

A05-1377 and A05-1378

STATE OF MINNESOTA
IN SUPREME COURT

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

Appellants,

vs.

Minneapolis Public Schools,
Special School District No. 1,

Respondent.

BRIEF AND APPENDIX OF AMICUS CURIAE
MINNESOTA SCHOOL BOARDS ASSOCIATION

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TABLE OF CONTENTS

	<u>Page</u>
INTEREST OF THE AMICUS CURIAE	1
STATEMENT OF THE ISSUES, CASE AND FACTS	2
ARGUMENT	2
I. Introduction	2
II. Recognizing the Unique Role School Districts Occupy in Our Society, the Legislature Has Evidenced a Clear, Non-Arbitrary and Continuing Intent to Provide Immunity to School Districts Based Upon Fiscal Restraints	4
III. School Districts Should Be Entitled to Rely on Clear Statutory Language in Balancing Policy Decisions in Light of Their Budgets	9
IV. Application of Immunity to School Districts Based Upon the Inability to Obtain Insurance is Not Arbitrary and Capricious	14
CONCLUSION	16
INDEX TO APPENDIX/APPENDIX	17

TABLE OF AUTHORITIES

	<u>Page</u>
<u>UNITED STATES CODE</u>	
20 U.S.C. § 5801	5
20 U.S.C. § 6301	5
<u>UNITED STATES SUPREME COURT</u>	
<u>Chastleton Corp. v. Sinclair</u> , 264 U.S. 543, 44 S. Ct. 405, 68 L. Ed. 841 (1924)	10
<u>Ferguson v. Skrupa</u> , 372 U.S. 726, 83 S. Ct. 1028, 10 L. Ed. 93 (1963)	10, 11
<u>Home Bldg. & Loan Ass'n v. Blaisdell</u> , 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413 (1934)	10
<u>Munn v. Illinois</u> , 94 U.S. 113, 4 Otto 113, 24 L. Ed. 77 (1876)	11
<u>W. Coast Hotel Co. v. Parrish</u> , 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703	11
<u>Williamson v. Lee Optical of Okla., Inc.</u> , 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563 (1955)	10
<u>UNITED STATES DISTRICT COURT</u>	
<u>Connecticut v. Spellings</u> , ____ F. Supp.2d ____, 2006 WL 2789871 (D. Conn. Sept. 27, 2006)	5
<u>Indep. Sch. Dist. No. 283, St. Louis Park, Minn. v. S.D. By and Through J.D. and N.D.</u> , 948 F. Supp. 860 (D. Minn. 1995)	3
<u>Rittmiller v. Sch. Dist. No. 84 (Wabasso, Minn.)</u> , 104 F. Supp. 187 (Minn. 1952)	15

MINNESOTA CONSTITUTION

Minn. Const. art. XIII, § 1 5

LAWS OF MINNESOTA

1963 Minn. Laws 1396, ch. 798, § 12 12

1969 Minn. Laws 1515, ch. 826, §§ 1 to 3 12

1974 Minn. Laws 1189, ch. 472, § 1 12

1996 Minn. Laws 185, ch. 310 12

MINNESOTA STATUTES

Minn. Stat. § 18B.095 1

Minn. Stat. Ch. 38 8

Minn. Stat. § 120A.03 3

Minn. Stat. Ch. 120B 5

Minn. Stat. § 121A.21 5

Minn. Stat. § 121A.23 5

Minn. Stat. § 121A.27 5

Minn. Stat. § 123B.09, subd. 2 1

Minn. Stat. § 123B.88 5

Minn. Stat. § 123B.91, subd. 1 1

Minn. Stat. § 124D.23 8

Minn. Stat. Ch. 125A 5

Minn. Stat. § 125A.023 1

Minn. Stat. § 127A.42 13

Minn. Stat. § 179A.04, subd. 3 1

Minn. Stat. § 245.491 8

Minn. Stat. § 245.495 8

Minn. Stat. § 354.06 1

Minn. Stat. § 424A.001, subd. 4 8

Minn. Stat. Ch. 466 15

Minn. Stat. § 466.01 7, 8

Minn. Stat. § 466.01, subd. 1 8

Minn. Stat. § 466.02 8

Minn. Stat. § 466.06, subd. 3a 15

Minn. Stat. § 466.12 8, 9, 12, 13, 14

Minn. Stat. § 466.12, subdivision 3 4, 9, 12, 14, 16

Minn. Stat. § 466.15 7, 8

Minn. Stat. § 471.59 8

Minn. Stat. § 645.40 11

MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE

Minn. R. Civ. App. P. 129.03 3

MINNESOTA SUPREME COURT

Congdon v. Congdon,
160 Minn. 343, 200 N.W. 76 (1924) 12, 13

Head v. Spec. Sch. Dist. No. 1,
288 Minn. 496, 182 N.W.2d 887 (1970) 10

Nusbaum v. Blue Earth County,
422 N.W.2d 713 (Minn. 1998) 10

Schwartz v. Talmo,
295 Minn. 356, 205 N.W.2d 318 (1973) 10

Skeen v. State,
505 N.W.2d 299 (Minn. 1993) 5

Smith v. Holm,
220 Minn. 486, 19 N.W.2d 914 (1945) 11

Spanel v. Mounds View School District No. 621,
264 Minn. 279, 118 N.W.2d 795 (1962) 7, 15

State v. Red Owl Stores, Inc.,
262 Minn. 31, 115 N.W.2d 643 (1962) 10

Strand v. Village of Watson,
245 Minn. 414, 72 N.W.2d 609 (1955) 12

MINNESOTA COURT OF APPEALS

State v. Pilla,
380 N.W.2d 207 (Minn. Ct. App. 1986) 11

OTHER

Educ. Fin. Reform Task Force Project Charter 6

Henry Reske, School Principal Survey Reveals Fear of Liability Limits
Educational Opportunities for America’s Children, (1999) 6, 7

INTEREST OF THE AMICUS CURIAE

The Minnesota School Boards Association (“MSBA”) is a voluntary nonprofit association of all public school boards in the State of Minnesota. MSBA represents the interests of school districts in public forums, such as the courts and the Minnesota Legislature. MSBA also provides information and services to its members and coordinates their relationships with other public and private groups.

In addition, MSBA provides advice and guidance to its member school districts in a wide variety of areas, including policy matters, public finance and legal issues. Many of MSBA’s activities are explicitly sanctioned or recognized by the Minnesota Legislature. See, e.g., Minn. Stat. § 18B.095 (requiring the commissioner to consult with MSBA to establish and maintain a registry of school pest management coordinators and provide information to school pest management coordinators); Minn. Stat. § 123B.09, subd. 2 (requiring school board members to receive training in school finance and management developed in consultation with MSBA); Minn. Stat. § 123B.91, subd. 1 (encouraging school districts to use MSBA’s Model Transportation Safety Policy); Minn. Stat. § 125A.023 (requiring that MSBA appoint one member to the interagency committee to develop and implement an interagency intervention service system for children with disabilities); Minn. Stat. § 179A.04, subd. 3 (requiring MSBA, as the representative organization for Minnesota school districts, to provide a list of names of arbitrators to conduct teacher discharge or termination hearings to the Bureau of Mediation Services); and Minn. Stat. § 354.06 (requiring that one member

of the board of trustees of the Teachers Retirement Association be a representative of the MSBA).

MSBA has an ongoing relationship with public school districts in the State of Minnesota. As an *amicus curiae*, MSBA seeks to present the perspectives of public school districts in this state, aside from Respondent Minneapolis Public Schools (hereafter "School District").¹

STATEMENT OF THE ISSUES, CASE AND FACTS

MSBA concurs with the statement of the issues, statement of the case and the facts contained in Respondent's Brief.

ARGUMENT

I. Introduction

The decision of the Court in this matter will have a significant impact on public school districts throughout the State of Minnesota. More is at stake in this matter than the interests of the immediate parties. This case will have a far-reaching impact on the educational system as a whole. The narrow issue presented in this case focuses on whether or not a school district should be able to rely on current statutory language which provides a school district with immunity if that school district is unable to obtain insurance at the rate that does not exceed \$1.50 per pupil per year. The broader question, however, relates to the liability

¹ Rule 129.03 Certification: No counsel for a party to this proceeding authored this brief in whole or in part. Further, no person or entity, other than the *amicus curiae*, its members or its counsel, made a monetary contribution to the preparation or submission of this brief.

school districts should face given the financial limitations of our educational system and the need for school districts to be able to rely on present law in managing their resources.

In this respect, 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. The mission of school districts of this state is to “serve the needs of the students . . . to develop the students’ intellectual capabilities and lifework skills in a *safe* and *positive* environment.” Minn. Stat. § 120A.03 (emphasis added). However, as a public entity that also is responsible to the taxpayers, school districts, similarly, are charged with the responsibility of preventing the waste or unnecessary spending of public money and using innovative fiscal resource practices to manage and operate the educational system as efficiently as possible. See id.

When balancing the need for student well-being with fiscal responsibilities, school districts often are placed in a very precarious situation, especially in times like these when the costs of education are soaring and financial resources are sparse. In this regard, the Court should be mindful that while every student is entitled to a free and appropriate public education, the fundamental right to an education does not include the right of a student to be educated to his or her maximum potential. See *Indep. Sch. Dist. No. 283, St. Louis Park, Minn. v. S.D. By and Through J.D. and N.D.*, 948 F. Supp. 860, 885, fn.33 (D. Minn. 1995). Synonymously, 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. To do so would benefit a few to the detriment of the educational system as a whole.

The intent to balance these interests clearly was set forth by the legislature in Minnesota Statutes Section 466.12, subdivision 3 when it codified a school district's right to immunity from torts in those situations where the costs of providing insurance protection were prohibitive to school districts. While this statute was enacted approximately thirty-seven years ago, the financial issues and policy concerns of school districts have not changed. School districts still have to make decisions as to how to provide coverage to students for their injuries while acting in a fiscally responsible manner. In making these decisions, school districts deserve the right to rely on present law. To undermine the ability of a school district to plan and budget appropriately for these expenses not only affects the fiscal and educational responsibilities of Respondent but the ability of all school districts to rely on the clear language of the law in making these types of decisions. For these reasons and those set forth more fully below, MSBA urges the Court to affirm the decision of the Minnesota Court of Appeals in Granville II holding that Minnesota Statutes Section 466.12 is constitutional.

II. Recognizing the Unique Role School Districts Occupy in Our Society, the Legislature Has Evidenced a Clear, Non-Arbitrary and Continuing Intent to Provide Immunity to School Districts Based Upon Fiscal Restraints

In arguing that Minnesota Statutes Section 466.12 is unconstitutional, Appellants and *Amicus Curiae* Minnesota Trial Lawyers Association ("MTLA") claim that the Legislature created an arbitrary classification system based on the insurance rate of \$1.50. They allege that this exemption does not rationally relate to any legitimate purpose. This argument fails

to recognize the unique character of the public education system, which requires some governmental protection.

School districts are charged with providing its residents with a fundamental right to education services. See Minn. Const. art. XIII, § 1; Skeen v. State, 505 N.W.2d 299, 313 (Minn. 1993). In contrast to other political subdivisions and municipalities, school districts are obligated to provide fundamental services on a daily basis. Not only are school districts charged with providing educational services, the standards for providing these services continually are increasing without adequate funding. See, e.g., Minn. Stat. Ch. 120B (academic standards, curriculum, assessment and accountability); 20 U.S.C. § 5801, *et seq.* (National Education Goals 2000); 20 U.S.C. § 6301, *et seq.* (No Child Left Behind Act); see also, e.g., Connecticut v. Spellings, _____ F. Supp.2d _____, 2006 WL 2789871 (D. Conn. Sept. 27, 2006) (State brought action against Secretary of Education, challenging Secretary's interpretation of No Child Left Behind Act's unfunded mandates provision). Additionally, school districts increasingly are being asked to provide supplemental services to students related to transportation, health services, special education and other collateral programs. See Minn. Stat. § 123B.88 (transportation); Minn. Stat. § 121A.21 (school health services); Minn. Stat. Ch. 125A (special education); see also, e.g., Minn. Stat. § 121A.23 (programs to prevent and reduce the risks of sexually transmitted infections and diseases); Minn. Stat. § 121A.27 (school and community advisory team related to chemical use and abuse). No other government entity is required to assume this same level of broad responsibilities.

Moreover, in addition to increased financial stress from statutorily mandated programs, such as those mentioned above, school districts face increasing drains on their budgets due to numerous sociological issues. These issues include increased enrollment of limited English speaking students and students from families of poverty, increased student mobility, a declining enrollment of the student population in greater Minnesota, and a shrinking tax base due to changes in population demographics (i.e., an aging population). Educational funding is at an all time crisis as the present K-12 funding system, which was formulated in 1971, at approximately the same time as the immunity statutes, is stretched to its extremes. In fact, the crisis in this State's education funding has become so severe that in 2003, the Governor named a nineteen-member task force, the Education Finance Reform Task Force, to revamp the educational finance system. See Educ. Fin. Reform Task Force Project Charter, available at: http://education.state.mn.us/mde/Accountability_Programs/Program_Finance/General_Information/Education_Finance_Reform_Task_Force/index.html. (App. A1–A4).

Not only do school districts face a constant increase in the cost of education, they also have seen a dramatic increase in the number of liability claims being made against them. In a 1999 study by the American Tort Reform Association, twenty-five percent (25%) of the school principals surveyed said they had faced a lawsuit or court settlement in the last two years. See Henry Reske, School Principal Survey Reveals Fear of Liability Limits Educational Opportunities for America's Children, (1999), available at <http://www.atra.org/show/91>. (App. A5–A6). In response, school districts have begun to alter or eliminate

programs with higher incidents of liability concerns, such as certain physical education programs, driver's education, shop, recess and dances. Id. Clearly, the costs of liability claims and insurance coverage as a result of these claims significantly affects the educational services and manner in which they can be provided. There is nothing arbitrary in recognizing these financial conditions and determining that, at some point, the provision of education services to all students should take priority over the liability claims of a few.

While these problems have increased over the years, these same types of financial concerns were raised to the Court when it considered the need for school district tort immunity in Spanel v. Mounds View School District No. 621, 264 Minn. 279, 118 N.W.2d 795 (1962). In this regard, the Court noted that some of the reasons for retaining sovereign immunity included the fact that the:

. . . functions of government are mandatory under our system, involving many dangerous and hazardous undertakings, exposing vast numbers of persons to potential harm. It is practically impossible to police all of the activities of school children. Many units of government do not have sufficient resources to absorb a substantial loss without the threat of bankruptcy.

264 Minn. at 285, 118 N.W.2d at 799. While the Court rejected these financial issues as sufficient reasons to continue common law sovereign immunity, the Court did recognize, in dictum, that the Legislature may give entities affected by the removal of blanket immunity some protections. 264 Minn. at 293, 118 N.W.2d at 804.

In fact, when the Legislature did review the application of immunity for school districts, these issues were considered. While the Legislature did see fit to require that every municipality, subject to the limitations of sections 466.01 to 466.15, be accountable for its

torts and those of its officers, employees or agents, special exceptions were made for school districts based upon financial circumstances. See Minn. Stat. § 466.02. In this regard, the limitations enumerated in sections 466.01 to 466.15 generally apply to all municipalities.² However, Minnesota Statutes Section 466.12 exempts only two types of municipalities from tort liability, school districts and towns not exercising the powers of a statutory city.³ With respect to school districts, the Legislature specifically recognized the financial limitations of school districts to protect themselves from liability for their torts by providing immunity

² Minnesota Statutes Chapter 466.01 defines a municipality for purposes of imposing tort liability upon governmental entities as follows:

For the purposes of sections 466.01 to 466.15, “municipality” means any city, whether organized under home rule charter or otherwise, any county, town, public authority, public corporation, nonprofit firefighting corporation that has associated with it a relief association as defined in section 424A.001, subdivision 4, special district, school district, however organized, county agricultural society organized pursuant to chapter 38, joint powers board or organization created under section 471.59 or other statute, public library, regional public library system, multicounty multitype library system, the following local collaboratives whose plans have been approved by the Children’s Cabinet: family services collaboratives established under section 124D.23, children’s mental health collaboratives established under sections 245.491 to 245.495, or a collaborative established by the merger of a children’s mental health collaborative and a family services collaborative, other political subdivision, community action agency, or a limited partnership in which a community action agency is the sole general partner.

Minn. Stat. § 466.01, subd. 1.

³ It is interesting to note that while Appellant and MTLA attack the application of Minnesota Statutes Section 466.12 upon school districts, arguing that it is arbitrary that all school districts may be exempt because none can obtain insurance for less than \$1.50 per pupil, they are silent as to the fact that this same statute also exempts all non-statutory cities completely from tort liability unless they choose to procure insurance. Clearly, the Legislature saw fit to provide a complete exemption for non-statutory cities which is much broader than the limited exemption provided to school districts.

when school districts cannot afford insurance. No other governmental entity was provided this type of exception.

While Appellants and MTLA claim that the standard set for immunity was and/or now is arbitrary based upon the \$1.50 rate set forth in the statute, given the responsibilities that school districts have been given and their increasingly tighter budgets, this rate is not as arbitrary as Appellants attempt to convince this Court. Regardless of the rate that is set, there were and always will be financial issues other than insurance that veraciously compete for the school district's dollar, making insurance unaffordable for many school districts.

Clearly, both the executive and legislative branches are aware of the severe financial issues school districts face and the need to protect our educational system. As set forth below, the Legislature has periodically reviewed Minnesota Statutes Section 466.12 with the knowledge of these increasing drains on school district resources. Thus, it is not unreasonable or arbitrary for the Legislature to determine that school districts should not have to bear an additional financial burden of securing liability insurance when it is unaffordable.

III. School Districts Should Be Entitled to Rely on Clear Statutory Language in Balancing Policy Decisions in Light of Their Budgets

Appellants and MTLA argue that Minnesota Statutes Section 466.12, subdivision 3 is archaic and outdated and, therefore, arbitrary as applied to today's circumstances. Therefore, they urge this Court to find the statute unconstitutional. Not only is this an inaccurate statement, even if the statute is outdated, the courts do not have the authority to invalidate the law on this basis.

“It is not within the province of this court to amend or engraft a new provision on a statute merely because a present provision in it may become stale or obsolete.” State v. Red Owl Stores, Inc., 262 Minn. 31, 55, 115 N.W.2d 643,658 (1962). To do otherwise would amount to an improper intrusion by the courts upon the policy-making functions of the legislature. Indeed, a law may not be declared unconstitutional merely because the court believes it is bad policy or bad economics. See Home Bldg. & Loan Ass’n v. Blaisdell, 290 U.S. 398, 54 S. Ct. 231, 78 L. Ed. 413 (1934); Schwartz v. Talmo, 295 Minn. 356, 205 N.W.2d 318 (1973); Head v. Spec. Sch. Dist. No. 1, 288 Minn. 496, 182 N.W.2d 887 (1970). The concept of statutory immunity is itself rooted in the doctrine of separation of powers. Statutory immunity is specifically intended to prevent courts from second-guessing “policy-making activities that are legislative or executive in nature.” Nusbaum v. Blue Earth County, 422 N.W.2d 713, 718 (Minn.1988).

MTLA points out that the United States Supreme Court once held that a statute may be constitutionally valid when enacted but later become constitutionally invalid. See Chastleton Corp. v. Sinclair, 264 U.S. 543, 547-48, 44 S. Ct. 405, 68 L. Ed.841 (1924). This reasoning has been widely rejected by the modern day United States Supreme Court as well as the Minnesota Supreme Court. See, e.g., Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483, 75 S. Ct. 461, 99 L. Ed. 563(1955) (“[t]he day is gone when this Court uses the Due Process Clause of the Fourteenth Amendment to strike down state laws, regulatory of business and industrial conditions, because they may be unwise, improvident, or out of harmony with a particular school of thought”); Ferguson v. Skrupa, 372 U.S. 726, 730, 83

S. Ct. 1028, 10 L. Ed. 2d 93 (1963) (the Court announced it was returning “to the original constitutional proposition” enunciated in Munn v. Illinois, 94 U.S. 113, 4 Otto 113, 24 L. Ed. 77 (1876), “that courts do not substitute their . . . economic beliefs for the judgment of legislative bodies”); W. Coast Hotel Co. v. Parrish, 300 U.S. 379, 57 S. Ct. 578, 81 L. Ed. 703 (overruling Lochner and its line of cases).

The Minnesota Supreme Court similarly has held that where the statute in question is “not an exercise of the police power, but of a political, administrative power involving the exercise of judgment and discretion, . . . [t]he judicial branch may not . . . directly or indirectly interfere with this legislative power in any other way than by passing upon the constitutionality, *as of the time of their enactment*, of such laws as the one before us for failure to comply with the rule hereinbefore stated.” Smith v. Holm, 220 Minn. 486, 489–90 19 N.W.2d 914, 915–16 (1945) (emphasis added). “The wisdom of legislation is not for [a] court to decide,” even where the statute is argued to be obsolete and arbitrary because it was designed to combat problems that no longer exist. State v. Pilla, 380 N.W.2d 207, 210 (Minn. Ct. App. 1986).

As pointed out by Appellant, the statute in this case is not vague or ambiguous. Even if the insurance rate is outdated, it evidences the intent of the legislature to continue to provide immunity to school districts based upon financial conditions that still exist. Nonetheless, in interpreting statutory construction, “a law shall not be deemed repealed because the reason for its passage no longer exists.” Minn. Stat. § 645.40. In this regard, this statute has been the law for approximately thirty-seven years without challenge. “Even an

erroneous interpretation of a legislative enactment, acquiesced in for such length of time, ought not to be disturbed. Otherwise confusion, uncertainty, and bad law must follow.” Congdon v. Congdon, 160 Minn. 343, 370, 200 N.W. 76, 86 (1924).

Moreover, contrary to the assertions of Appellants and MTLA, this is not a situation where the legislature has not reviewed this statute since its enactment. This statute, including subdivision 3, was reviewed by the legislature as recently as 1996. In this regard, when 466.12 initially was enacted, it contained an expiration date of January 1, 1968 in subdivision 4 of the statute. See 1963 Minn. Laws 1396, ch. 798, § 12. At the same time that subdivision 3a was enacted in 1969, the legislature extended the expiration date of this statute a second time to July 1, 1974. See 1969 Minn. Laws 1515, ch. 826, §§ 1 to 3. Then, in 1974, the legislature clarified its intent as to the expiration date by revising the section addressing the expiration of the statute by providing: “This section is in effect on January 1, 1964 but all of its provisions shall expire on July 1, 1974.” See 1974 Minn. Laws 1189, ch. 472, § 1.

Minnesota Statutes Section 466.12 was reviewed by the legislature again in 1996. At that time, the legislature repealed subdivision 4, which related to the expiration of this statute. See 1996 Minn. Laws 185, ch. 310. By repealing the expiration of this statute, the legislature evidenced a clear intent that school districts retain immunity when they are unable to obtain insurance at a rate that does not exceed \$1.50 per pupil. See, e.g., Strand v. Village of Watson, 245 Minn. 414, 420, 72 N.W.2d 609, 614 (1955) (upon repeal of statute suspending laws, laws existing prior to enactment of such statute again became operative

except insofar as otherwise repealed). Despite the changes in the cost of insurance over time, it may be assumed that the legislature knew the existing law on the subject and nevertheless, intended that result. See Congdon, 160 Minn. at 370, 200 N.W. at 86.

Based on the legislative review of Minnesota Statutes Section 466.12 as well as the clear and unambiguous wording of this law, there is no basis upon which to determine that the legislature has acted in an arbitrary and capricious manner by permitting tort immunity to school districts who cannot obtain insurance at the \$1.50 rate. So, too, Respondent, as with all school districts, had every right to rely on the validity of this law in obtaining the appropriate exemption from tort immunity based upon financial circumstances. To now say that a statute that has been active for almost forty years cannot be relied upon will have a traumatic effect not only upon Respondent but upon all school districts.

More specifically, school districts make great efforts to balance their budgets. They can be penalized if they do not act in a fiscally responsible manner. See, e.g., Minn. Stat. § 127A.42 (Reduction of State Aid for Violations of the Law). So, too, they can be penalized if they do not provide the educational services required by law. Id. While they are expected to comply with these laws, school districts similarly rely upon numerous statutes to determine what are appropriate expenditures and what are not. They base their budgets upon the authority in these statutes. To tell a school district that it is unreasonable to rely upon a statute that has been in effect, unchallenged for over forty years, will cause all school districts to question the reasonableness of relying upon any other well-established laws in balancing their budgets. Such an expectation is unfair, unreasonable and will further place an

unnecessary and undue burden upon all school districts. For these reasons, it is important that this Court not seek to change a policy that has been established for decades and has been reasonably relied upon.

IV. Application of Immunity to School Districts Based upon the Inability to Obtain Insurance Is Not Arbitrary and Capricious

It has been asserted that Minnesota Statutes Section 466.12, in its application, also has an arbitrary and capricious result. In their Briefs, both Appellants and MTLA insinuate that if the Court upholds Minnesota Statutes Section 466.12, subdivision 3, most school districts, if not all, would be immune from tort liability, sending the message to school districts that they have no responsibility for the safety of the children in their schools. As set forth above, there are very legitimate reasons as to why the legislature has provided and continues to provide school districts with immunity based upon the financial conditions of all Minnesota school districts. The statement that school districts will misuse the grant of immunity and endanger our children based upon immunity is insulting to the school districts of this state and further contrary to the mission and goals of the educational system.

Regardless of the availability of immunity and the outcome of this case, school districts take and will continue to take measures to protect their students from any number of harms that may come to them. Every year, school districts enact policies and procedures for the protection of their students from a variety of potential dangers. In assisting school districts with these efforts, MSBA publishes numerous policies which address student safety issues, such as discipline, weapons, harassment, bullying, hazing and violence prevention to prohibit potential harm to students. School districts also adopt other safety provisions,

including transportation safety policies and procedures, student medication policies, infectious disease, tobacco prohibition and crisis management policies, to name a few. School safety is of utmost importance to school districts, their students, parents and constituents. It is ridiculous to believe that school districts would take any action to make their schools less safe simply because they are granted immunity. If this statement were true, school districts would not be implementing these types of policies when immunity potentially was available to them under Minnesota Statutes Section 466.06, subdivision 3a.

Moreover, even though immunity may be available to all Minnesota school districts based on the \$1.50 insurance rate, as the record in this case shows, only one school district in the state has applied for application of this statute. Thus, the majority of school districts have waived their right to assert any claim for immunity under this statute. In fact, even prior to the enactment of Minnesota Statutes Chapter 466 and the Court's decision in Spanel, school districts have obtained insurance coverage for injuries to their students despite the availability of tort immunity and no legal obligation to incur the cost for such coverage. See, e.g., Rittmiller v. Sch. Dist. No. 84 (Wabasso, Minn.), 104 F. Supp. 187 (Minn. 1952).

Notwithstanding the foregoing, whether eligible school districts choose to seek immunity based upon their financial limitations or not, this determination is a policy decision to be weighed and made by each individual school district. Each school district has a different set of circumstances to consider, such as the cost of the insurance, the number of students in the school district, the school district's history of claims and the financial stability of the school district. It very well may be that some school districts will decide not only to

obtain insurance in the amount of the statutory maximum limits but obtain excess coverage as the school district may have the financial resources available to do so. Other school districts, with more limited resources, may find that it can pay potential claims at less of a financial cost than obtaining insurance. In any event, the legislature determined that school districts should have this decision making ability if they are faced with financial limitations. They should not be punished for exercising such discretion when faced with limited resources.

CONCLUSION

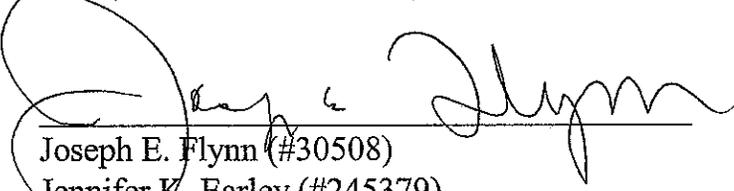
The appellate court's decision finding Minnesota Statutes Section 466.12 constitutional is not only legally correct, but consistent with the legislature's intent and public policy. In light of these factors and for other reasons set forth herein, *Amicus Curiae* MSBA respectfully requests that this Court uphold the court of appeals' decision and grant Respondent immunity under Minnesota Statutes Section 466.12, subdivision 3.

Respectfully submitted,

Dated: November 27, 2006

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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).