

Kelly Buckland, Executive Director

National Council on Independent Living (NCIL)

**NCIL Testimony to the Judiciary Subcommittee on the Constitution
and Civil Justice Witness**

**Chairman Goodlatte, Ranking Member Conyers and Members of the
Subcommittee,**

**My name is Kelly Buckland, and I am the Executive Director of
the National Council on Independent Living (NCIL).**

**NCIL is the oldest cross-disability, national grassroots
organization run by and for people with disabilities. NCIL's
membership includes people with disabilities, Centers for Independent
Living, Statewide Independent living Councils, and other disability
rights organizations. NCIL advances independent living and the rights
of people with disabilities, and we envision a world in which people
with disabilities are valued equally and participate fully.**

**Centers for Independent Living are non-residential, community-
based, non-profit organizations that are designed and operated by
individuals with disabilities and provide five core services: advocacy,**

information and referral, peer support, independent living skills training and transition services that facilitate the transition of individuals with significant disabilities from nursing homes and other institutions to home and community-based residences with appropriate supports and services. Also included are assistance to individuals with significant disabilities who are at risk of entering institutions so that the individuals may remain in the community, and the transition of youth with significant disabilities to postsecondary life.

CILs are unique in that they operate according to a strict philosophy of consumer control, in which people with any type of disability, including people with mental, physical, sensory, cognitive, and developmental disabilities, of any age, directly govern and staff the Center. Each of the 365 federally funded Centers are unique because they are run by people with disabilities and reflect the best interest of each community individually.

Centers for Independent Living address discrimination and barriers that exist in society through direct advocacy. These barriers are sometimes architectural, but more often reflect attitudes and

prejudices that have been reinforced for generations. They have deterred people with disabilities from working, leaving many in poverty and unjustly detained in institutions. As my own life experience has proven, with increased opportunities, individuals with disabilities can claim their civil rights and participate in their communities in ways their non-disabled counterparts often take for granted.

I broke my neck in a diving accident on July, 26th 1970. I have used a wheelchair since. Coincidentally the Americans with Disabilities Act (ADA) was signed into law on July 26th, 1990 by President George H. W. Bush. Exactly 20 years after I became disabled. Therefore, I had 20 years of experience living with a disability prior to the ADA. And now 26 years of experience living with a disability post ADA. Fortunately, the ADA has literally changed the face of the globe.

Although I am honored to be here, I am here to testify in opposition to the so called ADA Notification bills. As Congressman Sensenbrenner, Conyers, and Nadler know, the original ADA and the 2008 amendments were passed and signed into law because people with disabilities and bipartisan lawmakers worked together with the

business community. The various efforts to make it harder to bring Title III lawsuits have never followed the same process and never enjoyed support from people with disabilities or the organizations that support them or the organizations that represent them.

People with disabilities don't want more lawsuits, we want more accessibility. The Department of Justice (DOJ) does some amazing work to enforce the ADA but DOJ's budget is not and will never be big enough to address every ADA violation, so our community relies on people with disabilities who know their rights to challenge violations. Adding a notification requirement won't make the multiple lawsuit phenomenon go away. It simply sends the message to business owners that they don't have to worry about complying with the ADA until they receive a letter notifying them that they are discriminating against people with disabilities.

In most parts of this country it is very difficult to find a lawyer who is interested in bringing an ADA complaint against a place of public accommodation because they cannot collect damages. When the ADA was enacted as a compromise between the disability and business community, the disability community gave up the ability to

obtain damages for public accommodations' failure to comply with Title III of the ADA by allowing only injunctive relief and attorney's fees for violations of that part of the law. Unfortunately, there are still businesses, and companies who have yet to comply with this important civil rights law for people with disabilities, even after more than a quarter of a century has passed.

The problem these bills are trying to address has little if anything to do with the ADA. Title III of the ADA does not authorize damages! Settlements or court orders that involve money damages for accessibility violations are based on state laws in a handful of states, not Title III of the ADA. Thus, adding a notice require requirement before people with disabilities can enforce their rights under Title III will do nothing to prevent businesses from being subjected to damages. In addition, if the accessibility violations in question are truly minor, as the proponents of these bills claim, it would not be difficult for businesses to fix the problem and resolve the issue quickly, with minimal attorneys' fees.

Lawyers who do bring ADA Title III cases already assume the risk that they could lose and be paid nothing, with their only upside

being that they may be awarded fees for their time if they win or receive a small amount of fees if they settle. By making it even more difficult to get paid for enforcing the ADA, the proposed bills builds into the statute more disincentives to enforcement, resulting in less compliance and less accessibility.

There is also free technical assistance available to the public on how to comply with Title III's requirements. The ADA itself expressly requires the Department of Justice, in consultation with other agencies, to assist small and large businesses in understanding their obligations under the law. There are a large number of publications on Title III's requirements and a telephone information line and a web site with a numerous technical assistance materials.

Also, the ADA has several provisions that protect businesses from unreasonable requirements. The ADA does not require any action that would cause an "undue burden" or that is "not readily achievable," which is defined as "easily accomplished and able to be carried out without much difficulty or expense."

The result of these bills would be that there will be much less voluntary compliance with the law and the overwhelming advantage will go to those who choose to ignore the law.

I have experienced discrimination before the ADA was passed and I have experienced discrimination since it was passed. For example recently I went to Virginia Beach for Spring Break. They were promoting Time Shares and if you participated in a presentation, you were provided with a free Dolphin watching tour. The Time Shares were not accessible to wheelchair users. They all had stairs.

Disappointed, my family and I were looking forward to the Dolphin watching tour. Alas, they were not accessible either. They stated that they did not take people in wheelchairs. My son was extremely disappointed. I contacted the DOJ and now after very simple and inexpensive changes, the Dolphin watching tour is now accessible to wheelchair users.

As a person with a disability who has seen what our world was like before the ADA and how much our world has changed because of the ADA I would expect congress to make it easier for people to claim their civil rights, not more difficult!

Thank you for the opportunity to provide testimony. I welcome any questions you may have.