

Nos. A05-1377 and A05-1378

State of Minnesota
In Supreme Court

David Granville and Marlyss Granville as parents and natural guardians of Kailynn Granville, a minor, and Jacqueline Johnson as parent and natural guardian of Shanel Andrews, a minor,

Appellants,

vs.

Minneapolis Public Schools,
Special School District No. 1,

Respondent.

**BRIEF OF AMICUS CURIAE
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TABLE OF CONTENTS

| | |
|---|----|
| TABLE OF AUTHORITIES..... | ii |
| STATEMENT OF INTEREST | 1 |
| ARGUMENT..... | 2 |
| I. MINN. STAT. § 466.12, SUBD. 3A DOES NOT CREATE A CLASSIFICATION THAT RESULTS IN THE DISPARATE TREATMENT OF SIMILARLY SITUATED INDIVIDUALS..... | 3 |
| II. EVEN IF MINN. STAT. § 466.12, SUBD. 3A CREATED A CLASSIFICATION THAT RESULTED IN THE DISPARATE TREATMENT OF SIMILARLY SITUATED INDIVIDUALS, THE CLASSIFICATION IS RATIONALLY RELATED TO THE LEGITIMATE INTENDED PURPOSE OF HELPING SCHOOLS REMAIN FINANCIALLY STABLE..... | 6 |
| A. Ensuring the Financial Stability of School Districts is a Legitimate Governmental Purpose..... | 7 |
| B. The Mere Passage of Time Does Not Render a Statute Unconstitutional..... | 10 |
| III. BALANCING COMPETING CONCERNS AND PUBLIC POLICY GOALS IS THE ROLE OF THE LEGISLATURE, NOT THE COURT..... | 13 |
| CONCLUSION | 15 |

TABLE OF AUTHORITIES

Cases

Bernthal v. City of St. Paul

376 N.W.2d 422 (Minn. 1985) 6

Carmichael v. Southern Coal & Coke Co.

301 U.S. 495 (1937)..... 6

Chastleton Corp. v. Sinclair 11, 12

City of Cleburne v. Cleburne Living Ctr.

473 U.S. 432 (1985)..... 6

City of Pipestone v. Madsen

178 N.W.2d 594 (Minn. 1970) 3

City of Richfield v. Local No. 1215

276 N.W.2d 42 (Minn. 1979) 3

Dockendorf v. Lakie

61 N.W.2d 752 (Minn. 1953) 12

Glassmann v. Miller

356 N.W.2d 655 (Minn. 1984) 4

Granville v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1,

716 N.W.2d 387 (Minn. Ct. App. 2006)..... 5, 10

In re Haggerty

448 N.W.2d 363 (Minn. 1989) 3

Kossak v. Stalling

277 N.W.2d 30 (Minn. 1979) 4

Leinhard v. State

431 N.W.2d 861 (Minn. 1988) 6, 7, 8

McGuire v. C & L Rest., Inc.

346 N.W.2d 605 (Minn. 1984) 3

Minneapolis Gas Co. v. Zimmerman

91 N.W.2d 642 (Minn. 1958) 3

| | |
|---|-------|
| <i>Olson v. Ford Motor Co.</i> , 558 N.W.2d 491 (Minn. 1997) | 6, 13 |
| <i>Randall v. Sorrell</i> , 126 S. Ct. 2479 (2006) | 11 |
| <i>Rio Vista Non-Profit Hous. Corp. v. Ramsey County</i> 335 N.W.2d 242 (Minn. 1983) | 6 |
| <i>Schroeder v. St. Louis County</i> 708 N.W.2d 497 (Minn. 2006) | 9 |
| <i>Scott v. Minneapolis Relief Ass'n</i> 615 N.W.2d 66 (Minn. 2000) | 7 |
| <i>Snyder v. City of Minneapolis</i> 441 N.W.2d 781 (Minn. 1989) | 7 |
| <i>Spanel v. Mounds View Sch. Dist. No. 621</i> , 118 N.W.2d 795 (Minn. 1962) | 10 |
| <i>State v. Russell</i> 477 N.W.2d 886 (Minn. 1991) | 7 |
| <i>State v. United Parking Stations, Inc.</i> , 50 N.W.2d 50, 52 (Minn. 1951) | 13 |
| <i>Wegan v. Vill. of Lexington</i> 309 N.W.2d 273 (Minn. 1981) | 4 |
| Statutes | |
| Act of Apr. 11, 1974 Ch. 472, §1, 1974 Minn. Laws 1189 | 12 |
| Act of Apr. 19, 1973 Ch. 123, Art. V, § 7, 1973 Minn. Laws 209 | 12 |
| Act of Mar. 15, 1996, Ch. 310, § 1, 1996 Minn. Laws 185 | 12 |
| Minn. Stat. § 466.12, subd. 1 | 14 |

Minn. Stat. § 466.12, subd. 3apassim
Minn. Stat. §121A.31 14
Minn. Stat. §121A.32 14

Rules

Minn. R. Civ. App. P. 129.03 1

Constitutional Provisions

Minn. Const. Art. I, § 2..... 6
Minn. Const. Art. III, § 1 13
U.S. Const. Amend. XIV § 1.....6

STATEMENT OF INTEREST

The Minnesota Defense Lawyers Association (“MDLA”) was founded in 1963 as a nonprofit Minnesota corporation whose members are trial lawyers in private practice.¹ MDLA is affiliated with the Minnesota State Bar Association and Defense Research Institute, and devotes a substantial portion of its efforts to the defense of civil litigation. During the course of the past 43 years, MDLA has grown to include representatives from more than 180 law firms across Minnesota, and 800 individual members.

The MDLA has a public interest in protecting the rights of litigants in civil actions, promoting the high standards of professional ethics and competence, and improving the many areas of law in which its members regularly practice. Those interests translate into concerns regarding the practical impact of developing law within the civil justice system. To that end, and for the reasons articulated in this brief, the MDLA urges the Court to affirm the Court of Appeals’ ruling that Minn. Stat. § 466.12, subd. 3a does not violate the Equal Protection Clause of either the United States or Minnesota Constitutions.

¹ The undersigned counsel for Amicus Curiae authored the brief in its entirety, and no persons other than Amicus Curiae made a monetary contribution to the preparation or submission of the brief. This disclosure is made pursuant to Minn. R. Civ. App. P. 129.03.

ARGUMENT

Minn. Stat. § 466.12, subd. 3a does not violate the Equal Protection Clause of either the United States or Minnesota Constitutions. The statute does not create a classification that results in the disparate treatment of different classes of similarly situated individuals. Under the statute, all school districts in Minnesota, and every one of their students, receive identical treatment. Whether individual school districts choose to obtain the certification necessary to gain the immunity offered by section 466.12, subd. 3a, or to rely on the immunity in a particular case, is not relevant to the issue of whether the statute is constitutionally sound. The statute potentially provides immunity to all Minnesota districts.

Even if section 466.12, subd. 3a did create a classification under which different classes of similarly situated individuals receive disparate treatment, such a classification comports with the Equal Protection Clause. The statute satisfies both the federal and state rational basis tests. Appellants concede the legislature enacted section 466.12, subd. 3a, in order to effectuate an important policy objective. Their assertion that, through the passage of time, the statute has become arbitrary, and now fails rational basis review, is without support in the law. Such an approach would create uncertainty in our legal system and usurp the Legislature's function.

I. MINN. STAT. § 466.12, SUBD. 3A DOES NOT CREATE A CLASSIFICATION THAT RESULTS IN THE DISPARATE TREATMENT OF SIMILARLY SITUATED INDIVIDUALS.

Minnesota statutes are presumed to be constitutional; the 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. 1989) (citing *City of Richfield v. Local No. 1215*, 276 N.W.2d 42, 45 (Minn. 1979)). The party challenging the constitutionality of a Minnesota statute bears the burden of establishing, beyond a reasonable doubt, that the statute violates a constitutional provision. *Haggerty*, 448 N.W.2d at 364 (citing *McGuire v. C & L Rest., Inc.*, 346 N.W.2d 605, 611 (Minn. 1984)). The great deference the Court gives to the Legislature and the restraint the Court exercises in declaring statutes unconstitutional only where their invalidity is clearly apparent, reflects the important balance and separation of powers between the judicial and legislative branches of government. The Court endeavors to carry out the Legislature’s intent whenever possible. *See City of Pipestone v. Madsen*, 178 N.W.2d 594, 598 (Minn. 1970); *Minneapolis Gas Co. v. Zimmerman*, 91 N.W.2d 642, 650 (Minn. 1958). This approach acknowledges the unique role the Legislature plays in shaping and establishing public policy and promotes consistency and certainty in the law.

The Equal Protection Clauses of the United States and Minnesota constitutions do not prohibit legislation that distinguishes between groups of individuals. The Legislature may establish classifications between individuals so long as the distinctions are fair. At the heart of equal protection concerns is the requirement that similarly situated individuals be treated the same. *See, e.g., Glassmann v. Miller*, 356 N.W.2d 655, 656

(Minn. 1984) (the Equal Protection Clause was violated where a statutory notice-of-claim requirement applied to tort victims of municipalities, but not to tort victims of the state, because there was “no rational basis for distinguishing between municipal and state tortfeasors”); *Wegan v. Vill. of Lexington*, 309 N.W.2d 273, 280 (Minn. 1981) (provisions of the Dram Shop Act that applied only to plaintiffs injured by people intoxicated by “stronger liquor,” violated the Equal Protection Clause because there was no rational basis for distinguishing between people intoxicated from 3.2 beer and those who became intoxicated from drinking “stronger liquor”); *Kossak v. Stalling*, 277 N.W.2d 30, 34 (Minn. 1979) (the Equal Protection Clause was violated where a one-year commencement-of-suit-requirement applied only to municipal tortfeasors, because it drew a distinction that was “not rationally related to any legitimate government function” between municipal and private tortfeasors, who were subject to the general six-year statute of limitations).

Here, equal protection analysis demonstrates section 466.12, subd. 3a does not create a classification under which similarly situated individuals are treated differently. While the statute, on its face, distinguishes between school districts that can and cannot obtain liability insurance for \$1.50 per pupil, there is no scenario under which this classification actually impacts similarly situated individuals differently. This fact is critical. Appellants concede it to be true: “it is not possible for any school in the state of Minnesota to obtain general liability insurance at the rate of \$1.50 per pupil per year...the classification between schools that qualify for immunity and those that do not has become a nullity.” (Appellants’ Brief at 29-30.) The statute affords tort immunity to *any*

school district that is not successful in its good-faith attempt to obtain insurance at a \$1.50-per-pupil rate, and obtains certification from the Department of Commerce to that effect. Minn. Stat. § 466.12, subd. 3a. As the appellate court observed, there is no need to determine whether the statute meets the rational basis test. *Granville v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, 716 N.W.2d 387, 393 (Minn. Ct. App. 2006). Because the statute does not treat similarly situated persons differently, it does not implicate any equal protection concerns. *Id.*

Appellants attempt to avoid this fact by arguing that the Minneapolis School District (“the District”) has invoked the immunity the statute affords in an arbitrary way, paying on some tort claims while relying on the statute to deny claims it considers frivolous. (Appellants’ Brief at 8.) Appellants further suggest that the District’s purported knowledge that the \$1.50 classification is outdated renders application of the statute to bar Appellants’ tort claims unconstitutional. (Appellants’ Brief at 15, 18.) Both of these arguments are misplaced. The fact an individual school district may choose to invoke the immunity offered by section 466.12, subd. 3a, as the District did here, does not change the fact that the statute itself does not treat similarly situated individuals differently. A school district’s decision to take the steps necessary to obtain statutory tort immunity is a decision outside the statute’s mandate. The Court of Appeals correctly held the statute does not create a classification that causes similarly situated individuals to receive disparate treatment. Minn. Stat. § 466.12, subd. 3a is clear on its face. There is no need to resort to rules of construction to determine and effectuate the Legislature’s

intent. *See Olson v. Ford Motor Co.*, 558 N.W.2d 491, 497 (Minn. 1997). The statute bars Appellants' claims in their entirety.

II. EVEN IF MINN. STAT. § 466.12, SUBD. 3A CREATED A CLASSIFICATION THAT RESULTED IN THE DISPARATE TREATMENT OF SIMILARLY SITUATED INDIVIDUALS, THE CLASSIFICATION IS RATIONALLY RELATED TO THE LEGITIMATE INTENDED PURPOSE OF HELPING SCHOOLS REMAIN FINANCIALLY STABLE.

The Equal Protection Clause of the Fourteenth Amendment commands that no state shall "deny any person within its jurisdiction the equal protection of the laws." U.S. Const. Amend. XIV § 1. The Fourteenth Amendment's rational basis test gives states "wide latitude" to enact social and economic legislation. A statute challenged under the federal Equal Protection Clause survives as long as it is "rationally related to a legitimate state interest." *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439-40 (1985).

The Minnesota Constitution similarly provides that no member of the state "shall be disenfranchised or deprived of any of the rights or privileges secured to any citizen thereof, unless by the law of the land or the judgment of his peers." Minn. Const. Art. I, § 2. When a challenged statute involves governmental liability, this Court has followed the federal rational basis approach. *See Leinhard v. State*, 431 N.W.2d 861, 867 (Minn. 1988); *Bernthal v. City of St. Paul*, 376 N.W.2d 422, 425 (Minn. 1985). Under this analysis, a legislative classification "will be sustained as having a rational basis if any conceivable state of facts supports it." *Rio Vista Non-Profit Hous. Corp. v. Ramsey County*, 335 N.W.2d 242, 246 (Minn. 1983)(citing *Carmichael v. Southern Coal & Coke Co.*, 301 U.S. 495, 509 (1937)).

The Minnesota Equal Protection Clause rational basis review is, on occasion, interpreted apart from the federal test. *See, e.g., State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991). Minnesota's rational basis test requires (1) distinctions separating classes to be genuine and substantial, and not manifestly arbitrary or fanciful; (2) classifications to be relevant to the purpose of the law; and (3) the legislative purpose is one the state can legitimately attempt to achieve. *Scott v. Minneapolis Relief Ass'n*, 615 N.W.2d 66, 74 (Minn. 2000) (citing *State v. Russell*, 477 N.W.2d at 888 (Minn. 1991)).

Minn. Stat. § 466.12, Subd. 3a survives constitutional scrutiny under both the federal and Minnesota rational basis tests. The statute's intended purpose of ensuring the fiscal viability of school districts is legitimate. The statute does not create arbitrary distinctions and, as noted above, does not treat similarly situated individuals differently. Notwithstanding Appellants' assertions, the passage of time does not, in and of itself, compromise the statute's validity. The statute does not violate the Equal Protection Clause of the state or federal constitutions and must be upheld.

A. Ensuring the Financial Stability of School Districts is a Legitimate Governmental Purpose.

Appellants acknowledge, as they must, that "[p]rotecting the fiscal condition of school districts is a legitimate objective of the state." (Appellants' Brief at 30.) The protection of a governmental entity's fiscal stability is a legitimate public purpose. *Leinhard*, 431 N.W.2d at 867 (citations omitted). This Court has consistently upheld challenges to governmental tort immunity under rational basis review. *See, e.g., Snyder v. City of Minneapolis*, 441 N.W.2d 781, 789 (Minn. 1989) (ca p on municipal tort

liability is rationally related to the legitimate governmental purpose of insuring financial stability); *Leinhard*, 431 N.W.2d at 867.

In *Leinhard*, this Court upheld the constitutionality of a statute capping liability for tort claims against the state at \$100,000 for any claimant, and \$500,000 for any occurrence. *Leinhard*, 431 N.W.2d at 863, 868. The Court rejected the argument that government tort immunity was “an anachronism, without rational basis,” and reaffirmed that “the protection of a governmental entity’s financial stability is a legitimate public purpose.” *Id.* at 867. The Court thus held that the limitation was “rationally related to the legitimate government objective of insuring fiscal stability to meet and carry out the manifold responsibilities of government,” and therefore did not violate the Equal Protection clauses of the federal or state constitutions. *Id.* at 868.

Chapter 466’s grant of immunity to school districts that are unable to obtain liability insurance at a particular rate is motivated by the same legislative objective the Court approved in *Leinhard*. Like the state tort liability caps, section 466.12, subd. 3a promotes the sound public policy of assisting Minnesota schools in their efforts to be financially stable so they can effectively carry out their responsibilities. As the *Leinhard* court stated, “[i]t is incumbent upon the legislature to balance myriad competing interests.” *Id.* at 867. This Court should likewise defer to the Legislature’s unique ability to evaluate and weigh competing interests.

The classification that appears on the face of section 466.12, subd. 3a is genuinely related to the statute’s purpose. While the parties agree this classification does not actually result in similarly situated persons being treated differently, if it did, the statute

would still pass constitutional muster. A classification based on a school district's ability to obtain liability insurance at a particular rate advances the goal of relieving districts of litigation costs and potentially large tort judgments. Where the cost of the insurance itself is unduly high, the expense of obtaining insurance becomes as burdensome on a school district as the prospect of uninsured tort exposure. The Legislature properly determined both situations place a significant burden on school districts and appropriately exercised its prerogative in immunizing districts from tort liability where its insurance costs exceeded \$1.50 per pupil per year.

The Legislature is authorized to immunize governmental bodies from tort liability. *Schroeder v. St. Louis County*, 708 N.W.2d 497, 503 (Minn. 2006). Tying governmental tort immunity to the cost of insurance creates a distinction that is clearly relevant to the purpose of immunity statutes. Section 466.12, subd. 3a meets any rational basis test.

It is undisputed that school budgets have become even tighter and insurance rates have increased dramatically in the years since the Legislature enacted section 466.12, subd. 3a. (Respondent's App. 39 ¶¶ 14, 17, Ex. 1, 2; Affidavit of David M. Lanigan, Appellants' App. at 42 ¶ 3.) The justification for and strong public policy supporting the statute's immunity provision have not been diminished. To the contrary, the need for this statutory protection has become stronger over time. The statute's aim is sound and critically important to the continued financial viability of Minnesota's schools.

B. The Mere Passage of Time Does Not Render a Statute Unconstitutional.

The Appellants concede the distinction between school districts that could not obtain liability insurance at a rate less than \$1.50 per student and were entitled to statutory immunity and those districts that could obtain insurance at this rate did not establish an arbitrary classification at the time the statute was enacted. *Granville*, 716 N.W.2d at 393 (“this court is limited to analyzing whether the \$1.50 classification was arbitrary at the time it was enacted (the parties agree it was not.)” Instead, Appellants contend it became arbitrary at some unknown point in time, as “current market conditions” changed. (Appellants’ Brief at 26, 29.)

Such an argument presents troubling challenges to the presumption that statutes are constitutionally sound, and the restraint this Court exercises when considering the validity of legislation. The notion that a statute can become constitutionally infirm over time undermines the certainty and predictability of the law. Concerns about certainty in the law prompted his Court to apply its decision abolishing common law sovereign immunity on a prospective basis in *Spanel v. Mounds View Sch. Dist. No. 621*, 118 N.W.2d 795, 803 (Minn. 1962). The *Spanel* court specifically stated:

It may appear unfair to deprive the present claimant of his day in court. However, we are of the opinion it would work an even greater injustice to deny defendant and other units of government a defense on which they have had a right to rely.

Id. at 804. Here, Appellants essentially ask the Court to declare a statute on which school districts have been entitled to rely since 1969 unconstitutional for no other reason than Appellants believe the statute is too old. Concerns that a statute has lost its effectiveness

over time are appropriately directed to the Legislature. They do not provide the occasion for a court to substitute its judgment for that of the Legislature.

Appellants and Amicus Curiae Minnesota Trial Lawyers Association (“MTLA”) cite no controlling or persuasive authority for the proposition that equal protection analysis has a temporal or “current market conditions” element under either federal or state law. In fact, none of the cases Appellants and the MTLA cite for the proposition that a statute involving dollar amounts may become unconstitutional due to changing market conditions involved an immunity provision or equal protection challenge. *Randall v. Sorrell*, 126 S. Ct. 2479 (2006) included a first Amendment challenge to campaign contribution limits. The factual distinctions between *Randall* and the present case make a difference. Simply stated, the First Amendment analysis of whether speech restrictions are “narrowly tailored” is an analysis inapposite to that of Equal Protection rational basis review; the two cannot be analogized. Moreover, even assuming the analyses were analogous to one another, the Vermont statute’s failure to adjust for inflation was only one factor among five the Court cited in finding the statute violated the First Amendment. *See Randall*, 126 S. Ct. at 2483.

The MTLA’s reliance on *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547-48 (1924), for the proposition that events occurring subsequent to the enactment of a statute can cause it to become unconstitutional is also misplaced. *Chastleton* included a District of Columbia rent control ordinance passed in response to a wartime housing crisis. The plaintiffs challenged the ordinance under the Fifth Amendment arguing the “emergency” situation, World War I, had ended. *Id.* The *Chastleton* court remanded the case for a

determination as to whether the emergency conditions still existed in light of the war's conclusion. *Id.* at 548.

Here, the Appellants make no claim the statute was enacted in the midst of an emergency that has since ended. In fact, the financial issues facing school districts that the Legislature addressed in 1969 are still present, and may have become even more acute. (Respondents' App. 39 ¶¶ 14, 17) The passage of time and market changes support the continued application of the statutes.

Moreover, the Appellants' argument the statute has become arbitrary, and thus unconstitutional, because the Legislature neglected to amend it ignores the fact that the Legislature has reviewed section 466.12, subd. 3a, several times since it was enacted. *See* Act of Mar. 15, 1996, Ch. 310, § 1, 1996 Minn. Laws 185, 186-87; Act of Apr. 11, 1974, Ch. 472, §1, 1974 Minn. Laws 1189; Act of Apr. 19, 1973, Ch. 123, Art. V, § 7, 1973 Minn. Laws 209. As recently as 1996, the Legislature amended the statute by repealing its expiration date. Act of Mar. 15, 1996, Ch. 310, § 1 1996 Minn. Laws 185. A legislature's decision not to amend a statute is entitled to deference. *See Dockendorf v. Lakie*, 61 N.W.2d 752, 756 (Minn. 1953) (noting that when the Legislature had revisited a workers' compensation statute, if it had intended to exclude medical expenses from the subrogation right of recovery, "the legislature would have expressly amended that section accordingly"). This Court may infer that the Legislature intended section 466.12, subd. 3a, to remain intact

The legislative history directly contradicts Appellants' assertion that "the legislature never once revisited this rate." (Appellants' Brief at 26.) Further, this history

demonstrates that the Legislature remains aware of the \$1.50 per-pupil-rate, and has decided not to change it. Because there is no classification that results in the disparate treatment of similarly situated individuals, and because the purpose of the statute is legitimate, and not based on arbitrary classifications, it meets the rational basis test. The statute does not violate the Equal Protection clauses of either the state or federal Constitutions.

III. BALANCING COMPETING CONCERNS AND PUBLIC POLICY GOALS IS THE ROLE OF THE LEGISLATURE, NOT THE COURT.

The Minnesota Constitution provides that the powers of government are divided among the legislative, executive, and judicial branches, and commands that no person “belonging to or constituting one of these departments shall exercise any of the powers properly belonging to either of the others except in the instances expressly provided in this constitution.” Minn. Const. Art. III, § 1. Where the Legislature has acted within the scope of its power, the Court may not substitute its own judgment unless the legislative action contravenes the state or federal constitution. *See Olson*, 558 N.W.2d at 496. Where the subject of legislation involves competing interests and policy goals that are subject to debate, “the determination of such questions is not for the courts, but rather for the determination of the legislative body upon which rests the duty and responsibility of such decisions.” *State v. United Parking Stations, Inc.*, 50 N.W.2d 50, 52 (Minn. 1951) (citations omitted).

The operation of Minnesota’s school system presents a labyrinthine public policy challenge requiring a delicate balancing of numerous, widely varied interests and

concerns. Every school district is responsible for educating students, maintaining facilities, supervising employees and a myriad of other related functions. Ensuring the safety of students and employees is of great importance, along with maintenance of high academic standards and ensuring the school district's continued financial stability. The determination of how best to protect students requires consideration of competing policies and concerns including (1) the extent of the financial demands that are already placed on school districts; (2) a determination of the most effective ways to promote school safety; and (3) consideration of whether regulatory and funding approaches better address safety concerns than tort exposure. The Legislature is equipped to and effectively weighs such complex, competing interests and policy considerations. If the legislative balancing of interests embodied in section 466.12, subd. 3a is to be changed, it is up to the Legislature to do so.

Appellants' assertion that upholding the constitutionality of the statute will permit school districts to disregard student safety ignores the many state and federal regulations with which districts must comply. The Legislature does actively regulate school safety. *See, e.g.*, Minn. Stat. §121A.31 (requiring schools to meet lab safety guidelines); Minn. Stat. §121A.32 (requiring students to wear eye protection in certain situations). The fact Appellants disagree with the Legislature's regulation of school district tort liability is a matter appropriately directed to the Legislature. If the statute is "outdated", as Appellants assert, that determination must be made by the Legislature, not this Court. Appellants have failed to prove beyond a reasonable doubt that the statute is unconstitutional.

CONCLUSION

Minnesota Statute section 466.12, subd. 3a, does not violate either the federal or state Equal Protection Clauses. Even if the statute creates a distinction, it does not lead to the disparate treatment of similarly situated individuals, because every Minnesota school district is able to obtain the necessary certification to invoke the immunity the statute confers. The statute's immunization of school districts that are unable to procure insurance at the \$1.50-per-student rate is rationally related to the legitimate purpose of ensuring the financial viability of Minnesota's school districts.

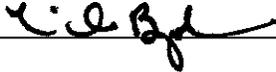
Grafting a "current market conditions" analysis onto the rational basis equal protection analysis is not grounded in the law, undermines the principle of certainty and predictability and would inevitably spawn additional litigation. The natural consequence of the "current market conditions" analysis Appellants urge this Court to adopt would be constant and unwarranted second-guessing by the courts of any legislation that arguably was enacted under any circumstances different from those that exist on the day a suit is brought. Such an approach is both unwarranted and unwise.

With these concerns in mind, the MDLA urges this Court to affirm the Court of Appeals' ruling that the statute does not violate the Equal Protection Clauses of the federal or state constitutions.

Respectfully submitted,

Dated: November 27, 2006

LARSON · KING, LLP

By  _____

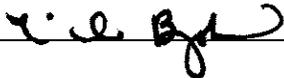
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CERTIFICATE

I hereby certify that this brief conforms to the requirements of Minn. R. Civ. App. P. 132.01, subds. 1 and 3, for a brief produced with a proportional font. The length of this brief is 3846 words. This brief was prepared using Microsoft Word XP.

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