



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: March 9, 2018

TO: The Honorable Tom Carper, U.S. Senator for Delaware
The Honorable Chris Coons, U.S. Senator for Delaware

FROM: Dafne A. Carnright, Chairperson
GACEC

RE: **H.R. 620 ADA Education and Reform Act**

Dear Senator Carper and Senator Coons:

I write to you on behalf of the Governor's Advisory Council for Exceptional Citizens (GACEC) and individuals with disabilities in Delaware. We urge you to **oppose** H.R. 620, the ADA Education and Reform Act of 2017, which was passed by the House of Representatives on February 15, 2018. The GACEC is mandated by Delaware Code to provide advice on addressing the unmet educational and unmet service needs of citizens with disabilities in Delaware. This legislation is viewed by the Council as an attack on the civil rights of people with disabilities.

If passed into law, H.R. 620 will dramatically impact accessibility. The bill would, among other things, require a person with a disability to notify a business of a violation of Title III of the Americans with Disabilities Act (ADA) - which prohibits discrimination in public accommodations such as stores, theaters, restaurants, and hotels - and wait up to **180 days** to allow the business to remedy that alleged violation before the person could file a lawsuit. Such a pre-suit "notice and cure" requirement would seriously undermine effective enforcement of Title III, which depends on the credible threat of private litigation to ensure that businesses voluntarily comply with the mandate of the ADA which is to provide access to persons with disabilities.

This enforcement mechanism ensures that the business, not the protected person, bears the ultimate burden of compliance. H.R. 620 shifts the compliance burden from businesses to the individuals with disabilities that the ADA is intended to protect from discrimination. H.R. 620 undermines the overarching goal of the ADA, which is to ensure full integration and inclusion of people with disabilities into society.

Under the ADA, if a person with a disability encounters an access barrier that can be removed or remedied by readily achievable means, he or she is being discriminated against and can file a

complaint with the Department of Justice or file a lawsuit to enforce compliance. While the Department of Justice enforces the ADA, the bulk of enforcement actions are filed by private parties, usually necessitating private counsel.

Unfortunately, it is already difficult to enforce Title III. Despite 27 years of protections under the ADA, people with disabilities continue to face challenges accessing the community. The National Council on Disability (NCD), an independent federal agency charged with gathering information about the effectiveness and impact of the ADA, reported that [“many public accommodations are not in compliance with Title III and are not, in fact, accessible.”](#) In part, this is because Title III does not provide for aggrieved persons to recover damages, making it more difficult for a person who has been discriminated against under Title III to obtain legal representation. H.R. 620 would only make matters worse.

In practice, under H.R. 620, a person with a disability could be prohibited from accessing his or her place of employment, local movie theater, hotel, homeless shelter, or restaurant for more than six months before seeking legal redress under the ADA – a 27-year-old law that businesses should already be in compliance with by now. We would also like to note that mediation typically works in favor of businesses because it creates yet another delay in the process to improve accessibility.

This bill is an attack on the civil rights of people with disabilities because justice delayed is justice denied. The ADA is designed to integrate people with disabilities into the community, and to do so they must be able to obtain timely legal redress to erase barriers to access. H.R. 620 erects an unnecessarily arbitrary legal hurdle that will only benefit ADA violators and further isolate people with disabilities from the rest of society.

When President George H.W. Bush signed the ADA into law, he spoke about the guarantee that people with disabilities would have “the opportunity to blend fully and equally into the rich mosaic of the American mainstream.” Our country has taken many steps since that time toward improving the lives of individuals with disabilities, but H.R. 620, if enacted, would take us back decades. We should not support the placement of additional barriers in the way of an inclusive society for people with disabilities. It is unthinkable that our federal elected officials would support re-enacting such barriers after the overwhelmingly bipartisan passage of the ADA based on the idea of decreasing the number of meritless lawsuits presented by unscrupulous attorneys. Address the bad behavior of the lawyers who are only acting out of the pursuit of profit instead of the individuals with disabilities who only want the same accessibility enjoyed by everyone else.

Thank you for your time and consideration of our comments in opposition to H.R. 620. Please feel free to contact me or Wendy Strauss at the GACEC office should you have any questions.

CC: The Honorable Lisa Blunt-Rochester, U.S. House of Representatives