

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

Larimore Public School District No. 44, a
political subdivision of the State of North
Dakota; and the North Dakota Insurance
Reserve,

Plaintiffs and Appellees,

v.

John Aamodt and Jennifer Aamodt,
individually and as the parents and
guardians and on behalf of minor children
CLA, KHA, and SMA; Michael Schwab
and Carrie Schwab, individually and as the
parents and guardians on behalf of minor
child CJS; Melissa Erickson, individually
and as the parent and guardian, and on
behalf of minor child CRS; Carrie Schwab,
individually and as the parent and guardian
on behalf of minor children DMB and
EXB; Paul Sandstrom and Judy Sandstrom,
individually and as the parents and
guardians on behalf of minor children CBS
and MBS;

Defendants and Appellants,

and

Michael Schwab, individually and as the
parent and guardian, and on behalf of
minor child CRS; Doug Sullivan,
individually and as the noncustodial
biological father and on behalf of minor
child EXB; Juan Carrera and Martha
Carrera, individually and as the parents
and custodial guardians and on behalf of
minor children CMC and VC; Rita

Supreme Court No. 20170258

Grand Forks County No.
18-2015-CV-1989

Corona, individually and as the noncustodial biological mother and on behalf of minor children CMC and VC; Juan Carrera Jr, individually and as the noncustodial biological father and on behalf of minor children CMC and VC; Jeff Fuqua and Odella Fuqua, individually and as the parents and guardians and on behalf of minor children JMF and JMF; BNSF Railway Company, a Delaware corporation; Altru Health System, a North Dakota nonprofit corporation; Children's Health Care, a Minnesota nonprofit corporation; Essentia Health, a Minnesota nonprofit corporation; Sanford Medical Center Fargo, d/b/a Sanford, a North Dakota non-profit corporation; Sanford, d/b/a Sanford Health, a North Dakota nonprofit corporation; Face and Jaw Surgeons, P.C. d/b/a Face and Jaw Center and Face and Jaw Surgery Clinic; Larimore Ambulance Service; the State of North Dakota by and through the North Dakota Department of Human Services, an agency of the State of North Dakota; and Matthew J. Volk, DDS, PC,

Defendants and Appellees.

Appeal from Judgment
Dated May 10, 2017

District Court, Northeast Central Judicial District
Grand Forks County, North Dakota

The Honorable Gary H. Lee, Presiding

**BRIEF OF AMICUS CURIAE
IN SUPPORT OF LARIMORE PUBLIC SCHOOL DISTRICT NO. 44 AND
THE NORTH DAKOTA INSURANCE RESERVE FUND AND IN SUPPORT
OF AFFIRMING THE DISTRICT COURT JUDGMENT**

**North Dakota League of Cities,
and North Dakota Recreation & Park
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INTEREST OF AMICUS CURIAE

[¶1] The issue directly before this Court involves the appellants in this case and an individual school district; however, declaring NDCC § 32-21.1-03 unconstitutional has broader implications than just the outcome of this case. The associations filing this motion and brief are in a unique position to provide perspective on the ramifications of such a decision on the political subdivisions they represent and, ultimately, the citizens served by those political subdivisions.

[¶2] The North Dakota School Boards Association (“NDSBA”) is a leading advocate for public education. NDSBA is governed by a board of seven local school board members elected by their peers. Membership is voluntary, and includes all of North Dakota’s 178 school districts, two air force base districts, and one Tribal school. NDSBA exists to serve the needs of school leaders in areas of board training, information, and education. NDSBA works cooperatively with its member school boards, school districts, and education leaders to form an effective voice for public education in North Dakota. NDSBA and its members are first and foremost concerned about the quality of education that young people of North Dakota receive from the public elementary and secondary schools under their governance.

[¶3] The North Dakota League of Cities is a voluntary membership organization with 323 of North Dakota’s 357 incorporated cities as members. Its member cities make up ninety-nine percent of the population of incorporated cities in North Dakota. The North Dakota League of Cities also has 120 of North Dakota’s Park Districts as its members.

[¶4] The North Dakota Association of Counties is a voluntary membership organization with all 53 of North Dakota's counties as members.

[¶5] The North Dakota Recreation and Park Association is a voluntary membership organization with 73 park districts as members. There are 215 park districts in North Dakota that levied general fund property taxes in 2016.

STATEMENT OF AUTHORSHIP AND CONTRIBUTIONS

[¶6] No party's counsel authored this brief in whole or in part, neither a party nor party's counsel contributed money that was intended to fund preparing or submitting this brief, and no person, other than the amicus curiae, its members, or its counsel, contributed money that was intended to fund preparing or submitting this brief.

ARGUMENT

THE DISTRICT COURT JUDGMENT SHOULD BE AFFIRMED BECAUSE N.D.C.C. § 32-12.1-03, LIMITING THE LIABILITY OF POLITICAL SUBDIVISIONS, IS A CONSTITUTIONAL LEGISLATIVE DECISION

[¶7] The North Dakota Legislature has the power to define the remedies available in court proceedings. Tangedal v. Mertens, 2016 ND 170 ¶¶ 10-11, 883 N.W.2d 871 . That power includes the ability to limit or preclude liability for certain persons and entities. See e.g. N.D.C.C. § 32-03-39 (Civil liability immunity for parents for damages caused by minor children more than \$1,000); N.D.C.C. § 32-03-54 (Civil liability immunity for firearms manufacturer, distributor or seller for wrongful death or property damage due to sale of firearm); N.D.C.C. § 32-03-56 (Civil liability immunity for anhydrous ammonia owners). The legislature made the decision to limit the liability of political subdivisions. See N.D.C.C. § 32-12.1-03. When claims in this case arose, the North Dakota Century Code provided, “[t]he liability of political subdivisions under this chapter is limited to a total of two hundred fifty thousand dollars per person and five hundred thousand dollars for injury to three or more persons during any single occurrence.” N.D.C.C. § 32-12.1-03(2) (2010).

[¶8] It is reasonable for the legislature to place a limit on the liability of political subdivisions based on the large amount of responsibility and services that political subdivisions provide, the limited ability that political subdivisions have to raise money to satisfy a large judgment, and the negative consequences that requiring a political subdivision to satisfy a large judgment would have on citizens.

A. Political Subdivisions Have a Large Amount of Responsibility and Provide Critical Services to the Public

[¶9] Each of the four political subdivisions discussed in this brief have different responsibilities and provide different services; however, they all provide services and carry responsibilities that an individual or a business cannot take on or will not take on due to cost, lack of profit, or risk associated with the activity. Below we provide a brief explanation of the responsibilities and services of the political subdivisions represented in this brief.

1. School Districts

[¶10] Generally, it is the duty of a school district to establish a system of free public schools for all children of legal school age residing within the district. N.D.C.C. § 15.1-09-33; see also N.D. Const. art. VIII, § 2 (requiring a free public school system throughout the state). However, the role played by our public schools in the lives of children and the communities they serve is critical and essential, and quite simply, cannot be overstated. The North Dakota Century Code provides school boards, the governing bodies of school districts, broad enumerated powers and authority to accomplish their overall goal and duty to provide educational services to the citizens of North Dakota. See N.D.C.C. § 15.1-09-33. While public school's first responsibility to its students may be academic, the job does not end there. Their role is much broader. The school's primary role is to help each student achieve his or her maximum academic potential. Public schools are dedicated to helping children become expert problem solvers, a skill that will become essential in both the

personal and professional aspect of a child's adult life. In addition to that, public schools play an important part in teaching students how to form solid and appropriate social relationships and to connect with other children and adults in a caring, positive, and empathetic manner. Public schools not only play a vital role in our children's academic and social development, but they also provide a significant contribution to the general improvement of their respective communities, and can operate as a major platform to enhance child welfare in the community. The public school system has long been thought of as the bedrock of a community. Public schools provide a place for the community to meet and discuss important issues, as well as opportunities to foster unity and common goals. Moreover, the public school system in a given geographic location is generally one of the largest employers of the citizenry, especially in smaller communities.

[¶11] Public schools provide these important and essential services to the public on limited budgets that are sensitive to economic factors, population rates, enrollment numbers, and the like. The public policy behind the imposition of liability caps is clear when it comes to public schools. If a public school, already operating on a limited budget sensitive to various factors, is hit with a large judgment that it must satisfy, the result can be devastating and can literally mean the closing of schools. In that scenario, which can easily become a reality for a school district in North Dakota, the effect on the community would be significant. The residents of the community would have to look elsewhere to obtain educational services for their children, which would put a strain on the day-to-day existence of families. Moreover, those employed by the school district would need to find new employment, which could result in decreases in population and other negative impacts

on the community as a whole.

2. Cities

[¶12] Between sections 40-05-01 and 40-05-02 of the North Dakota Century Code, cities are granted 105 different authorities to exercise on behalf of citizens. Additionally, cities where citizens have voted in favor of a home rule charter have another 16 enumerated authorities. N.D.C.C. § 40-05.1-06. Not every city exercises every authority available and implementation varies. Below are three common examples of cities implementing the authorities granted by the State of North Dakota to provide critical services to citizens.

[¶13] Cities have the authority to regulate laying of gas, sewer, and water mains and to establish and maintain water works systems. N.D.C.C. §§ 40-05-01(12) and (36). Many cities provide for the laying of sewer and water pipes within the city and maintain those systems that exist. The water systems that exist generally provide water for drinking and residential use, business and industrial use, and fire suppression systems. Beyond the system of pipes in the ground, those systems often require plants to treat the water for human consumption and to clean the water after use and water towers to provide the pressure required to get the water where it needs to go.

[¶14] Cities have the power to lay out establish streets laying out, grading, cleaning and establishing public streets. N.D.C.C. § 40-05-01(8). Most cities exercise this power by repairing and redoing streets that fall into disrepair, removing snow from streets and cleaning the streets. Cities also regulate where new streets will be placed to ensure orderly development of the city.

[¶15] Cities are granted the power to regulate and control traffic within the city.

N.D.C.C. § 40-05-02(14). Cities exercise this power by putting up traffic lights, traffic signs, designate which direction traffic may travel on a particular street and how many lanes of traffic may travel on that street.

3. Counties

[¶16] Article VII, section 8 of the North Dakota Constitution provides that “[e]ach county shall provide for law enforcement, administrative and fiscal services, recording and registration services, educational services, and other governmental services or functions as may be provided by law.” What these functions entail and additional authorities that counties have are elaborated on in several other sections of the Century Code. See e.g. N.D.C.C. §§ 11-10-20, 11-15-03, 12-44.1-02 (duties related to enforcing laws and providing for jails); N.D.C.C. §§ 11-11-14(5), 11-11-14(14) (duties related to public roads and right of ways); N.D.C.C. §§ 16.1-04-02, 16.1-05-05, 16.1-06-02 (duties related to elections). The following are common examples of way counties serve their citizens.

[¶17] Counties supervise and direct human service programs for the county. N.D.C.C. § 50-01.2-03(1). These human service programs include the supplemental nutrition assistance program (SNAP), child welfare services, and the home energy assistance program. N.D.C.C. §§ 50-01.2-03(4), (5) and (7). These programs provide support for individuals, children and families during their most vulnerable times. In addition to the money required to pay the benefits, managing the social service programs requires staff, offices, and other supplies to keep an office running.

[¶18] Each county is responsible for maintaining law and order in the county. An elected sheriff provides law enforcement services to the county. N.D.C.C. § 11-15-03.

Those services include preserving the peace, arresting individuals who have committed offenses, transporting prisoners, and enforcing traffic laws. Id. Additionally, many counties have jails that are ultimately the responsibility of the county and managed by the sheriff. Id. Further, counties provide states attorneys who follow through with prosecuting public offenses within each county. N.D.C.C. § 11-16-01.

[¶19] Counties manage county roads within each county. N.D.C.C. §§11-11-14, 24-05-01. This includes determining which roads are county roads to be maintained by the county. Building and repairing roads so that the public can travel safely on the county roads and clearing snow from the roads after a snow storm event.

4. Park Districts

[¶20] Section 40-49-12 of the North Dakota Century Code enumerates 13 authorities that park boards can exercise on behalf of park districts. Park districts own property and build, maintain and manage buildings, play grounds, fields and other such improvements. N.D.C.C. § 40-49-12(2). The services provided by park districts most often are establishing parks with green space and playground equipment and developing recreational trails. Many park districts also manage swimming pools and fitness centers and run recreational programs such as baseball, softball, and volleyball leagues for children and adults.

**B. Political Subdivisions Have Limited Ability to Raise Funds to Satisfy a
Large Judgment Without Substantially Impairing the Services Provided to
Citizens**

[¶21] Local property taxes and the state aid funding formula provide the main funding sources for public schools. See N.D.C.C. ch. 15.1-27. The main source of funding for cities, counties, and park districts is local property taxes; however, cities, counties, and parks also receive funding from other sources such as grants and various state funds. See e.g., N.D.C.C. § 54-27-19 (highway tax distribution fund distributed to cities and counties); N.D.C.C. § 57-39.2-26.1 (state aid distribution fund distributed to cities and counties). Since property tax is the source of funding that these political subdivisions have the most control over, that is the funding source that will be most closely examined in this brief.

[¶22] The North Dakota Legislature provides the framework for political subdivisions levying property taxes. Each political subdivision can levy a certain number of mills¹ for a general fund that is spent on general expenses and is not restricted to one use. Additionally, each type of political subdivision has other mill levies that can be levied but must be used for specific purposes. See e.g., N.D.C.C. § 57-15-06.7(8) (county capital Improvement levy); N.D.C.C. § 57-15-48 (city emergency purposes levy). The amount of money raised by levying a mill will vary by political subdivision based on the value of the real property within that political subdivision. See N.D.C.C. § 57-15-02. Each political

¹ “A money of account equal to 1/10 cent.” *Mill*, Merriam Webster’s Collegiate Dictionary (11th ed. 2003).

subdivision's property tax levying authority is explained below. Additionally, financial information is provided for a median sized² version of each of the political subdivisions to illustrate the financial realities of political subdivisions in North Dakota.

1. School Districts

[¶23] School districts have the authority to levy the amount of money that was levied in the previous year plus an additional twelve percent, up to 70 mills. N.D.C.C. § 57-15-14.2(1). School districts also have authority to levy the following additional mill levies, which can only be used for the limited purposes described in the statute:

Limited Purpose	Maximum Rate and Action Required to Levy	Legal Authority
Non-resident Student Tuition	No limit on mills and can be levied by school board action to cover student tuition	N.D.C.C. § 15.1-29-15; N.D.C.C. § 57-15-14.2(4)
Special Assessment on School Property	No limit on mills and can be levied by school board action for the limited purpose of paying for special assessments	N.D.C.C. § 57-15-41
Building Fund for new school building	Limited to 20 mills and must be authorized by sixty percent majority vote of electors	N.D.C.C. § 57-15-14.2(5); N.D.C.C. § 57-15-16; N.D.C.C. § 15.1-09-49
Special Reserve Fund	Limited to 3 mills and cannot exceed amount produced by a 15 mill levy.	N.D.C.C. § 57-19-01; N.D.C.C. § 57-15-14.2(3)
Miscellaneous Fund	Limited to 12 mills	N.D.C.C. § 57-15-14.2(2)

² “[A] value in an ordered set of values below and above which there is an equal number of values or which is the arithmetic mean of the two middle values if there is no one middle number.” *Median*, Merriam Webster’s Collegiate Dictionary (11th ed. 2003).

[¶24] The largest school district had 12,961 students and the smallest school district had 6 students for the 2016-2017 enrollment year. The median sized school district in North Dakota is the Mandaree and Max School District which had a student enrollment of 212 for the 2016-2017 school year. Mandaree and Max School District's budget for 2017 is \$3,102,674. The budget must cover all the costs to provide for the constitutionally mandated education to 212 students. That is only approximately \$14,635 per student to provide the required education.

[¶25] A stipulation was entered in this case that damages would exceed three million dollars. A judgment of that size would have a significant impact on the ability of a median sized school district to meet its constitutionally mandated requirement to provide an education to students in the district. It would take almost Mandaree and Max's entire yearly budget to satisfy a three million dollar judgment.

2. Cities

[¶26] Cities have the authority to levy up to 105 mills for their general fund. N.D.C.C. § 57-15-08. Cities where the citizens have passed a home rule charter may have a different limit if that limit is provided for in the home rule charter. See N.D.C.C. § 40-05.1-06(2). Cities also have authority to levy sixteen other levies but the money raised from those levies must be used only for specific purposes. See e.g., N.D.C.C. §§ 40-24-10, 57-15-10(1) (levy for city's share of special improvements); N.D.C.C. § 2-06-10 (levy for municipal airport). Seven of those levies require a public vote. See e.g., N.D.C.C. §§ 40-38.1-02, 57-15-10(6) (levy for municipal arts council); N.D.C.C. §§ 57-15-55, 57-15-10(10) (levy for aid for public transit system). One of these specific levies allows cities to

levy up to five mills or up to ten mills if the city has insurance to settle a claim or satisfy a judgment. N.D.C.C. §§ 40-43-01, 32-12.1-11, 57-15-28.1.

[¶27] North Dakota has 357 cities. The largest city in North Dakota has a population of 105,549 people and the smallest city has a population of 4 people, according to the 2010 census. The city of Reeder, with a population of 162 people, according to the 2010 census, represents the median sized city in North Dakota. Reeder's budget for 2017 is \$431,575.64. To satisfy a three million dollar judgment, it would take approximately 7 years of Reeder's entire budget. Otherwise, presuming Reeder had insurance in effect at the time of the incident, it could levy an additional ten mills to satisfy the judgment. A mill in Reeder was worth \$275.79 for the 2016 taxable year; thus, Reeder could raise approximately \$2,757.90 a year through the judgment mill levy and it would take approximately 1,088 years to satisfy the judgment, presuming no interest was accruing.

[¶28] Without the liability limit, a median sized city would need to look at significantly cutting items from its budget to satisfy the judgment. Items removed from the budget might include limiting garbage services, street cleaning, and snow plowing and limiting utility services. It might also delay maintenance to water and sewer systems and cut personnel. These items would significantly impact the lives of that city's residents. It is also a distinct possibility that a median size city would be forced to dissolve as a result of a three million dollar judgment.

3. Counties

[¶29] A county has the authority to levy 60 mills for its general fund. N.D.C.C. § 57-15-06. In counties where the citizens have voted in favor of implementing a home rule

charter, the mill levy limit may vary, depending on what is in the home rule charter. N.D.C.C. § 11-09.1-05. Counties have additional authority for 20 separate levies for specific purposes. See e.g., N.D.C.C. § 21-03-15 (Levy for interest and principal payments on bonds); N.D.C.C. §§ 57-15-06.7(9), 57-15-28 (Emergency levy). Seven of the levies require a public vote to authorize the levy. See e.g. N.D.C.C. §§ 57-15-06.7(12), 57-15-56 (Levy for programming and services for older people); N.D.C.C. §§ 23-30-02, 23-30-07 (Levy for county hospital district). One of these specific levies allows counties to levy up to five mills or up to ten mills if the county has insurance to settle a claim or satisfy a judgment. N.D.C.C. §§ 32-12.1-11, 57-15-28.1.

[¶30] North Dakota has 53 counties. The largest county has a population of 149,778 according to the 2010 census. The smallest county has a population of 727 people, according to the 2010 census. Sioux County represents the median sized county in North Dakota and has a population of 4,153 people, according to the 2010 census. Sioux County's total budget for 2017 is \$2,304,752. To satisfy a three million dollar judgment, it would take more than a median sized county's yearly budget. A mill in Sioux County for the 2016 taxable year is worth \$4,358. Thus, a median sized county could raise approximately \$43,500 per year to pay towards the judgment. At that rate, it would take the county approximately 68 years to satisfy the judgment, without accounting for interest being applied to the judgment.

[¶31] To try and satisfy the judgment, the county could start making cuts to road maintenance, sheriff's departments, jails, and social services. Through making these types of cuts, it would quickly become impossible to meet a county's constitutional and statutory

obligations for roads, public safety, welfare and public health. Cuts to these items would all negatively impact the lives of the citizens in that county.

4. Park Districts

[¶32] A park district has the authority to levy up to 38 mills for its general fund. N.D.C.C. § 57-15-12. Park districts also have authority to levy additional mills for interest and principal payments on bonds issued for park development, to cover the costs of special assessments on park property, for judgments and for acquiring real estate for park facilities. N.D.C.C. § 21-03-07(10); N.D.C.C. § 21-03-15; N.D.C.C. § 40-23-07; N.D.C.C. § 57-15-12.3; N.D.C.C. § 57-15-41; N.D.C.C. § 57-15-28.1. Park districts are permitted to levy up to five mills or up to ten mills if the park district has insurance to settle a claim or satisfy a judgment. N.D.C.C. §§ 32-12.1-11, 57-15-28.1.

[¶33] There are 215 park districts that levied general fund taxes in North Dakota in 2016. The largest park district in North Dakota has a population of 105,549, and the smallest park district has a population of 20, according to the 2010 census. The median sized park district is the Kulm Park District, with a population of 354, according to the 2010 census. Kulm Park District's budget for 2017 is \$34,951. Based on this amount, it would take approximately 85 years of paying Kulm Park District's entire budget to satisfy a three million dollar judgment, without any interest. For the 2016 taxable year, a mill in Kulm was worth \$642. If Kulm Park District, levied the 10 mill judgment levy, it could raise approximately \$6,520 a year. At that rate, it would take approximately 460 years to satisfy a three million dollar judgment, without interest.

[¶34] With such a limited budget, it is unlikely that the Kulm Park District could

raise enough money to satisfy the judgment, even with using its entire budget. Based on these numbers, it is likely that the park district would be required to dissolve and not provide any services to the citizens. Park districts tend to provide the services beyond basic needs that help enhance life within a particular park district, including spaces for engaging in physical activity necessary for healthy citizens of all ages. Without the park district, the citizens would lose those life enhancing services, resulting in less healthy communities.

CONCLUSION

[¶35] Political subdivisions provide services to citizens that others cannot or will not provide due to cost, lack of profit, or risk associated with the activity. Without a liability cap, in the event of a large judgment, a political subdivision may not be able to provide the critical services to its citizens. Due to the effect that a large judgment could have on the citizens of North Dakota, it is appropriate for the North Dakota Legislature to limit the liability of political subdivisions and the district court judgment holding N.D.C.C. § 32-12.1-03 constitutional should be affirmed.

[¶36] Respectfully submitted this 25th day of September, 2017.

North Dakota League of Cities,
and North Dakota Recreation & Park
Association

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A copy of this document and the motion for filing of amicus curiae brief was electronically filed with the North Dakota Supreme Court, on September 25, 2017 and served electronically upon:

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Further, I certify that on the 25th day of September, 2017, I served a copy of this document and the motion for filing of amicus curiae brief on the following by United States mail:

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[¶ 36] A copy of this document was electronically filed with the North Dakota Supreme Court, on October 2, 2017 and served electronically upon:

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