

Sovereign Immunity in Arkansas: Absolute or Only a Bar to Monetary Recovery?



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

03/06/2018

My law firm colleagues, Megan Hargraves and Devin Bates, recently authored an article titled:

Sovereign Immunity in Arkansas: Absolute or Only a Bar to Monetary Recovery?

The article addresses a recent Arkansas Supreme Court decision that, as they put it, “reduced the ability to sue the State.”

The decision is *Board of Trustees of the University of Arkansas v. Andrews*, 2018 Ark. 12,538 S.W. 3d 616 (hereinafter, “Andrews”).

The Arkansas Supreme Court in *Andrews* addressed the scope of the doctrine of sovereign immunity in Arkansas.

The authors indicate that *Andrews* disagreed with the prior 1996 decision in which the State of Arkansas could in fact be sued. They note:

... This January, the pendulum of Arkansas sovereign immunity jurisprudence swung back in the other direction, as the Court signaled a return to absolute sovereign immunity in *Andrews*.

Ms. Hargraves and Mr. Bates conclude that the approach limits the applicability of the defense of sovereign immunity to:

1. Cases involving monetary damages, and
2. Cases that do not involve monetary damages but have been vetted by the Governor as being worthy of the assertion of the sovereign immunity shield

Also addressed is whether the Governor’s position is valid under the relevant precedence. Due to more recent Arkansas Supreme Court precedent, the authors conclude that sovereign immunity is now characterized as an affirmative defense and therefore if not raised by the party immunity can be waived. Nevertheless, whether such waiver will remain viable is still an unknown.

The sovereign immunity issue is obviously relevant to litigation with Arkansas agencies. As a result, it should be carefully followed by anyone who litigates with agencies.

Finally, the authors conclude that a Constitutional Amendment would bring “clarity to the issue and answer this question once and for all.” They also speculate that the issue will be the subject of additional challenge in a scenario in which no money damages are sought. This will be a critical precedent as they note it will force the Court to clarify its holding in *Andrews*.

[A link to the article can be found here.](#)