

Should local governments and school districts, unlike individual citizens and businesses, enjoy limited immunity from lawsuits?

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That is the question to be argued Tuesday before the Pennsylvania Supreme Court in Harrisburg, where a prominent Philadelphia plaintiffs law firm is to square off against lawyers for the Pennsbury School District in Bucks County.

A Bucks County Court jury slapped the district with a \$14 million verdict in 2011 in the case of a former high school student run over by one of its buses. But the award was reduced to \$500,000 under a Pennsylvania law that limits how much school districts and municipalities must pay in liability lawsuits.

The case has been closely followed by plaintiffs and defense lawyers, as well as governmental agencies protected by caps on lawsuit awards.

One critical question is whether the school district should sidestep liability simply because it operated its own school buses. Had the district outsourced that work to a company, as many other districts do, most observers agree that the cap would not have applied and the victim, former Pennsbury High School student Ashley Zauflik, would be able to collect the full award.

"If equal protection means anything, an innocent victim such as Ms. Zauflik should not be stripped

of her jury verdict because she was crushed under a government-operated rather than a privately operated school bus," said the appeal brief by Zauflik's lawyers, Kline & Specter P.C.

Yet there is disagreement in the legal world on whether the results in the Zauflik case, though widely viewed as unfair, can be overturned under Pennsylvania law.

"It isn't fair, there is no question about it," said Jonathan Hugg, a litigator at the firm of Clark Hill in Center City. "But sometimes the law is not fair. If the law means anything at all, the [reduced verdict] will be upheld."

Zauflik was 17 when she was crushed beneath a runaway district bus on Jan. 12, 2007, suffering pelvic and leg injuries requiring the amputation of her left leg above the knee. Authorities later determined that the bus driver caused the accident by stepping on the accelerator rather than the brake.

Zauflik sued the district that year. In late 2011, the jury awarded her \$14 million, most of it to compensate her for pain and suffering as a result of the accident.

Several months later, Bucks County Court Judge Robert Mellon reduced the award to \$500,000, the maximum allowed by law, saying

the result was unjust but he had no choice.

"There is no dispute that the circumstances of this case create an unfair and unjust result," he said. The district "chose to run its own private busing company by hiring drivers, purchasing and maintaining vehicles, and planning bus routes. Had Zauflik been injured in another school district that chose to outsource its transportation to a private company, Zauflik would likely be able to recover the full amount of compensation."

The debate over governmental immunity in Pennsylvania traces back to the early 1970s, when the state Supreme Court overturned such protections in *Ayala v. Philadelphia Board of Education*. William Ayala Jr. sued as the result of an accident in which an arm was caught in an industrial shredder in an upholstery class and had to be amputated. He was 15. The School District claimed it was immune from such lawsuits, but the state Supreme Court said no, stating that adherence to precedent "is not a vehicle for perpetuating error."

The legislature responded in 1978 by passing the Political Subdivisions Tort Claims Act, restricting liability by school districts and municipalities to \$500,000 per incident.

The state Supreme Court has upheld that law in two opinions. In

one, the court ruled that the cap applied to 43 separate lawsuits following a gas explosion in 1979 in the Bridesburg section of the city that claimed seven lives and injured dozens of people. The court said the plaintiffs, who had sued the City of Philadelphia and the Philadelphia Gas Works, had no right under the Pennsylvania constitution to unlimited awards from government agencies.

Hugg said the fact that the Supreme Court already upheld the tort claims act poses very high hurdles for the Zauflik appeal. Zauflik's lawyers, pointing to the Ayala case, say a decision to strike the immunity provision in her case would have plenty of precedent.