

Congress of the United States
Washington, DC 20515

June 20, 2018

The Honorable Jeff Sessions
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Ave NW
Washington, DC 20530-0001

Dear Attorney General Sessions:

Thank you for your service to our country. We write today to express support for the Department of Justice providing guidance and clarity with regard to website accessibility under the Americans with Disabilities Act or ADA.

Although there have been several recent court decisions on the application of the ADA, the statutory authority for applying the ADA to websites is unclear.^[1] However, businesses of every shape and size throughout the country are being threatened with legal action by private plaintiffs for unsubstantiated violations of the ADA. This problem is expanding at a rapid rate since the Internet allows such actions to be filed from anywhere, and there are no restrictions or limitations on making such complaints. The absence of statutory, regulatory, or other controlling language on this issue only fuels the proliferation of these suits since there are no requirements these complaints have to meet. In fact, in most cases these suits are filed for the purpose of reaching a financial settlement and do little or nothing to improve website accessibility.

We support the original spirit and intent of the ADA. However, unresolved questions about the applicability of the ADA to websites as well as the Department's abandonment of the effort to write a rule defining website accessibility standards, has created a liability hazard that directly affects businesses in our states and the customers they serve.

It is critically important for the Department to take steps now to state publicly that private legal action under the ADA with respect to websites is unfair and violates basic due process principles in the absence of clear statutory authority and issuance by the Department of a final rule establishing website accessibility standards. We agree with the U.S. District Court for the Central

^[1] See *Carroll v. ABNB Fed. Credit Union*, No. 2:17CV521, 2018 WL 1180317, at *1 (E.D. Va. Mar. 5, 2018), and *Robles v. Dominos Pizza LLC*, No. CV1606599SJOSPX, 2017 WL 1330216, at *1 (C.D. Cal. Mar. 20, 2017); but see *Gil v. Winn-Dixie Stores, Inc.*, 257 F. Supp. 3d 1340 (S.D. Fla. 2017), and *Markett v. Five Guys Enterprises LLC*, No. 17-CV-788 (KBF), 2017 WL 5054568 (S.D.N.Y. July 21, 2017).


District of California in *Domino's Pizza v. Robles* which held that "impos[ing] on all regulated persons and entities a requirement that they 'compl[y] with the WCAG 2.0 Guidelines' without specifying a particular level of success criteria and without the DOJ offering meaningful guidance on this topic ... files in the face of due process."¹ Further, as it dismissed the ADA complaint, the court said:

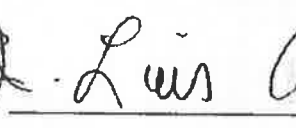
The Court concludes by calling on Congress, the Attorney General, and the Department of Justice to take action to set minimum web accessibility standards for the benefit of the disabled community, those subject to Title III, and the judiciary.²

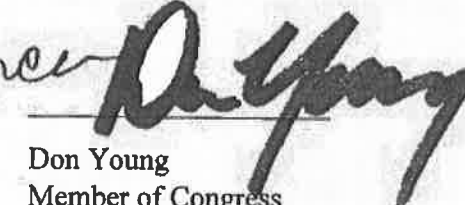
It is important for Congress to act to provide greater clarity through the legislative process. However, in the meantime, it is also unfair and disruptive to subject businesses to litigation risk caused by insufficiently specific statutory language or even basic direction on compliance from the Department. We respectfully urge you to help resolve this situation as soon as possible.

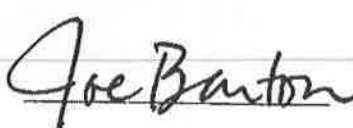
Thank you again for your service to this nation and we look forward to your response.

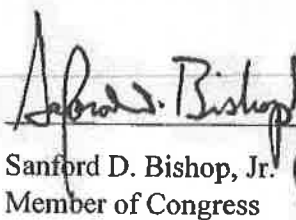
Sincerely,

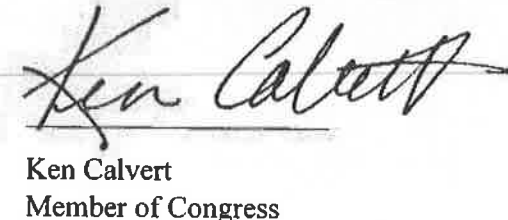

Ted Budd
Member of Congress



J. Luis Correa
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Don Young
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Joe Barton
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Sanford D. Bishop, Jr.
Member of Congress


Ken Calvert
Member of Congress


Ed Royce
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Frank Lucas
Member of Congress


Walter B. Jones, Jr
Member of Congress

¹ *Robles v. Dominos Pizza LLC*, No. CV1606599SJOSPX, 2017 WL 1330216, at *5.

² *Id.* at 8.

Frank LoBiondo Bill Pascrell Steve Chabot

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Andy Barr
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Susan W. Brooks
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Doug Collins
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Paul Cook
Member of Congress



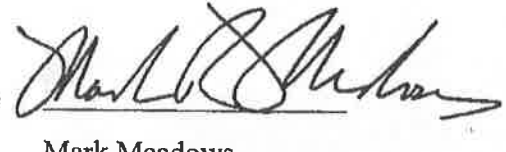
George Holding
Member of Congress



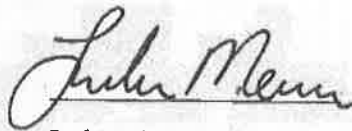
Richard Hudson
Member of Congress



Doug LaMalfa
Member of Congress



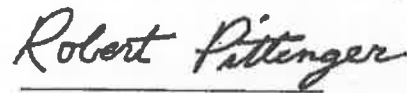
Mark Meadows
Member of Congress




Luke Messer
Member of Congress



Scott Perry
Member of Congress



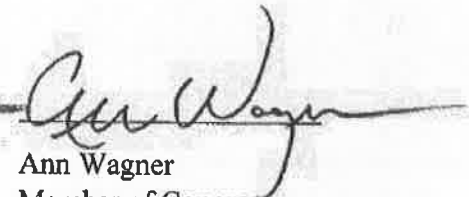
Robert Pittenger
Member of Congress



Keith Rothfus
Member of Congress



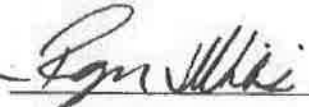
David G. Valadao
Member of Congress



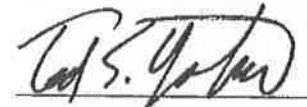
Ann Wagner
Member of Congress



Randy K. Weber
Member of Congress



Roger Williams
Member of Congress



Ted S. Yoho, D.V.M.
Member of Congress



Dave Brat
Member of Congress



Rick W. Allen
Member of Congress



Ralph Abraham, M.D.
Member of Congress



Mike Bishop
Member of Congress



Earl L. "Buddy" Carter
Member of Congress



Tom Emmer
Member of Congress



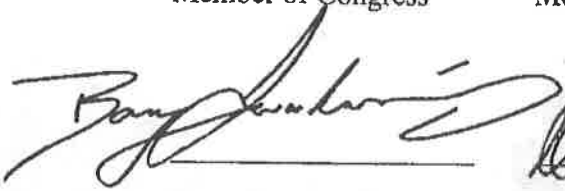
Garret Graves
Member of Congress



Glenn Grothman
Member of Congress



Jody Hice
Member of Congress



Barry Loudermilk
Member of Congress



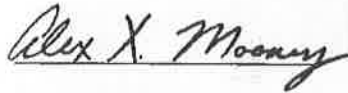
Mia Love
Member of Congress



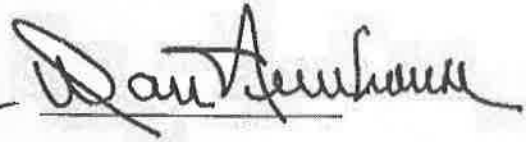
Tom MacArthur
Member of Congress



Gary Palmer
Member of Congress



Alex Mooney
Member of Congress



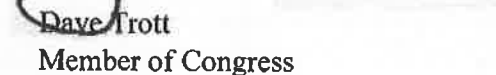
Dan Newhouse
Member of Congress



John Ratcliffe
Member of Congress



David Rouzer
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Dave Trott
Member of Congress



Mark Walker
Member of Congress



Mimi Walters
Member of Congress



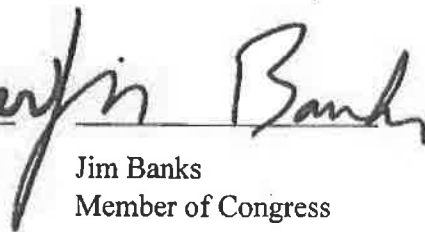
Lee Zeldin
Member of Congress



Warren Davidson
Member of Congress



James Comer
Member of Congress



Jim Banks
Member of Congress



Jack Bergman
Member of Congress



Andy Biggs
Member of Congress

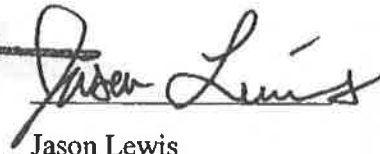
Drew Ferguson
Member of Congress



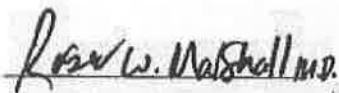
Clay Higgins
Member of Congress



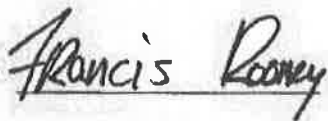
Mike Johnson
Member of Congress



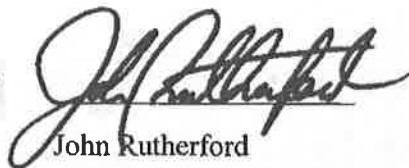
Jason Lewis
Member of Congress



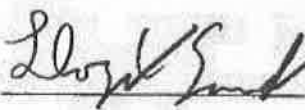
Roger Marshall
Member of Congress



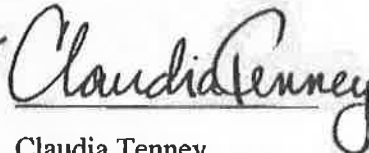
Francis Rooney
Member of Congress



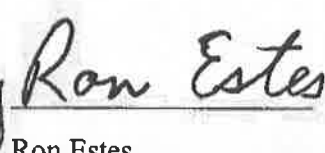
John Rutherford
Member of Congress



Lloyd Smucker
Member of Congress



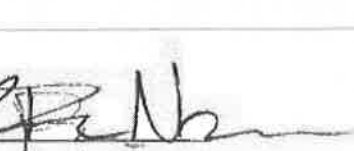
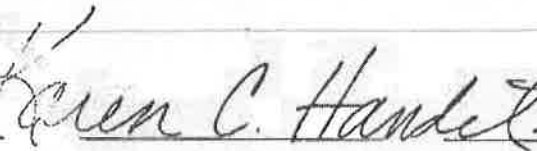
Claudia Tenney
Member of Congress



Ron Estes
Member of Congress



Greg Gianforte
Member of Congress



Karen Handel
Member of Congress

Ralph Norman
Member of Congress



Debbie Lesko
Member of Congress



Jason Smith
Member of Congress

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.”¹ 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.² 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.³ 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 2017.⁴ 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.

¹ 42 U.S.C. §12182(a).

² 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).

³ 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.

⁴ 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>.

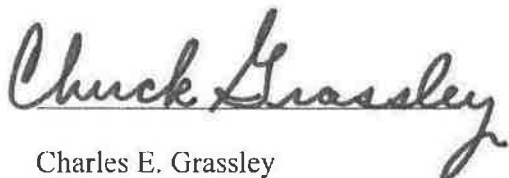
As you may know, in 2010 the Department issued an Advanced Notice of Proposed Rulemaking concerning website accessibility standards. In December 2017, however, the Department withdrew the proposal. In doing so, the Department stated that it is “evaluating whether promulgating regulations about the accessibility 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.”⁵

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.

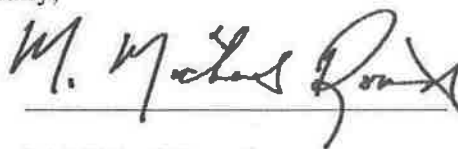
Accordingly, we respectfully urge the Department to promptly take all necessary and appropriate actions within its authority—including filing statements of interest in currently pending litigation—to resolve the current uncertainty. Further, we request the Department provide a briefing to our staff with 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



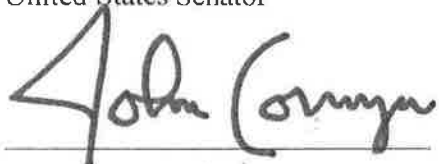
M. Michael Rounds
United States Senator



Thom Tillis
United States Senator



Mike Crapo
United States Senator



John Cornyn
United States Senator



Joni K. Ernst
United States Senator

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