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### Eleventh Circuit Rules that Websites Are Not Public Accommodations Under the ADA



On April 7, 2021, the U.S. Court of Appeals for the Eleventh Circuit issued a decision in a closely watched web accessibility case, holding that websites do not constitute places of public accommodations under Title III of the Americans with Disabilities Act (ADA).

The decision—*Gil v. Winn-Dixie Stores, Inc.*—represents a departure from what has been a trend toward increasingly expansive interpretations of the ADA, and it is likely to prompt renewed conversations regarding whether and how Congress or the U.S. Department of Justice (DOJ) should address the issue. In *Gil*, a legally blind individual brought a lawsuit under Title III against the Winn-Dixie grocery store chain, alleging that because the company's website was not compatible with screen reader software, he was unable to fill pharmacy prescriptions online. Winn-Dixie challenged the plaintiff's complaint, arguing that Title III did not apply to its website because the website both is not a physical location and lacks a sufficient nexus to any such location. After a bench trial, the U.S. District Court for the Southern District of Florida entered judgment in favor of the plaintiff. Winn-Dixie appealed to the Eleventh Circuit, which vacated the district court's ruling. After finding that the plaintiff had standing to bring the suit, Judge Elizabeth Branch, writing for the majority, held that the plain language of Title III made clear that public accommodations are limited to physical spaces. In dicta, Judge Branch went further to note that the absence of auxiliary aids on Winn-Dixie's website did not amount to an intangible barrier resulting in the plaintiff being discriminated against. As a result, Judge Branch concluded, the plaintiff could not sustain his ADA claim. Judge Jill Pryor dissented from the majority opinion. Among other things, Judge Pryor contended that Winn-Dixie's website constituted a place of public accommodation and that in failing to make the website compatible with auxiliary aids such as screen readers, Winn-Dixie violated the ADA. What is more, Judge Pryor wrote, the majority opinion effectively overruled an unpublished per curiam decision from 2018 in which the Eleventh Circuit held that allegations of website inaccessibility could form the basis of a Title III claim. *Gil* creates an additional split among the circuits regarding the ADA's application to websites and other online content. As a practical matter, however, plaintiffs can still find venues in which websites are subject to the ADA even without a physical nexus. And as we have previously noted, the Supreme Court passed on the opportunity to resolve the circuit split less than two years ago. Nevertheless, the disparity in

ADA interpretation across the courts may increase pressure on Congress to ultimately address the issue. (Indeed, a bill was recently introduced in the House of Representatives that would formally establish accessibility standards for websites and mobile apps.) In addition, *Gil* may prompt renewed efforts to have the DOJ, which is responsible for regulatory enforcement of the ADA, adopt specific regulations concerning web accessibility.

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