



Oppose the ADA Education and Reform Act of 2017 (H.R. 620)

The ADA Education and Reform Act of 2017 would undermine the ADA by significantly eroding equal access protections and progress made over nearly three decades.

In 1990 the landmark Americans with Disabilities Act (ADA) was passed with broad bipartisan support. After years of advocacy by people with disabilities and extensive negotiations with the business community, a compromise was reached which balanced the cost to businesses of accommodating people with disabilities with the desperate need to eliminate the physical and systemic barriers that were isolating them from the rest of society and denying them educational, economic, and employment opportunities. Over twenty-seven years later, while much still needs to be done, the ADA has tremendously benefitted the blind and others, with and without disabilities. The blind have more access and more ability to participate in economic and community life than we have ever had, while businesses have an expanded customer base, and many accommodations that benefit people with disabilities also benefit others. Now, H.R. 620 (and other proposed ADA “notification” or “reform” bills) threaten to bankrupt the promise of the ADA.¹

H.R. 620 would eliminate the right to equal access that is guaranteed by the ADA. Instead, the bill would require only that a public accommodation show “substantial progress” toward fixing an access barrier, a standard which has no clear legal definition. The introduction of this vague standard disregards the right of people with disabilities to demand an immediate remedy to an access barrier. Given that this standard is not clearly defined, a business may be able to create a quick partial remedy to an access barrier, not a real solution. For the blind, this could mean continued inaccessibility in online shopping or digital banking platforms, as well as the inability to maintain the privacy of medical information that other people have during visits to the doctor’s office, or to independently peruse the menu choices at a restaurant.

H.R. 620 would undermine the ADA by eroding the threat of litigation, and thereby eliminate a major incentive for compliance. Under the bill, a covered business need not comply with its existing obligations under the ADA at all until receiving a detailed letter from a person with a disability who experienced an access barrier. The business will then be required only to achieve “substantial progress” in remedying the barrier to avoid a lawsuit. The result will be that many businesses will never need to fully comply with the ADA, despite being notified of access barriers that have been experienced by their potential patrons.

This bill is founded on inaccuracies and misunderstandings. Proponents of H.R. 620 argue that the bill is necessary because of the existence of “drive-by lawsuits” designed to exploit Title III of the ADA.² This argument has no researched data behind it and rests entirely on anecdotes and sensationalized media stories. There is also confusion as to whether the ADA permits litigants to seek monetary damages under Title III lawsuits, which it does not.³

The Americans with Disabilities Act:

The ADA is already a compromise that is designed to acknowledge the concerns of the business community. It explicitly states that any remedy must be “readily achievable” if the access barrier exists in an establishment that predates passage of the bill (1990).⁴ The “readily achievable” standard considers the difficulty of the remedy as well as the expense and relationship to the structure of the establishment in question. In addition to this standard, there are provisions within Title III that require certain factors to be considered when determining obligations to undertake Title III remedies, such as the size of the business and the financial resources available to the business.⁵

The federal government already provides extensive educational and technical assistance resources to aid businesses with their ADA compliance obligations. The following resources make Section 2 of H.R. 620 redundant:

- ten regional ADA centers, funded by a grant from the Department of Health and Human Services, that provide technical assistance, trainings, and other resources for businesses;⁶
- an ADA hotline for businesses to call, operated by the Department of Justice;⁷ and
- an ADA website, containing numerous resources, tools, and information for businesses.⁸

The Department of Justice already facilitates mediation and alternative dispute resolution mechanisms. When the ADA was enacted nearly thirty years ago, Congress encouraged the use of mediation as a way to resolve disputes. To that end, the Department of Justice refers ADA disputes to professional mediators specifically trained in the requirements of the ADA. This mediation is provided at no charge,⁹ making Section 5 of H.R. 620 unnecessary.

**CONTINUE SUPPORTING EQUAL ACCESS AND OPPORTUNITY FOR BLIND AMERICANS
WHILE ALSO AVOIDING WASTEFUL AND DUPLICATIVE PROGRAMS AT TAXPAYER
EXPENSE.**

Oppose H.R. 620.

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¹ “Comparison of 115th ADA Notification Bills.” Last modified October 3, 2017. <http://www.c-c-d.org/fichiers/Comparison-of-115th-ADA-Notification-Bills-NDRN-DB-Oct-2017.pdf>.

² Rogers, Chip. “A bipartisan solution to stopping drive-by lawsuits.” *The Hill*. September 8, 2017. <http://thehill.com/blogs/congress-blog/judicial/349835-a-bipartisan-solution-to-stopping-drive-by-lawsuits>.

³ 42 U.S. Code § 12188 (b)(4)

⁴ 42 U.S.C. § 12183 (a)(1)

⁵ 28 CFR 36.104

⁶ ADA National Network. “Contact Your Region/ADA Center.” Accessed January 9, 2018. <https://adata.org/find-your-region>.

⁷ United States Department of Justice Civil Rights Division. “ADA Information Line.” Information and Technical Assistance on the Americans with Disabilities Act. Accessed January 9, 2018. <https://www.ada.gov/infoline.htm>.

⁸ United States Department of Justice Civil Rights Division. “ADA Technical Assistance Materials.” Information and Technical Assistance on the Americans with Disabilities Act. Accessed January 9, 2018. <https://www.ada.gov/ta-pubs-pg2.htm>.

⁹ United States Department of Justice Civil Rights Division. “Department of Justice ADA Responsibilities: ADA Mediation Program.” Information and Technical Assistance on the Americans with Disabilities Act. Accessed January 9, 2018. <https://www.ada.gov/mediate.htm>.