No. 18-1150

IN THE

Supreme Court of the United States

STATE OF GEORGIA, *et al.*,

Petitioners,

v.

PUBLIC.RESOURCE.ORG, INC.,

Respondent.

On Petition for a 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 AND DIGITAL ACCESSIBILITY ADVOCATE IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICI CURIAE*

Amici are nonprofit and for-profit creators of next-generation legal research platforms and databases that provide innovative tools and services, and a digital accessibility researcher and advocate.[1] The next-generation tools developed by *amici* dramatically improve the ways in which the public, courts, lawyers, and other users access, understand, and use the law.

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 Casetext is a legal technology company that provides information and research services to

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[1] Parties' counsel were given timely notice of *amici's* intent to file this brief pursuant to Rule 37.2(a). 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.

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 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.

Amicus Fastcase[2] 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

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[2] 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.

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 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 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 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.

Amicus Sina Bahram is a digital accessibility researcher, inclusive design expert, and founder of Prime Access Consulting, Inc. ("PAC"), a company dedicated to making the world more inclusive and accessible to all people, independent of ability. An individual with vision-impairment himself, Mr. Bahram advocates for individuals with disabilities and organizations representing their interests, and has co-invented transformative solutions that allow access to online mathematics for persons with disabilities. He requires accessible access to the law as an expert witness and because of PAC's role in helping clients become compliant with laws regarding accessibility and disability. Mr. Bahram has been

honored by the White House as a "Champion of Change" for his accessibility work. *See* Matt Shipman, *White House Honors Sina Bahram as a "Champion of Change,"* CSC News (May 7, 2012), http://www.csc.ncsu.edu/news/1322. Persons with disabilities like Mr. Bahram and those for whom he advocates are severely impacted by copyright protection of the law because the resulting restricted access and formats often prevent the use of vital assistive technologies such as screen readers to render the law in an accessible manner.

SUMMARY OF ARGUMENT

The Court should grant certiorari because this case raises fundamental and exceptionally important issues regarding full access to the law. Uniform and consistent access to the law nationwide is an essential component of due process and the rule of law; everyone in our society must have fair and meaningful notice of conduct that is forbidden or required. Full access to, and knowledge of, the law is also essential for meaningful engagement in our democracy.

Restricting access to the law by allowing copyright protection is irreconcilable with these basic principles. Limiting access harms the public and can disproportionately disenfranchise vulnerable populations. Copyright also hinders the valuable work being done by legal innovators, like *amici*, who create tools to inform and empower the public and everyone in the legal field. *Amici's* innovative tools increase access to the law and to justice; they also improve the efficiency and quality of legal advocacy and legal services through an array of sophisticated new

research, distribution, visualization, and predictive analytics tools.

As Petitioners note, there is currently uncertainty and lack of uniformity around whether the law can be copyrighted. Pet'rs' Cert. Pet. 16. This uncertainty hampers *amici*'s development and use of legal access and research tools. It stymies valuable innovation and competition in an industry characterized by high concentration and limited options for users. The public, and legal innovators like *amici*, must be free to locate, access, use, transform, and distribute law in novel and innovative ways. But claims of copyright over the law have been, and will continue to be, made by states and publishers acting on their behalf. The continued unpredictable nature and outcome of such claims, due to ongoing legal uncertainty, will worsen existing accessibility barriers to legal information, hamper valuable innovation, and further reduce already limited competition in the legal information, research, and analytics industry.

The Court should grant certiorari to eliminate this uncertainty and to establish, finally and uniformly, that the law cannot be copyrighted.

ARGUMENT

I. This Case Is Exceptionally Important Because Full Access to the Law Is Fundamental.

Meaningful access to the law is critical to both due process and the rule of law. *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012) ("A fundamental principle in our legal system is that laws which regulate persons or entities must give fair

notice of conduct that is forbidden or required."). Granting copyright protection to the law conflicts with our society's engrained presumption that citizens must know the law, contravenes basic due process principles, and disproportionately disenfranchises vulnerable populations. Permitting copyright in the law contradicts the legal imperative of, and overriding public interest in, the right of full access to the law by everyone.

A. Due Process and Democratic Principles Require Public Access to the Law.

A fundamental tenet of the American legal system—that ignorance of the law is no excuse—assumes people can comply with the law and, necessarily, that they can access it in the first place. *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.") (quoting *Cheek v. United States*, 498 U.S. 192, 199 (1991)); *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) ("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.'") (quoting *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)).

In addition to promoting comprehension and compliance, open and unimpeded access to the law is also important for public engagement in a democracy. *See Buckley v. Valeo*, 424 U.S. 1, 49 (1976) ("Democracy depends on a well-informed electorate."). The public's ability to read, possess, and understand the law is essential to both the effective administration of justice and to the core principles of

democracy: participation, transparency, and accountability. *See Veeck 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.").

Full access to the law is also critical to enable legal innovation. Innovators like *amici* use the latest computer science techniques such as artificial intelligence, machine learning, and natural language processing, to classify, store, analyze, and disseminate legal knowledge through new research and analytics products. These tools and databases empower constituents—including judges, attorneys, academics, researchers, litigants, and the public—to better understand and apply the law. *Amici* are committed to providing access to the law to everyone, consistent with this Court's precedent that "the authentic exposition and interpretation of the law, which, binding every citizen, *is free for publication to all*, whether it is a declaration of unwritten law, or an interpretation of a constitution or a statute." *Banks v. Manchester*, 128 U.S. 244, 253 (1888) (emphasis added).

Allowing the law to be copyrighted, however, limits access, stifles competition in the legal research market, and hinders the development of tools that would improve both access to justice and the quality of advocacy. And it contravenes fundamental tenets of fair notice and due process. "[I]f 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." *Bldg. Officials & Code Adm. v. Code Tech., Inc.*, 628 F.2d

730, 734 (1st Cir. 1980). The public and legal innovators like *amici* must be permitted to freely access, use, transform, and distribute the law in novel and innovative ways.

B. People Who Use Assistive Technologies in Particular Require Access to the Law.

While full, free access to the law is vital for all members of the public, it is particularly important for individuals with disabilities, who may be especially vulnerable to disenfranchisement. People with disabilities are acutely affected by the substance of, and changes to, public safety, accessibility, and many other laws. For some persons with disabilities, full access means the very ability to engage in certain professions, including legal practice, regulatory compliance, etc. *See, e.g.*, U.S. Equal Opportunity Employment Commission, *Reasonable Accommodations for Attorneys with Disabilities*, https://www.eeoc.gov/facts/accommodations-attorneys.html (last updated Dec. 20, 2017).

Many individuals with disabilities rely on a variety of assistive technologies, such as screen-reading software, to exercise their fundamental right to access the law. But this technology depends on materials being both readily available electronically, and appropriately formatted with well-defined structural data. Any format that prohibits copying and pasting also prevents the creation of accessibility adaptations and translations. If the digital text of the law is unavailable in sufficiently open formats, or if the text is restricted by technical measures that block digital interaction (e.g., to prevent copying), assistive technology becomes impossible or prohibitively cumbersome to use. Persons with disabilities report

significant difficulty accessing legal materials and legal research tools. *See* Robert J. Derocher, *Accessibility Matters: Experts and Lawyers with Disabilities Help Bars Find, Eliminate Barriers*, American Bar Association (Jan. 11, 2018), https://www.americanbar.org/groups/bar_services/publications/bar_leader/2017-18/january-february/accessibility-matters-experts-and-lawyers-with-disabilities-help-bars-find-eliminate-barriers/.

Given these difficulties, Respondent and legal innovators like *amici* serve a critical role as sources of appropriately formatted law that is accessible by persons with disabilities. Respondent creates searchable, manipulable, and accessible versions of the law that are compatible with assistive technologies. In this case, Respondent made the OCGA available in formats that are fully accessible to all, including persons with disabilities who use screen readers and other assistive technologies. In contrast, the current version of the OCGA provided by Lexis is not accessible. When a person attempts to access the statutory text with his or her screen reader, he or she is unable to do so; when a button is actuated or boxes are checked, nothing happens for a screen reader to announce. There is also no obvious or even slightly nonobvious way to subsequently access the desired content.

This case powerfully illustrates how copyright assertions over the law can be especially detrimental to persons with disabilities.[3] Copyright restrictions

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[3] The Chafee Amendment of 1996 is not a substitute for full access by innovators, legal providers, or the public at large. The

that prevent innovators like Respondent and *amici* from creating and distributing versions of the law in appropriately open formats, with properly-defined data, hampers or outright blocks access to the law by persons with disabilities. Moreover, such restrictions prevent persons with disabilities from designing and implementing their own solutions to transform the text of the law into accessible formats. The result will be that many people with disabilities will be precluded from accessing and understanding important elements of the law that govern and (perhaps disproportionately) affect them.

II. Existing Legal Uncertainty Hampers Legal Innovation and Lessens Competition.

The substantial uncertainty and lack of nationwide uniformity regarding the copyrightability of various aspects of the law, including state statutes and annotations, has created a significant chilling

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amendment allows an "authorized entity" to reproduce or distribute copies or phonorecords of previously published nondramatic literary works in specialized formats exclusively for use by blind or other persons with disabilities. But "authorized entity" is defined narrowly as any "*nonprofit* organization or a *governmental agency* that has a *primary mission* to provide specialized services relating to training, education, or adaptive reading or information access needs of blind or other persons with disabilities." 17 U.S.C. § 121 (2018) (emphasis added). Thus, *any* legal technology or legal access entity with a mission broader than primarily providing services for persons with disabilities, and *any* for-profit organization, would fail to qualify under 17 U.S.C. § 121. Nor is a possible fair use defense a substitute for full, copyright-free access to the law, given the inherently uncertain nature of fair use and the significantly greater risk posed by relying on it. Only consistent, ex-ante assurances that the law is not copyrightable will eliminate the chilling effects on access and innovation.

effect on innovation. *Amici* and other developers of innovative new legal tools are hampered in their efforts to improve access and understanding of the law for the public, lawyers, and courts.

This lack of uniformity among the courts of appeals concerning copyrightability means that even if legal innovators can freely operate in one jurisdiction, they may still face risk of copyright infringement liability in another. For example, even though Respondent can now offer full and open access to the OCGA in the Eleventh Circuit, it may not be able to do so without fear of legal threats or suit in other circuits. This uncertainty may force legal innovators like *amici* and Respondent to defer expansion into other geographic jurisdictions or to limit their service coverage to only a certain subset of the law.

Nationwide uniformity of copyright protection for state statutes and other law is essential for legal innovators to grow confidently and serve the public interest by improving access to the laws that govern our everyday lives. Without consensus, legal innovators cannot implement tools that dramatically transform the ways in which the public, courts, and lawyers access, understand, and use the law.

A. Uncertainty Regarding Access to the Law Impairs *Amici's* Ability to Innovate.

Amici are creating innovative tools that bring the full range of modern research techniques, and associated access to information, to the legal sphere. Their mission depends on open access to the law in its complete, official form. Without full access to all state statutes and other law, the development of groundbreaking research tools, intended to increase

the overall efficiency and fairness of the law, has been impeded.

For example, intelligent legal search tools include products like *amicus* Casetext's CARA tool, which analyzes the language in a brief to find relevant but not yet included case law that traditional search techniques might miss. *See* Judge Kevin Burke, *An Exciting Opportunity for Judges to Get Good, Solid Research*, American Judges Association (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."). Casetext also provides free legal research services, a valuable public resource that is currently used by approximately one million people each month.

To function effectively, however, CARA requires full access to the official, current legal corpus. CARA software builds on the Casetext research database, which grants all users access to a law library with both Federal and State law, annotated by experts. The current uncertainty around open access to legal data (and the use of such data) creates high barriers to entry as Casetext expands its services and seeks to become a true competitor in the legal research market.

Tools developed by other *amici* also depend on having access to the law because their machine learning algorithms require a complete and accurate dataset to be fully effective. *Amicus* Judicata, for example, relies on Respondent's legal corpus. Without access to these laws, Judicata would have been unable to build or refine its most innovative tools. Although Judicata's legal research services are currently limited to California law, it plans to expand its geographical coverage soon. The uncertainty engendered by state

copyright assertions in official statutory code has inhibited Judicata's growth.

Similarly, some *amici* that aggregate court data have been forced to circumscribe their product offerings out of concerns over copyright claims. *Amicus* UniCourt, for example, decided not to expand court coverage and provide its users with access to Georgia state court records due to the chilling precedent of Georgia's suit against Respondent (compounded with claims of copyright in Georgia's court records by private providers granted exclusive publication rights). After conducting a 50-state survey to help determine which new state court systems to onboard, UniCourt specifically excluded Georgia to avoid the risk of copyright infringement suit. Other innovators may find themselves similarly forced to defer adding coverage of a jurisdiction so long as concerns about copyrightability persist.

Other innovators also struggle with the uncertainty surrounding copyrightability. Lack of a consistent rule prevents *amicus* Free Law Project from collecting and freely distributing not just all U.S. Court opinions, but all statutes and annotations, as well. The public, attorneys, and litigants often require past versions of codes to understand the law that governed at the time a contract became effective, when a conviction was entered, etc. 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). Ensuring that statutes, and associated annotations, including previous versions, are openly available to the public, would help scholars, lawyers, and judges track this evolution over time. However, to do so, one would have to reproduce and

distribute not just one copy of a state's statutes, but every historical version in its entirety. The possibility of copyright assertions creates crippling risk for a small non-profit—indeed, it has deterred Free Law Project from ever posting state statutes.

Another legal innovator, Ravel, provides powerful research and analytics tools including case law maps, language technology that identifies key passages in cases, and judge, court, motion, and law firm analytics that shed light on how often judges and courts grant roughly one hundred different motions, as well as the cases, courts, and language that judges commonly cite and use in their opinions. Ravel previously described, in an *amicus* brief it joined in this case before the Eleventh Circuit, how it was "depend[ent] on having access to comprehensive, authoritative, and up-to-date primary legal information—especially statutes and case law." Brief for Next-Generation Legal Research Platforms as Amici Curiae Supporting Defendant/Appellant at 8, *Code Revision Comm'n v. Public.Resource.Org, Inc.*, 906 F.3d 1229 (11th Cir. 2018) (No. 17-11589-HH). Ravel also explained that, in its experience, "jurisdictions that limit the availability of statutes through various means—including assertions of copyright—are impeding new legal search providers like Ravel from developing innovative new tools that can help legal professionals and members of the public." *Id.*[4]

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[4] Ravel was acquired by Lexis soon after the prior *amicus* brief was filed in the Eleventh Circuit. *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.

Assertions of copyright in official annotated statutes, and the uncertainty created by the lack of nationwide uniformity, directly impede important preservation and public access goals. Far from restricting access and granting exclusive rights to the law, governments should remove all barriers for willing, innovative third parties to collect, preserve, and make accessible official copies of the law to all members of the public, and sophisticated search and analytics tools based on that law.

B. Lack of Uniformity Exposes Legal Innovators to Nationwide Suits.

The lack of national uniformity impairs *amici*'s goal of providing full and open access to the law for everyone. Because *amici* create and distribute Internet-based legal research tools and databases that are available nationwide, the possibility of copyright threats and lawsuits remains even when established precedent in the jurisdiction where *amici* reside is in their favor.

The Internet creates the risk of being sued anywhere. An innovator disseminating state law online understands its materials or tools may be downloaded by users from any state. Even if precedent in the circuit in which they are based treats the law as uncopyrightable, so long as a version of that law is even potentially copyrightable in a different circuit, the innovator faces a dilemma. It can restrict its activities in a way that avoids risk in the circuits where the material *may* be copyrightable, withholding access to and valuable transformative uses of that law. Or, it can include the law in its products or services and risk suit in any of those circuits.

The broad scope of potential liability arises largely from the jurisdictional framework for Internet-based copyright claims. Under traditional notions of personal jurisdiction, *amici* will be threatened with suit wherever infringement occurs, or anywhere they have users. *See Edy Clover Prods., Inc. v. Nat'l Broadcasting Co.*, 572 F.2d 119, 121 (3d Cir. 1978) (requiring defendant broadcaster to answer a copyright infringement charge in a remote forum receiving the broadcast); *Evergreen Media Holdings, LLC v. Warren*, 105 F. Supp. 3d 192, 199 (D. Conn. 2015) (holding that "the sit[e] of [an infringement] injury is generally where the plaintiff experiences a loss of business, not where the plaintiff resides"); *Foreign Imported Prods. & Publ., Inc. v. Grupo Indus. Hotelero, S.A.*, 2008 U.S. Dist. LEXIS 108705, at *1, *17 (S.D. Fla. Oct. 24, 2008) ("If copyright infringement occurs on a website []accessible in Florida, [Florida's long-arm statute] is met even if the *website* was created outside of Florida.") (emphasis added)*; see also* 16 James Wm. Moore et al., *Moore's Federal Practice - Civil* § 108.40 (3d ed. 2019) ("A typical example is the exercise of specific jurisdiction over a nonresident defendant who has committed a tort within the state.").

That risk is further increased because some courts have held that the site of injury for unauthorized uploads of copyrighted works onto the Internet can be where the copyright *holder* resides, even if there is no proof that infringing downloads occurred in that state. *Penguin Grp. (USA) Inc. v. American Buddha*, 946 N.E.2d 159, 164 (N.Y. 2011) (certified from the Second Circuit) (lacking any evidence of an illegal download occurring in a state is "not fatal to a finding that the alleged injury occurred in [the state]"). Thus,

innovators may be at risk of being sued in many jurisdictions, anywhere the law *might* be deemed copyrightable—even if the circuit where the innovator resides, or where its products or services are actually used, deems the law uncopyrightable.

Even the possibility of transferring the case to another district does not eliminate the chilling effect caused by the inconsistent treatment of the copyrightability of law. First, changing venue absent a jurisdictional defect is at the court's discretion and thus uncertain. 28 U.S.C. § 1404 (2018). Second, in any event, the costs of defending a lawsuit, even to transfer on procedural grounds, imposes a substantial burden and creates a chilling effect, especially on smaller innovators.

C. Without Uniformity, Legal Threats and Lawsuits Against Innovators Will Recur.

Absent a consistent nationwide rule, disputes regarding the copyrightability of statutes will continue to arise across the country, and innovators will be forced to develop and distribute their products in persistent fear of litigation. Innovators and advocates attempting to both improve public access to the law and make legal research tools readily available have borne the brunt of the cost of prior threats of suit.

For example, in 2008, the State of Oregon's Legislative Counsel accused *amicus* Justia of infringing its "copyright in the arrangement and subject-matter compilation of Oregon statutory law, the prefatory and explanatory notes" among other parts of the code. Tim Stanley, *Cease, Desist & Resist: Oregon's Copyright Claim on the Oregon Revised Statutes,* Justia (Apr. 19, 2008), https://lawblog.justia.com/2008/04/19/cease-desist-

resist-oregons-copyright-claim-on-the-oregon-revised-statutes. Although Oregon's Legislative Committee ultimately decided not to proceed with enforcing copyright claims on the Oregon Revised Statutes, that decision came only after Justia's CEO obtained legal counsel and traveled to Oregon to lodge objections with the committee. *Id.* The dispute occurred because of uncertainty surrounding whether the law is copyrightable.

Amici experience threats of suit similar to those of Respondent, including the lawsuit in this case and a 2013 legal threat from the State of Idaho. In that case, Respondent posted a scanned copy of the Idaho Code to "promote access to the law by citizens and [permit] innovation [by making] the statutes . . . available so that public servants, members of the bar, citizens, and members of the business community have ready access to the laws that govern them." Letter from Carl Malamud, President & Founder, Public.Resource.Org, to Hon. Scott Bedke, Speaker of the House, Idaho State Legislature (May 30, 2013), https://law.resource.org/pub/us/code/id/id.gov.20130530.pdf. Idaho then claimed copyright and threatened to sue. Letter from Bradley R. Frazer, Hawley Troxell Ennis & Hawley LLP, to Carl Malamud, President & Founder, Public.Resource.Org (Aug. 14, 2013), https://law.resource.org/pub/us/code/id/id.gov.20130814.pdf. Idaho ultimately did not file a lawsuit.

Similarly, following the district court's decision in this case, Mississippi demanded Respondent remove its Annotated Code from Respondent's website. Letter from Larry A. Schemmel, Special Assistant Attorney General, State of Mississippi, to Carl Malamud, President & Founder, Public.Resource.Org (Oct. 7, 2013),

https://law.resource.org/pub/us/code/ms/ms.gov.20131007.pdf. But the Eleventh Circuit's favorable decision, while providing more certainty in Mississippi, does not eliminate *amici*'s (or Respondent's) fears of suit elsewhere in the country.

Instead, inconsistency across circuits will force *amici*, as well as Respondent, to grapple with similar demands throughout the country—just as they have in Oregon, the District of Columbia, California, and Idaho. Currently, at least 20 states besides Georgia make some type of copyright assertion over their official statutory code; many others make claims regarding their administrative codes and judicial opinions. Leslie Street & David Hansen, *Official Publications of State Laws: Copyright Status and Terms of Use (Compiled with Status Current to August 2018)*, Mercer University Research, Scholarship, and Archives (Dec. 17, 2018, 2:36 PM), https://libraries.mercer.edu/ursa/handle/10898/9937. And Georgia and at least eight other states[5] have asserted in this case that states should be affirmatively empowered to assert copyright infringement claims against anyone who publishes official annotated codes for the public's benefit.

Certiorari is exceptionally important in this case for the Court to ensure that the law is accessible to all, anywhere in the country. Otherwise, the current uncertainty and inconsistency across circuits will

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[5] Arkansas, Alabama, Idaho, Kansas, Mississippi, South Carolina, South Dakota, and Tennessee. Br. for Arkansas et al. as Amici Curiae Supporting Pet'rs, *Georgia v. Public.Resource.Org*, (2019) (No. 18-11505).

continue to hamper the innovation and enhanced access that *amici* seek to provide.

D. Legal Uncertainty Restrains Valuable Competition.

Amici's advanced, cutting-edge technologies and offerings are beginning to provide much-needed competition in existing concentrated markets for legal information and research. To be fully effective and competitive, however, *amici* require comprehensive access to all official law in whatever form. Restricting access to the law through copyright protection undermines *amici's* and other innovators' efforts and restrains the emerging competition they have been generating.

The legal information industry has experienced progressive consolidation, with significant consequences for public access and making the role of small innovators even more important. 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 been created 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). In fact, former *amicus* legal-tech innovator Ravel was acquired by Lexis shortly after the previous *amicus* brief was submitted. *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 affects access, innovation, and the quality of database, research, and analytic tools. *See* Arewa, *supra*, at 826 (reporting prices following legal publishing mergers have grown at rates exceeding inflation). Many consumers have difficulty affording the services of incumbents. Without an "effective library through which information in digital databases might be accessed by the public in the manner of the public library during the print era," the public must depend on open access models. *Id.* at 828.

But open and affordable access models are undermined by allowing law to be copyrighted. When copyright is available, copyright holders can charge whatever they choose for the law and even decide they will not license the law in the first place. By way of example, Georgia and LexisNexis have already demonstrated their unwillingness to do so. *Amicus* Fastcase partnered with the State Bar of Georgia to provide legal research tools to all Georgia attorneys, but was relegated to providing an unofficial version of the Code, after being informed after repeated requests

that no license would be granted, "at any price." Def.'s Mot. Summ. J. ¶¶ 60-62, ECF No. 29. If innovators like *amici* can only provide unofficial versions that attorneys must cite "at their own peril," they will always be at a permanent and irresolvable disadvantage to Lexis. *Code Revision Comm'n v. Public.Resource.Org, Inc.*, 906 F.3d 1229, 1243, 1250 (11th Cir. 2018).

Amici and other innovators require access to the law to provide badly needed competition—resulting in better products and services and lower prices. For example, of the more than three thousand law firms that use Casetext, the majority are small firms that struggle to afford LexisNexis or Westlaw. These firms and their attorneys benefit greatly from competition in the market for information products necessary for their jobs.

Allowing the law to be copyrighted intensifies competitive concerns by reinforcing the copyright holder or exclusive licensee's market power. In 1994, the Justice Department was inquiring into ways to make legal research more affordable in the face of concerns over the high cost of electronic access to federal court opinions through services like Westlaw and Lexis. In response, the American Association of Law Libraries (AALL) explained that:

> *[I]t is a fundamental part of our belief that no one should own the law, either outright or in practical effect.* Regrettably, the assertion of ownership of some parts [numbering and pagination] of the published case law together with the requirements of courts and others to cite to certain privately published versions of the case law, have, *in practical effect, given one*

> *publisher substantial control over the legal information market. [This] gives West near monopoly-like power and severely limits 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 Services Q. 123, 135 (2002) (emphasis added).

Allowing claims of copyright over the law, and the granting of exclusive publication rights to particular companies will, to borrow the language of the AALL, "in practical effect, give one publisher substantial control over the legal information market," and "severely limit[] the ability of others to enter the market and compete effectively."

CONCLUSION

Access to the law by *all* persons is a fundamental right. Granting copyright protection to any part of the law will exacerbate existing accessibility barriers to legal information, hinder innovation, and intensify current competitive concerns with the legal research and information industry. The restriction of access to and transformative uses of the law harms innovation in the legal research space and, worse, withholds meaningful access to the law from the public at large, from individuals with disabilities, and from users of *amici*'s innovative and transformative products and services.

Respectfully submitted,

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