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# Bullying victim aims to help with law fix [+video]

Chris Cassidy, Meghan Ottolini Monday, March 05, 2018



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A Lynn man who was paralyzed after a school bully pushed him down the stairs 10 years ago is vowing to take on Beacon Hill after the state Supreme Judicial Court ruled city government cannot be liable for his injuries.

“Yes, this looks bad, being in a wheelchair. But if my case could help some kid later on, then that could be the positive aspect of this whole thing,” [Matthew Mumbauer](#), now 21, told the Herald. “Even if I don’t ever meet the person that is helped, as long as it helps someone, then I’m at ease.”

Mumbauer — as a fourth-grader at Lynn’s Brickett Elementary School in 2008 — was lining up for class at the beginning of the day when a bully shoved him down the stairs. It was the culmination of a long streak of incessant bullying. Though Mumbauer complained to teachers and students about “tingling and numbness,” his

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symptoms weren't reported to the school nurse, the SJC ruling noted.

Matthew eventually regained the use of his arms, but remains a paraplegic, confined to a wheelchair.

The bullying against him had been "constant" from a small group of students — including the boy who pushed him, according to the ruling. Both Matthew and his mother had reported harassment and bullying several times to teachers and school administrators throughout the school year, and Matthew's family even accused the school of not enforcing its own anti-bullying policies, according to the ruling. The family sued Lynn Public Schools and the boy who pushed Mumbauer in 2011, ultimately reaching a settlement with the family of the boy, who was not criminally charged. But the schools were found to be not liable.

In its decision last week, the high court admitted the case was "tragic" and that Mumbauer suffered both "emotional" and "physical harm." But the court also conceded the issue wasn't about whether the school was negligent — the court agreed it was — but whether the Mumbauer family could hold the city of Lynn liable for that negligence under the Massachusetts Tort Claims Act.

The SJC seemed sympathetic toward Mumbauer in its written opinion, but claimed its hands were tied.

"It appears, based upon the allegations of the complaint, that those working at the elementary school could have and should have done more to protect Matthew," wrote Justice Kimberly Budd. "Nevertheless, the fact remains that the Legislature has imposed restrictions on the act that exempt school districts from liability."

A section of the Massachusetts Tort Claims Act allows cities and towns to be held liable if school officials actively created the circumstances that led to harm — known as "original cause" — but not simply by a failure to prevent those circumstances. Mumbauer wants to change that.

Douglas Sheff, Mumbauer's lawyer, plans to help Mumbauer find a sponsor for a bill on Beacon Hill and help him navigate the state Legislature in the coming year.

"I would tell parents who send their kids to public schools that they're much less safe here than in other states because of two words in a statute," Sheff said. "If you want to be an outlier, be an outlier for safety, not an outlier for hazard and danger."

Sheff said it would be a "major accomplishment" and bring "meaning to all of their suffering" if the Mumbauer case led to Beacon Hill legislation.

"It's got to change," said Sheff, who wants to eliminate the "original cause" wording from the law. "I'm sure we'll garner the support necessary to have an appropriate sponsorship necessary for a bill, and I'm sure we'll be able to lobby and pass this law and change the culture in Massachusetts slightly but in a very significant way."

Jonathan Karon, the president of the Massachusetts Academy of Trial Attorneys, said the Mumbauer decision could create momentum on Beacon Hill to change at least parts of the Massachusetts Tort Claims Act.



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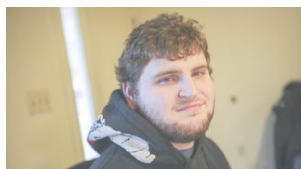
"I would hope that this decision would serve as a wake-up call to the Legislature to do something to further address the important issue of school bullying and to at least allow a jury, as the voice of the community, to decide whether a school system had behaved reasonably," Karon said. "I would hope they do and if they don't, my organization would certainly be interested in any effort that any other groups might bring to move that forward."

But allowing school departments to be held financially responsible for failing to prevent every act of mischief and mayhem committed by immature juveniles would open the legal floodgates to a rash of suits that could be ruinous to government, said another lawyer who handles municipal cases.

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"They'd go bankrupt," said attorney Leonard Kesten, who has represented public schools across Massachusetts. "Is there anything stupider in the world than a group of 14-year-old boys? Even if you watched them 24/7, they'd still do it. ... The reality is that school administrators always do the very best they can, but it's impossible to stop everything."

Attorney Carmen Durso said the most plaintiffs in Massachusetts can collect in negligence is \$100,000 and for most communities, that amount would be picked up by insurance companies.

"It changes behavior," Durso said of civil suits. "No person ever walked into my office and said, 'How much money can I get?' They say, 'What can I do about the person that did this to me and the place where this happened?'"

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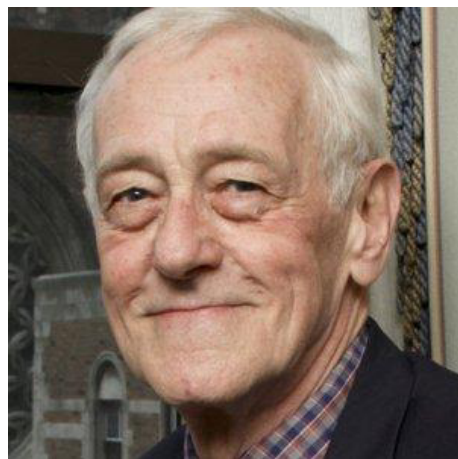
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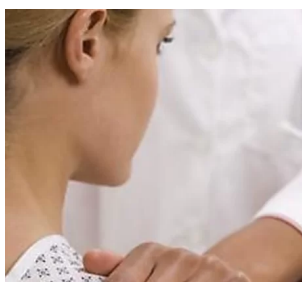


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