

October 15, 2019

The Honorable Lindsey Graham
Chair
U.S. Senate Committee on the Judiciary

The Honorable Dianne Feinstein
Ranking Member
U.S. Senate Committee on the Judiciary

Dear Chairman Graham and Ranking Member Feinstein:

We, the following 17 organizations, write in support of the Electronic Court Records Reform Act (ECRRA), S. 2064. The bipartisan bill was introduced by Senators Rob Portman (R-OH), Ron Wyden (D-OR), Ted Cruz (R-TX), and Mazie Hirono (D-HI) on July 9, 2019. ECRRA modernizes the federal judicial records system and eliminates the paywall that restricts access to court records through the Public Access to Court Electronic Records (PACER) system.

The public's right of meaningful access to judicial proceedings can be traced to a time preceding the First Amendment. The Supreme Court of the United States first recognized its constitutional roots in a landmark 1980 decision, *Richmond Newspapers, Inc. v. Virginia*.¹ The Judicial Conference of the United States first authorized a program for electronic public access to court information more than 30 years ago.² Soon after, the Federal Judicial Center initiated pilot programs in several bankruptcy and district courts, establishing the early origins of the PACER system. Unfortunately, despite significant investments in the system during the past three decades, PACER has not kept up with its promise to provide the public with affordable electronic access to court information. Today, PACER is cumbersome, inefficient, and outdated. The system erects barriers to equitable access to information and inhibits access to justice.

PACER charges users 10 cents per page to search for and view electronic documents. From 2010 to 2016, the Administrative Office of the United States Courts (AOUSC) collected more than \$920 million in PACER fees; approximately \$200 million in fees collected during that period were recently ruled in violation of the *E-Government Act of 2002*.³

ECRRA strengthens access to justice by providing free access to the more than 300 million documents in PACER. Access to justice cannot exist without robust access to legal information. Removing PACER fees would be particularly helpful to *pro se* litigants in preparing their own cases. Without the fee barrier, *pro se* litigants could view successful cases similar to their own to strengthen their legal arguments and deepen their knowledge about the judicial process.

The bill increases efficiency and accountability in the federal courts by requiring the AOUSC to work with the General Services Administration to consolidate the Case Management/Electronic Case Files system, ensuring uniform access for all litigants and requiring implementation of new technologies to improve security, affordability, and performance.

¹ 448 U.S. 555, 567 (1980).

² Rep. of Proceedings of the Jud. Conf. of the U.S. ("Jud. Conf. Rep.") at 83 (Sept. 18, 1988).

³ In March 2018, Judge Ellen Segal Huvelle of the U.S. District Court for the District of Columbia declared some PACER fees in violation of the *E-Government Act of 2002*, which states that the Judiciary "may, only to the extent necessary, prescribe reasonable fees... to reimburse expenses incurred" in providing access to electronic court records. The case, *National Veterans Legal Services Program et al v. United States of America*, is now on appeal to the United States Court of Appeals for the Federal Circuit.

ECRRA enhances transparency by requiring that documents be text-searchable and machine-readable. It also requires audio and visual court records be made available. ECRRA directs the AOUSC to protect private information, mandating redaction of any information prohibited from public disclosure.

For these reasons, our organizations strongly support ECRRA. We respectfully ask for your support to promptly bring the bill to the Senate floor.

Sincerely,

American Association of Law Libraries
American Library Association
Association of Research Libraries
Citizens for Responsibility and Ethics in Washington
Data Coalition
Demand Progress
Free Government Information
Government Accountability Project
Government Information Watch
GovTrack.us
National Freedom of Information Coalition
National Security Archive
National Security Counselors
Open The Government
Project on Government Oversight
R Street Institute
Senior Executives Association

cc: Members of the Committee