

No A08-0825

STATE OF MINNESOTA  
IN SUPREME COURT

Middle-Snake-Tamarac Rivers Watershed District,

Appellant,

vs.

James Stengrim,

Respondent

BRIEF AMICUS CURIAE OF AMERICAN CIVIL LIBERTIES UNION OF  
MINNESOTA

Teresa Nelson #269736  
Legal Counsel, ACLU-MN  
445 North Syndicate Street, Suite 325  
Saint Paul, MN 55101  
(651) 645-4097, ext. 122

Faegre & Benson LLP  
John P. Borger #9878  
Leita Walker #387095  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
(612) 766-7501

Attorneys for American Civil Liberties  
Union of Minnesota  
*Amicus Curiae*

Rinke Noonan  
Gerald W. Von Korff #113232  
US Bank Plaza, Suite 300  
P.O. Box 1497  
St. Cloud, MN 56302-1497  
(320) 251-6700

Murnane Brandt  
Daniel A. Haws #193501  
Kelly S. Hadac #0328194  
30 East Seventh Street, Suite 3200  
St Paul, MN 55101  
(651) 227-9411

Attorney for Appellant  
Middle-Snake-Tamarac Rivers  
Watershed District

Attorneys for Respondent  
James Stengrim

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## STATEMENT OF THE CASE

### Introduction

Subjective fears and overt threats of costly litigation can deter speech and public participation in government on important public issues, to the detriment of the would-be speakers, participants, and the public at large. In 1994, the Minnesota Legislature sought to mitigate this problem by enacting Minn. Stat. § 554.01 *et. seq* (the “anti-SLAPP statute”). The American Civil Liberties Union of Minnesota (“ACLU-MN”) supports application of the plain meaning of the statute, including to claims for breach of settlement agreement.<sup>1</sup> The Court of Appeals properly remanded the case to the District Court to apply the standard set forth in § 554.02 Subd. 2(3) to Respondent James Stengrim’s (“Stengrim”) motion for summary judgment. (AA-H1-9).<sup>2</sup> This Court should affirm the decision of the Court of Appeals.

### Identification of Amici

ACLU-MN is a not-for-profit, non-partisan, membership-supported organization dedicated to the protection of civil rights and liberties. It is the statewide affiliate of the American Civil Liberties Union and has more than 10,000 members in the state of

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<sup>1</sup> Other than the identified amici and their counsel, no person has made a monetary contribution to the preparation or submission of this brief. No counsel for a party authored the brief in whole or in part.

<sup>2</sup> “AA-\_\_” refers to pages within the Appendix of Appellant Middle-Snake-Tamarac Rivers Watershed.

Minnesota. Its purpose is to protect the rights and liberties guaranteed to all Minnesotans by the state and federal constitutions and state and federal laws.

### **Summary of Argument**

The plain language of the anti-SLAPP statute applies to Respondent James Stengrim's motion for summary judgment on Appellant Middle-Snake-Tamarac Rivers Watershed District's ("the District") claim for breach of settlement agreement. See Section I below. Given the clarity of the statutory language, this Court need not engage in extended statutory interpretation or analyses of legislative intent and public policy. Nevertheless, relevant methods of statutory construction (see Section II below), the experience of other states with similar anti-SLAPP statutes (see Section III below) and considerations of public policy (see Section IV below) reinforce the broad statutory application of the anti-SLAPP statute to claims alleging breach of settlement agreement. The Court of Appeals therefore properly reversed and remanded the case to the District Court with instructions to apply the standard set forth in Minn. Stat. § 554.02 Subd. 2(3). Finally, the District has not raised any valid constitutional challenge to the anti-SLAPP statute. See Section V below.

### **Argument**

#### **I. The Plain Language of Minn. Stat. § 554.01 *et seq.* Applies to Claims for Breach of Settlement Agreement.**

Chapter 554 of the Minnesota Statutes ("the anti-SLAPP statute") "applies to any motion in a judicial proceeding to dispose of a judicial claim on the grounds that the claim materially relates to an act of the moving party that involves public participation."

Minn. Stat. § 554.02 Subd. 1 (2008). Under the anti-SLAPP statute, a motion is defined as including “any motion to dismiss, motion for summary judgment, or any other judicial pleading.” Id. § 554.01 Subd. 4. The statute defines a “judicial claim” as “any civil lawsuit, cause of action, claim, cross-claim, counterclaim or other judicial pleading or filing seeking damages for an alleged injury.” Id. Subd. 3. Claims “solely for injunctive relief,” however, do not fall within the statute’s reach. Id. Finally, “public participation” under the statute means “speech or lawful conduct that is genuinely aimed in whole or in part at procuring favorable government action.” Id. Subd. 6.

Thus, the anti-SLAPP statute applies when (1) a party brings a motion to dispose of a claim; (2) the motion falls within the class of motions described in the statute; (3) the claim to be disposed of is any civil action seeking damages for an alleged injury; and (4) the grounds for the motion are that the claim materially relates to speech or lawful conduct genuinely aimed in whole or in part at procuring favorable government action.

All four elements are satisfied in this litigation. Stengrim brought a motion for summary judgment, which is proper under the statute. (RA-128-49)<sup>3</sup>; see Minn. Stat. § 554.01 Subd. 4. The motion sought to dispose of the District’s claim, which sought damages for the alleged breach of settlement agreement. (RA-128-49) Specifically, the District alleged that Stengrim’s actions “made the Plaintiff incur incidental and consequential damages” (RA-6), and sought an order “disgorging the Defendant of such

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<sup>3</sup> “RA-\_\_” refers to pages within the Appendix of Respondent James Stengrim.

proceeds from his share of the \$1,700,000.00 settlement sum so as to fully and adequately compensate Plaintiff for its damages, including the costs of bringing this action to enforce the Settlement Agreement” (Id.). Finally, Stengrim’s filing of data practices requests was “lawful conduct that is genuinely aimed in whole or in part at procuring favorable government action” which “materially relate[d]” to the District’s allegations that Stengrim breached the settlement agreement; see Minn. Stat. § 554.01 Subd. 6.

The Court of Appeals properly applied these statutory criteria in remanding the case to the District Court. It noted that the District Court “analyzed neither whether Stengrim’s actions involved ‘public participation’ nor whether the District’s claim ‘materially relates’ to those actions.” Middle-Snake-Tamarac Rivers Watershed Dist. v. Stengrim, No. 45-CV-07-428, 2009 WL 367286, at \*2 (Minn. Ct. App. Feb. 17, 2009) (“Stengrim”). The plain meaning of the statute requires the District Court to undertake this analysis, and the Court of Appeals properly noted that the “district court’s failure to apply the anti-SLAPP statute disregarded the statute’s plain meaning.” Id.

The Court of Appeals also properly rejected the District’s argument that the plain language of the anti-SLAPP statute does not apply to claims for breach of settlement agreement and that it instead applies only to “tort claims” or those brought “in bad faith.” (See App. Br. at 20, 33, 41). By its express terms, the anti-SLAPP statute defines “judicial claim” and “claim” as including “any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury.” Minn. Stat. § 554.01 Subd. 3 (2008) (emphasis added). As the Court

of Appeals explained, “[t]he District’s breach-of-settlement-agreement claim is a ‘judicial claim’ for damages,” which invoked “the broad, plain language of the anti-SLAPP statute.” Stengrim, 2009 WL 367286, at \*3. “Further construction was neither required nor appropriate.” Id.

The Court of Appeals’ analysis was proper because the starting point in discerning legislative intent is the language of the statute in question. Group Health Plan, Inc. v. Philip Morris, Inc., 621 N.W.2d 2, 5 (Minn. 2001). “When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” Minn. Stat. § 645.16 (2008). In the words of this Court:

When interpreting a statute, a court must first determine whether the statute’s language, on its face, is ambiguous. See Amaral v. Saint Cloud Hosp., 598 N.W.2d 379, 384 (Minn.1999). “A statute is only ambiguous when the language therein is subject to more than one reasonable interpretation.” Id. Words and phrases are to be construed according to their plain and ordinary meaning. Frank’s Nursery Sales, Inc. v. City of Roseville, 295 N.W.2d 604, 608 (Minn.1980). Where the legislature’s intent is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute’s plain meaning. Ed Herman & Sons v. Russell, 535 N.W.2d 803, 806 (Minn.1995).

American Tower, L.P. v. City of Grant, 636 N.W.2d 309, 312 (Minn. 2001). “[T]he court must give a plain reading to any statute it construes, and when the language of the statute is clear, the court must not engage in any further construction.” Gomon v. Northland Family Physicians, Ltd., 645 N.W.2d 413, 416 (Minn. 2002); see also Hans Hagen Homes, Inc. v. City of Minnetrista, 728 N.W.2d 536, 539 (Minn. 2007).

Because the statute is unambiguous, and because Stengrim's motion for summary judgment on the District's breach of settlement claim invokes all of the anti-SLAPP statute's criteria, the Court of Appeals properly reversed and remanded the case to the District Court for application of the anti-SLAPP statute's standard. On remand, the District Court must determine whether the District can show by clear and convincing evidence that Stengrim's conduct was not immunized from liability under Section 554.03 of the anti-SLAPP statute. See Minn. Stat. § 554.03 (2008); see also Stengrim, 2009 WL 367286, at \*4 (“[R]emand is necessary for the district court to weigh the evidence and apply the correct statutory criteria.”).

**II. Relevant Canons of Statutory Interpretation Indicate that Minn. Stat. § 554.01 *et seq.* Applies to Claims for Breach of Settlement Agreement.**

While the Court need not employ other methods of statutory interpretation because of the anti-SLAPP statute's plain meaning, relevant canons of statutory construction bolster the conclusion that the anti-SLAPP statute applies to claims for breach of settlement agreement. As explained below, two canons of interpretation indicate that, properly construed, the anti-SLAPP statute includes in its reach claims for breach of settlement agreement. Moreover, two more canons indicate that the District's preferred interpretation of the anti-SLAPP statute is inconsistent with proper methods of statutory interpretation.

**A. Legislative Intent**

“The object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature.” Minn. Stat. § 645.16 (2008). Though the

legislature's intent is clear from the statute's plain meaning (see Section I above), even assuming that the meaning of the anti-SLAPP statute is ambiguous, other indicators of legislative intent suggest that the anti-SLAPP statute applies to claims for breach of settlement agreement. When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

- (1) the occasion and necessity for the law;
- (2) the circumstances under which it was enacted;
- (3) the mischief to be remedied;
- (4) the object to be attained;
- (5) the former law . . . including other laws upon the same or similar subjects;
- (6) the consequences of a particular interpretation;
- (7) the contemporaneous legislative history; and
- (8) legislative and administrative interpretations of the statute.

Id.

These considerations suggest that claims for breach of settlement agreement fall under the ambit of the anti-SLAPP statute. For example, the statute was enacted "to protect citizens and organizations from civil suits that chill the exercise of rights of public participation in government." Am. Iron & Supply Co. v. Dubow Textiles, Inc., No. C1-98-2150, 1999 WL 326210, at \*2 (Minn. Ct. App. May 25, 1999); see also Marchant Inv. & Mgmt. Co. v. St. Anthony W. Neighborhood Org., 694 N.W.2d 92, 94 (Minn. Ct. App. 2005) (same). Courts should thus construe the anti-SLAPP statute in light of these "mischief[s] to be remedied" and so that the statute's "object [] be attained." Minn. Stat. § 645.16 cl. (3)–(4) (2008).

Applying the statute to claims for breach of settlement agreement would "remed[y]" the threat of chilling the exercise of public participation, and would

further the statute's "object to be attained," by preventing parties from using a breach of settlement agreement claim as a means of chilling a citizen's lawful public participation. See id. Similarly, the "consequences" of this "particular interpretation" of the statute would further the statute's purpose by preventing parties from using breach of settlement claims as a weapon to thwart public participation. Id. cl. (6). On the other hand, a narrow interpretation of the statute to exclude claims for breach of settlement agreement would undermine the statute's purpose by permitting such claims to chill public participation.

**B. Exceptions in a Law Exclude All Other Exceptions**

A second canon of construction—that "[e]xceptions in a law shall be construed to exclude all others"—bolsters the conclusion that the anti-SLAPP statute applies to claims alleging breach of settlement agreement. See Minn. Stat. § 645.19 (2008). According to this canon, when the legislature specifically excludes one class of claims from a statute's reach, it specifically includes all other types of claims. This canon is based on the logic that since the legislature knows how to exclude some claims from the ambit of a statute, its decision not to exclude other types of claims necessarily implies that those claims fall within the statute. In Minnesota, this canon is well-settled. See Bd. of Educ. of Minneapolis v. Public Sch. Employees' Local Union No. 63, 45 N.W.2d 797, 801 (Minn. 1951) (noting that it is a "well-settled" principle of statutory construction that "the exclusion of one thing includes all others").

Applied to the anti-SLAPP statute, this canon compels the conclusion that the legislature meant to include claims for breach of settlement. This is because the statute

specifically excludes claims “solely for injunctive relief.” See Minn. Stat. § 554.01 Subd. 3 (2008). By making the statute inapplicable to claims “solely for injunctive relief,” the legislature indicated that all other claims—whether in contract, tort, or otherwise—fall under the statute as long as they “seek[] damages for an alleged injury.” Id. Because the legislature knew how to exclude certain claims, its decision not to exclude claims for breach of settlement agreement means that those claims fall under the statute’s reach.

### **C. Specific Provisions Control over General Provisions**

The District argues, on the other hand, that § 554.05 “expressly incorporates the provisions of Rule 12 and 56” of the Minnesota Rules of Civil Procedure (see App. Br. at 18), and thus that the standards in those rules, rather than the standard in § 554.02, applies to Stengrim’s motion for summary judgment on the District’s breach of settlement agreement claim. Such an interpretation is inconsistent with the canon of construction that “special” or “specific” provisions control over inconsistent “general” provisions in the same law. See Minn. Stat. § 645.26 (2008) (noting that for conflicts between two irreconcilable provisions, “the special provision shall prevail and shall be construed as an exception to the general provision”); see also Torgelson v. 17138 880th Avenue, 749 N.W.2d 24, 30 (Minn. 2008) (“[W]hen two statutes conflict, the more specific provision controls over the general.”).

As applied to the anti-SLAPP statute, this canon indicates that the more specific standard in § 554.02 controls over the more general reservation of rights in § 554.05. Section 554.02 provides a specific standard for the nonmoving party to satisfy upon a motion to dispose of a SLAPP claim: the responding party must produce “clear and

convincing evidence that the acts of the moving party are not immunized from liability under section 554.03.” Minn. Stat. § 554.02 Subd. 2(3) (2008). Section 554.05, on the other hand, is more general, and merely states that “[n]othing in this chapter limits or precludes any rights the moving party or responding party may have under any constitutional, statutory, case, or common law, or rule.” The District’s interpretation of § 554.05 as incorporating by reference more general procedural rules for dismissal of claims and for summary judgment, or as incorporating certain contractual rights, is inconsistent with ordinary statutory construction, which requires more specific provisions such as § 554.02 to control over more general provisions such as § 554.05. On remand, therefore, the District Court should apply § 554.02’s more specific standard.

**D. The Entire Statute Should Be Construed to Be Effective**

The District’s argument would render much or all of the anti-SLAPP law ineffective, contrary to normal canons of construction. “In ascertaining the intention of the legislature ..., the legislature intends the entire statute to be effective and certain.” Minn. Stat. § 645.17 cl. (2) (2008). Reading a statute so that some or all provisions would be ineffective is not a proper method of statutory interpretation and would not effectuate the legislature’s intent. See In re Stadvold, 754 N.W.2d 323, 328 (Minn. 2008) (“The legislature intends the entire statute to be effective and certain.”).

Applying normal standards as articulated in Rules 12 or 56 of the Minnesota Rules of Civil Procedure would nullify the more specific standard set forth in § 554.02 Subd. 2(3). Because the anti-SLAPP law sets forth a specific burden on the responding party, applying different standards from Rule 12 or Rule 56 would render the specific standard

ineffective. Nor can the District plausibly argue that § 554.05 takes away the substantive immunities or procedural protections that the rest of the anti-SLAPP statute grants; such an interpretation would be illogical and contrary to proper statutory interpretation. See, e.g., Stadvold, 754 N.W.2d at 328 (noting that this Court “presume[s] that the legislature did not intend absurd or unreasonable results”). In addition, courts presume that “the legislature intends to favor the public interest as against any private interest.” Minn. Stat. § 645.17 cl. (5). The public interest in protecting public participation should prevail over the private interest in enforcing particular contracts.

On remand, therefore, the District Court should apply the standard set forth in the statute; to do otherwise would render portions of the anti-SLAPP statute ineffective, illogical, and contrary to the public interest, a result inconsistent with normally recognized canons of statutory construction.

### **III. Anti-SLAPP Statutes Typically Apply to Claims Alleging Breach of Contract.**

Other states’ experiences with anti-SLAPP statutes indicate that these laws typically apply both specifically to claims alleging breach of settlement agreement and, more generally, to breach of contract claims. These cases hold that the nature of the plaintiff’s cause of action—whether in tort, contract, or otherwise—makes no difference in determining the application of the anti-SLAPP statute. Instead, courts examine whether the defendant’s activity “constitutes protected speech or petitioning” that the legislature meant to protect from vexatious litigation. See, e.g., Navellier v. Sletten, 29 Cal. 4th 82, 92, 52 P.3d 703 (Cal. 2002).

In Navellier, the California Supreme Court held that the California anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, applied to an investment fund management company's claim that its trustee breached a settlement agreement. The court specifically noted that the management company's action "falls squarely within the ambit" of the anti-SLAPP statute. 29 Cal. 4th at 90. The California Supreme Court rejected arguments—similar to those made by the District in this case—that anti-SLAPP statutes were "not enacted to or intended to protect someone from being sued for breaching his/her agreement not to sue." Id. at 91. The court stated: "Nothing in the statute itself categorically excludes any particular type of action from its operation, and no court has the 'power to rewrite the statute so as to make it conform to a presumed intention which is not expressed.'" Id. at 92 (internal quotation marks omitted). Rather, "conduct alleged to constitute breach of contract may also come within constitutionally protected speech or petitioning." Id. The critical test for the court was "not the form of the plaintiff's cause of action but, rather, the defendant's activity that gives rise to his or her asserted liability—and whether that activity constitutes protected speech or petitioning." Id. at 93 (emphasis in original). Thus, when a defendant engages in protected activities, anti-SLAPP statutes apply to a plaintiff's cause of action, whether for breach of settlement agreement or otherwise. In short, "contract and fraud claims are not categorically excluded from the operation of the anti-SLAPP statute." Id.

In the present case, the Court of Appeals properly employed this reasoning in determining that there is nothing inherently unique about claims for breach of settlement agreement that would exclude such claims from the ambit of the anti-SLAPP statute.

According to the Court of Appeals, the “District’s breach-of-settlement-agreement claim is a ‘judicial claim’ for damages,” which “can therefore ‘be enforced by an ordinary action for breach of contract.” Stengrim, 2009 WL 367286, at \*3 (internal citation omitted). Because ordinary contract claims are encompassed by the anti-SLAPP statute’s broad definition of a proper “claim,” see Minn. Stat. § 554.01 Subd. 3, the statute applies to such claims.

Other courts have held that anti-SLAPP statutes ordinarily apply to breach-of-contract cases. See, e.g., 1100 Park Lane Assocs. v. Feldman, 160 Cal. App. 4th 1467, 1483–84 (Cal. Ct. App. 2008) (“[I]t is established that conduct alleged to constitute a breach of contract may also come within the statutory protections for protected speech or petitioning.”); Midland Pac. Bldg. Corp. v. King, 157 Cal. App. 4th 264, 273 (Cal. Ct. App. 2007) (“Here the actions that allegedly breached the contract necessarily and essentially constitute petitioning activity; that is activity protected under the anti-SLAPP statute.”). In Georgia, moreover, “the anti-SLAPP statute extends to abusive litigation that seeks to chill exercise of certain First Amendment rights’ based upon defamation, invasion of privacy, breach of contract, and intentional interference with contractual rights . . . arising from speech and petition of government.” Browns Mill Dev. Co., Inc. v. Denton, 543 S.E.2d 65, 68 (Ga. Ct. App. 2000) (emphasis added), quoted with approval in EarthResources, LLC v. Morgan County, 638 S.E.2d 325, 329 (Ga. 2006).

The Rhode Island Supreme Court applied its anti-SLAPP statute to a claim for tortious interference with contractual relations, stating that the anti-SLAPP statute, by its terms, “applie[s] to any case in which a party asserts that the civil claims...against said

party are based on said party's lawful exercise of its right of petition." Hometown Props. Inc., v. Fleming, 680 A.2d 56, 64 (R.I. 1996) (internal quotation marks omitted); cf. Haines and Kibblehouse Inc. v. Silver Hill Ass'n, No. 272, 1991 WL 352648, at \*2-3 (Ct. Common Pleas, Lancaster County, Pennsylvania, June 4, 1991) (noting that a property owner's claim for "malicious interference with contract" was a SLAPP "type[] of action" and that letting the claim proceed would have had "an impermissible chilling effect on a right most essential to the maintenance of a free society").

These decisions from other states with anti-SLAPP statutes support applying Minnesota's statute to all types of claims for damages based upon protected activity, and not excluding claims for breach of contract (including the subset of breach of settlement agreements) from the statute's reach.

#### **IV. Minnesota Public Policy Supports Application of Minn. Stat. § 554.01 *et seq.* to Claims for Breach of Settlement Agreement.**

Like most states, Minnesota refuses to enforce contracts that violate public policy. "If a contract transgresses the law or contravenes public policy, it is void." Ind. Sch. Dist. No. 877 v. Loberg Plumbing & Heating Co., 266 Minn. 426, 434, 123 N.W.2d 793, 799 (Minn. 1963); accord, Barna, Guzy & Steffen, Ltd. v. Beens, 541 N.W.2d 354, 356 (Minn. Ct. App. 1995). Minnesota's public policy can be found in its constitution, its statutes, and judicial decisions. Chubbuck v. Holloway, 182 Minn. 225, 227, 234 N.W. 314, 315 (Minn. 1931). "Primarily, it is for the lawmakers to determine the public policy of the state." Bldg. Serv. Employees Int'l Union, Local 262 v. Gazzam, 339 U.S. 532, 537-38 (1950). In Minnesota, three separate areas of public policy support application of

the anti-SLAPP statute to claims alleging breach of contract, including breaches of settlement agreements.

First, the anti-SLAPP statute itself articulates Minnesota's policy of preventing the chilling of citizens' exercise of their right to public participation. See Minn. Stat. § 554.01–.05 (2008); see also Marchant, 694 N.W.2d at 94 (indicating the statute's purpose was “[t]o protect citizens and organizations from lawsuits that would chill their right to publicly participate in government”). By applying the statute to the District's claim for breach of settlement agreement, Minnesota would be furthering this previously expressed public policy.<sup>4</sup>

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<sup>4</sup> Other states have also underscored their public policy in favor of protecting citizens' right to public participation. See, e.g., Providence Constr. Co. v. Bauer, 494 S.E.2d 527, 529 (Ga. Ct. App. 1997) (invalidating a restrictive covenant as “unenforceable as against public policy” because it was contrary to Georgia's interest in “encourag[ing] participation by the citizens of Georgia in matters of public significance through the exercise of their constitutional rights of freedom of speech and the right to petition government for redress of grievances”).

Still other courts have expressed similar solicitude for the First Amendment, in the related context of claims for tortious interference with business relationships. See, e.g., Havoco of America, Ltd. v. Hollobow, 702 F.2d 643, 650 (7th Cir. 1983) (“The First Amendment guarantees defendants' right to attempt to enlist the government on their side of the dispute. That this petitioning activity may have had incidentally an adverse effect on plaintiff's business, even that defendants knew this and intended such a result, has no effect on the First Amendment's protection, as long as the activity represents a genuine attempt to influence governmental action.”); First Nat'l Bank of Omaha v. Marquette Nat'l Bank of Minneapolis, 482 F. Supp. 514, 524–25 (D. Minn. 1979) (granting summary judgment to a defendant who engaged in lobbying activities that the plaintiff alleged interfered with its business relationships, because a failure to apply the Noerr-Pennington doctrine would “effectively chill the defendants' First Amendment rights”); Rudoff v. Huntington Symphony Orchestra, Inc., 397 N.Y.S.2d 863, 865 (N.Y. App. Term 1977) (“Public policy dictates that the tort of interference [with contract] not be extended to those situations wherein a citizen petitions an agency of his government.”).

Second, the Minnesota Data Practices Act underscores Minnesota's public policy in favor of unrestricted access to information properly classified as "public." See Minn. Stat. § 13.01 (2008) (establishing a "presumption that government data are public and are accessible by the public for both inspection and copying" unless certain exceptions apply). Notwithstanding the District's claim that "inherent in [] settlements is that all parties constrain their public advocacy" (see App. Br. at 27), government entities like the District could not enter into any agreement to treat as private data any data properly classified as public under the Minnesota Government Data Practices Act, because such an agreement would be void as against public policy. See Adv. Op. 94-047 ("Entities subject to Chapter 13 are not authorized to make promises of confidentiality unless the data that are the subject of the promise of confidentiality are actually classified by statute or federal law as not public."); Adv. Op. 94-045 ("[I]f the District entered into a contract which contains an agreement to treat data as confidential, which are classified as public, it would appear to be in opposition to public policy, and a violation of state law, and therefore the contract would not be valid. A contract which contains terms that are in violation of public policy is void."); see also Tribune-Review Publ. Co. v. Westmoreland Housing Auth., 833 A.2d 112, 673-77 (Pa. 2003) (noting that a settlement agreement between a public agency and a civil rights complainant was a matter of public record and that a confidentiality provision within the agreement was void as against public policy); cf. id. (collecting cases from other jurisdictions).

Parties to litigation cannot escape judicial scrutiny of private agreements that restrict public access to information about public affairs. Cf. Lund v. Lund, 20 Media L.

Rep. 1775, 1775, 1992 WL 361744, at \*1 (Minn. Ct. App. Sept. 14, 1992) (noting that even if the parties agree to entry of a protective order in a lawsuit, that agreement “is not dispositive [of the public’s right of access to court records], because the trial court must make a legal determination regarding the propriety of restricting public access.”), rev. denied (Minn. Sept. 15, 1992), application for stay denied, U.S. Order A-219 (Sept. 22, 1992) (Blackmun, J.). Public policy similarly should bar the District from imposing or attempting to enforce contractual terms that would interfere with the public’s fundamental right to disseminate and to receive information on matters of public concern and matters relating to the actions of public bodies and public officials.

Finally, Minnesota judicial policy favors the efficient use of judicial resources. See State v. Dahlin, 753 N.W.2d 300, 304 (Minn. 2008) (noting that the Court’s holding was in part based on its desire to “avoid a waste of time, resources and effort by the parties and the court system”); Kunze v. Kunze, No. C6-97-593, 1997 WL 471472, at \*3 (Minn. Ct. App. Aug. 19, 1997) (unpublished) (“Public policy favors the efficient use of judicial resources.”). Broad construction of anti-SLAPP statutes promotes judicial efficiency and prevents “delay” and “wast[e]” of judicial resources. See, e.g., Briggs v. Eden Council for Hope and Opportunity, 19 Cal. 4th 1106, 1122, 969 P.2d 564, 575 (Cal. 1999). This is because unmeritorious claims can be quickly dismissed without imposing significant discovery costs on parties who engage in lawful public participation. To the extent that the District claims the settlement agreement is properly interpreted as prohibiting Stengrim from making lawful data practices requests, this too can be classified as unmeritorious, because Minnesota public policy prevents government

entities from treating as private data otherwise classified as public. The Court would therefore save significant judicial resources by applying the standard set forth in § 554.02 Subd. 2(3) of the statute, eliminates claims not based upon “clear and convincing evidence” that particular acts of public participation are “not immune” from suit. See Minn. Stat. § 554.02 Subd. 2(3) (2008).

Minnesota public policy, as expressed in its statutes and judicial decisions, favors (1) protecting public participation from the threat of lawsuits that would chill such advocacy; (2) maintaining unrestricted access to data properly classified as public under the Minnesota Data Practices Act; and (3) promoting judicial efficiency and preventing a waste of judicial resources. Applying the anti-SLAPP statute to claims for breach of settlement agreements furthers all three policies.

**V. The District Has Not Presented a Valid Constitutional Challenge to the Anti-SLAPP Statute.**

The District argues that the statute impairs “the inherent power of Article III courts” to enforce “a party’s constitutional right to a meaningful remedy” (App. Br. at 23)<sup>5</sup> in the context of the Noerr-Pennington doctrine, as extended to judicial access in California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508 (1972). The Court of Appeals considered and rejected that argument, explaining that the Noerr-Pennington doctrine “has no bearing on whether a party can bring a defensive motion to dispose of a

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<sup>5</sup> The District’s reference to “Article III courts” confuses the legal analysis. Federal courts are established pursuant to Article III of the Federal Constitution. Minnesota state courts are established by Article VI of the Minnesota Constitution.

lawsuit already filed.” Stengrim, 2009 WL 367286, at \*3 n.2 (citing Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus., 508 U.S. 49, 57–58 (1993)). Appellant’s Brief makes no attempt to address that refutation.

Beyond Noerr-Pennington, it is hard to determine what the District’s constitutional challenge to the anti-SLAPP statute might be. Although the District’s Petition for Review primarily contended that the Court of Appeals decision had drastically altered the judicial approach to anti-SLAPP motions, it articulated a confusing statement of the legal issue presented that alluded to constitutional problems with the statute. The District compounded that confusion with its Notice to Attorney General (AA-M-1–3) that claimed the Court of Appeals decision “potentially raises the constitutionality of the application” of Chapter 554 (emphasis added). Appellant’s Brief appears to mount an oblique assault on the statute’s constitutionality,<sup>6</sup> and its Appendices G (a district court decision) and L (an article in Hennepin Lawyer) reproduce discussions from the 1990s on the constitutional question, suggesting that the statute’s procedures improperly interfere with a plaintiff’s right to a jury trial (as distinct from a general right of access to courts).

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<sup>6</sup> Compare App. Br. at 18 (“Section 554 is rendered constitutional precisely because it incorporates the responding parties [sic] rights.”), with id. at 4 (noting that the Court of Appeals opinion “upsets the delicate balance of constitutional protections” in the anti-SLAPP law), 23 (“To [apply the anti-SLAPP statute to this case] would impair a party’s constitutional right to a meaningful remedy and impair the inherent power of Article III courts to enforce that remedy.”), and 29–31 (contending that application of Chapter 554 to breach of contract claims “raises significant constitutional and statutory issues” and that § 554.05 “has both statutory and constitutional foundations”).

The hysteria in some quarters that arose after the statute's passage in 1994 has subsided considerably as courts have applied the statutory protections without seismic repercussions. See, e.g., Special Force Ministries v. WCCO Television, 576 N.W.2d 746 (Minn. 1998); In re Conditional Use Permit & Preliminary Planned Unit Dev. Applications of Living Word Bible Camp, Nos. A06-1734, A06-1850, A07-1231, 2008 WL 2245708, at \*4–5 (Minn. Ct. App. June 3, 2008); Marchant, 694 N.W.2d at 94–96; Am. Iron & Supply Co., 1999 WL 326210, at \*2–4; Special Force Ministries v. WCCO Television, 584 N.W.2d 789, 792 (Minn. Ct. App. 1998); Hoyt v. Spangenberg, No. C9-97-1527, 1998 WL 74286, at \*4 (Minn. Ct. App. Feb. 24, 1998). Fifteen years of actual experience should trump speculative claims about the statute's supposed interference with rights to a jury trial (rights which in any event are not absolute, as demonstrated by motions to dismiss, motions for summary judgment, and motions for judgment as a matter of law).

The present case is a particularly poor vehicle for a broad, ambiguous, and oblique constitutional challenge to the anti-SLAPP statute, because it was neither raised nor addressed by the courts below. Appellate courts will not review the constitutionality of a statute if the lower courts did not address that issue below. See In re Stadsvold, 754 N.W.2d 323, 327 (Minn. 2008) (“[A]n appellate court must generally consider only those issues that were presented and considered below.”); Hoyt, 1998 WL 74286, at \*4 (“Because the constitutionality of the anti-SLAPP statute was not passed on by the district court, it is not before this court.”). A reviewing court “must limit itself to a consideration of only those issues which the record shows were, or had to be, presented

and considered by the trial court in deciding the matter before it.” Butt v. Schmidt, 747 N.W.2d 566, 578 (Minn. 2008). The trial court was not presented with, did not consider, and was not required to rule on the anti-SLAPP statute’s constitutionality, and the Court of Appeals addressed only the Noerr-Pennington argument.

**Conclusion**

This Court should affirm the Court of Appeals and remand the case to the District Court for application of the standard set forth in Minn. Stat. § 554.02 Subd. 2(3). The plain language of the statute, as well as proper statutory interpretation, the experience of other states, and Minnesota public policy, all confirm that Minnesota’s anti-SLAPP statute should apply to Stengrim’s motion for summary judgment on the District’s claim for breach of settlement agreement.

Dated: July 2, 2009

FAEGRE & BENSON LLP

  
\_\_\_\_\_  
John P. Borger #9878  
Leita Walker #387095  
2200 Wells Fargo Center  
90 South Seventh Street  
Minneapolis, MN 55402-3901  
(612) 766-7501

Teresa Nelson #269736  
Legal Counsel, ACLU-MN  
445 North Syndicate Street, Suite 325  
Saint Paul, MN 55104  
(651) 645-4097, ext. 122

Attorneys for American Civil Liberties  
Union of Minnesota, *Amicus Curiae*