No. 4-19-0611

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT

JOHN TILLMAN, Petitioner-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.	)	Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois No. 2019 CH 235 The Honorable JACK D. DAVIS, II, Judge Presiding.

BRIEF OF RESPONDENTS-APPELLEES

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

Petitioner requested leave to file a taxpayer standing action seeking an injunction against any further payments by the State on about $14 billion dollars of outstanding general obligation bonds that the State issued in 2003 and 2017, backed by its full faith and credit. The proposed complaint (the "Complaint"), submitted under Section 11–303 of the Code of Civil Procedure, claimed that Section 9(b) the State Debt Clause of the Illinois Constitution (art. IX, § 9(b)) prohibits issuing long-term debt for "deficit financing" and to "cover general operating expenses," and that this was the purpose of the challenged bonds. The Complaint named as defendants the Illinois Governor, Treasurer, and Comptroller, in their official capacities ("Defendants"), but did not name as defendants any of the bondholders. Defendants opposed the petition on several grounds: that it was barred by the doctrine of laches and the applicable statute of limitations; that the Complaint failed to name necessary parties; and that it lacked merit because Section 9(b), which allows state debt to be authorized by a law approved by a three-fifths majority in each legislative chamber, only requires that law to "set forth the specific purposes" for the debt, and the laws authorizing the 2003 and 2017 bonds satisfied that requirement by defining in reasonable detail the objectives to be achieved by issuing the bonds and how the funds would be spent. The circuit court denied Petitioner leave to file the Complaint, finding that he lacked reasonable grounds to do so.

ISSUES PRESENTED FOR REVIEW

Whether the circuit court properly denied Petitioner leave to file his proposed Complaint, which sought to enjoin $14 billion in principal and interest payments on general obligation bonds issued by the State in 2003 and 2017, and backed by the State's full faith and credit, because:

1. his claim was barred by laches;

2. his claim challenging the 2003 bonds was barred by the applicable statute of limitations;

3. he failed to name as defendants the bondholders, who are necessary parties; and

4. the laws enacted by the General Assembly to authorize the challenged bonds complied with the State Debt Clause because they defined in reasonable detail the objectives to be achieved and how the funds were to be spent.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Relevant parts of the State Debt Clause of the Illinois Constitution (art. IX, § 9) and of Article 11, Part 3 of the Code of Civil Procedure governing taxpayer standing suits (735 ILCS 5/11–301 *et seq.*) are contained in the Supplementary Appendix (SA-1 to SA-2).

STATEMENT OF FACTS

Introduction

In this appeal, Petitioner challenges the circuit court's denial of his petition for leave to file a taxpayer standing action under Section 11–303 of the Code of Civil Procedure, 735 ILCS 5/11–303 (2018), in which he sought to enjoin the payment of about $14 billion in principal or interest on two series of general obligation bonds that the State issued in 2003 and 2017 and backed by its full faith and credit. (C 10–50.) Petitioner sought this relief on the theory that the bonds were issued in violation of Section 9(b) of the Illinois Constitution's State Debt Clause, which provides that when the General Assembly enacts a law authorizing the issuance of long-term state debt, that law must be approved by a three-fifths majority in each legislative chamber and must "set forth the specific purposes and the manner of repayment," Ill. Const. art. IX, § 9(b). (C 10, 13–14, 20–21, 34–48.) The circuit court denied Petitioner leave to file his Complaint, holding that he had not alleged a "reasonable ground" for bringing it, as required by Section 11–303. (C 343–45.)

Legal Framework for Issuing State Debt

As described in more detail below (at 25–27), Article IX, Section 9 of the Illinois Constitution governs the State's issuance of "state debt," including bonds backed by the State's full faith and credit. (Ill. Const., art IX, § 9.) The General Obligation Bond Act (30 ILCS 330/1 *et seq.*) (the "Bond Act") applies to general obligation bonds issued by the State. Section 18 of the Bond Act provides that if

the State fails to pay any principal or interest on general obligation bonds as they become due, bondholders may bring an original action against the State in the Supreme Court seeking payment on the bonds. 30 ILCS 330/18 (2018).

The 2003 Bonds

Public Act 93–002 (the "2003 Act") authorized the issuance of $10 billion in general obligation bonds (the "2003 bonds") "for the purpose of making contributions to" the five state-funded retirement systems. Pub. Act 93–002, § 10 (the "2003 Act"); 30 ILCS 330/7.2 (2004). The 2003 Act added new Section 7.2 to the Bond Act, which created the "Pension Contribution Fund," into which the bond proceeds (less amounts for bond expenses and direct deposits to the General Obligation Bond Retirement and Interest Fund) "shall be deposited." 30 ILCS 330/7.2(b) (2004). Section 7.2(c) then provided for two sets of payments from the Pension Contribution Fund: (1) direct payment of about $7.84 billion to the five state-funded retirement systems; and (2) payments to the General Revenue Fund, in installments of $300 million and $1.86 billion, to reimburse the General Revenue Fund after equivalent payments from that Fund were made to the state-funded pension systems for the State's scheduled contributions to those systems under existing law for the last quarter of fiscal year 2003 and for fiscal year 2004 (which were scheduled to occur after passage of the 2003 Act). (Those contributions to the state-funded retirement systems were governed by Public Act 88–593, which established a continuing appropriation of specified amounts from the General Revenue Fund to these pension systems.)

The 2017 Bonds

Section 75–10 of Public Act 100–23 (the "2017 Act") authorized $6 billion in general obligation bonds (the "2017 bonds") "for the purpose of paying vouchers incurred by the State prior to July 1, 2017." Pub. Act 100–23, § 75–10. The 2017 Act created new Section 7.6(c) of the Bond Act. 30 ILCS 330/7.6 (2018). Section 7.6(c) created the "Income Tax Bond Fund," into which the bond proceeds (less sale expenses) "shall be deposited"; provided that monies in that Fund "shall be used for the purpose of paying vouchers incurred by the State prior to July 1, 2017"; and specified that, "[f]or the purpose of paying such vouchers, the Comptroller has the authority to transfer moneys from the Income Tax Bond Fund to general funds and the Health Insurance Reserve Fund," which is used to pay providers of medical care to active and retired state employees. *Id.*; 5 ILCS 375/13.1 (2016).

During the budget impasse in the two fiscal years before the 2017 Act took effect on July 6, 2017, the State's backlog of unpaid vouchers, including for payments to medical service providers for state employees and retirees, rose from about $5 billion to almost $15 billion, threatening the delivery of vital services to these individuals and incurring hundreds of millions of dollars per year in late-payment penalties under the State Prompt Payment Act. (C 43–44; 30 ILCS 540/0.01 *et seq.* (2018); 215 ILCS 5/368a (2018); *see also https://illinoiscomptroller.gov/financial-data/backlog-voucher-report-bvr*; last accessed Feb. 12, 2020.)

The Petition and Proposed Complaint

Petitioner initiated this action in July 2019 by filing a petition for leave to file his Complaint under Section 11–303 of the Code of Civil Procedure (the "Petition"). (C 10–16.) The Petition alleged that Petitioner had standing, as a taxpayer, to enjoin the illegal expenditure of public funds, and that principal and interest payments on the 2003 and 2017 bonds represented such an illegal expenditure because those bonds were issued in violation of the State Debt Clause. (C 11–15.) In particular, the Petition alleged that the laws authorizing the 2003 and 2017 bonds did not satisfy the State Debt Clause's requirement that they set forth their "specific purposes" — which Petitioner claimed "refers to specific projects in the nature of capital improvements, including roads, buildings, and bridges," and does not encompass "[s]imply obtaining cash to finance the State's structural deficits or to speculate in the market." (C 13–15.)

The proposed Complaint similarly alleged that the 2003 and 2017 bonds violated the State Debt Clause because the Clause authorizes long-term debt only for "specific purposes," which Petitioner claimed did not include "cash-flow borrowing, deficit financing, and refinancing debt." (C 20.) According to the Complaint, the 2003 Act failed to satisfy this requirement because, although it authorized $10 billion in general obligation bonds, "more than $2 billion went into the State's General Revenue Fund and was never used to fund pensions," and "[t]he bond proceeds that did go to the pension systems were effectively a loan — not a contribution — to be used to speculate in the market." (C 21.) The

Complaint also alleged that the 2017 Act violated the State Debt Clause because its authorization to issue $6 billion in general obligation bonds "to pay off a portion of the $15.245 billion backlog of unpaid bills that had accumulated during the previous two years," when the Governor and General Assembly "failed to pass a budget," was "not a 'specific purpose' for incurring State debt," but was "just another name for deficit financing." (*Id.*)

Circuit Court Proceedings

Pursuant to Section 11–303 of the Code of Civil Procedure, 735 ILCS 5/11–303 (2018), the circuit court set a hearing on the Petition, with a schedule for the Attorney General to file any objections and for Petitioner to respond to those objections. (C 55.) The court also granted two institutions that invest in Illinois bonds (the "Amici") leave to file an amicus brief opposing the Petition. (C 7, 225–27.) Arguing that the Petition might have been brought for a malicious purpose, the amicus brief pointed out that proposed co-plaintiff Warlander Asset Management, LP ("Warlander"), who is not an Illinois taxpayer, had a financial interest in the litigation of an undisclosed nature, which the Amici suspected might be "credit default swaps Warlander purchased that will pay off if this action causes Illinois to default on any of its G.O. Bonds." (C 231.) Petitioner's response to the Amici's motion did not admit or deny that suggestion (C 302–09), but the circuit court inquired about it at the hearing, and Petitioner's counsel admitted that Warlander did own credit default swaps that apply to the bonds challenged in the Complaint (C 382).

In opposition to the Petition, the Attorney General argued that it should be denied because the Complaint was barred by laches and the applicable statute of limitations; that it did not include the bondholders as defendants, who stood to be harmed and "need to have a seat at the table"; and that it lacked merit because the laws authorizing the 2003 and 2017 bonds satisfied the "specific purposes" requirement in Section 9(b) of the State Debt Clause. (C 67–87, 392–408.) Petitioner disputed each of these points. (*Id.* at 200–19, 371–91, 408–17.)

The circuit court denied Petitioner leave to file the Complaint, finding that he lacked "reasonable grounds" to pursue the action. (C 345.) Accepting as true the Complaint's "well-pleaded, non-conclusory allegations of fact," and analyzing the case under the standard announced in *People ex rel. Ogilvie v. Lewis*, 49 Ill. 2d 476 (1971), the court stated:

> 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.

(C 344.) The court continued:

> 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.

(C 344–45.) Tillman appealed. (C 348–50.)

ARGUMENT

I. Summary of Argument

Petitioner is wrong to claim that the circuit court was required to allow him to file his Complaint even if it lacked merit as a matter of law. And there are multiple reasons to conclude that it did lack merit, warranting affirmance of the circuit court's judgment. Specifically, the Complaint was barred by laches, and Petitioner's challenge to the 2003 bonds was barred by the applicable statute of limitations. In addition, the Complaint did not name as defendants any bond-holders of the 2003 and 2017 bonds, who were necessary parties to his proposed action because he sought to enjoin the State from making any principal or interest payments to them. Finally, there was no merit to Petitioner's claim that the laws authorizing the 2003 and 2107 Bonds did not satisfy the State Debt Clause's requirement that they set forth the Bonds' "specific purposes." Section 9(b) of the State Debt Clause does not impose a substantive limitation on the types of purposes for which the State may issue debt, as Petitioner claimed, and the laws he sought to challenge stated, in reasonable detail, the purposes for which the State incurred the corresponding debt and how the funds would be spent.

II. Standard of Review

The circuit court's decision whether to permit the filing of a taxpayer-standing action under Section 11–303 is reviewed for an abuse of discretion. *People ex rel. White v. Busenhart*, 29 Ill. 2d 156, 161 (1963); *Hamer v. Dixon*, 61 Ill. App. 3d 30, 32 (2d Dist. 1978). "One of the purposes of the [taxpayer standing

statute] was to provide a check upon the indiscriminate filing of taxpayers' suits." *Busenhart*, 29 Ill. 2d at 161. Review of the circuit court's exercise of its discretion "involves ascertaining whether the complaint states a cause of action." *Id.*

The circuit court's judgment may be sustained on any ground supported by the record and law, even if not the ground relied on by that court. *Eychaner v. Gross*, 202 Ill. 2d 228, 262 (2002); *Beckman v. Freeman United Coal Mining Co.*, 123 Ill. 2d. 281, 286 (1988); *Kaider v. Hamos*, 2012 IL App (1st) 111109, ¶ 8.

III. Standards Governing Taxpayer Suits

Section 11–301 of the Code of Civil Procedure authorizes the Attorney General or a "citizen and taxpayer of the State" to bring an "action to restrain and enjoin the disbursement of public funds by any officer or officers of the State government." 735 ILCS 5/11–301 (2018). Section 11–303 states that when a citizen and taxpayer desires to bring such an action, he must file a petition in the circuit court for leave to do so, accompanied by the proposed complaint, and that the court shall set the matter for a hearing after the Attorney General has the opportunity to respond. 735 ILCS 5/11–303 (2018). Section 11–303 then provides that "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 . . . ." *Id.* (emphasis added). This procedure serves as a check on the indiscriminate filing of taxpayer suits. *Strat-O-Seal Mfg. Co. v. Scott*, 27 Ill. 2d 563, 565–66 (1963); *see also Daly v. Madison County*, 378 Ill. 357, 376 (1941) (holding that purpose of statute regulating taxpayer suits to enjoin disbursement of public

funds "was not . . . to enlarge but only to limit and restrict" taxpayers' rights under traditional equity principles); *Hamer*, 61 Ill. App. 3d at 32. Reasonable grounds to pursue a taxpayer suit are lacking where a suit is brought for ulterior, frivolous, or malicious purposes, or represents an "unjustified interference[]" in the application of public funds, *Strat-O-Seal*, 27 Ill. 2d at 565–66, or where the claims sought to be asserted fail as a matter of law, *see also Busenhart*, 29 Ill. 2d at 161; *Kaider*, 2012 IL App (1st) 111109, ¶¶ 24, 28, 33, 35. In evaluating whether reasonable grounds exist, well-pled allegations of fact must be taken as true, but conclusions or unjustified allegations should be disregarded. *Busenhart*, 29 Ill. 2d at 161; *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 162 (1956); *Daly*, 378 Ill. at 359; *Hamer*, 61 Ill. App. 3d at 31–32; *cf. Beacham v. Walker*, 231 Ill. 2d 51, 57–58 (2008) (Section 2–615 motion accepts as true a complaint's well-pleaded allegations of fact, but not legal or factual conclusions).

IV. The Circuit Court Properly Denied Petitioner Leave to Pursue His Claim that the 2003 and 2017 Bond Acts Violate the State Debt Clause.

The circuit court's judgment denying Petitioner leave to proceed on his Complaint should be affirmed because he failed to establish a reasonable ground to pursue his claim to enjoin further payments on the 2003 and 2017 bonds based on his theory that the laws authorizing them violated the State Debt Clause. That claim lacked merit for several reasons. And the circuit court was not required, as Petitioner contends, to let his case go forward even if doing so was ultimately futile as a matter of law.

A. The Circuit Court Was Not Required to Let Petitioner Proceed on a Legally Meritless Claim.

This Court need not reverse the circuit court's judgment on the ground that, even if Petitioner's Complaint lacked merit as a matter of law, the circuit court was legally required to let him file it before dismissing it. In the circuit court, Petitioner admitted that "the issue of whether or not to grant leave to file this complaint turns on an examination of the plain text of the constitutional provisions and the statutes at issue, . . . as well as the structure of the Constitution and precedent." (C 376.) On appeal, however, Petitioner insists that the circuit court was legally required to let him file his Complaint unless it was "frivolous" or filed for a "malicious" purpose. (Pet. Br. at 2, 16–17, 37.) That inconsistent position misstates the applicable law. And the result Petitioner demands, requiring a remand to observe a pointless formality, is not required by the relevant provisions of the Code of Civil Procedure or precedent applying them.

Section 11–303 of the Code of Civil Procedure, governing the procedure for cases brought under Section 11–301, states that a circuit court may grant the petition, allowing the petitioner to file the proposed complaint, "if the court is satisfied that there is *reasonable ground* for the filing of [the] action." 735 ILCS 5/11–303 (2018) (emphasis added). Here, as explained below, there were several reasons for the circuit court to conclude that Petitioner's Complaint lacked merit as a matter of law, and that Petitioner therefore did not have a reasonable ground to pursue his proposed action. That was not an abuse of discretion.

A circuit court evaluating a request for leave to file a taxpayer-standing complaint must take the well-pled factual allegations as true. *Busenhart*, 29 Ill. 2d at 161; *Strat-O-Seal*, 27 Ill. 2d at 565–66; *Hamer*, 61 Ill. App. 3d at 31–32. And, as Petitioner notes (Pet. Br. at 2, 15), a court should deny leave to file an action that is "frivolous," "malicious," or "otherwise unjustified," *Strat-O-Seal Mfg.*, 27 Ill. 2d at 566. But that does not mean, as Petitioner maintains, that a court should conduct only a "cursory . . . review" and must allow the filing of a taxpayer complaint that is objectively without legal merit on its face as long as it is neither frivolous nor malicious. (Pet. Br. at 15–16.)

Certainly, a court should not, at the initial screening stage of a taxpayer standing action, attempt to ascertain the truth of the proposed complaint's factual allegations. *See*, *e.g.*, *Strat-O-Seal*, 27 Ill. 2d at 566 ("we are not concerned, of course, with whether the allegations of the proposed complaint can, on hearing, be sustained"); *Hamer*, 61 Ill. App. 3d at 31–32 ("the allegations in the complaint are assumed to be true"). But Section 11–303 expressly requires the circuit court to determine whether the petitioner has established a "reasonable ground" for pursuing the action. *See* 735 ILCS 5/11–303 (2018). The Supreme Court in *Strat-O-Seal* held that the court should decide whether "filing of the complaint is otherwise unjustified." 27 Ill. 2d at 566. In *Busenhart*, the Court held that review of the circuit court's discretion on this question "involves ascertaining whether the complaint states a cause of action." 29 Ill. 2d at 161; *see also Hamer*, 61 Ill. App. 3d at 34 (affirming denial of petition to file taxpayer action that lacked

merit as a matter of law). And Petitioner himself concedes that a court should deny leave to file a taxpayer standing complaint that "plainly lacks merit." (Pet. Br. at 15.) That is precisely what the circuit court did here, and its judgment should not be reversed on the ground that it conducted more than a "cursory . . . review" of Petitioner's Complaint. (*Id.*)

Petitioner relies on *Webb v. Rock*, 80 Ill. App. 3d 891 (4th Dist. 1980), but it does not support his position. According to Petitioner, *Webb* "affirmed" the circuit court's rulings that the taxpayer's proposed complaint "was reasonable and should proceed," but that a temporary restraining order should be denied "because 'the complaint did not demonstrate a likelihood of success on the merits.'" (Pet. Br. at 15 (quoting *Webb*, 80 Ill. App. 3d at 899).) That misstates the Court's holding. The only appeal in *Webb* was the *plaintiffs'* appeal under Illinois Supreme Court Rule 307 from the denial of their request to extend the temporary restraining order. 80 Ill. App. 3d at 892–94. Even if the *defendants* could have done so, they did not appeal the circuit court's initial decision to allow the case to proceed, or its denial of their motion for rehearing on that question. Thus, this Court had no occasion to rule on, and did not rule on, that question, but instead considered only the plaintiffs' appeal. And the Court's comment about its limited review of the sufficiency of the complaint, *id.* at 899, just reflected the nature of appellate review of an order involving an interlocutory injunction, where one of the relevant factors is the plaintiff's "likelihood of success on the merits," *id.* at 896, not the ultimate merits.

In sum, the circuit court here properly considered the legal merits of Petitioner's Complaint in connection with its ruling that he had not established a reasonable ground for being allowed to file it.

B. Petitioner's Proposed Taxpayer Action to Enjoin State Payments on the Bonds Was Barred by Laches.

Petitioner's manifestly late attempt to interfere with bond payments to the prejudice of the State and countless unnamed bondholders was barred by laches. Where an injunction is sought to restrain the disbursement of public funds, equity "will strictly require that the application for relief be promptly made," and "a failure to assert such right without a sufficient excuse therefor, until after the expenditure of large sums of money, operates as a bar to relief." *Bowman v. Lake County*, 29 Ill. 2d 268, 280 (1963); *see also Solomon v. N. Shore Sanitary Dist.*, 48 Ill. 2d 309, 322 (1971) (finding laches as a matter of law where public records showed taxing district "had already issued and sold bonds totaling $8,000,000, and expenses had been incurred in furtherance of the project"); *DiSanto v. City of Warrenville*, 59 Ill. App. 3d 931, 940–41 (2d Dist. 1978) (affirming judgment dismissing on laches grounds suit to rescind municipal contract to acquire water and sewer system where "the sale in question was a matter of public record" and $2 million in bonds had been issued). The doctrine is "grounded in the equitable notion that courts are reluctant to come to the aid of a party who has knowingly slept on his rights to the detriment of the opposing party." *Parks v. Parks*, 2019 IL App (3d) 170845, ¶ 23. And it definitely applies here.

Petitioner complains of alleged, prolonged fiscal malfeasance by the State. (C 18, 30–33.) As in *Bowman*, however, "[a]ll of the[] events were a matter of public record and known to [Petitioner], and no sufficient excuse is shown for the delay." 29 Ill. 2d at 280. In *Bowman*, the Supreme Court rejected a taxpayer's claim on laches grounds where the taxpayer waited one to three years before seeking to reverse cash and land transfers from a county to its building commission. *Id.* By then, as here, the cash grants had already been appropriated. The stakes in this case are greater than those in *Bowman* by several orders of magnitude. But the principle is the same.

Petitioner's attempt to halt payments for bonds issued in 2003 and 2017, the proceeds of which have long since been expended, comes too late. When the General Assembly passed the 2003 Act authorizing the 2003 bonds, Petitioner did not seek an injunction against their issuance. He did nothing. The State then issued and sold those bonds, applied the proceeds as specified in that Act, and for years made payments on the bonds. Petitioner still did nothing. Now, well over a decade later, he comes to court asking that the bonds be declared invalid and that the State be enjoined from making future payments on them. His delay, and the corresponding prejudice to the State (and to the holders of these bonds) if that relief were granted, are unquestionably immense. The same is true for the 2017 bonds, which were authorized by the General Assembly, issued and sold, and used to pay billions of dollars of unpaid state vouchers, while Petitioner did nothing to

stop any of these actions.[1] A clearer case for laches is difficult to imagine.

Had Petitioner timely sought and obtained an injunction against *issuance* of the bonds, the State could have made different financial arrangements. In that case, bondholders would not now be needlessly placed in peril, and the State would not now be facing the risk of a potentially serious downgrade in its credit rating based on a court ruling forcing the State into a *de facto* default on bonds backed by its full faith and credit. Thus, Petitioner's inexplicable delay in bringing this challenge, thereby maximizing the potential fallout and prejudice to the State and the bondholders, not only establishes laches, but also reflects an "unjustified interference[]" in the application of public funds that warrants denying the Petition. *Strat-O-Seal*, 27 Ill. 2d at 565–66.

C. Petitioner's Claim to Enjoin State Payments on the 2003 Bonds Was Barred by the Applicable Statute of Limitations.

Petitioner's proposed challenge to the 2003 bonds was also barred by the applicable statute of limitations. Because there is no specific statute of limitations applicable to bond validity claims, his claim is subject to the five-year limitations period for "all civil actions not otherwise provided for." 735 ILCS 5/13–205 (2018). Petitioner's challenge to the 2003 bonds accrued in 2003, and that challenge, asserted 16 years after these bonds were issued, is therefore

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[1] At the time, the Illinois Policy Institute, of which Petitioner is the CEO (C 12), recognized that paying down these vouchers with the 2017 bonds was estimated to save the State more than $360 million in interest payments each year. *See www.illinoispolicy.org/illinois-bill-backlog-stands-at-nearly-16-4b* (last accessed Feb. 10, 2020).

barred for this reason as well. *Cf. Flynn v. Stevenson*, 4 Ill. App. 3d 458, 459–62 (2d Dist. 1972) (holding that taxpayer's claim to enjoin future disbursement of public moneys based on allegedly void annexation, and corresponding incorrect population basis, was barred by one-year statute of limitations for challenges to annexations).

D. Petitioner Failed to Join the Bondholders as Necessary Parties to His Suit Seeking to Enjoin Payments to Them.

The circuit court's judgment should also be affirmed on the ground that Petitioner sought to enjoin the State from making principal and interest payments to the bondholders of the 2003 and 2017 bonds, but his Complaint did not name the bondholders as parties. In the circuit court, Petitioner attempted to dismiss this problem on the ground that he alleged that Defendants, not the bondholders, had violated the State Debt Clause, and that he sought relief only against "State officials." (C 215–16.) Thus, he maintained, his "suit concerns Defendants, and Defendants alone." (C 216.) That response is insufficient.

Petitioner affirmatively asserts that a favorable judgment on his Complaint would prevent the State from making about $14 billion in outstanding principal and interest payments to the holders of the 2003 and 2017 bonds according to the terms of those bonds. (C 21, 48–49.) Such relief obviously would cause the bondholders great prejudice. In these circumstances, therefore, the bondholders are necessary parties, and the relief requested by Petitioner could not be granted without giving them notice and an opportunity to be heard.

In *Oglesby v. Springfield Marine Bank*, 385 Ill. 414, 423 (1944), the Supreme Court stated the rule regarding necessary parties as follows: "Where a party has been omitted whose presence is so necessary that a final decree cannot be entered without necessarily affecting his interest, the court should not proceed to a decision of the case on the merits." *See also Feen v. Ray*, 109 Ill. 2d 339, 344–48 (1985). The failure to join a necessary party may be raised by any party, or by the court itself, even on appeal. *Feen*, 109 Ill. 2d at 348; *Hobbs v. Pinnell*, 17 Ill. 2d 535, 536 (1959); *Oglesby*, 385 Ill. at 423. Whether a person is a "necessary party" must be determined from the pleadings and issues in the case. *Oglesby*, 385 Ill. at 426; *see generally Moore v. McDaniel*, 48 Ill. App. 3d 152, 156 (1977); *Lakeview Tr. & Sav. Bank v. Estrada*, 134 Ill. App. 3d 792, 811 (1st Dist. 1985). To qualify as a necessary party, a person's interest in the case "must be 'present and substantial rather than a mere expectance or future contingency.'" *City of Elgin v. Arch Ins. Co.*, 2015 IL App (2d) 150013, ¶ 34 (quoting *Borrowman v. Howland*, 119 Ill. App. 3d 493, 499 (4th Dist. 1983)).

These principles have been recognized and applied many times by Illinois courts, which have dismissed suits where a necessary party was not joined. *See*, *e.g.*, *Oglesby*, 385 Ill. at 426–30 (reversing judgment where circuit court failed to join trust beneficiaries whose interests were potentially affected in action about whether trust owned disputed land); *Hauser v. Power*, 351 Ill. 36, 39 (1932) (reversing decree challenging title to mortgaged property because mortgagee was not made party to action); *Application of Busse*, 145 Ill. App. 3d 530, 535–37 (1st

Dist. 1986) (reversing judgment in action by land trustee challenging registration of new land titles following eminent domain proceeding where land trustee did not make trust beneficiary a party plaintiff); *see also In re Adoption of Ledbetter*, 125 Ill. App. 3d 306, 308 (4th Dist. 1984) ("The requirement of joinder of necessary parties is absolute and inflexible.").[2]

In this case, there can be no doubt that the impact on the holders of the 2003 and 2017 bonds from the relief Petitioner seeks would be immediate and severe, not just remote, speculative, or theoretical. Thus, they are necessary parties, and the case could not proceed without joining them. *See Hobbs*, 17 Ill. 2d at 536–37; *Oglesby*, 385 Ill. at 421, 430–31; *see also Feen*, 109 Ill. 2d at 347–49.

Moreover, the problem presented by Petitioner's failure to join the bondholders is all the more pronounced because, as non-parties to this case, they would be affected, but not bound, by a judgment in Petitioner's favor. *See Feen*, 109 Ill. 2d at 347–48; *Oglesby*, 385 Ill. at 430; *City of Evanston v. Reg'l Transp. Auth.*, 209 Ill. App. 3d 447, 454–55 (1st Dist. 1991); *see generally Sundance*

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[2] An exception exists where, due to the number of affected persons, it is "practically impossible to make all parties in interest parties to the suit," in which case their absence may be excused where "others are made parties who have the *same interest*" and adequately represent that interest. *Oglesby*, 385 Ill. at 423–24 (emphasis added); *see also Feen*, 109 Ill. 2d at 348–49 (holding that absence of necessary party could not be excused where its interests were not same as existing parties); *Vill. of Lansing v. Sundstrom*, 379 Ill. 121, 124–26 (1942). But that exception cannot apply here because the interests of the State (which ordinarily must *make* payments on the bonds) and the bondholders (who ordinarily *receive* those payments) are not the same, and in some respects actually diverge. *See Flashner Med. P'ship v. Mktg. Mgmt., Inc.*, 189 Ill. App. 3d 45, 54 (1st Dist. 1989) (holding that potential divergence of interests prevented excusing presence of absent parties).

Homes, Inc. v. County of DuPage, 195 Ill. 2d 257, 274 (2001). Consequently, if the State stopped paying the bondholders pursuant to a judgment in Petitioner's favor in this case, they could bring original actions in the Supreme Court against the State seeking payment on the bonds pursuant to Section 18 the Bond Act, 30 ILCS 330/18 (2018). Thus, omitting them from this case, under the justification that no relief was directly sought against them, prevented the circuit court from validly proceeding to a binding and conclusive adjudication of Petitioner's proposed claim, for if the circuit court had allowed the case to proceed and ultimately entered judgment in Petitioner's favor, that just would have triggered more litigation over the State's liability on the challenged bonds without definitively resolving the questions Petitioner sought to have decided.

E. The Laws Authorizing the 2003 and 2017 Bonds Satisfy the State Debt Clause's Requirement that These Laws Set Forth the Bonds' Specific Purposes.

The circuit court rightly rejected Petitioner's contention that Section 9(b) of the State Debt Clause allows the General Assembly to authorize state debt only for certain purposes, and that the 2003 and 2017 bonds fell outside this category of permissible purposes. Petitioner's proposed reading of the State Debt Clause is contrary to its text and established precedent interpreting it. And the laws authorizing the 2003 and 2017 bonds readily satisfy the requirement that Section 9(b) does impose — namely, that a law authorizing state debt under Section 9(b) define in reasonable detail the objectives to be accomplished and how the proceeds are to be spent.

1. Standards for Evaluating Constitutional Challenges to Statutes

"Legislative enactments are presumed to be constitutional, and a party challenging the constitutionality of a statute bears the burden of clearly establishing a constitutional violation." *Wirtz v. Quinn*, 2011 IL 111903, ¶ 17 (citations omitted); *see also People v. Rizzo*, 2016 IL 118599, ¶ 23; *Arangold Corp. v. Zehnder,* 204 Ill. 2d 142, 146 (2003) (holding that legislative enactments enjoy a "strong presumption of constitutionality"). And courts must resolve reasonable doubts in favor of a statute's constitutionality. *Rizzo*, 2016 IL 118599, ¶ 23; *Arangold* 204 Ill. 2d at 146. In this case, Petitioner failed to sustain his burden to overcome the strong presumption that the 2003 and 2017 Acts are constitutional.

2. Section 9(b) of the State Debt Clause Requires a Law Authorizing Long-Term State Debt Only to Define in Reasonable Detail the Objectives to Be Accomplished and How the Proceeds Will Be Spent.

The circuit court correctly found no merit in Petitioner's strained reading of Section 9(b) of the State Debt Clause. The text of the State Debt Clause makes clear that state debt authorized under Section 9(b), unlike debt under Sections 9(c), 9(d), and 9(e), is not limited to a *constitutionally identified* justification (e.g., in anticipation of revenues to be received later in the same fiscal year). At the same time, the State Debt Clause also makes clear that when the General Assembly authorizes debt under Section 9(b) by a supermajority vote, it may not leave to later legislation an identification of the debt's purpose, but instead must, in the

authorizing legislation itself, "set forth the specific purposes." (Ill. Const. art. IX, § 9(b).) And in *Lewis,* the Supreme Court gave this language a straightforward, common-sense interpretation, holding that a law authorizing debt under Section 9(b) "must define in reasonable detail how the funds from the sale of bonds are to be expended and the objectives to be accomplished." 49 Ill. 2d at 484.

Petitioner maintains, however, that this straightforward and common-sense interpretation of Section 9(b) is incorrect, and that Section 9(b) also impliedly incorporates a *substantive* distinction between certain *permissible* purposes (such as capital improvements) and other *prohibited* purposes ("deficit financing" and "to cover general operating expenses"). (Pet. Br. at 18–26.) Petitioner further maintains that the 2003 and 2017 Acts authorized state debt for such prohibited purposes, making any payments to the bondholders unlawful. (*Id.* at 12, 17, 29–35.)

As explained below, Petitioner is mistaken about the meaning of Section 9(b). His reading of Section 9(b) is refuted by its text, history, and established judicial interpretation. Petitioner is also mistaken about the legislatively declared purposes for the bonds authorized by the 2003 and 2017 Acts, which satisfy Section 9(b)'s requirements.

a. Principles of Constitutional Interpretation

The principles governing interpretation of the Illinois Constitution are generally the same as those for interpreting statutes. *Blanchard v. Berrios*, 2016 IL 120315, ¶ 16; *Walker v. McGuire*, 2015 IL 117138, ¶ 16. The ultimate goal in

interpreting a provision of the Illinois Constitution is to determine the intent of the citizens who adopted it. *Blanchard*, 2016 IL 120315, ¶ 16; *Walker*, 2015 IL 117138, ¶ 16; *Committee for Educ. Rights v. Edgar*, 174 Ill. 2d 1, 13 (1996). That inquiry begins with "the plain and generally understood meaning of the words used," and "[w]here the language of a constitutional provision is unambiguous, it will be given effect without resort to other aids for construction." *Blanchard*, 2016 IL 120315, ¶ 16 (citations and internal quotation marks omitted); *see also Cook v. Ill. State Bd. of Elections*, 2016 IL App (4th) 160160, ¶ 18. If, after examination of the language, doubt remains about the language's meaning, "it is appropriate to consult the drafting history of the provision, including the debates of the delegates to the constitutional convention." *Blanchard*, 2016 IL 120315, ¶ 16; *see also Gregg v. Rauner*, 2018 IL 122802, ¶ 23. But "[w]here the language of a constitutional provision is unambiguous, it will be given effect without resort to other aids for construction." *Kanerva v. Weems*, 2014 IL 115811, ¶ 36. And "courts should not, under the guise of interpretation, add requirements or impose limitations that are inconsistent with the provision's plain meaning." *Cook*, 2016 IL App (4th) 160160, ¶ 18.

b. The State Debt Clause's Text

Under these principles, the State Debt Clause must be interpreted in accordance with the plain and unambiguous meaning of its text, which cannot sustain Petitioner's proposed reading of Section 9(b). The State Debt Clause defines what constitutes "state debt" and establishes standards and procedures

for its issuance. Ill. Const., art. IX, § 9. Section 9(a) defines state debt as "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 . . . ." Ill. Const. art. IX, § 9(a). Then, in Sections (b) through (e), the State Debt Clause authorizes four different types of state debt subject to prescribed criteria, including, as applicable to each Section, criteria concerning the approval process, the circumstances justifying the debt, how the proceeds may be spent, and how the debt shall be repaid. Ill. Const. art. IX, §§ 9(b) – 9(e).

Three of these types of state debt, governed by Sections (c), (d), and (e) (sometimes referred to as "short-term debt"), may be approved by a simple majority vote in each chamber of the General Assembly, are limited to identified justifications, and have a limited duration and amount. They are:

- state debt "in anticipation of revenues to be collected in a fiscal year," which is limited to "5% of the State's appropriations for that fiscal year" and must "be retired from the revenues realized in that fiscal year" (Section 9(c));
- state debt "to meet deficits caused by emergencies or failures of revenue," which is limited to "15% of the State's appropriations for that fiscal year" and must "be repaid within one year of the date it is incurred" (Section 9(d)); and
- state debt "to refund outstanding State debt," which is limited by the amount of the existing state debt to be refunded and must "mature within the term" of that debt (Section 9(e)).

Ill. Const. art. IX, §§ 9(c) – 9(e).

Section 9(b), by contrast, authorizes the State to issue bonds without such limits on the duration or amount, but under a more restrictive approval process. Such bonds (sometimes referred to as "long-term debt") must be authorized by a law that is "passed by the vote of three-fifths of the members elected to each house of the General Assembly" or approved by a voter referendum, and that sets forth the bonds' "specific purposes and the manner of repayment." Ill. Const., art. IX, § 9(b).

Thus, whereas the text of Sections (c), (d), and (e) of the State Debt Clause establishes express restrictions on the reasons for issuing debt under them, as well as limits on their amount and duration, the text of Section 9(b) does not impose such restrictions or limits, except to require that the "specific purposes" for state debt under that Section be "set forth" in the law authorizing it.

As the Supreme Court held in *Kanerva*, "[w]here the language of a constitutional provision is unambiguous, it will be given effect without resort to other aids for construction." 2014 IL 115811, ¶ 36; *see also Cook*, 2016 IL App (4th) 160160, ¶ 18. That principle applies here and eliminates any need to consider Petitioner's contention that Section 9(b) means something different from what it says — namely, that a law authorizing state debt under Section 9(b) is not just subject to Section 9(b)'s *express* requirements, but also is *implicitly* subject to the additional *substantive* restriction that it may be incurred only for certain permissible purposes (such as capital improvements) and is prohibited for other purposes ("deficit financing" and covering "general operating expenses").

c. Judicial Interpretation of the State Debt Clause

The plain meaning of Section 9(b)'s language is consistent with, and confirmed by, applicable precedent interpreting it. Shortly after adoption of the 1970 Constitution, the Supreme Court in *Lewis* interpreted the State Debt Clause according to its straightforward meaning, holding that "the 'specific purposes' requirement of article IX, section 9(b), was intended to require that laws . . . which incur debt through the issuance of bonds must define *in reasonable detail* how the funds from the sale of bonds are to be expended and the objectives to be accomplished." 49 Ill. 2d at 484 (emphasis added). That holding controls here and forecloses Petitioner's claim in this case.

Lewis considered the constitutionality of the "Transportation Bond Act," which, as the Court described, authorized debt for the following purposes:

> "promoting and assuring rapid, efficient, and safe highway, air and mass transportation . . . by providing monies . . . to be used for the acquisition, construction, reconstruction, extension and improvement" of [specified] highway, mass transit and aviation facilities;
>
> "providing immediate relief . . . to meet principal and interest payments . . . for . . . indebtedness issued or guaranteed prior to the passage of this Act by the State or any unit of local government . . . authorized to provide public transportation within the State . . . .

Id. at 478–79. The law specified the total amount of state debt that could be issued and the amounts that could be spent for each purpose. *Id.* at 479–80. The law also created a separate fund into which proceeds would be deposited and

specified that they could be spent for the prescribed purposes at the direction of designated State departments, subject to appropriation by the General Assembly. *Id.* at 480.

Upholding the law, the Supreme Court concluded "that the Act sets forth with reasonable detail how the funds are to be expended and the objectives to be accomplished." *Id.* at 485. The Court added: "We believe that sufficient guidelines are established which will permit the respective governmental departments to plan future use of the funds for particular projects and to afford the legislature adequate standards to determine whether funds should be appropriated for such intended uses." *Id.* The Court also emphasized that the need for appropriation legislation by the General Assembly, as an extra step before any of the bond proceeds could be spent, provided an additional protection against misapplying those proceeds to purposes other than those specified in the Act. *Id.* at 485, 486–87. No case has adopted a contrary or conflicting interpretation of Section 9(b) of the State Debt Clause. And *Lewis*'s holding, which conforms to the plain meaning of Section 9(b)'s text, directly undermines Petitioner's contention that Section 9(b) actually means something else.

d. Background of the State Debt Clause

This meaning of "specific purposes" in Section 9(b) of the State Debt Clause, as *Lewis* held, is also consistent with the history of that provision's addition to the 1970 Constitution. The State Debt Clause replaced the similar provision of the 1870 Constitution, which set a very low dollar limit on the

amount of state debt not approved by a popular referendum and was generally considered to be overly restrictive for the State's current financial needs. *See* 3 Record of Proceedings, Sixth Ill. Constitutional Convention ("*Proceedings*") at 3848–49 (comment of Delegate Netsch); Ill. Const. 1870, art. IV, § 18.[3] The Delegates to the 1970 Constitutional Convention accordingly sought to modernize that process and to prescribe new standards and procedures for creating state debt. They did so, as described above (at 25–27), by establishing four categories of state debt, each with its own criteria regarding how it is authorized, the circumstances in which it may be issued, how the proceeds may be spent, and how the debt shall be repaid. And the differences among these types of state debt explain the Delegates's decision to adopt the "specific purposes" requirement for state debt under Section 9(b).

First, state debt under Section 9(b), unlike other state debt, is not subject to any limit on its duration or amount, which is one reason that the delegates made it subject to a supermajority vote requirement (or approval in a public referendum) and specifically rejected a proposal to allow it to be issued with a

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[3] Article IV, Section 18 of the 1870 Constitution provided, in part:

> [T]he State may, to meet casual deficits or failures in revenues, contract debts, never to exceed in the aggregate $250,000; and moneys thus borrowed shall be applied to the purpose for which they were obtained . . . ; and no other debt, except for the purpose of repelling invasion, suppressing insurrection, or defending the State in war, . . . shall be contracted, unless the law authorizing the same shall, at a general election, have been submitted to the people, and have received a majority of the votes cast for members of the general assembly at such election. . . .

simple majority vote. *See* 3 *Proceedings* at 1928–29, 2109–10; 5 *Proceedings* at 3848–56. Second, state debt under Section 9(b) is also unlike other state debt in the sense that it is not subject to any *constitutionally identified* limit on the circumstances justifying it or how the proceeds may be spent. The State Debt Clause *itself* identifies the circumstances necessary to justify each of those other forms of state debt (e.g., "deficits caused by emergencies") and, for "refunding debt" under Section 9(e), also prescribes how the proceeds may be used (i.e., to pay off outstanding state debt with a longer maturity).

But the lack of a *constitutionally* identified justification and limitation on the use of the proceeds of state debt under Section 9(b) does not mean that such debt is free from *any* limits on its purpose or use. Instead, Section 9(b) provides that such limits must be "set forth" in the "*law*" authorizing that debt. Thus, in addition to imposing a supermajority requirement for such a law passed by the General Assembly, Section 9(b) prevents issuing long-term state debt in one law, but leaving the purposes for which the proceeds will be used to be determined by later legislation.

In accordance with this constitutional scheme, the 1970 Convention debates also make clear that the "specific purposes" requirement in Section 9(b) was designed to ensure that, in a law authorizing such debt, its purpose is "described in such a way as it is identifiable and not just a general term." 3 *Proceedings* at 1932 (comment of Delegate Johnson). Delegate Johnson added that the concept was similar to the one concerning appropriations by the General

Assembly, subject to the Governor's veto power. Asked whether "the determination of the specificity of the purpose is subject to judicial review," he stated:

> 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; and 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.[4] That prediction soon proved to be accurate, for this is just what the Supreme Court did in *Lewis*. *See* 49 Ill. 2d at 484–87.

e. Petitioner's Arguments about the Meaning of the State Debt Clause.

Fighting the text, established judicial interpretation, and historical background of the State Debt Clause, Petitioner argues, in effect, that it does not mean what it plainly says, and that the requirement in Section 9(b) that a law authorizing state debt set forth the debt's "specific purposes" must be interpreted to make *certain* purposes impermissible, regardless of how specific they may be, and regardless of how much detail the General Assembly uses to describe them.

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[4] Under the 1870 Constitution, the Supreme Court repeatedly applied the constitutional requirement that any expenditures of public funds be supported by a legislative appropriation that identified in sufficient detail the specific purposes for the expenditure. *See*, *e.g.*, *Cont'l Ill. Nat'l Bank v. Ill. State Toll Highway Comm'n*, 42 Ill. 2d 385, 404 (1969); *Turkovich v. Bd. of Trs. of Univ. of Ill.*, 11 Ill. 2d 460, 470 (1957); *Winter v. Barrett*, 352 Ill. 441, 473–75 (1933) (stating that, to be valid, an appropriation bill "must specify the objects and purposes for which the appropriations are made," and must include a "statement of the objects and purposes thereof"). And in *Lund v. Horner*, 375 Ill. 303, 306 (1940), the Court explained that one reason for this requirement was to give effect to the Governor's right to approve, or veto, specific appropriations.

Petitioner's contentions in support of this argument are all unpersuasive.

Petitioner first maintains that because Section 9(b) uses the term "specific purposes" twice, each use must have a different meaning, with the second use imposing a *procedural* requirement that such purposes be "clearly articulate[d]," and the first use "impos[ing] the *additional* substantive requirement that the purpose be specific, rather than general" — which, Petitioner contends, means that debt under Section 9(b) may not be used to "cover general operating expenses" or for "deficit financing." (Pet. Br. at 19, 20 (emphasis in original).) As a matter of semantics, this makes no sense. And it conflicts with well-established principles of interpretation. As noted, the interpretation of constitutional provisions is subject to the same general principles that apply to statutes. *Blanchard*, 2016 IL 120315, ¶ 16. And in *Guillen ex rel. Guillen v. Potomac Insurance Co. of Illinois*, 203 Ill. 2d 141 (2003), the Supreme Court held that "[u]nder basic rules of statutory construction, where the same words appear in different parts of the same statute, they should be given the same meaning unless something in the context indicates that the legislature intended otherwise." 203 Ill. 2d at 152 (citation and internal quotation marks omitted); *see also Maksym v. Bd. of Election Comm'rs of City of Chicago*, 242 Ill. 2d 303, 322 (2011); *People v. Maggette*, 195 Ill. 2d 336, 349 (2001).

Here, nothing in Section 9(b) indicates an intention to give the two uses of the term "specific purposes" different meanings. To the contrary, they both plainly convey the same meaning. The first use, describing the *approval process*,

declares that state debt may be issued for "specific purposes" by a law passed by a three-fifths vote of the House and Senate, or by public referendum. And the second use, governing the *contents* of the enacting legislation, provides that such a law must "set forth the specific purposes" for which the debt is authorized. Neither use suggests that Section 9(b), beyond requiring that a law be adopted by the prescribed approval process and identify the specific purposes for the debt authorized, creates a constitutional classification between some purposes that are substantively permissible and others that are not.

Nor is there any merit to Petitioner's contention that the structure of the State Debt Clause, including its distinctions between Section 9(b) and Sections 9(c), 9(d), and 9(e), shows that Section 9(b) embodies a classification between bonds for permitted, and prohibited, purposes. Petitioner's argument proceeds in several steps. First, he asserts that the debt authorized under Sections 9(c) and 9(d) of the State Debt Clause (for revenue-anticipation bonds and for bonds to deal with "deficits caused by emergencies or failures of revenue") constitutes a form of "general-purpose borrowing allowed only on a short-term basis" to pay "general operating expenses" and to cover "general operating deficits." (Pet. Br. at 23.) It follows, he contends, that such "general-purpose borrowing" for these purposes cannot be available under Section 9(b) because "[i]t 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)." (*Id.*) Thus, Petitioner concludes, state debt under Section 9(b) may not be used to pay general operating

expenses or cover general operating deficits. (*Id.*) This argument is neither logical nor faithful to the text or structure of the State Debt Clause, but instead attempts to rewrite it to mean something it does not say.

As noted above (at 26–27), the State Debt Clause contemplates four different types of state debt, which may be classified by several criteria: (1) how the debt may be authorized; (2) whether it must satisfy an identified justification, and if so what that justification is (e.g., refunding outstanding state debt); (3) limits on its amount; (4) limits on its duration; and (5) how it shall be repaid. These *express* criteria that the State Debt Clause makes applicable to each type of debt negate Petitioner's contention that it also imposes additional *implied* limitations on the uses of state debt under Section 9(b).

Thus, as also described above (at 26–27), a significant feature of the State Debt Clause is that, instead of imposing a *constitutional* definition of the justification or of the permitted expenditures for Section 9(b) bonds, as is done with bonds under Sections 9(c), 9(d), and 9(e),[5] Section 9(b) allows the General Assembly to provide that definition in the *statute* it enacts authorizing such bonds — provided that it does so in reasonable detail, and by a supermajority vote. In other words, the State Debt Clause requires the General Assembly itself to determine, when it authorizes bonds under Section 9(b), both the justification for such bonds and

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[5] For refunding bonds under Section 9(e), the Constitution prescribes both the necessary justification and use of the bond proceeds. And for short-term bonds under Sections 9(c) and 9(d), the Constitution prescribes the necessary justification (anticipated revenues during the same fiscal year, and deficits caused by emergencies or failures of revenue), but does not limit the types of expenditures allowed by subsequent appropriations.

the permitted uses of their proceeds. And in light of these *explicit* textual differences between state debt under Section 9(b) and under the other Sections of the State Debt Clause, there is no logical reason to read into the State Debt Clause, as Petitioner proposes, an additional *unexpressed* difference pursuant to which the General Assembly may not authorize state debt for certain types of spending, including, he claims, to cover budget deficits or general operating expenses.[6]

Petitioner responds to this objection by arguing that the State Debt Clause should be interpreted to establish not only different *approval processes* for state debt under Section 9(b) and under Sections 9(c) and 9(d) (requiring a supermajority and a simple majority, respectively), but also different *substantive restrictions* on how the proceeds may be used. (Pet. Br. at 23–24.) But that response disregards the difference between a condition that the Constitution *does* express and one that it *does not* express. And it is well established, as a principle of statutory interpretation — which applies equally to questions of constitutional interpretation, *Blanchard*, 2016 IL 120315, ¶ 16 — that courts may not "depart from the plain statutory language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *People v. Lewis*, 223 Ill. 2d 393, 402–03 (2006); *see also Droste v. Kerner*, 34 Ill. 2d 495, 504 (1966) (courts may not "inject provisions not found in a statute"); *Cook*, 2016 IL App (4th) 160160, ¶ 18.

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[6] As discussed below (at 41–47), even if the State Debt Clause did adopt such a limit on the permissible purposes for state debt issued under Section 9(b), the laws authorizing the 2003 and 2017 bonds did not violate that limit.

Especially relevant in this regard is the Supreme Court's opinion in *Hoffmann v. Clark*, 69 Ill. 2d 402 (1977), which rejected the argument that the General Assembly lacked the power to classify land, including agricultural land, for property tax purposes. The Court held:

> Absent an express and specific constitutional limitation upon the General Assembly's power to classify real property, which we do not find, we must conclude that that body possesses the power to classify. . . .
>
> Without a doubt we could lift from the various segments of the constitutional debates statements by delegates which reflect that a particular delegate may have interpreted certain language of the proposed constitution as restricting the General Assembly's power to classify. The fact remains that no such express restriction was incorporated in that document . . . . We are not, therefore, through judicial interpretation, disposed to fulfill the fears expressed in the report of the Committee on Revenue and Finance by placing upon the constitutional provision here under consideration a "narrow" or "unintended" limitation upon the General Assembly. . . . *We cannot read into the Constitution a limitation which it does not contain* solely to prevent some possible future abuse.

Hoffman, 69 Ill. 2d at 423–24 (emphasis added). Likewise here, where the text of the State Debt Clause does not impose substantive limits on the purposes for which the General Assembly may choose to authorize bonds under Section 9(b), the courts are not free to engraft such limits onto it.

Petitioner nonetheless purports to find support for his reading of Section 9(b) in the proceedings of the 1970 Constitution Convention, where the Delegates rejected a proposal by Delegate Netsch to allow debt under Section 9(b), like debt under Sections 9(c), 9(d), and 9(e), to be approved by a simple majority of each legislative chamber. (Pet. Br. at 23–24.) Thus, Petitioner maintains, "[t]he delegates . . . 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)." (*Id.* at 24.) But the Convention's rejection of that proposed amendment proves the exact opposite: that the Delegates simply chose to make state debt for "specific purposes" under Section 9(b) subject to a supermajority requirement — not anything else.[7]

Petitioner also relies on occasional comments during the discussion of the State Debt Clause reflecting individual Delegates' understanding that long-term debt under Section 9(b) would be used to fund capital improvements. (*Id.* at 24–25 (citing 3 *Proceedings* at 1392).) It is true that, historically, long-term debt was commonly used to fund capital improvements. *See*, *e.g.*, *Berger v. Howlett*,

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[7] That understanding is confirmed by the Committee Report for the State Debt Clause, which stated (7 *Proceedings* at 2182) (emphasis added):

> *The requirement of a two-thirds vote in the General Assembly*, or a simple majority vote plus a referendum, *is a wise check upon possible overborrowing*. Clearly, legislators pressed between demands for higher spending and lower taxes face a strong temptation to satisfy both demands by postponing taxation through borrowing. The proposed section will insure that no borrowing will be authorized unless it has wide support among the voters or bipartisan support in the legislature.

25 Ill. 2d 128 (1962) (upholding validity of bonds issued by State Building Authority). And the Convention Delegates' comments sometimes referred to such improvements as an example of state debt for "specific purposes." *See* 3 *Proceedings* at 1392, 1392. But these occasional references cannot support Petitioner's contention that Section 9(b) was intended to incorporate an unwritten requirement that long-term state debt could be issued only for capital improvements. Even if some delegates understood Section 9(b) to embody such an intention, that could not override the plain meaning of the adopted text of Section 9(b), which unambiguously omits any such requirement. Again, *Hoffman* establishes that such comments cannot override the meaning of the Constitution's actual text. *See also Kanerva*, 2014 IL 115811, ¶ 36; *Cook*, 2016 IL App (4th) 160160, ¶ 18.

In the circuit court, Petitioner admitted that Section 9(b)'s specific purposes requirement is not limited to capital projects, but also authorizes state debt for other purposes, such as paying "bonuses" to military veterans. (C 374, 379.) The constitutional test, he asserted, is whether debt under Section 9(b) is to fund an expenditure for something "that's outside of the normal operating budget." (C 378, 379; Pet. Br. at 25.) But apart from the inherent difficulty of having courts distinguish such expenditures from what Petitioner describes as "routine" or "ordinary" expenses (C 30, 73; Pet. Br. at 7), Petitioner again points to nothing in the text of Section 9(b) that adopts this distinction. The question is governed, therefore, by the plain meaning of Section 9(b)'s unqualified text, which as the Supreme Court held in *Lewis*, merely requires the General Assem-

bly, when authorizing state debt under Section 9(b), to "define in reasonable detail how the funds from the sale of bonds are to be expended and the objectives to be accomplished." 49 Ill. 2d at 484.

Petitioner disputes the thrust of the Court's holding in *Lewis*, claiming that it actually "supports the conclusion that Section 9 distinguishes between long-term financing for specific purposes and short-term financing for general operating expenses." (Pet. Br. at 26.) That argument is not well taken, either. Although all of the borrowing challenged in *Lewis* related to funding future state transportation projects or paying off earlier local debt for state or local transportation projects, *see* 49 Ill. 2d at 478–82, nothing in the opinion suggests that the Court considered the nature of that purpose — relating to past or future capital improvements — to be necessary to its decision upholding the challenged legislation. Instead, all of the Court's reasoning focused on whether that legislation satisfied Section 9(b)'s "specific purposes" requirement by "defining in reasonable detail" the objectives to be achieved and how the borrowed funds would be used. *Id.* at 484, 485. Consequently, Petitioner's attempt to reinterpret *Lewis* to fit his contrived reading of Section 9(b) fails as well.[8]

In short, the text, structure, and background of the State Debt Clause refute Petitioner's contention that it impliedly incorporates a substantive restric-

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[8] Contrary to Petitioner's suggestion, Defendants do not maintain that Section 9(b) is satisfied simply by providing extensive "details" to describe an open-ended and plainly undefined purpose. (Pet. Br. at 18–19.) Thus, a law authorizing bonds to finance any one of a number of enumerated purposes, followed by a listing of all state-funded programs, would not suffice.

tion on the types of state spending that may properly be identified as "specific purposes" for state debt authorized under Section 9(b).

3. The Laws Authorizing the 2003 and 2017 Bonds Satisfy Section 9(b)'s Requirement that They Set Forth the "Specific Purposes" for Incurring that State Debt.

The error in Petitioner's reading of Section 9(b) requires rejection of his argument that the 2003 and 2017 Acts violated the State Debt Clause by authorizing state debt for substantively prohibited purposes. And even if his reading of Section 9(b) were correct, that argument misses the mark because the proceeds of the bonds issued under the 2003 and 2017 Acts were not used to cover "general operating expenses" or for "deficit financing."

a. The 2003 Bonds Satisfied the State Debt Clause.

The 2003 Act set forth in reasonable detail the purposes for issuing the 2003 bonds and the manner in which the resulting funds would be spent, as Section 9(b) required. Under that Act, the 2003 bonds were "authorized to be used for the purpose of making contributions to [five] designated [state] retirement systems." Pub. Act 93–002, § 10; 30 ILCS 330/7.2 (2004). And that is the purpose the bonds served: by a direct payment of about $7.84 billion to these retirement systems, and by a $2.16 billion reimbursement to the General Revenue Fund of equivalent payments made to these systems from that Fund for the State's scheduled pension contributions for the last quarter of fiscal year 2003 and for fiscal year 2004 — the net effect of which was to use bond proceeds, rather than general revenue, to make these contributions to the retirement systems

under existing law, which the General Assembly could have suspended, amended, or eliminated by a simple majority vote. (See above at 4.)

The 2003 Act was passed shortly after the State experienced its first fiscal-year decrease in total tax revenues in decades.[9] And the fact that the 2003 Act allowed $2.16 billion in general revenue funds to be used for other purposes, while also enabling the State to continue making its scheduled pension contributions under existing law, does not negate the fact that the 2003 Act defined in reasonable detail the objectives to be achieved and how the 2003 bond funds were to be spent.

Nor, in any event, does this earmarked reimbursement of pension contributions paid out of the General Revenue Fund make the 2003 Act a form of "deficit financing," even if that were precluded by Section 9(b). The situation might be different if the 2003 Act simply generated debt proceeds to be added to the State's general revenues, subject to being used however the General Assembly might later decide. But such indeterminate uses were foreclosed by the terms of the 2003 Act, which identified precisely how the 2003 bond funds had to be spent.[10]

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[9] *See cgfa.ilga.gov/Upload/UPDATE_FY2006EconomicOutlookRevEstimate.pdf*, at 16] (last accessed on Feb. 12, 2020).

[10] Even if one fifth of the proceeds from the 2003 bonds were impermissibly used, as Petitioner contends, to cover "general operating expenses," he fails to explain why this would justify enjoining principal and interest payments on *all* of the 2003 bonds where the other four fifths were directly used for contributions to the five state-funded retirement systems. Again, this just shows that his proposed Complaint represented an "unjustified interference[]" in the application of public funds, justifying denial of the Petition. *Strat-O-Seal*, 27 Ill. 2d at 565–66.

In addition, the circuit court correctly concluded that Petitioner's policy-based objections to the General Assembly's choice to issue the 2003 bonds for these defined purposes sought to have the judiciary assume a responsibility vested in the legislative branch, in violation of the constitutional separation of powers. (C 344–45.) *See State (CMS) v. AFSCME*, 2016 IL 118422, ¶ 42; *Cook County v. Ogilvie*, 50 Ill. 2d 379, 384 (1972); *Daly v. Madison County*, 378 Ill. 357, 362 (1941). Thus, the 2003 Act fully satisfied the "specific purposes" requirement of Section 9(b).

b. The 2017 Bonds Complied with Section 9(b).

The same conclusion applies to 2017 Act, which authorized the 2017 bonds "to be used for the purpose of paying vouchers incurred by the State prior to July 1, 2017," specifically including vouchers for the Health Insurance Reserve Fund, which is used to pay providers of medical care to active and retired state employees. Pub. Act 100–23, § 75–10; 5 ILCS 375/13.1 (2016); 30 ILCS 330/7.6 (2018). Petitioner cannot contend that the 2017 bond proceeds, like general revenue funds, could have been used for any purpose later chosen by the legislature in a subsequently enacted appropriation. Instead, he argues that paying down a large share of the backlog of unpaid bills from prior years is the legal equivalent of "deficit financing for general operating expenses" (Pet. Br. at 34–35), and that the 2017 Act impermissibly delegated the legislature's responsibility to the Comptroller by giving her too much discretion to decide which vouchers to pay (*id.* at 33–34). Neither argument is well taken.

The situation the State confronted in 2017 after two fiscal years without enacted appropriations for major parts of the State's operations — including support for public education and payments to broad categories of vendors of goods and services, such as social service agencies and medical providers for active and retired state employees — represented an unprecedented crisis, in which the backlog of unpaid state bills rose precipitously from about $5 billion to almost $15 billion. (C 43–44; see also above at 5.) Moreover, state law mandated the payment of interest past-due bills at a 9% or 12% annual rate, seriously compounding this problem. 30 ILCS 540/0.01 *et seq.* (2018); 215 ILCS 5/368a (2018); (C 43). Thus, the 2017 Act, which was approved by supermajorities of the House and Senate and took effect shortly after fiscal year 2018 began, did not just use bond proceeds as "deficit financing" for that year's "general operating expenses." Instead, it addressed a unique fiscal crisis, consisting of the accumulation of unpaid bills going back over multiple fiscal years, by requiring the 2017 bond proceeds to be used to address the specific problem at the source of that crisis. The General Assembly was not required to authorize bonds to pay off either *all* of these unpaid bills or *none* of them. And Petitioner's policy-based quarrel with the General Assembly's decision about how to address this crisis is, once again, not a valid constitutional ground to challenge that decision. (See above at 43.)

Finally, the 2017 Act did not violate the "specific purposes" requirement of Section 9(b) by giving the Comptroller unbridled discretion over how to spend the bond proceeds. Petitioner claims that the 2017 Act violated this requirement

because it "did not specify *which* $6 billion in vouchers to pay," among the more than $15 billion in vouchers outstanding. (Pet. Br. at 33 (emphasis added).) But this contention would mandate an unnecessary degree of advance legislative foresight and control, and potentially embroil the courts in disputes over whether the legislature, while limiting Section 9(b) bond proceeds to specific purposes, failed to fulfill itself the responsibility to identify how each dollar must be spent.

Petitioner contends that his position is supported by *Peabody v. Russel*, 302 Ill. 111, 112–17 (1922), which held that an appropriation of $500,000 "to be apportioned between the executive, judicial and military departments" as determined by the Director of Finance with the Governor's approval, violated the provision of the 1870 Constitution requiring that laws making appropriations "specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections" (Ill. Const. 1870, art. V, § 16). But the facts of *Peabody* — where the challenged law allowed the appropriated funds to be used "for any public purpose within the general constitutional or statutory powers of the executive, judicial, and military departments of the state government," 302 Ill. at 115 — make it inapposite here, where the proceeds of the 2017 bonds could be used only for a single purpose: to pay vouchers incurred before July 1, 2017.[11]

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[11] Compare *Cont'l Ill. Nat'l Bank*, 42 Ill. 2d at 404 (upholding appropriation "for a single general purpose"); *Turkovich*, 11 Ill. 2d at 470 ("statutes appropriating funds in a lump sum for a single general purpose and without further itemization do not contravene the itemization provisions of . . . section 16 . . . where it appears the various details are embraced within and reasonably related to the general purpose"), and *Lund*, 375 Ill. at 307–08 ("where the purpose for

Lewis, on which Petitioner also relies for this argument, shows that it actually has no merit. In that case, a portion of the funds generated by the challenged bonds was dedicated to financing new state construction of highways, mass transportation, and aviation facilities, and another portion was dedicated to repaying existing debt incurred to finance state or local transportation projects. 49 Ill. 2d at 478–80. The respondent complained that the law did not identify the specific use of either portion in sufficient detail, but the Court disagreed. *Id.* at 484–87. Concerning the funds devoted to new construction, the Court stated:

> A project by project itemization certainly could not be expected in a comprehensive act of this type. . . . We believe that sufficient guidelines are established which will permit the respective governmental departments to plan future use of the funds for particular projects and to afford the legislature adequate standards to determine whether funds should be appropriated for such intended uses.

Id. at 485 (citations omitted). Reviewing the criteria that had to be satisfied for the debt-relief portion of the bond proceeds, which included a July 30, 1972 deadline, the Court similarly held: "we believe that this section clearly contemplates the expenditure of funds for debt relief only where that debt was incurred for the constitutionally permissible purpose of aiding and assisting public trans-

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which the money is appropriated is single, . . . the constitution does not require an itemization in detail of all expenditures of money in connection with the general purpose for which the appropriation is made"), with *Winter v. Barrett*, 352 Ill. 441, 474 (1933) (invalidating appropriation allowing local officials to determine whether funds would be used for public education or poor relief, which had no "relationship between" them and so were not a single subject).

portation." *Id.* at 486. The Court added:

> We again emphasize the further significant safeguard applicable to all expenditures of bond proceeds under the Act: namely, that no funds may be expended unless first appropriated by the General Assembly, thus affording the legislature an opportunity to scrutinize all proposed expenditures to insure that they will be made only for the public transportation purposes contemplated by the Act.

Id. at 486–87.

Similar considerations apply to the 2017 Act, warranting a similar result. The law challenged in *Lewis* was not rendered unconstitutional by the fact that it allowed a later determination — by executive-branch officials and the General Assembly through the appropriation process — of specific projects to fund or of existing loans to repay. Likewise here, where the 2017 bonds could be used only to pay vouchers incurred before July 1, 2017, and the General Assembly also had to enact specific appropriation legislation to authorize the specific payments, it cannot be said that the General Assembly failed to provide sufficient detail regarding the specific purposes for which the 2017 bonds were issued, and how the proceeds had to be spent.

CONCLUSION

For the foregoing reasons, the circuit court's judgment should be affirmed.

Respectfully submitted,

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Supreme Court Rule 341(c) 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 48 pages.

/s/ *Richard S. Huszagh*

Appendix

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

State Debt Clause of the Illinois Constitution – (art. IX, § 9)

(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. . . .

Section 11–301 of the Code of Civil Procedure – (735 ILCS 5/11–301)

> . . . An action to restrain and enjoin the disbursement of public funds by any officer or officers of the State government may be maintained either by the Attorney General or by any citizen and taxpayer of the State.

Section 11–303 of the Code of Civil Procedure – (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. . . .

Certificate of Filing and Service

I certify that on February 14, 2020, I electronically filed this Brief of Respondents-Appellees with the Clerk of the Illinois Appellate Court, Fourth District, by using the Odyssey eFileIL system.

I further certify that counsel of record for the other participants in this appeal, named below, are registered service contacts on the Odyssey eFileIL system, and thus will be served via the Odyssey eFileIL system.

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Under penalties as provided by law pursuant to section 1–109 of the Illinois Code of Civil Procedure, I certify that the statements in this Certificate of Filing and Service are true and correct, to the best of my knowledge, information, and belief.

/s/ *Richard S. Huszagh*