

March 8, 2018

The Honorable Charles E. Grassley
Chairman
Committee on Judiciary
United States Senate
Washington, DC 20510

The Honorable Diane Feinstein
Ranking Member
Committee on Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

On behalf of the residents of Washington, DC, I am writing to express concerns regarding H.R. 620, the ADA Education and Reform Act of 2017, which passed the House of Representatives in February and now moves to the Senate for consideration. The proposed legislation would require a person with a disability to provide a written notice in order to gain access to a business whose facility, programs, or services are not in compliance with the Americans with Disabilities Act (ADA) Title III before filing a civil action. After submitting written notice, and only if the owners of the building failed to provide a written description outlining improvements that will be made to “improve” the barrier, or fail to remove the barrier or make substantial progress towards removing it, the person with a disability could file suit, but would still need to wait a minimum of 60 days before filing suit if the business remains inaccessible.¹

Rather than requiring businesses to show that they are accessible to everyone who wishes to enter, this bill puts the burden on the individual and requires potential patrons to ask businesses for access. It requires customers who have been denied access to educate businesses on what they must do to comply with the law, removing an incentive for businesses to provide access independently and proactively. Placing the responsibility of businesses onto the shoulders of our citizens with disabilities is wrong. Businesses have had a quarter of a century to embrace and implement the equal access requirements of the ADA including access to extensive resources and in-depth technical assistance materials from the nation’s ten regional ADA Technical Assistance Centers; they should not be given this extra time to comply.²

The District of Columbia appreciates the concerns voiced by proponents of this bill who wish to avoid frivolous, “drive-by” lawsuits from lawyers seeking to exploit the needs of our citizens with disabilities for their personal gain. Yet this bill is not the solution. Since

¹ ADA Education and Reform Act of 2017, Sec 3, H.R. 620, 115 Cong. 2d Session (2017).

² *Americans with Disabilities Act ADA Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities*, US Department of Justice, Civil Rights Division, Disability Rights Section. Available at: <https://www.ada.gov/taman3.html>. See also *ADA National Network Information Guidance and Training on the Americans with Disabilities Act*. Available at: <https://adata.org/>.

the ADA was passed nearly 28 years ago, its provisions have allowed for equal access to places of public accommodation for all citizens. In fact, the ADA itself does not impose monetary damages upon businesses for noncompliance³. Instead, it perpetuates attitudinal as well as physical barriers harming our residents with disabilities.

Washington, DC prides itself on being a model city for accessibility. As such, we appreciate the rights of all residents and visitors who wish to participate in our economy. Nearly one in five persons in the United States is a person with a disability,⁴ and, together, persons with disabilities spend approximately \$175 billion each year, nationally⁵. This spending power boosts the economy and helps pave the pathway to the middle class for our residents, and makes Washington, DC and age-friendly city. Let's not loosen the protections of the Americans With Disabilities Act – it's against DC Values and the country's values.
Thank you for your consideration.

Sincerely,

Muriel Bowser
Mayor

³ Money damages are not allowed for private plaintiffs under Title III of the ADA, which applies to privately operated public accommodations, commercial facilities, and private entities offering certain examinations and courses unless specifically requested by the U.S. Attorney General in the interest of the public good. See 28 C.F.R 36.504

⁴ United States Census, *Nearly 1 in 5 People have a Disability in the U.S.*, *Census Bureau Reports*, July 25, 2012, <https://www.census.gov/newsroom/releases/archives/miscellaneous/cb12-134.html>.

⁵ *Customers with Disabilities Mean Business*. US Department of Justice, Civil Rights Division, Disability Rights Section. Available at: <https://www.ada.gov/busstat.htm>.