

United States Senate

WASHINGTON, DC 20510

March 28, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
S-230, The Capitol
Washington, DC 20510

Dear Majority Leader McConnell:

We are writing to express our strong opposition to H.R. 620 the ADA Education and Reform Act and any legislation that would repeal or weaken rights under title III of the Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of a disability in certain places of public accommodation.¹ As a civil rights law, title III of the ADA was modeled after title II of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, religion and national origin in certain places of public accommodation.²

Title III of the ADA does **not** permit monetary relief in the form of damages or settlements. Similar to title II of the Civil Rights Act of 1964, the ADA only permits non-monetary injunctive relief and recoupment of reasonable attorney's fees for individuals who prevail in a suit to enforce their rights under title III and secure removal of architectural barriers in public accommodations where readily achievable.

Congress carefully crafted title III of the ADA to make sure private enforcement actions prioritize achieving readily accessible barrier removal and are an affordable avenue for Americans with disabilities to seek relief. The expectation was that businesses would make themselves accessible *before* people with disabilities showed up at their place of business, rather than waiting until receiving a notice that people with disabilities have been excluded before starting to think about complying with the law.

The ADA is a groundbreaking civil rights law that recognizes the reality that removing an architectural barrier, when readily achievable, is a proven, efficient solution to improving accessibility in public places and providing equal treatment of people with disabilities across the United States. In recognizing the importance of accessibility, Congress also established tax incentives for businesses to lower the cost of making a place of public accommodation more accessible pursuant to ADA guidelines and requirements for architectural barrier removal.³

Proponents of H.R. 620 assert that eliminating the right of Americans to seek immediate injunctive relief under title III of the ADA is necessary to address private lawsuits that threaten businesses with punitive damages and demand monetary settlements. However, these private

¹ Americans with Disabilities Act §302(a): "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."

² Civil Rights Act of 1964 §201(a): "All persons shall be entitled to the full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of any place of public accommodation, as defined in this section, without discrimination on the ground of race, color, religion, or national origin."

³ 26 U.S.C. §190

actions seeking damages are filed pursuant to specific State laws that unlike title III of the ADA, authorize monetary damages. H.R. 620 would make no change to those state laws and therefore fails to address lawsuits seeking damages.

However, it would destroy any incentive under the ADA for timely removal of architectural barriers in public accommodations. Because title III of the ADA does not provide for damages, a business would have no reason to comply with the law unless and until it received written notice from a person with a disability who had been harmed, informing the business that it had violated the law, and the business would then have four months to remove the barrier or make “substantial progress” in doing so. There would be no consequence for breaking the law until the notice was received and the waiting period expired.

When supporters of the discriminatory H.R. 620 argue for its necessity by citing examples of alleged “minor” accessibility infractions, they miss the point that this bill undermines the rights of people with disabilities, rather than protects them. There is nothing minor about a combat Veteran with a disability having to suffer the indignity of being unable to independently access a restaurant in the country they were willing to defend abroad. There is nothing minor about a child with cerebral palsy being forced to suffer the humiliation of being unable to access a movie theater alongside her friends.

Simply put, we reject in the strongest terms the offensive suggestion by supporters of H.R. 620 that a civil rights violation denying access to a public space could ever be “minor.” A ramp a few degrees too steep or a shower head a couple inches too high from the legally prescribed standards are the difference between accessibility and discrimination. To efficiently address the aforementioned examples, we would urge operators of public facilities to simply fix the problem by lowering the ramp a few degrees or lowering the shower head a couple inches. This will not only make sure entities comply with the law, but more importantly, providing accessibility will protect the health, safety and dignity of Americans with disabilities, as promised under a civil rights law passed nearly 28 years ago.

We share many of the concerns on the potential impact of H.R. 620 expressed by the U.S. Department of Justice (DOJ) Civil Rights Division, which administers and enforces the ADA. We believe DOJ is right to be troubled by the premise that H.R. 620 would, “[s]ubstantially change the balance Congress struck for private enforcement actions pursuant to title III of the ADA.” We also share DOJ’s concern that:

“The proposed notice and cure process would also unnecessarily limit individuals’ abilities to obtain much-needed barrier removal in a timely manner by imposing additional requirements that may not result in the collaborative process that the proposed bill intends, but may instead result in additional areas of litigation.”⁴

Congress should promote ADA compliance nationwide by improving existing tools and resources, rather than advancing a harmful and duplicative proposal such as H.R. 620, which would upend a carefully crafted legal framework that has boasted strong bipartisan support for

⁴ U.S. Department of Justice, “The Civil Rights Division’s Comments on the “ADA Education and Reform Act of 2017” (H.R. 620), September 12, 2017. Available online at: <http://www.c-c-d.org/fichiers/DOJ-Comments-on-HR-620-%28289-11-17%29.pdf>

nearly three decades. It would be more productive to enhance funding for existing ADA education and mediation programs rather than requiring lengthy notice periods that remove any incentive to follow the law until violations are detected and civil rights are denied.

We are ready to work with any Senator who is interested in developing pragmatic and bipartisan solutions that improve business' compliance with the ADA. For example, we support strengthening the capabilities of the DOJ Civil Rights Division's ADA Technical Assistance Unit, which provides education and technical assistance to help businesses comply with the law. We should also expand the ADA National Network, which supports ten regional ADA Centers and an ADA Knowledge Translation Center. These resources, funded through the U.S. Department of Health and Human Service's National Institute on Disability, Independent Living, and Rehabilitation Research, provide free assistance to entities seeking to comply with the ADA.

However, we will strongly object to any time agreement or unanimous consent request with respect to consideration of H.R. 620, or any similar legislation that seeks to weaken Federal protections for an entire protected class of Americans. By preserving title III of the ADA, Congress will uphold the intent and principle of the underlying statute that disability rights are civil rights.

No American should be forced to endure discrimination for any length of time so that places of public accommodation may learn how to follow a seminal, bipartisan civil rights law that was enacted in 1990. Respectfully, we urge you to join us in supporting the rights of Americans with disabilities by making clear that H.R. 620, or similar legislation, will never receive a vote in the United States Senate during the 115th Congress.

Sincerely,


Tammy Duckworth
United States Senator

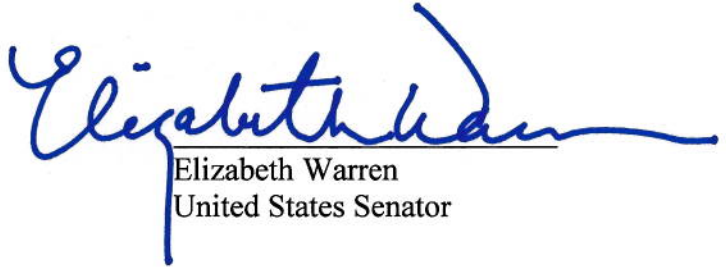

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Robert P. Casey, Jr.
United States Senator


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Margaret Wood Hassan
United States Senator



Elizabeth Warren
United States Senator



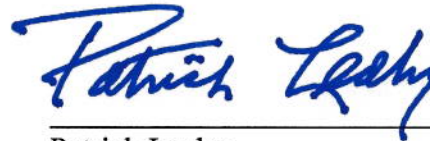
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Patrick Leahy
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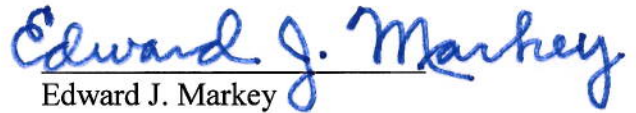
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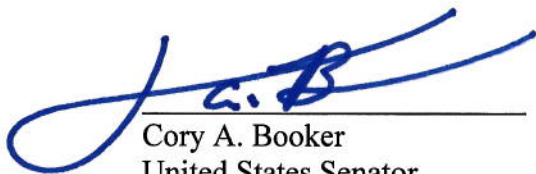
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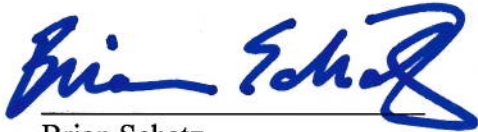
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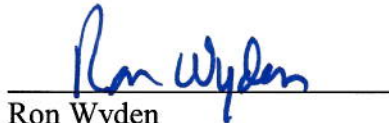
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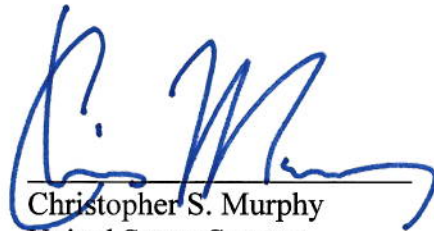
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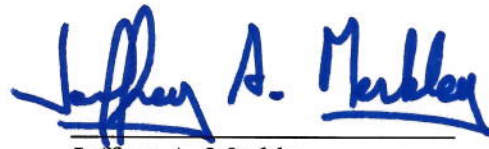
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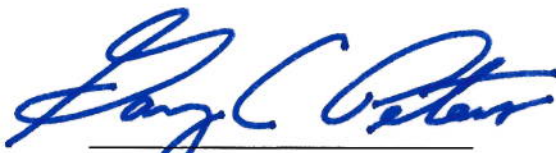
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