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State Court Administrator
c/o Supreme Court of Vermont
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SENT VIA EMAIL TO THERESE.CORSONES@VERMONT.GOV

August 23, 2023

Dear Ms. Corsones,

As you may remember, the New England First Amendment Coalition (NEFAC) reached out in early 2023 to raise concerns about how the public accesses Vermont court records online. In response, you helpfully clarified the existing rules and “agree[d] that changes to the policy for access to civil cases and criminal court opinions should be considered.” You also explained that your team was “reviewing the feasibility of making such changes.”

We are writing now to formally request that the judiciary propose — and ultimately implement — several of those policy and design changes to the existing rules for public access to court records. We believe these changes will significantly improve much-needed transparency, which in turn will lead to increased public trust in and engagement with the Vermont justice system.

As you know, since 2017, the Vermont Judiciary has used the Odyssey portal, designed by Tyler Technologies, to facilitate the filing and retrieval of electronic court records. This system does little to enhance public access to some court records compared to requests made in person at courthouses. Our conversations with journalists and transparency advocates in Vermont have highlighted continued issues with the poorly designed system, which we address below. These issues appear to be the result of policy choices, not technological barriers, and are therefore fixable — and we believe fixing them is in the best interest of both the judiciary and the public.

First, we urge your office to follow a “public is public” model whereby any record publicly available at a courthouse be made publicly available online. When it comes to Vermont’s “constitutional and common law right of access to court records,” *State v. Tallman*, 148 Vt. 465, 472 (Vt. 1987), there should be no difference between getting a record at the courthouse and getting it on one’s own computer. This model of disclosure increases transparency for all Vermonters, but it especially helps those facing barriers to accessing records in person, such as Vermonters with disabilities or weakened immune systems.

It also facilitates the work of Vermont’s journalists, who can devote more time to analyzing easily accessible records without having to travel to courthouses across the state. Making all eligible records directly available online also will ease the burden on the courthouse staff who physically retrieve records. Although we believe the principle behind this model should apply to all records of both civil and criminal cases, we acknowledge that 12 V.S.A. § 5 prohibits the courts from permitting online access to criminal case records. However, this statute explicitly does not prohibit the courts from permitting online access to “schedules of the Superior Court, or opinions of the Criminal Division of the Superior Court.” 12 V.S.A. § 5(b)(1). We hope you will be among those seeking changes in the law to allow even more online access.

Second, in addition to making all non-exempt court records available online, we ask that your office also make available a virtual docket containing an easily searchable index of all cases before the Vermont courts. Such an index could help the public search cases by party name as well as by docket number, or browse cases by category or keyword. Indexes could solve a common problem we found in our research: difficulty searching for court records when the requester does not know the exact spelling of a party’s name or the docket number. Other court systems offer such indexes, including California, New Hampshire, the U.S. Virgin Islands, and — of course — the federal system through PACER. These indexes make the courts more approachable to the public, increasing public awareness of and engagement with the judicial system.

We understand that the judiciary has been reluctant to expand remote access due, in part, to concerns about data-scraping. However, other jurisdictions — including the entirety of federal district courts and United States Courts of Appeal — have successfully implemented full online access and indexing without major issues from scraping. Of course, we respect the judiciary’s rules exempting certain sensitive records from disclosure and recognize those records should remain confidential, whether in the clerk’s office or online. Concerns about protecting such sensitive information from disclosure, however, should not govern the overall architecture for disclosing records that are indisputably public.

Third, we ask that the judiciary make a major commitment to improving public access through the computer terminals at courthouses across the state. Even when all records are available remotely, these terminals are important resources for individuals who choose to access records in person or who may not have access to their own computer or Internet service. We are grateful to the judiciary for making them available. However, barriers remain: multiple users, for example, reported needing a court officer to log them in. Our research has shown that Vermont is an outlier in requiring such a practice; journalists in California, Indiana, and even neighboring New Hampshire have reported being able to log into these terminals on their own. We urge Vermont to follow that practice.

Fourth, journalists, transparency advocates, and practitioners in Vermont have also expressed concern with records not being made timely available online due to Rule 5(d) of the 2020 Vermont Rules for Electronic Filing, which requires court staff to review every electronic filing to ensure compliance with both formatting rules and proper redaction of sensitive information. We appreciate that such a review process is no small feat for the staff of Vermont’s courts, and we know that the judiciary has created a “press review tool” for viewing new civil lawsuits before they are docketed. However, filings in existing cases do not appear immediately, which leads to unnecessary confusion — both for the public and even the attorneys of record in a case — as to whether a party has filed a document within the proper timeline. We urge the judiciary to streamline this process so that filings are available immediately, even if they are ultimately rejected. Again, we note that this is the practice of the federal system through PACER.

Fifth and finally, we understand from our conversations with executives at Tyler Technologies that the company will not be supporting the Odyssey platform within the next year or two, shifting to a new platform called “Research.” We understand that Research has more advanced search capabilities than Odyssey, which would remedy a common complaint from Vermonters: that simple spelling mistakes or searching only by last name do not return any search results. Regardless of whether your office chooses to move to the Research platform or work with a new vendor, we urge you to ensure the platform you make available to Vermonters has the strongest search capabilities available in the industry.

We thank the staff of the Vermont Office of the Court Administrator for the important work you do to ensure the state’s justice system works effectively. We share your office’s commitment to making Vermont courts transparent and accessible to all, and we anticipate that these recommendations will increase Vermonters’ engagement with their judiciary.

To the extent that any of these proposals would require formal rulemaking or rule amendment, we would be happy to draft language for your office. Thank you very much for taking the time to consider these important policy suggestions. We look forward to hearing from you.

Sincerely,

Justin Silverman
NEFAC Executive Director

Michael Donoghue
Vermont Press Association President

Tom Kearney
VTDigger Senior Editor, NEFAC Vermont Advisory Committee

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ACLU-Vermont Staff Attorney, NEFAC Board of Directors,