

# United States Senate

WASHINGTON, DC 20510

September 4, 2018

The Honorable Jeff Sessions  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530

Dear Attorney General Sessions:

We write to urge the Department of Justice to help resolve uncertainty regarding website accessibility obligations under the Americans with Disabilities Act (ADA). For nearly 30 years, the ADA has protected countless individuals with disabilities, ensuring physical access to “any place of public accommodation.”<sup>1</sup> We support the ADA and all that it stands for.

But for the ADA to be effective, it must be clear so that law abiding Americans can faithfully follow the law. Right now it is not clear whether the ADA applies to websites. This leaves businesses and property owners unsure of what standards, if any, govern their online services. To date, the Department has not issued guidance or regulations to provide clarity, and conflicting court opinions have created even more confusion.<sup>2</sup> Plaintiffs’ lawyers are exploiting this opportunity for personal gain and sending threatening demand letters and filing hundreds of lawsuits against small and medium-sized businesses across the country—from banks and credit unions to retailers and restaurants.

More ADA website accessibility lawsuits were filed in the first half of this year than in all of 2017, which witnessed over 800 such suits.<sup>3</sup> Statistics recently released by the Administrative Office of the U.S. Courts demonstrate that, more broadly, filings of cases raising certain ADA claims increased 521 percent from 2005 to 2017.<sup>4</sup> Unless the Department acts, this trend will only continue and even more lawsuits and demand letters will follow. Businesses would rather invest in making sure they can serve their disabled customers, instead of pay money to avoid a shakedown by trial lawyers who do not have the interests of the disabled at heart. The Department should waste no time in resolving this uncertainty, which will no doubt increase accessibility while curbing unnecessary and abusive litigation.

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<sup>1</sup> 42 U.S.C. §12182(a).

<sup>2</sup> See *Carroll v. ABNB Fed. Credit Union*, No. 2:17CV521, 2018 WL 1180317, at \*1 (E.D. Va. Mar. 5, 2018) and *Gil v. Winn-Dixie Stores, Inc.*, 257 F. Supp. 3d 1340 (S.D. Fla. 2017).

<sup>3</sup> Julia Limitone, *Company Websites that Aren’t ADA-Compliant Becoming Litigation Targets*, Fox Business (July 24, 2018) available at <https://www.foxbusiness.com/technology/company-websites-that-arent-ada-compliant-becoming-litigation-targets>; also see Minh N. Vu et al., *Website Access and Other ADA Title III Lawsuits Hit Record Numbers*, Seyfarth Shaw LLP (July 17, 2018) available at [https://www.adatitleiii.com/2018/07/website-access-and-other-ada-title-iii-lawsuits-hit-record-numbers/?utm\\_source=Seyfarth+Shaw+-+ADA+Title+III+News+%26+Insights&utm\\_campaign=b2ff37eb5a-RSS\\_EMAIL\\_CAMPAIGN&utm\\_medium=email&utm\\_term=0\\_decb46f1f5-b2ff37eb5a-70397757](https://www.adatitleiii.com/2018/07/website-access-and-other-ada-title-iii-lawsuits-hit-record-numbers/?utm_source=Seyfarth+Shaw+-+ADA+Title+III+News+%26+Insights&utm_campaign=b2ff37eb5a-RSS_EMAIL_CAMPAIGN&utm_medium=email&utm_term=0_decb46f1f5-b2ff37eb5a-70397757).

<sup>4</sup> Admin. Office of the U.S. Courts, *Just the Facts: Americans with Disabilities Act* (July 12, 2018) available at <http://www.uscourts.gov/news/2018/07/12/just-facts-americans-disabilities-act>.

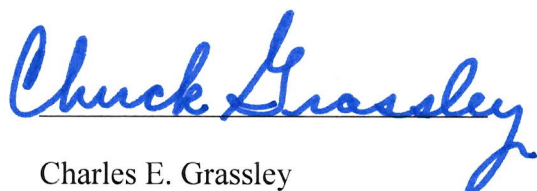
As you may know, in 2010 the Department issued an Advanced Notice of Proposed Rulemaking concerning website accessibility standards. In December 2017, however, the Department withdrew the proposal. In doing so, the Department stated that it is “evaluating whether promulgating regulations about the accessibility of Web information and services is necessary and appropriate. Such an evaluation will be informed by additional review of data and further analysis. The Department will continue to assess whether specific technical standards are necessary and appropriate to assist covered entities with complying with the ADA.”<sup>5</sup>

We appreciate the Department’s careful scrutiny of this complicated matter. At this time, however, the lack of regulatory clarity benefits only the plaintiffs’ lawyers. Clarity in the law will encourage private investment in technology and other measures that will improve conditions for the disabled.

Accordingly, we respectfully urge the Department to promptly take all necessary and appropriate actions within its authority—including filing statements of interest in currently pending litigation—to resolve the current uncertainty. Further, we request the Department provide a briefing to our staff with respect to its intentions on this important issue by no later than September 28, 2018.

Thank you for your consideration of this request, and we look forward to your response.

Respectfully,



Charles E. Grassley  
United States Senator



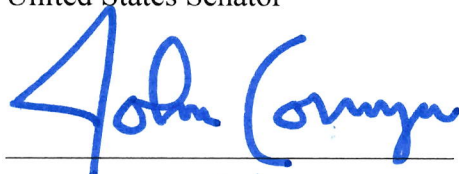
M. Michael Rounds  
United States Senator



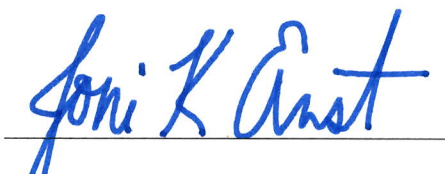
Thom Tillis  
United States Senator



Mike Crapo  
United States Senator



John Cornyn  
United States Senator



Joni K. Ernst  
United States Senator

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<sup>5</sup> Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 Fed. Reg. 60932-01 (Dec. 26, 2017).