

ELEVENTH CIRCUIT RULES ADA DOES NOT MANDATE WEBSITE ACCESSIBILITY WITHOUT FURTHER CONGRESSIONAL ACTION

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In a decision critical to online retailers, the Eleventh Circuit ruled that websites are not places of public accommodation, overturning a Florida district court's judgment against Winn-Dixie, whose website does not integrate with screen-reader technology. In so ruling, the Eleventh Circuit joins the Third, Sixth, and Ninth Circuits, which all have ruled that places of public accommodation must be actual, physical spaces. The decision adds to the existing circuit split, as it contradicts the First and Seventh Circuits, whose precedents have not limited the scope of the American with Disabilities Act ("ADA") to physical spaces.

The ADA prohibits discrimination and requires that goods, services, privileges, and/or activities be equally accessible to people with disabilities in "places of public accommodation," defined as non-governmental spaces open for business to the public. Originally, the ADA was understood to apply only to physical stores and locations. The Department of Justice issued extensive standards for ensuring such physical spaces are accessible to people with disabilities. In recent years, creative consumers and their attorneys have brought lawsuits under the ADA, seeking to extend its scope to websites. These suits have met with mixed success in courts across the country in the absence of any regulatory guidance on what standards – if any – are required for websites. This uncertainty has spurred even more litigation under the ADA filed on behalf of visually impaired individuals.

But the Eleventh Circuit is not entertaining this bedlam. In *Gil v. Winn-Dixie*, a visually impaired grocery store patron alleged that Winn-Dixie's website did not work with his screen-reader technology and thereby violated Title III of the ADA. *Gil v. Winn-Dixie Stores, Inc.*, No. 17-13467, 2021 WL 1289906 (11th Cir. Apr. 7, 2021). The plaintiff claimed that Winn-Dixie's website is a place of public accommodation with a direct nexus to Winn-Dixie's physical grocery stores and asked the court to order Winn-Dixie to remediate accessibility barriers on the website.

The Eleventh Circuit declined. It took a textualist approach to rule that Winn-Dixie's website is not a stand-alone place of public accommodation under the ADA, noting that if Congress had meant them to be, it would have included websites in its extensive list of public accommodations. The court rejected the "nexus standard" that other courts have used to apply the ADA to websites based on a connection between their services and a physical location. It further looked for evidence that the website was an intangible barrier to "the goods, services, privileges, or advantages" afforded to customers of Winn-Dixie, but found none. It noted that Winn-Dixie has a limited-use website that allows customers to request pharmacy refills and link coupons to their accounts, but prescriptions must be filled, and coupons redeemed, inside the stores. Winn-Dixie's website does not allow for any direct sales. Further, the court ruled that the plaintiff was able to successfully use coupons and pick up prescriptions in Winn-Dixie stores for at least 15 years before learning about the website's existence. The court also ruled that the plain language of the ADA does not require what is *reasonable*, but only what is "*necessary* to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids." *Gil v. Winn-Dixie Stores*, 2021 WL 1289906, at *11 (emphasis added). The court determined that if a disabled individual is able to participate, even with difficulty or some level of discomfort, then an accommodation may be reasonable, but not necessary. The court concluded that these facts showed that the website accessibility barriers did not impermissibly limit the plaintiff in his ability to take advantage of the goods and services provided by Winn-Dixie stores. The court, therefore, found that Winn-Dixie had not violated the ADA, and it vacated the lower court's verdict and judgment.

Implications of Decision

While this ruling is good news for online-only businesses who will certainly benefit from it in the Eleventh Circuit, it may simply shift where ADA lawsuits are brought. Litigants will avoid Eleventh Circuit courts in favor of more favorable venues, like the First, Second, Seventh, or other circuits that have yet to rule on these issues. Moreover, the ruling rests on a narrow and fact-specific analysis that would likely look different for a website that allows online sales.

Additionally, the ruling may not be good law for long. Even as it foreclosed website accessibility lawsuits in the Eleventh Circuit, the court acknowledged the benefit of online protections for people with disabilities and noted that Congress would have to act to meet such a need.

Congress may do just that. The Online Accessibility Act has been reintroduced in the 117th Congress. If passed, it would require that any consumer-facing website or mobile application comply with the Web Content Accessibility Guidelines or provide an alternative, equivalent means of ensuring access to individuals with disabilities. Importantly, this bill would also set standards to remedy violations before a potential plaintiff could file a lawsuit, fundamentally changing the way that litigants approach website accessibility compliance.

ADDITIONAL INFORMATION

For more information, please contact:

- [Ronie M. Schmelz](mailto:ronie.schmelz@tuckerellis.com) | 213.430.3375 | ronie.schmelz@tuckerellis.com
- [Avril G. Love](mailto:avril.love@tuckerellis.com) | 213.430.3306 | avril.love@tuckerellis.com
- [Lex R. Ehrenschwender](mailto:lex.ehrenschwender@tuckerellis.com) | 216.696.3805 | lex.ehrenschwender@tuckerellis.com

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