IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

PUBLIC.RESOURCE.ORG ET AL.,	)	
Petitioners-Appellants,	)	
v.	)	No. M2022-01260-COA-R3-CV
MATTHEW BENDER & COMPANY, INC., ET AL.,	)	
Respondents-Appellees.	)	

APPELLANTS' BRIEF

On Appeal from the Chancery Court for Davidson County, Tennessee
Public.Resource.org et al. v. Matthew Bender & Company, Inc., et al.
Case No. 22-1025-III

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STATEMENT OF THE ISSUES

1. Did the Chancery Court err by concluding that the Tennessee Code Annotated is exempt from disclosure under the Tennessee Public Records Act?

2. If the Chancery Court erred by concluding that the Tennessee Code Annotated is exempt from disclosure under the Tennessee Public Records Act, did the Chancery Court correctly conclude that Respondent-Appellee Matthew Bender & Company, Inc., a division of LexisNexis Group, (Lexis) is the functional equivalent of government for purposes of creating and publishing the Tennessee Code Annotated?

3. If the Chancery Court erred by concluding that the Tennessee Code Annotated is exempt from disclosure under the Tennessee Public Records Act, did the Chancery Court also correctly conclude that the Tennessee Code Annotated is not subject to copyright protection?

INTRODUCTORY STATEMENT

In this appeal, Appellants seek to vindicate and protect the public's right of access to the complete and current electronic version of the Tennessee Code Annotated–the law of Tennessee–in the hands of the private company hired by the State to publish it.

The state government of Tennessee has contracted with Lexis, a for-profit corporation, to compile, arrange, classify, annotate, edit, index, print,

bind, publish, sell, and distribute the Tennessee Code Annotated (TCA). Appellants seek access to the complete and current electronic version of this public record. Remarkably, the State does not have this electronic public record in its possession. As the TCA's publisher, Lexis does have this public record. Lexis has denied to Appellants their right of access to the TCA as a public record under the Act. Appellants sought redress for that denial in this proceeding.

The Chancery Court of Davidson County, Tennessee, denied Appellants access, finding that a provision in Title 1 of the Code governing legislative computer systems exempted the TCA from the access requirement of the Act. Appellants contend that this was error.

Despite this finding, in order to avoid "a time-consuming and expensive remand" if its ruling were reversed, the Chancery Court found that Lexis was the functional equivalent of state government under *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67 (Tenn. 2002), and thus subject to the Act. Appellants submit that this finding was correct.

Further, the Chancery Court also rejected the claim that the TCA is subject to copyright protection under federal law, which Appellees assert would exempt the TCA from the access requirement of the Act. In reaching this conclusion, the Chancery Court relied on the seminal decision of the U.S. Supreme Court in *Georgia v. Public.Resource.org, Inc.*, 140 S. Ct. 1498, 1506

(2020), that Georgia's annotated statutory was not eligible for copyright protection under the "government edicts doctrine." Appellants submit that this finding was correct. On these grounds, Appellants submit that they are entitled to access to and a copy of the TCA.

STATEMENT OF THE CASE

This is an appeal from the August 30, 2022, order of the Chancery Court for Davidson County, Tennessee, dismissing Appellants' Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access.

STATEMENT OF FACTS

The Tennessee Code Annotated and the Tennessee Code Commission

The laws of the State of Tennessee are compiled in the Tennessee Code. R. 5. The TCA includes, among other things, the text of the Tennessee Code and annotations to the Tennessee Code, including references to secondary sources that discuss the Code; references to cases in which courts have interpreted the Code (called Notes of Decisions); cross-references to other sections of the Code or to relevant regulations; and detailed historical notes. *Id.*

By Tennessee law and tradition, the TCA is the definitive, authoritative, authorized, and official version of all Tennessee statutory law. *Id.* The Tennessee Supreme Court, other Tennessee courts, and federal courts

routinely and uniformly cite to the TCA to make any reference to Tennessee statutory law. *Id.* They virtually never cite to any unannotated version of Tennessee statutory law. *Id.*

The TCA is produced and published by Respondent-Appellee the Tennessee Code Commission (the Commission), a State entity established by statute. *Id.*; Tenn. Code Ann. § 1-1-101. The members of the Commission include the Chief Justice of the State of Tennessee, the Attorney General and Reporter of the State of Tennessee, the Director of Legal Services of the General Assembly of Tennessee, all serving *ex officio*, plus two members appointed by the Chief Justice. R. 5; Tenn. Code Ann. § 1-1-101. The Commission's Executive Secretary is the Revisor of Statutes, a member of the Office of Legal Services. R. 5; Tenn. Code Ann. § 1-1-102(b).

The Commission is

> authorized and directed to formulate and supervise the execution of plans for the compilation, arrangement, classification, annotation, editing, indexing, printing, binding, publication, sale, distribution and the performance of all other acts necessary for the publication of an official compilation of the statutes, codes and session laws of the state of Tennessee of a public and general nature, now existing and to be enacted in the future, including an electronically searchable database of such code, which official compilation shall be known as "Tennessee Code Annotated."

Tenn. Code Ann. § 1-1-105. The Commission has

> full power and authority on behalf of the state of Tennessee to perform all acts and to negotiate and enter into all contracts necessary for and expedient to the successful production and

> publication of a revised compilation of the statutory laws of Tennessee, including the power and authority to enter into contracts with a law book publisher for the editing, compiling, annotating, indexing, printing, binding, publication, sale and distribution of the revised compilation and the performance and execution of all other publication plans formulated by the commission.

Tenn. Code Ann. § 1-1-106.

Section 107 further provides that

> [a]ny contract with a law book publisher for the purposes referred to in §§ 1-1-105 and 1-1-106 shall prescribe the specifications for the publication of the revised compilation, including the size of type to be used in the text of the statutes and the annotations, the grade and weight of the paper to be used, the size of the volumes, appropriate provisions for the insertion of pocket supplements and the publication of replacement volumes, the price at which Tennessee Code Annotated shall be sold in Tennessee when originally published, and such other provisions as are necessary for the full performance of the publication plans formulated by the commission.

Tenn. Code Ann. § 1-1-107.

If the Commission finds that the manuscript of the TCA "printed, edited, annotated, indexed and bound" by a law book publisher under a contract is acceptable, the Commission "shall prepare an appropriate written certificate of approval" and "acting through its executive secretary or other authorized officer, shall certify in writing" that the Commission has approved the manuscript. R. 7; Tenn. Code Ann. § 1-1-110.

The official status of the TCA has been expressly established by the Tennessee General Assembly for almost seven decades. R. 7. Since 1953,

Tennessee statutory law has provided that "[n]o compilation or codification of the statutes of Tennessee not bearing a copy of the certificate of approval of the code commission as provided in § 1-1-110 shall be recognized as an official compilation of the statutory law of Tennessee." R. 7; Tenn. Code Ann. § 1-1-112.[1] The Commission cannot subsidize the publication of the TCA out of public funds; rather, it "shall require that the cost of publication be borne by the publisher, and the publisher shall be required to depend for compensation upon the proceeds of the sale of the publication." R. 7; Tenn. Code Ann. § 1-1-113.

The Commission's Exclusive Contract with Lexis

The TCA is produced by Lexis, under a 2019 Restated Agreement for Publication with the Commission (the Agreement). R. 7; R. 20–52. Under the Agreement, Lexis "shall perform and provide all editorial services necessary for the publication of T.C.A.," and "shall provide and be responsible for all ongoing publishing requirements associated with the maintenance of T.C.A." R. 8; R. 20.

Notwithstanding Lexis's responsibilities under the Agreement, the Commission must approve virtually every aspect of the TCA, including the

[1] This is established by reference to the TCA annotation for Tenn. Code Ann. § 1-1-112 entitled, "History," which states "Acts 1953, ch. 80, § 5; T.C.A. (orig. ed.), § 1-112."

form of annotations; the addition of new annotations; the removal of archaic or obsolete references or annotations; any changes to the content or arrangement of replacement volumes; and the contents of each volume. R. 8; R. 20–52. Exhibit A to the Agreement provides an exhaustive list of technical specifications that "may be changed with the written approval of the Commission," including (among many others) the size of the pages; the type face and size; the margins; and the paper weight. R. 8; R. 43–52.

Under the Agreement, Lexis "shall maintain the present style and format of the Code, and adhere to the Style Guidelines adopted by the Commission," and the Commission's "Style Guidelines for Codification of Public Chapters" includes provisions governing alphabetization, dates, numbers, punctuation, and miscellaneous words and phrases. R. 9; R. 44–50. Under the Agreement, Lexis will also "implement style changes requested by the Commission." R. 9; R. 50.

Section 7 ("Supervision") of the Agreement provides that Lexis

> agrees that all compilations, codifications, annotations, and other matters to be included in T.C.A. shall be submitted to the Executive Secretary in advance of publication, in order that such items may be checked, proofread, verified and certified by the Executive Secretary prior to publication as provided by the minimum requirements.

R. 31. The Agreement further provides: "In the event of disagreement as to material to be included in such T.C.A., or as to any codification, annotation or

other matter of editorial content, [Lexis] shall abide by and follow the decision of the Commission as communicated by the Executive Secretary," and "[i]n the event of any other dispute between [Lexis] and the Commission concerning publication of the T.C.A. or performance under th[e] Agreement, the decision of the Commission shall prevail." R. 9–10; R. 31. The Agreement also requires that Lexis provide the Commission, after each legislative session, the complete and current electronic version of the TCA. R. 10; R. 27–28. And the Commission may terminate the Agreement for cause or for convenience without cause "if for any reason the Commission determines, in its sole discretion, that such termination is in the best interest of the State." R. 10; R. 32–33.

Appellants' Public Records Requests

On October 8, 2021, Vanderbilt Law School Professor Gautam Hans, working with Appellant Public.Resource.org, submitted a public records request to the Revisor of Statutes of Tennessee requesting "[a] copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety." R. 11; R. 54. Responding for the Revisor of Statutes, the Office of the Attorney General and Reporter of Tennessee denied Professor Hans's public records request on October 19, 2021, advising him "that the Revisor of Statutes does not [have] an electronic version of the most current Tennessee Code Annotated *in its entirety*." R. 11; R. 56–57 (emphasis in

original).

Professor Hans replied on January 24, 2022, seeking several clarifications concerning the Attorney General's response, including its use of the phrase "*in its entirety*," and confirmation "whether the State has any electronic documents or files responsive to [Professor Hans's] request." R. 11; R. 59–61. Professor Hans's January 2022 letter also cited Section 2.9 of the Agreement, which provides that Lexis "shall prepare and provide to the Commission at no cost to the State of Tennessee a mutually agreeable electronic format containing an accurate representation of the material contained in the bound volumes of T.C.A. and its cumulative supplements." R. 11; R. 27–28.

The Attorney General responded on February 2, 2022, repeating that neither the Revisor of Statutes and Executive Secretary of the Commission nor the OLS had any documents or records responsive to Professor Hans's records request. R. 11; R. 63–64. The Attorney General also advised that the Executive Secretary "has never requested that an 'electronic format' of the Tennessee Code Annotated be delivered" to the Commission under Section 2.9 of the Agreement. *Id.*[2]

[2] The Agreement clearly provides the Commission, at the very least, the right to receive the complete and current electronic version of the TCA. R. 27–28. Thus, the fact that the only custodian of this public record is Lexis is

Based on these statements in formal response to a request for public records under the Act, Appellants understood that the State of Tennessee does not have in its possession the complete and current electronic version of the TCA. R. 12. Given that understanding, and Lexis's exclusive contract with the State to compile, arrange, classify, annotate, edit, index, print, bind, publish, sell, and distribute the TCA, Appellants wrote Lexis requesting access under the Act to "[e]ach electronic version of the most current Tennessee Code Annotated, reproduced in its entirety" on May 16, 2022. R. 12; R. 66–68.

On May 20, 2022, Lexis denied Appellants' public records request, arguing that the Act does not apply to Lexis because Lexis "is not the functional equivalent of a government entity." R. 12; R. 70.

Appellants' Petition in the Chancery Court

On August 11, 2022, Appellants filed a Petition for Access to Public Records and to Obtain Judicial Review of Denial of Access under the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503 and 10-7-505 (the Act), in the Chancery Court for Davidson County, Tennessee. R. 1–70. Appellants sought access to and a copy of the complete and current electronic version of the TCA and to obtain judicial review of the actions of Lexis, who

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the result of a conscious and intentional decision of the State and, specifically, the Commission.

had denied Appellants access to that public record.

The Chancery Court dismissed Appellants' Petition on August 30, 2022. R. 357–70. The Chancery Court reasoned that the TCA was exempt from disclosure under Section 10-7-503(a)(2)(A) of the Act because the sale, publication, and reproduction of the TCA is governed by title 1, chapter 1 of the Tennessee Code, as provided in Tenn. Code Ann. § 3-10-108(d). R. 359–65.

Nevertheless, "in the interest of avoiding a time-consuming and expensive remand even if there is a reversal of [that] decision," the Chancery Court continued with its analysis under the Act. The Chancery Court first found that Lexis was the functional equivalent of the State because it "is performing a governmental function by producing and publishing" the TCA. R. 366. The Chancery Court also rejected the Appellees' argument that copyright law provided an exception to the access requirement of the Act, finding that the TCA is not eligible for copyright protection under the U.S. Supreme Court's decision in *Georgia v. Public.Resource.org, Inc.*, because the General Assembly created the Commission, and the Commission thus "functions as an arm" of the General Assembly in commissioning the creation of the TCA. R. 366–68.[3]

[3] Upon the request of Appellants under Tenn. Code Ann. § 10-7-505(b) ("The court may direct that the records being sought be submitted under seal

SUMMARY OF ARGUMENT

Tennessee courts have long recognized the public's right to examine governmental records. *See, e.g.*, *State ex rel. Wellford v. Williams*, 110 Tenn. 549, 75 S.W. 948 (1903). In 1957, the General Assembly codified this public access doctrine by enacting the Public Records Act. *Ballard v. Herzke*, 924 S.W.2d 652, 661 (Tenn. 1996).

The Public Records Act now "governs the right of access to records of government agencies in this state." *Cole v. Campbell*, 968 S.W.2d 274, 275 (Tenn. 1998). Facilitating access to governmental records promotes public awareness and knowledge of governmental actions and encourages governmental officials and agencies to remain accountable to the citizens of Tennessee. *Memphis Publ'g Co. v. Cherokee Children & Family Servs., Inc.*, 87 S.W.3d 67, 74–75 (Tenn. 2002) ("Through its provisions, the [Act] serves a crucial role in promoting accountability in government through public oversight of governmental activities.").

Given that purpose, the Act is construed "liberally to enforce the public interest in open access to the records of state, county, and municipal

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for review by the court and no other party."), the Chancery Court ordered Lexis to file in the court's registry "the current version of the Tennessee Code Annotated reproduced in its entirety"—that is, the public record sought by Appellants in this case. R. 369. That document or documents were subsequently filed under seal and are now held in the registry of the Chancery Court. R. 371–73, 379–82.

governmental entities." *Id.* at 74; *see also Schneider v. City of Jackson*, 226 S.W.3d 332, 340 (Tenn. 2007) ("[T]he General Assembly has directed the courts to construe broadly the Public Records Act 'so as to give the fullest possible access to public records.'" (quoting Tenn. Code Ann. § 10-7-505(d)).

The Public Records Act broadly defines "[p]ublic record or records" or "state record or records" to include "all documents, papers, letters, maps, books, photographs, microfilms, electronic data processing files and output, films, sound recordings, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official business by any governmental agency." Tenn. Code Ann. § 10-7-503(a)(1)(A). Given this definition, the Public Records Act has been described as an "'all[-]encompassing legislative attempt to cover all printed matter created or received by government in its official capacity.'" *Griffin v. City of Knoxville*, 821 S.W.2d 921, 923 (Tenn. 1991) (quoting *Bd. of Educ. of Memphis City Schools v. Memphis Publ'g Co.*, 585 S.W.2d 629, 630 (Tenn. Ct. App. 1979)). Two decades ago, in *Cherokee*, the Tennessee Supreme Court held that the public's right of access extends to public records in the hands of non-governmental entities that are the functional equivalent of government.

The Public Records Act mandates that "[a]ll state, county and municipal records shall . . . be open for personal inspection by any citizen of

this state, and those in charge of the records shall not refuse such right of inspection to any citizen, unless otherwise provided by state law." Tenn. Code Ann. § 10-7-503(a)(2)(A). "These statutes create a presumption of openness and express a clear legislative mandate favoring disclosure of governmental records." *Schneider*, 226 S.W.3d at 340 (citing *State v. Cawood*, 134 S.W.3d 159, 165 (Tenn. 2004); *Tennessean v. Elec. Power Bd.*, 979 S.W.2d 297, 305 (Tenn. 1998); *Arnold v. City of Chattanooga*, 19 S.W.3d 779, 785 (Tenn. Ct. App. 1999)). Unless an exception is established, Tennessee courts must be "vigilant" and require disclosure "even in the face of serious countervailing considerations." *Memphis Publ'g Co. v. City of Memphis*, 871 S.W.2d 681, 684 (Tenn. 1994).

The Chancery Court found an exception in Section 10-7-503(a)(2)(A) of the Act, which provides that

> [a]ll state, county and municipal records shall, at all times during business hours, which for public hospitals shall be during the business hours of their administrative offices, be open for personal inspection by any citizen of this state, and those in charge of the records shall not refuse such right of inspection to any citizen, *unless otherwise provided by state law*.

(Emphasis added). R. 362.

Citing several other statutory provisions that distinguish between the Tennessee Code and the TCA, the Chancery Court concluded that, although "helpful" for the citizens of Tennessee, the TCA "shall not be freely accessible,

and shall be available only through sale or purchase." R. 363 (citing Tenn. Code Ann. §§ 1-1-105(a), 1-1-106(a), 1-1-113(a)–(b), 12-6-102, and 12-6-116). This conclusion was based on Tenn. Code Ann. § 3-10-108, which provides "that the reproduction, publication, and sale of Tennessee Code Annotated in any form, in whole or in part, shall be pursuant to the provisions of title 1, chapter 1." R. 363–64. These provisions, the Chancery Court reasoned, "constitute state law that 'otherwise' provides that the Tennessee Code Annotated is exempt from access under the Public Records Act." R. 363.

The Chancery Court was wrong to find an exception to the access requirement of Section 10-7-503(a)(2)(A) of the Act because Tenn. Code Ann. § 3-10-108 governs access to legislative computer systems—not access to the TCA by Tennessee citizens as a public record. Lexis is undoubtedly not part of the legislature, and the TCA in Lexis's possession is not in any way within or part of the legislative computer systems.

The Chancery Court was correct, however, to conclude in the alternative that Lexis is the functional equivalent of the State because Lexis publishes the TCA–the definitive law of Tennessee–under the strict and close supervision of the Commission, a statutorily created government entity that, by law, must and does specify to Lexis precisely and in exacting detail how, in what form, and with what content, Lexis must publish the TCA. The Chancery Court was also correct to conclude (also in the alternative) that the

TCA is not entitled to copyright protection under the U.S. Supreme Court's decision in *Georgia v. Public.Resource.org, Inc.* because it was authored by an arm of the legislature—the Commission.

The issues in this appeal present questions of law, including issues of statutory interpretation, which this Court reviews de novo. *See Cherokee*, 87 S.W.3d at 74 ("Our determination whether the Tennessee Public Records Act applies to the records in Cherokee's possession is a question of law."); *Nationwide Mut. Fire Ins. Co. v. Memphis Light, Gas & Water*, 578 S.W.3d 26, 30 (Tenn. Ct. App. 2018) ("[W]hen an issue on appeal requires statutory interpretation, we review the trial court's decision de novo with no presumption of correctness.").

ARGUMENT

I. The TCA is not exempt from disclosure under the Act.

The Chancery Court concluded that the TCA is exempt from disclosure or "reproduction" because Tenn. Code Ann. § 3-10-108(d) provides that "the reproduction, publication, and sale of Tennessee Code Annotated in any form, in whole or in part, shall be pursuant to the provisions of title 1, chapter 1," and title 1, chapter 1 vests the Commission with the sole authority to reproduce, publish, and sell the TCA, "including an electronically searchable database of such code." R. 363–65.

The Chancery Court was wrong because—as is clear from its title and

text—section 3-10-108(d) applies to the "Legislative computer system" and not to any records in the possession of Lexis. The language of section 3-10-108(d), which modifies and governs the whole subject matter addressed by the section is clear about its scope:

> (a) The joint legislative services committee shall consider *each application for direct access to the legislative computer system* in which confidential information is stored or processed, or that is connected to another computer in which confidential information is stored or processed, and solely shall determine whether or not to permit direct access by the applicant.
>
> (b) Direct access to such a computer may not be permitted unless protection of any confidential information is ensured.
>
> (c) The provisions of § 10-7-503 shall not apply to records or information otherwise available in printed form or to information or records otherwise exempt from the provisions of § 10-7-503.
>
> (d) If public information is stored in a computer-readable form, the committee has exclusive authority to determine the form in which the information will be reproduced for the requestor of the information; provided, that the reproduction, publication, and sale of Tennessee Code Annotated in any form, in whole or in part, shall be pursuant to the provisions of title 1, chapter 1. If access to such public information is also available in printed form, it need not be provided in an electronic readable form.
>
> (e) The committee shall designate the terminals, if any, at which public access is given to public information. The data processing equipment located in the offices of members of the general assembly and legislative staff need not provide such access if not so designated by the committee.

(Emphasis added.) *See also* 1987 Tenn. Pub. Acts, ch. 163, § 8 (R. 284–88).

Neither the Commission nor Lexis are part of the General Assembly, of

course, although the Commission is a State entity established by statute. *See* Tenn. Code Ann. § 1-1-101; *see also* R. 115 ("The Code Commission is not part of the Legislature.").

Even assuming that the Commission is part of the legislature, the Commission has repeatedly denied that it has an electronic version of the TCA; indeed, the State has repeated denied that the State has an electronic version of the TCA.[4] Thus, Appellants do not seek in this action access to any records in the hands of the Commission. How can the TCA be exempted from the access requirement of the Act by enactment of a provision of the Tennessee Code that applies only to legislative computer systems when neither those systems nor those of the Commission house the TCA? By its plain terms, section 3-10-108(d) does not apply to the TCA in the hands of Lexis.

The Commission persuaded the Chancery Court to reject this simple, straightforward conclusion by arguing that, when the General Assembly

[4] *See* R. 57 ("Please be advised that the Revisor of Statutes does not [have] an electronic version of the most current Tennessee Code Annotated *in its entirety*."); R. 64 ("To the extent you are now making a request for copies of these documents to the Office of Legislative Legal Services, including its Director, please be advised that neither the Office, nor its Director, has any documents responsive to this request."); *id.* ("[Y]our client requested a 'copy of each electronic version of the most current Tennessee Code Annotated, reproduced in its entirety.' . . . Ms. Seals, both in her capacity as the Revisor of Statutes and as Executive Secretary for the Tennessee Code Commission, does not have any records responsive to this request.").

enacted section 3-10-108(d) in 1987, it presumably had knowledge of the Act, which was enacted in 1957. R. 364–65 (quoting R. 127). Although that presumption is correct, *see, e.g.*, *Shorts v. Bartholomew*, 278 S.W.3d 268, 277 (Tenn. 2009) (citation omitted), "[a] court's overarching purpose in construing statutes is to ascertain and effectuate legislative intent without expanding a statute beyond its intended scope," *Brown v. Jordan*, 563 S.W.3d 196, 198 (Tenn. 2018) (citing *Baker v. State*, 417 S.W.3d 428, 433 (Tenn. 2013)). Words used in a statute "must be given their natural and ordinary meaning in the context in which they appear and in light of the statute's general purpose." *Mills v. Fulmarque, Inc.*, 360 S.W.3d 362, 368 (Tenn. 2012) (citations omitted). Further, statutes must be construed in a reasonable manner that "avoids statutory conflict and provides for harmonious operation of the laws." *Baker*, 417 S.W.3d at 433 (internal quotations omitted). And "[w]here statutory language is ambiguous or a statutory conflict exists," this Court "may consider and discern legislative intent from matters other than the statutory language, 'such as the broader statutory scheme, the history and purpose of the legislation, public policy, historical facts preceding or contemporaneous with the enactment of the statute, earlier versions of the statute, the caption of the act, and the legislative history of the statute.'" *Brown*, 563 S.W.3d at 198–99 (Tenn. 2018) (quoting *Womack v. Corr. Corp. of Am.*, 448 S.W.3d 362, 366 (Tenn. 2014)).

Here the Chancery Court incorrectly expanded the scope of section 3-10-108(d), a statutory provision expressly limited to legislative computer systems by the plain and ordinary meaning of its text and context, to create a new exception to the Act and an exemption for the TCA, where the TCA is neither stored on a legislative computer system nor in the possession, custody, or control of the legislature or its proxy, the Commission.

The Chancery Court's construction also creates an unnecessary conflict between section 3-10-108(d) and the Act. The Act "create[s] a presumption of openness and express[es] a clear legislative mandate favoring disclosure of governmental records," *Schneider*, 226 S.W.3d at 340, and it must be construed "liberally to enforce the public interest in open access to the records of state, county, and municipal governmental entities," *Cherokee*, 87 S.W.3d at 74. Further, *none* of the extrinsic matters the Court may consider to resolve this conflict—including the broader statutory scheme, the history and purpose of the legislation, public policy, historical facts preceding or contemporaneous with the enactment of the statute, earlier versions of the statute, the caption of the act, or the legislative history of the statute, *Brown*, 563 S.W.3d at 198–99—supports the Chancery Court's reading.

II. Lexis is the functional equivalent of the State because publication of the TCA is a public function and the Commission exercises near-total control over publication of the TCA.

The General Assembly has mandated that the accountability created by the Public Records Act be extended in favor of "'the fullest possible public access to public records.'" *Cherokee*, 87 S.W.3d at 74 (quoting Tenn. Code Ann. § 10-7-505(d)). Thus, although the Public Records Act expressly governs "state, county and municipal records," Tenn. Code Ann. § 10-7-503(a)(2)(A), Tennessee courts interpret records "made or received . . . in connection with the transaction of official business by any governmental entity," *id.* § 10-7-503(a)(1)(A), "to include those records in the hands of any private entity which operates as the functional equivalent" of a governmental entity, *Cherokee*, 87 S.W.3d at 79.

Tennessee citizens denied access to governmental records have the right to file a petition in court and "to obtain judicial review of the actions taken to deny the access." Tenn. Code Ann. § 10-7-505(a). "In a case in which the court is called upon to apply the functional equivalency test, the initial burden is on the petitioner to show that the private entity operates as the functional equivalent of a governmental entity." *Memphis Publ'g Co. v. City of Memphis*, No. W2016-01680-COA-R3-CV, 2017 WL 3175652, at *5 (Tenn. Ct. App. July 26, 2017) (citing *Allen v. Day*, 213 S.W.3d 244, 251 (Tenn. Ct.

App. 2006)). Once that showing is made, the private entity bears the burden of proof, and must justify nondisclosure of the records by a preponderance of the evidence. Tenn. Code Ann. § 10-7-505(c); *see also The Tennessean v. City of Lebanon*, No. M2002-02078-COA-R3-CV, 2004 WL 290705, at *9 (Tenn. Ct. App. Feb. 13, 2004); *Allen*, 213 S.W.3d at 250–51.

When deciding whether a private entity is the functional equivalent of a governmental agency, Tennessee courts look to the totality of the circumstances. *Cherokee*, 87 S.W.3d at 79. Although not dispositive, the cornerstone of the functional-equivalent analysis is whether and to what extent the entity performs a governmental or public function; this is of the utmost importance because "a governmental agency cannot, intentionally or unintentionally, avoid its disclosure obligations under the Act by contractually delegating its responsibilities to a private entity." *Id. See also* Tenn. Code Ann. § 10-7-503(a)(6) ("A governmental entity is prohibited from avoiding its disclosure obligations by contractually delegating its responsibility to a private entity."). Other factors that may be relevant to the analysis include, but are not limited to, the extent of government involvement with, regulation of, or control over the entity; the level of government funding of the entity; and whether the entity was created by an act of the legislature or previously determined by law to be open to public

access. *Cherokee*, 87 S.W.3d at 79.[5]

The Chancery Court concluded that Lexis "is performing a governmental function by producing and publishing" the TCA. R. 366.[6] The Chancery Court was correct and its decision should be affirmed.

A. Compiling, arranging, classifying, annotating, editing, indexing, printing, binding, publishing, and selling the law of the State of Tennessee is a quintessentially governmental function.

There is no law without government,[7] and the law must be published in order for it to be the law. "The law must be accessible . . . the successful conduct of trade, investment and business generally is promoted by a body of accessible legal rules governing commercial rights and obligations." Thomas Henry Bingham, *The Rule of Law* 37–38 (Penguin Press 2011). "Every citizen is presumed to know the law," and "it needs no argument to show . . . that all should have free access" to its contents. *Nash v. Lathrop*, 142 Mass. 29, 35, 6 N.E. 559, 560 (1886) (cited by *Banks v. Manchester*, 128 U.S. 244, 253–54

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[5] Neither this Court nor the Tennessee Supreme Court have added other factors to this non-exclusive list in the 20 years since *Cherokee* was decided.

[6] The Chancery Court based its conclusion on arguments included in Appellants' memorandum (R. 84–91) and reply (R. 267–73) in support of their petition, which the court incorporated in its memorandum and final order. R. 366.

[7] *See* Bertrand Russell, *Ideas That Have Helped Mankind*, in Unpopular Essays (1950) ("Government can easily exist without law, but law cannot exist without government.").

(1888)). *See also* Brian Z. Tamanaha, *On the Rule of Law: History, Politics, Theory* 34 (Cambridge Univ. Press 2004) ("Citizens are subject only to the law, not to the arbitrary will or judgment of another who wields coercive government power. This entails that the laws be declared publicly in clear terms in advance."). The law cannot be the law without being published, and thus publication of the law is a necessary and integral part of the government function of law-making.

From the very earliest days of Tennessee statehood, our leaders recognized that publishing the law of Tennessee was necessary to the function of government and the rule of law in Tennessee. For that reason, Tennessee has a long history of collecting, organizing, and publishing the law as a function of government—with the assistance of private individuals and entities. For example, in 1803, Tennessee's "Territorial Government appropriated $600 to George Roulstone as public printer, and he was to publish all the acts and proclamations of that government." Eddie Weeks, A History of Tennessee Statutory Law: Compilations, Codifications, and Complications 1 (Lexis 2021) ("It was a private effort of Mr. Roulstone . . .") (R. 133).

Privatization—or "contracting out" services previously performed by the government—is why the functional-equivalence test was created. As the Tennessee Supreme Court observed in *Cherokee*, "[s]ince the 1980s,

governmental entities in various parts of the nation have looked increasingly to privatization as a possible solution to perceived problems of inefficiency or expense in the provision of public services," and "private entities that perform public services on behalf of a government often do so as independent contractors." *Cherokee*, 87 S.W.3d at 76, 78. "Nonetheless, the public's fundamental right to scrutinize the performance of public services and the expenditure of public funds should not be subverted by government or by private entity merely because public duties have been delegated to an independent contractor." *Id.* at 78.

In *Cherokee*, a non-profit public benefit corporation, Cherokee Children & Family Services, Inc., entered into a contract with Tennessee to provide childcare services for indigent families and supervise child care placements under Tennessee Department of Human Services guidelines. 87 S.W.3d at 70–71, 79. The Tennessee Supreme Court observed that the arrangement between the corporation and the State involved "'[t]he most common form of privatization, called "contracting out," [in which] the government contracts with a private entity to provide a service previously performed by the government, or to provide a service for or on behalf of a government entity.'" *Id.* at 76 (quoting Craig D. Feiser, *Protecting the Public's Right to Know: The Debate Over Privatization and Access to Government Information Under State Law*, 27 Fla. St. U.L. Rev. 825, 825–27 (2000)). Before the Department of

Human Services contracted with Cherokee Children & Family Services to perform these services, the Department provided the services itself. *Id.* at 79. After the contract ended, the Department again provided the services itself. The services provided by Cherokee Children & Family Services were undoubtedly government services that carried out a government function.

To determine whether Cherokee Children & Family Services was subject to the public-access requirements of the Public Records Act, the Supreme Court first considered whether it performed a governmental or public function and concluded that childcare services "were undeniably public in nature." *Id.* at 79. This was true, in part, because the State "directly performed these services prior to entering into the contracts" with the corporation, the corporation's "involvement in providing these services was extensive," and its business activities were "dedicated exclusively to the servicing of the [ ] contracts." *Id.* Thus, all of the Cherokee Children & Family Services's records "necessarily relate to its state business" and were therefore subject to public access under the Act. *Id.*; *see also id.* at 74, 80.

The reasoning in *Cherokee* applies with equal (if not greater) force here.[8] There is no dispute that the TCA is the definitive, authoritative,

[8] In *Cherokee*, the Supreme Court noted that Cherokee Children & Family Services did not "care for" or "keep" children "in the strictest sense;" rather, "it served as a 'brokering agency' that screened applicants and assisted eligible applicants in locating approved child care providers." 87

authorized, and official version of all Tennessee statutory law. And the Commission is "authorized and directed to formulate and supervise the execution of plans for the compilation, arrangement, classification, annotation, editing, indexing, printing, binding, publication, sale, distribution and the performance of all other acts necessary for the publication of an official compilation of the statutes, codes and session laws of the state of Tennessee." Tenn. Code Ann. § 1-1-105. The Commission also has "full power and authority on behalf of the state of Tennessee to perform all acts and to negotiate and enter into all contracts necessary for and expedient to the successful production and publication of a revised compilation of the statutory laws of Tennessee." Tenn. Code Ann. § 1-1-106.

As authorized by statute, the Commission has contracted out "the successful production and publication" of the TCA to Lexis, and these services are "undeniably public in nature." *Cherokee*, 87 S.W.3d at 79. *See also Wood v. Jefferson Cnty. Econ. Dev. Oversight Comm., Inc.*, No. E2016-01452-COA-R3-CV, 2017 WL 4277711, at *4 (Tenn. Ct. App. Sept. 26, 2017) (finding that the defendant performed a governmental function because it was tasked with the "primary governmental purpose" of promoting economic development); *City Press Commc'ns, LLC v. Tenn. Secondary Sch. Athletic Ass'n*, 447 S.W.3d

S.W.3d at 72. Here there is no broker or middleman, as Lexis publishes the TCA directly under the watchful eye of the Commission.

230, 238 (Tenn. Ct. App. 2014) (finding functional equivalence because "it is undeniable that education is a government function" and "the Tennessee State Board of Education viewed the supervision and regulation of athletic activities in public junior and senior high schools of Tennessee as one of its governmental functions" when it designated the TSSAA as the organization to supervise and regulate the athletic activities in which the public junior and senior high schools of Tennessee participate on an interscholastic basis) (quotation and citation omitted); *Friedmann v. Corr. Corp. of Am.*, 310 S.W.3d 366, 375 (Tenn. Ct. App. 2009) (concluding that the Corrections Corporation of America is the functional equivalent of a state agency because it provided prison services that the State is required to provide under the Tennessee Constitution); *Allen*, 213 S.W.3d at 254 (holding that a private entity was the functional equivalent of the Sports Authority of the Metropolitan Government of Nashville because the entity provided statutorily authorized management services to run the day-to-day operations of the Gaylord Entertainment Center).[9]

[9] *But see Gautreaux v. Internal Med. Educ. Foundation, Inc.*, 336 S.W.3d 526, 529 (Tenn. 2011) (holding that a non-profit corporation was not the functional equivalent of a governmental agency because its duties were "merely ministerial" and it "merely acted as a bookkeeper" for a state university); *Memphis Publ'g*, 2017 WL 3175652, at *7 (finding no functional equivalence because "the services [the International Association of Chiefs of Police, Inc.] performed were incidental to the selection of the director—a task wholly assumed by the City."). Unlike the private entities in *Gautreaux* and

Because Lexis performs the quintessentially governmental function of producing and publishing the law of Tennessee–the TCA–this factor weighs heavily in favor of a finding that the Chancery Court correctly concluded that Lexis is the functional equivalent of the Commission.

B. The Commission controls the publication of the TCA.

Under the contract in *Cherokee*, the State (through the Department of Human Services) reimbursed Cherokee Children & Family Services for approved costs, and was allowed to audit the corporation's records relating to work performed or money received under the contract. 87 S.W.3d at 71. Cherokee Children & Family Services was also required to submit an annual independent audit to the State after each reporting period, and the State conducted routine monitoring visits and regular reviews of the corporation's client files. *Id.* Although the State did not exercise "complete control or supervision" over Cherokee Children & Family Services, the Supreme Court

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Memphis Publishing, Lexis does not "merely act[ ] as a bookkeeper" for the State, nor are its services "incidental" to "a task wholly assumed by the [Commission]." 336 S.W.3d at 529; 2017 WL 3175652, at *7. Indeed, both Lexis and the Commission claim that the work done by Lexis under the Commission's supervision is sufficiently creative to qualify for copyright protection. Subject to the Commission's ultimate approval, Lexis—not the Commission—selects cases for inclusion in the TCA and creates the content of the annotations. R. 200, 205–06 ("Pursuant to the terms of a vendor Contract, [Lexis] simply publishes hardcopy and on-line copies of the Tennessee Code the same as any other custom publisher of books and textbooks, and researches and drafts Annotations for the TCA in the same manner as a freelance writer hired to create content.").

nevertheless found that these provisions evidenced "a significant level of governmental control and oversight" that weighed in favor of finding that the corporation was the functional equivalent of the State. *Id.* at 79–80.

On the facts here, the case for functional equivalence is even more compelling than in *Cherokee* because the Commission exercises complete control and supervision over Lexis under their Agreement. By statute, the Agreement must "prescribe the specifications for the publication" of the TCA,

> including the size of type to be used in the text of the statutes and the annotations, the grade and weight of the paper to be used, the size of the volumes, appropriate provisions for the insertion of pocket supplements and the publication of replacement volumes, the price at which Tennessee Code Annotated shall be sold in Tennessee when originally published, and such other provisions as are necessary for the full performance of the publication plans formulated by the commission.

Tenn. Code Ann. § 1-1-107. And by entering into the Agreement with Lexis, the Commission did just as the statute commands by providing an exhaustive list of minute technical specifications that may be changed only "with the written approval of the Commission." R. 43–44 ("General Requirements for the Publication of the Code and Code CD-ROM"); *see also* R. 44–50 ("Style Guidelines for Codification of Public Chapters"). The Commission must also approve numerous aspects of the TCA, and Lexis must submit the proposed-to-be-published TCA to the Revisor of Statutes in advance of publication to be "checked, proofread, verified and certified." R. 31. Any disagreements or

disputes about "matter[s] of editorial content" are resolved in favor of the Commission, which ultimately must approve and certify the manuscript. *Id.* Like the contractually mandated submission of an independent audit after each reporting period in *Cherokee*, Lexis must also provide the Commission with the complete and electronic version of the TCA after each legislative session. R. 27–28.

In the Chancery Court, Lexis candidly conceded the Commission's extensive involvement in the preparation and publication of the TCA:

> Any "control" by the Commission is not over the businesses of [Lexis] and its Affiliates, but instead solely over the agreed-on services provided by [Lexis] and creation and delivery of the TCA as outlined in the Contract including the General Requirements for the Publication of the Code and Code CD-ROM set forth in **Exhibit A** to the Contract (e.g., pertaining to type page size, type face, type size, etc.).

R. 198. Contrary to Lexis's suggestion, however, these services are not "merely ministerial"; rather, according to Lexis, the preparation of the TCA is a "labor-intensive creative process" that includes reading, reviewing, and analyzing opinions and other materials, verifying sources, and drafting annotations—a process that Lexis admits is at all times subject to "the terms of [Lexis's] vendor Contract with the Commission." R. 199–200.

In *Allen*, this Court considered a similarly significant level of government involvement in the day-to-day operations of a private contractor. There, the operating agreement between the Sports Authority of the

Metropolitan Government of Nashville and Powers, the non-governmental entity charged with managing the Gaylord Entertainment Center (the Arena), was "replete with evidence of the Sports Authority's substantial oversight," and the Court found that the Sports Authority's "substantial interest" in the operation and maintenance of the Arena was "illustrated by the pervasive influence and control the Sports Authority exerts over [its] management":

> Under the operating agreement, Powers is required to consult with the Sports Authority with respect to the service of alcohol, the designation of smoking areas in the Arena, the rates and charges for events and parking, community events held at the Arena, any material alterations, additions, changes, or improvements to the Arena, the selection of a general manager, the settlement of any claim, the entering into of any contract which creates $100,000 or more operating expenses during a term and the provisions in such contracts, the bank where the operating revenue is maintained, and the use of design rights.

Allen, 213 S.W.3d at 254–55, 258.

Like Lexis, "Powers not only agreed to comply with the Sports Authority's overarching directives regarding the management of the Arena but it acquiesced to the Sports Authority's control over more minute managerial decisions." *Id.* at 259. For example, just as Powers could not make "any material alterations, additions, changes, or improvements to the Arena" without consulting the Sports Authority, Lexis cannot so much as change the TCA's typeface or the weight of the paper it is printed on without

express Commission approval. R. 43–51. *See also Wood*, 2017 WL 4277711, at *5 (finding functional equivalence where "no check written by or on behalf of [the private entity] is valid unless it bears two signatures, one of which is that of the county finance director" and the entity complied with the county commission's directive to change its organizational structure or organizational flow chart).

Under the Agreement, Lexis publishes the TCA under the strict and close supervision of the Commission, a statutory entity that specifies what the TCA must include in exacting detail—every jot and tittle of the TCA to be published by Lexis must meet the Commission's approval. That, too, weighs heavily in favor of a finding that the Chancery Court correctly concluded that Lexis is the functional equivalent of the Commission.

C. The absence of direct government funding and the fact that Lexis was not created by the General Assembly are outweighed by the other *Cherokee* factors.

Although the Commission cannot subsidize the publication of the TCA out of public funds, Tenn. Code Ann. § 1-1-113, revenues from the sale of the TCA under Lexis's exclusive contract with the State are undoubtedly significant and "constitute indirect government funding," *City Press*, 447 S.W.3d at 236 (finding functional equivalence because "revenues from the various championship tournaments [that TSSAA governed and coordinated],

which generate millions, constitute indirect government funding"). *See also* *Friedmann*, 310 S.W.3d at 376 (finding functional equivalence even though the defendant's affidavit was "silent as to how much of [its] total revenue generated in Tennessee comes from its contracts with the State and local governments," and noting "[t]hat percentage likely is quite high"). In any event, the lack of direct government funding is not dispositive and cannot outweigh the two factors discussed above.

Similarly, the fact that Lexis was not created by the General Assembly is largely irrelevant here, as it was in *Cherokee*, *Allen*, *City Press*, and *Wood*. None of the private entities in those cases were created by an act of the legislature or previously determined by law to be open to public access, yet each was found to be the functional equivalent of the State. *See Cherokee*, 87 S.W.3d at 80 ("While it is true that: (1) Cherokee was privately incorporated rather than created by the legislature; (2) the contracts disavowed any agency relationship between Cherokee and the State; and (3) the parties asserted that the State incurred no tort liability for Cherokee's activities, these considerations are outweighed by the other factors listed above."); *Allen*, 213 S.W.3d at 260 ("The Court would note however that the Tennessee Supreme Court in *Cherokee* held that a non-profit corporation may be the functional equivalent of a government agency even though the corporation is privately incorporated and the contract disavows the existence

of an agency relationship."); *City Press*, 447 S.W.3d at 237; *Wood*, 2017 WL 4277711, at *7. Indeed, Tennessee courts applying *Cherokee*'s functional-equivalence analysis sometimes omit this factor entirely. *See Friedmann*, 310 S.W.3d 366.

III. The TCA is not eligible for copyright protection because it was created by the Commission, a creature of the General Assembly.

In *Georgia v. Public.Resource.org, Inc.*, the U.S. Supreme Court announced a "straightforward rule" for determining whether copyright protection extends to the annotations contained in a state's official annotated code:

> Under the government edicts doctrine, judges—and, we now confirm, legislators—may not be considered the "authors" of the works they produce in the course of their official duties as judges and legislators. That rule applies regardless of whether a given material carries the force of law. And it applies to the annotations here because they are authored by an arm of the legislature in the course of its official duties.

140 S. Ct. 1498, 1506 (2020).

"Instead of examining whether given material carries 'the force of law,'" the Court concluded, "we ask only whether the author of the work is a judge or a legislator." *Id.* at 1513. "If so, then whatever work that judge or legislator produces in the course of his judicial or legislative duties is not copyrightable." *Id.*

The Chancery Court concluded that this "bright line test . . . disqualifies" the TCA from copyright protection because the Commission was created by the General Assembly and thus "functions as an arm" of the General Assembly in relation to the TCA. R. 367–68.

The Chancery Court was correct and its decision should be affirmed. Both the Commission and Lexis assert that "the State is the owner of the copyright rights in the annotations to the TCA." R. 113, 120, 122, 128; R. 200 ("Each Annotation is an original and creative work of authorship that is protected by copyrights owned by the State of Tennessee under the Contract and as a work for hire.").[10] And each asserts that the State, through the Commission, is the "author" of the TCA. R. 113; R. 200. But in *Georgia*, the U.S. Supreme Court was clear: annotations "authored by an arm of the legislature in the course of its legislative duties" are "outside the reach of copyright protection" under the government edicts doctrine. 140 S. Ct. at 1504.

The first step in applying *Georgia*'s "straightforward rule" is examining whether the purported author qualifies as a legislator. *Id.* at 1508. Here, as

[10] Lexis also appears to assert copyright protection even over the "unannotated statutory texts of Tennessee" that it "freely distribut[es]" on the Internet. R. 291 (Terms and Conditions of Use at section 4.1 ("You agree that the Content and Web Site are protected by copyrights, trademarks, service marks, patents or other proprietary rights and laws.")).

in *Georgia*, the annotations were prepared by Lexis under a work-for-hire agreement with the Commission, and "[a]though Lexis expends considerable effort preparing the annotations, for purposes of copyright that labor redounds to the Commission as the statutory author." *Id.* at 1508. True, the Commission is "not identical" to the Tennessee legislature; nevertheless, it "functions as an arm of it for the purpose of producing the annotations." *Id.* "The Commission is created by the legislature, for the legislature," and it "receives funding and staff designated by law for the legislative branch." *Id.*; Tenn. Code Ann. § 1-1-103; R. 115 ("The Legislature's Office of Legal Services (OLS) provides staffing to the Code Commission."). The work of the Commission is also within the "sphere of legislative authority." *See, e.g.*, *State v. Gooch*, No. 01-C-01-9304-CR00139, 1994 WL 194263, at *2 (Tenn. Crim. App. May 19, 1994) ("The General Assembly authorized the Tennessee Code Commission to publish the Sentencing Commission Comments with the provisions of the Tennessee Criminal Sentencing Reform Act of 1989. Thus, the comments of the Sentencing Commission constitute strong evidence of the General Assembly's legislative intent when enacting the legislation that has been codified as Tenn. Code Ann. § 40-35-106.").

Under *Georgia*, "[t]he second step is to determine whether the Commission creates the annotations in the 'discharge' of its legislative 'duties.'" 140 S. Ct. at 1509. Here again, "the annotations provide

commentary and resources that the legislature has deemed relevant to understanding its laws." *Id. See also* R. 117; R. 21 (Section 1.6) (requiring Lexis to "compile a complete annotation to each statute appearing in the TCA, from all cases which are available up to the time work is completed" that "shall include all published opinions" of the courts of Tennessee and all federal courts "construing Tennessee statutes arising out of Tennessee"); R. 22 (Section 1.7) (requiring Lexis to provide references to law reviews, opinions of the Tennessee Attorney General, and any new annotations "as determined by [Lexis's] editorial staff and approved by the Executive Secretary or as recommended by the Commission or Executive Secretary"). And "annotations published by legislators alongside the statutory text fall within the work legislators perform in their capacity as legislators." 140 S. Ct. at 1509. "In light of the Commission's role as an adjunct to the legislature and the fact that the Commission authors the annotations in the course of its legislative responsibilities, the annotations . . . fall within the government edicts doctrine and are not copyrightable." *Id*. at 1509.[11] So, too, for the TCA.

[11] The Commission has argued that the annotations—unlike the unannotated text of the Tennessee Code—are not the official law of the State. *See* R. 114 ("[T]he Tennessee Code is the official law of the state, while the annotations are not."). Under *Georgia*, however, that is a distinction without a difference: "Instead of examining whether given material carries 'the force of law,' we ask only whether the author of the work is a judge or a legislator. If so, then whatever work that judge or legislator produces in the course of his judicial or legislative duties is not copyrightable." 140 S. Ct. at 1513.

That said, even if the TCA were eligible for and protected by copyright, that would in no way end the Court's inquiry in this case. Assuming *Georgia* does not apply here and the Commission does have a copyright in the TCA, no Tennessee authority holds that the Copyright Act is an exception to the access requirements of the Tennessee Public Records Act, or that providing access to the TCA under the Public Records Act would violate the Copyright Act. Nothing in the federal Copyright Act prohibits the State, as a copyright owner, from making a copyrighted work public, just as there is no federal law preventing the owner of a copyrighted book from passing it out to whomever they want or posting it on the Internet. Conversely, if the State has a valid copyright, and someone infringes that copyright by, for example, publishing the work without permission, the State would have remedies under the Copyright Act. Mere possession of a copy of a copyrighted work provided by the owner of the copyright, however, is not necessarily a violation of the Copyright Act.

CONCLUSION

For these reasons, the Chancery Court's decision exempting the TCA from disclosure under the Act should be reversed; the Chancery Court's decision that Lexis is the functional equivalent of the State and its decision that the TCA is not entitled to copyright protection should be affirmed; and this matter should be remanded to the Chancery Court with instructions to

order Lexis to produce a copy of the complete and current electronic version of the TCA to Appellants.

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CERTIFICATE OF COMPLIANCE

This brief contains 9,395 words and thus complies with the applicable limitation in Tennessee Rule of Appellate Procedure 30(e).

This 4th day of January, 2023.

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