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Enforcement of Judgments Against Governmental Entities: The New Sovereign Immunity

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validation of written qualification tests through correlation with scores on written training course exams, people who have good verbal skills will achieve high scores on both tests regardless of actual job-specific ability.[59] The majority, viewing a minimum level of communicative skill as practically essential to police work and accepting the legitimate need for recruit training, determined that a positive relationship between test scores and training course performance was sufficient validation. The Court found this approach a "much more sensible construction" of job relatedness and "not foreclosed" by *Griggs* or *Albemarle*.[60] However, the Court's willingness to forego proof that the test was predictive of actual job performance was based upon judicial cognizance[61] of the necessity of police training programs. This understanding may be lacking in other contexts.

Washington v. Davis is a pivotal case in the areas of equal protection and employment discrimination as defined by federal statutes. In evaluating future claims of unconstitutional racial discrimination, courts will no longer reason backwards from adverse impact to illicit purpose—nor will they avoid finding a discriminatory purpose by characterizing purpose as irrelevant. The decision also creates doubt whether the Court shares the EEOC's views on acceptable methods of test validation although the Court's brief treatment of the issue leaves few concrete impressions.

Robert G. Nida

ENFORCEMENT OF JUDGMENTS AGAINST GOVERNMENTAL ENTITIES: THE NEW SOVEREIGN IMMUNITY

A successful tort plaintiff sought to satisfy his judgment against a police jury by causing eighty acres owned by that entity but leased for agricultural purposes to be seized and sold after informal negotiations and numerous pleas for payment proved unfruitful. The Third Circuit Court of

59. 426 U.S. at 270.

60. *Id.* at 250-51. This "sensibleness" construction resembles the concept of construct validity which is demonstrated by examinations structured to measure the degree to which job applicants have identifiable characteristics that have been determined to be important in successful job performance. *Id.* at 247 n.13. The court of appeals labeled this common sense theory as equivalent to a finding of construct validity. Davis v. Washington, 512 F.2d 956, 965, (D.C. Cir. 1975).

61. 426 U.S. at 250 (stating that the need for the program seems conceded; usefulness of minimum verbal skill apparent).

Appeal *held* that property owned by a public entity in whatever capacity is not subject to seizure and sale for satisfaction of judgment, and that judgments are eligible *only* out of funds appropriated for payment under the terms of Article 12, Section 10 of the Louisiana Constitution. *Foreman v. Vermillion Parish Police Jury,* 336 So. 2d 986 (La. App. 3d Cir. 1976).[1]

Historically, execution of judgments against governmental bodies in Louisiana differed depending on whether the debtor was a local or state entity. The courts distinguished property owned by local entities as falling into either the public or private domain as determined by the use of the property.[2] Since it was serving no public purpose, private domain property was often found subject to seizure and sale to satisfy the debts of the local government entity. For example, rents from buildings leased to individuals for profit,[3] certain bonds held by the city,[4] and property bought by the city to donate to a third party[5] were subject to seizure and sale. Public domain property, however, was considered as "out of commerce" and not subject to seizure and sale for satisfaction of judgments.[6] Thus, water-

1. The land upon which the plaintiff sought to execute was originally dedicated as a "poor farm" when purchased in 1898. However, since 1910 it had been leased to individuals for private agricultural purposes. The court could have avoided confusion of the public and proprietary domains by holding that property once dedicated to public use does not become a private asset of the corporation merely because the trustees have failed to administer it according to its public dedication, and as property held in trust for the public, it could "no more be sold to satisfy the debts of a state or other political subdivision than can any other trust property be sold to satisfy the debts of any other trustee." Porter v. Town of Ville Platte, 158 La. 342, 345, 104 So. 67, 69 (1925); Kline v. Parish of Ascension, 33 La. Ann. 562 (1881).

2. LA. CIV. CODE arts. 481, 482(2). *See* J. B. McCrary v. Town of Winnfield, 40 F. Supp. 427 (W.D. La. 1941); Turfitt v. Police Jury, 191 La. 635, 186 So. 52 (1939); American-La France & Foamite Indus., Inc. v. Town of Winnfield, 184 La. 1043, 168 So. 293 (1936); Town of Farmerville v. Commercial Credit Co., 173 La. 43, 136 So. 82 (1931); Porter v. Town of Ville Platte, 158 La. 342, 104 So. 67 (1925). For a more detailed discussion of the division of public property into the public and private domains, *see* A. N. YIANNOPOULOS, PROPERTY §§ 29, 30 in 2 LOUISIANA CIVIL LAW TREATISE 77-86 (1966). *See also* Yiannopoulos, *Common, Public and Private Things in Louisiana: Civilian Tradition and Modern Practice,* 21 LA. L. REV. 697 (1960).

3. J. B. McCrary v. Town of Winnfield, 40 F. Supp. 427, 434 (W.D. La. 1941) (town rented part of its city hall to private persons for profit).

4. City of New Orleans v. Home Mut. Ins. Co., 23 La. Ann. 61 (1871).

5. Edey v. City of Shreveport, 26 La. Ann. 636 (1874).

6. Property in the public domain was considered as owned by the public, and the governing body only the trustees of such property. *See* Turfitt v. Police Jury, 191 La. 635, 186 So. 52 (1939); Town of Farmerville v. Commercial Credit Co., 173

works,[7] courthouses,[8] jails,[9] taxes[10] and school grounds[11] were not subject to seizure since these were dedicated to public use.[12]

Execution against the state was governed primarily by Article 3, Section 35 of the 1921 Constitution[13] and pursuant legislation. Prior to amendments, the consitution broadly stipulated that the legislature was to provide the procedure and effect of judgments rendered against the state or its agencies. In 1946, the constitution was amended specifically to provide that money judgments rendered against the state could only be satisfied by specific legislative appropriation.[14] However, a 1960 amendment to the 1921 Constitution included all public entities in this appropriation scheme by stating that "No judgment against the state *or any other public body* shall be exigible, payable or paid except out of funds appropriated for payment thereof."[15] Thus, the amendment apparently foreclosed the

La. 43, 136 So. 82 (1931); Porter v. Town of Ville Platte, 158 La. 342, 104 So. 67 (1925).

7. *See* Town of Farmerville v. Commercial Credit Co., 173 La. 43, 136 So. 82 (1931); Porter v. Town of Ville Platte, 158 La. 342, 104 So. 67 (1925).

8. Turfitt v. Police Jury, 191 La. 635, 186 So. 52 (1939).

9. *Id. But see* McKnight v. Parish of Grant, 30 La. Ann. 361 (1878).

10. Egerton v. Third Municipality of New Orleans, 1 La. Ann. 435 (1846).

11. City of Monroe v. Ouachita, 172 La. 861, 135 So. 657 (1931).

12. Only occasionally did the courts confuse the two theories and allow property in the public domain to be seized and sold by creditors of the public entity. In *McKnight v. Parish of Grant*, 30 La. Ann. 361 (1878), the court allowed the contractor of the parish jail to seize it under his mechanic and builder's lien. This case has been overruled, but on different grounds. Porter v. Town of Ville Platte, 158 La. 342, 104 So. 67 (1925). A short-lived method for enforcing judgments against parishes was embodied in an 1869 statute which required judges, when rendering a money judgment against a parish, to order the assessor of the defendant parish to assess a tax at a sufficient rate to pay the judgment. The act was in force only eight years and was repealed in 1877 by La. Acts 1877, No. 57.

13. Even prior to the 1921 Constitution of Louisiana, legislative consent to be sued did not imply consent to execution against the state. The purpose of adjudication was "nothing more than to refer to the judiciary the settlement of the questions of law and fact involved in the claims, and the determination, in the form of a judgment, of the rights of the parties." The judgment was of no executory force. Carter v. State, 42 La. Ann. 927, 8 So. 836 (1890). *Cf.* Mallard v. State, 194 So. 447 (La. App. 2d Cir. 1940).

14. La. Acts 1946, No. 385. Prior to the amendment, the legislature, at the time of granting permission to sue the state, also designated from which funds the judgment was to be satisfied, and such "appropriation" was not subject to the veto of the governor. Regardless of the condition of the budget, when the judgment was final it had to be satisfied from the pre-designated fund. *See* McMahon & Miller, *The Crain Myth—A Criticism of the Duree and Stephens Cases*, 20 LA. L. REV. 449 (1960) (authors conclude that the purpose of the 1946 amendment was to remedy this ridiculous situation and to provide for executive veto of the appropriation).

15. La. Acts 1960, No. 621 (emphasis added).

former practice of seizing and selling private domain property owned by local public entities.[16]

Article 12, Section 10(c) of the 1974 Constitution is similar to the 1960 amendment to the 1921 Constitution in that an appropriation by the governmental entity against whom judgment is rendered is necessary for payment of the judgment.[17] The provision of the 1974 Constitution, however, is more explicit than the former version. It *specifically* prohibits the seizure of any public property or funds owned by a governmental entity, and further provides that judgments are payable only out of specifically appropriated funds.[18]

The instant case addressed the issue of whether this prohibition against seizure encompasses property of both the public and private domains. The plaintiff argued that a farm, leased for profit by the grand jury, was property in the private domain, and therefore should be subject to seizure. The court rejected this contention by finding that the new constitutional prohibition against seizure applied to *all* public property in either the private or public domains.[19] The court seems correct, judging from the transcripts of the 1973 Constitutional Convention and the explicit language of Article 12, Section 10(c), in holding that no public property is subject to seizure and sale, and that appropriation by the debtor public entity is the exclusive manner for payment of judgments rendered against it.[20]

The possibility of non-payment by the governmental entities was appreciated and considered by the Convention in adopting Article 12, Section 10. In the words of one delegate who expressed a belief voiced often in the debates concerning payment of judgments, the legislature, "if

16. In a detailed and thorough analysis, the procedure of suits against the state and effect of judgment against the state under Louisiana Constitution Article 3, Section 35 (1921) was severely criticized in McMahon and Miller, *The Crain Myth—A Criticism of the Duree and Stephens Cases*, 20 LA. L. REV. 449 (1960). The author of this note found no Louisiana cases after the 1960 amendment to Article 3, Section 35 in which judgment creditors of a municipality attempted to seize publicly owned property to satisfy their judgment until the instant case.

17. LA. CONST. art. 12, § 10(c) provides: "The Legislature shall provide a procedure for suits against the state, a state agency, or a political subdivision. It shall provide for the effect of a judgment, but no public property or public funds shall be subject to seizure. No judgment against the state, a state agency, or a political subdivision shall be exigible, payable, or paid except from funds appropriated by the legislature or by the political subdivision against which judgment is rendered."

18. See note 17, *supra*.

19. 336 So. 2d 986, 988 (La. App. 3d Cir. 1976).

20. See note 23, *infra*.

it chooses to, may appropriate the funds. If it doesn't, too bad."[21] Further, evidence of a lack of concern for the judgment creditors of public entities may be adduced from the overwhelming defeat of an amendment which would have permitted seizure of public property which had been mortgaged or hypothecated.[22] Apparently,the intended effect of Article 12, Section 10(a)-(c) is merely to eliminate the necessity of obtaining legislative permission to sue in contract or tort, and to empower the legislature to provide for the effect of judgment subject to the constitutional limitation against seizure of public property or public funds.[23]

In addition to disposing of the former distinction between public and private domain property insofar as judgment creditors are concerned, *Foreman* further illustrates the inherent weakness in the present system. The legislation enacted pursuant to Article 12, Section 10(c) is inadequate to deal with the payment of judgments by governmental entities.[24] While

21. See STATE OF LOUISIANA CONSTITUTIONAL CONVENTION OF 1973 VERBATIM TRANSCRIPTS, July 26 at 42 [hereinafter cited as PROCEEDINGS]. *See also id.* at 51, 54-55; *id.*, July 27 at 39.

22. *Id.*, July 26 at 85 (29 Yea, 71 No).

23. The original committee proposal had sought to leave any waiver of immunity to the discretion of the legislature, and likewise leave to it the manner of executing judgments against the state, its agencies, and political subdivisions. PROCEEDINGS, July 26 at 31. The first and second proposed amendments both waived immunity and prohibited seizure of public property, but never reached a vote. *Id.* at 32-33. The amendment in whose favor the earlier two were withdrawn implicitly waived sovereign immunity and stipulated that the legislature should provide for the effect of judgment but exempted public property from seizure. *Id.* at 34. The Convention, concerned that the ambiguous language might be construed as making the state liable for the debts of municipalities and parishes, and that public funds in banks might be subject to seizure, defeated the amendment. *Id.* at 33-60. It had been admitted by proponents of the amendment that there was no security available to creditors of the state or political subdivisions, as property would be immune from seizure whether bonded or not. *Id.* at 35. A subsequent amendment attempted to remedy this situation by providing that public property was exempt from seizure except when mortgaged or hypothecated. *Id.* at 80. The amendment suffered overwhelming defeat. *Id.* at 85. Following this defeat, it was again proposed that the manner of executing judgments be left to the legislature, to which there were objections that school buses or property owned by the school boards or parishes could theoretically under such a system be subject to seizure. *Id.* at 93, July 27 at 22. A subsequent amendment compromised the convention's objections by providing specifically that *no* public property or public funds shall be subject to seizure, and that judgments are payable only out of funds appropriated for satisfaction thereof by the legislature or political subdivision against whom judgment is rendered. The amendment passed. *Id.*, July 27 at 46.

24. LA. R.S. 13:5101-08, 5110, 5111 (Supp. 1975); LA. R.S. 13:5109 (Supp. 1975) (as amended by La. Acts 1976, No. 372).

constitutionally commissioned to provide for the effect of judgments and to establish procedures for instituting suits against the state and political subdivisions, the legislature has only effectively provided for the procedural aspects.[25] The statute dealing with payment is ineffective because it merely tracks the language of Article 12, Section 10 (c),[26] thus encouraging nonpayment by public entities. By arbitrarily refusing to pay judgments for which they have been held liable, governmental entities can cause the waiver of immunity from suit and liability of Article 12, Section 10(a) to become only a waiver of immunity from suit.[27]

The plaintiff in *Foreman* posed an equal protection issue which the majority dismissed with neither citation nor discussion. It merits consideration because arbitrary payment and nonpayment of judgments may lead to serious constitutional problems. Concededly, citizens do not have a constitutional right to sue a sovereign which does not waive its sovereign immunity.[28] However, once the state has extended the benefit of recovery

25. The statutes provide that no jury trial is available to plaintiffs in suits against the state, *see* Carter v. City of New Orleans, 327 So. 2d 488 (La. App. 4th Cir. 1976), and that proper venue for suits in tort and contract is where the cause of action arises or in the Nineteenth Judicial District Court.

26. LA. R.S. 13:5109(B) (Supp. 1975) provides that: "Any judgment rendered in any suit filed against the state, a state agency, or a political subdivision, or any compromise reached in favor of the plaintiff or plaintiffs in any such suit shall be exigible, payable, and paid only out of funds appropriated for that purpose by the legislature, if the suit was filed against the state or a state agency, or out of funds appropriated for that purpose by the named political subdivision, if the suit was filed against a political subdivision."

27. *See* Foreman v. Vermillion Parish Police Jury, 336 So. 2d 986, 989 (Miller, J., concurring).

28. The doctrine of sovereign immunity is a product of a long, confused, and much debated legal genesis. For a historical examination of the doctrine, see Borchard, *Government Liability in Tort,* 34 YALE L.J. 1 (1924); Jaffe, *Suits Against Governments and Officers: Sovereign Immunity,* 77 HARV. L. REV. 1 (1963); Pugh, *Historical Approach to the Doctrine of Sovereign Immunity,* 13 LA. L. REV. 476 (1952). The United States Supreme Court early held that a state was not immune from suit by a citizen of another state. Chisholm v. Georgia, 2 U.S. 419 (1793). This immediately resulted in the proposal and ratification of the eleventh amendment. Pugh, *supra* at 484-85. The Court has since left the doctrine intact. *E.g.* United States v. Shaw, 309 U. S. 495 (1940); Hans v. State of Louisiana, 134 U.S. 1 (1890); Nichols v. United States, 74 U.S. 122 (1868). Although there are certain qualifications to the rule requiring waiver of immunity as a prerequisite to suit (Roady, *Lee, Land, Larson, Malone: Sovereign Immunity Revisited,* 43 TEXAS L. REV. 1062 (1965), and, in the area of "constitutional torts," *ex parte* Young 209 U.S. 123 (1908); Scheuer v. Rhodes, 416 U.S. 232 (1974) and progeny, the general rule remains that a state may not be sued without its consent. Schoenbrun, *Sovereign Immunity,* 44 TEXAS L. REV. 151 (1965). To avoid the harshness and patent injustice

to its citizens as Louisiana has under Article 12, Section 10, it should not then discriminate as to who may have his judgment satisfied.[29] As with the grant of any right or benefit, the state's actions should become subject to the requirements of the equal protection clause. Analogous situations suggest this result. Though states are not compelled constitutionally to provide for appellate review,[30] relief to Indians for historical wrongs,[31] disaster benefits,[32] or free medical care,[33] such activities once undertaken are subject to equal protection challenge.[34] Thus a statute providing for payment to judgment creditors by the state must not result in unreasonable classifications among that group of similarly situated persons.[35] Refusal of payments by the public entity of certain creditors' judgments could create one class of unsatisfied judgment creditors contrasted to a second class of judgment creditors to whom payment has been made.[36] Yet, both classes are members of the same group, as each individual possesses the determin-

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of the doctrine in its theoretical purity, all states and the federal government have, in one degree or another, waived sovereign immunity legislatively or judicially. W. PROSSER, THE LAW OF TORTS § 131 at 975 (rev. 4th ed. 1971).

29. Courts have occasionally found related problems such as notice requirements and short prescriptive periods unconstitutional denials of equal protection. Reich v. State Highway Dep't, 386 Mich. 617, 194 N.W.2d 700 (1972); Turner v. Staggs, 89 Nev. 230, 520 P.2d 879, *cert. denied*, 414 U.S. 1079 (1973) ("adequate state grounds"). *See generally* Downing & Thehin, *The Constitutional Infirmity of the California Government Claim Statute*, 1 PEPPERDINE L. REV. 209 (1974); Comment, *The Constitutionality of California's Public Entity Tort Claim Immunity From Tort Liability*, 1973 WASH. U. L. Q. 716 (1973); Note, 60 CORNELL L. REV. 417 (1975).

30. *E.g.*, Meyer v. City of Chicago, 404 U.S. 189 (1971); Griffin v. Illinois, 351 U.S. 12 (1956).

31. Weeks v. United States, 406 F. Supp. 1309 (W.D. Okla. 1975), *prob. juris noted*, 96 S. Ct. 2645 (1976).

32. *Cf.* McCollough v. Redevelopment Auth. of City of Wilkes-Barre, 522 F.2d 858 (3d Cir. 1975).

33. *Cf.* Gordon v. Forsyth County Hosp. Auth., Inc., 409 F. Supp. 708 (M.D.N.C. 1976).

34. *Cf.* Thompson v. Shapiro, 394 U.S. 618 (1967).

35. For an excellent discussion of the system and manner of creating classes, and the impact thereupon of the equal protection clause, see Tussman & tenBrock, *The Equal Protection of the Laws*, 37 CALIF. L. REV. 341 (1949).

36. Hypothetically, if one hundred money judgments were rendered against the state annually, and the legislature appropriated funds to discharge seventy-five of the debts, the two classes would be more easily discernible. Moreover, should the twenty-five unsatisfied judgment creditors be Negro or Chinese and the seventy-five creditors who have been paid Caucasian, the discrimination would become blatantly apparent. For an excellent example of a similar situation, see *Yick Wo v. Hopkins*, 118 U.S. 356 (1886).

ing characteristic (a judgment against the state) which defines inclusion within the group.

Current equal protection analysis requires a rational criteria for classification bearing a reasonable relation to the attainment of a permissible state objective.[37] Certainly, protection of the public treasury is a permissible objective which will justify the drawing of some classifications even among judgment creditors.[38] However, while refusal to pay Foreman's judgment might bear some extenuated relationship to the preservation of the public treasury, such action may be violative of the equal protection clause when it is arbitrary and not based upon some rational criteria.

The legislature, required to provide for the effect of judgments, should establish a uniform method for payment of such judgments.[39] Perhaps a ceiling on the amount of recovery by any one plaintiff and a statutory limitation per occurrence are advisable for protection of the public treasury.[40] Mandatory payment under such a system would be

37. Recent court decisions serve as the basis for formulating this statement of the general equal protection criteria applicable to economic and social legislation. *Cf.* Massachusetts Bd. of Retirement v. Murgia, 96 S.Ct. 2562 (1976); City of New Orleans v. Dukes, 96 S. Ct. 2513 (1976); Hughes v. Alexandria Scrap Corp., 96 S. Ct. 2488 (1976); Village of Bell Terre v. Boraas, 416 U.S. 1 (1974); Williamson v. Lee Optical Co, 348 U.S. 483 (1955). It is beyond the scope of this note to inquire as to exactly what the equal protection test is for state action which adversely affects suspect groups or the exercise of fundamental rights. It is sufficient for this purpose to note that the present Court has been unwilling to add to the short list of fundamental rights, (*cf.* Ross v. Moffitt, 417 U.S. 600 (1974); San Antonio Ind. School Dist. v. Rodriguez, 411 U.S. 1 (1973)) and therefore the less demanding "reasonable relation" test should be applicable in the area of sovereign immunity. *Cf.* Note, 52 B.U. L. REV. 202 (1972); Note, 60 CORNELL L. REV. 417 (1975); Note, 1973 WASH. U.L.Q. 716 (1973).

38. The courts have acknowledged that protection of the public treasury and the integrity of fiscal programs of the states are legitimate state objectives. This interest of the state, however, will not justify state action which adversely affects fundamental rights or classes in need of special protection. *See* Thompson v. Shapiro, 394 U.S. 618 (1967). As recovery of judgments from a governmental entity which has waived immunity is not a fundamental right, the test should be less demanding.

39. Perhaps the legislature should look to the tort claim procedures of the federal government and sister states for guidance in formulating such legislation. *See* FEDERAL TORTS CLAIM ACT. 28 U.S.C. §§ 1346, 1402, 1504, 2110, 2401, 2402, 2411, 2412, 2671-80 (1970); 28 U.S.C. § 2414 (1970) (effect of judgments); 31 U.S.C. § 724(a) (1970); CAL. GOV'T CODE §§ 810-996 (Deering 1973); COLO. REV. STAT. §§ 24-10-101 through 10-117 (1973); OR. REV. STAT. §§ 30.265-.295 (1975); TEX. REV. CIV. STAT. ANN. art. 6252-19 (1970); WASH. REV. CODE ANN. §§ 4.92.010-.92.170; 4.96.101-.96.020; 35.31.00-.285 (1962).

40. The federal government provides for automatic payment of judgments up to $100,000. 28 U.S.C. § 2414; 31 U.S.C. § 724(a). Several states place limitations

preferable to the present capricious system. Though still inequitable to those most seriously injured, similar statutes have survived equal protection scrutiny elsewhere.[41]

While of little theoretical value, *Foreman* does serve to question the ultimate importance of the constitutional waiver of sovereign immunity. Arbitrary refusal to pay justly adjudicated debts is hardly the result for which legal scholars campaigned in urging the abrogation of the doctrine. A desire for governmental accountability and responsibility bred the revolution which vitiated sovereign immunity, and *Foreman* is a poor vindication of both policies.

William Hardy Patrick III

Elrod v. Burns: CONSTITUTIONAL JOB SECURITY FOR PUBLIC EMPLOYEES?

Four unclassified employees of the Sheriff's office in Cook County, Illinois, brought suit in federal court to enjoin their dismissals by the newly-elected Democrat. Plaintiffs, all Republicans, alleged that their discharges[1] were based solely on the fact that they neither supported nor were members of the Democratic Party and had failed to obtain the

upon recovery against the state, *e.g.*, COLO. REV. STAT. § 24-10-113 (1973) ($100,000 per person; $300,000 per occurrence); OR. REV. STAT. § 30.270 (1975) ($100,000 per person; $300,000 per occurrence; $50,000 damage to property); TEX. REV. CIV. STAT. ANN. art. 6252-19(3) (1970) ($100,000 per person; $300,000 per occurrence; $100,000 damage to property); VT. STAT. ANN. tit. 12, § 5601 (1972) ($75,000 per person; $300,000 per negligent act).

41. State of Nevada v. Silva, 86 Nev. 911, 478 P.2d 591 (1971); *cf.* Hall v. Gillens, 13 111.2d. 26, 147 N.E.2d 352 (1958). One court has recently held that limitations placed upon recovery in malpractice actions are unconstitutional. Wright v. Central DuPage Hosp. Ass'n. 63 Ill.2d 313, 347 N.E.2d 736 (1976). *See* Comment, *Recent Medical Malpractice Legislation—A First Checkup,* 50 TUL. L. REV. 655 (1976). The rationales are clearly distinguishable because in the malpractice limitation, a common law right to full recovery was vitiated, whereas in sovereign immunity, the state creates both the right and the remedy. Its power to limit the maximum recovery in the right that it creates thereby differs from its power to abrogate pre-existing common law rights.

1. Three employees had already been discharged while one alleged that he was in imminent danger of dismissal. The suit was brought under 42 U.S.C. §§ 1983, 1985, 1986, 1988 (1970).