

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.

RESPONDENT'S BRIEF AND APPENDIX

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STATEMENT OF ISSUES

1. Whether a plainly written statute that by its practical application provides tort immunity to all Minnesota school districts that request certification violates the federal or state Equal Protection Clauses.

In the second appeal on this issue, the district court held yes because the statute includes an insurance rate that is not relevant under “current market conditions.” (AA16.) The court of appeals held no because the statute treats all school districts alike. (AA163.)

Apposite authorities:

Minn. Stat. § 466.12, subd. 3a.

Reiter v. Kiffmeyer,
721 N.W.2d 908 (Minn. 2006).

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

Lienhard v. State,
431 N.W.2d 861 (Minn. 1988).

Grimes v. Pearl River Valley Water Supply District,
930 F.2d 441 (5th Cir. 1991).

2. Whether Appellants have preserved a viable challenge under the Minnesota Constitution's Remedies Clause where the issue was not expressly stated in their Petition for Further Review; and if so, whether a constitutional violation can be found where there was no common law remedy to sue a school district in tort at the time the statute was enacted, and where the Legislature was pursuing a legitimate purpose by enacting the statute.

In the first appeal, the district court held no, and the court of appeals affirmed. After remand, the issue was not raised in the district court or the court of appeals.

Apposite authorities:

Minn. Stat. § 466.12, subd. 3a.

Peterson v. BASF Corp.,
675 N.W.2d 57 (Minn. 2004).

Olson v. Ford Motor Co.,
558 N.W.2d 491 (Minn. 1997).

Schweich v. Ziegler, Inc.,
463 N.W.2d 722 (Minn. 1990).

3. Absent a constitutional challenge, whether separation of powers permits this Court to invalidate a statute that could be construed as outdated.

The district court struck down the statute as unconstitutional. The court of appeals held that whether school district immunity is good public policy is a question for the Legislature, not the courts. (AA163.)

Apposite authorities:

Schroeder v. St. Louis County,
708 N.W.2d 497 (Minn. 2006).

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

State v. Red Owl Stores,
262 Minn. 31, 115 N.W.2d 643 (1962).

STATEMENT OF CASE AND FACTS

This appeal involves the constitutionality of Minn. Stat. § 466.12, subd. 3a, which provides immunity from tort suits for Minnesota school districts unable to obtain liability insurance for an average rate of \$1.50 or less per pupil per year. Pursuant to the statute, immunity arises only after the school district makes a good-faith attempt to obtain the insurance, and the Commissioner of Insurance (now known as the Commissioner of the Department of Commerce) certifies that such insurance is unobtainable. (AA136-37.)

The parties agree that at the time subdivision 3a was enacted in 1969 the \$1.50 per pupil rate was rationally related to the Legislature's goal of balancing the costs of insurance, tort claims, and education. Today, the record indicates that no school district can obtain insurance at the \$1.50 rate. The statute, in effect, confers tort immunity on any school district that seeks Department of Commerce certification.

On August 28, 2001, the Minneapolis School District (the "District") wrote to the Department of Commerce, included liability insurance quotations, and requested certification that it could not obtain insurance for \$1.50 per student or less. (AA51-52.)¹ Commissioner James C. Bernstein responded that it appeared the District had made a good faith attempt to procure liability insurance as required by statute, and that independent research by the Commerce Department's Market Assistance Plan Committee confirmed that the District could not obtain insurance for \$1.50 per student per year.

¹ Appellant's Appendix will be cited as "AA__," Respondent's Appendix as "RA__," and Appellant's Brief as "App. Br. at __."

(AA44.) The Commissioner “certif[ied] that the insurance required of the Minneapolis Public School District under Minn. Stat. § 466.06 is unobtainable.” (*Id.*)

In November 2001, students Kailynn Granville and Shanel Andrews allegedly sustained injuries when they ran into each other while playing “flashlight tag” during physical education class at the Minneapolis School District’s Loring Elementary School.

(AA3-4.) Both students’ parents, the Appellants here, sued the District alleging negligence. (*Id.*; *Granville v. Minneapolis Pub. Sch., Special Sch. Dist. No. 1*, Hennepin County Dist. Ct. File No. 02-010663, Appeal No. A05-1377; *Johnson v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1*, Hennepin County Dist. Ct. File No. 02-010664, Appeal No. A05-1378.)²

In 2002, the District moved to dismiss Appellants’ complaints under Minn. R. Civ. P. 12.02(e), asserting they had 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, subd. 3a. (*See* RA1-3.) Appellants opposed dismissal on the bases that section 466.12, subdivision 3a violates the Equal Protection Clauses of the Minnesota and United States Constitutions. The district court granted the District’s motions and dismissed Appellants’ claims. (RA4-11.) 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. (RA9-11.)

² In the district court, the *Granville* and *Johnson* cases were consolidated for proceedings but not for pleading. The court of appeals consolidated the appeals for briefing, oral argument, and decision. (AA121-22.)

Appellants appealed. The court of appeals held that Appellants' 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*") (see AA145). The court also applied a rational basis test to reject Appellants' argument that the statute violated the Remedies Clause in the Minnesota Constitution. (AA153-55.) But the court reversed the district court's dismissals, concluding that evidence in the record was insufficient to determine "whether Minn. Stat. § 466.12, subd. 3a, passes the rational-basis test in either of its formulations." (AA155.) On November 18, 2003, this Court denied the District's and Appellants' petitions for further review. (AA120.)

Following remand, the parties completed additional discovery 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 Minn. Stat. § 466.12, subd. 3a. (AA8.) Appellants again opposed the District's motion, arguing that section 466.12, subd. 3a violates the federal and state Equal Protection Clauses. (AA18-40.)

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. *Granville v. Minneapolis Sch. Dist.*, No. 02-10663, 2005 WL 1413322 (Hennepin County Dist. Ct. May 13, 2005) (AA6-17); *Johnson v. Minneapolis Sch. Dist.*, No. 02-10664, 2005 WL 1413333 (Hennepin County Dist. Ct. May 13, 2005). The district court concluded that although protection of a governmental

entity's financial stability is a legitimate public purpose (AA15), section 466.12 violated the equal protection guarantees of the state and federal constitutions because the \$1.50-per-pupil standard contained in the statute was not rationally related to or genuine or relevant under "current market conditions." (AA16.)

The District appealed and the court of appeals consolidated the appeals. (AA121-22.) The court of appeals reversed the district court's decisions and held that section 466.12 was constitutional. *Granville v. Minneapolis Sch. Dist., Special Sch. Dist. No. 1*, 716 N.W.2d 387, 394 (Minn. Ct. App. 2006) ("*Granville II*") (AA156-64.) The court cited the determination from *Granville I* that rational basis applied to whether Minn. Stat. § 466.12, subd. 3a violates the state and federal Equal Protection Clauses. *Granville II*, 716 N.W.2d at 391. (AA160.) The court then held that section 466.12 comports with both clauses, including the "stricter" Minnesota Constitution standard that required the state to establish "a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and statutory goals." *Id.* at 392 (citing *State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991)). (AA161.)

In its analysis, the court of appeals stated that while section 466.12, subd. 3a "on its face makes a distinction between those school districts that can and those that cannot obtain liability insurance at a rate of \$1.50 or less per pupil per year," the parties agreed that all school districts currently may become immune from tort liability should they apply to the Commerce Department. *Id.* at 392-93. (AA161-62.) This, in turn, compelled the court of appeals' conclusion that "the \$1.50 classification results in all public school districts, and all of their potential student tort victims, being treated alike

rather than differently.” *Id.* at 393. (AA163.) Accordingly, the court of appeals held that “[b]ecause the \$1.50 classification does not result in the unequal treatment of any individual or group, Minn. Stat. § 466.12, subd. 3a, does not violate the Equal Protection Clause of either the United States or Minnesota Constitution[s].” *Id.* (AA163.) The court stated that pursuant to separation of powers the question as to whether school-district immunity is good public policy was for the Legislature. *Id.* at 393. (AA163.) The court of appeals did not consider due process arguments that Appellants made only at oral argument.³ *Id.* at 394. (AA163-64.) Nor did the court address issues related to the state constitution’s Remedies Clause.

³ Nor did the district court address any due process argument. (*See* AA6-17.) Nevertheless, in a footnote Appellants suggest that “a Substantive Due Process analysis always remains available to this court to protect injured schoolchildren from arbitrary governmental actions.” (App. Br. at 10-11 n.11.) Appellants appear to suggest that this issue has been preserved because Appellants “noted for the district court that the factual record ... supported a Substantive Due Process analysis in addition to that of Equal Protection.” (App. Br. at 10 n.11.) Appellants did include a footnote in their district court submission stating that there might be substantive due process claim. (*See* AA30 n.4.) The substantive due process claim was not briefed to the court of appeals, or raised in Appellants’ petition for review, and is not before this Court. Even if it were, where (as here) no fundamental right is at issue, substantive due process is satisfied as long as a statute provides “a reasonable means to a permissible objective.” *Boutin v. LaFleur*, 591 N.W.2d 711, 716 (Minn. 1999). This is the same test that arises under the Minnesota Constitution’s Remedies Clause, which, as discussed below, is not violated. *See* discussion *infra* § V.D.

ARGUMENT

The rule reflected in section 466.12 as a whole is that school districts are generally immune from tort suits. The crux of Appellants' argument is that Minn. Stat. § 466.12, subd. 3a is outdated because the Legislature has failed to ensure that the \$1.50 rate comports with "current market conditions." Even if true, questions surrounding immunity and education funding are for the Legislature, not the court. The statute is plainly written; accordingly, there is no viable argument that it is "absurd." Nor is there any legal authority supporting the Appellants' ultimate conclusion that an outdated statute is unconstitutional facially or as applied. The Legislature has amended section 466.12 since its 1963 enactment, and has chosen not to alter the \$1.50 rate. Separation of powers prevents this Court from intruding on the Legislature's province. Perhaps the Court disagrees with the choices the Legislature has made, but if the statutory language is broken, then the Legislature must fix it.

I. STANDARD OF REVIEW

The constitutionality of a statute is a question of law reviewed *de novo*. *Heidbreder v. Carton*, 645 N.W.2d 355, 372 (Minn. 2002). Minnesota statutes are presumed constitutional, and the "power to declare a statute unconstitutional should be exercised with extreme caution," and "only when absolutely necessary." *Associated Builders and Contractors v. Ventura*, 610 N.W.2d 293, 299 (Minn. 2000); *In re Haggerty*, 448 N.W.2d 363, 364 (Minn. 1989). "The challenger of the constitutional validity of a statute must meet the very heavy burden of demonstrating beyond a reasonable doubt that the statute is unconstitutional." *Associated Builders and*

Contractors, 610 N.W.2d at 299. Unambiguous constitutional language is “is effective as written,” and only when language is ambiguous does a court “seek to discover its meaning by looking beyond the language for other indicia of intent.” *Kahn v. Griffin*, 701 N.W.2d 815, 825 (Minn. 2005). Even then, ambiguities are resolved “in a way that forwards the apparent purpose for which the provision was adopted.” *Id.*

Similarly, interpretation of a statute that involves immunity is a question of law reviewed *de novo*. *Hyatt v. Anoka Police Dep’t*, 691 N.W.2d 824, 826 (Minn. 2005); *see also Schroeder v. St. Louis County*, 708 N.W.2d 497, 503 (Minn. 2006) (stating that “[t]he application of immunity presents a question of law that we review *de novo*”). When statutory language is “clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.” Minn. Stat. § 645.16. When a statute is plain, the interpretive presumption that the Legislature does not intend a result that is “absurd” is triggered only in rare cases where the plain meaning “utterly confounds a clear legislative purpose.” *Mut. Serv. Cas. Ins. Co. v. League of Minn. Cities*, 659 N.W.2d 755, 761 (Minn. 2003).

II. THIS COURT’S DECISIONS AND LEGISLATIVE HISTORY ESTABLISH THAT SCHOOL DISTRICTS ARE GENERALLY IMMUNE FROM TORT LIABILITY

The District agrees that resolving this matter requires careful examination of the history of school district immunity. But the District cautions against inconsistent recitation of that history. On the one hand, Appellants suggest that this Court somehow abrogated common law governmental tort immunity for school districts. Appellants claim that this Court’s endorsement of such immunity was “long ago laid to rest by this

Court's landmark 1962 decision, *Spanel v. Mounds Views [sic] School District*'; that the Minnesota Legislature's reaction to *Spanel*, as embodied in Chapter 466 of Minnesota Statutes, represents "clear renunciation of sovereign immunity"; and that by prospectively overruling school district immunity, this Court "articulate[ed] a new rule of common law." (App. Br. at 23, 26, 34 (citing *Spanel v. MoundsView Sch. Dist.*, 264 Minn. 279, 118 N.W.2d 795 (1962).) But on the other hand, Appellants candidly concede that in *Spanel* this Court "manifest[ed] its *intent* to create a new common law rule permitting actions against school districts." (App. Br. at 36 (emphasis supplied).)

Appellants' latter interpretation is correct. An intention to overrule a doctrine should not be construed as an overruling.⁴ This Court did *not* overrule or abolish common law immunity for school districts, but voiced deep concern and deferred to the Legislature. Following *Spanel*, the Legislature did not eliminate immunity for school districts in Chapter 466 but instead made school districts generally immune from tort liability. This Court has recognized that school districts are generally immune from liability, unlike municipalities for which governmental liability has been abrogated. *Scott v. Indep. Sch. Dist. No. 709*, 256 N.W.2d 485, 490 (Minn. 1977).

⁴ In a Reply Brief to the court of appeals, Respondent stated that the *Spanel* decision had "overturned" common law immunity and that this Court had "rejected it as a common law doctrine," while also acknowledging that "*Spanel* was not the last word on school district immunity" and that this Court had "deferred to the legislature to define the parameters." See Respondent's Reply Brief to Minnesota Court of Appeals, at 2, 5. In this Brief, Respondent has endeavored to clarify its position.

A. In *Spanel*, This Court Stated An “Intention To Overrule” Common Law Immunity, Subject To Legislative Pronouncements

In 1892, when this Court first established that under the common law school districts were entitled to the immunity from suit that towns and counties enjoyed, the Court focused on the public functions and public benefits that educational institutions perform and provide. *Bank v. Brainerd Sch. Dist.*, 49 Minn. 106, 109, 51 N.W. 814, 815 (1892); *see also Spanel v. Mounds View Sch. Dist.*, 264 Minn. 279, 292, 118 N.W.2d 795, 803 (1962) (referencing *Bank*); *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). Subsequently, Minnesota courts scrutinized governmental immunity justifications, and the issue came to a head in *Spanel v. Mounds View School District*. In that case, which involved a 5-year-old injured on a school slide, this Court *affirmed dismissal* of the civil action, holding that under the common law the school district was immune from tort liability. 264 Minn. 280, 292, 118 N.W.2d at 796, 803. Then, in what this Court identified as *dictum*, the Court prospectively overruled common law tort immunity for school districts, putting the Legislature, school districts, and would-be litigants on notice that the then-existing doctrine of common law immunity for school districts was subject to being overruled in a future decision, should the Legislature not abrogate the common law:

We recognize that by denying recovery in the case at bar the remainder of the decision becomes dictum. However, the court is unanimous in expressing its *intention to overrule* the doctrine of sovereign tort immunity as a defense with respect to tort claims against school districts, municipal corporations, and other subdivisions of government on whom immunity has

been conferred by judicial decision arising after the next Minnesota Legislature adjourns, subject to any statutes which now or hereafter limit or regulate the prosecution of such claims. . . .

Id. at 292, 118 N.W.2d at 803 (emphasis supplied).

The Court clarified that it had no intention to “abolish sovereign immunity as to the state itself.” *Id.* at 293, 118 N.W.2d at 803 & n.42. This Court further recognized that any potential unfairness in denying the litigant relief was overridden by “an even greater injustice” in denying the school district a right to rely on settled common law:

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. We believe that it is more equitable if they are permitted to plan in advance by securing liability insurance or by creating funds necessary for self-insurance. . . .

Id. at 294-95, 118 N.W.2d at 804.

B. The Legislature’s Response To *Spanel* Created A Rule Generally Conferring Immunity On School Districts

After the *Spanel* decision was released on December 14, 1962, the Legislature responded by enacting Chapter 466 of Minnesota Statutes. Act of May 22, 1963, ch. 798, § 12, 1963 Minn. Laws 1396, 1400-01. (RA12-19.) Sections 466.01 through 466.11, as adopted and amended, generally abolished tort immunity of local governmental units. By contrast, section 466.12 set out exceptions that generally conferred immunity on school districts. (RA17-18.) The \$1.50-per-pupil rate at issue in this appeal was enacted in 1969 when Minn. Stat. § 466.12, subd. 3 was amended and subdivision 3a added. Act of May 27, 1969, ch. 826, §§ 1-3, 1969 Minn. Laws 1515, 1515-16. (RA22-24.)

Subdivision 1 of section 466.12 states the general rule that school districts generally are immune from tort liability:

Sections 466.01 to 466.11, except as otherwise provided for in this section, *do not apply to any school district*, however organized, or to a town not exercising the powers of a statutory city under the provisions of Minnesota Statutes 1961, section 368.01, as amended.

Minn. Stat. § 466.12, subd. 1 (emphasis supplied).

In subdivision 2 of section 466.12, the Legislature adopted the common law doctrine of immunity and made it generally applicable to school districts:⁵

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 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.

Minn. Stat. § 466.12, subd. 2 (emphasis supplied).

Subdivision 3a of section 466.12 required school districts to attempt to obtain insurance for \$1.50 per pupil, and expressly stated that the provisions in subdivisions 1 and 2 conferring immunity on school districts were to control when a school district failed in its good-faith attempt to procure the insurance, and when the state so certified:

⁵ The reference in subdivision 2 to December 13, 1962 is to the day before this Court issued its decision in *Spanel*, 264 Minn. 279, 118 N.W.2d 795.

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. (RA23.) The 1969 amendment also extended the statute's expiration date from January 1, 1970, to July 1, 1974.⁶ (RA24.)

The Legislature amended the statute in 1973 and 1974.⁷ Act of Apr. 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. (RA25-31.) The statute was amended most recently in 1996 when the Legislature repealed its expiration date.⁸ Act of Mar. 15, 1996, ch. 310, § 1, 1996 Minn. Laws 185, 186-87. (RA32-35.) In sum, the Legislature examined section 466.12 in the 1960s and 1970s and again in 1996, but did not amend the dollar amount

⁶ In 1969, the Legislature also amended section 466.12 to remove references to school districts from subdivision 3. (RA22-24.)

⁷ 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." (RA25-28.) A fourth amendment in 1974 rewrote subdivision 4. (RA29-31.)

⁸ 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.

contained in subdivision 3a and in fact extended its application indefinitely. Had the Legislature intended to alter the dollar amount, it had ample opportunity to do so.

The only logical conclusion is that by not altering the \$1.50-per-pupil rate in or before 1996, the Legislature was fulfilling a legitimate public purpose of ensuring that school district dollars go to classrooms and not courtrooms. On this point, an affidavit in the record from school district financial adviser Gary Olson is instructive. (*See* RA36-47.) Olson provided evidence that general fund revenue from 1991-2005 had not kept pace with inflation. (RA38-39, at ¶ 12.) Olson attested that “[m]any school districts in Minnesota are facing budget problems,” school districts suffer from unfunded federal mandates, and health insurance and energy costs have “increase[d] rapidly in recent years.” (RA37, 39-40, at ¶¶ 5, 14, 17.) The result is that cuts must be made, and “[i]n general, school boards will try to make these cuts in ways that will least impact the classroom.” (RA40, at ¶ 18.) The District—in the words of Kenneth Meyer, its Director of Risk Management—was facing “tons of budget problems” when it elected to take steps to attain immunity certification. (AA95.) One rational way for the District to address those problems was to exercise its right to tort immunity pursuant to Minn. Stat. § 466.12, in an effort to “put money into education.” (AA95.) The statute, in Meyer’s words, was “a tool to control our cost.” (AA99.)

C. Governmental Immunity From Tort Liability Is Available To Any School District That Seeks Certification

Decisions of this Court involving or interpreting Minn. Stat. § 466.12 confirm the general rule that school districts are immune from tort liability. In *Scott v. Independent*

School District 709, the Court unambiguously stated that “[s]chool districts generally are immune.” 256 N.W.2d 485, 490 (Minn. 1977). In *Larson v. Independent School District. No. 314*, this Court stated, “governmental immunity [is] conveyed to the school district under § 466.12, subd. 2.” 289 N.W.2d 112, 123 (Minn. 1979).

In fact, this Court has not found occasion or opportunity to follow through on its “intention to overrule” the common law.⁹ When Chapter 466 and this Court’s decisions are read together, the rule is that governmental tort immunity—as it existed and was adopted by the Minnesota Legislature—is available to any school district that fails in its good-faith attempt to procure insurance at a rate of \$1.50 per pupil and then obtains state certification to that effect. Any suggestion that *Spanel* stands for the proposition that school district immunity has been overruled is incorrect.

D. School District Immunity In Other Jurisdictions

Numerous jurisdictions provide 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

⁹ See *Larson*, 289 N.W.2d at 123 (holding that school principal’s attempt to obtain indemnity was barred by governmental immunity conveyed to the school district under § 466.12, subd. 2); *Scott*, 256 N.W.2d at 491 (holding that under Minn. Stat. §§ 466.04 and 466.12, subd. 3a, school district was liable for uninsured losses up to limit set in *Faber v. Roelofs*, 298 Minn. 16, 212 N.W.2d 856 (1973)); *Faber v. Roelofs*, 311 Minn. 428, 250 N.W.2d 817 (1977) (examining insurance coverage issue where section 466.12 was implicated); *Grams v. Indep. Sch. Dist. No. 742*, 286 Minn. 481, 176 N.W.2d 536 (1970) (examining notice requirements where section 466.12 was applicable).

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. 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) (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 because public school districts perform a function for which the state is primarily responsible, school districts share with the state immunity from tort liability or limitations on tort liability. *See, e.g., 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).

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).

The Minnesota Legislature’s decision to generally provide a means for school districts to obtain tort immunity fits squarely within the national framework. Should this Court find reason to invalidate the Legislature’s directive, it would judicially set the state apart from these jurisdictions.

III. BECAUSE THE STATUTORY LANGUAGE IS PLAIN, THIS COURT SHOULD NOT CONSIDER WHETHER ITS APPLICATION IS “ABSURD”

Appellants argue that application of the Minn. Stat. § 466.12, subd. 3a leads to an absurd result. According to Appellants, because the Minnesota Constitution requires a “classification” within a statute to be “genuine or relevant to the purpose of the law,” Minn. Stat. § 466.12, subd. 3a should have no effect because “[t]o apply this \$1.50 rate today would turn the obvious intent of this legislation on his head and lead to an absurd result.” (App. Br. at 32-33.) But Appellants did not raise an “absurdity” argument in their Petition for Further Review. (RA55-60.) In addition, Appellants have failed to suggest how this Court *should* interpret Minn. Stat. § 466.12, subd. 3a, consistent with the directive that no statutory language should be deemed “superfluous, void, or insignificant.” *Vlahos v. R&I Const. of Bloomington, Inc.*, 676 N.W.2d 672, 679 (Minn.

2004). The language cannot simply be ignored. The “absurd result” analysis is a rule of construction, not a rule of law.

Further, Appellants have put two carts before a single horse. First, as this Court has held numerous times, legislative intent is analyzed and “absurdity” analysis triggered only if a statute’s language is ambiguous. An “absurdity” analysis is not proper here because the language in Minn. Stat. § 466.12, subd. 3a could not be more plain. Second, because constitutional inquiries are made only when absolutely necessary, using a Minnesota constitutional test to explain why a statute’s application would be absurd is wrong. Even if legislative intent is relevant, the legislative history signals that the Legislature intended precisely the result that Minn. Stat. § 466.12, subd. 3a provides.

A. Interpretation Of The Plain Statutory Language Must Be Made Apart From Any Constitutional Analysis

Recently, this Court underscored that examination of a statute’s plain language must precede and be separate from constitutional analysis. In *Weston v. McWilliams & Associates, Inc.*, 716 N.W.2d 634 (Minn. 2006), the appellant had challenged a statute of repose in Minn. Stat. § 541.051 that potentially worked to treat injury claims differently from contribution and indemnity claims, in argued violation of due process and the state constitution’s Remedies Clause. *Id.* at 636. But before undertaking any constitutional analysis, this Court first examined the plain statutory language and rejected the appellant’s claim that the statute worked to create an “absurd” result. *Id.* at 639. In this appeal, any argument that a purported “classification” in Minn. Stat. § 466.12, subd. 3a

must be “relevant to the purpose of the law” must bow to examination of statutory language.

B. This Is Not The Rare Case Where Plain Statutory Language May Be Ignored

Appellants cite *Wegener v. Commissioner of Revenue*, 505 N.W.2d 612 (Minn. 1993), to argue that because the Legislature does not intend an absurd result, the Court is required “to look beyond the literal words of the statute.” (App. Br. at 33.) In *Wegener*, the Court held it was “utterly absurd” to apply a property tax refund statute in a manner that would require a county assessor to ignore the value of a \$464,635 structure when assessing the value of the parcel for real estate tax purposes. *Id.* at 617. But subsequently, the Court distinguished *Wegener* as a “rare case,” and observed that *Wegener* “ultimately determined that there was no conflict between the literal meaning of the statute and the clear legislative purpose.” *Hyatt*, 691 N.W.2d at 827-28.

Wegener stands alone as a “rare case.” The rule that the “absurdity” analysis endorsed in Minn. Stat. § 645.17(1) does not trump the plain statutory language has been applied to a wide range of contested statutes, and even when this Court has raised public policy concerns. In *Hyatt*, this Court held that a dog-bite statute imposing strict liability on the owner of any dog that injures someone applies equally to police dogs. 691 N.W.2d at 827-28, 831 (citing Minn. Stat. § 645.17(1)). This Court specifically held that the court of appeals had erred when it “looked beyond the plain meaning of the dog bite statute to ascertain the Legislature’s intent” and decided that applying the statute to police dogs would be “absurd.” *Id.* at 827-28. The Court stated that “although there might be

good policy reasons to not apply the dog bite statute to police dogs, we cannot say that holding municipalities liable for police dog injuries or attacks is ‘utterly absurd’ or ‘utterly confounds a clear legislative purpose.’” *Id.* at 828.

In *Mutual Service Casualty Insurance Co. v. League of Minnesota Cities*, this Court refused to look beyond plain statutory language and held that marked police patrol cars are not “motor vehicles.” 659 N.W.2d at 757, 758-60 (referencing Minn. Stat. § 168.012, subd. 1(b)). In doing so, the Court held that a pedestrian injured by a marked police patrol could not recover basic economic loss benefits from a municipality under the Minnesota No-Fault Automobile Insurance Act. *Id.* Again, the Court rejected an “absurdity” analysis and stated that the No-Fault Act “recognizes that there will be several classes of uncompensated victims of accidents with vehicles that might otherwise have been considered to be ‘automobiles,’ such as motorcycles, school buses, farm tractors and all-terrain vehicles,” and that “the Legislature intended that this class of victims would not be compensated under the Act.” *Id.* at 762.

In *Olson v. Ford Motor Co*, 558 N.W.2d 491 (Minn. 1997), the Court held that the so-called “seat belt gag rule”—which at the time barred evidence regarding use and installation of seat belts and child passenger restraint systems from “any litigation involving personal injuries or property damage resulting from the use or operation of any motor vehicle”—worked to bar the evidence in a crashworthiness action. *Id.* at 494, 497. Yet again, the Court unanimously rejected an “absurdity” analysis, even while it urged the Legislature to consider the “continuing desirability of the seat belt gag rule,” and even

while Justice Page in a special concurrence found the result to be “disturbing.” *Id.* at 496-97.

Taken together, the decisions in *Weston*, *Hyatt*, *Mutual Service Casualty Insurance Co.*, *Olson*, and even *Wegener* strongly suggest that this is not a “rare case” where an “absurdity” analysis can or should control. The language in Minn. Stat. § 466.12, subd. 3a could not be more plain. The statute directs school districts to make good-faith attempts to procure insurance at a rate that does not exceed \$1.50 per pupil, states that school districts that fail to procure insurance at that rate may seek state certification to that effect, and states that upon certification school districts are subject to subdivisions 1 and 2 of the statute, which established governmental immunity “as a rule of statutory law applicable to all school districts.” Minn. Stat. § 466.12, subd. 2. There is neither the need nor the precedential authority for this Court to look beyond the plain language.

As the District explained in Section II *supra*, the Legislature has had opportunities to alter Minn. Stat. § 466.12, subd. 3a if, in fact, it meant something other than what it has said. Yet the Legislature has not altered the \$1.50-per-pupil figure. The Legislature’s decision to permit school districts to obtain immunity from tort suits is no more absurd than the Legislature’s conclusion that a marked patrol car is not a motor vehicle.

C. In The Alternative, Legislate History And Public Policy Support The Result That Minn. Stat. § 466.12, Subd. 3a Works To Provide

Even if the Court determines legislative intent to somehow be relevant, the Legislature's refusal to alter the \$1.50 figure strongly signals that Minn. Stat. § 466.12, subd. 3a should not be disturbed and that the immunity afforded school districts in Minn. Stat. § 466.12, subds. 1-2 was intended. *See* discussion *supra* § II.B. Appellants state, "this Court has the unique opportunity to effect the intent of the Legislature by declaring an act of the Legislature unconstitutional." (App. Br. at 40.) This suggestion is remarkable. There is no authority suggesting that this Court can or should declare a plainly worded legislative act unconstitutional absent a constitutional infringement. Even if there are public policy reasons for altering the \$1.50-per-pupil rate, those reasons are to be weighed by the Legislature, free from this Court's decision that the statute is "absurd." *See* discussion *infra* § VI.

IV. THE STATUTE PROVIDING IMMUNITY TO SCHOOL DISTRICTS VIOLATES NEITHER THE FEDERAL NOR STATE EQUAL PROTECTION CLAUSES

The first constitutional issue that Appellants raise is whether Minn. Stat. § 466.12, subd. 3a violates equal protection. The district court ruled that the statute violates *both* the federal and state equal protection provisions, in part because the \$1.50 rate was not "rationally related to the current market conditions" and because the effect of providing immunity to all school districts "is contrary to the statute's goals, contrary to public policy, and contrary to the law." (AA16.) The court of appeals reversed the district court and held that the statute violated *neither* constitutional provision. (AA164.) Because the

\$1.50 classification results in all public school districts “being treated alike rather than differently,” the court of appeals held there can be no “unequal treatment of any individual or group” that would substantiate an equal protection violation under state or federal constitutional law. *Granville II*, 716 N.W.2d at 393. (AA163.) For reasons discussed below, the court of appeals’ analysis is sound and completely comports with settled federal and state constitutional law.

A. Minn. Stat. § 466.12, Subd. 3a Satisfies The Federal Equal Protection Clause

Appellants broadly claim that Minn. Stat. § 466.12, subd. 3a fails federal equal protection, but offer no legal authority for support. (App. Br. at 27.) 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. This “is essentially a direction that all persons similarly situated should be treated alike.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 439 (1985). Appellants’ federal equal protection claim is groundless because, as the court of appeals observed and as Appellants concede (*see* App. Br. at 28-29), “the \$1.50 classification results in *all* public school districts, and *all* of their potential student tort victims, being treated alike rather than differently.” *Granville II*, 716 N.W.2d at 393 (emphasis supplied). Where *all* persons are treated similarly, there can be no equal protection violation, regardless of what level of scrutiny is applied. *See Reiter v. Kiffmeyer*, 721 N.W.2d 908, 911 (Minn. 2006) (per curiam) (rejecting federal equal protection challenge to election filing law because law “applies equally” to all candidates).

Further, even if there were evidence that Minn. Stat. § 466.12, subd. 3a resulted in persons being treated dissimilarly, Appellants have not begun to meet their burden to explain how the statute fails the rational basis test beyond a reasonable doubt. *Estate of Jones v. Kvamme*, 529 N.W.2d 335, 337 (Minn. 1995). A statute challenged under the federal Equal Protection Clause is constitutional as long as it is “rationally related to a legitimate state interest.” *City of Cleburne*, 473 U.S. at 439. Heightened scrutiny is applied only if a suspect class or fundamental right is implicated. *Id.* at 440; *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 670 (1966). No suspect class is at issue because Appellants agree that Minn. Stat. § 466.12, subd. 3a applies to “all students.” (App. Br. at 28.) Appellants suggest that the statute “impinges on a fundamental right” (*see* App. Br. at 11) and for support cite *Skeen v. State*, 505 N.W.2d 299 (Minn. 1993), where this Court held that education is a fundamental right. However, *Skeen* implicates only state law. Further, there is no evidence in the record that making a school district immune from tort liability at all impinges on the rights of Appellants’ children to receive public educations. If anything, siphoning funds from classroom education by denying immunity would impinge on *all* students’ state constitutional fundamental rights to education.

The rational basis test applies to this Court’s scrutiny of Minn. Stat. § 466.12, subd. 3a. Under the federal rational basis test, the Equal Protection Clause affords states “wide latitude” to enact social and economic legislation. *City of Cleburne*, 473 U.S. at 440. This would include legislation that confers tort immunity on local governments. *See, e.g., Lumpkin v. City of Little Rock*, 608 F.2d 291, 292 (8th Cir. 1979) (*per curiam*) (finding “no merit” to constitutional challenge to Arkansas municipal immunity

doctrine). Parties challenging legislation under the Equal Protection Clause “cannot prevail” so long as the rational basis “is at least debatable.” *Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 464 (1981) (quoting *United States v. Carolene Prods. Co.*, 304 U.S. 144, 153-154 (1938)).¹⁰

Plaintiffs have attempted and failed at equal protection challenges to immunity statutes before. In *Grimes v. Pearl River Valley Water Supply District*, 930 F.2d 441 (5th Cir. 1991), the Fifth Circuit applied rational basis review to a claim substantially similar to that of Appellants. In that case, the Mississippi Supreme Court had abolished judicial sovereign immunity, and the Legislature responded by enacting a statute conferring immunity for claims against the state and its agencies—legislative action that survived the plaintiffs’ equal protection challenge:

¹⁰ Amicus curiae Minnesota Trial Lawyers Association (MTLA) cites language from *United States v. Carolene Products* where the Supreme Court stated that “the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist.” (MTLA Br. at 5) (citing *Carolene Prods.*, 304 U.S. 144, 153 (1938)). The Supreme Court was citing its decision from *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 547-48 (1924), where the Court stated that “[a] law depending upon the existence of an emergency or other certain state of facts to uphold it may cease to operate if the emergency ceases or if the facts change even though valid when passed.” The emergency was World War I, and the federal law controlled rents in Washington, D.C., during a wartime “sudden afflux of people to Washington.” *Id.* at 548. Because World War I had ceased, the Court held that “it is open to inquire” whether the emergency conditions still existed, and *remanded to the district court* with no holding of unconstitutionality. *Id.* at 548-49. Further, the Court in *Carolene Products* held that the law at issue that regulated milk was a decision for Congress not to be superseded by a “finding of a court.” *Carolene Prods.*, 304 U.S. at 154. Taken together, the authority that MTLA cites tends to suggest that this Court should not substitute its findings for those of the Legislature.

[Plaintiffs] argue that the state has created an impermissible class of persons. The class consists of those individuals who are injured by a political subdivision of the state and are not afforded a remedy. This class differs from those individuals who are injured by a political subdivision of the state and are allowed to pursue a remedy. ...

It is rational for the Legislature to provide sovereign immunity to the [state agency] in order to advance the legislative purpose of the agency or because the agency's source of revenue is limited and must be used for purposes prescribed by the Legislature. Plaintiffs have not shown us how this scheme is irrational and we cannot conceive how they could meet this burden. Accordingly, the statutory scheme does not violate the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

Id. at 444; accord *Kranson v. Valley Crest Nursing Home*, 755 F.2d 46, 52 (3d Cir. 1985) (rejecting equal protection challenge to statute providing immunity to municipally operated nursing homes); *Aubertin v. Bd. of County Comm'rs of Woodson County*, 588 F.2d 781, 785 (10th Cir. 1978) (rejecting equal protection challenge to statute granting immunity to county for construction and maintenance of county roads).

Appellants' arguments are virtually indistinguishable from those in *Grimes*, except raised in the context of school immunity instead of judicial immunity. Even though the burden of proving an equal protection violation is on Appellants, the District points to evidence in the record of a legitimate legislative purpose for conferring immunity on school districts given that "[m]any school districts in Minnesota are facing budget problems" and that the District, in light of "tons of budget problems," took the rational step of seeking certification as to immunity to "put money into education." (RA37, AA95.) Any federal equal protection claim must be rejected because Minn. Stat. § 466.12, subd. 3a is rationally related to a legitimate governmental interest. In the

alternative, the “question is at least debatable” and the statute must be affirmed. *See Clover Leaf Creamery Co.*, 449 U.S. at 464.

B. Minn. Stat. § 466.12, Subd. 3a Satisfies The State Equal Protection Clause

The crux of Appellants’ equal protection claim is made under the Minnesota Constitution, which states in relevant part that “[n]o member of this state shall be disfranchised 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. The Minnesota Constitution is a “separate source of citizens’ rights” that this Court can, and does, interpret separately from the United States Constitution. *Kahn*, 701 N.W.2d at 824, 828 (citing *Michigan v. Long*, 463 U.S. 1032, 1041 (1983)); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 80-81 (1980)). But this Court does not “cavalierly” depart from federal constitutional law and its interpretations. *Id.* at 825 (citing *State v. Fuller*, 374 N.W.2d 722, 726-27 (Minn. 1985)). This Court “take[s] a more restrained approach when both constitutions use identical or substantially similar language.” *Id.* at 828.

The state Equal Protection Clause’s rational basis test is sometimes interpreted apart from the federal test. *See, e.g., State v. Russell*, 477 N.W.2d 886, 888 (Minn. 1991). “[T]wo formulations” have emerged, one being “the standard articulated by federal courts for the Equal Protection Clause of the United States Constitution,” the other being a standard “characterized as the Minnesota rational basis test.” *Scott v. Minneapolis Police Relief Ass’n, Inc.*, 615 N.W.2d 66, 74 (Minn. 2000) (citing *Russell*, 477 N.W.2d at 888)). But use of the “Minnesota rational basis test” and divergence from federal principles “has

not been consistent,” and state equal protection principles sometimes are seen as “synonymous” with federal principles. *Id.* at 889 & n.4 (Minn. 1991) (citing *State v. Forge*, 262 N.W.2d 341, 347 n.23 (Minn. 1977)). Divergence from federal equal-protection interpretation is proper only where “there is a principled basis to do so”; this Court “adhere[s] to the general principle of favoring uniformity with the federal constitution.” *Kahn*, 701 N.W.2d at 824.

When governmental liability is at issue, this Court has employed the two-pronged rational basis test that generally tracks federal law. *See Lienhard v. State*, 431 N.W.2d 861, 867 (Minn. 1988); *Bernthal v. City of St. Paul*, 376 N.W.2d 422, 425 (Minn. 1985). There is no principled basis for Minnesota to be set apart from states where governmental immunity has been upheld under the federal rational basis test. This Court should resolve the constitutionality of Minn. Stat. § 466.12, subd. 3a by using a rational basis test that corresponds with federal law and hold the statute constitutional for reasons discussed in Section IV.A. However, as discussed below, Minn. Stat. § 466.12, subd. 3a survives even the “Minnesota rational basis test” under *State v. Russell*.

1. In this instance, there is no principled basis for interpreting the state Equal Protection Clause apart from the federal clause

Two years after its decision in *Russell*, this Court stated that the standard to be applied to claims brought under the state Equal Protection Clause is the same as what is applied to claims brought under the federal Equal Protection Clause. *Skeen*, 505 N.W.2d at 312 (citing *AFSCME Councils 6, 14, 65 & 96 v. Sundquist*, 338 N.W.2d 560, 569 n.11

(Minn. 1983), *appeal dismissed*, 466 U.S. 933 (1984)). Under that standard, this Court asks and answers two questions:

1. Does the challenged legislation have a legitimate purpose? and
2. Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose?

Lienhard, 431 N.W.2d at 867 (citing *Bernthal*, 376 N.W.2d at 425).

At issue in *Lienhard* was whether a state statute capping municipalities' tort liability violated the state Equal Protection Clause. In affirming the statute's constitutionality, this Court "reaffirm[ed] our earlier recognition that the protection of a governmental entity's financial stability is a legitimate public purpose." *Id.* at 867 (citing *Bernthal*, 376 N.W.2d at 425; *Sundquist*, 338 N.W.2d at 570-71 (Minn. 1983)). The Court then held that the Legislature had acted reasonably because "[t]here is in any case a practical limitation on the amount of damages which an injured person can recover: the resources of private individuals are not unlimited though they are sometimes nonexistent." *Id.*

Similarly, in this situation, the record indicates that the District's resources are limited, and maintaining financial stability a legitimate public purpose. The only real question is: "Was it reasonable for the lawmakers to believe that use of the challenged classification would promote that purpose?" See *Lienhard*, 431 N.W.2d at 867. Appropriately, this question is phrased in the past tense. The inquiry under the Equal Protection Clause is not whether it would be reasonable for the Legislature to set a \$1.50 per pupil rate in Minn. Stat. § 466.12, subd. 3a *today* or even at the time that Appellants

commenced their civil action, but whether it was reasonable for the Legislature to have acted as it did *when it did*. The answer to that question is yes. Appellants mount no plausible argument suggesting that the Legislature acted unreasonably in the 1960s.

Appellants claim that “a critical factor” supporting this Court’s decision in *Lienhard* was “the Legislature’s periodic review and revision of the limitations” on tort damages available from municipalities. (App. Br. at 31.) However, the Legislature’s periodic review was merely one factor supporting this Court’s holding, and was not determinative. The holding in *Lienhard* was that the plaintiffs had failed to prove beyond a reasonable doubt that the damages caps were unreasonable or inadequate, “*particularly in light of the Legislature’s periodic review and revision of the limitations.*” 431 N.W.2d at 867-68 (emphasis supplied). In this situation the Legislature has periodically revisited the statute, *see discussion supra* § II.B, but it has not revised the \$1.50 rate. Should the Court hold that it was unreasonable for the Legislature not to alter the \$1.50 rate over the years, the Court would engage in impermissible second-guessing of motives behind the Legislature’s inaction. *See, e.g., ILHC of Eagan, LLC v. County of Dakota*, 693 N.W.2d 412, 423-25 (Minn. 2005) (rejecting equal protection challenge to tax-exemption statute because “[t]he wisdom and social effect of a statute lie within the secure domain of the legislature”).

Appellants erroneously rely on *Bernthal*. That decision is distinguishable because the sole issue was whether Minn. Stat. § 466.03, subd. 2, which provided municipalities with tort immunity when the tort victim was covered by the Worker’s Compensation Act, violated equal protection. This Court found an equal protection violation because the

statute impermissibly “distinguish[ed] victims of municipal tortfeasors who receive workers’ compensation benefits from all other victims of municipal tortfeasors.” *Bernthal*, 376 N.W.2d at 426. In this situation, by contrast, no such distinction can be made because, as the court of appeals correctly observed, all potential tort victims are “treated alike rather than differently.” *Granville II*, 716 N.W.2d at 393.

**2. Even under the “Minnesota rational basis test,”
Minn. Stat. § 466.12, subd. 3a is constitutional**

The statute also is constitutional even if this Court finds reason to apply the three-part test from *Russell*, which states:

(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.

Russell, 477 N.W.2d at 888.

Appellants suggest that Minn. Stat. § 466.12, subd. 3a fails the first prong because the statute is “arbitrary” and because there is no “genuine” distinction between those who are included in the statute and those who are not. (App. Br. at 27-28.) Appellants concede that the statute was not arbitrary when enacted. (App. Br. at 28.) Because the statute was not “arbitrary” when enacted, it cannot be “arbitrary” now. Requiring Minnesota courts to continually double-check statutes for whether they are arbitrary, *i.e.* not aligned with current market conditions, would impose an unworkable and unprecedented burden on the judiciary. See discussions *infra* §§ IV.B.3, VI.

Further, Appellants ignore that for the first prong to have *any* application, there must be some *actual* statutory “distinction” that “separate[s] those included within the classification from those excluded.” As stated above, Minn. Stat. § 466.12, subd. 3a *as applied* simply fails to make any exclusionary “distinction.” As the court of appeals concluded, everyone is “treated alike rather than differently.” *Granville II*, 716 N.W.2d at 393. The court of appeals was correct that the inquiry is not whether statutory language purports to create an imaginary classification, but whether a classification actually “*result[s]* in similarly situated individuals being treated differently.” *Id.*; *see also Russell*, 477 N.W.2d at 889 (looking to effect of statute that differentiated between crack and powder cocaine as imposing “substantially disproportionate burden on the very class of persons whose history inspired the principles of equal protection”). There is no application of the statute that *results in* similarly situated individuals being treated differently. Accordingly, there can be no equal protection violation because Minn. Stat. § 466.12, subd. 3a is applied equally to all.

The statute also satisfies the second and third prongs of the Minnesota rational basis test. In examining the statute under the second prong, Appellants claim that there is no “evident connection between the distinctive needs peculiar to the class and the prescribed remedy,” but also state that “there is no longer any set of distinctive classes.” (App. Br. at 30.) Again, without class distinctions there can be no class-based violation of equal protection. Appellants do not even attempt to challenge the statute under the third prong of the Minnesota rational basis test.

3. “Market conditions” are irrelevant to the constitutional analysis

Appellants’ real complaint is that the \$1.50 rate in the statute is outdated, and that the Legislature has failed to adhere to “changing markets.” (App. Br. at 30.) Even if true, legislative inattention to “market conditions” does not compel unconstitutionality. There simply is no legal authority to support Appellants’ contention that a statute that “fails to further any intended legislative objective” is “unconstitutional.”¹¹ (App. Br. at 29.) Making “current market conditions” a component of rational basis analysis is without precedent and would force courts to stand watch over all legislatively enacted dollar figures.

This is particularly true in the insurance context. While his opinions were largely conclusory, Appellants’ expert, David Lanigan, opined that insurance pricing and availability increases and decreases in a cyclical framework. (AA69.) Using “current market conditions” to measure constitutionality of section 466.12, subd. 3a would require constant legislative monitoring to ensure that the per-pupil rate comports with the cyclical

¹¹ 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).

framework. According to Appellants' expert, the insurance market has "changed dramatically" since the 1969 amendment adding subdivision 3a to section 466.12. (AA42.) The expert also opined that every ten years pricing for insurance increases and availability becomes restricted. (AA69.) Given that the cost of insurance increased while the problems facing schools worsened, the Legislature's decision to leave the \$1.50 rate unchanged compels the inference that the statute is relevant to the Legislature's goal of preserving schools' financial integrity. More fundamentally, the expert's analysis suggests that "current market conditions" are for the Legislature to consider, and not a workable constitutional test for courts.

Similar problems arise with a "current market" test 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 must periodically review and revise section 466.12, subd. 3a, in light of changed market conditions. (AA16.) *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* would be open to constitutional challenge under the Equal Protection Clause.

Appellants cite *Randall v. Sorrell*, 126 S. Ct. 2479 (2006), for the proposition that the United States Supreme Court recently held that a set dollar figure was

unconstitutional “simply by the passage of time.” (App. Br. at 32.) But in that First Amendment case, the Supreme Court applied heightened scrutiny—whether the law was “closely drawn” to match a “sufficiently important interest”—to invalidate a Vermont campaign-contribution limit not adjusted for inflation. 126 S. Ct. at 2486, 2491-95. In making its heightened scrutiny inquiry, the Court determined it was required to “examine the record independently and carefully to determine whether [the law’s] contribution limits are ‘closely drawn’ to match the State’s interests.” *Id.* at 2494. In this situation, there is no First Amendment issue and no claim that would trigger heightened scrutiny and independent judicial examination of whether the Legislature’s \$1.50 rate is “closely drawn” to match the state’s interest in preserving education funds.

In conclusion, Minn. Stat. § 466.12, subd. 3a survives even the “Minnesota rational basis test” because the statute creates no “distinctions” between or “classifications” involving school districts and their students, and because the statute was not “arbitrary” when enacted. Analyzing “current market conditions” is wholly unnecessary and would be unprecedented in a rational basis analysis. For these reasons, this Court should hold that the statute is constitutional pursuant to Minnesota’s Equal Protection Clause, regardless of which test is applied.

V. MINN. STAT. § 466.12, SUBD. 3A DOES NOT VIOLATE THE REMEDIES CLAUSE OF THE MINNESOTA CONSTITUTION

Appellants claim that Minn. Stat. § 466.12, subd. 3a, “[a]s it is written and now applied,” violates the Minnesota Constitution’s Remedies Clause. (App. Br. at 33.) The court of appeals rejected this argument in *Granville I*, correctly concluding that “because

liability is imposed on the school district by statutory law and not common law, no right protected by [the Remedies Clause] is implicated.” *Granville I*, 668 N.W.2d at 234. Appellants filed a Petition for Further Review of that decision, which this Court denied, but Appellants did not specifically raise the Remedies Clause in their Statement of Legal Issues. (RA48-54.) Nor was the Remedies Clause specifically stated as an issue in Appellants’ most-recent Petition for Further Review to this Court. (RA55-60.) Accordingly, it is not clear that any Remedies Clause issue is properly before this Court because “[w]hen submitting a petition for review, a party should bring issues ripe for review to the supreme court’s attention with specificity, or waive the opportunity to have them reviewed.” *Peterson v. BASF Corp.*, 675 N.W.2d 57, 67 (Minn. 2004) (holding that party waived opportunity to have issue considered on appeal where issue “could have been raised in a prior appeal, but was not”).

If this Court decides to review this issue, it should hold that Minn. Stat. § 466.12, subd. 3a survives Remedies Clause scrutiny. The Remedies Clause of the Minnesota Constitution states:

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

Minn. Const. art. I, § 8. This clause, which has no federal parallel, “assures remedies for rights that vested at common law.” *Hickman v. Group Health Plan, Inc.*, 396 N.W.2d 10, 14 (Minn. 1986). “[T]he Remedies Clause does not guarantee redress for every wrong, but instead enjoins the Legislature from eliminating those remedies that have vested at

common law without a legitimate legislative purpose.” *Olson*, 558 N.W.2d at 497. “[T]he focus in a section eight challenge is on the legitimate purpose pursued by the legislature, not whether the statute meets that purpose in every constellation of fact.” *Schweich v. Ziegler, Inc.*, 463 N.W.2d 722, 734 (Minn. 1990). To that end, the Court does not “delve into whether” the legislative objective is “actually promoted.” *Id.*

A. There Is No Fundamental Right At Issue That Would Trigger Heightened Scrutiny Under The Remedies Clause

Appellants argue that the Remedies Clause provides a “fundamental common law right to seek redress from a negligent school district.” (App. Br. at 40-41.) The court of appeals rejected this argument in *Granville I* and held that “[t]he right to sue a governmental entity is not discussed in case law, and we conclude that it is not analogous to any of the rights that the United States Supreme Court has declared to be fundamental.” *Granville I*, 668 N.W.2d at 234. Appellants have cited no case where this Court has applied heightened scrutiny under the Remedies Clause or has even suggested that the right to sue a governmental entity is a “fundamental” constitutional right. In fact, this Court has stated that “in many respects” a Remedies Clause inquiry “is reminiscent of the minimal judicial scrutiny of an equal protection or substantive due process review.” *Schweich*, 463 N.W.2d at 734.

In *Skeen v. State*, this Court declared that although there is no fundamental right to education under the federal constitution, there is such a right under the Minnesota Constitution’s Education Clause, which commands that the “Legislature *shall* make such provisions by taxation or otherwise as will secure a thorough and efficient system of

public schools throughout the state.” 505 N.W.2d at 309, 313 (citing Minn. Const. art. XIII, § 1) (emphasis supplied)). By contrast, the Remedies Clause does not state that every person *shall* have a remedy; it uses weaker language and states that “[e]very person *is entitled to* a certain remedy in the laws for all injuries or wrongs.” Minn. Const. art. I, § 8 (emphasis supplied). This language fails to carry the weight that “shall” language typically commands, and which might indicate a fundamental right.

Further, the Education Clause’s purpose is to ensure the “republican form of government,” the preservation of which is a fundamental federal right. *See, e.g., Reynolds v. Sims*, 377 U.S. 553, 559-60 (1964) (voting rights fundamental). There is no underlying federal right implicated by either the Remedies Clause or Minn. Stat. § 466.12. In addition, a factor important to this Court in *Skeen* was that other states have found fundamental rights to education under state constitutions. 505 N.W.2d at 313-14. Appellants have cited no case where a right to a remedy has been deemed fundamental, and foreign authority signals that any right to sue is not a fundamental right. *See James v. Southeastern Penn. Transp. Auth.*, 477 A.2d 1302, 1306 (Pa. 1984) (concluding “that there is no ‘fundamental right’ to sue the Commonwealth”); *see also Grimes*, 930 F.2d at 443 (rejecting challenge to immunity statute under state constitution “remedy clause”). Accordingly, any claim that Minn. Stat. § 466.12 violates the Remedies Clause should not be subject to heightened security.

B. When Minn. Stat. § 466.12, Subd. 3a Was Enacted, There Was No Common Law Right To Sue A School District In Tort

For the Remedies Clause to be triggered, the remedy being sought had to have been in place in the common law at the time the offending statute was enacted. *See Olson*, 558 N.W.2d at 497 (holding that because seat belt gag rule predated 1968 inception of common law crashworthiness doctrine by five years, Remedies Clause was not implicated). Appellants claim that “[w]hile claims against school districts are governed by statutory law, the right to bring a claim *originated* with the common law, namely this Court’s *Spanel* decision.” (App. Br. at 34 (emphasis in Appellants’ brief).)

But Appellants are incorrect. As fully discussed in Section III *supra*, when Minn. Stat. § 466.12 was first enacted in 1963 and the \$1.50-per-pupil rate in 1969, there simply was no common law remedy to sue a school district in tort. This Court’s decision in *Spanel* did not “originate” a right to bring a tort claim against a school district. To the contrary, *Spanel* stated the Court intended to abrogate sovereign immunity, but left it to the Legislature to create a statutory scheme. *See discussion supra* § II.A and *infra* § V.C. In enacting subdivision 2, the Legislature unequivocally adopted the common law that school districts were immune. Immunity from tort liability was further defined in the statute as “the doctrine as part of the *common law of England as adopted by the courts of this state* as a rule of law exempting from tort liability school districts.” Minn. Stat. § 466.12, subd. 2 (emphasis supplied). By this language, the Legislature signaled both that governmental tort immunity was a deeply rooted common law doctrine that Minnesota

courts had embraced, and that common law immunity was firmly in place when Minn. Stat. § 466.12 was enacted.

In short, had Appellants' children been injured in 1963 or 1969 for that matter, they would have had no common law right to maintain a tort action against the District. And as stated above, for a Remedies Clause violation to be maintained, the remedy sought had to have been part of the common law at the time the offending statute was enacted. *See Olson*, 558 N.W.2d at 497. Accordingly, Appellants' contention that the Remedies Clause requires the Legislature to replace common law rights with a "reasonable substitute" (*see App. Br. at 36*) is without merit.

C. By Prospectively Overruling Minn. Stat. § 466.12, Subd. 3a, This Court Did Not Create A New Rule Of Common Law

Appellants state that by prospectively overruling the common law doctrine of sovereign immunity for school districts, the Court articulated "a new rule of common law." (*App. Br. at 34.*) But prospective overruling is just that—a stated intention to overrule a doctrine *in the future*.

The decision in *Spanel* makes this abundantly clear when it cites Justice Cardozo's opinion in *Great Northern Railway Co. v. Sunburst Oil & Refining Co.*, 287 U.S. 358 (1932), where the United States Supreme Court held that prospective overruling withstood federal constitutional scrutiny. *See Spanel*, 264 Minn. at 293, 118 N.W.2d at 804. Yet Appellants cite *Great Northern Railway* for the proposition that "when a court renders a prospective overruling, the court "is declaring common law" and is making a "prophecy" that "creates common law." (*App. Br. at 35.*) When read in context, *Great*

Northern Railway Co. does not support any conclusion that prospective overruling creates a new rule of common law. In fact, the discussion in *Great Northern* indicates that *this Court's* longstanding practice has been to not apply retrospectively new rules of law to statutory interpretation.

In *Great Northern Railway Co.*, the Montana Supreme Court had “refused to make its ruling retroactive, and the novel stand [was] taken that the Constitution of the United States is infringed by the refusal.” 287 U.S. at 364. In Justice Cardozo’s opinion, the United States Supreme Court observed that a state has two options when it alters the common law: (1) “[i]t may say that decisions of its highest court, though later overruled, are law none the less for intermediate transactions”; or (2) “it may hold ... the discredited declaration will be viewed as if it had never been, and the reconsidered declaration as law from the beginning.” *Id.* at 364-65. The comment that the Montana Supreme Court “is declaring common law” came amid the observation that the state had chosen option No. 1—that new rules of common law are *not to be applied retrospectively*. *Id.* at 365.

Further, it is instructive that when the Court listed cases where courts had rejected retrospective applications, the Supreme Court cited *Hoven v. McCarthy Bros. Co.*, 163 Minn. 339, 204 N.W. 29 (1925), where this Court stated that there can be no retrospective application of a new rule of law when “a Constitution or statute has received a given construction by the court of last resort, and contracts have been made and rights acquired in accordance therewith.” *Id.* at 341-42, 204 N.W. at 30. This authority, when read in conjunction with *Spanel*, stands for the proposition that a prospective overruling cannot

be construed as a new rule of common law. It follows, then, that because *Spanel* created no common law right to sue a school district, there can be no Remedies Clause violation.

D. In The Alternative, Minn. Stat. § 466.12, Subd. 3a Does Not Violate The Remedies Clause Because The Legislature Was Pursuing A Permissible Legislative Objective

Even if the Court could conclude that there existed a common law right to maintain a tort action against a school district in 1963 or 1969, the Legislature's abrogation of any such right is permissible under the Remedies Clause "when the Legislature pursues a permissible legislative objective." *Schweich*, 463 N.W.2d at 733; accord *Haney v. Int'l Harvester Co.*, 294 Minn. 375, 385, 201 N.W.2d 140, 146 (1972) (holding in case implicating Remedies Clause that "a common-law right of action may be abrogated without providing a reasonable substitute if a permissible legislative objective is pursued").

In *Schweich*, this Court held that the district court had erred in invalidating under the Remedies Clause a statutory cap on loss of consortium damages, stating that "[l]owering insurance rates and providing predictable damage awards are legitimate legislative objectives." 463 N.W.2d at 734. As discussed above and as the record indicates, apportioning education funds for children's education instead of tort judgments is a legitimate legislative objective. *Schweich* points out that this Court simply does not "delve into" whether the objectives are "actually promoted." *Id.* It is simply unnecessary to divine "every constellation of fact." *Id.*

The Legislature is 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. (RA39.) School districts make classroom cuts only as last resort so they can maximize their ability to perform their primary function of educating students. (RA40.) Given these difficult budget issues, the Legislature's failure to change the dollar amount in subdivision 3a implies a legislative policy decision to provide immunity uniquely reserved for school districts despite changing market conditions in the insurance industry.

Further, presumably the Legislature is and was well aware of this Court's decision in *Skeen*, 505 N.W.2d at 309, 313, where education was deemed a fundamental right under the state constitution. *Skeen* is ample legal authority for the Legislature's legitimate objective in allowing school districts to be certified under the statute.

Appellant cites *Allen v. Pioneer Press. Co.*, 40 Minn. 117, 41 N.W. 936 (1889) for the proposition that "[t]here is unquestionably a limit" in matters related to the Remedies Clause "beyond which, if the Legislature should go, the courts could and would declare their action invalid." (App. Br. at 34.) However, the very next sentence in *Allen* reads: "But inside of that limit there is, and necessarily must be, a wide range left to the judgment and discretion of the Legislature, and within which the courts cannot set up their judgment against that of the legislative branch of the government." 40 Minn. at 122-23, 41 N.W. at 938. In this situation, the Court must give the Legislature "wide range," and trust that the Legislature will change Minn. Stat. § 466.12, subd. 3a if it does not mean what it has said.

In conclusion, Minn. Stat. § 466.12, subd. 3a could not violate the Minnesota Constitution's Remedies Clause because there was no common law remedy to sue a

school district in tort when the statute was enacted. Further, even if such a common law remedy existed, the statute survives Remedies Clause scrutiny because by leaving the \$1.50-per-pupil rate unchanged the Legislature was pursuing a legitimate objective.

VI. THE VIABILITY OF AND POLICY IMPLICATIONS INVOLVING MINN. STAT. § 466.12, SUBD. 3A SHOULD BE LEFT TO THE LEGISLATURE, CONSISTENT WITH SEPARATION OF POWERS

It almost goes without saying that the District agrees that the public policy questions underlying this matter “are vitally important,” including questions surrounding students’ safety. (See App. Br. at 39.) But safety issues must be balanced against other vitally important issues including how to apportion educational dollars. Because Appellants have failed to prove that Minn. Stat. § 466.12, subd. 3a is unconstitutional beyond a reasonable doubt, balancing of public interests must be left to the Legislature, consistent with separation of powers principles. See Minn. Const. art. III, § 1; *Clover Leaf Creamery Co.* 449 U.S. at 470 (“[i]t is not the function of the courts to substitute their evaluation of legislative facts for that of the Legislature”).

Governmental immunity goes to the heart of separation of powers. “The purpose of statutory immunity is to protect legislative and executive branches from judicial second-guessing of certain policy-making activities through the medium of tort actions.” *Schroeder*, 708 N.W.2d at 503; accord *Zank v. Larson*, 552 N.W.2d 719, 721 (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”); *Watson by Hanson v. Metro. Transit Comm’n*, 553 N.W.2d 406, 414 (Minn. 1996) (stating that statutory immunity is

“designed to preserve the separation of powers”) (citation omitted)). When the Legislature makes exceptions to governmental tort liability, these exceptions are constitutional and the Court is to apply immunity as designated by the Legislature. *See, e.g., Spanel*, 264 Minn. at 291-92, 118 N.W.2d at 809.

Appellants argue that because Minnesota children “are required to attend school” pursuant to Minn. Stat. § 120A.22, enforcing Minn. Stat. § 466.12, subd. 3a creates “decreased financial incentive for school districts to ensure that every child is educated in a reasonably safe environment.” (App. Br. at 39-40). But judicially imposing tort liability on school districts, contrary to the Legislature’s plain directive, would intrude both on the Legislature’s ability to make public policy decisions and the District’s ability to use its experience and knowledge to determine how best to apportion education dollars. *See generally Schroeder*, 708 N.W.2d at 508 (holding that denying vicarious official immunity to county “would create a disincentive in the county to use its experience and knowledge to create protocols and policies in the future with respect to the grading of its roads”); *Anderson v. Anoka Hennepin Indep. Sch. Dist. 11*, 678 N.W.2d 651, 665 (Minn. 2004) (holding that school district “should be entitled to vicarious official immunity because to rule otherwise would create a disincentive to use collective wisdom to create such protocols and policies”).

Even if Minn. Stat. § 466.12, subd. 3a can be considered “antiquated,” precedent directs that “it is for the Legislature and not for the courts to change the law on this subject.” *State v. Red Owl Stores*, 262 Minn. 31, 56, 115 N.W.2d 643, 659 (1962). In *Red Owl Stores*, the plaintiffs had contended that 18 prepackaged medications were “non-

habit forming harmless proprietary medicines” and should be generally available in retail outlets because they were exempt from the Minnesota Pharmacy Act, which confined drug sales to state-supervised retail outlets. *Id.* at 46, 115 N.W.2d at 653. This Court concluded that the exception was “antiquated” because it was passed at “a time when society was largely rural, doctors were few and far between, and the Legislature sought to make so-called patent and proprietary medicines and other home remedies generally available for purchase in rural and outlying communities.” *Id.* at 51, 115 N.W.2d at 656. The Court observed that “[t]he act should be amended to conform to the realities of our day,” but held any amendment was “for the Legislature.” *Id.* at 51, 55, 115 N.W.2d at 656, 659.

Similarly, in this situation, it is for the Legislature to establish policies regarding both governmental immunity and education. The Legislature weighed public policy considerations when it conferred immunity on school districts under section 466.12 and is presumed to have weighed such considerations when it amended section 466.12 without altering the \$1.50-per-pupil rate. 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 and receive state certification to that effect. The court of appeals corrected the error, and its holding should be affirmed.

Even if this Court disagrees with the choices the Legislature has made in section 466.12, the most it can do is suggest that the Legislature revisit the issue. *See Lienhard*, 431 N.W.2d at 867 (stating that “[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"); *Olson*, 558 N.W.2d at 496 (urging Legislature to consider the "continuing desirability of the seat belt gag rule").

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

While retrospective application of a rule of constitutional law is neither prohibited nor required, Minnesota courts have indicated that prospective application is preferable where there is reliance upon an older standard. *See Spanel*, 264 Minn. at 292, 118 N.W.2d at 803; *see also Hoven*, 163 Minn. at 341-42, 204 N.W. at 30.

In arguing for retrospective application, Appellants suggest that the District had no right to rely on the existing standard that worked to confer tort immunity. Appellants selectively cite testimony from Meyer, the District's Director of Risk Management, that the immunity flowing from Minn. Stat. § 466.12, subd. 3a "was probably going to be short-lived," and that "if the word got out ... that the statute would probably be overturned." (App. Br. at 37-38.) But Meyer's testimony was that the Legislature—not this Court—might work to "overturn" the statute conferring immunity, and specifically that District decision-makers believed "that this statute would probably change." (AA100.)

Section 466.12, subdivision 3a was a valid law that deserved reliance. Holding otherwise would cause hardship to the District and ultimately impact students and others who depend on the District's limited funds for education. Thus, if this Court determines

that Minn. Stat. § 466.12, subd. 3a is unconstitutional, it should limit its holding to future cases and decline to hold that the District can be liable in this case. As this Court observed in *Spanel*, it may sometimes appear “unfair” to deprive a litigant of his day in court, but “it would work an even greater injustice to deny [a] defendant and other units of government a defense on which they have had a right to rely.” 264 Minn. at 294, 118 N.W.2d at 804.

CONCLUSION

School district immunity is not a constitutional affront, but is a matter of public policy for the Legislature. *Spanel*, 264 Minn. at 291-92, 118 N.W.2d at 809. The underlying public policies could not be clearer: Minnesota school districts are constitutionally required to educate students, but with fewer dollars—funds that the Legislature believes are best used in classrooms and not courtrooms. The language in Minn. Stat. § 466.12, subs. 1-3a could not be more plain: school districts unable to attain liability insurance for \$1.50 per pupil per year are immune from tort liability when they receive state certification to that effect.

Any qualifying Minnesota school district may seek to be immune from tort liability. Because Minn. Stat. § 466.12, subd. 3a treats all school districts and all injured schoolchildren the same, the court of appeals was correct to conclude that there can be no equal protection violation. There is no authority suggesting that a statutory dollar figure not in line with market conditions is unconstitutional on its face or as applied. There was no common law remedy to sue school districts in tort when Minn. Stat. § 466.12, subd. 3a was enacted; accordingly, there can be no state Remedies Clause violation. If this Court

believes the \$1.50 rate should be revisited, it can urge the Legislature to take that step as it has done in other cases—often with success. But in deference to separation of powers, the Court should not substitute its wisdom for that of the Legislature when, as here, there is no constitutional issue to resolve. Accordingly, the decision of the court of appeals in *Granville II* should be affirmed, and the Appellants’ additional challenge under the state Remedies Clause should be denied.

Respectfully submitted,

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By 

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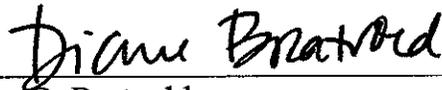
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I certify that this brief conforms to the Minn. R. Civ. App. P. 132.01, subd. 3, for a brief produced using the following font:

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