

CASE NOS. A05-1377 and A05-1378

State of Minnesota
In Supreme Court

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

Appellants,

vs.

Minneapolis Public Schools,
Special School District No. 1,

Respondent.

BRIEF OF AMICUS CURIAE
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Introduction

MTLA believes that the classification based upon \$1.50 as set out in Minn. Stat. § 466.12 (3)a was unconstitutional when it was passed as it fails several cardinal principals of the rational basis test as adopted in Minnesota.¹ Even if not unconstitutional when passed, the statute has become obsolete and unconstitutional over time, as facts have changed and the legislature has not responded to modify the ill-effects of the passage of time. The dual legislative objectives of requiring school districts to pay for their torts while at the same time limiting liability are best served with caps on liability and not on a classification system that arbitrarily deprives some students a recovery. If the statute at present completely eliminates liability for all school districts because no one can recover, that is an absurd result which negates the primary purpose of the law. The legislature could never have intended that result.

Argument

1. A classification based upon \$1.50 per pupil is arbitrary and unreasonable as a matter of law and therefore unconstitutional.

The legislature, as conceded by all parties, had a two fold purpose in passing Minn. Stat. § 466.01 et seq. The first and primary purpose was to codify the right of citizens to recover from government for the torts committed by the government, including school districts, thus giving acquiescence and approval to

¹ The undersigned certifies pursuant to Minn. R.Civ. App. P. 129.03 that this brief has been authored solely by Charles A. Bird on behalf of the Minnesota Trial Lawyer's Association and that no person has made any monetary contribution to the preparation or submission of this brief.

this Court's ruling in Spanel v. Mounds View School District No. 621, 264 Minn. 279, 118 N.W.2d 795 (Minn. 1962). Second, the parties concede it is a legitimate government objective to reasonably place a limit on the amount school districts must pay for their torts. This Court approved of such a limit in Lienhard v. State, 431 N.W.2d 861 (Minn. 1988), noting that "it cannot be said that the limitation is, beyond a reasonable doubt, either unreasonable or inadequate-particularly in light of the legislature's periodic review and revision of the limitations." Id. at 867-68.

The use of a classification based upon an insurance cost of \$1.50 per pupil is unreasonable and not rationally related to the objective of *limiting* such liability, but is instead directly opposed to the primary purpose of the law – removing barriers to suing the government for torts it commits. A classification that provides complete immunity to some and none to others is inadequate and unreasonable is therefore not constitutional.

MTLA does not argue, without conceding, that the legislature would be within its constitutional authority in eliminating altogether municipal liability for its torts. Instead, MTLA argues that where the legislature has chosen to allow municipalities to be sued, including school districts, it must do so in a fashion that is not either patently arbitrary, unreasonable or capricious. In seeking to limit liability, the legislature has created a classification for students in different school districts based upon the cost of insurance. Considerations of equal protection require some rationale for a classification based upon the cost per pupil of insurance.

The unreasonableness of using insurance rates as a basis for classification is simply demonstrated. The starting point is legislative understanding that insurance is available to some school districts at that rate while it is not available to others at that rate. Inability to insure at the rate chosen results in complete immunity from tort liability for that school district, whereas a school district that can obtain insurance has no immunity. The result is that a student from one school district can make recovery for injuries while another student with identical injuries is precluded from any recovery.

At the outset, therefore, the legislature is treating individuals in different school districts in a discriminatory manner. As contemplated by the manner of classification, some students can obtain recovery for exactly the same injury with exactly the same damages, while another student in a different school district can make no recovery.

A classification based solely upon insurance rates is invidious and incapable of being applied rationally to meet the objective of limiting municipal liability.

Insurance rates are significantly based upon loss history of the insured. Statement of Principles Regarding Property and Casualty Insurance Ratemaking, page 2, Casualty Actuarial Society, 1988 (see <http://www.casact.org/library/sppcrate.pdf>) (“Historical premium, exposure, loss and expense experience is usually the starting point of ratemaking”). School districts that are the worst offenders with respect to child safety will therefore have

the highest number of claims and therefore be charged the highest rates for insurance. An economic incentive to injure students is created that is exactly contrary to the primary purpose of the law. Conversely, an economic disincentive to provide safety for students is created.

The perverse result is that the most careless and negligent school districts have complete immunity while those school districts that have no claims history have no immunity. The difference is that one student can recover but another living across the street cannot. An invisible line drawn between them setting the boundaries of the school district is what separates these two injured children.²

This method of classification violates at least two cardinal principles of the rational basis test: (1) The distinctions cannot be manifestly arbitrary and fanciful and (2) the distinctions must be relevant to the purpose of the law. State v. Russell, 477 N.W.2d 886, 888 (Minn. 1991).

2. A classification based upon \$1.50 per pupil, even if constitutional when it was passed, may become obsolete, unconstitutional and absurd in application over time.

In Minnesota, where a statute has become obsolete, it is not a judicial prerogative to re-write the law. State v. Red Owl Stores, Inc., 262 Minn. 31, 55, 115 N.W.2d 643, 658-59 (1962). This Court may, however, *invalidate* a statute that becomes obsolete and unconstitutional over time. A statute may be

² Minnesota school district boundaries and enrollment by gender and ethnicity for the years 1988 to 2006 are set out at <http://cfl.state.mn.us/datactr/enroll/index.htm> (establishing that enrollment, gender, ethnicity and boundary lines of the various school districts have changed over time).

constitutionally valid when enacted but may become constitutionally invalid because of changes in conditions to which the statute applies. Chastleton Corp. v. Sinclair, 264 U.S. 543, 547-48, 44 S.Ct. 405, 68 L.Ed. 841 (1924) (“[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 the facts change even though valid when passed.” See also, Baker v. Carr, 369 U.S. 186, 254, 82 S.Ct 691, 7 L.Ed.2d 663 (1962) (citing Chastleton). In United States v. Carolene Products Co., 304 U.S. 144, 153, 58 S.Ct. 778, 82 L.Ed. 1234 (1938), the Court stated:

Where the existence of a rational basis for legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice, such facts may properly be made the subject of judicial inquiry, Borden’s Farm Products Co. v. Baldwin, 293 U.S. 194, 55 S.Ct. 187, 79L.Ed. 281, and 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 (citing Chastleton).

“Over a period of time social, political and economic changes may render a statute obsolete ... Where changed conditions have rendered a statute unconstitutional, the basis for its abrogation is clear. It is well settled that the continued existence of facts upon which the constitutionality of legislation depends remains at all time open to judicial inquiry.” Norman J. Slinger, 2 Sutherland Statutory Construction, § 34:5, at 38, 40 (6th Ed. 2000).

Assuming the Court concludes that the statute was constitutional when passed, it has become obsolete and unconstitutional over time.

3. A Limitation on Liability for School Districts is Reasonably Accomplished by Using Caps on Recovery.

This Court previously ruled that the legislature could reasonably accomplish the legislative objective of limiting liability through caps on recovery. Lienhard v. State, supra, 431 N.W.2d at 867 (holding that “protection of a governmental entity’s financial stability is a legitimate public purpose”). The Court noted that the statute was not either “unreasonable or inadequate – particularly in light of the legislature’s periodic review and revision of the limitations.” Id. at 867-68. This method of limiting liability is in sharp contrast to a classification that completely eliminates liability for some students while preserving it for others, in effect creating a patchwork of haves and have-nots that only has a relationship to geographical boundary lines that themselves change over time.

The caps method of limiting recovery has the benefit of being subject to application without discrimination over boundary lines. A student in Biwabik can recover just as much as a student in Worthington without concern over gender, ethnicity or other invidious classification. Application of the statute does not risk eliminating its primary purpose of allowing recovery against school districts for torts they commit.

Conclusion

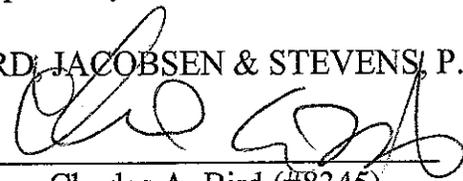
Minn. Stat. § 466.12 was unconstitutional when it was passed as it impermissibly created distinctions that were manifestly arbitrary and fanciful and

that were not relevant to the purpose of the law. Eliminating liability based upon the cost per pupil of insurance coverage creates a distinction that cannot be applied in a manner consistent with either the Minnesota or Federal constitutions. Even if not unconstitutional when passed, the statute has become obsolete and unconstitutional over time. The legislative objectives of allowing tort recovery against school districts while at the same time limiting such recoveries is best achieved by placing caps on such recoveries.

Dated this 26th day of October 2006.

Respectfully submitted,

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By 

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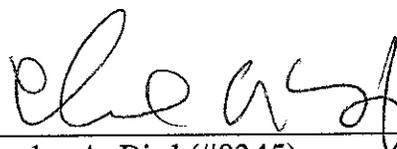
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CERTIFICATE OF COMPLIANCE

I certify that the above brief complies with the requirements of Minn. R.
App. P. 132.01, in that:

The font is 13-point or larger;

The length of the brief is 1,556 words and was prepared using Microsoft
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