IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

SAMUEL K. LIPARI, *Plaintiff,*	)	
v.	)	No.07-0849-CV-W-FJG
GENERAL ELECTRIC COMPANY, *et al.,* *Defendants.*	)	

SUGGESTION IN OPPOSITION TO INTERVENTION OF
US ATTORNEY GENERAL MICHAEL B. MUKASEY AS COUNSEL FOR
BRADLEY J. SCHLOZMAN AND REQUEST FOR ORDER TO SHOW CAUSE

Comes now the plaintiff Samuel K. Lipari appearing pro se and makes the following objection and suggestion in opposition to US Attorney John Wood's purported entry of appearance on behalf of Bradley J. Schlozman a private citizen expressly sued in his individual capacity for fraud in nondiscretionary conduct occurring after Schlozman stepped down as US Attorney and for conspiracy taking place after Schlozman's departure from employment by the US Department of Justice. Additionally, the plaintiff respectfully requests the court issue a show cause order requiring the US Department of Justice to jurisdiction to defend Schlozman from the plaintiff's charges.

STATEMENT OF FACTS

1. The defendant Bradley J. Schlozman was a private citizen and an employee of Hinkle Elkouri LLC at the time he was served under Rule 4's provision for establishing service under alternative forum state rules. See Exb.s I and 2.

2. Before the complaint was filed, Bradley J. Schlozman was sent a copy and the plaintiff has ensured that Schlozman's employer Winton M. Hinkle, Senior Counsel at Hinkle Elkouri LLC, Schlozman's registered address with the State of Kansas Attorney Admissions Office has received a copy of each pleading filed by the plaintiff.

3. The complaint clearly states Bradley J. Schlozman is only being sued in his individual capacity:

> "IV. PARTIES
> ***
> 25. Bradley J. Schlozman, a private Kansas citizen **in** his capacity as an agent of the Republican National Committee and the Kansas Republican Party and is believed to currently reside in Wichita, Kansas." [Emphasis added]

Plaintiff's initial federal complaint at pg. 3 ~25

4. The complaint was made after Schlozman was terminated at the US Department of Justice; "",Bradley 1. Schlozman has resigned his current position at main justice .." See ~101

5. The complaint charges Bradley J. Schlozman with civil violations of 18 U.S.C. § 1961 *et seq.* ("RICO") including the predicate act offraud (Plaintiff's Count 11) during Schlozman's June 5th, 2007 testimony to the US Senate in ~~ 298-305,333 after Schlozman was no longer US Attorney for the Western District of Missouri.

6. The complaint charges Bradley J. Schlozman with membership in an ongoing 18 U.S.c. § 1962 (d) RICO Conspiracy committing chargeable conduct after Schlozman was no longer an employee of the US Department of Justice:

> "124. The defendant Bradley J. Schlozman is an agent of the Republican National Committee with Karl Rove and used his contacts with Scott 1. Bloch, Special Counsel (and former Kansas Disciplinary Administrator representative) at the U.S. Office of Special Counsel and the Kansas Republican Party to keep track of problems for GE."

Pg. 24 at ~ 124

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> "142. The defendant Bradley J. Schlozman had an interest in furthering the Republican
> 156. Scott 1. Bloch was supposed to be investigating Karl Rove, warrantless surveillance and the Hatch Act employment violations of the defendant Bradley J. Schlozman (also from Kansas) and Schlozman's conduct in Missouri to protect the GE defendants from the petitoner but identified more strongly with his role in the RICO enterprise than his government job as Special Counsel.
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> Committee's protection of General Electric and Novation LLC, the client of Alberto Gonzales's former law firm and the main instrumentality oflooting the Medicare/Medicaid system."

Pgs. 26-27 at~~ 142-157

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Pg. 41 at ~233

8. The complaint charges Bradley J. Schlozman with association in fact membership in the 18 U.S.C. § 1962 (c) RICO Enterprise and § 1962 (d) RICO Conspiracy committing acts in furtherance of the unlawful goals that were in violation of the US Department of Justice's rules:

> "133. The defendant Bradley J. Schlozman's conduct was overtly contrary to the policy of the US Department of Justice and Bradley J. Schlozman lied under oath to conceal his conduct on behalf of the Republican National Committee and General Electric from the federal government's US Senate oversight committee and earlier from the Eight Circuit US Court of Appeals."

Pg.33.

SUGGESTION IN OPPOSITION
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INTERVENTION AND IN SUPPORT OF ISSUING A SHOW CAUSE ORDER

The complaint clearly charges the defendant Bradley J. Schlozman after he became a private citizen in his individual capacity. In this jurisdiction, the petition controls the determination of whether a government official (Schlozman is not a government official) is sued in his individual or official capacity. *Baker v. Chisom,* 501 F.3d 920 (8th Cir., 2007) expresses this circuit's minority rule requiring the express private capacity alleged by the plaintiff's petition:

> *"Andrus ex reI. Andrus v. Arkansas,* 197 F.3d 953, 955 (8th Cir.1999) ("specific pleading of individual capacity is required"); *Johnson v. Outboard Marine Corp.,* 172 F.3d 531,535 (8th Cir.1999) ("only an express statement that [public officials] are being sued in their individual capacity will suffice"); *Murphy v. State of Arkansas,* 127 F.3d 750, 754 (8th Cir.1997) ("a clear statement that officials are being sued in their personal capacities" is required). A "cryptic hint" in plaintiffs complaint is not sufficient. *Egerdahl,* 72 F.3d at 620."
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The plaintiff has not invoked jurisdiction of this court under § 1 of the Mandamus and Venue Act, 28 U.S.C. § 1361 so therefore Jeffrey P. Ray is merely aping the private corporate defense counsel technique of attempting to deceive this court. *Stafford v. Briggs Colby v. Driver,* 444 U.S. 527 at 527, 100 S.Ct. 774,63 L.Ed.2d I (l979).Here Jeffrey P. Ray has falsely asserting the plaintiff failed to give adequate notice to the US Government that he was suing a government official, therefore Bradley 1. Schlozman's, Jeffrey P. Ray's, John F Wood's, and ultimately US Attorney General Michael B. Mukasey's inadvertence or neglect should be excused.

In determining whether a suit against a government official is an official capacity suit or an individual capacity suit, "the dispositive inquiry is 'who will pay the judgment?' *"Stafford v. Briggs, 444*

U.S. 527, 542 n. 10, 100 S.Ct. 774, 63 L.Ed.2d 1 (1980); *Hines v. SSA*, No. 95-1342,1996 WL 426822, at *3 (D.N.J. Jan.23, 1996). If the individual defendant will be responsible for paying damages awarded against him, it is an individual capacity suit. Here clearly, Schlozman is jointly and severally liable with other private defendants.

The appearance by leffrey P. Ray of the Office of the United States Attorney purportedly on behalf of the US Attorney for the Western District of Missouri, John F. Wood is in actuality an unlawful intervention by US Attorney General Michael B. Mukasey in this civil proceeding.

The US Attorney General does not have a right to intervene under Rule 24 when there is no challenge to constitutionality of any statute or attempt to enjoin its enforcement. It would be the height of perversion of justice if Schlozman is invoking 42 USC § 2000h-2 Intervention by Attorney General; denial of equal protection on account of race, color, religion, sex or national origin.

US Attorney General Michael B. Mukasey and therefore US Attorney John F. Wood and his underling Jeffrey P. Ray lack jurisdiction to intervene and represent a private citizen for conduct committed after leaving the US Department of Justice and becoming an employee of Hinkle Elkouri LLC.

As a private citizen during most of the damages inflicted by the RICO Enterprise and RICO conspirators in this action, Bradley J. Schlozman has forfeited his defenses by failing to timely answer the petition, some of which he should be aware he does not have *Jama v. U.S.I.N.s.,* 343 F.Supp.2d 338 at 376 (D.N.J.,2004).

There is likely no lawfully obtained dismissal at the end of the influence and relationship rainbow. This isn't Kansas. The plaintiff does not charge Schlozman with extortion but instead with fraud. Schlozman is alleged to have committed fraud to protect the RICO Enterprise's theft of Medicare and Medicaid money *from* the government. However Schlozman could not even utilize the conspiracy's extortion acts to which he is alleged to have joined for cover under *Wilkie v. Robbins,* No. 06-219 (U.S. 6/25/2007) because the plaintiff's complaint clearly states that the other defendants' acts of extortion and attempted extortion and the acts of extortion by non-defendant State of Kansas officials were exclusively to obtain the plaintiff's property for private non-government purposes.

> "the crime of extortion focused on the harm of public corruption, by the sale of public favors for private gain, not on the harm caused by overzealous efforts to obtain property on behalf of the Government. 12

> The importance of the line between public and private beneficiaries for common law and Hobbs Act extortion is confirmed by our own case law, which is completely barren of an example of extortion under color of official right undertaken for the sole benefit of the Government. See, e.g., McCormick v. United States, 500 U. S. 257, 273 (1991) (discussing circumstances in which public official's receipt of campaign contributions constitutes extortion under color of official right); Evans, supra, at 257 (Hobbs Act prosecution for extortion under color of official right, where public official accepted cash in exchange for favorable votes on a rezoning application); United States v. Gillock, 445 U. S. 360,362 (1980) (Hobbs Act prosecution for extortion under color of official right, where state senator accepted money in exchange for blocking a defendant's extradition and agreeing to introduce legislation); cf. United States v. Deaver, 14 F. 595, 597 (WDNC 1882) (under the "technical meaning [of extortion] in the common law, ... [t]he officer must unlawfully and corruptly receive such money or article of value for his own benefit or advantage"). More tellingly even, Robbins has cited no decision by any court, much less this one, from the entire 60-year period of the Hobbs Act that found extortion in efforts of Government employees to get property for the exclusive benefit of the Government."

Wilkie v. Robbins, No. 06-219 at pgs. 30-31 (U.S. 6/25/2007).

The conduct of Schlozman while he was testifying before the US Senate on his violations of hiring practices and other felonies is not the conduct of the United States and to which the United States is not liable for because it was not discretionary. See *Tri-State Hosp. Supply Corp. v. United States, 142* F.Supp.2d 93, 100-101 (D.D.C.200 1) (explaining that customs officials did not have discretion to lie under oath and that malicious prosecution claim could proceed); *Merritt v. Shuttle, Inc.,* 13 F.Supp.2d 371, 380 (E.D.N .Y.1998) (holding that conspiracy of FAA inspectors to place blame on pilot for near-crash was not covered by discretionary function exception); *Chandler v. United States,* 875 F.Supp. 1250,1266 (N.D.Tex.1994) (holding that allegations based on bringing charges without probable cause and withholding of material information from prosecutors and grand jury are not barred by discretionary function exception); *Crow v. United States,* 659 F.Supp. 556,569 (D.Kan.1987) (concluding that discretionary function exception did not bar claim where inspector's memorandum and testimony contained inaccuracies and falsehoods).

The complaint makes it clear that Schlozman's perjury was to protect the operations of the defendants' RICO enterprise so that the unlawful goals of the conspiracy could be achieved.

> "What plaintiff is alleging is conduct of such a serious and malevolent nature as to be beyond any reasonable discretion on the part of a Government agency. Plaintiff is alleging something which does not involve normal regulatory activities or the weighing of policy factors within the scope of proper governmental power, but rather something which goes beyond the constitutional powers of the Government, and seriously violates the constitutional rights of a citizen. It cannot be said that Congress meant to withdraw this kind of allegation from judicial scrutiny under the "discretionary function" exception."

Limone v. UiS; 271 F.Supp.2d 345 at 356-357 (D. Mass., 2003)In testifying falsely to the US Senate, Schlozman was not advocating for the government:

> "But appellant's alleged perjury bears no relation whatever to the advocate's role as conceived by the Supreme Court in Imbler. The obligation to disclose, pursuant to judicial direction, the presence of Government informants among those subpoenaed to testify before the grand jury is entirely foreign to advocacy issues such as whether to initiate a prosecution or how to conduct a prosecution once begun. Such disclosure was, rather, an action required of appellant by the court in order to enable the court to deal with a possible defect in the conditions under which subpoena compulsions had been brought to bear in the grand jury investigation."

Briggs v. Goodwin, 569 F.2d 10 at21 (C.A.D.C., 1977).

While the Supreme Court has subsequently decided that liability for witness perjury is not valid under § 1983 in part because courtroom testimony is not conduct under "color of law" (why Schlozman's perjury was not furthering government policy) and the legislative history of § 1983 shows the common law principle of witness immunity was not intended to be abrogated, the court distinguished the legislation that became § 1985(3) precisely because Congress recognized that perjury by individuals in furtherance of a conspiracy by an organization infiltrating legitimate government is a sufficient danger to abrogate witness immunity:

> "The legislative history and statutory language indicate that Congress intended perjury leading to unjust acquittals of Klan conspirators to be prohibited by § 2, the civil and criminal conspiracy section of the statute, now codified in relevant part at 42 U.S.c. § 1985(3) (1976) and 18 U.S.c. § 241 (1976). But the language of § I-now codified as § 1983--differs from that of § 2 in essential respects, and we find no evidence that Congress intended to abrogate the traditional common-law witness immunity in § 1983 actions."

Briscoe v. Hue, 460 U.S. 325 at 336-337, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983).

> "[C]ourts have been unwilling to extend absolute immunity to a prosecutor's alleged perjury or destruction of evidence when not closely connected to an ongoing criminal prosecution. *Briggs v. Goodwin,* 569 F.2d 10 (D.C.Cir.1977) (although rejecting the district court's reasoning that perjury is never within a prosecutor's authority, declining to extend absolute immunity to a prosecutor's alleged perjury during a grand jury investigation that had not yet focused on a particular suspect), cert. denied, 437 U.S. 904,98 S.Ct. 3089, 57 L.Ed.2d 1133 (1978); *Wilkinson,* 484 F.Supp. at 1083 (destruction of evidence by prosecutor not closely connected to the judicial process because "when evidence is disposed of, it is kept from judicial scrutiny altogether").

Davis v. Grusemeyer, 996 F.2d 617 at fn 28 (C.A.3 (N.J.), 1993)

The US Supreme Court ultimately adopted this line of reasoning and clearly established liability for nondiscretionary acts determining even the senior law enforcement official in the Nation-the Attorney General of the United States-is protected only by qualified rather than absolute immunity when engaged in the performance of national defense functions rather than prosecutorial functions. *Mitchell v. Forsyth, 472*

U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d **411** (1985). The Court also determined liability for perjury by government attorneys exists when their function was that of a witness and not in their role of advocating for the state:

> "Testifying about facts is the function of the witness, not of the lawyer. No matter how brief or succinct it may be, the evidentiary component of an application for an arrest warrant is a distinct and essential predicate for a finding of probable cause. Even when the person who makes the constitutionally required "Oath or affirmation" is a lawyer, the only function that she performs in giving sworn testimony is that of a witness."

Kalina v. Fletcher, 522 U.S. 118, 118 S.Ct. 502, 139 L.Ed.2d 471 (1997).

Jeffrey P. Ray assures the court that the plaintiff's *"pro se "* claims could quickly be dispatched by Schlozman's answer other responsive pleading. **It** is not known whether is adopting the device used by the defendants to repeatedly obtain outcomes contrary to controlling law through denigrating the plaintiff's claims through ex parte communications and other forms of extrinsic fraud or ifJeffrey P. Ray is just describing his abilities were he able to make a timely filing. Instead of looking in a box of Cracker Jacks, Bradley J. Schlozman might consider a reputable private firm like his supremely competent employer Hinkle Elkouri LLC. Schlozman does not have a golden parachute separation private benefit of the services of US Attorney General Michael B. Mukasey.

CONCLUSION

Whereas for the above stated reasons the plaintiff respectfully requests that the court deny the defendant Bradley J.. Schlozman's extended date to answer and instead issue a show cause order to require Jeffrey P. Ray, John F Wood, or US Attorney General Michael B. Mukasey to declare what basis for jurisdiction any are asserting for the US Department of Justice to intervene and represent Bradley J.Schlozman

Respectfully submitted,

S/ Samuel K. Lipari

Samuel K. Lipari

CERTIFICATE OF SERVICE

I certify I have sent a copy via email to the undersigned and opposing counsel via email on 4/28/08.

And served the following counsel for Jeffrey R. Immelt, General Electric Capital Business Asset Funding Corporation, GE Transporation Systems Global Signaling, LLC, and General Electric Company via email at the following addresses:

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The conduct of Schlozman while he was testifying before the US Senate on his violations of hiring practices and other felonies is not the conduct of the United States and to which the United States is not liable for because it was not discretionary. See *Tri-State Hosp. Supply Corp. v. United States*, 142 F.Supp.2d 93, 100-101 (D.D.C.2001) (explaining that customs officials did not have discretion to lie under oath and that malicious prosecution claim could proceed); *Merritt v. Shuttle, Inc.,* 13 F.Supp.2d 371, 380 (E.D.N.Y.1998) (holding that conspiracy of FAA inspectors to place blame on pilot for near-crash was not covered by discretionary function exception); *Chandler v. United States*, 875 F.Supp. 1250, 1266 (N.D.Tex.1994) (holding that allegations based on bringing charges without probable cause and withholding of material information from prosecutors and grand jury are not barred by discretionary function exception); *Crow v. United States*, 659 F.Supp. 556, 569 (D.Kan.1987) (concluding that discretionary function exception did not bar claim where inspector's memorandum and testimony contained inaccuracies and falsehoods).

The complaint makes it clear that Schlozman's perjury was to protect the operations of the defendants' RICO enterprise so that the unlawful goals of the conspiracy could be achieved.

> "What plaintiff is alleging is conduct of such a serious and malevolent nature as to be beyond any reasonable discretion on the part of a Government agency. Plaintiff is alleging something which does not involve normal regulatory activities or the weighing of policy factors within the scope of proper governmental power, but rather something which goes beyond the constitutional powers of the Government, and seriously violates the constitutional rights of a citizen. It cannot be said that Congress meant to withdraw this kind of allegation from judicial scrutiny under the "discretionary function" exception."

Limone v. U.S., 271 F.Supp.2d 345 at 356-357 (D. Mass., 2003)In testifying falsely to the US Senate, Schlozman was not advocating for the government:

> "But appellant's alleged perjury bears no relation whatever to the advocate's role as conceived by the Supreme Court in Imbler. The obligation to disclose, pursuant to judicial direction, the presence of Government informants among those subpoenaed to testify before the grand jury is entirely foreign to advocacy issues such as whether to initiate a prosecution or how to conduct a prosecution once begun. Such disclosure was, rather, an action required of appellant by the court in order to enable the court to deal with a possible defect in the conditions under which subpoena compulsions had been brought to bear in the grand jury investigation."

Briggs v. Goodwin, 569 F.2d 10 at 21 (C.A.D.C., 1977).

While the Supreme Court has subsequently decided that liability for witness perjury is not valid under § 1983 in part because courtroom testimony is not conduct under "color of law" (why Schlozman's perjury was not furthering government policy) and the legislative history of § 1983 shows the common law principle of witness immunity was not intended to be abrogated, the court distinguished the legislation that became § 1985(3) precisely because Congress recognized that perjury by individuals in furtherance of a conspiracy by an organization infiltrating legitimate government is a sufficient danger to abrogate witness immunity:

> "The legislative history and statutory language indicate that Congress intended perjury leading to unjust acquittals of Klan conspirators to be prohibited by § 2, the civil and criminal conspiracy section of the statute, now codified in relevant part at 42 U.S.C. § 1985(3) (1976) and 18 U.S.C. § 241 (1976). But the language of § 1—now codified as § 1983—differs from that of § 2 in essential respects, and we find no evidence that Congress intended to abrogate the traditional common-law witness immunity in § 1983 actions."

Briscoe v. Hue, 460 U.S. 325 at 336-337, 103 S.Ct. 1108, 75 L.Ed.2d 96 (1983).

> "[C]ourts have been unwilling to extend absolute immunity to a prosecutor's alleged perjury or destruction of evidence when not closely connected to an ongoing criminal prosecution. *Briggs v. Goodwin*, 569 F.2d 10 (D.C.Cir.1977) (although rejecting the district court's reasoning that perjury is never within a prosecutor's authority, declining to extend absolute immunity to a prosecutor's alleged perjury during a grand jury investigation that had not yet focused on a particular suspect), cert. denied, 437 U.S. 904, 98 S.Ct. 3089, 57 L.Ed.2d 1133 (1978); *Wilkinson*, 484 F.Supp. at 1083 (destruction of evidence by prosecutor not closely connected to the judicial process because "when evidence is disposed of, it is kept from judicial scrutiny altogether").

Davis v. Grusemeyer, 996 F.2d 617 at fn 28 (C.A.3 (N.J.), 1993)

The US Supreme Court ultimately adopted this line of reasoning and clearly established liability for nondiscretionary acts determining even the senior law enforcement official in the Nation-the Attorney General of the United States-is protected only by qualified rather than absolute immunity when engaged in the performance of national defense functions rather than prosecutorial functions. *Mitchell v. Forsyth*, 472

U.S. 511, 105 S.Ct. 2806, 86 L.Ed.2d 411 (1985). The Court also determined liability for perjury by government attorneys exists when their function was that of a witness and not in their role of advocating for the state:

> "Testifying about facts is the function of the witness, not of the lawyer. No matter how brief or succinct it may be, the evidentiary component of an application for an arrest warrant is a distinct and essential predicate for a finding of probable cause. Even when the person who makes the constitutionally required "Oath or affirmation" is a lawyer, the only function that she performs in giving sworn testimony is that of a witness."

Kalina v. Fletcher, 522 U.S. 118, 118 S.Ct. 502, 139 L.Ed.2d 471 (1997).

Jeffrey P. Ray assures the court that the plaintiff's *"pro se"* claims could quickly be dispatched by Schlozman's answer other responsive pleading. It is not known whether is adopting the device used by the defendants to repeatedly obtain outcomes contrary to controlling law through denigrating the plaintiff's claims through ex parte communications and other forms of extrinsic fraud or if Jeffrey P. Ray is just describing his abilities were he able to make a timely filing. Instead of looking in a box of Cracker Jacks, Bradley J. Schlozman might consider a reputable private firm like his supremely competent employer Hinkle Elkouri LLC. Schlozman does not have a golden parachute separation private benefit of the services of US Attorney General Michael B. Mukasey.

CONCLUSION

Whereas for the above stated reasons the plaintiff respectfully requests that the court deny the defendant Bradley J.. Schlozman's extended date to answer and instead issue a show cause order to require Jeffrey P. Ray, John F Wood, or US Attorney General Michael B. Mukasey to declare what basis for jurisdiction any are asserting for the US Department of Justice to intervene and represent Bradley J.Schlozman

Respectfully submitted,

S/ Samuel K. Lipari

Samuel K. Lipari

CERTIFICATE OF SERVICE

I certify I have sent a copy via email to the undersigned and opposing counsel via email on 4/28/08.

And served the following counsel for Jeffrey R. Immelt, General Electric Capital Business Asset Funding Corporation, GE Transporation Systems Global Signaling, LLC, and General Electric Company via email at the following addresses:

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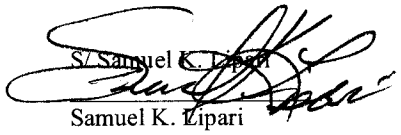

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