



Lee Burgess: Welcome back to the Law School Toolbox podcast. Today, we're doing another in our "Listen and Learn" series – this one is on state sovereign immunity. Your Law School Toolbox hosts are Alison Monahan and Lee Burgess, that's me. We're here to demystify the law school and early legal career experience, so you'll be the best law student and lawyer you can be. We're the co-creators of the [Law School Toolbox](#), the [Bar Exam Toolbox](#), and the career-related website [CareerDicta](#). Alison also runs [The Girl's Guide to Law School](#). If you enjoy the show, please leave a review or rating on your favorite listening app. And if you have any questions, don't hesitate to reach out to us. You can reach us via the [contact form](#) on LawSchoolToolBox.com, and we'd love to hear from you. And with that, let's get started.

Lee Burgess: Hello, and welcome back to the "Listen and Learn" series. Today we are going to be talking about state sovereign immunity, pursuant to the Eleventh Amendment to the United States Constitution. Now, before we get started, one quick thing I wanted to say: Due to the frequent changes in Supreme Court legal precedent these days, we want to note that this is being recorded in the summer of 2022, and the law is as it stands now.

Lee Burgess: So, let's jump right into our first rule: The Eleventh Amendment prohibits a party from suing a state or state agency in federal court. In other words, states are immune from lawsuits in federal court. For example, David – the local store owner, cannot sue the state of Washington in federal court for damages he incurred when state police negligently raided his store. And that is because Washington has sovereign immunity.

Lee Burgess: Now, there are a few instances where the state sovereign immunity doctrine does not apply. First, it does not apply to local governments. So, had David's store been raided by Tacoma police, and David sued the city of Tacoma instead of the state of Washington, that suit would not have been barred by the Eleventh Amendment. Second, the Eleventh Amendment also does not apply to a federal lawsuit by a state against another state. So, sovereign immunity did not bar the *Texas v. Pennsylvania* elections case, where Texas filed suit against Pennsylvania, among other states, in the United States Supreme Court, for allegedly unconstitutional election conduct. It was Texas – a state, suing Pennsylvania – another state, in the United States Supreme Court, which is a federal court. So, Pennsylvania cannot claim sovereign immunity to avoid suit. Third and finally, the sovereign immunity doctrine also does not apply to lawsuits by the federal government against a state. Any time you see a case name that is the U.S. against any state – *U.S. v. California*, *U.S. v. Virginia*, *U.S. v. Texas* – you should remember that the state being sued will not be able to successfully claim sovereign immunity.

Lee Burgess: So, let's talk about the exceptions to state sovereign immunity – when a party can sue a state. The first exception occurs when a state explicitly consents to



waive protection – to waive immunity. So back to our example about David, the local store owner. If the state of Washington consents to the suit by waiving immunity, then David can bring suit in federal court against the state of Washington.

Lee Burgess: The second exception to sovereign immunity is for lawsuits pertaining to federal laws – but not just any federal laws; only laws adopted specifically under Section 5 of the Fourteenth Amendment will overcome state sovereign immunity. So, a lawsuit against a state, claiming that the state’s family medical leave restrictions discriminate against female employees, and thus violate the Family and Medical Leave Act, would not be barred by the Eleventh Amendment. A federal law overriding state sovereign immunity is called “abrogation”. Congress can abrogate the Eleventh Amendment pursuant to the Fourteenth Amendment, as discussed, but Congress cannot abrogate the Eleventh Amendment pursuant to the Commerce Clause, for example. We’ll parse this distinction out in a later hypothetical.

Lee Burgess: The third exception is for lawsuits that seek only injunctive relief against a state official. Injunctive relief is when the court orders a party to stop doing something or restricts a party from ever starting to do something. So James – the farmer, can sue the state secretary of agriculture to prevent the enforcement of a new law requiring extensive reporting requirements for state farmers. Preventing the enforcement of a new law is injunctive relief, and the secretary of agriculture is a state official, and thus this suit is not barred by sovereign immunity.

Lee Burgess: The fourth and final exception is for lawsuits seeking money damages from a state official. Let’s bring back David – the local store owner, one last time. He wanted monetary relief from the state of Washington for the damage done to his store. Now that suit was barred by sovereign immunity, but David’s suit may survive if he instead sued the Chief of Police, who was leading the raid of David’s store.

Lee Burgess: Okay, let’s do a quick recap before we begin our first hypo: Under the Eleventh Amendment, states are immune from being sued in federal courts. However, sovereign immunity does not apply to local governments, lawsuits brought by a state against another state, or to lawsuits brought by the federal government against a state. Additionally, there are four exceptions to state sovereign immunity, where a state can be sued in federal court: when the state consents; suits brought under laws adopted under Section 5 of the Fourteenth Amendment; suits seeking injunctive relief against a state official; and suits seeking money damages from a state official.

Lee Burgess: Now we can jump into our first hypo. This question is pulled from Question 4 on the [July 2016 California bar exam](#), and has been abbreviated for focus:



- Lee Burgess: “State X has a valid contract with public school teachers providing a fixed salary schedule. State X recently passed legislation to address its failing public schools. Now, when a school falls below established standards, each teacher at the school has 10% of his or her salary withheld each pay period for a maximum of two years. The withholding ends, and the money is returned with interest upon the completion of a ten-hour certification program or termination of employment.
- Lee Burgess: City High is a public school in State X, where salary withholding has begun. Bob and Paige are teachers at City High. Bob and Paige have been outspoken opponents of the State X law and its application to City High, appearing at various community and school board meetings throughout the school year.
- Lee Burgess: Shortly before the end of Paige’s first year of employment, City High served her with written notice terminating employment, and refunded the money held with interest. Bob and Paige have sued State X and the Attorney General of State X in federal court, seeking damages and injunctive relief. State X and the Attorney General have moved to dismiss the suit based on the Eleventh Amendment. How should the court rule on the State and the Attorney General’s motion?”
- Lee Burgess: We know that, under the Eleventh Amendment, states are immune from suits in federal court – so let’s start there. Do we have a suit against a state in federal court? Well, the facts state that we’re in federal court, and that Bob and Paige are suing State X and the Attorney General. So we have a federal suit against a state and a state official. It may seem like this suit is barred by sovereign immunity, but this is the start of the analysis. Now we must determine whether an exception to the Eleventh Amendment applies.
- Lee Burgess: In order to figure out if one of our four exceptions apply, we’ll need to apply the facts to the elements for each exception. The first exception is consent. There is nothing in the facts from which we can determine that State X waived immunity and consented to being sued, so this is one we can rule out pretty quickly.
- Lee Burgess: The second exception is for suits brought pursuant to laws adopted under Section 5 of the Fourteenth Amendment. We did learn from the facts that State X recently passed legislation that withholds a portion of a teacher’s salary if their school has fallen below established standards. But note that this is a state statute and there is no claim that it is being violated. Remember we are looking for plaintiffs suing for violations of federal law brought under Section 5 of the Fourteenth Amendment. The facts do not tell us the legal theory that Bob and Paige are basing their suit on, and whether it’s at all related to the type of law necessary for this exception, so we cannot assume that this exception will apply. And because our next two exceptions apply only to suits against state officials,



we can now say that no exceptions apply to the suit against State X. So we know that the court should grant the motion to dismiss, at least in part.

Lee Burgess: Moving on to the third exception for suits brought against state officials seeking injunctive relief. Bob and Paige are suing the Attorney General, who is a state official. And the facts explicitly tell us that they are seeking injunctive relief. In this hypo, the relief would be for the court to enjoin the Attorney General from enforcing the state law that Bob and Paige are challenging. So we have met the two elements for this exception to apply, meaning sovereign immunity will not bar Bob and Paige from bringing their suit against the Attorney General for injunctive relief. But Bob and Paige are also seeking damages, so let's still take a look at our final exception.

Lee Burgess: As a reminder, the fourth exception is for suits against state officials for money damages. We have established that this is a suit against a state official – the Attorney General – and that Bob and Paige are seeking damages. But in order for this exception to apply, Bob and Paige have to be claiming that the Attorney General is personally liable for their financial losses, or liable under a respondeat superior, a theory of vicarious liability. There is nothing in the facts from which we can infer that Bob and Paige are alleging that the Attorney General is personally or vicariously liable for their financial losses. It was State X that passed the law that Bob and Paige oppose, and it was City High that fired Paige. Thus, this exception will not apply, and this action will likely be barred.

Lee Burgess: In sum, the court should deny the motion to dismiss in regard to the suit against the Attorney General for the injunctive relief, and should grant the motion in regard to the suits against State X and against the Attorney General.

Lee Burgess: Okay, let's try another hypo. This question is pulled from Question 5 on the [July 2016 California bar exam](#), and has been altered for brevity and focus:

Lee Burgess: "State X enacted a statute prohibiting the use of radar detectors in any motor vehicle on any road or highway within State X. The Secretary of the State X Highway Department has begun enforcing the statute.

Lee Burgess: The American Car Association (ACA) is an association comprised of automobile motorists residing throughout the United States. One of ACA's purposes is to promote free and unimpeded automobile travel. ACA has received numerous complaints about the State X statute from its members who drive vehicles there.

Lee Burgess: In response to such complaints, ACA has filed suit against the Secretary in federal district court in State X, seeking a declaration that the State X statute is invalid under the Commerce Clause of the United States Constitution. The



Department has moved to dismiss ACA’s complaint on Eleventh Amendment grounds. How should the court rule on the motion to dismiss?”

Lee Burgess: Once again, let’s begin with whether we have a state or state official being sued in federal court. The facts tell us that ACA filed suit in federal district court in State X, and did so against the Secretary of the State X Highway Department. So we have a state official in federal court, meaning this sounds like sovereign immunity, but we have to confirm by reviewing the exceptions to immunity.

Lee Burgess: There is nothing in the facts that states that the Secretary consented to the suit, so we can quickly rule out waiver of immunity.

Lee Burgess: Next consideration is the abrogation exception. Here, the most important consideration is the law that the Secretary is allegedly violating by enforcing the statute. ACA filed suit claiming that the State X statute is invalid under the Commerce Clause. If you remember our discussion earlier, this exception requires that the suit pertain to violations of federal laws that were established pursuant to Section 5 of the Fourteenth Amendment. So, a suit brought claiming violation of the Commerce Clause cannot satisfy this exception.

Lee Burgess: The next exception is for suits against state officials seeking injunctive relief. We have already established that the suit was filed against the Secretary – a state official, so let’s take a closer look at the type of relief ACA requested. ACA is seeking a declaration that the State X statute is invalid. It is likely that ACA is seeking to stop the Secretary from further enforcing the statute. Relief in the form of stopping an action is injunctive relief. Therefore, by seeking to stop the Secretary from enforcing the statute, ACA is seeking injunctive relief – meaning both elements of this exception have been met and the Secretary is not immune from the suit filed by ACA.

Lee Burgess: And moving to our final exception, just to ensure we have a full analysis: Suits against state official seeking damages are not barred by the sovereign immunity doctrine if the state official is personally or vicariously liable for any financial losses. There are at least two reasons why this exception is inapplicable. First, ACA was only seeking an injunction, not damages. And second, the facts do not infer any financial losses. Based on this, we can also dispose of this exception because it does not apply to the type of suit ACA brought.

Lee Burgess: That means we uncovered one exception, and one is all you need. With an exception satisfied, the Secretary is not immune from suit and the court should deny the motion to dismiss.

Lee Burgess: And with that, we’re out of time! Hopefully you found these hypos to be helpful examples of when parties can and cannot bring suits against states. If you enjoyed this episode of the Law School Toolbox podcast, please take a second to



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