

United States Senate
WASHINGTON, DC 20510

VIA ELECTRONIC TRANSMISSION

The Honorable John Roberts
Chief Justice
Supreme Court of the United States
One First Street, N.E.
Washington, D.C. 20543

June 7, 2021

Dear Chief Justice Roberts:

We write to you today in your capacity as the Chief Administrative Officer of the federal judiciary. We write to request that you direct the Judicial Conference of the United States to amend Rule 9 of the Federal Rules of Civil Procedure to bring reason and fairness to the ballooning litigation under Title III of the Americans with Disabilities Act (ADA) and better ensure resolution of violations of the Act.

As the Judicial Conference has already noted, the continuous, rapid increase in Title III litigation far outpaces other types of similar cases. The Judicial Conference noted that “[f]rom 2005 to 2017, filings of civil rights cases excluding ADA cases decreased 12 percent. In contrast, during that period, filings of ADA cases increased 395 percent”¹ In addition, many of the complaints filed in Title III ADA cases provide little or no detailed information that property owners could use to quickly remedy any potential ADA accessibility issue. In fact, the Ninth Circuit recently began dismissing cases because the allegations contained in the pleadings are so vague that property owners cannot determine whether an ADA violation exists at all.² This lack of specificity makes it very difficult for property owners to correct any potential ADA issue. Individuals seeking access under the ADA do not benefit unless property owners know what needs to be fixed.

We ask that you coordinate with the Judicial Conference to create a pleading standard for Title III ADA cases that employs the “particularity” requirement currently contained in Rule 9 (b) of the Federal Rules of Civil Procedure. Such a standard would benefit all stakeholders and promote judicial efficiency. Property owners can more easily resolve barriers to access with sufficient notice, disabled plaintiffs will see barriers removed more quickly, and at the motions stage, courts will have more fulsome pleadings to determine whether Title III of the ADA has been violated. An amended Rule 9 would thus assist in furthering the policy goals of Title III of

¹ See <https://www.uscourts.gov/news/2018/07/12/just-facts-americans-disabilities-act>

² See <https://www.adatitleiii.com/2021/02/ninth-circuit-makes-clear-in-trilogy-of-decisions-that-disability-access-complaints-without-specific-barrier-allegations-will-be-dismissed/>.

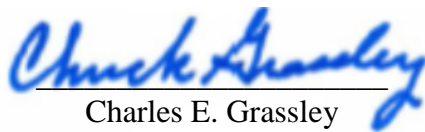
the ADA while ensuring judicial resources are used efficiently. Additionally, this change can and should be made by the judiciary under the Rules Enabling Act.

While we defer to the Judicial Conference on how the rule should be worded, we believe the draft text we have appended to this letter would accomplish this goal. Thank you for considering our request. We strongly support efforts by the Judicial Conference to update the pleading requirements in these cases to better ensure potential ADA violations can be resolved.

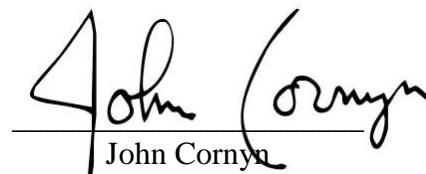
Sincerely,



Thom Tillis
United States Senator



Charles E. Grassley
Ranking Member
Senate Committee on the
Judiciary



John Cornyn
United States Senator

cc: Honorable John D. Bates
Committee on Rules of Practice and Procedure
c/o Rules Committee Staff
Administrative Office of the United States Courts
One Columbus Circle NE
Washington, DC 20544

APPENDIX

Proposed Rule 9(i)

In alleging a violation of Title III of the Americans with Disabilities Act, a non-government party must state with particularity the circumstances constituting such a violation, including references to the specific barrier to access at issue.