

California Supreme Court Decision Could Expand Standing for Website Accessibility Claims



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Evolving case law regarding website accessibility under the Americans with Disabilities Act (ADA) and comparable state laws continues to impact companies across the country. In the past, courts have required plaintiffs to show that the allegedly discriminatory website prevented their full use and enjoyment of a connected brick-and-mortar location. More recently, however, courts have looked favorably on claims even absent such an alleged deprivation. A recent opinion from the Supreme Court of California not directly addressing ADA website compliance appears nevertheless to further cement this shift, allowing standing for discrimination claims regarding a website under California's Unruh Civil Rights Act based on an individual's intent to use the website's services in and of themselves. This shift further emphasizes the need for commercial website owners to ensure that their online content is accessible to the visually impaired in compliance with the widely adopted Web Content Accessibility Guidelines (WCAG) 2.0.

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In *White v. Square, Inc.*, No. S249248 (Cal. Aug. 12, 2019), a payment processing website included in its terms of service that the user “will not accept payments in connection with” the business activities of “bankruptcy attorneys or collection agencies engaged in the collection of debt.” An attorney who wanted to use Square’s services in connection with a bankruptcy practice brought an action in federal court against the payment processor for discrimination under the Unruh Civil Rights Act because Square barred such a use of its product. Notably, the Act does not specifically bar occupation-based discrimination (though it does clarify that “all persons within the jurisdiction of this state are free and equal” and provides for full and equal access to business establishments).

The federal district court dismissed the complaint for lack of standing because the plaintiff did not actually transact business with the defendant. The plaintiff appealed to the U.S. Court of Appeals for the Ninth Circuit, which certified for the Supreme Court of California the narrow question of whether the Unruh Civil Rights Act provided standing to a plaintiff who *intended* to transact with an online business, but did not. The California Supreme Court concluded that the broad preventative and remedial provisions of the Unruh Civil Rights Act extended its standing to such a plaintiff. The court did not address whether the plaintiff was a member of a protected class or whether the website discriminated against him based on his occupation.

In reviewing the question of standing only, the Supreme Court of California drew parallels between the alleged discriminatory provisions of the website’s terms of service and discriminatory practices meant to discourage individuals of certain races from applying for employment. The court determined that an individual allegedly targeted by a discriminatory policy is not required to “engage in a futile gesture” of carrying out a transaction in the face of discrimination in order to have standing under the Unruh Civil Rights Act. Instead, an individual bringing a claim against an online business must allege that the individual visited the website, encountered discriminatory terms, and intended to make use of the business’s services.

While the California Supreme Court’s ruling addressed allegedly discriminatory terms of service, it may have implications for website accessibility claims more broadly. For example, the language of the opinion suggests that visually impaired individuals who visit an ADA-noncompliant website with the intent to make use of the website’s services may have sufficient standing to bring claims for violation of the Unruh Civil Rights Act,

even if the individual does not take action to actually use the website's services. Accordingly, this opinion drives home the importance of ensuring that commercial websites are compliant with both the ADA and state law. While there continue to be questions as to what standard should be used to establish compliance, many companies have turned to the WCAG 2.0 guidelines to demonstrate that their websites provide sufficient accommodations to allow visually impaired individuals to participate equally in their websites' products and services.