



## ASIAN AMERICAN HOTEL OWNERS ASSOCIATION

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### WRITTEN STATEMENT BY HEMANT D. PATEL, CHAIRMAN OF THE ASIAN AMERICAN HOTEL OWNERS ASSOCIATION (AAHOA)

ON

### “POOL SAFETY AND ACCOUNTABILITY FOR EVERYONE (Pool SAFE)” ACT OF 2012

BEFORE

### JUDICIARY COMMITTEE U.S. HOUSE OF REPRESENTATIVES

April 24, 2012

Honorable Judiciary Committee Chairman Lamar Smith, Ranking Member John Conyers, and members of the Judiciary Committee, thank you for this opportunity to discuss the need for safe access to public pools for all Americans.

#### **I. INTRODUCTION**

My name is Hemant Patel, and I am Chairman of the Asian American Hotel Owners Association, also known as AAHOA. AAHOA was founded more than twenty (20) years ago. We currently have nearly 11,000 members who own 20,000 hotels across the U.S., which is more than forty percent (40%) of all hotels in this country. Many of our members own independent hotels, or limited service brands, with less than 100 rooms.

The majority of our members' more than 20,000 hotels have a small outdoor swimming pool, and many also have a hot tub or spa. These pools are largely unattended. They are principally used by our guests with children.

AAHOA members are dedicated to providing excellent services to the traveling public, including the disabled community. We care deeply about our guests, and do all we can to provide an enjoyable stay. We support the ADA, and spend a substantial amount of time and effort to remove barriers and provide accessibility to our hotels.

#### **A. The DOJ Issued New Guidance On January 31, 2012 That Surprised Pool Owners; It Failed To Address Safety, Feasibility And Cost Concerns**

In 2010, the Department of Justice (“DOJ”) adopted updated standards for accessible design to replace the 1991 standards. These updated standards included requirements for hotels (as places of public

accommodation) to make pools and spas accessible for our guests with disabilities. The deadline for compliance was March 15, 2012.

On January 31, 2012 -- only six (6) weeks before this deadline -- the DOJ issued a new Guidance Document on the 2010 ADA standards for pools. This new ADA Guidance Document contained *major and significant revisions* to the 2010 ADA Standards concerning existing swimming pools. This was done *without providing advance notice to pool owners*. The January 31 changes in the ADA requirements included the following:

- a) For all existing, altered and newly constructed pools, they must install a “fixed” pool lift. If installation of a fixed lift is not readily achievable, the owner may only then consider alternatives such as use of a portable pool lift that complies with the 2010 Standards.
- b) Pool lifts must be at poolside and fully operational during all open pool hours.
- c) Sharing of accessible equipment between pools is not permitted.

As a result of these new rules, there was confusion in the hotel industry and among the pool lift manufacturers. In our discussions over the past few months, we have been informed that on January 31, 2012, many owners tried to cancel their orders for portable pool lifts. Others placed a “hold” on such orders. Numerous members tried to place orders for permanent or fixed lifts but learned that the backlog was substantial, and considered closing their pools to avoid liability. Still others who had already received their portable lifts tried to return them in exchange for permanent lifts.

In addition to the surprise element of this new Guidance Document, the more important concern is that it does not adequately address the concerns of hotel owners regarding *safety, feasibility* and the *cost of permanent pool lifts*.

**B. The New Pool SAFE Act Strikes The Appropriate Balance Between Providing Access To Pools And Addressing Industry Concerns**

The proposed Pool Safety and Accessibility for Everyone (Pool SAFE) Act of 2012 (“Pool SAFE Act”) will strike the appropriate balance to provide access to pools for guests with disabilities while also allowing pool owners the necessary time to purchase and install the lifts, to use the lift that will provide be safe for all guests, and to comply with the ADA requirements in a cost-effective manner. Specifically, the proposed Pool SAFE Act will:

- Extend the compliance deadline for places of public accommodation for one year;
- Allow a place of public accommodation to use a portable pool lift upon request to comply with the accessibility standards; and
- Allow a place of public accommodation to use a single portable pool lift for multiple water features at that location.

This reasonable and balanced approach to the ADA requirements will benefit all, and AAHOA strongly supports the proposed proposed Pool SAFE Act in its entirety.

**II. DISCUSSION**

On January 31, 2012, the DOJ issued – *for the very first time* – the new ADA Guidance Document that substantially changed the ADA requirements for pool owners. The concerns among AAHOA members and throughout the industry were substantial. The key concerns outlined below are based on the fact that the DOJ did not have adequate information and studies to support these changes or show how they would impact the industry overall.

**A. With The Passage Of The Pool SAFE Act, The Key Concerns Arising From The New ADA Guidance Document Issued By The DOJ On January 31, 2012 Will Be Addressed**

With passage of the proposed Pool SAFE Act, these concerns will be appropriately addressed to ensure the accessibility of pools for guests with disabilities while still offering pool owners the ability to provide a safe environment and the flexibility to install pool lifts in a timely and cost-effective manner.

**1. The New ADA Guidance Document Did Not Consider The Serious Safety Concerns, The Possibility Of Vandalism, Or The Potential Liability Of Pool Owners**

In recent weeks many of our AAHOA members expressed deep concerns about the impact of these new pool lift requirements on their guests and their businesses. As they considered their unattended pools and what it would mean to have permanent lifts installed at them, they clearly saw the danger for families with young children who would try to climb on the pool lifts, and/or jump and dive off them into the shallow end of the pools.

Specifically, since a large number of AAHOA members own independent and limited service hotels, many of their guests are young families with children. With no lifeguards on duty at the pools, the children and young guests will be drawn to the pool lifts and want to sit in the chairs, stand on the lifts, and jump or dive into the pools. The unattended lifts could also be the target of vandalism. This could pose dangers if guests with disabilities then tried to use a damaged or broken lift.

The DOJ has commented that it did not receive any information or studies on the safety risks of the fixed pool lifts. Of course, since AAHOA members were unaware that the DOJ was going to issue a surprise Guidance Document on January 31, 2012 which mandated that fixed pool lifts be installed at all pools at all times when the pools are open to the public, we did not commission any such studies.

Some might wonder whether portable lifts pose any less of a safety hazard than the fixed lifts. While portable lifts might also attract children, it is presumed that the lift will only be at the pool when a guest with a disability is using it. Thus, children will be far less likely to play on a lift when it is being used by someone with a disability, and their parents will also stop them from climbing on a lift that is in use. Of course, without studies on these issues, it is impossible to make an informed decision.

**2. The New ADA Guidance Document Did Not Address The Fact That Pool Lifts Are Not Being Used By Guests With Disabilities At Smaller Hotels, And It Did Not Account For The Significant Costs for Hotel Owners To Comply**

At the time it released the new Pool Lift Requirements Document on January 31, 2012, the DOJ had not conducted or received any cost / benefit analyzes or studies to determine how best to serve guests with disabilities without bankrupting hotel owners. The DOJ simply announced the new Rules, and did not consider the significance of its decision.

As explained in AAHOA's comments to the DOJ almost four (4) years ago, there is no evidence that guests with disabilities use pool lifts at swimming pools and hot tubs in smaller hotels. Specifically, this was raised during the DOJ's July 15, 2008 hearing by Sunny Patel, an owner/operator of six (6) hotels in the greater Washington, D.C. area. In Mr. Patel's case, each of the 6 hotels in question had indoor swimming pool lifts. However, during the nine (9) years he has been an owner and/or operator of the six hotels, Mr. Patel testified that not a single person used "that lift chair . . . in all of this time."

That same story has recently been told by several AAHOA Board members concerning their swimming pools, and the fact that guests with disabilities do not use the available pool lifts. One of our AAHOA Board members reported that he has had a portable pool lift at his hotel in Austin, Texas for 12 years. The City of Austin required that hotels have portable pool lifts at the time he constructed the hotel. However, over the past 12 years, no guests have ever requested the pool lift. This owner is also a member of the Austin Hotel Lodging Association, and according to his reports, none of the hotels in Austin has ever had a guest use the pool lifts.

Further, we have statements from Board members that have ordered the pool lifts and are waiting for them to be installed, but they have never had a request for pool lifts in their years of operating the hotels.

A cost-benefits analysis is always useful when implementing new requirements under the ADA and should be carefully considered as part of sound rule making. With additional time, interested parties can submit such studies and provide the DOJ with the necessary tools and information to make the right judgment call on the pool lift requirements.

**3. The New ADA Guidance Document Did Not Address How Quickly A Portable Lift Can Be Installed To Minimize Any Wait Time for Guests with Disabilities**

As indicated above, it appears that the DOJ has consistently maintained that the only reason it is mandating fixed lifts is because it will take too long for pool owners to secure the portable lifts at the pools for guests with disabilities. Significantly, the total time needed to set up and secure a portable lift is only 6.12 minutes. With advance notice, this wait time can be eliminated entirely.

It is not uncommon for guests in hotels to wait for a few minutes for special amenities. For example, if a guest with disabilities does not provide advance notice of the need for an assisted listening device, the guest will have to wait for the hotel to bring the TTY for their use. The same is true here. Hotels are in the business of pleasing their guests. They will do all they can to ensure that guests with disabilities are not kept waiting for a portable pool lifts. This is all part of providing excellent services to the traveling public, including the disabled community.

Indeed, if the hotels implement new policies whereby they ask each guest checking into the hotel whether they will need a pool lift, if the guest says “yes,” the hotel owner can have the lift at the pool by the time the guest goes to the room, changes into their swimsuit and returns to the pool for a swim.

**4. The New ADA Guidance Document Mandated That No Sharing Of Pool Lifts Is Allowed Without Analyzing The Benefits Of Sharing Lifts**

In the new Pool Lift Requirements Document, the DOJ stated that pool lifts could not be shared between pools and spas at the same property and in the same location. The DOJ failed to analyze the benefits of sharing the lifts, and did not allow the pool owners to submit comments or studies on these benefits. .

**5. The New ADA Guidance Document Mandated Installation Of Permanent Lifts Without Studying The Costs Involved In Permitting, Electrical Bonding And Reconstruction Of The Applicable Pool Decks**

When the DOJ issued the new Pool Lift Requirements Document on January 31, 2012, it failed to understand the process for installation of the “fixed” or permanent lifts. In order to comply with these new Requirements, a hotel owner will need to hire experts to prepare drawings of the proposed reconstruction of the pool deck area, apply for permits, do the electrical bonding, and install the fixed

pool lifts. Along with the back log in ordering the pool lifts, this total process can take several weeks to finalize and be costly for many small hoteliers.

In speaking with hotel owners and pool lift manufacturers in recent weeks, the costs of pool lifts can range from \$2,500 to over \$9,700 (depending on the manufacturer, model and type of lift ordered), and the cost of installation can range from \$500 to over \$3,000 in States such as California.

If a hotel owner with a small pool and hot tub in California needs to install two (2) permanent lifts (one at each body of water), the costs for purchasing and installing the two lifts could range from \$11,000 at the low end to \$25,400 at the high end.

It is significant to note that the DOJ will not allow owners to include the maintenance costs of the pool lifts when determining if it is “readily achievable” to install them, but to disallow the high cost of installation poses serious concerns. The cost of a pool lift alone is significant, but to add the additional costs of permitting, electrical bonding, and other installation requirements raises the bar even higher.

The DOJ’s failure to consider the additional time and expense of suddenly mandating fixed lifts at all pools calls for a retraction of the new ADA Pool Lift Requirements, and we strongly urge the DOJ to provide an opportunity for pool owners to submit comments so that an informed decision can be made.

**6. The New ADA Guidance Document Did Not Consider Whether Hotel Owners Would Be Forced To Close Their Pools And Spas Because Of The Increased Costs And Liability If They Were Required To Only Use “Fixed” Lifts At Their Pools**

In response to the new Pool Lift Requirements, many hotel owners started discussing among themselves whether they should simply close their hotel pools and spas to avoid the serious safety concerns they were now facing for all of their guests, along with the increased liability. They discussed the fact that diving boards were removed from all pools a few years ago because of the increased risks of serious injuries to guest, but they were now being required to install lifts that could serve as diving board -- in the shallow end of the pools.

Such concerns and ramifications must be considered before any final Requirements are implemented. Indeed, swimming pools and spas provide therapeutic benefits to all guests, and it would be a shame to see them close because the DOJ was unwilling to work with the hotel community to implement reasonable measures for the benefit of all.

**7. The New ADA Guidance Document Did Not Recognize The Potential For A Widespread Increase Of ADA “Drive-By” Lawsuits By Unscrupulous Plaintiffs’ Attorneys Without Benefiting the Disabled Community**

In the AAHOA community, hotel owners are sometimes subjected to ADA “drive-by” lawsuits by unscrupulous plaintiffs’ attorneys. These attorneys are typically asking for payment from the hotel owners of a specified amount up front for their fees and damages, and they do nothing to serve guests who have disabilities. Some of these ADA attorneys file hundreds and thousands of cases each year, and the vast majority of them are settled based on the money – instead of the alleged violations of the ADA.

If the DOJ does not work with the hotel community and continues to mandate that fixed lifts must be in place at all pools when they are open, this will provide new opportunities for drive-by lawsuits and only the attorneys will benefit.

**8. The New ADA Guidance Document Did Not Consider Whether Smaller Hotels With Less Than 100 Rooms Should Be Given Special Considerations**

As a final point, AAHOA respectfully submits that the DOJ should grant an extension and obtain comments on whether smaller hotels with less than 100 rooms should be given special consideration with respect to the pool lifts.

Given their size, the smaller hotels typically have fewer guests staying with them who have disabilities. We request the DOJ to consider ways in which special considerations might be granted to these smaller hotels as they seek to provide accessibility to guests with disabilities.

**III. CONCLUSION**

On behalf of our nearly 11,000 members with their 20,000 hotels, we strongly support the "Pool Safety and Accessibility for Everyone (Pool SAFE) Act of 2012." The Pool SAFE Act strikes the appropriate balance between providing individuals with disabilities access to our hotel pools and spas, while still taking into account important factors such as child safety, feasibility and costs.

We thank this Committee for the opportunity to testify in support of this important Pool SAFE Act. I welcome your questions.