STATE OF MINNESOTA

COUNTY OF RAMSEY

DISTRICT COURT

SECOND JUDICIAL DISTRICT

Court File No. 62-CV-11-10079
Judge Margaret M. Marrinan

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, Lehee Rothschild, Renen Raz, Dorothy Naor, Gal Lugassi, Boycott From Within and David Boehnke,

Plaintiffs,

vs.

Minnesota State Board of Investment,

Defendant.

FINDINGS OF FACT, CONCLUSIONS OF LAW, ORDER FOR JUDGMENT

This matter came before the undersigned on March 5, 2012, pursuant to Defendant's motion to dismiss the Complaint in its entirety. Attorneys Jordan Kushner, Esq. and Peter J. Nickitas, Esq. appeared on behalf of Plaintiffs. Assistant Attorney General Kristyn Anderson appeared on behalf of Defendant.

Based upon the arguments of counsel, the files and record herein, and the evidence before the Court, the Court hereby makes the following:

FINDINGS OF FACT

A. The State Board of Investment

1. The State Board of Investment (the "SBI") was created by the Minnesota Constitution, Minn. Const. art. XI, § 8, "for the purpose of administering and directing the investment of all state funds."

2. The SBI's authority also extends to administering and directing the investment of all state pension funds. Minn. Stat. § 11A.02, subd. 2; Minn. Stat. ch. 356A.

B. The SBI's Purchase of Foreign Government Bonds

3. M.S.Section 11A.24, subds.1-6 ("Authorized Investments,") contains a specific list of asset classes in which the SBI is authorized to invest. These include common stocks, bonds, short term securities, real estate, private equity, and resource funds.

4. In 1988, Section 11A.24 was amended to specifically include "international securities" among the SBI's authorized investments. Minn. Laws 1988, ch. 453, § 8; Minn. Stat. § 11A.24, subd. 6(a)(5).

5. The SBI has invested in Israel government bonds. Compl. ¶ 17.

C. The Plaintiffs

6. Plaintiffs are comprised of four organizations and twenty-three individuals. Compl. ¶¶ 2-13. Five of the individual Plaintiffs allege that they are either citizens of Minnesota or beneficiaries of plans with funds invested by the SBI. Compl. ¶¶ 5, 6, 7, 9, 13. Nine others allege that they are citizens of the State of Minnesota. The remaining Plaintiffs are neither fund beneficiaries nor Minnesota citizens. Compl. ¶¶ 3, 4, 11, 12.

7. Plaintiffs allege moral opposition to the SBI's investment in Israel bonds. *See, e.g.*, Compl. ¶¶ 6- 8, 10, 13.

D. Plaintiffs' Claims

8. The Complaint consists of three counts. Count One seeks a declaratory judgment that the SBI is not authorized to invest in bonds issued by Israel. Counts Two and Three request a declaration that the SBI may not invest in Israel bonds because in doing so the SBI allegedly aids and abets Israel's alleged violation of the Fourth Geneva Convention and exposes the State to tort liability.

9. Defendant has moved to dismiss all of Plaintiffs' claims with prejudice, based on four arguments: (a), that Plaintiffs lack standing to sue; (b) that M.S. § 11A.24, subd. 6(a)(5) authorizes the SBI to purchase foreign government bonds, including those of Israel; (c) that the political question and act of state doctrines render Counts Two and Three non-justiciable; and (d) that Plaintiffs fail to state a claim of aiding and abetting against the SBI.

CONCLUSIONS OF LAW

A. Motion to Dismiss

10. Minnesota Rule of Civil Procedure 12.02(a) provides for dismissal where the court lacks jurisdiction over the subject matter of a complaint. Subject matter jurisdiction, including plaintiffs' standing, is a question of law for the court to decide. *Id.*; *Shaw v. Bd. of Regents of Univ. of Minn.*, 594 N.W.2d 187, 190 (Minn. Ct. App. 1999), *rev. denied* (Minn. July 28, 1999).

11. Minnesota Rule of Civil Procedure 12.02(e) provides that a complaint may be dismissed "for failure to state a claim upon which relief can be granted." Dismissal of a claim is appropriate where it is clear from the face of the complaint that the claim is legally deficient.

Northern States Power Co. v. Franklin, 122 N.W.2d 26, 29 (Minn. 1963). Legal conclusions in the complaint are not binding on the court. *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

B. Standing of the Plaintiffs

12. Plaintiffs must prove that they have the requisite standing to bring this case. Standing exists if (1) a plaintiff has suffered an "injury-in-fact" or (2) the legislature has conferred standing by statute. *State by Humphrey v. Philip Morris Inc.*, 551 N.W.2d 490, 493 (Minn. 1996) (citing *Sierra Club v. Morton,* 405 U.S. 727, 731-32 (1972)). The necessary injury-in-fact must be both "concrete" and "actual or imminent, not conjectural or hypothetical." *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990) ; *Twin Ports Convalescent, Inc. v. Minnesota State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977).

13. "[M]ere differences of opinion" are not sufficient to establish standing. *St. Louis County Bd. of Educ. v. Borgen*, 257 N.W. 92, 95 (Minn. 1934); *Conant v. Robbins, Kaplan, Miller & Ciresi, L.L.P.*, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999) (finding no standing and reasoning that plaintiffs' claims were "based only on their disagreement with policy or the exercise of discretion by those responsible for executing the law."). Policy disagreements, no matter how deeply felt, also do not confer standing. *See St. Paul Area Chamber of Commerce v. Marzitelli*, 258 N.W.2d 585, 589-90 (Minn. 1977) (citizen with policy dispute "must take its case to the legislature"). When even a taxpayer's challenges to state action are "'based primarily on [the taxpayer's] disagreement with policy or the exercise of discretion by those responsible for executing the law,' they are insufficient to confer standing." *Olson v. State*, 742 N.W.2d 681, 685 (Minn. Ct. App. 2007).

14. Plaintiffs' challenges in this case are based on a policy disagreement with the discretionary decisions made by the Legislature and the SBI. Ultimately, the authority to make social, political and economic policy decisions of the kind Plaintiffs complain about in this case resides with the Legislature and the SBI, not this Court. *See Westling v. County of Mille Lacs*, 581 N.W.2d 815, 822 (Minn. 1998) ("social policy decisions are committed to the legislature"), *cert. denied*, 525 U.S. 1105 (1999). Accordingly, Plaintiffs do not have the requisite standing to bring this case.

15. In addition, the legislature has not conferred standing upon Plaintiffs. Although a plaintiff may have standing if his or her injuries fall within the zone of interests protected by a statutory provision, *see, e.g., Hanson v. Woolston*, 701 N.W.2d 257, 262 (Minn. Ct. App. 2005), Plaintiffs' alleged injury does not fall within the zone of interest of the SBI's enabling legislation. The purpose of Minnesota Statutes Chapters 11A and 356A relates to the economic decisions of the SBI, not international policy interests. As a result, Plaintiffs' claims fail for lack of standing.

C. Count One: The SBI's Investment Authority Under Minn. Stat. § 11A.24

16. Even if Plaintiffs had standing, to prevail on Count One, they must show that the SBI is not authorized to invest in Israel bonds under Minn. Stat. § 11A.24.

1. The Plain Meaning of Minn. Stat. § 11A.24

17. "The touchstone for statutory interpretation is the plain meaning of a statute's language." *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 419 (Minn. 2005) (citing Minn. Stat. § 645.16). When the words of a statute are clear in their application to a particular case, the plain meaning of the law controls and "shall not be disregarded under the pretext of pursuing the spirit [of the statute]." M.S.. § 645.16. The plain language of a statute

controls regardless of whether the reviewing court considers the result to be "reasonable" or "good policy." *Hyatt v. Anoka Police Dep't*, 691 N.W.2d 824, 826-28 (Minn. 2005). When a statute's meaning is plain from its language, "statutory construction is neither necessary nor permitted." *American Tower, L.P. v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001).

18. M.S. 11A.24, Subd.1 gives the SBI "the authority to purchase, sell, lend or exchange the following securities for funds or accounts specifically made subject to this section." Subdivision 6 then sets forth a number of permissible investments, including:

> **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:
>
> *******
>
> (5) international securities.

Minn. Stat. § 11A.24, subd. 6 (a) (5).

19. "International securities" unambiguously includes foreign government bonds, including those of Israel. The word "international" is used to mean something other than U.S. domestic securities. *See, e.g., Webster's Ninth New Collegiate Dictionary*, p. 632 (1988) (defining "international" to mean "reaching beyond national boundaries"). Similarly, the phrase "international securities" as used in Minn. Stat. § 11A.24, subd. 6(a) (5) is not limited to securities of a particular country.

20. The term "securities" plainly includes bonds. M.S.11A.24, Subd. 1 refers to the "securities" described in subdivisions 2 to 6, which specifically include "bonds, notes, bills mortgages, and other evidences of indebtedness," (Subd. 2) and "bonds, notes, [and]

debentures," (Subd. 3). Several other Minnesota statutes similarly use the term "security" to include bonds.[1]

21. M.S. § 645.08 (1) requires that statutory words and phrases be given their "common" usage. "Securities" is commonly understood in the industry to include government bonds.[2]

22. The plain and ordinary meaning of Minn. Stat. § 11A.24, subd. 6 (a) (5) authorizes the SBI to invest in foreign government bonds, including those of Israel.

23. Even if the statute were ambiguous, courts should defer to the construction given the statute by the agency which administers the law. *Krumm v. R.A. Nadeau Co.,* 276 N.W.2d 641, 644 (Minn. 1979) ([it is an established principle that when] the meaning of a statute is doubtful, courts should give great weight to a construction placed upon it by the department charged with its administration"); M. S. § 645.16(8). This judicial deference is "rooted in the

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[1] *See, e.g.,* Minn. Stat. §§ 50.14, subd. 2(c) ("authorized securities" includes "bonds or other interest bearing securities"); 51A.35 (authorizing associations to invest in "securities" including "bonds"); 80A.41(30) (Minnesota Securities Act definition of "security" includes "bonds"); 126C.72, subd. 4 (bonds issued by commissioner of management and budget deemed "authorized securities"); 136D.281, subd. 7 (intermediate school board bonds deemed "tax-exempt securities"). The federal Securities and Exchange Act of 1934 also defines "security" to include bonds. *See* 15 U.S.C. § 78C(a)(10).

[2] See also Definition of "Security," *InvestorWords*, http://www.investorwords.com/4446/security(defining "security" to mean "[a]n investment instrument, other than an insurance policy or fixed annuity, issued by a corporation, government, or other organization which offers evidence of debt or equity."); Black's Law Dictionary 1476 (9th ed. 2009) (defining "security" to include "[a]n instrument that evidences . . . the holder's creditor relationship with a firm or government (e.g., a bond). . .").

separation of powers doctrine." *In re Minnesota Power*, 807 N.W.2d 484, 488 (Minn. Ct. App. 2011), *rev. granted* (Minn. Feb. 14, 2012) ("judicial deference, rooted in the separation of powers doctrine, is extended to an agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing.'") (citations omitted).

The Court defers to the SBI's construction that it is authorized to invest in bonds of foreign governments, including those of Israel.

2. *Ejusdem Generis* and *Expressio Unius*

24. Relying on two cannons of construction, Plaintiffs argue that because M.S. 11A.24 Subd.2 references Canadian government bonds, that "international securities" as used in Subdivision 6 cannot include government bonds beyond those authorized by Subdivision 2. The cannons of construction cited by Plaintiffs apply only if a statute is ambiguous.[3] Because Subdivision 6(a) (5) plainly authorizes the purchase of foreign government bonds beyond those authorized by Subdivision 2, the cannons of construction do not apply.

25. Plaintiffs' position also conflicts with the plain language of the statute. Subdivision 6 states that "international securities" are authorized "*[i]n addition to* the investments authorized in *subdivisions 1 to 5*." (Emphasis added.) Thus, Plaintiffs' argument violates the cannon of construction that "[e]very law should be construed, if possible, to give effect to all its provisions," Minn. Stat. § 645.16. *See also State v. Caldwell*, 803 N.W.2d 373,

[3] *Winters v. City of Duluth*, 84 N.W. 788, 789 (Minn. 1901) (holding that *ejusdem generis* "can be used only as an aid in ascertaining the legislative intent, and when that is apparent from the statute itself the rule has no application."); *Lefto v. Hoggsbreath Enters., Inc.*, 567 N.W.2d 746, 749 (Minn. Ct. App. 1997) (refusing to resort to use of *ejusdem generis* where statute was unambiguous), *aff'd*, 581 N.W.2d 855, 856 (Minn. 1998). *See also Walser Auto Sales, Inc. v. City Of Richfield,* 635 N.W.2d 391, 397, n. 1 (Minn. Ct. App. 2001), *aff'd*, 644 N.W.2d 425 (Minn. 2002) ("*expressio unius*" "is only used where it is first determined that the language is ambiguous").

383 (Minn. 2011) (inference that mention of one term excludes another "is only justified when the language of the statute supports such an inference").

26. Plaintiffs' contention would render Subdivision 6(a)(5) superfluous. For example, M.S. 11A.24 Subd.5 addresses investment in U.S. and Canadian corporate stock. If "international securities" cannot include any type of security addressed in the supposedly more specific provisions of Section 11A.24, then the SBI also could not invest in the stock of foreign corporations other than the stock of Canadian domiciled corporations. Under Plaintiffs' reasoning, the SBI therefore could not invest in non-Canadian foreign corporate or government securities, rendering Subdivision 6(a)(5) meaningless.

27. To give effect to Subdivision 6(a)(5), it must mean that the SBI is authorized to invest in government bonds, corporate stocks, and other securities different from and in addition to those authorized by Minn. Stat. § 11A.24, subds. 2-5, and subd. 6(a)(1)-(4).[4]

28. Finally, the cannon of *ejusdem generis* does not apply where "the general provision shall be enacted at a later session and it shall be the manifest intention of the legislature that such a general provision shall prevail." M.S.§ 645.26, subd. 1. Here,

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[4] *See, e.g., Westerlund v. Kettle River Co.*, 162 N.W. 680, 682 (Minn. 1917) (rejecting use of *ejusdem generis*, and stating that "[t]he general purpose of a statute, as disclosed by the provisions thereof, taken as a whole, often requires that the final general clause, inserted with a view of bringing within its scope matters not specifically mentioned, should not be restricted in meaning by the preceding specifications."); *State v. Caldwell*, 803 N.W.2d at 383 (stating that use of "*expressio unius*" "is not justified when the omitted term is encompassed by the enumerated terms").

Subdivision 6(a)(5) was added in 1988, after Subdivisions 2-5 and after the provisions in Subdivision 6(a)(1)-(4). *See* Minn. Laws 1980, ch. 607, art. 14 § 22; Minn. Laws 1988, ch. 453, § 8.

29. Since the SBI is authorized to invest in foreign government bonds, including those of Israel, the Court grants Defendant's motion to dismiss Count One of Plaintiffs' Complaint.

D. Counts Two and Three: The SBI's Investment In Israel Bonds

30. Counts Two and Three of the Complaint allege that the SBI's investment in Israel bonds is unreasonable and violates the "prudent person" standard, because the SBI is allegedly aiding and abetting an alleged violation of the Fourth Geneva Convention, and the State would be liable in tort for its purchase of Israel bonds.

31. Two longstanding legal doctrines preclude courts from adjudicating cases of the kind now before the Court. The "political question" doctrine precludes claims which are impossible to decide "'without an initial policy determination of a kind clearly for non-judicial discretion.'" [5] This doctrine "is based upon respect for the pronouncements of coordinate branches of government that are better equipped and properly intended to consider issues of a distinctly political nature." *Doe I v. State of Israel*, 400 F. Supp.2d 86, 111 (D.D.C. 2005).

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[5] *Alperin v. Vatican Bank,* 410 F. 3d 532, 561 (9th Cir.2005), *cert. denied,* 546 U.S. 1137 (2006), quoting *Baker v. Carr,* 369 U.S. 186, 217 (1962) (holding that unjust enrichment claim against the bank for profits derived from conduct of foreign government was non-justiciable political question).

32. The "act of state" doctrine is a rule of law that "prevents a U.S. court 'from deciding a case when the outcome turns upon the legality or illegality (whether as a matter of United States, foreign, or international law) of official action by a foreign sovereign performed within its own territory.'" *Malewicz v. City of Amsterdam*, 517 F. Supp.2d 322, 336-7 (D.D.C. 2007) (citations omitted). This doctrine bars claims in which the relief sought would require a court in the United States to declare invalid a foreign sovereign's official acts.[6]

33. Both the political question and act of state doctrines preclude the Court from adjudicating this matter since it would require the Court to determine whether a foreign sovereign's acts have violated the Fourth Geneva Convention.[7]

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[6] *W.S. Kirkpatrick & Co., Inc. v. Envtl. Tectonics Corp., Int'l*, 493 U.S. 400, 404-406 (1990). *See also, e.g., Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 423 (1964) (act of state doctrine reflects "the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder" the conduct of foreign affairs); *Oetjen v. Central Leather Co.*, 246 U.S. 297, 302-304 (1918) (stating that act of state doctrine is premised on policy of international comity and amicable relations between governments, foreclosing adjudication of legality of acts of foreign states).

[7] See for example, *Corrie v. Caterpillar Inc.*, 503 F.3d 974, 984 (9th Cir. 2007) deciding political question doctrine precluded claim against Caterpillar for allegedly aiding and abetting Israel); *Corrie v. Caterpillar, Inc.* 403 F. Supp2d 1019, 1032 (W.D. Wash. 2005) *aff'd,* 503 F.3d 974 (9th Cir. 2007), finding act of state doctrine barred claim that Caterpiller allegedly aided and abetted Israel, stating that "[this] lawsuit challenges the official acts of an existing government in a region where diplomacy is delicate and the U.S. interests are great." *See also Doe I,* 400 F. Supp

34. Plaintiffs argue that the Court should presume that Israel has violated the Fourth Geneva Convention simply based on the allegations in their Complaint. However those allegations are in the nature of legal conclusions or conclusory assertions which are not deemed to be true for purposes of this Motion. *Bahr v. Capella University*, 788 N.W.2d 76, 80 (Minn. 2010), citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) .

35. Plaintiffs have also failed to show that any alleged action of an international organization is enforceable by this Court. *Medellin v. Texas*, 552 U.S. 491, 511, 518 (2008) (rejecting notion that International Court of Justice interpretations or decisions were intended to be enforceable by American courts); *Diggs v. Richardson*, 555 F.2d 848, 850-51 (D.C. Cir. 1976) (U.N. Security Council resolution did not confer rights enforceable in American courts); *Smith v. Socialist People's Libyan Arab Jamahiriya*, 886 F. Supp. 306, 311-12 (E.D.N.Y. 1995) (U.N. Security Council resolution did not create private right of action).

36. Plaintiffs' reliance on the assertion that they have alleged *jus cogens* violations is also misplaced. This same argument was rejected by the court in *Doe I.* 400 F. Supp.2d at 114 ("The fact that plaintiffs have alleged *jus cogens* violations does not change things. Within our territorial borders, the law of the United States is paramount, under which the law of nations does not preempt the act of state doctrine even if the conduct at issue allegedly violates international

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2d at 111-114 (finding claims which would require court to determine that Israeli settlement activity was illegal or tortious were non-justiciable under both political question and act of state doctrines, stating that such a determination "is a foreign relations determination to be made by the Executive or Legislative Branches," and that "[t]he actions challenged by plaintiffs are classic acts of state.").

law."). A determination of such alleged violations "would offend notions of international comity and sovereignty." *Id. See also Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1032 (finding act of state doctrine precluded aiding and abetting claims based on allegations that Israel's official policy violated international law). Here, the potential for interference in the conduct of foreign affairs and international comity preclude jurisdiction on Counts Two and Three of the Complaint.

E. Aiding and Abetting Allegations

37. Even if Counts Two and Three were justiciable, to state a valid claim for aiding and abetting alleged Fourth Geneva Convention violations, "a claimant must show that the defendant provided substantial assistance with the purpose of facilitating the alleged offenses." *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 582 F.3d 244, 247 (2nd Cir. 2009), *cert. denied*, 131 S. Ct. 79 & 131 S. Ct. 122 (2010). In other words, it must be shown that the SBI acted with the purpose of assisting international law violations, and that it has the right and ability to control the country's alleged conduct. *Id.* at 261, 263.

38. Since the SBI is merely a purchaser of bonds, it lacks the requisite purpose to aid and abet any alleged international law violations, as a matter of law. *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1024, 1027 (finding that as a matter of law, a seller lacks specific intent necessary to aid and abet actions of buyer). Plaintiffs' allegations of the SBI's intent to aid and abet international law violations are not plausible, and the Court is not bound by these conclusory assertions. *See Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1951-2 (2009) holding 1) that to survive motion to dismiss, complaint must allege facts sufficient to plausibly suggest defendant's state of mind, and 2) that court is not bound by conclusory assertions of knowledge or intent).

39. Regardless of Plaintiffs' allegations of intent, the SBI's conduct in merely purchasing government bonds cannot impose aiding and abetting liability as a matter of law. *See, e.g., Talisman*, *supra* p.13, 582 F.3d at 264 (any other conclusion would allow "private parties to impose embargos or international sanctions through civil actions in United States courts. Such measures...are properly reserved to governments and multinational organizations."); *Doe v. Nestle*, 748 F. Supp.2d 1057, 1096 (C.D. Ca. 2010) ("[A] plaintiff must allege something more than ordinary commercial transactions in order to state a claim for aiding and abetting human rights violations."); *Rothstein v. UBS AG*, 647 F. Supp.2d 292 (S.D. N.Y. 2009) (granting motion to dismiss claim against international bank that bank's funds indirectly facilitated international law violation, and reasoning that bank loans were not significant source of funds to government, and the money could be used for multiple legitimate uses); *In re South African Apartheid Litig.*, 617 F. Supp.2d 228, 257-258, 269 (S.D. N.Y. 2009) (dismissing aiding and abetting claims and stating that "[i]t is (or should be) undisputed that simply doing business with a state or individual" is insufficient to create aiding and abetting liability); *Corrie v. Caterpillar, Inc.*, 403 F. Supp.2d at 1023-24 ("Plaintiffs' claim of aiding and abetting fails because where a seller merely acts as a seller, he cannot be an aider and abettor. . . .").

40. Counts Two and Three of the Complaint are neither justiciable nor do state a claim upon which relief can be granted.

Based on the foregoing Findings of Fact and Conclusions of Law, the Court hereby issues the following:

ORDER

1. Defendant's motion to dismiss the Complaint is granted; and

2. Plaintiffs' Complaint is hereby dismissed in its entirety, with prejudice.

3. For the same reasons that Defendant's motion to dismiss the Complaint is granted, Plaintiffs' motion for summary judgment on Count One is denied.

Let Judgment be entered accordingly.

Dated: 9 June 2012

BY THE COURT:

MARGARET M. MARRINAN
Judge of District Court

AG: #2971012-v1

Memorandum

At issue is whether this complaint sets forth a legally sufficient claim for relief. Minn.R.Civ.P.12.02. For purposes of this motion, the court accepts as true the facts (and reasonable inferences drawn from them) as articulated in the complaint.

Plaintiffs' complaint alleges three counts: that Defendant 1) has exceeded its investment authority; 2) has violated a statutory duty to invest assets lawfully; and 3) has violated the "Prudent Person" standard.

Whether a litigant is entitled to have a court address the merits of a dispute hinges first upon the question of standing.[1] This exists if 1) the Plaintiff has suffered "an injury in fact" or 2) if the legislature has conferred standing via statute.[2]

Plaintiffs allege no concrete "injury in fact" as to any of these counts. As to the question of statutorily conferred standing, the Plaintiffs' injuries, if any, must fall within the "zone of interest" of the particular statute[3], here M.S. Chapters 11A and 356A.

Chapter 11A of Minnesota Statutes (Investment of State and Pension Assets) includes a Statement of Purpose at M.S. 11A.01:

> [It is] "to establish standards, in addition to the standards of chapter 356A, to ensure that state and pension assets subject to this legislation will be responsibly invested to maximize the total rate of return without incurring undue risk".

The Board's fiduciary duty (M.S. 356A.04) extends to 1) active, deferred and retired members of the plan (its beneficiaries); 2) the taxpayers of the state or political subdivision who help finance the plan; and 3) the state of Minnesota. At least five of the named plaintiffs are beneficiaries of plans covered in these statutes[4]; an additional nine are citizens of Minnesota[5].

Plaintiff's thirty two page complaint is dominated by representations regarding Israel's treatment of Palestinians; the bottom line here is that Plaintiffs object to the SBI investing in any Israeli bonds. The Court will not substitute its own judgment for those policy decisions appropriately made by the executive or legislative branches.

Nonetheless, Plaintiffs have alleged that the SBI is limited by statutory language to the international securities in which it may invest, and that its investments in Israeli bonds is in violation of those limitations.

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[1] *Annandale Advocate v. City of Annandale*, 435 NW2d 24, 27 (Minn. 1989).
[2] *State by Humphrey v. Phillip Morris, Inc.*, 551 NW2d 490, 493 (Minn. 1996).
[3] *Hanson v. Woolston*, 701 NW2d 257, 262 (Minn. Ct. App. 2005).
[4] Sylvia Schwarz, Sarah Martin, Robert Kosuth, Vern Simula and David Boehnke.
[5] Lucia Smith, Margaret Sarfehjooy, Catharine Abbott, Barbara Hill, Polly Mann, Leona Ross, Mary Eoloff, Nick Eoloff and Cynthia Arnold.

M.S. Sec. 11A.24 addresses authorized investments. Subdivision 2 allows for investment in governmental obligations, both nation-wide and in Canada. With the exception of certain specific international banks, there is no mention of countries other than Canada. Subdivision 6, however, opens the door to other international investments:

> "(a) In addition to the investments authorized in subdivisions 1 to 5, the state board may invest funds in... (5) international securities."

While M.S. 11A.24 Subd. 2 authorized only governmental obligations in the United States and Canada, that predated Subd. 6 (a) (5), which places no such limitations on international securities.[6] Where such a situation exists, the Court looks to M.S. 645.26 for assistance. M.S. 645.26 provides in pertinent part:

> Subd. 1: "When a general provision in a law is in conflict with a special provision in the same or another law, the two shall be construed, if possible, so that effect may be given to both. If the special shall prevail...unless the general provision shall be enacted at a later session....
>
> Subd. 4: "When the provisions of two or more laws passed at different sessions of the legislature are irreconcilable, the law latest in date of final enactment shall prevail."

In light of the above, the Plaintiffs' motion for summary judgment must be denied, and Defendant's motion for dismissal of this action granted.

4-9-12

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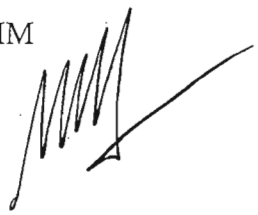

[6] M.S. 11A.24 clearly includes bonds in the term "security". Subd. 1 gives the SBI authority to invest in "the following securities" which are set out in subsequent subdivisions.