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## **MEMORANDUM IN OPPOSITION**

### **A608 (Dinowitz) / S4507 (Schneiderman) – An ACT to abridge freedom of contract between consenting parties**

On behalf of **New Yorkers for Lawsuit Reform.org**, a broad based coalition of businesses, professionals, municipalities, not-for-profits, and concerned citizens, I am writing in **STRONG OPPOSITION** to the above referenced bill.

In sum and substance this legislation will eliminate the right of two or more parties to freely contract the terms governing liability for simple negligence, subject to very narrow exceptions founded upon state, federal and international law. Pursuant to centuries old common law parties are generally free to determine the respective rights and liabilities arising from the decision to engage in a particular course of conduct including activities which may pose a significant risk. This legislation would repeal the normative rules governing liability and substitute a rule of expansive liability. The legislation will have a significant effect upon the quality of life for New Yorkers as many not-for-profits, churches, schools and municipalities are compelled to limit or completely eliminate various school, community and or church activities due to the unnecessary liability exposure created by this legislation. For example, extra curricula activities such as athletic programs will be curtailed in the face of increased liability costs.

To the extent that there is a need for this type of legislation a more appropriate approach would be to codify existing common law which prohibits recognition of an exculpatory agreement when the culpable party has engaged in intentional conduct or committed a grossly negligent act. To bar exculpatory agreements founded upon simple negligence will result in the unintended consequences detailed above. Accordingly this bill should be held or amended as set forth herein.

Respectfully submitted,

Mark C. Kriss  
Executive Director  
**New Yorkers for Lawsuit Reform**