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August 4, 2022

The Honorable John G. Roberts, Jr
Chief Justice
Supreme Court of the United States
1 First Street, NE
Washington, DC 20543

Dear Chief Justice Roberts:

I write with concern that federal courts are failing in their legal obligations to protect Americans' private information, putting Americans at needless risk of identity theft, stalking and other harms.

Each year, federal courts make available to the public court filings containing tens of thousands of Americans' personal information, such as their Social Security Numbers (SSNs) and dates of birth. However, federal court rules — required by Congress — mandate that court filings be scrubbed of personal information before they are publicly available. These rules are not being followed, the courts are not enforcing them, and as a result, each year tens of thousands of Americans are exposed to needless privacy violations.

The Judicial Conference, the courts' policy-making body, has known about this problem for at least a decade and has refused to act.

Twenty years ago, when Congress required federal courts to publish court records online, it required the Supreme Court to establish rules to protect the privacy and security of Americans whose information was contained in public court records. Congress also required the courts to report back every two years to describe whether the rules were in fact protecting Americans' privacy and security. The judiciary has produced a total of three reports, one in 2009, one in 2011, and then one in June of 2022, five months after my office asked for copies of the old reports.

The most recent report, which was provided to my office in draft form, says the Federal Judicial Center (FJC), the courts' research arm, has twice studied the problem of personal data appearing in public court records, in 2010 and 2015, and in both cases found significant violations of the judiciary's privacy rules. In the most recent study, the FJC examined 3.9 million court records filed during a one month period in 2013. It found 5,437 of these documents included one or more SSNs. If these statistics are representative of the problem, it would mean that the courts have made available to the public roughly half a million documents containing personal data since 2015.

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The Judicial Conference has willfully and deliberately failed to address the privacy problems documented by the FJC study. According to the report, the results of this 2015 FJC study were presented to the Judicial Conference's Standing Committee in 2016, after which the judges on that Committee determined that "no amendments to the privacy rules were warranted."

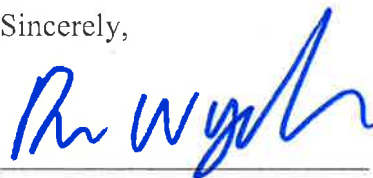
The report also describes how in 2015-2016, the Judicial Conference considered a proposal to redact the entire SSN from court filings, as federal court rules currently permit, and in some cases require, records to include the last four digits. The judicial conference cites a single reason for ignoring the predictable privacy harms the courts have enabled: consistency. According to the report, the Judicial Conference's Bankruptcy, Civil, Criminal, and Appellate Rules Committees rejected the proposal because of "the need for that information in bankruptcy proceedings and the value of a uniform approach across all the privacy rules [for different federal courts]."

Finally, the report describes a proposal from 2018 to address the problem of judges including sensitive personal information in their published opinions, which are not currently subject to privacy rules governing documents filed by litigants. According to the report, the Judicial Conference rejected a proposal to require that courts consider redacting all but the first name and last initial of any non-government parties in Social Security and immigration cases, which often contain deeply personal details about individuals' lives, because of "hesitation at the prospect of drafting rules that would tell courts how to write their opinions."

This draft report paints a disturbing picture and indicates that federal courts are totally failing in their responsibility to protect Americans' personal information. Federal courts must obey the law and protect the personal data entrusted to them. If federal courts cannot address this issue, quickly, Congress will be forced to act.

Thank you for your attention to this important issue. If you have any questions about this request, please contact Chris Soghoian in my office.

Sincerely,



Ron Wyden
United States Senator