Syllabus

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

Syllabus

FLORIDA PREPAID POSTSECONDARY EDUCATION EXPENSE BOARD *v.* COLLEGE SAVINGS BANK ET AL.

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

No. 98–531. Argued April 20, 1999– Decided June 23, 1999

After the Patent and Plant Variety Protection Remedy Clarification Act (Act) amended the patent laws to expressly abrogate the States' sovereign immunity, respondent College Savings Bank filed a patent infringement suit against petitioner Florida Prepaid Postsecondary Education Expenses Board (Florida Prepaid), a Florida state entity. When this Court decided *Seminole Tribe of Fla.* v. *Florida*, 517 U. S. 44, Florida Prepaid moved to dismiss the action, claiming that the Act was an unconstitutional attempt by Congress to use its Article I powers to abrogate state sovereign immunity. College Savings countered that Congress had properly exercised its power pursuant to §5 of the Fourteenth Amendment in order to enforce the due process guarantees in §1 of the Amendment. The United States intervened to defend the statute's constitutionality. Agreeing with College Savings, the District Court denied the motion, and the Federal Circuit affirmed.

Held: The Act's abrogation of States' sovereign immunity is invalid because it cannot be sustained as legislation enacted to enforce the guarantees of the Fourteenth Amendment's Due Process Clause. Pp. 5–20.

(a) Florida has not expressly consented to suit, or impliedly waived its immunity, see *College Savings Bank* v. *Florida Prepaid Postsecondary Ed. Expense Bd.*, *post*, p. ___. To determine whether the Act nonetheless validly abrogated that immunity, the Court must ask: first, whether Congress has "'unequivocally expresse[d] its intent to abrogate,'" and second, whether Congress acted "'pursuant to a valid exercise of power.'" *Seminole Tribe*, *supra*, at 55. Congress clearly made known its intent to abrogate in the Act. Whether it had

the power to do so is another matter. In *Seminole Tribe*, this Court held that Congress does not have such power under Article I but reaffirmed its holding in *Fitzpatrick* v. *Bizer*, 427 U. S. 445, that Congress has such power under §5 of the Fourteenth Amendment. Thus, legislation that is "appropriate" under §5, as that term was construed in *City of Boerne* v. *Flores*, 521 U. S. 507, could abrogate state sovereignty. Since Congress' enforcement power is remedial, *id.*, at 519, to invoke §5, Congress must identify conduct transgressing the Fourteenth Amendment's substantive provisions, and must tailor its legislative scheme to remedying or preventing such conduct. Pp. 5–10.

(b) Here, the underlying conduct is unremedied patent infringement by States. However, in enacting the Act, Congress identified no pattern of such infringement, let alone a pattern of constitutional violations. The House Report provided only two examples of patent infringement suits against States, and the Federal Circuit identified only eight such suits in 110 years. Testimony before the House Subcommittee acknowledged that States are willing and able to respect patent rights, and the Senate Report contains no evidence that unremedied patent infringement by States had become a problem of national import. Pp. 11–13.

(c) Although patents may be considered property within the meaning of the Due Process Clause, the legislative record still provides little support for the proposition that Congress sought to remedy a Fourteenth Amendment violation in enacting the Act. Under the plain terms of the Due Process Clause and the clear import of this Court's precedent, a State's infringement of a patent violates the Constitution only where the State provides no remedy, or only inadequate remedies, to injured patent owners for its infringement of their patent. Congress, however, barely considered the availability of state remedies for patent infringement. The primary point made by the limited testimony on state remedies was not whether the remedies were constitutionally inadequate, but rather that they were less convenient than federal remedies and might undermine the uniformity of patent law. Congress itself said nothing about the existence or adequacy of state remedies in the statute or the Senate Report. The need for uniformity in patent law construction, though undoubtedly important, is a factor belonging to the Article I patent-power calculus. Moreover, a state actor's negligent act causing unintended injury to a person's property does not "deprive" that person of property within the meaning of the Due Process Clause, and the record suggests that state infringement of patents was at worst innocent. The legislative record thus suggests that the 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. Because of the lack of legislative support for Congress' conclusion, the Act's provisions are so out of proportion to the supposed remedy or preventive object that they cannot be understood as responsive to, or designed to prevent, unconstitutional behavior. Congress did not limit the Act's coverage to cases involving arguable constitutional violations or confine its reach by limiting the remedy to certain types of infringement. Instead Congress made all States immediately amenable to federal-court suits for all kinds of possible patent infringement and for an indefinite duration. The statute's appearance and more basic aims— to present a uniform remedy for patent infringement and place States on the same footing as private parties under that regime— are proper Article I concerns, but that Article does not give Congress the power to enact such legislation after *Seminole Tribe*. Pp. 13–19.

148 F. 3d 1343, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, KENNEDY, and THOMAS, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SOUTER, GINSBURG, and BREYER, JJ., joined.