To: Members of Congress who have supported "free PACER" legislation

Sen. Ted Cruz   *Rep. Bill Foster*   *Rep. Ilhan Omar*
Sen. Mazie Hirono   *Rep. Chuy Garcia*   *Rep. Mark Pocan*
Sen. Rob Portman   *Rep. Brian Higgins*   *Rep. Mike Quigley*
Sen. Elizabeth Warren   *Rep. Eleanor Holmes Norton*   *Rep. Jamie Raskin*
Sen. Ron Wyden   *Rep. Darrell Issa*   *Rep. John Sarbanes*
                           Rep. Pramila Jayapal   *Rep. Jan Schakowsky*
Rep. Ben Cline   *Rep. Hank Johnson*   *Rep. Greg Stanton*
Rep. Tom Cole   *Rep. Jerry Nadler*

From: Pro-transparency groups (*see end for list*)

Re: Government-funded study on sustainability of CM/ECF and PACER

June 14, 2021

Dear Members of Congress:

In the last few years, you have introduced or co-sponsored legislation to modernize the federal judiciary's Case Management and Electronic Case Files (CM/ECF) and Public Access to Court Electronic Records (PACER) systems[1]. As several organizations that have supported that work, we write to apprise you of a recent study — paid for and released by the federal courts themselves — that recommends systemic improvements that mirror much of the thinking behind your legislation.

Armed with this information, we hope that last session's bills will be reinvigorated and that there will be an opportunity to bring them to the House and Senate floors this session.

GSA-based digital services agency 18F was hired earlier this year by the Administrative Office of the U.S. Courts to conduct user-centric research on CM/ECF and PACER, identify "pain points" and recommend improvements.[2] According to their analysis, "The foundational technology" behind these systems "is outdated, and some components are becoming obsolete." **The conclusion: the current systems are "not sustainable."**

Other pain points include:

- The current CM/ECF software is built in a way **that makes it vulnerable to cyberattacks**.
- Due to outmoded database architecture, **"sluggish response times"** to call up documents are common.
- **Recently deployed solutions aimed at improving security and user experience are only patchwork**. In several jurisdictions and at AO headquarters, IT professionals are doing their best to mend the system, but significant restructuring is needed.
- **It is difficult for attorneys to work in multiple courts**, as they must deal with different CM/ECF versions.
- According to stakeholders, these issues have resulted in the **erosion of trust in the system's functionality**.

One bright spot: "(T)he judiciary has an abundance of smart, dedicated, creative, and innovative staff, and that most of them are ready for change."

To create a case management and document filing and retrieval system that is worthy of the critical work of the federal courts, 18F "recommend(s) that the judiciary build a new, open source [system that] would be more reliable and easier to maintain, both for the AO and courts, and would be less expensive to operate in the future."

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[1] This includes the Judiciary ROOM Act (H.R. 6755 in the 115th Congress), the Electronic Court Records Reform Act (H.R. 1164 / S. 2064 in the 116th), the 21st Century Courts Act (H.R. 6017 in the 116th), the Open Courts Act (H.R. 8235 / S. 4988 in the 116th), and the Anti-Corruption and Public Integrity Act (H.R. 9029 / S. 5070 in the 116th).

[2] 18F spoke with more than 100 judiciary employees across the bankruptcy, district and appellate courts and from the AO in conducting its study, which is posted at **TinyURL.com/18F-CMECF**.

Storage of case documents and other filings like exhibits would be moved to a cloud-based system. The documents therein would be searchable and accessible. Modern data standards would be followed.

On top of that, the AO would build an Application Programming Interface, or API,[3] through which the public would access court filings. That way, per 18F, "courts [and the public] would not be allowed to access source code or the database directly," but individual courts could still customize when they want to improve user experience. This would add a layer of security that currently does not exist.

Finally, the report recommends an end to the "waterfall" approach to any updates to the system mandated by Congress or by the Judicial Conference. In "waterfall," systems go live only when the entire new architecture is complete, which slows implementation and impairs timeliness. A better method, per 18F, would be iterative, where updates are continually rolled out and activated, so user experience and security continually improve, *ad infinitum*.

As you can tell, these conclusions are consistent with the core aspects of both the House and Senate versions of the Open Courts Act. These bills would have created a searchable, user-friendly, paid-for document filing and retrieval system that would have cut costs for the courts and public and would have boosted security and accessibility.

Reform is overdue, and Congress has a primary role to play. Encouraged by the report's findings, we hope you continue your efforts to improve CM/ECF and PACER and create the contours, via bipartisan legislation, for an intuitive 21st century system that gives the American people the seamless, free access to court documents we deserve.

Sincerely,

American Civil Liberties Union	Government Information Watch
Americans for Prosperity Foundation	National Press Photographers Association
American Society of Magazine Editors	National Security Counselors
Centro de Periodismo Investigativo	Open The Government
Demand Progress	Project On Government Oversight
Digital Democracy Project	R Street Institute
Fix the Court	Radio Television Digital News Association
Free Law Project	Robert Crown Law Library at Stanford Law School
Government Accountability Project	Society of Professional Journalists

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[3] APIs are how organizations exchange information. For example, a major airline might not want an aggregator like Kayak to have access to its back-end flight data, so it might build an API that Kayak can interact with and create flight availability searches with.