

Congress passed a statute that expressly authorizes suits for damages in federal courts against state governments that violate federal copyright laws.

A photographer sued a state in a federal district court for damages pursuant to the federal statute. The photographer claimed that the state published her copyrighted photographs and videos on its website without her permission. The state has moved to dismiss the photographer's suit.

Should the court grant the state's motion?

- A. No, because Article I grants Congress the power to enact laws that protect copyrighted materials.
- B. No, because Articles I and III grant Congress the power to regulate the jurisdiction and procedures of the federal courts.
- C. Yes, because the Eleventh Amendment prohibits the action for damages against the state in federal court.
- D. Yes, because the Tenth Amendment prohibits the federal government from compelling states to act.

## Explanation:

### Eleventh Amendment

(state immunity from suit in federal court)

<b>Immunity</b>	<ul style="list-style-type: none"><li>• Suit brought by private party or foreign government</li><li>• Suit against state official violating state law</li><li>• Exceptions:<ul style="list-style-type: none"><li>– State consents to suit</li><li>– Immunity removed by 13th, 14th, or 15th Amendment</li><li>– State official sued for injunctive or declaratory relief</li><li>– Damages to be paid by state officer personally (not state treasury)</li><li>– State official sued for prospective (not retroactive) damages to be paid by state treasury</li></ul></li></ul>
<b>No immunity</b>	<ul style="list-style-type: none"><li>• Suit brought by United States or other state</li><li>• Suit against local government (eg, counties, municipalities)</li><li>• Bankruptcy proceedings</li></ul>

The **Eleventh Amendment** generally prohibits private parties and foreign governments from suing a state for money damages or equitable relief in federal court. **Congress can abrogate** (ie, repeal) this immunity if it is **clearly acting to enforce** a Civil War Amendment—ie, the **Thirteenth, Fourteenth, or Fifteenth Amendment** (not seen here). Congress may then enact appropriate remedial legislation expressly subjecting the states to private suits for damages in federal court.

However, **Congress cannot abrogate** a state's Eleventh Amendment immunity **through its other powers**.<sup>\*</sup> This includes its Article I power to enact laws protecting copyrighted materials (**Choice A**). This also includes its power under Articles I and III to regulate the jurisdiction of the federal courts (**Choice B**). Therefore, the court will likely grant the state's motion to dismiss the photographer's suit pursuant to the Eleventh Amendment.

<sup>\*</sup>The lone exception to this rule is that Congress may subject nonconsenting states to bankruptcy proceedings through the Article I bankruptcy clause. The Supreme Court has justified this exception based on the bankruptcy clause's unique history and exceptionalism.

**(Choice D)** The **Tenth Amendment** prohibits the federal government from compelling states to enact state laws or enforce federal laws. However, states can be subjected to suits for damages in federal court if Congress validly abrogates state immunity.

## Educational objective:

The Eleventh Amendment generally grants states immunity from suits for damages. Congress can abrogate this immunity when it clearly acts to enforce a Civil War Amendment but cannot do so through its other powers—eg, its powers to protect copyrights and regulate federal court jurisdiction.

### **References**

- Allen v. Cooper, 140 S. Ct. 994, 1007 (2020) (holding that Congress cannot abrogate the states' Eleventh Amendment immunity through the Article I copyright clause).

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