November 22, 2016

Senator Charles Grassley
Chair, Senate Judiciary Committee
135 Hart Senate Office Building
Washington, DC 20510

Senator Patrick Leahy
Ranking Member, Senate Judiciary Committee
437 Russell Senate Office Building
Washington, DC 20510

Re: Consortium for Citizens with Disabilities (CCD) and Coalition Partners' Letter of Opposition to the Americans with Disabilities Act (ADA) Education and Reform Act of 2016 (S.3446)

Dear Chairman Grassley and Ranking Member Leahy:

The Consortium for Citizens with Disabilities (CCD) is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The 101 undersigned organizations write in opposition to the ADA Education and Reform Act of 2016 (S. 3446), recently introduced by Senator Jeff Flake (R-AZ).

We are disappointed that the Senator has chosen to introduce this bill, recent variations of which have been strongly opposed in the House by people with disabilities nationwide. There is no need for such legislation and it flies in the face of civil rights that have been protected by the ADA since 1990 when Congress passed this law in a fully bipartisan fashion. The asserted justification for the bill is that it is too burdensome for businesses to understand their legal obligations under the ADA. Instead, this bill inappropriately puts the burden upon people with disabilities to understand those obligations and determine for themselves when the law applies, what details must be included in a notice to businesses that they are out of compliance, and to wait 180 days hoping that the business will come into compliance with the ADA, before they can use the ADA to protect their rights.

We believe this bill, S.3446 is unnecessary, seriously undermines the rights and interests of people with disabilities, and is out of line with the intent of the ADA, which you both have supported so consistently over the years. We urge you not to bring the bill forward for consideration.

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S.3446 is unnecessary. First, there are already organizations that serve both businesses and the public to educate and assist with accommodating people with disabilities in every part of the country. The ADA Technical Assistance Centers are a network of organizations that provide training, technical assistance, and support to businesses and consumers alike, free of charge, concerning compliance with the ADA. Their offices exist in every region of the country. The proposal in S. 3446 to add accessibility specialists at DOJ is duplicative, unnecessary, and a misuse of Department of Justice revenues better focused on protecting the civil rights of citizens with disabilities rather than solving technical details that businesses may face in accommodating all of their customers. Businesses that are concerned about lacking sufficient information about the ADA's requirements to avail themselves of the resources currently available rather than seeking to change the ADA's mandate.

Second, it is highly troubling to place a barrier of a 180-day waiting period before a person with a disability can enforce his or her right under the ADA to gain access to a business, social services establishment, educational institution, or other covered entity. This onerous burden, unheard of in any other civil rights law, means that effectively there is no incentive for businesses to come into compliance until someone with a disability, after being denied access, provides the business with specific written information about the particular provision of law that has been violated and when and how it was violated, and gives the business 180 days to comply with the law. Until that happens, individuals with disabilities affected by the violation are effectively shut out from the business's services.

It should be noted that under Title III of the ADA, a person with a disability cannot sue for damages for violations of a right to access a place of public accommodation, but only for injunctive relief. This was a significant compromise that people with disabilities agreed to in 1990 as a part of the ADA, and there is no justifiable reason to require further limitations on the right to accessibility now. There can be no argument today that businesses didn't have ample notice of their obligations to comply with the ADA, given that it has been 26 years since the law passed, and that there are multiple arenas and resources offering information on the ADA's accessibility requirements. It is the responsibility of the businesses, and not the individuals in your state who seek to visit those businesses or places of public accommodation, to ensure that they are already in compliance with the ADA.

Indeed, S.3446 removes all incentive for businesses, social service establishments, and other places of public accommodation to comply with the ADA's accessibility requirements, unless and until an individual with a disability recognize that the place is out of compliance with the ADA and provides the written notice in precisely the correct manner. It allows businesses to adopt a "wait and see" approach, continuing to violate

the law with impunity and excluding countless people with disabilities from accessing their goods, services and facilities. There would be no penalty to the business for having waited months, years, decades, to come into compliance with the law. The very premise of this bill is that people with disabilities should be responsible for not only knowing the accessibility requirements but take action to protect them within the precise notice requirements, rather than placing the burden of compliance with the ADA on the businesses to operate in compliance with a law and implementing regulations that are decades old.

To the extent that the bill reflects concern over periodic litigation against businesses, allegedly unfairly taking advantage of the ADA to exact large damages from individual businesses not in compliance with the law, such damage awards are not occurring under the ADA but under the handful of states that allow such damages. In addition, frivolous litigation can be dealt with through the legal system which has remedies. This bill does nothing to address either of those concerns, but rather with a broad brush harms all people with disabilities and compromises rights Congress gave to all many years ago.

Congress should be using its resources to ensure people with disabilities have full access to the community through the strong enforcement of the ADA, and not considering restricting their civil rights or adding to their burdens when they wish to fully participate in their communities.

Please feel free to contact CCD or any of our members, and can be best reached through Dara Baldwin of National Disability Rights Network (NDRN), at dara.baldwin@ndrn.org or 202-408-9514 ext. 102 or Jennifer Mathis, Bazelon Center for Mental Health Law, jenniferm@bazelon.org or 202-467-5730 ext. 1313.

Thank you for your consideration.

Sincerely,

<u>CCD Members</u>
American Association of People with Disabilities (AAPD)
American Association on Health and Disability
American Foundation for the Blind (AFB)
American Network of Community Options and Resources (ANCOR)
American Psychological Association
Association of University Centers on Disabilities (AUCD)
Autistic Self Advocacy Network (ASAN)
Bazelon Center for Mental Health Law
Brain Injury Association of America Center
for Public Representation Christopher &
Dana Reeve Foundation.
Council for Learning Disabilities
Council of Parent Attorney and Advocates (COPAA)
Disability Rights and Education Defense Fund (DREDF)
Easterseals

Epilepsy Foundation
Institute for Educational Leadership (IEL)
Learning Disabilities Association of America
Lutheran Services in America Disability Network
Mental Health America (MHA) National
Academy of Elder Law Attorneys
National Association of Council on Developmental Disabilities (NACDD)
National Association of State Head Injury Administrators
National Center for Learning Disabilities
National Council on Independent Living (NCIL)
National Disability Institute (NDI)
National Disability Rights Network (NDRN)
National Down Syndrome Congress (NDSC)
National Multiple Sclerosis Society
Paralyzed Veterans of America (PVA)
SourceAmerica
The American Foundation for the Blind
The Arc of the United States
The Council of Parent Attorneys and Advocates (COPAA)
The Jewish Federations of North America
United Cerebral Palsy (UCP)
United Spinal Association

Coalition Partners of CCD

9to5, National Association of Working Women
ABILITY 360
Access Living
ADAPT Montana
Appalachian Independent Living Center
Association of Programs for Rural Independent Living (APRIL)
Boston Center for Independent Living.
Brazoria County Center for Independent Living
Center for Disability Rights (CDR)
Center for Independence of the Disabled, NY
DC Advocacy Partners
DC Reentry Task Force
Disability Access (Texas)
Disability Power & Pride
Disability Rights Center
Disabled In Action of Metropolitan New York
Fathers & Families Coalition of America
FedCURE
Grounded Solutions Network
Independence Associates
Jewish Child & Family Services in Chicago

Jewish Council for Public Affairs
Lakeshore Foundation
Leadership Conference on Civil and Human Rights Liberty Resource Center, Inc.
MommieActivist and sons
National African American Drug Policy Coalition, Inc
National AIDS Housing Coalition
National Association of the Deaf
National Coalition for the Homeless
National Council of Churches
National Council of Jewish Women
National Council of State Agencies for the Blind
National Fair Housing Alliance
National LGBTQ Task Force Fund
National Organization of Nurses with Disabilities (NOND)
National Rehabilitation Association
National Respite Coalition
NETWORK Lobby for Catholic Social Justice
Network Lobby for Catholic Social Justice
Not Dead Yet
NYS ADAPT
Parent to Parent USA (P2P USA)
Partnership for Inclusive Disaster Strategies, Inc.
Pennsylvania Council on Independent Living (PCIL)
Pennsylvania Statewide Independent Living Council (PA SILC)
Portlight Strategies, Inc.
Regional Center for Independent Living
Rochester ADAPT
Summit Independent Living
Texas Disability Project
The Ability Center Greater Toledo
The ADA Legacy Project
The Advocacy Institute
The Advocrat Group
The Disability Rights Center
The Jewish Federation of Metropolitan Chicago
Union for Reform Judaism
Vermont Center for Independent Living (VCIL)
Women Who Never Give Up

Cc: Senate Judiciary Committee members
Senator Jeff L. Flake (R-AZ)