

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF RHODE ISLAND

Keven A. McKenna, :
Plaintiff :
v. :
Marc DeSisto, :
Debra Saunders, :
J. Joseph Baxter, :
Deborah Walsh, :
Paul Suttell :
Defendants :
_____ :

C.A. 11-

CA 11 - 602 ML

COMPLAINT TO QUASH SUBPOENAE DUCES TECUM, TO DECLARE PUTATIVE ADMINISTRATIVE ACTIONS UNCONSTITUTIONAL, AND TO DECLARE CERTAIN ADMINISTRATIVE STATUTORY DELEGATIONS TO THE R.I. JUDICIAL BRANCH UNCONSTITUTIONAL.

Parties:

1. The Plaintiff is Keven A. McKenna, is a resident of Rhode Island.
2. The Defendant, Marc DeSisto is a resident of Rhode Island, who practices law in the State of Rhode Island, who is being sued for undertaking an unconstitutional inquisition of the Plaintiff without statutory or constitutional authority, in violation of the Due Process clauses and the search and seizures clauses of the State and U.S. Constitutions.
3. The Defendant, Debra Saunders is a resident of Rhode Island, who is being sued in her representative capacity as a *principal officer* of the State of Rhode Island as the Chief Clerk of the Rhode Island Supreme Court, who was unconstitutionally appointed by Defendant Paul Suttell, without the authority of the Governor under Article IX §5¹ of the R.I.

¹R.I.Const. §5. Powers of appointment. The governor shall, by and with the advice and consent of the senate, appoint all officers of the state whose appointment is not herein otherwise provided for and all members of any board, commission or other state or quasi-public entity which exercises executive power under the laws of this state; but the general assembly may by law vest the appointment of such inferior officers, as they deem proper, in the governor, or within their respective departments in the other general officers, the judiciary or in the heads of departments.

Constitution, who has issued unconstitutional subpoenas duce tecum against the Plaintiff's personal property on behalf of Defendant DeSisto.

4. Defendant J. Joseph Baxter, Jr. is a resident of Rhode Island, who is being sued in his capacity as a *principal officer* of the State of Rhode Island as State Court Administrator, who was unconstitutionally appointed by Defendant Paul Suttell.
5. Defendant Baxter, under the administrative direction of Defendant Suttell, unconstitutionally exercises budgetary, personnel, and contractual authorities of an elected Governor, under §§ 1², 2³, 15⁴, and 16⁵ of Article IX of the RI. State Constitution, contrary to the voting rights, liberty interests and property rights of the Plaintiff under the State and Federal Constitution, which protect the Plaintiff and other similarly situated voters against the exercise of royal powers by the State officials to oppress the Plaintiff and other citizens.
6. Defendant Deborah Walsh is a resident of Rhode Island, who is being sued in her capacity as a *principal officer* of the State of Rhode Island, as State Director of Court Finance and Assistant Administrator for Finance and Budget, whose position is appointed and supervised by Defendant Paul Suttell.
7. Defendant Deborah Walsh, under the administrative direction of Defendant Suttell, unconstitutionally exercises budgetary, personnel, and contractual authorities of an elected

² R.I. Const. Article IX § 1. Power vested in governor. The chief executive power of this state shall be vested in a governor, who, together with a lieutenant governor, shall be elected by the people.

³ R.I. Const. Article IX § 2. Faithful execution of laws. The governor shall take care that the laws be faithfully executed.

⁴ R.I. Const. Article IX §15. State budget. The governor shall prepare and present to the general assembly an annual, consolidated operating and capital improvement state budget.

⁵ R.I. Const. Article IX §16. Limitation on state spending. (a) No appropriation, supplemental appropriation or budget act shall cause the aggregate state general revenue appropriations enacted in any given fiscal year to exceed ninety-eight percent (98%) of the estimated state general revenues for such fiscal year from all sources, including estimated unencumbered general revenues to the new fiscal year remaining at the end of the previous fiscal year. *** (c) Within forty-five (45) days after the close of any fiscal year, all unencumbered general revenue in the year end surplus account from the said fiscal year shall be transferred to the general fund.

Governor, under §§ 1,2,15, and 16 of Article IX of the RI. State Constitution, as if those powers were royal powers, to oppress the Plaintiff contrary to his voting rights, liberty interests and property rights as protected by the State and Federal Constitution.

8. Defendant Paul Suttell is a resident of Rhode Island and is a member of the Rhode Island Supreme Court, whose sole constitutional duty pursuant to § 2 of Article X of the Rhode Island Constitution, is to adjudicate cases and controversies pending in the Rhode Island Supreme Court.
9. The Defendant Paul Suttell is only being sued in his putative legislative capacity for exercising illegal rule making authority not authorized by an elected General Assembly under Article VI §1 and 2§ and for exercising his putative unconstitutional executive capacities under R.I.G.L. §8-15-2, R.I.G.L. § 8-15-2.1, R.I.G.L. § 8-15-4. R.I.G.L. § 8-15-5, and R.I.G.L. § 8-15-9, which interfere with appointive, budgetary, personnel, and contractual authorities of an elected Governor, under §§ 1, 2, 5⁶, 15, and 16 of Article IX of the RI. State Constitution, contrary to the voting rights, liberty interests and property rights of the Plaintiff under the State and Federal Constitution, which protect the Plaintiff against the exercise of royal powers by the State officials.

Jurisdiction:

10. This *Honorable* Court has jurisdiction pursuant to the provisions of 28 U.S.C. §1331 which provides jurisdiction under the Constitution and Laws of the United States; pursuant to the

⁶ R.I. Const. Article IX §5. Powers of appointment. The governor shall, by and with the advice and consent of the senate, appoint all officers of the state whose appointment is not herein otherwise provided for and all members of any board, commission or other state or quasi-public entity which exercises executive power under the laws of this state; but the general assembly may by law vest the appointment of such inferior officers, as they deem proper, in the governor, or within their respective departments in the other general officers, the judiciary or in the heads of departments.

provisions of 28 U.S.C, § 2201 which provide for declaratory relief, and pursuant to the provisions of 42 U.S.C. § 1983, which provide for relief from U.S. Constitutional Violations and pursuant to 28 § 1367 which provide for supplemental relief pursuant to state law.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1391 (b) (2) in the events or omissions giving rise to this claim which have occurred in Rhode Island.
12. Plaintiff has constitutional jurisdiction under Article III of the U.S. Constitution because there are redressible claims in this Complaint for which the Plaintiff has suffered harm from Defendants' U.S. Constitutional violations of the First Amendment, of the Fourth Amendment protection, of the Due Process Clauses in the Fifth and Fourteenth Amendments and, from the Defendants' State Constitutional violation of Due Process rights, Article I § 2, of his Right to Petition and to seek redress, Art. I § 21, and his protection against the tyranny of concentrated powers as required by Article V, Distribution of Powers, and from the invasion of his privacy as protected by Rhode Island General Laws § 9-1-28.1 (1).
13. Plaintiff avers that the Defendants are attempting to penalize him and chill his exercise of his freedom of expression (i) as protected by the First Amendment Freedom of Speech Clause of the U.S. Constitution and as protected by § 21 of Article I of the Rhode Island State Constitution, (ii) by violating the Fourth Amendment's protection against unreasonable seizure of the Plaintiff's papers (iii) and by the Defendants' attempt to take his property, to wit, his license to practice law, without due process, in violation of the Fourth and Fifth Amendment of the United States Constitution as applied to the State of Rhode Island through the Fourteenth Amendment of the United States Constitution, as otherwise protected through the provisions of 42 U.S.C. § 1983.

14. Defendants are further violating the Plaintiff's due process rights under the Fourteenth and Fifth Amendment to have a fair adjudication of his causes of actions since the Defendant Suttell in his adjudicative capacity is incapable of adjudicating his own constitutional violations of the Executive Powers contained in Article IX and the Legislative Powers contained in Article VI of the Rhode Island Constitution and of the Due Process Clause of the Rhode Island State Constitution.
15. Plaintiff, as a consequence of those actions, is suffering irreparable harm and has no other adequate remedy at law.

Facts:

16. Plaintiff, Keven A. McKenna, as a Rhode Island voter, has voted in each state referendum since 1972 in which an Amendment to the Rhode Island State Constitution was pending for approval or denial and is a representative of persons whose vote has created the Rhode Island State Constitution.
17. Pursuant to Rhode Island General Laws § 8-1-2, the Rhode Island Supreme Court admitted Keven A. McKenna to the practice of law in Rhode Island in June of 1973. Keven A. McKenna practices in all Rhode Island Courts.
18. To the Plaintiff's knowledge, there are no Complaints or investigations involving him pending before the Rhode Island Disciplinary Board as putatively created by Article III of the Rhode Island Supreme Court Rule without the authority of the General Assembly.
19. From 1979 to 1985, the Plaintiff, Keven A. McKenna was a member of the Rhode Island General Assembly.
20. The Plaintiff was the 1986 President of the Rhode Island Constitutional Convention and has served as a Providence Municipal Court Judge from 1985 through 1991.

21. From December of 1996 through December of 2001, Keven A McKenna was the sole stockholder and officer of Keven A. McKenna P.C. a subchapter S professional corporation, organized pursuant to the provisions of Rhode Island General Laws 7-5.1-3.
22. On July 30, 2004, prior to the passage of the Separation of Powers Provisions on November 4, 2004, Article 45, of P.L. 2004; ch. 495, was enacted as the result of closed door lobbying by former Chief Judge Frank Williams.
23. The provisions of Article 45, of P.L. 2004; ch. 495 granting the judicial process to the Defendants are in conflict with the Constitutional Separation of Power amendments enacted November 4, 2004 by the Plaintiff and other similarly situated voters.
24. The conflicting provisions of Article 45 being applied by the Defendants remain as follows:
 - i. Rhode Island General Laws §8-15-4 (c) (d), and (f) granted the Defendants, Suttell, Baxter and Walsh, the budgetary, personnel, and contract powers of the Governor over the Ninety million (\$90,000,000) Dollars + plus judicial budget;
 - ii. Rhode Island General Laws §35-3-1 exempted the money of the state judiciary from control of the State Budget officer appointed by the governor.
 - iii. Rhode Island General Laws §35-3-5. required direct review of judiciary budget by Legislative without review by the Governor;
 - iv. Rhode Island General Laws §36-4-2.1 exempted the employees of the judiciary from the state merit service managed by the Governor and allowed the judiciary it own patronage appointments.
 - v. Rhode Island General Laws §36-4-16.4 exempted the salaries of judges from the powers of the Unclassified Pay Board appointed by the Governor;

- vi. Rhode Island General Laws §35-6-1(6) exempted the State Controller who is appointed by the Governor from rejecting any expense incurred by the Judiciary.
- 25. In November of 2004, the Plaintiff and other similar situated voters approved the enacted of the Rhode Island Constitutional Separation of Powers of Amendments, Article IV, Article V, Article VI, and Article IX, which limited the judiciary and the Defendants to the sole exercise of adjudicatory powers.
- 26. In 2005, the Plaintiff, Keven A. McKenna, filed litigation challenging former Chief Justice Frank Williams' constitutional ability to hold dual state and federal judicial positions.
- 27. In 2008, 2009, 2010, and 2011 the Plaintiff has publicly criticized the present and the past Chief Justice and present Chief Justice of the Rhode Island Supreme Court for usurping will of the voters contained in the November 4, 2004 Separation of Powers Constitutional Amendment by their misuse of the appointment powers of the Governor and of the Governor's hiring, property management powers and regulatory powers.

Count I
(Quashing Illegal Subpoenae, DeSisto Appointment, Unconstitutional Rule Making)

- 28. Averments one (1) through twenty-seven (27) are re-averred and re-plead as if contained within this separate count for relief.
- 29. On or about January 13, 2011, the Defendants began an otherwise unfounded and unconstitutional pre-textual administrative inquisition of the Plaintiff's practice of law to seek possible technical violations of filing requirements for legal services corporation and of the bookkeeping Rules of Rhode Island Rules of Professional Conduct for Attorneys as contained in Article V of Rhode Island Supreme Court Rules, in order to place him in a false light as retaliation for his criticisms of the Rhode Island Supreme Court's abuse of the sole powers of the General Assembly and the Defendants' misuse of the sole executive powers of

the Governor in violation of Article V and Article VI and IX of the Rhode Island State Constitution.

30. On information and belief, Defendant, Marc DeSisto was putatively appointed by Defendant Paul Suttell, without Rhode Island constitutional authority under Article IX of Rhode Island State Constitution, on the pretext of inquiring about possible bookkeeping errors in Plaintiff's business accounts for the last seven (7) years in order to bring a Complaint designed to place the Plaintiff in a false light as retaliation for the Plaintiff's advocacy of litigation to strip the Rhode Island Supreme Court of its unconstitutional Article IX powers as required by November 2004 Separation of Powers Amendments.
31. The Defendants have no inherent constitutional or statutory powers to regulate the business practices of attorneys outside of court room proceedings on behalf of parties.
32. In January of 2011, Keven A. McKenna had filed notice with the Rhode Island Supreme Court of his statutory filing with the Rhode Island Secretary of State as a Limited Liability Corporation practicing law pursuant to Rhode Island General Laws §7-16-3.1 and provided a copy of his malpractice policy as required.
33. In January of 2011 the corporation, Keven A. McKenna, P.C. was not engaged in the practice of law.
34. In the winter of 2011, to the best of his knowledge, the Plaintiff had no client complaints pending against him with the Rhode Island Disciplinary Counsel.
35. In the winter of 2011, to the best of Plaintiff's knowledge, neither the R.I. Disciplinary Counsel nor the R.I. Disciplinary Committee were conducting an investigation of Keven A. McKenna for a violation of the Professional Rules of Conduct for Attorneys, as set forth in Article V of R.I. Supreme Court Rules.

36. On January 13, 2011, Defendant Suttell then, without a pending case or controversy, conducted an unauthorized public hearing where members of the Rhode Island Supreme Court, who have no regulatory authority over Keven A. McKenna's form of business, made negative comments about Keven A. McKenna and challenged Keven A. McKenna's statutory right to become a Limited Liability Corporation in an unauthorized regulatory hearing designed to place Keven A. McKenna in a false negative light for having simply provided a ministerial notice changing his corporate form of law practice.
37. As a consequence of such hearing, the Providence Journal wrote a misleading negative article about the Plaintiff causing him harm in his professional business.
38. On or about February 23, 2011, in order to deny Plaintiff his property in his stock in Keven A. McKenna P.C, Defendant, then subsequently, without constitutional authority, ordered Keven A. McKenna to cancel his stock in Keven A. McKenna P.C., which had been incorporated since 1996, as a condition of incorporating a new Limited Liability Corporation in 2011.
39. Since the stock in the professional corporation had a retained monetary value, Plaintiff Keven A. McKenna withdrew his application to do business as a lawyer in a Limited Liability Corporation and continue to practice as Keven A. McKenna Attorney at Law; and then changed the purpose and name of his Limited Liability Corporation to a staff support corporation, McKenna Support Services, LLC, instead of a litigating corporation.
40. On or about July 13, 2011, Defendant Suttell then, without conforming to the Rules on Disciplinary Procedure, Article III, appointed Defendant Marc DeSisto as a putative Assistant Disciplinary Counsel, reporting only to the Defendant, Suttell.

41. Defendant DeSisto does not report to Disciplinary Counsel David Curtin or act under his supervision, as required by Article III of the R.I. Supreme Court Rules.
42. At the time of Defendant's Suttell appointment of Defendant DeSisto, pursuant to Rule 4(d) of Article III of the Rhode Island, there was no factual basis for the R.I. Disciplinary Board to investigate the Plaintiff. The sole request of the Chief Disciplinary Counsel.
43. Pursuant to Rule 6 of Article III, only the Chief Disciplinary Counsel has authority to investigate the Plaintiff, not the Defendants Suttell and DeSisto.
44. Neither Defendant Suttell nor any member of the R.I. Supreme Court are a member of the R.I. Disciplinary Board and have any statutory or constitutional authority to investigate the business practices of Keven A. McKenna.
45. Defendant Suttell and members of the R.I. Supreme Court do not have constitutional standing to initiate complaints and then to adjudicate these same complaints they initiate before the R.I. Disciplinary Board whose activity is reviewed by Defendant, Suttell.
46. Only an elected Attorney General, under Article IX §12 of the R.I. Constitution, not the Defendant Chief Justice, nor his surrogate appointee, Defendant DeSisto, has the authority to conduct investigation of statutory violations and to appoint attorneys to undertake investigations of the Plaintiff for violations of R.I. statutes.
47. Defendant DeSisto is not an assistant disciplinary counsel because he does not report to Disciplinary Counsel David Curtin or act under his supervision, but he acts under the supervision and direction of Defendant Suttell.
48. Pursuant to Rule 11 of Article III of the Supreme Court Rules on Disciplinary Procedure, only the Chief Disciplinary Counsel, not the Defendants DeSisto and Saunders, have authority to issue subpoenas under Article III of the R.I. Supreme Court Rules.

49. On September 12, 2011 Defendants DeSisto and Saunders issued a subpoenae duces tecum to Plaintiff Keven A. McKenna for all of his business records for the last seven (7) years to which Plaintiff McKenna responded with a motion to quash before the R.I. Disciplinary Board which has not been heard.
50. On October 18, 2011, Defendants DeSisto and Saunders issued a similar subpoenae duces tecum to Sovereign Bank for all of the records for the last seven (7) years of Keven A. McKenna to which Plaintiff McKenna responded with a motion to quash before the R.I. Disciplinary Board which has not been heard.
51. The Rhode Island Disciplinary Rules, Article III of the Rhode Island Supreme Court Rules, do not provide for the use of Deposition Subpoenae of witnesses or Subpoena Duces Tecum for Records for proceeding, which are not before the Rhode Island Disciplinary Board.
52. Defendant DeSisto is without statutory or constitutional authority to undertake an investigation of Plaintiff Keven A. McKenna.
53. Defendant Debra Saunders has no constitutional or statutory authority to issue Subpoena Duces Tecum for matters not involving a case or controversy pending before a state court or for matters not pending before the R.I. Disciplinary Board.
54. Rule 11 of Article III of the Rhode Island Supreme Court Rules is an unconstitutional exercise of the sole legislative power of the General Assembly by Defendant Paul Suttell and does not otherwise entitle the Defendant Saunders to issue a Subpoenae at the request of Defendant DeSisto.
55. Defendant DeSisto is not under the supervision of the Rhode Island Disciplinary Board.
56. Defendant Marc DeSisto failed to follow the Rules of the Rhode Island Disciplinary Board as set forth in Rule 1.15 and Rule 11 of Article III.

57. The scope of the subpoenaed data is outside of the scope of Rule 19 of Article III since there has been no allegation of any violation of the Rules of Professional Conduct as set forth in Article V of the Rules of the Rhode Island Supreme Court.
58. Defendants Suttell and DeSisto are attempting to bypass the Rhode Island Disciplinary Board and to have a private deposition of the Plaintiff and to conduct a private inquisition of the Plaintiff.
59. The Plaintiff, Keven A. McKenna, has represented several criminal defendants in the last seven (7) years.
60. The financial records of the Plaintiff contain some information about clients who were charged with criminal violations.
61. Since the financial records of the Plaintiff contains some information about clients who were charged with criminal violations, the Subpoenae Duces Tecum issued by the Defendants, DeSisto and Saunders violates the purpose of Rule 3.8(f) of Article V of the Rules of R.I Supreme Court, which provides that "The prosecutor in a criminal case shall * * * (f) not, without prior judicial approval, subpoena a lawyer for the purpose of compelling the lawyer to provide evidence concerning a person who is or was represented by the lawyer when such evidence was obtained as a result of the attorney-client relationship."
62. The scope of the Subpoenae Duces Tecum seeking all business records for the last seven (7) years of the Plaintiff is unreasonable and burdensome and violates the Due Process clauses of the United States and Rhode Island Constitutions.
63. The Subpoenae Duces Tecum in question violates the Fourth Amendment because the accounts of Keven A. McKenna created by Keven A. McKenna at the Sovereign Bank are "papers" and "effects" of Keven A. McKenna being subject to an unreasonable search and

seizure by Marc DeSisto, Debra Saunders, and Paul Suttell, under the color of law, although they have no statutory, constitutional, or cognizable purpose for examining the “papers” and “effects” of Keven A. McKenna being held in trust by the Sovereign Bank as the fiduciary of Keven A. McKenna.

64. The Subpoena Duces Tecum sought by the Defendant DeSisto seeks non-client trust accounts owned by Keven A. McKenna without the authority of law and without any purpose other than retaliatory harassment.
65. In violation of the prohibition in the Fifth Amendment of the United States Constitution, as applied to the States by Fourteenth Amendment, Defendants DeSisto, Saunders, and Suttell are attempting to deprive Keven A. McKenna of “property which he created to be held in trust by the Sovereign Bank without due process of law;” and to otherwise invade illegally his statutory right to privacy.
66. The actions of the Defendants are an unconstitutional attempt to breach the protected confidential relationship between Keven A. McKenna and his clients in violation of Rule 1.6 of Rhode Island Rules of Professional Conduct for Lawyers.
67. The trust accounts at the Sovereign Bank contain confidential information regarding the financial relationship of Keven A. McKenna to his clients which are prohibited from disclosure by Rule 1.6 of the Rules of Professional Conduct for Lawyers Issued by Rhode Island Supreme Court without consent of the clients of Keven A. McKenna.
68. The trust accounts created by Keven A. McKenna at Sovereign Bank are items which Keven A. McKenna expected to be private and a Subpoena Duces Tecum of those private records is a violation of Rhode Island General Laws § 9-1-28.1 (1) which protects privacy rights which are to be secure from unreasonable intrusion upon a person’s seclusion.

69. Defendants purported wrongfully that they are enforcing Article V. Rule 1.15. on Safekeeping of Property, and. Rule 1.19 on required bookkeeping records.

70. Article V. Rule 1.15 and Rule 1.19 are unconstitutional exercises of the separate and distinct Legislative Power of the General Assembly prohibited to the Defendants who are employees of the Judicial Branch.

71. Article III, Rule 11 on the issuance of subpoenae and Article V, Rules 1.15 and 1.19 of the Rules of the Rhode Island Supreme Court are unconstitutional legislative acts by Defendant Suttell in violation of Article V of the Rhode Island Constitution and Article VI §1 and §2 of the Rhode Island State Constitution and are not authorized by either Article X §1⁷ or §2 on Judicial Power.

72. In violation of Articles V, Article VI .§1 and Article VI .§2, of the Rhode Island State Constitution, the Defendants are exercising constitutionally prohibited legislative powers through Article III of their Rules purporting to regulate Plaintiff's business relationships in order to cause harm to Plaintiff's personal property to continue to be licensed as an attorney and to destroy the will of the voters, such as the Plaintiff, as expressed in their passage of the Separation of Powers Constitutional Amendments of November 4, 2004.

73. In violation of the First Amendment of the United States Constitution, of the Fourth Amendment protection of private papers, in violation of the Due Process Clause of the United States Constitution, in violation of Due Process Clause of the Rhode Island State Constitution and search and seizure clause of the Rhode Island Constitution, the Separation of Powers Clauses of the Rhode Island State Constitution, and in violation of the right to

⁷ R.I. Const. Article X Section 1. Power vested in court. The judicial power of this state shall be vested in one Supreme Court, and in such inferior courts as the general assembly may, from time to time, ordain and establish.

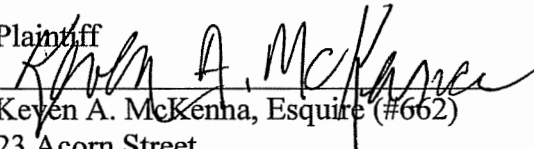
petition and to seek redress clause of the Rhode Island State Constitution, the Defendants jointly, independently, and severally are acting under the color of state law to attempt to deny the Plaintiff his statutory and constitutional rights under the United States and under Rhode Island law in violation of the provisions of 42 USC §1983.

WHEREFORE, Plaintiff respectfully demands that this Honorable Court provide the following relief against the Defendants:

- (i) Declare that the inquisition of the Plaintiff by the Defendants is a violation of the Plaintiff's U.S. Constitutional protections under the First Amendment, Fourth Amendment, Due Process Rights under the Fifth and Fourteen Amendment of the U.S. Constitution, and the Plaintiff's State Constitutional rights under Article I, § 2, the due process rights, at Article I §,6, the search and seizure clause, and at Article I, §21, the free speech and petition clause; and, of his privacy rights secured by the provisions of R.I.G.L. § 9-1-28.1 (1); and to otherwise restrained the Defendants from any further unconstitutional acts against the Plaintiff.
- (ii) Restrain the Defendants Suttell, Saunders, and DeSisto from taking any further retaliatory actions against Keven A. McKenna for his free speech expressions protected by the United States and Rhode Island Constitutions;
- (iii) Declare that the Defendants lack Constitutional and statutory powers to issue Subpoenae Duces Tecum to the Plaintiff;

- (iv) Quash the Subpoena Duces Tecum to the Sovereign Bank of any records created for Keven A. McKenna; and otherwise return such records sealed by the Plaintiff if the Subpoenae has been served and returned;
- (v) Declare that the Defendant Paul Suttell lacks state constitutional power to appoint the Defendant Marc DeSisto to otherwise perform non-judicial functions regulatory functions of the an elected R.I. Governor and the R.I. Attorney General and of an elected Legislative Branch, as provided in the Rhode Island State Constitution; and to stay the investigatory actions of Defendant DeSisto of Keven A. McKenna.
- (vi) Declare the Rule 11 of Article III of the Rhode Island Supreme Court Rules of Disciplinary Procedure as an unconstitutional use by the Defendant Suttell of the legislative regulatory powers reserved to the General Assembly.
- (vii) Declare that Rules 1.15 and 1.19 of Article V of the Rules of Rhode Island Supreme Court are an exercise of unconstitutional legislative powers by Defendant Paul Suttell of constitutional powers reserved to the R.I. General Assembly.
- (viii) Enjoin the Defendants from invading the privacy rights of the Plaintiff and interfering with his constitutional rights as secured by the United States and Rhode Island Constitutions.
- (ix) Award the Plaintiff to 42 USC §1988 reasonable attorneys' fees and costs.
- (x) Provide such other Relief which is just and equitable.

Plaintiff


Keven A. McKenna, Esquire (#662)

23 Acorn Street

Providence, Rhode Island 02903

Tel.: (401) 273-8200

Fax: (401) 521-5820

E-Mail: keven@kevenmckennapc.com

Count II
Unconstitutional Statutes In
Violation of State Separation of Powers.

74. Averments one (1) through seventy-three (73) are re-averred as if included within this Count.
75. The Defendants Suttell, Baxter, and Walsh, through the unconstitutional statutory powers contained in R.I.G.L. § 8-15-2 and R.I.G.L §8-15-4 and R.I.G.L §8-15-9, are exercising the sole executive powers reserved to the Governor pursuant to §1, §2, and §15 and §16 of Article IX of the Rhode Island State Constitution in violation of the constitutional supremacy clause contained in Article VI, 1 of the R.I. Constitution, in order to destroy democracy in Rhode Island and to harm the Plaintiff and other similarly situated Rhode Island citizens, who have not delegate such royal powers to the Defendants.
76. Plaintiff is a member of a class of voters who, by their votes, have enacted the Rhode Island State Constitution Separation of Powers Clauses as a prohibition of the exercise of royal tyrannical powers in Rhode Island; and have by their votes enacted the constitutional amendments on separation of powers to limit the powers of the Rhode Island Judiciary solely to adjudication in order to protect their individual rights from royal tyranny by unelected appointed persons with life terms called judges.

77. The members of the class of voters exceed four hundred (400,000) thousand voters and are too numerous to join as Plaintiffs and the Plaintiff by education and experience is appropriate to represent their interests in this litigation.
78. The Rhode Island Attorney General is constitutionally conflicted from representing the interests of the voters of Rhode Island because he has become the institutional defender in past matters of the non judicial activities of members of the Rhode Island Supreme Court including Defendant, Suttell, in a not too subtle attempt to pander favor from the members of the Court in their adjudicatory functions.
79. Defendants Suttell, Baxter, and Walsh, in violation of the Separate and Distinct Clause contained in Article V, the Rhode Island Constitutional Supremacy Clause contained in Article VI, §1 are unconstitutionally attempting to enforce the provisions of Rhode Island General Laws R.I.G.L. §35-3-5 which provides that “Itemized estimates of the financial needs of the *** the judiciary shall be submitted, without revision, by the budget officer to the governor on or before the first day of October for inclusion in the budget; and that the Governor shall submit the financial needs as requested by ***judiciary without revision for inclusion in the budget recommendation to the general assembly;” because those provisions are in conflict with the provisions of Article IX §15⁸ which provide exclusive Gubernatorial powers over the State Budget.
80. The Defendant, Debra Saunders is a *principal officer* of the State of Rhode Island as the Chief Clerk of the Rhode Island Supreme Court, who was unconstitutionally appointed by

⁸ R.I. Const. Article IX §15 The governor shall prepare and present to the general assembly an annual, consolidated operating and capital improvement state budget.

Defendant Paul Suttell, without the authority of the Governor under Article IX §5⁹ of the R.I. Constitution.

81. Defendant J. Joseph Baxter, Jr. is a *principal officer* of the State of Rhode Island as State Court Administrator, who was unconstitutionally appointed by Defendant Paul Suttell in violation of the power of the Governor to make such appointment pursuant to Article IX, §5 of the Rhode Island State Constitution.

82. Defendant Deborah Walsh is a *principal officer* of the State of Rhode Island, as State Director of Court Finance and Assistant Administrator for Finance and Budget, who was unconstitutionally appointed by Defendant Paul Suttell in violation of the power of the Governor to make such appointment pursuant to Article IX, §5 of the Rhode Island State Constitution.

83. Defendant Suttell, in violation of the *Separate and Distinct* Clause contained in Article V¹⁰ and the Rhode Island Constitutional *Supremacy* Clause contained in Article VI §1, through the unconstitutional provisions of Rhode Island General Laws § 8-15-4¹¹, appointed J. Joseph Baxter, Jr., the Director of Court Administration, in conflict with the appointive powers of the Governor contained in Section 5 of Article IX because the position of the

⁹R.I. Const. § 5. Powers of appointment. The governor shall, by and with the advice and consent of the senate, appoint all officers of the state whose appointment is not herein otherwise provided for and all members of any board, commission or other state or quasi-public entity which exercises executive power under the laws of this state; but the general assembly may by law vest the appointment of such inferior officers, as they deem proper, in the governor, or within their respective departments in the other general officers, the judiciary or in the heads of departments.

¹⁰R.I. Const. Article V of the Distribution of powers. The powers of the government shall be distributed into three separate and distinct departments: the legislative, executive and judicial.

¹¹R.I.G.L. §8-15-4. Appointment of court administrator and assistants. (a) The chief justice shall appoint a court administrator and such assistants as he or she deems necessary to aid in the administration of the judicial system. The administrator and his or her assistants shall serve at the pleasure of the chief justice. (b) The court administrator shall, under the direction of the chief justice, prepare an annual budget for the judicial system and submit the budget to the department of administration and perform all other necessary functions relating to the administration of the courts thereof.

Director of Court Administration is a principal officer of the State of Rhode Island, which may only be appointed by an elected chief executive officer of the State, the Governor.

84. Defendant Suttell, in violation of the *Separate and Distinct* Clause contained in Article V¹², the Rhode Island Constitutional Supremacy Clause contained in Article VI §1, through provisions of Rhode Island General Laws §8-4-2 and §8-4-3, appointed Defendant Debra Saunders as the Clerk of the Supreme Court, in constitutional conflict with the appointive powers of the Governor contained in Article IX §5 because the Clerk of the Supreme Court is a principal officer of the State and whose position has in the past been appointed by the Governor.

85. Defendant Suttell, in violation of the *Separate and Distinct* Clause contained in Article V and the Rhode Island Constitutional *Supremacy* Clause contained in Article VI §1, through the unconstitutional provisions of R.I.G.L. § 8-15-2.1¹³, unconstitutionally appointed the Chief Judge of the Rhode Island Traffic Tribunal, in conflict with the appointive powers clause of the Governor contained in Article IX §5 because the position of Chief Judge of the Rhode Island Traffic Tribunal is a principal state officer of the State of Rhode Island, which only may be appointed by an elected chief executive official of the State, the Governor.

86. Defendant Suttell, in violation of the *Separate and Distinct Clause* contained in Article V regarding the separate functions of the Judiciary contained in Article X and of the Governor set forth in Article IX, and in the Rhode Island Constitutional Supremacy Clause contained in Article VI §1, through the unconstitutional provisions of Rhode Island General Laws 8-15-

¹² ARTICLE V OF THE DISTRIBUTION OF POWERS The powers of the government shall be distributed into three separate and distinct departments: the legislative, executive and judicial.

¹³ R.I.G.L. § 8-8.2-1. The chief magistrate of the traffic tribunal shall be appointed by the chief justice of the supreme court, with the advice and consent of the senate, for a period of ten (10) years and until a successor is appointed and qualified.

9¹⁴ and Rhode Island General Laws §8-15-5, appointed “an advisory board of the four (4) associate justices to consult with him on administrative matters and to vote for the appointment of the Defendant, Director of Finance Walsh; in further conflict with the separate and distinct judicial powers of the members of the Supreme Court contained in Article X to only adjudicate and in further conflict with the appointment powers of the Governor for principal officers contained in § 5 of Article IX.

87. The Defendants, jointly, independently and severally are exercising unconstitutional administrative and legislative powers which interfere with the Voter, the Liberty and Property interests of the Plaintiff and the voters of Rhode Island as protected by the Fourteenth and Fifth Amendment Due Process Clauses and by Article I, 2 of the Rhode Island State Constitution and as protected by the provisions of 42 U.S.C. §1983.
88. In violation of Articles V, Article VI §1¹⁵ and Article VI §2, Article IX, §1 , §2, §5, of the Rhode Island State Constitution, the Defendants are jointly exercising constitutionally prohibited Executive Powers of appointment and budget through their wrongful exercise of the provisions of Rhode Island General Laws §8-15-2, § 8-15-2.1,8-15-4, 8-15-15, Rhode Island General Laws 35-6-1(6), Rhode Island General Laws § 36-4-16.4, R.I.G.L §35-3-5, Rhode Island General Laws §35-3-1 (c) and Rhode Island General Laws §35-3-1 (c) to cause harm to the Plaintiff’s liberty interests and personal property and to destroy the will of

¹⁴ R.I.G.L. §8-15-9. ***The director of the finance section shall be appointed by the chief justice of the supreme court, and approved by a majority vote of the advisory board. The director of the finance section shall monitor the handling, collection, receipt, and disbursement of all court imposed or court related fees, fines, costs, assessments, charges, and other monetary payments, deposits, and receipts,***.

¹⁵ R.I. Const. §1. Constitution supreme law of the state. This Constitution shall be the supreme law of the state, and any law inconsistent therewith shall be void. The general assembly shall pass all laws necessary to carry this Constitution into effect.

the voters, such as expressed by the Plaintiff, and as expressed in the voters' passage of the Separation of Powers Constitutional Amendments of November 4, 2004.

89. The *ultra vires* actions of the Defendants against the Plaintiff and the concentration of legislative regulatory, executive, appointive, administrative, and budgetary powers in the life time adjudicatory position of the Defendant Suttell are a clear and present danger to the exercise of the democratic freedoms of Plaintiff which are otherwise protected by United States and Rhode Island Constitution from abuse by the exercise of royalty powers by the judiciary; and have caused and will cause irreparable harm to the Plaintiff and the members of the Plaintiff class to which the Plaintiffs as a class have no other adequate remedy at law.
90. The Defendant, Chief Justice Suttell has an inherent constitutional conflict of interest in attempting to adjudicate unconstitutional administrative powers delegated to himself.
91. The Plaintiff is without an adequate remedy at law to seek a fair adjudication of his claims under the Due Process Clause of the United States under than this Honorable United States Court.

WHEREFORE, Plaintiff demands that this Honorable Court declare the following statutes unconstitutional under the Rhode Island Constitution and enjoin the Defendants from enforcing such statutes.

- i. Declare that the provisions of Rhode Island General Laws §8-15-2¹⁶ and Rhode Island General Laws §8-15-4 (b) § 8-15-2.1,8-15-4, 8-15-15, Rhode Island General Laws §35-6-1(6), Rhode Island General Laws § 36-4-16.4, R.I.G.L §35-3-5, Rhode Island General Laws §35-3-1 (c) and Rhode Island General Laws §35-3-1 (c) granting executive

¹⁶ R.I.G.L § 8-15-2. Executive head of system. The chief justice of the Supreme Court shall be the executive head of the judicial system.

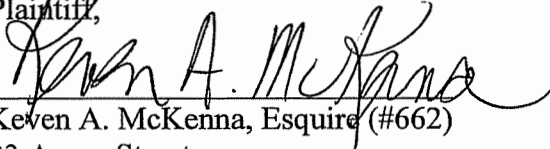
powers to the Defendant Chief Justice are in conflict with Article IX §1¹⁷, §2 §12, §15 and §16 of the R.I. State Constitution and are void; and otherwise enjoin Defendants Suttell, Baxter and Walsh from exercising such unconstitutional powers;

- ii. Declare that the provisions of Rhode Island General Laws R.I.G.L. §8-15-4 authorizing the Defendant Chief Justice of the Rhode Island Supreme Court to appoint the State Court Administrator to be in conflict with Article IX §5 authorizing the Governor to appoint principal state officers and to enjoin Defendant Suttell from making any further appointments and enjoin Defendant Baxter from utilizing such position until he is appointed the Governor and approved by the State Senate.
- iii. Declare that Rhode Island General Laws §8-15-9 (Appointing the Director of Finance) authorizing the Chief Justice and members of the R.I. Supreme Court to appoint a the Director of Finance for the Judiciary to be in conflict with Article IX §5 authorizing Governor to make such appointment and thus void ;and otherwise enjoin the Defendant Chief Justice from making such appointment again of a principal officer and enjoin such principal office, Defendant Walsh, from holding such position until appointed by the Governor and approved by the Rhode Island Senate.
- iv. Declare that Rhode Island General Laws §8-4-2 and R.I.G.L. §8-4—3 (Appointment of the Clerk of Supreme Court) authorizing the Defendant Suttell to appointment the Clerk, are in conflict with Article IX §5 authorizing the Governor to make such appointment and thus, are void; and otherwise enjoin the Defendant Chief Justice from making any further appointment of such principal officer and enjoin Defendant Saunders from holding such position until appointed by the Governor and approved by the Rhode Island Senate;

¹⁷ R.I. Const. Article IX §1. Power vested in governor. The chief executive power of this state shall be vested in a governor, who, together with a lieutenant governor, shall be elected by the people.

- v. Declare that Rhode Island General Laws § 8-15-3.1 (Appointment of Chief Judge of Traffic Tribunal) is in conflict with Article IX §5 authorizing the Governor to make such appointment; and thus is void; and enjoin the Defendant Chief Justice from making any further appointments under such statute;
- vi. Declare that Rhode Island General Laws §35-3-5 (Sole Budget Presentation) is conflict with Article IX § 15 and is void, and enjoin the Defendant Chief Justice of the Rhode Island Supreme Court and his appointed Defendant State Court Administrator and Defendant State Court Finance Administrator from enforcing such unconstitutional statute;
- vii. Declare that Rhode Island General Laws §8-15-5 (Appointing Justices for Administrative Advice) is in conflict with Article IX §5 and Article X and is void and enjoin the Defendant Chief Justice from enforcing such statute;
- viii. Declare that the Plaintiff is representative member of class whose vote on separation of powers in 2004 as been voided by the unconstitutional actions of the Defendants;
- ix. Provide such other relief which is just and equitable.

Plaintiff,



Keven A. McKenna, Esquire (#662)
23 Acorn Street
Providence, Rhode Island 02903
Tel.: (401) 273-8200
Fax: (401) 521-5820
keven@kevenmckennapc.com

PLAINTIFF DEMAND TRIAL BY JURY

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 Keven A. McKenna

(b) County of Residence of First Listed Plaintiff Providence
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Keven A. McKenna, Esquire
 23 Acorn Street

DEFENDANTS
 Marc DeSisto, Debra Saunders, J. Joseph Baxter, Deborah Walsh and Paul Suttell

County of Residence of First Listed Defendant Providence
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input checked="" type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habens Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify)

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 1983

Brief description of cause:
Quash Illegal Subpoena and Declare Unconstitutional Statutes

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$ _____

CHECK YES only if demanded in complaint:
 JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 12-5-11 SIGNATURE OF ATTORNEY OF RECORD Keven A. McKenna

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____