COOLEY LLP
MATTHEW D. CAPLAN (260388)
(mcaplan@cooley.com)
JOSEPH D. MORNIN (307766)
(jmornin@cooley.com)
RYAN O'HOLLAREN (316478)
(rohollaren@cooley.com)
3 Embarcadero Center, 20th floor
San Francisco, CA 94111-4004
Telephone: +1 415 693 2000
Facsimile: +1 415 693 2222

Attorneys for Petitioner
PUBLIC.RESOURCE.ORG, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

PUBLIC.RESOURCE.ORG, INC.,

Petitioners,

v.

CALIFORNIA OFFICE OF ADMINISTRATIVE LAW, and the CALIFORNIA BUILDING STANDARDS COMMISSION

Respondents.

Case No. 34-2021-80003612

PETITIONER PUBLIC.RESOURCE.ORG INC.'S REPLY TO INTERVENORS' OPPOSITION TO PETITION FOR A WRIT OF MANDATE

Date: March 25, 2022
Time: 1:30 p.m.
Dept: 27
Judge: Hon. Steven M. Gevercer

Action Filed: March 17, 2021

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

Other Authorities

I. INTRODUCTION

Public.Resource.Org, Inc. ("Public Resource") served a California Public Records Act ("CPRA") request on the California Building Standards Commission ("BSC") seeking a usable electronic copy of Title 24 of the California Code of Regulations ("CCR"). BSC denied Public Resource's request in part on the grounds that the interests of two private entities trumped the public's right to access the CCR. Those two entities, the National Fire Protection Association, Inc. ("NFPA") and the International Code Council, Inc. ("ICC", and collectively with NFPA "Intervenors") have now intervened in this action in a further attempt to stymie public access to the law of the state of California. Intervenors' Opposition brief ("Opposition") maintains that this Court should stay these proceedings or, in the alternative, exempt certain parts of Title 24 from disclosure under the CPRA based on their alleged ownership of this state's laws. The Intervenors' purported copyright interest in the materials incorporated by reference into Title 24 of the CCR, however, does not provide a basis to resist a CPRA request.

The CCR is an edict of government and carries the force of law in California. As such, it cannot be copyrighted. The Supreme Court of the United States has said as much. Yet, Intervenors ignore this authority, and, instead, attempt to impugn Public Resource's motives and history. Under California law, however, the motive of Public Resource's request is irrelevant, and the authority cited by Intervenors does not prevent this Court from deciding two dispositive issues of California law: (1) whether the CCR is an edict of the California state government; and (2) whether the CCR is the law of this state. An affirmative answer to either question is dispositive of Intervenors' objection to Public Resource's CPRA request.

Intervenors' request for this Court to stay these proceedings pending resolution of two federal lawsuits is without merit. The federal cases do not address the "same subject matter" as this action. While the federal cases address claims for copyright infringement, this action seeks only resolution of issues of California law: namely, whether the CCR is subject to disclosure under the CPRA. Nothing in the two federal cases cited by Intervenors would change the questions before this Court in this proceeding, and their resolution should not affect the outcome here. California courts do not stay proceedings based only on the fact that similar arguments are being made in other

cases.

Intervenors' arguments that parts of the CCR should qualify for the CPRA's statutory exemptions are meritless. Under California law, neither cited exemption applies. To be sure, Intervenors do not, and cannot, establish a public interest in non-disclosure which "clearly outweighs" the public interest in disclosure. And finally, Intervenors' attempt to import "implied preemption" into this case is doctrinally invalid. Intervenors have failed to demonstrate why Public Resource's Petition should not be granted.

II. ARGUMENT

A. Title 24 of the CCR is Not Subject to Copyright

Title 24 is law in California. In *Georgia v. Public.Resource.Org,* 140 S. Ct. 1498 (2020), the United States Supreme Court provided two independent reasons why documents like Title 24 of the CCR cannot be copyrighted. First, edicts of government— documents that are created by officials in the course of their official duties, regardless of the documents' legal status—are not copyrightable. Second, and more fundamentally, no one can own the law. This Court has the authority to decide both of these issues, and either is dispositive of Intervenors' arguments. Intervenors strategically dodge both issues in their Opposition, and instead focus on muddying the waters to protect their opportunity to sell to the public access to the laws of California.

1. The CCR is an Edict of Government

The government edicts doctrine is a natural outgrowth of our system of government. "The People" are "the constructive authors" of the law, and judges and legislators are merely "draftsmen . . . exercising delegated authority." *Georgia*, 140 S. Ct. at 1506 (citations omitted). "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." *Id*. Here, Intervenors argue that this doctrine does not apply to the CCR because they are private parties, and not judges or legislators. Opp. at 16. However, this argument ignores the fundamental holding in *Georgia*. Like the Code Revision Commission in *Georgia*, BSC adopts the CCR as "an arm of the legislature in the course of its official duties." *Georgia*, 140 S. Ct. at 1506. The statutory framework

makes this clear.

The California Legislature passed Health & Safety Code ("HSC") § 18901 *et seq.* to provide the statutory foundation, governing structure, and rule-making authority for the BSC to adopt and implement regulations under Title 24. Opp. 3, 9-10.

First, it outlines BSC's legislative grant of authority and mandate to adopt regulations for the state of California. It defines "adoption" to mean "the procedure for promulgation of a building standard, the final act of *a state agency that has the legislative authority and responsibility* to take proposed building standards to public hearing." HSC § 18906 (emphasis added). BSC operates as an arm of the California Legislature when it exercises its authority and obligation to "adopt" building standards as regulations. When BSC incorporates model codes, such as those originally published by Intervenors, it "adopts" them pursuant to that legislative authority and obligation. *See* HSC § 18928(a)-(c) (explaining the process for state agencies to "adopt" a model code, national standard, or specification).

Just like all regulations adopted by California state agencies, the Health & Safety Code makes clear that regulations adopted by the BSC, including model codes, are subject to the California Administrative Procedures Act. *See id.* § 18930(a) ("Any building standard adopted or proposed by state agencies shall be submitted to, and approved or adopted by, the California Building Standards Commission prior to codification. Prior to submission to the commission, building standards shall be adopted in compliance with the procedures specified in Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code." [a.k.a. The California Administrative Procedures Act]).[1] The requirements set forth in the APA are designed to provide the public with a meaningful opportunity to participate in the adoption of state regulations and to ensure that regulations are clear, necessary and legally valid. *Administrative Procedure Act & OAL Regulations*, OAL.CA.GOV (last visited Jan 17, 2022) https://oal.ca.gov/publications/administrative_procedure_act/.

Because BSC operates as an arm of the California Legislature, the documents that it creates

[1] It is no coincidence that this section parallels Title 1 § 20(e) of the CCR, which establishes the same status for regulations adopted and promulgated by the Office of Administrative Law.

in course of its official duties—including the CCR—are not eligible for copyright protection. In *Georgia*, the Court held that the Code Revision Commission, a state entity created by the state's legislature, funded by the legislature, and statutorily tasked with codifying and publishing the laws of the state, acted as "an arm of the legislature" when it adopted the work of a private contractor into the official annotated code. *Georgia*, 140 S. Ct. at 1504. Although that contractor "expend[ed] considerable effort preparing the annotations, for purposes of copyright that labor redounds to the Commission as the statutory author." *Id*. at 1508. The Court concluded that once the Code Revision commission adopted the official code, the code was a work produced in the course of their official duties as judges and legislators." *Id*. at 1506. So too here.

Critically, the Supreme Court confirmed that this "rule applies *regardless of whether a given material carries the force of law*." *Georgia*, 140 S. Ct. at 1506 (emphasis added). Thus, regardless of whether this Court finds that Title 24 carries the force of law, Title 24 is not subject to copyright because it is indisputably a creature of the BSC's legislative powers to adopt, codify, and implement the CCR.

Intervenors do not even attempt to argue otherwise. Rather, they simply ignore *Georgia*'s impact on the law. *Georgia* represented a sea change in the question of copyright over laws. Opp. at 16. Decisions from lower courts prior to *Georgia* are of limited usefulness insofar as the Supreme Court has narrowed the inquiry to the simple questions of "whether a given material carries the force of law" and whether "they are authored by an arm of the legislature in the course of its official duties." *Georgia*, 140 S. Ct. at 1506. As explained above, this Court is equipped to answer those questions about the CCR. *See, supra,* Sections I., II.A. Intervenors' citations to pre-*Georgia* orders from lower courts is an attempt to avoid the obvious conclusion that the CCR falls squarely within the Supreme Court's clear holdings in *Georgia*.

2. The CCR, including Title 24, carries the full force of law, and cannot be copyrighted.

If the CCR is the law of this state, then the Supreme Court's holding in *Georgia* confirms that no one owns any intellectual property in its contents. In *Georgia*, the Court unambiguously held that "no one can own the law." *Georgia*, 140 S. Ct. at 1507.

Intervenors attempt to characterize this pronouncement as nothing more than an "argument" and "interpretation" that Public Resource is making here and elsewhere (Opp. 12, 13, 15, 16), but they provide no alternative interpretation to the plain meaning of the Court's opinion. Indeed, they cannot do so, since the Court dismissed any contrary interpretation: "Every citizen is presumed to know the law," and "*it needs no argument to show* . . . that all should have free access to its contents." *Georgia*, 140 S. Ct. at 1507 (ellipses in original, quotations omitted, emphasis added). After *Georgia*, there remains no ambiguity whatsoever on the question of whether copyright attaches to laws. Intervenors' citations to pre-*Georgia* authorities on the issue are unpersuasive.

Title 24 of the CCR, and its technical standards for building construction and maintenance, is unambiguously the law of this state.

First, the Health & Safety Code makes plain that building standards in Title 24 *are* regulations under California law, by definition. HSC § 18919 ("'Regulation' includes building standards."). All its contents are subject to the California Administrative Procedures Act. *Id*. § 18930(a).

Second, violations of Title 24's technical standards carry criminal and civil penalties under California law. *Id*. § 17995 ("Any person who violates any of the provisions of this part, the building standards published in the State Building Standards Code relating to the provisions of this part, or any other rule or regulation promulgated pursuant to the provisions of this part is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars ($1,000) or by imprisonment not exceeding six months, or by both such fine and imprisonment."); *see id*. §§ 19997; 18700; 13199; 13190.4 (specifying fines and criminal penalties for violating the Building Standards Code); *see also id.* § 18902 (clarifying that "[a]ll references to the State Building Standards Code, Title 24 of the California Code of Regulations shall mean the California Building Standards Code."). It is clear that Title 24's standards directly affect the legal rights and duties of members of the public.

These authorities demonstrate that Title 24 is the law of this state, and as the Supreme Court held in *Georgia*, "no one can own the law." Intervenors' attempts to obfuscate this plain fact are unavailing. Critically, every one of Intervenors' arguments premised on the possibility of copyright

infringement fails for this simple reason. Should this Court rightly conclude that Title 24 of the CCR carries the force of law or has been adopted and enacted by an arm of the California legislature in the course of its official duties, then no one — including Intervenors — owns intellectual property in its contents.

B. A Stay of these Proceedings is Both Unnecessary and Contrary to Law.

Intervenors urge this Court, without a motion under CCP § 1005, to stay this writ proceeding as to the portions of Title 24 in which they claim ownership. A stay is not only unnecessary, but it is entirely inappropriate.

Intervenors claim that resolution of this writ proceeding could create conflicts with federal courts. Opp. 14-17. They are mistaken. Intervenors point to two cases and address the factors from *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co.*, 15 Cal. App. 4th 800, 803 (1993). But the Court need not address the factors, as the analysis fails at the premise, when Intervenors attempt to set up a conflict with two cases in federal court based on the faulty premise that the cases address "the same subject matter." This is demonstrably false. In neither case, *ICC v. UpCodes Inc*., (S.D.N.Y May 27, 2020, No. 17-cv-6261) nor *Am. Soc'y for Testing and Materials (A.S.T.M.) v. Public.Resource.Org, Inc.,* 896 F.3d 437 (D.C. Cir. 2018), is the court presented with the questions facing this Court—whether the CCR is a public record, subject to disclosure under the CPRA. In neither case is the court asked to decide whether the CCR is binding law in California, or whether it was adopted and codified by an arm of the legislature acting in its official capacity. In *Caiafa Prof. Law Corp. v. State Farm Fire & Cas. Co*., 15 Cal. App. 4th 800, 803 (1993), cited repeatedly by Intervenors, the claims between the parties in the state court action were *the same* as those between *the same* parties in the federal court action. Not so here. One of the federal cases cited by Intervenors (*UpCodes*) doesn't involve Public Resource at all. The other case (*A.S.T.M.*) addresses claims for copyright infringement, an issue decidedly *not* before this Court. Because there is no symmetry in subject matter between this proceeding and the federal cases, Intervenors attempt to distort the doctrine to apply to similar "arguments" that are made in the cases. Opp. at 14, 15, 16. But that is not the test, nor should it be. Intervenors cite *zero* authority for the proposition that a state court should stay proceedings so that a foreign court can hear a similar *argument* pursuant to

a completely different set of claims. Such a doctrine would be non-sensical and does not exist.

Furthermore, the outcomes of the two federal cases will have no effect on the questions posed to this Court in this proceeding, namely: (1) Is the CCR (including Title 24) binding law in the state of California?; (2) Is the CCR (including Title 24) an edict of the California state government?; and (3) is the CCR (including Title 24) a public record subject to disclosure under the CPRA? Regardless of how those federal courts decide the issues before them, based on different states' laws, with different governmental structures, and incorporated codes of varying legal significance, this Court will still need to address the same issues it faces today. Intervenors provide no reason why this Court need wait for foreign courts to resolve separate questions of law and fact when those decisions have no bearing on the issues before it.[2]

C. No Exemption Applies to the CCR.

Intervenors contend that certain parts of Title 24 of the CCR are exempt from disclosure under either of two statutory exemptions. Opp. 17-19, 21-22. Neither is valid. The California Constitution directs that the CPRA, and its exemptions, "shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." Cal. Const. art. I § 3(b)(2); *Cal. State Univ., Fresno Ass'n, Inc. v. Super. Ct.*, 90 Cal. App. 4th 810, 831 (2001) ("Statutory exemptions from compelled disclosure are narrowly construed.") Intervenors' capacious conception of Cal. Gov't Code Sections 6254(k) and 6255 are contrary to this express directive.

Furthermore, Intervenors' exemption arguments are doctrinally improper under the provisions of the CPRA. Intervenors argue that Public Resource intends to infringe the copyrights that they supposedly hold in the CCR. Opp. 1-12, 14-17. Because their argument is premised on the "purpose" or "motive" of the requestor, their argument is a non-starter doctrinally. Cal. Gov't

[2] The remaining *Caifa* factors are irrelevant to this proceeding. *Caiafa*, 15 Cal. App. 4th at 804. But even if the Court chooses to weigh them, they do not favor Intervenors' position here. First, there is no inference that Public Resource's litigation strategy is designed to harass any adverse parties. Intervenors do not allege otherwise. Next, the "availability of witnesses" is irrelevant, and Intervenors do not allege otherwise. Next, the "stage to which the proceedings in the other court have already advanced" is likewise immaterial. As explained in Part II. B., nothing about the federal cases will have any bearing on the state law issues before this Court. As such, the stage of those proceedings is irrelevant. Finally, the federal cases cited by Intervenors are *not* in the state of California – they are in Washington D.C. and New York.

Code § 6257.5 instructs this Court to disregard it entirely: "This chapter does not allow limitations on access to a public record based upon the purpose for which the record is being requested, if the record is otherwise subject to disclosure." Intervenors would have the Court ignore this directive in the statute's text, but California caselaw confirms that their request is meritless.

"The motive of the particular requester in seeking public records is irrelevant (§ 6257.5), and the CPRA does not differentiate among those who seek access to them." *L.A. Unified Sch. Dist. v. Super.Ct.*, 228 Cal. App. 4th 222, 242 (2014) (citing *Cty. of Santa Clara v. Super. Ct.*, 170 Cal. App. 4th 1301, 1324 (2009)). "Moreover, the purpose for which the requested records are to be used is likewise irrelevant." *Id*. (citing *Connell v. Super. Ct*., 56 Cal. App. 4th 601, 616 (1997)); *Caldecott v. Super. Ct*., 243 Cal. App. 4th 212, 219 (2015); *Cty. of L.A. v. Super. Ct*. (*Axelrad*), 82 Cal. App. 4th 819, 826 (2000). Intervenors do not even attempt to engage with this line of cases. Both of their arguments regarding exemptions are premised on the purpose of Public Resource's CPRA request, and California law clearly states that the purpose or motive of the request is irrelevant to the propriety of the request.

1. Cal. Gov't § 6254(k) Does Not Exempt Any Part of Title 24 from Disclosure.

Intervenors argue that certain parts of Title 24 are exempt from disclosure under Cal. Gov't. Code § 6254(k), but they cite no case law interpreting that provision. California courts, including the California Supreme Court, have rejected exemptions to disclosure under § 6254 when an agency has made the requested records available to certain recipients in other contexts. In *Black Panther Party v. Kehoe*, 42 Cal. App. 3d 645 (1974), plaintiffs filed a CPRA request with the state agency in charge of licensing debt collection businesses, seeking copies of citizen complaints regarding those businesses. The agency argued that the complaints were exempt under a provision of § 6254, and the court agreed, but nonetheless held that the complaints must still be produced because the agency had provided them to other recipients. The court explained: "When a record loses its exempt status and becomes available for public inspection, section 6253, subdivision (a), endows *Every citizen* with a right to inspect it. By force of these provisions, records are ***completely public*** or ***completely confidential***. The Public Records Act denies public officials any power to pick and

choose the recipients of disclosure." *Kehoe*, 42 Cal. App. 3d at 656 (emphasis in original); *accord Ardon v. City of L.A.*, 62 Cal. 4th 1176, 1185 (2016). The text of the CPRA supports this view. Cal. Gov't. Code § 6254.5 ("[I]f a state or local agency discloses a public record that is otherwise exempt from this chapter, to a member of the public, this disclosure shall constitute a waiver of the exemptions specified in Section 6254 or 6254.7, or other similar provisions of law.")

Here, Title 24 *is* currently disclosed by BSC and Intervenors to certain recipients of the public. The public can purchase personal copies at a price, inspect local hard copies at select libraries, and visit restricted private websites to view Title 24. Thus, BSC picks and chooses the recipients of Title 24 based on who is willing to pay the fees in exchange for full access. But the CPRA forbids this. "[R]ecords are either **completely public** or **completely confidential**." *Kehoe*, 42 Cal. App. 3d at 656 (emphasis in original). The CPRA simply does not permit BSC and Intervenors to provide public records on a "freemium" basis. Cal. Gov't. Code § 6254.5. Because Title 24 is not completely confidential, it must be made completely public.

2. Cal. Gov't § 6255(a) Does Not Exempt Any Part of Title 24 from Disclosure.

The CPRA includes a "catch-all" exemption for weighing the public interest of disclosures of public records that do not fall into one of the other statutory exemptions. It states that the "agency shall justify withholding any record by demonstrating that the record in question is exempt under express provisions of this chapter or that on the facts of the particular case the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record." Cal. Gov't Code § 6255(a). Intervenors argue that the public interest in not disclosing Title 24 of the CCR pursuant to Public Resource's CPRA request outweighs the public interests in disclosure. Their argument is hollow and meritless.

Intervenors' argument is not based on the public interest at all. Instead, they argue that disclosure will harm their own *private* interest, which they attempt to aggrandize into something larger than what it is. They argue that disclosure will harm their "economic incentive" and the business model that allows them to profit by selling the public access to binding laws. Opp. at 21; see Opp. at 3-10. This isn't a public interest at all; it's transparently a private one, which is entirely

irrelevant to the inquiry. "We start with the safe assumption that a public interest is not the same as a private interest. Otherwise, the adjectives 'public' and 'private' would be unnecessary." *L.A. Unified Sch. Dist.*, 228 Cal. App. 4th at 240. Intervenors' financial interest is decidedly private, but they attempt to ennoble it by arguing that the "regulation of public safety and industry would suffer" if the disclosure is of the CCR is ordered. Opp. at 21; Supp. Dubay Decl. 13-14; Supp. Johnson Decl. at 5-14. This speculative assertion finds no support in either fact or law. A "mere assertion of possible endangerment does not 'clearly outweigh' the public interest in access to these records." *CBS, Inc., v. Block*, 42 Cal. 3d 646, 652 (1986); *Cal. State Univ. v. Super. Ct*., 90 Cal. App. 4th 810 (2001). Thus, Intervenors are left with no cognizable interest to weigh against the public's interest in disclosure of Title 24.

This shortcoming is particularly fatal in light of the demanding standard imposed by the CPRA's catch-all exemption. Section 6255 requires an objector to not only establish a public interest in nondisclosure—they must show that the public interest in nondisclosure "clearly outweighs" the public interest in disclosure. Cal. Gov't. Code § 6255. Intervenors do not even attempt to engage in that weighing calculus. The reason is obvious; the public's interest in full and open access to the CCR is overwhelming.

"[I]n assigning weight to the public interest in disclosure, courts must look not only to the nature of the information requested, but also how directly the disclosure of that information contributes to the public's understanding of government." *L.A. Unified Sch. Dist.*, 228 Cal. App. 4th at 242. Disclosure of Title 24 in response to Public Resource's CPRA request would unambiguously and directly contribute to the public's understanding of its government, and "will shed light on the public agency's performance of its duty." *Id*. at 241. Specifically, disclosure would enable Title 24 to be keyword searched, queried, indexed, copied and pasted, printed, disseminated, and commented upon by the general public and scholars. A public dialogue could begin regarding the state's building codes that has heretofore been impossible with such limited access to the text.

Intervenors assert that nothing is to be gained from disclosure since Title 24 can already be

accessed online. Opp. at 22.[3] This is demonstrably false, since Intervenors' websites contain a litany of end user restrictions that make it technologically impossible for the public to engage with the material in any meaningful way. (Pet. 18-20). Moreover, Intervenors simply ignore California case law expressly rejecting the imposition of the exact type of end-user restrictions that Intervenors utilize. *Id*.; *see Cty. of Santa Clara*, 170 Cal. App. 4th at 1335 (holding that "end user restrictions" "are incompatible with the purposes and operation of the CPRA."). Forbidding such restrictions "effectuates the purpose of the statute, which is 'increasing freedom of information by giving members of the public access to information in the possession of public agencies.'" *Id*. On this point, Intervenors have no answer, as their own private interests are staked upon their ability to sell full access to California laws to those willing and able to pay.

The public's interest in free and open access to the laws of the state is clear, and overwhelmingly outweighs the private interests asserted by Intervenors in opposition to Public Resource's Petition. Section 6255 does not exempt disclosure of Title 24 of the CCR.

D. Implied Preemption Does Not Apply.

Intervenors argue that if parts of Title 24 are not exempt from disclosure under the CPRA, then the "implied preemption doctrine" applies via the supremacy clause of the U.S. Constitution. Opp. at 19-20. Intervenors draw the wrong conclusion because they neglect the fundamental threshold question for implied preemption, which is established by the very cases they cite. When a state's interest is substantial and distinct from those interests furthered by copyright, there is no implied preemption. *Jackson v. Roberts (In re Jackson),* 972 F.3d 25, 37 (2d Cir. 2020) (the "analysis of implied preemption depends on whether the state law claim furthers substantial state law interests that are distinct from the interests served by the federal law which may preempt the claim.").[4] Here, California's interest in public access to public records is substantial. It is enshrined

[3] To the extent that Intervenors argue that Title 24 is already in Public Resource's possession because Public Resource can visit their highly-restricted websites, such an argument is legally irrelevant to this proceeding. *Caldecott v. Super. Ct.*, 243 Cal. App. 4th at 220 ("Caldecott's possession of copies is not a basis to withhold the Documents").

[4] The *Jackson* court wrote at length about the limits of federal copyright when it abuts or conflicts with important state rights. That discussion squarely undermines Intervenors' argument: "The Copyright Act's grant of exclusive rights to disseminate (and to authorize the dissemination of) a work of authorship does not necessarily mean that those rights will effectively nullify significant rights established under state law whenever the application of the state law would impair or

in the state's constitution. Cal. Const. Art. I § 3(b). That interest is separate and distinct from the interests protected by copyright. As the Second Circuit explained in *Jackson*: "The more substantial the state law interest involved in the suit, the stronger the case to allow that right to exist side-by-side with the copyright interest, notwithstanding its capacity to interfere, even substantially, with the enjoyment of the copyright." 972 F.3d at 37-38. In *Jackson*, the case was weak because the interests protected by the state law right of publicity furthered the *same* interests as those protected by federal copyright. 972 F.3d at 39. Here, the case is extremely strong because the interests are so different, and there is no serious argument to the contrary. Indeed, Intervenors do not attempt to argue that the CPRA and the constitutional right that it furthers is in any way duplicative of the interests protected by copyright. Nor could they—the implied preemption doctrine does not apply to this case.

III. CONCLUSION

Intervenors' attempts to protect their private interests in selling access to the laws of California to the public are unsupported by law. Public Resource respectfully asks this Court to grant the Petition for a writ of mandate directing BSC to disclose a usable electronic copy of the entirety of Title 24 pursuant to the CPRA.

Dated: January 20, 2022

COOLEY LLP

By: */s/ Matthew D. Caplan*
Matthew D. Caplan

Attorneys for Petitioner
Public.Resource.Org, Inc.

262504251

diminish exploitation of the federal right. Federal copyright law does not entirely divest the states of authority to limit the exploitation of a work within copyright's subject matter in furtherance of sufficiently substantial state interests…" *Jackson*, 972 F.3d at 35.