

The Open Courts Act of 2021

The “Open Courts Act of 2021,” introduced by Representative Henry C. “Hank” Johnson, Jr., Chair of the Subcommittee on Courts, Intellectual Property, and the Internet (D-GA) and Representative Darryl Issa (R-CA) would modernize the federal judiciary’s court records systems (called CM/ECF) and would eliminate the paywall (called PACER) that currently forces the public to pay more than \$140 million each year to access these records.

The new system will provide a stable, secure, user-oriented site to file and read court records and monitor docket activity. All public court records on the site will be available free of charge. This system would be developed in consultation with 18F—GSA’s technology experts with a [track record](#) of overseeing successful IT projects and controlling costs. The Act includes a scalable mechanism to cover the costs of these reforms without requiring new appropriations.

The system would be supported by the money federal agencies currently pay in fees to access federal court records as well as an increase in fees for the largest commercial public users for the few years before court records become freely available to all. In case there are additional costs, the judiciary would also be allowed (but not required) to use its existing authority to establish a progressive schedule of nominal fees for parties who use the new system to file a suit. However, in contrast to the current paywall, the judiciary would not be allowed to charge fees that impair access to the courts. Most filers are expected to pay nothing.

The product of years of bipartisan effort, the Act’s commonsense solutions respond to mounting alarm that PACER fees and the outdated systems they subsidize have harmed access to justice, infringed on the foundational right of public access to court records, exposed sensitive data to external threats, stifled innovation, and fostered wasteful spending.

The need for reform has become increasingly urgent after a federal appeals court concluded in August that the judiciary has been unlawfully using PACER fees to pay for a range of other programs. The full extent of these illegal expenditures has not yet been determined, but court records show that more than \$190 million was misspent in one 6-year period alone. This illegal conduct has infringed upon the public’s First Amendment right of access to the courts and exposed taxpayers to the potentially hundreds of millions of dollars in damages that must be paid through appropriated funds.

Technology has become essential to preserving First Amendment rights and providing meaningful access to justice and to government records—including court records. The Open Courts Act will ensure that federal court records will be freely and easily available to parties, the public, and the press through a modernized, secure, cost-effective system.

Last Congress, the Open Courts Act passed out of the House Judiciary Committee by voice vote, with support from both the Chair and Ranking Member. The bill is [supported](#) by a broad coalition of current and retired judges and good government, transparency, civil liberty, media, and library organizations—including the Electronic Frontier Foundation, the Project on Government Oversight, the R Street Institute, and Americans for Prosperity.

Section-by-Section Summary

Sec. 1: Short Title

- Establishes the title as the “Open Courts Act of 2021.”

Sec. 2: Consolidating and Updating Electronic Case Management Systems

- Requires the Director of the Administrative Office of the United States Courts to work with the General Services Administration (GSA) to develop a centralized court records system within 2 years, with an option for a one-year extension if GSA certifies more time is needed.
- Requires the establishment of certain standards for the modernized court records system, including standards for security, searchability, accessibility, and data management.
- Provides funding for the modernized courts records system by authorizing the courts to increase fees for 2–3 years for very high-volume PACER users and by giving the courts discretion to marginally increase filing fees under certain circumstances, so long as those fees do not harm access to justice.

Sec. 3: Modernizing Public Access to Court Electronic Records (PACER)

- Makes court records freely available to the public; eliminates the paywall currently established by PACER.
- Ensures that the public can easily search for and access court records.
- Provides funding for making PACER free of charge by allowing the Judicial Conference to annually collect from the Department of Justice (DOJ) an amount equal to that which DOJ paid in PACER fees in 2018, adjusted for inflation.

Sec. 4: Rule of Construction

- Provides that the Act shall not be construed to affect the rules governing proceedings *in forma pauperis* proceedings and by prisoners.

Sec. 5: Digital Accessibility Standards

- Requires that the court records system established by the Act must comply with accessibility standards under Section 508 of the Rehabilitation Act of 1973.

Sec. 6: GAO Review

- Establishes quarterly Government Accountability Office (GAO) review of functionality and progress toward completion and annual performance audits with required reporting to Congress.