

## Sec. 2—Judicial Power and Jurisdiction

## Cl. 1—Cases and Controversies

ous subsequent cases, without discussion or examination.<sup>969</sup> Indeed, it was not until *United States v. Lee*<sup>970</sup> that the Court examined the rule and the reasons for it, and limited its application accordingly.

Because suits against the United States can be maintained only by congressional consent, it follows that they can be brought only in the manner prescribed by Congress and subject to the restrictions imposed.<sup>971</sup> As only Congress may waive the immunity of the United States from liability, officers of the United States are powerless either to waive such immunity or to confer jurisdiction on a federal court.<sup>972</sup> Even when authorized, suits may be brought only

<sup>969</sup> *United States v. McLemore*, 45 U.S. (4 How.) 286 (1846); *Hill v. United States*, 50 U.S. (9 How.) 386, 389 (1850); *De Groot v. United States*, 72 U.S. (5 Wall.) 419, 431 (1867); *United States v. Eckford*, 73 U.S. (6 Wall.) 484, 488 (1868); *The Siren*, 74 U.S. (7 Wall.) 152, 154 (1869); *Nichols v. United States*, 74 U.S. (7 Wall.) 122, 126 (1869); *The Davis*, 77 U.S. (10 Wall.) 15, 20 (1870); *Carr v. United States*, 98 U.S. 433, 437–439 (1879). It is also clear that the Federal Government, in the absence of its consent, is not liable in tort for the negligence of its agents or employees. *Gibbons v. United States*, 75 U.S. (8 Wall.) 269, 275 (1869); *Peabody v. United States*, 231 U.S. 530, 539 (1913); *Koekuk & Hamilton Bridge Co. v. United States*, 260 U.S. 125, 127 (1922). The reason for such immunity, as stated by Justice Holmes in *Kawananakoa v. Polyblank*, 205 U.S. 349, 353 (1907), is that “there can be no legal right as against the authority that makes the law on which the right depends.” See also *The Western Maid*, 257 U.S. 419, 433 (1922). As the Housing Act does not purport to authorize suits against the United States as such, the question is whether the Authority—which is clearly an agency of the United States—partakes of this sovereign immunity. The answer must be sought in the intention of the Congress. *Sloan Shipyards v. United States Fleet Corp.*, 258 U.S. 549, 570 (1922); *Federal Land Bank v. Priddy*, 295 U.S. 229, 231 (1935). This involves a consideration of the extent to which other government-owned corporations have been held liable for their wrongful acts. 39 Ops. Atty. Gen. 559, 562 (1938).

<sup>970</sup> 106 U.S. 196 (1882).

<sup>971</sup> *Loneragan v. United States*, 303 U.S. 33 (1938). Waivers of immunity must be express. *Library of Congress v. Shaw*, 461 U.S. 273 (1983) (Civil Rights Act provision that “the United States shall be liable for costs the same as a private person” insufficient to waive immunity from awards of interest). The result in *Shaw* was overturned by a specific waiver. Civil Rights Act of 1991, Pub. L. 102–166, 106 Stat. 1079, § 113, amending 42 U.S.C. § 2000e–16. Immunity was waived, with limitations, for contracts and takings claims in the Tucker Act, 28 U.S.C. § 1346(a)(2). Immunity of the United States for the negligence of its employees was waived, again with limitations, in the Federal Tort Claims Act. 28 U.S.C. §§ 1346(b), 2671–2680. Other waivers of sovereign immunity include Pub. L. 94–574, § 1, 90 Stat. 2721 (1976), amending 5 U.S.C. § 702 (waiver for nonstatutory review in all cases save for suits for money damages); Pub. L. 87–748, § 1(a), 76 Stat. 744 (1962), 28 U.S.C. § 1361 (giving district courts jurisdiction of mandamus actions to compel an officer or employee of the United States to perform a duty owed to plaintiff); Westfall Act, 102 Stat. 4563, 28 U.S.C. § 2679(d) (torts of federal employees acting officially), and the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412 (making United States liable for awards of attorneys’ fees in some instances when it loses an administrative proceeding or a lawsuit). See *FDIC v. Meyer*, 510 U.S. 471 (1994) (FSLIC’s “sue-and-be-sued” clause waives sovereign immunity, but a *Bivens* implied cause of action for constitutional torts cannot be used directly against FSLIC).

<sup>972</sup> *United States v. New York Rayon Co.*, 329 U.S. 654 (1947).