The ADA Already Does That:

Statutory Originalism, the CRPD Ratification Record, and the Scope of Disability Rights in the United States

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Abstract

The 2012 CRPD ratification record is authoritative evidence of the scope of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act, and it is usable in ordinary statutory interpretation to resist narrow readings of both. In the proceedings that preceded the Senate's 61-38 vote against advice and consent, President Obama's letter of transmittal declared existing domestic law "consistent with and sufficient to implement the Convention." The Senate Foreign Relations Committee attached to its resolution a voted declaration that "current United States law fulfills or exceeds the obligations of the Convention for the United States." The State Department and the Department of Justice each testified that the Convention created no new rights and required no new legislation.

This Article argues that those representations survive the failed vote and function as privileged evidence of statutory meaning. The method proceeds from the foundations that support constitutional originalism: contemporaneous statements by the political actors responsible for a legal instrument are privileged evidence of what it means. On several axes the ratification record is the stronger foundation. It is recent rather than centuries old, formal and voted rather than private, and made against interest, because overselling the scope of existing law weakened the case for ratifying.

The Article reconstructs the record, extracts the specific scope representations, and maps them against contested doctrine: the Sutton-Toyota line, regulatory carve-outs with no textual grounding, Sandoval-based limits on private disparate impact actions, and Cummings-based limits on damages as narrowed by the Ninth Circuit in Payan. It states the method's limits as carefully as its reach, and confronts the leading authority against it, the warning that a subsequent Congress is a hazardous basis for inferring the intent of an earlier one. The answer offered is that the warning's ground is evidentiary decay across elapsed time, that the operative definitions are the ones the ADA Amendments Act installed in 2008, and that the Court's own line between formal subsequent legislation and a mere committee report places the Amendments Act on the favorable side.

Keywords: disability law; civil rights; statutory interpretation; statutory originalism; subsequent legislative history; ratification record; scope representation; against-interest evidence; treaty non-ratification; disparate impact; lost opportunity damages; special education.

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I. Introduction

Originalism in constitutional interpretation proceeds from a simple premise: the meaning of a legal text is anchored by the contemporaneous understanding of those responsible for its adoption. What the Second Amendment means is substantially determined by what the 1791 ratifiers understood the words to mean. What the Fourteenth Amendment reaches is substantially determined by what the 1868 ratifiers meant by "equal protection." The method has limitations, and the historiographical work required to recover original meanings is often contested. The recovery typically depends on reconstructing statements, letters, speeches, debates, and contemporaneous commentary from incomplete sources.[1]

Statutory interpretation traditionally proceeds from analogous premises, with analogous methods. Contemporaneous statements by the political actors responsible for a statute, including committee reports, floor debates, presidential signing statements, and testimony by executive officials during the legislative process, are used by courts to illuminate statutory meaning.[2] The weight accorded these materials varies by court and by method. Strict textualists discount them more heavily than purposivists. But few interpretive traditions reject them entirely.

This Article argues that there exists, with respect to the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973, an evidentiary record produced in 2012 that meets the methodological standards of originalism and statutory interpretation at a level substantially exceeding what is typically available for either. The record is not from the original enactment of either statute. It is from the 2012 debate over United States ratification of the United Nations Convention on the Rights of Persons with Disabilities. The record consists of formal statements by the President of the United States, by the Senate Foreign Relations Committee (in a voted declaration and an executive report), by the State Department's senior

1. *See, e.g.*, District of Columbia v. Heller, 554 U.S. 570 (2008) (Scalia, J., conducting originalist analysis of Second Amendment); ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS (2012).

2. *See* WILLIAM N. ESKRIDGE JR. ET AL., CASES AND MATERIALS ON LEGISLATION AND REGULATION (6th ed. 2020) (surveying uses of legislative history in statutory interpretation).

official responsible for international disability rights, and by the Department of Justice's senior civil rights attorney. Each statement addresses the scope of existing United States disability rights law. Each represents that existing law already meets or exceeds specific international standards articulated in the CRPD.[3]

The argument of this Article is that this record is authoritative evidence of the meaning of the underlying statutes, and that the record is usable in ordinary statutory interpretation to resist narrow readings of those statutes.[4] The Committee said as much in terms: existing federal and state law meets or exceeds the Convention's requirements in the large majority of cases, and no additional implementing legislation would be necessary.[5] The record does not depend on the Convention having been ratified. The record exists regardless of ratification; its significance for domestic statutory interpretation is independent of its international-law effect.[6] Because the Convention was not ratified, the record is in a sense stranded: it was produced for a purpose (ratification) that was not achieved, and subsequent legal analysis has treated the failure of ratification as the principal interpretive event. The argument here is that the failure of ratification does not diminish the evidentiary value of the statements made about existing law during the

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3. The resolution of advice and consent made the point definitional as well as comparative. Its fifth understanding provides that "disability," "persons with disabilities," "undue burden," "discrimination on the basis of disability," and "reasonable accommodation" are "defined for the United States of America coextensively with the definitions of such terms pursuant to relevant United States law." S. Exec. Rep. No. 112-6, § (b)(5) (2012) [hereinafter 2012 SFRC Executive Report]. The report accompanied Treaty Doc. 112-7, was submitted by Senator Kerry for the Committee on Foreign Relations, and was ordered printed July 31, 2012. The Committee reported the Convention favorably with three reservations, eight understandings, and two declarations, and recommended advice and consent, by a vote of 13 to 6. The report was accompanied by minority views, which are themselves part of the record and are addressed *infra* Part VI.G. The Senate did not represent that domestic law approximated the Convention's terms. It represented that the two were the same.

4. The statutes at issue throughout are the ADA, 42 U.S.C. §§ 12101-12213, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.

5. S. Exec. Rep. No. 112-6, *supra* note 3 (Implementing Legislation). The Committee catalogued the domestic network it had in mind, beginning with the ADA, 42 U.S.C. § 12101 *et seq.*, and the Rehabilitation Act, 29 U.S.C. § 791 *et seq.*

6. The point is structural. Even a ratified Convention would not have supplied a domestic rule of decision absent implementing legislation, because a non-self-executing treaty is not itself domestic law. *Medellín v. Texas*, 552 U.S. 491 (2008). The record's domestic significance was therefore always going to run through the Article I statutes rather than through the treaty, which is why the failed vote does not reach it.

process.[7] The statements were made. They are formal, voted where applicable, and on the record. They remain evidence of the political branches' understanding of the statutes they addressed.

The scope representations in the record are not modest. The Obama administration and the Senate Foreign Relations Committee jointly represented that existing United States disability rights law "fulfills or exceeds" the obligations of a comprehensive international human rights treaty that was itself modeled on the ADA and that covers the full range of civil and political rights as applied to disability. The representations were made with full awareness that the Convention includes provisions on legal capacity, accessibility (including digital accessibility), reasonable accommodation, employment, education, health care, political participation, and access to justice. The representations were made to secure ratification, and as such they were made against the interest of anyone who would subsequently argue that the ADA or Section 504 should be read narrowly.

Part II of this Article reconstructs the ratification record in detail. Part III identifies the specific scope representations made about the ADA and Section 504, organized by subject matter. Part IV develops the interpretive method by which the record informs statutory interpretation, with attention to the analogy to constitutional originalism. Part V applies the method to five contested doctrinal areas: the Sutton-Toyota-ADAAA sequence on the scope of "disability";[8] regulatory carve-outs not grounded in statutory text, with the guaranty exemption as case study;[9] the Sandoval limitation on private disparate impact actions;[10] the Cummings limitation on damages under Spending Clause statutes;[11] and federal-agency coverage under Title II.[12] Part VI addresses the principal objections to the interpretive method advanced here. Part VII develops the

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7. *See infra* Part VI.A; *cf. New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001) (a party's formal position binds regardless of the outcome the position was advanced to secure).

8. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999); *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002); ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.

9. 28 C.F.R. § 41.3(e); *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

10. *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729, 740 (9th Cir. 2021) [hereinafter *Payan I*].

11. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022); *Payan v. Los Angeles Cmty. Coll. Dist.*, 169 F.4th 971, 977-79 (9th Cir. 2026) (No. 24-1809, decided Mar. 11, 2026) [hereinafter *Payan II*].

12. *Tennessee v. Lane*, 541 U.S. 509 (2004); 28 C.F.R. § 39.130(b)(3).

litigation strategy, identifying specific briefs, complaints, and motions in which the ratification record can be deployed. Part VIII concludes.

The Article's principal interpretive claim is most usefully framed as anti-narrowing rather than as affirmative scope expansion. The ratification record is authoritative evidence of what the political branches represented the statutes already cover; it is powerful against readings that narrow that coverage.[13] It is a shield, not a sword. In that operational frame, the record applies most forcefully where the question is whether the ADA or Section 504 should be construed narrowly against a plaintiff raising a claim that falls within what the political branches represented was covered. The record applies with comparatively less force where the question is the scope of remedy rather than the scope of right, though the boundary between the two is narrower than it appears once the surviving remedial channel is defined by what the statute entitled the plaintiff to.[14]

Three features of the argument should be stated at the outset, because each concedes something. The first is that the leading authority runs against it. The Supreme Court has cautioned that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," and that subsequent legislative history "will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment."[15] The Article takes that squarely rather than by avoidance, and its answer turns on the reason the Court gave: the concern is that memories fade, which makes the size of the interval decisive, and the interval that matters here is 2008 to 2012 rather than 1990 to 2012.

The second is that the record is not a single moment. The Committee reported the Convention favorably twice, in 2012 and again in 2014, under separate chairmen and on separate records, the second time after the first had already failed on the Senate floor.[16] Whatever else the

13. 2012 SFRC Executive Report, *supra* note 3; *see infra* Part IV.C.

14. *See infra* Part V.D (developing the point through *Payan II*, 169 F.4th at 978-79).

15. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 117-18 (1980) (quoting *United States v. Price*, 361 U.S. 304, 313 (1960)); *see infra* Part IV.D.

16. 2012 SFRC Executive Report, *supra* note 3; 2014 SFRC Executive Report, *supra* note 138; *see infra* Part VI.C. The 2014 report is offered on durability alone, not as better evidence of meaning; on the axis that gives the 2012 record its force, proximity to the ADA Amendments Act, the 2014 report is weaker.

scope representations were, they were not a one-time accommodation made to win a particular vote, because they were repeated when there was no vote to win.

The third is that the Executive has continued to say the same thing while acting against its own convenience in saying it. In April 2026, extending the compliance dates of its own Title II web accessibility rule, the Department of Justice stated that "[r]egardless of the compliance dates, covered entities have an ongoing obligation" to make their web content and mobile apps accessible "in accordance with their existing obligations under title II of the ADA."[17] A rule that specifies how to satisfy a duty is not the source of the duty. That is the whole of the thesis, stated by the agency that wrote the rule.

Relationship to Companion Articles

This Article is part of a broader research project on disability-rights enforcement and modern institutional design. The Article is interpretive and is largely self-contained: its central claim, that the CRPD ratification record is underused evidence of statutory meaning, does not depend on any particular downstream application. The anti-narrowing interpretive tool developed here applies across a range of contexts, including regulatory enforcement architecture, digital-platform design, the psychiatric harms of AI systems, and access to courts and the cognitive accessibility of legal text. Each is a concrete test case for the method, but the method stands on its own.

II. The Ratification Record

A. The Convention and Its Path Through the United States System

The Convention on the Rights of Persons with Disabilities was adopted by the United Nations General Assembly on December 13, 2006, and opened for signature on March 30, 2007.[18] It

17. Extension of Compliance Dates for Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 91 Fed. Reg. 20902, 20908 (Apr. 20, 2026) (interim final rule); *see infra* Part III.C. The Article takes no position on the extension's merits.

18. G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, U.N. Doc. A/61/49 (Dec. 13, 2006) [hereinafter CRPD].

entered into force on May 3, 2008, upon achieving its twentieth ratification.[19] As of the date of this Article, one hundred ninety-three countries have ratified the Convention, making it one of the most broadly ratified human rights instruments in the United Nations system.[20]

The Convention was modeled substantially on the Americans with Disabilities Act of 1990. This is acknowledged both by CRPD proponents and by commentators on the treaty's drafting history.[21] The Convention's structural approach, its definition of disability through a social-model framing, its emphasis on reasonable accommodation and accessibility, and its inclusion of both substantive rights and procedural protections track the ADA's innovations. As a result, ratification of the Convention by the United States was, from the beginning, presented as unlikely to require changes to existing domestic law.

United States participation in the drafting of the Convention occurred during the George W. Bush administration. The United States was actively involved in the negotiations through 2006, though the Bush administration did not sign the Convention. President Barack Obama signed the Convention on July 30, 2009.[22] The President transmitted the Convention to the Senate for advice and consent to ratification on May 17, 2012.[23]

B. The Presidential Transmittal Letter

President Obama's letter of transmittal accompanying the submission to the Senate stated the administration's position on the relationship between the Convention and existing domestic law. The letter stated that the administration had determined that existing United States law is "consistent with and sufficient to implement the Convention, including the Americans with

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19. CRPD art. 45(1).

20. UN DEP'T OF ECON. & SOC. AFFAIRS, *Convention on the Rights of Persons with Disabilities* (status information current as of 2026).

21. *See* Michael Ashley Stein, *A Quick Overview of the United Nations Convention on the Rights of Persons with Disabilities and Its Implications for Americans with Disabilities*, 31 MENTAL & PHYSICAL DISABILITY L. REP. 679 (2007); ARLENE S. KANTER, THE DEVELOPMENT OF DISABILITY RIGHTS UNDER INTERNATIONAL LAW: FROM CHARITY TO HUMAN RIGHTS (2015).

22. Statement by the President on the Signing of the Convention on the Rights of Persons with Disabilities, 2009 Daily Comp. Pres. Doc. (July 30, 2009).

23. Message from the President of the United States Transmitting Convention on the Rights of Persons with Disabilities, S. Treaty Doc. No. 112-7 (May 17, 2012).

Disabilities Act (ADA), the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA)."[24]

The transmittal letter is a formal submission by the President to the Senate, made under constitutional authority to negotiate treaties subject to Senate advice and consent.[25] It constitutes an official statement of the executive branch's position on the legal implications of ratification, and in particular on the relationship between the treaty and existing domestic law. The letter's statement that existing law is "sufficient to implement the Convention" is a representation by the executive branch that the ADA, the Rehabilitation Act, and IDEA already provide, at a minimum, the protections the Convention requires.

The representation is comprehensive with respect to the statutes named. It does not distinguish among provisions of the ADA; the representation is that the Act as a whole is sufficient. It does not distinguish among provisions of the Rehabilitation Act; the representation is that the Act as a whole is sufficient. It does not distinguish among components of the Convention; the representation is that the statutes listed are collectively sufficient to implement the entire Convention. Where subsequent interpretation of the ADA or Rehabilitation Act would render them unable to provide some protection the Convention requires, that subsequent interpretation is inconsistent with the executive branch's representation.

C. The Senate Foreign Relations Committee

The Senate Foreign Relations Committee held a hearing on the Convention on July 12, 2012.[26] Testimony was presented by administration officials, representatives of disability rights organizations, and representatives of organizations opposing ratification. On July 26, 2012, the Committee ordered the Convention favorably reported to the full Senate by a roll call vote of 13

24. S. Treaty Doc. No. 112-7, transmittal letter.

25. U.S. CONST. art. II, § 2, cl. 2.

26. Convention on the Rights of Persons with Disabilities: Hearing Before the S. Comm. on Foreign Relations, 112th Cong. (July 12, 2012).

in favor and 6 against, subject to three reservations, eight understandings, and two declarations; the report was ordered to be printed on July 31, 2012.[27]

The declarations proposed by the Committee included a statement that "the Senate declares that, in view of the reservations to be included in the instrument of ratification, current United States law fulfills or exceeds the obligations of the Convention for the United States."[28] The declaration was not voted on separately. It was the second of the two declarations contained in the resolution of advice and consent that the Committee ordered favorably reported by that vote.[29] This declaration is the load-bearing element of the ratification record for the argument developed in this Article. It is not a floor statement. It is not a private letter. It is not a committee staff memorandum. It is a formally voted declaration, attached to the proposed treaty instrument, reflecting the Committee's collective official position that existing United States law provides protection at a level that meets or exceeds the requirements of a comprehensive international human rights treaty.

The Committee's executive report expanded on the declaration:

> The United States has a comprehensive network of existing federal and state disability laws and enforcement mechanisms... In the large majority of cases, existing federal and state law meets or exceeds the requirements of the Convention.[30]

The report further catalogued the principal domestic statutes addressing disability rights, including the ADA (and the ADA Amendments Act of 2008), Section 504 of the Rehabilitation Act, IDEA, the Fair Housing Amendments Act, the Air Carrier Access Act, the Voting Rights Act as applied to disabled voters, and the Individuals with Disabilities Education Act, among others. The report's characterization of this network as "meet[ing] or exceed[ing] the requirements of the Convention" is a statement about the scope of each named statute.

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27. *See* CONG. RSCH. SERV., Report R42749, *The United Nations Convention on the Rights of Persons with Disabilities: Issues in the U.S. Ratification Debate* (Jan. 2015).

28. 2012 SFRC Executive Report, *supra* note 3 (Committee Action; Text of Resolution of Advice and Consent).

29. S. Exec. Rep. No. 112-6, *supra* note 3 (Committee Action; Text of Resolution of Advice and Consent to Ratification, § (c)). The report records a single roll call on the Convention and names each senator voting.

30. 2012 SFRC Executive Report, *supra* note 3.

D. Administration Testimony

Testimony by administration officials before the Senate Foreign Relations Committee elaborated the scope representations in specific detail. Judith Heumann, the State Department's Special Adviser for International Disability Rights, testified that the Convention "does not create new rights for disabled people, and no new legislation would be required to implement the Convention."[31] Heumann's testimony was in a formal hearing setting, given under oath in the established manner of senior administration testimony on treaty matters.

Eve Hill, Senior Counselor to the Assistant Attorney General for Civil Rights at the Department of Justice, testified that "ratifying the Convention, as proposed, will not require new legislation or create new rights."[32] Hill's testimony represents the position of the federal government's principal civil rights enforcement agency, delivered by its senior civil rights official, on the relationship between the Convention and existing domestic law.

Senator Richard Durbin, participating in the hearing, stated that "[o]ur country's existing legal framework for protecting those with disabilities is the best in the world and it has been very effective."[33] Senator Durbin's statement is a floor record, not of binding weight on its own, but it is consistent with and supports the broader record of scope representations.

E. The Floor Vote

The full Senate voted on the resolution of ratification on December 4, 2012. The vote was 61 in favor and 38 against.[34] Under Article II, Section 2, of the Constitution, treaty ratification requires concurrence of two-thirds of Senators present and voting. Ninety-nine Senators voted and one did

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31. Testimony of Judith Heumann, Special Adviser for International Disability Rights, U.S. Department of State, Hearing Before the Senate Committee on Foreign Relations, July 12, 2012.

32. Testimony of Eve Hill, Senior Counselor to the Assistant Attorney General for Civil Rights, U.S. Department of Justice, Hearing Before the Senate Committee on Foreign Relations, July 12, 2012.

33. Statement of Senator Richard Durbin, Hearing Before the Senate Committee on Foreign Relations, July 12, 2012.

34. 158 CONG. REC. S7365-79 (daily ed. Dec. 4, 2012) (recording a vote of 61 to 38, five short of the two-thirds required) (vote on resolution of ratification).

not, so the required threshold was sixty-six. The Convention failed to achieve that threshold by five votes.

The floor debate preceding the vote addressed a range of concerns raised by opponents, including sovereignty concerns, concerns about the UN treaty-monitoring system, concerns about federalism, and disagreements over specific articles. The floor debate did not materially challenge the scope representations in the transmittal letter, the SFRC declaration, the executive report, or the administration testimony. Opponents of ratification did not argue that existing US law was actually narrower than the scope representations acknowledged. They argued that ratification was unnecessary because existing law was sufficient (an argument that presupposes the scope representations are accurate), or that the treaty system would produce objectionable consequences even where domestic law already met the treaty's standards.

The vote against ratification is itself part of the record. It does not, however, undermine the scope representations. The scope representations were made to persuade the Senate to ratify. The Senate declined. But the representations had been made and entered into the record before the vote. They were not withdrawn.

III. The Scope Representations

The ratification record contains numerous specific statements about the scope of the ADA and Section 504. This Part extracts those statements and organizes them by subject matter, in each case identifying the source within the record and the corresponding Convention obligation the domestic statute was said to fulfill.

A. Comprehensive Scope of Nondiscrimination

The SFRC declaration's central representation is that existing domestic law "fulfills or exceeds the obligations of the Convention for the United States."[35] The Convention's general non-discrimination obligation appears at Article 5, which requires States Parties to "prohibit

35. 2012 SFRC Executive Report, *supra* note 3.

all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds."[36]

The representation implies that the ADA and Section 504, together with the other enumerated statutes, collectively prohibit "all discrimination on the basis of disability," provide "equal and effective legal protection against discrimination on all grounds," and apply across the full range of governmental and private activities. Any subsequent interpretation that would create categories of disability discrimination not reached by the statutes, or would deny "equal and effective legal protection" to disabled persons in some subset of cases, is in tension with the representation.

B. Scope of Reasonable Accommodation

Article 2 of the Convention defines "reasonable accommodation" as "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms."[37] Article 5(3) requires States Parties to take "all appropriate steps to ensure that reasonable accommodation is provided."

The representation that existing domestic law fulfills or exceeds these obligations implies that the ADA's reasonable accommodation requirements (under Title I, Title II, and Title III) and Section 504's reasonable accommodation requirements reach the full scope the Convention articulates: all human rights and fundamental freedoms, on an equal basis with others.[38] Interpretations narrowing the reasonable accommodation obligation, or limiting its application to particular domains, are inconsistent with this representation.

36. CRPD art. 5.

37. CRPD art. 2.

38. 42 U.S.C. § 12182(b)(2)(A)(ii); *see PGA Tour, Inc. v. Martin*, 532 U.S. 661 (2001) (construing the reasonable modification obligation and the fundamental alteration defense).

C. Scope of Accessibility

Article 9 of the Convention requires States Parties to "take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public."[39]

The representation that existing domestic law fulfills or exceeds these obligations, at the time of the 2012 ratification debate, implied that the ADA's accessibility requirements and the Rehabilitation Act's corresponding provisions reach digital accessibility, communications accessibility, and accessibility of public services.[40] The subsequent 2024 HHS rule at 45 C.F.R. § 84.84 and the 2024 DOJ rule at 28 C.F.R. §§ 35.200-35.205 formalizing digital accessibility requirements are consistent with this representation.[41]

The 2026 extension deserves emphasis rather than a footnote's obscurity, because it is the clearest recent statement of the relationship this Article describes. An agency postponing the compliance dates of its own accessibility rule paused to say that the underlying obligation runs regardless of those dates, because it arises from the statute and not from the rule. That is the distinction between a technical standard and a statutory command, drawn by the Executive,

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39. CRPD art. 9.

40. *See Robles v. Domino's Pizza, LLC*, 913 F.3d 898 (9th Cir. 2019) (holding the ADA applies to a website and mobile application connected to a physical place of public accommodation); 42 U.S.C. § 12182(b)(2)(A)(iii) (auxiliary aids and services).

41. Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 89 Fed. Reg. 31320 (Apr. 24, 2024) (codified at 28 C.F.R. §§ 35.200-35.205, *see id.* at 31337-38) (adopting WCAG 2.1 Level AA as the technical standard under Title II; effective June 24, 2024). The Department subsequently extended the rule's compliance dates by one year, from April 24, 2026 to April 26, 2027 for public entities with a total population of 50,000 or more, and from April 26, 2027 to April 26, 2028 for smaller entities and special district governments. Extension of Compliance Dates for Nondiscrimination on the Basis of Disability; Accessibility of Web Information and Services of State and Local Government Entities, 91 Fed. Reg. 20902, 20912 (Apr. 20, 2026) (interim final rule) (amending only § 35.200(b)(1) and (b)(2)). The extension does not qualify the representation; the Department said so expressly. The amendments "do not alter any other provisions of the 2024 final rule," *id.* at 20908, and, more directly: "Regardless of the compliance dates, covered entities have an ongoing obligation to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities in accordance with their existing obligations under title II of the ADA." *Id. Accord id.* at 20906 ("No matter the deadline, the rule's substantive requirements bind covered entities."). The Article takes no position on whether the extension was warranted. It relies only on what the Department said about the source of the duty.

in the Federal Register, against its own short-term interest in the postponement.[42] The 2012 representations said existing law already reached this ground. The 2024 rule specified how to occupy it. The 2026 extension moved the specification's deadline and left the ground where it was. Post-ratification-debate interpretations that would narrow the accessibility obligation are in tension with the representation.

D. Scope of Access to Justice

Article 13 of the Convention requires States Parties to "ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages."[43]

The Tennessee v. Lane decision had been decided eight years before the ratification debate and was well-known to the drafters of the scope representations.[44][45] The representation that existing law fulfills or exceeds Article 13, made with knowledge of Lane's holding that ADA Title II validly abrogates state sovereign immunity as applied to access-to-courts claims, implies that the ADA's access-to-courts protection is at least as broad as Article 13's requirements. Subsequent interpretations narrowing access-to-courts protection for disabled persons are in tension with this representation.

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42. 91 Fed. Reg. at 20908. The point is structural rather than partisan: a rule that specifies how to satisfy a duty is not the source of the duty, and delaying the specification does not delay the duty. *See infra* Part V.B (shield, not sword).

43. CRPD art. 13.

44. *Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004); *see also Olmstead v. L.C.*, 527 U.S. 581 (1999) (construing the integration mandate as a Title II requirement); *cf. Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001) (declining to sustain Title I abrogation on the record before Congress).

45. Tennessee v. Lane, 541 U.S. 509 (2004).

E. Scope of Methods of Administration

Article 4(1)(b) of the Convention requires States Parties "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities."[46]

The representation that existing law fulfills or exceeds this obligation implies that the disability rights statutes reach not just intentional discrimination but practices that constitute discrimination in effect, including methods of administration. The methods-of-administration regulations at 28 C.F.R. § 35.130(b)(3), 45 C.F.R. § 84.68(b)(3) (prohibiting a recipient from utilizing "criteria or methods of administration … [t]hat have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability," or that have "the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to individuals with disabilities")[47], and parallel agency regulations are the domestic instrument by which this Convention obligation is operationalized. Narrow interpretation of the methods-of-administration regime is inconsistent with the representation that existing law fulfills or exceeds Article 4(1)(b).

F. Scope of Covered Entities

The Convention's substantive provisions apply to state action, to "public authorities" generally, and to "any person, organization or private enterprise" that the State Party regulates.[48] The representation that existing domestic law fulfills or exceeds these obligations implies that the

46. CRPD art. 4(1)(b).

47. The methods-of-administration provision was redesignated from former 45 C.F.R. § 84.4(b)(4) to 45 C.F.R. § 84.68(b)(3) by HHS final rule. Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40066, 40180, 40182 (May 9, 2024) (effective July 8, 2024). The eCFR credit line records the change as "[r]edesignated and revised and republished," and the revision was terminological rather than substantive: the Department retained sections from the prior rule with terminology revisions, stating that no substantive difference was intended in its use of "individual with a disability" and cognate terms. *Id.* at 40067. The current provision reaches "qualified individuals with disabilities." 45 C.F.R. § 84.68(b)(3). Two cautions follow for anyone citing the prior number. Former § 84.4 was not vacated; it remains live under the title "Disability" and addresses a different subject, so a citation to § 84.4(b)(4) resolves to a section that does not contain the provision. And a resolving URL for the old number is not evidence that the number is current. Throughout this Article, citations are to § 84.68(b)(3) as verified against eCFR, current as of July 6, 2026.

48. *See* CRPD arts. 4(1)(d) (state conduct), 4(1)(e) (conduct of private enterprises).

ADA's coverage of state and local government (Title II) and of private entities (Titles I and III), together with Section 504's coverage of recipients of federal financial assistance and executive agencies, reaches at least the full scope of entities whose conduct the Convention covers.

Regulatory carve-outs that narrow statutory coverage of entities implicate the representation. The guaranty exemption at 28 C.F.R. § 41.3(e), to the extent it excludes from Section 504 coverage entities that receive federal support through guaranty or insurance arrangements, reduces the scope of covered entities below the Convention's requirement. The representation that existing domestic law fulfills or exceeds the Convention's coverage obligations is in tension with the exemption as applied.[49]

IV. The Method

A. Statutory Originalism as Analogy, Not Full Methodological Identity

The method by which the ratification record informs statutory interpretation is best understood by analogy to constitutional originalism rather than as a full methodological identity. The analogy is useful because it names a familiar interpretive commitment: that contemporaneous evidence of the political branches' understanding of a legal text informs its meaning. The analogy has limits. Constitutional originalism operates on a text that is not readily amended and that therefore admits a stable contemporaneous understanding at the moment of ratification;[50] statutory originalism, if the term is used, operates on texts that are readily amended and elaborated over time, and the contemporaneous understanding relevant to meaning may have multiple reference points: original enactment, subsequent amendments, landmark judicial interpretations, executive branch

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49. The tension is regulatory rather than statutory. Section 504 conditions coverage on the receipt of "Federal financial assistance," 29 U.S.C. § 794(a), and draws no distinction between direct assistance and support extended through a guaranty or insurance arrangement. The exclusion is the Department's, not Congress's. *Cf. supra* note 12 (noting the parallel asymmetry between 28 C.F.R. § 39.130(b)(3) and its Title II and Section 504 counterparts, likewise regulatory in origin).

50. *See supra* note 1. The asymmetry is not a defect in the analogy so much as the reason the analogy favors this record. A constitution's resistance to amendment is what makes its ratification-era understanding authoritative and also what makes that understanding remote; a statute's amendability is what makes any single moment less authoritative and also what keeps the relevant moment near. The 2012 record trades one for the other, and the trade is examined at Part IV.D.

regulatory interpretations, and authoritative political-branch characterizations. The CRPD ratification record is a single-event source of contemporaneous understanding that integrates across these reference points. It is best characterized as ordinary statutory interpretation informed by an unusually formal and unified political-branch admission about the scope of the statutes as they existed in 2012, rather than as the application of a distinct "statutory originalism" methodology.[51]

The political branches in 2012 were engaged in the task of characterizing the scope of the statutes as currently in force, which meant they had to take account of the original enactments,[52] the subsequent amendments,[53] the judicial decisions that had constrained or expanded the statutes' meaning,[54] and the administrative interpretations that had given them operational shape.[55] The ratification record is thus a synthesis document. It represents the political branches' position on the scope of the statutes as they existed, with all accumulated adjustments, in 2012.[56]

The weight of the record as interpretive evidence depends on its formality and the circumstances of its production. The record here scores highly on both axes. It includes a presidential transmittal letter (formally submitted to the Senate under constitutional authority); a Senate committee declaration (voted 14-5, included in the proposed ratification instrument); a Senate committee executive report (the formal committee product submitted to the full Senate); testimony by Senate-confirmed executive officials in their official capacity (the Special Adviser for International Disability Rights and the Senior Counselor to the Assistant Attorney General for Civil Rights); and the floor vote. Each element is at a formality level that ordinarily receives substantial weight in statutory interpretation.

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51. The ordinary tools include text, structure, and contemporaneous understanding. *See Wis. Cent. Ltd. v. United States*, 585 U.S. 274 (2018); ANTONIN SCALIA & BRYAN A. GARNER, *supra* note 1; WILLIAM N. ESKRIDGE JR. ET AL., *supra* note 2.

52. Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355; Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327.

53. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.

54. *See, e.g.*, *Sutton*, 527 U.S. 471; *Toyota*, 534 U.S. 184; *Choate*, 469 U.S. 287; *Lane*, 541 U.S. 509; *Olmstead v. L.C.*, 527 U.S. 581 (1999).

55. *See, e.g.*, 28 C.F.R. § 35.130; 45 C.F.R. pt. 84; Exec. Order No. 12250, 45 Fed. Reg. 72995 (Nov. 2, 1980).

56. 2012 SFRC Executive Report, *supra* note 3; S. Treaty Doc. No. 112-7, transmittal letter.

B. The Four Doctrinal Categories of the Ratification Record

The characterization of the ratification record as a single evidentiary category, whether “legislative history,” “executive interpretation,” or otherwise, understates its actual doctrinal structure and exposes the argument to objections that track the characterization rather than the underlying materials. The record is more accurately understood as comprising four distinct doctrinal categories, each of which receives interpretive weight under established principles and each of which is subject to different objections. Identifying the categories separately clarifies both what weight the record carries and what objections apply to which elements.

Category One: Executive Branch Formal Interpretation Under Skidmore. The presidential transmittal letter is a formal submission by the President to the Senate, made under Article II constitutional authority. The letter’s characterization of existing United States law is a formal executive branch interpretation of the scope of federal statutes. Under Skidmore v. Swift & Co., such interpretations receive weight proportional to “the thoroughness evident in [their] consideration, the validity of [their] reasoning, [their] consistency with earlier and later pronouncements, and all those factors which give [them] power to persuade.”[57] Skidmore survived Loper Bright Enterprises v. Raimondo,[58] which eliminated Chevron deference but preserved the weight of reasoned agency interpretations under Skidmore’s persuasion standard. The Heumann and Hill testimony is formal interpretation by the agency officials charged with enforcing the statutes at issue: the State Department’s Special Adviser for International Disability Rights and the Department of Justice’s Senior Counselor to the Assistant Attorney General for Civil Rights. DOJ is the coordinating agency for Section 504 enforcement under Executive Order 12250 and 28 C.F.R. Part 41. DOJ’s formal interpretations of Section 504 scope are authoritative executive interpretations entitled to Skidmore weight. The State Department speaks for the United States on matters of international treaty interpretation, and its characterizations of existing

57. Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944).

58. Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024).

US law in that context are interpretations by the agency responsible for the subject matter of the hearing.

Category Two: Evidentiary Admissions by an Opposing Party. When the United States government, through its authorized executive-branch representatives, makes a formal statement about the meaning or scope of its own statutes, the statement is admissible as an evidentiary admission under Federal Rule of Evidence 801(d)(2) in subsequent litigation where the United States is a defendant or intervenor. FRE 801(d)(2) excludes from the hearsay rule statements offered against an opposing party that were made by the party, by a person authorized by the party to make a statement on the subject, or by an agent of the party on a matter within the scope of the agency relationship.[59] The transmittal letter from the President and the testimony by DOJ and State Department officials fall squarely within this category. Each is a statement by a person acting within the scope of authority delegated by the Executive branch, the department of the government against which the admission would be offered.

The SFRC declaration and committee report require a separate evidentiary analysis. The Senate is a legislative body. Congress as a body is not simply the United States as a litigant for party-opponent-admission purposes; Senate materials are not party admissions of the United States government in the 801(d)(2) sense merely because the Senate is part of the federal government. The more accurate characterization of the SFRC materials is that they are formal political-branch ratification history of high probative value, admissible under ordinary statutory-interpretation principles as authoritative contemporaneous evidence of the political branches' position on the scope of the statutes. Their weight derives from their formality, their voted status, their production against adversarial political scrutiny, and their contemporaneous character as a vetted expression of the Senate's position. Where the United States is subsequently a litigant taking a position inconsistent with the Senate's 2012 representations, the Senate materials can be used as evidence of the political branches' position at the time, and the government's current position as an evidentiary contradiction. The doctrinal basis for that use

59. FED. R. EVID. 801(d)(2); *see, e.g.*, *United States v. Morgan*, 581 F.2d 933 (D.C. Cir. 1978) (statements by government agents admissible against the government under party-admission rule).

is not the party-opponent-admission rule but the broader doctrine of inconsistent governmental positions, which courts have long treated as bearing on the weight of agency interpretations.

The distinction between evidentiary admissions and judicial admissions is material and should not be collapsed. Judicial admissions are formal concessions made in pleadings, stipulations, or responses to requests for admission during the specific litigation at hand; they conclusively bind the party that made them and withdraw the admitted fact from dispute.[60] Evidentiary admissions, by contrast, are statements made outside the current proceeding that are admissible as evidence but do not conclusively bind the party; the party may offer contrary evidence and argue for a different interpretation, though the admission carries significant persuasive weight. The 2012 ratification record is not a judicial admission in the technical sense, because the statements were not made in the course of any subsequent specific litigation in which a party now wishes to deploy them. The statements are, however, fully admissible as evidentiary admissions by the United States whenever the United States is a party, and as persuasive evidence of the political branches' interpretation of the statutes even in cases between private parties where the United States is not a party.

Two additional doctrinal consequences follow. First, in cases where a private plaintiff sues a private defendant (for example, a private disability-rights plaintiff suing a platform corporation under Section 504), the 2012 record is not binding on the defendant because the defendant was not the speaker and is not the party whose admission it is. The defendant can argue against the interpretation the record reflects. The record nonetheless carries persuasive weight as authoritative interpretation of the statute by the political branches, and the court evaluating the defendant's position is entitled to weigh that interpretation alongside the defendant's contrary arguments. Second, in cases where the government is the defendant or an intervenor (for example, an APA challenge to a regulation narrowing Section 504 coverage, or a government motion to dismiss a disability rights action), the record is directly admissible against the government as a party admission under FRE 801(d)(2). The government's position in 2012

60. *See* Keller v. United States, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995) (defining judicial admissions as formal, deliberate concessions made in the course of the proceeding at bar).

is evidence of the government's interpretation that, combined with the other three doctrinal categories, makes contrary government positions in subsequent litigation difficult to sustain without explanation of the inconsistency.

Category Three: Admissions Against Interest. Federal Rule of Evidence 804(b)(3) and the underlying common-law doctrine accord heightened evidentiary weight to statements made against the declarant's pecuniary, proprietary, or penal interest. The extension of the principle to governmental statements made against the government's advocacy interest in particular proceedings is established in evidentiary practice and in the case law of administrative review.[61] The against-interest characterization should be used with precision here, because the political economy of the ratification debate was not uniformly adverse to the "fulfills or exceeds" representation. The representation served two political purposes simultaneously: it weakened the case for a new treaty instrument by making the treaty appear unnecessary (against the interest of ratification proponents), and it reassured sovereignty skeptics that ratification would not change domestic law (consistent with the interest of building a broader coalition for ratification). A pure against-interest framing accordingly overstates the doctrine's application.

The stronger interpretive signal emerges not from traditional against-interest analysis but from the adversarial structure of the ratification debate itself. Opponents of the treaty, particularly those raising sovereignty concerns, did not challenge the scope representations as overstated. On the contrary, opposition arguments frequently proceeded on the premise that the treaty was unnecessary *precisely because* existing US law was already sufficient to meet the Convention's obligations. Both supporters and opponents of ratification thus agreed on the scope of existing US disability rights law, differing on whether ratification was warranted given that scope. The bipartisan agreement on the scope point is a stronger interpretive signal than a pure against-interest characterization. The Senate's ultimate rejection of the treaty was a rejection of ratification on sovereignty grounds; it was not a rejection of the scope representations, which

61. *See, e.g.*, *United States v. Paccione*, 949 F.2d 1183, 1198-99 (2d Cir. 1991) (discussing statements against interest generally); administrative law applications in which agency statements against enforcement interest receive heightened weight.

were the common ground on which the sovereignty debate proceeded. The record accordingly supports a formulation stronger than narrow against-interest doctrine: the scope representations were made in a formally vetted, adversarial, politically scrutinized setting, and were confirmed rather than challenged by opponents of the overall ratification effort.

Category Four: Subsequent Legislative History. The SFRC declaration and the Committee's executive report can be characterized as legislative history in the conventional sense, though they are legislative history of the 2012 Senate's activities rather than of the Congress that enacted the ADA or the Rehabilitation Act. Justice Scalia famously objected to the use of subsequent legislative history, arguing that the views of a subsequent Congress cannot reliably reconstruct the intent of an earlier one.[62] The Supreme Court has put the point about as strongly as it can be put. Invoking what it called an oft-repeated warning, the Court in *GTE Sylvania* observed that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one," and reasoned that subsequent legislative history "does not bear strong indicia of reliability" because "as time passes memories fade and a person's perception of his earlier intention may change."[63] Any argument built on a 2012 committee report about statutes enacted in 1973 and 1990 must answer that passage rather than route around it.

Three answers are available, and they are cumulative.

The first is that *GTE Sylvania* supplies its own limiting principle. The Court's stated reason is evidentiary, not categorical: memories fade, perceptions shift, and the reliability of a later characterization decays with elapsed time. A rule grounded in decay has force in proportion to the interval. *GTE Sylvania* involved a 1976 report construing a 1972 statute, four years, and the Court still discounted it, so the interval alone does not answer the objection. But the relevant

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62. *See* ANTONIN SCALIA, A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW 29-37 (1997) (criticizing legislative history generally); Sullivan v. Finkelstein, 496 U.S. 617, 631-32 (1990) (Scalia, J., concurring) (objecting to subsequent legislative history). The objection is not merely academic; it has a controlling statement. *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980) (declining to narrow a 1972 statute by reference to a 1976 conference report).

63. *GTE Sylvania*, 447 U.S. at 117-18 (quoting *United States v. Price*, 361 U.S. 304, 313 (1960)). The Court concluded that such history "will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment." *Id.*

interval here is not 1990 to 2012. It is 2008 to 2012, because the operative definitional provisions are those the ADA Amendments Act installed, and the Congress that reported the Convention in 2012 was substantially the Congress that had enacted those provisions four years earlier.[64]

The second is that *GTE Sylvania* drew a line this record falls on the favorable side of.[65] The Court did not reject the maxim that "[s]ubsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction."[66] It distinguished it, on the ground that with subsequent legislation "Congress has proceeded formally through the legislative process," whereas "[a] mere statement in a conference report" about an earlier statute's meaning is "obviously less weighty."[67] The same footnote states the harder half of the rule, and it should be met head on rather than left for a reader to find: the less formal types of subsequent legislative history "provide an extremely hazardous basis for inferring the meaning of a congressional enactment," and "even when it would otherwise be useful, subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment."[68] That is the objection at full strength, and the answer is the distinction the footnote itself draws. That distinction is a gift here. The ADA Amendments Act is subsequent legislation declaring the intent of an earlier statute, enacted formally, expressly repudiating *Sutton* and *Toyota* and directing broad construction. Under *Red Lion* it takes great weight on its own. The 2012 record is not offered as a substitute for that legislation. It is offered

64. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (enacted Sept. 25, 2008); 2012 SFRC Executive Report, *supra* note 3 (reported July 31, 2012). The Article makes no claim about the 1990 or 1973 enacting Congresses, and none is needed.

65. Two 1980 decisions carry the *GTE Sylvania* name. The case discussed here is *Consumer Product Safety Commission v. GTE Sylvania, Inc.*, 447 U.S. 102 (1980). It is not *GTE Sylvania, Inc. v. Consumers Union of the United States, Inc.*, 445 U.S. 375 (1980), a distinct FOIA decision. Citator flags on the former attach principally to its Exemption 3 holding, which Congress addressed in the OPEN FOIA Act of 2009, Pub. L. No. 111-83, § 564, 123 Stat. 2142, 2184 (codified at 5 U.S.C. § 552(b)(3)(B)), and not to the statutory-construction discussion in footnote 13 relied on here.

66. *Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 380-81 (1969), *quoted in GTE Sylvania*, 447 U.S. at 118 n.13.

67. *GTE Sylvania*, 447 U.S. at 118 n.13.

68. *GTE Sylvania*, 447 U.S. at 118 n.13. The same passage repeats the warning that "the views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one." *Id.* at 118 (quoting *United States v. Price*, 361 U.S. 304, 313 (1960)).

as a contemporaneous characterization of the landscape that legislation created, made by the Congress that created it.

At least one court has applied the *GTE Sylvania* warning to the ADA specifically, and the objection is worth stating in its strongest form. In *Martin v. THI E-Commerce, LLC*, a California Court of Appeal declined to give weight to post-enactment materials bearing on whether ADA Title III reaches websites, reasoning that the materials concerned "the Internet generally and not the ADA itself," that many "took place a decade or more later," and that they therefore had "limited, if any, value."[69] Three features distinguish the 2012 record from the materials *Martin* discounted. First, subject matter. The materials in *Martin* addressed the Internet rather than the statute; the 2012 scope representations address the ADA and Section 504 by name and by provision, and were made for the express purpose of characterizing what those statutes already require. Second, form. *Martin* confronted informal materials of the kind footnote 13 calls hazardous. The 2012 record consists of a constitutionally authorized Presidential transmittal, a formally voted committee declaration attached to a proposed treaty instrument, a published executive report, and sworn testimony by the two agencies charged with enforcement. Third, position. The materials in *Martin* were offered by a party seeking to expand a statute's reach; the 2012 representations were made by the political branches against the interest of anyone who would later argue for a narrow reading, which is the classic indicium of reliability that footnote 13's fading-memory rationale is designed to test for. *Martin* is therefore consistent with the use made here. It rejects informal, off-topic, late-arriving commentary. It does not reach formal, on-point, contemporaneous scope representations made by the enforcing branches.

The third is that the 2012 record is not, in the main, a committee report at all. *GTE Sylvania* addressed one genre. The record here includes a Presidential transmittal, formal executive-branch testimony from Senate-confirmed officials, and a voted resolution of advice and consent containing an understanding that defines the operative terms coextensively with domestic

69. *Martin v. THI E-Commerce, LLC*, 95 Cal. App. 5th 521 (Cal. Ct. App. 2023) (quoting *Reno v. Bossier Parish Sch. Bd.*, 520 U.S. 471, 484-85 (1997), and citing *GTE Sylvania*, 447 U.S. at 118 n.13).

law.[70] Only the committee report itself sits squarely in *GTE Sylvania*'s category, and the Article's argument does not depend on it alone.

The objection therefore has force as applied to this fourth category of the record, though even within the category the force is limited: the 2012 Committee was not purporting to reconstruct 1990 or 1973 legislative intent; it was characterizing the then-current scope of statutes that had been substantially amended[71] and elaborated by three decades of enforcement.[72] The subsequent-legislative-history objection applies to one of the four doctrinal categories and does not reach the others. The executive branch formal interpretation, the judicial admissions, and the admissions against interest stand independent of the legislative-history characterization.

The four-category analysis clarifies the response to the principal methodological objection to this Article's argument. A textualist court or critic who insists that legislative history is an impermissible interpretive resource has nothing to say about Categories One, Two, and Three. The Skidmore weight of executive formal interpretation, the evidentiary weight of opposing-party admissions, and the heightened weight of admissions against interest are all textualist-compatible interpretive mechanisms. The ADAAA-anchoring move developed in later applications reinforces the legislative-history category by making clear that the 2012 record addresses a statutory scope that post-dates the 2008 amendments and therefore is not subsequent legislative history with respect to the enacting Congress of the amended statute. The methodological defense of the argument does not stand or fall with any single doctrinal category.

C. Shield, Not Sword: The Post-Loper Bright Operational Frame

The four-category analysis establishes what weight the ratification record carries. A distinct operational question is how litigants should deploy the record in the current post-Loper Bright

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70. S. Treaty Doc. No. 112-7, transmittal letter; Testimony of Judith Heumann, *supra* note 31; Testimony of Eve Hill, *supra* note 32; 2012 SFRC Executive Report, *supra* note 3, § (b)(5).

71. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (rejecting *Sutton* and *Toyota* and directing that "disability" be construed in favor of broad coverage to the maximum extent permitted). 42 U.S.C. § 12102(4)(A).

72. *See, e.g.*, 28 C.F.R. pt. 35; 45 C.F.R. pt. 84; Exec. Order No. 12250, 45 Fed. Reg. 72995 (Nov. 2, 1980) (assigning the Attorney General leadership in coordinating Section 504 enforcement across agencies).

judicial environment. The deployment question matters because the record's persuasive weight depends in part on the posture in which it is offered, and the wrong posture risks activating judicial resistance that the right posture avoids.

Loper Bright Enterprises v. Raimondo eliminated Chevron deference and, more broadly, signaled that the federal judiciary is reasserting its independent authority to interpret statutory text.[73] Federal judges in the post-Loper Bright era are protective of the interpretive prerogative articulated in Marbury v. Madison, that saying what the law is remains the province and duty of the judicial department.[74] A litigant who offers the 2012 ratification record as a reason the court must defer to the Obama administration's interpretation invites the judicial response that the court is not bound by any administration's interpretation and will construe the statute independently.[75]

The ratification record's most effective deployment is therefore not as a sword demanding deference, but as a shield confirming plain-text reading. The distinction operates as follows.

Sword framing: "The Obama administration and the Senate Foreign Relations Committee determined in 2012 that existing law fulfills or exceeds the Convention's obligations. This Court should defer to that determination and read the statute accordingly." This framing invites post-Loper Bright resistance and frames the argument as an administrative-deference claim that the court is doctrinally disposed to reject.[76]

Shield framing: "The plain text of the ADA and Section 504 reaches the conduct at issue in this case. The statutory text supports the broad construction the plaintiff advances through its natural reading. The 2012 ratification record is independent confirmation that the political branches, when presented with the question, read the statutes the same way. The Court's own independent construction of the text is therefore consistent with the formal position of the

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73. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024) (overruling *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), and holding that courts exercise independent judgment in deciding whether an agency has acted within its statutory authority).

74. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803); *see Loper Bright*, 603 U.S. 369 (invoking that prerogative in overruling *Chevron*).

75. *Loper Bright*, 603 U.S. 369; *cf. Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012) (declining deference where an agency position would work unfair surprise).

76. *See Loper Bright*, 603 U.S. 369; *Kisor v. Wilkie*, 588 U.S. 558 (2019) (narrowing deference to an agency's construction of its own regulation).

coordinate branches, and does not require the Court to adopt an interpretation that differs from the statute's plain meaning."

The shield framing preserves the court's interpretive independence while using the record as corroborating evidence of the reasonable reading of the statutory text. A textualist judge committed to plain-text interpretation is not asked to defer to the political branches; the judge is asked to note that the political branches, when they formally addressed the question, reached the same conclusion the plain text supports.[77] The record functions as a confirmation that the textualist reading is not a radical or contested construction but an interpretation that the political branches themselves have formally endorsed.

The shield framing also neutralizes the common defense-counsel move of portraying plaintiff's argument as a political argument about administration preferences. If plaintiff offers the record as sword, defendant responds that the Trump administration disagreed, the Obama administration's view is not the current administration's view, and political interpretations change with elections.[78] If plaintiff offers the record as shield, defendant's argument about administration change is irrelevant because plaintiff is not asking the court to defer to any administration; plaintiff is asking the court to read the statute's plain text and noting that prior formal interpretations confirm the plain-text reading.

The operational implications for brief-writing are concrete. The first argument in plaintiff's brief should be the plain-text analysis of the statute, grounded in Skidmore-surviving agency implementing regulations and the ordinary tools of statutory construction.[79] The ratification record appears later in the brief as confirmation, with specific citations to the presidential transmittal letter, the SFRC declaration, and the executive testimony deployed to

77. *See Bostock v. Clayton Cnty.*, 590 U.S. 644 (2020) (applying ordinary public meaning to reach a result the enacting Congress did not anticipate); *Wis. Cent. Ltd. v. United States*, 585 U.S. 274 (2018) (ordinary meaning at the time of enactment); *New Prime Inc. v. Oliveira*, 586 U.S. 105 (2019) (same).

78. *Cf. State Farm*, 463 U.S. at 59 (Rehnquist, J., concurring in part and dissenting in part) ("A change in administration brought about by the people casting their votes is a perfectly reasonable basis for an executive agency's reappraisal of the costs and benefits of its programs and regulations."). The shield framing renders the point immaterial because it asks the court to construe the text rather than to follow any administration.

79. *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); *Loper Bright*, 603 U.S. 369 (preserving *Skidmore*'s power-to-persuade weight while abrogating *Chevron*).

show that the plain-text reading is the reading the political branches have formally adopted. The record strengthens the argument without becoming the argument's foundation.

D. The Analogy to Constitutional Originalism and Its Comparative Strengths

Constitutional originalism operates under significant epistemic handicaps that statutory originalism as applied to the ratification record does not share. Three comparisons illustrate.

First, recency. Constitutional originalism's subject matter is often two hundred or more years old. The historiographical work required to reconstruct original meaning is substantial, and much of the relevant evidence has been lost, misplaced, or rendered inaccessible by archival practices.[80] The ratification record is from 2012. The officials who produced it are, with few exceptions, still alive. The documentary sources are complete and accessible through the Senate Foreign Relations Committee archives and the CRS.[81] The historiographical problem is essentially nonexistent.

Second, formality. Constitutional originalism often relies on private correspondence, Federalist essays, state ratification debates, and other materials that were not produced as formal instruments of government. THE FEDERALIST, for example, is a set of newspaper essays.[82] State ratification debates were legislative discussions rather than voted declarations. The ratification record consists predominantly of voted instruments and formal submissions. Every element is at a higher formality level than the comparable evidentiary materials in much constitutional originalism.

Third, adverse interest. The founders made statements about the Constitution in the context of advocating for its ratification. They had every incentive to characterize the document favorably to persuade ratifiers. The ratification record, by contrast, was produced to justify ratification of an international treaty, with the stated rationale that existing domestic law already

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80. *See District of Columbia v. Heller*, 554 U.S. 570 (2008) (majority and dissent reaching opposing conclusions from the same eighteenth-century record).

81. 2012 SFRC Executive Report, *supra* note 3; CONG. RSCH. SERV., *supra* note 12; S. Treaty Doc. No. 112-7.

82. THE FEDERALIST (Clinton Rossiter ed., 1961); *see Heller*, 554 U.S. 570 (drawing on ratification-era commentary of this character).

provided the protections the treaty required. The executive branch had no incentive to oversell the scope of existing law; overselling would have weakened the case for ratification by making the treaty appear unnecessary. The SFRC's declaration that existing law "fulfills or exceeds" the treaty standards was a concession made to opponents' concerns, intended to demonstrate that the treaty would not require changes to domestic law. It was, from the standpoint of statutory interpretation, a statement against interest by the political branches.[83] Statements against interest receive heightened weight in evidentiary analysis, including in statutory interpretation contexts where courts consider whether the speaker had incentive to shade the statement.[84]

The adverse-interest feature is particularly important because it responds to a common objection to legislative history. Courts and commentators sometimes discount legislative history on the ground that legislators have incentive to stuff the record with favorable characterizations that are not necessarily shared by the enacting majority.[85] That concern has less force where the characterization runs against the speaker's advocacy interest. The ratification record's scope representations were offered to secure ratification, not to affect subsequent litigation. The political branches were not, in 2012, attempting to expand the scope of disability rights statutes; they were attempting to ratify a treaty. The scope characterizations are collateral to that primary purpose, which enhances rather than diminishes their evidentiary weight.[86]

E. Relationship to Post-Ratification-Debate Events

The Convention was not ratified. Does the failure of ratification diminish the evidentiary value of the record? The argument developed here is that it does not.

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83. 2012 SFRC Executive Report, *supra* note 3.

84. *See* FED. R. EVID. 804(b)(3) (excepting from hearsay a statement so contrary to the declarant's interest that a reasonable person would make it only if true); *United States v. Paccione*, 949 F.2d 1183, 1198-99 (2d Cir. 1991).

85. *See Blanchard v. Bergeron*, 489 U.S. 87 (1989) (Scalia, J., concurring in part and concurring in the judgment) (objecting to reliance on committee reports as evidence of congressional intent); *Conroy v. Aniskoff*, 507 U.S. 511 (1993) (Scalia, J., concurring in the judgment) (same); *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546 (2005) (cautioning against legislative history as a substitute for text); *see also* ANTONIN SCALIA, *supra* note 62 (criticizing legislative history generally).

86. *Cf.* FED. R. EVID. 804(b)(3); *Keller v. United States*, 58 F.3d 1194, 1198 n.8 (7th Cir. 1995).

The record exists independent of ratification. The transmittal letter was submitted. The hearing was held. The committee reported the Convention and adopted its declaration. The testimony was given. The floor debate occurred. The vote was taken. Each of these events is documented and entered into the record. The failure to achieve the required supermajority means the treaty did not become binding on the United States in international law. It does not mean the documents produced during the process are retroactively stripped of evidentiary significance.

The analogy is to judicial admissions.[87] A party's statement in a litigation document that subsequently fails to achieve its procedural goal is not retroactively expunged from the record because the goal was not achieved.[88] The statement remains evidence of the speaker's position. Where the speaker was the political branches, and the statement concerned the scope of existing statutes, the statement remains evidence of the political branches' position on the scope of those statutes.

A second-order question is whether subsequent political-branch actions supersede the 2012 record. Subsequent administrations may take positions on ADA and Section 504 scope that differ from the 2012 record. Such subsequent positions are themselves evidence and can be weighed against the 2012 record.[89] But no subsequent administration has formally repudiated the 2012 record, and the Obama-Biden and Biden-Harris administrations (the principal subsequent Democratic administrations) have been supportive of ratification and of the scope representations. The Trump administration was generally silent on CRPD ratification but took various positions narrowing disability rights implementation.[90] Those positions are themselves subject to the interpretive method developed here: subsequent narrow positions by the executive branch are inconsistent with the 2012 formal record and should be weighed as conflicting evidence rather than as superseding it.

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87. *Keller*, 58 F.3d at 1198 n.8; *New Hampshire v. Maine*, 532 U.S. 742, 749-51 (2001).

88. *New Hampshire v. Maine*, 532 U.S. at 749-51.

89. *Skidmore*, 323 U.S. at 140 (weight of an executive interpretation depends on thoroughness, consistency, and validity of reasoning); *Fox*, 556 U.S. at 515-16 (an agency departing from a prior position owes a reasoned explanation).

90. The specific content of Trump administration positions on disability rights statutes varies by subject matter and agency; systematic cataloguing is beyond the scope of this Article.

V. Applications

This Part applies the method to five areas of contested doctrinal interpretation where the ratification record provides material interpretive guidance.

A. The Sutton-Toyota-ADAAA Sequence

In *Sutton v. United Air Lines, Inc.*,[91] the Supreme Court interpreted the ADA's definition of "disability" to require consideration of mitigating measures in determining whether a person has a substantially limiting impairment. The Court's holding narrowed the statute's coverage substantially by excluding persons whose impairments were controlled by medication, prosthetics, or other accommodations. In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*,[92] the Court further narrowed the definition by requiring that a substantially limiting impairment be "permanent or long term" and interpreting "substantially" to require severe impairment.

Congress responded with the ADA Amendments Act of 2008,[93] which expressly abrogated Sutton and Toyota. The ADAAA restored the broad definition of disability Congress had originally intended, and the Act's findings explicitly state that *Sutton* and its companion cases "narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect."[94]

The 2012 ratification record was produced after the ADAAA and reflects the political branches' then-current understanding of the ADA's scope as restored by the Amendments Act. The scope representations in the record therefore incorporate the ADAAA's broad definition. Any subsequent interpretation that would re-introduce the Sutton-Toyota narrowing, whether through judicial construction or regulatory action, is inconsistent with the representation that existing law fulfills or exceeds CRPD standards. The disability definition cannot be narrower

91. Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999).
92. Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002).
93. Pub. L. No. 110-325, 122 Stat. 3553 (codified at 42 U.S.C. § 12101 *et seq.*).
94. 42 U.S.C. § 12101 note, ADAAA findings.

than the ADAAA-restored version while still fulfilling the CRPD's Article 1 definitional requirements, which encompass "those who have long-term physical, mental, intellectual or sensory impairments."[95]

Litigation use: in cases where a defendant argues for a narrow construction of disability that approaches pre-ADAAA scope, plaintiffs can cite the 2012 ratification record as evidence that the political branches have formally represented the post-ADAAA definition as the scope of existing law. The SFRC declaration is particularly useful because its representation that existing law "fulfills or exceeds" a treaty that defines disability broadly is a formal representation that cannot be squared with a narrower interpretation.

B. Regulatory Carve-Outs Not Grounded in Statutory Text

The guaranty exemption at 28 C.F.R. § 41.3(e) excludes from the definition of "Federal financial assistance" any contract of insurance or guaranty.[96] The exemption is not grounded in Section 504's statutory text, which speaks to "any program or activity receiving Federal financial assistance" without excluding any transactional category.[97] The exemption is vulnerable to challenge under *Loper Bright Enterprises v. Raimondo*.[98] With *Chevron* deference abrogated, a court reviewing the guaranty exemption interprets Section 504's coverage of "any program or activity receiving Federal financial assistance" de novo and owes no deference to the agency's decision to carve out contracts of insurance and guaranty. The statutory text draws no transactional distinction, and an exclusion that appears only in the regulation, not in the statute, cannot survive a reviewing court's independent judgment about the best reading of the text.

The ratification record supplements the statutory-text argument. The SFRC declaration represents that existing Section 504 fulfills or exceeds CRPD Articles 4(1)(e) and 9 (general

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95. CRPD art. 1.

96. 28 C.F.R. § 41.3(e) (defining Federal financial assistance as "any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which the agency provides or otherwise makes available assistance"). Verified against eCFR, current as of July 6, 2026.

97. 29 U.S.C. § 794(a).

98. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

nondiscrimination and accessibility obligations), which reach the full range of entities whose conduct affects disabled persons. The guaranty exemption removes a category of federally-supported recipients from Section 504 coverage. Its application narrows Section 504 coverage below the level the 2012 ratification record represents.

Litigation use: in challenges to the guaranty exemption, or in cases where defendants assert that their federal financial relationship is insurance or guaranty and therefore exempt, plaintiffs can cite the ratification record. The SFRC declaration's representation that existing law reaches CRPD-required coverage is evidence that the political branches did not understand the Section 504 coverage to be narrowed by the guaranty exemption as the exemption has been interpreted in some contexts.

C. Sandoval and Private Disparate Impact Actions

In *Alexander v. Sandoval*, the Court held that Title VI of the Civil Rights Act of 1964 does not authorize private disparate impact actions; only intentional discrimination claims can be brought by private plaintiffs under Title VI.[99] The decision has been read in some subsequent cases to limit disparate impact actions under Section 504 as well, on the ground that Section 504 incorporates Title VI's enforcement provisions.[100]

That reading has been rejected where it has been squarely presented. In *Payan v. Los Angeles Community College District*, the Ninth Circuit held that a private right of action exists to enforce disparate impact claims under Title II of the ADA and Section 504, and that *Sandoval* did not disturb the circuit's prior precedent permitting them.[101] The court grounded the distinction in the different constitutional postures of the two statutes, declining to import Title VI's rule

99. *Alexander v. Sandoval*, 532 U.S. 275 (2001).

100. 29 U.S.C. § 794a(a)(2) (incorporating Title VI remedies for Section 504 actions).

101. *Payan I*, 11 F.4th at 740 (holding that *Sandoval* does not foreclose private disparate impact claims under Title II and Section 504).

wholesale into the disability statutes.[102] The Eleventh Circuit has permitted Section 504 damages claims on a related theory.[103]

Payan I rests the availability of disparate impact claims on *Alexander v. Choate*, and the reliance is instructive for the argument advanced here.[104] *Choate* rejected the proposition that federal disability law prohibits only intentional discrimination, reasoning that discrimination against disabled people is "most often the product, not of invidious animus, but rather of thoughtlessness and indifference, of benign neglect."[105] Much of the conduct Congress sought to alter, the Court observed, "would be difficult if not impossible to reach if the Act were construed to proscribe only conduct fueled by a discriminatory intent."[106] *Choate* balanced that objective against the desire to keep Section 504 "within manageable bounds," and assumed without deciding that the statute reaches at least some conduct with an unjustifiable disparate impact on disabled persons.[107]

The doctrinal architecture *Payan I* sets out organizes disability discrimination into three theories of liability: disparate treatment, disparate impact, and failure to make a reasonable accommodation.[108] A disparate impact claim requires the plaintiff to allege that a facially neutral policy or practice has the effect of denying meaningful access to public services.[109] The distinguishing feature is systemic rather than individual: a reasonable accommodation claim turns on an individualized request, while a modification responding to a disparate impact finding turns

102. *Id.* The court distinguished Title VI on the ground that disability classifications and race classifications occupy different positions in equal protection jurisprudence.

103. *See Liese v. Indian River Cnty. Hosp. Dist.*, 701 F.3d 334 (11th Cir. 2012) (addressing the standard for damages liability under Section 504).

104. *Alexander v. Choate*, 469 U.S. 287 (1985).

105. *Id.* at 295.

106. *Id.* at 296-97.

107. *Id.* at 299.

108. *Payan I*, 11 F.4th at 740 (quoting *Davis v. Shah*, 821 F.3d 231, 260 (2d Cir. 2016)); *see also McGary v. City of Portland*, 386 F.3d 1259, 1265-66 (9th Cir. 2004) (reasonable accommodation claim as to individual enforcement of a nuisance abatement code).

109. *Payan I*, 11 F.4th at 740 (quoting *K.M. ex rel. Bright v. Tustin Unified Sch. Dist.*, 725 F.3d 1088, 1102 (9th Cir. 2013), in turn citing *Crowder v. Kitagawa*, 81 F.3d 1480, 1484 (9th Cir. 1996)).

on altering a policy to improve systemic accessibility.[110] Title II and Section 504 are interpreted coextensively, because “there is no significant difference in the analysis of rights and obligations created by the two Acts.”[111]

The contrary position has a circuit-level statement of its strongest form, and it should be met rather than passed over. Judge Lee, dissenting in *Payan I*, argued that the statutory text forecloses disparate impact outright: Title II bars exclusion “by reason of” disability, Section 504 bars discrimination “solely by reason of” disability, and on the dissent’s reading those phrases mean “because of” and therefore reach only intentional discrimination.[112] The dissent is a textualist argument, and it is the argument a defendant will make.

The 2012 ratification record answers it on the record’s own terms. The dissent’s premise is that the statutes as written reach only intentional discrimination. The political branches, in 2012, formally represented that those same statutes fulfill or exceed CRPD Article 4(1)(b), which obligates States Parties to modify or abolish existing laws, regulations, customs, and practices “that constitute discrimination against persons with disabilities.”[113] A practice constitutes discrimination under Article 4(1)(b) by its operation, without regard to the intent behind it. The representation is therefore an assertion, by the President and by the Senate committee that voted the declaration, that the ADA and Section 504 as enacted already reach effects-based discrimination. If the dissent’s textual reading were correct, the 2012 representations were false when made, and no participant in the ratification debate, including the treaty’s opponents, said so.[114]

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110. *Payan I*, 11 F.4th at 740; *compare Crowder*, 81 F.3d at 1485-86 (modification of a 120 day quarantine on dogs entering Hawaii, which disparately affected blind users of guide dogs), *with Rodde v. Bonta*, 357 F.3d 988, 995-98 (9th Cir. 2004) (disparate impact claim against county closure of a hospital serving people with chronic disabilities).

111. *Payan I*, 11 F.4th at 740 (quoting *K.M.*, 725 F.3d at 1098).

112. *Payan I*, 11 F.4th at 740 (Lee, J., dissenting) (arguing that “[t]he plain language of Title II and Section 504 bars only intentional discrimination” and that the text does not contemplate a disparate impact theory); *see* 42 U.S.C. § 12132; 29 U.S.C. § 794(a).

113. 2012 SFRC Executive Report, *supra* note 3; CRPD art. 4(1)(b).

114. *See supra* Part II.D (documenting that opponents contested ratification on sovereignty, federalism, and treaty-monitoring grounds rather than by disputing the scope representations).

The record does not by itself resolve the private-right-of-action question *Sandoval* poses, which is a question about the enforcement vehicle rather than about the reach of the substantive prohibition. The vehicle runs through *Choate* meaningful access as recognized in *Mark H. v. Lemahieu*.[115] The move is as follows. Section 504's substantive prohibition reaches practices denying meaningful access, as construed in *Choate* and as *Choate* itself drew from *Southeastern Community College v. Davis*.[116] Methods-of-administration regulations at 45 C.F.R. § 84.68(b)(3) and parallel agency regulations operate as authoritative constructions of that meaningful-access requirement rather than as extensions of statutory coverage beyond what the statute prohibits.[117] *Lemahieu* recognized the distinction and held such regulations enforceable through Section 504's private right of action as incorporated by the Title VI cross-reference.[118] The ratification record corroborates the substantive half of that move; *Payan I* supplies the procedural half.

Litigation use: in Section 504 and Title II cases raising disparate impact claims where defendants invoke *Sandoval*, plaintiffs should lead with *Payan I* in the Ninth Circuit and with *Choate* and *Lemahieu* elsewhere, and cite the 2012 ratification record as evidence that the political branches characterized existing domestic law as reaching effects-based discrimination at a level fulfilling or exceeding CRPD Article 4(1)(b). The argument is strongest for agency-led enforcement, where *Sandoval*'s private-right-of-action limitation does not apply at all, and for disparate impact conceptualized through the methods-of-administration regulations, where the regulatory text reaches effects-based practices directly.

115. *Mark H. v. Lemahieu*, 513 F.3d 922, 937-38 (9th Cir. 2008) (holding that regulations construing Section 504's substantive prohibition are enforceable through the statute's private right of action).

116. *Se. Cmty. Coll. v. Davis*, 442 U.S. 397, 410 (1979); *Choate*, 469 U.S. at 301.

117. *Lemahieu*, 513 F.3d at 937-38.

118. *Id.*; 29 U.S.C. § 794a(a)(2).

D. Cummings, Payan, and Damages Under Spending Clause Statutes

In *Cummings v. Premier Rehab Keller, P.L.L.C.*, the Supreme Court held that emotional distress damages are not available under Section 504 or other Spending Clause civil rights statutes.[119] The Court reasoned from the contract analogy: Spending Clause legislation operates as a contract between the federal government and the funding recipient, and a recipient is on the hook only for remedies it would have anticipated when it accepted the funds.[120]

The reach of that holding has now been settled in the Ninth Circuit, and the settlement cuts in two directions. In *Payan v. Los Angeles Community College District*, decided March 11, 2026, the court held that emotional distress damages are unavailable under Title II of the ADA.[121] The route is the statutory chain of incorporation rather than the Spending Clause: Title II provides that the remedies, procedures, and rights it affords are those set forth in the Rehabilitation Act, and the Rehabilitation Act in turn sets its remedies as those of Title VI.[122] That chain forecloses the argument that Title II escapes *Cummings* by not being Spending Clause legislation. As the *Barnes* Court put it, the ADA's explicit incorporation provisions "make discussion of the ADA's status as a 'non Spending Clause' tort statute quite irrelevant."[123] A plaintiff should not spend brief space on that argument.

The second direction is the one that matters for this Article. *Payan II* held that compensatory damages for lost educational opportunities remain available under Title II, and that the district court erred in barring the plaintiffs from seeking them.[124] The Ninth Circuit followed

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119. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022).

120. *Id.*; *see Barnes v. Gorman*, 536 U.S. 181, 187-88 (2002) (establishing the contract-remedies analogy for Spending Clause antidiscrimination statutes); *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998) (describing the funding condition as "essentially a contract between the Government and the recipient of funds").

121. *Payan II*, 169 F.4th at 977.

122. *Id.* at 977; 42 U.S.C. § 12133; 29 U.S.C. § 794a(a)(2); *accord A.W. ex rel. J.W. v. Coweta Cnty. Sch. Dist.*, 110 F.4th 1309, 1314 (11th Cir. 2024) (tracing the same chain of incorporation).

123. *Barnes*, 536 U.S. at 190 n.3. The proposition does not rest on that footnote alone, which answers Justice Stevens and which an opponent might discount on that ground. The Court stated the same chain in the opinion of the Court, reasoning from the text of both incorporation provisions that "the remedies for violations of § 202 of the ADA and § 504 of the Rehabilitation Act are coextensive with the remedies available in a private cause of action brought under Title VI of the Civil Rights Act of 1964." *Id.* at 185. *Accord Payan II*, 169 F.4th at 977.

124. *Payan II*, 169 F.4th at 978-79.

the Eleventh, which had already held that while emotional distress damages are unavailable under Title II after *Cummings*, plaintiffs may still seek compensation for lost educational benefits.[125] The anchor is *Franklin v. Gwinnett County Public Schools*: where legal rights have been invaded and a federal statute provides a general right to sue, federal courts may use any available remedy to make good the wrong done.[126] Even the partial dissent conceded the point, agreeing that ADA plaintiffs may still seek pecuniary damages for opportunities lost after unlawful discrimination.[127] The plaintiff's burden on this channel is proof of amount to a reasonable certainty.[128]

Two circuits therefore agree that *Cummings* bars a category of damages and leaves another category standing. The live question after *Payan II* is no longer whether compensatory damages survive; it is what counts as a lost opportunity. That question is a question of scope of right wearing the clothes of scope of remedy. A lost opportunity is defined by what the statute entitled the plaintiff to in the first place, and the ratification record is evidence of exactly that. Where the political branches represented that existing domestic law fulfills or exceeds the Convention's obligations on education, on accessibility of information and communications, and on access to justice, they represented that the statutes entitle disabled people to those things.[129] An opportunity within the scope of that entitlement, lost through a violation, is a lost opportunity in *Payan II*'s sense. A defendant arguing for a cramped construction of lost opportunity is arguing that the statute entitled the plaintiff to less than the political branches said it did, which is the narrowing move this Article's method is built to resist.[130]

This application was, before *Payan II*, the weakest of the five developed in this Part, on the ground that the ratification record addresses scope of right rather than scope of remedy. *Payan*

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125. *A.W.*, 110 F.4th at 1315-16; *Payan II*, 169 F.4th at 978-79.

126. *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 66 (1992) (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)).

127. *Payan II*, 169 F.4th at 979 (Lee, J., dissenting in part).

128. *Id.*; *see Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 962 (9th Cir. 2001).

129. 2012 SFRC Executive Report, *supra* note 3; *see* CRPD arts. 9, 13, 24.

130. *See supra* Part IV.C (anti-narrowing as the operational frame).

II narrows that objection rather than answering it. The record still cannot be pressed against *Cummings*'s core holding on emotional distress damages, and a plaintiff who tries will lose. What *Payan II* establishes is that the core holding does not occupy the whole field, and that the surviving field is defined by a scope-of-right question the record is competent to address.

Litigation use: in Title II and Section 504 cases following *Cummings*, plead lost opportunities with the specificity *Payan II* requires and, where the facts allow it, in pecuniary terms,[131] cite *Payan II* and *A.W.* for the proposition that the channel survives, concede the emotional distress point rather than litigating it, and deploy the ratification record on the definitional question of what the statutes entitled the plaintiff to. The record also supports the continued availability of injunctive relief, declaratory relief, and attorney's fees, remedies *Cummings* does not touch and which supply the "equal and effective legal protection" Article 5 addresses.[132]

E. Federal Agency Coverage and Tennessee v. Lane

The Lane decision upheld ADA Title II's application to state courts as a valid prophylactic measure under Section 5 of the Fourteenth Amendment.[133] The decision was based on a documented pattern of disability-based denial of access to state courthouses and state court programs. The 2012 ratification record represents that existing domestic law fulfills or exceeds CRPD Article 13's access-to-justice obligation. Title II's application to state court access is one component of this; Section 504's application to federal agency conduct and to recipients of federal financial assistance provides additional coverage.

The federal-agency coverage question is material because Title II does not reach federal agencies, but CRPD Article 13's access-to-justice obligation does cover federal judicial and administrative proceedings where disabled persons participate. The ratification record's

131. *Payan II*, 169 F.4th at 979 (agreeing with the partial dissent that "plaintiffs seeking lost opportunity damages must prove the amount of damages with reasonable certainty" (citing *Vestar Dev. II, LLC v. Gen. Dynamics Corp.*, 249 F.3d 958, 962 (9th Cir. 2001))). Pleading in pecuniary terms is a recommendation of this Article, not a holding of the panel, which did not reach the classification.

132. 29 U.S.C. § 794a(b); CRPD art. 5.

133. Lane, 541 U.S. at 533-34.

representation that existing law fulfills or exceeds Article 13 implies that federal-agency coverage is provided by Section 504 at a level at least equivalent to Title II's state-agency coverage. Interpretations narrowing federal-agency Section 504 obligations or their enforcement are in tension with this representation.

Litigation use: in challenges to federal agency practices affecting disabled participants in judicial or administrative proceedings, the ratification record supports broad Section 504 coverage of federal agency conduct, including the methods-of-administration obligations at 28 C.F.R. § 39.130(b)(3) for DOJ and parallel regulations at other agencies.[134]

VI. Objections

A. The Treaty Was Not Ratified

The central objection is that the treaty was not ratified, so the record is not binding. The response: the record is not invoked for any binding treaty effect; it is invoked as evidence of the political branches' understanding of the scope of existing domestic statutes.[135] The non-ratification does not retroactively expunge the record. The scope representations were made on formal occasions in official documents, regardless of whether the ratification process they supported was completed.[136]

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134. 28 C.F.R. § 39.130(b)(3) (federally conducted programs), verified against eCFR, current as of July 6, 2026. Two features of the provision are worth noting. It still speaks of "qualified handicapped persons" and discrimination "on the basis of handicap," terminology HHS retired from its own Section 504 regulation in 2024 but that DOJ has never updated in Part 39. And it is textually narrower than its recipient-facing counterparts: § 39.130(b)(3) reaches only methods of administration that subject handicapped persons to discrimination or defeat program objectives, omitting the third prong, present at both 28 C.F.R. § 35.130(b)(3) and 45 C.F.R. § 84.68(b)(3), that reaches methods perpetuating another entity's discrimination. The asymmetry is regulatory rather than statutory: 29 U.S.C. § 794(a) draws no such distinction between federally conducted and federally assisted programs. *See also* 29 U.S.C. § 794(a) (reaching "any program or activity conducted by any Executive agency"); *see* CRPD art. 13; *cf. Lane*, 541 U.S. at 533-34.

135. The objection assumes the record is offered as a source of obligation. It is offered as evidence of meaning. *Cf. Medellín*, 552 U.S. 491 (a ratified but non-self-executing treaty is itself not binding domestic law); *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (same as to the ICCPR).

136. S. Treaty Doc. No. 112-7, transmittal letter; 2012 SFRC Executive Report, *supra* note 3; 158 CONG. REC. S7365-79 (daily ed. Dec. 4, 2012).

The objection also rests on a premise about Senate practice that is inaccurate. A treaty that fails to attract two-thirds on the floor is not thereby rejected and removed. Under the Senate's rules, a treaty leaves the calendar only when the Senate affirmatively votes to withdraw it and return it to the President; absent that vote, treaties awaiting action are automatically rereferred to the Foreign Relations Committee at the opening of each new Congress, and some have remained on the calendar for decades.[137] The Senate has never taken that vote as to this Convention. The December 2012 vote fell short of the required supermajority, but it did not dispose of the treaty, which is precisely why the Committee was able to take it up again and report it a second time in 2014, and why, when the 113th Congress adjourned without a floor vote, the Convention was rereferred to Committee rather than returned to the President.[138] An objection that treats the record as the residue of a closed and failed episode therefore misdescribes what happened. Nothing was closed.

The objection misunderstands the use of the record. If the argument were that the CRPD itself binds US law, the non-ratification would be fatal. The argument is that the 2012 proceedings generated domestic evidence of statutory meaning. That evidence exists whether or not the treaty was ratified, in the same way that any hearing testimony, committee report, or transmittal letter generates domestic evidence of statutory meaning regardless of the ultimate outcome of the legislative or treaty process that produced it.

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137. STANDING RULES OF THE SENATE R. XXX, § 2; *see* David P. Auerswald & Forrest Maltzman, *Policymaking through Advice and Consent: Treaty Consideration by the United States Senate*, 65 J. Pol. 1097, 1099 (2003) (observing that a defeated treaty and all other treaties awaiting action remain on the Senate calendar until the Senate actively votes to withdraw the treaty from consideration, and that the Genocide Convention consequently remained on the calendar for decades). The Article cites the point for the institutional practice it describes, not for its statistical findings.

138. S. Exec. Rep. No. 113-12 (2014) [hereinafter 2014 SFRC Executive Report] (Menendez, ordered printed July 28, 2014, accompanying the same Treaty Doc. 112-7, reporting favorably with three reservations, nine understandings, and two declarations); *see infra* Part VI.C. The Article makes no claim about the Convention's status at any date after the 113th Congress, which is immaterial to the evidentiary use made of the 2012 and 2014 records here.

B. The Declaration Was a Reservation That Qualifies Rather Than Expands

A more sophisticated objection is that the SFRC declaration, in context, was intended to qualify the effect of ratification rather than to expand domestic law. The declaration was part of a package of reservations, understandings, and declarations designed to limit the treaty's effect on US sovereignty. Read in that context, the objection holds, the declaration should be read as narrowing the treaty's obligations to match existing law, not as a representation that existing law reaches all the treaty's obligations.

The response: the declaration's text states that existing law "fulfills or exceeds" the obligations.[139] The plain text establishes a floor of protection at the CRPD standard rather than a ceiling. The declaration does not say that existing law provides some subset of the treaty's protections; it says existing law provides at least the level the treaty requires. The qualifying effect of the declaration, if any, is on the treaty's application to US law rather than on the statement about what US law provides.[140] The representation about the scope of US law is direct and affirmative, and it is not vitiated by the declaration's secondary purpose of reserving against certain treaty obligations.

C. The Political Branches Have Changed and No Longer Hold the Position

A third objection is that the 2012 record reflects the Obama administration and the then-current Senate, and that subsequent political branches may hold different positions. The response: subsequent political-branch positions are themselves evidence and can be weighed in statutory interpretation.[141] The 2012 record remains evidence of the political branches' position at the time it was produced, and it was not merely left unrepudiated. It was reaffirmed. After the December 2012 floor vote failed, the Committee took the Convention up again in the next Congress and reported it favorably a second time, on a fresh record, under a different chairman, with a

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139. 2012 SFRC Executive Report, *supra* note 3.

140. *Cf. Medellín*, 552 U.S. 491 (distinguishing a treaty's international obligation from its domestic legal effect).

141. *Skidmore*, 323 U.S. at 140; *Fox*, 556 U.S. at 515-16 (an agency departing from a prior position owes a reasoned explanation for disregarding the facts underlying it).

further understanding added.[142] An objection premised on the singularity of the 2012 moment therefore understates the record. Two Congresses, two committee majorities, and two sets of executive-branch witnesses took the same position on the scope of existing domestic law, two years apart, and the second did so after the first had already been defeated on the floor. Whatever else the scope representations were, they were not a one-time accommodation made in the heat of a single vote.

The 2014 report does one thing and not another, and the distinction should be stated rather than left for an opponent to make. It is not better evidence of statutory meaning than the 2012 report; it is worse. The 2012 record draws its force from proximity: it was produced four years after the ADA Amendments Act, by a Congress most of whose members had voted on that Act and were still seated.[143] Every year of distance from 2008 weakens that inference, and the 2014 report is six years out, produced by a different Congress. The 2014 report is therefore offered here for a narrower purpose: not as evidence of what the statutes mean, but as evidence about the 2012 record's character. It shows that the scope representations were not contingent on the vote they were made to win, because they were repeated when there was no vote to win. That is the only work it is asked to do, and the objection this Part answers is the only objection it answers. Where subsequent administrations have taken positions narrowing disability rights implementation, those positions are in tension with the 2012 record, not superseding of it. The tension is itself material in statutory interpretation: a court considering competing positions by

142. 2014 SFRC Executive Report, *supra* note 138. The Committee considered the Convention and ordered it favorably reported at its July 22, 2014 business meeting; the report does not state a roll-call division, in contrast to the 2012 report, which records 13-6. *Id.* at 7. The 2014 report followed hearings on November 5 and November 21, 2013, and rested on renewed executive-branch testimony, including that of the Secretary of State. *Id.* Critically for the point made here, the scope representation was not merely left standing but restated: the Committee again reported that "current federal and state law meets or exceeds the requirements of the Convention, and no changes to federal or state law will be required as a result of U.S. ratification." *Id.* at 8. The obligations understanding and the coextensive-definitions understanding were readopted in substantially the terms used in 2012. *Id.* at 23 (resolution of advice and consent); *compare* 2012 SFRC Executive Report, *supra* note 3, at 16 (same understanding). The single substantive addition was a ninth understanding, offered by Senator Barrasso at the July 22, 2014 business meeting, providing that "[n]othing in the Convention limits the rights of parents to homeschool their children." *Id.* It died without a floor vote at the sine die adjournment of the 113th Congress and was automatically rereferred to the Committee. STANDING RULES OF THE SENATE R. XXX, § 2.

143. *See supra* Part IV.B. The ADA Amendments Act was enacted September 25, 2008; the Committee reported the Convention July 31, 2012.

different administrations will weigh their formality, their reasoning, and their consistency with statutory text. The 2012 record has substantial advantages in formality (voted declaration, formal transmittal, Senate-confirmed official testimony) that many subsequent narrow positions do not match.

One feature of both reports deserves separate statement, because it is the strongest sentence either Committee wrote and because it is easy to mistake for a concession. Each report states that the Convention is not self-executing, and that its provisions therefore "cannot be directly enforced by U.S. courts or give rise to individually enforceable rights in the United States."[144] Standing alone, that sentence is a limit, and the Article treats it as one. But the Committee did not let it stand alone. In the same section, having enumerated the existing federal statutory network by citation, from the ADA and the Rehabilitation Act through the Air Carrier Access Act, the Individuals with Disabilities Education Act, and the Architectural Barriers Act, the Committee reported that "[i]n the vast majority of cases, existing federal and state law meets or exceeds the requirements of the Convention," and concluded that "[n]o additional implementing legislation is necessary with respect to the Convention."[145] Those two propositions are not in tension. They are load-bearing together, and only on one premise.

A treaty that creates no privately enforceable domestic rights requires implementing legislation unless domestic law already supplies what the treaty obligates. The Committee said implementing legislation was unnecessary. It follows that the Committee understood the enumerated domestic statutes to already reach the Convention's substantive ground. That inference is not the Article's gloss; it is the only reading on which the Committee's own two sentences are consistent. The non-self-execution point, in other words, does not cut against

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144. 2014 SFRC Executive Report, *supra* note 138, at 6. The Article does not dispute this. *See Medellín v. Texas*, 552 U.S. 491 (2008).

145. 2014 SFRC Executive Report, *supra* note 138, at 6 (listing, among others, the Americans with Disabilities Act, 42 U.S.C. § 12101 *et seq.*; the Rehabilitation Act, 29 U.S.C. § 791 *et seq.*; the Communications Act of 1934 as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 251(a)(2), 255; the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*; the Air Carrier Access Act, 49 U.S.C. § 41705; the Help America Vote Act, the National Voter Registration Act, the Civil Rights of Institutionalized Persons Act, the Copyright Act, the Genetic Information Nondiscrimination Act, the Individuals with Disabilities Education Act, and the Architectural Barriers Act, and citing Letter of Submittal at 91); *accord* 2012 SFRC Executive Report, *supra* note 3, at 6.

the argument advanced here. It is what makes the scope representations do work. Had the Committee thought the Convention self-executing, its assessment of domestic law would have been beside the point, because the treaty would have supplied the rule itself. Precisely because the Convention supplies nothing, the Committee's assessment of what domestic law already required was the operative finding on which the recommendation rested.

Additionally, the 2012 record was bipartisan in a way that many subsequent narrowing positions have not been. The SFRC declaration was adopted 14-5, with bipartisan support. The transmittal letter represented the executive branch's official position. The testimony by State and DOJ officials reflected institutional positions developed over multiple administrations. The record is not a narrow partisan artifact; it is the product of bipartisan institutional representation of the scope of existing law.

D. The Record Cannot Overcome Express Statutory Exclusions

A fourth objection is the strongest one available, and it is worth stating in its most demanding form. The ADA does not merely define "disability." It also expressly excludes conditions from that definition.[146] Those exclusions were on the books in 2012. If the political branches represented that existing law meets or exceeds the Convention's standards while the exclusions sat in the statute, then the record either proves too much or proves nothing. It cannot be evidence that the statutes reach conduct that the statutes expressly place outside them.

The response is to concede the point without qualification, because conceding it is what makes the rest of the argument work.

The record does no work against express statutory text. This Article does not claim that the ratification record is a source of law, a canon, or a thumb on the scale that survives contact with an enacted exclusion. It claims that the record is evidence of contemporaneous political-branch understanding, usable in ordinary statutory interpretation. Ordinary statutory

146. 42 U.S.C. § 12211(b) ("Under this chapter, the term 'disability' shall not include" the enumerated conditions); 42 U.S.C. § 12210 (current illegal use of drugs). Section 504 incorporates the ADA's definitional provisions. 29 U.S.C. § 705(20)(B). Verified against the United States Code as of June 26, 2026; the exclusions were in force in 2012.

interpretation begins with text, and where the text resolves the question it ends there as well.[147] Where Congress has spoken by express exclusion, evidence of what the Executive told the Senate about the statute's scope eighteen years later is not merely outweighed. It is not admissible on the question. The exclusions in § 12211(b) and § 12210 are the paradigm case: the 2012 record said nothing about them, and could not have displaced them had it tried.[148]

A second and related limit follows. The record does no work on questions the record never addressed. Silence is not evidence of coverage. The 2012 representations were specific: they identified international standards and asserted that identified domestic provisions already meet or exceed them.[149] Their evidentiary force runs to the questions they answered and no further. An advocate who reaches for the record on a question the political branches never took up is not making the argument this Article defends; the advocate is making a different and much weaker one, and inviting a court to notice the substitution.

These limits are not concessions extracted under pressure. They are the reason the argument has purchase where it does. A source of evidence that proved everything would prove nothing, and a court would be right to discount it. The record's domain is the contested middle: provisions whose scope is genuinely open, where courts have narrowed by construction rather than by text, and where the political branches said on a formal occasion what the provisions already covered. That is a real domain, and Part V maps it.[150] It is not the whole of disability law, and this Article does not claim it is.

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147. *Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment); ANTONIN SCALIA & BRYAN A. GARNER, *supra* note 1.

148. The limit is doctrinally live rather than academic. The exclusions in § 12211(b)(1) have generated a circuit-level dispute over the boundary between an excluded condition and a covered one. *See Williams v. Kincaid*, 45 F.4th 759, 770 (4th Cir. 2022). This Article takes no position on that dispute, which turns on the exclusion's own text and on medical nosology rather than on anything in the ratification record.

149. 2012 SFRC Executive Report, *supra* note 3; S. Treaty Doc. No. 112-7, transmittal letter.

150. *See supra* Part V (applying the record to the Sutton-Toyota-ADAAA sequence, the guaranty exemption, *Sandoval*, *Cummings*, and federal-agency coverage). Each is a question on which the statutory text is open and a court has narrowed by construction. None involves an express exclusion.

E. Textualists Will Discount the Record

A fifth objection is methodological: strict textualists discount legislative history and analogous interpretive materials. To the extent the court or forum resolving a disability rights question is staffed by textualists, the argument developed here may be less effective. The objection requires substantive engagement because textualism is ascendant in federal statutory interpretation and because the ratification record superficially resembles the materials textualists discount.

The response proceeds in two steps. First, the characterization of the ratification record as a unitary category of evidence is inaccurate, as developed in Part IV.B. The record comprises four doctrinal categories: executive branch formal interpretation entitled to Skidmore weight; government judicial admissions; admissions against interest; and, only as to one component, subsequent legislative history in a narrow sense. Textualist hostility to legislative history does not extend to Skidmore-weight executive interpretation, to judicial admissions, or to admissions against interest. Those three categories carry the argument even in a strictly textualist forum. The legislative-history characterization applies only to the SFRC declaration and committee report, and even there, the materials are post-dating the 2008 ADA Amendments Act and can be framed as contemporaneous with the currently operative statutory regime rather than as subsequent history of the 1990 enactment.

Second, strict textualists are not uniformly hostile to all non-textual materials. Scalia's own work on statutory interpretation includes acceptance of certain categories of interpretive aids, including dictionary definitions contemporaneous with enactment, canons of construction, and limited use of committee reports where they clarify otherwise ambiguous text.[151] The 2012 ratification record falls within the categories textualists sometimes accept, and its formality and adverse-interest characteristics heighten its appeal to textualist sensibilities. The argument can also be framed without heavy reliance on the record in textualist venues. The record can be offered as confirmatory of the textualist analysis of the statutes' plain text, rather than as the primary interpretive evidence. Textualist arguments that ADA and Section 504 as written reach

151. SCALIA & GARNER, *supra* note 1.

broad protection are independently available; the ratification record strengthens those arguments by showing that the political branches themselves read the plain text the same way.

The ADAAA-anchoring move is particularly important for the textualist response. The ADA Amendments Act of 2008 was enacted specifically to reverse narrow Supreme Court constructions of the ADA's disability definition. The ADAAA's legislative findings expressly repudiate Sutton and Toyota and direct that the ADA be construed broadly.[152] The 2012 ratification record is subsequent to the ADAAA and reflects the political branches' interpretation of the post-ADAAA statutory regime. A textualist reading the 2012 record as interpretation of the post-ADAAA statute treats the record as contemporaneous with the currently-operative statutory text, which removes the subsequent-legislative-history objection at its root. The 2012 record is not post-enactment commentary on the 1990 ADA; it is contemporaneous commentary on the 2008-amended ADA and the 1973-enacted-and-never-substantively-narrowed Section 504.

F. Article II Treaty Power Versus Article I Legislative Power

A sixth objection, more technical than the preceding ones but sometimes raised by defense counsel, is that the SFRC and the President were acting in Article II treaty-ratification capacity when they produced the record, and that Article II actors lack authority to definitively interpret Article I domestic legislation. On this objection, the SFRC's jurisdiction over treaty advice and consent[153] does not extend to authoritative interpretation of the ADA or Section 504, which fall within the jurisdiction of the Health, Education, Labor, and Pensions Committee (in the Senate) and the Judiciary Committee (for civil rights subject matter). The President's transmittal of a treaty is an Article II act and the characterizations in the transmittal letter are accordingly ancillary to the treaty function rather than definitive executive interpretation of the statutes at issue.[154]

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152. 42 U.S.C. § 12101 note (ADAAA findings). The findings state that "the purposes of the ADA Amendments Act of 2008 are . . . to reinstate a broad scope of protection to be available under the ADA."

153. U.S. Const. art. II, § 2, cl. 2.

154. S. Treaty Doc. No. 112-7, transmittal letter; *cf. Medellín*, 552 U.S. 491 (the Executive cannot by its own act convert a non-self-executing treaty into domestic law).

The objection has surface plausibility and deeper weakness. It conflates the procedural vehicle through which statements were made with the substantive content of those statements. The SFRC declaration's substantive content is a characterization of domestic statutory scope. That characterization is evidence of what the Committee understood the statutes to mean, regardless of which constitutional authority supported the Committee's action in producing it. The Committee's advice-and-consent role is an Article II power, and this Article does not contend otherwise. The evidentiary point is that the Committee's substantive representations, produced during Article II consideration, concerned the scope of Article I statutes. Whether a formal representation about the meaning of domestic legislation is produced in an Article I hearing, an Article II hearing, or any other formal congressional proceeding, the representation is evidence of the political branches' position on the scope of those statutes. The procedural vehicle does not transform the substantive content; the substantive content is what it is regardless of the hat worn during its production.

The stronger response is that the objection does not reach the executive-branch testimony. Judith Heumann testified as Special Adviser for International Disability Rights at the State Department. Eve Hill testified as Senior Counselor to the Assistant Attorney General for Civil Rights at the Department of Justice. DOJ is the coordinating agency for Section 504 enforcement under Executive Order 12250[155] and has direct statutory authority under 29 U.S.C. 794 to interpret and enforce Section 504. The Attorney General is the chief law enforcement officer of the federal government and the official whose position on federal civil rights enforcement binds the United States in subsequent litigation. Eve Hill's testimony, given in her capacity as the agency's senior civil rights counselor, is authoritative executive interpretation of Section 504 regardless of whether the hearing at which she testified was formally denominated an Article I or Article II proceeding. The interpretation is entitled to Skidmore weight.

155. Exec. Order No. 12250, 45 Fed. Reg. 72995 (Nov. 2, 1980), as codified at 28 C.F.R. Part 41. The Order delegates to the Attorney General coordination authority over federal agency enforcement of Section 504.

Similarly, the presidential transmittal letter is a constitutionally authorized Presidential submission to the Senate, made under Article II.[156] The letter's substantive content, however, is a statement by the President about the scope of domestic legislation. A President who states that "existing U.S. law is 'consistent with and sufficient to implement the Convention, including the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Individuals with Disabilities Education Act (IDEA)' " is making a domestic-law characterization. The Article II context is the procedural vehicle through which the characterization was conveyed; the characterization itself is about Article I statutes.[157] The Take Care Clause obligates the President to enforce Article I statutes, and the Presidential position on the scope of those statutes, formally stated, is authoritative executive interpretation of them.[158]

The objection accordingly fails at the level of the executive testimony and the Presidential letter, which together carry the argument even if the SFRC declaration is set aside on jurisdictional grounds. The DOJ enforcement interpretation binds the government's subsequent enforcement positions.[159] The Presidential characterization binds the executive branch's official position. These are not treaty-specific statements; they are statements about domestic law made in a treaty context, and the substantive content does not transform with the procedural vehicle.

G. The Political-Pacification Objection

A final objection, more sociological than doctrinal, is that the "fulfills or exceeds" declaration and the accompanying administration testimony were politically motivated pacification of conservative opposition rather than genuine legal representations. On this objection, Rick

156. U.S. CONST. art. II, § 2, cl. 2; *see Zivotofsky v. Kerry*, 576 U.S. 1 (2015) (surveying the allocation of foreign affairs authority); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635-38 (1952) (Jackson, J., concurring) (the tripartite scheme for measuring executive authority).

157. *Cf. Medellín v. Texas*, 552 U.S. 491 (2008) (holding a non-self-executing treaty is not domestic law absent implementing legislation, and thereby confirming that the operative domestic obligations here are statutory); *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (same premise as to the ICCPR).

158. U.S. CONST. art. II, § 3; *cf. United States v. Texas*, 599 U.S. 670 (2023) (addressing the justiciability of challenges to executive enforcement discretion).

159. Testimony of Eve Hill, *supra* note 32; Exec. Order No. 12250, 45 Fed. Reg. 72995 (Nov. 2, 1980); *see Skidmore*, 323 U.S. at 140.

Santorum, Mike Lee, and allied opposition to the treaty mounted arguments about sovereignty, parental rights, and homeschooling that the declaration was designed to neutralize by assuring opponents that the treaty would not change US law. A skeptical court might view the declaration as political cover rather than as an honest legal characterization, and accordingly discount its weight as interpretive evidence.

The objection misapprehends the doctrinal significance of motive. Two responses are available.

First, the doctrine of judicial admissions does not ask about motive. A party's formal statement binds the party regardless of whether the speaker wished they had not made it, regretted making it, or was forced to make it by political circumstances. New Hampshire v. Maine articulates this principle for judicial estoppel purposes,[160] and the broader doctrine of admissions against interest is consistent. A statement made under political pressure is not for that reason less reliable. If anything, the opposite: a statement made in the face of opposition counsel scrutinizing it for weakness is more carefully vetted than a statement made without adversarial review. The declaration's language was lawyered. It survived hostile attention by sophisticated opponents who would have mounted a challenge to any obviously overstated characterization. The political-pressure context operates as a verification mechanism for the statement's substantive accuracy, not as a ground for impeaching its weight.

Second, and more fundamentally, the pacification characterization presupposes the statement had to be at least plausibly true to function as pacification. The declaration's purpose, on the pacification reading, was to reassure opponents that the treaty would not require changes to US domestic law. That reassurance would have been immediately refuted by opposition counsel, by legal commentators, and by the full range of opponents' supporting analyses if the declaration had overstated the scope of existing law. The declaration survived the opposition without successful refutation of its substantive content. Opponents of the treaty did not argue that existing US law was actually narrower than the declaration represented; they argued on different

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160. New Hampshire v. Maine, 532 U.S. 742, 749-51 (2001).

grounds (sovereignty, the UN monitoring system, federalism) that the treaty was objectionable even if existing law was as broad as the declaration said.[161] The failure of opponents to attack the scope representations is evidence that the representations were accurate, because if they had been overstated the opponents would have had a stronger argument against ratification (the treaty is unnecessary) rather than the weaker arguments they actually made (sovereignty concerns).

The point is stronger than an inference from silence. The opposition put its agreement in writing, in the same document as the declaration. The five senators who filed minority views stated that the country "has already set the highest standard" for the treatment of and assistance to disabled people, so much so that the Convention's drafters had built the instrument out of United States law, and that the treaty accordingly "will not improve the rights of the disabled in the United States."[162] That is not a concession extracted from the opposition. It is the load-bearing premise of the opposition's own argument: the treaty was unnecessary precisely because existing domestic law already went further. Both sides of the Committee, voting opposite ways, agreed about the scope of the statutes and disagreed only about what followed from it. A representation that survives adversarial testing because the adversary depends on it is the strongest form this record could take.

The pacification motive, in short, strengthens the evidentiary weight of the statement rather than undermining it. The statement was made under adversarial conditions, subjected to scrutiny by sophisticated opponents with incentive to find flaws, and survived without its substantive content being successfully attacked. That is the opposite of the unreliability the objection claims. It is the posture in which statements generally receive heightened weight in evidentiary analysis.

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161. The contemporaneous objections have been catalogued. Thomas D. Grant, *The U.N. Convention on the Rights of Persons with Disabilities (CRPD): Some Observations on U.S. Participation*, 25 IND. INT'L & COMP. L. REV. 171 (2015) (collecting the objections raised to the Convention's anticipated domestic effect, among them that its standards had "already been met or exceeded in the United States"). That the leading objection took the adequacy of existing law as its premise rather than its target is the point developed here.

162. S. Exec. Rep. No. 112-6, at 17 (2012) (minority views of Sens. Risch, Rubio, Inhofe, DeMint, and Lee).

The broader doctrinal point. The government makes statements in many contexts where political considerations shape the speaker's calculus. Briefs filed by the Solicitor General are politically vetted. Administrative interpretations reflect political-appointee direction. Testimony by agency officials is prepared with political oversight. The fact that governmental statements are politically vetted does not disqualify them from serving as authoritative interpretations in subsequent litigation. Courts routinely accord Skidmore weight, judicial-admission force, and substantial evidentiary value to statements made under political pressure by political actors.[163] The 2012 ratification record is no different in this respect from any other formal governmental statement in a politically salient context. The political-pacification objection, applied consistently, would invalidate vast categories of governmental interpretive material that courts routinely treat as authoritative.[164]

VII. Litigation Strategy

The practical deployment of the 2012 ratification record requires it to appear in briefs, complaints, motions, and regulatory submissions where it can inform the interpretive question at issue.[165] This Part identifies specific contexts in which the record can be deployed.

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163. The Court's own catalogue of the factors bearing on Skidmore weight is instructive for what it leaves out. In *Mead*, the Court explained that the fair measure of deference "has been understood to vary with circumstances," and that courts have looked "to the degree of the agency's care, its consistency, formality, and relative expertness, and to the persuasiveness of the agency's position." *United States v. Mead Corp.*, 533 U.S. 218, 228 (2001) (citing *Skidmore*, 323 U.S. at 139-40). *Skidmore* itself framed the inquiry as one of "the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade." *Skidmore*, 323 U.S. at 140. Political vetting appears on neither list. The objection therefore does not apply an existing disqualifier; it proposes a new one, and proposes it selectively.

164. The consistency problem is the objection's central difficulty. An interpreter who discounts the 2012 representations because they were politically motivated must explain why the same discount does not reach agency amicus filings, litigating positions, interpretive rules, and congressional testimony generally, all of which are produced under political direction. The objection is rarely pressed that far, which suggests it is functioning as an outcome-selected rule rather than an evidentiary one.

165. *See supra* Part IV (developing the interpretive method the deployments below apply).

A. Private Plaintiff Briefs

In ADA and Section 504 cases where defendants seek narrow construction, plaintiffs' briefs should cite the 2012 ratification record in their statutory-scope arguments. The citation should include the Obama transmittal letter,[166] the SFRC declaration with the vote,[167] the executive report,[168] and the administration testimony.[169] Use of the record in this posture establishes that the political branches have formally represented the scope of the statutes at issue, and that the defendants' narrow construction is inconsistent with that representation.[170]

The record is not a substitute for doctrinal authority and should never lead a brief. It corroborates. The brief leads with the governing case law, and the record answers the question a court will ask about why the plaintiff's reading is the natural one.[171] In the Ninth Circuit, a disparate impact brief leads with *Payan I*.[172] Elsewhere it leads with *Choate* and *Lemahieu*.[173] The record follows.

A model citation chain for a disparate impact case under Section 504 might read: "The Obama administration represented in 2012 that existing U.S. law, including Section 504, is 'consistent with and sufficient to implement' the Convention's obligation to prohibit practices with the effect of discriminating against persons with disabilities, CRPD arts. 4(1)(b), 5. The Senate Foreign Relations Committee, by a vote of 14-5, adopted a declaration representing that existing U.S. law 'fulfills or exceeds the obligations of the Convention.' The Committee's executive report confirmed that '[i]n the large majority of cases, existing federal and state

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166. S. Treaty Doc. No. 112-7, transmittal letter; *see supra* Part II.B.
167. 2012 SFRC Executive Report, *supra* note 3 (declaration adopted 14 to 5).
168. *Id.*
169. Testimony of Judith Heumann, *supra* note 31; Testimony of Eve Hill, *supra* note 32.
170. *See supra* Part IV.B (cataloguing the four doctrinal categories through which the record operates).
171. *See supra* Part IV.C (anti-narrowing as the operational frame; the record is a shield rather than a sword).
172. *Payan I*, 11 F.4th at 740.
173. *Choate*, 469 U.S. at 299; *Lemahieu*, 513 F.3d at 937-38.

law meets or exceeds the requirements of the Convention.' These formal representations are inconsistent with the narrow construction defendants urge. . . "[174]

B. Administrative Complaint Filings

In administrative complaints under Section 504 and Title II filed with the Department of Justice, the Department of Education Office for Civil Rights, or other agencies with Section 504 jurisdiction, complainants should include the ratification record as contextual authority establishing the scope of the statutes against which the complained-of practice is measured.[175] The record is particularly useful in methods-of-administration complaints because its representation that existing law fulfills or exceeds CRPD Article 4(1)(b)'s effects-based obligation directly supports the statutory scope asserted in the complaint.[176]

The administrative posture carries a structural advantage the private posture does not. *Sandoval*'s limitation runs to private rights of action and does not constrain agency enforcement of validly promulgated regulations.[177] An agency enforcing the methods-of-administration regulations is not asking a court to imply a private remedy, so the entire *Sandoval* problem is absent, and the ratification record's support for the substantive scope of the regulation operates without the procedural complication analyzed in Part V.C.[178]

C. Responses to Narrow Regulatory Interpretations

Comments on proposed regulations that would narrow disability rights statutes should invoke the 2012 ratification record as part of the statutory-scope analysis. An agency proposing to narrow

174. S. Treaty Doc. No. 112-7, transmittal letter; 2012 SFRC Executive Report, *supra* note 3; CRPD arts. 4(1)(b), 5. Each quoted representation is pinned to its source in Parts II.B and II.C.

175. 28 C.F.R. § 35.170 (Title II complaint procedure); *see* Exec. Order No. 12250, 45 Fed. Reg. 72995 (Nov. 2, 1980) (delegating Section 504 coordination authority to the Attorney General).

176. 45 C.F.R. § 84.68(b)(3); 28 C.F.R. § 35.130(b)(3); CRPD art. 4(1)(b); *see supra* Part III.E.

177. *Sandoval*, 532 U.S. at 275; *see also Guardians Ass'n v. Civil Serv. Comm'n*, 463 U.S. 582 (1983) (addressing the relationship between Title VI's private and administrative enforcement tracks).

178. *See supra* Part V.C.

Section 504 coverage through regulatory action is proposing to reduce domestic protection below the level the political branches formally represented in 2012.[179]

The inconsistency is material to the agency's reasoning obligation under the Administrative Procedure Act, and it is preserved for a subsequent APA challenge by being raised in the comment.[180] An agency must examine the relevant data and articulate a satisfactory explanation for its action, including a rational connection between the facts found and the choice made.[181] An agency changing an established position must display awareness that it is changing position and supply a reasoned explanation for disregarding facts and circumstances underlying the prior policy.[182] Where the prior position is the executive branch's own 2012 representation about the reach of the statute the agency administers, an agency narrowing that reach without addressing the representation has left a comment-raised inconsistency unanswered, and the omission is the ordinary ground for vacatur.[183]

The argument does not depend on deference doctrine and survives its collapse. After *Loper Bright*, a reviewing court exercises independent judgment on the meaning of the statute, and the 2012 record is evidence going to that meaning rather than a claim on the agency's interpretive authority.[184] The record's force against the agency's own inconsistency is likewise independent of *Auer* and its successors, which govern deference to an agency's reading of its own regulation rather than the adequacy of the agency's explanation.[185]

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179. 2012 SFRC Executive Report, *supra* note 3.

180. 5 U.S.C. § 706(2)(A).

181. *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983) (an agency "must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made' "). A court "may not supply a reasoned basis for the agency's action that the agency itself has not given." *Id.*

182. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515-16 (2009) (holding that a reasoned explanation "is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy," and that an agency "may not … depart from a prior policy sub silentio"); *see also Encino Motorcars, LLC v. Navarro*, 579 U.S. 211 (2016) (declining to defer to a regulation promulgated without reasoned explanation for a change in position).

183. *State Farm*, 463 U.S. at 41 (a revocation is "a reversal of the agency's former views as to the proper course"); *Fox*, 556 U.S. at 515-16.

184. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024); *see supra* Part V.B.

185. *Auer v. Robbins*, 519 U.S. 452 (1997); *Kisor v. Wilkie*, 588 U.S. 558 (2019) (narrowing *Auer* deference); *cf. Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142 (2012) (declining deference to an interpretation that would impose unfair surprise).

D. Amicus Participation

Amicus briefs in significant disability rights cases before federal courts, particularly the Supreme Court, can use the ratification record to contextualize the interpretive question at issue.[186] The record is particularly useful in amicus postures because it provides historical and institutional material that parties may not have the brief space to develop fully.[187] A disability rights organization filing amicus can devote substantial brief space to the record and its implications for the case at bar, supplementing the parties' doctrinal arguments with the formal political-branch representations.[188]

The posture is well suited to cases where the Court has already shown it will consider the institutional record surrounding a disability statute.[189] *Garrett* is the cautionary half of that pair, and it is instructive here for a reason beyond its holding: the Court's objection was to the thinness of the record before Congress. The 2012 record is not thin, and it is more recent than the record *Garrett* found wanting.[190]

E. Academic and Practitioner Dissemination

The record's deployment in litigation depends on practitioners knowing about it and being equipped to use it. Dissemination through law review articles (including this one), practitioner guides, continuing legal education, and advocacy-organization training is part of the litigation strategy. The record is underused because it has not been systematically presented to practitioners as an interpretive resource. Systematic presentation will shift practice.

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186. SUP. CT. R. 37.1 (amicus brief should bring relevant matter not already before the Court); FED. R. APP. P. 29.

187. SUP. CT. R. 37.1 (an amicus brief that does not serve this purpose "burdens the Court").

188. *See supra* Part III (organizing the scope representations by Convention obligation, which is the organization an amicus brief can adopt directly).

189. *See Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004) (relying on a documented pattern of disability-based exclusion in upholding Title II as applied to access to courts); *cf. Bd. of Trs. of Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001) (finding the legislative record insufficient in the Title I employment context).

190. *Garrett*, 531 U.S. at 356; *see supra* Part IV.D (comparing the ratification record's evidentiary qualities to the materials ordinarily available).

VIII. Conclusion

The 2012 ratification debate over the Convention on the Rights of Persons with Disabilities generated a documentary record that constitutes substantial evidence of the political branches' understanding of the scope of the Americans with Disabilities Act and Section 504 of the Rehabilitation Act. The record includes a presidential transmittal letter,[191] a Senate Foreign Relations Committee declaration adopted by a 14-5 vote,[192] the Committee's executive report,[193] and testimony by senior State Department and Department of Justice officials.[194] The record represents that existing domestic law fulfills or exceeds the obligations of a comprehensive international human rights treaty that covers the full range of civil, political, economic, and social rights as applied to disability.[195]

The record is usable in ordinary statutory interpretation to resist narrow readings of the disability rights statutes. The method is a form of statutory originalism: contemporaneous statements by the political actors responsible for a statute constitute privileged evidence of the statute's meaning.[196] The ratification record is comparatively strong evidence under this method because it is recent, formal, and produced against the political branches' interest in the context in which the statements were made.[197] The failure of ratification does not retroactively diminish the evidentiary value of the record.[198]

The applications developed in Part V are illustrative rather than exhaustive. The ratification record can be deployed across the full range of ADA and Section 504 litigation to resist narrow constructions. It operates most effectively in combination with textual arguments

191. S. Treaty Doc. No. 112-7, transmittal letter.
192. 2012 SFRC Executive Report, *supra* note 3.
193. *Id.*
194. Testimony of Judith Heumann, *supra* note 31; Testimony of Eve Hill, *supra* note 32.
195. CRPD arts. 2, 4(1)(b), 5, 9, 13, 24.
196. *See supra* Part IV.A; *see also* ANTONIN SCALIA & BRYAN A. GARNER, *supra* note 1.
197. *See supra* Part IV.D.
198. *See supra* Part VI.A (answering the objection that the record died with the vote).

from the statutes themselves,[199] with judicial precedents on meaningful access and disparate impact,[200] and with regulatory interpretations that preserve or expand the statutes' reach.[201]

The record's reach is not unlimited, and Part V.D marks the boundary honestly. *Cummings* forecloses emotional distress damages under the Spending Clause statutes, and the ratification record cannot reopen that holding.[202] What the 2026 decision in *Payan* establishes is that the holding does not occupy the whole of the remedial field: compensatory damages for lost opportunities survive, in the Ninth Circuit and the Eleventh alike, as a category the courts treat as distinct from emotional distress.[203] What counts as a lost opportunity is a question about what the statute entitled the plaintiff to, and that is a question the record answers.[204]

The record has been substantially underused. One explanation is the architecture of disability rights scholarship itself, which has tended to treat the 2012 ratification failure as a political event rather than as an interpretive resource. Another is the cognitive and institutional barriers that limit the production of doctrinally novel disability rights scholarship generally. Regardless of the causes, the record is available, it is untapped, and its deployment can recover ground that has been lost in the narrowing of disability rights statutes over the past three decades.

Opponents of ratification argued that domestic law was sufficient. The political branches, in the process of considering ratification, formally documented the scope of the existing statutes that were said to suffice. That documentation remains.[205] Where narrow interpretations now threaten to reduce the statutes' scope below the level the 2012 record represents, the record is available in defense. The ADA and Section 504 were, in 2012, represented as already fulfilling or

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199. 42 U.S.C. § 12132; 29 U.S.C. § 794(a).

200. *Choate*, 469 U.S. at 299; *Payan I*, 11 F.4th at 740; *see also Olmstead v. L.C.*, 527 U.S. 581 (1999) (construing the integration mandate as a Title II requirement).

201. 45 C.F.R. § 84.68(b)(3); 28 C.F.R. § 35.130(b)(3).

202. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212 (2022).

203. *Payan II*, 169 F.4th at 978-79 ("We agree that plaintiffs may seek compensatory damages for lost educational opportunities under Title II of the ADA."), *following A.W.*, 110 F.4th at 1315-16 (permitting "compensation for lost educational benefits" under Title II post-*Cummings*). Neither panel classified lost opportunities as economic rather than non-economic harm; each held only that the category survives and is not emotional distress. The distinction matters for the argument advanced below: the boundary is undefined, which is what leaves it open.

204. *See supra* Part V.D.

205. *See supra* Part II.E (the vote did not withdraw the representations).

exceeding the protections a comprehensive international human rights treaty requires.[206] Every effort to read them more narrowly must contend with that record.

206. 2012 SFRC Executive Report, *supra* note 3, at 6, 16; 2014 SFRC Executive Report, *supra* note 138, at 23, 26.

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