



National Council on Disability

An independent federal agency making recommendations to the President and Congress to enhance the quality of life for all Americans with disabilities and their families.

September 13, 2016

The Honorable Paul Ryan
Speaker of the House
United States House of Representatives
H-232, The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
Democratic Leader
H-204, The Capitol
United States House of Representatives
Washington, D.C. 20515

Dear Speaker Ryan and Leader Pelosi:

We write as present and past presidentially-appointed Chairs of the National Council on Disability (NCD) spanning the Administrations of Presidents Bill Clinton, George W. Bush, and Barack Obama to strongly advise against the passage of H.R. 3765, the "ADA Education and Reform Act of 2015." H.R. 3765 is a dangerous, misguided national policy "solution" ill-fit to a state law problem that is aggressively opposed by virtually every disability-related organization and should be soundly rejected by this Congress. Similar legislation has been proposed numerous times over the 26 years since Americans with Disabilities Act was signed by President George H.W. Bush and throughout the Clinton, Bush, and Obama administrations we have consistently asserted that this type of legislation would, "perpetuate disability discrimination by minimizing or eliminating the consequences of persistent noncompliance."¹

H.R. 3765 improperly shifts the burden of ensuring compliance with the ADA to individuals with disabilities who are denied access to public accommodations due to business owners' failures to comply with the ADA. Although the ADA has been the law of the land for more than a quarter century and the rules and regulations associated with it should come as no surprise to anyone opening a business who exercises due diligence, this legislation makes it the responsibility of the individual who is denied access to a store, restaurant, hotel or other commercial establishment to tell the business owner that their facilities do not comply with federal laws pertaining to accessibility, and gives the business two months to explain how they will fix a problem that never should have occurred in the first place and another 4 months to fix the problem, during which time the business remains out of compliance with existing law and inaccessible to people with disabilities.

¹ National Council on Disability (2001) National Disability Policy: A Progress Report. Retrieved September 8, 2016. http://www.ncd.gov/progress_reports/Jan2001

The ADA passed with overwhelming bipartisan support more than 25 years ago after the legislation was first proposed by NCD in 1986. Following NCD's initial proposal for comprehensive civil rights legislation, a variety of groups including business interests, civil rights organizations, and legislators from across the political spectrum finalized legislation that balanced the need to make it possible for people with disabilities to experience an equality of opportunity in life without placing an undue burden on businesses -- particularly small, family-owned businesses. Since the passage of the ADA, proposals like H.R. 3765 have been made several times, and each time they have, we have opposed the legislation and advised Members of Congress as to the danger of such legislation. We again strongly oppose this legislation and strongly advise against its consideration and vote in the House.

Proponents of H.R. 3765, the "ADA Education and Reform Act of 2016" argue that the ADA has become a tool of vexatious litigants who use it to extort money from well-meaning business owners who have made every attempt to comply with the law. However, it is NCD's strong and unwavering position that this is a false narrative and that any changes to the ADA to require notification are misguided and weaken this important piece of civil rights legislation, causing immeasurable harm to people with disabilities. The ADA already provides that business owners only have to make their facilities accessible to the extent that is "readily achievable" and does not constitute "undue burden" -- these legal standards are a part of the disability community's original compromise with the business community and demonstrate the good faith process involved in all interested parties in the original ADA. Further, the ADA does not entitle plaintiffs to civil damages if they are successful in suing a business under Title III, so it is puzzling that a business would pay a potential plaintiff an exorbitant sum to avoid a lawsuit when the business can be sued again for the same problem by a different person who was also denied access -- a process that could continue unless the business makes its facility accessible by fixing the problem that gave rise to the potential lawsuit in the first place. There are states, such as Florida and California, that have civil rights statutes that provide for damages and it is in these states that apparent abuses of the legal system have occurred. What we endeavor to make very clear in our opposition to H.R. 3765 is that the bill would not change the state laws that allow for these apparent abuses, but it would make the ADA less effective for the rest of the country. This makes it a dangerous national policy "solution" ill-fit to a state law problem.

In addition to the misguided notice requirement, H.R. 3765 instructs the Department of Justice (DOJ) to educate state and local officials as well as the general public about the ADA. This provision is in response to the testimony of witnesses in support of ADA notification bills who have testified that they found the ADA's requirements confusing, and they were unaware that they were out of compliance until being served with a lawsuit. However, from very soon after the ADA's signing, DOJ, the U.S. Access Board, NCD, and other federal agencies have made every effort to publish and make available relevant and timely information regarding both one's rights and obligations under the law. Therefore, the provision in the proposed legislation that directs DOJ to establish a program to educate state and local governments and businesses on how to achieve full accessibility in their physical spaces is redundant to past and existing actions, because DOJ is currently doing exactly that and has been for many years. In fact, DOJ has an entire website (www.ADA.gov) devoted to the dissemination of ADA-related guidance, technical assistance, and other resources, including a prominently featured illustrated ADA "Primer for State and Local Governments" that includes an extensive discussion of how to make the built environment accessible. In addition to DOJ's extensive work to this end, the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR) funds 10 regional ADA Centers that exist to disseminate information about the ADA and to foster its

implementation. There is simply no lack of reliable and relevant information about ADA compliance, despite the suggestion otherwise in H.R. 3765.

Finally, H.R. 3765 instructs the Judicial Conference of the U.S. to develop a mediation program to help resolve ADA disputes without going to court. Here again this legislation purports to fill a gap that does not exist. As noted on DOJ's website, "In enacting the ADA, Congress specifically encouraged the use of alternative means of dispute resolution, including mediation, to resolve ADA disputes."² Accordingly, DOJ already has a program in place to refer potential litigants in ADA cases to mediation.

Small business is a critical part of the U.S. economy, and the interests of people with disabilities and small business are not opposed. In fact, people with disabilities who often face employment discrimination despite the ADA's protections, often look to small-business ownership and self-employment as a way to earn a living on their own terms. However, no business should be given what essentially amounts to a pass to continue to violate a law that was established more than a quarter-century ago to end the pervasive discrimination against people with disabilities that prevented us from going to movies, eating in restaurants, shopping in stores, going to museums and sporting events, and simply being an active part of our communities.

H.R. 3765 is an attempt to fix a law that isn't broken and in doing so, this proposed legislation rolls back what is widely recognized as one of the most important civil rights achievements of the past 30 years -- making America accessible to people with disabilities. NCD strongly urges Congress to reject H.R. 3765 as bad national policy and to not advance it for full consideration in the House.

Respectfully,



Clyde Terry
Chairperson (current)



Jeff Rosen (past Chair, President Barack Obama)

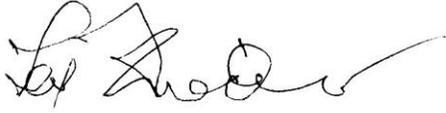


Jonathan Young (past Chair, President Barack Obama)

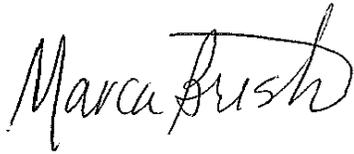
² See: <https://www.ada.gov/mediate.htm>



Linda Wetters (past Chair, Presidents Barack Obama and George W. Bush)



Lex Frieden (past Chair, President George W. Bush and NCD Executive Director during the H.W. Bush Administration)



Marca Bristo (past Chair, President Bill Clinton)

Cc: The Honorable Bob Goodlatte
The Honorable John Conyers