

**Statement of Michelle Cosby
President of the American Association of Law Libraries
For the Hearing Record**

**“The Federal Judiciary in the 21st Century: Ensuring the Public’s Right of
Access to the Courts”**

**Hearing before the U.S. House of Representatives Judiciary Committee
Subcommittee on Courts, Intellectual Property, and the Internet**

September 26, 2019

Chairman Johnson, Ranking Member Roby, and Members of the Subcommittee:

On behalf of the American Association of Law Libraries (AALL), a national organization representing almost 4,000 law librarians and legal information professionals, I submit this statement for the record in support of the Electronic Court Records Reform Act (ECRRA), H.R. 1164. 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 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 Today, PACER is cumbersome, inefficient, and outdated.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

¹ 448 U.S. 555, 567 (1980).

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



collected during that period were recently ruled in violation of the *E-Government Act of 2002*.³

PACER fees hinder law librarians' ability to fulfill their responsibility to provide equitable and permanent public access to legal materials and support access to justice. Because PACER charges for access, most law libraries keep their PACER passwords confidential to limit overuse of the library's account. In addition, most academic and public law libraries require users to request access to PACER documents from a librarian or limit assistance to helping users set up their own personal accounts.⁴

During the past two decades, AALL has urged the Judiciary to provide greater access to court records through PACER. In the early 2000s, the Association worked closely with then-Senator Joseph I. Lieberman to draft language included in the *E-Government Act of 2002* to direct the Judicial Conference to charge fees "only to the extent necessary." In 2006, the AALL Executive Board approved a Resolution on No-Fee Federal Depository Library Program (FDLP) Access to PACER, which helped motivate the U.S. Government Publishing Office (GPO) to work with the AOUSC on a pilot project to make PACER available at no cost to users of geographically-distributed libraries in the FDLP. A three-year pilot program was launched in 2007 at 17 federal depository libraries, 10 of which were law libraries. The program was abruptly ended in September 2008 after concerns about a security breach.

In 2011, AALL commended the AOUSC and the GPO for making PACER opinions available to the public through the GPO's FDsys, now govinfo, which provides access to authentic electronic information from all three branches of government. As of August 2019, there are 131 courts represented in the U.S. Courts collection, with 3.8 million opinions in 1.1 million cases. The U.S. Courts collection is one of the GPO's most used collections⁵ but because Court participation is voluntary and each judge's determination of what constitutes an opinion is discretionary, the GPO collection is not comprehensive.⁶

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.

⁴ Brief Amici Curiae by the American Association of Law Libraries, et al. for the Plaintiff, *Nat'l Veterans Legal Servs. Program v. United States*, 235 F. Supp. 3d 32 (D.D.C. 2017) (No 61).

⁵ Email to Emily Feltren, Director of Government Relations, American Association of Law Libraries, from Laurie B. Hall, Superintendent of Documents, U.S. Government Publishing Office, August 23, 2019.

⁶ Brief Amici Curiae by the American Association of Law Libraries, et al. and Peter W. Martin, *District Court Opinions That Remain Hidden Despite a Long-standing Congressional Mandate of Transparency—The Result of Judicial Autonomy and Systemic Indifference*, 110 Law Libr. J. (2018).



In 2012, AALL, the GPO, and the AOUSC established the PACER: Access and Education Program with the aim of increasing use of PACER at federal depository libraries, public law libraries, and public libraries. Participating libraries, which are asked to create PACER educational materials and training guides, were exempt from the first \$50 of quarterly usage charges. The program experienced low interest from libraries, with approximately 15 participating.

It is evident from the limited success of these programs that voluntary arrangements are not enough to enable law libraries to provide meaningful, equitable access to court records. ECRRA solves this problem by requiring the implementation of modern systems and eliminating the PACER paywall.

ECRRA strengthens access to justice by providing free access to more than one billion case 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.

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, AALL supports the Electronic Court Records Reform Act, H.R. 1164. We respectfully request that this statement, along with the following letter of support, be inserted into the hearing record.

February 12, 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, the following 16 organizations, are writing in support of the Electronic Court Records Reform Act of 2019. The legislation would improve the federal courts' electronic records system, enabling greater access to court records and bringing increased efficiency and transparency to the courts.

The legislation would address several of the issues raised during the House Judiciary Subcommittee on Courts, Intellectual Property, and the Internet February 2017 hearing, "Judicial Transparency and Ethics," including the federal courts' current compartmentalized electronic records system and PACER's fees for access to case materials.

The legislation would consolidate the Case Management/Electronic Case Files (CM/ECF) system and require that all documents in the system be searchable, machine-readable, and available to the public and to parties before the court free of charge. The legislation would also protect private information, requiring the courts to redact any information prohibited from public disclosure.

For these reasons, we urge all members of the House Judiciary Committee to support the Electronic Court Records Reform Act of 2019. We respectfully request the Committee to promptly consider the legislation.

Sincerely,

American Association of Law Libraries
American Civil Liberties Union
American Library Association
Association of Research Libraries
Citizen for Responsibility and Ethics in Washington
Data Coalition
Demand Progress
Engine
Government Accountability Project
Government Information Watch
GovTrack.us
National Security Archive
National Security Counselors
Open The Government
Project on Government Oversight
Senior Executives Association

cc: Members of the Committee