

Nos. A05-1377 and A05-1378

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State of Minnesota  
**In Supreme Court**

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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.*

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**APPELLANTS' REPLY BRIEF**

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**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... iii

ARGUMENT ..... 1

I. The Legislative History of Minnesota Statute Section 466.12  
Evidences No Intent to Grant Schools Statewide Blanket Immunity. .... 2

A. Respondent’s original recognition that Spanel abolished  
sovereign immunity for schools is a proper reading  
of that case. . . . . 2

B. Spanel evidenced a willingness for the legislature to “limit or  
regulate” claims against schools; it did not acquiesce to the  
wholesale abolition of claims. . . . . 3

C. Immunity in other states. . . . . 4

II. Application of the Minnesota Equal Protection  
Standard is Appropriate. . . . . 6

A. Market Conditions are an Appropriate Manner for  
Measuring the Reasonableness of Legislative actions. . . . . 7

B. The \$1.50 Figure in Section 466.12 subd. 3a Creates an  
Unconstitutional Classification. . . . . 8

III. Appellants’ Remedies Clause Arguments are Properly  
Before This Court. . . . . 12

IV. Respondent’s Separation of Powers Analysis is Inapplicable  
Where the Application of a Statute Causes a Constitutional Violation. . . 13

V. Respondent is Not Entitled to the False Protections of an  
Unconstitutional Statute. . . . . 13

VI. Striking Down Section 466.12 Will Not Undermine School Budgets. . . 14

VII. As Amicus MSBA Points Out, Section 466.12 Was Inoperative Between  
1974 and 1996 and is Currently Not Law. .... 16

CONCLUSION ..... 18

## TABLE OF AUTHORITIES

### CASES

Bernthal v. City of St. Paul, 376 N.W.2d 422 (Minn. 1985) .....	7
Boyer v. Iowa High School Athletic Association, 127 N.W.2d 606 (Iowa 1964) .....	5, 6
Faber v. Roelofs, 250 N.W.2d 817 (Minn. 1977) .....	17
Glassman v. Miller, 356 N.W.2d 655 (Minn. 1984) .....	9-11
Grams v. Indep. Sch. Dist. No. 742, 176 N.W.2d 536 (Minn. 1970) .....	17
Granville v. Minneapolis Public Schools, 668 N.W.2d 227 (Minn. Ct. App. 2003)(Granville I) .....	9
Granville v. Minneapolis Public Schools, 716 N.W.2d 387 (Minn. Ct. App. 2006)(Granville II) .....	9
Guilliams v. Commissioner of Revenue, 299 N.W.2d 138 (Minn. 1980) .....	6, 7
Harris v. County of Hennepin, 679 N.W.2d 728 (Minn 2002) .....	8
In re Clerk of Lyon County Courts' Compensation, 241 N.W.2d 781 (Minn. 1976) ...	13
Kahn v. Griffin, 701 N.W.2d 815 (Minn. 2005) .....	6
Kossak v. Stalling, 277 N.W.2d 30 (Minn. 1979) .....	9, 10
Larson v. Indep Sch. Dist. No. 314, 289 N.W.2d 112 (Minn. 1979) .....	17
Lienhard v. State, 431 N.W.2d 861 (Minn. 1988) .....	7
Marbury v. Madison, 1 Cranch 137 (1803) .....	13
Nieting v. Bondell, 235 N.W.2d 597 (Minn. 1975) .....	1, 5, 18
Rockne v. Olsen, 254 N.W. 5 (Minn. 1934) .....	13

Scott v. Indep. Sch. Dist. No. 709, 256 N.W.2d 485 (Minn. 1977) . . . . . 17

Spanel v. Mounds View School Dist., 118 N.W.2d 795 (Minn. 1962) . . . . . 1-5, 10, 18

State v. Red Owl Stores, 115 N.W.2d 643 (Minn. 1962) . . . . . 11, 12

State v. Russell, 477 N.W.2d 886 (Minn. 1991) . . . . . 9

Wegner v. Village of Lexington, 309 N.W.2d 273 (Minn. 1981) . . . . . 7

**STATUTES**

Act of April 11, 1974, ch. 472, § 1, 1974 Minn. Laws 209 . . . . . 16

Act of Mar. 15, 1996, ch. 310, § 1, 1996 Minn Laws 185 . . . . . 17

Act of May 22, 1963, ch. 798, § 12, 1963 Minn. Laws 1396 . . . . . 16

Act of May 25, 1965, ch. 748, § 12, 1965 Minn. Laws 1126 . . . . . 16

Act of May 27, 1969, ch. 826, §§ 1-3, 1969 Minn. Laws 1515 . . . . . 16

Iowa Code § 670 . . . . . 6

MINN. STAT. § 3.732 . . . . . 5

MINN. STAT. § 466.12 subd. 4 . . . . . 2, 16, 17

MINN. STAT. § 10A:255 . . . . . 8

MINN. STAT. § 466.12 . . . . . 2, 6, 8, 12, 14-17

MINN. STAT. § 466.12 subd. 2 . . . . . 3

MINN. STAT. § 466.12 subd. 3a . . . . . 1, 6, 8, 9, 11, 13

MINN. STAT. § 62J.04 . . . . . 8

MINN. STAT. § 645.36 . . . . . 17, 18

**RULES**

MINN. R. APP. P 103.4 ..... 12

**OTHER AUTHORITIES**

75 A.L.R. 1196 ..... 6

## ARGUMENT

In 1962 this Court unanimously agreed that the notion of sovereign immunity for schools and municipalities served no reasoned purpose in modern life. Spanel v. Mounds View School Dist., 118 N.W.2d 795 (Minn. 1962). Thirteen years later, in 1975, the Court abolished sovereign immunity for the State. Nieting v. Bondell, 235 N.W.2d 597 (Minn. 1975). This Court recognizes the fundamental unjustness the doctrine of sovereign immunity inflicts when it unfairly shifts the burden of an injury from a negligent governmental actor to, in this case, two innocent children.

Respondent misinforms the Court by stating the parties agree that Section 466.12 subd. 3a creates but a single class. Appellants agree that all schools in the state qualify for blanket immunity under the unreasonably low dollar figure contained in Section 466.12 subd. 3a. However, that does not mean students as a whole, and more specifically, Appellants, are not treated differently than other injured persons. Nor do Appellants concede the \$1.50 figure was rationally related to achieving a legitimate government purpose when the legislature adopted it in 1969. There is simply no legislative history or other historical evidence from which to draw this conclusion.

Likewise, Respondent's plea for restraint under the concept of separation of powers is misplaced. Where a statute violates a constitutional provision it is the obligation of the courts to protect constitutional rights from infringement by arbitrary legislative acts.

**I. The Legislative History of Minnesota Statute Section 466.12 Evidences No Intent to Grant Schools Statewide Blanket Immunity.**

Contrary to Respondent's broad assertions, there is no legislative history to support the notion that the legislature intended to grant indefinite blanket immunity to every public school in the state. The sparse legislative history shows that the legislature intended schools and municipalities to act in a responsible manner by securing proper insurance or creating a self-insurance fund for the benefit and protection of those they may injure. To assume that legislature intended to leave every single public school student in the state unprotected is unreasonable, unsupportable and unconscionable. Further, the legislature never intended to make Section 466.12 a permanent statutory fixture. By operation of the repealer contained in 466.12 subd. 4, the entire scheme set up by Section 466.12 ended in 1974.

**A. Respondent's original recognition that Spanel abolished sovereign immunity for schools is a proper reading of that case.**

The legislative enactment of Section 466.12 came in response to this Court's ruling in Spanel, which abolished sovereign immunity for schools and municipalities. Respondent was previously in agreement with this point, stating "[i]n Spanel, the Minnesota Supreme Court prospectively overruled the governmental immunity doctrine as a defense with respect to tort claims against schools. . . ." and "Spanel overturned common law immunity. . . ." (Respondents Brief to the Court of Appeals, p. 9)(Respondent's Reply Brief to the Court of Appeals, p. 2). Respondent now backpedals

from that position, attempting to argue that Spanel in fact *did not* overturn common law immunity.

Respondent argues that the Court only *intended* to overturn common law sovereign immunity. The fallacy of Respondent's argument lies in the legislature's own acts after Spanel. The legislature recognized that common law sovereign immunity for schools and municipalities was dead after Spanel. When enacting Minnesota Statutes Section 466.12 subd. 2 in the 1963 legislative session (the first session after Spanel) the legislature referred back to December 13, 1962, the day *prior* to the Spanel decision, to define common law sovereign immunity. MINN. STAT. § 466.12 subd. 2. Word play and semantics aside, Respondent's arguments are a difference without a distinction. Common law sovereign immunity ceased to exist for schools and municipalities when this Court handed down the Spanel decision on December 14, 1962.

**B. Spanel evidenced a willingness for the legislature to “limit or regulate” claims against schools; it did not acquiesce to the wholesale abolition of claims.**

When the Spanel Court abolished sovereign immunity for schools and municipalities, it did not do so cavalierly. Counsel for, and amici on behalf of, defendants in Spanel assured the Court that proper steps would be taken to ensure schools and municipalities were able to meet their “new obligations.” Spanel, 118 N.W.2d at 804. Among the safeguards suggested by counsel to help schools and municipalities to regulate claims were notice provisions and damage caps. Id. At no point in the Spanel opinion

does the court evidence an intent to allow the wholesale abolition of claims and a return to blanket immunity for schools or municipalities. Quite the opposite, the Court spent a good deal of the opinion explaining why sovereign immunity was an unjust and archaic concept devoid of rationality and admonishing the legislature for not taking the steps to abolish sovereign immunity of its own accord.

In light of this Court's description of sovereign immunity as a defense "based on neither justice nor reason," the genesis of which was "accidental" and the continuation of which "stemmed from inertia" it cannot be credibly argued that its overruling "subject to any statutes which now or hereafter limit or regulate [not eliminate] the prosecution of such claims" was an invitation to the legislature to reenact the immunity this Court has just abolished. Spanel, 118 N.W.2d at 285, 290, 292 (emphasis added). While the Spanel Court indicated it's preference that the legislature fix the problems immunity created (due to the flexibility of the legislative process), it reiterated that "the court has the right and the duty to modify rules of common law after they have become archaic." Id. at 292. That is exactly what the court did in Spanel.

**C. Immunity in other states.**

Respondent's reliance on the manner in which other states have chosen to address immunity is neither instructive nor relevant to the manner in which this state addresses immunity. Respondent makes much of the fact that other "jurisdictions have held that school district immunity is the logical extension of state sovereign immunity."

(Respondent's Brief, p. 17). Respondent cites cases from Kentucky, Louisiana, Idaho, and Oklahoma for the sole proposition that schools should enjoy the same immunities as the state. With all due respect to the above listed states, their actions are of little assistance to Respondent's arguments, especially in Minnesota, where the state has wisely done away with its own sovereign immunity. See Nieting v. Bondell, 235 N.W.2d 597 (Minn. 1975); MINN. STAT. § 3.732 et. seq. With no state sovereign immunity, there can be no "logical extension" of that doctrine to school district immunity, rendering Respondent's reliance on authority from the above states misplaced and mandating rejection of its arguments based thereon.

Respondent also cites the Iowa case of Boyer v. Iowa High School Athletic Association for the proposition that allowing tort claims threatens to deplete public funds. 127 N.W.2d 606 (Iowa 1964)(Respondent's Brief, p.17-18). The Boyer court held, as this Court did until its patience ran out in Spanel, that immunity decisions were for the legislature. But in a sharply written dissent, Justice Moore, joined by three additional justices, laid bare the shortcomings of the doctrine of sovereign immunity. Citing decisions from Illinois, Washington, Florida, New Jersey, California, Michigan, Wisconsin, Nevada, Arizona, and Minnesota, specifically Spanel, he pointed out that:

The whole doctrine of governmental immunity from liability for tort rests upon a rotten foundation. It is almost incredible that in this modern age of comparative sociological enlightenment, and in a republic, the medieval absolutism supposed to be implicit in the maxim, 'the King can do no wrong,' should exempt the various branches of the government from liability for their torts, and that the entire burden of damage resulting from

the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government, where it could be borne without hardship upon any individual, and where it justly belongs.

Id. at 613 (Justice Moore dissent)(citing 75 A.L.R. 1196). The reasoning in Justice Moore's dissent ultimately carried the day as shortly thereafter the Iowa legislature abolished common law sovereign immunity. See I.C.A. §§ 670 et. seq.

Respondent argues that a decision by this Court finding Section 466.12 subd. 3a unconstitutional will put Minnesota out of line with a few other states. However, in actuality, this Court's finding that the immunity granted by Section 466.12 is constitutionally infirm will place Minnesota in line with a majority of states.

## **II. Application of the Minnesota Equal Protection Standard is Appropriate.**

Minnesota long ago chose to grant its citizens greater protections under the state constitution than are available under the federal Constitution. See Kahn v. Griffin, 701 N.W.2d 815 (Minn. 2005)(discussing the growing trend of states, including Minnesota, looking to state constitutions as independent sources of rights beyond the federal Constitution). The field of equal protection is one area where Minnesota views its constitutional provision as granting its citizens more rights than the federal Constitution. State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991)("Since the early eighties, this court has, in equal protection cases, articulated a rational basis test that differs from the federal standard.")(citing Guilliams v. Comm. of Revenue, 299 N.W.2d 138 (Minn. 1980) in which the stronger Minnesota equal protection test was created). For Respondent to

argue that only the federal equal protection standard should apply is to disregard an entire body of this Court's work and is unfounded.

Respondent cites Berthal v. City of St. Paul for the proposition that Minnesota courts use the more lenient federal test. This ignores the Court's finding in Berthal that it need not reach the Minnesota test because the statute at issue was "defective even under the deferential federal standard." 376 N.W.2d 422, 425 (Minn. 1985). In Berthal, the Court never had to take the next step of examining the statute under the heightened scrutiny of the Minnesota equal protection test developed by the Guilliams Court. However, in Wegner v. Village of Lexington, this Court explicitly stated that the Guilliams standard "is the appropriate constitutional standard for review" of equal protection claims. 309 N.W.2d 273, 280 (Minn. 1981).

**A. Market Conditions are an Appropriate Manner for Measuring the Reasonableness of Legislative actions.**

Courts already use "current market conditions" as a standard to gauge whether or not a dollar amount is reasonable. Whether courts refer to it as "current market conditions" or use some other term, the analysis is the same. In Lienhard this Court found the statutory caps neither "unreasonable [n]or inadequate - particularly in light of the legislature's periodic review and revision of the limitations." Lienhard v. State, 431 N.W.2d 861, 868 (Minn. 1988)(emphasis added). Lienhard also, in addressing pre-verdict interest, looked to "generally accepted standards, such as market value" to assess the reasonableness of an award. Id. at 865 (internal citations omitted)(emphasis added).

There is no difference between “current market conditions” and “market value” in assessing the reasonableness of a dollar figure, because without resort to a reference point, such as “current market conditions,” courts would be utterly lost in assessing the reasonableness of any dollar figure. The courts of this state have regularly used the measure of market value in equal protection challenges, especially in the area of tax assessments and takings. See generally, Harris v. County of Hennepin, 679 N.W.2d 728 (Minn. 2002).

Assuming that Section 466.12 was constitutional when passed (a point neither established nor conceded), it is entirely appropriate and reasonable for the legislature to make recurring and automatic revisions to a dollar figure so that it does not become unreasonably low over time. Aside from periodic review and revision, the legislature could tie the \$1.50 rate to inflation as it has in other areas where set dollar figures exist, or instruct a state agency to recalculate new rates for insurance that track actual costs. See MINN. STAT. § 10A.255 (campaign contribution limits automatically adjusted upward by tracking changes in the Consumer Price Index); MINN. STAT. § 62J.04 (instructing the commissioner of health to annually recalculate rates for state healthcare spending).

**B. The \$1.50 Figure in Section 466.12 subd. 3a Creates an Unconstitutional Classification.**

By containing an arbitrarily low dollar figure, Section 466.12 subd. 3a creates an entire class of schoolchildren that are treated differently from all other victims of governmental tortfeasors and all private tortfeasors. While Respondent and the court of

appeals below are correct in stating that all public schoolchildren are equally at risk of being left without a recovery for injuries negligently inflicted by their school, the notion that Section 466.12 subd. 3a therefore creates but a single class is inaccurate. In the realm of equal protection, this Court has looked broadly at the practical impact of classifications in an effort to find those treated differently than others. See Kossak v. Stalling, 277 N.W.2d 30 (Minn. 1979)(finding legislation impermissibly created distinctions between victims of municipal and private tortfeasors in violation of equal protection guarantees); Glassman v. Miller, 356 N.W.2d 655 (Minn. 1984)(finding legislation impermissibly created separate classes of governmental tortfeasors).

Section 466.12 subd 3a creates impermissible classifications when it treats those injured by a public school differently than those injured by any other governmental or private actors. For a statute to pass constitutional muster under the Minnesota Equal Protection clause it must comport with the following test:

(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.

State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991); Granville v. Minneapolis Public Schools, 668 N.W.2d 227, 234 (Minn. Ct. App. 2003); Granville v. Minneapolis Public Schools, 716 N.W.2d 387 (Minn. Ct. App. 2006)(emphasis added).

There is no reason to treat schools differently than other governmental or private

tortfeasors. Respondent's only argument is that schools have budget issues. This does not separate schools from any other governmental or private entity. This argument was likewise dismissed in Spanel, Kossak and Glassman. The protection of school funds deserves equal treatment to other state and municipal funds. Inasmuch as the state and municipal governments are protected by statutory caps and notice provisions, so too are school districts. Neither Respondent, nor amici writing on its behalf, have identified a single state agency, municipality or school district that has been crippled or even hampered by tort claims.

Kossak addressed a one-year statute of limitations for claims arising out of the negligent acts of a municipality. 277 N.W.2d 30 (Minn. 1979). The Court compared that requirement to the general six-year statute for claims against private tortfeasors. Kossak found that separating out victims of governmental negligence from private negligence in this respect "is not rationally related to any legitimate government function," noting:

Even if the commencement of suit requirement furthered a governmental objective, we have great doubt whether there exists a proper basis for distinguishing between a person injured by a vehicle belonging to a municipal corporation and one belonging to a private corporation or anyone else.

Id. at 34, fn. 6.

Under Respondent's view, a negligently driven school district bus that injures dozens of children, pedestrians or other drivers is entitled to complete immunity. There is no legitimate purpose served in applying this type of standard to a school when it is

uniformly agreed that there is no purpose served in allowing such immunity to a private entity. Appellants should not be denied justice by the mere fact that they were injured by a school as opposed to a private party.

Glassman addressed notice-of-claim requirements as they applied to claims against the state as a tortfeasors versus other governmental tortfeasors. 356 N.W.2d 655 (Minn. 1984). The Glassman examination of statutory provisions revealed failure for a claimant to provide proper notice to a municipal tortfeasor barred later prosecution of a claim, but failure to provide proper notice to the state did not bar a subsequent claim. Id. The Glassman Court recognized the differing notice provisions:

create[] two classes of governmental tortfeasors by erecting a jurisdictional obstacle for victims of torts perpetrated by municipalities that is not encountered by victims of torts committed by the state. The question now presented is whether this distinction violates the equal protection guarantees contained in Article I, Sec. 2 of the Minnesota Constitution and the Fourteenth Amendment to the United States Constitution.

Id. at 656. The Court went on to find “no rational basis for distinguishing between municipal and state tortfeasors” and struck down the statute as a violation of state and federal constitutional protections. Id.

Again, Section 466.12 subd. 3a impermissibly classifies those injured by a school as having no rights as compared to those injured through the negligent acts of any other governmental body. Such a classification is arbitrary and without a rational basis.

Both Respondent and Amicus Curiae Minnesota School Board Association (MSBA) cite State v. Red Owl Stores for the proposition that just because a statute is

antiquated, that does not mean it is infirm. Red Owl, 115 N.W.2d 643 (Minn. 1962). In Red Owl, the Court addressed the ability of the State to regulate certain medications as a “proprietary drug,” thereby requiring it to be sold by a licensed facility. Id. It was not an equal protection case, it simply addressed whether an unlicensed person who sold the medication could be held criminally liable. The immediate statute is completely different, as are the arguments before the Court. Section 466.12, by use of an outdated statutory figure, creates an unconstitutional classification that deprives Appellants of their constitutional equal protection rights. Red Owl simply enjoined the illegal sale of medications classified as “proprietary drugs.” Id.

### **III. Appellants’ Remedies Clause Arguments are Properly Before This Court.**

Respondent argues that Appellants’ Remedies Clause claims are not properly before this Court. The argument is baseless. A simple reading of Appellants’ original Petition for Review from 2003 shows that Appellants cited directly to the constitutional provision of the Minnesota Constitution that is commonly referred to as the Remedies Clause. (R.A. 52). Further, in the immediate Petition for Review, Appellants requested “review granted by this Court should consider all issues raised to date. . . .” This Court’s grant of review, filed September 19, 2006, contained no limitations to the scope of review. (A.A. 143-44).

Even if Appellants did not properly request review, this Court may address any claims or arguments it deems appropriate to the resolution of a case. MINN.R.APP.P

103.4 (Appellate court “may review any other matter as the interest of justice may require”). Appellants’ Remedies Clause arguments are expressly argued in the record below and are properly before this Court.

**IV. Respondent’s Separation of Powers Analysis is Inapplicable Where the Application of a Statute Causes a Constitutional Violation.**

There is no basis for Respondent’s separation of powers analysis where a legislative act infringes upon a constitutional protection. To the contrary, it is exactly this separation of powers that gives this Court the inherent authority to declare the statute unconstitutional. See In re Clerk of Lyon County Courts’ Compensation, 241 N.W.2d 781 (Minn. 1976). This principle lies at the very foundation of our constitutional democracy and judicial system. “It is a proposition too plain to be contested, that the constitution controls any legislative act repugnant to it.” Marbury v. Madison, 1 Cranch 137 (1803). It is the providence of the courts, not the legislature, to pass on questions of constitutionality. See Rockne v. Olsen, 254 N.W. 5 (Minn. 1934)(citing Marbury 1 Cranch 137). When, as presented here, a statute runs afoul of Appellants’ constitutional rights of equal protection, the Court need not defer to the legislature and the statute must necessarily fall.

**V. Respondent is Not Entitled to the False Protections of an Unconstitutional Statute.**

Respondent argues that, should this Court find Section 466.12 unconstitutional, it should not apply the ruling to the present case because it would work a budgetary

hardship on the District. What Respondent fails to explain is how it would work a hardship. Respondent has already budgeted for tort claims, is holding funds in a separate account to pay tort claims and is in fact paying some tort claims. (A.A. 104).

Respondent's claimed reliance on the immunity laid out in Section 466.12 is illusory. There is nothing in Respondent's actions surrounding this matter that constitutes a good faith reliance on the statute. For this reason, Respondent is not entitled to a prospective only ruling of unconstitutionality. Respondent knew from the outset that the dollar figure contained in the statute was outdated, unreasonable, and likely to be overturned. (A.A. 100).

What makes Respondent's position in this matter even more egregious is the fact that they chose to pay some claims and claim immunity in others. (A.A. 100). There are no guidelines or safeguards to protect against discriminatory or arbitrary application of the immunity defense. Respondent believes it can pick and choose when to claim immunity and when to pay claims. At the end of the day, Respondent can point to nothing to justify why two little girls from an elementary school in North Minneapolis get clubbed with an immunity defense, while some other negligently injured students are compensated.

#### **VI. Striking Down Section 466.12 Will Not Undermine School Budgets.**

Respondent and Amicus Curiae Minnesota School Board Association (MSBA) claims that without being able to rely upon the protections of Section 466.12, schools

would not be able to properly budget. Yet, at the same time MSBA concedes that Respondent is the only school in the state that took the irresponsible steps to claim immunity. While it is commendable for MSBA to come to the defense of one of its members, its brief does very little to advance Respondent's arguments. At no time does MSBA assert that the \$1.50 figure is reasonable and its claims that statewide school budgets will be altered as a result of this Court's ruling are baseless.

It is undisputed that Respondent is the only school district to date to seek immunity under Section 466.12. It is therefore difficult to understand MSBA's insinuation that school budgets statewide would be effected by this Court finding the statutory scheme set up by Section 466.12 unconstitutional.

Even more telling is that not even MSBA believes immunity for schools under Section 466.12 is sound practice. To the contrary, MSBA states "MSBA is not asserting that school districts should not be liable for the injuries to the students under their care for which they are responsible." (MSBA brief, p. 3). Further, MSBA is of the opinion that "while some students may deserve reparation for injuries they receive at school, school districts cannot be, and are not, held to a standard of providing maximum compensation for every student." (MSBA brief, p. 3). No one has argued that schools should carry unlimited liability, all that Appellants ask is that Respondent be responsible, within the limits of the statutory caps, for the injuries that it has caused.

**VII. As Amicus MSBA Points Out, Section 466.12 Was Inoperative Between 1974 and 1996 and is Currently Not Law.**

In the original enactment of Section 466.12, the legislature envisioned a finite life for the section. Subdivision 4 contained a repeal date for the Section. It read “This section is in effect on January 1, 1964, but all of its provisions shall expire on January 1, 1968.” Act of May 22, 1963, ch. 798, § 12, 1963 Minn. Laws 1396, 1400-01 (R.A. 12-19). In 1965 the legislature extended the repeal date to January 1, 1970. Act of May 25, 1965, ch. 748, § 12, 1965 Minn. Laws 1126 (R.A. 21). In 1969, when subdivision 3a was added, the legislature again extended the repeal date, this time until July 1, 1974. Act of May 27, 1969, ch. 826, §§ 1-3, 1969 Minn. Laws 1515-16 (R.A. 22-24).

Respondent argues that the legislature again “examined” Section 466.12 in the 1970's and again as recently as 1996. This is a vast overstatement of the legislature's actions with regard to this section. The alterations that were made in 1973 were not addressed specifically to Section 466.12. The legislature simply instructed the Revisor of Statutes to go through the entirety of Minnesota statutes and change the word “village” to “statutory city.” Section 466.12, like every statute in the state that contained village was changed to statutory city. Hardly an “examination” of Section 466.12. In 1974, the legislature extended the repeal date for “towns not exercising municipal powers” but left unchanged the July 1, 1974 repeal date for school districts. Act of April 11, 1974, ch. 472, § 1, 1974 Minn. Laws 209, 226 (R.A. 25-31). The legislature let Section 466.12,

and any immunities it afforded to schools, perish as of July 1, 1974.<sup>1</sup>

Section 466.12 was never heard from again until 1996 when House File 2377 titled “An act relating to state government; repealing obsolete laws” passed the legislature in which a laundry list of over 300 sections and subsection of Minnesota Statutes were repealed in one fell swoop. Act of Mar. 15, 1996, ch. 310, § 1, 1996 Minn Laws 185, 186-87. Among the subsections repealed was subdivision 4 of Section 466.12, containing the repeal date. There is no explanation in the statute as to why the repeal date was repealed 22-years after Section 466.12 expired.

Under Minnesota statutory directives on statutory construction, “When a law is repealed which repealed a former law, the former law shall not thereby be revived, unless it is so specifically provided.” MINN. STAT. § 645.36. While this statute is not a rule of substantive law, it is a legislative directive telling courts, when, in those limited circumstances where the repealer was intended to revive the prior law, we will tell you. The 1996 repealer that repealed the repeal date contained in Section 466. 12 subd. 4 contained no specific directive that the entirety of Section 466.12 was intended to be

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<sup>1</sup> Every case dealing with Section 466.12, including those cited by Respondent involved injuries that occurred prior to the expiration of the section pursuant to the repealer in subdivision 4. See Larson v. Indep Sch. Dist. No. 314, 289 N.W.2d 112 (Minn. 1979)(child injured in physical education class on April 12, 1971); Scott v. Indep. Sch. Dist. No. 709, 256 N.W.2d 485 (Minn. 1977)(child injured in shop class on December 21, 1972); Faber v. Roelofs, 250 N.W.2d 817 (Minn. 1977)(child injured when she slipped and fell under the wheels of a school bus on March 24, 1970); Grams v. Indep. Sch. Dist. No. 742, 176 N.W.2d 536 (Minn. 1970)(child injured in physical education class on February 19, 1968).

revived through repeal of the repeal date. It is clear under the directive of Section 645.36 that in repealing the repealer in subdivision 4, the legislature never intended to revive the remainder of Section 466.12. In other words, there is no statute conferring immunity (sovereign or otherwise) on schools, and the last word on the subject of immunity are this Court's rulings in Spanel and Nieting, which abolish immunity. Contrary to MSBA's argument that repeal of subsection 4 intended to revive the remainder of Section 466.12, the legislative history strongly suggests it was never the intent of the legislature that Section 466.12 be reenacted.

### CONCLUSION

Because Minnesota Statute Section 466.12 subd. 3(a) fails to meet the rational basis standard required of all constitutionally sound statutes, and because it violates the State Remedies Clause Appellants request that this Court reverse the court of appeals and affirm the district court's denial of Respondent's motion for summary judgment.

Respectfully submitted,

**YAEGER, JUNGBAUER & BARCZAK,  
PLC**

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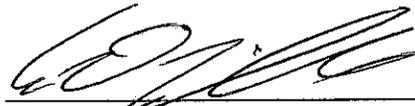
## CERTIFICATE OF COMPLIANCE

I certify that the above brief complies with the requirements of Minn. R. App. P.

132.01, in that:

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The length of the brief is 4,763 words and was prepared using WordPerfect 9.



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