WASHINGTON
LEGISLATIVE OFFICE

September 6, 2017

Vote "NO" on H.R. 620, "ADA Education and Reform Act of 2017"

Dear Representative:

On behalf of the American Civil Liberties Union (ACLU) and our nearly two million members and supporters, we urge members of the Judiciary Committee to oppose H.R. 620, the so-called ADA Education and Reform Act of 2017, during the markup of the legislation expected on September 7.

The ACLU opposes this legislation which would amend the Americans with Disabilities Act to fundamentally alter that way in which a person with a disability enforces their civil rights and would severely limit access to places of public accommodations. This misnamed and mispresented bill would have a devastating impact on people with disabilities.[i]

H.R. 620 would amend the ADA to require that an individual with a disability first be denied access to a public accommodation, such as a business, doctor's office, or private school, and go through a rigorous and lengthy process[ii] before they are able to seek legal relief in order to gain access.[iii] Specifically, this bill proposes that after an individual with a disability is denied access she must first notify the business owner, with exacting specificity, that her civil rights were violated, and then wait for six months to see if the business will make "substantial progress" toward access, before she can ask a court to order compliance. A business can spend years out of compliance, and face no penalty even after they receive notice, so long as "substantial progress" could be claimed. This would remove the incentive that was carefully crafted in the ADA over a quarter century ago to motivate business owners to act proactively to ensure their buildings are accessible to people with disabilities.[iv] Contrary to the original intent of Congress, this bill would create a perverse incentive that would encourage businesses to wait until an individual's rights are violated and the owner is notified of a barrier, before taking action to come into compliance.

This bill also departs from Congress' previous treatment of federal civil rights protections and upends the way protected classes assert their rights. Recognizing the injustice of denying individuals access to public spaces, when Congress passed the Civil Rights Act of 1964 it included a provision allowing an individual who is denied access to public accommodations because of race, color, religion, or national origin to immediately seek relief through the courts to gain access.[v] Building upon the demonstrated success of the 1964 law, when Congress passed the ADA it incorporated the same enforcement mechanism to protect people with disabilities and ensure their access to public accommodations.[vi] In doing this, Congress recognized, and the ACLU firmly believes, that civil rights protections for people

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with disabilities should be treated no differently than protections based on race, color, religion, and national origin.[vii]

H.R. 620 would drastically change the enforcement of these protections by shifting the burden from the business, which normally would ensure that its facility is accessible, to the individual with a disability who would have to first have her rights violated and then proceed to a lengthy, possibly endless, waiting period before she can assert her rights and fully gain access.

The ACLU urges every member of the Judiciary Committee to protect the civil rights of people with disabilities and honor our nation's commitment to ensuring access to public accommodations for all by opposing H.R. 620, the ADA Education and Reform Act.

Should you have any questions, please contact Tyler Ray (tray@aclu.org) or Vania Leveille (vleveille@aclu.org).

Sincerely,

Faiz Shakir
Director, Washington Legislative Office

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[i] Fact Sheet, Myths and Truths About the "ADA Education and Reform Act" (H.R. 620) (July 21, 2017), https://www.aclu.org/other/hr-620-myths-and-truths-about-ada-education-and-reform-act. h.

[ii] The legislation would add an overly burdensome notification requirement and potentially unlimited waiting period that allows a business to be in perpetual non-compliance with the ADA, so long as they can show "substantial progress," an undefined standard, towards providing accessibility.

[iii] Under the ADA statute, the only legal recourse an individual has is to seek injunctive relief through access to the public accommodation and attorney's fees associated with the denial of access. Damages are not provided for under the federal law.

[iv] Congress also created a tax incentive for small businesses to comply with the ADA and provides federal funds for the ADA National Network, whose sole purpose is to help with ADA compliance. *See ADA Quick Tips-Tax Incentives*, www.ADAta.org/factsheet/quicktips-tax (last visited Sept. 6, 2017); *see also Learn About The National Network*, www.adata.org/national-network (last visited Sept. 6, 2017).

[v] 42 U.S.C. §2000(a).

[vi] 42 U.S.C. §12188.

[vii] Id. "The remedies and procedures set forth in section 2000a–3(a) of this title [referencing the 1964 Civil Rights Act] are the remedies and procedures this subchapter provides to any person who is being subjected to discrimination on the basis of disability in violation of this subchapter or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 12183 of this title."