

September 20, 2017

Via E-mail

Ohio Delegation in the U.S. House of Representatives

Copies to:

Members, Committee on the Judiciary, U.S. House of Representatives

Senator Sherrod Brown

Senator Robert Portman

Re: H.R. 620 ADA Education and Reform Act of 2017

Dear Members of our Ohio Delegation,

The undersigned Ohio organizations write to discuss H.R. 620, the ADA Education and Reform Act of 2017. H.R. 620 would weaken the ability of people with disabilities to live independently and stilt their access to education, jobs, and the community. Title III of the ADA, the title that affects businesses, is often under-enforced and does not allow the collection of damages. It does not need to be altered.

The ADA protects our neighbors, friends, and family members. It is estimated that 22.7% of Ohioans live with a disability,¹ and Ohio is an aging state. By 2020, 25.2% of the population of Ohio is projected to be over age 60, and 18.2% of the population is projected to be over the age of 65.² Studies show that, as people get older, the prevalence of disability increases.

H.R. 620 would remove any incentive for businesses to affirmatively comply with the ADA.

H.R. 620 would weaken the hard-fought protections of the ADA and remove all incentive for compliance with ADA Title III, the provision affecting businesses. In Ohio, there is very little private Title III ADA enforcement. There are few attorneys that will take Title III cases. The Department of Justice, the federal ADA enforcement agency, only takes Title III cases that are “systemic.” While ADA architectural standards were adopted into Ohio’s building code, our building departments are often uneducated about federal standards and will grant businesses waivers of state accessibility requirements. As a result, even though the ADA was passed twenty-seven years ago, is part of the Ohio building code, and there are many Department of Justice educational resources available, many local businesses fail to comply with ADA standards without any consequences.

¹ Elizabeth Courtney-Long, Centers for Disease Control and Prevention, Prevalence of Disability and Disability Type Among Adults – United States, 2013 (July 31, 2015), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm6429a2.htm>.

² Ritchey, Mehdizadeh & Yamashita, Projections of Ohio’s Population 2010-2030, SCRIPPS Gerontology Center, Miami University, Oxford, Ohio, http://www.ohio-population.org/wp-content/uploads/2015/07/Proportions_age_groups_proj_data_JUN26_2012.pdf.

The ADA was designed to remove barriers to access without over-burdening businesses.

We have heard the argument that architectural requirements are a “burden” on businesses. The ADA was a bi-partisan bill designed to not unduly burden businesses while allowing people with disabilities access to them. Architectural standards for “existing construction” are much less stringent than those for “new construction,” and architectural requirements for “existing construction” already balance the price of an alteration with the revenue of a business. Given that the ADA has been in existence for 27 years, and ADA Title III architectural standards have been adopted into Ohio’s building code, ADA architectural standards should be no more burden than other building code requirements like those required for health, sanitation, and fire safety.

There are already methods in place to deal with drive-by lawsuits, and they are a state, not a federal, problem.

We have also heard that H.R. 620 is being proposed in response to a purported flurry of “drive-by” lawsuits. There may be unscrupulous lawyers who aim to get money for minor violations of ADA regulations, as there are unethical lawyers in personal injury, debt collection, and other areas of law, but there are already methods in place to deal with unethical lawyers. In Ohio, lawyers must adhere to the ethical standards established by the Supreme Court, or they will be disciplined and/or lose their law license. Lawyers are assessed costs for bringing lawsuits that a court deems frivolous, and frivolous lawsuits are easily dismissed. Also, courts have been strict regarding ADA Title III enforcement. In our federal circuit, plaintiffs must prove that they intend to return to a business in order to even bring a lawsuit under ADA Title III. Amendment of the ADA is not required to deal with allegations of these types of lawsuits.

Additionally, Title III of the ADA does not allow plaintiffs to collect damages. It only provides for injunctive relief and attorneys’ fees. If damages are being collected for ADA violations, it is not because of an ADA violation but because of a violation of state laws that offer greater protections than the ADA.

The ADA was passed because federal policy and societal barriers forced people with disabilities into dependence, isolation, and maltreatment.

When George Bush signed the Americans with Disabilities Act into law in 1990, he said, “Let the shameful wall of exclusion come tumbling down.” The ADA was passed in response to a federal policy favoring involuntary institutionalization of people, often from childhood, in places where they were subject to starvation, isolation, medical experimentation, and involuntary sterilization. The ADA recognizes that a medical condition is not a barrier to independent living, jobs, education, and economic self-sufficiency when societal barriers such as architectural design and segregated programs are removed.

People with disabilities, and our growing aging population, need ADA Title III to gain employment, live independently, go grocery shopping, visit family and friends, and access many other benefits that allow independence, economic self-sufficiency, and a high quality of life. H.R. 620 would remove any incentive for businesses to follow ADA Title III because they would not be penalized for violating ADA Title III unless they first receive legally sufficient notice.

With the lack of ADA Title III enforcement, and the plethora of resources available regarding Title III standards, H.R. 620 is unnecessary and would place significant burdens on people with disabilities and our aging population who seek access to the community. This would be a major loss for Ohioans, who, increasingly, need accessible spaces to remain independent.

Sincerely,

Access Center for Independent Living
Advocates for Basic Legal Equality, Inc.
Autism Society of Ohio
Autism Society of Central Ohio
Autism Society of Dayton
Autism Society of Greater Akron
Autism Society of Greater Cincinnati
Autism Society of Greater Cleveland
Autism Society of Mahoning Valley
Autism Society of Northwest Ohio
Citizen Advocates for Transportation Rights
Coalition on Housing and Homelessness in Ohio
Disability Rights Ohio
Epilepsy Foundation of Greater Cincinnati and Columbus
Indivisible Toledo
Linking Employment, Abilities, & Potential
Lucas County Board of Developmental Disabilities
Mental Health and Addiction Advocacy Coalition
Mid-Ohio Board for IL Environment, Inc.
National Alliance on Mental Illness Ohio
NOFA Indivisible
NW Ohio Chapter United Spinal Association
Ohio Association of Area Agencies on Aging
Ohio Developmental Disabilities Council
Ohio Olmstead Taskforce
Ohio Statewide Independent Living Council
Ohio Psychological Association
Ohio Poverty Law Center
Services for Independent Living
Sighted Guide Ohio
Society for Equal Access Independent Living Center
The Ability Center of Greater Toledo
The ARC of Ohio
The Center for Disability Empowerment
The Center for Independent Living Options, Inc.
Toledo Fair Housing Center
Toledo Lucas County Commission on Disabilities