STATE OF MINNESOTA
IN SUPREME COURT

MINNESOTA BREAK THE BONDS CAMPAIGN, et al., Petitioners, vs. MINNESOTA STATE BOARD OF INVESTMENT, Respondent.	**PETITION FOR REVIEW OF DECISION OF COURT OF APPEALS** APPELLATE CASE NO. A12-0945 DATE OF FILING OF COURT OF APPEALS DECISION: 11/13/2012

TO: The Supreme Court of the State of Minnesota:

The petitioners[1] request that the Supreme Court review the above-entitled decision of the Court of Appeals upon the following grounds:

1. Statement of legal issues and their resolution by the Court of Appeals.

A. IS THE MINNESOTA STATE BOARD OF INVESTMENT (SBI) AUTHORIZED TO INVEST IN FOREIGN GOVERNMENTAL BONDS OTHER THAN THOSE LISTED IN SUBD. 2 OF MINN. STAT. § 11A.24? The Court of Appeals ruled in the affirmative.

B. DOES STANDING EXIST UNDER AN AIDING AND ABETTING THEORY TO CHALLENGE THE SBI'S PURCHASE OF ISRAEL BONDS, THE PROCEEDS OF WHICH ARE PARTIALLY USED BY ISRAEL TO BUILD ILLEGAL SETTLEMENTS AND VIOLATE INTERNATIONAL LAW? The Court of Appeals ruled in the negative.

2. Statement of the criteria of the rule relied upon to support the petition.

(i) The questions presented are important ones upon which the Supreme Court should rule, because they involve a) the statutory limits of the SBI's authority to invest state retirement funds in foreign governmental bonds, and b) the standing requirements for those who bring challenges to a fiduciary's investments in activities that aid and abet the commission of war crimes;

[1] 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

(ii) By assigning a hyper-literal disharmonious meaning to the term "international securities" in the statute that controls the SBI's investment decisions, the Court of Appeals has utterly confounded a clear legislative purpose and so far departed from the accepted and usual course of justice as to call for an exercise of the Supreme Court's supervisory powers;

(iii) A decision will help develop, clarify and harmonize the law that controls the investment decisions of a public agency entrusted with the statutory fiduciary duty of managing the state's retirement funds and the questions are likely to recur unless resolved by the Supreme Court.

3. Statement of the case (facts and procedural history).

Petitioners include fourteen Minnesota residents (five of whom are beneficiaries of SBI managed state retirement funds), four community organizations (and several of their members) and a committee representing an endangered village in the occupied West Bank of Palestine.

In Count I of their Complaint, the petitioners sought a declaratory judgment that the SBI had exceeded its investment authority by purchasing millions of dollars of Israel Bonds. App.at 15A-16A. Minn. Stat. § 11A.24, subd. 2, inclusively lists the "governmental bonds" that the SBI is authorized to purchase. It does not include Israel Bonds. In Count II, the petitioners requested a declaratory judgment that the SBI had violated its statutory duty to invest lawfully because it was aiding and abetting Israel's settlement activities which violate Article 49 of the 4th Geneva Convention. (Israel's use of Bond funds to finance illegal West Bank settlement activities is undisputed.) App. at 16A-24A. Because the purchase of Israel Bonds materially supports Israel's violations of international law, Count III requests a declaratory judgment that the SBI has violated its statutory duty to invest prudently by exposing the plan and the SBI to lawsuits under the federal Alien Tort Statute (ATS), 28 U.S.C. § 1350. App. at 24A-32A.

The district court concluded that the petitioners lacked standing as to all three counts and that § 11A.24 authorized the SBI's purchase of Israel Bonds. While recognizing that an adequate

basis for taxpayer standing as to Count I had been pled, the Court of Appeals affirmed. It held that the term "international securities" at Minn. Stat. § 11A.24, subd. 6(a)(4), authorized the SBI to buy Israel Bonds and that the petitioners lacked standing as to Counts II and III.[2]

4. Argument in support of the petition.

The Court of Appeals decision, the first judicial interpretation of the meaning of "international securities" at Minn. Stat. § 11A.24, subd. 6(a)(4), has utterly confounded a clear legislative purpose. By ascribing a hyper-literal meaning to the term, the decision has created an irreconcilable disharmony between the various subdivisions in Minn. Stat. § 11A.24 that are easily reconcilable if the statute is construed "in a way that gives effect to all its provisions." See *Schatz v. Interfaith Care Center et al.,* 811 N.W.2d 643, 649 (Minn. 2012); Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 327 (2012) ("In the words of Judge Learned Hand: 'a sterile literalism . . . loses sight of the forest for the trees.' The full body of a text contains implications that can alter the literal meaning of individual words."). By ignoring the full body of the text, the decision violates the requirement that a court must read and construe a statute as a whole, that it must interpret each section in light of surrounding sections to avoid conflicting interpretations (See *KSTP-TV v. Ramsey County,* 806 N.W.2d 785,788 (Minn. 2011)) and that, whenever possible, it must interpret the statute so that "no word, phrase, or sentence [is] superfluous, void or insignificant." *Amaral v. St. Cloud Hospital Hosp.,* 598 N.W.2d 379, 384 (Minn. 1999). Read in proper context, Minn. Stat. § 11A.24 does not authorize the SBI to invest in Israel Bonds.

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[2] By concluding that the petitioners lacked standing as to Counts II and III, the Court of Appeals did not review the district court's nonjusticiability decision as to those Counts.

The decision also violates the presumption that the Legislature intends the entire statute to be effective and that repeal by implication is disfavored. See *In re Petition regarding 2010 Gubernatorial Election,* 793 N.W.2d 256, 261 (Minn. 2010); Scalia & Garner, *supra*, at 356. By interpreting subd. 6(a)(4) "international securities" as unconditionally expansive, the Court of Appeals has repealed by implication various restrictive segments of Minn. Stat. § 11A.24. It has voided all language in the statute that imposes any conditions on the authority of the SBI to invest in anything remotely identifiable as a security so long as it is "international," despite the fact that more imperative wording restricting the SBI's authority to invest in Canadian and U.S. bonds and stocks was added to § 11A.24 in amendments that became effective on May 1, 2012, long after the "international securities" provision was added to subd. 6 in 1988. Thus, while subd. 2 requires Canadian bonds to be guaranteed or insured and payable in U.S. Dollars, the Court of Appeals' reading of subd. 6(a)(4) eliminates these explicit restrictions on the purchase of Canadian bonds, which are certainly no less "international" than Israel bonds. In the same way, the requirement under subd. 5 that Canadian stocks either be listed on a regulated exchange or organized under Canadian law has now been rendered inoperative.

Despite the conclusion of the Court of Appeals that subdivisions1-5 are limited to U.S. and Canadian securities, the "Corporate obligations" and "Other obligations" listed in subdivisions 3(b) and 4(a)(4)-(7), which include restrictions on the SBI's investment authority, have no such geographical limits. Yet, because the Court of Appeals determined that all of the investments listed in these subdivisions are U.S. and Canadian, the now limitless expansion of the meaning of subd. 6(a)(4) authorizes the SBI to invest in the exact same securities with no restrictions, so long as they are "international." By the same token, the limitations at subd. 6(b)

which apply to the investments at subd. 6(a)(1)-(3) have been rendered inoperative as to any subd. 6(a)(1)-(3) investments that are “international,” unless subd. 6(a)(4) is tethered to subd. 6(a)(1)-(3) by employing established canons of statutory interpretation, which the Court of Appeals disregarded. By disregarding the most basic contextual canons, the court transformed a comprehensible statutory scheme into an incoherent set of internal inconsistencies.

Finally, the Court of Appeals’ refusal to recognize the petitioners’ standing to bring Counts II and III denies the same taxpayer standing allowed for Count I and ignores the injuries suffered by the Bil’in villagers from SBI funded illegal settlement activities. The aim of Counts II and III is to prevent the SBI from aiding and abetting Israel’s war crimes. Minnesota’s courts are empowered and well equipped to hear claims based on aiding and abetting and to establish the preliminary facts of the underlying tortious or criminal conduct, regardless of the ultimate disposition of any action against the principal or the ability to hold the principal accountable. See, e.g., Minn. Stat. § 609.05; *Witzman v. Lehrman et al.,* 601 N.W.2d 179, 187 (Minn. 1999).

Accordingly, the Supreme Court should review the decision of the Court of Appeals.

Respectfully Submitted,

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