

Supreme Court Denies Review of ADA Website Accessibility Case, Leaving Businesses Subject to Ninth Circuit's Guidelines



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Jeffrey M. Goldman | goldmanj@pepperlaw.com

Tracey E. Diamond | diamondt@pepperlaw.com

Victoria D. Summerfield | summerfieldv@pepperlaw.com

The U.S. Supreme Court recently declined to review a Ninth Circuit Court of Appeals ruling (available at <https://www.pepperlaw.com/publications/ninth-circuit-reinforces-accessibility-requirement-for-websites-and-apps-under-ada-2019-01-17/>) that held that the Americans With Disabilities Act (ADA) applies to nongovernmental entity websites that have a nexus to their brick-and-mortar locations. *Domino's Pizza, LLC v. Robles*, No. 18-1539. The Supreme Court's denial of the restaurant owner's petition allows this standard to prevail in the Ninth Circuit. As a result, businesses and entities of public accommodation should ensure that their websites and mobile apps are accessible to visually impaired individuals to avoid running afoul of the ADA.

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In January 2019, the Ninth Circuit reversed a lower court ruling that the Domino's website and mobile app did not need to comply with the WCAG 2.0 guidelines, which are commonly invoked by the plaintiff's bar as the standard for determining if websites comply with the ADA. The plaintiff was visually impaired and had unsuccessfully attempted to order a customized pizza because his screen-reading software could not read the Domino's website or mobile app.

After the Ninth Circuit's decision, on June 13, 2019, Domino's filed a petition for a writ of certiorari with the U.S. Supreme Court. Amicus briefs were filed in support of Domino's petition by the Retail Litigation Center, the National Retail Federation, the Restaurant Law Center, the Cato Institute, the U.S. Chamber of Commerce, the National Federation of Independent Business, and the Washington Legal Foundation. The amicus briefs raised concerns over creating technical obligations for retailers in a changing digital landscape when the ADA does not articulate a specific standard to be met. On October 7, 2019, the Supreme Court denied the Domino's petition.

In denying the petition, the Supreme Court allows to stand the Ninth Circuit's holding that businesses and entities of public accommodation must confirm that their websites and mobile apps (at least those tied to a brick-and-mortar location) are accessible to the visually impaired. While there continues to be a lack of certainty as to what constitutes "accessible" in this arena, the WCAG 2.0 guidelines are a resource to companies seeking to avoid this type of lawsuit.