

To the Bag

It is indeed easy to block legislation, although once it is enacted its political history earns it a level of judicial respect that administrative action – that is not “legislation,” although sometimes like it in its effects if valid – is not accorded. Conservatives, perhaps anticipating that vetogates will be an important remaining handle on government for them come the fall, may be moved by Manning’s conflation. But one cannot find a national government anywhere that does not, as we do, exhibit a regime for lawmaking of which legislation is only one element. It is a designedly political element, and for that reason it is one at special risk of the mob. But it is only one element; rulemaking, as we call it, is a universal element of government.

As for the courts, they are emphatic that statutory interpretation is lawmaking. That is, once it has decided what a statute “means,” the Supreme Court has insisted, only Congress can change that reading. This is a much more conservative than liberal principle. With the Court constituted as it now is, one can see that it too would have a certain conservative appeal. Bill Eskridge’s view, at which John Manning takes aim, is at root a call to constructive partnership; Manning’s, a call to arms.

Yours truly,
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AALL’S EFFORTS ON DIGITAL AUTHENTICATION

To the *Bag*:

The American Association of Law Libraries (AALL) is pleased with the attention our 2007 *State-by-State Report on Authentication of Online Legal Resources* has received, both in Bob Berring’s excellent article, “Losing the Law,” (10 GREEN BAG 2D 279) and the recent letter to the editor by Richard Leiter, “Paper Is Not a Drag.” (11 GREEN BAG 2D 12). Both authors highlight the fact that we have a crisis on our hands. As states eliminate the print versions of their primary legal resources (as a cost-saving measure), they aren’t tak-

ing into account the cost of long-term preservation of the digital versions so that the law will be accessible in the future. In addition, in most cases they are not granting official status to the online version, or ensuring that the online resources are capable of being authenticated by technological measures to protect them from tampering or data-corruption.

In our law libraries we are committed to collecting, maintaining and preserving the print versions of primary legal materials – when they exist – because we know that these are official and authentic. We can trust them. But, as our report shows, governments are indeed “ditching” print in favor of online *only*. Legal researchers therefore have no alternative to online information and no guarantee that it is official, that it has not been altered and that it will continue to be available on the web in 5, 10, or 50 years. States have not recognized the need to manage what we call the “electronic life cycle,” from cradle to preservation with authentication and permanent access thrown into the mix. In the online-only world, this life-cycle management must be a responsibility of government. Our report gives the states a failing grade in that regard.

AALL’s efforts in publishing the report and holding the National Summit last year were intended to raise awareness within the legal community about this very real crisis. Currently we are working hard in some states to amend or repeal laws that eliminated the print publication of their legal resources. We are not willing, as Leter seems to suggest, to “Cross our fingers and hope that computer scientists can come up with something as good as paper to preserve our legal history.”

At the same time, we acknowledge the reality that state governments are moving to online-only publication of their statutory, regulatory and case law. We want to make them aware that as they do so, they *must* take measures to ensure that the online information is official, authentic and permanently preserved for continued public access. Today, no state is providing that guarantee. We believe it is absolutely necessary that they do so and that there is no time to waste. To this end, AALL is very pleased that the Uniform Law Commission recently approved our proposal to create a study

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committee to investigate the possibility of a uniform law or model act on the digital authentication and preservation of legal resources. To keep from “losing the law” in the transition to digital formats, we must all work together to find effective and trustworthy technological and legal solutions.

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