

A06-1849
 No. ~~WC06-124~~

STATE OF MINNESOTA
 IN SUPREME COURT

James E. Gluba, Deceased, by Lorraine Gluba,

Employee-Relator,

vs.

Bitzan & Ohren Masonry,

Employer-Respondent,

and

Grinnell Mutual Group,

Insurer-Respondent.

**BRIEF AND APPENDIX OF THE AMICUS CURIAE
 COMMISSIONER M. SCOTT BRENER OF THE MINNESOTA DEPARTMENT
 OF LABOR AND INDUSTRY**

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LEGAL ISSUE

- I. Does the requirement in Minn. Stat. § 176.101, subd. 5(2)(c) (2004) that an employee who is at least fifty-five years of age and does not have a high school education must be at least 13% permanently partially disabled in order to be eligible for permanent total disability benefits violate the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution or the Rights and Privileges Clause of the Minnesota Constitution, article I, section 2.

The Workers Compensation Court of Appeals lacked authority to and did not rule on this issue.

Apposite Authority:

1. United States Constitution, Fourteenth Amendment, Section 1;
2. Minnesota Constitution, article I, section 2;
3. *Scott v. Mpls. Police Relief Assoc., Inc.*, 615 N.W.2d 66 (Minn. 2000);
4. *Texas Workers' Compensation Commission v. Garcia*, 893 S.W.2d 504 (Tex. 1995).

STATEMENT OF THE CASE

James Gluba ("Gluba") was sixty-eight years old at the time of his initial injury in 1996 and had not completed the 12th grade. *James E. Gluba, Deceased by Lorraine Gluba v. Bitzan & Ohren Masonry and Grinnel Mutl Grp.*, No. WC06-124, 2006 WL 2923538 (Minn. Work. Comp. Ct. App. (unpublished) September 13, 2006), Relator's Appendix ("Rel. App.") at A-32.

On February 1, 2002, Gluba filed a claim for workers' compensation benefits which included claims for permanent total disability benefits from and after September 4, 2001, and for 13% permanent partial disability benefits. Relator's Brief ("Rel. B.") at 3, Rel. App. at A-8.3. His claim was heard by Compensation Judge Paul Rieke on March 5,

2003.¹ Judge Rieke found Gluba to be permanently totally disabled from September 4, 2001, through March 5, 2003, at which time Judge Rieke found that Gluba had withdrawn from the labor market. Rel. App. at A-9.3. Permanent total disability benefits were denied, however, pursuant to Minn. Stat. § 176.101, subd. 5 (2004) based upon Judge Rieke's finding that Gluba had only a ten percent permanent partial disability. *Id.*²

The Workers' Compensation Court of Appeals affirmed the compensation judge's finding of a ten percent permanent partial disability, reversed the compensation judge's finding that permanent total disability status ended on March 5, 2003, but affirmed the denial of benefits since the thirteen percent threshold of Minn. Stat. § 176.101, subd. 5(2)(c) (2004) had not been met. *See* Rel. App. at A-17-20. Gluba did not raise any constitutional issues in this appeal. *James E. Gluba v. Bitzan & Ohren Masonry and Grinnel Mutl Grp*, 64 W.C.D. 42, 47, 2003 WL 22861829, *4 (Minn. Work. Comp. Ct. App. 2003), Rel. App. at A-14-20.

On May 7, 2004, Gluba filed a second claim petition seeking, *inter alia*, permanent total disability benefits from September 4, 2001, to the present and continuing. Rel. B. at 4. Although the parties had arrived at a settlement of the claims raised in this petition, Gluba died on May 30, 2004 (Rel. App. at A-32), before signing the settlement agreement. *Id.* His workers' compensation claims were continued by his surviving spouse, the Relator in the present case.

¹ At the time of his initial hearing in 2003, the Relator was age seventy-five. *See* Rel. App. at A-11.

² A copy of Minn. Stat. § 176.101, subd. 5 (2004) is supplied in the Amicus Curiae's Appendix ("A.C. App.") at 1.

Relator's claims were heard by Compensation Judge Gary P. Mesna on December 14, 2005. Judge Mesna found that the claim for benefits from September 4, 2001, through March 5, 2003, was barred by the doctrine of *res judicata* since Gluba had been denied permanent total benefits for this period in his initial claim, Rel. App. at A-25. Judge Mesna found that for the period March 6, 2003 through May 29, 2005, Gluba had only a ten percent (10%) permanent partial disability. Rel. App. at A-26. This was insufficient to meet the statutory threshold of thirteen percent (13%). *Id.*

Judge Mesna's findings were affirmed by the Workers' Compensation Court of Appeals on September 13, 2006. In its decision, the court noted the Relator's challenge to the constitutionality of the threshold requirements of section 176.101, subd. 5, but noted it lacked jurisdiction to hear this challenge. *See* Rel. App. at A-37.

Relator filed a petition for certiorari with the Minnesota Supreme Court on September 29, 2006, claiming that the Workers' Compensation Court of Appeals' decision was "not in conformity with the terms of the Workers' Compensation Act and is unwarranted by the evidence." *See* Rel. App. at A-38. The petition did not raise a constitutional issue. The Relator's Statement of the Case merely identified the issue on appeal to be whether the threshold requirements of section 176.101, subd. 5(2)(a)(b)(c) are "unconstitutional." *See* Statement of the Case at 5. In her brief before the Court, Relator raises, for the first time, an equal protection challenge.³

³ A constitutional challenge before the Minnesota Supreme Court must be presented to the Court with specificity: It is "incumbent upon a party to state with specificity the precise nature of the relief sought. If an issue is not raised before the court with specificity, the opportunity for review of that issue is waived." *Peterson v. BASF Corp.*,

INTEREST OF THE AMICUS CURIAE

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) is responsible for the administration and enforcement of Minnesota’s workers’ compensation law. *See* Minn. Stat. §§ 175.101, subd. 1(b) and 175.17, subd. 1 (2004). Since 1953 it has been the Commissioner’s responsibility to, “[S]upervise and require prompt and full compliance with all provisions of the workers’ compensation law that relate to the payment of compensation.” Minn. Stat. § 176.251 (2004).

Prior to 1983, the workers’ compensation act was considered to be “remedial” and construed in favor of the injured employee. *See Jonas v. Lillyblad*, 272 Minn. 299, 301, 137 N.W.2d 370, 372 (Minn. 1965). In 1983, however, the legislature adopted a new statement of intent for the workers’ compensation act and revised the manner in which it was to be construed.

It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter. It is the specific intent of the legislature that workers’ compensation cases shall be decided on their merits and that the common law rule of “liberal construction” based on the supposed “remedial” basis of workers’ compensation legislation shall not apply in such cases. The workers’ compensation system in Minnesota is based on a mutual renunciation of common law rights and defenses by employers and

675 N.W.2d 57, 66-67 (Minn. 2004) (“Peterson I”); *Hoyt Investment Co. v. Bloomington Commerce & Trade Center Assoc.*, 418 N.W.2d 173, 175 (Minn. 1988). *See also Peterson v. BASF Corp.*, 711 N.W.2d 470, 482 (2006) (“Peterson II”); *Anderly v. City of Mpls.*, 552 N.W.2d 236, 239-240 (Minn. 1996). Addressing an issue in a party’s brief but not in the petition for review does not satisfy this requirement. *Northwest Racquet Swim and Health Clubs, Inc. v. Deloitte & Touche*, 535 N.W.2d 612, 613 n.1 (Minn. 1995) (issue not raised in petition although addressed in briefs not reviewable). The Amicus Curiae takes no position on whether a constitutional issue has been properly raised by Relator.

employees alike. Employees' rights to sue for damages over and above medical and health care benefits and wage loss benefits are to a certain degree limited by the provisions of this chapter, and employers' rights to raise common law defenses such as lack of negligence, contributory negligence on the part of the employee, and others, are curtailed as well. Accordingly, the legislature hereby declares that the workers' compensation laws are not remedial in any sense and are not to be given a broad liberal construction in favor of the claimant or employee on the one hand, nor are the rights and interests of the employer to be favored over those of the employee on the other hand.

Act of June 7, 1983, ch. 290, § 25, 1983 Minn. Laws 1310, 1324, codified as Minn. Stat. § 176.001 (2004).

In administering the workers' compensation law under this legislative mandate, the Commissioner is neither to take sides nor to favor the interests of the employee or the employer/insurer. The Commissioner takes no position on the benefit decisions made by Compensation Judge Mesna and the Workers' Compensation Court of Appeals. When, however, the constitutionality of the workers' compensation law is challenged, the Commissioner believes it is his duty to join with the party defending the constitutionality of that law and to provide the Court with an explanation of the legislative purpose and intent behind the challenged provisions within the context of applicable equal protection standards of review.

In 1995 significant changes were made to the workers' compensation law. The permanent partial disability rating thresholds challenged in this case were part of those changes. The thresholds have been part of the law for eleven years. There is a public interest involved in maintaining these thresholds. Consistent with the standards this

Court has invoked regarding other challenges to the workers' compensation law, any future changes to that law are best decided by the legislature.

ARGUMENT

INTRODUCTION

On March 14, 1995, legislators from both the Minnesota House and Senate announced that they planned to draft a bill designed to cut workers' compensation costs. Sponsors of the bill stated that, "Minnesota has lost control of a system that should be simple but is not. We are foolishly allowing this state not to be as competitive as we could be." See Judges Thomas L. Johnson and Catherine J. Wasson, *The Minnesota Workers Compensation Act: Amendments By The 1995 Minnesota Legislature*, 22 Wm. Mitchell L. Rev. 1493, 1497, 1534 (1996). The result was a significant revision of the workers' compensation system. See generally Act of May 25, 1995, ch. 231, art. 1, 1995 Minn. Laws 1977,⁴ and the Minnesota Department of Labor and Industry COMPAct Newsletter, July 1995.⁵

A decade has passed since the adoption of the 1995 amendments. In *Scott v. Greater Anoka County Humane Society*, 59 W.C.D. 96, 101, 1998 WL 883067,*3 (Minn. Work. Comp. Ct. App.), *aff'd without opinion*, 591 N.W.2d 722 (Minn. 1999), A.C. App. at 57-61, the law's 104 week limitation on temporary total disability benefits was challenged under the "certain remedy" provision of MN. Const. art. I, § 8.⁶ The instant

⁴ The permanent partial disability thresholds were codified at Minn. Stat. § 176.101, subd. 5. See A.C. App. at 1.

⁵ A copy of the COMPAct Newsletter, July 1995, is provided in A.C. App. at 7-56.

⁶ MN. Const. art. I, § 8 reads:

case does not involve a “certain remedy” challenge but rather, an “equal protection” challenge under the United States Constitution’s Fourteenth Amendment, and the Minnesota Constitution, art. I, § 2. In considering this case, the Court should consider the entire scheme of benefits provided under the workers’ compensation law, the limitations which should guide the Court’s scope of review, and the 1995 legislature’s desires to reduce the costs of the workers’ compensation system and to limit permanent total disability benefits to those employees who have more than just minimal permanent partial disability.

STANDARDS FOR REVIEW

I. RELATOR HAS STANDING TO CHALLENGE ONLY THE THIRTEEN PERCENT CRITERIA OF SECTION 176.101, SUBD. 5(C) (2004).

Standing is essential to the Court’s exercise of jurisdiction. *Annandale Advocate v. City of Annandale*, 435 N.W.2d 24, 27 (Minn. 1989). A person has no standing to make a constitutional challenge until he or she can show direct personal harm from the alleged constitutional violation. *City of Minneapolis v. Wurtele*, 291 N.W.2d 386, 393 (Minn. 1980). Standing requires that a litigant have a sufficient stake in the controversy

Every person is entitled to a certain remedy in the laws for all injuries or wrongs which he may receive to his person, property or character, and to obtain justice freely and without purchase, completely and without denial, promptly and without delay, conformable to the laws.

In previous “certain remedy” challenges, the Court has deferred to the legislature’s authority to establish the “quid pro quo” of the workers’ compensation law. *Hyett v. Northwestern Hospital for Women and Children*, 147 Minn. 413, 414, 180 N.W.2d 552, 553 (1920); *Parson v. Holman Erection Company*, 428 N.W.2d 72, 76 (Minn. 1988) (it is for the legislature, not the court, to judge the social utility of this statutory system).

to seek relief from the court. *State by Humphrey v. Phillip Morris, Inc.*, 551 N.W.2d 490, 493 (Minn. 1996).

A plaintiff's lack of standing precludes the prosecution of a lawsuit. *Id.* Standing “focuses on the party seeking to get his complaint before a court and not on the issues he wishes to have adjudicated.” *Sundberg v. Abbott*, 423 N.W.2d 686, 688 (Minn. Ct. App.1988) (quoting *Flast v. Cohen*, 392 U.S. 83, 99, 88 S. Ct. 1942, 1952 (1968)) (emphasis omitted). The underlying purpose of the standing requirement is to ensure that a sufficient controversy exists between the parties so that the issue is adequately presented to the court. *Twin Ports Convalescent, Inc. v. Minn. State Bd. of Health*, 257 N.W.2d 343, 346 (Minn. 1977). Because the existence of a justiciable controversy is a prerequisite to adjudication, the Court may consider this issue even though it was not raised or argued before the lower courts. *Izaak Walton League of Am. Endowment, Inc. v. State Dep't of Natural Res.*, 312 Minn. 587, 589, 252 N.W.2d 852 (1977).

To determine standing, Minnesota has adopted an “injury in fact” test. *Snyder's Drug Stores, Inc. v. Minn. State Bd. of Pharmacy*, 301 Minn. 28, 32, 221 N.W.2d 1622, 1655 (1974). Under this test, a litigant has standing when he or she has suffered an actual injury or otherwise has a cognizable stake in a justiciable controversy. *Leffler v. Leffler*, 602 N.W.2d 420, 422 (Minn. Ct. App. 1999). The litigant must have a direct interest in the litigation and articulate more than an abstract concern. *Philip Morris Inc.*, 551 N.W.2d at 495; *Byrd v. Ind. Sch. Dist. No. 194*, 495 N.W.2d 226, 231 (Minn. Ct. App. 1993). The litigant also must demonstrate an injury or imminent threat of injury to a legally recognized interest. *Envall v. Indep. Sch. Dist. No. 704*, 399 N.W.2d 593, 596

(Minn. Ct. App. 1987); *Davis v. Comm'r of Pub. Safety*, 509 N.W.2d 380, 391 (Minn. Ct. App. 1993), *aff'd on other grounds*, 517 N.W.2d 901 (Minn. Ct. App. 1994). Standing requires “a direct and personal harm resulting from the alleged denial of constitutional rights.” A petitioner “must be able to show not only that the statute is invalid but that petitioner sustained or is in immediate danger of sustaining some direct injury resulting from its enforcement.” *Paulson v. Lapa, Inc.*, 450 N.W.2d 374, 380 (Minn. Ct. App. 1990). A party cannot gain standing by asserting the claim of a friend or family member. *Wurm v. John Deere Leasing Co.*, 405 N.W.2d 484, 486 (Minn. Ct. App. 1987).⁷

In this case, Relator has standing to dispute only the thirteen percent permanent partial disability requirement of Minn. Stat. § 176.101, subd. 5(c) (2004). The rest of the statutory criteria, those that apply to employees under age fifty-five (§§ 176.101, subd. 5(a) and (b)), do not apply to Gluba. He met the age 55 and less than a high school education requirements of subd. 5(c). Consequently, only the constitutionality of the thirteen percent criteria is properly before the Court.

⁷ The federal courts apply similar standards. In *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 2136 (1992), the Supreme Court set three criteria: (1) the plaintiff must have suffered an injury in fact; (2) there must be a causal connection between the injury and the conduct complained of; and; (3) it must be likely that the injury will be “redressed by a favorable decision.” *Id.* at 560-561, 112 S. Ct. at 2136. Article III of the Constitution limits federal jurisdiction to cases and controversies. The core component of standing is an essential and unchanging part of the “case or controversy” requirement. *Advantage Media, L.L.C. v. City of Eden Prairie*, 456 F.3d 793 at 799 (8th Cir. 2006) (citing *Citizens for Equal Protection v. Bruning*, 455 F. 3d 859 (8th Cir. 2006)).

II. THE THIRTEEN PERCENT CRITERIA OF SECTION 176.101, SUBD. 5(C) (2004) SHOULD BE REVIEWED USING THE RATIONAL BASIS TEST.

Relator challenges the validity of the thirteen percent permanent partial disability threshold under both the Equal Protection Clause of the 14th amendment to the United States Constitution and article I, section 2 of the Minnesota Constitution. Rel. Brief at 13. Several basic principles apply to those challenges:

1. All similarly situated individuals shall be treated alike, but only “invidious discrimination” is deemed constitutionally offensive, *Scott v. Minneapolis Police Relief Ass'n, Inc.*, 615 N.W.2d 66, 74 (Minn. 2000.); *In re Estate of Turner*, 391 N.W.2d 767, 769 (Minn. 1986); *Plyler v. Doe*, 457 U.S. 202, 216, 102 S. Ct. 2382, 2394 (1982); *In re Harhut*, 385 N.W.2d 305, 310 (Minn. 1986); *Lidberg v. Steffen*, 514 N.W.2d 779, 784 (Minn. 1994).

2. “Minnesota statutes are presumed constitutional, and the Court’s power to declare a statute unconstitutional is exercised with extreme caution and only when absolutely necessary.” *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1998); *AFSCME Councils 6, 14, 65 and 96, AFL-CIO v. Sundquist*, 338 N.W.2d 560, 570 (Minn.1983) (“[I]t must be recognized that statutes carry a presumption of constitutionality, and that it is not the role of the judiciary in applying the rational basis standard, to question either the factual accuracy or political wisdom of the reasoning and judgment underlying the legislative enactment”).

3. A challenger has a “heavy burden” in seeking to invalidate a statute on constitutional grounds. The challenging party bears the burden of establishing beyond a reasonable doubt that the statute violates a constitutional right. *ILHC of Eagan, LLC v. Cty. of Dakota*, 693 N.W.2d 412, 421 (Minn. 2005).

4. Every presumption in favor of the constitutionality of a statute must be invoked and a statute will be declared unconstitutional “only when absolutely necessary and with extreme caution,” and only if it violates a constitutional provision “beyond a reasonable doubt.” *Scott v. Minneapolis Police Relief Ass'n, Inc.*, 615 N.W.2d at 74; *In re Haggerty*, 448 N.W.2d at 364; *Parson v. Holman Erection Company, Inc.*, 428 N.W.2d 72, 77 (Minn. 1988).

Unless a statute involves a suspect classification or a fundamental right, equal protection challenges are decided using a rational-basis standards under both the state and federal constitutions. *Kolton v. County of Anoka*, 645 N.W.2d 403, 411 (Minn. 2002);

Alcozer v. North Country Food Bank, 635 N.W.2d 695, 715 (Minn. 2001) (dissenting opinion); *Scott v. Minneapolis Police Relief Ass'n, Inc.*, 615 N.W.2d at 74. See also *Blue Earth County Welfare Dep't v. Cabellero*, 302 Minn. 329, 342, 255 N.W.2d 373, 381 (Minn. 1974).⁸

This Court has long recognized that “the expectation of workers’ compensation benefits is not equivalent to a vested property right.” *Alcozer v. North Country Food Bank*, 635 N.W.2d at 706 (citing *Lindell v. Oak Park Coop. Creamery*, 369 N.W.2d 505, 507 (Minn. 1985)). In an equal protection challenge to legislation affecting the regulation of economic activity and the distribution of economic benefits, the “rational basis” test should be used to measure classifications created by a public benefits scheme such as the workers’ compensation law. *Alcozer*, 635 N.W.2d at 705 (citing *Tibbetts v. Leech Lake Reservation Bus. Comm.*, 397 N.W.2d 883, 890 (Minn. 1986))⁹.

⁸ For non-suspect classifications in the federal courts, legislation that distinguishes between similarly situated persons must be rationally related to a legitimate public purpose in order to withstand equal protection review. *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 446, 105 S. Ct. 3249, 3257 (1985).

⁹ In like fashion, the Supreme Court has ruled: “In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational-basis for the classification.” *F.C.C. v. Beach Communications, Inc.*, 508 U.S. 307, 313, 113 S. Ct. 2096, 124 L.Ed.2d 211 (1993); see also *Citizens for Equal Protection v. Bruning*, 455 F.3d at 867. Whether embodied in the Fourteenth Amendment or inferred from the Fifth, equal protection is not a license for courts to judge the wisdom, fairness, or logic of legislative choices. In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable facts that could provide a rational basis for the classification. See *Sullivan v. Stroop*, 496 U.S. 478, 485, 110 S. Ct. 2499, 2504 (1990); *Bowen v. Gilliard*, 483 U.S. 587, 600-603, 107

The thirteen percent threshold, like the classifications based on level of education, age or disability, does not involve suspect classes and does not intrude upon fundamental rights. See *Bituminous Gas. Corp. v. Swanson*, 341 N.W.2d 285, 289 (Minn. 1983)¹⁰ and *Kolton v. County of Anoka*, 645 N.W.2d at 411.¹¹ Rational basis analysis applies in evaluating its constitutional validity.

The rational basis test asks whether a challenged classification is rationally related to a legitimate governmental purpose. In answering the question, the Court used two methods. The first formulation is the federal standard under the Equal Protection Clause of the United States Constitution: *i.e.*, does the challenged legislation have a legitimate purpose, was it reasonable for legislators to believe that the use of the challenged

S. Ct. 3008, 3016-3018 (1987); *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. 166, 174-179, 101 S. Ct. 453, 459-462 (1980). When there are “plausible reasons” for Congress’ action, “our inquiry is at an end.” *United States Railroad Retirement Bd. v. Fritz*, 449 U.S. at 179, 101 S. Ct. at 461. This standard of review is a paradigm of judicial restraint. “The Constitution presumes that, absent some reason to infer antipathy, even improvident decisions will eventually be rectified by the democratic process and that judicial intervention is generally unwarranted no matter how unwisely we may think a political branch has acted.” *Vance v. Bradley*, 440 U.S. 93, 97, 99 S. Ct. 939, 942-943 (1979) (footnote omitted).

¹⁰ In *Bituminous*, the Court found that holding that classification by age is not a suspect class and that a workers’ compensation statute that compensates permanently disabled minors at a higher rate than injured workers who are not minors does not violate equal protection. *Bituminous*, 341 N.W.2d at 289 (citing *Massachusetts Bd. of Retirement v. Murgia*, 427 U.S. 307, 96 S. Ct. 2562 (1976)); *Meyers v. Roberts*, 310 Minn. 358, 246 N.W.2d 186 (1976).

¹¹ In *Kolton*, the Court found that classifications based on disability are analyzed using the rational basis test, and that a disability plan that provides fewer benefits for a mental disability than a physical disability did not violate equal protection. 645 N.W.2d at 411.

classification would promote that purpose? See *Scott v. Minneapolis Police Relief Ass'n, Inc.*, 615 N.W.2d at 74.¹²

The second formulation, often characterized as the Minnesota rational basis test, is more stringent than the federal standard. *Id.* The Minnesota rational basis test requires that:

- (1) The distinctions which separate those included within the classification from those excluded must not be manifestly arbitrary or fanciful but must be genuine and substantial, thereby providing a natural and reasonable basis to justify legislation adapted to peculiar conditions and needs;
- (2) the classification must be genuine or relevant to the purpose of the law; that there must be an evident connection between the distinctive needs peculiar to the class and the prescribed remedy; and
- (3) the purpose of the statute must be one that the state can legitimately attempt to achieve.

Council of Independent Tobacco Manufacturers of America, Carolina Tobacco Co., Winner Tobacco Wholesale, Inc., v. State, 713 N.W.2d 300, 308-309 (Minn., 2006).¹³

Under the Minnesota test, the classification must apply uniformly to all those similarly situated, must be necessitated by genuine and substantial distinctions between the groups, and must effectuate the purpose of the law. *Alcozer v. North Country Food*

¹² Under federal equal protection analysis, “if the classification has some ‘reasonable basis,’ it does not offend the Constitution simply because the classification ‘is not made with mathematical nicety or because in practice it results in some inequality.’ ” *Dandridge v. Williams*, 397 U.S. 471, 485, 90 S. Ct. 1153, 1161 (1970), quoting *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78, 31 S. Ct. 337, 340 (1911). See also *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 96 S. Ct. 2562.

¹³ The evolution of the Minnesota standard is discussed in detail in *Kahn v. Griffin*, 701 N.W.2d 815, 827-832 (Minn. 2005). Earlier, in *Scott*, the Court noted that legal scholars and justices have raised questions concerning possible differences in the two tests and their applicability in different contexts. See *Scott*, 615 N.W.2d 74, n.15; see also *In re Estate of Turner*, 391 N.W.2d 767, 770, n.2 (Minn. 1986).

Bank, 635 N.W.2d at 705 (citing *Nelson v. State Dep't of Natural Resources*, 305 N.W.2d 317, 319 (Minn. 1981)).

Requiring an employee who is age fifty-five or older and lacking a high school degree to have at least a thirteen percent permanent partial disability rating in order to be eligible for permanent total disability passes both the federal and Minnesota's rational basis test.

III. LIMITING ELIGIBILITY FOR PERMANENT TOTAL DISABILITY TO THOSE WITH A SUBSTANTIAL PERCENTAGE OF PHYSICAL DISABILITY IS RATIONALLY RELATED TO LEGITIMATE PUBLIC PURPOSES.

Prior to the 1995 amendments to chapter 176, an employee could be permanently and totally disabled if he or she suffered from an injury "which totally and permanently incapacitated the employee from working at an occupation which brings the employee an income." Minn. Stat. § 176.101, subd. 5(a)(2) (1994). Prior to 1992, the courts defined the term, "totally and permanently incapacitated" as requiring the employee to establish that his or her physical condition, combined with age, training, experience, and the work available in the community caused him or her to be unable to secure anything more than sporadic employment resulting in an insubstantial income. *See Schulte v. C.H. Peterson Const. Co.*, 278 Minn. 79, 83, 153 N.W.2d 130, 134, n.1 (Minn. 1967) ("the *Schulte* factors"). These factors were eventually codified at Minn. Stat. § 176.101, subd. 5(b) (1992).

The 1995 law did not change the *Schulte* factors but required that certain thresholds of permanent partial disability must be met before the *Schulte* factors could be considered. Before the thresholds were enacted in 1995, any employee, theoretically

even an employee with minimal impairment related to the work injury, could collect permanent total disability benefits if the injury contributed to the inability to find work. The 1995 thresholds established a minimum standard of eligibility for permanent total disability benefits by establishing clearer, more objective standards based on employees' level of physical impairment, age, and education.

Under the Minnesota rational basis test, the first question to be addressed is whether the 1995 legislation has a legitimate purpose. *Council of Independent Tobacco Manufacturers of America v. State*, 713 N.W.2d at 308. In answer to this question, the Court is not restricted to the purpose stated by the legislature, any legitimate purpose can support the classifications created by the statute. *See Westling v. Cty. of Mille Lacs*, 581 N.W.2d 815, 821 (Minn. 1998) (rational basis exists if any facts reasonably support the statute); *Rio Vista Non-Profit Housing Corp. v. Cty. of Ramsey*, 335 N.W.2d 242, 245-46 (Minn. 1983) (legislation need not contain a statement of purpose); *Hegenes v. State*, 328 N.W.2d 719, 721-22 (Minn. 1983) (sustaining a statute by conceiving of a possible legislative basis).

In the past, this Court has given particular deference to the legislature in analyzing classifications that relate to social or economic welfare programs: "Statutes, particularly those dealing with social or economic issues, carry a presumption of constitutionality, and it is not the role of the judiciary to question the factual accuracy or political wisdom of the reasoning and judgments underlying the legislative enactment." *Metropolitan Rehabilitation Services, Inc. v. Westberg*, 386 N.W.2d 698, 701 (Minn. 1986) (reducing costs is a legitimate state interest) (citing *AFSCME Councils 6, 14, 65 and 96, AFL-CIO*

v. Sundquist, 338 N.W.2d at 570); *Parson*, 428 N.W.2d at 76. Legitimate legislative objectives may include workers' compensation legislation to decrease costs, to reduce litigation and reduce the need for reliance on often conflicting medical testimony, and to promote objectivity, consistency, and more uniform results in workers' compensation decisions. *Schmidt v. Modern Metals Foundry, Inc.*, 424 N.W.2d 538, 541 (Minn. 1988). Legislation intended to reduce the costs of the workers' compensation system is consistent with the expressed purposes of the workers' compensation set forth in Minn. Stat. § 176.001 (2004):

It is the intent of the legislature that chapter 176 be interpreted so as to assure the quick and efficient delivery of indemnity and medical benefits to injured workers at a reasonable cost to the employers who are subject to the provisions of this chapter.

See Metropolitan Rehabilitation Services, Inc. v. Westberg, 386 N.W.2d at 702; *Bituminous Gas Corp. v. Swanson*, 341 N.W.2d at 288-289 (administrative ease is an adequate justification even if the only purpose was to avoid a judicial determination in each case).

Reducing costs was a major goal of the 1995 legislation. In its publication, **COMPAct** Newsletter, July 1995, the Department of Labor and Industry estimated that the permanent partial disability thresholds would reduce employers' workers' compensation costs by 5.1%. *See COMPAct* at A.C. App. at 45. This cost reduction was referenced during the debate on the House floor on May 22, 1995. *See A.C. App.* at A-79.

The permanent total disability thresholds were debated by legislators on the floor of the Minnesota House of Representatives and Senate when the 1995 legislation was being discussed. The transcripts of the House and Senate floor debates indicate that by enacting the 1995 amendments the legislature intended to save costs, preserve jobs for Minnesota, simplify the workers' compensation system, reduce litigation, and promote injured workers' return to work. *See* A.C. App. at 62 - 97.¹⁴

Amendments to Minn. Stat. § 176.101, subd. 5 (1995) were introduced, discussed, and passed out of the Minnesota House of Representatives as part of House File 642 on May 9, 1995. A.C. App. at 63-69. Authors in the House included Reps. Kelso, Simoneau, and Betterman. The permanent partial disability rating thresholds were vigorously debated on the House floor on May 9 and May 22, 1995. They were debated in the Senate on May 19, 1995. *See* footnote 14. Comments by Reps. Kelso, Simoneau, and Betterman and by Senator Sams, one of the Senate authors, during the debates show that the primary purposes of the legislature in enacting the permanent total disability thresholds were to save costs, preserve jobs for Minnesota, and reduce

¹⁴ "Statements made . . . by the sponsor of a bill or an amendment on the purpose or effect of the legislation are generally entitled to some weight." *Handle With Care, Inc. v. Dep't of Human Services*, 406 N.W.2d 518, 522 (Minn. 1987). The Department of Labor and Industry transcribed the audio tapes of the debates relating to the 1995 legislation. In *Vezina v. Best Western Inn Maplewood*, 627 N.W.2d 324 (Minn. 2001), the Commissioner filed the complete transcripts with the Workers' Compensation Court of Appeals. *Vezina v. Best Western Inn*, 2000 WL 1177704 (W.C.C.A., July 28, 2000). On appeal to this Court, the Relator in *Vezina* included the transcripts in his Appendix.

For this case, the Commissioner has set forth in his Appendix only those portions of the transcripts that relate to the threshold requirements. Specific discussion on the permanent partial disability thresholds are at the following pages: May 9, 1995, House floor debate transcript: pages 20 (A-63), 77-80 (A-64-69), 85 (A-71), 107-109 (A-72-74), 149 (A-75), 154-155 (A-76-77); May 22, 1995, House floor debate transcript: pages 13 (A-79), and 20 (A-80); May 19, 1995, Senate floor debate transcript: pages 15 (A-82), 27 (A-83), 45 (A-84), 79 (A-85), 84-85 (A-86- 87) and 98-106 (A-88-97).

litigation. *Id.* Cost containment and reduction of litigation are legitimate legislative purposes for the permanent total disability threshold classifications in Minn. Stat. § 176.101, subd. 5, and are consistent with the overall purposes of the workers' compensation law expressed in Minn. Stat. § 176.001.

Once a legitimate purpose has been established, the next question under the Minnesota rational basis standard is whether the classifications established by the statute are reasonably related to those purposes- stated and unstated- based upon their "logical effect." *Council of Independent Tobacco Manufacturers of America v. State*, 713 N.W.2d at 310 (citing *Miller Brewing Co., v. State*, 284 N.W.2d 356, 357 (Minn. 1979)); *Scott*, 615 N.W.2d at 74.

The 1995 rating thresholds based eligibility for permanent total disability benefits on an employee's level of physical impairment, age, and education.¹⁵ Except for catastrophically injured workers as provided in Minn. Stat. § 176.101, subd. 1, the statute establishes minimum standards that must be met before an injured worker is considered to be permanently totally incapacitated, and thereby entitled to permanent total disability benefits. Any employee who satisfies the threshold classifications and who is unable to secure anything more than sporadic employment resulting in an insubstantial income is entitled to permanent total disability benefits. Minn. Stat. § 176.101, subd. 5(2)(c).

The threshold "classifications" are relevant to the legitimate purpose of reducing costs in a social welfare program. The legislature could have reasonably believed that

¹⁵ In *Frankhauser v. Fabcon, Inc.*, 57 W.D.D 239 (Minn. Work Comp. Ct. App. 1997), the Workers' Compensation Court of Appeals held that work-related and non-work-related disability could be included in establishing the thresholds in Minn. Stat. § 176.101, subd. 5.

limiting the permanent total disability benefit to those who are more severely impaired, less educated, and older would reduce the number of people receiving the benefit and thereby contain workers' compensation costs.

Relator claims that no reasonable relationship exists between permanent partial disability and employability. Rel. B. at 13-16. Therefore, she argues, since the rating thresholds exclude and do not protect all injured workers who are permanently precluded from substantial, gainful employment, the thresholds are irrational. *Id.* Contrary to Relator's claim, there has always been a relationship between permanent partial disability and employability. Physical condition, combined with age, training, experience, and work availability was a factor to be considered under the *Shulte* test and physical condition was a factor to be considered under the statutory codification of the *Shulte* test. *Shulte*, 278 Minn. at 83, 153 N.W.2d at 133; Minn. Stat. § 176.101, subd. 5(b) (1992).

The thresholds may well exclude some employees with limited permanent partial disabilities that were not excluded under the *Shulte* test.¹⁶ But the workers' compensation law, by its nature, places limits on entitlement to benefits in order to contain employer costs. *See* Minn. Stat. § 176.001 (2004). The fact that some people may be excluded from a workers' compensation benefit is not a denial of equal protection since mere disparity in treatment of members of a class is insufficient to establish a denial of equal protection. *See Graber v. Lametti Construction Co.*, 293 Minn. 24, 29 197 N.W.2d 443, 447 (Minn. 1972). Limiting permanent total disability benefits to those employees who are most severely impaired, older, and less

¹⁶ The permanent partial disability schedules are set forth in Minn. R. ch. 5223 (2005). As Relator correctly notes, they cover over one thousand categories. For illustrative purposes, some of the more common injuries above and below the 13 to 17% thresholds are set forth in the A.C. App. at 98.

educated is consistent with the legislature's intent to provide reasonable benefits to employees at reasonable cost to employers and insurers.

Moreover, before the thresholds were enacted, application of the *Shulte* factors could also have excluded some employees, but not others, with the same level of impairment, depending on the subjective opinions of the claims adjustors, the doctors and the compensation judge. The legislature could have reasonably believed that objective standards would minimize inconsistent application of the *Shulte* factors and, consequently, would minimize litigation over an employee's permanent total disability status. The clearer standards provided by the thresholds promote objectivity, consistency, and more uniform results in workers' compensation decisions. *See Schmidt*, 424.N.W.2d at 541. Limiting permanent total disability to those more severely impaired serves legitimate purposes under the Workers' Compensation Law.

The third and final question under the Minnesota rational basis test is whether the distinctions which separate those included within the classification from those excluded provide a "natural and reasonable basis" for the classifications. *Council of Independent Tobacco Manufacturers of America*, 713 N.W.2d at 310-311. Are the distinctions "manifestly arbitrary or fanciful" or are they "genuine and substantial?" *Scott*, 615 N.W.2d at 74.

Limiting permanent total disability benefits to employees who are more seriously disabled, less educated, and older is not "fanciful or arbitrary." The legislature could reasonably assume that the level of physical impairment affects a person's ability to find work. Higher levels of physical impairment, whether that impairment be work or non-work related, will affect employability. Where the line is to be drawn, distinguishing

between severe and not so severe disabilities, is properly left to the judgment of the legislature. The legislature could have set the percent of required disability, lower or higher.¹⁷ That the legislature chose a 13% for employees aged fifty-five and older does not mean the classification violates the equal protection clauses. In that this percentage is rationally supportable, the Court should not interpose its judgment as to another appropriate stopping point. *Kolton v. County of Anoka*, 645 N.W.2d at 411 (distinction between mental disability and physical disability did not violate equal protection). Any reasonable distinction will sustain a classification in the area of social benefit programs and the differences between classes need not be great. See *Peterson v. Minn. Dep't of Labor and Industry*, 591 N.W.2d 76 (Minn. Ct. App. 1999) (limits on the hourly rates of qualified rehabilitation consultants did not violate equal protection). A classification does not offend the constitution simply because it is not made with mathematical nicety or because in practice it results in some inequality. *Guilliams v. Comm'r of Revenue*, 299 N.W.2d 138, 143 (Minn. 1980).

The fact that the 13% permanent partial disability threshold means some employees will not be eligible for permanent total disability benefits even though, in all

¹⁷ Relator argues that judicial decisions allowing non-work related disabilities, which may have no impact on employability, to count towards meeting the thresholds demonstrates the lack of a rational basis for enacting the thresholds. Rel. Br. at 11, 14-15; see *Frankhauser v. Fabcon, Inc.*, 57 W.D.D 239 (Minn. Workers' Comp. Ct. App. 1997) (work-related and non-work-related disability could be included in establishing the thresholds). Although Relator may be correct in claiming that case law has "eroded" what the legislature intended in establishing the thresholds, Rel. B. at 14-15, this "erosion" favors the interests of all employees and may conflict with what the legislature intended. To the extent the workers' compensation courts have "extended the line" drawn by the legislature, those judicial decisions should have no bearing on the Court's analysis of the reasonableness of the line drawn by the legislature.

other respects, they may be able to prove an inability to work does not invalidate the distinction made. Maybe the line could be drawn differently: at 10% or at 25% for example. Such judgment calls are best left to legislative policy makers. The fact that the line could have been drawn differently does not mean the classifications violate the Equal Protection Clauses.

Finally, conditioning additional long term benefits to permanent partial disability rating thresholds is not novel to Minnesota. In 1989, Texas limited long term benefits to injured employees with a 15% or higher permanent partial disability rating. This was challenged on equal protection grounds in *Texas Workers' Compensation Commission v. Garcia*, 893 S.W.2d 504 (Tex. 1995).

The Texas workers' compensation system pays three basic benefits: (1) temporary income, (2) impairment income based upon physical disability, and (3) supplemental income which provide "long term" benefits. Supplemental income benefits provide long term disability compensation but are only payable if the claimant has an impairment rating of 15% or more and is earning less than 80% of his pre-injury wage. *Id.* at 514; Texas Lab. Code § 408.142(a)(1).¹⁸

Like Relator in this case, *Garcia* argued that since "impairment" did not translate directly into disability, the 15 percent threshold unreasonably and arbitrarily differentiated between those persons eligible for supplemental benefits and those that did not simply because their impairments were less than 15%.

¹⁸ Relevant sections of the Texas Labor Code are set forth in A.C. App. at 99-104. Long term supplemental benefits are payable for 401 weeks. Texas Lab. Code § 408.083, A.C. App. at 104.

The Texas court of appeals had earlier ruled that the 15 percent threshold violated equal protection because:

1. There was no explanation of the source of the 15 percent threshold.
2. Those involved in the legislative process “had no idea where the number came from.”
3. There was no evidence in the legislative record showing what this figure was based on or any indication that once a 15 percent impairment was reached, that significant numbers of workers were so disabled as to require long term benefits.
4. There was no evidence in the legislative record showing that significant numbers of workers who would not reach the 15 percent level had no need for long term benefits.

Texas Workers’ Compensation Commission v. Garcia, 862 S.W.2d 61, 88 (Tex. App. 1993).¹⁹ Therefore, the court reasoned, the 15 percent level created an unreasonable classification. *Id.* at 89.

The Texas Supreme Court reversed finding:

1. Legislative history showed an intent to establish a more objective system utilizing impairment along with traditional disability factors. It was not irrational for the legislature to distinguish between moderately severe impairment likely to interfere with long-term employment from less severe impairment:

It was not irrational for the Legislature to distinguish between moderately severe impairment likely to interfere with long term employment from less severe impairment. Setting the threshold at 15 percent is a rational means of accomplishing this purpose. Peter Barth, an economist specializing in compensation issues and former executive director of the National

¹⁹ The evidence before the trial court included a study showing that only 7 percent of injured workers obtain impairment ratings in excess of 15 percent and that there would be severely disabled workers not reaching the 15 percent level. *Texas Workers’ Compensation Commission v. Garcia*, 862 S.W.2d at 88.

Commission on State Workmen's compensation Laws, testified that the 15 percent threshold 'cull out those impairments that are not very serious...[leaving] supplemental income benefits for workers with more serious impairments.'

Texas Workers' Compensation Commission, 893 S.W.2d at 524.

2. Even if a 15 percent impairment did not perfectly correspond to occupational disability, that did not render the threshold invalid under the Equal Protection Clause. 893 S.W.2d at 524 (citing *Weinberger v. Salfi*, 422 U.S. 749, 781-785, 95 S. Ct. 2457, 2474-77 (1975)); and

3. The legislature need not have articulated the reason for setting the threshold at 15 percent:

[T]his Court has never insisted that a legislative body articulate its reasons for enacting a statute. This is particularly true where the legislature must necessarily engage in a process of line drawing. The task of classifying persons for ... benefits ... inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line; (citation omitted) and the fact the line might have been drawn differently at some point is a matter of legislative, rather than judicial, consideration. (citation omitted).

893 S.W.2d at 524 (citing the Supreme Court in *Matthews v. Diaz*, 426 U.S. 67, 83-84, 96 S. Ct. 1883, 1893 (1976)); and *U.S. R.R. Retirement Bd. v. Fritz*, 449 U.S. 166, 179, 101 S. Ct. 453, 461 (1980).

The Texas Supreme Court also took note of the many other jurisdictions that used an impairment threshold for other benefits, including Florida, 20 %, Maine, 15%, and Colorado, 25 %. 893 S.W.2d. at 523, n.22.²⁰ Minnesota's use of a permanent partial

²⁰ For the Court's convenience, the Texas court of appeals' decision and the Texas Supreme Court decision are set forth in the A.C. App. at 105 and 109. Statutory cites for

disability rating as a threshold for permanent total benefits is not significantly different that the use of percentages in these states. Minnesota's use of the threshold should be found to be valid for equal protection purposes.

the other state laws the Texas court identified as also using disability percentage thresholds are in footnote 22 of the Texas Supreme Court decision. A.C. App. at 129.

CONCLUSION

The purposes of the permanent partial disability rating thresholds in Minn. Stat. § 176.101, subd. 5 (2004) are legitimate, the established classifications are reasonably related to those purposes, and there is a natural and reasonable basis for the classifications. They do not violate the Equal Protection Clauses of the United States or Minnesota constitutions.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).