SUPREME COURT OF LOUISIANA

No. 97-CA-0055

Christina N. and Joseph P. Williams, et al

Versus

State of Louisiana, through the Department of Health and Hospitals, et al

ON APPEAL FROM THE 24TH JUDICIAL DISTRICT COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA JUDGE PATRICK J. MCCABE

JOHNSON, Justice, Dissenting

When a law is clear and unambiguous and its application does not lead to absurd consequences, the law shall be applied as written and no further interpretation may be made in search of the intent of the legislature. *La. Smoked Products v. Savoie's Sausage*, 97-1128 (La. 6/30/97); 696 So. 2d 1373, 1378, *reh'g denied*. *See also,* La. C.C. art. 9. When a constitutional provision contains clear, unambiguous language, we must rely on the finished product, which is the expression of the voters who adopted the constitution. *See Chamberlain v. State through DOTD*, 624 So. 2d 874, 886 (La. 1993) *(citations omitted).* Constitutional provisions which are plain and unambiguous must be given effect. *City of New Orleans v. Scramuzza*, 507 So. 2d 215, 217 (La. 1987).

La. Const. Art. XII, §10(A) provides:

> "Section 10. **(A). No Immunity in Contract and Tort.**
> Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property."

The clear, unambiguous, straightforward language of La. Const. Art. XII, §10(A) (hereinafter, Section 10(A)) contains an absolute prohibition against immunity by the state from specific types of suits and liability -- suits in contract and for injury to person or property. *Chamberlain v. State through DOTD,* 624 So.

2d 874 (La. 1993). Because Section 10(A) sets forth a mandatory prohibition against sovereign immunity in tort and contract suits, it is a self-executing constitutional provision.[1] This court recognized decades ago that in Louisiana, sovereign or governmental immunity was a judicially-created doctrine, which was outmoded and inconsistent with the state's policy of requiring that state agencies either "act responsibly, or be subject to answer in court." *See Chamberlain*, 624 So. 2d at 881, *citing Board of Comm'rs of Port of New Orleans v. Splendour Shipping & Enterprises Co.,* 273 So. 2d 19, 24-25 (La. 1973).

The statutory ceiling contained in La. R.S. 40:1299.39(F) provides in pertinent part:

> "Notwithstanding any other provision of the law to the contrary, no judgment shall be rendered and no settlement or compromise shall be entered into for the injury or death of any patient in any action or claim for an alleged act of malpractice in excess of five hundred thousand dollars plus interest and costs, exclusive of future medical care and related benefits valued in excess of such five hundred thousand dollars."

A ceiling on non-economic damages partially resurrects sovereign immunity because it declares, in essence, that injury inflicted by the governmental tortfeasor is not legally cognizable beyond the ceiling amount. *See Chamberlain,* 624 So. 2d at 884 *(citations omitted).* Accordingly, the $500,000.00 statutory ceiling on damages contained in La. R.S. 40:1299.39(F) violates the constitutional proscription against sovereign immunity.

A finding that La. R.S. 40:1299.39(F) is violative of Section 10(A)'s proscription against sovereign immunity is consistent and directly on point with this court's decision in *Chamberlain*. The majority correctly recognizes that this court's decision in *Chamberlain* "presents us with a window to better view the question presently before us." In *Chamberlain*, the trial court initially awarded plaintiffs $2,000,000.00 in general damages, but subsequently reduced the damages to fit within the $500,000.00 cap under La. R.S. 13:5106(B)(1). Following *Sibley v. Board of Supervisors of Louisiana State University (Sibley*

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[1] *Compare* to the permissive, non-self-executing language of Sections 10(B), which allocates the power to consent to suit in matters other than contract and tort to the legislature, and 10(C), which allocates the power to establish procedures for such suits and to provide the method for enforcing such judgments to the legislature. *See Chamberlain*, 624 at 882.

I)[2] and *Butler v. Flint Goodrich of Dillard University*,[3] the appellate court held that the cap was constitutional and affirmed the trial court. This court granted plaintiffs' writ application and addressed the issue of whether the caps provision of the statute was constitutional. This court held that "the statutory ceiling on general damages imposed by Louisiana Revised Statute 13:5106(B)(1) conflicts with Section 10(A) and is thus unconstitutional." This court reasoned that the ceiling on damages cannot be "construed as anything other than a partial resurrection of sovereign immunity," and that to limit the state's liability to $500,000.00 effectually immunizes the state from liability.

In reaching the conclusion that La. R.S. 49:1299.39 does not violate Section 10(A) in the present case, the majority relies on the following language in the *Chamberlain* decision:

> "In prohibiting immunity from liability as well as from suit, the framers clearly intended that the state not be afforded substantive defenses unavailable to private litigants, based simply on its governmental status." *Chamberlain*, 624 So. 2d at 886, *citing Segura v. Louisiana Architects Selection Board*, 362 So. 2d 498 (La. 1978) and *Jones v. City of Baton Rouge,* 388 So. 2d 737 (La. 1980).

Based upon the above language, the majority in the instant case concludes that because the legislature enacted a ceiling on the liability of private litigants, it may properly enact a ceiling on the liability of the state as well without violating the proscription against sovereign immunity.

The majority's reasoning and reliance on this one-sentence language in *Chamberlain* is misplaced and narrow, considering the *Chamberlain* decision in its entirety. In stating the above language, the court in *Chamberlain* was pointing out the flaws of reading Section 10(A) as simply eliminating the consent to sue requirement. *Chamberlain,* 624 So. 2d at 886. A reading of this language in its proper context reveals that this court was noting the fact that in addition to eliminating the consent to sue requirement, elimination of advantages by the state based simply on its governmental status which are unavailable to private litigants was an additional purpose of Section 10(A). *Chamberlain,* 624 So. 2d at 886. Moreover, the majority's conclusion that the *Chamberlain* court found La. R.S. 13:5106(B)(1) unconstitutional under Section 10(A) because "no corresponding limitation of liability applied to private

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[2] *(Sibley I)*, 462 So. 2d 149, *vacated on reh'g*, *(Sibley II)*, 477 so. 2d 1094 (La. 1985).

[3] 607 So. 2d 517 (La. 1992), *cert. denied,* 508 U.S. 909, 113 S. Ct. 2338, 124 L. Ed. 2d 249 (1993).

defendants" is erroneous and incorrect. Actually, the *Chamberlain* court found the statute unconstitutional solely because it conflicted with Section 10(A)'s absolute, unequivocal proscription against sovereign immunity. The court stated:

> "A ceiling on non-economic damages, like LSA-R.S. 13:5106(B)(1), partially resurrects sovereign immunity because it declares, in essence, that injury inflicted by a governmental tortfeasor is not legally cognizable beyond the ceiling amount. Stated otherwise, when immunity has been abolished, decreasing recovery from full compensation to a maximum ceiling partially resurrects immunity. It follows that LSA-R.S. 13:5106(B)(1)'s ceiling on general damages cannot, despite the legislature's disclaimer to the contrary in LSA-R.S. 13:5106(E)(4), be construed as anything other than a partial resurrection of sovereign immunity. Thus, we conclude that the statutory ceiling on general damages imposed by LSA-R.S. 13:5106(B)(1) conflicts with Section 10(A) and is thus unconstitutional." *Chamberlain,* 624 So. 2d at 884 *(footnotes omitted).*

Additionally, the majority's reading this court's decisions in *Segura,* 362 So. 2d at 498 and *Jones*, 388 So. 2d at 737 as meaning that the statutes at issue in those cases violated Section 10(A) "because it [the statute] attempted to relieve the government from an aspect of liability which private litigants did not have at their disposal," and since "private parties could not be held liable on the basis of strict liability," is incorrect. In neither *Jones* nor *Segura* did this court rely on or even mention the language regarding the availability of substantive defenses to private litigants. In *Segura,* the court stated that the "narrow question presented by this case is whether the exemption from payment of court costs granted to the State in judicial proceedings by Section 4521 of Title 13 of the Revised Statutes was superseded by Section 10(A) of Article XII of the Constitution of 1974 declaring that the State shall not be 'immune from suit and liability in contract.'" *Segura*, 362 So. 2d at 499. In analyzing the case and reaching its conclusion, the court in no way considered whether or not there was such a remedy for private litigants -- it was not even a consideration. Also in *Jones*, this court refused to find a governmental exception to La. C.C. Art. 2317 liability on the basis that it is not the courts' function to create an exception to La. Const. Art. XII, §10's "unequivocal" waiver of sovereign immunity. Again, no mention or consideration of whether private litigants were afforded that remedy. The court relied merely on the fact that sovereign immunity is unequivocally prohibited by Section 10(A). Had the court considered whether or not such substantive defenses were available to private litigants, such consideration would have been a part of the court's reasoning in *Jones* and *Segura*.

The fundamental difference in allowing the legislature to limit the liability for private health-care providers while denying legislative attempts to limit the liability of the state is that only the state's liability is guaranteed by the Louisiana Constitution. Slakter, *supra* note 46, at 370. As there exists no counterpart to La. Const. Art. XII, §10(A) for private health-care providers, a constitutional attack on the limitation for private health-care providers must demonstrate a violation of the equal protection, due process or adequate remedy clauses, while a successful attack on the constitutionality of a limitation of the state's liability must merely demonstrate that the limitation violates Louisiana's constitutional proscription of sovereign immunity. *See* Slakter, *supra* note 47, at 370. This court has, in the past, upheld the $500,000.00 statutory cap in medical malpractice actions against private health-care providers citing plaintiffs' failure to demonstrate a constitutional violation of equal protection, due process or adequate remedy. *See Butler*, 607 So. 2d at 517.[4]

The majority correctly notes that the issue of whether La. R.S. 40:1299.39 violates equal protection of the laws under Article I, § 3 of the Louisiana Constitution is not before us. *See Opinion page 7, n. 6.* The equal protection argument is not invoked by either party, and the sole question in this case is whether the proscription against sovereign immunity has been contravened. Because the equal protection issue is not before us, whether or not the state is afforded substantive defenses unavailable to private litigants is inapplicable to this case and inappropriate for discussion because it is, undoubtedly, an equal protection argument. Accordingly, the majority's reliance on this language throughout its decision is improper, as well as its reliance on *Butler,* 607 So. 2d at 517. *Butler* is irrelevant because in *Butler,* the $500,000.00 medical malpractice cap which this court upheld pertained to private health-care providers and the constitutional challenges were based on the equal protection and access to court provisions of La. Const. Art. I, §3 and La. Const. Art. I, §22 -- not the proscription against sovereign immunity provision of La. Const. Art. XII, §10(A) at issue in the instant case. The majority in the present case, while declaring that the equal protection argument is not before the court, essentially makes an equal protection analysis and concludes that because the $500,000.00 medical malpractice cap is available to private defendants, the

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[4] The court held that the $500,000.00 statutory cap on general damages in a medical malpractice suit against multiple defendants does not violate equal protection provisions of the State or Federal Constitutions.

same may be properly available to the state.

I am cognizant of the fact that the legislative goal prompting the enactment of the statutory ceiling was to protect the public fisc. *See Chamberlain,* 624 So. 2d at 878, *citing* comment, *Limiting Strict Liability of Governmental Defendants: The Notice Requirement of the 1885 Legislation,* 46 La. L. Rev. 1197 (1986). However, as this court acknowledged in *Chamberlain*, it is not our role to consider the legislature's policy or wisdom in adopting the statute; our role is to determine only the applicability, legality and constitutionality of the statute. *Chamberlain* at 879, *citing City of New Orleans v. Scramuzza*, 507 So. 2d 215, 219 (La. 1987); *Board of Commissioners of Orleans Levee District v. Dept. of Natural Resources,* 496 So. 2d 281, 298 n.5 (La. 1986).

For the foregoing reasons, I respectfully dissent.