

# OPEN AND TIMELY PUBLIC ACCESS TO FINAL, CITABLE U.S. CASE LAW: A PROGRESS REPORT

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By the early 1990s, numerous advantages of disseminating legal information electronically instead of in print had become widely recognized. These included the potential for faster and wider access and increased competition. To maximize those gains, the American Association of Law Libraries and American Bar Association recommended that the nation's court systems adopt public (non-proprietary) systems of case citation that could function readily regardless of medium. A few had already headed down that path. In the years since, others have followed.

This article traces the progress of that movement and describes a less conspicuous alternative more recently implemented in a number of U.S. jurisdictions. It surveys the current status of these reforms and examines: their recognition and use beyond the implementing jurisdiction, the gains realized by adopting jurisdictions, and the limited impact of the Uniform Electronic Legal Materials Act on these developments. It concludes with an exploration of the reasons why the shift to neutral case law citation has proven so halting and uneven.

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## I. ONLINE ACCESS TO JUDICIAL OPINIONS IN FINAL FORM, BEARING COURT-APPLIED “NEUTRAL CITATION” DESIGNATIONS: AN AMBITION BORN WHEN THE INTERNET WAS YOUNG

For three decades, appellate courts in a slowly growing number of U.S. jurisdictions have taken advantage of digital technology to distribute their decisions on the Internet in final and complete form, accompanied by all the identification markers required by their rules in later court filings that cite them. For many, this ended dependence on a single, dominant commercial firm for official case law publication—a firm that had, with remarkable success, fought off emerging digital competition through the assertion of copyright in the printed case report volumes it published.<sup>1</sup> Court-applied case citations promised to be “non-proprietary,” and therefore “vendor-neutral,” as well as “medium-neutral” (i.e., not book-dependent).<sup>2</sup> Official, citable online publication was also seen as eliminating the, sometimes lengthy, delays produced by rules and norms that called for the identification of judicial opinions and their key passages through use of volume and page numbers drawn from books that were not released until they contained several months, if not full terms, of judicial output.

The Supreme Court of Louisiana led the way. In 1994, under a rule adopted the prior year, it began attaching neutral citations to its decisions and requiring their use.<sup>3</sup> That same year Wisconsin’s Supreme Court held a public hearing on a similar plan, urged upon it by

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1. The assertion rested on the volumes’ organization—reflected in volume and page numbers—in addition to the company’s editorial additions. *See* West Publ’g Co. v. Mead Data Cent., Inc., 616 F. Supp. 1571, 1576–77 (D. Minn. 1985), *aff’d*, 799 F.2d 1219 (8th Cir. 1986).

2. *See* AM. ASS’N. OF L. LIBRS., *AALL Task Force on Citation Formats Report* March 1, 1995, 87 LAW. LIBR. J. 582 (1995).

3. LA. SUP. CT. R. PART G § 8.

the state bar.<sup>4</sup> It backed away from implementation in the face of fierce opposition organized by the country's dominant case law publisher, the West Publishing Company.<sup>5</sup> Lobbying of similar intensity by West also occurred in Louisiana. There, while it failed to derail or delay neutral citation, it affected its form.<sup>6</sup> In 1995, the American Association of Law Libraries endorsed a report recommending non-proprietary case citation and providing detailed guidance on implementation.<sup>7</sup> The American Bar Association added its support, with the endorsement of the U.S. Justice Department.<sup>8</sup> Again, the West Publishing Company strenuously opposed the reform.<sup>9</sup> In 1999, drawing on the experience of the early adopters, the chief justices of the states' highest courts endorsed a committee report that addressed the issues involved in making the switch.<sup>10</sup> While declaring that whether any jurisdiction should "adopt such a system" lay outside its scope, the report's overall message was encouraging.<sup>11</sup>

In the years that followed, adoptions continued, but at a halting pace, across state and federal courts. Moreover, where and when the reform occurred, it took

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4. See Peter W. Martin, *Neutral Citation, Court Web Sites, and Access to Authoritative Case Law*, 99 LAW LIBR. J. 329, ¶¶ 1–6 (2007) [hereinafter Martin, *Neutral Citations*].

5. See *id.* Six years later Wisconsin did adopt neutral citation, while still requiring parallel citation to "official" print volumes. See Wis. Sup. Ct. R. 80.01–80.02.

6. Telephone Interview with Carol D. Billings, Former Libr. & Former President, La. S. Ct. & Am. Ass'n of L. Librs. (June 15, 2023).

7. See Carol Billings & Kathy Carlson, *Universal Citation and the American Association of Law Libraries: AALL and the Dawn of Citation Reform*, 103 L. LIBR. J. 339, ¶¶ 31–32 (2011).

8. *Id.* ¶¶ 33–34.

9. See generally Donna M. Bergsgaard & Andrew R. Desmond, *Keep Government out of the Citation Business*, 79 JUDICATURE 61 (1995); Donna M. Bergsgaard & William H. Lindberg, *Case Citation Formats in the United States: Is a Radical New Approach Needed?*, 23 INT'L. J. LEGAL INFO. 53 (1995) (adaptation of a memorandum distributed to members of the American Association of Law Libraries Task Force on Citation Formats).

10. See generally CONF. CHIEF JUSTS., REPORT OF THE COMMITTEE ON OPINIONS CITATION (January 1999), [https://ccj.nsc.org/\\_data/assets/pdf\\_file/0018/23454/reportofthecommitteeonopinionscitations.pdf](https://ccj.nsc.org/_data/assets/pdf_file/0018/23454/reportofthecommitteeonopinionscitations.pdf).

11. *Id.* at 2.

a diversity of configurations.<sup>12</sup> As a result, hopes for a universal or uniform non-print-based, non-proprietary system of U.S. case citation slowly collapsed. Comparable citation reform movements in Australia,<sup>13</sup> Canada,<sup>14</sup> and Great Britain<sup>15</sup> proved far more successful.

Even where implemented, systems of neutral citation were often compromised. Some state courts that released their opinions in digital format, accompanied by non-print identifiers and paragraph numbers, continued to stipulate that the versions subsequently published in print were to be considered the final and official ones, coupled with a warning that they might contain revisions.<sup>16</sup> Many required case references in court filings to contain print-based, volume and page number citations in addition to the court-attached “neutral” identifiers.<sup>17</sup> Early on, this may have been warranted as a transition measure. During the mid-1990s, significant numbers of lawyers and judges still conducted at least portions of their final case law research and analysis in the pages of law report volumes pulled from a library shelf.<sup>18</sup>

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12. *See generally* Martin, *Neutral Citation*, *supra* note 4.

13. *See, e.g.*, FED. CT. OF AUSTL., JUDGMENTS FAQS, <https://www.fedcourt.gov.au/digital-law-library/judgments/judgments-faq> (last visited Apr. 8, 2025).

14. *See, e.g.*, CANADIAN CITATION COMM., A NEUTRAL CITATION STANDARD FOR CASE LAW: IMPLEMENTATION OF THE NEUTRAL CITATION STANDARD FOR CASE LAW ACROSS CANADA, [https://www.lexum.com/ccc-ccr/neutr/index\\_en.html](https://www.lexum.com/ccc-ccr/neutr/index_en.html) (last visited Feb. 15, 2025).

15. *See, e.g.*, INC. COUNCIL OF L. REPORTING, NEUTRAL CITATION, <https://www.iclr.co.uk/knowledge/case-law/neutral-citations/> (last visited Feb. 15, 2025).

16. *See, e.g.*, ME. JUD. BRANCH, PUBLISHED OPINIONS, <https://www.courts.maine.gov/courts/sjc/opinions.html> (last visited Feb. 16, 2025).

17. *See, e.g.*, S.D. CODIFIED LAWS § 15-26A-69.1 (2010).

18. In 1965 West Publishing Company presented the Wisconsin Supreme Court with telephone survey results indicating that a strong majority of that state’s lawyers still preferred to work from books. *See* Martin, *Neutral Citation*, *supra* note 4, at ¶ 4.

## II. VIRTUAL LAW REPORT VOLUMES: A LESS DISRUPTIVE ALTERNATIVE

In recent years a less conspicuous model of reform has emerged—the substitution of virtual law report volumes for physical ones. As lawyers and judges turned to electronic research services, the demand for printed case reports plummeted. That posed a major fiscal challenge for those jurisdictions that still retained public control over case law publication.<sup>19</sup> Troubling delay often followed. In 2017, Nebraska shifted from seriously tardy print publication to timely electronic release of the *Nebraska Reports* and *Nebraska Appellate Reports*.<sup>20</sup> The state’s appellate decisions continue to possess volume and page numbers and are to be cited by them, but the volumes and pages are no longer physical. Since 2017, when a Nebraska decision is released online, it already carries the volume numbers and pagination required for any future citation. Steps taken since 2021 by the Reporter of Decisions of the U.S. Supreme Court point in the same direction.<sup>21</sup>

## III. WHERE MATTERS STAND, THIRTY YEARS ON

Those recent changes in reporting the decisions of the nation’s highest court<sup>22</sup> prompted this survey of the uneven success of the thirty-year effort to persuade U.S. courts to publish their decisions electronically, in a non-proprietary, final, citable form.

Overall, the results are disappointing. That is particularly true of the federal courts. With but one

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19. See Peter W. Martin, *Abandoning Law Reports for Official Digital Case Law*, 12 J. APP. PRAC. & PROCESS 25, 44–45 (2011).

20. See NEB. JUD. BRANCH, NEBRASKA APPELLATE COURTS ONLINE LIBRARY, <https://www.nebraska.gov/apps-courts-epub/> (last visited Feb. 16, 2025); Peter W. Martin, *Better Never than So Very Late?*, CITING & ACCESSING U.S. L. CITE BLOG (Sept. 22, 2016, 6:48 PM), <https://citeblog.access-to-law.com/?p=652>.

21. See generally Peter W. Martin, *A New Reporter Confronts the Supreme Court’s Unpublished Decisions*, 24 J. APP. PRAC. & PROCESS 337 (2024).

22. See generally *id.*

lonely exception,<sup>23</sup> neither the U.S. Courts of Appeals nor the U.S. District Courts have budged from their historic reliance on proprietary print reports—reports currently produced and controlled by subsidiaries of the Canadian-based multinational enterprise, Thomson Reuters. And for decisions not to be published in print, they depend on and cite to the same company’s online service, Westlaw.<sup>24</sup> Turning to the states, more than half of their high courts—at least twenty-seven—still specify that the versions of their opinions appearing in proprietary print publications, the multi-state regional reporters also published by Thomson Reuters, are the official ones and require citation using volume and page numbers drawn from that series, once attached.<sup>25</sup> For most of them, Thomson Reuters produces and sells volumes devoted solely to decisions of the one state. For a majority of that group, fourteen states, the decisions in those single-state volumes are simply extracted from the company’s National Reporter System and carry the volume numbers and pagination of the parent, multi-state series.<sup>26</sup> Beyond providing a framework for citation—and, no doubt for some still, a reassuring component of law office décor—the books themselves see little use.<sup>27</sup> Essentially, the volumes comprise a print archive of material that most lawyers and judges access electronically. Yet, because they constitute the official

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23. See Peter W. Martin, *One U.S. District Court’s Lonely Gesture Toward Open Access and Medium-Neutral Citation*, CITING & ACCESSING U.S. L.: CITE BLOG (Jan. 24, 2017, 6:28 PM), <https://citeblog.access-to-law.com/?p=797>. One other U.S. District Court in a neutral citation state—South Dakota—employed the system for a short time, using the court designation DSD and numbering the paragraphs of its decisions. See, e.g., Whalen v. U.S., 29 F. Supp. 2d 1093 (1998); Christian Child.’s Fund, Inc. v. Crow Creek Sioux Tribal Ct., 103 F. Supp. 2d 1161, 1164 (2000).

24. See, e.g., THOMPSON REUTERS, <https://www.thomsonreuters.com/en> (last visited Feb. 16, 2025).

25. See Peter W. Martin, *Introduction to Basic Legal Citation, §7-500: Table of State-Specific Citation Norms and Practices*, CORNELL UNIV. L. SCH.: LEGAL INFO. INST. (2020), <https://www.law.cornell.edu/citation/7-500>.

26. See *Case Law*, THOMPSON REUTERS, <https://store.legal.thomsonreuters.com/law-products/Publication-Types/Case-Law/c/20193> (last visited Feb. 16, 2025).

27. See *id.*

source of final decision texts and contain essential citation parameters for the precedential decisions of a majority of state judicial systems, as well as the entire federal judiciary below the Supreme Court, firms that compete with Thomson Reuters in the online legal information market must license data from that company—such is the case with LEXIS—or buy its books and incur the non-trivial additional cost of extracting data from them.

In addition to Nebraska, a few other states have begun publishing case reports online that are compiled into virtual volumes. These include: Connecticut,<sup>28</sup> Massachusetts,<sup>29</sup> North Carolina,<sup>30</sup> and Oregon.<sup>31</sup> A recent New Hampshire statute authorizes electronic publication of that state's reports,<sup>32</sup> and its supreme court has begun attaching neutral citations to opinions as a first step.<sup>33</sup>

North Carolina presents a curious case. In late 2019, the North Carolina Supreme Court adopted a non-proprietary, non-print-based citation scheme, effective at

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28. Official opinions published in the Connecticut Law Journal have been available online since June 13, 2017. CONN. JUD. BRANCH, OPINIONS (AROs), <https://www.jud.ct.gov/opinions.htm> (last visited Feb. 16, 2025). Beginning with volume 320 (2023) all volumes of the Connecticut Reports are electronic. CONN. JUD. BRANCH, CONNECTICUT REPORTS, <https://www.jud.ct.gov/lawjournal/CR/CRArchive.aspx> (last visited Feb. 16, 2025).

29. COMMONWEALTH OF MASS., MASSACHUSETTS REPORTS: VOLUMES 1–477, <https://www.mass.gov/guides/massachusetts-reports-volumes-1-477> (last visited Feb. 16, 2025).

30. The court site offers PDF versions of the final volumes of the North Carolina Reports and the North Carolina Court of Appeals Reports. N.C. JUD. BRANCH, APPELLATE COURT VOLUMES, <https://www.nccourts.gov/documents/pdf-volumes?> (last visited Feb. 16, 2025). The advance sheets are also available in that form. N.C. JUD. BRANCH, APPELLATE COURT ADVANCE SHEETS, <https://www.nccourts.gov/documents/advance-sheets> (last visited Feb. 16, 2025).

31. OR. L. LIBR., *SOLL Digital Collection*, <https://cdm17027.contentdm.oclc.org/digital/search/collection/p17027coll3/order/dated/ad/desc> (last visited Feb. 16, 2025).

32. N.H. REV. STAT. ANN. § 505:8 (2022).

33. N.H. SUP. CT., NOTICE—ADOPTION OF NEUTRAL CITATION FORM (Jan. 18, 2024), <https://www.courts.nh.gov/sites/g/files/ehbemt471/files/inline-documents/sonh/1-18-2024-notice-concerning-adoption-of-neutral-citation.pdf>.

the beginning of 2021.<sup>34</sup> The system was used, although not for long. *Cherry Community Organization v. Sellars*,<sup>35</sup> decided in May 2022, was designated 2022-NCSC-62, and its paragraphs were numbered. Later that year, a partisan judicial election—the hot issue being gerrymandered districts—altered the political balance on the court.<sup>36</sup> In January 2023, the earlier order was rescinded, and the court reverted to volume and page citation.<sup>37</sup> Allegedly, paragraph numbering, practiced by the North Dakota Supreme Court for nearly three decades and by over a dozen other state courts for shorter periods, proved too burdensome for North Carolina's justices and court staff.<sup>38</sup>

#### IV. LIMITED USE OF COURT-APPLIED NEUTRAL CITATIONS OUTSIDE THE ADOPTING JURISDICTION

Decisions from jurisdictions that have implemented a court-applied neutral citation scheme or publish electronic law report volumes carry all their essential citation parameters from the time of release. When the jurisdiction has included paragraph numbering, those parameters permit greater precision in pinpoint citation than the larger and arbitrarily delimited units designated by page numbers, especially those drawn from the densely packed volumes of the National

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34. See Kip D. Nelson, *Supreme Court Adopts Universal Citation Format*, FOX-ROTHSCHILD: N.C. APP. PRAC. BLOG (Dec. 5, 2019), <https://ncapb.foxrothschild.com/2019/12/05/supreme-court-adopts-universal-citation-format/#more-5937>.

35. 871 S.E.2d 706 (2022).

36. See Eliza Benbow & Ethan E. Horton, *Two Republicans win seats on the NC Supreme Court, flipping majority*, THE DAILY TAR HEEL (Nov. 9, 2022), <https://www.dailytarheel.com/article/2022/11/city-nc-supreme-court-2022-election-results>.

37. See Matthew Nis Leerberg, *Universal Citation Rescinded*, FOX-ROTHSCHILD: N.C. APP. PRAC. BLOG (Jan. 13, 2023), <https://ncapb.foxrothschild.com/2023/01/13/universal-citation-rescinded/>.

38. See N.C. JUD. BRANCH, SUPREME COURT OF NORTH CAROLINA WITHDRAWS ORDER IMPLEMENTING UNIVERSAL CITATION SYSTEM (Jan. 13, 2023), <https://www.nccourts.gov/news/tag/press-release/supreme-court-of-north-carolina-withdraws-order-implementing-universal-citation-system>.

Reporter System. The “Uniform System of Citation” codified in *The Bluebook*—a reference work that, in one edition or another, shaped the citation practices of most U.S. lawyers and judges during their student days—calls for use of “public domain” case citations when citing decisions that carry them.<sup>39</sup> It specifically directs use of an opinion’s paragraph numbers for “pinpoint citation[s],” concluding, however, with a call to provide “a parallel citation to the appropriate regional reporter [published by Thomson Reuters, if available].”<sup>40</sup>

The major online legal research services relied upon by lawyers and judges preserve court-applied citation information, including paragraph numbering and virtual report pagination. North Dakota, New Mexico, and Illinois decisions retrieved from Westlaw, Lexis, Fastcase, Bloomberg Law, or Google Scholar can be cited in accordance with their home jurisdiction’s required format, as can decisions from Nebraska and North Carolina. With those citations alone, they can also be retrieved from the same services. Parallel citation to a Thomson Reuters regional reporter is unnecessary; its use in a pinpoint reference, less useful.

Nonetheless, the market dominance of the Thomson Reuters publications, print and electronic, and enduring professional norms, have limited the use of court-applied neutral citations beyond the adopting jurisdiction. When California, Georgia, or New York decisions, still published in official print volumes, are cited in another state or a federal court proceeding, the reference often begins with the volume and page numbers of the official report, using official report pagination for any pinpoint cite, before providing a parallel regional reporter citation. This has been the consistent citation practice of the U.S. Supreme Court.<sup>41</sup> Yet citations of a North

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39. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION R. 10.3.3 (Columbia L. Rev. Ass’n et al. eds., 21st ed. 2020).

40. *Id.*

41. See, e.g., *Wilson v. Sellers*, 584 U.S. 122, 140 (2018) (Gorsuch, J., dissenting) (citing *Redmon v. Johnson*, 302 Ga. 763 (2018)); *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 644–45 (2022) (citing *Iskanian v. CLS*

Dakota, New Mexico, or Illinois appellate decision by a federal court or the courts of another state still accustomed to print-based case citation will commonly rely on the Thomson Reuters volume and page numbers for pinpoint citation, instead of the official medium-neutral designation and more precise paragraph numbers.<sup>42</sup> This holds true even with the U.S. Courts of Appeals for circuits containing neutral citation jurisdictions.<sup>43</sup> U.S. District Courts in neutral citation states are generally more respectful.<sup>44</sup>

Familiarity appears to be a major factor. Appellate courts in states that have adopted systems of neutral citation for their own decisions are more likely than those that have not to employ those of other such states.<sup>45</sup> The Vermont Rules of Appellate Procedure specifically call for it.<sup>46</sup> The switch from print law reports to virtual ones, being largely invisible to the online researcher, is less likely to encounter resistance beyond the adopting jurisdiction.

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Transp. L.A., LLC, 59 Cal.4th 348 (2014); *see generally* THE SUPREME COURT'S STYLE GUIDE § 1.4.1 (Jack Metzger ed., Inter Alias Press 2016).

42. *See, e.g.*, Birchfield v. North Dakota, 579 U.S. 438, 451–52 (2016) (citing State v. Birchfield, 2015 N.D. 6); Martinez v. Illinois, 572 U.S. 833, 838 (2014) (citing People v. Martinez, 2013 IL 113475); Harrod v. Country Oaks Partners, LLC, 15 Cal. 5th 939, 964 n.15 (2024) (citing Parker v. Symphony of Evanston Healthcare, LLC, 2023 IL App (1st) 220391).

43. *See, e.g.*, Cothron v. White Castle Sys., Inc., 20 F.4th 1156, 1162 (7th Cir. 2021) (citing Rosenbach v. Six Flags Ent. Corp., 2019 IL 123186); Ortega v. Santistevan, No. 22-2029, 2024 U.S. App. LEXIS 3793 at \*1 (10th Cir. Feb. 16, 2024) (citing State v. Ortega, 2014-NMSC-017).

44. *See, e.g.*, N. Star Mut. Ins. Co. v. Rodin, No. 3:23-cv-39, 2024 U.S. Dist. LEXIS 18001, at \*7 (D.N.D. Jan. 3, 2024) (citing Grinnell Mut. Reinsurance Co. v. Thies, 2008 N.D. 164); Hurd v. Flywheel Energy Prod., LLC, No. 4:21-cv-01207-LPR, 2024 U.S. Dist. LEXIS 193504, at \*17 n. 55 (E.D. Ark. Oct. 24, 2024) (citing Flywheel, 2023 Ark. App. 483).

45. *Compare* Progressive Direct Ins. Co. v. Jungkans, 2012 IL App (2d) 110939, ¶25, 972 N.E.2d 807, 814 (Ill. App. Ct. 2012) (citing Fennema, 2005 NMSC 010; Hasper v. Center Mutual Insurance Co., 2006 ND 220, ¶ 18; State Farm Mutual Automobile Insurance Co. v. Green, 2003 UT 48, ¶¶ 31-34), *with* Prince George's Cty. v. Local Gov't Ins. Tr., 388 Md. 162, 183 n.9, 879 A.2d 81, 94 (2005) (citing State Farm Mut. Auto. Ins. Co. v. Green, 2003 UT 48).

46. VT. R. APP. P. 28.2(c).

## V. WHAT THE ADOPTING JURISDICTIONS HAVE GAINED

The vision of nationwide adoption of open digital access to state and federal appellate decisions, accompanied by the attachment of citation markers in a consistent format, has clearly not been realized. That does not mean that jurisdictions that have implemented such measures have not realized benefits. Several have leveraged them to build impressive public-access resources.

In over twenty states, case law released from a public site carries all the identification information one will need to cite a specific decision or a key passage within it to a court in the same jurisdiction.<sup>47</sup> Commercial systems can and do add their proprietary citations to that case law, but to lawyers, judges, and others within the jurisdiction those additions are superfluous. Open legal research platforms, of which there are a growing number, can load those decisions “as is,” providing search capabilities not furnished by the court site. On November 21, 2024, the Illinois Supreme Court filed a significant defamation decision, *Glorioso v. Sun-Times Media Holdings, LLC*, 2024 IL 130137. Swiftly, the opinion, together with its official citation, became part of several open and searchable case law collections, including Google Scholar,<sup>48</sup> Justia,<sup>49</sup> and Court Listener.<sup>50</sup> Ohio, which adopted a neutral citation system in 2002, has continued official print publication. But while the latter yields volume and page numbers for all published decisions, the Ohio Supreme Court citation

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47. This total combines the states that have adopted systems of neutral citation and those now issuing virtual law reports. FREE L. PROJECT, THE CASE FOR NEUTRAL CITATIONS IN THE LAW, <https://free.law/advocacy/neutral-citations> (last visited May 21, 2025).

48. GOOGLE SCHOLAR, <https://scholar.google.com> (last visited Feb. 17, 2025).

49. JUSTIA, ILLINOIS CASE LAW, <https://law.justia.com/cases/illinois/> (last visited Feb. 17, 2025).

50. COURT LISTENER, <https://www.courtlistener.com/> (last visited Feb. 17, 2025).

guide<sup>51</sup> and the reporter's consistent practice is to employ only the paragraph numbers embedded in a decision for pinpoint citation.<sup>52</sup> Those paragraph numbers and a decision's volume and page location in the official reports are accessible at a public website, maintained by the court's reporter of decisions.<sup>53</sup>

For any jurisdiction considering the provision of direct public access to its case law, there are several exemplary models. The Illinois appellate courts, which have employed medium-neutral citation since 2011 and authenticated online decision texts since 2016, furnish one.<sup>54</sup> Neither court rule nor the Illinois Supreme Court's own citation practice suggests the need for a parallel citation to the proprietary volumes and commercial online systems in which those decisions also appear.<sup>55</sup> As a result, other online legal information services, whether employing conventional search technology or the latest in AI, can offer Illinois decisions, in their full, final, citable form, reaching back to the state's earliest days. Citable public domain versions of earlier Illinois decisions, as well as those of the other forty-nine states, are available in digital format from Harvard's Caselaw Access Project.<sup>56</sup>

Two states that adopted systems of medium neutral citation, New Mexico and Oklahoma, have applied them to over a century of past decisions.<sup>57</sup> They and a few other

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51. See OHIO S. CT., WRITING MANUAL: A GUIDE TO CITATIONS, STYLE, AND JUDICIAL OPINION WRITING 13–14 (2d ed. July 1, 2013), <https://www.supreme court.ohio.gov/rod/manual.pdf>.

52. See, e.g., State v. Hacker, 173 Ohio St.3d 219, 2023–Ohio–2535 (2023), <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2023/2023-Ohio-2535.pdf>.

53. See OHIO S. CT. & OHIO JUD. SYS.: OFF. REPORTER, <https://www.supreme court.ohio.gov/opinions-cases/opinions/office-of-the-reporter/> (last visited Feb. 17, 2025).

54. See ILL. CTS., OPINIONS AND RULE 23 ORDERS, <https://www.illinoiscourts.gov/top-level-opinions> (last visited March 20, 2025).

55. See ILL. SUP. CT. R. 6.

56. *Caselaw Access Project*, HARV. L. SCH., <https://case.law> (last visited Feb. 17, 2025).

57. Those for the Oklahoma Supreme Court begin in 1890. See OKLA. STATE CTS. NETWORK, OKLAHOMA SUPREME COURT CASES, <https://www.oscn.net/applications/oscn/Index.asp?ftdb=STOKCSSC> (last visited Feb. 17, 2025).

states now provide an open and comprehensive case law database for direct public access.<sup>58</sup> These include several states that have retained control over the production of official print case law volumes. Colorado,<sup>59</sup> Nebraska,<sup>60</sup> and North Carolina<sup>61</sup> are examples.

The two states with the most lucrative legal information markets, California and New York, continue to secure substantial technical and editorial services under commercial publication contracts that include the provision of public access to a full database of “official” case law,<sup>62</sup> although on terms that effectively block data-harvesting by competing legal information services.<sup>63</sup>

## VI. AUTHENTICATION: THE MINIMAL OVERLAP AND IMPACT OF THE UNIFORM ELECTRONIC LEGAL MATERIALS ACT (UELMA)<sup>64</sup>

In 2011, with the strong support of the American Association of Law Libraries, the Uniform Law Commission approved a Uniform Electronic Legal

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New Mexico’s neutral case citations begin in 1852. *See* N.M. COMPILATION COMM’N, SUPREME COURT OF NEW MEXICO, [https://nmonesource.com/nmos/nmsc/en/nav\\_date.do](https://nmonesource.com/nmos/nmsc/en/nav_date.do) (last visited Feb. 17, 2025).

58. *See* N.M. COMPILATION COMM’N, SUPREME COURT OF NEW MEXICO, [https://nmonesource.com/nmos/nmsc/en/nav\\_date.do](https://nmonesource.com/nmos/nmsc/en/nav_date.do) (last visited Feb. 17, 2025); OKLA. STATE CTS. NETWORK, OKLAHOMA SUPREME COURT CASES, [www.oscn.net/v4/](http://www.oscn.net/v4/) (last visited Feb. 17, 2025).

59. *See* COLO. JUD. BRANCH, COLORADO CASE LAW SEARCH, <https://research.coloradojudicial.gov/> (last visited Feb. 17, 2025).

60. *See* NEB. JUD. BRANCH, NEBRASKA APPELLATE COURTS ONLINE LIBRARY, <https://www.nebraska.gov/apps-courts-epub/public/> (last visited Feb. 17, 2025).

61. *See* N.C. JUD. BRANCH, APPELLATE COURT VOLUMES, <https://www.nccourts.gov/documents/pdf-volumes> (list visited Feb. 17, 2025).

62. *See* Peter W. Martin, “*Official Report*” Contracts between State Courts and Law Report Publishers, ACCESS-TO-LAW (Feb. 9, 2021), <https://access-to-law.com/elaw/contracts/>.

63. *See* THOMSON REUTERS: WESTLAW, NEW YORK OFFICIAL REPORTS SERVICE, <https://govt.westlaw.com/nyofficial/Index> (last visited Feb. 17, 2025); LEXISNEXIS, CALIFORNIA OFFICIAL REPORTS, <https://www.lexisnexis.com/clients/CACourts/> (last visited Feb. 17, 2025).

64. *See generally* AALL, UELMA ENACTMENTS, <https://www.aallnet.org/advocacy/government-relations/state-issues/uelma-resources/uelma-enactments/> (last visited Feb. 17, 2025).

Materials Act.<sup>65</sup> Its provisions merged the interests of the advocates for official electronic dissemination of primary legal materials and those who were wary about or even opposed to such intangible publication. Three features were critical to its approval. First, it was highly configurable. The uniform act did not specify what categories of legal materials were covered and, importantly, whether it applied to judicial opinions. Those details were left to each adopting state.<sup>66</sup> Second, the act applied only to legal materials that the responsible public body, as designated by the state, published exclusively in electronic format.<sup>67</sup> Lastly, it explicitly avoided disturbing commercial arrangements for official publication. Electronic publication by third parties fell beyond its scope.<sup>68</sup> As of the end of 2024, of the twenty-two states that have adopted the act, only eight (Connecticut, Hawaii, Idaho, Illinois, Indiana, Michigan, Maryland, and Pennsylvania) have included judicial opinions within its scope.<sup>69</sup> Of those, one, Illinois, now publishes judicial opinions exclusively in electronic format, subject to and in compliance with its terms.<sup>70</sup> Those terms, importantly, include mandates that the files be authenticated, preserved, and their future accessibility assured. In one other UELMA jurisdiction, Maryland, the statute appears to apply to appellate court decisions during the interval prior to their publication in print.<sup>71</sup> Finally, at least one state's judiciary, that of

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65. NAT'L CONF. COMM'R'S ON UNIF. STATE L., UNIFORM ELECTRONIC LEGAL MATERIAL ACT (2011), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=22fde69f-4235-ed35-2823-76d632cf112d&forceDialog=0>.

66. NAT'L CONF. COMM'R'S ON UNIF. STATE L., UNIFORM ELECTRONIC LEGAL MATERIALS ACT § 2(2) (2011), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=22fde69f-4235-ed35-2823-76d632cf112d&forceDialog=0>.

67. *Id.* § 2(3).

68. *Id.* § 2 cmt.

69. See AALL, *supra* note 64.

70. See AALL, ILLINOIS: ONLINE LEGAL INFORMATION (Mar. 29, 2022), <https://www.aallnet.org/wp-content/uploads/2022/08/OLIR-Illinois.pdf>.

71. See MD. CTS., MARYLAND APPELLATE COURT OPINIONS, <https://www.mdcourts.gov/opinions/opinions> (last visited Feb. 17, 2025).

Arkansas, complies with UELMA's authentication requirements without legislative direction.<sup>72</sup>

## VII. WHY HAS REFORM BEEN SO HALTING AND UNEVEN?

The sluggish and uncoordinated adjustment of U.S. case law citation to official digital dissemination has been the product of several mutually reinforcing factors. Uniformity of approach was an early casualty. It was not a jurisdiction's lawyers or librarians who were to be responsible for attaching the essential elements of neutral citation to decisions but its judges, reporters, clerks, or secretaries. By the time the American Association of Law Libraries and the American Bar Association had endorsed their respective (slightly different) methods of universal case citation, both of which employed a sequential release number, preceded by the year of a decision and an abbreviation indicating the jurisdiction and deciding court,<sup>73</sup> Louisiana had implemented one that substituted the case docket number.<sup>74</sup> Soon thereafter, Mississippi followed its neighbor's lead.<sup>75</sup> Years later when Illinois adopted neutral citation,<sup>76</sup> the difficulty of forcing decisions coming from the five separate districts of that state's intermediate appellate court into a single sequence led the Illinois Supreme Court to do the same.<sup>77</sup>

Responsible for publishing decisions from all levels of the state's judicial system, Ohio's Reporter of Decisions numbered them as they were processed by his

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72. See, e.g., *Heritage Props. Ltd. P'ship v. Walt & Lee Keenihan Found., Inc.*, 2019 Ark. 371, <https://opinions.arcourts.gov/ark/supremecourt/en/item/454358/index.do?q=2019+Ark.+371>.

73. See *supra* notes 7–8 and accompanying text.

74. See *supra* note 3 and accompanying text.

75. See MISS. R. APP. P. 28(f)(2).

76. See Chris Bonjean, *Illinois Supreme Court ends era of printed volumes with new public domain citation system*, ILL. STATE BAR ASS'N.: THE BAR NEWS (May 31, 2011), <https://www.isba.org/barnews/2011/05/31/illinois-supreme-court-announces-new-public-domain-citation-system-ending-era-of-printed-volumes/>.

77. See *id.*

office.<sup>78</sup> “2025–Ohio–718” is the “WebCite” for a decision of the Court of Appeals of Ohio, First Appellate District.<sup>79</sup> “2025–Ohio–719” designates several dispositions without opinion by the Ohio Supreme Court.<sup>80</sup> Unlike the recommended uniform schemes, the core of Ohio’s publicly applied citation carries no indication of the deciding court.

Paragraph numbering alarmed court staff who saw themselves as having to insert them into judges’ opinions, at a time when not all word processing software and word processing users were capable of accomplishing that task automatically.<sup>81</sup> That led Louisiana and Arkansas to opt for slip opinion page number instead and Washington to place the responsibility for paragraph numbering on the publisher of its print reports.<sup>82</sup> (The direct result of Washington’s approach is that the decisions available at the court website do not carry that critical information).<sup>83</sup>

The failure to achieve a common approach is, in all likelihood, one major factor limiting the use of court-attached, public domain citations outside their adopting jurisdiction. In competition with a uniform proprietary citation system, one deeply embedded in legal training, culture, software, and legal research systems used by the nation’s lawyers and judges and still needed to reference most print-era case law, the disparate systems of medium neutral citation have fared poorly. Urged upon

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78. See generally OHIO SUP. CT. R. FOR THE REPORTING OF OPS., <https://www.supremecourt.ohio.gov/docs/LegalResources/rules/reporting/Report.pdf>.

79. See *State v. Sexton*, 2025–Ohio–718.

80. See SUP. CT. OF OHIO, CASE ANNOUNCEMENTS (Mar. 5, 2025), <https://www.supremecourt.ohio.gov/rod/docs/pdf/0/2025/2025-Ohio-719.pdf>.

81. See generally HYPERLAW, INC., *Selected Comments/Documents Submitted to the Committee on Automation Judicial Conference. Set 2*, 80-115 (Mar. 25, 1997), <http://hyperlaw.com/jccite/jcmail.htm>.

82. See Wash. Sup. Ct. Order No. 25700-B-447 (Nov. 8, 2004), [https://www.courts.wa.gov/appellate\\_trial\\_courts/supreme/?fa=atc\\_supreme.raOrder](https://www.courts.wa.gov/appellate_trial_courts/supreme/?fa=atc_supreme.raOrder).

83. See WASH. CTS., SUPREME COURT AND COURT OF APPEALS OPINIONS, <https://www.courts.wa.gov/opinions/index.cfm?fa=opinions.recent> (last visited May 15, 2025).

courts by outsiders,<sup>84</sup> the implementation of non-print-based citation faced many potential points of resistance. The reform succeeded in jurisdictions where there was an internal champion on the court, among its staff, or both and saw its greatest gains during that brief period during which a flock of new legal information providers offered competition to the large online systems in the form of single jurisdiction law collections delivered on compact disc.<sup>85</sup>

In jurisdictions that had retained public responsibility for the production of their own official reports, the shift from print to virtual volumes posed fewer work flow challenges. But in the many that had already abdicated that role, deferring to the proprietary National Reporter System for official print publication, that alternative was effectively foreclosed.

Finally, to many within the judiciary, facilitating the dissemination of authoritative legal information, a public good, is likely to seem far less salient than the need to resolve an unending stream of controversies in light of all pertinent law. That law will generally encompass more than their own past decisions. Statutes and regulations must often be considered, and not infrequently, the appellate decisions of other courts, state and federal. The weight of this core responsibility tends to focus the attention of judges on the comprehensive legal information resources at their disposal, and away from the quality and cost of access to the case law resulting from their own court's publication practices. It also induces attachment to the country's dominant legal research service and the print-based citation norms its proprietor has employed and encouraged for well over a century.<sup>86</sup>

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84. See *supra* notes 7–8 and accompanying text.

85. See KENDALL F. SVENGALIS, *LEGAL INFORMATION BUYER'S GUIDE AND REFERENCE MANUAL* 141–42 (New England LawPress ed. 2013).

86. See generally Peter W. Martin, *How Structural Features of the U.S. Judicial System Have Affected the Take-up of Digital Technology by Courts*, 1 EUR. J. OF L. & TECH. (SPECIAL ISSUE) 1 (2010), <https://ejlt.org/index.php/ejlt/article/view/16/18>.

