

115TH CONGRESS  
2D SESSION

# H. R. 6761

To direct the Judicial Conference to provide electronic public access to exhibits in Federal cases, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 10, 2018

Mr. CICILLINE introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To direct the Judicial Conference to provide electronic public access to exhibits in Federal cases, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Open Access to Courts  
5 Act of 2018”.

6 **SEC. 2. ELECTRONIC PUBLIC ACCESS TO EXHIBITS IN FED-**  
7 **ERAL CASES.**

8 (a) IN GENERAL.—Not later than 2 years after the  
9 date of enactment of this Act, and except as provided in  
10 subsection (b), the Judicial Conference of the United

1 States shall establish a pilot program to ensure that exhib-  
2 its in Federal cases before 5 Federal courts selected by  
3 the Judicial Conference and any additional Federal court  
4 that elects to participate are accessible through such on-  
5 line portal as the Judicial Conference may designate for  
6 the pilot program established under this Act.

7 (b) EXEMPTION FROM ELECTRONIC PUBLIC AC-  
8 CESS.—This Act shall not apply to the following exhibits:

9 (1) Exhibits that cannot be digitized.

10 (2) Exhibits concerning matters that are ex-  
11 empt from disclosure under section 552(b) of title 5,  
12 United States Code.

13 (3) Exhibits exempt from disclosure under Rule  
14 25(a)(5) of the Federal Rules of Appellate Proce-  
15 dure.

16 (4) Exhibits exempt from disclosure under Rule  
17 5.2 of the Federal Rules of Civil Procedure.

18 (5) Exhibits exempt from disclosure under Rule  
19 49.1 of the Federal Rules of Criminal Procedure.

20 (6) Exhibits exempt from disclosure under Rule  
21 9037 of the Federal Rules of Bankruptcy Procedure.

22 (7) Exhibits that have been sealed by the pre-  
23 siding judge.

24 (8) Exhibits that a presiding judge determines  
25 the public disclosure of which would likely interfere

1 with a fair trial or otherwise the due administration  
2 of justice.

3 (9) Exhibits that are otherwise exempt from  
4 public disclosure under any other provision of Fed-  
5 eral or State law.

6 (c) APPLICABILITY OF EXEMPTION.—

7 (1) IN GENERAL.—The determination of the ap-  
8 plicability of subsection (b) to an exhibit shall be  
9 made by the presiding judge. With respect to the ap-  
10 plicability of the exemption described in paragraph  
11 (2), (3), (4), (5), or (6) of subsection (b), the pre-  
12 siding judge must determine that it is reasonably  
13 foreseeable that the disclosure of the exhibit would  
14 harm an interest protected by the relevant provision.

15 (2) REDACTED EXHIBITS.—With respect to an  
16 exhibit exempted from disclosure under subsection  
17 (b)(2), any reasonably segregable portion of the ex-  
18 hibit shall be made available on the online portal es-  
19 tablished under subsection (a), in accordance with  
20 the procedures described at the end of section  
21 552(b) of title 5, United States Code.

22 (3) DESCRIPTIVE NOTATION.—With respect to  
23 an exhibit exempted from disclosure under para-  
24 graph (1), (2), (3), (4), (5), (6), or (9) of subsection  
25 (b), a descriptive notation of the exhibit shall be

1 made available, consistent with any requirement  
2 under law regarding limitation on disclosure, on the  
3 online portal established under subsection (a).

4 **SEC. 3. RULEMAKING.**

5 The Judicial Conference of the United States may  
6 promulgate such regulations as may be necessary to imple-  
7 ment this Act.

8 **SEC. 4. DEFINITIONS.**

9 For purposes of this Act:

10 (1) **DIGITIZED.**—The term “digitized” means  
11 converted into a digital form that can be processed  
12 by a computer.

13 (2) **EXHIBIT.**—The term “exhibit” means a  
14 document, record, or other tangible object intro-  
15 duced as evidence during a trial, and that, in accord-  
16 ance with the Federal Rules of Evidence, is identi-  
17 fied or authenticated, and admitted into the record,  
18 and does not include any portion of such document,  
19 record, or tangible object that was not so admitted.

20 (3) **PRESIDING JUDGE.**—The term “presiding  
21 judge” means the magistrate or judge presiding over  
22 the court proceeding concerned. In proceedings in  
23 which more than 1 judge participates, the presiding  
24 judge shall be the senior active judge so partici-  
25 pating or, in the case of a circuit court of appeals,

1 the senior active circuit judge so participating, ex-  
2 cept that in en banc sittings of any United States  
3 circuit court of appeals, the presiding judge shall be  
4 the chief judge of the circuit whenever the chief  
5 judge participates.

6 **SEC. 5. TERMINATION; REPORT.**

7 (a) **TERMINATION.**—This Act and the pilot program  
8 established under this Act shall terminate on the date that  
9 is 4 years after the date of enactment of this Act.

10 (b) **REPORT.**—Not later than one year after the ter-  
11 mination of the pilot program established under this Act,  
12 the Federal Judicial Center shall submit to the Judicial  
13 Conference of the United States, Congress, and any other  
14 appropriate Federal agency or office, a report that con-  
15 tains the results of the pilot program, along with any rec-  
16 ommendations for improving public electronic access to  
17 Federal court exhibits.

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