

No. 18-1150

In the Supreme Court of the United States

STATE OF GEORGIA, ET AL., PETITIONERS

v.

PUBLIC.RESOURCE.ORG, INC.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

**BRIEF OF THE CENTER FOR DEMOCRACY AND
TECHNOLOGY AND CATO INSTITUTE AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENT**

LESLIE M. SPENCER
STEPHEN MEIL
ROPES & GRAY LLP
1211 Avenue of the
Americas
New York, NY 10036

ILYA SHAPIRO
TREVOR BURRUS
SAM SPIEGELMAN
CATO INSTITUTE
1000 Mass. Avenue NW
Washington, DC 20001

MARTA F. BELCHER
Counsel of Record
MONICA A. ORTEL
JAMES H. RICKARD
ROPES & GRAY LLP
1900 University Avenue
East Palo Alto, CA 94303
(650) 617-4000
Marta.Belcher@ropesgray.com

LISA A. HAYES
ROBERT S. ADAMS IV
CENTER FOR DEMOCRACY
AND TECHNOLOGY
1401 K Street NW, Ste. 200
Washington, DC 20005

TABLE OF CONTENTS

	Page
Interest of <i>amici curiae</i>	1
Summary of the argument	2
Argument:	
I. Granting a copyright monopoly over official codes undermines the constitutional purpose of copyright.....	4
A. Copyright takes works out of the public domain only because doing so ultimately benefits the public	5
B. The government does not need copyright incentives to publish the official annotated code	8
II. The official version of the law should not be behind a paywall	13
A. People should not be charged to access the laws they pay the government to write	13
B. People must have access to the laws that bind them	15
C. Forcing people to access official codes through a private website discourages public discourse.....	17
1. People are likely to be confused about what material they are entitled to share	17
2. Private parties may limit users' ability to disseminate content.....	18
III. Forcing people to access official codes through a private website kills competition and undermines users' privacy and anonymity	19

(I)

II

Table of Contents—Continued	Page
A. Granting a copyright monopoly undermines competition	19
B. Granting a copyright monopoly forces users to agree to a private party’s terms and conditions	21
C. Forcing people to access the official code through a private website endangers users’ anonymity and privacy	22
1. Private parties may monitor users as they search and view the law	23
2. The laws a user views and searches for can reveal sensitive information	24
3. Undermining users’ anonymity has a chilling effect	26
Conclusion.....	27

III

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Banks v. Manchester</i> , 128 U.S. 244 (1888).....	9
<i>Barlow v. United States</i> , 32 U.S. 404 (1833).....	16
<i>Buckley v. Valeo</i> , 424 U.S. 1 (1976) (per curiam)....	13
<i>Building Officials & Code Adm’rs v. Code Tech., Inc.</i> , 628 F.2d 730 (1st Cir. 1980).....	10
<i>Community for Creative Non-Violence v. Reid</i> , 490 U.S. 730 (1989).....	10
<i>Connally v. Gen. Constr. Co.</i> , 269 U.S. 385 (1926).....	17
<i>Eldred v. Ashcroft</i> , 537 U.S. 186 (2003).....	6, 7, 8
<i>Estate of Hogarth v. Edgar Rice Burroughs, Inc.</i> , No. 00 CIV. 9569 (DLC), 2002 WL 398696 (S.D.N.Y. Mar. 15, 2002)	10
<i>FCC v. Fox Television Stations, Inc.</i> , 132 S. Ct. 2307 (2012)	16
<i>Fox Film Corp. v. Doyal</i> , 286 U.S. 123 (1932)	5
<i>Georgia v. Harrison Co.</i> , 548 F. Supp. 110 (N.D. Ga. 1982), vacated by 559 F. Supp. 37 (N.D. Ga. 1983).....	16
<i>Globe Newspaper Co. v. Superior Court</i> , 457 U.S. 596 (1982).....	19
<i>International News Serv. v. Associated Press</i> , 248 U.S. 215 (1918).....	4
<i>McCulloch v. Maryland</i> , 17 U.S. 316 (1819).....	10
<i>McIntyre v. Ohio Elections Comm’n</i> , 514 U.S. 334 (1995).....	26

IV

Cases—Continued:	Page(s)
<i>Nixon v. Adm’r of Gen. Servs.</i> , 433 U.S. 425 (1977).....	13
<i>Siegel v. Time Warner Inc.</i> , 496 F. Supp. 2d 1111 (C.D. Cal. 2007)	10
<i>Tattered Cover, Inc. v. City of Thornton</i> , 44 P.3d 1044 (Colo. 2002)	26
<i>Twentieth Century Music Corp. v. Aiken</i> , 422 U.S. 151 (1975).....	5, 7, 19
<i>United States v. Valle</i> , 807 F.3d 508 (2d Cir. 2015)	24
<i>Veeck v. S. Bldg. Code Cong. Int’l, Inc.</i> , 293 F.3d 791 (5th Cir. 2002) (en banc), cert. denied, 539 U.S. 969 (2003).....	10
Constitution and statutes:	
U.S. Const. Art. 1, § 8, Cl. 8	5, 19
Ga. Code Ann. (OCGA):.....	<i>passim</i>
§ 1-1-8.....	16
§ 16-6-2.....	12, 25
§ 16-12-80.....	12
§ 17-17	25
§ 26-5	25
§§ 31-9a to 9b	25
§ 37-3	25

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.