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THE COUNCIL OF STATE GOVERNMENTS

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# U.S. Supreme Court – No Copyrights for State Legislatures

In [Georgia v. Public.Resource.Org](#) the U.S. Supreme Court held, in a 5-4 decision, that non-binding, explanatory legal materials created by state legislatures cannot be copyrighted.

The Official Code of Georgia Annotated (OCGA) contains various non-binding supplementary materials including summaries of judicial decisions and attorney general opinions and a list of law review articles related to current statutory provisions. The OCGA is assembled by the Code Revision Commission, which is a state entity; a majority of its member are state legislators. Lexis prepares the annotations and the legislature approves them.

Georgia argued that it may copyright these annotations. The Supreme Court disagreed in an opinion written by Chief Justice Roberts.

The author of an original work receives copyright protection. According to the Court, “[t]he animating principle behind [the government edicts doctrine] is that no one can own the law.” Per this doctrine, judges “may not be considered the ‘authors’ of the works they produce in the course of their official duties as judges,” regardless of whether the material carries the force of law. The Court extended this same rule to legislators.

According to the Court, “the government edicts doctrine traces back to a trio of cases decided in the 19th century” and “reveals a straightforward rule based on the identity of the author.” In *Wheaton v. Peters* (1834), the Court held that judicial opinions can’t be copyrighted. In *Banks v. Manchester* (1888), the Court



held a case syllabus or head note written by a judge can't be copyrighted. In *Callaghan v. Myers* (1888), the Court held that an official reporter could copyright explanatory materials it had written about a case. According to the Court, “[t]hese cases establish a straightforward rule: Because judges are vested with the authority to make and interpret the law, they cannot be the ‘author’ of the works they prepare ‘in the discharge of their judicial duties.’”

The Supreme Court extended the government edicts doctrine to legislators acting in the course of their legislative duties because “[c]ourts have thus long understood the government edicts doctrine to apply to legislative materials.”

The Court held Georgia's annotations are not copyrightable because the author is the Code Revision Commission and it “qualifies as a legislator.” Even though Lexis did the drafting Georgia agreed the author of the annotations is the Commission. While the Court acknowledged that the “Commission is not identical to the Georgia Legislature,” nevertheless it “functions as an arm of it for the purpose of producing the annotations.” The Court noted that “[s]ignificantly, the annotations the Commission creates are approved by the legislature before being ‘merged’ with the statutory text and published in the official code alongside that text at the legislature’s direction.”

Finally, the Court determined that the Commission creates the annotations in the “discharge” of its legislative “duties” because “the Commission’s preparation of the annotations is under Georgia law an act of ‘legislative authority’ . . . and the annotations provide commentary and resources that the legislature has deemed relevant to understanding its laws.”

Justice Thomas, in a dissenting opinion, which Justice Alito joined in full and Justice Breyer joined in part, took the position that precedent stands for the



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proposition that materials lacking legal force, like the annotations in this case, may be copyrighted.

Justice Ginsburg also dissented. She concluded the OCGA annotations aren't created in the legislative process because they aren't "created contemporaneously with the statutes to which they pertain," are "descriptive rather than prescriptive," and are only "explanatory, referential, or commentarial material." Justice Breyer joined her opinion.

Twenty-two states, two territories, and the District of Columbia "rely on arrangements similar to Georgia's to produce annotated codes."

*Case recap provided by Lisa Soronen, Executive Director, State & Local Legal Center (SLLC)*