

UNITED STATES DISTRICT COURT

for the  
Middle District of Florida

Maribeth Schonberg, Steven E. Schonberg )  
Plaintiff )  
v. )  
Federal Election Commission )  
Defendant )

Civil Action No.

5:09-cv-534-DC-106RS

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Steven T. Walther  
Chairman, Federal Election Commission  
999 E St. NW  
Washington D.C. 20463

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Maribeth Schonberg      Steven E. Schonberg  
60 Wilson Hill Road      7938 SE 12th Circle  
Merrimack, NH 03054      Ocala, FL 34480

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

SHERYL L. LOESCH

CLERK OF COURT

Date:

12/3/09

Signature of Clerk or Deputy Clerk

Civil Officer John Boehner  
1011 LONGWORTH H.O.B.  
WASHINGTON, DC 20515

Civil Officer Joe Lieberman  
706 HART SENATE OFFICE BUILDING  
WASHINGTON DC 20510

Civil Officer Blanche Lincoln  
355 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON DC 20510

Civil Officer John McCain  
241 RUSSELL SENATE OFFICE BUILDING  
WASHINGTON DC 20510

Civil Officer Mitch McConnell  
361A RUSSELL SENATE OFFICE BUILDING  
WASHINGTON DC 20510

Civil Officer Eric Cantor  
329 CANNON BUILDING  
WASHINGTON, DC 20515

Civil Officer Bernie Sanders  
332 DIRKSEN SENATE OFFICE BUILDING  
WASHINGTON, DC 20510

Steven T. Walther  
Chairman, Federal Election Commission  
999 E St. NW  
Washington D.C. 20463

U.S. Attorney, A. Brian Albritton  
400 N. Tampa Street, Suite 3200  
Tampa, Florida 33602


Attorney General of the United States  
Eric Holder  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

November 3, 2009

To the Honorable Blanche Lincoln and Gentlemen:

Enclosed Please Find:

1. SUMMONS IN A CIVIL ACTION
2. Plaintiffs' Complaint for Emergency Injunction, Damages, and Motion for Declaratory Judgment
3. Memorandum in Support of Plaintiffs' Complaint for Emergency Injunction, Damages, and Motion for Declaratory Judgment
4. Notice Requesting Emergency Three-Judge Court
5. Plaintiffs' Emergency Motion to Shorten Time and for Leave to File a Reply
6. Plaintiffs' Memorandum in Support of Emergency Motion to Shorten Time and for Leave to File a Reply



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Steven E. Schonberg, pro se  
7938 SE 12<sup>th</sup> Circle  
Ocala, FL 34480  
352-789-0610  
sschonberg@aol.com

2009 DEC -3 AM 9: 04

CLERK, U.S. DISTRICT COURT  
ORLANDO, FLORIDA

IN THE UNITED STATES DISTRICT COURT  
THE  
MIDDLE DISTRICT OF FLORIDA

MARIBETH SCHONBERG, )  
STEVEN E. SCHONBERG, )

Plaintiffs, )

v. )

Civil Officer BERNIE SANDERS, Agent of the )  
U.S. Senator Bernie Sanders Principal )  
Campaign Committee, A/K/A "Friends of )  
Bernie Sanders," )

Civil Officer JOE LIEBERMAN, Agent of the U.S. )  
Senator Joe Lieberman Principal Campaign )  
Committee, A/K/A "Friends of Joe )  
Lieberman," )

Civil Officer JOHN McCain, Agent of )  
the U.S. Senator John McCain )  
Principal Campaign Committee, )  
A/K/A "Friends of John McCain, )  
Inc."

Civil Officer ERIC CANTOR, Agent of )  
the U.S. Representative Eric Cantor )  
Principal Campaign Committee, )  
A/K/A "Cantor for Congress," )

Civil Officer MITCH McCONNELL, )  
Agent of the U.S. Senator Mitch )  
McConnell Principal Campaign )  
Committee, A/K/A "McConnell )  
Senate Committee '14"

Defendants )

Civil Action No. \_\_\_\_\_

5:09-CU-534-OC-10GRJ

Civil Officer BLANCHE LINCOLN, )  
Agent of U.S. Senator Blanche )  
Lincoln Principal Campaign )  
Committee, A/K/A "Friends of )  
Blanche Lincoln," )

Civil Officer JOHN BOEHNER, )  
Agent of the U.S. Representative )  
John Boehner Principal Campaign )  
Committee, A/K/A "Friends of John )  
Boehner," )

FEDERAL ELECTION )  
COMMISSION, )

PLAINTIFFS' COMPLAINT FOR EMERGENCY INJUNCTION,  
DAMAGES, AND MOTION FOR DECLARATORY JUDGMENT

## Jurisdiction

1. Jurisdiction of the Court in this action is created in Article III, Section 2, Clause 1 of the Constitution, being a claim arising under the Constitution, codified at 28 U.S.C. §1346. Plaintiffs contend that 2 U.S.C. §432, §434, §439, and §441i are unconstitutional and in violation of the Constitution, Article I, Section 6, Clause 2:

“No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.”

This clause of the United States Constitution will hereinafter be referred to as the “Emoluments Clause.”<sup>1</sup>

## Parties

2. Plaintiffs are husband and wife. Plaintiff Maribeth Schonberg was a citizen of the State of Florida, but became a citizen of the State of New Hampshire because she was denied major medical health insurance coverage in Florida due to a pre-existing condition. Plaintiff Steven E. Schonberg is a citizen of the State of Florida and is the beneficial recipient of “public option” medical care in Florida from the Veterans Administration and Medicare. Plaintiff S. Schonberg pays for his wife’s medical insurance and medical bills.

3. The Defendant Civil Officers and Agents of their respective Principal Campaign Committees are also members of Congress who, except for Defendant Sanders, have received enormous campaign contributions from the health insurance

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<sup>1</sup> There is a clause forbidding the President from receiving emoluments in Article II, Section 1, Clause 7 of the Constitution. Plaintiffs’ Complaint only deals with the Article I Emoluments clause.

industry and the pharmaceutical industry, (hereinafter referred to as "Big Health.") On legislative issues, these Defendants have consistently voted in favor of Big Health and against the interests of the Plaintiffs. Defendants McCain, McConnell, Boehner and Cantor are leaders in their political party in the effort to defeat health care reform. Defendant Lieberman is an independent legislator who has threatened to filibuster any health insurance reform bill on the floor of the Senate. Defendant Lincoln is a democratic legislator who intends to block any "public option" in health care reform legislation. Hereinafter these honorable public servants are referred to as "the six legislators."

4. Defendants Boehner and Cantor are also the directors of their unconstitutional leadership Political Action Committees, (PAC's.) "The Freedom Project" is Defendant Boehner's and "Every Republican Is Crucial (EricPac) is Defendant Cantor's. The only difference between these committees and the principal campaign committees of the defendants is that instead of appointing themselves "agents" under the FECA Law they appoint themselves as "directors." The Emoluments Clause prohibits the appointments and illegal gratuities and/or bribes<sup>2</sup> as described below.

5. Defendant Sanders is NOT one of the six legislators. He is in favor of public financing of federal elections, but as the Civil Officer and Agent for his Principal Campaign Committee, Defendant Sanders has received millions of dollars in illegal contributions. Defendant Sanders plans to vote against presently drafted health care reform. He plans to vote "no" to any proposed legislation that fails to contain a robust public option to prevent another huge windfall to Big Health. Defendant Sanders

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<sup>2</sup> Called just "bribes" henceforth.

believes that all of the People of the United States should have a "single payer" option like the Medicare program in which Plaintiff S. Schonberg is enrolled.

6. Defendant Federal Election Commission, ("FEC"), is a commission created by the United States Congress in the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 et seq., (hereinafter referred to as the **FECA Law**.) The **FECA Law** is not only unconstitutional, but is also defective; it does not even define the agency relationship which it illegally established for the Defendant Agents.

#### **Standing to Sue**

7. Plaintiff M. Schonberg is a patient who, after being forced to move from Florida to New Hampshire because of a lack of health insurance availability in Florida, has been gouged by higher and higher premiums with fewer benefits. The only major medical coverage known to her in either New Hampshire or Florida was with New Hampshire's Anthem Health Plan a/k/a Anthem Blue Cross Blue Shield. In the year 2007, Plaintiff M. Schonberg's Anthem insurance premium was huge, approximately \$5100 per year. Anthem is owned by WELLPOINT, a profit-making insurance company that is part of Big Health and traded on the New York Stock Exchange under the ticker symbol "WLP." In late 2009 Anthem raised its already outrageous premium for M. Schonberg to approximately \$8100 per year, an increase of almost 60% in 2 years.<sup>3</sup>

8. Here are the recent Anthem payments made by S. Schonberg:

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<sup>3</sup> Last month, Plaintiff M. Schonberg found a slightly less exorbitant rate for her health insurance with a company owned by Coventry Health Systems, another for-profit company traded on the NYSE under the ticker symbol CVH.



Anthem Health Plan Payments  
3000 GOFFS FALLS RD  
MANCHESTER, NH 03111 0001

9/28/09 - \$1,447.53  
6/29/09 - \$1,447.53  
3/27/09 - \$1,447.53  
12/30/08 - \$1,447.53  
9/30/08 - \$1,447.53  
6/27/08 - \$1,281.81  
3/25/08 - \$1,281.81

9. Approximately 25% of these premium payments were the result of the six legislators failing to put an end to "for profit" health insurance companies. Plaintiffs exorbitant healthcare insurance and costs will continue because of the corruption of the six legislators permitted by the **FECA Law**.

10. For all times material herein, the Chief Executive Officer of WELLPOINT is Angela Braly. According to Defendant FEC, among the tens of thousands of dollars Braly provided in illegal bribes to the members of Congress opposing health care reform was a \$2000 gift to Defendant McConnell. Plaintiffs paid an inflated premium to Anthem whose profits were forwarded to WELLPOINT. Some of Plaintiffs' premium paid part of Braly's flagrant and scandalous 2008 salary and long term compensation of \$9,844,212.<sup>4</sup> Braly then used part of plaintiffs' premium to give illegal bribes to Defendant McConnell who is and was an opponent of any health care reform that would benefit the Plaintiffs.

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<sup>4</sup>This amount was reported by the Wall Street Journal as of November 28, 2009 at [http://online.wsj.com/quotes/executives.html?mod=2\\_0471&symbol=wlp&news-symbol=WLP](http://online.wsj.com/quotes/executives.html?mod=2_0471&symbol=wlp&news-symbol=WLP). Our system of government is seriously flawed when captive consumers of health insurance have to help pay bribes which inure to benefit the people who are their captors. The main flaw is the **FECA Law**.

11. WELLPOINT has its own Political Action Committee made up of executives and managers in the company. Named "WELLPOINT, INC. WELLPOINT," the committee has provided \$34,350 in illegal bribes to Defendant Boehner, \$24,000 to Defendant Cantor, \$16,000 to Defendant Lieberman, \$26,000 to Defendant Lincoln, and \$12,000 to Defendant McConnell.<sup>5</sup> Some of Plaintiffs' premiums also paid for these bribes which have helped the six legislators make real health care reform a pipe-dream, as matters presently stand on the floor of the U.S. Senate.

12. Plaintiff M. Schonberg has needed medication and testing for her pre-existing medical condition. The costs incurred have been enormous and mostly uncovered by Anthem due to pervasive corporate corruption in the Congress of the United States. E.g., a single medication prescribed for his wife in 2008 cost Plaintiff S. Schonberg \$2200 per month in cash, out of pocket. These are outlandish medical expenses incurred by Plaintiffs as a result of the six legislators' unconstitutional support of Big Health.

13. In 2009, the legislative support the six legislators provided to Big Health was given in a quid pro quo fashion in concert with the six legislators' receipt of hundreds of thousands of dollars in bribes or illegal gratuities, which are referred to in the unconstitutional FECA Law as campaign contributions.

14. Plaintiffs' specific, concrete injuries giving them standing are a lack of availability of health insurance in Florida for M. Schonberg and paying exorbitant health insurance premiums and health care costs suffered by S. Schonberg. For the plaintiffs to stay together, they must spend half of their time in Florida and half in New Hampshire so

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<sup>5</sup> The amounts were gathered from the FEC.gov website on November 29, 2009.



that each can retain citizenship in their respective states. The travel costs for the trips back and forth have averaged approximately \$2000 per year for the past three years.

15. These injuries will continue in the future as long as the six legislators receive bribes and/or illegal gratuities. The cause of these injuries is the bribery of, and/or illegal gratuities given to the six legislators by Big Health. If there were no bribes or illegal gratuities, these Defendants and the rest of Congress would probably act in the best interests of the Plaintiffs and the People of the United States. Real health insurance reform legislation would result. Plaintiff M. Schonberg would become eligible for major medical health insurance in Florida; and Plaintiff S. Schonberg would pay the reasonable cost.

16. The six legislators provide themselves with Cadillac health insurance coverage which is superb. The U.S. Congress requires that the Plaintiffs and the People of the United States pay for about 75% of the health insurance premiums for the six legislators. These Cadillac plans cost the six legislators about half of the premium that Plaintiff S. Schonberg paid for his wife's insurance; and the Cadillac plans pay for more than twice the medical benefits. Plaintiff S. Schonberg estimates that he has paid in excess of four times the cost for his wife's medical insurance and care in the past 3 years than each of the six legislators would have paid under similar circumstances.

17. The **FECA Law's** unconstitutional sections have allowed unconscionable campaign contributions, outright bribery of, and/or illegal gratuities given to the six legislators by Big Health. But for this corruption in Congress allowed by the **FECA Law** and paid to these Defendants, Plaintiffs would have no injuries. If there were no **FECA**

Law, and the bribes or illegal gratuities continued, the six legislators would be placed in a federal prison.

#### **Medicare Plus 5%**

18. "Medicare Plus 5%" refers to a health insurance plan put forth in Congress during health reform legislation discussions in 2009. The idea was to allow any citizen of the United States under the age of 65 an option to purchase Medicare insurance at the cost of the insurance plus an additional 5% premium. The plan was a simple, straightforward one which would not have increased taxes; and yet it would provide relief from the unfair burdens addressed in this Complaint. The plan was scuttled primarily by the six legislators because it probably would have put for-profit health insurance companies like WELLPOINT out of business. The main reason Medicare plus 5% failed to gain the support of Congress was intense lobbying of the six legislators which included illegal bribes unconstitutionally permitted in the FECA Law.

#### **Basis for Constitutional Claims**

19. The Emoluments Clause forbids a sitting member of Congress from taking on a second job as a civil officer of the United States "under the Authority of the United States..." The FECA Law at 2 U.S.C. §432(e)(2) requires that members of Congress who form campaign committees for the purpose of raising campaign gifts ("emoluments<sup>6</sup>") be considered as Agents of their campaign committees. This agency relationship creates a civil office under the Authority of the United States and the Defendant Agents are the civil officers in charge of the committees.

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<sup>6</sup> *Black's Law Dictionary* defines emolument as "[a]ny perquisite, advantage, profit or gain arising from the possession of an office." (6<sup>th</sup> ed, 1990, pg 524)

20. The Defendant Civil Officers and Agents illegally receive, manage and distribute millions of dollars of FECA Law money while Defendants are also sitting members of Congress. Here are pertinent amounts raised by all of the Defendants' civil offices for the present election cycle:<sup>7</sup>

Friends of Bernie Sanders 2005-2010	\$5,813,062
John Boehner Combined PACs for 2010	\$2,148,792
Blanche Lincoln Combined PACs 2005-2010	\$7,094,737
Joe Lieberman Combined PACs 2005-2010	\$20,187,719
Mitch McConnell Combined PACs 2005-2010	\$23,882,771
John McCain Combined PACs 2005-2010	\$20,653,777
Eric Cantor Combined PACs for 2010	\$2,575,223

21. The above multi-million dollar civil offices are antithetical to the role of the U.S. Congress envisioned by the Founding Fathers of our Country and the Framers of the Constitution. The civil offices do nothing beneficial for the People of the United States of America. These civil offices detract the members of our legislature from their duties, ensnare them in constant fundraising, enrage the electorate, and tarnish the reputation of the United States in the world community of nations.

22. The obscene emoluments received and distributed by Defendant Civil Officers and Agents also unconstitutionally "encrease" over time. The illicit payments begin shortly after the Defendant Civil Officer and Agent is sworn into office as a member of Congress following her/his last election victory. As the next election approaches, the bribes and/or illegal gratuities pour into the campaigns in greater and greater amounts. Sections 432, 434, 439, and 441i of the FECA Law, which authorize

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<sup>7</sup> Data retrieved from the Center for Responsive Politics, OpenSecrets.org on November 29, 2009. Combined PACs include both the Leadership PAC and the Principal Campaign Committee.

and regulate the relationship of Defendant Civil Officers, Agents and directors to their campaign committees are unconstitutional.

23. Defendant McConnell admits that the American electorate is losing confidence in the democratic process because of the spectre of actual and apparent corruption created by "soft money" and other campaign finance abuses, and because of the climate of evasion of legitimate regulation that has come to characterize our political system.

24. In their unconstitutional activities as FECA Law civil officers, Defendants McConnell, Boehner and Cantor, and probably Defendants McCain, Lincoln and Lieberman are in violation of several Federal Criminal Statutes, e.g. receiving illegal gratuities, (18 U.S.C. § 201), racketeering (18 U.S.C. §1961) and extortion (18 U.S.C. § 1951.)

25. Defendant Boehner, an avid golfer, immerses himself in illegal golf emoluments. Earlier this year, his illegal PAC, "The Freedom Project," put on a golf tournament which treated the Defendant and his friends to \$31,400 in free golf with all the trimmings at the Naples, Florida Ritz Carlton.<sup>8</sup>

#### **Basis for Emergency Request**

26. In *Bush v. Gore*, 531 U.S. 98 (2000), the Supreme Court decided the winner of the 2000 United States Presidential Election in 5 days and issued a 60-page opinion. There was a national emergency. At the time of the filing of Plaintiffs' Complaint, the United States was in a health insurance crisis which President Barack Obama said was the cause of forty thousand deaths per year in the under-insured population. Health care

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<sup>8</sup> From The Washington Post online, By Mary Ann Akers, June 24, 2009



reform is being debated on the floor of the U. S. Senate in the midst of Big Health's absolute torrent of illegal money siphoning into the pockets of the Senators who are deciding the fate of the American people. If the Court granted the relief requested before the end of the calendar year 2009, real health care reform in the United States of America would be enacted by the Congress that is now in session. Plaintiffs' damages would be mitigated. And Plaintiff M. Schonberg could re-establish her citizenship in the State of Florida with major medical health insurance coverage.

**Motion for Declaratory Judgment**

27. Plaintiffs hereby move the Court for an Order declaring that 2 U.S.C. §432, §434, §439, and §441i are unconstitutional and in violation of Article I, Section 6, Clause 2 of the United States Constitution.

**Emergency Injunctive Relief**

27. Plaintiffs pray for the following relief:
- A. That the Court immediately Order the dissolution of all **FECA Law** campaign committees of the Defendant Civil Officers and Agents.
  - B. That the Court immediately Order that all remaining funds in the campaign committees of Defendant Civil Officers and Agents be returned to the donors.
  - C. If any Defendant Civil Officers and Agents refuse to obey the Orders of the Court requested above, then Plaintiffs pray that the Court shall dismiss each one of them as a "Member of either House during his Continuance in Office," pursuant to the Emoluments Clause.

D. That the Court issue a Restraining Order forbidding the six legislators from voting on or filibustering any future health care bill until all illegal bribes received from Big Health in the past six years have been returned to the donors.


E. That the part of Plaintiffs' Anthem premiums used to pay illegal bribes to the six legislators be returned to the Plaintiffs in the amount of \$1.

F. That the six legislators pay for the costs of this action.

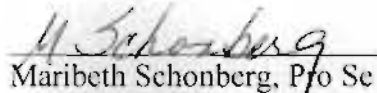
G. That the six legislators be referred to the Justice Department as required by law.

THE END

RESPECTFULLY SUBMITTED BY:



Steven E. Schonberg, Pro Se  
7938 SE 12<sup>th</sup> Circle  
Ocala, FL 34480  
352-789-0610  
Email: sschonberg@aol.com



Maribeth Schonberg, Pro Se  
60 Wilson Hill Road  
Merrimack, NH 03054  
352-789-9474  
Email: maribethnh@aol.com



IN THE UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF FLORIDA

2009 DEC -3 AM 9:07  
CLERK, U.S. DISTRICT COURT  
ORLA, FLORIDA

MARIBETH SCHONBERG,  
STEVEN E. SCHONBERG,  
  
Plaintiffs,  
  
v.  
  
Civil Officer BERNIE SANDERS, Agent of the  
U.S. Senator Bernie Sanders Principal  
Campaign Committee, A/K/A "Friends of  
Bernie Sanders," et al,  
  
Defendants

Civil Action No. \_\_\_\_\_  
  
5:09-CU-534-OC-10GRJ

**Memorandum in Support of Plaintiffs Complaint for Emergency  
Injunction, Damages, and Motion for Declaratory Judgment**

A good politician is quite as unthinkable as an honest burglar  
*- H. L. Mencken*

This challenge to 2 U.S.C. Sections 432, 439, and 441i as a violation of Article I, Section 6, Clause 2 of the United States Constitution<sup>1</sup> is a matter of first impression for the Court. The Supreme Court held that the Federal Election Campaign Act of 1971, as amended in 1974<sup>2</sup>, was constitutional in *Buckley v. Valeo*, 424 U.S. 1, 96 S.Ct.612 (1976). Things change, and that Court never addressed the Emoluments Clause.

"In constitutional adjudication as elsewhere in life, changed circumstances may impose new obligations, and the thoughtful part of the Nation could accept each decision to overrule a prior case as a response to the Court's constitutional duty."

*Planned Parenthood of Southern Pennsylvania v. Casey*, 505 U.S. 833, 86(1992).

<sup>1</sup> Referred to henceforth as "The Emoluments Clause."

<sup>2</sup> The Federal Election Campaign Act of 1971 is hereinafter referred to as the "FECA Law."

"*Buckley* may stand today. But it cannot stand the test of time."<sup>3</sup> Plaintiffs hereby respectfully ask this Court to overrule *Buckley v. Valeo*, supra.

The essence of Plaintiffs' Complaint contends Defendant Agents<sup>4</sup>, who are also Members of Congress, have unconstitutionally appointed themselves as civil officers in charge of their campaign fundraising committees. And the illegal status of their multimillion dollar "civil offices" is the essence of this important matter. But first,

#### **Standing**

Plaintiffs anticipate that all Defendants, with the possible exception of civil Officer Bernie Sanders, will contend Plaintiffs have no right to ask the Court to determine the legitimacy of the **FECA** Law by suing them. Because Plaintiffs have requested expedited responses and briefing, Plaintiffs will hereby set forth the arguments that will hopefully defeat Defendants' anticipated responses before they are filed.

There are two classes of Defendants in this matter. The first are a group of civil officers who are agents of their campaign committees. These Defendants are also members of Congress, but they are not being sued in that capacity. The second class of Defendant is the Federal Election Commission (FEC) which is an agency of the United States government. Since these two classes of Defendants have different sets of rights under the law, it is possible for the Court to find that Plaintiffs have standing to sue both classes, just one class or none of the Defendants. Thus, the Court could determine that Plaintiffs have standing to sue only Defendant FEC. If the Court then found the **FECA**

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<sup>3</sup> "Challenging *Buckley v. Valeo*: A Legal Strategy," *Akron Law Review*, 33:1, (1999). Pagination not online, see <http://www.uakron.edu/law/lawreview/v33/docs/wright331.pdf>.

<sup>4</sup> "Agent...: one that acts for or in the place of another by authority from him: as a representative, emissary, or *official of a government*..." (emphasis added), *Webster's Third International Dictionary* (1993), pg 40.

Law unconstitutional, it could grant the Plaintiffs the relief requested and enjoin all members of Congress who have illegal fundraising campaign committees.

To satisfy "the irreducible constitutional minimum of standing" as to both classes of Defendants, Plaintiffs must satisfy the three prongs set forth in *Lujan v. Defenders of Wildlife*, 504 U.S. 555 at 560, (1992.) First, Plaintiffs must show an injury-in-fact, i.e., "an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical." *Id.*

Plaintiffs' concrete and particularized injuries are:

1. A lack of availability of major medical health insurance in Florida for M. Schonberg,
2. Meeting 6 month residency requirements for S. Schonberg in Florida and M. Schonberg in New Hampshire at a cost of approximately \$2000 per year.
3. Paying exorbitant health insurance premiums incurred by S. Schonberg,
4. Having insurance with poor benefits and uncovered costs, e.g. a medication prescribed for Plaintiff M. Schonberg in 2008 which cost Plaintiff S. Schonberg \$2200 per month in out-of-pocket expenses.
5. Unwanted participation in CEO Braly's and WELLPOINT'S bribery of Defendants Boehner, Cantor, Lieberman, Lincoln and McConnell by virtue of the high premiums paid to Anthem insurance which went to pay the exorbitant WELLPOINT salaries and other compensation.
6. The injuries are likely to continue in the future absent a favorable ruling by the Court.

See Plaintiffs' Complaint, ¶s 7 thru 12. These injuries are concrete and particularized. If this were a tort claim, the damages would be itemized in a jury instruction. Recompense would be sought. A court or jury could determine a fair and just monetary award. And for the purposes of Defendants' Motions to dismiss, the allegations must be accepted as true.

The second prong of *Lujan* requires Plaintiffs to show "a causal connection between the injury" and the challenged action, *Lujan*, supra at 560. Plaintiffs claim that the six legislators<sup>4</sup> have received enormous campaign contributions from Big Health<sup>5</sup>, that they consistently vote for Big Health and against the interests of the Plaintiffs, and that the six legislators intend to block health care reform, Plaintiffs' Complaint, ¶3. Defendant McConnell is alleged to have received a \$2000 bribe from the CEO of WELLPOINT when Plaintiffs were paying an inflated health insurance premium to Anthem Health Plan which WELLPOINT owned. Part of Plaintiffs' premium went to pay for the bribe. Plaintiffs' premiums also paid salaries to WELLPOINT managers and executives who used some of that money to bribe Boehner, Cantor, Lieberman and Lincoln. With respect to the bribes, causation is obvious. Plaintiffs unwittingly paid money to a company that used it to bribe members of Congress. The cause of the injury was the bribe.

And if a jury instruction were given at a trial for receiving illegal gratuities by one of the six legislators, it would include the following in order to prove the U.S. Attorney's case (against a senator):

*One*, the defendant was a United States Senator;  
*Two*, the defendant received a thing of value not authorized by law; and  
*Three*, the defendant did so for an official act to be performed by  
Senator \_\_\_\_\_.

See 18 U.S.C. § 201(c)(1)(B).

With this jury instruction, the government need not have direct evidence of intent. If the defendant legislator is found to have received an unauthorized thing of value and

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<sup>4</sup> The six legislators referred to in Plaintiffs Complaint are Defendants Lincoln, McCain, McConnell, Lieberman, Boehner, and Cantor. Defendant Bernie Sanders is NOT one of the six legislators.

<sup>5</sup> This is the slogan used in the Complaint to refer to the health insurance industry and the pharmaceutical industry

voted favorably for the (insurance company) in his official actions, that's all the proof the Government would need for a Court or Jury to decide guilt or innocence. The focus for this Court's decision are the words in sentence *Two* of the suggested instruction "not authorized by law." *Buckley*, supra, needs to be overturned to make such a case possible.

In the 38 years of the existence of the **FECA Law**, it has never been questioned as a violation of the Emoluments Clause. Defendants, their brethren, sisterhood, and predecessors always thought that the **FECA Law** was constitutional; receipt of millions of dollars in gifts was "business as usual." It's obvious that they receive campaign contributions authorized by **FECA Law**. And, it's blatantly clear the six legislators vote in Congress to protect their major contributors. Clearly, the second Lujan prong is also met if the **FECA Law** is unconstitutional, *id.* Plaintiffs injuries were, are, and will be the result of a continued protection of "for profit" health insurance companies by the six legislators. These legislators vote "no" to any public option that could jeopardize the financial well-being of Big Health, from whom they have received hundreds of thousands of dollars in bribes (according to Plaintiffs) or campaign contributions (according to Defendants.)

What an unusual case for the Court to decide. *It can resolve the underlying constitutional question by deciding whether or not standing exists in the first place!* If the **FECA Law** is unconstitutional, Plaintiffs have standing; if it is constitutional with respect to the Emoluments Clause, there is no standing.

The third prong of Lujan is that "it must be likely," as opposed to speculative, that the injury will be redressed by a favorable decision." *Id* at 561, (internal cites omitted). This prong is the equivalent of asking, "Do bribes work?" Also plain and clear is that if



the portion of the Anthem premiums used for bribes are returned to Plaintiffs, the injury will be favorably redressed.

Having made the above analysis for both classes of Defendants, Plaintiffs are unable to parse out any different treatment that might be applied to one or the other class. *Doe v. McMillan*, 412 U.S. 306, provides absolute immunity for members of Congress acting in that function. That is why Plaintiffs' Complaint does not name any Defendant in his official capacity as a United States Senator or Member of the United States House of Representatives. Defendants might claim Plaintiffs can't sue the Defendants as civil officers, but the same constitutional circuit results. If Defendant legislators are acting as civil officers in their capacities as Agents of their respective campaign committees, then the FECA Law is unconstitutional; if they are not so acting, it is constitutional. Once again the Court's decision on the underlying Constitutional question determines whether Plaintiffs have standing.

#### **A Brief History of the Emoluments Clause**

Article I, Section 6, Clause 2 of the United States Constitution in final draft form was agreed to at the Constitutional Convention on September 12, 1787:<sup>7</sup>

"No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been increased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office."

The clause was drafted as an anti-corruption clause. Here are some of the notes from the framers in the drafting process:

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<sup>7</sup> "1787 Drafting the U.S. Constitution," Wilbourn E. Benton, editor, (1986), pg.739.



Mr. Pierce Butler: "Look at the history of the government of Great Britain, where there is a very flimsy exclusion—Does it not ruin their government? A man takes a seat in parliament to get an office for himself or friends or both; and this is the great source from which flows its great venality and corruption."<sup>7</sup>

Mr. Alexander Hamilton: "I am, therefore, against all exclusions and refinements, except only in this case; that when a member takes his seat, he should vacate every other office."<sup>8</sup>

"Mr. Rutledge, was for preserving the Legislature as pure as possible, by shutting the door against appointments of its own members to offices, which was one source of corruption."<sup>9</sup>

"Mr. Jenifer remarked that in Maryland, the Senators chosen for five years, could hold no other office and that this circumstance gained them the greatest confidence of the people."<sup>10</sup>

Gov. John Rutledge: "No person ought to come to the legislature with an eye to his own emolument in any shape."<sup>11</sup>

Mr. George Mason: "But if we do not provide against corruption, our government will soon be at an end..."<sup>12</sup>

Mr. James Madison: "I believe all public bodies are inclined, from various motives, to support its members; but it is not always done from the base motives of venality..."<sup>13</sup>

Mr. Roger Sherman: "The Constitution should lay as few temptations as possible in the way of those in power."<sup>14</sup>

These notes support what Plaintiffs and many others learned in high school history class.

The Founding Fathers were honorable men who wrote the Constitution with an eye toward preventing corruption. And if the Court wants to take our country a step back in

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<sup>7</sup> *Id* at 715

<sup>8</sup> *Id* at 717

<sup>9</sup> *Id* at 718

<sup>10</sup> *Id* at 721

<sup>11</sup> *Id* at 723

<sup>12</sup> *Id*

<sup>13</sup> *Id*

<sup>14</sup> *Id* at 732

time when there was less Congressional malevolence, it should find Defendant Agents to be civil officers under the authority of the United States and in violation of the Emoluments Clause.<sup>15</sup>

#### Civil Office

Undefined in the Constitution, the term "civil office" in the Emoluments Clause has been rarely interpreted by the Courts. It's certain that the Office of the Secretary of State of the United States or a U.S. military appellate court are offices.

The Incompatibility Clause<sup>16</sup> of the Constitution which prohibits a Member of Congress from "holding any Office under the United States," precludes a Member of Congress from serving on a Court of Criminal Appeals, as such a position is an "office" that must be filled by an "Officer of the United States." U.S. v. Lane, U.S. Armed Forces 2006, 64 M.J. 1, reconsideration denied 64 M.J. 312.<sup>17</sup>

The less lofty civil office of Agent of a federal campaign committee regulated by and under the authority of the FEC is awaiting a determination by this Court. But how can the office of a federal campaign committee "Agent" not likewise be prohibited by the Emoluments Clause when Defendant Agents can freely use the funds gathered to pay the expenses of their Congressional offices?

Defendant Boehner, an avid golfer, immerses himself in illegal golf emoluments. Earlier this year, his illegal PAC, "The Freedom Project," put on a golf tournament which

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<sup>15</sup> Plaintiffs pro se have no staff and are almost out of available time. They apologize to the Court that this brief is being hurried and that it shows. Plaintiffs have tried to refrain from cluttering the record just to fill pages.

<sup>16</sup> Some Courts and commentators refer to the Emoluments Clause as the "incompatibility clause," the "sinecure clause," or the "ineligibility clause."

<sup>17</sup> Taken verbatim from pocket part of U.S.C.A. regarding Emoluments Clause.

treated the Defendant and his friends to \$31,400 in free golf with all the trimmings at the Naples, Florida Ritz Carlton.<sup>18</sup> The FECA Law states:

(2) *Conversion.* For the purposes of paragraph (1), a contribution or donation shall be considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office, including—

- (A) a home mortgage, rent, or utility payment;
- (B) a clothing purchase;
- (C) a noncampaign-related automobile expense;
- (D) a country club membership;
- (E) a vacation or other noncampaign-related trip;
- (F) a household food item;
- (G) a tuition payment;
- (H) admission to a sporting event, concert, theater, or other form of entertainment not associated with an election campaign; and
- (I) dues, fees, and other payments to a health club or recreational facility.

2 U.S.C. § 439a.(b)(2). Thus Defendant Boehner gives himself and friends unlimited golf, food, drink, souvenirs and lodging at the most expensive resort in the area, but it's **no vacation** and **no country club membership**. What a *joke* of a law Congress enacted for themselves!!

*As to the exception that [Senators and Representatives] cannot be appointed to offices created by themselves, or the emoluments of which are by themselves increased, it is certainly of little consequence, since they may easily evade it... Luther Martin<sup>19</sup>*

In 2 U.S.C. § 439a.(a)(2), Congress legislated to allow themselves to use their illicit contributions “for ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office.” Plaintiffs cannot determine what those necessary expenses are, but they probably include expenses which Defendant Boehner

<sup>18</sup> From The Washington Post online, By Mary Ann Akers, June 24, 2009

<sup>19</sup> From, “The Emoluments Clause: An Anti-federalist Intruder in a Federalist Constitution”, John F. O'Connor, 24 Hofstra Law Review 89 (1995), citing Luther Martin, “The Genuine Information Delivered to the Legislature of the State of Maryland Relative to the Proceedings of the General Convention Lately Held at Philadelphia, in 2 The Complete Anti-Federalist 19, 52 (Herbert J. Storing., 1981). Luther Martin was an anti-federalist delegate from Maryland who refused to sign the Constitution.

was unable to pass off as a campaign expense. Congress also only requires its members to disclose to the FEC the monthly amounts of their PACs' credit card debt; no itemization seems to be required.<sup>21</sup>

The Court has but a solitary, single and simple question to answer for the Plaintiffs and the People of the United States of America: when does an agent of an election campaign committee become a civil officer under the "Authority of the United States?" An office is a public station, or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emolument, and duties. *U.S. v. Hartwell*, 73 U.S.385, 393 (1867).

Applying this *Hartwell* definition to Defendant Civil Agents:

- A. Appointment: Once their PACs are formed the **FECA Law** appoints them as Agents.<sup>22</sup>
- B. Tenure: The Defendant Agents hold their offices and direct the activities of their campaign committees.
- C. Duration: The Agency continues as long as the campaign committee exists.
- D. Emolument: Millions of Dollars.
- E. Duties: Golf, entertainment, providing political favors to contributors,<sup>23</sup> etc.

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<sup>21</sup> Plaintiffs were unable to find any credit card itemizations on the FEC.gov website.

<sup>22</sup> 2 U.S.C. §432(e)(2)

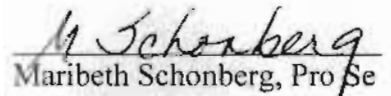
<sup>23</sup> "Those who pay are the masters of those who are paid." Alexander Hamilton, as quoted in the Benton text, FN 7, *supra*, pg. 691.

Founding Fathers, Hamilton, Madison, Mason, Jackson, Rutledge, Washington, Jefferson and those other magnificent souls from 1787 crafted the law of our land. Had they known that their Constitution could ever allow the incredible Congressional power and money "grab" we are witnessing, the Founding Fathers surely would have placed into the lifeblood of the American Democracy an Amendment to the Constitution similar to the one contained in EXHIBIT I to this memorandum.<sup>24</sup>

Respectfully submitted,



Steven E. Schonberg, Pro Se  
7938 SE 12<sup>th</sup> Circle  
Ocala, FL 34480  
352-789-0610  
Email: [sschonberg@aol.com](mailto:sschonberg@aol.com)



Maribeth Schonberg, Pro Se  
60 Wilson Hill Road  
Merrimack, NH 03054  
352-789-9474  
Email: [maribethnh@aol.com](mailto:maribethnh@aol.com)

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<sup>24</sup> Exhibit I to this Memorandum is a letter faxed to New Hampshire Governor John Lynch earlier this year in regard to the suggested Constitutional Amendment. The "original" of Exhibit I was signed by Plaintiff S. Schonberg and sent to Governor Lynch and those "cc'd." Schonberg wants the New Hampshire State Legislature to be the first State to vote "up or down" to convene a Constitutional Convention pursuant to Article V of the United States Constitution. The sole purpose of the convention would be for campaign finance reform. The States must adopt the Amendment because Congress will never enact significant reform that is contrary to the self-interests of its members.

60 Wilson Hill Rd  
Merrimack, NH 03054  
603-423-1017 E-mail [sschonberg@aol.com](mailto:sschonberg@aol.com)

---

September 27, 2009

VIA FAX ONLY

To the Honorable John Lynch  
Governor of the Great State of New Hampshire  
State House  
25 Capitol Street  
Concord, NH 03301

FAX: 2 pages total to (603)271-7680

RE: Federal Campaign Finance Reform

Dear Governor Lynch:

Since my last correspondence to you, there have been a number of responses to the amendment proposal, mainly positive. In order to pare down the complexity of the proposed amendment, and to provide more power to the states to oversee federal election campaign financing, here is the latest iteration:

2<sup>nd</sup> Revision of Proposed Constitutional Amendment XXVIII

Section 1

**IT SHALL BE ILLEGAL**

For any person, corporation or other entity to contribute anything of value to the campaign of an individual running for elected federal office.

For a federal candidate to contribute anything of value to her or his own campaign.

For an individual running for elected federal office to accept anything of value from any person, corporation or other entity.

For any Federal official to accept anything of value from any person, corporation or other entity.



For any person, corporation, or other entity to provide any advertising or promotion for any candidate running for an elected federal office. No person, corporation, or other entity may provide any advertising or promotion for any elected official for any purpose.

**THE PENALTY** for violation of this Amendment shall be no less than two years in prison and a fine of no less than treble the value of any illegal gift, contribution or thing of value for the contributor, candidate and elected official.

Section 2

**Each State** shall pass legislation to enhance the prosecution and severity of penalties set forth in this Amendment for all residents, corporations and other entities in the State who violate this criminal provision.

**Each State** shall determine how to finance the campaigns for its candidates for the U.S Senate and House of Representatives.

**Each State** shall determine how it contributes to the campaigns of candidates for President of the United States from a distribution from the United States Treasury in amounts to be decided by Congress. This Treasury distribution will be made equitably to the States based on United States Census Bureau population estimates for the several states.

Governor Lynch, thank you for your continued attention to this most important matter.

Sincerely yours,

Steven E. Schonberg, MD, JD

cc To the Honorable:

Barack Obama, President of the United States, Fax only: 202-228-4260  
U.S. Senator Judd Gregg, Fax only: 202-224-4952  
U.S. Senator Jeanne Shaheen, Fax only: 202-228-3194  
U.S. Representative Carol Shea-Porter: Fax only 202-225-5822  
U.S. Representative Paul Hodes: Fax only 202-225-2946  
NH District 9 State Senator Sheila Roberge [sheila.roberge@leg.state.nh.us](mailto:sheila.roberge@leg.state.nh.us)  
NH District 19 Representatives:

Batula, Christensen, Elliott, Hinch, Hinkle, L'Heureux, O'neil, and Pellegrino  
[stoj@juno.com](mailto:stoj@juno.com), [c.christensen@leg.state.nh.us](mailto:c.christensen@leg.state.nh.us), [nancy\\_elliott@elliott-controls.com](mailto:nancy_elliott@elliott-controls.com), [bob.lheureux@leg.state.nh.us](mailto:bob.lheureux@leg.state.nh.us), [jmonet1@aol.com](mailto:jmonet1@aol.com), [dick.hinch@leg.state.nh.us](mailto:dick.hinch@leg.state.nh.us), [petchhinkle@comcast.net](mailto:petchhinkle@comcast.net), [tony.pellegrino@leg.state.nh.us](mailto:tony.pellegrino@leg.state.nh.us)

Karen Lovett, Reporter for the Nashua Telegraph, [klovett@nashuatelegraph.com](mailto:klovett@nashuatelegraph.com)

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF FLORIDA

DEC -3 AM 9:20  
CLERK, U.S. DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA

MARIBETH SCHONBERG, )  
STEVEN E. SCHONBERG, )  
 )  
Plaintiffs, )  
 )  
v. )  
 )  
Civil Officer BERNIE SANDERS, Agent of the )  
U.S. Senator Bernie Sanders Principal )  
Campaign Committee, A/K/A "Friends of )  
Bernie Sanders," et al, )  
 )  
Defendants )

Civil Action No. \_\_\_\_\_

5:09-CU-534-OC-10GRJ

**Plaintiffs' Emergency Motion  
to Shorten Time and for Leave to File a Reply**

1. Plaintiffs move the Court for an Emergency Order shortening the time for Defendants to respond to the Complaint for Emergency Injunction and Motion for Declaratory Judgment in this matter. Time is of the essence because the issue before the Court may and should affect the Health Care Reform proceedings ongoing in the Senate of the United States.
2. Plaintiffs ask that Defendants be ordered to file their responses to Plaintiffs' initial pleadings no later than 10 days after they have been served.
3. Plaintiffs request leave of the Court to file a single 15 page reply brief to all Defendants' Responses no later than 10 days after receipt thereof.
4. This pleading and accompanying memorandum in support are being served on Defendants with the original Complaint in this matter. Plaintiffs have no opportunity to consult with opposing counsel for concurrence.

RESPECTFULLY SUBMITTED BY:

Steven E. Schonberg, Pro Se  
7938 SE 12<sup>th</sup> Circle  
Ocala, FL 34480  
352-789-0610  
Email: sschonberg@aol.com

Maribeth Schonberg  
Maribeth Schonberg, Pro Se  
60 Wilson Hill Road  
Merrimack, NH 03054  
352-789-9474  
Email: maribethnh@aol.com

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF FLORIDA

DEC -3 AM 9:19

MARIBETH SCHONBERG,	)	
STEVEN E. SCHONBERG,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No.
	)	
Civil Officer BERNIE SANDERS, Agent of the	)	
U.S. Senator Bernie Sanders Principal	)	5:09-CU-534-OC-10GRJ
Campaign Committee, A/K/A "Friends of	)	
Bernie Sanders," et al.	)	
	)	
Defendants	)	

Plaintiffs' Memorandum in Support of Emergency Motion  
to Shorten Time and for Leave to File a Reply

The United States Senate is in the midst of an historic debate to reform the health insurance industry for all Americans. Plaintiffs have alleged that four of the Senators named in the Complaint received unconstitutional and illegal gratuities and/or bribes from the industry that they are about to regulate. There is a clear and present immediate danger that the Senate will draft and approve a health care reform measure that has been tainted by the alleged illegal conduct. A tainted bill will turn into a corrupt law that will adversely affect the Plaintiffs for many years, until Plaintiff M. Schonberg is eligible for Medicare.

President Barack Obama has said there is a health insurance crisis in the country that needs immediate resolution. At the President's urging a majority of the members of the U.S. Senate have been and will continue to put in long, exhaustive days in an effort to get a health insurance bill out of the Senate by the end of 2009.

All of the defendants have huge legal staffs.<sup>1</sup> There will be no resulting prejudice by expedited briefing.

RESPECTFULLY SUBMITTED BY:



Steven E. Schonberg, Pro Se  
7938 SE 12<sup>th</sup> Circle  
Ocala, FL 34480  
352-789-0610  
Email: [sschonberg@aol.com](mailto:sschonberg@aol.com)



Maribeth Schonberg, Pro Se  
60 Wilson Hill Road  
Merrimack, NH 03054  
352-789-9474  
Email: [maribethnh@aol.com](mailto:maribethnh@aol.com)

---

<sup>1</sup> One of the egregiously unconstitutional provisions of the FECA Law permits the civil officer defendants to pay for "ordinary and necessary expenses incurred in connection with duties of the individual as a holder of Federal office" from their illegal campaign committees. The section allows for more of the PAC treasure troves to be completely untraceable and listed as generic credit card charges. See 2 U.S.C. §439a(a)(2). So Defendant legislators could theoretically use part of the illicit millions of dollars in their PACs to pay legal fees.

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7938 SE 12th Circle  
Ocala, FL 34480

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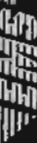
TO: (PLEASE PRINT) PHONE ( )

Steven T. Walther  
Chairman, Federal Election Comm.  
999 E. Street NW  
Washington, DC

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RECEIVED

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
MIDDLE DISTRICT OF FLORIDA

2009 DEC -3 AM 9:08  
CLERK, U.S. DISTRICT COURT  
ORLA, FLORIDA

MARIBETH SCHONBERG,	)	
STEVEN E. SCHONBERG,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. _____
	)	
Civil Officer BERNIE SANDERS, Agent of the	)	
U.S. Senator Bernie Sanders Principal	)	5:09-CU-534-OC-10GRJ
Campaign Committee, A/K/A "Friends of	)	
Bernie Sanders," et al,	)	
	)	
Defendants	)	

**Notice Requesting Emergency Three-Judge Court**

**To the U.S. District Court Clerk for the Middle District of Florida**

Pursuant to local rule 1.06(d), please take notice that the above-captioned and docketed matter draws into question the constitutionality of 2 U.S.C. §432, §434, §439, and §441i of the Federal Election Campaign Act of 1971 (hereinafter referred to as the **FECA Law**.) The constitutional grounds upon which this case assails these sections of the **FECA Law** are:

1. In 2 U.S.C. §432, §434, §439, and §441i Congress allowed its members to be appointed to civil Offices for the purpose of receiving illegal gratuities and/or bribes, referred to in the Federal Election Campaign Act of 1971, 2 U.S.C. § 431 et seq. as "campaign contributions."
2. These civil Offices are forbidden by Article I, Section 6, Clause 2 of the United States Constitution.

Plaintiffs request, pursuant to the local rule and 28 U.S.C. Section 2403, that a Three-Judge Court be composed to rule on this matter. A Complaint for an Emergency

Injunction has been filed. Time is of the essence.

RESPECTFULLY SUBMITTED BY:



Steven E. Schonberg, Pro Se  
7938 SE 12<sup>th</sup> Circle  
Ocala, FL 34480  
352-789-0610  
Email: sschonberg@aol.com



Maribeth Schonberg, Pro Se  
60 Wilson Hill Road  
Merrimack, NH 03054  
352-789-9474  
Email: maribethnh@aol.com