

No. 21-1603

In the Supreme Court of the United States

CANADA HOCKEY, L.L.C., DBA EPIC SPORTS, ET AL.,
PETITIONERS

v.

TEXAS A&M UNIVERSITY ATHLETIC DEPARTMENT, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT*

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

In *Allen v. Cooper*, 140 S. Ct. 994 (2020), this Court held that the Copyright Remedy Clarification Act of 1990 (CRCA) does not validly abrogate state sovereign immunity for copyright infringement claims. Here, petitioners seek damages for a state university’s alleged infringement on the theory that, even after *Allen*, the CRCA abrogates immunity for claims based on conduct that violates the Fourteenth Amendment under the reasoning of *United States v. Georgia*, 546 U.S. 151 (2006). In the alternative, petitioners seek damages via a federal takings claim. In an unpublished, non-precedential decision, the court of appeals held that sovereign immunity bars petitioners’ claims. The questions presented are:

1. Whether, assuming the CRCA validly abrogates state sovereign immunity for a violation of the Takings Clause, the court of appeals correctly held that petitioners failed to allege such a violation because, “in these circumstances,” their copyright infringement allegations did not “amount[] to a taking.”
2. Whether, assuming the CRCA validly abrogates state sovereign immunity for a violation of the Due Process Clause, the court of appeals correctly held that petitioners failed to allege such a violation because Texas law affords them an adequate post-deprivation remedy for copyright infringement.
3. Whether the court of appeals correctly applied uniform circuit precedent in holding that state sovereign immunity bars a federal takings claim notwithstanding *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), which did not address sovereign immunity.

(I)

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