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Tilton

## Supreme Court sides with sidewalk activist

Disabled man wins push to clear way

By Margot Sanger-Katz Monitor staff

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Bill Tinker likes to ride his scooter around downtown Tilton. The Northfield man has respiratory, circulatory and orthopedic problems that make walking or driving difficult. But he still likes to get out to the post office, the grocery store and other local shops.

Now, he will be able to ride downtown all year long. This week, the New Hampshire Supreme Court settled a longstanding dispute between Tinker and Tilton about whether the town is required to clear snow from its sidewalks to allow him and others with disabilities access. In short, the court said it is.

"Disabled people have been stomped on long enough," Tinker, 63, said yesterday, adding that he "cheered" when he heard about the court's decision.

Molly McPartlin, the lawyer who represented the town, said that Tilton will comply with the court's ruling and "make reasonable efforts with regard to snow removal." She said that the town does not plan to appeal the ruling or ask the court to reconsider.

Tinker and Tilton have been arguing over the sidewalks for years. According to Tinker, he first hounded the town to install the sidewalk, which runs parallel to Route 3. Then, when they built it, he prodded them to maintain the way so he could use it year-round.

"All I wanted was access for pedestrians, whether walking rolling or creeping," he said.

Tinker is firmly in the rolling category. He rides a four-wheeled scooter, which he said can reach speeds of "with a tailwind, probably 11 mph." But without his scooter, Tinker said, he is much more limited, and can't walk more than 100 or 200 feet at a time.

McPartlin estimated that it will cost the town between \$15,000 and \$20,000 a year for the town to maintain the sidewalk, a cost that is driven up because parts of the walkway are on a highway overpass, and maintenance crews are barred from simply pushing the snow down onto the interstate.

"He's been the only person who has ever requested snow removal services on this sidewalk," McPartlin said. "The sidewalk is a very low traffic area."

But Tinker, represented by James Fox of the Disability Rights Center, argued that the federal Americans with Disabilities Act required the municipality to accommodate disabled residents who could not safely travel on an icy sidewalk or the shoulder of a busy state highway. The law says that public entities must "give people with disabilities an equal opportunity to benefit from all of their programs, services, and activities," including transportation.

Failing to clear the walkway denied Tinker the opportunity to travel around town, his lawyers argued.

"Once you have a curb, if you have a wheelchair or a scooter, if you're using the road, it's very dangerous," Fox said.

On the advice of the trial court, the town initially opted to close the sidewalk between December and April, arguing that because no one could use it, they were not discriminating against disabled residents by not clearing it.

The town even passed an ordinance that allowed the police to fine pedestrians from using the sidewalk when it was closed.

But the Supreme Court said that the town's policy still violated the law.

"The refusal to remove any snow is not a reasonable limit upon the removal of snow, but it is an abdication by the town of its obligation altogether," the court wrote.

The court made clear that its opinion was narrow and applied only to Tinker's case, but Fox said that the decision has made its interpretation of the law quite clear, and he hopes the case will prevent similar disputes in other communities.

"I never thought it was in any way ambiguous that they did have to maintain it, and I think most towns know that," Fox said. "But if there's any question, now I think this case should settle once and for all that towns must maintain these sidewalks."

Tinker said that he'd never planned to sue the town. He hoped that selectmen would understand his needs and clear the sidewalks. Now, he said, the town is out four years of legal costs, and a \$60,000 fee to repay Tinker's lawyer. It would have cost less to do the road maintenance, he said.

"All we wanted was for them to plow the sidewalks."

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