H.R. 985 Would Devastate Cases that Improve the Lives of People with Disabilities

The Honorable Bob Goodlatte Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable John Conyers, Jr. Ranking Member
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515


Dear Chairman Goodlatte and Ranking Member Conyers:

The disability rights organizations, individuals with disabilities, and their family members who have signed below strongly oppose H.R. 985, the Fairness in Class Action Litigation Act of 2017.

H.R. 985 would be devastating to the rights of people with disabilities. By severely limiting attorneys’ fees in cases seeking only injunctive relief, it would remove class actions as an essential tool for those who seek to improve the systems that serve people with disabilities. In the paradoxically-named “Class Member Benefit” provision, attorneys’ fees for injunctive cases — with no claim for damages — are limited to “a reasonable percentage of the value of the equitable relief, including any injunctive relief.” How can one put a value, however, on the important gains achieved through these class action lawsuits? Community living? Effective communication? Freedom from abusive conditions?

And ultimately, without the ability to pay the rent, pay their staff, and make a modest living, what lawyers or organizations will be able to bring these cases?

As you are aware, Rule 23(h) of the Federal Rules of Civil Procedure requires the court to review and approve any attorneys’ fees awarded in a class action, and specifically requires that the Court “must find the facts and state its legal conclusions” supporting any award. Fed. R. Civ. P. 23(h)(3). Decades of precedent ensure that these awards are reasonable in amount — reflecting reasonable hours actually worked multiplied by a reasonable rate — and are fair to the class. As Justice Alito explained, writing for the majority in *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542 (2010), this “lodestar” rate is “presumptively sufficient” to achieve the goals of attorneys’ fees provisions without providing a “windfall” to attorneys. *Id.* at 552.

Indeed, the attorneys’ fees provision in section 1718(b)(3) will provide an incentive to defendants to prolong litigation with the goal of ensuring that the class incur fees and costs that exceed the value of injunctive relief sought by the class — directly contrary to the stated goal of this legislation to ensure “prompt” recoveries. Under this bill, class counsel would not be paid for those fees and costs, even though it was defendant’s litigation strategy that made the expenditure of time and costs necessary. The Supreme Court addressed this precise situation in *City of Riverside v.*
Rivera, 477 U.S. 561 (1986), upholding an award of attorney’s fees and costs to the plaintiff’s counsel that was more than seven times greater than the value of the relief obtained for the plaintiff, and noting that a defendant “cannot litigate tenaciously and then be heard to complain about the time necessarily spent by the plaintiff in response.” Id. 580 n.11

In light of this, respectfully, no further limits are required to ensure fairness to the class; the proposed limits -- far from being “class member benefits” -- would take from potential classes of disabled people this essential tool for improving their lives.

The undersigned are also concerned about the provision prohibiting a single individual or organization from being a named plaintiff in more than one class action. This provision overlooks the fact -- especially in the disability rights arena -- that the world is still very inaccessible, and that it is not unusual for individuals with disabilities to encounter discrimination in a variety of different contexts. It would also prohibit organizations such as the American Association of Retired Persons, the National Association of the Deaf, or the National Federation of the Blind from being a class representative more than once. This would significantly hobble their mission to advocate for people with disabilities and increase the accessibility and integration of such individuals.

The cases listed below are only a small sample of the many class actions that have sought to improve life for people with disabilities. Most if not all would be impossible under the proposed legislation.

- **Bates v. United Parcel Serv.**, 204 F.R.D. 440 (N.D. Cal. 2001): Class of deaf truck drivers seeking to secure job opportunities.


Armstrong v. Davis, 275 F.3d 849 (9th Cir. 2001): Class of inmates and parolees with disabilities seeking accessible programs and services.


Brantley v. Maxwell-Jolly, 656 F. Supp. 2d 1161 (N.D. Cal 2009): Class of seniors and people with disabilities challenging restrictive eligibility criteria for Adult Day Health Care that would have caused unnecessary placement in nursing homes.
Letter from Disability Rights Organizations Opposing H.R. 985

We urge that the Committee not move this bill forward. If the bill does move, we urge that hearings be convened so that this Committee may hear from the many people -- including people with disabilities -- whose lives this legislation will affect.

Thank you for your attention to this letter.

Sincerely,

Amy F. Robertson
Co-Executive Director
Civil Rights Education and Enforcement Center

cc: Members of the House Judiciary Committee (by fax)

Co-Signers

American Council of the Blind
Arizona Center for Disability Law
Association on Higher Education And Disability (AHEAD)
Autistic Self-Advocacy Network
Center for Accessible Technology
Center for Public Representation
Colorado Cross-Disability Coalition
Disability Independence Group
Disability Law Center of Massachusetts
disAbility Law Center of Virginia
Disability Law Colorado
Disability Rights Advocates
Disability Rights Bar Association
Disability Rights California
Disability Rights Center – New Hampshire
Letter from Disability Rights Organizations Opposing H.R. 985

Disability Rights DC at University Legal Services
Disability Rights Education and Defense Fund
Disability Rights Florida
Disability Rights Iowa
Disability Rights Maryland
Disability Rights Mississippi
Disability Rights Nebraska
Disability Rights Pennsylvania
Disability Rights Tennessee
Disability Rights Texas
Disability Rights Vermont
Disabled Parent Rights
Helping Educate to Advance the Rights of the Deaf (HEARD)
Judge David L. Bazelon Center for Mental Health Law
Legal Aid at Work (formerly known as Legal Aid Society – Employment Law Center)
National Association of the Deaf
National Disability Rights Network
National Federation of the Blind
National Health Law Program
Paralyzed Veterans of America
The ARC

Washington Lawyers’ Committee for Civil Rights and Urban Affairs