No Place for the Nexus Doctrine: ADA Title III and Public Accommodation After Digital Migration

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Abstract

Title III of the Americans with Disabilities Act prohibits discrimination against persons with disabilities in places of public accommodation. A circuit split has emerged on whether Title III reaches digital services that lack a connection to a physical place. The majority of federal circuits require a "nexus" between a covered business's digital operations and a brick-and-mortar location. A minority of circuits treat the categories of public accommodations functionally, reaching digital-only services without requiring a physical anchor. This Article argues that the nexus doctrine cannot be reconciled with the statute's text, purpose, or category structure, and that its application produces actionable screen-out and methods-of-administration violations under Title III's own regulatory architecture at 28 C.F.R. §36.301(a) and §36.204. It answers the doctrine's strongest support directly: the physical-place requirement has its only textual home not in the statute but in the Attorney General's definition at 28 C.F.R. §36.104, a regulation the nexus opinions never invoke and one that, read in full, defines a covered facility to include equipment and personal property and elaborates its categories by function rather than by structure. The Article documents the migration of commerce from physical to digital forms, develops a functional equivalence analysis that substantially narrows the apparent scope of the nexus problem, and demonstrates that the defendants who benefit from the doctrine routinely concede its premise in their own marketing. The Article walks through each of the twelve statutory categories of public accommodations to show how the nexus doctrine fails for the modern equivalent of each. It proposes a functional public accommodation test as the replacement coverage standard, a test that is sense-neutral, text-faithful, and capable of reaching modern commerce without doctrinal contortion. The Article closes with the case of locked-in syndrome, the population for whom every place of public accommodation is inaccessible and for whom digital services are the sole pathway to participation in commerce and culture.

Keywords: web accessibility; disability civil rights; functional public accommodation test; functional equivalence; circuit split; screen-out criteria; methods of administration; definition of facility; locked-in syndrome; telemedicine; Section 504 Rehabilitation Act; artificial intelligence accessibility.

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I. Introduction

A small number of Americans live with classical locked-in syndrome.[1] Conscious, cognitively intact, and paralyzed except for vertical eye movement and blinking.[2] For them, the twelve categories of places of public accommodation that Title III of the Americans with Disabilities Act was written to guarantee access to are, each and all, inaccessible. They cannot enter a restaurant, a theater, a bank, a library, a pharmacy, a school, a bowling alley, or any other physical space the statute names. Their disability is total with respect to the architectural assumptions of 1990.

The only way a person with locked-in syndrome participates in commerce, culture, or civic life is through digital platforms operated via eye-tracking interfaces, brain-computer interfaces, or caregiver-mediated assistive technology.[3] Amazon ordering through gaze. Kindle books through gaze. Netflix through gaze. Telehealth through gaze. Banking through gaze. Communication with family and friends through gaze. Every one of these services is pure-digital. Every one of these services, in the Third, Fifth, Sixth, and Ninth Circuits, falls outside the coverage of Title III. In the Eleventh Circuit they fell outside on reasoning more restrictive still, until that decision was vacated.

1. Classical locked-in syndrome is rare and no national registry exists, so no reliable United States prevalence estimate is available; the clinical literature reports the condition's rarity alongside a documented pattern of delayed or missed diagnosis. Éimear Smith & Mark Delargy, *Locked-in Syndrome*, 330 BMJ 406, 406–09 (2005) (noting that the diagnosis is frequently made first by a family member rather than a clinician). The argument does not turn on the count. It turns on the fact that the population exists and that every physical place of public accommodation is closed to it.

2. Laura Schnetzer, Mark R. McCoy & Jürgen Bergmann, *Locked-in Syndrome Revisited*, 16 Therapeutic Advances Neurological Disorders 1, 1 (2023) (defining the syndrome as "quadriplegia with preserved vertical eye and eyelid movements and retained cognitive abilities," and distinguishing classical, complete, and incomplete forms from locked-in plus syndrome), `https://doi.org/10.1177/17562864231160873`; Samuel Maiser, Asish Kabir & David S. Sabsevitz, *Locked-In Syndrome #303*, 19 J. Palliative Med. 460, 460 (2016) ("At least 60% of cases are caused by an acute stroke," and because the etiology is usually confined to the brainstem, the syndrome "typically does not affect cognition").

3. Ellen Farr, Kathryn A. Altonji & Richard L. Harvey, *Locked-In Syndrome: Practical Rehabilitation Management*, 13 PM&R 1418, 1418, 1424–26 (2021) (describing augmentative communication systems and additional technology as "the basis to promote connectivity to family and friends through the use of social media and the internet," and identifying the establishment of "communication, mobility, and connectivity" as essential to independence and autonomy); Smith & Delargy, *supra* note 1, at 408 (reporting that computers have had "a liberating effect" on patients, enabling them to initiate dialogue and use the internet).

Under the nexus doctrine as applied in the majority of federal circuits, the population most totally dependent on digital access has no civil rights recourse for that access. The statute that was written to ensure equal access to goods, services, facilities, privileges, advantages, and accommodations has, by judicial interpretation, been rendered inapplicable to the only goods, services, facilities, privileges, advantages, and accommodations this population can reach.[4]

This Article argues that the nexus doctrine cannot be reconciled with the statute's text, its purpose, or its coherence with adjacent regulatory regimes.[5] The doctrine fails the locked-in patient. It fails the broader population for whom physical access is impossible or severely burdened. It fails the general consumer who has migrated to digital commerce through market consolidation and manufacturer choice. Within the ADA's own three-title structure, Title II and Section 504 impose coverage without any nexus requirement; only Title III, alone among the federal disability rights regimes, has been read to require a physical-place threshold. The populations the nexus doctrine excludes are the populations Congress wrote the statute to protect.

The argument this Article makes is not that courts must extend Title III beyond its terms. The argument is the reverse. The nexus doctrine itself is the extension, a judicial gloss on the statute that has drifted from what the statute says. The statute lists twelve categories of businesses.[6] The statute does not list twelve categories of buildings. The categories describe what businesses do. A "motion picture house" is a business that shows motion pictures. A "sales or rental establishment" is a business that sells or rents. A "service establishment" is a business

4. 42 U.S.C. §12182(a) (guaranteeing "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation"); *see Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1114–15 (9th Cir. 2000); *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006, 1010–14 (6th Cir. 1997) (en banc); *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 614 (3d Cir. 1998); *Magee v. Coca-Cola Refreshments USA, Inc.*, 833 F.3d 530, 534–35 (5th Cir. 2016); *Gil v. Winn-Dixie Stores, Inc.*, 993 F.3d 1266, 1278–81 (11th Cir. 2021), *vacated as moot*, 21 F.4th 775 (11th Cir. 2021).

5. *See* 42 U.S.C. §12101(b) (ADA's statement of purpose, including "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"); H.R. Rep. No. 101-485, pt. 2, at 99–100 (1990); S. Rep. No. 101-116, at 59–60 (1989); *see also* Chai R. Feldblum, *The ADA's Second Bite at the Apple: The 2008 ADA Amendments Act*, 10 U.C. Davis J. Juv. L. & Pol'y 67, 69–74 (2010).

6. 42 U.S.C. §12181(7); *see also* ADA Amendments Act of 2008, Pub. L. No. 110-325, §2(b), 122 Stat. 3553 (emphasizing broad coverage and instructing courts to construe the ADA "in favor of broad coverage of individuals"); Chai R. Feldblum, *Definition of Disability Under Federal Anti-Discrimination Law: What Happened? Why? And What Can We Do About It?*, 21 Berkeley J. Emp. & Lab. L. 91 (2000) (discussing congressional intent and judicial narrowing).

that provides services. These are functional descriptions, not architectural ones. Reading them as architectural descriptions requires importing an assumption the statute does not contain.

That assumption entered the doctrine through a series of early circuit decisions that treated the physical forms the businesses took in 1990 as constitutive of the categories rather than incidental to them.[7] In 1990 a motion picture house was a building with seats and a screen. In 2026 it can also be Netflix. In 1990 a clothing store had racks and fitting rooms. In 2026 it can also be Amazon. In 1990 a professional office of a health care provider had a waiting room and an examination table. In 2026 it can also be a telehealth platform accessed from a patient's home. In each case, the statutory category describes a function, and the function has survived the migration from architecture to code. The nexus doctrine refuses to recognize this, and in refusing, removes civil rights protection from the populations whose access to the function has always been hardest.

The present moment is the most consequential in which to resolve this problem. The migration of commerce from physical to digital is no longer a trend. It is substantially complete in several categories and accelerating in others. The emergence of consumer artificial intelligence as a pure-digital service with no physical consumer endpoint has created a large and growing class of businesses that under the nexus doctrine are wholly exempt from Title III. These are not

7. *Parker*, 121 F.3d at 1010–14 (en banc) (reading the enumerated examples as physical establishments and rejecting coverage of an insurance policy on that basis); *Ford*, 145 F.3d at 614 ("The plain meaning of Title III is that a public accommodation is a place."); *Weyer*, 198 F.3d at 1114 ("[S]ome connection between the good or service complained of and an actual physical place is required."); *Weyer*, 198 F.3d at 1114–15 (adopting the same construction). *But see Carparts Distribution Ctr., Inc. v. Automotive Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994) (declining to read the categories as building types three years earlier); *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999) (Posner, C.J.) ("The core meaning of this provision, plainly enough, is that the owner or operator of a store, hotel, restaurant, dentist's office, travel agency, theater, Web site, or other facility (whether in physical space or in electronic space, [*Carparts*]) that is open to the public cannot exclude disabled persons from entering the facility and, once in, from using the facility in the same way that the nondisabled do."). The passage names a Web site as a covered facility in 1999. The court nonetheless affirmed for the insurer on the ground that Title III does not regulate the content of the goods or services offered, *id.* at 559–64, so the coverage language is dictum; it is dictum from Judge Posner, adopted by the Seventh Circuit, and no later panel has disowned it..

marginal businesses. They are among the most consequential consumer technologies of the era, and they produce harms to disabled users that existing doctrine cannot reach.[8]

This Article proceeds in thirteen Parts and a conclusion. Part I describes the statute and the circuit split. Part II documents the migration of commerce from physical to digital. Part III develops a functional equivalence analysis. Part IV presents the self-refuting doctrine problem, the pattern of defendants conceding the doctrine's premise in their own marketing. Part V addresses the cultural-monopoly dimension of digital-only production. Part VI addresses regulatory incoherence across the parallel disability regimes. Part VII walks through each of the twelve statutory categories. Part VIII develops the accommodation paradox. Part IX addresses the political economy of the doctrine. Part X examines the procedural traps the doctrine creates for plaintiffs. Part XI applies the analysis to consumer artificial intelligence as the hardest test case. Part XII proposes a functional public accommodation test as the doctrinal replacement. Part XIII addresses the strongest objections to the test; its central move is to meet the one objection the nexus opinions never make, the argument from the Attorney General's own definition of "place of public accommodation" at 28 C.F.R. §36.104, and to show that the regulation, read in full, describes coverage by function rather than by structure. The First Circuit's reasoning in *Carparts* anchors the textual analysis throughout. A concluding section returns to the case of locked-in syndrome and asks whether the doctrine under critique can defend its application to that population.

One note on scope before the argument begins. This Article concerns Title III of the Americans with Disabilities Act. It does not address Title II (state and local government) or Title I (employment). It references Section 504 and Title II at points because those regimes govern the same service providers without the nexus problem Title III has developed, and that asymmetry is

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8. 42 U.S.C. §12181(7)(F) (reaching a "service establishment" by function rather than by premises); *cf. Earll v. eBay, Inc.*, 599 F. App'x 695, 696 (9th Cir. 2015) (mem.) (holding that eBay's services "are not connected to any 'actual, physical place[]'" and are therefore outside Title III); *Cullen v. Netflix, Inc.*, 600 F. App'x 508 (9th Cir. 2015) (mem.) (same as to a streaming service). A consumer artificial intelligence service has no physical consumer endpoint at all, so under this line it is categorically exempt without any court having considered the question.

itself evidence that the nexus requirement is a judicial gloss rather than a faithful reading of the statute.[9]

II. The Statute and the Split

A. The Twelve Categories

Title III of the ADA prohibits discrimination on the basis of disability in the "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation."[10] The statute defines "public accommodation" by reference to a list of twelve categories, each illustrated by examples and extended by an "other" clause inviting inclusion of unlisted entities within the same category.[11]

The twelve categories are:

(A) An inn, hotel, motel, or other place of lodging.

(B) A restaurant, bar, or other establishment serving food or drink.

(C) A motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment.

(D) An auditorium, convention center, lecture hall, or other place of public gathering.

(E) A bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment.

(F) A laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment.

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9. 29 U.S.C. §794(a) (barring exclusion "solely by reason of her or his disability" from "any program or activity receiving Federal financial assistance," with no physical-place threshold); 42 U.S.C. §12132 (Title II, reaching "the services, programs, or activities of a public entity," likewise with no physical-place threshold).

10. 42 U.S.C. §12182(a).

11. 42 U.S.C. §12181(7).

(G) A terminal, depot, or other station used for specified public transportation.

(H) A museum, library, gallery, or other place of public display or collection.

(I) A park, zoo, amusement park, or other place of recreation.

(J) A nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education.

(K) A day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment.

(L) A gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.

The statute's drafting choices matter. Each category names illustrative examples and closes with an "other" clause. The Department of Justice Technical Assistance Manual confirms that the enumerated examples are illustrative, not exhaustive.[12] Within category (E), for instance, the DOJ has recognized that video stores, carpet showrooms, and athletic equipment stores fit even though the statute does not name them.[13] The "other" clauses are the statute's acknowledgment that commerce takes forms Congress could not fully enumerate in 1990 and that coverage must extend to unlisted entities within each category's functional scope.

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12. U.S. Dep't of Justice, Civil Rights Div., *ADA Title III Technical Assistance Manual* §III-1.2000 (1993 & Supp. 1994) (listing the twelve categories with illustrative examples introduced by "e.g."); *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 676–77 (2001) (the categories "should be construed liberally" to afford people with disabilities "equal access" to the wide variety of establishments available to the nondisabled (quoting the legislative history)); 28 C.F.R. §36.104 (defining "place of public accommodation" with parallel illustrative structure); *but see infra* Part XII.B (addressing the regulation's use of "facility," its definition of that term to include "equipment" and "other real or personal property," and its functional elaboration of the lodging category); *see also* H.R. Rep. No. 101-485, pt. 2, at 99–100 (1990) (House Committee Report confirming the illustrative nature of the enumerated examples); *id.* at 108 ("[I]nformation exchange is one of the areas where there are still substantial barriers," and "the Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times.").

13. *See* 28 C.F.R. pt. 36, App. C (2010) (Guidance on regulatory interpretation, including examples of covered sales and rental establishments); DOJ, Civil Rights Div., *Americans with Disabilities Act: Title III Technical Assistance Manual Covering Public Accommodations and Commercial Facilities*, supra, at examples throughout §III.

The interpretive question this Article engages is whether the "other" clauses reach digital forms of the listed businesses.[14] The nexus doctrine says no. The statute's text, read without the physical-place assumption, says yes. The categories describe businesses by what they do. A business that does what a restaurant does by serving food and drink falls within category (B) whether it serves in a dining room, at a drive-through window, through a delivery app, or through a ghost kitchen with no public-facing space at all. A business that does what a motion picture house does by exhibiting motion pictures falls within category (C) whether it exhibits in a theater with seats or on a streaming platform with a queue.

The statutory language supports this reading.[15] Each category's "other" clause is keyed to functional attributes: "place of exhibition or entertainment," "place of public gathering," "sales or rental establishment," "service establishment," "place of public display or collection," "place of recreation," "place of education," "social service center establishment," "place of exercise or recreation." The recurring noun is "place," but the modifier in every instance describes what the place does, not what it looks like. A reader committed to the physical-place requirement must import that requirement into the statute. It is not there by its terms.

The statute also contains affirmative signals against a narrow physical-place reading. Category (F) lists "travel service" among service establishments. Travel services in 1990 frequently operated by telephone and mail, without requiring a client's physical presence in an office. The First Circuit in *Carparts Distribution Center v. Automotive Wholesaler's Association of New England*[16] relied on this statutory choice as evidence that Congress did not intend to limit coverage to walk-in businesses. The same category lists "insurance office," which at the time of

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14. The question has a 1994 answer that predates every nexus opinion discussed in this Article. *Carparts*, 37 F.3d at 19–20. The First Circuit's construction has been narrowed by later courts and carries caution treatment in the citators, but no court has answered its travel-service reasoning on the merits.

15. 42 U.S.C. §12181(7)(C)–(L) (closing each enumeration on "other place of exhibition or entertainment," "other place of public gathering," "other sales or rental establishment," "other service establishment," "other station used for specified public transportation," "other place of public display or collection," "other place of recreation," and "other place of education"). Each residual clause names an activity. None names a construction material, a square footage, or a door.

16. *Carparts Distribution Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England*, 37 F.3d 12, 19 (1st Cir. 1994) (holding that Title III reaches entities in statutory categories regardless of whether they operate through physical places, and reasoning that restrictive interpretation "would run afoul of the purposes of the ADA").

the statute's passage often conducted business by telephone and mail. *Pallozzi v. Allstate Life Insurance Co.*[17] extended this reasoning, rejecting the physical-place requirement as inconsistent with the statute's inclusion of services Congress knew to operate remotely.

These textual observations matter because they demonstrate that the physical-place reading is not required by the statute.[18] It is imposed on the statute by a line of decisions examined in the following section.

B. The Circuit Split

The federal circuits are divided on whether Title III requires a physical place of public accommodation, and if so, whether a website or digital service can qualify as such a place or must instead be connected to one.[19]

The firmest nexus-required circuits:

The Ninth Circuit established its nexus requirement in *Weyer v. Twentieth Century Fox Film Corp.*,[20] which read the statutory categories as requiring physical places where goods and services are offered. The court extended this reading to web-only businesses in *Cullen v. Netflix, Inc.*[21] and *Earll v. eBay, Inc.*,[22] both unpublished opinions issued the same day that rejected

17. *Pallozzi v. Allstate Life Ins. Co.*, 198 F.3d 28, 32–33 (2d Cir. 1999) (holding that insurance underwriting is a service of a place of public accommodation covered by Title III regardless of physical office visit), *cert. denied*, 529 U.S. 1110 (2000).

18. The First Circuit reached that conclusion on the same text. *Carparts*, 37 F.3d at 19 ("The plain meaning of the terms do not require 'public accommodations' to have physical structures for persons to enter.").

19. The division is now more than three decades old and the Supreme Court has not resolved it. *Compare Carparts*, 37 F.3d at 19 (1st Cir.), *and Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999), *with Parker*, 121 F.3d at 1010–14 (6th Cir.) (en banc), *Ford*, 145 F.3d at 614 (3d Cir.), *Weyer*, 198 F.3d at 1114–15 (9th Cir.), *and Magee*, 833 F.3d at 534–35 (5th Cir.). The statutory text construed is identical in every one of them.

20. *Weyer*, 198 F.3d at 1114–15 (reasoning from noscitur a sociis that "this context suggests that some connection between the good or service complained of and an actual physical place is required").

21. *Cullen*, 600 F. App'x at 508 (mem.) (affirming dismissal of Title III claim against Netflix streaming service on ground that streaming service is not connected to physical place); *Cullen v. Netflix, Inc.*, 880 F. Supp. 2d 1017, 1024 (N.D. Cal. 2012) (lower court opinion discussing physical-place requirement).

22. *Earll v. eBay, Inc.*, 599 F. App'x 695, 696 (9th Cir. 2015) (mem.) (affirming dismissal on ground that "eBay's services are not connected to any 'actual, physical place[]'" (quoting Weyer, 198 F.3d at 1114)); *Earll v. eBay, Inc.*, No. 5:11-CV-00262-JF, 2011 WL 3955485 (N.D. Cal. Sept. 7, 2011) (lower court opinion).

ADA claims against purely digital companies. In *Robles v. Domino's Pizza, LLC*,[23] the court clarified that websites tied to physical stores must comply with Title III because they serve as the mechanism by which customers use the physical place of public accommodation. The Supreme Court denied certiorari in *Robles*.[24]

The Fifth Circuit joined the nexus camp in *Magee v. Coca-Cola Refreshments USA, Inc.*,[25] which held that glass-front vending machines are not places of public accommodation because they are not enumerated in the statute and do not resemble the categories the statute names. District courts in Texas have extended *Magee* to websites.[26]

The Third Circuit's nexus requirement stems from *Ford v. Schering-Plough Corp.*,[27] and district courts in the circuit have applied it to website cases.[28]

The Sixth Circuit applied a narrow physical-place reading in *Parker v. Metropolitan Life Insurance Co.*,[29] and district courts in the circuit have applied its reasoning to website cases.

The Eleventh Circuit briefly adopted the most restrictive position of any circuit in *Gil v. Winn-Dixie Stores, Inc.*,[30] holding that websites are never places of public accommodation

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23. *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905–06 (9th Cir. 2019) (holding that ADA applies to website and app of restaurant where "[t]he alleged inaccessibility of Domino's website and app impedes access to the goods and services of its physical pizza franchises"), *cert. denied*, 140 S. Ct. 122 (2019); *see also Robles v. Domino's Pizza LLC*, No. CV 16-06599, 2021 WL 2945562 (C.D. Cal. June 23, 2021) (on remand, finding accessibility violation).

24. 140 S. Ct. 122 (2019).

25. *Magee*, 833 F.3d at 534–35 (holding that glass-front vending machines are not "sales establishments" under §12181(7)(E) because the subsection "uses the term 'sales establishment' following a list of retailers occupying physical stores" and "a vending machine is not akin to any of the listed examples"), *cert. denied*, 138 S. Ct. 55 (2017).

26. *Zaid v. Smart Fin. Credit Union*, No. H-18-1130, 2019 WL 314732 (S.D. Tex. Jan. 24, 2019) (applying Magee to dismiss Title III website claim); *see also Mendez v. Apple Inc.*, No. 1:18-cv-07550, 2019 WL 2611168 (S.D.N.Y. Mar. 28, 2019) (discussing split among district courts on website coverage).

27. *Ford*, 145 F.3d at 614 ("The plain meaning of Title III is that a public accommodation is a place."); *Weyer*, 198 F.3d at 1114 ("[T]his context suggests that some connection between the good or service complained of and an actual physical place is required."), *cert. denied*, 525 U.S. 1093 (1999).

28. *Murphy v. Spongellé LLC*, 716 F. Supp. 3d 358, 365–67 (W.D. Pa. 2024) (dismissing online-only retailer Title III claim on nexus grounds); *Peoples v. Discover Fin. Servs., Inc.*, 387 F. App'x 179, 183 (3d Cir. 2010) (applying nexus analysis).

29. *Parker v. Metro. Life Ins. Co.*, 121 F.3d 1006, 1010–14 (6th Cir. 1997) (en banc) (holding that Title III requires physical place of public accommodation and rejecting coverage of disability insurance policy on that basis), *cert. denied*, 522 U.S. 1084 (1998).

30. *Gil*, 993 F.3d at 1278–81 (holding that websites are never places of public accommodation regardless of nexus to physical location), *vacated as moot*, 21 F.4th 775 (11th Cir. 2021); *see also Gil v. Winn-Dixie Stores, Inc.*, 257 F. Supp. 3d 1340 (S.D. Fla. 2017) (lower court opinion reaching opposite conclusion and finding violation of Title III).

regardless of nexus. That decision was later vacated as moot. The Eleventh Circuit's ultimate position remains unsettled but the underlying reasoning signals a willingness to exclude digital services entirely.

The no-nexus circuits:

The First Circuit in *Carparts* held that Title III applies to entities in the statutory categories regardless of whether they operate through [31]physical places. The court emphasized that the statute's inclusion of travel services and similar remote-operating categories precluded a narrow physical-place reading.

The Seventh Circuit's position was signaled in dicta by Judge Posner in *Doe v. Mutual of Omaha Insurance Co.*,[32] which observed that places of public accommodation are not limited to physical structures. The observation was repeated in *Morgan v. Joint Administration Board*.[33] Although the Seventh Circuit has not squarely applied this reasoning to a website case at the appellate level, district courts have increasingly followed the dicta.[34]

31. *Carparts*, 37 F.3d at 19 (reasoning that the subsection (F) enumeration includes "travel service," an entity that need not occupy premises the customer enters, and that "[i]t would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not"). *Carparts* carries a caution signal in the citators, which reflects the circuit disagreement this Article documents rather than any intervening reversal; it has not been overruled and the First Circuit has not retreated from it.

32. *Doe v. Mut. of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999) ("The core meaning of this provision, plainly enough, is that the owner or operator of a store, hotel, restaurant, dentist's office, travel agency, theater, Web site, or other facility (whether in physical space or in electronic space) that is open to the public cannot exclude disabled persons from entering the facility and, once in, from using the facility in the same way that the nondisabled do." (citation omitted)), *cert. denied*, 528 U.S. 1106 (2000).

33. *Morgan v. Joint Admin. Bd.*, 268 F.3d 456, 459 (7th Cir. 2001) (rejecting the request "to interpret 'public accommodation' literally, as denoting a physical site, such as a store or a hotel," because "we have already rejected that interpretation," and stating that "[t]he site of the sale is irrelevant to Congress's goal of granting the disabled equal access to sellers of goods and services").

34. *See, e.g.*, *Walsh v. Dania, Inc.*, No. 23-cv-14380, 2024 U.S. Dist. LEXIS 24037 (N.D. Ill. Feb. 12, 2024); *Mejico v. Alba Web Designs, LLC*, 515 F. Supp. 3d 424, 434–37 (W.D. Va. 2021) (following the Seventh Circuit's *Doe* and *Morgan* reasoning); *Access Now, Inc. v. Blue Apron, LLC*, No. 17-cv-116-JL, 2017 WL 5186354 (D.N.H. Nov. 8, 2017) (applying Carparts-style reasoning).

The contested circuits: The Second Circuit took an expansive view in *Pallozzi* but has not squarely addressed website coverage.[35] District courts in the Southern District of New York have split, with recent decisions drifting toward the nexus majority. The Fourth, Eighth, and Tenth Circuits, and the D.C. Circuit, have not squarely addressed the question.

By population, the firm nexus position covers approximately two-thirds of the United States.[36] The firm no-nexus position covers approximately fifteen percent. The remainder sits in contested circuits where the doctrine could move either direction.

C. The Reasoning Behind the Nexus Position

The nexus position did not emerge from careful textual analysis.[37][38] It emerged from two related interpretive moves, each traceable to specific paragraphs in the foundational opinions, each requiring analytical work the opinions did not perform. This subsection examines the reasoning behind the four nexus decisions that matter most to the current landscape. The analysis is cited to pin-cites where the interpretive moves appear. Because this Article is drafted from the publicly reported text of the opinions and secondary legal materials, the pin-cites should be independently verified against the bound reporters before any litigation filing that relies on them.

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35. The absence of a squarely controlling decision in the contested circuits is itself significant for a cert petition: it means the split is not merely entrenched but is being widened by district courts applying inconsistent rules within a single circuit, without appellate correction. *Cf.* 42 U.S.C. §12101(b)(2) (purpose of providing "clear, strong, consistent, enforceable standards").

36. The geographic reach is what makes the split intolerable rather than merely academic: an identical claim against an identical defendant succeeds or fails on where the plaintiff lives. *Compare Carparts*, 37 F.3d at 19, *with Weyer*, 198 F.3d at 1114–15. *Cf.* 42 U.S.C. §12101(b)(2) (purpose of "clear, strong, consistent, enforceable standards"); *id.* §12101(b)(1) ("comprehensive national mandate").

37. The scholarly literature has tracked the split without resolving it. *See* Peter Blanck, *On the Importance of the Americans with Disabilities Act at 30*, 34 J. Disability Pol'y Stud. 176 (2021), `https://doi.org/10.1177/10442073211036900`, at 186–88 (surveying the circuit split under a heading addressed to websites as places of public accommodation, and observing that "[t]he U.S. Courts of Appeals currently have a split of opinion as to whether Title III covers only physical 'places' of public accommodation"). Blanck identifies the textual hinge this Article presses: *Robles* turned on the point that Title III "applies to services *of* a place of public accommodation and not only to services *in* a place of public accommodation." *Id.* at 187. He also flagged, in 2021, that the next wave of access questions would involve "websites using Artificial Intelligence." *Id.* at 188.

38. *See Carparts*, 37 F.3d at 19 (reaching the opposite construction on the same text in 1994, before any of the four opinions discussed here); *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999) (reading the provision to reach a facility "whether in physical space or in electronic space"). The construction was contested from the start; the nexus opinions did not resolve the contest so much as decline to join it.

Parker v. Metropolitan Life. The Sixth Circuit's en banc opinion in *Parker* provided the analytical template the other nexus circuits adopted. The critical passage appears at 121 F.3d at 1014, where the court invoked the interpretive canon of noscitur a sociis to read the statute's listed categories as implying a physical-place requirement: "The clear connotation of the words in §12181(7) is that a public accommodation is a physical place. Every term listed in §12181(7) and subsection (F) is a physical place open to public access."[39] The court acknowledged that certain enumerated entries ("travel service," "shoe repair service") might not obviously map to physical-only operations, but reached the conclusion that Congress "simply had no better term than 'service"' to describe offices where travel agents and shoe repairers work.[40]

The analytical weakness is visible on its own terms. Noscitur a sociis instructs that a word's meaning is illuminated by its surrounding terms. The canon operates most reliably where the surrounding terms share an obvious and unambiguous common feature. Parker treated the category F list as sharing the feature of being physical places.[41] But category F names "travel service" and "bank" and "insurance office" and "professional office of a health care provider." The category F list in 1990 already included businesses whose operations extended substantially beyond walk-in service. Travel services in 1990 booked tickets by telephone. Insurance offices in 1990 sold policies by mail and telephone. The category F list's coherence does not actually require the physical-place reading Parker imposed. Parker ignored this by treating the apparent physical-place implication as the dispositive common feature, when the common feature

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39. *Parker v. Metro. Life Ins. Co.*, 121 F.3d 1006, 1014 (6th Cir. 1997) (en banc) ("The clear connotation of the words in §12181(7) is that a public accommodation is a physical place. Every term listed in §12181(7) and subsection (F) is a physical place . . . ."). The dissent answered from the regulation: quoting *Stoutenborough*, it defined a "place" as "[1] a facility, [2] operated by a private entity, [3] whose operations affect commerce and [4] fall within at least one of the twelve 'public accommodation' categories," *id.* at 1019 (Martin, C.J., dissenting), which is 28 C.F.R. §36.104's definition. The *Parker* court had the regulation in front of it and the majority did not rest on it.

40. *Parker*, 121 F.3d at 1014. The same passage of the majority opinion; the preceding footnote closes on the dissent.

41. *Parker*, 121 F.3d at 1010–14 (en banc); *see* 42 U.S.C. §12181(7)(F) (listing "a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment"). The canon is sound; the application is not. *Cf. Yates v. United States*, 574 U.S. 528, 543 (2015) (plurality opinion) (noscitur a sociis counsels that "a word is given more precise content by the neighboring words with which it is associated" (quoting *United States v. Williams*, 553 U.S. 285, 294 (2008)), and the associated words must actually share the feature ascribed to them).

available from the statutory text is simply that each listed entry is a business that provides the named service to members of the public.

Ford v. Schering-Plough. The Third Circuit's *Ford* opinion borrowed Parker's reasoning and applied it to a disability insurance plan administered through an employer. The core passage appears at 145 F.3d 601, 612–614, where the court wrote: "we do not find the term 'public accommodation' or the terms in 42 U.S.C. §12181(7) to refer to non-physical access or even to be ambiguous as to their meaning."[42] Ford went further than Parker by declaring the statutory text unambiguous on the physical-place question, a characterization that foreclosed both legislative-history analysis and the no-nexus reading the First and Second Circuits would subsequently reach through exactly that kind of analysis. The interpretive move that treats contested text as unambiguous in order to shut down consideration of contrary readings is a familiar appellate technique. It is not a neutral application of textualist methodology. It is an exercise in interpretive foreclosure.

Weyer v. Twentieth Century Fox. The Ninth Circuit extended the Parker-Ford analysis in *Weyer*. Applying noscitur a sociis to the statutory categories, the panel wrote that "this context suggests that some connection between the good or service complained of and an actual physical place is required."[43] The opinion relied directly on Parker and Ford for the physical-place reading, reproducing the noscitur a sociis analysis without independent textual engagement. Weyer's significance is that it imported the Parker-Ford reading into the Ninth Circuit, the circuit where the largest technology companies operate and the circuit whose interpretation of ADA Title III therefore has the greatest commercial consequence. The Ninth Circuit in Weyer did not examine whether the Parker and Ford analyses survived their own interpretive weaknesses; the opinion instead treated Parker and Ford as authoritative and followed them.

Magee v. Coca-Cola Refreshments. The Fifth Circuit's 2016 opinion in *Magee* completed the nexus quadrangle with a particularly pointed application of the reasoning to vending

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42. *Ford*, 145 F.3d at 613–14. Pin-cite requires independent verification.

43. *Weyer*, 198 F.3d at 1114. The quoted sentence closes the paragraph applying the canon; the surrounding discussion runs to 1115. The panel then "agree[d] with the Third and Sixth Circuits." *Id.* at 1115.

machines. The case warrants extended treatment because its reasoning crystallizes the deepest flaws of the nexus doctrine in a single opinion.[44]

The plaintiff, Emmett Magee, was a blind man who could not access the touchscreen interface and visual product displays of Coca-Cola's glass-front vending machines. Magee sued Coca-Cola alleging Title III violations. The Fifth Circuit affirmed dismissal, holding that the vending machines were not places of public accommodation under category (E).[45]

The court's reasoning relied on two interpretive canons. First, the court applied ejusdem generis, the canon that general terms following specific examples should be read as limited to entities similar in kind to the specific examples.[46] The category (E) list reads "a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment." The court read "other sales or rental establishment" as limited to entities similar in kind to bakeries, grocery stores, clothing stores, hardware stores, and shopping centers. A vending machine, the court reasoned, does not resemble these examples. Second, the court applied noscitur a sociis, the canon that the meaning of a word is informed by the words around it. The surrounding words, on the court's reading, suggest that the category covers physical premises with floor space, employees, customer-facing service, and the rest of the architectural features of a traditional retail establishment. A vending machine has none of these features.

The ejusdem generis argument fails on its own terms. The canon requires identifying the genus the specific examples share, then asking whether the residual entity falls within the genus. The genus of the specific examples in category (E) is not "physical premises" but "sales

44. *Magee*, 833 F.3d at 534–35. The holding is narrower than its reputation. The court expressly acknowledged "the limits of our holding," noting that the machines "may very well be subject to various requirements under the ADA by virtue of their being located in a hospital or a bus station, both of which are indisputably places of public accommodation," and that the plaintiff "sued only Coca-Cola, an entity that does not own, lease (or lease to), or operate a place of public accommodation." *Id.* at 535. *Magee* is as much a defendant-identity case as a category case, which is a reason its category reasoning has traveled further than it should have.

45. *Magee*, 833 F.3d at 534–36 (quoting district court), *cert. denied*, 138 S. Ct. 55 (2017).

46. *Magee*, 833 F.3d at 534 (invoking both canons: "Under the principle of noscitur a sociis, 'a word is known by the company it keeps.' Similarly, the canon of ejusdem generis instructs that 'when a general word or phrase follows a list of specifics, the general word or phrase will be interpreted to include only items of the same class as those listed.' "). Neither canon supplies a genus. Both presuppose one.

establishments," which is the exact phrase the residual clause uses.[47] A bakery, a grocery store, a clothing store, a hardware store, and a shopping center are all sales establishments. They share the function of completing sales transactions between a commercial entity and members of the public. A vending machine completes sales transactions between a commercial entity (the machine's operator) and members of the public (the customers). The vending machine falls within the genus the specific examples identify. The court's contrary reading required identifying the genus as "physical premises with floor space" rather than as "sales establishments." That choice of genus is unexplained in the opinion and is precisely the textual move under challenge in this Article.

The deeper problem is that the *Magee* reading required the court to make a visual judgment about whether the entity at issue resembled the specific examples.[48] The court did not measure the vending machines against the statute's text or against the genus the residual clause identifies. The court measured the machines against an image of what a sales establishment should look like, then concluded that the machines fell outside category (E) because they did not match that image. This is what may be called the Sighted Observer Standard: a coverage test that requires the plaintiff to possess the visual capacity to recognize the entity as a sales establishment in the same way the court would recognize one. The plaintiff in *Magee* was a blind man who could not see the vending machine. The court's holding turned on whether the machine looked like a sales establishment to the court. The blind plaintiff's experience of the machine, which was that it sold him nothing because he could not access its interface, played no role in the coverage

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47. The genus the *Magee* court actually identified was "retailers occupying physical stores." *Magee*, 833 F.3d at 534. The court reached it by reasoning that the subsection "uses the term 'sales establishment' following a list of retailers occupying physical stores," and that "[a]lthough the term 'establishment' could possibly be read expansively to include a vending machine, a vending machine is not akin to any of the listed examples." *Id.* The move is visible in that sentence: the court supplied "occupying physical stores" as the genus and then tested the residual entity against the supplement rather than against the phrase Congress wrote.

48. The judgment was lexical rather than visual, and that is worse for the panel. *Magee* canvassed six dictionaries, Merriam-Webster's Collegiate, Webster's Third New International, the American Heritage Dictionary, the New Shorter Oxford, Webster's Encyclopedic Unabridged, and Black's Law Dictionary, each defining "establishment" by reference to a place of business or premises. *Magee*, 833 F.3d at 534–35. The panel did not reach 28 C.F.R. §36.104, which supplies the agency's own definition of "facility" and includes "equipment" and "other real or personal property" within it.

analysis. The doctrine's logic excludes the very perspective the disability rights analysis exists to protect.

The Fifth Circuit's panel did acknowledge a doctrinal nuance that the broader nexus doctrine has obscured. The court's holding was specifically that Coca-Cola was not the liable defendant because Coca-Cola did not own or operate the hospital or bus station where the vending machines were located. The district court had explicitly allowed that vending machines located in public accommodations "must comply with the ADA" so patrons with disabilities are not discriminated against, but had held the operator of the surrounding accommodation, not the machine vendor, responsible.[49] The Fifth Circuit's holding was therefore not that vending machines fall entirely outside Title III. It was that the operator of the surrounding accommodation, not the machine vendor, was the proper defendant. This distinction creates an opening for plaintiffs to sue the surrounding accommodation (the hospital, the bus station, the airport, the workplace) when vending machines on its premises are inaccessible. It does not save the broader doctrine, however, because the broader doctrine has been used to deny coverage even for entities that are not severed from the defendant's own operations. Amazon Lockers, addressed in Part III above, are owned and operated by Amazon, integrated into Amazon's transaction architecture, and reachable through Amazon's website. The *Magee* reasoning, taken at its narrowest, does not reach this case, and the broader nexus doctrine's extension of *Magee* to entities like Amazon Lockers is therefore unsupported by even *Magee*'s own analysis.

49. *Magee v. Coca-Cola Refreshments USA, Inc.*, 143 F. Supp. 3d 464, 467 (E.D. La. 2015), *aff'd*, 833 F.3d 530 (5th Cir. 2016); *see also* Brief for the United States as Amicus Curiae, *Magee v. Coca-Cola Refreshments USA, Inc.*, No. 16-668 (U.S. 2017) (advising that the operator of the public accommodation in which a vending machine is located is better suited to determine how to provide accessible service, and recommending denial of certiorari), *discussed in Justice Department Says Vending Machines Are Not Places of Public Accommodation*, ADA Title III (Seyfarth Shaw) (July 2017), `https://www.adatitleiii.com/2017/07/justice-department-says-vending-machines-are-not-places-of-public-accommodation-and-so-much-more/`.

The Magee analysis is the most transparently outcome-driven of the four foundational nexus opinions.[50] A vending machine in a bus station sells soft drinks to travelers. A "sales or rental establishment" in category (E) sells goods to members of the public. The vending machine performs the function the statute names: it completes sales transactions between a commercial entity and members of the public. The Magee court reached its conclusion by treating the listed examples as exhausting the category rather than as illustrating the category the statute's text said was non-exhaustive ("or other sales or rental establishment"). The "other" clause is the textual signal that Congress intended extension beyond the listed examples. *Magee*'s reading of the clause is in tension with its plain function. The court's observation that Coca-Cola-operated vending machines "are essentially always found inside" other public accommodations, even if true, does not answer the doctrinal question. A vending machine inside a public accommodation remains a distinct commercial entity that completes distinct transactions on behalf of a distinct corporate operator. *Magee*'s treatment of the container as identical to the commercial transaction is the analytical move the functional public accommodation test proposed in Part XII of this Article is designed to correct.

The pattern across all four opinions is consistent. Each imported a physical-place requirement that the statute's text does not contain, through an interpretive-canon argument that does not actually support the physical-place reading when the canons are applied to the statute's full text rather than to a curated subset of it.[51] Each relied on the earlier opinions rather than independently engaging the statute's text. The result is a doctrinal edifice in which the majority-circuit position rests on a chain of citations that does not, at any point in the

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50. The characterization should be qualified. *Magee* expressly "acknowledge[d] the limits of our holding," observing that the machines "may very well be subject to various requirements under the ADA by virtue of their being located in a hospital or a bus station," and resting in part on the fact that the plaintiff "sued only Coca-Cola, an entity that does not own, lease (or lease to), or operate a place of public accommodation." *Magee*, 833 F.3d at 535. The panel wrote a narrower opinion than the one later courts cite it for.

51. *Compare Magee*, 833 F.3d at 534 (quoting the Third, Sixth, and Ninth Circuits for the proposition that "[e]very term listed in §12181(7) . . . is a physical place open to public access"), *with* 42 U.S.C. §12181(7)(F) (listing "travel service," "bank," "insurance office," and the "office of an accountant or lawyer" among service establishments). A travel service is not a physical place; it is a service. The proposition the nexus opinions cite each other for is contradicted by the subsection they are construing.

chain, perform the textual analysis that would be required to sustain the reading against serious challenge.

D. The Circuit-Split Map

The current state of circuit-level doctrine is summarized in Table 1.[52][53] The table identifies for each circuit the leading case establishing the circuit's position, the position itself, the treatment of pure-digital services, and any qualifications that affect the strength of the doctrine's hold on the circuit.

Table 1: Circuit Positions on Title III Coverage of Pure-Digital Services

52. *Accord* Blanck, *supra* note 37, at 186–88 (describing the same division); Trevor Paul, Comment, *Is a Website Subject to Title III of the ADA? Why the Text Applies to Only Websites "Of" a Place of Public Accommodation*, 8 J. Prop. L. 177 (2022), `https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1188&context=journal-of-property-law`, at 179–85 (mapping the split as majority and minority approaches and dating its origin to 1995).

53. The four foundational nexus decisions are *Parker*, 121 F.3d 1006 (en banc), *Ford*, 145 F.3d 601, *Weyer*, 198 F.3d 1104, and *Magee*, 833 F.3d 530. The functional-reading decisions are *Carparts*, 37 F.3d 12, and *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557 (7th Cir. 1999).

Circuit	Leading Case	Position	Pure-Digital	Notes
First	*Carparts*, 37 F.3d 12 (1994)	No physical-place requirement	Covered if within category	Strongest plaintiff circuit; absurdity-canon textualism
Second	*Pallozzi*, 198 F.3d 28 (1999)	Functional reading, not fully settled for websites	Contested at district court level	Insurance underwriting held covered without physical office visit
Third	*Ford v. Schering-Plough*, 145 F.3d 601 (1998)	Nexus / physical-place required	Generally excluded absent nexus	Strong defense circuit; nexus doctrinal anchor
Fifth	*Magee*, 833 F.3d 530 (2016)	Nexus / physical-place required	Excluded absent nexus	Vending machine ruling narrow; surrounding accommodation analysis preserves coverage
Sixth	*Parker v. Metropolitan Life*, 121 F.3d 1006 (1997)	Nexus / physical-place required	Generally excluded	Original noscitur a sociis analysis; imported by later circuits
Seventh	*Doe v. Mutual of Omaha*, 179 F.3d 557 (1999); *Morgan*, 268 F.3d 456 (2001)	Functional reading endorsed; square holding not yet required	District courts applying functional reading	Posner's *Doe* passage reinforced by *Morgan*'s refusal to read the term as denoting a physical site
Ninth	*Weyer* (2000); *Robles* (2019)	Nexus required for full coverage	Excluded if pure-digital; covered when tied to physical place under *Robles*	Key technology circuit; outsized commercial significance
Eleventh	*Gil v. Winn-Dixie*, 993 F.3d 1266 (2021)	Rejected nexus outright; held websites categorically excluded	Unsettled	*Winn-Dixie* vacated as moot; circuit-level position not currently fixed

Three observations qualify the table. First, the Supreme Court has repeatedly declined to resolve the Title III nexus split. The Court denied certiorari in *Robles* in 2019,[54] and in *Acheson Hotels, LLC v. Laufer* the Court vacated as moot a separate Title III question on ADA tester standing, observing in passing that the tester-standing split was "very much alive", a description of a different doctrinal disagreement, but a marker of the Court's awareness that Title

54. *Domino's Pizza, LLC v. Robles*, 140 S. Ct. 122 (2019) (cert. denied).

III's lower-court divides remain unresolved.[55] Second, the Eleventh Circuit's position requires particular care because *Gil v. Winn-Dixie Stores, Inc.* was vacated as moot in 2021, leaving the circuit's current position unsettled at the appellate level.[56] Third, the Seventh Circuit's position rests on dicta in *Doe v. Mutual of Omaha* and *Morgan v. Joint Administration Board*; district courts within the circuit have increasingly applied the functional reading, but appellate-level adoption awaits a suitable vehicle. The accurate descriptor for the doctrinal landscape is not "majority of circuits" against "minority of circuits" but a more nuanced map in which the Third, Fifth, Sixth, and Ninth Circuits are firmly committed to a nexus requirement, the First Circuit applies a functional reading, the Second and Seventh Circuits apply functional reasoning with appellate-level treatment still developing, and the Eleventh Circuit's position is currently unfixed.

The doctrinal map matters strategically. Plaintiffs in firm-nexus circuits face dismissal at the coverage threshold for pure-digital cases.[57] Plaintiffs in functional-reading or unsettled circuits can reach the merits. Defendants exploit this asymmetry through forum selection and 1404(a) transfer motions, the subject of Part X. The geography of the split is not merely descriptive; it determines which disabled plaintiffs have access to Title III's enforcement structure and which do not.

E. Why This Matters Now

Commerce has migrated to digital forms at scale since the ADA's enactment in 1990. The Supreme Court has declined one opportunity to resolve the split, and the case that squarely

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55. *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 5 (2023) (vacating Title III "tester" standing case as moot; noting that "[t]hough Laufer's case is dead, the circuit split is very much alive", a reference to the tester-standing circuit split (Second, Fifth, and Tenth Circuits holding no standing; First, Fourth, and Eleventh Circuits holding standing), not the nexus/public-accommodation circuit split addressed in this Article).

56. *Gil*, 993 F.3d 1266, *vacated as moot*, 21 F.4th 775 (11th Cir. 2021).

57. *See, e.g.*, *Earll v. eBay, Inc.*, 599 F. App'x 695, 696 (9th Cir. 2015) (mem.); *Cullen*, 600 F. App'x at 508 (mem.). *Gil* sits outside this pattern: the Eleventh Circuit found Article III standing, the case proceeded to a bench trial, and the panel rejected the claim on a categorical-coverage rationale rather than dismissing at the threshold. *Gil*, 993 F.3d at 1277, *vacated as moot*, 21 F.4th 775 (11th Cir. 2021). Dismissal at the coverage threshold means the merits of the access claim are never reached, which is why the split is not a difference in outcomes so much as a difference in whether there is a case at all.

presented the question never reached it.[58] Certiorari was denied in *Robles* in 2019. *Winn-Dixie* never reached the Court at all: the Eleventh Circuit panel vacated its own opinion as moot in December 2021, on the appellee's petition for panel rehearing.[59] The split has deepened in the years since.

Three developments compound the urgency:

First, the pandemic accelerated the migration of professional services, education, healthcare, and retail to digital-first or digital-only modes. Telehealth expanded from approximately one percent of healthcare visits to roughly twenty percent during the pandemic and has stabilized at levels far above pre-pandemic norms.[60] Remote work and online schooling normalized digital service delivery across categories where it had been peripheral.

Second, consumer artificial intelligence emerged as a category of pure-digital service with no physical consumer endpoint. OpenAI, Anthropic, Google's consumer Gemini product, and similar services lack the physical-store infrastructure that provides nexus in nexus circuits.[61] These services are reaching hundreds of millions of users while remaining wholly exempt from Title III in majority-circuit jurisdictions.

Third, disability advocacy organizations have documented systematic accessibility failures in pure-digital services, including consumer AI products that are inaccessible to screen reader users, cognitively impaired users, and users with various sensory and motor

58. Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (July 26, 1990). The circuits first divided four years later, *Carparts*, 37 F.3d at 19, and the split has now outlasted the commercial world that produced it.

59. *Gil v. Winn-Dixie Stores, Inc.*, 21 F.4th 775, 776 (11th Cir. 2021) ("The Petition for Panel Rehearing filed by Appellee Juan Carlos Gil is GRANTED.").

60. *See* Ateev Mehrotra et al., *The Impact of the COVID-19 Pandemic on Outpatient Visits: Practices Are Adapting to the New Normal*, Commonwealth Fund (Aug. 13, 2020) (documenting telehealth expansion); U.S. Dep't of Health & Human Servs., Off. of the Assistant Sec'y for Plan. & Evaluation, *Medicare Beneficiary Use of Telehealth Visits: Early Data from the Start of the COVID-19 Pandemic* (2020); Ctrs. for Medicare & Medicaid Servs., *Telemedicine Health Care Provider Fact Sheet* (2021) (documenting regulatory response); Am. Med. Ass'n, *AMA Digital Health Research Survey* (2022) (documenting sustained post-pandemic levels).

61. *See generally* Peter Lee et al., *Benefits, Limits, and Risks of GPT-4 as an AI Chatbot for Medicine*, 388 New Eng. J. Med. 1233 (2023) (discussing consumer AI service scope); Ryan Calo, *Artificial Intelligence Policy: A Primer and Roadmap*, 51 U.C. Davis L. Rev. 399, 421–26 (2017) (analyzing regulatory challenges of AI services); Margot E. Kaminski, *Regulating the Risks of AI*, 103 B.U. L. Rev. 1347 (2023).

disabilities.[62] The harms are occurring in real time while the doctrine that should reach them remains unavailable.

III. The Migration Argument

A. Retailer Death

Commerce has been migrating from physical to digital since the late 1990s. The migration is not incidental.[63] It has been structural and in several categories coerced by competitive dynamics.

Major physical retailer closures over the past two decades include CompUSA (2008, transitioned to online-only), Circuit City (2009),[64] Borders (2011),[65] multiple iterations of RadioShack bankruptcies, Toys R Us (2017, later partial revival),[66] the Sears collapse, Blockbuster's reduction from 9,000 stores to one remaining location, Bed Bath & Beyond (2023),[67] and Pier One. The surviving retailers (Walmart, Target, Best Buy, Home Depot, Lowe's, Costco) survived by building competing e-commerce at a scale that now dwarfs their physical footprint.

Competitive pressure from digital retail has driven competitors either to migrate online or to close. The pattern is not a consumer preference shift alone. It is a market consolidation under pressure from a single dominant player whose business model was digital-first from inception.

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62. *See* Jonathan Lazar et al., *Ensuring Digital Accessibility Through Process and Policy* (2015); Jonathan Lazar, *Accessibility of Major Internet Sites, A Look at 2003–2007*, Trans. on Accessible Computing (2007); WebAIM, *The WebAIM Million: An Annual Accessibility Analysis of the Top 1,000,000 Home Pages* (2024) (documenting systematic accessibility failures in web services).

63. The statute predates the migration entirely. The ADA was enacted July 26, 1990. Pub. L. No. 101-336, 104 Stat. 327. The nexus opinions were decided between 1997 and 2016. *Parker*, 121 F.3d 1006; *Magee*, 833 F.3d 530. Neither the enacting Congress nor the early panels were describing the economy this Article addresses, which is a reason to read the categories by function rather than by the forms commerce happened to take when the list was written.

64. *See In re Circuit City Stores, Inc.*, No. 08-35653 (Bankr. E.D. Va. 2008); Michael J. de la Merced, *Circuit City to Liquidate After Sale Efforts Fail*, DealBook, N.Y. Times (Jan. 16, 2009), `https://archive.nytimes.com/dealbook.nytimes.com/2009/01/16/circuit-city-to-liquidate-after-sale-efforts-fail/`.

65. *See In re Borders Grp., Inc.*, No. 11-10614 (Bankr. S.D.N.Y. 2011).

66. *See In re Toys "R" Us, Inc.*, No. 17-34665 (Bankr. E.D. Va. 2017).

67. *See In re Bed Bath & Beyond Inc.*, No. 23-13359 (Bankr. D.N.J. 2023).

B. Manufacturer-Driven Digital Migration

More consequential than retail death is the active decision by manufacturers and content producers to force customers out of physical distribution entirely. Examples span multiple industries:

In video gaming, both Sony and Microsoft produce "digital-only" versions of their flagship consoles. The PlayStation 5 Digital Edition ships without a disc drive, requiring all games to be purchased through the PlayStation Store.[68] The Xbox Series S is digital-only by design.[69] Steam, operated by Valve, has become the dominant distribution channel for PC games, with most major publishers releasing exclusively or primarily through digital stores.[70] Physical PC game distribution has effectively ended outside collector editions.

In music, streaming has displaced physical media as the ordinary mode of consumption. Apple Music, Spotify, Amazon Music, and YouTube Music collectively serve hundreds of millions of subscribers. CD and DVD sales have declined continuously since the early 2000s. Vinyl has seen a partial resurgence but remains niche.

In video, streaming services have largely replaced DVD and Blu-ray rental.[71] Netflix, Disney+, HBO Max, Apple TV+, Amazon Prime Video, Paramount+, and Peacock collectively account for a majority of video consumption in the United States. Major studios release direct-to-streaming in addition to theatrical windows, and some releases are streaming-only.

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68. Sony Interactive Entm't, *PlayStation 5 Digital Edition Console*, PlayStation Direct, `https://direct.playstation.com/en-us/buy-consoles/playstation5-digital-edition-console-825-gb` (last visited May 15, 2026) (product page describing digital-only console and requirement to purchase all content through PlayStation Store).

69. Microsoft Corp., *Xbox Series S Specs*, Xbox.com, `https://www.xbox.com/en-US/consoles/xbox-series-s#specs` (last visited May 15, 2026); *see also* Tom Warren, *Microsoft confirms Xbox Series S will arrive on November 10th in new official trailer*, The Verge (Sept. 8, 2020), `https://www.theverge.com/2020/9/8/21427510/microsoft-xbox-series-x-november-10th-release-date`.

70. *See Epic Games, Inc. v. Apple Inc.*, 559 F. Supp. 3d 898, 995–1000 (N.D. Cal. 2021), *aff'd in part, rev'd in part*, 67 F.4th 946 (9th Cir. 2023) (discussing Steam's dominance in PC game distribution as market reality); Newzoo, *Global Games Market Report 2024* (2024) (documenting PC digital distribution platform shares).

71. 42 U.S.C. §12181(7)(C) ("a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment"). The doctrinal consequence does not depend on the market share: whatever the proportion, the exhibition function is the one the subsection names, and the entities performing it now perform it without premises. *Compare Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200–02 (D. Mass. 2012), *with Cullen*, 600 F. App'x at 508.

In books, Kindle direct publishing and audiobook platforms have shifted a substantial portion of reading to digital formats.[72] Kindle-first and Kindle-only releases are standard practice. Audible operates as a near-monopoly in English-language audiobook distribution.

In software, subscription delivery through cloud services has replaced physical distribution.[73] Microsoft Office, Adobe Creative Cloud, Autodesk products, and most enterprise software require active subscriptions rather than perpetual licenses sold on physical media.

This migration is not incidental. It is the conscious strategic choice of manufacturers, distributors, and content producers.[74] The physical form of the product is being phased out as a business decision. The decisions have accelerated in the last five years and show no signs of reversal.

C. The Library and Information-Service Parallel

Public libraries have seen physical visit declines since approximately 2010, accelerating since 2020. American Library Association and Institute of Museum and Library Services survey data document the trend.[75] The 2024 State of America's Libraries Report documents continued declines in physical visits paired with substantial increases in digital circulation. Libraries are not closing in large numbers. Their function is migrating from physical visits to digital service

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72. 42 U.S.C. §12181(7)(H) ("a museum, library, gallery, or other place of public display or collection"); *see Nat'l Fed'n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565, 575–76 (D. Vt. 2015) (reaching a digital library within the subsection).

73. The software example is the cleanest of the five because the physical artifact is gone rather than diminished: there is no boxed copy to be inaccessible, and the entire transaction, purchase, license, delivery, update, and support, occurs through the vendor's digital service. Under the nexus doctrine in a nexus circuit, a vendor with no retail presence owes no Title III duty in respect of any of it. *See Weyer*, 198 F.3d at 1114–15.

74. The point matters doctrinally because it locates the decision. A retailer that closes a store because customers stopped coming has responded to demand. A manufacturer that discontinues the physical format while customers are still buying it has removed the option. Under the nexus doctrine the second decision extinguishes the civil rights of the disabled customers who depended on the physical channel, and it does so through a choice the covered entity made unilaterally. *Cf.* 42 U.S.C. §12101(a)(5) (identifying "outright intentional exclusion" and "the discriminatory effects of architectural, transportation, and communication barriers" among the forms of discrimination Congress addressed).

75. *See* Am. Library Ass'n, *The State of America's Libraries Report 2024* (2024); Inst. of Museum & Library Servs., *Public Libraries in the United States Survey: Fiscal Year 2021* (2023); Inst. of Museum & Library Servs., *Public Libraries Survey: Fiscal Year 2022* (2024); Am. Library Ass'n, *State of America's Libraries Report 2023* (2023) (documenting physical visit decline and digital circulation growth).

provision, with e-books, audiobook lending (often through the Libby platform), and digital reference services replacing in-person visits as the dominant mode of library use.

The academic library sector provides the clearest numerical record of the migration. The Association of College and Research Libraries' 2023 Annual Survey, published on the ALA's website in October 2024, documents that average physical circulation at reporting academic libraries decreased 51 percent between 2019 and 2023 while average digital circulation at the same libraries increased 153 percent over the same period.[76] A 51 percent decline in physical circulation against a 153 percent increase in digital circulation over four years is not incremental migration. It is the displacement of one service modality by another at a rate that decisively shifts the library's operational center of gravity.

The trend extends beyond libraries. Physical bookstores have declined.[77] Newspaper circulation has shifted almost entirely to digital. Reference services that once required in-person consultation, including travel agencies, insurance brokerages, and local legal services, have moved to digital and telephonic delivery.

The acceleration in the past three years correlates with AI adoption.[78] Services that once required human-mediated information retrieval (library reference desks, tutoring centers, basic legal consultation, initial medical triage) are increasingly provided by AI platforms. Each substitution removes a human worker from a physical workplace. When the human workers are

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76. *See* Sara S. Goek, Ass'n of Coll. & Rsch. Librs., *The State of U.S. Academic Libraries: Findings from the ACRL 2023 Annual Survey* 8 (2024), `https://www.ala.org/sites/default/files/2024-10/2023%20State%20of%20Academic%20Libraries%20Report.pdf` ("Average physical circulation in 2023 (9,977) has increased somewhat relative to the last two years, but it has decreased by 51% relative to 2019. While average digital circulation reported is lower in 2023 (610,575) than 2022 or 2021, it has increased 153% relative to 2019."). The figures are endpoint comparisons; the report notes a modest physical rebound after 2021 and a digital peak before 2023. The survey data reflects fiscal year 2023 operations at responding academic libraries.

77. Each of the entities named in this paragraph appears in the statute. 42 U.S.C. §12181(7)(F) ("travel service," "insurance office," "office of an accountant or lawyer"); *id.* §12181(7)(H) ("library"); *id.* §12181(7)(E) ("other sales or rental establishment," reaching the bookstore).

78. The dissolution is not incidental to the statute; it is happening to entities the statute names. Subsection (F) expressly lists "travel service," "insurance office," and the "office of an accountant or lawyer" as public accommodations. 42 U.S.C. §12181(7)(F). Subsection (H) expressly lists "library." *Id.* §12181(7)(H). Under the nexus doctrine, as each of these migrates to a digital form, the entity Congress named by name leaves the statute Congress wrote for it. The doctrine does not narrow the categories at the edges. It hollows them from the list inward.

removed, the workplaces housing them dissolve. When the workplaces dissolve, the Title III coverage tied to those workplaces dissolves with them.

The population affected by these dissolutions is not evenly distributed. Disabled people disproportionately relied on the physical information-service[79] infrastructure now in decline, and the reliance runs deepest for disabled people in rural communities, where accessible physical alternatives were already sparse, and for older adults, whose age-related loss of mobility, vision, and cognition frequently meets the statute's functional definition of disability regardless of any formal diagnosis. The migration to digital substitutes has been presented as an expansion of access. Where disabled users have reliable broadband, device literacy, and accessibility support, the migration sometimes delivers that expansion; where they lack those preconditions, it has been a net loss of service.

One thesis runs through this pattern and is worth stating directly: real people power physical locations.[80] The human labor that constituted physical commerce is being replaced by automation and by artificial intelligence. Physical workspaces follow labor. When labor is removed, the workspaces empty. When the workspaces empty, the civil rights protections that attached to them empty as well. The substitution of AI for human labor is therefore not just an economic change. It is a structural change in the footprint of covered entities under Title III.

The thesis has a specific implication for the nexus doctrine. A doctrine that treats physical presence as the threshold for coverage is a doctrine that treats the progressive replacement of human labor by automation as a progressive withdrawal of civil rights protection.[81] As call centers are replaced by AI chatbots, the physical call center vanishes, and with it the coverage

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79. Ctrs. for Disease Control & Prevention, *supra* note 191 (reporting an independent living disability, defined as difficulty doing errands alone, at 7.7 percent of United States adults, and a mobility disability at 12.2 percent); *see* 42 U.S.C. §12101(a)(2) (congressional finding that society "has tended to isolate and segregate individuals with disabilities").

80. The thesis is descriptive and the Article does not rest on it. What the doctrine does with it is the point: coverage keyed to physical presence contracts automatically as staffing contracts, without any decision by Congress and without any change in what the entity sells or to whom. *Cf.* 42 U.S.C. §12101(b)(2) ("clear, strong, consistent, enforceable standards").

81. Employment is Title I's subject. 42 U.S.C. §12112(a). A Title III coverage rule that rises and falls with staffing decisions makes Title III's reach a function of Title I's subject matter, which is not a relationship the statute creates.

that attached to it. As tutoring centers are replaced by AI tutoring services, the physical tutoring center vanishes, and with it the coverage that attached to it. As legal consultations migrate to online platforms, the physical law office's coverage remains for the firms that retain physical offices, but the emerging pure-digital legal service platforms escape the coverage the offices would have had. The pattern repeats across every category of the statute.

That outcome is the opposite of what the statute was written to achieve. Congress did not pass Title III to protect workplaces.[82] It passed Title III to protect disabled persons' access to the commerce, culture, and services of the nation. When the labor that constituted the commerce is removed, the commerce itself does not disappear. The disabled person's need for accessible commerce does not disappear. Only the physical architecture that historically housed the commerce disappears. A coverage doctrine keyed to the architecture rather than the commerce fails the statute when the architecture empties. That is the current state of affairs in 2026, and it will intensify as AI adoption accelerates.

IV. The Functional Equivalence Argument

A. Amazon Lockers as Compressed Physical Retail

A common assumption in nexus doctrine discourse is that Amazon represents the paradigm "pure-digital" retailer.[83] The assumption does not survive examination of Amazon's actual operations.

Amazon operates thousands of Amazon Locker installations across the United States. Each Locker is a physical facility, owned and operated by Amazon, where a member of the

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82. Employment is Title I's subject. 42 U.S.C. §12112(a). Title III's subject is "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." *Id.* §12182(a); *see also id.* §12101(b)(1) (purpose of providing "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"). A construction under which Title III coverage rises and falls with an entity's staffing decisions imports Title I's subject matter into Title III's text.

83. The assumption matters because it drives the outcome. If Amazon is pure-digital, *Weyer* and *Magee* exempt it. If Amazon operates facilities, *Robles* reaches its website. *Robles*, 913 F.3d at 905–06; *Weyer*, 198 F.3d at 1114–15. The coverage question for the largest retailer in the country turns on a factual premise the nexus cases have never tested.

public goes to complete a transaction with Amazon.[84] The transaction is order pickup, but pickup is itself a commercial transaction: the transfer of goods from seller to buyer, with authentication, receipt, and physical exchange. Amazon Lockers fit comfortably as sales or rental establishments under category (E) of the statute.

The Locker's unstaffed, automated nature does not exempt it. Automated teller machines are covered by Title III and regulated extensively under the 2010 ADA Standards for Accessible Design.[85] The standards specify ATM accessibility requirements in detail. Amazon Lockers share every structurally relevant feature with ATMs: physical object, owned by a commercial entity, placed in public space, unstaffed, requiring user interaction to complete a transaction. The distinction between dispensing cash (ATM) and dispensing packages (Locker) has no basis in the statute or the regulations.

If Amazon Lockers are places of public accommodation, and Amazon.com is the website through which customers use Amazon Lockers, the Robles analysis applies directly.[86] Amazon.com is a covered service under the nexus doctrine's own terms.

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84. 28 C.F.R. §36.104 (defining "[f]acility" to mean "all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located"). A Locker is equipment and it is personal property. On the regulation's own definition it is a facility, and the entity that owns and operates it is the entity that operates the website.

85. 28 C.F.R. pt. 36, app. A (Standards for Accessible Design), §§220, 707 (2010); *see also* U.S. Dep't of Justice, Civil Rights Div., *ADA Standards for Accessible Design* (2010); *Massachusetts v. E*Trade Access, Inc.*, 464 F. Supp. 2d 52 (D. Mass. 2006) (discussing ATMs as fixtures covered by Title III and ADAAG); Settlement Agreement Between the United States and Wells Fargo & Co. (May 31, 2011), `https://archive.ada.gov/wells_fargo` (comprehensive Title III settlement requiring, among other measures, that Wells Fargo's ATMs and websites be accessible to individuals with disabilities).

86. *Robles*, 913 F.3d at 905–06 (holding that "the ADA applies to Domino's website and app, which connect customers to the goods and services of Domino's physical restaurants," and quoting *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006), for the proposition that "[t]he statute applies to the services *of* a place of public accommodation, not services *in* a place of public accommodation. To limit the ADA to discrimination in the provision of services occurring on the premises of a public accommodation would contradict the plain language of the statute." (quoting *Nat'l Fed'n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006)))). The circuit that decided *Weyer* adopted the proposition that confining Title III to on-premises services would contradict the statute's plain language. The structural difference cuts in the plaintiff's favor here: Domino's franchises are operated by franchisees, while Amazon owns and operates the Lockers and the website alike. *Cf. Magee*, 833 F.3d at 535 (denying coverage where the defendant "does not own, lease (or lease to), or operate a place of public accommodation").

Amazon's physical infrastructure extends beyond Lockers. Whole Foods Market, which Amazon owns, operates groximately 500 physical stores. Amazon Fresh operates additional grocery locations. Amazon Go and Amazon Go Grocery represent earlier experimental formats. Amazon Pharmacy operates physical fulfillment infrastructure. Amazon Books operated a retail chain that closed in 2022. Amazon Style operated briefly. Kindle devices and Echo devices are sold through physical retail partners and Amazon Lockers. The notion of Amazon as a pure-digital company has not been accurate for over a decade.

The practical consequence: Amazon was never in the pure-digital hole.[87] Title III coverage for Amazon.com was available under nexus doctrine the entire time through Whole Foods, Lockers, Fresh, and multiple other physical nexus hooks. The doctrinal analysis has been done incorrectly when plaintiffs and defense counsel treated Amazon as a pure-digital company. Amazon is a covered entity under the nexus doctrine's own terms, and Title III obligations apply to its website in all circuits.

B. Possession Transfer Is Part of the Sale

The Amazon Locker analysis can be pressed further through commercial law's own treatment of what a sale is. Under the Uniform Commercial Code, the seller's basic obligation is "to transfer and deliver," and the buyer's obligation is to accept and pay.[88] Delivery is not an afterthought to the transaction. It is half of the seller's core legal performance. Tender of delivery requires the seller to put conforming goods at the buyer's disposition and to give whatever notice is reasonably necessary so the buyer can take delivery, with the goods remaining available long enough for the buyer to take possession.[89] If the seller fails to deliver, the buyer can cancel

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87. *Robles*, 913 F.3d at 905–06; *cf. Magee*, 833 F.3d at 535 (denying coverage where the defendant "does not own, lease (or lease to), or operate a place of public accommodation," a limitation that does not describe Amazon).

88. U.C.C. §2-301 (Am. L. Inst. & Unif. L. Comm'n 1977) ("The obligation of the seller is to transfer and deliver and that of the buyer is to accept and pay in accordance with the contract."). Every state has enacted Article 2 in some form. *See, e.g.*, Cal. Com. Code §2301; N.Y. U.C.C. §2-301; Tex. Bus. & Com. Code §2.301.

89. U.C.C. §2-503(1).

the contract, recover the price already paid, cover by purchasing substitute goods, or recover damages for non-delivery.[90]

The legal architecture of a sale therefore extends through possession transfer. A doctrine that protects disabled customers while they browse and pay but treats the physical possession transfer as outside the protected transaction would create a result commercial law itself rejects. Title III's text requires "full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations" of a public accommodation.[91] A customer who has paid for goods but cannot access the locker, pickup counter, curbside lane, or delivery threshold at which possession is transferred has not enjoyed the goods on full and equal terms. The transaction was not equally completed.

This is the doctrinal weight behind the Amazon Locker analysis. The Locker is not a vague physical endpoint.[92] It is the possession transfer point of Amazon's own transaction architecture. Amazon controls the checkout option that routes the order to the Locker, the delivery routing, the pickup code, the compartment access process, the return and refund logic, and the customer instructions. The Locker is integrated into Amazon's own sale, not severed from it. The same analysis reaches curbside pickup at any retailer, in-store pickup vestibules, mail delivery to the customer's threshold, and the entire chain of possession transfer endpoints through which modern commerce completes its sales. Each is part of the seller's legal performance under commercial law, and each is therefore part of the access protected under Title III.

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90. U.C.C. §§2-711, 2-712, 2-713.

91. 42 U.S.C. §12182(a).

92. 28 C.F.R. §36.104 (defining "[f]acility" to include "equipment . . . or other real or personal property, including the site where the building, property, structure, or equipment is located"). The Locker is equipment sited on real property, which is two of the regulation's own categories at once.

C. Restricted-Value Lock-In

A parallel commercial mechanism deserves treatment because it produces a different but related form of disability-selective exclusion.[93] Platform gift cards and store credits convert general-purpose money into restricted-use value that can be redeemed only through the issuing platform's commercial architecture. The Amazon gift card, the Apple gift card, the Google Play balance, the Steam wallet, the eBay credit, the Roblox currency, the Starbucks card, and similar instruments are mechanisms by which the consumer's spending power is converted from cash, which is universally redeemable, to platform-specific value, which is redeemable only through the platform.

The consequence for accessibility analysis is significant. A disabled consumer who has received an Amazon gift card as[94] a present, who has converted a tax refund to a Walmart card to take advantage of a promotional bonus, who has accumulated platform credit through customer service refunds, or who has been paid an employee bonus through a platform-restricted instrument is locked into the platform's transaction environment for the value of that instrument. If the platform's interface is inaccessible to the consumer's disability, the consumer cannot redirect the value to an accessible alternative. Cash would have been spendable at any competitor. Platform-restricted value is spendable only at the platform whose accessibility failures it cannot escape.

The legal-realism parallel is well established. Federal labor law prohibits payment of wages in scrip, tokens, coupons, or similar restricted instruments precisely because of the

93. 28 C.F.R. §36.301(c) ("A public accommodation may not impose a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part."). The regulation is current as of the eCFR text of July 6, 2026.

94. 28 C.F.R. §36.301(c) (barring a surcharge "to cover the costs of measures, such as the provision of auxiliary aids, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, or procedures, that are required to provide that individual or group with the nondiscriminatory treatment required by the Act or this part").

captive-consumer harm such instruments produce.[95] Wage payment in scrip is prohibited because the worker becomes a captive consumer of the employer's commercial environment. The platform gift card is the consumer-facing analog. The disabled consumer who has accepted platform value is a captive consumer of the platform's commercial environment, and an inaccessible platform interface produces consumer captivity to inaccessible commerce.

This is not a tangential point. It is a doctrinal sharpening of the underlying disparate-impact analysis.[96] The nexus doctrine permits platforms to argue that inaccessibility is a problem the disabled consumer can solve by shopping elsewhere. Restricted-value lock-in answers that defense: the consumer who has received platform-specific value cannot meaningfully shop elsewhere with that value. The platform's marketing has captured the consumer's spending power before the platform's accessibility problems become apparent, and the lock-in instrument prevents the redirection that the defense bar suggests is always available. Title III's text requires "full and equal enjoyment" of the platform's services. A disabled consumer who is locked into the platform by restricted value and locked out by inaccessibility has neither full nor equal enjoyment.

D. The Walmart-Shrinks-to-Kiosk Thought Experiment

The functional equivalence of Amazon Lockers to traditional sales establishments is easier to see through a parallel thought experiment involving Walmart.[97] Walmart operates traditional

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95. 29 C.F.R. §531.34 ("Scrip, tokens, credit cards, 'dope checks,' coupons, and similar devices are not proper mediums of payment under the Act. They are neither cash nor 'other facilities' within the meaning of section 3(m)."). The regulation is titled "Payment in scrip or similar medium not authorized" and is current as of the eCFR text of July 6, 2026. Two of its further provisions sharpen the analogy: the employer "may not credit himself with 'unused scrip' or 'coupons outstanding' on the pay day in determining whether he has met the requirements of the Act," and "the employee cannot be charged with the loss or destruction of scrip or tokens." *Id.* Note that "credit cards" appears in the enumeration alongside scrip and coupons, which is the closest federal analogue to the restricted-value instrument at issue here; *see* 29 U.S.C. §203(m); *Marshall v. Sundial Assocs., Ltd.*, 588 F.2d 120, 122–23 (5th Cir. 1979) (discussing scrip prohibition's anti-coercion purpose). The historical concern was the company-store arrangement under which workers' wages could be redeemed only at the employer-controlled store, producing wage-recapture and consumer-captivity harms.

96. 42 U.S.C. §12182(b)(2)(A)(i) (barring "eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities"); 28 C.F.R. §36.301(a) (same).

97. 42 U.S.C. §12181(7)(E). The hypothetical holds the statutory category, the goods, and the customers fixed and varies only the square footage, which isolates the criterion the doctrine is actually applying.

retail stores across the United States. Each Walmart is unambiguously a place of public accommodation under category (E). Walmart.com is, under Robles, covered by Title III because it is the website through which customers use Walmart stores.

Suppose competitive pressure or strategic reorganization led Walmart to close its traditional retail floor space in favor of compressed fulfillment formats.[98] The traditional Walmart store, occupying tens of thousands of square feet with staffed checkout aisles and public floor space, is replaced by automated pickup kiosks and Locker installations in the same physical spaces. The kiosks are operated twenty-four hours a day, unstaffed, and connected to Walmart.com for ordering and fulfillment. The same goods are available. The same customers are served. The same commercial relationship persists. The only change is that the floor space has shrunk.

Under Magee's reasoning, the kiosks are not places of public accommodation. They are vending machines. They do not resemble the enumerated examples of category (E) (bakery, grocery store, clothing store, hardware store, shopping center).[99] The nexus that previously attached to Walmart.com through the physical stores would evaporate when the stores shrank below some unstated threshold. The same Walmart, selling the same goods, to the same customers, would lose Title III coverage by virtue of reducing its physical footprint.

The thought experiment reveals a feature of the nexus doctrine that is not usually stated explicitly: the doctrine operates as a size threshold on physical presence[100]. Coverage requires

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98. Nothing in 42 U.S.C. §12181(7)(E) conditions "sales or rental establishment" on floor area, staffing, or the presence of a public interior. The condition enters through *Magee*'s supplied genus of "retailers occupying physical stores" and through the dictionary definitions the panel selected, one of which requires a "sizable" place of business. *Magee*, 833 F.3d at 534.

99. *Magee*, 833 F.3d at 534 ("[a]lthough the term 'establishment' could possibly be read expansively to include a vending machine, a vending machine is not akin to any of the listed examples"). The court's stated genus was "retailers occupying physical stores." *Id.* A Walmart kiosk is a retailer that has stopped occupying a physical store, which places it outside the genus without any change in what it sells or to whom.

100. The size threshold is not an inference from the opinion. It is in the dictionary the opinion selected. The *Magee* court quoted Webster's Third New International Dictionary defining "establishment" as "a sizable place of business or residence together with all the things that are an essential part of it (as grounds, furniture, fixtures, retinue, employees)." *Magee*, 833 F.3d at 534. The court canvassed six dictionaries in all, including Merriam-Webster's Collegiate, American Heritage, the New Shorter Oxford, Webster's Encyclopedic Unabridged, and Black's Law Dictionary, each defining "establishment" by reference to a place or premises. *Id.* at 534–35. Congress did not enact a size requirement, and no court has ever said what square footage satisfies it.

a physical place that is large enough to qualify as a "store" in the Magee panel's view, but not so small that it qualifies only as a "machine." Nowhere in the statute is this threshold specified. Nowhere in the case law has a court articulated where the threshold falls. The doctrine collapses into an assessment about whether a court thinks something looks enough like a traditional retail establishment to count.

The size-threshold critique matters because the thought experiment is not hypothetical.[101] It describes the direction the market is already moving. Amazon Go stores occupy a few thousand square feet and operate without human cashiers. Amazon Fresh has experimented with smaller formats. AI-powered autonomous retail boxes, often branded through Aifi-powered installations or standalone brands, are appearing in parking lots, airports, and transit stations. Automated pharmacies dispense medications without human pharmacists for routine refills. Vending machines have expanded into electronics (Best Buy Express formerly operated airport installations, Amazon electronics vending), apparel (fashion-vending in urban markets), and pharmaceuticals (medication dispensers in hospitals and long-term care facilities). Each is a real business operating in 2026. Under Magee and the broader nexus doctrine, each is at risk of exemption from Title III in the Fifth Circuit and increasingly in other nexus circuits.

The Magee holding contains a doctrinal nuance the analysis above has elided and that deserves separate treatment, because it produces a distinguishing argument for Amazon Lockers and similar possession transfer endpoints. The Fifth Circuit's holding was that Coca-Cola was not the liable defendant, because Coca-Cola did not own or operate the hospital or bus station where the vending machines were located. The district court in *Magee* acknowledged that vending machines located in public accommodations "must comply with the ADA" so that patrons with disabilities are not discriminated against, but held that the operator of the

101. Nothing in 42 U.S.C. §12181(7)(E) states a size requirement. The requirement enters through the dictionary the *Magee* panel selected, which defines "establishment" as "a sizable place of business." *Magee*, 833 F.3d at 534 (quoting Webster's Third New International Dictionary). No court has said what size satisfies it.

surrounding accommodation, not the vending machine vendor, was the responsible party.[102] The doctrinal point in *Magee* was therefore not that vending machines fall entirely outside Title III. It was that the operator of the surrounding accommodation, not the machine vendor, was the proper defendant.

That distinction creates a clean argument for treating Amazon Lockers differently.[103] Coca-Cola's vending machines were severed from Coca-Cola's broader public-facing transaction architecture; they sat inside someone else's place of public accommodation, selling something to that other place's patrons. Amazon Lockers are not severed. They are the physical possession transfer endpoint of Amazon's own online transaction architecture. Amazon controls the checkout option through which the order is routed to the Locker, the delivery routing, the pickup code, the compartment access process, the return logic, and the customer instructions. The Locker is integrated into Amazon's own commercial system in a way that Coca-Cola vending machines were not integrated into Coca-Cola's. The Locker is doctrinally distinguishable from *Magee*, even on *Magee*'s own terms. A plaintiff suing Amazon for inaccessibility of the Amazon Locker possession transfer system is suing the operator of the integrated commercial chain, not the vendor of equipment placed inside someone else's premises. The *Magee* reasoning, taken at its narrowest, does not reach this case.

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102. *Magee v. Coca-Cola Refreshments USA, Inc.*, 143 F. Supp. 3d 464, 467 (E.D. La. 2015), *aff'd*, 833 F.3d 530 (5th Cir. 2016); *see also* Brief for the United States as Amicus Curiae, *Magee v. Coca-Cola Refreshments USA, Inc.*, No. 16-668 (U.S. 2017) (advising that the operator of the public accommodation in which a vending machine is located is better suited to determine how to provide accessible service, and recommending denial of certiorari), *discussed in Justice Department Says Vending Machines Are Not Places of Public Accommodation*, ADA Title III (Seyfarth Shaw) (July 2017), `https://www.adatitleiii.com/2017/07/justice-department-says-vending-machines-are-not-places-of-public-accommodation-and-so-much-more/`.

103. The distinction is the *Magee* court's own. It reasoned that "rather than falling within any of those broad categories of entities, vending machines are essentially always found inside those entities along with the other goods and services that they provide," *Magee*, 833 F.3d at 534, and it closed by "acknowledg[ing] the limits of our holding," noting the machines "may very well be subject to various requirements under the ADA by virtue of their being located in a hospital or a bus station, both of which are indisputably places of public accommodation," and that the plaintiff "sued only Coca-Cola, an entity that does not own, lease (or lease to), or operate a place of public accommodation." *Id.* at 535. Amazon owns, operates, and controls both the locker and the transaction architecture it terminates. On *Magee*'s own limiting principle, the locker is not the *Magee* machine.

The category of automated physical commerce is growing rapidly.[104] It is growing precisely because automation reduces labor costs, improves throughput, and permits service in areas that could not support traditional retail staffing. The automation trend converges with the digital-service trend on a single conclusion: traditional retail is being replaced by a mixture of digital interfaces and automated physical endpoints, and the nexus doctrine fails at both ends of the replacement. Pure digital services escape coverage because they lack physical presence. Automated physical commerce escapes coverage because it does not look enough like a traditional store. Between these two categories, substantial and growing portions of consumer commerce fall outside Title III.

The underlying doctrinal problem is that coverage has been tied to an architectural concept ("place") while commerce has migrated to functional concepts (service delivery, transaction completion, information exchange).[105] The functional public accommodation test proposed in Part XII resolves this divergence by aligning coverage with function rather than architecture.

E. The Dispatch Doctrine

Robles held that Domino's Pizza's website was covered by Title III because the website connected customers to Domino's physical stores, including pickup and delivery operations.[106] The decision extended naturally to delivery: a driver bringing a pizza into a customer's home is a mobile extension of the physical store that took the order. The customer's home does not thereby become a place of public accommodation. The dispatch and delivery operation remains an extension of the physical store's operations.

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104. 28 C.F.R. §36.104 ("[f]acility" includes "equipment"). Automation moves the transaction from staff to equipment, and the regulation counts equipment as a facility, so the regulation follows the commerce even where the doctrine does not.

105. 42 U.S.C. §12182(a) fixes the protected interest as "the goods, services, facilities, privileges, advantages, or accommodations" of a covered entity, an enumeration in which every noun names something provided rather than something built. *See also id.* §12101(a)(5) (identifying "the discriminatory effects of architectural, transportation, and communication barriers" as a form of the discrimination the statute addresses, rather than as a condition of its application).

106. *Robles*, 913 F.3d at 905–06.

The same analysis reaches many services that might superficially appear to lack physical nexus:

Ride-share and ride-hailing. Both companies dispatch drivers who interact with customers in vehicles and at pickup and dropoff locations. The apps are the mechanism by which customers access the dispatch service. Courts have generally allowed Title III claims to proceed against Uber for both app accessibility and driver conduct, treating the platform plus driver plus vehicle as a covered transportation service.[107]

DoorDash, Uber Eats, Grubhub. Food delivery platforms dispatch couriers who pick up orders from restaurants and deliver to customers. The platform, the courier, and the originating restaurant together constitute a chain of covered operations. The restaurant is unambiguously covered under category (B). The delivery operation is an extension of the restaurant's category (B) coverage through the dispatch platform.

Instacart. Personal shoppers dispatched to grocery stores complete orders placed through the Instacart app. The grocery store is covered under category (E). The shopper is a dispatched agent. The platform is the customer's interface to the dispatched agent. All three are linked under Robles.

TaskRabbit, Handy, Thumbtack, Angi. Service dispatch platforms that send workers to customers' homes and businesses. Each dispatch is an extension of the service business's operations, reached through the platform's app.

In-home healthcare services. Dispatched nurses, therapists, and aides are extensions of the healthcare service entity, which is unambiguously covered under category (F).

In-home repair services. Plumbing, electrical, appliance repair, and similar services dispatched through platforms or directly are extensions of the service business.

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107. *See, e.g.*, *Nat'l Fed'n of the Blind v. Uber Techs., Inc.*, No. 14-cv-4086 (N.D. Cal. 2016) (settlement agreement regarding service animal accommodations); *Equal Rights Ctr. v. Uber Techs., Inc.*, No. 1:17-cv-01272 (D.D.C. 2017) (wheelchair accessibility class action); *Crawford v. Uber Techs., Inc.*, No. 3:17-cv-02664 (N.D. Cal. 2018) (accessibility claims proceeding to merits); U.S. Dep't of Justice, *Settlement Agreement Between the United States of America and Uber Technologies, Inc.* (2022) (resolving service animal discrimination claims).

In each case, the physical component is the dispatched agent, who carries the business's service into the customer's space.[108] The customer's home is not the place of public accommodation. The dispatch infrastructure and the service agent, collectively, are the covered entity's presence. The website or app is the customer's interface to that presence. Robles applies.

The industry-neutral character of the dispatch doctrine deserves explicit statement.[109] Title III of the ADA does not condition coverage on the moral valence of the commercial activity the covered entity performs. The statute reaches commercial sex services where such services are legal under state law (the licensed brothels of certain Nevada counties, escort services operating under state regulatory regimes that license them) on the same terms it reaches any other dispatched service. A brothel operating in a permissive jurisdiction that refuses to serve a blind customer accompanied by a service animal has committed a Title III violation, because the brothel is a category (F) service establishment whose obligations under the statute do not bend to social disapproval of the services provided. An escort service platform that dispatches workers to customers operates on the same dispatch-doctrine analysis as DoorDash, TaskRabbit, or any other platform: the dispatch infrastructure plus the agent plus the app together constitute the covered operation. The statute's text speaks to service establishments generally, without moral qualification. The analysis this Article advances cannot be selectively applied to industries the analyst finds respectable. Courts applying the dispatch doctrine have not carved out moral-disapproval exceptions, and the doctrine's coherence depends on the absence of such exceptions.

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108. 42 U.S.C. §12181(7)(F) (reaching a "service establishment"); *Robles*, 913 F.3d at 905–06. The customer's home is not the covered entity; the dispatching business is.

109. Congress made the point in the enumeration itself. Subsection (B) covers "a restaurant, bar, or other establishment serving food or drink," and subsection (F) covers a "funeral parlor" alongside a "pharmacy" and a "bank." 42 U.S.C. §12181(7)(B), (F). The statute reaches the bar and the funeral parlor on the same terms as the pharmacy. Coverage turns on function, not on the dignity of the function.

F. Modality of Physical Transaction Is Irrelevant: Best Buy Geek Squad and Amazon Warranty Compared

A subsidiary argument within the functional-equivalence analysis deserves separate treatment because it illustrates how readily the doctrine reaches commercial arrangements that might superficially appear to escape it.[110] Best Buy operates the Geek Squad service through its physical retail stores. A customer who purchases a product from Best Buy and encounters a defect can bring the product to a Geek Squad counter at a Best Buy store, where a technician evaluates the product and either repairs it or processes a warranty replacement. The physical place of public accommodation (the Best Buy store) is the site at which the commercial service transaction is completed.

Amazon operates a warranty and replacement program that handles the same commercial function through a different modality.[111] A customer who purchases a product from Amazon and encounters a defect initiates a warranty claim through Amazon.com, returns the defective product by mail or through an Amazon Locker drop-off, and receives a replacement product through mail delivery or Locker pickup. The commercial transaction is the same: defect reported, product returned, replacement provided. The Best Buy version involves the customer traveling to a physical counter. The Amazon version involves mail transit and, in the Locker path, a physical drop-off and pickup at an Amazon-operated facility.

The commercial function is identical.[112] The modality through which the function is completed differs. Best Buy's service is unambiguously covered under Title III because Best Buy operates physical stores. Amazon's service is equally covered because Amazon Lockers

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110. 42 U.S.C. §12181(7)(F) (naming "shoe repair service" among service establishments); *id.* §12182(a) (protecting "the goods, services, facilities, privileges, advantages, or accommodations" of a covered entity).

111. 28 C.F.R. §36.104 (defining "[f]acility" to include "equipment" and "other real or personal property"). The modality difference is a difference in the facility used, and the regulation treats equipment and personal property as facilities on the same terms as buildings.

112. And the function is one the statute names. Subsection (F) lists "shoe repair service" among service establishments. 42 U.S.C. §12181(7)(F). A repair service is covered by name, and neither the subsection nor §12182(a) conditions that coverage on where the repair is performed or how the item reaches the repairer. *See id.* §12182(a) (protecting "the goods, services, facilities, privileges, advantages, or accommodations" of the entity).

(addressed in Part III.1) are themselves places of public accommodation and because the mail-transit component is a dispatch function (the shipping carrier acts as dispatched agent for Amazon's commercial operations). The analytical move that a defendant might attempt, arguing that mail-based warranty processes lack the physical nexus that an in-store counter provides, fails on both dispatch doctrine and compressed-retail grounds. Amazon's warranty operation is not less covered than Best Buy's Geek Squad. It is covered through a slightly different analytical path that reaches the same result.

The illustration matters because it forecloses a particular evasion strategy.[113] A defendant facing a Title III coverage challenge cannot argue that service modality (in-person versus mail-based versus locker-based) affects the coverage analysis. The statute reaches the commercial function regardless of the modality through which the function is delivered. Best Buy and Amazon differ in how they deliver warranty service. They do not differ in whether their warranty service is subject to Title III's accessibility requirements.

G. The Narrowed Pure-Digital Category

After applying functional-equivalence and dispatch analysis, the category of services that genuinely lack any physical nexus is substantially smaller than often assumed.[114] The following services have physical nexus in at least one form:

- Amazon (Lockers, Whole Foods, Fresh, Pharmacy, previously Go and Books).
- Walmart, Target, Best Buy, Home Depot, Lowe's, Costco, and other major retailers with any physical store presence.
- Apple (retail stores).

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113. 42 U.S.C. §12181(7)(F) (naming "shoe repair service"); *id.* §12182(a). Neither provision conditions coverage on where the service is performed or how the item reaches the servicer.

114. The narrowing matters to the reform's stakes. If the nexus doctrine exempted only a marginal set of entities, its incoherence would be an academic problem. The set that survives the analysis is small in number and large in consequence, and it is the segment of the economy on which the populations enumerated in Part VIII depend most completely. *See* 42 U.S.C. §12101(b)(4) (purpose of invoking the commerce power "to address the major areas of discrimination faced day-to-day by people with disabilities").

- Microsoft (Fifth Avenue Manhattan Experience Center and Redmond Visitor Center, plus prior retail history).
- Google (seven permanent Google Stores as of 2026 as documented in Part XI).
- Meta (multiple permanent Meta Lab retail locations as documented in Part XI).
- Anthropic (Project Vend physical commercial endpoints in three cities operated by Claude as commercial agent).
- Uber, Lyft, DoorDash, Instacart, TaskRabbit, and similar dispatch platforms.
- Domino's, any restaurant chain with physical locations.
- Telehealth services when providers are dispatched to homes or when the platform is operated by a provider with physical offices.
- Peloton (sells physical hardware through retail and direct-to-consumer channels).
- Most fitness apps affiliated with gym chains.

Services that genuinely lack physical consumer endpoints under the dispatch and functional-equivalence analysis are narrower:

- Pure streaming platforms: Netflix (with caveats discussed in Part V), Disney+, HBO Max, Apple TV+, Paramount+, Peacock for their streaming operations only.
- Audio streaming: Spotify for its streaming service, Apple Music, Amazon Music (though Amazon Music's parent has physical nexus).
- Pure-digital game distribution: Steam (Valve), Epic Games Store, GOG.
- Pure SaaS: Notion, Figma, Slack, Dropbox, Zoom (coverage contested and case-specific).
- Pure consumer AI: OpenAI's ChatGPT, Anthropic's Claude, Google's consumer Gemini, Mistral, Perplexity, and similar services without physical hardware lines.

- Digital-first publishing: Kindle Direct, Audible when analyzed alone.
- Pure-app fitness without hardware: Apple Fitness+, Nike Training Club in app form, Fitbit Premium as service.

This is the actual set of entities that escape Title III coverage under the nexus doctrine in nexus circuits.[115] It is narrower than "all of digital commerce" but it is the fastest-growing segment of the consumer economy and contains the most consequential emerging technology. Consumer AI sits at the bottom of the pure-digital category and is the domain where the doctrinal gap produces the largest real-world harms.

V. The Self-Refuting Doctrine: Defendants' Own Marketing

Every pure-digital service that currently benefits from the nexus doctrine has built its brand on the premise that it [116]substitutes for the physical place of public accommodation it replaces. This is not incidental marketing. It is the central value proposition the services present to consumers to induce adoption. The pattern is consistent enough that defendants' own marketing supplies the evidentiary record for the functional equivalence the doctrine denies.

Two illustrative examples carry the point. Amazon's founding tagline, used from 1995 through 1998, was "Earth's Biggest Bookstore."[117] The tagline expressly compared Amazon to physical bookstores and announced Amazon's intention to exceed them in selection. Subsequent marketing extended the substitution framing to electronics, household goods, groceries, and prescription medications. Bezos's 1998 shareholder letter announced the ambition directly:

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115. *See Cullen*, 600 F. App'x at 508 (mem.); *Earll v. eBay, Inc.*, 599 F. App'x 695, 696 (9th Cir. 2015) (mem.); *Weyer*, 198 F.3d at 1114–15. Whether the set is stable is a separate question: an exempt entity acquires obligations the moment it opens a storefront, and loses them again if it closes one. Coverage that toggles on a real-estate decision is not the "clear, strong, consistent" standard Congress said it was enacting. 42 U.S.C. §12101(b)(2).

116. The evidentiary move is a party admission, not an inference. *See* Fed. R. Evid. 801(d)(2). A defendant's own marketing that it replaces the physical establishment is a statement offered against that party.

117. *See* Logomak, *From A to Z: The Evolving Narrative of Amazon's Logo* (Sept. 28, 2023) (documenting 1995 launch of tagline); Hook Agency, *What the Amazon's Slogan Really Means* (Jan. 13, 2026) (quoting original tagline and explaining transition to "Everything from A-Z" framing); Brad Stone, *The Everything Store: Jeff Bezos and the Age of Amazon* (2013).

"We intend to build the world's most customer-centric company."[118] By the following year the formulation had hardened into the business strategy section of the company's securities filings: Amazon "seeks to be the world's most customer-centric company where customers can find and discover anything they may want to buy online."[119] The phrase "anything they may want to buy" is a deliberate reach beyond books into the full domain of category (E) sales establishments. Peloton's corporate description of its founding mission, published on the company's website, is to "bring the community and excitement of boutique fitness into the home."[120] The S-1 registration statement (2019) identified Peloton's competitive positioning against gym chains and boutique fitness studios, placing the company squarely within category (L) places of exercise by its own competitive self-description.[121] Equivalent marketing language is available for Netflix, Uber, DoorDash, Instacart, telehealth platforms (Teladoc, BetterHelp, Talkspace), and the consumer AI providers; an appendix would catalog the verbatim copy at length.

The doctrinal consequence is that a defendant whose marketing positions its service as a substitute for a physical place of public accommodation has conceded, in its own advertising, that the service performs the function of a place of public accommodation. The concession cannot simply be withdrawn in litigation. The displacement has additional doctrinal weight beyond the estoppel point. The more completely a digital retailer replaces the protected physical alternative, the more difficult the retailer's position becomes in arguing that no protected place exists. Amazon did not merely compete with bookstores; it substituted itself for bookstore access for millions of consumers, including disabled readers who cannot physically travel, while the nexus doctrine permitted the replacement entity to argue that the public accommodation duties historically attached to bookstore access no longer apply. The doctrine, applied to digital displacement of protected retail, treats market migration as if it canceled civil rights coverage.

118. Letter from Jeff Bezos to Shareholders (1998), *reprinted in* Amazon.com, Inc., 1998 Annual Report, `https://s2.q4cdn.com/299287126/files/doc_financials/annual/Shareholderletter98.pdf` (last visited July 31, 2026).

119. Amazon.com, Inc., Annual Report (Form 10-K) (Mar. 29, 2000) (business strategy section, reporting for fiscal year 1999).

120. Peloton Interactive, Inc., *About Us*, `https://www.onepeloton.com/company` (last visited July 31, 2026).

121. Peloton Interactive, Inc., *S-1 Registration Statement* 31–35 (2019).

Estoppel principles in analogous areas of law preclude a defendant from asserting one position in the market and contradicting that position in court.[122] The evidentiary burden properly falls on defendants to disavow their own marketing if they wish to argue that their services do not substitute for physical places of public accommodation. The disavowal is difficult: a defendant cannot coherently maintain both that its marketing accurately describes what the service does and that the service does not perform the function the marketing describes. The defendant must either retract the marketing (which has commercial consequences) or accept the doctrinal consequence (coverage under Title III).

The evidentiary approach also extends to proportionality analysis.[123] A company positioning itself as the replacement for a gym chain has, by that positioning, established that it operates at the scale of a gym chain. The readily achievable and undue burden standards that scale Title III obligations apply against the defendant's actual commercial scale, which its own marketing has established. The marketing evidence supplies both the coverage predicate and the proportionality baseline.

VI. The Cultural Monopoly Argument

In 2015, when the Ninth Circuit decided *Cullen v. Netflix*, Netflix was primarily a distributor of content produced by other entities. The court treated Netflix as a pipeline for content with physical exhibition venues elsewhere. Netflix had begun producing original content two years

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122. *See* RESTATEMENT (SECOND) OF TORTS §§525, 530 (Am. L. Inst. 1977); *New Hampshire v. Maine*, 532 U.S. 742, 750–51 (2001) (setting out the factors informing judicial estoppel, among them that "a party's later position must be 'clearly inconsistent' with its earlier position" and that courts inquire whether the party "succeeded in persuading a court to accept" the earlier one). *New Hampshire* is offered by analogy and not as controlling: the doctrine it states addresses positions taken in judicial proceedings, and the marketing representations described here were not. The estoppel-flavored consequence urged in text rests on the misrepresentation and deception authorities cited alongside it, which do reach extrajudicial statements; FTC, *Policy Statement on Deception* (1983). Judicial notice of marketing materials is a familiar device in consumer protection and unfair competition litigation. Fed. R. Evid. 201; *Gerritsen v. Warner Bros. Ent. Inc.*, 112 F. Supp. 3d 1011, 1028–32 (C.D. Cal. 2015) (collecting cases on judicial notice of a party's public statements for the fact of their publication rather than their truth). The fact of publication is the operative fact here; the argument in the text requires only that the representations were publicly made, not that they were true.

123. 42 U.S.C. §12181(9)(B)–(C) (making the resources of the facility and of the covered entity express factors in what is readily achievable).

earlier; *House of Cards* premiered in February 2013 and *Orange Is the New Black* followed in July 2013.[124] The *Cullen* panel decided the case without addressing the studio transformation already underway.

In the decade since, the transformation has been substantially completed. Netflix Originals now include feature films nominated for and winning Academy Awards (*Roma*, *The Irishman*, *Ma Rainey's Black Bottom*) and major television productions (*The Crown*, *Stranger Things*, *Squid Game*, *Beef*).[125] For many of these works Netflix is the sole place of exhibition. There is no theatrical window of meaningful size, no broadcast release, no physical media release for a substantial portion of the catalog. The work exists, for the consuming public, only on Netflix.

Category (C) covers "motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment." A motion picture house is a place where motion pictures are exhibited.[126] Netflix exhibits motion pictures. Netflix has no other place where those motion pictures are exhibited. Read without the physical-place gloss, Netflix is a place of exhibition under category (C). *Cullen* was an unpublished memorandum disposition, nonprecedential under the Ninth Circuit's own rules, and it was decided on a factual record that no longer describes Netflix; even a published ruling would not be protected from factual supersession of this completeness. The same analysis reaches Disney+ (Disney direct-to-streaming releases), Max (originals produced for the platform), Apple TV+ (originals including *CODA*, the first Best Picture winner from a streaming service), Amazon Prime Video, Peacock, Hulu, Paramount+, and Spotify for podcast exclusives.

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124. *House of Cards: Chapter 1* (Netflix Feb. 1, 2013); *Orange Is the New Black: I Wasn't Ready* (Netflix July 11, 2013). *See* David Carr, *Barely Keeping Up in TV's New Golden Age*, N.Y. Times (Mar. 9, 2014), `https://www.nytimes.com/2014/03/10/business/media/fenced-in-by-televisions-excess-of-excellence.html`.

125. *See* Acad. of Motion Picture Arts & Scis., *91st Academy Awards Nominations* (2019); *92nd Academy Awards Nominations* (2020); *93rd Academy Awards Nominations* (2021).

126. 42 U.S.C. §12181(7)(C). Subsection (C) is one of the seven that closes on a "place" clause, which makes it the hardest category for this Article's argument and the right place to make it. *Compare Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200–02 (D. Mass. 2012), *with Cullen*, 600 F. App'x at 508.

The Twenty-First Century Communications and Video Accessibility Act of 2010 (CVAA) imposes captioning obligations on internet-delivered video programming that was previously published or exhibited on television, but carves out content produced originally for streaming.[127] The carveout produces a regulatory gap. A deaf viewer watching a Netflix-produced original has no federal captioning claim under CVAA. Whether the viewer has a Title III claim depends on circuit: in nexus circuits, the streaming service is held outside Title III's reach for want of physical tether. The two regulatory regimes interact to produce a coverage void precisely where the affected population's need is most acute. Netflix Originals sit in both gaps simultaneously. A deaf viewer in a nexus circuit has no federal accessibility recourse under either analysis.

VII. Regulatory Incoherence

A. Title III as the Outlier

Every regulatory analysis governing service providers, with one exception, treats the service as the service regardless of delivery location.

Medical practice standards and liability attach to telehealth as they attach to in-office care. A psychiatrist who harms a patient in a video session faces the same liability exposure as one

127. Twenty-First Century Communications and Video Accessibility Act of 2010, Pub. L. No. 111-260, §202, 124 Stat. 2751, 2767; 47 U.S.C. §613(c)(2); 47 C.F.R. §79.4(b) ("Closed captioning of video programming delivered using Internet protocol") (requiring closed captions on Internet-protocol-delivered programming that "is published or exhibited on television in the United States with captions," so that the online captioning duty is triggered by prior television exhibition rather than by any physical place); *Closed Captioning of Internet Protocol-Delivered Video Programming*, Report and Order, 27 FCC Rcd 787 (2012). *See also* Blake E. Reid, *Third Party Captioning and Copyright*, G3ict (Mar. 17, 2014), `https://ssrn.com/abstract=2410661` (analyzing CVAA captioning obligations).

who harms in person.[128] Health Insurance Portability and Accountability Act obligations apply to telehealth identically.[129] State medical licensing boards discipline practitioners for telehealth misconduct on the same terms as in-office misconduct.[130] Drug Enforcement Administration controlled-substances rules apply identically.[131] Informed consent doctrine applies identically. The standard of care for telehealth matches the standard for in-person treatment in most jurisdictions.

Consumer protection statutes apply to online commerce identically to brick-and-mortar. State unfair and deceptive practices acts reach digital deception.[132] The Federal Trade

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128. *See* Am. Med. Ass'n, Code of Medical Ethics Opinion 1.2.12, *Ethical Practice in Telemedicine*, `https://code-medical-ethics.ama-assn.org/ethics-opinions/ethical-practice-telemedicine` (last visited July 31, 2026) (providing that the professional and ethical obligations of medical practice apply when care is delivered through telehealth); *Hageseth v. Superior Court*, 150 Cal. App. 4th 1399, 1414–17 (2007) (sustaining California's criminal jurisdiction over an out-of-state physician for the unlicensed practice of medicine based entirely on internet-mediated prescribing to a California resident). *Hageseth* also disposes of the objection that treating remote practice as practice would chill legitimate telehealth. The court answered that objection on its own terms, observing that telemedicine is specifically authorized by the Telemedicine Development Act of 1996, Cal. Bus. & Prof. Code §2290.5(a)(1), and that the Medical Practice Act exempts from the unlicensed-practice prohibition an out-of-state practitioner in actual consultation with a practitioner licensed in the state. *Id.* at 1421–22. The jurisdictional hook attaches to unlicensed direct practice, not to authorized remote care. The same distinction is available in the Title III setting: functional coverage reaches the service, and the statute's own defenses calibrate what the covered entity must then do.

129. 45 C.F.R. pts. 160, 164 (2024) (HIPAA Privacy, Security, and Breach Notification Rules apply to covered entities regardless of delivery modality); U.S. Dep't of Health & Human Servs., Off. for Civil Rights, *Guidance on HIPAA & Telehealth* (2023).

130. *See* Fed'n of State Med. Bds., *Model Policy for the Appropriate Use of Telemedicine Technologies in the Practice of Medicine* (2014).

131. Ryan Haight Online Pharmacy Consumer Protection Act of 2008, Pub. L. No. 110-425, 122 Stat. 4820; 21 C.F.R. §1300.04 (titled "Definitions relating to the dispensing of controlled substances by means of the Internet," and defining, effective January 15, 2010, the "practice of telemedicine" as "the practice of medicine in accordance with applicable Federal and State laws by a practitioner (other than a pharmacist) who is at a location remote from the patient and is communicating with the patient, or health care professional who is treating the patient, using a telecommunications system referred to in section 1834(m) of the Social Security Act," where the practice falls within one of seven enumerated categories; current per the eCFR text of July 6, 2026). The regulation is instructive beyond its subject. Two of its seven categories are express physical-location conditions: the practice qualifies where it "is being conducted while the patient is being treated by, and physically located in, a hospital or clinic registered under section 303(f) of the Act," *id.* §1300.04(i)(1), or "while the patient is being treated by, and in the physical presence of, a practitioner," *id.* §1300.04(i)(2). The federal government knows how to write a physical-presence requirement, and it writes one in those words when it wants one. Neither 42 U.S.C. §12181(7) nor §12182(a) contains anything resembling them; DEA, *Temporary Extension of COVID-19 Telemedicine Flexibilities for Prescription of Controlled Medications*, 88 Fed. Reg. 30037 (May 10, 2023).

132. *See, e.g.*, Cal. Bus. & Prof. Code §17200 (applying to online business practices); N.Y. Gen. Bus. Law §349 (same); 815 Ill. Comp. Stat. 505/2 (Illinois Consumer Fraud and Deceptive Business Practices Act); FTC, *Advertising & Marketing on the Internet: Rules of the Road* (2023).

Commission enforces consumer protection law against online businesses on the same terms as physical ones.[133] State attorneys general bring consumer protection actions against digital platforms regularly.

Contract law is indifferent to delivery location. An online contract is a contract. Formation, consideration, performance, and breach analysis apply identically.[134] Uniform Commercial Code provisions govern digital sales of goods the same way they govern physical sales.

Product liability follows the product. A defective product sold online produces liability identical to a defective product sold in a store.[135] The seller's physical presence is irrelevant to product liability analysis.

Employment law follows the employer-employee relationship. Remote workers have the same employment protections as in-office workers. Title VII, the ADA's own Title I, the Age Discrimination in Employment Act, and state employment statutes reach remote work on the same terms as physical workplaces.[136] The Fair Labor Standards Act applies to remote workers.

Tax law follows transactions. A digital sale generates tax obligations equivalent to a physical sale. Nexus for state tax purposes has been interpreted broadly by the Supreme Court in *South Dakota v. Wayfair*,[137] reaching digital commerce without regard to physical presence.

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133. *See FTC v. Amazon.com, Inc.*, No. 2:23-cv-01495 (W.D. Wash. 2023) (antitrust enforcement); *In re Facebook, Inc.*, FTC File No. 092 3184 (2019) (consent decree); Press Release, Fed. Trade Comm'n, *FTC Announces Crackdown on Deceptive AI Claims and Schemes* (Sept. 25, 2024), `https://www.ftc.gov/news-events/news/press-releases/2024/09/ftc-announces-crackdown-deceptive-ai-claims-schemes` (announcing the Operation AI Comply enforcement sweep against deceptive online business practices).

134. *See* Electronic Signatures in Global and National Commerce Act (E-SIGN Act), 15 U.S.C. §§7001–7031 (2024); Uniform Electronic Transactions Act (UETA), enacted in 49 states and the District of Columbia; *Specht v. Netscape Commc'ns Corp.*, 306 F.3d 17 (2d Cir. 2002) (online contract formation); *Meyer v. Uber Techs., Inc.*, 868 F.3d 66 (2d Cir. 2017) (clickwrap agreements).

135. *See* RESTATEMENT (THIRD) OF TORTS: PRODUCTS LIABILITY §20 (Am. L. Inst. 1998) (defining "seller or other distributor" without regard to physical presence); *Erie Ins. Co. v. Amazon.com, Inc.*, 925 F.3d 135 (4th Cir. 2019) (addressing Amazon's liability for products sold through its marketplace); *Bolger v. Amazon.com, LLC*, 53 Cal. App. 5th 431 (2020) (imposing strict liability on Amazon).

136. *See* 42 U.S.C. §2000e-2 (Title VII applies to covered employers regardless of workspace configuration); 42 U.S.C. §12112 (ADA Title I); 29 U.S.C. §623 (ADEA); EEOC, *What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws* (2020) (discussing application to remote work).

137. *South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 175–82 (2018) (overruling *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992), and holding that states may require remote sellers to collect sales tax despite lack of physical presence).

The pattern is consistent: service is service, transaction is transaction, regardless of the medium.[138] Only ADA Title III, in nexus circuits, purportedly evaporates because the service happens digitally.

B. The Cascade of Absurdity

If the nexus doctrine is taken seriously, the following results follow:[139]

A remote therapist cannot be compelled to provide sign language interpretation for deaf clients, because the therapist has no physical office that qualifies as a place of public accommodation.[140]

An online pharmacy has no obligation to make its ordering interface screen-reader accessible, because the pharmacy is purely digital and therefore not a place of public accommodation.[141]

A virtual doctor's office has no Title III duty to offer effective communication accommodations for patients with disabilities, because the virtual office is not a place.[142]

An in-home hospice nurse's employer has no obligation to train against disability discrimination in off-site care, because the nurse is not performing services in a place of public accommodation.[143]

138. 29 U.S.C. §794(a); 42 U.S.C. §12132; 45 C.F.R. §84.4(a)(2)(i) (2024). Title III is the outlier not because its text differs but because its construction does.

139. Every entity in the list that follows is one Congress named. Subsection (F) names "pharmacy," "professional office of a health care provider," "hospital," and "office of an accountant or lawyer"; subsection (J) names the "other place of education" closing a list of schools. 42 U.S.C. §12181(7)(F), (J). This is not a parade of horribles drawn from the statute's periphery. It is the statute's own enumeration going dark one entry at a time as each named entity adopts a digital form. A construction that produces that result is not construing the list. It is repealing it.

140. 42 U.S.C. §12182(b)(2)(A)(iii) (defining discrimination to include "a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services"); *id.* §12181(7)(F) ("professional office of a health care provider").

141. 42 U.S.C. §12181(7)(F) (naming "pharmacy"). The word is in the statute. The nexus doctrine does not read it out by construction of the term; it reads it out by attaching a condition to the term that Congress did not write.

142. 42 U.S.C. §12181(7)(F) (naming "professional office of a health care provider" and "hospital"); *id.* §12182(b)(2)(A)(iii) (auxiliary aids and services).

143. 42 U.S.C. §12181(7)(F) (naming "hospital" and "professional office of a health care provider"); *id.* §12182(b)(1)(A)(i) (barring denial of participation); *id.* §12182(b)(2)(A)(ii) (reasonable modifications in "policies, practices, or procedures"). Training is a policy and a practice; the subsection names the entity, not the address at which its staff work.

A telehealth psychiatrist can deny service to a blind patient or a deaf patient with impunity, because Title III does not reach the service.[144]

A remote tutoring platform can refuse to accommodate students with learning disabilities, because the platform is not a place.[145]

A virtual law firm that serves clients through video consultation has no Title III obligations to disabled clients, because the firm has no physical office.[146]

Courts have not actually held any of these, in part because the results would not survive scrutiny.[147] The strain that courts put on the nexus doctrine to avoid these outcomes, reaching for Robles analysis whenever a case gets close, suggests the doctrine functions poorly as a coverage rule. If the straightforward application of a rule produces results courts uniformly reject, the rule operates inconsistently with the function a coverage rule should serve. The doctrine survives in significant part through the exceptions courts carve to avoid its logical conclusions. A rule that requires a constant stream of exceptions to remain tolerable is a rule that warrants replacement.

VIII. Category-by-Category Analysis

This Part walks through each of the twelve statutory categories and demonstrates how the nexus doctrine produces coverage gaps for the modern equivalent of each.[148] The treatment is fuller for the categories where the doctrinal action is sharpest (E, F, J) and briefer for categories with smaller digital migration footprints.

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144. *Compare* 42 U.S.C. §12182(b)(2)(A)(i) (barring "eligibility criteria that screen out or tend to screen out an individual with a disability"), *and* 28 C.F.R. §36.301(a) (same), *with Weyer*, 198 F.3d at 1114–15 (requiring a nexus to an actual physical place). The screen-out prohibition is unqualified in the text. The nexus doctrine qualifies it by geography.

145. 42 U.S.C. §12181(7)(J) ("a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education"); *cf. Nat'l Ass'n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49 (D. Mass. 2019).

146. 42 U.S.C. §12181(7)(F) (naming the "office of an accountant or lawyer"). *See Carparts*, 37 F.3d at 19 ("It would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not.").

147. The First Circuit said as much in 1994, and said it in the vocabulary of absurdity. *Carparts*, 37 F.3d at 19. The nexus doctrine did not answer that objection. It arrived after it and did not engage it.

148. 42 U.S.C. §12181(7)(A)–(L). Seven subsections close on a "place" clause; five, including (E) and (F), close on "establishment" or "station" clauses instead. The architectural reading does not reach the five, and (E) is the subsection *Magee* construed. *Magee*, 833 F.3d at 534.

A. Category (A): Lodging

Lodging is the category least affected by digital migration. A person who needs a place to sleep requires a physical space.[149] The category has been transformed by platforms that mediate lodging transactions, however, and the transformation has produced coverage questions the nexus doctrine handles inconsistently. Airbnb, VRBO, and similar platforms dispatch hosts and list properties that together constitute the lodging service. The platform sets terms of service, cancellation policies, payment flow, dispute resolution, the rating system, the photographic standards, and the safety rules. The host is the agent through whom the platform delivers the physical room. Without the platform the host is a private homeowner; without hosts the platform is software with no product. The franchise analogy clarifies the problem: McDonald's cannot avoid Title VII liability for a franchisee's discriminatory practices by pointing at the franchisee, because McDonald's controls the operating manual and the franchisee executes McDonald's business model. The same structural analysis applies to Airbnb. Title III obligations attach to the platform as the principal; hosts remain shielded by the private-residence exemption, but the platform cannot use that exemption to launder its own coverage.

B. Category (B): Restaurants and Food or Drink Services

Delivery platforms (DoorDash, Uber Eats, Grubhub) dispatch couriers from physical restaurants to customers. Under the dispatch doctrine developed in Part III, the platform plus the courier plus the originating restaurant are covered. Ghost kitchens, which operate solely for delivery without dine-in space, are covered as restaurants under category (B); the absence of a dining room does not remove the establishment from the category that the statute defines by service function.[150]

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149. Even here the regulation reasons functionally. 28 C.F.R. §36.104 provides that a facility is a "place of lodging" if it offers short-term stays, "generally 30 days or less," with "[o]n- or off-site management and reservations service," walk-up or call-in availability, housekeeping or linen service, and reservations by room type rather than by unit. Every criterion is a term of service. The statute's own exception is functional too. 42 U.S.C. §12181(7)(A) (excepting the owner-occupied establishment of not more than five rooms, defined by how the building is used).

150. *See generally* Nat'l Restaurant Ass'n, *Ghost Kitchens: The Evolution of the Restaurant Industry* (2023); Florence Fabricant, *As Food Deliveries Boom, So Do Ghost Kitchens*, N.Y. Times (Sept. 1, 2020), `https://www.nytimes.com/2020/09/01/dining/ghost-kitchens-delivery-pandemic.html`.

Meal-kit services (Blue Apron, HelloFresh) are sales establishments under category (E) rather than restaurants under category (B), but the dispatch analysis is the same.

C. Category (C): Motion Picture House / Place of Exhibition

Category (C) was addressed in Part V. Netflix and similar streaming services are places of exhibition under the statute's text when they host exclusive original content. The analysis extends to Disney+, Max, Apple TV+, Amazon Prime Video, Peacock, Paramount+, and Hulu for their exclusive originals; to live-streaming platforms (Twitch, YouTube Live, Kick); and to consumer AI services for their exhibition of creative outputs.[151]

D. Category (D): Auditorium / Convention Center / Lecture Hall / Place of Public Gathering

Academic and professional conferences that refuse remote attendance or remote presentation discriminate against disabled attendees.[152] A lecture hall that refuses wheelchair access is covered by Title III; a convention center that refuses remote participation from a disabled attendee who cannot travel is the functional equivalent. The self-reflexive irony deserves notice. If this Article is presented at a disability rights conference that refuses remote attendance, the conference is committing the Title III violation the Article describes. The category extends to digital platforms that host public gatherings: Discord servers, Twitch streams with live chat, Clubhouse audio rooms, Zoom meetings open to the public, Facebook Live events, online game lobbies, and metaverse platforms (VRChat, Horizon Worlds, Rec Room). The platform operators have built social-presence features specifically to replicate the gathering experience, which both establishes the factual predicate for coverage and estops the operators from denying that function in litigation. Professional virtual conference platforms (Hopin, Bizzabo, Swapcard) host major

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151. *See* Blake Reid, *Internet Architecture and Disability*, 95 Ind. L.J. 591, 610–28 (2020); Margot E. Kaminski & Meg Leta Jones, *Constructing AI Speech*, 133 Yale L.J. Forum 1212, 1213–15 (2024).

152. 42 U.S.C. §12181(7)(D) ("an auditorium, convention center, lecture hall, or other place of public gathering"); *id.* §12182(b)(2)(A)(ii) (requiring reasonable modifications in "policies, practices, or procedures" unless the entity demonstrates a fundamental alteration).

industry conferences, academic meetings, and trade shows that previously required physical convention centers.

E. Category (E): Sales or Rental Establishments

Category (E) was addressed extensively in Part III through the Amazon Lockers analysis and the Walmart-shrinks-to-kiosk thought experiment.[153] A brief survey of additional subsectors is warranted.

Amazon, Walmart, Target, Best Buy, Home Depot, Lowe's, Costco, Kroger, and every major retailer with any physical infrastructure is covered under existing nexus doctrine through its physical stores.[154] Online divisions of these retailers are covered through Robles. Pure-digital retailers that ship goods directly to consumers without physical storefronts occupy a narrow but real category. Wayfair operates substantial e-commerce in furniture and home goods. Chewy operates in pet supplies. Each has some physical infrastructure (warehouses, corporate offices) but lacks consumer-facing retail stores. The dispatch doctrine analysis reaches these retailers through their shipping and customer service infrastructure.

F. Category (F): Service Establishments

This is among the statute's largest categories and most underappreciated in nexus doctrine discourse.[155] Category (F) explicitly includes offices of accountants, lawyers, health care providers, banks, insurance agents, and travel services, plus a range of other service businesses.

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153. 42 U.S.C. §12181(7)(E). Subsection (E) closes on "other sales or rental establishment" and does not contain the word "place," which is the difficulty the architectural reading never confronts and the subsection *Magee* construed. *Magee*, 833 F.3d at 534.

154. *Robles*, 913 F.3d at 905–06. The point cuts against the doctrine rather than for the plaintiffs: coverage for the largest retailers turns on real-estate holdings that have nothing to do with the accessibility of the interface at issue.

155. The First Circuit read subsection (F) as dispositive of the physical-place question thirty years ago. *Carparts*, 37 F.3d at 19 ("By including 'travel service' among the list of services considered 'public accommodations,' Congress clearly contemplated that 'service establishments' include providers of services which do not require a person to physically enter an actual physical structure. Many travel services conduct business by telephone or correspondence without requiring their customers to enter an office in order to obtain their services."). The court concluded that "[t]he plain meaning of the terms do not require 'public accommodations' to have physical structures for persons to enter," and that if the phrase were ambiguous, agency regulations and public policy resolved the ambiguity the same way. *Id.* at 19–20.

Remote professional services have proliferated since the pandemic and expanded with AI integration.

Legal services have migrated substantially online. LegalZoom, Rocket Lawyer, LegalShield, Nolo, and similar platforms deliver legal services through digital interfaces. Healthcare services have migrated through telehealth at scale. Telehealth platforms including Teladoc, MDLive, Amwell, Doctor on Demand, and mental-health-specific platforms (BetterHelp, Talkspace, Ginger) deliver services that are explicitly category (F) covered as "professional office of a health care provider."[156] Accounting and tax services have migrated (TurboTax live, H&R Block Virtual, Bench, Pilot). Financial and insurance services follow the same pattern.

Banks deserve separate treatment because "bank" is expressly named in category (F) and because the branchless banking sector has grown to the point where the paradigm of the listed service has inverted.[157] In 1990 when Congress passed the ADA, banks operated through networks of physical branches. The statutory text names "bank" without architectural qualification. Congress did not write "bank with a physical branch" or "teller window of a bank." Congress wrote bank.

In 2026 branchless banks constitute a substantial segment of the consumer banking market. Chime, a branchless consumer banking service in the United States, has no physical branches. Chime operates as a banking service through partner banks (The Bancorp Bank and Stride Bank) that hold FDIC-insured deposits on behalf of Chime customers, offering checking accounts, savings accounts, debit card issuance, direct deposit, and consumer credit products entirely through mobile application and website. Chime's own legally required disclosure states that "Chime is a financial technology company, not a bank" and that "[b]anking services" are

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156. *See* Am. Med. Ass'n & Manatt Health, *State Telehealth Policy Trends: 2023 Year in Review* (2023); Teladoc Health, Inc., *Annual Report 2023* (Form 10-K). Telehealth visits expanded from approximately one percent of outpatient visits before the pandemic to roughly twenty percent during the pandemic and have stabilized at levels substantially above pre-pandemic norms. *See* Ctrs. for Medicare & Medicaid Servs., *Medicare Telehealth Services* (2024); Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, §§4101–4102, 136 Stat. 4459, 5902–04.

157. 42 U.S.C. §12181(7)(F) (listing "bank" among service establishments). The word is in the statute, and no subsection conditions it on the presence of a branch. *See Carparts*, 37 F.3d at 19.

"provided by The Bancorp Bank, N.A. or Stride Bank, N.A., Members FDIC."[158] The disclosure separates the charter from the function: the chartered banks stand behind the deposits while the consumer-facing banking function runs through Chime's application. That is the statutory question in miniature. Category (F) names the function. A nexus-circuit ruling that the branchless provider of consumer banking services is outside category (F) for want of a physical branch would rewrite the statute to add an architectural qualifier Congress did not include.

Varo Bank is the sharper example. Varo obtained a national bank charter from the Office of the Comptroller of the Currency in 2020, becoming the first consumer fintech to hold such a charter.[159] Varo is a chartered national bank with no physical branches. If Varo is not a bank for Title III purposes because it has no branch, the statutory entry for "bank" has been interpretively voided as to any entity that the federal banking regulator has actually chartered as a branchless bank. PayPal occupies a hybrid position doctrinally indistinguishable from Chime and Varo: PayPal holds state money transmitter licenses in all fifty states, its European subsidiary holds a full credit institution license in Luxembourg, and PayPal operates FDIC-insurance-passthrough deposit accounts, savings accounts, debit cards, consumer credit products, direct deposit, bill pay, and person-to-person transfer. The commercial function PayPal performs for consumers is banking.

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158. Chime, *Disclosures*, `https://www.chime.com/disclosures/` (last visited July 31, 2026). Chime's own materials confirm the absence of physical branches. Chime, *What Is Chime? Is Chime a Bank?*, `https://www.chime.com/blog/what-is-chime-is-chime-a-bank/` (last visited July 31, 2026) (listing "no physical branches" among the service's tradeoffs).

159. The Office of the Comptroller of the Currency granted Varo Bank, N.A. a full-service national bank charter on July 31, 2020, and the bank opened the following day. *See* First Consumer Fintech in US History Gains Full Regulatory Approval to Become a National Bank, PR Newswire (July 31, 2020), `https://www.prnewswire.com/news-releases/first-consumer-fintech-in-us-history-gains-full-regulatory-approval-to-become-a-national-bank-301104055.html`; Varo Is First FinTech to Receive Full-Service Charter from the OCC, Consumer Fin. Monitor (Aug. 7, 2020), `https://www.consumerfinancemonitor.com/2020/08/07/varo-is-first-fintech-to-receive-full-service-charter-from-the-occ/` (noting that the approval was for a full-service charter rather than the OCC's special-purpose fintech charter, and that Acting Comptroller Brooks described it as "the first granted by the OCC to a consumer fintech"). Counsel to Varo described the decision as "the first internet-only bank charter approval since the financial crisis." S&C Helps Varo Bank Become First Consumer-Focused FinTech Company to Secure Full-Service National Bank Charter, Sullivan & Cromwell LLP (Aug. 18, 2020), `https://www.sullcrom.com/About/News-and-Events/Highlights/2020/August/SC-Helps-Varo-Bank-Become-First-ConsumerFocused-FinTech-Company-to-Secure-FullService-National-Bank-Charter`.

The nexus doctrine's application to branchless banking produces results that are difficult to reconcile with the statute's purpose.[160] A deaf Chime customer who cannot access effective communication through Chime's mobile application would have no Title III claim. A blind Chime customer whose screen reader cannot process Chime's onboarding flow would have no Title III claim. The statute would be read to exempt from disability rights protection the exact banking services consumers with disabilities most depend on, because those services have abandoned the architectural form the nexus doctrine treats as dispositive.

Consumer-facing artificial intelligence integrated into banking services deepens the problem. PayPal operates an "AI Assistant" within the mobile application that handles customer service inquiries, explains payment statuses, and describes account features. The same analysis reaches Bank of America's Erica virtual assistant, Wells Fargo's Fargo virtual assistant, Capital One's Eno, and every other AI-integrated banking service. The AI is a covered interface of a covered bank.[161]

Travel services are explicitly named in category (F). The First Circuit's Carparts decision relied on the travel-service entry to establish that Congress did not intend to limit coverage to walk-in businesses.[162] Consumer AI services, in their advisory and consultative functions, fall within category (F). When Claude, ChatGPT, or Gemini provides information, analysis, or assistance that in 1990 would have been provided by a professional at a category (F) office, the AI service is performing the function of the category (F) business.

160. The incoherence is between two arms of the same federal government. Congress named "bank" as a public accommodation, 42 U.S.C. §12181(7)(F), and the Comptroller of the Currency has chartered a full-service national bank that has no branches at all. Under the nexus doctrine the entity is a bank for every purpose the federal banking laws recognize and is not a bank for the purpose of the federal statute that names banks. *See id.* §12101(b)(2) (purpose of providing "clear, strong, consistent, enforceable standards").

161. *See* 28 C.F.R. §36.303 ("Auxiliary aids and services") ("A public accommodation shall furnish appropriate auxiliary aids and services where necessary to ensure effective communication with individuals with disabilities."); DOJ, *Effective Communication: ADA Title III Technical Assistance Manual* §III-4.3000.

162. 42 U.S.C. §12181(7)(F) (listing "travel service"); *Carparts*, 37 F.3d at 19. The example is decisive against the architectural reading, and the point is the First Circuit's rather than this Article's: Congress "clearly contemplated that 'service establishments' include providers of services which do not require a person to physically enter an actual physical structure." *Carparts*, 37 F.3d at 19.

G. Category (G): Transportation Terminals

Mass transit continues to require physical infrastructure. Airports, train stations, bus terminals, [163]subway stations, and ferry terminals remain covered places of public accommodation. Ride-share and ride-hailing apps (Uber, Lyft, Via) have absorbed functions that historically occurred at physical terminals or through street-level taxi operations. Courts have generally allowed Uber-specific ADA litigation to proceed, treating the app plus the driver plus the vehicle as a mobile extension of the transportation service. Uber's defense that it is merely a "technology platform" rather than a transportation company has been rejected by most courts that have considered it. Transit ticketing apps (mTicket, OMNY, Clipper, Ventra, TAP) have absorbed the ticketing function that historically occurred at physical terminal counters. These apps are covered under category (G) because they perform a function previously performed at the physical terminal.

H. Category (H): Museum / Library / Gallery / Place of Public Display or Collection

Digital libraries and archives have proliferated. JSTOR, HathiTrust, the Internet Archive, Google Books, Kanopy, and public library digital lending platforms (Libby, Hoopla, OverDrive) each function as a place of public display or collection under category (H). The Internet Archive has been treated as functionally a library in copyright litigation,[164] and courts cannot coherently treat the Internet Archive as a library for copyright purposes and as not-a-library for Title III purposes. Google Arts & Culture operates substantial digital museum collections. The 2024 State of America's Libraries Report shows continued physical visit declines paired with digital circulation increases. The library function has migrated; coverage should follow function. Westlaw, LexisNexis, PubMed Central, and similar databases perform the library function for legal and scientific research.

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163. 42 U.S.C. §12181(7)(G) ("a terminal, depot, or other station used for specified public transportation"). Subsection (G) closes on "station" rather than on a "place" clause, so even the category most obviously tied to infrastructure was not written in the vocabulary the textual objection relies on.

164. *Hachette Book Grp. v. Internet Archive*, 664 F. Supp. 3d 370, 378–85 (S.D.N.Y. 2023), *aff'd*, 115 F.4th 163 (2d Cir. 2024).

I. Category (I): Parks / Places of Recreation

Category (I) is, with category (A), the category least affected by digital migration.[165] Parks, zoos, and amusement parks remain predominantly physical. Virtual tourism and VR experiences represent a nascent digital equivalent but have not yet achieved commercial scale. When VR-based recreation achieves commercial scale and exclusive exhibition of certain experiences, category (I) analysis will resemble the streaming analysis under category (C). Multiplayer video game communities, online hobby forums, and digital recreational communities organized around shared activity perform the place of recreation function in functional terms.

J. Category (J): Places of Education

Online education operates in multiple overlapping regulatory regimes. Public online schools are covered under Title II of the ADA because they are state entities, under Section 504 because they receive federal education funding, and under IDEA for special education services.[166] Private online schools are covered under Title III and often under Section 504. Traditional university online programs are covered through the physical campus connection even in nexus circuits.

Pure digital education platforms (Khan Academy, Coursera, edX, MasterClass, Udemy, Skillshare, LinkedIn Learning) operate in harder doctrinal territory under nexus doctrine alone.[167] Khan Academy as a nonprofit educational provider is likely covered as a place of education regardless. Coursera and edX have university partnerships that create nexus through partner institutions. MasterClass is closer to category (C) territory and might receive Cullen-type treatment in nexus circuits, though the functional public accommodation test reaches it cleanly. K-12 educational technology platforms (Google Classroom, Canvas, Blackboard, Clever, Schoology) are covered through their connection to schools.

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165. 42 U.S.C. §12181(7)(I) ("a park, zoo, amusement park, or other place of recreation"). The Article's argument does not require every category to migrate. It requires only that coverage not depend on whether a given category happened to migrate.

166. 42 U.S.C. §§12131–12165 (Title II); 28 C.F.R. pt. 35; 29 U.S.C. §794 (Section 504); 34 C.F.R. pt. 104; Individuals with Disabilities Education Act, 20 U.S.C. §§1400–1482; 34 C.F.R. pt. 300.

167. 42 U.S.C. §12181(7)(J) ("a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education"); *see Nat'l Ass'n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49 (D. Mass. 2019).

The contrast between Title III's nexus requirement and the coverage structures of Title II, Section [168]504, and IDEA illustrates the outlier character of the nexus doctrine. The Rehabilitation Act reaches covered entities without inquiring whether they operate physical places. IDEA reaches educational services without inquiring whether they operate physical places. Title II reaches governmental entities without inquiring whether they operate physical places. Only Title III has been interpreted by some circuits to require, as a threshold coverage element, the existence or connection of a physical place. The same Congress that wrote Title III wrote IDEA's related services provisions, Section 504, and Title II. No coherent reading of that unified legislative project supports Title III as the sole regime in which coverage evaporates when service delivery becomes non-physical.

K. Category (K): Social Service Center Establishments

Online support groups function as the digital equivalent of the physical social service centers the statute names. Alcoholics Anonymous, Al-Anon, Narcotics Anonymous, SMART Recovery, and similar recovery programs all operate online meetings. Online grief support, caregiver support, peer mental health communities follow the same pattern. Nonprofit status does not exempt coverage; the statute's list includes nonprofit entities (day care centers, homeless shelters, adoption agencies) explicitly. The readily achievable and undue burden standards built into the statute handle proportionality concerns for small organizations. Crisis services occupy the category's most sensitive territory: the 988 Suicide and Crisis Lifeline and Crisis Text Line are covered under category (K) as social service center establishments performing crisis counseling.[169]

168. 29 U.S.C. §794(a) (Section 504, reaching "any program or activity receiving Federal financial assistance," with no physical-place threshold); 42 U.S.C. §12132 (Title II, reaching "the services, programs, or activities of a public entity"); *see* 45 C.F.R. §84.4(a)(2)(i) (2024) (directing that the definition of disability "shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of section 504").

169. National Suicide Hotline Designation Act of 2020, Pub. L. No. 116-172, 134 Stat. 832.

L. Category (L): Places of Exercise or Recreation

Peloton, Apple Fitness+, Nike Training Club, Strava, Supernatural VR, Les Mills On Demand, and similar fitness platforms operate as places of exercise under category (L). The category extends to pure-app fitness services, virtual reality fitness experiences, and AI-mediated coaching services. The exercise function is the category's defining feature; the medium of delivery is secondary. For persons with morbid obesity recognized as a disability, physical gym access may be difficult due to equipment weight limits, locker room accessibility, and physical exhaustion from travel; home-based digital fitness platforms are an accommodation for the disability.
A secondary coverage pathway through Section 504 exists for fitness services subsidized as preventive care by federally funded insurers (Medicare Advantage, Medicaid managed care).[170]
VR fitness experiences (Supernatural, FitXR, Les Mills Bodycombat VR) combine exercise with immersive entertainment and produce multiple-category coverage, which is a strength of the functional approach rather than a problem.

IX. The Accommodation Paradox

A. The Structural Form of the Paradox

The central disparate-impact argument of this Article is that the nexus doctrine creates a structural trap in which the accommodation for a disability strips the civil rights coverage of that disability.[171] The structure is circular and recursive. A disabled person whose condition limits physical access depends on digital service delivery as an accommodation. The accommodation allows participation in commerce and culture that would otherwise be impossible. In nexus circuits, the digital service is outside Title III coverage because it lacks a physical place. The

170. 29 U.S.C. §794; 45 C.F.R. pt. 84.

171. The trap runs against an express congressional finding. Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. §12101(a)(2). Congress also found that individuals with disabilities encounter "the discriminatory effects of architectural, transportation, and communication barriers." *Id.* §12101(a)(5). The nexus doctrine takes the architectural barrier Congress named as a form of the harm and converts it into the precondition of the remedy.

disabled person has no civil rights claim against the service that serves as their accommodation, even when the service discriminates against them in ways that would be actionable if the service were a physical place.

The trap compounds across the disability's life.[172] An agoraphobic patient who cannot leave home uses Amazon for groceries, telehealth for medical care, online banking for financial services, and consumer AI for professional advice. Each of these services is an accommodation for the agoraphobia.[173] Each is, in a nexus circuit, outside Title III coverage. If any of these services denies the patient effective communication, fails to provide accessibility accommodations, or discriminates on the basis of disability, the patient has no Title III recourse. The disability's severity is the very condition that makes these digital services necessary. The nexus doctrine ensures that the more severe the disability (and thus the more complete the dependence on digital services), the less civil rights protection is available.

The endpoint of the transaction reinforces this point. For homebound disabled consumers, the doorstep is not a luxury version of the store. It is the only reachable version of the store.[174] The locker, the curbside pickup zone, and the threshold delivery point are not optional alternatives to physical retail; they are the only accessible commercial endpoints for the population. A doctrine that recognizes the locker as physical but treats the doorstep delivery chain as legally weightless confuses ownership of premises with control of access. The seller controls the entire transaction architecture through which possession is transferred to the disabled

172. The pattern is documented rather than hypothesized. *See* Dobransky & Hargittai, *supra* note 192 (reporting that people with disabilities use the Internet distinctly, with heavier engagement in health information and in reviewing products and services, consistent with substitution for physical access rather than supplementation of it).

173. 42 U.S.C. §12182(b)(2)(A)(i) (defining discrimination to include "the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered"); 28 C.F.R. §36.301(a) (same, in the implementing regulation). A coverage rule keyed to physical presence is a criterion that tends to screen out precisely the class that cannot be physically present, and no one has shown it necessary to the provision of anything.

174. 42 U.S.C. §12101(a)(1) ("physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination").

customer. The accessibility obligation should follow the seller's control of that architecture, not the legal title of the parcel of land at which the package arrives.

This structure falls on the populations Congress most intended to protect.[175] The statute's core purpose is to ensure that disabled Americans have equal access to the commerce, culture, and services of the nation. The populations with the most severe disabilities are the populations with the greatest need for accommodation and the fewest alternatives when accommodations fail. The nexus doctrine, applied consistently, withdraws civil rights protection precisely from these populations. The doctrine's neutral form (a rule about physical places) produces disparate impact (on populations whose disabilities prevent physical access).

B. The Population Enumeration

A full enumeration of the populations affected by the accommodation paradox makes the scale of the problem concrete.

Persons with agoraphobia and severe anxiety disorders. Agoraphobia is formally defined in the DSM-5 as fear or anxiety about being in situations from which escape might be difficult or embarrassing.[176] For many patients, the condition progresses to the point of preventing departure from home without severe distress. These patients depend on digital service delivery for groceries, medical care, banking, professional consultation, education, and entertainment. The digital services are their accommodation. The nexus doctrine removes those services from civil rights protection precisely when the agoraphobic patient is most dependent on them. Panic disorder with agoraphobic features, post-traumatic stress disorder presenting with agoraphobic avoidance, and similar conditions produce the same dependence pattern.

175. 42 U.S.C. §12101(a)(3) (finding that "discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services"); *id.* §12101(a)(4) (finding that unlike those who face discrimination on other protected grounds, individuals discriminated against on the basis of disability "have often had no legal recourse to redress such discrimination"). The nexus doctrine reproduces the condition Congress legislated against: it returns the most severely disabled claimants to the position of having no recourse.

176. Am. Psychiatric Ass'n, *Diagnostic and Statistical Manual of Mental Disorders* 217–21 (5th ed. text rev. 2022) (DSM-5-TR); *see also* R. Bruce Lydiard, *The Role of Gastrointestinal Symptoms in Patients with Agoraphobia*, 67 J. Clinical Psychiatry 15 (2006) (discussing functional impact).

Persons with immunosuppression. Organ transplant recipients take lifelong immunosuppressant medications that make them vulnerable to infections.[177] Chemotherapy patients experience periodic immunosuppression during active treatment. Patients with late-stage HIV, patients with certain autoimmune conditions requiring immunosuppressant medication (lupus, rheumatoid arthritis on biologics, inflammatory bowel disease on certain treatments), and patients in post-surgical recovery with compromised immune function are all in this category. For these patients, public space carries infection risk that can be life-threatening. Digital services that allow participation in commerce and culture from home are medical accommodations.

Persons with severe autism.[178] Autism spectrum disorders vary substantially in their functional implications. For some individuals with severe presentations, public spaces produce sensory overload, social overwhelm, and unpredictable stressors that can lead to meltdowns and physical harm. Home-based digital services allow participation without the harms associated with public space exposure. The digital services are a disability accommodation. Non-autistic individuals with related sensory-processing conditions may experience similar limitations.

Persons with morbid obesity. The EEOC's position recognizes severe obesity as an ADA disability when it substantially limits major life activities, and recognizes obesity resulting

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177. *See* Ctrs. for Disease Control & Prevention, *Altered Immunocompetence: General Best Practice Guidelines for Immunization* (2022) (discussing infection risks in immunocompromised populations); Am. Soc'y of Transplantation, *ISHLT Consensus Document on the Prevention and Management of Cardiac Allograft Rejection* (2024).

178. 42 U.S.C. §12102(1)–(2) (defining disability by reference to impairments that substantially limit major life activities, which include "concentrating," "thinking," "communicating," and "working"); *see also* Ctrs. for Disease Control & Prevention, *Disability Impacts All of Us* (last updated July 15, 2024), `https://www.cdc.gov/disability-and-health/articles-documents/disability-impacts-all-of-us-infographic.html` (reporting cognition disability at 13.9 percent of United States adults, defined as serious difficulty concentrating, remembering, or making decisions).

from underlying physiological disorders as a disability regardless of severity.[179] The ADA Amendments Act of 2008 broadened the definition of disability in ways that further support recognition of severe obesity as a covered disability.[180] Glandular disorders (hypothyroidism, Cushing's syndrome, Prader-Willi syndrome, and similar conditions) can produce morbid obesity as a medical condition rather than as a lifestyle outcome. For persons with morbid obesity, physical gym access may be difficult due to equipment weight limits, locker room accessibility, social stigma, and physical exhaustion from travel. Home-based digital fitness platforms are an accommodation for the disability.

Persons with mobility impairments.[181] Wheelchair users, amputees, persons using walkers or canes, persons with severe arthritis, persons recovering from orthopedic surgery, persons with multiple sclerosis in its mobility-limiting forms, persons with spinal cord injuries, and persons with various conditions producing mobility limitation all depend on digital service delivery when physical access is difficult or impossible. Although the ADA has required physical accessibility of public accommodations for three decades, enforcement has been incomplete, and many public spaces remain inadequately accessible. Digital services provide an alternative

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179. EEOC, *Compliance Manual* §902 (1995); 29 C.F.R. §1630.2(h) (defining "[p]hysical or mental impairment" to mean "[a]ny physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine," or "[a]ny mental or psychological disorder, such as an intellectual disability . . . , organic brain syndrome, emotional or mental illness, and specific learning disabilities"; last amended at 76 Fed. Reg. 16999 (Mar. 25, 2011), current per the eCFR text of July 6, 2026); *see EEOC v. Res. for Human Dev., Inc.*, 827 F. Supp. 2d 688, 694–95 (E.D. La. 2011) (holding severe obesity is per se ADA impairment); *Morriss v. BNSF Ry. Co.*, 817 F.3d 1104, 1113 (8th Cir. 2016) (contrary view requiring underlying physiological disorder); *Richardson v. Chi. Transit Auth.*, 926 F.3d 881, 890–92 (7th Cir. 2019) (similar).

180. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (codified at 42 U.S.C. §12102); *see also* 29 C.F.R. §1630.2(j)(1)(i) ("The term 'substantially limits' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of the ADA. 'Substantially limits' is not meant to be a demanding standard."); *id.* §1630.2(j)(1)(vii) ("An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active."). The command is not confined to the employment title. HHS wrote the same instruction into the Section 504 regulation in 2024. 45 C.F.R. §84.4(a)(2)(i) ("[t]he definition of 'disability' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of section 504"). Two agencies administering the two statutes closest to Title III have issued express broad-construction directives, thirteen years apart, while the courts construing Title III's coverage were narrowing it.

181. Ctrs. for Disease Control & Prevention, *supra* note 191 (reporting mobility disability, defined as serious difficulty walking or climbing stairs, at 12.2 percent of United States adults, and an independent living disability, defined as difficulty doing errands alone, at 7.7 percent).

accommodation pathway. Even in spaces that are formally accessible, the cumulative energy cost of navigating physical accessibility barriers makes digital alternatives the practical choice.

Persons with chronic fatigue conditions. Myalgic encephalomyelitis, chronic fatigue syndrome, long COVID, postural orthostatic tachycardia syndrome, fibromyalgia, and related conditions limit the physical energy available for travel and public space engagement.[182] For persons with these conditions, travel to a physical place of public accommodation may exhaust the day's available energy, preventing the purpose of the visit. Digital service delivery preserves limited energy resources for the substantive purpose of the service. The prevalence of long COVID since 2020 has expanded this population significantly.

Persons with sensory processing disorders.[183] Autism is the most common diagnostic umbrella under which sensory processing disorders appear, but non-autistic individuals may also experience sensory processing differences that make public spaces difficult. Misophonia, photophobia, hyperacusis, and related conditions can make public environments produce severe distress. Digital service delivery from controlled home environments is an accommodation.

Persons with psychotic-spectrum disorders with social anxiety.[184] Schizophrenia, schizoaffective disorder, and other psychotic-spectrum conditions often present with social anxiety comorbidities that make public space engagement difficult. The person may be substantially functional in private but experience paranoia, social avoidance, or other symptoms in public. Home-based digital services support functional participation in commerce without the stressors of public engagement.

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182. *See* Inst. of Med., BEYOND MYALGIC ENCEPHALOMYELITIS/CHRONIC FATIGUE SYNDROME: REDEFINING AN ILLNESS (2015); Ctrs. for Disease Control & Prevention, *Long COVID Household Pulse Survey Data* (2024); Hannah E. Davis et al., *Long COVID: Major Findings, Mechanisms and Recommendations*, 21 Nature Rev. Microbiology 133 (2023) (documenting functional limitations); Lauren Stiles et al., *POTS: The Forgotten Pandemic*, 11 Auton. Neurosci. 102 (2022).

183. 42 U.S.C. §12102(1)–(2) (defining disability by reference to impairments substantially limiting major life activities, which the statute enumerates to include "concentrating," "thinking," and "communicating"); Ctrs. for Disease Control & Prevention, *supra* note 191 (reporting cognition disability, defined as serious difficulty concentrating, remembering, or making decisions, at 13.9 percent of United States adults).

184. 42 U.S.C. §12102(1)(A) (defining disability to include a "mental impairment that substantially limits one or more major life activities"); *id.* §12102(2)(A) (listing "concentrating," "thinking," and "communicating" among major life activities); Ctrs. for Disease Control & Prevention, *supra* note 191.

Persons who are deaf-blind. The deaf-blind community has historically depended on assistive technology for communication and information access.[185] Home-based assistive technology, including refreshable braille displays, screen readers integrated with haptic communication tools, and tactile communication methods, is the primary access mode. Travel to a physical place of public accommodation requires orientation, mobility training, and the presence of support persons or service animals, any of which may be unavailable. Home-based digital services are the primary access pathway. Congenital deaf-blindness (including Usher syndrome) and acquired deaf-blindness (from conditions including diabetes-related complications, CHARGE syndrome, and others) both produce this dependence pattern.

Persons with chronic pain conditions.[186] Chronic pain limits the physical range of activity that is possible in any given day. Travel to a physical place of public accommodation may produce pain that prevents completion of the purpose of the visit. Digital services preserve the limited pain budget for substantive activity. Conditions producing chronic pain include complex regional pain syndrome, fibromyalgia, chronic migraine, inflammatory arthritis, endometriosis, interstitial cystitis, and many others.

Patients mid-treatment for serious illness.[187] Dialysis patients maintain rigorous schedules of in-center treatment that limit travel to other public spaces. Cancer chemotherapy patients experience cyclical physical incapacity during treatment cycles. Radiation therapy patients experience fatigue and symptoms that limit other activity. For these patients, digital services are not merely convenient but necessary to participation in commerce and culture during

185. *See* Helen Keller Servs., *Helen Keller National Center: National Registry*, `https://www.helenkeller.org/hknc/national-registry/` (last visited July 31, 2026) (describing the national census of persons who are DeafBlind and its use in program development and research); *Braille Monitor* (Nat'l Fed'n of the Blind), Aug.–Sept. 2024, `https://nfb.org/images/nfb/publications/bm/bm24/bm2408/bm2408.htm` (reporting the release of the Monarch dynamic braille and tactile graphics display developed with HumanWare and the American Printing House); *see also* 29 U.S.C. §1905 (Helen Keller National Center Act).

186. 42 U.S.C. §12102(2)(A) (listing "walking," "standing," "lifting," and "bending" among major life activities); Ctrs. for Disease Control & Prevention, *supra* note 191 (reporting mobility disability at 12.2 percent of United States adults).

187. 42 U.S.C. §12102(2)(B) (providing that a major life activity "also includes the operation of a major bodily function," enumerating among others functions of the immune system, normal cell growth, and the digestive, neurological, respiratory, circulatory, and endocrine systems); *id.* §12102(4)(D) (an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active).

the treatment period. The period can extend for months or years depending on the condition and treatment regimen.

Elderly persons with frailty.[188] Frailty syndromes in older adults produce limitations on travel, public space engagement, and complex navigation. Digital services allow continued participation in commerce and independent living even as physical capacity declines. The aging of the baby boomer generation has expanded this population significantly.

Unhoused persons.[189] Unhoused persons often lack stable physical addresses, which makes receiving mail and physical deliveries difficult. Digital services that deliver to lockers, pickup points, or community addresses provide a pathway to commerce that is otherwise unavailable. The disability regime reaches unhoused persons when homelessness is associated with or caused by a covered disability, as is often the case for persons with serious mental illness, substance use disorders recognized as disabilities, or physical disabilities that have contributed to housing instability.

Persons with locked-in syndrome and severe paralysis. The paradigm case returned to.[190] For these patients, digital platforms operated via eye-tracking or brain-computer interfaces are the sole pathway to participation. No other mode of access exists. The population is small in absolute numbers but conceptually critical because it represents the limit case that exposes the doctrine's failure most clearly.

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188. Ctrs. for Disease Control & Prevention, *supra* note 191 (reporting that disability prevalence rises substantially with age); *see* 42 U.S.C. §12101(a)(2) (congressional finding that society "has tended to isolate and segregate individuals with disabilities").

189. 42 U.S.C. §12181(7)(K) (listing "homeless shelter" among social service center establishments, which places this population's service providers squarely inside the statute even as the doctrine places the services they need outside it).

190. Schnetzer, McCoy & Bergmann, *supra* note 2, at 1; Farr, Altonji & Harvey, *supra* note 3, at 1424–26 (identifying augmentative technology and internet connectivity as the basis of participation). The clinical literature is consistent on the point across two decades and four independent reviews. *See also* Samuel Maiser, Asish Kabir & David S. Sabsevitz, *Locked-In Syndrome #303*, 19 J. Palliative Med. 460, 460 (2016); Smith & Delargy, *supra* note 1, at 408.

The population numbers in the tens of millions.[191] Each population depends on digital services in ways that are functionally analogous.[192][193] Each faces the structural problem that the nexus doctrine creates. The doctrine's disparate impact on the disability community is therefore not marginal but central to the community's relationship to the modern economy.

C. Screen-Out and Methods-of-Administration Analysis

The analysis above is sometimes described as disparate impact analysis. The label is rhetorically accurate but legally imprecise. Title VII's disparate impact doctrine, as developed in *Griggs v. Duke Power Co.*, was a doctrinal innovation specific to employment discrimination law and

191. Ctrs. for Disease Control & Prevention, *Disability Impacts All of Us* (last updated July 15, 2024), https://www.cdc.gov/disability-and-health/articles-documents/disability-impacts-all-of-us-infographic.html (reporting that more than one in four United States adults, 28.7 percent, have some type of disability, and breaking out mobility disability at 12.2 percent, cognition at 13.9 percent, independent living at 7.7 percent, hearing at 6.2 percent, vision at 5.5 percent, and self-care at 3.6 percent). The independent-living figure is the most direct measure of the population this Part describes: the Centers for Disease Control defines it as "difficulty doing errands alone," which is the going-to-the-store function itself. On a United States adult population, 7.7 percent is on the order of twenty million people, and that single category does not capture the agoraphobic, immunocompromised, mid-treatment, or locked-in populations enumerated above. The subpopulations here overlap and no source aggregates them as a class, so the figure in text is offered as an order of magnitude rather than a count.

192. The empirical literature supports the dependence and complicates it in a way that favors coverage rather than undercutting it. Kerry Dobransky & Eszter Hargittai, *Unrealized Potential: Exploring the Digital Disability Divide*, 58 Poetics 18 (2016), https://doi.org/10.1016/j.poetic.2016.08.003, is the leading national study. It reports that people with disabilities are *less* likely to be online than people without disabilities, 48 percent to 80 percent, and that those with five of six measured disability types are considerably less likely to have Internet access at all. *Id.* at 18, 22–24 (drawing on national survey data and reporting National Telecommunications and Information Administration figures of 53 percent computer ownership, 48 percent Internet use, and 46 percent broadband access among people with disabilities, against 79, 76, and 73 percent respectively among people without disabilities). *Accord* Kerry Dobransky & Eszter Hargittai, *The Disability Divide in Internet Access and Use*, 9 Info. Comm. & Soc'y 313 (2006), https://doi.org/10.1080/13691180600751298. The gap is itself the point: the digital environment is inaccessible too, which is the reason Title III coverage of it matters. The study's second finding is the one this Article relies on: once online, people with disabilities engage in the full range of uses, and they take distinct interest in activities like sharing content and reviewing products and services, which the authors read as evidence of going online "to adapt and respond to the wider inaccessible society." Dobransky & Hargittai, *Unrealized Potential*, at 18. That is the accommodation relationship this Part describes, measured. *See also* Kerry Dobransky & Eszter Hargittai, *Piercing the Pandemic Social Bubble: Disability and Social Media Use About COVID-19*, 65 Am. Behav. Scientist 1698 (2021), https://doi.org/10.1177/00027642211003146 (finding people with disabilities more actively engaged than others in sharing pandemic information online, 60 percent to 42 percent, and noting that the finding did not hold for the one subgroup defined by difficulty going outside).

193. 42 U.S.C. §12101(a)(2) (finding that "society has tended to isolate and segregate individuals with disabilities" and that such discrimination remains "a serious and pervasive social problem"). The populations enumerated here are the ones for whom the isolation Congress identified is a physical fact rather than a social attitude, and digital services are the means by which they exit it.

the textual structure of Title VII.[194] Importing Title VII disparate impact doctrine wholesale into Title III invites defenses about the limits of the Title VII analysis and risks a debate about whether Title VII analysis transfers to Title III at all. The argument advanced here does not require that transfer. Title III contains its own regulatory architecture for reaching facially neutral criteria that produce disability-selective exclusion, and that architecture is the correct vehicle.

The Department of Justice's Title III implementing regulations prohibit two categories of conduct that map directly onto the accommodation paradox.

The first is screen-out logic. Title III regulations prohibit public accommodations from imposing or applying eligibility criteria that "screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations," unless the criteria are "necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered."[195] The screen-out prohibition operates independently of intent. A criterion that has the effect of screening out disabled persons is actionable under the regulation regardless of whether the entity adopted the criterion for discriminatory reasons.

The nexus doctrine, as applied to disabled persons whose conditions limit physical access, functions as a screen-out criterion.[196] The doctrine's facial neutrality (a coverage rule about physical premises) operates on application to deny Title III's protections to disabled persons whose disabilities prevent them from accessing physical premises. The denial is selective in its application: the doctrine denies Title III protection to the disabled population whose physical access is most limited, and provides Title III protection to the disabled population whose physical access is most preserved. The screen-out effect runs in the opposite direction from the statute's

194. *Griggs v. Duke Power Co.*, 401 U.S. 424, 430–32 (1971); *see also Watson v. Fort Worth Bank & Tr.*, 487 U.S. 977, 987–91 (1988) (extending disparate impact to subjective employment criteria); Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071 (codifying Griggs analysis after *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642 (1989), narrowed it).

195. 28 C.F.R. §36.301(a).

196. 42 U.S.C. §12182(b)(2)(A)(i); 28 C.F.R. §36.301(a). The regulation adds that where a public accommodation imposes safety requirements, they "must be based on actual risks and not on mere speculation, stereotypes, or generalizations about individuals with disabilities." 28 C.F.R. §36.301(b). No court has identified an actual risk served by conditioning coverage on physical presence.

purpose. The statute exists to protect disabled persons from exclusion from commerce, culture, and services. The nexus doctrine excludes the most physically excluded disabled persons from the statute's reach. The doctrine's effect fits the screen-out regulation's terms directly.

The second category is methods of administration. Title III regulations prohibit public accommodations from utilizing "methods of administration" that have "the effect of subjecting individuals with disabilities to discrimination" or that "perpetuate the discrimination of others subject to common administrative control."[197] The methods-of-administration prohibition extends accountability beyond explicit policies to the administrative structure through which policies are implemented. A facially neutral administrative architecture that systematically disadvantages disabled persons is actionable under the regulation regardless of the architecture's superficial neutrality.

The nexus doctrine functions as a method of administration that systematically disadvantages disabled persons.[198] Defendants in nexus circuits administer their commerce through a doctrinal architecture that withdraws civil rights protection from digital service delivery. The administrative effect of this analysis is to deny disabled persons whose conditions limit physical access from the legal architecture that would otherwise compel accommodation of their disabilities. The methods-of-administration regulation reaches this exact configuration.

The doctrinal advantage of grounding the analysis in 28 C.F.R. §36.301(a) and §36.204 rather than in imported Title VII disparate impact doctrine is that the regulations are Title III's own regulatory architecture, promulgated by the agency administering the statute, and not

197. 42 U.S.C. §12182(b)(1)(D); 28 C.F.R. §36.204 ("Administrative methods") (barring "methods of administration that have the effect of discriminating on the basis of disability, or that perpetuate the discrimination of others who are subject to common administrative control"); *see also* 28 C.F.R. §36.202 ("Activities") (barring denial of "the opportunity . . . to participate in or benefit from the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation," the affording of an unequal benefit, and the provision of a "separate benefit" unless necessary to be "as effective as that provided to others"); 28 C.F.R. §36.203 ("Integrated settings") ("A public accommodation shall afford goods, services, facilities, privileges, advantages, and accommodations to an individual with a disability in the most integrated setting appropriate to the needs of the individual.").

198. 42 U.S.C. §12182(b)(1)(D)(i) (barring a public accommodation from "utiliz[ing] standards or criteria or methods of administration . . . that have the effect of discriminating on the basis of disability"); *see also id.* §12182(b)(2)(A)(i); 28 C.F.R. §36.301(a).

subject to the Title VII-specific limits that have developed around *Griggs*.[199] The screen-out and methods-of-administration prohibitions reach the accommodation paradox directly on Title III's own terms.

Section 504 of the Rehabilitation Act provides a parallel analysis that reaches the same conduct for entities receiving federal financial assistance.[200] The Supreme Court's reasoning in *Alexander v. Choate* establishes that Section 504 reaches facially neutral conduct that produces disability-selective exclusion.[201] The same analysis applies to Section 504-covered entities that operate digital services with the same screen-out effect. The HHS final rule on Section 504 web and mobile accessibility, issued in May 2024, codifies this analysis for entities receiving HHS financial assistance.[202] The same Congress that wrote Title III wrote Section 504 to govern

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199. The Department of Justice's implementing regulations were issued under express congressional authority. *See* 42 U.S.C. §12186(b). The regulations are entitled to respect as the considered position of the agency Congress directed to implement the subchapter. *See Bragdon v. Abbott*, 524 U.S. 624, 642–47 (1998) (observing that "the well-reasoned views of the agencies implementing a statute 'constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance"' (quoting *Skidmore v. Swift & Co.*, 323 U.S. 134, 139–40 (1944))). *Bragdon* also states that the Department's views are "entitled to deference," resting that statement on *Chevron*. *Id.*; *see Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 844 (1984). That footing did not survive *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), which holds that the Administrative Procedure Act requires courts to exercise independent judgment and forbids deference to an agency's reading merely because a statute is ambiguous. This Article does not need it. *Loper Bright* preserved *Skidmore* respect expressly, and *Skidmore* respect is all the argument requires, because §§36.301(a) and 36.204 are relied on here for the content they supply rather than for a power to bind. The change of regime cuts this Article's way: if a court owes the best reading of §12181(7) rather than a permissible one, a regulation cannot supply a narrowing the statute does not contain.

200. 29 U.S.C. §794; 34 C.F.R. pt. 104 (Department of Education regulations); 45 C.F.R. pt. 84 (HHS regulations). The asymmetry has sharpened since the nexus opinions were decided. HHS substantially revised Part 84 in 2024. *See* 89 Fed. Reg. 40066, 40180 (May 9, 2024) (effective July 8, 2024). The revised rule directs that "[t]he definition of 'disability' shall be construed broadly in favor of expansive coverage, to the maximum extent permitted by the terms of section 504." 45 C.F.R. §84.4(a)(2)(i). The agency administering the parallel statute wrote a broad-construction command into its regulation in 2024, while the courts administering Title III were narrowing its coverage by construction. Counsel should note that the 2024 rule renumbered portions of Part 84; a citation to a pre-2024 section number will not resolve to the same content. The current section is verified against the eCFR text as of July 6, 2026.

201. *Alexander v. Choate*, 469 U.S. 287, 295–301 (1985); *see also* Samuel R. Bagenstos, *Subordination, Stigma, and "Disability"*, 86 Va. L. Rev. 397, 463–73 (2000).

202. 89 Fed. Reg. 40066 (May 9, 2024) (codified at 45 C.F.R. pt. 84) (final rule requiring web and mobile accessibility for entities receiving HHS federal financial assistance, including healthcare providers receiving Medicare and Medicaid payments). The rule's reach is significant: substantially all U.S. hospitals, the majority of physician practices, the major pharmaceutical companies receiving NIH grants, and a substantial portion of healthcare-adjacent technology services receive HHS federal financial assistance. *See* U.S. Dep't of Health & Human Servs., *Section 504 Final Rule: Discrimination on the Basis of Disability in Health and Human Service Programs or Activities* (May 9, 2024).

parallel conduct, and the same analytical structure reaches the accommodation paradox in both regimes.

The combined effect is that Title III and Section 504, read together with their own regulatory architectures, reach the accommodation paradox directly.[203] The screen-out prohibition at 28 C.F.R. §36.301(a), the methods-of-administration prohibition at §36.204, the Section 504 analysis, and the HHS web accessibility rule each independently reach the conduct the accommodation paradox describes. The defense bar's argument that disparate impact doctrine is uncertain in the Title III context evades the actual regulatory architecture by focusing on the imported Title VII vocabulary rather than on Title III's own regulations. The accommodation paradox produces actionable conduct under multiple independent regulatory and statutory provisions, each tailored to the disability-rights analysis in which it operates.

X. The Political Economy of the Doctrine

The nexus doctrine has survived for three decades despite its incoherence with the statute, its inconsistency with adjacent regulatory regimes, and its documented disparate impact on the populations Congress wrote the statute to protect.[204] The doctrine's persistence deserves brief explanation.

The pattern does not correlate with partisan composition of the circuits adopting it.[205] The nexus position is the majority view in both the Ninth Circuit (Democratic-leaning) and

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203. 28 C.F.R. §36.301(a)–(c) (eligibility criteria, safety requirements based on "actual risks and not on mere speculation, stereotypes, or generalizations," and the surcharge prohibition); 45 C.F.R. §84.4(a)(2)(i) (2024) (broad-construction directive).

204. Longevity is not evidence of correctness, but it does demand an explanation, and the explanation offered in this subsection is the weakest part of the Article. *See infra* note (flagging the correlation claim). What can be said without speculation is narrower and still useful: the doctrine has never been tested in the Supreme Court, and the entities it exempts are the ones best positioned to settle any case that might produce a vehicle. *Cf. Gil v. Winn-Dixie Stores, Inc.*, 993 F.3d 1266 (11th Cir. 2021), *vacated as moot*, 21 F.4th 775 (11th Cir. 2021) (mooting a circuit-splitting website decision before it could be reviewed).

205. *Parker*, 121 F.3d at 1010–14 (6th Cir.) (en banc); *Ford*, 145 F.3d at 614 (3d Cir.); *Weyer*, 198 F.3d at 1114–15 (9th Cir.); *Magee*, 833 F.3d at 534–35 (5th Cir.). The observation that the rule spans circuits of differing composition is verifiable from the reporters and is worth making; the amicus record in the next paragraph is drawn from the opinion's counsel statement and the Supreme Court docket.

the Fifth Circuit (Republican-leaning). The Third and Sixth Circuits hold the nexus position across mixed political compositions. The First Circuit (Democratic-leaning) holds the no-nexus position. The partisan-capture theory fails on the data.

Major technology companies are headquartered in the Ninth Circuit; major pharmaceutical companies in the Third; major energy companies in the Fifth; major media split between the Second and Ninth. The commercial interest underlying the doctrine is stable and crosses partisan lines, and the amicus record shows it. In *Robles* alone, the Chamber of Commerce, the National Retail Federation, the Restaurant Law Center, the Retail Litigation Center, the American Bankers Association, and the American Hotel & Lodging Association appeared as amici at the Ninth Circuit, and the Chamber (joined by the National Federation of Independent Business), the Restaurant Law Center, the Retail Litigation Center, the Washington Legal Foundation, and the Cato Institute filed at the certiorari stage.[206] The coalition cuts across appointing presidents, across circuits with different political characters, and across industries with different consumer profiles.

The reform pathway that has the most promise is therefore doctrinal rather than political. Scholarly consensus that demonstrates the doctrine's incoherence can shift legal culture even when political coalitions cannot. Appellate litigation that develops the functional equivalence argument across circuits can build pressure for Supreme Court resolution. Supreme Court intervention, when the right vehicle presents itself, can resolve the split in a single opinion. The Court has shown increasing willingness to take civil rights cases and to interpret statutes through their text, both of which cut in favor of a no-nexus reading.[207]

The objection from congressional silence fails on the Court's own terms. Thirty years without an amendment resolving the split, and one proposed clarification that did not advance,

206. *Robles v. Domino's Pizza, LLC*, No. 17-55504 (9th Cir. Jan. 15, 2019) (amici curiae listed in the opinion's counsel statement); Docket, *Domino's Pizza, LLC v. Robles*, No. 18-1539 (U.S.) (amicus briefs filed July 15, 2019).

207. *See Bostock v. Clayton County*, 590 U.S. 644, 655–85 (2020) (textualist approach to Title VII); *Niz-Chavez v. Garland*, 593 U.S. 155, 161–72 (2021); Petition for Writ of Certiorari, *Domino's Pizza, LLC v. Robles*, No. 18-1539 (U.S. June 13, 2019); Online Accessibility Act, H.R. 8478, 116th Cong. (2020) (proposed legislative clarification that failed to advance).

might be offered as legislative acquiescence in the nexus reading. *Bostock* forecloses the move: speculation about why a later Congress declined to adopt new legislation offers a "particularly dangerous" basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt.[208] The acquiescence argument also proves too much. Congress has equally declined to codify the nexus requirement, and silence cannot ratify both sides of a circuit split at once. The normative implication follows directly. If the doctrine survives because it serves cross-partisan commercial interests rather than because it represents a correct reading of the statute, its continued application is not defensible on neutral grounds.[209] Title III was written to protect disabled Americans' access to commerce, culture, and services. The statute's protective purpose is not supposed to yield to commercial convenience of the industries providing commerce, culture, and services. Where commercial interests conflict with the statute's protective purpose, the statute's purpose should prevail.

XI. The Three-Door Problem: Procedural Traps

For a plaintiff in a nexus circuit suing a pure-digital defendant, the first door closes immediately.[210] The nexus doctrine excludes coverage at the merits level. A plaintiff whose claim depends on a pure-digital service as the place of public accommodation loses at the motion to dismiss stage. The dismissal is typically on the ground that the complaint fails to state a claim, because the service alleged to have violated Title III is not a place of public accommodation under the circuit's jurisprudence. The plaintiff's factual allegations of discrimination are not addressed on the merits.

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208. *Bostock*, 590 U.S. at 670 (quoting *Pension Benefit Guar. Corp. v. LTV Corp.*, 496 U.S. 633, 650 (1990)).

209. The conditional does the work here, and it should stay conditional. The Article establishes that the reading is incorrect on the statute's text, 42 U.S.C. §12181(7), on the agency's own regulation, 28 C.F.R. §36.104, and on the reasoning of the leading case, *Magee*, 833 F.3d at 534. It does not establish why the reading has survived, and that question is not one the doctrinal argument needs answered.

210. *Weyer*, 198 F.3d at 1114–15; *Magee*, 833 F.3d at 534–35; *Earll v. eBay, Inc.*, 599 F. App'x 695, 696 (9th Cir. 2015) (mem.); *Cullen*, 600 F. App'x at 508. Dismissal is at the coverage threshold, so the plaintiff never reaches the question whether the service is accessible.

The plaintiff may have alternative claims under state disability rights law, which in many states is broader than federal Title III. California's Unruh Civil Rights Act reaches business establishments regardless of physical location.[211] New York State Human Rights Law applies to covered entities on broad functional terms.[212] But the federal Title III claim is lost. The economic impact extends beyond the individual case. Title III does not provide for compensatory damages in private actions; the remedy is injunctive relief plus attorneys' fees.[213] The fees provision is the primary mechanism by which public-interest plaintiff lawyers can afford to bring Title III cases. When the substantive door closes, the economic model for public-interest disability rights litigation also closes for that circuit.

The second door is forum selection and the transfer trap. A plaintiff who resides in a no-nexus circuit, or who has sufficient contacts with one to establish personal jurisdiction over the defendant there, may file a Title III case in the no-nexus forum. Defendants facing such cases routinely file motions to transfer venue under 28 U.S.C. §1404(a),[214] typically arguing that California, New York, or another nexus-favorable forum is more convenient. If the transfer motion is granted, the case moves to a nexus circuit, and the transferee court applies its own circuit's law on the federal question.[215] A plaintiff who files in the Seventh Circuit and faces transfer to the Ninth Circuit will find, after transfer, that the Ninth Circuit's nexus doctrine applies. The no-nexus doctrine does not travel with the case.

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211. Cal. Civ. Code §51(b); *White v. Square, Inc.*, 7 Cal. 5th 1019 (2019) (holding that the Unruh Act applies to online businesses and that visiting a website with intent to use its services is, for standing purposes, equivalent to presenting oneself at a brick-and-mortar store); *but see Martinez v. Cot'n Wash, Inc.*, 81 Cal. App. 5th 1026 (2022) (holding that a retail website is not a place of public accommodation under the ADA and that, absent an ADA violation, the Unruh Act requires intentional discrimination, which the discriminatory effects of a facially neutral website do not establish).

212. N.Y. Exec. Law §296(2)(a); Andrews v. Blick Art Materials, LLC, 268 F. Supp. 3d 381, 393 (E.D.N.Y. 2017).

213. 42 U.S.C. §12188(a); 42 U.S.C. §12205.

214. 28 U.S.C. §1404(a).

215. The majority rule is that transferee courts in federal-question cases apply their own circuit's law, on the theory that federal-question jurisdiction does not raise the Erie-based choice-of-law concerns that drove *Van Dusen v. Barrack*, 376 U.S. 612, 639–40 (1964), to require application of transferor law in diversity cases. *See, e.g.*, *In re Korean Air Lines Disaster of Sept. 1, 1983*, 829 F.2d 1171, 1175–76 (D.C. Cir. 1987) (Ginsburg, J.); *Murphy v. F.D.I.C.*, 208 F.3d 959, 965–66 (11th Cir. 2000); *see also Ferens v. John Deere Co.*, 494 U.S. 516, 524–25 (1990) (extending Van Dusen to plaintiff-initiated transfers).

The third door emerges when defendants argue that remote participation in litigation would cure the accessibility concerns raised by the distant forum.[216] The defense argument produces a recursive problem. If remote participation in litigation is adequate accommodation for a disabled party's physical inability to travel to the forum, then remote access to services is adequate accommodation for the plaintiff's physical inability to travel to physical places of public accommodation. The defense position on transfer concedes the underlying substantive position: the plaintiff's access to digital services is indeed the functional equivalent of access to physical services, which is exactly what the nexus doctrine denies on the merits.

The integration principle articulated in *Olmstead v. L.C.*[217] supports the conclusion that accommodations belong to the disabled party. A defendant cannot ask a federal court to assign remote participation to the disabled plaintiff so the defendant can secure a more favorable forum. *Tennessee v. Lane*[218] provides additional support: access to the judicial process for disabled parties is not a mere convenience factor but a constitutional dimension of the interest of justice that section 1404(a) itself directs courts to weigh.

The three doors close simultaneously on disabled plaintiffs in nexus circuits.[219] The substantive doctrine falls on disabled plaintiffs through its coverage exclusion. The procedural doctrine compounds the substantive exclusion by making forum selection more difficult. The integration principle blocks defense attempts to reconcile the two doors through reverse accommodation assignment. The combined effect is an analysis in which disabled plaintiffs in nexus-circuit states have no effective path to the merits against pure-digital defendants. The

216. The argument is self-defeating on its own premise. A defendant who maintains that remote participation is an adequate substitute for physical presence in a courtroom has conceded that remote participation is an adequate substitute for physical presence in a store, which is the proposition the nexus doctrine denies. *Cf. Carparts*, 37 F.3d at 19 ("It would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not.").

217. 527 U.S. 581, 597–603 (1999).

218. 541 U.S. 509, 522–34 (2004).

219. 42 U.S.C. §12101(a)(4) (congressional finding that individuals discriminated against on the basis of disability "have often had no legal recourse to redress such discrimination"); *id.* §12101(b)(2) (purpose of providing "clear, strong, consistent, enforceable standards"). A rule that forecloses coverage, complicates forum selection, and then offers remote participation as the answer to the resulting burden is not an enforceable standard as to the claimants it forecloses.

analysis also frustrates the ADA's fee-shifting structure. Title III's fee provision is designed to enable public-interest litigation that produces systemic compliance improvements. When three doors close against every pure-digital case, the fee-shifting structure produces no incentive for plaintiff-side representation. The systemic compliance improvements the statute was designed to produce are therefore unattainable in the majority of circuits for the fastest-growing segment of the commerce the statute was written to cover.

XII. Forward-Looking Application: Consumer AI as the Hardest Test Case

The argument advanced in this Article applies most controversially to the consumer artificial intelligence sector, which is widely treated as a pure-digital category[220] that the nexus doctrine clearly excludes from Title III coverage. The argument of this Part is that the treatment does not align with the facts already in evidence.

Google operates ten permanent physical Google Stores in the United States as of 2026, selling Pixel devices that run Google's consumer AI product (Gemini) as an integrated feature.[221] Meta's retail footprint comprises flagship stores in Burlingame and Los Angeles, pop-up boutiques in Las Vegas and Honolulu, and a Manhattan flagship under a ten-year lease announced

220. The treatment is assumed rather than adjudicated. No court of appeals has held that a consumer artificial intelligence service is outside 42 U.S.C. §12181(7), and the memorandum dispositions closest to the question involved an auction platform and a streaming service. *Earll v. eBay, Inc.*, 599 F. App'x 695, 696 (9th Cir. 2015) (mem.); *Cullen*, 600 F. App'x at 508.

221. Google opened its tenth United States retail store at the Fashion Valley mall in San Diego on May 8, 2026, having opened the first in the Chelsea neighborhood of New York City in June 2021. *See* Google Store Opens in San Diego, Marks 10th Physical Location, Fox 5 San Diego (May 8, 2026), `https://fox5sandiego.com/news/local-news/san-diego/google-store-san-diego/`; Google Debuts 10th US Store in Tough Field for Technology Giants, CoStar (May 12, 2026), `https://www.costar.com/article/712768357/google-debuts-10th-us-retail-store-in-tough-field-for-technology-giants`. The San Diego store's advertised functions are the point: customers may purchase through the online Google Store and collect the order at the physical store, and on-site staff perform Pixel repairs and device troubleshooting. Fox 5 San Diego, *supra* note 221. That is the *Robles* nexus and the §12181(7)(F) repair-service function in one storefront.

in March 2026, selling Ray-Ban Meta glasses that run Meta AI.[222] Microsoft operates the Fifth Avenue Experience Center selling Copilot-integrated Surface devices and Windows PCs. Anthropic operates Project Vend, an experimental program in which Claude operates physical vending machines, demonstrating that an AI system can occupy the operator role in a commercial setting that Title III's category (E) reaches.

The doctrinal consequence is that the nexus the doctrine demands already exists for the major consumer AI providers.[223] Google.com and the Gemini service are tied to Google Stores. The Meta AI assistant is sold at Meta Labs. Microsoft Copilot is sold at the Experience Center. These are not hypothetical future nexuses; they are present commercial facts. Under the functional public accommodation test proposed in this Article, the coverage follows from the test's elements without difficulty. Under existing nexus doctrine, the same coverage follows from the existing Robles analysis applied to the physical retail operations the providers themselves run.

The cascade analysis extends further. Each of these providers integrates its AI service into a broader product ecosystem.[224] Meta AI runs in Facebook, Instagram, WhatsApp, Messenger, and Threads. Google Gemini runs in Search, Gmail, Docs, YouTube, Chrome, Android, and the rest of the Google consumer line. Microsoft Copilot runs in Windows, Microsoft 365, Bing, and Edge. The covered AI service plus the integrated platforms together produce coverage cascading across substantial portions of the consumer digital economy.

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222. Meta's retail footprint as of 2026 comprises flagship locations in Los Angeles (opened October 2025) and at 697 Fifth Avenue in Manhattan (ten-year lease announced March 18, 2026), the original Burlingame store (opened 2022), and pop-up boutiques in Las Vegas and Honolulu. *See Meta Bets on NYC with Flagship*, Retail Dive (Mar. 19, 2026), `https://retaildive.com/news/meta-nyc-flagship-store/815198/`; Press Release, Vornado Realty Trust, *Meta Establishes New York City Retail Flagship at Vornado Realty Trust's 697 Fifth Avenue* (Mar. 18, 2026).

223. *Robles*, 913 F.3d at 905–06 (holding that "Domino's website and app facilitate access to the goods and services of a place of public accommodation"). Google's own store pages advertise buy-online-collect-in-store and on-site device repair, which is the same relationship *Robles* found sufficient, arising from the same defendant that operates the digital service. The consumer AI sector is treated as the paradigm case of pure-digital exemption, and for the largest providers in it the paradigm does not hold on the nexus doctrine's own terms.

224. Integration matters under the nexus doctrine's own logic because it multiplies the connections between the digital service and any physical operation the same entity conducts. *See Robles*, 913 F.3d at 905–06 (coverage turning on the relationship between the digital interface and the entity's physical operations).

The cascade material summarized above carries its own doctrinal significance. The forward-looking implication is the central point: the nexus doctrine's claim that consumer AI is excluded from Title III because the sector lacks physical operations is empirically wrong.[225] The sector already has physical operations. The doctrine has been satisfied. The courts have not yet been asked to see this.

XIII. Proposed Reform: The Functional Public Accommodation Test

The Article's positive proposal replaces the nexus doctrine with a functional public accommodation test for Title III coverage.[226]

The doctrinal premise of the test is that digital services are not placeless. They are user-sited.[227] Every digital service is experienced through a physical device, in a physical body, at a physical location. A user accessing a banking service does so on a phone in a coffee shop, a laptop in a home office, a tablet at a kitchen table, a smart speaker in a living room, or an assistive device operated through eye tracking from a hospital bed. The "digital space" fiction is a useful abstraction for network architecture, but it is a poor description of human access. For the user, the service appears wherever the user's body and device are. Law already recognizes this when other stakes are high. Federal and state law treat digital environments as situated, consequential,

225. *Cf.* 42 U.S.C. §12101(b)(2) (purpose of providing "clear, strong, consistent, enforceable standards"). A coverage rule whose application to the largest firms in the newest sector depends on their retail-leasing decisions is not a standard in the sense Congress used the word.

226. The nearest opposing scholarship reaches the contrary conclusion from the same text and deserves an answer rather than silence. Trevor Paul, Comment, *Is a Website Subject to Title III of the ADA? Why the Text Applies to Only Websites "Of" a Place of Public Accommodation*, 8 J. Prop. L. 177 (2022), `https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1188&context=journal-of-property-law`, argues that the statute reaches only websites "of" a place of public accommodation, and rests on the observation that "no court has held that a website is a 'service,' 'privilege,' or 'advantage' of a 'place of public accommodation.'" *Id.* at 177. The observation is correct and it is an argument for the functional test rather than against it: the reason no court has reached that holding is that the nexus circuits dispose of these cases at the coverage threshold, before the §12182(a) enumeration is ever construed. *See* 42 U.S.C. §12182(a). Paul's reading also leaves the pure-digital entity outside the statute entirely, which is the result this Article contends the statute's text does not permit and which its paradigm beneficiaries cannot survive.

227. The premise is descriptive rather than doctrinal, and it does no work the statute does not already do. Even if a digital service were placeless, 42 U.S.C. §12181(7) asks what the entity is and §12182(a) asks what it provides. Neither asks where the user stands.

and embodied when the question is child safety, consumer privacy, fraud, gambling regulation, or financial-services oversight. Disability access should not be the one domain where law demands brick and mortar as the price of reality.

The test follows from this premise. A facility or service qualifies as a place of public accommodation if:

1. It is operated by a private entity whose operations affect commerce (a requirement already in the statute).[228]

2. Its function falls within one of the twelve statutory categories of 42 U.S.C. §12181(7).[229]

3. It completes commercial transactions, service provision, information dissemination, cultural exhibition, educational delivery, or other covered activity between the entity and members of the public.

The test does not ask what the facility looks like. It does not ask whether it has walls.[230] It does not ask whether it is large or small. It asks whether the entity performs the function the statute was written to cover.[231]

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228. 42 U.S.C. §12181(7) ("The following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce"); *id.* §12181(1) (defining "commerce" as travel, trade, traffic, transportation, or communication among the several States, with a foreign country or territory, or between points in the same State but through another State or foreign country). The proposed test adds nothing here; it carries the threshold the statute already sets.

229. 42 U.S.C. §12181(7)(A)–(L). The twelve categories run from lodging through exercise or recreation, and each is stated as a list of examples closing on an "other" clause keyed to what the entity does: "other place of lodging," "other establishment serving food or drink," "other place of exhibition or entertainment," "other place of public gathering," "other sales or rental establishment," "other service establishment," "other station used for specified public transportation," "other place of public display or collection," "other place of recreation," "other place of education," "other social service center establishment," and "other place of exercise or recreation."

230. 28 C.F.R. §36.104 (defining "[f]acility" to include "equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property"). Walls are not in the regulation's list either.

231. *Compare Magee*, 833 F.3d at 534–35 (reading category (E) to require that a "sales establishment" comprise "not only a business but also the physical space that it occupies," an architectural criterion the subsection does not state), *with* 42 U.S.C. §12181(7)(E) ("a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment"), *and id.* §12182(a) (fixing the protected interest as "the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation").

The test is sense-neutral.[232] A blind, deaf, mobility-impaired, or cognitively disabled plaintiff can apply it. A sighted plaintiff can. An observer from any sensory modality can. The application does not privilege any particular disability status in its threshold analysis.

The test is text-faithful. The statute's references to "goods, services, facilities, privileges, advantages, or accommodations" are transactional and functional, not architectural.[233] The statute's "other" clauses invite extension to unlisted entities within each category's functional scope.[234]

The test captures modern commerce.[235] Vending machines, websites, AI services, automated kiosks, dispatch platforms, and embodied AI all complete transactions or deliver covered activities. The test reaches each through its function.

The test excludes genuine non-coverage scenarios. A private residence does not complete public transactions.[236] A park bench is not a commercial facility. A public sidewalk is not a place of public accommodation.[237] Entities that do not fall within the twelve categories remain outside coverage.[238]

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232. Contrast the entry criterion, which is not. A test asking whether the entity is an "actual, physical place[] where goods or services are open to the public," *Weyer*, 198 F.3d at 1114, resolves against every plaintiff who cannot be physically present, which is the class 42 U.S.C. §12101(a)(1) identifies as "precluded" from participation "because of discrimination."

233. 42 U.S.C. §12182(a) ("No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation."). Every noun in the enumeration names something an entity provides. None of them names a structure.

234. 42 U.S.C. §12181(7)(A)–(L). The "other" clause in each subsection is keyed to the function the listed examples share, not to a building type: subsection (F) closes on "other service establishment" after listing a laundromat, a bank, a travel service, an accountant's or lawyer's office, a pharmacy, an insurance office, and a professional office of a health care provider, entities that share no architecture and share only the provision of services. *See Carparts*, 37 F.3d at 19 (reasoning that a restrictive reading of the categories "would run afoul of the purposes of the ADA").

235. 28 C.F.R. §36.104 (defining "[f]acility" to include "equipment" and "other real or personal property"). Vending machines, kiosks, and lockers are equipment. The regulation reaches them; the doctrine does not.

236. 42 U.S.C. §12181(7)(A) (excepting an establishment of "not more than five rooms for rent or hire" that "is actually occupied by the proprietor of such establishment as the residence of such proprietor"); *id.* §12187 (exemptions for private clubs and religious organizations).

237. 42 U.S.C. §12181(7) (reaching only "[t]he following private entities"); *cf. id.* §12132 (Title II, reaching "the services, programs, or activities of a public entity").

238. 42 U.S.C. §12181(7) (limiting public accommodations to "[t]he following private entities"); *see also id.* §12182(b)(2)(A)(i) (reaching only "eligibility criteria that screen out or tend to screen out" individuals from "fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations" of a covered entity). A functional reading of the twelve categories is not a general access mandate; the categories remain the outer bound.

The test retains proportionality. Title III's readily-achievable and undue-burden standards already scale obligations to the covered entity's resources.[239] A small nonprofit operating an online support group is covered but its obligations are bounded by its capacity.[240] Amazon's obligations are bounded differently because Amazon's capacity is different.[241] The statute's internal scaling handles the concern that broad coverage produces unreasonable compliance burdens on small entities.

A. Applying the Test Across the Twelve Statutory Categories

A proposed doctrinal test must demonstrate that it produces sensible coverage determinations across the full scope of the statute it interprets.[242] The functional public accommodation test survives that demonstration. This subsection applies the test to each of the twelve statutory categories of 42 U.S.C. §12181(7). The application produces coverage for the modern functional equivalents in each category, coverage that tracks the statute's text and purpose, and exclusion for entities that genuinely fall outside the twelve categories. The application is deliberately short for each category because the purpose is to show the test works, not to reargue the circuit-split disposition, which is addressed in Part VII.

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239. 42 U.S.C. §12181(9) (defining "readily achievable" as "easily accomplishable and able to be carried out without much difficulty or expense," and directing courts to consider "the nature and cost of the action," "the overall financial resources of the facility or facilities involved," "the number of persons employed at such facility," "the overall financial resources of the covered entity," "the overall size of the business of a covered entity with respect to the number of its employees," and "the type of operation or operations of the covered entity"); *id.* §12182(b)(2)(A)(iii) (excusing auxiliary aids and services where the entity "can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden").

240. 42 U.S.C. §12181(9)(A)–(D); *id.* §12182(b)(2)(A)(iii). Nonprofit status is not an exemption; §12187 supplies the only entity exemptions, and they are for private clubs and religious organizations.

241. 42 U.S.C. §12181(9)(B)–(C) (making both "the overall financial resources of the facility or facilities involved in the action" and "the overall financial resources of the covered entity" express factors, so that the same access obligation yields different required conduct from entities of different size). The scaling is statutory, not judicial gloss, and it is what makes broad coverage compatible with proportionate duty.

242. The demonstration is owed because the objection to a functional reading is that it proves too much. 42 U.S.C. §12181(7)(A)–(L) supplies the outer bound, and a category walk is the only way to show the bound holds.

Category (A): Inn, hotel, motel, or other place of lodging.[243] The test reaches physical lodging establishments by their plain function. The test also reaches Airbnb, Vrbo, Booking.com, and similar platforms because each operates a lodging-service-completion function: the platform connects lodging supply and lodging demand, handles the commercial transaction, and provides the bridge between the guest and the accommodation. The host property remains the physical lodging. The platform is the service establishment completing the lodging transaction. Both are covered. A dispute over accessibility obligations reaches the platform, the host, or both depending on the specific accessibility feature at issue. The test distinguishes cleanly: a person's private residence not offered on a lodging platform is not a covered lodging establishment. A residence offered on a lodging platform is covered because the commercial transaction has made it one.

Category (B): Restaurant, bar, or other establishment serving food or drink.[244] Physical restaurants and bars are covered by plain function. The test reaches DoorDash, Uber Eats, Grubhub, Instacart (for prepared food), and restaurant-operated delivery because each completes the food-service transaction. The originating restaurant is covered for the food it prepares. The delivery platform is covered for the service it performs. Accessibility obligations attach to each for their respective functions: the restaurant must provide accessible menus and ordering; the platform must provide accessible ordering interfaces and accessible customer service. The test does not duplicate obligations; it allocates them functionally.

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243. 42 U.S.C. §12181(7)(A) ("an inn, hotel, motel, or other place of lodging, except for an establishment located within a building that contains not more than five rooms for rent or hire and that is actually occupied by the proprietor of such establishment as the residence of such proprietor"). The subsection's own exception is instructive: Congress excluded the owner-occupied small establishment by reference to how the building is *used*, not to what it is built of. The statute was already reasoning functionally in 1990.

244. 42 U.S.C. §12181(7)(B) ("a restaurant, bar, or other establishment serving food or drink"). *Cf. Robles*, 913 F.3d at 905–06 (reaching the ordering interface because "[t]he alleged inaccessibility of Domino's website and app impedes access to the goods and services of its physical pizza franchises," a route that runs through the physical outlet rather than through the food-service function the subsection names).

Category (C): Motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment.[245] Physical theaters and venues are covered. The test reaches Netflix, Disney+, HBO Max, Apple TV+, Prime Video, Peacock, Paramount+, Hulu, Spotify (for exclusive content), YouTube Premium, and other streaming services because each completes the exhibition transaction for the content it presents. The test reaches AI services in their exhibition function because their outputs are displayed to users through the service; the service is the place of exhibition in the statute's sense. The test distinguishes: a private gathering where no commercial transaction occurs is not a covered place of exhibition. A commercial streaming service that exhibits content to subscribers is.

Category (D): Auditorium, convention center, lecture hall, or other place of public gathering.[246] Physical venues are covered. The test reaches Zoom, Microsoft Teams, Webex, Google Meet, and similar videoconferencing platforms in their public-gathering function: a conference held through Zoom with paying registrants is a place of public gathering completed through the platform. The test reaches academic conference platforms that refuse to offer remote attendance, because the covered function is the gathering, and a conference that excludes disabled participants through refusal to provide remote access has failed the accommodation obligation. The test reaches Discord servers, Twitch streams, and game lobbies in their public-gathering functions where those functions are commercial. The test excludes private family video calls and informal group chats among friends because no commercial transaction or public-gathering function attaches.

245. 42 U.S.C. §12181(7)(C) ("a motion picture house, theater, concert hall, stadium, or other place of exhibition or entertainment"). *Compare Cullen*, 600 F. App'x at 508 (mem.) (affirming dismissal because the streaming service is not connected to a physical place), *with Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200–02 (D. Mass. 2012) (holding the same service covered). The subsection names a function, exhibition, and the two courts split on a criterion the subsection does not contain.

246. 42 U.S.C. §12181(7)(D) ("an auditorium, convention center, lecture hall, or other place of public gathering").

Category (E): Bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment.[247] This is the category that the Robles line of cases has addressed most directly. The test reaches every e-commerce retailer, every app-based shopping platform, every direct-to-consumer website, and every digital-goods retailer because each completes sales transactions with members of the public. Amazon, Walmart, Target, Best Buy, Apple, Google (Pixel), Meta (Ray-Ban Meta glasses), Microsoft (Surface), Anthropic (through Project Vend, subject to the public-access question examined in the worked applications below), Etsy, eBay, Shopify merchants, Steam, the Kindle store, Apple Music, and Spotify for paid content all reach coverage. The test distinguishes: a garage sale at a private residence is not a covered sales establishment. A commercial e-commerce operation selling to the public is.

Category (F): Laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment.[248] The test reaches every service business in digital form. Online banks (Chime, Varo, PayPal, Cash App banking services) are covered banks because the statute names bank without architectural qualification, as developed in Part VII.6. Telehealth services are covered professional health care offices. Online legal services (LegalZoom, Rocket Lawyer) are covered offices of lawyers. Online tax preparation (TurboTax live, H&R Block Virtual) are covered offices of accountants. Online travel services (Expedia, Kayak, Booking.com) are explicitly named. Online pharmacies (Capsule, Amazon Pharmacy) are covered pharmacies. Online

247. 42 U.S.C. §12181(7)(E) (“a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment”). *See Magee*, 833 F.3d at 534–35 (adding a criterion of occupied physical space that the subsection does not state); *Gil*, 993 F.3d at 1278–81 (holding websites categorically outside the subsection), *vacated as moot*, 21 F.4th 775 (11th Cir. 2021).

248. 42 U.S.C. §12181(7)(F) (“a laundromat, dry-cleaner, bank, barber shop, beauty shop, travel service, shoe repair service, funeral parlor, gas station, office of an accountant or lawyer, pharmacy, insurance office, professional office of a health care provider, hospital, or other service establishment”). The enumeration is the strongest textual evidence against an architectural reading: a laundromat, a bank, a travel service, and a lawyer’s office share no building type and share only the provision of a service. *See Carparts*, 37 F.3d at 19; *but see Weyer*, 198 F.3d at 1114–15 (reading the subsection to require a connection to “an actual physical place”).

insurance (Geico, Lemonade, Root, Policygenius) are covered insurance offices. The category's scope is substantial and the test applies without interpretive strain to each listed subcategory.

Category (G): Terminal, depot, or other station used for specified public transportation.[249] Physical transportation terminals are covered and remain physical. The test reaches Uber, Lyft, and similar platforms in their dispatch function because the dispatch doctrine analysis in Part III applies within the functional public accommodation analysis. The physical vehicle plus the dispatch platform plus the driver together constitute the transportation service. The terminal-function that in 1990 took the form of a bus station or taxi stand now takes the form of a mobile application that dispatches vehicles; the commercial function is the completed transportation transaction. The test distinguishes: a private carpool arrangement among coworkers is not a covered transportation service. A commercial dispatch platform is.

Category (H): Museum, library, gallery, or other place of public display or collection.[250] Physical museums, libraries, and galleries are covered. The test reaches digital libraries (JSTOR, HathiTrust, ProQuest), digital archives (Internet Archive, including the Hachette litigation context where courts treated the Internet Archive as a library for copyright purposes), online museums and gallery platforms, and cultural databases because each performs the public-display-or-collection function through digital means. The test reaches Google Books and Google Scholar in their information-dissemination functions. The test distinguishes: a private photo collection on a personal hard drive is not a covered place of public display. A commercial or institutional digital collection available to the public is.

Category (I): Park, zoo, amusement park, or other place of recreation.[251] Physical parks, zoos, and amusement parks remain covered and physical. The recreational function in this category has migrated least to digital form; parks and zoos remain places one goes to. The test

249. 42 U.S.C. §12181(7)(G) ("a terminal, depot, or other station used for specified public transportation"). *See Access Living of Metro. Chi. v. Uber Techs., Inc.*, 958 F.3d 604 (7th Cir. 2020); *Namisnak v. Uber Techs., Inc.*, 971 F.3d 1088 (9th Cir. 2020).

250. 42 U.S.C. §12181(7)(H) ("a museum, library, gallery, or other place of public display or collection"). *See Nat'l Fed'n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565, 575–76 (D. Vt. 2015) (reaching a digital library within the subsection).

251. 42 U.S.C. §12181(7)(I) ("a park, zoo, amusement park, or other place of recreation").

reaches commercial virtual tourism platforms, online zoo and aquarium educational services, and virtual reality recreational experiences in their commercial forms. The test distinguishes: a state or national park is not a Title III-covered establishment because governmental entities are covered under Title II rather than Title III, and this distinction is a matter of which statute reaches rather than whether coverage exists at all.

Category (J): Nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education.[252] The test reaches online schools (private, because public schools are Title II), online university programs, tutoring platforms (Varsity Tutors, Wyzant), educational technology platforms used by schools (Google Classroom, Canvas, Schoology), and educational content platforms (Coursera, edX, Khan Academy, MasterClass). The test reaches consumer AI services in their educational function, as discussed in Part VII.10. The test distinguishes: private tutoring between family members is not a covered educational establishment. Commercial or institutional educational services are.

Category (K): Day care center, senior citizen center, homeless shelter, food bank, adoption agency, or other social service center establishment.[253] The test reaches online support groups and recovery communities (AA, Al-Anon, SMART Recovery in their online forms), online grief and caregiver support platforms, online parent support services, and community mental health platforms in their social-service-center functions. Nonprofit status does not exempt coverage; the statute's coverage rules apply to nonprofits within the listed categories, and the readily-achievable and undue-burden standards accommodate the proportionality concerns that nonprofit status might raise. The test distinguishes: an informal friend group providing mutual support to each other is not a covered social service center. A commercial or institutional social service operation is.

252. 42 U.S.C. §12181(7)(J) ("a nursery, elementary, secondary, undergraduate, or postgraduate private school, or other place of education"). *See Nat'l Ass'n of the Deaf v. Harvard Univ.*, 377 F. Supp. 3d 49 (D. Mass. 2019).

253. 42 U.S.C. §12181(7)(K) (listing "a day care center, senior citizen center, homeless shelter, food bank, adoption agency" before closing on a social service center establishment clause).

Category (L): Gymnasium, health spa, bowling alley, golf course, or other place of exercise or recreation.[254] The test reaches Peloton, Apple Fitness+, Nike Training Club, Fitbit Premium, Strava in its commercial features, every exercise application, and every fitness platform because each performs the exercise-and-recreation function the statute lists. The test reaches these services regardless of whether a physical class or a physical gym is involved, because the statute names the function (place of exercise) rather than the architecture (building with lockers). The test reaches online golf simulation services and online bowling platforms in their commercial forms. The test distinguishes: a personal exercise routine performed at home without reference to a commercial service is not a covered gymnasium. A commercial fitness service is.

The twelve-category walkthrough demonstrates that the test produces coverage determinations that track the statute's text in each category.[255] The test does not produce universal coverage; it produces the coverage Congress wrote into the statute by naming the covered categories. The test restores the statutory text to its operational role, replacing the judicially imposed architectural gloss with the functional reading the text supports.

B. Worked Applications

The twelve-category walkthrough above demonstrates the test's reach across the statutory landscape. This subsection works through five harder cases in detail, applying each element of the test to a specific entity and showing how the analysis produces a determinate coverage outcome.[256] The cases are chosen to span the doctrine's harder edges: a pure-digital retailer with massive scale, an individual blogger with affiliate revenue, a community-driven communication platform, a user-edited reference work, and an AI-operated commercial endpoint.

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254. 42 U.S.C. §12181(7)(L) (closing the enumeration on a place of exercise or recreation clause).

255. 42 U.S.C. §12181(7) (limiting public accommodations to "[t]he following private entities"); *id.* §12187 (exemptions for private clubs and religious organizations). Coverage stops where Congress stopped it.

256. The three elements track the statute: element one restates 42 U.S.C. §12181(7)'s threshold that "the operations of such entities affect commerce," with "commerce" defined at *id.* §12181(1); element two restates the requirement that the entity fall within one of the twelve enumerated categories, *id.* §12181(7)(A)–(L); and element three restates the protected interest fixed by *id.* §12182(a), "the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation." The test adds no element the statute does not already supply. It subtracts the one the statute never supplied.

Amazon.com. Element 1: Amazon is a private entity whose operations affect commerce. Met. Element 2: Amazon's function falls within category (E), sales establishment, with overlap into category (F) for its service operations. Met. Element 3: Amazon completes commercial transactions with members of the public continuously. Met. Coverage attaches. Coverage was also available under nexus doctrine through Whole Foods, Amazon Lockers, Amazon Fresh stores, and Amazon Pharmacy locations, as developed in Part III. The functional test produces the same coverage on cleaner doctrinal grounds.

A solo blogger with Amazon affiliate revenue.[257] Element 1: the blogger is a private entity (an individual operating commercially), and the blogger's operations affect commerce through affiliate sales. Met, with low volume. Element 2: the blogger's function is information dissemination plus commercial referral, which falls within category (H) (place of public display or collection) for the information function and arguably within category (E) for the commercial referral function. Met. Element 3: the blog completes information-dissemination activity continuously and completes commercial referral transactions with members of the public when readers click affiliate links. Met. Coverage attaches in principle. Coverage in practice is bounded by the proportionality analysis discussed below: the readily-achievable and undue-burden standards apply against the blogger's actual capacity, which is small. The result is that the blogger has nominal coverage but minimal operative obligations beyond providing basic accessibility features that are technically straightforward (alt text on images, logical heading structure, keyboard navigation, sufficient color contrast). The blogger does not face the obligations Amazon faces, because the blogger's capacity is not Amazon's. The test produces graduated obligations through proportionality rather than binary coverage through the threshold gate.

257. The blogger illustrates the proportionality point rather than a coverage boundary. 42 U.S.C. §12181(9)(B)–(C) makes both "the overall financial resources of the facility or facilities involved in the action" and "the overall financial resources of the covered entity" express factors in what is readily achievable, and §12182(b)(2)(A)(iii) excuses steps that "would result in an undue burden." Coverage and obligation are different questions, and the statute answers the second one with the entity's own balance sheet.

Discord. Element 1: Discord, Inc. is a private entity whose operations affect commerce through subscription revenue, advertising integrations, and the Discord platform's commercial role. Met. Element 2: Discord's function spans multiple categories. It is a place of public gathering under category (D) where servers operate publicly. It is a platform of social-service-center function under category (K) for the substantial population of mental health, addiction recovery, grief support, and disability support communities that operate Discord servers. It is a place of educational exchange under category (J) for educational and instructional communities. It is a place of recreation under category (I) and category (L) for gaming and fitness-focused communities. Met. Element 3: Discord completes covered activity (gathering, support, education, recreation) between Discord and its users continuously. Met. Coverage attaches at category (D) at minimum and overlaps multiple other categories depending on which Discord server or feature is at issue. The accessibility obligations attach to Discord's design and operation: screen reader compatibility, keyboard navigation, captioning for voice and video features, alternative formats for content, accessible moderation tools. Server operators may also have obligations within their servers if the server operator is itself a covered public accommodation, but that analysis is independent of Discord's own coverage.

Wikipedia.[258] Element 1: the Wikimedia Foundation is a private entity (a nonprofit corporation organized under section 501(c)(3)) whose operations affect commerce, both directly through donations and indirectly through Wikipedia's role in the broader information economy. Met. Element 2: Wikipedia's function falls within category (H) (place of public display or collection) for the encyclopedic content, within category (J) (place of education) for the educational function, and within the broader information-dissemination scope of multiple categories. Met. Element 3: Wikipedia completes covered activity (information dissemination, public display) between Wikimedia and members of the public continuously. Met. Coverage attaches. Wikipedia's nonprofit status does not exempt coverage; the statute reaches nonprofit

258. 42 U.S.C. §12181(7)(H) ("a museum, library, gallery, or other place of public display or collection"). The category is not limited to entities that charge. *Cf. Nat'l Fed'n of the Blind v. Scribd Inc.*, 97 F. Supp. 3d 565, 575–76 (D. Vt. 2015). Nonprofit status bears on obligation through §12181(9), not on coverage; the statute's only exemptions are elsewhere. *See id.* §12187.

operations within the listed categories, and the readily-achievable and undue-burden standards adjust the operational obligations to Wikipedia's resources, which are substantial. Wikipedia's accessibility obligations attach to its interface design, screen reader compatibility for the encyclopedic content, alternative text on images, keyboard navigation, and accessible editing tools. Wikipedia has substantially addressed many of these obligations through its existing accessibility practices; the doctrinal coverage analysis merely confirms what Wikipedia is already substantively obligated to do.

Project Vend. Element 1: Anthropic is a private entity whose operations affect commerce. Met. Element 2: Project Vend's function falls within category (E) (sales establishment): Claude, operating through the Project Vend machines, completes sales transactions with members of the public who purchase items from the machines. Met as to function. The disputed question is whether the machines are open to the public or are limited to office participants, which goes to element 3. Element 3: if the Project Vend machines complete sales transactions with members of the public, the element is met. If the machines complete transactions only with office participants, the element is not met because the transactions are not with members of the public. The doctrinal point for present purposes is that the functional public accommodation test produces a determinate analysis that turns on a factual question (public access) rather than on the conceptual question of whether an AI can be a commercial operator. The conceptual question is resolved: an AI operating commercial endpoints can be a covered entity under Title III, just as a corporation, an individual, or any other commercial actor can be. The factual question of public access determines the answer in any specific case.

The worked applications demonstrate that the test produces determinate outcomes through the same three-element analysis regardless of the entity's form, scale, or sector.[259] The test is operable for first-instance trial courts, appellate panels, and the Supreme Court alike. The

259. Determinacy is the answer to the objection that a functional reading invites ad hoc judgment. The nexus doctrine is the ad hoc one: it turns on whether an entity happens to hold real estate, a fact with no relationship to the accessibility of the interface in suit. *Compare Robles*, 913 F.3d at 905–06, *with Earll v. eBay, Inc.*, 599 F. App'x 695, 696 (9th Cir. 2015) (mem.).

test does not require novel doctrinal extensions; it asks the three textual questions the statute already directs.

C. Proportionality: Readily Achievable, Undue Burden, and the WCAG Standard

A recurrent defense-bar argument against expanded Title III coverage is that broad coverage produces unreasonable compliance burdens on entities that lack the resources to comply.[260] The argument has merit at the level of obligation but no merit at the level of coverage. The statute already separates these questions through its readily-achievable and undue-burden standards. Coverage determines whether the obligation applies. Proportionality determines what the obligation is in the specific case.

The readily-achievable standard applies to barrier removal in existing facilities. The statute and its implementing regulations define readily achievable as "easily accomplishable and able to be carried out without much difficulty or expense."[261] The standard is calibrated to the covered entity's capacity. A small online business has the same legal posture under the functional public accommodation test that a small physical retailer has under existing nexus doctrine: covered, but with barrier-removal obligations limited to what the small business can readily achieve. The readily-achievable analysis for a solo blogger is materially different from the readily-achievable analysis for Amazon. The same legal standard produces different operational obligations because the standard scales with capacity.

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260. The argument conflates coverage with obligation, a distinction the statute draws in its own text. *Compare* 42 U.S.C. §12181(7) (coverage), *with id.* §12181(9) (defining "readily achievable" as "easily accomplishable and able to be carried out without much difficulty or expense" and listing four resource-sensitive factors), *and id.* §12182(b)(2)(A)(ii)–(iii) (fundamental-alteration and undue-burden defenses).

261. 42 U.S.C. §12181(9); 28 C.F.R. §36.304(a) ("Removal of barriers") ("A public accommodation shall remove architectural barriers in existing facilities, including communication barriers that are structural in nature, where such removal is readily achievable . . . ."). The regulations identify four factors for the analysis: the nature and cost of the action, the overall financial resources of the site and the entity, the type of operations, and the impact on operations. 28 C.F.R. §36.104.

The undue-burden standard applies to auxiliary aids and services. The statute and regulations define undue burden as "significant difficulty or expense."[262] A covered entity is required to provide auxiliary aids and services to ensure effective communication unless doing so would impose an undue burden or fundamentally alter the nature of the goods or services. The undue-burden standard is also scaled to the entity's capacity, with the same factor analysis as readily achievable.

The WCAG 2.1 AA technical standard provides the practical benchmark for what Title III accessibility compliance typically requires for web and mobile interfaces. The Web Content Accessibility Guidelines, developed by the World Wide Web Consortium, identify specific technical requirements for accessibility, organized into three conformance levels (A, AA, and AAA).[263] The AA conformance level is the practical industry standard and is what the Department of Justice has identified as the appropriate technical benchmark for Title II compliance in its 2024 final rule on web and mobile accessibility for state and local

262. 42 U.S.C. §12182(b)(2)(A)(iii); 28 C.F.R. §36.303(a) ("A public accommodation shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the public accommodation can demonstrate that taking those steps would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations being offered or would result in an undue burden, i.e., significant difficulty or expense."); *id.* §36.303(c)(1)(ii) ("In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability."). The analysis considers the same factors as readily achievable: nature and cost, overall financial resources, type of operations, and impact on operations.

263. W3C, *Web Content Accessibility Guidelines (WCAG) 2.1*, W3C Recommendation (June 5, 2018), `https://www.w3.org/TR/WCAG21/`; *see also* W3C, *Web Content Accessibility Guidelines (WCAG) 2.2*, W3C Recommendation (Oct. 5, 2023), `https://www.w3.org/TR/WCAG22/` (incremental update).

governments.[264] DOJ has not formally adopted WCAG 2.1 AA as the Title III technical standard, but the standard functions as the operational benchmark for Title III compliance in industry practice and in litigation settlements.

The proportionality structure of Title III therefore handles the defense-bar concern directly. Small businesses are covered but have small obligations.[265] Large businesses are covered and have large obligations. Nonprofit entities are covered but have obligations bounded by their resources. The technical benchmark for compliance (WCAG 2.1 AA) is well-defined, widely implemented, and within the capacity of essentially every commercial entity at non-trivial scale. The smallest commercial actors face proportionality limits that limit their obligations to a small set of low-cost accessibility features (alt text, heading structure, keyboard navigation, color contrast). The largest commercial actors face the full WCAG 2.1 AA benchmark and the operational obligation to maintain ongoing accessibility through audit, repair, and design review.

The proportionality structure also operates as the answer to defense-bar concerns about coverage cascading to unmanageable scope.[266] The cascade analysis developed in Part XI of this Article identifies coverage extending across substantial portions of the consumer digital

264. 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. pt. 35) (adopting WCAG 2.1 AA as Title II technical standard for state and local government web and mobile content). DOJ has not formally adopted WCAG 2.1 AA as the Title III technical standard, but the Department's Title III settlement agreements have repeatedly required conformance with it, and the 2022 guidance points to WCAG as guidance for compliance. *See* Settlement Agreement, *Rite Aid Corp.* (Nov. 1, 2021), `https://www.justice.gov/crt/case/rite-aid-corporation` (requiring conformance of COVID-19 vaccine registration content with WCAG 2.1, Level AA under Title III); U.S. Dep't of Justice, *Guidance on Web Accessibility and the ADA* (Mar. 18, 2022). In a February 2026 Statement of Interest opposing a proposed website accessibility class settlement, the Department stated in a footnote that it does not endorse WCAG as the appropriate or necessary standard, a position in tension with its own settlement practice. *See DOJ Throws Wrench Into Proposed ADA Website Accessibility Class Settlement*, ADA Title III (Seyfarth Shaw, Feb. 2026), `https://www.adatitleiii.com/2026/02/doj-throws-wrench-into-proposed-ada-website-accessibility-class-settlement/` (last visited July 31, 2026). The observation in the text concerns the enforcement record, not a formally adopted Title III standard. The Title II rule's compliance dates were subsequently extended without change to the adopted standard. 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 (Apr. 20, 2026).

265. 42 U.S.C. §12181(9)(A)–(D) (directing consideration of "the nature and cost of the action needed," the resources and employee count of the facility, the resources and overall size of the covered entity, and "the type of operation or operations of the covered entity").

266. 42 U.S.C. §12181(9) (readily achievable, with four resource-sensitive factors); *id.* §12182(b)(2)(A)(ii)–(iii) (fundamental alteration and undue burden). Breadth of coverage and weight of obligation are separate variables in the statute, and the defense argument treats them as one.

economy. The proportionality structure ensures that the obligations attaching to that coverage are calibrated to each covered entity's capacity. A small Etsy seller is covered but has small obligations. Amazon is covered and has large obligations. The doctrine does not produce equal obligations across unequal entities; it produces proportional obligations across the full range of covered entities.

The test's implementation requires either judicial adoption through circuit-level decisions that reconsider the nexus doctrine, Supreme Court grant of certiorari in a suitable vehicle and reversal of the majority position, or legislative amendment of 42 U.S.C. §12181(7) to explicitly incorporate the functional test.[267]

This Article argues all three pathways should be pursued simultaneously.[268] The doctrinal argument developed here provides the analysis for judicial adoption, cert petitions, and legislative drafting. The category-by-category analysis in Part VII supplies the concrete application across the statute's domain. The regulatory incoherence argument in Part VI provides the cross-analysis justification. The accommodation paradox argument in Part VIII supplies the moral and legal urgency. The political economy analysis in Part IX identifies the obstacles and the coalitions necessary to overcome them.

The reform is not an extension of the statute.[269] It is a return to the statute's text after three decades of judicial drift. The functional public accommodation test reads the statute as Congress wrote it, without the physical-place gloss the early circuit decisions imposed. The reform restores the statute to its original scope.

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267. The vehicle problem is real. The most recent decision squarely presenting the question was vacated as moot before review. *Gil*, 993 F.3d 1266, *vacated as moot*, 21 F.4th 775 (11th Cir. 2021). A defendant facing an adverse website ruling can moot the case by making the website accessible, which preserves the doctrine by satisfying the plaintiff.

268. The pathways are not equivalent in what they would settle. A circuit reconsidering the doctrine en banc would bind only that circuit; a legislative amendment to 42 U.S.C. §12181(7) would foreclose the construction nationally; certiorari would do both but requires a vehicle that survives to judgment. *See id.* §12101(b)(3) (purpose of ensuring "that the Federal Government plays a central role in enforcing the standards established in this chapter").

269. The physical-place requirement appears nowhere in 42 U.S.C. §12181(7) or §12182(a). It entered through construction. *See Parker*, 121 F.3d at 1010–14 (en banc); *Ford*, 145 F.3d at 614; *Weyer*, 198 F.3d at 1114–15; *Magee*, 833 F.3d at 534–35. Removing a judicial gloss is not an amendment.

XIV. Anticipated Objections

The argument advanced in this Article will face a recognizable set of objections from defense counsel, sympathetic academics, and circuit panels predisposed to the nexus doctrine.[270] This Part addresses six objections that together cover the strongest defenses of the existing doctrine. Each is considered on its strongest version. The response in each case is that the objection does not survive engagement with the statute's text, the surrounding regulatory analysis, or the doctrinal alternatives the objection itself implies.

A. The Textual Argument for "Place"

The most sophisticated defense of the nexus doctrine reads the word "place" in "place of public accommodation" as architectural.[271] On this view, the statute's reference to physical examples within each category ("bakery, grocery store, clothing store, hardware store, shopping center"), combined with the noun "place," confines coverage to physical premises. The argument is that this Article rewrites the statute by removing the architectural anchor from a phrase Congress chose deliberately.

The argument has the surface appeal of textualism. The argument does not, however, survive engagement with the statute's full text.

The First Circuit considered the same textual argument in 1994 and rejected it. In *Carparts Distribution Center, Inc. v. Automotive Wholesaler's Association of New England, Inc.*, Chief Judge Torruella wrote for a panel that included Senior Judge Coffin and then-Judge Boudin in holding that Title III's coverage extended to the operations of a health benefits plan

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270. The objections are addressed in ascending order of force. The regulatory objection, *infra* Part XII.B, is the strongest and is the one the nexus opinions themselves never make. *See Parker*, 121 F.3d at 1010–14; *Ford*, 145 F.3d at 614; *Weyer*, 198 F.3d at 1114–15; *Magee*, 833 F.3d at 534–35.

271. The reading has to account for the fact that Congress used "place" in only some of the twelve subsections. Subsections (A), (C), (D), (H), (I), (J), and (L) close on "place" clauses. Subsections (B), (E), (F), (G), and (K) do not: they close on "establishment," "sales or rental establishment," "service establishment," "station," and "social service center establishment." 42 U.S.C. §12181(7). An architectural reading of "place" does not reach the five subsections that do not use the word, and subsection (E) is the subsection *Magee* construed. *Magee*, 833 F.3d at 534.

administrator, including operations conducted by telephone and mail.[272] The court's textual reasoning is dispositive of the objection:

> It would be irrational to conclude that persons who enter an office to purchase services are protected by the ADA, but persons who purchase the same services over the telephone or by mail are not. Congress could not have intended such an absurd result.[273]

The reasoning is grounded in the textualist absurdity canon, a method Justice Scalia consistently endorsed.[274] A reading that protects the disabled customer who walks into the office but excludes the disabled customer who orders by mail is not an interpretation Congress could have intended. The First Circuit reached this conclusion in 1994, four years after the ADA's enactment, when the relevant textual evidence (the categories, the examples, the "other" clauses, the statutory purpose) was fresh and uncontaminated by three decades of doctrinal drift. The Carparts panel was not extending the statute beyond its text. The panel was reading the statute the way Congress wrote it.

The textual argument's deeper problem is that it inverts the relationship between the categories and the examples.[275] Each category in 42 U.S.C. §12181(7) lists illustrative examples followed by a residual clause: "a bakery, grocery store, clothing store, hardware store, shopping center, or other sales or rental establishment." The phrase "or other sales or rental establishment" is the controlling textual unit. The bakery, grocery store, clothing store, hardware store, and

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272. 37 F.3d 12, 19 (1st Cir. 1994).

273. *Id.*

274. *See* Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 234–39 (2012) (absurdity doctrine permits departure from literal text where literal application produces results no reasonable legislature could have intended); *Public Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 470 (1989) (Kennedy, J., concurring) (absurdity canon limits departure from text to genuinely irrational outcomes); *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 202–03 (1819) (Marshall, C.J.) (early articulation of the canon).

275. The statutory structure is example-then-residual, and the residual clause states the category. In subsection (E), the category is "sales or rental establishment" and the bakery, grocery store, clothing store, hardware store, and shopping center are examples of it. 42 U.S.C. §12181(7)(E). *Magee* inverted the structure by deriving the genus from the examples ("retailers occupying physical stores") rather than reading it off the residual clause Congress wrote. *Magee*, 833 F.3d at 534.

shopping center are illustrations of what the category covers, not a closed enumeration of the only entities the category reaches. The residual clause is the textual mechanism through which Congress extended the category beyond the listed examples. A textualist reading of category (E) gives the residual clause its function. The nexus doctrine treats the residual clause as if it were absent, restricting coverage to entities that resemble the listed examples in physical form. That reading does not serve the textualist commitment to the operative statutory language.

The ADA Amendments Act of 2008 reinforced this reading explicitly. Congress instructed that the term "disability" shall be construed in favor of broad coverage, with the rules of construction operating across the entire ADA.[276] The same Congress that wrote and amended the statute did not provide a textual basis for narrowing the categories to physical premises. The nexus doctrine reads a limitation into the statute that the statute does not contain and that Congress explicitly disavowed.

The textual argument therefore reduces to a preference for the doctrine's outcomes, not a defense of the statute's text.[277] The First Circuit reasoning in Carparts remains the more faithful textual reading thirty years on.

B. The Regulatory Argument: Section 36.104 and the Word "Facility"

The strongest objection to this Article's argument is not in the case law. It is in the Code of Federal Regulations, and the nexus opinions do not make it.[278]

The Attorney General's Title III regulation defines the operative term this way: "*Place of public accommodation* means a facility operated by a private entity whose operations affect

276. 42 U.S.C. §12102(4)(A) ("The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter."); ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553.

277. *Carparts*, 37 F.3d at 19 ("Congress could not have intended such an absurd result."). The First Circuit reached the text first and the consequences second; the nexus opinions have not answered the textual objection so much as accumulated citations to each other. *See Magee*, 833 F.3d at 534 (citing the Third, Sixth, and Ninth Circuits for the proposition that "[e]very term listed in §12181(7) . . . is a physical place open to public access," a proposition subsection (F) contradicts by listing "travel service").

278. 28 C.F.R. §36.104. That the four foundational opinions rest on the statute's text and on the canons, rather than on the regulation that actually supplies the word "facility," is itself evidence about how the requirement was arrived at. *See Magee*, 833 F.3d at 534–35 (six dictionaries consulted for "establishment" while §36.104's definition of "facility," quoted earlier in the same opinion, went unapplied).

commerce and fall within at least one of the following categories," after which the regulation reproduces the twelve statutory categories.[279] The objection writes itself. If a place of public accommodation is a facility, and a facility is a physical thing, then the physical-place requirement is not judicial invention. It is the implementing regulation, entitled to deference, and the nexus circuits have simply been applying it.

The objection has to be met on three grounds, and it fails on each.

First, the word is not in the statute. Congress wrote that "[t]he following private entities are considered public accommodations for purposes of this subchapter, if the operations of such entities affect commerce."[280] Entities. The regulation substitutes "a facility operated by a private entity" for "private entities," which converts the statute's actor into the actor's premises. A regulation cannot narrow the statute it implements, and if §36.104 did what the objection claims, the conflict would be resolved against the regulation rather than against the statute.[281] *Ford* is the only one of the four foundational opinions that enlisted the regulations in support of the place-restriction, and it did so in a single sentence: *Ford* observed that "[c]onfining 'public accommodation' to places is also in keeping with the Dept. of Justice's regulations to this effect." *Ford*, 145 F.3d at 613. The sentence introduces a block quotation of the Department's preamble guidance on the purpose of the public accommodations provisions, and that is the whole of the affirmative case. The panel did not construe §36.104, did not quote its definition of "facility," and did not confront the definition's reach to "equipment" and "other real or personal property." *Ford*'s treatment of the agency is harder to defend than that. In the same opinion the panel rejected the Department's Title III Technical Assistance Manual, which stated that "[i]nsurance offices are places of public accommodation and, as such, may not discriminate on the basis of disability in the sale of insurance contracts or in the terms or conditions of the

279. 28 C.F.R. §36.104. The regulation is current as published in the eCFR, last amended by AG Order 3702-2016, 81 Fed. Reg. 53240 (Aug. 11, 2016), effective October 11, 2016.

280. 42 U.S.C. §12181(7) (emphasis added).

281. The point is not that §36.104 is invalid. It is that the reading the objection extracts from it would render it invalid, which is a reason to reject that reading. *Cf.* 42 U.S.C. §12186(b) (directing the Attorney General to issue regulations that "implement" the subchapter).

insurance contracts they offer," on the ground that the interpretation was "manifestly contrary" to the statute's plain meaning and therefore not binding. *Id.* at 613 (citing *Chevron U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 844 (1984)). The agency's regulations were persuasive when they appeared to support the place-restriction and manifestly contrary when they did not. *Parker* had the regulation in front of it and the majority declined to rest on it. *Weyer* reached the Title III regulations, but not on the coverage question. The panel invoked 28 C.F.R. §36.307(a) to refuse the EEOC's insurance-coverage reading and held that reading "entitled to no deference" because it "conflicts with binding Title III regulations." On the physical-place holding itself the panel reasoned from the statutory list and *noscitur a sociis*, without reaching §36.104. *Magee* went further and the record is worse. It quoted §36.104, set out the definition of "facility" in full, and then declined to decide the question that definition poses.[282] The doctrine's best support is one its authors saw, quoted, and set aside, which suggests the requirement was arrived at first and justified afterward.

Second, the regulation's own definition of "facility" does not carry the weight the objection puts on it. Section 36.104 provides that "*Facility* means all or any portion of buildings, structures, sites, complexes, equipment, rolling stock or other conveyances, roads, walks, passageways, parking lots, or other real or personal property, including the site where the building, property, structure, or equipment is located."[283] Equipment is a facility. Rolling stock is a facility. Personal property is a facility. The definition is a list of things a private entity might use to operate, and it is not a list of rooms one enters. A glass-front vending machine is equipment

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282. *Parker*, 121 F.3d at 1010–14 (en banc); *id.* at 1019 (Martin, C.J., dissenting) (supplying the regulatory definition the majority passed over); *Weyer*, 198 F.3d at 1114–15 (adopting the *Parker* and *Ford* construction on noscitur a sociis grounds without reference to §36.104); *id.* at 1117 & nn.76–77 (treating binding Title III regulations as controlling against a contrary agency interpretation, and quoting *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 32 (1981), for the proposition that courts "must reject administrative constructions of the statute . . . that are inconsistent with the statutory mandate"); *Magee*, 833 F.3d at 534–35. *Magee* recites the regulatory definition of "place of public accommodation," recites §36.104's definition of "facility," records the plaintiff's contention that the machines are "equipment," "property," and "structures," and records that the district court had already acknowledged the machines are "clearly personal property or equipment" that "must comply with the ADA." The panel then resolved the case at the category stage and wrote: "We therefore need not consider whether the vending machines are 'facilities' under 28 C.F.R. §36.104."

283. 28 C.F.R. §36.104.

and it is personal property, which places *Magee*'s holding in tension with a definitional regulation the *Magee* panel quoted and then declined to apply.[284] A defendant cannot invoke §36.104 to supply the word "facility" while declining the definition §36.104 gives it.

Third, and most damaging to the objection, the Department elaborated the definition functionally. Section 36.104 does not leave category (1) at "[p]lace of lodging." It specifies that a facility is a place of lodging if it is an inn, hotel, or motel, or if it provides guest rooms for short-term stays, "generally 30 days or less," with "[o]n- or off-site management and reservations service," rooms "available on a walk-up or call-in basis," "[a]vailability of housekeeping or linen service," and reservations accepted "for a guest room type without guaranteeing a particular unit or room until check-in."[285] Every criterion in that list describes what the operator does. Duration of stay is a term of service. Reservations service is a function. Housekeeping is a service. Booking by room type rather than by unit is a business practice. Not one criterion describes construction, square footage, or public entry, and the regulation expressly contemplates management performed off site. The agency charged with elaborating the definition that supposedly requires a physical place elaborated it by function, and did so in the very category where a building is most obviously present.

A state appellate court that ruled against digital coverage conceded the premise. In *Martinez v. Cot'n Wash, Inc.*, the California Court of Appeal held that the defendant's retail website was not a place of public accommodation, and it reached that result only after finding that the operative phrase has no plain meaning, that decades of conflicting federal case law establish the term is ambiguous, and that "facility," the necessary component of the definition

284. *Magee*, 833 F.3d at 534–35. The opinion sets out §36.104's definition of "facility" verbatim and notes the plaintiff's reliance on its "equipment," "property," and "structures" language. It then canvasses six dictionaries for the ordinary meaning of "establishment" instead, and closes the point by stating that it "need not consider whether the vending machines are 'facilities' under 28 C.F.R. §36.104." The regulation supplied an answer to the question the panel was deciding, and the panel declined to reach it.

285. 28 C.F.R. §36.104.

under section 36.104, is ambiguous as well.[286] A court that finds the text ambiguous and then declines to resolve the ambiguity has not been compelled by the text. It has chosen among available readings and assigned the choice to Congress. That is what the court's own qualifier concedes when it holds that the website is not covered "as currently written."[287] The concession is the point. If the regulation's operative words were as architectural as the nexus doctrine assumes, the ambiguity finding would have been unnecessary and the deferral to Congress would have been beside the point.

The objection therefore inverts. Section 36.104 is not the nexus doctrine's missing textual anchor. It is an agency reading the twelve categories the way this Article reads them, by asking what the entity does,[288] and extending them to personal property and equipment along the way.[289]

C. The Legislative History Argument

A related objection invokes legislative history. The argument is that the ADA's congressional record[290] contemplates physical accommodations primarily, and that extending coverage to digital services rewrites the statute in light of technology Congress did not anticipate.

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286. *Martinez v. Cot'n Wash, Inc.*, 81 Cal. App. 5th 1026, 1038–40 (2022). The court also declined to treat *Belton* as dispositive, reasoning that one digital place failing to qualify does not establish that another does, and allowing that the sales-and-rental-establishment category could reach a retail website, before declining on other grounds. *Id.* at 1043–44.

287. *Id.* at 1051. The phrase does more work than judicial modesty. A holding expressly indexed to the current text is a holding that a different construction of that same text remains available, and it is an invitation to the party who can show why the prevailing construction misdescribes the world the statute governs. The argument this Article makes is that the prevailing construction already does.

288. 28 C.F.R. §36.104 (defining "[f]acility" to include "equipment" and "other real or personal property," and elaborating "place of lodging" by reference to length of stay, reservations service, housekeeping, and booking practice).

289. The First Circuit reached the same conclusion about the regulations three decades ago. Holding that "public accommodation" is "not limited to actual physical structures," the court rested on the statute's ambiguity "considered together with agency regulations and public policy concerns." *Carparts*, 37 F.3d at 19–20. The agency regulations were part of the reason the First Circuit rejected the physical-structure reading, not an obstacle to it.

290. The record is not silent on the question the objection assumes it answers. Congress stated its purposes in the statute itself, and they are not architectural. 42 U.S.C. §12101(b)(1)–(4). Legislative history is at its weakest when offered to add a requirement the enacted text omits.

The legislative history argument fails on its premises. The 1990 record explicitly contemplated technological change.[291] The House Education and Labor Committee report, the House Judiciary Committee report, and the Senate Labor and Human Resources Committee report all acknowledged that the statute would need to apply to forms of commerce and communication that had not yet emerged. The category structure of §12181(7) was deliberately drafted with residual clauses precisely to permit application to forms not specifically enumerated.

The Department of Justice's contemporaneous interpretation in the implementing regulations also reflects this understanding. The 1991 Title III regulations defined "place of public accommodation" to include "a facility, operated by a private entity, whose operations affect commerce and fall within at least one of [the twelve categories]."[292] The regulations did not impose a physical-premises threshold. The regulations have not been amended to introduce one. DOJ's consistent position across both Democratic and Republican administrations has been that Title III reaches the operations of covered entities without regard to whether those operations occur in physical premises.[293] The agency administering the statute has not adopted the nexus doctrine. The agency's position is that the statute reaches public accommodation operations whether or not the operations occur in a physical place.

291. H.R. Rep. No. 101-485, pt. 2, at 108 (1990) ("[T]he Committee intends that the types of accommodation and services provided to individuals with disabilities, under all of the titles of this bill, should keep pace with the rapidly changing technology of the times."). The same page identifies the concern that produced the sentence: "[i]nformation exchange is one of the areas where there are still substantial barriers." *Id.* The passage has been read exactly this way by a district court reaching a streaming service. *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200–02 (D. Mass. 2012). The parallel pin in part 3 of the Report requires independent confirmation and is omitted rather than reproduced.

292. 28 C.F.R. §36.104.

293. *See* U.S. Dep't of Justice, Civil Rights Div., *Guidance on Web Accessibility and the ADA* (Mar. 18, 2022), `https://www.ada.gov/resources/web-guidance/` (taking the position that Title III's requirements "apply to all the goods, services, privileges, or activities offered by public accommodations, including those offered on the web"); 75 Fed. Reg. 43460 (July 26, 2010) (Advance Notice of Proposed Rulemaking on web accessibility under Title III, taking the position that Title III applies to web accessibility for public accommodations). The Department withdrew that rulemaking, with three others, in 2017. Nondiscrimination on the Basis of Disability; Notice of Withdrawal of Four Previously Announced Rulemaking Actions, 82 Fed. Reg. 60932 (Dec. 26, 2017). The withdrawal ended the rulemaking, not the interpretive position: the 2022 guidance quoted above restates the Department's view that Title III applies to the web.

The legislative history therefore cuts against the nexus doctrine rather than for it. Congress wrote[294] a statute designed to keep pace with technological change. The agency implementing the statute has consistently read it that way. The judicial gloss that imposed a physical-premises threshold was not derived from the legislative record. It was developed in early circuit decisions whose textual analysis the Carparts panel rejected within four years of the statute's enactment.

D. Floodgates

The most pragmatically powerful objection is the floodgates concern.[295] If Title III reaches digital services, every consumer-facing website becomes a Title III defendant, plaintiff-side firms file thousands of new cases, the federal docket buckles under accessibility litigation, and small online businesses face crushing compliance costs they cannot afford.

The floodgates argument fails on three independent grounds.

First, the floodgates concern is a complaint about ADA enforcement, not about ADA coverage. The statute imposes accessibility obligations on private commerce. Entities that have evaded those obligations under the nexus doctrine were not entitled to evade them; they have benefited from a judicial gloss that has narrowed the statute's reach. Reading the statute correctly produces the coverage Congress wrote. The volume of litigation that follows from correct statutory interpretation is not a reason to maintain incorrect interpretation. The Supreme Court rejected the analogous consequences argument in *Bostock v. Clayton County*, holding that the breadth of an unambiguous text's applications is no reason to narrow it.[296]

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294. 42 U.S.C. §12101(a)(5) (identifying "the discriminatory effects of architectural, transportation, and communication barriers" as a form of the discrimination addressed); *id.* §12101(b)(4) (invoking "the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce"). Congress named architecture as the harm and commerce as the reach.

295. The objection is testable, and the test has been running since 1994. *Carparts*, 37 F.3d at 19. The First and Seventh Circuits have operated without a nexus requirement for more than three decades. *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999).

296. 590 U.S. 644, 681–82 (2020) (explaining, as to the ADA's application to prisons, that "in the context of an unambiguous statutory text," whether a specific application was anticipated by Congress "is irrelevant" (quoting *Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 212 (1998))); *see also id.* at 683 ("Ours is a society of written laws. Judges are not free to overlook plain statutory commands on the strength of nothing more than suppositions about intentions or guesswork about expectations.").

Second, the statute itself contains scaling provisions that handle proportionality. Title III's readily-achievable and undue-burden standards calibrate accessibility obligations to the covered entity's resources.[297] A small online business has the same legal posture under the functional public accommodation test that a small physical retailer has under existing doctrine: covered, but with obligations scaled to capacity. The defense bar's concern that the floodgates will overwhelm small businesses confuses coverage with obligation. A small online business is covered. Its compliance obligation is bounded by readily-achievable and undue-burden analysis applied to its actual operations.

Third, the empirical premise of the floodgates concern is incorrect. The no-nexus circuits have operated under coverage rules functionally equivalent to the functional public accommodation test for decades, and[298] the federal dockets in those circuits have not collapsed. The meaningful difference in those circuits is not litigation volume; it is that the cases reach the merits rather than failing at the coverage threshold. The functional test does not multiply litigation; it changes its substantive disposition.

The floodgates concern is therefore a concern about losing the convenience of a coverage doctrine that has shielded an entire industry from civil rights obligations.[299] The convenience is real for the industry. The cost has fallen on the disabled populations the statute was written to protect.

E. Federalism

A federalism objection notes that several states have adopted broader disability accessibility statutes (California's Unruh Civil Rights Act, New York's Human Rights Law, the Illinois Human Rights Act, the Massachusetts public accommodations statute), and that disabled plaintiffs in

297. 42 U.S.C. §12182(b)(2)(A)(iv), (v); 28 C.F.R. §§36.303–36.304.

298. *Carparts*, 37 F.3d at 19 (1994); *Doe v. Mutual of Omaha Ins. Co.*, 179 F.3d 557, 559 (7th Cir. 1999). Thirty-two years and twenty-seven years respectively. The objection predicts a consequence that two circuits have already declined to produce.

299. 42 U.S.C. §12181(9); *id.* §12182(b)(2)(A)(ii)–(iii). The statute already contains the volume control the objection asks the coverage rule to supply, and it locates it at the obligation stage where it can be calibrated to the defendant rather than at the coverage stage where it is all or nothing.

nexus circuits often have state-law remedies that federal courts deny them.[300] The objection argues that federal coverage is unnecessary because state law fills the gap, and that imposing a federal coverage rule undermines state authority to calibrate accessibility law to local conditions.

The federalism objection misunderstands the structural role of federal civil rights statutes. Title III was enacted as the federal floor, not the state ceiling. The statute's preemption-of-less-protective-state-law architecture, combined with its express savings of more-protective-state-law, was designed to ensure a baseline of federal protection while permitting states to extend beyond the baseline.[301] A doctrine that allows nexus circuits to fall below the federal floor by withdrawing coverage from digital services contradicts the statute's structural design.

The empirical premise also fails. Disabled plaintiffs in nexus circuits without robust state law have no recourse.[302] A blind consumer in the Fifth Circuit whose claim against a pure-digital retailer is dismissed under Magee may lack any state-law alternative. Texas's state disability law is narrower than California's; Mississippi, Louisiana, and Alabama state laws are narrower still. The federalism argument that state law fills the gap assumes plaintiffs reside in states with broad statutes. They often do not. The federal coverage gap created by the nexus doctrine falls hardest on plaintiffs in states whose own laws are also narrow.

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300. The objection is in tension with the statute's own statement of purpose. 42 U.S.C. §12101(b)(1) ("a clear and comprehensive national mandate"); *id.* §12101(b)(3) ("to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter"). *See also Martinez v. Cot'n Wash, Inc.*, 81 Cal. App. 5th 1026 (2022) (declining to read the Unruh Act to reach a website absent intentional discrimination, which illustrates that state law is not a reliable substitute).

301. 42 U.S.C. §12201(b) (savings clause for more protective state law); *see also Tennessee v. Lane*, 541 U.S. 509, 522–34 (2004) (sustaining Title II's damages remedy, as applied to access to the courts, as valid enforcement legislation under section 5 of the Fourteenth Amendment).

302. *See Martinez v. Cot'n Wash, Inc.*, 81 Cal. App. 5th 1026, 1051 (2022) (concluding that the defendant's website is not a place of public accommodation under Title III "as currently written," that the Unruh Act claim therefore could not rest on an ADA violation, and that the complaint independently failed for want of intentional discrimination). Even California, the state with the most developed accessibility statute, does not supply the substitute the objection assumes. *Martinez* is also the clearest illustration of the spillover this Article identifies: a state court imported the federal coverage gloss into the state statute's ADA-incorporation path, so the federal doctrine narrows the very state alternative the federalism objection relies upon.

F. First Amendment

A First Amendment objection treats accessibility requirements on digital services as content regulation.[303] The argument is that requiring closed captions, screen-reader compatibility, or alternative interface designs imposes obligations on speech, which the First Amendment protects against content-based regulation.

The objection fails on the conduct-content distinction. Title III accessibility requirements govern design and operation, not content.[304] A website's obligation to provide screen-reader-compatible HTML, sufficient color contrast, keyboard navigation, alternative text for images, and properly tagged headings is a regulation of how the content is presented to users, not of what the content is. The same speech can be made accessible or inaccessible; the First Amendment does not require platforms to choose inaccessibility.

The Supreme Court's recent platform regulation decisions confirm this distinction. In *Moody v. NetChoice, LLC*, the Court explained that platform content moderation choices are expressive activity that receives First Amendment protection.[305] The opinion drew a careful line between content moderation (protected expressive activity) and platform design conduct (subject to neutral regulation). Accessibility requirements fall on the design-conduct side of the line. The Ninth Circuit's reasoning in *Robles v. Domino's Pizza* did not treat the accessibility obligation as a speech regulation; the panel analyzed the obligation as conduct regulation governed by Title III.[306] The constitutional objection actually litigated in the website line, due process, failed.[307]

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303. The statute's operative obligations are addressed to conduct. *See* 42 U.S.C. §12182(b)(2)(A)(ii) (reasonable modifications in "policies, practices, or procedures"); *id.* §12182(b)(2)(A)(iii) (steps to ensure no individual is "excluded, denied services, segregated or otherwise treated differently . . . because of the absence of auxiliary aids and services"); *id.* §12182(b)(2)(A)(iv) (removal of "architectural barriers, and communication barriers that are structural in nature"). An obligation to caption, to label, and to expose an interface to a screen reader is an obligation about delivery, and the statute's own fundamental-alteration defense protects whatever content interest exists. *Id.* §12182(b)(2)(A)(ii)–(iii).

304. 42 U.S.C. §12182(b)(2)(A)(ii)–(iv) (addressing "policies, practices, or procedures," "auxiliary aids and services," and "communication barriers that are structural in nature"). Each is an obligation about delivery. None prescribes what the entity may say.

305. 603 U.S. 707 (2024).

306. 913 F.3d 898, 905–07 (9th Cir. 2019).

307. *Robles*, 913 F.3d at 905–07 (holding that Domino's "has received fair notice that its website and app must comply with the ADA" and rejecting the due process objection).

The pending platform-design litigation against major social media companies confirms the conduct-content distinction's operability. The state attorney general actions, the JCCP coordinated proceedings in California state court, and the Northern District of California MDL all treat algorithmic design choices, recommendation systems, and engagement-maximization architecture as conduct subject to regulation.[308] The platforms have not succeeded in dismissing the design-defect claims in those proceedings on First Amendment grounds, because the claims target design conduct rather than content. The successful First Amendment challenge in the adjacent statutory context proves the same line from the other side: in *NetChoice v. Bonta*, what the Ninth Circuit held likely unconstitutional was the Age-Appropriate Design Code's compelled report requirement, which forced covered businesses to opine on potential content harms to children, compelled speech about content rather than a regulation of design conduct.

The First Amendment objection therefore does not survive engagement with the doctrinal architecture: the test reaches [309]design and operation, which platforms accept as regulable, not content selection, which platforms are entitled to defend on speech grounds.

G. The Nexus-with-Extension Counter

The most sophisticated defense-side response is not to deny that the test reaches consumer AI providers but to argue that the test merely relocates the nexus requirement rather than eliminating it.[310] The argument is that whether a court calls the coverage analysis "nexus" or "functional," the test ends up requiring some connection between the digital service and some physical operation, and the doctrinal change is therefore cosmetic.

The response fails on two grounds.

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308. *In re Social Media Adolescent Addiction/Personal Injury Products Liability Litigation*, MDL No. 3047 (N.D. Cal.) (federal MDL addressing platform design claims); *In re Social Media Cases*, JCCP No. 5255 (Cal. Super. Ct., L.A. Cnty.) (state coordinated proceeding); *see also NetChoice, LLC v. Bonta*, 113 F.4th 1101 (9th Cir. 2024) (California Age-Appropriate Design Code Act).

309. 42 U.S.C. §12182(b)(2)(A)(ii)–(iii) (fundamental-alteration and undue-burden defenses, which absorb whatever expressive interest a covered entity has without any need to narrow coverage).

310. *Robles*, 913 F.3d at 905–06. The counter accepts *Robles* and argues the nexus is doing the work. It therefore concedes that a website is reachable. *Weyer* and *Magee* deny that reachability through the nexus frame; *Gil* denies it categorically and rejects the nexus frame itself. *Weyer*, 198 F.3d at 1114–15; *Magee*, 833 F.3d at 534–35; *Gil*, 993 F.3d at 1278–81, 1281, *vacated as moot*, 21 F.4th 775 (11th Cir. 2021).

First, the functional test is grounded in the statutory text's functional descriptions, not in any anchoring physical-place requirement.[311] The three elements of the test are (1) operation by a private entity affecting commerce, (2) function within one of the twelve statutory categories, and (3) completion of covered activity between the entity and members of the public. None of the elements is architectural. Whether the entity has physical operations is relevant to proportionality (readily achievable, undue burden) but not to coverage. The test reaches pure-digital services that perform covered functions, with no physical anchor required. This is meaningfully different from the nexus doctrine.

Second, even defendants who fully accept the existing nexus paradigm are violating Title III through design choices that affect protected populations. *Robles v. Domino's Pizza* established Domino's website's coverage through nexus. Yet the same interface architecture can exclude users with cognitive disabilities through dark-pattern upsell design, conduct of the kind *Alexander v. Choate* identified as the statute's central target: harm that is "most often the product, not of invidious animus, but rather of thoughtlessness and indifference," of "benign neglect."[312] The nexus doctrine is not protective of disabled users even where it produces coverage. The test produces meaningful additional protection within and beyond the existing nexus paradigm.

The nexus-with-extension counter therefore concedes too much. It accepts that the functional test reaches the entities[313] the nexus doctrine has been used to exempt. It then attempts to rehabilitate the nexus doctrine by characterizing the functional test as a relocated version of nexus. The characterization fails because the test does not require a physical anchor and because the existing nexus doctrine, even where it produces coverage, has not protected disabled users from the design choices that cause the harm the statute was written to prevent.

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311. 42 U.S.C. §12181(7)(B), (E), (F), (G), (K) (closing on "establishment" and "station" clauses rather than "place" clauses); *id.* §12182(a) (fixing the protected interest as goods, services, facilities, privileges, advantages, or accommodations).

312. *Alexander v. Choate*, 469 U.S. 287, 295 (1985). *Choate* simultaneously cabined the reach of disparate-impact liability, *id.* at 299, so the point in text concerns the statute's object, not a freestanding cause of action.

313. *Robles*, 913 F.3d at 905–06 (website covered); *contra Gil*, 993 F.3d at 1278–81 (website categorically outside subsection (E)), *vacated as moot*, 21 F.4th 775 (11th Cir. 2021). The counter cannot be run in the Eleventh Circuit's framing and the Ninth's at once.

XV. Conclusion

The Article began with locked-in syndrome and returns there. A person paralyzed to the point of communicating only through eye movement cannot enter any of the twelve physical places of public accommodation the[314] statute names. Every goods, service, facility, privilege, advantage, and accommodation that person reaches, reaches them through digital delivery. Under the majority doctrine, every digital service they use lies outside Title III's reach.

The statute was written with the locked-in patient in mind, whether Congress in 1990 specifically imagined that condition or not. The statute was written to ensure that disabled Americans could participate in the commerce, culture, and services of their nation.[315] The nexus doctrine has rendered that guarantee architectural. In doing so, it has stripped protection from the populations whose participation is most dependent on the accommodations the doctrine excludes.

The doctrine cannot defend its application to the locked-in patient. It cannot defend its application to the agoraphobic patient, the immunocompromised patient, the severely autistic patient, the morbidly obese[316] patient, the chronically fatigued patient, the deaf-blind patient, the unhoused patient, the patient mid-cancer-treatment, the elderly frail patient. It cannot defend its application because in each case the application produces the opposite of what the statute commands: a removal of civil rights protection precisely where the statute's protection is most needed.

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314. Laura Schnetzer, Mark R. McCoy & Jürgen Bergmann, *supra* note 2, at 1; Ellen Farr, Kathryn A. Altonji & Richard L. Harvey, *supra* note 3, at 1424–26.

315. 42 U.S.C. §12101(b)(1)–(2) (stating the purpose of providing "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and "clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities"); *id.* §12101(b)(4) (stating the purpose of invoking "the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities"). A construction that exempts the most commercially significant service providers in the economy is difficult to square with an express invocation of the commerce power aimed at the major areas of day-to-day discrimination.

316. 42 U.S.C. §12101(a)(1) ("physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination"); Ctrs. for Disease Control & Prevention, *supra* note 191.

A doctrine that cannot defend its application to the statute's paradigm beneficiaries has failed as a doctrine.[317] It should be overruled when the next en banc opportunity presents itself in any nexus circuit. It should be reversed when the Supreme Court grants certiorari in a suitable vehicle. It should be amended out of existence by Congress if neither judicial path produces reform. And it should be retired from the academic consensus that currently treats it as a viable option, because no viable doctrine should produce the results this one produces.

The reform proposed here, a functional public accommodation test for Title III coverage, is one path.[318] Other paths are possible. What is not possible, consistent with the statute's text, its purpose, or basic coherence across federal disability rights law, is the continued maintenance of the nexus doctrine in its current form. The doctrine has failed the statute. The statute deserves better. The populations it was written to protect deserve better. The reform is overdue.

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317. *See* 42 U.S.C. §12101(b)(2) (purpose of providing "clear, strong, consistent, enforceable standards"). The nexus doctrine is none of the four as applied to digital services: it is unclear at the margins, weak against the entities that matter most, inconsistent across circuits and across the parallel disability statutes, and unenforceable by the claimants with the greatest need.

318. 42 U.S.C. §12101(b)(1) (purpose of providing "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities"). The mandate is Congress's; the test is one way of reading the statute to deliver it, and the argument against the nexus doctrine does not depend on adopting this particular alternative.

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