



# Welcome to the ADA Legal Webinar Series

A collaborative program between the  
**Southwest ADA Center, Great Lakes ADA Center and members of the  
ADA National Network**

The Session is Scheduled to begin at 2:00pm Eastern Time  
We will be testing sound quality periodically

Audio and Visual are provided through the on-line webinar system. This session is closed captioned. Individuals may also listen via telephone by dialing  
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## Listening to the Webinar, *continued*

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## Listening to the Webinar, *continued*



### MOBILE Users (iPhone, iPad, or Android device (including Kindle Fire HD))

Individuals may listen\*\* to the session using the Blackboard Collaborate Mobile App (Available Free from the Apple Store, Google Play or Amazon)



\*\*Closed Captioning is not visible via the Mobile App and limited accessibility for screen reader/Voiceover users

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## Captioning



- Real-time captioning is provided during this webinar.
- The caption screen can be accessed by choosing the icon in the Audio & Video panel. 
- Once selected you will have the option to resize the captioning window, change the font size and save the transcript.

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## Submitting Questions



- You may type and submit questions in the Chat Area Text Box or press Control-M and enter text in the Chat Area
- If you are connected via a mobile device you may submit questions in the chat area within the App
- If you are listening by phone and not logged in to the webinar, you may ask questions by emailing them to [webinars@ada-audio.org](mailto:webinars@ada-audio.org)



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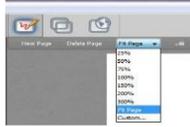
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- Resize the Whiteboard where the Presentation slides are shown to make it smaller or larger by choosing from the drop down menu located above and to the left of the whiteboard. The default is “fit page”



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## Customize Your View *continued*



- Resize/Reposition the Chat, Participant and Audio & Video panels by “detaching” and using your mouse to reposition or  “stretch/shrink”. Each panel may be detached using the icon in the upper right corner of each panel.

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## Technical Assistance



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  1. Send a private chat message to the host by double clicking “Great Lakes ADA” in the participant list. A tab titled “Great Lakes ADA” will appear in the chat panel. Type your comment in the text box and “enter” (Keyboard - F6, Arrow up or down to locate “Great Lakes ADA” and select to send a message ); or
  2. Email [webinars@ada-audio.org](mailto:webinars@ada-audio.org); or
  3. Call 877-232-1990 (V/TTY)

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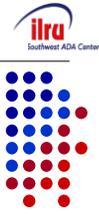
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# An Update on ADA Drive-by Lawsuits

November 15, 2017



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## H.R.620 - ADA Education and Reform Act of 2017



- Bill sponsored by Ted Poe
- Introduced 1/24/2017
- Touted as enjoying widespread bipartisan support
- 78 republicans, 11 democrats (+2 democrats that withdrew support later)
- 11/2017 Rep. Poe not seeking reelection



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## History of the “ADA Notification” bills



Credit:  
playbuzz.com

- Eastwood hotel in Carmel, CA and spends over \$4 Million renovating it into an exclusive inn and destination restaurant.
- 1997 sued for ADA and state law violations
- 2000 Court found that there was no ramp to rental office and other accessibility concerns, but actor didn't have to pay damages to plaintiff
- Eastwood began to champion for ADA notification law

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## “ADA Notification Act” bills through the years:



- H.R.3590 — 106th Congress (1999-2000)
- S.3122 — 106th Congress (1999-2000)
- H.R.914 — 107th Congress (2001-2002)
- H.R.728 — 108th Congress (2003-2004)
- H.R.2804 — 109th Congress (2005-2006)
- H.R.3479 — 110th Congress (2007-2008)
- H.R.2397 — 111th Congress (2009-2010)
- H.R.881 — 112th Congress (2011-2012)
- H.R.777 — 113th Congress (2013-2014)



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## History of the “ADA Notification” bills – 114th Congress get busy!



- H.R. 241: ACCESS (ADA Compliance for Customer Entry to Stores and Services) Act of 2015
- H.R. 4719: Correcting Obstructions to Mediate, Prevent, and Limit Inaccessibility Act or the COMPLI Act
- H.R. 3765: ADA Education and Reform Act of 2015



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## Into the maw of public opinion:



Credit:  
Denverpost.com

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## Centering myself in the argument:



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## Mythology of “drive-by” ADA lawsuits



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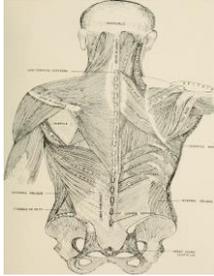
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## Anatomy of ADA “drive-by” lawsuits



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## Anatomy of ADA “drive-by” lawsuits



- Only Title III
- Places of **public accommodations**
- No **monetary damages** available to private sector plaintiffs
- **Injunctive relief** available (e.g. make facility accessible)
- Reasonable statutory attorney fees available



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## Using the Veterans' Day card: Is more delay of compliance the morally right thing to do?



Credit:  
Media.defense.gov

Credit:  
Wikimedia

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## The Media and the ADA: 60 Minutes 12/2016



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## My problem with “drive-by” ADA lawsuits



- Typically pro-plaintiff
- I believe small businesses are the backbone of our economy
- I think the label “drive-by” ADA lawsuit is a bit of propaganda
- Sometimes, these efforts look like “drive-by” lawsuits
- Shady and shoddy legal advocacy chill needed litigation efforts
- Most businesses are motivated by lawsuits more than threats of same

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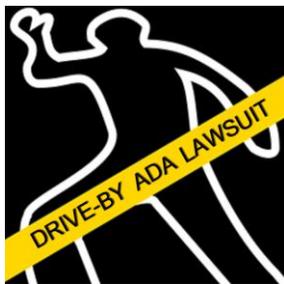
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## What are “drive-by” ADA lawsuits?



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## What are “drive-by” ADA lawsuits?



- Are about money, not access and civil rights?
- Extortion?
- Increasingly common?
- Are ruining the reputation of the ADA and disability rights advocates?
- Frivolous?
- Target small businesses & minority / foreign born business owners?
- Plaintiffs are “tourists” with out-of-state lawyers?
- Brought by “fake” disability rights groups & professional plaintiffs?

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## What are “drive-by” ADA lawsuits, REALLY?



- Title III cases.
- Do target small businesses.
- Are slowly becoming more common across the country --- including outside of FL & CA.
- Have damaged the ADA’s reputation.
- Few cases are *entirely* frivolous.
- Some cases have revealed at least negligent, cookie-cutter legal filings.
- Some litigants & their attorneys appear little interested in improving access.

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## What are “drive-by” ADA lawsuits, REALLY?



- Many so-called ADA drive-by lawsuits are brought under federal AND state law
- Most commonly in California, & Florida.
  - Q: Why?
  - A: State laws may provide different remedies



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### Example: California

- Unruh Civil Rights Act (Cal. Civ. Code § 51(f))
- California Disabled Persons Act (Cal. Civ. Code §§ 52(a))



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### Example: Florida

- Florida Civil Rights Act (ss. 760.07, 760-08, & 760.11(5))



©creative commons



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### What if it were not disability at issue?



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## Alternatives to a federal law change Texas style!



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## Alternatives to a federal law change California style!



Jarek Molski



Attorney Thomas Frankovich

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## Defenses to “drive-by” ADA lawsuits?



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## Small Businesses: The best defense is compliance:



- Learn the ADA law applicable to your facility or service
- Establish ADA compliance of facility and practices of customer service
  - Survey site
  - Ensure communication is accessible and effective --- including website
- Maintain accessible features of site
- Rinse, repeat!

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## Use available free resources to evaluate compliance and learn the ADA:



ADAChecklist.org

ADA.gov

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## Use available tax incentives to aid in remedying ADA violations:



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## Hire ADA talent to prevent and correct ADA violations:



Credit:  
Flicker / USACE Europe



Credit:  
Wikimedia

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## Think about your market:



Credit: media.defense.gov

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## Think about employee and customer safety:



Credit:  
fws.gov



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## Defenses to label of “drive-by” ADA lawsuits?

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## Advocates: The best Offense is an accurate offense:

- Learn what the ADA requires and what it does not
- Be specific in your allegations, and accurate.
- If **access** is the goal, try asking first, filing complaint or suing second.
- Partner with the business community to foster compliance.
- Be willing to mediate, settle, ready to win in court.

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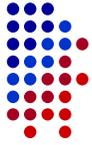
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**Your questions?**



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**Session Evaluation**  
Your feedback is important to us

You will receive an email following the session with a link to the on-line evaluation



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**Next ADA Legal Webinar Session**  
**January 17, 2018**  
**Topic To Be Announced**



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