

Group asks SCOTUS to overturn 'profoundly wrong' ADA ruling against Domino's

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An American free enterprise advocacy group has asked the U.S. Supreme Court to overturn a federal appeals court decision made earlier this year in the case of a blind man suing a nationwide pizza delivery chain over an alleged violation of the Americans with Disabilities Act.

In its **32-page amicus brief** filed Monday, **Washington Legal Foundation**, a nonprofit, public-interest law firm and policy center, called the U.S. Ninth Circuit Court of Appeals' decision to reinstate the case against Domino's Pizza "unwise" and "profoundly wrong."

No court should rewrite federal law "no matter how well-intentioned they may be," Washington Legal Foundation's amicus brief said.

"Acting on an understandable but still misguided desire to achieve rough justice for the disabled, many lower courts have drifted far from these fundamental principles," the amicus brief continued. "Only this court's intervention can remind those courts of their proper, narrow role in our constitutional structure. Only then will the difficult social and economic policy choices at stake be returned to their rightful place—the Congress."

Washington Legal Foundation's amicus brief was one of five filed with the court Monday and Tuesday by public interest and business groups that asked the nation's highest court to take up the case.

Other groups that filed briefs in the case were the **Cato Institute**, **Restaurant Law Center**, the **U.S. Chamber of Commerce**, the **Retail Litigation Center and National Retail Federation**. The latter two groups filed a joint amicus brief. The U.S. Chamber Institute for Legal Reform owns *Legal Newsline*.

Like the other groups that filed amicus briefs with the court this week, Washington Legal Foundation maintained that a federal appeals court's decision in the case essentially and improperly rewrites the ADA. WLF, in its brief, urged the court to review the appeals court's "rewrite of Title III" of the ADA and keep it "from becoming the law of the land."

"To be clear, the question Domino's petition poses is not what Congress would have wanted, but what Congress enacted," WLF's brief continued. "And because Congress did not enact an ADA

that regulates, or even allows the regulation of, websites and mobile apps, any rule the U.S. Department of Justice might enact that does so would be ultra vires."

The case involves Guillermo Robles, a blind man who **filed suit against Domino's Pizza** in September 2016 in U.S. District Court for California's Central District, Western Division, alleging that the company's website does not allow him to order pizza online. Robles claims that he was twice thwarted in his attempt to order a customized pizza and found that Domino's website and mobile app did not work with the screen-reading software he was using.

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A federal judge based in Los Angeles **dismissed the lawsuit** in March 2017, finding that the ADA applies to Domino's website and mobile app but that Robles' lawsuit violated the company's due process rights. In that ruling, U.S. District Court Judge S. James Otero found that the U.S. Department of Justice had not provided standards for online accessibility or didn't offer technical assistance that would create such standards.

Robles appealed and in January, the U.S. Ninth Circuit Court of Appeals **reversed the district court's ruling**, holding that Domino's must make its website and mobile app accessible to the blind using screen-reading software.

"The alleged inaccessibility of Domino's website and app impedes access to the goods and services of its physical pizza franchises – which are places of public accommodation," Judge John B. Owens wrote for the three-judge panel in that court's decision.

In June, Domino's **asked the U.S. Supreme Court to review the Ninth Circuit's ruling**. The high court **has not yet announced** whether it will grant writ of certiorari to hear the case.