



Public Works for a Better Government

July 1, 2016

Paulette Brown
Locke Lord LLP
44 Whippany Rd, Ste 208
Morristown, NJ 07960-4558

Dear President Brown:

I am writing to you concerning Resolution 112, which will be considered by the ABA House of Delegates at the Annual Meeting in August. Resolution 112 concerns public safety standards that are incorporated into the Code of Federal Regulations (CFR). As currently drafted, the resolution plays havoc with the rule of law by attempting to put limits on how and when citizens may read and speak these laws to inform their fellow citizens. There are efforts underway to lobby you to make Resolution 112 even more restrictive.

You will find enclosed two documents:

1. An *Appeal to the House of Delegates*, a report which I wrote. This report details how the resolution as currently framed requires mandatory registration and acceptance of terms of use before a citizen would be allowed to read public safety laws. The resolution would subject those laws to Digital Rights Management and other technical restrictions which prevent citizens from printing, saving, searching, or copying the law without paying a fee and applying for a license. My report also details procedural irregularities in the drafting of the current resolution which I do not believe meet our standards of due process in the American Bar Association.
2. A **call to action** by the American National Standards Institute (ANSI) asking its member organizations to call their outside law firms and tell them to lobby you to make the resolution even more restrictive. ANSI maintains that material incorporated into law under the careful and deliberate provisions of 1 CFR Part 51 are indeed part and parcel of the Code of Federal Regulations, yet they would place those laws under copyright protection by private parties. ANSI demands an exclusive right for private parties to determine who may read and speak these public safety laws.

What is ironic about ANSI's call to arms is that the ANSI delegation was the dominant force in drafting the resolution that is currently before the House. ANSI's general counsel, the former chairman of its Board of Directors, and several others directly involved in the sale of standards were very active players in the task force deliberations. What is equally ironic is that no technical experts in legal publishing, no law librarians, and no government regulators who use these standards were allowed to participate in the task force. I asked

three sections for permission to participate in the task force, as did many others with deep experience in this issue. The long-time co-chairs of the ABA Technical Standardization Committee resigned in protest because they were similarly rebuffed.

The public safety laws in question are crucial in our modern technical society. An example is the EPA-mandated specification for testing for lead in the water in Flint, Michigan and the 5,300 other communities facing toxic water systems. Public safety standards include blowout prevention for oil wells in the Gulf of Mexico and the safe transmission of natural gas to prevent massive explosions like the one in San Bruno, California. Other subjects covered include the transportation of hazardous materials, worker safety on the factory floor, the safety of playgrounds, the safety of toys, and the safety of infant products such as car seats, carriages, and cribs. These materials are of great interest to a broad swath of society. The fact that they have the force of law makes wide promulgation a moral imperative. Public safety laws should be widely disseminated, not locked behind a cash register.

The ANSI position is that without careful controls over who may post these segments of the CFR, they would lose needed revenue. But, that claim is nonsense. Only a small portion of standards developed are deemed essential to the public safety and incorporated into law, and in most cases those standards were developed precisely for that purpose. Standards are developed by volunteers, with huge participation from federal, state, and local government experts. Standards bodies have numerous revenue streams, such as training, certification, and handbooks. Standards bodies use the imprimatur of the American people when “their” standards are incorporated by regulators into law as a powerful marketing tool.

The American Bar Association has had a long-standing commitment to the rule of law. It is one of our signature issues. The rule of law requires promulgation of the law or it has no meaning. An informed citizenry is the bedrock of our democracy. There can be no equal protection under the law if the text of the law is subject to a tax before one can read it and a license before one can speak it.

I would be pleased to discuss this matter with you before the meeting, or to meet with you or other ABA members in San Francisco. I would hope that we table this resolution and form a real task force, one that carefully and deliberately examines how we can make all edicts of government available to the legal profession and the American people. If the House of Delegates does consider the resolution in San Francisco, I would be obliged if the House would grant me the privilege of allowing me to briefly state my concerns on the floor.

Sincerely yours,



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Carl Malamud
President and Founder
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Public Works for a Better Government

July 1, 2016

Linda A. Klein
Baker Donelson
3414 Peachtree Rd NE, Ste 1600
Atlanta, GA 30326-1164

Dear President-Elect Klein:

I am writing to you concerning Resolution 112, which will be considered by the ABA House of Delegates at the Annual Meeting in August. Resolution 112 concerns public safety standards that are incorporated into the Code of Federal Regulations (CFR). As currently drafted, the resolution plays havoc with the rule of law by attempting to put limits on how and when citizens may read and speak these laws to inform their fellow citizens. There are efforts underway to lobby you to make Resolution 112 even more restrictive.

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July 1, 2016

Patricia Lee Refo
Snell & Wilmer LLP
400 E Van Buren St
Phoenix, AZ 85004-0908

Dear Chairperson Refo:

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