



Minnesota State Board of Investment
Retirement Systems Building
60 Empire Drive, Suite 355
St. Paul, MN 55103

February 28, 2013

Re: Renewed Divestment Demand

Dear Members of the Board:

In advance of your next quarterly meeting on March 6, 2013, we renew our demand that the State Board of Investment divest from Israel Bonds. For reasons more fully explained below, the SBI should also divest from all Israeli corporations, especially those that profit from Israel's discriminatory treatment of the indigenous Palestinian population, from its brutal occupation of the Palestinian territories and from its illegal settlement enterprise in the West Bank.

The outcome of our recent lawsuit has motivated us to remain vigilant in our divestment demand. Although we believe that the Court of Appeals' interpretation of MN Stat. § 11A.24 was wrongly reasoned, we do not quibble with the decision here. Minnesota state courts have the last say in interpreting a Minnesota Statute, however much we may disagree. More importantly, the Court of Appeals left the central question undecided: Is the SBI aiding and abetting Israel's violations of human rights under federal and international law?

By limiting its decision on the international law issues to state court standing, the appellate court ignored much of the District Court's findings with respect to the international law based claims.¹ By upholding the dismissal of our international law based claims on the penultimate issue of standing, the appellate court left open the ultimate question of the SBI's complicity and exposure to a future aiding and abetting lawsuit under the federal Alien Tort Statute by an injured party with federal court standing. In any such lawsuit, the SBI would now be hard pressed to deny that it knew that its investments were materially supporting Israel's human rights violations.

Throughout the entire court proceedings, the SBI never contested, in or out of court, that Israel uses a portion of the proceeds from the sale of Israel Bonds for purposes, outlined in our complaint, which violate international law and the human rights of the indigenous Palestinian population. These facts remain undisputed. The SBI has also never contested our accusation that the SBI knows that a portion of its investment funds will be used by Israel for these unlawful purposes. During the lawsuit, counsel hired by the State of Israel to monitor the proceedings at no time offered any challenge to these facts. Even

¹ We submit that the lower court's opinion was tainted by the incorporation of the SBI's seriously erroneous mischaracterization of the holding of an important federal case, a matter which we pointed out when that mischaracterization was again repeated in the SBI's appellate brief. To ensure transparency, we have posted all of the lawsuit documents on our website and we encourage the SBI to do the same.

local pro-Israel advocates, although vocal in the local press and at Board meetings in response to our divestment demands, have similarly failed to dispute these facts.

The SBI needs to divest. The SBI cannot continue to simply disregard what human rights organizations such as Amnesty International and Human Rights Watch have repeatedly recognized: that Israel racially discriminates against the Palestinians -- both those residing in Israel and those who are under the thumb of its brutal military occupation in the Palestinian territories -- and that it does so in a manner no less oppressively than the former apartheid regime did so shamefully in South Africa.

The SBI has no business using state retirement fund assets of Minnesota's citizens to prop up these inhumane activities. It should not use state retirement funds to conduct business with a country that violates international laws with such unhesitating vigor, and the fact that the rates of return on its investments in such activities may be only minimal is certainly no justification or excuse. Any degree of complicity in such human rights violations is morally reprehensible. Indeed, divestment is a moral imperative directed by the SBI's own administrative guidelines.

The SBI categorizes Israel as a "Group II" country. Group II countries are those that have been cited for human rights violations in U.S. State Department reports. Current State Department reports, in addition to UN reports and the reports of Amnesty International and Human Rights Watch, would more appropriately justify placing Israel in "Group III," the worst SBI human rights category, based on Israel's persistent failure to provide basic human rights protections to the Palestinians living under its prolonged and opportunistic military occupation. Israel's institutionalized racism sustains official practices such as its illegal settlement activities. Its administrative military detention without trial of non-violent Palestinian protestors -- including numerous children -- has been shown to be unrestrained by its own self-touted legal structures.

Just within the last few days, there have been worldwide reports that the Israeli Prison Service tortured one of its administratively detained Palestinian prisoners, Mr. Arafat Jeradat, to death. Mr. Jeradat, who leaves behind a pregnant widow and two children, had been accused of throwing rocks during a demonstration.

Even though the SBI has assigned Israel to the less severe "Group II" category, according to SBI guidelines no active stock manager may invest in the Israeli market unless the manager believes that it would be a breach of fiduciary responsibility *not* to do so and then notifies the SBI in writing. Thus, the fiduciary obligation to invest must be so sufficiently compelling that it trumps the human rights considerations which caused the SBI to place Israel in one of the SBI's less favored investment categories in the first place.

Yet, when the SBI's own records were examined by an MN BBC member pursuant to a Data Practices Act Request, those records were completely devoid of anything which would meet the required standard that the SBI's fiduciary responsibilities to Minnesota's retirement fund beneficiaries can supposedly only be satisfied by investing in Israel Bonds. Thus, the profits the SBI has made from its Israeli investments, which in turn implicate human rights violations, are profits which have been acquired by the SBI in

derogation of its own articulated requirement of a truly compelling financial justification for such tainted investments.

Given the growing public awareness concerning Israel's human rights violations, the SBI cannot continue to keep its head in the sand concerning the moral implications of such investments. Israel recently refused to cooperate in the Universal Periodic Review process conducted by the United Nations Human Rights Council (<http://www.nytimes.com/2013/01/30/world/europe/israel-to-boycott-un-human-rights-review.html>), an unprecedented action by any UN member nation. Israel even shunned efforts by the United States Government to encourage it to participate (*ibid*). This followed a formal report from the UN Human Rights Council advising the following:

Private companies must assess the human rights impact of their activities and take all necessary steps – including by terminating their business interests in the settlements – to ensure they are not adversely impacting the human rights of the Palestinian People in conformity with international law as well as the Guiding Principles on Business and Human Rights. The Mission calls upon all Member States to take appropriate measures to ensure that business enterprises domiciled in their territory and/or under their jurisdiction, including those owned or controlled by them, that conduct activities in or related to the settlements respect human rights throughout their operations. The Mission recommends that the Human Rights Council Working Group on Business and Human Rights be seized of this matter.

(<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/FFM/FFMSettlements.pdf>)

An advance copy of that UN Human Rights Council report has been provided with this letter. We challenge each of the SBI's stock managers to read Section IV of that report (pp. 8-22), which provides a succinct summary of the human rights violations which affect the Palestinians now living under Israeli control and authority. We draw your particular attention to Paragraphs 47, 48, 53, 56, 57, 78, 108 and 109, which concern the impact of Israel's settlement activities upon Palestinian children, and ask each individual stock manager now advising the SBI whether, in good conscience, there is any kind of financial gain to Minnesota's retirement beneficiaries which could ever remotely justify even an indirect financial participation in these appalling human rights violations, let alone perversely "require" it under the guise of a "fiduciary" duty.

The SBI cannot deny that the bulk of its Israeli investments, including its current multi-million dollar investment in Israel Bonds, does materially support and/or benefits from Israel's illegal settlement activities, Israel's various other human rights violations and Israel's racially discriminatory practices. In addition to the SBI's Israel Bond investments (which indisputably support Israel's human rights violations), according to its most recent asset listing the SBI has invested more than \$3 million of Minnesota's state retirement funds in the stocks of Bank Hapoalim, Bank Leumi, Bezek Telecom and the Delek Group, all of which have a profiteering stake in Israel's human rights violations according to the Israeli monitoring group www.WhoProfits.org.

The SBI's gross disregard of its own internal morally responsible investment policies is out of step with the practices of more responsible retirement investment funds. Several of the major Protestant churches in America, including the Methodists, Presbyterians and Quakers, have taken precautions to ensure that their retirement funds do not support Israel's human rights violations. The Presbyterians have even gone further by endorsing the boycott of consumer items produced in West Bank settlements.

The California Public Employees' Retirement System (CalPERS) and the California State Teachers Retirement System (CalSTRS), which jointly manage more than \$400 billion in assets, have begun an "engagement" process with companies whose business interests are connected to Israel's occupation and human rights violations as a first step leading to potential divestment. CalPERS, the largest public employee retirement fund in the United States, is pushing for a discussion of "responsible investing" in Israel/Palestine at an upcoming U.N. Principles for Responsible Investment meeting in October, 2013. (See <http://mondoweiss.net/2013/02/roundtable-responsible-occupation.html>.)

Against this background of a growing recognition of the importance of responsible investments, the unanswered questions concerning the SBI stand out even more sharply. What is the SBI doing to promote morally responsible investment? Why is it ignoring even its own internal policies when it comes to Israel?

To be fair, we acknowledge that the SBI has apparently recently divested from Elbit Systems and we applaud that decision. On September 6, 2011, we wrote to the SBI advising the Board that it had invested in the stock of Israeli defense contractors whose products are used by Israel to maintain its authoritarian control over the West Bank. This was a pointed reference to Elbit Systems. According to www.WhoProfits.org, Elbit Systems provides surveillance drones to the Israeli military and was one of the two main providers of the electronic detection fence and separation wall in the occupied West Bank, structures condemned by the International Court of Justice.

Elbit Systems is among the worst of the many examples of companies which profit from Israeli human rights violations, and we implore the SBI to keep this company off of its assets list. Yet even this recent divestment leaves completely unanswered the question of what supposed "fiduciary" obligation purportedly mandated the SBI's investment in Elbit Systems in the first place.

The SBI's continued investment in such enterprises promotes Israel's continuing oppression of the indigenous Palestinian population, an oppression driven by a half century of racial discrimination. It is time for the SBI to reset its moral compass. Minnesota has a proud and distinguished history of fostering and upholding civil and human rights. The SBI should not continue to sully that proud history.

Divest for justice. Divest now.

Minnesota Break the Bonds Campaign