STATE OF MICHIGAN

COURT OF CLAIMS

MACOMB INTERMEDIATE SCHOOL DISTRICT, et al,

Plaintiffs,

v

Case No. 25-000175-MZ

Hon. Sima G. Patel

STATE OF MICHIGAN, MICHIGAN DEPARTMENT OF EDUCATION, and STATE SUPERINTENDENT FOR PUBLIC INSTRUCTION, in her official capacity,

Defendants.
_____ /

OPINION AND ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFFS' CROSS MOTION

On November 12, 2025, plaintiffs—comprising a coalition of local school districts, intermediate school districts, and school officials—filed an emergency motion for a preliminary injunction seeking to enjoin enforcement of § 31aa(9) of the State School Aid Act of 1979 (SSAA), MCL 388.1630 *et seq*., as amended by 2025 PA 15, which requires districts accepting state funding in support of student mental health and school safety to "waive any privilege that may otherwise protect information from disclosure in the event of a mass casualty event" (the privilege waiver). Following status conferences in this Court and in a companion case filed in federal district court, plaintiffs withdrew their motion for a preliminary injunction and the parties agreed to proceed on cross-motions for summary disposition. The Court heard oral argument on the parties' cross-

motions on December 11, 2025. The Court now GRANTS defendants' motion for summary disposition and DENIES plaintiffs' cross-motion.

I. BACKGROUND

In 1979, the Headlee Amendment was adopted by the voters of Michigan as part of the Michigan Constitution. Const 1963, art 9, §§ 25-34. Since the adoption of the Headlee Amendment, the Legislature has appropriated funds to local school districts pursuant to the SSAA, which was enacted by 1979 PA 94 and is amended annually to reflect the appropriations to be made in that year. The SSAA is entitled:

> An act to make appropriations to aid in the support of the public schools, the intermediate school districts, community colleges, and public universities of the state; to make appropriations for certain other purposes relating to education; to provide for the disbursement of the appropriations; to authorize the issuance of certain bonds and provide for the security of those bonds; to prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to create certain funds and provide for their expenditure; to prescribe penalties; and to repeal acts and parts of acts.

On October 1, 2025, the Legislature passed SB 166 to amend the SSAA for the 2025-2026 fiscal year. The governor signed the bill on October 7, 2025, and it became effective immediately with the enactment of 2025 PA 15.

At issue in this case is § 31aa of the SSAA, MCL 388.1631aa, which was first enacted in 2022, to appropriate funds for school safety and student mental health programs. It has been amended every year since. 2025 PA 15 amended § 31aa for the 2025-2026 fiscal year. The statute requires the Michigan Department of Education (MDE) to make payments to those districts that "opt in" and agree to the terms of § 31aa. MCL 388.1631aa(3). More specifically at issue is the addition of Subsection (9) to § 31aa, which states:

To receive funding under this section, *a district, an intermediate district, a nonpublic school, or the Michigan Schools for the Deaf and Blind* must agree to be subject to a comprehensive investigation, *must affirmatively agree to waive any privilege that may otherwise protect information from disclosure in the event of a mass casualty event*, and must agree to comply with a comprehensive investigation. All of the following apply to a comprehensive investigation described in this subsection:

(a) The comprehensive investigation will assess the circumstances surrounding the mass casualty event, including, but not limited to:

(*i*) Emergency response effectiveness.

(*ii*) Compliance with safety protocols.

(*iii*) Communication procedures.

(*iv*) Any factors contributing to the incident.

(b) The governor shall designate an appropriate person or investigative entity to conduct the comprehensive investigation. This person or investigative entity may include, but is not limited to, state law enforcement agencies, independent review boards, or specially appointed task forces. The person or designated investigative entity has the authority to do all of the following:

(*i*) Access relevant records and data from the district.

(*ii*) Interview witnesses and district personnel involved.

(*iii*) Issue findings and recommendations based on the investigation.

(c) The person or investigative entity designated in subdivision (b) shall prepare a detailed report of its findings and submit the report to the governor and relevant legislative committees within 90 days following the conclusion of the investigation. The report must include recommendations for preventing future incidents and improving school safety protocols. [Emphasis added.]

Plaintiffs challenge the constitutionality of a single clause in the introductory paragraph of § 31aa(9): in order to receive funds a district "must affirmatively agree to waive any privilege that may otherwise protect information from disclosure in the event of a mass casualty event."

A "mass casualty event" is defined in § 31aa(12):

> As used in this section:
>
> (a) "Mass casualty event" means any of the following that occur on school grounds or at a school-sponsored event:
>
> (*i*) An incident resulting in significant injuries to not fewer than 3 individuals.
>
> (*ii*) An incident resulting in fatalities.
>
> (*iii*) An incident that exceeds the normal resources for emergency response available in the jurisdiction where the incident takes place.
>
> (*iv*) An incident that results in a sudden and timely surge of injured individuals necessitating emergency services.
>
> * * *
>
> (c) "School grounds" means all properties owned or operated by the district, including transportation vehicles owned or operated by the district.
>
> (d) "School-sponsored event" means any activity organized or sanctioned by the district.

If any one of the four conditions are met, a "mass casualty event" can be found.

Also relevant to the challenges raised is § 161 of the SSAA, MCL 388.1761, which states:

> A *school official or member of a board or other person* who neglects or refuses to do or perform an act required by this act or who violates or knowingly permits or consents to the violation of this act is guilty of a misdemeanor, punishable by imprisonment for not more than 90 days, or a fine of not more than $1,500.00, or both. This penalty is in addition to all other financial penalties otherwise specified in this article. [Emphasis added.]

Section 161 has been in the SSAA since its 1979 enactment, although the fine amount has increased over the years.

Plaintiffs argue that the privilege waiver is: (1) unconstitutionally vague; (2) an unconstitutional condition that coerces the surrender of fundamental rights, including the privilege

against self-incrimination; (3) a violation of the Title-Object Clause of the Michigan Constitution; and (4) an intrusion upon the judiciary's exclusive authority in violation of the separation-of powers doctrine. Plaintiffs seek a declaration that the privilege waiver found in § 31aa(9) is unconstitutional and invalid. They contend that the privilege waiver can be severed from the remainder of the statutory provision, preserving the State's authority to conduct comprehensive investigations following a mass casualty event. They request a permanent injunction enjoining the administration from enforcing the waiver privilege clause. The MDE and State Superintendent take no position on the constitutionality or validity of the statute. The State of Michigan seeks summary disposition in its favor and a ruling that the privilege waiver is constitutional and enforceable. Because this Court's ruling will govern the conduct of the MDE and State Superintendent, as well as the State, the Court will refer to defendants in the plural.

The MDE originally set an 11:59 p.m. deadline on November 30, 2025, for school districts to certify acceptance of the conditions associated with § 31aa funding. With negotiation, that deadline was adjourned to 11:59 p.m. on December 4, 2025, with the parties later stipulating that districts could rescind their decision to "opt in" by 11:59 p.m. on December 30, 2025.

II. LEGAL PRINCIPLES

The parties have filed competing motions for summary disposition under MCR 2.116(C)(10). The parties agree that there are no factual disputes and that resolution of this case comes down to purely legal issues. "A motion under MCR 2.116(C)(10) . . . tests the *factual sufficiency* of a claim." *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 160; 934 NW2d 665 (2019). Summary disposition should be granted in a party's favor when, after reviewing the evidence in the light most favorable to the nonmoving party, there are no remaining issues of

material fact and the moving party is entitled to judgment as a matter of law. *Lowrey v LMPS & LMPJ, Inc*, 500 Mich 1, 5; 890 NW2d 344 (2016).

Resolution of the underlying issues requires the Court to interpret legislative enactments. "The foremost rule, and our primary task in construing a statute, is to discern and give effect to the intent of the Legislature" by examining the language of the legislative act, "both the plain meaning of the critical word[s] or phrase[s] as well as its placement and purpose in the statutory scheme." *Sun Valley Foods Co v Ward*, 460 Mich 230, 236-237; 596 NW2d 119 (1999) (cleaned up). "We accord to every word or phrase of a statute its plain and ordinary meaning, unless a term has a special, technical meaning or is defined in the statute." *Guardian Environmental Servs, Inc v Bureau of Constr Codes & Fire Safety*, 279 Mich App 1, 6; 755 NW2d 556 (2008). See also *Brackett v Focus Hope, Inc*, 482 Mich 269, 276; 753 NW2d 207 (2008), citing MCL 8.3a. "Where the statutory language is unambiguous, the plain meaning reflects the Legislature's intent and the statute must be applied as written." *Honigman Miller Schwartz & Cohn LLP v Detroit*, 505 Mich 284, 294; 952 NW2d 358 (2020) (cleaned up).

III. ANALYSIS

A. VOID-FOR-VAGUENESS

Plaintiffs argue that § 31aa(9) is unconstitutionally vague because it fails to adequately and clearly define key terms such as "any privilege" and "mass casualty event," and does not provide adequate notice or guidance about what is legal and illegal. This is especially problematic, plaintiffs urge, given the potential for criminal liability under § 161.

Plaintiffs raise a facial challenge to the constitutionality of § 31aa(9), and therefore face an extremely steep hurdle. "The party challenging the facial constitutionality of an act 'must establish

that no set of circumstances exists under which the act would be valid. The fact that the . . . act might operate unconstitutionally under some conceivable set of circumstances is insufficient . . . .' " *Council of Orgs & Others for Ed About Parochiaid, Inc v Governor*, 455 Mich 557, 568; 566 NW2d 208 (1997), quoting *United States v Salerno*, 481 US 739, 745; 107 S Ct 2095; 95 L Ed 2d 697 (1987). If any possible set of circumstances can reasonably be conceived of to sustain the statute, the constitutionality of the statute must be assumed and the facial challenge must fail. *Council of Orgs*, 455 Mich at 568.

"The 'void for vagueness' doctrine is derived from the constitutional guarantee that the state may not deprive a person of life, liberty, or property without due process of law." *Proctor v White Lake Twp Police Dep't*, 248 Mich App 457, 467; 639 NW2d 332 (2001), citing US Const, Am XIV; Const 1963, art 1, § 17. " 'It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined.' " *People v Howell*, 396 Mich 16, 20 n 4; 238 NW2d 148 (1976), quoting *Grayned v City of Rockford*, 408 US 104, 108-109; 92 S Ct 2294; 33 L Ed 2d 222 (1972). When challenged on substantive due process grounds, a statute is void for vagueness when its language "fails to provide fair notice of the conduct proscribed" or "is so indefinite that it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed." *People v Harris*, 495 Mich 120, 133-134; 845 NW2d 477 (2014). See also *Turunen v Dir of Dep't of Natural Resources*, 336 Mich App 468, 482-483; 971 NW2d 20 (2021) ("A statute may be challenged for vagueness on the grounds that it does not provide fair notice of the conduct proscribed or that it is so indefinite that it invites arbitrary or discriminatory enforcement.").

As explained by the Court of Appeals in *Exclusive Capital Partners, LLC v City of Royal Oak*, __ Mich App __; __ NW3d __ (2024) (Docket No. 366257); slip op at 11 (cleaned up):

> Vagueness challenges that do not involve a challenge to First Amendment freedoms are examined in light of the facts of the particular case. A statute or ordinance has a strong presumption of constitutionality, and the party challenging such law has the burden of overcoming that presumption. In determining whether a statute is void for vagueness, the entire text of the statute is examined and the words of the statute are given their ordinary meanings. A statute must give a person of ordinary intelligence a reasonable opportunity to know what is prohibited or required. A statute is unconstitutionally vague where people of common intelligence must guess at the statute's meaning and differ with regard to how it applies. When determining whether a statute inappropriately delegates unstructured and unlimited discretion to a decision maker, the court examines whether the statute provides standards for enforcing and administering the laws in order to ensure that enforcement is not arbitrary or discriminatory . . . .

Further, "[t]he courts have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent. If necessary, a court must give a statute a narrow construction to render it constitutional if such a construction is possible without harming the Legislature's purpose." *Thompson v Merritt*, 192 Mich App 412, 424; 481 NW2d 735 (1991).

1. Interpretation of the Statutory Language

Interpretation of the statutory language is a necessary first step in determining whether the statute is so unclear that a person of ordinary intelligence would be unable to determine what conduct is prohibited. Under § 31aa(9), in order to "receive funding," a district must: 1) "agree to be subject to a comprehensive investigation"; 2) "affirmatively agree to waive any privilege that may otherwise protect information from disclosure in the event of a mass casualty event"; and 3) "agree to comply with a comprehensive investigation."

a. "Any Privilege"

First, plaintiffs describe the phrase "any privilege" as vague because it is not clear what privileges are covered. Contrary to plaintiffs' contention, the phrase "any privilege" is plain and clear and not vague: "any privilege" means exactly what it says.

"Any" is defined as:

> **1**. one, a, an, or some; one or more without specification or identification. **2**. whatever or whichever it may be. **3**. in whatever quantity or number, great or small; some. **4**. every; all . . . . [*Harris*, 495 Mich at 131, quoting *Random House Webster's College Dictionary* (1997).]

"Any" is "commonly understood to encompass a wide range of things." *Harris*, 495 Mich at 132. In *Harris*, the Michigan Supreme Court noted, in relation to the phrase "any act" in the criminal extortion statute, "it is difficult to imagine how the Legislature could have cast a broader net." *Id*.

Although broad, the phrase "any privilege" is clear and unambiguous. Any and all privileges that may otherwise protect information from disclosure by the district are included. The breadth of the phrase does not render it ambiguous.

b. "Mass Casualty Event"

Second, the term "mass casualty event" is not ambiguous or even vague. The statute requires, in the event of a mass casualty event, that a district affirmatively waive any privilege against disclosure. The waiver is only triggered if a mass casualty event occurs.

Section 31aa(12)(a) defines a "mass casualty event" as four alternative incidents occurring on school grounds or at a school-sponsored event. The meaning of the words in the phrase "mass casualty event" must also be considered. "Mass" is defined, in relevant part, as "a quantity or aggregate of matter usually of considerable size" and "a large quantity, amount, or number." *Merriam Webster's On-Line Dictionary*. "Casualty" is defined, in relevant part, as "a person or thing injured, lost, or destroyed." *Merriam Webster's On-Line Dictionary*. An "event" is defined "as 'something that happens or is regarded as happening; an occurrence, esp. one of some importance.' " *1373 Moulin, LLC v Wolf*, 341 Mich App 652, 667; 992 NW2d 314 (2022), quoting

Random House Webster's Dictionary (1997). Accordingly, a "mass casualty event" is an occurrence during which a large number of persons are injured or die (lost or destroyed).

The first alternative for finding a mass casualty event is "[a]n incident resulting in significant injuries to not fewer than 3 individuals." MCL 388.1631aa(12)(a)(*i*). Plaintiffs contend that the word "significant" is subjective and undefined, giving the State unlimited authority to find that a mass casualty event has occurred. " 'Significant' is defined as 'of a noticeably or measurably large amount,' . . ." *People v Eichler*, ___ Mich App ___; ___ NW3d ___ (2025) (Docket No. 371360), slip op at 6, quoting *Merriam-Webster's Collegiate Dictionary* (11th ed), and adopting *Martin v Smith*, unpublished opinion of the Court of Appeals, issued December 10, 2020 (Docket No. 354128), p 10. "Significant" is also defined as "large enough to be noticed or to have an effect." *Merriam Webster's On-Line Dictionary*. A significant injury is one that is severe enough to be noticed and have an effect on the injured person. To be counted as a mass casualty event, at least three individuals must suffer such an injury from the event. This definition may be broad, but it is understandable.

The second alternative comprising a mass casualty event is "[a]n incident resulting in fatalities." MCL 388.1631aa(12)(a)(*ii*). Plaintiffs assert that this is vague because there is no numerosity requirement. Plaintiffs point to MCL 8.3b, which provides, "Every word importing the singular number only may extend to and embrace the plural number, and every word importing the plural number may be applied and limited to the singular number." Accordingly, plaintiffs contend that a mass casualty event could be declared with a single fatality, such as if a teacher suffers a fatal heart attack on school grounds. However, MCL 8.3 limits the rule of MCL 8.3b when "such construction would be inconsistent with the manifest intent of the legislature." See *Robinson v Detroit*, 462 Mich 439, 461 n 18; 613 NW2d 307 (2000). The statute in question

defines a "*mass* casualty event," which by its definition requires more than one casualty. A single fatality with no other persons suffering any type of injury would be insufficient. According to the plain language of § 31aa(12)(a), the Legislature's use of the word "fatalities" was intentional and must be read only in the plural.

In relation to the third alternative for demonstrating a mass casualty event—"[a]n incident that exceeds the normal resources for the emergency response available in the jurisdiction where the incident takes place," MCL 388.1631aa(12)(a)(*iii*)—plaintiffs complain that the availability of resources varies greatly around the state, and even in a single jurisdiction depending on the time of day and number of other emergencies ongoing at the time. The State concedes that this factor will vary by district. This does not render the statutory language unconstitutionally vague or even unclear. It is a fact of life that districts with less emergency response resources will be disproportionally hindered in responding to an incident involving mass casualties on school grounds or at a school sponsored event. It makes sense that the Legislature would desire an investigation following such an incident in order to determine how to better respond in the future.

The alternative of MCL 388.1631(12)(a)(*iv*) is the most difficult to parse, but even that provision is not vague. Under this subsection, a mass casualty event means "[a]n incident that results in a sudden and timely surge of injured individuals necessitating emergency services." The Michigan Supreme Court defined the word "sudden" in *Upjohn Co v New Hampshire Ins Co*, 438 Mich 197, 207; 476 NW2d 392 (1991): " '[S]udden' is defined with a temporal element that joins together conceptually the immediate and the unexpected. The common, everyday understanding of the term 'sudden' is happening, coming, made or done quickly, without warning or unexpectedly; abrupt." (Cleaned up.) "Timely" means: "coming early or at the right time"; "appropriate or adopted to the times or the occasion." As an adverb, it is defined as: "in time,

opportunely"; "early, soon." *Merriam-Webster's On-Line Dictionary*. "Surge" is defined, in relevant part, as "to rise suddenly to an excessive or abnormal value." *Id*. The word "timely" appears out of place and the Court recognizes that it was a poor word choice on the drafters' part. However, the meaning of this subsection is clear: if an event suddenly and unexpectedly causes several individuals to suffer injuries that require emergency services all at once, or within a short window of time, a mass casualty event has occurred.

c. "Comprehensive Investigation"

Third, plaintiffs are concerned that the privilege waiver is not bound by a comprehensive investigation and, therefore, could be used against them at any time and for purposes other than the comprehensive investigation. The clause creating the privilege-waiver requirement does not include the phrase "comprehensive investigation." The clause is, however, placed between clauses requiring a district to agree to be subject to and to comply with a "comprehensive investigation," within a statutory subsection outlining the parameters of a comprehensive investigation, the powers of the investigator(s) conducting the comprehensive investigation, and describing the method of resolving a comprehensive investigation. "[W]hen interpreting a clause in a statute, courts must consider the context in which the clause was used." *Lewandowski v Nuclear Mgt Co, LLC*, 272 Mich App 120, 124-125; 724 NW2d 718 (2006). Every other provision in § 31aa(9) pertains to a comprehensive investigation. Reading the privilege waiver clause in context, it is clear that the privilege waiver will be triggered only during a comprehensive investigation following a mass casualty event. The language selected by the Legislature could have been more straightforward, but the meaning is easily understood in context.

d. Section 31aa(9) Applies Only to the District

Fourth, plaintiffs contend it is unclear whether the individuals who comprise the district will be deemed to have waived their privilege against the release of their communication. The plain language of § 31aa(9) applies only to the district. The statute provides that the district must affirmatively agree to waive any privilege. There is no mention of any persons or individuals who comprise the district, let alone any provision requiring them to waive their privileges as a condition for the district receiving funds.

2. The Privilege Waiver is not Void for Vagueness

After examining the text of § 31aa(9) and (12), and giving the words chosen by the Legislature their ordinary meanings, the Court now considers plaintiffs' facial, substantive due process challenge that the privilege waiver is void for vagueness.

A person of ordinary intelligence has a reasonable opportunity to know from the language of the statute that in the event of a mass casualty event, a comprehensive investigation will be conducted, during which a district that has accepted funding under § 31aa must waive any possible privilege that would protect information from disclosure. For example, if a shooting on a school bus leads to the injury of three or more persons or the death of at least two persons, the State may conduct a comprehensive investigation. If the investigators request the district to provide e-mail communications within the district's transportation department about safety issues on school buses, the district may not withhold those documents. If the investigators request communications between the district's superintendent and the district's attorney about legal methods of addressing safety on buses, the district may not claim an attorney-client privilege. If a school counselor worked with the involved shooter in the past, the district could not raise a counselor privilege for

communications within its control. If, however, the district asked the counselor directly to reveal statements made during a session or to produce materials shared with the counselor's own attorney, the counselor could assert any available privilege because the counselor did not agree to waive any privileges.

Similarly, a district could reasonably understand that if the bleachers collapsed at a football game, resulting in injuries requiring emergency services for several individuals, this could be declared a mass casualty event triggering a comprehensive investigation. A bleacher collapse injuring or causing the death of one individual, on the other hand, would not be a *mass* casualty event and thus would not trigger an investigation or incumbent waiver of privilege. A mass food poisoning event or mass illness caused by a gas leak would fall within the definition of a mass casualty event, although plaintiffs argue this is unreasonable. But such incidents impact school safety and school safety is one purpose of the funding provided by § 31aa. By contrast, plaintiffs' example of a single teacher suffering a heart attack in the classroom would not be a mass casualty event and would trigger neither a comprehensive investigation nor the district's waiver of its privileges.

Plaintiffs have not met their steep burden of demonstrating that § 31aa(9)'s privilege waiver could not be constitutional under any set of circumstances. The statutory language is clear in context and the situations in which the district's privilege waiver would apply are reasonably discernable. Accordingly, plaintiffs cannot establish that the privilege waiver is void for vagueness. The Court DENIES plaintiffs' motion for summary disposition on this ground, and GRANTS defendants' motion.

B. UNCONSTITUTIONAL-CONDITIONS DOCTRINE

Under § 31aa(9), in order to "receive funding," a district must "affirmatively agree to waive any privilege that may otherwise protect information from disclosure in the event of a mass casualty event." Plaintiffs assert that the unconstitutional-conditions doctrine precludes the state from conditioning essential public funding on the waiver of constitutional rights as attempted in § 31aa(9).

"As a general matter, the government can choose to offer or not offer public benefits or privileges as it sees fit (public funds, public employment, a license, etc.), and it can condition the receipt of these benefits on compliance with certain obligations." *Herschfus v City of Oak Park*, 150 F4th 489, 498 (CA 6, 2025). "[I]f a party objects to a condition on the receipt of federal funding," as a general rule, "its recourse is to decline the funds." *Agency for Int'l Dev v Alliance for Open Society Int'l, Inc*, 570 US 205, 214; 133 S Ct 2321; 186 L Ed 2d 398 (2013). The judiciary has created an exception to this general rule when "the government asks for too much and poses an unreasonable choice," called the "doctrine of unconstitutional conditions" or the "unconstitutional-conditions doctrine." *Herschfus*, 150 F4th at 498.

The Michigan Supreme Court explained this doctrine in *AFT Mich v Michigan*, 497 Mich 197, 225-226; 866 NW2d 782 (2015):

> Individuals may under most circumstances voluntarily waive their constitutional rights. Individuals also have no constitutional right to receive any particular governmental benefits. *Falk v State Bar of Mich*, 411 Mich 63, 107; 305 NW2d 201 (1981) (opinion by RYAN, J.), quoting *Elrod v Burns*, 427 US 347, 361; 96 S Ct 2673; 49 L Ed 2d 547 (1976). However, under limited circumstances, the government may be prevented from denying a benefit to an individual because that person has exercised a constitutional right; this is known as the "doctrine of unconstitutional conditions." *Dolan v City of Tigard*, 512 US 374, 385; 114 S Ct 2309; 129 L Ed 2d 304 (1994). Not every condition attached to a governmental benefit is an unconstitutional one, and although the exact boundaries of the doctrine

> are difficult to define, the fundamental principle underlying the doctrine is clear: the government cannot attach conditions to government benefits that effectively *coerce* individuals into relinquishing their constitutional rights.

Following a mass casualty event, a district that has accepted funding must disclose information requested by the State and must waive "any privilege" protecting that information. As noted above, the phrase "any privilege" is broad and encompasses any possible privilege that could apply. "[A]ny privilege," by its plain meaning, would encompass the state and federal constitutional privilege against self-incrimination. US Const, Am V and Const 1963, art 1, § 17. However, a district, as a governmental agency, does not have a constitutional right against self-incrimination. Constitutional rights protect individuals from government overreach, not the government itself from the overreach of other parts of the government. See *McDonald v Chicago*, 561 US 742, 765; 130 NW2d 3020; 177 L Ed 2d 894 (2010) (holding that the federal Bill of Rights is applied to the states through the 14th Amendment and states must not invade the rights of individuals); *Ciraci v J.M. Smucker Co*, 62 Fth 278, 280 (CA 6, 2023) (holding that the Bill of Rights protects individuals from the government, not each other). Plaintiffs acknowledge this legal truth, but contend that by waiving its privileges, the district indirectly waives the privileges of the persons who make up that district.

When a district speaks, a person is the actual mouthpiece. A person must present the materials requested by the state during a comprehensive investigation. A person will communicate on behalf of the district. But the speech and the materials belong to the district. If the investigator directly communicates with an individual within the district, that person retains every right to invoke his or her privileges because the individual has not waived his or her privileges, only the district has. The district cannot waive an individual's personally held privileges. See *People v Bragg*, 296 Mich App 433, 465; 824 NW2d 170 (2012). Because the persons making up the district

have not waived their individual privileges, they will not violate the SSAA by raising a privilege when directly questioned and cannot be held liable under § 161 for doing so.

But the Court acknowledges that there may be statements within the materials required to be disclosed by the district that could incriminate persons within the district. The individual's privilege does not protect against the release of those materials. In *Couch v United States*, 409 US 322, 328; 93 S Ct 611; 34 L Ed 2d 548 (1973), the United States Supreme Court explained:

> It is important to reiterate that the Fifth Amendment privilege is a personal privilege: it adheres basically to the person, not to information that may incriminate him. As Mr. Justice Holmes put it: "A party is privileged from producing the evidence but not from its production." *Johnson v United States*, 228 US 457, 458; 33 S Ct 572; 57 L Ed 919 (1913). The Constitution explicitly prohibits compelling an accused to bear witness "against himself"; it necessarily does not proscribe incriminating statements elicited from another. Compulsion upon the person asserting it is an important element of the privilege, and "prohibition of compelling a man . . . to be witness against himself is a prohibition of the use of physical or moral compulsion to extort communications from *him*," *Holt v United States*, 218 US 245, 252-253; 31 S Ct 2; 54 L Ed 1021 (1910) (emphasis added). It is extortion of information from the accused himself that offends our sense of justice.

If a school administrator made an incriminating statement in an e-mail to a school board member and the district is in possession of that e-mail, the district must disclose it during a comprehensive investigation. The e-mail is in the district's possession and control and the district has waived any privilege. Accordingly, the district has no ground to deny the state's request for disclosure. The school administrator who authored the e-mail also has no ground to object to the disclosure of the e-mail. The administrator made the self-incriminating statement in a communication to a third party, and the administrator has no privilege against that third party's release of the statement. So long as the State does not extort the individual to be a witness against himself or herself, such as by demanding the individual admit to making the statement or repeating the statement, the individual's privilege under the Fifth Amendment has not been violated.

Section § 31aa(9) is coercive, but it does not coerce the relinquishment of a constitutional right in exchange for essential public funding. Accordingly, the Court GRANTS defendants' motion for summary disposition and DENIES plaintiffs' motion in this regard.

C. TITLE-OBJECT CLAUSE

Plaintiffs next contend that § 31aa(9) imposes a condition on funding that is not contemplated in nor germane to the title of the SSAA and it was added to the bill late in the budget process to avoid notice, rendering it violative of the Title-Object Clause.

The Title-Object Clause provides:

> No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title. [Const 1963, art 4, § 24.]

"The purpose of the Title-Object Clause is to prevent the Legislature from passing laws not fully understood, to ensure that both the legislators and the public have proper notice of legislative content, and to prevent deceit and subterfuge." *Enbridge Energy, LP v State*, 332 Mich App 540, 545-546; 957 NW2d 53 (2020). A statute that is challenged as a violation of the Title-Object Clause is presumed to be constitutional. *Pohutski v Allen Park*, 465 Mich 675, 690; 641 NW2d 219 (2002). Such a statute will not be declared unconstitutional as a title-object violation "unless clearly so, or so beyond a reasonable doubt." *Hildebrand v Revco Discount Drug Ctrs*, 137 Mich App 1, 6; 357 NW2d 778 (1984), quoting *Rohan v Detroit Racing Ass'n*, 314 Mich 326, 342; 22 NW2d 433 (1946). There are three types of challenges under the Title-Object Clause: "(1) a 'title-body' challenge, (2) a multiple-object challenge, and (3) a change of purpose challenge." *People v Kevorkian*, 447 Mich 436, 453; 527 NW2d 714 (1994) (opinion by CAVANAGH, C.J.). Plaintiffs argue that § 31aa(9) violates all three prongs of the Title-Object Clause.

1. Title-Body Challenge

A title-body challenge is

> an assertion that the body of an act exceeds the scope of its title. However, the title of an act is not required to serve as an index to all of the provisions of the act. The goal of the clause is notice, not restriction of legislation. A title will only fail to give fair notice if the subject in the body is so diverse from the subject in the title that they have no necessary connection. Even if not directly mentioned in the title of the act, if the title comprehensively declares a general object or purpose, a provision in the body is not beyond the scope of the act as long as it is germane, auxiliary, or incidental to that general purpose . . . . [*Enbridge Energy*, 332 Mich App at 545-546 (cleaned up).]

Plaintiffs argue that the SSAA's title refers to appropriations for school safety and mental health but does not mention the waiver of legal privileges. Plaintiffs contend that this omission deprived legislators and the public of fair notice.

2. Multiple-Object Prohibition

Plaintiffs further argue that the statute improperly combines two distinct objects—appropriating funds and regulating "any" legal privilege—in violation of the multiple-object prohibition. This type of Title-Object challenge precludes

> bringing together into one bill subjects diverse in their nature, and having no necessary connection . . . . The entire body of an act must be considered to determine whether the act encompasses more than one object. That provisions could have been enacted in separate acts does not mean that an act violates the Title-Object Clause. There is virtually no statute that could not be subdivided and enacted as several bills. The multiple-object prohibition does not preclude the Legislature from amending an act to include new legislation that is germane to furthering the act's general purpose. [*Id*. at 554 (cleaned up).]

3. Change-of-Purpose Challenge

Plaintiffs also assert that the addition of the privilege waiver fundamentally changed the bill's legal purpose from appropriations to regulation of legal privileges. A change-of-purpose challenge tests whether the change to a bill making its way through the Legislature "comprises a mere amendment or extension of the basic purpose of the original bill or instead introduces an entirely new and different subject matter." *Gillette Commercial Operations N America v Dep't of Treasury*, 312 Mich App 394, 444; 878 NW2d 891 (2015). As with the other types of challenges, the question "is whether the subject matter of the amendment or substitute is germane to the original purpose." *Id*. The change-of-purpose arm of a Title-Object challenge goes hand-in-hand with the five-day rule of Const 1963, art 4, § 26, which provides that a bill must remain in each chamber of the Legislature for five days before passage to prevent hasty legislation that has not been fully considered. If the bill is so altered that it no longer serves the same purpose as the original, the five-day period starts over. *Anderson v Oakland Co Clerk*, 419 Mich 313, 329; 353 NW2d 448 (1984).

4. Is the Amendment Germane to the Subject of the Statute?

The underlying theme of all three types of challenges is whether an amendment to a statute is germane to the subject of the statute. "The question of when an amendment or substitute is germane to the original bill is a difficult one. The test is whether or not the change . . . represented an amendment or extension of the basic purpose of the original, or the introduction of entirely new and different subject matter." *United States Gypsum Co v Dep't of Revenue*, 363 Mich 548, 554; 110 NW2d 698 (1961) (*Gypsum*). The amendment or substitution must be "in harmony with the objects and purposes of the original bill and germane thereto." *Id*. at 553. "Where . . . the changes

fall within the general purpose of the original bill, or are extensions of it, the Court has termed them germane." *Id*. at 554.

The purpose of the SSAA is encapsulated in its title and so it bears repeating:

> An act to make appropriations to aid in the support of the public schools, the intermediate school districts, community colleges, and public universities of the state; to make appropriations for certain other purposes relating to education; to provide for the disbursement of the appropriations; to authorize the issuance of certain bonds and provide for the security of those bonds; to prescribe the powers and duties of certain state departments, the state board of education, and certain other boards and officials; to create certain funds and provide for their expenditure; to prescribe penalties; and to repeal acts and parts of acts.

The purpose of § 31aa is to appropriate funds "to support school safety and mental health." MCL 388.31aa(1). That purpose is clearly germane to the purpose of making appropriations to aid in the support of schools, making appropriations for certain other purposes related to education, and creating funds and providing for their expenditure.

Section 31aa(9) provides for a comprehensive investigation following a mass casualty event as a condition to receiving funds appropriated to support school safety and mental health under § 31aa. The person or entity that conducts the comprehensive investigation is tasked with assessing the circumstances surrounding the mass casualty event, including the emergency response, compliance with safety protocols, communication procedures, and the factors contributing to the event. § 31aa(9)(a). The investigator(s) will ultimately author a report regarding the mass casualty event with the goal of "preventing future incidents and improving school safety protocols." § 31aa(9)(c). Plaintiffs do not deny that these provisions of § 31aa(9) are directly germane to supporting school safety and mental health, and to the more general purpose of appropriating funds for schools.

The privilege waiver is a condition that must be met to receive funding to support school safety and mental health. Plaintiffs maintain that requiring a district to waive any privilege in the course of an investigation is not germane to the purpose of the statute. The State contends it is a necessary condition to ensure full cooperation with the comprehensive investigation, which in turn will ensure true progress in preventing future mass casualty events.

a. No Violation of the Title-Body Prong

The Court finds that the privilege-waiver requirement does not violate the title-body prong of the Title-Object Clause. The title of a legislative act "is not required to serve as an index to all of the provisions of the act." *Enbridge Energy*, 332 Mich App at 545. The SSAA contains a plethora of conditions to funding that are not identified in its title. Indeed, no condition appears in the SSAA's title, nor does the title mention that the receipt of appropriations may be conditional. Throughout the SSAA, the Legislature requires districts to agree to provide reports and data, conduct testing, follow federal regulations, and maintain attendance levels, as well as a multitude of other conditions, to receive funding for various purposes. If all these conditions were required to be included in the title of the act, it would become overwhelming and cumbersome. After all, SB 166 as enacted is 154 pages of single-spaced small type. The privilege waiver is just as germane to the purpose of the act as the many other conditions on funding that are not listed in the SSAA's title.

b. No Violation of the Multiple-Object Prong

The Court also finds that the privilege-waiver requirement does not violate the multiple-object prong of the Title-Object Clause. Without context, appropriating funds and requiring the waiver of legal privileges appear "diverse in their nature." *Id*. at 554. However, the entire body

of the SSAA, and more specifically § 31aa(9), must be considered. The overarching purpose of the SSAA includes supporting school districts and creating funds for specific needs. The specific need addressed by § 31aa is to provide funding for school safety and mental health purposes. Conducting comprehensive investigations following a mass casualty event is germane to the general purpose both of supporting school districts and promoting school safety and mental health. The investigations will provide much needed information about how and why mass casualty events occur to assist in preventing future events. Requiring school districts to agree to full transparency during a comprehensive investigation following a mass casualty event ensures the success of the investigation, assisting all districts across the state. Read in the context of the entirety of the SSAA and within the comprehensive investigation provisions, the privilege-waiver requirement is germane.

c. No Violation of the Change-of-Purpose Prong

Finally, the Court finds no violation of the change-of-purpose arm of the Title-Object Clause. Looking at the legislative history of SB 166 and 2025 PA 15, the privilege waiver was not a secret provision thrust into an unrelated statute at the last minute to prevent full discourse or to evade the notice of legislators and the public.

SB 166 was introduced by Senator Camilleri on March 18, 2025 and referred to the Committee on Appropriations. 2025 Senate Journal 234. This initial version simply addressed funding and did not include any amendments to § 31aa. This version was intentionally bare bones and was meant to be a mere placeholder for the following year's education budget.

In May 2025, the Senate considered a substitute (S-3) for SB 166. S-3 included language very similar to the language now found in § 31aa(9): § 31aa(6). The introductory paragraph was

identical to the bill as eventually adopted, including the privilege waiver. Subsection 31aa(9)(a) of S-3 gave the Governor broad discretion to declare a mass casualty event: " 'Mass casualty event' means any incident resulting in significant injuries or fatalities on school grounds or at a school-sponsored event, as determined by the governor."

On May 8, 2025, the Committee on Appropriations reported back to the Senate favorably, recommending that the substitute (S-3) be adopted and the bill pass with immediate effect. The Senate referred SB 166 and S-3 to the Committee of the Whole. 2025 Senate Journal 429. On May 13, 2025, the Committee of the Whole reported back to the Senate favorably and with additional amendments (none of which affected the privilege waiver). The Senate agreed to the substitute as amended and recommended by the Committee of the Whole, and the bill as substituted was placed on the order of Third Reading of Bills. 2025 Senate Journal 495-496.

On May 14, 2025, the amendment to the senate bill was defeated and the entirety of the appropriations bill for school funding went back to the drawing board before the Appropriations Committee. 2025 Senate Journal 44. There is no indication that the defeat of SB 166 and S-3 was in any way related to the introduction of a comprehensive investigation requirement as a condition to receiving funding for school safety and mental health purposes.

On October 1, 2025, the House adopted a new substitute for SB 166 (H-5), but like the initial SB 166, H-5 was a bare bones bill providing an overall appropriations amount. The privilege waiver provisions of § 31aa(9) and (12) were reincluded in the revived appropriations bill at a joint conference committee on October 3, 2025. The bill as enacted into 2025 PA 15 was approved by the Senate at 1:04 a.m. on October 3, 2025. The House followed suit later that morning.

The privilege waiver was not a change of purpose from the prior version of the SSAA or § 31aa. As the Court has already found, the comprehensive investigation, including the privilege-waiver requirement, are germane to the purposes of the act. Further, the privilege waiver was not a surprise addition to the act. The privilege-waiver and comprehensive-investigation provision was proposed in May of 2025. Although the SSAA failed to pass in the spring and summer of 2025, legislators and parties interested in school funding were on notice of this provision for approximately five months before 2025 PA 15 was officially enacted. This scenario simply does not amount to the type of legislative gamesmanship that is constitutionally prohibited under the Title-Object Clause.

Accordingly, the Court also GRANTS defendants' motion for summary disposition and DENIES plaintiffs' motion in this regard.

D. SEPARATION OF POWERS

Finally, plaintiffs contend that the Legislature intruded upon the judiciary's exclusive authority to define and regulate evidentiary privileges by requiring districts to waive their privileges to receive funding. Citing *McDougall v Schanz*, 461 Mich 15; 597 NW2d 148 (1999), and *Leibel v Gen Motors Corp*, 250 Mich App 229; 646 NW2d 179 (2002), they argue that the waiver improperly alters common law and court rule-based privileges, violating the separation of powers. Specifically, plaintiffs contend that the privilege-waiver requirement infringes on the judiciary's role of "establish[ing], modify[ing], amend[ing] and simplify[ing] the practice and procedure in all courts of this state," Const 1963, art 6, § 5, and that this violates the separation of powers in Const 1963, art 3, § 2.

Defendants, on the other hand, emphasize that appropriations fall within the legislative sphere. Citing *Kalamazoo v Dep't of Corrections*, 229 Mich App 132, 139; 580 NW2d 475 (1998), defendants assert that the Legislature may impose conditions on appropriations, as long as they are constitutionally valid. Because the recipients of funds agree to waive their privileges, there is no separation-of-powers issue. By waiving their privileges, the recipients intentionally release their rights. Defendants also note that plaintiffs' facial challenge requires them to show that the act would not be valid under *any* set of circumstances. But there can be some overlap of responsibilities and powers under the separation-of-powers doctrine; the branches are not intended to operate with complete independence. *Judicial Attorneys Ass'n v State*, 459 Mich 291, 296; 586 NW2d 894 (1998); *Makowski v Governor*, 495 Mich 465, 482; 852 NW2d 61 (2014). Defendants therefore maintain that plaintiffs cannot show that the privilege waiver would violate the separation of powers under all circumstances.

"It is beyond question that the authority to determine rules of practice and procedure rests exclusively with" the Supreme Court. *McDougall*, 461 Mich at 26, referring to Const 1963, art 6, § 5. Conversely, courts are "not authorized to enact court rules that establish, abrogate, or modify the substantive law." *McDougall*, 461 Mich at 27. When faced with a separation-of-powers challenge, a court must first determine whether the subject legislative enactment substantively conflicts with court-made rules of practice and procedure. "When there is no inherent conflict, we are not required to decide whether the statute is a legislative attempt to supplant the Court's authority. We do not lightly presume that the Legislature intended a conflict, calling into question [the Supreme Court's] authority to control practice and procedure in the courts." *Id.* at 24 (cleaned up).

Contrary to plaintiffs' position, whether a particular privilege applies implicates *substantive* law, not an evidentiary rule governing *practice and procedure*. See *Van Sickle v McHugh*, 171 Mich App 622, 624; 430 NW2d 799 (1988) ("Although the court rules govern the procedure for asserting and waiving privileges, the substantive source of the physician-patient privilege is statutory."); *Lexington Ins Co v Swanson*, 240 FRD 662, 666 (WD Wash) (finding that whether the attorney-client privilege applies is a matter of substantive law). The judiciary's inherent rule-making authority is not implicated in this case. Plaintiffs conflate an appellate court's ability to carry forward common law through precedent (by applying common-law and statutory privilege law to particular cases) with the Supreme Court's constitutional authority to promulgate rules about process and procedure. The Supreme Court does not, through its rule-making authority, prescribe privileges. See MRE 501 ("The common law governs a claim of privilege, unless a statute or court rule provides otherwise.").

Although plaintiffs rely on *McDougall*, they have not, and cannot, draw a parallel that supports their case. In *McDougall*, the Michigan Supreme Court was asked to determine whether the provisions of MCL 600.2169 dictating the necessary credentials to qualify as a medical expert witness in a case of medical malpractice against a medical specialist conflicted with MRE 702, a more general rule about the qualifications of expert witnesses. Unlike the evidentiary court rules at issue in *McDougall*, plaintiffs do not cite any court rule creating a privilege that arguably conflicts with § 31aa. Instead, they argue that § 31aa may conflict with common-law privileges found in precedent, and because there may be such a conflict, plaintiffs claim that the statute violates the separation of powers. But any alleged conflict implicates *substantive law and policy*, over which the Legislature has full authority "because the Legislature is authorized to change a common-law cause of action or abolish it altogether[.]" *McDougall*, 461 Mich at 36.

Indeed, various statutes create or define privileges. See, e.g., MCL 600.2162 (spousal communication privilege); MCL 767.5a (journalist-informant privilege, attorney-client privilege, clergy-parishioner privilege, and physician-patient privilege). And various statutes either require the waiver of a privilege or declare that a privilege is inapplicable under certain circumstances. See, e.g., MCL 325.75(4) (the physician-patient privilege does not apply to mandatory reports of certain "critical health problem[s]" to state authorities); MCL 451.2602 (in certain securities investigations, the privilege against self-incrimination cannot prevent the production of information, but protects the individual against criminal or civil liability); MCL 600.2157 and MCL 600.2912f(1) (a person who files a medical malpractice action automatically waives the physician-patient privilege).

Ultimately, just because the Supreme Court interprets, applies, and sometimes expands or restricts common-law privileges, does not make those privileges a rule of process or procedure. Requiring a recipient to waive certain rights is a regular tool in appropriation legislation. The required waiver of privileges against the production of materials does not violate the constitutional separation of powers between the legislative and judicial branches.

IV. EXTENSION OF RESCISSION DATE

Because the Court upholds the constitutionality of the privilege waiver of § 31aa(9), plaintiffs ask the Court to adjourn the deadline for the rescission of a district's "opt in" to 30 days after the resolution of the appeal process. The Court agrees with defendants that this is not a feasible option. There is no way for this Court or the interested parties to know how long the appellate process will take. The distribution of funds cannot be delayed that long, and the longer the districts have and use the funds, the more complicated they will be to recoup. Accordingly,

the Court DENIES plaintiffs' request without prejudice to plaintiffs seeking this relief from the Court of Appeals.

V. CONCLUSION

1. The Court DENIES plaintiffs' motion for summary disposition.

2. The Court GRANTS defendants' motion for summary disposition, upholds the validity of MCL 388.1631aa(9), and DISMISSES plaintiffs' complaint with prejudice.

3. The Court DENIES plaintiffs' request to extend the deadline to rescind a district's "opt-in" until 30 days after the close of the appellate process.

4. This is a final order resolving all issues in this case.

Date: December 17, 2025

Sima G. Patel
Judge, Court of Claims