No. 126387

IN THE
SUPREME COURT OF ILLINOIS

JOHN TILLMAN, Petitioner-Appellee, 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-Appellants.	)	On Appeal from the Appellate Court of Illinois, Fourth Judicial District, No. 4-19-0611 There Heard on 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.

REPLY BRIEF OF RESPONDENTS-APPELLANTS

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ARGUMENT

I. Introduction

Petitioner not only believes that the State should take on long-term debt solely for capital improvements and similar projects, but also insists that the Illinois Constitution enshrines this fiscal policy, prohibiting such debt for other purposes. Consistent with this position, his proposed taxpayer's Complaint alleged a single legal theory in support of his claim that the 2003 and 2017 Acts violated the Illinois Constitution: that section 9(b) of the State Debt Clause (art. IX, § 9(b)) implicitly establishes a *substantive* limitation under which long-term state debt may be issued only for "special projects in the nature of capital improvements." (A 20.) The circuit court rejected that theory, holding that Petitioner had not established "reasonable grounds" to file his Complaint, as required by section 11–303 of the Code of Civil Procedure, 735 ILCS 5/11–303. (A 13–16.) Those rulings were correct, and the circuit court's judgment should be affirmed. The appellate court's contrary holding that section 11–303 requires a circuit court to allow the filing of a complaint that is legally insufficient on its face, as long as it is not "frivolous or malicious" (A 2, 10), was legally erroneous and should be reversed.

II. Section 11–303's "Reasonable Ground" Standard Permits a Circuit Court to Deny Leave to File a Taxpayer Complaint that Is Legally Insufficient on Its Face.

The text of section 11–303, this Court's precedent interpreting it, and the legislative purpose for requiring judicial screening of proposed taxpayer actions all support the conclusion that a circuit court may deny leave to file a

proposed complaint that is legally insufficient on its face.

Defendants initially wish to clarify that, given the circuit court's screening function under section 11–303, a proposed complaint's legal insufficiency on its face *permits*, but does not *require*, the court to deny leave to file it. Although the court must accept well-pleaded facts as true, it has discretion over whether to allow the filing of a complaint. *People ex rel. White v. Busenhart*, 29 Ill. 2d 156, 161 (1963). In appropriate circumstances, that discretion may be exercised by allowing the filing of a complaint, subject to the defendants' ability to move to dismiss it. But a circuit court also may properly deny leave to file a complaint that on its face lacks merit as a matter of law, even if it is not frivolous, without being obliged to prolong this type of proceeding. And in light of the legislative purpose for the screening stage of a taxpayer action (see Def. Br. at 15–16), that is true even though this stage is abbreviated.

Petitioner rightly does not argue that section 11–303's text, which directs a circuit court to determine whether there is "reasonable ground" to bring a taxpayer action, requires it to allow the filing of a pleading that lacks merit as a matter of law as long as it is not frivolous. To the contrary, this standard easily encompasses the ability to deny leave to file such a pleading.

Petitioner's attempt to characterize this Court's precedent as consistent with his interpretation of section 11–303 is unavailing. Petitioner does not deny that in *Busenhart* the Court specifically stated that whether to allow the

filing of a taxpayer's complaint "involves ascertaining whether the complaint states a cause of action," 29 Ill. 2d at 161, and affirmed the circuit court's order denying leave to file a proposed complaint, *id.* at 161–65. Petitioner implausibly suggests that this is "nonbinding dicta," and that "in context" the Court's statement about "'ascertaining whether the complaint states a cause of action'" was "merely explaining why" its discussion made "'reference . . . to the complaint . . . rather than the petition.'" (Pet. Br. at 18, quoting *Busenhart*.) That reading of *Busenhart* cannot be squared with the opinion itself, where the Court said:

> A review of the exercise of the trial court's discretion must be made to ascertain whether there was justification for the finding that no reasonable ground existed for the filing of a complaint in equity, based upon the well pleaded facts in the complaint and the applicable law. Since the problem involves ascertaining whether the complaint states a cause of action and all points raised in the petition are elaborated upon therein, reference will be made to the complaint, as amended, rather than the petition.

29 Ill. 2d at 161. Nothing about this statement indicates that it means anything other than what it plainly says. See also *Lund v. Horner*, 375 Ill. 303, 309 (1940) ("The question before us is whether the complaint sought to be filed sufficiently shows a right of action.").

Petitioner also offers several arguments for why section 11–303's "reasonable ground" standard for screening taxpayer actions is not the same as the standard for granting a motion to dismiss under section 2–615 of the Code of Civil Procedure. (Pet. Br. at 16–17.) This just knocks down a straw

man. As noted, section 11–303 *permits*, but does not *require*, a circuit court to deny leave to file a taxpayer complaint that is legally insufficient on its face. And that situation readily fits within the category, distinct from whether a taxpayer's action is frivolous or malicious, in which this Court held that a proposed complaint may be disallowed because it is "otherwise unjustified." *Strat-O-Seal Mfg. Co. v. Scott*, 27 Ill. 2d 563, 566 (1963). Petitioner insists that a taxpayer complaint is "otherwise unjustified" only if it is frivolous or malicious. (Pet. Br. at 17–18.) But that is not a plausible reading of *Strat-O-Seal* or section 11–303. (See Def. Br. at 17–19.)

Petitioner's arguments based on the nature and purpose of the screening-stage review under section 11–303 fare no better. While the statute contemplates an expedited process that is designed to avoid the "indiscriminate filing" of taxpayer suits, *Busenhart*, 29 Ill. 2d at 161, this process is not intended to extend the life of legally meritless actions, for it also serves to protect against the risk that the mere pendency of a taxpayer action can impede the orderly functioning of public finances. (See Def. Br. at 20.)

III. This Court Should Decide Whether the Circuit Court Correctly Held that Petitioner's Complaint Does Not State a Valid Claim.

Petitioner does not dispute that if the appellate court misinterpreted section 11–303, this Court may review the circuit court's ruling rejecting his theory that the State Debt Clause allows long-term debt to be incurred only for capital improvements and similar projects. That issue has been fully briefed, and the interests of justice favor a definitive ruling on that constitutional issue

by this Court, rather than on remand. (See Def. Br. at 22–25.)

Petitioner nonetheless maintains that a remand is warranted for consideration of his claim that the 2003 and 2017 Acts violated section 9(b)'s "procedural" requirement that a law authorizing long-term debt set forth its specific purposes in reasonable detail. (Pet. Br. at 49–50.) As explained below, however, Petitioner's Complaint did not include such a claim, and when that was pointed out in the circuit court he did not ask to amend his Complaint. There is no need, therefore, for a remand to consider it.

Even if Petitioner's failure to allege such a claim could be overlooked, the Court should still decide whether the 2003 and 2017 Acts violate the State Debt Clause. Under the standard announced in *People ex rel. Ogilvie v. Lewis*, 49 Ill. 2d 476, 484–87 (1971), that issue is a legal one that is properly resolved without the need for any fact finding. The issue is also fully presented by the record. Defendants, while noting that Plaintiff did not assert any claim on this ground, argued that it lacked merit in any event. (C 69, 72–73.) The circuit court agreed. (A 13–16.) And the appellate court did not decide the issue. (A 6, 10.) In these circumstances, remanding the case to the appellate court to hear the issue would unnecessarily prolong the undesirable uncertainty about the validity of the 2003 and 2017 Bonds.

IV. The State Debt Clause of the Illinois Constitution Does Not Limit Long-Term State Debt to Specific Projects in the Nature of Capital Improvements.

The circuit court properly rejected Petitioner's interpretation of the

State Debt Clause under which long-term state debt may be issued only for "specific projects in the nature of capital improvements, including roads, buildings, and bridges." (A 20.) Defendant's opening brief explains that the text of the State Debt Clause, the circumstances surrounding its adoption, and the Court's precedent applying it negate Petitioner's contention that it makes some purposes for issuing long-term state debt substantively impermissible. (Def. Br. at 25–34.) Petitioner offers no meaningful response.

A. Text of the State Debt Clause

Tellingly, Petitioner does not begin his analysis of the State Debt Clause's meaning with its text. And when Petitioner does address the text, he offers unpersuasive arguments for his proposed meaning of it.

1. Section 9(b)

Focusing on section 9(b), Petitioner first argues that because it uses the term "specific purposes" twice, each use must have a different meaning, and that because the second use establishes a *procedural* requirement that the specific purposes for long-term debt be "set forth" in the law authorizing it, the first use must impose a *substantive* limitation on such debt. (Pet. Br. at 20–21.) That substantive limitation, according to Petitioner, is that specific purposes cannot be "general purposes," which he characterizes as issuing debt to pay general operating expenses. (*Id.* at 20, 23, 24.) The premises and conclusion of this strained argument are wrong.

It is true, as Petitioner observes, that a constitutional provision should ordinarily be read to avoid making any part of it meaningless or superfluous. *Hirschfield v. Barrett*, 40 Ill. 2d 224, 230 (1968). But it is also true that when the same term is used in different parts of a provision, it is presumed that the term is "used with the same meaning" unless a contrary intent is "clearly expressed." *People v. Ashley*, 2020 IL 123989, ¶ 36. Both principles combine here to refute Petitioner's proposed interpretation of section 9(b).

Neither sentence in section 9(b) is redundant or superfluous, and both use the term "specific purposes" in the same sense. The first sentence provides that long-term debt for "specific purposes" may be authorized by "a law passed by the vote of three-fifths of the members elected to each house of the General Assembly," and the second sentence provides that such a law "shall set forth the specific purposes" of the debt authorized. Each imposes a distinct requirement, with neither being superfluous. And in each the term "specific purposes" has the same meaning, under which long-term debt may be issued only for particular, identified purposes. See *Lewis*, 49 Ill. 2d at 484.

Nor does the term "specific purposes," viewed alone, support Petitioner's attempt to read into it a substantive limitation under which long-term debt may be issued only for "specific projects in the nature of capital improvements." The ordinary meaning of the term "specific purposes" refers to purposes that are particularly identified and defined, differentiating them from all other purposes. See *Lewis*, 49 Ill. 2d at 484; see also Def. Br. at 33,

n.8. In this context, therefore, funds dedicated to "specific purposes" are funds whose use is restricted to defined and identified purposes, in the sense that they are "earmarked" for such purposes. See *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 88 (2008) ("The track owners cannot simply pocket any of the funds they receive . . . . The 40% is earmarked for specific purposes and must be used by the tracks for those purposes.").

Pressing his argument that section 9(b) does not allow borrowing for what he calls "general purposes," Petitioner repeatedly attempts to equate (1) putting long-term bond proceeds into the State's general revenue fund and determining *later* how they will be spent (which Defendants concede the State Debt Clause does not allow), and (2) issuing long-term debt to pay for any state expense that can be described as "regular" or "recurring," even if the law authorizing it identifies that expenditure in detail (C 374, 378, 414; Pet. Br. at 24, 34, 39, 40 n.24.) Petitioner ignores the key difference between those situations: only in the latter are the constitutional requirements — a supermajority vote approving a law that itself identifies in reasonable detail how the debt proceeds will be used — satisfied, rather than circumvented. Those requirements, which promote transparency and accountability, are the ones the drafters of the State Debt Clause intended to serve as a protection against excessive long-term state debt. (See Def. Br. at 32–33 & n.7.) And section 9(b), by its terms, does not impose any other restrictions.

2. The Rest of the State Debt Clause

Seeking additional support for his interpretation of section 9(b), Petitioner contrasts it with sections 9(c) and 9(d), under which the General Assembly may authorize short-term debt, either in anticipation of revenues expected later in the same fiscal year, or to meet deficits caused by emergencies or failures of revenue. (Pet. Br. at 22, 24–25.) Petitioner argues that because the proceeds of such short-term debt are intended to be used for general operating expenses, including to cover budget deficits, the proceeds of long-term debt under section 9(b) logically may not be used for such purposes. (*Id.*) Again, Petitioner improperly attempts to engraft onto section 9(b) a limitation not contained in its text, contrary to basic principles of constitutional interpretation. See *Hoffmann v. Clark*, 69 Ill. 2d 402, 423–24 (1977).

Sections 9(c) and 9(d) expressly set limits on the amount of debt they permit the General Assembly to authorize, allow such authorization by simple majority vote, and impose short repayment deadlines. Section 9(b), by contrast, requires a supermajority vote but does not impose any limit on the debt's amount or time of repayment. Given these stated differences, there is no occasion for the Court to read into section 9(b) additional differences or limitations it does not state. See *Hoffman*, 69 Ill. 2d at 423–24.

Because section 9(b)'s text is unambiguous, there is no need to consult other sources to glean its meaning. See *Blanchard v. Berrios*, 2016 IL 120315, ¶ 16. Those sources point to the same meaning in any event.

B. This Court's Precedent

The leading case applying section 9(b) is *Lewis*, which says nothing to support Petitioner's interpretation of it, and instead held that section 9(b) requires legislation authorizing long-term debt 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. Having argued below that *Lewis* supported his interpretation of section 9(b) (C 207–09), Petitioner now maintains that *Lewis* is not relevant to that issue because the petitioner there argued only that the debt he challenged violated section 9(b)'s "*procedural* requirement that a borrowing act 'set forth the specific purposes.'" (Pet. Br. at 23–24, quoting § 9(b), emphasis in original.) This merely highlights the fact that no one has advanced the argument Petitioner makes here, presumably because it lacks any textual basis.

C. The Constitutional Convention

Petitioner's reliance on the proceedings of the 1970 Constitutional Convention is likewise unavailing. They reflect, at best, a belief that state bonds were *commonly* used for capital projects, not that the State Debt Clause made such projects the *exclusive* permissible use of long-term state debt. (See Def. Br. at 33–34.)

The convention proceedings record an extensively debated decision to protect against excessive long-term borrowing by requiring supermajority approval by the General Assembly for specifically identified purposes. (*Id.* at 31–34.) They do not show a similar collective intention to restrict such

purposes to capital improvements and similar projects, and the text of the State Debt Clause accordingly contains no such restriction. (See *id.* at 26–34.) In fact, when one delegate asked whether the term "specific purposes" "might include" things other than "capital improvements," the sponsor, emphasizing the provision's procedural focus, responded that it required "that the improvement to be financed be *described* in such a way as it is identifiable and not just a general term." 3 Record of Proceedings, Sixth Ill. Constitutional Convention ("Proceedings") 1932 (emphasis added). Thus, the only clear understanding of section 9(b) was that it required a specific description of the purposes for long-term debt, not adherence to any substantive limitation on those purposes. See also *id.* at 1933; Def. Br. at 32–34.[1]

Even Petitioner admits that the State historically issued long-term debt to fund "bonuses for returning war veterans" (Pet. Br. at 2), which obviously are not capital improvements. And although the convention delegates were advised that the courts would be responsible for deciding "whether or not the purpose *described* in a debt issue is specific enough," 3 Proceedings at 1933 (emphasis added), they were never told that the courts would decide whether a specifically described purpose was substantively permissible.

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[1] Asserting that the convention delegates were "not satisfied to require merely that a purpose be 'clearly defined'" (Pet. Br. at 21), Petitioner selectively quotes from a proposal that was rejected by the Revenue and Finance Committee because it included a feature Petitioner fails to mention: approval of long-term debt only by voter referendum. 7 Proceedings at 2183–84, 2187.

D. Policies Underlying the State Debt Clause

Finally, Petitioner fails to explain satisfactorily what criteria courts should use to distinguish between permissible and impermissible purposes for long-term debt. He offers various formulations, stating that such non-routine expenditures as veterans' bonuses and the State's public health response to Covid-19 are permissible purposes (i.e., "*in the nature of* capital improvements") (Pet. Br. at 2 & n.3, emphasis in original), but that borrowing under section 9(b) is impermissible to pay expenditures typically treated as "general operating expenses," that amount to "deficit financing," or that "facilitate deficit spending" (*id.* at 24, 26, 28, 33, 35). There is no bright line between these categories, however. For example, the two-year budget impasse that ended in mid-2017 and generated a massive backlog of unpaid bills, including by healthcare providers for active and retired state employees, was unprecedented in Illinois history — much like the State's response to the Covid-19 pandemic. But Petitioner offers no principled criteria for concluding that the use of long-term debt to pay down such bills, thereby greatly reducing the related interest cost, represented an expenditure prohibited by the State Debt Clause, as opposed to a permitted exceptional expenditure.

Similar observations apply to Petitioner's argument about the State's pension contributions, some of which fund the "normal cost" to cover benefits for current services, but most of which go toward amortizing unfunded liabilities. See *www.srs.illinois.gov/PDFILES/oldAnnuals/SERS19.pdf* at 57

(last accessed Feb. 23, 2021). Petitioner argues that the statute requiring these combined contributions is constitutionally binding on the State, making them a regular "operating expense." (Pl. Br. at 34–35.) But his premise is wrong. The General Assembly could change the existing contribution statute to reduce the State's annual pension contributions without offending the Constitution, as long as the benefits themselves were not diminished. *People ex rel. Sklodowski v. State*, 182 Ill. 2d 220, 232–33 (1998); *McNamee v. State*, 173 Ill. 2d 433, 444–47 (1996).

In the end, these distinctions between routine and exceptional situations, and how to address them, require political judgments, not judicial ones, which the State Debt Clause properly entrusted to the General Assembly based on the idea that requiring supermajority approval of long-term debt for specifically identified purposes, not judicial examination of the wisdom of those purposes, provides the appropriate check on excessive borrowing.

V. Petitioner's Complaint Did Not State a Valid Claim that the 2003 and 2017 Acts Failed to Set Forth in Reasonable Detail the Specific Purposes of the State Debt They Authorized.

Petitioner attempts to salvage his action by arguing that his Complaint also alleged a claim that the 2003 and 2017 Acts failed to satisfy the State Debt Clause's procedural requirement that a law authorizing long-term debt "set forth" the debt's specific purposes. (Pet. Br. at 38, 40–42.) He is wrong for two reasons, and the Court may affirm the circuit court's judgment without remanding for further consideration of this issue. First, his complaint did not

include such a claim, eliminating any need for this Court (or any court) to consider whether it would have merit. Second, the 2003 and 2017 Acts satisfy section 9(b)'s procedural requirements in any event.

A. Petitioner's Complaint Did Not Allege that the 2003 and 2017 Acts Failed to Define in Reasonable Detail the Specific Purposes of the Debt They Authorized.

Notwithstanding Petitioner's repeated protestations to the contrary (Pet. Br. at 13, 32), his Complaint never alleged that the 2003 and 2017 Acts failed to satisfy section 9(b)'s "procedural" requirement. A careful examination of his pleading shows that although it frequently alleged that the 2003 and 2017 Bonds funded *impermissible* purposes (see A 27–28, 34, 47, 53–55), it never alleged that the 2003 and 2017 Acts failed to *describe* those purposes in reasonable detail.[2]

The only remotely plausible candidate for such a claim in Petitioner's Complaint is paragraph 27, which is included in a multi-paragraph summary of the State Debt Clause. (A 33–34.) After alleging that "'[s]pecific purposes' refers to specific projects in the nature of capital improvements, such as roads, buildings, and bridges," paragraph 27 states that the first sentence of section 9(b) establishes a supermajority vote requirement for long-term debt, and that the second sentence "contains the procedural requirement that the 'specific purposes and manner of repayment' of the debt be set forth in the authorizing

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[2] Curiously, after Petitioner was challenged on the issue in the circuit court, he identified different paragraphs that he said alleged such a claim. (C 203.)

law." (*Id.*) It alleged nothing more about this "procedural requirement" generally, or its relevance to the 2003 and 2017 Acts. Petitioner did argue that the differences between these two sentences in section 9(b) supported his theory that the first sentence establishes a substantive limitation on the permissible purposes for long-term state debt. (C 204.) But nowhere did his Complaint include any allegations, even conclusory ones, that the 2003 and 2017 Acts did not describe in adequate detail their specific purposes. Further, although in the circuit court Defendants specifically raised the absence of such a claim (C 69), Petitioner never sought to amend his Complaint to include it.

Petitioner urges the Court to overlook this omission, arguing that Defendants forfeited it by not raising it in the circuit court, in the appellate court, or in their petition for leave to appeal ("PLA"). He is wrong again. Where "no cause of action is stated," as opposed to a cause of action being "defectively stated," the issue "may be raised at any time." *Wilson v. Bd. of Educ. of Sch. Dist. No. 126*, 394 Ill. 197, 201–02 (1946); see also *In re S.L.*, 2014 IL 115424, ¶ 17. And because Defendants prevailed in the circuit court, this Court may sustain the judgment in their favor on any ground supported by the record, even if they did not raise that issue in the appellate court. *Matthews v. Chi. Transit Auth.*, 2016 IL 117638, ¶ 42; *People v. Donoho*, 204 Ill. 2d 159, 169 (2003). In addition, this issue is unquestionably supported by the record. In the circuit court, Defendants specifically asserted that "Petitioner does not dispute that the laws authorizing the bonds he seeks to

challenge specify in sufficient detail the purposes for these bonds." (C 69.)

Petitioner's objection that Defendants did not raise this point in their PLA also misses the mark. Supreme Court Rule 315(c) requires a PLA to include "a statement of the points relied upon in asking the Supreme Court to review the judgment of the Appellate Court," and "a short argument . . . stating . . . why the decision of the Appellate Court should be reversed or modified." Ill. Sup. Ct. Rule 315(c)(3), (5); see *MD Elec. Contractors, Inc. v. Abrams*, 228 Ill. 2d 281, 299 (2008). Defendants' PLA did just that. The appellate court expressly declined to decide the merits of Petitioner's claims or Defendants' defenses. (A 6, 10.) Instead, it rested its judgment on the ground that section 11–303 requires a circuit court to allow the filing of a claim unless it is "frivolous or malicious," and that "Tillman's complaint sets forth a colorable reading of the Illinois Constitution that does not appear to be frivolous on its face." (A 2, 10.) Defendants' PLA asked the Court to review that holding, which is all that Rule 315(c) required. Defendants' PLA did not have to ask this Court to "reverse" a ruling the appellate court did not make.

In any event, forfeiture principles under Rule 315(c) are not jurisdictional, *People v. Peterson*, 2017 IL 120331, ¶ 67, and the Court may consider an issue not raised in a PLA that "is inextricably intertwined with other matters properly before the court," *id.* (citations and internal quotation marks omitted). Thus, if the Court believes that it is appropriate to address the legal sufficiency of any claim by Petitioner under section 9(b)'s procedural

requirement, the Court may do so regardless of whether that was expressly raised in Defendants' PLA.

B. The 2003 and 2017 Acts Defined in Reasonable Detail the Specific Purposes of the Debt They Authorized.

There is no merit, in any event, to Petitioner's suggestion that the 2003 and 2017 Acts failed to set forth in reasonable detail the specific purposes for the debt they authorized. As explained in Defendants' opening brief, both Acts defined in reasonable detail the objectives to be accomplished and how the bond proceeds would be spent. The 2003 Act specified exactly how the 2003 Bond proceeds would be used and the purpose of that use. (Def. Br. at 6, 35–36.) And the 2017 Act, which limited the use of the 2017 Bond proceeds to a single purpose (paying off unpaid vouchers that accrued during the State's two-year budget impasse, including vouchers for healthcare services to active and retired state employees), likewise satisfied section 9(b). (*Id.* at 7–8, 36–40.)

VI. In the Alternative, the Court Should Affirm the Circuit Court's Judgment on Other Grounds.

As noted, this Court can affirm the circuit court's judgment in Defendants' favor on any ground supported by the record. In addition, the screening-stage inquiry under section 11–303 is not limited to the face of a taxpayer's complaint, but may consider other matters that defeat his claim. *Busenhart*, 29 Ill. 2d at 162, 164 (affirming denial of leave to file taxpayer action and holding that claim was barred by judgment in other action). Thus, if the Court decides not to address the merits of Petitioner's constitutional claim under the State Debt Clause, it should still affirm the judgment against

him on the alternate grounds asserted by Defendants in the circuit court.

A. Petitioner Failed to Name the Bondholders as Necessary Parties.

Petitioner does not dispute that the injunctive relief he seeks would have a direct, adverse effect on the holders of the 2003 and 2017 Bonds; that his failure to make them parties was raised in the circuit court; and that he never sought to add them as parties. And, for obvious reasons, he does not contend that Defendants and the bondholders have the *same* interests. He nonetheless argues that Defendants adequately represent the bondholders, dispensing with the need to name any of them as parties. (Pet. Br. at 47–48.) This argument disregards fundamental principles of civil procedure and due process. Under both, an existing party may be deemed an adequate representative of a missing party only if the two have the "same interests," not just interests that align in the sense that they favor a common outcome. *Feen v. Ray*, 109 Ill. 2d 339, 348–49 (1985); see *Richards v. Jefferson Cty., Ala.*, 517 U.S. 793, 798–99 (1996) (affirming due process "same interests" requirement); see also *Taylor v. Sturgell*, 553 U.S. 880, 900–01 (2008) (rejecting theory of preclusion by "virtual representation" and holding that alignment of interests with party is insufficient to satisfy due process requirements for non-party to be bound by adjudication). Thus, regardless of how vigorously Defendants oppose Petitioner's action, the bondholders could not be bound by a judgment in this case merely because Defendants seek to defeat Petitioner's claims and the bondholders would benefit from that outcome. See *Feen*, 109 Ill. 2d at 349

(holding that party's "most diligent efforts in pursuing his claims . . . cannot abrogate, under the doctrine of representation, the necessity of the district as a party to this litigation"); *Taylor*, 553 U.S. at 900–01.[3]

Petitioner also argues that the absence of necessary parties does not automatically require dismissal of an action. (Pet. Br. at 48.) But the necessary-party issue was raised in the circuit court, and Petitioner never argued that he should be allowed to amend his pleading or asked to do so. He cannot complain now, therefore, that he was not afforded a "reasonable opportunity to add [the bondholders] as parties" (*id.*, quoting 735 ILCS 5/2–407). See *Eagan v. Chicago Transit Auth.*, 158 Ill. 2d 527, 530, 534–35 (1994) (holding that Court would not consider, as grounds to challenge circuit court's judgment, issue not raised in plaintiffs complaint after he "elected to stand by his complaint and did not seek to amend").

B. Petitioner's Claims Were Barred by Laches.

A court screening a taxpayer's action need not close its eyes, as Petitioner argues, to matters other than the strict elements of a petitioner's claim. *Busenhart*, 29 Ill. 2d at 164. And just as a court may dismiss a complaint that establishes laches on its face, including a taxpayer's complaint, see *People ex rel. Casey v. Health & Hosps. Governing Comm'n*, 69 Ill. 2d 108,

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[3] The additional requirement that a party claimed to be a representative of absent parties "understood herself to be acting in a representative capacity," *Taylor*, 553 U.S. at 900, fails for the additional reason that Defendants do not represent private parties generally and did not undertake to do so here.

113 (1977); *Schnell v. City of Rock Island*, 232 Ill. 89, 96 (1907) (holding that laches evident on face of taxpayers' complaint barred request to enjoin payments on municipal bonds), it logically may deny leave to file such a complaint under section 11–303.

Petitioner insists that a taxpayer's right to enjoin unlawful public expenditures necessarily allows him to challenge government bonds at any time, even long after they are issued. (Pet. Br. at 44–45.) Established law holds the opposite. See *Solomon v. N. Shore Sanitary Dist.*, 48 Ill. 2d 309, 322 (1971) (holding that laches barred taxpayers' action to enjoin issuance of bonds and expenditure of bond proceeds); *Schnell*, 232 Ill. at 93, 96 (holding that laches precluded action to enjoin municipal bond payments).

Petitioner further contends that he did not unreasonably delay in challenging the 2003 or 2017 Bonds — even though he waited years after they were issued, after purchasers paid for them, and after the proceeds were spent — because he "is not seeking a remedy for any *past* misconduct," and challenges "only future payments" on the bonds. (Pet. Br. at 44, emphasis in original.) But he obviously *is* challenging past conduct, which is the basis for his claim that the 2003 and 2017 Bonds were invalid *ab initio*. That he requests prospective relief, enjoining only future payments on the bonds, does not make his delay legally irrelevant. See *Solomon*, 48 Ill. 2d at 322; *Bowman v. Lake Cty.*, 29 Ill. 2d 268, 280 (1963); *Schnell*, 232 Ill. at 96–97.

Petitioner further argues that only prejudice to the State, not the bondholders, is relevant, and that the Court must accept as true his allegation that the State will actually benefit from a decree enjoining payments on the 2003 and 2017 Bonds. (Pet. Br. at 45.) These contentions are not well taken.

Prejudice to innocent third parties, including bona fide purchasers, is directly relevant to the equitable defense of laches, *McCleary v. Lewis*, 397 Ill. 76, 83 (1947); see also *Evers v. Watson*, 156 U.S. 527, 536 (1895); *People ex rel. Casey v. Health & Hosps. Governing Comm'n*, 69 Ill. 2d 108, 117–18 (1977), including in actions to enjoin payments on bonds, *Johnson v. Atlantic, Gulf & West India Transit Co.*, 156 U.S. 618, 648–49 (1895); *Lerew v. Cresbard Indep. Consol. Sch. Dist.*, 192 N.W. 747, 748–49 (S.D. 1923); *Calhoun v. Delhi & M.R. Co.*, 24 N.E. 27, 30–31 (N.Y. 1890). Those principles have special relevance here. Petitioner does not dispute the prejudice the bondholders would suffer from the relief he seeks. And his choice not to name them as parties should not enable him to avoid laches. See *Lerew*, 192 N.W. at 748–49; *Calhoun*, 24 N.E. at 30–31.

Even if prejudice to the State alone were relevant, Petitioner's Complaint does *not* allege, as his brief asserts, that "the State's credit rating . . . would improve" if payments on the 2003 and 2017 Bonds were enjoined. (Pet. Br. at 45.) The supposed basis for this assertion (Complaint paragraph 17) merely alleges that the State's risk of defaulting on other bonds increased as a result of its *voluntary decision* to assume and service the debt evidenced

by the 2003 and 2017 Bonds (A 29–30), not that a court order *enjoining payments* on these bonds, with the massive disruption that would entail, would "improve" the State's credit rating. And the prejudice to the State from such an injunction, beyond just the obvious adverse effect on the State's credit (see PLA at 16 n.4), is evident, exposing the State to litigation by bondholders who would not be bound by any judgment in this case (see Def. Br. at 42), and potentially inconsistent judgments.

C. Petitioner's Challenge to the Validity of the 2003 Bonds Is Barred by the Five-Year Statute of Limitations.

In opposition to Defendants' defense that Petitioner's claim challenging the 2003 Bonds is barred by the five-year statute of limitations, Petitioner contends that this defense is never a ground to deny leave to file a taxpayer action, is inapplicable to constitutional claims, and cannot bar injunctive relief against future bond payments. (Pet. Br. at 47.) These arguments are unfounded.

Because a limitations defense on the face of a complaint justifies granting a motion to dismiss (see Def. Br. at 44), there is no reason to require allowing the filing of such a complaint under section 11–303. Constitutional claims are not exempt from statutes of limitations. *Langendorf v. City of Urbana*, 197 Ill. 2d 100, 110–11 (2001). And although claims to *enforce* installment payments accrue when each payment comes due, *Light v. Light*, 12 Ill. 2d 502, 506 (1957), a claim concerning the *validity* of the underlying obligation accrues when the elements to prove that claim have arisen, *Kozak v.*

Ret. Bd. of Firemen's Annuity & Ben. Fund, 170 Ill. App. 3d 1095, 1097 (1st Dist. 1988); see *Sundance Homes, Inc. v. Cty. of DuPage*, 195 Ill 2d 257, 266 (2001); *35 Park Ave. Corp. v. Campagna*, 399 N.E.2d 1144, 1145 (N.Y. 1979) (holding that claim challenging lease "accrued at the execution of the lease," "notwithstanding that its effect may last the life of the lease"). For Petitioner's claim challenging the 2003 Act, those elements occurred well before the five-year limitations period for that claim.

CONCLUSION

For the foregoing reasons and those in Defendants' opening brief, this Court should reverse the appellate court's judgment and affirm the circuit court's judgment denying Petitioner leave to file his proposed Complaint.

Respectfully submitted,

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February 26, 2021

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 or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and 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 5,956 words.

/s/ *Richard S. Huszagh*

CERTIFICATE OF FILING AND SERVICE

I certify that on February 26, 2021, I electronically filed the foregoing Reply Brief of Respondents-Appellants with the Clerk of the Supreme Court of Illinois by using the Odyssey eFileIL system.

I further certify that counsel for the other participants in this appeal, listed below, are registered service contacts for this case on the Odyssey eFileIL system and 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 set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ *Richard S. Huszagh*

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