

NO. A08-0825

State of Minnesota
In Supreme Court

Middle-Snake-Tamarac Rivers Watershed District,
Appellant,

vs.

James Stengrim,
Respondent.

RESPONDENT JAMES STENGRIM'S BRIEF

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LEGAL ISSUES

I. Did the Court of Appeals correctly hold that Minnesota's Anti-SLAPP statutes, Minn. Stat. §§ 554.01-.05, which apply to "any civil lawsuit," apply to a claim for breach of a settlement agreement that seeks money damages?

- **District Court Ruling:**

- The trial court ruled that Minn. Stat. §§ 554.01-.05 do not apply to breach-of-settlement-agreement actions. The trial court ruled that the anti-SLAPP statutes do not apply because it was unclear "whether or not the legislature intended to apply the anti-SLAPP statute to suits to enforce settlement agreements" and found it inappropriate for the statute "to be extended to such suits in this case."

- **Court of Appeals Ruling:**

- The Court of Appeals reviewed *de novo* the trial court's statutory interpretation and reversed. The Court of Appeals correctly found that the plain language of the anti-SLAPP statutes apply to claims for breach of a settlement agreement. No extended statutory interpretation of legislative intent or public policy was necessary or permitted.

- **Most Apposite Cases/Statutes:**

- Minn. Stat. § 554.01, subd. 3 ("Judicial claim' or 'claim' includes any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury.")

STATEMENT OF THE CASE

Appellant Middle-Snake-Tamarac-Rivers Watershed District (“the District”), a political subdivision of the State of Minnesota, sought to silence one of its most prominent critics, Respondent James Stengrim (“Stengrim”), by suing him and seeking money damages for an alleged breach of a settlement agreement. The District’s strategy, however, has backfired due to protections afforded to Minnesota citizens under the plain language of Minn. Stat. §§ 554.01-.05, which protects citizens like Stengrim from lawsuits that would chill their right to publicly participate in government. These laws were enacted to eliminate lawsuits like this, aimed at suppressing public participation. The law recognizes that freedom of speech is not so free, and can be quite expensive, if citizens are forced to engage in extensive and expensive discovery and trial, as the District wanted to do in this case, but which the Minnesota Court of Appeals soundly rejected.

The origination of this lawsuit came from a September 26, 2002 order entered by the District establishing the Agassiz Valley Water Management Project (“the Project”). The Project required the taking of certain private property, including Stengrim’s property, for stated compensation. Stengrim and other citizens of Minnesota did not want the District to take their land at the price being offered. Thus, they objected by appealing the establishment order. That case proceeded until 2006 when the District, Stengrim and the other appealing landowners entered into the settlement agreement that is at issue in this litigation (“the Settlement Agreement”). Under the terms of the Settlement Agreement, the

District agreed to pay the landowners an agreed upon price for their lands. In return, the other appealing landowners agreed not to challenge the establishment of the Project in litigation.

After signing the Settlement Agreement, Stengrim actively engaged in the public process to ensure the District would construct the Project in accordance with Minnesota law. The Settlement Agreement did not preclude this inherent right. Stengrim questioned how money for the Project would be spent and otherwise inquired about the various activities of the District. He also made data practice requests and talked to the Office of Legislative Auditor about some concerns. Stengrim and other members of the public were legitimately concerned about the District's conduct, especially after the Minnesota Department of Administration, Informational Policy Analysis Division, previously ruled that the District had violated its public duties on several occasions.

The District ultimately sued Stengrim alleging he breached the Settlement Agreement by (1) interfering with funding of the Project; (2) filing data practice requests; and (3) making complaints about the Project. Stengrim denied the allegations and affirmatively alleged the lawsuit violated Minn. Stat. §§ 554.01-.05, otherwise known as Minnesota's anti-SLAPP laws. "SLAPP" is an acronym for "Strategic Lawsuits Against Public Participation."

Shortly thereafter, Stengrim moved for summary judgment pursuant to Minn. Stat. § 554.02, claiming his public participation did not violate the Settlement Agreement and that he was otherwise immune from liability under

Minn. Stat. § 554.03. Stengrim argued the District's lawsuit was nothing more than an abuse of its power and resources to unlawfully strip him of his most basic constitutional right—participating in the public process.

In an Order dated April 30, 2008, Marshall County District Court Judge Donna K. Dixon held that Stengrim's "actions alone do not violate the settlement agreement as they are not a challenge to the 'establishment of the project.'" Despite this finding, the District Court denied Stengrim's Motion for Summary Judgment brought under Minn. Stat. § 554.02 by somehow reasoning Minnesota's anti-SLAPP statutes do not apply to suits to enforce settlement agreements.

Stengrim appealed the district court's ruling that Minnesota's anti-SLAPP statutes do not apply to suits to enforce settlement agreements. The Court of Appeals reversed the district court and held that Minnesota's anti-SLAPP statutes apply to breach-of-settlement-agreement actions since the statutes apply broadly to "any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury," which clearly includes a breach-of-settlement-agreement action.

STATEMENT OF FACTS

The District wastes numerous pages in its brief reciting a self-serving background of prior litigation (without appropriate citations to the record because much of what is claimed would be disputed by Stengrim) between the District and certain landowners, including Stengrim. This is nothing more than a detour from

the only issue properly before this Court—whether the Anti-SLAPP statutes apply to a claim for breach of a settlement agreement that seeks money damages. The relevant facts are set forth below.

I. THE PARTIES

A. The District

The District is a political subdivision of the State of Minnesota.¹ It is organized under Minn. Stat. Chap. 103D. (Id.)²

B. Stengrim

Stengrim is a citizen of Minnesota.³ Stengrim owned land in Marshall County that he transferred to the District pursuant to the Settlement Agreement.⁴

II. THE DISTRICT ATTEMPTS TO TAKE STENGRIM'S LAND

On September 26, 2002, the District made findings and entered an order establishing the Project.⁵ Part of this Order determined lands required for the Project.⁶ Certain landowners, including Stengrim, challenged the Project and damages awarded by appealing to the District Court from the Order.⁷ The appealing landowners did not want the District to take their lands for the offered

¹ Respondent's Appendix ("RA") at RA 1-6.

² Id.

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

⁷ Id.

price.⁸ Considerable litigation ensued.⁹ The District was represented by Jerry Von Korff, the same counsel that it retained in this lawsuit.¹⁰

III. THE SETTLEMENT AGREEMENT

In May-June 2006, the District, Stengrim, and the other appealing landowners entered into a Settlement Agreement relating to the landowners' challenges to the establishment of the Project and damages awarded.¹¹ The pertinent provisions of the Settlement Agreement according to the District's underlying lawsuit are:

RECITALS

WHEREAS, the parties hereto desire to mutually resolve the issues pending before the Marshall County District Court without additional expense and litigation;

WHEREAS, Landowners and District respectively agree that they will endeavor to establish a positive and collaborative relationship between Landowners and the District;

AGREEMENT

Landowners release and forever discharge the Watershed District from any and all claims, legal and equitable that were or could have been raised in Litigation, including, but not limited to, challenges to the establishment of the Project and damages awarded;

The Watershed District shall pay, and Landowners shall accept in full settlement of their claims, a cash sum of \$1.7 Million;

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ RA 9, 10, 11, and 14.

Landowners agree to execute or procure all documents necessary to convey their complete and absolute interest in the properties to the Watershed District in fee simple;

Landowners agree that, by accepting this settlement, their challenges to the establishment of the Project are being dismissed with prejudice and that Landowners will address no further challenges in litigation or otherwise against the establishment of the Project, which Landowners now understand will be going forward. Nothing in this Paragraph prohibits Landowners from meaningfully attending meetings or participating in Project team meetings regarding the Project and any modifications of the Project.¹²

IV. THE DISTRICT'S INTERPRETATION OF THE SETTLEMENT AGREEMENT

Concerned that the Settlement Agreement might limit his constitutional rights to ask questions about the Project and to otherwise participate in the public process concerning issues that could arise relating to the Project, Stengrim asked the District to clarify what the Settlement Agreement was meant to accomplish.¹³ Stengrim received the following responses from the District's attorney Jerry Von Korff:

The issue is whether the agreement will provide a litigation format to Mr. Zutz and Mr. Stengrim each and every time they take a notion that they don't like the operational decisions made by the district;

The District has insisted from day one that we [the District] cannot have individual landowners using this agreement [the Settlement Agreement] as a mechanism to challenge operations [of the impoundment].

¹² Id.; see also RA 1-6.

¹³ RA 31-33.

Any landowner may participate in the adoption process in the same way that all other citizens will participate.

Landowners do not have the right, by virtue of this agreement, to attempt to control project operation, or to use the agreement as a vehicle to litigation about operations.

Nothing in this agreement [the Settlement Agreement] bars landowners from participating in administrative processes available to interested citizens regarding the project plan approval or the project supervision process.

This is what I [Von Korff] want the agreement to accomplish: (1) It doesn't authorize the district to violate the approved plan, nor does it deprive your clients from using the techniques that would be available to any citizen, to participate in the plan approval process. **Nor does it immunize the district from challenges that your clients might bring that would be available to any other citizen in the future.**

You [Landowners] are not going to be able to interfere with the operations of the impoundment;¹⁴

Stengrim executed the Settlement Agreement only after receiving Mr. Von Korff's assurances that he could continue to participate in the public process and ask any questions about the Project.¹⁵

V. PROVISIONS NOT IN THE SETTLEMENT AGREEMENT

By filing this lawsuit, the District has attempted to read into the Settlement Agreement provisions which simply do not exist.¹⁶ By way of example, the Settlement Agreement does not prohibit Stengrim from: (1) freely speaking to

¹⁴ RA 34, 35, 31-33, RA 36-50, RA 51-52.

¹⁵ RA 8-30.

¹⁶ Id.

the press; (2) petitioning the government for redress of grievances other than a challenge to the establishment of the Project; and (3) making data practice requests.¹⁷

The District even admitted that the Settlement Agreement does not prohibit the following:

- [The District] “absolutely disclaim[s] any intent to prevent Stengrim from holding-or even expressing—whatever beliefs and opinions he may have about the project.”
- Stengrim “is free to believe that he made a bad bargain.”
- Stengrim “is free to say that he wishes that he never settled.”
- Stengrim “is free to march down the streets of Warren Minnesota with a sign saying that the Watershed District is pursuing the wrong course.”
- Stengrim “has not given up those rights in the settlement agreement.”¹⁸

VI. THE LAWSUIT

A. The Complaint

Despite (1) the Settlement Agreement only limiting Stengrim’s right to challenge the “establishment” of the Project, and (2) the District’s attorney specifically stating that the Settlement Agreement does not prohibit Stengrim from participating in the public process just like any other citizen that did not sign

¹⁷ Id.

¹⁸ RA 63-64.

the Settlement Agreement, the District sued Stengrim anyway.¹⁹ The District alleged that Stengrim breached the Settlement Agreement by (1) interfering with funding of the Project; (2) filing data practice requests; and (3) making complaints about the Project.²⁰ Nowhere in the Complaint did the District claim that Stengrim was challenging the “establishment” of the Project.²¹ Finally, the District sought monetary damages in the amount of money Stengrim received under the Settlement Agreement, plus costs, disbursements and attorneys’ fees.²²

B. Stengrim’s Answer

Stengrim denied the District’s claim that he breached the Settlement Agreement.²³ Stengrim further asserted that he was immune from the claims pursuant to Minn. Stat. § 554.03.²⁴

C. The District’s Own Manager Testified That This Is A SLAPP Lawsuit

Elden Elseth is a member of the District itself. Mr. Elseth, who has a Juris Doctor degree, specifically informed the District that commencing a lawsuit against Stengrim for breach of the Settlement Agreement “is frivolous and

¹⁹ RA 1-6.

²⁰ Id.

²¹ Id.

²² Id.

²³ RA 76-79.

²⁴ Id.

without merit and a misuse of taxpayer dollars.”²⁵ Mr. Elseth’s testimony

since the District commenced this litigation has not changed:

In my humble opinion, not only do attorneys for [the District] appear to want to discredit and silence Mr. James Stengrim, they also appear to want to discredit and silence myself as well as Mr. Loren Zutz [another manager of the District] from making any comments or asking any questions which might be negative concerning [the Project.] The Court should consider that Mr. Loren Zutz and I are Managers and part of the leadership of [the District].

This is an unprecedented case in which I believe the legal team of [the District] possibly in collaboration with other Managers is attempting to silence and squelch reasonable public participation of . . . the rights of citizens, such as Mr. James Stengrim, who may ask questions concerning this [the Project] and other projects.

[I]ssues of freedom of association, freedom of speech, freedom of public participation . . . as well as other civil liberties and rights are involved in this action. I believe this is indeed an effort to silence free speech and public discourse.²⁶

D. The District’s Answers To Stengrim’s Interrogatories

Stengrim served the District written discovery in an effort to specifically determine what conduct the District believes violated the Settlement Agreement.²⁷ The answers to the written discovery, along with the deposition testimony of Nick Drees, a 37-year veteran of the District, confirmed what manager Elden Elseth has told the District all along—that this lawsuit is a misuse of taxpayer dollars and that the District is attempting to violate Stengrim’s right to

²⁵ RA 81-82.

²⁶ RA 83-84; see also RA 89-103.

²⁷ RA 104-115.

free speech by adding provisions to the Settlement Agreement that do not exist.²⁸

The District claims the following conduct violated the Settlement Agreement:

1. Direct evidence of activities to interfere with completion of the project is the statement of James Stengrim as transcribed by Sonya Johnson of the Office of Legislative Auditor
2. Newspaper article by Dan Browning which tied Stengrim's data practice requests to his efforts to defeat the project;
3. Stengrim lodged 21 data practices requests following the settlement; and
4. Stengrim referred non-appealing landowners to an attorney.²⁹

E. Testimony Of The District's Long Time Administrator, Nick Drees

Nick Drees has been with the Watershed District for 37 years.³⁰ He does not speak favorably of Stengrim's "antics" and believes Stengrim asks too many questions.³¹

Mr. Drees testified that the Project was established in 2002.³² He further testified that the Settlement Agreement does not prevent Stengrim from making

²⁸ Id.

²⁹ RA 108-111.

³⁰ RA 116-124.

³¹ Id. at Deposition pp. 21, 76

³² Id. at Deposition p. 17

data practice requests.³³ Indeed, Nick Drees agreed that Stengrim always has a right to ask questions to ensure the Project is being built according to Minnesota law and to make sure the taxpayers' money is spent correctly.³⁴ Drees agrees that Stengrim has a right to contact his congressman or other governmental agency to voice any concerns that he has.³⁵

Mr. Drees also testified that no conduct of Stengrim has stopped the Project in any manner.³⁶ Indeed, the only thing that prevented the Project from being completed at the time of Drees' deposition (10/2007) was the fact that the Watershed District had not received permits from the Army Corps of Engineers and the DNR.³⁷ Furthermore, Drees confirmed that Stengrim has not prevented the funding of the project.³⁸

F. Testimony of Stengrim

Stengrim's testimony confirms that he never challenged the establishment of the Project since executing the Settlement Agreement.³⁹ Stengrim does not

³³ Id. at Deposition p. 47

³⁴ Id.

³⁵ Id. at Deposition pp. 61, 76

³⁶ Id. at Deposition p. 54

³⁷ Id. at Deposition pp. 55-56.

³⁸ Id. at Deposition p. 70.

³⁹ RA 125-127.

want anything to stop the Project from moving forward.⁴⁰ Stengrim “just wants it done according to the law.”⁴¹ Despite these outward manifestations of Stengrim’s desire to see the Project built, the District has continued with this litigation and forced Stengrim to seek dismissal by bringing the appropriate motion.

G. Stengrim’s Motion For Summary Judgment Pursuant To Minn. Stat. § 554.02

On November 28, 2007, Stengrim moved for summary judgment pursuant to Minn. Stat. § 554.02.⁴² Stengrim argued that the alleged acts the District claimed breached the Settlement Agreement were immune from liability under Minn. Stat. § 554.03 because such conduct was genuinely aimed at procuring governmental action.⁴³ Stengrim further argued that the District could not meet its statutorily imposed burden of producing clear and convincing evidence that his alleged acts were not immunized from liability.⁴⁴ Finally, pursuant to Minn. Stat. § 554.04, Stengrim requested (1) dismissal of the lawsuit; (2) an award of

⁴⁰ Id. at Deposition p. 74.

⁴¹ Id.

⁴² RA 128-149 (Defendant James Stengrim’s Memorandum of Law in Support of His Motion for Summary Judgment Pursuant to Minn. R. Civ. P. 56 and Minn. Stat. § 554.02); see also RA 150-284 (Affidavit of Kelly S. Hadac in Support of Motion for Summary Judgment); RA 285-305 (Plaintiff’s Memorandum in Response to Defendant’s Motion for Summary Judgment and Rule 11 Motion); RA 306-312 (Second Affidavit of Jeff Hane); RA 313-325 (Defendant James Stengrim’s Reply Memorandum of Law in Support of Motion for Summary Judgment Pursuant to Minn. R. Civ. P. 56 and Minn. Stat. § 554.02)

⁴³ RA 128-149.

⁴⁴ Id.

reasonable attorneys' fees and costs; (3) actual damages; and (4) punitive damages.⁴⁵

The District opposed Stengrim's Motion for Summary Judgment arguing that Stengrim somehow waived his right to participate in the public process when he signed the Settlement Agreement.⁴⁶ The District also argued, without any legal support and despite the broad definitions set forth in Minn. Stat. § 554.01, that Chapter 554 of the Minnesota Statutes does not apply to suits to enforce settlement agreements.⁴⁷ **The District never argued that Minnesota's anti-SLAPP statutes were unconstitutional.**⁴⁸

H. **The District Court Order**

On April 30, 2008, the Honorable Donna K. Dixon found that the District presented no evidence that Stengrim breached the Settlement Agreement, but yet denied Stengrim's Motion for Summary Judgment brought under Minn. Stat. § 554.02.⁴⁹ The District Court reasoned:

Depositions of critical witnesses have not been completed because the anti-SLAPP statute stayed discovery. Because discovery has been stayed, the Court does not have enough facts to determine this issue and has found several issues of material facts in dispute contained in the parties' motions. Furthermore, based on the parties' submissions, the Court finds that this is not the type of

⁴⁵ Id.

⁴⁶ RA 285-305.

⁴⁷ Id.

⁴⁸ Id.

⁴⁹ RA 326-332.

litigation the anti-SLAPP statute protects as the parties were not able to cite legal references concerning whether or not the legislature intended to apply the anti-SLAPP statute to suits to enforce settlement agreements and the Court does not find it is appropriate to be extended to such suits in this case.⁵⁰

VII. THE COURT OF APPEALS' DECISION

In an opinion issued on February 17, 2009, the Court of Appeals correctly found that the plain language of the anti-SLAPP statute applies to claims for breach of a settlement agreement.⁵¹ No extended statutory interpretation of legislative intent or public policy was necessary or permitted.⁵² Stated differently, the Court of Appeals properly rejected the trial court's reasoning that the anti-SLAPP statutes do not apply to claims for breach of a settlement agreement.⁵³ After all, Minnesota's anti-SLAPP statutes plainly apply to breach-of-settlement-agreement actions since the statutes apply broadly to "any civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury."⁵⁴

⁵⁰ Id.

⁵¹ Appellant's Appendix at H-1 – H-9.

⁵² Id.

⁵³ Id.

⁵⁴ Id.

ARGUMENT

I. MINNESOTA'S ANTI-SLAPP STATUTES APPLY TO SUITS TO ENFORCE SETTLEMENT AGREEMENTS

A. Statutory Interpretation

Interpretation of a statute is a legal question. *Brookfield Trade Ctr., Inc. v. County of Ramsey*, 584 N.W.2d 390, 393 (Minn. 1998). The goal in reading a statute is to effectuate the purpose of the legislature. *Tuma v. Comm'r of Econ. Sec.*, 386 N.W.2d 702, 706 (Minn. 1986), *see also* Minn. Stat. § 645.16. When statutory language is not reasonably susceptible to more than one interpretation, a court must give effect to its plain meaning as a manifestation of legislative intent. *Kersten v. Minn. Mut. Life Ins. Co.*, 608 N.W.2d 869, 874-75 (Minn. 2000); *see also Tuma*, 386 N.W.2d at 706. If the legislative intent "is clearly discernable from plain and unambiguous language, statutory construction is neither necessary nor permitted and courts apply the statute's plain meaning." *Am. Tower, LP v. City of Grant*, 636 N.W.2d 309, 312 (Minn. 2001); *see also Gomon v. Northland Family Physicians, Ltd.*, 645 N.W.2d 413, 416 (Minn. 2002); Minn. Stat. § 645.16; *Occhino v. Grover*, 640 N.W.2d 357, 359 (Minn. App. 2002), *rev. denied* (Minn. May 28, 2002).

When interpreting a statute, a court must focus on the words of the statute to ascertain and effectuate the intention of the legislature. Minn. Stat. § 645.16. In ascertaining the intention of the legislature, there is a presumption that "[t]he legislature does not intend a result that is absurd, impossible of execution, or

unreasonable." Minn. Stat. § 645.17. **A court should not read into a statute what the legislature has left out.** *Ly v. Nystrom*, 615 N.W.2d 302, 315 (Minn. 2000) (Emphasis added.)

The above paragraphs provide the proper standard that this Court must consider in deciding whether Minn. Stat. §§ 554.01-.05 apply to suits to enforce settlement agreements. Under these standards, the Court of Appeals' decision that Minnesota's anti-SLAPP statutes apply to suits to enforce settlement agreements was absolutely and undisputedly correct. In stark contrast, the District ignores these elementary canons of construction in its forty (40) plus page appellate brief.⁵⁵

B. Minn. Stat. §§ 554.01-.05 Plainly And Unambiguously Include Suits To Enforce Settlement Agreements

The Minnesota legislature expressed that Chapter 554 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. "Judicial claim" or "claim" includes:

"[A]ny civil lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing seeking damages for an alleged injury. 'Judicial claim' does not include a claim solely for injunctive relief."

Minn. Stat. § 554.01, subd. 3. The Court of Appeals correctly noted that "judicial claim" or "claim" was defined "broadly."⁵⁶

⁵⁵ Appellant's Brief at pp. 1-42.

⁵⁶ Appellant's Appendix at H-5.

In this case, the District sued Stengrim in a civil action lawsuit alleging he “breach[ed] the terms and conditions of the Settlement Agreement.” Certainly a claim that a citizen breached a contract, in this case a settlement agreement, is a “civil lawsuit, claim, and/or cause of action within the definition set forth in Minn. Stat. § 554.01, subd. 3. It is impossible to characterize it any other way. The District Court action is even coded as “45-CV-07-428.”⁵⁷ In fact, if the “breach of settlement agreement” allegation is not a “claim” or “cause of action,” then, by definition, the District would have no legal recourse against Stengrim.

Furthermore, the only “claim” that can be made without potentially being subject to Chapter 554 is a “claim solely for injunctive relief.” *Id.* It is not even disputed that this exception does not apply because the District sought money damages from Stengrim.⁵⁸

The fact that the Minnesota legislature made nearly every kind of claim imaginable subject to Minnesota Chapter 554, including suits to enforce settlement agreements, is consistent with the purpose of the statutes, which is to protect Minnesota citizens “from lawsuits that would chill their right to publicly participate in government.” *Marchant Investment & Management Co., Inc. v. St. Anthony West Neighborhood Organization, Inc.*, 694 N.W.2d 92, 94 (Minn. App.

⁵⁷ RA-128

⁵⁸ RA-6 (Complaint seeking (1) “an Order disgorging [Stengrim] of such proceeds from his share of the \$1,700,000.00 settlement sum so as to fully and adequately compensate [the District] for its damages, including the costs of bringing this action to enforce the Settlement Agreement, (2) costs and disbursements; [and] (3) attorney’s fees.”)

2005).⁵⁹ Public participation is the foundation of democracy and recognized by the Minnesota Constitution. See Minn. Const. art. 1, § 3 (liberty of the press shall forever remain inviolate, and all persons may freely speak, write and publish their sentiments on all subjects”)

The legislature obviously believed it was extremely important to have Chapter 554 apply to any type of claim to prevent powerful agencies such as the District from employing “artful pleading” strategies to try and avoid the implications and ramifications of Chapter 554. If the legislature did not want Chapter 554 to apply to suits seeking to enforce a settlement agreement, it easily could have created another exception. The fact that the legislature did not do so speaks volumes.

Furthermore, the District completely fails to address the plain and unambiguous language discussed above in its brief.⁶⁰ By this omission, the District essentially concedes that its breach of settlement agreement action, which seeks money damages, is subject to the requirements of Minnesota’s Anti-SLAPP laws.

For all the above reasons, Chapter 554 of the Minnesota Statutes clearly, plainly, and unambiguously applies to suits to enforce settlement agreements. Any other holding would directly circumvent the plain and unambiguous language

⁵⁹ At least twenty-three other states have similar statutes, ranging from those that only protect speech related to zoning issues and others that protect the right to speak in any public forum on matters of public concern. *Id.* at p. 95.

⁶⁰ Appellant’s Brief at pp. 1-42.

of Minn. Stat. § 554.01, subd. 3, and would also significantly reduce the public participation protections the legislature granted to every citizen of Minnesota. Therefore, the February 17, 2009 Court of Appeals' decision in this matter should be affirmed in its entirety.

II. MINN. STAT. § 554.05 DOES NOT SUPERCEDE ALL OTHER PROVISIONS OF CHAPTER 554

The District's main argument in its lengthy and sometimes incomprehensible Brief is essentially that Minn. Stat. § 554.05 trumps the rest of Chapter 554, thereby making the definitions, procedures and burdens of proof set forth in the rest of the chapter entirely ineffective.⁶¹ This argument would effectively eviscerate the purpose of the statute and its plain language.

The text of Minn. Stat. § 554.05 states:

Nothing in this chapter [554] limits or precludes any rights the moving party or responding party may have under any other constitutional, statutory, case or common law or rule.

Id. If the Court were to adopt the District's argument that this provision supersedes the rest of Chapter 554, then the Court would really be holding that Minn. Stat. §§ 554.01-.04 do not even exist.

Indeed, under the District's interpretation, Minn. Stat. § 554.01, *et seq.*, do not apply as long as a party asserts rights under any constitutional, statutory, case, or common law or rule. Certainly every party to a lawsuit asserts rights

⁶¹ See Appellant's Brief at pp. 18-23.

under one of these categories and therefore Minnesota's Anti-SLAPP statutes would be rendered meaningless under the District's remarkable theory.

Even the cases cited by the District in support of its interpretation of Minn. Stat. § 554.05 do not support its theory. One case cited by the District is *Marchant Investment & Management Co., Inc.*, 694 N.W.2d 92.⁶² In *Marchant*, the district court and Court of Appeals applied Minn. Stat. § 554.02's procedures and burdens of proof rather than holding them ineffective as the District now argues this Court should do. *Id.* Other cases cited by the District in its brief (p. 21) do not even involve, or discuss, Minnesota Statutes 554. See *Surgidev Corp. v. Eye Tech., Inc.*, 625 F.Supp. 800, 803 (D.Minn. 1986) (never discusses or applies Minn. Stat. Chap. 554); *Razorback Ready Mix Concrete Co., Inc. v. Weaver*, 761 F.2d 484 (8th Cir. 1985) (same); *Lund Industries, Inc. v. Westin, Inc.*, 764 F.Supp. 1342 (D. Minn. 1990) (same).

The District also relies on the *Noerr-Pennington* doctrine to argue that Minnesota's anti-SLAPP statutes somehow impair the power of courts to enforce "a party's constitutional right to a meaningful remedy."⁶³ But the District fails to explain how the *Noerr-Pennington* doctrine could apply to the facts of this case. The Court of Appeals already recognized that the *Noerr-Pennington* doctrine does not apply to this case:

⁶² Appellant's Brief at p. 22

⁶³ *Id.* at pp. 19-23.

The District's reliance on the *Noerr-Pennington* doctrine is misplaced because the anti-SLAPP statute creates an immunity—not a weapon but a shield—designed to allow people to participate in government without fear of being sued, irrespective of the plaintiff's good faith in bringing the suit. See *Marchant*, 694 N.W.2d at 94-95 (stating purpose of anti-SLAPP statute); cf. *Simmons v. Fabian*, 743 N.W.2d 281, 287 (Minn. App. 2007) (noting that official immunity represents policy decision that harm to plaintiff in leaving claim unaddressed is outweighed by harm to public in having officials' decision-making impaired by fear of liability for decisions). . . . The *Noerr-Pennington* doctrine, which generally immunizes the act of filing a lawsuit from tort or antitrust liability, has no bearing on whether a party can bring a defensive motion to dispose of a lawsuit already filed. See generally *Prof'l Real Estate Investors, Inc. v. Columbia Pictures Indus.*, 508 U.S. 49, 57-58, 113 S.Ct. 1920, 1926-27 (1993) (explaining *Noerr-Pennington* doctrine).⁶⁴

The District does not even attempt to refute this reasoning by the Court of Appeals, and therefore must have acknowledged that its reliance on the *Noerr-Pennington* doctrine is misplaced.

The District's interpretation of Minn. Stat. § 554.05 is also inconsistent with elementary rules of statutory construction. First, in ascertaining the intention of the legislature, it is presumed that the legislature intends to favor the public interest as against any private interest. Minn. Stat. § 645.17(5). Minnesota Statutes Chapter 554 was enacted to protect citizens from lawsuits that would chill their right to publicly participate in government. *Marchant*, 694 N.W.2d at 94. It provided a procedure to citizens to quickly end lawsuits that were based on

⁶⁴ Appellant's Appendix at H-7.

their public participation unless the plaintiff had clear and convincing evidence to prevail on the merits of the case. Minn. Stat. § 554.02. If this public interest is going to be protected, then by no means can Minn. Stat. § 554.05 trump the rest of Chapter 554.

Furthermore, under Minnesota law addressing statutory construction, specific provisions of statutes prevail over general provisions:

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 conflict between the two provisions be irreconcilable, the special provision shall prevail and shall be construed as an exception to the general provision

Minn. Stat. § 645.26, subd. 1. In this case, the District essentially claims Minn. Stat. § 554.05 trumps and supersedes everything else in Chapter 554. Such an interpretation does not give effect to the other provisions of Chapter 554 as is required by Minn. Stat. § 645.26, subd. 1. After all, contrary to the District's interpretation, the Legislature surely enacted Minn. Stat. §§ 554.01-.04 for a reason. See *In re Stadsvold*, 754 N.W.2d 323, 328 (Minn. 2008) ("The legislature intends the entire statute to be effective and certain.")

Additionally, Minn. Stat. §§ 554.01-.04 provides very specific procedures for both plaintiffs and defendants in cases involving free speech and acts of public participation. The language in those provisions is much more specific than the general language of Minn. Stat. § 554.05. Thus, consistent with Minn. Stat.

§ 645.26, subd. 1, and for all the other reasons discussed above, the provisions of Minn. Stat. §§ 554.01-.04 control to the extent they are irreconcilable with Minn. Stat. § 554.05, and the February 17, 2009 decision of the Court of Appeals should be affirmed in its entirety.

III. WHETHER MINNESOTA'S ANTI-SLAPP STATUTES ARE CONSTITUTIONAL WAS NOT CONSIDERED BY THE LOWER COURTS AND THEREFORE THE ISSUE IS NOT PROPERLY BEFORE THIS COURT

Appellate courts will not review issues that were not addressed by the lower courts. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988); *Hoyt v. Spangeberg*, 1998 WL 74286 (Minn. App. 1998)⁶⁵ (“Because the constitutionality of the anti-SLAPP statute was not passed on by the district court, it is not before this court.”)

In this case, the District did not even present to the trial court the issue of whether or not the anti-SLAPP statute was constitutional.⁶⁶ As a result, the trial court and the court of appeals did not rule or in any way address the issue.⁶⁷ In fact, the District’s Notice to Attorney General, which was not served until after the Court of Appeals rendered its decision, states that “[w]e [the District] contend that the statute is not unconstitutional”⁶⁸ Thus, the District apparently recognized that it never raised the constitutionality of the anti-SLAPP statutes in the lower

⁶⁵ This case is unpublished. A true and correct copy of it is at RA333-336.

⁶⁶ RA285-312.

⁶⁷ RA326-332; AA H-1 – H-9.

⁶⁸ AA at M-2.

courts. Because the issue was not raised or addressed in the lower courts, it is not reviewable in this Court.

IV. THE ANTI-SLAPP LAW IS CONSTITUTIONAL EVEN IF THIS COURT IS WILLING TO ADDRESS THE ISSUE

The District's vague and ambiguous claim that the anti-SLAPP statute is unconstitutional is wrong. Case law supports the validity of Minnesota's anti-SLAPP statute and similar statutes from other jurisdictions.

The standard of review for the District's constitutional challenge is very high. Statutes are presumed constitutional. *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). They are constitutionally infirm only if they are unconstitutional "beyond a reasonable doubt." *Id.* The "power to declare a statute unconstitutional should be exercised with extreme caution and only when absolutely necessary."

The District has not and cannot satisfy this extremely high burden. Minnesota is one of at least two dozen states that have enacted statutes designed to protect individual citizen rights to participate in the public process by restricting lawsuits designed to or having the effect of chilling public participation. *NOTE, Slapping Around the First Amendment, An analysis of Oklahoma's Anti-SLAPP statute and Its Implications on the Right to Petition*, 60 Okla. L. Rev. 419 (Summer 2007). These measures serve the important public purpose of "protect[ing] citizens and organizations from lawsuits that would chill their right to publicly participate in government." *Marchant*, 694 N.W.2d at 94. These goals

are intended to extend, rather than frustrate, freedom of expression of First Amendment rights.

Anti-SLAPP statutes have been attacked on a number of constitutional grounds throughout the county similar to those now advanced by the District, including First Amendment rights, vagueness, denial of due process, right to trial by jury, right to petition courts, and other grounds. However, none of these challenges has succeeded in any contested decision of any appellate court, in Minnesota or elsewhere to Stengrim's knowledge.⁶⁹

California has led the way and rejected constitutional challenges to its anti-SLAPP law. *Equilon Enterprises, LLC v. Consumer Cause, Inc.*, 52 P.3d 685 (Cal. 2002); see also *Bernardo v. Planned Parenthood Fed'n of Am.*, 9 Cal. Rptr. 3d 197 (Cal. Ct. App. 2004), cert. denied 543 U.S. 942 (2004) (anti-SLAPP statute does not interfere with freedom of speech or petitioning rights, and attorney's fee award does not affect due process rights, equal protection rights, or right to petition). Significantly, in *Bernardo*, the California Court of Appeals declared: "We reject [the] contention that application of the anti-SLAPP statute violated [any] First Amendment Rights." *Id.* at 227.

And California is not alone in upholding anti-SLAPP statutes. In *Lee v. Pennington*, 830 So.2d 1037 (La. Ct. App. 2002), the Louisiana Court of Appeals held that its state's anti-SLAPP statute was not ambiguous and did not violate

⁶⁹ The only appellate court looking down upon various anti-SLAPP provisions is an advisory opinion in New Hampshire, in *Opinion of the Justices (SLAPP suit procedure)*, 138 N.H. 445 (N.H. 1994).

equal protection or due process. *Id.* The Court found “no constitutional flaw” with the statute. *Id.* at 1042. The Supreme Courts of Utah and Rhode Island found the same. *Anderson Development Co. v. Tobias*, 116 P.3d 323 (2005) (state anti-SLAPP statute was constitutional); *Hometown Properties, Inc. v. Fleming*, 680 A.2d 56 (1996). These cases are consistent with the treatment of the statute in Minnesota where the Court of Appeals has addressed anti-SLAPP suits on their merits, without questioning the statutes’ constitutionality. See e.g. *Marchant*, 694 N.W.2d at 92; *Special Force Ministries v. WCCO Television*, 584 N.W.2d 789, 791 (Minn. App. 1998).⁷⁰

One other point should also not be overlooked: Minnesota’s anti-SLAPP laws are narrowly tailored and do afford litigants access to the courts despite the District’s argument to the contrary. Significantly, this is **NOT** a case about whether the District had a right (or was denied a right) of access to the courts and a jury trial itself, but is instead about what rights exist after the District had accessed the court system.

Nothing within Minn. Stat. Chap. 554 precludes access to the courts. However, once a litigant accesses the courts, that litigant may be faced with a Minn. Stat. § 554.02 motion to dismiss based on immunity, which is similar to a Rule 12 motion to dismiss or a Rule 56 motion for summary judgment, and must

⁷⁰ There have been a few decisions by district court judges in this jurisdiction that have found provisions of the statute unconstitutional, although others have not. See generally *M.H. Tanick*, “Anti-SLAPP Law Slapped Down in Hennepin County,” *Hennepin Lawyer*, February 1999. This article is in Appellant’s Appendix at L-1 – L-3. But these cases do not carry precedential value and have never been affirmed, adopted, or approved by the Court of Appeals or Supreme Court.

present evidence sufficient to meet a particular standard to overcome the motion and ultimately proceed to trial. See Minn. Stat. § 554.02, subd. 2 (a court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from liability under section 554.03.) Moreover, Minnesota's anti-SLAPP laws allow a responding party to conduct discovery upon a showing a good cause. Minn. Stat. § 554.02, subd. 2 (discovery is allowed after the filing of a motion under Minn. Stat. § 554.02 if good cause is shown.)

To illustrate the protections afforded to litigants in the District's position, in *Special Force Ministries*, the plaintiff operated various care facilities for mentally challenged adults. *Id.*, 584 N.W.2d at 791. A reporter from WCCO made false representations to the plaintiff in order to obtain employment from plaintiff, which the reporter did. *Id.* The reporter then secretly videotaped the facility while she worked there, which videotapes WCCO later broadcast to the public. *Id.* The When the plaintiff sued WCCO after the broadcast, WCCO raised Minnesota's anti-SLAPP statute as a defense. *Id.* at 792. The Minnesota Court of Appeals held that under the statute, plaintiff had to prove by clear and convincing evidence that WCCO's conduct constituted a tort. *Id.* The Court of Appeals reasoned that holding the media accountable for torts of trespass and fraud did not create tension with any First Amendment rights. *Id.* The Court of Appeals affirmed the trial court's decision that plaintiff had met its burden of proving that

WCCO's conduct amounted to a tort, therefore rendering the conduct outside the protections of the anti-SLAPP statute. *Id.* at 792-95.

Similar to the plaintiff in *Special Force Ministries*, the District could have availed itself of all the opportunities to pursue discovery against Stengrim and tried to overcome the anti-SLAPP presumption of immunity in favor of Stengrim, but it failed to diligently pursue this claim as allowed under Minnesota law. To be sure, the District did depose Mr. Stengrim and serve written discovery, which Stengrim answered. Apparently the District wanted to conduct more discovery before Stengrim's Minn. Stat. § 554.02 motion was heard by the trial court. But the failure of the District and its counsel to attempt to pursue additional discovery to withstand Stengrim's motion under Minn. Stat. § 554.02, to the extent it could have helped its case, which it would not have, does not render the anti-SLAPP statute unconstitutional. In light of the statutory protections available to the District, the District's argument that Chapter 554 denies it access to the courts is plainly wrong.

Thus, case law in this country at the appellate level has consistently found anti-SLAPP laws constitutional, and there is no decision by the Minnesota Court of Appeals or Supreme Court deviating from these holdings, nor does the plain language of Chapter 554 necessitate a finding of unconstitutionality. The District's vague and ambiguous constitutional challenge to Minnesota Statutes Chapter 554 falls short of reaching the high standard necessary to find a statute

unconstitutional. Therefore, the District's constitutional challenge should be rejected and the decision of the Court of Appeals should be affirmed.

CONCLUSION

Minnesota's anti-SLAPP laws apply to suits to enforce settlement agreements. The plain language of Minnesota's anti-SLAPP laws, which apply to "any civil lawsuit," compels this result. Accordingly, this Court should affirm the February 17, 2009 decision of the Court of Appeals in its entirety.

Dated: 7/1/09

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CERTIFICATE OF BRIEF LENGTH

The undersigned counsel for Respondent James Stengrim certify that this Brief complies with the requirements of Minn. R. Civ. P. 132.01 in that it is printed in proportionately spaced typeface utilizing Microsoft Word and contains 6,933 words, excluding Table of Contents and Table of Authorities.

Dated: 7/1/09

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