

Nos. A05-1377 and A05-1378

State of Minnesota
In Court of Appeals

David Granville and Marlyss Granville, as parents and natural
guardians of Kailynn Granville, a minor,
Respondents (A05-1377),

Jacqueline Johnson, as parent and natural
guardian of Shanel Andrews, a minor,
Respondent (A05-1378),

vs.

Minneapolis Public Schools,
Special School District No. 1,

Appellant.

APPELLANT'S BRIEF AND APPENDIX

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES.....	1
STATEMENT OF CASE AND FACTS.....	2
ARGUMENT	6
I. STANDARD OF REVIEW	6
II. THE HISTORY OF IMMUNITY FOR SCHOOL DISTRICTS	7
A. Several Rationales Support Immunity For School Districts.....	7
B. The History Of Immunity And Limitations On Tort Liability For School Districts In Minnesota	9
III. SECTION 466.12 PROVIDES FOR SCHOOL DISTRICT IMMUNITY AND LIMITATIONS ON SCHOOL DISTRICT LIABILITY.....	10
IV. SECTION 466.12, SUBDIVISION 3A, IS RATIONALLY RELATED TO THE LEGITIMATE PURPOSE OF ENSURING THE FISCAL STABILITY OF SCHOOL DISTRICTS.....	13
A. Ensuring Financial Stability Is A Legitimate Government Purpose.....	15
B. The Classification Contained In Section 466.12, Subdivision 3a, Is Not Arbitrary	17
C. Section 466.12, Subdivision 3a, Is Relevant To Achieving Fiscal Stability	22
V. HOLDING SECTION 466.12, SUBDIVISION 3A, UNCONSTITUTIONAL THREATENS THE LEGISLATURE'S ROLE	23
VI. EVEN IF THIS COURT HOLDS SECTION 466.12 UNCONSTITUTIONAL, ITS HOLDING SHOULD NOT BE APPLIED TO THIS CASE.....	25
CONCLUSION	26

TABLE OF AUTHORITIES

CASES

Allen v. Indep. Sch. Dist. No. 17, 173 Minn. 5, 216 N.W. 533 (1927)	9
Anderson v. Anoka Hennepin Indep. Sch. Dist. 11, 678 N.W.2d 651 (Minn. 2004)	7
Avella v. Almac’s Inc., 211 A.2d 665 (R.I. 1965).....	18
Bank v. Brainerd Sch. Dist., 49 Minn. 106, 51 N.W. 814 (1892)	9
Beaudette v. Frana, 285 Minn. 366, 173 N.W.2d 416 (1969)	24
Bjorkquist v. City of Robbinsdale, 352 N.W.2d 817 (Minn. Ct. App. 1984).....	16
Boyer v. Iowa High Sch. Athletic Ass’n, 127 N.W.2d 606 (Iowa 1964)	9
Bullock v. Joint Class “A” Sch. Dist. No. 241, 272 P.2d 292 (Idaho 1954)	8
Carrillo v. Texas Tech Univ. Health Sci. Ctr., 960 S.W.2d 870 (Tex. App. 1997)	8
Conlin v. City of St. Paul, 605 N.W.2d 396 (Minn. 2000)	24
Estate of Jones v. Kvamme, 529 N.W.2d 335 (Minn. 1995)	13
Faber v. Roelofs, 311 Minn. 428, 250 N.W.2d 817 (1977)	12
Grames v. King, 332 N.W.2d 615 (Mich. Ct. App. 1983).....	7

Granville v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1, Hennepin County District Court File No. 02-010663, Appeal No. A05-1377.....	3, 4
Granville v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1, 668 N.W.2d 227 (Minn. Ct. App. 2003).....	1, 3, 14, 18
Heidbreder v. Carton, 645 N.W.2d 355 (Minn. 2002)	7
Herweg v. Bd. of Educ., 673 P.2d 154 (Okla. 1983).....	8
ILHC of Eagan, LLC v. County of Dakota, 693 N.W.2d 412 (Minn. 2005)	17
In re Estate of Turner, 391 N.W.2d 767 (Minn. 1986)	14, 15
Jaar v. Univ. of Miami, 474 So. 2d 239 (Fla. Ct. App. 1985).....	8
Johnson v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1, Hennepin County District Court File No. 02-010664, Appeal No. A05-1378.....	3, 4
Kerrville State Hosp. v. Fernandez, 28 S.W.3d 1 (Tex. 2000)	8
Krueth v. Indep. Sch. Dist. No. 38, 496 N.W.2d 829 (Minn. Ct. App. 1993).....	14
Larson v. Indep. Sch. Dist. No. 314, 289 N.W.2d 112 (Minn. 1979)	12
Lienhard v. State, 431 N.W.2d 861 (Minn. 1988)	passim
Lloyd v. City of St. Paul, 538 N.W.2d 921 (Minn. Ct. App. 1995).....	15
Mgmt. Computer Servs., Inc. v. Hawkins, Ash, Baptie & Co., 592 N.W.2d 279 (Wis. Ct. App. 1998).....	18
Minder v. Anoka County, 677 N.W.2d 479 (Minn. Ct. App. 2004).....	24

Minn. Brewing Co. v. Egan & Sons Co., 574 N.W.2d 54 (Minn. 1998)	24
Nat'l Meat Ass'n v. Deukmejian, 743 F.2d 656 (9th Cir. 1984)	18
Riedel v. Goodwin, 574 N.W.2d 753 (Minn. Ct. App. 1998).....	6
Scott v. Indep. Sch. Dist. No. 709, 256 N.W.2d 485 (Minn. 1977)	1, 10, 12
Scott v. Minneapolis Police Relief Ass'n, 615 N.W.2d 66 (Minn. 2000)	14, 17
Skeen v. State, 505 N.W.2d 299 (Minn. 1993)	23
Snyder v. City of Minneapolis, 441 N.W.2d 781 (Minn. 1989)	13, 16
Spanel v. Mounds View Sch. Dist., 264 Minn. 279, 118 N.W.2d 795 (1962)	passim
State v. Frazier, 631 N.W.2d 432 (Minn. Ct. App. 2001).....	15
State v. Johnson, 514 N.W.2d 551 (Minn. 1994)	24
Thacker v. Pike County Bd. of Educ., 193 S.W.2d 409 (Ky. 1946).....	8
Watson by Hanson v. Metro. Transit Comm'n, 553 N.W.2d 406 (Minn. 1996)	6
Watson v. Metro. Transit Comm'n, 553 N.W.2d 406 (Minn. 1996)	23
Watts v. Town of Homer, 207 So. 2d 844 (La. Ct. App. 1968)	8
Wulff v. Tax Court of Appeals, 288 N.W.2d 221 (Minn. 1979)	23

Zank v. Larson, 552 N.W.2d 719 (Minn. 1996)	7, 24
--	-------

STATUTES

Minn. Stat. § 3.736	15, 19
Minn. Stat. § 3.736, subd. 4	19
Minn. Stat. § 176.061, subd. 5	24
Minn. Stat. § 466.03, subd. 1	7
Minn. Stat. § 466.03, subd. 6	7, 24
Minn. Stat. § 466.04	13
Minn. Stat. § 466.07, subd. 1	12
Minn. Stat. § 466.12	passim
Minn. Stat. § 466.12, subd. 2	10, 11, 12
Minn. Stat. § 466.12, subd. 3a	passim
Minn. Stat. Ch. 466	6, 10, 15

OTHER AUTHORITIES

Act of May 22, 1963, ch. 798, § 12, 1963 Minn. Laws 1396, 1400-01	12
Act of May 27, 1969, ch. 826, §§ 1-3, 1969 Minn. Laws 1515, 1515-16	12
Act of Apr. 19, 1973, ch. 123, Art. V, § 7, 1973 Minn. Laws 209, 226	13
Act of Apr. 11 1974, ch. 472, § 1, 1974 Minn. Laws 1189, 1189-90	13
Act of Mar. 15, 1996, ch. 310, § 1, 1996 Minn. Laws 185, 186-87	13
Act of May 22, 1997, ch. 210, § 1, 1997 Minn. Laws 1915, 1915	20
Allan E. Korpela, Annotation, <u>Modern Status of Doctrine of Sovereign Immunity as Applied to Public Schools and Institutions of Higher Learning</u> , 33 A.L.R. 3d 703 (1970)	7

Michael L. Weiner & Christopher J. Moreland, The Minneapolis School District is No Longer the “King That Can Do No Wrong,” Minn. Trial Law. Ass’n, Summer 2005, at 8, 38 17

Robin C. Miller, Annotation, Tort Liability of Public Schools and Institutions of Higher Learning for Accidents Occurring in Physical Education Classes, 66 A.L.R. 5th 1 (1999)..... 7, 25

RULES

Minn. R. Civ. P. 12.02(e) 3

CONSTITUTIONAL PROVISIONS

Minnesota Constitution, Article I, Section 2..... 13

United States Constitution, 14th Amendment..... 13

STATEMENT OF ISSUES

1. Is Minn. Stat. § 466.12, subdivision 3a, which provides immunity to school districts that in good faith attempt to obtain insurance but cannot do so at the legislature's selected rate of \$1.50 per pupil and then apply for certification from the Department of Commerce, rationally related to a legitimate governmental purpose under the Equal Protection Clauses of the Minnesota and United States Constitutions because the statute allows school districts to spend limited dollars on education instead of litigation?

The district court held no, reasoning that while the \$1.50 per pupil rate may have been rationally related to fiscal stability, which is a legitimate government purpose, the statutory rate does not meet "current market conditions" and now permits all school districts to obtain immunity.

Apposite authorities:

Minn. Stat. § 466.12, subd. 3a.

Granville v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1,
668 N.W.2d 227 (Minn. Ct. App. 2003).

Scott v. Indep. Sch. Dist. No. 709,
256 N.W.2d 485 (Minn. 1977).

Spanel v. Mounds View Sch. Dist.,
264 Minn. 279, 118 N.W.2d 795 (1962).

STATEMENT OF CASE AND FACTS

This appeal presents a constitutional challenge to a statute that allows school districts to choose to spend scarce educational dollars on academics instead of litigation. Minnesota Statutes section 466.12, subdivision 3a (2004), provides immunity for school districts that are unable to obtain insurance for an average rate of \$1.50 or less per pupil per year *and* receive certification from the Commissioner of Insurance (now known as the Commissioner of the Department of Commerce) that such insurance is unobtainable. (A.A. 94-95.)

On August 28, 2001, the Minneapolis School District (the "District") sent a letter to the Minnesota Department of Commerce containing liability insurance quotations it had received, and requesting certification that it could not obtain insurance for \$1.50 per student or less under Minn. Stat. § 466.12. (A.A. 45-46.) Commissioner James C. Bernstein responded by letter dated September 14, 2001, stating that it appeared the District made a good faith attempt to procure liability insurance as required by statute. (A.A. 47.) Independent research performed by the Commerce Department's Market Assistance Plan Committee confirmed, and the Commissioner ultimately certified, that the District could not obtain the liability insurance required by statute at a rate of \$1.50 per student per year. (Id.) The Minneapolis School District is the only school district that has obtained certification under section 466.12.

In November 2001, students Kailynn Granville and Shanel Andrews allegedly sustained injuries when they ran into each other while participating in a game of "flashlight tag" during their physical education class at Loring Elementary School, which

is part of the Minneapolis School District. (A.A. 3-4.) The parents of both students (“Respondents”) sued the District alleging negligence. (Id.; Granville v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1, Hennepin County District Court File No. 02-010663, Appeal No. A05-1377; Johnson v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1, Hennepin County District Court File No. 02-010664, Appeal No. A05-1378.)¹ The Respondents’ claims have been the subject of two appeals.

In 2002, the District moved to dismiss Respondents’ complaints under Minn. R. Civ. P. 12.02(e), asserting Respondents failed to state a claim for which relief could be granted because the District is immune from tort liability pursuant to Minn. Stat. § 466.12, subdivision 3a. (See A.A. 6.) Respondents opposed dismissal on the basis that section 466.12, subdivision 3a, violates the Equal Protection Clauses of the Minnesota and United States Constitutions. (See id.) The district court granted the District’s motions and dismissed Respondents’ claims. (See id.) In doing so, the district court applied a rational basis analysis and upheld the challenged statute based on the state’s legitimate interest in preserving scarce educational funding.

Respondents appealed. (See A.A. 6.) This Court held that Respondents’ equal protection challenge of section 466.12 did not involve a racial classification or implicate a fundamental right, and thus a rational basis analysis rather than strict scrutiny analysis applied to the challenge. Granville v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1, 668 N.W.2d 227, 235 (Minn. Ct. App. 2003) (“Granville I”). This Court then reversed

¹ The Granville and Johnson cases were consolidated for proceedings in the district court, but not for pleading. In both appeals, this Court has consolidated the appeals for briefing, oral argument, and decision.

the district court's dismissals, concluding that there was insufficient evidence in the record to determine "whether Minn. Stat. § 466.12, subd. 3a, passes the rational basis test in either of its formulations." Id. The Minnesota Supreme Court denied the District's and Respondents' petitions for further review.

Following remand, the parties completed additional discovery consisting of depositions and the production of affidavits concerning the cost of available insurance and budget issues facing school districts. On December 22, 2004, the District moved for summary judgment in both cases pursuant to section 466.12, subdivision 3a. (See A.A. 7.) Respondents opposed the District's motion on the basis that section 466.12, subdivision 3a, violates the Equal Protection Clauses of the United States and Minnesota Constitutions.² (A.A. 3, 17-39.)

The Hennepin County District Court, the Honorable Heidi S. Schellhas presiding, denied the District's motions on May 13, 2005, and filed identical memoranda in the Granville and Johnson matters. (A.A. 5-16.)³ The district court concluded that, although the protection of a governmental entity's financial stability is a legitimate public purpose (A.A. 10), section 466.12 violated the equal protection guarantees of the state and federal constitutions because the \$1.50 or less per pupil standard contained in the statute was not

² Respondents also argued the District was not entitled to immunity afforded by section 466.12, subdivision 3a, because it is self-insured and the District obtained certification *ultra vires*. (See A.A. 7.) The district court rejected Respondents' argument that the District's self-insured status precludes it from asserting immunity and did not reach Respondents' *ultra vires* argument. (A.A. 11, 16.)

³ Because the orders and memoranda filed in the Granville and Johnson matters are virtually identical, only the Granville memorandum and order is included in Appellant's appendix. (See A.A. 87-88.)

rationality related to or genuine or relevant under “current market conditions.” (A.A. 15.)

The District appealed both matters and this Court consolidated the appeals. (A.A. 85-88.)

ARGUMENT

Limitations on government liability and government immunity are rationally related to the legitimate government purpose of ensuring fiscal stability. For a school district, liability limitations mean more dollars are spent educating children and fewer dollars are diverted to injury claims. By implementing Minn. Stat. § 466.12, subdivision 3a, which immunizes school districts from tort liability if they are unable to obtain liability insurance coverage for a rate of \$1.50 per pupil per year, the legislature made a policy decision that is rationally based. The rational basis for the statute remains regardless of constantly fluctuating “current market conditions” surrounding a school district’s procurement of insurance. Minnesota courts repeatedly have recognized the legislature’s role in determining the boundaries of governmental immunity under Chapter 466 of Minnesota Statutes. With all due respect, the separation of powers doctrine requires the legislature rather than the courts to determine limitations on school district liability under section 466.12, subdivision 3a.

I. STANDARD OF REVIEW

An appellate court reviews the denial of an immunity-based motion for summary judgment *de novo* “because immunity from suit is effectively lost if a case is erroneously permitted to go to trial.” Riedel v. Goodwin, 574 N.W.2d 753, 756 (Minn. Ct. App. 1998) (quoting Watson by Hanson v. Metro. Transit Comm’n, 553 N.W.2d 406, 411 (Minn. 1996)). On appeal from summary judgment, the court determines whether genuine issues of material fact exist and whether the district court erred in its application of the law. Id. When the facts are undisputed, the court determines as a matter of law

whether a government entity is entitled to immunity from liability. See Zank v. Larson, 552 N.W.2d 719, 721 (Minn. 1996).

This immunity-based appeal involves a constitutional challenge to Minnesota Statutes section 466.12, subdivision 3a. The constitutionality of a statute is a question of law. Heidbreder v. Carton, 645 N.W.2d 355, 372 (Minn. 2002). This Court is not bound by the district court's conclusions and reviews *de novo* a statute's constitutionality. Id.

II. THE HISTORY OF IMMUNITY FOR SCHOOL DISTRICTS

A. Several Rationales Support Immunity For School Districts

Numerous jurisdictions have provided school districts with broad immunity from tort liability, including liability for incidents that occur during physical education classes. Robin C. Miller, Annotation, Tort Liability of Public Schools and Institutions of Higher Learning for Accidents Occurring in Physical Education Classes, 66 A.L.R. 5th 1 (1999); Allan E. Korpela, Annotation, Modern Status of Doctrine of Sovereign Immunity as Applied to Public Schools and Institutions of Higher Learning, 33 A.L.R. 3d 703 (1970). Many jurisdictions have held that school district immunity is the logical extension of state sovereign immunity.⁴ Some jurisdictions reason that public schools are subdivisions of the state and receive the benefits of the state's sovereign immunity because they act for the benefit of the state and the public. See, e.g., Grames v. King, 332 N.W.2d 615, 619 (Mich. Ct. App. 1983), aff'd in part and vacated in part, 368 N.W.2d 219 (Mich. 1985)

⁴ Under the theory of sovereignty, state officials are largely immune from liability. See Minn. Stat. § 466.03, subd. 1, 6 (2002); Anderson v. Anoka Hennepin Indep. Sch. Dist. 11, 678 N.W.2d 651, 655 (Minn. 2004) (holding state officials are immune from claims arising out of the performance of discretionary duties).

(holding immunity proper where school district's operation of extracurricular sports program provided opportunities to students that could not be provided except through the school district's operation); Thacker v. Pike County Bd. of Educ., 193 S.W.2d 409, 409 (Ky. 1946) (upholding immunity for board of education because it is a public agency performing a public service).

Other jurisdictions hold that public school districts perform a function for which the state is primarily responsible and act as agents or instrumentalities of the state. Therefore, school districts share with the state immunity from tort liability or limitations on tort liability. See, e.g., Carrillo v. Texas Tech Univ. Health Sci. Ctr., 960 S.W.2d 870, 871 (Tex. App. 1997), overruled on other grounds by Kerrville State Hosp. v. Fernandez, 28 S.W.3d 1 (Tex. 2000) (holding state university is an agent of the state protected by sovereign immunity); Watts v. Town of Homer, 207 So. 2d 844, 845-46 (La. Ct. App. 1968) (school district is an agency of the state and not liable for torts in absence of statute to the contrary); Bullock v. Joint Class "A" Sch. Dist. No. 241, 272 P.2d 292, 296 (Idaho 1954) (upholding immunity for school district because it is an agency of the state performing a function for the state).

Still other courts have cited lack of funds and other public policy considerations as reasons to allow immunity for school districts. See e.g., Jaar v. Univ. of Miami, 474 So. 2d 239, 245 (Fla. Ct. App. 1985) (holding legislature's purpose in enacting sovereign immunity statute was to protect public from "profligate encroachments on the public treasury"); Herweg v. Bd. of Educ., 673 P.2d 154, 156 (Okla. 1983) (stating sovereign immunity is based in part on the risk of litigants depleting the state's resources

at the expense of tax revenues); Boyer v. Iowa High Sch. Athletic Ass'n, 127 N.W.2d 606, 612-13 (Iowa 1964) (sovereign immunity is question of public policy for legislature to decide).

B. The History Of Immunity And Limitations On Tort Liability For School Districts In Minnesota

In 1892, the Minnesota Supreme Court first held that school districts were entitled to the immunity that towns and counties enjoyed, focusing on the public functions performed and public benefits provided by educational institutions. Spanel v. Mounds View Sch. Dist., 264 Minn. 279, 292, 118 N.W.2d 795, 803 (1962) (citing Bank v. Brainerd Sch. Dist., 49 Minn. 106, 109, 51 N.W. 814, 815 (1892)); see also Allen v. Indep. Sch. Dist. No. 17, 173 Minn. 5, 6, 216 N.W. 533, 534 (1927) (noting a school district is an arm of the state and performs governmental functions). Over time, however, Minnesota courts grew increasingly skeptical of the previous justifications for the doctrine of governmental immunity. See Spanel, 264 Minn. at 288-81, 118 N.W.2d at 799-802.

In Spanel, the Minnesota Supreme Court prospectively overruled the governmental immunity doctrine as a defense with respect to tort claims against school districts, but noted that legislative action to address immunity was preferable to judicial action and expressly deferred to legislative acts to define the parameters of tort liability and immunity. Id. at 292, 118 N.W.2d at 803. The Court specifically invited the legislature to address municipal liability at its next session and stated that its intention to

limit immunity was “subject to any statutes which now or hereafter limit or regulate the prosecution of such claims.” Id.

The legislature responded to Spanel by enacting Chapter 466 of the Minnesota Statutes, which abolished the tort immunity of local governmental units and erected financial limits on liability. Chapter 466 contains some exceptions, including those unique to school districts set forth in Minn. Stat. § 466.12. Section 466.12, not Spanel, currently governs school district immunity and limitations on school district liability.

III. SECTION 466.12 PROVIDES FOR SCHOOL DISTRICT IMMUNITY AND LIMITATIONS ON SCHOOL DISTRICT LIABILITY

Unlike municipalities for whom governmental liability has been abrogated, school districts are generally immune from liability. Scott v. Indep. Sch. Dist. No. 709, 256 N.W.2d 485, 490 (Minn. 1977) (citing Minn. Stat. § 466.12, subd. 2). The legislature enacted Minn. Stat. § 466.12, subd. 2, which establishes “governmental immunity from tort liability” for school districts as previously defined by Minnesota’s courts before Spanel.⁵ That immunity is subject to an exception contained in subdivision 3a that the legislature created six years after the original enactment of section 466.12.

⁵ Minn. Stat. § 466.12, subdivision 2, provides:

Subd. 2. Pre-12/13/1962 immunity enacted, defined. The doctrine of “governmental immunity from tort liability” as a rule of the decisions of the courts of this state is hereby enacted as a rule of statutory law applicable to all school districts and towns not exercising powers of statutory cities in the same manner and to the same extent as it was applied in this state to school districts and such towns on and prior to December 13, 1962.

As used in this subdivision the doctrine of “governmental immunity from tort liability” means the doctrine as part of the common law of

Section 466.12, subdivision 3a, provides:

Subd. 3a. Schools shall insure, be liable; conditions. A school district shall procure insurance as provided in section 466.06, meeting the requirements of section 466.04, if it is able to obtain insurance and the cost thereof does not exceed \$1.50 per pupil per year for the average number of pupils. If, after a good faith attempt to procure such insurance, a school district is unable to do so, and the commissioner of insurance certifies that such insurance is unobtainable, it shall be subject to the provisions of subdivisions 1 and 2. If the school district fails to make a good faith attempt to procure such insurance and the commissioner of insurance does not certify that such insurance is unobtainable, then in that event section 466.12 shall not apply to such a school district and it shall be subject to all of the other applicable provisions of chapter 466.

Minn. Stat. § 466.12, subd. 3a (emphasis added). (A.A. 94-95.) Essentially, subdivision 3a provides that school districts must obtain insurance to protect them against tort liability to the extent of liability limits applicable to municipalities, unless (1) a district makes a good faith attempt to procure the insurance, and (2) the Insurance Commissioner certifies the school cannot obtain insurance at a cost of \$1.50 per pupil per year. If those conditions are met, the school district is immune from liability as provided in section 466.12, subdivision 2. Subdivision 3a does not create immunity; rather, it is an exception to the general grant of school district immunity under subdivision 2.

England as adopted by the courts of this state as a rule of law exempting from tort liability school districts and towns not exercising the powers of statutory cities regardless of whether they are engaged in either governmental or proprietary activities, subject however, to such modifications thereof made by statutory enactments heretofore enacted, and subject to the other provisions of this section.

(A.A. 94-95.)

The legislative history of section 466.12 is significant because it indicates the legislature first granted school district immunity and then six years later made exceptions to that immunity based on the cost of insurance. The legislature originally enacted section 466.12 in 1963.⁶ Act of May 22, 1963, ch. 798, § 12, 1963 Minn. Laws 1396, 1400-01. (A.A. 96-103.) In 1969, the legislature added subdivision 3a, the subdivision that is the subject of this challenge, regarding school district procurement of insurance and its effect on the immunity defense provided by section 466.12. Act of May 27, 1969, ch. 826, §§ 1-3, 1969 Minn. Laws 1515, 1515-16. (A.A. 106-108.) The 1969 amendment also extended the statute's expiration date from January 1, 1970, to July 1, 1974.⁷ Id. Thereafter, the legislature amended the statute in 1973 and 1974.⁸ Act of Apr.

⁶ The legislature first amended the statute in 1965, adding subdivision 4 to extend the sunset date from January 1, 1968, to January 1, 1970. Act of May 25, 1965, ch. 748, § 1, 1965 Minn. Laws 1126, 1126. (A.A. 104-105.)

⁷ In 1969, the legislature also amended section 466.12 to remove references to school districts from subdivision 3. (A.A. 106-108.)

⁸ The 1973 amendment consolidated the terms "villages" and "boroughs" into the term "cities" and allowed the substitution of the term "statutory cities" for "villages" and/or "boroughs." (A.A. 109-112.) A fourth amendment in 1974 rewrote subdivision 4. (A.A. 113-115.)

The Minnesota Supreme Court has issued few decisions involving Minn. Stat. § 466.12. See Larson v. Indep. Sch. Dist. No. 314, 289 N.W.2d 112 (Minn. 1979) (holding that principal who was liable to minor injured in physical education class was not entitled to indemnity from school district, which was immune under Minn. Stat. §§ 466.07, subd. 1, 466.12, subds. 2, 3a); Scott v. Indep. Sch. Dist. No. 709, 265 N.W.2d 485 (Minn. 1977) (holding that school district that did not have insurance coverage to meet maximum statutory liability standards, but made a good faith attempt to procure such insurance, was liable for difference between insurance coverage and statutory liability limits where such insurance was obtainable); Faber v. Roelofs, 311 Minn. 428, 250 N.W.2d 817 (1977) (stating Minn. Stat. § 466.12, subdivision 3a, mandates that

11 1974, ch. 472, § 1, 1974 Minn. Laws 1189, 1189-90; Act of Apr. 19, 1973, ch. 123, Art. V, § 7, 1973 Minn. Laws 209, 226. (A.A. 109-115.) The statute was amended most recently in 1996 when the legislature repealed its expiration date.⁹ Act of Mar. 15, 1996, ch. 310, § 1, 1996 Minn. Laws 185, 186-87. (A.A. 116-119.) In sum, the legislature examined section 466.12 in the 1960s and 1970s and again in 1996, but did not amend the dollar amount contained in subdivision 3a.¹⁰ Had the legislature intended to alter the dollar amount, it had ample opportunity to do so.

IV. SECTION 466.12, SUBDIVISION 3A, IS RATIONALLY RELATED TO THE LEGITIMATE PURPOSE OF ENSURING THE FISCAL STABILITY OF SCHOOL DISTRICTS

Respondents' constitutional challenge arises under the Equal Protection Clauses contained in the 14th Amendment of the United States Constitution and Article I, Section 2 of the Minnesota Constitution. Statutes are presumed to be constitutional. See Estate of Jones v. Kvamme, 529 N.W.2d 335, 337 (Minn. 1995). Courts will uphold a statute unless the party challenging the constitutionality of the statute proves beyond a reasonable doubt that it is unconstitutional. Id.; Snyder v. City of Minneapolis, 441 N.W.2d 781, 788 (Minn. 1989).

school districts obtain liability insurance meeting the requirements of Minn. Stat. § 466.04).

⁹ No additional legislative history is available for the original promulgation of and amendments to section 466.12 that occurred in the 1960s and 1970s, nor was the 1996 repealer accompanied by any explanatory language or history.

¹⁰ The District's 2001 request for certification from the Commerce Department also brought the statute to the Department's attention, which could have encouraged legislative involvement if deemed necessary.

The federal and state constitutions require that similarly situated individuals be treated similarly. In re Estate of Turner, 391 N.W.2d 767, 769 (Minn. 1986). An equal protection challenge to the constitutionality of Minn. Stat. § 466.12, subdivision 3a, is reviewed under a rational basis standard because no fundamental right or suspect class is at issue. Granville I, 668 N.W.2d at 230.¹¹ Minnesota courts have discussed two formulations of the rational basis test. Scott v. Minneapolis Police Relief Ass'n, 615 N.W.2d 66, 75 (Minn. 2000). Under the federal constitution, courts consider whether the challenged legislation has a legitimate purpose and whether it was reasonable for legislators to believe that the use of the challenged classification would promote that purpose. Id. at 74. The rational basis test under the Minnesota Constitution 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 is 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.

Id. (internal citations omitted). Although the Minnesota Supreme Court has stated these two formulations “merely represent different ways of stating the same analysis[.]” In re

¹¹ Minnesota courts apply strict scrutiny to legislative classifications that limit a fundamental right or involve a suspect classification. Krueth v. Indep. Sch. Dist. No. 38, 496 N.W.2d 829, 835 (Minn. Ct. App. 1993) (citations omitted). This Court previously rejected Respondent’s argument that this case involves a racial classification or fundamental right warranting strict scrutiny under the state or federal constitutions. Granville I, 668 N.W.2d at 233-34.

Estate of Turner, 391 N.W.2d at 770 n.2, this Court has described the Minnesota rational basis test as more stringent than that used in the federal courts. State v. Frazier, 631 N.W.2d 432, 435 (Minn. Ct. App. 2001).

Section 466.12, subdivision 3a passes constitutional muster under both the federal and state rational basis tests. The Spanel decision does not suggest otherwise. While Spanel revealed the judiciary's concerns about the propriety of school district immunity, the court's decision to prospectively abrogate school district immunity was not based on constitutional considerations and does not support a constitutional challenge to section 466.12. Spanel, 264 Minn. at 292, 118 N.W.2d at 803.

A. Ensuring Financial Stability Is A Legitimate Government Purpose

Under both the federal and state rational basis tests, a statute must promote a legitimate state purpose. The district court correctly noted that protection of a governmental entity's financial stability is a legitimate public purpose. (A.A. 10 (citing Lienhard v. State, 431 N.W.2d 861, 867 (Minn. 1988)).) Minnesota courts have considered numerous challenges to the constitutionality of governmental tort immunity under Chapter 466 of Minnesota Statutes (governing actions against municipalities) and Minn. Stat. § 3.736 (governing actions against the state). In those cases, courts applied the rational basis test to repeatedly uphold the constitutionality of these statutes, reasoning that governmental immunity is rationally related to the legitimate purpose of preserving resources and ensuring fiscal stability. See, e.g., Lloyd v. City of St. Paul, 538 N.W.2d 921, 924-25 (Minn. Ct. App. 1995) (holding that municipal recreational

immunity statute is rationally related to the legitimate purpose of preserving outdoor recreational resources and does not violate equal protection); Snyder v. City of Minneapolis, 441 N.W.2d 781 (Minn. 1989) (holding that cap on state tort liability is rationally related to legitimate purpose of insuring fiscal stability); Lienhard, 431 N.W.2d at 867 (holding that cap on state tort liability is rationally related to legitimate government objective of insuring fiscal stability); Bjorkquist v. City of Robbinsdale, 352 N.W.2d 817, 819 (Minn. Ct. App. 1984) (holding that discretionary act immunity from tort liability is rationally related to legitimate governmental purpose of allowing official to perform duties unfettered by prospect of tort litigation).

Simply put, governmental immunity does not offend the constitution because it is rationally based. In Lienhard, 431 N.W.2d at 867, the Minnesota Supreme Court upheld the constitutionality of liability caps for actions against the state. The court specifically rejected the argument that the language in prior cases addressing the court's intent to abrogate sovereign immunity reflected that sovereign immunity did not have a rational basis. Id. The court also noted that its prior decisions were not based on constitutional principles and that "the legislature was not precluded from restoring governmental immunity." Id. The rational basis underlying section 466.12 is similar to that supporting the statutory cap on tort damages recoverable from the government; it is rationally related to the government's legitimate interest in spending more dollars on education and fewer dollars on tort litigation.¹²

¹² Although not contained in the record, Respondents' counsel has acknowledged, in a magazine article written after the district court's opinion, that the District did not have a

B. The Classification Contained In Section 466.12, Subdivision 3a, Is Not Arbitrary

Minnesota's rational basis test also requires that distinctions created by statutory classifications be genuine and substantial, rather than arbitrary, to provide a reasonable basis for the statute. Scott, 615 N.W.2d at 74. "The difference between classes need not be great, and if any reasonable distinction can be found, a court should sustain the classification." ILHC of Eagan, LLC v. County of Dakota, 693 N.W.2d 412, 422 (Minn. 2005).

The district court criticizes the \$1.50 classification because it has not been revised since 1969 and, under current market conditions, "all" school districts are immune if they seek certification. (A.A. 15.) This Court should reject both criticisms. Significantly, Respondents have conceded, and the district court has acknowledged, that the \$1.50 per pupil rate contained in section 466.12, subdivision 3a was not arbitrary when first promulgated. (A.A. 11, 28 (noting the \$1.50 per pupil rate was once considered market).)

The heart of the district court's challenge to section 466.12 is that the \$1.50 per pupil insurance rate in the statute is outdated and does not meet "current market conditions." (A.A. 15.) The district court's reliance on "current market conditions" reflects a departure from the way Minnesota courts have applied the rational basis test and is not a proper standard by which to determine that subdivision 3a contains an arbitrary classification. The district court focused on "current market conditions" based

budget that would allow it to fund adequate teaching and purchase insurance to compensate negligence victims. Michael L. Weiner & Christopher J. Moreland, The Minneapolis School District is No Longer the "King That Can Do No Wrong," Minn. Trial Law. Ass'n, Summer 2005, at 8, 38.

on the language from Granville I, 668 N.W.2d at 234-35, in which the court of appeals stated, “[a]t this early stage of the proceedings, there is insufficient evidence from which the district court can determine whether the legislature’s choice of a rate of \$1.50 per student is arbitrary under current market conditions, as appellants assert, or, on the contrary, creates a constitutional classification that is relevant to the statute’s purpose.”

(See A.A. 15 (citing Granville I.)

There is no readily apparent legal authority for incorporating “current market conditions” into a rational basis analysis involving the federal or state Equal Protection Clauses. Granville I cites no authority for its reference to the use of “current market conditions” to determine whether the rate is arbitrary. Also, careful review of Minnesota and federal case law reveals no decisions in which the appellate courts have held that a statute must comport with “current market conditions” to survive a rational basis challenge under the Equal Protection Clauses. Decisions using related principles are not apparent.¹³

¹³ A number of cases that discuss market conditions in other contexts indicate market conditions are not an appropriate measure of constitutionality. See Mgmt. Computer Servs., Inc. v. Hawkins, Ash, Baptie & Co., 592 N.W.2d 279, 326 (Wis. Ct. App. 1998) (rejecting due process challenge related to allegedly excessive damages award of post verdict and prejudgment interest, holding the constitution does not require statutory interest rates stay “in virtual lock-step with every fluctuation in market conditions”). In fact, some case law suggests that statutes incorporating market conditions may be unconstitutional. See Nat’l Meat Ass’n v. Deukmejian, 743 F.2d 656, 661 n.3 (9th Cir. 1984) (analyzing allegedly discriminatory tax under the Commerce Clause and rejecting scheme for allowing tax that would fluctuate as a function of market conditions); Avella v. Almac’s Inc., 211 A.2d 665, 673 (R.I. 1965) (holding “existing market conditions” clause in Unfair Sales Practices Act violated due process clause; formula in statute requiring retailers to assess “existing market conditions” was unreasonably vague).

This Court should not embrace the new standard because it has troubling ramifications. “Current market conditions,” by definition, are changing constantly. Requiring statutes to comport with “current market conditions” places a sizable burden on courts and the legislature and creates needless uncertainty in the law. Introducing this standard means that any statute that contains a dollar figure will be subject to repeated constitutional challenges to determine whether that amount falls within “current market conditions.” Presumably, such challenges could occur even after a very short amount of time, forcing the legislature to constantly monitor and revise statutes that contain dollar figures to keep them current in light of variable market conditions.

This is particularly true in the insurance context. While his opinions were largely conclusory, Respondents’ expert, David Lanigan, opined that insurance pricing and availability increases and decreases in a cyclical framework. (A.A. 63.) The use of “current market conditions” as a measure of the constitutionality of section 466.12, subdivision 3a, would require constant monitoring by the legislature to ensure that the statute’s per pupil rate comports with that cyclical framework at all times.

Similar problems are apparent in other statutory schemes that employ dollar figures. For example, the district court in this case discussed Lienhard, 431 N.W.2d at 868, to demonstrate that the legislature failed to periodically review and revise section 466.12, subdivision 3a, in light of changed market conditions. (A.A. 15.) Lienhard was decided in 1988 and involved an equal protection challenge to damages caps in Minn. Stat. § 3.736. Id. The legislature amended the amounts of the damages caps in section 3.736, subdivision 4, in 1976 and 1983, shortly before Lienhard was

decided, but did not again adjust the caps until 1997. Act of May 22, 1997, ch. 210, § 1, 1997 Minn. Laws 1915, 1915. Market conditions certainly changed between 1983 and 1997. Pursuant to a “current market conditions” standard, however, the damages caps in Lienhard are open to constitutional challenge under the equal protection clause. “Current market conditions” – as a component of rational basis analysis – is not only without precedent but also unworkable, putting the courts in the position of standing watch over the dollar figures that the legislature writes into law.

Even assuming this Court considers “current market conditions” and determines that the \$1.50 per pupil rate is outdated, that hardly supports the conclusion that the statute is not rationally based. Specifically, the presumption of constitutionality applies not only to the statute as it was created in 1969 but also the legislature’s failure to change the statutory rate since that time in light of the record in this case. The legislature has reviewed section 466.12 more than once since 1969 and as recently as 1996 when it repealed the expiration date. Amendments to section 466.12 reveal that the legislature examined section 466.12, subdivision 3a, after it was enacted and declined to further amend the statute or change its application despite simultaneous changes in the insurance industry and school funding.

The legislature is well aware that Minnesota school districts face financial crisis. In recent years, the funds the legislature has made available for education have lagged behind the rate of inflation and school district costs, forcing school districts to make budget cuts. (A.A. 71.) School districts make cuts to the classroom the last resort so they can maximize their ability to perform their primary function of educating students. (See

A.A. 72.) Given the difficult budget issues facing school districts, the legislature's failure to change the dollar amount in subdivision 3a, despite having several opportunities to do so, implies a legislative policy decision and commitment to provide immunity uniquely reserved for school districts despite changing market conditions in the insurance industry.

Additionally, the potential immunity of all school districts does not support the conclusion that section 466.12 is unconstitutional. The Spanel decision specifically recognized that school district immunity is not a constitutional affront, but a matter of public policy for the legislature. Spanel, 264 Minn. at 291-92, 118 N.W.2d at 809. Also, even assuming all school districts are currently eligible for immunity under section 466.12, the immunity is not arbitrary or automatic, but a policy decision for the school district, subject to revision by the legislature. School districts are entitled to immunity under section 466.12 only *if* they make a good faith effort to obtain insurance for \$1.50 per student *and* apply for and receive certification from the Commerce Department stating that such insurance is unobtainable. Even when insurance may be obtained only in excess of \$1.50 per pupil, school districts nonetheless may obtain insurance or choose not to seek the certification that would entitle them to immunity from tort liability.

In sum, a statute's failure to comport with "current market conditions" is an unworkable and inappropriate measure of constitutionality under a rational basis analysis, and departs from prior decisions applying the rational basis test. The \$1.50 per pupil rate creates a genuine and substantial distinction based on the cost of insurance and is

reasonably justified by the goal it was designed to achieve: providing a mechanism for school districts to achieve financial stability. In light of budget constraints plaguing Minnesota's schools, the \$1.50 per pupil rate contained in section 466.12, subdivision 3a, is reasonably related to the legitimate purpose of protecting the fiscal stability of school districts.

C. Section 466.12, Subdivision 3a, Is Relevant To Achieving Fiscal Stability

Finally, under Minnesota's rational basis test, the \$1.50 per pupil rate in section 466.12, subdivision 3a, must be relevant to the purpose of the statute. Limitations on liability "emerge[] as a classic example of an economic regulation – a legislative effort to structure and accommodate the burdens and benefits of economic life." Lienhard, 431 N.W.2d at 867 (quotation omitted). The preceding section noted the increasingly serious budget crisis facing Minnesota schools. Section 466.12, subdivision 3a, is relevant to relieving that strain, particularly in light of increasing insurance costs.

According to Respondents' expert, the insurance market has "changed dramatically" since the 1969 amendment adding subdivision 3a to section 466.12. (A.A. 41, 62.) Respondents' expert also opined that every ten years, pricing for insurance increases and availability becomes restricted. (A.A. 63.) Given that the cost of insurance has undisputedly increased while the budget problems facing schools continue to worsen, the legislature's decision to leave unchanged the \$1.50 rate contained in the statute compels the inference that the statute is relevant to the legislature's original goals of preserving the financial integrity of Minnesota schools.

The fact that section 466.12, subdivision 3a may deny recovery for Respondents is immaterial when determining whether the statute is genuine or relevant to assisting school districts work toward achieving financial stability. Prior decisions indicate this Court will apply immunity as designated by the legislature even where immunity bars any recovery. See, e.g., Watson v. Metro. Transit Comm'n, 553 N.W.2d 406 (Minn. 1996).

Because the public schools are constitutionally required to educate, Skeen v. State, 505 N.W.2d 299, 313 (Minn. 1993), the legislature clearly has the obligation to balance other concerns to serve that end. Without question, every dollar taken away from a school district decreases its ability to properly educate its students. Section 466.12, subdivision 3a provides an evident connection between the need for fiscal integrity and financial stability with immunity by limiting the per pupil cost of insurance premiums. Section 466.12, subdivision 3a satisfies all three prongs of Minnesota's rational basis test.

V. HOLDING SECTION 466.12, SUBDIVISION 3A, UNCONSTITUTIONAL THREATENS THE LEGISLATURE'S ROLE

The separation of powers doctrine is a deeply rooted and fundamental principle governing the constitutional operation of government. Wulff v. Tax Court of Appeals, 288 N.W.2d 221, 222 (Minn. 1979). While the formulation of a balanced government has changed over time, the basic principle recited by renowned political philosophers remains the same: "too much power in the hands of one governmental branch invites corruption and tyranny." Id. at 223. Accordingly, "[d]ue respect for coequal branches of

government requires this [C]ourt to exercise great restraint in considering the constitutionality of statutes. . . .” State v. Johnson, 514 N.W.2d 551, 554 (Minn. 1994).

The Minnesota Supreme Court has clearly recognized that “[t]he legislature is eminently capable of providing for immunity when it so desires.” Minn. Brewing Co. v. Egan & Sons Co., 574 N.W.2d 54, 62 (Minn. 1998) (noting the legislature enacted a co-employee immunity provision in Minn. Stat. § 176.061, subdivision 5). For example, the entire premise of statutory immunity is based on separation of powers. Minder v. Anoka County, 677 N.W.2d 479 (Minn. Ct. App. 2004); see also Zank v. Larson, 552 N.W.2d 719, 175 (Minn. 1996) (noting the underlying purpose of statutory or discretionary immunity is “to preserve the separation of powers by preventing courts from passing judgment on policy decisions entrusted to coordinate branches of government”).¹⁴

Precedent establishes that legislative exceptions to governmental tort liability are constitutional and the courts will apply immunity as designated by the legislature. Minnesota courts defer to the legislature to define governmental tort liability. See, e.g., Spanel, 264 Minn. at 291-92, 118 N.W.2d at 809. Even outside the context of governmental immunity, the courts have given similar deference to the legislature. See, e.g., Beaudette v. Frana, 285 Minn. 366, 368-69, 173 N.W.2d 416, 417-18 (1969) (deferring to traditional legislative determination of public policy concerns and abrogating interspousal immunity in tort actions only after legislature declined invitation

¹⁴ Minnesota courts have indicated that statutory immunity for government officials’ discretionary acts “exists to prevent the courts from conducting an after-the-fact review which second-guesses certain policy-making activities that are legislative or executive in nature.” Conlin v. City of St. Paul, 605 N.W.2d 396, 401 (Minn. 2000) (citations omitted); see also Minn. Stat. § 466.03, subd. 6 (2004).

to do so). Thus, even if the courts disagree with the choice the legislature made in section 466.12, “[i]t is incumbent upon the legislature to balance myriad competing interests and to allocate the State’s resources for the performance of those services important to the health, safety, and welfare of the public.” Lienhard, 431 N.W.2d at 867 (emphasis added).

Here, the legislature weighed public policy considerations when it conferred immunity on school districts under section 466.12, subdivision 3a. By declaring the \$1.50 per pupil rate unconstitutional, the district court usurped the legislature’s role and abrogated the legislature’s decision to provide immunity to school districts that cannot obtain insurance at a specific rate. The legislature, rather than the courts, should determine the terms of that immunity.

VI. EVEN IF THIS COURT HOLDS SECTION 466.12 UNCONSTITUTIONAL, ITS HOLDING SHOULD NOT BE APPLIED TO THIS CASE

While retrospective effect is neither constitutionally prohibited nor required, Minnesota courts have indicated that prospective application of a new rule is preferable where there is reliance upon an older standard. See Spanel, 264 Minn. at 292, 118 N.W.2d at 803; see also State v. Olson, 258 N.W.2d 898 n.15 (Minn. 1977). Here, the district court’s refusal to apply the language of section 466.12, subdivision 3a, to this case is unjust. In Spanel, the court prospectively overruled the doctrine of sovereign tort immunity as a defense in a case involving injuries sustained by a child at an elementary school. Id. at 294, 118 N.W.2d at 804. While the court noted that it may appear unfair to deprive the plaintiff in that case of his day in court, the court declined to apply its ruling

to hold the school district in that case liable because “it would work an even greater injustice to deny defendant[s] and other units of government a defense on which they have had a right to rely.” Id.

Section 466.12, subdivision 3a was a valid law on which the District was entitled to rely. Given its limited budget, the district court’s refusal to apply section 466.12, subdivision 3a to provide the District with immunity from liability this case on the basis that it is unconstitutional will cause hardship to the District and ultimately impact students and other members of the public who depend on the District’s limited funds for education rather than lawsuits. Thus, if this Court determines section 466.12, subdivision 3a is unconstitutional, it should limit its holding to future cases and decline to hold the District liable in this case.

CONCLUSION

Despite its decision to modify the immunity from tort liability afforded to municipalities, the legislature carved out a unique area of immunity for school districts in Minn. Stat. § 466.12. Subdivision 3a is merely an exception to the immunity granted to school districts and operates to ensure that insurance rates will not jeopardize the financial stability of school districts and the welfare of their students. Minnesota’s school districts are required to educate students with increasingly fewer dollars. Section 466.12, subdivision 3a allows school districts to spend those limited dollars on education rather than lawsuits. “Current market conditions” are irrelevant to a constitutional analysis of the \$1.50 per pupil rate contained in subdivision 3a and the legitimate need for school

districts to maintain financial integrity. Subdivision 3a passes constitutional scrutiny under the state and federal rational basis tests.

Moreover, any judicial intervention that abrogates all or part of subdivision 3a will affect the scope of immunity the legislature granted to school districts and usurp the role of the legislature. Changes to the statute will also modify the way school districts are allowed to budget money, which is within the realm of policy decisions this Court is required to leave to the legislature. This Court should reverse the district court and direct that summary judgment be granted for the District based on the immunity constitutionally provided under section 466.12, subdivision 3a.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the Minn. R. Civ. App. P. 132.01, subd. 3, for a brief produced using the following font:

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