

ing that the entity was structured so as to take advantage of the state's constitutional protections.⁷³

Consent to Suit and Waiver.—The immunity of a state from suit is a privilege which it may waive at its pleasure. A state may expressly consent to being sued in federal court by statute.⁷⁴ But the conclusion that there has been consent or a waiver is not lightly inferred; the Court strictly construes statutes alleged to consent to suit. Thus, a state may waive its immunity in its own courts without consenting to suit in federal court,⁷⁵ and a general authorization “to sue and be sued” is ordinarily insufficient to constitute consent.⁷⁶ “The Court will give effect to a State’s waiver of Eleventh Amendment immunity ‘only where stated by the most express language or by such overwhelming implication from the text as [will] leave no room for any other reasonable construction.’ A State does not waive its Eleventh Amendment immunity by consenting to suit only in its own courts, and ‘[t]hus, in order for a state statute or constitutional provision to constitute a waiver of Eleventh Amendment immunity, it must specify the State’s intention to subject itself to suit in *federal court*.’”⁷⁷

Thus, in *Port Authority Trans-Hudson Corp. v. Feeney*,⁷⁸ an expansive consent “to suits, actions, or proceedings of any form or nature at law, in equity or otherwise” was deemed too “ambiguous and general” to waive immunity in federal court, because it might be interpreted to reflect only a state’s consent to suit in its own courts. But, when combined with language specifying that consent was conditioned on venue being laid “within a county or judicial district, established by one of said States or by the United States, and situated wholly or partially within the Port of New York District,” waiver was effective.⁷⁹

⁷³ *Lake County Estates v. Tahoe Regional Planning Agency*, 440 U.S. 391 (1979); *Petty v. Tennessee-Missouri Bridge Comm’n*, 359 U.S. 275 (1959).

⁷⁴ *Gunter v. Atlantic Coast Line R.R.*, 200 U.S. 273, 284 (1906).

⁷⁵ *Smith v. Reeves*, 178 U.S. 436 (1900); *Murray v. Wilson Distilling Co.*, 213 U.S. 151, 172 (1909); *Graves v. Texas Co.*, 298 U.S. 393, 403–04 (1936); *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47 (1944).

⁷⁶ *Great Northern Life Ins. Co. v. Read*, 322 U.S. 47, 54 (1944); *Ford Motor Co. v. Department of Treasury*, 323 U.S. 459 (1945); *Kennecott Copper Corp. v. State Tax Comm’n*, 327 U.S. 573 (1947); *Petty v. Tennessee-Missouri Bridge Comm’n*, 359 U.S. 275 (1959); *Florida Dep’t of Health v. Florida Nursing Home Ass’n*, 450 U.S. 147 (1981). Compare *Patsy v. Florida Bd. of Regents*, 457 U.S. 496, 519 n.* (1982) (Justice White concurring), with *id.* at 522 and n.5 (Justice Powell dissenting).

⁷⁷ *Port Authority Trans-Hudson Corp. v. Feeney*, 495 U.S. 299, 305–06 (1990) (internal citations omitted; emphasis in original).

⁷⁸ 495 U.S. 299 (1990).

⁷⁹ 495 U.S. at 306–07. But see *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 241 (1985).