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The Honorable Mary Fairhurst
Chair, Judicial Information System Committee

Dear Justice Fairhurst and Members of the Judicial Information System Committee,

The American Civil Liberties Union of Washington Foundation (ACLU) welcomes this opportunity to comment on the plan to modernize the complex of applications which comprise the JIS Portfolio. We are a statewide, non-partisan, non-profit organization with over 19,000 members, dedicated to the preservation and defense of constitutional and civil liberties. One of those civil liberties is the right of access to information about our government, necessary to allow public oversight of government workings. Another civil liberty is the right to personal privacy, and the right to control the dissemination of information about one's private life. Another liberty is the right to due process, effective access to the judicial system, and fair treatment by that system. The ACLU has advanced all of these liberties, including participating in numerous cases involving the Public Records Act (PRA) as *amicus curiae*, as counsel to parties, and as a party itself. In addition to litigation, the ACLU has participated in legislative and rule-making procedures surrounding access to a wide variety of public records, including judicial records.

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It is with this background that we are interested in plans to upgrade Washington's judicial information systems. We fully agree that the existing systems, some decades old, are inadequate to meet the growing needs of the judicial system and its constituents. We look forward to a day when an informational infrastructure is in place that fully serves the diverse set of needs presented by different users of the judicial system. In order for that to happen, however, we believe it is critical that future systems are designed to accommodate the needs of all users, and that the systems are flexible enough to adapt to changing needs.

Our concern is best illustrated by reference to the current project to replace SCOMIS with a new SC-CMS. This is referred to in a variety of materials as being simply an issue of case management—a largely internal matter for the judicial system. As such, the ACLU only recently realized its extra-judicial significance, and we suspect other stakeholders have a similar experience.

Although it appears that much of the judicial system continues to view SCOMIS as solely a case management took, in reality SCOMIS is now used for a variety of purposes by nonjudicial entities. For example, this Committee is well aware that SCOMIS is used for informal background checks by employers, landlords, and others. This nonjudicial use has very real impacts on individuals' lives. This Committee and workgroups created by it have grappled with issues involving misleading and confusing presentations of SCOMIS data to the public—issues

including identity theft victims, unclear disposition information, and confusion between cases, probable cause hearings, and judgments. In many of these cases, potential solutions have been limited by the underlying technological limits of SCOMIS (e.g., inability to add new case types). Yet the Superior Court Management Feasibility Study Report doesn't even list public access to information as one of the objectives of the new SC-CMS—it refers only to the needs of judicial officers and court administrators.

The ACLU strongly urges this Committee to recognize that *public* use of judicial records is an integral function of the judicial system, and to ensure that all efforts to modernize JIS applications are designed to meet public needs as well as the needs of the judiciary itself. This comports with the technology principles adopted by the Washington Supreme Court, which say that "The justice system has the dual responsibility of being open to the public and protecting personal privacy. Its technology should be designed and used to meet both responsibilities." Access to Justice Technology Principle #3.

It is also essential to plan for changing public needs over the lifetime of any adopted system. Public policy regarding access to judicial records changes constantly—through court rules, legislation, and even development of constitutional and common law. One need only look at the past decade to see this; significant changes through court rules alone include the adoption of GR 31 and major amendments to GR 15 and GR 22. We believe that future policy changes should be determined solely by evaluation of the various public interests involved—and not be dictated by technological limitations, especially when those limitations could be avoided by design of flexibility from the outset.

These issues are most immediately coming to the fore with the development of an RFP for a new SC-CMS. That RFP must be written to explicitly incorporate requirements to serve public users as well as requirements driven by judicial needs. Perhaps this has already been done; we have not yet seen a draft RFP, so we are unable at this point to comment on whether the current draft is sufficient. But the lack of any such discussion in the Feasibility Study makes us nervous.

The ACLU therefore respectfully urges the JISC to insist on both design flexibility and accommodation of public access requirements in the RFP for the SC-CMS.

Sincerely,

Doug Klunder
Privacy Counsel