

SCOTUS Opinion: Annotations of State Law Are Not Entitled to Copyright Protection

1 May 2020

The Official Code of Georgia Annotated consists of the text of all of Georgia's laws plus a set of non-binding annotations with summaries of opinions regarding each statute issued by the courts or the state attorney general. The annotations were drafted by a private company under contract with Georgia's Code Revision Commission, which controlled the product in exacting detail. The contract stated that Georgia retained any copyright over the annotations. When a nonprofit posted the annotated Code online and distributed copies, the Commission sued for violation of copyright. The district court held that the annotations were entitled to copyright, but the Eleventh Circuit reversed under the government edicts doctrine, which holds that officials empowered to speak with the force of law cannot obtain copyright over works created in the course of their duties.

The Court, in a 5-4 opinion by Chief Justice Roberts, affirmed, holding that the annotations were not copyrightable under the government edicts doctrine because its author, the Commission, is an arm of the state legislature. Moreover, because the work annotates state law, which itself is not copyrightable, the annotations were not separately subject to copyright. Justice Thomas, joined by Justices Breyer and Alito, dissented, arguing that the decision "will likely come as a shock to the other 25 jurisdictions—22 States, 2 Territories, and the District of Columbia—that rely on arrangements similar to Georgia's to produce annotated codes," and stating that Congress should be the one to change copyright law, not the Court. Justice Ginsburg, joined by Justice Breyer, also dissented, arguing that the annotations were not created in the state's legislative capacity, but were instead created well after the laws were already enacted to simply be a reference for the public, and thus are not subject to the government edicts doctrine.

A link to the opinion in *Georgia v. Public Resource Org., Inc.* is here:
https://www.supremecourt.gov/opinions/19pdf/18-1150_7m58.pdf

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