**Defend the Civil Rights of People with Disabilities: Oppose H.R. 620, the “ADA Education and Reform Act of 2017”**

October 19, 2017

Dear Democratic Colleague,

As the Ranking Members of the Committees on the Judiciary and Education and the Workforce, we write to urge you to oppose H.R. 620, the "ADA Education and Reform Act of 2017." Despite the innocuous bill title, this legislation is an attack on the civil rights of people with disabilities. The bill would, among other things, require a person with a disability to notify a business of a violation of Title III of the Americans with Disabilities Act (ADA) - which prohibits discrimination in public accommodations such as stores, theaters, restaurants, and hotels - and wait up to *180 days* to allow the business to remedy that alleged violation before that person could file a lawsuit. Such a pre-suit “notice and cure” requirement would seriously undermine effective enforcement of Title III, which depends on the credible threat of private litigation to ensure that businesses voluntarily comply with the ADA’s mandate to provide access to disabled persons.

As with other civil rights statutes, this enforcement mechanism ensures that the business, not the protected person, bears the ultimate burden of compliance. Yet H.R. 620 shifts the compliance burden from businesses to people with disabilities that the ADA is intended to protect from discrimination. By effectively hindering access to public accommodations, H.R. 620 undermines the overarching goal of the ADA, which is to ensure full integration and inclusion of people with disabilities into society.

Under the ADA, if a person with a disability encounters an access barrier that can be removed or remedied by readily achievable means, he or she is being discriminated against and can file a complaint with the Department of Justice or file a lawsuit to enforce compliance. While the Department of Justice enforces the ADA, the bulk of enforcement actions are filed by private parties, usually necessitating private counsel.

Unfortunately, it is already difficult to enforce Title III. Despite 27 years of protections under the ADA, people with disabilities continue to face challenges accessing the community. The National Council on Disability (NCD), an independent federal agency charged with gathering information about the effectiveness and impact of the ADA, reported that [“many public accommodations are not in compliance with Title III and are not, in fact, accessible."](https://www.ncd.gov/rawmedia_repository/17362824_35e8_449d_92c1_5fbbdfc79c7c.pdf) In part, this is because Title III does not provide for aggrieved persons to recover damages, making it more difficult for a person who has been discriminated against under Title III to obtain legal representation. H.R. 620 would only make matters worse.

It is important to note that several states have chosen to go beyond the federal ADA by providing for the possibility of recovering money damages for violations of state disability law. An unintended result of such state laws, however, is that a small number of lawyers reportedly are sending issue specious legal letters to businesses demanding money in lieu of a lawsuit or are filing a large volume of supposedly meritless lawsuits, driven by the financial incentive that the availability of money damages provides under state law. Courts in these states, such as California and Texas, are already using existing federal and state laws or rules to regulate these bad actors and have disciplined them for their behavior when merited.

Although proponents argue that the bill is a solution, H.R. 620, which only amends the federal ADA, would do *nothing* to address the problems that arise from state laws. For example, the bill does not address legal demand letters nor does it even attempt to distinguish the behavior of bad actors from that of lawyers pursuing legitimate claims on behalf of clients with disabilities. Instead, H.R. 620 gives places of public accommodation in every state carte blanche to effectively ignore the protections, rights, and remedies afforded to people with disabilities under the federal ADA.

Under H.R. 620, places of public accommodation can willfully forego compliance with accessibility requirements, and instead comply only after a person with a disability notifies the business that they are violating the law. The place of public accommodation then only complies after it exhausts a drawn-out “cure” period that favors ADA violators, who do not even have to remedy the violation within the period, but only have to demonstrate “substantial progress”, a purposefully vague standard that must be determined by a court on a case-by-case basis. And, this all must occur before a person with a disability can even file a lawsuit to enforce his or her civil rights.

In practice, under H.R. 620, a person with a disability could be prohibited from accessing his or her place of employment, local movie theater, hotel, homeless shelter, or restaurant for more than six months before seeking legal redress under the ADA – a 27-year-old law that businesses should already be in compliance with by now.

This bill is an attack on civil rights of people with disabilities because justice delayed is justice denied. The ADA is designed to integrate people with disabilities in to the community, and to do so they must be able to obtain timely legal redress to erase barriers to access. H.R. 620 erects an unnecessarily arbitrary legal hurdle that will only benefit ADA violators and further isolate people with disabilities from the rest of society.

Our country has taken many steps toward improving the lives of individuals with disabilities, but H.R. 620, if enacted, would take us back decades.  We ought not to support the placement of additional barriers in the way of an inclusive society for people with disabilities.

We encourage you to read the [Center for American Progress article on these issues](https://www.americanprogress.org/issues/disability/news/2017/09/22/439464/quiet-attack-ada-making-way-congress/) and an [op-ed piece by Senator Tammy Duckworth (D-IL)](https://www.washingtonpost.com/opinions/congress-is-on-the-offensive-against-americans-with-disabilities/2017/10/17/f508069c-b359-11e7-9e58-e6288544af98_story.html?tid=ss_fb&utm_term=.3d5d95d90f0f) in opposition to the bill. For more information and additional resources, please contact James Park with the Committee on the Judiciary (James.Park@mail.house.gov) or Kimberly Knackstedt with the Committee on Education and the Workforce (Kimberly.Knackstedt@mail.house.gov).

Sincerely,

John Conyers, Jr. Robert C. "Bobby" Scott

Ranking Member Ranking Member

Committee on the Judiciary Committee on Education and the Workforce