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No. 4-19-0611

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

JOHN TILLMAN,	)	Appeal from the Seventh Judicial Circuit,
	)	Sangamon County, Illinois
Plaintiff-Appellant,	)	
	)	Circuit Court No. 2019 CH 235
vs.	)	
	)	Trial Judge: Honorable Jack D. Davis, II
J.B. PRITZKER, Governor of the State	)	
of Illinois, in his official capacity;	)	Date of Judgment: August 29, 2019
MICHAEL W. FRERICHS, Treasurer of	)	
the State of Illinois, in his official	)	
capacity; and SUSANA A. MENDOZA,	)	
Comptroller of the State of Illinois, in her	)	
official capacity,	)	
	)	
Defendants-Appellees.	)	

BRIEF OF PLAINTIFF-APPELLANT

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Introductory Statement

This appeal involves a petition for leave to file a taxpayer lawsuit under 735 ILCS 5/11-303. Plaintiff-Appellant John Tillman ("Tillman") seeks to enjoin Defendants-Appellees (collectively referred to as the "State") from using taxpayer funds to repay unconstitutional long-term bonds authorized by acts passed in 2003 (the "2003 Act")[1] and 2017 (the "2017 Act").[2] The trial court denied Tillman's petition and denied him leave to file the proposed Complaint attached to it ("Complaint"). A 43-A 46.

The Complaint asserts that the challenged bonds violate Article IX, Section 9(b) of the Illinois constitution. This provision authorizes long-term borrowing by the State only "for specific purposes" and only if the legislature "shall set forth" those "specific purposes" in the authorizing law. As Mr. Tillman explained in his Complaint and his briefing, the text, structure, and history of Section 9(b)—as well as Illinois Supreme Court precedent—show that Section 9(b) imposes two practical limitations on long-term borrowing by the State of significance here. First, long-term borrowing may not be used to cover deficits in the State's general operating budget—a *general* purpose allowed only on a short-term basis in Sections 9(c) and (d), and therefore excluded from the "specific purposes" contemplated in Section 9(b). Second, the legislature must adequately "set forth" the Act's specific purposes, and thus may not delegate to the executive branch the decision of how to spend the bond proceeds.

The 2003 and 2017 Acts are unconstitutional because they authorized long-term borrowing for items that—even by the State's own classification—were (and are) general

[1] An Act Concerning Bonds, Pub. Act 93-2 (Apr. 7, 2003) (codified in relevant part at 30 ILCS 330/7.2).
[2] An Act Concerning Finance, Pub. Act 100-23, § 75-10 (July 6, 2017) (codified in relevant part at 30 ILCS 330/7.6).

operating expenses, and not specific purposes. Both Acts also failed to adequately *set forth* the specific purposes to which they were directed. The 2017 Act, for example, authorized $6 billion of debt to pay an unspecified portion of $15 billion of back-logged bills, thus improperly delegating to the Comptroller the decision of how to actually spend the bond proceeds.

At the petition stage, the trial court was tasked with determining *solely* whether these arguments are “frivolous or malicious,” or “otherwise unjustified.” *Strat-O-Seal Mfg. Co. v. Scott*, 27 Ill. 2d 563, 566 (1963). Tillman briefed his arguments accordingly. Yet the court ignored this limited standard of review and rejected Tillman’s claims *on the merits*. Because the briefing and argument had been limited, the court’s cursory treatment did not meaningfully address Tillman’s arguments regarding the constitutional text, history, or precedent. It also relied on a material misstatement of the purpose of the 2017 Act, and incorrectly held that Tillman’s claim was a “non-justiciable political question,” even though the Illinois Supreme Court has already adjudicated just such a claim. The order denying Tillman’s petition should be reversed, and the case remanded to allow Tillman to file his lawsuit on behalf of Illinois taxpayers.

Issues Presented

1. Did the trial court err by ruling on the merits of Tillman’s taxpayer lawsuit at the preliminary petition stage, when it should have determined only whether his allegations are frivolous or malicious?

2. Is Tillman’s claim that the 2003 and 2017 Acts violated the “specific purposes” requirements frivolous or malicious?

3. Are the "specific purposes" requirements set forth in Article IX, Section 9(b) of the Illinois Constitution judicially enforceable?

Jurisdiction

This Court has jurisdiction pursuant to Illinois Supreme Court Rules 301 and 303 because the trial court entered a final judgment on August 29, 2019, when it denied Tillman's petition to file a taxpayer lawsuit under 735 ILCS 5/11-303. A 43-A 46. The notice of appeal was timely filed on September 3, 2019. A 47-A 49.

Constitutional Provisions and Statutes Involved

- **Article IX, Section 9 of the Illinois Constitution:**

State Debt

(a) No State debt shall be incurred except as provided in this Section. For the purpose of this Section, "State debt" means bonds or other evidences of indebtedness which are secured by the full faith and credit of the State or are required to be repaid, directly or indirectly, from tax revenue and which are incurred by the State, any department, authority, public corporation or quasi-public corporation of the State, any State college or university, or any other public agency created by the State, but not by units of local government, or school districts.

(b) State debt for specific purposes may be incurred or the payment of State or other debt guaranteed in such amounts as may be provided either in a law passed by the vote of three-fifths of the members elected to each house of the General Assembly or in a law approved by a majority of the electors voting on the question at the next general election following passage. Any law providing for the incurring or guaranteeing of debt shall set forth the specific purposes and the manner of repayment.

(c) State debt in anticipation of revenues to be collected in a fiscal year may be incurred by law in an amount not exceeding 5% of the State's appropriations for that fiscal year. Such debt shall be retired from the revenues realized in that fiscal year.

(d) State debt may be incurred by law in an amount not exceeding 15% of the State's appropriations for that fiscal year to meet deficits caused by emergencies or failures of revenue. Such law shall provide that the debt be repaid within one year of the date it is incurred.

(e) State debt may be incurred by law to refund outstanding State debt if the refunding debt matures within the term of the outstanding State debt.

(f) The State, departments, authorities, public corporations and quasi-public corporations of the State, the State colleges and universities and other public agencies created by the State, may issue bonds or other evidences of indebtedness which are not secured by the full faith and credit or tax revenue of the State nor required to be repaid, directly or indirectly, from tax revenue, for such purposes and in such amounts as may be authorized by law.

- **735 ILCS 5/11-303**

Action by private citizen. Such action, when prosecuted by a citizen and taxpayer of the State, shall be commenced by petition for leave to file an action to restrain and enjoin the defendant or defendants from disbursing the public funds of the State. Such petition shall have attached thereto a copy of the complaint, leave to file which is petitioned for. Upon the filing of such petition, it shall be presented to the court, and the court shall enter an order stating the date of the presentation of the petition and fixing a day, which shall not be less than 5 nor more than 10 days thereafter, when such petition for leave to file the action will be heard. . . .

Upon such hearing, if the court is satisfied that there is reasonable ground for the filing of such action, the court may grant the petition and order the complaint to be filed and process to issue. The court may, in its discretion, grant leave to file the complaint as to certain items, parts or portions of any appropriation Act sought to be enjoined and mentioned in such complaint, and may deny leave as to the rest.

- **30 ILCS 330/7.2**

State pension funding.

(a) The amount of $10,000,000,000 is authorized to be used for the purpose of making contributions to the designated retirement systems. For the purposes of this Section, “designated retirement systems” means the State Employees’ Retirement System of Illinois; the Teachers’ Retirement System of the State of Illinois; the State Universities Retirement System; the Judges Retirement System of Illinois; and the General Assembly Retirement System.

. . . .

- **30 ILCS 330/7.6**

Income Tax Proceed Bonds.

. . . .

(b) Income Tax Proceed Bonds in the amount of $6,000,000,000 are hereby authorized to be used for the purpose of paying vouchers incurred by the State prior to July 1, 2017. . . .

Statement of Facts

I. The origin of the "specific purposes" requirements

The Illinois Supreme Court has directed courts interpreting the Constitution to consider the "the history and condition of the times, the objective to be attained, and the evil to be remedied," *Gregg v. Rauner*, 2018 IL 122802, ¶ 23, as well as the drafters' "real object and intent," *People ex rel. Chi. Bar Ass'n v. State Bd. of Elections*, 136 Ill. 2d 513, 526-27 (1990) (citation omitted). Therefore, we recite below the history of the debt provisions of the 1970 constitution.

A. The need to revise the debt provisions of the 1870 Illinois constitution

The "specific purposes" requirements of Article IX, Section 9(b) originate in the 1870 constitution, which (absent a popular referendum or certain rarely invoked exceptions) strictly capped General Obligation borrowing at $250,000. Ill. Const. of 1870, art. IV, § 18. As the delegates to the 1970 Constitutional Convention (the "Convention") realized, legislators often evaded this cap by borrowing through "revenue bonds, building authorities, and similar devices." This "back-door debt" was ultimately payable with tax revenue and was the functional equivalent of General Obligation debt. 7 Record of Proceedings, Sixth Illinois Constitutional Convention ("Proceedings"), at 2176 (Report of the Committee on Revenue and Finance); *see also* A 17 ¶ 22.

For example, in 1961 the legislature created the "Illinois Building Authority"—a quasi-governmental body formed for the sole purpose of constructing public buildings approved by the General Assembly and then "leasing" them back to the state. *Berger v. Howlett*, 25 Ill. 2d 128, 131 (1962). Because the Building Authority was not "the State" and was not bound by the constitution's debt limitations, it could incur unlimited debt, even while pledging the State's lease payments as the source of repayment. *Id.*

By 1969, quasi-governmental agencies like the Building Authority had incurred over $1 billion of debt (about $7 billion in 2019 dollars)—more than 3 times the debt incurred directly. 7 Proceedings at 2180. In the face of these figures and the increasing cost of borrowing, the Convention's Committee on Revenue and Finance (the "Revenue Committee") concluded that the 1870 debt limitations "have not accomplished their intended purpose" and needed to be changed. *Id.* at 2176. In particular, the Revenue Committee aimed to implement enforceable debt limitations to restrict legislators who might otherwise place short-term political gains ahead of the State's long-term financial welfare. *See id.* at 2182 (noting the need for limits on "legislators pressed between demands for higher spending and lower taxes" who "face a strong temptation to satisfy both demands by postponing taxation through borrowing").

B. The Revenue Committee's proposed revisions to the State debt provisions (which became Article IX, Section 9)

To address the unfettered borrowing allowed by the circumventions of the 1870 constitution, the Revenue Committee proposed what led to Article IX, Section 9 of the 1970 Constitution. 7 Proceedings at 2174. The Revenue Committee's stated aim for this new section was to "*limit* state borrowing to reasonable amounts and for reasonable purposes." *Id.* at 2182 (emphasis added). In contrast to the back-door borrowing that proliferated under the prior constitution, it also aimed to "insure that decisions to borrow are *publicly* arrived at by the proper authorities" and that any proposed debt was "subject to closer public scrutiny." *Id.* (emphasis added).

To accomplish these goals, the Revenue Committee defined State debt to include *all* borrowing to be repaid by tax revenue, including debt incurred by "quasi-public corporations" like the Building Authority. *Id.* at 2174. It then provided that "State debt" could be "incurred *only* as provided in this section," and outlined only three specific ways in which the state could incur debt. *Id.* (emphasis added).

The first two ways were types of *short-term* borrowing, which could be authorized by majority vote. First, the proposal authorized limited cash-flow borrowing whenever tax revenues—which are not all received at the start of the fiscal year—lag behind expenditure needs. *Id.* at 2175. Any such debt had to be repaid in the same fiscal year. *Id.* Second, "in case of [an] emergency or unforeseeable failure to collect anticipated revenue," the proposal permitted short-term borrowing to cover the unforeseen deficit. *Id.* Such debt had to be repaid within one year. *Id.* Both kinds of short-term debt could be used to pay ordinary expenses caused by cash deficits, and could thus be put into the general revenue fund to be used wherever needed, for *any* purpose.[3]

For long-term borrowing, the Revenue Committee proposed to permit debt only "for specific purposes . . . as may be provided by the General Assembly." *Id.* at 2174. Unlike short-term debt, long-term debt could not be put into the general fund for general use, but was limited to the specific purposes identified by the legislature. Long-term debt also required a supermajority vote or approval by referendum. *Id.*

C. Debates at the 1970 Convention

The proposed short-term borrowing provisions engendered significant debate at the Convention. Multiple delegates expressed concern that deficit financing—*even on a year-to-year basis* as contemplated in the short-term provisions—would lead to irresponsible borrowing and "snowballing" debt:

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[3] *See, e.g.,* Governor's Office of Mgmt. & Budget, *Official Statement Addendum Dated July 20, 2010: $1,300,000,000 State of Ill. Gen. Obligation Certificates of July, 2010* (July 20, 2010), at 2 (noting that proceeds of borrowing under the short-term debt provisions were deposited into the General Revenue Fund).

> MR. FRIEDRICH: Now anyone who knows anything about it knows what is going to happen in [an] election year or the year before a governor gets down to the last part of his term. He's going to see a bunch of pet projects that he'd like to have about $50,000,000 or $100,000,000 borrowed . . . . Well, obviously the next administration has no choice except to borrow another $100,000,000 to perpetuate it, plus . . . interest . . . and the first thing you know you're living from hand to mouth . . . . You have a deficit this year, you borrow for next year. Next year you've got a deficit, you borrow for the next year and so on. And my prediction is it comes a little bigger each year because it's like a snowball.

3 Proceedings 2105. To limit the legislature's ability to engage in deficit financing, the short-term borrowing provisions were authorized only with percentage caps (5% and 15% of the total annual appropriations, respectively). These caps were meant to ensure that deficit financing would not "become [the State's] continuous mode" of operation. 3 Proceedings 3872.[4]

The delegates did not impose similar caps on long-term debt, nor did they express concern that such debt for "specific purposes" would result in continuous deficit financing. As they understood it, long-term debt was only for "projects" or unique "improvements," *see* 3 Proceedings 1932-33; *id.* at 2109—items "for which it is not appropriate to pay as you go" and that "need to be financed on a debt basis." 5 Proceedings 3855.

The delegates also discussed the purpose behind allowing long-term debt to be

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[4] *See also* 3 Proceedings 2107 ("MR. THOMPSON: I'm very disturbed that the state will, in a very few years, fall into the position of being one year behind on its financing and issuing tax anticipation warrants one year behind . . . ."); *id.* ("MR. LADD: Delegate Thompson is absolutely correct that eventually the state government will increase its debt by the total current budget. In other words, they're going to eventually be one year behind. It's an open invitation to spending, and when we don't want to raise debt or we don't want to raise taxes, we'll just go into next year's revenues . . . ."); 5 Proceedings 3871 ("MR. THOMPSON: I just do not want this 'emergencies or failures of revenues' to be used as an excuse to put this state in the position of continuous deficit financing."); *id.* at 3872 ("MR. CONNOR: I concur with Delegate Thompson's intent not to let deficit financing become a continuous mode . . . .").

authorized by referendum or supermajority vote. The referendum option was necessary for “huge debt issues which have statewide application,” because the legislature would not want to take on large debt without broad support. 3 Proceedings at 1927. The legislative option was also necessary, however, because regional projects might not obtain state-wide support to pass a referendum. *Id.* In either case, acts authorizing debt for a “specific purpose” would need to state that purpose with sufficient detail to allow legislators or voters to know what they were voting to fund. 7 Proceedings at 2182. As one delegate explained, “[w]e have in mind when we use the term, ‘specific purposes,’ that the improvement to be financed be described in such a way as it is identifiable and not just a general term.” 3 Proceedings 1932.

The delegates approved in substance the Revenue Committee’s proposal for short-term general-purpose borrowing and long-term specific-purpose borrowing, and adopted it as Article IX, Section 9 of the new constitution. The short-term borrowing provisions were enacted as Sections 9(c) and 9(d), and the long-term borrowing provision was enacted as Section 9(b). The delegates also added an additional provision, Section 9(e), to prohibit refinancing of State debt for longer than the original term of indebtedness. This addition closed another potential loophole that would have allowed borrowing beyond the carefully drawn confines of Article IX, Section 9.

II. The State’s unconstitutional borrowing

Tillman asserts two separate instances of unconstitutional long-term borrowing: (A) the 2003 Act; and (B) the 2017 Act. We describe each below.

A. The 2003 Act

In 2003, the State faced significant financial challenges arising from the 2001 recession, including a steep decline in tax revenues. A 26 ¶ 52. During fiscal year 2002, the State suffered a large operating deficit in its general fund. *Id.* In its fiscal year 2003 budget (adopted in 2002), the State overestimated its revenues, leading to a failure of revenue of nearly $4 billion, or 10% of the revenues estimated. *Id.* ¶ 53.

In 2003, wanting to address this massive budget deficit, Governor Rod Blagojevich proposed an unprecedented solution: that the State issue $10 billion in long-term (30-year) bonds. *Id.* ¶ 55. The legislation nominally was "for the purpose of making contributions to the designated [State] retirement systems." 30 ILCS 330/7.2. However, Governor Blagojevich did not hide that he viewed the issuance of these bonds as simply "a financing alternative[] to increase revenues during fiscal year 2003" and thereafter.[5] Legislators similarly saw the debt proposal as a means to plug a "$5 billion hole in [the state's] budget" without raising taxes or cutting spending. 93rd Ill. Gen. Assem., House Proceedings, Mar. 20, 2003, at 209 (statements of Representative Lang); *see also id.* at 212 (statements of Representative Hoffman) (urging "yes" votes because "[i]f we don't do this, we essentially have a $2 billion shortfall . . . and we'd have to look at raising taxes, income and sales taxes. Who wants to do that?"); 93rd Ill. Gen. Assem., Senate Proceedings, Apr. 4, 2003, at 58-59 (statements of Senator E. Jones) ("House Bill 2660 . . . is a proposal by the Governor to deal with the serious budget deficit we have in the State of Illinois. . . . It will allow us to . . . deal with forty percent of the five-billion-dollar budget deficit we face . . . .").[6]

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[5] A28 ¶ 60 (quoting Governor's Office of Mgmt. & Budget, *Official Statement: Gen. Obligation Bonds, Pension Funding Series of June 2003* (June 5, 2003) ("June 2003 Official Statement"), at 19-20).

[6] *See also* 93rd Ill. Gen. Assem., House Proceedings, Mar. 20, 2003, at 209 (statements of Representative Lang) ("[A]dd to [the fiscal crisis] a $5 billion hole in our budget and I don't know how any responsible [l]egislator can be opposed to this measure. . . . Unless some of you are prepared to step forward with another way to fill in this gap, a

The legislation authorizing $10 billion in long-term borrowing passed both houses of the General Assembly by the requisite supermajority vote and was signed by the Governor. *See* Pub. Act 93-2 (Apr. 7, 2003) (codified in relevant part at 30 ILCS 330/7.2).

B. The 2017 Act

From 2014 through 2017, the State again faced significant fiscal challenges, causing it to fall behind in its regular payments to state vendors. A 33-A 34 ¶¶ 72-75. By mid-2017, the backlog of unpaid bills had reached a staggering $15.245 billion. A 35 ¶ 79. Rather than paying these bills—which were general operating expenses—the State issued "vouchers" to be paid in the future. A 34 ¶¶ 76-77

In response, the legislature passed Public Act 100-23, authorizing an additional $6 billion in long-term (10-year) bond debt for the stated purpose of "paying vouchers incurred by the State prior to July 1, 2017." Pub. Act 100-23, § 75-10 (July 6, 2017) (codified in relevant part at 30 ILCS 330/7.6). These vouchers ran the gamut—everything from social services programs to higher education to agency operations. A 34 ¶ 75.

The Act did not specify *which* portion of the $15.245 billion in outstanding vouchers the $6 billion in bond proceeds would pay for. Exercising her sole discretion, the Illinois Comptroller—an executive branch official—opted to use the funds primarily to pay down medical bills and unpaid state health-insurance claims. A 37 ¶ 86 & n.52.[7]

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responsible way, then I suggest that you do the right thing and vote for a [b]ill that will fill in the gap. There's gonna be other measures we're going to have to fill in gaps. We're gonna be talking about a budget where there'll be cuts we won't like. . . . . [N]one of them will be as much of a no-brainer as this one.").

[7] *See also* Office of the Comptroller, *November 2017 $6 Billion Bond Authorization Proceeds*, https://illinoiscomptroller.gov/financial-data/fiscal-

III. Procedural history

On July 1, 2019, Tillman filed a petition for leave to file a taxpayer complaint challenging the constitutionality of the 2003 and 2017 Acts. The attached Complaint asserted that Article IX, Section 9 of the 1970 constitution forbids long-term general-purpose deficit financing, such as borrowing to cover a hole in the State's general operating budget. A 19 ¶ 31. Because the 2003 and 2017 Acts were directed at general purposes, the Complaint claimed that the acts were unconstitutional and sought to enjoin state officials from making future payments on the challenged bonds. A 39-A 41 ¶¶ 92-107.

In August 2019, the circuit court held a hearing on the petition. At this hearing, the State conceded several important points. First, it conceded that, *at a minimum*, the specific-purposes requirements prohibit delegating discretion to executive branch officials to determine how bond proceeds will be spent:

> The cases that reference—and there's a lot of cases that refer to this specific objects and specific purpose and they always, always, always, always talk about whether the legislature is essentially granting authority to another body to make those determinations, to offer an opinion as to what the money should be spent on or discretion as to what the money should be spent on. . . . In *Peabody* [*v. Russel*, 302 Ill. 111 (1922)] I believe the case was that they had an appropriation that was granted to three different departments of state. . . . And it says the agents of those departments get to decide . . . how these moneys should be spent. So *Peabody* said no, no, no, *that is not a specific object and specific purpose, you are delegating legislative authority, that's unconstitutional*.

C 396-97 (emphasis added).

Second, the State conceded that the specific-purposes requirement prohibits the State from borrowing money to facilitate general deficit spending:

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information/archive/november-2017-6-billion-bond-authorization-proceeds/ (last visited Dec. 2, 2019); A37 n.52 (citing and thus incorporating by reference this page).

> We disagree that the State could just say, I want more money, I'm going to issue these bonds, dump it into the general revenue fund, we're going to figure out what to do with it later. No, that's not what we're saying is allowed. That would be a purpose. *It wouldn't be a specific purpose* because it doesn't say where to go.

C 401 (emphasis added).

Nevertheless, the circuit court denied the petition in a four-page order. A 43-A 46. The court held that its evaluation of the petition required it to "review . . . the language of the 2003 and 2017 laws to find whether specific purpose(s) for the appropriations are stated." A 45. The court then described, without elaboration, the results of that review:

> In 2003, the legislature's specific purpose for issuing bonds was to contribute to funding the State's five pension systems. In 2017, the stated specific purpose was to make good on health insurance vouchers the State promised to pay to vendors that accepted State issued insurance for services rendered prior to July 1, 2017. This court finds the legislature stated with reasonable detail the specific purposes for the issuance of the bonds and assumption of the debt as well as the objectives to be accomplished by enactment of the legislation.

Id. The circuit court then concluded that "reasonable grounds do not exist for filing the proposed Complaint." A 46.

In a separate paragraph, the court also held that the proposed complaint raised "a non-justiciable political question" that would inappropriately ask the court to "substitute its judgment for the Illinois legislature some two decades after it occurred." A 45-A 46.

Standard of Review

The Appellate Court's review of all issues appealed is *de novo*. <u>First</u>, the denial of a petition under 735 ILCS 5/11-303 is typically reviewed for abuse of discretion. *Flynn v. Stevenson*, 4 Ill. App. 3d 458, 459-60 (2d Dist. 1972). If the trial court applied the wrong standard, however—as Tillman argues here—review is *de novo*. *See Shulte v. Flowers*, 2013 IL App (4th) 120132, ¶ 23. ("a trial court can abuse its discretion . . . by applying the wrong legal standard"); *People ex rel. Graf v. Village of Lake Bluff*, 206 Ill. 2d 541, 549 (2003) (review of whether the trial court applied the correct standard is *de novo*).

Second, the trial court's ruling on the merits was based on its holding that the 2003 and 2017 bond issuances are constitutional. That holding, too, is reviewed *de novo*. *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 200 (2009) ("We review a statute's constitutionality *de novo*.").

Third, the trial court's conclusion that enforcing the specific-purposes requirement presents a non-justiciable political question is also reviewed *de novo*. *Ferguson v. Patton*, 2013 IL 112488, ¶¶ 22-23.

Argument

I. The trial court acted prematurely by resolving Tillman's claims on the merits at the petition stage.

The trial court erred by resolving Tillman's claims on the merits after only a cursory review of a pre-complaint record. This action oversteps the proper role of the trial court at the petition stage, which is merely a "summary proceeding" to determine whether a proposed complaint presents "reasonable grounds" for filing suit. *Hill v. La Salle Cty.*, 326 Ill. 508, 515 (1927); 735 ILCS 5/11-303. It also improperly denies the taxpayer his right to a day in court. *Strat-O-Seal*, 27 Ill. 2d at 566.

The petition-stage review of a taxpayer complaint is extremely limited in time and scope. Section 11-303 requires a hearing on any petition within only 5 to 10 days of presentment. 735 ILCS 5/11-303. This limited time frame cannot accommodate anything other than a cursory review, especially in light of the complex constitutional questions likely to arise in a taxpayer suit.[8] It certainly does not provide adequate time for a full-blown merits review.

Courts agree. The Illinois Supreme Court has emphasized that at the preliminary petition stage, a court asks only whether the petition "is frivolous or malicious," or "is otherwise unjustified." *Strat-O-Seal*, 27 Ill. 2d at 566. This low standard is meant only to prevent the "indiscriminate filing" of suits that plainly lack merit, and does not address "whether the allegations of the proposed complaint can, on hearing, be sustained." *Id.* at 565-66. Indeed, the standard can be met even if the proposed complaint does not "demonstrate a likelihood of success on the merits." *Webb v. Rock*, 80 Ill. App. 3d 891, 894 (4th Dist. 1980).

The decision in *Webb* underscores just how cursory the review is. In that case, on the same day the trial court evaluated *both* whether a taxpayer complaint was reasonable under Section 11-303 *and* whether to grant a TRO enjoining the allegedly unconstitutional expenditures. *Id.* at 894. The court held that the complaint was reasonable and should proceed, but also *denied* the requested TRO because "the complaint did not demonstrate a likelihood of success on the merits." *Id*. This court affirmed. *Id.* at 899.

Webb confirms that at the preliminary petition stage, even if the court believes that a proposed complaint is unlikely to succeed, it cannot deny leave to file. Further proceedings may show that "plaintiffs may be able to persuade that the complaint is sufficient" to prevail. *Id.* Jumping to a conclusion on the merits without fulsome argument thus denies taxpayers their right to a meaningful day in court. *See Strat-O-Seal*,

[8] By acceding to the State's request for a slightly longer briefing schedule, C 55, Tillman obviously did not consent to a full-blown merits review at the petition stage.

27 Ill. 2d at 566 (it is "important that [taxpayer] suits which do not appear unjustified are not barred or foreclosed"); *Hill*, 326 Ill. at 516 (the petition procedure should "not be so construed as to deprive the tax-payer of his right to present his cause").

The trial court ignored the preliminary "reasonableness" analysis and concluded (based on a material misstatement of the purpose stated in the 2017 Act) that Tillman's claims fail on the merits. Its failure to apply the mandated reasonableness review is apparent from its written opinion, which explicitly addressed whether "the proposed claims fail as a matter of law," A 44, and concluded that they did. At *no point* did the court discuss whether Tillman's claims are frivolous or malicious. The court thus applied the wrong legal standard. Its order should be reversed for this reason alone.[9]

II. Tillman's claims that the 2003 and 2017 Acts are unconstitutional are not frivolous or malicious.

This Court could remand to the trial court to apply the correct legal standard. But in addition to being premature, the trial court's conclusion on the merits was plainly wrong. Because "the undisputed facts and the governing legal principles permit only one conclusion in this case," a remand for another review of the Petition would serve no purpose. *People v. Ralph L. (In re Haley D.)*, 2010 Ill. 110886, ¶ 68. The Court should thus apply the correct legal standard itself and allow Tillman's Complaint to be filed. *See id.*

[9] The court attempted to justify its premature merits review by referring to Tillman's reply, which the Court stated had argued that a court cannot conduct a meaningful review under Section 9(b) without considering "whether the challenged legislation clearly articulates a specific purpose for incurring the debt." A 45. That is not what the reply brief said. Tillman had argued that a court reviewing a debt issuance under Section 9(b) must consider both whether the Act clearly articulated the "specific purpose" for the debt *and* what that purpose is and whether it is specific. C 206. This argument was a reference to the constitutional standard, not an invitation for the trial court to review the merits at the petition stage.

Both the 2003 and the 2017 Acts fail to comply with the specific-purposes requirements of Article IX, Section 9(b). To apply the correct legal standard, however, the Court need not reach that conclusion—nor need it even conclude that Tillman is likely to prevail. At this preliminary stage, the court need only conclude that his arguments are not frivolous or malicious. For the reasons stated below, they plainly are not.[10]

First, it is undisputed that Tillman's motives are not "malicious." Tillman has no financial interest in this litigation other than his interest as an Illinois taxpayer in preventing taxpayer funds from servicing unconstitutional debt. A 14 ¶¶ 14-15. His interest is exactly the type that 735 ILCS 5/11-303 was designed to vindicate. *See Turkovich v. Bd. of Trustees*, 11 Ill. 2d 460, 464 (1957) (purpose is to "enjoin the misuse of public funds").

Second, Tillman's claims are far from frivolous. They comport with the text and history of Section 9(b), as well as the relevant case law. Article IX, Section 9(b)—the provision governing long-term borrowing—states as follows:

> <u>State debt *for specific purposes* may be incurred</u> or the payment of State or other debt guaranteed in such amounts as may be provided either in a law passed by the vote of three-fifths of the members elected to each house of the General Assembly or in a law approved by a majority of the electors voting on the question at the next general election following passage. <u>Any law providing for the incurring or guaranteeing of debt shall *set forth the specific purposes*</u> and the manner of repayment.

Ill. Const. art IX, § 9(b) (emphases added). As explained below, that language imposes both substantive and procedural limits on issuing long-term debt. Both the 2003 and 2017 Acts violated both sets of limits.

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[10] If the Court concludes that it must review the merits at this stage, it should reverse the order and hold that the 2003 and 2017 Acts are unconstitutional.

A. The specific-purposes requirements of Section 9(b) impose both procedural and substantive limitations on issuing long-term debt.

The trial court held that the 2003 and 2017 Acts satisfied the specific-purposes requirements simply because each Act stated its purpose with "reasonable detail." A 45. At no point did the Court discuss whether the stated purposes were in fact *specific*. The Court's analysis thereby adopted the State's position that Section 9(b) is merely a *procedural* regulation that allows debt for "*any* purpose," so long as it is "reasonably define[d]." C 74.

But Section 9(b) authorizes debt only for "specific purposes," not for "any purpose." The two are plainly different. *See Gregg*, 2018 IL 122802, ¶ 23 ("In construing a constitutional provision, . . . courts [should] look first to the common meaning of the words used."). A *general* purpose is not a "specific purpose," *no matter how much detail is used to describe it*. The conclusion that any purpose will do, so long as it is "reasonably define[d]," is directly at odds with the intention of the drafters, who *expressly contemplated* that the judiciary would need to decide whether the stated purpose is "specific enough":

> MR. S. JOHNSON: I would imagine that a case will, at some time in the future, come up questioning ***whether or not the purpose described*** in a debt issue ***is specific enough***.

3 Proceedings at 1933 (emphasis added). In contrast to the State's reading, the "specific purposes" language means exactly what it says: (1) that the debt must be incurred "*for specific purposes*" (not for general purposes); *and* (2) that the State must "*set forth* the specific purposes" in the authorizing law.

The structure of Article IX, Section 9 confirms this reading. First, the "specific purposes" language in paragraph (b) must exclude the general-purpose financing permitted for operating deficits in paragraphs (c) and (d). Second, Section 9(b) mentions "specific purposes" *twice*. The second instance imposes the procedural requirement that the legislation must "clearly articulate[] a specific purpose." A 45. But the phrase appears in the first sentence as well, where it imposes the *additional* substantive requirement that the purpose be specific, rather than general. Otherwise, the first instance of "specific purposes" would be superfluous, in violation of fundamental interpretive canons. *See Comm. for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 48 (1996) (noting that the rule against superfluity "applies *especially* to constitutional interpretation" (emphasis added)).

The history of Section 9 further confirms that it requires more than merely stating a purpose. As outlined above, the specific-purposes requirements were adopted as part of an effort to eliminate the loopholes in the 1870 constitution that had facilitated excessive borrowing. To close these loopholes and yet allow unlimited long-term borrowing for any purpose would make no sense.

The sole Supreme Court case applying the specific-purposes requirements also confirms this reading. The Court engaged in a lengthy review extending far beyond whether the legislation at issue merely stated its purpose. *See People ex rel. Ogilvie v. Lewis*, 49 Ill. 2d 476 (1971). *Lewis* dealt with the 1971 Transportation Bond Act, which stated in detail its purposes "of promoting and assuring rapid, efficient, and safe highway, air and mass transportation." Pub. Act 77-150 § 2 (July 2, 1971) (stating its purposes in seven paragraphs of text); *see also Lewis*, 49 Ill. 2d at 478-79 (quoting at length from this section). If a detailed recitation of an act's purposes were all Section 9(b) requires, *Lewis*'s analysis would have stopped there.

Rather than concluding that the detailed recitation of the statute's purpose sufficed to comply with the specific-purposes requirement, the Supreme Court instead *analyzed* the stated purposes to decide whether the act appropriately "set forth [its] specific purposes." *Lewis*, 49 Ill. 2d at 484.[11] The Supreme Court noted many features of the Transportation Bond Act demonstrating its compliance with the specific-purposes language. For example, the Act:

- established "*sufficient* guidelines . . . which will permit the respective governmental departments to plan future use of the funds for *particular projects*," *id.* at 485 (emphasis added);
- gave "the legislature *adequate* standards" to allow it to determine how to appropriate the bond proceeds for the "intended uses," *id.* (emphasis added);
- provided "*significant* limitations" sufficient to direct the expenditure of funds, *id.* at 486 (emphasis added);
- articulated goals that advanced the "constitutionally permissible purpose of aiding and assisting public transportation," *id.*; and
- included a "further *significant* safeguard" to ensure that the "proposed expenditures . . . will be made only for the public transportation purposes contemplated by the Act," *id.* at 486-87 (emphasis added).

Therefore, in contrast to what the trial court did here, the Supreme Court considered more than simply whether the law *stated* its purposes. We now demonstrate how, consistent with *Lewis*, Section 9(b)'s specific-purposes requirements are both (1) substantive and (2) procedural.

1. Section 9(b)'s *substantive* requirement that debt be incurred "for specific purposes" prohibits incurring debt for general purposes such as deficit financing to cover general operating expenses.

As discussed above, Sections 9(c) and (d) permit short-term deficit financing for *general* purposes. In contrast, Section 9(b) provides for long-term financing for *specific*

[11] In *Lewis*, the Supreme Court evaluated only the requirement that long-term borrowing "set forth [its] specific purposes." *Id.* The Court did not address the "for specific purposes" requirement.

purposes. Under Section 9(b), long-term debt cannot be incurred for an inherently *general* purpose. In particular, borrowing to cover deficits in the State's general operating budget is not a "specific purpose." *See* A 19 ¶ 31, A 30 ¶ 65, A 38 ¶ 89. However, such borrowing is allowed on a *short-term* basis under Sections 9(c) and (d), *which do not require a specific purpose*. This reading of Section 9 reflects a common-sense distinction embedded deeply in the State's financial practices, and is also clear from Section 9's structure and history, and from binding precedent.

a. The prohibition on long-term borrowing to fund general operating expenses reflects a common-sense distinction.

The distinction between spending *without* a specific purpose (such as paying for general operating expenses) and spending "*for specific purposes*" is fundamental to state and municipal finance law. It is thus logical that the delegates to the 1970 Convention incorporated this distinction into Section 9.

For example, state law starting at least in the 1940s required tax revenues for education to be divided into two separate funds: one whose uses were "limited to the *specific* purposes defined in the statute, namely, building, repairing and improving school houses"—and a second fund to be used for the schools' "*general* operating expenses." *People ex rel. Schlaeger v. Reilly Tar & Chem. Corp.*, 389 Ill. 434, 452-53 (1945) (emphasis added) (holding that the law "affords no basis for charging any part of [the general operating expenses] to the" specific-purposes fund); *see also People ex rel. Kucharski v. McGovern*, 42 Ill. 2d 119, 126-27 (1969) (contrasting "general operating expenses" with spending for a "special purpose"); *People ex rel. Brenza v. Jasper*, 1 Ill. 2d 238, 250-51 & 254-55 (1953) (contrasting "general" expenses with spending for a "specific purpose"). The Court must assume that the drafters of Section 9 intended this same distinction. *See Kanerva v. Weems*, 2014 IL 115811, ¶ 41 ("[T]he drafters of a constitutional provision are presumed to know about existing laws . . . and to have drafted their provision accordingly.").

This common-sense distinction between the general "operating budget" funded by regular revenues, and a budget "for specific purposes" funded by long-term borrowing continues to be central to the State's current budgeting practices. Governor Pritzker's 2020 budget proposal, for example, is divided into a "Capital Budget" (that is, a budget for "specific purposes") and an "Operating Budget," using a graphic to explain the distinction:

DIFFERENCES BETWEEN CAPITAL AND OPERATING BUDGETS

CAPITAL BUDGET	OPERATING BUDGET
Appropriations are for assets that have a long-term useful life, such as buildings, highways, underground or surface infrastructure, durable equipment and land. Capital appropriations may span multiple fiscal years.	Appropriations are for consumable goods and services such as salaries and benefits, commodities, utilities, and professional services that are purchased and used during any one fiscal year.
Spending occurs over one to several years. For example, a road construction project might take three years, with design and engineering work occurring in year one and the majority of spending occurring in years two and three.	Spending typically occurs over the course of one fiscal year.
Funding Sources include both bond sales and current revenues (e.g. Motor Fuel Tax and federal grants).	Funding Sources include general (e.g. sales and income taxes) and dedicated (e.g. licensing fees) revenues.
Financing is often derived from long-term bond proceeds that are repaid in increments over the life of the bond, which is typically 25 years.	Financing comes from current revenue streams. The timeframe in which revenues are received and services or commodities are purchased is often within one fiscal year. In this regard, the operating budget balances annual expenditures with annual revenues.

Gov. JB Pritzker, *Illinois State Capital Budget Fiscal Year 2020*, at 14 (2019) (highlighting added).[12] The State itself thus confirms that long-term borrowing for specific purposes excludes borrowing for general operating expenses.

[12] *See also Commonwealth Edison Co. v. Will Cnty. Collector*, 196 Ill.2d 27, 29-30 (2001) (describing the distinction in 55 ILCS 5/5-1024 between taxes authorized "for general corporate funds" and taxes authorized "for more specific purposes").

b. Section 9's structure confirms that debt for specific purposes is different from debt to pay general operating expenses.

The distinction between debt for specific purposes and debt incurred to pay for general operating deficits is further confirmed by the structure of Article IX, Section 9. As discussed above, the inclusion of "specific purpose" language in paragraph (b) necessarily excludes the general-purpose borrowing allowed only on a short-term basis in paragraphs (c) and (d). Paragraphs (c) and (d) further restrict general-purpose financing to limited circumstances: borrowing in anticipation of revenue in paragraph (c), and borrowing to meet deficits caused by emergencies or failures of revenue in paragraph (d). It would make no sense to so strictly limit general-purpose financing in (c) and (d), only to allow it *carte blanche* with a supermajority vote in paragraph (b). *See Gregg*, 2018 IL 122802, ¶ 23 ("Effective constitutional interpretation requires that the court view the constitution as a whole, construing provisions in context with other relevant provisions.").

The State objected to this argument below, arguing that the only difference between paragraphs (b) and (c)-(d) is paragraph (b)'s requirement of a supermajority—not the distinction between short-term, general-purpose borrowing and long-term, specific-purpose borrowing. C 402-03. But the State failed to explain why paragraphs (b) and (c)-(d) should not be read to include *both* distinctions. There is good reason to require a supermajority for long-term borrowing for specific purposes, but a supermajority requirement does not transform general-purpose deficit financing into a specific purpose. To the contrary, general-purpose deficit financing is authorized *only* in the form of short-term borrowing under paragraphs (c) and (d).

The State's argument also ignores the history of the 1970 Convention. The delegates considered an amendment from delegate Dawn Clark Netsch that would have reduced the supermajority requirement for long-term specific-purposes debt to a simple majority (the "Netsch Amendment"). 5 Proceedings at 3848; *see also* 7 Proceedings at 2236-37 (reporting the text of Section 9 at the time of the proposed amendment). Under the State's reading of "for specific purposes," this amendment would have rendered paragraphs (c) and (d) useless, because the legislature could have engaged in unrestricted general-purpose financing under paragraph (b) by a simple majority vote. But the Netsch Amendment *did not* propose deleting what became paragraphs (c) and (d). Rather, it proposed to keep those in place while allowing borrowing by a simple majority under paragraph (b). The delegates thus must have seen a meaningful distinction, apart from the voting threshold, between debt issued under paragraphs (c) or (d) and debt issued under paragraph (b). The *only* logical reason for the Netsch Amendment to preserve what became paragraphs (c) and (d) is that the delegates did not believe general-purpose deficit financing was permitted as a "specific purpose" under paragraph (b).

c. The delegates at the Convention understood "specific purposes" to mean specifically identifiable improvements—not general operating expenses.

The drafters' understanding of "specific purposes" further shows that the phrase does not include deficit financing for general operating expenses. All discussions of the specific-purpose requirement referred to spending for projects in the nature of "capital improvements":

> MR. STAHL: In line 2, you used the phrase, "for specific purposes." I am not sure I know exactly what the [drafting] committee means by that language. Normally indebtedness, of course, is created *to finance capital improvements*. Do you envision that "for specific purposes["] might include other things?
>
> MR. S. JOHNSON: We have in mind when we use the term, "specific

> purposes," that *the improvement* to be financed be described in such a way as it is identifiable and not just a general term . . . .

3 Proceedings 1932 (emphasis added). This answer confirms that debt "for specific purposes" contemplates *an improvement*—that is, an expenditure outside of the normal operating budget (or, to echo the Budget Office's own dichotomy, a capital expenditure as opposed to an operating expenditure).

Other delegates similarly spoke of borrowing "for specific purposes" to include financing of "a specifically identifiable improvement," *id.* at 1933, "large projects," *id.* at 2109, "smaller projects which are of a pressing nature and which require more immediate action," *id.* at 2110, or "projects for which it is not appropriate to pay as you go," 5 Proceedings 3855. All of these phrases denote special "projects" or "improvements" outside of the normal operating budget.

At no time did any delegate propose that borrowing to fund operating deficits could count as a "specific purpose." To the contrary, the only discussion of such deficit spending came in the context of the *short-term* borrowing provisions, which did not include the specific-purposes language and thus contemplated the funding of general operating deficits. And again, the delegates placed strict limits on short-term borrowing precisely because they wanted to prevent the State from operating through continual deficit spending.[13] Enacting these strict limitations to *prevent* continual deficit spending

[13] 3 Proceedings 2107 ("MR. THOMPSON: I'm very disturbed that the state will, in a very few years, fall into the position of being one year behind on its financing and issuing tax anticipation warrants one year behind . . . ."); *id.* ("MR. LADD: Delegate Thompson is absolutely correct that eventually the state government will increase its debt by the total current budget. In other words, they're going to eventually be one year behind. It's an open invitation to spending, and when we don't want to raise debt or we don't want to raise taxes, we'll just go into next year's revenues . . . ."); 5 Proceedings 3871 ("MR. THOMPSON: I just do not want this 'emergencies or failures of revenues' to be used as an

would make little sense if the delegates also intended to allow unlimited deficit spending as a "specific purpose" under paragraph (b).

d. *Lewis* is consistent with the conclusion that borrowing to pay general operating expenses is not a specific purpose.

Finally, the Illinois Supreme Court's decision in *Lewis* supports the conclusion that Section 9 distinguishes between long-term financing for specific purposes and short-term financing for general operating expenses. The long-term borrowing authorized in *Lewis* was directed entirely to capital projects; none of the borrowing was directed to general operating expenses. *Lewis*, 49 Ill. 2d at 478-79. Even the $32 million set aside for refinancing existing debt was unrelated to operating expenses, as Governor Ogilvie acknowledged in his approval message for the Act:

> Because these emergency payments are for debt service, which essentially *represents past capital* and is a fixed and readily ascertainable figure, I am satisfied that this use of a limited portion of the bond proceeds is a safe financial commitment which, by its very nature, *is far different from an ongoing operating subsidy*.

Special Message on House Bills 1277-1307, 2300, and 3000, 77th Ill. Gen. Assem., 3 J. of the H.R. 5483, 5485 (July 2, 1971) (emphasis added). *Lewis*'s approval of the Transportation Bond Act thus does not mean that Section 9(b) allows long-term borrowing for general operating deficits.

2. Section 9(b)'s *procedural* requirement that an authorizing act "set forth [its] specific purposes" ensures transparency for voters and prohibits delegation of spending decisions to the executive branch.

Because Section 9(b) requires the legislature to set forth the specific purposes of long-term borrowing, the authorizing act must specify how the bond proceeds are to be

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excuse to put this state in the position of continuous deficit financing."); *id.* at 3872 ("MR. CONNOR: I concur with Delegate Thompson's intent not to let deficit financing become a continuous mode . . . .").

used. This requirement serves two purposes: first, it ensures that those voting on the debt—whether the legislature or the public in a referendum—are sufficiently informed as to what they are voting on. Second, it ensures that the *legislature*—rather than the executive branch, through improper delegation of authority—decides how the proceeds will be spent.

First, requiring that specific purposes be set forth ensures both transparency (voters know what they are voting on) and accountability (the proceeds must be used for the purposes stated in the legislative act). *See* 7 Proceedings at 2182 (proposed Section 9 "desires to . . . insure that decisions to borrow are *publicly* arrived at by the proper authorities" and that proposed debt is "subject to closer public scrutiny" (emphasis added)). As the Supreme Court has emphasized, specific purposes must be stated so as to "afford[] the legislature an opportunity to scrutinize all proposed expenditures" to ensure their consistency with the authorizing act. *Lewis*, 49 Ill. 2d at 487.

Second, the requirement that the *legislature* set forth the specific purposes acts as a ban on delegating spending authority to executive branch officials. This restriction is clear from the "item veto" cases. Those cases interpreted a similar requirement in the 1870 constitution that spending bills "specify the[ir] objects and purposes" to forbid delegating spending decisions to the executive branch. *See* Ill. Const. of 1870, art. V, § 16; *Winter v. Barrett*, 352 Ill. 441, 474-75 (1933) (holding that specificity requires that "the General Assembly must determine to what objects and purposes money of the State shall be appropriated, and cannot bestow that power upon any person or board for the exercise of discretion"); *Peabody v. Russel*, 302 Ill. 111, 117 (1922) (holding that specificity requires that the legislature not "delegate to an administrative officer the specification of objects and purposes").

The delegates to the 1970 Convention expressly discussed their intent to import into Section 9(b) the meaning ascribed to the specificity requirement in item-veto cases like *Winter* and *Peabody*:

> MR. KAMIN: One additional thing, because I think the language is unclear on that—is it then meant that the determination of the specificity of the purpose is subject to judicial review?
>
> MR. S. JOHNSON: I would suppose so. It has—*we ran into the same problem with the item veto, you recall, years ago*. The 'specific purposes' was put in there to assure that there was not just a general statement that would circumvent the idea of the item veto . . . ."

3 Proceedings 1933 (emphasis added); s*ee also Comm. for Educ. Rights*, 174 Ill. 2d at 15-16 (using cases interpreting the 1870 Constitution to interpret related language in the 1970 Constitution).

The requirement that a borrowing act "set forth [its] specific purposes" thus prevents the legislature from delegating to the executive branch the decision of how to spend debt proceeds. This proposition is undisputed—at the hearing, the State embraced the same rule. C 396-97 (arguing that under *Peabody* and *Winter* delegating spending authority is unconstitutional); C 75-76.

The Supreme Court recognized the non-delegation rule in *Lewis*. There, a portion of the long-term debt the Transportation Bond Act had authorized was set aside for refinancing debt previously incurred by state and local agencies for public transportation purposes. *Lewis*, 49 Ill. 2d at 478-79. The challenger argued that the Act did not adequately "specify the nature of the pre-existing indebtedness to be retired," such that the bond proceeds could be diverted to "purposes unrelated to public transportation." *Id.* at 485-86.

In rejecting this challenge, the Supreme Court emphasized that the Act by itself did not authorize the executive branch to engage in spending any of the bond proceeds absent further legislative action. *Id.* at 486-87 (emphasizing the "further significant safeguard" providing that "no funds may be expended unless first appropriated by the General Assembly"). *Lewis* thus held that the Act did not delegate any discretionary spending authority to the executive branch. This holding was crucial to its conclusion that the Act satisfied the specific-purposes requirements. *Id.* at 487.

B. The 2003 and 2017 Acts violate both the procedural and the substantive requirements of Section 9(b).

As explained above, the "specific purposes" language in Section 9(b) restricts the State's long-term borrowing in several ways. Procedurally, it requires the legislature to set forth the specific purposes of the debt, thus ensuring transparency and accountability, and prohibits delegating the spending discretion to the executive branch. Substantively, it prohibits long-term borrowing for general purposes like deficit financing of general operating expenses. The 2003 and 2017 Acts violate both sets of requirements.

1. The 2003 Act violated Section 9(b)'s *substantive* requirements by authorizing long-term borrowing for general operating expenses.

The 2003 Act authorizes long-term deficit financing to fund general operating expenses and therefore is not "for specific purposes." The stated purpose of the 2003 Act was to borrow $10 billion "for the purpose of making contributions to the [five] designated [State] retirement systems." Pub. Act 93-2 § 10 (Apr. 7, 2003) (codified at 30 ILCS 330/7.2(a)). Funding the State retirement systems, however, is a general operating expense, not an "identifiable improvement." Governor Pritzker candidly admits this in his most recent budget proposal, which classifies pension contributions as an operating expense, not as a capital expense:

OPERATING EXPENDITURES & TRANSFERS OUT (OPERATING PAYMENTS)

CURRENT YEAR EXPENDITURES

APPROPRIATIONS (Total Estimated Budget)

Minus: Appropriated Intra-fund Deposits [1]

Minus: Unspent Appropriations [2]

Minus: Comptroller Prior Year Adjustments

Equals: Current Year Expenditures before Pension Contributions [2]

PENSION CONTRIBUTIONS [3]

Teachers' Retirement System

State Universities Retirement System

State Employees', Judges and General Assembly Retirement Systems

Less: Transfers from State Pensions Fund (Unclaimed Property) [3]

Equals: General Funds Pension Contributions (Net) [3]

CURRENT YEAR EXPENDITURES (Net Appropriations Spent)

Gov. JB Pritzker, *Illinois State Budget Fiscal Year 2020*, at 57 (2019) (red boxes added).[14]

The State's classification of pension spending as an operating expense is undeniably correct. Government-employee payroll expenses include both current wages and retirement benefits, including annual contributions to pension systems. Both payments represent a regular cost of operating the government. Funding the pensions is simply one component of the government's annual payroll expenses. It is no different from other operating costs such as the general maintenance of state roads.

The 2003 Act was thus not borrowing to *fund* state pensions. Existing law already required such funding. *See* 40 ILCS 5/2-124 (requiring the State to make specified annual contributions to the pension systems); Ill. Const. art. XIII, § 5 (providing that pension benefits "shall not be diminished or impaired."); *see also Heaton v. Quinn (In re Pension Reform Litig.)*, 2015 IL 118585, ¶¶ 45-50 (describing the constitutional requirement that pension benefits not be diminished). The 2003 Act even acknowledged this obligation. *See* Pub. Act. 93-2 § 5 (Apr. 7, 2003) (codified at 30 ILCS 330/7.2(c)) (noting that

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[14] Available at https://www2.illinois.gov/sites/budget/Documents/Budget%20Book/FY2020-Budget-Book/Fiscal-Year-2020-Operating-Budget-Book.pdf.

proceeds will cover "the *required* State contributions to the designated retirement systems"). The purpose of the 2003 Act was instead to free up funds that would have been spent on pensions for any number of operating expenses—in essence, dumping more money into the general fund to facilitate deficit spending. As the State admits, this is exactly what the specific-purposes requirement prohibits. C401 at 40:2-9.

The legislators supporting the 2003 Act candidly acknowledged that their purpose was "to fill this big hole that we find ourselves in to deal with this big budget deficit." 93rd Ill. Gen. Assem., Senate Proceedings, Apr. 4, 2003, at 62-63 (statements of Senator E. Jones); *see also* 93rd Ill. Gen. Assem., House Proceedings, Mar. 20, 2003, at 209 (statements of Representative Lang). During the floor debates, the need to plug a hole in the budget without raising taxes or cutting spending was repeated many times:

- "House Bill 2660, which was thoroughly debated a couple nights ago, is a proposal by the Governor to deal with the serious budget deficit we have in the State of Illinois. . . . It will allow us to . . . deal with forty percent of the five-billion-dollar budget deficit we face . . . ." 93rd Ill. Gen. Assem., Senate Proceedings, Apr. 4, 2003, at 58-59 (statements of Senator E. Jones).

- "It's our duty to seize this opportunity . . . as we begin to fill this big hole that we find ourselves in to deal with this big budget deficit that we—we must come up with." *Id.* at 62-63.

- "Unless some of you are prepared to step forward with another way to fill in this gap, a responsible way, then I suggest that you do the right thing and vote for a Bill that will fill in the gap." 93rd Ill. Gen. Assem., House Proceedings, Mar. 20, 2003, at 209 (statements of Representative Lang).

- "[I]t's a no-brainer because no one on this floor wants to cut $5 billion out of our budget." *Id.* at 210.

- "If we don't do this, we essentially have a $2 billion shortfall and a $5 billion deficit that already exists. . . . We'd have a $2 billion hole and we'd have to look at raising taxes, income and sales taxes. Who wants to do that? We'd have to look at cuts in education, cuts in health care, cuts in public safety." *Id.* at 212 (statements of Representative Hoffman).

- "[W]e need to find the money to fill the hole. . . . [W]e have to do it. . . . What this does is free up 2.1 billion dollars for—that we would have to raise otherwise." 93rd Ill. Gen. Assem., Senate Proceedings, April 2, 2003 at 39 (statements of Senator Welch).

- "[T]here certainly can be no doubt that we have to get some money into our coffers. We have to bring money into the State of Illinois to avoid the drastic cuts in education, in health care, in safety . . . ." *Id.* at 40.

The legislative debates confirm what the 2003 Act already makes clear—that using bond proceeds to make "contributions" that the State was already legally required to make is just another name for deficit financing in the general operating budget.[15]

By contrast, nothing suggests that the pension contributions should be thought of as a "capital improvement," "a specifically identifiable improvement," a "large project[]," a "smaller project[] which [is] of a pressing nature and which require[s] more immediate action," or a "project[] for which it is not appropriate to pay as you go"—the types of purposes the delegates to the 1970 Convention considered "specific." 3 Proceedings 1932-33, 2109-10; 5 Proceedings 3855.

2. The 2003 Act violated Section 9(b)'s *procedural* requirements by failing to adequately specify the purposes to which it was directed.

The 2003 Act also violated the procedural requirement that it "set forth" the purpose for which proceeds would be spent. As discussed above, the effect of the 2003 borrowing was to free a few extra billion dollars to spend from the General Revenue fund on whatever the legislature wanted, to be determined later. But the 2003 Act did not specify the ultimate use of these extra funds. The voters were thus unable to determine whether the borrowing was sufficiently important to justify burdening future citizens with

[15] The State's *June 2003 Official Statement* on the 2003 bonds also confirms that their purpose was to plug a hole in the operating budget. A 28 ¶ 60 (bonds were one of "certain steps" that Governor Blagojevich had taken to "reduce the budget deficit for fiscal year 2003" and thereafter).

long-term debt. This omission violates one of the key objectives of the "specific purposes" language—transparency. *See* 7 Proceedings at 2182.

3. The 2017 Act violated Section 9(b)'s *procedural* requirements by improperly delegating spending authority to the Comptroller.

The 2017 Act is unconstitutional because it improperly delegated spending authority to the Comptroller—an executive branch official. In particular, the 2017 Act authorized *$6 billion* in long-term borrowing "for the purpose of paying vouchers incurred by the State prior to July 1, 2017." 30 ILCS 330/7.6. At the time the 2017 Act passed, however, *$15.245 billion* in outstanding vouchers fell into that category, encompassing bills due to vendors of virtually every state agency. A 35 ¶ 79. The 2017 Act did not specify which $6 billion in vouchers to pay—leaving that decision to the Comptroller. *See* 15 ILCS 405/9 (giving the Comptroller authority to approve payment of vouchers).

The trial court fundamentally misunderstood this aspect of the 2017 Act, stating that the 2017 Act was enacted "*to pay health insurance vouchers* incurred by the State prior to July of 2017." A 44 (emphasis added). This purpose is nowhere stated in the 2017 Act, which states its purpose simply as "paying vouchers incurred by the State prior to July 1, 2017." 30 ILCS 330/7.6. The Act does not restrict in any way the Comptroller's discretion to determine which of the $15.245 billion in vouchers to pay.[16]

The 2017 Act thus lacks the safeguards that *Lewis* found sufficient to ensure that

[16] The Comptroller later boasted that she "directed" the bond proceeds from the 2017 Act "primarily to unpaid state health insurance claims and unpaid medical bills." Office of the Comptroller, *November 2017 $6 Billion Bond Authorization Proceeds,* https://illinoiscomptroller.gov/financial-data/fiscal-information/archive/november-2017-6-billion-bond-authorization-proceeds/ (last visited Dec. 2, 2019); *see also* A 37 n.52. The Comptroller's spending decision merely underscores the inappropriate delegation of discretion to her to determine how to spend the proceeds.

"the legislature [has] an opportunity to scrutinize *all proposed expenditures*" to be made with the borrowed funds. *Lewis*, 49 Ill. 2d at 487. There are no "sufficient guidelines," no "adequate standards," no "significant limitations," and no "significant safeguard[s]" directing the expenditure of the bond proceeds, as there were in *Lewis*. *Id.* at 485-86. Instead, the State authorized the Comptroller to pay whichever $6 billion in outstanding vouchers she—in her sole discretion—chose to pay. Such a broad delegation of spending discretion is unconstitutional. *Cf. Peabody*, 302 Ill. at 117 ("It is clear . . . that the appropriation itself is not a complete act of legislation but seeks to delegate to an administrative officer the specification of objects and purposes and the determination of distinct items therefor. The constitution expressly requires these acts to be performed by the General Assembly itself.").

The 2017 Act is also unconstitutional because it failed to specify the specific purposes behind the backlogged expenses to be paid down. Voters were thus unable to evaluate the decision to incur debt, and so the 2017 Act failed to ensure the transparency and accountability Section 9(b) requires. *See* 7 Proceedings at 2182.

4. The 2017 Act violated Section 9(b)'s *substantive* requirements by improperly authorizing long-term borrowing for general operating expenses with multiple purposes.

Like the 2003 Act, the 2017 Act also violates the prohibition on deficit financing for general operating expenses. The $15.245 billion in then-outstanding vouchers arose from the State's regular bills owed to vendors in virtually every area of State government—including social service programs, higher education, agency operations, and state employee health insurance—all part of the State's general operating budget. A 34 ¶ 75. The 2017 Act thus improperly authorized long-term borrowing for general operating expenses.

As the State conceded at the hearing, under the specific-purposes requirement the State cannot simply say "I want more money, I'm going to issue these bonds, dump it into the general revenue fund." C 401. But that is exactly what the State did by building a backlog of unpaid vouchers for regular bills to the tune of $15.245 billion, and then borrowing to cover the deficit. If the State cannot borrow billions to dump into the general-revenue fund to cover operating expenses, it also cannot do the reverse: overspend its operating budget, build up a huge backlog of unpaid vouchers to vendors, and *then* borrow to pay them off. Such a strategy is simply deficit financing through the backdoor, made significantly worse because the borrowing was not authorized until *after* the State had committed to the deficit spending.

The State argued that the stated purpose of "paying vouchers incurred prior to July 1, 2017" is "plainly" a specific purpose under Section 9(b) because it is a list of only one thing—namely, "vouchers incurred prior to July 1, 2017." C 73. But that argument makes no sense: if a list of only one amorphous thing were necessarily a specific purpose, then debt authorized for the purpose of "more cash," "paying bills," or "paying expenses" also would be specific-purpose debt.

Underlying the "vouchers incurred prior to July 1, 2017" are tens of thousands of expenditures with tens of thousands of disparate purposes, none of which were mentioned in the 2017 Act. But even if all the disparate purposes were mentioned, the 2017 Act would be no better, for example, than an act that in section 1 authorizes long-term borrowing "for any of the purposes listed in section 2," and then in section 2 simply *copies* the State's entire operating budget. *See Lund v. Horner*, 375 Ill. 303, 308 (1940) (listing disparate purposes in detail does not satisfy the specificity requirement).

III. Enforcing the "specific purposes" requirements is the duty of the judiciary, not a "political question."

The trial court held in the alternative that applying the specific-purposes language in Section 9(b) is a "non-justiciable political question" that would require the court to "substitute its judgment for the Illinois Legislature." A 45. That ruling contradicts both *Lewis* and the intent of the delegates to the Convention; and also abdicates the judiciary's role in interpreting and enforcing the constitution.

The Supreme Court in *Lewis* considered the specific-purposes language in Section 9(b). At no point did the Court suggest that the judiciary has no role in policing the specific-purposes requirements. *Lewis*, 49 Ill. 2d at 484-86. The trial court's holding cannot be squared with *Lewis*'s extensive analysis of whether legislation complies with the "specific purposes" language.

Moreover, the debates at the 1970 Convention plainly contemplated that the courts would have a role in policing the specific-purposes requirements:

> MR. KAMIN: One additional thing, because I think the language is unclear on that—is it then meant that the determination of the specificity of the purpose [under Article IX, Section 9(b)] is subject to judicial review?
>
> MR. S. JOHNSON: I would suppose so. . . . ***I would imagine that a case will, at some time in the future, come up questioning whether or not the purpose described in a debt issue is specific enough***.

3 Proceedings 1933 (emphasis added). The delegates thus enacted the "specific purposes" language based on the understanding that it would be judicially enforced. The court must follow this understanding. *See Thies v. State Bd. of Elections*, 124 Ill. 2d 317, 323-24 (1988) (the debates at the 1970 Convention "are of particular significance" where they "appear to answer the very question presented by this case"); *Webb*, 80 Ill. App. 3d at 897 (the constitutional question of whether expenditures are for a "public purpose" is

justiciable based on a statement at the 1970 Convention that courts would decide that issue).

Finally, the trial court abdicated its role in interpreting the Constitution. "It is the function and duty of th[e] court[s] to act as the final arbiter of the Constitution." *People ex rel. Harrod v. Ill. Courts Comm'n*, 69 Ill. 2d 445, 458 (1977); *see also People v. Gersch*, 135 Ill. 2d 384, 399 (1990) ("We also are duty-bound to strike down unconstitutional acts of the legislature."). Far from being a non-justiciable political question, the determination of whether the legislature has exceeded its constitutional bounds is a core judicial function. As the Supreme Court has explained:

> This court, the legislature and the executive are bound by the limitations of the constitution. No matter how politically or socially desirable a piece of legislation may be, if it is contrary to the provisions of our constitution, it cannot stand. Possibly, this court is more conscious of constitutional restrictions than are the other branches of our State government because we must constantly square our holdings with the constitution, whereas the legislative and executive branches must often measure their positions by social and political concerns. ***Nonetheless, the final product of those branches must stand the constitutional test***.

Maddux v. Blagojevich, 233 Ill. 2d 508, 529 (2009) (emphasis added) (citation, alteration, and quotation marks omitted). As the Supreme Court has warned, "[i]n a constitutional government no injury can come to a State greater than the destruction of the safeguards provided in its constitution." *Peabody*, 302 Ill. at 121. The political-question doctrine does not allow the judiciary to shirk its duty to decide the constitutionality of the legislature's actions.

Conclusion

For all the reasons stated above, the proposed Complaint is not frivolous or malicious under 735 ILCS 5/11-303. Tillman simply asks that he be given the opportunity to file his proposed complaint and to pursue in court his claims on behalf of the taxpayers of Illinois. This Court should reverse the holding of the trial court, order that the proposed Complaint be placed on file, and remand this case for further proceedings. In the alternative, if the Court concludes that it must undertake a full merits review at the petition stage, the trial court's order should be reversed and the Court should hold that the 2003 and 2017 Acts are unconstitutional.

Dated: December 4, 2019

Respectfully submitted,

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Certificate of Compliance

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 38 pages.

s/ John E. Thies
John E. Thies

Certificate of Service

The undersigned, an attorney, certifies that on December 4, 2019, before 5:00 p.m. he electronically filed this BRIEF OF PLAINTIFF-APPELLANT with the Clerk of the Court using the Odyssey eFileIL system which will send notification of such filing to the following:

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s/ John E. Thies
John E. Thies

No. 4-19-0611

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

JOHN TILLMAN, Plaintiff-Appellant, vs. J.B. PRITZKER, Governor of the State of Illinois, in his official capacity; MICHAEL W. FRERICHS, Treasurer of the State of Illinois, in his official capacity; and SUSANA A. MENDOZA, Comptroller of the State of Illinois, in her official capacity, Defendants-Appellees.	)))))))))))))))	Appeal from the Seventh Judicial Circuit, Sangamon County, Illinois Circuit Court No. 2019 CH 235 Trial Judge: Honorable Jack D. Davis, II Date of Judgment: August 29, 2019

APPENDIX TO BRIEF OF PLAINTIFF-APPELLANT

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IN THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

JOHN TILLMAN and **WARLANDER ASSET MANAGEMENT, LP**, Plaintiffs, v. **J.B. PRITZKER**, Governor of the State of Illinois, in his official capacity; **MICHAEL W. FRERICHS**, Treasurer of the State of Illinois, in his official capacity; and **SUSANA A. MENDOZA**, Comptroller of the State of Illinois, in her official capacity, Defendants.	)	Case No. 2019CH000235

PETITION FOR LEAVE TO FILE A TAXPAYER ACTION TO RESTRAIN AND ENJOIN THE DISBURSEMENT OF PUBLIC FUNDS

1. Plaintiff John Tillman ("Petitioner" or "Tillman"), by his undersigned attorneys, hereby petitions this Court pursuant to 735 ILCS 5/11-303 that he be granted leave to file his taxpayer Complaint,[1] attached hereto as Exhibit A, and states in further support as follows:

2. Illinois is one of the most heavily indebted states in the United States of America. Since 2000, the State's unfunded pension liability and bonded debt have grown more than 600%, to over $168 billion.

3. The State's debt burden is unsustainable. Public watchdog group Truth in Accounting estimates that the State has only $28.8 billion in assets to pay $244.9 billion in

[1] The Complaint also joins a bondholder claim that is being asserted by Warlander Asset Management, LP ("Warlander"), a bondholder of the State of Illinois. This bondholder claim is based on the same series of transactions as Petitioner's taxpayer claim. A bondholder of the State is not required to seek leave before asserting a claim, and so Warlander is not a party to this petition. However, Warlander will assert its claim if Petitioner's petition for leave is granted.

obligations, which translates to a taxpayer burden of $50,800 for each taxpayer.[2] Moody's Investors Service and S&P Global Ratings have rated Illinois bonds just one notch above "junk."[3]

4. Article IX, section 9 of the Illinois Constitution places strict limitations on the State's ability to incur General Obligation ("GO") State debt in a considered effort to prevent irresponsible borrowing.

5. In 2003 and 2017, the State incurred debt in violation of the Illinois Constitution through the issuance of certain GO bonds that did not conform to the limited borrowing authority granted in Article IX, section 9 (the "Challenged Bonds"). Petitioner's taxpayer Complaint challenges Defendants' repeated issuances of unconstitutional GO bonds and their continuing illegal expenditure of public funds in service of this unconstitutional debt.

I. Petitioner Has Standing to Challenge Defendants' Misuse of Public Funds

6. "It has long been the rule in Illinois that citizens and taxpayers have a right to enjoin the misuse of public funds." *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 160 (1956). "This right is based upon the taxpayers' ownership of such funds and their liability to replenish the public treasury for the deficiency caused by such misappropriation." *Id.*; *see Martini v. Netsch*, 272 Ill. App. 3d 693, 695-96 (1995) ("[A] taxpayer has standing to bring suit, even in the absence of a statute, to enforce the equitable interest in public property which he claims is being illegally disposed of."). Each disbursement of public funds for "illegal or unconstitutional

---

[2] *See* Truth in Accounting, *State Data Lab: Illinois* (Sept. 2018), https://www.statedatalab.org/state_data_and_comparisons/detail/illinois.

[3] *See* Fidelity, *Bond ratings*, https://www.fidelity.com/learning-center/investment-products/fixed-income-bonds/bond-ratings (last visited June 21, 2019); Office of the Comptroller, *Bond Ratings*, https://illinoiscomptroller.gov/financial-data/fiscal-information/bond-ratings/.

purposes" injures taxpayers, and this injury entitles them to file suit. *Barco Mfg. Co.*, 10 Ill. 2d at 160.

7. Petitioner is the Chief Executive Officer of the Illinois Policy Institute. The Institute has long been one of the loudest voices calling for fiscal reform in Illinois, shining a light on the State's dishonest budgeting practices and the unsustainability of its long-term debt burden. Petitioner is a citizen of the State of Illinois and has been paying income taxes to the State treasury since 1985. Petitioner asserts his right as a citizen and taxpayer to seek to enjoin Defendants from making further unauthorized and unconstitutional expenditures of public funds in service of the Challenged Bonds. 735 ILCS 5/11-301, 11-303.

8. Petitioner has alleged specific monetary harm to the State treasury that would arise if such injunctive relief is not granted, namely, certain interest and principal payments on the unconstitutional debt that are scheduled to become due as described in Ex. A, ¶¶ 68, 88.

9. Petitioner has also alleged each Defendant's involvement in the challenged expenditures, namely, that the Governor provides for the "manner of repayment," *i.e.*, debt service, on all outstanding GO bonds, and that the Treasurer and Comptroller disburse public funds to provide such debt service. *See* 30 ILCS 330/14-15. Such state officers are collectively referred to herein as "Defendants."

10. To date, the Attorney General has taken no action to redress or prevent Defendants' debt service payments on the unconstitutional debt. It is therefore necessary for Petitioner to file suit to do so.

II. Reasonable Grounds Exist for the Filing of this Taxpayer Action

11. Illinois law requires that a citizen and taxpayer seeking to enjoin illegal government spending by State officials petition for leave to file a taxpayer Complaint, with a copy of the Complaint attached to the petition. 735 ILCS 5/11-301 & 11-303.

12. The petition requirement "serve[s] as a check upon the indiscriminate filing" of taxpayer lawsuits. *Strat-O-Seal Mfg. Co. v. Scott*, 27 Ill. 2d 563, 565 (1963). However, while it is important to prevent "frivolous" and "unjustified" lawsuits, "it is equally important that suits which do not appear unjustified are not barred or foreclosed." *Id.* at 566. This Court is not tasked at the petition stage with determining "whether the allegations of the proposed complaint can, on hearing, be sustained," but only with determining if Petitioner has offered "reasonable grounds for filing suit." *Id.*; *see* 735 ILCS 5/11-303.

13. "Reasonable grounds" clearly exist for the filing of this taxpayer action. Petitioner's allegations are in no way "unjustified," "frivolous," or "malicious." *Strat-O-Seal Mfg. Co.*, 27 Ill. 2d at 566. Rather, as summarized below and set forth in detail in the attached Complaint, Petitioner's allegations set forth a compelling claim that the State issued the Challenged Bonds, and is continuing to disburse public funds in service of those bonds, in violation of the Illinois Constitution.

A. The Illinois Constitution Expressly Limits the State's Power to Incur State Debt

14. The Illinois Constitution expressly limits the State's power to incur State debt. Article IX, section 9 permits the State to incur new long-term debt only to finance "specific purposes." Ill. Const. art IX, section 9(b). "Specific purposes" refers to specific projects in the nature of capital improvements, including roads, buildings, and bridges. Simply obtaining cash to finance the State's structural deficits or to speculate in the market is not a "specific purpose."

B. The 2003 Pension Funding Bonds Are Unconstitutional

15. In fiscal years 2002 and 2003, Illinois had significant General Fund deficits.

16. In June 2003, the State issued $10 billion in General Obligation "Pension Funding" bonds, with maturities extending out 30 years. More than $2 billion of the bond proceeds were allocated to the State's General Revenue Fund to cover general operating expenses. The State diverted another $2.3 billion in 2006 and 2007 to help fund its growing long-term structural deficit. The remainder (which was allocated among the State's pension systems) was effectively a loan—not a contribution—for those systems to use to speculate in the market.

17. Neither deficit financing nor borrowing money for speculative profit qualifies as a "specific purpose" for incurring GO debt under Article IX, section 9(b) of the Illinois Constitution. The debt is therefore unconstitutional.

C. The 2017 Income Tax Proceed Bonds Are Also Unconstitutional

18. During the fiscal year 2016-17 budget impasse, the State's accumulated backlog of unpaid bills grew to $15.245 billion.

19. In November 2017, the State issued $6 billion in "Income Tax Proceed Bonds" with maturities extending out to 2028. This debt was incurred for the stated purpose of "provid[ing] funds to pay vouchers previously incurred by the State."

20. The purpose of this debt was to pay an unspecified variety of past-due general operating expenses, *i.e.*, deficit financing. This is not a "specific purpose" under Article IX, section 9(b) of the Illinois Constitution. The debt is therefore unconstitutional.

D. Petitioner Requests that the Court Enjoin Defendants from Disbursing Public Funds in Service of the Unconstitutional Debt

21. Approximately $8.85 billion of the 2003 Pension Funding Bonds and $5.5 billion of the 2017 Income Tax Proceed Bonds remain outstanding. Based on the interest and maturity schedules for these bonds, the State will continue to pay interest and principal on the bonds through 2033, in an amount that will total approximately $20 billion.

22. Debt service payments on unconstitutional debt like the Challenged Bonds are an unconstitutional misuse of public funds that will cause irreparable harm to Illinois taxpayers, including Petitioner.

23. Accordingly, this Court should grant the Petition and allow Petitioner's taxpayer Complaint to be filed.

III. Relief Sought by This Petition

24. Pursuant to 735 ILCS 5/11-303, upon filing and presentation of this Petition to this Court, Petitioner asks the Court to enter an Order:

a. Fixing a date for the hearing on this Petition, not less than 5 days nor more than 10 days from the date of the presentment of this Petition;

b. Commanding Petitioner to serve notice in writing to each Defendant named herein and to the Attorney General, specifying in such notice the fact of the presentation of this Petition and the date and time when the same shall be heard, at least 5 days before the hearing.

25. Pursuant to 735 ILCS 5/11-303, Petitioner asks the Court to find at the hearing on this Petition that there are reasonable grounds for filing the Complaint, to grant the Petition, and to enter an Order that the Complaint be filed and process issue as set forth in 735 ILCS 5/11-304.

WHEREFORE, Plaintiff John Tillman urges that the Court grant this Petition and provide him the relief sought, as well as all other relief to which he may be entitled.

Respectfully submitted,

JOHN TILLMAN
Plaintiff

By: WEBBER & THIES, P.C.

By: /s/John E. Thies
John E. Thies

By: WHITE & CASE LLP

By: /s/Jason N. Zakia
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EXHIBIT A

IN THE CIRCUIT COURT
OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

JOHN TILLMAN and **WARLANDER ASSET MANAGEMENT, LP**, Plaintiffs, v. **J.B. PRITZKER**, Governor of the State of Illinois, in his official capacity; **MICHAEL W. FRERICHS**, Treasurer of the State of Illinois, in his official capacity; and **SUSANA A. MENDOZA**, Comptroller of the State of Illinois, in her official capacity, Defendants.	))))))))))))))	Case No. __________________

<u>TAXPAYER AND BONDHOLDER COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</u>

1. Plaintiffs, John Tillman and Warlander Asset Management, LP, for their Taxpayer and Bondholder Complaint for Declaratory and Injunctive Relief against Defendants, J.B. Pritzker, Michael W. Frerichs, and Susana A. Mendoza, all in their official capacities, allege as follows:

<u>NATURE OF THE CASE</u>

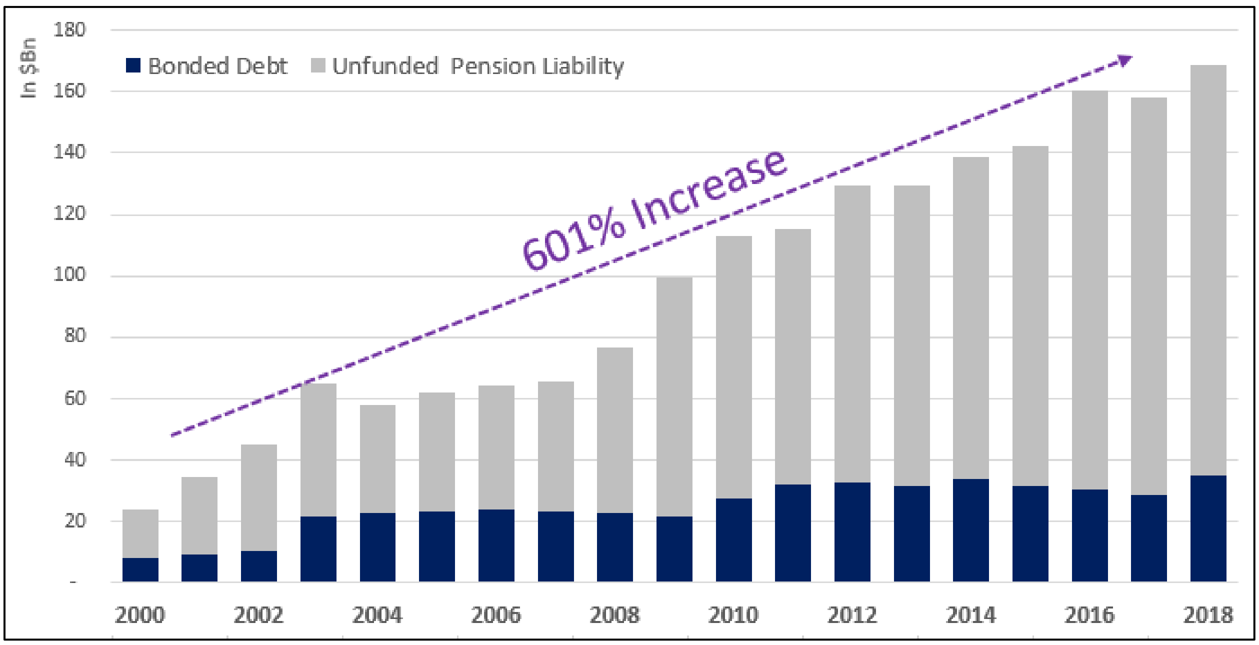
2. This is an action seeking to declare unconstitutional, and enjoin payments on, certain bonds issued by the State of Illinois in 2003 and 2017. As alleged below, and for the reasons stated, these bonds violate Article IX, section 9 of the Illinois Constitution.

3. Illinois is one of the most heavily indebted states in the United States of America.

4. The State has suffered from financial deficits dating back to the economic recession in 2001—first external, and then perpetuated by the State's financial mismanagement.

State leaders turned to long-term debt to fill the budget gaps. As illustrated in the chart below, since 2000, Illinois's unfunded pension liability and bonded debt have grown more than 600%, to over $168 billion. (If one also takes into account the State's $16 billion in unfunded liabilities for "Other Post-Employee Benefits," the State's long-term obligations are over $185 billion.) At the same time, all other State spending, including spending on the State's neediest citizens, has declined by almost a third since 2000 when adjusted for inflation.[1]

State of Illinois,
Historical Bonded Debt & Unfunded Pension Liabilities



5. The State's debt burden is clearly unsustainable. U.S. News & World Report's 2018 ranking of states by fiscal stability ranked Illinois dead last.[2] Public watchdog group Truth in Accounting has labeled Illinois a "Sinkhole State" and estimates that the State has only $28.8

[1] *Compare* FY 2000 Budget *with* FY 2020 estimated spend (adjusted for inflation).
[2] *See* U.S. News & World Report, *Fiscal stability rankings: Measuring states' short-and long-term fiscal health*, https://www.usnews.com/news/best-states/rankings/fiscal-stability (last visited June 20, 2019).

billion in assets to pay $244.9 billion in obligations.[3] This $216.1 billion shortfall translates to a taxpayer burden of $50,800 for each taxpayer.[4] Moody's Investors Service and S&P Global Ratings have rated Illinois's bonds just one notch above "junk."[5]

6. Ironically, the State's Constitution was designed to *avoid* this very situation. The Illinois Constitution requires the Governor and General Assembly to balance the budget every year, *see* Ill. Const. art VIII, § 2,[6] and expressly limits the State's ability to incur long-term debt, *see id.* art. IX, § 9. The State may issue long-term debt only to finance "specific purposes," or to refinance longer-term debt. *See id.* § 9(b), (e). Though the State may borrow in anticipation of revenues or to meet unanticipated shortfalls, it can do so only through short-term debt. *See id.* § 9(c)-(d). Importantly, "specific purposes" in Article IX, section 9(b) of the Illinois Constitution does *not* encompass the general purposes for incurring debt discussed in the *other* paragraphs of Article IX, section 9, *i.e.*, cash-flow borrowing, deficit financing, and refinancing debt.

7. The goal of the Balanced Budget requirement and Article IX, section 9 was to ensure that the State's elected officials would act in a fiscally responsible manner—that they would cut spending or make structural reforms when needed, rather than continually using deficit financing to "kick the can down the road" for future generations to resolve.

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[3] *See* Truth in Accounting, *State Data Lab: Illinois* (Sept. 2018), https://www.statedatalab.org/state_data_and_comparisons/detail/illinois.
[4] *See id.*
[5] *See* Fidelity, *Bond ratings*, https://www.fidelity.com/learning-center/investment-products/fixed-income-bonds/bond-ratings (last visited June 21, 2019); Office of the Comptroller, *Bond Ratings*, https://illinoiscomptroller.gov/financial-data/fiscal-information/bond-ratings/.
[6] *See also* Governor's Office of Mgmt. & Budget, Official Statement: Gen. Obligation Bonds, Series of November 2017 (Oct. 17, 2017) (hereinafter "November 2017 Official Statement"), at 23 (noting "State's constitutional requirement for a balanced budget").

8. The State's elected officials have done just the opposite. They have mortgaged the State's future to pay for the present.

9. In 2003, the State issued $10 billion in General Obligation ("GO") Pension Funding Bonds, purportedly to alleviate the severe underfunding of the State's public pension systems. Yet more than $2 billion went into the State's General Revenue Fund and was never used to fund pensions. The State diverted another $2.3 billion in 2006 and 2007 to help fund its growing long-term structural deficit. The bond proceeds that did go to the pension systems were effectively a loan—not a contribution—to be used to speculate in the market. Neither deficit financing nor speculation is a "specific purpose" for incurring GO debt. By 2008, any alleged benefit to the pension systems from the 2003 bond proceeds had evaporated.

10. In 2017, the State issued $6 billion in GO Income Tax Proceed Bonds to pay off a portion of the $15.245 billion backlog of unpaid bills that had accumulated during the previous two years—when then-Governor Rauner and the General Assembly had failed to pass a budget. The need to pay bills is not a "specific purpose" for incurring State debt; it is just another name for deficit financing. The State used long-term GO debt to pay unspecified past-due general operating expenses.

11. Approximately $14.3 billion of the 2003 Pension Funding Bonds and 2017 Income Tax Proceed Bonds remain outstanding. The burden of servicing this unconstitutional debt falls on the taxpayers of Illinois, including Plaintiff John Tillman.

12. The State's incurrence and continued servicing of this unconstitutional debt also harms holders of other Illinois GO debt, including Plaintiff Warlander Asset Management, LP.

13. This complaint seeks a declaration that the debt described above is unconstitutional and unenforceable, and seeks an injunction prohibiting Defendants from disbursing public funds in service of this unconstitutional debt.

PARTIES, VENUE AND JURISDICTION

14. Plaintiff John Tillman is the Chief Executive Officer of the Illinois Policy Institute. Over the past 12 years, Mr. Tillman has built the Institute into one of the most influential think tanks in the country. The Institute provides Illinois taxpayers with budget and economic research on the impact of the State's fiscal policies. The Institute has long been one of the loudest voices calling for fiscal reform in Illinois, shining a light on the State's dishonest budgeting practices and the unsustainability of its long-term debt burden.

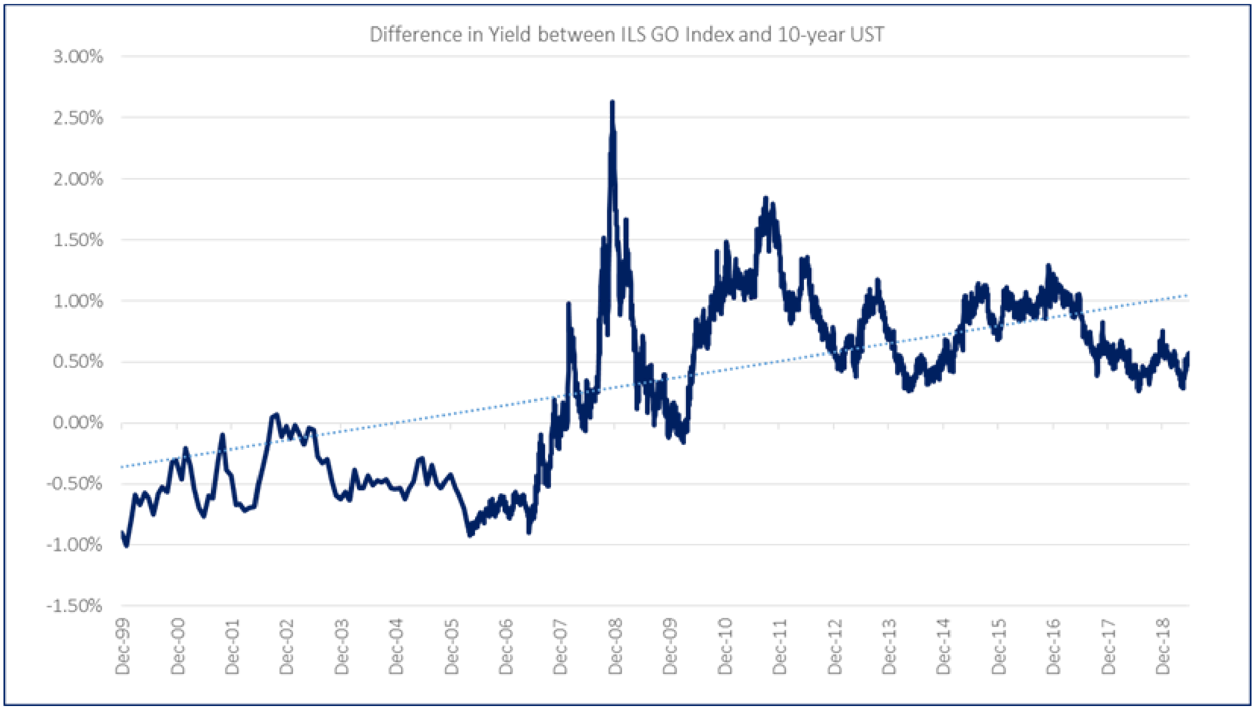
15. Mr. Tillman is a citizen of the State of Illinois and has been paying income taxes to the State treasury since 1985. Mr. Tillman asserts his right as an Illinois citizen and taxpayer to sue to protect the public trust, and to restrain and enjoin Defendants from misusing public funds for unconstitutional purposes. 735 ILCS 5/11-301.

16. Plaintiff Warlander Asset Management, LP ("Warlander") is an investment management firm located in New York, New York. Founded in 2015 and led by its Chief Investment Officer, Eric A. Cole, Warlander acts as the investment manager to certain private investment funds. Warlander manages credit funds that invest across the full spectrum of global corporate and municipal fixed income securities, as well as in credit-sensitive equities.

17. Warlander is a lender to the State of Illinois as the beneficial owner of $25 million (face value) in Illinois GO bonds, including bonds from the series issued February 2010, February 2014, April 2014, May 2014, November 2016, December 2017, and May 2018. The State's anticipated debt service on the unconstitutional debt challenged in this Complaint is more

than $20 billion over the next 14 years—roughly half of the State's total debt service requirements. These payments reduce the State's ability to service Warlander's bonds and harm the present market value of Warlander's bonds. As depicted in the graph at paragraph 74, *infra*, the State's GO bond ratings dropped precipitously after the State issued the unconstitutional bonds challenged in this Complaint. Meanwhile, as shown by the light blue best-fit line in the graph below, the spread between the interest rates on Illinois GO bonds and U.S. Treasury bonds has grown. Both indicators tell the same story: the unconstitutional bonds lowered the State's creditworthiness and have put the State at a significant risk of default. This risk of default will only grow as the State continues to make payments on the unconstitutional bonds. Because Warlander has been harmed by the State's issuance of unconstitutional debt, and because it faces a significant risk of future harm from the State's payments on that debt, an actual controversy exists between Warlander and the State regarding the proper interpretation of the Illinois Constitution. Warlander asserts its right as a bondholder adversely affected by the State's unlawful actions to challenge the legality of those actions by seeking a declaratory judgment in this court.[7]

[7] In addition to the bondholdings referenced above, Warlander also has a separate financial interest in this litigation.



18. Defendant J.B. Pritzker is the Governor of Illinois. He is sued in his official capacity. The Governor is the State's chief executive. The Governor directs the amounts and prices of all GO Bonds issued by the State, and must approve a "Bond Sale Order" authorizing the issuance and sale of each bond series. 30 ILCS 330/9. The Governor also signs all of the State's GO Bonds, and provides the manner of their repayment by "includ[ing] an appropriation in each annual State Budget of monies in such amount as shall be necessary and sufficient" to provide debt service on any outstanding bonds. 30 ILCS 330/10, 330/14.

19. Defendant Michael Frerichs is the Illinois State Treasurer. He is sued in his official capacity. The State Treasurer is the elected official who receives all revenues and other public moneys of the State. 15 ILCS 505/7. The Treasurer countersigns all State GO Bonds, and has the statutory authority and duty to disburse funds, as needed, to pay the interest and principal due on any such bonds. 30 ILCS 330/10, 14-15.

20. Defendant Susana A. Mendoza is the Illinois State Comptroller. She is sued in her official capacity. The Comptroller is the elected official who is the State's chief fiscal control officer. The Comptroller maintains the State's central fiscal accounts and orders all payments into and out of the public funds held by the State Treasurer. 15 ILCS 405/1 *et seq.* The Comptroller has the statutory authority and duty to disburse funds, as needed, to pay the interest and principal due on any State GO bonds. 30 ILCS 330/14-15.

21. Venue and jurisdiction are proper in the Circuit Court of Sangamon County pursuant to 735 ILCS 5/2-101 because Defendants' actions challenged herein occurred in or will occur in Sangamon County.

FACTUAL ALLEGATIONS

22. The Illinois Constitution of 1870 authorized the State to borrow only up to $250,000 absent a popular referendum. Ill. Const. art. IV, § 18 (1870). State officials used various "back-door" financing mechanisms to evade this rigid cap. This led to a higher cost of borrowing for the State.

23. In 1969 and 1970, the people of Illinois convened the State's Sixth Constitutional Convention. One of the issues addressed at the Convention was State debt.

24. The constitutional provisions governing State debt are found in Article IX, section 9 of the Illinois Constitution of 1970. Instead of a cap on debt, section 9 uses a combination of other substantive and procedural limits to control against over-borrowing.

State Debt: Article IX, § 9

25. Article IX, section 9 of the Illinois Constitution provides, in pertinent part:

SECTION 9. STATE DEBT

(a) No State debt shall be incurred except as provided in this Section. For the purpose of this Section, "State debt" means bonds or other evidences of

> indebtedness which are secured by the full faith and credit of the State or are required to be repaid, directly or indirectly, from tax revenue and which are incurred by the State, any department, authority, public corporation or quasi-public corporation of the State, any State college or university, or any other public agency created by the State, but not by units of local government, or school districts.
>
> (b) State debt for specific purposes may be incurred or the payment of State or other debt guaranteed in such amounts as may be provided either in a law passed by the vote of three-fifths of the members elected to each house of the General Assembly or in a law approved by a majority of the electors voting on the question at the next general election following passage. Any law providing for the incurring or guaranteeing of debt shall set forth the specific purposes and the manner of repayment.
>
> (c) State debt in anticipation of revenues to be collected in a fiscal year may be incurred by law in an amount not exceeding 5% of the State's appropriations for that fiscal year. Such debt shall be retired from the revenues realized in that fiscal year.
>
> (d) State debt may be incurred by law in an amount not exceeding 15% of the State's appropriations for that fiscal year to meet deficits caused by emergencies or failures of revenue. Such law shall provide that the debt be repaid within one year of the date it is incurred.
>
> (e) State debt may be incurred by law to refund outstanding State debt if the refunding debt matures within the term of the outstanding State debt.

Ill. Const. art. IX, § 9(a)-(e).

26. Paragraph (a) defines "State debt" broadly. It provides that such debt can be incurred by the State only as authorized in section 9. *Id.* § 9(a). Section 9 therefore functions as a restraint on the State's power to issue debt.

27. Paragraph (b) permits the State to incur State debt for "specific purposes," without limitations on amounts or maturity dates. "Specific purposes" refers to specific projects in the nature of capital improvements, such as roads, buildings, and bridges. State debt for a "specific purpose" must be authorized by a law approved by either a three-fifths vote of the General Assembly or a popular referendum. *Id.* § 9(b). Paragraph (b) also contains the

procedural requirement that the "specific purposes and manner of repayment" of the debt be set forth in the authorizing law. *Id.*

28. Paragraph (c) permits the State to incur State debt "in anticipation of revenues to be collected in a fiscal year," with a strict limit on both amount (5% of appropriations) and maturity date (to be "retired from the revenues realized" in the same fiscal year). *Id.* § 9(c).

29. Paragraph (d) permits the State to incur State debt to "meet deficits caused by emergencies or failures of revenue," again with a strict limit on both amount (15% of appropriations) and maturity date (to be "repaid within one year of the date it is incurred"). *Id.* § 9(d).

30. Paragraph (e) permits the State to incur State debt to "refund outstanding State debt," provided this refunding does not extend the debt's maturity. *Id.* § 9(e).

31. As stated above, State debt incurred under paragraph (b) must be for a "specific purpose." A "specific purpose" must be a coherent and logical purpose; it cannot simply restate the *general* purposes for borrowing described in paragraphs (c) (cash flow borrowing), (d) (deficit financing), and (e) (debt refinancing). Debt incurred for the general purposes described in paragraphs (c), (d), and (e), rather than for a "specific purpose," must comport with the strict percentage caps and maturity limits set forth in those paragraphs.

32. Because paragraph (a) limits the State's powers to incur State debt to only those set forth in paragraphs (b) through (e), any other State debt issuances are ultra vires and unconstitutional.

33. Section 9 as a whole is thus designed to limit the State's borrowing to reasonable amounts and for reasonable purposes. Its provisions work together to prevent "back-door"

borrowing, keep the State's cost of borrowing to a minimum, and most importantly, avoid the "snowballing" effect of a growing, unsustainable debt load.

The Balanced Budget Requirement: Article VIII, § 2

34. The Illinois Constitution also requires a balanced budget. Each year, the Governor shall "prepare and submit to the General Assembly . . . a State budget for the ensuing fiscal year." This proposed budget must be balanced—that is, "[p]roposed expenditures shall not exceed funds estimated to be available for the fiscal year as shown in the budget." Ill. Const. art. VIII, § 2(a).

35. The General Assembly, in turn, is required to pass a budget and send it to the Governor's desk for signature. This budget, too, must be balanced—that is, "[a]ppropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year." *Id.* § 2(b).

36. The Balanced Budget requirement is designed to work in tandem with the State Debt requirements in Article IX, section 9 to mandate fiscal responsibility—that is, to prevent the State from continually operating at a deficit, borrowing money to finance such deficits, and mortgaging the State's future to pay for its present.

The Short Term Borrowing Act

37. The Short Term Borrowing Act, 30 ILCS 340/0.1 *et seq.*, implements in part the borrowing authority granted in paragraphs (c) and (d) of Article IX, section 9. It authorizes the Governor, Comptroller, and Treasurer to issue short-term "certificates" for (i) an amount not exceeding 5% of the State's appropriations for any fiscal year in anticipation of revenues to be collected in that fiscal year, which borrowing must be repaid by the close of that fiscal year; or (ii) an amount not exceeding 15% of the State's appropriations for any fiscal year to meet

failures in revenue, which borrowing must be repaid within one year. 30 ILCS 340/1, 340/1.1, 340/2.

38. Short-term certificates are backed by the State's full faith and credit and are "State debt" under Article IX, section 9 of the Illinois Constitution.

<u>The General Obligation Bond Act</u>

39. The General Obligation Bond Act, 30 ILCS 330/1 *et seq.* ("GO Bond Act"), purportedly implements the borrowing authority granted in paragraph (b) of Article IX, section 9. The GO Bond Act was enacted on December 4, 1984 by a three-fifths vote of the General Assembly. It consolidated several earlier bond acts. *See* Pub. Act 83-1490 (Dec. 4, 1984).[8] The GO Bond Act has been amended multiple times since 1984.

40. The GO Bond Act authorizes the State to issue GO bonds "***for the categories and specific purposes*** expressed in Sections 2 through 8 of this Act." 30 ILCS 330/2 (emphasis added). In addition to this general authorization, Section 2 authorizes College Savings Bonds and Retirement Savings Bonds. Sections 3 through 7 authorize GO bonds for various other "specific purposes," *i.e.*, projects such as Capital Facilities (30 ILCS 330/3), Transportation (30 ILCS 330/4), School Construction (30 ILCS 330/5), Anti-Pollution (30 ILCS 330/6), and Coal and Energy Development (30 ILCS 330/7). Each of sections 3 through 7 was authorized by a separate public act passed by a three-fifths vote of the General Assembly. Section 8 allows a portion of any debt issued pursuant to the GO Bond Act "to pay the reasonable costs of issuance and sale" of the bonds. 30 ILCS 330/8(a).

41. GO bonds are backed by the State's full faith and credit and are "State debt" under Article IX, section 9 of the Illinois Constitution.

[8] *See* June 2003 Official Statement, *infra* note 13, at 3; November 2017 Official Statement, *supra* note 6, at 13.

The State's History of Fiscal Mismanagement

42. The State's current financial crisis did not develop overnight. It is the result of decades of fiscal mismanagement.

43. No politician likes cutting spending or making other politically tough choices. Illinois's leaders, however, have become known for taking extraordinary steps—deferring routine payments, underestimating spending, overestimating revenues, using creative accounting, and misleading investors—to mask their persistent failure to pass a constitutionally required balanced budget.[9]

44. The State's government pension systems show perfectly how poorly the State has managed its finances.

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[9] *See* Governor's Office of Mgmt. & Budget, *Illinois Economic & Policy Report* 14 (Oct. 12, 2017) (hereinafter "GOMB 2017 Report"), https://www2.illinois.gov/sites/budget/documents/economic%20and%20fiscal%20policy%20reports/fy%202017/economic_and_%20fiscal_%20policy_%20report_10.12.17.pdf (discussing "[d]ecades of deficit spending, refusing to enact structural changes, and deferring present liabilities to future years"); U.S. Securities & Exchange Comm'n, *Press release: SEC Charges Illinois for Misleading Pension Disclosures* (Mar. 11, 2013), https://www.sec.gov/news/press-release/2013-2013-37htm (reporting that SEC charged State of Illinois "with securities fraud for misleading municipal bond investors about the State's approach to funding its pension obligations").

As explained in a CNN Money article entitled, *How Illinois became America's most messed-up state*:

> "The massive pension liability results from a chronic tendency to defer difficult decisions," said Ted Hampton, who as a senior credit officer at Moody's will help decide whether to downgrade Illinois into junk. Hampton said Illinois treated the pension fund as a "financial cushion" that could be relied on to provide fiscal relief. He also pointed to a tendency to delay paying bills and chronically underestimate spending needs. "All of these problems are governance and management weaknesses," Hampton said. That's a polite way of saying the political leaders broke the system.

Matt Egan, *How Illinois became America's most messed-up state*, CNN Money (July 1, 2017), https://money.cnn.com/2017/06/29/investing/illinois-budget-crisis-downgrade/index.html.

45. Illinois provides retirement benefits to more than 213,000 public employees and retirees through five State-run pension systems: the State Employees' Retirement System of Illinois; the Teachers' Retirement System of the State of Illinois; the State Universities Retirement System; the Judges Retirement System of Illinois; and the General Assembly Retirement System. The State is responsible for funding these five systems through annual contributions. Contributions are based on each system's "unfunded actuarial accrued liabilities" ("UAAL")—its level of underfunding. *See* 40 ILCS 5/1-101 *et seq.*

46. In 1994, the State's five public pension systems were underfunded by approximately $15 billion. Governor Jim Edgar proposed to fix this problem with a pension funding bill that contained a "50-year ramp," now known as the "Edgar Ramp." Under the Edgar Ramp, the State's pension contributions would increase each year from 1996 to 2010, with funding thereafter equal to the percentage of payroll necessary to reach a 90% funding ratio by the end of fiscal year 2045. *See* Pub. Act 88-593 (Aug. 1994).[10]

47. Rather than solving the underfunding problem, however, the Edgar Ramp made it worse. It was designed to hold the State's pension contributions artificially low for the first 15 years (to ensure that lawmakers "would have more money to fund their current projects"), and not to begin paying normal costs and interest on the unfunded liability until around 2034.[11] In

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[10] *See also* Ted Dabrowski, *The Edgar ramp—the 'reform' that unleashed Illinois' pension crisis*, Illinois Policy Institute (Oct 27, 2015), https://www.illinoispolicy.org/the-edgar-ramp-the-reform-that-unleashed-illinois-pension-crisis/.

[11] *See id.* Testifying before a subcommittee of the House Committee on Education and the Workforce, John Filan, Director of the Governor's Office of Management and Budget under Governor Blagojevich, described the Edgar Ramp as follows:

> During the 1970's, 1980's, and first half of the 1990's, state contributions were grossly inadequate. It increased the unfunded liability every single year, every adopted budget under-funded the pensions, without exception, during good times and during bad times. In 1994, the state adopted a payment schedule. . .

other words, the Edgar Ramp was by design too steep at the end and not steep enough at the start.

48. Ralph Martire, executive director of the Center for Tax and Budget Accountability, has called the Edgar Ramp "one of the greatest pieces of chicanery ever pulled by a political system."[12]

49. In 2000, the State executed a new contract with the Union Bargaining Committee that *increased* pension benefits.[13] In 2002, the State enacted legislation providing for early retirement, but greatly underestimated the number of employees who would take advantage of the law as well as their average compensation.[14] The State projected the law would increase its unfunded pension liabilities by only about $622 million. The increase turned out to be almost $2.5 billion.[15]

> . However, the payment schedule continued to under-fund each of the pension funds each and every year. . . . Payments were not sufficient to pay normal costs and interest on unfunded liability until around 2034. Thus, the state was guaranteed to experience a growing unfunded liability. This had the impact of deferring and increasing major debt into the future. . . . The plan was structured that way.

Examining The Retirement Security of State and Local Government Employees, Field Hearing, Before H. Comm. on Education and the Workforce, Subcomm. on Employer-Employee Relations 21-22 (Aug. 30, 2006) (Testimony of John Filan), https://www.govinfo.gov/content/pkg/CHRG-109hhrg29627/html/CHRG-109hhrg29627.htm.

[12] See Egan, *supra* note 9.

[13] *See* Governor's Office of Mgmt. & Budget, Official Statement: Gen. Obligation Bonds, Pension Funding Series of June 2003 (June 5, 2003) (hereinafter "June 2003 Official Statement"), at 40.

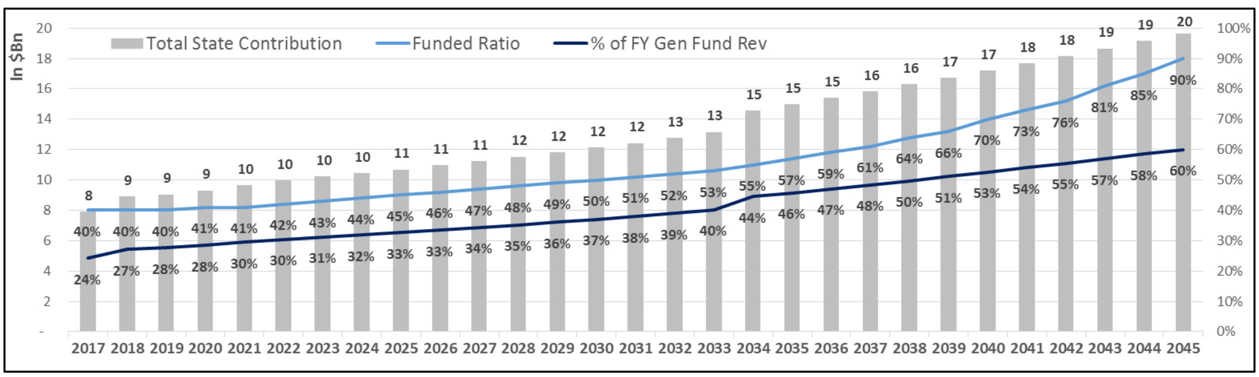
[14] Pub. Act 92-566 (June 25, 2002); Governor's Office of Mgmt. & Budget, Official Statement: Gen. Obligation Bonds, Series of November 2004 (Oct. 27, 2004) (hereinafter "November 2004 Official Statement"), at 48.

[15] November 2004 Official Statement, *supra* note 14, at 48.

50. Unsurprisingly, the State's pension debt ballooned. Each year from 1999 through 2003, the funding ratio declined—from 73% in 1999 to just 48.6% in 2003.[16] By mid-2003, the State's pension systems were underfunded by approximately $43.1 billion.[17]

51. For years, the State has treated pension funds like a "financial cushion" it can use to finance present-day needs.[18] Its irresponsible behavior created a pension time bomb that threatens to bankrupt the State. As illustrated in the chart below, at least 22% of the State's General Fund spending already goes to pay pensions, but the State will need to double that amount to fully fund benefits at current levels.[19]

State of Illinois,
Projected Pension Contributions, FY 2017 to FY 2045



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16 *See id.* at 47.

17 Judy Baar Topinka, Illinois State Comptroller, *State Searches for Answers: Pension Funding Problems Plague States Nationwide*, Fiscal Focus (May 2011), at 4-5.

18 *See* Egan, *supra* note 9.

19 Adam Schuster, *Bad Budgeting Basics: How Illinois' Budget Process Hurts Taxpayers*, Illinois Policy Institute (Spring 2018), https://www.illinoispolicy.org/reports/bad-budgeting-basics-how-illinois-budget-process-hurts-taxpayers/; Michael Cembalest, J.P. Morgan Private Bank, *The ARC & the Covenants 4.0*, Eye on the Market: Special Edition (Oct. 9, 2018), https://www.jpmorgan.com/jpmpdf/1320746272624.pdf.

The 2003 Pension Funding Bonds

52. Fiscal year 2001 was the State's last year with a surplus. Illinois suffered extensively from the economic recession in 2001. Tax revenues fell dramatically, leaving the State with a large operating deficit in fiscal year 2002.[20]

53. In its fiscal year 2003 budget, the State substantially overestimated its expected revenues, leading to a failure of revenue of nearly $4 billion, or 10% of revenues initially estimated.[21]

54. To address this shortfall, in May 2003, the State issued $1.5 billion in short-term debt. As required by the Short Term Borrowing Act and the Illinois Constitution, these certificates were due to be repaid within a year—on May 15, 2004.[22] *See* Ill. Const. art. IX, § 9(d); 30 ILCS 340/1.1.

55. Faced with the need to pay back this short-term debt in fiscal year 2004, and with a still-growing budget deficit, "[Governor] Blagojevich's team came up with a brazen idea: a $10 billion bond sale."[23]

56. On April 7, 2003, the State amended the GO Bond Act to add Section 7.2. Section 7.2 authorized the Governor to issue $10 billion in GO bonds "for the purpose of making contributions to the designated retirement systems." Of the proceeds, $2.16 billion was earmarked to reimburse the State's General Revenue Fund for the State's required pension contributions in the last quarter of fiscal year 2003 and fiscal year 2004. The remainder was to

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[20] *See* Office of the Comptroller, *Comprehensive Annual Financial Report for Fiscal Year 2002*, at 38, https://illinoiscomptroller.gov/Ledger-Temp/assets/File/CAFR/CAFR%202002.pdf.

[21] *See* Office of the Comptroller, *Comprehensive Annual Financial Report for Fiscal Year 2003*, at 42, https://illinoiscomptroller.gov/Ledger-Temp/assets/File/CAFR/CAFR%202003.pdf.

[22] *See* November 2004 Official Statement, *supra* note 14, at 44.

[23] Daniel C. Vock, *Who Ruined Illinois?*, Governing (May 2018), https://www.governing.com/topics/politics/gov-illinois-rauner-budget-rating.html.

be allocated among the five pension systems. Critically, however, the law provided that the State's annual required contributions to the systems, as dictated by the Edgar Ramp, would be reduced by whatever amounts the State paid to service the debt each year (both principal and interest). Pub. Act 93-2 (Apr. 7, 2003); 30 ILCS 330/7.2. Public Act 93-2 was passed on a three-fifths vote of the General Assembly.

57. On June 12, 2003, the State issued the entire $10 billion in "GO Pension Funding Bonds" at the following rates and maturities:[24]

Name	**Amount Issued**	**Interest Rate**	**Maturity Date**
Serial Bonds (2008)	$50,000,000	2.50%	06/01/2008
Serial Bonds (2009)	$50,000,000	2.80%	06/01/2009
Serial Bonds (2010)	$50,000,000	3.30%	06/01/2010
Serial Bonds (2011)	$50,000,000	3.55%	06/01/2011
Serial Bonds (2012)	$100,000,000	3.75%	06/01/2012
Serial Bonds (2013)	$100,000,000	3.85%	06/01/2013
Serial Bonds (2014)	$100,000,000	3.95%	06/01/2014
Serial Bonds (2015)	$100,000,000	4.05%	06/01/2015
Term Bonds (2018)	$375,000,000	4.35%	06/01/2018
Term Bonds (2023)	$1,375,000,000	4.95%	06/01/2023
Term Bonds (2033)	$7,650,000,000	5.10%	06/01/2033

[24] *See* $10,000,000,000 General Obligation Bonds, Pension Funding Series of June 2003 (Taxable) issued on June 12, 2003 pursuant to proceedings of the Governor and the Director of the Bureau of the Budget, including a Bond Sale Order executed on June 5, 2003 by the Governor and the Director of the Bureau of the Budget, as described in that certain Official Statement, dated June 5, 2003.

58. Both the Governor and the Director of the Bureau of the Budget approved the Bond Sale Orders for these bonds.[25]

59. The Official Statement for the bonds states that the bond proceeds would be used to "(i) reimburse the State's General Revenue Fund for a portion of the contributions made to the Retirement Systems for the last quarter of the State's fiscal year 2003, (ii) reimburse the State's General Revenue Fund for the State's contributions to the Retirement Systems for the State's fiscal year 2004, and (iii) fund a portion of the UAAL."[26]

60. The Official Statement further explains that:

> Due to the overestimation of revenues for the fiscal year 2003 budget, Governor Blagojevich has taken certain steps to control expenditures and reduce the budget deficit for fiscal year 2003. . . . The Governor has also recommended other financing alternatives to increase revenues during fiscal year 2003, including the reimbursement into the General Revenue Fund of $300 million in proceeds from the sale of the Bonds . . . .
>
> On April 9, 2003, Governor Blagojevich presented the fiscal year 2004 budget to the General Assembly. The fiscal year 2004 budget was intended to address the budget deficit created in fiscal year 2003. . . . The budget also projects general funds revenues totaling $1,860 million derived from the proceeds from the sales of the Bonds[.][27]

61. In essence, then, the State diverted $2.16 billion of the proceeds of the 2003 Pension Funding Bonds to address its 2003 and 2004 budget deficits. It was deficit financing. The State was able to "balance" its fiscal year 2004 budget only by counting $1.86 billion of the bond proceeds as revenue.

62. This $2.16 billion that was transferred to the State's General Revenue Fund was not used to fund pensions. Although notionally based on the State's required pension contributions for the final quarter of 2003 and fiscal year 2004, the State was already obligated to

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[25] June 2003 Official Statement, *supra* note 13, at 12.
[26] *Id.* at 2.
[27] *Id.* at 19-20.

make (and to some extent had already made) those contributions. This money was not earmarked for pension funding. "Reimbursing" the General Revenue Fund for money the State was already obligated to pay was simply a gimmick to mask the fact that the State was using GO bond debt to fill operating deficits.[28]

63. As explained by Crain's *Chicago Business*: "Rather than use all of the proceeds to pay down pension debt, the Blagojevich administration used $2.7 billion to pay the state's regular annual pension contribution, essentially plugging an operating hole with bond debt."[29] Or, as the *Chicago Tribune* put it: "[L]ike several of his predecessors, Blagojevich also used the pension system to solve the state's financial problems . . . . [A]bout $2 billion of the bond money was diverted to help cover the day-to-day operations of the state."[30]

64. The people of Illinois were told that the purpose of the $7.3 billion in bond proceeds allocated to the pension systems was to "fund a portion of the UAAL." However, the State did not give this money to the pension systems; it only *loaned* them the money. The authorizing law reduced the State's annual pension contributions by the amount of the State's "debt service" on the 2003 bonds—in other words, whatever the State pays each year in interest

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[28] Vock, *supra* note 23 ("To make a clean break from the Ryan years, Blagojevich had brought in out-of-state advisers and political neophytes to run his administration. They quickly ran into a big problem: Illinois' government still had not recovered from the 2001 recession, and there was precious little money to pay for ambitious programs. So Blagojevich's team came up with a brazen idea: a $10 billion pension bond sale. While the state might have conceivably saved money in the deal, in reality it was an elaborate way to skip $2.7 billion in otherwise required pension payments. Lawmakers went along with the idea anyway. The gimmick not only deprived the pension systems of needed cash, it also skewed the state's budgets for two years.").

[29] Ralph Martire & Daniel Hertz, Center for Tax & Budget Accountability, *Don't dismiss the city's pension bond idea out of hand (opinion)*, Crain's Chicago Business (Aug. 16, 2018), https://www.chicagobusiness.com/opinion/dont-dismiss-citys-pension-bond-idea-out-hand.

[30] Jason Grotto & Ray Long, *Digging a pension hole*, Chicago Tribune (Dec. 15, 2011), https://www.chicagotribune.com/investigations/ct-met-pension-code-20111216-story.html.

and principal on the bonds, it *subtracts* from its required pension contributions.[31] The pension systems thus must effectively "pay back" all the bond proceeds they received in 2003, with interest, by taking reduced contributions from the State in the future. That is not a contribution; it is a loan. The subtraction of the debt service amount also means that the State's annual contributions are now short even of those required by the disastrous Edgar Ramp.

65. The purpose of the loan was financial speculation—not any "specific purpose" that is recognized under Article IX, section 9(b). Because the $7.3 billion in bond proceeds allocated to the pension systems was a loan rather than a true contribution, the pension systems needed to obtain an overall investment rate of return higher than the interest rate on the bonds in order to get any benefit. Otherwise, the pension systems would lose money.[32] In short, the purpose of the debt was not pension funding—it was to speculate in the market and hope for a rate of return that would both cover the interest and yield some profit. The pension systems took on the risk, but were expected to reap the benefit of any excess return in profit.

66. For the first few years, this financial chicanery worked. The pension systems did indeed see returns on investment rates higher than the interest rates on the bonds. In 2005, however, the State used this fact to justify taking a "pension holiday" in fiscal years 2006 and 2007, cutting back its required pension contributions by a total of $2.3 billion.[33] So while the pension systems shouldered the risk of a low return, the General Fund, it was clear, would reap the reward in any profitable years. And, because the State would continue to subtract the debt service on the 2003 bonds from its annual pension contributions, the State was speculating with the money for free. The $2.3 billion pension holiday added another $6.8 billion to the State's

[31] *See* Pub. Act 93-2 (Apr. 7, 2003).
[32] *See* November 2017 Official Statement, *supra* note 6, at E-12, E-13.
[33] *See* Pub. Act 94-01 (June 1, 2005).

unfunded pension liabilities.[34] By 2008, any improvement in the pension systems' UAAL from the temporary cash infusion in 2003 had disappeared.[35]

67. These maneuvers left the State's pension systems even worse off than they would have been under the already-lopsided Edgar Ramp. From 2003 to 2017, Illinois's pension debt roughly tripled, with unfunded liabilities growing to $129 billion.[36] According to Moody's Investors Service, Illinois's unfunded pension liabilities in 2017 equaled 601% of the State's revenues, a U.S. record.[37]

68. Approximately $8.85 billion of the 2003 Pension Funding Bonds remains outstanding. Interest on these bonds is payable on June 1 and December 1 of each year, and a portion of the remaining principal will also come due each year until maturities in 2023 and 2033.[38] If the State were to cease making debt service payments on the 2003 Pension Funding Bonds, then under current law, its annual pension contributions would return to those amounts required by the Edgar Ramp.[39] This translates to an additional $13 billion for the pension systems over the next 14 years.

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[34] *See* chart at paragraph 4, *supra*.

[35] *See* Dave McKinney, *The Illinois pension disaster: What went wrong?*, Crain's Chicago Business, https://www.chicagobusiness.com/static/section/pensions.html (last visited June 20, 2019).

[36] *See* November 2017 Official Statement, *supra* note 6, at 9.

[37] Moody's Investors Service, *Research Announcement: Moody's – Unfunded US state pension liabilities surge in fiscal 2017 due to poor investment returns* (Aug. 27, 2018), https://www.moodys.com/research/Moodys-Unfunded-US-state-pension-liabilities-surge-in-fiscal-2017--PBM_1139183?WT.mc_id=AM~RmluYW56ZW4ubmV0X1JTQl9SYXRpbmdzX05ld3NfTm9fVHJhbnNsYXRpb25z~20180827_PBM_1139183.

The State issued another $7.2 billion in GO bonds in 2010 and 2011 to pay its required pension contributions in fiscal years 2010 and 2011. This debt has matured and is no longer outstanding. *See* Governor's Office of Mgmt. & Budget, Official Statement: Gen. Obligation Bonds, Taxable Series of January 2010 (Jan. 7, 2010); Governor's Office of Mgmt. & Budget, Official Statement: Gen. Obligation Bonds, Taxable Series of February 2011 (Feb. 23, 2011).

[38] *See* June 2003 Official Statement, *supra* note 14, at 4-5.

[39] *See* Pub. Act 93-2.

69. The Illinois Constitution did not authorize the State to incur the GO debt reflected in the 2003 Pension Funding Bonds. Using bond money to cover general operating expenses (*i.e.*, deficit financing) or to speculate in the market in hopes of turning a profit is not a qualifying "specific purpose" under Article IX, section 9(b). The State should not be in the business of borrowing money for speculative profit.

70. The debt also did not fall within the authority granted to the State to incur State debt in paragraphs (c), (d), or (e) of Article IX, section 9. The 2003 Pension Funding Bonds were not tied to any anticipated revenue as required by Article IX, section 9(c), and in any event, the debt was not retired in the same fiscal year and far exceeded 5% of appropriations. Although the bonds were used to finance a deficit caused by a failure of revenue, the maturity of the debt extended beyond the one year prescribed by Article IX, section 9(d), and the debt exceeded 15% of appropriations. And although part of the $2.16 billion in bond proceeds paid into the General Revenue Fund could have been used to "refund" the short-term certificates due in May 2004, the 2003 Pension Funding Bonds did not mature within the term of that outstanding debt, as required by Article IX, section 9(e).

71. Because the State debt reflected in the 2003 Pension Funding Bonds did not satisfy the requirements of any of paragraphs (b)-(e) of Article IX, section 9 of the Illinois Constitution governing the incurrence of State debt, the debt is unconstitutional.

The 2017 Income Tax Proceed Bonds

72. The State allowed a 2011 income-tax increase to expire on January 1, 2015. As a result, between fiscal year 2014 and fiscal year 2016, annual State income tax revenues dropped by more than $4.5 billion.[40]

73. In the face of the reduced revenues and other political disputes, Governor Rauner and the legislature could not agree on how to balance the budget. The budget impasse, during which the State operated without a fully appropriated budget, lasted for just over two fiscal years: from July 1, 2015 to July 6, 2017—the longest *any* state has ever gone without a budget in modern history.[41]

74. During this period, the State's bond rating was downgraded a combined eight times by Moody's Investors Service, Fitch Ratings, and S&P Global Ratings.[42] As reasons for the downgrades, the rating agencies cited the State's lack of a budget and its history of financial mismanagement.[43]

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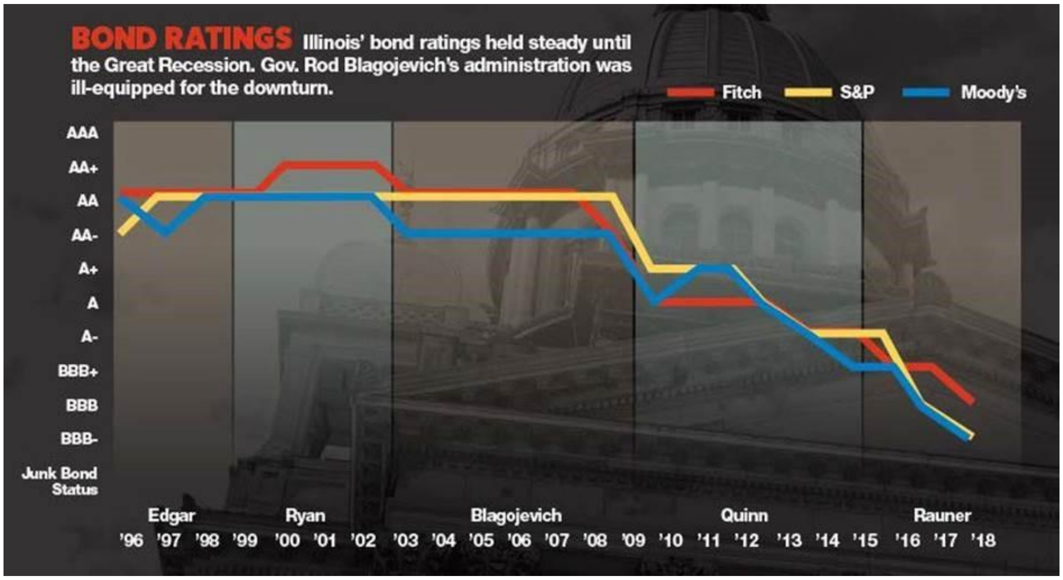
[40] Office of the Comptroller, *Consequences of Illinois' 2015-2017 Budget Impasse and Fiscal Outlook* (hereinafter "Comptroller Report"), at 1, https://illinoiscomptroller.gov/financial-data/find-a-report/special-fiscal/consequences-of-illinois-2015-2017-budget-impasse-and-fiscal-outlook/.

[41] *See id.*; John O'Connor & Sophia Tareen, *Illinois approves spending plan, ending nation's longest budget stalemate*, PBS News Hour (July 6, 2017), https://www.pbs.org/newshour/nation/illinois-vote-end-nations-longest-budget-stalemate.

[42] *See* Comptroller Report, *supra* note 40, at 4.

[43] *See, e.g.*, Moody's Investors Service, *Rating action: Moody's downgrades Illinois GOs to Baa3 from Baa2, affecting $31.5B of GO & related debt; Outlook negative* (June 1, 2017); *see also* Monique Garcia, *Credit agency warns of 'long-term damage' in Illinois if no budget deal by May 31*, Chicago Tribune (Mar, 30, 2017), https://www.chicagotribune.com/politics/ct-illinois-budget-moodys-rauner-met-0331-20170330-story.html.



Graphic from Daniel C. Vock, *Who Ruined Illinois?*, Governing (May 2018), https://www.governing.com/topics/politics/gov-illinois-rauner-budget-rating.html.

75. The budget impasse created a fiscal crisis. Without a budget, the State risked uncontrolled spending. The lack of appropriations also meant the State could not pay many of its regular bills, such as payments for social service programs, higher education, agency operations, and state employee health insurance payments.

76. Under Illinois law, State agencies that wish to pay their vendors must submit "vouchers" to the Comptroller requesting that payment be made. A voucher evidences the propriety of a transaction and indicates the account(s) in which it is to be recorded. 15 ILCS 405/9(b).

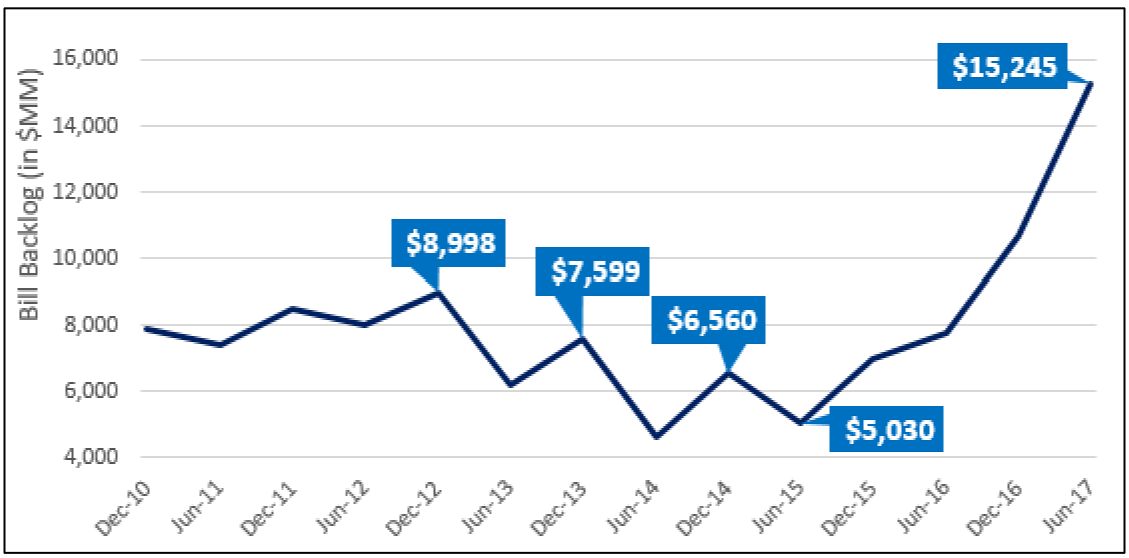
77. Once the Comptroller satisfies herself of the voucher's legality and the availability of appropriated funds, she draws a "warrant," which the Treasurer must countersign. A "warrant" is similar to a check; it is a negotiable instrument drawn by the Comptroller on the State Treasury to effect payment from public funds held by the Treasurer. 15 ILCS 405/9(a).[44]

[44] *See also* Office of the Treasurer, *Warrants and forgeries*, https://illinoistreasurer.gov/Office_of_the_Treasurer/Warrants_and_Forgeries# (last visited June 25, 2019).

78. Illinois has historically had difficulty paying its bills on time. Even before the budget impasse, the State's backlog of unpaid bills was over $5 billion.

79. Because the State had appropriated insufficient funds to pay its various vendors during the 2016-17 budget impasse, this backlog mushroomed.[45] By June 21, 2017, the State's backlog of unpaid bills had reached a staggering $15.245 billion.[46] The State was paying up to 12% interest on a large portion of this unpaid backlog due to late payment penalties, at a cost of roughly $2 million a day.[47] The graph below shows the spike in unpaid bills caused by the 2016-17 budget impasse.

State of Illinois, Historical Bill Backlog



80. Defendant Mendoza warned State officials that the State would begin to experience "unmanageable financial strains" beginning in July 2017. "Everything's in danger

[45] *See* Comptroller Report, *supra* note 40, at 3-5.
[46] Office of the Comptroller, *Illinois bill backlog from 2010-2017*, https://illinoiscomptroller.gov/financial-data/fiscal-information/charts-graphs/illinois-bill-backlog-from-2010-2017/ (last visited June 25, 2019).
[47] Office of the Comptroller, *Press release: Comptroller Mendoza and social service providers urge Governor Rauner to start bond offering*, https://illinoiscomptroller.gov/news/press-releases/comptroller-mendoza-and-social-service-providers-urge-governor-rauner-to-start-bond-offering/ (last visited June 25, 2019).

right now," she said. "We are no longer going to be able to meet our core state responsibilities."[48]

81. In July 2017, the General Assembly finally ended the budget impasse by approving a fiscal year 2018 budget over the Governor's veto. The budget package counted on the State borrowing money to help pay some of its backlog of bills. *See* Pub. Act 100-23 (July 6, 2017).

82. Public Act 100-23, authorized on July 6, 2017, added Section 7.6 to the GO Bond Act. That section authorizes the Governor to issue $6 billion in GO bonds denominated "Income Tax Proceed Bonds" for the stated purpose of "paying vouchers incurred by the State prior to July 1, 2017." 30 ILCS 330/7.6. Public Act 100-23 was enacted on a three-fifths vote of the General Assembly.

83. On November 8, 2017, the State issued $6 billion in "Income Tax Proceed Bonds" at the following rates and maturities:[49]

Name	Amount Issued	Interest Rate	Maturity Date
November 2017A	$500,000,000	5.00%	11/01/2018
November 2017B	$500,000,000	5.00%	11/01/2019
November 2017C	$500,000,000	5.00%	11/01/2029

[48] Julie Bosman & Monica Davey, *"Everything's in danger": Illinois approaches 3rd year without budget*, N.Y. Times (June 29, 2017), https://www.nytimes.com/2017/06/29/us/illinois-state-budget-impasse.html.

[49] *See* $1,500,000,000 General Obligation Bonds, Series of November 2017 issued on November 8, 2017 pursuant to a Bond Sale Order approved by the Governor and the Director of the Bureau of the Budget, dated October 6, 2017, as supplemented by a Sale Confirmation Certificate, dated October 17, 2017, as described in that certain Official Statement, dated October 17, 2017; $4,500,000,000 General Obligation Bonds, Series of November 2017D issued on November 8, 2017 pursuant to a Bond Sale Order approved by the Governor and the Director of the Bureau of the Budget, dated October 5, 2017, as supplemented by a Sale Confirmation Certificate, dated October 25, 2017, as described in that certain Official Statement, dated October 25, 2017.

November 2017D (2020)	$500,000,000	5.00%	11/01/2020
November 2017D (2021)	$500,000,000	5.00%	11/01/2021
November 2017D (2022)	$500,000,000	5.00%	11/01/2022
November 2017D (2023)	$500,000,000	5.00%	11/01/2023
November 2017D (2024)	$500,000,000	5.00%	11/01/2024
November 2017D (2025)	$475,000,000	5.00%	11/01/2025
November 2017D (2025)	$25,000,000	5.00%	11/01/2025
November 2017D (2026)	$55,000,000	3.25%	11/01/2026
November 2017D (2026)	$445,000,000	5.00%	11/01/2026
November 2017D (2027)	$500,000,000	5.00%	11/01/2027
November 2017D (2028)	$500,000,000	5.00%	11/01/2028

84. The Governor and the Director of the Bureau of the Budget approved the Bond Sale Orders.[50]

85. Consistent with Section 7.6 of the GO Bond Act, the Official Statements for these bonds state that the bonds "are being issued to provide funds to pay vouchers previously incurred by the State."[51]

86. Defendant Mendoza later reported that the bond proceeds allowed the State to release nearly 73,000 vouchers for payment.[52]

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[50] November 2017 Official Statement, *supra* note 6, at 1; Governor's Office of Mgmt. & Budget, Official Statement, Gen. Obligation Bonds, Series of November 2017D (Oct. 25, 2017) (hereinafter "November 2017D Official Statement"), at 1.

[51] November 2017 Official Statement, *supra* note 6, at ii; November 2017D Official Statement, *supra* note 50, at ii.

[52] Office of the Comptroller, *November 2017 $6 Billion Bond Authorization Proceeds*, https://illinoiscomptroller.gov/financial-data/fiscal-information/archive/november-2017-6-billion-bond-authorization-proceeds/ (last visited June 22, 2019).

87. With the inclusion of the bond proceeds, the General Assembly proclaimed its fiscal year 2018 budget "balanced." The Governor's Office of Management and Budget, however, claimed the General Assembly's calculations were wrong and projected a remaining $1.5 billion structural deficit.[53]

88. Approximately $5.5 billion of the Income Tax Proceed Bonds remain outstanding. The interest on these bonds is payable on May 1 and November 1 of each year. The bonds mature from 2019 through 2028.[54]

89. The Illinois Constitution did not authorize the State to incur the GO debt reflected in the 2017 Income Tax Proceed Bonds. The purpose of the Income Tax Proceed Bonds was to pay various unspecified, unrelated bills that had gone unpaid in fiscal years 2016 and 2017 due to the State's lack of funding. The debt was not incurred for a "specific purpose," as Article IX, section 9(b) of the Illinois Constitution requires, but to pay past-due operating expenses.

90. The debt also did not fall within the authority granted to the State to incur State debt in paragraphs (c), (d), or (e) of Article IX, section 9. The bonds were not tied to any anticipated revenue as required by Article IX, section 9(c), and in any event, the debt was not retired in the same fiscal year and far exceeded 5% of appropriations. Although the 2017 Income Tax Proceed Bonds were used to finance deficits caused by an emergency or failure of revenue, the maturity of the debt went beyond the one year prescribed by Article IX, section 9(d), and the debt also exceeded 15% of appropriations. And to the extent the bonds refinanced outstanding State debt (*i.e.*, the vouchers), they extended the maturity of that debt in violation of Article IX, section 9(e).

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[53] *See* GOMB 2017 Report, *supra* note 9, at 1, 4; *see also* November 2017 Official Statement, supra note 6, at 8-9.

[54] *See* November 2017 Official Statement, *supra* note 6, at cover page & inside cover page; November 2017D Official Statement, *supra* note 50, at cover page & inside cover page.

91. Because the State debt reflected in the 2017 Income Tax Proceed Bonds did not satisfy the requirements of any of paragraphs (b)-(e) of Article IX, section 9 of the Illinois Constitution governing the incurrence of State debt, the debt is unconstitutional.

COUNT I

Violation of the State Debt Provision & Balanced Budget Requirement of the Illinois Constitution Art. IX, § 9 & Art. VIII, § 2(b):
2003 Pension Funding Bonds

92. Plaintiffs incorporate by reference paragraphs 1-91 above, as if fully set forth herein.

93. By taking the actions described above with respect to the 2003 Pension Funding Bonds, Defendants exceeded the authority granted under the Illinois Constitution for the incurrence of State debt. Accordingly, the debt reflected in these bonds is unconstitutional and unenforceable.

94. Approximately $8.85 billion in 2003 Pension Funding Bonds remain outstanding. Defendants continue on a regular basis to service this unconstitutional debt.

95. Plaintiffs have a clear and ascertainable right in need of protection, namely, their right as Illinois taxpayers and bondholders to prevent the Defendants' misuse of public funds.

96. Pursuant to 735 ILCS 5/11-301 & 11-303, Plaintiff Tillman has standing to sue as a taxpayer of the State of Illinois to enjoin the imminent unlawful expenditure of funds to service the unconstitutional debt.

97. Plaintiff Warlander has standing to sue as a bondholder of the State of Illinois whose economic interests are adversely affected by the State's actions challenged herein.

98. Plaintiffs will be substantially affected, especially damaged, and irreparably harmed by the illegal expenditure of general revenue funds, for the loss of which they have no adequate remedy at law.

99. The equities strongly favor Plaintiffs as against Defendants, particularly as the only acts to be abated or enjoined are illegal acts.

WHEREFORE, Plaintiffs request that the Court grant the following relief:

a) Enter a declaratory judgment that Defendants exceeded the authority granted by the Illinois Constitution in incurring the debt reflected in the 2003 Pension Funding Bonds, and that debt is therefore unconstitutional and unenforceable;

b) Enjoin Defendants and their agents, servants, employees, and all those acting in concert with them, from making any further disbursements of public funds in service of the unconstitutional 2003 Pension Funding Bonds; and

c) Grant Plaintiffs any and all such other relief as law and justice demand.

COUNT II

Violation of the State Debt Provision & Balanced Budget Requirement of the Illinois Constitution Art. IX, § 9 & Art. VIII, § 2(b): <u>2017 Income Tax Proceed Bonds</u>

100. Plaintiffs incorporate by reference paragraphs 1-99 above, as if fully set forth herein.

101. By taking the actions described above with respect to the 2017 Income Tax Proceed Bonds, Defendants exceeded the authority granted under the Illinois Constitution for the incurrence of State debt. Accordingly, the debt reflected in these bonds is unconstitutional and unenforceable.

102. Approximately $5.5 billion in 2017 Income Tax Proceed Bonds remain outstanding. Defendants continue on a regular basis to service this unconstitutional debt.

103. Plaintiffs have a clear and ascertainable right in need of protection, namely, their right as Illinois taxpayers and bondholders to prevent the Defendants' misuse of public funds.

104. Pursuant to 735 ILCS 5/11-301 & 11-303, Plaintiff Tillman has standing to sue as a taxpayer of the State of Illinois to enjoin the imminent unlawful expenditure of funds to service the unconstitutional debt.

105. Plaintiff Warlander has standing to sue as a bondholder of the State of Illinois whose economic interests are adversely affected by the State's actions challenged herein.

106. Plaintiffs will be substantially affected, especially damaged, and irreparably harmed by the illegal expenditure of general revenue funds, for the loss of which they have no adequate remedy at law.

107. The equities strongly favor Plaintiffs as against Defendants, particularly as the only acts to be abated or enjoined are illegal acts.

WHEREFORE, Plaintiffs request that the Court grant the following relief:

d) Enter a declaratory judgment that Defendants exceeded the authority granted by the Illinois Constitution in incurring the debt reflected in the 2017 Income Tax Proceed Bonds, and that such debt is therefore unconstitutional and unenforceable;

e) Enjoin Defendants and their agents, servants, employees, and all those acting in concert with them, from making any further disbursements of public funds in service of the unconstitutional 2017 Income Tax Proceed Bonds; and

f) Grant Plaintiffs any and all such other relief as law and justice demand.

Respectfully submitted,

JOHN TILLMAN
WARLANDER ASSET MANAGEMENT, LP

Plaintiffs

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By: /s/John E. Thies
John E. Thies

By: WHITE & CASE LLP

By: /s/Jason N. Zakia
Jason N. Zakia

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STATE OF ILLINOIS
IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY

JOHN TILLMAN and WARLANDER ASSET MANAGEMENT, LP,

Plaintiffs,

v.

J.B. PRITZKER, Governor of the State of Illinois, in his official capacity; MICHAEL W. FRERICHS, Treasurer of the State of Illinois; In his official capacity; and SUSANA A. MENDOZA, Comptroller of the State of Illinois, in her official capacity,

Defendants.

2019 CH 000235

Order

Cause removed from advisement concerning the Petition for Leave to File a Taxpayer Action to Restrain and Enjoin the Disbursement of Public Funds filed by Petitioner/Plaintiff, John Tillman (hereinafter "Tillman") on July 1, 2019. After considering the pleadings, contents of the record, the arguments of counsel and all relevant authorities, the court finds and Orders:

Tillman requests leave to file suit seeking to enjoin the Defendants from making disbursements of funds in service of bonds issued by the State in 2003 and 2017.[1] As the petition before the court seeks leave by an Illinois taxpayer to enjoin the use of public funds, 735 ILCS 5/11-303 applies and provides in pertinent part:

> "Action by private citizen. Such action, when prosecuted by a citizen and taxpayer of the State, shall be commenced by petition for leave to file an action to restrain and enjoin the defendant or defendants from disbursing the public funds of the

[1] Tillman is an Illinois taxpayer. The caption also identifies Warlander Asset Management, LP as a plaintiff. Warlander is not an Illinois taxpayer. Rather, the proposed Complaint identifies Warlander as the beneficial owner of $25 million of Illinois general obligation bonds. Warlander's action purports to be a bondholder action in that it claims the payments the complaint seeks to stop will impair Illinois' ability to service its bonds and will reduce the present market value of its bonds. Footnote 7, at page 6 of the proposed Complaint, indicates Warlander also has a separate financial interest in this litigation.

> State. Such petition shall have attached thereto a copy of the complaint, leave to file which is petitioned for...
>
> Upon such hearing, if the court is satisfied that there is reasonable ground for the filing of such action, the court may grant the petition and order the complaint to be filed and process to issue. The court may, in its discretion, grant leave to file the complaint as to certain items, parts or portions of any appropriation Act sought to be enjoined and mentioned in such complaint, and may deny leave as to the rest."

*** *** ***

The procedure set forth in 735 ILCS 5/11-303 serves as a check upon the indiscriminate filing of taxpayer lawsuits and to prevent unjustified interference with the application of public funds. The threshold question for the court to determine is whether there are reasonable grounds to allow the filing of the action. Reasonable grounds will not exist where the court finds the matter was filed for ulterior, frivolous or malicious purposes, where the filing constitutes an unjustified interference with/in the application of public funds, or, where the proposed claims fail as a matter of law.

In deciding whether to grant Tillman leave to file the Complaint, the court must accept as true all well-pleaded, non-conclusory allegations of fact set forth in the proposed filing. On the other hand, the court must disregard conclusions of law or unsupported conclusory allegations offered in support of his claims.

Tillman challenges the constitutionality of two legislative acts. The Illinois Legislature passed 30 ILCS 330/7.2 in 2003, which amended the General Obligation Bond Act to authorize bond proceeds to fund five designated Illinois pension systems. The second occurred in 2017 when the legislature enacted 30 ILCS 330/7.6 to authorize "Income Tax Proceed Bonds" to pay health insurance vouchers incurred by the State prior to July of 2017. Tillman argues that in passing these laws, the legislature violated Article IX, section 9(b) of the Illinois Constitution.

When the issue before the court concerns the constitutionality of a legislative enactment, the party challenging the law must overcome a presumption the law is constitutional and bears the burden of establishing a clear constitutional violation.

Article IX, section 9(b) of the Illinois Constitution states in relevant part:

> State debt for specific purposes may be incurred....in such amounts as may be provided...in law passed by the vote of three-fifths of the members elected to each house of the General Assembly....Any law providing for the incurring...of debt shall set forth the specific purposes and the manner of repayment.

***   ***   ***

The issue here is not whether the laws passed with the requisite super-majority vote. In fact, Tillman concedes these laws passed with a three-fifths vote by both the House and Senate. Rather, Tillman's proposed Complaint contends that the State acted outside its Constitutional authority in issuing the bonds in that it failed to state a "specific purpose" for which the debts were incurred under section 9(b). Ergo, Tillman maintains the 2003/2017 debt is unconstitutional and therefore any action the State may take to repay the debt is unconstitutional.

At page 7 of his Reply brief, Tillman suggests that this court cannot conduct a meaningful review of this issue without considering whether the challenged legislation clearly articulates a specific purpose for incurring the debt as required by Article IX, section 9(b). The court agrees. While at this stage of the litigation the court is to determine whether or not reasonable grounds exist for filing the suit, that issue cannot be meaningfully addressed without a review of the language of the 2003 and 2017 laws to find whether specific purpose(s) for the appropriations are stated.

The court has reviewed the challenged legislation in light of the Illinois Supreme Court's decision in *Ogilvie v. Lewis*. In 2003, the legislature's specific purpose for issuing bonds was to contribute to funding the State's five pension systems. In 2017, the stated specific purpose was to make good on health insurance vouchers the State promised to pay to vendors that accepted State issued insurance for services rendered prior to July 1, 2017. This court finds the legislature stated with reasonable detail the specific purposes for the issuance of the bonds and assumption of the debt as well as the objectives to be accomplished by enactment of the legislation.

Despite Tillman striving mightily to do so, he cannot ignore the plain language of the statutes in question. Tillman's proposed Complaint is chock-full of conclusory and argumentative statements describing the financial condition of the state that are irrelevant and which the court must disregard. Indeed, it resembles far more of a political stump speech than it does a legal pleading.

The court finds that to allow the filing of the Complaint would result in an unjustified interference with the application of public funds. Moreover, Tillman asks this court to address a non-justiciable political question and substitute its judgment for the Illinois Legislature some two decades after it occurred. To do so would be improper and would violate the separation of powers. The court rejects Tillman's invitation to do so.

The court finds reasonable grounds do not exist for filing the proposed Complaint.

In light of the foregoing, this Court **ORDERS**:

A. Tillman's Petition for Leave to File a Taxpayer Action to Restrain and Enjoin the Disbursement of Public Funds is denied.

Entered this 29 day of August, 2019

Hon. Jack D. Davis, II
Associate Circuit Judge

EFILED
9/3/2019 9:07 AM
Paul Palazzolo
7th Judicial Circuit
Sangamon County, IL
2019CH000235

APPEAL TO THE ILLINOIS FOURTH DISTRICT APPELLATE COURT
FROM THE CIRCUIT COURT OF SANGAMON COUNTY

JOHN TILLMAN Plaintiff-Appellant, v. **J.B. PRITZKER**, Governor of the State of Illinois, in his official capacity; **MICHAEL W. FRERICHS**, Treasurer of the State of Illinois, in his official capacity; and **SUSANA A. MENDOZA**, Comptroller of the State of Illinois, in her official capacity, Respondents-Appellees.	)	No. 2019-CH-235

NOTICE OF APPEAL

Plaintiff-Appellant, John Tillman ("Plaintiff"), hereby appeals from the Order of the Circuit Court for the Seventh Judicial Circuit, Sangamon County entered on August 29, 2019 in the above captioned matter denying Plaintiff's petition under 735 ILCS 5/11-303. Plaintiff requests that the Appellate Court reverse the Circuit Court's Order and grant whatever other relief it deems appropriate.

Respectfully submitted,

JOHN TILLMAN
Plaintiff-Appellant

By: WEBBER & THIES, P.C.

By: /s/ *John. E. Thies*
John E. Thies

By: WHITE & CASE LLP

/s/ *Raoul G. Cantero*
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CERTIFICATE OF SERVICE

I, John E. Thies, hereby certify that I caused to be served a copy of the foregoing NOTICE OF APPEAL upon:

Joshua D. Ratz, Esq. Marlaina Strunk, Esq. Assistant Attorneys General Via email: jratz@atg.state.il.us mstrunk@atg.state.il.us	*Counsel for Governor J.B. Pritzker; Michael W. Frerichs, Illinois State Treasurer; and Susana A. Mendoza, Illinois State Comptroller*
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by causing to be sent by electronic mail a true and correct copy of said document no later than 5:00 p.m. on the 3rd day of September 2019.

/s/John E. Thies
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