



The Center for Disability Empowerment

Providing Resources and Advocacy for Community Living in Central Ohio

October 23rd, 2017

House Civil Justice Committee

House Bill 271

Opponent Testimony- The Center for Disability Empowerment

Dear Chairman Butler, Vice-Chair Hughes, Ranking Member Boggs, and members of the House Civil Justice Committee:

Thank you for taking the time to consider my testimony and perspective as a person with a disability who opposes HB 271. Not only am I a person with a disability, I work for The Center for Disability Empowerment (CDE), an Independent Living Center in Columbus, OH. I am CDE's ADA and Community Outreach Coordinator. CDE operates our Access Ohio program on a grant from the Great Lakes ADA Center in Chicago, part of the ADA National Network. Our program and the Great Lakes Center are both available to help anyone who needs guidance on any of the five titles of the ADA, including access to buildings and facilities.

Having worked in this field since 1999, I am an expert on accessibility under the ADA/ABA Accessible Guidelines, the new PROWAG, UFAS, ICC/ANSI and the Fair Housing Act Accessible Design Guidelines. CDE also provides in depth fee for service accessibility consultations for businesses, universities, and state and local governments. Since 2013, CDE has provided more than 50 accessibility audits in all regions of Ohio and has trained hundreds of people on common sense approaches to accessibility using the easily understood 2010 ADA/ABA Accessible Guidelines.

I would like to be very intentional in providing testimony to H.B. 271's Committee Members and Sponsors because I feel any legislation that proposes to diminish a minority population's civil rights is not only short-sighted but is antithetical to any individual's civil rights anywhere. Any proposal to amend the Ohio Revised Code should be based on preserving individual freedoms and our common welfare, not on abandoning a segregated class of citizens, whose rights to equal access were minimal prior to 1990. Furthermore, it is shameful that this legislation would give businesses a civil rights compliance loophole. Prolonging persons' with disabilities civil rights with a 60-90 day waiting period is unacceptable. Are not 27 years long enough for us to wait?

I wonder if businesses were complaining about issues including tax code compliance, liability insurance, worker's comp, or others if a legislative committee would convene to hear their cries? What if a business decided to put a **No Blacks or No Jews Allowed** sign on their front door? Would an aggrieved minority have to wait 60-90 days before that sign was taken down? Would they first have to notify the business that the sign was offensive to them? Lack of a "Van Accessible" parking space or a building entry with even one step are just two of many examples that tell a person with a disability you are not welcomed. Why is it okay to tell someone that they first must notify a business, which is already preventing them from entering, that they are not compliant before state and federal civil rights are enforced?

I want to take the opportunity now to redirect the focus off businesses without launching any further counter attack. I do believe there is more naivety than malicious intent among their well-intentioned constituency. In performing hundreds of accessibility audits over the last 17 years, I hope I can provide unique insight on how to correct this issue for both businesses and people with disabilities.

Many of the audits I have performed have been at facilities constructed since passage of the ADA. At one college campus, a newly constructed facility had over 30 barriers that limited access for people with disabilities significantly.

Last year I surveyed a facility for the State of Ohio constructed post ADA. Although the facility was over 300,000 square feet, there were 184 barriers to access found that made the facility "technically" non-compliant.

When access issues are presented as technicalities it does nothing to present the facts as they really are. How many technicalities are there and how severe are they? True a business may have a ramp, but if it is built at a grade steeper than 8.3% a majority of people using wheelchairs will have difficulty navigating it. The technical aspects of the guidelines exist to provide a minimum level of access. If the guidelines are technically not met, access becomes limited to most people with disabilities.

I could highlight many more such cases of recent construction with compliance issues. Each one firmly puts the finger on where we can make progress and not enemies between businesses and people with disabilities. Number one is the fact that building departments are not responsible for enforcing the ADA when they approve plans for new construction or renovations. Ohio Building Code references ANSI A117.1 as the accessibility code. As it is a referenced code and "technically" not part of Ohio code, building departments frequently ignore it based on a "technicality."

As much education as architects get, many seem to be lacking in true knowledge of how to design facilities to be in technical compliance with the accessibility guidelines. I did a plan review a few weeks ago on a new small multi-family housing project that has obligations to comply with the Fair Housing Act and Section 504 of the Rehabilitation Act. Between 6 units, I found 30 issues that would make the accessible units difficult to use for someone with a disability.

From these examples, we can understand the dismay of a business owner or even a corporation when they are opening a newly constructed facility and then find they are being sued for an access issue within months of opening their doors. They are trusting in the supposed expertise of their architect or builder as well as the plans review process that their business is in compliance. If building departments are not catching things on plans reviews, chances are building inspectors in the field do not have accessibility guidelines on their radar screen either.

I would recommend that members of this committee look at ways to remedy the issues businesses face with accessibility lawsuits, by first asking businesses to take their responsibility in complying with all federal and state laws seriously. As the saying goes, "where there's smoke there's fire." Likewise, the fact that this committee wants to address a number of access related lawsuits should point to the fact that there are broader issues with non-compliance.

Secondly, what will the State, or this committee, do to ramp up its own enforcement activity through the Civil Rights Commission or by holding licensed building officials responsible for plans reviews that have allowed the approval of inaccessible projects? What about architects and contractors who design and construct facilities out of compliance? How will they be held responsible? Until we put a legitimate process in place, that insures compliance with both federal and state accessibility guidelines, our sole avenue of enforcement and accountability lies with private lawsuits. If we water this down, we are effectively setting the civil rights of people with disabilities back 30 years or more.

Lastly, I would like to refer this committee to legislation passed in Florida to address this same issue. It seems like a proactive approach to address the problem without limiting the civil rights of people with disabilities. Governor Rick Scott signed [HB 727](#), which enacted Florida Statute [§ 553.5141](#), on June 23, 2017.

I again want to thank this committee for your time, your service as state legislators, and for honoring the hard-won civil rights of people with disabilities. For businesses, I encourage you to reach out, open your doors, and welcome customers with disabilities. One customer with a disability will likely bring you 5-6 without a disability. CDE is here for our community, including all businesses. We can even help businesses take advantage of ADA tax incentives.

In closing, I leave everyone with this one thought: Unfortunately, Disability is an equal opportunity minority anyone can join at any time, completely by accident or by birth.

Sincerely,

Derek Mortland
ADA and Community Outreach Coordinator
The Center for Disability Empowerment