

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

JOHN TILLMAN and WARLANDER  
ASSET MANAGEMENT, LP,

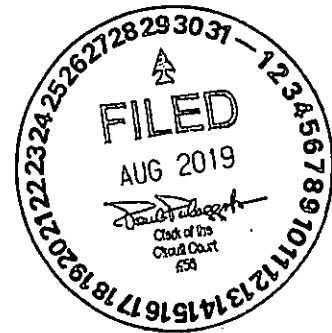
Plaintiffs,

v.

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

Defendants.

2019 CH 000235



Order

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

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

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

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

State. Such petition shall have attached thereto a copy of the complaint, leave to file which is petitioned for...

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

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

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

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

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

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

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

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

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

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

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

The court finds that to allow the filing of the Complaint would result in an unjustified interference with the application of public funds. Moreover, Tillman asks this court to address a non-justiciable political question and substitute its judgment for the Illinois Legislature some two

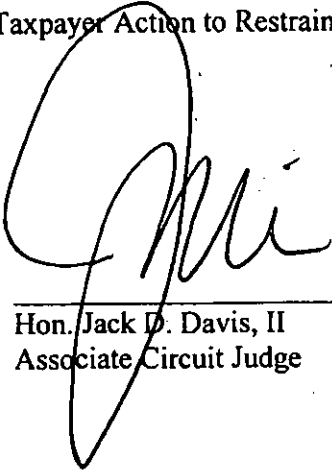
decades after it occurred. To do so would be improper and would violate the separation of powers. The court rejects Tillman's invitation to do so.

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

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

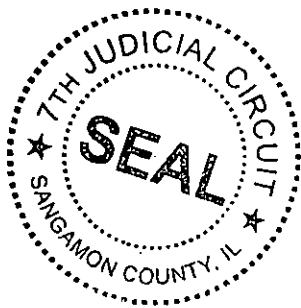
A. Tillman's Petition for Leave to File a Taxpayer Action to Restrain and Enjoin the Disbursement of Public Funds is denied.

Entered this 29 day of August, 2019

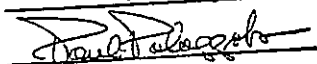


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Hon. Jack D. Davis, II  
Associate Circuit Judge



I hereby certify the document to which this certificate is attached is a true and complete copy of this original on file and of record in my office. Date: 8.29.2019

  
PAUL PALAZZOLO  
Clerk of the Circuit Court in the  
State of Illinois and County of Sangamon