U.S. House Committee on the Judiciary

Subcommittee on the Constitution

June 27, 2012

Hearing on H.R. 3356, the "ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act of 2011"

Testimony of Representative Daniel E. Lungren, 3RD Congressional District of California

Mr. Chairman, first, I would like to thank you for this opportunity to speak on behalf of my legislation – H.R. 3356, the ACCESS Act.

The Americans with Disabilities Act (ADA) is a landmark civil rights law. The passage of the ADA was a watershed moment in American history because our nation stood up to protect and defend the dignity of persons with disabilities and their rights to accessibility in our Nation. This is what the ADA was intended to do – to ensure that public accommodations will be accessible to all Americans.

Unfortunately, however, across the nation and especially in my district in California, thousands of lawsuits have been filed under the ADA in which litigants have the *sole intent* of obtaining settlement money from small business enterprises. These litigants usually have *no intent* whatsoever of obtaining increased accessibility for persons with disabilities. In these lawsuits that abuse the Americans with Disabilities Act, litigants routinely make general allegations against businesses about non-compliance with the ADA. Business owners all too often find themselves unaware of the specific nature of the allegations against them. The litigants then quickly seek to settle for thousands of dollars while usually not pursuing that business' actual compliance with the ADA. These kinds of abusive lawsuits are based upon a desire to achieve financial settlements. In the vast majority of these cases, they do not seek to achieve the facility modifications necessary to provide equal access to places of public accommodation.

What is the impact of these lawsuits that abuse the Americans with Disabilities Act? Professional litigants make money. ADA compliance is not truly enforced because these cases often never make it to court. Unsuspecting businesses in my state are forced to close or temporarily shut down because of the inability to pay settlements or insufficient time to make the necessary improvements. Nobody wins. In one particularly egregious example, one plaintiff has filed over 2,000 of these kinds of lawsuits. The ADA was never intended to be a money making machine for the few while failing to increase accessibility for the many.

My staff and I have spoken with dozens of small business owners in California – restaurants and other small business enterprises. What is the number one threat they fear – abusive ADA lawsuits. They tell me they want as many customers as possible. They tell me they try hard to comply with the ADA because they do not want to turn anyone away, especially in this economy. But they believe these abusive ADA lawsuits are not what the ADA was intended to do.

With thousands of these lawsuits nationwide and in my district in particular, the number of egregious lawsuits are too numerous to count. I have been told of a music store that was the defendant in an ADA lawsuit in which the complaint failed to state any violations specific to that store. What was the primary issue of the lawsuit? The number of handicapped parking spaces in the parking lot despite the fact that the plaintiff had not ever visited the music store. I am aware of a sandwich shop that was the defendant in an ADA lawsuit in which the litigant never visited the shop but used Google maps to determine that the handicapped signage was missing. The plaintiff in this case sued for trauma and embarrassment as a consequence of being unable to access a business that the plaintiff never visited. In another case, a locksmith owner, who himself has a disability, closed his shop in Mid-April 2012 to undergo surgery. His shop is located in a building that is approximately 100 years old. When he came back a month later to reopen he learned that an abusive ADA lawsuit had been filed against his business. His attorney advised the owner, age 66, to never open his doors again. The business owner calls it "extortion." Other tenants in the building may be told they have to move. This is not what the Americans with Disabilities Act was intended to do. It was intended to increase accessibility for all Americans with disabilities not to enrich the few.

There is bipartisan concern about abuse of the ADA. In an April 2012 letter, U.S. Senator Dianne Feinstein wrote to California Senate President pro Tempore Darrell Steinberg and stated:

> "[t]oday, we are still witnessing an alarming rate of demand letters that are being sent to small business owners demanding settlements in the range of $5,000-$8,000. The payment of this settlement amount, combined with the cost of hiring a lawyer to respond to the demand letter, can easily add up to more than $15,000 in costs for a small business owner. As you know, these unforeseen costs can be devastating to the "moms and pop shops" that are struggling to remain open for business."

Though discussing state legislation and not commenting on my ACCESS Act specifically, Senator Feinstein agrees that a new right to cure approach is needed to solve this problem. She continues:

> "Thus, I believe it is critical that a 90-day right to cure be enacted to help small businesses respond to this problem and, once and for all, to end these abuses by certain aggressive attorneys and predatory plaintiffs. I strongly urge you to reconsider your position on this approach. A business owner's ability to cure an ADA violation within 90 days would give that owner the opportunity to comply with the law without the wasteful expense of a lawsuit, which in my view would represent a win both for people with disabilities and for California small businesses."

Mr. Chairman, I would like to submit Senator Feinstein's April 13, 2012 letter for the record.

My legislation, H.R. 3356, the ACCESS (*ADA Compliance for Customer Entry to Stores and Services*) Act of 2011, ensures greater compliance with the Americans with Disabilities Act while protecting small businesses from abusive lawsuits.

The ACCESS Act would serve the underlying purpose of the ADA by creating a legal structure which enhances the prospects for real corrective action. Under my legislation, *any person aggrieved by a violation of the ADA would provide the owner or operator with a written notice of the violation specific enough to allow the owner or operator to identify the barrier, make the needed changes, and thus become compliant.* Within 60 days the owner or operator would be required to provide the aggrieved person with a description outlining improvements

that would be made to address the barrier. The owner or operator would then have 120 days to remove the infraction. *The failure to meet any of these conditions would allow the suit to go forward.*

The ACCESS Act will refocus the ADA on what it was meant to do – ensure that public accommodations will be accessible to all Americans. Increasing public accommodations for persons with disabilities is not inconsistent with the need to protect small business owners from lawsuits that abuse the purpose of the Americans with Disabilities Act. The ACCESS Act demonstrates that we can indeed do both.