

Welcome to Civil Discourse. This podcast will use government documents to illuminate the workings of the American Government and offer contexts around the effects of government agencies in your everyday life. Now your hosts, Nia Rodgers, Public Affairs Librarian and Dr. John Aughenbaugh, Political Science Professor.

N. Rodgers: Hey, Aughie.

J. Aughenbaugh: Good morning, Nia. How are you?

N. Rodgers: I'm good. How are you?

J. Aughenbaugh: I'm good.

N. Rodgers: So this week, we've had some oral arguments before the Supreme Court or actually a couple of weeks ago, this one, that I want to ask you about, they started in May doing them where we could hear them. But I think this was done before that.

J. Aughenbaugh: Yes. What you're talking about is in late April, the Supreme Court started handing down rulings in cases that they had oral arguments last fall and early winter. Yes.

N. Rodgers: Yes. That's fascinating to me too that there's a length of time between we hear the oral argument and the rest of us have completely forgotten what was being talked about. Then all of a sudden they come out with a ruling and we go, "That's a thing." So it's fascinating to me how all of it works. But in this particular instance, Georgia took a case to the Supreme Court. State of Georgia, not the country of Georgia, and not a person named Georgia. The State of Georgia took a case to the Supreme Court, Georgia versus the Public Resource Org, which sounds to me like a non-profit sort of something that has to do with something. I don't know. I didn't super look into it. Although, it looks like they are a legal representation type of organization.

J. Aughenbaugh: Well, they are what's known as a public interest group. Their, shall we say, main focus is to increase access to government documents and materials, okay?

N. Rodgers: Is it good for my opinion because that's what we're trying to do?

J. Aughenbaugh: That's right.

N. Rodgers: Though I'm on their side. Whatever it is that they did, I'm on their side, unless they did something really bad in which case I'm not on their side.

J. Aughenbaugh: Yeah, the case you're talking about is, as you pointed out, this interest group, and for the rest of this podcast, I'm just going to refer to them as the public resource organization or organization. The organization brought a challenge, a lawsuit in federal district court because Georgia, along with 22 other states and the District of Columbia, basically had a practice of employing a private company to provide annotations to the laws that their legislative bodies had created.

N. Rodgers: Okay. Wait. So we're going to pause here and explain quickly and briefly what an annotation is.

J. Aughenbaugh: Okay. So basically, let's say, for instance, the Commonwealth of Virginia, the State of Virginia, the General Assembly passes a law. The governor signs it, and then it starts to be used. Annotations are created to explain how the law is implemented, any rulings that help explain or interpret the law by courts or in the case of pretty much four-fifths of all the states, any Attorney General's advisory opinions, which also help explain how the law is implemented. The annotations allow, for instance, lawyers to figure out how the law is being implemented so their clients can either comply with the law or find ways to get around the law or to make arguments in courts. Because if you have an annotation, it's like if you have an annotated bibliography, Nia, for a research paper. You write the annotation, so you have a brief explanation of what a book or a journal article actually said and how you think it means.

N. Rodgers: Right. How do you think it applies to what you're trying to say or to your argument?

J. Aughenbaugh: That's right. Now, in the case of Georgia, the annotations that were produced arose because Georgia has a commission. It's called the Code Revision Commission. It's a state entity, composed mainly of Georgia State legislators, funded by the state's legislator branch, and it's staffed by the legislature's Office of Legal Counsel.

N. Rodgers: Okay.

J. Aughenbaugh: Basically, what they did, this commission, they hired.

N. Rodgers: No. Wait. They make the annotations?

J. Aughenbaugh: Well, what they did was they hired a private sector company, a subsidiary of LexisNexis, to produce the annotations.

N. Rodgers: So did Lexis make the annotations or did the Georgia law makers make the annotations and Lexis compiled them?

J. Aughenbaugh: LexisNexis subsidiary compiled all the annotations.

N. Rodgers: But they were made by the commission.

J. Aughenbaugh: No. The commission hired somebody else to do all of this annotation work. Okay?

N. Rodgers: Okay.

J. Aughenbaugh: So you didn't have members of the Georgia Legislature doing the research. Okay?

N. Rodgers: Okay.

J. Aughenbaugh: The commission itself hired somebody else to do the annotations based on laws produced by the legislature.

N. Rodgers: Okay.

J. Aughenbaugh: Now, what Georgia and these 22 other states did was, once the annotations were produced, they basically claimed that those annotations were copyrighted materials so that if anybody wanted to use them, they would have to pay a copyright fee. That's where the interest group said, "These are annotations based on laws produced by government officials."

N. Rodgers: Well, and the annotations are paid for by the government, hence by the taxpayers. Because if Georgia is paying somebody to make the annotations, then state taxpayer money is paying for that because that's how, the Georgia Legislature doesn't have money of its own, it's money comes from.

J. Aughenbaugh: That's fine. But that wasn't the argument made by the interest group.

N. Rodgers: Well, that's what the argument should have been, but okay, fine.

J. Aughenbaugh: But again, this all comes back to the Copyright Act passed by the United States Congress. So many Americans don't understand that if you produce a book, or a piece of music, a piece of artwork, under federal law, you can get a copyright to protect your work, meaning that if anybody else wants to use your work, they have to pay you a fee to use it.

N. Rodgers: Right.

J. Aughenbaugh: Okay.

N. Rodgers: Yeah.

J. Aughenbaugh: The idea behind copyrights is, this encourages people to produce this literature, this artwork, this music, and gives them a financial incentive to do so.

N. Rodgers: Right.

J. Aughenbaugh: It's your work, it's your property, if you will, and you should be able to derive a financial benefit from it. Well, the argument made by Georgia was, we produce this so that other people wouldn't have to, and since we hired somebody to do this, the subsidiary of LexisNexis and the Georgia Legislature should derive a financial benefit from producing these annotations. The interest group responded and their claim was, "We don't want to pay the copyright fees because these annotations are based on work produced by the people's representatives."

N. Rodgers: Isn't there something about the government edicts doctrine. Correct me if I'm wrong. Let me make a stab at it. You were saying if you write a book you own the copyright to it, and you're able to make money from that. However, if you wrote a book at the behest of the federal government as part of your job, and your job was to, let's say, produce a book on either President Eisenhower, and the government paid you to do that because it was your job, then you don't own the copyright to that material. The government owns the copyright to that material because it was produced in the doing of your job. Supreme Court justices don't own their opinions, right?

J. Aughenbaugh: Yeah. In the hypothetical, you just gave. Things produced by government officials do not receive copyright protection. That is the government edicts doctrine created by the United States Supreme Court. The logic is basically this, how can the output of government officials be copyrighted? It's being produced for the benefit of whom? The public. So that's the government edicts doctrine. It was created back in 1834 in a Supreme Court ruling called *Wheaton v. Peters*, where the court basically went ahead and said, what the government produces, they do so for the benefit of the public. Therefore, nothing the government produces, whether it is a Congressional Research Service report, a law passed by Congress, a regulation that is created by a government agency, they're not doing it for personal gain.

N. Rodgers: Well, I'm not sure we'd go that far, but okay.

J. Aughenbaugh: The logic is they are producing a work, if you will, for the benefit of the public. So the government should not be able to go ahead and restrict access or charge a fee to access government documents.

N. Rodgers: From the other side, you shouldn't be able to double-dip. You're already being paid to do that work, you can't be paid again to do that work. Like if you compose music as your job as the head of the band for the Navy, which is an awesome band, you compose a piece of music, that belongs to the Navy, and therefore, more or less to the people. Those pieces of music are, generally speaking, not copyrighted, which is why any band in the world can play that piece of music. Because it's in the public domain. That's the point of the public domain, is to say, for instance, Nano is pointing this out in our data episode. The census has an enormous amount of data, which it will give to you, but if you want it in some prepackaged, super-nice form, in a sense, what you're paying LexisNexis for, is you're paying them to make it look nice and easy to read. So I see where the court's coming from on hearing the case.

J. Aughenbaugh: So the case goes to the Supreme Court and the ruling was five to four.

N. Rodgers: Nothing like a spot decision.

J. Aughenbaugh: It's a spot decision. Before we get to the substance of the decision, the votes were highly unusual. The majority opinion was written by Chief Justice John Roberts. However, the other four justices in the majority, are the last four appointed justices, the four youngest. I kid you not, Kavanaugh, Gorsuch, Sotomayor, and Kagan.

N. Rodgers: Well, now, that's a strange bunch of bedfellows right there.

J. Aughenbaugh: Yes. The division was not on conservative versus liberal.

N. Rodgers: No. Because that's two conservatives and two liberals.

J. Aughenbaugh: That's right. The four in the dissent.

N. Rodgers: It's not gender because that's two men, two women, but there's a woman left out.

J. Aughenbaugh: That's right. In the dissent, it was Thomas, Ginsburg, Breyer, and Alito.

N. Rodgers: Is that one of the signs of the apocalypse? Are we in the end times? Has somebody opened an envelope and I don't know about it? Because wow, that's.

J. Aughenbaugh: So the vote count almost immediately got constitutional law scholars, judicial political scholars were like, "Hey, what the heck is going on here?"

N. Rodgers: Freaking out a little bit.

J. Aughenbaugh: But then you get to the substance. Basically, the substance was this. If you had to narrow down Robert's majority opinion to one sense, it was this, nobody owns the law. The law is for the public, and these annotations are created and derived from the law. So Georgia and the other 22 states, and the District of Columbia can't make money off of this. They can't hire a private sector firm to do all this work and make money off of this, it's the law.

N. Rodgers: They can still have that firm do everything, they just can't-

J. Aughenbaugh: Copyright it.

N. Rodgers: They just can't copyright it.

J. Aughenbaugh: They can not copyright it.

N. Rodgers: The company is not going to do it because then they have no way to sell it as a product.

J. Aughenbaugh: That's right.

N. Rodgers: What was the dissent? So you said Thomas wrote the dissent?

J. Aughenbaugh: The primary dissent was written by Thomas, which was joined by Alito, and in large part Breyer. Ginsburg wrote a separate dissent.

N. Rodgers: What were they grumpy about?

J. Aughenbaugh: Well, Thomas just basically came out and said our precedent is wrong.

N. Rodgers: Well, you have to admire going straight to the point. We've been wrong for 230 years. Next.

J. Aughenbaugh: Well, and Thomas's point was, what Georgia and the 22 other states have been doing could not have made sense when the Supreme Court looked at the original purpose of the copyright laws. Because according to Thomas, the government edicts doctrine is not faithful to Anglo-Saxon history, legal history. His point is the British crown actually had an anti-government edicts doctrine. You could not quote or use laws handed down by the British crown because the British crown got its power from what source?

N. Rodgers: Taxation.

J. Aughenbaugh: God.

N. Rodgers: Oh, my bad. The other power.

J. Aughenbaugh: You can't copyright God.

N. Rodgers: Somebody should tell that to the Bible companies, but okay.

J. Aughenbaugh: He makes an interesting argument. He basically just comes out and says, we created a precedent that no longer is applicable to the facts on the ground today. So therefore, our case law has to acknowledge that the legal community and almost half of the states of this country, rely upon these annotations to do what?

N. Rodgers: To defend.

J. Aughenbaugh: Won't engage in legal practice. That's his argument. Ginsburg's argument was basically, it wasn't the Georgia legislature that was making money off of this. Who decided to provide annotations of Georgia law? The commission is not the legislature, it's not even part of the executive branch. They have the independent authority to go ahead and help Georgians understand Georgia law. So our previous precedent doesn't apply. Well, yeah. Well, right? It is a fascinating case for not only the government edicts doctrine, which the Supreme Court basically broadened to include not only laws and regulations in court decisions, but any annotations based on those.

N. Rodgers: Right.

J. Aughenbaugh: Okay.

N. Rodgers: For anything.

J. Aughenbaugh: Okay.

N. Rodgers: Oh, yeah.

J. Aughenbaugh: On the other hand.

N. Rodgers: I mean, that has the potential to be super far-reaching.

J. Aughenbaugh: Think about it this way, if you're LexisNexis or a subsidiary of LexisNexis, why would you engage in the time-consuming, very detail-oriented work of producing annotations when you can't do what?

N. Rodgers: Make money.

J. Aughenbaugh: Make money?

N. Rodgers: Yeah. Whatever else may be said about the corporations, they're not doing it for your good. The idea that somehow the corporations are warm and fuzzy and want to make your life better: GE, we're bring good things to life. That may be true, but we bring good things to life for money. We still have to make money in order to do this.

J. Aughenbaugh: Any common good that arises is an auxiliary benefit. It's not the primary, right?

N. Rodgers: Right.

J. Aughenbaugh: But as Thomas points out in his dissent, think about all those lawyers who are now going to have to go ahead and do their own annotation research, and if you're a small firm, or a solo practitioner-

N. Rodgers: You won't be able to do it.

J. Aughenbaugh: Yeah, you just don't have the resources. You don't have the money, the time, the staff to go ahead and do this. As somebody, by the way, who's relied on both annotations but has done their own legal research, I got to agree with Thomas. It's a hell of a lot easier and more accurate, I would argue, for me to go ahead and pay \$60 for this CD-ROM of all the annotations of all Georgia laws, regulations, and court decisions than it is for me to go ahead and kill two or three weeks and miss a case.

N. Rodgers: For listeners who never did this, there used to be a thing called Shepardizing. It comes from Shepard's, which was a list of all the cases. So if you Shepardized a case, you went and found all the other cases that were relevant to your case.

J. Aughenbaugh: That's right.

N. Rodgers: Now, because of, well, the way the world has advanced and electronic materials have advanced, there are a couple of major producers of legal research who we've mentioned LexisNexis, to give equal airtime, Westlaw, is it?

J. Aughenbaugh: Yes.

N. Rodgers: They're major. There are some smaller people. Hein is in there, and there's some other groups that are in there, but the two majors, now, you press a button. You pull up your case, and then you press a button, and magically all of the things that are attached to your case in some way come up and you're able to see what's valuable and what's not valuable. The idea that people would go back to Shepard, I mean, shepardizing used to take days and days of sitting with those books, and pulling out the various volumes, and it would lead you to something else. I mean, people have no idea how much research has changed just in my career in libraries in 30 years. Yes, I'm a geezer. I'm about to have my geezerly birthday, so I'm feeling good.

J. Aughenbaugh: Happy birthday.

N. Rodgers: Thank you. But that 30 years has seen an enormous change in accessibility and how much material you can get a hold of. You're talking about missing cases. It used to be that when you Shepardized a case, you just knew you were going to miss cases. You just knew it was going to happen. Now, it's pretty rare that there's a major case that gets missed really rare and almost never do you miss any laws. It's just because there's people out there who do that, and you pay money, and those sources are expensive. I get where the organization doesn't like that because, frankly, both of the major legal databases are expensive. They are out of the reach of individuals for the most part, unless you are a lawyer like one of the super high-paid Alan Dershowitz type, I-make-a-gazillion-dollars-a-case lawyer. But if you're a regular lawyer in a small town, you can't afford those. At VCU, we have one of those products, but we have the academic version. We don't even have the legal version because the legal version is too expensive. We don't have a law school, so there's no reason for us to have one. But it's very enormously expensive and we're talking thousands and thousands of dollars a year. So I take their point that they're saying regular people can't afford that. People who are representing themselves can't afford that. How are they supposed to? What it does is it changes the law to be people who can afford something versus people who can't, and their defenses will suffer accordingly.

J. Aughenbaugh: So you got these two competing imperatives in regards to what should be the access to government documents. The interest group, and you and I are very sympathetic, and we started off the podcast, and I think you neatly encapsulated the appeal of what the interest group was trying to do. The interest group wants to promote public access to government documents and doesn't believe that the public should have to go ahead and pay for even things derived from government documents. You cannot probably find two more people who are willing to sit in that particular church's congregation than you and me. I like access to government documents. That's what you do for a living, right?

N. Rodgers: Yeah.

J. Aughenbaugh: On the other hand, I'm also very sympathetic to the arguments made by Justice Thomas in his dissent in regards to what will be the impact, in regards to those who use the law on a daily basis, and the extent to which all of this vital research, I mean, and annotations are vital, right?

N. Rodgers: Absolutely.

J. Aughenbaugh: I mean, I tell students this all the time. If you want to shorten the length of time you got to spend on doing research for a research paper, learn the skill of doing annotated bibliographies because it gives you a shorthand you can go back to, so you can just plug in what you wrote when you first read an article or book, and how this relates to your argument or the counterarguments you want to respond to, etc. That's what legal argument is all about. How can I marshal evidence to support my argument? What will be the likely cases, regulations, decisions that work against my argument?

N. Rodgers: I need to have an answer for those.

J. Aughenbaugh: That's right.

N. Rodgers: Because the lawyers on the other side are bound to bring that up.

J. Aughenbaugh: Sure.

N. Rodgers: I say in Aughenbaugh versus the State of Virginia, it was found blah, blah, blah, blah, blah, blah, blah. Then I need to have a response in my pocket for when the other lawyer says in Rodgers v. Virginia, blah, blah, blah, blah, blah, blah, blah was found, and I need to be able to say, "Yes, but the circumstance was different in this way." That is how, if anybody has ever been to court, well, not traffic court, I mean, I'm talking big-time court, that's how it works is they bring up cases when they're saying, "In this case, this is why you should rule this way because these other people ruled this way."

J. Aughenbaugh: For those of you who don't want to become lawyers, who don't want to go to court, and by the way, you don't want to go to court.

N. Rodgers: We wish for you that you never have to go to court as a defendant.

J. Aughenbaugh: But even if you want to go to graduate school, for instance, or you want to become a college professor or a researcher, your ability to go ahead and understand that there are counterarguments or counter views to what you are claiming and being able to respond to them, is the mark of an advanced, nuanced mind, which as we've been discussing throughout this podcast. A willingness to go ahead and respond and talk to others who think differently to you so that you understand what they're saying, and perhaps you can engage in a conversation of, but what if.

N. Rodgers: Well, and you have to acknowledge that people are not acting most of the time out of malice. They have a point of view. They have a point of view, and understanding their point of view will help you get closer to compromise.

J. Aughenbaugh: Maybe even truth. A truth that both of you can accept. Okay?

N. Rodgers: Right. So it's tough that I have so many feelings about being with Thomas because usually we're on very different tracks of viewing the law. Not would I think that Justice Thomas is always wrong because I don't. I think there are times when Justice Thomas has said things I'm like okay, and then there are times where I say, "Hey, sir, welcome to the 21st century," which is mean, and I would never say to his face because that would be rude. But in this particular instance, him bringing up the idea that this has carry on effects for your small legal firms, your individual lawyers, your people who are representing themselves, and more than that, regulators who are looking at the statute, who are trying to figure out whether what they're going to do will actually be in violation of the statute, that's huge. Regulation in the States is huge. You can't say, I'm going to use an outlandish example, we're going to make everybody wear a mask in Richmond, Virginia if they go outside. If you step outside your door, you have to wear a mask. If you don't know what the statutes basis is.

J. Aughenbaugh: You don't know what courts have said in similar cases, you don't know what the Attorney General has said in an advisory opinion, you're flying blind.

N. Rodgers: Right. So then you say we're going to enforce it by doing this and you're immediately in court, it's going to cost thousands, if not millions of dollars to settle cases because people didn't have the background information that they needed to do their jobs. I'm with him on that, I think there is a scary lawful of that.

J. Aughenbaugh: Well, to give you a real life example that has happened in the past week. This relates to the hypothetical you just mentioned, Nia. In the state of Wisconsin right now, Republicans in the state legislature have taken the Governor of Wisconsin to state court challenging the scope of the governor's stay at home executive order. In particular, the legislature has issues with certain businesses and certain organizations that have been closed, but also what the thought process was. The legislature has argued that the governor doesn't have the authority to do this. While the governor has responded, while my authority is based on the part of the state constitution that gives me the authority to act as the Chief Executive of the state, and there are a number of other laws that in the past, have been interpreted this way by either Wisconsin courts or the legislature has allowed previous governors to act in similar ways, in similar crises. Which lead to a fascinating exchange between some of the judges of the Wisconsin State Supreme Court and attorneys for both the legislature and the governor's office in regards to what has been the meaning of these parts of the state constitution and of state law. They were talking about examples from previous epidemics, pandemics, natural disasters, etc, and some of it focused on annotations of state law. This were government documents.

N. Rodgers: See I'm struggling because I'm split. I'm like the Supreme Court.

J. Aughenbaugh: Yes.

N. Rodgers: There's part of me that's with Justice Roberts, there's part of me with the chief. The law it should be open to all the people all the time. The derivatives of the law, the everything of the law, all of it. I don't think anybody's questioning the statutes of Georgia are public domain because the statutes

themselves are in the public domain. That's not in question. What's in question is the annotations to the statutes, not the statutes themselves. So let me do make that clear for listeners in case you were wondering. We're talking about the add-ons to the statutes, not the statutes themselves. The statutes themselves are unquestionably public domain.

J. Aughenbaugh: Yes.

N. Rodgers: I think Roberts what he did was say, "Well, if the statutes are unquestionably public domain, then everything that derives from the statutes is public domain."

J. Aughenbaugh: Oh, yeah.

N. Rodgers: For him, that's a relatively simple, well, okay. But you wouldn't have these annotations if you didn't have the statutes, and the statutes are public domain.

J. Aughenbaugh: Yes. When this case was rising through the lower federal courts, I was just like, I'm with the interest group, right?

N. Rodgers: Yeah.

J. Aughenbaugh: Access to government document.

N. Rodgers: Access for the people.

J. Aughenbaugh: I learned about the government edicts doctrine when I was an undergrad, and I'm like, of course, this has been already decided by the court. They decided it in three different cases in the 19th century, the State of Georgia is going to lose. Then I read Roberts's majority opinion and I'm like, it's simple, it's straightforward, it provides clarity going forward. Then I started reading Thomas's dissent, and I'm like.

N. Rodgers: Oh, crap.

J. Aughenbaugh: That's right.

N. Rodgers: Wait, there's an argument on the other side. You had your undergraduate moment, and you're like, this is patently obvious. Somebody goes except x and you go, oh man.

J. Aughenbaugh: Yeah.

N. Rodgers: Yeah. After then you have to go back and rethink your whole position.

J. Aughenbaugh: Yeah. There was that oh man moment where I was just like, wow, okay. Now I'm torn, and I didn't think I was going to be. I got to be honest, right?

N. Rodgers: I'm torn in part because working in a library, I'm part of the publishing world. I'm all about open access. We have an open access librarian, we push for people to put things in open access. This podcast is in open access. We will never make money from this podcast, there is not profit. We didn't try to put it behind a paywall or anything like that. One, one does not do that with podcasts, generally. Two, we just never even.

J. Aughenbaugh: No.

N. Rodgers: It wasn't part of what we do. Our mission is public access. We know that this podcast is pulled down in countries other than our own and by students other than our own.

J. Aughenbaugh: Sure.

N. Rodgers: We're okay with that, we're fine with that. Go for it if you want to listen to this podcast, good luck. We've never made a thing of that, we have it on the campus because the campus is our university level open access. So we're all about open access and I'm all about that. But there's a part of me that feels a certain level of sympathy to publishers who say, but I'm adding value to the material by either making it digitally accessible, which there is a cost to that or because I'm manipulating the material in some way that will make it simpler and easier. I'm again, thinking about the census data to pull it down. Is really complicated and you almost always need a program to help you do that.

J. Aughenbaugh: Yes.

N. Rodgers: So there's a part of me that's like, well, okay, those people should be able to make some money. But then you get into how much money we should even maybe allowed to make.

J. Aughenbaugh: Then it gets really complicated, right?

N. Rodgers: Yeah. It turns into this big giant gray, it starts off very black and white, right? Power to the people, governments documents to the people. Then you're like, okay, but the government documents are not produced in the way that the people can really understand, they're, well, crap. Now understand.

J. Aughenbaugh: Yeah, because as we talked about before, the work of annotation is difficult work, okay?

N. Rodgers: That's intellectual property.

J. Aughenbaugh: There is value to that work, right? Like most things in a capitalist economy, if you put time, labor, energy into a process, then you should be paid for it.

N. Rodgers: Right. Well, so I'm with you that there's the complications of we should reward people in some way. But by the same token, what do we do about people who can't reward but still should have access?

J. Aughenbaugh: Yeah.

N. Rodgers: So it's a, yeah. This particular case is like one of those balls of yarn. Starts off like, okay, I'm knitting, I'm doing fine, I'm doing fine and then all of a sudden your cat comes along and goes, you got me a toy and they pull it around the room and now your yarn is wrapped around every piece of furniture 64 times.

J. Aughenbaugh: Yes.

N. Rodgers: Trying to get it untangled.

J. Aughenbaugh: The yarn that whose original purpose was for you to knit that sweater is now turned into a toy for your pet.

N. Rodgers: Right.

J. Aughenbaugh: So how do we classify or label it? Okay and again the purpose buying copyrights was to go ahead and allow people to derive an economic benefit from work. But the original source of the work was to produce something for the common good. So does that require us to go ahead and modify the Copyright Act? Because if you read Roberts' majority opinion, that's what would have to happen, and would make a significant change to the government edicts doctrine. A doctrine again that flows from the idea that Congress has the authority in the Constitution to issue copyrights and patents.

N. Rodgers: Further flows from the idea that the people have a right to know.

J. Aughenbaugh: Yes.

N. Rodgers: Part of the reason you have the revolution, besides the fact that George is bonkers and we don't like him and we don't want to be part of this country anymore, is that evolution oversimplified TLDR.

J. Aughenbaugh: I'm going to have to remember that the next time I teach the founding of the US regime in Poli 103.

N. Rodgers: I just wrapped it up for you in two sentences. You just put it right out there.

J. Aughenbaugh: My future students thank you because nobody like, wow, okay, he said this was going to be an entire class lecture, but he just wrapped it up in two sentences.

N. Rodgers: You said we can all go for coffee. But aside from that, you get to the idea of representation. People want representation, they want to have a say in the government. They want the fruits of their labor. They want to be able to see what the government is producing. The government at that point didn't allow you to use their materials. So it's not surprising that we will come from an opposite point of view because we tried to do that with almost everything, was coming from an opposite point of view of

the idea that now there are things that the people have a right to access. Then you get what we have with the Library of Congress, and the founding of Library of Congress, and the founding of the idea or the formation of the idea that information should be shared and information should be free.

J. Aughenbaugh: Yes.

N. Rodgers: So I can see where Roberts is saying this just follows what we believe as a society which is that, is that certain information should just be accessible to all the people all the time.

J. Aughenbaugh: Yeah and if you go back to what is the source of government power. The source of government power in the United States is the people. But in a monarchy, the source of power of government is God.

N. Rodgers: You can't question God, but you can question your elected leaders.

J. Aughenbaugh: That's right. I mean that's the entire basis of the social contract theory, Locke's Social Contract Theory. We give up certain rights, and in exchange we get order, stability, and regularly scheduled opportunities to hold our government officials accountable. How else can we hold them accountable if we don't know the output of their efforts, laws, regulations, and judicial decisions.

N. Rodgers: Well and not to mention the fact that, how would you know if you were breaking the law if you didn't know what the law was?

J. Aughenbaugh: Oh, hey, one of the one of the primary purposes of law, behavioral norms.

N. Rodgers: They say ignorance of the law is not an excuse, the only way they can get away with saying that is if the law is accessible to the people.

J. Aughenbaugh: That's right.

N. Rodgers: If we hide the law and then we say if you don't know what the law is you're in trouble, but how could I know?

J. Aughenbaugh: Yeah.

N. Rodgers: So it's complicated. SCOTUS, why does everything have to be so complicated? I guess in some way this is a perfect microcosm of how the SCOTUS works?

J. Aughenbaugh: Yes.

N. Rodgers: Because they took a case that has such complicated and potentially far reaching. I mean this is a national you said 22 states plus the District of Columbia so just under half, and the potential for this to have carry on effects for years and years and years and kill potential industries. There's all stuff here, I guess that's why they took the case is because it's not what you and I are like well it's that guy. Come on.

J. Aughenbaugh: Yes.

N. Rodgers: Why is this even in question? They were like well, it turns out there's a few questions that you didn't think of, Aughie and Nia, and we're going to answer them for you.

J. Aughenbaugh: That's right.

N. Rodgers: Sorry, SCOTUS, we didn't get you anything. But well it's a good case for people to dig in. I'm going to put the link on the guide so that people can go in and dig around in that. If you would like, listeners, I'm also going to put the link for the governor of Wisconsin versus the Legislature. So you can see what that argument looked like and I guess I could put the link to the recording of this argument. They didn't do a recording of this argument.

J. Aughenbaugh: Excuse me?

N. Rodgers: They didn't do a recording of this argument, did they?

J. Aughenbaugh: No, but you can put the transcript.

N. Rodgers: I'll put the transcript.

J. Aughenbaugh: Yeah.

N. Rodgers: Okay. Well, thanks, Aughie. I'll see you next week.

J. Aughenbaugh: All right. See you, Nia.

N. Rodgers: Bye.

J. Aughenbaugh: Bye.

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