



March 11, 2022

Dear Maryland Legislators:

Every day, people are able to go to theaters and watch any movie they want on a big screen. The National Association of the Deaf (NAD) respectfully asks that you support the right of deaf and hard of hearing people to have the equivalent and equitable experience by passing House Bill 1238, the Open Captioning Movies Bill. Based in Maryland, the NAD is the oldest national civil rights organization in the United States, having been founded in 1880 and overseen for the past 142 years by deaf and hard of hearing leaders. The NAD also has a state association affiliate in Maryland – the Maryland Association of the Deaf (MDAD). With this letter, the NAD and MDAD also wish to respond to the comments of the National Association of Theater Owners (NATO).

You would think that the National Association of Theater Owners would want to welcome everyone to this experience and expand their audience. Unfortunately, their history shows that they are short sighted and that they have only relented in increasing access when the political will was too great.

When the Americans with Disabilities Act of 1990 was passed with a mandate for equal access for everyone including captioning, NATO and its members resisted the provision of captioning in their theaters. To counter this resistance, the deaf community persisted in bringing legal cases which ultimately led to the Ninth Circuit Court of Appeals' ruling in the *State of Arizona v. Harkins Amusement* case, 603 F.3d 666 (9th Cir. 2010). With that ruling, movie theaters finally had to provide access for deaf and hard of hearing patrons through captioning technology. However, even with that landmark ruling and other cases that expanded this mandate for captioning access, many deaf and hard of hearing people were frustrated with the deficiencies of closed captioning technology used by movie theaters.

NATO has also resisted any survey of deaf and hard of hearing people regarding their satisfaction with the closed captioning movie theater equipment. Instead, NATO dismisses any allegations of such complaints by arguing that no one files complaints with them. Yet, nearly every deaf and hard of hearing person who has gone to a movie and had to endure the theater's closed captioning equipment will tell you that they have indeed complained. Instead of tracking complaints, NATO's member theaters offer refunds, free popcorn, and other concessions.

This frustration with closed captioning movie technology was so significant that the U.S. Department of Justice (DOJ) took note and opened a rulemaking process to collect comments from both the industry and the community on the issue of closed captioning regulations. Although NATO collaborated with various organizations including the NAD on proposing specifications for closed captioning equipment in movie theaters, the NAD and other organizations representing deaf and hard of hearing people also urged the DOJ to recognize the need for open captioned showings. The DOJ chose not to address this plea for open captioning but instead focused on closed captioning technology only and issued a Final Rule on November 21, 2016 which compelled every movie theater to follow a specific set of requirements for closed captioning access (see, [https://www.ada.gov/regs2016/movie\\_captioning\\_rule\\_page.html](https://www.ada.gov/regs2016/movie_captioning_rule_page.html)).

Predictably, deaf and hard of hearing people continued to be frustrated because closed captioning equipment failures are very common. While the DOJ's 2016 Final Rule made it possible in theory for deaf and hard of hearing people to go to any movie theater and be able to watch practically any movie, these equipment failures were so common that going to the movies was fraught with disappointment rather than the equal access that was the idealized goal.



Such frustrations were the impetus for the deaf and hard of hearing community to seek state and local level remedies -- starting in Hawaii in 2015 with a new open captioning law. NATO fought this effort and succeeded in watering down this legislation in 2017. The deaf and hard of hearing community fought back and finally secured passage of a permanent open captioning law in 2019. NATO repeatedly misrepresented to Hawaii legislators that the deaf and hard of hearing community was happy with closed captioning access. NATO also argued in Hawaii that the mandate for some showings of open captioning at their theaters would harm their theaters and drive away audiences.

Since then, several other states and cities have sought to pass similar open captioning mandates for movie theaters. NATO has resisted every one of them including in Maryland. However, all of their arguments fail.

If it is true that open captioning is driving down the ability of movie theaters to stay in business, then why has AMC, the largest chain of movie theaters and a member of NATO, announced that they have established open captioning at 240 locations? If open captioning was truly disastrous for movie theaters, then AMC would never have done this.

Instead, movie theaters are seeing the open captioning on the wall, and recognizing that there is a demand for open captioning. According to research done by Johns Hopkins experts, there are at least 48 million people in the United States who are deaf or hard of hearing (see, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3564588/>). In Maryland alone, it is estimated that there are more than 1.2 million deaf and hard of hearing people (see, <https://odhh.maryland.gov/press-releases/featured-story/over-1-2-million-deaf-and-hard-of-hearing-marylanders/>). This is a huge audience that needs access at movie theaters along with their families and friends.

Moreover, movie theaters in Maryland are failing to provide enough showings with open captioning to ensure access to the latest movies. Too often, movie theaters make arbitrary decisions on which movies will be open captioned and the low frequency of showings. They will often show a very popular movie with open captioning only once during its run and do so on a day and time that is inconvenient for most people.

HB 1238 would ensure two open captioning showings of each movie per week, and this is not unreasonable. Would the deaf and hard of hearing community be seeking open captioned showings of movies in several states if they were truly happy with closed captioned showings? As was said in *Princess Bride*, "Inconceivable!" and in *Clueless*, "As if!"

Deaf and hard of hearing Marylanders simply ask that we be able to watch movies at any time without dreading frequent machine failures. Please pass HB 1238 to make that possible.

Sincerely,

A handwritten signature in black ink, appearing to read 'H.A. Rosenblum', written in a cursive style.

Howard A. Rosenblum  
Chief Executive Officer