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Wachtler v. Cuomo: The Limits of Inherent Power

Howard B. Glaser*

"We are faced with the paradox that litigation designed to solve a problem makes its solution less likely."¹

I. Introduction

On December 31, 1990, New York Governor Mario M. Cuomo entered the paneled chambers of the state Court of Appeals, where he began his legal career thirty years earlier as a law clerk, and stepped-up to face Chief Judge Sol Wachtler.² The Governor and the Chief Judge were long-time friends and some-time rivals: the Democratic Governor had appointed the Republican jurist Chief Judge in 1985.³ Governor Cuomo had asked Chief Judge Wachtler to preside over the ceremony marking the Governor's third inauguration. As the Chief Judge administered the oath of office to the Governor, neither man could anticipate that in the coming year they would face each other again in a New York courtroom, not to celebrate democracy, but to test it in the most severe constitutional crisis in New York State's history. The confrontation was spawned by New York's grim fiscal condition, when the Governor, four weeks after his swearing in, announced unprecedented budget cutbacks throughout state government, including the court system.⁴ The Chief Judge responded with a lawsuit, which asserted that the judiciary had "inherent power" to compel the executive and leg-

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1. Federal district Judge Jack Weinstein on *Cuomo v. Wachtler*, No. 91-CV-3874, slip op. at 4 (E.D.N.Y. Oct. 7, 1991); see also *Wachtler v. Cuomo*, No. 6034/91 (Sup. Ct. Albany County filed Sept. 27, 1991) (settled Jan. 1992).

2. Sam H. Verhovek, *Cuomo is Sworn in For 3rd Term Without Festivities*, N.Y. TIMES, Jan. 1, 1991, at 31.

3. See David Margolick, *The Making of a Chief Judge*, N.Y. TIMES, Jan. 6, 1985, § 4 (Week in Review), at 6.

4. See *infra* notes 96-101 and accompanying text.

islative branches to fund the state court system at a judicially mandated level of almost \$1 billion.⁵

The doctrine of inherent powers is one which asserts that the very existence of the courts implies their authority to exercise powers reasonably necessary to the performance of judicial functions.⁶ Though the doctrine has been employed by American courts for various purposes since the beginning of the nineteenth century, *Wachtler v. Cuomo*⁷ was significant in several ways. It marked the first substantial use of the doctrine by a state's highest court against an equal branch of government.⁸ The budget at the center of the conflict approached \$1 billion, dwarfing previous inherent power conflicts.⁹ The lawsuit represented an unprecedented application of inherent powers to lump-sum funding, as opposed to the discrete line-item expenditures at issue in prior cases.¹⁰ Due to the involvement of New York's Chief Judge and Governor, the case received wide media coverage.¹¹ The controversy focused public attention on constitutional questions usually covered in the classroom or the courtroom rather than by the newsroom.¹²

Although the legal issues in *Wachtler v. Cuomo* never came to trial, the lawsuit and the controversy it created are worth analyzing for the lessons they provide about the nature and limits of the inherent powers doctrine. It is particularly important to consider the implications of *Wachtler v. Cuomo* at a time when state court budgets around the country are tightly squeezed by fiscal pressures, tempting besieged judges and

5. See *infra* note 99 and accompanying text.

6. For a collection of definitions appearing in case law and commentary, see JOHN C. CRATSLEY, *INHERENT POWERS OF THE COURTS* 19 (1980). For a discussion of the conceptual basis of the doctrine, see *infra* notes 151-60 and accompanying text.

7. No. 6034/91 (Sup. Ct. Albany County filed Sept. 27, 1991) (settled Jan. 1992).

8. See cases cited *infra* notes 14-26.

9. See cases cited *infra* notes 14-26.

10. See cases cited *infra* notes 14-26.

11. Chief Judge Wachtler resigned in November, 1992. *Chief Judge Resigns Court*, N.Y. TIMES, Nov. 11, 1992, at B1.

12. See *infra* notes 90, 108, 124-25, 206-13 and accompanying text.

court administrators into increased use of inherent powers to address chronic budget shortfalls.¹³

The objective of this Article is to assess the viability of applying the inherent powers doctrine in the context of a state budget conflict. Centering on a case study of *Wachtler v. Cuomo*, this Article will place this exercise of inherent powers in historical perspective by analyzing the theoretical, precedential, doctrinal, and political implications of the use of the doctrine as a tool to compel funding for a state court system. Part II discusses the historic roots and gradual expansion of the inherent powers doctrine. The judicially created doctrinal limitations imposed on the use of the expanding doctrine are introduced in Part III. Part IV presents a detailed review of the political, legal and fiscal developments surrounding Judge Wachtler's lawsuit. In Part V, *Wachtler v. Cuomo* is analyzed in light of the legal, political, and conceptual justifications offered for the exercise of inherent power. Part VI concludes that although the doctrine of inherent powers may retain its vitality as a tool to protect politically vulnerable local courts from local government incursions into the judicial sphere of power, *Wachtler v. Cuomo* demonstrates that its expansion into the statewide budget process is untenable.

II. The Historical Expansion of the Inherent Powers Doctrine

A. *Early Uses of the Doctrine*

The courts have long recognized the use of inherent powers to assert judicial independence. The early applications of the doctrine involved the courts' attempts to exercise control over courthouse facilities and personnel,¹⁴ and over the judicial pro-

13. See, e.g., John A. Clarke, *Asserting the Courts' Independence*, THE COURT MANAGER, Winter 1992, at 9-12; Malcolm M. Lucas, *Is Inadequate Funding Threatening Our System of Justice?*, 74 JUDICATURE 292 (1991).

14. See *Scott v. Minnehaha County*, 152 N.W. 699 (S.D. 1915) (preparation of court calendars); *State ex rel. Kitzmeyer v. Davis*, 68 P. 689 (Nev. 1902) (court can order new furniture and carpet); *Board of Comm'rs v. Stout*, 35 N.E. 683 (Ind. 1893) (control of courthouse elevator belongs to court); *State ex rel. S. Howard v. Smith, Auditor*, 15 Mo. App. 412, 424 (1884) (power to appoint janitor); *In re Janitor of Supreme Court*, 35 Wis. 410 (1874) (power to appoint janitor); *McCalmont v. County of Allegheny*, 29 Pa. 417 (1857) (ordering office space for court clerk, ordering forms and stationery within inherent powers).

cess itself, most notably through the power of contempt.¹⁵ From these limited beginnings, the use of the doctrine evolved to keep pace with new developments and challenges affecting the management of the courts. During the 20th century, the courts have frequently exercised the power to issue rules of practice and procedure,¹⁶ rules governing the practice of law,¹⁷ rules of courtroom decorum,¹⁸ protective orders against the press,¹⁹ provisions for jury expenses,²⁰ and appointments of counsel for criminal defendants.²¹ These exercises of inherent power were largely limited to judicial housekeeping or to assert control over adjudicative proceedings and administration, posing neither threats to a coordinate branch nor any serious fiscal consequences.²² None of these applications of inherent power were particularly objectionable on constitutional or political grounds.

15. See *In re Cooper*, 32 Vt. 253, 257 (1858). "The power to punish for contempt is inherent in the nature and constitution of a court. It is a power not derived from any statute but arising from necessity; implied, because it is necessary to the existence of all the powers." *Id.* See also *United States v. Hudson*, 11 U.S. (7 Cranch) 32, 34 (1812) (dictum). In *Hudson*, the Court commented that "inherent powers are those which cannot be dispensed with in a court because they are necessary to the exercise of all others [O]ur courts no doubt possess powers not immediately derived from statute" *Id.*

16. *State v. Gary*, 247 S.E.2d 420 (W. Va. 1978); *Rose v. Palm Beach City*, 361 So. 2d 135 (Fla. 1978); *People v. Jackson*, 371 N.E.2d 602 (Ill. 1977); *Albermont Petroleum, Ltd. v. C.D. Cunningham*, 9 Cal. Rptr. 45 (Ct. App. 1960); *State ex rel. Conway v. Superior Court*, 131 P.2d 983 (Ariz. 1942); *Kolkman v. People*, 300 P. 575 (1931); *Walton v. Walton*, 278 P. 780 (Colo. 1929).

17. *Collins v. Godfrey*, 87 N.E.2d 838 (Mass. 1989); *State Bar v. Guardian Abstract Title Co.*, 575 P.2d 943 (N.M. 1978); *In re Manoual*, 247 S.E.2d 230 (N.C. 1977).

18. *Illinois v. Allen*, 397 U.S. 337 (1970).

19. *Rosato v. Superior Court*, 124 Cal. Rptr. 427 (Ct. App. 1975), *cert. denied*, 427 U.S. 912 (1976); *United States v. Schiavo*, 504 F.2d 1 (3d Cir.), *cert. denied*, 419 U.S. 1096 (1974); *Younger v. Smith*, 106 Cal. Rptr. 225 (Ct. App. 1973).

20. *Rose v. Palm Beach City*, 361 So. 2d 135 (Fla. 1978).

21. *Kovarik v. County of Banner*, 224 N.W.2d 761 (Neb. 1975); *People ex rel. Conn v. Randolph*, 219 N.E.2d 337 (Ill. 1966).

22. See, e.g., *O'Coins, Inc. v. Treasurer of Worcester*, 287 N.E.2d 608, 611 (Mass. 1972) (Court's authority "is not limited to adjudication, but includes certain ancillary functions, such as rulemaking and judicial administration, which are essential if the courts are to carry out their constitutional mandate."); see also Geoffrey Hazard, Jr. et al., *Court Finance and Unitary Budgeting*, 81 YALE L.J. 1286, 1288 (1972) ("Most of the reported decisions have involved marginal appropriations for ancillary personnel and facilities rather than basic fiscal under-writing.").

B. *Modern Expansion of the Doctrine to Court Funding*

During the last thirty years, the doctrine has been extended into areas of more significant fiscal consequence, and the conflict between the branches has sharpened. The typical modern dispute has involved the power of the courts to fill support positions and to compel the local legislature to fund them at adequate salaries.²³ The rhetoric of the cases justified these exercises of inherent power as necessary to preserve the independence of the judicial branch. The judiciary, observed one court, "is the only branch excluded from participation in the formulation and adoption of the government budget. Such exclusion makes the courts vulnerable to improper checks in the form of reward or retaliation."²⁴ Thus, the judiciary must "be able to ensure its own survival when insufficient funds are provided by other branches."²⁵

The application of the doctrine in these cases was not as broad as its language suggests. The actual court orders compelled funding for fairly small, discrete, line-item expenditures such as salaries and equipment.²⁶ Notwithstanding the dicta, the doctrine was not being used as a basic budget mechanism in this line of cases. Furthermore, in virtually every reported case since the 19th century the doctrine was being asserted by a state court against a local government body. The interbranch conflict was played out between a superior and inferior division of government, and did not represent the confrontation between equals as was implied by the expansive verbiage of the opinions.

23. See, e.g., *Judges for the Third Judicial Circuit v. County of Wayne*, 172 N.W.2d 436 (Mich. 1969) (power to set salaries of a group of probation officers and law clerks), *modified on reh'g*, 190 N.W.2d 228 (Mich. 1971), *cert. denied*, 405 U.S. 923 (1972) (power to set salaries of a group of probation officers and law clerks); *Smith v. Miller*, 384 P.2d 738 (Colo. 1963) (judicial authority to set salaries of court clerks); *Noble County Council v. State*, 125 N.E.2d 709 (Ind. 1955) (power to appoint probation officer).

24. *In re Salary of the Juvenile Director*, 552 P.2d 163, 170 (Wash. 1976).

25. *Id.* at 171; see also *Smith*, 384 P.2d at 741 ("It is abhorrent to the principles of our legal system and to our form of government that courts, being a coordinate department of government should be compelled to depend upon the vagaries of an extrinsic will." (quoting conclusion of trial court)).

26. *Juvenile Director*, 552 P.2d 163 (Wash. 1976) (\$125 per month increase in salary for director of juvenile services); *O'Coins, Inc. v. City of Worcester*, 287 N.E.2d 608 (Mass. 1972) (\$86 for tape recorder and tapes); *State ex rel. Reynolds v. County Court*, 105 N.W.2d 876 (Wis. 1960) (\$250 for an air conditioner).

C. *The Outer Bounds of the Doctrine: Commonwealth ex rel. Carroll v. Tate*

The furthest expansion of the doctrine occurred in *Commonwealth ex rel. Carroll v. Tate*.²⁷ The dispute in *Tate* concerned the 1970-71 budget request submitted by the Philadelphia Court of Common Pleas. The Mayor trimmed a number of items from the \$19.7 million request, reducing it to \$16.5 million, and the city council approved the reduced amount.²⁸ The court sought mandamus to compel the payment of the additional funds.²⁹ The Pennsylvania Supreme Court, in affirming (with modifications) a lower court opinion ordering restoration of approximately \$2.5 million to the budget, argued that fiscal autonomy was a requisite for judicial independence:

[T]he Judiciary must possess the inherent power to determine and compel payment of those sums of money which are reasonable and necessary to carry out its mandated responsibilities, and its powers and duties to administer Justice, if it is to be in reality a co-equal, independent Branch of our Government.³⁰

In determining whether the exercise of inherent power to compel funding was justified, the court rejected consideration of the fiscal condition of the locality as a factor.³¹

Tate was significant for two reasons. First, it marked an expansion of the inherent powers doctrine into broader fiscal matters than in previous cases. Substantial budget items for an entire municipal court system were in dispute, rather than the isolated expenditures of a particular judge, which had typified prior inherent powers cases. Second, the traditional exercises of inherent power served to protect the institutional control of the court, but not at the expense of a coordinate branch. Although some of the earlier cases required specific outlays, the expenditure of a few dollars for a janitor or court stenographer did not seriously impinge upon the institutional taxing or

27. 274 A.2d 193 (Pa.), cert. denied, 402 U.S. 974 (1971).

28. *Id.* at 195.

29. *Id.* at 193; see also Comment, *State Court Assertion of Power to Determine and Demand Its Own Budget*, 120 U. PA. L. REV. 1187 (1972) for a discussion of the case.

30. *Carroll*, 274 A.2d at 197.

31. *Id.* at 199.

spending power of the legislative or executive branches.³² By contrast, *Tate's* decision to allocate a significant amount of public resources to the courts went to the heart of the city council's institutional power. Thus, *Tate* marked the first "offensive" use of inherent power; its exercise preserved the status of the courts by diminishing the power of the legislature.

In spite of the distinctions, there were two fundamental ways in which *Tate* was consistent with prior and subsequent inherent powers case law which arguably made this "offensive" use acceptable. First, as in virtually every other inherent powers case, the ultimate confrontation in *Tate* occurred not between coequal partners in state government, but between a state supreme court and a local government unit.³³ *Tate* and the inherent powers case law should thus be viewed as a power struggle between state and local government, rather than as a true separation of powers conflict.³⁴

Second, the offense in *Tate*, which spurred the use of inherent powers, was that the legislature had eliminated specific expenditure items from the court's budget. The gravamen of *Tate* and its progeny was judicial resentment at being told *how* to spend the courts' money, rather than discontent over *how much* total spending was to be allocated.

III. Controlling the Expansion of Inherent Powers: Judicial Limitations and the Growth of State Financing

In the wake of *Tate*, commentators predicted (with varying degrees of approval) that courts, which had traditionally been more of a spectator than a player, had found a tool by which they could circumvent the budget process.³⁵ At a time of in-

32. See Hazard et al., *supra* note 22, at 1288, for a discussion of this point.

33. See cases cited *supra* notes 14-26 and accompanying text.

34. See Hazard et al., *supra* note 22, at 1288.

35. See Hazard et al., *supra* note 22; Note, *The Courts' Inherent Power to Compel Legislative Funding of Judicial Functions*, 81 MICH. L. REV. 1687 (1983); John C. Taggart, Note, *Judicial Power - The Inherent Power of the Courts to Compel Funding for Their Own Needs - In Re Juvenile Director*, 87 Wn.2d [sic] 232, 552 P.2d 163 (1976), 53 WASH. L. REV. 331 (1978); John F. Burke, *The Inherent Power of the Courts*, 57 JUDICATURE 247 (1974); William S. Ferguson, *Judicial Financial Autonomy and Inherent Power*, 57 CORNELL L. REV. 975 (1972); James T. Brennan, *Judicial Fiscal Independence*, 23 U. FLA. L. REV. 277 (1971); Jim R. Carrigan, *Inherent Powers and Finance*, 7 TRIAL 22 (Nov./Dec. 1971).

creasing fiscal difficulties for municipalities around the country, the use of inherent powers as a negotiating instrument or legal weapon could prove to be a tempting way to address chronic, broad-based budget problems. However, until *Wachtler v. Cuomo*, inherent powers disputes actually remained confined to discrete budget items rather than to broad budget-making; and to state-local government conflicts rather than to primal clashes between coequal branches at the state level.

There are several reasons why it took twenty years before there was an attempt to expand the doctrine to the next level. First, as the post-*Tate* case law developed and top-level court administrators reacted to *Tate*, the courts placed a series of self-imposed limitations on the exercise of inherent powers.³⁶ These doctrinal limits include a requirement of prior approval, the standard of reasonable necessity, the exhaustion of established procedures, and, in some cases, appointment of an outside judge.³⁷ As state supreme courts recognized ever broader applications of the doctrine, they sought to impose these limits as a means by which to regulate the exercise of inherent power by the lower courts.³⁸ Second, the development of unitary financing and lump-sum budgeting reduced the opportunities for inherent powers conflicts at the local level.³⁹

A. *Judicially Imposed Doctrinal Limitations on Inherent Powers*

1. *The Requirement of Prior Approval*

An important limitation imposed on a court seeking to exercise its inherent power is the prior approval of either a state court administrator, or the supreme court itself, as a prerequisite to the exercise. Several states have embodied this requirement in an administrative order or court rule.⁴⁰

36. See *infra* notes 40-48 and accompanying text.

37. *Id.*

38. *Id.*

39. See *infra* notes 49-55 and accompanying text.

40. See, e.g., MASS. SUP. JD. CT. R. 1:05 (requiring approval of chief judge); MICH. SUP. CT. ADMIN. ORDER no. 1971-6, 386 Mich. xxix (1971) ("[N]o judge of a subordinate court may . . . order the expenditure of public funds for any judicially required purpose until such judge has submitted his proposed writ or order to the constitutional office of Court Administrator, and has obtained due approval . . .").

Prior approval has two important consequences. First, it gives the state supreme court ultimate control over the exercise of inherent powers. Second, the approval requirement helps facilitate solutions between the court units and the local legislative units by placing the state court administrator in a position to mediate the dispute outside of the judicial process.⁴¹ Removing the dispute from the heated arena of local politics helps cool the passions that might otherwise lead to an injudicious use of the expanded doctrine.

2. *The Reasonable and Necessary Standard*

The second doctrinal requirement is that the funding sought should be "reasonably necessary" to the functioning of the court.⁴² This vague, verbal formula is subject to manipulation and is incapable of a precise definition.⁴³ Despite its drawbacks, this formula functioned as a minimum, uniform guideline for budget development. Local judges and legislators brought *ad hoc* standards and varying degrees of skill to the budget making process; the decentralization of the budget process simply did not lend itself to expert budget development. By imposing the "reasonable and necessary" standard, the supreme courts created a makeshift surrogate for the uniform standards of a centralized finance system.⁴⁴

A related purpose of the standard was to force the court seeking to exercise inherent powers to document its needs in order to add credibility to its action and reduce the chance that

41. See CRATSLEY, *supra* note 6, at 8 (citing CARL BARR, JUDICIAL ACTIVISM IN STATE COURTS: THE INHERENT POWERS DOCTRINE).

42. Commonwealth *ex rel.* Carroll v. Tate, 274 A.2d 193, 199 (Pa. 1971), *cert. denied*, 402 U.S. 974 (1971) (A court's "wants and needs must be proved by it to be reasonably necessary for its proper functioning and administration.").

43. Clerk of Court's Compensation v. Lyon County Comm'rs, 241 N.W.2d 781, 782 (Minn. 1976) ("The test is not relative needs or judicial wants, but practical necessity in performing judicial functions."); *In re* Salary of the Juvenile Director, 552 P.2d 163, 174 (Wash. 1976) (setting a strict standard of "clear, cogent, and convincing proof" to show reasonable necessity).

44. It is clear from the inclusion in supreme court administrative rules of the reasonable and necessary standard that the standard was aimed at imposing some uniformity on local court budget activity. See *infra* note 53 and accompanying text. The concern over inconsistent local approaches to court budget policies has been one of the driving forces behind court unification. See generally NAT'L INST. OF JUSTICE RESEARCH REPORT, STRUCTURING JUSTICE: THE IMPLICATIONS OF COURT UNIFICATION REFORMS (1984).

the exercise of inherent powers would be viewed as arbitrary.⁴⁵ Although the cases rarely acknowledge that the exercise of inherent powers may implicate public trust in the judiciary, the "reasonably necessary" requirement seems motivated in part by such considerations.⁴⁶

3. *The Requirement of Administrative Exhaustion*

One of the most basic of the court-imposed limits is the requirement that inherent powers may only be used when established means for fulfilling a court's needs have failed.⁴⁷ Therefore, invoking inherent powers is an act of last resort. Courts must, at a minimum, follow prescribed procedures for legislative approval of budget items and cannot simply substitute inherent powers for the normal legislative budget process.

4. *Appointment of an Outside Judge*

The appearance of judicial impartiality is threatened when the judge who issues a funding order under the mantle of inherent powers then reviews his own order in a subsequent legal action. As a result, courts will sometimes require that a judge who is unaffected by the inherent powers order hear the challenge to the order.⁴⁸

B. *The Growth of Modern Finance Mechanisms*

Several nonjudicial developments have also affected the use of inherent powers. First, with the advent of the modern expansion of inherent powers that limited the budgetary discretion of local governments, localities began to support state take-

45. See *Juvenile Director*, 552 P.2d at 174 (discussing the proper standard). In that case, the court stated that "it is incumbent upon the courts, when they must use their inherent power to compel funding, to do so in a manner which clearly communicates and demonstrates to the public the grounds for the court's action." *Id.*

46. *Id.*

47. See, e.g., *Clerk of Court's Compensation v. Lyon County Comm'rs*, 241 N.W.2d 781 (Minn. 1976) (inherent power could not be exercised to establish clerk's salary where clerk failed to appeal figure set by county as required); *Leahy v. Farrell*, 66 A.2d 577 (Pa. 1949) (inherent power not justified where lower court failed to submit salary increase to county board as required by statute); *Hillis v. Sullivan*, 137 P. 932 (Mont. 1913).

48. See, e.g., *McCorkle v. Judges of Chatham County*, 392 S.E.2d 707, 709 (Ga. 1990).

overs of court financing.⁴⁹ As the use of unitary budgeting expanded, the battleground for local, inherent powers disputes contracted.⁵⁰ In addition, the introduction of lump-sum budgeting gave judges and court administrators greater flexibility in creating and managing their budgets. Under lump-sum budgeting, there is no longer a need for a judge to go hat in hand to a legislative body for a tape recorder⁵¹ or an air-conditioner.⁵²

C. *The Implications of Centralizing Financing and State Supreme Court Control of the Doctrine: Setting the Stage for Wachtler v. Cuomo*

Taken together, the court-imposed limitations and the budget innovations have largely removed inherent powers disputes from the province of local government and have encouraged reconciliation of conflicts. As this process progressed, some commentators predicted that inherent powers would become less important as a budgeting tool for the courts.⁵³ A few observers recognized that the removal of the budgeting process to the state level and the assumption by the state's highest courts of the role of guardian of the inherent power may have raised the stakes of an inherent powers conflict even while reducing the incidence of disputes.⁵⁴

49. See CRATSLEY, *supra* note 6, at 3 (discussing Carl Barr, *Judicial Activism in State Courts: The Inherent Powers Doctrine*, in STATE SUPREME COURTS: POLICY-MAKERS IN THE FEDERAL SYSTEM, 129 (Mary C. Porter & G. Alan Tarr eds., 1982)).

50. In New York State, for example, the 1962 consolidation of the court system meant that the local courts were no longer dependent on the 62 county governments, thus reducing a significant number of potential fiscal flash points — or at least shifting the battleground to the state level. See *infra* notes 54, 184 and accompanying text.

51. O'Coins, Inc. v. Treasurer of Worcester, 287 N.E.2d 608 (Mass. 1972).

52. State *ex rel.* Reynolds v. County Court, 105 N.W.2d 876 (Wis. 1960).

53. See, e.g., Barr, *supra* note 49, at 146.

54. A group of prescient commentators who recognized the implications of these events was Geoffrey Hazard and his co-authors, who wrote 20 years before *Wachtler v. Cuomo* that:

a remote danger in unitary budgeting, but one which cannot be ignored, is that the judicial system will take the inherent powers doctrine seriously and try to secure its appropriation by mandamus. At this level the legislature would find its vital interests and prerogatives threatened . . . [T]he ultimate outcome of such a conflict is impossible to predict but certainly it would discredit both branches of government and embarrass judicial financing for some time.

Hazard et al., *supra* note 22, at 1300.

Prior to *Wachtler v. Cuomo*, there were no significant inherent power conflicts between coequal state branches of government.⁵⁵ As the fiscal problems of the cities during the 1960s and 1970s (which spawned the modern expansion of the inherent powers doctrine) became the burden of the states in the 1980s, the locus of inherent power conflicts shifted. With both the budget process and control of inherent powers residing at the state level, an attempt to expand the doctrine beyond its previous bounds in a direct confrontation between constitutionally equal branches of state government was inevitable.

IV. *Wachtler v. Cuomo*: A Chronicle of Constitutional Crisis

A. *Judicial Funding and the New York Budget Process*

The majority of states treat the judicial branch like any other state agency in the preparation of the budget.⁵⁶ judiciary budget requests are submitted to executive budget officials who review and revise the requests, and incorporate the revised requests into the final budget submitted to the legislature.⁵⁷ The remaining states either permit the judiciary to submit its budget request directly to the legislature, or require the judiciary to submit its request to the executive branch, which must then transmit the request to the legislature without revision but subject to the recommendations of the executive.⁵⁸ New York follows the latter procedure in which the executive acts as a "conduit" for the judicial budget request; New York is fairly unusual in that the conduit procedure is mandated by a consti-

55. There were several cases involving insignificant sums, none of which precipitated any head-to-head conflict between the branches over fundamental powers. See *In re Appointment of Clerk of Court of Appeals*, 297 S.W.2d 764 (Ky. 1957) (power to appoint clerk); *State ex rel. Cunningham*, 101 P. 962 (Mont. 1909) (power to set stenographer's salary); *State ex rel. Kitzmeyer v. Davis*, 68 P. 689, 690 (Nev. 1902) (power to order new furniture and carpet for supreme court); *In re Janitor of Supreme Court*, 35 Wis. 410 (1874).

In 1978, the West Virginia Legislature decreased funding for the judicial budget several times. The Supreme Court of Appeals ordered the full budget reinstated. The case did not involve inherent powers; it turned on a constitutional provision prohibiting the legislature from decreasing judicial budget items. *State ex rel. Bagley v. Blankenship*, 246 S.E.2d 99 (W. Va. 1978).

56. CARL BARR, *SEPARATE BUT SUBSERVIENT: COURT BUDGETING IN THE AMERICAN STATES* 25 (1975).

57. *Id.*

58. *Id.* at 29.

tutional provision.⁵⁹ The constitution further provides that the legislature may strike, reduce, or add items to the judiciary budget request subject to the veto of the Governor.⁶⁰

Pursuant to its constitutional powers, the New York State Legislature had in fact consistently reduced the judiciary request in each of the fiscal years from 1982-1990 by between \$10 and \$50 million, even while the actual level of appropriations rose by over \$400 million.⁶¹ The Governor's acquiescence in these reductions in the judiciary budget request became an increasing source of tension between the Chief Judge and the Governor to the point that observers looked to "their annual squabble over the state judiciary budget" as a way to "enliven Albany's dreary year end political scene."⁶²

In 1982, the year Cuomo took office, the appropriation for the judiciary was \$480.1 million. This figure increased by \$415 million or 86% during the following nine fiscal years.⁶³ Yet, the judiciary still found its resources stretched with these increases falling an average of 4% short of its own budget requests.⁶⁴ Since 1985, the year when "crack cocaine" first began to appear in New York, the number of felony indictments and superior court informations in Supreme and County Courts statewide increased by 57%.⁶⁵ Felony filings in the criminal terms of New York County supreme courts increased by 73%.⁶⁶ Municipal

59. N.Y. CONST. art. VII, § 1 provides that:

Itemized estimates of the financial needs of the legislature, certified by the presiding officer of each house, and of the judiciary, approved by the court of appeals and certified by the chief judge of the court of appeals, shall be transmitted to the Governor not later than the first day of December in each year for inclusion in the budget without revision but with such recommendations as he may deem proper. Copies of the itemized estimates of the financial needs of the judiciary also shall forthwith be transmitted to the appropriate committees of the legislature.

Id.

60. *Id.* § 4.

61. *Wachtler v. Cuomo*, No. 6034/91 (Sup. Ct. Albany County 1991 filed Sept. 27, 1991).

62. Elizabeth Kolbert, *Cuomo at Odds with Top Judge on Budget Plea*, N.Y. TIMES, Dec. 8, 1989, at B3.

63. *Wachtler*, at 12.

64. *Id.*

65. *Id.* at 14.

66. *Id.*

courts around the state were experiencing similar increases.⁶⁷ New York City Criminal Court calendars commonly contained 250 cases daily, as approximately 330,000 cases were filed in 1989.⁶⁸ Noncriminal cases also surged during the late 1980s, including a 223% increase in family court cases in New York City, and civil filings increasing 25%.⁶⁹ As caseloads rose swiftly, judicial staffing resources increased only minimally, and nonjudicial personnel remained understaffed, particularly in the trial courts where 850 positions remained unfilled due to budget constraints entering the 1991-92 fiscal year.⁷⁰ The Chief Judge had repeatedly pressed the legislature and the Governor for more money over the years, characterizing court funding as a "bones and sinew budget,"⁷¹ and privately complaining of cavalier treatment by the Governor.⁷² The resulting backlogs and delays set the stage as the Office of Court Administration began planning for the 1991-92 budget process in the fall of 1990.

B. *The 1991-92 Executive Budget Proposal*

On December 1, 1990, the Chief Judge transmitted to the Governor and legislature a judiciary budget request for \$966.4 million, an increase of \$70 million, or 8% over the previous year's appropriation.⁷³ The Governor incorporated this request in his Executive Budget without revision on January 31st⁷⁴ and included the entire request within the appropriations bill submitted to the legislature.⁷⁵ However, in the Governor's financial plan, which contained the Governor's recommended levels of expenditures and revenues, the Governor recommended a reduction of 10% from the judiciary's request, resulting in a \$25

67. *Id.*

68. *Id.*

69. *Id.* at 15.

70. *Id.* at 13.

71. William Glaberson, *Cuomo Urged to Increase Court Budget*, N.Y. TIMES, Jan. 29, 1990, at B1.

72. Frank Lynn, *Cuomo's Fiscal Battle With Judge Pits Dollars and Dignity*, N.Y. TIMES, Mar. 19, 1990, at B3.

73. *Wachtler*, at 7, 13.

74. 1991-92 N.Y.S. Executive Budget at 555-83.

75. S. 1751, A. 3051; *Wachtler*, at 12.

million (2.8%) proposed reduction from the previous year's appropriation.⁷⁶

The Governor's 2.8% proposed reduction in the judiciary budget was in line with other spending cuts compelled by what the Governor characterized as the state's worst financial crisis since the Great Depression.⁷⁷ The 1991-92 Executive Budget anticipated a \$6 billion gap between revenue forecasts and spending projections.⁷⁸ The \$29.15 billion state spending plan included proposals for the largest spending cuts and tax increases in the state's history.⁷⁹ The cuts went to the heart of some of the state's most powerful political constituencies. Governor Cuomo acknowledged that the budget would generate "a lot of complaining and a lot of screaming" from interest groups but insisted that the state's basic strengths would remain intact.⁸⁰ One of the first to respond was Chief Judge Wachtler, who warned the Governor that "what you recommend will not leave this state strong—it will leave it vulnerable in a very fundamental way."⁸¹

C. *The Chief Judge Drops a Bombshell*

Although the New York State Constitution imposes an April 1 deadline for the approval of the state budget, the fiscal crisis of the late 1980s complicated negotiations between the Governor and legislature over spending cuts and revenue increases, resulting in a series of missed budget deadlines.⁸² By the time the April 1 deadline had passed in 1991, negotiators still had not resolved major budget issues.

76. *Wachtler*, at 11. This distinction between the Executive Budget and financial plan would later form one focal point of the confrontation and intertwine with the inherent powers arguments.

77. Sam H. Verhovek, *Cuomo Proposing Steep Budget Cuts and Tax Increases*, N.Y. TIMES, Feb. 1, 1991, at A1.

78. *Id.*

79. Including a \$1 billion cut in school aid, a 50% cut in aid to localities, the abolishment of dozens of state agencies, the elimination of 18,000 state jobs (10% of the work force), a \$400 million loss in aid to New York City, and a host of new taxes, including a 50% increase in tuition at state and city universities. *Id.*

80. *Id.*

81. *Id.*

82. Sarah Lyall, *Budget in Albany is Political Pact*, N.Y. TIMES, Apr. 2, 1993, at B1.

The question of the judiciary budget remained a background issue until mid-April when Chief Judge Wachtler, in a Manhattan speech, dropped his first bombshell. Noting that the Governor had failed to include the judiciary's own budget estimate in his financial plan, the Chief Judge announced, "[a]s far as I'm concerned, that's an unconstitutional budget."⁸³ By including a revised estimate in the financial plan, the Chief Judge charged that the Governor was not just "fiddling with the financial plan – he's fiddling with the Constitution."⁸⁴ The Chief Judge noted that several other court systems had successfully sued their states to force them to fully finance the judiciary,⁸⁵ which was the first indication that he thought the Governor's actions might come within the inherent powers doctrine.

Off the record, judiciary officials were "hinting darkly" about lawsuits.⁸⁶ Governor Cuomo remained unperturbed by the Chief Judge's remarks. "I have no doubts as to [the budget's] constitutionality despite the Chief Judge's opinions," the Governor, who takes pride in his own legal acumen, told the New York Times.⁸⁷ Seizing on a theme that would recur throughout the confrontation, the Governor tried to cast the Chief Judge as the voice of just one more special interest group vying for a bigger slice of a shrinking budget pie. "He's like all the other people who speak in their political capacity. He's trying to get as much as he can for his particular segment."⁸⁸

The Chief Judge's approach was met with an equally cool reception in the legislature, where the Chair of the Assembly Judiciary Committee dismissed the constitutional accusations as a "sort of 'how many angels can dance on the head of a pin' kind of argument. The fact of the matter is the court system is

83. Elizabeth Kolbert, *Wachtler Says Cuomo Cut Judiciary Funds Unconstitutionally*, N.Y. TIMES, Apr. 11, 1991, at B5.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.* After graduating at the top of his St. John's law school class in 1956, Cuomo clerked for the Court of Appeals for two years. Prior to embarking on a career in politics, Cuomo developed a reputation as a tough litigator and creative appellate attorney. See generally ROBERT S. McELVAINE, MARIO CUOMO - A BIOGRAPHY, 133-46, 167-92 (1988).

88. Kolbert, *supra* note 83, at B5.

not going to get the total budget they requested, and I think they realize that."⁸⁹

In the court of public opinion, the editorial writers awarded round one of the budget battle to the Governor.⁹⁰ The New York Times accused Wachtler of "picking a constitutional fight" which "foment[ed] needless turmoil," and suggested that fears of collapse in the justice system were "overstated," involving consequences to public convenience, not safety.⁹¹ These responses did nothing to improve the Chief Judge's negotiating position, and he was to suffer a more damaging loss in the next round.

D. *A Budget Is Approved*

On May 31, 1991, the state legislature approved a final appropriation for the judicial branch of \$889.3 million.⁹² The amount represented a decrease of \$77 million from the judiciary's original budget request, and an increase over the Governor's recommendation by \$19 million. Compared to the previous year's appropriation, the judiciary absorbed an actual decrease of about \$6.5 million, or .7% of the 1990 budget.⁹³ In response, the Chief Judge again raised the possibility of an inherent powers lawsuit, suggesting that the "enormity" of the cuts would justify legal action. "Courts throughout the country have consistently held that the legislative and executive branches have the obligation of adequately funding the courts."⁹⁴ Chief Judge Wachtler emphasized that an inherent powers suit was "something that must be exercised with enormous restraint. But we should not confuse judicial restraint with judicial abdication."⁹⁵

89. *Id.*

90. *This Court Crisis Isn't Necessary*, N.Y. TIMES, Apr. 15, 1991, at A16.

91. *Id.*

92. *Wachtler*, at 10.

93. The 1990-91 appropriation for the judiciary was \$895.8 million. *Wachtler*, at 12.

94. Gary Spencer, *Legislature Appropriates \$899 Million For Judiciary*, N.Y. L.J., June 4, 1991, at 1.

95. *Id.*

E. *The Legal and Political Battles*

The situation remained quiet until September 1991 when the Chief Judge made good on his threat and filed a lawsuit against the Governor and legislative leaders in the New York State Supreme Court. Chief Judge Wachtler charged that the Governor had violated his constitutional obligation to incorporate the judiciary budget request in the Executive Budget, and that the Governor and legislature had failed to fund the courts adequately.⁹⁶ He preceded the filing of the suit with an announcement that the budget would require 500 layoffs in the court system and a cutback in the hours of operation of small claims courts.

Chief Judge Wachtler accompanied these announcements with a release of a letter to the Governor and the legislative leaders complaining about the budget's treatment of the court system.⁹⁷ It appeared that the reaction to his April comments⁹⁸ had convinced the Chief Judge that his constitutional argument and inherent powers exercise would be met with skepticism unless he could win the hearts and minds of the public (and the media) by pointing to the dramatic effects of the budget shortfall. Thus, he ordered the cutbacks, and publicly released the letter on September 5, 1991, announced the lawsuit on September 25, fired the 500 court workers the following day, and filed the lawsuit the day after the layoffs, all of which was accompanied by press conferences and releases.⁹⁹

The lawsuit took Albany observers by surprise. They had viewed the Chief Judge's threats primarily as a bargaining tactic designed to maximize his leverage during the spring budget negotiations.¹⁰⁰ In fact, the Chief Judge may actually have been looking ahead to the next budget cycle when he filed the lawsuit; in comments to reporters he conceded that he decided to file the suit after receiving warnings from the Governor's

96. Wachtler, at 25-26.

97. Elizabeth Kolbert, *Fiscal Cuts Forcing Layoffs, Chief Judge Says*, N.Y. TIMES, Sept. 6, 1991, at B3.

98. See *supra* notes 86-91 and accompanying text.

99. Sam H. Verhovek, *Chief State Judge is Suing Cuomo to Get More Money For Courts*, N.Y. TIMES, Sept. 26, 1991, at A1.

100. *Id.*

budget office that the upcoming budget would contain no judiciary increase.¹⁰¹

The Governor responded with a public relations offensive of his own, returning to the themes that had worked earlier in the year.¹⁰² In a statement released on the day the lawsuit was filed, Governor Cuomo again accused the judiciary of looking out for its own interests while turning a blind eye to other needs in the state. He made the point that the state's limited resources meant that any increase for the courts would have to come out of someone else's pocket: "[By] this complaint, the judges of our State say that they are entitled to whatever they feel they need for themselves and their courts, no matter whose taxes go up; no matter what poor people, sick people or children are denied; no matter who is laid off."¹⁰³

The day after the suit was filed, Governor Cuomo and Chief Judge Wachtler continued their "take no prisoners" brand of public relations warfare. The Governor held a press conference to sharply criticize the suit. He labeled it "zany," and said it set a "dangerous precedent."¹⁰⁴ He questioned the objectivity of judges hearing a case in which their own interests were at stake: "Having sat at the table of accusation, after they finish making the charge, they jump up, leap on the bench, turn around and say 'I was right.' Fascinating, even for New York."¹⁰⁵

Chief Judge Wachtler returned fire, charging the Governor with a "total unfamiliarity with the law" and suggested that the Governor should "spend more time governing, more time finding ways to properly fund the courts, and spend less time holding press conferences."¹⁰⁶

The editorial writers were dismayed by the confrontation. The New York Times ran an editorial captioned "Wachtler v. Cuomo = Two Losers," and took both men to task for the level of

101. *Id.*

102. See *supra* note 88 and accompanying text.

103. *Judge Wachtler Files his Suit to Get Courts More Money*, N.Y. TIMES, Sept. 27, 1991, at B3.

104. Kevin Sack, *Cuomo Denounces Judge's Lawsuit on Budget*, N.Y. TIMES, Sept. 28, 1991, at 22.

105. *Id.*

106. *Id.*

bitterness marking the conflict.¹⁰⁷ On the merits of the issue, the Times saw no change from its earlier conclusion that the legal issues were beside the point; the real question was the "judiciary's fair share" in a time of "plunging revenues and rising needs" throughout the state.¹⁰⁸ The Times remained skeptical that a few million dollars from a budget of \$900 million would make the difference between survival and collapse of the court system. Picking up on a point that the Governor was emphasizing, the Times suggested that the suit raised "disturbing conflict of interest questions" for the courts.¹⁰⁹ Even if the Chief Judge recused himself, should the case come before the Court of Appeals, "how could any other New York judge credibly try a case whose outcome would determine resources available for his own courtroom?"¹¹⁰ None of the commentary in the major papers gave any serious recognition to the inherent powers doctrine or precedent.

While the two men continued to lob daily volleys in the public relations battle, the Governor opened up a second front in the legal conflict with a countersuit filed before Federal Judge Jack Weinstein in the Eastern District of New York.¹¹¹ The Governor sought dismissal of the state court suit, relying on Civil War era civil rights provisions to argue that voters would be disenfranchised if their elected officials' budget making decisions could be overridden by unelected judges.¹¹² The complaint also repeated the Governor's public argument that the state courts could not fairly decide a case in which they had a strong institutional interest.¹¹³

Judge Weinstein declined to dismiss the suit, but suggested in a written opinion that the courtroom was not the best place

107. *Wachtler v. Cuomo = Two Losers*, N.Y. TIMES, Sept. 27, 1991, at A28.

108. *Id.*

109. *Id.*

110. *Id.*

111. Kevin Sack, *Cuomo Challenges His Chief Judge's Lawsuit*, N.Y. TIMES, Oct. 8, 1991, at B1.

112. Gary Spencer, *New Cuts Sought from Court Budget, Cuomo Cites Need to Close Latest Deficit*, N.Y. L.J., Nov. 1, 1991, at 2. The theory of Cuomo's suit was that, under 28 U.S.C. § 1443, Wachtler's suit had the effect of denying New Yorkers their vote for legislators who had adopted the budget and that the Wachtler suit violated the Equal Protection Clause by elevating judicial desires "over the demands of all other people of the state." *Id.*

113. Sack, *supra* note 104, at 22.

to resolve the budget dispute. He admonished the two "titans of New York" to avoid "an unseemly conflict" by negotiating a resolution.¹¹⁴ "Is it not time now, at the threshold, to stop, to reason, to withdraw from what will become a public spectacle with no benefit to the people whom both the talented Governor and the learned Chief Judge so desperately want to serve?,"¹¹⁵ questioned Weinstein. "We are faced with the paradox that litigation designed to solve a problem makes its solution less likely."¹¹⁶

To help achieve an out-of-court resolution, Weinstein asked former Secretary of State Cyrus Vance to mediate the dispute.¹¹⁷ Vance found negotiating this conflict to be as frustrating as his efforts to bring peace to the Balkans,¹¹⁸ for as soon as court recessed, the war of words began anew. The Governor tried to "remind the world that [the unseemly conflict]"¹¹⁹ was started by the Chief Judge:

It was the judges who charged into court, using their power and their forum as a giant sledgehammer to demand from the rest of the society that they be accommodated above all other people as though they weren't just judges, they were some kind of Brahmins [sic] who were specially selected.¹²⁰

After being told by a reporter of the Governor's comments, the Chief Judge reportedly reacted with an obscenity before responding that the "conflict was started when [the Governor] submitted our budget in an unconstitutional fashion, causing the closing of our courts."¹²¹ The Chief Judge dismissed the Governor's comments as "populist rhetoric" and announced that he would accept the mediation effort.¹²² However, the Governor rejected Vance's mediation effort, suggesting that neither the

114. *Cuomo v. Wachtler*, No. 91-CV-3874, slip op. at 2 (E.D.N.Y. Oct. 7, 1991).

115. *Id.* at 4.

116. *Id.*

117. *Id.*

118. See David Binder, *Vance, Leaving Sees Hope for Bosnia Plan Despite Fighting*, N.Y. TIMES, Apr. 14, 1993, at A8.

119. Sack, *supra* note 111, at B1.

120. *Id.*

121. *Id.*

122. *Id.*

constitution nor the state's fiscal condition were amenable to negotiation.¹²³

The Weinstein comments provided fresh ammunition for the editorial writers who caricatured the Governor and the Chief Judge as "schoolyard gladiators," and repeated the contention that "this dispute simply doesn't belong in court."¹²⁴ The Times dismissed the legal arguments and insisted again that "the dispute remains more political than legal."¹²⁵

As work on the legal briefs continued in October 1991 (with the Governor telling reporters he was up late every night researching the law for his countersuit)¹²⁶ the out-of-court maneuvering intensified, with both sides threatening investigations of the other's spending practices. By the end of October, it appeared that the Chief Judge was wavering in his resolve to continue the lawsuit.¹²⁷ He reportedly was willing to accept as little as \$11 million in increased funding along with a "pledge" that the courts may directly submit their budget request to the legislature.¹²⁸ However, he stood firm on the principle driving the suit, contending that even if he lost the lawsuit, "I would have made the point that we are not another state agency — we are a separate and co-equal branch of government."¹²⁹

F. *New York's Fiscal Picture Darkens*

In November 1991, the pressure on the Chief Judge to agree to a settlement increased sharply when state budget officials announced their estimate of a mid-year budget gap of nearly \$700 million.¹³⁰ The Governor moved to drop his federal countersuit and to abandon his effort to remove the primary suit to federal court, citing the need for expedited discovery of judicial spending in the state case in order to propose additional cuts in the current year and in the spending plan for the 1992-

123. *Id.*

124. *A Hot Feud, Through Cooler Eyes*, N.Y. TIMES Oct. 9, 1991, at A24.

125. *Id.*

126. Sam H. Verhovek, *Wachtler v. Cuomo: Duel of Ex-Friends*, N.Y. TIMES, Oct. 29, 1991, at B1.

127. *Id.*

128. *Id.*

129. *Id.*

130. Sarah Bartlett, *Fathoming the Gaps*, N.Y. TIMES, Nov. 3, 1991, § 1, at 1.

93 budget.¹³¹ The Governor undoubtedly calculated that opening the judiciary's books to public scrutiny would be a more potent weapon to force dismissal than the federal countersuit. Judiciary officials attempted to turn the strategy around by suggesting that they were equally eager to begin discovery of spending in the Governor's office.¹³² By late November 1991, however, the Governor's budget office announced that the mid-year budget gap had risen to \$875 million.¹³³ Governor Cuomo ordered additional deep cuts throughout state government including a further cut of \$26 million in the current-year budget for the judiciary.¹³⁴

The Chief Judge responded by announcing that the additional cuts would force the closing of all civil courts and half of the state's criminal courts by January 1, 1992.¹³⁵ The rhetoric reached a fever pitch. In a statement, Chief Judge Wachtler predicted that "the closing of so many criminal courts would lead unavoidably to the release of hundreds, even thousands, of criminal defendants because of jail overcrowding and speedy trial mandates."¹³⁶ The Chief Judge went on to accuse the governor of "vindictiveness" because of the lawsuit.¹³⁷ The Governor's press secretary responded that it was "absurd" to suggest that a 3.4% cut would cause the closure of most of the state's courts: "Perhaps there's new management needed in the courts if they can't manage a 3% cut."¹³⁸

Two days later the Office of Court Administration released its budget request for the upcoming fiscal year. The request proposed a \$61 million increase over current (1991-92) court funding, which was enough to restore most of the previous cuts including the lay-offs and add sixteen judges.¹³⁹ The request was significant because it actually sought less money for the

131. Gary Spencer, *Cuomo Drops Effort to Shift Funding Suit, Wachtler Challenge to Return to State Court*, N.Y. L.J., Nov. 15, 1991, at 1.

132. *Id.*

133. *Wachtler Says New Budget Cuts May Lead to Release of Suspects*, N.Y. TIMES, Nov. 29, 1991, at B4.

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. Kevin Sack, *Court Propose New Fees to Pay for A Budget Rise*, N.Y. TIMES, Nov. 29, 1991, at 25.

next fiscal year (1992-93) than the Chief Judge was seeking for the current (1991-92) fiscal year through the lawsuit. In a departure from previous years, the budget request presented the legislature with a variety of cost-saving and fee options to pay for the increase. The proposals included a 1% levy on civil judgments and a fifty dollar fee for filing motions.¹⁴⁰

Representatives of the legal community, usually staunch opponents of such proposals, reflected the depth of concern over the current budget gridlock by acknowledging that the fees might be necessary to get the courts moving again.¹⁴¹ The new budget request thus seemed to represent a tacit acknowledgment that the legal and political battle over the 1991-92 budget was draining the court's institutional effectiveness and damaging its credibility, and was a harbinger of the settlement to come.

The judiciary's reputation suffered one more blow when Chief Judge Wachtler, in a December 13, 1991 letter to the state's judges, told them that he intended to seek pay increases for the 1,100 state judges despite the budget cuts and layoffs.¹⁴² This split the court's own constituency when the politically powerful Court Officers' Association denounced the move.¹⁴³ Although the letter seemed to be nothing more than a morale booster for the judges, because it made no mention of when the Chief Judge would seek the increase, the Governor's spokesperson was quick to pounce on the misstep. "His startling request for raises for judges at this time of hardship for the hardworking people of the middle class, and those in poverty, does more to impair his credibility than we ever could."¹⁴⁴ On the legal front, the Governor chose to file his motion to dismiss Chief Judge Wachtler's lawsuit arguing that the New York State Constitution precluded the use of inherent powers to compel a state judicial budget.¹⁴⁵

140. *Id.*

141. *Id.* The representatives included the New York State Bar Association. *Id.*

142. Robert D. McFadden, *Wachtler in Letter Vows to Seek Raises for Judges*, N.Y. TIMES, Dec. 27, 1991, at B5.

143. *Id.*

144. *Id.*

145. Motion to Dismiss, *Wachtler v. Cuomo*, No. 6034/91 (Sup. Ct. Albany County filed Dec. 24, 1991).

G. Settlement

With the 1992-93 budget release just weeks away, intense negotiations over the 1992-93 judiciary budget were being brokered by legislative staff. The Governor was prepared to propose significant new cuts in the judiciary spending plan for the new year.¹⁴⁶ The combination of pressures created by budget realities, the upcoming hearing on the motion to dismiss, and the constant battering in the press finally moved the Chief Judge to cut both his fiscal and public relation losses ending the year-long conflict.

At 4:30 p.m. on January 16, 1992, the Chief Judge called the Governor with an offer to resolve the crisis.¹⁴⁷ The Chief Judge proposed that if the Governor would agree to restore the judiciary budget for the upcoming fiscal year to the expenditure level of the previous fiscal year, he would drop the suit and open his books to an outside auditor.¹⁴⁸ An hour later, the Governor called back and told the Chief Judge, "It's done."¹⁴⁹ A year of political and legal skirmishes came to an end just days prior to the first arguments on the merits of the case and the release of the 1992-93 budget plan.¹⁵⁰

V. Analysis of *Wachtler v. Cuomo*

Wachtler v. Cuomo broke new ground in the development of the inherent powers doctrine. The suit represents the only attempt to date to test the doctrine's viability in a direct confrontation between coequal branches of state government over the lump-sum budget of a state judiciary. To evaluate the efficacy of this or similar attempts, this section will address the theoretical, doctrinal, precedential and political implications of *Wachtler v. Cuomo*.

146. The proposed cuts were in excess of \$130 million. Gary Spencer, *Wachtler, Cuomo Settle Funding Suit*, N.Y. L.J., Jan. 17, 1992, at 2.

147. *Id.*

148. *Id.* at 1.

149. *Id.* at 2.

150. For an evaluation of the settlement, see *infra* notes 187-92 and accompanying text.

A. *Wachtler v. Cuomo and the Theoretical Justification for Inherent Power*

The doctrine of inherent powers holds that a branch of government may exercise the power necessary to protect itself in the performance of its institutional duties.¹⁵¹ The source of the power is said to be neither constitutional nor statutory; it is an intrinsic characteristic of the institution.¹⁵² The doctrine finds its primary theoretical basis in the separation of powers. The functional differentiation between the branches of government is designed, in Madison's words, to prevent "the accumulation of all powers, legislative, executive, and judiciary, in the same hands," for this concentration would be "the very definition of tyranny."¹⁵³ This separation is enforced by the concept of checks and balances which provides "great security against a gradual concentration of the several powers in the same department [by] giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others."¹⁵⁴ By permitting one branch to "resist encroachments" by the other branches, the inherent powers doctrine serves as a balancing mechanism of the constitutional framework.

The paradox of the inherent powers doctrine is that the very exercise of inherent power by a branch of government violates the separation of powers in order to preserve the branch's status as an equal and independent unit of government.¹⁵⁵ When, for example, a court compels funding for the salary of a clerk or legal secretary, it is exercising the appropriation power which belongs to the legislative branch. This violation is not

151. See *Commonwealth ex rel. Carroll v. Tate*, 274 A.2d 193, 197 (Pa. 1971), *cert. denied*, 402 U.S. 974 (1971); see generally CRATSLEY & CARRIGAN, *supra* note 6, at 18, and cases therein.

152. See, e.g., *In re Integration of Nebraska State Bar Ass'n*, 275 N.W. 265, 267 (Neb. 1937) ("The term 'inherent power of the judiciary' means that [power] which is essential to the existence, dignity, and functions of the court from the very fact that it is a court."); *In re Surcharge of County Comm'rs*, 12 Pa. D. & C. 471, 477 (Lackawanna County Comm. Pl 1928). In this case, the court held: "Such powers from both their nature and their ancient exercise, must be regarded as inherent. They do not depend upon express constitutional grant nor in any sense upon legislative will." *Id.*

153. THE FEDERALIST No. 47 (James Madison).

154. THE FEDERALIST No. 51 (James Madison).

155. See Ferguson, *supra* note 35, at 986-87 for a discussion of this point.

troublesome for several reasons. First, it has been recognized since Madison's time that the separation of powers is not a rigid demarcation, but one which tends to blur at the edges. The branches of government are not meant to be "wholly unconnected with each other."¹⁵⁶ The branches should be "connected and blended as to give each a constitutional control over the other."¹⁵⁷ There is no fundamental objection where the exercise by one branch of another branch's powers helps to protect the constitutional status of each. This is the essence of checks and balances.

Second, this kind of action, while protecting the judicial capacity to carry out institutional functions, does not strike at the power of a coordinate branch in any vital way. Simply because the judiciary's power is *augmented* does not mean that the legislature's power is correspondingly *diminished*. Where the exercise of the power is by a superior governmental unit, as in the typical case in which a state supreme court compels funding from a locality, the concern over a separation of powers violation by the judiciary is remote. The concern underlying the concept of separation of powers is concentration of power in one source. This concern is simply not implicated in any real way when a court exercises its inherent power to protect itself *without* diminishing the sphere of a coordinate and equal branch.

Conversely, the point at which the exercise of the power can no longer be characterized as an action which merely protects one branch but instead diminishes the rights and powers of a coordinate and equal branch marks the conceptual boundary of inherent power. It is at this point where the judiciary ceases to act as a check on the other branches and begins to encroach on their dominion. When the exercise of inherent powers crosses this line it becomes a cure that does more damage to the separation of powers doctrine than the malady it was intended to address.

Wachtler v. Cuomo is on the wrong side of this line. The power to tax and the power to appropriate are vested in the legislature.¹⁵⁸ Financial support for the courts can only come from

156. THE FEDERALIST No. 48 (James Madison).

157. *Id.*

158. Though the wording and provisions of state constitutions differ, all state legislatures possess these powers, subject only to constitutional limitations such as

tax revenues in the form of an allocation of appropriations.¹⁵⁹ When a state court compels a state legislature to fund the judiciary at a level beyond that which the legislature has determined can be supported by the fisc, the court, in essence, is mandating either an exercise of the taxing power or a reallocation of appropriations, or both. This exercise of inherent power would redress the injury to the judiciary only by upsetting the fundamental alignment of the branches, and thus is neither an acceptable nor legitimate use of the inherent powers doctrine. Chief Judge Wachtler's attempt to compel \$77 million in additional funding from an already balanced budget usurped core taxing and appropriation powers of the legislature. The suit thus cannot be justified as an exercise of inherent power because it would do far more to damage than to preserve the separation of powers.¹⁶⁰

B. *Wachtler v. Cuomo and the Doctrinal Limitations on Inherent Power*

1. *The Requirement of Prior Approval*

Courts have developed a number of doctrinal limitations on the exercise of inherent power even as they have broadened its scope.¹⁶¹ The most important of these is the requirement that a lower court receive the prior approval of the state supreme court or central court administrator for any inherent power exercise.¹⁶² The review process results in a more objective evaluation of the proposed action when the decision to invoke inherent powers is removed from the local judge, who stands to gain the

executive veto. For the provisions of specific constitutions, see generally LEGISLATIVE DRAFTING RESEARCH FUND OF COLUMBIA UNIVERSITY, CONSTITUTIONS OF THE UNITED STATES, NATIONAL AND STATE (1983).

159. *See id.*

160. Some of the cases are beginning to explicitly recognize this danger. *See* McCorkle v. Judges of the Superior Court, 392 S.E.2d 707, 708 (Ga. 1990). Inherent power:

does not give the judicial branch the right to invade the province of another branch of government. As a principle flowing from the separation of powers doctrine, it arms the judicial branch with authority to prevent another branch from invading the province. The inherent power is not a sword but a shield."

Id.

161. *See supra* notes 40-48 and accompanying text.

162. *See supra* notes 40-41 and accompanying text.

most from the exercise, and from the arena of local politics. This tends to screen out injudicious use of the power and to encourage conciliation between the local parties. These constraints are lost when the supreme court *itself chooses* to exercise its inherent power. There is no disinterested entity to review the high court's decision. Without this escape valve the decision is mired in the highly charged context of an inter-branch budget battle, an environment unlikely to produce an objective evaluation of the exercise of inherent power.¹⁶³ Thus, in a situation like *Wachtler v. Cuomo* where the state's highest court is involved in a significant inter-branch conflict, the most important of the safeguards imposed by the state's highest courts to control the use of inherent power is rendered meaningless. This is exacerbated in a state like New York where inherent powers precedent is sparse,¹⁶⁴ and which has no guidelines or court rules to regulate the initiation of inherent power suits.

2. *The Reasonable and Necessary Standard*

The second doctrinal limitation that has emerged in the case law is the requirement that the funding sought by the exercise of inherent power is "reasonable and necessary" for the functioning of the court.¹⁶⁵ This somewhat murky standard has been used to evaluate whether specific line-item expenditures are important enough to compel their funding. It responds to the problem of local judges who make their own budgets without the oversight or expertise of professional budget experts, sometimes resulting in questionable budget requests.¹⁶⁶ The standard served, in effect, as surrogate for professional budgeting guidelines. It was not designed for and has never been ap-

163. The political stakes in an inter-branch conflict at the constitutional level can be extraordinarily high. In New York, during the time of the lawsuit, it was widely assumed that the Chief Judge was preparing to run for Governor against Mario Cuomo and that Chief Judge Wachtler's assertiveness on the budget may have been motivated by his political ambitions. See Sam H. Verhovek, *Friends of Judge: GOP Answer to Cuomo*, N.Y. TIMES, Nov. 8, 1992, at 48; Lynn, *supra* note 72, at B3. This suggests that the inherent powers doctrine can be as subject to abuse as a political weapon on the state level as on the local level.

164. See *infra* notes 176-180 and accompanying text.

165. See *supra* notes 42-46 and accompanying text.

166. See *Schmelzel v. Board of County Comm'rs*, 100 P. 106 (Idaho 1909) (haircuts and shaves for jurors not considered necessary for functioning of judicial process.)

plied to a lump-sum appropriation request developed by court administration experts through a rigorous budget process. Presumably, modern court administrators in a unified system would not submit any request which was not demonstrably reasonable and necessary according to established fiscal standards. The court request developed in the modern budget process is, by definition, reasonable and necessary or the court would not have made the request.

The reasonable and necessary standard is thus no help as a device to screen out improper uses of inherent powers. At the level of sophisticated statewide budgeting it has the opposite effect of turning every budget request into one which would provide grounds for an exercise of inherent power. Where, as in New York, the state constitution explicitly recognizes the legislature's right to reduce the judiciary's budget,¹⁶⁷ conflict is almost guaranteed by the use of the "reasonable and necessary" standard. If a lump-sum budget request by the state judiciary can always be defended as reasonable and necessary and the legislature exercises its constitutional power to reduce that request, then the use of inherent powers is always justified. What began as a standard designed to limit the use of inherent powers becomes, under the *Wachtler v. Cuomo* scenario, a device which encourages separation of powers conflicts.

3. *The Requirement of Administrative Exhaustion*

The third limitation imposed by case law is that the established means of seeking funding must be utilized before a court can exercise its inherent power.¹⁶⁸ This fundamental constraint is designed to ensure that courts do not substitute inherent powers for statutory procedures. However, as with the other restrictions, it has little bite at the state level where the budget process is statutorily or constitutionally mandated. If the established budgetary procedures that fail to produce the desired funding are constitutionally mandated, as in New York,¹⁶⁹ then the exercise of inherent power not only presents a clash with a coordinate and coequal branch over the force of a statute, but

167. N.Y. CONST. art. VII, § 4.

168. See *supra* note 47 and accompanying text.

169. BARR, *supra* note 56, at 26-27.

also creates significant tension with the constitution itself.¹⁷⁰ Since the ultimate goal of the inherent powers doctrine is to redress imbalances in the framework of separation of powers, a use of the doctrine which engenders constitutional discord undermines the purpose of inherent powers.

4. *Appointment of an Outside Judge*

A fourth and final device is utilized by state supreme courts to regulate inherent powers cases. Although not a formal part of the doctrine, it has been the practice of state supreme courts to appoint a judge from outside the local judicial district where the dispute arose to hear the case at the trial level.¹⁷¹ Like the prior approval mechanism, this practice brings a disinterested decision-maker into the dispute providing a more objective review of the case and increasing public confidence in the process. These constraints are sacrificed in a state budget conflict. The specter of a judge hearing a case in which he or she has a direct interest in the result is not easily masked when every judge in the court system has a stake in the outcome of an inherent powers conflict over global funding for the judiciary.¹⁷² Furthermore, it is entirely likely that the case will wind its way up to the state's high court – the same court whose Chief Judge has brought the case. The difficulties with the real or apparent conflicts of interest point up the unsuitability of utilizing inherent power as a judicial financing tool at the state level, as *Wachtler v. Cuomo* attempted to do.

C. *Wachtler v. Cuomo and Inherent Powers Precedent*

1. *The National Case Law*

Wachtler v. Cuomo marks a departure from inherent powers precedent in a number of ways. Most significantly, it was the first serious inherent powers challenge between coequal

170. See *supra* notes 59-60; see *infra* notes 181-84 and accompanying text.

171. See *supra* note 48 and accompanying text; see also Ferguson, *supra* note 35, at 564 n.16 and Jeffrey Jackson, *Judicial Independence, Adequate Court Funding, and Inherent Judicial Powers*, 52 Md. L. Rev. 217, 231, nn.86-96 (1993) for a discussion and cases on the impartiality problem in judicial review of funding orders.

172. See Governor Cuomo's comments, *supra* note 105 and accompanying text; editorial comments, *supra* note 110 and accompanying text; and general discussion of public confidence, *infra* notes 193-215 and accompanying text.

branches of state government as opposed to the state-local conflicts that have characterized the cases thus far.¹⁷³ Additionally, it is the first case to assert an inherent power to overturn a lump-sum budget rather than specific expenditures.¹⁷⁴ Finally, the magnitude of the budget at issue — approaching \$1 billion — sets *Wachtler v. Cuomo* apart from previous exercises of inherent power, which tended to be limited to small expenditures.¹⁷⁵ Thus, although the dicta of inherent powers cases is sweeping, the holdings have in fact been quite narrow and do not provide firm support for expansion of the doctrine to conflict on the level of *Wachtler v. Cuomo*.

2. *The New York Case Law on Inherent Power*

The history of the use of inherent powers in New York is less developed than in many jurisdictions. No major inherent powers case has come out of New York; the majority of the inherent powers cases in New York involve court control of the adjudicatory process.¹⁷⁶ The few New York cases involving the power to compel funding are limited in their reach. The strongest case is *In re McCoy v. Mayor of the City of New York*.¹⁷⁷ In *McCoy*, the city of New York refused to provide any funding for a newly created housing part of the civil court. The local court administrators sued the city to compel funding. The court held that the city had to provide the requested funds.¹⁷⁸ However, the holding appeared to rest on the fact that the state legislature had authorized the creation of the housing part and that the city by refusing to fund it was "flout[ing] a legislative mandate."¹⁷⁹ There was no significant discussion of inherent powers

173. See cases cited *supra* notes 14-26; see *supra* notes 27-55.

174. See cases cited *supra* notes 14-26; see *supra* notes 27-55.

175. See cases cited *supra* notes 14-26; see *supra* notes 27-55.

176. See, e.g., *In re Bar Ass'n of N.Y.*, 222 A.D. 580, 227 N.Y.S. 1 (1st Dep't 1928) (power to conduct investigation); *Benjamin Franklin Fed. Sav. Ass'n v. PJT Enters., Inc.*, 149 Misc. 2d 688, 566 N.Y.S.2d 478 (Sup. Ct. Cortland County 1991) (power to punish for contempt); *Bankers Trust Co. v. Braten*, 101 Misc. 2d 227, 420 N.Y.S.2d 584 (Sup. Ct. N.Y. County 1979) (power to assign cases); *People v. Bell*, 95 Misc. 2d 360, 407 N.Y.S.2d 944 (Crim. Ct. Queens County 1978) (power to control calendar).

177. 73 Misc. 2d 508, 347 N.Y.S.2d 83 (Sup. Ct. N.Y. County), *modified and aff'd*, 41 A.D.2d 929, 344 N.Y.S.2d 986 (1st Dep't 1973).

178. *Id.* at 513, 347 N.Y.S.2d at 88.

179. *Id.* at 510, 347 N.Y.S.2d at 86.

doctrine in this or any other New York case, thus leaving the status of the doctrine uncertain at best.¹⁸⁰

3. *Inherent Powers and the New York Constitution*

In addition to the indefinite recognition of inherent powers in New York case law, the New York Constitution implicitly rejects the use of judicial inherent power to compel funding when the funding is the result of constitutional procedure:

Insofar as the expense of the courts is borne by the state or paid by the state in the first instance, *the final determination* of the itemized estimates of the annual financial needs of the courts *shall be made by the legislature and the governor* [in accordance with the prescribed procedures].¹⁸¹

Taken in concert with the procedures that permit the legislature to alter the judiciary budget¹⁸² and the Governor to veto that budget in whole or in part,¹⁸³ the constitution explicitly contemplates reduction of the state judiciary budget without judicial recourse.¹⁸⁴ A line of New York cases subsequent to the reorganization of the courts under these provisions recognizes that the existence of explicitly governing statutory or constitutional provisions preempts judicial intervention in matters involving the appropriation power.¹⁸⁵ Thus, it is not clear whether

180. A comprehensive review of the development and status of inherent powers doctrine in New York is beyond the scope of this paper. There is extraordinarily little attention in either the cases or the commentary to inherent powers in New York. The topic is ripe for further research. The only point sought to be made here is that the doctrine is simply not well established in New York.

181. N.Y. CONST. art. VI, § 29 (emphasis added). In addition, article VII, § 7 provides that "[n]o money shall ever be paid out of the state treasury . . . except in pursuance of an appropriation by law" N.Y. CONST. art. VII, § 7. For a detailed description of constitutional procedures, see *infra* notes 59-60 and accompanying text.

182. N.Y. CONST. art. VII, § 4.

183. N.Y. CONST. art. IV, § 7.

184. See N.Y. Leg. Doc. Nos. 36, 24 (1958). The Temporary Commission on the Courts, which drafted article VI, said of § 29 that "all budget requests are as the name implies *requests* and will be finally determined by the appropriating agencies as, in their wisdom, they deem right. No court is to continue to have mandate power over its own budget" (emphasis in original). See also JOINT LEGIS. COMM'N ON COURT REORG., Ninth Interim Report, N.Y. Leg. Doc. No. 46 at 17-18 (1964) ("paramount" authority over the Judiciary's budget rests with the Governor and legislature).

185. See *Cohn v. Borchard Affil.*, 25 N.Y.2d 237, 252, 250 N.E.2d 690, 697, 303 N.Y.S.2d 633, 643 (1969) (holding that a statute did not infringe on the judiciary's

New York constitutional law or case law supports the use of inherent power as asserted in *Wachtler v. Cuomo*.¹⁸⁶

D. *A Political Evaluation of Wachtler v. Cuomo*

The weakness of the theoretical justifications for *Wachtler v. Cuomo* and the paucity of New York law on the issue of inherent powers suggest that the suit may primarily have been a political tool to leverage additional funding in future budget negotiations. It is not clear that the suit was successful even on these terms. Furthermore, to the extent that the handling of the suit undermined public confidence in the judiciary and injured the judiciary's relationships with the other branches the damage resulting from *Wachtler v. Cuomo* may have outweighed any potential gains.

1. *The Settlement and the Fiscal Outcome for the Courts*

The stated objectives of the suit were to alter the way in which the Governor submitted the judiciary's budget to the leg-

inherent power to control calendars). In *Cohn* the court stated: "It is one thing to be of the view that the power . . . should be in the Court. It is quite another to say that it is there in the face of clear evidence that the Constitution chose not to lodge it there." *Id.* (quoting David Siegel, *Supplementary Practice Commentary*, N.Y. CIV. PRAC. L. & R., Book 7B at 307-08 (McKinney 1968); see also *County of Oneida v. Berle*, 49 N.Y.2d 515, 522, 404 N.E.2d 133, 137, 427 N.Y.S.2d 407, 411 (1980) ("In budgetary matters, the essential process is detailed by the Constitution, and the role of each branch distinctly treated."); *Saxton v. Carey*, 44 N.Y.2d 545, 549, 378 N.E.2d 95, 97-98, 406 N.Y.S.2d 732, 734 (1978). In referring to article VI, the court in *Saxton* stated that "[t]he power of the judiciary is as subject to such limitations as is that of its coordinate branches of government, for the specter of judicial tyranny is no more palatable to a free people than is the threat of an uncontrolled executive or legislative branch Under our system of government, the creation and enactment of the state budget is a matter delegated essentially to the Governor and the Legislature." *Id.*; see also *People v. Ohrenstien*, 77 N.Y.2d 38, 46, 565 N.E.2d 493, 496, 563 N.Y.S.2d 744, 747 (1990) ("Under the State Constitution, the Legislature alone has the power to authorize expenditures from the State treasury"); *In re Smiley*, 36 N.Y.2d 433, 438, 441-42, 330 N.E.2d 53, 56, 58, 369 N.Y.S.2d 87, 91, 94 (1975). In *Smiley* the court stated: "Nor under the State Constitution may the courts of this state arrogate the power to appropriate and provide funds The absence of appropriated funds and legislation to raise taxes under our state constitutional system . . . is not a judicially fillable gap." *Id.*

186. Unsurprisingly, the legal memoranda of the Chief Judge rely heavily on cases from other jurisdictions. See Plaintiff's Mem. of Law in Opposition to Defendant's Motions to Dismiss at 10-14, *Wachtler v. Cuomo* No. 6034/91 (Sup. Ct. Albany County filed Sept. 27, 1991) (citing 14 non-New York inherent power cases, and just four New York inherent power funding cases).

islature, and to compel an additional \$77 million in funding for the judiciary.¹⁸⁷ Neither goal was achieved by the settlement proposed and agreed to by the Chief Judge. The Governor did not change the way in which the budget was submitted. Furthermore, the courts did not receive the additional funding they sought to compel, and, in fact, received a substantial *further* cut in funding due to the mid-1991 budget deficit.¹⁸⁸

The courts did receive a small increase for the 1992-93 fiscal year, but only enough to restore the budget to the 1990 level.¹⁸⁹ This amount was still \$55 million less than the Office of Court Administration had estimated it would need for the 1992-93 fiscal year.¹⁹⁰ In addition, the court system would now be subject to an outside audit, a move the Chief Judge had resisted.¹⁹¹ Although judicial officials sought to put the best face on the settlement,¹⁹² the reality was that the courts ended 1991 worse off than they started and would be no better off in the next budget year.

2. *The Effect of Wachtler v. Cuomo on Public Confidence in the Courts*

a. *Publicizing the Plight of the Courts*

From the commencement of *Wachtler v. Cuomo* it was clear that the Chief Judge was making his case on behalf of the courts not only in a legal setting, but to the public at large.¹⁹³ Even the complaint read much like a press release, detailing the alleged mistreatment of the courts at the hands of the legislature and the Governor, recounting "the ever-increasing workload of the Judicial Branch" and describing its effects on the administration of justice.¹⁹⁴ Articles by court officials and prominent New York lawyers appeared in the legal press echoing the message and explaining why the use of inherent powers

187. *Wachtler*, at 12, 25-26.

188. Spencer, *supra* note 146, at 2.

189. *Id.*

190. See *supra* note 139 and accompanying text.

191. Spencer, *supra* note 146, at 2.

192. *Id.*

193. See *supra* notes 94-95, 136 and accompanying text.

194. *Wachtler*, at 24.

was an appropriate legal exercise.¹⁹⁵ The major papers ran features on the deteriorating conditions of the courts as part of their overall coverage of the dispute.¹⁹⁶ The lawsuit presented the Chief Judge with an unparalleled opportunity to place the plight of the courts in the public eye, in the hopes of building support for enhancement of the judicial budget.

Although *Wachtler v. Cuomo* was successful in publicizing the difficulties faced by the courts, there is no evidence that the campaign mounted by the Chief Judge translated into public support for the judiciary. There are several reasons why public confidence in the courts may actually have eroded in the wake of the suit. It is a political axiom that the greater the number of interests injured by fiscal constraints, the smaller the likelihood that any particular budget cut will be perceived by the public as unfair.¹⁹⁷ When the "pain" is spread more or less evenly, the public will perceive the entire budget plan as a fair and necessary, albeit unwelcome exercise.¹⁹⁸ For the executive faced with the unpleasant task of selling the public on a budget which slashes services, the spectacle of various interest groups each clamoring for a larger piece of a shrinking budget pie actually helps implement the overall budget strategy by persuading the public of the fairness of the plan.¹⁹⁹ When the Chief Judge mounted his campaign to restore a judiciary cut of less than one percent, he handed the Governor a better opportunity to advance this strategy than the Governor could have created himself. This explains the zeal with which the Governor seemed to welcome the chance to engage the Chief Judge over the law-

195. Sidney H. Stein & Eric M. Schmidt, *Can the Judiciary Compel the Legislature to Increase Funding for the Courts?*, N.Y. L.J., Apr. 25, 1991, at 1; *Is Governor Cuomo's Budget Unconstitutional?*, N.Y. L.J., Apr. 22, 1991, at 1.

196. Virginia Breen, *Small Claims, Big Spats; Budget Cuts Slowing Justice to a Crawl*, NEWSDAY, Oct. 2, 1991, at 2.

197. This strategy was evident in President Clinton's first budget proposal. David E. Rosenbaum, *Clinton's Hope: Hostility; Oddly Enough If Everybody Finds Fault In The Deficit Plan, The Better Its Chances*, N.Y. TIMES, Feb. 14, 1993, § 1, at 1 ("Representative Dan Rostenkowski, the Chairman of the House Ways and Means Committee, has told the White House that it is politically crucial to create such a large universe of sacrifice that it is difficult for people to say they should be outside of it.").

198. *Id.*

199. *Id.*

suit,²⁰⁰ and is one reason why public sympathy for the courts did not materialize.²⁰¹

b. *Diminishing the Stature of the Courts and the Political Leadership*

The judiciary's authority is uniquely dependent on public confidence.²⁰² The image painted by the news reports and editorials²⁰³ of a judiciary demanding priority allocations of scarce budget resources ahead of competing social needs, cannot help but diminish the stature of the courts in the public mind.²⁰⁴ Furthermore, when a court determines that its needs are paramount to other social concerns, and then orders the executive to meet its needs it undermines the quality of impartiality upon which public trust in the courts is based.²⁰⁵ The editorials expressed particular dismay over the potential conflict, indicating that the image of a court acting as prosecutor, judge, jury and executioner struck a deep nerve.²⁰⁶

It may also be hard for the public to accept particular arguments made to justify the exercise of inherent powers. For example, it is often asserted that the courts are a virtually helpless bystander in the budget negotiation process.²⁰⁷ Can this be true today, when the bar associations and court employee unions — which have a direct stake in the judicial budget — are among the most powerful players in the political arena? And since the overwhelming majority of legislators are

200. See *supra* notes 87-88 and accompanying text.

201. See *supra* notes 90, 107-108, 124-25 and accompanying text.

202. See, e.g., *Baker v. Carr*, 369 U.S. 186, 267 (1962) (Frankfurter, J., dissenting) ("The Court's authority — possessed of neither the purse nor the sword — ultimately rests on sustained public confidence in its moral sanction."); see also *Planned Parenthood of S.E. Pa. v. Casey*, 112 S. Ct. 2791, 2814 (1992). In *Casey* the Supreme Court noted that the Court "cannot independently coerce obedience to its decrees. The Court's power lies, rather, in its legitimacy"

203. See *supra* notes 90, 107-08, 125 and accompanying text.

204. See *In re Salary of the Juvenile Director*, 552 P.2d 165, 172 (Wash. 1976) ("The unreasoned assertion of power to determine and demand their own budget is a threat to the image of and public support for the courts.").

205. *Id.* at 173 ("By in effect initiating and trying its own lawsuits, the judiciary's image of impartiality and the concomitant willingness of the public to accept its decisions as those of a fair and disinterested tribunal may be severely damaged.").

206. See *supra* note 108 and accompanying text.

207. See *supra* notes 24-25 and accompanying text.

practicing attorneys,²⁰⁸ it cannot be argued that the legislature fails to understand the needs of the courts. One might suppose that lawyers lobbying other lawyers on the needs of the courts would evoke more sympathy than would lobbying on subjects further removed from their experience. The legislature's decision to reduce funding for the courts may well have a special aura of credibility with the public *precisely* because of the legislators' familiarity with and understanding of the court system.

The primary factual argument made by Chief Judge Wachtler could not withstand public scrutiny. The Chief Judge repeatedly claimed that the judiciary budget had been consistently cut by the Governor and the legislature.²⁰⁹ In fact, the budget had increased by \$415 million (86%) since the Governor assumed office, and the actual cut at issue in the lawsuit was under 1%.²¹⁰ Only the judiciary's *requests* had been trimmed, as the legislature was constitutionally entitled to do.²¹¹

It was not just the courts that suffered a loss of public confidence as a result of *Wachtler v. Cuomo*. The credibility of the political leadership as a whole suffered when the executive branch called on the entire state to make sacrifices in the name of fiscal recovery,²¹² while the judicial branch engaged in extraordinary conduct to avoid such sacrifices.

c. *The Dangers of Success*

Had the suit ultimately been successful in compelling the funding of the judiciary budget, the negative effect on public confidence in the courts could have been greater. The court is ill-equipped to make broad judgments about the allocation of resources to competing interests; its success in compelling funding undermines rational budget decisions by a representative body.²¹³ Furthermore, if the court's action results in a tax in-

208. Lawyers make up the largest group of state legislators nationwide. Elizabeth Kolbert, *Lawmaking for States Evolves into Full Time Job*, N.Y. TIMES, June 4, 1989, at 26.

209. See *Wachtler*, at 10-13.

210. See *supra* note 63 and accompanying text.

211. See *supra* notes 59-60 and accompanying text.

212. See *supra* notes 103, 113, 144 and accompanying text.

213. See *In re Salary of the Juvenile Director*, 552 P.2d 163, 172 (Wash. 1976) ("By its nature litigation based on inherent judicial power to finance its own func-

crease or cuts in other programs in order to raise the level of judicial funding, active public animosity toward the judiciary would surely emerge.²¹⁴ The damage to public confidence is further exacerbated if the executive or legislature refuses to enforce the order to compel funding. The court's essential dependence on the other branches would be revealed, perhaps crippling the court's authority in a substantial way.²¹⁵ Thus, whether the court wins, loses or settles the case, but perhaps especially if it is won, the court seeking to exercise its inherent power at the state level may be risking much more in terms of public confidence than it stands to gain by adding a few — or even a great many — dollars to its budget. The loss of public trust and the increase in inter-branch tension may impair the functioning of the court in a more fundamental way than a lean budget appropriation. The budget money will rise and ebb with the currents of the economy; the public trust, once lost, is not so easily regained. *Wachtler v. Cuomo* suggests that a court considering the exercise of inherent power must think hard about the effects of its action on its relationship with the public, for such concerns may be more determinative of the efficacy of the exercise than a carefully parsed legal and theoretical analysis.

VI. Conclusion: The Implications of *Wachtler v. Cuomo* for the Future of Inherent Powers

Wachtler v. Cuomo provides evidence for the conclusion that the doctrine of inherent power cannot and should not be pushed beyond its conceptual, precedential, and practical limits. As a conceptual matter, a use of the doctrine that undermines rather than strengthens the separation of powers is unsupportable.

tions ignores the political allocation of available monetary resources by representatives of the people elected in a carefully monitored process.”).

214. *Id.* (“[S]uch actions may threaten, rather than strengthen, judicial independence since involvement in the budgetary process imposes upon the courts at least partial responsibility for increased taxes and diminished funding of other public services.”).

215. The executive might indeed relish the opportunity to display the court's impotence after a bruising interbranch conflict; as President Jackson is reputed to have said of one disagreeable Supreme Court holding, “John Marshall has made his decision; now let him enforce it.” E. CORWIN, *JOHN MARSHALL AND THE CONSTITUTION* 194 (1919).

Viewed in historical perspective, the critical use of the doctrine as applied to funding is when court budgeting lay in the hands of local legislators and judges with little expertise in modern court management. It serves as a useful tool for local courts to protect themselves from becoming overly subservient to local politicians. But when unitary financing and lump-sum budgeting replace a fragmented process of line-item appropriations, the doctrine of inherent powers outlives its usefulness. Furthermore, the judicially created limitations on inherent powers that control the use of the power by local courts are ineffective when the doctrine is applied by a state supreme court in a conflict with its constitutional partners. Finally, by using inherent power as a weapon to coerce a co-equal branch of government to fund the courts at a judicially mandated level, the courts undermine the public confidence and interbranch cooperation on which they ultimately depend.

All of the significant boundaries of the doctrine are violated by the judiciary's use of inherent power as an alternative to the state budget process. The attempt by *Wachtler v. Cuomo* to assert inherent power as a response to chronic budget problems at the state level ignores the roots and limits of the doctrine. The traditional use of the doctrine as a means of protecting the sovereignty of local courts against attacks by other local government entities will survive *Wachtler*. Although attempts to assert the doctrine beyond its historical and theoretical borders will undoubtedly persist as long as the states are pressed by tight fiscal constraints, it is unlikely that these exercises will be successful. Even the court which wins funding through an inherent power suit stands to lose power, prestige, and effectiveness while inflicting damage on its coordinate branches and creating a substantively irrational state budget. The ultimate implication of *Wachtler v. Cuomo* is that all parties emerge as losers in an inherent powers conflict of this nature, no matter what the legal outcome of the exercise.