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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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NORCOTT, J., with whom BORDEN and PALMER, Js., join, dissenting. After our very recent decision in *Martinez* v. *Dept. of Public Safety*, 258 Conn. 680, 784 A.2d 347 (2001) (*Martinez I*), the majority of this court granted the state's motion for en banc reargument and reconsideration of the issues. Because I fully adhere to our opinion in *Martinez I*, concluding that General Statutes § 53-39a abrogated sovereign immunity from both liability and suit; id., 683; I cannot agree with the majority opinion set forth today. Accordingly, I respectfully dissent.

To begin, I emphasize that I fully subscribe to the analysis and conclusions of the original majority opinion of this court. "It is well established law that the state is immune from suit unless it consents to be sued by appropriate legislation waiving sovereign immunity in certain prescribed cases. *Baker* v. *Ives*, 162 Conn. 295, 298, 294 A.2d 290 (1972); *Murphy* v. *Ives*, 151 Conn. 259, 262–63, 196 A.2d 593 (1963)." *Duguay* v. *Hopkins*, 191 Conn. 222, 227, 464 A.2d 45 (1983). "The question whether the principles of governmental immunity from suit and liability are waived is a matter of legislative, not judicial, determination. . . . The state's sovereign right not to be sued may be waived by the legislature, provided clear intention to that effect is disclosed by the use of express terms or by force of a *necessary implication*." (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 228. Thus, although § 53-39a does not *explicitly* waive sovereign immunity from suit, I conclude that the present case presents one of the "certain prescribed cases" for which the state implicitly has waived its sovereign immunity for purposes of indemnification. (Internal quotation marks omitted.) *Martinez I*, supra, 258 Conn. 683. Consequently, § 53-39a falls within the exception provided in General Statutes § 4-142 (2) for "claims upon which suit . . . is authorized by law . . . ."

Specifically, I conclude that, because the language of § 53-39a is explicit and its directive is mandatory, the legislature intended to waive sovereign immunity from both liability and suit. *Martinez I*, supra, 258 Conn. 688. If the state were not able to be sued in order to enforce § 53-39a, the plaintiff's only means of redress, pursuant to § 4-142, would be the claims commissioner. The claims commissioner, as discussed later in this opinion, has discretion to deny or accept the plaintiff's claim for indemnification if it is under $7500. See General Statutes § 4-158. Moreover, the claims commissioner may only make recommendations to the legislature to pay or deny the plaintiff's claim if it is for more than $7500. General Statutes § 4-159. This discretion in the claims commissioner, however, is at odds

with the mandatory nature of the obligation to indemnify employees who meet the statutory criteria. Id. Put differently, without the waiver of immunity from both liability and suit, the statute would be meaningless to the people whom it is intended to protect. Id.; see also *Bergner* v. *State*, 144 Conn. 282, 287, 130 A.2d 293 (1957) (''It is a cardinal rule of statutory construction that courts must presume that legislatures do not intend to enact useless legislation. . . . It would be utterly useless and meaningless to permit a suit which could not end otherwise than in a judgment for the defendant.'' [Citation omitted.]).

A fundamental flaw in the majority's reasoning concluding that the legislature explicitly waived its sovereign immunity from liability and not from suit is that the statute, as interpreted by the majority, now treats state police officers differently from municipal police officers. Previous decisions of this court have held, and the majority does not dispute, that municipal police officers have the right to enforce § 53-39a in court.[1] Additionally, the explicit language of § 53-39a specifically includes, in its first sentence, '' 'an officer of the [d]ivision of [s]tate [p]olice' '' in the class of employees entitled to indemnification from their governmental employing unit when the statutory requirements are satisfied. *Martinez I*, supra, 258 Conn. 690.

Notwithstanding the explicit language of the statute including state police officers as employees who shall be indemnified, under the majority's approach a state police officer seeking indemnification under the same statute must overcome a series of additional procedural hurdles before being indemnified. First, the state police officer must apply to the claims commissioner for indemnification pursuant to § 4-142. Then, if the claim for which the state police officer is seeking payment is greater than $7500, such as the plaintiff's claim in the present case, the claims commissioner may only make a recommendation to the legislature to pay, or reject, the claim. General Statutes § 4-159. The legislature may then accept, alter or reject the claim for indemnification, or grant or deny the claimant permission to sue the state. General Statutes § 4-159. The state police officer would not have any redress from that legislative action.

Moreover, the majority notes that the claims commissioner may also authorize suit against the state in Superior Court pursuant to General Statutes § 4-160. Under § 4-160 (a), however, the claims commissioner must first deem suit against the state ''just and equitable . . . .'' Then, the claim presented to the claims commissioner must present an issue of law or fact ''under which the state, were it a private person, could be liable.'' General Statutes § 4-160 (a). I know of no legal theory, however, which would allow an employee to seek and attain indemnification from a private employer for costs

arising out of criminal charges for conduct that allegedly occurred during the course of employment. Thus, as counsel for the defendant admitted at oral argument before this court, § 4-160 can not provide relief to the plaintiff in the present case.

Thus, under the majority's analysis, state police officers who have a claim greater than $7500, but meet the other statutory criteria, will be indemnified under § 53-39a if, and only if, the legislature approves of the payment. Consequently, the majority opinion raises serious doubts regarding the plaintiff's ability to attain any relief from the approximately $90,000 he spent defending himself against criminal charges that arose during the course of his employment as a state police officer. This scheme simply could not have been the intent of the legislature when they provided that *both* local and state police officers "*shall be indemnified* by his employing governmental unit . . . ." (Emphasis added.) General Statutes § 53-39a.

Even though this distinction is not apparent from the language of the statute, the majority contends that the disparate treatment of state and municipal police officers exists because of "inherent differences in the nature of the governmental immunity enjoyed by municipalities as contrasted with the sovereign immunity enjoyed by the state." This conclusion, however, places municipal police officers in a much better position than state police officers when, if they are prosecuted for crimes allegedly committed by them in the course of their employment, the charges are dismissed or they are found not guilty. Specifically, municipal officers have the right to seek and enforce the indemnification statute in court. Conversely, state police officers are first subject to the discretion of the claims commissioner and then to the discretion of the legislature. This distinction is neither expressed nor can it be implied from the language of the statute, nor can it be gleaned from the legislative history. Nor is there, in my opinion, any rational basis for the disparity in the treatment of state and municipal police officers, who are listed in the same indemnification statute, have the same job requirements, and confront the same risks in the course of their employment. Moreover, the scheme adopted by the majority here offers no incentive to future police officers to become members of the state police department, who are subject to the discretion of the claims commissioner and the legislature in order to be afforded protection under § 53-39a, unlike municipal police officers, who have the right to enforce the provisions of § 53-39a in court. Thus, the disparate treatment given to state and municipal police officers as a result of the majority opinion in the present case has no rational basis either in the statute, or in our law of sovereign immunity.

Accordingly, I respectfully dissent.

[1] See, e.g., *Cislo* v. *Shelton*, 240 Conn. 590, 598, 692 A.2d 1255 (1997) ("[§]

53-39a . . . authorizes indemnification for economic loss, including legal fees, incurred by officers of local police departments who are prosecuted for crimes allegedly committed by them in the course of their duties when the charges against them are dismissed or they are found not guilty'' [citation omitted]); *Link* v. *Shelton*, 186 Conn. 623, 627, 443 A.2d 902 (1982) (''§ 53-39a authorizes indemnification for legal fees incurred by an officer of a local police department as a result of prosecution for a crime allegedly committed by him 'in the course of his duty' where he is found not guilty of the crime charged'').