Intellectual Property Alert: The Supreme Court Expands the Government Edicts Doctrine in its Ruling that Annotations in Official State Codes Are Not Copyrightable by the Government

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Yesterday, the United States Supreme Court, in a 5-4 decision, ruled that Georgia could not copyright annotations to its official state law code. In doing so, the Supreme Court expanded the "government edicts doctrine"—a judicial doctrine dating back to the Supreme Court's first copyright ruling in 1834—to apply equally to members of the legislative branch.

How Did This Case Reach the Supreme Court? Georgia, like some states, annually publishes an official annotated code—a single, voluminous source of the state's law and how particular sections and definitions have been applied and interpreted in the past. Public.Resource.Org, a nonprofit organization that seeks to facilitate public access to government records and legal materials, began publishing on various websites and distributing hard copies of Georgia's official annotated code. Georgia issued cease and desist letters to Public.Resource.Org, asserting copyright protections over the official code's annotations and litigation ensued after Public.Resource.Org refused to stop its publication and distribution. The District Court found in favor of Georgia, but the Eleventh Circuit reversed. The Eleventh Circuit reached its conclusion after creating a three-factor balancing test it said was guided by the Supreme Court's government edicts doctrine case law.

The Government Edicts Doctrine Applies beyond Members of the Judiciary: Historically, the Supreme Court had applied the government edicts doctrine to works prepared by members of the judiciary. However, the Supreme Court, on Monday, extended its application to members of the legislature. The ruling articulated, however, is arguably broad enough to cover any government official, not just judges and legislators.

Specifically, the Court articulated "a straightforward rule based on the identity of the author."[1] The government edicts doctrine prohibits judges—and, now, legislators—from qualifying as "authors" of works they produce in connection with their official duties as judges and, now, legislators. The doctrine applies regardless of the nature of the

material produced. Accordingly, because members of the judiciary and the legislature do not qualify as an "author" when they produce material in their official capacity, the work is not copyrightable as an "original work of authorship," as required by 17 U.S.C. § 102(a).

Client Consideration: The "government edicts doctrine" focuses on who authored the work in question and if they did so in the course of their official duties. It does not focus on the work itself. Accordingly, the Supreme Court's ruling in *Public.Resouce.Org Inc.* could be extended to other, non-legal works authored by a member of any branch of government, so long as it was authored in his or her official capacity. If you have questions about your or your company's use of government-published materials, please contact your Vorys attorney for further assistance.