

# 11th Circuit finds websites aren't places of public accommodation

by H. Carlton Hilson and Gabriell M. Jeffreys  
Burr Forman McNair

*Title III of the Americans with Disabilities Act (ADA) provides "no individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." In a recent case, the U.S. 11th Circuit Court of Appeals (which covers Florida, Georgia, and Alabama employers) for the first time addressed whether websites are covered by Title III's prohibition against disability discrimination in places of public accommodation. The court concluded (1) the protection is limited to actual physical places and doesn't cover websites, and (2) a grocery chain's limited-use website didn't function as an intangible barrier to accessing the goods or services at its physical stores.*

### Facts

Juan Carlos Gil, who is legally blind, said he frequently shopped at Winn-Dixie's physical grocery stores in the past. He claimed he then sought to use the company's website to refill his prescriptions and obtain coupons, but it wasn't compatible with the screen reader software he used to try to access the site and vocalize its content.

Gil alleged Winn-Dixie violated Title III because the website was inaccessible to visually impaired individuals. In response, the company argued it hadn't violated the ADA because its website wasn't a "place of public accommodation." Unlike its physical stores, the website lacked a physical location or sufficient nexus to any physical location to be considered a public accommodation, according to the company.

The district court ruled in Gil's favor and concluded Winn-Dixie had violated his rights under Title III. The court stated, however, it need not determine whether the store's website is a public accommodation "in and of itself" because it was "heavily integrated with, and in many ways operates as a gateway to Winn-Dixie's physical store locations."

The district court granted injunctive relief to Gil and required Winn-Dixie to make its website conform to certain accessibility guidelines. The company appealed.

### 11th Circuit's ruling

The 11th Circuit reversed the lower court's decision and held websites aren't "public accommodations" subject to Title III. The court determined the statute's text is unambiguous and clear: It describes 12 types of locations that are considered public accommodations, and all of them are "tangible, physical locations."

Because websites are intangible, they don't fall under the definition of public accommodations. Thus, the 11th Circuit rejected the nexus standard and held Gil's inability to access the website wasn't a Title III violation because the site wasn't a place of public accommodation.

The 11th Circuit also ruled Winn-Dixie's website didn't constitute an "intangible barrier" to Gil's ability to access and enjoy the company's physical stores. In particular, the website had only limited functionality and wasn't a point of sale. Any function that could be initiated on the website could still be accomplished in stores, and nothing prevented Gil from visiting the physical establishments as he had done for years.

Accordingly, the 11th Circuit concluded Gil's inability to access the website didn't violate Title III. The court's reasoning left open the possibility that the inability to access other websites with more functionality could serve as an impermissible, intangible barrier to the full enjoyment of a physical place of public accommodation. *Gil v. Winn-Dixie Stores, Inc.*

### Bottom line

The 11th Circuit's decision deepens a circuit split and applies a heavier burden to individuals seeking to assert website accessibility claims under ADA Title III. Other circuits have implemented a lower standard for determining when inaccessible websites may constitute an ADA violation.

For example, the 9th Circuit (which covers California and other western states) in *Robles v. Domino's Pizza* determined an individual can show a website falls within the ADA's public accommodation provision by demonstrating it has a sufficient nexus to a physical place. The 11th Circuit in *Gil* rejected the standard and instead required individuals to prove the website prevents them from accessing the goods, services,

privileges, or advantages of a physical place of public accommodation.

The deepening of the circuit split may make it more likely for the U.S. Supreme Court to take up the issue in the future to resolve the current confusion. For now at least, the *Gil* decision makes it more difficult for individuals to succeed on website accessibility claims in the 11th Circuit. You should continue to pay attention to any updates and ensure your websites are in compliance with any applicable ADA requirements.

*H. Carlton Hilson and Gabriell M. Jeffreys are attorneys with Burr & Forman LLP. You can reach them at [chilson@burr.com](mailto:chilson@burr.com) or [gjeffreys@burr.com](mailto:gjeffreys@burr.com).*