No. 18-1150

IN THE
Supreme Court of the United States

STATE OF GEORGIA, ET AL.,
Petitioners,

v.

PUBLIC.RESOURCE.ORG, INC.,

Respondent.

On Writ of Certiorari to
The U.S. Court of Appeals
For the Eleventh Circuit

BRIEF OF *AMICI CURIAE* ELECTRONIC PRIVACY INFORMATION CENTER (EPIC) AND THIRTY-FIVE TECHNICAL EXPERTS AND LEGAL SCHOLARS IN SUPPORT OF RESPONDENT

MARC ROTENBERG
Counsel of Record
ALAN BUTLER
MEGAN IORIO
ELECTRONIC PRIVACY
INFORMATION CENTER (EPIC)
1519 New Hampshire
Avenue NW
Washington, DC 20036
(202) 483-1140
rotenberg@epic.org

October 16, 2019

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

INTEREST OF THE *AMICI CURIAE*

The Electronic Privacy Information Center (EPIC) is a public interest research center in Washington, D.C.[1] EPIC was established in 1994 to focus public attention on emerging civil liberties issues, to promote government transparency, and to protect privacy, the First Amendment, and other constitutional values.

EPIC has filed numerous briefs before this Court over the past 25 years. *See, e.g.*, Brief of *Amici Curiae* EPIC et al., *Carpenter v. United States*, 138 S. Ct. 2206 (2018) (No. 16-402) (arguing that the rule adopted in *Smith v. Maryland* should not extend to warrantless collection of cell phone location data); Brief of *Amici Curiae* EPIC et al., *Packingham v. North Carolina*, 137 S. Ct. 1730 (2017) (No. 15-1194) (arguing for the right to access information on social media platforms); Brief of *Amici Curiae* EPIC et al., *Riley v. California*, 573 U.S. 373 (2014) (arguing that cell phones should not be subject to warrantless searches under the search incident to arrest exception); Brief of *Amicus Curiae* EPIC, *Florida v. Harris*, 568 U.S. 237 (2013) (arguing that the government bears the burden of establishing the reliability of new investigative techniques used in establishing probable cause for a search); Brief of *Amici Curiae* EPIC et al., *United States v. Jones*, 565 U.S. 400 (2012) (arguing that warrantless tracking of a car using a GPS device violates the Fourth Amendment).

---

[1] Both parties consent to the filing of this brief. In accordance with Rule 37.6, the undersigned states that no monetary contributions were made for the preparation or submission of this brief, and this brief was not authored, in whole or in part, by counsel for a party.

EPIC, and its staff, have worked for almost thirty years to promote online access to judicial opinions and open access to government information. *See, e.g.,* Memorandum from Marc Rotenberg, Dir., Wash. Office, Computer Professionals for Social Responsibility ("CPSR"), Meeting on Electronic Dissemination of Supreme Court Opinions (1990);[2] *The Government Printing Office Improvement Act of 1990: Hearing on H.R. 3849 Before the Subcomm.* Procurement & Printing of the H. Comm. on Admin., 101th Cong. 101–07 (1990) (Testimony and Statement of Marc Rotenberg, Dir., Wash. Office, CPSR) (supporting broader electronic dissemination of government information by the GPO, including electronic access to the Congressional Record, the Federal Register, and Supreme Court opinions);[3] EPIC, Public Comments on Privacy and Public Access to Electronic Case Files, Admin. Office of the U.S. Courts (Jan. 26, 2001);[4] EPIC, Comments on Privacy and Access to Court Records, Public Access Ad Hoc Committee, Admin. Office of Penn. Courts (Nov. 9, 2005);[5] EPIC, Comments on Privacy, Access and Court Records/Report and Recommendations of the Committee on Privacy and Court Records / Group Two, Letter to Florida Courts Concerning Group Two Privacy Recommendations (Feb. 28, 2006);[6] EPIC, Letter to Leadership of the House Judiciary Committee

---

[2] *Available at* https://epic.org/privacy/publicrecords/Rotenberg-memo-re-supreme-court-opinions.pdf.

[3] *Available at* https://epic.org/testimony/congress/Rotenberg-GPO-modernization-testimony.pdf.

[4] *Available at* https://epic.org/open_gov/ecfcomments.html.

[5] A*vailable at* https://epic.org/privacy/public-records/paecfcomments.html.

[6] *Available at* https://epic.org/privacy/public-records/flgp222806.html.

regarding the Hearing on the Federal Judiciary in the 21st Century: Ensuring the Public's Right of Access to the Courts (Sep. 26, 2019) (noting that "EPIC supports the right of public access in all forms" because the right "enables the public to monitor government agencies and inquire into the operation of government").[7] EPIC staff has also called on federal agencies to make statutes, regulations, adjudications, and relevant court documents freely available on agency websites. OMB Watch Working Grp. on Information, *Principles for Circular A-130* (Dec. 20, 1990); EPIC, Comments to the Office of Management and Budget on Circular No. A-130, Managing Information as a Strategic Resource (2015).[8]

EPIC's brief is joined by the following distinguished experts in law, technology, and public policy.

Legal Scholars and Technical Experts

Ann M. Bartow
Director, Franklin Pierce Center for Intellectual Property and Professor of Law, University of New Hampshire School of Law

Rod Beckstrom
Founder and CEO, BECKSTROM

Francesca Bignami
Professor of Law, The George Washington University Law School

Christine L. Borgman
Distinguished Research Professor & Director, UCLA Center for Knowledge Infrastructures

---

[7] *Available at* https://epic.org/testimony/congress/EPIC-HJC-AccessToCourts-Sept2019.pdf.
[8] *Available at* https://epic.org/apa/comments/EPIC-A130-Comments.pdf.

Danielle Keats Citron
Professor of Law, Boston University School of Law; Vice President, Cyber Civil Rights Initiative

Jennifer Daskal
Associate Professor, American University Washington College of Law

Dr. Whitfield Diffie

Cynthia Dwork
Gordon McKay Professor of Computer Science, Harvard Radcliffe Alumnae Professor, Radcliffe Institute for Advanced Study

David J. Farber
Adjunct Professor of Internet Studies, Carnegie Mellon University

Addison Fischer
Founder and Chairman, Fischer International Corp.

Hon. David Flaherty
Former Information and Privacy Commissioner for British Columbia

Rush Holt Jr.

Jerry Kang
Korea Times—Hankook Ilbo Chair in Korean Am. Studies and Law, UCLA

Len Kennedy
EPIC Scholar-in-Residence

Lorraine G. Kisselburgh
Lecturer and Fellow, Discovery Park, Purdue University

Chris Larsen
Executive Chairman, Ripple Inc.

Harry R. Lewis
Gordon McKay Professor of Computer Science, Harvard University

Gary T. Marx
Professor Emeritus of Sociology, MIT

Roger McNamee
Elevation Partners

Mary Minow
Library Law Consultant

Dr. Pablo Garcia Molina
Adjunct Professor, Georgetown University

Dr. Peter G. Neumann
Chief Scientist, SRI International Computer Science Lab

Deborah C. Peel, M.D.
President of Patient Privacy Rights

Dr. Stephanie Perrin
President, Digital Discretion, Inc.

Dr. Bilyana Petkova
Affiliate Scholar, Yale Information Society Project

Bruce Schneier
Fellow and Lecturer, Harvard Kennedy School

Dr. Barbara Simons
IBM Research (retired)

Nadine Strossen
John Marshall Harlan II Professor of Law, New York Law School

Sherry Turkle
Abby Rockefeller Mauzé Professor of the Social Studies of Science and Technology, Program in Science, Technology, and Society, MIT

Edward G. Viltz
President, Global Charter Consultants

Paul Vixie
Chairman & CEO, Farsight Security, Inc.

Anne L. Washington
Assistant Professor of Data Policy, NYU Steinhardt School

Jim Waldo
Gordon McKay Professor of the Practice of Computer Science, John A. Paulson School of Engineering and Applied Sciences, Harvard University

Christopher Wolf
Board Chair, Future of Privacy Forum

Shoshana Zuboff
Charles Edward Wilson Professor of Business Administration, Emerita, Harvard Business School

(Affiliations are for identification only)

SUMMARY OF THE ARGUMENT

Public access to the law is necessary in a democratic society. As this Court has stated repeatedly, access to the law is broader than access to judicial opinions and statutory text; meaningful knowledge of the law facilitates public debate and access to justice. The advent of the Internet has made possible the rapid, widespread, and inexpensive distribution of legislative and judicial materials. At this moment in history, the official law of the states should be freely available to the public. But the state of Georgia has chosen to limit public access to the authoritative source of state law. The state argues that it can hold copyright in the Official Code of Georgia Annotated; yet, both courts and litigators view the annotations contained in the Official Code as an authoritative source for statutory interpretation.

This Court recognized in *Banks v. Manchester* that the public has a right of free access to the "whole work" of State agents, such as the Georgia legislature, that make the law. This right is recognized as a matter of "public policy." Constitutional and common law rights of access to judicial proceedings and materials further militate against upholding a copyright in the state's official annotated code. Fairness and judicial efficiency also weigh in favor of free access to Georgia's law.

The Court should reject Georgia's archaic argument that publishing costs justify the state's copyright claim. Digital publishing is now far cheaper, easier, and efficient than printing large legal tomes. For more than thirty years, the federal government has worked to ensure that government materials, including legal

materials, are broadly accessible to the public; the states should do the same.

ARGUMENT

In 2000, Christine L. Borgman, an Information Studies professor at UCLA, described two possible futures for information technology's effect on access to information. In one scenario, new technology would "lead to radically different models of information access:" most print publications would cease; electronic publication would become the norm; authors would become less dependent on publishers, and information seekers less dependent on libraries. Christine L. Borgman, *From Gutenberg to the Global Information Infrastructure: Access to Information in the Networked World* 2, 4 (2000). In the second scenario, changes would be "slow and incremental," with electronic publishing becoming more important, but publishers and libraries would continue to "serve gatekeeping functions." *Id.*

Borgman predicted the true future to be somewhere between the two scenarios. *Id.* at 4. But today, many state governments comfortably inhabit the second, more tech-resistant future. Past practices, such as emphasis on printing the law, are so "firmly entrenched" that states have been slow to acknowledge that, through the internet, the promise of free access to the law can be fulfilled cheaply, easily, and efficiently. *Id.* at 4. As Brewster Kahle, Founder of the Internet Archive, has said: "In today's world, public access means access on the Internet." Letter from Brewster Kahle, Digital Librarian & Founder, Internet Archive, to Reps. Darrell Issa & Jerry Nadler, Subcomm. on Courts, Intellectual Prop. & the Internet of the H.

Comm. on the Judiciary (Feb. 10, 2017).[9] The federal government is now far down this path—and the states should follow suit.

Long ago, this Court proclaimed that "public policy" prevents *anyone* from holding a copyright in case annotations imbued with the authority of the State. *Banks v. Manchester*, 128 U.S. 244, 253–54 (1888). The Court's subsequent ruling that "no ground of public policy" prevented a court reporter from copyrighting *their own* annotations did not disturb the holding in *Banks*, as court reporters do not speak with the authority of the State. *Callaghan v. Myers*, 128 U.S. 617, 647 (1888).

Georgia and Public.Resource.Org, along with their *amici*, differ on the public policies that should be considered here, and which should have the most weight. *Amici* EPIC et al. urge the Court to reject Georgia's antiquated policy arguments based on traditional publishing costs, and to recognize that free access to the law is not only guaranteed by our country's traditions but also enabled by digital technologies.

I. Democratic values require free access to Georgia's official annotated code.

This Court has long recognized the public's right to access government edicts. The "public policy" concerns that led the Court to bar copyright in judge-made annotations should guide this Court to hold that a legislature's official annotations, contained in the state's one and only official code, cannot be copyrighted.

---

[9] *Available at* http://blog.archive.org/2017/02/13/internet-archive-offers-to-host-pacer-data/.

More than one hundred and fifty years ago, this Court first recognized that the public has a right to free access to government edicts. In *Wheaton v. Peters*, 33 U.S. 591 (1834), the Court announced that it was "unanimous" that "no reporter has or can have any copyright in the written opinions delivered by this court; and that the judges thereof cannot confer on any reporter any such right." *Id.* at 668.

Fifty years later, this Court determined that no one—not the judge, the state, nor the official court reporter—could hold a copyright in *any* work a judge produces in their capacity as judge. *Banks*, 128 U.S. at 253. *Banks* concerned a report's copyright claim in a compilation of decisions of the Ohio state courts where the judges prepared not only the decisions and opinions, but also the statements of the cases, syllabi, and headnotes. *Id.* The Court was clear that judges could not hold or confer a copyright "against the public at large, in the fruits of their judicial labors." *Id.* The Court explicitly stated that the exemption did not stop at the opinions themselves, but "extends to *whatever work* they perform in their capacity as judges, and as well to the statements of cases and head-notes prepared by them, as to the opinions and decisions themselves." *Id.* (emphasis added). The Court explained that it was a matter of "public policy" that "[t]he *whole work* done by the judges constitutes the authentic exposition and interpretation of the law, which, binding every citizen, is free for publication to all, whether it is a declaration of unwritten law, or an interpretation of a constitution or a statute." *Id.* (citing *Nash v. Lathrop*, 142 Mass. 29, 36 (1886)) (emphasis added).

Banks offers a simple rule: the public has a right to access the official work of a court, not just the

text of the opinion but *also* the court's annotations. The Court's decision a few months later did not disturb the rule in *Banks*. The Court reiterated that opinions and judgements must be freely available to all. *Callaghan*, 128 U.S. at 647. At the same time, the Court upheld a copyright in case annotations produced by the reporter of Illinois state court decisions. *Id.* Unlike in *Banks,* the Court found "no ground of public policy" that barred the reporter from copyrighting the annotations. *Id.* The difference between *Banks* and *Callaghan* is that judges speak with the authority of the State, while court reporters do not. A reporter of court decisions has no more authority to say what the law is than any private citizen; the reporter's annotations do not add any additional authoritative understanding to the law.

The Official Code of Georgia Annotated is more like the work in *Banks* than *Callaghan*. Georgia does not simply contract with Lexis to prepare annotations for Georgia's statutes at Lexis's discretion—Georgia and Lexis consider Georgia the author of the annotations, the state directs the creation of the annotations, has final editorial say, and adopts the annotations as their own, conferring the authority of the state on them. Georgia, not Lexis, is the author of the annotations and holds the copyright. JA567. Indeed, Georgia's contract with Lexis describes the annotations as a "work made for hire," *id.*, under which, as Georgia acknowledges, "the employer or other person for whom the work was prepared is considered the author." Pet'rs' Br. 11 n3 (citing 17 U.S.C. §§ 101). Under Georgia's agreement with Lexis, Lexis must conform to Georgia's "Publication Manual for the Official Code of Georgia Annotated," which directs, in great detail, the "specific content, style, and publishing standards of

the Code." JA536. For instance, the provision on annotations of Attorney General decisions directs Lexis to "[l]ook for statements near the end of the opinion beginning with 'it is my opinion that' or 'it is my unofficial opinion that.'" JA418. The contract between Georgia and Lexis also makes clear that Georgia, not Lexis, has final say "as to material to be included in the Code or as to any codification, *annotation*, or other matter of editorial content." JA569 (emphasis added). The Georgia Assembly then adopts the "statutory portion" of the code "merged" with "annotations, captions, catchlines, history lines, editorial notes, cross-references, indices, title and chapter analyses, and other materials," and the whole work is "published by authority of the state." OCGA § 1-1-1. Finally, the website for the free, unannotated version of the code states that "the latest print version of the OCGA is the authoritative version" of Georgia's statutes, and "in case of any conflict between the materials on this website and the latest print version of the OCGA, the print version shall control." JA190. The annotations are thus part of the "whole work" of the Georgia Assembly imbued with the authority of the State. As in *Banks,* "public policy," such as those underlying other rights to access, as well as fairness, equity, and judicial efficiency, weigh in favor of denying Georgia's copyright.

Neither *Banks* nor *Callaghan* require showing that a *constitutional* violation would follow from a copyright. The bar is much lower than that: the copyright need only be against "public policy." Many of the works that are clearly in the public domain, such as judicial opinions and statutory text, would clearly violate the constitutional right to due process if withheld from the public. But that only means a potential constitutional violation is a *sufficient* condition for placing a work in

the public domain, not that it is a *necessary* condition. There is no indication that the judges or anyone else in *Banks* held out the judges' headnotes as having the force of law. Case headnotes are also not a vehicle for lawmaking, and they certainly do not establish rights or obligations. Nor did the Court make any determination that any of the headnotes added clarification to the underlying opinions. Rather, the *concept* of due process can be a guide to whether a work should be in the public domain, but it need not be the only guide. Indeed, this is how some lower courts have treated due process within the *Banks* framework. *Veeck v. S. Bldg. Code Congress Int'l, Inc.*, 293 F.3d 791, 799 (5th Cir. 2002) (en banc) ("*Banks* does not use the term 'due process.' There is also no suggestion that the Banks concept of free access to the law is a factual determination or is limited to due process, as the term is understood today. Instead, public ownership of the law means precisely that 'the law' is in the 'public domain' for whatever use the citizens choose to make of it."); *see also* Pamela Samuelson, *Reconceptualizing Copyright's Merger Doctrine*, 63 J. Copyright Soc'y U.S.A. 417, 460–61 (2016) (discussing access to information as justification for recognizing merger doctrine in access to the law cases such as *Veeck*).

In other contexts, this Court has recognized that due process requires that the public have broad access to official government records. In the Fourteenth Amendment context, the Court has found that due process requires access to court records, and in includes an obligation on the State to provide inmates with "adequate, effective, and *meaningful*" access to legal research materials. *Bounds v. Smith*, 430 U.S. 817, 822 (1977) (emphasis added). Meaningful access is necessary to "give prisoners a reasonably adequate

opportunity" to present their claims to a court. *Id.* at 824. The necessary first step—indeed, "most importantly"—is to "know what the law is in order to determine whether a colorable claim exists, and if so, what facts are necessary to state a cause of action." *Id.* The annotations in Georgia's official code are the authoritative source for "what the law is" and "what facts are necessary to state a cause of action."

Free access to the annotations in Georgia's official code will also provide the public insight into the meaning of the law that is necessary for meaningful and informed public debate about the scope and meaning of Georgia's laws. In *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980), this Court "firmly established for the first time that the press and general public have a constitutional right of access to criminal trials." *Globe Newspaper Co. v. Superior Ct. for Norfolk Cty.*, 457 U.S. 596, 603 (1982). The plurality in *Richmond Newspapers* grounded this right in part in the understanding that opening the courts "affords citizens a form of legal education," "promotes confidence in the fair administration of justice," and "contribute[s] to public understanding of the rule of law." *Richmond Newspapers*, 448 U.S. at 572–73 (citations omitted). Indeed, the plurality recognized that the right to observe court proceedings, and the broader right to "receive information and ideas," are essential to animate the First Amendment guarantee of freedom of expression. *Id.* at 575–76 (quoting *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972)). Justice Brennan, writing in concurrence, saw that access to information served a structural purpose: democracy requires "meaningful communication" to survive and "valuable public debate—as well as other civic behavior—must be informed." *Id.* at 586–87 (Brennan, J., concurring).

Writing for the majority in *Globe Newspaper*, Justice Brennan continued to stress the importance of access to information in a democracy. The Court recognized that "a major purpose" of the First Amendment was to "protect the free discussion of government affairs." *Globe Newspaper*, 457 U.S. at 604 (quoting *Mills v. Alabama*, 384 U.S. 214, 218 (1966)). This protection is meant to "ensure that the individual citizen can effectively participate in and contribute to our republican system of self-government" and that the "constitutionally protected 'discussion of government affairs' is an informed one." *Id.* (citation omitted).

This Court has also recognized a common law right of access to court documents. *Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978). As in the First Amendment context, the Court recognized the structural role access to information in court documents plays in a democracy. Access to court documents allows citizens "to keep a watchful eye on the workings of public agencies" and communicate on "the operation of government." *Id.* at 598 (citations omitted). Even though individual determinations are left to the discretion of trial court judges, the Court was clear that there is "a presumption . . . in favor of public access to judicial records." *Id.* at 602.

Free access to the official annotations in the Georgia code would also promote fairness, equity, and judicial efficiency. While access to judicial opinions and statutory text provides some level of access to the law, "it achieves very little in the way of assisting or empowering citizens who are bound to comply with the laws they lack the independent analytical tools to fully comprehend." Ann M. Bartow, *Open Access, Law, Knowledge, Copyrights, Dominance and Subordina-*

tion, 10 Lewis & Clark L. Rev. 869, 874 (2006). Meaningful access to the law means that the law is "rendered learnable, teachable, understandable and usable." *Id*. at 875. Without access to explanatory texts, such as annotations, "functional knowledge of the law often requires the interpretive powers of a lawyer." *Id*. The result is that "[a]ttorneys, and those who can readily purchase the time and expertise of attorneys, use the complexity of the law and the legal system to assert dominance over those who lack access to interpretive, no less proactive, legal services." *Id*. Free access to the official annotations of the Georgia state code, then, places citizens on a more equal footing in the legal system, and allows *pro se* parties to represent themselves more easily, saving the judiciary time, effort, and expense.

II. Georgia's concerns about printing costs are obsolete as internet publishing makes public access to information cheap, easy, and efficient.

Georgia acknowledges that the scope of the government edicts doctrine is "a matter of 'public policy.'" Pet'rs' Br. i (quoting *Banks v. Manchester*, 128 U.S. 244, 253–54 (1888)). Yet the State's attempts to argue that it would be "bad policy" to apply the government edicts doctrine to official state code annotations ignore the realities of modern publishing. It is no longer necessary to pull heavy, expensive, leather-bound volumes off a shelf to examine laws, judicial opinions, or executive orders. The federal government and state governments have recognized the benefits of making government information freely available online to the public. The costs of publishing and distributing

information have plummeted, and the business model that Georgia seeks to preserve is obsolete.

Georgia argues that Congress chose to exclude works of the federal government from copyright protection, but not works of state governments, because state governments, unlike the federal government, have to rely on private publishers. Pet'rs' Br. 4, 27–29. Georgia cites to a 1959 study on "Copyright in Government Publishing" that says that "[i]n the nineteenth century much of the public printing for the States was done under contract by private publishers," so the states relied on copyright to fund private printing. Pet'rs' Br. at 27–28. Georgia also cites to a 1961 report that refers to the state of technology in 1909 when states "generally did not have their own facilities for printing" and thus "contracted with private publisher who undertook to print and publish at their own expense as a commercial venture, for which the publishers required copyright." Pet'rs' Br. 4, 28–29. Both of these studies were published decades before digital publishing existed, and the source material is over a hundred years old. It is hard to see why the state of technology more than a century ago should justify copyright protection today.

Much has changed in the field of government publication and distribution of officials records over the last hundred years. In 1985, the Office of Management and Budget first issued Circular A-130 in order to "provide a general policy framework for management of Federal information resources." OMB Circular No. A-130, 50 Fed. Reg. 52,730 (1985). The Circular required all federal agencies to "provide public access to government information, consistent with the Freedom of Information Act" and to disseminate

government information "[i]n a manner that ensures that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information." *Id.* §§ 8.a(6), 8.a(11)(a), 50 Fed. Reg. 52,736. The Circular has been updated by the White House four times since it was first issued, strengthening the requirements that agencies provide the public with easy electronic access to government information.

When Congress passed the E-Government Act of 2002, Pub. L. 107-347, 116 Stat. 2899, it emphasized the need to "take full advantage of improved Government performance that can be achieved through the use of Internet-based technology" and to "promote the use of the Internet and emerging technologies within and across Government agencies to provide citizen-centric Government information and services." E-Government Act § 2, 116 Stat. 2900–01. The E-Government Act mandated that federal government agencies and courts "maintain and promote an integrated Internet-based system of providing the public with access to Government information and services." *Id.* § 204, 116 Stat. 2913. Congress also specifically mandated that each federal court establish and maintain a website that provides access to key legal documents including: "Local rules and standing or general orders of the court;" "Individual rules, if in existence, of each justice or judge in that court;" "docket information for each case;" and "the substance of all written opinions issued by the court." *Id.* § 205, 116 Stat. 2913.

The E-Government Act was passed nearly twenty years ago, and the federal government has continued to adapt and expand its deployment of Internet-based government information systems since then. Indeed, in 2014, the Government Printing Office, the

legislative branch agency responsible for "Keeping America Informed," was officially renamed the Government Publishing Office (GPO). Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. 113-235, 128 Stat. 2537 (2014). This change followed a comprehensive report by the National Academy of Public Administration, which found that:

> The amount and types of information being created by the federal government has exploded with the advent of digital publishing. In many ways, this has been a boon for the public: more government information is reaching more people, more quickly than ever before.

Nat'l Acad. Of Pub. Admin, *Rebooting the Government Printing Office: Keeping America Informed in the Digital Age* 29 (2013). The study found that "demand for federal print products has declined by half over the past twenty years, but the demand for information that government creates has only increased." *Id*. at 1. Today the GPO's "primary information dissemination program . . . is predominantly electronic." U.S. Gov't Publ'n Office, *GPO FY18-22 Strategic Plan* 3.[10] The GPO provides public access "to more than 1.5 million searchable titles" through its official website www.govinfo.gov. *Id.* This includes the Budget of the U.S. Government, the Code of Federal Regulations, Congressional Records, the Federal Register, the United States Code, and United States Court Opinions.

---

[10] https://www.gpo.gov/docs/default-source/mission-vision-and-goals-pdfs/gpo-strategic-plan-fy2019-2017.pdf.

In addition to the millions of official government records made available by the GPO, the Office of Law Revision Counsel ("OLRC") in the U.S. House of Representatives has made the entire, official U.S. Code available for free on the Internet.[11] The printed, "main edition" of the U.S. Code, is prepared by the GPO every six years with five annual cumulative supplements printed in intervening years. Office of the Law Revision Counsel, U.S. House of Rep., *About the United States Code and This Website*.[12] But unlike the old main edition, the new online versions of the code are always "available for searching and browsing . . . [in] the most current version" and the "OLRC staff updates this version throughout a congressional session on an ongoing basis." *Id*. The OLRC website also allows access to and searching of prior year versions of the Code going back to 1994. *Id*.

The development and recent expanded availability of the U.S. Code illustrate why it is good policy to make official sources of law freely available to the public. The U.S. Code main edition is available for purchase from the GPO at the U.S. Government Bookstore. The hardback edition costs ~$150 per volume and there are more than 40 volumes (the total cost for the full set would be over $6,000). U.S. Gov't Publ'n Office, *U.S. Government Bookstore: United States Code*.[13] The GPO also sells a CD-ROM version of the U.S. Code for list price of $30.00, but only currently offers 2006, 2007, and 2008 editions (at a discounted rate of $15). *Id*. Meanwhile, the OLRC makes

---

[11] https://uscode.house.gov.

[12] https://uscode.house.gov/about_code.xhtml.

[13] https://bookstore.gpo.gov/catalog/united-states-code.

the full and most current version of U.S. Code available for free online, along with archived prior versions.

These prices make clear that the cost of publishing has been dramatically reduced by the advent of digital publishing and Internet distribution. And the U.S. Code itself was developed as a way to "keep current an official and positive codification of the laws of the United States," 2 U.S.C. § 285a, which had previously been developed through iterative adoption of Statutes at Large. *See* Office of the Law Revision Counsel, U.S. House of Rep., *The United States Code – What It Is … What It Isn't … And What It Could Be*.[14] As Congress has explained, it is essential that "the general and permanent provisions of Federal statutory law [be] findable and accessible." *Id*. The same should be true of the official law of the State of Georgia.

[14] https://uscode.house.gov/about/WhatTheCodeIs.pdf.

CONCLUSION

For the above reasons, *amici* EPIC et al. respectfully ask this Court to affirm the decision of the U.S. Court of Appeals for the Eleventh Circuit.

Respectfully submitted,

MARC ROTENBERG
ALAN BUTLER
MEGAN IORIO
ELECTRONIC PRIVACY
INFORMATION CENTER (EPIC)
1519 New Hampshire
Avenue NW
Washington, DC 20036
(202) 483-1140
(202) 483-1248 (fax)
rotenberg@epic.org

October 16, 2019