

The agency sought access to records of state-run hospitals in federal court. Six Justices upheld the effort: The relief sought was straightforward and prospective, and not a burdensome encroachment on state sovereignty.<sup>161</sup>

Thus, as with the cases dealing with suits facially against the states themselves, the Court's greater attention to state immunity in the context of suits against state officials has resulted in a mixed picture, of some new restrictions, of the lessening of others. But a number of Justices have increasingly resorted to the Eleventh Amendment as a means to reduce federal-state judicial conflict.<sup>162</sup> One may, therefore, expect this to be a continuingly contentious area.

***Tort Actions Against State Officials.***—In *Tindal v. Wesley*,<sup>163</sup> the Court adopted the rule of *United States v. Lee*,<sup>164</sup> a tort suit against federal officials, to permit a tort action against state officials to recover real property held by them and claimed by the state and to obtain damages for the period of withholding. The immunity of a state from suit has long been held not to extend to actions against state officials for damages arising out of willful and negligent disregard of state laws.<sup>165</sup> The reach of the rule is evident in *Scheuer v. Rhodes*,<sup>166</sup> in which the Court held that plaintiffs were not barred by the Eleventh Amendment or other immunity doctrines from suing the governor and other officials of a state alleging that they deprived plaintiffs of federal rights under color of state law and seeking damages, when it was clear that plaintiffs were seeking to impose individual and personal liability on the officials. There was no “executive immunity” from suit, the Court held; rather, the immunity of state officials is qualified and varies according to the scope of discretion and responsibilities of the particular office and the circumstances existing at the time the challenged action was taken.<sup>167</sup>

<sup>161</sup> In a concurring opinion, Justice Kennedy, joined by Justice Thomas, continued to support a case-by-case balancing analysis. *Virginia Office for Protection and Advocacy v. Stewart*, 563 U.S. \_\_\_, No. 09–529, slip op. (2011) (Kennedy, J., concurring).

<sup>162</sup> See, e.g., *Florida Dep't of State v. Treasure Salvors*, 458 U.S. 670, 702 (1982) (dissenting opinion); *Patsy v. Florida Board of Regents*, 457 U.S. 496, 520 (1982) (dissenting opinion). See also *Employees of the Dep't of Public Health and Welfare v. Department of Public Health and Welfare*, 411 U.S. 279 (1973).

<sup>163</sup> 167 U.S. 204 (1897).

<sup>164</sup> 106 U.S. 196 (1883).

<sup>165</sup> *Johnson v. Lankford*, 245 U.S. 541 (1918); *Martin v. Lankford*, 245 U.S. 547 (1918).

<sup>166</sup> 416 U.S. 233 (1974).

<sup>167</sup> These suits, like suits against local officials and municipal corporations, are typically brought pursuant to 42 U.S.C. § 1983 and typically involve all the decisions respecting liability and immunities thereunder. On the scope of immunity of federal officials, see Article III, “Suits Against United States Officials,” *supra*.