

Hon. James C. Duff
Director, Administrative Office of the United States Courts
One Columbus Circle NE
Washington, D.C., 20544

September 22, 2020

Dear Director Duff:

Last Tuesday was a momentous day for the undersigned advocates of court transparency and for the judiciary writ large: the Open Courts Act of 2020, a bill introduced by Reps. Doug Collins (R-Ga.) and Hank Johnson (D-Ga.) on improving public access to the third branch – a topic we know the Administrative Office cares about deeply – was presented to the full House Judiciary Committee.

Chairman Jerry Nadler (D-N.Y.) and Ranking Member Jim Jordan (R-Ohio) allied together and offered compelling statements in favor of the bill, which would eliminate the PACER paywall and help all Americans engage more readily with their federal courts system. Member after member echoed that sentiment, and the bill advanced without a single dissenting vote.

Republicans and Democrats on Capitol Hill, not to mention federal judges and court administrators, have for years debated strategies to consolidate and modernize the judiciary's case management and electronic case files system (CM/ECF) and end the pay-for-access arrangement that exists nowhere else in the federal government.

But it was not until last week that a strategy to build open access that's fully paid for was given such a boost – and in a non-ideological way at that. As such, **we ask that you not oppose this critical, bipartisan legislation.**

The Open Courts Act funds a means to move from an aging and difficult to navigate CM/ECF system to one that is modern and user-friendly. The legislation also funds a way to store, upload and access the static PDFs that largely comprise CM/ECF and requires that the new structure be implemented in a reasonable amount of time.

The judiciary often notes the potential financial burdens of not collecting fees from the public to retrieve court records. The Open Courts Act, however, provides a "pay-for," where the judiciary will be fairly compensated while keeping documents free. It is a victory for both the public and federal judiciary. Further, because of your own fiscal responsibility, any unforeseen expenses can be supplemented by the judiciary's rainy-day fund, as was disclosed to Congress in April. We are confident that between the financial mechanisms in the bill and your resourcefulness, a move to free PACER would not be burdensome.

Reform is often challenging, but it is imperative when the status quo limits access to justice. It is unjust to charge for court documents and place undue burdens on students, researchers, *pro se* litigants, and interested members of the public – not to mention the journalists who cover the courts. The fairest alternative is not moving from 10 cents a page to eight cents; it's no price at all.

We look forward to hearing about your plans to work with members of Congress to improve access to court records in a meaningful and lasting way.

Sincerely,

Judge W. Royal Furgeson, Jr. (ret.)*
Judge Nancy Gertner (ret.)*
Judge Brian L. Owsley (ret.)*
Judge Viktor V. Pohorelsky (ret.)*
Judge Shira A. Scheindlin (ret.)*
Judge Stephen Wm. Smith (ret.)*

Judge Mildred E. Methvin (ret.)
Judge David Waxse (ret.)
Chief Justice Bridget Mary McCormack
American Society of Magazine Editors
Campaign for Accountability

Center for Democracy & Technology
Chicago Association of Law Libraries
Electronic Frontier Foundation
First Amendment Coalition
Fix the Court
Free Law Project
Government Information Watch
Howard Law Library
Lincoln Memorial School of Law
Lewis & Clark Law School Library
Niskanen Center
Open the Government
Project on Government Oversight
Public Knowledge

R Street Institute
Radio Television Digital News Association
Reporters Committee for Freedom of the Press
Richmond University Law Library
Society of Professional Journalists
Stanford Law Library
University of Nebraska, Lincoln, Law Library
University of New Mexico Law Library
University of Oregon Law Library
Executive Director Jocelyn Kennedy, Harvard Law
Library (*as individual*)
Director Leslie A. Street, Wolf Law Library,
William & Mary Law School (*as individual*)

**Signed retired judges' [amicus brief](#) in NVLSP v. U.S.*

CC: Hon. Lindsey Graham
Hon. Dianne Feinstein
Hon. Jerry Nadler
Hon. Jim Jordan