

November 16, 2022

*Re: Passage of the Open Courts Act*

Dear Chairmen Durbin, Van Hollen, Nadler and Quigley; Ranking Members Grassley, Hyde-Smith, Jordan and Womack:

We the undersigned groups write to encourage you and your Judiciary and Appropriations Committee colleagues, as well as congressional leadership, to **support the passage of the Open Courts Act** (S. 2614 and H.R. 5844), a bill that would at last modernize the antiquated and expensive federal court records system while also removing the unjustifiable paywall between the public and public court records, **before the end of the congressional session.**

**Over the past decade, the judiciary has charged Americans more than a billion dollars to download legal documents.** Though this fee-for-access arrangement, called PACER, may have made sense when the Internet was new, we are confident you would agree that there is no good reason for the judiciary to continue charging exorbitant fees.

As you have likely seen, the years-long PACER class action lawsuit reached a settlement last month, with users receiving \$100 million in refunds due to the judiciary **illegally directing these fees to unrelated projects.** Though the case has highlighted the myriad problems with PACER, the settlement only covers a small portion of the costs Americans have paid, and the PACER slush fund has endured. **This affair makes it clear that the only way to fix the larger issue is with legislation.**

As if this were not enough, earlier this year the House Judiciary Committee revealed<sup>1</sup> that the court records system was hacked. Though few details have been disclosed even to Congress, what we do know is that the current structure is not secure and needs more than a simple fix. A new system must be built to protect the administration of justice.

Such a secure, modernized and free-to-the-public records system is precisely what the Open Courts Act would require. Although investing in any new IT architecture costs money, **its completion would achieve major savings for taxpayers over the status quo.**

For example, the judiciary currently spends \$64 million annually to run PACER and its electronic case management and filing system (CM/ECF) — a number that, according to CBO,<sup>2</sup> will increase another \$10 million per year by 2032. But CBO maintains that building the new system envisioned by the OCA would drop these costs to \$15 million per year and over the next decade save \$343 million compared to maintaining the current system. These are real savings that lawmakers should heartily embrace.

Although the CBO report implies that the passage of the OCA will require new appropriations in the coming years, that presumes the judiciary's IT apparatus will proceed with business as usual, carrying out projects like bankruptcy and juror e-notifications and courtroom technology upgrades that we believe can be funded at much lower than current levels or eliminated altogether.

With a recent GAO report<sup>3</sup> finding “insufficient oversight and incomplete IT project management guidance [...] may have contributed to cost increases and schedule overruns” in the judiciary's administrative arm, we are optimistic that the third branch, with help from Congress and the OCA, **can begin a new era of fiscal restraint, one in which a modernized court records system will be a crown jewel.**

---

<sup>1</sup> Alexandra Jones, “Feds working to uncover full scope of court system data breach,” *Courthouse News Service*, July 29, 2022 ([link](#))

<sup>2</sup> Congressional Budget Office Cost Estimate of S. 2614, Open Courts Act, Sept. 26, 2022 ([link](#))

<sup>3</sup> U.S. Government Accountability Office Report to Congressional Requesters, “Action Needed to Improve IT Management and Establish a Chief Information Officer,” July 2022, GAO-22-105068 U ([link](#))

As lawmakers, you have each been champions of government transparency and fiscal responsibility, and we appreciate your leadership in this session and in sessions past. Let's finish this one strong by meeting those objectives in the judiciary and tearing down the government's most notorious and unnecessary paywall.

Sincerely,

American Oversight

American Society of Magazine Editors

Americans for Prosperity

Citizens for Responsibility and Ethics in Washington

Data Coalition Initiative

Demand Progress

Digital Democracy Project

Electronic Privacy Information Center

Fix the Court

Free Law Project

Government Information Watch

GovTrack.us

National Newspaper Association

National Press Photographers Association

National Taxpayers Union

Project On Government Oversight

Public Knowledge

R Street Institute

Radio Television Digital News Association

Reporters Committee for Freedom of the Press