



Topeka Independent Living Resource Center

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House Judiciary Committee
Representative Fred Patton, Chair

Testimony Opposing HB 2423 by:

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Thank you for the opportunity to present this testimony opposing HB 2423 on behalf of the disabled people who own, operate, and are served by the Topeka Independent Living Resource Center. For over 40 years, our agency has advocated for justice, equality and essential services for a fully integrated and accessible society for all people with disabilities. Our agency was at the forefront of efforts to pass the Americans with Disabilities Act of 1990, and has worked tirelessly to promote the inclusion of disabled people into all aspects of community life.

When President Bush signed the Americans with Disabilities Act (ADA) into law, he expressed his hope that the law would bring down the “shameful wall of exclusion” that had kept disabled people out of all areas of civic life. For many disabled people, exclusion is a matter of physical walls, stairs, doorways, floor plans, and display arrangements that make getting in, out, and around impossible.

The ADA, as negotiated by the late honourable Senator Dole, was a demonstration in compromise both in its writing and in its application. HB2423 and its punitive measures are in stark contrast to Senator Dole’s ADA.

The ADA does not allow disabled people asking for compliance to make a claim for personal compensation or monetary penalties. The only relief a successful litigant can get under the law is that a public serving entity should make it so disabled people can patronize their business. HB2423 would punish disabled people trying to use a public service more than any law would “punish” businesses that after 30 years choose to continue to exclude disabled people.

Advocacy and services provided by and for people with disabilities.

At the heart of the ADA is a spirit of cooperation and collaboration between people who want to use a public service and the owners/operators of such public services. The ADA contemplates the use of an interactive process where people excluded from public services and the provider of such services work collaboratively to identify how a public entity can serve the disabled person with the least disruption to the business. The ADA requires disabled people using it to get access to public services to demonstrate that compromise was not possible, and in some instances requires the disabled person to use administrative processes such as filing a complaint with regulatory agencies before filing a lawsuit. HB2423 would discourage business owners from using this interactive process, opting instead to push the matter to litigation to seek damages against the disabled person, or knowing that their refusal to even discuss making any changes to open their doors to disabled people is defensible under the provisions of HB2423.

Another aspect of the ADA's emphasis on compromise is the built-in claims public serving entities can use. The ADA offers public servicing entities two ways to avoid making changes to serve all people. Businesses for whom making the changes would face an "undue burden"; financial, operational, or otherwise, may be able to avoid compliance with the decades-old obligation. Another way public serving entities can continue to exclude disabled people is if making changes would fundamentally alter that entity's operations.

Our agency has been in operation since 1980. For the better part of our agency's existence we have had attorneys on staff, including myself for the past 20 years. We have helped scores of public serving entities identify ways to make their establishments better and more accessible. In my 22 total years of service to the agency, we have not filed a single lawsuit against a private entity. We have, on the other hand, taught hundreds of young people how to assess the accessibility of built spaces. The young people in our summer intern program have for years performed accessibility surveys for public serving entities in Shawnee County and have given their recommendations to those entities to encourage all public serving entities to make what usually amount to very small changes so disabled people are not excluded. This is the spirit of compromise and inclusion Senator Dole envisioned for the ADA. HB2423 undercuts the integrity and the intent of the ADA and its role as the landmark civil rights law for disabled people by threatening to punish disabled people seeking access to public services.

Being able to serve all people is good for business. Furthermore, public serving entities should come to terms with the demographic reality that customers are aging and as they do, will require basic access for age-related disabilities. Instead of embracing the opportunity to prepare for the changing needs of their customers, HB2423 offers businesses an iron-clad lock on the doors to their businesses, excluding both present and future patrons.

We firmly oppose HB2423 and its attempt to disrupt efforts of disabled people to address barriers which exclude and often deny us access to meeting our most basic needs. We ask that members of this Committee and this legislative body vote no on HB2423.