



Written testimony of the National Disability Rights Network for the
House Judiciary Committee, Subcommittee on the Constitution, Civil Rights
and Civil Liberties Hearing On
Oversight of the Americans with Disabilities Act of 1990: The Current State of
Integration of People with Disabilities
October 20, 2021

Thank you for the opportunity to submit written testimony for the above referenced hearing. The National Disability Rights Network (NDRN) writes to comment on issues surrounding compliance with the Americans with Disabilities Act (ADA) for businesses both physically and on their websites.

NDRN is the non-profit membership association of Protection and Advocacy (P&A) and Client Assistance Program (CAP) agencies located in all 50 States, the District of Columbia, Puerto Rico, and the United States Territories. In addition, there is a P&A and CAP affiliated with the Native American Consortium which includes the Hopi, Navajo, and San Juan Southern Paiute Nations in the Four Corners region of the Southwest. P&A and CAP agencies are authorized under various federal statutes to provide legal representation and related advocacy services, and to investigate abuse and neglect of individuals with disabilities in a variety of settings. The P&A / CAP Network comprises the nation's largest provider of legally-based advocacy services for persons with disabilities. Work involving the enforcement of the ADA is an important component of the advocacy the P&A / CAP Network does throughout the year.

NDRN has great concerns with the testimony of Ms. Karen Harned, the Executive Director of the legal center for the National Federation of Independent Businesses (NFIB). We take this opportunity to provide the subcommittee the facts around the ADA and clarifications to her testimony for the Record.

First, Ms. Harned claimed that the various ADA regulations are too complicated and burdensome for small business owners to comply with. She also argued that a lack of regulations for website accessibility prevents

businesses from knowing how to make their websites accessible for customers with disabilities.

A myriad of resources already exist to equip and support small businesses to adhere to the ADA. For instance, the ADA National Network is a federally mandated information system with ten offices across the nation. The ADA Centers under this program provide training and technical assistance on the provisions of the law. This can include both training on physical standards as well as access to some website accessibility experts. Any business can call the ADA Centers for advice anonymously, without the risk of being reported.

Although the Department of Justice has not officially promulgated specific website regulations, numerous judicial entities have pointed to the Web Content Accessibility Guidelines (WCAG) as an appropriate standard to use. On more than one occasion, a judge in his or her ruling has pointed to the WCAG as the standards to go by. Therefore, small businesses have a roadmap to follow. Likewise, the federal government under Section 508 of the Rehabilitation Act of 1973 has similarly applied such standards. Although the two laws are separate, there is a compelling argument that such standards are reasonable and can be applied to make websites accessible.

Furthermore, an argument that standards are too difficult is not a convincing argument to allow businesses to not follow a law. Standards that businesses need to comply with may be more or less complicated, but discomfort over the level of complexity is not enough to enable a business not to comply. For example, in the entire country, businesses must comply with local health and safety regulations. These policies can be complex. Businesses cannot argue that health and safety requirements are too difficult or cumbersome to comply with; it is simply a part of running a business in a jurisdiction that appropriately governs its community.

NDRN would also like to raise concerns with and provide the facts on Ms. Harned's argument that establishing an advanced notice policy under the ADA is needed. We have heard this argument made many times that businesses must first receive notice that their physical business or website are inaccessible under the ADA before a lawsuit is brought. In other words, the business must first be given an extended amount of time to remedy the violation before the business can be held accountable. This runs contrary

to civil rights law. A civil right is something to be upheld, not something that can be delayed.

First, the ADA is thirty-one years old. Any business owner is already on notice of the need to comply with the ADA. When a merchant endeavors to establish his or her own business, he or she knows that they will have to comply with a myriad of county, state, and federal policies, which includes the ADA. The accessibility requirements of the ADA are not new, or unknown, after 31 years. And as described above, there are numerous resources and experts that can be accessed by any business to ensure compliance with the ADA.

Furthermore, under her proposal, while a business is given extra time to make remedies to the legal requirements, the patron will not have access to the good or service. In such an instance, the patron has to wait, which depending on the situation can have varying levels of negative consequences. Regardless of the service provided, persons with disabilities have a right to access the good or service provided by the business. But in some situations, the consequences could be even more impactful. For example, a customer with a disability might need to rush to a pharmacy at the last minute when his or her child is sick. In this circumstance, the patron cannot simply wait several months to receive the critical service. In the routine day to day, people need access to goods and should not have to wait.

Finally, Ms. Harned touched upon the practices that are referred to by some as “drive by lawsuits”. Simply penalizing all patrons with disabilities because of the right and appropriate actions taken to enforce the civil rights of people with disabilities is not the right approach. Instead, businesses should report practices that they consider to be unscrupulous to the appropriate state bar.

Thank you for allowing NDRN to provide this written testimony for the Record. We stand ready to discuss these issues further with the committee. Please contact Claire Stanley, Public Policy Analyst, at Claire.stanley@ndrn.org should you want to discuss this issue further.