

No. 18-1150

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**In the Supreme Court of the United States**

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STATE OF GEORGIA, *et al.*,

*Petitioners,*

v.

PUBLIC.RESOURCE.ORG, INC.,

*Respondent.*

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**On Writ of Certiorari to the United States  
Court of Appeals for the Eleventh Circuit**

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**BRIEF OF THE SOFTWARE & INFORMATION  
INDUSTRY ASSOCIATION AS *AMICUS  
CURIAE* SUPPORTING PETITIONERS**

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## INTEREST OF THE *AMICUS CURIAE*

The Software & Information Industry Association (SIIA) is the principal trade association for the software and digital information industries. SIIA has over 700 members, including software companies, search engine providers, data and analytics firms, information services companies, and digital publishers that serve nearly every segment of society, including business, education, government, healthcare, and consumers.<sup>1</sup>

SIIA is a leading advocate of strong intellectual property protection that appropriately balances the legitimate interests of copyright owners and users. SIIA has regularly filed *amicus* briefs in intellectual property cases presenting issues of importance to its members. See, e.g., *Samsung Elecs. Co. v. Apple Inc.*, 137 S. Ct. 429 (2016); *Petrella v. Metro-Goldwyn-Mayer, Inc.*, 572 U.S. 663 (2014); *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519 (2013).

Many of SIIA's members create informational works, and many of them also license those works to third parties. Creating these works requires significant investments of capital and resources. SIIA members thus have a substantial interest in clear and predictable standards for copyright protection, so that they can know in advance that such investments will be protected.

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<sup>1</sup> No party or counsel for a party authored this brief in whole or in part, and no one other than *amicus curiae*, its members, or its counsel funded the preparation or submission of this brief. See Sup. Ct. R. 37.6. All parties have consented to the filing of the brief.

## SUMMARY OF ARGUMENT

Everyone agrees that the works at issue in this case—annotations summarizing judicial decisions that are prepared by a private company and included in the print version of Georgia’s compilation of its laws, the Official Code of Georgia Annotated (O.C.G.A.)—do not carry the force of law. The question whether the annotations can be copyrighted should begin, and end, there: because the annotations do not have the force of law they may be protected by copyright.

That bright-line rule comports with the governing legal principles, is easy to administer, and properly balances the interests underlying the Constitution’s fair-notice requirement with the interests protected by the Copyright Act.

The Court has recognized that “it is peculiarly important that the boundaries of copyright law be demarcated as clearly as possible.” *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 527 (1994). Authors need certainty and predictability regarding the availability of copyright protection in order to decide where to invest their creative efforts. If copyright protection is uncertain, authors will naturally be reluctant to invest time and effort—because they will be unable to recoup that investment if it turns out that the product of their labors may be freely copied. And the best way to ensure certainty and predictability in copyright law is to closely adhere to the text of the Copyright Act, to deviate as little as possible from the Act’s text, and to define the scope of any deviations as clearly as possible.

The Copyright Act provides that “annotations” of other works (including works that are not protected

by copyright) are copyrightable. 17 U.S.C. 101, 103(b). And it is clear that works produced by a State are eligible for copyright protection. Under the plain text of the statute, therefore, the annotations here should be copyrightable. Any deviation from the statutory text must be justified by a constitutional limitation on copyright, and go no further than necessary to address that constitutional concern.

The constitutional justification for the government edicts doctrine—the principle that governmental rules are not copyrightable—is the requirement of fair notice. It would offend due process if individuals could be required to pay to read a legally-binding obligation, but at the same time could be punished or otherwise subjected to liability for violating that obligation. That principle, however, extends only to materials that themselves have the force of law. It does not extend to materials that might help in interpreting the law, but do not themselves constitute binding authority.

Determining which materials have the force of law is not difficult. That category includes statutes, regulations, and ordinances, as well as, in our common-law tradition, the text of judicial opinions. On the other hand, summaries of those judicial opinions—even when prepared as annotations to an official statutory compilation—lack the requisite legally-binding effect.

That is particularly true here, because Georgia state law and precedent expressly state that the annotations have no legal significance—making clear that they are research tools, and nothing more. Because the code annotations do not have legal force, there is no reason to exempt them from the plain text of the Copyright Act.



The contrary approach adopted by the court below—a multi-factor test to determine whether a work has the “hallmarks of law” or is “sufficiently law-like so as to be properly regarded as a sovereign work” (Pet. App. 4a)—would create tremendous uncertainty about the copyrightability of a whole range of works. That test provides neither certainty nor predictability—indeed, even the court below acknowledged that it is difficult to apply. A wide variety of works addressing legal topics that courts or legislatures cite or could be claimed to have some vague role in creating law and could be declared exempt from copyright protection under the lower court’s approach. And a work’s status could change over time, such that a work could lose copyright protection midway through the copyright period.

The end result would be a significant reduction in authors’ investment of the time and resources necessary to create such works—the very adverse consequence that the Copyright Act is designed to prevent. This Court therefore should make clear that only materials that have the force of law fall within the government edicts exception to copyright protection.

## ARGUMENT

### I. Copyright Law Requires Certainty And Predictability.

The fundamental purpose of copyright law is to “promote the Progress of Science and useful Arts” (U.S. Const. Art. I, § 8, Cl. 8). The “economic philosophy behind” copyright law is “the conviction that encouragement of individual effort by personal gain is the best way to advance public welfare through the talents of authors.” *Mazer v. Stein*, 347 U.S. 201, 219 (1954). This Court has explained that the “ultimate

aim” of copyright law is “to stimulate artistic creativity for the general public good” by “secur[ing] a fair return for an author’s creative labor.” *Twentieth Century Music Corp. v. Aiken*, 422 U.S. 151, 156 (1975) (quotation marks omitted).

Businesses and individuals will be much less likely to create new works if they cannot know in advance that they will be able to obtain a fair return on their labor—and a reduction in the creation of new works would injure society as a whole. See *Eldred v. Ashcroft*, 537 U.S. 186, 212 n.18 (2003) (“[C]opyright law celebrates the profit motive, recognizing that the incentive to profit from the exploitation of copyrights will redound to the public benefit by resulting in the proliferation of knowledge.”) (quotation marks and emphasis omitted).

That is particularly true when large investments are required to produce and maintain those works. SIIA’s members, for example, spend millions of dollars each year developing legal informational works. These include legal treatises, casebooks, electronic databases, and surveys of the laws, as well as summaries, headnotes, annotations, and cross-references of judicial opinions.

These works are invaluable research tools for the bench and for the bar. Judges write better decisions, litigators make better arguments, and practitioners provide better advice to clients when they are able to assess statutes and precedents in context—for example, when they are able to identify the judicial decisions interpreting a statutory provision that are potentially relevant to the question facing the judge or lawyer. The practice of law would be poorer (and much more difficult) without these resources.

Developing these works requires skill, judgment, and effort. See Pet. App. 69a. Authors of a code annotation, for instance, must monitor all relevant decisions, select the rulings worth including in an annotation, and then accurately summarize those decisions in a manner that provides the reader with the information needed to determine whether the decision might be relevant to an issue being researched.

That is an immense task. The appellate courts of the State of Georgia issue nearly a thousand reported opinions each year.<sup>2</sup> No one would invest this effort without assurance that the investment would be rewarded. And no one would pay for the information if the annotations were not protected by copyright.

Because the investment needed to create and maintain annotations and other research tools can take many years to recoup, authors must know what the legal landscape is and will be for years to come *before* they commit time and resources into creating a work. And the more risks and uncertainty in the legal landscape, the less time and money authors will be willing to invest in creating new works. Cf. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010) (“Predictability is valuable to [those] making business and investment decisions.”).

For these reasons, the Court has recognized that “it is *peculiarly important* that the boundaries of copyright law be demarcated as clearly as possible.” *Fogerty v. Fantasy, Inc.*, 510 U.S. 517, 527 (1994) (emphasis added); cf. *Landgraf v. USI Film Prods.*, 511 U.S. 244, 271 (1994) (in matters regarding “property

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<sup>2</sup> Lexis lists 909 reported opinions issued by the Georgia Supreme Court and the Court of Appeals of Georgia in 2018 and 935 in 2017.

rights, \* \* \* predictability and stability are of prime importance.”). Indeed, “Congress’[s] paramount goal” in revising the Copyright Act was to “enhance[e] predictability and certainty of copyright ownership.” *Community for Creative Non-Violence v. Reid*, 490 U.S. 730, 749 (1989).

The best way to provide that certainty and predictability is to hew closely to the text of the Copyright Act. Certainly any judicial exceptions to the Copyright Act’s plain text should be narrow—and the lines drawn should be clear, easy to understand, and easy to apply.

## **II. The Government Edicts Exception To Copyright Protection Applies Only To Works That Have The Force Of Law.**

The Copyright Act provides that (1) “annotations” are expressly copyrightable as derivative works, even when the underlying work is not protected by copyright, 17 U.S.C. 101, 103(b); and (2) States may hold copyrights, see 17 U.S.C. 105 (excluding works of the United States government from copyright protection); see also *Copyright Law Revision: Report of the Register of Copyrights on the General Revision of the U.S. Copyright Law*, 87th Cong., 1st Sess., 129-130 (H.R. Judiciary Comm. Print 1961) (explaining that States have long been understood to be able to hold copyrights).

Under the Act’s plain language, therefore, copyright protection would extend to the case annotations at issue here. There is no basis in law or policy for extending the “government edicts” exception to encompass these case annotations.

**A. The “Force of Law” Rule Comports Best with the Constitutional Underpinning of the Government Edicts Doctrine.**

The government edicts doctrine holds that “the law,’ whether articulated in judicial opinions or legislative acts or ordinances, is in the public domain and thus not amenable to copyright.” *Veeck v. Southern Bldg. Code Congress Int’l, Inc.*, 293 F.3d 791, 796 (5th Cir. 2002) (en banc). The doctrine developed in the nineteenth century, as this Court was confronted with questions regarding the application of copyright law to judicial opinions. See *Wheaton v. Peters*, 33 U.S. 591, 667-668 (1834) (this Court’s decisions are not copyrightable); *Banks v. Manchester*, 128 U.S. 244, 252-254 (1888) (state supreme court decisions are not copyrightable); *Callaghan v. Myers*, 128 U.S. 617, 647-650 (1888) (headnotes authored by a state supreme court’s official reporter are copyrightable).

In delineating the scope of this judicially-created exception to the Copyright Act’s plain language, the Court should act narrowly to minimize the intrusion on the delicate “balance of competing claims” that Congress struck in enacting (and revising) the Act. *Twentieth Century Music Corp.*, 422 U.S. at 156; see also *Eldred*, 537 U.S. at 222 (“[T]he Copyright Clause empowers Congress to determine the intellectual property regimes that, overall, *in that body’s judgment*, will serve the ends of the Clause”) (emphasis added).

This Court has not clearly identified the constitutional underpinning of the government edicts doctrine. The court below believed that the doctrine is grounded in principles of popular sovereignty, stating that because “the People” ultimately had responsibility for actions of a State, authorship resided in them

rather than in the State, precluding the State from obtaining copyright protection. Pet. App. 24a. But that theory is inconsistent with the settled rule that the States may obtain copyright protection for works authored by government employees that satisfy the Act’s requirements. See Pet. Br. 22-23.

Instead, the logical basis for the government edicts doctrine is the principle of fair notice. It would offend due process if individuals were unable to obtain the text of a binding legal rule they are required to obey—and would be subjected to punishment or other liability for violating. *Bldg. Officials & Code Adm. v. Code Tech., Inc.*, 628 F.2d 730, 734 (1st Cir. 1980) (“Due process requires people to have notice of what the law requires of them so that they may obey it and avoid its sanctions.”); see also *United States v. Davis*, 139 S. Ct. 2319, 2325 (2019) (explaining that “the first essential of due process of law” is ensuring that “people of common intelligence” have “fair notice of what the law demands of them”) (quotation marks omitted). And the fair notice principle surely encompasses the ability to provide to other interested individuals copies of materials that impose binding obligations, or contain binding interpretations of those obligations.<sup>3</sup>

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<sup>3</sup> Another court of appeals stated, in the context of the government edicts doctrine, that individuals should be able to republish, comment on, and otherwise use those laws however they see fit. *Veeck*, 293 F.3d at 799. Those actions relate principally to informing others about the requirements of the law, and therefore are also tied to the fair notice requirement imposed by due process. To the extent they are not, the First Amendment would provide an additional constitutional justification for exempting from copyright protection materials that have the force of law—to the extent such uses did not qualify as fair use.

That constitutional principle, however, extends only to materials that themselves have the force of law—that is, those works which *in and of themselves* set forth binding legal obligations. Most obviously, that category of works includes the text of statutes, regulations, and ordinances. And in our common-law tradition, we understand “the law” to include the text of judicial opinions, because the application and development of the common law requires people to have a full understanding of the facts of the case and reasoning of the court (sharpened by any concurrences or dissents), and not merely the court’s holding. See *Banks v. Manchester*, 128 U.S. 244, 253 (1888) (“The *whole work* done by the judges constitutes the authentic exposition and interpretation of the law \* \* \* *binding every citizen.*”) (emphases added); see also Pet. Br. 47-50. The same principle would encompass decisions of administrative tribunals.

There is a fundamental distinction between statutes, regulations, and judicial opinions on the one hand, and works that discuss the meaning of statutes, regulations, and judicial opinions on the other—because the latter are not “authentic exposition[s] and interpretation[s] of the law” and are not binding on anyone. See *Callaghan*, 128 U.S. at 647-48. Extending the government edicts exception from copyright protection to works that do not have the force of law cannot be justified by fair notice concerns.

For these reasons, the rule most consistent with the text of the Copyright Act and the constitutional concerns underlying the government edicts doctrine is a bright-line rule: Only those materials that have the force of law are not subject to copyright protection. See *Veck*, 293 F.3d at 800; cf. *Roell v. Withrow*, 538 U.S.

580, 596 (2003) (Thomas, J., dissenting) (“A bright-line rule brings clarity and predictability.”).

There is no doubt that the annotations at issue in this case lack the force of law and cannot prescribe legal rights or obligations. O.C.G.A. §§ 1-1-1, -7; *Harrison Co. v. Code Revision Comm’n*, 260 S.E.2d 30, 35 (Ga. 1979). Because they do not create or define any legal obligations, the annotations do not fall within the copyright exception for government edicts.

The court below placed significant weight on the “official” status of the annotations, which it believed might cause readers to believe the annotations contained “special insight.” Pet. App. 42a. But as a matter of Georgia law, the “official” label does not confer binding effect, or even any weight, on the statements contained in the annotations. The possibility that an unsophisticated reader might mistakenly think otherwise provides no basis for expanding an exception to the protection provided by the plain text of the Copyright Act.<sup>4</sup>

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<sup>4</sup> In fact, no informed reader could reasonably believe that the annotations have the force of law. The operative code sections are set out in larger type and in one column that spans the width of the page. The annotations, in contrast, consist of summaries of cases and other research references set out in smaller type in a two-column layout. They often are preceded by “Editor’s notes” explaining cross-references, and are divided into sections based on type of content (e.g., “Judicial Decisions”). Each case summary does no more than describe the case’s holding, without any additional analysis or commentary. In short, the annotations are unmistakably guides for research, and no competent attorney would treat them as anything else. See, e.g., O.C.G.A. vol. 13 at 346-347 (2018) (setting out text of O.C.G.A. § 24-6-608); *id.* at 347-360 (“Judicial Decisions” construing O.C.G.A. § 24-6-608); *id.* at 360-361 (additional “Research References”).



Indeed, if the inaccurate views of uninformed readers were sufficient to eliminate copyright protection, the scope of this exception to copyright protection could reach very far. Thus, an uninformed reader might believe that a law review article written by a sitting judge contained legally-binding statements, or that a treatise regularly cited by courts was therefore “authoritative.” Basing the scope of copyright on readers’ erroneous views regarding the nature of legal publications could bar copyright for a broad range of legal materials.

The lower court also concluded that because the annotations were “imbue[d] \* \* \* with an official, legislative quality,” “any understanding of the statutory text arrived at without reference to the annotations is axiomatically incomplete.” Pet. App. 40a-41a. That is incorrect: it is the judicial decisions construing a statutory provision that must be consulted to avoid an “incomplete” interpretation of the statute. The annotations themselves are legally irrelevant as a matter of Georgia law—and an argument relying on the annotations rather than on the text of the opinions would be rejected as non-authoritative by a Georgia court. See *Harrison Co.*, 260 S.E.2d at 35

Thus, no court would accept the annotations’ *description* of a ruling as any sort of legal authority overriding or even persuasive in interpreting the *decision itself*. Put another way, if an annotation were to describe an opinion’s holding incorrectly, no court would treat that mistake as having any relevance whatsoever to the meaning of either the opinion or the statute. Cf. *Brewer v. Gittings*, 116 S.E.2d 500, 505 (Ga. Ct. App. 1960) (rejecting argument based on treatise that misconstrued Georgia precedent).

Finally, the state legislature’s “official” imprimatur does not change the legal status of the annotations. That would be true even if the case descriptions were actually prepared by the Georgia legislature—even though that is not the case, see Pet. Br. 10, 40. Legislators may have their views on what a judicial opinion means, but those views have no binding or even persuasive legal effect—as Georgia law makes clear with respect to these very annotations. Cf. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803) (“It is emphatically the province and duty of the judicial department to say what the law is.”).

To be sure, the annotations may provide helpful assistance in identifying the judicial opinions most relevant to the particular legal issue being researched. But if the government edicts doctrine were interpreted to exclude from copyright protection all material helpful in targeting legal research, then every treatise, law review article, database, and collection of case annotations would be exempt from copyright protection. The resulting diminution in tools critical to enable legal research would be extraordinarily harmful to the courts, the legal profession, and every individual client seeking legal advice or representation in court.

Indeed, it is the annotations’ value as research aids that proves why they should be copyrightable. The annotations are useful because of the extensive effort expended in creating the annotations and keeping them up to date. The authors must be able to recoup that huge investment through the availability of copyright protection, or such works simply will not be created.

Of course, a State could choose to make additional reference materials available to the public—such as by providing copies of the O.C.G.A. to public libraries

across the State, as Georgia has done here. Pet. App. 8a. But nothing *requires* a State, or anyone else, to do so.

**B. The “Force of Law” Rule Is Clear and Easy to Administer, and Provides the Predictability and Certainty Essential to Copyright Law.**

The “force of law” standard for determining the applicability of the government edicts doctrine has critical, additional benefits. It is an easy-to-understand and easy-to-apply clear, bright-line test that provides the certainty and predictability that this Court has found necessary in copyright law.

Typically, it will be clear whether a particular work has the force of law, because that category of materials is defined and limited: the text of statutes, regulations, and ordinances, and the decisions of courts and administrative tribunals. These materials either impose or authoritatively interpret binding legal obligations, so individuals potentially subject to those obligations should have unfettered access to them.<sup>5</sup>

The court below applied a different approach—what it termed “a consideration of those characteristics that are the hallmarks of law.” Pet. App. 3a. The court in particular assessed “the identity of the public

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<sup>5</sup> This is not a case in which a legislature or agency officially incorporates a copyrighted work into a statute or regulation, thereby giving binding force to the work. Such a situation would present concerns not present here, such as under the Takings Clause, that might favor retaining limited copyright protection in the work, so long as the work is reasonably accessible to those bound by it. See, e.g., *Practice Mgmt. Info. Corp. v. American Med. Ass’n*, 121 F.3d 516 (9th Cir. 1997), amended by, 133 F.3d 1140 (9th Cir. 1998).

officials who created the work, the authoritativeness of the work, and the process by which the work was created.” *Id.* at 4a (emphasis omitted).

As the lower court’s analysis shows, that approach is vague and unpredictable. Asking whether a work is “sufficiently law-like so as to be properly regarded as a sovereign work,” Pet. App. 4a., and examining a wide variety of facts and circumstances, Pet. App. 25a-26a, will produce the opposite of the clarity that this Court has deemed essential in delineating the scope of copyright protection. Indeed, the court of appeals itself acknowledged that “[b]asing the inquiry on whether a work is similar enough to the law so as to be attributable to the People \* \* \* does little to diminish the difficulty of applying [that] rule in the unique circumstances presented here.” Pet. App. 25a.

And the lower court’s discussion of the factors it believed relevant confirms the flaws in its approach.

For example, the first factor the court of appeals considered was the “identity of the public officials who created the work.” Pet. App. 4a. The court acknowledged that, as a factual matter, the annotations are authored by the editors at Lexis—private individuals who are not public officials. Pet. App. 26a. But the lower court thought that because Georgia’s Code Revision Commission theoretically can (though in practice does not) exercise oversight over the annotations, and because that commission is comprised in part of legislators and is funded by the State, the authorship of the annotations ultimately is attributable to the Georgia legislature itself. Pet. App. 27a-30a. In other words, the fact that a work literally is created by a private party is of no moment if a State actor *could be* involved somewhere in the process. That describes, for

instance, an article in a law review published by a public law school.

Next, the court of appeals considered the authoritativeness of the work. For this factor, the court of appeals pointed to judicial citations to support its conclusion that the annotations are “law-like.”<sup>6</sup> Pet. App. 43a-44a. But courts cite a variety of materials in their opinions; those materials do not become “the law” as a result. Courts frequently cite treatises addressing various topics. No one would contend that such citations, which in some cases can reach large numbers,<sup>7</sup> transform the treatise into “the law” and make the treatise ineligible for copyright protection. And to take another example, it is not inconceivable that a work like *Black’s Law Dictionary* could become subject to the court of appeals’ rule.<sup>8</sup> The result of that, of course, would be that the authors of those works would lose some (if not all) incentive to improve those works, to the ultimate detriment of the “Progress of Science and useful Arts.”

The court of appeals also considered whether the work was “necessar[y]” to obtain a “[c]omplete” understanding of the law. Pet. App. 41a. But a wide variety

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<sup>6</sup> In fact, the citations cited by the court involved only comments in the O.C.G.A., not the case annotations at issue here. Pet. App. 43a-44a. As the comments explain, the comments were authored by the State Bar committees that drafted the provision (or its revision), and neither Georgia nor Lexis claim copyright in those comments. Pet. Br. 41 n.12.

<sup>7</sup> For example, searching Westlaw for federal court cases that mention “Nimmer on Copyright” or “McCarthy on Trademarks” yields nearly 4,000 results for each.

<sup>8</sup> Searching Westlaw for federal court cases that mention “Black’s Law Dictionary” yields nearly 5,000 results in the last ten years alone.

of legal materials help researchers better understand the law—treatises, law review articles, practice guides, fifty-State surveys, among many others. The extent to which one or more of those works are “necessary” to understand a particular law will vary widely in each circumstance and over time. The lower court’s approach thus opens the door to a dramatic contraction in copyright protection for a wide range of works that today receive copyright protection and likely could never have been produced without the ability to recoup the authors’ investment that copyright provides.

Worse yet, under the lower court’s “law-like” test, a work’s eligibility for copyright protection could change over time. The work could start out as copyrightable but become “sufficiently law-like” midway through the copyright period—upsetting the investment-backed expectations of the author. Perversely, that result appears most likely to occur if the author does a particularly convincing job of arguing in favor of a certain legal outcome. If courts or legislators find a reference work to be accurate and useful and as a result repeatedly cite to the work, that would appear to increase the likelihood that the work would qualify as “sufficiently law-like.”

If the scope of the government edict exception were determined by the court of appeals’ vague rule, no publisher will enter into agreements with a State to create works like the annotations at issue here. It would be irrational to undertake the significant investment required when copyright protection—essential to recover that investment—is unlikely or, at best, wholly uncertain.

The court of appeals’ rule thus jeopardizes the code annotations not only in Georgia, but also in twenty

other States, the District of Columbia, and Puerto Rico, where official codes are produced by private companies.<sup>9</sup> Legal practice in all of those jurisdictions would be much poorer without those annotations.

States could avoid that outcome only by paying publishers directly to produce useful annotations. But government budgets are stretched already and there is no assurance that funds would be appropriated to produce high-quality informational works used principally by lawyers and not by the public at large.

Moreover, the disciplining function of the market promotes quality. As this Court has explained, “[t]he economic philosophy” underlying the whole of copyright law “is the conviction that the encouragement of individual effort by personal gain is *the best* way to advance public welfare through the talents of authors.” *Mazer*, 347 U.S. at 219 (emphasis added). To take one relevant example, West’s regional case reporter system first rose to prominence precisely because West (equipped with copyright) had economic incentives to produce a timely product that was useful to the bar and the public, while official state court reporters (having no such incentives) took years to publish their reports. See John H. Langbein et al., *History*

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<sup>9</sup> Those jurisdictions are Alabama (Ala. Code); Alaska (Alaska Stat.); Arkansas (Ark. Code Ann.); Delaware (Del. Code Ann.); Idaho (Idaho Code); Kentucky (Ky. Rev. Stat. Ann., Certified Version); Maine (Me. Rev. Stat. Ann.); Maryland (Md. Code Ann.); Mississippi (Miss. Code Ann.); New Hampshire (N.H. Rev. Stat. Ann.); North Carolina (N.C. Gen. Stat.); North Dakota (N.D. Cent. Code); Rhode Island (R.I. Gen. Laws); South Carolina (S.C. Code Ann.); South Dakota (S.D. Codified Laws); Tennessee (Tenn. Code Ann.); Utah (Utah Code Ann.); Vermont (Vt. Stat. Ann.); Virginia (Va. Code Ann.); Wyoming (Wyo. Stat. Ann.); the District of Columbia (D.C. Code); and Puerto Rico (P.R. Laws Ann.).

*of the Common Law: The Development of Anglo-American Legal Institutions* 833-835 (2009).

There is simply no justification for eliminating copyright protection for legal works that lack the force of law. Nor is there any reason to require taxpayers at large to bear the cost of developing code annotations, when those annotations are most useful to the bench and the bar. It instead makes sense for practitioners to reward publishers for producing quality code annotations by voting with their dollars—precisely what Congress provided in the Copyright Act.

### CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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