

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JAMES L. TOBIN, CHRISTINA MARIE TOBIN, RAE)
ANN McNEILLY, GLENN WESTPHAL and CAROL)
WESTPHAL, *individually and as representatives of*)
a class of similarly situated individuals,)

Plaintiffs,)

vs.)

No.)

ILLINOIS STATE TOLL HIGHWAY AUTHORITY, a body)
politic, PAULA WOLFF, CHAIR of the ILLINOIS)
TOLLWAY BOARD OF DIRECTORS, in her official)
capacity, and ELECTRONIC TRANSACTION)
CONSULTANTS CORPORATION, a Texas Corporation)
doing business in Illinois,)

Defendants.)

COMPLAINT FOR DECLARATORY and INJUNCTIVE RELIEF
and to
REDRESS DEPRIVATION OF CIVIL RIGHTS

NOW COME the Plaintiffs, JAMES L. TOBIN, CHRISTINA MARIE TOBIN, GLENN WESTPHAL and CAROL WESTPHAL, *individually and as representatives of a class of similarly situated individuals*, by and through their attorney ANDREW B. SPIEGEL and pursuant to the U.S. and State Constitutions, 42 U.S.C §§1983, *et. seq.* complain against the Defendants ILLINOIS STATE TOLL HIGHWAY AUTHORITY, a body politic, PAULA WOLFF, CHAIR of the ILLINOIS TOLLWAY BOARD OF DIRECTORS, in her

official capacity, and ELECTRONIC TRANSACTION CONSULTANTS CORPORATION to seek redress for the Constitutional violations which took place and which continue to take place by the manner in which the Defendants are operating the Illinois Tollway system. Plaintiffs seek injunctive relief, a Declaratory Judgment and redress for the violation of their civil rights by the Defendants pursuant to 42 U.S.C. §1983, et seq. In support of this Complaint, the Plaintiffs state the following:

Parties, Jurisdiction and Venue

1. Plaintiffs JAMES L. TOBIN and CHRISTINA MARIE TOBIN, are citizens of Illinois and are, respectively the President and Vice President of TAXPAYERS UNITED of AMERICA (hereinafter “TUA”), which is a nonpartisan national organization dedicated to fighting unjust taxes in the United States. Both James and Christina Tobin are cash users of the Illinois tollway system and are subjected to the manner in which that system is operated by these defendants.

2. Plaintiff RAE ANN McNEILLY is the Director of Outreach of TUA, a citizen and resident of Illinois and an I-Pass user of the Illinois tollway system and is subjected to the manner in which that system is operated by these defendants.

3. Plaintiffs GLENN WESTPHAL and CAROL WESTPHAL are citizens and residents of the state of Wisconsin and when they travel in interstate commerce through the state of Illinois, they are cash users of the

Illinois Tollway system and are subjected to the manner in which that system is operated by these defendants.

4. Defendant, Illinois State Toll Highway Authority, ("TOLLWAY") is an instrumentality and an administrative agency of the State of Illinois empowered by statute to operate the Illinois State Toll Highway system. The agency maintains and operates nearly 500 toll lanes located on 286 miles of interstate tollways in 12 counties in Northern Illinois, including but not limited to Cook County, where many of the actions complained of have taken place. Venue is therefore proper in the Circuit Court of Cook County.

5. Defendant, ELECTRONIC TRANSACTION CONSULTANTS CORPORATION (hereinafter "ETC"), is a Texas Corporation operating as a foreign corporation in the state of Illinois, but not in good standing with the Illinois Secretary of State as of September 19, 2011.

6. The state of Illinois has consented to suits against the Tollway in 605 ILCS 10/31, which provides in part that:

(b) any person or persons may bring a civil action to recover damages for injury to his person or property caused by any act of the Authority or by any act of any of its officers, agents or employees done under its direction.

This statute vests the Circuit Court with jurisdiction to hear the Plaintiffs' claims.

Facts Common to All Counts

7. In January 2005, the Tollway selected ETC to implement the reciprocity (interoperability) program between its I-Pass system and the

Interagency Group's E-ZPass system.

8. In March, 2005, Defendant Tollway awarded ETC the contract to implement and maintain a new toll collection system which included the so-called open road tolling. As a result of ETC's implementation and maintenance of the tollway system, each of the Plaintiffs and every member of the putative classes of plaintiffs have been subjected to unconstitutional acts of the defendants and of the Chairwoman of the Tollway Board, Defendant PAULA WOLFF, since the time she became Chair.

9. These acts, and all other and additional acts alleged in this complaint, were done by each of these Defendants under color of state law.

10. Ever since the original State Toll Highway Commission Act went into effect on July 13, 1953, the intent of the legislature, and the mandate of the statute itself, required the tollways to be converted to freeways at some point in the future. Fifty-eight years later, the Tollway continues to ignore this requirement.

11. The most recent version of the Toll Highway Act provides that:

*When all bonds including refunding bonds and all interest thereon have been paid, or a sufficient amount for the payment of all bonds and interest due or accrued thereon has been set aside in trust for the benefit of the bondholders and shall continue to be held for that purpose, and when all money appropriated by the General Assembly has been repaid as provided by Section 18 of this Act, the toll highways and any connecting tunnels, bridges, approaches or other appurtenances to such toll highways **shall become a part of the system of the State highways of the State of Illinois and be maintained and operated free of tolls.***

*When all the obligations and all bonds including refunding bonds of the Authority have been paid, or the payment therefor has been provided as is required herein, the Authority **shall be dissolved** and all funds of the Authority not required for the payment of bonds, interest, machinery, equipment, property or other obligations of the Authority shall be paid to the State Treasurer.*

605 ILCS 10/21 (emphasis supplied).

12. On August 25, 2011, the Tollway approved a 15 year \$12 Billion Capital Plan that completely disregards the legislative intent and statutory mandate requiring the conversion of all tollways to freeways and the dissolution of the Tollway Authority.

13. That Plan also increases the tolls paid by these Plaintiffs and the classes they intend to represent in this litigation. The increases are scheduled to go into effect on January 1, 2012.

14. The August 2011 Plan not only violates the legislative intent and statutory requirement of §10/21. On information and belief, the Tollway intends the exact opposite of that intent and mandate.

15. The Tollway intends, on information and belief, to convert a freeway to an additional tollway by what it refers to as the “new Elgin O’Hare West Bypass,” and to generate “toll revenue” from the additional facilities on this new tollway.

16. Further, effective January 1, 2005 the TOLLWAY decreed that any motorist using the tollway system would be required to pay twice the actual toll unless the motorist obtained an I-Pass. I-Pass users, now pay half the tolls of non-I-Pass users, at least when the system properly registers their I-Pass and whether or not they are citizens of Illinois.

Class-action Allegations

17. Plaintiffs bring this action as a class action pursuant to 735

ILCS 5/2-801 et seq. of the Illinois Code of Civil Procedure on behalf of named party plaintiffs and on behalf of all other persons similarly situated who have been forced to pay double the toll of I-Pass users or when the complained of course of conduct described above in the common allegations commenced.

18. The members of the putative class or of the sub-classes are so numerous that joinder of all members is impractical. There are thousands of individuals who have been wrongfully or incorrectly required to pay double because they do not have an I-Pass. There are also scores of thousands of motorists who continue to pay tolls on highways that should have been converted to freeways. Since the number of potential class members is so large and the amount of individual damage relatively small, individual suits by each class member would be costly and that imposition affects all litigants as well as the court system.

19. Plaintiffs' claims are typical of the claims of the class because Defendants acted jointly to wrongfully exact unconstitutional tolls from all of the putative class members through the enforcement mechanisms of the Toll Highway Act in the event tolls are not paid.

20. Questions of fact and law to all class members predominate over any questions affecting any individual member of the class, including, but not limited to:

- a. Whether the Tollway is required by law to plan for its dissolution rather than for its existence to

continue in perpetuity?

- b. Whether the TOLLWAY acted beyond its statutory authority by adopting a 15 year capital plan without giving due consideration to dissolution of the Tollway as required by statute?
- c. Whether the Defendant Tollway and Wolff abused their discretion and acted in bad faith by adopting toll increases without adequately considering the Tollway's limited existence and required dissolution?
- d. Whether the regulations the Defendants are seeking to enforce are unconstitutional on their face.
- e. Whether the doubling of tolls for non I-Pass class members is violative of the interstate commerce clause and the equal protection and due process rights of motorists both in Illinois and motorists traveling in interstate commerce from Wisconsin and other states to or through Illinois?

21. Plaintiffs will fairly and adequately promote, protect and represent the interests of the class.

22. Plaintiffs have retained counsel who is experienced in complex civil litigation and knowledgeable in class action litigation.

23. Plaintiffs have an interest in pursuing this action on their own behalf and on behalf of the class, in as much as Plaintiffs sustained losses as a result of one or both Defendants' misapplication of the law, misrepresentations and wrongful conduct.

24. No Plaintiff has an interest that is contrary to or antagonistic to the interest of other potential class members.

25. The action is not brought for any collusive purposes, but is a true adversary proceeding against Defendants.

26. A class action would be superior to all other available methods for the fair and efficient adjudication of this controversy.

27. Plaintiffs know of no difficulty to be encountered in the management of this action that would preclude its maintenance as a class action.

28. In this controversy, a large number of individuals have been damaged in a sufficiently small amount, which makes individual litigation financially impractical.

29. It is unlikely that any individual could afford the cost and legal fees to prosecute an action on his or her own behalf considering the size of the damages per individual class member.

30. The prosecution of separate actions by individual class members would create a risk of inconsistent adjudications concerning the subject of this action.

31. A class action is an appropriate method for the fair and efficient adjudication of this controversy.

COUNT I

Declaratory Judgment Action – TOLLWAY & Wolff

32 - 62. Plaintiffs re-state and re-allege paragraphs 1- 31 above as paragraphs 32-62 of this Count I as if stated herein in their entirety.

63. The TOLLWAY is a creature of statute that went into effect on or about July 13, 1953. The TOLLWAY has been in continuous existence since that time, with a slight name change, and has now adopted a plan to continue its existence at least through 2026, a total of 73 years.

64. Pursuant to 605 ILCS 10/21, the TOLLWAY was never intended by the legislature to have a perpetual existence.

65. The TOLLWAY has taken no steps to comply with the statutory mandate of its limited existence, but has, instead acted in direct contravention of this statutory limitation, by continuing to issue and re-issue bonds for new construction without freeing old highway systems whose bonds have been paid, from the mandate of the TOLLWAY.

66. The Tollway has acted beyond its statutory authority by adopting a new 15 year capital plan with no plan given to complying with its limited statutory existence and without any indication of which tollways have been paid for and which should therefore be converted to freeways.

67. In so acting the Tollway has acted in bad faith and has clearly abused its discretion. A further abuse of discretion and bad faith is

demonstrated by the Tollway continuing to collect tolls for highways that were paid for and that such action on its part is in violation of its mandate.

68. Pursuant to 735 ILCS 5/2-701, the Plaintiffs are entitled to a declaratory judgment affirming the legislative intent and the statute that declares the TOLLWAY is to be a temporary measure which as such, must come to an end on a date certain.

WHEREFORE, Plaintiffs and the putative class, pray for a declaratory judgment against the Illinois State Toll Highway Authority as follows:

- a. That the TOLLWAY is a creature of statute of limited duration and therefore must reveal to the public its plan to phase itself out and an expected end date for its operation.
- b. That the TOLLWAY has failed to act within the confines of this statutory limitation and in so doing has abused its discretion and acted in bad faith.
- c. That the TOLLWAY account to the public for the date upon which each highway constructed under its authority was paid for, and convert each of those tollways to freeways as of such dates.
- d. That the TOLLWAY wrongfully collected tolls on each of those highways since the date they were paid for and must now account for those tolls and refund them to the class.
- e. Alternatively, the TOLLWAY should be ordered to pay all wrongfully

collected tolls into a trust fund for the benefit of bondholders until all bonds have been paid so that the TOLLWAY can be dissolved.

COUNT II

Injunctive Relief v. TOLLWAY, WOLFF and ETC

69– 104. Plaintiffs restate and re-allege paragraphs 1 - 68 as paragraphs 69-104 of this Count II as if stated herein in their entirety.

105. At all times relevant to this complaint, 605 ILCS §10/21 required the Tollway to convert all toll highways to freeways and to dissolve itself.

106. Since its statutory creation in 1953, the Tollway has ignored its limited duration and its statutory mandate to dissolve and to convert all tollways into freeways.

107. By acting in such a manner, the Tollway has abused its discretion and acted in bad faith. Its charging double to cash users of the tollway system is manifestly oppressive and a violation of the interstate commerce clause of the U.S. Constitution.

108. The Defendants were and are required to convert tollways to freeways. Instead, the Tollway adopted a plan that includes converting a freeway to a tollway.

109. As part and parcel of its continuing scheme to continue its existence, the Tollway adopted a plan to increase tolls effective January 1, 2012, not to hasten its own dissolution as required by law, but rather so it can

continue into the future until at least 2026 with no plan to convert even an inch of tollway to freeway despite the clear statutory requirement that the Tollway do exactly that.

110. Plaintiffs are more than likely to prevail on this matter as the statute could not be clearer and the Defendants' violation of it more blatant.

111. A preliminary injunction should be imposed against the Defendants to enjoin them from implementing the \$12 Billion Dollar capital plan, including the increase in tolls they intend to start collecting on January 1, 2012, until such time as the Tollway complies with the statutory mandate to convert tollways to freeways and to dissolve. These defendants must be ordered to create and make public their plan to comply with 605 ILCS 10/21 before they proceed with any further attempt to implement toll increases or a 15 year \$12 Billion plan.

113. The Preliminary injunction should be imposed without bond as the Plaintiffs are in good faith defending their constitutional rights under both the U.S. and State Constitutions for the benefit of all the motorists who use the Illinois tollways. Requiring them to post a bond is not in the public interest.

114. The Plaintiffs have incurred costs, expenses and attorneys' fees in prosecuting this cause and should be awarded all of such expenditures from the Defendants Tollway and ETC.

Wherefore, the Plaintiffs herein, by and through their attorney

Andrew B. Spiegel petition for entry of a preliminary injunction as follows:

- a. enjoining the Defendants from implementing any toll increase or from attempting to collect any such increase until a specific plan is made to comply with 605 ILCS 10/21;
- b. converting the preliminary injunction into a permanent injunction prior to any attempt by these Defendants to take any further action to either implement the toll increase or the 15 year \$12 Billion plan until they have clearly shown how they will comply with 605 ILCS 10/21;
- c. entering any injunctive relief issued without bond being required from these Plaintiffs;
- d. awarding the Plaintiffs all costs, expenses and attorneys' fees incurred as a result of this action with any such award to be paid jointly and severally from the Tollway and ETC;
- e. granting such further and additional relief as the court deems warranted in these circumstances.

COUNT III
Civil Rights Violations –
Tollway and ETC

115 -229. Plaintiffs restate and re-allege paragraphs 1 -114 of Count II as paragraphs 115-229 of this Count III as if stated herein in their entirety.

230. Defendants' actions being complained of herein, in addition to

being conducted under color of state law, were conducted in violation of the 4th 9th, 10th and 14th Amendments of the U.S. Constitution and in violation of Section 1, 2, 12 and 24 of Article I of the Illinois Constitution (1970) and in violation of 42 U.S.C. §1983.

231. Their actions in charging non-I-Pass users twice as much as I-Pass users violates the equal protection and due process clauses of both the state and federal Constitutions.

232. Each Plaintiff, and each member of the putative class of Plaintiffs has been damaged by the actions of these Defendants by continuing to pay tolls on tollways that should now be freeways, by paying twice the actual toll by virtue of using cash rather than an I-Pass, and by the additional actions of these defendants set forth above.

WHEREFORE, Plaintiffs and the putative class, pray for relief and judgment against Defendants Tollway and ETC, as follows:

- a. for damages to redress the violations of the constitutional rights of all class members who have suffered from the same due process violations perpetrated by these Defendants;
- b. for punitive damages to redress the blatant violation of the civil rights of the Plaintiffs and the class they represent;
- c. for all attorneys fees incurred by the Plaintiffs pursuant to 42 U.S.C. §1988, and all costs and expenses of suit; and
- c. for such other and additional relief as this

court deems appropriate.

Respectfully submitted,

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