

August 26, 2020

To Sens. Cruz, Hirono, Portman and Wyden; Reps. Cline, Cole, Collins, Foster, Higgins, H. Johnson, Nadler, Quigley, Raskin, Roe and Stanton:

Thank you for drafting and supporting legislation to modernize judicial records systems and remove the fee-for-access barriers that modern technology has made unjustifiable.

As you're aware, the U.S. Court of Appeals for the Federal Circuit [ruled](#) on August 6 that the judiciary is overcharging the public to access court records. However, its opinion stated that due to the 2002 E-Government Act, the U.S. Courts may continue imposing fees "to the extent necessary" to maintain an online document retrieval system.

Even with one of the authors of that Act [asserting](#) that fee collection was never intended to be cost-prohibitive for students, researchers and legal non-profits, here we are, and here we will remain, if in response to this litigation, the third branch merely drops its charges by a couple cents per page, as is rumored.

Only congressional action will end PACER's unjust fee structure, so **we urge you to advocate for a swift post-recess markup and passage of H.R. 1164, H.R. 6017 and/or S. 2064**, each of which would make PACER free and improve its functionality - and that of its case management and electronic case filing system (CM/ECF) - by making court documents searchable, downloadable, machine-readable and more accessible once and for all.

Further, we believe there may be a straightforward way to pay for this new system. Startup costs could be recovered by continuing to charge some "power users" per-page fees in the short term, for example, and in the medium to long term, costs to maintain Free PACER could be recovered via moderate increases in filing fees based on complexity or type of action.

Finally, we want to head off an assertion you're likely to hear as legislation proceeds: how PACER fees are critical to cover the judiciary's costs to operate its CM/ECF system. Remember, we're talking about an operation that comprises uploading, downloading and searching for static PDF documents. That's it. This and other ancillary programs should under no circumstances cost upwards of \$150 million annually to operate, which is what the judiciary [claimed](#) during a House Judiciary hearing last September. ("[T]he FY 2020 interim financial plan includes approximately \$159.3 million in projected [Electronic Public Access] requirements.")

Rather than await further litigation, or be forced to accept a mere \$0.02-per-page reduction in fees, we have a chance this fall to make things right. As Rep. Collins, who introduced one of the aforementioned bills, [said](#) during the same hearing, "State [courts] have electronic records systems that enable easy searches and free access to records, yet the federal court records are very difficult to search through, and the system charges users to view each page."

"While state courts are in sports cars," Collins added, "the federal courts are riding bicycles, and we need to make a change." We stand ready to support you in your work to make that change.

Sincerely,

American Society of Magazine Editors

Campaign for Accountability

Fix the Court

Free Law Project

Government Accountability Project

Government Information Watch

National Press Foundation

National Press Photographers Association

National Security Counselors

Open the Government

Project on Government Oversight

R Street Institute

Radio Television Digital News Association

Reporters Committee for Freedom of the Press

Society of Professional Journalists

Tully Center at Syracuse University