From: Kim Gibson

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RE: ADA Education and Reform Act of 2017

**ADA Education and Reform Act of 2017 (H.R. 620):**

**Rolling back the rights of individuals with disabilities.**

**Executive Summary:** The Americans with Disability Act (ADA) was enacted in 1990 to provide equal access for individuals with disabilities in all areas of public life including public and private places of business that are open to the general public (ADA National Network, 2018). The passing of the ADA was important to people with disabilities to assist in gaining access to services such as shopping, employment, medical care, recreational activities, going out to eat at a restaurant, and so many other things that many Americans take for granted. Although barriers remain, the ADA continues to make a significant difference in the lives of individuals with disabilities to gain access (National Disability Rights Network (NDRN), 2018). Today, businesses have an obligation to be accessible and there are consequences for non-compliance via the legal system (ADA National Network, 2018). H.R. 620, the ADA Education and Reform Act of 2017, takes away incentives for businesses to abide by the law; and takes on a wait and see approach. Businesses are not required to do anything until they receive a notice, and additionally the burden of non-compliance proof is placed upon the individual with disability who encounters the barriers. The bill takes away the ADA’s benefits and creates obstacles for individuals with disabilities to live in their communities of choice while enjoying access to live, work, and play.

**Scope of Problem:** The ADA has been law for over 27 years, but businesses continue to refuse to comply with the law (American Association of People with Disabilities (AAPD), 2017b). The government gives time for businesses to comply, yet ADA violations continue to occur. The most common ADA violations that occur within businesses include: no accessible entrance, non-accessible bathrooms, parking spots not accessible, cluttered and narrow aisles, too steep of ramps or no curb cuts (AAPD, 2017b). According to the U.S. Census Bureau (2017) roughly 30.6 million people with disabilities in the United States have difficulty walking or climbing stairs, or used a wheelchair, cane, crutches, or walker. In addition, it reports that 19 percent of the United States population has a disability, meaning that the ADA protects the basic rights of nearly 60 million Americans. H.R. 620 weakens the ADA by removing incentives for businesses to comply with the law while creating additional obstacles for people with disabilities to access in public accommodations. The ADA accessibility standards are extremely important to individuals with disabilities. AAPD (2017a) discusses how a doorway that is too narrow can mean the difference between accessing a business or not. In addition, AAPD (2017a (or b?)) describes how the size of a bathroom can be the difference between being able to use the bathroom or having to go without a bathroom. Additionally, a building with no ramp could be the difference between a person with a disability taking a job, eating with friends, shopping at a store, or having access to a building. The ADA already considers the needs of the businesses. In its current design existing businesses are only required to provide access when it is readily achievable (ADA National Network, 2018). H.R. 620 will affect the ability of individuals with disabilities to pursue legal action when necessary as well as the increased burden of providing detailed information to initial complaints beyond what is currently required by Title III of the ADA (NDRN, 2018). The bill takes the responsibility of the business to follow the law and places the burden on those individuals who face barriers of access to public accommodations. Individuals with disabilities would have the burden of providing the business with specific notice of which provisions of the ADA were violated and detailing the changes that need made for their accommodation. According to the bill, the business would then have 60 days to acknowledge the receipt and another 120 days to provide proof of substantial improvement working towards the improvement. No other civil rights group must wait 180 days to enforce their civil rights (AAPD, 2017a). H.R. 620 will affect the ability of individuals with disabilities to pursue legal action when necessary.

**Policy Alternatives:** H.R. 620 fails to acknowledge that the Department of Justice mandates, under Title III of the ADA, an established mediation process (Disability Rights Education & Defense Fund. (DREDF), 2018). The ADA of 1990 was designed to take into account the needs of the covered entities which included businesses covered by Title III. DREDF (2018) reports that part of the process of design reflected was the absences of any damage remedy in Title III by only allowing for injunctive relief and attorney’s fees for violation of this part of the law. H.R. 620 does not address the problem of frivolous lawsuits. There are ways to address the problem without placing the burden on individuals with disabilities. Supporters of the bill cite concerns about frivolous lawsuits (NDRN, 2018). However, according to DREDF (2018) the ADA does not allow money damages and damages are only available under a few state’s laws, which the proposed amendment to the ADA will not prevent or change. For those few that do engage in fraudulent claims, state courts and state bar examiners have the ability to monitor and deal with these litigants on a case by case basis.

**Policy Recommendations**: H.R. 620 cites concerns about frivolous lawsuits or serial litigants, but the majority of ADA lawyers and plaintiffs are not seeking damages, but instead are attempting to seek solutions to fix access barriers. For the few who may engage in shameful and unscrupulous practices, state courts already have the ability to deal with these individuals (DREDF, 2018). It is important to use the already existing legal tools when needed rather than denying the civil rights to individuals with disabilities established by the ADA. For those businesses who are noncompliant assessing penalties against them could assist in reducing the litigations.

**Conclusion:** The ADA was passed 27 years ago with businesses still not complying with the law. One out of five Americans have a disability with 30.6 million having difficulty walking or climbing stairs, or use a wheelchair, cane, crutches, or walker (U.S. Census Bureau, 2012). The ADA provides protections for basic accessibility for these individuals. H.R. 620, the ADA Education and Reform Act of 2017, would weaken the ADA by taking away the threat of litigation and eliminating incentives for businesses to comply. Under this bill, businesses are not required to comply with the existing requirements under the ADA until a problem is identified by the person with a disability. The burden is then on the individual with a disability to provide a detailed letter addressing the situation or concern. The business is then only required to show substantial progress in addressing the access barrier to avoid a lawsuit. The proponents of H.R. 620 argue that it is necessary due to the existence of “drive-by-lawsuits” designed to exploit Title III of the ADA. The argument has no researched data and there is a clear misunderstanding that Title III provides monetary damages, which it does not (DREDF, 2018). The bill will roll back the rights of individuals with disabilities by making it harder to assert the right to be part of society. No other civil rights group has to wait 180 days to enforce their civil rights (DREDF, 2018). H.R. 620 is a direct attack on the civil rights of individuals with disabilities and should be repealed.

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