

allows or recognizes the necessity of modifying the basic concept that the sovereign can do no wrong and cannot be sued.

There are three states, I believe, that strictly forbid any such suits. The modern tendency is to do otherwise. There are now two states which by constitutional statements recognize this principle. Most of them leave it to the legislature to spell out the areas in which this right is to be granted. A few of them spell it out in detail.

I therefore urge you to vote against this amendment. While nobody wants a terse constitution more than I do, there are certain corners we do not want to skip and there are certain areas where we want to recognize basic principles. I think this is one of them.

I would urge you to defeat this amendment to eliminate all reference to this concept of sovereign immunity.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the amendment?

Delegate Bamberger.

DELEGATE BAMBERGER: Will Delegate Kiefer yield to a question?

THE CHAIRMAN: Delegate Kiefer, do you yield to a question?

DELEGATE KIEFER: Yes, sir.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Do you intend to offer your Amendment D as a substitute for section 7?

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Yes.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Then, if the constitution says nothing about the immunity of governmental units, does the legislature not have the power to prescribe the limits of that immunity?

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: Yes, that is true. But it is similar to other concepts which we are putting into this constitution, where we frankly admit that the legislature could act on its own. We are stating a concept.

THE CHAIRMAN: Delegate Bamberger.

DELEGATE BAMBERGER: Why, do you mean either section 7 as it is or your Amendment D?

THE CHAIRMAN: Delegate Kiefer.

DELEGATE KIEFER: As I explained, we believed on this Committee, and I reiterate, in the desirability and if you please, the almost necessity of establishing this concept.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the amendment?

Delegate Clagett.

DELEGATE CLAGETT: Mr. Chairman, I rise in support of the amendment to strike because we have seen over the years a gradual evolution of the effect of this doctrine with respect to the course of our daily lives.

As Delegate Henderson mentioned yesterday, to the extent that there is insurance coverage, there is no immunity. To the extent that there is direct exposure where the public interest is involved, the doctrine is recognized.

As the public interest changed, it seems that we are undergoing many changes with respect to the public interest. There is no question but that the General Assembly and the courts will be able to adequately deal with the situation.

Where something is adequately effectively recognized and taken care of, there is absolutely no need for the additional cluttering of this document.

Therefore, I strongly urge that we delete it.

THE CHAIRMAN: Does any other delegate desire to speak in opposition to the amendment?

Delegate Macdonald.

DELEGATE MACDONALD: Mr. Chairman and fellow delegates. The proposer of this amendment says that the section 4 in the majority report is not necessary. I submit to you that it is most necessary, especially in connection with suits against counties and municipalities. The present state of the law is this in Maryland: If a county fails to maintain a road properly, and acknowledges that it failed to fix a pothole that you drive your car into although you were careful, you could sue the county.

That is the only case in which you could sue the county. If a county police vehicle smashes into your car because the police officer is grossly negligent and the county has not insured its vehicles for liability, you can not recover against the county.