

Georgia v. Public Resource.Org, Inc. – Official Annotations of State Codes Not Protected by Copyright

April 27, 2020

On April 27, 2020, the U.S. Supreme Court held that under its precedents, copyright does not protect “works that are (1) created by judges and legislators (2) in the course of their judicial and legislative duties.” At issue in the case was the copyrightability of the Official Code of Georgia Annotated (OCGA), and the Court squarely held that it cannot be copyrighted. The parties and the Court were in full agreement that the *unannotated* code is outside copyright protection. Only the annotations were at issue. Although official Georgia code annotations are prepared in the first instance by a private party—Matthew Bender & Co., Inc., a division of the LexisNexis Group—they are prepared pursuant to a contract with and under the supervision of a commission created by the Georgia Legislature.

The Supreme Court held that under its nineteenth century government edicts doctrine, judges and legislatures do not qualify as “authors” under the Copyright Act when they act in the course of their official duties. That holding extends to the OCGA because, as the Court explained, the annotations are prepared by the Georgia Legislature acting in the course of its legislative duties through an officially appointed commission.

The Court’s holding is narrow in scope as it pertains only to the government edicts doctrine. Nevertheless, as Justice Thomas noted in dissent, the Court’s “ruling will likely come as a shock to the 25 other jurisdictions—22 States, 2 Territories, and the District of Columbia—that rely on arrangements similar to Georgia’s to produce annotated codes.”

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