



Key Takeaways:

- The U.S. Court of Appeals for the Eleventh Circuit recently vacated its April 2021 opinion holding that websites do not constitute places of public accommodations under Title III of the Americans with Disabilities Act (ADA).
- Prior to this decision, the Eleventh Circuit was the only federal circuit court of appeal to explicitly hold that Title III of the ADA does not apply to websites, although federal courts are split as to whether Title III extends only to websites with a "nexus" to a physical location or to stand-alone e-commerce sites.
- In 2021, as in other recent years, thousands of website accessibility cases were filed and an untold number of demand letters were received by businesses. Businesses should consider digital accessibility and ways

to reduce risk of claims.

In December 2021, the Eleventh Circuit vacated its April 2021 opinion in *Gil v. Winn-Dixie Stores, Inc.* holding that websites do not constitute places of public accommodations under Title III of the ADA. 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 neither is a physical location covered by Title III nor has a sufficient nexus to any such location. After a bench trial in June 2017, the U.S. District Court for the Southern District of Florida [entered judgment](#) in favor of the plaintiff and issued a three-year injunction requiring Winn-Dixie to improve the accessibility of its website. Winn-Dixie appealed to the Eleventh Circuit, which, in April 2021, [vacated](#) the district court's ruling and held that public accommodations are limited to physical spaces under the plain language of Title III. The Eleventh Circuit's ruling deepened the existing split among circuit courts as to the applicability of Title III to websites. Courts in the Third, Sixth and Ninth Circuits have held that there must be a "nexus" between the website at issue and a physical location, while courts in the First and Seventh Circuits have held that any website can be a place of public accommodation, regardless of its connection to a physical location, and courts in the Second Circuit have split on the issue. On December 28, 2021, however, the Eleventh Circuit vacated its April 2021 decision as moot. The court held that because the injunction requiring Winn-Dixie to improve its website had expired in 2020, there was no active dispute for the Eleventh Circuit to resolve at the time of its April 2021 decision. Two weeks after the Eleventh Circuit's ruling in *Gil*, a legally blind individual filed a lawsuit in the Southern District of Florida against a restaurant, alleging that the restaurant's website is a place of public accommodation under Title III because it is an integral part of the goods and services offered by the restaurant. This case suggests that litigants will likely continue to file web accessibility cases in the Eleventh Circuit unless and until the court issues another substantive opinion on this issue. Web accessibility issues have captured the attention of more than just the courts. President Biden's Department of Justice (DOJ) has made it clear that web accessibility and implementing the [Web Content Accessibility Guidelines](#) (WCAG) are enforcement priorities, and a bill [introduced](#) in the House of Representatives in February 2021 would, if adopted, require consumer-facing websites and mobile applications owned or operated by private entities to comply with WCAG version 2.0, Levels A and AA. However, without a U.S. Supreme Court ruling on this issue, and absent guidance from the DOJ or Congress, website accessibility claims will continue to pose a challenge for businesses.

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