

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

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**From:** Center for Judicial Accountability, Inc. (CJA) <elena@judgewatch.org>  
**Sent:** Friday, April 14, 2017 2:59 PM  
**To:** 'ddadey@citizensunionfoundation.org'; 'egeringer-sameth@citizensunionfoundation.org'; 'rbloom@citizensunionfoundation.org'  
**Cc:** 'nmallory@citizensunionfoundation.org'; 'rsilverstein@gothamgazette.com'; 'bmax@gothamgazette.com'  
**Subject:** OPPORTUNITY/OBLIGATION -- citizen-taxpayer action: March 29, 2017 OSC for declaration of unconstitutionality & unlawfulness of NYS budget -- returnable April 28, 2017

### TO: CITIZENS UNION

**Dick Dadey, Executive Director**  
**Rachel Elana Bloom, Director of Public Policy & Programs**  
**Ethan Geringer-Sameth, Public Policy & Program Manager**

This follows my phone conversation the other day with Alan Rothstein, chair of Citizens Union's State Affairs Committee, about Citizens Union's latest "*Spending in the Shadow*" report – this, on the Executive Budget for fiscal year 2017-2018 – which Mr. Rothstein principally authored with assistance from each of you. It also follows my phone conversation, a short time ago, with Executive Assistant Nelson Mallory. With both I discussed the opportunity that CJA's unfolding 2<sup>nd</sup> citizen-taxpayer action furnishes Citizens Union to substantively advance its "*Spending in the Shadows*" report.

The posture of the unfolding citizen-taxpayer action is that on March 29<sup>th</sup> I brought an order to show cause for a preliminary injunction, with TRO, addressed to the budget for fiscal year 2017-2018, which is returnable on April 28<sup>th</sup>. Here's the link to the webpage for it: <http://www.judgewatch.org/web-pages/searching-nys/budget/citizen-taxpayer-action/2016/9-2-16-osc-complaint/3-29-17-osc.htm>.

It will not take you long to review the order to show cause and recognize its potential. Please, therefore, call me as soon as you review it so that I might have the benefit of your thoughts and judgment. I have no doubt that based on Article VII, §§4, 5, 6 of the New York State Constitution and the reinforcing Court of Appeals decisions in *Silver v. Pataki/Pataki v. Assembly & Senate*, 4 NY3d 75 (2004), and *New York State Bankers Association v. Wetzler*, 81 NY2d 98 (1993) – ALL posted on the webpage of the March 29<sup>th</sup> order to show cause – you will agree that the New York State budget is flagrantly "OFF THE CONSTITUTIONAL RAILS" and that the outcome of CJA's March 29<sup>th</sup> order to show cause – and of the 2<sup>nd</sup> citizen-taxpayer action on which it rests – must be summary judgment for the plaintiffs, AS A MATTER OF LAW.

As I stated to both Mr. Rothstein and Mr. Mallory, I invite Citizens Union to have "a piece of the action" by filing an *amicus curiae* brief and/or by making a motion to intervene, thereby contributing its wider perspective and achieving, through the citizen-taxpayer action, adjudications of the constitutional and legal dimensions of its most recent "*Spending in the Shadows*" report and of its several predecessor reports – all blithely ignored by New York's governors and legislators. Certainly, too, Citizens Union has a bully-pulpit and can easily issue press statements about the citizen-taxpayer action, as well as reach out to its large network of media and academic contacts so that the lawsuit receives both the press coverage and substantive scholarship it deserves. This apart from a discussion of it in the Citizens Union's own excellent "*Gotham Gazette*" – whose March 30<sup>th</sup> article "*Three Men in a Room, Millions Outside*", by Rachel Silberstein, I have already embodied in the lawsuit record.

Citizens Union has a powerful opportunity, if not obligation, to play a leadership role in the citizen-taxpayer action, for the benefit of ALL New Yorkers. The March 29<sup>th</sup> order to show cause for declarations of unconstitutionality and unlawfulness of the New York State budget is OPEN & SHUT – and WE WILL WIN!

Kindly forward this e-mail to Mr. Rothstein – and to all members of Citizens Union’s State Affairs Committee.

I look forward to hearing from you about the order to show cause – and as soon as possible.

Thank you.

Elena Sassower, Director  
Center for Judicial Accountability, Inc. (CJA)

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