

No. 18-1150

In the Supreme Court of the United States

STATE OF GEORGIA, ET AL., PETITIONERS,

v.

PUBLIC.RESOURCE.ORG, INC.

*ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

**JOINT APPENDIX
(VOLUME 1 OF 3)**

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APPENDIX A

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA

CODE REVISION)	
COMMISSION et al.,)	
)	
Plaintiffs,)	
)	
v.	)	No. 1:15-cv-2594
	)	(RWS)
PUBLIC.RESOURCE.ORG,)	
INC.,)	
)	
Defendant.)	

RELEVANT DOCKET ENTRIES

No.	Filed	Docket Text
1	07/21/2015	COMPLAINT filed by State of Georgia, Code Revision Commission. (Filing fee \$ 400 receipt number 113E-5942262.) (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6

No.	Filed	Docket Text
		Exhibit 6, # 7 Civil Cover Sheet)(cem) Please visit our website at http://www.gand.uscourts.gov/forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 07/22/2015)
6	09/14/2015	ANSWER to 1 COMPLAINT with Jury Demand (Discovery ends on 2/11/2016.), COUNTERCLAIM against All Plaintiffs with Jury Demand by Public.Resource.Org, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Rosenberg, Jason) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 09/14/2015)
10	10/08/2015	ANSWER to 6 Counterclaim and Affirmative Defenses by Code Revision Commission, State of Georgia.(Askew, Anthony) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions.

No.	Filed	Docket Text
		(Entered: 10/08/2015)
11	10/08/2015	<p>AMENDED COMPLAINT FOR INJUNCTIVE RELIEF against Public.Resource.Org, Inc., filed by State of Georgia, Code Revision Commission. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6)(Askew, Anthony) Please visit our website at http://www.gand.uscourts.gov/commonly-used-forms to obtain Pretrial Instructions which includes the Consent To Proceed Before U.S. Magistrate form. (Entered: 10/08/2015)</p>
16	10/22/2015	<p>ANSWER to 11 Amended Complaint , COUNTERCLAIM against All Plaintiffs by Public.Resource.Org, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G)(Rosenberg, Jason) Please visit our website at http://www.gand.uscourts.gov to obtain Pretrial Instructions. (Entered: 10/22/2015)</p>

No.	Filed	Docket Text
17	01/15/2016	STIPULATION of Facts by Code Revision Commission, State of Georgia. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D, # 5 Exhibit E, # 6 Exhibit F, # 7 Exhibit G, # 8 Exhibit H, # 9 Exhibit I, # 10 Exhibit J, # 11 Exhibit K, # 12 Exhibit L, # 13 Exhibit M)(Askew, Anthony) (Entered: 01/15/2016)
28	05/17/2016	First MOTION for Leave to File An Amicus Curiae Brief in Support of Plaintiff with Brief In Support by Matthew Bender & Company, Inc. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Bowler, John) (Entered: 05/17/2016)
29	05/17/2016	MOTION for Summary Judgment with Brief In Support by Public.Resource.Org, Inc., Public.Resource.Org, Inc., Public.Resource.Org, Inc.. (Attachments: # 1 Statement of Material Facts, # 2 Brief Memorandum of Law In Support, # 3 Exhibit Ex. A, # 4 Exhibit Ex. B, # 5 Exhibit Ex. C, # 6 Exhibit Ex. D, # 7 Exhibit Ex. E, # 8 Exhibit Ex. F, # 9 Exhibit Ex. G, # 10 Exhibit Ex. H, # 11 Exhibit Ex.

No.	Filed	Docket Text
		I, # 12 Exhibit Ex. J, # 13 Exhibit Ex. K, # 14 Exhibit Ex. L, # 15 Exhibit Ex. M, # 16 Exhibit Ex. N, # 17 Exhibit Ex. O)(Parker, Sarah) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 05/17/2016)
30	05/17/2016	MOTION for Partial Summary Judgment with Brief In Support by Code Revision Commission, State of Georgia. (Attachments: # 1 Brief in support, # 2 Statement of Undisputed Material Facts, # 3 Exhibit 1, # 4 Exhibit 2, # 5 Exhibit 3, # 6 Exhibit 4)(Pavento, Lisa) --Please refer to http://www.gand.uscourts.gov to obtain the Notice to Respond to Summary Judgment Motion form contained on the Court's website.-- (Entered: 05/17/2016)
31	05/23/2016	ORDER OF RECUSAL. Judge Mark H. Cohen recused. Case reassigned to Judge Richard W. Story for all further proceedings NOTICE TO ALL COUNSEL OF RECORD: The Judge designation in the civil action number assigned to this case has

No.	Filed	Docket Text
		been changed to 1:15-cv-2594-RWS. Please make note of this change in order to facilitate the docketing of pleadings in this case. Signed by Judge Mark H. Cohen on 5/23/16. (jpa) (Entered: 05/23/2016)
33	06/07/2016	RESPONSE in Opposition re 30 MOTION for Partial Summary Judgment filed by Public.Resource.Org, Inc., Public.Resource.Org, Inc., Public.Resource.Org, Inc.. (Attachments: # 1 Statement of Material Facts Defendant's Response to Plaintiff's Statement of Material Facts)(Parker, Sarah) (Entered: 06/07/2016)
34	06/10/2016	RESPONSE in Opposition re 29 MOTION for Summary Judgment filed by Code Revision Commission, State of Georgia. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Plaintiff's Responses to Defendant's Statement of Undisputed Material Facts, # 5 Plaintiff's Supplemental Statement of Additional Undisputed Material Facts in Support of Its Response to Defendant's Motion for Summary

No.	Filed	Docket Text
		Judgment)(Pavento, Lisa) (Entered: 06/10/2016)
37	06/27/2016	ORDER granting 28 Motion for Leave to File Amicus Curiae Brief in Support of Plaintiff. Signed by Judge Richard W. Story on 6/27/16. (hfm) (Entered: 06/27/2016)
38	06/27/2016	Amicus Curiae Brief by Matthew Bender & Company, Inc. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(hfm) (Entered: 06/27/2016)
40	07/05/2016	REPLY to Response to Motion re 30 MOTION for Partial Summary Judgment filed by Code Revision Commission, State of Georgia. (Pavento, Lisa) (Entered: 07/05/2016)
41	07/05/2016	REPLY to Response to Motion re 29 MOTION for Summary Judgment filed by Public.Resource.Org, Inc., Public.Resource.Org, Inc., Public.Resource.Org, Inc.. (Attachments: # 1 Statement of Material Facts Response to Plaintiff's Supplemental Statement of Undisputed Material Facts)(Parker, Sarah) (Entered: 07/05/2016)

No.	Filed	Docket Text
43	03/10/2017	NOTICE Of Filing Supplemental Authority by Code Revision Commission, State of Georgia (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Pavento, Lisa) (Entered: 03/10/2017)
44	3/23/2017	ORDER denying 29 Defendant's Motion for Summary Judgment and granting 30 Plaintiffs' Motion for Partial Summary Judgment. The parties are ORDERED to confer and to submit to the Court, within 14 days, a proposed briefing schedule to address the injunctive relief to which Plaintiffs are entitled as a result of the foregoing decision. Signed by Judge Richard W. Story on 3/23/2017. (bdb) (Entered: 03/23/2017)
45	04/06/2017	Joint MOTION for Order Entering Proposed Permanent Injunction by Code Revision Commission. (Attachments: # 1 Text of Proposed Order)(Askew, Anthony) (Entered: 04/06/2017)
46	04/07/2017	PERMANENT INJUNCTION ORDER granting 45 Joint Motion for Permanent Injunction Order. (See order for details)

No.	Filed	Docket Text
		The Clerk shall close the case. Signed by Judge Richard W. Story on 4/7/2017. (bdb) Modified to add text on 4/7/2017 (bdb). (Entered: 04/07/2017)
	04/07/2017	Civil Case Terminated. (bdb) (Entered: 04/07/2017)
48	04/07/2017	RESPONSE in Support re 45 Joint MOTION for Order Entering Proposed Permanent Injunction filed by Public.Resource.Org, Inc.. (Rader, Elizabeth) (Entered: 04/07/2017)
49	04/07/2017	NOTICE OF APPEAL as to 44 Order, 52 Judgment and 46 Permanent Injunction Order by Public.Resource.Org, Inc. Filing fee \$505, receipt number 113E-7076702. Transcript Order Form due on 4/21/2017 (Rader, Elizabeth) Modified on 4/7/2017 to include document relationship (kac). Modified to include judgment on 4/7/2017 (bdb). (Entered: 04/07/2017)
50	04/07/2017	NOTICE Of Filing Appeal Transmission Letter by Public.Resource.Org, Inc., re: 49 Notice of Appeal. (kac) (Entered: 04/07/2017)

No.	Filed	Docket Text
51	04/07/2017	Transmission of Certified Copy of Notice of Appeal, Orders and Docket Sheet to US Court of Appeals re: 49 Notice of Appeal. (kac) (Entered: 04/07/2017)
52	04/07/2017	CLERK'S JUDGMENT ENTERED that this action be and the same hereby is dismissed. (bdb)--Please refer to http://www.ca11.uscourts.gov to obtain an appeals jurisdiction checklist-- (Entered: 04/07/2017)

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 17-11589

CODE REVISION COMMISSION, et al.,
Plaintiffs – Appellees,
v.
PUBLIC.RESOURCE.ORG, INC.,
Defendant – Appellant.

RELEVANT DOCKET ENTRIES

Filed	Docket Entry
04/07/2017	CIVIL APPEAL DOCKETED. Notice of appeal filed by Appellant Public.Resource.Org, Inc. on 04/07/2017. Fee Status: Fee Paid. No hearings to be transcribed. The appellant's brief is due on or before 05/17/2017. The appendix is due no later than 7 days from the filing of the appellant's brief. Awaiting Appellant's CIP Due on or before 04/21/2017 as to Appellant Public.Resource.Org, Inc.. Awaiting Appellee's CIP due on or before 05/05/2017 as to Appellees Code Revision

Filed	Docket Entry
	Commission and State of Georgia [Entered: 04/14/2017 08:29 AM]
05/17/2017	Appellant's brief filed by Public.Resource.Org, Inc.. (ECF: Sarah LaFantano) [Entered: 05/17/2017 03:05 PM]
05/23/2017	<i>MOTION to file amicus brief pursuant to FRAP 29(a) filed by Charles Duan for Amici Curiae Public Knowledge et al.. [8137568-1]</i> (ECF: Charles Duan) [Entered: 05/23/2017 08:29 AM]
05/24/2017	Appendix filed [2 VOLUMES] by Appellant Public.Resource.Org, Inc.. (ECF: Sarah LaFantano) [Entered: 05/24/2017 02:22 PM]
05/24/2017	MOTION to file amicus brief pursuant to FRAP 29(a) filed by Esha Bhandari Amici Curiae for American Civil Liberties Union Foundation, American Civil Liberties Union Foundation of Georgia, Inc., Southern Poverty Law Center, Center for Democracy & Technology, and Georgia Coalition for the People's Agenda.. [8140321-1] (ECF: Esha Bhandari) [Entered: 05/24/2017 06:46 PM]
05/24/2017	MOTION to file amicus brief pursuant to FRAP 29(a) filed by Jeffrey Pearlman for Casetext, Free Law Project, Judicata, OpenGov Foundation, and

Filed	Docket Entry
	Ravel. [8140334-1] (ECF: Jeffrey Pearlman) [Entered: 05/24/2017 10:28 PM]
06/26/2017	ORDER: Motion for leave to file amicus brief (Public Knowledge) is GRANTED. [8140334-2], Motion for leave to file amicus brief (American Civil Liberties, et al) is GRANTED. [8140321-2], Motion for leave to file amicus brief (Next Generation) is GRANTED. [8137568-2] SM [Entered: 06/26/2017 08:49 AM]
06/26/2017	Amicus Brief filed by Amicus Curiae Public Knowledge. Service date: 05/23/2017 email - Attorney for Amicus Curium: Bhandari, Duan, Malone, Pearlman; Attorney for Appellants: LaFantano, Rader, Rosenberg; Attorney for Appellees: Askew, Pavento, Thomas; US mail - Attorney for Amicus Curiae: Sollazzo. [Entered: 06/26/2017 09:16 AM]
06/26/2017	Amicus Brief filed by Amicus Curium American Civil Liberties Union Foundation and American Civil Liberties Union of Georgia. Service date: 05/24/2017 email - Attorney for Amicus Curium: Bhandari, Duan, Malone, Pearlman; Attorney for Appellants: LaFantano, Rader, Rosenberg; Attorney for Appellees: Askew, Pavento,

Filed	Docket Entry
	Thomas; US mail - Attorney for Amicus Curiae: Sollazzo. [Entered: 06/26/2017 09:17 AM]
06/26/2017	Amicus Brief filed by Amicus Curiae Next Generation Legal Research Platforms. Service date: 05/24/2017 email - Attorney for Amicus Curium: Bhandari, Duan, Malone, Pearlman; Attorney for Appellants: LaFantano, Rader, Rosenberg; Attorney for Appellees: Askew, Pavento, Thomas; US mail - Attorney for Amicus Curiae: Sollazzo. [Entered: 06/26/2017 09:18 AM]
06/30/2017	Appellee's Brief filed by Appellees Code Revision Commission and State of Georgia. (ECF: Anthony Askew) [Entered: 06/30/2017 03:52 PM]
07/07/2017	Supplemental Appendix [2 VOLUMES] filed by Appellees Code Revision Commission and State of Georgia. (ECF: Lisa Pavento) [Entered: 07/07/2017 05:13 PM]
07/14/2017	Reply Brief filed by Appellant Public.Resource.Org, Inc.. (ECF: Sarah LaFantano) [Entered: 07/14/2017 04:40 PM]
09/26/2017	MOTION to appear in oral argument filed by American Civil Liberties Union Foundation and American Civil

Filed**Docket Entry**

Liberties Union of Georgia. Motion is Opposed. [8254595-1] (ECF: Esha Bhandari) [Entered: 09/26/2017 04:52 PM]

- 10/06/2017 ORDER: Amicus Curiae's, American Civil Liberties Union Foundation, American Civil Liberties Union Foundation of Georgia, Inc., Southern Poverty Law Center, Center for Democracy & Technology and Georgia Coalition for The People's Agenda motion for leave to participate in oral argument on time ceded by Appellant is GRANTED. ENTERED FOR THE COURT - BY DIRECTION [8254595-2] [Entered: 10/06/2017 11:47 AM]
- 11/16/2017 Oral argument held. Oral Argument participants were Vera Eidelman for Amicus Curiae American Civil Liberties Union of Georgia, Elizabeth Hannah Rader for Appellant Public.Resource.Org, Inc. and Lisa Pavento for Appellees State of Georgia and Code Revision Commission. [Entered: 11/16/2017 02:35 PM]
- 07/20/2018 Notice under FRAP 28(j) of supplemental authority filed by Attorney Elizabeth Hannah Rader for Appellant Public.Resource.Org, Inc. (ECF:

Filed	Docket Entry
	Elizabeth Rader) [Entered: 07/20/2018 12:45 PM]
10/19/2018	Judgment entered as to Appellant Public.Resource.Org, Inc. [Entered: 10/19/2018 12:36 PM]
10/19/2018	Opinion issued by court as to Appellant Public.Resource.Org, Inc. Decision: Reversed in part, Vacated in part and Remanded. Opinion type: Published. Opinion method: Signed. The opinion is also available through the Court's Opinions page at this link http://www.ca11.uscourts.gov/opinions . [Entered: 10/19/2018 12:39 PM]
11/19/2018	Mandate issued as to Appellant Public.Resource.Org, Inc. [Entered: 11/19/2018 09:37 AM]

APPENDIX C

**UNITED STATES DISTRICT COURT NORTHERN
DISTRICT OF GEORGIA ATLANTA DIVISION**

)	
CODE REVISION)	
COMMISSION on Behalf of)	
and For the Benefit of the)	
GENERAL ASSEMBLY OF)	
GEORGIA, and the STATE)	
OF GEORGIA,)	
Plaintiffs,	)	CIVIL ACTION
	)	NO. 1:15-cv-
v.	)	2594-MHC
)	
PUBLIC.RESOURCE.ORG,)	
INC.)	
Defendant.)	

COMPLAINT FOR INJUNCTIVE RELIEF

The Code Revision Commission on Behalf of and For the Benefit of the General Assembly of Georgia and the State of Georgia ("Plaintiff"), alleges, on information and belief, the following against Defendant:

NATURE OF THIS ACTION

1. This action for injunctive relief arises from Defendant's systematic, widespread and unauthorized copying and distribution of the copyrighted annotations in the Official Code of Georgia Annotated ("O.C.G.A.") through the distribution of thumb drives containing copies of the O.C.G.A. and the posting of the O.C.G.A. on various websites. Defendant has

facilitated, enabled, encouraged and induced others to view, download, print, copy, and distribute the O.C.G.A copyrighted annotations without limitation, authorization, or appropriate compensation. On information and belief, Defendant has also created unauthorized derivative works containing the O.C.G.A. annotations by re-keying the O.C.G.A. in order to make it possible for members of the public to copy and manipulate the O.C.G.A., thereby also encouraging the creation of further unauthorized derivative works.

2. The copyrighted annotations include analysis and guidance that are added to the O.C.G.A. by a third party publisher of the O.C.G.A. as a work for hire. These annotations include synopses of cases that interpret the O.C.G.A., summaries of Opinions of the Attorney General of Georgia, and summaries of research references related to the O.C.G.A. Each of these annotations is an original and creative work of authorship that is protected by copyrights owned by the State of Georgia. Without providing the publisher with the ability to recoup its costs for the development of these copyrighted annotations, the State of Georgia will be required to either stop publishing the annotations altogether or pay for development of the annotations using state tax dollars. Unless Defendant's infringing activities are enjoined, Plaintiff and citizens of the State of Georgia, will face losing valuable analysis and guidance regarding their state laws.

JURISDICTION AND VENUE

3. This is a civil action seeking injunctive relief for copyright infringement under the Copyright Act of 1976, as amended, specifically 17 U.S.C. §§ 101, *et seq.*

4. This Court has jurisdiction in and over this copyright infringement action pursuant to 17 U.S.C. §§ 101, *et seq.*, and 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant. Defendant has infringed the State of Georgia's copyright in Georgia by distributing infringing copies of the O.C.G.A. including copyrighted annotations to persons in Georgia, to Georgia Speaker of the House David Ralston and Georgia Legislative Counsel Wayne R. Allen at locations within the State of Georgia on or about May 30, 2013. On or about September 24, 2013, Defendant further distributed infringing copies of the O.C.G.A. including copyrighted annotations on thumb drives to at least eight (8) institutions in and around the State of Georgia. Defendant further presented copies of the O.C.G.A. including copyrighted annotations on at least one Internet website (<https://public.resource.org>, <https://bulk.resource.org>, and/or <https://law.resource.org>) that attracts citizens from Georgia as viewers and actively encourages all such individuals to copy, use, and disseminate to others in Georgia and elsewhere, and to create derivative works of the O.C.G.A. Defendant still further solicited and continues to solicit funds on one of its own websites (<https://yeswescan.org>) and a crowd funding website (www.indiegogo.com/projects/the-laws-of-georgia) to help Defendant scan and post the O.C.G.A. including copyrighted annotations, which websites attract and affect citizens from the State of Georgia. Defendant's website at <https://yeswescan.org> indicates that \$3,035 dollars were raised as of June 15, 2015 to assist Defendant in infringing the State of Georgia's copyrights in the O.C.G.A. copyrighted annotations. Individual visitors are also encouraged to provide financial

donations on several of the Defendant's websites via a PayPal account, and Defendant offers for sale multiple products via the Internet, including phone cases, caps, stickers, stamps, mugs, bags, and prints at <http://www.zazzle.com/carlmalamud/>.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 since a substantial number of the claims recited in this Complaint arose in the State of Georgia and the Defendant does business in this state. Paragraph 5 above is incorporated by reference as if set forth fully herein.

PARTIES

7. Plaintiff Georgia Code Revision Commission is acting on behalf of and for the benefit of the General Assembly of Georgia and the State of Georgia. The Georgia Code Revision Commission is composed of fifteen members selected from the Georgia House, the Georgia Senate and the State Bar of Georgia including a judge of the superior courts and a district attorney. The Georgia Code Revision Commission compiles and obtains the publication of the O.C.G.A. The Georgia General Assembly enacts laws on behalf of the State of Georgia.

8. Defendant Public Resource.Org is a California corporation with its principal place of business located at 1005 Gravenstein Highway North, Sebastopol, California 95472.

**ALLEGATIONS COMMON TO ALL
CLAIMS FOR RELIEF**

**Plaintiffs and Their Infringed
Copyrighted Works**

9. The State of Georgia enacts and promulgates the laws of the state through its legislature. The state laws are provided in Code sections. Periodically, typically annually, the Georgia General Assembly (“Legislature”) revises, modifies, and amends its laws through supplemental laws and amendments. The Georgia General Assembly is assisted by the Code Revision Commission in publishing the Georgia state laws.

10. The Legislature contracts with a publisher, currently Matthew Bender and Company, Inc., a member of the LexisNexis Group (“LexisNexis”), a division of Reed Elsevier Properties, Inc., to publish an annotated version of the State laws as the O.C.G.A. Pursuant to this contract (“Code Publishing Contract”), and in order to allow LexisNexis to recoup its publishing costs, LexisNexis is permitted to sell the O.C.G.A., with the copyrighted annotations, in both hard bound book and electronic format for a set fee.

11. In its capacity as publisher of the O.C.G.A., LexisNexis makes additions to the statutory text of the state laws previously approved and enacted by the Legislature. One example of additions made by LexisNexis is a summary of a judicial decision that relates to a particular Code section and illustrates and informs as to an interpretation of that Code section. This judicial summary is added at the end of the relevant Code section under the heading “Judicial Decisions.” See Exhibit 1 for examples of O.C.G.A. judicial

summaries. The judicial summary is only added in the annotated publication and is not enacted as law.

12. In order to create judicial summaries, LexisNexis selects and reads relevant judicial decisions. LexisNexis then distills each relevant decision down to a single paragraph. The succinctness and accuracy of the judicial summaries are in large part what make them valuable to attorneys and others researching the Code. Accordingly, the text of the judicial summaries of the O.C.G.A. must be and is carefully crafted by LexisNexis in order to illustrate and interpret the Code sections of the O.C.G.A.

13. These judicial summaries, along with notes and other original and creative works added by LexisNexis to the Georgia statutory text, are prepared as works made for hire for the State of Georgia and are protected by copyright (“Copyrighted Annotations”). The Copyrighted Annotations are created by LexisNexis for the State of Georgia pursuant to the state’s Code Publishing Contract with LexisNexis. Accordingly, each of Plaintiff’s Copyrighted Annotations, as to which infringement is specifically alleged below, are original works of authorship protected by copyright, and exclusive rights under these copyrights are owned by Plaintiff. These copyrights have been registered with the United States Copyright Office, or have an application for registration pending with the United States Copyright Office.

14. Plaintiff does not assert copyright in the O.C.G.A. statutory text itself since the laws of Georgia are and should be free to the public. The Code Publishing Contract between LexisNexis and the State of Georgia requires that LexisNexis publish on the internet, free of charge, the statutory text of the O.C.G.A.

These free Code publications are available 24 hours each day, 7 days a week, and include all statutory text and numbering; numbers of titles, chapters, articles, parts, and subparts; captions and headings; and history lines. The free Code publications are fully searchable, and the catchlines, captions and headings are accessible by links from the table of contents. The free Code publication of the State of Georgia is accessible via a website link found on the State of Georgia website www.legis.ga.gov.

**Defendant's Copying and Distribution
of Plaintiffs' Copyrighted Annotations**

15. On information and belief, Defendant has, without authorization, copied at least 140 different volumes/supplements containing the O.C.G.A. Copyrighted Annotations, the copyrights for which are owned by the State of Georgia. Each of these copied works has been posted by the Defendant on at least one of its websites, <https://public.resource.org>, <https://law.resource.org>, and <https://bulk.resource.org>, and is available to members of the public for downloading, viewing, and printing. *See* <https://law.resource.org/pub/us/code/ga/georgia.scan.2013/>. The electronic nature of these documents, and their availability on the Internet, magnifies the ease and speed with which they may be copied and distributed to others.

16. On information and belief, Defendant has, without authorization, copied or “rekeyed” at least some of Plaintiff’s Copyrighted Annotations prior to posting them on Defendant’s website(s) to make the Copyrighted Annotations easier for members of the public to copy and manipulate, thereby encouraging the creation of works that are derivative of Plaintiff’s Copyrighted Annotations.

17. On information and belief, Defendant has, without authorization, distributed/uploaded hundreds of Plaintiff's Copyrighted Annotations to the website www.archive.org ("Internet Archive Website"). On information and belief, Defendant has further falsely indicated that PublicResource.Org is the owner of Plaintiff's Copyrighted Annotations by uploading those works to the Internet Archive Website with an indication that Defendant has dedicated the work to the public and with an instruction that members of the public "can copy, modify, distribute and perform the work, even for commercial purposes, all without asking permission." See, for example, <https://archive.org/details/govlawgacode392000>, which indicates that O.C.G.A. Volume 39, 2000 Edition, Title 51 is subject to a "CCO 1.0 Universal" license. Following the CCO 1.0 Universal link on that web page directs one to <http://creativecommons.org/publicdomain/1.0/> where the quoted language can be found. As a result, Plaintiff's Copyrighted Annotations have been downloaded by the public from the Internet Archive Website thousands of times. See <https://archive.org/search.php?query=georgia%20code%20and%20public%20resource>.

18. On information and belief, Defendant's ongoing and widespread copying and distribution of Plaintiff's Copyrighted Annotations are deliberate and willful acts of copyright infringement that are part of a larger plan designed to challenge the letter of U.S. copyright law and force government entities (in the U.S. and elsewhere) to expend tax payer dollars in creating annotated state codes and making those annotated codes easily accessible by Defendant. Defendant's websites <https://public.resource.org> and

<https://yeswescan.org> are dedicated to these efforts, and in January of 2014, Carl Malamud, Defendant's founder and president, testified in front of the U.S. House of Representatives, House Judiciary Committee, to advance an amendment to the U.S. Copyright Act making state and local official legal documents uncopyrightable for reasons of public policy. No such amendment has been adopted by Congress. On information and belief, Carl Malamud has engaged in an 18 year-long crusade to control the accessibility of U.S. government documents by becoming the United States' Public Printer — an individual nominated by the U.S. President and who is in control of the U.S. Government Printing Office. Carl Malamud has not been so nominated.

19. On information and belief, Defendant is employing a deliberate strategy of copying and posting large document archives such as the O.C.G.A. (including the Copyrighted Annotations) in order to force the State of Georgia to provide the O.C.G.A., in an electronic format acceptable to Defendant. Defendant's founder and president, Carl Malamud, has indicated that this type of strategy has been a successful form of "terrorism" that he has employed in the past to force government entities to publish documents on Malamud's terms. *See* Exhibit 2.

20. Consistent with its strategy of terrorism, Defendant freely admits to the copying and distribution of massive numbers of Plaintiff's Copyrighted Annotations on at least its <https://yeswescan.org> website. *See* Exhibit 3. Defendant also announced on the <https://yeswescan.org> website that it has targeted the States of Mississippi, Georgia, and Idaho and the District of Columbia for its continued, deliberate and willful copying

of copyrighted portions of the annotated codes of those jurisdictions. Defendant has further posted on the <https://yeswescan.org> website, and delivered to Plaintiffs, a “Proclamation of Promulgation,” indicating that its deliberate and willful copying and distribution of Plaintiff’s Copyrighted Annotations would be “greatly expanded” in 2014. Defendant has further instituted public funding campaigns on a website www.indiegogo.com to support its continued copying and distribution of Plaintiff’s Copyrighted Annotations. Defendant has raised thousands of dollars to assist Defendant in infringing the O.C.G.A. Copyrighted Annotations.

21. Defendant deliberately and willfully distributed USB thumb drives containing scanned copies of Plaintiff’s Copyrighted Annotations to members of the State of Georgia Legislature.

22. Defendant mailed at least ninety (90) different volumes/supplements of the O.C.G.A. Copyrighted Annotations published over several years to Honorable David Ralston, Speaker of the House, Georgia House of Representatives and Mr. Wayne Allen, Legislative Counsel, Office of Legislative Counsel, Georgia General Assembly, and, on information and belief, later mailed USB thumb drives containing copies of the same O.C.G.A. Copyrighted Annotations to at least eight (8) institutions in and around the State of Georgia.

23. Plaintiff has not authorized Defendant to copy, distribute or make derivative works of Plaintiff’s Copyrighted Annotations. The State of Georgia demanded that Defendant cease and desist its infringement of the O.C.G.A. Copyrighted Annotations on at least July 25, 2013 (*see* Exhibit 4). Defendant has

refused to remove any and all copies of Plaintiff's Copyrighted Annotations from its website(s) (*see* Exhibit 5).

CLAIMS FOR RELIEF

First Claim

Direct Copyright Infringement in Violation of 17 U.S.C. § 106

24. Paragraphs 1 through 23 above are incorporated by reference as set forth fully herein.

25. By scanning, copying, displaying, distributing, and creating derivative works of Plaintiff's Copyrighted Annotations—including but not limited to each copyrighted work identified on Exhibit 6—on a widespread and continuing basis via Defendant's website(s) and the Internet Archive Website, Defendant's conduct constitutes infringement of Plaintiff's copyrights and exclusive rights under copyright in violation of one or more of Sections 106, 501-503, and 505 of the Copyright Act, 17 U.S.C. §§ 106, 501-503, 505.

26. By scanning, copying and distributing Plaintiff's Copyrighted Annotations in at least twenty one (21) different volumes/supplements of the O.C.G.A. identified on Exhibit 6 on USB thumb drives via a mail service to multiple entities, Defendant's conduct constitutes infringement of Plaintiff's copyrights and exclusive rights under copyright in violation of one or more of Sections 106, 501-503, and 505 of the Copyright Act, 17 U.S.C. §§ 106, 501-503, 505.

27. Defendant's acts have been and continue to be willful, intentional and purposeful, in violation of Plaintiff's rights.

28. As a direct and proximate result of Defendant's infringement of Plaintiff's copyrights and exclusive rights under copyright, and because there is no adequate remedy at law, Plaintiff is entitled to injunctive relief. Unless enjoined by the Court, Defendant's conduct will continue to cause severe and irreparable harm to Plaintiff.

29. Plaintiff is entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

Second Claim
Indirect Copyright Infringement in
Violation of 17 U.S.C. § 106

30. Paragraphs 1 through 23 above are incorporated by reference as set forth fully herein.

31. By facilitating, encouraging and inducing members of the public to copy, display, distribute, and create derivative works of Plaintiff's Copyrighted Annotations—including, but not limited to each copyrighted work identified on Exhibit 6—on a widespread and continuing basis via Defendant's website(s) and the Internet Archive Website, Defendant has contributorily infringed Plaintiff's copyrights and exclusive rights under copyright in violation of one or more of Sections 106, 501-503, and 505 of the Copyright Act, 17 U.S.C. §§ 106, 501-503, 505.

32. Defendant has actual and constructive knowledge that members of the public have copied and displayed Plaintiff's copyrighted material, and Defendant knowingly encouraged members of the public to do so.

33. Defendant's acts have been and continue to be willful, intentional and purposeful, in violation of Plaintiff's rights.

34. As a direct and proximate result of Defendant's infringement of Plaintiff's copyrights and exclusive rights under copyright, and because there is no adequate remedy at law, Plaintiff is entitled to injunctive relief. Unless enjoined by the Court, Defendant's conduct will continue to cause severe and irreparable harm to Plaintiff.

35. Plaintiff is entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

WHEREFORE, Plaintiff prays:

1. That this Court enter an order pursuant to 17 U.S.C. § 502 granting permanent injunctive relief enjoining Defendant and all of its representatives, agents, servants, employees, related companies, successors and assigns, and all others in privity or acting in concert with any of them, now or in the future, without seeking the appropriate authorization from Plaintiff, from creating derivative works of, or copying, displaying, or distributing electronic or paper copies of, any of Plaintiff's copyrighted works to anyone, in the manner described above—namely, via the posting on a website or the distribution of a USB thumb drive or otherwise;

2. That this Court enter an order pursuant to 17 U.S.C. § 502 granting permanent injunctive relief enjoining Defendant and all of its representatives, agents, servants, employees, related companies, successors and assigns, and all others in privity or acting in concert with any of them, now or in the future, without seeking the appropriate authorization from Plaintiff, from facilitating or encouraging others to create derivative works of, or copy, display or distribute electronic or paper copies of, any of Plaintiff's copyrighted

works to anyone, in the manner described above—namely, via the posting on a website or otherwise;

3. That this Court enter an order pursuant to 17 U.S.C. § 503 for seizure to recover, impound, and destroy all things infringing Plaintiff's copyrighted works that are in the custody or control of Defendant;

4. That this Court award Plaintiff the costs of this action and reasonable attorneys' fees and expenses pursuant to 17 U.S.C. § 505; and

5. That this Court grant such other and further relief as it deems just and proper.

Respectfully submitted, this 21st day of July, 2015.

[Signature block omitted]

CODE REVISION)
COMMISSION on Behalf of) CIVIL ACTION
and For the Benefit of the) NO. 1:15-cv-
GENERAL ASSEMBLY OF) 2594-MHC
GEORGIA, and the STATE)
OF GEORGIA,)
Plaintiffs,) JURY TRIAL
v.) DEMANDED
PUBLIC.RESOURCE.ORG,)
INC.)
Defendant.)

1. Public Resource admits that this action arises from its copying and distribution of the Official Code of Georgia Annotated (“O.C.G.A.”) through the distribution of thumb drives containing copies of the O.C.G.A. and the posting of the O.C.G.A. on two websites. Public Resource denies that the Plaintiff holds any valid copyright in the O.C.G.A., including its annotations, and therefore denies that Public Resource—

or anyone—requires authorization to copy it. Public Resource admits that it has facilitated, enabled, encouraged and induced others to view, download, print, copy and distribute the O.C.G.A. without limitation or compensation. Public Resource admits that it has also created works containing the O.C.G.A. All other allegations of paragraph 1 are denied.

2. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first sentence in paragraph 2, and therefore denies them. Public Resource admits that the annotations to the O.C.G.A. include synopses of cases that interpret the O.C.G.A., summaries of Opinions of the Attorney General of Georgia and summaries of research references related to the O.C.G.A. Public Resource denies the remaining allegations of paragraph 2.

JURISDICTION AND VENUE

3. Public Resource admits the allegations of paragraph 3.

4. Public Resource admits the allegations of paragraph 4.

5. Public Resource admits that this Court has personal jurisdiction over it. Public Resource admits doing the acts alleged in paragraph 5 but denies that Plaintiff owns a valid copyright in the annotations, and further denies that Public Resource has infringed any copyright held by the State of Georgia.

6. Public Resource admits that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

PARTIES

7. Public Resource admits that the Georgia General Assembly enacts laws on behalf of the State of Georgia. As to the remainder of the allegations in paragraph 7, Public Resource lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them.

8. Public Resource admits the allegation in paragraph 8.

**ALLEGATIONS COMMON TO
ALL CLAIMS FOR RELIEF**

**Plaintiffs and Their Infringed
Copyrighted Works**

9. Public Resource admits the allegations in the first two sentences of paragraph 9. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 9 and therefore denies them.

10. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 and therefore denies them.

11. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 and therefore denies them.

12. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 and therefore denies them.

13. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are

protected by copyright or otherwise owned by the State of Georgia, and thus denies that Plaintiff's "Copyrighted Annotations" is an accurate description of what was copied and distributed. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 13 and therefore denies them. Public Resource denies the allegations in the third sentence of paragraph 13, all of which are legal conclusions to which no response is legally required. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the fourth sentence of paragraph 13 and therefore denies them.

14. Public Resource admits that Plaintiff does not assert copyright in the O.C.G.A. statutory text itself because the laws of Georgia are and should be free to the public. Public Resource lacks sufficient information to admit or deny the remaining allegations in paragraph 14 and therefore denies them.

**Defendant's Copying and Distribution
of Plaintiffs' Copyrighted Annotations**

15. Public Resource admits it has copied at least 140 different volumes/supplements containing the O.C.G.A. and that each of these works has been posted by it on at least one of its websites and is available to the public for downloading, viewing and printing, and that the electronic nature of these documents and their availability on the Internet, magnifies the ease and speed with which they may be copied and distributed to others. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that "Plaintiff's

Copyrighted Annotations” is an accurate description of what was copied and distributed.

16. Public Resource admits that it has copied the O.C.G.A. prior to posting it on its website. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource denies the remaining allegations in paragraph 16.

17. Public Resource admits that it has distributed/uploaded the entire O.C.G.A. to the website www.archive.org (“Internet Archive website”). Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource admits that it has labeled all the works with the “CCO 1.0 Universal license” which indicates that members of the public may “copy, modify, distribute and perform the work.” Public Resource admits that individual volumes of the O.C.G.A. have been viewed or downloaded on the Internet Archive website thousands of times. Public Resource denies the remaining allegations in paragraph 17.

18. Public Resource admits that in January of 2014, Carl Malamud, its founder and president, testified before the U.S. House of Representatives, House Judiciary Committee, to advance an amendment to the U.S. Copyright Act making state and local official legal documents uncopyrightable for reasons of public policy. Public Resource admits that no such amendment

has been adopted by Congress. Public Resource admits that Carl Malamud has not been nominated for the office of United States Public Printer. Public Resource denies the remaining allegations of paragraph 18.

19. Public Resource admits that Carl Malamud, its founder and president, made the statements attributed to him in Exhibit 2, an article published in Columbia Journalism Review. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource denies the remaining allegations of paragraph 19.

20. Public Resource admits to the copying and distribution of the entire O.C.G.A. on its website at <https://law.resource.org>. Public Resource vehemently denies the bizarre, defamatory and gratuitous allegation that it has a “strategy of terrorism.” Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource admits that it posted on its website and delivered to Plaintiff a Proclamation of Promulgation stating that its deliberate copying and distribution of the O.C.G.A. would be greatly expanded in 2014. Public Resource admits that it instituted a public funding campaign on the website www.indiegogo.com to support its continued copying and distribution of the O.C.G.A. and raised approximately \$3000.00. Public Resource denies the remaining allegations of paragraph 20.

21. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. published by the Georgia Code Revision Commission are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource otherwise admits the remaining allegations in paragraph 21.

22. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource otherwise admits the remaining allegations in paragraph 22.

23. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource otherwise admits the remaining allegations in paragraph 23.

CLAIMS FOR RELIEF

FIRST CLAIM

24. Public Resource’s responses to paragraphs 1 through 23 above are incorporated by reference as if set forth fully in this paragraph.

25. Public Resource denies the allegations in paragraph 25.

26. Public Resource denies the allegations in paragraph 26.

27. Public Resource denies the allegations in paragraph 27.

28. Public Resource denies the allegations in paragraph 28.

29. Public Resource denies the allegations in paragraph 29.

SECOND CLAIM

30. Public Resources [sic] responses to paragraphs 1 through 23 above are incorporated by reference as if set forth fully in this paragraph.

31. Public Resource denies the allegations in paragraph 31.

32. Public Resource denies the allegations in paragraph 32.

33. Public Resource denies the allegations in paragraph 33.

34. Public Resource denies the allegations in paragraph 34.

35. Public Resource denies the allegations in paragraph 35.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The complaint and each cause of action alleged fails to allege facts sufficient to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has no copyrights in works that government entities have enacted as law. The O.C.G.A. including annotations, regardless of how they were authored, is the law of Georgia, and the law should be

free to the public. As such, the O.C.G.A. is not copyrightable subject matter and is in the public domain.

THIRD AFFIRMATIVE DEFENSE

Lack of ownership of the asserted copyrights bars Plaintiff's copyright infringement claims.

FOURTH AFFIRMATIVE DEFENSE

The fair use doctrine bars Plaintiff's claims.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's failure obtain [sic] a registration from the U.S. Copyright Office for the allegedly infringed material prior to filing suit bars Plaintiff's claims.

SIXTH AFFIRMATIVE DEFENSE

Failure to comply with formalities required under the Copyright Act bars Plaintiff's claims.

SEVENTH AFFIRMATIVE DEFENSE

The doctrine of copyright misuse bars Plaintiff's claims.

EIGHTH AFFIRMATIVE DEFENSE

The equitable doctrine of waiver bars Plaintiff's claims.

NINTH AFFIRMATIVE DEFENSE

Lack of irreparable injury bars Plaintiff's demand for an injunction.

TENTH AFFIRMATIVE DEFENSE

An injunction would be inimical to the public interest, and thus the public interest bars Plaintiff's demand for an injunction.

**COUNTERCLAIM FOR
DECLARATORY RELIEF**

Public Resource.Org, Inc. (“Public Resource”) alleges the following against Plaintiff-Counterclaim Defendant Code Revision Commission:

NATURE OF THE ACTION

1. Public Resource seeks a declaratory judgment that its copying and distributing the text of the Official Code of Georgia Annotated “(O.C.G.A.)” do not infringe any copyright because laws enacted by government entities such as the State of Georgia Legislature are not copyrightable subject matter and are in the public domain.

THE PARTIES

2. Public Resource is a California nonprofit corporation with its principal place of business at 1005 Gravenstein Highway North, Sebastopol, California 95472. Its mission is to improve public access to government records and the law.

3. As part of its mission to protect and promote the right of the public to know and speak the laws that govern it, Public Resource has undertaken to make certain edicts of government widely available to the public on a noncommercial basis.

4. Counterclaim-defendant Georgia Code Revision Commission purports to act on behalf of and for the benefit of the General Assembly of Georgia and the State of Georgia.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the counterclaim pursuant to 17 U.S.C. § 101 et seq (the Copyright Act); 28 U.S.C. § 1331 (federal

question); 28 U.S.C. § 1338(a) (exclusive federal copyright jurisdiction); and 28 U.S.C. § 2201 (the Declaratory Judgment Act).

6. This Court has personal jurisdiction over the Code Revision Commission because the Commission resides, may be found in, or transacts business in this District.

7. This Court also has personal jurisdiction over the Code Revision Commission because it submitted to jurisdiction for purposes of this Counterclaim by filing the underlying suit against Public Resource in this District.

8. To the extent that Code Revision Commission had sovereign immunity against suit as an arm of the State of Georgia, it waived such immunity by filing the underlying suit against Public Resource in this District.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the Commission may be found in this District and transacts business in this District and because a substantial part of the events giving rise to this counterclaim, including the filing of the underlying lawsuit, occurred in this District.

FACTS

10. Carl Malamud founded Public Resource in 2007 and serves as its president. While the Code Revision Commission falsely (and offensively) alleges that he practices a “strategy of terrorism,” Mr. Malamud is recognized by government officials and others for his advocacy, over thirty years, for public access to sources of law and for privacy rights. Among his notable successes was helping to persuade the Securities and

Exchange Commission to make EDGAR, its database of corporate filings, available to the public free of charge.

11. In 1992, Mr. Malamud played a leadership role in the deliberations of the Internet Engineering Task Force (“IETF”) on questions of governance of the Internet Standards process. In 2004, he served as a consultant to the IETF and the Internet Architecture Board on questions of strategic direction and governance. He is the author or co-author of six Requests for Comments (“RFCs”) and several Internet-Drafts, technical memoranda on Internet architecture published by the IETF. The IETF has designated some of his RFCs as Internet Standards and two more as Proposed Standards.

12. Mr. Malamud has also served as the Founding Chairman of the Board of Directors of the Internet Systems Consortium and the Internet Multicasting Service. The non-profit Internet Systems Consortium operates a key piece of Internet infrastructure, the “F” root Domain Name Server and is responsible for producing the open source software “BIND,” which is considered the standard Domain Name Server software. The non-profit Internet Multicasting Service operated the first radio station on the Internet, was responsible for placing the SEC EDGAR and US Patent databases on the Internet for the first time, and ran the Internet 1996 World Exposition, a world’s fair for the Internet which received the endorsement of 12 heads of state including Presidents Clinton and Yeltsin and participation from 70 countries. Mr. Malamud’s book on the Internet 1996 World Exposition was published by MIT Press in 1997 and included a foreword from His Holiness, the Dalai Lama.

13. In a letter dated July 16, 2008, the Judicial Conference of the United States recognized Mr. Malamud's work on the subject of privacy violations in the dockets of the U.S. District Courts. A copy of this letter is attached as Exhibit A and also may be viewed at <https://public.resource.org/scribd/7512576.pdf>. Also in 2008, he advised the Federal Trade Commission and the Office of the Inspector General, U.S. Department of Defense, on the appearance of Social Security Numbers in the Congressional Record and private databases. Also in 2008, he served as an advisor to the Presidential Transition Team on Federal Register issues, an effort that led to fundamental changes in the mechanics of distribution of the Official Journals of Government.

14. In 2009, Carl Malamud was considered by the Office of Presidential Personnel for the position of Public Printer of the United States.

15. On December 16, 2009, Mr. Malamud testified before the U.S. House of Representatives Oversight Committee in a hearing about the strategic direction of the National Archives and Records Administration, the parent entity of the Office of the Federal Register. Mr. Malamud's testimony may be viewed at <http://www.archives.gov/era/acera/pdf/malamud-testimony.pdf>.

16. In 2007 and 2011, Mr. Malamud submitted reports to the Speaker of the U.S. House of Representatives about the accessibility and preservation of video used in Congressional hearings. On January 5, 2011, the Speaker of the House publicly thanked him for those efforts. Speaker Boehner's letter to Mr. Malamud is attached as Exhibit B and also may be viewed at <https://law.resource.org/rfcs/gov.house.20110105.pdf>.

At Speaker Boehner's request, Mr. Malamud worked with Chairman Darrell Issa of the Committee on Oversight and Government Reform and placed online over 14,000 hours of video from Congressional hearings that had not been previously available. Mr. Malamud also worked with the Committee staff to add closed-captioning to House Oversight hearings, the first time congressional hearings were available for people with hearing impairments.

17. From 2008 to 2015, Public Resource processed over 8 million Form 990 reports of Exempt Organizations it purchased from the Internal Revenue Service and made these reports available on the Internet. Public Resource identified a large number of privacy violations, such as Social Security Numbers, in these forms. Public Resource's effort resulted in a change in the Internal Revenue Manual to allow the IRS to better redact and protect personal information released by the government. Public Resource also successfully brought an action under the Freedom of Information Act to compel release of machine-processable (e-filed) versions of Exempt Organization returns, an effort that led to a 2015 decision by the IRS that this information will be released in bulk starting in 2016. The action was docket 3:13-cv-02789 in the Northern District of California before the Hon. William H. Orrick.

18. On December 12, 2012, Mr. Malamud was appointed as a member of the Administrative Conference of the United States, a federal agency that "promotes improvements in the efficiency, adequacy, and fairness of the procedures by which federal agencies conduct regulatory programs, administer grants and benefits, and perform related governmental functions." Mr. Malamud was a member of the committee that held

hearings and drafted ACUS Recommendation 2011-5, “Incorporation by Reference.” Mr. Malamud also was one of the signatories of a petition to the Office of the Federal Register that led to a rulemaking procedure that was initiated in 78 Federal Register 60784 and Federal Docket OFR-2010-0001. This led to a change in the procedures specified by incorporation by reference in 1 CFR Part 51 in a final rule that was published November 7, 2014, in 79 FR 66267.

19. On January 14, 2014, Mr. Malamud testified before the U.S. House of Representatives Judiciary Committee on the Scope of Copyright Protection and submitted a petition from 115 law professors and librarians that proposed the following amendment to the Copyright Act to reinforce longstanding public policy and judicial opinions making state and local official legal documents uncopyrightable for reasons of public policy:

Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.

20. This language comes directly from Section 206.01, Compendium of Office Practices II, U.S. Copyright Office (1984). It reflects clear and established Supreme Court precedent on the matter in cases such as *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834) and *Banks v. Manchester*, 128 U.S. 244 (1888). The law belongs to the people, who should be free to read, know, and speak the laws by which they choose to govern themselves.

21. To accomplish its mission, Public Resource acquires copies of government records, including legal decisions, tax filings, statutes and regulations, and posts them online in easily accessible formats that make them more useful to readers, entirely free of charge.

22. Public Resource operates the websites `public.resource.org`, `law.resource.org`, `house.resource.org`, `bulk.resource.org`, `yeswecan.org` and others.

23. Public Resource also operates a program that helps the public access over 6,000 U.S. Government-produced videos (such as training and historical films), called FedFlix, which Public Resource originally developed in a joint venture with the National Technical Information Service and subsequently in cooperation with the Archivist of the United States. FedFlix content has been viewed on YouTube.com more than thirty-eight million times, and all the content is also available on the Internet Archive. The YouTube channel may be found at <https://www.youtube.com/user/PublicResourceOrg>.

24. Public Resource reformats some of the laws it posts, in order to make them easier to find, more useful and more accessible to the public.

25. This reformatting includes putting some codes into standard Hypertext Markup Language (HTML), converting graphics into the standard Scalable Vector Graphics (SVG) format, and converting mathematical formulas into the standard Mathematical Markup (MathML) language, all of which are open standards supported by modern web browsers[.]

26. These steps make the codes, including the diagrams and formulae they contain, viewable with

many kinds of computer hardware and software, more accessible to people with disabilities, and easier to translate and annotate.

27. Public Resource applies rigorous quality control and proofreading when it reformats codes, including the O.C.G.A. at issue in this case.

28. The growth of the Internet provides a tremendous opportunity for government to inform its citizens in a broad and timely manner about the laws they must follow in carrying out their daily activities. It also allows business enterprises, university professors and students, non-profits and citizens to better organize and use this information.

29. Public Resource maintains an agent, registered with the U.S. Copyright Office, to receive notifications of claims of copyright infringement, pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512(c)(2). Public Resource provides contact information for that agent at <https://public.resource.org/copyrightpolicy.html>.

30. Public Resource does not sell any copies of the laws to which it provides access or charge money for such access.

31. Like many charities, Public Resource offers for sale items bearing its logo, such as stickers, T-shirts and books by its founder. Total revenue from sales of these products since Public Resource's founding has amounted to less than \$100. Other than sales of such items, all of Public Resource's funding comes from charitable donations. No text or links soliciting donations appear on pages where codes or laws are displayed within Public Resource's websites.

32. The State of Georgia enacts and promulgates the laws of the state through its legislature. The state laws are provided in Code sections. Periodically, the Georgia General Assembly (“Legislature”) revises, modifies and amends its laws through supplemental laws and amendments. Every single bill introduced in the Georgia Legislature begins with the incantation in the form: “An Act ... To amend Article [3] of Chapter [11] of Title [16] of the Official Code of Georgia Annotated.” (Numbering of bill relating to invasions of privacy supplied as an example). <http://www.legis.ga.gov/Legislation/20072008/69691.pdf>

33. The Legislature is assisted by Plaintiff-Counterclaim Defendant in publishing the Georgia state laws. Plaintiff-Counterclaim Defendant does not assert copyright in the O.C.G.A. statutory text because it recognizes that the laws of Georgia are not copyrightable subject matter and should be free to the public.

34. Plaintiff-Counterclaim Defendant, however, claims copyright and asserts copyright in additions to the statutory text in the O.C.G.A, allegedly made by Matthew Bender and Company, a member of the LexisNexis Group (“Lexis/Nexis”), a division of Reed Elsevier Properties, Inc. These include single-paragraph summaries of judicial decisions interpreting sections of the Code, which are derivative works of the judicial decisions themselves, which are not copyrightable subject matter. They also include “notes and other original and creative works added,” allegedly by LexisNexis, “to the Georgia statutory text.” They include summaries of Opinions of the Attorney General of Georgia and summaries of research references related to the O.C.G.A., cross references, Editor’s notes, and Code

Commission Notes. The annotations include notice that “The Official Code publication controls over unofficial compilations” and that “[a]ttorneys who cite unofficial publications ...do so at their peril.” O.C.G.A. Annotations 1-1-1 and 1-1-10 are attached as Exhibits C and D and can also be viewed at line at <https://archive.org/stream/govlawgacode20003#page/2/mode/2up>.

35. Plaintiff-Counterclaim Defendant has alleged that the Code Publishing Contract between LexisNexis and the State of Georgia requires that LexisNexis publish on the Internet, free of charge, the statutory text of the O.C.G.A., and that these “free” Code publications are accessible.

36. To access the O.C.G.A. via the website link found on the State of Georgia website, www.legis.ga.gov, one must accept the terms of use for the LexisNexis site that govern use of all areas of LexisNexis, (“LexisNexis Terms of Use”) even though the Georgia site states that the terms and conditions do not apply to the statutory text and numbering. These terms and conditions are complicated and onerous. For example, paragraph 22 of the LexisNexis Terms of Use states “Governing Law and Jurisdiction. The Terms of Use are governed by and construed in accordance with the laws of the State of New York and any action arising out of or relating to these terms shall be filed only in state or federal courts located in New York and you hereby consent to and submit to the personal jurisdiction of such courts for the purpose of litigating any such action.” The LexisNexis Terms of Use also purport to prohibit “public or nonprofit use.” A copy of these terms of use is attached as Exhibit E.

37. The Georgia Code available “free” on the LexisNexis site does not contain the Annotations, such as

the Judicial Summaries, Code Revision Commission Notes, and Attorney General Opinions, and therefore, by definition, is not the “Official” Code of Georgia.

38. Until at least May 28, 2014, the notice displayed before users could access the “free” online publication included a banner page that the user had to acknowledge before access was granted. That banner page noted clearly that only the “latest print version of the O.C.G.A. is the authoritative version.” A true copy of this banner page is provided as Exhibit F and can be viewed at: <https://web.archive.org/web/20140528092032/http://www.lexisnexis.com/hottopics/gacode/layout.htm>].

39. A marketing page for the print version of the O.C.G.A. stresses that the print version is the only official version of the Official Code of Georgia Annotated. The word “Official” is emphasized throughout this marketing page, including boldface and underlining. A true copy of this page is provided as Exhibit G and can also be viewed at: <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?catld=prod15710352&prold=6647>]

40. In addition to onerous terms of use and lack of content, the website which the State of Georgia offers as the only place citizens can and should view the O.C.G.A. on the Internet suffers from numerous technical deficiencies. For example, it is impossible to “bookmark” a section of the code, requiring a user to navigate through each of the volumes, sections and subsections by clicking little boxes before being able to view a relevant paragraph of text. The lack of a bookmark and the terms of use prohibition against copying means that a citizen cannot readily communicate a section of the code to another citizen. The system also suffers from numerous technical and security errors in

the HTML and other underlying code, meaning that the pages will display differently or not at all on different kinds of web browsers. Finally, the site is highly inaccessible to those that are visually impaired.

COUNT I

[Declaratory Relief Pursuant to 28 U.S.C. § 2201, et seq. (Declaratory Judgment Act) and the Copyright Act (U.S.C. Title 17)].

41. Public Resource incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

42. The people are the authors of the law, regardless of who first pens the words that later become law through enactment by a legislature or public agency.

43. The principle that the law must be public and available to citizens to read and speak has its roots in the concept of the rule of law itself.

44. The legal principle that ignorance of the law is no defense presumes that all citizens have access to the law.

45. The First, Fifth and Fourteenth Amendments to the Constitution require that all people have the power to read, speak and disseminate the law.

46. Laws and regulations are in the public domain and not subject to copyright.

47. Law and regulations do not lose their public domain status and become subject to copyright because they were drafted by a private party as “works for hire.”

48. Laws and regulations do not lose their public domain status and become subject to copyright

because they incorporate material that private parties have drafted or prepared.

49. There is only one way to express a particular law fully and authoritatively, namely with explicit reference to any matters that the law incorporates into itself.

50. Once the Legislature incorporates material into the official version of the Code, use of that material by the public or private parties is lawful through the doctrine of merger.

51. Public Resource's purpose in using the O.C.G.A. is to facilitate scholarship, criticism and analysis of the Official Code, to inform the public about the laws that govern it, for educational purposes and to encourage public engagement with the law.

52. Upon their incorporation into law, incorporated expressions are factual as statements of the law. Public Resource publishes the O.C.G.A. in its entirety. Scholarship, analysis and other public engagement with the law is not possible without access to the complete Official Code, including summaries of judicial opinions and attorney generals' opinions. Therefore, Public Resource publishes as much of the O.C.G.A. as is necessary to fulfill its purpose.

53. Even if copyright law protected authorship by private parties after it is incorporated into law, which it does not, Public Resource's use of the complete O.C.G.A. is fair use and therefore not copyright infringement.

54. There is a real and actual controversy between Public Resource and the Code Revision Commission regarding whether Public Resource's copying, publication and reformatting of the O.C.G.A. constitutes

infringement of any valid copyright owned by the State of Georgia.

55. The Code Revision Commission is seeking an injunction against Public Resource that would hinder Public Resource's activities in furtherance of its mission to make the law accessible to all.

56. The Georgia legislature regularly enacts amendments of the O.C.G.A., not of unofficial publications, and will likely continue to do so.

57. The Code Revision Commission is likely to assert copyright in the so-called Copyrighted Annotations in future editions of the O.C.G.A. to restrict the public's expression of and distribution of, and access to, those codes. It would then have the power to inhibit public discourse about and public use of the official code.

58. The controversy between Public Resource and the Code Revision Commission is thus real and substantial and demands specific relief through a conclusive judicial decree.

59. Public Resource is entitled to a declaratory judgment that its copying, posting and reformatting of the O.C.G.A., including the annotations, does not infringe any copyright rights owned by the State[] of Georgia.

WHEREFORE, Defendant prays:

1. That the Court denies Plaintiff the relief sought in the Complaint;
2. That the Court adjudge and decree that the State of Georgia has no valid copyright in any portion of the O.C.G.A. because the O.C.G.A. is in the public domain;

3. That Public Resource's acts of copying, posting and distributing the O.C.G.A. does not infringe, directly or indirectly, any copyright;
4. That Public Resource is entitled to its reasonable attorney fees, costs and expenses in this action;
5. For such other relief as the Court deems just.

JURY TRIAL DEMAND

Counterclaimant Public Resource demands a jury trial of all issues properly triable to a jury.

Respectfully submitted this 14th day of September, 2015, in accordance with the formatting guidelines approved by the Court in Local Rule 5.1B.

[Signature block omitted]

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CODE REVISION
COMMISSION on Behalf of
and For the Benefit of the
GENERAL ASSEMBLY OF
GEORGIA, and the STATE
OF GEORGIA,

Plaintiffs,

v.

PUBLIC.RESOURCE.ORG,
INC.

Defendant.

CIVIL ACTION
NO.

1:15-cv-2594-MHC

**ANSWER TO AFFIRMATIVE DEFENSES
AND COUNTERCLAIM**

Plaintiff and Counterclaim-Defendant the Code Revision Commission, on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia (“Commission”), answers the Affirmative Defenses and Counterclaim as follows:

AFFIRMATIVE DEFENSES

The Commission denies the allegations of defendant’s affirmative defenses one through ten.

**COUNTERCLAIM FOR
DECLARATORY RELIEF
NATURE OF THE ACTION**

1. The Commission admits that defendant seeks a declaratory judgment that its copying and distributing the texts of the Official Code of Georgia Annotated (“O.C.G.A”) do not infringe any copyright. The Commission denies the remaining allegations of paragraph 1.

THE PARTIES

2. The Commission admits that Public Resource is a California nonprofit corporation with its indicated principal place of business. The Commission lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 2 and therefore denies them.

3. The Commission admits that Public Resource has undertaken to make many documents widely available to the public on a noncommercial basis. The Commission lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 3 and therefore denies them.

4. The Commission admits that the Georgia Code Revision Commission acts on behalf of and for the benefit of the General Assembly of Georgia and the State of Georgia pursuant to and within the statutory provisions of Title 28, Chapter 9 of the O.C.G.A.

JURISDICTION AND VENUE

5. The Commission admits that this Court has subject matter jurisdiction over the counterclaim as alleged in paragraph 5 except to the extent that state

sovereign immunity applies to the allegations of that counterclaim.

6. Admitted.
7. Admitted.
8. Denied.
9. Admitted.

FACTS

10. The Commission admits the first sentence of this paragraph. With respect to the allegations of falsity in the second sentence of this paragraph, the Commission denies that any allegations of its original complaint are false. The Commission lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 10 and therefore denies them.

11. The Commission admits that during 2004 Mr. Malamud had a contract to provide consulting services to the Internet Engineering Task Force. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations of paragraph 11 and therefore denies them.

12. The Commission admits that Mr. Malamud is a founder of the Internet Systems Consortium. The Commission admits that the Internet Systems Consortium: (1) operates the F-Root domain name server and (2) produces the BIND domain name system software. The Commission admits that the book “A World’s Fair for the Global Village” (ISBN 978-0262133388) was authored by Mr. Malamud, published by MIT Press in 1997, and includes a foreword by the Dalai Lama. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the

remaining allegations of paragraph 12 and therefore denies them.

13. The Commission admits that a letter from The Hon. Lee H. Rosenthal to Mr. Malamud, dated July 16, 2008, is attached as Exhibit A to defendant's counterclaim. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations of paragraph 13 and therefore denies them.

14. The Commission admits that Carl Malamud campaigned for the position of Public Printer of the United States. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations of paragraph 14 and therefore denies them.

15. The Commission admits that on December 16, 2009, Mr. Malamud testified before the Subcommittee on Information Policy, Census, and National Archives of the House Committee on Oversight and Government Reform, and that Mr. Malamud's prepared statement for that hearing may be viewed at <http://www.archives.gov/era/acera/pdf/malamud-testimony.pdf>. The Commission admits that the Office of the Federal Register is one of the offices within the National Archives and Records Administration. The Commission denies the remaining allegations of paragraph 15.

16. The Commission admits that a letter dated January 5, 2011, from Reps. John Boehner and Darrell Issa to Mr. Malamud is attached to the counterclaim as Exhibit B and available at the alleged URL. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the

remaining allegations of paragraph 16 and therefore denies them.

17. The Commission admits that Public Resource brought an action against the IRS under the Freedom of Information Act, Civil Action No. 3:13-cv-02789-WHO, in the Northern District of California, and that the district court entered judgment in favor of Public.Resource.Org on the claims alleged in that complaint. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations of paragraph 17 and therefore denies them.

18. The Commission admits that Mr. Malamud was at one time a member of the Administrative Conference of the United States (ACUS) but denies that Mr. Malamud was appointed on the date alleged in paragraph 18. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations of paragraph 18 and therefore denies them.

19. The Commission admits that Mr. Malamud testified regarding the “Scope of Copyright Protection” before the U.S. House of Representatives Judiciary Committee, Subcommittee on Courts, Intellectual Property, and the Internet, on January 14, 2014, that he submitted a petition with 115 signatories, and that the petition proposed the amendment to the Copyright Act as quoted in paragraph 19. The Commission denies the remaining allegations of paragraph 19.

20. The Commission admits the first sentence of paragraph 20. The remainder of this paragraph consists of legal arguments and conclusions that require no response.

21. The Commission admits that Public Resource acquires copies of documents containing government records, legal decisions, tax filings, statutes, and regulations, and posts them online to be accessed without monetary cost to readers. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations of paragraph 21 and therefore denies them.

22. The Commission admits that Public Resource operates the websites public.resource.org, law.resource.org, house.resource.org, bulk.resource.org and others. On information and belief, Public Resource does not operate the website yeswecan.org and therefore the Commission denies this allegation.

23. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations of paragraph 23 and therefore denies them.

24. The Commission admits that Public Resource reformats at least some of the documents containing laws it posts. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations of paragraph 24 and therefore denies them.

25. The Commission admits that Public Resource's reformatting includes putting some documents containing codes into standard HTML format. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations of paragraph 25 and therefore denies them.

26. The Commission lacks knowledge or information sufficient to form a belief about the truth or

falsity of the allegations of paragraph 26 and therefore denies them.

27. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations of paragraph 27 and therefore denies them.

28. The Commission admits that the growth of the Internet provides an opportunity for government to inform some of its citizens about the laws they must follow in carrying out their daily activities. The Commission denies the remaining allegations in paragraph 28.

29. Admitted.

30. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations in paragraph 30 and therefore denies them.

31. The Commission admits that Public Resource offers for sale items bearing its logo, such as stickers, T-shirts and books by its founder. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the remaining allegations in paragraph 31 and therefore denies them.

32. The Commission admits that it is common for bills introduced in the Georgia General Assembly (“Legislature”) to begin, “An Act . . . To amend Article . . . Chapter . . . of Title . . . of the Official Code of Georgia Annotated.” However, the Commission lacks knowledge or information sufficient to form a belief about the truth of the allegation that “every single bill” so introduced recites the same language. The remaining allegations of paragraph 32 are admitted.

33. The Commission admits that the Legislature is assisted by Plaintiff-Counterclaim Defendant in publishing the laws enacted by the Legislature. Plaintiff-Counterclaim Defendant does not assert copyright in the O.C.G.A. statutory text because the enacted laws are not copyrightable subject matter and should be free to the public.

34. The Commission admits that it claims copyright and asserts copyright in original and creative works added by Mathew Bender and Company, a member of the LexisNexis Group, a division of Reed Elsevier Properties, Inc. (“LexisNexis”), to the Georgia statutory text. These original and creative works include the addition of single-paragraph summaries of judicial decisions interpreting sections of the Code, summaries of Opinions of the Attorney General of Georgia, summaries of research references related to the O.C.G.A., summaries of cross references, Editor’s notes, and summaries of Code Commission Notes, all selected, coordinated or arranged by LexisNexis. The Commission admits that the judicial decisions themselves are not copyrightable subject matter. The Commission denies that the judicial decision summaries are derivative works. As to the fifth sentence of paragraph 34, the Commission admits that the quoted language is an excerpt from a Copyrighted Judicial Decision Annotation accompanying O.C.G.A. §§ 1-1-1 and 1-1-2. As to the sixth sentence of paragraph 34, the Commission: (1) admits that Exhibit C contains annotations to O.C.G.A. § 1-1-1; (2) admits that Exhibit D contains a portion of the statutory text for O.C.G.A. § 1-1-10 but denies that Exhibit D contains any annotations to O.C.G.A. § 1-1-10; and (3) admits that the O.C.G.A. pages shown in Exhibits C and D are

available on the defendant's website at the URL alleged in paragraph 34. The Commission denies the remaining allegations of paragraph 34.

35. Admitted.

36. The Commission admits that to access the statutory text and numbering in the O.C.G.A. via the website link found on the State of Georgia website, www.legis.ga.gov, one must accept the terms of use for the LexisNexis site ("LexisNexis Terms of Use") and that the LexisNexis Terms of Use do not apply to the O.C.G.A. statutory text and numbering. The Commission denies sentence 2 of paragraph 36. The Commission admits the language of sentence 3 of paragraph 36 and that the language of this sentence does not apply to the statutory text and numbering. The Commission admits that Exhibit E is a copy of the LexisNexis Terms of Use, and that these Terms of Use indicate that restrictions on unpermitted uses extend to all commercial, non-profit and public purposes, but these restrictions do not apply to the statutory text and numbering. The Commission denies the remaining allegations in paragraph 36.

37. The Commission admits that the O.C.G.A. statutory text and numbering that is available for free on the LexisNexis site does not contain the Annotations, such as the Judicial Summaries, summaries of Code Revision Commission Notes, summaries of Attorney General Opinions, and compilations thereof. The Commission denies the remaining allegations of paragraph 37.

38. Admitted.

39. The Commission admits that Exhibit G and the alleged URL contain a LexisNexis marketing page

for the print version of the Official Code of Georgia Annotated wherein the term “official” is included within boldface and underlined type. The Commission denies the remaining allegations of this paragraph, including the defendant’s characterizations of the content of that marketing page.

40. Denied.

COUNT I

41. In response to this paragraph, the Commission incorporates its responses to the allegations of the proceeding paragraphs as if fully set forth in this paragraph.

42. This paragraph consists of legal arguments and conclusions that require no response.

43. This paragraph consists of legal arguments and conclusions that require no response.

44. This paragraph consists of legal arguments and conclusions that require no response.

45. This paragraph consists of legal arguments and conclusions that require no response.

46. The Commission admits that laws are in the public domain and not subject to copyright. The remaining allegations consist of legal arguments and conclusions that require no response, but to the extent that a response is required, the Commission denies them.

47. The Commission admits that laws do not lose their public domain status and become subject to copyright. The Commission denies that a private party drafts laws whether as works for hire or otherwise. The remaining allegations consist of legal arguments and conclusions that require no response, but to the

extent that a response is required, the Commission denies them.

48. The Commission admits that laws do not lose their public domain status and become subject to copyright. The remaining allegations consist of legal arguments and conclusions that require no response, but to the extent that a response is required, the Commission denies them.

49. Denied.

50. Denied.

51. The Commission lacks knowledge or information sufficient to form a belief about the truth or falsity of the allegations of paragraph 51 and therefore denies them.

52. The Commission admits that the defendant copies and publishes the O.C.G.A. in its entirety. The remaining allegations of paragraph 52 are denied.

53. Denied.

54. Admitted.

55. The Commission admits it seeks an injunction against the defendant. The Commission denies the remaining allegations of paragraph 55.

56. The Commission admits that the Georgia legislature regularly enacts amendments of the statutes of the O.C.G.A. and will likely continue to do so. The Commission denies the remaining allegations of paragraph 56.

57. The Commission admits that it is likely to assert its rights in the Copyrighted Annotations in future editions of the O.C.G.A. The Commission denies the remaining allegations of paragraph 57.

58. Admitted.

59. Denied.

Respectfully submitted, this 8th day of October,
2015.

[Signature block omitted]

APPENDIX F

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

<p>CODE REVISION COMMISSION on Behalf of and For the Benefit of the GENERAL ASSEMBLY OF GEORGIA, and the STATE OF GEORGIA, Plaintiffs,</p>	<p>CIVIL ACTION NO. 1:15-cv-2594-MHC</p>
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v.

<p>PUBLIC.RESOURCE.ORG, INC. Defendant.</p>

**AMENDED COMPLAINT FOR
INJUNCTIVE RELIEF**

Pursuant to Fed. R. Civ. P. 15(a)(1)(B), Plaintiff Code Revision Commission on Behalf of and For the Benefit of the General Assembly of Georgia and the State of Georgia (“Commission”), hereby states its first amended complaint for injunctive relief against Public.Resource.Org, Inc. (“Defendant”) and alleges, on information and belief, the following against Defendant:

NATURE OF THIS ACTION

1. This action for injunctive relief arises from Defendant’s systematic, widespread and unauthorized copying and distribution of the copyrighted annotations in the Official Code of Georgia Annotated

(“O.C.G.A.”) through the distribution of thumb drives containing copies of the O.C.G.A. and the posting of the O.C.G.A. on various websites. Defendant has facilitated, enabled, encouraged and induced others to view, download, print, copy, and distribute the O.C.G.A. copyrighted annotations without limitation, authorization, or appropriate compensation. On information and belief, Defendant has also created unauthorized derivative works containing the O.C.G.A. annotations by re-keying the O.C.G.A. in order to make it possible for members of the public to copy and manipulate the O.C.G.A., thereby also encouraging the creation of further unauthorized derivative works.

2. The copyrighted annotations include analysis and guidance that are added to the O.C.G.A. by a third party publisher of the O.C.G.A. as a work for hire. These annotations include synopses of cases that interpret the O.C.G.A., summaries of Opinions of the Attorney General of Georgia, and summaries of research references related to the O.C.G.A. Each of these annotations is an original and creative work of authorship that is protected by copyrights owned by the State of Georgia. Without providing the publisher with the ability to recoup its costs for the development of these copyrighted annotations, the State of Georgia will be required to either stop publishing the annotations altogether or pay for development of the annotations using state tax dollars. Unless Defendant’s infringing activities are enjoined, Plaintiff and citizens of the State of Georgia, will face losing valuable analysis and guidance regarding their state laws.

JURISDICTION AND VENUE

3. This is a civil action seeking injunctive relief for copyright infringement under the Copyright Act of 1976, as amended, specifically 17 U.S.C. §§ 101, *et seq.*

4. This Court has jurisdiction in and over this copyright infringement action pursuant to 17 U.S.C. §§ 101, *et seq.*, and 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has personal jurisdiction over Defendant. Defendant has infringed the State of Georgia's copyright in Georgia by distributing infringing copies of the O.C.G.A. including copyrighted annotations to persons in Georgia, to Georgia Speaker of the House David Ralston and Georgia Legislative Counsel Wayne R. Allen at locations within the State of Georgia on or about May 30, 2013. On or about September 24, 2013, Defendant further distributed infringing copies of the O.C.G.A. including copyrighted annotations on thumb drives to at least eight (8) institutions in and around the State of Georgia. Defendant further presented copies of the O.C.G.A. including copyrighted annotations on at least one Internet website (<https://public.resource.org>, <https://bulk.resource.org>, and/or <https://law.resource.org>) that attracts citizens from Georgia as viewers and actively encourages all such individuals to copy, use, and disseminate to others in Georgia and elsewhere, and to create derivative works of the O.C.G.A. Defendant still further solicited and continues to solicit funds on one of its own websites (<https://yeswescan.org>) and a crowd funding website (www.indiegogo.com/projects/the-laws-of-georgia) to help Defendant scan and post the O.C.G.A. including copyrighted annotations, which websites attract and affect citizens from the State of Georgia. Defendant's website at <https://yeswescan.org> indicates that

\$3,035 dollars were raised as of June 15, 2015 to assist Defendant in infringing the State of Georgia's copyrights in the O.C.G.A. copyrighted annotations. Individual visitors are also encouraged to provide financial donations on several of the Defendant's websites via a PayPal account, and Defendant offers for sale multiple products via the Internet, including phone cases, caps, stickers, stamps, mugs, bags, and prints at <http://www.zazzle.com/carlmalamud/>.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400 since a substantial number of the claims recited in this Complaint arose in the State of Georgia and the Defendant does business in this state. Paragraph 5 above is incorporated by reference as if set forth fully herein.

PARTIES

7. Plaintiff Georgia Code Revision Commission is acting on behalf of and for the benefit of the General Assembly of Georgia and the State of Georgia. The Georgia Code Revision Commission is composed of fifteen members selected from the Georgia House, the Georgia Senate and the State Bar of Georgia including a judge of the superior courts and a district attorney. The Georgia Code Revision Commission compiles and obtains the publication of the O.C.G.A. The Georgia General Assembly enacts laws on behalf of the State of Georgia.

8. Defendant Public Resource.Org is a California corporation with its principal place of business located at 1005 Gravenstein Highway North, Sebastopol, California 95472.

ALLEGATIONS COMMON TO ALL CLAIMS

FOR RELIEF**Plaintiffs and Their Infringed Copyrighted Works**

9. The State of Georgia enacts and promulgates the laws of the state through its legislature. The state laws are provided in Code sections. Periodically, typically annually, the Georgia General Assembly (“Legislature”) revises, modifies, and amends its laws through supplemental laws and amendments. The Georgia General Assembly is assisted by the Code Revision Commission in publishing the Georgia state laws.

10. The Legislature contracts with a publisher, currently Matthew Bender and Company, Inc., a member of the LexisNexis Group (“LexisNexis”), a division of Reed Elsevier Properties, Inc., to publish an annotated version of the State laws as the O.C.G.A. Pursuant to this contract (“Code Publishing Contract”), and in order to allow LexisNexis to recoup its publishing costs, LexisNexis is permitted to sell the O.C.G.A., with the copyrighted annotations, in both hard bound book and electronic format for a set fee.

11. In its capacity as publisher of the O.C.G.A., and through its own original creation, selection, coordination and/or arrangement, LexisNexis makes additions to the statutory text of the state laws previously approved and enacted by the Legislature. One example of additions made by LexisNexis is a summary of a judicial decision that relates to a particular Code section and illustrates and informs as to an interpretation of that Code section. This judicial summary is added at the end of the relevant Code section under the heading “Judicial Decisions.” *See* Exhibit 1 for examples of

O.C.G.A. judicial summaries. The judicial summary is only added in the annotated publication and is not enacted as law.

12. In order to create judicial summaries as original and creative works of authorship, LexisNexis selects and reads relevant judicial decisions. LexisNexis then distills each relevant decision down to a single paragraph. The succinctness and accuracy of the judicial summaries are in large part what make them valuable to attorneys and others researching the Code. Accordingly, the text of the judicial summaries of the O.C.G.A. must be and is carefully crafted by LexisNexis in order to illustrate and interpret the Code sections of the O.C.G.A.

13. These judicial summaries, along with notes and other original and creative non-statutory text added by LexisNexis to the Georgia statutory text, and the compilations thereof, are prepared as works made for hire for the State of Georgia and are protected by copyright. These judicial summaries and additional non-statutory text are further selected, coordinated and/or arranged in an original manner in the O.C.G.A. and protected by compilation copyright. Accordingly, the O.C.G.A. contains individual judicial summaries, non-statutory text, and compilations thereof, which are separately copyrightable and copyrighted. The judicial summaries and other non-statutory text together with the compilations thereof are referred to herein as the “Copyrighted Annotations.” The Copyrighted Annotations are created by LexisNexis for the State of Georgia pursuant to the state’s Code Publishing Contract with LexisNexis. Therefore, each of Plaintiff’s Copyrighted Annotations, as to which infringement is specifically alleged below, are original

works of authorship protected by copyright, and exclusive rights under these copyrights are owned by Plaintiff. These copyrights have been registered with the United States Copyright Office, or have an application for registration pending with the United States Copyright Office.

14. Plaintiff does not assert copyright in the O.C.G.A. statutory text itself since the laws of Georgia are and should be free to the public. The Code Publishing Contract between LexisNexis and the State of Georgia requires that LexisNexis publish on the internet, free of charge, the statutory text of the O.C.G.A. These free Code publications are available 24 hours each day, 7 days a week, and include all statutory text and numbering; numbers of titles, chapters, articles, parts, and subparts; captions and headings; and history lines. The free Code publications are fully searchable, and the catchlines, captions and headings are accessible by links from the table of contents. The free Code publication of the State of Georgia is accessible via a website link found on the State of Georgia website www.legis.ga.gov.

Defendant's Copying and Distribution of Plaintiffs' Copyrighted Annotations

15. On information and belief, Defendant has, without authorization, copied at least 140 different volumes/supplements containing the O.C.G.A. Copyrighted Annotations, including the original selection, coordination and arrangement therein, the copyrights for which are owned by the State of Georgia. Each of these copied works has been posted by the Defendant on at least one of its websites, <https://public.resource.org>, <https://law.resource.org>, and <https://bulk.resource.org>, and is available to members

of the public for downloading, viewing, and printing. *See* <https://law.resource.org/pub/us/code/ga/georgia.scan.2013/>. The electronic nature of these documents, and their availability on the Internet, magnifies the ease and speed with which they may be copied and distributed to others.

16. On information and belief, Defendant has, without authorization, copied or “rekeyed” at least some of Plaintiff’s Copyrighted Annotations prior to posting them on Defendant’s website(s) to make the Copyrighted Annotations easier for members of the public to copy and manipulate, thereby encouraging the creation of works that are derivative of Plaintiff’s Copyrighted Annotations.

17. On information and belief, Defendant has, without authorization, distributed/uploaded hundreds of Plaintiff’s Copyrighted Annotations to the website www.archive.org (“Internet Archive Website”). On information and belief, Defendant has further falsely indicated that PublicResource.Org is the owner of Plaintiff’s Copyrighted Annotations by uploading those works to the Internet Archive Website with an indication that Defendant has dedicated the work to the public and with an instruction that members of the public “can copy, modify, distribute and perform the work, even for commercial purposes, all without asking permission.” *See*, for example, <https://archive.org/details/govlawgacode392000>, which indicates that O.C.G.A. Volume 39, 2000 Edition, Title 51 is subject to a “CCO 1.0 Universal” license. Following the CCO 1.0 Universal link on that web page directs one to <http://creativecommons.org/publicdomain/zero/1.0/> where the quoted language can be found. As a result, Plaintiff’s Copyrighted Annotations have been

downloaded by the public from the Internet Archive Website thousands of times. See <https://archive.org/search.php?query=georgia%20code%20and%20public%20resource>.

18. On information and belief, subsequent to the filing of Plaintiff's original Complaint (Dkt. No. 1), Defendant has, without authorization, copied at least 52 different volumes/supplements containing the 2015 O.C.G.A. Copyrighted Annotations, including the original selection, coordination and arrangement therein, the copyrights for which are owned by the State of Georgia. Each of these copied works has been posted by the Defendant on at least one of its websites, <https://public.resource.org>, <https://law.resource.org>, and <https://bulk.resource.org>, and is available to members of the public for downloading, viewing, and printing. See <https://law.resource.org/pub/us/code/ga/georgia.scan.2015/?C=N;O=A>. The electronic nature of these documents, and their availability on the Internet, magnifies the ease and speed with which they may be copied and distributed to others.

19. On information and belief, Defendant's ongoing and widespread copying and distribution of Plaintiff's Copyrighted Annotations are deliberate and willful acts of copyright infringement that are part of a larger plan designed to challenge the letter of U.S. copyright law and force government entities (in the U.S. and elsewhere) to expend tax payer dollars in creating annotated state codes and making those annotated codes easily accessible by Defendant. Defendant's websites <https://public.resource.org> and <https://yewswescan.org> are dedicated to these efforts, and in January of 2014, Carl Malamud, Defendant's founder and president, testified in front of the U.S. House of

Representatives, House Judiciary Committee, to advance an amendment to the U.S. Copyright Act making state and local official legal documents uncopyrightable for reasons of public policy. No such amendment has been adopted by Congress. On information and belief, Carl Malamud has engaged in an 18 year-long crusade to control the accessibility of U.S. government documents by becoming the United States' Public Printer – an individual nominated by the U.S. President and who is in control of the U.S. Government Printing Office. Carl Malamud has not been so nominated.

20. On information and belief, Defendant is employing a deliberate strategy of copying and posting large document archives such as the O.C.G.A. (including the Copyrighted Annotations) in order to force the State of Georgia to provide the O.C.G.A., in an electronic format acceptable to Defendant. Defendant's founder and president, Carl Malamud, has indicated that this type of strategy has been a successful form of "terrorism" that he has employed in the past to force government entities to publish documents on Malamud's terms. *See* Exhibit 2.

21. Consistent with its self-described strategy of mass publication terrorism, Defendant freely admits to the copying and distribution of massive numbers of Plaintiff's Copyrighted Annotations on at least its <https://yeswescan.org> website. *See* Exhibit 3. Defendant also announced on the <https://yeswescan.org> website that it has targeted the States of Mississippi, Georgia, and Idaho and the District of Columbia for its continued, deliberate and willful copying of copyrighted portions of the annotated codes of those jurisdictions. Defendant has further posted on the

<https://yeswescan.org> website, and delivered to Plaintiffs, a “Proclamation of Promulgation,” indicating that its deliberate and willful copying and distribution of Plaintiff’s Copyrighted Annotations would be “greatly expanded” in 2014. Defendant has further instituted public funding campaigns on a website www.indiegogo.com to support its continued copying and distribution of Plaintiff’s Copyrighted Annotations. Defendant has raised thousands of dollars to assist Defendant in infringing the O.C.G.A. Copyrighted Annotations.

22. Defendant deliberately and willfully distributed USB thumb drives containing scanned copies of Plaintiff’s Copyrighted Annotations to members of the State of Georgia Legislature.

23. Defendant mailed at least ninety (90) different volumes/supplements of the O.C.G.A. Copyrighted Annotations published over several years to Honorable David Ralston, Speaker of the House, Georgia House of Representatives and Mr. Wayne Allen, Legislative Counsel, Office of Legislative Counsel, Georgia General Assembly, and, on information and belief, later mailed USB thumb drives containing copies of the same O.C.G.A. Copyrighted Annotations to at least eight (8) institutions in and around the State of Georgia.

24. Plaintiff has not authorized Defendant to copy, distribute or make derivative works of Plaintiff’s Copyrighted Annotations. The State of Georgia demanded that Defendant cease and desist its infringement of the O.C.G.A. Copyrighted Annotations on at least July 25, 2013 (*see* Exhibit 4). Defendant has refused to remove any and all copies of Plaintiff’s Copyrighted Annotations from its website(s) (*see* Exhibit 5).

CLAIMS FOR RELIEF**First Claim****Direct Copyright Infringement in Violation of
17 U.S.C. § 106**

25. Paragraphs 1 through 23 above are incorporated by reference as set forth fully herein.

26. By scanning, copying, displaying, distributing, and creating derivative works of Plaintiff's Copyrighted Annotations—including but not limited to each copyrighted work identified on Exhibit 6—on a widespread and continuing basis via Defendant's website(s) and the Internet Archive Website, Defendant's conduct constitutes infringement of Plaintiff's copyrights and exclusive rights under copyright in violation of one or more of Sections 106, 501-503, and 505 of the Copyright Act, 17 U.S.C. §§ 106, 501-503, 505.

27. By scanning, copying and distributing Plaintiff's Copyrighted Annotations in at least twenty one (21) different volumes/supplements of the O.C.G.A. identified on Exhibit 6 on USB thumb drives via a mail service to multiple entities, Defendant's conduct constitutes infringement of Plaintiff's copyrights and exclusive rights under copyright in violation of one or more of Sections 106, 501-503, and 505 of the Copyright Act, 17 U.S.C. §§ 106, 501-503, 505.

28. Defendant's acts have been and continue to be willful, intentional and purposeful, in violation of Plaintiff's rights.

29. As a direct and proximate result of Defendant's infringement of Plaintiff's copyrights and exclusive rights under copyright, and because there is no adequate remedy at law, Plaintiff is entitled to

injunctive relief. Unless enjoined by the Court, Defendant's conduct will continue to cause severe and irreparable harm to Plaintiff.

30. Plaintiff is entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

Second Claim

Indirect Copyright Infringement in Violation of 17 U.S.C. § 106

31. Paragraphs 1 through 23 above are incorporated by reference as set forth fully herein.

32. By facilitating, encouraging and inducing members of the public to copy, display, distribute, and create derivative works of Plaintiff's Copyrighted Annotations—including, but not limited to each copyrighted work identified on Exhibit 6—on a widespread and continuing basis via Defendant's website(s) and the Internet Archive Website, Defendant has contributorily infringed Plaintiff's copyrights and exclusive rights under copyright in violation of one or more of Sections 106, 501-503, and 505 of the Copyright Act, 17 U.S.C. §§ 106, 501-503, 505.

33. Defendant has actual and constructive knowledge that members of the public have copied and displayed Plaintiff's copyrighted material, and Defendant knowingly encouraged members of the public to do so.

34. Defendant's acts have been and continue to be willful, intentional and purposeful, in violation of Plaintiff's rights.

35. As a direct and proximate result of Defendant's infringement of Plaintiff's copyrights and exclusive rights under copyright, and because there is no

adequate remedy at law, Plaintiff is entitled to injunctive relief. Unless enjoined by the Court, Defendant's conduct will continue to cause severe and irreparable harm to Plaintiff.

36. Plaintiff is entitled to recover its attorneys' fees and costs pursuant to 17 U.S.C. § 505.

WHEREFORE, Plaintiff prays:

1. That this Court enter an order pursuant to 17 U.S.C. § 502 granting permanent injunctive relief enjoining Defendant and all of its representatives, agents, servants, employees, related companies, successors and assigns, and all others in privity or acting in concert with any of them, now or in the future, without seeking the appropriate authorization from Plaintiff, from creating derivative works of, or copying, displaying, or distributing electronic or paper copies of, any of Plaintiff's copyrighted works to anyone, in the manner described above—namely, via the posting on a website or the distribution of a USB thumb drive or otherwise;

2. That this Court enter an order pursuant to 17 U.S.C. § 502 granting permanent injunctive relief enjoining Defendant and all of its representatives, agents, servants, employees, related companies, successors and assigns, and all others in privity or acting in concert with any of them, now or in the future, without seeking the appropriate authorization from Plaintiff, from facilitating or encouraging others to create derivative works of, or copy, display or distribute electronic or paper copies of, any of Plaintiff's copyrighted works to anyone, in the manner described above—namely, via the posting on a website or otherwise;

3. That this Court enter an order pursuant to 17 U.S.C. § 503 for seizure to recover, impound, and destroy all things infringing Plaintiff's copyrighted works that are in the custody or control of Defendant;

4. That this Court award Plaintiff the costs of this action and reasonable attorneys' fees and expenses pursuant to 17 U.S.C. § 505; and

5. That this Court grant such other and further relief as it deems just and proper.

Respectfully submitted, this 8th day of October, 2015.

[Signature block omitted]

APPENDIX G

1-1-6. Effect of adoption of Code upon terms of office and rights of officials or employees.

(a) The adoption of this Code shall not affect the term of office or the right to hold office of any person who is in office on November 1, 1982, unless otherwise expressly provided or unless such office is abolished by the adoption of this Code.

(b) The adoption of this Code shall not affect the compensation, expenses, per diem, allowances, retirement, or other rights of any official or employee of the state or any county, municipal corporation, school system, political subdivision, authority, or other governmental entity within this state, unless otherwise provided in this Code.

1-1-7. Notes and catchlines of Code sections not part of law.

Unless otherwise provided in this Code, the descriptive headings or catchlines immediately preceding or within the text of the individual Code sections of this Code, except the Code section numbers included in the headings or catchlines immediately preceding the text of the Code sections, and title and chapter analyses do not constitute part of the law and shall in no manner limit or expand the construction of any Code section. All historical citations, title and chapter analyses, and notes set out in this Code are given for the purpose of convenient reference and do not constitute part of the law. (Ga. L. 1982, p. 3, § 1.)

Cross references. — Section captions in Title 11 as constituting part of that title, § 11-1-109.

JUDICIAL DECISIONS

Cited in *Hogan v. State*, 178 Ca. App. 534, MS S.E.28 770 (1986); *Brown v. Earp*, 261 Ga. 522, 407 S.E.2d 737 (1991).

1-1-8. References to state law or this Code.

(a) Unless otherwise indicated in the context, references in this Code to titles, chapters, articles, parts, subparts, or Code sections shall mean titles, chapters, articles, parts, subparts, or Code sections of this Code.

(b) Unless there is an expressed intention to the contrary, any reference in this Code or in any law of this state, to another provision of this Code or law of this state shall mean and be construed to refer to such other provision or law as it now or hereafter exists.

(c) Any reference in any local or special law of this state to any Act or resolution of the General Assembly or to any title, chapter, section, or other portion of any prior code of this state shall be construed to be a reference to the appropriate title, chapter, article, part, subpart, Code section, subsection, paragraph, subparagraph, division, or subdivision of the Official Code of Georgia Annotated.

(d) Unless otherwise indicated by the context in which it is used, any citation in any public or private document, writing, or other instrument to a law of the State of Georgia which has been codified in the Official Code of Georgia Annotated shall be construed to be a reference to such law as contained in the Official Code of Georgia Annotated.

(e) Any reference in any Act of the General Assembly or in any other public or private document, writing, or other instrument to “O.C.G.A.” shall mean

and refer to the Official Code of Georgia Annotated published under authority of the State of Georgia. The Official Code of Georgia Annotated published under authority of the State of Georgia may be cited or referred to as "O.C.G.A." (Ga. L. 1981, Ex. Sess., p. 8, § 6; Ga. L. 1982, p. 3, § 1; Ga. L. 1983, p. 3, § 2.)

1-1-9. Effective date of Code.

This Code shall become effective on November 1, 1982.

JUDICIAL DECISIONS

Editor's notes. — Some of the decisions cited below [were] decided under former Code 1863 § 2.

Driving while license revoked under former Code provision. — Where a driver was declared a habitual violator by the Department of Public Safety under the provisions of former Code 1933, § 68B-308(a), then was convicted for operating a motor vehicle while his license was still revoked pursuant to that action, after the Official Code of Georgia Annotated became effective on November 1, 1982, the revocation of the driver's license was effective "under this Code section" within the meaning of § 40-5-58(c), and the driver can be sentenced to a five-year confinement pursuant to that section. *Ketchum v. State*, 167 Ga. App. 858, 307 S.E.2d 742 (1983).

Effect of adopting the Code was to enact into one statute all of the sections of the Code. *Barnes v. Carter*, 120 Ga. 895, 48 S.E. 587 (1904); *Atkinson v. Swords*, 11 Ga. App 167, 74 S.E. 1093 (1912). See also *Central of Ga. Ry. v. State*, 104 Ga. 831, 31 S.E. 531, 42 L.R.A. 518 (1898); *Thornton v. State*, 5 Ga. App 397, 63 S.E. 301 (1908).

Adoption, not the compilation, is the legislative Act. *Western & A.R.R. v. Young*, 83 Ga. 512, 10 S.E. 197 (1889).

Errors were not adopted. *City of Atlanta v. Gate City Gas Light Co.*, 71 Ga. 106 (1883); *Bailey v. McAlpin*, 122 Ga. 616, 50 S.E. 388 (1905).

If Act embodied in Code, title immaterial. — If an Act has been embodied in the Code and becomes a part of the law of this state upon the adoption of the Code, the contents of the title of the original Act are immaterial. *Huff v. Markham*, 70 Ga. 284 (1883); *Central of Ga. Ry. v. State*, 104 Ga. 831, 31 S.E. 531, 42 L.R.A. 518 (1898); *Kennedy v. Meara*, 127 Ga. 68, 56 S.E. 243, 9 Ann. Cas. 396 (1906).

Rulings on statute applicable to Code. — Rulings are all as applicable to the Code as to the statute on which they were made, for the Code is not substantially different from the statute. *Wall v. Jones*, 62 Ga. 725 (1879).

Where provision of the Code treats the entire subject matter, what is omitted is repealed. *Shumate v. Williams*, 34 Ga. 245 (1866); *Georgia R.R. & Banking Co. v. Wynn*, 42 Ga. 331 (1871); *Miller v. Southwestern R.R.*, 55 Ga. 143 (1875).

APPENDIX H

Carl Malamud, Public Printer

An open source Presidential appointment campaign

It was 1991, in the early days of the Internet. Carl Malamud was thirty-two years old, and deeply embedded in a community of computer engineers and visionaries shaping the world's nascent online architecture as it was being built atop phone lines and in parallel with other global networks.

Many of the technical standards governing those telecommunication systems were laid out in a 20,000-page document known as the Blue Book, covering such communications basics as modems, faxes, and packet switching. The standards were maintained and shepherded by the International Telecommunication Union, a Geneva-based intergovernmental agency. If you were an American engineer, student, inventor, or amateur who wanted a copy, you could buy it for about a dollar a page.

To Malamud and many others, this highly unsatisfactory state of affairs represented a real barrier to innovation and transparency. So Malamud told Tony Rutkowski, a sympathetic ITU official, that he was prepared to scan the Blue Book and put it online, freely accessible to all by anonymous FTP. It was a threat to commit "standards terrorism," as Malamud later put it (<http://museum.media.org/eti/>); faced with it, the ITU agreed to hand over the standards on nine-track magnetic tape to Malamud for a three-month free download trial.

Soon, the National Science Foundation, whose network was then the backbone of much of the Internet's traffic, complained to Malamud that Blue Book downloads from his server and its mirrors were stressing NSF bandwidth. Given this flood of requests, the ITU's head, under internal pressure, sent Malamud a letter asking him to take the standards down.

"It was pro-forma, and everybody knew it," remembers Rutkowski. "The site had been replicated in a dozen places all over the world and it had been copied thousands of times." Once free, there was no stopping the data.

"It just convinced me of two things," Malamud says, looking back. "One, the power of open standards and why that's so important to society, but also the power of putting large document archives online. Aggressively."

And so, on and off for the last eighteen years, Malamud has been involved in or led a spate of impish efforts to pry public domain information—like building codes, law books, and court records—out of hidebound government entities. Now, via a Web-focused viral campaign, he's unabashedly asking President Obama to make him the nation's twenty-sixth Public Printer and put him in charge of one such very large government entity, the Government Printing Office.

The campaign, such as it is, is centered around Malamud's lovingly named YesWeScan.org (<http://www.yeswescan.org/>), where he lays out his platform and collects endorsements. At first blush it doesn't look so different from any political campaign site, except that, in the end, it's targeted at a single voter. "The best I can do is make my case," says Malamud. "This is up to a fickle selectorate, if you will."

“I have never in my life been asked to endorse a candidate for appointed office,” says OMB Watch executive director Gary Bass, a longtime fixture in Washington’s transparency and good government communities, who is supporting Malamud’s effort. “That’s not the way it’s usually done.”

But who said Malamud was very concerned about the way things are usually done? In 1993, in an early domestic example of what *The Atlantic*’s James Fallows once described (http://jamesfallows.theatlantic.com/archives/2007/03/another_win_for_earl_malamud_o.php) as his “guerrilla/jiu-jitsu approach,” Malamud was part of a team that coaxed vital data out of the Securities and Exchange Commission. The group then hosted the information on its own computer, upon which thousands of users—regulators, financiers, investors—came to depend.

And then the team put a notice on the portal, warning that the site—and visitors’ easy, free, access to data—would disappear in sixty days. Users were invited to click to learn more about the situation, and to contact the SEC.

“And people clicked,” says Malamud. The SEC brought the system under its wing. The database, known as EDGAR, runs to this day, and remains one of the most user-friendly online government databases.

In just the last two years, Malamud, as the sole staffer of Public.Resource.Org (<http://public.resource.org/>), a 501c3 nonprofit based in Sebastopol, California, has posted over 80 million pages of legal documents on his Web site, many of them federal appeals court decisions. He’s also freed (<http://public.resource.org/justice.gov/index.html>) from private control

the only remaining copy of a massive Navy-created database of legal decisions, placed (<http://bulk.resource.org/codes.gov/>) building codes from all fifty states online, and convinced (<http://public.resource.org/oregon.gov/index.html>) the Oregon legislature to cease claiming copyright over the state's laws. It's all been done by pointing out that documents created at public expense are, under U.S. law, considered the property of the public.

"Ultimately my goal has always been policy change, and that's something that some people don't get. They think that this is all about shaming the government, and it's not," says Malamud. "Wanting to run GPO is the ultimate in policy change, because then I'm not telling GPO how to do it right, I've actually got the ability to do it right."

You may never have heard of it, but the GPO does a lot. They administer the Federal Depository Library Program, manufacture the nation's passports, host a slew of online databases, and run a 1.5 million square foot plant in downtown Washington that prints the Congressional Record and the Federal Register, among other documents.

Malamud wants it to do more. He has a broad agenda for the GPO, which he briefly lays out in a seven point platform on YesWeScan.org. (Points three and five are both "Jobs," perhaps in a concession to the times.) His position papers—repurposed from earlier submissions to the Obama transition team—lay out an agenda spanning the ambitious and the obvious. Why not create an art-book quality "Library of the U.S.A." whose writers, editors, and printers could count towards the administration's job creation promises? What if the GPO enabled streaming video for all

agency hearing rooms? Why not post 55,000 government produced (and therefore copyright free) archival films and photographs in the next year? What if the full collections of the National Archives were digitized? Why not design a more user-friendly online Federal Register, one that's linkable, easier to read, and cross-referenced with hyperlinks? Why not make the GPO a leader and a nexus in efforts to make bulk data widely available?

While Malamud has plans for the agency, he's neither a former congressional staffer, major political donor, or presidential buddy, nor has he held a senior government position. So how does Malamud think he might get the appointment?

Malamud points to another government outsider. Enter Augustus E. Giegengack, Franklin Roosevelt's colorful Public Printer.

The New Yorker described Giegengack, in a magnificent three-part 1943 profile by Geoffrey Hellman, as "a connoisseur of girls, beer, and anecdote." He worked in or managed a series of newspaper and commercial printing plants before finding himself in Europe as an army sergeant in the First World War, where he won the job of running *Stars and Stripes's* Paris-based press. Fifteen years later, at the dawn of a new administration, he waged a successful campaign to become Public Printer.

The YesWeScan.org website sets Carl as Gus 2.0, if you will, down to balancing Malamud's Shepard Fairey-style "SCAN" poster with a charcoal cartoon portrait cribbed from Gus's *New Yorker* profile. And Malamud is relying on Giegengack's by-the-bootstraps tale to power his way into the GPO. Here's how he told the story in an online interview

(<http://cachefly.oreilly.com/broadcast/2009/02/carl-malamud-128kbps.mp3>), shortly after launching his campaign:

He was what you would call a regular apron man. A real working printer. Blue collar. When FDR was elected, Augustus was a New York resident and he was really inspired and he wanted to become Public Printer of the United States. But he didn't know FDR. So he went and spoke at a couple of Rotary clubs and asked everybody to send him endorsements and they all sent him these letters of endorsements, and he bound them up and sent them to FDR. He knew a guy who worked in the White House who knew somebody who knew somebody, and they sent it in. And FDR looked over the book and said, "Well, this is our man."

What Malamud's retelling neglects to mention is that the guy who took the bound letters, the guy "who knew somebody who knew somebody," was James Farley, FDR's campaign manager; after the 1932 election, the president installed him as Postmaster General and chair of the Democratic National Committee. Giegengack got to know Farley by joining his Long Island bedroom community's Democratic local, and then engineering a major fundraising dinner in Farley's honor.

"He's a totally different kind of person," Malamud admits. "But I was inspired by the story." Still, he points to his relationship with John Podesta, who led the Obama transition team, and has his fingers in many Washington pots.

The two met in the summer of 1993, when the Clinton White House contacted Malamud, then running an Internet radio broadcast from a few blocks away at the

National Press Club, for assistance in setting up a infrared [sic] link for an online demonstration. (“They asked whether I could see the White House lawn from the press building, and we went up to the roof, and we could,” remembers Malamud.) He later served as the Chief Technology Officer of Podesta’s Center for American Progress, where he mixed policy work with upgrading and overseeing the nonprofit’s computer systems.

Alas, when *The New York Times* recently asked (<http://www.nytimes.com/2009/02/13/us/13records.html>) Podesta about Malamud’s efforts to earn an appointment, they got a non-committal “He would certainly shake things up.”

There’s another big difference between Malamud and Giegengack. Giegengack was a press and ink printer—he’d managed several print operations with staffs numbering into the hundreds; by the time of his appointment, he’d held the presidencies of the International Association of Printing House Craftsmen and the New York State Typographers Association.

In fact, 44 USC Sec. 301 explicitly says that the Public Printer “must be a practical printer and versed in the art of bookbinding.”

But as Malamud points out, like many an ambassador whose diplomatic qualifications stop at having a well-stamped passport, the requirement has often been ignored or lightly enforced.

“I’m doing a positive campaign, but go look at the current Public Printer’s resume, and look at how many years he spent as a congressional aide and in office, and I think you’ll find—he designed menus in high school. That’s what he did,” says Malamud.

In any case, Malamud is ready to tick off his qualifications.

“I typeset all eight of my books. I worked in newsrooms, I have run Linotypes. Actually my first book, I typeset running troff (<http://en.wikipedia.org/wiki/Troff>) on a Windows 3.1 machine and hooking it up directly to a film based type setter,” said Malamud. “I created the first radio station (<http://museum.media.org/radio/>) on the Internet. I think that’s skilled in the publishing arts and, as we know, that language is more general than simply printing.

“Most importantly, when it comes to publishing government information, I published in 2008 32.4 million pages, and so far in 2009 I’ve published 50 million pages. So I think by the definition of printing today, I definitely am skilled.

“And I would hire a very skilled deputy public printer who really understood production printing. I’m no dummy.”

Malamud is working hard on rallying a posse to support his bid.

He’s asking the public (and potential endorsees) to vet him, and, on his Web site offers a handy timeline (<http://public.resource.org/timeline/>) of his writings, press clips, and other documents that might illuminate his life (in 1986, he spent a year at Georgetown Law netting (http://public.resource.org/archive/1986_07_ll_george.pdf) two B-pluses and an A-minus). He’s held a Twitter rally, where, shortly before doling out a thirteen-part speech (<http://legalresearch-plus.com/2009/03/09/twitter-rally-transcript-yewescan/>) in 140 characters or less, he recommended attendees stream a Marine band performance

(<http://www.archive.org/details/PatrioticMedleyFeaturingTheMilitaryBands>) of Fanfare for the Common Man, among other tunes available from the Library of Congress's public domain collection.

And he's collecting endorsements from the lights of the technology focused transparency movement, like Stanford law professor Larry Lessig, and Ellen Miller of the Sunlight Foundation, which supports CJR's transparency reporting. Those will be compiled, along with about a thousand other endorsements that Malamud has collected—tweets, blog posts, e-mails, and maybe even Facebook campaign friends—into Giegengack style books. They'll be available for public download, and he plans to FedEx them to the White House personnel director, and to give copies to people he knows who work for or are close to the president, including Podesta.

"If they like the book, maybe they will shuttle it over to someplace that matters," says Malamud. "There is at least a possibility that the people appointing this position might think it's time for a change."

Malamud says he won't stop his campaign until he or someone else is appointed public printer—and he admits the latter scenario is "highly likely." Even if he doesn't get the job, he sees reasons to be pleased with the campaign.

"We've had a couple of very successful outcomes so far. A good five, ten thousand people, maybe much more, now know what the Government Printing Office is and what it does. There's a thousand people who care enough about this to want to influence this agency. I think that's really key," says Malamud. "It's been a valuable exercise if nothing else."

“I want the job and I’m willing to be patient. If they want to come back in three years, I’ll probably still do it then,” he says. “And I’ll continue to do GPO-like work anyway.”

APPENDIX I





YES WE SCAN

SUPPORT THE 2014 SUMMER OF CODE!

Help us raise funds to scan the Official Codes of our Official States with your tax-deductible contribution!

For 2014, we are proud to have selected the great states of Georgia, Idaho, and Mississippi. As a special bonus, we have all the Official Codes for the District of Columbia dating back to World War II and would like to scan and post those as well.

This summer, give the tax-deductible gift of law! We've established 4 separate Indiegogo campaigns, one for each of our specially selected jurisdictions.

	D.C.	GEORGIA	IDAHO	MISSISSIPPI
				
Minimum Amount Needed:	\$3,000	\$3,000	\$3,000	\$3,000
Amount We Can Put To Use:	\$12,000	\$12,000	\$12,000	\$12,000
Amount Raised So Far:	\$3,075	\$3,035	\$3,775	\$3,885
CLICK To Go To INDIEGOGO!	GoGo D.C.!	GoGo GEORGIA!	GoGo IDAHO!	GoGo MISSISSIPPI!

Your tax-deductible contribution goes to Public.Resource.Org, a 501(c)(3) certified non-profit. Our complete due diligence information is on-line and we maintain a GuideStar Gold Seal of Excellence for nonprofit transparency and accountability. You may also donate directly to us via PayPal.

* * *

PROCLAMATION OF PROMULGATION
» ATTENTION! YOUR RESPONSE MUST BE
RECEIVED BY MAY 1, 2014! «

- Mr. V. David Zvenyach, General Counsel of the District of Columbia
- The Honorable Joshua McKoon, Chairman of the Georgia Code Revision Commission
- The Honorable Ben Ysura, Secretary of State of the State of Idaho, and the Idaho Code Commission
- The Honorable Jim Hood, Attorney General of the State of Mississippi
- Mr. Bubba Neely and Mr. Ronny Frith, Co-Counsel, Joint Legislative Code Committee of Mississippi
- Mr. Mike Walsh, Chief Executive Officer, LexisNexis
- Mr. Ian McDougall, Executive Vice President & General Counsel, LexisNexis
- Mr. Anders Ganten, Senior Director of Government Content Acquisition, LexisNexis

WHEREAS, the District of Columbia Official Code is “the only version of the District of Columbia Code that is reviewed and approved by the government of the District of Columbia” and is considered the definitive and authoritative statement of the law of the District of Columbia; and

WHEREAS, the Official Code of Georgia Annotated is the “Official version of the Georgia statutes, including guidance from the Georgia Code

Commission” and is considered the definitive and authoritative statement of the law of the State of Georgia; and

WHEREAS, the Idaho Code is “the only official source in Idaho for primary law” and is considered the definitive and authoritative statement of the law of the State of Idaho; and

WHEREAS, the Mississippi Code of 1972 Annotated is published by the Mississippi Joint Legislative Committee on Compilation, Revision, and Publication of Legislation which “maintains careful editorial control over the publication of the official code” and is considered the only official “correct statement of the law” of the State of Mississippi; and

WHEREAS, Public.Resource.Org has posted on the global Internet computer network all four of these Official Codes for the purpose of providing the citizenry the information by which they may inform themselves of their rights and obligations under the law; and

WHEREAS, the freedom to read, know, and speak the law is essential to our democracy, and is a fundamental underpinning of the doctrines of the rule of law, equal protection, due process, and access to justice; therefore

BE IT RESOLVED, this promulgation will be continued and greatly expanded during the 2014 Summer of Code with the aim of providing accurate, up-to-date, and comprehensive access to the Official Codes through the mechanisms of crowdsourcing the funding of scanning of the codes, by facilitating the gatherings of developers across the nation to make the codes more useful, and through the mass distribution throughout

the named jurisdictions of free thumb drives containing copies of the codes.

NOTICE IS HEREBY GIVEN that any that wish to object to these constitutionally protected activities should state their objections before May 1, 2014.

* * *

ABOUT THE 2014 SUMMER OF CODE

***Caveat Coders!** The 2014 Summer of Code is not affiliated with, endorsed by, or in any way related to any other “summer of code” efforts, including such wonderful programs as those that allow students to spend the summer working on open source projects with a worthy mentor. Thank you for your understanding.*

[Sidebar with image omitted.]

The 2014 Summer of Code will use the mechanism of “crowd funding” as a way to fund the scanning of the official codes and to make them broadly available throughout the named jurisdictions. This effort kicks off on May 1, a day known throughout the world as “Law Day.” ***We are presently in the comment period. Check back here on May 1 for specifics on the crowdfunding effort.***

Here’s how it’s going to work:

- Your tax-deductible contribution to Public.Resource.Org will be earmarked for a particular state (Georgia, Idaho , or Mississippi) or the District of Columbia, and will be used to pay for the scanning of the official code at a nonprofit, open source scanning center such as the one operated by the Internet Archive.
- If you contribute at higher levels, we will send a *Freedom Drive* (a USB flash drive) containing the

contents of the Official Code and public safety codes (such as the building, fire, electrical, plumbing, fuel & gas, mechanical, and energy codes) to a library, school, or other public endeavor in that state.

- You—the patriotic and generous donor—will be given the title of Patron of the Law and we will send you a handsome Certificate of Promulgation (suitable for framing!) along with a picture of the worthy library, school, or other public endeavor to which we sent the *Freedom Drive*.
- Any excess funds raised will be used to create XML-compatible data in the open source States Decoded format and in other ways that add value to Official Codes to make them more useful.

About the Comment Period: Public.Resource.Org sent the *Proclamation of Promulgation* to the Official Code Officials of Georgia, Idaho, Mississippi, and the District of Columbia, as well as their vendor, on March 15, 2014 with a 45-day comment period. We believe that the Official Code Officials are the ones that should be making these codes available—without restrictions on use—because the law belongs to the people.

It is our sincere and express hope that the Official Code Officials will consult with the citizens of their jurisdictions and then take steps so that they would be the ones promulgating the official codes, in an appropriate manner befitting edicts of government. Only if no such action occurs will the Summer of Code begin, an effort to make the law available for all to read, know, and speak so that we may be informed of our rights and our obligations.

Public.Resource.Org sent 19 hardcopies of the *Proclamation of Promulgation* to the Official Code Officials, their vendor, selected officials of the federal government, and members of the mainstream media. You may view the snailmail version (5.1 mbytes) of the *Proclamation of Promulgation* and pictures of the public printing production process in the Codes of the World photoset. Enjoy!

APPENDIX J

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CODE REVISION)	
COMMISSION on Behalf of)	
and For the Benefit of the)	
GENERAL ASSEMBLY OF)	
GEORGIA, and the STATE)	
OF GEORGIA,	)	CIVIL ACTION
Plaintiff,	)	NO.
	)	1:15-cv-2594-MHC
v.)	
)	
PUBLIC.RESOURCE.ORG,)	
INC.)	
Defendant.)	

**ANSWER TO AMENDED COMPLAINT AND
COUNTERCLAIM OF DEFENDANT
PUBLIC.RESOURCE.ORG, INC.**

Defendant Public.Resource.Org, Inc. (“Public Resource”) responds to the Amended Complaint as follows:

NATURE OF THIS ACTION

1. Public Resource admits that this action arises from its copying and distribution of the Official Code of Georgia Annotated (“O.C.G.A.”) through the distribution of thumb drives containing copies of the O.C.G.A. and the posting of the O.C.G.A. on two websites. Public Resource denies that the Plaintiff holds any valid copyright in the O.C.G.A., including its annotations, and therefore denies that Public Resource—

or anyone—requires authorization to copy it. Public Resource admits that it has facilitated, enabled, encouraged and induced others to view, download, print, copy and distribute the O.C.G.A. without limitation or compensation. Public Resource admits that it has also created works containing the O.C.G.A. All other allegations of paragraph 1 are denied.

2. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the first sentence in paragraph 2, and therefore denies them. Public Resource admits that the annotations to the O.C.G.A. include synopses of cases that interpret the O.C.G.A., summaries of Opinions of the Attorney General of Georgia and summaries of research references related to the O.C.G.A. Public Resource denies the remaining allegations of paragraph 2.

JURISDICTION AND VENUE

3. Public Resource admits the allegations of paragraph 3.

4. Public Resource admits the allegations of paragraph 4.

5. Public Resource admits that this Court has personal jurisdiction over it. Public Resource admits doing the acts alleged in paragraph 5 but denies that Plaintiff owns a valid copyright in the annotations, and further denies that Public Resource has infringed any copyright held by the State of Georgia.

6. Public Resource admits that venue is proper in this Court pursuant to 28 U.S.C. §§ 1391 and 1400.

PARTIES

7. Public Resource admits that the Georgia General Assembly enacts laws on behalf of the State of

Georgia. As to the remainder of the allegations in paragraph 7, Public Resource lacks knowledge or information sufficient to form a belief as to their truth or falsity, and therefore denies them.

8. Public Resource admits the allegation in paragraph 8.

**ALLEGATIONS COMMON TO ALL CLAIMS
FOR RELIEF**

**Plaintiffs and Their Infringed Copyrighted
Works**

9. Public Resource admits the allegations in the first two sentences of paragraph 9. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the remaining allegations in paragraph 9 and therefore denies them.

10. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 10 and therefore denies them.

11. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 11 and therefore denies them.

12. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 and therefore denies them.

13. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by copyright or otherwise owned by the State of Georgia, and thus denies that Plaintiff's "Copyrighted Annotations" is an accurate description of what was copied and distributed. Public Resource lacks

knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the second sentence of paragraph 13 and therefore denies them. Public Resource denies the allegations in the second, third and sixth sentence of paragraph 13, all of which are legal conclusions to which no response is legally required. Public Resource lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in the fifth sentence of paragraph 13 and therefore denies them.

14. Public Resource admits that Plaintiff does not assert copyright in the O.C.G.A. statutory text itself because the laws of Georgia are and should be free to the public. Public Resource lacks sufficient information to admit or deny the remaining allegations in paragraph 14 and therefore denies them.

**Defendant's Copying and Distribution of
Plaintiffs' Copyrighted Annotations**

15. Public Resource admits it has copied at least 140 different volumes/supplements containing the O.C.G.A. and that each of these works has been posted by it on at least one of its websites and is available to the public for downloading, viewing and printing, and that the electronic nature of these documents and their availability on the Internet, magnifies the ease and speed with which they may be copied and distributed to others. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that "O.C.G.A. Copyrighted Annotations" is an accurate description of what was copied and distributed.

16. Public Resource admits that it has copied the O.C.G.A. prior to posting it on its website. Public

Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource denies the remaining allegations in paragraph 16.

17. Public Resource admits that it has distributed/uploaded the entire O.C.G.A. to the website www.archive.org (“Internet Archive website”). Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource admits that it has labeled all the works with the “CCO 1.0 Universal license” which indicates that members of the public may “copy, modify, distribute and perform the work.” Public Resource admits that individual volumes of the O.C.G.A. have been viewed or downloaded on the Internet Archive website thousands of times. Public Resource denies the remaining allegations in paragraph 17.

18. Public Resource admits that it has uploaded 52 volumes of the 2015 edition of the O.C.G.A. on at least one of its websites and is available to members of the public for downloading, viewing, and printing. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “2015 O.C.G.A. Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource denies the remaining allegations in paragraph 18.

19. Public Resource admits that in January of 2014, Carl Malamud, its founder and president, testified before the U.S. House of Representatives, House Judiciary Committee, to advance an amendment to the U.S. Copyright Act making state and local official legal documents uncopyrightable for reasons of public policy. Public Resource admits that no such amendment has been adopted by Congress. Public Resource admits that Carl Malamud has not been nominated for the office of United States Public Printer. Public Resource denies the remaining allegations of paragraph 19.

20. Public Resource admits that Carl Malamud, its founder and president, made the statements attributed to him in Exhibit 2, an article published in Columbia Journalism Review. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource denies the remaining allegations of paragraph 20.

21. Public Resource admits to the copying and distribution of the entire O.C.G.A. on its website at <https://law.resource.org>. Public Resource vehemently denies the bizarre, defamatory and gratuitous allegation that it has a “strategy of mass publication terrorism.” Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource admits that it posted on its website and delivered to Plaintiff a Proclamation of Promulgation stating that its deliberate copying and distribution of the O.C.G.A. would be greatly expanded

in 2014. Public Resource admits that it instituted a public funding campaign on the website www.indiegogo.com to support its continued copying and distribution of the O.C.G.A. and raised approximately \$3000.00. Public Resource denies the remaining allegations of paragraph 21.

22. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. published by the Georgia Code Revision Commission are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource otherwise admits the remaining allegations in paragraph 22.

23. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource otherwise admits the remaining allegations in paragraph 23.

24. Public Resource denies that judicial summaries, notes and other components of the O.C.G.A. are protected by a copyright owned by the State of Georgia, and thus denies that “Plaintiff’s Copyrighted Annotations” is an accurate description of what was copied and distributed. Public Resource otherwise admits the remaining allegations in paragraph 24.

CLAIMS FOR RELIEF

FIRST CLAIM

25. Public Resource’s responses to paragraphs 1 through 24 above are incorporated by reference as if set forth fully in this paragraph.

26. Public Resource denies the allegations in paragraph 26.

27. Public Resource denies the allegations in paragraph 27.

28. Public Resource denies the allegations in paragraph 28.

29. Public Resource denies the allegations in paragraph 29.

30. Public Resource denies the allegations in paragraph 30.

SECOND CLAIM

31. Public Resources [sic] responses to paragraphs 1 through 24 above are incorporated by reference as if set forth fully in this paragraph.

32. Public Resource denies the allegations in paragraph 32.

33. Public Resource denies the allegations in paragraph 33.

34. Public Resource denies the allegations in paragraph 34.

35. Public Resource denies the allegations in paragraph 35.

36. Public Resource denies the allegations in paragraph 36.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The complaint and each cause of action alleged fails to allege facts sufficient to state a cause of action.

SECOND AFFIRMATIVE DEFENSE

Plaintiff has no copyrights in works that government entities have enacted as law. The O.C.G.A. including annotations, regardless of how they were authored, is the law of Georgia, and the law should be free to the public. As such, the O.C.G.A. is not copyrightable subject matter and is in the public domain.

THIRD AFFIRMATIVE DEFENSE

Lack of ownership of the asserted copyrights bars Plaintiff's copyright infringement claims.

FOURTH AFFIRMATIVE DEFENSE

The fair use doctrine bars Plaintiff's claims.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's failure obtain [sic] a registration from the U.S. Copyright Office for the allegedly infringed material prior to filing suit bars Plaintiff's claims.

SIXTH AFFIRMATIVE DEFENSE

Failure to comply with formalities required under the Copyright Act bars Plaintiff's claims.

SEVENTH AFFIRMATIVE DEFENSE

The doctrine of copyright misuse bars Plaintiff's claims.

EIGHTH AFFIRMATIVE DEFENSE

The equitable doctrine of waiver bars Plaintiff's claims.

NINTH AFFIRMATIVE DEFENSE

Lack of irreparable injury bars Plaintiff's demand for an injunction.

TENTH AFFIRMATIVE DEFENSE

An injunction would be inimical to the public interest, and thus the public interest bars Plaintiff's demand for an injunction.

**COUNTERCLAIM FOR DECLARATORY
RELIEF**

Public Resource.Org, Inc. (“Public Resource”) alleges the following against Plaintiff-Counterclaim Defendant Code Revision Commission:

NATURE OF THE ACTION

1. Public Resource seeks a declaratory judgment that its copying and distributing the text of the Official Code of Georgia Annotated (“O.C.G.A.”) do not infringe any copyright because laws enacted by government entities such as the State of Georgia Legislature are not copyrightable subject matter and are in the public domain.

THE PARTIES

2. Public Resource is a California nonprofit corporation with its principal place of business at 1005 Gravenstein Highway North, Sebastopol, California 95472. Its mission is to improve public access to government records and the law.

3. As part of its mission to protect and promote the right of the public to know and speak the laws that govern it, Public Resource has undertaken to make certain edicts of government widely available to the public on a noncommercial basis.

4. Counterclaim-defendant Georgia Code Revision Commission purports to act on behalf of and for the benefit of the General Assembly of Georgia and the State of Georgia.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the counterclaim pursuant to 17 U.S.C. § 101 et seq. (the Copyright Act); 28 U.S.C. § 1331 (federal

question); 28 U.S.C. § 1338(a) (exclusive federal copyright jurisdiction); and 28 U.S.C. § 2201 (the Declaratory Judgment Act).

6. This Court has personal jurisdiction over the Code Revision Commission because the Commission resides, may be found in, or transacts business in this District.

7. This Court also has personal jurisdiction over the Code Revision Commission because it submitted to jurisdiction for purposes of this Counterclaim by filing the underlying suit against Public Resource in this District.

8. To the extent that Code Revision Commission had sovereign immunity against suit as an arm of the State of Georgia, it waived such immunity by filing the underlying suit against Public Resource in this District.

9. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because the Commission may be found in this District and transacts business in this District and because a substantial part of the events giving rise to this counterclaim, including the filing of the underlying lawsuit, occurred in this District.

FACTS

10. Carl Malamud founded Public Resource in 2007 and serves as its president. While the Code Revision Commission falsely (and offensively) alleges that he practices a “strategy of terrorism,” Mr. Malamud is recognized by government officials and others for his advocacy, over thirty years, for public access to sources of law and for privacy rights. Among his notable successes was helping to persuade the Securities and

Exchange Commission to make EDGAR, its database of corporate filings, available to the public free of charge.

11. In 1992, Mr. Malamud played a leadership role in the deliberations of the Internet Engineering Task Force (“IETF”) on questions of governance of the Internet Standards process. In 2004, he served as a consultant to the IETF and the Internet Architecture Board on questions of strategic direction and governance. He is the author or co-author of six Requests for Comments (“RFCs”) and several Internet-Drafts, technical memoranda on Internet architecture published by the IETF. The IETF has designated some of his RFCs as Internet Standards and two more as Proposed Standards.

12. Mr. Malamud has also served as the Founding Chairman of the Board of Directors of the Internet Systems Consortium and the Internet Multicasting Service. The non-profit Internet Systems Consortium operates a key piece of Internet infrastructure, the “F” root Domain Name Server and is responsible for producing the open source software “BIND,” which is considered the standard Domain Name Server software. The non-profit Internet Multicasting Service operated the first radio station on the Internet, was responsible for placing the SEC EDGAR and US Patent databases on the Internet for the first time, and ran the Internet 1996 World Exposition, a world’s fair for the Internet which received the endorsement of 12 heads of state including Presidents Clinton and Yeltsin and participation from 70 countries. Mr. Malamud’s book on the Internet 1996 World Exposition was published by MIT Press in 1997 and included a foreword from His Holiness, the Dalai Lama.

13. In a letter dated July 16, 2008, the Judicial Conference of the United States recognized Mr. Malamud's work on the subject of privacy violations in the dockets of the U.S. District Courts. A copy of this letter is attached as Exhibit A and also may be viewed at <https://public.resource.org/scribd/7512576.pdf>. Also in 2008, he advised the Federal Trade Commission and the Office of the Inspector General, U.S. Department of Defense, on the appearance of Social Security Numbers in the Congressional Record and private databases. Also in 2008, he served as an advisor to the Presidential Transition Team on Federal Register issues, an effort that led to fundamental changes in the mechanics of distribution of the Official Journals of Government.

14. In 2009, Carl Malamud was considered by the Office of Presidential Personnel for the position of Public Printer of the United States.

15. On December 16, 2009, Mr. Malamud testified before the U.S. House of Representatives Oversight Committee in a hearing about the strategic direction of the National Archives and Records Administration, the parent entity of the Office of the Federal Register. Mr. Malamud's testimony may be viewed at <http://www.archives.gov/era/acera/pdf/malamud-testimony.pdf>.

16. In 2007 and 2011, Mr. Malamud submitted reports to the Speaker of the U.S. House of Representatives about the accessibility and preservation of video used in Congressional hearings. On January 5, 2011, the Speaker of the House publicly thanked him for those efforts. Speaker Boehner's letter to Mr. Malamud is attached as Exhibit B and also may be viewed at

<https://law.resource.org/rfcs/gov.house.20110105.pdf>.

At Speaker Boehner's request, Mr. Malamud worked with Chairman Darrell Issa of the Committee on Oversight and Government Reform and placed online over 14,000 hours of video from Congressional hearings that had not been previously available. Mr. Malamud also worked with the Committee staff to add closed-captioning to House Oversight hearings, the first time congressional hearings were available for people with hearing impairments.

17. From 2008 to 2015, Public Resource processed over 8 million Form 990 reports of Exempt Organizations it purchased from the Internal Revenue Service and made these reports available on the Internet. Public Resource identified a large number of privacy violations, such as Social Security Numbers, in these forms. Public Resource's effort resulted in a change in the Internal Revenue Manual to allow the IRS to better redact and protect personal information released by the government. Public Resource also successfully brought an action under the Freedom of Information Act to compel release of machine-processable (e-filed) versions of Exempt Organization returns, an effort that led to a 2015 decision by the IRS that this information will be released in bulk starting in 2016. The action was docket 3:13-cv-02789 in the Northern District of California before the Hon. William H. Orrick.

18. On December 12, 2012, Mr. Malamud was appointed as a member of the Administrative Conference of the United States, a federal agency that "promotes improvements in the efficiency, adequacy, and fairness of the procedures by which federal agencies conduct regulatory programs, administer grants and benefits, and perform related governmental functions." Mr. Malamud was a member of the committee that held

hearings and drafted ACUS Recommendation 2011-5, “Incorporation by Reference.” Mr. Malamud also was one of the signatories of a petition to the Office of the Federal Register that led to a rulemaking procedure that was initiated in 78 Federal Register 60784 and Federal Docket OFR-2010-0001. This led to a change in the procedures specified by incorporation by reference in 1 CFR Part 51 in a final rule that was published November 7, 2014, in 79 FR 66267.

19. On January 14, 2014, Mr. Malamud testified before the U.S. House of Representatives Judiciary Committee on the Scope of Copyright Protection and submitted a petition from 115 law professors and librarians that proposed the following amendment to the Copyright Act to reinforce longstanding public policy and judicial opinions making state and local official legal documents uncopyrightable for reasons of public policy:

Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.

20. This language comes directly from Section 206.01, Compendium of Office Practices II, U.S. Copyright Office (1984). It reflects clear and established Supreme Court precedent on the matter in cases such as *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834) and *Banks v. Manchester*, 128 U.S. 244 (1888). The law belongs to the people, who should be free to read, know,

and speak the laws by which they choose to govern themselves.

21. To accomplish its mission, Public Resource acquires copies of government records, including legal decisions, tax filings, statutes and regulations, and posts them online in easily accessible formats that make them more useful to readers, entirely free of charge.

22. Public Resource operates the websites public.resource.org, law.resource.org, house.resource.org, bulk.resource.org, yeswescan.org and others.

23. Public Resource also operates a program that helps the public access over 6,000 U.S. Government-produced videos (such as training and historical films), called FedFlix, which Public Resource originally developed in a joint venture with the National Technical Information Service and subsequently in cooperation with the Archivist of the United States. FedFlix content has been viewed on YouTube.com more than thirty-eight million times, and all the content is also available on the Internet Archive. The YouTube channel may be found at <https://www.youtube.com/user/PublicResourceOrg>.

24. Public Resource reformats some of the laws it posts, in order to make them easier to find, more useful and more accessible to the public.

25. This reformatting includes putting some codes into standard Hypertext Markup Language (HTML), converting graphics into the standard Scalable Vector Graphics (SVG) format, and converting mathematical formulas into the standard Mathematical Markup (MathML) language, all of which are open standards supported by modern web browsers[.]

26. These steps make the codes, including the diagrams and formulae they contain, viewable with many kinds of computer hardware and software, more accessible to people with disabilities, and easier to translate and annotate.

27. Public Resource applies rigorous quality control and proofreading when it reformats codes, including the O.C.G.A. at issue in this case.

28. The growth of the Internet provides a tremendous opportunity for government to inform its citizens in a broad and timely manner about the laws they must follow in carrying out their daily activities. It also allows business enterprises, university professors and students, non-profits and citizens to better organize and use this information.

29. Public Resource maintains an agent, registered with the U.S. Copyright Office, to receive notifications of claims of copyright infringement, pursuant to the Digital Millennium Copyright Act, 17 U.S.C. § 512(c)(2). Public Resource provides contact information for that agent at https://public.resource.org/copyright_policy.html.

30. Public Resource does not sell any copies of the laws to which it provides access or charge money for such access.

31. Like many charities, Public Resource offers for sale items bearing its logo, such as stickers, T-shirts and books by its founder. Total revenue from sales of these products since Public Resource's founding has amounted to less than \$100. Other than sales of such items, all of Public Resource's funding comes from charitable donations. No text or links soliciting donations appear on pages where codes or laws are displayed within Public Resource's websites.

32. The State of Georgia enacts and promulgates the laws of the state through its legislature. The state laws are provided in Code sections. Periodically, the Georgia General Assembly (“Legislature”) revises, modifies and amends its laws through supplemental laws and amendments. Every single bill introduced in the Georgia Legislature begins with the incantation in the form: “An Act ... To amend Article [3] of Chapter [11] of Title [16] of the Official Code of Georgia Annotated.” (Numbering of bill relating to invasions of privacy supplied as an example). <http://www.legis.ga.gov/Legislation/20072008/69691.pdf>

33. The Legislature is assisted by Plaintiff-Counterclaim Defendant in publishing the Georgia state laws. Plaintiff-Counterclaim Defendant does not assert copyright in the O.C.G.A. statutory text because it recognizes that the laws of Georgia are not copyrightable subject matter and should be free to the public.

34. Plaintiff-Counterclaim Defendant, however, claims copyright and asserts copyright in additions to the statutory text in the O.C.G.A., allegedly made by Matthew Bender and Company, a member of the LexisNexis Group (“Lexis/Nexis”), a division of Reed Elsevier Properties, Inc. These include single-paragraph summaries of judicial decisions interpreting sections of the Code, which are derivative works of the judicial decisions themselves, which are not copyrightable subject matter. They also include “notes and other original and creative works added,” allegedly by LexisNexis, “to the Georgia statutory text.” They include summaries of Opinions of the Attorney General of Georgia and summaries of research references related to the O.C.G.A., cross references, Editor’s notes, and Code

Commission Notes. The annotations include notice that “The Official Code publication controls over unofficial compilations” and that “[a]ttorneys who cite unofficial publications ...do so at their peril.” O.C.G.A. Annotations 1-1-1 and 1-1-10 are attached as Exhibits C and D and can also be viewed at line at <https://archive.org/stream/govlaw-gacode20003#page/2/mode/2up>.

35. Plaintiff-Counterclaim Defendant has alleged that the Code Publishing Contract between LexisNexis and the State of Georgia requires that LexisNexis publish on the Internet, free of charge, the statutory text of the O.C.G.A., and that these “free” Code publications are accessible.

36. To access the O.C.G.A. via the website link found on the State of Georgia website, www.legis.ga.gov, one must accept the terms of use for the LexisNexis site that govern use of all areas of LexisNexis, (“LexisNexis Terms of Use”) even though the Georgia site states that the terms and conditions do not apply to the statutory text and numbering. These terms and conditions are complicated and onerous. For example, paragraph 22 of the LexisNexis Terms of Use states “Governing Law and Jurisdiction. The Terms of Use are governed by and construed in accordance with the laws of the State of New York and any action arising out of or relating to these terms shall be filed only in state or federal courts located in New York and you hereby consent to and submit to the personal jurisdiction of such courts for the purpose of litigating any such action.” The LexisNexis Terms of Use also purport to prohibit “public or nonprofit use.” A copy of these terms of use is attached as Exhibit E.

37. The Georgia Code available “free” on the LexisNexis site does not contain the Annotations, such as the Judicial Summaries, Code Revision Commission Notes, and Attorney General Opinions, and therefore, by definition, is not the “Official” Code of Georgia.

38. Until at least May 28, 2014, the notice displayed before users could access the “free” online publication included a banner page that the user had to acknowledge before access was granted. That banner page noted clearly that only the “latest print version of the O.C.G.A. is the authoritative version.” A true copy of this banner page is provided as Exhibit F and can be viewed at: <https://web.archive.org/web/20140528092032/http://www.lexisnexis.com/hottopics/gacode/layout.htm>].

39. A marketing page for the print version of the O.C.G.A. stresses that the print version is the only official version of the Official Code of Georgia Annotated. The word “Official” is emphasized throughout this marketing page, including boldface and underlining. A true copy of this page is provided as Exhibit G and can also be viewed at: <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?catId=prod15710352&prodId=6647>]

40. In addition to onerous terms of use and lack of content, the website which the State of Georgia offers as the only place citizens can and should view the O.C.G.A. on the Internet suffers from numerous technical deficiencies. For example, it is impossible to “bookmark” a section of the code, requiring a user to navigate through each of the volumes, sections and subsections by clicking little boxes before being able to view a relevant paragraph of text. The lack of a bookmark and the terms of use prohibition against copying

means that a citizen cannot readily communicate a section of the code to another citizen. The system also suffers from numerous technical and security errors in the HTML and other underlying code, meaning that the pages will display differently or not at all on different kinds of web browsers. Finally, the site is highly inaccessible to those that are visually impaired.

COUNT I

[Declaratory Relief Pursuant to 28 U.S.C. § 2201, et seq. (Declaratory Judgment Act) and the Copyright Act (U.S.C. Title 17)].

41. Public Resource incorporates by reference the allegations in each of the preceding paragraphs as if fully set forth in this paragraph.

42. The people are the authors of the law, regardless of who first pens the words that later become law through enactment by a legislature or public agency.

43. The principle that the law must be public and available to citizens to read and speak has its roots in the concept of the rule of law itself.

44. The legal principle that ignorance of the law is no defense presumes that all citizens have access to the law.

45. The First, Fifth and Fourteenth Amendments to the Constitution require that all people have the power to read, speak and disseminate the law.

46. Laws and regulations are in the public domain and not subject to copyright.

47. Law and regulations do not lose their public domain status and become subject to copyright because they were drafted by a private party as “works for hire.”

48. Laws and regulations do not lose their public domain status and become subject to copyright because they incorporate material that private parties have drafted or prepared.

49. There is only one way to express a particular law fully and authoritatively, namely with explicit reference to any matters that the law incorporates into itself.

50. Once the Legislature incorporates material into the official version of the Code, use of that material by the public or private parties is lawful through the doctrine of merger.

51. Public Resource's purpose in using the O.C.G.A. is to facilitate scholarship, criticism and analysis of the Official Code, to inform the public about the laws that govern it, for educational purposes and to encourage public engagement with the law.

52. Upon their incorporation into law, incorporated expressions are factual as statements of the law. Public Resource publishes the O.C.G.A. in its entirety. Scholarship, analysis and other public engagement with the law is not possible without access to the complete Official Code, including summaries of judicial opinions and attorney generals' opinions. Therefore, Public Resource publishes as much of the O.C.G.A. as is necessary to fulfill its purpose.

53. Even if copyright law protected authorship by private parties after it is incorporated into law, which it does not, Public Resource's use of the complete O.C.G.A. is fair use and therefore not copyright infringement.

54. There is a real and actual controversy between Public Resource and the Code Revision Commission

regarding whether Public Resource's copying, publication and reformatting of the O.C.G.A. constitutes infringement of any valid copyright owned by the State of Georgia.

55. The Code Revision Commission is seeking an injunction against Public Resource that would hinder Public Resource's activities in furtherance of its mission to make the law accessible to all.

56. The Georgia legislature regularly enacts amendments of the O.C.G.A., not of unofficial publications, and will likely continue to do so.

57. The Code Revision Commission is likely to assert copyright in the so-called Copyrighted Annotations in future editions of the O.C.G.A. to restrict the public's expression of and distribution of, and access to, those codes. It would then have the power to inhibit public discourse about and public use of the official code.

58. The controversy between Public Resource and the Code Revision Commission is thus real and substantial and demands specific relief through a conclusive judicial decree.

59. Public Resource is entitled to a declaratory judgment that its copying, posting and reformatting of the O.C.G.A., including the annotations, does not infringe any copyright rights owned by the State[] of Georgia.

WHEREFORE, Defendant prays:

1. That the Court denies Plaintiff the relief sought in the Complaint;
2. That the Court adjudge and decree that the State of Georgia has no valid copyright in any

portion of the O.C.G.A. because the O.C.G.A. is in the public domain;

3. That Public Resource's acts of copying, posting and distributing the O.C.G.A. does not infringe, directly or indirectly, any copyright;
4. That Public Resource is entitled to its reasonable attorney fees, costs and expenses in this action;
5. For such other relief as the Court deems just.

[Signature block omitted]

APPENDIX K

COMMITTEE ON RULES OF PRACTICE AND
PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED
STATES
WASHINGTON, D.C. 20544

July 16, 2008

Mr. Carl Malamud
Public.Resource.Org, Inc.
1005 Gravenstein Highway North
Sebastopol, CA 95472

Dear Mr. Malamud:

Thank you for the materials you provided on personal identifiers in appellate opinions. It is enormously helpful to have the benefit of the empirical research that you have done. As you know, the Judicial Conference Rules Committees and the Committee on Court Administration and Case Management have implemented the E-Government Act requirements by developing rules and procedures to protect personal identifiers from being included in court filings, particularly those that are remotely accessible electronically. We are continuing to work to ensure that this implementation is effective and efficient. I hope you will keep us informed about your ongoing work.

I am sending a copy of your materials to Judge Carl Stewart, Chair of the Appellate Rules Committee, as well. Thank you for your commitment to improving the court system.

Very truly yours,

Lee H. Rosenthal

cc: The Hon. Carl Stewart
Peter McCabe, Esq.
John Rabiej, Esq.

APPENDIX L

Congress of the United States
Washington, DC 20515

January 5, 2011

Carl Malamud
President & CEO
Public.Resource.Org, Inc.
1005 Gravenstein Highway North
Sebastopol, CA 95472

Dear Carl:

We're writing today to thank you for your nearly two decades of work to increase the availability of public data, and more recently your efforts to publish proceedings of the House Oversight and Government Reform Committee online in their entirety.

A major pillar of House Republicans' *Pledge to America* is that of reforming Congress and restoring public trust so that we can put power back in the hands of the people. Increasing transparency by making more high-quality government video available and easy-to-find represents a significant step in doing just that. It's our hope that this project is only the beginning of an effort to eventually bring all congressional committee video online.

Thank you again for your continued work. We look forward to working with you and the many other civic-minded technologists that will help this new majority leverage modern tools in making The People's House more open and accessible to all Americans.

Sincerely,

Rep. John A. Boehner
Speaker of the House

Rep. Darrell Issa
Chairman
House Oversight and
Government Reform

APPENDIX M

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CODE REVISION
COMMISSION on behalf of
THE GENERAL ASSEMBLY
OF GEORGIA, and THE
STATE OF GEORGIA,

Plaintiff,

v.

PUBLIC.RESOURCE.ORG,
INC.

Defendant.

CIVIL ACTION
NO.

1:15-cv-02594-MHC

STIPULATION OF FACTS

Plaintiff and Counterclaim-Defendant the Code Revision Commission, on behalf of and for the benefit of the General Assembly of Georgia, and the State of Georgia (“Commission”), and Defendant and Counterclaim-Plaintiff Public.Resource.Org, Inc. (“Public Resource”) stipulate to the following facts:

1. Each Official Code of Georgia Annotated (“O.C.G.A.”) volume and supplement in Exhibit A contains statutory text and non-statutory annotation text.

2. The 2014 and 2015 State of Georgia session laws each state in part:

Annotations; editorial notes; Code Revision Commission notes; research references; notes on law review articles;

opinions of the Attorney General of Georgia; indexes; analyses; title, chapter, article, part, and subpart captions or headings, except as otherwise provided in the Code; catchlines of Code sections or portions thereof, except as otherwise provided in the Code; and rules and regulations of state agencies, departments, boards, commissions, or other entities which are contained in the Official Code of Georgia Annotated are not enacted as statutes by the provisions of this Act.

2014 Ga. Laws 866, § 54; 2015 Ga. Laws 5, § 54.

3. The non-statutory annotation text of each O.C.G.A. volume and supplement in Exhibit A includes summaries of judicial decisions.

4. The summaries of judicial decisions in the non-statutory annotations of each O.C.G.A. volume and supplement in Exhibit A are prepared by Matthew Bender and Company, a member of the LexisNexis Group, a division of Reed Elsevier Properties, Inc. (“LexisNexis”) under contract for the State of Georgia, and are finalized under the direct supervision of and subject to the approval of the Code Revision Commission.

5. The judicial decisions summarized in the judicial decision summaries in each O.C.G.A. volume and supplement in Exhibit A have been selected by LexisNexis to be summarized for inclusion in the O.C.G.A., under the direct supervision and subject to the approval of the Code Revision Commission.

6. The content of the summaries of judicial decisions in each O.C.G.A. volume and supplement in Exhibit A has been selected for inclusion in the O.C.G.A.

7. The summaries of judicial decisions in each O.C.G.A. volume and supplement in Exhibit A have been coordinated with an O.C.G.A. statute (statutory text).

8. The summaries of judicial decisions in each O.C.G.A. volume and supplement in Exhibit A are arranged under the heading “Judicial Decisions” prior to or following an O.C.G.A. statute (statutory text).

9. The summaries of judicial decisions are selected, coordinated and arranged in each O.C.G.A. volume and supplement listed in Exhibit A.

10. The non-statutory annotation text of each O.C.G.A. volume and supplement in Exhibit A includes editor’s notes.

11. Editor’s notes in each O.C.G.A. volume and supplement in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision and subject to the approval of the Code Revision Commission.

12. The editor’s notes in each O.C.G.A. volume and supplement in Exhibit A have been coordinated with an O.C.G.A. statute (statutory text).

13. The editor’s notes in each O.C.G.A. volume and supplement in Exhibit A are arranged after the heading “Editor’s notes” prior to or following an O.C.G.A. statute (statutory text).

14. The editor’s notes are coordinated and arranged in each O.C.G.A. volume and supplement listed in Exhibit A.

15. The preface in each O.C.G.A. volume and supplement in Exhibit A is prepared under contract by LexisNexis for the State of Georgia and under the

direct supervision and subject to the approval of the Code Revision Commission.

16. Each O.C.G.A. volume and supplement in Exhibit A contains a copyright notice in the form of “Copyright © [Year] By State of Georgia All rights reserved.”

17. Each O.C.G.A. volume and supplement in Exhibit A is the subject of a U.S. Copyright Registration as shown in Exhibit A.

18. The non-statutory annotation text of each O.C.G.A. volume and supplement listed in Exhibit A includes summaries of opinions of the Attorney General of Georgia.

19. The summaries of opinions of the Attorney General of Georgia in the non-statutory annotations of each O.C.G.A. volume and supplement listed in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision of and subject to the approval of the Code Revision Commission.

20. The opinions of the attorney general of Georgia referenced in each O.C.G.A. volume and supplement listed in Exhibit A have been selected for inclusion in the O.C.G.A.

21. The opinions of the Attorney General of Georgia referenced in the opinion of the attorney general summaries are selected in each O.C.G.A. volume and supplement listed in Exhibit A.

22. The content of the summaries of opinions of the Attorney General of Georgia in each O.C.G.A. volume and supplement listed in Exhibit A has been selected for inclusion in the O.C.G.A.

23. The summaries of opinions of the Attorney General of Georgia in each O.C.G.A. volume and supplement listed in Exhibit A have been coordinated with an O.C.G.A. statute (statutory text).

24. The summaries of opinions of the Attorney General of Georgia in each O.C.G.A. volume and supplement listed in Exhibit A are arranged under the heading "Opinions of the Attorney General" prior to or following an O.C.G.A. statute (statutory text).

25. The summaries of the opinions of the Attorney General of Georgia are selected, coordinated and arranged in each O.C.G.A. volume and supplement listed in Exhibit A.

26. The non-statutory text of each O.C.G.A. volume and supplement listed in Exhibit A includes summaries of research references.

27. The summaries of research references in the non-statutory annotations of each O.C.G.A. volume and supplement in Exhibit A are prepared by LexisNexis under contract for the State of Georgia, and under the direct supervision and subject to the approval of the Code Revision Commission.

28. The research references referenced in each O.C.G.A. volume and supplement in Exhibit A have been selected for inclusion in the O.C.G.A.

29. The research references are selected in each O.C.G.A. volume and supplement listed in Exhibit A.

30. The content of the summaries of the research references in each O.C.G.A. volume and supplement listed in Exhibit A has been selected for inclusion in the O.C.G.A.

31. The summaries of research references in each O.C.G.A. volume and supplement listed in Exhibit A

have been coordinated with an O.C.G.A. statute (statutory text).

32. The summaries of research references in each O.C.G.A. volume and supplement listed in Exhibit A are arranged under the heading “Research References” prior to or following an O.C.G.A. statute (statutory text).

33. The summaries of research references are selected, coordinated and arranged in each O.C.G.A. volume and supplement listed in Exhibit A.

34. Public Resource purchased from LexisNexis and copied the entirety of 186 volumes and supplements of the O.C.G.A., including front and back covers, which 186 volumes include the volumes and supplements of the O.C.G.A. listed in Exhibit A.

35. Although at least some of the O.C.G.A. volumes and supplements purchased by Public Resource were available for purchase on compact disc (CD), Public Resource purchased these volumes and supplements in paper form.

36. Public Resource posted on its website <https://law.resource.org> the copies it made of the O.C.G.A. including the volumes and supplements of the O.C.G.A. listed in Exhibit A.

37. At least one copy of each O.C.G.A. volume and supplement that Public Resource posted on its <https://law.resource.org> website is in an electronic format that displays an image of the printed publication as copied by Public Resource, which image allows for electronic page turning of the printed publication. Exhibit B is a true and correct copy of the front cover of one such image.

38. Public Resource has facilitated, enabled, encouraged and induced others to view, download, print, copy and distribute each O.C.G.A. volume and supplement listed in Exhibit A without limitation or compensation to the State of Georgia.

39. Public Resource created works containing each O.C.G.A volume and supplement listed in Exhibit A.

40. The annotations to each O.C.G.A. volume and supplement listed in Exhibit A include summaries of cases that relate to the O.C.G.A., summaries of Opinions of the Attorney General of Georgia and summaries of research references related to the O.C.G.A.

41. Public Resource actively encourages all citizens to copy, use, and disseminate to others in Georgia and elsewhere and to create works containing the O.C.G.A volumes and supplements listed in Exhibit A.

42. Public Resource solicited funds on a crowd funding website (www.indiegogo.com/projects/the-laws-of-georgia) to help it scan and post entire volumes and supplements of the O.C.G.A, including each O.C.G.A. volume and supplement listed in Exhibit A. This funding campaign ended on July 11, 2014.

43. Public Resources continues to solicit funds on its website (<https://yeswescan.org>) to support its general mission of making federal, state and local laws easily available to the public free of charge.

44. The State of Georgia enacts and promulgates the laws of the state through its legislature. The state laws are provided in Code sections.

45. The Commission does not assert copyright in the O.C.G.A. statutory text itself because the laws of Georgia are and should be free to the public.

46. Subsequent to July 22, 2015 and with full knowledge of the Commission's Complaint (Dkt. No. 1), Public Resource copied the entirety of the volumes and supplements of the 2015 O.C.G.A. shown in Exhibit A and distributed those copies via posting them on its website <https://law.resource.org>.

47. Public Resource continues to post the entirety of the 114 volumes and supplements of the O.C.G.A. shown in Exhibit A, including front and back covers, on its website <https://law.resource.org>.

48. Public Resource's posting of the entirety of the 114 volumes and supplements of the O.C.G.A. listed in Exhibit A on its website <https://law.resource.org> was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the O.C.G.A.

49. Public Resource's posting of the entirety of the 114 volumes and supplements of the O.C.G.A. listed in Exhibit A on its website <https://law.resource.org> resulted in the copying (downloading) of those volumes and supplements from that website by members of the public.

50. Public Resource posted on a website, www.archive.org, copies of the entirety of the volumes and supplements of the O.C.G.A. listed in Exhibit A.

51. At least one copy of each O.C.G.A. volume and supplement that Public Resource posted on the www.archive.org website is in an electronic format that mimics a printed publication.

52. Subsequent to July 22, 2015 and with full knowledge of the Commission's Complaint (Dkt. No. 1), Public Resource copied the entirety of the volumes

and supplements of the 2015 O.C.G.A. listed in Exhibit A and posted them on the website www.archive.org.

53. Public Resource, despite having the right to remove the entirety of the volumes and supplements of the O.C.G.A. that it posted on the website www.archive.org, including those volumes and supplements listed in Exhibit A, has not removed such copies.

54. Public Resource's posting of the entirety of the volumes/supplements of the O.C.G.A. on the website www.archive.org, including those volumes/supplements listed in Exhibit A, was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the O.C.G.A.

55. Public Resource's posting of the entirety of volumes and supplements of the O.C.G.A. on the website www.archive.org, resulted in the copying (downloading) of each of those volumes/supplements of the O.C.G.A. from the website by members of the public as listed in Exhibit A.

56. Public Resource labeled each of the volumes and supplements of the O.C.G.A. it posted on the website www.archive.org as listed in Exhibit A with the "CCO 1.0 Universal license" which states that members of the public may copy, modify and distribute those O.C.G.A. volumes and supplements.

57. Public Resource labeled each of the volumes and supplements of the O.C.G.A. it posted on the website www.archive.org as listed in Exhibit A with the following statement:

All citizens and residents are hereby advised that this is a legally binding document duly promulgated and enacted and

that failure to comply with such requirements as hereby detailed within may subject you to criminal or civil penalties under the law. Ignorance of the law shall not excuse noncompliance and it is the responsibility of the citizens to inform themselves as to the laws that are enacted in the United States of America and in the State of Georgia and all cities and territories contained therein.

58. Public Resource's copying and posting of the entire volumes and supplements of the O.C.G.A. on the websites <https://law.resource.org> and www.archive.org as shown in Exhibit A, and in particular the electronic nature of these documents and their availability on the Internet, magnifies the ease and speed with which they may be copied and distributed to others.

59. Carl Malamud, the founder and president of Public.Resource.Org, testified before the U.S. House of Representatives, House Judiciary Committee, to advance an amendment to the U.S. Copyright Act making state and local official legal documents uncopyrightable for reasons of public policy. No such amendment has been adopted by Congress.

60. Carl Malamud has tried to become the U.S. Public Printer but has not been nominated for the office of United States Public Printer.

61. Public Resource posted on its <https://yewescan.org> website and delivered to the Commission a Proclamation of Promulgation stating that its deliberate copying and distribution of the O.C.G.A. would be greatly expanded in 2014.

62. Public Resource instituted a public funding campaign on the website www.indiegogo.com to

support its continued copying and distribution of the O.C.G.A. and raised approximately \$3,000.00.

63. Public Resource distributed USB thumb drives containing scanned copies of the O.C.G.A. to members of the State of Georgia Legislature.

64. Public Resource distributed copies of the entirety of 90 volumes and supplements of the O.C.G.A. to at least eight institutions in and around the state of Georgia, Honorable David Ralston, Speaker of the House, Georgia House of Representatives and Mr. Wayne Allen, Legislative Counsel, Office of Legislative Counsel, Georgia General Assembly, including those shown in Exhibit A, by placing those copies on USB thumb drives and mailing them.

65. Public Resource's distribution of the entirety of 90 volumes and supplements of the O.C.G.A. to at least eight institutions in and around the state of Georgia, including those volumes and supplements shown in Exhibit A, was for the purpose of facilitating, enabling, encouraging and inducing others to view, download, print, copy and distribute those volumes and supplements of the O.C.G.A.

66. The Commission has not authorized Public Resource to copy, distribute or make derivative works of any entire volume or supplement of the O.C.G.A., including those shown in Exhibit A, and upon receiving cease and desist letters from the Commission, Public Resource refused to remove any and all copies of the O.C.G.A. that it had posted on any website.

67. The correspondence shown in Exhibit C is a true and exact copy of a letter written by Mr. Malamud and sent to David Ralston and Wayne Allen on May 30, 2013.

68. The correspondence shown in Exhibit D is a true and exact copy of a letter written by Mr. Malamud and sent to Joshua McKoon, David Ralston and David Shafter on July 30, 2013.

69. The correspondence shown in Exhibit E is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on July 25, 2013.

70. The correspondence shown in Exhibit F is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on August 15, 2013.

71. The correspondence shown in Exhibit G is a true and exact copy of a letter written by Joshua McKoon and sent to Mr. Malamud on April 2, 2014.

72. The correspondence shown in Exhibit H consists of true copies of an email written by Brendan Keefe and sent to Wayne R Allen, on September 18, 2015 and Mr. Allen's email responding to Mr. Keefe the same day.

73. The statutory text and numbering of the O.C.G.A. is accessible by the public through the Georgia General Assembly website at www.legis.ga.gov and the Georgia Senate website at www.senate.ga.gov by clicking on the "Georgia Code" link on each of those websites which will direct the user to the LexisNexis website operated for the State of Georgia.

74. The "Georgia Code" links on the websites www.legis.ga.gov and www.senate.ga.gov link to the LexisNexis website <http://www.lexisnexis.com/hottopics/gacode/Default.asp> ("LexisNexis GA Code website"), which is operated for the State of Georgia, and the LexisNexis GA Code website contains the statutory text and numbering of the O.C.G.A.

75. There is no fee to access the statutory text and numbering of the O.C.G.A. through the LexisNexis GA Code website.

76. The statutory text and numbering of the O.C.G.A. can be electronically copied and/or printed from the LexisNexis GA Code website.

77. The statutory text of the O.C.G.A. is searchable by term on the LexisNexis GA Code website.

78. The market for the O.C.G.A. includes markets for the sale of the printed publication, the CD-ROM, and on-line versions of the O.C.G.A.

79. Public Resource operates the websites public.resource.org, law.resource.org, house.resource.org, bulk.resource.org and others.

80. Public Resource reformats at least some of the documents containing laws it posts. As a matter of course, Public Resource transforms codes and standards into HTML. The O.C.G.A. had not been so transformed, but this was the intention.

81. It is typical for bills introduced in the Georgia General Assembly ("Legislature") to begin, "An Act . . . To amend Article . . . Chapter . . . of Title . . . of the Official Code of Georgia Annotated."

82. The Georgia Legislature is assisted by the Code Revision Commission in publishing the laws enacted by the Legislature.

83. The Code Commission Notes added to the Georgia Statutory Text are prepared by the Code Revision Commission.

84. LexisNexis publishes and sells the O.C.G.A. as a printed publication, on CD-ROM, and in an on-line version.

85. LexisNexis receives income from its sales of the O.C.G.A.

86. To access the statutory text and numbering in the O.C.G.A. via the website link found on the State of Georgia website, www.legis.ga.gov, one must accept the terms and conditions of use generally applicable to the LexisNexis websites (“LexisNexis Website Use Terms and Conditions”). A true and correct copy of the LexisNexis Website Use Terms and Conditions is attached as Exhibit I. The access page that allows users to access the online publication by accepting the LexisNexis Website Use Terms and Conditions explicitly states that the LexisNexis Website Use Terms and Conditions do not apply to the O.C.G.A. statutory text and numbering. A true and correct copy of this access page is attached as Exhibit J.

87. The LexisNexis Website Use Terms and Conditions are governed by New York state law and require the user to submit to the personal jurisdiction of New York state courts for the purpose of litigating any action arising out of or relating to the LexisNexis Website Use Terms and Conditions.

87. After navigating through the access page, and once within the LexisNexis site hosting the statutory text and numbering of the O.C.G.A. (“LexisNexis GA Code website”), one notice on the LexisNexis GA Code website is a hyperlink to Terms and Conditions specific to the Georgia Code materials (“LexisNexis Georgia Materials Terms and Conditions”), which is available for download at [https://www.lexisnexis.com/hot-topics/gacode/GA Statutes Website Terms3.doc](https://www.lexisnexis.com/hot-topics/gacode/GA%20Statutes%20Website%20Terms3.doc) or by clicking on the “Terms and Conditions” hyperlink at the bottom of the page. A true and accurate copy of the

Second LexisNexis Terms and Conditions is attached as Exhibit K.

89. The LexisNexis Website Use Terms and Conditions incorporate by reference any notices contained on the LexisNexis GA Code website. See Sec. 25 of the Website Use Terms and Conditions.

90. The LexisNexis Georgia Materials Terms and Conditions state that “Georgia Code section text and numbering may be copied from this website at the user’s expense and effort.”

91. The O.C.G.A. statutory text and numbering that is available for free on the LexisNexis site does not contain the Annotations, such as the Judicial Summaries, summaries of Code Revision Commission Notes, summaries of Attorney General Opinions, and compilations thereof.

92. Until at least May 28, 2014, the notice displayed before users could access the “free” online publication included a banner page that the user had to acknowledge before access was granted. That banner page noted clearly that only the “latest print version of the O.C.G.A. is the authoritative version.” A true and correct copy of this banner page is attached as Exhibit L to this pleading.

93. This 2014 banner page did not explicitly state that the LexisNexis Website Use Terms and Conditions do not apply to the Georgia Code statutory text and numbering.

94. The Annotations include a summary of a vacated Northern District of Georgia case, which states: “[a]ttorneys who cite unofficial publications of 1981 Code do so at their peril,” and the heading of the summary reads “Official Code publication controls over

unofficial compilation.” O.C.G.A. § 1-1-1, note (Judicial Decisions).

95. A LexisNexis marketing page for the print version of the O.C.G.A. states: “The Official Code of Georgia Annotated (O.C.G.A.) provides users with the official Georgia statutes, fully annotated” (emphasis in original). A true and correct copy of this marketing page is attached as Exhibit M to this pleading.

96. Public.Resource.org will not rely on the affirmative defenses of failure to state a claim on which relief can be granted or copyright misuse as pleaded in its Answer. To the extent that there are factual disputes that relate to irreparable harm, those do not render summary adjudication of the parties’ respective claims and counterclaims inappropriate.

Respectfully submitted, this 15th day of January, 2016.

[Signature blocks omitted]

APPENDIX N

May 30, 2013

Hon. David Ralston
Speaker of the House
Georgia House of Representatives
332 State Capitol
Atlanta, GA 30334

Mr. Wayne R. Allen, Legislative Counsel
Office of Legislative Counsel
Georgia General Assembly
3021 State Capitol
Atlanta, GA 30334

Dear Speaker Ralston and Mr. Allen:

I am pleased to enclose for your consideration a George Washington USB Thumb Drive containing a scanned version of the Official Code of Georgia Annotated as well as XML-encoded versions of the code. Our purpose in making these statutes available is to promote access to the law by citizens and to promote innovation in ways the statutes are made available so that public servants, members of the bar, citizens, and members of the business community have ready access to the laws that govern them.

Access to the law is a fundamental aspect of our system of democracy, an essential element of due process, equal protection, and access to justice. The Supreme Court of the United States has repeatedly reaffirmed this principle, stating for example in *Banks v. Manchester* (128 U.S. 244, 1888) that “the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all, whether

it is a declaration of unwritten law, or an interpretation of a constitution or a statute.”

The fact that there is no copyright in the law has been affirmed as a statement of policy by the United States Copyright Office which stated “Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.”

I would be pleased to answer any questions you may have and look forward to better access to the law by the citizens of Georgia.

Sincerely yours,

Carl Malamud
Public.Resource.Org

APPENDIX O

July 30, 2013

Hon. Joshua McKoon, Chairman
Georgia Code Revision Commission
319-A Coverdell Legislative Office Building
Atlanta, Georgia 30334

Hon. David Ralston
Speaker of the House
House of Representatives of Georgia
Atlanta, Georgia 30334

Hon. David Shafer
President Pro Tempore
Georgia State Senate
321 State Capitol
Atlanta, GA 30334

Dear Senator McKoon, Speaker Ralston, and President Pro Tempore Shafer:

Public.Resource.Org is in receipt of the communication of July 25, 2013 from Senator McKoon concerning your notice of purported copyright infringement. Your notice claims copyright infringement for the publication of the Official Code of Georgia Annotated. Your letter claims “all copyrightable aspects of the Official Code of Georgia Annotated are copyrighted under United States copyright law” and disclaims any copyright “in the statutory text itself or in the number of the Code sections.”

We respectfully decline to remove the Official Code of Georgia Annotated and respectfully reject the distinction between “the statutory text itself” and additional materials, as both are integral part and parcel of the only Official Code of Georgia Annotated, such

material constituting the official law as published by the State.

It is a long-held tenet of American law that there is no copyright in the law. This is because the law belongs to the people and in our system of democracy we have the right to read, know, and speak the laws by which we choose to govern ourselves. Requiring a license before allowing citizens to read or speak the law would be a violation of deeply-held principles in our system that the laws apply equally to all.

This principle was strongly set out by the U.S. Supreme Court under Chief Justice John Marshall when they stated “the Court is unanimously of opinion that no reporter has or can have any copyright in the written opinions delivered by this Court, and that the judges thereof cannot confer on any reporter any such right.” *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591 (1834). The Supreme Court specifically extended that principle to state law, such as the Official Code of Georgia Annotated, in *Banks v. Manchester* (128 U.S. 244, 1888), where it stated that “the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all, whether it is a declaration of unwritten law, or an interpretation of a constitution or a statute.”

This principle has become embedded clearly throughout our country. The Court of Appeals for the Sixth Circuit has stated that “any person desiring to publish the statutes of a state may use any copy of such statutes to be found in any printed book, whether such book be the property of the state or the property of an individual.” *Howell v. Miller*, 91 F. 129, 137 (6th Cir. 1898) (Harlan, J.).

These strong precedents are reflected in the official policy statement of the U.S. Copyright Office:

“Edicts of government, such as judicial opinions, administrative rulings, legislative enactments, public ordinances, and similar official legal documents are not copyrightable for reasons of public policy. This applies to such works whether they are Federal, State, or local as well as to those of foreign governments.” Compendium II: Copyright Office Practices § 206.01 (1984)

The principle that there is no copyright in the law, and that no license is therefore needed, has been fundamental to the evolution of our legal system. West Law could never have built that magnificent edifice of American jurisprudence, the Federal Reporter, if each court had imposed restrictions on promulgation. If citizens are required to obtain a permission before repeating the law, does that not strike at the very heart of our rights of free speech under the First Amendment? If ignorance of the law is no excuse, how can we restrict dissemination of those laws?

The distinction between “the statutory text itself” and additional materials perhaps would have some bearing if the publication in question were the independent commercial endeavor of a publication firm. If such a firm were to copy the state statutes and compile that information with additional analyses and summaries and were to do so as a strictly commercial endeavor, we understand and respect that this material would be their private property.

However, the publication in question is not by some independent endeavor, it is by the Official Georgia

Code Revision Commission and the document is clearly labeled as the official Official Code of Georgia Annotated. Your hired sub-contractor states this clearly in their marketing materials:

“The Official Code of Georgia Annotated (OCGA) provides users with the official Georgia statutes, fully annotated and including guidance from the Georgia Code Commission. If you live or work in Georgia, the OCGA is the essential reference you need to guide you quickly and efficiently in understanding the Georgia statutory scheme.” [Emphasis in the Original]

The Official Code of Georgia Annotated is a publication of the State and it is the definitive statement by the State of the law. Any lawyer would ignore this publication and any of its components at his or her peril. Any citizen wishing to read the Official Official Code of Georgia Annotated would have trouble distinguishing between the “statutory text itself” and those materials outside the box. No matter how you slice that cheese, it all looks the same. The Official Code of Georgia Annotated, every component of it, is the official law.

Your letter also notes that “the unannotated Georgia Code...is available to the public at no charge at www.legis.ga.gov.” In addition to numerous technical and usability deficiencies, this site is subject to two different terms of use. The first, which must be accepted before entering the site, stresses that only “the latest print version” of the Code is official and authoritative. The second set of terms has 8 parts and 35 subparts and permits only “insubstantial” uses and even

prohibits use of the Code in “newsletters” and “articles.” As you can see, when copyright prohibits citizens from speaking the law of the land, substantial concerns are raised under the U.S. and Georgia Constitutions.

A similar situation occurred in the great state of Oregon when we received a Cease and Desist notice on April 7, 2008 for publishing online the Oregon Revised Statutes. As with the present situation, lawyers for that state demanded licenses as a condition to publication and attempted to make a distinction between the law and the additional organization of that material by the Legislative Counsel of Oregon.

I am pleased to tell you that the State of Oregon decided that this was an issue that should be decided by the people of Oregon and their elected officials. The Speaker of the House and the Senate President called a hearing of the Legislative Counsel Committee, listened to citizens and to their own legislative counsel, kindly invited us to speak, and at the end of the day unanimously waived any assertion of copyright in the Oregon Revised Statutes.

Not only was copyright waived, something very special happened. With the restrictions on use of the Oregon Revised Statutes lifted, a law student at the Lewis & Clark Law School was able to take this material and develop a vastly better version of the Oregon Revised Statutes for the people of his state to use. Restricting use of the codes restricts innovation, making it harder for citizens and lawyers to know and understand the law. Restrictions on the Official Code of Georgia Annotated hurts democracy and the citizens of Georgia by making their laws less accessible.

In Oregon, the assertion of copyright dated back to the 1940s and the state had carried that policy forward. When the people of Oregon looked at the issue in the light of our modern era, the decision was very clear. Is it not time, in light of developments such as the Internet, to revisit those restrictions?

Our publication of the Official Code of Georgia Annotated should be encouraged, not threatened. Our publication of the Official Code of Georgia Annotated is unimpeachable act, not one that should be prosecuted. I would be more than happy to come to Georgia to discuss the matter with you, and would strongly encourage you to discuss the issue with the people of Georgia.

Sincerely yours,

Carl Malamud

Public.Resource.Org

APPENDIX P

July 25, 2013

Carl Malamud
Public.Resource.Org
1005 Gravenstein, Highway North
Sebastopol, California 95472

VIA CERTIFIED MAIL

Dear Mr. Malamud:

On behalf of the Georgia Code Revision Commission, we are writing to notify you that your unlawful copying of the Official Code of Georgia Annotated infringes upon the exclusive copyright of the State of Georgia. Accordingly, you are hereby directed to

**CEASE AND DESIST ALL COPYRIGHT
INFRINGEMENT.**

The State of Georgia, acting through the Georgia Code Revision Commission, is the owner of a copyright in various aspects of the Official Code of Georgia Annotated. Under United States copyright law, the State of Georgia's copyright has been in effect since the original date of creation of such official Code in 1983. All copyrightable aspects of the Official Code of Georgia Annotated are copyrighted under United States copyright law. The state asserts no copyright in the statutory text itself or in the numbering of the Code sections.

We received your letter dated May 30, 2013, to Honorable David Ralston, Speaker of the House of Representatives of Georgia, and Mr. Wayne Allen, Legislative Counsel for the Georgia General Assembly, containing notice that you have scanned the Official

Code of Georgia Annotated, as evidenced by the USB Thumb Drive which was enclosed with the letter. It has also come to our attention that such files can be freely accessed from the internet (<https://law.resource.org/pub/us/code/ga/georgia.scan.2012/>) with no restrictions to its access.

Therefore, we demand that you immediately: (a) cease and desist your unlawful copying of the Official Code of Georgia Annotated; (b) remove any and all files containing the Official Code of Georgia Annotated from the internet; (c) destroy any and all files containing the Official Code of Georgia Annotated from the internet; and (d) provide us with prompt written assurance within 10 days of receiving this letter that all such steps have been taken and that you will cease and desist from any further infringement of the copyrighted Official Code of Georgia Annotated.

If you do not comply with this cease and desist demand within this time period, the State of Georgia, through the Georgia Code Revision Commission, is entitled to use your failure to comply as evidence of willful infringement and seek monetary damages and equitable relief for your copyright infringement.

For your information, the unannotated Georgia Code, including Code section designations and headings, is available to the public at no charge at www.legis.ga.gov.

If you are represented by legal counsel, please direct this letter to your attorney immediately and have your attorney notify us of such representation.

Sincerely,
Chairman Josh McKoon
Georgia Code Revision Commission

cc: Code Commission members

APPENDIX Q

August 15, 2013

Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, California 95472

VIA CERTIFIED MAIL

Dear Mr. Malamud:

We have received your response dated July 30, 2013, refusing to comply with the cease and desist letter sent on behalf of the Georgia Code Revision Commission on July 25, 2013, regarding your unlawful copying of the Official Code of Georgia Annotated. The response received was unacceptable.

Your response includes a misstatement or misunderstanding of federal copyright law. As indicated in the prior letter, the State of Georgia already makes the entire body of statutory law in Georgia available to the public at no charge at www.legis.ga.gov. This is wholly different from the product produced by Lexis, the state's publisher, which includes additional value-added material which is subject to copyright protection.

Therefore, we again demand that you immediately: (a) cease and desist your unlawful copying of the Official Code of Georgia Annotated; (b) remove any and all files containing the Official Code of Georgia Annotated from the internet; (c) destroy any and all files containing the Official Code of Georgia Annotated from the internet; and (d) provide us with prompt written assurance within 5 days of receiving this letter that all such steps have been taken and that you will cease and

desist from any further infringement of the copyrighted Official Code of Georgia Annotated.

If you fail to comply with this letter, the Georgia Code Revision Commission intends to pursue all available remedies, including but not limited to, preliminary and permanent injunctions, damages, and costs and attorney's fees associated with defending the state's rights for copyright violation under the Copyright Act of 1976.

Sincerely,
Chairman Josh McKoon
Georgia Code Revision Commission

cc: Code Commission members

APPENDIX R

April 2, 2014

Carl Malamud
Public.Resource.Org
1005 Gravenstein Highway North
Sebastopol, California 95472

Dear Mr. Malamud:

We have received your package entitled “Proclamation of Promulgation”. Please see our correspondence of July 25, 2013, and August 15, 2013 (copies attached) to Public.Resource.Org asserting our rights in the copyrightable portions of the Official Code of Georgia Annotated. Per such previous notice, we continue to assert such copyright ownership and direct Public.Resource.Org to immediately cease and desist all activities which entail infringement of such copyright.

Sincerely,
Chairman Josh McKoon
Georgia Code Revision Commission

cc: Code Commission members

[Attachments omitted]

APPENDIX S

From: "Allen, Wayne" <Wayne.Allen@legis.ga.gov>
Date: Friday, September 18, 2015 at 3:45 PM
To: Brendan Keefe <bkeefe@11alive.com>
Subject: RE: Georgia Code Revision Commission --
Open Records Request

Mr. Brendan Keefe
Chief Investigative Reporter
WXIA 11 Alive (NBC/TEGNA Atlanta)

Mr. Keefe,

This is in response to your request below for inspection and reproduction of the Official Code of Georgia Annotated (O.C.G.A.).

To inspect the content of the Official Code of Georgia Annotated, there is no need to resort to an open records request such as you have made. The O.C.G.A. is available at many libraries, such as at the Georgia State University Law School and general public libraries. You are free to peruse it there for research purposes. If you wish to obtain your own copies of the volumes of the O.C.G.A., you may purchase it from LexisNexis, the official publisher, like anyone else.

For your information, the Georgia General Assembly and its agencies are not subject to the Georgia "open records" law. See *Coggin v. Davey*, 233 Ga. 407, 410-411 (1975) (General Assembly is not an "agency" within the meaning of the "Open Meetings" law); O.C.G.A. Sec. 50-18-70(b) (the term "agency" under Open Records law has same meaning as under Open Meetings law).

As to your intention to electronically reproduce the O.C.G.A. and republish it "on WXIA-TV 11 and

11alive.com”, be aware that the O.C.G.A. is copyrighted by the State of Georgia, and the copyright is controlled by the Code Revision Commission of the State of Georgia. Those portions of the O.C.G.A. that are enacted by the General Assembly (i.e., statute text of Code sections and numbers of Titles, Chapters, Articles, Parts, Subparts, and Code sections) are in the public domain and may be used without any need for obtaining permission. Indeed, the statutory portion of the O.C.G.A. is available to the general public at no charge at <http://www.lexisnexis.com/hottopics/gacode/Default.asp>[.] Please see the note to users on that webpage.

The remaining, nonstatutory material in the O.C.G.A. (i.e., catchlines of Code sections; names of Titles, Chapters, Articles, Parts, and Subparts; history lines; editor’s notes; Code Commission notes; annotations; research references; cross-references; indexes; and other such materials) is copyrighted by the State of Georgia and shall not be republished without permission. No such permission is granted here.

For further information regarding the publication and copyright of the O.C.G.A., I refer you to an informative news release regarding the same as posted at <http://www.house-press.com/?p=5088>

W. R. Allen
Legislative Counsel
Georgia General Assembly

* * *

From: Keefe, Brendan [mailto:bkeefe@11alive.com]
Sent: Friday, 18 September, 2015 14:54
To: Allen, Wayne
Cc: Keefe, Brendan
Subject: Georgia Code Revision Commission -- Open
Records Request

Wayne,

We are requesting inspection of the current **Official Code of Georgia Annotated**. At time of inspection, we will bring our own photographic device for electronic reproduction of this open record, as provided by OCGA 50-18-71(b)(1)(B), for publication on WXIA-TV 11 and 11alive.com

Please let us know when such inspection and photographic reproduction is convenient for your office.

If you or anyone else at the Georgia Code Revision Commission are not the custodians of these records, please forward this ORR to the custodians or reply with their contact information. If you are claiming an exemption or exception to the Open Records Act to deny this request in whole or in part, please cite the particular exemption/exception and any relevant case law. In that case, if there is a state agency that holds these records that may not be exempt or excepted from the Open Records Act, please reply with the name and contact information for that agency.

Thank you in advance for this consideration, and for prompt inspection of the people's records.

BRENDAN KEEFE

Chief Investigative Reporter

WXIA 11 Alive (NBC/TEGNA Atlanta)

* * *

APPENDIX T

Terms & Conditions

Terms and Conditions of Use

January 7, 2013

YOUR USE OF THIS WEB SITE CONSTITUTES
YOUR AGREEMENT TO BE BOUND BY THESE
TERMS AND CONDITIONS OF USE.

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2. Limitations on Use; Third Party Communications.

2.1. Limitations on Use. The Content on this Web Site is for your personal use only and not for commercial exploitation. Notwithstanding the foregoing and to the extent this Web Site provides electronic commerce, such buying opportunities may be made available for group as well as personal purchasing, so long as you are authorized to make purchases on behalf of such group. You may not use the Content to determine a consumer’s eligibility for: (a) credit or insurance for personal, family, or household purposes; (b)

employment; or (c) a government license or benefit. You may not decompile, reverse engineer, disassemble, rent, lease, loan, sell, sublicense, or create derivative works from this Web Site or the Content. Nor may you use any network monitoring or discovery software to determine the site architecture, or extract information about usage, individual identities or users. You may not use any robot, spider, other automatic software or device, or manual process to monitor or copy our Web Site or the Content without Provider's prior written permission. You may not use this Web Site to transmit any false, misleading, fraudulent or illegal communications.

You may not copy, modify, reproduce, republish, distribute, display, or transmit for commercial, non-profit or public purposes all or any portion of this Web Site, except to the extent permitted above. You may not use or otherwise export or re-export this Web Site or any portion thereof, or the Content in violation of the export control laws and regulations of the United States of America. Any unauthorized use of this Web Site or its Content is prohibited.

2.2. Third Party Communications. Provider disclaims all liability for any Third Party Communications you may receive or any actions you may take or refrain from taking as a result of any Third Party Communications. You are solely responsible for assessing and verifying the identity and trustworthiness of the source and content of any Third Party Communications. Provider assumes no responsibility for verifying, and makes no representations or warranties regarding, the identity or trustworthiness of the source or content of any Third Party Communications. As used herein, "Third Party Communications" means any

communications directed to you from any third party directly or indirectly in connection with this Web Site.

3. Not Legal Advice. Content is not intended to and does not constitute legal advice and no attorney-client relationship is formed, nor is anything submitted to this Web Site treated as confidential. The accuracy, completeness, adequacy or currency of the Content is not warranted or guaranteed. Your use of Content on this Web Site or materials linked from this Web Site is at your own risk.

4. Intellectual Property Rights.

4.1 Except as expressly provided in these Terms of Use, nothing contained herein shall be construed as conferring on you or any third party any license or right, by implication, estoppel or otherwise, under any law (whether common law or statutory law), rule or regulation including, without limitation those related to copyright or other intellectual property rights. You agree that the Content and Web Site are protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.

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4.2 This Web site contains interactive areas which includes, without limitation, any blogs, wikis, bulletin boards, discussion boards, chat rooms, email forums, and question and answer features (the “Interactive Areas”). You grant to Provider an irrevocable, non-exclusive, royalty-free, perpetual, worldwide license to use, authorize use of and have used on its behalf any ideas, expression of ideas, text, graphics, messages, blogs, links, data, information and other materials you submit (collectively, “Postings”) to this Web Site. Said

license is without restrictions of any kind and without any payment due from Provider to you or permission or notification, to you or any third party. The license includes, the right to make, use, sell, reproduce, publish, modify, adapt, prepare derivative works from, combine with other works, translate, distribute, display, perform and sublicense Postings in any form, medium, or technology now known or hereafter developed.

4.3. You certify and warrant that the Postings: (i) are your original works or that the owner of such works has expressly granted to Provider a perpetual worldwide royalty-free irrevocable, non-exclusive license for said works with all of the rights granted by you in section 4.2 of these Terms of Use and (ii) do not violate and will not violate the rights of any third party including any right of publicity, right of privacy, copyright, patent or other intellectual property right or any proprietary right.

4.4. You acknowledge and agree that your submitting Postings to this Web Site does not create any new or alter any existing relationship between you and Provider.

4.5. If you have submitted a photo to your profile on lawyers.com you agree that this photo may be included in the Interactive Areas, including with your Postings. If you have not submitted a photo then Provider may, but is not obligated to, display a stock photo or legal image with your Postings. You hereby consent to the use of such stock photos or images in the Interactive Areas.

4.6. By submitting Postings to this Web Site, you acknowledge and agree that Provider may create on its own ideas that may be, or may obtain submissions that

may be, similar or identical to Postings you submit. You agree that you shall have no recourse against Provider for any alleged or actual infringement or misappropriation of any proprietary or other right in the Postings you provide to Provider.

4.7. Provider shall have the exclusive option to purchase from you and acquire all right, title and interest in any Postings containing patentable subject-matter that you submit to this Web Site. The option shall be exercisable by Provider from the date you submit such Posting until one year from that date. If Provider exercises its option under this section 4.6, you agree to accept payment in the amount of \$1,000.00 USD or value in kind at Provider's discretion as full and sufficient consideration for such purchase, and you agree to execute, acknowledge and deliver any and all instruments required to transfer legal ownership of Postings to Provider. Such instruments include, but are not limited to, assignments and declarations executed by you.

4.8. Additional Intellectual Property Terms for Ask A Lawyer

4.8.1 Notwithstanding the licenses granted in these Terms of Use, Attorneys who participate in Ask A Lawyer ("AAL") agree that their Postings, and all intellectual property rights therein, including, without limitation, all copyrights and moral rights, (collectively, "IP Rights") will be owned exclusively by Provider. You agree that Provider has commissioned you to provide such Postings, and that the Postings are works made for hire. To the extent ownership of Your Postings does not vest in Provider as a work made for hire, you hereby assign to Provider all IP Rights in and to the Postings. You also agree to promptly execute, acknowledge, and deliver to Provider any additional

assignments or other documents that may be reasonably requested by Provider to effectuate the intent of the foregoing sentences. You acknowledge and agree that Provider, its parent and affiliated companies and their licensees and assigns, may use the Postings in any manner that deems appropriate without any attribution or payment to you of any sort. This paragraph will survive any termination of your participation in AAL.

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4.8.2.a. Each use of the Designated Content includes a hyperlink to the most recent AAL Q&A or other pages in AAL as designated by Provider, and

4.8.2.b. Each use of the Designated Content is solely for the purposes of promoting and marketing AAL and/or your contribution of the Designated Content (collectively the "Purpose").

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the regulations of the U.S. Securities and Exchange Commission, any rules of any securities exchange such as the New York Stock Exchange, the American Stock Exchange, or the NASDAQ, either intentionally or unintentionally. Provider may delete your Postings at any time for any reason without permission from you.

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13. Attorney Ethics Notice; Posting Rules. If you are an attorney participating in any aspect of this Web Site, including but not limited to Interactive Areas, a) you agree not to provide specific legal advice in any of your Postings and to draft Postings which are appropriate, educational, and in accordance with attorney ethics requirements, b) you represent and warrant that you are an attorney in good standing with a license to practice law in at least one of the 50 United States of America or the District of Columbia, c) you agree to promptly notify Provider of any grievance, claim, reprimand, or censure brought against you, as well as resignation or other loss of license, d) you acknowledge that the Rules of Professional Conduct of the jurisdictions where you are licensed ("Rules") apply to all aspects of your participation and that you will abide by these Rules. These Rules include, but are not limited to, the rules relating to advertising, solicitation of clients, rules regarding the establishment of attorney-client relationships, failure to maintain client confidences, unauthorized practice of law, and misrepresentations of fact. Provider disclaims all responsibility for your compliance with these Rules. You further agree and acknowledge that when you participate in any of the Interactive Areas on this Web Site, that you will not offer legal advice, but will only provide general information. Provider highly recommends that you include a disclaimer at the end of every Posting regarding the aforementioned advertising and ethics issues. Provider will have no liability to you arising out of or related to your compliance or noncompliance with such laws and rules, or related to Provider's inclusion or failure to include a disclaimer in the Interactive Areas.

14. Additional Terms for Attorney's Participating in Ask A Lawyer

14.1. You agree that your participation is as an unpaid, volunteer, and that the purpose of such participation is to provide public education on legal matters and to provide you and your firm national exposure. You may terminate your participation in AAL at any time for any reason or no reason by providing Provider with notice of termination at least three days prior to the effective date of termination at mhcr@martindale.com.

14.2. Your name will be associated with each of your Postings in AAL when one of your Responses is included in the “Most Recent Q&A” section of AAL. Each question and corresponding Response may be archived and searchable on AAL and in other site searches associated with Lawyers.com and Provider’s media outlets. Visitors currently have the ability to view these archives, but such public access to the archives is not guaranteed. Provider, at its discretion, may associate your name with your archived Responses; however Provider is not required to do so.

14.3. You are prohibited from responding to questions via personal and professional email, telephone or otherwise. You will not directly contact visitors who post questions on AAL prior to posting your response on AAL and any contact should be in compliance with attorney ethics requirements. All Responses must be submitted through the Administrative Page.

14.4. You represent and warrant to Provider that (a) you will perform your duties for the Ask a Lawyer service in a highly professional manner, (b) except for public domain materials, your Responses will not infringe any third party rights, (c) your Responses will be your original work not previously published and will not contain libelous, obscene, or unlawful

material, (d) the Responses will not invade anyone's privacy rights, and (e) your participation in the Ask a Lawyer service presents no conflicts of interest for you, and You assume all liability for any claims, suits, or grievances filed against you, including any and all damages related, due to your participation as a National Attorney Panelist.

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20. Unlawful Activity; Termination of Access. Provider reserves the right to investigate complaints or reported violations of our Terms of Use and to take any action we deem appropriate including but not limited to reporting any suspected unlawful activity to law enforcement officials, regulators, or other third parties and disclosing any information necessary or appropriate to such persons or entities relating to user profiles, e-mail addresses, usage history, posted materials, IP addresses and traffic information. Provider may discontinue any party's participation in any of the Interactive Areas at any time for any reason or no reason.

21. Remedies for Violations. Provider reserves the right to seek all remedies available at law and in equity for violations of these Terms of Use, including but not limited to the right to block access from a particular internet address to this Web Site and any other Provider web sites and their features.

22. Governing Law and Jurisdiction. The Terms of Use are governed by and construed in accordance with the laws of the State of New York and any action

arising out of or relating to these terms shall be filed only in state or federal courts located in New York and you hereby consent and submit to the personal jurisdiction of such courts for the purpose of litigating any such action.

23. Privacy. Except with respect to Martindale-Hubbell Connected, your use of this Web Site is subject to Provider's Privacy Policy. With respect to Martindale-Hubbell Connected, your use of such Web Site is subject to this Privacy Policy.

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from the remaining provisions and shall not affect their validity and enforceability. Notwithstanding anything to the contrary in these Terms of Use, if you have a separate signed written agreement with a Provider that applies to your use of any of that Provider's Content, that agreement constitutes the entire agreement between you and that Provider with respect to the affected Content subject thereto (the "Otherwise Covered Content"), and these Terms of Use shall be treated as having no force or effect with respect to the Otherwise Covered Content.

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APPENDIX U

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APPENDIX V

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3.2 Limited Warranty Regarding Use of the Research Service Media. You hereby represent and warrant that all use of the Research Service will comply with this Agreement and all federal, state and local laws, statutes, rules and regulations.

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7.3 Failure to Enforce. If we fail to enforce any provision of the Agreement it will not constitute or be construed as a waiver of such provision or of the right to enforce it at a later time.

7.4 Governing Law. The Agreement will be governed by and construed in accordance with the laws of the State of Georgia, regardless of the law that might otherwise apply under applicable principles of conflicts of law.

7.5 Survival. Sections 1.0, 2.0, 3.0 and 4.0 will survive after the Website is no longer available and this Agreement is considered terminated.

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8.2 “Licensed Program” means, if applicable, any computer programs, control information and related software that provide access to the Materials.

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APPENDIX W

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APPENDIX X

Official Code of Georgia Annotated

Description

The Official Code of Georgia Annotated (OCGA) provides users with the official Georgia statutes, fully annotated and including guidance from the Georgia Code Commission. If you live or work in Georgia, the OCGA is the essential reference you need to guide you quickly and efficiently in understanding the Georgia statutory scheme. Key features include:

- 48 volumes plus current cumulative supplement including three index volumes
- Official state statutes, fully annotated with explanatory notes
- Comprehensive index, replaced annually
- Fully annotated cumulative supplements published annually within 75 days of receipt of all acts from the legislature

The Official Code of Georgia's copious annotations help you expand your research and include:

- Decisions of the U.S. Supreme Court, the Supreme Court of Georgia, the Courts of Appeals of Georgia, and all federal cases arising in Georgia
- Opinions of the Georgia Attorney General
- State law reviews
- ALR
- American Jurisprudence
- American Jurisprudence, Pleading and Practice
- American Jurisprudence, Proof of Facts

- American Jurisprudence, Trials
- Corpus Juris Secundum
- Uniform Laws Annotated
- Cross reference notes to statutes, rules, and regulations including the United States Code and the Official Compilation of the Rules and Regulations of the State of Georgia
- All case citations are Shepardized® for accuracy and relevant subsequent history

The fully annotated Georgia Rules of Court is available separately in a convenient softbound format at an affordable price, as well as on CD-ROM and online at lexis.com. Georgia Advance Annotated Service (AAS), published quarterly, and the Citator, providing comprehensive citations, are also available separately.

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APPENDIX Y

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CODE REVISION)	
COMMISSION on Behalf of)	
and For the Benefit of the	)	CIVIL
GENERAL ASSEMBLY OF	)	ACTION
GEORGIA and the STATE OF)	
GEORGIA,)	
	)	FILE NO. 1:15-
Plaintiff,	)	CV-2594-MHC
)	
v.)	
)	
PUBLIC.RESOURCE.ORG,)	
INC.,)	
Defendant.)	

**DEFENDANT PUBLIC.RESOURCE.ORG, INC.'S
LOCAL RULE 56.1 STATEMENT OF
UNDISPUTED MATERIAL FACTS
IN SUPPORT OF ITS
MOTION FOR SUMMARY JUDGMENT**

A. Public Resource and Its Mission

1. Carl Malamud is the founder of the nonprofit Public.Resource.org (“Public Resource”). Declaration of Carl Malamud (“Malamud Decl.”), Ex. A at ¶¶ 1, 14; Ex. B.

2. Mr. Malamud founded Public Resource in 2007 to address an absence of primary legal materials on the Internet, including judicial opinions (and the underlying dockets leading to those opinions), statutes

and the codifications of those statutes (including the legislative hearings that led to those statutes), and federal regulations (including the underlying notices and comments leading to those regulations). Malamud Decl., Ex. A at ¶¶ 15, 19.

3. Mr. Malamud found that most states' statutes, regulations, and the codification of those statutes and regulations were publicly available in some form on the Internet. *Id.* at ¶ 33.

4. The technology employed to make those materials available to the public, however, did not provide the information in a user-friendly fashion or take advantage of the features of the Internet and its potential. *Id.*; *see also* Declaration of Beth Noveck ("Noveck Decl."), Ex. C at ¶ 14.

5. In an effort to remedy this shortcoming, Public Resource has made publicly available on the Internet, for example, copies of the Oregon Revised Statutes, California Code of Regulations, District of Columbia Code, and the Chicago Building, Municipal and Zoning Codes. Malamud Decl., Ex. A at ¶¶ 31, 34, 37, 39.

6. In each of the above instances, Public Resource's posting of these edicts of government resulted in an improved web presence coded by individuals and volunteers and increased public access for the materials. In the cases of Washington, D.C. and Chicago, city officials also were involved in the process. *Id.* at ¶¶ 31-41, 44.

7. Indeed, making edicts of government, such as legal codes, available in bulk leads to more innovation, a better-informed citizenry, and a better democracy. Noveck Decl., Ex. C at ¶ 14.

B. History of the Code Revision Commission & the Official Code of Georgia Annotated

8. The State of Georgia enacts and promulgates its laws through its legislature. Stipulation of Facts (“Stip.”), Dkt. 17 at ¶ 44.

9. Georgia’s Constitution provides that “[t]he General Assembly shall provide for the publication of the laws passed at each session.” Ga. Const., Art. 3, Section 5, ¶ 1.

10. It is typical for bills introduced in the General Assembly to begin, “an Act to amend Article...Chapter...Title of the Official Code of Georgia, Annotated,” Stip., Dkt. 17 at ¶ 81, as required by Georgia’s Constitution, Ga. Const., Art. 3, Section 5, ¶ 4.

11. Each year the General Assembly passes a bill to reenact the statutory portions of the O.C.G.A. Senate Bill 340 (2014), Ex. M.

12. The Code Revision Commission assists the legislature in publishing the laws it enacts in the Official Code of Georgia (“O.C.G.A.”). Stip., Dkt. 17 at ¶ 82.

13. The Commission was created by the General Assembly in 1977 and tasked with selecting a publishing firm “possessing the necessary expertise and manpower to accomplish a complete recodification [of the state’s laws] as quickly as possible.” Ga. Code Ann., Foreword, Ex. D at ix-x.

14. The Code Revision Study Committee, also created by the General Assembly, concluded that a complete revision and recodification of the state’s laws was “long overdue” and that “the most economical and satisfactory method to accomplish code revision within the State of Georgia is through a negotiated contract with a publishing firm possessing the necessary

expertise and manpower to accomplish a complete recodification as quickly as possible.” *Id.* at ix.

15. Upon the Study Committee’s recommendation, the General Assembly created the Commission to select a publishing firm and “resolve the myriad of details connected with the code revision project.” *Id.* at ix-x.

16. The Commission is composed of the Lieutenant Governor, four members of the Senate, the Speaker of the House of Representatives and four additional members of the House of Representatives, and four members appointed by the State Bar of Georgia, one of whom is a judge or senior judge of the State Superior Courts and one of whom is a State district attorney. *Id.* at x.

17. From five law publishers, the Commission selected The Michie Company to prepare and publish what would become the O.C.G.A., and entered into a contract. *Id.*

C. The Publication Agreement between Lexis/Nexis & the Commission Regarding the O.C.G.A.

18. Despite contracting with Michie, the Commission itself developed the uniform numbering system and rules of style used in the new (1981) Code and adopted an arrangement into 53 Code titles. *Id.* at xi.

19. Upon completion of the editorial process, a manuscript entitled the Code of Georgia 1981 Legislative Edition, was prepared, presented to the General Assembly, and enacted at the 1981 extraordinary session of the General Assembly. Annotations, indexes, editorial notes and other materials have been added to that manuscript to produce the Official Code of Georgia

Annotated, the first official Code to be published under authority of the State of Georgia since the Code of 1933. *Id.*; Terry A. McKenzie, *The Making of A New Code*, 18 Ga. St. B.J. 3 (1982), Ex. E at 2.

20. On October 3, 2006, the Commission issued a Request for Proposals, and on December 27, 2006, entered into a new Agreement for Publication (“Agreement”) with Matthew Bender & Co. Inc. (“Lexis/Nexis”). Publication Agreement, Ex. F at 1.

21. The Agreement requires the official Code to include not only the statutory provisions, but also “annotations, captions, catchlines, headings, history lines, editorial notes, cross-references, indices, title and chapter analyses, research references, amendment notes, Code Commission notes, and other material related to or included in such Code at the direction of the Commission.” *Id.* at 2.

22. Each O.C.G.A. volume and supplement therefore contains statutory text and non-statutory annotation text, including judicial decision summaries, editor’s notes, research references, notes on law review articles, summaries of the opinions of the Attorney General of Georgia, indexes, and title, chapter, article, part and subpart captions, and others (collectively, “annotations”) that are prepared by Lexis/Nexis under the requirements of the agreement. Stip., Dkt. 17 at ¶¶ 1-3, 9, 18, 26.

23. The Commission has regularly asserted copyright in the “catchlines of Code sections; names of Titles, Chapters, Articles, Parts, and Subparts; history lines; editor’s notes; Code Commission notes; annotations; research references; cross-references; indexes; and other such materials.” Dkt. 17-8 at 1.

24. The Agreement requires Lexis/Nexis to adhere to the organization and numbering used by the previous publisher. Publication Agreement, Ex. F at 3.

25. The Agreement also provides that the Commission, not its hired publisher, has “the ultimate right of editorial control” both over all material contained in the O.C.G.A. and over what material is selected to become part of the O.C.G.A. *Id.* at 2.

26. The Agreement requires Lexis/Nexis to follow the Commission’s detailed publication manual, which “reflect[s] those specific content, style and publishing standards of the Code as adopted, approved or amended from time to time by the Commission or its staff pursuant to Code Section 28-9-3 of the Official Code of Georgia Annotated.” *Id.*

27. Lexis/Nexis does not choose which cases to summarize in the Code’s annotations, as the Agreement requires Lexis/Nexis to summarize “all published opinions of the Georgia Supreme Court and the Court of Appeals of Georgia, and all published opinions of the United States Supreme Court and other federal courts that arose in Georgia and construed Georgia general statutes, whether such decisions favor plaintiffs, defendants, or the prosecution.” *Id.* at 3.

28. The Agreement similarly requires that the Annotations include research references and legislative history. *Id.* at 4-5.

29. The Commission’s Publication Manual is even more detailed in its directions to Lexis/Nexis, for example providing nine pages of instruction in the proper formulation of amendment notes and ten pages to that of Editor’s Notes. Publication Manual, Ex. G at 78-87, 99-109.

30. The Agreement requires that Lexis/Nexis provide Georgia's statutes unannotated ("Unannotated Code") on a website that the public can access for free using the Internet. *Id.* at 11-12; Stip., Dkt. 17 at ¶ 73-75.

31. The free public website contains only the statutory text and numbering of the O.C.G.A., stripped of its Annotations. Stip., Dkt. 17 at ¶¶ 73, 75.

32. The Agreement requires Lexis/Nexis to track usage of the Unannotated Code on the public website and to report annually to the Commission the amount of usage and whether its sales of, or subscriptions to, the printed O.C.G.A., the C.D. ROM version and similar commercial versions have decreased. Publication Agreement, Ex. F at 12; 2015 Usage Report, Ex. H..

33. The Agreement requires Lexis/Nexis to provide appropriate copyright notices on both the free public website for the unannotated Code and the online O.C.G.A. available as part of Lexis/Nexis for-profit online services and to notify visitors that any reproduction of the O.C.G.A. other than the statutory text and numbering is prohibited. *Id.* at 12.

34. According to Lexis/Nexis's representative, Anders Ganten, the Agreement between Georgia, through the Commission, and the O.G.C.A.'s publisher is unique. Commission Minutes, Ex. I at 2.

35. "In other states, the work on annotations is done in house or contracted as a fee for service arrangement." *Id.*

36. In Georgia, Lexis/Nexis has the exclusive right to publish and sell the O.C.G.A. as a printed publication, on CD-ROM, and in an online version and

receives income from its sales of the O.C.G.A. Stip., Dkt. 17 at ¶¶ 84-85.

37. The Commission, however, only receives royalties from the licensing fees for the CD-ROM and online versions of the O.C.G.A. Pl.’s Resp. to D.’s Interrogatories, Ex. O at 14.

38. In fiscal year 2014, the Commission received \$85,747.91 in licensing fee royalties. Mar. 29, 2016 Letter from L. Pavento, Ex. J at 1.

39. For Lexis/Nexis, “the cost of publishing the Code rises each year” and “the print publication is a struggle each year.” Commission Minutes, Ex. I at 2.

40. The Legislative Counsel publishes the *User’s Guide to the Official Code of Georgia, Annotated*. User’s Guide, Ex. N.

41. The User’s Guide instructs those citing to the Code of Georgia to cite to the O.C.G.A. *Id.* at xvii

42. The User’s Guide explains that some annotations are indexes, tables and research references that advise the reader of other materials relevant to understanding the nuances and interpretations of the statutory text itself. *Id.* at xxi-xxii.

D. The O.C.G.A. as the only Official Code

43. The Annotations to the O.C.G.A. include a summary of a vacated Northern District of Georgia case that quotes “[a]ttorneys who cite unofficial publications of 1981 code do so at their peril.” The heading of that summary reads: “Official Code publication controls over unofficial compilation.” Ga Code Ann. § 1-1-1, note (Judicial Decisions); Stip., Dkt. 17 at ¶ 94.

44. Lexis/Nexis markets its printed O.C.G.A. stating “the Official Code of Georgia Annotated (O.C.G.A.)

provides users with the *official* Georgia statutes, fully annotated.” Stip., Dkt. 17 at ¶ 95; Ex. M to Stip., Dkt. 17-13.

45. The Honorable Johnnie Caldwell, Representative, Chairman of the Commission and a lawyer in Georgia for at least 43 years, told the Commission that he buys the O.C.G.A. for the annotations. Commission Minutes, Ex. I at 2.

46. The judicial summary annotation for Ga. Code Ann. § 50-2-1 for the case *Dep’t of Natural Resources v. Joyner*, 241 Ga. 390 (1978) reads:

Salt waters of this state extend from the mean low watermark of the foreshore three geographical miles offshore; except where a low tide elevation is situated within three nautical miles seaward of the low water line along the coast, the state’s three mile boundary is measured from such low tide elevation.

Ga. Code Ann. § 50-2-1 ann.

47. The judicial summary annotation for West’s Code of Georgia Annotated for the same case reads: “Salt waters of Georgia extend from mean low water mark of foreshore three geographical miles offshore, except where a low tide elevation is situated within three nautical miles seaward of low waterline along coast, in which case state’s three-mile boundary is measured from such low tide elevation.” Ga. Code Ann. § 50-2-1 ann. (West 2016).

48. The judicial summary annotation for Ga. Code Ann. § 50-2-1 for the case *State v. Bruce*, 231 Ga. 783 (1974) reads:

Whichever line is correct, low tide or high tide, as the dividing line between private property sought to be registered and the state's property, the state is still an adjoining landowner and should have been so named in the petition and served other than by the advertisement "to whom it may concern," and a land registration judgment, if granted, would not be binding upon an adjoining landowner who was not named and served.

Ga. Code Ann. § 50-2-1.

49. The judicial summary annotation for West's Code of Georgia Annotated for the same case reads:

Regardless of whether the low-tide line or the high-tide line was the dividing line between property sought to be registered and the State's property as the owner of the ocean within three geographical miles of ordinary low-water mark, State was an "adjoining landowner" and should have been so named in the petition and served other than by advertisement, despite contention that by reason of statute and revision of the Constitution petitioners were already owners of land between the high and low-tide marks and that the land which they were seeking to register, which had been built up by accretion, was only land above the high-tide line.

Ga. Code Ann. § 50-2-1 ann. (West 2016).

50. The judicial summary annotation for O.C.G.A. § 50-2-1 for the case *Ga. Ry. & Power Co. v. Wright*, 146 Ga. 29 (1916) reads:

That part of the Savannah River which is broken by islands, located between an island and the Georgia mainland, is within the jurisdiction and sovereignty of this state by virtue of this section, and a dam constructed across the river from an island to the Georgia shore is subject to taxation in this state.

Ga. Code. Ann. § 50-2-1.

51. The judicial summary annotation for West's Code of Georgia Annotated for the same case reads:

Under Beaufort Convention 1787 and Civ. Code 1910, § 16, that part of the Savannah river which is broken by islands, located between an island and the Georgia mainland, is in Georgia, and a dam from an island to the Georgia shore is subject to taxation in Georgia.

Ga. Code Ann. § 50-2-1 (West 2016).

E. Limitations on Public Access to the Unannotated Code

52. To access the unannotated code via the website link found on the Georgia website, www.legis.ga.gov, one must accept the terms and conditions of use generally applicable to the Lexis/Nexis websites. Stip., Dkt. 17 at ¶ 86; Ex. I to Stip., Dkt. 17-9.

53. The access page that allows users to access the online publication, however, states that the Lexis/Nexis website use terms and conditions do not

apply to the O.C.G.A. statutory text and numbering. Stip., Dkt. 17 at ¶ 86; Ex. J to Stip., Dkt. 17-10.

54. The Lexis/Nexis website use terms and conditions are governed by New York state law and require the user to submit to the personal jurisdiction of New York state courts for the purpose of litigating any action arising out of or relating to the Lexis Nexis website use terms and conditions. Stip., Dkt. 17 at ¶ 87.

55. Until at least May 28, 2014, the notice displayed before users could access the unannotated code on the public access Lexis/Nexis site included a banner page that the user had to acknowledge to gain access to the Lexis/Nexis site. *Id.* at ¶ 92; Ex. L to Stip., Dkt. 17-12. This banner page stated “the latest print version of the O.C.G.A. is the authoritative version.” Stip., Dkt. 17 at ¶ 92.

56. This 2014 banner page also did not explicitly state that the Lexis/Nexis terms and conditions of use do not apply to the Georgia Code statutory text and numbering *Id.* at ¶ 93; Ex. L to Stip., Dkt. 17-12.

57. Once within the Lexis/Nexis public access site, one notice on the website is a hyperlink to the terms and conditions specific to the Georgia Code materials. Stip., Dkt. 17 at ¶ 88; Ex. K to Stip., Dkt. 17-11. These terms and conditions explain that a user may copy Georgia Code sections’ text and numbering. Stip., Dkt. 17 at ¶ 90.

58. At least one citizen of Georgia found the requirement to accept the Lexis/Nexis terms of use before being able to access the Georgia statutory materials “distasteful,” particularly the provision agreeing to jurisdiction in a New York court and the provisions prohibiting use of the data even by “public and non-profit users.” Declaration of Clay Johnson (“Johnson

Decl.”), Ex. K at ¶ 10. The Lexis/Nexis free online site also suffers from technical challenges, including generating unwarranted security errors, displaying a blank screen in certain web browsers, lack of bookmarking function, lack of permanent links, HTML and CSS errors, and limited accessibility for the visually impaired. *Id.* at ¶¶ 11-18. Finally, it is unclear to users what Lexis/Nexis is doing with their search terms and navigation history. *Id.* at ¶ 18.

F. Alternatives for Access to the O.C.G.A.

59. Fastcase, Inc. (“Fastcase”) provides subscribers a comprehensive legal research service, including cases, statutes, regulations, court rules and constitutions for all 50 states. Declaration of Edward Walters (“Walters Decl.”), Ex. L at ¶ 8.

60. The Fastcase service is often offered to end users as part of an arrangement with state and local bar association[s], which contract with Fastcase so they may offer the service as a free benefit to their members. *Id.* at ¶ 9.

61. In January 2011, Fastcase and the State Bar of Georgia announced a partnership that made the Fastcase service available to the 42,000 members of the State Bar of Georgia. *Id.* at ¶ 10.

62. Fastcase has attempted on numerous occasions to license the O.C.G.A. from the State of Georgia and Lexis/Nexis, but has been informed that no license would be granted, at any price. *Id.* at ¶ 11.

63. Instead, Fastcase offers its subscribers a version of the Code of Georgia, but it is what O.C.G.A. § 1-1-1 terms an “unofficial compilation.” *Id.* at ¶ 12.

64. Fastcase would prefer to offer the O.C.G.A. to its subscribers because it is the version of these edicts

of government promulgated by the State of Georgia. *Id.* at ¶ 13.

G. Public Resource's Posting of the Code

65. To make the O.C.G.A., including the annotations, available on the Internet, Public Resource purchased the entirety of 186 printed volumes and supplements of the O.C.G.A. and copied them all, including their front and back covers, and then posted those copies on its website: <https://law.resource.org>. Stip., Dkt. 17 at ¶¶ 34-36.

66. At least one copy of each O.C.G.A. volume and supplement that Public Resource posted on its <https://law.resource.org> website is in an electronic format that displays an image of the printed publication as copied by Public resource, which image allows for electronic page turning of the printed publication. *Id.* at ¶ 37.

67. Public Resource distributed copies of the entirety of the O.C.G.A, contained on USB thumb drives, to the Speaker of the House, Georgia House of Representatives, Mr. Wayne Allen, Legislative Counsel, Office of Legislative Counsel, Georgia General Assembly, and other members of the State of Georgia Legislature. *Id.* at ¶¶ 63-64.

68. Public Resource's purpose in scanning and posting the O.C.G.A. was to facilitate scholarship, criticism and analysis of the official Code, to inform the public about the laws that govern it, for educational purposes and to encourage public engagement with the law. (Malamud Decl., Ex. A at ¶ 45.

69. After the Commission commenced this action, Public Resource purchased and copied the 2015

volumes and supplements of the O.C.G.A. and copied and posted them on its website. Stip., Dkt. 17 at ¶ 46.

70. In addition to posting volumes of the O.C.G.A. on its own website, Public Resource also posted them on the Internet Archive website, www.archive.org. *Id.* at ¶¶ 50-52, 54-56.

71. Each scanned copy has optimal character recognition, making it significantly more accessible to people who are visually impaired. Malamud Decl., Ex. A at ¶ 46.

72. The process of posting each volume includes significant metadata, such as the names of the titles included in each volume, making them more easily discovered using search engines. *Id.*

73. The process of posting each volume creates a version that is compatible with e-Book readers, smart phones, and tablets. *Id.*

74. Public Resource actively encourages all citizens to copy, use, and disseminate the O.C.G.A. volumes and to create works containing them. *Id.*

75. Public Resource also provides all the volumes in bulk on its servers, allowing users to quickly access the entire Code or a specific volume, and copy and paste relevant sections into their own documents. *Id.*

76. The Internet Archive's user interface allows readers to search a volume of the O.C.G.A., displaying "pins" for each page that contain the search term, allowing a reader to quickly look for key phrases in different locations. *Id.*

77. In 2014, Public Resource solicited crowd funding on the website [<indiegogo.com>](http://indiegogo.com) to support its scanning and posting of the O.C.G.A. *Id.* at ¶ 42.

78. This campaign ended on July 11, 2014 and raised approximately \$3,000 *Id.* at ¶ 42, 62.

Respectfully submitted this 17th day of May, 2016.

[Signature block omitted]

APPENDIX Z

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CODE REVISION)	
COMMISSION on Behalf of)	
and For the Benefit of the)	
GENERAL ASSEMBLY OF)	
GEORGIA, and the STATE	)	CIVIL
OF GEORGIA,	)	ACTION NO.
	)	1:15-cv-2594-
Plaintiff,	)	MHC
)	
v.)	
)	
PUBLIC.RESOURCE.ORG,)	
INC.,)	
Defendant.)	

**DECLARATION OF CARL MALAMUD IN
SUPPORT OF PUBLIC.RESOURCE.ORG'S
MOTION FOR SUMMARY JUDGMENT**

I, Carl Malamud, declare as follows:

1. I am the founder of Public.Resource.Org ("Public Resource"). I have personal knowledge of the facts stated in this declaration and know them to be true and correct. I could competently testify to them if called as a witness.
2. I wish to explain why I purchased, scanned, and posted on the Internet the Official Code of Georgia Annotated.
3. As plaintiffs have mentioned that my name was considered for appointment as Public Printer of the

United States and that President Obama did not appoint me to that position, I will explain the circumstances.

4. From 2005-2006, I served as Chief Technology Officer to John D. Podesta, the President and CEO of the non-profit research organization, the Center for American Progress (“CAP”). Although my main job was to help the institution and its people use technology effectively, John encouraged me to undertake initiatives around national technology policy.

5. My approach has always been hands-on, focused on building systems that provide solutions to real problems.

6. I am a self-taught computer expert, which affects my approach to technology policy. In the 1980s, I consulted for a number of federal agencies, such as the Department of Defense and the Board of Governors of the Federal Reserve System, on the use of databases and networks. I wrote eight advanced professional reference books and taught many engineers how these technologies work in practice. I have since placed all my books in the public domain and they are available at [http://catalog.hathitrust.org/Search/Home?adv=1&type\[\]=author&lookfor\[\]=Carl+Malamud](http://catalog.hathitrust.org/Search/Home?adv=1&type[]=author&lookfor[]=Carl+Malamud)

7. In 1993, I created the first radio station on the Internet, under the auspices of a 501(c)(3) nonprofit I founded called the Internet Multicasting Service. I was inspired to make the radio station non-profit by the examples of National Public Radio and of Brian Lamb, who created C-SPAN. The New York Times described this effort in an article entitled “Turning the Desktop PC Into a Talk Radio Medium” which may be viewed at <http://www.nytimes.com/1993/03/04/us/turning-the-desktop-pc-into-a-talk-radio-medium.html>

8. As part of our programming, we did live streaming of speeches held at National Press Club luncheons, and also joined the Public Radio Satellite system, produced original programming such as my talk show “Geek of the Week,” and received rights from Harper Audio to post audio of authors such as T.S. Elliot and Robert Frost reading their own work. The archives of our programming are still available on the net and may be viewed at <http://museum.media.org/radio/>

9. In 1993, I applied for and was granted membership in the Radio TV Gallery of the U.S. House of Representatives and connected a feeds [sic] of the floors of the House and Senate to the Internet by installing dedicated lines from the basement of the U.S. Capitol to our offices. The Washington Post described this project in an article entitled “Superhighway Routed Through Capitol Hill” which may be viewed at <https://www.washingtonpost.com/archive/politics/1994/09/19/superhighway-routed-through-capitol-hill/0aba8ac6-e154-4bd5-8cb3-0a3b30b0e762/>

10. Being located in Washington, D.C. was fortuitous. Internet Service Providers UUNET and MFS Datanet donated a free 10 million bit per second link into the core of the Internet, one of the fastest links in Washington at the time. When President Clinton’s staff wanted to do an Internet demonstration but had not yet been able to get their own link installed, we ran an infrared link down to the White House lawn so the President could give his demonstration.

11. I always considered the Internet to be a new medium, and “radio” was only a metaphor. We did not hesitate to explore other ways of using the Internet. In 1993, Congressman Edward J. Markey asked me why the Securities and Exchange Commission’s EDGAR

database was not available on the Internet. I told him I didn't see any reason why it wasn't. I proceeded to get a grant from the National Science Foundation and put that database on the Internet. Dr. Eric Schmidt, then at Sun Microsystems, gave us equipment so we could run the service. The New York Times described the project in an article entitled "Plan Opens More Data To Public" which may be found at <http://www.nytimes.com/1993/10/22/business/plan-opens-more-data-to-public.html>

12. We also put the full U.S. Patent database on the Internet with full text capabilities. Not only the public, but also many patent examiners used this service extensively[.], Two years later, I loaned the SEC hardware and donated all our software so that they were able to take over the service. Our loaner agreement with the SEC and a letter of thanks from them is available at <https://public.resource.org/sec.gov/>

13. With this background in mind, 2006, when I moved back to D.C. to work for John Podesta, I set out looking for a new policy initiative that would further open government proceedings to the public. I decided to focus on the proposition that video from all congressional hearings should be streamed live on the Internet as high resolution video with closed captions and other modern features. As part of my investigation, I met with numerous congressional staff, and with Mr. Bruce James, the Public Printer of the United States, and became familiar with the working of the Government Printing Office and their publication of the Official Journals of Government, including the Federal Register and the Code of Federal Regulations.

14. In 2007, I had moved the Center for American Progress from having no technical staff, being

dependent on high-priced outside consultants and having only rudimentary capabilities to a full department working with modern technologies, such as the Python programming language and a properly hosted web system. I told John that my work was done, and moved back to California where I founded my current non-profit, Public.Resource.Org (“Public Resource”), where I have worked exclusively since then.

15. At Public Resource, I continued my interest in better access throughout the country to the proceedings of Congress. After C-SPAN issued a DMCA takedown notice to Speaker Nancy Pelosi for posting video of herself testifying in front of the House of Representatives, I was able to convince C-SPAN to allow far more liberal use of records of government proceedings. James Fallows described this incident in the Atlantic, a copy of which may be read at <http://www.theatlantic.com/technology/archive/2007/03/another-win-for-carl-malamud-or-news-you-won-apost-see-in-the-may-2007-issue-of-the-atlantic/7543/>

16. I continued my efforts from 2007-2010 to get Congress to make more video available. I began posting video of congressional hearings obtained from the few committees that were online and from C-SPAN, and wrote an unsolicited report to Speaker Pelosi. Those efforts are documented on the Public Resource web site at <https://public.resource.org/house.gov/>

17. In 2011, one of the first acts of Speaker Boehner on taking office was to ask me to work with Chairman Darrell Issa and his staff on congressional video. As part of that effort, we worked with the Committee on Oversight and Government Reform to post a full archive of their proceedings and to develop techniques to

use official transcripts to create closed-captions, the first time Congressional video was accessible in this manner. We copied over 14,000 hours of video from all committees, an archive spanning the 100th to the 112th Congress and furnished that data to C-SPAN and the Internet Archive, as well as maintaining an extensive YouTube presence. A copy of the letter from Speaker Boehner may be viewed at <https://law.resource.org/rfcs/gov.house.20110105.pdf>

18. During this same period, from 2007-2011, we worked with David Ferriero, the Archivist of the United States. Public Resource donated equipment to the National Archives, and we sent in volunteers to duplicate approximately 6,000 government videos and post them to YouTube and the Internet Archive, where they have received over 50 million views. The New York Times described this program in “Duplicating Federal Videos for an Online Archive” which can be viewed at <http://www.nytimes.com/2010/03/15/technology/15fedflix.html>

19. While online video and other government databases were important initiatives, when I started Public Resource, I felt the public suffered from the the [sic] absence on the Internet of primary legal materials, the raw materials of our democracy. These materials include judicial opinions (and the underlying dockets leading to those opinions), statutes and the codifications of those statutes (and the underlying hearings that led to those public laws) of the legislature, and regulations (and the underlying notices and comments that led to those regulations) of the executive branch.

20. In 2008, working with Professor Lawrence Lessig and Creative Commons, Public Resource posted on the Internet 1.8 million pages of case law, including all

U.S. Court of Appeals opinions from 1950 on, as well as all U.S. Supreme Court opinions. This was the first time these judicial opinions were freely available on the Internet. A copy of that announcement may be viewed at https://bulk.resource.org/courts.gov/0_Press_20080211.pdf

21. Public Resource went on to post all the text of the First Series of the Federal Reporter, all of the Federal Cases, and to scan three million pages of briefs from the Ninth Circuit of the U.S. Court of Appeals dating from the beginning of the court to 1970. All of these materials are available for use without restriction. In addition, all of the Federal Cases and the first forty volumes of the Federal Reporter were re-typed into HTML files so they can be viewed as web pages in the same format we used for other court opinions. An example is *Banks v. Manchester*, 128 U.S. 244, 9 S.Ct. 36, 32 L.Ed. 425 (1888) which may be viewed at <https://law.resource.org/pub/us/case/reporter/US/128/128.US.244.html>

22. In 2008, as part of posting the U.S. Court of Appeals opinions on the Internet, a member of the public alerted me that numerous Social Security Numbers appeared in court opinions. I redacted those privacy violations and sent a copy of my audit to the Committee on Rules and Practice of the Judicial Conference and to the Chief Judges of the Circuits. This effort received a letter of thanks from the Judicial Conference is available [sic] at <https://public.resource.org/scribd/7512576.pdf>

23. In 2008, I discovered Social Security Numbers (SSNs) of 232,000 military officers in the Congressional Record. I alerted the Government Printing Office, the Defense Department, and the Federal Trade

Commission. The government redacted those Social Security Numbers from their computer systems and, after I contacted them, both West and Lexis redacted this information from their commercial services. The privacy breach was the subject of a front-page article in Stars and Stripes entitled “Military lags in safeguarding officers’ identities” which may be found at <http://www.stripes.com/news/military-lags-in-safeguarding-officers-identities-1.96079>

24. In 2008, an audit of the PACER system unveiled a large number of privacy violations in District Court dockets. A comprehensive audit of 20 million pages of filings from 32 District Courts was sent to the Chief Judges and the Judicial Conference. This effort led to changes in the privacy procedures for the PACER system as a whole and in specific District Courts. A copy of the letter of acknowledgement from the Honorable Royce C. Lamberth of the District Court for the District of Columbia may be found at <https://public.resource.org/scribd/11851306.pdf>

25. In 2010, Public Resource led a national effort entitled “Law.Gov,” which consisted of a series of fifteen workshops examining the availability of primary legal materials in the United States. Major law schools, such as Harvard, Stanford, Duke, Cornell, and Colorado hosted these workshops. Over 600 people attended them, and speakers included government officials such as the Law Librarian of Congress, the Archivist of the United States, the Director of the Office of the Federal Register, several White House officials, and Professor Laurence Tribe from the Department of Justice. At the conclusion of the workshops, we posted a set of consensus principles with recommendations for access to legal materials. Details may be viewed at <https://law.resource.org/index.law.gov.html>

26. During this period, I continued to visit Washington and met on numerous occasions with officials responsible for the Official Journals of Government, including Mr. Ray Mosley of the Office of the Federal Register, and Robert C. Tapella, the Public Printer of the United States, and his Chief Technology Officer, Mr. Michael Wash. I came to appreciate the important role that the Government Printing Office plays and saw great potential in transforming the office to meet the needs of the Internet era.

27. When Barack Obama was elected President, I spent considerable time developing those ideas into a series of concrete actions the Government Printing Office could take, and published those ideas in a series of papers. I announced that I would be delighted to be considered as a possible candidate for Public Printer, and posted a web site called "Yes We Scan." A number of prominent individuals agreed to lend their name as supporters. A copy of that web page may be found at <https://yeswescan.org/index.gpo.html>

28. Advancing one's name publicly for an appointed office is somewhat unusual, but one of my goals was to raise public awareness of the important role the Government Printing Office played since its founding in 1861. My campaign did so: a large number of people read the position papers and expressed their "tweets of support." A "flip book" with 1,017 of those tweets may be found at at [sic] https://yeswescan.org/tweets_for_net.pdf

29. I had several interviews at the Office of Presidential Personnel and was informed that I was on the short list. While I was not named to the position, I was asked by the Obama-Biden Transition effort to serve as a consultant and expand my thoughts on how the

Federal Register could be transformed. A copy of the paper I submitted in January, 2009 may be viewed at <https://public.resource.org/change.gov/reboot.register.pdf>

30. That effort led to far-reaching changes in the publication of the Federal Register. I was pleased to help support Mr. Raymond Mosley of the Office of the Federal Register (OFR) in those efforts and to serve as the nominator for OFR as the winner of the first Walter Gellhorn Award for innovation in government services from the Administrative Conference of the United States. A copy of the statement from the Office of the Federal Register may be viewed at <https://www.federalregister.gov/blog/2011/12/federalregister-gov-wins-award-for-innovation-best-practices>

31. Although availability of Federal information has been my primary focus since 1993, at Public Resource I also looked at the availability of primary legal materials published by states and municipalities. In 2008, Public Resource posted a copy of the California Code of Regulations, which previously was not available on the Internet. We also posted a copy of Title 24 of the California Code of Regulations, which consists of the building, electrical, fire, plumbing, and other public safety codes.

32. Since 2008, we have continued our efforts to post the public safety codes incorporated into law by state governments. In 2012, that effort was expanded to include technical public safety codes that are incorporated by reference into the Code of Federal Regulations. Neither of these actions was undertaken lightly, and I read deeply into the issue of promulgation of the law through history.

33. In most states, I found that state statutes and regulations, as well as the codification of the statutes and regulations, were available in some form on the Internet. In many cases, however, the technology employed did not make the information in a very useful fashion or [sic] take advantage of the Internet and its potential.

34. In 2008, the State of Oregon tried to prevent Internet sites, including the one run by Public Resource, from posting the Oregon Revised Statutes, and initially threatened to sue them. I was pleased to be invited, however, along with citizens of Oregon, to testify before a joint session of the Legislative Counsel Committee on June 19, 2008. At the conclusion of that hearing, the Legislative Counsel Committee resolved unanimously not to assert copyright over the Oregon Revised Statutes. Copies of my testimony, and press reports about the Oregon situation may be viewed at [https:// public.resource.org/oregon.gov/](https://public.resource.org/oregon.gov/)

35. A lecture I gave at Lewis & Clark Law School and the University of Oregon entitled “Three Revolutions In American Law” about the Oregon situation and the principle that the law has no copyright in the United States may be viewed at https://public.resource.org/oregon.gov/3revolutions_pamphlet.pdf

36. After Oregon ceased asserting copyright in its laws, a student at Lewis & Clark Law School who had majored in computer science as an undergraduate, was able to create a vastly better web presence for the Oregon Revised Statutes. Public Resource was pleased to provide some financial support and technical advice for this effort. The web site may be viewed at <http://www.oregonlaws.org/>

37. A similar situation occurred in April 2013 in the District of Columbia, where the D.C. Code was unavailable to download and had restrictions on use asserting copyright. I spent \$803 and purchased the Official DC Code, scanned the documents, and sent them on a USB Drive to V. David Zvenyach, the General Counsel of the DC Council, with a letter detailing the reasons D.C.'s copyright assertions were unfounded.

38. Mr. Zvenyach looked into the situation and in a September 13, 2013 letter to me acknowledged the importance to an informed citizenry of promulgation of the law. But, he went further. A few days later, the DC Council issued an unofficial version of the code that could be downloaded in bulk, and then Mr. Zvenyach and local volunteer programmers created a far better version of the Code on a public web site. A July 8, 2014 article in Government Executive described the project and may be viewed at [http:// www.govexec.com/state-local/2014/07/ultimate-open-government-unlocking-laws/87997/](http://www.govexec.com/state-local/2014/07/ultimate-open-government-unlocking-laws/87997/). The DC Code site they created may be viewed at <http://dccode.org/>

39. I have repeatedly seen that making an official code available in bulk enables volunteers in the community to create a better web. In Chicago, for example, I worked with American Legal Publishing, the official codification contractor for the Chicago City Council, to make a copy of the Chicago Code available for download, with the active support of the City Clerk of Chicago, the Honorable Susana Mendoza. In August, 2013, Todd Meyers, the Vice President for Client Services of American Legal Publishing, worked with me to provide a custom version of the Chicago Code in bulk as a series of RTF files, making it easy for me to transform the entire code into other formats, such as HTML. We posted quarterly snapshots of the Chicago

Building, Municipal and Zoning Codes from 2007-2013 on our site at <https://law.resource.org/pub/us/code/city/il/Chicago/>

40. After the data was made available, a nonprofit organization in Washington, D.C., the OpenGov Foundation, took that raw data and put together a beautiful web site which may be found at <http://chicagocode.org/>

41. I was pleased to be a speaker, along with Clerk Mendoza, when this new site was unveiled on November 25, 2013. Her press release about the event may be viewed at <http://www.chicityclerk.com/news/clerk-mendoza-joins-open-government-movement-leaders-tonight-help-crack-chicago-municipal-code>

42. In 2013, purchased paper copies of the official state codes of a number of states, including Arkansas, Colorado, Idaho, Mississippi, and Arkansas. I had those documents scanned. Then I put the files on a George Washington USB “thumb drive,” and sent them to the state officials charged with codification and promulgation of state law. On May 30, 2015, I sent such a letter to the Honorable David Ralston, Speaker of the House of the Georgia House of Representatives and Mr. Wayne R. Allen, the Legislative Counsel. That letter may be viewed at <https://law.resource.org/pub/us/code/ga/ga.gov.20130530.pdf>

43. I have encountered assertions, like the State of Georgia’s, that the State owns copyright in its Official Code, before. For example, in 2007, I created a mirror of the U.S. Copyright records, data used in services such as Google Book Search and the Internet Archive’s Open Library. The Library of Congress asserted copyright over that database. It was only after the Register of Copyrights, Marybeth Peters, stepped in and disclaimed copyright protection for works of government

that the Library of Congress dropped its assertions. The letter from Ms. Peters may be viewed at <https://public.resource.org/scribd/3319365.pdf>

44. During a break in the 2008 hearing before the Legislative Counsel Committee of Oregon, I was approached by Senate President Peter Courtney, who served seven terms in the Oregon House of Representatives before serving five terms in the Oregon Senate. Senator Courtney asked me why it was not enough that the State had a web site already for the Oregon Revised Statutes. He seemed unimpressed when I explained some of the technical flaws in the state-run site. I explained then that many of us that had a dream of being able to post the state laws of all states and allow people to compare them; if each state had special license agreements and restrictions, that could never be possible. Senator Courtney's eyes lit up. He told me that when he goes to write a law, the first thing he does is looks at similar laws in neighboring states, and that the service I described would be immensely useful.

45. By purchasing, scanning, and posting the O.C.G.A. volumes, we are striving to provide a significantly more useful version of the Official Code for people to read and share. Public Resource's purpose in scanning and posting the O.C.G.A. was to facilitate scholarship, criticism and analysis of the official Code, to inform the public about the laws that govern it, for educational purposes and to encourage public engagement with the law.

46. A significant transformation in the O.C.G.A. is performed during this process, increasing the usability and accessibility of the Official Code. Each volume that is scanned also has Optical Character Recognition (OCR), which means it becomes significantly more

accessible to people who are visually impaired. The process of posting each volume includes significant metadata, such as the names of the titles included in each volume, making them more easily discovered using search engines. In the process of posting the each volume [sic], a version is created that is compatible with e-Book readers, smart phones, and tablets. In addition, the user interface provided on the Internet Archive allows users to search a volume, with “pins” being displayed for each page that contains the search term, allowing a reader to quickly look for key phrases in different locations. The user interface also allows a user to “bookmark” a particular page and send that link via email or social media, allowing other readers to quickly pull up that location. In addition, Public Resource provides on our own servers all the volumes in bulk, allowing a user to quickly access the entire code or a specific volume, then copy and paste relevant sections into their own documents.

47.I would like to do many more things with the Official Code of Georgia Annotated to make it more useful for citizens. There are numerous references in the O.C.G.A.to the U.S. Code. Section 1-2-5, for example, references 8 U.S.C. 1448, and it would be very help to link directly to that provision of the U.S. Code. Likewise, references to the Georgia Constitution, to acts of the legislature on the government’s web site, and to judicial opinions can all be provided with links.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on May 14, 2016 in Sebastopol, CA,

/s/ Carl Malamud
CARL MALAMUD

APPENDIX AA

DEPARTMENT OF THE TREASURY

INTERNAL REVENUE SERVICE
P. O. BOX 2508
CINCINNATI, OH 45201

Date: SEP 25 2007

PUBLIC.RESOURCE.ORG, INC.
C/O CARL MALAMUD
1005 GRAVENSTEIN HWY N
SEBASTOPOL, CA 95472

* * *

Dear Applicant:

We are pleased to inform you that upon review of your application for tax exempt status we have determined that you are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to you are deductible under section 170 of the Code. You are also qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Organizations exempt under section 501(c)(3) of the Code are further classified as either public charities or private foundations. During your advance ruling period, you will be treated as a public charity. Your advance ruling period begins with the effective date of your exemption and ends with advance ruling ending date shown in the heading of the letter.

Shortly before the end of your advance ruling period, we will send you Form 8734, Support Schedule for Advance Ruling Period. You will have 90 days after the end of your advance ruling period to return the completed form. We will then notify you, in writing, about your public charity status.

Please see enclosed Publication 4221-PC, Compliance Guide for 501(c)(3) Public Charities, for some helpful information about your responsibilities as an exempt organization.

If you distribute funds to other organizations, your records must show whether they are exempt under section 501(c)(3). In cases where the recipient organization is not exempt under section 501(c)(3), you must have evidence the funds will be used for section 501(c)(3) purposes.

If you distribute funds to individuals, you should keep case histories showing the recipient's name and address; the purpose of the award; the manner of selection; and the relationship of the recipient to any of your officers, directors, trustees, members, or major contributors.

Sincerely,
/s/ Robert Choi
Robert Choi
Director, Exempt Organizations
Rulings and Agreements

Enclosures: Publication 4221-PC
Statute Extension

Letter 1045 (DO/CG)

[Attachment to letter omitted.]

APPENDIX BB

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

CODE REVISION)	
COMMISSION on Behalf of)	
and For the Benefit of the)	
GENERAL ASSEMBLY OF)	
GEORGIA, and the STATE	)	CIVIL
OF GEORGIA,	)	ACTION NO.
	)	1:15-cv-2594-
Plaintiff,	)	MHC
)	
v.)	
)	
PUBLIC.RESOURCE.ORG,)	
INC.,)	
Defendant.)	

**DECLARATION OF BETH SIMONE NOVECK IN
SUPPORT OF PUBLIC.RESOURCE.ORG'S
MOTION FOR SUMMARY JUDGMENT**

Pursuant to 28 U.S.C. § 1746, I, Beth Simone Noveck, hereby declare and state as follows:

1. My name is Beth Simone Noveck. I have personal knowledge of the facts stated in this Declaration and know them to be true and correct. I could competently testify to them if called as a witness.

2. I received an A.B. from Harvard University, magna cum laude, in Social Studies. I received a Ph.D. in 1994 from the University of Innsbruck and a J.D. from the Yale Law School in 1997. I was admitted to

the Bar of the States of New York and New Jersey in 1997.

3. Since 2002, I have been a Professor of Law at the New York Law School. I am presently on leave from that position. I am currently the Jerry Hultin Global Network Professor of Engineering at New York University and since 2012, I have also been a Visiting Professor at the MIT Media Lab. At New York University, I lead the MacArthur Research Network on Opening Governance and am director of the Governance Lab, an action research institute that works with governments around the world on strategies, including open data, to govern more effectively and legitimately.

4. From 2009 to 2011, I served as United States Deputy Chief Technology Officer in the Executive Office of the President. In that capacity, I was charged with responsibility for the White House Open Government Initiative, including implementation of the President's Memorandum on Transparency and Open Government and the Office of Management and Budget's Open Government Directive and, together with my colleagues, implementation of the Administration's policy on open government data and creation of its open data portal data.gov.

5. One of the first Open Government initiatives we began in the White House was to make the Official Journals of Government, including the Federal Register, more broadly available. While the Federal Register was available in bulk in 2008, the cost of the service was \$17,000 per year and procuring the data from the Government Printing Office involved a cumbersome subscription process.

6. Working with the Library of Congress, the National Archives, the Government Printing Office, and

other groups in the government, we were able to remove the \$17,000/year fee and make the data available in bulk. The Federal Register is coded in a markup language known as SGML, a language similar to modern Internet technologies such as HTML and XML.

7. At the White House, we worked with a number of partners, such as Princeton University, to demonstrate how the Federal Register could be reformatted into a more usable web site. However, we were a long ways away from building a publicly accessible web site for the government to use. However, because we made the data available in bulk for use without restriction, other individuals were also free to work with the code.

8. In September 2009, a Washington, D.C. non-profit called the Sunlight Foundation hosted a contest called “Apps for America.” Three young programmers in California decided to enter the contest and went looking for something to do. They were not familiar with the Federal Register, but stumbled across the raw data.

9. The three programmers, Andrew Carpenter, Bob Burbach and Dave Augustine, created a new system called GovPulse.Us, which featured a vastly better web interface for the Federal Register. It included modern typography, daily feeds and alerts, a sophisticated search capability, the ability to link to individual paragraphs of Federal Register notices, and many other features. Their application was a surprise to those of us in government and it very much impressed the judges in the contest, which they won.

10. The new interface to the Federal Register so impressed the Office of the Federal Register that they found the three individuals and asked them to work with the government. The result was that the open

source application developed by them became the official web site for the government at federalregister.gov. A very modest consulting arrangement was put in place, and Andrew, Bob, and Dave continue to support the government web site.

11. On the 75th Anniversary of the Federal Register, the Honorable David Ferriero, Archivist of the United States, announced the public availability of “Federal Register 2.0” on the White House blog. His statement may be found at <https://www.whitehouse.gov/blog/2010/07/26/federal-register-20>

12. Because the work that was created at govpulse.US, and is now the basis for federalregister.gov, is open source, anybody can build on their work and create specialized sites or derivatives.

13. The difference between the “classic” Federal Register and the current system based on open source software is dramatic and can be seen immediately even by those without a technical background. For example, compare the announcement of the U.S. Copyright Office of a new Compendium of U.S. Copyright Office Practices (78 C.F.R. 78911) in the old and new formats:

- <https://www.federalregister.gov/articles/2014/12/31/2014-30415/the-compendium-of-us-copyright-office-practices>;
- <http://www.gpo.gov/fdsys/pkg/FR-2014-12-31/pdf/2014-30415.pdf>.

14. Building web sites for legal materials is difficult. By making bulk data available, we are able to take advantage of the efforts of volunteers, citizen programmers, and others who can often move faster and

in a smarter way than we can in government or in large corporations. At the GovLab, we have documented in detail the myriad benefits of making bulk data available online through a series of case studies available at <http://odimpact.org>. Making edicts of government, such as legal codes, available in bulk leads to more innovation and to a better democracy.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 10, 2016.

/s/ *Beth Simone Noveck*
BETH SIMONE NOVECK

APPENDIX CC

FOREWORD

At the 1981 extraordinary session, the General Assembly of Georgia enacted the statutory portion of the Official Code of Georgia Annotated, the first complete and official recodification of the laws of Georgia since the Code of 1933. Since the adoption of the Code of 1933, there has been a significant increase in both the number and complexity of the laws of Georgia. State government has grown in size and has undergone several significant reorganizations. State government is operating under its fourth state constitution since 1933.

In recognition of the many changes in the laws and the government of the State of Georgia, the General Assembly created the Code Revision Study Committee in 1976. The committee was composed of the following members:

Honorable Wayne Snow, Jr., Chairman
Honorable Howard T. Overby, Vice Chairman
Honorable Hugh Brown McNatt, Secretary
Honorable Peter L. Banks
Honorable Roy Barnes
Honorable Robert W. Crenshaw, Jr.
Honorable Roger Johnson
Honorable Randolph C. Karrh
Honorable J. Beverly Langford
Honorable Preston B. Lewis, Jr.
Honorable Lewis R. Slaton
Honorable Hugh D. Sosebee
Honorable J. Douglas Stewart
Honorable Albert W. Thompson
Honorable Larry Walker

The committee was directed to conduct a thorough study of the subject of code revision, including the need therefor, the time involved, the cost thereof, and all other matters relative thereto. In December, 1976, the committee submitted its report to the General Assembly. In its findings the committee stated: "The time for a complete, bulk revision and recodification of this state's statutory law is long overdue and must be accomplished as quickly as possible. Any attempt to accomplish code revision on a title-by-title basis is not a practicable or feasible solution to the problem. The most economical and satisfactory method to accomplish code revision within the State of Georgia is through a negotiated contract with a publishing firm possessing the necessary expertise and manpower to accomplish a complete recodification as quickly as possible."

The committee then recommended that the General Assembly create a Code Revision Commission and vest in the commission the responsibility of selecting an appropriate firm to accomplish the code revision project and to resolve the myriad of details connected with the code revision project.

To carry out the recommendations of the Code Revision Study Committee, the General Assembly created the Code Revision Commission at the 1977 session and gave the commission the powers necessary to carry out the code revision project. The commission is composed of the Lieutenant Governor and four members of the Senate, the Speaker of the House of Representatives and four additional members of the House of Representatives, and five members appointed by the president of the State Bar of Georgia, one of whom is a judge or senior judge of the superior courts and one of whom is a district attorney. The members of the

commission as of the date of enactment of the Official Code of Georgia Annotated were:

Honorable Wayne Snow, Jr., Chairman
Honorable Thomas B. Murphy
Honorable Larry Walker
Honorable Randolph C. Karrh
Honorable J. C. Daugherty
Honorable Zell Miller
Honorable Roy Barnes
Honorable J. Nathan Deal
Honorable Bill Littlefield
Honorable Charles Wessels
Honorable R. W. Crenshaw, Jr.
Honorable Hugh Brown McNatt
Honorable Lewis R. Slaton
Honorable Hugh D. Sosebee
Honorable J. Douglas Stewart

In addition to the members listed above, Honorable Peter L. Banks, Honorable Howard T. Overby, Honorable J. Beverly Langford, and Honorable Albert W. Thompson served as members of the commission during the recodification process.

The Office of Legislative Council of the General Assembly provided staff for the commission. Terry A. McKenzie, Betty J. Clements, Martin Moody Wilson, G. Joseph Scheuer, Dolores McDonald, and Patterson Harp served as members of the Code Revision Division of the Office of Legislative Counsel and as the staff of the commission. In addition, Frank H. Edwards, Legislative Counsel, Gloria Anderson, and the other employees of the Office of Legislative Counsel provided valuable assistance in the preparation of the Official Code of Georgia Annotated.

Following presentations by five law publishers, the commission selected The Michie Company to prepare and publish the Official Code of Georgia Annotated on behalf of the State of Georgia. Following the execution of a contract between the commission and The Michie Company, the commission and staff developed the uniform numbering system and rules of style which are used in the new Code. The commission adopted an arrangement of laws consisting of 53 Code titles. A statute copy consisting of the Code of 1933, all Georgia laws enacted since 1933, and those laws which were inadvertently omitted from the Code of 1933 but which are still in effect was prepared and arranged into the 53 titles. The editorial staff of The Michie Company, under the direction of David P. Harriman, Stephen C. Willard, James J. Watson, and J. Gerald Kail, performed a title-by-title examination of the statute copy. Numerous memoranda were prepared and sent to the commission for each title. The questions and proposals for changes contained in the memoranda were examined by the staff of the commission, proposed responses were developed, and the questions and proposals were then considered and resolved by the commission. Over 100,000 questions were resolved in this manner. In addition to the questions contained in the memoranda, grammatical changes, the correction of typographical errors, the renumbering of 1933 Code sections and portions thereof, the correction of cross-references within text, and changes necessitated by rules of style were marked directly onto the statute copy by the editors and were examined and approved by the commission and its staff. Upon completion of this process, each title was typeset in a page-proof format and was again examined completely by the editors and the commission's staff. The page proofs were

proofread several times and every memoranda question and response was compared with the page proofs to ensure that the editorial work was correct. Throughout this process, every effort was made to avoid changes in the substance of the law. In those instances in which the commission felt that a substantive change had to be made, a separate bill was introduced in the General Assembly to accomplish the change. These bills were enacted in the 1980 and 1981 regular sessions of the General Assembly. Upon completion of the editorial process, a manuscript entitled the *Code of Georgia 1981 Legislative Edition* was prepared, presented to the General Assembly, and enacted at the 1981 extraordinary session of the General Assembly. Annotations, indexes, editorial notes, and other materials have been added to that manuscript to produce the Official Code of Georgia Annotated, the first official Code to be published under authority of the State of Georgia since the Code of 1933.

In reviewing the memoranda and page proofs, the commission and its staff received the assistance of several hundred people. The Code Revision Overview Committee of the State Bar of Georgia and a number of committees, sections, and individual members of the bar reviewed memoranda or page proofs and provided valuable assistance to the commission. In addition, each department of state government and a number of organizations assigned people to work with the commission in the recodification project. This project could not have been completed without the expertise provided by these individuals and the Code Revision Commission wishes to express its gratitude for their assistance.

The adoption and publication of the Official Code of Georgia Annotated represents years of painstaking

effort by the General Assembly of Georgia, the Code Revision Commission, the Office of Legislative Counsel, the State Bar of Georgia, and The Michie Company. It has been the goal of all who have contributed their time, labor, and expertise to this project to produce a complete, thorough, accurate, and usable Code for the State of Georgia and its citizens. We sincerely hope and believe that this goal has been accomplished.

Code Revision Commission
Honorable Wayne Snow, Jr.
Chairman, 1981
Honorable Larry Walker
Chairman, 1990

HISTORY OF THE CODIFICATION OF THE LAWS OF GEORGIA

The development of the codification of the laws of Georgia has been divided by one commentator into three separate stages—compilation, digest, and code.

The compilation stage began with the provisions of the Constitution of 1798 that the body of laws of the state should be “revised, digested and arranged under proper heads.” Pursuant to this provision, a compilation of laws was published by Robert Watkins in 1801, followed the next year by a compilation prepared by Horatio Marbury and William H. Crawford. Both compilations covered much the same field, specifically, the years 1755 to 1800. Later, pursuant to an Act of 1809 providing for decennial compilations, three separate compilations were prepared. The first, covering the years 1800 to 1810, was prepared by Augustin Smith Clayton. The second, covering the years 1810 to 1819, was prepared by Lucius Q. C. Lamar. The third, covering the years 1819 to 1829, was prepared by William H. Dawson. These volumes encompassed all laws and resolutions passed during the periods in question, regardless of the public and general or private and local nature of the laws and resolutions included and regardless of whether they were in force.

The next stage of development, the digest period, began with an Act of 1819 directing the preparation of a digest of laws of the state. The digest was to embrace all Acts and resolutions passed prior to the 1819 Session as well as those Acts and resolutions passed during that session. The Act directing the preparation of the digest contemplated a condensed volume which would exclude repealed laws and laws of a private and local nature. Pursuant to this legislative

authorization, Oliver H. Prince prepared a digest volume which was approved by the Governor in January 1822 and which was revised in 1837. The 1837 revision of Prince's Digest contained an index of local laws. Pursuant to a resolution of the General Assembly passed December 23, 1843, William A. Hotchkiss prepared a digest of the statutory law of Georgia. This work was the subject of a state subscription upon its completion in 1845. In 1851, Thomas R. R. Cobb published another legislatively authorized digest which was based on the arrangement and plan developed by Prince. Both Prince's Digest and Cobb's Digest contained an alphabetical listing of titles and a chronological arrangement of legislative Acts and resolutions. Next, Howell Cobb prepared "A Compilation of the General and Public Statutes of the State of Georgia." This work was subscribed to by the state in 1859.

The next and most innovative step in the evolution of Georgia codified law was the Georgia Code of 1863. In 1858, a bill was introduced in the General Assembly proposing the codification of Georgia law. The resulting enactment provided for the formation of a three-man commission to prepare for the people of Georgia a code "which should, as near as practicable, embrace, in a condensed form, the laws of Georgia, whether derived from the common law, the constitutions, the statutes of the state, the decisions of the supreme court, or the statutes of England in force in the State." This was to be the first code in the United States giving statutory effect to common law and equitable principles.

The commissioners, David Irwin, Thomas R. R. Cobb, and Richard H. Clark, took it upon themselves to add and delete laws in a manner consistent with the existing system of law, with an eye toward meeting existing needs and in anticipation of future needs. In

doing so, the commissioners adopted and incorporated suggestions, alterations, modifications, enlargements, and restrictions in the laws of the state. However, the taking of such liberties was ratified when the Code was adopted by the General Assembly.

Because the commissioners omitted historical annotations, the sources of some of the laws contained in the Code of 1863, particularly the part dealing with "Political and Public Organization of the State," written by Clark, remain undisclosed. Other parts of the Code are clearly traceable to two prior sources, the Judiciary Act of 1799 and the Penal Code of 1833, which were carried almost wholly intact into Parts 3 and 4 of the Code.

Although a number of codes have followed the Code of 1863, few alterations in its form have been made. Some changes have been made for purposes of clarity, but the substance of the original Code has generally been preserved. The succeeding revisions have continued the process initiated by the Code of 1863 of codifying common law principles as they have developed.

Subsequent official Codes of Georgia were commissioned and adopted as follows:

Code of 1868: Committee appointed to examine revised Code, Ga. L. 1865-66, p. 315. Governor authorized to subscribe for copies for use by state, Ga. L. 1866, p. 223. Code ratified by Constitution of 1868, Art. XI, Sec. III.

Code of 1873: Governor authorized to subscribe for copies of revised Code upon favorable report by Attorney General, Ga. L. 1872, p. 524.

Code of 1882: Governor authorized to direct Attorney General to examine revised Code, Ga. L. 1880-81,

p. 676. Publication of Code authorized by General Assembly, Ga. L. 1880-81, p. 140.

Code of 1895: Authorization given for appointment of Code commissioners, Ga. L. 1893, p. 119. Code adopted, Ga. L. 1895, p. 98.

Code of 1910: Code commission created, Ga. L. 1909, p. 111. Code adopted, Ga. L. 1910, p. 48.

Code of 1933: Code commission created, Ga. L. 1929, p. 1487. Code adopted, Ga. L. 1933, p. 31; Ga. L. 1935, p. 84.

APPENDIX DD

**THE MAKING
OF A NEW CODE****The Official Code of Georgia Annotated:
Recodification in Georgia**

By Terry A. McKenzie

ON NOVEMBER 1, 1982, the first Official Code of Georgia in almost 50 years will become effective.¹ The adoption of this Code represents years of effort by the General Assembly, the Code Revision Commission, the Office of Legislative Counsel, the State Bar of Georgia, and the Michie Company. This article reviews the recodification process in Georgia and describes the features of the new Code in an effort to provide information that will be helpful in using the new Code.

History of Recodification

Official codes were enacted by the General Assembly or became effective following their enactment in 1863, 1868, 1873, 1882, 1889, 1910, and 1933. In addition to these official codes, several private individuals and companies have published unofficial codes in Georgia. These unofficial codes were not enacted by the General Assembly.

Recognizing the length of time that had elapsed since the adoption of the Code of 1933 and the changes that have occurred in the law and in state government since that time, the General Assembly created the Code Revision Study Committee in 1976.² This committee recommended that the recodification process be undertaken. To carry out this recommendation, the

General Assembly in 1977 created the Code Revision Commission (the "Commission").³ The Commission is composed of the Lieutenant Governor and four members of the Senate, the Speaker and four additional members of the House of Representatives, and five members appointed by the president of the State Bar of Georgia, one of whom is a senior judge of the superior courts and one of whom is a district attorney. The Office of Legislative Counsel provides staff services to the Commission. Following presentations by five law publishers, the Commission entered into a contract on June 19, 1978 with the Michie Company for the preparation and publication of the Official Code of Georgia Annotated.

The Recodification Process

Immediately following the execution of the contract with the Michie Company, the Commission and its staff began developing the rules of style that are used in the new Code. A three unit numbering system was adopted for Code section numbers.⁴ Uniform designations were developed for subsections, paragraphs, subparagraphs, divisions, and subdivisions of Code sections.⁵ The Code was divided into titles, titles into chapters, chapters into articles, articles into parts, and parts into subparts. Rules for capitalization and punctuation were adopted and a dictionary⁶ was selected as a standard reference work. Standard headings were developed for those types of sections that are repetitive in nature, such as definition sections.⁷

Following the adoption of the rules of style, the editorial staff of the Michie Company arranged the statutes into 53 titles selected by the Commission. This was done by actually cutting and pasting copies of the Code of 1933 and all Georgia laws enacted since 1933.

In addition, statutes enacted prior to 1933 that were inadvertently omitted from the Code of 1933 were included. The statute copy that resulted from this process thus contained the text of the laws as they were actually enacted by the General Assembly.

The editors then began a title-by-title examination of this material. A main memorandum and one or more supplemental memoranda were sent to the Commission for each title. The questions and proposals for changes contained in the memoranda were examined by the staff, proposed responses were developed, and the questions and proposals were then considered and resolved by the Commission itself. More than 100,000 questions were resolved in this manner. In addition to making the changes resulting from resolving the questions contained in the memoranda, the editors also made grammatical changes, corrected typographical errors, renumbered Code sections and portions thereof, corrected cross-references within the text, and made changes necessitated by rules of style. All of these changes were examined and approved by the Commission and its staff.

Upon completion of this process, each title was typeset in a page proof format and was again examined completely by the editors and the Commission's staff. The page proofs were proofread several times and every memoranda question and response was compared with the page proofs to ensure that the editorial work was correct. Throughout this process, every effort was made to avoid changes in the substance of the law. In those instances in which the Commission felt that a substantive change had to be made, a separate bill was introduced in the General Assembly to accomplish the change. [T]hese bills were enacted in the 1980 and 1981 regular sessions of the General Assembly.

In reviewing the memoranda and page proofs, the Commission and its staff received the assistance of several hundred people in the state. The Code Revision Overview Committee of the State Bar and a number of committees, sections, and individual members of the Bar reviewed memoranda or page proofs and provided valuable assistance to the Commission. In addition, each department of state government and a number of organizations assigned people to work with the Commission in the recodification project.

Upon completion of the review of the page proofs, the Michie Company printed 500 sets of the statutory portion of the Code. This manuscript version is entitled the *Code of Georgia 1981 Legislative Edition*. It is this document that was enacted by the General Assembly. Copies of the legislative edition have been placed in the office of the clerk of the superior court or the county law library in each county so that members of the Bar may examine them. The text of the statutes contained in the legislative edition is currently being merged with annotations, notes, and other material and will be published in the early summer of 1982 as the Official Code of Georgia Annotated. This new Code will become effective on November 1, 1982 and will repeal the Code of 1933 and most general laws of the state as of the effective date.

Types of Changes

As noted earlier, in the preparation of the new code typographical errors were corrected, grammatical corrections were made, and the laws were converted into the style adopted by the Commission. While these changes are important from an aesthetic point of view and constitute a major portion of the changes made in

the statutory law, they are not the most important changes made.

In the past when an Act of the General Assembly was declared unconstitutional, there was no established procedure to ensure that such Act was specifically repealed by the General Assembly. These Acts are not included in the new Code and are repealed by its adoption.

There are also many laws that are still in effect in a technical sense but that are obsolete either from the mere passage of time, through the advancement of technology or society in general, or as a result of changes in the law itself. As an example, under Chapter 78-2 of the Code of 1933, the state provided pensions for ex-Confederate soldiers and their widows. In 1912, there were 19,972 soldiers and widows receiving pensions, but they are all now deceased. Thus, Chapter 78-2 has become obsolete through the passage of time. As another example, under an 1826 Act, now codified as Code Section 40-1403, the Comptroller General is required to reside in the state capitol building. This provision may have served a purpose at a time when communications were slow, but it is hardly necessary today and it has been many years since this provision was observed. Such obsolete laws have been omitted from the new Code.

Since the last official code was adopted in 1933, there have been several major reorganizations in state government. A number of the changes in the structure of state government were accomplished through broadly worded statutes. The Executive Reorganization Act of 1972⁸ is an example of this method of reorganization. Using fairly broad language, this Act transferred functions or assigned powers and duties

without specifically amending the text of the statutes directly affected. Thus, the Ocean Science Center of the Atlantic Commission was abolished and its functions were divided between the Department of Natural Resources, the Board of Regents of the University System of Georgia, and the Department of Industry and Trade and this division of functions was accomplished without a specific amendment to the law creating the commission.⁹ The Code revision process has corrected the language of the statutes to carry out the various reorganization Acts.

In addition to reorganization Acts, there have been a number of statutes and constitutional amendments that have changed the titles of public officials. These have been given effect in the new Code. For example, the term “ordinary” has been changed to “judge of the probate court.”¹⁰

Of major significance has been the resolution of conflicts in the law and the deletion of material that had previously been repealed by implication. In performing this part of the recodification process, very careful attention was given to the rules of statutory construction, always keeping in mind the intention of the General Assembly in enacting a particular statute. Conflicts, of necessity, must be resolved if all general statutes are being enacted at one time in a new code because there will not be a latest expression of the General Assembly once everything is reenacted in one Act. As an example, Code Section 5-104 provides that the Commissioner of Agriculture shall be allowed one clerk to assist in the duties of his office. Later appropriations Acts and the laws dealing with the State Merit System of Personnel Administration allow the employment of more than one employee. In preparing the new Code, such conflicts in the law have been

resolved and statutes have been repealed in the revision process to avoid unintended results from the adoption of the new Code.

Contents of the Code

The Official Code of Georgia Annotated will contain 53 titles. In addition to these titles, a separate volume will contain the United States Constitution and the Constitution of Georgia. The constitutions will not be assigned Code title numbers but will retain their original internal designations.

Until all annotations, editorial notes, and other materials are completed, it is impossible to determine the number of volumes that the new Code will contain. Each volume will contain between 700 and 850 pages, will be stub bound to allow for substantial pocket parts before a volume will need replacement, and will be bound so that the book will lie open at any page. The Michie Company will sell individual volumes of the Code in addition to complete sets.

A new index is being prepared for the Code. The general index will contain no double jump or blind references. Each provision in the Code will be adequately indexed and, under the provisions of the code revision contract, each provision of the Code must be cited in at least two index entries. Each volume of the code will also contain an individual volume index. Both of these indexes will contain popular names of Acts where they are ascertainable. In addition to the general index, a new local and special laws index has been prepared. This index contains all local laws enacted since 1730. This has been compiled after a complete reading of each Act and represents a significant historical resource.

Following each Code section is a history line that will trace that Code section back to its origin. If a Code section originated in a prior code, rather than in a separate Act, such fact will be noted with the abbreviation "Orig." The section number of the Act in which the Code section or amendment thereto actually appears will be given in each citation in addition to the volume and page number of the Georgia laws at which the Act may be found. Also, each official code and the section number thereof will be given in the history line for a Code section to show where that new Code section appeared in prior official codes. While a Code section's history can easily be traced backwards through the history lines, conversion tables will also be included in the new Code so that a researcher can easily trace Code sections from their origin forward to the new Code. The Code will also contain a note detailing the history of prior codes in Georgia.

Where appropriate, Code sections will be followed by cross-references to related provisions of the Code as well as by appropriate references to the United States Code. Code sections that have been cited in articles or notes in law reviews published in Georgia, including the *Georgia State Bar Journal*, will be followed by a reference to such articles or notes. Editorial notes will also be included where the editors or the Commission feel that such notes would be helpful.

The editorial staff of the Michie Company has read and annotated all appropriate Georgia cases and federal cases construing Georgia law. The annotations contain direct quotations from the reported decisions where possible. Annotations contain the full name of the case, the full *Georgia Reports* and *Georgia Appeals Reports* citations, the full *Southeastern Reporter* citation, and the year of decision. Annotations will

generally be arranged by subject matter with cases involving the constitutionality of the statute appearing first.

In addition to judicial decisions, the annotations will also include summaries of the *Opinions of the Attorney General*. Following the *Opinions of the Attorney General* will be research references that will cite the user of the Code to appropriate articles or notes in *American Jurisprudence*, *Corpus Juris Secundum*, *American Law Reports*, and *Uniform Laws Annotated*.

Points to Ponder

The adoption of the Official Code of Georgia Annotated marks a departure from prior codes in several respects. Unlike a number of prior codes, the new Code contains a specific repealer that repeals all prior codes and most prior general laws of the state. If a law was omitted from the Code of 1933, it was not necessarily repealed as a result of the omission, Code Section 1-1-10 of the new Code repeals all prior laws except for those excepted from repeal. In addition to specific Code sections or Acts that are listed, Code Section 1-1-10 exempts 15 classes of Acts and resolutions from repeal. These classes include laws that are not normally contained in a code because they are of limited duration or of limited interest to researchers. Examples of these types of laws include appropriations Acts, resolutions authorizing leases of state property, local Acts, resolutions creating study committees of the General Assembly, and Acts or resolutions directing that a memorial be erected or that a bridge be named in honor of someone. Although not codified, citations to these Acts and resolutions will be carried in the index.

The important point to remember is that the Official Code of Georgia Annotated will be the official

publication of the general laws of this state that are contained therein. Future general Acts of the General Assembly will be drafted as amendments to this Code and it is this Code that will be cited in state publications.

Code revision is an ongoing effort. The Commission will continue in existence and can make recommendations and introduce legislation, through its members, to maintain the Official Code of Georgia Annotated. The Commission will also provide members of the Bar with a conduit for comments and suggestions for improvements in the Code.

The State of Georgia holds a copyright for the Official Code of Georgia Annotated. Under the provisions of the contract with the Michie Company, the Commission will control the price of the Code to subscribers, the price of pocket parts, and the replacement of individual volumes of the Code. The Commission intends to allow the replacement of volumes only when that becomes absolutely necessary. While the final price to subscribers will not be fixed until later, the Michie Company is offering a prepublication price of \$600 per set to subscribers until March 1, 1982.

The Commission and the Michie Company have designed the new Code to make it as easy to use as possible. Every attempt has been made to make the arrangement of the laws within the Code as logical as possible and to allow for orderly future growth. A user's guide will be provided with the Code to explain its usage.

In addition to the user's guide, subscribers are encouraged to read the foreword and Title 1. Title 1, "General Provisions," contains the rules of statutory construction, definitions of terms that are used

throughout the Code, a statement of legislative intent, statements relating to the effect of the new Code, and repealers and exceptions thereto.

A card will be placed in each set of the new Code containing a toll-free telephone number for the Michie Company. Anyone having a question or comment concerning the new Code is encouraged to call the publisher or the Commission.

The index for the new Code will also contain postage-paid cards that can be used if there is any question or comment concerning index entries. The preparation of an index is one of the most difficult aspects of publishing. Every effort is being made to ensure that the index for the new Code will be of the highest quality and will be easy to use. Anyone who feels that additional index entries would be helpful or who has difficulty finding a Code section in the new Code is encouraged to fill out and mail one of the postage-paid cards or to use the toll-free telephone number. Since the index has not been completed, members of the Bar are also encouraged to provide the Commission with their suggestions for particular index entries now so that such suggestions can be incorporated into the index prior to publication. Correspondence can be addressed to the Commission at 316 State Capitol, Atlanta, Georgia 30334.

Conclusion

On November 1, 1982, the State of Georgia, the General Assembly, and the legal profession will enter a new era in Georgia. The Code Revision Commission, the Office of Legislative Counsel, the Michie Company, and the hundreds of people who have participated in the recodification process believe that it will be a positive step forward.

FOOTNOTES

1. Ga. L. 1981, Ex. Sess., p. 8.
2. Ga. L. 1976, p. 739.
3. Ga. L. 1977, p. 922, amended by Ga. L. 1978, p. 230.
4. The three unit numbering system is used in a number of state codes. Under this system the Code section number is a combination of the title, chapter, and section numbers, separated by dashes. Thus, Code Section 25-2-3 is Code Section 3 of Chapter 2 of Title 25. While articles, parts, and subparts of the Code are numbered, they are not reflected in Code section numbers.
5. Subsections are designated (a), (b), etc.; paragraphs are designated (1), (2), etc.; subparagraphs are designated (A), (B), etc.; divisions are designated (i), (ii), etc.; and subdivisions are designated (I), (II), etc.
6. *Funk & Wagnalls Standard College Dictionary*, copyright 1977 by Harper & Row, Publishers, Inc.
7. In connection with definitions sections, users of the Code should note Code Section 1-3-2 of the Official Code of Georgia Annotated.
8. Ga. L. 1972, p. 1015, as amended.
9. Ga. L. 1972, p. 1015, Sections 705, 1518, and 2203.
10. Article VI, Section VI, Paragraph IV of the Constitution of Georgia of 1976.

APPENDIX EE

**PUBLICATION MANUAL
FOR THE
OFFICIAL CODE OF GEORGIA ANNOTATED
State of Georgia
CODE REVISION COMMISSION**

**4th Edition
December 2010**

**Compiled on Behalf of the Commission by
The Office of Legislative Counsel**

* * *

PREFACE

The Code Revision Commission of Georgia, pursuant to those powers granted under Chapter 9 of Title 28 of the Official Code of Georgia Annotated and acting through the Office of Legislative Counsel as staff for the commission, has compiled this Publication Manual for use in publishing the Official Code of Georgia Annotated.

This manual specifies: general procedures for transmission of statutory materials to the publisher; the system for arranging, numbering, and designating material within the Code; and various other publishing details associated with the codification or recodification of the Code and laws of Georgia, including but not limited to case annotations, historical notes, research references, notes on law review articles, cross-references, summaries of the opinions of the Attorney General of Georgia, editor's notes, Code Revision Commission notes, and such other material as the commission determines to be useful to users of the Code.

This manual is organized as follows:

Chapter 1 provides general background information relating to the Code and its publication, organization, and style.

Chapter 2 relates to Acts generally and their transmission to the publisher following sessions of the General Assembly.

Chapters 3 through 35 relate to specific Code contents and style thereof, etc. These chapters are generally arranged in the order in which the elements appear in volumes of the Code.

Appendixes A through C relate to specific publisher's tasks relating to updating internal references, supplements, and revised volumes.

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1. GENERAL PROVISIONS

1.1. Definitions

As used in this manual, the term:

- (1) "Act" means a bill that has been approved by the Governor or has become law without such approval.
- (2) "Bill" means a piece of legislation that has passed both houses of the General Assembly.
- (3) "Code" means the Official Code of Georgia Annotated.
- (4) "Code section" or "section" means a portion of the Code designated by the three-unit numbering system (title-chapter-section). Strict adherence to Georgia Code style would call for the use of the

term “Code section” rather than “section” in referring to a section of the Code. In this manual, however, the terms “Code section” and “section” will be used interchangeably where the context will allow. However, normally, “Code Section” is used when referring to a particular Code section, e.g., “Code Section 5-5-1.” “Code section” is used when making a general reference, e.g., “this Code section.”

(5) “Georgia Laws” or “Ga. L.” means the state published compilation of Acts and Resolutions enacted at a session of the General Assembly of Georgia.

(6) “State” means the Office of Legislative Counsel, acting as staff for the Georgia Code Revision Commission pursuant to Code Section 28-9-4.

(7) “Sublevel” means a subsection, paragraph, subparagraph, division, or subdivision of a Code section.

(8) “Unit” means a title, a chapter, an article, a part, or a subpart of the Code.

1.2. Background

The Georgia General Assembly holds regular sessions annually, beginning on the second Monday in January and lasting up to 40 legislative days, determined by an ongoing and frequently changing schedule set by the legislature. In recent years, the regular session has adjourned *sine die* on or around the beginning of April but has also extended into late April. Extraordinary sessions are called occasionally to deal with specific urgent matters.

Upon completion of each session, the House and Senate prepare enrolled versions of all bills that passed both houses. These enrolled bills are sent to the Governor, who has 40 days after adjournment *sine die* to

veto bills; otherwise, the bills will become law without such approval. Upon signature, Acts are sent to the publisher to begin the process of updating the Official Code of Georgia Annotated.

Pursuant to Code Sections 28-9-3 and 28-9-5, the Code Revision Commission of the State of Georgia is authorized to contract with a publisher to provide for the publication and maintenance of the Official Code of Georgia Annotated. The Code Revision Commission is made up of representatives from the House, Senate, and the State Bar. The Office of Legislative Counsel acts as staff for the commission pursuant to Code Section 28-9-4.

For further background information regarding preparation, adoption, and research of the Code, see:

McKenzie, T., *The Making of a New Code*, Georgia State Bar Journal (February 1982).

Johnson, Nancy P. and Deel, Nancy Adams, Researching Georgia Law, Georgia State University Law Review (May 1998).

1.3. Contract

The Code is produced pursuant to a contract between the Code Revision Commission and a publisher selected by the commission. The contract provides for a wide range of specific editorial procedures pertaining to the Code, and its requirements must be considered and satisfied whenever any editorial policy decisions related to the Code are to be made.

1.4. General content of the O.C.G.A.

The material comprising the Code includes:

(1) All statutory provisions, annotations, captions, catchlines, headings, history lines, editorial notes,

cross-references, indexes, title and chapter analyses, research references, amendment notes, Code Commission notes, and other material related to or included in such Code at the direction of the commission;

(2) The United States Constitution and the Georgia Constitution, as amended;

(3) General index, indexes related to local and special laws, and conversion tables; and

(4) Other material as provided in the publishing contract.

The Code shall include the codification of Georgia laws prepared by the Code Revision Commission and the (then) Michie Company and enacted by the General Assembly of Georgia by an Act approved September 3, 1981 (Ga. L. 1981, Ex. Sess., p. 8), and subsequent current legislative enactments of the General Assembly of Georgia.

1.5. Citation form

The Official Code of Georgia Annotated may be cited as “O.C.G.A.” See Code Section 1-1-8 as to citation of the Official Code of Georgia Annotated.

1.6. General arrangement and numbering system

The Official Code of Georgia Annotated is arranged into 53 Code titles. Beginning with the 2011 annual updates, those titles are divided among Volumes 3 through 40 as follows:

<u>Volume</u>	<u>Title(s)</u>	<u>Volume</u>	<u>Title(s)</u>
3	1-3	23	31-32
4	4-6	24	33 (book 1 of 2)
5	7-8	25	33 (book 2 of 2)
6	9 (book 1 of 2)	26	34

7	9 (book 2 of 2)	27	35-36
8	10	28	37-39
9	11	29	40
10	12	29A	41-42
11	13	30	43
12	14	31	44 (book 1 of 2)
13	15	32	44 (book 2 of 2)
14	16 (book 1 of 3)	33	45
14A	16 (book 2 of 3)	34	46
14B	16 (book 3 of 3)	35	47
15	17	36	48 (book 1 of 2)
16	18-19	37	48 (book 1 of 2)
17	20	38	49-50
18	21	39	51
19	22-23	40	52-53
20	24		
21	25-26		
22	27-30		

In addition to the 53 titles, the Constitution of the United States (Volume 1) and the Constitution of Georgia (Volume 2) are included in separate volumes with their original internal numbering systems retained. No Code title numbers have been assigned to the Constitutions.

With the exception of Title 1, “General Provisions,” titles within the Code are arranged in alphabetical order. A list of the Code title numbers and names appears in the front of each volume of the Code.

Where appropriate, titles within the Code are divided into chapters, chapters are divided into articles, articles are divided into parts, and parts are divided into subparts. An exception to this arrangement occurs in Title 11, the “Commercial Code.” Because of the importance of maintaining the numbering scheme of the Uniform Commercial Code throughout the United States, Title 11 does not follow the numbering scheme used in the remaining titles of the Code.

Title, chapters, articles, parts, and subparts of the Code are designated with Arabic numerals. If a new title, chapter, article, part, or subpart is added between two existing titles, chapters, articles, parts, or subparts, it will be designated by the preceding numeral plus a capital letter. Thus, if two new chapters are to be added between Chapters 4 and 5 of a title, they will be designated as Chapters 4A and 4B.

A three-unit numbering system is used to designate Code sections, with the first unit reflecting the title number, the second unit reflecting the chapter number, and the third unit reflecting the section within the chapter. Thus, Code Section 2-5-1 is the first Code section of Chapter 5 of Title 2. Code section numbers are not consecutive in the Code. Note that this system does not reflect article, part, or subpart locations of Code sections.

At the end of each article, part, or subpart, gaps are typically left between Code section numbers to allow for future enactments; typically, the third-tier number skips to the next multiple of ten and then (unless the Code section number at the end of the article, part, or subpart ended with a multiple of ten) skips ten more numbers before the Code section numbering resumes. Thus, for example, Article 17 of Chapter 2 of Title 20

ends with Code Section 20-2-732; the first section of Article 18 is numbered Code Section 20-2-750; Article 20 of Chapter 3 of Title 20 ends with Code Section 20-3-800, a multiple of ten, and Article 21 thus begins with Code Section 20-2-810.

If a new Code section is added between two existing Code sections, the new Code section will be designated with the preceding Code section number followed by a period and one or more numerals. Thus, if two new Code sections are added between Code Sections 2-5-38 and 2-5-39, the new Code sections will be designated as Code Sections 2-5-38.1 and 2-5-38.2.

Where appropriate, Code sections are divided into subsections, subsections are divided into paragraphs, paragraphs are divided into sub-paragraphs, subparagraphs are divided into divisions, and divisions are divided into subdivisions. These units are designated as follows:

Subsections—(a), (b), (c), (d), etc.

Paragraphs—(1), (2), (3), (4), etc.

Subparagraphs—(A), (B), (C), (D), etc.

Divisions—(i), (ii), (iii), (iv), etc.

Subdivisions—I, (II), (III), (IV), etc.

If it becomes necessary to add new subsections, paragraphs[,] subparagraphs, divisions, or subdivisions between existing subsections, paragraphs, subparagraphs, divisions, or subdivisions, the new material will be designated as follows:

Subsections—(a), (a. 1), (a.2), (b)

Paragraph—(1), (1.1), (1.2), (2)

Subparagraph—(A), (A.1), (A.2), (B)

Division—(i), (i.1), (i.2), (ii)

Subdivision—(I), (I.1), (I.2), (II)

If a Code section has introductory language followed by a list, subsection designations are not used to designate the items in the list, but each item is given a paragraph designation. This helps to maintain the flexibility of the numbering system. Definitions sections are examples of this system of numbering items in a list.

1.7. Arrangement of specific types of material within the code

Title 1 of the Official Code of Georgia Annotated relates to general provisions applicable either to the adoption of the Code itself or to the enactment of laws generally. Title 1 contains an expression of legislative intent in the enactment of the Code, provides for severability for the Code and future laws as well, preserves certain types of Acts which are not codified, provides for the specific repeal of prior codes and laws, describes classes and categories of persons, provides for rights of persons, provides for rules of statutory construction, and provides for definitions of terms used throughout the Code. All persons are urged to read Title 1 prior to using the Code.

In the same manner that Title 1 contains material which is applicable to the entire Code, most titles within the Code contain a general provisions chapter as Chapter 1 of the title. This chapter contains definitions and other material of general application throughout the particular title.

Within each chapter, article, part, and subpart certain types of material generally will be arranged in a uniform manner throughout the Code. The short title of a

law, if any, will be the first Code section, followed by the Code section stating the purpose or legislative findings, followed by Code section defining certain words and phrases used in that law. Within the body of the chapter, article, part, or subpart, related Code sections will be grouped together. Penalty Code sections are generally at the end of the material to which they relate.

1.8. Order of notes and annotations under units and Code sections

After each unit and Code section, notes and annotations (as applicable) are ordered as follows:

- (1) Delayed effective date notes.
- (2) Effective date notes.
- (3) Amendment notes.
- (4) Cross-references to related provisions of the Code.
- (5) Code Commission notes.
- (6) Editor's notes.
- (7) U.S. Code references.
- (8) Administrative rules and regulations.
- (9) Commentaries (e.g., State Bar comments in Titles 14 and 53).
- (10) Law reviews.
- (11) Case notes for opinions of the Supreme Court of Georgia, Court of Appeals of Georgia, and all decisions of the federal courts in cases which arise in Georgia.
- (12) Opinions of the Attorney General of Georgia.
- (13) Opinions of the State Bar.

- (14) Opinions of the Judicial Qualifications Commission.
- (15) Research references.

1.9. Printing specifications and type sizes

- (a) **Type face:** Century.
- (b) **Type page size:** 30 x 50 picas.
- (c) **Trim page size:** 6 5/8 x 10 inches.
- (d) **Type size:**
 - Text: 11 point on 12.
 - Notes: 9 point on 10 double column.
 - Index: 9 point on 10 double column.
- (e) **Page number:**
 - Bottom of page, centered, roman font.
- (f) **Titles and chapters:**
 - Begin at top of page in all cases. Title begins on right-hand page in all cases. Chapter begins at top of page, either left or right.
- (g) **Statute headings:**
 - Title: 14 point, all caps, bold, centered.
 - Chapter: 12 point, all caps, bold, centered.
 - Article: 11 point, all caps, roman font, centered.
 - Part: 11 point, caps and small caps, roman font, centered.
 - Subpart: 11 point, caps and lower case, roman font, centered.
- (h) **Statute analyses:**
 - Title: 11 point, caps and lower case, roman font, wide measure. No section symbols.

Chapter: 9 point, double column, roman font. Within chapter analysis, where the following headings are used, they should appear as follows:

Article: 9 point, caps and lower case, bold, center.

Part: 9 point, caps and small caps, roman font, center.

Subpart: 9 point, caps and lower case, roman font, center.

(i) Notes:

Type size and format generally: 9 point, double column.

Analysis: (preceding notes) The word “Analysis” should be 9 point, caps and small caps, bold. Individual analysis entries are 9 point, caps and small caps, roman font, wide measure, flush left.

Headings:

(1) “Judicial Decisions,” “Opinions of the Attorney General,” “Research References”: 9 point, caps, bold, center, wide measure.

(2) Analysis headings within body of notes: 9 point, caps & small caps, bold, center, narrow measure.

Attorney General Opinions: (notes) 9 point, double column, roman font; (heading) 9 point all caps, bold, wide measure. AG Opinion notes will follow all case note material.

(j) Subsection and other internal catchlines:

- (1) Subsection: Bold, followed by period. No dash; run in text following.
- (2) Paragraph: Bold, followed by period. No dash; run in text following.
- (3) Subparagraph: Bold, followed by period. No dash; run in text following.

In the case of double designations with internal catchlines, higher designation sits alone with catchlines and next designation starts a new paragraph. It is possible that the Code section will not begin with an alphabetic subsection designation and that the Code section will start with the paragraph level which is always numeric. The type style and appearance remains the same.

(k) Margins:

Where there is blocked text following a sublevel designation, the margins have a tendency to become misaligned. Please check the Acts carefully to be sure that the material is printed in the format intended.

1.10. Dictionary

In the preparation of the Code, the Code Revision Commission and the original publisher (The Michie Company) utilized Funk & Wagnalls Standard College Dictionary, copyright 1977 by Harper & Row, Publishers, Inc., as a standard reference work.

1.11. Effective Date of Code

The Official Code of Georgia Annotated was completed in 1982 following four years of editorial preparation. The Code, which repealed and replaced the former 1933 Official Code of Georgia, became effective November 1, 1982. (See Code Section 1-1-9.)

1.12. Official nature

The O.C.G.A. carries the force of statutory law in Georgia; see Code Section 1-1-1. For annual legislation (reviser Acts) reenacting the O.C.G.A. as amended by the text and numbering as contained in each year's supplements, see, e.g., Ga. L. 2010, p. 878, § 54, and other statutes cited in the editor's notes under Code Section 1-1-1, per Manual Section 9.1 .

1.13. Office of Legislative Counsel (state contact)

The Office of Legislative Counsel provides staff for the Code Revision Commission. Mr. Sewell Brumby is the Legislative Counsel. The primary contact person for Code matters is Mr. Wayne Allen, Deputy Legislative Counsel, 316 State Capitol, Atlanta, Georgia 30334 (e-mail: wayne.allen@legis.ga.gov). The secondary contact person is Ms. Betsy Howerton, Deputy Legislative Counsel (e-mail: betsy.howerton@legis.ga.gov). Ms. Joyce Hall assists in handling correspondence with the publisher during supplement production, e.g., proof review, memo answers, etc. (e-mail: joyce.hall@legis.ga.gov). Ms. Tracy Cochran assists in sending new legislation to the publisher (e-mail: tracy.cochran@legis.ga.gov). Ms. Beth Yinger is the Senior Editor for the state (e-mail: beth.yinger@legis.ga.gov). Ms. Natasha Spurrier maintains the state's data base (e-mail: natasha.spurrier@legis.ga.gov). While e-mail is generally preferred for routine correspondence, the main phone number for all of the above contacts is 404-656-5000.

2. ACTS—GENERALLY

2.1. Approval by the Governor; veto; veto override

The Governor has 40 days after the end of the session to sign or veto bills. Any bill becomes law if it is not

vetoed within 40 days after adjournment, whether the bill is approved by the Governor or not. The Governor usually takes some action on every bill, either signing or vetoing, although on rare occasions a bill has become law without his or her approval (i.e., the bill was neither signed nor vetoed within the requisite period).

If a Governor's veto of a bill is successfully overridden by the requisite constitutional majority in each house of the General Assembly, then the bill becomes an Act (often specifically referred to as a veto override Act), effective on the date that the second house successfully overrode the veto unless the Act specifies a later effective date.

Resolutions proposing amendments to the 1983 Constitution of Georgia are not subject to veto by the Governor, and his or her approval or lack thereof is without legal effect. Nevertheless, the Governor typically does approve such resolutions.

2.2. Types of Acts

There are three major types of Acts:

- (1) General Acts of general applicability ("general Acts"), which may be either:
 - (A) Acts that amend the Code; or
 - (B) Acts that do not amend the Code, such as appropriations Acts;
- (2) Population Acts, which are general Acts that apply to political subdivisions within a specified population range only ("population Acts"). The 1983 Constitution provides (in Article III, Section VI, Paragraph IV): "No population bill, as the General Assembly shall define by general law, shall be passed." Population bills are defined in Code Section 28-1-15; and

- (3) Local Acts, which apply to political subdivisions as specified by name. Local Acts are not codified by the General Assembly.

2.3. Codification of Acts

(a) In General. Only those Acts which contain specific Code section assignments will be codified; no other Acts are to be codified. However, uncoded Acts or portions of Acts where relevant to interpretation or application of the Code should be noted.

(b) Code Section Numbers. Because Code section numbers are considered a part of the Act, codify Acts in the locations assigned by the General Assembly. (However, see Manual Sections 25.5(b) and 25.6 regarding duplicate and erroneous Code section assignments by the General Assembly.)

2.4. Numbering and citation of bills and Acts

(a) Bill numbers. Bills are designated by a House Bill Number or a Senate Bill Number, depending on the house in which the bill originated. (NOTE: The “HB” and “SB” designation must always be attached to the number when citing a bill in this manner. Thus “HB 1,” “HB 2,” “SB 1,” “SB 2.” Resolutions are designated by House Resolution Numbers and Senate Resolution Numbers (“HR 1,” “HR 2,” “SR 1,” “SR 2”).

(b) Act numbers; veto Act numbers. When a bill is signed by the Governor or otherwise becomes law without approval, it is given an Act number that corresponds to the order in which it was signed by the Governor or otherwise became law. (First bill signed in a biennium is Act #1, second bill

signed is Act #2, etc.) Similarly, when a resolution becomes law, it is given an Act number.

However, a previously vetoed bill for which the veto has been overridden by the requisite constitutional majority in each house will be given a Veto Act number corresponding to the previous Veto number (see, e.g., Veto Act No. 25, Ga. L. 2008, p. VO1; cf. Veto No. 25, Ga. L. 2007 at p. 371A); this should not to be confused [sic] with the Veto Override number, which is based upon the order of all vetoes overridden during the same biennium (see, e.g., Veto Override No. 1, Ga. L. 2008, p. VO1).

The state supplies corresponding bill and Act numbers as they become available.

(c) Georgia Laws page numbers. The session laws are printed in Volumes I and II of Georgia Laws, which are prepared by the state. In recent years, Volume I has been divided into two books, with general and supplemental appropriations Acts printed alone in Book 2 of Volume I (see, e.g., Ga. L. 2008, Vol. I, Book 2); all other general Acts are printed in Act-number order in Book 1 of Volume I, except that veto override Acts (which have a different Act-number scheme, per subsection (b) of this section) have been published at the beginning of that same book (see, e.g., Ga. L. 2008, p. VO1). Constitutional amendments generally are printed last in Book 1 of Volume I. Local Acts are published in Act-number order in Volume II, which may or may not be divided into multiple books, depending upon volume size limitations. The Georgia Laws are used to determine the page numbers in the citations to the legislation.

2.5. Transmission of bills, Acts, and veto and veto override information

(a) Copies of bills as passed. Bills and resolutions passed by both houses of the General Assembly will be transmitted electronically to the publisher by the state, first in “as passed” (AP) bill versions prior to signature by the Governor (and typically containing striking and underscoring) so that the publisher may begin work on preparing amendment notes, etc.; in no case should these AP versions be used for purposes of updating the publisher’s Code data base.

(b) Enrolled Acts. Later, as bills become law, enrolled Acts (ENR) will be transmitted electronically (without striking and underscoring). The ENR versions are the sole authoritative versions for purposes of updating the publisher’s Code data base. If there is any discrepancy between the “as passed” version of a bill and the enrolled Act, the enrolled Act will control, and in such a case amendment notes, etc. prepared based on the superseded AP version must be revised as necessary to accurately reflect the ENR version. See Manual Section 25.3 regarding discrepancies.

(c) Vetoed bills and veto overrides. The state will inform the publisher as to any vetoed bills or veto overrides. Veto Override Acts will be transmitted electronically by the state to the publisher, the same as other enrolled Acts.

(d) Funding. The state will inform the publisher as to which bills contingent upon funding have been funded.

2.6. Comparing of Acts

The state should be notified of any textual discrepancies between AP and ENR versions discovered by the publisher when preparing amendment notes. The state will notify the publisher of any discrepancies found in the strike-through and underscored language for correction of the amendment note and the addition of an Editor's note or a Code Commission note in the following year's supplement. See Manual Section 25.8 regarding missing text.

2.7. Reading of Acts

The contract requires the publisher to read all Acts.

2.8. Text of statutes as source for Code updating

In updating Code text with legislation, the publisher shall copy the exact language of the text of the statutes as it appears in the enrolled Acts sent to the publisher by the state, except as otherwise specifically instructed by state. Furthermore, the publisher shall make every effort to eliminate the need to keystroke any material from an Act and should lift the text of the statute directly from the Act.

2.9. Proofreading

(a) Generally. The publishing contract with the State of Georgia requires: "The Publisher shall be responsible for proofreading and other quality control procedures sufficient to ensure that such materials accurately incorporate the enactments of the General Assembly." Although the state has editorial proofreading staff, it is primarily the publisher's responsibility to ensure that the text is accurate and complete before sending any proof pages to the state.

(b) Bracketing. In order to easily identify for the state the location of changes, proof pages must be

marked with brackets in accordance with the following rules:

(1) Bracketing should be done when:

(A) The Act enacts a new Code section (everything would then be bracketed as new), even in a supplement which is the first one for that volume.

(B) Amended subsections exist (only brackets where changes occur; bracket redesignated subsections), even in a supplement which is the first one for that volume.

(C) New notes appear (case notes, notes, amendment notes, etc.).

(D) Text has been modified to reflect a repeal.

(E) New history has been added (bracket only the line with the change).

(2) Double bracketing should be done when:

(A) Text material has been keystroked in manually rather than loaded from electronic version (this should be a rare occurrence).

(B) New charts, graphics, or forms are added which were not loaded from electronic version.

3. SECRETARY OF STATE'S CERTIFICATES

3.1. Generally

In each statutory volume as well as in the volume containing the Constitution of Georgia, there is included in the front matter a certification by the Secretary of State of Georgia that the statutes or constitutional provisions contained in that volume are true and correct copies of such material as enacted by the General Assembly of Georgia, all as the same appear of file and record in the office of the Secretary of State. The state will annually provide the publisher with a new certificate to be copied for use in any volumes that are to be replaced in that year.

4. TITLE AND CHAPTER ANALYSES

4.1. Title analysis

Preceding each title in the Code is a title analysis which lists the numbers and captions of each chapter within the title.

4.2. Chapter analysis

Preceding each chapter in the Code is a chapter analysis which lists each article, part, and subpart within the chapter and each Code section and its catchline.

4.3. Analyses in supplements

(a) Title. In title analyses in the supplement, list only chapters for which text appears in the supplement.

(b) Chapter. In chapter analyses in the supplement, list all sections for which text appears in the supplement or which are listed as repealed in the supplement.

(c) Repeals. See Manual Section 11.4 regarding treatment of repeals in analyses.

5. RUNNING HEADS AND CORNER HEADS

5.1. Running heads

Running heads differ between verso (left hand) and recto (right hand) pages and according to content of the volume.

(1) Verso pages:

Code: Title name (shortened if necessary to fit space)

Ga. Constitution: "Georgia Constitution"

U.S. Constitution: "Constitution of the United States"

(2) Recto pages:

Code: Chapter name (shortened if necessary to fit space)

Ga. Constitution: Article name (shortened if necessary to fit space)

U.S. Constitution: "Constitution of the United States" or "Amendments to the Constitution", as applicable

5.2 Corner heads

On both verso and recto pages:

(1) Upper left: identifies the most specific level in the Code (i.e., title, chapter, article, part, subpart, or Code section), Ga. Constitution (i.e., article, section, or paragraph), or U.S. Constitution (i.e., article, section, or amendment) with which the first line of any text on the page is associated--no exceptions.

(2) Upper right: identifies the most specific level in the Code (i.e., title, chapter, article, part, subpart, or Code section), Ga. Constitution (i.e., article,

section, or paragraph), or U.S. Constitution (i.e., article, section, or amendment) with which the last line of any text on the page is associated--no exceptions. E.g.:

(Code) T. 1
 T. 1, C. 1
 T. 1, C. 1, A. 1
 T. 1, C. 1, A. 1, P.1
 T. 1, C. 1, A. 1, P. 1, S. 1
 1-1-1

(Note: if a particular corner head is too long for space available, mark proof to delete the most specific detail in that corner head as necessary to fit)

(Ga. Const.) Art. 1
 Art. 1, § 1
 Art. 1, § 1, ¶ 1

 (U.S. Const.) Art. 1
 Art. 1, § 1
 Amend. 1

6. HEADINGS AND CATCHLINES

6.1. Functions

(a) Generally. An ideal heading or catchline should serve both hierarchical and descriptive functions.

(b) Hierarchical. The hierarchical function of headings (used with units) and catchlines (used with Code sections) gives the user an overview of the contents of a unit or Code section. The notion of

a hierarchy implies both a vertical relationship and a horizontal relationship of Code section catchlines and unit headings within a title. The vertical relationship of catchlines and headings reflects the arrangement of provisions in a title from the general to the particular--that is, an arrangement in which the subject matter of each Code section represents a category of the subject matter of the unit within which it is located, and the subject matter of each unit represents a category of the subject matter of the next superior unit. The horizontal relationship of catchlines and headings reflects the function of each Code section in a unit, and of each unit under a superior unit, as giving separate treatment to a discrete aspect of the superior unit.

(c) Descriptive. Catchlines and headings also should be descriptive--that is, they should give a sufficient representation of the contents of the Code section or unit.

(d) General guidelines. Three general catchline guidelines are:

- (1) A catchline should not duplicate an element of the next superior heading. This would obscure the vertical relationship of the Code sections and units in the title (e.g., a chapter which is captioned "State Tollway Authority" contains a Code section creating the authority; the Code section should be catchlined "Creation" rather than "Creation of State Tollway Authority").
- (2) A catchline should be sufficiently different from the catchlines of the other Code sections in the same unit as to distinguish the contents of that Code section from the contents of the other

Code sections. This recognizes the horizontal relationship of the Code sections.

(3) A catchline should sufficiently describe the contents of the Code section and should be neither underinclusive nor overinclusive. This serves the descriptive function of catchlines.

Providing further guidelines for a heading and catchlining system is difficult because the two functions to be served are frequently in conflict. The hierarchical function may best be served by a series of brief headings and catchlines that allow for an overview of a title by quick reference to the headings and catchlines therein, but it also may inadequately represent (through either underinclusion or overinclusion) the extent of the provision of the title. A long, descriptive heading or catchline might better serve to reveal the contents of the unit or Code section but would defeat the purpose of allowing a comprehension of the scope of the title by means of a quick reference to the analysis. Also, a series of long, descriptive catchlines may obscure the horizontal relationship of Code sections, since the catchlines would not then indicate any common strain running through all of the Code sections but would instead convey a sense of “strung together” provisions with no clear interrelationship. A properly conceived system of catchlines would serve to draw a proper middle ground between the two functions.

(e) Additional guidelines. The potential for conflict presented by the two functions of catchlines should be kept in mind in considering the following additional guidelines:

(1) Every provision of a Code section should be addressed, at least in general terms, by some element of the catchline. This policy primarily stresses the descriptive function of a catchline. However, in order to serve the hierarchical function as well, each descriptive word or phrase in the catchline should be sufficiently general as to embody as many specific provisions as possible.

(2) A catchline should be sufficiently general in order to accommodate, as far as possible, subsequent amendments without the need to rewrite the catchline. For example, a Code section sets a license fee of \$15.00. Although a catchline reading “Fifteen-dollar license fee” may serve to describe with some specificity the contents of the Code section, and while the catchline is probably brief enough to serve the hierarchical function, the catchline would become obsolete if the fee were later changed to \$20.00. A catchline reading simply “License fee” would likely be preferable, since such a catchline would cover the contents of the Code section regardless of the amount of the fee.

(3) If a catchline is divided into parts separated by semicolons or dashes, the separate parts should stand in horizontal relation to one another. That is, each separate part of a catchline should deal with a distinct part of the Code section. For example, the three parts of a catchline reading “License requirement--License requirement for minors--License requirement for minors completing hunter training course” do not stand in horizontal relation to one another, since the three parts do not describe three

mutually exclusive aspects of the general subject “licenses.”)

(4) Catchlines should not contain unnecessary words. A catchline reading “Purpose” is preferable to one reading “Legislative purpose and declaration of intent”; a catchline reading “Rules and regulations” is preferable to one reading “Promulgation of rules and regulations by Board of Natural Resources.”

(5) A catchline should not assert the positive or the negative; rather, the “label” style should be used. Code sections often require or prohibit certain activities, without more, but just as often requirements and prohibitions are conditioned on specified contingencies or are suspended in certain instances or for certain persons. A catchline reading “License required” would be overbroad if the Code section required a certain license but also exempted several classes of persons from the requirement. In addition, in order to serve the hierarchical function, catchlines should list the subject of a Code section, not paraphrase the language of the Code section in shorthand form (“License required” is intended as shorthand for “A license is required.”) Also, a positive or negative assertion in a catchline would violate the policy that a catchline be broad enough to accommodate future amendments. A neutral catchline such as “License requirement” would avoid these problems and would be preferable.

6.2. Official or unofficial status

Generally, Code section catchlines and headings do not constitute part of the law (see Code Section 1-1-7) and

may be written by the publisher as appropriate. However, if any catchlines or headings are included in an Act, they are considered official and no revision should be made. Catchlines for uniform legislation, such as the Uniform Commercial Code, should be left as enacted by the Act, absent obvious error. CAUTION: If the General Assembly should ever enact a new title of the Code, the publisher should observe any heading attached to that title by the General Assembly.

If catchlines for subsections are omitted from an amending Act, the state should be notified before any revision is carried out. In the following year, the state will likely enact a catchline in the Reviser's Act to make the subsection catchline official.

Headings and catchlines in the Georgia Constitution are official (unlike statute catchlines) and can only be changed if amended by resolution and ratification.

6.3. Rules for catchlining

General rules for catchlining are:

- (1) Do not make catchlines run; that is, do not use the word "Same" construction. If an amended Code section has a "Same" catchline do not carry the "Same" in the supplement but carry the word or words which "Same" is intended to represent.

For all newly enacted Code sections, do not write a catchline containing a "Same." In replacement volumes rewrite catchlines as necessary to eliminate "Same" constructions.

- (2) In Code sections with a series of defined terms: Use the catchline: "Definitions."

(3) In Code sections with a single term being defined: Proceed as shown in following illustration: “Dogs defined.”

(4) Code section defining term and also containing substantive provisions: Do not put the defined term in the catchline unless the defined term applies to more than just that Code section.

(5) Code sections setting out a penalty only: “Penalty.”

(6) Code sections describing prohibited activity and also setting out a penalty for that activity: “Prohibited action; penalty.”

(7) Short title of units: “Short title.”

(8) “Act” or short title as a unit heading: Do not use the word “Act” as a unit heading, even if the word “Act” is part of the short title. (Thus, even though the short title may be “Junkyard Dealers Act,” the unit itself should carry the heading “Junkyard Dealers.”) Furthermore, do not use a short title as a heading unless it is truly descriptive. (For example, the heading for T. 15, C. 21, A. 10 should be “Georgia Driver’s Education Commission” not “Joshua’s Law.”)

(9) Try to make catchlines no longer than three lines of type in the printed books. Longer catchlines should be shortened on replacement of the volume. Originally, Code style called for very detailed and, hence, lengthy catchlines.

(10) “Etc”: As with the word “same,” “etc.” should be deleted from catchlines and headings upon replacement of volumes. Often a general

more inclusive term can be substituted for a list ending with “etc.”

(11) Catchlines should generally contain semicolons; not dashes. The word following a semicolon would be lower cased. However, if a dash is used, the next word would be capitalized.

(12) Reference is always made to the words “this Code section” or “Code Section 1-2-3” and not “Section” when referring to a Code section in a catchline.

(13) Repealed, reserved, or redesignated spans. Show only the span numbers without a catchline in span references that have been repealed, reserved, or redesignated. No text should follow the span.

6.4. Capitalization

See Manual Section 1.9.

7. CONSTITUTION TEXT AND AMENDMENTS

7.1. Generally

The Code contains both the United States Constitution (in Volume 1) and the Georgia Constitution of 1983 (in Volume 2). Both are annotated. This chapter of the manual will be concerned primarily with the Georgia Constitution.

The catchlines in the Georgia Constitution and text are official and must appear as adopted. Supplement catchlines should be the same as in the bound volume, unless changed by amendment. There are no reviser’s bill or Code Section 28-9-5 (Code Commission notes) changes to the Constitution.

7.2. Tables of comparable provisions

The current Georgia Constitution was approved at the November, 1982, general election, became effective January 1, 1983, and is designated the “Constitution of the State of Georgia of 1983” or “Ga. Const. 1983” for short. The three most recent previous constitutions were designated the 1976 Constitution, the 1945 Constitution, and the 1877 Constitution. Tables 11 through 14 of Volume 41 indicate corresponding provisions of the current and three preceding constitutions. Comparative Tables 1 and 2 at front of Volume 2 show corresponding provisions of the 1983 and 1976 constitutions.

7.3. Citation form; references

(a) Citing U.S. Constitution. Cite as “U.S. Const., art. I, sec. I, cl. 3” or “U.S. Const., amend. 14.” Less formal citation forms are also permissible in case notes in citing very well known provisions, such as the “commerce clause,” “Bill of Rights,” “Fourteenth Amendment,” etc.

(b) Citing Georgia Constitution.

(1) In general. In citing the Georgia Constitution in annotations, it is imperative that the year of the Constitution be included in the citation. A sample citation to the current Constitution would be “Ga. Const. 1983, Art. I, Sec. I, Para. I.” For prior constitutions, substitute the appropriate year in this form. Note also that “Code Section” and “§” are not used in citing the Constitution.

(2) Prior Georgia Constitutions.

(A) Case notes. Many case notes refer to prior versions of the Georgia Constitution such as the Constitutions of 1877, 1945,

1976. These references are not translated directly to the corresponding provision of the 1983 Constitution, but a parenthetical translation to the current constitution is added following the reference. Example: “Const. 1945, Art. I, Sec. I, Para. I (now Const. 1983, Art. I, Sec. II, Para. X).”

Often, the references to a prior Georgia Constitution will not contain the date of the Constitution. The publisher must insert this as well. One can generally assume that the reference in the note is to the Constitution in effect as of the date of the case. However, this cannot always be assumed - check the translation to the 1983 Constitution for sense and look up the case, if necessary.

If there is no comparable provision in the 1983 Constitution, consider either editing out the constitutional reference or deleting the note if it has no further value. Another alternative is to insert “former” preceding the reference.

(B) Cross-references. Translate references directly. That is, insert a reference to the corresponding 1983 Ga. Const. provision and delete the reference to the prior Ga. Const. Cross-references in any remaining original volumes (no edition year printed on spine) will be to the 1976 Constitution and will, therefore, need to be translated.

7.4. Proposed amendments (Georgia Constitution)

(a) Review. As the publisher reviews Acts and resolutions each year, it should identify any resolution

which contains a proposed amendment to the Georgia Constitution (See, e.g., Ga. L. 1984, p. 1713).

(b) Notes. The publisher should write a note for each proposed amendment as illustrated in the following:

Proposed amendments. - Amendment of the Georgia Constitution proposed by Ga. L. 2004, p. 1111, if ratified, would...[if amending existing text of Constitution, describe the proposed text change here. If adding an entirely new Article, Section, Paragraph, or subparagraph, quote in full the proposed new material to be added here].

This will be the first note under the Constitutional provision to which it is assigned. Keep in mind that amendments are submitted to voters at the general election held in each even-numbered year (Ga. Const. 1983, Art. X, Sec. I, Para. I), so the supplement for each even-numbered year will carry proposed amendments from that year as well as any from the previous year.

(c) Election results. In mid-November of each even-numbered year, the publisher should request from the Office of Legislative Counsel the results of the prior November election regarding each proposed amendment. For those proposed amendments receiving a majority vote of approval, the publisher should prepare the amendment to be directly incorporated into the next CD, any electronic version, and supplement; and a historical citation should be added in accordance with Section 13.2 of this manual. In addition, a note should be added to describe the revision with specificity, as illustrated in the following:

Editor's notes. - The constitutional amendment (Ga. L. 1984, p. 1713, § 1) which inserted "and to provide public library facilities" following "salad bars" was ratified at the general election held on [date of election].

If the amendment is defeated, a note will also need to be added. This note should be similar to the following:

Editor's notes. - The constitutional amendment proposed in Ga. L. 1988, p. 2100, § 4, which would have revised subparagraph (A) to delete the reference to the State School Superintendent, was defeated in the general election on November 8, 1988.

If duplicate sublevels are enacted, do not redesignate either sublevel. No Code Commission notes are allowed in the Constitution. If ratified, the duplicate numbering system is retained. Contact the state as to order of duplicates.

7.5. Local amendments (Georgia Constitution)

Just as Georgia has had a long history of "local Acts" which apply only to designated localities, Georgia Constitutions prior to 1983 were amended over the years by "local constitutional amendments" which affect only certain localities. While these amendments were fashioned as actual additions to specific Paragraphs of the Constitution, the Constitution itself is not printed with each local amendment set out in full. This is an analogous situation to "local Acts," which are not printed in the O.C.G.A.

With the advent of the 1983 Constitution, the practice of adopting local constitutional amendments ended. Furthermore, the 1983 Constitution provides that all

existing local amendments which were not specifically continued by local law, local ordinance, or local resolution were repealed on July 1, 1987 (Ga. Const. 1983, Art. XI, Sec. I, Para. IV).

A local amendment may have amended either the 1877, the 1945, or the 1976 Constitution, depending on the year of adoption of the amendment. The “continuing” Act will give the session law cite of the local amendment, but the publisher will need to consult the Local Laws Index (Volumes 42 and 42A) to determine which Paragraph of a given Constitution was amended by the local amendment.

Continued amendments are found in Appendix Four in Volume 2.

8. STATUTORY TEXT AND AMENDMENTS— GENERALLY

8.1. Restated language and directory language in Acts

Amendments to the Code as made in Acts may be described in (1) restated form, with striking and/or underscoring, setting out the entire unit, Code section, or sublevel as amended; (2) directory form, describing the specific change to be made but without setting out the unit, Code section, or sublevel as amended; or (3) a combination of (1) and (2).

8.2. Amended Code sections set out in full

Amended Code sections are to be set out in full in the supplement.

8.3. Use of restated language set out in Act

The full text of all Code sections with restated language in an Act should always be picked up for the supplement, even if the amendment only affects a

sublevel of the Code section. If only a sublevel is set out in the Act, the publisher should pick up that sublevel from the Act and get the remaining portion from the latest version of the Code section.

8.4. Amended subsection with fewer paragraphs than old Code section

When a subsection is amended so that it contains fewer paragraphs than previously existed, there is no need to set out a line accounting for the old paragraphs.

Note, however, that if sublevels are specifically repealed, as opposed to disappearing through an amendment, it is necessary to have a line accounting for the repealed sublevel. See Manual Section 11.3 for a discussion of treatment of repealed sublevels. Case notes, notes, etc. should be checked for references to sublevels which are no longer in existence.

9. STATUTORY TEXT AND AMENDMENTS— REVISER BILLS; REVISER ACTS

9.1. Generally

Each year the Office of Legislative Counsel drafts three omnibus bills called “reviser bills” (a general reviser bill covering all titles except Titles 21 and 47; an elections reviser bill covering Title 21 only; and a retirement reviser bill covering Title 47 only) which when enacted (thus becoming reviser Acts) make various changes in the Code for the primary purpose of correcting errors in punctuation, grammar usage, capitalization, etc., resulting from the original codification and subsequent amendments.

The general reviser Act (typically in Section 54 of that Act) annually reenacts the entire statutory portion of the Code (except for Title 47) as contained in Volumes

3 through 40 of such publication or replacement volumes thereto, as amended by the text and numbering of Code sections as contained in the most recently published year's supplements. An editor's note of the form prescribed in Manual Section 26.3(16) should be included and updated annually under Code Section 1-1-1 to inform the reader of the annual reenactments of the Code.

9.2. Organization and history cites

The general reviser Act is arranged by Act section numbers that correspond to Code title numbers. Within each Act section, there is a list of item numbers for each individual change within that particular title. Do not include item numbers in history cites.

9.3. Incorporation procedure

Most of the revisions effected by any reviser Act are of a "directory" nature, that is, they describe how a certain Code section is to be amended rather than quoting the Code section or sublevel as amended. In many of these cases, the publisher must transfer the described corrections directly to the affected sublevel. It is essential that the described corrections be read carefully so that an accurate incorporation may be made. For example, in a situation in which a change such as follows is described:

SECTION 25.

Title 25 of the Official Code of Georgia Annotated, relating to fire protection and safety, is amended in:

- (1) Code Section 25-14-3, relating to the Safety Fire Commissioner and standards for testing cigarettes, reports, and exceptions, by replacing "commissioner" with "Commissioner" each time it appears

in paragraphs (5) and (8) of subsection (b) and subsections (d) through (g).

it is very easy to overlook the reference to “each time “in the directory language or to overlook an occurrence of the word to be replaced in the Code text. Publishing staff must use great care in reviewing a reviser Act to assure that described revisions are incorporated in all proper locations and with proper punctuations.

9.4. Code sections printed in full

Any Code section affected by a reviser Act correction must be printed in full in the supplement, as would be done for any other amended Code section.

9.5. Amendment notes

See Manual Section 23.7 as to general form of amendment notes for reviser Acts.

9.6. Amendments to same Code section by other Acts in same session

In situations where a Code section affected by a reviser Act is also amended by another Act from the same year, any “descriptive” amendment note prompted by the reviser Act should be quickly checked against the amendment note prompted by the other Act to see whether the two notes duplicate each other in any way. (This may occur if the other Act takes a reviser bill correction into account but underscores it as if it were material being newly enacted.) In case of such duplication, see Manual Section 25.6 regarding the form of amendment notes for duplicate changes; see also Manual Sections 23.6 and 25.5 for general treatment of Code sections amended by multiple Acts.

Beginning with the 2010 regular session of the General Assembly, each of the reviser bills contains a provision stating that in case of conflict between a

provision of the reviser Act and another Act enacted at the same session, the other Act will control to the extent of the conflict. This allows a substantive change in another Act to prevail over a reviser Act change, without regard to the order in which bills are approved by the Governor. In case of such an occurrence, an editor's note of the form prescribed in Manual Section 25.5 (a)(3)(A) should be used.

10. STATUTORY TEXT—INTERSTATE COMPACTS

10.1. Style

Interstate compacts should be left exactly as they are written since each state enacts identical language.

The language of the compact may not conform to O.C.G.A. style.

Capitalization, punctuation, and numbering will all be left exactly as they appear within the compact.

10.2. Quotation marks

Compacts are enclosed in quotes in Acts, as is the text of most legislation. While such quotes are usually deleted elsewhere, quotes enclosing the text of compacts should be retained, since compacts are usually set out in the Code following introductory language reading something like "The text of the compact is as follows:." This means that quotes within the text of the compact (usually single quotes) should also be kept as is, instead of making them double quotes as would ordinarily be done when deleting the quotes that appear in the Act at the beginning and end of the section text.

Many of the compacts now in the Code do not follow this style. The publisher should note what is required to conform them to this style upon replacement of

volumes and inform the state of any such suggested changes.

11. REPEALS - GENERALLY

11.1. Scope of discussion

This section deals with the effect and handling of repealed units, Code sections, and Code section sublevels. For the treatment of situations in which an Act repeals the Code sections comprising a unit and enacts new Code sections under the same unit number, see Manual Chapter 12.

When a single Code section is repealed, its Code section number and catchline are set out, followed by a notation that the particular section has been repealed, a citation of the repealing Act (including the bill number in the same manner as prescribed for historical citations; see Manual Section 13.1(d)), and the effective date of the repeal. Span references are set out without any catchline. An editor's note under the repeal line lists citations to the Georgia Laws on which the repealed Code section was based, and refers the user to the Code provisions, if any, now covering the subject of the repealed Code section.

Repeal lines are not set out for Code sections repealed by implication in a repeal and reenactment of a unit (e.g., where the old chapter consisted of 1-1-1 through 1-1-25 and the new chapter consists of 1-1-1 through 1-1-15, the Code sections repealed by implication would be 1-1-16 through 1-1-25.) These implied repealed Code sections are accounted for in an editor's note setting out the former Code section numbers and their histories, at the beginning of the unit. This would also apply to any .1, .2, etc., references that may exist.

A separate editor's note should account for any Code sections previously repealed prior to the repeal of the unit.

11.2. Form for repeal lines

(a) Repeal of a Code section not redesignated. (See Manual Section 12.2 for redesignations.)

(1) In text:

2-2-22. Grounds for revocation; hearing.

Repealed by Ga. L. 2011, p. 3, § 3/HB 1,
effective July 1, 2011.

Editor's notes. -- This Code section was
based on [set out the entire history verba-
tim].

(2) In analysis:

2-2-22. Grounds for revocation; hearing [Re-
pealed].

(b) Repeal of two consecutive Code sections.
Combine into a span repeal line if only two Code
sections are repealed and this is all that exists in
the chapter, article, part, or subpart. Use the word
“and” in the Code section span. Do not add a paren-
thetical, except in delayed repeals. See (e) below for
further discussion and for treatment of three or
more consecutive Code sections.

(c) Repeal of an article or part.

(1) In text:

ARTICLE 3
GLASS GRINDERS
Part 4
Liability for Shards

2-2-20 through 2-2-30.

Repealed by Ga. L. 2011, p. 3, § 3/HB 1, effective July 1, 2011.

Editor's notes. -- This part was based on [organize and set out history for all Code sections in part].

(2) In chapter analysis:

2-2-20 through 2-2-30 [Repealed].

(d) Repeal of a chapter.

(1) In text:

CHAPTER 2
OPTOMETRISTS

2-2-1 through 2-2-22.

Repealed by Ga. L. 2011, p. 3, § 3/HB 1, effective July 1, 2011.

Editor's notes. -- This chapter consisted of Code sections [see Section 28.5 for style of Editor's notes].

If the Act says that the chapter, article, etc. is reserved, set the information out like above, but add "Reserved." at the beginning of the repeal paragraph, e.g.:

Reserved. Repealed by Ga. L. 2011, p. 3 § 3/HB 1, effective July 1, 2011.

(2) In title analysis:

2. Optometrists, 2-2-2 through 2-2-22. [Repealed]

(e) Repeal of a consecutive series of Code sections:

If only two Code sections are repealed and this is all that exists in the chapter, article, part, or subpart the word “and” should be used and these Code sections should not be set out separately. No parenthetical following the Code section span. If only two Code sections are repealed and this is not all that exists in the chapter, article, part, or subpart, these Code sections should be set out separately.

Two consecutive repealed Code sections would also be set out separately when there are more than two Code sections in a chapter, article, part, or subpart and the two consecutive Code sections are repealed independently by separate legislation and the full chapter, article, part, or subpart has not been repealed and reenacted.

If three or more Code sections within a chapter, article, part, or subpart, that is not amended in its entirety, are repealed and reserved by a single Act, whether this is accomplished by one or more sections in the Act, a spanned reference is used and they are not set out independently.

(1) In text:

2-2-29 through 2-2-32.

Repealed by Ga. L. 2011, p. 2, § 22/HB 2,
effective July 1, 2011.

(2) In chapter analysis:

2-2-29 through 2-2-32 [Repealed].

(3) Entire unit consisting of two Code sections:

ARTICLE 2

NEMATODES

2-7-200 and 2-7-201.

Repealed by Ga. L. 2011, p. 5, § 1/HB 3,
effective July 1, 2011.

11.3. Repeals of sublevels

(a) At beginning or in middle of Code section.

If an Act deletes a sublevel from the beginning of a Code section (that is, deletes subsection (a)) or deletes a sublevel from the middle of a Code section, carry the sublevel designation and add the appropriate word “Repealed” (see © below for reserved sublevels) following it, e.g.:

2-2-5. Corporations.

(a) As used in this Code section, the term “corporation” includes person.

(b) Repealed.

(c) All corporations shall be required to register with the Secretary of State.

Retain the punctuation of the repealed sublevel. Thus, if it ended in a semicolon, keep the semicolon following “Repealed” and if it ended in a period, keep the period following “Repealed.”

(b) At the end of a Code section. If an Act deletes a sublevel from the end of a Code section, there is no need to carry the sublevel designation and “Repealed”; merely delete the entire sublevel. (Exception: See subsection (c) of this section.)

(c) Repealed and reserved sublevels. As happens with Code sections, occasionally an Act will delete the language of a sublevel and will specifically “reserve” the sublevel designation. In these situations, the word “Reserved” with the correct punctuation (rather than “Repealed.”) should be added following the sublevel designation. This

should be done regardless of whether the sublevel in question falls at the beginning, middle, or end of the Code section.

(d) Repeals treated as amendments. Repeals of sublevels are treated like amendments (deletions) and an amendment note is required. Amendment notes are discussed in Manual Chapter 23. The amendment note should refer to these as deletions, not repeals.

11.4. Form for analyses of repealed provisions

When listing repealed entries in analyses, the following rules apply:

In title analyses and in tables of contents in the preliminary pages, the period falls preceding the bracketed word “Repealed”, e.g.:

8. Economic Development Council, 10-8-1 through 10-8-5. [Repealed]

However, in chapter analyses, the period follows the bracketed word “Repealed”, e.g.

10-1-236. Action by dealer against distributor for violation of article [Repealed].

11.5. Editor’s notes

The publisher will have to prepare an Editor’s note indicating the laws on which the repealed provisions were based to accompany the repeal line. See Manual Chapter 28 for style of these notes.

11.6. Reserved Code sections

Occasionally an Act will contain language of the following sort: Code Section 2-2-22 is amended by striking and reserving that Code section in its entirety. This type of language is to be construed simply as repealing the Code section as this Code section has not

been redesignated. However, this type of language requires some indication of the fact of the “reservation,” even though the language has no effect different from that of a straight repeal other than reserving the Code section number. Thus, any Code section affected in this manner should be treated in text as shown in the following example:

2-2-22. Grounds for revocation; hearing.

Reserved. Repealed by Ga. L. 2011, p. 2 § 22/HB 1, effective July 1, 2011.

There is no need to refer to the fact of reservation in the analysis. In the analysis, treat this like any other repeal.

The word “Reserved” should not be used following a unit heading. The only time this will be used following one of those units is when there have never been any existing Code sections under a unit heading, unless the unit has been statutorily reserved.

11.7. Reused Code sections

When a Code section is repealed and the number is later reused for a different Code section, retain the editor’s note that appeared under the repeal line, but insert a reference to the subject matter of the Code section that was formerly codified with that number, since the catchline for the old Code section will now be gone.

Editor’s notes. -- This Code section formerly pertained to unlawful acts upon hospital grounds, including possession and use of alcohol and drugs, trespass, and escape. The former Code section was based on Ga. L. 1964, p. 499, § 1, and Ga. L. 1985, p. 149, § 31.

11.8. Repeal lines in original O.C.G.A. volumes

In several places in the remaining original O.C.G.A. volume (19), there may be repeal lines. This resulted from the fact that the final classification scheme of the Code was approved by the state prior to the 1981 session. Thus, any 1981 repeals of Acts upon which new Code sections were based had to be accounted for by a repeal line in the new Code, renumbering of Code sections not being an option at that point. These repeal lines require no editor's notes to explain their presence and should be carried forward intact into subsequent replacements. (If it ever happens that such a number is reused, it is possible that an Editor's note will be needed to explain that the number was listed as repealed in the original Code.)

11.9. Repeal prior to effective date

If a Code section is repealed prior to becoming effective, set out the repeal line and an editor's note stating the fact that the Code section was repealed prior to becoming effective. If repealed by another Act, give the cite of the repealing Act. Include a relating to statement in the editor's note to give the user some insight into what the contents would have been if the Code section had become effective.

12. REPEALS AND REENACTMENTS; AMENDATORY REVISIONS OF ENTIRE UNITS

12.1. Generally

(a) Repeal and reenactment. A true "repeal and reenactment" (or "R & R") occurs when a unit is repealed and, in the same Act, a group of Code sections is enacted and given the number designation of the repealed unit. An R & R wholly revamps the affected unit, wiping the slate clean and starting over again. In most cases the general subject matter of the "old" unit and the "new" unit will be the

same, and some of the provisions of the new unit may have antecedents in the old unit; however, there will be no direct correlation between similarly numbered Code sections in the old unit and in the new unit. A true R & R is usually identifiable in an Act by language such as the following: “Title 22 of the Official Code of Georgia Annotated, ..., is amended by repealing Chapter 2, relating to..., and enacting a new Chapter 2 to read as follows....”

(b) Amendatory revision of entire unit. A distinction may be made between R & Rs and amendatory revisions of entire units. An amendatory revision of an entire unit represents a straight amendment of some or all of the Code sections in the existing unit, which is set out in its entirety. There will be a one-to-one correspondence between most Code sections of the old unit and most Code sections of the new unit, even though some Code section numbers of the old unit may be redesignated in the new unit.

(c) Distinguishing between the two types. If an Act refers to the repeal of an existing unit and enactment of a new (underscored) unit with the same number designations or if it shows all sections of the existing unit as being stricken completely and followed by new underscored sections, then it is an R & R. If an Act uses striking and underscoring in relation to existing Code text of an entire unit, some of which text remains unchanged, then it is most likely an amendatory revision of the unit. Consult the state as needed for guidance.

12.2. Treatment of amendatory revisions of entire units

(a) Code sections with amended text. For every Code section in which a change in language is effected, the Code section will be printed in the supplement, accompanied by an amendment note.

(b) Code sections reenacted without change in text or Code section number. If a Code section is restated without change in language and without change in designation:

(1) In bound volume only. If the Code section appears only in the bound volume, carry only the catchline in the supplement accompanied by the following note:

Editor's notes. -- Ga. L. [cite], effective [date], reenacted this Code section without change. Refer to bound volume for text of this Code section.

If the Code section is later amended and thus printed in the supplement, convert the Editor's note into an amendment note. The Ga. L. cite will be added to the history cite even though the Code section will not appear in the supplement. Delete the second sentence of the note when it is converted to an amendment note.

Retention of Editor's notes for Code sections reenacted without change are to be treated the same as amendment notes - See Manual Appendix C.

(2) In supplement. If the Code section appears in the supplement, print the Code section and add the Editor's note as directed in (b)(1) above without the second sentence, and also add the Act to the history.

When a previously repealed and reserved Code section is reenacted without change, the standard

Editor's note for a reenactment without change should be modified as follows:

Editor's notes. — Ga. L. 2002, p. 1324, § 1-7, reenacted the reservation of this Code section without change.

(c) Code section without change in text but redesignated. If a Code section is restated without change but is given a new Code section number:

- (1) Carry the entire text of the restated Code section in the supplement, with the new Code section designation, along with an amendment note describing the changed Code section number (see style of amendment note in (d) below);
- (2) Place an Editor's note under the old number as follows:

20-2-308.

Editor's notes. -- Ga. L. [cite], effective [date], redesignated former Code Section 2-2-22 as present Code Section 2-2-23.

If the old number is not reused, carry only the old number, with the word "redesignated" not in brackets (the same in the analysis), and the above editor's note.

- (3) Place appropriate "Code 1981" and "Code 1981, enacted by" citations in the history line as described in Manual Section 13.8 regarding treatment of history lines for redesignated Code sections. (Note that the "as redesignated by" construction would not be used if striking and underscoring was not used, since the directory language of the Act does not specifically direct the redesignation of individual Code section numbers.)

(4) Transfer any notes from the old location to the new location.

(d) Code section redesignated with change in Code section text. An amendment note is required. The amendment note should describe the redesignation as well as the text changes.

Example:

The 1990 amendment, effective July 1, 1990, redesignated former Code Section 40-3-41 as present Code Section 40-3-43, and in the first sentence of subsection (b), substituted “to this Code section” for “thereto”.

(e) Code section number reused with different subject matter. Carry the new text and an editor’s note (see (c)(2) above) and also add to the end of the editor’s note a brief description of the subject matter of the Code section formerly codified there.

(f) History cite. The history of the prior Code section (whether or not the Code section designation was changed) should be carried forward to the new Code section.

12.3. Treatment of repeals and reenactments

(a) Editor’s Note. In an R & R, it will be necessary to place an editor’s note under the unit heading to indicate the fact of the repeal and reenactment. In the note, include:

- (1) The cite for the R & R Act;
- (2) The effective date;
- (3) The Code section numbers of the repealed unit;

- (4) A brief description of the subject matter of the repealed unit, if sufficiently different from that of the new unit; and
- (5) The Acts upon which the repealed unit was based.

Editor's notes. -- Ga. L. [cite], effective [date], effective July 1, 20_, repealed the Code sections formerly codified at this [unit] and enacted the current [unit]. The former [unit] consisted of Code Section 2-2-20 through 2-2-30, relating to administrative procedure, and was based on Ga. L. 1981, Ex. Sess. p. 8 (Code enactment Act) and Ga. L. [cite of any subsequent amending Acts].

(b) Steps to implement:

- (1) Write the editor's note so that it appears as illustrated in the following example:

Editor's notes. -- Ga. L. [cite], effective [date], repealed the Code sections formerly codified at this [unit] and enacted the current [unit]. The former [unit] consisted of Code Sections 2-2-20 through 2-2-30, relating to administrative procedure, and was based on Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act) and Ga. L. [cite of any subsequent amending Acts].

- (A) If the subject matter of the repealed unit is sufficiently different from the subject matter of the new unit, also add a brief description of the old subject matter, as illustrated in the following example:

Editor's notes. -- [Same first sentence as in (b)(1) above.] The former unit,

which dealt with regulation of farm implement retailers, consisted of Code Section 2-2-20 through 2-2-30 [etc.].

(B) If the repealed unit contained any decimal-point numbers, the Editor's note should specify which of those numbers appeared in the repealed unit. Note the following example:

Editor's notes. -- [Same first sentence as in (b)(1) above.] The former [unit] consisted of Code Sections 2-2-20 through 2-2-25, 2-2-25.1, 2-2-25.2, and 2-2-26 through 2-2-30 and was based on Ga. L. [cite].

(C) If the repealed unit was divided into further units, this should also be specified as illustrated in the following:

Editor's notes. -- [Same first sentence as in (b)(1) above.] The former chapter consisted of Code Sections 2-2-2 through 2-2-5 (Article 1), 2-2-20 through 2-2-35 (Article 2), and 2-2-50 through 2-2-67 (Article 3).

(2) After writing the editor's note, it will be necessary for the publisher to indicate the new placement of any annotations (including cross-references, law reviews, case notes, etc.) appearing in the supplement under the former chapter.

(c) Other notes. For any R & R, it will normally not be necessary to place amendment notes, effective date notes, or editor's notes under the individual Code sections in the affected unit. The editor's note at the front of the unit will normally suffice.

(d) History lines. For any R & R, do not carry forward the history lines of Code sections of the former unit to corresponding Code sections of the current unit. The editor's note at the front of the unit will suffice to give the history of the repealed unit.

12.4. Reenactment of lapsed Code sections

See Manual Section 13.12 for discussion of newly enacted Code sections which in fact derive from pre-Code Acts. In addition to adjusting the history and the tables, the publisher should determine whether any judicial decisions or Attorney General opinions construing the pre-Code Acts should be annotated. The statutes edition of Shepard's should be consulted for these purposes.

12.5. Repeal of Code section and reuse of number

When a Code section is repealed and its Code section number later reused for different subject matter, the following editor's note is used:

Editor's notes. -- Ga. L. 1985, p. 1413, § 1, repealed former Code Section 31-16-4, pertaining to appointment of a kidney disease control officer, and enacted the present Code section. The former Code section was based on Ga. L. 1972, p. 708, § 1.

13. HISTORICAL CITATIONS

13.1. Generally

(a) Georgia Laws. Generally, each Code section is followed by a history line which includes citations to the Georgia Laws and prior official compilations of the laws of the state pertaining to substantially the same subject matter as the present Code section. Unofficial codes are not cited in the history lines. No history line is included for those Code

sections which were enacted by the Official Code of Georgia Annotated itself until these sections are otherwise amended. Examples of these types of Code sections include those Code sections in Title 1 dealing with the enactment of the Official Code of Georgia Annotated and Code sections in other titles which provide new titlewide definitions not previously included in the law. See Manual Section 13.7.

Quite often the history lines not only will reflect the most recent specific enactment of a Code section but also will trace similar provisions of law existing prior to the most recent specific enactment, even though that enactment may not have expressly amended any of the prior similar provisions and may in fact have repealed them. For example, Ga. L. 1977, p. 396 enacted a new game and fish code (now codified primarily at Title 27) which repealed most of the then-existing provisions of law relating to game and fish. However, rather than beginning each history line in Title 27 with the most recent specific enactment (Ga. L. 1977, p. 396), the publisher examined the pre-1977 game and fish Acts, compared the subject matter of those Acts with the subject matter of each section of Ga. L. 1977, p. 396, and added history where appropriate. This tracing procedure serves the purpose of providing more complete historical information and recognizes the fact that many repeals by the General Assembly have the practical effect of amending or renumbering existing provisions of law.

In some cases the history lines may provide a quick method of translating sections of the Code to sections of prior codes. However, since the history lines do not cite unofficial codifications of provisions of Georgia law, reference generally should be

made to the conversion tables in Volume 41 whenever a translation of a new Code section to a prior provision of law is desired.

(b) Enactment and amendments. Every Code section must contain a citation to the Act which enacted it, as well as to any Acts which subsequently amended it (see Manual Section 13.5 for exception). This is called the historical citation, often referred to as the “history cite” or just the “history.”

(c) Indention. The historical citation is enclosed in parentheses and is run into the last line of text of the Code section or of the Paragraph of the 1983 Constitution; any runover lines are indented the same as the runovers of the sublevel to which it is attached. (That is, if the Code section or Paragraph ends with a subsection or subparagraph, the history runover is flush left; etc.) However, if a Code section ends with an oath or a table or other special material not constituting a textual subunit, the history line is not run into the last line of text but begins flush left on a new line.

(d) Citation of Acts.

(1) Acts of the General Assembly enacted prior to 2005 are cited as follows:

(A) The year and session of the General Assembly in which the Act was enacted, always preceded by the abbreviation “Ga. L.” (for “Georgia Laws”);

(B) The page number of the session laws on which the Act begins; and

(C) The section or sections of the Act which affect the Code section in question. Do not refer to subsections of Act sections, even for

cites to reviser's bill. Example: Ga. L. 2004, p. 1000, § 1.

(2) Acts of the General Assembly enacted in 2005 or later are cited the same as in paragraph (1) of this subsection, except that the corresponding House bill (HB), Senate bill (SB), House resolution (HR), or Senate resolution (SR) number, preceded by a forward stroke, is added at the end. Example: Ga. L. 2005, p. 1000, § 1/HB 1.

(3) Cites to Acts from the same year are listed separately in full (do not try to combine cites to Acts from the same year). Citations to Acts from the same year are arranged in chronological order according to when the Act was approved by the Governor or became law without such approval. This can usually be determined by the ascending numerical order of Georgia Laws page numbers of each cite; however, the pagination in the Georgia Laws (and hence in the historical citation) for an Act that became law via a veto override may be distinct from other Acts; see Manual Sections 2.4 and 22.3 regarding veto override Acts).

13.2 Constitution Paragraphs

Beginning with the 2007 revised Volume 2, history cites will be provided for numbered Paragraphs (in their entirety) of the 1983 Constitution, as follows:

(1) Numbered Paragraphs contained in original 1983 Constitution.

(A) No citation will be added to a numbered Paragraph contained in the original 1983 Constitution as approved by Ga. L. 1981, Ex.

Sess. p. 143, §1, unless and until an amendment to such Paragraph has been approved by the General Assembly and ratified by the voters.

(B) If an amendment to a numbered Paragraph contained in the original 1983 Constitution has been approved and ratified, then add a cite to show the origin of the Paragraph in the 1983 Constitution plus a Ga. L. cite for the amendment, including a House or Senate resolution number for such amendment, e.g.:

(Ga. Const. 1983, Art. 9, § 2, Para. 7; Ga. L. 1984, p. 1709, § 1/HR 444; Ga. L. 2002, p. 1497, §1/HR 391).

(2) Numbered Paragraphs not contained in but subsequently added to original 1983 Constitution.

(A) If a numbered Paragraph was not contained in the original 1983 Constitution as approved by Ga. L. 1981, Ex. Sess. p. 143, §1, but was added by other resolution, then add a history cite for the added paragraph including the approving resolution; e.g:

(Ga. Const. 1983, Art. 1, § 4, Para. 1, approved by Ga. L. 2004, p. 1111, §1/SR 595).

(B) If a numbered Paragraph added to the original 1983 Constitution has been amended after it became a part of the Constitution, add a cite for the subsequent amendment; e.g.:

(Ga. Const. 1983, Art. 15, § 1, Para. 1, approved by Ga. L. 2010, p. 1000, § 1/HR1; Ga. L. 2012, p. 1050, §1/HR2).

13.3. New Code sections

(a) **Number assigned by General Assembly.** Example: “Code 1981, § 2-2-22, enacted by Ga. L. 1982, p. 1, § 1.” This applies only to new Code sections, not to amendments to existing Code sections.

(b) **Number redesignated in year of enactment under Code Section 28-9-5.** If, in the year of enactment, a Code section is redesignated pursuant to Code Section 28-9-5 powers, the new number is used in the “enacted by” construction, even though technically that is not the number actually “enacted by” the legislature. Therefore, follow the procedure in (a) above.

13.4. Amendments to Code sections

Add the Ga. L. cite for each Act that amends the Code section irrespective of whether it was given effect or superseded.

13.5. Delayed and contingent amendments to the Code

Cites to Acts amending the Code with delayed effective dates are included immediately, rather than waiting for the Act to become effective, since the text of delayed amendments is set out in 11 point type. Cites to Acts with contingent effective dates are also added immediately, even though the contingency may not yet be fulfilled or may never be fulfilled, since there should be a complete record of Acts purporting to amend each Code section.

13.6. Delayed and contingent amendments to the Constitution

All proposed amendments to the 1983 Constitution are contingent upon ratification by a majority of those persons voting in the next state-wide general election held in an even-numbered year following adoption by the General Assembly and, unless otherwise specified in the resolution proposing the amendment, the effective date of a ratified amendment is delayed until January 1 of the year following such ratification. Add the Ga. L. cite for a resolution that amends a Constitution Paragraph only if the proposed amendment was ratified by the voters.

13.7. Directory amendments to units

Occasionally an Act will direct certain changes to be made “throughout” a specified unit of the Code but will not list the particular Code sections affected. (For example, an Act might provide: “Chapter 2 of Title 2 is amended by changing ‘movable home’ to ‘mobile home’ wherever that term appears.”) Any Code section affected by such an Act should have the Act listed in its history cite. (Note also that in these situations the state may provide the publisher with a list of the Code sections affected so the publisher will not have to search the unit.)

13.8. Amendment of Code section not having a history cite

If a Code section was created anew pursuant to the 1981 recodification (see, e.g., Code Sections 46-1-3 and 46-1-4), no historical citation was attached to it, and if that Code section is subsequently amended, a notation must be added to show the origin of the Code section in the 1981 Code. Thus, if Code Section 46-1-3 is subsequently amended by Ga. L. 1990, p. 1, § 1, add an original Code 1981 cite plus the amended Act, as

follows: “(Code 1981, § 46-1-3; Ga. L. 1990, p. 1, § 1.)” Also, add a note precisely as follows:

Editor’s notes. -- This Code section was created as part of the Code revision and was thus enacted by Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act).

13.9. Number redesignated by General Assembly

If an Act renumbers a Code section or Constitution Paragraph, such redesignation must be acknowledged in the history citation. As with other historical citations, the citation of the redesignating Act should include the bill number in accordance with Manual Section 13.1(d). For example, if Code Section 2-2-22 is renumbered as Code Section 2-2-23 by a 2011 Act, the citation would read “Code 1981, § 2-2-23, as redesignated by Ga. L. 2011, p. 1, § 1/HB 6.” When a Code section is redesignated, a “Code 1981” cite for the Code section’s former number also must be added to the history cite.

If a Code section was part of the original 1981 Code, the former Code section number will not yet be in the history and a reference to it needs to be added at this point. Add a cite to the former number in the form “Code 1981, § 1-2-3.” The cite should be inserted following any 1981 or earlier history and preceding any 1981 Ex. Sess. or later history.

Example:

(Code 1933, § 20-301; Ga. L. 1980, p. 1, § 1 Code 1981, § 22-2-2; Ga. L. 1982, p. 1, § 2; Code 1981, § 22-2-3, as redesignated by Ga. L. 2011, p. 1, § 1/HB 7.)

If the Code section was not part of the original 1981 Code, the former Code section number should already be in the history, in the form “§ 22-2-2, enacted by Ga. L. 1982, p. 1, § 1” so no other reference to the former Code section number needs to be added.

If the Code section had no history cite prior to redesignation (such as a Code section created anew as part of the 1981 recodification), then a history cite should be created, consisting of a “Code 1981” cite and an “as redesignated by” cite.

Example:

(Code 1981, § 22-2-2; Code 1981, § 22-2-3, as redesignated by Ga. L. 2011, p. 100, § 3/HB 8.)

13.10. Code sections in amendatory revisions of units

Treat these like ordinary amendments. That is, add the Act’s “Ga. L.” cite. Note: If the Code section is redesignated, use the form in Manual Section 13.8, whether the Code section text is also amended or not.

13.11. Repeals and reenactments of Code sections

Treat these like new Code sections. See Manual Section 13.3. Do not pick up any old history, regardless of whether Code section numbers are reused and regardless of the existence of comparable old and new provisions.

13.12. Double drafting at 1982 session

Many Acts during the 1982 session were “double-drafted” to allow for the November 1, 1982, transition to the Code. “Double drafted” means that the same Act enacted comparable Code 1933 and Code 1981 provisions, the Code 1933 provision to be repealed 11/1/82

and the Code 1981 provision to become effective on that date. Make sure that the Code 1981 cite follows the Code 1933 cite.

Example:

(Code 1933, § 92-104.1, enacted by Ga. L. 1982, p. 85, § 1; Code 1981, § 1-2-3, enacted by Ga. L. 1982, p. 85, § 2.)

13.13. Code sections omitted from 1981 Code and added later

Some new Code sections enacted in 1982 or later were in fact derived from pre-1981 Acts but were not included in the 1981 Code. (Most of these appear to result from reconsideration by the Code commission of earlier decisions to omit Code sections from the Code.) The state must tell the publisher whether a given new Code section is in fact a reenactment of a lapsed Code section; there is really no other way to determine this. For these types of Code sections, indicate the pre-1981 Code section and session law on which the new Code section was based and add a “Code 1981, § _____, enacted by” cite; for example:

(Ga. L. 1899, p. 32, § 1; Civil Code 1910, § 3256; Code 1933, § 67-103; Ga. L. 1947, p. 529, § 1; Ga. L. 1961, p. 468, § 1; Code 1981, § 44-14-35.1, enacted by Ga. L. 1983, p. 3, § 33; Ga. L. 1990, p. 256, § 1; Ga. L. 1991, p. 94, § 44.)

An editor’s note should be added to read as follows:

Editor’s notes. -- The provisions of this Code section were previously enacted in substantially similar form by [pre-1981 Ga. L. cite]. However, those provisions were not enacted as part of the original Code by the Code enactment Act (Ga. L. 1981, Ex. Sess., P. 8).

See Manual Section 12.4 for identification and creation of annotations in this situation. See also Manual Section 35.2 for handling of tables in this situation.

13.14. Amendment to effective date or other uncodified section of Act

The cite to an Act amending the effective date or other uncodified section of a previous Act and not specifically amending a Code section should not be in the history line but should be included in an editor's note.

14. DELAYED EFFECTIVE DATES — GENERALLY

14.1. Introduction

Some Acts specify an effective date which falls after the date when the supplement is to be published. The procedure for handling individual delayed effective date (DED) situations depends on several considerations, including:

- (1) Whether the Act works an amendment, an enactment, a repeal and reenactment, or a repeal;
- (2) Whether the Act affects a unit or a Code section;
- (3) Whether the Act is effective before September 1 of the year of shipment, on or after September 1 of the year of shipment and up to and including the following July 1, or after July 1 of the year following the year of shipment;
- (4) Whether the current version appears in the bound volume or in the supplement;
- (5) Whether the state directs special treatment; and
- (6) Whether the Act works an extensive or minor revision.

Manual Chapters 15 through 21 describe methods of handling delayed enactments, delayed amendments, delayed repeals and reenactments, delayed repeals, and contingent material.

14.2. Memos to state

The handling of a delayed effective date situation should be memoed to the state to see if a deviation from normal procedure is desired or to suggest a procedure for an out-of-the-ordinary situation not covered by the general rules.

15. DELAYED EFFECTIVE DATES — DELAYED ENACTMENTS

15.1. Generally

(a) Text. In newly enacted date certain delayed enactments, carry the text of the new material in 11 point type.

(b) Note. In newly enacted date certain delayed enactments, carry a regular “Effective date note” and not a “Delayed effective date note.” See Manual Chapter 22 regarding effective dates for newly enacted material:

(1) If a new unit is enacted, place the effective date note only under the unit heading; or

(2) If only a new Code section is enacted, place the effective date note under the Code section.

(c) Parenthetical. Carry a catchline parenthetical in each new Code section as follows:

“2-2-22. (Effective [Date Certain]) Penalty.”

If a date certain, place the date in the parenthetical, e.g., “(Effective July 1, 2000)”, whenever possible. See Manual Chapter 19 for contingent effective date enactments.

(d) History cite. Cite the enacting legislation by its Ga. L. cite in the historical citation of each new Code section.

(e) Contingencies. See Manual Chapters 20 and 21 for contingent delayed legislation.

16. DELAYED EFFECTIVE DATES — DELAYED AMENDMENTS

16.1. “Delayed amendment” defined

Delayed amendments are those amendments that do not become effective until September 1 of the year of enactment or later. (Note “delayed amendments” do not include contingent amendments, which are treated separately in this manual. See Manual Section 21.) A “delayed” amendment becomes effective on a future date certain, while a “contingent” amendment becomes effective only upon the occurrence of an event specified in the Act, such as funding or a referendum.

16.2. Effective on or before July 1 of following year

(a) Generally. Handling of delayed amendments is a function of (1) effective date, (2) whether the current version of the Code section is in the bound volume or supplement, (3) whether the state directs special treatment, and (4) the nature of the amendatory changes.

If an entire unit is affected, parentheticals are not added to the unit headings. They are, however, added to the Code section catchlines of each Code section in the unit.

The general rules for handling postponed amendments are set out below. Note: While a vast majority of delayed amendments fit within one of the following categories, some will require special

treatment. Also the standard treatment can be modified in cases where such would be more convenient and understandable to the user.

(b)(1) Code section or sublevel amended—current version in supplement. Carry new text in 11 point type Insert “(For effective date, see note.)” at the beginning of the Code section catchline and following the designation of the amended sublevel(s), i.e., “(a) (For effective date, see note.) Text of sublevel...” Add amendment note describing change. Add “Delayed effective date” note either (A) quoting the prior version of the sublevel in full or (B) if the amendment is not extensive, referring the user to the Amendment note to determine the prior version. Examples of the forms for these delayed effective date notes are as follows:

(A) **“Delayed effective date.**--Subsection (b), as set out above, becomes effective January 1, 1996. Until January 1, 1996, subsection (b) reads as follows: ‘[quote version effective until January 1, 1996, here--include designation of sublevel in quoted language]’.”

(B) **“Delayed effective date.**--Subsection (b), as set out above, becomes effective January 1, 1996. For version of subsection (b) in effect until January 1, 1996, see the 1995 amendment note.”

(C) **“Delayed effective date.**--Paragraph (2.1), as set out above, becomes effective March 31, 2009. Until March 31, 2009, there is no paragraph (2.1).”

The amendment note referred to in the delayed effective date note in (1)(B) above should be as descriptive as possible, and, if the Code section is extensively

amended and short, the amendment note can set out the text. The form for the note would then be: “**The 1995 amendment**, effective July 1, 1995, rewrote this Code section (or subsection),

which read ‘.....’.”

(2) Code section or sublevel amended—changes extensive, current version in bound volume. Carry new text in 11 point type. Insert “(For effective date, see note.)” at the beginning of the Code section catchline and following the designation of the amended sublevel(s), i.e., “(a) (For effective date, see note.) Text of sublevel....” Add an amendment note describing the extensive changes. Add a delayed effective date note, referring the user to the bound volume.

Example:

Delayed effective date.--For version of this Code section (or sublevel) effective until January 1, 1998, see the bound volume.

Do not use a note referring to the bound volume unless the changes are extensive. If they are not extensive, use the style set out in (1)(B) above.

16.3. Effective after July 1 of following year

(a) Code section or sublevel amended—current version in bound volume. Set out the text of the delayed version in the supplement, together with a parenthetical at the beginning of the Code section catchline and following the designation of the amended sublevel, e.g., “(Effective January 1, 1999. See note).” Also add an amendment note and a delayed effective date note. The DED note should read as follows:

Delayed effective date. This Code section, as set forth above, is effective on January 1, 1999. For the version of this Code section effective until that date, see the bound volume.

(b) Code section or sublevel amended—current version in supplement. Generally set out two versions of the Code section in 11 point type in the supplement (in special cases such as very lengthy Code sections, e.g., Code Section 48-8-3, the state may give special instructions).

The catchline of the current version should read: “1-2-3. (Effective until July 1, 1999. See note.) Short title.”

The catchline of the delayed version should read “1-2-3. (Effective July 1, 1999. See note.) Short title.”

Editor’s notes.—Code Section 1-2-3 is set out twice in this Code. The first version is effective until January 1, 1999, and the second version becomes effective on that date.

(c) Placement of notes. The history cite to the delayed amendment should only appear in the delayed version. The amendment note for the delayed amendment should only appear under the delayed version. All other notes should appear only under the current version, unless they relate specifically to the delayed version.

16.4. Multiple delayed amendments

If a Code section is amended with a delayed effective date beyond two years and is amended again before the delayed effective date occurs, set out both versions in the supplement.

16.5. Code section or sublevel amended but same Act provides for repeal of amendment

Treat the delayed repeal of the amendment as a delayed amendment. Add “(For effective date, see note.)” to the catchline and as a sublevel parenthetical where applicable. In the following amendment note, use, e.g.:

The 1995 amendment, effective July 1, 1995, and repealed effective July 1, 1998,”

Also, add a Delayed effective date note explaining the delayed repeal of the amendment, e.g.:

Delayed effective date.—This Code section, as set forth above, is effective on July 1, 1998, in accordance with Ga. L. 1995, p. 1500, § 2, which provides for repeal of the amendment made by § 1 of that Act.

16.6. Caution

If a Code section was previously set out twice in the supplement and one of the versions has become effective so as to supersede the other (either due to the passage of time or the fulfillment of a contingency), then delete the obsolete version and omit the effective date parentheticals and delayed effective date notes from the now current version.

17. DELAYED EFFECTIVE DATES — DELAYED REPEALS; TERMINATION PROVISIONS

17.1. Delayed repeal of Code section

If an Act repeals a Code section effective between September 1 of the supplement year and July 1 of the following year, inclusive:

- (1) For a Code section, the text of which is printed only in the bound volume, in the supplement print the catchline and add a parenthetical in the catchline (note that the language of this parenthetical

differs from that used in the situation where a subsection is repealed - see Manual Section 17.2), add a repeal line, and add an editor's note referring the user to the bound volume and citing the history of the Code section, e.g.:

31-7-143. (Repealed effective March 1, 2012) Committee proceedings and records immune from discovery or use as evidence in civil actions.

Repealed by Ga. L. 2011, p. 1000, § 2/HB 9, effective March 1, 2012.

Editor's notes.--Ga. L. 2011, p. 1000, § 2 provides for the repeal of this Code section, effective March 1, 2012. For provisions of this Code section effective until that date, see the bound volume.

(2) For a Code section, the text of which is printed in the supplement, carry the text of the Code section, add "(Repealed effective)" to the catchline, and also carry an editor's note as follows:

Editor's notes.--Ga. L. 2011, p. 1000, § 2 provides for the repeal of this Code section effective March 1, 2012.

Do not add the repealing Act to the historical citation.

17.2. Delayed repeal of subsection

If a sublevel, such as a subsection or a paragraph, is repealed, add a parenthetical at the beginning of the text of the affected sublevel. The parenthetical should read: (Repealed effective ____.) If the repeal provision is not expressed in the text of the sublevel itself, add an explanatory editor's note following the Code section, e.g.:

Editor's notes—Ga. L. 1997, p. 1000, § 2 provides for the repeal of subsection (b), effective March 1, 1998.

If the repeal provision is expressed in the text of the sublevel itself, no editor's note is needed.

After the repeal has become effective, if the repeal was not expressed in the sublevel itself, convert the existing editor's note to past tense to read as follows:

Editor's notes—Ga. L. 1997, p. 1000, § 2 provided for the repeal of former subsection (b), effective March 1, 1998.

If the repeal was expressed in the text of the sublevel itself, there was no editor's note, and the repeal has become effective, add an editor's note:

Editor's notes—Former subsection (b) was repealed on its own terms effective March 1, 1998.

17.3. Delayed repeal of unit

If an Act repeals an entire unit effective between September 1 of the supplement year and July 1 of the following year, inclusive:

(1) If the text of all Code sections in the unit appears in the bound volume only:

(A) In the supplement, print the unit heading and Code section span and add a parenthetical to the Code section span line, e.g.:

ARTICLE 10

HOSPITAL FINANCING AUTHORITY

31-7-190 through 31-7-208. (Repealed effective March 1, 2012)

Repealed by Ga. L. 2011, p. 1000, § 2/HB 9 , effective March 1, 2012.

Editor's notes.—Ga. L. 2011, p. 1000, § 2 provides for the repeal of this article effective March 1, 2012. For provisions of this article effective until that date, see the bound volume.

(B) For each Code section for which annotations but not text appear in the supplement, add a parenthetical to the catchline preceding the annotations and add a supplement editor's note referring back to the note under the unit heading (see example below), and retain the annotations.

Editor's notes.— See the Editor's note following the [unit] heading as to the repeal of this Code section.

(2) If the entire unit is not being repealed, for each Code section for which annotations do not appear in the supplement, proceed as in (1)(B) above. Do not list separate catchlines for two or more consecutive Code sections; i.e.:

2-2-29 through 2-2-35. (Repealed effective March 1, 1996)

Editor's notes.—See the editor's note following the [unit] heading as to the repeal of these Code sections.

(3) If the text of any of the Code sections in the unit appears in the supplement retain the text and proceed as in (1)(B) above.

17.4. Effective after July 1 of following year

(a) Bound volume. If the Code section appears in the bound volume only, in the supplement add a parenthetical to the catchline "(Repealed, effective)", an Editor's note, and refer the user back to

the bound volume for the text of the Code section. Do not add a repeal line. E.g.:

2-2-29. (Repealed effective ____) Catchline.

Editor's note.— Ga. L. 1995, p. 1000, § 2 provides for the repeal of this Code section effective March 1, 1996. For provisions of this Code section effective until that date, see the bound volume.

(b) Supplement. If the Code section appears in the supplement, carry the existing text with a parenthetical in the catchline and an Editor's note like that in (a), but do not refer the user to the bound volume. Do not add a repeal line.

17.5. Caution

In a future supplement, the delayed repeal will have to be treated as a regular repeal. At that time, the publisher must be sure to carry out all functions required for regular repeals, including writing editor's notes to list the history of the repealed material.

17.6. Effective date extended by legislation

If an amendment is made to a previous "Act" and not specifically to a codified portion of the Code and that amendment extends the effective date of that "Act," an Editor's note should carry this history but the cite should not be reflected in the history line.

17.7. Termination Code sections (sunseting)

(a) Generally. Throughout the Code there are a number of Code sections which specify dates for the eventual repeal of units or sections of the Code. There may also be Code sections which provide for their own repeal on certain dates.

(b) Treatment as delayed repeal. If the date in such a termination section does not occur before the shipping date of the next year's supplement, it is necessary to note its effect under the Code sections affected and to list the repeal date in the catchline of any Code sections. Treat as a delayed repeal. A follow up is needed each year on units, Code sections, or sublevels sunseting.

(c) Treatment as repeal. If the termination date falls before the date of the next supplement, and if the termination section is not amended so as to extend the date, then treat the affected Code sections as repealed. A repeal line in this situation should read as follows: "Repealed pursuant to Code Section 2-2-22, which provided for the repeal of this [unit or Code section] on July 1, 1994."

(d) Termination on its own terms. See Manual Section 28.9 for termination of a unit or Code section on its own terms.

17.8. Comparison of editor's notes and delayed effective date notes

Editor's notes are used with the former language of a unit, Code section, etc. describing what will no longer be in effect.

Delayed effective date notes are used with new language describing what will become effective.

Both notes are used in a repeal and reenactment; i.e., editor's notes describing the former language that will no longer be in effect and delayed effective date notes describing the new language that will become effective.

See Manual Chapter 26 regarding editor's notes generally.

See Manual Section 26.3 regarding deletion of editor's notes in volume revision.

18. DELAYED EFFECTIVE DATES — DELAYED REPEALS AND REENACTMENTS

18.1. Generally

A delayed repeal and reenactment of a unit of material can be very confusing for a Code user, since (1) provisions within the unit are often extensively renumbered and rearranged, (2) some Code sections of the current version of the unit may already appear in the supplement, and (3) annotations will appear under Code sections in the current version whose counterparts in the delayed version will probably have been redesignated.

18.2. Effective between September 1 and the following July 1, inclusive

(a) Text of current version. If any or all Code sections in the current version of the unit are in the supplement, these should continue to appear in the supplement until the delayed version becomes effective.

(b) Code section catchlines in current version. The catchline of all Code sections of the unit already in the supplement should contain a parenthetical. Example: "2-2-22. (Effective until [date]) Penalty."

(c) Text of delayed version. Print all Code sections of the delayed repealed and reenacted version of the unit in 11 point type. Note: All provisions of the current version of the unit in the supplement are to appear before the delayed version. Current and delayed versions of the individual Code sections are not to be paired together.

(d) Code section catchlines in delayed version. Carry a catchline parenthetical in each Code section catchline. Example: “2-2-22. (Effective [date]) Penalty.”

(e) Editor’s notes; delayed effective date (DED) notes. If any or all provisions of the current version are in the supplement, include a DED note under the unit heading of the current version in the style of the following example:

Delayed effective date.--Ga. L. 1995, p. 139, § 1, revised Chapter 8 of Title 34, effective January 1, 1996. For the version of Chapter 8 effective until January 1, 1996, consult the bound volume and the Code sections in this version of Chapter 8 in the supplement. For the version effective January 1, 1996, see the version of Chapter 8 following this version.

Under the unit heading of the delayed version, a delayed effective date note and also an editor’s note should appear, as in the following examples:

Delayed effective date.--Ga. L. 1995, p. 139, § 1, revised Chapter 8 of Title 34, effective January 1, 1996. For the version of Chapter 8 effective until January 1, 1996, consult the bound volume and the Code sections set out in the preceding version of Chapter 8 in the supplement. For the version effective January 1, 1996, see this version of Chapter 8.

Editor’s notes.--Ga. L. 1995, p. 139, effective January 1, 1996, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of §§ 34-8-1 through 34-8-7.1, 34-8-8 through 34-8-19 (Article 1); 34-8-30 through 34-

8-41.1, 34-8-2 through 34-8-49.1, and 34-8-50 through 34-8-53 (Article 2; 34-8-70 through 34-8-83 (Article 3; 34-8-100 through 34-8-104 (Article 4); 34-8-110 through 34-8-115 (Article 4A); 34-8-120 through 34-8-132 (Article 5); 34-8-150 through 34-8-160 (Article 6); and 34-8-170 through 34-8-177 (Article 7); and was based on Ga. L. 1989, p. 302, §§ 1, 2; Ga. L. 1989, p. 305, §§ 1-5; Ga. L. 1989, p. 594, § 1; Ga. L. 1990, p. 870, § 1.

Following each individual Code section of the delayed version, include a delayed effective date note (DED) referring the user to the note under the unit heading, e.g.:

Delayed effective date.--For information as to the delayed repeal and reenactment of this [unit], see the delayed effective date note at the beginning of this [unit].

18.3. Effective after July 1 of year following supplement shipment

(a) Text of current version. If any or all Code sections in the current version of the unit are in the supplement, these should continue to appear in the supplement in 11 point type until the delayed version becomes effective.

(b) Code section catchlines in current version. The catchline of all Code sections of the current version already in the supplement should contain a parenthetical as to the effective date. Example: “2-2-22. (Effective until [date]) Penalty.”

(c) Text of delayed version. Print new Code sections and catchlines in 9 point wide-measure type (but do not carry a history line for the 9 point

versions and do not carry any amendment notes).
 Note: All provisions of the current version of the unit that are set out in the supplement are to appear before the delayed version. Current and delayed versions of individual Code sections are not to be paired together.

(d) Code section catchline in delayed version. Carry a catchline parenthetical in each Code section catchline. Example: “2-2-22. (Effective [date]) Penalty.”

(e) Editor’s notes; delayed effective date notes. These are handled the same way as discussed in Manual Section 18.2(e) above.

(f) Changes in following year’s supplement. In the following year’s supplement, change the 9 point type to 11 point type, deleting the now-repealed versions from the supplement. Also, be sure to change the Code section catchlines as appropriate.

19. DELAYED EFFECTIVE DATES — CONTINGENT DATES

GENERALLY

19.1. Generally

Occasionally an Act will not specify a particular date on which it becomes effective but will instead specify an event which must occur before the Act will become effective. For example, an Act may become effective upon the ratification of a specified constitutional amendment, or upon the appropriation of a sum of money, or upon adoption of the Act by a city or county. Such an effective date is referred to as a contingent effective date.

19.2. Instructions from state as to unusual situations

While certain standard procedures are set down herein for handling contingent effective dates, the state will occasionally direct a different treatment depending on the determination of the likelihood of the contingency coming to pass. As with delayed effective dates, any situation involving a contingent effective date should be memoed to the state.

19.3. Funding contingencies

If funded, the effective date is the date funded, not the date the bill was effective (normally July 1 for General Appropriations Acts).

19.4. Conversion of notes

If there is any pertinent information contained in any funding contingency notes not already carried in editor's notes, carry such notes until the contingency is met. As to any funding contingency notes which should be retained after the contingency has been met, contact the state with a query.

20. DELAYED EFFECTIVE DATES — CONTINGENT ENACTMENTS

20.1. New unit

(a) Type. Print the unit in 11 point type.

(b) DED note. Print a "delayed effective date" note at the front of the unit describing the contingency.

(c) Editor's note. Under each Code section in the unit place the following note:

Editor's notes--For information as to the effective date of this Code section, see the delayed effective date note at the beginning of this [unit].

(d) Parenthetical. Place the following parenthetical in the catchline of each Code section: “(For effective date, see note)”.

(e) Contingency not met. If new unit is set out in the volume only (replacement volume year of enactment) and the contingency is not met in subsequent years, set out the unit heading and a delayed effective date note only in the supplement stating that contingency was not met for the current year.

(f) History. Print the enacting Act in the history of each Code section.

20.2. New Code section

(a) Type. Print the Code section in 11 point type.

(b) DED note. Print a “delayed effective date” note under the Code section describing the contingency, i.e.:

Delayed effective date.--Ga. L. ____, § ____ provides this Code section becomes effective only when funds are specifically appropriated for purposes of the Act in an Appropriations Act making specific reference to that Act. Funds were not appropriated [during current session].

(c) Parenthetical. Place the following parenthetical at the beginning of the catchline: “(For effective date, see note)”.

(d) Contingency not met. Same as Manual Section 20.1(e) above.

(e) History. Print the enacting Act in the history line.

20.3. Retirement provisions requiring concurrent funding

See Manual Section 21.5. Special attention must be paid in this area.

21. DELAYED EFFECTIVE DATES — CONTINGENT AMENDMENTS

21.1. Generally

Do not incorporate contingent amendments into the text until the contingency has been met. (For newly enacted Code sections, see Manual Section 20.5.) For amended Code sections, until the contingency is met, set out the text, as it would read, in a delayed effective date note. Also, include a parenthetical “(For effective date, see note)” in the Code section catchline. Do add the cite to the historical citation immediately, however.

As to the delayed repeal of a subsection, where the repeal will not take effect until a contingency is met, see Manual Section 17.2.

21.2. If Code section appears in bound volume only

(a) Catchline. Carry the catchline only in the supplement, no parenthetical is necessary.

(b) Amendment note. Add amendment note describing change. The last sentence of the amendment note should read: “For effective date of this amendment, see the delayed effective date note.” Add delayed effective date note reading as follows:

Delayed effective date.—Ga. L. 20__, p. __, § __, provides that the 20__ amendment becomes effective [describe contingency]. This Code section as amended is not set out in the Code owing to the delayed effective date.

If the amendment is contingent upon appropriation of funds, and funds are not appropriated as of the time of publication, include such information in the delayed effective date note as follows:

“Funds were not appropriated at the 1995, 1996, or 1997 sessions of the General Assembly.”

Finally, add language to the DED note explaining how the Code section will read after the contingency is met as follows:

“After the appropriation is made [or, whatever contingency is met], this Code section [or whatever particular sublevel] will read as follows: [quote pertinent language].

After the contingency has been met, convert the pertinent information that needs to be retained in the delayed effective date note to an editor’s note. See © below.

Thus, a final printed note may read as follows:

Delayed effective date.--Ga. L. 1994, p. 1154, § 1, provides that the 1994 amendment becomes effective only when funds are specifically appropriated for purposes of the Act in an Appropriations Act making specific reference to that Act. This Code section as amended is not set out in the supplement owing to the delayed effective date. Funds were not appropriated at the 1994, 1995, 1996, or 1997 sessions of the General Assembly. After the appropriation is made, subsection (a) will read as follows: [quote subsection (a)].

(c) Contingency met. If the contingency is later met, then in a subsequent supplement the Code section as amended must be printed and an editor’s

note written describing the contingency and the date of its satisfaction. Carry the Act in the history line even if the contingency has not been met.

21.3. If Code section appears in supplement or in current revised volume

Basically follow the same procedure as in Manual Section 21.2 above. Since the current text appears in the supplement, retain the current text and add a parenthetical to the catchline. Do not incorporate the amendment, but do include the amendatory act in the history. The second sentence in the delayed effective date note set out in Manual Section 21.2 above should read: "This Code section, as set out above, does not reflect the amendment by that Act owing to the delayed effective date."

Observe the same cautionary point as above.

21.4. When text is set out in 11 point type

When the text already appears in the supplement or a new replacement volume is involved, add a parenthetical immediately preceding the catchline as follows:

15-11-9.1. (For effective date, see note) Intake and probation services of juvenile courts.

21.5. Concurrent funding of retirement provisions

(a) In general. In even numbered years, some of the legislation pertaining to retirement of public employees is made contingent upon concurrent funding. Most, but not all, such provisions are in Title 47. Acts requiring concurrent funding contain a provision that the Act is effective only if concurrently funded and that the provision is repealed (without ever having taken effect) if not concurrently funded.

(b) Determination of concurrent funding. The state auditor's report on concurrent funding is sent in each even-numbered year during supplement production. The report is also printed in the Georgia Laws.

(c) Section text. If the Act is concurrently funded, set out the Code section as affected by the Act. If not funded, do not give effect to the Act. Note: If the Act purported to enact a new Code section, but was not funded, a repeal line will be needed, so there is a place for the editor's note (see (d) below). Do not create a catchline since the Code section never was effective, but include a description of its subject matter in the editor's note.

(d) Notes required.

(1) Enacted Code sections. If funded, an effective date note (See Manual Chapter 22) is all that is needed. The note should not refer to the fact that the Act was subject to a funding contingency. If not funded, an Editor's note is needed instead of an effective date note. The form for the Editor's note is:

Editor's notes.--Ga. L. 1988, p. 697, § 1, which would have enacted a Code Section 47-10-117, pertaining to contributions for prior service credit, was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1988. See state auditor's report at Ga. L. 1988, p. CCLXXXIV.

(2) Amended Code sections. If funded, an amendment note (see Manual Chapter 23) is all that is required. The note should not refer to the fact that the Act was subject to a funding

contingency. If not funded, an Editor's note is needed instead of an amendment note. The form for the Editor's note is:

Editor's notes.--Ga. L. 1988, p. 697, § 1, which would have amended subsections (c) and (f) and would have added a subsection (h), was not concurrently funded as required by Code Section 47-20-50 and, therefore, did not become law and was repealed on July 1, 1988. See state auditor's report at Ga. L. 1988, p. CCLXXXIV.

(e) History cite. Every Code section amended by the Act should include a cite to the Act in its history cite, even if the Act is not concurrently funded. Newly enacted Code sections would carry a cite to the Act, if concurrently funded.

(f) Effective date. If funded, the amendment is effective on the date it is funded, not the date the bill was effective. (Normally July 1 for General Appropriations Acts.)

21.6. Reenactment of repealed and reserved Code section

If a previously enacted Code section is reenacted without change in legislation that contains a contingency, do not use amendment notes or delayed effective date notes. Use the following editor's note:

Editor's notes. — Ga. L. 2002, p. 1324, § 1-8, which reenacted this Code section without change, becomes effective only if funds are specifically appropriated for the purposes of the Act in an appropriations Act making specific reference to that Act and shall become effective when funds so appropriated become available for expenditure. Funds were

not appropriated at the 2002 session of the General Assembly.

22. EFFECTIVE DATE NOTES

22.1. Generally

A Georgia Act may sometimes contain a specific effective date provision. This can be expressed as a date certain, contingent upon an event such as funding, or effective upon approval by the Governor. For those Acts which are effective upon approval by the Governor, obtain approval date information from the Legislative Counsel's office.

22.2. Default dates

(a) Generally. Unless a different effective date is specified in the Act, a general Act signed by the Governor or becoming law without such approval between January 1 and June 30, inclusive, becomes effective July 1 of that year, and an Act signed by the Governor or becoming law without such approval between July 1 and December 31, inclusive, becomes effective January 1 of the following year (See Code Section 1-3-4).

(b) Compensation of certain officials. Code Section 1-3-4.1 provides a January 1 effective date rule for general Acts increasing the compensation of any county officer listed in Article 9, Section 1, Paragraph 3 of the Georgia Constitution 1983 or Title 15, Chapter 10. See the cross-references under Code Section 1-3-4.1 for a listing of the Code sections that this conceivably could affect.

22.3 Veto override.

Treat the veto override Act as becoming effective on the date that the second house successfully overrode the veto, unless the Act specifies a later effective date.

22.4. Notes

An effective date note is required for every new Code section. Exceptions: If an entire new unit is enacted create just one note for the entire unit, to be placed under the unit heading.

22.5. Form of notes generally

(a) On or before September 1. For Acts effective on or before September 1 of the current year:

Effective date.--This Code section (or chapter, etc.) became effective (date).

(b) After September 1 but before July 1. For Acts effective after September 1 of the current year but on or before July 1 of the following year.

Effective date.--This Code section (or chapter, etc.) becomes effective (date).

Caution: “becomes” changes to “became” the following year.

If the effective date provision of the Act contains more language than simply a date, such as “for taxable years beginning on or after July 1, 1990,” or applicability language, this language should be recited in full in an editor’s note setting out the language in full.

22.6. Date preceding approval by the Governor

Sometimes an Act will have an effective date that precedes the date of approval by the Governor. In that case, treat the Act as if it had no specified effective date (see Manual Section 22.2) and add an editor’s note like the following:

Editor’s notes. -- Ga. L. 1994, p. ___, § ___, approved by the Governor April 14, 1994, provided that the effective date of this Code section is April 1, 1994. See Op. Att’y Gen. No. 76-76 for

construction of effective date provisions that precede the date of approval by the Governor.

22.7. Change of effective date by later legislation

If an amendment is made to a previous Act and not specifically to a codified portion of the Code and that amendment extends the effective date of that Act, an Editor's note should explain this, but the cite to the Act amending the effective date should not be reflected in the history line. Place the note at each unit or Code section for which delayed effective date of enactment, amendment, or repeal has been changed.

22.8. Retention of effective date notes

Effective date notes are kept indefinitely in supplements. Typically, only the last three years' notes are kept in replacement volumes--notes from sessions held in the year of replacement and the two preceding years. The effective date note should not contain applicability or contingency language. This language should be contained in an editor's note.

23. AMENDMENT NOTES

23.1. Generally

An amendment note is required for every amendment to a Code section. Amendments by separate Acts are considered as separate amendments (See Manual Section 23.6), while amendments to a given Code section by different sections of the same Act are considered one amendment unless such amendments have different effective dates.

At the time of creating amendment notes, the publisher should review each Code section and catchline and, where appropriate, create a new catchline in light of the amendment modification. Please note that

special and careful attention needs to be given to the continuing accuracy of the catchlines. The general rule is that if the publisher thinks the catchline should be modified, then it probably should be; the publisher should not hesitate to modify the catchlines to reflect the content of the Code section since such catchlines are not part of the statutory text. The only exceptions are those catchlines in Title 11 and Interstate Compacts; in these cases, do not modify the catchlines since they are typically part of the statutory text.

Amendment notes should describe all changes as concisely as possible but, at the same time, in such a manner that the user can readily ascertain what the change is and where it occurs, using consistent language and style, and only the changes made to existing text by amendment. Applicability language should not be contained in an amendment note but language should be added referring the user to an editor's note, i.e. 'See editor's note for applicability.' Reenactment of Code sections without change should be expressed in an Editor's note and not an amendment note.

Please watch the length of amendment notes. A note should not be so long that it is not usable by the reader. However, it must be long enough to accurately reflect the changes made by the statute.

23.2. Form

The form of amendment notes is illustrated by the following example:

The 20__ amendment, effective ____, (description of amendment).

Some Acts do not contain any specific effective date provision, in which case the default date specified in Code Section 1-3-4 (currently July 1 of the year of

enactment if passed during a regular session of the General Assembly). See Manual Section 22.2. Other Acts may have specified effective dates, become effective upon approval by the Governor, or become effective upon certain contingencies.

If the effective date provision of the Act contains more language than simply a date, such as “for taxable years beginning on or after January 1, 1990” or applicability language, this language should not be contained in the amendment note but should be recited in full in an editor’s note. The last sentence of the amendment note should state: “See editor’s note for applicability.”

Example:

Editor’s notes.--Ga. L. 20_, p. , § , not codified by the General Assembly, makes this Code section applicable to all proceedings initiated in magistrate courts pursuant to Code Section 15-10-2 after January 1, 1996, and to all proceedings initiated in superior courts pursuant to Code Section 15-6-8 after January 1, 1997.

For more information on Editor’s notes, see Manual Section 26.

23.3. Stylistic items

(a) Format. The style to use when citing sublevels in amendment notes follows the same format used in annotations. All citations may be run together and, for example, references may be made to “paragraph (a)(1)” as is currently done in annotations. The name of the sublevel is determined by the last character in a string, i.e. (a)(1) is a paragraph, (a)(1)(A) is a subparagraph, (1)(A)(i) is a division, and (A)(i)(I) is a subdivision. Never refer to the

designation by the first character, i.e., (a)(1)(A) as a subsection.

(b) Quotes and commas. The punctuation goes inside the quotes if it is part of the quoted material, otherwise it goes outside the quotes. This is necessary so that the reader can know if the punctuation is, in fact, part of the amended material.

In the following example, the comma is not part of the quoted material:

“in subsection (a), inserted “except the municipality”,

However, in the next example, the comma is part of the quoted material and was changed by the Act:

“in subsection (a), inserted “except the municipality,”

Note that this style differs from the punctuation style in other types of notes and in text, where certain punctuation always goes inside the quotes.

(c) Locational phrases and commas. After the locational phrases such as “in subsection (a)” or “in subsection (b)”, always insert a comma. E.g. “in subsection (a), added paragraph (5).” Also, in consecutive phrases there should always be a comma or a semicolon preceding such a phrase, if the description follows the phrase.

(d) Semicolons. Use semicolon as a device to add clarity for the user. Semicolons can be extremely helpful when a number of commas are involved. Use semicolons to separate descriptions of changes from subsection to subsection. When many commas are involved, a semicolon can signal to the user that the changes subsequent to the semicolon relate to a different subsection.

Take the following note as an example:

“in subsection (a), inserted “or she” in five places, deleted “not” following “shall” in the first sentence in paragraph (1), and substituted “75 percent” for “28 percent” in the second sentence in paragraph (3); in subsection (b), substituted “death penalty” for “life imprisonment” in the first sentence and “felony” for “misdemeanor” in the third sentence; and, in subsection (c), substituted “may” for “shall”.”

In this example, note how the use of semicolons between the subsection descriptions, instead of commas, made the note easier to follow. In very complicated notes, use semicolons even more extensively than this. See the example in Manual Section 23.4(e).

(e) Designations. If an Act adds a designation to the existing provisions, the proper style is, e.g.,

“designated the existing provisions of this Code section as subsection (a) and added subsection (b).”,

or, e.g.:

“designated the existing provisions of subsection (b) as paragraph (1) and added paragraph (2).”

For more information on redesignations, see Manual Section 23.5(b)(5).

(f) Spans. In spans, use the word “through”. E.g., “in subsections (e) through (j).”

(g) Effective date. Include the effective date in the note.

(h) “Relating to” and “respectively.” Use a comma prior to “relating to” and prior to and after “respectively.”

(i) Added provisions. If a new subsection or sublevel is added, say, e.g., “added subsection (d).” do not say “added a new subsection (d).”

(j) Redesignation. If the Code section is redesignated by amendment, mention that fact in the amendment note. For example:

The 1997 amendment, effective July 1, 1997, redesignated former Code Section 40-4-6 as this Code section.

(k) Next-to-last sublevels. If the Code section has introductory language and a series of sublevels, and the next-to-last subdivision contains the word “and” at the end, but new sublevels are added which omit the word “and” at the end of that next-to-last sublevel, do not add the word “and.” The publisher should memo the situation to the state and follow the state’s instructions. Similarly, do not remove the now improper existing “and” without consulting the state. Typically, these changes require a Code Commission note.

23.4. Order and location of changes

(a) Notes by year. All amendment notes are arranged in ascending numerical order by year.

(b) Single paragraph for each year. All amendments for a given year are contained in a single paragraph, with the amendments being described in Act-number order. Do not begin a new paragraph for each subsequent amendment in a single year. See Manual Section 23.6, below, for an example.

(c) Order of change within Code section. Describe the changes in the order in which they occur (except changes throughout the Code section, or in

more than one place in the Code section, are described at the beginning).

(d) Location of change. Always state the location of the change. State the subsection, paragraph, etc., of the change and the sentence in which it occurs. E.g., “inserted ‘not’ in the third sentence in subsection (b).”

(e) Which to describe first—change or location? Whether to describe the change or location first depends on the circumstances. The bottom line is to do it the way that makes it easiest for the user to follow the note. When many changes are involved, this can be difficult, and some thought is required. If a single change is involved, the smoothest flowing method is to put the location last. E.g.:

“inserted ‘not’ in subsection (a)”

(instead of saying “in subsection (a), inserted ‘not’”).

However, if several changes occur in a subsection, or if several subsections have changes in them, put the location first. E.g.:

“in subsection (a), inserted ‘not’ in the first sentence and deleted ‘from henceforth’ at the end of the second sentence”

or,

“in subsection (a), added ‘from henceforth’ at the end; in subsection (b), added the second sentence; and, in subsection (c), deleted the former third sentence, relating to fees.”

Where it becomes more involved is when there are multiple changes in multiple sublevels of multiple subsections. The following note illustrates the preferred style for complicated notes of this type:

“in subsection (a), in the introductory language, deleted ‘full-time’ following ‘employed’ and ‘or if not full-time employees while engaged in pursuit of official duty’ following ‘below; in paragraph (7), inserted ‘or her’ in the first sentence and ‘or she’ in the second sentence; in paragraph (8), substituted “Chief probation officers, probation officers, intensive probation officers, and surveillance officers’ for ‘Probation supervisors’; in paragraph (10), substituted ‘State and federal trial and appellate’ for ‘Trial’ in the first sentence and added the second sentence; in paragraph (2) of subsection (b), designated the existing language as subparagraph (A), added subparagraph (B), and, in subparagraph (A), substituted ‘a member’s’ for ‘his’ in the first sentence and, in the second sentence, substituted ‘subparagraph’ for ‘paragraph’ and ‘that member’ for ‘him’; and added subsection (d).”

Note the use of semicolons in this example. The note is so complex that we used semicolons to separate descriptions of paragraphs, not just subsections.

23.5. Terminology

(a) Specific key terms. There is very specific terminology used to describe the changes, and it is imperative that the publisher adhere to this terminology. Consistency is very important. The key terms are:

- added
- inserted
- substituted
- deleted
- redesignated

- Code section (not simply “section)
- rewrote [this Code section] [subsection ____]
- following (not “after”)
- preceding (not “before”)

(b)(1) Use “added” when a whole new unit of some sort is being added (e.g., a new proviso, sentence, subparagraph, paragraph, subsection), or when the language is added to the beginning or end of a whole unit. E.g., “added the proviso at the end of the second sentence” or “added ‘Pursuant to subsection (b) of this Code section’ at the beginning of subsection (c).”

The following terminology may also be used: “added the language beginning with ... and ending with” This will allow shortening the length of the amendment note. However, be sure that the reader can easily distinguish where the material is being added.

(2) Use “inserted” only when language other than a complete unit is being inserted into the Code section, not at the beginning or end of a complete unit. E.g., “inserted ‘, except for the commission,’ in the second sentence in subsection (d).” Do not say “inserted the second sentence.” “Added” is the correct term when dealing with complete units.

If stating that language was inserted in a particular area and it is obvious that it replaces language beginning a sentence, it is not necessary to specifically state that the first word of the existing sentence has been lower cased. If stating that language was substituted, it is necessary to be specific.

(3) Use “substituted” when one word or phrase is being deleted and another is being inserted in

its place. E.g., “substituted ‘commissioner’ for ‘chief in the second and third sentences.” If addition of one or two adjacent words, which technically are not part of the specific change, would help make it clearer to the user what is going on, add the adjacent words. E.g., instead of saying “substituted ‘40’ for ‘20’,” say “substituted ‘40 days’ for ‘20 days’,” even though the word “days” has not changed from the earlier version. Never use “substituted” unless both a deletion and insertion is involved.

In each of the above situations (additions, insertions, substitutions), the location of the change must be described. State the subsection or sublevel and the sentence number, but do not quote any specific language adjacent to the change, unless there are other instances of the phrase, making it necessary to distinguish which is the one that was changed.

(4) When describing deletions, however, it is essential to quote the language adjacent to the deletion, as this is the only way the user can locate from where the language was deleted. E.g., “deleted ‘and this includes the legislature’ following ‘punished for sexual harassment’ in the second sentence in subsection (c).” If the language is deleted from the beginning or end, it is not necessary to quote adjacent language. Just say, e.g., “deleted ‘from henceforth’ from the end of subsection (c).”

Also, in describing deletions, the deleted language must be quoted verbatim. However, if it is very lengthy language, such as an entire unit being deleted, a description of the subject

matter is preferable. E.g.: “deleted the former fifth and sixth sentences, relating to fees in magistrate courts and fees in municipal courts, respectively.” Notice that the words “relating to” are used here. Do not use terminology such as “regarding,” “dealing with,” or “concerning.” Once again, consistent terminology is expected.

(5) “Redesignated” is the term to use when the amendment changes the numbering of subsections, paragraphs, etc., within a Code section. Do not use “relettered” or “renumbered.” Because great specificity is required, do not use “made related stylistic changes” to refer to punctuation changes or change of “or” or “and” in connection with a redesignation. Spell out those changes, e.g.:

The 1997 amendment, effective July 1, 1997, deleted “and” from the end of paragraph (c)(1), added “and” at the end of paragraph (2), and added paragraph (3).

Describe the change in sublevel designation before describing language changes within the redesignated sublevel. E.g.”

The 1997 amendment, effective July 1, 1997, redesignated former subsection (b) as subsection (c), and, in subsection (c), substituted “director” for “commissioner” in three places.

When describing the redesignation, use the form “redesignated former subsection (b) as present subsection (e)” when describing redesignations of previously existing designations. However, it is not necessary to say “present” (as in the immediately above example) if the subsection has not previously existed.

See Manual Section 23.3(e) above, for further information on the style of notes involving redesignations of sublevels.

(6) When referring to a Code section in an amendment note, never simply say “this section.” Always refer to it as “this Code section.” Note that the word “section” is lower cased in this example. However, when the reference is to a specifically designated Code section, the word should be capitalized. E.g., “Code Section 5-10-2.”

(7) “Rewrote” should be used extremely sparingly, but it is necessary when the changes are so extensive that the amendment note would be unreasonably long. If only specific subsections were rewritten, only state that those particular subsections were rewritten, but specifically describe the changes in the rest of the Code section. Simply say “rewrote this Code section (or sublevel).” Do not say: “rewrote this Code section to the extent that a detailed comparison would be impracticable.” The publisher should be less inclined to use “rewrote” if the amended Code section last appeared in the supplement than if it last appeared in the bound volume. In the latter case, the reader can still refer to the previous version to determine the changes, but in the former case, the previous version has disappeared. A good rule of thumb is that the note is probably too long if it is more than one column.

(8) Use “following” rather than “after.”

(9) Use “preceding” rather than “before.”

23.6. Multiple amendments

(a) No conflict. If a Code section is amended by more than one Act at a given legislative session, and there is no conflict, the form of the amendment note is as follows:

The 20__ amendments. The first 20__ amendment, effective ____, (description of amendment). The second 20__ amendment, effective ____, (description of amendment), etc.

The order of amendments in the amendment note is determined by the Ga. L. page number (which is determined by the ascending order of Act numbers) not by bill number or effective date. If the publisher has yet not been provided with the Ga. L. page numbers at that time, the order can be determined from the Act numbers.

Standard language should be used if two bills make identical changes rather than detailing what each bill did. E.g.,

The second 20 amendment, effective ____, made identical changes.

(b) Conflict. If there is a conflict among amendments, place a sentence at the end of the amendment note stating: “See the Code Commission note regarding the effect of these amendments.” and add a Code Commission note. (See Manual Section 25.5(a)(2) for the forms of these types of Code Commission notes and for further discussion of conflicting amendments and enactments.) However, if the conflict is resolved according to a special conflict resolution provision contained in one of the conflicting Acts whereby that Act cedes its control (see Manual Sections 9.6 & 25.5(a)(3)(A)), an editor’s note rather than a Code Commission note is used to explain the resolution of the conflict, and a

sentence at the end of the amendment note should refer the reader to the editor's note regarding the effect of the amendments.

The state generally sends a list of conflicts and how they are to be resolved. If the publisher discovers a conflict which is not listed by the state, the publisher must ask about it to determine how the Code section will read.

All cites should appear in the historical citation, regardless of whether they are given effect.

23.7. Reviser Acts

Because of the length of the general reviser Act (see Manual Chapter 9), and because most of the corrections effected by it are very minor, a standardized amendment note is used to describe most reviser Act corrections as follows:

The [year] amendment, effective [date], part of an Act to revise, modernize, and correct the Code, revised language and punctuation in this Code section.

Of course, if only language or only punctuation is revised, this standard note should be adjusted accordingly. However, if the correction is a minor change (as opposed to a very minor change), it should be described in the same manner as any other amendment would be. Always include the phrase "part of an Act to revise, modernize, and correct the Code," before the described change.

Amendment notes for reviser Act corrections in Title 21 and Title 47 should say revise, modernize, and correct "this title" rather than "the Code," because there are separate reviser Acts for these titles.

Use the following as a guide to whether the change is minor or very minor:

Minor changes: any added or deleted words, including minor words like “the”; changes or corrections of references to the O.C.G.A., U.S. Code, state and federal constitutions, rules; references to Act names.

Very minor changes: capitalization, punctuation, correction of spelling and typos. When in doubt, treat the change as minor and describe in detail.

23.8. Veto override Acts

In the case of an amendment to a Code section made via an overridden veto, the amendment should be included in the amendment notes for the year in which the override occurred (which may be a year later than the year in which the bill originally passed).

The amendment note (or effective date note in the case of a newly enacted Code section, etc.) for a veto override should refer the reader to an editor’s note which provides the procedural history of the passage, veto, veto override, and effective date. E.g.,

The 2008 amendment, effective January 28, 2008, substituted “the director of the Senate Budget Office, and the director of the House Budget Office” for “and the director of the Legislative Budget Office” at the end of the Code section. See the Editor’s note.

See Manual Section 26.3(15) for the form of the editor’s note.

23.9. Retention of amendment notes

Amendment notes are kept indefinitely in the supplements. Only the last three years’ notes are kept in

replacement volumes, i.e. notes from sessions held during the year of replacement and the two preceding years. The publisher is not required to review these notes until the volume is replaced.

24. CROSS-REFERENCES

24.1. Generally

(a) Location. Appropriate cross-references between related provisions of the Code are included at the beginning of the annotations for a particular title, chapter, article, part, subpart, or Code section.

These are notes referring the user to a related Code section. In these notes, section symbols are to be used. (This is an exception to the general policy of using “Code section”.) As amendment notes are being created, attention should be paid to the creation of cross-reference notes. During the proof review, the publisher should also look for additional cross-references that may be appropriate. Also, the state may suggest cross-references which should be implemented.

(b)(1) Related provisions should be cross-referenced to one another. Consider whether an attorney in practice would find the cross-reference useful rather than cross-referencing provisions only tangentially or vaguely related.

(A) Cross-reference specific provisions under more general provisions relating to the same subject.

(B) Do not cross-reference provisions within the same chapter, article, or part.

(C) If adding a cross-reference under one provision, and the referenced provision does not

refer back to the first provision, add a cross-reference to the first provision under the second provision.

(D) Cross-reference related constitutional and statutory provisions under each other.

(i) References under a single Code section should be arranged as follows: U.S. Constitution, Ga. Constitution, Titles 1 through 53 (that is, references are arranged in ascending numerical order), and court rules, in the order they appear in the court rules book.

(ii) The style for each cross reference to statutory provisions other than specific Code sections should be in descending order of units within the Code, using single-letter abbreviations separated by commas for each unit designation; e.g., a cross-reference to Part 1 of Article 3 of Chapter 5 of Title 7 would be “T. 7, C. 5, A. 3, P. 1.” Older cross-references differing from this style should be converted when volumes are replaced.

(iii) The “As to ... see” style for cross-references that was used in the original Code volumes should be eliminated.

(iv) Any cross-reference notes following the old styles referenced in (ii) and (iii) above should be changed when the volume is replaced.

(v) Provisions in the Constitution and in the Code that essentially duplicate each other should be cross-referenced to one

another. Conflicts caused by amendments to one and not the other should be addressed to the Code commission.

(vi) If Code sections are renumbered or if subsections are redesignated, be careful to search for references that may now be inaccurate due to the amendment.

(vii) Cross-references to the state and federal constitutions should be added more frequently. Review case annotations to determine any relevant constitutional provisions.

(viii) If a Code section has been repealed, please be sure to eliminate any cross-reference notes to that newly repealed Code section.

25. CODE COMMISSION NOTES; CHANGES IN STATUTORY TEXT; CONFLICTS; DISCREPANCIES IN ACTS; STATUTORY CONSTRUCTION

25.1. Changes in text generally; Code commission notes

(a) Absolutely no change in statutory text without written authorization from state. The publisher has no authority to make any changes or corrections in Code section text without the prior approval in writing of the state. Absent such permission, Acts are to be printed exactly as received.

Do not add subsection catchlines if the existing Code section contains subsection catchlines. If a new subsection is added without containing a subsection catchline, notify the state and they will determine if a correction can be made.

(b) Code Commission notes. In 1985, the General Assembly enacted Code Section 28-9-5, which empowers the Code Revision Commission to authorize certain enumerated changes in legislative Acts when the Acts are published into the supplement. The publisher should not make a concerted search of the Acts each year to weed out such errors as are described in Code Section 28-9-5, but when such an error comes to the publisher's attention an appropriate change (after approval has been given) may be made. The publisher should memo or call but document the state regarding the change and asking for permission to correct it with a Code Section 28-9-5 note (Code Commission note). Please bear in mind that Code Section 28-9-5 is a very limited power.

No Code Commission change should be made to Title 21, parts of Title 28, Code Section 46-2-1 (districting), Title 47, the Constitution, and certain other parts of the Code, i.e., compacts and U. S. Justice Department approved Code sections.

Reference is always made to the words "Code section" and not the word "Section" when referring to a statute in the O.C.G.A.

A reference to the federal U.S.C. or U.S.C.A. (no space between the letters) should contain the word "Section" preceding the cite. Both corrections would require a Code Commission note.

(c) Approval required in advance for any change. Do not make any change until approval has been obtained from the state. Proof sent to the state for its approval must specifically set out any Code Commission notes for purposes of documentation. Do not set out a Code Commission note (or the

change it refers to) without first sending a memo or notifying the state.

(d) General form of notes. The Code Commission note must specify the year of the change, i.e., the year the correction was initially made. (Code Commission notes regarding conflicts differ in form; see Manual Section 25.5(a)). A comma follows the Code section number and the year.

Example:

Code Commission notes.--Pursuant to Code Section 28-9-5, in 1995, a comma was inserted following “license” in the second sentence in subsection (a).

Use past tense (“was”) in notes, rather than present perfect tense (“has been”).

In describing misspellings, say “corrected a misspelling of ‘rapacious’” rather than setting out the misspelled version in the note.

(e) Retention of notes. The Code Commission notes describing changes made pursuant to Code Section 28-9-5 are the only record of such changes. Therefore, they should not be deleted in later supplements or replacement volumes, unless the language is deleted by a later amendment. Modifications to notes indicating changes in location and deletion of portions no longer valid may be made. The state may change this retention policy at some future point.

25.2. Effective date references in Code section text

The words “effective date of this Act, subsection, etc...” in a Code section should be changed to reflect the actual date the Act became effective. This change will

require a Code Section 28-9-5 note (a Code Commission note) and prior approval from the state.

25.3. Discrepancies between AP and ENR versions of bills or Acts

These should always be brought to the attention of the state. Usually, the electronic ENR version controls, per instruction from the state, since this has been corrected. However, the state should be notified of discrepancies. See Manual Section 2.5 regarding transmission of bills and Acts.

25.4. Problems and inconsistencies in amendments

(a) Generally. The Georgia Acts generally are clear as to their effect. However, there occasionally are some anomalies in enactments that may make it impossible to incorporate an Act exactly as described within the Act.

(b) Disagreement between directory language and restated language. An Act might say “Amend Code Section 2-2-22 by changing “\$20.00” to “\$30.00” so that the Code section reads ‘2-2-22. A fee of \$40.00 is required.’” Since in Georgia the general rule is that the quoted language of an Act takes precedence over the directory language, the conflict would normally be resolved in favor of the \$40.00 figure. In such cases, the state should always be consulted. The amendment note should contain language stating that “\$20.00” was changed to “\$40.00” and not address the issue of disagreement between directory language and quoted language. An editor’s note would be carried only when the directory language purports to amend one unit or sublevel and the quoted unit or sublevel differs from the directory language and the error is in the

directory language. If the quoted Code section number contains the error, then a Code Commission note would be required to change the designation.

(c) Amendment to wrong Code section, subsection, sentence, etc.

(1) Occasionally, an amendment will read something like the following: “Title 27 is amended by revising Code Section 17-5-5, relating to penalties for unlicensed fishing, in its entirety,” where, in fact, a reference to Code Section 27-5-5, not Code Section 17-5-5, was intended. The state should be informed of the discrepancy. Unless the state gives different directions, the amendment should then be incorporated according to a reasonable interpretation of legislative intent. An Editor’s note should also be written pointing out the error in the Act. E.g.:

Editor’s notes.--Ga. L. 1993, p. 118, § 1, which amended this Code section, purported to amend Code Section 17-5-5 but actually amended Code Section 27-5-5.

(2) This situation may also occur in connection with references to subsections, paragraphs, subparagraphs, divisions, and subdivisions. It may also occur in connection with sentences of a Code section; for example, an amendment may read “Delete \$20.00” from the first sentence of Code Section 2-2-22” when in fact the figure \$20.00” occurs only in the second sentence of Code Section 2-2-22. Treat these in the manner noted above; that is, carry the correct treatment of this amendment in the Amendment note and carry the discrepancy in an Editor’s note.

25.5. Multiple and conflicting amendments and enactments

(a) Multiple amendments; substantive conflicts. The Office of Legislative Counsel, acting on behalf of the Code Revision Commission, analyzes Code sections affected by multiple bills passed at the most recently adjourned session of the General Assembly. The state performs this analysis as soon as possible after adjournment and, after expiration of the period in which the Governor may veto bills, sends written instructions to the publisher regarding how to publish the affected Code sections, pursuant to Code Section 28-9-3. (If the state neglects to do this, the publisher should attempt to follow the principles outlined in this subsection and should inform the state of the suggested resolution or the inability to reach a resolution. If a conflict has not been resolved prior to the page proof being shipped, the publisher should send a memo to the state concerning multiple amendments, and the state should send a response, in writing, to the publisher to ensure that differing interpretations of the actual extent of the conflict do not occur.)

Bearing in mind that the three imperatives of statutory construction are: “(1) read the statute; (2) read the statute; (3) read the statute,” Henry J. Friendly, “Mr. Justice Frankfurter and the Reading of Statutes,” Benchmarks, 196, 202 (1967), the state applies the following principles for purposes of publishing the Code when construing multiple bills that affect the same Code section, as derived from decisions of the Georgia appellate courts (and federal appellate courts, if applicable) and the preeminent legal treatise on statutory construction:

(1) Give effect to all amendments if possible. Acts passed during the same legislative session and amending the same Code section shall be considered in *pari materia*, and full effect shall be given to each, if that is possible. Singer & Singer, I A Sutherland Statutory Construction 384-385 (7th ed. 2009); *id.* at 512 (citing Adcock v. State, 60 Ga. App. 204 (1939)); GMAC v. Whisnant, 387 F.2d 774, 775-776 (5th Cir. 1968) (construing Georgia statutes). Thus, when a Code section is amended by two (or more) Acts enacted at the same session of the General Assembly, one should first attempt to incorporate the changes made by both Acts. This is usually not a problem if the two Acts amend two different parts of a Code section, unless, despite the separate placement, the substantive effects of the amendments conflict. Language carried forward unchanged in one amendatory Act shall not be read as conflicting with changed language contained in another Act passed during the same session:

[O]nly those provisions of the earlier amendment which cannot be reconciled with the later amendment are repealed, regardless of whether the later amendment purports to set out the original act or amendment as amended and omits the earlier amendment. The fact that in the same legislative session several bills to amend the same act may be introduced in each of the two houses of the legislature independently of each other, and passed within a few days of each other, and only accidentally in the order of their introduction, makes it impractical for the last

amendment to include in its body all previous amendments passed at that session, when it purports to set out the original act as amended....

1A Sutherland Statutory Construction, *supra*, at 384-385; see *Reeves v. Gay*, 92 Ga. App. 309 (1893);

(2) In case of conflict, the general rule is that the later enacted Act controls to the extent of the conflict. Acts are in conflict with each other only to the extent that they cannot be given effect together. See *Montgomery v. Bd. of Educ. of Richmond County*, 74 Ga. 41 (1885). If such an irreconcilable conflict occurs between two Acts, then, to the extent of the conflict, the later enacted Act (as determined by the order in which the bills became law with or without approval by the Governor, without regard to effective date) impliedly repeals and supersedes the earlier enacted Act. *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974); 1A Sutherland Statutory Construction, *supra*, at 513-514. If Acts with conflicting provisions have different effective dates, then the conflict will not arise until such time as both Acts are to be effective; because repeal occurs on the effective date of a later enacted statute, the earlier enacted statute remains in operation until the later enacted statute takes effect. 1A Sutherland Statutory Construction, *supra*, at 515.

Thus, the order in which conflicting Acts become law, with or without the Governor's approval, is important, and the result in some such cases

may be significant. Since Acts are numbered sequentially and arranged in ascending numerical order in the Georgia Laws, an Act with a higher Act number or Georgia Laws page number usually controls over one with a lower Act number or page number. (However, a veto override Act may be paginated differently in the Georgia Laws; in such a case, the date of override must be checked and compared to the date of enactment of other legislation. See Manual Sections 2.4 (c) & 22.3).

In the event of a conflict, the controlling provision should be incorporated into the Code, but changes to the existing text from both bills should be set out in the amendment note, and a Code Commission note (referenced in the amendment note; see Manual Section 23.6(b)) should be used to direct the reader to the version which was incorporated. The form of the Code Commission note used here (citing Code Section 28-9-3) differs from the note used for nonsubstantive corrections (citing Code Section 28-9-5, as described in Manual Section 25.1(d)):

Code Commission notes—Pursuant to Code Section 28-9-3, in 20 , the amendment of [sublevel of] this Code section by Ga. L. 20_, p. , § was treated as impliedly repealed and superseded by Ga. L. 20_, p. , § __, due to irreconcilable conflict. See *County of Butts v. Strahan*, 151 Ga. 417 (1921); *Keener v. McDougall*, 232 Ga. 273 (1974).

However, such language is not necessary if there is no conflict involved in the amendments. Regardless, all cites should appear in the

history line irrespective of whether they were given effect; this is true for superseded amendments and enactments; and

(3) There are exceptions to the general rule for conflict resolution. The general rule for conflict resolution does not apply:

(A) To a later enacted Act that contains a special conflict resolution provision surrendering such Act's controlling effect. (Such provisions may be found in reviser Acts; see Manual Section 9.6.) In case of a conflict involving an Act with such a special provision, an editor's note (not a Code Commission note) should be used, explaining how the conflict was resolved in accordance with the Act:

Editor's notes. - Ga. L. 2010, p. 878, § 54(e), not codified by the General Assembly, provides: "In the event of an irreconcilable conflict between a provision in Sections 1 through 53 of this Act and a provision of another Act enacted at the 2010 regular session of the General Assembly, the provision of such other Act shall control over the conflicting provision in Sections 1 through 53 of this Act to the extent of the conflict." Accordingly, the amendment to subsection (a) of this Code section by Ga. L. 2010, 878, § 42, was not given effect.

The editor's note should be referenced in the amendment note; compare Manual Section 23.6(b).

(B) When an earlier enacted Act repeals (rather than amends) a Code section (i.e., in a case where the bill uses the term “to repeal”, “by repealing”, or “is repealed” in the bill title or directory language or in case of a true repeal and reenactment of a unit as described in Manual Section 12.1) and a later enacted Act (whether at the same session or a subsequent session) purports to amend the same Code section after the repeal has become effective. A repealed statute cannot be amended. *Lampkin v. Pike*, 115 Ga. 827 (1902). In such a case, do not attempt to revive and amend the repealed Code section, but instead explain the prior repeal, the purported amendment, and the effect of the purported amendment in a Code Commission note such as the following:

Code Commission notes. - Former Code Section 53-8-29 was repealed effective January 1, 1998, by operation of Ga. L. 1996, p. 504, § 10. However, Ga. L. 2004, p. 161, § 11, effective July 1, 2005, purported to amend the former Code section to read as follows:

“In all respects other than as provided in Code Sections 53-8-27 and 53-8-28, all sales pursuant to Code Section 53-8-27 shall be made as provided in Code Sections 29-3-35 and 29-5-35, relating to sales for reinvestment by guardians. All such sales shall be approved and confirmed by the judge of the superior court by appropriate order, and the entire proceedings shall be recorded on the minutes

of the superior court and properly indexed.”

For effect of subsequent amendment of a repealed statute, see *Lampkin v. Pike*, 115 Ga. 827 (1902).

(b) Duplicate Code section number enacted without substantive conflict. If an Act enacts a new Code section with a number that duplicates a Code section number already in use, either from a prior year’s enactment or from an enactment of that same year, the publisher should point out the problem to the state.

The usual resolution in this situation is to assign a new number to the last enacted Code section pursuant to Code Section 28-9-5 (unless the two Code sections address the same subject matter in irreconcilably conflicting ways; see subsection (a) of this section). The number should be assigned so as to place the Code section immediately following the Code section whose number it duplicates. The unofficial number should be a decimal number (say, Code Section 2-2-22.1) unless the number would fall at the end of a unit, in which case a whole number should be used. In these types of situations, a Code Commission note like the following should be placed below both the Code section retaining the original designation and the Code section(s) which are redesignated:

Code Commission notes.-- Pursuant to Code Section 28-9-5, in 20 , Code Section 1-1-1, as enacted by Ga. L. 20_, p. 1, § 2, was redesignated as Code Section 1-1-2.

The state will send a memo giving final direction as to which Code section retains the assigned

designation and the Code section that will then be redesignated with that redesignation.

(c) Duplicate sublevel designations. An Act which enacts a new sublevel designation that is already in use should be treated in a manner similar to that described above for Code section designations. The second enacted sublevel should be given a new designation pursuant to Code Section 28-9-5 so that the sublevel will immediately follow the sublevel whose designation is being duplicated. Approval or disapproval from the state is needed and a Code Commission note should be used as follows:

Code Commission notes.--Pursuant to Code Section 28-9-5, in 1994, subsection (c), as enacted by Ga. L. 1991, p. 1389, § 5, was redesignated as subsection (d).

25.6. Enactment of new Code section with obviously wrong number

The procedures in Manual Section 25.4 would also be applicable in a situation in which a new enactment is assigned an obviously wrong Code section number. For example, if an Act says “Title 40 is amended by adding a new Code section to follow Code Section 40-10-9 to read as follows: ‘4-10-10. A fee of \$11.00 is required.’” It is obvious that the “4-10-10” designation in the quoted language of the new Code section itself is a typographical error and may be changed pursuant to Code Section 28-9-5. A Code Commission note is required.

25.7. History cite

Whenever a newly enacted Code section is redesignated pursuant to Code Section 28-9-5, the new number should be the one to appear in the history, even

though technically the new number was not “enacted by” the legislature. See Manual Section 13.8.

If one Act is determined to have wholly superseded another Act amending the same Code section, both Acts should nevertheless be included in the history cite.

25.8. Missing Code text or other apparently inadvertent change.

It is important that the state be immediately notified of any missing Code text (i.e., Code text omitted without striking) or other apparently inadvertent changes, so that the appropriate resolution may be determined and authorized by the state. Such resolution will typically involve either the general rule or one of the exceptions stated below:

(1) General rule for inadvertent omission of previously enacted Code text. The general rule is that, when an enrolled Act inadvertently omits previously enacted Code text (i.e., the missing text was not shown as being stricken in the AP version of the bill), the omitted text will not be not retained in the Code. In such a case, the inadvertent discrepancy will be noted in an editor’s note, such as follows:

Editor’s notes.-- Ga. L. 20_, p. _, § _ did not reenact and did not strike ... in this Code section (sublevel).

However, as discussed in paragraph (2) of this section, there are two large exceptions to the general rule.

(2) Exceptions for amendments made by previous Acts. Two exceptions to the general rule involve cases where an amending Act ignores

amendments made to the same Code section, subsection, etc., by previous Acts:

(A) The first exception is the case of multiple amending Acts passed at the same session of the General Assembly, in which case the Acts are construed together if possible, and only those provisions of the earlier enacted amendment which cannot be reconciled with the later enacted amendment are repealed; see Manual Section 25.5 for treatment of multiple amendments and enactments.

(B) The second exception is the case where an amendment ignores changes made to the same Code section, subsection, etc., by a prior year's amendment (e.g., language added by a prior year's amendment is omitted without striking in the subsequent amending Act). This occasionally happens in "carryover" legislation, when a bill introduced in the first year of a biennium does not receive final passage until the second year of the biennium, and the bill is not updated before passage in the second year to reflect changes made to the same Code provisions by other legislation that passed during the first year. Whether to retain the omitted prior change depends upon legislative intent, which must be determined by the state.

(i) If the state determines that there was no legislative intent to repeal or modify the prior amendment, then do not omit the prior amendment, but instead incorporate the change made by the current year's amendment into the existing Code

text as previously amended. See Reeves v. Gay, 92 Ga. 309 (1893). Add a Code Commission note such as follows:

Code Commission notes.—Ga. L. 2000, p. __, § 1, amended subsection (a) of this Code section and in so doing omitted without expressing an intent to repeal or modify the amendment made to that subsection made by Ga. L. 1999, p. __, § 3. The two amendments were not irreconcilably conflicting, and the amendment to subsection (a) of this Code section made by Ga. L. 1999, p. __, § 3, was treated as not having been repealed by Ga. L. 2000, p. __, § 1. See Reeves v. Gay, 92 Ga. 309 (1893).

(ii) If the state determines that there was legislative intent to repeal or modify the prior amendment, the latest Act will control, and no Code Commission note is necessary. Follow the general rule in paragraph (1) of this subsection.

25.9. Code Commission note errors

If the state has requested a page proof correction (Code Commission note) one year and the correction was not made but the Code Commission note was added to the Code section or the correction to the text was made incorrectly or incompletely, i.e., failing to add a comma following the date “July 1, 2000,” in the text of the Code section, the state will ask again to make this correction the following year. Correct the previous year’s note to encompass both years stating the complete

correction in full only one time. The style of the note is as follows:

Code Commission notes.—Pursuant to Code Section 28-9-5, in 2000 and in 2001, [state in full the changes made in 2000 and 2001, do not list them separately].

26. EDITOR'S NOTES — GENERALLY

26.1. Introduction

If the editorial staff of the original publisher, the Code Revision Commission, or the commission's staff felt that an explanatory note would be helpful to users of the Code, such notes were added as editorial notes in the initial publication of the Code.

Editor's notes are used to describe uncodified material which relates to the unit, Code section, case notes, annotations, judicial decisions, or Attorney General opinions. Examples are uncodified short titles (when these appear they are usually the first section in an Act), applicability clauses, and severability clauses (when these appear, they are usually near the end of an Act).

Be sure to use the phrase "not codified by the General Assembly" in such notes when appropriate. Do not reference uncodified portions of an Act that has been superseded by another Act and has not been given effect. The superseded Act should be reflected only in the history line, the amendment note, and the Code Commission note. (See Manual Section 25.5(a) regarding conflicting amendments or enactments.) Do not add Editor's notes translating such text items as references to "this Act" or references to "the effective date of this Code section." For those, use Code Commission notes after getting approval from the state to make the translation (See Manual Section 25.1).

26.2. Required editor's notes each year under Code Section 1-1-1

Code Section 1-1-1 deals with the enactment of the Code and provides the authorization for the work that is done to the O.C.G.A. Each year, the first editor's note cumulatively listing those Acts which reenact the Code must be updated, and a new citation must be added at the end for that uncodified portion of the latest annual general reviser's bill that provides for reenactment of the Code (typically § 54 of the bill). These notes must be reviewed and updated carefully. See Manual Section 26.3(16) for the form of such notes.

26.3. Examples

Following are examples of specific types of editor's notes (do not include the following language in amendment notes or effective date notes but refer the reader to the editor's note):

(1) Short title.

Editor's notes.--Ga. L. 1995, p. 381 § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as 'The Death Penalty Reform Act of 1995.'"

This type of note needs to follow every Code section in the Act which contains the uncodified short title, unless the Act enacts an entire unit such as a chapter, article, etc. In that case, a single note at the beginning of the unit is sufficient. Note that the language is quoted, not paraphrased. This note is not necessary if the short title of the Act was codified.

(2) Applicability language.

Editor's notes.--Ga. L. 1997, p. 1250, § 5, not codified by the General Assembly, makes subsection (b) of this Code section applicable to cases filed on or after January 1, 1997, and makes subsection (c) of this Code section applicable to cases filed on or after January 1, 1998.

(3) Severability.

Editor's notes.--Ga. L. 1997, p. 975, § 7, not codified by the General Assembly, provides for severability.

Note the very brief language of the note. When a section of the Act refers to severability, be sure to read the section carefully. Sometimes the section will actually be providing for nonseverability.

(4) Resolutions.

Editor's notes.--By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of Georgia.

Editor's notes.--By resolution (Ga. L. 1992, p. 1560), the General Assembly created the Joint Study Committee on State and Local Government Environmental Enforcement Authority, to be abolished on December 31, 1992.

See Manual Chapter 27 for a complete discussion.

(5) Preceding notes to decisions. Frequently, editor's notes are used to immediately precede notes to decisions (and following the heading) when a note is needed to explain that

the case notes were decided under prior law (see Manual Section 30.13(b)) or to explain some unusual aspect of some of the case notes of which the user should be aware.

(6) Comparable provisions. The only note that should generally appear under a repealed Code section (or unit) is an editor's note enumerating the Ga. L. on which the repealed section was based. The second sentence of the Editor's note should refer the user to the present comparable provisions (if any), e.g.:

Editor's notes.--Ga. L. 1990, p. 2048, § 4, provided for the repeal of this Code section effective January 1, 1991. For present comparable provisions, see Code Section 40-5-21.

(7) Delayed repeals, reenactments, contingencies. See Manual Chapters 17 through 21 for examples.

(8) Conflicts and errors. See Manual Section 25.4 for discrepancies in directory language when an Act purports to amend something other than what is quoted in the section of the Act.

(9) Constitution. See Manual Chapter 7 for examples.

(10) Effective date of previous Act amended. See Manual Sections 17.6 and 22.7 for examples.

(11) Redesignations. When existing Code sections are designated as a new article, part, etc., place an editor's note at the beginning of the unit explaining the new designation. Set out only those Code sections which may have also

been amended or which previously appeared in the supplement.

When existing Code sections are redesignated as a new chapter, i.e. 36-19-1 thru 36-19-10 redesignated as 36-65-1 thru 36-65-10, carry the word redesignated in the analysis and carry an editor's note following the Code section span designations, which does not contain the word "Redesignated" in parenthesis, of the former chapter explaining the redesignation to the user and an editor's note at the beginning of the new chapter with the former history and cites of the previous chapter. Set out all of the new Code sections, with redesignated language in the history lines. See also Manual Section 13.8. Do not add a repeal line. This would also apply to an individual Code section redesignated to a new chapter or title.

When two Acts enact duplicate chapter numbers, Code section numbers, or sublevel numbers, notify the state for redesignation purposes and carry the redesignation in a Code Commission note, not an editor's note. See Manual Chapter 13 for historical citations.

(12) Repeals and reenactments. See Manual Chapters 11 and 12 for examples.

(13) Code sections amended not having previous history cite. See Manual Section 13.7 for examples.

(14) Quoted text. When quoting a passage of more than one sublevel from the same source and such passage is not to be set as an excerpt, quotation marks are used at the beginning of each paragraph and at the end of the last

paragraph. That is, quotation marks are not used at the end of any paragraph in the quotation except the last one.

(15) Veto override. An editor's note for a veto override should provide the procedural history of the passage, veto, veto override, and effective date. E.g.,

Editor's notes.--Ga. L. 2008, p. V01, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The House overrode the veto on January 14, 2008, the Senate overrode the veto on January 28, 2008, and the Act became effective on that latter date.

(16) Code reenactment: Under Code Section 1-1-1, an editor's note of the following form should be included and updated annually to inform the reader of the annual reenactments of the Code as provided in the general reviser Acts (do not quote the uncodified reenactment provision of each general reviser Act, due to the great and unnecessary cumulative length of such notes which would otherwise result over the years):

Editor's notes. - For the Acts reenacting the Official Code of Georgia Annotated as amended by the text and numbering contained in the 2000 through 2010 supplements, see Ga. L. 2001, p. 4, § 54; Ga. L. 2002, p. 415, § 54; Ga. L. 2003, p. 140, § 54; Ga. L. 2004, p. 631, § 54; Ga. L. 2005, p. 60, § 54; Ga. L. 2006, p. 72, § 54; Ga. L. 2007, p.

47, § 54; Ga. L. 2008, p. 324, § 54; Ga. L. 2009, p. 8, § 54; Ga. L. 2010, p. 878, § 54; and Ga. L. 2011, p. , § 54, respectively.

Notice that the latest cited supplement year is always one year prior to the latest cited year of the Georgia Laws.

26.4. Deleting notes in volume revision

Where an editor's note is more than three years old (i.e., not from a session held in the year of replacement or the two preceding years) and refers only to an effective date provision which has ripened (and not to applicability, severability, short title, etc.), the editor's note should be deleted from the replacement volume.

27. EDITOR'S NOTES—RESOLUTION ACTS

27.1. Generally

The publisher will note Resolution Acts that are:

- (1) Proposed amendments to the Georgia Constitution (see Manual Chapter 7 for these); or
- (2) Related to the subject matter of codified provisions.

27.2. Specific types of Resolution Acts to be noted

The following types should be noted:

- (1) Joint committees to study the need for legislation, such as revision of Georgia's evidence laws (place where the subject is treated in the Code--for example, a note re: revision of evidence laws would go at the beginning of Title 24).
- (2) Designation of official symbols or items, etc. Place at the beginning of Title 50, Chapter 3, Article 3.

(3) Designation of a day, week, or month in every year as a time for honoring something. Example “Georgia Muscle Car Week.” Place at beginning of Title 1, Chapter 4. Do not note the resolution if it is for one year only.

(4) Naming of parks, memorials, historic areas. Place in Title 12, Chapter 3, at the beginning of the most appropriate article therein.

27.3. Form of notes

The general form is:

Editor’s notes. --By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of Georgia.

Editor’s notes. --By resolution (Ga. L. 1992, p. 1560), the General Assembly created the Joint Study committee on State and Local Government Environmental Enforcement Authority, to be abolished on December 31, 1992.

27.4. Retention of notes

Notes are retained indefinitely, unless the resolution itself contains a termination provision, such as the date on which a study committee is abolished, or the note otherwise becomes obsolete.

28. EDITOR’S NOTES—REPEALS

28.1. Generally

When a Code section, consecutive series of Code sections, or entire unit is repealed, an editor’s note must be created to list all prior Codes and Ga. L. on which the repealed provisions were based and, if necessary, to indicate the subject matter of the repealed provisions. (In supplements in the past, Editor’s notes referred the user to the bound volume to determine the

history of the Code section or unit. This treatment is no longer adequate with the advent of online and CD products. The editor's note should always include the full history of the Code section.)

28.2. Delayed repeals

See Manual Chapter 17.

28.3. Sublevel repeals

See Manual Section 11.3.

28.4. Repeal of single Code section

The editor's note should quote the prior history verbatim from the historical citation. The style is as follows:

Editor's notes. -- This Code section was based on Code 1933, § 45-1101, enacted by Ga. L. 1979, p. 1094 § 4; Ga. L. 1993, p. 91, § 27.

If a .1, .2, etc. Code section is repealed independently in the supplement, those Code sections should be carried forward into the revised volume and not dropped or covered by an Editor's note.

28.5. Repeal of entire unit

The editor's note must specify all of the Code sections that were in the unit. If .1, .2, .3, etc. Code sections were included within the repeal, they must be specified. If the unit contained subunits, such as articles or parts, the breakdown of each subunit must be included. E.g.:

Editor's notes. -- This chapter consisted of Code Sections 14-2-1 through 14-2-7, 14-2-7.1, 14-2-8 through 14-2-10 (Article 1), 14-2-20 through 14-2-23 (Article 2), 14-2-40 through 24-2-43 (Article 3), 14-2-60 through 14-2-63 (Article 4), 14-2-80 through 14-2-98 (Article 5), 14-2-110 through 14-2-123 (Article 6), 14-2-140 through 14-2-156 (Article

7), 14-2-170 through 14-2-177 (Article 8), relating to business corporations, and was based on Ga. L. 1968, p. 565, § 1; Ga. L. 1969, p. 152, § 1; Ga. L. 1970, p. 195, § 1; Ga. L. 1970, p. 243, § 1; Ga. L. 1970, p. 605, § 1; Ga. L. 1972, p. 433, § 1; Ga. L. 1973, p. 833, § 1; Ga. L. 1975, p. 778, § 1; Ga. L. 1976, p. 1102, § 1; Ga. L. 1976, p. 1576, § 1; Ga. L. 1977, p. 324, § 1.

28.6. Previously repealed Code sections in chapter presently being repealed

If there are Code sections at the end of a chapter which have previously been repealed, and now the entire chapter is being repealed, incorporate the earlier repealed Code sections into the existing repeal by adding paragraphs at the beginning of the Editor's note that explains the former repeal. For example:

Editor's notes. -- Former Code Section 14-2-8 (Ga. L. 1968, p. 565, § 3), relating to taxation of small business, was repealed by Ga. L. 1996, p. 126, § 5,

This chapter consisted of Code Sections 14-2-1 through 14-2-7, relating to small business, and was based on Ga. L. 1968, p. 565, § 2; Ga. L. 1978, p. 12, § 4; Ga. L. 1995, p. 21, § 6.

28.7. Retention of editor's notes under repeal lines

The editor's notes described above should be retained indefinitely under repeal lines. If the repealed Code section numbers are later reused, the Editor's note should still be retained; the note should be modified, however, by inserting "former" preceding the reference to the repealed provisions in the note.

28.8. Amendment by other Acts in year of repeal

Caution! Whenever a Code section is repealed, check to see whether another Act in the year of the repealer amended or purported to amend the Code section. If so, consult the state to see whether the amending Act should be added to the editor's note.

28.9. Code section itself provides for automatic repeal

The catchline should contain a parenthetical reference to the delayed repeal and no editor's note is needed.

For a sublevel which provides for automatic repeal of itself, see Manual Section 11.3.

28.10. Entire chapter repealed that contains earlier repealed Code sections

In this situation, do not set out a separate line for each of the earlier repealed Code sections. One spanned reference and editor's note at the beginning is sufficient. The editor's note should have the citations to the repealing Acts worked into the list of Acts on which the unit was based.

28.11. Former chapter repealed in previous years and new chapter now enacted

In this case, add a normal effective date note at the chapter level. Also retain the existing editor's note explaining the repeal of the former chapter and change the introductory language to indicate "former."

Editor's notes. -- The former chapter consisted of Code Sections 14-2-1 through 14-2-7, 14-2-7.1, 14-2-8 through 14-2-10 (Article 1), 14-2-20 through 14-2-23 (Article 2), 14-2-40 through 24-2-43 (Article 3), 14-2-60 through 14-2-63 (Article 4), 14-2-80 through 14-2-98 (Article 5), 14-2-110 through 14-2-123 (Article 6), 14-2-140 through 14-2-156 (Article 7), 14-2-170 through 14-2-177 (Article 8), relating

to business corporations, and was based on Ga. L. 1968, p. 565, § 1; Ga. L. 1969, p. 152, § 1; Ga. L. 1970, p. 195, § 1; Ga. L. 1970, p. 243, § 1; Ga. L. 1970, p. 605, § 1; Ga. L. 1972, p. 433, § 1; Ga. L. 1973, p. 833, § 1; Ga. L. 1975, p. 778, §1; Ga. L. 1976, p. 1102, § 1; Ga. L. 1976, p. 1576, §; Ga. L. 1977, p. 324, § 1.

28.12. Comparable provisions

The only note that should generally appear under a repealed Code section or unit is an editor's note enumerating the Ga. L. on which the repealed section or unit was based. The second sentence of the editor's note should refer the user to the present comparable provisions (if any), e.g.:

Editor's notes.--Ga. L. 1990, p. 2048, § 4, provided for the repeal of this Code section effective January 1, 1991. For present comparable provisions, see Code Section 40-5-21.

28.13. Repeal and reenactment of previously repealed and reserved Code section

When a unit is repealed and reenacted and a previously repealed and reserved Code section is reenacted without change, the standard editor's note for a reenactment without change should be modified as follows:

Editor's notes. — Ga. L. 2002, p. 1324, § 1-7, reenacted the reservation of this Code section without change.

29. LAW REVIEWS AND BAR JOURNAL

29.1. Generally

Appropriate articles and notes from each law review which is published in the State of Georgia and from

the Georgia State Bar Journal are noted following the title, Code section, or other unit to which they relate.

29.2. List of periodicals read

The following periodicals should be read:

- (1) Emory Law Journal (Emory University) (was titled "Journal of Public Law" until 1974). Current cite is as Emory L. J.
- (2) Georgia Law Review (University of Georgia). Cite as Ga. L. Rev.
- (3) Georgia State University Law Review (Georgia State University). Cite as Georgia St. U.L. Rev.
- (4) Mercer Law Review (Mercer University). Cite as Mercer L. Rev.
- (5) Georgia State Bar Journal (Georgia State Bar) (was titled "Georgia Bar Journal" until 1964). Current cite is as Ga. St. B. J.

29.3. Categories of annotations

(a) Articles. Author is an attorney, judge, professor, or other professional, not a law student. The periodical will provide the information necessary to determine the author's educational status. Surveys, if not written by a law student, are included with articles.

(b) Notes. Author is a law student. The scope of notes is usually narrower than that of articles. Notes are usually labeled as such in law reviews (follow label used in publication).

The Georgia State University Law Review periodically publishes notes on peach-colored pages, known as the "Peach Sheets." These are surveys of selected recent legislation, which are helpful, since

Georgia does not publish official legislative history, other than the information contained in the House and Senate Journals. These are retained indefinitely and are worded in the following manner:

For note on the 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 201 (1990).

(c) Comments. Author is a law student. Comments generally pertain to a particular court decision. Comments are usually labeled as such in law reviews (follow label used in publication).

(d) Case comments. These are read, as are the articles discussed above, with a view to determining whether they may be relevant to any constitutional or statutory section. Note that it may be helpful to look at the case being treated, in deciding which constitutional or Code provisions (if any) it deals with, and whether the comment deals with the same. Cite as follows:

For comment on *Independent Bankers Ass'n v. Dunn*, 230 Ga. 345, 197 S.E.2d 129 (1973), appearing below, see 10 Ga. St. B.J. 509 (1974).

Case comments are often referred to following the case citation in notes from the case. The form is “(case cite), commented on in (cite to law review).”

29.4. Reading of publications

(a) In general. The publisher should note articles, notes, and comments that would be of value to a practicing attorney in using the Code. Do not note those articles, etc., that would be of interest mainly in academic research.

Articles that discuss provisions of the U.S. Constitution, Georgia Constitution, Georgia Code, or Georgia rules should be noted. Also, the publisher

should note articles on a general subject that is dealt with in the Georgia Code, even if a Georgia Code provision is not cited (examples would be articles on contract law, evidence law, the UCC, etc.). Do not note articles on federal law unless there is a specific tie-in to state law (such as a state statute opting out of the federal bankruptcy exemption scheme).

(b) Placement of notes. Place notes under the provisions that are the main point of discussion in the article. Do not place notes under every provision cited, particularly if cited only in passing. An article on a whole chapter of a title should be noted under the chapter heading or under the Code sections mainly discussed but not under every single Code section of the chapter.

29.5. Format of notes

(a) Title quotation. Where the title of the article, note, or comment is fairly self-explanatory, quote the title.

Examples:

For article, “The Child as a Party in Interest in Custody Proceedings,” see 10 Ga. St. B.J. 577 (1974).

For note, “Klan, Cloth and Constitution: Anti-mask Laws and the First Amendment,” see 25 Ga. L. Rev. 819 (1991).

(b) Subject description. Where the title does not clearly indicate its subject matter and its relation to the constitutional or statutory provision, or is unduly awkward, do not quote it. Instead, simply describe the subject matter (paraphrasing the title may be sufficient). Example:

For note on condonation as a bar to reconciliation, see 20 Mercer L. Rev. 481 (1969).

(c) Partial relevance. A descriptive type of annotation may also be used where only one subdivision or a few paragraphs of the article are devoted to the constitutional or statutory section in question:

As to survival of power of attorney following incompetence of principal, see 10 Ga. St. B.J. 189 (1973).

(Note that in an annotation of this sort the page number citation is where the article begins, not where the subdivision on power of attorney begins.)

29.6. Order

(a) Type. The notes from law reviews should be arranged according to type in the following order:

- articles (including surveys)
- notes
- comments

Articles, notes, and comments are each grouped in a separate paragraph.

(b) Chronology. Within each group, notes are arranged chronologically, oldest to newest.

(c) Publications. If there is more than one note for the same year for any of the above groups, then notes for that year should be arranged in the following order:

- Emory L.J. (cited as J. of Public L. until 1974)
- Ga. L. Rev.
- Georgia St. U.L. Rev.
- Mercer L. Rev.
- Ga. St. B.J. (cited as Ga. B.J. until 1964)

30. CASE NOTES

30.1. Generally

The original publisher (The Michie Company) prepared and included in the Official Code of Georgia Annotated a complete set of case annotations. All decisions of the Supreme Court of Georgia and the Court of Appeals of Georgia and all decisions of the federal courts in cases which arose in Georgia construing any portion of the general statutory law of the state, the Constitution of the United States, and the Constitution of Georgia were examined and appropriate annotations prepared and included under a “Judicial Decisions” heading following the title, chapter, article, part, subpart, or Code section designation of the Official Code of Georgia Annotated to which they relate. Annotations contain the name of the case, the complete official and unofficial citations, and the year of the decision. Normally, constructions of statutes relating to constitutionality thereof appear first in the annotations for a particular provision of the Code.

30.2. Scope

Case notes of decisions should be annotated to the following:

- (1) Units and Code sections of the Code;
- (2) United States Constitution;
- (3) Georgia Constitution;
- (4) Rules contained in the Georgia Rules of Court Annotated;
- (5) Rules and regulations of the State Board of Workers’ Compensation (Volume 26 Appendix);
- (6) Rules and regulations of the Subsequent Injury Trust Fund (Volume 26 Appendix); and

(7) Population Acts, local Acts, or local constitutional amendments held unconstitutional (see Manual Section 30.5).

The standard for determining if an annotation is necessary is: “is there any indication that the court is construing the Georgia Code or Constitution?” Be sure that annotations are construing the statutes or Constitution. The Code already has many case notes, so be sure that annotations have relevancy in the location where the notes are to be placed. Merely because a Code section is mentioned in a case does not justify taking an annotation. Because of the already existing volume of notes, new notes should be brief yet accurately reflect the facts, holding, and statutory construction. If a long note is required in order to reflect the opinion, it is better to have a note that is two sentences or at least a sentence that uses proper punctuation and connectors (therefore, however, etc.) rather than a sentence that goes on and on. The facts included in the annotation should only reflect the facts necessary for the proper construction of that section or those are relevant [sic] to the note; therefore, it is possible that facts that are relevant to a note under Code Section 1-1-1 are not relevant to a note under Code Section 1-2-2. Each case note must be read in its entirety.

Pursuant to a decision in 2002 from the Code commission, unpublished opinions may be included in case notes.

30.3. Cites to Georgia Constitution

(a) Current Georgia Constitution. The proper citation for references to the Georgia Constitution is of the form “Ga. Const. 1983, Art. I, Sec. I, Para. I.” The inclusion of the year is especially important so as to remove any ambiguity from the reference;

see Manual Chapter 7 for a discussion of the different Constitutions under which Georgia has operated.

(b) Prior Constitutions. If the publisher encounters a judicial decision or Attorney General opinion which construes a provision of a prior Constitution, cite to the prior Constitution but also include cite to the corresponding provision in the current Constitution in a parenthetical following the old citation.

Example:

“This section is unconstitutional under Ga. Const. 1976, Art. I, Sec. I, Para. II (see Ga. Const. 1983, Art. I, Sec. I, Para. III).”

30.4. Cites to the 1933 Code

If a case cites to the 1933 Code cite only, translate to the appropriate O.C.G.A. cite for placement of the note.

If the text of the note contains a 1933 Code cite, use (see ...) format, to indicate the comparable 1981 Code provision. If the 1933 Code cite is retained, make sure it was not a number assigned by Harrison--if so, translate to Ga. L. cite or simply delete the reference. (This is because of Harrison's copyright in 1933 of Code numbers that it assigned.)

30.5. Unconstitutional local Acts

If a case holds unconstitutional a local Act, local constitutional amendment, or population Act, this fact needs to be noted in Volume 42, the Local Laws Index. These are not noted under any unit or Code section. These types of Acts are rarely codified, so case readers must be on the alert for such holdings of unconstitutionality. If such a holding is encountered, inform the

state, which will write a memorandum to the indexer in charge of the Georgia Local Laws Index giving the complete citation of the Act held unconstitutional and the complete citation of the case holding it such.

30.6. Notes to entire unit

If an annotation pertains to a unit of the Code, the note should be marked to the unit itself rather than to the first Code section in the unit.

30.7. In accords

(a) Generally. “In accords” may be taken even though the wording of the pertinent notes is not precisely the same. Unless a note is making a significant elaboration on or addition to a similar preexisting note, an “In accord” should be taken.

(b) Style. The following will be the style for “in accord with” notes:

In accord with Doe v. Roe. See [cite to the case currently being read].

30.8. Analyses of notes

In situations in which an analysis is to be created for notes to judicial decisions or Attorney General opinions:

(1) “General Consideration” and “In General”. A “General Consideration” heading must be created, and it must be the first heading in the analysis.

If headings are further broken into subheadings, a “general consideration” subheading or other general subheading is not required; however, if a general subheading is desired, the phrase “In General” should be used.

Do not break a “General Consideration” heading into subheadings.

(2) Numbering of headings and subheadings. Headings are not numbered. Subheadings are designated with Arabic numerals. If a new subheading needs to be added between two existing subheadings, a decimal number should be used. If a numbered subheading is carried in the supplement, all superior headings must also be carried. The following example illustrates these rules:

General Consideration

Applicability of Section

1. In General

1.1. Peddlers

2. Shepherders

Burden of proof

(3) “Decisions under prior law.”

See Manual Section 30.13.

30.9. Order of case notes

(a) By headings. Headings in an analysis (or, if no analysis, the subject matter of the notes themselves) should be arranged according to the following guide. Any specific heading not covered by this list should be placed in its most logical position.

Constitutionality or validity

Common law

History of section

Origin of section

Legislative intent

Statements pertaining directly to section

Meaning of particular words or phrases in section

Applicability of section

Elements of offense

Definitions of elements

Venue and jurisdiction

Indictment, complaint, answer, etc.

Burden of proof

Evidence

Instructions

Jury/court determination of questions

Verdict

Sentence

Appeal

(b) Other considerations. In addition to the general rules in (a) above, the following concepts are typically applied:

(1) Annotations are grouped according to their specific fact pattern.

(2) Annotations should be ordered based upon the stages of the process. Thus, as noted above, jury instructions come before sentencing provisions.

(3) Where the same annotation could be reasonably placed in several locations within a unit, a brief review is completed to determine if there are additional annotations to that case or opinion which should impact the placement of the annotation with multiple potential “right”

locations for placement. If there are multiple annotations to a particular case or opinion, an attempt is made to place annotations under multiple major headings to improve accessibility to the end user.

The above-referenced procedures are complicated by three primary factors: first, the subjective nature of the entire process; second, that annotations frequently contain more than one issue or more than one fact pattern; and, third, the constraints of working within the existing structure versus the flexibility to create new groupings for each supplement, as appropriate. Due to the subjective nature of this process, the state may suggest alternative locations for placement.

30.10. Order of string cited cases

Case cites are arranged chronologically, from earliest to latest. When cases are from different courts for the same year, the cases are arranged in ascending numerical order by volume and page number, as follows:

- (1) United States Supreme Court (U.S., S. Ct., L. Ed.);
- (2) Georgia Appellate Courts - arranged according to Southeastern Reporter (S.E. or S.E. 2d) citation, without regard as to whether the case is from the state Supreme Court or the state Court of Appeals;
- (3) Federal Reporter (F. or F.2d);
- (4) Federal Supplement (F.Supp.);
- (5) Bankruptcy Reporter (Bankr.);
- (6) Federal Rules Decisions (F.R.D.).

30.11. Catchlines and black-letter lines

Case note catchlines should be short and succinct; the “label” style, akin to a newspaper headline, is best. Try to limit the catchline to no more than ten words. The idea is to help the reader find the note by highlighting its central point. (Some very lengthy catchlines are found in older bound volumes; such catchlines should be shortened upon replacement of the volume).

Running in of note catchlines. The text of a case note is to be run into the boldface note catchline (separated by a period and a dash), except paragraph the first line of the text of a case note in a supplement to indicate the presence of another note under that catchline in the bound volume. This rule applies only to case note catchlines and black-letter lines. All other note catchlines are always run in.

30.12. Running catchlines

Do not make note catchlines “run.” Do not create a new catchline with “And” or “But” or “Or” or some other construction intended to make the note a “continuation” of the prior note. (This is a change in policy from the method used when the original Code was being edited. Old running catchlines should be eliminated when replacement volumes are worked up.) 30.13.

Decisions under prior law

(a) Generally. When a provision of law was specifically repealed but subsequently succeeded by a similar provision in current law, decisions rendered under the former law may remain relevant, despite the specific repeal due to the similarity of the prior and current provisions of law. Such relevant decisions under prior law warrant inclusion in case annotations for the current similar Code provision, but the user should be alerted to their presence as specified in this section.

There may be several “prior versions” of a law, so that decisions under any of the prior versions are considered decisions under prior law.

A repeal and reenactment requires treatment of decisions under prior law as described in this section (even for current provisions that read exactly as before in the repealed law and which have the same Code section numbers). In contrast, an amendatory revision of a unit does not require such treatment. See Manual Section 12.1 for distinctions between these two types.

Also, a mere recodification (such as the O.C.G.A. itself) that is not intended to make substantive changes in the law does not require such treatment.

(b) Editor’s notes. When decisions under prior law are included among case annotations for a current Code provision, the user should be alerted to their presence by an editor’s note at the beginning of the case annotations for that Code provision. The editor’s note should include a citation of or reference to the former law and state the fact of its subsequent repeal and succession by similar provisions in current law. Additional information may be included where useful and appropriate.

Examples:

Editor’s notes.—In light of the similarity of the statutory provisions, decisions under former Ga. L. 1937-38, Ex. Sess., p. 103, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Editor’s notes.—In light of the similarity of the statutory provisions, decisions under former

Code Section 14-2-110, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Editor's notes.—In light of the similarity of the statutory provisions, decisions under pre-1983 provisions of this chapter pertaining to justices of the peace, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section. See the Editor's notes at the beginning of the chapter.

(c) Separate analysis headings--discontinued. "Decisions under prior law" may appear as an analysis heading for case notes in earlier O.C.G.A. volumes. This separate heading should be eliminated when a volume is replaced, and case notes formerly found under such a heading should be transferred to other appropriate locations under the same Code provision.

30.14. Cited only

If a "cited" is carried as a "cited only" and that case is overruled or vacated, the citation will be removed from the "citeds." In this instance, the state need not be notified.

30.15. Style rules for case notes

(a) Comma. Use the "Harvard" comma; i.e. a comma appears before the final "and" or "or" in a series or list.

Use a comma preceding or following an "and" to connect two distinct clauses (but not to connect compound verbs).

Use a comma to set off a clause only if that clause can be eliminated without affecting the meaning of the rest of the sentence.

Do not use a comma preceding a clause beginning with “where”.

(b) Grammar. Besides using standard English grammar rules, do not drop articles, particularly “the” before a party (e.g., “the defendant”) or “that” preceding certain clauses (e.g., “notify the courts that he had not”).

(c) Capitalization. Generally, the rules are the basic grammar rules learned during elementary school.

Words such as paragraph, subsection, or state should be lower cased.

Titles of state officials (e.g., commissioner of revenue) should not be capitalized unless they are elected Constitutional officers (e.g., Commissioner of Agriculture).

U.S. Constitutional amendments should be capitalized (e.g., Fifth Amendment, not fifth amendment).

“State” should not be capitalized unless it is the full phrase State of Georgia.

(d) Numbers. Numbers 11 or more should be written as numerals.

(e) References. References to subunits may be aggregated; e.g., paragraph (a)(1), rather than paragraph (1) of subsection (a).

(f) Detail. Notes should be written with more, as opposed to less, detail, making sure that the resulting annotation is not unduly long.

(g) Gender neutrality. Where possible, he and she should be eliminated from the body of the case note. Clearly, there are exceptions to this rule such as when a father is required to take a paternity test. However, in most instances gender neutral terms such as the defendant or the victim can be used.

(h) References to “this section” or “this Code section.” In case notes, the former preferred style was to use the term “this section” or “this Code section.” In order to facilitate linking in electronic products, an O.C.G.A. citation (e.g., “O.C.G.A. §21-2-21”) may be substituted in reprint volumes in lieu of an existing reference to “this section” or “this Code section” for cases that were actually decided under the O.C.G.A.

However, for cases decided under pre-O.C.G.A. provisions, such conversions to O.C.G.A. cites are misleading and should not be made. For such pre-O.C.G.A. case annotations in reprint volumes, a sentence containing a reference to “this section” may, where feasible, be reworded slightly to eliminate such reference, but without substituting an O.C.G.A. section number.

(i) “Where.” If possible, eliminate the use of the word “where”. Many people believe that “where” should only be used to refer to a place. Therefore, if possible, use other words such as because, although, etc. Do not use a comma preceding a clause beginning with “where”.

(j) “It.” Make sure that the case note is clear. Often, the reference made by “it” will be unclear. Thus, translate this word, if possible.

(k) ALR. Between the text of the ALR and the citation to the ALR, verify there should be a comma. The period only appears at the end of the ALR annotation, following the citation. See Manual Section 33.2.

(l) Multiple sentences. If the case note will be easier to read and be more effective as multiple sentences, divide as appropriate. Under no circumstances should the case note exceed three sentences.

30.16. Information in parentheses at end of case cite

If adding history to state case in Georgia, indicate date.

If adding history from F.2d, indicate circuit (“11th Cir.” in Georgia) and date.

If adding history from F. Supp. or Bankr. (there should not be many of these), indicate district (“N.D. Ga.”, “M.D. Ga.”, or “S.D. Ga.”) and date.

30.17. How case annotation style differs from Code section text

The style used in case annotations differs in some key respects from the style used in the text of Code sections. The following are some variations in style:

(1) References to sublevels may be shortened in all case annotations. Thus a reference such as paragraph (a)(1) (as opposed to paragraph (1) of subsection (a)) is acceptable in case annotations. This applies to amendment notes, editor’s notes, or Code Commission notes as of the 2000 session of the General Assembly.

(2) The section symbol should be used in case notes to refer to sections of Acts and to Code sections.

(3) Constitutional references should appear in the following form: “Ga. Const. 1983, Art. I, Sec. II, Para. III.” (always list a date with a Constitutional reference in the notes.)

30.18. Record of deleted notes

The state needs to be notified in writing of any case notes that are deleted. Notification can be in the form of xerox copies or a word processing document that lists the Code section and case.

30.19. Shephard’s treatment

affirmed - Add.

cert. denied - Add.

withdrawal of cert. by court upon further consideration - Add.

modified - Determine grounds for modification. Delete notes from modified portions of decision (do not try to rework them based on modifying decision). Add “modified on other grounds” to notes from modified decision not based on modified portion. Make sure there are notes from modifying decision that state correct rule.

overruled - Determine grounds for overruling. Delete notes from overruled portions of decision. Add “overruled on other grounds” to notes from overruled decision not based on overruled portion. Make sure there are notes from overruling decision that state correct rule.

rehearing denied - Do not add.

reversed - Determine grounds for reversal. Any notes from reversed decision that are based on reversed portions of that decision should be deleted. Add “reversed on other grounds” to notes from reversed decision not based on reversed portions. Make sure there are notes from reversing decision that state correct rule.

vacated - Frequently, Georgia courts will vacate only a specific portion of the prior case. Delete the note from a vacated decision if vacated on that point. Use “vacated on other grounds” if vacated on some other point.

31. ATTORNEY GENERAL OPINIONS

31.1. Generally

Where appropriate, annotations are included concerning relevant opinions of the Attorney General of Georgia, and citations to those opinions are given. These annotations are included under the heading “Opinions of the Attorney General” following the particular title, Code section, or other designation to which they relate.

31.2. Receipt of opinions

Every month the publisher should receive a packet from the Georgia Department of Law containing the Opinions of the Attorney General from the previous month. Opinions are designated as “Official” if the opinion was requested by a state agency or state official or “Unofficial” if requested by any other person or if an opinion of an unofficial nature is specifically requested.

31.3. Numbering of opinions

Opinions are numbered according to year of issuance and sequence of issuance within the year; thus, Op. #83-75 is the 75th official opinion issued during 1983,

Op. #U80-15 is the 15th unofficial opinion issued during 1980.

31.4. Annotations

Official and unofficial Attorney General opinions are read, annotated, and ordered in the same manner as judicial decisions except that no “Citeds” are taken to Attorney General Opinions. Notes generally should be limited to the opinion of the Attorney General in response to the question asked. Look for statements near the end of the opinion beginning with “it is my opinion that” or “it is my unofficial opinion that.” Do not annotate statements that merely constitute part of the Attorney General’s reasoning, unless the note also contains his or her opinion in the matter.

31.5. Citation form

Opinions on or before June 14, 1965, are cited using the style of Example 1. Later opinions are cited using the style of Examples 2 and 3, depending upon the date and whether the opinion is official or unofficial:

- (1) Opinions on or before June 14, 1965, cite to pages in the bound volume. Example, “1958-59 Op. Att’y Gen. p. 1.”
- (2) Opinions after June 14, 1965, and prior to 2000 cite to the two-digit year and the opinion number:
 - (A) Official: Example, “1976 Op. Att’y Gen. No. 76-121.”
 - (B) Unofficial: Example, “1976 Op. Att’y Gen. No. U76-69.”
- (3) Opinions on or after 2000 cite to the four-digit year and the opinion number:

(A) Official: Example, “2000 Op. At-Cy Gen. No. 2000-121.

(B) Unofficial: Example, “2000 Op. Att’y Gen. No. U2000-121.

31.6. Editor’s notes

Editor’s notes pertaining to opinions can be found following that heading, as needed.

31.7. Opinions under prior law

These should be treated similarly to judicial decisions under prior law; see Manual Section 30.13 (but be sure to use the word “opinions” instead of “decisions” in the editor’s notes in such instances, as shown below).

Example:

Editor’s notes.—In light of the similarity of the statutory provisions, opinions under former Ga. L. 1937-38, Ex. Sess., p. 103, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

32. STATE BAR ADVISORY OPINIONS

32.1. Generally

Where appropriate, annotations are included concerning relevant advisory opinions of the State Bar of Georgia, and citations to those opinions are given. These annotations are included under the heading “Advisory Opinions of the State Bar” following the particular unit or Code section to which they relate.

33. RESEARCH REFERENCES

33.1. Generally

Research references are designed to aid the user in locating materials outside of the Official Code of Georgia which may be helpful in understanding the applicability of certain provisions of the Georgia Code.

To aid in legal research, collateral references are included to appropriate material in American Jurisprudence, American Jurisprudence 2d, American Jurisprudence Trials, American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts, Corpus Juris Secundum, Uniform Laws Annotated, and American Law Reports. These annotations are included under the heading Research References following the particular title, Code section, or other designation to which they relate.

33.2. Form

Am. Jur. 1d: 56 Am. Jur. 2d, Municipal Corporations, §§ 126-138.

Am. Jur. 2d New Topic Service, Comparative Negligence, § 1.

Am. Jur. Trials

Am. Jur. Pleading and Practice

Am. Jur. Proof of Facts

C.J.S.: 62 C.J.S., Municipal Corporations, §§ 108, 124

U.L.A.: Uniform Limited Partnership Act (U.L.A.) § 1.

A.L.R.: Accused's right to interview witnesses held in public custody, 14 ALR3d 652.

33.3. Order

The collateral references under a Code section will appear in the following order following the heading, “Research References”:

Am. Jur. 2d (all in one paragraph and in ascending numerical order).

Am. Jur. Trials

Am. Jur. Pleading and Practice

Am. Jur. Proof of Facts

C.J.S. (all in one paragraph and in ascending order).

U.L.A. (all in one paragraph).

ALR (the first one run into the boldface “ALR” catchline, with each succeeding one made an individual paragraph and in ascending numerical order). A.L.R. Fed. notes follow all other A.L.R. notes.

33.4. Retention of ALR notes

Do not delete any ALR notes without first notifying the state. Global deletions are unacceptable. The only exception to this rule is if an ALR is superseded by a later ALR. In only the aforementioned instance can an ALR note be deleted.

34. INDEXES

34.1. General index

(a) Generally. The Official Code of Georgia Annotated contains a general index. All major headings in the Code are represented in the index.

(b) Updating and publication. The general index shall be updated and published annually. The general index shall be published in three softcover volumes (Volumes 43, 44, and 45) in a format similar to the current index, unless otherwise specified

by the Code Commission. Repealed laws shall be deleted from the general index and references to new laws or new subjects in amended laws shall be integrated annually. General index volumes will be bound with flexible, perfect bound covers. The general index shall be prepared in accordance with the following general specifications:

- (1) Lines will be produced by an actual reading of the body of the statutes and other material and not merely from headings or catchlines;
- (2) All sections of the Code, appropriate statutes, and other appropriate material will be separately indexed, although blanket references may also be used where a group of Code sections includes the same general subject matter or where separate indexing of each Code section will serve no useful purpose;
- (3) The headings used in the index shall not be a mere alphabetical arrangement of those used in the body of the statutes and other material. In choosing index headings, the indexers shall, whenever practical, break down the large divisions employed by the compilers of the statutes and arrange index lines under such group headings as the user may reasonably be expected to look for in an index prepared on an alphabetical or catchword plan. All major terms used in the statutory portion of the Code shall be represented in the index. All short titles used in the statutory portion of the Code shall be represented as main headings in the index and shall also be compiled in a separate table index preceding the general index entries;

- (4) Headings, subheadings, and the lines and sublines under the headings and subheadings shall be arranged alphabetically throughout;
- (5) Where matter may be reasonably indexed under more than one descriptive word, it shall be indexed under each of such descriptive words either by a direct reference or a cross-reference, and no section shall be indexed in less than two entries;
- (6) Under each heading the lines will begin with some descriptive word, so as to be readily located without the necessity of scanning everything under such heading;
- (7) The index shall include popular names of Acts; and
- (8) All cross-references shall be made:
 - (A) Wherever a heading consists of an expression for which there is a common synonym;
 - (B) Whenever there is a group of lines (one flush line and two or more indented lines) which, having been put under a chosen heading, might also properly be put under other headings; the object being to gather all related matter together in one place, with cross-references in all the other places, rather than scattering the lines around, with some under one heading and others under different headings; but this will not apply to single lines, which shall be duplicated in all appropriate places;

(C) Where matter under a heading might reasonably be expected to be found under some other heading; and

(D) In all other instances, where, in the judgment of the indexers or the Code Commission, cross-references would be helpful to the user.

(c) No blind or double jump references. Adequate precautions shall be taken to see that all cross-references correctly refer to the place intended and are not of the “blind” or “double jump” type, leading either to nothing or to another cross-reference.

34.2. Title indexes

In addition to the general index, each title of the Code contains an individual title index prepared by the publisher and covering the material contained in that title. Individual title indexes will not be revised in the annual supplements but will be revised and updated when a volume is recompiled and republished.

34.3. Index of local and special laws and general laws of local application

(a) Definition. As used in this section, the term “local and special laws” shall include laws enacted by the General Assembly of Georgia which, by their terms, are of less than state-wide application and shall also include ordinances and resolutions adopted by municipalities and counties under their home rule powers and which are published in the Georgia Laws, local amendments to the Constitutions of Georgia, miscellaneous resolutions adopted by the General Assembly which are not codified but which appear in the Georgia Laws, and other laws

and resolutions which appear in the Georgia Laws but which are not included in the general index.

(b) Complete index. A complete index to all local and special laws and general laws of local application shall be published in two volumes (Volumes 42 and 42A) as a part of the Code. The local and special laws index shall contain references to the volume and page of the Georgia Laws at which all local and special laws may be found.

(c) Current and noncurrent entries. Entries relating to each municipality, county, authority, court, or other topic shall be divided into two sections. The first section shall contain all currently effective local and special laws pertaining to such topic and each amendment to such laws, even though any such amendments may have been superseded by a later amendment. The second section under each topic shall contain references to all local and special laws pertaining to such topic which have been repealed and which are no longer in effect. In the event that the name of any municipality, county, authority, court, or other topic for which index entries are made in the local and special laws index has been changed, index entries shall be made under the current name and cross-references shall be made to former names.

(d) Consistency. Care shall be taken to ensure consistency in the manner in which Acts of similar subject matter pertaining to the same topic are indexed.

(e) Population Acts. The local and special laws index shall also include an index of general laws of local application, arranged according to the census under which they were originally enacted. Such

local and special laws index shall also include a table showing the population of Georgia counties according to each census beginning with the United States Decennial Census of 1920 and shall likewise include a list of the population of each county in order according to the population of each county according to the most recent census available.

(f) Further information. For further information regarding the index to local and special laws and general laws of local application, see the foreword to that index and the user's guide preceding the portion of that index dealing specifically with general laws of local application.

35. TABLES

35.1. Conversion tables generally

Conversion tables are included in Volume 41 to assist the user of the Code in converting citations between the Official Code of Georgia Annotated and the Georgia Code Annotated, the Code of Georgia of 1933, and all previous codes of the State of Georgia. Also included are a table showing the location of each section of the Georgia Laws which has been codified in the Official Code of Georgia Annotated and tables which indicate corresponding provisions of the 1877 Constitution of Georgia, the 1945 Constitution of Georgia, the 1976 Constitution of Georgia, and the 1983 Constitution of Georgia. Conversion tables for the present and prior Constitutions of Georgia are also contained in Volume 2.

35.2. Disposition of Acts table

Various disposition tables may be found in Volume 41 of the Code. The disposition of Acts from the most current year should be added to the end of Table 15 in the

supplement; do not go back to entries from earlier years and add any notations regarding subsequent repeals or renumberings. Table 15 lists only those Act sections that are codified; do not add any information regarding uncoded sections of Acts.

35.3. Codification of language from pre-Code Act

Occasionally the General Assembly will codify language that in fact derives from a pre-Code Act that was not codified in the original Code. Any such pre-Code Act should be reflected in its appropriate year category in Table 15. If the pre-Code Act was codified in the original 1933 Code or any prior Codes, do not make any entries to any of the comparative sections tables to reflect this fact.

35.4. Corresponding provisions of 1933 and 1981 Codes

Tables One and Two indicate corresponding provisions of the original O.C.G.A. codification and Harrison codifications. Table 11 indicates those original O.C.G.A. sections that can be traced back to the original 1933 Code; thus, Table 11 does not indicate any provisions that were first enacted after 1933.

APPENDIX A. INTERNAL REFERENCE UPDATES

A.1. Generally

References in notes to state and federal Constitutions, statutes, court rules, and administrative rules and regulations must be checked periodically to ensure continued accuracy, in light of later amendments and repeals.

A.2. Currency

Internal references to O.C.G.A. sections should be checked annually for references to Code sections affected by that year's legislation. References to Constitutions, rules, and federal statutes should be checked also (constitutional references change infrequently, so do not check unless there has been an amendment).

A.3. Updating references other than in Code section text

If legislation has renumbered, amended, or repealed the Code section referred to so that the reference is no longer accurate, it should be changed outright, updated with a parenthetical reference to the comparable new provision, or deleted, as appropriate.

References in Code section catchlines and cross-references are changed outright or deleted.

References in all other types of notes should not be changed outright, but, instead, a parenthetical notation to the current provision should be inserted; e.g., "(see now O.C.G.A. § 1-2-3)". If there is no comparable provision, insert "former" preceding the reference or delete the reference altogether, as appropriate.

A.4. Updating of references in Code section text

Do not update references in Code section text. The state performs its own computer checks on statutory references within Code text and adjusts them by legislation or Code Commission note as required.

A.5. Georgia administrative rules and regulations

State administrative rules and regulations are updated monthly and, therefore, administrative rules and regulations notes need to be checked and updated periodically to maintain currency. This should be done

as part of the preliminary work for replacement volumes.

APPENDIX B. PUBLISHER'S SPECIAL TASKS ON SUPPLEMENTS

B.1. Generally

Besides the incorporation of legislative amendments, there are other aspects of the Code that must be checked annually and updated as necessary.

B.2. Proposed constitutional amendments

See the discussion regarding this subject at Manual Section 7.4.

B.3. Corporations comments

(a) There are two sets of comments contained in Title 14: Comments on Chapters 2 and 3 (which are contained both in the bound volume and in the supplement) and Comments on Chapter 8 (which were contained for the first time in the 1985 Supplement).

(b)(1) The general corporation comments contained in Chapters 2 and 3 are updated in many years by the Corporate Code Committee of the Business Law Section of the State Bar of Georgia, with comments on the current year's legislation being added. The contact person is the committee's chairperson; for the name and contact information for the current chairperson, see the State Bar of Georgia website, Business Law Section, Executive Committee Members, Corporate Code Committee chairperson listing:

<http://www.gabar.org/sections/section> [web](#)
[pages/business law/](#)

Sometime in late February or early March, the state bar contact should be queried as to whether the committee will be preparing updated commentary on the current year's corporation legislation. This commentary is commonly included in first proof.

(2) The Comments in Chapter 8 to the new partnership law were prepared by Professor Larry Ribstein of Mercer University, Walter F. George School of Law, Macon, GA 31207. The comments, which were first included in the 1985 supplement, accounted for the original 1984 enactment of the partnership law as well as its 1985 amendments.

B.4. Rules and regulations of State Board of Workers' Compensation; rules and regulations of Subsequent Injury Trust Fund

These rules appear as appendixes to Title 34. The Workers' Compensation and Subsequent Injury Trust Fund (SITF) rules are set up as entirely separate sets of rules and the corresponding appendixes are organized similarly to separate chapters of a title. The main heading for Appendix A should be "Rules and Regulations of the State Board of Workers' Compensation," and the main heading for Appendix B should be "Rules and Regulations of the Subsequent Injury Trust Fund."

For Workers' Compensation rules, the contact is:

[name] _____
 Chief Operating Officer
 State Board of Workers' Compensation
 270 Peachtree St., N.W.
 Atlanta, GA 30303-1299
 404-656-2048

The name of the current chief operating officer of the board can be found via the “Contact Information” link on the board’s website:

<http://sbwc.georgia.gov/portal/site/SBWC/>

For SITF rules, the contact is:

[name] _____
 Administrator [or Deputy Administrator] of
 Subsequent Injury Trust Fund
 Marquis Two Tower, Suite 1250
 285 Peachtree Center Avenue NE
 Atlanta, GA 30303
 (404) 656-7000

The name of the current fund administrator (or deputy administrator) can be found via the “Contact Information” link to the staff directory on the fund’s website:

<http://sitf.georgia.gov/portal/site/SITF/>

Separate requests for rules updates should go to each of these officials.

B.5. Delayed effective dates from prior years

Delayed effective dates are accounted for in supplements by means of catchline parentheticals, editor’s notes, or both.

Further, keep in mind that each year there may be contingent effective dates lurking throughout the Code, waiting for the particular contingency to occur. This information usually is also contained in editor’s notes. It is necessary to regularly check with the state as to whether the contingencies have been met.

Another situation involving “old” delayed effective dates is represented by the termination provisions,

showing when certain provisions of the Code are scheduled for repeal.

APPENDIX C. PUBLISHER'S SPECIAL TASKS ON REPLACEMENT VOLUMES

C.1. Statute text

Bear in mind that the publisher has absolutely no authority to make any changes or corrections, however minor, in statute text without authority from the state. Generally, limit changes and corrections to fixing misspellings and typos, indention, (unbalanced designations (a), but no (b)), and name changes. There are not many name changes in Georgia but the publisher should be alert to changes that might affect the volume. Internal references in statutes are checked by the state. A Code Section 28-9-5 Code Commission note is often required by the state in conjunction with a textual change made by the publisher (be sure to ask in memo if a Code Commission note needed).

C.2. Statute catchlines and unit headings

The statute catchlines in the original 1981 Code and early replacements are often far too lengthy. As a rule of thumb, shorten catchlines to three lines of print or less. Catchlines in earlier volumes often itemized the contents of the Code section in too much detail. The publisher should consider substitution of broader language that adequately covers the subject of the Code section.

Do not memo catchline or heading changes to the state. Brackets on proof serve as sufficient notice that a change has been made.

Delete "Same--" from statute catchlines in replacement volumes and substitute the full text of the phrase that "Same--" stood for (retain the dash following the

phrase). The publisher should consider revision of the catchline to eliminate the phrase preceding the dash altogether if it is lengthy.

“Etc.” should be deleted from catchlines and the catchline revised as necessary, either by enumerating the items that “etc.” stood for or by substituting a shorter, more general summary description of the enumerated items.

C.3. Case notes

Review case notes in light of later amendments to the section. Catchlines probably need to be shortened, especially in original volumes and earlier replacement volumes--try to keep catchlines to ten words or fewer. Add analyses if there are more than two pages of notes for any one unit or Code section.

Review case notes throughout the volume before editing begins to see if any notes require such extensive revision that they need to be moved.

“Decisions under prior law” should be eliminated as a separate analysis category in most instances; see Manual Section 30.13 for treatment of decisions under prior law.

Xerox all deleted case notes and opinions of the Attorney General, briefly state reason for deletion (reversal on appeal, later amendment of section, overruled, etc.), and send to the state.

C.4. Editor’s notes and Code Commission notes

These notes need to be reviewed for continued accuracy and often are either reedited or deleted. They often are made obsolete by the passage of time or a subsequent amendment. Naturally, there should be no notes referring the user to the bound volume. Notes as to a delayed effective date which has passed are an

example, as are Code Commission notes describing changes made pursuant to Code Section 28-9-5, where a later amendment has deleted or corrected the language in question. If the editor's note pertains to applicability of an act (for example, pending litigation, etc.) retain it. Deletion of Code Commission notes should always be memoed; great caution should be used in deleting Code Commission notes.

C.5. Cross-references

The style of these notes should be "(subject), § ____."

C.6. U.S. Code notes

Check to make sure that the federal reference is still in the text of the Code section and make sure the reference in the note is correct.

C.7. Administrative rules and regulations

Check for sense and check rule references against the Compilation of Rules and Regulations of Georgia. Change form of these notes from "As to ..., see" to "(subject), (cite)".

C.8. Amendment notes and effective date notes

Keep only the last three years -- legislation from the year of replacement and the two preceding years. Delete earlier notes.

C.9. Delayed effective date notes

Delete if date has passed. Also delete any effective date information inserted in parentheses in section catchline or at the beginning of a subsection. If provision becomes effective only on fulfillment of a condition such as adequate funding, check with the state to see whether the condition has been met.

C.10. Notes under repealed sections

The only note that should generally appear under a repealed Code section (or unit) is an editor's note enumerating the Georgia Laws on which the repealed Code section or unit was based and referring the user to where that subject is now treated in the Code.

Other notes for the repealed Code section or unit should either have been deleted or transferred to the comparable provisions (if any) referred to in the Editor's note.

C.11. Notes under repealed and reenacted units

When a unit is repealed and reenacted, the new provisions are usually sufficiently similar to the old provisions that case notes, cross-references, research references, and other notes not specifically applicable only to the old section can be transferred. Be careful in this situation, since Georgia often reuses Code section numbers in repeals and reenactments, and the new section to which notes are transferred may have the same section number as an old section whose notes need to be transferred to another location.

C.12. Research references

Check research references for continued accuracy. References to A.L.R. 1st should not be deleted globally. There is no need to check other A.L.R. references (other than to make sure subject matter fits in with statute text). Check citations of Am. Jur. 2d's and C.J.S.'s. These may have become out of date due to Am. Jur. 2d or C.J.S. replacing volumes.

[Index omitted]