

No. 18-1150

In the
Supreme Court of the United States

STATE OF GEORGIA, ET AL.,

Petitioners,

v.

PUBLIC.RESOURCE.ORG, INC.,

Respondent.

On Writ of Certiorari to the United States
Court of Appeals for the Eleventh Circuit

**BRIEF OF CURRENT AND FORMER
GOVERNMENT OFFICIALS AS *AMICI CURIAE*
IN SUPPORT OF RESPONDENT**

ANDREW M. GASS
LATHAM & WATKINS LLP
505 Montgomery Street
Suite 2000
San Francisco, CA 94111

JESSICA STEBBINS BINA
LATHAM & WATKINS LLP
10250 Constellation Blvd.
Suite 1100
Los Angeles, CA 90067

SARANG VIJAY DAMLE
Counsel of Record
LATHAM & WATKINS LLP
555 Eleventh Street, NW
Suite 1000
Washington, DC 20004
(202) 637-2200
sy.damle@lw.com

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICI CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	1
ARGUMENT	4
I. A Broad Range of Government Works Are And Should Be Excluded from Copyright Protection.	4
A. Governments Produce A Broad Range Of Works That Are Not “Law,” But Nonetheless Are Authoritative And Essential To The People’s Understanding Of Their Legal Obligations And To Their Ability To Engage In Self-Government.	4
B. The Constitutional Purpose Of Copyright Law Is Ill-Served By Extending Copyright Protection To Government Works.	9
C. This Court Long Ago Recognized The Need For An Exception To Copyright For Government Works.	12
D. The Government Edicts Doctrine Should Bar Copyright In All Government- Authored Works Created In The Exercise Of A Distinctly Governmental Function.	14
E. Petitioner’s Proposal To Limit The Government Edicts Doctrine To Works Having “The Force of Law” Would Harm The Public.	18

TABLE OF CONTENTS—Continued

	Page
F. The United States’ Proposal Is Closer To Correct, But Not Quite Right.....	21
II. The Annotations Within The Official Georgia Code Are Government Edicts.....	22
A. The O.C.G.A. Are Effectively Authored By Georgia And Distinctly Governmental.	22
B. This Case Is Unlike Those Involving Private Authors Where Copyright Has Been Upheld.	25
CONCLUSION.....	28

APPENDIX

List of <i>Amici Curiae</i>	1a
-----------------------------------	----

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>American Society for Testing & Materials v. Public.Resource.Org, Inc.</i> , 896 F.3d 437 (D.C. Cir. 2018).....	15
<i>Banks v. Manchester</i> , 128 U.S. 244 (1888).....	12, 13, 17, 25
<i>Building Officials & Code Administrators v. Code Technology, Inc.</i> , 628 F.2d 730 (1st Cir. 1980)	15
<i>Callaghan v. Myers</i> , 128 U.S. 617 (1888).....	25, 26
<i>County of Suffolk v. First American Real Estate Solutions</i> , 261 F.3d 179 (2d Cir. 2001)	15
<i>Georgia ex rel. General Assembly, by & through Code Revision Commission v. Harrison Co.</i> , 548 F. Supp. 110 (N.D. Ga. 1982), <i>vacated</i> , 559 F. Supp. 37 (N.D. Ga. 1983).....	18
<i>Harrison Co. v. Code Revision Commission</i> , 260 S.E.2d 30 (Ga. 1979)	18

TABLE OF AUTHORITIES—Continued

	Page(s)
<i>Heine v. Appleton</i> , 11 F. Cas. 1031 (S.D.N.Y. 1857).....	14
<i>Howell v. Miller</i> , 91 F. 129 (6th Cir. 1898).....	15
<i>Mazer v. Stein</i> , 347 U.S. 201 (1954).....	9
<i>Perez v. Mortgage Bankers Association</i> , 135 S. Ct. 1199 (2015).....	7
<i>Practice Management Information Corp.</i> <i>v. American Medical Association</i> , 121 F.3d 516 (9th Cir. 1997), <i>amended</i> , 133 F.3d 1140 (9th Cir. 1998).....	15
<i>Sony Corp. of America v. Universal City Studios, Inc.</i> , 464 U.S. 417 (1984).....	10
<i>Timbs v. Indiana</i> , 139 S. Ct. 682 (2019).....	20
<i>Veek v. Southern Building Code Congress International, Inc.</i> , 293 F.3d 791 (5th Cir. 2002).....	15
<i>Wheaton v. Peters</i> , 33 U.S. (8 Pet.) 591 (1834).....	12, 26

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.