



**CONSORTIUM FOR CITIZENS
WITH DISABILITIES**

Nov. 19, 2020

Hon. Frank Pallone
Chair
House Energy and Commerce Committee
2107 Rayburn House Office Bldg.
Washington DC 20515

Hon. Greg Walden
Ranking Member
House Energy and Commerce Committee
2185 Rayburn House Office Bldg.
Washington DC 20515

Hon. Lou Correa
1039 Longworth House Office Bldg.
Washington DC 20515

Hon. Ted Budd
118 Cannon House Office Bldg.
Washington DC 20515

Re: Opposition to H.R. 8478, Online Accessibility Act

Dear Chair Pallone, Ranking Member Walden, and Representatives Correa and Budd,

The undersigned members of the Consortium for Citizens with Disabilities (CCD) Rights Task Force write in opposition to H.R. 8478, the Online Accessibility Act. CCD is the largest coalition of national organizations working together to advocate for Federal public policy that ensures the self-determination, independence, empowerment, integration and inclusion of children and adults with disabilities in all aspects of society. The Online Accessibility Act would *decrease* rather than increase access to the internet for people with disabilities.

Access to websites has become critical to most people's daily lives. Without such access, it is difficult to conduct basic transactions and participate in everyday activities. During the pandemic, online accessibility has become even more important. The non-discrimination mandates of the Americans with Disabilities Act (ADA) provide protections against the use of inaccessible websites by public accommodations, public entities, and employers.

The Online Accessibility Act appears to significantly weaken the ADA's protections with respect to the accessibility of websites operated by public accommodations. The bill would amend the ADA to add new provisions covering website accessibility, even though nearly every court to consider the question has found that the ADA currently requires website accessibility. The new website access provisions, however, require that before a person with a disability can enforce the right to access a public accommodation's website, the person must provide notice to the owner or operator of the website identifying the ADA violations at issue, afford the website owner or

operator 90 days to achieve “substantial compliance” with the WCAG 2.0 Level A and AA website accessibility standards or to provide “equivalent access,” and complete an administrative exhaustion process that would take at least another 180 days.¹ In addition, the rights under these new web accessibility provisions do not appear to take effect until after a years-long rulemaking process for the Access Board and then the Justice Department.

The bill would remove any incentive for proactive compliance with the ADA: If it were to become law, this legislation would remove any incentive for website operators to comply proactively with the law, allowing them to wait to see if they receive notification from a person with a disability who has been denied full access to the website. Only after receiving such a notice would a website operator even have to begin considering its obligations and how to bring itself into compliance. Absent a damages remedy, website operators would have no reason to comply proactively. We know of no other law that outlaws discrimination but permits entities to discriminate with impunity until victims experience that discrimination and educate the entities perpetrating it about their obligations not to discriminate.

The bill would allow websites to remain inaccessible if there is an “alternative means of access”: The bill would allow website operators who fail to comply with the web access standards to instead provide an “alternative means of access” that is “equivalent.” But there is simply no alternative means of accessing web content that is equivalent to the 24/7 access offered by websites. Businesses have frequently argued in website access cases that individuals with disabilities can have equivalent access by simply calling the business. Yet phone calls are limited to business hours, which may make calling inconvenient or even impossible for some individuals with disabilities, particularly if they are placed in phone queues. Even during business hours, phones may not be answered. Moreover, the information provided on websites is often too complex to describe meaningfully by phone. Finally, websites often provide valuable information that a person may not be aware to ask about on a phone call. Yet this bill would invite extensive litigation over whether phone access constitutes equivalent access, and would suggest an inaccurate conclusion that equivalent means of access *do* exist.

The bill would lower the civil penalties that DOJ can assess for violations of the law: The Justice Department currently can seek civil penalties of up to \$75,000 for a first violation of Title III of the ADA, and up to \$150,000 for subsequent violations.² Yet this bill would allow the Department to seek civil penalties of only up to \$20,000 for a first violation of web access requirements and up to \$50,000 for subsequent violations. This significant reduction in civil penalties would further undermine efforts to ensure web access.

While this bill is titled the Online Accessibility Act, it would have the effect of reducing rather than increasing online accessibility for people with disabilities. Particularly given the importance of website access to the lives of people with disabilities, Congress should not be weakening the ADA’s requirements with respect to website access. We oppose this bill and urge that it not be reintroduced in the next Congress.

¹ The new provisions apply to “private owner[s] or operator[s] of a consumer facing website or mobile application.” For all intents and purposes, these provisions apply to public accommodations covered by Title III of the ADA.

² 28 C.F.R. § 36.504(a)(3).

Sincerely,

American Council of the Blind

American Foundation for the Blind

The Arc of the United States

Autistic Self Advocacy Network

Bazelon Center for Mental Health Law

Center for Public Representation

CommunicationFIRST

Council of Parent Attorneys and Advocates

Disability Rights Education and Defense Fund

Easterseals

Epilepsy Foundation

National Association of Councils on Developmental Disabilities

National Association of the Deaf

National Council on Independent Living

National Disability Rights Network

Paralyzed Veterans of America

Partnership for Inclusive Disaster Strategies

Perkins School for the Blind

United Spinal Association

U.S. International Council on Disabilities