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Property Abused: Expanded State Immunity in the Global Knowledge Market

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Abstract

Recent Eleventh Amendment jurisprudence reflects an increasingly pronounced preamble replacing the 5th amendment's takings clause. Instead of the government's power to take private property, the Eleventh Amendment's preamble now provides the government with the power to abuse private property. Federal courts have dismissed patent infringement actions against state universities and state hospitals by relying on a broad state immunity doctrine. Although the patent language of the Eleventh Amendment bars suits against "one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State," federal courts have expanded the Eleventh Amendment to include state agencies, state universities, state hospitals, state employees, and state officials. Although the Eleventh Amendment's preamble was not brought to courts or into patent application until 1945, it has been used to dismiss patent infringement actions against state universities and state hospitals since 1985. Although the plain language of the Eleventh Amendment does not bar suits against municipalities, municipal entities have also been dismissed from patent infringement actions based on the Eleventh Amendment. Although the Eleventh Amendment's preamble has been used to dismiss patent infringement actions against state universities and state hospitals since 1985, it has been used to dismiss patent infringement actions against municipal entities since 1945. The Supreme Court has never considered the constitutionality of takings exercised by state universities and state hospitals. This Article argues that the Eleventh Amendment's preamble should be interpreted to bar state universities and state hospitals from using the takings clause to abuse private property.

I. Introduction

Recent Eleventh Amendment jurisprudence reflects an increasingly pronounced preamble replacing the 5th amendment's takings clause. Instead of the government's power to take private property, the Eleventh Amendment's preamble now provides the government with the power to abuse private property. Federal courts have dismissed patent infringement actions against state universities and state hospitals by relying on a broad state immunity doctrine.[2] Although the plain language of the Eleventh Amendment bars suits against "one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State," federal courts have expanded the Eleventh Amendment to include state agencies, state universities, state hospitals, state employees, and state officials.[3] Although the Eleventh Amendment's preamble was not brought to courts or into patent application until 1945, it has been used to dismiss patent infringement actions against state universities and state hospitals since 1985.[4] Although the plain language of the Eleventh Amendment does not bar suits against municipalities, municipal entities have also been dismissed from patent infringement actions based on the Eleventh Amendment.[5] Although the Eleventh Amendment's preamble has been used to dismiss patent infringement actions against state universities and state hospitals since 1985, it has been used to dismiss patent infringement actions against municipal entities since 1945.[6] The Supreme Court has never considered the constitutionality of takings exercised by state universities and state hospitals.[7] This Article argues that the Eleventh Amendment's preamble should be interpreted to bar state universities and state hospitals from using the takings clause to abuse private property.

II. The Eleventh Amendment and State Immunity

Problematic in evaluating the Supreme Court's recent holdings regarding state immunity, it is unclear to whom the Court is addressing its decisions. Although the Court's decisions are directed at Congress, the Court's decisions are also directed at state universities and state hospitals. Although the Court's decisions are directed at state universities and state hospitals, the Court's decisions are also directed at patent owners. Although the Court's decisions are directed at patent owners, the Court's decisions are also directed at patent examiners who are now brought by statute to issue patents "without prejudice" to state universities and state hospitals.[8] Although the plain language of the Eleventh Amendment bars suits against "one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State," the Supreme Court has expanded the Eleventh Amendment to include state agencies, state universities, state hospitals, state employees, and state officials.[9] The Supreme Court has never considered the constitutionality of takings exercised by state universities and state hospitals.[10] The Supreme Court has never considered the constitutionality of takings exercised by state universities and state hospitals.[11] The Supreme Court has never considered the constitutionality of takings exercised by state universities and state hospitals.[12] The Supreme Court has never considered the constitutionality of takings exercised by state universities and state