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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

# SUPREME COURT OF THE UNITED STATES

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## ALLEN ET AL. *v.* COOPER, GOVERNOR OF NORTH CAROLINA, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 18–877. Argued November 5, 2019—Decided March 23, 2020

In 1996, a marine salvage company named Intersal, Inc., discovered the shipwreck of the *Queen Anne's Revenge* off the North Carolina coast. North Carolina, the shipwreck's legal owner, contracted with Intersal to conduct recovery operations. Intersal, in turn, hired videographer Frederick Allen to document the efforts. Allen recorded videos and took photos of the recovery for more than a decade. He registered copyrights in all of his works. When North Carolina published some of Allen's videos and photos online, Allen sued for copyright infringement. North Carolina moved to dismiss the lawsuit on the ground of state sovereign immunity. Allen countered that the Copyright Remedy Clarification Act of 1990 (CRCA) removed the States' sovereign immunity in copyright infringement cases. The District Court agreed with Allen, finding in the CRCA's text a clear congressional intent to abrogate state sovereign immunity and a proper constitutional basis for that abrogation. The court acknowledged that *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank,* 527 U. S. 627, precluded Congress from using its Article I powers—including its authority over copyrights—to deprive States of sovereign immunity. But the court held that Congress could accomplish its objective under Section 5 of the Fourteenth Amendment. The Fourth Circuit reversed, reading *Florida Prepaid* to prevent recourse to both Article I and Section 5.

*Held*: Congress lacked authority to abrogate the States' immunity from copyright infringement suits in the CRCA. Pp. 4–17.

(a) In general, a federal court may not hear a suit brought by any person against a nonconsenting State. But such suits are permitted if Congress has enacted "unequivocal statutory language" abrogating

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the States' immunity from suit, *Seminole Tribe of Fla.* v. *Florida,* 517 U. S. 44, 56, and some constitutional provision allows Congress to have thus encroached on the States' sovereignty. Congress used clear language to abrogate the States' immunity from copyright infringement suits in the CRCA. Allen contends that Congress's constitutional power to do so arises either from the Intellectual Property Clause, Art. I, §8, cl. 8, or from Section 5 of the Fourteenth Amendment, which authorizes Congress to "enforce" the commands of the Due Process Clause. Each contention is foreclosed by precedent. Pp. 4–6.

(b) The Intellectual Property Clause enables Congress to grant both copyrights and patents. In Allen's view, Congress's authority to abrogate sovereign immunity from copyright suits naturally follows, in order to "secur[e]" a copyright holder's "exclusive Right" as against a State's intrusion. But that theory was rejected in *Florida Prepaid*. That case considered the constitutionality of the Patent Remedy Act, which, like the CRCA, attempted to put "States on the same footing as private parties" in patent infringement lawsuits. 527 U. S., at 647, 648. *Florida Prepaid* acknowledged that Congress's goal of providing uniform remedies in infringement cases was a "proper Article I concern," but held that *Seminole Tribe* precluded Congress from using its Article I powers "to circumvent" the limits sovereign immunity "place[s] upon federal jurisdiction," 517 U. S., at 73. For the same reason, Article I cannot support the CRCA. Allen reads *Central Va. Community College* v. *Katz,* 546 U. S. 356 to have replaced *Seminole Tribe*'s general rule with a clause-by-clause approach to evaluating whether a particular constitutional provision allows the abrogation of sovereign immunity. But *Katz* rested on the unique history of the Bankruptcy Clause. 546 U. S., at 369, n. 9. And even if the limits of *Katz*'s holding were not so clear, *Florida Prepaid*, together with *stare decisis*, would doom Allen's argument. Overruling *Florida Prepaid* would require a "special justification," over and above the belief "that the precedent was wrongly decided," *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U. S. 258, 266, which Allen does not offer. Pp. 6–10.

(c) Section 5 of the Fourteenth Amendment allows Congress to abrogate the States' immunity as part of its power "to enforce" the Amendment's substantive prohibitions. *City of Boerne* v. *Flores*, 521 U. S. 507, 519. For Congress's action to fall within its Section 5 authority, "[t]here must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end." *Id.*, at 520. This test requires courts to consider the nature and extent of state conduct violating the Fourteenth Amendment and to examine the scope of Congress's response to that injury. *Florida Prepaid* again serves as the critical precedent. There, the Court defined

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the scope of unconstitutional patent infringement as intentional conduct for which there is no adequate state remedy. 527 U. S., at 642–643, 645. Because Congress failed to identify a pattern of unconstitutional patent infringement when it enacted the Patent Remedy Act, the Court held that the Act swept too far. Given the identical scope of the CRCA and Patent Remedy Act, this case could be decided differently only if the CRCA responded to materially stronger evidence of unconstitutional infringement. But as in *Florida Prepaid*, the legislative record contains thin evidence of infringement. Because this record cannot support Congress's choice to strip the States of their sovereign immunity in all copyright infringement cases, the CRCA fails the "congruence and proportionality" test. Pp. 10–16.

895 F. 3d 337, affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and ALITO, SOTOMAYOR, GORSUCH, and KAVANAUGH, JJ., joined, and in which THOMAS, J., joined except for the final paragraph in Part II–A and the final paragraph in Part II–B. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. BREYER, J., filed an opinion concurring in the judgment, in which GINSBURG, J., joined.

# SUPREME COURT OF THE UNITED STATES

No. 18–877

FREDERICK L. ALLEN, ET AL., PETITIONERS *v.* ROY A. COOPER, III, GOVERNOR OF NORTH CAROLINA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[March 23, 2020]

JUSTICE KAGAN delivered the opinion of the Court.

In two basically identical statutes passed in the early 1990s, Congress sought to strip the States of their sovereign immunity from patent and copyright infringement suits. Not long after, this Court held in *Florida Prepaid Postsecondary Ed. Expense Bd.* v. *College Savings Bank*, 527 U. S. 627 (1999), that the patent statute lacked a valid constitutional basis. Today, we take up the copyright statute. We find that our decision in *Florida Prepaid* compels the same conclusion.

## I

In 1717, the pirate Edward Teach, better known as Blackbeard, captured a French slave ship in the West Indies and renamed her *Queen Anne's Revenge*. The vessel became his flagship. Carrying some 40 cannons and 300 men, the *Revenge* took many prizes as she sailed around the Caribbean and up the North American coast. But her reign over those seas was short-lived. In 1718, the ship ran aground on a sandbar a mile off Beaufort, North Carolina. Blackbeard and most of his crew escaped without harm.

Not so the *Revenge*. She sank beneath the waters, where she lay undisturbed for nearly 300 years.

In 1996, a marine salvage company named Intersal, Inc., discovered the shipwreck. Under federal and state law, the wreck belongs to North Carolina. See 102 Stat. 433, 43 U. S. C. §2105(c); N. C. Gen. Stat. Ann. §121–22 (2019). But the State contracted with Intersal to take charge of the recovery activities. Intersal in turn retained petitioner Frederick Allen, a local videographer, to document the operation. For over a decade, Allen created videos and photos of divers' efforts to salvage the *Revenge*'s guns, anchors, and other remains. He registered copyrights in all those works.

This suit arises from North Carolina's publication of some of Allen's videos and photos. Allen first protested in 2013 that the State was infringing his copyrights by uploading his work to its website without permission. To address that allegation, North Carolina agreed to a settlement paying Allen $15,000 and laying out the parties' respective rights to the materials. But Allen and the State soon found themselves embroiled in another dispute. Allen complained that North Carolina had impermissibly posted five of his videos online and used one of his photos in a newsletter. When the State declined to admit wrongdoing, Allen filed this action in Federal District Court. It charges the State with copyright infringement (call it a modern form of piracy) and seeks money damages.

North Carolina moved to dismiss the suit on the ground of sovereign immunity. It invoked the general rule that federal courts cannot hear suits brought by individuals against nonconsenting States. See State Defendants' Memorandum in No. 15–627 (EDNC), Doc. 50, p. 7. But Allen responded that an exception to the rule applied because Congress had abrogated the States' sovereign immunity from suits like his. See Plaintiffs' Response, Doc. 57, p. 7. The Copyright Remedy Clarification Act of 1990 (CRCA or Act)

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