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SEPTEMBER 12, 2014

## ADA Lawsuits: A Case Study in Lack of Governance

 August 23, 2014 by [stevenyoder](#)  [Leave a Comment](#)

In April, a National Public Radio reporter went to California to [cover](#) the effects of a wave of Americans with Disabilities Act lawsuits targeting small businesses in that state. The story offered listeners a picture of government run amok. Lawsuits are shutting down struggling shops. Store owners are suspicious of people with disabilities who come in, fearing they're looking for problems that they can use to sue.

But had the reporter talked to experts who have watched the ADA play out in California over the years, listeners might have drawn another conclusion: the state's ADA problems result not from too much government, but not enough.

Almost one in five Americans has some kind of disability. In 1990, Congress passed the federal ADA to ensure that they aren't discriminated against, particularly in gaining access to public accommodations, businesses, and transportation.

But to keep bipartisan support, the law's backers never built in an enforcement mechanism to ensure that private and public facilities would have to fix barriers to the

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disabled. Instead, individual plaintiffs and their lawyers were handed the task of enforcing the law by suing violators.

States were free to pass their own legislation to supplement the federal ADA requirements. California did just that. In other states, when plaintiffs win an ADA lawsuit, they force the violator to remedy the access problem and pay their attorneys' fees. But in California, plaintiffs also can tack on damages of at least \$1000, creating a financial incentive to sue. The theory was that more lawsuits would lead to better compliance.

The results have been predictable. More than 40 percent of the country's ADA access lawsuits are brought in California, though it has just 12 percent of the population. A handful of lawyers are profiting handsomely—Scott Johnson, a Sacramento attorney who gets around in a wheelchair, has filed more than 2000 by himself. Meanwhile, state government has funded no studies of whether all of those lawsuits have actually improved access.

That the state is losing businesses as a result is undeniable. In the last few months, 48 businesses have been hit with lawsuits in Lake Tahoe, 25 in Fresno, 26 in the town of Manteca. No one keeps track of how many businesses have closed statewide, but defense lawyer David Warren Peters has documented at least [eight](#).

Still, it's hard to blame those with disabilities or their lawyers for using the system that state politicians have set up. "We're in a false battle with the business community," says California disabilities advocate Teresa Favuzzi. "We just want to get in, get out, and enjoy life."

But a system of private lawsuits is a curious way to enforce access for those with disabilities. "ADA compliance is not under the purview of any of the governmental inspectors or regulators who oversee businesses," notes Kimberly Stone of the California Civil Justice Association, a pro-business advocacy group.

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She observes that policymakers could have embedded responsibility for enforcing access in local government. To get a building inspection, business license, or fire inspection, business owners could have been forced to prove that they were compliant with ADA access codes. That, of course, would have required more money for towns and cities to do the inspections. State leaders may have had to go to voters to ask for small tax increases to pay for the changes.

Ireland already uses such a scheme. Under a law passed in 2007, any Irish developer planning [construction](#) of a new building that's designed for public access—apartments, churches, businesses, and so forth—has to get a “disability access certificate.” They also need a certificate to do any major renovations. Irish voters have decided that access for those with disabilities is a basic tenet of public safety, no less important than requiring sprinklers and fire escapes. They've given government the tools to make sure it happens.

In California, both the pro-business and pro-disabilities sides say they want the same goal—ensuring that people with disabilities can easily get in and out of buildings. But by trying to do it on the cheap, the state has reaped the whirlwind—angry business owners, frustrated disability advocates who wonder why fixing the access problem has taken more than 24 years, and public suspicion that the ADA law has gone off the rails.

If that story sounds familiar, it is. For example, an AP [poll](#) in early August found that a majority of Americans think the cost of good highways, railroads, and airports is justified by their benefits. But most also oppose any scheme to raise money for them—raising gas taxes, selling them off to private companies who charge tolls, or having state and local government maintain them.

Whether highways or access ramps are being debated, a theme runs through American polity. Political leaders and voters want the benefits of a thriving democracy. But they don't want to pay for them.



## Commentary: The irony of Turkey hosting a UN-sponsored Internet forum

September 3, 2014

By [Liz Fields](#)

The decision to host a major UN-backed

Internet forum in Turkey this week, despite the country's displays of spiraling contempt toward web and social media freedoms, seems to be rewarding Turkish government for its draconian censorship laws, rather than denouncing them. The Internet Governance Forum (IGF), being held between 2-5 Sept. in Istanbul, is a gathering [...]



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## Commentary: Polarization – the single biggest threat to the United States

September 1, 2014 By [Patrick R.](#)

[Romain](#)

The standing of the United States will likely weaken over the next several years, setting the country on a path to become an also-ran middle tier power by 2035. By most measures and indicators that bear on future performance and strength, America’s advantage over other countries is disappearing – fast. Meanwhile, the country’s political leadership [...]



## Commentary: Journalists at risk in Iraq and Ferguson, Missouri

August 30, 2014 By [Patrick R. Romain](#)

The Islamic State’s gruesome killing of Associated Press reporter James Foley is a stark reminder of the ultimate danger faced by journalists who cover various state and regional conflicts around the world. The profession is predicated on providing transparency to local and global constituents on

issues that impact human progress and development. That mission is no less [...]

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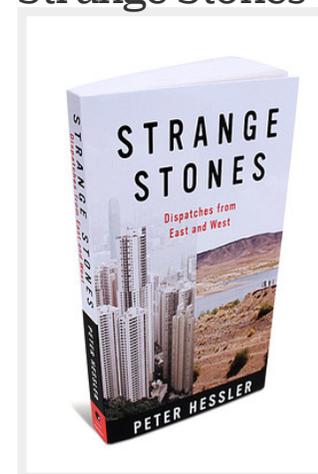
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## Book recommendation: Strange Stones

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