May 25, 2017

Via Email

The Honorable Scott H. Peters
The Honorable Ken Calvert
The Honorable Ami Bera
The Honorable Jackie Speier
The Honorable Pete Aguilar
The Honorable J. Luis Correa
The Honorable Jeff Denham
The Honorable Darrell E. Issa
U.S. House of Representatives

RE: California Organizations Strongly Oppose H.R. 620, the ADA Education and Reform Act of 2017, and Call on Their Representatives to Withdraw Their Co-Sponsorship of this Bill

Dear Representatives Peters, Calvert, Bera, Speier, Aguilar, Correa, Denham, and Issa:

The undersigned are 110 California disability, civil rights, senior, and civic organizations that collectively represent hundreds of thousands of Californians who have or may acquire a disability. We urge you to protect the Americans with Disabilities Act (ADA) and to reconsider and withdraw your co-sponsorship of and support for H.R. 620, the inaptly named ADA Education and Reform Act of 2017.

The ADA was modeled on other civil rights statutes. Indeed, in enacting Title III of the ADA, Congress incorporated the remedial structure of Title II of the Civil Rights of 1964.[1] This decision recognized that disability access is a civil rights issue, and aligned disability protections with the protections offered to other diversity characteristics. To change this remedial structure – to impose on individuals with disabilities a unique ADA "notice" requirement before a public accommodation must ensure access – is to go backwards. It would mark disability as a lesser issue than other civil rights issues, in contravention of decades of federal policymaking.

On a practical level, the legislation would effectively exempt businesses

[1] *See* 42 U.S.C. § 12188. "Return to Main Document"

from compliance with Title III of the ADA, but would do nothing to resolve the problem you seek to address – a small group of individuals who are viewed as bringing harassing or unjustified access lawsuits against small businesses. By undermining voluntary compliance with longstanding civil rights standards, H.R. 620 would cause substantial harms by furthering the continued exclusion of individuals with disabilities from the basic public accommodations of daily life.

H.R. 620 erodes the balancing of interests in the ADA by removing incentives for businesses to comply with the law, and by placing excessive burdens on individuals with disabilities.

Almost 27 years ago, the ADA was carefully crafted as a bipartisan compromise to take the needs of individuals with disabilities *and* covered entities – including large and small public accommodations – into account. Title III of the ADA requires architectural changes to existing structures only when such changes are "readily achievable, *i.e.*, easily accomplishable and able to be carried out without much difficulty or expense,"[2] and the law defines "readily achievable" with explicit reference to the size and resources of the business in order to accommodate small businesses.[3] Further upgrades are only required when an entity engages in new construction or alteration.[4]

Under the current ADA, a business that chooses not to remove architectural barriers under this framework risks a lawsuit; this was intended as a powerful incentive to comply so that people with disabilities would have the access they are entitled to under law. But H.R. 620 would make it far more advantageous for a business to delay doing anything to ensure access for all until it receives a notice that someone was not able to access their public accommodation. This is because, once notice is received, the legislation would grant the business *up to six months* to make

[2] 28 C.F.R. § 36.304(a). "Return to Main Document"
[3] 28 C.F.R. § 36.104 ("In determining whether an action is readily achievable factors to be considered include … [t]he nature and cost of the action …; … [t]he overall financial resources of the site or sites …; the number of persons employed at the site; [and] the effect on expenses and resources[.]").“Return to Main Document"
[4] 28 C.F.R. § 36.401 *et seq.* "Return to Main Document"

"substantial progress" in removing the barrier described in the notice. This means a business could spend years without *actually* removing barriers to come into compliance with longstanding access standards, and face no penalty, so long as "substantial progress" can be claimed. Even our largest and most ubiquitous corporations – from Wal-Mart to Starbucks – would be entitled to these exemptions. This upends the careful balancing reached by the drafters of the ADA.

Equally misguided, the legislation requires that an individual provide written notice that identifies the "architectural barrier to access into an existing public accommodation," and the circumstances "under which an individual was *actually denied access* to a public accommodation," but then only requires that the entity remove "the barrier" identified. A plain reading of the legislation suggests that the business need only remove the initial barrier that actually denied access, but not all of the *additional* barriers that the individual *would* experience could she ever get past the initial barrier. The doorway may be fixed – over a period of six months or longer – but then the restroom inside may require another notice! The only plausible conclusion from such a scheme is that its underlying purpose is to simply make disabled individuals give up and go away. That is totally contrary to the values of inclusion and full citizenship enshrined in the ADA.

Additionally, the notice requirements in the bill are unduly burdensome and technical, requiring the disabled individual to provide far more information than is necessary to identify the barriers and exclusions experienced, including citations to "the specific sections of the Americans with Disabilities Act alleged to have been violated."

H.R. 620 does not solve the problems it seeks to address, many of which can be fixed through existing means.

H.R. 620 is not tailored to address any problem there may be of a few unscrupulous individuals who send demand letters or who file litigation not to achieve legitimately required access changes but to obtain a monetary payout.[5] Unlike California state law and the law of several other states, Title

[5] California disability advocates have worked in good faith for years to address this perceived problem, supporting the creation of the Certified Disability Access Specialist program and the California Commission on

III of the ADA only provides for "injunctive relief," the requirement to fix the access problems. Title III does not allow for money damages. Thus, the legislation would allow the exclusion of individuals with disabilities from public accommodations while making no change that would actually deter the stated problem.

And the legislation would undermine implementation of the ADA despite existing and effective mechanisms for regulating civil litigation and attorney conduct. Federal and state courts in California already have extensive authority to manage civil actions based on the failure to remove architectural access barriers with streamlined procedures.[6] And state and federal courts are well-equipped to impose an array of sanctions for improper attorney behavior in disability access cases.[7]

California businesses that seek to comply with federal and state access laws have access to numerous free and affordable resources, including the U.S. Department of Justice's (DOJ) ADA website (http://ada.gov), the DOJ hotline, the ten federally funded regional ADA centers (www.adata.org),

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Disability Access. California state law regulates attorney demand letters and prescribes early and assertive case management measures in disability access matters. "Return to Main Document"

[6] *See* General Order No. 56, Americans with Disabilities Act Access Litigation, at www.cand.uscourts.gov/filelibrary/142/GO_56_5-29-12_Corrected.pdf; Cal. Civ. Code § 55.54. "Return to Main Document"

[7] *See, e.g. Molski v. Mandarin Touch Rest*., 359 F. Supp. 2d 924, 928 (C.D. Cal. 2005), ***aff'd sub nom. Molski v. Evergreen Dynasty Corp***., 500 F.3d 1047 (9th Cir. 2007) (requiring leave of court for new filings); *Jankey v. Belmont Restaurant*, 2:04-cv-08617-MMM-SH (C.D. Cal. Apr. 26, 2005) (disqualifying attorney); *In the Matter of Thomas E. Frankovich*, No. CV06-2517 (C.D. Cal. June 23, 2006) (suspending attorney from practice in court for six months); *Kinney v. Bridge*, No. 3:16-CV-03211-CRB, 2017 WL 492832, at *4 (N.D. Cal. Feb. 7, 2017) (requiring filing of court's order in new matters); *Deutsch v. Henry*, No. A-15-CV-490-LY-ML, 2016 WL 7165993 (W.D. Tex. Dec. 7, 2016), at **22-24 (awarding attorneys' fees and costs to defendant); *see also In the Matter of Thomas Edward Frankovich*, Member No. 74414, Nos. 04-O-15890-PEM & 06-J-13032 (State Bar Court of California, June 25, 2009) (finding violation of the rules of professional responsibility). "Return to Main Document"

and California's Certified Access Specialist Program and its Commission on Disability Access. Businesses that come into compliance can use existing tools to respond to and shut down unjustified access claims.

In conclusion, H.R. 620 is an unnecessary and poorly considered measure that would fundamentally harm our nation's progress toward an accessible and integrated society. The bill further telegraphs to individuals with disabilities, including Californians with disabilities, that their inclusion is not important. Please reconsider your support and withdraw your co-sponsorship of this legislation.

Sincerely,

- Access to Independence
- ACLU of Northern California
- ACLU of San Diego & Imperial Counties
- ACLU of Southern California
- Alpha Resource Center of Santa Barbara
- ASAN (Autistic Self-Advocacy Network) Los Angeles
- ASAN Sacramento
- ASAN San Diego
- Asian Americans Advancing Justice – Los Angeles
- AXIS Dance Company
- BARC
- Bet Tzedek Legal Services
- California Advocates for Nursing Home Reform
- California Coalition of Agencies serving the Deaf and Hard of Hearing
- California Disability Alliance (CDA)
- California Foundation for Independent Living Centers (CFILC)
- California In-Home Supportive Services Consumer Alliance (CICA)
- Californians for Disability Rights, Inc.
- Central Coast Center for Independent Living
- Civil Rights Education and Enforcement Center (CREEC)
- Coalition on Long Term Care Services and Supports
- Communities Actively Living Independent & Free (CALIF)

- Community Legal Services in East Palo Alto
- Community Resources for Independent Living (CRIL)
- Contra Costa Arc
- Dayle McIntosh Center
- Desert Arc
- Desert Area Resources and Training
- Designing Accessible Communities
- Disability Action Center
- Disability Rights Advocates
- Disability Rights California
- Disability Rights Education & Defense Fund (DREDF)
- Disability Services and Legal Center
- East Bay Developmental Disabilities Legislative Coalition
- Easter Seals California
- Easter Seals Southern California
- Educate. Advocate.
- Epilepsy California
- Epilepsy Foundation of Northern California
- Epilepsy Foundation San Diego
- Epilepsy Foundation Greater Los Angeles
- Exceptional Family Center
- Exceptional Parents Unlimited (EPU)
- FREED Center for Independent Living
- Gray Panthers of San Francisco
- Greater Los Angeles Agency on Deafness (GLAD)
- Hand in Hand: The Domestic Employers Network
- Independent Living Center of Southern California
- Independent Living Resource Center San Francisco (ILRCSF)
- Justice in Aging
- Law Foundation of Silicon Valley
- Legal Aid at Work
- Little People of America—Los Angeles Chapter
- Little People of America—Orange County Chapter
- Little People of America—San Francisco Bay Area Chapter

- Little People of America—San Joaquin Chapter
- Marin Center for Independent Living (MCIL)
- Matrix Parent Network & Resource Center (Matrix)
- National Coalition for Latinxs with Disabilities (CNLD)
- NFB of California
- National Organization of Nurses with Disabilities
- NorCal Services for Deaf & Hard of Hearing
- Parents Helping Parents (PHP)
- Personal Assistance Services Council
- Placer Independent Resource Services (PIRS)
- Pushrim Foundation
- Resources for Independent Living (RIL)
- San Diego Volunteer Lawyer Program
- Senior and Disability Action
- Service Center for Independent Life
- Silicon Valley Independent Living Center (SVILC)
- Sonoma County SCI Support Group
- Southern California Against Forced Treatment
- Support for Families of Children with Disabilities (SFCD)
- Team of Advocates for Special Kids (TASK)
- The Arc Alameda County
- The Arc of Amador and Calaveras
- The Arc of Butte County
- The Arc of Fresno and Madera Counties
- The Arc Imperial Valley
- The Arc Los Angeles and Orange Counties
- The Arc of Placer County
- The Arc of Riverside
- The Arc – San Bernardino Area
- The Arc of San Diego
- The Arc San Francisco
- The Arc of San Joaquin
- The Arc – Solano
- The Arc – South Bay

- The Arc – Taft
- The Arc & United Cerebral Palsy California Collaboration
- The Arc of Ventura County
- The California Collaborative for Long Term Services and Supports
- TheCIL
- The Impact Fund
- UCP (United Cerebral Palsy) of Central California
- UCP of the Golden Gate
- UCP of the Inland Empire
- UCP of Los Angeles, Ventura & Santa Barbara Counties
- UCP of the North Bay
- UCP of Orange County
- UCP of Sacramento and Northern California
- UCP of San Diego County
- UCP of San Joaquin, Calaveras & Amador Counties
- UCP of San Luis Obispo
- WarmLine Family Resource Center
- Westside Center for Independent Living (WCIL)
- Worksafe
- Wry Crips