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## Supreme Court Holds that Annotated State Codes Are Unprotectable by Copyright

On Monday, in *Georgia v. Public.Resource.Org*, the Supreme Court of the United States ruled that, under the “government edicts doctrine,” just as judges cannot claim copyright rights in their opinions, legislatures cannot claim copyright rights in state code annotations prepared on their behalf.

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Justice Roberts authored the 5-4 opinion of the Court, with Justices Sotomayor, Kagan, Gorsuch, and Kavanaugh joining the majority opinion, and Justices Ginsburg, Breyer, Thomas, and Alito dissenting.

The “animating principle behind” the decision, Justice Roberts wrote, “is that no one can own the law.” (Op. at 2.)

The Official Code of Georgia Annotated (OCGA)—the official version of Georgia state law—includes annotations prepared by LexisNexis Group pursuant to a work-for-hire agreement between Lexis and Georgia’s Code Revision Commission. Georgia’s legislature has tasked the Commission with consolidating Georgia’s law into a single code, and the Commission is made up in part by members of the Georgia legislature. The annotations “provide commentary and resources that the legislature has deemed relevant to understanding its laws,” such as collecting court cases that have interpreted the statutes. (Op. at 11.) The State of Georgia had claimed copyright rights in these annotations, and had given Lexis the exclusive right to publish and sell the OCGA.

Public.Resource.Org, a nonprofit organization that facilitates public access to the law, posted a digital version of the OCGA on the Internet without permission, and Georgia sued the organization for copyright infringement. The district court held that the annotations were protectable by copyright, and the Eleventh Circuit reversed.

The Court affirmed the Eleventh Circuit’s decision. The Court held that the OCGA is not protectable by copyright under the government edicts doctrine, which “bars the officials responsible for creating the law from being considered the ‘author[s]’ of ‘whatever work they perform in their capacity’ as lawmakers.” (Op. at 8.)

The Court emphasized the “practical significance” of the annotations, writing that “a Georgia citizen interested in learning his legal rights and duties” who “reads the economy-class version of the Georgia Code” (without the annotations) will see laws that have been held unconstitutional “with no hint that important aspects of those laws have been held unconstitutional.” (Op. at 17.) “Meanwhile, first-class readers with access to the annotations will be assured that these laws are, in crucial respects, unenforceable relics that the legislature has not bothered to narrow or repeal.” (*Id.*) The Court also noted that, under Georgia’s interpretation of copyright law, a state would be able to “monetize its entire suite of legislative history” or “launch a subscription or pay-per-law service.” (*Id.*)

The Court rejected Georgia’s argument that the relevant question under the government edicts doctrine is whether the material carries the force of law, holding instead that the relevant question is “whether the author of the work is a judge or a legislator. If so, then whatever work that judge or legislator produces in the course of his judicial or legislative duties is not copyrightable.” (Op. at 18.)

Some have noted that the decision featured unusual alliances that broke down on age lines, with the five youngest justices joining the majority opinion and the four oldest justices dissenting.

Ropes & Gray submitted an amicus brief in the case on behalf of the Center for Democracy & Technology and the Cato Institute in support of Public.Resource.Org, arguing that the government does not need copyright incentives to write the

law, that the law should not be behind a paywall, and that allowing private parties to monitor citizens' searches of the law presents privacy concerns.

The Court's opinion is available at [https://www.supremecourt.gov/opinions/19pdf/18-1150\\_7m58.pdf](https://www.supremecourt.gov/opinions/19pdf/18-1150_7m58.pdf).

Ropes & Gray's brief in the case is available at [https://www.supremecourt.gov/DocketPDF/18/18-1150/119112/20191016121606259\\_No.%2018-1150bsacCDTandCatoInstitute.pdf](https://www.supremecourt.gov/DocketPDF/18/18-1150/119112/20191016121606259_No.%2018-1150bsacCDTandCatoInstitute.pdf).