No. 18-1150

IN THE

Supreme Court of the United States

STATE OF GEORGIA, ET AL.,

Petitioners,

v.

PUBLIC.RESOURCE.ORG, INC.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

**BRIEF OF THE R STREET INSTITUTE,
THE AMERICAN LIBRARY ASSOCIATION,
THE ASSOCIATION OF RESEARCH LIBRARIES,
THE ASSOCIATION OF COLLEGE AND RESEARCH LIBRARIES,
THE NATIONAL FREEDOM OF INFORMATION COALITION,
THE GOVERNMENT ACCOUNTABILITY PROJECT,
KNOWLEDGE ECOLOGY INTERNATIONAL,
GOVERNMENT INFORMATION WATCH,
THE RE:CREATE COALITION,
THE RURAL COALITION,
PUBLIC KNOWLEDGE,
ENGINE ADVOCACY,
AND C–SPAN
AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT'S
ACQUIESCENCE IN THE PETITION**

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INTEREST OF *AMICI CURIAE*

Amici curiae[1] include 13 associations, nonprofit organizations, and coalitions that share common interests in the correct development of copyright law and availability of legal texts to the public. *Amici* believe the present case to be an important opportunity to promote greater transparency of government and access to governing documents, through clarification of the copyright doctrines at issue in this case.

The R Street Institute is a non-profit, non-partisan public-policy research organization. R Street's mission is to engage in policy research and educational outreach that promotes free markets as well as limited yet effective government, including properly calibrated legal and regulatory frameworks that support economic growth and individual liberty.

The American Library Association is a nonprofit professional organization of more than 60,000 librarians dedicated to providing and improving library services and promoting the public interest in a free and open information society. The Association of College and Research Libraries, the largest division of the ALA, is a professional association of academic and research librarians. The Association of Research Libraries is a nonprofit organization of 125 research libraries in North America, including university, public, government, and national libraries.

[1]Pursuant to Supreme Court Rule 37.2(a), all parties received appropriate notice of and consented to the filing of this brief. Pursuant to Rule 37.6, no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than *amici*, their members, or their counsel, made a monetary contribution to the preparation or submission of this brief.

Collectively, these associations represent over 100,000 libraries in the United States employing over 350,000 librarians and other personnel.

The National Freedom of Information Coalition is a national nonprofit, nonpartisan organization of state and regional affiliates representing 45 states and the District of Columbia, which promotes press freedom, legislative and administrative reforms, dispute resolutions and litigation (when needed) to ensure open, transparent and accessible state and local governments and public institutions.

The Government Accountability Project ("GAP") is a non-partisan, non-profit organization specializing in legal and other advocacy on behalf of whistleblowers. GAP has a 30-year history of working on behalf of government and corporate employees who expose illegality, gross waste and mismanagement, abuse of authority, substantial or specific dangers to public health and safety, or other institutional misconduct undermining the public interest.

Knowledge Ecology International ("KEI") is a 501(c)(3) nonprofit organization that searches for better outcomes, including new solutions, to the management of knowledge resources. KEI undertakes and publishes research on new approaches to the production of and access to knowledge goods, engages in global public interest advocacy, provides technical advice to governments, NGOs and firms, enhances transparency of policy making, monitors actions of key actors, and provides forums for interested persons to discuss and debate policies on knowledge management.

Government Information Watch is focused on open and accountable government. Its mission is to monitor access to information about government policy, process,

and practice and to ensure and preserve open, accountable government through advocacy.

The Re:Create Coalition is an alliance of organizations representing creators, advocates, thinkers, users, and consumers who stand for a copyright system grounded in the Founders' promise to "promote the progress of science and useful arts." The coalition stands for a copyright system that is clear, simple, transparent, and appropriately limited and that acknowledges the vital roles of those who own, experience, learn from, consume, and transform the creations of others.[2]

The Rural Coalition, born of the civil rights and antipoverty rural movements, has worked for 40 years to assure that diverse organizations from all regions, racial, and ethnic groups and by gender have the opportunity to work collaboratively on the issues that affect them all. The foundation of this work are strong local, regional and national organizations that assure the representation and involvement of every sector of this diverse fabric of rural peoples on decisions that affect their lives, communities and futures. Critical to their shared success is access to public information critical to their efforts to build civic engagement at every level of governance.

Public Knowledge is a nonprofit organization dedicated to preserving an open Internet and the public's access to knowledge, promoting creativity through balanced intellectual property rights, and upholding and protecting the rights of consumers to use innovative tech-

[2]Several signatories to this brief are members of the Re:Create Coalition. Additionally, the Electronic Frontier Foundation is a member of the coalition and also represents the Respondent in litigation separate to the present case. None of the aforementioned *amici* other than the R Street Institute made a contribution to the content of this brief.

nology lawfully. As part of this mission, Public Knowledge advocates on behalf of the public interest for a balanced copyright system, particularly with respect to new, emerging technologies.

Engine Advocacy is a non-profit technology policy, research, and advocacy organization that bridges the gap between policymakers and startups, working with government and a community of high-technology, growth-oriented startups across the nation to support the development of technology entrepreneurship. Part of amplifying startup concerns includes highlighting the unique challenges small startups face when trying to build businesses using open data and overly restrictive copyright law.

C–SPAN is a non-profit organization created by the cable television industry with a public service mission to provide news and coverage of public affairs to Americans in all 50 states by means of three networks and one radio station on a twenty-four hour per day basis. Its nonpartisan programming includes gavel-to-gavel televised coverage of the U.S. House of Representatives and the U.S. Senate, coverage of other public policy events, and programs focused on newsmakers, journalists, public officials, American history and commentary from the public.

SUMMARY OF ARGUMENT

Although the Court of Appeals reached the correct result in this case, there remains substantial uncertainty and division among the circuits as to which documents a state or local government may exclude its citizens from accessing under the auspices of copyright law. As a result, Respondent agrees with the petition in seeking clarity in the law, and *amici* agree with that acquiescence in the petition. This Court should resolve that uncertainty and uniformly define the ambit of the state's ability to assert copyright in its works.

The present case is exceptionally important because it touches upon the relationship between a sovereign and its citizens with respect to copyright law. The case thus implicates least four critical interests: individual rights under the First and Fourteenth Amendments, foundational principles of republican self-governance, the public service work of libraries and journalists, and valuable private innovation that derives from accessible public information.

1. State assertion of copyright implicates fundamental rights protected under the Constitution. The First Amendment provides a qualified right of access to government information, and the imposition of copyright liability potentially undermines, if not outright conflicts with, that right of access. Due process under the Fourteenth Amendment also stands to be diminished if a state can leverage copyright to raise access barriers to important sources of legal information. Certainly these constitutional rights do not mandate access to all state-produced works, but they do mandate access to at least some sources of law. Clarity in the ability of states to as-

sert copyright is consequently important to clarifying the boundaries of individual constitutional rights.

2. The ability of states to assert copyright in legal texts also raises questions about popular sovereignty and self-governance. The foundation of the American system of government is that sovereign power flows from citizens themselves, through the representatives that they elect or that are appointed at their behest. State assertion of copyright in legal texts is at odds with the corollary consequence that citizens are the effective authors of the law, and it is an impediment to citizens' ability to oversee government through research and analysis of government legal works. Clarification of copyright law would help to overcome these challenges and, accordingly, to promote good governance.

3. Uncertainty about state copyright in legal information also stands to harm important public objectives of key civic institutions, including libraries, the press, and schools. These institutions serve at least two primary missions: to educate people on the law to produce an informed citizenry, and to maintain a public record of the activities of government. Especially in the digital age where documents are more easily produced and more often transient, copying of information is necessary to achieve these missions. Copyright can and often does interfere with that copying and thus those missions. The degree to which states may or may not assert copyright in their works thus defines the ability of librarians, reporters, and educators to execute public services.

4. Copyright in state legal information also has important ramifications for the private sector. Historical and contemporary experience shows that public information, including data produced by state and local govern-

ments, is a resource upon which much private innovation is founded. Indeed, cutting-edge artificial intelligence research today has frequently stemmed from government-produced information. To the extent that a cloud of uncertainty exists over certain state-produced information, potential private development based on that information is diminished. Given the hundreds of billions of dollars of value that government data has already created for private industry, clarification of the boundaries of copyright law in this case could have immense economic implications.

The question presented thus has important consequences ranging from private sector innovation to fundamental rights and principles of government. Certiorari should be granted.

ARGUMENT

Certiorari Should Be Granted to Determine the Extent to Which the State May Exclude Citizens from Government Works Under Copyright Law

Under the edicts-of-government doctrine,[3] the state or others may not maintain a copyright in "a government edict that has been issued by any state, local, or territorial government." U.S. Copyright Office, *Compendium of U.S. Copyright Office Practices* § 313.6(C)(2), at 31 (3d ed., updated 2017), *available online*.[4] This petition, and Respondent's acquiescence therein, seek clarification as to what constitutes a "government edict" that the state may not withhold from its citizens through assertion of copyright. That question, at bottom, is about the relationship between a sovereign and its citizens that inheres in any system based on the rule of law.

Certiorari should be granted because of the critical consequences of this question, which heretofore has been answered inconsistently among the courts of appeals. Four such consequences are considered below.

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[3]There is not even certainty as to the name of the doctrine itself. No court other than those in the present case appears to refer to the rule in question as the "government edicts" or "edicts of government" doctrine. *Cf.* Pet. App. 15a, 32a, 62a. Courts of Appeals have generally applied the doctrine without naming it. *See Bldg. Officials & Code Adm'rs v. Code Tech., Inc.*, 628 F.2d 730, 733 (1st Cir. 1980); *Cty. of Suffolk v. First Am. Real Estate Sols.*, 261 F.3d 179, 193–95 (2d Cir. 2001). The Northern District of California has used the term "governmental enactment" to refer to the doctrine, but that is obviously underinclusive because judicial opinions are not enactments. *Del Madera Props. v. Rhodes & Gardner, Inc.*, 637 F. Supp. 262, 264 (N.D. Cal. 1985).

[4]Locations of authorities available online are shown in the Table of Authorities.

A. State-Owned Copyrights Implicate the First and Fourteenth Amendments

A state's use of copyright law to prevent its citizens from distributing certain government works affects fundamental rights under the Constitution. In particular, state action to enforce copyright implicates the First Amendment right to receive information and the Fourteenth Amendment requirement of due process.

1. First Amendment rights are at stake because state assertion of copyright potentially denies citizens the ability to access information of critical importance. Freedom of speech "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes"; government restraints on information can inhibit that interchange. *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964) (quoting *Roth v. United States*, 354 U.S. 476, 484 (1957)). As a result, the First Amendment "necessarily protects the right to receive" certain information. *Martin v. City of Struthers*, 319 U.S. 141, 143 (1943); *accord Stanley v. Georgia*, 394 U.S. 557, 564 (1969) ("This right to receive information and ideas . . . is fundamental to our free society.").

In the criminal proceedings context, this Court has assessed the right of access under the "experience and logic" test, which considers whether the information under question has traditionally been available to the public and whether access to that information serves an important purpose of governance. *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 605–06 (1982) (citing opinions in *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555 (1980)); *Press-Enter. Co. v. Superior Court*, 464 U.S. 501, 505–10 (1984); *Press-Enter. Co. v. Superior Court*, 478 U.S. 1, 8 (1986).

How far the right of access extends beyond criminal proceedings is an open question that the district courts and courts of appeals have debated, but it appears likely that the doctrine could apply to other government information, including the legislative materials at issue in this case. *Cf. N.Y. Civil Liberties Union v. N.Y. City Transit Auth.*, 684 F.3d 286, 298–99 (2d Cir. 2011) (applying experience and logic test to transit authority proceedings); *Wash. Post v. Robinson*, 935 F.2d 282, 292 (D.C. Cir. 1991) (plea agreements); *Co. Doe v. Pub. Citizen*, 749 F.3d 246, 265–66 (4th Cir. 2014) (administrative enforcement decision); *N. Jersey Media Grp. v. Ashcroft*, 308 F.3d 198, 208–09 (3d Cir. 2002) (administrative deportation hearings) (test is "broadly applicable to issues of access to government proceedings"); *Detroit Free Press v. Ashcroft*, 303 F.3d 681, 695–96 (6th Cir. 2002) (same).

With respect to this case, lawmaker-sanctioned annotations to law would seem to fall squarely within the experience and logic test for public access under the First Amendment. There is little question that there is a long tradition of access to official legislative codes. Access to them advances at least public discourse on the law, especially given that Georgia courts have treated its official annotations like legislative history for interpretation of statutes. *See* Section B *infra* p. 12; Pet. App. 43a–4a (citing Georgia cases relying on official annotations). To the extent that constitutional avoidance counsels against creating a conflict between state-owned copyrights and the First Amendment, this Court should grant certiorari to clarify the boundaries of the edicts-of-government doctrine in a manner that avoids constitutional concerns.

2. State assertion of copyrights also has implications for due process rights under the Fourteenth Amend-

ment.[5] Among the guarantees of the Due Process Clause is that "laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *Fed. Commc'ns Comm'n v. Fox Television Stations, Inc.*, 567 U.S. 239, 253 (2012). "Living under a rule of law entails various suppositions, one of which is that all persons are entitled to be informed as to what the State commands or forbids." *Papachristou v. City of Jacksonville*, 405 U.S. 156, 162 (1972) (quote and alteration marks omitted) (citing *Lanzetta v. New Jersey*, 306 U.S. 451, 453 (1939)). To the extent that copyright can potentially prevent citizens from accessing and thus reading texts such as the officially published code of a state's law, copyright can potentially impinge on due process.

To be sure, Georgia asserts copyright protection not in the statutory language itself, but in accompanying materials such as the state's official annotations. *See* Pet. App. 2a. Yet it is equally undeniable that "the law" is not narrowly limited to the words of statutes; to understand one's legal rights, one must consult multiple sources such as case law, executive orders, administrative guidance, legislative history, and perhaps even official annotations. *See* Antonin Scalia & Bryan A. Garner, *Making Your Case: The Art of Persuading Judges* 49 (2008) ("Since most judges use legislative history, . . . you must use legislative history as well."). Clarity in which of these sources of legal interpretation a state may withhold from its citizens under a claim of copyright is thus important to guaranteeing due process of law.

[5]Federal due process under the Fifth Amendment should generally not be at issue because federal government works are categorically not subject to copyright protection. *See* 17 U.S.C. § 105.

B. State-Owned Copyrights Implicate Republican Self-Governance

Clarification of the edicts-of-government doctrine is of momentous importance because state-owned copyrights affect the ability of citizens to govern themselves.

It is fundamental to the constitution (and Constitution) of this country that sovereignty derives from "we the people." U.S. Const. pmbl.; *accord* The Declaration of Independence para. 2 (1776) ("Governments are instituted among Men, deriving their just powers from the consent of the governed . . . ."). Yet people do not exercise the sovereign power of the state directly; they do so through elected and appointed representatives of government. *See, e.g.*, U.S. Const. Art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government . . . ."). To ensure that those representatives wield the power of government responsibly, the people must oversee the government through engagement such as elections, public expression, and persuasive advocacy.

Copyrights held by states potentially interfere with republican self-governance in at least two ways.

First, as this Court and others recognized over a century ago, the notion of popular sovereignty implies that the authors of the law are the people, meaning that ownership of any copyright in the law inheres in the citizenry and not in the state as an independent entity. *See Banks v. Manchester*, 128 U.S. 244, 253–54 (1888) (citing *Wheaton v. Peters*, 33 U.S. (8 Pet.) 591, 668 (1834)); *Bldg. Officials & Code Adm'rs v. Code Tech., Inc.*, 628 F.2d 730, 734 (1st Cir. 1980) (explaining *Banks* as holding that "citizens are the authors of the law . . . because the law derives its authority from the consent of the public").

To the extent that a state government is permitted to create works that fall outside of this framework and receive copyright protection, the logical consequence is that the state government is acting, in some form, outside its ordinary mandate derived from the sovereignty of the people. Put another way, the edicts-of-government doctrine does not just define the upper limit of copyright law for state works, but importantly also defines the lower limit where government by the people begins.

Second, copyright restricts the ability of citizens to understand and oversee their representatives in government. Self-governance requires "opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government." *Thornhill v. Alabama*, 310 U.S. 88, 95 (1940). To the extent that copyright can prevent opportunities for public education on the law, copyright interferes with correcting government errors. Indeed, analysis of government texts has proven to be invaluable to improving the processes of governance, even within this Court. In 2014, researchers used automated computer analysis to identify changes of varying significance in published opinions; the Court subsequently adjusted its policies to provide greater transparency into those changes. *See* Richard J. Lazarus, *The (Non)Finality of Supreme Court Opinions*, 128 Harv. L. Rev. 540, 588–89, 607 (2014); Adam Liptak, *Supreme Court Plans to Highlight Revisions in Its Opinions*, N.Y. Times (Oct. 5, 2015), *available online*.

In a similar fashion, one might wonder whether the Georgia legislature has made alterations of significance to the annotations of the Georgia official code. Discovering that important fact would likely require computer analy-

sis and thus require making computer-readable copies of the Georgia code—precisely what Georgia seeks to suppress under copyright law in this case. *See* Pet. App. 9a.

It is likely not the case that all works of state governments will implicate principles of self-government or citizens' role in government oversight. Nevertheless, it is important for the people to know where that dividing line lies. By specifying what works of government may be used or analyzed without fear of government copyright assertions, review of this case will help to promote basic republican values of self-governance.

C. State-Owned Copyrights Implicate the Work of Libraries, Journalists, Educators, and Others

Beyond having abstract implications for republican values, this case has direct and practical consequences for the work of libraries, the press, schools, and others in the information ecosystem. Uncertainty over the boundaries of copyright in state government information impedes the important missions of these institutions to inform the public and to maintain a complete public record. Especially in an age when information—and disinformation—travel at Internet speeds, clear rules on state-held copyrights are essential for promoting the reliable and truthful dissemination of news and knowledge.

1. Libraries, journalists, and educators share an important mission of informing and educating the public, especially on matters of public concern. A former president of the American Association for Law Libraries explained that law librarians today serve an important purpose of acting as "legal research instructors, in the court, law firm, or law school." Claire M. Germain, *Legal Informa-*

tion Management in a Global and Digital Age: Revolution and Tradition, 35 Int'l J. Legal Info. 134, 159 (2007), *available online*. Among other things, librarians are responsible for educating the public on distinguishing official or reliable sources from secondary or unreliable ones. *See id.* at 158; Richard A. Leiter, *Law Librarians' Roles in Modern Law Libraries*, *available online*, *in Academic Law Library Director Perspectives: Case Studies and Insights* 319, 322 (Michelle M. Wu ed., 2015).

Journalism serves a similar, and similarly important, educational role. As this Court has explained, "the press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve." *Mills v. Alabama*, 384 U.S. 214, 219 (1966). "An untrammeled press is a vital source of public information, and an informed public is the essence of working democracy." *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983) (quotes, alterations, and citations omitted) (quoting *Grosjean v. Am. Press Co.*, 297 U.S. 233, 250 (1936)).

Questions as to copyright in state legal materials hinder librarians, journalists, and teachers in educating the public. Copyright in legal materials is a barrier to accessing those materials, potentially forcing students and members of the public to resort to unofficial or secondary sources of law. Indeed, in the present case, Georgia presents its unofficial online code as a substitute for the official print copy. Pet. Cert. 10. This conflates the canonical source of law, the Official Code of Georgia Annotated, with a certainly incomplete and potentially unreliable substitute. That conflation undermines the impor-

tant objective, outlined above, of informing the public of the difference between official and unofficial sources of law.

2. Beyond informing the public, these institutions also seek to preserve a public record of the activities of governments. A complete historical record is important for many reasons, ranging from recovery after natural disasters to protecting rights and property to even saving lives. *See* Council of State Archivists, *The Importance of State Archives* 3 (2013). Yet today, especially as documents and information transition from print to digital, there are concerns that records of government are not being preserved, either out of unintentional lack of awareness or due to intentional desires to suppress politically unfavorable materials.[6] Digital and online materials are notoriously transient, leading to an archival problem known as "link rot."[7] Librarians have reflected on their information preservation efforts, working "to make sure that in a paperless world there will be a permanent record of the law in its many forms." Germain, *supra*, at 153.

Unsurprisingly, copyright can interfere with preservation of a public record. The act of preserving information frequently involves making copies of that information, particularly when the information is only available

[6]Thomas Lipscomb, *Crisis at the National Archives*, Real Clear Pol. (June 10, 2018), *available online*; Kalev Leetaru, *Trump's Tweeting and Government Records in the Digital Era*, Forbes (June 18, 2017), *available online*.

[7]*See* Jason Hennesey & Steven Xijin Ge, *A Cross Disciplinary Study of Link Decay and the Effectiveness of Mitigation Techniques* 3, *in* 14 (Supp. 14) BMC Bioinformatics S5 (2013), *available online*; Jonathan Zittrain et al., *Perma: Scoping and Addressing the Problem of Link and Reference Rot in Legal Citations*, 127 Harv. L. Rev. F. 176, 184 (2014); Jill Lepore, *The Cobweb: Can the Internet Be Archived?*, N.Y.er, Jan. 26, 2015, at 34, 34, *available online*.

online. Diane Leenheer Zimmerman, *Can Our Culture Be Saved? The Future of Digital Archiving*, 91 Minn. L. Rev. 989, 990–91 (2007). Although libraries enjoy a limited exception to copyright law for archival or preservation purposes, *see* 17 U.S.C. § 108, that exception does not cover the wide range of efforts that go into preserving a complete public record, and it does not cover non-library preservation efforts.[8] Clarity in what public documents are covered by copyright will thus help substantially to facilitate the work of librarians, reporters, and educators in preserving a record of the work of state and local governments.

D. State-Owned Copyrights Implicate Technological and Economic Development

Beyond matters of individual rights, public accountability, and an informed citizenry, this case also has a private-sector dimension: Copyright in state government information affects the development of private information technology industries in a remarkably substantial way. Certainty about the edicts-of-government doctrine thus is also important for facilitating private technological advancement.

Government information, and particularly legal documentation, has long been a resource upon which innovative private businesses have been built. The late 18th and early 19th centuries saw the development in the United States of case law citators and cross-references, Shepard's Citations being the best-known of these. *See generally* Patti Ogden, *"Mastering the Lawless Science of*

[8]Fair use under 17 U.S.C. § 107 likely also permits most or all of libraries' preservation work, but the fact-specific nature of fair use provides insufficient certainty for those activities.

Our Law": A History of Legal Citation Indexes, 85 L. Libr. J. 1, 5, 18–36 (1993); Morris L. Cohen, *An Historical Overview of American Law Publishing*, 31 Int'l J. Legal Info. 168 (2003). These tools were made possible in large part because of public availability of case law reports and other legal texts.

Today, technologists are developing new tools for making the law more accessible to individuals, identifying unusual connections in the law, improving the speed and quality of legal research, and automating legal procedures. *See* Mohana Ravindranath, *OpenGov Start-up Company Makes Government Transparency Its Business*, Wash. Post (Feb. 1, 2015), *available online*; Basha Rubin, *Legal Tech Startups Have a Short History and a Bright Future*, TechCrunch (Dec. 6, 2014), *available online*. These new businesses are generally enabled, at least in part, by their ability to copy, summarize, and repackage legal documents produced by state and local governments.

More broadly, public-sector information has spurred a great deal of private innovation. Governments are major producers of all sorts of information, through census activities, public works, regulatory investigations, budgetary analyses, and other activities. A government repository reports collections of 216,646 data sets from the federal government, 17,674 from states, and 18,298 from local governments.[9] That information is often useful to the private sector in unexpected ways, in particular ways that governments themselves cannot generally exploit. A 2011 study estimated that within the European

[9]This information was retrieved from https://www.data.gov/metrics, which reports having last been updated on August 5, 2018.

Union, public-sector information created $97 billion in private market value in 2008, and $111 billion in 2010.[10] The U.S. Postal Service computes that the ZIP code system creates about $7.6 billion annually in private, non-USPS value.[11]

One emerging field that is especially sensitive to the availability of public data is artificial intelligence. Development of high-quality artificial intelligence systems depends on having large quantities of so-called "training data" used to calibrate those systems to make accurate predictions and computations for useful ends.[12] Multiple experts have recognized that increasing the availability of public data sets would potentially speed up research and development in artificial intelligence.[13] These experts have history on their side: Many of the crucial developments in computer vision were born from U.S. Postal Service data on handwriting examples.[14] Government data has been, and likely will continue to be, an impor-

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[10]Dir. for Sci., Tech. & Innovation, Org. for Econ. Cooperation & Dev., *Assessing Government Initiatives on Public Sector Information: A Review of the OECD Council Recommendation* 5 (OECD Dig. Econ. Papers, No. 248, June 18, 2015), *available online*.

[11]U.S. Postal Serv. Office of the Inspector Gen., *Report No. RARC-WP-13-006, The Untold Story of the ZIP Code* 9 tbl.3 (2013), *available online*.

[12]*See* Ian Goodfellow et al., *Deep Learning* 414–15 (2016), *available online* ("gathering more data is one of the most effective solutions" to improving AI systems).

[13]*See* Caleb Watney, *Reducing Entry Barriers in the Development and Application of AI* 4–5 (R St. Inst., Policy Study No. 153, Oct. 2018), *available online*; Office of Sci. & Tech. Policy & Nat'l Sci. & Tech. Council, *Preparing for the Future of Artificial Intelligence* 14 (Oct. 2016), *available online*.

[14]Y. LeCun et al., *Backpropagation Applied to Handwritten Zip Code Recognition*, 1 Neural Computation 541, 542 (1989).

tant springboard for technological progress and private innovation.

To the extent that copyright law casts a cloud over a wide swath of potentially valuable information produced by state and local governments, copyright may be stifling the development of better, more accurate, more valuable technologies that could grow the economy and advance society. This is not to say that states may maintain no copyrights in any of their works; certainly in at least some cases state action is more akin to private activity amenable to the creation of private rights. *See supra* pp. 13–14. But the boundaries must be defined. Clarification of the range of state-produced information that is outside the ambit of copyright would likely focus private research and development efforts on that information, reducing the costs of and potentially speeding up innovation.

Obviously the private benefits from clarifying copyright on government works pale in comparison to the public benefits of protecting fundamental rights, promoting self-governance and republicanism, educating the public on the law, and preserving the public record of government activities. But the sum total of these private and public benefits demonstrates the importance of definite resolution of the question presented in this case, and thus the importance of granting the petition for a writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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