

DELEGATE WEIDEMEYER: Mr. President and members of the Committee. In our Committee we gave considerable thought to this and at first the Committee was rather hostile, I thought, to the doctrine of removal of sovereign immunity. But on the hearing we concluded that the old doctrine of sovereign immunity coming down from the king of England when the king could do no wrong should not apply in this modern day and age.

We found that the legislature had full and plenary power to act. What we are also faced with is the fact that over the past fifteen years the legislature has dragged its feet and has moved entirely too slowly.

We were then faced with ignoring the proposition of removing the doctrine of sovereign immunity or adopting section 7 where the doctrine of sovereign immunity is removed except in such instances as the legislature may close the door.

We had the other concept where we stated the principle of sovereign immunity ought to be abolished, but would be abolished as the legislature opened up the door to the removal.

Now, the section 7 opens the door wide to removal and forces the General Assembly to legislate in those areas that sovereign immunity should be limited.

The proposal that Delegate Kiefer had is a more mild and more significant one. I would gladly go with it because that opens the door, states the concept and says to the legislature that in the past it has been wrong, that we want the doctrine of sovereign immunity removed and that it should remove it in those areas and to the extent and in the manner that it removes the doctrine of sovereign immunity, the state shall suffer to be sued.

I think we ought to reject the amendment and get at this matter and find out whether or not we want to adopt section 7 as it is or take the more mild measure offered by Delegate Kiefer. But, certainly, in no event ought we pass this amendment and abolish the concept entirely.

As some say, it might not do anything, but it states a concept and we ought to state it so that the legislature knows that the people in the Constitutional Convention do not want to stand by in this age an old doctrine of sovereign immunity which no longer serves the people of the State of Maryland.

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

Delegate Bamberger?

DELEGATE BAMBERGER: I have from time to time been too concerned that there are too many lawyers in this Convention and that we tend to talk to each other and not —

*(Applause.)*

THE CHAIRMAN: Delegate Bamberger, the Chair observes that the applause comes from the non-lawyer members of the Committee of the Whole.

DELEGATE BAMBERGER: I move to expunge the Chair's remark from the record.

*(Laughter.)*

I rise to point out that section 7 makes a very important policy decision. I am not prepared on the basis of any facts stated on this floor to make that policy decision.

Let me try to say in non-legal language what we are doing. The present law is that you may not sue a unit of government when it is exercising a governmental function, but just taking it without all the qualifications and the legal gobble-de-gook, that you cannot sue a unit of government for injuries which you suffer.

I agree that is an archaic doctrine and a doctrine which it is difficult to defend in some particular instances.

The legislature now may consider that doctrine and its application to the state, to a county, to a city, to an authority, and to any other governmental unit and make a judgment of whether the resources and the functions of that governmental unit are such that people ought to be able to recover from it when they are injured.

That is something which the legislature can explore, and then can understand the impact of its action. What section 7 does is absolutely the reverse of the rule. It says that if you suffer injury because of the action by some unit of government, by the state, or the county or the city, you may sue that unit and recover from the public treasury and recover from the tax funds unless the legislature says you may not.

If we adopt section 7, the door is open. This doctrine of immunity is completely gone and we put on the legislature the burden of reviewing the function of each little unit of government in the state, its