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MEMORANDUM IN OPPOSITION TO ADA EDUCATION AND REFORM ACT OF 2017

*Amendments to the Americans with Disabilities Act would make
remedies more difficult for disabled individuals*

Introduction

The Americans with Disabilities Act (ADA) is a 26-year-old law that protects individuals with disabilities and improves their lives in many ways, including ensuring access to public accommodations. House legislation H.R. 620, the ADA Education and Reform Act of 2017, would amend the ADA by making noncompliance with this law an acceptable option for businesses at the expense of the disabled community. It would jeopardize the normalcy of life that these ordinary people, who happen to suffer from a disability, have attained through the ADA. This bill may pass the House and make its way to the Senate in the near future.

Summary

H.R. 620 would amend the ADA's public accommodations requirements. Each provision would weaken the ADA at the expense of the disability community. It would essentially place the burden of ensuring businesses compliance with the ADA on individuals with disabilities, who were denied access, instead of businesses that violate the law. This bill would also weaken the responsibility of business owners to know their ADA obligations.¹ These amendments are a step backwards in achieving normalcy in public accommodation accessibility for members of the disability community.

Strict Notification Requirements

The bill changes the purpose and intent of the ADA by relieving non-compliant businesses of the obligation to comply with the law unless and until they first receive a very specific type of notice from an aggrieved individual denied access to a public accommodation because of an architectural barrier. Specifically, notice must specifically include (1) the address of property where there was a barrier, (2) the specific sections of the ADA that they believe the business has

¹ The Leadership Conference on Civil and Human Rights, Oppose the "Americans with Disabilities (ADA) Education and Reform Act of 2015" (H.R. 3765) (05/18/2016). <http://www.civilrights.org/advocacy/letters/2016/oppose-the-americans-with.html>

violated, (3) whether the individual requested assistance in removing the architectural barrier, and (4) whether the barrier was permanent or temporary. Some of this information, including the specific section of the ADA that was violated, is not made available to the public the way it is made available to businesses.² Moreover, if the notice is improper, the aggrieved individual would be subject to a criminal fine.³

By placing this kind of onerous notice burden onto aggrieved individuals, H.R. 620 dramatically weakens incentives for businesses to comply with ADA requirements, leading to diminished compliance with the ADA. Existing businesses not yet compliant with the ADA and new businesses would essentially have the option to spend money to make the necessary changes to comply with the ADA requirements or they could save their money and employ a “wait and see” approach⁴ as they continue to violate the law. This is unacceptable. Additionally, under H.R. 620, even if a business were found to be non-compliant, they would not be subject to penalty until sometime later.⁵

180-day Remedy Period

After proper written notice is given to a business owner, the owner would have 60 days to acknowledge that there is a problem and once the problem is acknowledged, an additional 120 days to begin to remedy the problem. The barrier does not have to be completely removed by the end of the 180-day period. Instead the business only has to show that there has been substantial progress made to remove or alter the architectural barrier.⁶ During this period, disabled individuals would still not be able to access the public accommodation, with no deadline for completion. This approach is unlike that of other civil rights laws that require that violations be remedied as quickly as possible.⁷

So-Called “Drive-by Lawsuits”

Proponents of this bill say its purpose is to curb frivolous “drive-by lawsuits” and to protect businesses from sizable monetary awards in court and in settlement agreements.⁸ However, even assuming such lawsuits are a problem, they are authorized under state law, not the ADA.⁹ Title III of the ADA authorizes only injunctive relief for these violations and not monetary damages.¹⁰ In other words, making it more difficult for disabled individuals to make claims about public accommodation accessibility violations under the ADA would have no impact on monetary

² American Association of People with Disabilities (AAPD), Action Alert! The ADA Needs Your Help! (03/27/2017). <http://www.aapd.com/tag/hr-620/>

³ H.R. 620 § 3(1)(C), ADA Education and Reform Act of 2017, 115th Congress (Unenacted).

⁴ Disability Rights Education & Defense Fund (DREDF), DREDF Letter Opposing HR 3765 (07/06/2016). <https://dredf.org/2016/08/08/dredf-letter-opposing-hr-3765/>

⁵ American Association of People with Disabilities (AAPD), Take Action to Save the ADA! (09/07/2016). <http://www.aapd.com/take-action-to-save-the-ada/>

⁶ H.R. 620 § 3(1)(B), ADA Education and Reform Act of 2017, 115th Congress (Unenacted).

⁷ National Disability Rights Network (NDRN), No Way! Not my ADA! (03/2017). <http://www.ndrn.org/en/public-policy/ada-a-civil-rights.html>

⁸ Poe Introduces Legislation to Curb Abusive ADA Lawsuits, Press Release, (10/21/2015). <http://poe.house.gov/press-releases?ID=64CC5E54-F5CE-4CBE-BDC1-960494894759>

⁹ DREDF (07/06/2016)

¹⁰ Americans with Disabilities Act of 1990, Title III, 101 Pub. L.336, 104 Stat. 327.

damages for businesses because disabled individuals have never been entitled to damages under the ADA and this bill would not alter the state laws that permit these damages.¹¹

The Education Component

In addition to the strict notification requirements, there is an education component to the bill. The education component is broad and only requires that the Department of Justice, with the help of business owners and members of the disability community, develop a program to educate state governments, local governments, and property owners on ways to promote accessibility.¹² This is pointless. For the last 26 years, there have been widespread efforts to educate business owners and yet there are still a large number of businesses that are noncompliant in 2017.¹³ Instead of educating business owners and local governments on ways to promote accessibility, any amendment to the ADA should be holding business owners accountable for violations. If a business were not paying its taxes, the government would not let that continue. It would assure prompt compliance. Any and all violations of the ADA should be treated with the same urgency.¹⁴

Bill Opponents

Among other groups, this bill is opposed by the Disability Rights Education & Defense Fund, the Consortium for Citizens with Disabilities, the American Association of People with Disabilities, the Leadership Conference on Civil and Human Rights, the Learning Disabilities Association of America, and the National Disability Rights Network.

Conclusion

This bill is insupportable. It makes disabled individuals responsible for their inability to access public accommodations. The heightened notice requirements and the prolonged 180-day remedy period will deter aggrieved individuals from making otherwise valid claims against business owners. Additionally, from the time that a violation is identified, through the 180 days and perhaps beyond, the individual and other members of the disability community would still be denied access to the public accommodation at issue – a burden that should be on the shoulders of the noncompliant business. Instead of preventing frivolous lawsuits, H.R. 620 is encouraging noncompliance.¹⁵ Therefore, we strongly oppose the ADA Education and Reform Act of 2017.

¹¹ DREDF (07/06/2016)

¹² H.R. 620 § 2, ADA Education and Reform Act of 2017, 115th Congress (Unenacted).

¹³ AAPD (09/07/2016)

¹⁴ DREDF (07/06/2016)

¹⁵ NDRN (03/2017)