

HHO-1118-5054798
RETURN DATE: SEPTEMBER 4, 2018

SUPERIOR COURT
JUDICIAL DISTRICT OF
HARTFORD

JOE MARKLEY

PLAINTIFF,

v.

DANNEL P. MALLOY

DEFENDANT.

AUGUST 7, 2018

VERIFIED COMPLAINT

COUNT ONE (Injunction – Violation of Section One of Article Second. Of The Distribution Of Powers.)

1. The Plaintiff, Joe Markley, (hereafter “Markley”) is a Connecticut resident residing at 47 Elm Street, Plantsville, CT 06479. Markley is currently serving as a Connecticut State Senator representing the Sixteenth District.
2. The Defendant, Dannel Malloy, (hereafter “Malloy”) is a Connecticut resident residing at 990 Prospect Ave. West Hartford, CT 06117. Malloy is currently serving as the Governor of the State of Connecticut and is sued in his official capacity.
3. Article Second of the Connecticut Constitution requires the powers of government be divided into three distinct departments, each with its own distinct function. It further permits the delegation of legislative authority to the executive department for a single limited purpose, regulatory authority to the executive department.
4. On March 23, 2018 the Transportation Committee considered and narrowly approved, by a vote of 19-17, H.B. 5391 – An Act Concerning The Preparation Of A Tolling Proposal And Support For Transportation Infrastructure. H.B. 5391 required the Department of Transportation to conduct National Environmental Policy Act studies in order to develop electronic tolling on state highways. H.B. 5391 was placed on the Legislative Calendar of the House of Representatives on April 10, 2018.
5. The 2018 legislative session adjourned Sine Die on May 9, 2018 without ever considering or voting upon H.B. 5391. The legislative body had the ability to consider

and vote on H.B. 5391 but chose not to consider or vote upon the bill. The legislative body rejected H.B. 5391 and with it, the mandate to the Department of Transportation to conduct National Environmental Policy Act studies in order to develop electronic tolling on state highways.

6. On March 23, 2018 the Transportation Committee considered and narrowly approved, by a vote of 19-17, H.B. 5393 – An Act Establishing The Connecticut Transportation Finance Authority To Maintain Major State Highways. H.B. 5393 created the Connecticut Transportation Finance Authority (hereafter “CTFA”) as a quasi-public agency and required it to build, maintain, and operate electronic toll systems and manage tolled roads.
7. The 2018 legislative session adjourned Sine Die on May 9, 2018 without ever considering or voting upon H.B. 5393. The legislative body had the ability to consider and vote on H.B. 5393 but chose not to consider or vote upon the bill. The legislative body rejected H.B. 5393 and with it, the creation of the CTFA and all duties and responsibilities with which it was charged.
8. On March 23, 2018 the Transportation Committee considered and narrowly approved, by a vote of 19-17, S.B. 389 – An Act Establishing The Connecticut Transportation Authority. S.B. 389 was placed on the Legislative Calendar of the Senate on April 10, 2018. S.B. 389 created the Connecticut Transportation Authority (hereafter “CTA”) as a quasi-public agency and charged it with the construction, maintenance, and operation of electronic tolling systems on I-84, I-91, I-95, and the Merritt and Wilbur Cross Parkways.
9. The 2018 legislative session adjourned Sine Die on May 9, 2018 without ever considering or voting upon S.B. 389. The legislative body had the ability to consider and vote on S.B. 389 but chose not to consider or vote upon the bill. The legislative body rejected S.B. 389 and with it, the creation of the CTA and all duties and responsibilities with which it was charged.
10. On July 17, 2018 Malloy issued Executive Order No. 67 (hereafter “Order”). The Order mandates the Department of Transportation to undertake the following actions;

“(a) Prepare a proposal for consideration by the General Assembly that: (i)

Implements electronic tolling, without the use of toll booths, gates or other impediments to travel, on Interstate 95, Interstate 91, Interstate 84, the Wilbur Cross Parkway and the Merritt Parkway; (ii) Includes options to implement electronic tolling on any other limited access highway or portion thereof, if the commissioner (1) determines that such tolling is necessary and (2) provides the rationale for such tolling; (iii) Identifies specific proposed locations of overhead gantries or other electronic equipment to support the operation of such a system; (iv) Specifies proposed toll charges, discounts and other value-pricing options including legally permissible accounting for Connecticut residents' other contributions to transportation funding in accordance with 2(b) herein; (v) Provides a plan for congestion pricing that includes peak and off-peak tolling rates that would apply consistently and fairly throughout the state; (vi) Estimates the capital and operating costs for the proposed electronic tolling systems; (vii) Includes specific recommendations regarding procurement, construction, and operation and oversight. (b) Conduct studies and satisfy any other requirements of the National Environmental Policy Act and any other applicable law prior to implementing such a system. (c) Engage a program manager and other consultants or experts as needed to prepare a comprehensive plan for electronic tolling for the General Assembly's consideration."

11. On July 17, 2018 Malloy signed the Order, the final paragraph of which states, "This Order shall take effect immediately."
12. The Defendant's Order constitutes a violation of the Connecticut Constitution Article Second because it requires the Department of Transportation take actions that were specifically rejected by the legislature during the 2018 legislative session when the legislative body failed to consider, vote on, or pass H.B. 5391, H.B. 5393, or S.B. 389. These actions include the expenditure of funds for the implementation of electronic tolling and the conducting of a study to satisfy the requirements of the National Environmental Policy Act.
13. The State Bonding Committee has ten members: six members are also members of the

Executive Branch while the other four are state legislators.

14. As the governor of the State of Connecticut, Malloy is, by operation of law, designated as the Chairman of the State Bonding Committee and has the sole authority to set the agenda.
15. On July 25, 2018 the State Bond Commission approved by a vote of 6-3 with one abstention Agenda Item No. 15, containing in part funding for the study of the implementation of electronic tolling and the requirements of the National Environmental Policy Act, referred to in the State Bond Commission Agenda from July 25, 2018 as “tolling studies.” This funding was necessary for execution of the Order.
16. Malloy’s actions constitute an unconstitutional exercise of the powers of the Executive Branch in subjugation of the will of the Legislative Branch in that the legislature, when it in all of its wisdom, made the determination not to pass H.B. 5391, H.B. 5393, or S.B. 389 offered during the 2018 legislative session.
17. The result of the Order will be state spending of multiple millions of dollars contrary to the will of the legislature during a time when Connecticut is facing deep financial troubles. This expenditure will directly impact residents of the state who are facing increasing financial burdens due to increasing government debt service payments, reduced government services, and a worsening of Connecticut’s transportation infrastructure.
18. If an injunction does not issue to prevent Malloy from issuing the pertinent portion of the Special Tax Obligation Bonds for the aforementioned purpose and to suspend the Order, Markley, along with all residents of Connecticut, will suffer irreparable harm in that (a) there will be increased debt service payments leading to a reduction of government services, (b) a worsening of Connecticut’s transportation infrastructure, and (c) the Executive Branch will continue in its suppression of the will of the people of Connecticut expressed that was explicitly through the purposeful inaction of the Legislative Branch.
19. Markley has no adequate remedy at law.
20. Connecticut General Statutes Section 52-471(a) provides: “Any judge of any court of equitable jurisdiction, may, on motion, grant and enforce a writ of injunction, according to the course of proceedings in equity, in any action for equitable relief when the relief is

properly demandable, returnable to any court, when the court is not in session. Upon granting of the writ, the writ shall be of force until the sitting of the court and its further order thereon unless sooner lawfully dissolved.”

21. Connecticut General Statutes Section 52-473(a) provides: “An injunction may be granted immediately, if the circumstances of the case demand it, or the court or judge may cause immediate notice of the application to be given to the adverse party, that he may show cause why the injunction should not be granted.”
22. The Plaintiff hereby applies for an order without bond from the Court pursuant to Connecticut General Statutes Section 52-472, enjoining the Defendant from issuing bonds or making any expenditure mandated by the Order.

COUNT TWO **(Injunction – Actions In Excess Of Authority)**

1. Paragraphs 1 through 22 of Count One are hereby incorporated and made Paragraphs 1 through 22 of this Count Two.
23. In the absence of legislative action mandating the Department of Transportation undertake a study of the implementation of electronic tolling systems on the state highways or the requirements of the National Environmental Policy Act Malloy has no authority to mandate the expenditure of funds for this purpose.
24. Malloy’s action is in excess of his Constitutional authority in that he had no authority to exercise what is a legislative function in blatant derogation of the will of the legislature.
25. The result of Malloy’s Order will be devastating to the state transportation infrastructure which will directly impact all residents of Markley’s community.
26. Markley has no adequate remedy at law.
27. Connecticut General Statutes Section 52-471(a) provides: “Any judge of any court of equitable jurisdiction, may, on motion, grant and enforce a writ of injunction, according to the course of proceedings in equity, in any action for equitable relief when the relief is properly demandable, returnable to any court, when the court is not in session. Upon granting of the writ, the writ shall be of force until the sitting of the court and its further order thereon unless sooner lawfully dissolved.”
28. Connecticut General Statutes Section 52-473(a) provides: “An injunction may be granted

immediately, if the circumstances of the case demand it, or the court or judge may cause immediate notice of the application to be given to the adverse party, that he may show cause why the injunction should not be granted.”

29. The Plaintiff hereby applies for an order without bond from the Court pursuant to Connecticut General Statutes Section 52-472, enjoining the Defendant from issuing bonds or making any expenditure mandated by the Order.

COUNT THREE (Declaratory Judgment – Validity of Executive Order In Excess Of Authority)

1. Paragraphs 1 through 29 of Count Two are hereby incorporated and made Paragraphs 1 through 29 of this Count Three.
30. There is an actual and bona fide dispute between the Plaintiff and the Defendant, which requires adjudication.
31. There is a substantial uncertainty of the authority of the Defendant, which requires adjudication.
32. The Plaintiff seeks a declaratory judgment that Defendant exceeded his powers in promulgating Executive Order No. 67, and that said order as to the proposal and expenditure of bond funds is void and of no effect.

WHEREFORE, The Plaintiff Prays For The Following Relief:

As to Counts One and Two:

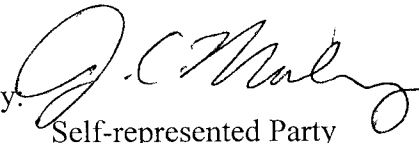
1. A temporary and permanent injunction prohibiting and restraining the Defendant from ordering the bond funds be expended for use by the Department of Transportation to produce a proposal pursuant to his Executive Order;
2. Such other relief as the ends of justice and equity require.

As to Count Three:

1. A declaration that the Defendant does not have the legal authority through an Executive Order to usurp legislative power and order an agency to create a legislative proposal;
2. A declaration that the Defendant does not have the legal authority to appropriate funds and circumvent the legislative power of budgeting for state agencies;

3. Such other relief as the ends of justice and equity require.

PLAINTIFF,

By: 
Self-represented Party
Joe Markley
47 Elm Street
Plantsville, CT 06479
860-681-4675

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SUPERIOR COURT

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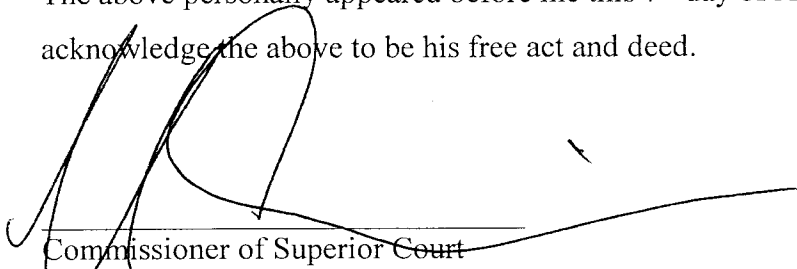
VERIFICATION OF COMPLAINT

I, John Zapata, residing at 295 Flanders Street, Southington CT, hereby verify that I am over the age of eighteen and believe in the obligations of an oath. I have personal knowledge of the facts stated in this Complaint and verify that they are true and accurate to the best of my knowledge and belief.



John Zapata

The above personally appeared before me this 7th day of August, 2018 and being duly sworn, acknowledge the above to be his free act and deed.



Commissioner of Superior Court

Juris No. 410876

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STATEMENT OF AMOUNT IN DEMAND

The Plaintiff claims equitable relief, specifically, a temporary and permanent injunction and a declaratory judgment.

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APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

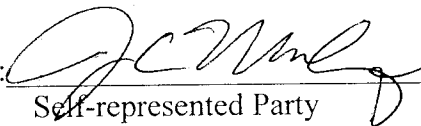
The Plaintiff, in the above-entitled action hereby makes application for a temporary and permanent injunction in accordance with his prayer for relief, and respectfully requests that this Court issue an injunction forthwith for the following reasons: The Plaintiff has attached a Verified Complaint outlining the reasons for his application for temporary and permanent injunction and incorporate said Verified Complaint herein:

Specifically the Plaintiff requests that this Court enter a temporary and permanent injunction:

1. A temporary and permanent injunction prohibiting and restraining the enactment of Executive Order No. 67; and
2. The expenditure of any funds necessary for implementation and execution of Executive Order No. 67, including but not limited to the pertinent portions of the July 25, 2018 approval by the State Bonding Commission of Agenda Item 15.

In the alternative, the Plaintiff requests that the Defendant be ordered to appear at an early date to show cause why the prayer for an injunction and mandamus should not be granted.

PLAINTIFF,

By: 

Self-represented Party
Joe Markley
47 Elm Street
Plantsville, CT 06479
860-681-4675