

# United States Senate

WASHINGTON, DC 20510

September 18, 2014

The Honorable John D. Bates  
Director  
Administrative Office of the U.S. Courts  
One Columbus Circle, N.E.  
Washington, D.C. 20544

Dear Judge Bates:

We are writing today to express concern about the removal of the records of four U.S. Courts of Appeals and one U.S. Bankruptcy Court from the Public Access to Court Electronic Records (PACER) system. The abrupt decision to remove these critical records from public view has concerned lawyers, librarians, and archivists and perplexed technical experts. Our understanding is that many of these missing cases—some filed as recently as March 2012—are now only available by calling or writing to a court clerk to have a hard copy mailed for a fee of up to \$63. In an era of ubiquitous technology, it is difficult to imagine any reason for such a procedure.

Public announcements from your office indicate that the deleted data is somehow incompatible with your recent NextGen system upgrade. Upgrading the PACER system is a commendable goal and we congratulate you for the hard work that has evidently gone into the NextGen system. However, public access to our courts is a foundation of our democracy, and nowhere is that transparency more important than in our federal judiciary. A functional upgrade should never come at the cost of public access to public documents.

We understand that the Administrative Office is working to rectify this problem, and as you do so, we strongly encourage you to ensure that the solution includes restoration of access to the deleted records on the PACER system. If reincorporation into PACER is infeasible, we strongly encourage the courts to facilitate free public access to these documents through other means. We are aware that all five courts whose records have been removed have received an offer from the nonprofit Internet Archive to host the missing information at no cost to the courts or users. These or similar offers should be pursued where necessary.

Additionally, it is clear that the public was not made aware of the impending loss of these public documents before their removal. We view this as a symptom of the Administrative Office's larger failure to adequately engage the public on the important issue of how they access the public records of our federal courts. Rule 83(a) of the Federal Rules of Civil Procedure and 28 U.S.C. §2071(b) permit courts to institute local rules, but "only after giving appropriate public notice and an opportunity for comment." It is our understanding that input on the recent upgrade to NextGen was limited to organizations and individuals selected by the Administrative Office. The last substantive public comment period on PACER was the Fall 2007 "Request for Comment on Privacy and Security Implications of Public Access to Certain Electronic Criminal Case File Documents."

Although Congress has always given great deference to the independence of the federal judiciary when it comes to the mechanics of the operations of our courts, we respectfully recommend that the Administrative Office issue a new request for public comment on the PACER system as a whole. This would offer all members of the public an opportunity to express their views on PACER, the recent NextGen upgrades and, more importantly, what they would like to see from PACER as the system continues to evolve.

Both Congress and the courts work for the American people, and our responsibility is to the American people. Imposing unreasonable barriers to public access is a violation of this responsibility. Therefore we encourage you to restore online access to the court documents recently removed from PACER and seek full comment from the public on how PACER might best serve the public going forward.

Sincerely,



JOHN CORNYN  
United States Senator



CHUCK GRASSLEY  
United States Senator



TED CRUZ  
United States Senator



MIKE LEE  
United States Senator