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“It’s Not Just A Good Idea—It’s The Law!”

April 6, 2021

Code Revision Commission
Arkansas State Legislature
% Bureau of Legislative Research
1 Capitol Mall, Fifth Floor
Little Rock, Arkansas 72201

Dear Speaker Shepherd, Code Revisor Henderson, and members of the Arkansas Code Revision Commission:

I am writing in reference to my letter to you of [December 12, 2020](#), discussing copyright assertions by the Arkansas Code Revision Commission and notifying you of our efforts at Public Resource to provide public access to the Arkansas Code. We have not received a response from you.

The issue of copyright assertions over state codes was litigated and decided by the Supreme Court of the United States in [Georgia et. al. v. Public.Resource.Org](#). The State of Arkansas led an effort to submit a [brief of amici curiae](#) encouraging the Supreme Court to grant certiorari. After the Supreme Court granted the writ of certiorari, the State of Arkansas led the effort to submit a [second brief of amici curiae](#) in support of the State of Georgia.

You had your day in court. The Supreme Court considered and rejected your arguments. The Chief Justice of the United States wrote for the majority and stated:

The question in this case is whether that protection extends to the annotations contained in Georgia’s official annotated code.

We hold that it does not. Over a century ago, we recognized a limitation on copyright protection for certain government work product, rooted in the Copyright Act’s “authorship” requirement. Under what has been dubbed the government edicts doctrine, officials empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties. [Georgia et. al. v. Public.Resource.Org](#), 140 S.Ct. 1498 (2020)

On January 21, 2021, the U.S. Copyright Office revised its manual of procedures to clearly state this principle:

Legislators and judges “empowered to speak with the force of law cannot be the authors of—and therefore cannot copyright—the works they create in the course of their official duties.” [Georgia v. Public.Resource.Org, Inc.](#), 140 S. Ct. 1498, 1504 (2020). This is known as the “government edicts doctrine.” *Id.* at 1504, 1506.

... The government edicts doctrine “applies to whatever work legislators perform in their capacity as legislators. That of course includes final legislation, but it also includes explanatory and procedural materials legislators create in the discharge of their legislative duties.” *Id.* at 1508.

... The U.S. Copyright Office will not register a government edict that has been issued by any federal, state, local, or territorial government, including legislative enactments, judicial decisions, administrative rulings, public ordinances, or similar types of official legal materials. [Compendium of U.S. Copyright Office Practices \(Third Edition\), § 316\(C\)\(2\)](#)

Despite this clear and unequivocal statement of policy, the Arkansas Code Revision Commission continues to assert copyright over the code. This is directly contrary to the ruling of the U.S. Supreme Court issued almost a year ago.

Even worse, the Arkansas Code Revision Commission has been taking active steps that further restrict access to the Arkansas Code of 1987 Annotated, the only official statement of the law of your state. In addition to the copyright notices that remain in the code, in late December 2020, the Commission and your vendor cancelled the only reasonable electronic access to the Arkansas Code of 1987 Annotated, which was the quarterly DVD product we had subscribed to. What remains are two options:

- A very expensive interactive service from Lexis called Lexis Advance, a service which is tightly wrapped in onerous terms of use and aggressive technical measures to prevent any downloading.
- The 55 hardbound volumes of the Arkansas Code of 1987 Annotated, available for \$650 to in-state customers and \$1,339 for out-of-state customers (plus a \$273 annual “upkeep” charge).

Public Resource has purchased the print version. We will scan the books and supplements, use optical character recognition, convert the OCR to HTML, and perform post-processing to provide additional facilities such as crosslinks within the code, links to external resources, accessibility for the visually impaired, and other features. This effort would not be required if Arkansas and its vendor were not acting in a manner that obstructs the U.S. Supreme Court’s ruling. But our organization will continue to do what is needed to make the law available to the public.

All members of the Arkansas Code Revision Commission have sworn an oath under [Article 19, §20](#) of the Arkansas Constitution of 1874 that you will “support the Constitution of the United States and the Constitution of the State of Arkansas.” I respectfully put it to you that the recent efforts to play “hide the code” and your apparently willful disregard of the ruling of the highest court in the land is disrespectful to the Supreme Court of the United States and not in keeping with the solemn you all swore when you undertook your important duties.

I urge you take immediate and definitive action to bring your policies in compliance with the law. The public you serve deserve better from you than this.

Sincerely,

DocuSigned by:

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Carl Malamud, President
Public.Resource.Org, Inc.