

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 REPLY BRIEF

RIDER BENNETT, LLP
 Diane B. Bratvold (#18696X)
 Shanda K. Pearson (#340923)
 33 South Sixth Street
 Suite 4900
 Minneapolis, MN 55402
 (612) 340-8900

Attorneys for Appellant

YAEGER, JUNGBAUER & BARCZAK, PLC.
 Erik D. Willer (#330395)
 Michael L. Weiner (#127991)
 Christopher J. Moreland (#278142)
 745 Kasota Avenue
 Minneapolis, MN 55414
 (612) 333-6371

Attorneys for Respondents

YOST & BAILL, LLP
 Steven L. Theesfeld (#216860)
 2050 U.S. Bank Plaza South
 220 South Sixth Street
 Minneapolis, MN 55402
 (612) 338-6000

*Attorneys for Amicus Curiae
 Minnesota Trial Lawyers Association*

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ARGUMENT

In the 1960s, the legislature adopted a general rule of school district immunity, but required school districts to obtain insurance and exposed school districts to legal claims to the extent of that insurance. The legislature also created Minn. Stat. § 466.12, subd. 3a as an exception to the mandatory insurance provisions for those districts that did not qualify for insurance at a specific per pupil rate and reaffirmed immunity for those districts. Without dispute, this statute limits the financial burdens plaguing Minnesota's schools districts. It provides an evident connection between the legitimate government purpose of providing financial stability and the need for immunity by limiting the costs school districts must pay for insurance. Minn. Stat. § 466.12, subd. 3a survives scrutiny under the state and federal rational basis tests. Respondents do not challenge the rational basis of the statute at the time it was passed, but argue instead that, at some unknown point in time, it "became" unconstitutional.

Respondents ask this Court to focus solely on whether Minn. Stat. § 466.12, subd. 3a, is arbitrary in light of "current market conditions," yet Respondents provide absolutely no analysis regarding the propriety of "current market conditions" as measure of constitutionality under the federal and state Equal Protection Clauses. The use of the "current market conditions" standard has not been analyzed or decided by this Court in any prior decision, and is not the law of the case. Even if the law of the case includes "current market conditions," this Court has the discretion to more fully analyze the issue in this appeal.

Respondents also lose sight of the fact that *Spanel* was not the last word on school district immunity. *Spanel* was a policy-based decision that deferred to the legislature. While *Spanel* overturned common law immunity, the legislature created statutory immunity. Respondents' assertion that section 466.12, subd. 3a no longer delineates between classes of school districts only emphasizes that the statute does not implicate Equal Protection or other constitutional issues that this Court should decide. Rather, any changes to section 466.12, subd. 3a should be made by the legislature.

I. THE LAW OF THE CASE DOES NOT REQUIRE THIS COURT TO APPLY THE "CURRENT MARKET CONDITIONS" STANDARD

Respondents devote only one footnote in their brief to discussing whether "current market conditions" are a measure of constitutionality. (Resp. Br. at 24 n.11.) In addition to mentioning *Lienhard v. State*, 431 N.W.2d 861 (Minn. 1988), the only parallel Respondents draw between "current market conditions" and constitutional analysis involves cases under the federal Takings Clause. (*Id.*) This is a poor parallel to draw because, under applicable case law, a Takings claim requires that the government compensate individuals for the fair market value of property taken for public benefit. The Equal Protection Clause does not incorporate fair market value or "current market conditions," either expressly or by case law.

Respondents essentially hang their hat on the argument that this Court has already decided that Equal Protection includes an analysis of "current market conditions" and this standard is the law of the case. (Resp. Br. at 4-5.) The law of the case doctrine does not apply to this Court's reference to "current market conditions" in the first appeal of this

case. See *Granville v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1*, 668 N.W.2d 227, 234-35 (Minn. Ct. App. 2003) (*Granville I*). Even if the doctrine applies, this Court should decline to apply “current market conditions” simply as a matter of law of the case.

The law of the case doctrine is a rule of practice that generally provides that once an issue is considered and adjudicated, that issue should not be relitigated in a second appeal. *Sigurdson v. Isanti County*, 448 N.W.2d 62, 66 (Minn. 1989). What Respondents fail to acknowledge is that “only questions that are *decided* . . . become the law of the case.” *Cayse v. Foley Bros.*, 260 Minn. 248, 254, 110 N.W.2d 201, 205 (1961) (citation omitted) (emphasis added) (holding court’s comment that the evidence in the record did not conclusively establish plaintiff was contributorily negligent or assumed the risk was not the law of the case because the court did not determine that defendant established either theory as a matter of law).

In the first consolidated appeal of these matters, this Court did not decide that “current market conditions” was the proper measure by which to determine whether section 466.12, subd. 3a is constitutional. To the contrary, this Court stated:

At 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.

Granville I, 668 N.W.2d at 234-235 (emphasis added). The remainder of the Court’s opinion discussed whether the rational basis test or strict scrutiny analysis applied to Respondents’ constitutional challenge. *Id.* at 230-34. Absent any discussion of the use of “current market conditions” as a measure of constitutionality, the above language may

be more properly interpreted as an effort by this Court to frame the parties' competing arguments for remand. This Court did not decide whether "current market conditions" should govern the constitutionality of section 466.12, subd. 3a.

Even if the law of the case doctrine applies, the doctrine is discretionary. *Sands v. Am. Ry. Express Co.*, 159 Minn. 25, 26, 198 N.W. 402 (1924) (stating the rule does not impose a limitation on this Court's power to reconsider an issue). The law of the case doctrine is not a rule of substantive law or appellate authority, but instead a matter of judicial policy. *Braunworth v. Control Data Corp.*, 483 N.W.2d 476, 476 n.1 (Minn. 1992) (stating the law of the case is "a rule of practice, not of substantive law"). Because it is discretionary, the law of the case doctrine does not and should not limit this Court from carefully considering in this appeal whether "current market conditions" is an appropriate measure of constitutionality.

Rather than adopting the standard as the law of the case when the alleged determination did not receive discussion or scrutiny in *Granville I*, this Court should exercise its discretion to more fully examine the issue. Appellate courts have not used "current market conditions" to analyze Equal Protection claims and use of the standard would only increase the burden on the courts and create needless uncertainty in the law. (App. Br. at 19.) "Current market conditions" are not a proper measure of constitutionality under the state or federal Equal Protection Clauses.

II. THE LEGISLATURE PROVIDED STATUTORY IMMUNITY FOR SCHOOL DISTRICTS AFTER SPANEL AND THE COURT SHOULD DEFER ANY DECISION TO ALTER THAT IMMUNITY TO THE LEGISLATURE

Respondents assume that school district immunity under section 466.12, subd. 3a is unconstitutional in part because the Minnesota Supreme Court rejected it as a common law doctrine in *Spanel v. Mounds View School District*, 264 Minn. 279, 292, 118 N.W.2d 795, 803 (1962). The *Spanel* decision, however, rejected school district immunity as a common law doctrine on policy grounds and did not decide constitutional issues. *Id.* at 290-92, 118 N.W.2d at 802-03. This limits *Spanel's* applicability to the issues in this appeal.

Moreover, *Spanel* was not the last word on school district immunity. In fact, in *Spanel*, the court deferred to the legislature to define the parameters of tort liability and immunity. *Id.* at 292, 118 N.W.2d at 803. Respondents virtually ignore the legislature's decision, after *Spanel*, to adopt a general doctrine of school district immunity. Minn. Stat. § 466.12, subd. 2 (establishing "governmental immunity from tort liability" for school districts as previously defined by Minnesota courts before *Spanel*). The legislature did not enact Minn. Stat. § 466.12, subd. 3a as an exception to that general grant of immunity until six years later.

Respondents do not address existing case law that recognizes the constitutional operation of the government requires the legislative and judicial branches to have separate and distinct roles in creating and modifying the law. The legislature is constitutionally empowered to adopt and define immunity and the courts defer to the

legislature to balance policy interests to allocate limited financial resources. (App. Br. at 23-24.) It is inappropriate to ask this Court to weigh competing policy interests and thereby alter the terms of the statutory immunity granted under section 466.12, subd. 3a. For a policy change in statutory law, legislative action is required.

III. SECTION 466.12, SUBD. 3A IS CONSTITUTIONAL UNDER THE EQUAL PROTECTION CLAUSE

A. If Section 466.12, Subd. 3a Creates A Classification, It Satisfies Equal Protection

Section 466.12, subd. 3a classifies school districts by the per pupil cost of insurance in order to determine those that may apply for certification and obtain immunity from suit. Viewed in this light, the statute satisfies both the federal and state rational basis tests. First, the statute promotes the legitimate purpose of helping Minnesota's schools achieve financial stability. (App. Br. at 15-16.) Second, the statutory insurance rate is not arbitrary, but is based on a policy to ease financial hardship to school districts. (*Id.* at 17-22.) Finally, an evident connection exists between the need for financial stability and immunity by limiting the per pupil cost of insurance premiums. (*Id.* at 22-23.)

Respondents do not dispute that, as originally enacted, the statute served a legitimate legislative purpose. (Resp. Br. at 18.) Respondents' argument instead focuses on the second of the above prongs, which provides that an arbitrary classification cannot provide a reasonable basis for a statute. *Scott v. Minneapolis Police Relief Ass'n*, 615 N.W.2d 66, 74 (Minn. 2000). Respondents emphasize the legislature has failed to update the insurance rate and argue that this demonstrates the \$1.50 per pupil rate is arbitrary.

But Respondents' argument fails to consider the statute's legislative history. (Resp. Br. at 18.)

The legislature has revisited section 466.12, subd. 3a on numerous occasions since its enactment and has not amended the insurance rate. (App. Br. at 12-13.) During this same time period, school district financing has changed dramatically; school budgets have been slashed, and insurance rates have climbed. Thus, because the legislature's decision not to amend Subdivision 3a is entitled to deference, we can infer the legislature intended the statute to remain intact despite, or even because of, changing market conditions in the insurance industry. *See Dockendorf v. Lakie*, 240 Minn. 441, 447-48, 61 N.W.2d 752, 756 (1953) (noting that when the legislature revisited a workers' compensation statute, it would have made other amendments to the statute if necessary). The financial challenges facing schools also support the legislature's decision not to amend the statute.

Moreover, Respondents do not challenge that section 466.12, subd. 3a fully complied with the Equal Protection Clause when first promulgated. (Resp. Br. at 17.) Existing case law establishes that this Court has examined the legislative facts and effects of a statute at the time the legislature adopted it to assess whether it is constitutional under the rational basis test. *See, e.g., Guilliams v. Comm'r of Revenue*, 299 N.W.2d 138, 141 n.3 (Minn. 1980) (quoting *Vance v. Bradley*, 440 U.S. 93 (1979) (noting the challenger must show "the legislative facts on which the classification is apparently based could not reasonably be conceived to be true by the governmental decisionmaker")); *Little Earth of United Tribes, Inc. v. Hennepin County*, 384 N.W.2d 435, 442 (Minn.

1986) (assuming the legislature investigates and properly determines the propriety of the classification it adopts).

This premise is apparent in a recent Minnesota Supreme Court decision, *ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412 (Minn. 2005). In that case, the court scrutinized a statutory tax exemption enacted in 1993 that applied to buildings constructed before a certain date. *Id.* at 418. The exemption was intended to resolve the county's failure to properly assess a particular property providing housing for individuals who would be greatly impacted by a sudden tax increase. *Id.* at 421-25 (noting evidence indicating only one other property was exempted under the statute since its enactment). The court emphasized the legislature was empowered to consider a broad variety of policy concerns applicable when the statute was enacted and recognized a rational basis for the statute as it applied to a property owner's requests for exemption under the statute in 2001 and 2002. *Id.* at 425.

While the court questioned the legislature's decision not to include a sunset provision, it noted that "[t]he wisdom and social effects of a statute lie within the secure domain of the legislature." *Id.* at 423, 424-25. As in *ILHC of Eagan, LLC*, the \$1.50 per pupil rate may lead Respondents to question the propriety of section 466.12, subd. 3a, but the statute reflects a legislative policy decision that had a rational basis when it was enacted. Any modifications to the statute should be left to the legislature.

Finally, the rational basis test requires a relatively low level of judicial scrutiny. A statute can survive constitutional scrutiny where the basis for the statute is reasonably debatable. *See Doll v. Barnell*, 693 N.W.2d 455, 461 (Minn. Ct. App. 2005) ("[F]airly

debatable questions as to [a law's] reasonableness, wisdom, and propriety are not for the determination of the courts . . ."); *Rio Vista Non-Profit Housing Corp. v. Ramsey County*, 335 N.W.2d 242, 245-46 (Minn. 1983) (noting the legislature has no obligation to state its purpose for a classification, and a classification "will be sustained as having a rational basis if any conceivable state of facts supports it."). *But see State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991) (noting Minnesota rejects a hypothetical rational basis).

Here, Respondents ask this Court to favor one side of the debate and reject immunity under Subdivision 3a. But this approach does not comport with the rational basis test because it neglects the competing policy interests in support of the statute and the changing economic circumstances facing Minnesota schools. Over the years, school districts have had to work with increasingly limited budgets and make difficult financial choices. Moreover, these budget problems are not simply a matter of money going to tort claimants or students. Public schools have a constitutional obligation to educate. *Skeen v. State*, 505 N.W.2d 299, 313 (Minn. 1993). At the very least, it is reasonably debatable whether school districts, which do not qualify for insurance at the statutory rate, should be able to choose between paying for litigation expenses and making those dollars available to educate children. Thus, section 466.12, subd. 3a meets constitutional scrutiny under the rational basis test.

B. If Section 466.12, Subd. 3a Does Not Create A Classification, Constitutional Analysis Is Not Necessary

Alternatively, to the extent that the legislature's failure to change the insurance rate in section 466.12, subd. 3a has resulted in all school districts qualifying for

immunity, then Subdivision 3a no longer contains a classification and constitutional analysis no longer applies. The Equal Protection Clause requires that similarly situated individuals be treated similarly. *In re Estate of Turner*, 391 N.W.2d 767, 769 (Minn. 1986). In other words, section 466.12, subd. 3a is not subject to an Equal Protection challenge unless the statute operates to treat similarly situated individuals differently. To the extent that the statute no longer differentiates between students located in different school districts, a statutory classification does not exist. This eviscerates the crux of Respondents' argument and the need for this Court to examine section 466.12, subd. 3a under the Equal Protection Clause, which in turn heightens the importance of deferring the remaining public policy concerns to the legislature.

Respondents characterize Minn. Stat. § 466.12, subd. 3a as providing "blanket immunity" and tout that "the classification between schools that qualify for immunity and those that do not has become a nullity" because "every school district in the state now qualifies for immunity." (Resp. Br. at 20, 22.) Essentially, Respondents argue that students in all school districts are in the same position as students in the Minneapolis School District ("the District"). If the statute does what Respondents contend, then the statute does not implicate the Equal Protection Clause because it does not create a classification. Absent a constitutional challenge to the statute, the legislature is the more appropriate body to weigh competing policy interests to determine whether the statute needs to be modified and if so, what modifications should be made. *See Spanel*, 264 Minn. at 292, 118 N.W.2d at 803 (noting the "flexibility of the judicial process - which is denied the judiciary," makes the legislative approach more desirable). In sum,

Respondents' position on the effect of the statutory insurance rate is inconsistent with an Equal Protection challenge and further demonstrates why the legislature rather than the courts should make any necessary changes to section 466.12, subd. 3a.

IV. THE SCHOOL DISTRICT JUSTIFIABLY RELIED ON SECTION 466.12, SUBD. 3A

In its initial brief, the District asserted that 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. Respondents argue that prospective application is not appropriate because the District was not justified in relying on section 466.12, subd. 3a. To support this argument, and in other contexts throughout their brief, Respondents imply that the District did not think the statute was sound and would be held unconstitutional.

Contrary to Respondent's assertions, the District had a right to rely on section 466.12, subd. 3a. The truth is that District representatives testified they were concerned that the statute would be changed if too many school districts sought certification, but had not concluded the statute would be declared unconstitutional by the judiciary. (*See* R.A. 15.) Contrary inferences mischaracterize the record. Additionally, the District should not be penalized for seeking protection from liability that is authorized by Minnesota law. Because school districts are responsible to the public and use tax dollars, the District had a duty to the parents and students to take advantage of available cost-saving measures authorized by the law.

Finally, the fact that the District chooses to settle some tort claims and not others is inapposite to any of the issues in this case. Despite the immunity granted under

section 466.12, subd. 3a, the District has settled some tort claims and, for other cases, asserted the immunity granted under 466.12, subd. 3a. The District's decisions in this regard are not different from any other defendant who chooses to settle some cases and fight others. The District properly makes these decisions to control costs and avoid paying frivolous claims. (*Id.*) The District should not be penalized for taking responsibility for claims it deems meritorious even though it has a viable immunity defense.

V. SCHOOLS ARE RESPONSIBLE FOR STUDENT SAFETY AND EDUCATION IRRESPECTIVE OF SECTION 466.12, SUBD. 3A

The notion that section 466.12, subd. 3a somehow increases the risk of danger to students is a concern trusted to the legislature and not part of a constitutional review. Nonetheless, even if section 466.12, subd. 3a continues without amendment, schools have a responsibility to proceed with reasonable care to ensure the safety of students. Respondents create a specter of decreasing student safety, but this fear is unfounded and contrary to one of Respondents' main theories. Respondents argue on one hand that the District has relatively few tort claims (Resp. Br. at 26-27), but on the other hand assert that if section 466.12, subd. 3a stands, schools will have no incentive to provide a safe environment for their students. (*Id.* at 27-28.) If the latter is correct, the District would have seen an increase in tort claims after it sought and received certification under section 466.12, subd. 3a, yet Respondents assert only few tort claims arise.

Respondents' alarmist theory is faulty on other levels. Whether potential liability actually influences behavior is a questionable premise. *See Hickman v. Group Health*

Plan, Inc., 396 N.W.2d 10, 16 & n.2 (Minn. 1986). Also, there are factors other than potential liability that encourage school districts to provide a safe environment for their students. Public schools and individual school board members are subject to public scrutiny and the electoral process. The public will not stand for unsafe schools and will be quick to respond if a particular district is not ensuring student safety. Additionally, the state highly regulates school districts with regard to student safety. *See, e.g.*, Minn. Stat. § 121A.31 (requiring schools meet guidelines for school lab safety); Minn. Stat. § 121A.32 (requiring students wear protective eye devices in certain situations); Minn. Stat. § 123B.91 (regarding school bus safety).

While the immunity allowed under section 466.12, subd. 3a does not undermine school safety, it does have a large impact on the District's budget. Respondents assert that addressing tort claims will not undermine the District's budget because the District already budgets for litigation expenses. This argument ignores the big picture: Minnesota's schools are in financial crisis. The budget issues currently facing Minnesota schools are different than in 1962 when the court in *Spanel* considered the financial impact of its ruling. (A.A. 68-73.)

The District *can* budget for litigation expenses, but its limited funds would be better spent on education. Under 466.12, subd. 3a, the District can continue to compensate for its insufficient budget by reallocating to education dollars previously earmarked for litigation. In fact, the District has viewed section 466.12, subd. 3a as a tool to maximize the dollars allocated toward education in light of the District's budget shortfall. (R.A. 15 (stating we were looking at our shortfall with our budgets and . . .

should we be spending a million dollars on insurance . . . was that a good use of our dollars or should that money be going to spend or provide for education for kids.”.)

CONCLUSION

The legislature’s role is to resolve competing policy concerns. Here, there are many. Important to the District are the fiscal integrity and financial stability of schools and the need to provide adequate funding to educate children. Respondents elevate the need to allow tort victims an avenue for recovery and cite student safety as an issue. The legislative decision to balance these competing concerns by allowing immunity for schools that cannot obtain insurance at a rate less than \$1.50 per pupil may be arguably unwise, but it is not unconstitutional.

Respectfully submitted,

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RIDER BENNETT, LLP

By *Diane Bratvold*

Diane B. Bratvold (18696X)

Shanda K. Pearson (340923)

Attorneys for Appellant
33 South Sixth Street
Suite 4900
Minneapolis, MN 55402
(612) 340-8900

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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Diane B. Bratvold

33 South Sixth Street
Suite 4900
Minneapolis, Minnesota 55402
(612) 340-8900