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Supreme Court hears challenge to lawsuit damage cap in case where teen lost leg in school bus crash

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But there was a problem.

State law caps damage awards against school districts and municipalities at \$500,000. So the county judge who presided over the case pared the amount Pennsbury School District owed to Zauflik to that amount.

On Tuesday, the state Supreme Court held a hearing in its ornate courtroom in the state Capitol on whether that outcome - and the very concept of a damage cap - should be considered fair and constitutional.

Zauflik took the dispute to the state's highest court after a divided Commonwealth Court panel ruled in the school district's favor last year.

If the Supreme Court reaches a different conclusion, that would strip away a shield of legal protections in the state Political Subdivision Tort Claims Act that insulates schools and local governments statewide from paying out high

damage awards for catastrophic accidents.

The Zauflik case dates to January 2007 when the driver of a district-owned bus hit the gas instead of the brake, drove onto the sidewalk and ran over the teen.

During Tuesday's arguments, Zauflik's lawyer, Thomas R. Kline, contended the state-imposed damage cap is a "draconian provision" that discriminates against those who are injured in mishaps involving public entities.

He said under questioning by Justice J. Michael Eakin that any cap would violate the rights of a Pennsylvanian hurt or killed under such circumstances.

"If (the Legislature) put a cap of \$100 million, would that be justifiable?" Eakin asked.

It wouldn't be for someone who was awarded \$100.1 million by a jury, Kline replied. "Our (state) constitution says, 'No caps,'" he said.

Justice Max Baer cited court rulings that upheld the Legislature's authority to establish damage award caps. Such rulings are flawed and should be overruled,

Kline countered, adding that the law is not supposed to be "a vehicle for perpetuating error."

He noted that Zauflik's situation would be different if the bus had been owned by a contractor, since state law doesn't shield private school bus providers and requires them to carry at least \$5 million in insurance.

The cap's supporters might argue that school districts and local governments could go broke from paying damages if it is removed, but they ignore the fact that those entities can buy insurance to cover themselves, Kline said.

Stephen A. Cozen, the school district's attorney, called Kline's arguments "totally spurious." The framers of the state constitution wanted the Legislature to have "complete control" over the parameters under which lawsuits are mounted against schools and governments, he said.

The Legislature could set a damage pay-out limit of \$1 if it chose, or completely bar lawsuits against local governments, Cozen said. He said 34 states have damage caps.

"The courts are not the place for the determination (on the damage

cap issue) to be made," Cozen argued. "That determination is for the Legislature."

He held to that stance after Justice Correale F. Stevens noted that the \$500,000 cap has been unchanged for decades, despite factors, such as inflation, which have driven up costs, and the size of damage awards.

"Isn't that fundamentally unfair?" Stevens asked.

"I don't think it's fundamentally unfair in the legal sense," Cozen said.