

# Phoenix-area activists, businesses go head-to-head in flood of Americans With Disabilities Act lawsuits



Maria Polletta, The Republic | azcentral.com 10:02 a.m. MST July 18, 2016

*Valley businesses are lambasting a recent flood of ADA-compliance lawsuits as a money grab, but disability-rights advocates say the tactic is the 'only effective method' to force compliance.*



(Photo: Charlie Kaijo/The Republic)

Small businesses throughout the Phoenix area are crying foul at a recent spate of lawsuits filed against them by disability-rights advocates, contending they've been unfairly targeted for minor violations by serial plaintiffs looking to make a quick buck.

The advocates, however, argue a flood of lawsuits is the "only effective method to wake up business owners" who continue to ignore clear accessibility requirements outlined by the Americans With Disabilities Act decades ago.

The real victims, they say, are people with disabilities who want the chance to comfortably visit the same shops and facilities customers without disabilities do.

The nearly 1,000 lawsuits — which focus on elements of parking-lot accessibility, such as parking-space widths and signage — have hit businesses in Scottsdale, Phoenix, Mesa, Chandler and Gilbert over the past six months, racking up thousands in settlement payouts.

And they aren't slowing down: Phoenix-based Advocates for Individuals With Disabilities, the organization behind the suits, said it has mailed out tens of thousands of "courtesy" letters to Maricopa County businesses telling them additional inspections are pending.

Jamie Ratner, a professor at the University of Arizona's James E. Rogers College of Law, said the group's approach is "fully appropriate" from a legal standpoint, because "the ADA, like most civil-rights laws, is a complaint-driven process and relies on individuals or organizations to initiate compliance."

But it "isn't out of the question that suits are jumping the gun in some situations" where businesses would've been receptive to less drastic measures, he said.

"Sometimes, only a suit gets someone's attention, while sometimes more informal discussion with the entities not in compliance can resolve the issues well short of a need to file a suit," Ratner said.

"Businesses who genuinely were unaware (of certain ADA guidelines) ... and are moving promptly to comply might appropriately be dropped from the suit as soon as they are in compliance," he said. "Businesses who have dragged their feet for 20 years and now don't like it, however, are subject to lawsuits — their risk."



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(<http://www.azcentral.com/story/money/business/tourism/2016/07/12/why-arizona-woman-sued-more-than-30-hotels-where-she-hadnt-stayed/86875122/>)

## 'Rampant disregard and discrimination'

Title III of the ADA requires public accommodations — including educational, recreational and commercial facilities — to provide goods and services to people with disabilities on an equal basis. It also compels them to remove "architectural barriers" to access when doing so isn't cost-prohibitive.

Key parking-lot rules involve designating accessible parking spots, including an extra-wide space for vans with an adjacent pathway, and mounting appropriate accessible-parking signage at least 5 feet above the ground. Exceptions and variations exist depending on the size and age of the facility.

"Signage may sound minor to some, but people with disabilities live their lives looking for signage that indicates a facility can accommodate them," said J.J. Rico, executive director of the Arizona Center for Disability Law.



A handicap placard is displayed at the parking lot of Y-Knot Party & Rentals in Mesa as a man cleans the asphalt in preparation for restriping on July 14, 2016. The business is restriping the handicap stalls in their parking lot to meet accessibility requirements outlined by the Americans with Disabilities Act. (Photo: Charlie Kaijo/The Republic)

"If accessibility isn't readily apparent, they're moving on," he said. "If it's properly marked and in a uniform place, it makes it that much easier for them to participate in things we all want to participate in, like going to the store or the movies."

Van-accessible spaces are similarly key for people who use wheelchairs.

"Again, I think some folks think it's not a big deal," Rico said, "but if there's not ample space for a wheelchair ramp to come down, the person can't actually get out of his vehicle."

Advocates for Individuals With Disabilities spokeswoman Jennifer Rogers said the organization formed this year to make businesses aware of ongoing accessibility issues and has since applied for tax-exempt status. The group is continuing the work of the ADA's founders, who "experienced living with disabilities and recognized the rampant disregard and discrimination of individuals with disabilities firsthand and decided to do something about it," she said.

The organization wants "compliance, not lawsuits," according to Rogers, but has seen a "dismal response" to alternative methods.

"Only about 10 percent of businesses which we provided notice to (prior to inspections) ... even responded to us that they were interested in compliance," she said. In cases where the group has filed a lawsuit and reached a settlement, "we have a 100 percent success rate in causing them to comply regarding the violations we note in the suit."

Rogers said settlement payouts go toward providing medical and other equipment to people with disabilities but declined to disclose average settlement amounts.



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(<http://www.azcentral.com/story/news/arizona/politics/2016/02/04/disability-community-protests-accessibility-legislation/79821538/>)

## 'Shooting fish in a barrel'

The parking-lot cases are only the latest example of the lawsuit-blitz strategy in Arizona.

Last year, a woman filed more than 150 suits against Arizona hotels lacking pool lifts (/story/money/business/tourism/2016/07/12/why-arizona-woman-sued-more-than-30-hotels-where-she-hadnt-stayed/86875122/), which help guests with disabilities get into swimming pools. And Phoenix attorney Lindsay Leavitt, who has defended about 175 businesses in ADA-compliance cases, said he has seen more than 200 suits regarding bar and restaurant interiors since October.

"I think all of us would agree: The ADA is a great, well-intentioned law," Leavitt said. "I'm not sure that 1,300 lawsuits filed against small businesses is what (its creators) had in mind."

Leavitt said the suits are "like shooting fish in a barrel," because nearly all businesses choose to settle out of court instead of investing additional time and money into pursuing litigation. He was not aware of any Arizona suits that had gone to trial.

Possible defendants abound, Leavitt said, because there is no such thing as "almost compliant" — meaning a business that posts one sign an inch below the minimum required height, for instance, is just as vulnerable to a suit as one with more severe accessibility problems.

Ginia Lucas, manager of Y-Knot Party & Rentals in Mesa, said she and business partner Sharon Olsen were "frustrated and surprised" to hear they were being sued for failing to have proper parking-lot signage and a van-accessible space earlier this summer. They did not receive a warning letter or other notice prior to the suit, Lucas said.

The partners have since purchased a sign online and had their parking-space stripes adjusted and repainted, she said, and are attempting to get the case against the business dismissed.

"If somebody would've said, 'Hey, you're not in compliance on these few things; fix it within 15 or 30 days,' we would have immediately been like, 'OK, how can we fix this?'" Lucas said. "It seems very extreme that somebody would do it this way. It seems like a money grab."

Mesa Chamber of Commerce President Sally Harrison said she'd heard similar comments from other chamber members, who have reported settling for an average of \$5,000 to \$6,000-plus.

"These are mostly small, family-owned businesses — chiropractic offices, small automotive shops," Harrison said. "It seems like they're pretty much targeting small businesses that are willing to quickly settle because they feel they can't fight back."

Peter Strojnik, the Phoenix lawyer who filed the parking-lot and several pool-lift suits, did not respond to requests for comment.

## Acting instead of reacting



Nick Tetzloff, 19, of Chandler, restripes the lot at Y Knot Party Rentals in Mesa on July 14, 2016. The business is restriping the handicap stalls in their parking lot to meet accessibility requirements outlined by the Americans with Disabilities Act. (Photo: Charlie Kaijo/The Republic)

Rose Daly-Rooney, legal director for the Arizona Center for Disability Law, said even small businesses should be proactively familiarizing themselves with ADA standards.

The law's detailed requirements might be extensive, but there's no excuse not to be aware of them when guidelines are available to anyone who takes the time to review them, she said.

"The information is free, and it's available in a user-friendly way," she said. "The U.S. Department of Justice has an ADA homepage, as well as an 800 number businesses can call to find out about their obligations. There are briefs on parking-lot restriping with illustrations and even a guide specifically called 'Common ADA Errors and Omissions in New Construction.'"

The law also makes exceptions for older buildings where certain efforts to comply would put an "undue burden" on businesses, so conscientious owners have some wiggle room.

Lawyers recommend businesses ask experienced contractors or compliance consultants to help them inspect their facilities and provide cost estimates for any needed improvements.

They should also be aware plaintiffs in ADA suits don't necessarily have to have visited a business in person to successfully file a complaint.

"The ADA has been around a long time, so (businesses feeling) 'ambushed' sounds too dramatic," said Ratner, the law professor. "Substitute race or sex for disability, and see how sympathetic anyone would be to a 'I didn't know. Why are you picking on me?' excuse."



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