

**Editorial**

# ADA lawsuit abuse still a big problem

California adopted some reforms last year to curb predatory disability lawsuits but, as evidenced by more proposals at both the state and federal levels, the problem remains.

The Americans with Disabilities Act, adopted in 1990, was enacted to ensure access for the disabled to public accommodations, but too often it has been abused to shake down businesses — particularly smaller businesses that are more inclined to pay off plaintiffs because they lack the means to engage in expensive litigation — for the most minor of violations that do not actually impede access at all. Businesses can be sued because a bathroom mirror is an inch too high, a sign is missing or the paint on a disabled parking space has become too faded over time. There are numerous examples like the San Ramon gas station owner who was forced to install a shield under a bathroom sink to prevent burns to the legs of someone in a wheelchair — even though the bathroom does not even have hot water.

The problem is exacerbated here in California due to the Unruh Civil Rights Act, which incorporates provisions of the ADA but offers much higher fines — a minimum of \$4,000 per infraction, versus \$1,000 for the federal ADA — and requires payment of plaintiffs' legal fees. So it should be no surprise that a cottage industry of ADA hustlers has sprung up in the Golden State, which now accounts for 40 percent of ADA cases nationwide, despite being home to just 12 percent of the country's disabled population.

Most claims are filed by a small number of serial plaintiffs (and their attorneys) who canvass strip malls and business parks looking for any technical excuse to threaten a business with many thousands of dollars in legal claims. In fact, from 2012 to 2014, 54 percent of all construction-related

accessibility complaints in the state were filed by just two law firms, and 14 plaintiffs brought 46 percent of all lawsuits, the California Commission on Disability Access found.

These include people like Robert McCarthy, who does not even live in California, and who has filed more than 400 disability lawsuits against California businesses, including 91 in the past year, the Modesto Bee noted. Assemblyman Adam Gray, D-Merced, proposed Assembly Bill 913 this year to give the courts more leeway to bar "extremely high-frequency litigants" who file more than 15 disability access lawsuits within a year from proceeding with their claims, but it was shot down by the Assembly Judiciary Committee in late March.

In a positive step last year, California enacted Senate Bill 269 by state Sen. Richard Roth, D-Riverside, which gives small businesses some time to fix certain minor or technical ADA violations, though it was not comprehensive and is not enough, by itself, to put a stop to predatory ADA lawsuits.

At the federal level, Republican Congressmen Jeff Denham of Turlock and Ted Poe of Texas each have bills that would provide businesses with a 120-day period to fix violations before a lawsuit could be filed.

Extortionate disability lawsuits tarnish the legitimate claims of others who genuinely seek redress for inadequate access. It is time to put the focus on fixing problems that actually prevent access rather than lining the pockets of a small number of "professional victims," as a fact sheet for AB 913 described them, and their attorneys.

**Editorial**

# Subpoena needed on UC finances

Last month, the state auditor issued a damning report on the finances and practices of the University of California president's office.

Now, the state Legislature should be aggressive in trying to find out more.

In a letter to Gov. Jerry Brown, Auditor Elaine Howle reported that UCOP "used misleading budgeting practices, provided its employees with generous salaries and atypical benefits, and failed to satisfactorily justify its spending on systemwide initiatives."

It was revealed that, for years, UCOP requested and received far more money than it needed and had amassed an undisclosed surplus of \$175 million. When asked to disclose records of \$35.8 million in expenditures for things like lodging, meals and entertainment, UCOP delayed for weeks before producing records for only \$10.4 million in expenses.

Considering that in January the UC system approved its first tuition hike since 2010-11, revelations of such a massive surplus and questionable budgetary practices raise alarms.

Compounding this, the auditor reported that UCOP directly interfered with confidential surveys distributed to leaders of the university system's 10 cam-

pus by the auditor, with responses altered to reflect more positive views of UC operations.

A group of Assembly Republicans has called on Speaker Anthony Rendon, D-South Gate, to issue a legislative subpoena to compel the University of California to produce all financial records and correspondences pertaining to the \$175 million fund. Rendon has declined to do so.

In a meeting with our editorial board Tuesday, Assemblyman Dante Acosta, R-Santa Clarita, reiterated calls for the subpoena as well as a forensic audit to better understand how money from the \$175 million surplus has been used.

Stressing he is not interested in a witch hunt, Acosta rightly said students and the public alike are owed a thorough accounting of how their money was used. "We don't have the information, so let's get the information," he said.

The pattern of deception and obstructionism exhibited by UC President Janet Napolitano underscores the need for a more thorough review. While the autonomy of the UC system is important, so is a baseline level of transparency UCOP has failed to provide.

Speaker Rendon should support a subpoena.

**POSSIBLE OBSTRUCTION OF JUSTICE**

# Is it time to start talking about impeachment?

For weeks, I have dismissed talk about the possible impeachment of President Donald Trump as premature and a waste of time, but I have changed my mind in light of evidence that he might have engaged in the crime of obstruction of justice. This is the crime that led to Richard Nixon's resignation and Trump's conduct is remarkably similar to that which caused the House Judiciary Committee to vote articles of impeachment against Nixon.

The Constitution provides that the president may be impeached for treason, bribery or "high crimes and misdemeanors." Impeachment in the House of Representatives requires a majority vote, while conviction in the Senate requires a two-thirds vote. The phrase "high crimes and misdemeanors" never has been defined with any precision. Criminal activity always has been regarded as sufficient to meet this standard. But it also has been understood to include serious abuses of power, even if not illegal.

Only twice in history have presidents been impeached by the House of Representatives; in neither instance did the Senate vote to remove the president from office. President Andrew Johnson was impeached for firing a Cabinet official in violation of a federal law, the Tenure in Office Act. President Bill Clinton was impeached for lying under oath about whether he had a sexual relationship with a White House intern, Monica Lewinsky. The House Judiciary Committee voted articles of impeachment against President Richard Nixon in 1974, but he resigned before the full House could consider them. The primary charge against Nixon was that he had engaged in obstruction of justice with regard to the cover-up of the break-in to the Democratic headquarters at the Watergate building in Washington, D.C. The "smoking gun" that led to Nixon's resignation was the revelation of a taped conversation in which Nixon said he would tell the FBI not to investigate the Watergate burglary because it

was a CIA matter. Such interference with a pending investigation is obstruction of justice. Obstruction of justice occurs when one "obstructs, influences or impedes any official proceeding." There is reason to believe that Trump did just this in trying to stop an FBI investigation into whether Michael Flynn, a Trump campaign aide and briefly a high-level official in the Trump administration, violated federal law in his contacts with Russia. Last week, former FBI Director James Comey revealed that Trump said that he hoped the FBI would "let it go" with regard to the investigation of Flynn. Comey said he felt pressured by the president to end the investigation and that Comey recorded this in a memo he wrote at the time.

Perhaps more important, Trump has made statements that he fired Comey precisely to end the investigation about possible illegal activity by Flynn and others. If so, that is obstruction of justice. After firing Comey, Trump told Lester Holt of NBC "this Russia thing" was on his mind when he fired Comey. Last Friday, The New York Times reported that Trump told two Russian officials that Comey was fired to end "pressure" with regard to the investigation concerning Russian influence in the election. Trump invited Russian

Foreign Minister Sergey Lavrov and Russian Ambassador to the U.S. Sergey Kislyak — both of whom are being investigated by the FBI — to a special Oval Office meeting May 10, just a day after firing Comey. It was earlier reported that Trump leaked classified information to the two Russians in that meeting. Robert Mueller, who was appointed last week as a special prosecutor, must investigate whether Trump engaged in the crime of obstruction of justice, as well as whether crimes were committed by officials of the Trump campaign and the Trump administration. If so, it remains unresolved whether a sitting president can be criminally indicted or whether impeachment is the sole remedy.

At this stage, impeachment seems unlikely. Republicans control both the House and the Senate and do not seem disposed to impeach and remove a president of their party. Impeachment is truly extraordinary in American history. But everything about the Trump presidency has been unlikely and even staunch Republicans have expressed great concern about the latest revelations. No longer does talk about consideration of impeachment seem premature.

*Erwin Chemerinsky is dean of the UC Irvine School of Law.*



FILE PHOTO COURTESY RUSSIAN FOREIGN MINISTRY VIA THE ASSOCIATED PRESS  
 President Donald Trump meets with Russian Foreign Minister Sergey Lavrov, left, and Russian Ambassador to the U.S. Sergey Kislyak at the White House earlier this month.

**Letters**

**Developmentally disabled deserve state's support**

Re "Too much spending, not enough restraint in Gov. Brown's revised budget proposal" (Editorial, May 12):

As an educator, I applaud additional funding for our schools. Yet, while Gov. Jerry Brown appears to care about wage stagnation, I hope he supports Assembly Bill 279, currently on suspense by the Appropriations Committee.

AB 279 allows organizations serving Californians with developmental disabilities to receive adjustments to meet the new, higher minimum wage laws. Professional caregivers deserve so much more than minimum wage. But many developmentally disabled adults come from families that cannot provide the costly additional support.

If the state doesn't approve AB 279, residential programs with skilled caregivers who pro-

vide personalized attention to the disabled, like New Horizons in North Hills and schools like Tierra del Sol Foundation in Sunland, won't be able to pay their staffs. Failure to support AB 279 could leave thousands of disabled people without shelter and vital support services.

We must protect our most vulnerable citizens by compassionately compensating those who care for them.

— *Lena Rivkin, Studio City*

**Of course media are liberal**

Re "Liberal media bias? No, tax plan critique is valid" (Letters, May 12):

Letter writer Erik Eskelin seems outraged that columnist Joel Kotkin dares to suggest that there is liberal media bias. That's like someone getting upset because he was told that TV wrestling was fake.

The "conservative pundit flame throwers" he refers to

who "dominate the airwaves with their propaganda" are a handful of talk radio hosts who promote opinions so alien they would make any high school, college or graduate student run to a puppy-filled safe room faster than you can say "climate change."

Talk radio, however, pales in comparison to the onslaught of indoctrination from the axis of leftism: academia, Hollywood and yes, the media. Where's our safe room?

The writer also refers to the "anti-urbanist" who downplays the criticism President Obama supposedly received. First of all, what is an "anti-urbanist," and second, you can't downplay something that isn't there. Obama got more free passes by the media than a wide receiver.

It's clear the letter writer hates President Trump and conservatives, but anti-urbanist? That's hitting below the belt.

— *John Cramer, Los Angeles*

**MALLARD FILLMORE:** By Bruce Tinsley

