

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Type of Case: Declaratory Judgment Action

Court File No. _____

Judge: _____

Minnesota Break the Bonds Campaign,
Bil'in Popular Committee Against the
Wall and Settlements, Women Against
Military Madness-Middle East Committee,
Lucia Wilkes Smith, Margaret Sarfehjooy,
Catharine Abbott, Barbara Hill, Polly Mann,
Leona Ross, Sylvia Schwarz, Nadim Shamat,
Sarah Martin, Robert Kosuth, Mary Eoloff,
Nick Eoloff, Vern Simula, Cynthia Arnold,
Newland F. Smith, III, Ronnie Barkan, Ofer
Neiman, David Nir, Leehee Rothschild,
Renen Raz, Dorothy Naor, Gal Lugassi,
Boycott From Within and David Boehnke,

**COMPLAINT FOR
DECLARATORY JUDGMENT
AND AFFIRMATIVE RELIEF**

Plaintiffs,

vs.

Minnesota State Board of Investment,

Defendant.

Plaintiffs, by and through their undersigned attorneys, for their complaint for declaratory and other affirmative relief against Defendant, state and allege as follows:

1. This is an action for declaratory judgment pursuant to Minnesota Statutes, Section 555.01, et seq., the Uniform Declaratory Judgments Act, and Rule 57 of the Minnesota Rules of Civil Procedure and for temporary injunctive relief pursuant to Rule 65.02 of the Minnesota Rules of Civil Procedure pending a decision by the court on the merits.

PARTIES

2. Plaintiff Minnesota Break the Bonds Campaign (MNBBC), a nonprofit Minnesota corporation, is an association of Minnesotans working together to promote justice and human rights in Israel/Palestine through education and civic actions. MNBBC's members represent a diverse cross-section of Minnesotans, including Christians, Muslims and Jews, students, professionals, artists, clergy, retirees, veterans and community activists. Several members of MNBBC have familial ties to Israel and the occupied Palestinian territories, including family members who have directly suffered from the policies of the State of Israel. Members of MNBBC believe that the citizens of Minnesota, through their governmental representatives, have the moral obligation to make sound investments that will not aid the oppression of any race, creed or people. MNBBC believes that Minnesota's investment in Israel entangles Minnesota and its citizens in Israel's apartheid system, including dispossession and ethnic cleansing of the indigenous Palestinian population in both Israel and the occupied Palestinian territories that has caused thousands of civilian deaths, many of them children. Accordingly, MNBBC has initiated a statewide campaign aimed at ending Minnesota investment in Israel until Israel complies with international law and respects human rights. MNBBC has demanded that the Minnesota State Board of Investment divest from Israel Bonds.

3. Plaintiff Bil'in Popular Committee Against the Wall and Settlements (BPC) is a

civic organization comprised of the residents of Bil'in, a small West Bank Palestinian farming village under the Governorate of Ramallah. Since April 2004, when Israel illegally expropriated approximately 500 acres of Bil'in land for illegal settlement purposes and began to construct an apartheid wall on the West side of the village, the BPC has organized regular non-violent Friday protests which have been met with violence and arrests from the Israeli authorities, despite a ruling from the Supreme Court of Israel siding with the BPC. During the course of the BPC's non-violent protests, the Israeli Army has injured scores of protesters and killed at least two. In December 2009, Abdallah Abu Rahma, a BPC organizer, was arrested by the Israeli authorities and imprisoned for fifteen months in an Israeli military prison.¹ These punitive measures exemplify Israel's harsh crowd dispersal measures, the targeted arrests of protest leadership, the draconian use of military courts to stifle political resistance and Israel's imposition of a broad range of limitations on the Palestinians' ability to plan and organize peaceful protests. Despite these measures, the BPC and a growing number of other Palestinian village popular committees remain dedicated to non-violent opposition to the Israeli occupation and Israel's unlawful settlement activities. BPC opposes Minnesota's investment in Israel Bonds because the money Israel raises from the sale of Israel Bonds funds Israel's illegal settlement activities in the occupied Palestinian territories, victimizing the residents of Palestinian villages like Bil'in.

4. Plaintiffs Lucia Wilkes Smith, Margaret Sarfehjooy, Barbara Hill, Polly Mann, Catharine Abbott and Leona Ross are Minnesota members of Plaintiff Women Against Military Madness - Middle East Committee (WAMM-MEC).² WAMM-MEC was formed to educate

¹ Rahma has been called a prisoner of conscience by Amnesty International and a "human rights defender" by the foreign policy chief of the European Union.

² Women Against Military Madness (WAMM) is a Minnesota based non-profit, non-violent feminist

WAMM members about conditions in Israel/Palestine, to support peace movements in Israel and Palestine and all efforts at reconciliation, to encourage trips to the area and to act and advocate for full equality for Palestinians in the land of their birth. WAMM's Middle East Committee focuses on the political, economic and military support of Israel's illegal and unjust occupation of Palestine and supports an equitable solution in accordance with international law.

5. Plaintiff Sylvia Schwarz (Schwarz) is a Minnesota resident, a Jewish member of MNBBC and the daughter and grand-daughter of survivors of the Nazi genocide of European Jews. Schwarz holds general and durable powers of attorney on behalf of her husband, plaintiff Nadim Shamat (Shamat). Shamat is a naturalized Palestinian-American who was born in Jaffa, Palestine (now Israel) in 1945. On April 28, 1948, Shamat's entire extended family was forced to flee Jaffa and Palestine to escape Zionist militias. Shamat subsequently settled in Minnesota where he received a Ph.D. in Civil Engineering from the University of Minnesota and also served as an adjunct associate professor. Between 1980 and 1991, Shamat was employed by the Metropolitan Waste Control Commission (now the Metropolitan Council Environmental Services) where he became entitled to deferred compensation. Shamat, who has lost his cognitive abilities as the result of advanced stage Alzheimer's disease, receives deferred compensation payments from funds that are managed and invested by the Minnesota State Board of Investment.

6. Plaintiff Sarah Martin (Martin) is a Minnesota born and raised peace activist. She is also a retired general care surgical/trauma unit nurse and a participant in a Public Employees

organization that works in solidarity with others to create a system of social equality, self determination and justice through education, action and the empowerment of women. WAMM's stated purpose is to dismantle systems of militarism, economic exploitation and global oppression.

Retirement Association plan whose funds are managed and invested by the Minnesota State Board of Investment. Martin is a great-grandmother who became a lifelong anti-war activist in the 1960's during the Vietnam War and a former co-chair of the board of Women Against Military Madness (WAMM). As a member of WAMM's International Committee, Martin has traveled on fact finding delegations to the Phillipines, Burma, Viet Nam, Thailand, Cambodia and India. In 2009, Martin attempted to travel to the occupied West Bank of Palestine with a fact-finding solidarity delegation, but was denied entry by Israeli authorities and deported back to the United States where she and 23 other Midwest anti-war and peace and justice activists were subsequently served subpoenas to appear before a federal grand jury. Several members of Congress, including Representatives Michael Capuano, Jan Schakowsky, David Price, Jim McDermott, John Conyers, Luis Gutierrez, Keith Ellison, Danny Davis, John Lewis and Dennis Kucinich have expressed their concern to the Attorney General and the President about the purpose of these Grand Jury subpoenas. Martin is outraged that the Minnesota State Board of Investment is financially supporting Israel's ongoing and brutal occupation of Palestine by investing her retirement funds in Israel Bonds.

7. Plaintiff Robert Kosuth (Kosuth) is a beneficiary of a pension plan whose funds are administered and invested by the Minnesota State Board of Investment. Kosuth, a U.S. Army veteran, received his Ph.D. in Second Languages and Cultures Education from the University of Minnesota in 1995 and currently serves, post-retirement, as a part time instructor of developmental reading at Lake Superior College in addition to teaching occasional courses in the Community Education Program in Duluth. Before his retirement from the University of Wisconsin in 2006, where he served at the Superior campus as the director of the ESL institute, Kosuth taught and lectured as a linguistics and second language instructor for the Duluth

Community College, the University of Kansas, the University of Minnesota at Duluth and at various universities in China. Kosuth is widely traveled. He has seen first-hand Israel's unjust occupation and illegal settlement activities in Gaza and the West Bank of Palestine and is opposed to any investment of his pension funds by the Minnesota State Board of Investment in Israel Bonds.

8. Plaintiffs Mary and Nick Eoloff (the Eoloffs), who reside in Minnesota, are the American adoptive parents of Mordechai Vanunu, the renowned Israeli nuclear whistleblower who blew the whistle on Israel's secret nuclear weapons facility at Dimona, Israel, to the British press in 1986, leading to his imprisonment.³ While visiting Vanunu in Israel during his

³ A Sephardic Jew who immigrated as a child to Israel from Morocco, Vanunu served with the Israel Defense Forces during the 1973 war and was later employed as a nuclear plant technician at the Dimona facility while he continued his university studies. As a student at the Ben-Gurion University in Beersheba, Israel, Vanunu expressed opposition to nuclear weapons and became involved in a peace group that advocated for equal rights for Palestinians. He was subsequently fired from his employment at the Dimona facility after calling for the creation of a Palestinian state, but not before taking 57 secret photographs that revealed Israel's secret nuclear weapons program. After delivering his photographs to the Sunday Times of London, Vanunu was kidnapped in Europe by Israeli agents and smuggled back to Israel where he was tried and sentenced to 18 years in prison, 11 of which were spent in solitary confinement.

Following his release in 2004, Israel has continued to impose severe restrictions on Vanunu's freedom, including prohibitions on contact with citizens of other countries, telephone and internet access, contact with any foreign embassies or consulates and leaving Israel. Despite these restrictions, Vanunu remains defiant and has received various international human rights awards, including the John Lennon Peace Prize presented by Yoko Ono to the Eoloffs on Vanunu's behalf, the Norwegian Peace Prize and

incarceration and restricted freedom, which continues to this day, the Eoloff's have had the opportunity to meet and collaborate with Israeli and American anti-nuclear groups, including The Nuclear Resister, based in Tucson, Arizona. They have also met with Palestinian attorneys who were desperately trying to represent, to the extent Israeli security allowed, tortured Palestinian prisoners. The Eoloff's direct observations of the Israeli system of justice, its oppressive treatment of their adopted son and other prisoners, specifically Palestinian, and Israel's undiminished and secretive pursuit of weapons of mass destruction, including nuclear weapons, has left them adamantly opposed to the State of Minnesota's purchase of Israel Bonds.

9. Plaintiff Vern Simula, Ed.D.(Simula), is a beneficiary of a retirement plan whose funds are managed and invested by the Minnesota State Board of Investment. Simula, an adherent of the Quaker faith and Professor Emeritus at the University of Minnesota, Duluth (where he was employed between 1964-1992), is also an active member of Veterans for Peace, Chapter 80. Simula is a long time peace, social justice and environmental community activist who is committed to deep democracy and constitutional principles. A witness for non-violence during several Native-American treaty rights conflicts, Simula is committed to protecting the rights of indigenous peoples through non-violent means.

10. Plaintiff Cynthia Arnold (Arnold) is a Minnesotan who serves as the Chairperson of the Minneapolis Westminster Presbyterian Church's Bethlehem Partnership. Traveling to Palestine in 2006 and 2010, Arnold saw first-hand Israel's human rights violations and the

the Carl-von-Ossietzky Medal for 2010 from the International League for Human Rights. Vanunu has been repeatedly nominated for the Nobel Peace Prize and has been described as the preeminent hero of the nuclear era by Daniel Ellsberg.

effects of Israel's illegal occupation. Arnold is a witness to the massive destruction caused by Israel's armored Caterpillar bulldozers (the same kind of bulldozer that killed American peace activist Rachel Corrie) in demolishing thousands of Palestinian homes and uprooting tens of thousands of olive trees. She has seen the physical barriers and advanced electronic communications and control systems used by Israel to restrict Palestinian travel and to impose routine collective punishment on Palestinian civilians. Arnold believes that Minnesota's investment of public employee retirement funds in the purchase of Israel bonds is inconsistent with promoting a just and lasting peace and that society has a moral and ethical duty to end Israel's daily attacks on innocent Palestinian civilians and its relentless destruction of Palestinian homes, infrastructure and farmlands.

11. Plaintiff Newland F. Smith, III, (Smith) resides in Illinois. Smith is a retired former faculty member and the Librarian of Seabury-Western Theological Seminary. Smith holds a M.A. from the University of Chicago Graduate Library School and a B.D. from Garrett Theological Seminary. Smith has served as a Deputy to the Episcopal Church's General Convention since 1988 and has served on the National and International Affairs Legislative Committee of the Church where he has helped craft a number of resolutions addressing the dire human rights situation in Palestine, including one condemning the Israeli demolition of Palestinian homes and another on Israel's siege of Gaza. Smith is an active member of the Palestine Israel Network, a branch of the Episcopal Peace Fellowship, he was a contributor to the Episcopal edition of *Steadfast Hope: a Palestinian Quest for a Just Peace*, which was published in October, 2011, and he is a member of the Chicago Faith Coalition on Middle East Policy which came into being during the second Lebanese war in 2006. CFCMEP works with the Illinois congressional delegation and senators to change American policy on Israel. Since

October 2010, Smith has also been an active member of the Committee against Political Repression and has protested the FBI raids and federal grand jury subpoenas against 23 Midwest anti-war and peace and justice activists. Smith has made eleven visits to Israel and Palestine since 1983. These have included a church group visit comprised of bishops, clergy and lay members to a hospital in Gaza where they observed Palestinians wounded by Israeli armed assaults, including one who had just had an American made bullet extracted from his body, and two witness visits sponsored by Sabeel, a Jerusalem based Palestinian-Christian liberation theology movement. Smith has also participated in four Sabeel international conferences in Jerusalem and Bethlehem and is a vocal critic of his own state's investment in Israel Bonds.

12. Plaintiffs Ronnie Barkan, Ofer Neiman, David Nir, Leehee Rothschild, Dorothy Naor, Gal Lugassi and Renen Raz are Jewish-Israeli members of Plaintiff Boycott From Within (BFW), an Israeli association that has joined the worldwide Palestinian call for a Boycott, Divestment and Sanctions (BDS) Campaign against Israel, inspired by the struggle of South Africans against apartheid.⁴ In response and in an attempt to chill freedom of expression in

⁴ The members of BFW initially endorsed the BDS call with the following statement:

“We, Palestinians, Jews, citizens of Israel, join the Palestinian United Call for BDS against Israel and call on others to do the same.

As people devoted to the promotion of just peace and true democracy in this region, we are especially opposed to the international community's decision to punish the Palestinians in the occupied territories and withhold funds from them, after they exercised their democratic right to elect the government of their choice. At the same time, the international community continues, through economic investments in Israel, involving governments and international corporations, to actively support Israel's daily violations of international law and accelerated colonization of the occupied territories.

We fear the potentially irreversible damage created by Israeli and international

Israel, in July 2011, the Israeli Knesset passed a law making it an offense to call for a boycott against the State of Israel or its West Bank settlements. This is one of many laws recently passed or being considered by the Knesset designed to restrict freedom of expression, the work of Israeli civil society organizations, or the rights of Palestinian citizens and their political representatives. In courageous defiance of this oppressive law, Barkan, Neiman, Nir, Rothschild, and Raz, and other members of BFW, at great personal risk, have signed a pledge reiterating their support and promotion of the Palestinian call for BDS against Israel. The pledge states as follows:

“We, Israeli citizens, members of Boycott!, hereby reiterate our support and promotion of the Palestinian call for Boycott, Divestment and Sanctions against Israel, until it complies with international law and universal principles of human rights. We declare this in spite of new legislation by the Israeli Knesset, which aims to penalize our and our partners’ activities, curbing freedom of speech and political organizing and most importantly – banning Israeli citizens from acting according to their conscience when it conflicts with the deplorable policies of the state.”

13. Plaintiff David Boehnke (Boehnke) is a Jewish member of MNBBC who works

policy, and realize that the occupation will truly end only when its cost becomes higher than its gain for Israeli society, primarily for the Israeli elites. In light of attacks on boycott supporters, we emphasize that a critical stance against the occupation, including explicit BDS actions taken by individuals and organizations, are not anti-Semitic. On the contrary, only resistance of this kind as part of the struggle for peace based on justice and equality will enable a common future for Arabs and Jews in the region. We stand against all forms of racism and oppression and support and encourage BDS actions as a legitimate political activity and necessary form of non-violent resistance.”

for the Minneapolis School District and is a participant in a retirement plan whose funds are invested by the Minnesota State Board of Investment. Boehnke traveled to Israel in 2007 to participate in a trip sponsored by Birthright Israel, an ideologically Zionist organization which sponsors fully paid guided “heritage” tours of Israel for Jewish youth from around the world. Following the completion of his Birthright Israel tour, which did not include a tour of the occupied Palestinian territories, Boehnke, on his own, traveled to the occupied West Bank of Palestine, observing firsthand the institutionalized apartheid imposed by Israel on the indigenous Palestinian population as a means to facilitate Israel’s illegal settlement activities. Boehnke also participated in a tour of East Jerusalem and the West Bank by ICAHD (Israeli Committee Against Home Demolitions). ICAHD members have been known to physically block Israeli bulldozers sent to demolish Palestinian homes. Following Boehnke’s eye-opening visit to the occupied Palestinian territories, he is opposed to Minnesota’s investment of his pension funds in Israel Bonds.

14. Defendant, the Minnesota State Board of Investment (SBI), is an agency of the State of Minnesota, established pursuant to Article XI, Section 8, of the Minnesota Constitution to invest all state funds, including various retirement funds, trust funds and cash accounts, as part of the “statewide plan” (hereinafter, the “plan”), which includes the Minnesota state retirement system or a pension plan administered by it, the public employees retirement association or a pension plan administered by it, and the teachers retirement association or a pension plan administered by it. Minnesota Statute 356A.01 (Subd. 24). As specified in the Minnesota Constitution, SBI membership is comprised of the Governor (who is the designated chair), the State Auditor, the Secretary of State and the Attorney General. The defendant’s current executive director, selected by the Board of the SBI, is Howard Bicker. All investments undertaken by the

SBI are governed by Minnesota Statutes, Chapter 11A and Chapter 356A. Pursuant to Minnesota Statutes 356A.02 and 356A.04, the members of the Board and the executive director of the SBI are statutory fiduciaries who, by law, owe their fiduciary duties to the beneficiaries of the plan, Minnesota taxpayers and the State of Minnesota. Not only are they held by law to a prudent person standard, they are expressly obligated by law to select investment products and to invest plan assets in a manner consistent with law.

JURISDICTION AND VENUE

15. This Court has jurisdiction because the defendant is an agency of the State of Minnesota and because the SBI, through the actions of its members and executive director, has exceeded the scope of its statutory investment authority, violated its statutory duty to invest plan assets in a manner consistent with law and violated its statutory duty to invest prudently in derogation of the statutory duties owed by the members and executive director of the SBI to the beneficiaries of the plan, Minnesota taxpayers and the State of Minnesota.

16. Venue is proper in this Court pursuant to Minn. Stat. § 542.09 because the action arises within this County.

BACKGROUND

17. The SBI has invested plan funds in Israeli government obligations, namely Israel Bonds, with a total market value of between approximately \$10-20 million. Israel Bonds are sovereign debt bonds issued by the Government of Israel. Proceeds from the sale of Israel Bonds are deposited in Israel's general treasury under the control of Israel's Ministry of Finance

without restriction on use. The funds are then disbursed to various governmental units, many of which then use the disbursed funds to support and promote illegal settlement activities which violate international law and human rights, including the construction of a massive walled separation barrier on Palestinian land, the annexation and confiscation of Palestinian lands, the removal and displacement (ethnic cleansing) of Palestinians from their ancestral homes, the construction of Jewish-only settlements in the West Bank of Palestine, the construction of Jewish-only bypass roads in the West Bank and the construction of an apartheid infrastructure in the nature of barriers, walls, razor wire fences, deadly force no-man's lands, falsely designated "closed military zones" and armed checkpoints designed to separate the Palestinian population from the Jewish Israeli population and to isolate and imprison the remaining Palestinian population within ghettos and cantons in the West Bank and Gaza.

18. On January 31, 2011, MNBBC formally demanded that the SBI divest from Israel Bonds based on moral and legal grounds. On March 3, 2011, at the quarterly meeting of the SBI, the SBI voted to give MNBBC an opportunity to engage with the SBI staff and to give the Attorney General's office an opportunity to review statutory authority and to report back to the Board at its next meeting. On March 18, 2011, members of MNBBC met with the SBI staff and counsel from the Attorney General's office, laying out their arguments for divestment based on both moral and legal grounds. During the meeting, counsel from the Attorney General's office admitted that Minnesota Statute 11A.24, *subd.* 2, which controls the SBI's investments in government obligations, did not authorize the SBI's investment in Israel Bonds. Thereafter, in correspondence dated March 31, 2011, the Attorney General's office advised MNBBC that Minn. Stat. § 11A.24, *subd.* 6, subsection (a)(5), encompassing "other investments", permitted the investment in Israel Bonds because the language of the provision "makes the general

category of international securities an eligible investment in addition to the types of permissible investments, set forth in Minn. Stat. § 11A.24, *subds.* 1-5, which include U.S. and Canadian government securities.”

19. On April 8, 2011, MNBBC advised the Attorney General’s office that it did not agree with the conclusion of that office that Minn. Stat. §11A.24, *subd.* 6, subsection (a)(5), permitted investment in Israel bonds under the “general category” of “international securities”. MNBBC advised the Attorney General’s office that under the principal of *ejusdem generis*, codified as a canon of construction at Minn. Stat. § 645.08(3) (which states that “general words are construed to be restricted in their meaning by preceding particular words”), the “international securities” in which the SBI was permitted to invest pursuant to §11A.24, *subd.* 6, subsection (a)(5), were restricted to those types of investments described in the four preceding subsections of the subdivision, none of which include government or sovereign bonds or securities. Minn. Stat. § 11A.24, *subd.* 6, subsection (a) reads as follows:

Subd. 6. Other investments. (a) In addition to the investments authorized in subdivisions 1 to 5, and subject to the provisions in paragraph (b), the state board may invest funds in:

(1) venture capital investment businesses through participation in limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations;

(2) real estate ownership interests or loans secured by mortgages or deeds of trust or shares of real estate investment trusts through investment in limited partnerships, bank sponsored collective funds, trusts, mortgage participation agreements, and insurance company commingled accounts, including separate accounts;

(3) regional and mutual funds through bank sponsored collective funds and open-end investment companies registered under the Federal Investment Company Act of 1940, and closed-end mutual funds listed on an exchange regulated by a governmental agency;

(4) resource investments through limited partnerships, trusts, private placements, limited liability corporations, limited liability companies, limited liability partnerships, and corporations; and

(5) international securities.

20. MNBBC further advised the Attorney General's office that reading subsection §11A.24, *subd.* 6, subsection (a)(5) in a manner that permitted unrestricted investment in Israel Bonds or any other foreign sovereign bonds or government obligations, other than those expressly permitted by Minnesota Statute 11A.24, *subd.* 2, violated various canons of statutory construction and opened the door for the statute to be read in an absurd manner, especially when §11A.24, *subd.* 6, subsection (a), was read alongside the express restrictions at §11A.24, *subd.* 6, subsection (b) and §11A.24, *subd.* 2. MNBBC asked for a response from the Attorney General's Office but no response has been made. Upon information and belief, at the time MNBBC first demanded that the SBI divest from Israel Bonds, the only sovereign bonds in which the SBI had invested, other than Canadian and U.S. bonds, which are authorized by the statute, were Israeli bonds. The SBI was willing to disregard the law for Israel alone to show political and financial support for Israel. After MNBBC made its divestment demand, upon information and belief, the SBI invested in German sovereign bonds to attempt to cover up the willful illegality of its actions.

21. On June 1, 2011, Howard Bicker formally advised the SBI that the Attorney General's Office had determined that the SBI's investments in Israel Bonds are legal. Upon information and belief, defendant SBI retains its unlawful investments in Israel Bonds.

COUNT I

REQUEST FOR DECLARATORY JUDGMENT

(The SBI Has Exceeded Its Investment Authority)

22. Plaintiffs incorporate by reference herein the allegations made above in

paragraphs 1-21, inclusive.

23. An actual controversy and dispute of a justiciable nature has arisen between the plaintiffs and defendant as to whether state law permits the SBI to invest in Israel Bonds. Plaintiffs have demanded that the SBI divest from Israel Bonds on the basis that the SBI's investment in Israel Bonds exceeds its statutory authority, but the SBI has refused to divest.

24. The plaintiffs contend that pursuant to Chapter 11A and Chapter 356A of the Minnesota statutes, the SBI is not permitted by law to invest in Israel Bonds. The SBI contends that the law permits it to invest in Israel Bonds.

25. The inclusive list of all categories of "government obligations" in which the SBI is permitted to invest is set forth in Minnesota Statute 11A.24, *subd.* 2. The list includes guaranteed or insured issues of the United States, the States and their municipalities and political subdivisions, Canada and its provinces and United States government sponsored organizations of which the United States is a member. It does not include any sovereign bonds or government obligations issued by the State of Israel, including Israel Bonds. The plaintiffs further contend that the SBI's reliance on Minn. Stat. §11A.24, *subd.* 6, subsection (a)(5), to argue that the law permits the SBI to invest in Israel Bonds is disingenuous and fundamentally mistaken.

COUNT II

REQUEST FOR DECLARATORY JUDGMENT

(The SBI Has Violated Its Statutory Duty To Invest Plan Assets Lawfully)

26. Plaintiffs incorporate by reference herein the allegations made above in paragraphs 1-25, inclusive.

27. The Fourth Geneva Convention (1949) was ratified by Israel in 1951 and the

United States in 1955. It is specific and obligatory and it has gained such universal acceptance that it has become customary international law. It is the “law of the land” in the United States and binding on the State of Minnesota and all of its departments and agencies, including the SBI, pursuant to Clause 2 of Article VI of the United States Constitution.

28. Article 49 of the Fourth Geneva Convention prohibits an occupying power from transferring parts of its own civilian population into the territory it occupies. Both the International Committee of the Red Cross and the International Court of Justice (ICJ) have determined that Israel has violated and is in violation of Article 49, describing the establishment of Israeli settlements in the occupied Palestinian territories, including East Jerusalem, as a violation of international law and the Fourth Geneva Convention. Indeed, as noted by the ICJ, the United Nations Security Council has described "Israel's policy and practices of settling parts of its population and new immigrants in [the occupied] territories" as a "flagrant violation" of the Fourth Geneva Convention.” B’Tselem-The Israeli Information Center for Human Rights in the Occupied Territories has reported that the settlements have led to the infringement of the Palestinian right to self-determination, equality, property, an adequate standard of living and freedom of movement.

29. For decades, Israel has spent tens of billions of dollars to maintain its army operations in the West Bank and East Jerusalem, build roads and public institutions and subsidize housing and transportation costs as it has drawn over 500,000 Israelis to live there. More, recently, Israel’s capital investments in its unlawful settlement activities have been accelerating. Peace Now, an Israeli anti-settlement group, in a report it released last year, documented that Israel's government has invested four times more per capita in public building in the West Bank than the national average in 2009, and twice as much per capita in West Bank

municipal governments. More recently, the Government of Israel has formally announced that it would step up the rate of its already accelerated state sponsored Israeli settlement construction in the occupied Palestinian territories in retaliation for the Palestinian Authority's admission to UNESCO and its attempts to apply for full the admission of Palestine as a member state of the United Nations.

30. Over the course of the last 40 years, the United Nations Security Council has passed several resolutions condemning Israel's annexation and settlement activities in the occupied Palestinian territories as violations of international law, including Article 49 of the Fourth Geneva Convention. These Resolutions include the following:

a) Res. 242 (Nov. 22, 1967) – Emphasizes “the inadmissibility of the acquisition of territory by war”, emphasizes that member states have a commitment to abide by the U.N. Charter, and calls for the “Withdrawal of Israeli armed forces from territories occupied” during the June 1967 war.

b) Res. 252 (May 21, 1968) – “Deplores the failure of Israel to comply with” General Assembly resolutions 2253 and 2254, considers Israel's annexation of Jerusalem “invalid”, and calls upon Israel “to rescind all such measures already taken and to desist forthwith from taking any further action which tends to change the status of Jerusalem”.

c) Res. 267 (Jul. 3, 1969) – Recalls resolution 252 and General Assembly resolutions 2253 and 2254, notes that “since the adoption of the above-mentioned resolutions Israel has taken further measures tending to change the status of the City of Jerusalem”, reaffirms “the established principle that acquisition of territory by military conquest is inadmissible”, “Deplores the failure of Israel to show any regard for the resolutions”, “Censures in the strongest terms all measures taken to change the status of the City of Jerusalem”, “Confirms that all

legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status”, and urgently calls on Israel to rescind the measures taken to annex Jerusalem.

d) Res. 298 (Sep. 25, 1971) – Recalls resolutions 252 and 267 and General Assembly resolutions 2253 and 2254 concerning Israel’s measures to annex Jerusalem, reaffirms “the principle that acquisition of territory by military conquest is inadmissible”, notes “the non-compliance by Israel” of the recalled resolutions, deplors Israel’s failure to respect the resolutions, confirms that Israel’s actions “are totally invalid”, and urgently calls on Israel to rescind its measures and take “no further steps in the occupied section of Jerusalem” to change the status of the city.

e) Res. 446 (Mar. 22, 1979) – Affirms “once more that the Fourth Geneva Convention ... is applicable to the Arab territories occupied by Israel since 1967, including Jerusalem”, “Determines that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East”, “Strongly deplors the failure of Israel to abide by” resolutions 237, 252, and 298, and General Assembly resolutions 2253 and 2254, and calls on Israel “as the occupying Power” to abide by the Fourth Geneva Convention, to “rescind its previous measures and to desist from any action which would result in changing the legal status and geographical nature and materially affecting the demographic composition of the Arab territories occupied since 1967, including Jerusalem, and, in particular, not to transfer parts of its own civilian population into the occupied Arab territories”.

f) Res. 452 (Jul. 20, 1979) – Strongly deplores “the lack of co-operation of Israel” with the Security Council Commission “established under resolution 446 (1979) to examine the situation relating to settlements in the Arab territories occupied since 1967, including Jerusalem”, considers “that the policy of Israel in establishing settlements in the occupied Arab territories has no legal validity and constitutes a violation of the Fourth Geneva Convention”, expresses deep concern at Israel’s policy of constructing settlements “in the occupied Arab territories, including Jerusalem, and its consequences for the local Arab and Palestinian population”, and calls on Israel to cease such activities.

g) Res. 465 (Mar. 1, 1980) – Strongly deplores Israel’s refusal to co-operate with the Security Council Commission, regrets Israel’s “formal rejection of” resolutions 446 and 452, deplores Israel’s decision “to officially support Israeli settlement” in the occupied territories, expresses deep concern over Israel’s settlement policy “and its consequences for the local Arab and Palestinian population”, “Strongly deplores the decision of Israel to prohibit the free travel” of the mayor of Hebron “to appear before the Security Council”, and “Determines that all measures taken by Israel to change the physical character, demographic composition, institutional structure or status of the Palestinian and other Arab territories occupied since 1967, including Jerusalem, or any part thereof, have no legal validity and that Israel’s policy and practices of settling parts of its population and new immigrants in those territories constitute a flagrant violation of the Fourth Geneva Convention”.

h) Res. 471 (Jun. 5, 1980) – Recalls “once again” the Fourth Geneva Convention, “and in particular article 27, which reads, ‘ Protected persons are entitled, in all circumstances, to respect for their persons... They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof...’”, reaffirms the applicability of the

Fourth Geneva Convention “to the Arab territories occupied by Israel since 1967, including Jerusalem”, expresses deep concern “that the Jewish settlers in the occupied Arab territories are allowed to carry arms, thus enabling them to perpetrate crimes against the civilian Arab population”, “Condemns the assassination attempts against the Mayors of Nablus, Ramallah and Al Bireh and calls for the immediate apprehension and prosecution of the perpetrators of these crimes”, “Expresses deep concern that Israel, as the occupying Power, has failed to provide adequate protection to the civilian population in the occupied territories in conformity with the provisions of the Geneva Convention relative to the Protection of Civilian Persons in Time of War”, calls on Israel “to provide the victims with adequate compensation for the damage suffered as a result of these crimes”, “Calls again upon the government of Israel to respect and to comply with the provisions of” the Fourth Geneva Convention and “the relevant resolutions of the Security Council”, “Calls once again upon all States not to provide Israel with any assistance to be used specifically in connexion [*sic*] with settlements in the occupied territories”, “Reaffirms the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”.

i) Res. 476 (Jun. 30, 1980) – Reaffirms that “the acquisition of territory by force is inadmissible”, deplores “the persistence of Israel, in changing the physical character, demographic composition, institutional structure and the status of the Holy City of Jerusalem”, expresses grave concern “over the legislative steps initiated in the Israeli Knesset with the aim of changing the character and status of the Holy City of Jerusalem”, reaffirms “the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”, “Strongly deplores the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly”,

“Reconfirms that all legislative and administrative measures and actions taken by Israel, the occupying Power, which purport to alter the character and status of the Holy City of Jerusalem have no legal validity and constitute a flagrant violation of the Fourth Geneva Convention”, “Reiterates that all such measures ... are null and void and must be rescinded in compliance with the relevant resolutions of the Security Council”, and “Urgently calls on Israel, the occupying Power, to abide by this and previous Security Council resolutions and to desist forthwith from persisting in the policy and measures affecting the character and status of the Holy city of Jerusalem”.

j) Res. 592 (Dec. 8, 1986) – Reaffirms that the Fourth Geneva Convention “is applicable to the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem”, and “Strongly deplores the opening of fire by the Israeli army resulting in the death and the wounding of defenceless *[sic]* students”.

k) Res. 605 (Dec. 22, 1987) – “Strongly deplores those policies and practices of Israel, the occupying Power, which violate the human rights of the Palestinian people in the occupied territories, and in particular the opening of fire by the Israeli army, resulting in the killing and wounding of defenseless Palestinian civilians”, and reaffirms the applicability of the Fourth Geneva Convention “to the Palestinian and other Arab territories occupied by Israel since 1967, including Jerusalem”.

31. The United States Government has consistently opposed Israel’s settlement activities in the occupied Palestinian territories and has even reduced the amount of loan guarantees it has extended to Israel by amounts equal to Israel’s estimated spending on settlement construction in the occupied Palestinian territories. Israeli settlement activities are

inconsistent with official U.S. foreign policy, the goal of which is to achieve a two-state solution to the Israeli-Palestinian conflict based on the creation of a Palestinian state in the occupied West Bank and Gaza. By law, U.S. loan guarantees cannot be used to finance Israeli settlement building in areas occupied by Israel after the 1967 War. Pursuant to 22 U.S.C. § 2186(c), U.S. loan guarantees to Israel may be used “only to support activities in the geographic areas which were subject to the administration of the Government of Israel before June 5, 1967.” Accordingly, in 2003, the United States reduced its loan guarantees by approximately \$290 million. In 2005, the United States again reduced its loan guarantees an additional amount of approximately \$800 million at which point Israel stopped selling its sovereign bonds under the U.S. loan guarantee program as it entered a wave of accelerated settlement expansion activities.

32. To continue to finance its unabated and unlawful settlement activities in the occupied Palestinian territories, Israel has continued to sell Israel Bonds to its supporters in Canada, Europe, Latin America and the United States, even without the security of U.S. loan guarantees. And despite universal public condemnation of Israel’s unlawful settlement enterprise, including condemnation by the world’s foremost human rights and international law governmental and non-governmental organizations and with full knowledge that unrestricted Israel Bond funds are being used by Israel for unlawful settlement activities in violation of customary international law, namely Article 49 of the Fourth Geneva Convention, the SBI continues to provide direct material support and financial aid to Israel for these unlawful purposes by investing in Israel Bonds and holding them in its portfolio. Given that the foreseeable and apparently intended consequence of the SBI’s investment in Israel Bonds is to aid Israel’s violation of Article 49, the Board members of the SBI and its executive director, with extraordinary impunity, are willingly, knowingly and/or purposively aiding, abetting and

assisting Israel in violating Article 49 of the Fourth Geneva Convention thereby violating their statutory duties to invest plan assets lawfully.

33. Plaintiffs demand that the SBI divest from Israel Bonds on the basis that monies invested in Israel Bonds are pooled in Israel's general treasury without restriction on use and that these pooled funds augment funds that are then used and have been used by Israel to fund activities that violate customary international law. The SBI has refused to divest. An actual controversy and dispute of a justiciable nature has therefore arisen between the plaintiffs and defendant.

COUNT III

REQUEST FOR DECLARATORY JUDGMENT

(The SBI Has Violated the Prudent Person Standard)

34. Plaintiffs incorporate by reference herein the allegations made above in paragraphs 1-33, inclusive.

35. Plaintiffs contend that the SBI's investment of public employee pension funds in Israel Bonds and/or its refusal to divest from Israel Bonds violates its statutory obligation to act prudently. In addition to being patently and repulsively offensive to plan beneficiaries who have personally suffered or whose family members have suffered at the hands of official Israeli oppression, the SBI's investment in Israel Bonds is imprudent because it not only entangles the plan and plan officials in Israel's violations of customary international law, but it also exposes the plan, the SBI, its agents, officers and directors and ultimately the taxpayers of Minnesota to liability and the costs of defending against potential claims that could be brought on the basis that the SBI has aided and abetted or otherwise provided unrestricted financial material support

to an international law violator that has in fact used its pooled general treasury funds obtained in part from the sale of Israel Bonds to commit international law violations.

36. An example of the types of claims that could be brought against the SBI and its agents, officers and directors based on its support of Israel's violations of customary international law would be a federal claim pursuant to the Alien Tort Statute (ATS), 28 U.S.C. § 1350, which provides that "[U.S.] district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States." Federal courts have permitted claims under the ATS to be prosecuted alleging violations of internationally accepted norms that are specific, universal, and obligatory which would include violations of the Fourth Geneva Convention. Further, the federal courts have recognized that the ATS may permit liability for aiding and abetting violations of the law of nations or a Treaty of the United States and that such aiding and abetting could include either knowing or purposive action which has the consequence of facilitating the commission of a violation or includes awareness of the likely outcome, without the necessity of showing specific intent. The SBI, its agents, officers and directors, in purchasing Israel Bonds, were and are aware that the likely use of such funds will, in part, support Israel's continued and accelerated settlement expansion projects in the occupied Palestinian Territories, including East Jerusalem, which violates the Fourth Geneva Convention, a Treaty of the United States and a customary part of the law of nations, but have willfully decided to keep providing Israel money for these illegal projects. The SBI and its agents, directors and officers would not be immune from suit. The courts have recognized that the Fourth Geneva Convention does not limit its application based on the identity of the perpetrator of the violation. Rather, its protections are based on the identity of the potential victims.

37. The ATS permits tort claims for conduct which is part of or related to the customary international law violations. This includes unjustified killing, the destruction of property, apartheid, forced displacement, collective punishment and the seizure of territory and property by force. A victim of any of these and other customary international law violations would have the right to bring a claim against an aider and abettor of such practices in United States' courts and the SBI, its agents, officers and directors would have no cognizable claim of immunity. Israel's settlement expansion activities have triggered investigations and reports by numerous and reputable international law and human rights organizations implicating Israel in these crimes and, by extension, those who provide financial material support and who aid and abet Israel in the commission of these crimes.

38. One example of a reputable international law organization that has implicated Israel in the crime of apartheid as defined by the UN Convention on the Suppression and Punishment of the Crime of Apartheid is the Human Sciences Research Council of South Africa. Funded by the Department of Foreign Affairs of the Government of South Africa, between 2007-2009, the Council conducted a two year analysis of Middle East politics relevant to South African Foreign policy and concluded that Israel's laws and policies in the occupied Palestinian territories fit the definition of apartheid set forth in the UN Convention. After an extensive investigation, the research team found as follows:

a) Israel's laws and policies in the OPT (Occupied Palestinian Territories) fit the definition of apartheid in the International Convention on the Suppression and Punishment of the Crime of Apartheid. Israeli law conveys privileges to Jewish settlers and disadvantages Palestinians in the same territory on the basis of their respective identities, which function in this case as racialised identities in the sense provided by international law. Israel's practices are

corollary to five of the six 'inhuman acts' listed by the Convention. A policy of apartheid is especially indicated by Israel's demarcation of geographic 'reserves' in the West Bank, to which Palestinian residence is confined and which Palestinians cannot leave without a permit. The system is very similar to the policy of 'Grand Apartheid' in apartheid South Africa, in which black South Africans were confined to black homelands delineated by the South African government, while white South Africans enjoyed freedom of movement and full civil rights in the rest of the country.

b) The three pillars of apartheid in South Africa are all practiced by Israel in the OPT. In South Africa, the first pillar was to demarcate the population of South Africa into racial groups, and to accord superior rights, privileges and services to the white racial group. The second pillar was to segregate the population into different geographic areas, which were allocated by law to different racial groups, and restrict passage by members of any group into the area allocated to other groups. And the third pillar was "a matrix of draconian 'security' laws and policies that were employed to suppress any opposition to the regime and to reinforce the system of racial domination, by providing for administrative detention, torture, censorship, banning, and assassination."

c) Israeli practices in the OPT exhibit the same three 'pillars' of apartheid. The first pillar "derives from Israeli laws and policies that establish Jewish identity for purposes of law and afford a preferential legal status and material benefits to Jews over non-Jews". The second pillar is reflected in "Israel's 'grand' policy to fragment the OPT [and] ensure that Palestinians remain confined to the reserves designated for them while Israeli Jews are prohibited from entering those reserves but enjoy freedom of movement throughout the rest of

the Palestinian territory. This policy is evidenced by Israel's extensive appropriation of Palestinian land, which continues to shrink the territorial space available to Palestinians; the hermetic closure and isolation of the Gaza Strip from the rest of the OPT; the deliberate severing of East Jerusalem from the rest of the West Bank; and the appropriation and construction policies serving to carve up the West Bank into an intricate and well-serviced network of connected settlements for Jewish-Israelis and an archipelago of besieged and non-contiguous enclaves for Palestinians". The third pillar is "Israel's invocation of 'security' to validate sweeping restrictions on Palestinian freedom of opinion, expression, assembly, association and movement [to] mask a true underlying intent to suppress dissent to its system of domination and thereby maintain control over Palestinians as a group."

39. Another example of a reputable international human rights organization that has implicated Israel in various war crimes and violations of international law is Amnesty International whose most recent report on the conduct of Israel in the occupied Palestinian territories stated the following in its annual report for 2010: "The Israeli army maintained draconian controls on the movement of Palestinians in the Occupied Palestinian Territories (OPT), including a blockade on the Gaza Strip that deepened hardship and virtually imprisoned the entire population of 1.5 million. The Israeli authorities rejected or delayed applications for permits to leave Gaza submitted by hundreds of Palestinians requiring specialist medical treatment; a few died as a result. Most of Gaza's inhabitants depended on international aid, which was severely hampered by the blockade. In May, Israeli forces killed nine men aboard an aid flotilla in international waters that was aiming to breach the blockade. In the West Bank, the movement of Palestinians was severely curtailed by hundreds of Israeli checkpoints and barriers, and by the 700km fence/wall that Israel continued to build mostly inside the West Bank. There

was a substantial increase in the number of demolitions by Israeli authorities of Palestinian homes, water cisterns and other structures in the West Bank, affecting thousands of people. Israeli authorities also destroyed homes in Bedouin villages in the south of Israel. The expansion of illegal Israeli settlements on seized Palestinian land, partially frozen until 26 September, resumed. Israel still did not conduct adequate investigations into alleged war crimes and other serious violations of international law by its forces during Operation “Cast Lead”, the 22-day offensive in Gaza in December 2008/January 2009, during which nearly 1,400 Palestinians, including more than 300 children, were killed. Israeli soldiers and settlers who committed serious abuses against Palestinians, including unlawful killings, assaults and attacks against property, were generally not held to account for their crimes. Israeli military forces killed 33 Palestinian civilians in the OPT, including eight children. Hundreds of Palestinians were arrested and detained by Israeli forces; at least 264 were held without charge or trial under administrative detention orders, some had been held for over two years. Reports of torture and other ill-treatment were frequent, but investigations were rare. Around 6,000 Palestinians remained in Israeli prisons, many after unfair military trials. Israeli conscientious objectors to military service continued to be imprisoned.”

40. Human Rights Watch, another reputable international human rights organization, in its annual for 2010, reported Israel’s conduct as follows:

a) Israeli forces in the West Bank killed at least seven Palestinian civilians as of October. According to B'Tselem, those killed, including two young men collecting scrap metal and two children participating in a demonstration inside their village, posed no danger to Israeli military forces or civilians.

b) Israeli settlers destroyed or damaged mosques, olive trees, cars, and other Palestinian property, and physically assaulted Palestinians. In October the UN reported 204 attacks by settlers resulting in Palestinian injuries or property damage, almost double the previous year's number. Israeli authorities arrested numerous settlers but convicted few.

c) As of October Israeli authorities had demolished 285 Palestinian homes and other buildings in the West Bank (including East Jerusalem), displacing 340 people, on the grounds that the structures were built without permits; in practice such permits are almost impossible for Palestinians to obtain, whereas a separate planning process available only to settlers grants new construction permits much more readily. Israeli authorities repeatedly demolished the community of al-Farsiye in the northern Jordan Valley, displacing approximately 113 people for living in a "closed military zone." Some of the displaced families had been living there since at least the 1960s.

d) Settlers also continued to take over Palestinian homes in East Jerusalem, including based on laws that recognize Jewish ownership claims there from before 1948 but that bar Palestinian ownership claims from that period in West Jerusalem.

e) From November 26, 2009, to September 26, 2010, Israeli authorities "froze" new residential construction in settlements, not including East Jerusalem or roughly 2,000 homes that had already broken ground, or public buildings and infrastructure.

f) Israel maintained onerous restrictions on the movement of Palestinians in the West Bank, especially in "Area C" which is under exclusive Israeli control. It removed some closure obstacles, but more than 500 remained.

g) Israel continued construction of the wall or separation barrier. Some 85 percent of the barrier's route falls within the West Bank, placing many settlements on the "Israeli" side of the barrier. The barrier's confiscation of private land separated many farmers and pastoralists from their lands.

h) Israeli military justice authorities arbitrarily detained Palestinians who advocated non-violent protest against Israeli settlements and the route of the separation barrier. In October a military court sentenced Abdallah Abu Rahma, from the village of Bil'in, to one year in prison on charges of inciting violence and organizing illegal demonstrations, largely on the basis of coerced statements by children. In January the Israeli military released anti-wall activist Muhammad Othman, after detaining him for 113 days without charge.

i) While Israeli courts define Israelis under 18 years of age as children in accordance with international standards, Israeli military courts continue to treat Palestinians over the age of 16 as "adults," and sentence them as adults according to their age at sentencing even if they were children at the time of the offense. Israel detained at least 286 children under 18, including 20 under the age of 15, as of September. Human rights groups reported dozens of cases in which Israeli authorities detained and questioned Palestinian children without a family member present or access to a lawyer, as required by law, and allegedly mistreated them in custody to coerce them to sign confessions in Hebrew, which they did not understand.

j) As of September Israel held 189 Palestinians in administrative detention without charge.

41. Plaintiffs demand that the SBI divest from Israel Bonds on the basis that monies

invested in Israel Bonds are pooled in Israel's general treasury without restriction on use and that the SBI knows that these pooled funds augment funds that are then used and have been used by Israel to fund activities that violate customary international law. The SBI has refused to divest, in violation of its statutory obligation to act prudently. An actual controversy and dispute of a justiciable nature has therefore arisen between the plaintiffs and defendant.

PRAYER

WHEREFORE, plaintiffs pray for the following declaratory relief:

1. That this Court determine and declare that by investing in Israel Bonds,
 - a) the SBI has exceeded its investment authority;
 - b) the SBI has violated its statutory duty to invest plan assets lawfully; and
 - c) the SBI has violated the prudent person standard.
2. That this Court grant plaintiffs a temporary injunction prohibiting the SBI from further investing in Israel Bonds pending the outcome of this case and enter a final judgment directing the SBI to divest from all Israel Bonds.
3. That this Court grant to plaintiffs such other and further relief as the court may deem just and equitable.

Dated: November 28, 2011

Respectfully Submitted,

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