

Syllabus

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SUPREME COURT OF THE UNITED STATES

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GEORGIA ET AL. *v.* PUBLIC.RESOURCE.ORG, INC.CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE ELEVENTH CIRCUIT

No. 18–1150. Argued December 2, 2019—Decided April 27, 2020

The Copyright Act grants monopoly protection for “original works of authorship.” 17 U. S. C. §102(a). Under the government edicts doctrine, officials empowered to speak with the force of law cannot be the authors of the works they create in the course of their official duties.

The State of Georgia has one official code—the Official Code of Georgia Annotated (OCGA). That Code includes the text of every Georgia statute currently in force, as well as a set of non-binding annotations that appear beneath each statutory provision. The annotations typically include summaries of judicial opinions construing each provision, summaries of pertinent opinions of the state attorney general, and a list of related law review articles and other reference materials. The OCGA is assembled by the Code Revision Commission, a state entity composed mostly of legislators, funded through legislative branch appropriations, and staffed by the Office of Legislative Counsel.

The annotations in the current OCGA were produced by Matthew Bender & Co., Inc., a division of the LexisNexis Group, pursuant to a work-for-hire agreement with the Commission. Under the agreement, Lexis drafts the annotations under the supervision of the Commission, which specifies what the annotations must include in exacting detail. The agreement also states that any copyright in the OCGA vests in the State of Georgia, acting through the Commission.

Respondent Public.Resource.Org (PRO), a nonprofit dedicated to facilitating public access to government records and legal materials, posted the OCGA online and distributed copies to various organizations and Georgia officials. After sending PRO several cease-and-desist letters, the Commission sued PRO for infringing its copyright in the OCGA annotations. PRO counterclaimed, seeking a declaratory judgment that the entire OCGA, including the annotations, fell in the

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public domain. The District Court sided with the Commission, holding that the annotations were eligible for copyright protection because they had not been enacted into law. The Eleventh Circuit reversed, rejecting the Commission's copyright assertion under the government edicts doctrine.

Held: The OCGA annotations are ineligible for copyright protection. Pp. 5–18.

(a) The government edicts doctrine developed from a trio of 19th-century cases. In *Wheaton v. Peters*, 8 Pet. 591, the Court held that no reporter can have a copyright in the Court's opinions and that the Justices cannot confer such a right on any reporter. In *Banks v. Manchester*, 128 U. S. 244, the Court held that judges could not assert copyright in “whatever work they perform in their capacity as judges”—be it “the opinion or decision, the statement of the case and the syllabus or the head note.” *Id.*, at 253. Finally, in *Callaghan v. Myers*, 128 U. S. 617, the Court reiterated that an official reporter cannot hold a copyright interest in opinions created by judges. But, confronting an issue not addressed in *Wheaton* or *Banks*, the Court upheld the reporter's copyright interest in several explanatory materials that the reporter had created himself because they came from an author who had no authority to speak with the force of law.

The animating principle behind the government edicts doctrine is that no one can own the law. The doctrine gives effect to that principle in the copyright context through construction of the statutory term “author.” For purposes of the Copyright Act, judges cannot be the “author[s]” of “whatever work they perform in their capacity” as lawmakers. *Banks*, 128 U. S., at 253. Because legislators, like judges, have the authority to make law, it follows that they, too, cannot be “authors.” And, as with judges, the doctrine applies to whatever work legislators perform in their capacity as legislators, including explanatory and procedural materials they create in the discharge of their legislative duties. Pp. 5–9.

(b) Applying that framework, Georgia's annotations are not copyrightable. First, the author of the annotations qualifies as a legislator. Under the Copyright Act, the sole “author” of the annotations is the Commission, 17 U. S. C. §201(b), which functions as an arm of the Georgia Legislature in producing the annotations. Second, the Commission creates the annotations in the discharge of its legislative duties. Pp. 9–11.

(c) Georgia argues that excluding the OCGA annotations from copyright protection conflicts with the text of the Copyright Act. First, it notes that §101 lists “annotations” among the kinds of works eligible for copyright protection. That provision, however, refers only to “annotations . . . which . . . represent an original work of *authorship*.”

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(Emphasis added.) Georgia’s annotations do not fit that description because they are prepared by a legislative body that cannot be deemed the “author” of the works it creates in its official capacity. Second, Georgia draws a negative inference from the fact that the Act excludes from copyright protection works prepared by Federal Government officials, without establishing a similar rule for State officials. §§101, 105. That rule, however, applies to all federal officials, regardless of the nature and scope of their duties. It does not suggest an intent to displace the much narrower government edicts doctrine with respect to the States.

Moving on from the text, Georgia invokes what it views as the official position of the Copyright Office, as reflected in the Compendium of U. S. Copyright Office Practices. The Compendium, however, is a non-binding administrative manual and is largely consistent with this Court’s position. Georgia also appeals to copyright policy, but such requests should be addressed to Congress, not the courts.

Georgia attempts to frame the government edicts doctrine to focus exclusively on whether a particular work has the force of law. But that understanding cannot be squared with precedent—especially *Banks*. Moreover, Georgia’s conception of the doctrine as distinguishing between different categories of content with different effects has less of a textual footing than the traditional formulation, which focuses on the identity of the author. Georgia’s characterization of the OCGA annotations as non-binding and non-authoritative undersells the practical significance of the annotations to litigants and citizens. And its approach would logically permit States to hide all non-binding judicial and legislative work product—including dissents and legislative history—behind a paywall. Pp. 11–18.

906 F. 3d 1229, affirmed.

ROBERTS, C. J., delivered the opinion of the Court, in which SOTOMAYOR, KAGAN, GORSUCH, and KAVANAUGH, JJ., joined. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, and in which BREYER, J., joined as to all but Part II–A and footnote 6. GINSBURG, J., filed a dissenting opinion, in which BREYER, J., joined.

Opinion of the Court

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SUPREME COURT OF THE UNITED STATES

No. 18–1150

GEORGIA, ET AL., PETITIONERS *v.*
PUBLIC.RESOURCE.ORG, INC.

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

[April 27, 2020]

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Copyright Act grants potent, decades-long monopoly protection for “original works of authorship.” 17 U. S. C. §102(a). The question in this case is whether that protection extends to the annotations contained in Georgia’s official annotated code.

We hold that it does not. Over a century ago, we recognized a limitation on copyright protection for certain government work product, rooted in the Copyright Act’s “authorship” requirement. Under what has been dubbed the government edicts doctrine, officials empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties.

We have previously applied that doctrine to hold that non-binding, explanatory legal materials are not copyrightable when created *by judges* who possess the authority to make and interpret the law. See *Banks v. Manchester*, 128 U. S. 244 (1888). We now recognize that the same logic applies to non-binding, explanatory legal materials created *by*

Opinion of the Court

a legislative body vested with the authority to make law. Because Georgia’s annotations are authored by an arm of the legislature in the course of its legislative duties, the government edicts doctrine puts them outside the reach of copyright protection.

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The State of Georgia has one official code—the “Official Code of Georgia Annotated,” or OCGA. The first page of each volume of the OCGA boasts the State’s official seal and announces to readers that it is “Published Under Authority of the State.”

The OCGA includes the text of every Georgia statute currently in force, as well as various non-binding supplementary materials. At issue in this case is a set of annotations that appear beneath each statutory provision. The annotations generally include summaries of judicial decisions applying a given provision, summaries of any pertinent opinions of the state attorney general, and a list of related law review articles and similar reference materials. In addition, the annotations often include editor’s notes that provide information about the origins of the statutory text, such as whether it derives from a particular judicial decision or resembles an older provision that has been construed by Georgia courts. See, *e.g.*, OCGA §§51–1–1, 53–4–2 (2019).

The OCGA is assembled by a state entity called the Code Revision Commission. In 1977, the Georgia Legislature established the Commission to recodify Georgia law for the first time in decades. The Commission was (and remains) tasked with consolidating disparate bills into a single Code for reenactment by the legislature and contracting with a third party to produce the annotations. A majority of the Commission’s 15 members must be members of the Georgia

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