



## US Supreme Court denies review of *Robles v. Domino's Pizza*, opening door to more lawsuits on website and mobile app accessibility claims

### Litigation Alert

16 October 2019

By: Margo H. K. Tank | David Whitaker | Andrew Grant | Elizabeth S. M. (Liz) Cairnes

On October 7, 2019, the United States Supreme Court denied certiorari in *Domino's Pizza, LLC v. Robles*. Domino's Pizza requested the high court to review the Ninth Circuit's decision holding that Domino's must make its website accessible to persons with visual impairments under the Americans with Disabilities Act (ADA) (covered here). The issue being contested is "[w]hether Title III of the Americans with Disabilities Act requires a website or mobile-phone application that offers goods or services to the public to satisfy discrete accessibility requirements with respect to individuals with disabilities."

### **Does the ADA apply to websites and mobile apps?**

While the ADA doesn't expressly state that a "public accommodation" includes websites and mobile apps, the DOJ has interpreted Title III to apply to websites, online tools and mobile applications of places of public accommodation. In addition, in the absence of DOJ regulation, private ADA litigation (either from individuals or advocacy groups) has significantly increased in the recent years (with hundreds of lawsuits filed), with recent decisions affirmatively requiring companies to bring their websites into compliance with WCAG 2.0 AA (previously, courts had approved consent decrees). Furthermore, plaintiff's law firms have been aggressive in pursuing businesses for perceived non-compliance with the

website accessibility requirements by mailing demand letters seeking non-public settlements.

Because the Supreme Court declined to rule on whether Title III of the ADA applies to websites and mobile apps, companies with physical locations that operate websites and/or mobile apps will need to ensure that their websites and mobile apps are ADA compliant. Meanwhile, for those companies that *only* operate through a website and/or mobile app, the applicability of the ADA is based on jurisdiction (for example, the First Circuit has held that there is no need for a physical location while the Third, Sixth, and Ninth have held that some nexus to a physical business is required). The next ADA decision to watch is the Eleventh Circuit's opinion in *Gil v. Winn-Dixie*, in which it held oral argument over one year ago, on October 4, 2018.

### What to do right now?

Bringing a website into WCAG 2.0 AA compliance requires development and implementation of a clear plan for compliance, careful planning and thoughtful design. Companies, with the assistance of counsel, should take proactive steps to address these risks and ensure that their websites, online tools and mobile applications are ADA-complaint over a short- and long-term horizon. DLA Piper regularly advises on ADA compliance needs and defends clients with ADA claims.

For more on the ADA and website and mobile application accessibility issues, please reach out to one of authors of this alert. Additional resources on this topic may be found in this article and in the materials from our recent webinar.

## AUTHORS

---



### Margo H. K. Tank

Partner  
Washington, DC | T: +1 202 799 4000  
margo.tank@dlapiper.com

---



### David Whitaker

Partner  
Chicago | T: +1 312 368 4000  
david.whitaker@dlapiper.com

---



### Andrew Grant

Associate  
Washington, DC | T: +1 202 799 4000  
andrew.grant@dlapiper.com

---



### Elizabeth S. M. (Liz) Caires

Attorney  
Dallas | T: +1 214 743 4500  
liz.caires@dlapiper.com

---