

February 7, 2019

The Honorable Jerrold Nadler
Chair
U.S. House Committee on the Judiciary

The Honorable Doug Collins
Ranking Member
U.S. House Committee on the Judiciary

Dear Chairman Nadler and Ranking Member Collins:

We are members of the leadership team of the Harvard Law School Library. We have been actively involved in public interest efforts to expand free online access to court records. In particular, over the past five years, our Library Innovation Lab has led a large-scale effort at Harvard Law School called the Caselaw Access Project, through which we have digitized and begun to make freely available online all of the published court decisions issued by state and federal courts throughout our country's history up to mid-2018.¹

We write in support of the Electronic Court Records Reform Act, which was introduced by Ranking Member Collins in the 115th Congress as HR-6714, and which we hope will be reintroduced and acted upon favorably by the Committee.

Records made available online through the federal courts' Public Access to Court Electronic Records (PACER) system should be available to the public **for free** and in **machine-readable** form. The current regime of fee-based restrictions effectively precludes access for much of the public while privileging access for well-resourced entities and individuals. Public access to court records can and should be an equalizing force that increases transparency, enhances the integrity of the courts and reinforces our commitment to justice, equality and the rule of law. When access extends only to those who can pay, these fundamental ideals suffer.

Eliminating PACER's access restrictions will serve these principles not only with respect to the millions of records inside PACER, but also with respect to many millions of records outside PACER. Our Caselaw Access Project database includes machine-readable versions of all official published decisions of the federal courts, most of which predate PACER. For the next several years, however, we are contractually bound to limit access to those decisions until the federal courts begin making their newly issued decisions publicly accessible for free in machine-readable form. Thus, when PACER is reformed in accordance with this legislation, those actions also will trigger the public release of this complete corpus of published federal court decisions from the past. In addition, we believe many states will follow the example set by the federal courts and begin expanding public access to their own records. This legislation therefore has the potential to fundamentally transform public access to important court records and to have positive impacts beyond PACER's own scope.

¹ More information about the Caselaw Access Project is available online at <https://case.law>.

Finally, we believe it is clear that no technological or financial justification exists for the current regime and no technological or financial obstacle stands in the way of making all public court records available for free in machine-readable form. Indeed, as reported recently in the *New York Times*,² and as shown by the plaintiffs in *National Veterans Legal Services Program v. United States*,³ now pending on appeal before the U.S. Court of Appeals for the Federal Circuit, the fees charged by PACER far exceed the costs of enabling access. In short, the current access restrictions imposed by PACER are harmful and unjustified, and they should be removed.

We are grateful for the Committee's work on this important issue and look forward to free public access to court records becoming law.

Sincerely

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² Adam Liptak, "Attacking a Paywall that Hides Public Court Filings" *New York Times* (Feb. 4. 2019) (available at <https://www.nytimes.com/2019/02/04/us/politics/pacer-fees-lawsuit.html>) (archived at <https://perma.cc/GV9E-RV76>).

³ Full record of *NVLSP v. United States*, No. 16-cv-00745 (D.D.C.) available for fee via PACER at <https://ecf.dcd.uscourts.gov/cgi-bin/DktRpt.pl?178502>.