

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

JAMES L. TOBIN, CHRISTINA MARIE TOBIN,)	
KENNETH MALO, JOHN GUILD, RAE ANN)	
McNEILLY, PAUL CASSIDY, GLENN WESTPHAL)	
and CAROL WESTPHAL, <i>individually and as</i>)	
<i>representatives of their respective classes of</i>)	
<i>similarly situated individuals,</i>)	
)	Plaintiffs,
)	
vs.)	No. 11 CH 33144
)	Judge Rita M. Novak
)	Cal. 9
ILLINOIS STATE TOLL HIGHWAY AUTHORITY,)	
a body politic, and PAULA WOLFF, CHAIR of the)	
ILLINOIS TOLLWAY BOARD OF DIRECTORS, in)	
her official capacity,)	
)	
)	Defendants.

FIRST AMENDED COMPLAINT

NOW COME the Plaintiffs, JAMES L. TOBIN, CHRISTINA MARIE TOBIN, KENNETH MALO, JOHN GUILD, RAE ANN McNEILLY, PAUL CASSIDY, 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 and 42 U.S.C §§1983, *et. seq.* complain against the Defendants ILLINOIS STATE TOLL HIGHWAY AUTHORITY, a body politic, and PAULA WOLFF, CHAIR of the ILLINOIS TOLLWAY BOARD OF DIRECTORS, in her official capacity, to seek redress for the statutory and 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 a Declaratory Judgment,

injunctive relief, 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. KENNETH MALO is also a citizen and resident of the State of Illinois. James and Christina Tobin and KENNETH MALO are cash users of the Illinois tollway system and both they and the class of Illinois citizen cash users they purport to represent have been and continue to be subjected to the unlawful manner in which that system is operated by these Defendants as set forth in this complaint.

2. Plaintiff RAE ANN McNEILLY is the Director of Outreach of TUA, and a citizen and resident of Illinois. Plaintiffs JOHN GUILD and PAUL CASSIDY are citizens and residents of Illinois. These Plaintiffs are I-Pass users of the Illinois tollway system and both they and the class they purport to represent of Illinois citizen I-Pass Users have been and continue to be subjected to the unlawful manner in which that system is operated by these defendants as set forth in this complaint.

3. Plaintiffs GLENN WESTPHAL and CAROL WESTPHAL are citizens and residents of the state of Wisconsin. When they travel in interstate

commerce through the state of Illinois, as they frequently do, they are cash users of the Illinois Tollway system. Both they and the class they purport to represent of non-citizen non-resident users of the Illinois Tollway system, have been and continue to be subjected to the unlawful manner in which that system is operated by these defendants as set forth in this complaint.

4. Defendant, Illinois State Toll Highway Authority, ("TOLLWAY") is a statutory creation. The 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 Tollway maintains and operates nearly 500 toll lanes located on 286 miles of interstate tollways in 12 counties in Northern Illinois, including Boone, Cook, De Kalb, DuPage, Kane, Lake, Lee, McHenry, Ogle, White, Will and Winnebago. Venue is therefore proper in the Circuit Court of Cook County.

5. Defendant, PAULA WOLFF is the current Chairwoman of the Tollway Board of Directors and is being sued in her official capacity only.

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. The Illinois State Toll Highway Commission (the Commission) was created by an act of the Illinois General Assembly as an instrumentality and administrative agency of the State of Illinois in 1953.

8. Its purpose was to provide for the construction, operation, regulation and maintenance of a system of toll highways in Northeastern Illinois.

9. The initial appropriation made by the legislature was \$64,000 for the salaries of the commissioners as well as \$436,000 for the performance of the commission's duties. See Laws of 1953, p.591.

10. While the commission was allowed to acquire property in its own name, the toll highways which it was to construct "are to become a part of the regular State highway system whenever the indebtedness incident to their construction has been liquidated." *People of the State of Illinois v. Illinois Toll Highway Commission*, 3 Ill.2nd 210, 225 (1954).

11. On October 25, 1955, the Tollway Commission adopted a resolution authorizing a single series of bonds aggregating \$415,000,000 to finance the construction of what it described as "The Northern Illinois Toll Highway," which was to consist of three separate routes.

12. The first of these routes, called the "Tri State Route," extended from a point near the Indiana boundary south of Chicago along a route bypassing Chicago to a point near the Wisconsin border adjacent to the eastern boundary of Illinois.

13. The second of these routes, called the “Northern Illinois Route,” was to cross the Tri-State route at an angle of approximately 90 degrees and was to be a direct connection between Chicago, Rockford and Beloit.

14. The third route, called the “East-West Route,” was to connect with the Tri-State Route and was to be approximately parallel with the North Illinois Route for 128 miles, connecting Chicago with Aurora and ultimately with Rock Island.

15. The three routes were constructed and by 1959 the Tollway Commission began collecting tolls from users of the toll highways for the first full year of its operations.

16. In its first full year of operation the annual toll revenues collected amounted to \$14,536,000.

17. The Commission officially became the Illinois State Toll Highway Authority (the “Tollway”) in March, 1969, after the Illinois Supreme Court found the Authority Act (Ill. Rev. Stat. 1967, ch. 121, par. 100-1 to 100-35, as amended 1968), constitutional at least as to the issues raised in that case. *Continental Illinois National Bank and Trust Company of Chicago, Trustee v. The Illinois State Toll Highway Commission*, 42 Ill.2nd 377.

18. At the time of that case, Continental Bank was the Trustee for persons holding more than \$300,000,000 in outstanding Northern Illinois Toll Highway revenue bonds issued on October 25, 1955. The case was decided on March 27, 1969.

19. The Tollway assumed all the obligations, powers, duties, functions

and assets of the prior Tollway Commission. The new Act creating the Tollway Authority, included the requirement to convert the toll highways to freeways.

20. Consistently, through a completely new Act and through numerous amendments to the Act, the intent of the legislature, and the mandate of the statute itself, required the tollways to be converted to freeways. 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).

21. On information and belief, the single series of bonds aggregating \$415,000,000 to finance the construction of the three initial toll highway routes in 1955 has been repaid long ago. None of the three original toll highways has been converted to a freeway.

22. The most currently available “Comprehensive Annual Financial Report” for the year ended December 31, 2010, indicates the Tollway now has approximately \$4 Billion in outstanding bonds. It does not indicate that any of

the original first single series of revenue bonds remains outstanding.

23. On August 25, 2011, the Tollway adopted Resolution 19480 which approved a 15 year \$12 Billion Capital Plan that includes, *inter alia* annexation of the Elgin-O'Hare freeway and conversion of that freeway into a toll highway, part of the \$3.83 Billion in "new Priority Projects" identified by the Tollway in its "Capital Plan Overview."

24. Prior to adoption of that resolution, the Tollway failed to create a local advisory committee of members from each county in which any portion of an additional toll highway is proposed to be constructed as required by §10/14(b) of the Act which provides that the Tollway:

...create a local advisory committee of members from each county in which any portion of an additional toll highway is proposed to be constructed...

605 ILCS §10/14. This section of the Tollway Act also requires that:

...The committee members shall be designated by township and municipal governing bodies in proportion to the percentage of corridor property situated within the unincorporated area of a township and incorporated municipalities located in the same township. No less than 50% of the members of this committee shall be representatives of organized citizen groups directly affected by the proposed corridor. All meetings shall be held in compliance with the Open Meetings Act.

25. On information and belief, no such committee was created by either Wolff or anyone else at the Tollway prior to inclusion of the plan to convert the Elgin-O'Hare freeway into a toll highway in its Capital Plan.

26. The Tollway also failed to require at least 5 of its Directors to attend each meeting held as required, pursuant to §10/14.2 of the Act, prior to submitting plans to the Governor for the new toll highway.

27. That Plan also increases the tolls paid by these Plaintiffs and the class they intend to represent in this litigation. The increases went into effect on January 1, 2012. By failing to comply with the foregoing provisions of the Act, the Tollway failed to comply with §10/19 by setting toll rates calculated to provide the lowest reasonable rates that will provide funds sufficient with other Tollway revenues to meet its other obligations that were done in conformity with the Act.

28. In addition, in further violation of §10/14 of the Act, the Tollway has been and/or is currently paying for engineering and traffic studies relating to the Elgin-O'Hare annexation, an annexation which has itself been adopted in violation of the Tollway Act. It is a further violation of the Act to pay for such studies without satisfying the conditions precedent set forth in the statute for a new toll highway.

29. Further, effective January 1, 2005 the TOLLWAY decreed that any motorist using the tollway system on a cash basis would be required to pay twice the actual toll as motorists who obtained an I-Pass. The Tollway's determination to double the tolls for cash users violates §10/19, regardless of how convenient such a system may be for the Tollway.

30. From January 1, 2005 through December 1, 2010, the Tollway has collected \$2,006,035,000 in tolls from passenger vehicles plus an additional \$1,518,463,000 from commercial vehicles for a total toll collection in the amount of \$3,524,498,000.

31. An undetermined percentage of those tolls was collected in

violation both the Tollway Act and the equal protection and due process clauses of the State and U.S. Constitutions.

32. Since 2000, the Tollway has collected nearly \$9 Billion (\$8,621,360,000) in toll revenues from the users of its toll highways. The majority of that amount was collected from the three routes where the revenue bonds were already paid.

33. The Tollway has indicated it now has some 13 series of outstanding bonds, with an aggregate total of over \$4 Billion (\$4,066,675,000) and with at least one series of those bonds not maturing until January 1, 2034 (issues of Series A, 5.293% to 6.184% due on various dates through January 1, 2031). It continues to issue bonds without giving due consideration to the intent of the legislature that the Tollway should dissolve when the bonds are repaid.

34. The Tollway cannot be allowed to continue issuing bonds in order to perpetuate its existence when the General Assembly has maintained since first creating a tollway commission that it was to be dissolved once it achieved its purpose – to build the highways.

35. Nearly \$220 Million is paid by tollway users in motor fuel and sales taxes for the miles they drive on the toll highways, in addition to the user fee tolls they are forced to pay to use such routes.

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

Class Action Allegations

37. 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 and on behalf of tollway users who traveled on the three routes when the complained of course of conduct described above in the common allegations commenced.

38. The members of the putative class 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 tolls because they do not have an I-Pass. There are also scores of thousands of motorists who continue to pay tolls on the three toll 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.

39. 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.

40. 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 paid off its first series of revenue bonds issued in 1955 and whether it was therefore required by law to plan for conversion of those three routes to freeways as stated in §10-21?
- b. Whether the TOLLWAY acted beyond its statutory authority by adopting a 15 year capital plan without complying with §10/14 of the Act?
- c. Whether the Defendant Tollway and Wolff abused their discretion and acted in bad faith by adopting toll increases by failing to comply with §§10/14, 10/14.2, 10/19 and 10/21 of the Act?
- d. Whether the doubling of tolls for non I-Pass class members is violative of 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?

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

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

43. 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.

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

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

46. A class action would be superior to all other available methods for

the fair and efficient adjudication of this controversy.

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

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

49. 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.

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

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

COUNT I
Declaratory Judgment Action

52- 103. Plaintiffs re-state and re-allege paragraphs 1- 51 above as paragraphs 52-103 of this Count I as if stated herein in their entirety.

104. The TOLLWAY, as a statutory creation, it must follow its creating statute to the letter. It has failed to do so by violating the provisions of §10/14, §10/14.2, §10/19 and §10/21.

105. Pursuant to 605 ILCS 10/21, the TOLLWAY was never intended by

the legislature to have a perpetual existence. 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.

106. 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. In so acting the Tollway has acted in bad faith and has clearly abused its discretion.

107. A further abuse of discretion and bad faith is demonstrated by the Tollway continuing to collect tolls for highways whose construction bonds have been repaid. Such action on its part is in violation of its mandate.

108. The Tollway failed to comply with §10/14 in both its conduct of 15 public hearings prior to adoption of Resolution 19480, and in its failure to create a local advisory committee as required by §10/14(b).

109. Pursuant to 735 ILCS 5/2-701, the Plaintiffs are entitled to a declaratory judgment that the tollway failed to comply with §10/14, §10/14.2, §10/19 and §10/21 of the Act and that as a result, its Plan is null and void and as a result, its toll increase is also null and void.

WHEREFORE, Plaintiffs and the putative class prays for a declaratory judgment against the Illinois State Toll Highway Authority and its Chair Paula Wolff as follows:

- a. That the TOLLWAY has violated §10/14, §10/14.2, §10/19 and §10/21 of its Act.
- b. That the TOLLWAY has failed to act within the confines its Act and in so doing has abused its discretion and acted in bad faith.
- c. That the TOLLWAY Capital Plan adopted on August 25, 2011 is violative of the Act and must be rescinded and held for naught.
- d. That the Tollway account to the public for the date upon which its initial \$415 Million Revenue Bond issue was repaid and for each toll highway constructed pursuant to that initial offering.
- e. That the Tollway be ordered to convert each of the toll highways already paid for, and convert each of those toll highways to freeways as required by its Act.
- f. That the TOLLWAY has wrongfully collected tolls on each of those highways since the date they were paid for and order the Tollway to account for those tolls and refund them to the class.
- g. 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 in its entirety.

COUNT II
Injunctive Relief

110 – 161. Plaintiffs restate and re-allege paragraphs 1 – 51 as paragraphs 110-161 of this Count II as if stated herein in their entirety.

162. 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.

163. 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.

164. 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, constitutes an illegal taking of private property and is violative of the due process and equal protection clauses of the U.S. and Illinois Constitutions.

165. The Tollway also violates §10/19, which requires the rates to be calculated to provide the lowest reasonable toll rates that will provide funds sufficient together other revenues of the Tollway to meet the financial obligations set forth in §10/19. Charging cash paying users double the amount of I-Pass users cannot satisfy the lowest reasonable rate requirement of §10/19.

166. 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 in violation of §10/14 and the legislative intent of the Act.

167. 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 and annex the Elgin-O'Hare freeway and convert it to a toll highway at a cost of nearly \$1.5 Billion.

168. In so doing, the tollway violated §10/14 of the Act by failing to convene a local advisory committee of members from each county in which any portion of the Elgin-O'Hare tollway will pass.

169. The Tollway also failed to conduct hearings - with at least five Directors in attendance - at each such hearing as required by §10/14.2, prior to submission of its preliminary plans to the Governor.

170. 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.

171. A preliminary injunction should be imposed against the Defendants to enjoin them from any further implementation the \$15 Billion Dollar capital plan, including a roll back of the increase in tolls the Tollway began collecting on January 1, 2012, until such time as the Tollway complies with the statutory mandates set forth in §10/14, §10/14.2, §10/19 and §10/21.

172. 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.

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

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 further collection of toll increases or of any further aspects of its Capital Plan;
- b. converting the preliminary injunction into a permanent injunction to prevent any attempt by these Defendants from continuing to collect the toll increase or from implementing any further portions of the 15 year \$12 Billion plan until they have complied with §§10/14, 14.2, 19 as well as 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 from the Tollway;
- e. granting such further and additional relief as the court deems warranted in these circumstances.

COUNT III
Civil Rights Violations

174 -225. Plaintiffs restate and re-allege paragraphs 1-51 above as paragraphs 174-225 of this Count III as if stated herein in their entirety.

226. Defendants' actions being complained of herein, in addition to being conducted under color of state law, were conducted in violation of the 5th, 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.

227. The Tollway's 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 as well as the Act itself at §10/19.

228. For the year ending December 31, 2010, the percentage of vehicles using I-PASS was 83 per cent. There were 817,083,000 individual toll transactions for that year. As a result, there were approximately 138,904,110 individual cash transactions for 2010, each one of those being forced to pay double the amount of I-PASS users. Each one of those individual cash transactions was an illegal taking of property under color of state law by the Tollway.

229. In addition, it was an illegal taking for the Tollway to collect any tolls for toll highways that should have been converted to freeways. On information and belief, the construction costs for the Jane Addams Toll highway (opened August, 1958), the Tri-State Toll highway (also opened August 1958) and the Ronald Reagan Toll highway (opened November, 1958 under a different name) are paid for and each of those toll highways should have been converted to freeways.

230. 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 conducted in violation of §10/14, §10/14.2 and §10/19 of the Act.

231. Since 2000, the Tollway has collected nearly \$9 Billion (\$8,621,360,000) in toll revenues from the users of its toll highways. A large portion of that amount was collected from the Plaintiffs in violation of the Act and the State and U.S. Constitutions.

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
- d. for such other and additional relief as this court deems appropriate.

Respectfully submitted,

ANDREW B. SPIEGEL
Attorney for Putative Class

Andrew B. Spiegel,
General Counsel
TAXPAYERS UNITED OF AMERICA
407 South Dearborn Street
Suite 1170
Chicago, Illinois 60605
312 427-5128