



# JUDICIAL CONFERENCE OF THE UNITED STATES

WASHINGTON, D.C. 20544

THE CHIEF JUSTICE  
OF THE UNITED STATES  
*Presiding*

JAMES C. DUFF  
*Secretary*

December 7, 2020

Honorable Steny Hoyer  
Majority Leader  
United States House of Representatives  
Washington, DC 20515

Dear Mr. Leader:

I write on behalf of the Judicial Conference of the United States, the policy-making body of the federal Judiciary, to express our continued strong opposition to H.R. 8235, the Open Courts Act of 2020 (“OCA”), which is scheduled for floor action on Tuesday, December 8, 2020. This legislation – which will take years to implement – rushes forward without appropriate and necessary assurances and provisions regarding the budget for such an enormous undertaking. The bill as drafted will have devastating budgetary and operational impact on the Judiciary and our ability to serve the public.

We very much appreciate that you, along with House Judiciary Courts Subcommittee Chairman Hank Johnson, intervened last week after my helpful conversation with Chairman Johnson to prompt more dialogue between the branches. The many hours of staff conversations, through the weekend, that followed your encouragement led to some significant textual changes to the bill. We are grateful for those efforts which addressed some of our concerns with the previous version of the bill. Very serious concerns remain, however, and further dialogue is much needed.

The fact is that our preliminary estimates for the cost of this bill is orders of magnitude higher than the bill’s proponents have presumed – currently we are \$2 billion apart – and CBO’s hurried and preliminary estimates of the cost of developing and implementing a new electronic filing and public access system, in our view, vastly underestimates the cost of the bill. Critically, some of the bill’s revenue streams are also untested, difficult to administer and/or impossible to estimate reliably in advance.

If our cost estimates are correct – or even marginally closer to correct than the bill’s proponents’ – there is no scenario in which the revenue generated by the bill could be sufficient to cover those costs. This will force the Judiciary to slash funding for staff

Honorable Steny Hoyer

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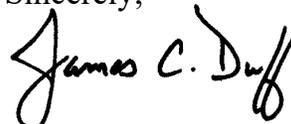
and other critical operations. Moreover, the Judiciary's backbone case management system, and therefore the Judiciary itself, could grind to a halt. In anticipation of a funding shortfall, the bill now provides for an emergency pause in the transition to the new system required by the bill. This might be preferable to the forced accommodation of significant unbudgeted costs, but such a pause in the middle of a massive transition of systems would result in its own substantial disruptions.

Better information on the costs of this bill and the revenues it would generate is needed to ensure that the Judiciary and public users of this system avoid devastating consequences. We believe we will have a much clearer picture of cost projections in early Spring 2021, at the conclusion of the first phase of a study for a replacement case management system to be performed by GSA.

The Judiciary has other major concerns with the bill, including issues of technological feasibility, security, and governance, but the threat of devastating budget consequences for the Third Branch simply cannot be overemphasized.

The Judiciary is committed to working collaboratively with the next Congress to improve our systems for filing, storing, managing, and making available to the public all relevant court records. We recognize and share Congress' bipartisan interest in a modern, effective, fair and successfully funded system. The current version of the Open Courts Act, however, is not the way to accomplish those goals. We look forward to working through these shared goals with you in the future.

Sincerely,

A handwritten signature in black ink that reads "James C. Duff". The signature is written in a cursive style with a large, stylized "J" and "D".

James C. Duff  
Secretary

cc: Honorable Kevin McCarthy  
Honorable Jerrold Nadler  
Honorable Jim Jordan  
Honorable Hank Johnson  
Honorable Martha Roby