

DOCKET NO. SUPERIOR COURT

Catherine D. Ludlum,
Amber L. Michaud,
The Connecticut Association of Personal
Assistance, Inc.,
Senator Joseph Markley,
State Representative Robert C. Sampson,
Michelle M. Tyler,
Nicole Butkus,
Joy M. Minervini, and
Yankee Institute for Public Policy
Plaintiffs

v.

Governor Dannel P. Malloy,
Dawn Lambert

Defendants

SUPERIOR COURT

JUDICIAL DISTRICT
AT WATERBURY

March 22, 2012

COMPLAINT

Now come Plaintiffs, personal care attendants, consumers, surrogates, employers, employees, legislative representatives and a voluntary association in the State of Connecticut, who bring this suit to challenge Governor Dannel P. Malloy's Executive Order No. 10, which, among personal care attendants in various waiver programs, determined appropriate units, mandated an election, established a Personal Care Attendant Quality Home Care Workforce Council with broad powers to recognize a Majority Representative, reach agreements, coordinate with other states and accept money from any source private or public. Plaintiffs seek declaratory relief that Defendants' actions violate Connecticut and federal law as well as the Connecticut and

United States Constitutions. Plaintiffs also seek injunctive relief to prevent the State from implementing Executive Order No. 10 in any manner.

Wherefore, for its Complaint against Defendants, Plaintiffs state and allege as follows:

Parties

1. Plaintiff Catherine D. Ludlum, is a taxpayer, resident and citizen of the State of Connecticut, who is also a consumer receiving services from Personal Care Attendants under a PCA waiver program. She employs 11 personal care attendants and is an employer under the National Labor Relations Act and/or the State Labor Relations Act.

2. Plaintiff Amber L. Michaud, is a is a taxpayer, resident and citizen of the State of Connecticut, who is also a personal care attendant employed by Catherine D. Ludlum under a PCA waiver program.

3. Plaintiff The Connecticut Association of Personal Assistance, Inc., is a nonprofit Connecticut Nonstock Corporation, whose mission is to support and enhance the relationships between personal care attendants, the disabled or elder consumers, their families and the general public, whose members include personal care attendants, consumers, surrogates, and of which Plaintiffs Ludlum and Michaud are members.

4. Plaintiff Senator Joseph Markley , is a taxpayer, resident and citizen of the State of Connecticut, who serves as the State Senator from 16th District which includes parts of Cheshire, Wolcott, Southington and Waterbury.

5. Plaintiff State Representative Robert C. Sampson, is a taxpayer, resident and citizen of the State of Connecticut, who serves as State Representative for 80th General Assembly district covering Southington and Wolcott.

6. Plaintiff Nicole Butkus, is a taxpayer, resident and citizen of the State of Connecticut, who is a surrogate employing Personal Care Attendants under a PCA waiver program.

7. Plaintiff Joy M. Minervini, is a taxpayer, resident and citizen of the State of Connecticut, who is also a consumer receiving services from Personal Care Attendants under a PCA waiver program. She employs personal care attendants and is an employer under the National Labor Relations Act and/or the State Labor Relations Act.

8. Plaintiff Michelle M. Tyler, is a is a taxpayer, resident and citizen of the State of Connecticut, who is also a personal care attendant who works as a personal care assistant not under a PCA waiver program.

9. Plaintiff Yankee Institute for Public Policy is a 501c(3) non profit organization registered in the state of Connecticut involved in education and research in public policy issues.

10. Defendant Governor Dannel P. Malloy is sued in his official capacity as the Connecticut Governor.

11. Dawn Lambert is sued in her official capacity as the Chairperson of the Personal Care Attendant Quality Home Care Workforce Council. The Personal Care Attendant Quality Home Care Workforce Council is a group established by Executive Order No. 10 that has powers to recognize a Majority Representative, coordinate with

other states, reach agreements affecting personal care attendants, consumers and surrogates, and accept money from any source private or public.

Jurisdiction and Venue

12. This action is brought in challenge to Governor Dannel P. Malloy's Executive Order No. 10, as well as to challenge various unlawful actions taken pursuant to that Executive Order by State officials acting under the color of State law.

13. Plaintiffs seek declaratory and injunctive relief: (a) for deprivation of Plaintiffs' rights arising under and secured by the Constitution and laws of the United States, including the National Labor Relations Act as amended, 29 U.S.C. §151, et. seq., and the Supremacy Clause of the United States Constitution; and (b) under State law for violation of the State Constitution and other laws of the Connecticut.

14. Plaintiffs bring this action pursuant to Article First, §§2, 10, 14, Article Second, Article Fourth, and Article Eleventh of the Connecticut Constitution and Connecticut General Statutes §§52-471, 52-473, 52-485, 52-493, 52-494; and Practice Book §§11-9 and 23-47.

15. Plaintiffs also bring this action for declaratory judgment pursuant to Connecticut General Statutes §52-29, Practice Book §§17-54 through 17-59.

16. Venue is appropriate under Connecticut General Statutes §31-345 (a) (3).

Facts in Support of Claims For Relief

17. On or about February 25, 2011, House Bill number 6486 was proposed in the general assembly, establishing inter alia, a procedure for personal care attendants to choose and to be represented by a bargaining agent to engage in collective bargaining with the state; in which the only bargaining unit appropriate for purposes of

collective bargaining between the state and personal care attendants was defined and in which a Personal Care Attendant Quality Home Care Workforce Council was established with broad powers and authority.

18. The bill went through the various committees and on or about May 11, 2011 was tabled for the calendar of the house, signifying it was to be called for a vote by the full House.

19. On or about June 8, 2011 the General Assembly adjourned the session without having called House Bill 6486 for a vote by the full Senate or House, effectively killing the bill.

20. On or about September 21, 2011 Defendant Governor Malloy filed with the Secretary of State's office Executive Order No. 10 establishing the only appropriate units, setting up a "working group", mandating an election and establishing a Personal Care Attendant Quality Home Care Workforce Council with broad powers to recognize a Majority Representative, reach agreements, coordinate with other states and accept money from any source public or private. Executive Order No. 10 thus established a procedure that was substantially identical to the provisions contained in defeated House Bill number 6486.

21. The wages of Personal Care Attendants covered by Executive Order No. 10 are publicly funded, in whole or in part, through waivers operated by Department of Social Services (DSS) and Department of Developmental Disabilities (DDS).

22. In October, 2011 Defendant Governor Malloy appointed members to the working group and Defendant Personal Care Attendant Quality Home Care Workforce Council Workforce Council specified in Executive Order No. 10.

23. On or about February 15, 2012 the members of Defendant Personal Care Attendant Quality Home Care Workforce Council facilitated by counsel representing the office of Defendant Governor Malloy completed its work in accordance with Executive Order No. 10.

24. Defendants are proceeding with further implementation of Executive Order No. 10 at this time including but not limited to conducting elections and encouraging the general assembly to adopt the recommendations of the personal care attendants working group as newly proposed legislation. These elections were conducted without any of the necessary safeguards found in Federal and state legislation and there was widespread misconduct on the part of union advocates.

COUNT I: VIOLATION OF THE CONNECTICUT CONSTITUTION: SEPARATION OF POWERS

25. Plaintiffs reallege and incorporate herein as if fully restated, the allegations contained in paragraphs 1 through 24.

26. Pursuant to Article Second of the Constitution of the State of Connecticut no branch of government can exercise powers belonging to another branch of government.

27. Pursuant to Article Third of the Constitution of the State of Connecticut, the Legislature is granted the power to pass bills which create or amend the laws of the state and forward them to governor for approval or veto. Legislative bills become law if signed by the governor.

28. Pursuant to Article Fourth, Section 12 of the Constitution of the State of Connecticut, the governor has a constitutional duty to take care that the laws of

Connecticut are faithfully executed.

29. The Defendant Governor's power with respect to passage of laws of the state is limited to the power granted him in Article Fourth Section 15 to either sign or veto laws passed by the legislature.

30. The Labor Relations Act, Connecticut General Statutes §§31-101 through 31-111; the State Employees Relations Act, Connecticut General Statutes §§5-270 through 5-280; the Municipal Employee Relations Act, Connecticut General Statutes §§7-468 through 7-479 and the Teacher Negotiation Act, Connecticut General Statutes §§10-153a through 10-153n set forth the State of Connecticut's public policy on labor relations in the public and private sectors.

31. All of these acts were passed by the legislature and provided for a procedure for secret ballot election among covered employees in an appropriate unit as determined by the state labor board.

32. By enacting Executive Order No.10 which determined appropriate units, mandated an election, established a Personal Care Attendant Quality Home Care Workforce Council with broad powers to recognize a Majority Representative, reach agreements, coordinate with other states and accept money from any source private or public, Defendant Governor Malloy improperly superseded the legislature's authority and violated the separation of powers clause as set forth in the Connecticut Constitution.

**COUNT II: THE EXECUTIVE ORDER IS PREEMPTED BY AND ILLEGAL UNDER
FEDERAL LABOR LAW**

33. Plaintiffs reallege and incorporate herein as if fully restated, the allegations contained in paragraphs 1 through 24.

34. The operation of the personal attendant care services impacts interstate commerce and many consumers, surrogates and assistants are subject to the National Labor Relations Act (NLRA), as amended, 29 U.S.C. §151, et. seq.

35. Under the NLRA, there is an established procedure for determining appropriate units, for recognizing bargaining units, and for conducting elections. There is a federal agency and well-established procedures to safeguard against coercive and intimidating conduct by overzealous union advocates. Such safeguards are absent from Executive Order No. 10, thereby denying aggrieved parties any legal redress.

36. Under the NLRA, employers are prohibited from agreeing to pre-hire agreement with labor organizations unless they fall within the construction industry proviso set forth in Section 8(f) of the NLRA.

37. By directing an establishing an appropriate unit, directing an election, allowing election misconduct, and authorizing recognition the Executive Order is in conflict with the National Labor Relations Act ("NLRA") and is preempted by the National Labor Relations Act as well as the Supremacy Clause of the United States Constitution (Article VI, Clause 2).

COUNT III: THE EXECUTIVE ORDER IS IN VIOLATION OF STATE LABOR LAW

38. Plaintiffs reallege and incorporate herein as if fully restated, the allegations contained in paragraphs 1 through 26.

39. Under Connecticut's Labor Relations Act, Connecticut General Statutes §§31-101 through 31-111, private employers who are too small for coverage by the NLRB are covered by the State Act

40. Some of the Plaintiffs are employers or employees covered by the Connecticut's Labor Relations Act.

41. Under Connecticut's Labor Relations Act there is an established procedure for determining appropriate units, for recognizing bargaining units, and for conducting elections. There is a state agency and well-established procedures to safeguard against coercive and intimidating conduct by overzealous union advocates. Such safeguards are absent from Executive Order No. 10, thereby denying aggrieved parties any legal redress.

42. By directing and establishing an appropriate unit, directing an election for a representative, allowing election misconduct and authorizing recognition, Executive Order No. 10 is in conflict with and contrary to the provisions of Connecticut's Labor Relations Act. As such, it is illegal under state law.

**COUNT IV: VIOLATION OF THE EQUAL PROTECTION CLAUSES OF THE
UNITED STATES AND CONNECTICUT CONSTITUTION**

43. Plaintiffs reallege and incorporate herein as if fully restated, the allegations contained in paragraphs 1 through 24.

44. The Equal Protection Clauses found in Article First of the Constitution the State of Connecticut, and in the Fourteenth Amendment of the United States Constitution, require the state to treat similarly situated individuals alike.

45. Executive Order No. 10 allegedly affords personal care attendants under certain waiver programs the right to engage in collective action, and directs mail-ballot elections to determine whether a Majority Representative shall represent certain Personal Care Attendants.

46. Executive Order No. 10 does not afford certain waiver program personal care attendants and non-waiver program personal care attendants the same rights to engage in collective action or to vote in the election directed by the order.

47. Executive Order No. 10 provides that if Majority Representative is certified by the vote, that representative shall meet and confer with the Personal Care Attendant Quality Home Care Workforce Council ("the Council") concerning ways for improving the quality and accessibility of personal care assistance programs for consumers and surrogates.

48. It further provides that the Council and the Majority Representative shall discuss relevant issues including: (1) the quality and availability of personal care assistance services in the state; (2) the improvement of the recruitment and retention of qualified personal care attendants; (3) standards for compensating personal care attendants; (4) state payment procedures related to PCA waiver programs; and (5) training, professional development and other requirements and opportunities appropriate for personal care attendants, including consideration of training currently utilized by DSS and/or DDS."

49. By excluding certain Plaintiffs from the ability to participate in the vote, from being as equally represented as the other personal care attendants, and from having an equal say in the issues of mutual concern set forth in the Executive Order, and nonetheless subjecting them to whatever determinations are negotiated by the Personal Care Attendant Quality Home Care Workforce Council, the Executive Order violates the Equal Protection Clauses of the Constitutions of the State of Connecticut and the United States.

COUNT V: VIOLATION OF THE FIRST AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE FIRST OF THE CONNECTICUT CONSTITUTION

50. Plaintiffs reallege and incorporate herein as if fully restated, the allegations contained in paragraphs 1 through 24.

51. Sections 4, 5 and 14 of Article First of the Constitution the State of Connecticut, and the First Amendment of the United States Constitution, guarantee the right to freedom of speech and to petition Government for redress. Implicit in these rights is the freedom to associate or not associate for purposes of lobbying the government.

52. The plaintiff personal care attendants, consumers and surrogates are not state employees. They simply receive monies from government programs. They are citizens and private sector employees, not state employees. Executive Order No. 10 although couched in "collective bargaining terms" in reality is simply state mandated political representation for lobbying purposes and violates the United States and Connecticut Constitutions.

COUNT VI: THE DEFENDANT GOVERNOR HAD NO CONSTITUTIONAL OR STATUTORY AUTHORITY TO ISSUE EXECUTIVE ORDER NO. 10

53. Plaintiffs reallege and incorporate herein as if fully restated, the allegations contained in paragraphs 1 through 24.

54. Article Second on the Constitution of the State of Connecticut divides the powers of government among three separate and distinct departments, one legislative, one executive and one judicial. Article Third grants to the legislative branch the authority to enact laws. Article Fourth grants to the governor the power to approve or disapprove bills enacted by the legislature and to take care that the laws are faithfully

executed. Executive Order No. 10 falls outside the authority granted to a governor.

55. The Governor has statutory authority to issue executive orders pursuant to Connecticut General Statutes §§3-6a, 3-6b, 4-11 and 4-12, 5-254, 16a-11, 22a-148, 22a-161, 27-2, 27-5, 28-9, and 42-231. None of these statutes authorize the action taken by the Defendant Governor in Executive Order No. 10.

56. Executive Order No. 10 interferes with the legislative power vested in the General Assembly, is outside the scope of his constitutional and statutory authority, covers subjects matters already addressed by state and federal legislative bodies, and calls for action that affects private citizens in the absence of an emergency, and as such, its issuance is ultra vires.

IRREPARABLE HARM

57. Plaintiffs are suffering or are in danger of suffering irreparable harm if the illegal and unconstitutional Executive Order No. 10 is not invalidated. This Executive Order will directly impact the regulation of their livelihood and or the quality and nature of their care and daily life. Plaintiffs have no adequate remedy at law to prevent the infringement of their Constitutional rights.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request this Court to:

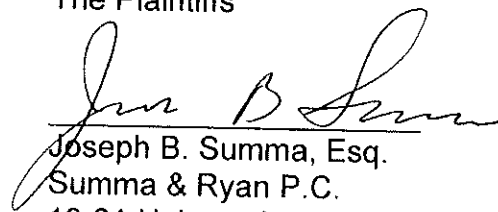
1. Grant a temporary and permanent injunction that:
 - a. Enjoins any enforcement or implementation of Executive Order No. 10.
 - b. Enjoins any implementation of the working group's recommendations.
 - c. Enjoins the Personal Care Attendant Quality Home Care Workforce Council from any activity on behalf of the state.

2. Issue a declaratory judgment which provides that the Executive Order is void and unenforceable because:
 - a. Defendant Governor Malloy's Executive Order No. 10 is an unconstitutional usurpation of the legislature's constitutional right to create law and as such is a violation of the separation of powers under the Connecticut Constitution.
 - b. Executive Order No. 10 violates the Equal Protection Clauses of the Constitutions of the United States and Connecticut.
 - c. Executive Order No. 10 violates the Free Speech Clauses of the Constitutions of the United States and Connecticut.
 - d. The Executive Order is preempted by Federal law.
 - e. The Executive Order is in violation of state and federal labor laws.
 - f. Defendant Governor Malloy had no constitutional or statutory authority to issue an Executive of this nature.
3. Award reasonable costs and attorneys' fees as the Court deems proper.
4. Grant all further relief in law or in equity which the court deems Plaintiffs to be justly entitled.

Respectfully submitted:

By: The Plaintiffs

By:



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