

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

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**Benjamin Bluman,**

455 West 37<sup>th</sup> Street, Apt. 208  
New York, NY 10018

**Dr. Asenath Steiman,**

353 East 17<sup>th</sup> Street, Apt. 4G  
New York, NY 10003

Plaintiffs,

v.

**Federal Election Commission,**

999 E Street, NW  
Washington, DC 20463,

Defendant.

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CIVIL ACTION NO. \_\_\_\_\_

THREE JUDGE COURT

**COMPLAINT**

**I. INTRODUCTION**

1. This is an action challenging the constitutionality of 2 U.S.C. § 441e (as well as its implementing regulations, found at 11 CFR § 110.20) as applied to prohibit political contributions and independent expenditures by foreign nationals who lawfully reside and work in the United States. Section 441e and its regulations (the “Alien Gag Law”) prohibit, upon pain of civil and criminal penalties, any foreign national other than a permanent resident from (i) making a contribution to a candidate for local, state, or federal office; (ii) making a contribution to a committee of a political party; or (iii) making any independent expenditure in connection with a local, state, or federal election. This statutory provision was enacted by § 303 of the Bipartisan Campaign Reform Act of 2002 (“BCRA”), Pub. L. No. 107-155, 116 Stat. 81, 96.

2. Plaintiffs are foreign nationals who are legally authorized to live and work in the United States. They are subject to the laws enacted by their local, state, and federal governments. They pay taxes and robustly participate in civic life. Plaintiffs also hold strong political views on a variety of matters of public concern. They wish to express and actualize those views by, among other things, (i) contributing funds to candidates for political office who share their opinions; (ii) contributing funds to committees of the political parties who best represent their ideological and policy preferences; and (iii) independently spending money to advocate for their preferred candidates, including by donating to independent political committees and expending funds directly to print and distribute pamphlets. Each of these avenues of political expression is forbidden by the Alien Gag Law.

3. Plaintiffs lawfully reside and work in the United States and are protected by the First Amendment to the United States Constitution. The Alien Gag Law's restrictions on core political speech, enumerated above, violate the First Amendment. Plaintiffs therefore seek a declaration that § 441e and its implementing regulations are unconstitutional as applied to foreign nationals lawfully residing and working in the United States, and a corresponding injunction preventing Defendant from enforcing the statute or regulations against such persons.

## **II. JURISDICTION AND VENUE**

4. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and BCRA § 403, 116 Stat. at 113-14, because Plaintiffs elect "such provisions to apply to the action." BCRA § 403(d)(2), 116 Stat. at 114.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and BCRA § 403, 116 Stat. at 113-14, because Plaintiffs elect "such provisions to apply to the action." BCRA § 403(d)(2), 116 Stat. at 114.

**III. THREE-JUDGE PANEL**

6. Pursuant to 28 U.S.C. § 2284 and BCRA § 403, 116 Stat. at 113-14, Plaintiffs request the appointment of a three-judge panel to hear and resolve this Complaint. Pursuant to BCRA § 403(d)(2), 116 Stat. at 114, Plaintiffs elect the provisions of BCRA § 403(a) to apply to this action.

**IV. THE PARTIES**

7. Plaintiff Benjamin Bluman, a natural person, is a citizen of Canada who resides in New York City, New York.

8. Plaintiff Dr. Asenath Steiman, a natural person, is a dual citizen of Canada and Israel who resides in New York City, New York.

9. Defendant Federal Election Commission (“FEC”) is the government agency with enforcement authority over § 441e.

**V. FACTS**

10. Mr. Benjamin Bluman is a Canadian citizen. He attended Harvard Law School in Cambridge, Massachusetts, from September 2006 until June 2009. During that period, he lawfully resided in the United States as an “F1-status” non-immigrant. Thereafter, on November 12, 2009, Mr. Bluman was admitted to the United States as a “TN-status” non-immigrant. Subject to certain conditions, he is authorized to remain and work in the United States for a term of three years, ending on November 11, 2012. Following that period, Mr. Bluman is likely to apply for TN status for a second three-year term, as he is permitted to do under the law, which imposes no limit on the number of times one may apply for (or obtain) TN status.

11. Mr. Bluman is currently employed as an associate by a law firm in New York. He is scheduled to be sworn into the Bar of the State of New York on November 22, 2010, and intends thereafter to join the American Bar Association (“ABA”).

12. Mr. Bluman has long been involved in various political causes and activities. He is passionate, in particular, about protecting the environment, recognizing same-sex marriage, and ensuring that “net-neutrality” is enshrined into law.

13. Mr. Bluman desires to express his views on those matters by contributing money to candidates for political office and by independently advocating for such candidates. In particular, he seeks to:

(a) contribute the sum of \$100 to Representative Jay Inslee (D – WA), who has been at the forefront of the push toward mandating net-neutrality;

(b) contribute the sum of \$100 to Diane Savino, a Democratic State Senator in New York, who has been a powerful and eloquent proponent of same-sex marriage;

(c) contribute the sum of \$100 to President Barack Obama in support of his bid for reelection to the presidency; and

(d) print flyers in support of the reelection of President Barack Obama, and distribute those flyers in Central Park.

14. Mr. Bluman expects that over the coming years, while he resides in the United States, he will want to make similar contributions and expenditures in support of other candidates for local, state, and federal office.

15. Dr. Asenath Steiman is a dual citizen of Canada and Israel. On June 23, 2009, she was admitted to the United States as a “J1-status” non-immigrant. Subject to certain conditions, she is authorized to reside and work in the United States for a period of three years, but that term is subject to extension, to a maximum of seven years. Dr. Steiman is fulfilling her medical residency at the Beth Israel Medical Center in New York City.

16. Dr. Steiman is a member of the American Medical Association (“AMA”).

17. Dr. Steiman has been politically active for many years. In Canada, she was a member of the Conservative Party of Canada and its predecessor party, and during college she held office in that party's campus association. Dr. Steiman is particularly passionate about preventing a Government-takeover of the health-care system in the United States. She also strongly supports tax reductions and policies that encourage entrepreneurship by increasing economic liberty.

18. Dr. Steiman desires to express her views on those matters by contributing money to candidates for political office and to committees of political parties, and by independently advocating for such. In particular, she seeks to:

(a) contribute the sum of \$100 to Senator Tom Coburn (R – OK), who is a medical doctor and has been a leader in the opposition to the recent federal health-care legislation and in the movement to repeal the same;

(b) contribute the sum of \$100 toward her preferred candidate for the Republican nomination to challenge President Barack Obama in the next presidential election;

(c) contribute the sum of \$100 to the National Republican Senatorial Committee, which will help to elect candidates who are broadly sympathetic to these causes; and

(d) donate the sum of \$100 to the Club for Growth, which independently advocates for candidates who support lower taxes and economic freedom.

19. Dr. Steiman expects that over the coming years, while she resides in the United States, she will want to make similar contributions and expenditures in support of other candidates for local, state, and federal office.

20. The Alien Gag Law prohibits both Mr. Bluman and Dr. Steiman from expressing their political views in any of the aforementioned ways.

21. Section 441e and its implementing regulation, 11 CFR § 110.20, forbid any foreign national (other than one who has been admitted to the United States for permanent residence) from, “directly or indirectly,” making “a contribution or donation of money or other thing of value . . . in connection with a Federal, State, or local election”; making “a contribution or donation to a committee of a political party”; or making an “expenditure,” “independent expenditure,” or “disbursement for an electioneering communication” in connection with any federal, state, or local election.

22. Plaintiffs are foreign nationals covered by the Alien Gag Law, and the political speech in which they desire to engage falls within its scope.

23. A willful violation of § 441e is punishable by a civil penalty not exceeding the greater of \$10,000 or 200 percent of any contribution or expenditure involved in the violation. It is also punishable criminally by up to five years’ imprisonment. 2 U.S.C. § 437g(a)(6), (d).

24. But for the prohibitions of § 441e, Plaintiffs would engage in the various forms of political advocacy enumerated above. Plaintiffs have not engaged in the above for fear of being subjected to the severe penalties applicable to violations of § 441e.

## **VI. CLAIMS**

25. Plaintiffs incorporate paragraphs 1-24 of this Complaint.

26. The Alien Gag Law, as applied to aliens who are lawfully residing and working in the United States, violates the First Amendment to the United States Constitution.

27. Plaintiffs lawfully reside and work in the United States, and are fully protected by the First Amendment.

28. The forms of expression that are criminalized by the Alien Gag Law constitute core political speech entitled to the strongest protection under the First Amendment.

29. Defendant cannot show that the prohibitions in the Alien Gag Law are narrowly tailored to serve a compelling government interest. Nor can Defendant even show that these prohibitions are closely drawn to serve a sufficiently important government interest. Indeed, the prohibitions are arbitrary and irrational.

**VII. REQUEST FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment:

(1) declaring that 2 U.S.C. § 441e and 11 CFR § 110.20, as applied to foreign nationals lawfully residing and working in the United States, violate the First Amendment to the United States Constitution;

(2) enjoining the FEC from enforcing 2 U.S.C. § 441e or 11 CFR § 110.20 against Plaintiffs and other similarly situated foreign nationals;

(3) granting costs and attorneys' fees pursuant to any applicable statute or authority; and

(4) awarding any other relief this Court deems just and proper.

Dated: October 19, 2010

Respectfully submitted,

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Warren Postman  
D.C. Bar No. 995083

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Jacob M Roth  
D.C. Bar No. 995090

JONES DAY  
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Washington, DC 20001  
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**Counsel for Plaintiffs**

N  
10-1766  
RMIL

**CIVIL COVER SHEET**

JS-44  
(Rev. 1/05 DC)

<b>I (a) PLAINTIFFS</b> Mr. Benjamin Bluman & Dr. Asenath Steiman	<b>DEFENDANTS</b> Federal Election Commission
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF <u>88888</u> (EXCEPT IN U.S. PLAINTIFF CASES)	COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT <u>11001</u> (IN U.S. PLAINTIFF CASES ONLY) NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER) Warren Postman and Jacob Roth Jones Day 51 Louisiana Ave. NW, Washington DC 20001 (202) 879-3939	Case: 1:10-cv-01766 Assigned To : Urbina, Ricardo M. Assign. Date : 10/19/2010 Description: 3-Judge Court
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**II. BASIS OF JURISDICTION**  
(PLACE AN x IN ONE BOX ONLY)

<input type="radio"/> 1 U.S. Government Plaintiff	<input type="radio"/> 3 Federal Question (U.S. Government Not a Party)
<input checked="" type="radio"/> 2 U.S. Government Defendant	<input type="radio"/> 4 Diversity (Indicate Citizenship of Parties in item III)

**III CITIZENSHIP OF PRINCIPAL PARTIES** (PLACE AN x IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT) **FOR DIVERSITY CASES ONLY!**

	PTF	DFT		PTF	DFT
Citizen of this State	<input type="radio"/> 1	<input type="radio"/> 1	Incorporated or Principal Place of Business in This State	<input type="radio"/> 4	<input type="radio"/> 4
Citizen of Another State	<input type="radio"/> 2	<input type="radio"/> 2	Incorporated and Principal Place of Business in Another State	<input type="radio"/> 5	<input type="radio"/> 5
Citizen or Subject of a Foreign Country	<input type="radio"/> 3	<input type="radio"/> 3	Foreign Nation	<input type="radio"/> 6	<input type="radio"/> 6

**IV. CASE ASSIGNMENT AND NATURE OF SUIT**

(Place a X in one category, A-N, that best represents your cause of action and one in a corresponding Nature of Suit)

<input type="radio"/> <b>A. Antitrust</b>  <input type="checkbox"/> 410 Antitrust	<input type="radio"/> <b>B. Personal Injury/Malpractice</b>  <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Medical Malpractice <input type="checkbox"/> 365 Product Liability <input type="checkbox"/> 368 Asbestos Product Liability	<input type="radio"/> <b>C. Administrative Agency Review</b>  <input type="checkbox"/> 151 Medicare Act  <b>Social Security:</b> <input type="checkbox"/> 861 HIA ((1395ff)) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>Other Statutes</b> <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 890 Other Statutory Actions (If Administrative Agency is Involved)	<input type="radio"/> <b>D. Temporary Restraining Order/Preliminary Injunction</b>  Any nature of suit from any category may be selected for this category of case assignment.  *(If Antitrust, then A governs)*
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<input type="radio"/> <b>E. General Civil (Other)</b>		<b>OR</b>	<input type="radio"/> <b>F. Pro Se General Civil</b>	
<b>Real Property</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent, Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property  <b>Personal Property</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<b>Bankruptcy</b> <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157  <b>Prisoner Petitions</b> <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition  <b>Property Rights</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark  <b>Federal Tax Suits</b> <input type="checkbox"/> 870 Taxes (US plaintiff or defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609	<b>Forfeiture/Penalty</b> <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other  <b>Other Statutes</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 430 Banks & Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced & Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Satellite TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 900 Appeal of fee determination under equal access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions (if not administrative agency review or Privacy Act)	

3

<input type="radio"/> <b>G. Habeas Corpus/ 2255</b>  <input type="checkbox"/> 530 Habeas Corpus-General <input type="checkbox"/> 510 Motion/Vacate Sentence	<input type="radio"/> <b>H. Employment Discrimination</b>  <input type="checkbox"/> 442 Civil Rights-Employment (criteria: race, gender/sex, national origin, discrimination, disability age, religion, retaliation)  *(If pro se, select this deck)*	<input type="radio"/> <b>I. FOIA/PRIVACY ACT</b>  <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act)  *(If pro se, select this deck)*	<input type="radio"/> <b>J. Student Loan</b>  <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (excluding veterans)
<input type="radio"/> <b>K. Labor/ERISA (non-employment)</b>  <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="radio"/> <b>L. Other Civil Rights (non-employment)</b>  <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 American w/Disabilities-Employment <input type="checkbox"/> 446 Americans w/Disabilities-Other	<input type="radio"/> <b>M. Contract</b>  <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholder's Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input checked="" type="radio"/> <b>N. Three-Judge Court</b>  <input checked="" type="checkbox"/> 441 Civil Rights-Voting (if Voting Rights Act)

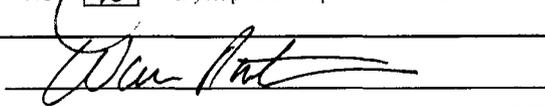
**V. ORIGIN**

1 Original Proceeding  
  2 Removed from State Court  
  3 Remanded from Appellate Court  
  4 Reinstated or Reopened  
  5 Transferred from another district (specify)  
  6 Multi district Litigation  
  7 Appeal to District Judge from Mag. Judge

**VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)**  
 28 U.S.C. 1331; Section 403, Bipartisan Campaign Reform Act, Pub. L. No. 107-155, 116 Stat. 81, 114 First Amendment challenge to 2 U.S.C. 441e.

**VII. REQUESTED IN COMPLAINT**       CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23      **DEMAND \$** 0      Check YES only if demanded in complaint  
**JURY DEMAND:**      YES       NO

**VIII. RELATED CASE(S) IF ANY**      (See instruction)      YES       NO       If yes, please complete related case form

**DATE** October 19, 2010      **SIGNATURE OF ATTORNEY OF RECORD** 

**INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44**  
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I.** COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence. Use 11001 to indicate plaintiff is resident of Washington, D.C., 88888 if plaintiff is resident of the United States but not of Washington, D.C., and 99999 if plaintiff is outside the United States.
- III.** CITIZENSHIP OF PRINCIPAL PARTIES. This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV.** CASE ASSIGNMENT AND NATURE OF SUIT. The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of case.
- VI.** CAUSE OF ACTION. Cite the US Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII.** RELATED CASES, IF ANY. If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk's Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.