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Death of the Author: The Evolution and Expansion of the Government Edicts Doctrine in Copyright Law*

I. INTRODUCTION

Codification of the law is an expensive and time-consuming task that requires a certain level of skill and an ability for quick turnaround of product.¹ Because of this, Congress and a majority of state legislatures hire companies, pursuant to their respective jurisdictions, with legal experts who organize legal information from a wide swath of sources into masterfully-constructed annotations brimming with helpful information to the reader.² These annotations are so useful that the federal and state judiciary often employ them to understand statutes that are unclear or to define the scope of statutes.³ Moreover, these annotations, due to the nature of the agreement with their respective legislatures, even save taxpayers a great amount of money.⁴ If you are a publication company, have an employer with enough capital to purchase a subscription package with these publication companies, or are an individual with expendable funds, there are little drawbacks to copyrighted annotations. For many Americans, unfortunately, this option is not so freely available.

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¹ Ed Walters, *Georgia v. Public.Resource.org: Ending Private Copyright in Public Statutes*, MEDIUM, (June 27, 2019), <https://medium.com/@ejwalters/who-owns-the-law-5e356ea5b5f8>.

² *Id.*

³ Code Revision Comm'n for Gen. Assembly of Georgia v. Public.Resource.Org, Inc., 906 F.3d 1229, 1250–51 (11th Cir. 2018).

⁴ *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498, 1522 (2020).

Annotated copies of the Official Code of Georgia Annotated (O.C.G.A.) and other statutes are often copyrighted and require payment of several hundred dollars for access.⁵ Even with the distribution of copies to libraries pursuant to the publication agreement, these provided O.C.G.A. sets are often incomplete, outdated, and require travel that might not be possible or feasible to everyone.⁶ Even if an individual can pay for annotated versions of statutes, the websites on which these codes are accessed are coded in a manner, in the facilitation of paywall restrictions, that hampers legal research and prevents those who need to use accessibility software from reading the annotated copies.⁷ If these annotations were more cursory, such results could be more excusable, but the federal and state judiciary have shown that this is not the case.

Federal and state courts give annotations the power to aid interpretation and contextualization of the law, indicate which statutes have been ruled unconstitutional or repealed, even though they are still a part of the O.C.G.A., and have become a fundamental part of the process of reading and understanding the O.C.G.A., other state codes, and federal codes.⁸ Because of this, the annotations have been given tremendous power as explanatory legal material to impact the law, and many recognize that people reading the statutes without the

⁵ Stan Adams, *Supreme Court Reminds States That Citizens Own the Law in Georgia v. Public.Resource.Org.*, CENTER FOR DEMOCRACY & TECHNOLOGY, (Apr. 30, 2020), <https://cdt.org/insights/supreme-court-reminds-states-that-citizens-own-the-law-in-georgia-v-public-resource-org/>.

⁶ Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. NEWS & WORLD REPORT L.P., (Aug. 22, 2019), <https://www.usnews.com/news/best-states/articles/2019-08-22/can-states-copyright-annotations-to-their-own-laws>; Lindsay Basye, Brendan Keefe, *Georgia lawmakers fights to keep state laws off the internet*, 11ALIVE, (Dec. 2, 2019), <https://www.11alive.com/article/news/investigations/the-reveal/ga-copyright-laws-us-supreme-court/85-4ebce978-2735-434f-93e8-06bd66a4f3f2>.

⁷ Kelundra Smith, *Law professors pen amicus brief in Georgia copyright case*, GEORGIA STATE NEWS HUB, (June 26, 2020), <https://news.gsu.edu/2020/06/26/law-professors-pen-amicus-brief-in-georgia-copyright-case/>; BRIEF OF 36 COMPUTATIONAL LAW SCHOLARS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT at 9–11, *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020) (No. 18-1150).

⁸ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1512; *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1250–51; Kelundra Smith, *Law professors pen amicus brief in Georgia copyright case*, GEORGIA STATE NEWS HUB, (June 26, 2020), <https://news.gsu.edu/2020/06/26/law-professors-pen-amicus-brief-in-georgia-copyright-case/>.

annotations are at a significant disadvantage to understanding the laws which govern their lives.⁹

This Comment analyzes the historical development of the government edicts doctrine and the impact *Georgia v. Public.Resource.Org, Inc.*¹⁰ has on the American people. Part II outlines the development of copyright law, the government edicts doctrine, work for hire doctrine, and statutory interpretation as they relate to this recent evolution of copyright law. Part III explains *Georgia v. Public.Resource.Org, Inc.* in the United States Supreme Court, the preceding district and appellate court decision on this case, as well as prior case law discussing the government edicts doctrine. Part IV discusses how uncopyrightable legislative works will impact groups such as legal researchers, agencies, publishers, other states, those with disabilities, future intellectual property lawsuits, and others under purview of American legislatures.

II. THE FOUNDATION AND ADVANCEMENT OF THE GOVERNMENT EDICTS DOCTRINE IN RELATION TO GOVERNMENTAL WORKS

A. *The Foundations of Copyright*

The Constitution gives Congress the right to “promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”¹¹ Through this, Congress created The Copyright Act,¹² which allows copyright protection for “original works of authorship.”¹³ Copyright grants the holder the exclusive right to reproduce the work, to prepare derivative works, to distribute copies of the work, to sell the work, to perform the work publicly, or to display the work.¹⁴ Copyright interests are given to the author of the work, so authorship is a fundamental factor for a determination of copyright ownership.¹⁵

⁹ Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. NEWS & WORLD REPORT L.P., (Aug. 22, 2019), <https://www.usnews.com/news/best-states/articles/2019-08-22/can-states-copyright-annotations-to-their-own-laws>.

¹⁰ 140 S. Ct. 1498 (2020).

¹¹ Art. I, Sec. 8, cl. 8.

¹² 17 U.S.C. § 101 et. seq. (2020).

¹³ 17 U.S.C. § 102(a) (2020).

¹⁴ 17 U.S.C. § 106 (2020).

¹⁵ 17 U.S.C. § 201(a) (2020); *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1232.

Copyright protection grants to the owner exclusive monopolization of a work in the work's respective market for at least several decades, with the specific lengths varying dependent on the date of the copyright, the author, and the lifetime of the author.¹⁶ An author can also transfer or assign a copyright through a signed "instrument of conveyance."¹⁷ Through the Berne Convention, an international treaty signed by the United States in 1989, the works of authors are also protected internationally in the other 178 countries that signed the treaty.¹⁸

Copyright protection was created to "promote the Progress of . . . [the] useful Arts."¹⁹ If individuals are guaranteed by the government the right to hold a monopoly on their work in an economic market, copyright proponents believe that those individuals will continue to do so for economic incentive. These creators, recognizing the government's assurance of their solitary control over their work, will be able to block free-riders and hold themselves out as the sole creators of a work on the market. Through competition on the market the best creations will earn the most revenue, incentivizing those artists to create more creative content, thus "promot[ing] the Progress of . . . [the] useful Arts."²⁰ One of the strongest criticisms of this reasoning is that the vulnerability and high degree of risk involved in a new, non-market-tested work can result in only slight variations of an already-proven successful product to be marketed to the public. Regardless, other forces such as societal drives for differing and new creative content ensure shifts in the Arts promoted to the public.

B. The Creation and Evolution of the Government Edicts Doctrine

Wheaton v. Peters,²¹ an 1834 United States Supreme Court case, was the first case which concerned the copyrightability of a government edict.²² In this case, a court reporter wanted to establish a copyright on court opinions that he had written through his occupation.²³ The Court determined that a court reporter did not hold a valid copyright claim to a court opinion, and a judge is also unable to grant a court reporter this

¹⁶ 17 U.S.C. § 302 (2020).

¹⁷ 17 U.S.C. § 204(a) (2020).

¹⁸ *Circular 38A: International Copyright Relations of the United States*. U.S. Copyright Office (August 2020), <https://copyright.gov/circs/circ38a.pdf>.

¹⁹ Art. I, Sec. 8, cl. 8.

²⁰ Art. I, Sec. 8, cl. 8.

²¹ 33 U.S. 591 (1834).

²² *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1237.

²³ *Wheaton*, 33 U.S. at 593.

copyright.²⁴ The Court used the Copyright Act of 1790²⁵ and mentioned that the court reporter was the author, but excluded an explanation as to why the law was not eligible for copyright.²⁶

The Massachusetts Supreme Judicial Court gave reasoning to this belief with its 1886 case *Nash v. Lathrop*,²⁷ where a publisher wanted to exclude a newspaper from publishing copies of judicial opinions in the daily paper.²⁸ On the question of “whether the [state] has an absolute [copyright] in the opinions of the justices after they are filed with the reporter,” the court held that the state could not because “justice requires” free access to judicial opinions.²⁹ The court stated that public policy disallowed any suppression of this type, and immediate public access to judicial opinions was an existing right of citizenry.³⁰ The *Nash* opinion focused mostly on this public policy concern rather than any notion of authorship of the work.

The Supreme Court of the United States cited *Nash* as the rationale for the holding in the case *Banks v. Manchester*,³¹ which also involved judicial opinions.³² In *Banks*, a publishing firm under contract by the state of Ohio via statute for the publication of Supreme Court of Ohio judicial opinions sued an author who published the opinions in the *American Law Journal*.³³ The Court in 1888 determined that a state judge or those under the judge’s direction also could not hold a copyright despite the preparations of an opinion, the statement of the case, the syllabus, and the headnotes.³⁴

The Court reasoned that while a relationship existed between the state and the judicial opinion, the Court was unable to answer who was the proper author of the work.³⁵ The Court could only identify that the state could not qualify as an author, citizen, or any other descriptor of an individual capable of receiving protection under copyright.³⁶ The Court stated that while judges are paid by the People at a fixed salary and have no monetary interest in the opinions they write, the People

²⁴ *Id.* at 668.

²⁵ 1 Stat. 124 (1790).

²⁶ *Wheaton*, 33 U.S. at 593, 667.

²⁷ 142 Mass. 29 (1886).

²⁸ *Id.* at 29–30.

²⁹ *Id.* at 34–35.

³⁰ *Id.* at 35.

³¹ 128 U.S. 244 (1888).

³² *Id.* at 254.

³³ *Id.* at 245, 249.

³⁴ *Id.* at 253–54.

³⁵ *Id.* at 253.

³⁶ *Id.* at 252–53.

have paid into judicial opinions which grants them proprietorship.³⁷ The court also emphasized how information that is binding to the public should be available to them freely.³⁸

A month later in 1888, the Supreme Court decided *Callaghan v. Myers*,³⁹ where a reporter appointed by the Supreme Court of Illinois sold to a publisher court opinions and annotations that he prepared while employed for the state.⁴⁰ This publisher later sued another publisher who had published the same reports; the other publisher stated that the work was under the public domain because any work done by the reporter was completed as part of his public duties.⁴¹ However, the Court disagreed, stating that while judges cannot produce copyright while creating written work in their official capacity, a reporter who prepares explanatory information should be able to receive a copyright for the intellectual labor.⁴² The Court stated that he could obtain the copyright as an author for the parts which he created, but that he could not be an author as to judicial opinions because copyright was not intended to grant the writer of a judicial opinion a monopoly over the law.⁴³ The Court also reasoned that since the state government never objected to his sale of the work he did as a reporter, not only did this suggest his ownership of the work, but this also showcased that the state assented to his copyright of the work.⁴⁴

Since *Banks* and *Callaghan*, Congress has codified the government edicts doctrine on a federal level with 17 U.S.C. § 105.⁴⁵ Meanwhile, the Copyright Office stated through its Register's Report that "[t]he judicially established rule . . . prevent[s] copyright in the text of [s]tate laws, municipal ordinances, court decisions, and similar official documents," which would extend the rule to include legislative works.⁴⁶ The rationale behind the uncopyrightability of legislative codifications derives from two tenets: a Lockean political philosophy that the citizens of a nation (the "People") are the source of all law of a nation through

³⁷ *Id.* at 253.

³⁸ *Id.*

³⁹ 128 U.S. 617 (1888).

⁴⁰ *Id.* at 645–46.

⁴¹ *Id.* at 619–22, 645–47.

⁴² *Id.* at 647.

⁴³ *Id.* at 647, 650.

⁴⁴ *Id.* at 647.

⁴⁵ 17 U.S.C. § 105.

⁴⁶ 1961 Register's Report, at 129–30.

tacit consent,⁴⁷ and a belief that the legislature are representative of the citizens of a geographical area, which allows for the People to be the “constructive authors” and owners of legal works, making such works public domain and not capable of copyright protection.⁴⁸

Lower courts have deliberated the expansion of the government edicts doctrine. In *Howell v. Miller*,⁴⁹ the United States Court of Appeals for the Sixth Circuit in 1898 decided that the government edicts doctrine also applied to state statutes.⁵⁰ In this case, Howell prepared a compilation of annotated judicial opinions and statutes for which he later obtained copyright. The Michigan legislature contracted Miller via statute to prepare a compilation of statutes, and Miller used some of Howell’s work in the completion of this work.⁵¹ Howell sued Miller for copyright infringement.⁵²

The court stated that while the statutes and judicial opinion within the compilation belongs to the state, Howell could still stop Miller from publishing Miller’s compilation if Howell has a valid copyright.⁵³ The court held that a person can publish any statute and judicial opinion found in Howell’s compilation without violation of the law, disregarding any appropriation of Howell’s “labor and industry,” citing *Banks and Callaghan*.⁵⁴ While the court disallowed Howell to be the author of the “public property” of statutes or judicial opinion, he met all the qualifiers to be an author of the auxiliary information in the compilation due to his labor and research.⁵⁵

In 2002, the United States Court of Appeals for the Fifth Circuit ruled in *Veeck v. S. Bldg. Code Cong. Int’l, Inc.*⁵⁶ that the government edicts doctrine included model-building codes later adopted by a municipality.⁵⁷ The court held the building codes to be under the government edicts doctrine on the principle that the law is public domain, citing *Wheaton*, *Banks*, and *Nash*.⁵⁸ The court emphasized the

⁴⁷ *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1232; Alex Tuckness, *Locke’s Political Philosophy*, Stanford Encyclopedia of Philosophy (Jan. 11, 2016), <https://plato.stanford.edu/entries/locke-political/>.

⁴⁸ *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1232.

⁴⁹ 91 F. 129 (6th Cir. 1898).

⁵⁰ *Id.* at 137.

⁵¹ *Id.* at 130–32.

⁵² *Id.* at 132.

⁵³ *Id.* at 136–37.

⁵⁴ *Id.* at 137–38.

⁵⁵ *Id.* at 138.

⁵⁶ 293 F.3d 791 (5th Cir. 2002).

⁵⁷ *Id.* at 796, 800.

⁵⁸ *Id.* at 795–96, 800.

foundations of popular sovereignty in its belief of a “metaphorical concept of citizen authorship.”⁵⁹ The court also acknowledged that public policy demands that citizens be educated on the laws, have free access to laws, and have the best capacity to influence future laws.⁶⁰ The court also explains that, along with judicial opinions and regulations, ordinances and statutes are also not subject to federal copyright law through these guiding principles and the 1976 Copyright Act.⁶¹

However, not all lower courts decided to extend the government edicts doctrine. Lower courts deemed that the government edicts doctrine was not applicable to privately-prepared data that states mandated insurance companies follow or a privately-prepared system that was published in the Federal Register and used as part of government reimbursement.⁶² The government edicts doctrine was not applicable to maps created by a county assessor or the terms of a town’s restrictive covenant.⁶³

In *Lawrence v. Dana*,⁶⁴ an individual in the 1869 case published and obtained copyright for a compilation of international law judicial opinions with an introduction, annotations, and an appendix.⁶⁵ The United States Circuit Court for the District of Massachusetts did not question the copyrightability of this auxiliary information.⁶⁶ In the 1928 case *W.H. Anderson Company v. Baldwin Law Publishing Company*,⁶⁷ an author sued under copyright infringement for copying of the author’s annotations and indices placed alongside a collection of the Ohio Code.⁶⁸ While the Sixth Circuit facilitated a discussion of who of the two parties actually wrote the annotations and thusly held copyright in the annotations, a discussion regarding the annotations’ copyrightability was not considered.⁶⁹ In 1998, the United States Court of Appeals for

⁵⁹ *Id.* at 799.

⁶⁰ *Id.* at 799.

⁶¹ 17 U.S.C. § 105; *Id.* at 796.

⁶² *Practice Mgmt. Info. Corp. v. Am. Med. Ass’n*, 121 F.3d 516, 518–20 (9th Cir. 1997); *CCC Info. Servs., Inc. v. Maclean Hunter Mkt. Reports, Inc.*, 44 F.3d 61, 73–74 (2d Cir. 1994).

⁶³ *John G. Danielson, Inc. v. Winchester-Conant Properties, Inc.*, 322 F.3d 26, 39–40 (1st Cir. 2003); *City of Suffolk v. First Am. Real Estate Sols.*, 261 F.3d 179, 193, 195 (2d Cir. 2001).

⁶⁴ 15 F.Cas. 26 (C.C.D. Mass. 1869).

⁶⁵ *Id.* at 45, 50–51.

⁶⁶ *Id.* at 60–61.

⁶⁷ 27 F.2d 82 (6th Cir. 1928).

⁶⁸ *Id.* at 84.

⁶⁹ *Id.* at 85–88.

the Second Circuit held West Publishing Co. to not hold copyright to annotations prepared in the compilation of judicial opinions. The court viewed the selection and arrangement of facts for these annotations as not displaying the minimal level of creativity necessary for copyright protection.⁷⁰

In 2017, the United States District Court for the District of Columbia issued Public.Resource.Org (in a separate action from the case at focus in this Comment) a permanent injunction in 2017 for its publication of technical and scientific standards written by private organizations that were incorporated by reference in the Code of Federal Regulations.⁷¹ These standards, although written by private organizations, were incorporated by reference by the Code of Federal Regulations and were used for public safety regulation in products and practices across America.⁷² These technical and scientific standards can value from forty dollars to almost \$10,000.⁷³ The American Bar Association later passed a resolution urging Congress to make regulations adopted by the legislature available for free to the public.⁷⁴

⁷⁰ In order to maintain copyright over a work, the work must also be original and possess some minimal level of creativity. These annotations held “subsequent procedural developments” such as amendments and denials of rehearing, alongside parallel citations, additional citations, and compilation attorney summaries. Rather than be held uncopyrightable due to the author, the court viewed this compilation of data as insufficiently creative because of its constraint to factual data and accepted legal conventions. The majority found the selection and arrangement to be obvious and typical. The dissent, authored by Justice Sweet, strongly disagreed, stating that the minimal level of creativity necessary is rather low to pass copyright. Mechanical or routine presentation of data such as an alphabetical listing of a phonebook is not sufficiently creative as its compilation in this manner is “practically inevitable.” However, the dissent noted that in this case, West was able to decide “a number of substantive, editorial choices—without court direction or approval.” According to the dissent, West’s annotations required independent and creative thought that was not controlled by the judiciary. *Matthew Bender & Co. v. Pub. Co.*, 158 F.3d 674, 677, 690–91 (2d Cir. 1998). *See Feist Publications, Inc. v. Rural Telephone Service Company, Inc.*, 499 U.S. 340, 345, 358, 363 (1991).

⁷¹ Robert Ambrogi, *Can A State Copyright The Law? SCOTUS Will Decide*, ABOVE THE LAW, (Jul. 1, 2019), <https://abovethelaw.com/2019/07/can-a-state-copyright-the-law-scotus-will-decide/?rf=1>.

⁷² Robert Ambrogi, *In a Blow to Open Law, Court Upholds Private Copyright in Public Safety Laws*, LAWSITES, (Feb. 14, 2017), <https://www.lawsitesblog.com/2017/02/blow-open-law-court-upholds-private-copyright-public-safety-laws.html>.

⁷³ *Id.*

⁷⁴ *Id.*

C. Work for Hire: An Agent for Authorship

Under the Copyright Act, if a work is a “work made for hire,” then “the employer or other person for whom the work was prepared is considered the author.”⁷⁵ This can be negated if the parties agree otherwise via a “written instrument.”⁷⁶ The Copyright Act defines a work made for hire falling under two criteria:

(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work . . . as a supplementary work, as a compilation, as an instructional text . . . if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire. [A] “supplementary work” is a work prepared for publication as a secondary adjunct to a work by another author for the purpose of . . . commenting upon, or assisting in the use of the other work, such as . . . editorial notes, . . . bibliographies, appendices, and indexes.⁷⁷

These two differentiations apply depending on who made the work; criteria (1) applies when a work made for hire was made by an employee, whereas criteria (2) applies when an independent contractor created the work.⁷⁸ Although the terms “employment” or “employee” are not defined within the Copyright Act, the Court in *Community for Creative Non-Violence v. Reid*,⁷⁹ inferred that common law of agency applied given the term “scope of . . . employment” used in The Copyright Act.⁸⁰ A party’s right to control or acts of actual control over the other party who created the work does not transform a commissioned work into a work made under an employee-employer relationship.⁸¹

Under the common law of agency, a hired party is an employee if “the hiring party [has a] right to control the manner and means by which the product is accomplished.”⁸² Several elements can determine whether an employee has the requisite control: “the skill required; the source of the instrumentalities and tools; . . . the duration of the relationship between the parties; whether the hiring party has the right

⁷⁵ 17 U.S.C. § 201(b) (2020).

⁷⁶ *Id.*

⁷⁷ 17 U.S.C. § 101 (2020).

⁷⁸ *Cnty. for Creative Non-Violence v. Reid*, 490 U.S. 730, 736 (1989).

⁷⁹ 490 U.S. 730 (1989).

⁸⁰ 17 U.S.C. § 101; *Id.* at 739–40.

⁸¹ *Cnty. for Creative Non-Violence*, 490 U.S. at 750.

⁸² *Id.* at 751.

to assign additional projects to the hired party; the extent of the hired party's discretion over when and how long to work" among other elements.⁸³ If most of these factors are not met, the hired party will be considered an independent contractor.⁸⁴

Such a differentiation is significant for copyright ownership. If the hired party is an employee, then the hiring party is the copyright owner.⁸⁵ If the hired party is an independent contractor, then the hired party can retain copyright ownership or share copyright ownership with the hiring party if both parties "intend[ed] that their contributions be merged into inseparable or interdependent parts of a unitary whole."⁸⁶

D. Statutory Interpretation: How Annotations Can Alter the Verdict

When differing interpretations of a statute are brought before a court, a court can employ several differing theories of statutory interpretation: textualism, purposivism, and intentionalism are the most common. Textualism is a theory of statutory interpretation that prioritizes the text of a statute and other intrinsic sources, such as grammar, word choice, and context within the statute, over any other extrinsic source, such as legislative history, the purpose of the statute, and historical context.⁸⁷ However, if issues arise with interpreting the text, such as when the construction of the text is ambiguous or absurd, some textualist judges will allow considerations of extrinsic sources to solve ambiguity in the statute.⁸⁸ Depending on the judge, a finding of ambiguity is easily accomplished; ambiguity of a statute's meaning is defined by some courts as "capable of being understood by reasonably well-informed persons in two or more senses."⁸⁹

Purposivism looks to the purpose behind the law or the goal behind the enactment of the statute as the basis for statutory interpretation.⁹⁰ While proponents of purposivism will consider and weigh heavily the language of the statute and other intrinsic sources, they believe that an analysis of the policy and legislative history of the text is also fundamentally important in initial interpretation.⁹¹ Purposivism holds that statutes are created in order to effectuate a purpose, and a court

⁸³ *Id.*

⁸⁴ *Id.* at 752.

⁸⁵ *Id.* at 753.

⁸⁶ *Id.*

⁸⁷ *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45–52.

⁸⁸ *Id.*

⁸⁹ *Id.* at ¶ 47.

⁹⁰ *State v. Courchesne*, 262 Conn. 537, 561–63 (2003).

⁹¹ *Id.*

should not attempt to divorce the meaning of the text from the context from which the statute came to be.⁹²

Proponents of intentionalism want to ascertain the intention of Congress when enacting the bill as a basis of interpretation for a statute.⁹³ While some intentionalist judges will only consider the intent of the legislature when the statute's language is ambiguous,⁹⁴ other judges consider legislative history for statutory interpretation without any determination of ambiguity in a statute.⁹⁵ Finding the intentions of the legislature is usually done through the consultation of legislative history through reports or other documents which convey intent.⁹⁶

Regardless of which method is employed by a judge for statutory interpretation, there can exist the possibility for an analysis of extrinsic sources to determine the meaning of a statute, especially if a court's interpretation of ambiguity is easily met.⁹⁷ In federal courts, official notes to statutes are often given "considerable weight" in determining legislative intent.⁹⁸ Federal courts have also recognized that interpretations of statutes that are placed in the statutory notes are also "nearly universally accorded great weight."⁹⁹

Georgia courts often utilize the annotations of the O.C.G.A. in interpretation of its provisions as well. The Georgia Supreme Court has stated that the "express intent" of the Georgia General Assembly in creating a provision can be found in the O.C.G.A. comments.¹⁰⁰ The Georgia Supreme Court has also stated that the "legal effect" of a provision and the scope of a statute could be found via an annotation.¹⁰¹ O.C.G.A. comments have been used to determine the purpose of a statutory provision as well as to determine a statutory remedy.¹⁰²

Through an employment of various theories, statutory interpretation has a foreseeable impact on the meaning of a statute and a statute's effects on an individual. Through the court's commonplace use of annotations and comments in statutory interpretation, annotations

⁹² *Id.* at 570.

⁹³ *Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 98 (2011).

⁹⁴ *Id.*

⁹⁵ *United States v. Locke*, 471 U.S. 84, 93, (1985).

⁹⁶ *Id.*

⁹⁷ *State ex rel. Kalal*, 2004 WI 58, ¶ 47-48.

⁹⁸ *Stigars v. State*, 674 A.2d 477, 483 (Del. 1996).

⁹⁹ *Horenkamp v. Van Winkle And Co.*, 402 F.3d 1129, 1132 (11th Cir. 2005).

¹⁰⁰ *Jackson v. S. Pan & Shoring Co.*, 258 Ga. 401, 403 (1988).

¹⁰¹ *Cox v. Fowler*, 279 Ga. 501, 502 (2005); *Prodigy Centers/Atlanta No. 1 L.P. v. T-C Assocs., Ltd.*, 269 Ga. 522, 525 (1998).

¹⁰² *Grace Bros. v. Farley Indus., Inc.*, 264 Ga. 817, 820 (1994); *Quinn v. Cardiovascular Physicians, P.C.*, 254 Ga. 216, 220 (1985).

have the capacity to impact people's lives and redefine the laws of a nation or state's citizens, although they are not legally binding.¹⁰³ Despite annotations to a statute being seemingly inconsequential, their repeated use by the courts to define and interpret laws have a profound effect on the people.

III. GEORGIA V. PUBLIC.RESOURCE.ORG, INC.: LEGISLATIVE EXPANSION OF THE GOVERNMENT EDICTS DOCTRINE

A. *The Development of Georgia v. Public.Resource.Org, Inc.*

In 1977, the Georgia General Assembly created the Code Revision Commission (Commission), comprised of “the Lieutenant Governor, four members of the Senate, the Speaker of the House of Representatives, four additional members of the House of Representatives, and four members appointed by the State Bar of Georgia . . . one of whom is a State district attorney.”¹⁰⁴ The Georgia General Assembly enacted the Commission to select a publishing firm to remodify and publish the Official Code of Georgia (O.C.G.A.), since the state had not published an official state code since 1933. The Commission created fifty-three Code titles for the O.C.G.A. as well as annotations for the Code, which the Georgia General Assembly later enacted.¹⁰⁵

The Commission in 2006 entered into an agreement with Matthew Bender & Co. Inc. (Lexis) for the publication of the O.C.G.A., which required the compilation of the statutes as well as the formation of non-statutory annotations, including “judicial decision summaries, editor's notes, research references, notes on law review articles, [and] summaries of the opinions of the Attorney General of Georgia . . .”¹⁰⁶ The Commission gave Lexis detailed instructions about what type of annotations can appear alongside statutory text as well as specific instructions for how Lexis could arrange the annotations.¹⁰⁷

Lexis was required to summarize all published opinions from the Georgia Court of Appeals, the Georgia Supreme Court, and any federal case which involved Georgia statutes. Lexis was also obligated to upload an unannotated version for free access to the general public. The contract stated that the Commission, not Lexis, held control and final approval over all material in the O.C.G.A., including the annotations,

¹⁰³ *Horenkamp*, 402 F.3d at 1132.

¹⁰⁴ *Code Revision Comm'n v. Public.Resource.Org, Inc.*, 244 F. Supp. 3d 1350, 1352 (N.D. Ga. 2017).

¹⁰⁵ *Id.* at 1352–53.

¹⁰⁶ *Id.* at 1353.

¹⁰⁷ *Id.*; *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1234.

before enactment by the Georgia General Assembly. Lexis had the exclusive right to publish and sell the O.C.G.A. in various forms, with the Commission receiving any licensing fee royalties.¹⁰⁸ The State of Georgia held the copyright for all the copyrightable contents of the Code.¹⁰⁹

Public.Resource.Org, Inc. (Public Resource) is a well-known, free publication site of the Supreme Court of the United States and United States Courts of Appeals opinions as well as some state statutory codes.¹¹⁰ Public Resource's goal in the publication of this material was to increase public access to legal information.¹¹¹ Public Resource purchased every volume and supplement of the O.C.G.A., posted the scanned copies on its website, submitted copies to an Internet archiving website, and gave electronic copies to individuals in the Georgia legislature. Due to this action, and after several cease and desist letters the Commission and the State of Georgia sued Public Resource in 2015 in the United States District Court for the Northern District of Georgia for copyright infringement.¹¹²

B. Previous Courts' Rationale in Georgia v. Public.Resource.Org, Inc.

The United States District Court found for the State of Georgia, stating that the O.C.G.A.'s annotations are copyrightable against Public Resource.¹¹³ Judge Story noted that The Copyright Act lists annotations as being a part of copyright protection and mentions *W.H. Anderson Co.* and *Lawrence* as two cases granting copyright protection for annotated cases and statutes.¹¹⁴ The court further observed that the United States Copyright Office's treatise states the copyrightability of annotations, alongside its registration of other states' annotated statutes, including Texas and New Mexico.¹¹⁵ The court also used *Callaghan*, a 1888 Supreme Court case where a legal reporter's annotations were copyrightable intellectual labor, as rationale for its decision.¹¹⁶

¹⁰⁸ *Code Revision Comm'n*, 244 F. Supp. at 1353–54.

¹⁰⁹ *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1234.

¹¹⁰ *Id.* at 1234–35.

¹¹¹ *Id.* at 1234.

¹¹² *Id.* at 1235; *Code Revision Comm'n*, 244 F. Supp. at 1354.

¹¹³ *Code Revision Comm'n*, 244 F. Supp. at 1361.

¹¹⁴ *Code Revision Comm'n*, 244 F. Supp. at 1356. See 17 U.S.C. § 101; *W.H. Anderson Co.*, 27 F.2d at 85–88; *Lawrence*, 15 F.Cas. at 60–61.

¹¹⁵ *Code Revision Comm'n*, 244 F. Supp. at 1356. See U.S. COPYRIGHT OFFICE, *COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES* §§ 313.6(C)(2), 717.1 (3d ed. 2014).

¹¹⁶ *Code Revision Comm'n*, 244 F. Supp. at 1356. See *Callaghan v. Myers*, 128 U.S. 617, 647 (1888).

Finally, although the entire O.C.G.A. contains both the statutory text and its annotations, the district court stated that the Georgia legislature did not enact the entire O.C.G.A. into law and is not binding. The Georgia General Assembly had, with O.C.G.A. § 1-1-1, declared its affiliation with a publisher in the production of annotations and with O.C.G.A. § 1-1-7 affirmed that such annotations do not constitute part of the law.¹¹⁷ After disregarding a defense of fair use by Public Recourse, the United States District Court found for the State of Georgia in 2017 and granted partial summary judgment.¹¹⁸

However, the United States Court of Appeals for the Eleventh Circuit disagreed.¹¹⁹ Judge Marcus wrote that O.C.G.A. annotations are an exercise of sovereign power and have legal effect, even if they do not have the force of the law.¹²⁰ The court stated that there are three hallmarks to a law: “the identity of the public officials who created the work, the authoritativeness of the work, and process by which the work was created.”¹²¹ The court explained that if the work holds authoritative power and is created by someone with authority, even if this authority is assigned, through a process by which public officials normally operate, then the work is authored by the People and belongs to the public domain.¹²² In this case, the court stated that the annotations were created through legislative authority, hold power to “explicat[e] and establish[] the meaning and effect of Georgia’s laws,” as well as following the process the legislature normally operates by presentment and enactment by the Georgia General Assembly.¹²³

The court of appeals focused on the term “authorship” through its analysis of the O.C.G.A. annotations.¹²⁴ The Eleventh Circuit intuited that “authorship” usually determines the ownership of the work, referring to the United States Code’s definition of ownership of copyright (“[c]opyright in a work . . . vests initially in the author or authors of the work”) where copyright will persist with the author despite a lack of registration of the work.¹²⁵ From this, the court

¹¹⁷ *Code Revision Comm’n*, 244 F. Supp. at 1356–57. See O.C.G.A. § 1-1-1; O.C.G.A. § 1-1-7.

¹¹⁸ *Code Revision Comm’n*, 244 F. Supp. at 1361.

¹¹⁹ *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1232.

¹²⁰ *Id.* at 1232–33.

¹²¹ *Id.* at 1232.

¹²² *Id.* at 1232–33.

¹²³ *Id.* at 1233.

¹²⁴ *Id.* at 1236.

¹²⁵ 17 U.S.C. § 201(a); *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1236. See *Arthur Rutenberg Homes, Inc. v. Drew Homes*, 29 F.3d 1529, 1531 (11th Cir. 1994).

rationalized that in order to determine who owns the copyright, the author must be recognized.¹²⁶ With works that are produced by the government, the author has been determined to be the People, barring copyright.¹²⁷

The court also took great inspiration from *Banks* and *Veeck* in its rationale.¹²⁸ The court stated that *Banks* created two rules: (1) works created by courts as a part of official duties do not belong to judges, thus calling attention to the manner in which works are created as to their copyrightability, and (2) public policy demanded that these works be uncopyrightable, thus shaping an argument that public policy can mold the rationale for what should be copyrighted.¹²⁹ This belief is noted by the court as also being iterated in *Veeck*, which declares that popular sovereignty creates public ownership of the law, which requires free access to laws.¹³⁰ The court also explained that the People are the constructive authors of any judicial and legislative work, since legislators and the judiciary are delegated by the People and are acting on their behalf (popular sovereignty).¹³¹ Any work in which the People are constructive authors is under the public domain.¹³²

The court stated that while the annotations do not have any authoritative power, they are “part and parcel” of the law and are “inextricable” from it.¹³³ The nature of the annotations are law-like in who created them, the process of how they were created, and the “role they play in the legislature and jurisprudential spheres of Georgia’s public life.”¹³⁴

Similar to Georgia law and *Banks*, the Georgia General Assembly was the “driving force” of the annotations’ making.¹³⁵ The connection to the Georgia General Assembly was made through the Commission, “an arm of the General Assembly,” who was funded and comprised primarily of legislative members.¹³⁶ Georgia law has also previously described the Commission’s work as “legislative.”¹³⁷ Since the

¹²⁶ *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1236.

¹²⁷ *Id.*

¹²⁸ *Id.* at 1239–41.

¹²⁹ *Id.*

¹³⁰ *Id.* at 1240–41; *Veeck*, 293 F.3d at 799.

¹³¹ *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1239. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

¹³² *Id.* at 1240.

¹³³ *Id.* at 1243.

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* at 1243–44. See O.C.G.A. § 28-9-2 (2020).

¹³⁷ *Harrison Co. v. Code Revision Comm’n*, 244 Ga. 325, 330 (1979).

Commission was seen as an agent of the Georgia General Assembly, and the Commission held ultimate control, supervision, final approval, and an eventual vote over the work that Lexis created, the annotations were seen as sufficiently similar in creation to a Georgia law.¹³⁸ Other United States Supreme Court and Eleventh Circuit cases have also allowed legislative immunity to groups that worked as a function of the legislative body even though they were not a part of the legislature themselves.¹³⁹

Through application that the annotations were authored, tailored, and adopted by the Georgia General Assembly, the court of appeals reasoned that they were a work of the state government, and “[c]opyright protection . . . is not available for any work of the United States Government,”¹⁴⁰ where “[a] work of the United States Government” is defined as “a work prepared by an officer or employee of the United States as part of the person’s official duties.”¹⁴¹ In *Banks*, the information must be created by someone who has the ability to promulgate binding works to the people.¹⁴² This is why, the court of appeals argued, that *Callaghan* was not antagonistic to *Banks*, in response to the analysis provided by the district court, which used *Callaghan* as the basis in its opposing ruling.¹⁴³ In *Callaghan*, the individual was tasked with administrative duties rather than having the power to promulgate law.¹⁴⁴

While every work of the legislature is not copyrightable, the court of appeals emphasized that the O.C.G.A.’s annotations have played a tremendous part in statutory interpretation in Georgia laws.¹⁴⁵ Courts across Georgia have cited to the annotations of the O.C.G.A. as a primary source to determine legislative intent, and the Supreme Court of the United States has often used legislative intent in statutory interpretation.¹⁴⁶ The O.C.G.A. annotations, unlike other annotations, carry with them the official state imprimatur and are interpreted by Georgia courts as the authoritative source in understanding provisions of the O.C.G.A.¹⁴⁷ The court of appeals noted that Georgia courts

¹³⁸ *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1243–45.

¹³⁹ *Id.* at 1245.

¹⁴⁰ 17 U.S.C. § 105.

¹⁴¹ 17 U.S.C. § 101; *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1245–46.

¹⁴² *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1246.

¹⁴³ *Id.* at 1247; *Code Revision Comm’n*, 244 F. Supp. 3d at 1356.

¹⁴⁴ *Callaghan*, 128 U.S. at 646.

¹⁴⁵ *Code Revision Comm’n for Gen. Assembly of Georgia*, 906 F.3d at 1248.

¹⁴⁶ *Id.* at 1248, 1250–51.

¹⁴⁷ *Id.* at 1249–50.

through statutory interpretation have merged the annotations with the statutory text to where the annotations are authoritative on the text.¹⁴⁸ The O.C.G.A. also states that statutes are “merged with annotations” to be published by authority of the state.¹⁴⁹ This evolution lends to the interpretation that the annotations are imbued “with an official, legislative quality” and have combined as separate entities to become one product or work.¹⁵⁰

Finally, the court of appeals stated that the process in which the annotations are adopted bears sufficient similarity to Georgia laws as well to be comparable.¹⁵¹ The court ruled that the General Assembly’s annual adoption of annotations carried the same key facets of the process of a law.¹⁵² Given this annual adoption, the legal significance that the annotations carry, and the annotations’ merger with the O.C.G.A. to define Georgia Code, the court of appeals held that the O.C.G.A.’s annotations were not copyrightable.¹⁵³ The facets of the annotations are “attributable to the constructive authorship of the People” and belong in the public domain.¹⁵⁴

C. The United States Supreme Court and Georgia v. Public.Resource.Org, Inc.

The Supreme Court of the United States followed the court of appeals’ use of *Banks* to determine, under differing rationale, that the annotations of the O.C.G.A. are not copyrightable, in Public Resource’s favor.¹⁵⁵ The Court, in a similar fashion to the court of appeals, viewed the Commission as an arm for the Georgia General Assembly.¹⁵⁶ The Commission was viewed as part of the Georgia General Assembly because the Commission was created by the legislature, did work in service of the legislature, was primarily composed of legislators, received funding from money allocated to the legislative branch, and the final work product was approved and merged with the O.C.G.A.¹⁵⁷

The Supreme Court evaluated the work Lexis provided as a “work for hire” due to the control the Commission exerted over the annotations;

¹⁴⁸ *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1248–49.

¹⁴⁹ O.C.G.A. § 1-1-1.

¹⁵⁰ *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1249.

¹⁵¹ *Id.* at 1255.

¹⁵² *Id.*

¹⁵³ *Id.* at 1254–55.

¹⁵⁴ *Id.*

¹⁵⁵ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1504.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 1508.

thus, the annotations were a work of the Commission.¹⁵⁸ This rendered the Commission, or through extension the Georgia General Assembly, the “author” of the annotations.¹⁵⁹ The Court also believed that the annotations were a legislative duty because of, as the court of appeals stated, the approval of the work.¹⁶⁰

The Supreme Court of the United States differed from the court of appeals in that the Supreme Court did not believe that a work carrying the “force of law” was significant in comparison to the position of the individual who creates their authoritative work as a part of their official duties; while a judge’s work holds power as an authoritative legal work due to the judge’s position, the same cannot be stated for a court reporter.¹⁶¹ The Court held that as in *Banks* where “non-binding, explanatory legal materials are not copyrightable when created by judges who possess the authority to make and interpret the law,” so should the same standard apply to “non-binding, explanatory legal materials created by a legislative body vested with the authority to make law.”¹⁶² The Court applied the rationale of the Massachusetts Supreme Court case *Nash v. Lathrop* as evidence that judicial opinions and statutes are equal in measure for purposes of the government edicts doctrine, thus allowing the equivalence of judges and legislators in this manner.¹⁶³ Works created by government officials who lack the authority to make or interpret the law are not under the government edicts doctrine.¹⁶⁴

Georgia argued that the Copyright Act specifically listed “annotations” as a work that is eligible for copyright protection.¹⁶⁵ However, the Court countered that this definition was insufficient due to a distinction of the “author.”¹⁶⁶ While annotations are allowed for copyright if they are “original work[s] of authorship,” the Court countered that this was not applicable because under the government edicts doctrine, judges and legislators are not “authors when they produce works in their official capacity.”¹⁶⁷

¹⁵⁸ *Id.* at 1505, 1508.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 1509.

¹⁶¹ *Id.* at 1506–07.

¹⁶² *Id.* at 1504 (emphasis removed).

¹⁶³ *Id.* at 1507; *Nash*, 142 Mass. at 35.

¹⁶⁴ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1507.

¹⁶⁵ *Id.* at 1509.

¹⁶⁶ *Id.*

¹⁶⁷ 17 U.S.C. § 102; *Id.* at 1509.

Georgia also argued that the Compendium of U.S. Copyright Office Practices (Compendium) preserved Georgia's argument.¹⁶⁸ The Compendium states that "the Office may register annotations that summarize or comment upon legal materials."¹⁶⁹ The Court responded by remarking that the Compendium is only persuasive authority as well as noting that this argument disregards the author of the material.¹⁷⁰ The Court countered that the Compendium also states, in reference to the significance of the author, that "[a]s a matter of longstanding public policy, the U.S. Copyright Office will not register a government edict that has been issued by any state, local, or territorial government, including . . . types of official legislative materials."¹⁷¹

Georgia also contended that such a decision would be harmful for the production and dissemination of the O.C.G.A., which runs counter to the Copyright Act's overall purpose of promoting such actions.¹⁷² Georgia argued that ruling in Public Resource's favor would cause many states to "be unable to induce private parties like Lexis to assist in preparing affordable annotated codes for widespread distribution."¹⁷³ The Court responded that Congress, not the judiciary, is the proper forum "to pursue the Copyright Clause's objectives."¹⁷⁴

After responding to both Justice Ginsburg's and Justice Thomas's dissents, the Court argued that public availability of the O.C.G.A.'s annotations is in Georgia citizens' best interest.¹⁷⁵ Without annotations, a free version of the Georgia Code also does not outline which statutes are overruled by the Georgia Supreme Court that the legislature has not narrowed or repealed.¹⁷⁶ After this, the Court affirmed the judgment of the Eleventh Circuit.¹⁷⁷

D. Georgia v. Public.Resource.Org, Inc.: Thomas's Dissent

In the first of two dissents, Justice Thomas, Justice Alito, and Justice Breyer took issue with the expansion of the government edicts doctrine,

¹⁶⁸ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1510.

¹⁶⁹ U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.6(C)(2)(rev. 3d ed. 2017).

¹⁷⁰ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1510–11.

¹⁷¹ U.S. COPYRIGHT OFFICE, COMPENDIUM OF U.S. COPYRIGHT OFFICE PRACTICES § 313.6(C)(2)(rev. 3d ed. 2017); *Id.* at 1511.

¹⁷² *Public.Resource.Org, Inc.*, 140 S. Ct. at 1511.

¹⁷³ *Id.*

¹⁷⁴ *Id.*; *Eldred v. Ashcroft*, 537 U.S. 186, 212 (2003).

¹⁷⁵ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1509, 1511–12.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 1513.

the argued expansion of the Copyright Act, and the effects the law will have upon the “22 [s]tates, 2 [t]erritories, and the District of Columbia” who employ a similar agreement for the production of annotated codes.¹⁷⁸ After reviewing the facts, court analysis, and holdings of *Wheaton* and *Banks* establishing that judicial opinions cannot be copyrighted, the dissent, through the use of *Callaghan*, articulated that notes prepared via an official court report are still copyrightable even when published with the uncopyrightable judicial opinions.¹⁷⁹

The dissent stated that these previous decisions were uncritically examined by the majority to receive an incorrect conclusion.¹⁸⁰ The dissent added that an incorrect application of the term “author” was used, in that *Banks* and the Copyright Act were not considering a judge as an “author” similarly to a writer of novels or musicals.¹⁸¹ Historically, in England judges were not considered authors.¹⁸² The dissent responded that, based on precedent, the Court should not have placed consideration on authorship; instead, the Court should have focused exclusively on whether a particular work has the force of law.¹⁸³

The majority responded to this argument of the dissent by countering that this exclusion of authorship held multiple problems.¹⁸⁴ The majority opinion stated that a lack of consideration on the identity of the author does not match the rationale used in previous Supreme Court cases, naming *Wheaton* and *Banks*.¹⁸⁵ *Banks* considered and disallowed copyright protection for “headnotes and syllabi produced by judges,” although these materials did not carry the force of law.¹⁸⁶ The majority held that the Court should primarily consider who the author is, whether this author carries the force of law, and whether this author was acting in an official capacity when creating this work, not whether the work carries any force of law.¹⁸⁷ While the dissent argued that the author should not be considered, the majority countered that the Copyright Act focuses on the author through the “authorship”

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 1514–15.

¹⁸⁰ *Id.* at 1515.

¹⁸¹ *Id.* at 1515–16.

¹⁸² *Id.* at 1516.

¹⁸³ *Id.* at 1515.

¹⁸⁴ *Id.* at 1511.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*; *Banks*, 128 U.S. at 253.

¹⁸⁷ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1512.

requirement, and other Supreme Court cases have made differentiations on copyrightability based on whom the author was.¹⁸⁸

The dissent also asserted that a worry about fair notice may have been the true motivator for the Court's holding rather than the cases themselves.¹⁸⁹ The dissent expressed that this concern is unwarranted because the annotations are not law and "do not even purport to embody the will of the people."¹⁹⁰ They only serve as a summary and consolidation of legal information.¹⁹¹ The dissent also argued that the Copyright Act supports this interpretation due to a lack of definition of the term "author," no mention of state employees is made in the government edicts doctrine, and the mention of annotations as copyrightable derivative works.¹⁹²

The Georgia General Assembly expressly stated that the annotations were not binding through O.C.G.A. § 1-1-1 and O.C.G.A. § 1-1-7, and although the materials appear in the same code, there is little confusion for the reader as to which material is the Code and which material serves as commentary.¹⁹³ The annotations also do not enter the same process of bicameralism and presentment necessary to become a law in Georgia.¹⁹⁴ The creation of the annotations was also more synonymous to other copyrightable material such as books and music because, unlike judicial opinions, the creation of annotations is motivated by copyright laws to create a product that will earn revenue.¹⁹⁵ The dissent remarked that an individual who wishes to find information regarding Georgia statutory law changes can look through court decisions rather than be dependent on one tool to access the same factual information.¹⁹⁶

Finally, Justice Thomas's dissent finds flaw with the application of the majority's holding. Almost all jurisdictions with annotated codes employ contractors that are supervised by legislators or the judiciary.¹⁹⁷ "Many [s]tates, private parties, and legal researchers" are affected by this holding, possibly causing the cessation of an annotated version.¹⁹⁸ Via its contract, the O.C.G.A. allowed creation of an annotated version

¹⁸⁸ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1512. See 17 U.S.C. § 101; *Banks*, 128 U.S. at 253; *Callaghan*, 128 U.S. at 647.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 1517.

¹⁹¹ *Id.*

¹⁹² *Id.* at 1518.

¹⁹³ *Id.* at 1517.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*

¹⁹⁷ *Id.* at 1521.

¹⁹⁸ *Id.* at 1522.

to sell that is markedly less expensive than other annotated codes on the market for the O.C.G.A.¹⁹⁹ “Lexis sold the O.C.G.A. for \$404 in 2016, while West Publishing’s competing annotated code sold for \$2,570.”²⁰⁰ Through the majority’s decision, the majority’s initial fear that the law was less accessible to people may have been truly realized.²⁰¹ The dissent ended by stating that the People should be able to take to Congress to alter the Copyright Clause in their best interest.²⁰²

E. Georgia v. Public.Resource.Org, Inc.: Ginsburg’s Dissent

Justice Ginsburg authored the other dissenting opinion, which Justice Breyer joined, to state that the O.C.G.A. annotations are not an act of the legislature.²⁰³ Rather than detract away from the role of the “author,” this dissent believed that a legislator’s annotations can be copyrightable versus a judge’s due to the difference of the role.²⁰⁴ While the judiciary is tasked with interpreting and applying the law, the legislature makes laws.²⁰⁵

The dissent argued that the O.C.G.A. annotations are not a part of the lawmaking process to count as works of the legislature.²⁰⁶ The legislature did not create annotations and statutes concurrently, and the annotations only serve as comments to statutes that are already passed; “annotating begins only after lawmaking ends.”²⁰⁷ The annotations also only serve to describe a law, rather than prescribe any action as a law written by a legislator does.²⁰⁸ Finally, the O.C.G.A. stated that annotations are present only as a convenience or aid for the reader.²⁰⁹ Because of these reasons, the dissent ended by stating that the O.C.G.A. annotations cannot be considered works of the legislature and should not be copyrightable.²¹⁰

The majority opinion also responded to the dissent’s argument that annotations are not “authoritative explanations of the law” and work

¹⁹⁹ *Id.*

²⁰⁰ *Id.*

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.* at 1523.

²⁰⁴ *Id.* at 1515, 1523.

²⁰⁵ *Id.* at 1523.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.* at 1523–24.

²⁰⁹ O.C.G.A. § 1-1-7; *Id.* at 1524.

²¹⁰ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1524.

only as a summarization and comment of other law.²¹¹ The majority retorted that a lack of authoritative explanation of the law does not place a written work “outside the exercise of legislative duty by the Commission and legislature.”²¹² The majority opinion countered that even though statements of the case or syllabi lack an authoritative explanation of the law, these works are still under the government edicts doctrine because the judges did the work within their official capacity.²¹³ The majority did not directly address the delineation Justice Ginsburg made between the work of the legislator and the creation and role of the annotations.²¹⁴

IV. BENEFITS OF THE EXPANSION OF THE GOVERNMENT EDICTS DOCTRINE

The Supreme Court reached the correct holding in *Georgia v. Public.Resource.Org, Inc.* through its analysis of the annotation’s author and the annotations’ power in Georgia courts. As the Supreme Court and the Eleventh Circuit determined, statutory annotations hold significant power over courts’ statutory interpretation and are a necessary aid for citizens to understand their rights. Though changes to public access to state statutory annotations may seem of small effect, this change benefits a multitude of people and professions, as well as possibly increasing public access to other information promulgated and enforced by the government. Although changes may occur to the procedure of governmental departments and to annotations’ creation, this change can either be remedied or is slight in comparison to the benefit of increased access to statutory annotations. The sections below denote the benefits and just results of this ruling, as well as possible issues that may arise and how those issues can be diminished.

A. Increase of Access to Legal Information to the Public

The greatest boon from the Supreme Court’s decision for the People is the increase in access to legal information for the citizenry. For the populace, this is “a cause to celebrate;” an allowance for free access to these annotations allows a deeper understanding of the laws which govern their lives.²¹⁵ Annotations contextualize the law and are often

²¹¹ *Id.* at 1509, 1523–24.

²¹² *Id.* at 1509.

²¹³ *Id.*

²¹⁴ *See id.* at 1523–24.

²¹⁵ Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. NEWS & WORLD REPORT L.P., (Aug. 22, 2019), <https://www.usnews.com/news/best-states/articles/2019-08-22/can-states-copyright-annotations-to-their-own-laws>.

used by federal and state courts in interpretation of the law.²¹⁶ Access to the law and information which has great power on the law is not only beneficial, but also expected and fundamental to the right of citizens expected to comply with these laws where “ignorance of the law is no excuse.”²¹⁷ “[I]t’s difficult to imagine the people who fought a war against a Star Chamber monarchy meant for this power to allow state governments to keep people in the dark about the law.”²¹⁸

By allowing Georgia citizens access to annotations, Georgia residents are no longer subject to the “economy-class” version of the O.C.G.A. that never denoted unconstitutional and unenforceable statutes that had not been removed from the current Code.²¹⁹ By gaining access to the “first-class” O.C.G.A., readers will be able to see what limits, restrictions, and freedoms apply to them and it does not subject the reader to less rights for the inability or unwillingness to purchase the premium product.²²⁰ Although the Court believed no nefarious action was done, it is cognizant that an unjust result occurred.²²¹

Before this ruling, these annotations could only be accessed via purchase of an annotated copy for several hundred dollars, an attempt to find a library with a current copy, or payment to use Lexis, thus raising further concerns about having to agree to extensive terms that implicate an individual’s privacy.²²² Before the Supreme Court’s

²¹⁶ Kelundra Smith, *Law professors pen amicus brief in Georgia copyright case*, GEORGIA STATE NEWS HUB, (June 26, 2020), <https://news.gsu.edu/2020/06/26/law-professors-pen-amicus-brief-in-georgia-copyright-case/>.

²¹⁷ Stan Adams, *Supreme Court Reminds States That Citizens Own the Law in Georgia v. Public.Resource.Org*, CENTER FOR DEMOCRACY & TECHNOLOGY, (Apr. 30, 2020), <https://cdt.org/insights/supreme-court-reminds-states-that-citizens-own-the-law-in-georgia-v-public-resource-org/>.

²¹⁸ A Star Chamber court was an English court for the upper class that was viewed by many during its use to be arbitrary, subjective, mismanaged, and an instrument of oppression by royalty. The court was often used by English royalty to convict political opponents and to suppress those who acted or spoke unfavorably of the actions of the king until its abolishment in 1641. Stan Adams, *Supreme Court Reminds States That Citizens Own the Law in Georgia v. Public.Resource.Org*, CENTER FOR DEMOCRACY & TECHNOLOGY, (Apr. 30, 2020), <https://cdt.org/insights/supreme-court-reminds-states-that-citizens-own-the-law-in-georgia-v-public-resource-org/>; The Editors of Encyclopaedia Britannica, *Star Chamber | Definition, History, & Facts*. BRITANNICA. (Sep. 27, 2020), <https://www.britannica.com/topic/Star-Chamber>.

²¹⁹ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1512.

²²⁰ *Id.* at 1513.

²²¹ *Id.*

²²² Stan Adams, *Supreme Court Reminds States That Citizens Own the Law in Georgia v. Public.Resource.Org*, CENTER FOR DEMOCRACY & TECHNOLOGY, (Apr. 30, 2020), <https://cdt.org/insights/supreme-court-reminds-states-that-citizens-own-the-law-in-georgia-v-public-resource-org/>.

holding, a news station in Atlanta attempted to gain access to a current annotated version of the O.C.G.A. through the legislative council, who directed the station to visit a library if they did not want to pay several hundred dollars.²²³ After visiting three branches of the Fulton County Public Library, including the main branch directly across from the Georgia Capitol, the investigator found that none of the libraries held a complete current set, and some volumes were six years out of date.²²⁴

An amicus brief also raised concerns about the O.C.G.A.'s inaccessibility for those with disabilities.²²⁵ For those who are unable to physically travel to a library, they will be unable to access legal materials without paying for a subscription or a copy of the O.C.G.A. Other individuals with disabilities require the use of assistive technology such as screen reading software. Since the law is unavailable online and is hosted on a site that is not sufficiently open to allow such software to work, then these individuals are unable to use such technology. The brief cites a study of individuals with these needs having difficulty reading and utilizing legal materials, as well as noting how Lexis is currently not available for people with these disabilities. Public Resource created a database for the O.C.G.A. that was accessible to those who use assistive technology.²²⁶ With this copyright displaced, those with disabilities will have better access to the law.

Prior to this decision, some feared that those who were unable to purchase a subscription with Lexis or who were unaware of the annotations would be unable to access “the state’s own explanation and analysis of the law in which the state’s citizens are expected to abide.”²²⁷ Such greater access also allows those who frequently utilize annotations such as educators, students, librarians, journalists, historians, and any lawyer or legal educator unable to afford Lexis to have access to the “state’s interpretation of the law” and have a greater

²²³ Lindsay Basye, Brendan Keefe, *Georgia lawmakers fights to keep state laws off the internet*, 11ALIVE, (Dec. 2, 2019), <https://www.11alive.com/article/news/investigations/the-reveal/ga-copyright-laws-us-supreme-court/85-4ebce978-2735-434f-93e8-06bd66a4f3f2>.

²²⁴ Lindsay Basye, Brendan Keefe, *Georgia lawmakers fights to keep state laws off the internet*, 11ALIVE, (Dec. 2, 2019), <https://www.11alive.com/article/news/investigations/the-reveal/ga-copyright-laws-us-supreme-court/85-4ebce978-2735-434f-93e8-06bd66a4f3f2>.

²²⁵ Brief of Amici Curiae Next-Generation Legal Research Platforms and Databases and Digital Accessibility Advocate In Support of Respondent at 9–11, *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020) (No. 18-1150).

²²⁶ *Id.*

²²⁷ Kristin Lamb, *SCOTUS to Consider if State Legal Texts May Be Copyrighted in Georgia v. Public.Resource.Org, IPWATCHDOG*, <https://www.ipwatchdog.com/2019/08/21/scotus-consider-state-legal-texts-may-copyrighted-georgia-v-public-resource-org/id=112409/>.

swath of information for research.²²⁸ The American Association of Law Libraries and other library associations filed an amicus brief stating that libraries need the government edicts doctrine for access and preservation of legal materials.²²⁹

A deeper understanding of a law, while beneficial, shrinks in comparison to the paramount importance of the annotations' power as explanatory legal materials to determine how a statute is interpreted.²³⁰ Both federal and Georgia courts utilize the annotations provided with their respective codes as a guide for interpretation, allowing the annotations to hold the statute's true meaning.²³¹ Given the power that annotations hold in the determination of the laws, free access to this information gives citizens a much greater chance of understanding their rights.

Many individuals often choose to represent themselves in court for family law matters, wills and estates, or other sectors of the law when a lawyer would be too expensive or time-consuming to consult or hire.²³² These numbers are expected to continue to rise, especially in family law cases.²³³ While an individual may search and read the relevant statutes, an inability to consult annotations may lead to an incorrect interpretation already resolved by the courts or to not consider other legal data such as cases present in the annotations. Such a lack of access to explanatory information used by the federal and Georgia courts places that party at a great disadvantage; it "can make the

²²⁸ Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. NEWS & WORLD REPORT L.P., (Aug. 22, 2019), <https://www.usnews.com/news/best-states/articles/2019-08-22/can-states-copyright-annotations-to-their-own-laws>; Kristin Lamb, *SCOTUS to Consider if State Legal Texts May Be Copyrighted in Georgia v. Public.Resource.Org*, IPWATCHDOG, (Aug. 21, 2019), <https://www.ipwatchdog.com/2019/08/21/scotus-consider-state-legal-texts-may-copyrighted-georgia-v-public-resource-org/id=112409/>.

²²⁹ Brief of American Library Association, Association of College and Research Libraries, Association of Research Libraries, and the American Association of Law Libraries as *Amici Curiae* In Support of Respondent, *Georgia v. Public.Resource.Org, Inc.*, 140 S. Ct. 1498 (2020) No. 18-1150; Thomas Baer, *SCOTUS Rules "No One Can Own The Law" – Georgia v. Public.Resource.Org, Inc.*, JENKINS LAW LIBRARY, (May 7, 2020), <https://www.jenkinslaw.org/blog/2020/05/07/scotus-rules-no-one-can-own-law-georgia-v-publicresourceorg-inc>.

²³⁰ *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1250–51.

²³¹ *Id.*

²³² Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. NEWS & WORLD REPORT L.P., (Aug. 22, 2019), <https://www.usnews.com/news/best-states/articles/2019-08-22/can-states-copyright-annotations-to-their-own-laws>.

²³³ *Id.*

difference between winning and losing a case.”²³⁴ With this ruling, these people have a better understanding of the law.

B. Benefits to Computational Analysis of Legal Information

A greatly unconsidered but intriguing impact of *Georgia v. Public.Resource.Org, Inc.* is the effect that the ruling will have upon computational analysis of legal information. Researchers at Georgia State University School of Law and many other law schools use computational analysis with legal information for the prediction of case outcomes and the identification of biases in rulings; this holding is greatly beneficial to their studies. Paid platforms greatly inhibit their research due to downloading restrictions and other limits. Other researching sites such as Westlaw or Bloomberg also place limits on the information displayed. Computational legal scholarship requires access to digital versions of codes; previously, annotations were privy to the restrictions of paid platforms that do not exist for free platforms. With full free access to statutory code, legal researchers, historians, and courts can more easily utilize computational methodologies to their benefit.²³⁵

However, other researchers have indicated trepidation that this ruling is beneficial for legal research. The Software & Information Industry Association (of which Lexis is a member) filed an amicus brief stating that a ruling for Public Resource would likely hamper investment of law-related works, inhibiting innovation within the legal research community.²³⁶ However, this argument seems to be structured in a belief that an alternative deal for the creation of annotations is improbable, especially any scenario in which the state legislature is not in control of the work product.

C. Increased Supervision on Other Governmental Work-Product to Protect Copyrightability

If, during their official capacity, legislators create a work on their own or via a work for hire, then that work is uncopyrightable under the government edicts doctrine as a result of *Georgia v.*

²³⁴ *Id.*

²³⁵ Kelundra Smith, *Law professors pen amicus brief in Georgia copyright case*, GEORGIA STATE NEWS HUB, (June 26, 2020), <https://news.gsu.edu/2020/06/26/law-professors-pen-amicus-brief-in-georgia-copyright-case/>.

²³⁶ Robert Ambrogi, *Can A State Copyright The Law? SCOTUS Will Decide*, ABOVE THE LAW, (Jul. 1, 2019), <https://abovethelaw.com/2019/07/can-a-state-copyright-the-law-scotus-will-decide/?rf=1>.

*Public.Resource.Org, Inc.*²³⁷ Any individuals or companies concerned with copyright that create government materials will have to keep watch as to whether their work will be used by a lawmaking official or body in an official capacity, as well as consider if their work could be used for a legislative activity.²³⁸ Government entities should also evaluate if activities they employ have “quasi” legislative or judicial functions that could be evaluated as an action of the legislature or judiciary.²³⁹ Concerns could also arise with works created by private parties for municipalities and counties.²⁴⁰

This new need for supervision is not too strenuous of a task for these governmental bodies. The public policy benefit to access of information created in an official capacity by the legislature or judiciary is far greater than an internal check to ensure that information would be copyrightable. If this information is being used in a manner that binds the citizenry, such as governmental adoption of building codes or regulations, there is a strong public benefit to having this information be publicly accessible. Demanding a citizen to be bound to governmental materials which are not publicly available—materials which must be bought to be accessed—disallows that individual from a fundamental right to the law.²⁴¹ Moreover, not all works created by the government are under the government edicts doctrine. Governmental works

²³⁷ Jeffrey Cadwell, *Copyright Lawyers on SCOTUS Decision in Georgia v. Public.Resource.Org: Expected, But Possibly Problematic*, IPWATCHDOG, (Apr. 29, 2020), <https://www.ipwatchdog.com/2020/04/29/copyright-lawyers-scotus-decision-georgia-v-public-resource-org-expected-possibly-problematic/id=121163/>.

²³⁸ Anthony J. Dreyer, Jordan Feirman, David M. Lamb, *US Supreme Court Rejects Attempt To Copyright Annotated Version of State Laws*, SKADDEN, (Apr. 28, 2020), <https://www.skadden.com/insights/publications/2020/04/us-supreme-court-rejects-attempt>; Mark Matuschak, Rieko Shepherd, *Supreme Court Expands the Government Edicts Doctrine to Legislators*, JD SUPRA, (May 18, 2020), <https://www.jdsupra.com/legalnews/supreme-court-expands-the-government-59105/>.

²³⁹ Anthony J. Dreyer, Jordan Feirman, David M. Lamb, *US Supreme Court Rejects Attempt To Copyright Annotated Version of State Laws*, SKADDEN, (Apr. 28, 2020), <https://www.skadden.com/insights/publications/2020/04/us-supreme-court-rejects-attempt>.

²⁴⁰ Darren Ford, *Supreme Court Offers Guidance Regarding Eligibility of State Legislative Records for Protection Under the Copyright Act*, GRAYDON, (Apr. 28, 2020), <https://graydon.law/supreme-court-offers-guidance-regarding-eligibility-of-state-legislative-records-for-protection-under-the-copyright-act/>.

²⁴¹ Stan Adams, *Supreme Court Reminds States That Citizens Own the Law in Georgia v. Public.Resource.Org*, CENTER FOR DEMOCRACY & TECHNOLOGY, (Apr. 30, 2020), <https://cdt.org/insights/supreme-court-reminds-states-that-citizens-own-the-law-in-georgia-v-public-resource-org/>.

prepared for non-legislative or non-judicial officials, offices, or uses have copyright protection.²⁴²

D. The Necessary Alterations to Other State Statutes

As noted in Justice Thomas's dissent, twenty-five other jurisdictions claimed copyrights on their official code annotations, affecting nearly half of the states of the United States.²⁴³ Alabama, Alaska, Arkansas, Idaho, Kansas, Mississippi, Nebraska, South Carolina, South Dakota, Tennessee, Utah, Vermont, Virginia, and the District of Columbia all filed an amicus brief for Georgia in the case.²⁴⁴ All of the twenty-five regions which employ an annotation method for their Codes similar to Georgia will now have to re-evaluate and alter the structure of their publishing agreements.²⁴⁵ As previously discussed, the work which will have to be employed to restructure these deals are a necessary cost if done in the protection of the People's right to annotations. A necessity of a right should not hinge on the possibility that state bodies and corporations will have to restructure contract negotiations.

E. A Worried End to Annotations and Its Possible Solutions

The strongest rebut to the majority opinion, especially after the opinion espouses so many public policy sentiments, was Justice Thomas's concern that individual states will, as a result, cease in the production of annotated codes.²⁴⁶ He hypothesizes that, because the state will no longer be able to receive an annotated version of the O.C.G.A. via a government contract for a much lower price (\$404) than the other competing annotated code (\$2,570), the O.C.G.A. might become less accessible and expensive than before.²⁴⁷

²⁴² Jeffrey Cadwell, *Copyright Lawyers on SCOTUS Decision in Georgia v. Public.Resource.Org: Expected, But Possibly Problematic*, IPWATCHDOG, (Apr. 29, 2020), <https://www.ipwatchdog.com/2020/04/29/copyright-lawyers-scotus-decision-georgia-v-public-resource-org-expected-possibly-problematic/id=121163/>.

²⁴³ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1513; *Georgia v. Public.Resource.Org, ELECTRONIC PRIVACY INFORMATION CENTER*, (Apr. 27, 2020), <https://epic.org/amicus/public-access/publicresourceorg/>.

²⁴⁴ Ross Ufberg, *Can You Copyright the Law...ish?*, BERKLEY TECHNOLOGY LAW JOURNAL, (Nov. 25, 2019), <https://btlj.org/2019/11/can-you-copyright-the-law-ish/>.

²⁴⁵ Anthony J. Dreyer, Jordan Feirman, David M. Lamb, *US Supreme Court Rejects Attempt To Copyright Annotated Version of State Laws*, SKADDEN, (Apr. 28, 2020), <https://www.skadden.com/insights/publications/2020/04/us-supreme-court-rejects-attempt>.

²⁴⁶ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1522.

²⁴⁷ *Id.*

Concerns also arise that taxpayers will have to pay several million dollars for Georgia to create annotations.²⁴⁸ Other lawyers share Justice Thomas's concern and worry that if states are not willing to pay extra for annotated versions of their respective codes, then publishing companies will have no financial incentive to continue making annotations, and the public will no longer have access to this valuable information that can be essential for statutory interpretation.²⁴⁹ Some lawyers state that if copyright protection is absent and freely available for use, no reputable company will be willing to write them.²⁵⁰

Other lawyers have noted that through the publication agreement with Lexis, Georgia had in place barriers for how much Lexis could charge (\$404) and requirements for Lexis to provide copies to some libraries, universities, and government buildings in Georgia.²⁵¹ Without these barriers in place, any annotated law that is eventually produced will be far less accessible to Georgia's citizens.²⁵² Other states argued that, with curated control over who creates the annotations, states can prevent unsolicited third parties from publishing incorrect statutory language to the detriment of the people of Georgia.²⁵³ They believe that Congress, as mentioned by the Court and Justice Thomas's dissent, will be the best solution to these possible issues.²⁵⁴

²⁴⁸ See Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. NEWS & WORLD REPORT L.P., (Aug. 22, 2019), <https://www.usnews.com/news/best-states/articles/2019-08-22/can-states-copyright-annotations-to-their-own-laws>.

²⁴⁹ Mitchell Stein, *Copyright Lawyers on SCOTUS Decision in Georgia v. Public.Resource.Org: Expected, But Possibly Problematic*, IPWATCHDOG, (Apr. 29, 2020), <https://www.ipwatchdog.com/2020/04/29/copyright-lawyers-scotus-decision-georgia-v-public-resource-org-expected-possibly-problematic/id=121163/>.

²⁵⁰ Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. NEWS & WORLD REPORT L.P., (Aug. 22, 2019), <https://www.usnews.com/news/best-states/articles/2019-08-22/can-states-copyright-annotations-to-their-own-laws>.

²⁵¹ *Id.*

²⁵² *Id.*

²⁵³ Kristin Lamb, *SCOTUS to Consider if State Legal Texts May Be Copyrighted in Georgia v. Public.Resource.Org*, IPWATCHDOG, <https://www.ipwatchdog.com/2019/08/21/scotus-consider-state-legal-texts-may-copyrighted-georgia-v-public-resource-org/id=112409/>; Katherine C. Dearing and Meaghan H. Kent, *Supreme Court Uses Old Cases to Create New Problems in Denying Copyrightability of Annotations of Georgia's Code*, Venable LLP, (May 18, 2020), <https://www.venable.com/insights/publications/2020/05/supreme-court-uses-old-cases-to-create-new>.

²⁵⁴ Mitchell Stein, *Copyright Lawyers on SCOTUS Decision in Georgia v. Public.Resource.Org: Expected, But Possibly Problematic*, IPWATCHDOG, (Apr. 29, 2020), <https://www.ipwatchdog.com/2020/04/29/copyright-lawyers-scotus-decision-georgia-v-public-resource-org-expected-possibly-problematic/id=121163/>; Katherine C. Dearing and Meaghan H. Kent, *Supreme Court Uses Old Cases to Create New Problems in Denying*

However, this envisioning fails to consider any possible alternative agreements that Lexis can make with a state body to retain most of the benefits found in the original agreement. This viewpoint articulates that Lexis holds such tremendous value in the copyright, as opposed to payment for only the creation and distribution, that a lack of copyrightability will disallow any alternative structure. This prediction also eliminates any possibility that the price of these agreements will still remain reasonably low if companies bid for the value of the creation and distribution agreements future states will offer to publishing companies.

One possible solution could be a state-funded or state-affiliated organizations where legislators do not hold so much control over the creation of the annotations, lending them not a work-for-hire.²⁵⁵ However, this does not address all the concerns that Georgia presented. Another consideration is that Lexis and other similar platforms already have a client-base that expects annotations when using their product, establishing an economic incentive to continue creating annotations. Lexis was not producing any revenue via the creation of Georgia's annotations, and much of the material that they were already offering (statutes and cases) are uncopyrightable.²⁵⁶ Lexis derives revenue from the ease of access and the quick searchability of the law, rather than access to copyrighted material.²⁵⁷ Moreover, private publishers still have the "ability to create, copyright, and sell annotated versions of legal codes," but just not official works made by those in the judiciary or legislature while in their official capacities.²⁵⁸

The best solution to this issue would be for Georgia to enter into a license agreement with Lexis instead of a work-for-hire agreement to

Copyrightability of Annotations of Georgia's Code, Venable LLP, (May 18, 2020), <https://www.venable.com/insights/publications/2020/05/supreme-court-uses-old-cases-to-create-new>.

²⁵⁵ Mike Etienne, Marcus Harris, *Supreme Court Rules on Copyright Ownership for Annotated State Code*, TAFT LAW, (Apr. 28, 2020), <https://www.taftlaw.com/news-events/law-bulletins/supreme-court-rules-on-copyright-ownership-for-annotated-state-code>.

²⁵⁶ Adina Solomon, *Can States Copyright Annotations to Their Own Laws?*, U.S. NEWS & WORLD REPORT L.P., (Aug. 22, 2019), <https://www.usnews.com/news/best-states/articles/2019-08-22/can-states-copyright-annotations-to-their-own-laws>.

²⁵⁷ *Id.*

²⁵⁸ Stan Adams, *Supreme Court Reminds States That Citizens Own the Law in Georgia v. Public.Resource.Org*, CENTER FOR DEMOCRACY & TECHNOLOGY, (Apr. 30, 2020), <https://cdt.org/insights/supreme-court-reminds-states-that-citizens-own-the-law-in-georgia-v-public-resource-org/>; Bashar H. Malkawi, *Georgia vs. Public.Resource.org: The Morning After*, SCRIPTed, (June 15, 2020), <https://script-ed.org/blog/georgia-vs-public-resource-org/>.

mitigate these issues and allow Lexis to retain its copyright.²⁵⁹ In the future, if states wish to keep copyright protection on annotations, they could allow the compiler to be the author of the annotation, who could later assign or license the annotations to the state.²⁶⁰

Veeck stated in the Fifth Circuit that model building codes were not copyrightable as they had become law after being the industry standard for buildings in the municipality.²⁶¹ Given how influential *Veeck* was in the rationale for the Eleventh Circuit with this current expansion of copyright law, copyright law may be expanded again to include model building codes and other industry standards such as technical and scientific standards which are later adopted into regulations and laws.²⁶²

One notable developing lawsuit by the International Code Council against UpCodes involves the publication of model building codes used by architectural firms and contractors that were copyrighted but also enacted into law.²⁶³ The International Code Council creates I-Codes that are used as construction regulation for commercial and residential buildings adopted in every U.S. state and some other countries.²⁶⁴ UpCodes is a database with building codes and construction regulations that attempts to make this information available to its users.²⁶⁵

²⁵⁹ David R. Todd, *Georgia v. Public.Resource.Org, Inc.: Works Produced by Judges or Legislators in the Course of Their Official Duties Are Not Protected by Copyright, Including the Annotations in Georgia's Official Code*, WORKMAN NYDEGGER, (May 13, 2020), <https://www.wnlaw.com/blog/georgia-v-public-resource-org-inc-works-produced-by-judges-or-legislators-in-the-course-of-their-official-duties-are-not-protected-by-copyright-including-the-annotations-in-georgias-offi/>.

²⁶⁰ Michael R. Friedman, Justin A. MacLean, *Allen v. Cooper and Georgia v. Public.Resource.org: The Supreme Court Navigates the Relationship Between State Government and Federal Copyright Law*, GreenbergTraurig, (May 05, 2020), <https://www.gtlaw.com/en/insights/2020/5/allen-v-cooper-and-georgia-v-public-resource-org-supreme-court-state-federal-copyright-law>.

²⁶¹ *Veeck*, 293 F.3d at 795–96, 800.

²⁶² *Code Revision Comm'n for Gen. Assembly of Georgia*, 906 F.3d at 1239–41; Michael Carroll, *Big Win for Open Access to Law – Georgia v. Public.Resource.Org*, INFOJUSTICE, (May 5, 2020), <http://infojustice.org/archives/42320>.

²⁶³ Michael Carroll, *Big Win for Open Access to Law – Georgia v. Public.Resource.Org*, INFOJUSTICE, (May 5, 2020), <http://infojustice.org/archives/42320>; Kim Slowey, *ICC v. UpCodes: Can a private organization copyright the law?*, CONSTRUCTIONDIVE, (July 17, 2019), <https://www.constructiondive.com/news/icc-v-upcodes-can-a-private-organization-copyright-the-law/558723/>.

²⁶⁴ Kim Slowey, *ICC v. UpCodes: Can a private organization copyright the law?*, CONSTRUCTIONDIVE, (July 17, 2019), <https://www.constructiondive.com/news/icc-v-upcodes-can-a-private-organization-copyright-the-law/558723/>.

²⁶⁵ *Id.*

Organizations that develop these technical standards often later become adopted into state legislatures or Congress.²⁶⁶ These organizations are often reliant on revenue gained from selling access to these technical standards via books and subscriptions.²⁶⁷ Upcodes affirms that these standards, through adoption by the state and federal legislature, have become the law and should be accessible to the public, motivated by the outcome of *Georgia v. Public.Resource.Org, Inc.*²⁶⁸ Upcodes also believes navigation of code requirements, transparency in these regulations, and innovations within model codes and workflows via algorithms can be realized if this information is accessible to the public.²⁶⁹ As previously discussed, expectations that the public pay to access regulations to which they are legally bound to follow goes against the fundamental rights of the People.²⁷⁰

Georgia v. Public.Resource.Org, Inc. bodes similar to *Fastcase, Inc. v. Lawriter, LLC*,²⁷¹ a case where Casemaker sued Fastcase over Fastcase's publication of the Georgia Administrative Rules and Regulations.²⁷² Casemaker's parent company has a contract with the Georgia Secretary of State to be the exclusive publisher of Georgia's administrative regulations.²⁷³ Although Fastcase lost its case, Fastcase's CEO remarked how great of a decision *Georgia v. Public.Resource.Org, Inc.* was for public access.²⁷⁴ The Supreme Court's

²⁶⁶ *Id.*

²⁶⁷ *High Court Rules Works Authored by Legislators in Their Legislative Capacity Ineligible for Copyright Protection*, COOLEY, (Apr. 29, 2020), <https://www.cooley.com/news/insight/2020/2020-04-29-works-authored-legislators-legislative-capacity-exempt-copyright-protection>.

²⁶⁸ Kim Slowey, *Construction code purveyor calls Supreme Court's ruling that annotated code can't be copyrighted 'monumental'*, CONSTRUCTIONDIVE, (Apr. 29, 2020), <https://www.constructiondive.com/news/construction-code-purveyor-calls-supreme-courts-ruling-that-annotated-code/577013/>.

²⁶⁹ *Id.*

²⁷⁰ Stan Adams, *Supreme Court Reminds States That Citizens Own the Law in Georgia v. Public.Resource.Org*, CENTER FOR DEMOCRACY & TECHNOLOGY, (Apr. 30, 2020), <https://cdt.org/insights/supreme-court-reminds-states-that-citizens-own-the-law-in-georgia-v-public-resource-org/>.

²⁷¹ 229 F. Supp. 3d 1301 (N.D. Ga. 2017).

²⁷² Robert Ambrogi, *Fastcase Sues Casemaker Over Publishing of State Laws*, LAWSITES, (Feb. 6, 2016), <https://www.lawsitesblog.com/2016/02/fastcase-sues-casemaker-over-publishing-of-state-laws.html>.

²⁷³ Bob Ambrogi, *Breaking: Fastcase and Casemaker Settle Copyright Litigation over Georgia Regs*, LAWSITES, (Dec. 9, 2019), <https://www.lawsitesblog.com/2019/12/breaking-fastcase-and-casemaker-settle-copyright-litigation-over-georgia-regs.html>.

²⁷⁴ Bob Ambrogi, *In Key Ruling for Public Access, SCOTUS Says No Copyright In Georgia Code Annotations*, LAWSITES, (Apr. 27, 2020),

decision certainly allows for lower courts to deem administrative regulations uncopyrightable, in a benefit and deserved right for the People.

V. CONCLUSION

While concerns exist as to the future of annotated versions and the ability of legislators to orchestrate a deal in the facilitation of both their and the American people's interest, these concerns cannot work to trivialize the desire and right of Americans to have full access to annotations that, as explanatory legal materials, have such a direct impact on their lives.²⁷⁵ In a nation where "ignorance of the law is no excuse" and where the law is believed to belong to the People, holding that these People do not have full access to this law-defining material goes against the People's right to fully understand their limits, restrictions, and freedoms under the law. Access to the law and information that holds great power in the law is necessary for the protection of the People's rights.²⁷⁶ With this holding, *Georgia v. Public.Resource.Org, Inc.* secures this access for the People's benefit.

Elizabeth Selph

<https://www.lawsitesblog.com/2020/04/in-key-ruling-for-public-access-scotus-says-no-copyright-in-georgia-code-annotations.html>.

²⁷⁵ *Public.Resource.Org, Inc.*, 140 S. Ct. at 1512, 1522; Mitchell Stein, *Copyright Lawyers on SCOTUS Decision in Georgia v. Public.Resource.Org: Expected, But Possibly Problematic*, IPWATCHDOG, (Apr. 29, 2020), <https://www.ipwatchdog.com/2020/04/29/copyright-lawyers-scotus-decision-georgia-v-public-resource-org-expected-possibly-problematic/id=121163/>.

²⁷⁶ Kelundra Smith, *Law professors pen amicus brief in Georgia copyright case*, GEORGIA STATE NEWS HUB, (June 26, 2020), <https://news.gsu.edu/2020/06/26/law-professors-pen-amicus-brief-in-georgia-copyright-case/>.