No. 18-1150

In The
Supreme Court of the United States

STATE OF GEORGIA, et al.,

Petitioners,

v.

PUBLIC.RESOURCE.ORG, INC.,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF FOR THE TENNESSEE COALITION FOR OPEN GOVERNMENT AND THE HUMAN RIGHTS DEFENSE CENTER AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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QUESTION PRESENTED

The Official Code of Georgia Annotated (O.C.G.A.) is Georgia's only official code of law and is "published under authority of the State of Georgia." Georgia courts routinely cite annotations and other parts of the O.C.G.A. that formally lack the force of law as nonetheless authoritative. Every element of the O.C.G.A. is "finalized under the direct supervision" of Georgia's legislative branch, and the O.C.G.A. only exists because Georgia law requires that Georgia's statutes be "merged" with other material before being published "by authority of the State" in the form of Georgia's only official code.

The question presented is: Is the O.C.G.A. an edict of government?

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BRIEF OF THE TENNESSEE COALITION FOR OPEN GOVERNMENT AND THE HUMAN RIGHTS DEFENSE CENTER AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

Pursuant to Rule 37 of the Supreme Court of the United States, *amici curiae* the Tennessee Coalition for Open Government and the Human Rights Defense Center submit this brief in support of the Respondent, Public.Resource.Org, Inc.[1]

INTEREST OF *AMICI CURIAE*

The Tennessee Coalition for Open Government ("TCOG") is a 501(c)(3) nonprofit organization that seeks to preserve, protect, and improve open government and citizen access to public information. TCOG accomplishes this through an alliance of citizens, journalists, and civic groups. TCOG believes that unimpeded access to government information, through public records and public meetings, is crucial for informed citizen participation in a democratic society.

TCOG recognizes that open access to the law is essential for an informed citizenry. As a result, TCOG has a strong interest in ensuring that government does not erect barriers around its official laws, as open

[1] Counsel for the parties have consented to this brief. Per Rule 37.6, *amici curiae* affirm that no counsel for any party authored this brief in whole or in part, and no party or counsel for any party made a monetary contribution to fund the preparation or submission of this brief. Only *amici curiae* made such a monetary contribution.

access furthers norms that are central to our democracy. These norms include transparency, equality, self-government, and notice.

The Human Rights Defense Center (HRDC) is a nonprofit charitable corporation headquartered in Florida that advocates in furtherance of the human rights of people held in state and federal prisons, local jails, immigration detention centers, civil commitment facilities, Bureau of Indian Affairs jails, juvenile facilities, and military prisons. HRDC's advocacy efforts include publishing two monthly publications, Prison Legal News, which covers national and international news and litigation concerning prisons and jails, as well as Criminal Legal News, which is focused on criminal law and procedure and policing issues. HRDC also publishes and distributes self-help reference books for prisoners, and engages in state and federal court litigation on prisoner rights issues, including wrongful death, public records, class actions, and Section 1983 civil rights litigation concerning the First Amendment rights of prisoners and their correspondents. It relies on access to statues both in its own litigation and in educating prisoners. As a non-profit organization, it has limited funds to expend on legal materials.

SUMMARY OF ARGUMENT

For reasons of law and policy, this Court should affirm the decision of the Eleventh Circuit. More is at stake in this case than immediately meets the eye. By

imposing financial barriers to accessing its official Code, Georgia diminishes the ability of its citizens to access the authority that governs them. Georgia thus undermines core constitutional values and norms underlying the First Amendment as well as the Fourteenth Amendment's Due Process Clause—both as applied to the general public and to society's most vulnerable populations.

The First Amendment's Free Speech Clause exists in part to protect the right of citizens to engage in informed discussion regarding their government, so that citizens may govern themselves and participate in democracy. Toward that end, the First Amendment guarantees the right of citizens to access government information necessary for informed self-governance. A state's official annotated code constitutes such information, but efforts to impede access to the official annotated code frustrate the goals of the Free Speech Clause.

The First Amendment also guarantees a right of access for the press that is implicated by Georgia's copyright. This right exists to ensure the free flow of information regarding the government to the public, which preserves our open and democratic political process. Requiring the press to pay hundreds of dollars in fees to access official statutes impinges on the press's ability to accurately report about Georgia's authoritative laws, undermining the important goals of the Press Clause.

The First Amendment does not tell the whole story, though. In addition to First Amendment concerns, Georgia's copyright on its official statutory compilation also implicates due process. The paywall Georgia has installed makes access to its official statutory compilation difficult for many and impossible for some. But because all citizens are presumed to know the law, all must have free access to the law. While this concept of notice is deeply embedded into our constitutional and democratic norms, it is a value that Georgia undermines by making access to its official code more difficult. While the harm affects the general population, it is also more particularized. For instance, inmates need open access to official statutes as a function of their right to meaningfully access courts. In a similar vein, a citizen's ability to access authoritative law should not depend on his financial ability. There ought not be one superior version of the law for the rich and an inferior version for the poor.

ARGUMENT

I. The First Amendment protects the right of citizens to freely access official statutory codes as a means of ensuring effective participation in democratic self-government.

The First Amendment protects a right of access to important government information. *See*, *e.g.*, *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 604 (1982). This right is an extension of express First Amendment freedoms, but it serves the same purpose:

ensuring informed and effective self-governance. *Id.* Self-governance, however, becomes difficult for many—and *impossible* for some—when a state imposes financial barriers to access the official annotated code that governs the duties and rights of the citizen-lawmaker. That is what Georgia has done here. While it is difficult to imagine any source of information more vital to citizen-rule than *the law*, Georgia's assertion of copyright diminishes access to the state's official code. This in turn excludes from informed self-governance citizens who are unable to afford, or unwilling to pay, hundreds of dollars in fees. In a similar vein, journalists' ability to accurately report the goings-on of government—which the First Amendment in part exists to protect—is undermined by the expensive fees Georgia requires as a precondition to obtaining the state's official laws. *See Pell v. Procunier*, 417 U.S. 817, 832 (1974). In light of these rights and policies that underlie the First Amendment, this Court should affirm the Eleventh Circuit.

Government derives "its just powers from the consent of the governed." Declaration of Independence para. 2. To ensure this consent remained robust, the Framers of the Constitution protected from government encroachment "the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. I. These freedoms share the common purpose of "assuring freedom of communication on matters relating to the functioning of government." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S.

555, 575 (1980). In other words, the First Amendment protects free discussion so that the individual "can effectively participate in and contribute to our republican system of self-government." *Globe Newspaper Co.*, 457 U.S. at 604; *see First Nat'l Bank of Boston v. Bellotti*, 435 U.S. 765, 783 (1978).

Effective participation in self-government requires more than mere discussion of governmental affairs, though; it requires that such discussion be *informed*. *Globe Newspaper Co.*, 457 U.S at 604–05. As a result, the First Amendment also guarantees a right to *access* certain government information. *Id.* at 605; *see also Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("It is now well established that the Constitution protects the right to receive information and ideas."); *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943) (the First Amendment "embraces the right to distribute literature and necessarily protects the right to receive it"). As a First Amendment right, the right of access is aimed at (and necessary for) preserving and encouraging informed participation in self-governance. *Id.* at 604–05. Put differently, the First Amendment protects the right of citizens to access the information that is required for them to govern themselves—information that includes an official statutory compilation. Georgia's copyright of the Official Code of Georgia Annotated (O.C.G.A.), however, diminishes the ability of citizens to access official statutes, and thus undermines an objective central to the First Amendment: popular democratic participation.

The right of access necessarily exists to foster open government, which in turn creates an opportunity for citizens to understand their government. *See Richmond Newspapers, Inc.*, 448 U.S. at 572. This opportunity serves both practical and substantive First Amendment ends. For one, "it is difficult for [citizens] to accept" what they cannot observe, and an unwillingness to accept a result lessens "respect for the law." *Id.* On the other hand, open access also results in an "educative effect" for citizens and an "intelligent acquaintance" with government. *Id.* Openness, in other words, "contribute[s] to public understanding of the rule of law." *Id.* at 573.

The policies furthered by the right of access—informed and effective self-governance, and citizen understanding and respect for the law—apply with great force when an official statutory code is involved. A citizen cannot perceive the vague contours of, let alone understand, the rule of law when he is excluded from reading the official code in the first place. *Id.* Openness in official statutes therefore serves the basic, threshold purpose of allowing citizens to know *what the law is*, and knowledge of the law is essential to understanding the workings of government. In this way, a free and open code becomes necessary to sustain the purpose of the First Amendment.[2]

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[2] That Georgia makes the O.C.G.A. available at several dozen libraries across the state is inapposite. As holder of the O.C.G.A.'s copyright, Georgia could revoke a library's ability to stock the O.C.G.A. at any time. A citizen's access to official statutes, however, should not depend on the discretion and caprice of the state.

While it was difficult for this Court in *Richmond Newspapers* "to single out any aspect of government of higher concern and importance to the people than the manner in which criminal trials are conducted," *id.* at 575, this case presents one example: the law itself. While *Richmond Newspapers* addressed a right of access with regards to criminal trials, access to the law itself is an even more crucial fundamental right, as free access to the law is a basic prerequisite of democratic governance. Indeed, political speech and petition are neither informed nor effective—and therefore do not serve their purpose of effectuating self-governance—when a state erects barriers to some citizens' ability to access an official statutory compilation. *Globe Newspaper Co.*, 457 U.S. at 604–05; *see Bd. of Educ. v. Pico*, 457 U.S. 853, 868 (1982) ("[A]ccess to ideas makes it possible for citizens generally to exercise their rights of free speech and press in a meaningful manner. . . .").

A substantial fee to access the law excludes some citizens entirely from accessing the law based on their income, and many others who can afford the fee are nevertheless deterred from doing so by the cost

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What's more, Georgia has over one hundred counties, making limited and concentrated O.C.G.A. availability useless for many across Georgia's several regions. Finally, easy and open access to the law better serves uniformity and promotes the values underlying the First Amendment. For instance, counsel contacted multiple Tennessee public libraries and found that while Tennessee also owns a copyright of its official annotated code, and publishes a free, unofficial version online, access to the official version at public facilities varies, and many libraries—rural and urban—do not stock the Tennessee Code Annotated, which is currently under copyright protection. *See* Registration No. TX0008588806.

associated with access. For instance, Georgia's students who are interested in learning more about their state and its laws face the trilemma of perusing the inferior unofficial code with statutes that have been long invalidated, surrendering hundreds of dollars to read an official version, or foregoing the exercise altogether.[3] In this way, Georgia discourages students from preparing themselves adequately for "active and effective participation in the pluralistic, often contentious society in which they will soon be adult members." *Pico*, 457 U.S. at 868.

Georgia's system quells popular participation in citizen-rule and risks fostering disrespect for the law specifically and for government generally. This dampened participation defeats the goals of the First Amendment, harkening back to James Madison's warning that "a popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy; or, perhaps both." *Leigh v. Salazar*, 677 F.3d 892, 897 (9th Cir. 2012) (quoting 9 Writings of James Madison 103 (G. Hunt ed. 1910)).

In addition to undermining the ends of the public's right of access, Georgia's assertion of copyright also interferes with the goals underlying the press's right of access, which the First Amendment similarly protects. *See PG Pub. Co. v. Aichele*, 705 F.3d 91, 99 (3d Cir. 2013)

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[3] Consider, for instance, that Georgia's ban on consensual sodomy has not been *repealed*. O.C.G.A. § 16-6-2. Nevertheless, the statute has been *invalidated*. *See*, *e.g.*, *Powell v. State*, 510 S.E.2d 18 (Ga. 1998). A Georgian reading the unannotated Code would have to purchase the O.C.G.A. to discover this.

("[T]he First Amendment encompasses a right of access for news-gathering purposes."). Indeed, "without some protection for seeking out the news, freedom of the press could be eviscerated." *Branzburg v. Hayes*, 408 U.S. 665, 681 (1972). The press's right of access "'assures the maintenance of our political system and an open society,' and secures 'the paramount public interest in a free flow of information to the people concerning public officials. . . .'" *Pell*, 417 U.S. at 832 (citations omitted). But journalists' interests in reporting the goings-on of government are jeopardized by a statutory code hidden by an expensive fee.

The First Amendment protects journalists' right of access because newsgathering and reporting help to maintain our open, democratic political system. *Garrison v. Louisiana*, 379 U.S. 64, 77 (1964). This protection is undermined, however, when a state imposes a fee that prevents individuals from accurately reporting its laws. Indeed, if litigants use the unofficial Georgia code "at their peril," it is much worse for reporters and citizen-journalists to rely on anything *but* the O.C.G.A., as they communicate information to thousands of people. O.C.G.A. § 1-1-1. Yet Georgia has created significant barriers to accessing and using the O.C.G.A. Journalists having open access to official state codes promotes "informed discussion of governmental affairs by providing the public with the more complete understanding" of the law. *United States v. Simone*, 14 F.3d 833, 839 (3d Cir. 1994); *see Richmond Newspapers*, 448 U.S. at 573. Journalists are protected by the First Amendment so that they can inform the public about the affairs of

their government. *See*, *e.g.*, *Garrison*, 379 U.S. at 77. But this role, which is necessary for "the maintenance of our political system," cannot be served if a state surrounds the information most important to open government and citizen participation with significant barriers. *Pell*, 417 U.S. at 832.

Freedom of speech, petition, and the press play a structural role "in securing and fostering our republican system of self-government." *Richmond Newspapers, Inc.*, 448 U.S. at 587 (Brennan, J., concurring). The First Amendment was designed to deter any action that "might prevent such free and general discussion of public matters as seems absolutely essential to prepare the people for an intelligent exercise of their rights as citizens." *Grosjean v. Am. Press Co.*, 297 U.S. 233, 249–50 (1936). A state's official code is one such matter. America's project in republican government suffers, though, when some of its citizens cannot afford to access the law and others are deterred by cost from doing so. The right to freely and meaningfully access the law thus plays an important role in assuring the people's sovereign power to make and unmake governments. *See* Declaration of Independence paras. 1–2. Citizens cannot effectively govern themselves if a state is permitted to erect barriers against the public's access to the full and official version of its laws.

II. Due Process requires that all citizens have access to and notice of the law.

Copyrights over official annotated codes also give rise to significant due process concerns. Citizens have a right to know and have free access to the laws that govern them. *See*, *e.g.*, *Bldg. Officials & Code Adm. v. Code Tech., Inc.* [hereinafter *BOCA*], 628 F.2d 730, 734 (1st Cir. 1980). Those who lack the means to pay hundreds of dollars to access the O.C.G.A., however, are foreclosed from having notice of its *official* mandates. Indigent citizens and inmates, in particular, have an especially difficult time overcoming the paywall, as these populations often lack the resources necessary to purchase the O.C.G.A. At the same time, they are often the very populations that need access to official statutes the most. For example, prisoners need the official copy of the statutes relevant to their case in order to exercise their right to meaningfully access courts. *Lewis v. Casey*, 518 U.S. 343, 356 (1996). Similarly, indigent citizens, like all members of the public, must have notice of the laws they are obliged to follow; there ought not be one superior collection of the law for the rich and one inferior version of the code for the poor.

A. Citizens must have free access to the laws that govern and bind them.

It is well established that "ignorance of the law is no excuse." *See*, *e.g.*, *Lambert v. California*, 355 U.S. 225, 228 (1957). Indeed, "[e]very citizen is presumed to know the law thus declared. . . ." *Nash v. Lathrop*, 6 N.E. 559, 560 (Mass. 1886). Yet intrinsic in this maxim

are presumptions about citizens' ability to *know* the law and therefore presumptions about citizens' ability to *access* the law.

For that reason, "it needs no argument to show that justice requires that all should have free access to" the laws that govern them. *Id.* Specifically, "[d]ue process requires people to have notice of what the law requires of them so that they may obey it and avoid its sanctions." *BOCA*, 628 F.2d at 734. Despite these well-established principles, Georgia seeks to enforce a copyright over its official code. This leaves citizens with two equally inappropriate alternatives: pay a substantial fee, committing themselves to lengthy terms of service obligations in using the law, or forego notice of the official code altogether, relying on the unofficial version "at their peril." O.C.G.A. § 1-1-1.

The requirement of notice is firmly embedded in both our Constitution and in our culture. It manifests, for example, in the Constitution's Due Process Clauses. *See* U.S. Const. amends. V, XIV. Due process requires that "citizens must have free access to the laws which govern them." *BOCA*, 628 F.2d at 734. If, however, "access to the law is limited, then the people will or may be unable to learn of its requirements and may be thereby deprived of the notice to which due process entitles them." *Id.* The principle of notice also appears in Article I's Ex Post Facto Clauses. *See* U.S. Const. art. I, sec. 9, cl. 3; *id.* art. I, sec. 10, cl. 1. The same policy undergirding this prohibition has inspired all fifty states to enact open meeting laws and nearly every state and the District of Columbia to enact open record laws.

Open Government Guide, RCFP.org, https://www.rcfp.org/open-government-guide/ (last visited Oct. 3, 2019). These examples demonstrate the clear "nexus between openness, fairness, and the perception of fairness. . . ." *Richmond Newspapers, Inc.*, 448 U.S. at 570. An official code hidden by an expensive fee that many citizens cannot afford disturbs this nexus.

Though "it is hard to see how the public's essential due process right of free access to the law . . . can be reconciled with the exclusivity afforded a private copyright holder," such a situation has arisen in Georgia. *BOCA*, 628 F.2d at 736. The Official Code of Georgia Annotated bears all indicia of authoritativeness: the Code merges statutes with annotations, which are collectively known as the *official* code; Georgia courts rely on annotations found in the O.C.G.A. to divine the meaning of statutes and intent of the legislature; and citing anything but the O.C.G.A. invites potential "peril." *Code Revision Comm'n v. Public.Resource.Org, Inc.*, 906 F.3d 1229, 1248 (11th Cir. 2018), *cert. granted sub nom. Georgia v. Public.Resource.Org, Inc.*, 139 S. Ct. 2746 (2019). Nonetheless, Georgia bars citizens from having "free access to the laws which govern them." *BOCA*, 628 F.2d at 734.

Appellate courts have taken notice of the due process concerns that arise when a copyright is asserted over information merged with law. *See Veeck v. Southern Bldg. Code Congress Int'l, Inc.*, 293 F.3d 791, 793 (5th Cir. 2002) (model building codes incorporated into law could not be copyrighted); *BOCA*, 628 F.2d at 736 (state regulations that incorporated private model

materials could not be copyrighted). For the courts in these cases, it was difficult "to reconcile the public's right to know the law with the statutory right of a copyright holder to exclude his work from any publication or dissemination." *Veeck*, 293 F.3d at 799. Equally concerning was the reality that the holder of a copyright (such as Georgia) "has the right to refuse to publish the copyrighted material at all and may prevent anyone else from doing so, thereby preventing any public access to the material." *BOCA*, 628 F.2d at 735. It is difficult to see how "this aspect of copyright protection can be squared with the right of the public to know the law to which it is subject." *Id.* This same prospect looms here, and the same due process concerns therefore manifest.

The rule of law demands that every citizen is "entitled to be informed as to what the State commands or forbids." *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)). This entitlement does not—and ought not—depend on a citizen's financial capabilities. While "it is a maxim of universal application that every man is presumed to know the law, . . . freedom of access to the laws . . . should be co-extensive with the sweep of the maxim," *Banks & Bros. v. W. Pub. Co.*, 27 F. 50, 57 (C.C.D. Minn. 1886), Georgia's decision to tie access to the law with financial ability runs counter to fundamental concepts of due process.

B. Georgia's scheme implicates the due process interests of several vulnerable classes of citizens, including inmates and indigents.

Though asserting copyright over an official code implicates the due process concerns of the public writ large, a financial barrier to accessing the law is especially harmful for inmates and indigent citizens. These populations, whose due process rights entitle them to unimpeded access to the law, are unlikely to possess the financial means to pay the fee unlocking access to the O.C.G.A.

The effects of Georgia's current scheme are therefore wide-ranging, and the harms reach diverse segments of the population. For instance, inmates are likely to be injured by heightened barriers around an official code, since access to the code is an important function of inmates' right to "meaningfully access" courts. *See Lewis*, 518 U.S. at 356; *Bounds v. Smith*, 430 U.S. 817, 820–21 (1977). The Constitution requires that prisoners be given "the capability of bringing contemplated challenges to sentences or conditions of confinement before the courts." *Lewis*, 518 U.S. at 356. Due process itself mandates that inmates be provided the tools they need "in order to attack their sentences, directly or collaterally, and in order to challenge the conditions of their confinement." *Id.* at 355.

Georgia's current arrangement, though, threatens inmates' due process right to access courts and petition the government. First, a prisoner's entitlement to due

process is impeded when he cannot afford the materials that are necessary to adequately challenge his conviction or confinement. *Burns v. Ohio*, 360 U.S. 252, 258 (1959); *Griffin v. Illinois*, 351 U.S. 12, 19 (1956). Similarly, due process concerns arise when a prisoner is denied access to the research tools he needs to attack his sentence or challenge the conditions of his confinement. *Bounds*, 430 U.S. at 821. By requiring a substantial fee to access its official laws, Georgia jeopardizes inmates' ability to obtain the materials they need to perform appropriate research and adequately prepare their challenges.[4]

By foreclosing public dissemination of its official code, Georgia requires that inmates pay hundreds of dollars just to obtain access to that part of the O.C.G.A. that carries "authoritative weight in explicating and establishing the meaning and effect of Georgia's laws." *Public.Resource.Org, Inc.*, 906 F.3d at 1233. Many inmates cannot afford this cost, leaving them without "authoritative sources on statutory meaning and legislative intent" relied upon regularly by Georgia courts. *Id.* at 1248. Indeed, "in any situation wherein defendant's compilation differs in any way from statutory

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[4] Indeed, one lower court struggled to "fathom" how an inmate could possibly prepare a 28 U.S.C. § 2255 Motion to Vacate without access to the United States Code Annotated "and its accompanying annotations, rules and form." *Mitchell v. United States*, 419 F. Supp. 2d 709, 713 (W.D. Pa. 2005). Elsewhere, the failure of a prison to provide copies of state annotated statutes to a prisoner trying to attack his federal sentence amounted to a constitutional injury. *Dahler v. Goodman*, 139 F.3d 911 (10th Cir. 1998).

provisions of the Official Code of Georgia Annotated as published by [LexisNexis], *it is the [LexisNexis] publication which is controlling.*" O.C.G.A. § 1-1-1 (emphasis added). A litigant cannot capably bring a challenge to his conviction or confinement while he lacks such an important and authoritative source.

Access to annotated statutes is an important component of the constitutional right of inmates to access courts, but prisoners are not alone in feeling the effects of the expensive fee Georgia has placed on its official code. By copyrighting the O.C.G.A., Georgia also handicaps its indigent citizens' ability to access the law, leaving them with an unofficial, inferior version of the Code that they can use and cite only "at their peril." *Public.Resource.Org, Inc.*, 906 F.3d at 1250 (quoting O.C.G.A. § 1-1-1). The disparity Georgia has created in its citizens' ability to access the O.C.G.A. produces informational asymmetries between the poor and the wealthy, signifying that the affluent and well-funded are entitled to a superior version of the law than the poor and underfinanced.[5]

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[5] The inferiority of the free online version of the Code is no secret. In fact, the O.C.G.A. itself emphasizes that it is "controlling" over the unofficial compilation. O.C.G.A. § 1-1-1. Georgia State Senator William Ligon, who chairs the Code Commission, admitted, "If you don't have that annotation, then *you're at a disadvantage*. Those are tools that help lead you to interpretations of code sections. And that can make the difference between winning or losing a case." Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. News & World Report (Aug. 22, 2019), https://www.usnews.com/news/best-states/articles/2019-

A state, of course, ought not draw lines between citizens "on account of their poverty." *Douglas v. California*, 372 U.S. 353, 355 (1963). But such line drawing has long been an ailment that Americans have sought to prevent and cure. Thus, while "[p]roviding equal justice for poor and rich . . . is an age-old problem," *Griffin v. Illinois*, 351 U.S. at 16, the pursuit for equal access to the law regardless of financial standing dates back to 1215 and the royal concessions of the Magna Carta: "To no one will we sell, to no one will we refuse, or delay, right or justice. . . ." *Id*. at 16–17. The vision articulated in that venerable document suffers where one version of the law is available to the well-off while another, inferior version is relied upon precariously by the poor.

A "man's mere property status, without more, cannot be used by a state to test, qualify, or limit" his rights. *Edwards v. California*, 314 U.S. 160, 184 (1941) (Jackson, J., concurring). When it comes to fundamental interests such as access to the law, a state should not enforce divisions between the rich and poor. Neither should it sacrifice open access to the law for financial gain.

08-22/can-states-copyright-annotations-to-their-own-laws (emphasis added).

CONCLUSION

For the foregoing reasons, this Court should affirm the Eleventh Circuit.

Respectfully submitted,

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