



# The AALL Washington E-Bulletin

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## **TAKE ACTION NOW**

### **Calls and Letters Needed for the Presidential Records Act Amendments of 2007**

#### **BACKGROUND:**

Legislation currently [held up in the Senate](#) by [Sen. Jim Bunning](#) (R-KY) would restore standards for the timely release of Presidential records and nullify [Executive Order 13233](#) which President Bush issued in 2001. The Bush E.O. gave current and former presidents and vice presidents broad authority to withhold presidential records. The “Presidential Records Act Amendments of 2007” ([H.R. 1255](#); [S. 886](#)) would reverse the Bush E.O. by establishing a deadline for the review of records, limiting the authority of former presidents to withhold records, requiring the president to make privilege claims personally, and eliminating the ability for Vice Presidents to assert executive privilege claims over vice presidential records. On March 14, 2007, by a [veto proof vote of 333-93](#), the U.S. House of Representatives approved H.R. 1255. S. 886 cleared the Senate Homeland Security and Government Affairs Committee this summer, but when the Democratic leadership sought to bring the bill to the floor on September 29, Senator Bunning objected to consideration of the bill and it is currently stalled in the Senate. You can read more about the Presidential Records Act in our [Issue Brief](#).

#### **TAKE ACTION!**

For more information, including a sample letter and a list of co-sponsors and Committee Members, see the [alert on our website](#).

There are two things you can do to help this bill move through the Senate:

1. If your Senator is **not** a [co-sponsor](#), send him or her an email to request he or she consider co-sponsoring. The bill cleared the [Senate Committee on Homeland Security and Governmental Affairs](#) (HSGA) this summer, but it is stalled in the Senate and Committee members need to hear from you. Only Committee Members Lieberman, Obama, and Sununu have signed on to co-sponsor.

Even if your Senator is not on the committee, he or she stills need to hear from you! You can find contact information for your Senator on the [Senate website](#).

2. If your Senator is already a co-sponsor, send him or her a thank you note!

Alternatively, you may use the U.S. Capitol Switchboard at 202-224-3121 to call your Senator’s office. Tell the staffer you are a constituent, and either ask that your Senator sign on to co-sponsor the “Presidential Records Act Amendments of 2007” or thank your Senator for co-sponsoring.

## **UPDATES FROM THE HILL**

Several important bills have passed one or both chambers this session, and we are excited to move into the next session. Brief overviews of select bills are provided below with

links to the full text digital documents, summaries, current bill status, and congressional actions taken. Additional tracking info is available via [THOMAS](#).

### **OPEN Government Act ([S. 849](#) / [S. 2427](#) / [H.R. 1309](#))**

The Openness Promotes Effectiveness in our National Government Act of 2007 (OPEN Government Act) aims to strengthen the [Freedom of Information Act \(FOIA\)](#) by clarifying the response time to requests and establishing reliable methods for checking the status of pending requests. [Specifically](#), the legislation clarifies that the 20 day time limit for agencies to respond to FOIA requests would begin on the day that the agency originally receives the request. It also requires each agency to establish a telephone line or Internet service as a method to allow for a request status check. The OPEN Government Act (as [S. 849](#)) passed the Senate in August, but concerns from the House about payment of attorneys and processing fees (“pay-go” issues) stalled the House’s consideration of the Senate legislation. Co-sponsors of the Senate bill, [Sen. John Cornyn](#) (R-TX) and [Sen. Patrick Leahy](#) (D-VT) introduced revised legislation ([S. 2427](#)) to address the pay-go issues in early December. However, with the end of the session approaching, it is uncertain whether the legislation will pass before the winter break.

### **Congressional Research Accessibility Act ([HR 2545](#) / [S.Res.401](#))**

[Rep. Christopher Shays](#) (R-CT) introduced [HR. 2545](#) on May 24 and has been referred to the [Committee on House Administration](#). The bill requires the Director of the Congressional Research Service (CRS) to make CRS reports available to the public through a centralized electronic database within 30 to 40 days after the first day it is available to Members of Congress. The public would be able to access CRS issue briefs; CRS reports that are available to Members of Congress through the CRS website; and CRS authorization of appropriations products and appropriations products. Any information that is either confidential or the product of an individual, office, or committee research request would not be made public. Seeing a need for public access to CRS reports, several organizations have worked together to make CRS reports available to the public through [Open CRS](#), which provides citizens with access to CRS reports already in the public domain. Sen. Lieberman introduced a similar measure ([S.Res.401](#)) on December 11.

### **Public Access Policy to Require Access to NIH Research ([S. 1710](#) / [H.R. 3043](#))**

The Senate approved the FY2008 Labor, HHS, and Education Appropriations Bill ([S. 1710](#)), including a provision (Sec. 221), that directs the National Institutes of Health (NIH) to strengthen its Public Access Policy by requiring rather than requesting participation by researchers. The mandate is that the [National Institutes of Health](#) (NIH) will require every scientist who publishes the results of research funded by an NIH grant in a peer-reviewed journal to deposit a digital copy of the article in [PubMed Central](#) (PMC), the online digital library maintained by the NIH. The public will be able to access the article through PubMed Central for free. On November 15, the House failed to

override a veto of the health and education spending bill ([H.R. 3043](#)) which also contained the same language for the open access mandate at NIH. There is not a lot of push back from the White House on this provision, and since the Senate and House have both approved their appropriations bills with the NIH open access provision, the provision has a good chance of making into the eventual law.

### **Budget Secrecy Provision in Transportation and Housing and Urban Development Appropriations bill ([H.R. 3074](#))**

In November, AALL [joined 11 other groups](#) in quickly and successfully opposing a secrecy provision added to the [Conference Report](#) of the FY 2008 Transportation-HUD Appropriations bill. The provision, cited as [Section 193](#) (page 80 [marked page 79]) in the bill, would have severely limited the ability of congressional authorizing and budget committees to provide proper oversight in the federal budgeting process and would have prohibited the public and members of Congress who are not on the Transportation-HUD appropriations committees from viewing agency budget justifications prior to May 31 of each year. [Sen. Tom Coburn](#) (R-OK) and [Rep. John Olver](#) (D-MA), chairman of the House appropriations [subcommittee for Transportation, Housing and Urban Development](#), came to an agreement to drop the provision.

### **FOIA Secrecy Provision in the Farm, Nutrition, and Bioenergy Act of 2007 ([H.R. 2419](#))**

This year's version of the [Farm, Nutrition, and Bioenergy Act of 2007](#) (commonly referred to as the 2007 Farm Bill) contains a provision that would prohibit the disclosure of information including "animal identification" information and information gathered in the USDA's National Animal Identification System (NAIS). The non-disclosure provision ([Sec. 10305 of the Livestock Title](#)) was approved by the [Senate Agriculture, Nutrition and Forestry Committee](#) on October 25, 2007. Section 10305 creates a Freedom of Information Act exemption, without explicitly stating so, by prohibiting disclosure of information including "animal identification" information.

AALL signed on to a [letter](#) opposing the provision. Despite opposition from many open government and journalist groups, the provision remains in the bill.

## **WASHINGTON OFFICE ACTIVITIES**

Hello everyone, I'm Emily Feldman, the new Advocacy Communications Assistant in the Washington Affairs Office of AALL. I came to AALL after working for two and a half years at OpenTheGovernment.org, a broad-based coalition of organizations, including AALL, who are committed to making government more open to achieve accountability, security and safety. Since starting in the Washington Affairs Office in November, I have assumed responsibility for our open government issues as well as improving our communications and advocacy work.

I strongly believe in the power of grassroots advocacy and am very excited about working with all of our members to make AALL's advocacy program even more effective than it is today. One of my first priorities is to expand the AALL Advocacy listserv. If you're not already a subscriber to the listerv, now is the time to join! You'll receive alerts, our e-bulletin, and more information about our issues. Sign up here: <http://www.aallnet.org/aallwash/aalladvocsubscribe.html>. I also expect to return to monthly distribution of the e-bulletin, so keep an eye on your inbox! Please feel free to [contact me](#) with any questions or thoughts.

In 2005, I received a Bachelor of Arts in Political Science and Women's Studies from the University of Rochester. In my free time, I enjoy exploring the Washington, DC area and reading at independent coffee shops and bookstores.

### **AALL President Ann T. Fessenden Testifies at LC Hearing**

Ann T. Fessenden [testified](#) on behalf of AALL at an October 24 oversight hearing held by the House Administration Committee on the operations of the Library of Congress. Ann was invited to join a panel on the Law Library of Congress that included Tedson J. Meyers, chair of the ABA Standing Committee on the Law Library of Congress, and former congressman William Orton. All three witnesses asked that the Law Library be given a separate line item in LC's annual budget. This would put the Law Library on par with the CRS and the Copyright Office. It would also provide the Law Librarian with much greater control over the law library's annual budget and how the funds are spent.

### **AELIC Principles Adopted, Input Requested**

In spring 2007, the AALL Executive Board adopted the "[Principles and Core Values Concerning Public Information on Government Web Sites](#)" developed by AELIC, the Access to Electronic Legal Information Committee. AELIC is engaged in the ongoing effort to make government Web information accessible to all and to ensure its reliability. As part of their important work, AELIC has developed draft [Guidelines for Evaluating a Legal Website](#) and is looking for input on them from the law library community. Please help them by evaluating the guidelines through an [online survey](#). Thanks!

### **Comments Submitted on NARA's Digitization Plan**

AALL submitted [comments](#) to the National Archives and Records Administration (NARA) in November on their [draft plan](#) for digitizing archival materials for public access. While we support the goal of increasing public access to records, we had several concerns with the plan, mostly focusing on [Appendix A](#), "NARA's Principles for Partnerships to Digitize Archival Materials". Our comments requested clarification on several points, including exclusive scanning privileges for partners and ensuring continued availability of print records.

### **AALL Applauds the New PACER Pilot Project**

On April 1, 2006, the AALL Executive Board endorsed a “[Resolution on No-Fee FDLP Access to PACER](#)” that was submitted to them by the Government Relations Committee. The resolution requested that the Government Printing Office work with the Administrative Office of the U.S. Courts to allow users of federal depository libraries to access PACER at no-fee. The Judicial Conference met in September and approved the establishment of a joint pilot project with GPO to provide free public access to federal court records at 16 depository libraries in fourteen states.

AALL applauds this new collaboration between GPO and the AOUSC, and we are especially pleased [that ten law libraries](#) have been selected for the pilot. GRC member Lawrence (Larry) R. Meyer, director of the Law Library for San Bernardino County, CA, deserves special recognition for his tireless advocacy for many years to bring PACER into the Federal Depository Library Program.

### **States Sue EPA over Toxic Release Inventory Rollback**

Twelve states sued the Environmental Protection Agency in November over new regulations denying the public access to information about toxic chemicals in their communities. New York Attorney General Andrew Cuomo is leading the [suit](#), filed in the U.S. District Court for the Southern District of New York on Nov. 28, over a December 2006 [rule change](#) that weakened the Toxics Release Inventory (TRI). The TRI program tracks the waste production and release of approximately 650 dangerous chemicals, and is considered one of the EPA’s most successful programs.

AALL signed onto a [letter](#) in support of the Toxic Right-to-Know Protection Act ([S. 595](#)), which would reverse the EPA rule change. The other states involved in the suit are Arizona, California, Connecticut, Illinois, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Pennsylvania, and Vermont.

### **Sunshine Week 2008 Program: Save the Date!**

Save the date! OpenTheGovernment.org's [Sunshine Week](#) webcast will be March 19th, from 1-2:30 Eastern, from the National Press Club. This year, the webcast will be free, but we are still looking for host sites to show the webcast and organize local programs in their communities. A satellite download will be available for a charge. Look for the program description in the next couple of weeks; the program on Executive power is being developed.

As in past years, AALL chapters are encouraged to show the national program and organize programs on local sunshine issues. You can see details of last year’s event, “[Closed Doors, Open Democracies?](#)”. For more information, visit [OpenTheGovernment.org](#).

### **Robert C. Tapella Sworn in As the New Public Printer**

Immediate Past President Sarah (Sally) G. Holterhoff was invited to testify before the Senate Rules and Administration Committee at the September 12 hearing on the nomination of Robert C. Tapella to become the new Public Printer. Her statement was endorsed by ALA, MLA and SLA. Unfortunately, the hearing was postponed at the eleventh hour although Sally and Mary Alice Baish were able to meet with Mr. Tapella and Acting Superintendent of Documents Richard G. Davis for a substantive discussion about the Federal Depository Library Program. Mr. Tapella's nomination was confirmed by the full Senate on October 4 and the public swearing in ceremony was held on November 6.

### **Jonathan Franklin Selected as International Copyright Advocate**

Jonathan Franklin, Associate Law Librarian at the University of Washington's M.G. Gallagher Law Library, has been selected as an International Copyright Advocate for a new pilot project funded by the ALA Washington Office for Information Technology Policy (OITP). This new opportunity was created to build expertise and broaden the ability of the [Library Copyright Alliance](#), of which AALL is a member, to be represented at the international level.

OITP will train the new International Copyright Advocates to represent us on issues related to copyright advocacy at forums such as the World Intellectual Property Organization (WIPO), the World Summit on the Information Society (WSIS) and the International Federation of Library Associations (IFLA). The first face-to-face meetings for the new copyright advocates were held here in DC on December 5-6. We thank the OITP for creating and funding this important new program that will benefit libraries all over the world.

### **New Brief Filed in National Geographic Case**

In October, AALL joined other members of the [Library Copyright Alliance](#) (LCA) in filing an [amicus brief](#) with the 11<sup>th</sup> Circuit in *Greenberg v. National Geographic Society*. The case against National Geographic alleges copyright infringement due to their publication of 100 Years of the National Geographic magazine as a set of CD-ROMs. LCA has been involved in the case for several years and filed a brief in the 11<sup>th</sup> Circuit supporting National Geographic in June 2006. Last June, the 11<sup>th</sup> Circuit held that digitizing past issues of their magazine is a permitted revision of the collective works and that National Geographic, as copyright owner, does not need additional permission from the plaintiff who owns copyright of several of the photographs.

In October, we learned that the favorable ruling from the court from last June had been vacated and that an order indicating that Greenberg's request for a rehearing en banc had been granted. This leaves the fate of the CD-ROM version of the National Geographic magazine in jeopardy, as well as other publications for which CD and DVD formats are viewed as the digital age's equivalent of microfiche.

## **OUTSIDE THE BELTWAY: CHAPTER NEWS**

### **SFALL Members Visit Legislative Branch Approps Subcommittee Chair**

Late this summer, several SFALL members visited Congresswoman Debbie Wasserman Schultz (D-FL), the chair of the Legislative Branch Appropriations Subcommittee. The members stressed the importance of the Government Printing Office (GPO) and the Library of Congress to the judiciary, the practicing bar, legal academia and the general public. The group included the four academic law library directors in South Florida, Matthew P. Downs from the Florida International University, Lisa Butler-Smith from Nova Southeastern University, Karl Gruben from St. Thomas University and Sally Wise from the University of Miami, and two members of the Government Relations Committee, Barbara Brandon and Stephanie Hess. In addition to showing the flag on behalf of AALL, the members emphasized several issues of great importance to law librarians and to the practicing bar.

They stressed the role of the Federal Depository Library program to her constituents, asking for increased funding so that GPO could improve the technical underpinnings of GPO Access, and they thanked her for her support for continuing print distribution of the U.S. Code. The Washington Office applauds SFALL for recognizing the need to develop a long-term working relationship with Congresswoman Wasserman Schultz because she holds such a key position in the congressional funding structure.

*-Submitted by Barbara Brandon, University of Miami School of Law Library*

### **LLOPS Members Testify for Free Print Versions of State Register**

LLOPS members Marcus Hochstetler, King County Law Library Director, Kay Newman, WA State Law Library Director, and Sue Bellevue, Reference Librarian with the WA Attorney General's office testified before the Washington Statute Law Committee meeting on November 14, 2007 in Olympia regarding the importance of keeping free print versions of the Washington State Register (WSR) in as many county and government law libraries as possible. The State Code Reviser agreed to examine what the U.S. Government Printing Office was doing with the authentication of public laws generated by the 110th Congress. This keeps the authentication issue as a viable option for enhancing the online version of the WSR in the future.

*-Submitted by [Marcus Hochstetler](#), King County Law Library*

### **CALL Members Provide Leadership on Digital Authentication and Permanent Public Access**

Keith Ann Stiverson, former Chair of the AALL Government Relations Committee, and Mary Alice Baish, Associate Washington Affairs Representative, spoke on authentication of online state legal resources at a session of the National Association of Legislative Information Technology (NALIT) conference in Springfield, IL, on September 29. NALIT is the IT arm of the National Conference of State Legislatures, and the conference

was attended by nearly 150 people. A good number of the attendees went to the authentication program, and there was great interest in making possible the authentication of state primary legal materials.

The Illinois State Library, which is responsible by statute for managing the deposit of state agency publications in both hard copy and electronic formats, has established a Permanent Public Access Advisory Committee to assess stakeholder needs and strengthen technical standards for its Electronic Documents Initiative (EDI). Committee member Kevin McClure reports that the EDI is designed to provide secure, online permanent public access to authoritative agency publications. The Illinois State Library is working with organizations from other states, including the Minnesota State Archives, to address the challenges of state government digital preservation.

*-Submitted by Kevin McClure, Chicago-Kent College of Law*

If you have news regarding advocacy issues in your AALL Chapter, please [let us know](#). We'd love to share!

### **FREE TIME WELL SPENT: Further Reading for the Information Policy Junkie**

#### **1.8 Million Pages of Federal Case Law to be Freely Available**

[Public.Resource.Org](#) and [Fastcase, Inc.](#) [announced](#) that they will [release a large and free archive](#) of federal case law, including all Courts of Appeals decisions from 1950 to the present and all Supreme Court decisions since 1754. The archive will be public in the domain. The agreement calls for definitive paperwork approved by both parties within 30 days with Public.Resource.Org making developer snapshots of the archive available in early 2008. Public.Resource.Org is represented by the [Electronic Frontier Foundation](#) in this transaction. The cases will be marked with a new [Creative Commons](#) mark—CC-Ø—that signals that there are no copyrights or other related rights attached to the content.

#### **1.5 Million Book Digitized by Universal Digital Library**

1.5 million documents books have been digitized by the [Universal Digital Library](#), a book-scanning project backed by several major libraries across the globe, and are now free and publicly available. The online library offers full text downloads of works that are in the public domain, or for which the copyright holder has been given permission to make available. So far, [24,772 law books](#) have been scanned. [Resource Shelf](#) has compiled a list of some of the organizations and libraries offering digitized collections.

#### **Trends in Federal Courts Caseload Released**

“What are the identifiable caseload trends and what are the forces behind the changing nature of the federal courts’ caseload?” That is the question answered by a new report, [“A Decade of Change in the Federal Courts Caseload: Fiscal Years 1997-2006”](#) from the

US Courts. According to the report, “Between September 30, 1997 and September 30, 2006, appeals court filings steadily climbed, district court caseloads fluctuated, and bankruptcy filings hit a record high before tumbling following the enactment of sweeping bankruptcy reform legislation.”

### **The Role of Law Schools in Open Access to the Law**

Ian Gallacher, professor at Syracuse University College of Law, released a preprint self-archived version of his paper, [Aux Armes, Citoyens! Time for Law Schools to Lead the Movement for Free and Open Access to the Law](#). The paper outlines the principles of the open access to legal information movement and sounds a call to action for law schools to become leaders in that movement.

### **Wisconsin Passes Law to Require Disclosure of Library User Data**

Jim Doyle, the Governor of Wisconsin signed [SB 214](#) into law on November 21 (2007 Wisc Act 34) creating Wisc. Stat. ss. 43.30 (1b) (b) and 43.30 (5) relating to the disclosure of certain library records to law enforcement officers. This law requires a public library to disclose to a law enforcement officer, upon his or her request, all records produced by a surveillance device, if the officer is investigating criminal conduct alleged to have occurred at the public library.

### **Stanford Launches Copyright Renewal Database**

Stanford University has just launched a [Copyright Renewal Database](#) that makes searchable the copyright renewal records received for books by the U. S. Copyright Office between 1950 and 1992. This includes books published in the United States between 1923 and 1963. Reliable access to the copyright status for books published between 1923 and 1963 is important, as it is dependent on whether the original copyright was renewed. Changes in copyright law removed this requirement for works published after 1963. The database is a helpful tool as libraries develop plans to digitize older materials in the public domain and make them available broadly through the Internet.

### **ALA GODORT wants YOU to help Build the State Database Registry**

Readers of Daniel Cornwall’s blog [Free Government Information](#) (FGI) may recall his [June 30, 2007 entry](#) announcing ALA-GODORT’s intention to build a comprehensive 50-state database registry of government agencies. Thanks to the talents of many in the government documents community, this ambitious [project](#) has gotten off to a great start with many volunteering their skills to ensure the success of this endeavor. To view some of the highlights, visit the [Unofficial State Database Blog](#) (also hosted by Cornwall). A list of [participants](#) by state is available. If you are interested in [helping](#), please visit the [wiki](#) to contribute information about the databases from your state.

### **CREW Launches Collaborative Online Government Document Database**

On November 8th, [Citizens for Responsibility and Ethics in Washington](#) (CREW), in conjunction with a coalition of government watchdog groups, launched a new online

government document database, [GovernmentDocs.org](http://GovernmentDocs.org). The site allows users to browse, search, and review hundreds of thousands of pages acquired through the Freedom of Information Act (FOIA) and other public disclosure, or “sunshine,” laws.

Joining CREW as partners in this project are the Project on Government Oversight, Public Citizen, Electronic Frontier Foundation and the Sunlight Foundation.

### **Historical Society of the D.C. Circuit Presents Program on FOIA and National Security**

On November 29, the Historical Society of the D.C. Circuit presented a [program](#), *FOIA, National Security and the D.C. Circuit: A Safeguard or a Sham?*, on the role of the Courts of the District of Columbia Circuit in developing the law respecting the Freedom of Information Act and national security. Particular attention was given to the origins and history of Exemption 1, [5 U.S.C. § 552\(b\)\(1\)](#), pertaining to national defense and foreign policy; problems such as delay and overclassification; how the line should be drawn between the public interest in disclosure and the needs of national security; what the drafters envisioned and whether those objectives are feasible in today's circumstances; and relevant judicial interpretations. A webcast of the event will be available on the Historical Society's [website](#).

Judge Royce C. Lamberth, former Presiding Judge of the U.S. Foreign Intelligence Surveillance Court and currently U.S. District Judge for the District of Columbia, participated in the discussion along with panelists Stewart A. Baker of the Department of Homeland Security; Thomas S. Blanton, Director of the National Security Archive; and James T. O'Reilly, Professor of Law, University of Cincinnati College of Law. Judge Lamberth will participate in a program during the 2008 AALL Annual Meeting entitled “[Explore the Secret Workings of the FISA Court](#)”.

*Thanks to Stephanie Hess and Camilla Tubbs for their contributions*

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