Myths and Truths About the "ADA Education and Reform Act" (H.R. 620)

The so-called ADA Education and Reform Act of 2017 is not what its proponents claim and will not achieve its stated goals. Instead, this bill undermines the very purpose of the landmark civil rights law, the Americans with Disabilities Act (ADA), and harms people with disabilities. We address and dispel, below, the myths and misinformation about H.R. 620.

MYTH: The "ADA Education and Reform Act" strengthens the Americans with Disabilities Act.

TRUTH: The so-called "ADA Education and Reform Act" weakens the Americans with Disabilities Act and undermines one of the key goals of the law.

Title III of the ADA prohibits places of public accommodation (i.e., businesses or service establishments that are open to the public like grocery stores, doctors' offices, recreation facilities, private schools, homeless shelters) from discriminating against people with disabilities. If a person with a disability encounters an architectural barrier that prevents her from accessing the business, she has 3 options under the ADA: speak with the business, file a complaint with the Department of Justice, or file a lawsuit as provided under the law.

The "ADA Education and Reform Act" upends a key provision of the ADA by preventing people with disabilities from immediately going to court to enforce their rights and to press for timely removal of the barrier that impedes access. Without this critical enforcement mechanism, compliance under the ADA will suffer and people with disabilities will be denied the access to which they are entitled to under the law.

MYTH: The "ADA Education and Reform Act" doesn't harm people with disabilities because it merely delays the ability to go to court.

TRUTH: The so-called "ADA Education and Reform Act" means that people with disabilities won't have access for weeks, months, or possibly years, and it removes any incentive for businesses to comply proactively with the ADA. This change in the law would be a boon for businesses at the expense of people with disabilities.

This ill-informed legislation requires people with disabilities to jump through numerous procedural hoops before they can commence a lawsuit to protect their rights. It also removes any reason for businesses to proactively comply with the ADA. Instead of ensuring that people with disabilities have access, as the law requires, businesses will likely wait until a customer confronts an obstruction and has completed the detailed notification process. Even then, the only action the business is required to make is "substantial progress" in removing the barrier described in the notice. A business could *wait years without actually removing barriers* and face no penalty, as long as it can show "substantial progress" was made. There would be no incentive for a business to learn about ADA compliance and take steps prior to notification. "Wait and see" would become the norm.

This bill would also effectively change Title III's requirements from providing access to making "substantial progress" in removing barriers. Progress is not access. Changing the standard under the ADA from access to substantial progress would not only harm the civil rights of people with disabilities but would also increase litigation due to uncertainties about what constitutes "substantial progress."

MYTH: **Lawsuits under Title III of the ADA expose businesses to big damage awards for people with disabilities and their lawyers.**

TRUTH: **There are no money damages under Title III of the ADA.**

Under Title III of the ADA, an individual who files a lawsuit and is successful is entitled to removal of the barrier and attorney's fees. There are no damage awards. Once a business removes the barrier in question, legal claims challenging that barrier under Title III no longer exist. Some state laws, however, do authorize money damages for non-compliance. Amending the federal ADA, as this bill does, will have no effect on lawsuits seeking damages under those state laws.

MYTH: **It's too difficult for businesses, particularly small businesses, to understand their obligations under the ADA.**

TRUTH: **Complying with the ADA is no more burdensome than complying with other laws and ample resources exist to aid compliance.**

Businesses must comply with many complex and detailed laws, including tax laws and health and safety laws. Civil rights laws and other laws protecting people with disabilities should not be treated differently.

Furthermore, free resources are available to help businesses comply with the ADA. The federal government funds the ADA National Network which provides free technical assistance to businesses about their responsibilities under the ADA. Specifically, there are 10 regional ADA centers that provide individual assistance, in-person trainings, webinars, and publications. There are also tax credits to help businesses remove barriers, including a specific small business tax credit.

MYTH: **The "ADA Education and Reform Act" is necessary to stop lawyers who abuse the ADA by filing frivolous lawsuits.**

TRUTH: **The so-called "ADA Education and Reform Act" will do nothing to stop frivolous lawsuits. And there are ways to address the problem of unscrupulous attorneys without placing unwarranted burdens on the rights of people with disabilities.**

Although a very small number of lawyers have filed significant numbers of lawsuits that may be frivolous or fraudulent, a "notice and cure" period would not eliminate fraud or frivolous suits. At best, it defers the lawsuit. The true purpose of this bill is to allow businesses to delay meeting their obligations under the law – for weeks, months, or longer – at the expense of people with disabilities.

Additionally, there are established and tested avenues to address this problem. Courts and state bar examiners have the tools needed to shut down unscrupulous lawyers through sanctions, disciplinary measures, and other steps. These mechanisms have been, and continue to be, successfully used to address fraudulent and unethical practices under Title III.

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