

March 14, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Charles Schumer
Minority Leader
United States Senate
Washington, DC

Dear Majority Leader McConnell and Minority Leader Schumer:

The undersigned groups are strong supporters of H.R. 620, the ADA Education and Reform Act, and we appreciate the hard work of Republicans and Democrats to offer solutions to growing problems of frivolous and costly lawsuits inflicted upon the business community. We urge the Senate to consider and approve this or similar legislation in the near future.

We also want to take this opportunity to set the record straight regarding H.R. 620 and respond to some of the points recently raised by opponents of the bill.

First and foremost, our support for H.R. 620 is in no way an attempt to “repeal or weaken rights under Title III of the Americans with Disabilities Act (ADA)” as some Senate opponents allege. Businesses and operators of facilities covered by Title III of the ADA have made tremendous progress in bringing their locations into compliance with the ADA, and have embraced the opportunity to welcome all customers. All parties agree that the goal is to ensure facilities are in compliance. Litigation should be seen as one tool for achieving that end, not an end in itself. This bill addresses the question of how litigation processes can be managed to generate the most beneficial impact.

While those opposed to this bill are correct that the federal ADA only provides for injunctive relief and not monetary damages, nothing in current law prevents or hinders unscrupulous attorneys from sending non-specific demand letters and filing lawsuits by the dozens under the federal ADA solely for the purpose of extracting monetary settlements and/or exorbitant attorney’s fees with no effect at all on barrier removal or improving accessibility to public facilities. The ADA’s mission of benefiting Americans with disabilities is not advanced through these sham legal filings, otherwise known as “drive-by lawsuits.”

The number of Title III ADA lawsuits has increased dramatically in the past few years with no evidence of slowing down. In 2017, 7,663 Title III lawsuits were filed in federal courts, up 14% over 2016. From 2015 to 2016 the number jumped by 37%. To put the increase into perspective, nearly three times more lawsuits of this type were filed in federal court in 2017 than were filed just five years ago in 2013. Importantly, these figures do not take into account the

vast number of complaints that settle before being publicly recorded. These businesses cannot afford taking the chance on litigation even if the suit is baseless.

Contrary to opponents' arguments, the ADA Education and Reform Act actually facilitates barrier removal by incentivizing businesses to correct accessibility and non-compliant issues before litigation ensues. When businesses are informed that a problem still exists, the first instinct is to work towards fixing it. As former Senator Daniel Inouye (D-HI) said when he introduced an earlier version of this legislation in 2001, "this legislation is a reasonable means to ensure that businesses will be given notice of violations of the ADA and the opportunity to comply with the ADA before costly litigation is begun. This would foster greater compliance with the ADA by allowing businesses to expend their resources on making their properties more accessible to the disabled, rather than on attorneys' fees."

Demand letters and complaints that do not specify how the facility is out of compliance, or are not based on an actual customer experience, do nothing to bring these businesses into compliance. Accordingly, the bill requires that any complaint includes "a written notice specific enough to allow such owner or operator to identify the barrier." The bill also requires that the notice demonstrates the complainant "was actually denied access to a public accommodation, including the address of property, whether a request for assistance in removing an architectural barrier to access was made, and whether the barrier to access was a permanent or temporary barrier." We believe these are reasonable changes and would eliminate the current practice of hiring people to serve as plaintiffs in exchange for a portion of the monetary settlements agreed upon to make the lawsuit go away, as was highlighted in an Anderson Cooper piece on "60 Minutes" that aired on December 4, 2016.

Furthermore, under current law, a complaint filed in a federal court would almost certainly take longer than six months to produce a result in favor of the complainant. Under the ADA Education and Reform Act, the business owner is provided a window of only four months to make the change, or demonstrate "substantial progress" towards removal of the barrier. Opponents of this bill claim that this gives non-compliant businesses a "free pass" and delays them being held accountable. In reality, this bill would cause them to make the changes sooner than under current law, and if they do not respond or do not make "substantial progress" the lawsuit moves forward with the plaintiff having lost nothing, and their attorney able to recoup fees going back to the filing of the complaint. This is hardly the elimination of the right to bring an action as opponents of H.R. 620 allege.

The comments from the Department of Justice, cited in the letter from Senate opponents, assert that this bill would "...[s]ubstantially change the balance Congress struck for private enforcement actions pursuant to title III of the ADA" do not take into account what has unfolded since the enactment of the ADA in 1990. H.R. 620 will not disturb the balance Congress envisioned, it would actually protect that balance by ensuring that any action filed is substantive and focused on achieving barrier removal.

Once again Senator Inouye's words describe the essence of H.R. 620: "Please be assured that I simply want to close a loophole in the ADA that unscrupulous lawyers have exploited. I do not suggest or approve of any changes to the ADA that would weaken its substantive requirements

for reasonable accommodation to persons with disabilities.” We are in full agreement with his comments.

Sincerely,

American Hotel & Lodging Association

Asian American Hotel Owners Association

American Resort Development Association

The Building Owners and Managers Association (BOMA) International

California Business Properties Association

Coalition of Franchisee Associations

Franchisee Business Services

Institute of Real Estate Management

International Council of Shopping Centers

International Franchise Association

Minnesota Chamber of Commerce

National Apartment Association

National Association of Convenience Stores

NAIOP, the Commercial Real Estate Development Association

National Association of Theater Owners

National Council of Chain Restaurants

National Federation of Independent Business

National Franchisee Association

National Multifamily Housing Council

National Restaurant Association

National Retail Federation

NATSO, Representing America's Travel Centers and Truckstops

Retail Industry Leaders Association

cc: The United States Senate