Local Leaders and Small Business Owners Throughout California Tell California Citizens Against Lawsuit Abuse

“WE NEED LEGAL REFORM NOW!”

www.cala.com
Introduction

In autumn 2011, California Citizens Against Lawsuit Abuse (CALA), a nonpartisan grassroots movement of concerned citizens and businesses who are fighting against lawsuit abuse in California, brought together local elected officials, community leaders and business owners to spark a dialogue about how lawsuit abuse is hurting California and what can be done to stop it.

These roundtable discussions, held in Sacramento, Modesto, Fresno, Orange County, and San Diego, offered small business owners and community leaders an opportunity to share their experiences with abusive lawsuits with their local leaders, and for elected officials to hear firsthand how lawsuit abuse is hurting their constituents.

While specific stories of lawsuit abuse varied from region to region, each roundtable discussion centered on a common theme: California's legal climate is severely hindering economic growth, hurting job creation and prolonging the recession. Due to this, California's small business owners are fed up with the Legislature's continued inability to pass meaningful reforms.

California’s Legal Climate

California’s legal climate is infamously unfriendly to business. It was rated as the worst state for business in CEO Magazine’s 2011 survey of more than 500 chief executives. California has consistently been ranked as one of the top five “judicial hellholes” and more than one million civil lawsuits are filed in the state every year.

When a small business owner faces an abusive lawsuit, the money spent on attorneys or a settlement is money that cannot be spent expanding the business or hiring new workers. Many small business owners in California have been forced to delay or scrap altogether their plans for hiring new employees because of a lawsuit.

For California’s small businesses, there’s no denying it: lawsuit abuse is hurting our economy and costing our communities jobs at a time when we can least afford it. Unemployment in California is still in double digits. Meanwhile, at every turn, our state adopts policies that create lawsuits and hurt job creation and business growth.
Small Business Owners Speak Out on Lawsuit Abuse

The small business owners who joined CALA and their local elected leaders at the roundtable discussions told story after story of how lawsuit abuse had hurt their businesses. Small businesses are the engine of job creation in this nation, yet California’s laws invite unscrupulous attorneys to attack them with lawsuits. These “shakedown lawsuits” often force small business owners to settle for thousands of dollars rather than fight the lawsuit in court, in order to keep their businesses open, regardless of whether or not they were actually in violation of the law. This leaves businesses with fewer dollars to hire new employees and reinvest in their business.

While numerous laws invite lawsuit abuse in California, certain laws appear to be favored by plaintiffs’ attorneys more than others, such as the Americans with Disability Act (ADA), Proposition 65 and employment regulations. These laws invite attorneys to sue, sometimes for completely fabricated reasons, in search of a quick settlement. California’s ADA laws allow businesses to be sued for any access restriction, no matter how minor, such as the location of a garbage can; its Proposition 65 laws encourage attorneys to sue if the height or color of a sign warning consumers of hazardous materials is not correct; and its employment regulations allow attorneys to file lawsuits if employees are not forced to take breaks at specific times.

An ADA reform bill passed in 2008 has been largely ineffective in stopping abusive lawsuits alleging ADA access restrictions because of the complex regulations and conflicts with federal laws. The end result is that small businesses have to raise prices for their goods and services to pay their legal costs, passing the bill onto their customers.

Bob Bertelli, who owns a pharmacy in Atwater, California

that has been in his family for 48 years, notes that Proposition 65 invites lawsuit abuse against small businesses. “The dangerous [chemicals] I work with in my pharmacy are exempt from Prop. 65, but I got sued over a vinyl cover,” Bob said. “I can’t see how we can stay in business paying out settlements in lawsuits like this.” Bob is unsure if he will be able to stay in business if he gets sued again.
The damage from these lawsuits extends beyond small businesses and hurts our communities. Abusive lawsuits have caused some small businesses to delay hiring new workers, others to take on additional debt to pay off court costs, and some even to go out of business. What’s worse, when they face abusive lawsuits, there is no recourse without incurring enormous legal fees.

Local governments are also feeling the squeeze from abusive lawsuits. Legal costs are accounting for larger and larger portions of their budgets, taking money out of classrooms and forcing cutbacks to public services. In an era of annual budget cuts and layoffs, California simply cannot afford to line trial lawyers’ pockets with more and more precious taxpayer dollars while government services suffer.

Numerous business owners have chosen not to expand their businesses in California due to the state’s legal climate, and some have even chosen to move their businesses to another state completely. This exodus of job-creating small businesses is increasing the number of unemployed Californians, putting additional strain on our state’s social safety net and perpetuating California’s deep economic pain.

In early 2011, Andrew Puzder, CEO of California-based CKE Restaurants told reporters he was planning to completely stop opening new restaurants in California due to the legal and regulatory climate. At the same time, Puzder said CKE Restaurants, which owns the Carl’s Jr. and Hardee’s franchises, plans to open 300 new restaurants in Texas, where legal reforms and less arduous regulations mean opening a restaurant costs $250,000 less than it does in California. Puzder called California the “most business-unfriendly state” CKE Restaurants operates in.
Californians Agree – We Need Legal Reform Now

Small business owners and local elected officials throughout the state know that California needs legal reform to reduce abusive lawsuits and jump-start the economy. These fixes can be simple. For example, allowing a business owner to have 60 or 120 days to fix an alleged access restriction prior to filing a lawsuit can both improve access for the disabled and reduce the costs to businesses to fight lawsuits that do not help to achieve increased access. This reform would be a true win-win for both small business owners and the disabled community. (Bills that would implement reform like this have failed during every legislative session since 2003.)

Similarly, private attorneys have taken advantage of California’s Proposition 65 at the expense of small businesses throughout the state. The law, originally intended to protect Californians from harmful chemicals, has become a state-sanctioned mechanism for shakedown lawsuits against small businesses, forcing them to pay massive fines and post notices even when they have no idea if there is an actual risk of chemicals being present. Reforming Proposition 65 to remove the incentives for filing these lawsuits while decreasing the exposure to dangerous chemicals would benefit all Californians.

These roundtable discussions throughout California make it clear that California needs legal reform now more than ever. With a sluggish economy struggling to emerge from a prolonged recession, our state needs to do everything it can to create jobs. Other states have pursued no-cost, common-sense solutions to reform their civil justice systems and have seen companies build and expand within their borders, while California continues to lag behind.

A recent survey published by CALA found California voters are increasingly aware of the high costs and negative effects of abusive lawsuits and the vast majority of voters believe legal reform is an important part of improving our state’s business climate.

We have a choice in this state. We can keep passing more and more bad laws that result in more and more bad lawsuits, which in turn will continue hurting our economy, or we can change course. We can look at implementing legal reform. If we are serious about growing our economy and attracting new jobs, it is time we sincerely commit to meaningful legal reform.
Local Leaders and Small Business Owners Throughout California Tell California Citizens Against Lawsuit Abuse

“We Need Legal Reform Now!”

www.cala.com