



**Written Testimony of Tom Stebbins
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**Before the New York City Council
Committee on Small Business
Hearing on Accessibility in Small Businesses
April 9, 2021**

Thank you Chairman Gjonaj, the Honorable Members of the Committee on Small Business, and the staff of the New York City Council for inviting me to provide testimony on accessibility in small businesses.

My name is Tom Stebbins. I am the executive director of the Lawsuit Reform Alliance of New York a nonpartisan organization that advocates for reforms to the civil litigation system. I also serve on the advisory board of the Progressive Policy Institute's Center for Civil Justice.

New York is second in the nation for the filing of lawsuits under Title III of the Americans With Disabilities Act. In 2020, despite the COVID-19 pandemic, [plaintiffs attorneys filed 2,238](#) such suits in New York federal courts. From January 2014 to June 2019, ADA litigation in the Empire State [increased by 300 percent](#). A total of 2,635 claims were filed here in 2019.

While much of this litigation has moved from lawsuits that allege access issues at brick-and-mortar locations to lawsuits over website and mobile app accessibility — a category of litigation where New York leads the nation — the Big Apple's mom and pop establishments still remain a prime target for physical access claims. And these are often not one-off claims. The same law firms and the same plaintiffs file nearly identical, cut-and-paste lawsuits against numerous businesses at a time.

This is due to the law's private right of action or the component that allows for the filing of private lawsuits, as opposed to only allowing for government enforcement of the law. As written, the law allows prevailing attorneys to recoup costs and fees from defendants.

Motivated by the prospect of collecting attorneys' fees, lawyers have reportedly filed hundreds of claims on behalf of only a handful of plaintiffs. And some have gone to great lengths — Stuart Finkelstein is alleged to have [earned over \\$930,000 filing ADA claims](#) with [at least 25](#) of those lawsuits filed without the knowledge of the plaintiff. Before practicing in New York, Finkelstein filed 286 lawsuits in Florida. The named plaintiff in those suits also says they were filed without his consent. In 2019, Finkelstein was arrested charged with fraud, identity theft, and false declarations by the Department of Justice.

This is an extreme case, but Finkelstein is not alone in filing a slew of lawsuits on behalf of individual plaintiffs. Brooklyn Judge Brian Cogan [held up the payment of fees](#) to Tara Demetriades, who filed more than 60 lawsuits on behalf of two men, writing in his decision that the filings were "an exercise in

shooting ducks in a barrel — marginal businesses that barely have enough funds to defend themselves — in order to generate a small amount of attorneys' fees.”

A report produced by my organization, [*Serial Plaintiffs: Abuse of ADA Title III*](#) includes a brief addendum cataloging New York’s most prolific serial plaintiffs as of September 1, 2017.

While enacted with the best of intentions and with the truly laudable goal of protecting and enriching the lives of persons with disabilities, the ADA has created costly challenges for businesses of all sizes throughout the country. There are a number of “frequent-flyer” serial litigants and law firms that specialize in filing these “drive-by” lawsuits.

Some localities have become particularly vulnerable to abusive ADA related litigation. In addition to the ADA, they have enacted their own laws that allow for the collection of damage awards in litigation that is consistent with violations of the ADA. One such law is the New York City Human Rights Law.

While, as noted above, the ADA only allows for the attorneys to receive costs and fees, the NYC Human Rights Law allows plaintiffs to receive statutory damages. This confluence of overlapping local and federal remedies – one paying out to the plaintiff and the other paying out to the attorneys – creates a perverse incentive for the filing of abusive litigation.

The legislation under discussion today should be welcomed by businesses – education on how to remain compliant and funding for alterations are crucial to ensuring access for all – but the laws that entice extortionate litigation must be changed as well.

The Lawsuit Reform Alliance of New York supports the following proposals to reduce the incentives for abusive, “frequent-flyer” lawsuits in this area:

- A “notice and cure” period that will alert business owners of possible violations and give them a period to remedy the issues before being subject to a lawsuit or enforcement;
- A cap on the reimbursement of attorneys fees;
- A lower cap on the damages payable to plaintiffs; and
- A vexatious litigant database, similar to what has been enacted in California and is overseen by the state’s attorney general.

Thank you again for your efforts in this area and please do not hesitate to reach out to me for any additional information. The Lawsuit Reform Alliance of New York is standing by to work with the New York City Council on this important issue effecting our small businesses. In the wake of the COVID-19 economic crisis, small businesses now more than ever cannot afford to be extorted through one of these shake down lawsuits.