July 7, 2017

Via Email

The Honorable Bill Foster
The Honorable Bobby Rush
U.S. House of Representatives

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

Dear Representatives Foster and Rush:

The undersigned are Illinois disability, civil rights, senior, and civic organizations that collectively represent hundreds of thousands of Illinoisans 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 create an unjust distinction between people with disabilities and other protected classes and thereby signal that people with disabilities have lesser civil rights, in contravention of decades of federal policymaking.

On a practical level, the legislation would effectively exempt businesses from compliance with Title III of the ADA, but would do little to resolve the problem that it purports to address – a small group of individuals who have used demand letters or fraudulent lawsuits to try to extract monetary payments from businesses rather than seeking the removal of barriers.

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

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 *"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

[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"

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.

It is important to note that this practice is not widespread in Illinois. In 2016, there were only 47 cases filed in federal court alleging violations of Title III's barrier removal obligation.[5]

There is also no expectation that excessive lawsuits will be brought for monetary relief in Illinois. Title III of the ADA only provides for "injunctive relief," the requirement to fix the access problems. Title III does not allow for monetary damages. And Illinois state law only authorizes monetary damages if plaintiffs proceed through an administrative process prior to bringing a private cause of action and file in state court. [6] In 2016, there were only 59 complaints brought to the Illinois Department of Human Rights on the basis of physical disability (a number that includes cases beyond architectural access cases), and we are not aware of any cases brought in state court seeking monetary relief.

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.

The legislation would undermine implementation of the ADA despite existing and effective mechanisms for regulating civil litigation and attorney conduct. State and federal courts are well-equipped to impose an array of sanctions for improper attorney behavior, including in disability access cases.[7]

Illinois businesses that seek to comply with federal and state access laws

---

[5]We determined this number by analyzing all complaints filed in 2016 in the Northern, Central and Southern Districts of Illinois, and tagged as Americans with Disabilities Act—Other.

[6] 775 ILCS 5/7A-102.

[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);; *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); Illinois Rules of Professional Conduct of 2010, Ill. M.R. 3140 (July 1, 2009).

"Return to Main Document"

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) the Illinois ADA Project (http://www.equipforequality.org/ada-il/), which is funded by the Great Lakes ADA Center based in Chicago (http://www.adagreatlakes.org/), and county and local government programs that provide free advice on ADA compliance.[8] . 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 Illinoisans with disabilities, that their inclusion is not important. Please reconsider your support and withdraw your co-sponsorship of this legislation.

Sincerely,

Access Living
Advocates for Access
AIM Center for Independent Living
American Civil Liberties Union of Illinois
Association for Individual Development
Chicagoland Leadership Council
CJE SeniorLife
Community Alternatives Illinois

---

[8] The City of Chicago, Accessibility Compliance Unit (ACU) provides technical assistance to businesses regarding disability and accessibility requirements. *Mayor's Office for People with Disabilities,* CITYOFCHICAGO.ORG, https://www.cityofchicago.org/city/en/depts/mopd/provdrs/comply.html (last visited June 5, 2017). Further, the Illinois Capital Development Board provides written and verbal interpretations of the Illinois Accessibility Code. www.illinois.gov/cdb/business/codes/pages/illinoisaccessibilitycode.aspx (last visited June 7, 2017).

Disability Resource Center
Disability Resource Center
Epilepsy Foundation North/Central Illinois
Epilepsy Foundation of Greater Chicago
Epilepsy Foundation of Greater Southern Illinois
Equip for Equality
Forefront
Hadley Institute for the Blind and Visually Impaired
Health & Medicine Policy Research Group
Illinois Coalition for Immigrant and Refugee Rights
Illinois Network for Centers for Independent Living
Illinois Valley Center for Independent Living
Illinois_Iowa Center for Independent Living
IMPACT Center for Independent Living
Institute on Disability and Human Development, University of Illinois at Chicago
Jacksonville Area Center for Independent Living
Jewish Child and Family Services Chicago
Jewish Federation of Metropolitan Chicago
Jewish Federation of Southern Illinois
Keshet
Lake County Center for Independent Living
LIFE Center for Independent Living
LINC Inc.
National Organization of Nurses with Disabilities, (NOND)
Next Steps, NFP
Northwestern Illinois Center for Independent Living
Open Taxis
Opportunities for Access Center for Independent Living
Options Center for Independent Living
Organizing for Action-Springfield
PACE, Inc. Center for Independent Living
Progress Center for Independent Living
RAMP Center for Independent Living

Sargent Shriver National Center on Poverty Law
Self Advocacy Council of Northern Illinois
Self Advocate
Southern Illinois Center for Independent Living
Soyland Access to Independent Living
Springfield Center for Independent Living
Stone-Hayes Center for Independent Living
The Arc of Illinois
The Chicago Lighthouse
The Jewish Federation of Peoria
Thresholds
UCPSeguin of Greater Chicago
Vaughan Chapter Paralyzed Veterans of America
West Central Center for Independent Living