educational institutions,[66] the court held that the sovereign immunity of the state was not infringed despite the fact that the issue was "ancillary" to a bankruptcy court's *in rem* jurisdiction.[67]

Because Eleventh Amendment sovereign immunity inheres in states and not their subdivision or establishments, a state agency that wishes to claim state sovereign immunity must establish that it is acting as an arm of the state: "agencies exercising state power have been permitted to invoke the [Eleventh] Amendment in order to protect the state treasury from liability that would have had essentially the same practical consequences as a judgment against the State itself."[68] In evaluating such a claim, the Court will examine state law to determine the nature of the entity, and whether to treat it as an arm of the state.[69] The Court has consistently refused to extend Eleventh Amendment sovereign immunity to counties, cities, or towns,[70] even though such political subdivisions exercise a "slice of state power."[71] Even when such entities enjoy immunity from suit under state law, they do not have Eleventh Amendment immunity in federal court and the states may not confer it.[72] Similarly, entities created pursuant to interstate compacts (and subject to congressional approval) are not immune from suit, absent a show-

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[66] A "preferential transfer" was defined as the transfer of a property interest from an insolvent debtor to a creditor, which occurred on or within 90 days before the filing of a bankruptcy petition, and which exceeds what the creditor would have been entitled to receive under such bankruptcy filing. 11 U.S.C. § 547(b).

[67] 546 U.S. at 373.

[68] Lake County Estates v. Tahoe Regional Planning Agency, 440 U.S. 391, 400–01 (1979), *citing* Edelman v. Jordan, 415 U.S. 651 (1974), and Ford Motor Co. v. Department of Treasury, 323 U.S. 459 (1945). The fact that a state agency can be indemnified for the costs of litigation does not divest the agency of its Eleventh Amendment immunity. Regents of the University of California v. Doe, 519 U.S. 425 (1997).

[69] *See*, *e.g.*, Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274, 280 (1977) (local school district not an arm of the state based on (1) its designation in state law as a political subdivision, (2) the degree of supervision by the state board of education, (3) the level of funding received from the state, and (4) the districts' empowerment to generate their own revenue through the issuance of bonds or levying taxes.

[70] Northern Insurance Company of New York v. Chatham County, 547 U.S. 189, 193 (2006) (counties have neither Eleventh Amendment immunity nor residual common law immunity). *See* Mt. Healthy City Bd. of Educ. v. Doyle, 429 U.S. 274 (1977) ; Moor v. County of Alameda, 411 U.S. 693 (1973); Workman v. City of New York, 179 U.S. 552 (1900); Lincoln County v. Luning, 133 U.S. 529 (1890). In contrast to their treatment under the Eleventh Amendment, the Court has found that state immunity from federal regulation under the Tenth Amendment extends to political subdivisions as well. *See* Printz v. United States, 521 U.S. 898 (1997).

[71] Lake County Estates v. Tahoe Regional Planning Agency, 440 U.S. 391, 400–01 (1979) (quoting earlier cases).

[72] Chicot County v. Sherwood, 148 U.S. 529 (1893).