

Client Alert

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Are Government Legal Publications Copyrightable? The Supreme Court Says No.

Many states publish online a simplified, free version of their state code. Some also offer an annotated version, featuring citations, analysis, and opinions from the state attorney general, available only after a fee is paid. One of those states is Georgia.

Yesterday, the Supreme Court held that such annotations to a state's legal code are not copyrightable, ruling against the state of Georgia.

The 5-4 ruling authored by Chief Justice John Roberts upholds the Eleventh Circuit's decision that official annotations to the Georgia Code are not entitled copyright protection, by virtue of the *government edicts doctrine*.

Under the government edicts doctrine, the Supreme Court has previously held that works authored by public officials are not copyrightable. In yesterday's ruling, the Court extended the doctrine to Georgia's annotations. The "animating principle" behind the doctrine, Chief Justice Roberts wrote, "is that no one can own the law." Justices Sonia Sotomayor, Elena Kagan, Neil Gorsuch, and Brett Kavanaugh joined Roberts.

The case originated after the group Public.Resource.Org republished the annotated version of Georgia's code without permission. As a result, the state sued Public.Resource.Org for copyright infringement and was granted partial summary judgment on that issue in district court.

But the Eleventh Circuit overturned the summary judgment, siding with Public.Resource.Org on the grounds that Georgia's annotations "are part and parcel of the law ... and are so enmeshed with Georgia's laws as to be inextricable." *Georgia, et. al. v. Public.Resource.Org, Inc.*, 906 F.3d 1229, 1243 (11th Cir. 2018), *aff'd* No. 18-1150 (U.S. April 27, 2020).

In upholding the Eleventh Circuit's decision, the Supreme Court ruled that the relevant question is not whether the material carries "the force of law." Rather, the question is "whether the author of the work is a judge or a legislator." And, "[i]f so, then whatever work that judge or legislator produces in the course of his judicial or legislative duties is not copyrightable."

The Court noted that although a private company prepared the annotations to Georgia's code, the Code Revision Commission—a state entity composed mostly of legislators, funded through legislative appropriations, and staffed by a legislative office—actually assembled the annotated code. "Because Georgia's annotations are authored by an arm of the legislature in the course of its legislative duties, the government edicts doctrine puts them outside the reach of copyright protection," Roberts wrote.

Dissenting justices observed that the ruling "will likely come as a shock to the 25 other jurisdictions—22 States, 2 Territories, and the District of Columbia—that rely on arrangements similar to Georgia's to produce annotated codes," as Justice Clarence Thomas wrote in a dissent joined by Justice Samuel Alito

and partially by Justice Stephen Breyer. Justice Ruth Bader Ginsburg wrote a separate dissent, joined by Breyer.

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