

Sec. 2—Judicial Power and Jurisdiction

Cl. 1—Cases and Controversies

are maintainable.⁹⁹¹ Third, cases involving injury to a plaintiff because the official has exceeded his statutory authority. In general these suits are maintainable.⁹⁹² Fourth, cases in which an officer seeks immunity behind statutory authority or some other sovereign command for the commission of a common law tort.⁹⁹³ This category of cases presents the greatest difficulties because these suits can as readily be classified as falling into the first group if the action directly or indirectly is one for specific performance or if the judgment would affect the United States.

Suits Against Government Corporations.—The multiplication of government corporations during periods of war and depression has provided one motivation for limiting the doctrine of sovereign immunity. In *Keifer & Keifer v. RFC*,⁹⁹⁴ the Court held that the government does not become a conduit of its immunity in suits against its agents or instrumentalities merely because they do its work. Nor does the creation of a government corporation confer upon it legal immunity. Whether Congress endows a public corporation with governmental immunity in a specific instance is a matter of ascertaining the congressional will. Moreover, it has been held that waivers of governmental immunity in the case of federal instrumentalities and corporations should be construed liberally.⁹⁹⁵ On the other hand, Indian nations are exempt from suit without further congressional authorization; it is as though their former immunity as sovereigns passed to the United States for their benefit, as did their tribal properties.⁹⁹⁶

Suits Between Two or More States

The extension of federal judicial power to controversies between states and the vesting of original jurisdiction in the Su-

⁹⁹¹ *Rickert Rice Mills v. Fontenot*, 297 U.S. 110 (1936); *Tennessee Electric Power Co. v. TVA*, 306 U.S. 118 (1939) (holding that one threatened with direct and special injury by the act of an agent of the government under a statute may challenge the constitutionality of the statute in a suit against the agent).

⁹⁹² *Philadelphia Co. v. Stimson*, 223 U.S. 605 (1912); *Waite v. Macy*, 246 U.S. 606 (1918).

⁹⁹³ *United States v. Lee*, 106 U.S. 196 (1882); *Goltra v. Weeks*, 271 U.S. 536 (1926); *Ickes v. Fox*, 300 U.S. 82 (1937); *Land v. Dollar*, 330 U.S. 731 (1947). See also *Barr v. Matteo*, 360 U.S. 564 (1959); *Howard v. Lyons*, 360 U.S. 593 (1959). An emerging variant is the constitutional tort case, which springs from *Bivens v. Six Unknown Named Agents*, 403 U.S. 388 (1971), and which involves different standards of immunity for officers. *Butz v. Economou*, 438 U.S. 478 (1978); *Carlson v. Green*, 446 U.S. 14 (1980); *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

⁹⁹⁴ 306 U.S. 381 (1939).

⁹⁹⁵ *FHA v. Burr*, 309 U.S. 242 (1940). Nonetheless, the Court held that a congressional waiver of immunity in the case of a governmental corporation did not mean that funds or property of the United States can be levied on to pay a judgment obtained against such a corporation as the result of waiver of immunity.

⁹⁹⁶ *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506 (1940).