

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF GEORGIA, ET AL.,
Petitioners

v.

PUBLIC.RESOURCE.ORG, INC.

***APPLICATION FOR AN EXTENSION OF TIME IN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT***

To the Honorable Clarence Thomas, Associate Justice of the United States and
Circuit Justice for the Eleventh Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.2 of this Court, the
State of Georgia and the Georgia Code Revision Commission on behalf of and for the
benefit of the General Assembly of Georgia (“Applicants”) respectfully request a 46-day
extension of the time in which to file a petition for a writ of certiorari in this Court, to
and including Monday, March 4, 2019. The U.S. Court of Appeals for the Eleventh
Circuit entered judgment on October 19, 2018, in *Code Revision Comm’n ex rel. General
Assembly of Georgia v. Public.Resource.Org, Inc.*, No. 17-11589. A copy of the Eleventh

Circuit’s opinion is attached as Exhibit 1. See 906 F.3d 1229 (11th Cir. 2018). A copy of the judgment is attached as Exhibit 2. This Court’s jurisdiction would be invoked under 28 U.S.C. § 1254(1). Applicants’ time to file a petition for a writ of certiorari in this Court will currently expire on January 17, 2019. This application is being filed more than 10 days before that date, and no prior application has been made in this case.

Under the Copyright Act, “[c]opyright protection subsists . . . in original works of authorship fixed in any tangible medium of expression.” 17 U.S.C. § 102(a). Although copyright protection is not available for works of the federal government, see *id.* § 105, there is no similar limitation in relation to state governments. See, e.g., *County of Suffolk v. First Am. Real Estate Sols.*, 261 F.3d 179, 187 (2d Cir. 2001). However, this Court has held that judicial opinions are not copyrightable, see *Banks v. Manchester*, 128 U.S. 244, 253-254 (1888), and other courts have extended that holding to state statutes. See generally *John G. Danielson, Inc. v. Winchester-Conant Props., Inc.*, 322 F.3d 26, 38 (1st Cir. 2003) (summarizing case law). The resulting rule—sometimes known as the government-edicts doctrine—has “proven difficult to apply when the material in question does not fall neatly into the categories of statutes or judicial opinions.” *Ibid.* Although the scope of the government-edicts doctrine is frequently litigated, and “appellate courts have reached arguably inconsistent results in such cases,” *ibid.*, this Court has not revisited the doctrine since 1888. See *Callaghan v. Myers*, 128 U.S. 617 (1888).

This case involves the State of Georgia’s registered copyright in non-binding statutory annotations appearing in the Official Code of Georgia Annotated (“OCGA”). The case presents the question whether the government-edicts doctrine extends to texts like the annotations that lack the “force of law,” but which a court deems “sufficiently law-like” to implicate “policy interests” that the court determines resemble those underlying this Court’s holding that judicial opinions cannot be copyrighted. *Code Revision Comm’n*, 906 F.3d at 1242 (Ex. 1, at 26-27). In the decision below, the Eleventh Circuit answered that question in the affirmative, stripping the entire OCGA of copyright protection. Although the Eleventh Circuit acknowledged that “[t]he question is a close one,” raising “important considerations of public policy . . . on either side,” it concluded that “the annotations in the OCGA are sufficiently law-like” to fall within the scope of the government-edicts doctrine, *id.* at 1233 (Ex. 1, at 4)—an outcome inconsistent with decisions of other courts of appeals in similar contexts. See, e.g., *County of Suffolk*, 261 F.3d at 195 (declining to apply government-edicts doctrine to official county tax maps); cf. *Code Revision Comm’n*, 906 F.3d at 1238-1239 (Ex. 1, at 18-19) (noting that courts of appeals have differed on whether to “extend the [government-edicts doctrine] in other, related contexts”).

Undersigned counsel and the University of Virginia Supreme Court Litigation Clinic are working diligently, but respectfully submit that the additional time requested is necessary to complete preparation of a petition for a writ of certiorari. We represent Applicants *pro bono*. Undersigned counsel were engaged for the first time at the certiorari stage, and substantial work remains to master the full record of the case,

to complete research on the authorities supporting this Court's review, and to prepare the petition and appendix for filing. Among other things, this case will require detailed research regarding the text and history of the Copyright Act, this Court's precedents on the government-edicts doctrine, and lower courts' differing interpretations of those authorities. In particular, substantial research into the historical context for this Court's 19th-century precedents on the government-edicts doctrine will be necessary.

The undersigned counsel of record has also faced numerous overlapping deadlines in other matters, including an amicus brief filed in this Court on November 14, 2018, in *Food Marketing Institute v. Argus Leader Media*, No. 18-481; a brief filed on November 21, 2018, in *Algonquin Gas Transmission, LLC v. Town of Weymouth*, No. 18-1686 (1st Cir.); a brief filed on November 30, 2018, in *Idaho Conservation League v. Wheeler*, No. 18-1141 (D.C. Cir.); a reply brief due in late December in *United States v. Atilla*, No. 18-1589 (2d Cir.); and assisting with preparation for the January 8, 2019 oral argument in *Algonquin Gas Transmission, LLC v. Town of Weymouth*, No. 18-1686 (1st Cir.).

Wherefore, Applicants respectfully request that an order be entered extending their time to file a petition for writ of certiorari up to and including March 4, 2019.

Respectfully submitted,



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