

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 OF *AMICI CURIAE*
NEXT-GENERATION LEGAL RESEARCH
PLATFORMS AND DATABASES
IN SUPPORT OF RESPONDENT**

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INTEREST OF *AMICI CURIAE*

Amici – Casetext, Docket Alarm, Fastcase, Free Law Project, Internet Archive, Judicata, Justia, and UniCourt – are nonprofit and for-profit creators of next-generation legal research and analytics platforms and databases.¹ Full descriptions of *amici* can be found in the Appendix.

Amici's groundbreaking innovations – advances like data mining and visualization, legal analytics, research automation, new distribution formats, and many others – are dramatically improving how the law is accessed, understood, and used by all stakeholders in the legal system, to the ultimate benefit of the public. The Court's decision in this case will determine whether these emerging innovations will be allowed to flourish and reach their full potential.

Amici recognize the importance of, and indeed benefit from, copyright. But an overbroad application of copyright to core legal materials will harm innovation, competition, and the public interest. Petitioners' overly narrow view of the scope of the government edicts doctrine would give state and private parties control over core legal information that belongs in the public domain. This would have profoundly negative consequences for legal innovation and the legal system as a whole.

¹ The parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person, other than *amici* or their counsel, made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

This case is about whether states can assert copyright over core legal materials and thereby impede the public and legal technology innovators from knowing, understanding, and using the law. Meaningful access to core legal information is the linchpin of a democratic society governed by the rule of law. If an entity – public or private – can assert control over the access, distribution, and use of such essential information, foundational rule of law values and important principles of democratic governance will be subverted. And valuable legal innovation that improves the legal system as a whole will be hindered.

This Court and others have recognized that certain core legal information is beyond the reach of copyright and that, at a minimum, judicial opinions and statutes belong in the public domain. Petitioners are now asking the Court to declare this very limited set of materials – based on a restrictive reading of precedents articulated during the 1880s – to be the entirety of what constitutes core legal information protected under the government edicts doctrine.

Accepting Petitioners' view would weaken the rule of law and impede democratic principles of participation, transparency, and accountability. These values compel an understanding that the government edicts doctrine encompasses more than just statutes and judicial opinions. *Amici* call the materials and information that properly fall within the ambit of the government edicts doctrine the legal core. Materials in the legal core carry a special status; they define and shape the meaning and operation of the law. Unimpeded access to this core is essential for anyone trying to understand their legal rights and obligations

and participate in democratic life. Public access to the legal core must be ensured by placing it within the ambit of the government edicts doctrine.

Petitioners' cramped reading of the scope of the government edicts doctrine would also stifle ongoing and much-needed innovation and competition in the legal research and analytics market. Innovators like *amici* have created tools that empower all stakeholders in the legal system – judges, lawyers, and the public – to access, understand, and use the law in new and transformative ways. Not only do *amici's* innovations help level the field to increase access to justice, they also raise the entire field by improving the quality of legal advocacy, reasoning, and decision-making. But the risk of copyright assertions and liability hamper this innovation. To unleash the full potential of their products and services, innovators in legal research and analytics need definitive assurance that the legal core cannot be restricted by copyright.

ARGUMENT

I. The Government Edicts Doctrine Must Encompass the “Legal Core.”

The question at the heart of this case is: What is the scope of the government edicts doctrine and what materials belong within it, such that they are in the public domain, freely available to all on equal terms?

Petitioners assert that the government edicts doctrine covers only materials that carry the binding force of law. However, fundamental rule of law values and important principles of meaningful participation in democratic life compel a less restrictive reading of this doctrine. In order to understand what the law

actually says and how it truly operates, the public needs unimpeded access to a wider set of information than just statutes and judicial opinions.

Amici do not propose or endorse a specific test for determining the full scope of the government edicts doctrine. At a minimum, however, it must include legal information that has been created, adopted, or imbued with the authority, imprimatur, or sanction of the state – like the Official Code of Georgia Annotated (“OCGA”) at issue in this case.

In this brief, *amici* use the term the “legal core” to refer to the set of materials and information that properly fall within the ambit of the government edicts doctrine. Based on the principles underlying this Court’s reasoning that “the authentic exposition and interpretation of the law, which binding every citizen, is free for publication to all,” *Banks v. Manchester*, 128 U.S. 244, 253 (1888), the legal core necessarily contains materials beyond just statutes and judicial opinions. The legal core in its entirety must be covered by the government edicts doctrine and be free from copyright.

A. The Legal Core Includes More than Just Statutes and Judicial Opinions.

To conceptualize the legal core, consideration of the universe of legal materials is instructive. At the center of this universe – undeniably free from copyright – are statutes and judicial opinions. Under existing precedent, judicial opinions and statutes are plainly within the ambit of the government edicts doctrine. *See, e.g., Banks*, 128 U.S. at 253 (1888) (establishing that judicial opinions are uncopyrightable); *see also John G. Danielson, Inc. v. Winchester-Conant Props., Inc.*, 322 F.3d 26, 38 (1st

Cir. 2003) (discussing how lower courts have extended these precedents to cover statutes). Neither party disputes that these materials fall under that doctrine and therefore within what *amici* are calling the legal core. They are rightly protected as the most essential of the basic building blocks of law, but are not the entirety of what the legal core includes.

Using these most essential building blocks of law, public and private entities alike create ancillary materials – annotations, compilations, commentaries, treatises, articles, summaries, public records, etc. – that explain and enrich the legal universe for the benefit of those who need to understand, and engage with, the law. The vast majority of these ancillary materials are the product of purely private authorship and are properly subject to copyright. While copyright can be an important force in helping to enrich the universe of available information, it must not be stretched beyond its proper bounds. To do so gives a state or private entity the power to dictate the distribution and use of core legal information upon which everyone depends to understand what the law is and how it operates.

Petitioners assert that the government edicts doctrine is so narrow that only materials that have the binding force of law are included – namely statutes and judicial opinions. This ignores the fact that some legal information carries sufficient authority or involvement of the state that it becomes just as essential as statutes and opinions in the actual operation of the law and governmental institutions.

For example, materials like the OCGA can be so imbued with official character or created under state authority, and their content so elevated by state

imprimatur, that they are cited to and treated as the official law. *See* Resp't's Br. 5-8, 47-48. Other materials may be incorporated into statutes and regulations, their content becoming part of the official governing standards. Still others might be government-sanctioned or authorized expositions of the meaning, scope, and application of the law. Beyond these, various other court and public records are necessary to understand the operation and administration of legal and government systems. All of these materials are examples of core legal information that likely should remain in the public domain.

Wherever the Court ultimately draws the line on the scope of the government edicts doctrine – and hence the scope of the legal core – fundamental rule of law values and important democratic principles of participation, transparency, and accountability compel an understanding of the legal core that encompasses more than just statutes and judicial opinions.

B. Ensuring the Rule of Law Depends on Unimpeded Access to the Legal Core.

Access to the legal core is central to the rule of law. *See, e.g., Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939) (“Living under a rule of law entails various suppositions, one of which is that ‘[all persons] are entitled to be informed as to what the State commands or forbids.’”). Information in the legal core adds a layer of official meaning and direction to the law or conveys critical information about the operation of government and legal systems. Such information is essential to understanding the full

contour and meaning of the rules that govern behavior and protect rights.

Copyright assertions by states and companies erect major barriers to public access to the legal core. Therefore, an overly narrow reading of what materials are free from copyright under the government edicts doctrine would make it harder and costlier for the public to obtain basic and essential legal information. The public's ability to comprehend, comply with, and use the laws will be hampered, damaging the rule of law.

Indeed, in this case, anyone who needs to know the full official meaning of the Georgia Code must currently pay approximately \$400 for the right to do so because Petitioners claim the OCGA is copyrightable. Pet'rs' Br. 53. But even that may not be enough: *Amicus* Fastcase wanted to improve public access and comprehension of the Code through innovative product offerings but was told by Petitioner it could not obtain a license to the OCGA at any price. JA207-08. In other cases, companies that have been granted the right to republish state court records claim copyright over those records and impose burdensome restrictions on the use and dissemination of public court data, limiting the public's ability to understand how the legal system operates. *See, e.g., Terms of Use, JUDICI*, https://www.judici.com/agreements/terms_of_use (last visited Oct. 14, 2019) (outlining access and use restrictions).

When people are impeded from fully understanding the meaning and operation of the law, their ability to participate in the legal system is impaired. More significantly, they become vulnerable to unknowingly violating the laws through no fault of

their own. This subverts foundational due process values. A fundamental tenant of the American legal system is that ignorance of the law is no excuse for violating it. *See, e.g., Commil USA, LLC v. Cisco Sys.*, 135 S. Ct. 1920, 1930 (2015) (“[T]he general rule that ignorance of the law or a mistake of law is no defense to criminal prosecution is deeply rooted in the American legal system.”) (internal citation omitted). But this tenet only makes sense if people have the opportunity to actually access and meaningfully understand the law in the first place. If access to the legal core can be controlled or tolled, the ability to access the laws would become partly a function of wealth, and people who are economically and socially marginalized would be disproportionately affected.

Adopting Petitioners’ overly narrow reading of the government edicts doctrine would undermine fundamental assumptions underpinning the rule of law and due process.

C. Participation in Our Democratic System Requires Unimpeded Access to the Legal Core.

A more encompassing view of what is included in the government edicts doctrine accords with the informational needs of a democratic society.

Of all the knowledge required to meaningfully participate in our democratic system, none is more central than an understanding of what the laws say and mean. The public’s ability to know, understand, and use the law is essential not just to the effective administration of justice, but also to robust engagement in democratic processes and institutions. *See, e.g., Veek v. S. Bldg. Code Cong. Int’l*, 293 F.3d 791, 799 (5th Cir. 2002) (“Citizens may reproduce

copies of the law for many purposes, not only to guide their actions but to influence future legislation.”).

Indeed, an informed citizenry is the foundation of the American system of governance. As James Madison noted, in the context of supporting education, “[a] popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or a Tragedy . . . a people who mean to be their own Governors, must arm themselves with the power which knowledge gives.” Letter from James Madison to W.T. Barry (Aug. 4, 1822), *in* 9 THE WRITINGS OF JAMES MADISON 103, 103 (Gaillard Hunt ed., 1910).

Madison’s insight about the critical importance of shared, unrestricted knowledge to civic and political life is broadly applicable. “The right to receive ideas is a necessary predicate to the *recipient’s* meaningful exercise of his own rights of speech, press, and political freedom.” *Bd. of Educ. v. Pico*, 457 U.S. 853, 867 (1982) (emphasis in original); *see also Buckley v. Valeo*, 424 U.S. 1, 49 n.55 (1976) (per curiam) (“Democracy depends on a well-informed electorate.”).

Ensuring that the public has the opportunity to understand the full contours and operation of the law – which is essential to realizing the basic guarantees of our society – requires unimpeded access to the legal core. Allowing copyright to limit the distribution and use of information within the legal core limits the public’s ability to participate on equal terms in the policymaking and legislative processes that so profoundly shape people’s lives and communities. Economically and socially marginalized people would have the hardest time surmounting these artificial barriers. Their access to information that is central to

the exercise of their most basic civil and political rights would be restricted.

Relatedly, unimpeded access to the legal core is a prerequisite to fulfilling one of the central purposes of the First Amendment: “protect[ing] the free discussion of governmental affairs.” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). The central aim of “assuring freedom of communication on matters relating to the functioning of government . . . [is to protect] all members of the public from abridgement of their rights of access to information about the operation of their government, including the judicial branch.” *Press-Enterprise Co. v. Super. Ct. of California*, 464 U.S. 501, 517 (1984) (Stevens, J., concurring) (internal citations omitted).

Restricting the flow of essential information about the law and its operation will create critical gaps in the public’s legal and civic knowledge. Such gaps in knowledge are acutely pernicious to meaningful democratic participation when they can only be filled by paying the entities that claim copyright over the legal core.

II. Full Access to the Legal Core Is Essential for Innovation and Competition.

We are currently in “the golden age of legal research innovation.” Robert Ambrogi, *Upsetting the Applecart of Legal Research*, ABOVE THE LAW (May 15, 2017, 6:15 PM), <http://abovethelaw.com/2017/05/upsetting-the-applecart-of-legal-research/?rf=1>.

Innovators like *amici* have created tools that empower everyone in the legal field: judges, lawyers, and the public. Not only do *amici* help level the field to increase access to justice, they also seek to raise the

entire field by improving the quality of legal advocacy, reasoning, and decision-making.

By creating innovative technologies that are redefining the way the legal core is accessed, understood, and used, *amici* and other innovators are enabling the next generation of legal research and analytics – much as LexisNexis and West once did. But pioneering technological tools based on digitization, artificial intelligence, or data visualization require complete access to the legal core to realize their full potential. Allowing overbroad copyright restrictions over any portion of the legal core will restrict necessary inputs into these breakthrough technologies, forestalling or even foreclosing their transformative benefits.

A. Innovation Is Transforming How We Access, Understand, and Use the Law.

The next generation of legal research tools is dramatically improving how we access, understand, and use the law. But these tools cannot achieve their full potential when overbroad copyright prevents access to the complete legal core. Indeed, fear of potential copyright liability has already chilled legal innovation, including by some *amici*.

Three crucial stakeholder groups interact with the law: lawyers, judges, and the public. Members of the public range from large businesses needing to comply with a patchwork of laws and regulations to individuals simply desiring to know their rights. Lawyers advocate on behalf of the public and judges hear their cases. Each can derive significant benefits from the advanced capabilities of innovative legal research and analytics tools.

For example, as a result of *amici's* products and services, a law clerk can quickly dissect the parties' cited authorities using a color-mapping tool that increases comprehension and shows how distinct cases connect to one another; an attorney can use software to analyze the language in her brief, identifying whole strands of relevant case law that hours of traditional search techniques missed; and a member of the public can comment on laws being written in real-time, directly to the lawmakers drafting them.

What follows are just a few examples of how new research and analytic tools are transforming the legal system. Critically, each of these tools requires full access to the legal core to reach its full potential.

i. Next-Generation Legal Research and Analytics Expand Access to the Law.

“Access” means knowing what the law actually says. Open access for everyone has been greatly aided by the efforts to digitize the legal core and freely distribute it online. For example, *amicus* Free Law Project creates an open ecosystem for legal materials and research by providing free, public, and permanent access to primary legal materials on the Internet. *About & Mission*, FREE LAW PROJECT, <https://free.law/mission/> (last visited Oct. 15, 2019). *Amicus* UniCourt provides case research and access to dockets and documents for federal and state trial courts, as well as case tracking for real-time notifications on new case updates. UNICOURT, <https://unicourt.com/> (last visited Oct. 15, 2019).

New tools that rely on the digitization of the legal core, including tools that make its materials easy to find, save, organize, and annotate, have also proven incredibly useful. For example, the free service offered

by Cornell's Legal Information Institute (LII) provides easy online access to federal statutory law. This year alone, the pages of LII's U.S. Code has been viewed close to 40 million times. Legal Information Institute (@LIICornell), TWITTER (Oct. 14, 2019, 11:23 AM), *https://twitter.com/LIICornell/status/1183810673488355328*). And Cornell's U.S. Code is feature-rich. Among other things, it automatically extracts statutory definitions from the text and displays them as hypertext in relevant statutes. *https://law.cornell.edu/uscode*.)

In addition, *amicus* the Internet Archive takes important public documents, such as the Mueller Report, and creates more accessible and contextualized versions of them to make their contents more useful to the public and fully accessible to the visually impaired and print-disabled. Mark Graham, *The Mueller Report – Now With Linked Footnotes and Accessible*, INTERNET ARCHIVE BLOGS (July 19, 2019), <http://blog.archive.org/2019/07/19/the-mueller-report-now-with-linked-footnotes-and-accessible/>.

Finally, the OpenGov Foundation created a platform called “Madison” for lawmakers to share proposed legislation with their citizens.² Using Madison, citizens could easily access the law as it was being written, leave comments, annotate specific content, and interact with other civic-minded participants.

² The OpenGov Foundation discontinued Madison in February 2019. The OpenGov Foundation, *Say Goodbye to Madison*, MEDIUM (Feb. 4, 2019), <https://medium.com/@OpenGovFdn/say-goodbye-to-madison-84629ce013a0>.

ii. *Innovative New Legal Tools Will Increase Comprehension of the Law.*

“Understanding” means comprehending how, for example, a single statute or case fits into a complex latticework of laws, regulations, and cases. Virtually no part of the law stands in isolation, and truly understanding the implications of a statute or case requires comprehension of the sometimes-byzantine legal context in which it appears. Next-generation legal research and analytics are advancing understanding of the law in numerous ways.

Technologies such as *amicus* Casetext’s CARA tool help ensure that searches for legal authority are as relevant and comprehensive as possible, far beyond what can be found by previous generation Boolean keyword search strategies. CARA analyzes the language in a brief to find relevant but not-yet-included case law that might otherwise have been wholly overlooked. See Kevin Burke, *An Exciting Opportunity for Judges to Get Good, Solid Research*, AM. JUDGES ASS’N (May 16, 2017), <http://blog.amjudges.org/?p=5968> (CARA “can help judges and their clerks quickly find important case law that the parties may have overlooked.”).

Products like *amicus* Judicata’s color-mapping research tool increase the ease of reading and comprehension of legal cases. While reading a judicial opinion, a reader enabling Judicata’s color-mapping tool will see each case citation highlighted in a different color depending on its treatment within the opinion, allowing her to quickly find which precedent is most essential. See *Case Outline: Harry Locklin v. City of Lafayette*, JUDICATA, <https://www.judicata.com/demo/color> (last visited Oct. 8, 2019).

Finally, tools such as case law maps and language technology developed by legal-research company Ravel enhance understanding of how cases relate to one another, allowing a more comprehensive view of binding and persuasive legal authority.³ Case law maps illuminate the citation relationships among cases to quickly identify important precedents and “needles in the haystack,” while the language technology identifies key passages in cases based on citations from other cases and collects all interpretations of those passages for the user. Brief for Next-Generation Legal Research Platforms as Amici Curiae Supporting Defendant/Appellant at 12, *Code Revision Comm’n v. Public.Resource.Org, Inc.*, 906 F.3d 1229 (11th Cir. 2018) (No. 17-11589-HH).

iii. Both Lawyers and Ordinary Citizens Use the Law, and Innovative Legal Research and Analytics Will Enhance These Efforts.

“Use” is the fruit of understanding. “Using” the legal core means interpreting it to give guidance on whether and how it should apply in a particular scenario.

“Use” is primarily the work of judges and lawyers who have made the law their craft. For example, many large law firms use Casetext. *See, e.g., Fenwick Launches Casetext’s AI Litigation Research Tool,*

³ Ravel was acquired by Lexis soon after a prior legal-tech innovators *amicus* brief it joined was filed in the Eleventh Circuit in this case. *LexisNexis Announces Acquisition of Ravel Law*, LexisNexis (Jun. 8, 2017), <https://www.lexisnexis.com/en-us/about-us/media/press-release.page?id=1496247082681222>
It is not a signatory to this current brief.

Fenwick & West LLP (Feb. 9, 2017), <https://www.fenwick.com/media/pages/fenwick-launches-casetexts-ai-litigation-research-tool.aspx>.

Small firms and solo practitioners also benefit from innovation in legal research and analytics. Of the more than three thousand law firms that use Casetext, the majority are small firms that struggle to afford LexisNexis or Westlaw. *See also* Carolyn Elefant, *Part II: Casetext Is Three-Dimensional Research—Watch How a Real Lawyer Uses It*, MYSHINGLE (May 16, 2017), <http://myshingle.com/2017/05/articles/web-tech/part-ii-casetext-three-dimensional-research-watch-real-lawyer-uses> (explaining how a solo practitioner utilizes CaseText to improve legal research).

Members of the public also need to be able to use the legal core, including in the course of their daily lives. To take a few small examples, ordinary citizens must predict which materials they are required to recycle, which electrical configurations are allowed or prohibited when rewiring their house, or which driving maneuvers the traffic regulations prohibit — all of which explicitly depend on an understanding of and predictions about conduct that the law sanctions and prohibits.

Tools that make the legal core easier to understand, particularly for laypeople, significantly benefits ordinary citizens. The State Decoded project, for instance, enhances lay understanding through tools such as scroll-over definitions that translate legal jargon into common English. *See, e.g.*, VIRGINIA DECODED, <https://www.vacode.org> (last visited Oct. 15, 2019). In addition, Casetext provides free legal research services, a valuable public resource that is

currently used by approximately one million people each month.

Finally, various legal analytics, like those provided by *amicus* UniCourt, help lawyers and laypeople alike make more informed litigation decisions about cases, judges, attorneys, and parties. This includes how judges rule on various motions and pleadings, how long it takes to reach certain case milestones, the litigation experience and tactics of judges, attorneys, and parties, and examples of top filers for specific motions and pleadings.

B. Innovative Technologies Require Public Access to the Legal Core to Reach Their Full Potential.

Complete access to the legal core is crucial to maximize the value of innovative legal research and analytics technologies.

Judicata, for example, has relied on the availability and breadth of Respondent's Public.Resource.Org legal database. Judicata attributes its existence in part to the work performed by Public Resource; without these basic legal "building blocks," Judicata could not have built or refined its most innovative tools. Access to the portions of the legal core currently in the public domain has also enabled Judicata to pursue unexpected research paths and make serendipitous discoveries, such as its color-mapping tool.

In addition, Casetext's CARA requires full access to the legal core to function effectively. CARA's software builds on the Casetext research database, which grants users access to a law library with both Federal and State law and regulations. If CARA

doesn't operate upon the entire legal core, users of CARA cannot be assured that they have obtained comprehensive knowledge of relevant legal authority, and thus CARA's innovations may prove ineffective.

Allowing copyright to restrict public access to the legal core will harm not just legal innovators, like *amici*, but also everyone who is impacted by the legal system – which is to say, everyone.

C. Allowing Copyright to Restrict Use of the Legal Core Impedes Vital Legal Innovation and Competition.

Innovators like *amici* are providing badly needed innovation and competition in what has been a stagnant legal research and analytics market. Until the arrival of the next generation of legal research and analytics companies, the market had long been dominated by mostly two major players. The attendant lack of innovation caused by a reduced incentive to innovate impaired the quality of legal advocacy and limited access to justice. The legal research and analytics revolution is only beginning, and the journey of *amici* from smaller upstarts to serious alternatives to the status quo is still in its early stages. Enhancing competition and driving innovation require that the legal core, a key input to innovative legal tools, be free from copyright.

i. Innovators Like Amici Have Injected Badly Needed Competition and Innovation.

Until smaller innovators like *amici* emerged, the legal research industry was characterized by progressive consolidation, which adversely affected the quality of legal research over time.

Among publishers, for example, in 1977, “at least 23 legal publishers of some size and reputation were separately owned.” Olufunmilayo B. Arewa, *Open Access in a Closed Universe: Lexis, Westlaw, Law Schools, and the Legal Information Market*, 10 Lewis & Clark L. Rev. 797, 824 (2006). Today, two major incumbents have resulted from the consolidation: Reed Elsevier (now RELX Group), owner of LexisNexis, and Thomson, owner of West. Leslie Street & David R. Hansen, *Who Owns the Law? Why We Must Restore Public Ownership of Legal Publishing*, 26 J. Intell. Prop. L. 205, 206 (2019).

“With very few exceptions, almost all ‘official’ versions of state statutory codes and regulations are published by those two companies.” *Id.* at 206. See also Jill Schachner Chanen, *Exclusive: Inside the New Westlaw, Lexis & Bloomberg Platforms*, ABA JOURNAL (Jan. 25, 2010, 3:00 AM CST), http://www.abajournal.com/news/article/exclusive_inside_the_new_westlaw_lexis_bloomberg_platforms (characterizing online segment of the industry as a duopoly of LexisNexis and Westlaw). Ravel, an *amicus* on an earlier innovators’ brief in this case, was itself subsequently acquired by Lexis. *LexisNexis Announces Acquisition of Ravel Law*, LEXISNEXIS (Jun. 8, 2017), <https://www.lexisnexis.com/en-us/about-us/media/press-release.page?id=1496247082681222>.

This steady consolidation and market concentration adversely affected access, innovation, and the quality of database, research, and analytic tools. See Arewa, *supra*, at 826 (reporting that prices following legal publishing mergers have grown at rates exceeding inflation). Many consumers had (and

have) difficulty affording the services of the incumbents.

Amici and the next generation of powerful legal tools and services they create are beginning to add much needed competition. The innovations provided by *amici* are not merely free or cost-effective alternatives undercutting larger competitors like LexisNexis and West. Rather, innovators like *amici* represent a fundamental leap forward in the nature and scope of available legal technologies, promising dramatic improvements how everyone accesses, understands, and uses the law.

*ii. Copyright Over the Legal Core
Hampers Competition and
Innovation.*

Allowing overbroad copyright to restrict key inputs to innovative legal tools threatens to slow innovation and reduce competition, perpetuating the dominance of the few major players. Determining an appropriate scope for the government edicts doctrine will ensure that improper copyright assertions do not hamper innovations that are improving the work of lawyers and courts and enhancing access to justice for millions of Americans.

Fear of copyright liability has already substantially chilled innovation, including by *amici*. For example, after conducting a 50-state survey to help determine which new state court systems to onboard, *amicus* UniCourt specifically excluded Georgia in order to avoid the risk of a copyright infringement suit. Other innovators may find themselves forced to limit the amount of the legal core they utilize to minimize liability risk from potential copyright infringement suits.

An unnecessarily narrow view of what is covered by the government edicts doctrine would have harmful effects on innovation. Any doubt about the copyright status of materials in the legal core could prevent their use by innovators, many of whom are small and have limited ability to defend infringement lawsuits, however meritless. This is especially true in light of the asymmetries between what smaller innovators and the established players can afford to spend on litigation.

Providing clear guidance that no part of the legal core is copyrightable would protect the valuable competition and innovation that *amici* have injected into the market for legal research and analytics tools. Because the legal core is effectively an “essential input” for legal innovators, permitting one competitor to invoke copyright over any part of the legal core restrains the competition that innovation would otherwise create. In some cases, the copyright holder may simply refuse to license parts of the legal core to competitors. Georgia and LexisNexis have already done this: *Amicus* Fastcase partnered with the State Bar of Georgia to provide legal research and analytics tools to all Georgia attorneys, but was relegated to providing an unofficial version of the OCGA after being informed after repeated requests that no license would be granted, “at any price.” JA207-08. But this is an inadequate substitute; the OCGA itself warns that people who cite to unofficial publications do so “at their peril.” Ga. Code Ann. § 1-1-1, note (Judicial Decisions).

More importantly, without full access to the legal core, the tools and platforms developed by legal innovators will be less comprehensive, and will be viewed as less trustworthy, than those of their

competitors who leverage copyright to exclude rivals. Innovators may have to reduce their offerings and potentially even exit the market. Unimpeded public access to the legal core is required to facilitate the competition that is already producing better products and services and lower prices.

Allowing copyright over any portion of the legal core intensifies competitive concerns by reinforcing the copyright holder or exclusive licensee's market power. The effect will be, to borrow the language of the American Association of Law Libraries (AALL), to "give one publisher substantial control over the legal information market," and "severely limit[] the ability of others to enter the market and compete effectively." John Dethman, *Trust v. Antitrust: Consolidation in the Legal Publishing Industry*, 21 *Legal Reference Servs. Q.* 123, 135 (2002). In the context of a legal research market in transition, the effect of giving any one entity exclusive access to parts of the legal core will prevent the legal research and analytics revolution from reaching its full potential. Courts, lawyers, the legal system, and the public as a whole will all suffer.

CONCLUSION

The government edicts doctrine must encompass the legal core. The legal core includes, at a minimum, the set of materials and information that carries the authority or involvement of the state and is therefore as essential as statutes and opinions in the actual operation of the law and the public's engagement with it. The doctrine must not be limited to only statutes and caselaw.

Allowing copyright over any part of the legal core will exacerbate existing barriers to legal information, impede innovation, and intensify current competitive concerns within the legal research and information industry. Restricting access to and transformative uses of the legal core harms innovation in legal research and analytics, to the detriment of the lawyers, judges, and the public who would benefit from better and cheaper products and services. It also subverts fundamental rule of law values and important democratic principles of participation, transparency, and accountability. The Court should reject Petitioners' overly narrow construction of the government edicts doctrine.

Respectfully submitted,

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APPENDIX

Amicus Casetext is a legal technology company that provides information and research services to litigators, leveraging artificial intelligence and the legal community's expertise to provide equal access to justice. Its CARA software automates legal research tasks with artificial intelligence and machine-learning technologies to analyze litigation documents and algorithmically query federal and state law. Casetext's CARA tool provides a user with relevant cases immediately after uploading a brief or complaint. The system automatically analyzes the document's language to find relevant case law not cited in the original document that might otherwise be missing from traditional case law searches.

Amicus Docket Alarm, owned by Fastcase, is a legal technology company that provides docket tracking and analytics for state and federal courts. Docket Alarm provides full-text search of briefs, pleadings, and motions culled from docket sheets, as well as predictive analytics for the Patent Trial and Appeal Board, federal courts, and state courts. Attorneys can also sign up to receive alerts on docket updates through Docket Alarm's real-time tracking system.

Amicus Fastcase* is a legal technology company that provides tools to make research easier and more intuitive through complex search-data visualization. Thirty-two state bar associations make Fastcase's legal research tools available to their members for free, and more than 900,000 American lawyers have subscription access to the service. It also offers its research service through free mobile apps. Fastcase allows legal researchers to see suggested search terms through a case law map, provides unrestricted search results, suggests cases a researcher may have missed, and outlines case connections with an interactive timeline of case history. The integration of its visual timeline tool with search results quickly highlights the network of citations in judicial opinions and enables researchers to identify the most relevant cases immediately.

Amicus Free Law Project is a nonprofit organization seeking to create a more just legal system. To accomplish that goal, Free Law Project provides free, public, and permanent access to primary legal materials on the Internet for educational, charitable, and scientific purposes. Its work empowers citizens to understand the laws that govern them by creating an open ecosystem for legal materials and research. Free Law Project also supports academic research by developing and providing public access to technologies useful for research.

* Ed Walters, CEO of Fastcase, and Tim Stanley, CEO of Justia, are on Respondent's Board of Trustees, but neither they nor their respective organization provided any funding towards the preparation of this brief nor authored it in whole or in part.

Amicus Internet Archive is a public nonprofit organization that was founded in 1996 to build an Internet library, with the purpose of offering researchers, historians, scholars, artists, and the general public permanent access to historical collections in digital format. The Internet Archive receives data donations and collects, records, and digitizes material from a multitude of sources, including libraries, educational institutions, government agencies, and private companies. The Internet Archive then provides free public access to its data, including text, audio, video, software, and archived web pages.

Amicus Judicata provides research and analytic tools to turn unstructured case law into structured and easily digestible data. Judicata's color-mapping research tool highlights connections between cases and makes the law more accessible to both lawyers and nonlawyers. Its "Clerk" tool helps not only attorneys, but also *pro se* individuals, by reading and evaluating drafts of briefs across three dimensions, identifying quotation errors, and providing the user with "action items" and areas for improvement. Stephen Rynkiewicz, *Judicata Automated Review Scores Brief's Lines of Attack*, ABA Journal (Oct. 17, 2017, 4:19 PM), http://www.abajournal.com/news/article/judicata_automated_review_scores_brief.

Amicus Justia works to advance the availability of legal resources for society. It is committed to making legal records free and easily available on the Internet. It provides Internet users with free case law, codes, regulations, legal articles, and other legal resources. Justia works with educational, public interest, and

other organizations to make legal information easily available online.

Amicus UniCourt is a legal technology company dedicated to organizing court records to make them universally accessible and useful. Leveraging the latest advances in machine learning, indexing, and other technologies, UniCourt provides attorneys, businesses, and consumers with access to case research (docket searching), case tracking, document downloads, legal analytics, and bulk access to court data through their Legal Data APIs. In addition to covering all U.S. Courts of Appeals, district courts, and bankruptcy courts, UniCourt also provides access to state court records.