

# Press Release



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## **WLF Asks Supreme Court to Hold State Governments Accountable for Copyright Theft**

*(Allen v. Cooper)*

**“The Framers did not insist that Congress ‘secure’ copyrights with the tacit understanding that the States are perfectly free to trample copyrights without consequence.”**

**—Cory Andrews, WLF Vice President of Litigation**

WASHINGTON, DC—Washington Legal Foundation filed an *amicus curiae* brief today in the U.S. Supreme Court, urging it to reverse a decision by the U.S. Court of Appeals for the Fourth Circuit that would allow state governments and their agents to infringe federal copyrights with impunity. The Supreme Court has already agreed to hear the case, *Allen v. Cooper*, which will decide whether States’ Eleventh Amendment sovereign immunity shields them from liability for copyright infringement. Oral argument is set for November 5, 2019.

The dispute arises from the discovery of Blackbeard’s eighteenth-century flagship, the *Queen Anne’s Revenge*, off the coast of North Carolina. After locating the shipwreck, a private salvage–recovery firm hired videographer Frank Allen and his company, Nautilus Productions, LLC, to film and photograph the ship’s salvage. Over the next two decades, Allen created a large archive of video and still images documenting the recovery of the ship and its various artifacts. Allen registered his works with the U.S. Copyright Office and licensed them to Nautilus for commercial use. But the State of North Carolina and its officials began infringing Allen’s copyrights by uploading the works and posting them online without permission.

Allen sued North Carolina and its agents, in federal court, for copyright infringement. After the district court agreed to allow the suit to go forward, the Fourth Circuit reversed. It held that North Carolina and its officers are immune from copyright liability under the Eleventh Amendment. The appeals court explained that, while Congress may abrogate state sovereign immunity in some narrow circumstances under Section 5 of the Fourteenth Amendment, Congress has not validly abrogated state sovereign immunity for copyright infringement.

In its brief, WLF argues that the States consented to such suits in the “plan of the Convention.” As WLF shows, the history of the Copyright Clause, the reasons the Framers inserted it into the Constitution, and the laws enacted under its auspices just after ratification confirm that it was not only an Article I grant of authority to Congress but also a way to subordinate state sovereign immunity in copyright enforcement suits.

*Celebrating its 42nd year as America’s premier public-interest law firm and policy center, WLF’s mission is to preserve and defend America’s free-enterprise system by litigating, educating, and advocating for free-market principles, a limited and accountable government, individual and business civil liberties, and the rule of law.*

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