

Opinion of the Court

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**SUPREME COURT OF THE UNITED STATES**

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No. 98–531

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**FLORIDA PREPAID POSTSECONDARY EDUCATION  
EXPENSE BOARD, PETITIONER v. COLLEGE  
SAVINGS BANK AND UNITED STATES**

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

[June 23, 1999]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In 1992, Congress amended the patent laws and expressly abrogated the States' sovereign immunity from claims of patent infringement. Respondent College Savings then sued the State of Florida for patent infringement, and the Court of Appeals held that Congress had validly abrogated the State's sovereign immunity from infringement suits pursuant to its authority under §5 of the Fourteenth Amendment. We hold that, under *City of Boerne v. Flores*, 521 U. S. 507 (1997), the statute cannot be sustained as legislation enacted to enforce the guarantees of the Fourteenth Amendment's Due Process Clause, and accordingly reverse the decision of the Court of Appeals.

I

Since 1987, respondent College Savings Bank, a New Jersey chartered savings bank located in Princeton, New Jersey, has marketed and sold certificates of deposit known as the CollegeSure CD, which are essentially an-

nuity contracts for financing future college expenses. College Savings obtained a patent for its financing methodology, designed to guarantee investors sufficient funds to cover the costs of tuition for colleges. Petitioner Florida Prepaid Postsecondary Education Expenses Board (Florida Prepaid) is an entity created by the State of Florida that administers similar tuition prepayment contracts available to Florida residents and their children. See Fla. Stat. §240.551(1) (Supp. 1998). College Savings claims that, in the course of administering its tuition prepayment program, Florida Prepaid directly and indirectly infringed College Savings' patent.

College Savings brought an infringement action under 35 U. S. C. §271(a) against Florida Prepaid in the United States District Court for the District of New Jersey in November 1994.<sup>1</sup> By the time College Savings filed its suit, Congress had already passed the Patent and Plant Variety Protection Remedy Clarification Act (Patent Remedy Act), 35 U. S. C. §§271(h), 296(a). Before this legislation, the patent laws stated only that "whoever" without authority made, used, or sold a patented invention infringed the patent. 35 U. S. C. §271(a) (1988 ed.).<sup>2</sup> Ap-

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<sup>1</sup>College Savings also filed a separate action alleging that Florida Prepaid had made false claims about its own product in violation of the Trademark Act of 1946 (Lanham Act), 15 U. S. C. §1125(a). The District Court dismissed the Lanham Act suit on Eleventh Amendment grounds, the Third Circuit affirmed, and we granted College Savings' petition in that case on the same day we granted the petition in this case. See 525 U. S. \_\_\_ (1999). The Lanham Act suit is the subject of our opinion in *College Savings Bank v. Florida Prepaid Postsecondary Ed. Expense Bd.*, 52\_ U. S. \_\_ (1999).

<sup>2</sup> Section 271 still provides in relevant part:

"(a) Except as otherwise provided in this title, whoever without authority makes, uses, offers to sell, or sells any patented invention, within the United States or imports into the United States any patented invention during the term of the patent therefor, infringes the patent.

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plying this Court's decision in *Atascadero State Hosp. v. Scanlon*, 473 U. S. 234, 242–243 (1985), the Federal Circuit had held that the patent laws failed to contain the requisite statement of intent to abrogate state sovereign immunity from infringement suits. See, e.g., *Chew v. California*, 893 F. 2d 331 (1989). In response to *Chew* and similar decisions, Congress enacted the Patent Remedy Act to “clarify that States, instrumentalities of States, and officers and employees of States acting in their official capacity, are subject to suit in Federal court by any person for infringement of patents and plant variety protections.” Pub. L. 102–560, preamble, 106 Stat. 4230; see also H. R. Rep. No. 101–960, pt. 1, pp. 7, 33 (1990) (hereinafter H. R. Rep.); S. Rep. No. 102–280, pp. 1, 5–6 (1992) (hereinafter S. Rep.). Section 271(h) now states: “As used in this section, the term ‘whoever’ includes any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity.” Section 296(a) addresses the sovereign immunity issue even more specifically:

“Any State, any instrumentality of a State, and any officer or employee of a State or instrumentality of a State acting in his official capacity, shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doc-

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“(b) Whoever actively induces infringement of a patent shall be liable as an infringer.

“(c) Whoever offers to sell or sells within the United States or imports into the United States a component of a patented machine, manufacture, combination or composition, or a material or apparatus for use in practicing a patented process, constituting a material part of the invention, knowing the same to be especially made or especially adapted for use in an infringement of such patent, and not a staple article or commodity of commerce suitable for substantial noninfringing use, shall be liable as a contributory infringer.” 35 U. S. C. §271 (1994 ed. and Supp. III).

trine of sovereign immunity, from suit in Federal court by any person . . . for infringement of a patent under section 271, or for any other violation under this title.”

Relying on these provisions, College Savings alleged that Florida Prepaid had willfully infringed its patent under §271, as well as contributed to and induced infringement. College Savings sought declaratory and injunctive relief as well as damages, attorney’s fees, and costs.

After this Court decided *Seminole Tribe of Fla v. Florida*, 517 U. S. 44 (1996), Florida Prepaid moved to dismiss the action on the grounds of sovereign immunity.<sup>3</sup> Florida Prepaid argued that the Patent Remedy Act was an unconstitutional attempt by Congress to use its Article I powers to abrogate state sovereign immunity. College Savings responded that Congress had properly exercised its power pursuant to §5 of the Fourteenth Amendment to enforce the guarantees of the Due Process Clause in §1 of the Amendment. The United States intervened to defend the constitutionality of the statute. Agreeing with College Savings, the District Court denied Florida Prepaid’s motion to dismiss, 948 F. Supp. 400 (N. J. 1996), and the Federal Circuit affirmed, 148 F. 3d 1343 (1998).

The Federal Circuit held that Congress had clearly expressed its intent to abrogate the States’ immunity from suit in federal court for patent infringement, and that Congress had the power under §5 of the Fourteenth Amendment to do so. *Id.*, at 1347. The court reasoned that patents are property subject to the protections of the Due Process Clause and that Congress’ objective in enacting the Patent Remedy Act was permissible because it

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<sup>3</sup>The District Court concluded that, for purposes of immunity from suit, Florida Prepaid is an arm of the State of Florida, a conclusion the parties did not dispute before either the Federal Circuit or this Court.

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sought to prevent States from depriving patent owners of this property without due process. See *id.*, at 1349–1350. The court rejected Florida Prepaid’s argument that it and other States had not deprived patent owners of their property *without due process*, and refused to “deny Congress the authority to subject all states to suit for patent infringement in the federal courts, regardless of the extent of procedural due process that may exist at any particular time.” *Id.*, at 1351. Finally, the court held that the Patent Remedy Act was a proportionate response to state infringement and an appropriate measure to protect patent owners’ property under this Court’s decision in *City of Boerne*, 521 U. S., at 519. The court concluded that significant harm results from state infringement of patents, 148 F. 3d, at 1353–1354, and “[t]here is no sound reason to hold that Congress cannot subject a state to the same civil consequences that face a private party infringer,” *id.*, at 1355. We granted certiorari, 525 U. S. \_\_ (1999), and now reverse.

## II

The Eleventh Amendment provides:

“The Judicial Power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.”

As the Court recently explained in *Seminole Tribe*, *supra*, at 54:

“Although the text of the Amendment would appear to restrict only the Article III diversity jurisdiction of the federal courts, ‘we have understood the Eleventh Amendment to stand not so much for what it says, but for the presupposition . . . which it confirms.’ That presupposition, first observed over a century ago in

*Hans v. Louisiana*, 134 U. S. 1 (1890), has two parts: first, that each State is a sovereign entity in our federal system; and second, that “[i]t is inherent in the nature of sovereignty not to be amenable to the suit of an individual without its consent.” *Id.*, at 13 (emphasis deleted), quoting the Federalist No. 81 . . . . For over a century we have reaffirmed that federal jurisdiction over suits against unconsenting States ‘was not contemplated by the Constitution when establishing the judicial power of the United States.’ *Hans*, *supra*, at 15.”

Here, College Savings sued the State of Florida in federal court and it is undisputed that Florida has not expressly consented to suit. College Savings and the United States argue that Florida has impliedly waived its immunity under *Parden v. Terminal R. Co. of Ala. Docks Dept.*, 377 U. S. 184 (1964). That argument, however, is foreclosed by our decision in the companion case overruling the constructive waiver theory announced in *Parden*. See *College Savings Bank v. Florida Prepaid, Postsecondary Ed. Expense Bd.*, 52\_ U. S. \_\_ (1999).

College Savings and the United States nonetheless contend that Congress’ enactment of the Patent Remedy Act validly abrogated the States’ sovereign immunity. To determine the merits of this proposition, we must answer two questions: “first, whether Congress has ‘unequivocally expresse[d] its intent to abrogate the immunity,’ . . . and second, whether Congress has acted ‘pursuant to a valid exercise of power.’” *Seminole Tribe*, *supra*, at 55. We agree with the parties and the Federal Circuit that in enacting the Patent Remedy Act, Congress has made its intention to abrogate the States’ immunity “‘unmistakably clear in the language of the statute.’” *Dellmuth v. Muth*, 491 U. S. 223, 228 (1989). Indeed, Congress’ intent to abrogate could not have been any clearer. See 35 U. S. C.

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§296(a) (“Any State . . . shall not be immune, under the eleventh amendment of the Constitution of the United States or under any other doctrine of sovereign immunity, from suit in federal court . . . for infringement of a patent.”).

Whether Congress had the power to compel States to surrender their sovereign immunity for these purposes, however, is another matter. Congress justified the Patent Remedy Act under three sources of constitutional authority: the Patent Clause, Art. I, §8, cl. 8; the Interstate Commerce Clause, Art. I, §8, cl. 3; and §5 of the Fourteenth Amendment. See S. Rep., at 7–8; H. R. Rep., at 39–40.<sup>4</sup> In *Seminole Tribe*, of course, this Court overruled the plurality opinion in *Pennsylvania v. Union Gas Co.*, 491 U. S. 1 (1989), our only prior case finding congressional authority to abrogate state sovereign immunity pursuant to an Article I power (the Commerce Clause). 517 U. S., at 72–73. *Seminole Tribe* makes clear that Congress may not abrogate state sovereign immunity pursuant to its Article I powers; hence the Patent Remedy Act cannot be sustained under either the Commerce Clause or the Patent Clause. *Ibid.* The Federal Circuit recognized this, and College Savings and the United States do not contend otherwise.

Instead, College Savings and the United States argue that the Federal Circuit properly concluded that Congress enacted the Patent Remedy Act to secure the Fourteenth

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<sup>4</sup>The Patent Clause provides that “Congress shall have Power . . . [t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” Art. I, §8, cl. 8. The Commerce Clause provides that “Congress shall have Power . . . [t]o regulate Commerce with foreign Nations, and among the Several States, and with the Indian Tribes.” Art. I, §8, cl. 3. The relevant portions of the Fourteenth Amendment are discussed below.

Amendment's protections against deprivations of property without due process of law. The Fourteenth Amendment provides in relevant part:

"Section 1. . . . No State shall . . . deprive any person of life, liberty, or property, without due process of law.

"Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article."

While reaffirming the view that state sovereign immunity does not yield to Congress' Article I powers, this Court in *Seminole Tribe* also reaffirmed its holding in *Fitzpatrick v. Bitzer*, 427 U. S. 445 (1976), that Congress retains the authority to abrogate state sovereign immunity pursuant to the Fourteenth Amendment. Our opinion explained that in *Fitzpatrick*, "we recognized that the Fourteenth Amendment, by expanding federal power at the expense of state autonomy, had fundamentally altered the balance of state and federal power struck by the Constitution." *Seminole Tribe, supra*, at 59. The Court further described *Fitzpatrick* as holding that "through the Fourteenth Amendment, federal power extended to intrude upon the province of the Eleventh Amendment and therefore that §5 of the Fourteenth Amendment allowed Congress to abrogate the immunity from suit guaranteed by that Amendment." *Seminole Tribe, supra*, at 59.

College Savings and the United States are correct in suggesting that "appropriate" legislation pursuant to the Enforcement Clause of the Fourteenth Amendment could abrogate state sovereignty. Congress itself apparently thought the Patent Remedy Act could be so justified:

"[T]he bill is justified as an acceptable method of enforcing the provisions of the fourteenth amendment. The Court in *Lemelson v. Ampex Corp.* [372 F. Supp. 708 (ND Ill. 1974)] recognized that a patent is a form

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of property, holding that a right to compensation exists for patent infringement. Additionally, because courts have continually recognized patent rights as property, the fourteenth amendment prohibits a State from depriving a person of property without due process of law.” S. Rep., at 8 (footnotes omitted).

We have held that “[t]he ‘provisions of this article,’ to which §5 refers, include the Due Process Clause of the Fourteenth Amendment.” *City of Boerne v. Flores*, 521 U. S., at 519.

But the legislation must nonetheless be “appropriate” under §5 as that term was construed in *City of Boerne*. There, this Court held that the Religious Freedom Restoration Act of 1993 (RFRA), 107 Stat. 1488, 42 U. S. C. §2000bb *et seq.*, exceeded Congress’ authority under §5 of the Fourteenth Amendment, insofar as RFRA was made applicable to the States. RFRA was enacted “in direct response to” this Court’s decision in *Employment Div., Dept. of Human Resources of Ore. v. Smith*, 494 U. S. 872 (1990), which construed the Free Exercise Clause of the First Amendment to hold that “neutral, generally applicable laws may be applied to religious practices even when not supported by a compelling governmental interest.” *City of Boerne, supra*, at 512, 514. Through RFRA, Congress reinstated the compelling governmental interest test eschewed by *Smith* by requiring that a generally applicable law placing a “substantial burden” on the free exercise of religion must be justified by a “compelling governmental interest” and must employ the “least restrictive means” of furthering that interest. 521 U. S., at 515–516.

In holding that RFRA could not be justified as “appropriate” enforcement legislation under §5, the Court emphasized that Congress’ enforcement power is “remedial” in nature. *Id.*, at 519. We recognized that “[l]egislation which deters or remedies constitutional violations can fall

within the sweep of Congress' enforcement power even if in the process it prohibits conduct which is not itself unconstitutional and intrudes into 'legislative spheres of autonomy previously reserved to the States.'" *Id.*, at 518 (citation omitted). We also noted, however, that "[a]s broad as the congressional enforcement power is, it is not unlimited," *ibid.*, and held that "Congress does not enforce a constitutional right by changing what the right is. It has been given the power 'to enforce,' not the power to determine what constitutes a constitutional violation," *id.*, at 519. Canvassing the history of the Fourteenth Amendment and case law examining the propriety of Congress' various voting rights measures,<sup>5</sup> the Court explained:

"While the line between measures that remedy or prevent unconstitutional actions and measures that make a substantive change in the governing law is not easy to discern, and Congress must have wide latitude in determining where it lies, the distinction exists and must be observed. There must be a congruence and proportionality between the injury to be prevented or remedied and the means adopted to that end. Lacking such a connection, legislation may become substantive in operation and effect." *Id.*, at 519–520.

We thus held that for Congress to invoke §5, it must identify conduct transgressing the Fourteenth Amendment's substantive provisions, and must tailor its legislative scheme to remedying or preventing such conduct.

RFRA failed to meet this test because there was little support in the record for the concerns that supposedly animated the law. *Id.*, at 530–531. And, unlike the meas-

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<sup>5</sup>See *South Carolina v. Katzenbach*, 383 U. S. 301 (1966); *Katzenbach v. Morgan*, 384 U. S. 641 (1966); *Oregon v. Mitchell*, 400 U. S. 112 (1970); *City of Rome v. United States*, 446 U. S. 156 (1980).

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ures in the voting rights cases, RFRA's provisions were "so out of proportion to a supposed remedial or preventive object" that it could not be understood "as responsive to, or designed to prevent, unconstitutional behavior." *Id.*, at 532; see also *id.*, at 534 ("Simply put, RFRA is not designed to identify and counteract state laws likely to be unconstitutional").

Can the Patent Remedy Act be viewed as remedial or preventive legislation aimed at securing the protections of the Fourteenth Amendment for patent owners? Following *City of Boerne*, we must first identify the Fourteenth Amendment "evil" or "wrong" that Congress intended to remedy, guided by the principle that the propriety of any §5 legislation "must be judged with reference to the historical experience . . . it reflects." *Id.*, at 525. The underlying conduct at issue here is state infringement of patents and the use of sovereign immunity to deny patent owners compensation for the invasion of their patent rights. See H. R. Rep., at 37–38 ("[P]atent owners are effectively denied a remedy for damages resulting from infringement by a State or State entity"); S. Rep., at 6 ("[P]laintiffs in patent infringement cases against a State are foreclosed from damages, regardless of the State conduct"). It is this conduct then—unremedied patent infringement by the States— that must give rise to the Fourteenth Amendment violation that Congress sought to redress in the Patent Remedy Act.

In enacting the Patent Remedy Act, however, Congress identified no pattern of patent infringement by the States, let alone a pattern of constitutional violations. Unlike the undisputed record of racial discrimination confronting Congress in the voting rights cases, see *City of Boerne*, *supra*, at 525–527, Congress came up with little evidence of infringing conduct on the part of the States. The House Report acknowledged that "many states comply with patent law" and could provide only two examples of patent

infringement suits against the States. See H. R. Rep., at 38. The Federal Circuit in its opinion identified only eight patent-infringement suits prosecuted against the States in the 110 years between 1880 and 1990. See 148 F. 3d, at 1353–1354.

Testimony before the House Subcommittee in favor of the bill acknowledged that “states are willing and able to respect patent rights. The fact that there are so few reported cases involving patent infringement claims against states underlies the point.” Patent Remedy Clarification Act: Hearing on H. R. 3886 before the Subcommittee on Courts, Intellectual Property, and the Administration of Justice of the House Committee on the Judiciary, 101st Cong., 2d Sess., 56 (1990) (hereinafter House Hearings) (statement of William S. Thompson); *id.*, at 32 (statement of Robert Merges) (“[S]tates do occasionally find themselves in patent infringement suits”). Even the bill’s sponsor conceded that “[w]e do not have any evidence of massive or widespread violation of patent laws by the States either with or without this State immunity.” *Id.*, at 22 (statement of Rep. Kastenmeier).<sup>6</sup> The Senate Report,

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<sup>6</sup>Representative Kastenmeier made this statement in the course of questioning Jeffrey M. Samuels, Acting Commissioner of Patents and Trademarks, U. S. Department of Commerce. The discussion continued:

“MR. KASTENMEIER: . . . Accordingly, could one argue that this legislation may be premature. We really do not know whether it will have any affect [*sic*] or not.

“MR. SAMUELS: Well, you are right, Mr. Chairman. There have not been many cases that have raised this issue. I guess our feeling is that it is a step that should be taken now because the possibility exists in light of *Atascadero* and in light of the *Chew* case that more States will get involved in infringing patents.

“I guess as a general policy statement, we believe that those engaged— those who do engage in patent infringement should be subject to all the remedies that are set forth in the Patent Act and that the rights of a patent owner should not be dependent upon the identity of

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as well, contains no evidence that unremedied patent infringement by States had become a problem of national import. At most, Congress heard testimony that patent infringement by States might increase in the future, see House Hearings 22 (statement of Jeffrey Samuels); *id.*, at 36–37 (statement of Robert Merges); *id.*, at 57 (statement of William Thompson), and acted to head off this speculative harm. See H. R. Rep., at 38.

College Savings argues that by infringing a patent and then pleading immunity to an infringement suit, a State not only infringes the patent, but deprives the patentee of property without due process of law and “takes” the property in the patent without paying the just compensation required by the Fifth Amendment.<sup>7</sup> The United States declines to defend the Act as based on the Just Compensation Clause, but joins in College Savings’ defense of the Act as designed to prevent a State from depriving a patentee of property without due process of law. College Savings contends that Congress may not invoke §5 to protect property interests that it has created in the first place under Article 1. Patents, however, have long been considered a species of property. See *Brown v. Duchesne*, 19 How. 183, 197 (1857) (“For, by the laws of the United States, the rights of a party under a patent are his private

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the entity who is infringing, whether it be a private individual, or corporation, or State.

“So just as a general philosophical matter, we believe that this law needs to be passed.”

<sup>7</sup> There is no suggestion in the language of the statute itself, or in the House or Senate Reports of the bill which became the statute, that Congress had in mind the Just Compensation Clause of the Fifth Amendment. Since Congress was so explicit about invoking its authority under Article I and its authority to prevent a State from depriving a person of property without due process of law under the Fourteenth Amendment, we think this omission precludes consideration of the Just Compensation Clause as a basis for the Patent Remedy Act.

property”); cf., *Consolidated Fruit-Jar Co. v. Wright*, 94 U. S. 92, 96 (1877) (“A patent for an invention is as much property as a patent for land”). As such, they are surely included within the “property” of which no person may be deprived by a State without due process of law. And if the Due Process Clause protects patents, we know of no reason why Congress might not legislate against their deprivation without due process under §5 of the Fourteenth Amendment.

Though patents may be considered “property” for purposes of our analysis, the legislative record still provides little support for the proposition that Congress sought to remedy a Fourteenth Amendment violation in enacting the Patent Remedy Act. The Due Process Clause provides, “nor shall any State deprive any person of life, liberty, or property, *without due process of law.*” U. S. Const., Amdt. 14, §1 (emphasis added). This Court has accordingly held that “[i]n procedural due process claims, the deprivation by state action of a constitutionally protected interest . . . is not in itself unconstitutional; what is unconstitutional is the deprivation of such an interest without due process of law.” *Zinermon v. Burch*, 494 U. S. 113, 125 (1990) (emphasis deleted).

Thus, under the plain terms of the Clause and the clear import of our precedent, a State’s infringement of a patent, though interfering with a patent owner’s right to exclude others, does not by itself violate the Constitution. Instead, only where the State provides no remedy, or only inadequate remedies, to injured patent owners for its infringement of their patent could a deprivation of property without due process result. See *Parratt v. Taylor*, 451 U. S. 527, 539–531 (1981); *Hudson v. Palmer*, 468 U. S. 517, 532–533 (1984); *id.*, at 539 (O’CONNOR, J., concurring) (“[I]n challenging a property deprivation, the claimant must either avail himself of the remedies guaranteed by state law or prove that the available remedies are

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inadequate . . . . When adequate remedies are provided and followed, no . . . deprivation of property without due process can result”).

Congress, however, barely considered the availability of state remedies for patent infringement and hence whether the States’ conduct might have amounted to a constitutional violation under the Fourteenth Amendment. It did hear a limited amount of testimony to the effect that the remedies available in some States were uncertain.<sup>8</sup>

The primary point made by these witnesses, however, was not that state remedies were constitutionally inadequate, but rather that they were less convenient than federal remedies, and might undermine the uniformity of

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<sup>8</sup> See, e.g., House Hearings, 33 (statement of Robert Merges) (“Thus a patentee . . . would apparently have to draft her cause of action as a general tort claim— or perhaps one for restitution— to come within the statute. This might be impossible, or at least difficult under California law”); *id.*, at 43 (“[I]t is true that you may have State remedies, alternative State remedies. . . . You could bring a deceit suit. You could try just a general unfair competition suit. A restitution is one that has occurred to me as a possible basis of recovery”); *id.*, at 34 (“Another problem with this approach is that it assumes that such state law remedies will be available in every state in which the patentee’s product is sold. This may or may not be true”); *id.*, at 47 (statement of William Thompson) (“In this case there is no balance, since there are no— or at least there are not very effective patent remedies at the State level”); *id.*, at 57 (“The court in *Lane v. First Nat. Bank of Boston*, 687 F. Supp. 11 (Mass. 1988),] pointed out that the appellant may be able to obtain money damages by recourse to the Massachusetts tort claims act or sue the state for deceit, conversion, or unfair competition under Massachusetts law. The court also noted a Massachusetts statute which provides that damages may be recovered from the state when private property is confiscated for a public purpose. While many states may have similar statutes, the courts’ surmise that intellectual property infringement cases may be pursued in some state courts offer us little comfort”); *id.*, at 60 (“[I]t sounds to me like it is a very difficult area to predict what would happen. There is a rich variety of potential causes of action, as the prior speaker [Merges] pointed out”).

patent law. See, e.g., House Hearings, at 43 (statement of Robert Merges) (“[U]niformity again dictates that that sovereign immunity is a mistake in this field because of the variance among the State’s laws”), *id.*, at 34, 41 (Merges); *id.*, at 58 (statement of William Thompson).<sup>9</sup>

Congress itself said nothing about the existence or adequacy of state remedies in the statute or in the Senate Report, and made only a few fleeting references to state remedies in the House Report, essentially repeating the testimony of the witnesses. See H. R. Rep., at 37, n. 158 (“[T]he availability of a State remedy is tenuous and could vary significantly State to State”); *id.*, at 38 (“[I]f patentees turn to the State courts for alternative forms of relief from patent infringement, the result will be a patchwork of State laws, actually undermining the goal of national uniformity in our patent system”). The need for uniformity in the construction of patent law is undoubtedly important, but that is a factor which belongs to the Article I patent-power calculus, rather than to any determination of whether a state plea of sovereign immunity deprives a patentee of property without due process of law.

We have also said that a state actor’s negligent act that causes unintended injury to a person’s property does not “deprive” that person of property within the meaning of the Due Process Clause. See *Daniels v. Williams*, 474 U. S. 327, 328 (1986). Actions predicated on direct patent infringement, however, do not require any showing of intent to infringe; instead, knowledge and intent are considered only with respect to damages. See 35 U. S. C.

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<sup>9</sup>It is worth mentioning that the State of Florida provides remedies to patent owners for alleged infringement on the part of the State. Aggrieved parties may pursue a legislative remedy through a claims bill for payment in full, Fla. Stat. §11.065 (1997), or a judicial remedy through a takings or conversion claim, see *Jacobs Wind Electric Co. v. Florida Dept. of Transp.*, 626 So. 2d 1333 (Fla. 1993).

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§271(a) (1994 ed., Supp. III); 5 D. Chisum, *Patents* §16.02[2], p. 16–31 (rev. ed. 1998) (“It is, of course, elementary, that an infringement may be entirely inadvertent and unintentional and without knowledge of the patent’”). Congress did not focus on instances of intentional or reckless infringement on the part of the States. Indeed, the evidence before Congress suggested that most state infringement was innocent or at worst negligent. See S. Rep., at 10 (“It is not always clear that with all the products that [government] buy[s], that anyone is really aware of the patent status of any particular invention or device or product’”); H. R. Rep., at 39 (“[I]t should be very rare for a court to find . . . willful infringement on the part of a State or State agency”). Such negligent conduct, however, does not violate the Due Process Clause of the Fourteenth Amendment.

The legislative record thus suggests that the Patent Remedy Act does not respond to a history of “widespread and persisting deprivation of constitutional rights” of the sort Congress has faced in enacting proper prophylactic §5 legislation. *City of Boerne*, 521 U. S., at 526. Instead, Congress appears to have enacted this legislation in response to a handful of instances of state patent infringement that do not necessarily violate the Constitution. Though the lack of support in the legislative record is not determinative, see *id.*, at 531, identifying the targeted constitutional wrong or evil is still a critical part of our §5 calculus because “[s]trong measures appropriate to address one harm may be an unwarranted response to another, lesser one,” *id.*, at 530. Here, the record at best offers scant support for Congress’ conclusion that States were depriving patent owners of property without due process of law by pleading sovereign immunity in federal-court patent actions.

Because of this lack, the provisions of the Patent Remedy Act are “so out of proportion to a supposed remedial

or preventive object that [they] cannot be understood as responsive to, or designed to prevent, unconstitutional behavior.” *Id.*, at 532. An unlimited range of state conduct would expose a State to claims of direct, induced, or contributory patent infringement, and the House Report itself cited testimony acknowledging “it[']s difficult for us to identify a patented product or process which might not be used by a state.” H. R. Rep., *supra*, at 38.<sup>10</sup> Despite subjecting States to this expansive liability, Congress did nothing to limit the coverage of the Act to cases involving arguable constitutional violations, such as where a State refuses to offer any state-court remedy for patent owners whose patents it had infringed. Nor did it make any attempt to confine the reach of the Act by limiting the remedy to certain types of infringement, such as nonnegligent infringement or infringement authorized pursuant to state policy; or providing for suits only against States with questionable remedies or a high incidence of infringement.

Instead, Congress made all States immediately amenable to suit in federal court for all kinds of possible patent infringement and for an indefinite duration. Our opinion in *City of Boerne* discussed with approval the various

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<sup>10</sup>The relevant testimony stated in full:

“The comments regarding copyright centered on substantial use of copyrighted textbooks by state universities as well as state use of copyrighted music and computer software. State use of patented products is more diverse and more substantial. Patented inventions are involved in all manner of commonly used machines, tools, instruments, chemicals, compounds, materials, and devices of all description and purpose. Furthermore, patented processes are commonplace. States and state instrumentalities own and operate hospitals, universities, prisons, and libraries. States build and maintain roads. States provide facilities and equipment for large numbers of employees who perform all manner of state supported activities. It[']s difficult for us to identify a patented product or process which might not be used by a state.” House Hearings 55 (statement of William Thompson).

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limits that Congress imposed in its voting rights measures, see 521 U. S., at 532–533, and noted that where “a congressional enactment pervasively prohibits constitutional state action in an effort to remedy or to prevent unconstitutional state action, limitations of this kind tend to ensure Congress’ means are proportionate to ends legitimate under §5,” *id.*, at 533. The Patent Remedy Act’s indiscriminate scope offends this principle, and is particularly incongruous in light of the scant support for the predicate unconstitutional conduct that Congress intended to remedy. In sum, it simply cannot be said that “many of [the acts of infringement] affected by the congressional enactment have a significant likelihood of being unconstitutional.” *Id.*, at 532.

The historical record and the scope of coverage therefore make it clear that the Patent Remedy Act cannot be sustained under §5 of the Fourteenth Amendment. The examples of States avoiding liability for patent infringement by pleading sovereign immunity in a federal-court patent action are scarce enough, but any plausible argument that such action on the part of the State deprived patentees of property and left them without a remedy under state law is scarcer still. The statute’s apparent and more basic aims were to provide a uniform remedy for patent infringement and to place States on the same footing as private parties under that regime.<sup>11</sup> These are

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<sup>11</sup>See 35 U. S. C. §271(h) (stating that States and state entities “shall be subject to the provisions of this title in the same manner and to the same extent as any nongovernmental entity”); see also H. R. Rep., at 40 (“The Committee believes that the full panoply of remedies provided in the patent law should be available to patentees whose legitimate rights have been infringed by States or State entities”); S. Rep., at 14. Thus, contrary to the dissent’s intimation, see *post*, at 16, the Patent Remedy Act does not put States in the same position as the United States. Under the Patent Remedy Act, States are subject to all the remedies available to plaintiffs in infringement actions, which include punitive

proper Article I concerns, but that Article does not give Congress the power to enact such legislation after *Seminole Tribe*.

The judgment of the Court of Appeals is reversed, and the case is remanded for proceedings consistent with this opinion.

*It is so ordered.*

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damages and attorney's fees, see 35 U. S. C. §§284, 285, as well as injunctive relief, see §283. In waiving its own immunity from patent infringement actions in 28 U. S. C. §1498(a) (1994 ed. and Supp. III), however, the United States did not consent to either treble damages or injunctive relief, and allowed reasonable attorney's fees only in a narrow class of specified instances.