

**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

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Case No. _____

**TAXPAYER AND BONDHOLDER COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

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:

NATURE OF THE CASE

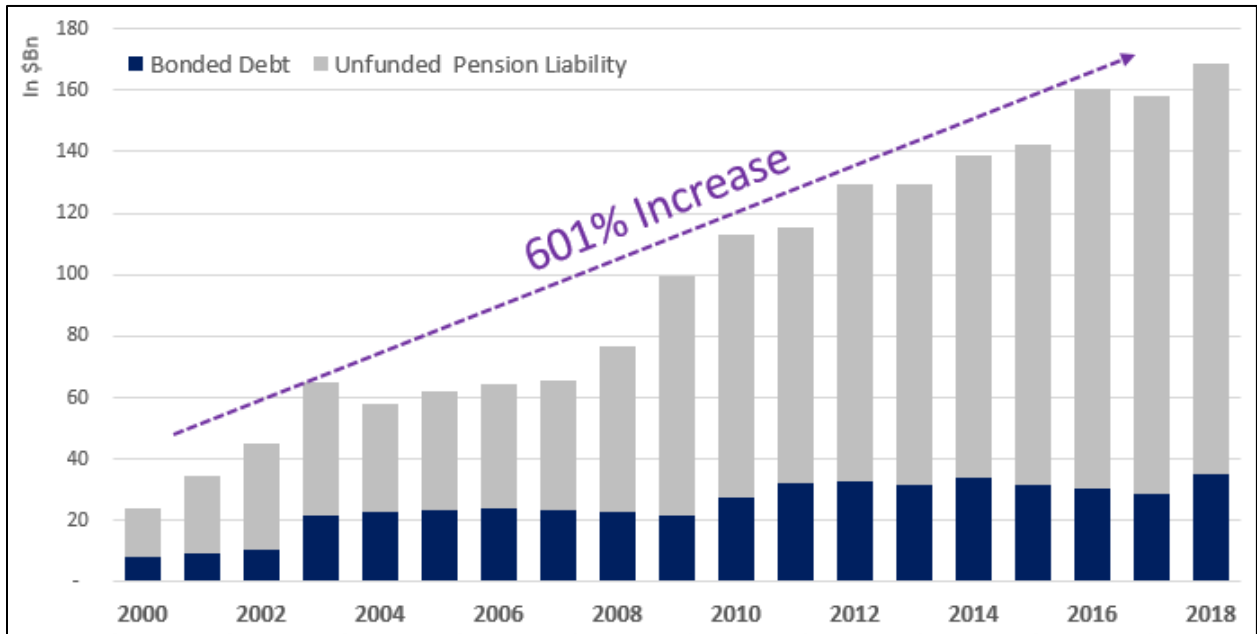
2. This is an action seeking to declare unconstitutional, and enjoin payments on, certain bonds issued by the State of Illinois in 2003 and 2017. As alleged below, and for the reasons stated, these bonds violate Article IX, section 9 of the Illinois Constitution.

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.

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.

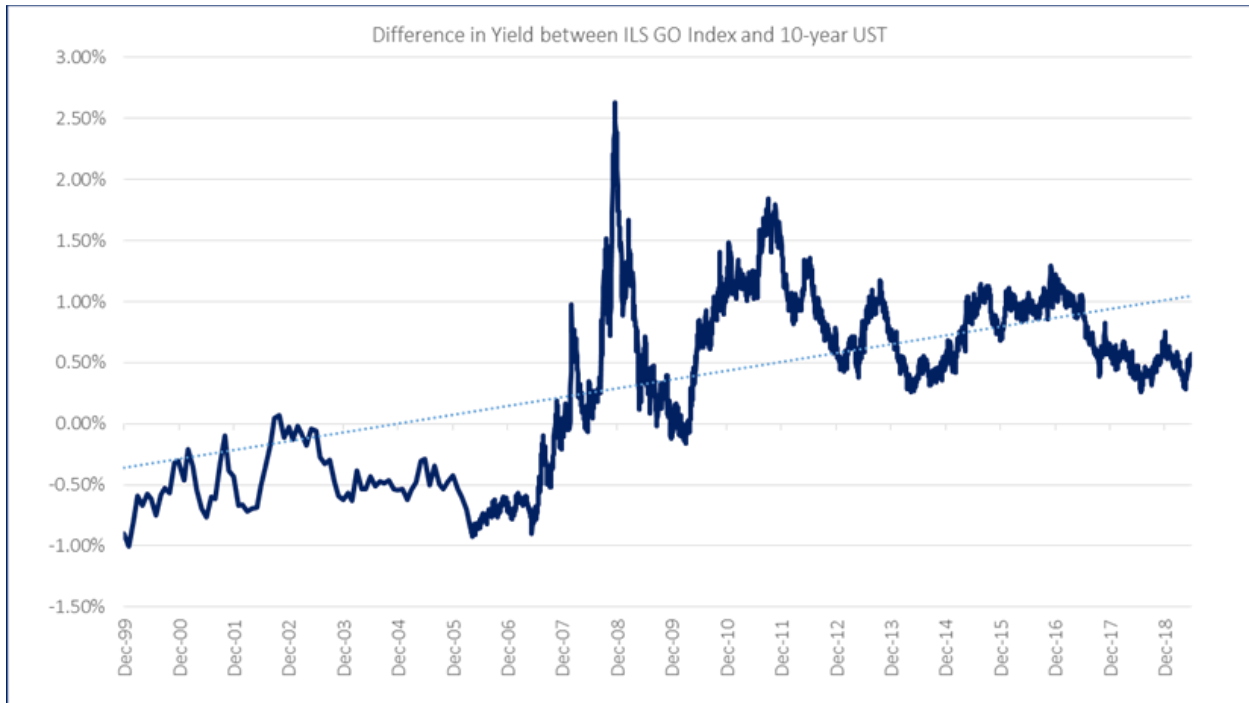
15. Mr. Tillman is a citizen of the State of Illinois and has been paying income taxes to the State treasury since 1985. Mr. Tillman asserts his right as an Illinois citizen and taxpayer to sue to protect the public trust, and to restrain and enjoin Defendants from misusing public funds for unconstitutional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

III. 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.

The General Obligation Bond Act

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.

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

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-109hhr29627/html/CHRG-109hhr29627.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.

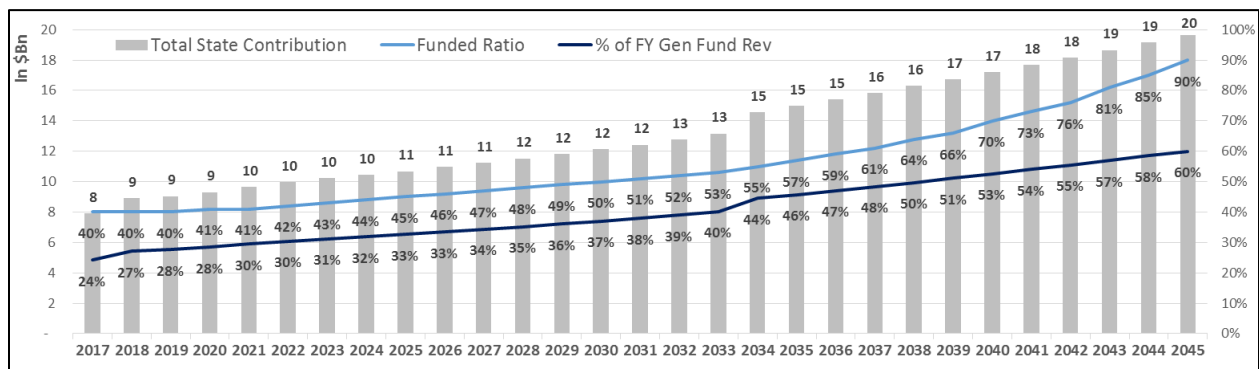
¹⁴ Pub. Act 92-566 (June 25, 2002); Governor’s Office of Mgmt. & Budget, Official Statement: Gen. Obligation Bonds, Series of November 2004 (Oct. 27, 2004) (hereinafter “November 2004 Official Statement”), at 48.

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**



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

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

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

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.

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.moody.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

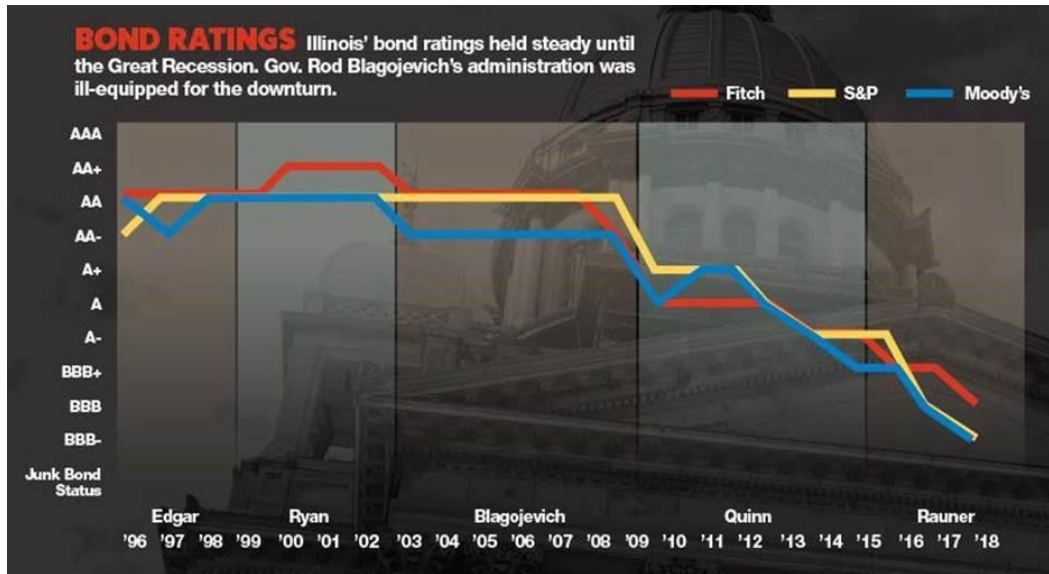
74. During this period, the State’s bond rating was downgraded a combined eight times by Moody’s Investors Service, Fitch Ratings, and S&P Global Ratings.⁴² As reasons for the downgrades, the rating agencies cited the State’s lack of a budget and its history of financial mismanagement.⁴³

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).

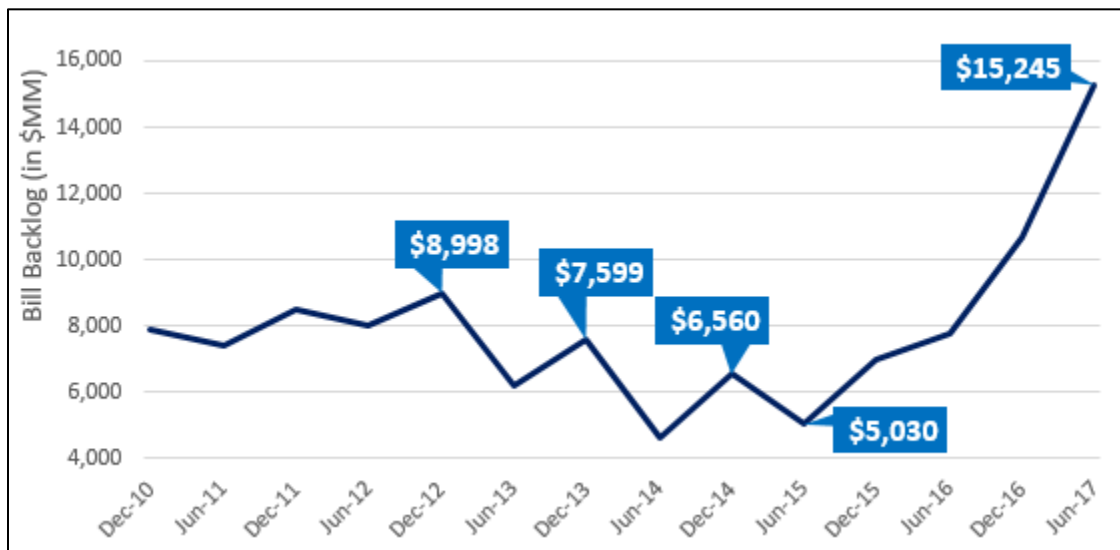
77. Once the Comptroller satisfies herself of the voucher’s legality and the availability of appropriated funds, she draws a “warrant,” which the Treasurer must countersign. A “warrant” is similar to a check; it is a negotiable instrument drawn by the Comptroller on the State Treasury to effect payment 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

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).

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):
2017 Income Tax Proceed Bonds**

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,

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