# Pro Se and the Cognitive Tax:

# Legalese and the Fundamental Right of Access to Courts

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**Abstract**

The right of self-representation runs on two tracks. In criminal proceedings, *Faretta v. California* grounds a substantive Sixth Amendment right; in federal civil proceedings the right is statutory under 28 U.S.C. § 1654, with Due Process overlays and analogous state protections. Exercising that right requires the litigant to read and understand the law. Statutes, regulations, opinions, and procedural rules are drafted in a specialized convention whose nested syntax, archaic survivals, and divergent terms of art impose cognitive cost beyond what the underlying content requires, a claim documented from Mellinkoff through Tiersma and Kimble and since confirmed by controlled experiment.

This Article argues that the cognitive cost of that drafting convention is a cognizable method of administration with disparate impact under Section 504 and ADA Title II, and, secondarily, a cognizable impairment of the access-to-courts right, as to the cognitive subset of the disability rights protected class.[1] The statutory claim is primary because the methods-of-administration regulations reach facially neutral administrative architecture directly, without the actual-injury threshold that *Lewis v. Casey* imposes on the constitutional claim. The argument proceeds in three registers: the statutory disparate-impact register applied to state courts and federally funded legal aid; the constitutional register under *Faretta* and *Tennessee v. Lane*; and the structural register extending *Bounds v. Smith* from the availability of legal materials to their readability. The disparate-impact mechanism is identified and defended on the experimental record rather than asserted. Center-embedded syntax, the feature that controlled study identifies as the largest single driver of processing difficulty in legal text, loads the precise capacity whose limitation defines the protected subset, and the resulting cost is an interaction rather than a constant: every reader pays, and the low-capacity reader pays measurably more. That differential is the tax. The Article develops the doctrine, answers the principal objections that law is inherently technical, that precision requires specialized language, and that difficulty tracks exposure rather than capacity, and identifies remedial pathways from plain-language court forms to statutory drafting reform.

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1. The statutory theory rests on the methods-of-administration regulations, 28 C.F.R. § 35.130(b)(3) and 45 C.F.R. § 84.68(b)(3), read through the meaningful-access standard of *Alexander v. Choate*, 469 U.S. 287 (1985). The constitutional theory rests on the access-to-courts line running through Bounds v. Smith, 430 U.S. 817 (1977), and Tennessee v. Lane, 541 U.S. 509 (2004). The statutory theory is primary because it supplies a damages-capable cause of action against funded entities and a reasonable-modifications obligation with settled contours, where the constitutional theory supplies primarily injunctive relief and carries the heavier abrogation and prerogative concerns addressed in Part VI.

*Keywords:* Section 504; Rehabilitation Act; ADA Title II; *Faretta v. California*; *Tennessee v. Lane*; *Bounds v. Smith*; *Lewis v. Casey*; *Alexander v. Choate*; access to courts; pro se representation; 28 U.S.C. § 1654; legalese; plain language; disparate impact; methods of administration; center-embedding; working memory; cognitive accessibility; fundamental rights; disability rights.

## Contents

## I. Introduction

The right of self-representation in American courts operates on two tracks with distinct constitutional status. In criminal proceedings, *Faretta v. California* grounds a substantive Sixth Amendment right of self-representation, under which the defendant may conduct the defense and raise any constitutional or statutory claims that bear on it.[2] In federal civil proceedings, the right is statutory rather than constitutional in its primary formulation: Congress codified it in one of the earliest federal statutes: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel."[3] The civil statutory right is supplemented by Due Process Clause protections in particular contexts where the proceeding affects a property or liberty interest, under the Fifth Amendment in federal civil proceedings and under the Fourteenth Amendment in state civil proceedings. State constitutions and statutes provide parallel protections, with variations in scope and procedural treatment, in state courts.

The right assumes the possibility of its exercise. A litigant cannot plead and conduct a case without reading the law that governs it. The complaint must allege the elements of a cause of action. The answer must respond to the allegations. The motion must cite applicable procedural rules. The appeal must identify errors of law and support them with statutory or case authority.[4] Each of these steps requires the litigant to read and understand statutes, regulations, judicial decisions, and procedural rules. The right of self-representation that the Constitution and Congress have guaranteed presupposes the capacity to read the legal materials through which the right is exercised.

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2. *Faretta v. California*, 422 U.S. 806, 819 (1975) ("The right to defend is given directly to the accused; for it is the accused who suffers the consequences if the defense fails."). The Court's reasoning recognizes the constitutional standing of the pro se criminal defendant to raise claims of any character, constitutional or statutory, that arise in the defense of the criminal charge.

3. 28 U.S.C. § 1654; the provision traces to the Judiciary Act of 1789.

4. The right to proceed pro se in federal court is statutory, 28 U.S.C. § 1654 (parties may plead and conduct their own cases personally), and in the criminal context constitutional, Faretta v. California, 422 U.S. 806 (1975). Every state guarantees a parallel right by constitution, statute, or rule. The point of the sentence is that each of these acts of pleading and conducting a case is a reading act before it is anything else, and the right presupposes the capacity to perform it.

Legal materials in the United States are drafted in a specialized language convention that imposes cognitive cost on readers beyond the cost of the underlying substantive content. The convention has been documented in scholarly literature since at least David Mellinkoff's 1963 treatment.[5] Its features include deeply nested syntactic structures with multiple embedded clauses, archaic and foreign-language survivals (Latin and Law French), terms of art whose technical definitions diverge from ordinary meaning, passive voice and nominalization at frequencies substantially above general English, absence of explanatory prose, and stylistic features reflecting centuries of accretion rather than design for contemporary communication.[6] The cognitive cost of reading legal text drafted according to this convention is substantially higher than the cost of reading equivalent content expressed in contemporary general English.

For readers with cognitive disabilities, including executive function impairments associated with Attention Deficit Hyperactivity Disorder, Autism Spectrum Disorder, traumatic brain injury, long COVID cognitive sequelae, chronic pain with associated cognitive effects, psychiatric conditions affecting sustained attention, and intellectual disabilities, the cognitive cost of legalese is disproportionate. The specialized language convention imposes cost that interacts with the specific cognitive features that define the reader's disability: working memory limitations confront nested clauses, sustained attention limitations confront long passages of dense prose without scaffolding, executive function limitations confront unstructured procedural requirements. The cognitive subset of the disability rights protected class bears differential burden in exercising the pro se right, compared to both non-disabled persons and to disabled persons whose disabilities do not implicate the cognitive features legalese engages.[7]

This Article argues that the differential burden constitutes a cognizable method of administration with disparate impact under Section 504 and ADA Title II, and, secondarily,

5. DAVID MELLINKOFF, THE LANGUAGE OF THE LAW (1963).

6. PETER M. TIERSMA, LEGAL LANGUAGE (1999); JOSEPH KIMBLE, LIFTING THE FOG OF LEGALESE: ESSAYS ON PLAIN LANGUAGE (2006).

7. The comparison class is doing analytical work and is worth stating precisely. The claim is not that disabled litigants fare worse than nondisabled litigants at law generally; it is narrower and therefore stronger. The burden falls on the subset of the protected class whose conditions implicate the specific cognitive capacity the drafting convention loads, and the mechanism that produces the differential is developed in Part V. *See infra* Part V.

a cognizable impairment of the constitutional right of access to courts. The statutory claim is primary because the methods-of-administration regulations operationalizing Section 504 and Title II reach facially neutral administrative architecture directly, without requiring the plaintiff to clear the threshold that *Lewis v. Casey* sets for access-to-courts claims in the prisoner-rights context. The constitutional claim is secondary because, although *Bounds v. Smith* and *Tennessee v. Lane* supply a normatively powerful account of why the differential burden matters, the *Lewis* actual-injury requirement and the narrower scope of the constitutional right make the constitutional claim a supplementary rather than a primary legal engine. The argument does not depend on any particular claim that legalese was deliberately designed to exclude. It depends on the undisputed fact that the convention imposes differential cost on the cognitive subset of the protected class, together with the settled doctrine that disability civil rights statutes reach facially neutral practices whose effect is discriminatory.[8]

### *Limiting Principles*

Because the scope of the argument could be read more broadly than intended, three limiting principles are stated at the outset. First, this Article does not argue that all legal complexity is unlawful.[9] Statutes, regulations, and judicial opinions necessarily encode technical content that no prose register can fully dissolve. The argument reaches the drafting convention, not the underlying content, and it does so only where the drafting convention imposes cognitive cost that exceeds what the content requires. Second, this Article does not argue for identical treatment of all categories of legal text. The strongest cases are those in which the state or

8. *See* Alexander v. Choate, 469 U.S. 287, 297-99 (1985) (recognizing that Section 504 reaches at least some conduct that is discriminatory in effect rather than only in intent); Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 738 (9th Cir. 2021) (*Payan I*) (disparate impact claims are cognizable under Title II and Section 504); *see infra* Part VI. The intent-effect distinction is where the statutory claim does its work, because the drafting convention is not plausibly a product of intent to exclude disabled readers; it is a product of inertia, and the effect-based standard is what makes inertia actionable.

9. This limiting principle has an empirical warrant developed later in the Article: redrafting studies show that simplification improves comprehension but that a residuum of difficulty traces to the legal concepts themselves rather than to the language carrying them. *See* Masson & Waldron, *supra* note 52, at 67; *see infra* Part IV.C. The claim is confined to the cost the drafting convention imposes beyond what the content requires, which is the cost the controlled experiments isolate.

a covered entity produces public-facing legal materials that function as required gateways to rights: court forms, clerk instructions, self-help materials, agency guidance to the public, and judicial opinions that govern discrete pro se filings. Binding statutes and regulations are a weaker case for direct accessibility obligations and a stronger case for parallel-text and plain-language-companion remedies. Third, this Article does not argue that legal drafting must satisfy universal comprehensibility. It argues that public-facing legal materials must satisfy a reasonable-modifications standard that reaches the cognitive subset of the protected class, without reaching all members of the general reading public regardless of ability.

Part II sets out the constitutional and statutory basis for pro se representation, including *Faretta v. California*, 28 U.S.C. § 1654, and parallel state provisions. Part III develops the doctrine of meaningful access to courts through *Bounds v. Smith*,[10] *Lewis v. Casey*,[11] and *Tennessee v. Lane*[12]. Part IV documents legalese as a cognitive barrier, drawing on Mellinkoff, Tiersma, Kimble, and empirical studies on legal text comprehension. Part V addresses the protected class analysis, identifying the cognitive subset of the protected class on which the disparate impact argument depends. Part VI conducts the doctrinal analysis in three registers: statutory methods-of-administration disparate impact, constitutional access-to-courts impairment, and the structural argument that *Bounds*'s library requirement presupposes the readability of the books. Part VII addresses the distinctive features of pro se litigation that make this population particularly burdened. Part VIII engages the principal objections: that law is inherently technical, that precision requires specialized language, and that plain-language drafting introduces ambiguity. Part IX identifies remedial pathways. Part X addresses the relationship to adjacent elements of the legal system. Part XI concludes.

10. 430 U.S. 817 (1977).
11. 518 U.S. 343 (1996).
12. 541 U.S. 509 (2004).

## II. The Right of Self-Representation

### *A. Faretta v. California and the Sixth Amendment Criminal Right*

The Supreme Court in *Faretta v. California* held that the Sixth Amendment guarantees a criminal defendant the right to conduct his own defense. Justice Stewart, writing for the Court, grounded the right in the text and structure of the Sixth Amendment, in the English common-law tradition predating the founding, and in the consistent understanding of the framers that the right of self-representation was among the defendant's constitutional protections.[13]

The Court rejected the argument that the defendant's interest in competent representation required that counsel be imposed. Justice Stewart observed that "[t]he right to defend is given directly to the accused; for it is he who suffers the consequences if the defense fails."[14] The Court acknowledged that a self-represented defendant typically fares less well at trial than one represented by competent counsel, but held that this observation is not a ground for displacing the constitutional right. The defendant's autonomy in making the representation choice is constitutionally protected.

*Faretta* has been developed in subsequent cases addressing the scope, the waiver requirements, and the limits of the right. *McKaskle v. Wiggins*[15] addressed the role of standby counsel in ensuring that pro se representation remained meaningful. *Godinez v. Moran*[16] addressed competence to waive counsel. *Indiana v. Edwards*[17] permitted states to require counsel for mentally incompetent defendants even where the defendant would otherwise have a *Faretta* right to self-representation. The *Edwards* holding is limited to severe mental incompetence

13. *Faretta*, 422 U.S. at 817-21. The Court drew extensively on the Judiciary Act of 1789, the first Congress's contemporaneous understanding of self-representation, and the Confrontation and Assistance of Counsel Clauses read together.

14. *Id.* at 819-20.

15. *McKaskle v. Wiggins*, 465 U.S. 168 (1984).

16. *Godinez v. Moran*, 509 U.S. 389 (1993).

17. *Indiana v. Edwards*, 554 U.S. 164 (2008).

affecting capacity for knowing waiver; it does not authorize displacement of pro se rights for cognitive disabilities of the kind at issue in this Article.

The right is exercisable at trial and on appeal, subject to limits imposed by the particular proceeding. It does not automatically extend to plea negotiations with the prosecution, to post-conviction proceedings in every circumstance, or to particular appellate procedures that have their own procedural logic.[18] For the argument developed in this Article, the central point is that *Faretta* establishes self-representation as a substantive constitutional right at the trial stage, where the defendant must confront the text of the statute charged, the text of applicable procedural rules, and the text of evidentiary rules that govern the conduct of the trial.

### *B. 28 U.S.C. § 1654 and Civil Pro Se Representation*

The civil counterpart is statutory rather than constitutional, but its origins are as old as the federal judicial system. The Judiciary Act of 1789 provided that "in all the courts of the United States, the parties may plead and manage their own causes personally."[19] The provision has been carried forward with minor modifications through successive codifications of federal judicial authority, and appears in current law at 28 U.S.C. § 1654: "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein."[20]

The provision is "in all courts of the United States," reaching federal district courts, bankruptcy courts, courts of appeals, and the Supreme Court, though the Supreme Court Rules impose practical limits on pro se argument at oral argument stage. The civil pro se right applies across the full range of federal civil litigation, including employment discrimination actions, civil rights suits under 42 U.S.C. § 1983, immigration proceedings, administrative appeals, bankruptcy proceedings, and habeas corpus.

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18. *See Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000) (no *Faretta* right on direct appeal from criminal conviction).

19. Judiciary Act of 1789, ch. 20, § 35, 1 Stat. 73, 92.

20. 28 U.S.C. § 1654.

The statutory basis of the civil right, rather than constitutional, does not weaken the doctrinal point. The statute is long-standing, uniform across the federal judicial system, and universally observed. Congress's codification of the right in 1789 reflects the founding-era understanding of self-representation as a foundational feature of the judicial process. Subsequent Supreme Court decisions have consistently treated the civil pro se right as substantive.[21] The constitutional dimension of the civil right is available through Due Process Clause analysis where the particular proceeding affects a property or liberty interest, though the direct statutory basis is sufficient for most civil contexts.

### *C. State Parallel Provisions*

State constitutions and statutes provide parallel protections for self-representation in state courts, with variations in scope and procedural treatment. Every state recognizes some form of the pro se right in civil proceedings, and every state recognizes the *Faretta* right as applied to state criminal proceedings through the Sixth Amendment's incorporation against the states via the Fourteenth Amendment.[22] State courts typically have supplementary court rules governing the practical conduct of pro se representation, including procedures for in forma pauperis filing, for waiver of filing fees, for simplified pleadings in small claims courts, and for enforcement of the *Haines v. Kerner* rule that pro se filings are read with liberal construction.

The aggregate effect is that across federal and state civil and criminal proceedings, the pro se right is available as a matter of constitutional or statutory guarantee, subject to the universal presupposition that the litigant can access and understand the legal materials through which the right is exercised.

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21. *See, e.g.*, *Haines v. Kerner*, 404 U.S. 519 (1972) (pro se complaints held to less stringent pleading standards than those drafted by counsel); *Estelle v. Gamble*, 429 U.S. 97 (1976) (same).

22. *See Duncan v. Louisiana*, 391 U.S. 145 (1968) (incorporating Sixth Amendment against states); *Faretta*, 422 U.S. at 832 (right of self-representation applicable in state criminal proceedings).

## III. Meaningful Access to Courts

### *A. Bounds v. Smith*

The Supreme Court in *Bounds v. Smith* held that the Constitution's guarantee of access to the courts is not satisfied by formal availability alone. The plaintiff class consisted of prisoners in North Carolina state custody who alleged that the state's failure to provide adequate law libraries or legal assistance violated their right of access to the courts.[23] The Court held that the fundamental right of access to courts "requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."[24]

*Bounds* was grounded in a line of earlier cases including *Ex parte Hull*,[25] which invalidated a prison regulation requiring that prisoner habeas corpus applications be reviewed and approved by prison officials before submission to court; *Johnson v. Avery*,[26] which invalidated a regulation preventing inmates from assisting other inmates with legal filings; and *Younger v. Gilmore*,[27] which affirmed a lower court holding requiring law library provision. The *Bounds* Court synthesized these cases into an affirmative constitutional obligation on state authorities to provide the tools that make access to courts meaningful rather than formal.

The central doctrinal move in *Bounds* is the distinction between formal and meaningful access. A legal system that permits prisoners to file papers but deprives them of the means to prepare the papers provides only formal access. Meaningful access requires that the means of exercising the right be available.[28] The obligation attaches to state authorities because the

23. *Bounds v. Smith*, 430 U.S. 817, 821 (1977).

24. *Id.* at 828.

25. *Ex parte Hull*, 312 U.S. 546 (1941).

26. *Johnson v. Avery*, 393 U.S. 483 (1969).

27. *Younger v. Gilmore*, 404 U.S. 15 (1971) (per curiam).

28. Bounds v. Smith, 430 U.S. 817, 822, 828 (1977) (the right of access to the courts requires prison authorities to provide the tools inmates need to attack their sentences and challenge conditions of confinement, and requires meaningful rather than merely formal access). The formal-meaningful distinction is the same one *Choate* draws in the benefits context, *Alexander v. Choate*, 469 U.S. 287, 301 (1985), which is why the constitutional and statutory theories converge on a single standard.

state has created conditions in which the prisoner's capacity to exercise the right depends on state-provided resources.

### *B. Lewis v. Casey*

The Court in *Lewis v. Casey* narrowed *Bounds* in two important respects while preserving the core meaningful-access principle.[29] First, Lewis held that *Bounds* does not create an abstract right to an adequate law library; it creates a right of access to the courts, for which adequate legal resources are one means among others of vindication. The state's obligation is satisfied by the provision of effective legal resources in whatever form; law libraries are not the exclusive form.[30] Second, Lewis imposed an actual-injury requirement: the plaintiff must show that the deficient resources caused injury to the pursuit of a nonfrivolous legal claim.[31]

The actual-injury requirement operates as a plaintiff-specific causation element in *Bounds*-based constitutional claims. It is sometimes understood as a substantial barrier to litigants who would assert that legal-system barriers impaired their access to courts, on the theory that a court asked to find *Bounds* injury can always attribute the plaintiff's procedural failure to the plaintiff's lack of legal training rather than to the particular barrier asserted.[32] The attribution is especially available where the barrier in question is the text of the law itself, because a court can reason that non-specialists generally struggle with legal text regardless of disability status.

The attribution is not available, however, against the statutory claim framed under the methods-of-administration disparate impact regulations. The statutory claim does not require individualized *Bounds*-style actual injury.[33] The disparate impact regime under 28

29. *Lewis v. Casey*, 518 U.S. 343 (1996).

30. *Id.* at 351.

31. *Id.* at 349-52.

32. *See* Lewis v. Casey, 518 U.S. 343, 351-53 (1996) (requiring that the plaintiff show a nonfrivolous claim was actually frustrated or impeded, and declining to presume injury from the inadequacy of legal resources alone). The attribution problem is real for the constitutional claim, which is one of the two reasons this Article treats the statutory claim as primary. The other is the availability of damages. *See supra* Part I.

33. The disparate impact inquiry is class-wide and statistical rather than plaintiff-specific: it asks whether a facially neutral practice produces a disproportionate adverse effect on the protected class. *See* Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 738 (9th Cir. 2021) (*Payan I*). A named plaintiff still needs standing, but the merits do not

C.F.R. § 35.130(b)(3), 28 C.F.R. § 39.130(b)(3), and 45 C.F.R. § 84.68(b)(3) operates on a class-wide showing: the covered entity's method of administration produces differential burden on the protected class. The plaintiff who brings the statutory claim is not required to prove that her particular procedural failure in her particular case was caused by the specialized language convention rather than by her lack of legal training. She is required to show that the specialized language convention imposes differential cognitive burden on the cognitive subset of the protected class, as compared to non-disabled pro se litigants confronting the same text. That showing is class-wide, grounded in empirical evidence on comprehension costs and cognitive-disability interaction effects, and does not depend on reconstructing an individualized causation chain in any particular case's procedural history.

The methodological point is important. The constitutional access-to-courts claim is doctrinally available, but it inherits the Lewis actual-injury requirement and all the attribution problems that come with it. The statutory disparate impact claim under Section 504 and ADA Title II runs on a different evidentiary standard. The latter is the primary engine of the litigation strategy developed in this Article. The former supports it and is doctrinally sound, but the statutory claim bears the main weight because it escapes the individualized-causation trap that has historically blunted *Bounds*-based access-to-courts litigation.[34]

The pro se litigant who wishes to assert both claims in the same action is not barred from doing so. Parallel assertion is the strongest litigation posture. But where one claim must carry, the statutory claim is the one that does not depend on defeating the "you just did not understand the law" attribution that defense counsel will always deploy against an individualized constitutional claim. The attribution concedes the class-wide pattern while denying its application to the

turn on proving that this litigant's specific procedural default was caused by this specific textual feature, which is the attribution burden that encumbers the constitutional theory.

34. The individualized-causation obstacle is a product of *Lewis v. Casey*, 518 U.S. 343, 349-53 (1996), which required each plaintiff to show that an actual, nonfrivolous claim was frustrated. A disparate impact claim under Section 504 proceeds on class-wide statistical proof of differential effect rather than on individualized proof that a particular text defeated a particular claim, which is why the statutory route is the load-bearing one and the constitutional route is reinforcement. *See* Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 738 (9th Cir. 2021).

particular plaintiff; the class-wide pattern is what the statutory claim requires, so the attribution helps rather than hurts.[35]

### *C. Tennessee v. Lane*

*Tennessee v. Lane* is the central case for the argument developed in this Article. The Court held that ADA Title II validly abrogates state sovereign immunity as applied to claims for access to courts brought by disabled persons.[36] The plaintiffs were two disabled persons who had been denied physical access to Tennessee state courthouses because the buildings lacked elevators or other accessible means of reaching courtrooms on upper floors. One plaintiff was a paraplegic defendant who had been compelled to crawl up two flights of stairs to appear at a criminal proceeding. The other was a court reporter whose mobility impairment prevented her access to courtrooms on upper floors.

Justice Stevens, writing for the Court, upheld Title II's abrogation of state sovereign immunity as a valid exercise of Congress's authority under Section 5 of the Fourteenth Amendment, at least as applied to access-to-courts claims. The Court described access to courts as a right "of basic importance in our society."[37] The Court documented a pattern of disability-based denial of physical access to courthouses extending over decades, and held that Congress had authority to remedy that pattern through Title II's prophylactic measures.

The *Lane* analysis has three elements material to the present argument. First, the Court identified a fundamental constitutional right, access to courts, as the rights-bearing interest.[38] Second, the Court documented a pattern of disability-based denial of meaningful access to that

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35. This is the analytical payoff of pleading the case as disparate impact rather than as disparate treatment. Disparate impact is established by a facially neutral practice producing a differential effect on the protected class, proved at the level of the class. *See* Alexander v. Choate, 469 U.S. 287, 297-99 (1985); Payan, 11 F.4th at 737-38. A defendant's showing that any given plaintiff might have surmounted the text concedes the class-wide differential while contesting only individual causation, and individual causation is not the statutory claim's burden.

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

37. *Id.* at 523.

38. Tennessee v. Lane, 541 U.S. 509, 522-23, 533-34 (2004) (grounding Title II's valid abrogation, as applied to cases implicating court access, in the fundamental character of the access-to-courts right and the documented history of disability-based exclusion from judicial services).

right. Third, the Court held that Congress had authority to adopt prophylactic measures (Title II) to remedy that pattern, with a congruence and proportionality inquiry establishing the fit between the remedy and the pattern documented.

The extension to the argument advanced here is direct. The fundamental constitutional right is the same: access to courts, as the category of rights that includes self-representation under *Faretta* and under 28 U.S.C. § 1654. The pattern of disability-based denial of meaningful access runs in parallel to the pattern documented in *Lane*, substituting cognitive inaccessibility for physical inaccessibility. The congruence and proportionality analysis for remedial measures including plain-language drafting requirements and accessible parallel texts proceeds on the same terms as the analysis in *Lane*. The *Lane* analysis thus supports Title II's applicability to cognitive access-to-courts claims, and by parallel analysis supports Section 504's applicability to covered federal agencies and recipients that produce or administer legal texts subject to the analysis.[39]

A consequence of *Lane*'s holding bears directly on the relief available under the statutory claim. Because *Lane* sustained Title II's abrogation of state sovereign immunity as applied to the class of cases implicating the fundamental right of access to the courts, a damages action against a state court system for a cognitive access-to-courts violation does not require the claim-by-claim congruence-and-proportionality inquiry that *United States v. Georgia* otherwise demands before Title II damages may be recovered against a State.[40] The access-to-courts category is the one class for which the Supreme Court has already performed that inquiry and resolved it against the State. The cognitive access-to-courts claim developed here falls within that resolved category, substituting cognitive for physical inaccessibility within the same fundamental right. The remedial significance is that the statutory claim, as applied to state court systems, carries a damages remedy and not only the injunctive and declaratory relief the methods-of-administration

39. Section 504 and Title II are construed coextensively, so authority developed under one ordinarily governs the other. *See* K.M. ex rel. Bright v. Tustin Unified Sch. Dist., 725 F.3d 1088, 1098 (9th Cir. 2013); Payan, 11 F.4th at 737. The coextensive-construction point lets the meaningful-access analysis built on Title II carry over to the Section 504 recipients and federal agencies that produce legal text, without re-litigating the standard for each statute.

40. *United States v. Georgia*, 546 U.S. 151, 158-59 (2006) (directing that Title II abrogation be determined claim by claim).

regime otherwise supplies, without the State retaining the sovereign-immunity defense that *Georgia* preserves for Title II claims outside the access-to-courts category.

## IV. Legalese as Cognitive Barrier

### *A. Historical Origins and Structural Features*

The foundational scholarly treatment of legalese is David Mellinkoff's 1963 book, *The Language of the Law*.[41] Mellinkoff traces the historical accretion of the specialized language convention through medieval English common law, the persistence of Law French in English legal drafting for centuries after it had ceased to be the language of ordinary life, the accretion of Latin legal terminology from Roman and canon law sources, and the stylistic conventions that developed during the long period when legal training was dominated by apprenticeship and oral tradition.

The structural features Mellinkoff documented are present in contemporary American legal drafting. They include: deeply nested syntactic structures, with multiple subordinate clauses embedded within a primary clause and secondary clauses embedded within those; archaic terminology ("aforesaid," "hereinbefore," "wheresoever"); Latin survivals ("inter alia," "mutatis mutandis," "prima facie," "per curiam," "habeas corpus"); Law French survivals ("voir dire," "tort," "estoppel," "lien," "parol"); terms of art whose legal definitions diverge substantially from ordinary meaning ("consideration," "construction," "instrument," "service," "provision"); passive voice and nominalization at frequencies substantially above general English; formulaic redundancies ("null and void," "cease and desist," "give, devise, and bequeath"); and absence of explanatory prose that would bridge between legal text and general-reader comprehension.[42]

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41. MELLINKOFF, *supra* note 5.

42. The catalogue is Mellinkoff's and is reproduced here as a description of the convention, not as a list of established cost drivers. Those are not the same thing, and the difference is material to this Article. Mellinkoff and Tiersma inventory the register's features; neither isolates which features impose measurable cost. Controlled study since has found that two of the catalogued features carry the load and at least one does not. *See infra* Part IV.C. Frequency of a feature in the corpus is evidence that the convention exists; it is not evidence that the feature is what makes the convention hard.

Peter Tiersma's *Legal Language*, published in 1999, extended Mellinkoff's analysis with attention to contemporary legal drafting practice and with linguistic analysis of the specific cognitive costs imposed by each feature.[43] Tiersma's work is particularly relevant because it identifies specific linguistic mechanisms that impose cognitive cost and distinguishes the cost of the specialized language convention from the cost of the underlying substantive complexity of the legal content. The distinction matters because it shows that legalese imposes cost that is not required by legal substance; it is an artifact of the convention, and in principle can be reduced without loss of substantive legal content.

### *B. Contemporary Documentation and Empirical Research*

Empirical research on legalese's cognitive costs has accumulated since Mellinkoff and Tiersma, and it has moved from documentation to controlled experiment. The distinction matters to the argument advanced here. Mellinkoff and Tiersma establish that the convention exists and catalogue its features; they do not isolate which features impose cost, on whom, or in what magnitude. The experimental literature does, and the disparate impact claim developed in Part VI depends on that isolation rather than on the catalogue.

The oldest and largest body of evidence concerns jury instructions. Comprehension of pattern instructions drafted in the conventional register is poor in absolute terms: a review of the literature places comprehension of pattern jury instructions at roughly half or less.[44] Field measurement in civil cases returns comparable figures, with overall comprehension of negligence instructions measured at approximately sixty-four percent.[45] Rewriting instructions according to psycholinguistic principles produces measurable gains. In the foundational demonstration,

43. TIERSMA, *supra* note 6.

44. Tarika Daftary-Kapur, Rachel Dumas & Steven D. Penrod, *Jury Decision-Making Biases and Methods to Counter Them*, 15 LEGAL & CRIMINOLOGICAL PSYCH. 133, 136 (2011) (reviewing the literature and reporting that "comprehension levels for pattern jury instructions stand at about 50% or less"), `https://doi.org/10.1348/135532509X465624` [hereinafter Daftary-Kapur et al.].

45. Edith Greene & Matthew Johns, *Jurors' Use of Instructions on Negligence*, 31 J. APPLIED SOC. PSYCH. 840, 840 (2001) (reporting overall comprehension of approximately 64% and finding that access to written instructions did not enhance comprehension while the opportunity to deliberate did), `https://doi.org/10.1111/j.1559-1816.2001.tb01416.x` [hereinafter Greene & Johns].

replacing infrequent words with common ones, replacing abstract words with concrete ones, removing negations, reducing jargon, shortening sentences, and reordering legal concepts raised mock juror comprehension from fifty-one percent to eighty percent.[46]

The magnitude of the gain should be stated with care, because it varies by instruction and by measurement method and the literature does not speak with one voice. Surveying the studies that tested original against revised instructions, the general range is a twenty to thirty percent improvement in comprehension, and some revisions introduce new sources of complexity rather than removing them.[47] There are also ceiling effects: rewriting does not carry comprehension to unity.[48] The argument developed here does not require the larger figure and does not depend on any claim that plain drafting is a complete remedy. It requires only that a measurable share of the cost is attributable to the drafting convention rather than to the legal content, which every study in this line finds.

Studies on the comprehension of contracts and consumer-facing legal documents point the same direction, though this Article states the contracts evidence more narrowly than the plain-language literature generally does, for reasons developed below. Applying established readability tests to the sign-in-wrap contracts of the five hundred most popular websites in the United States, one study found the overwhelming majority to be unreadable by ordinary standards, while the suppliers who draft them bear no corresponding duty to draft readably.[49] The asymmetry that study identifies has an analogue at the center of this Article: the pro se litigant is presumed to know the law, and no covered entity is presumed to owe her a readable version

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46. *See* Daftary-Kapur et al., *supra* note 44, at 141 (reporting the Elwork, Alfini & Sales rewrite results); AMIRAM ELWORK, BRUCE D. SALES & JAMES J. ALFINI, MAKING JURY INSTRUCTIONS UNDERSTANDABLE (1982).

47. Edith Greene, Kathryn Fogler & Sarah C. Gibson, *Do People Comprehend Legal Language in Wills?*, 26 APPLIED COGNITIVE PSYCH. 500, 501 (2012) ("Studies that tested comprehension of original and revised jury instructions generally show between 20% and 30% improvement in comprehension . . . although some changes in the language are obviously more influential than others and some revisions can actually introduce new sources of complexity."), `https://doi.org/10.1002/acp.2819` [hereinafter Greene et al.].

48. *See* Daftary-Kapur et al., *supra* note 44, at 141 (noting that recent research has shown limits to instruction comprehensibility in the form of ceiling effects).

49. Uri Benoliel & Shmuel I. Becher, *The Duty to Read the Unreadable*, 60 B.C. L. REV. 2255, 2255–96 (2019) (noting the asymmetry that "[w]hereas consumers are expected and presumed to read their contracts, suppliers do not generally have a duty to draft readable contracts"), `https://doi.org/10.2139/ssrn.3313837` [hereinafter Benoliel & Becher].

of it.[50] The mandated-disclosure literature reaches the compatible conclusion that requiring disclosure of complex terms does not produce comprehension of them.[51] The redrafting studies also mark the boundary of the remedy. Redrafting a set of contracts in three stages, first removing archaic and redundant terms, then simplifying words and sentence structure, then defining or replacing legal terms, reliably improved comprehension at the second stage, but absolute comprehension remained low, and the residual errors traced to the difficulty of the legal concepts themselves rather than to the language carrying them.[52] That finding is not an embarrassment to the argument advanced here. It is the argument's own limiting principle, arrived at independently and by experiment. Part I disclaimed any contention that all legal complexity is unlawful and confined the claim to cost the drafting convention imposes beyond what the content requires.[53] Masson and Waldron draw the same line from the other side, and in doing so they supply the measurement the doctrinal claim needs: the two cost components are separable, and one of them is the state's choice.

Statutory and regulatory text presents the same problem inside the government that produces it, and Congress has said so by statute. The Plain Writing Act of 2010 requires federal agencies to use "clear Government communication that the public can understand and use," directs each agency to designate a senior official responsible for implementation, and requires annual compliance reporting.[54] Compliance is uneven by the agencies' own accounts. The

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50. *Id.* at 2255. The parallel is structural rather than doctrinal. Benoliel and Becher address a private-law duty running between contracting parties; this Article addresses a public-law obligation running from a covered entity to a protected class. The common feature is a legal system that imposes a reading obligation on one party while imposing no drafting obligation on the party that writes the text.

51. *See* OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE (2014).

52. Michael E. J. Masson & Mary Anne Waldron, *Comprehension of Legal Contracts by Non-Experts: Effectiveness of Plain Language Redrafting*, 8 APPLIED COGNITIVE PSYCH. 67, 67 (1994) (finding comprehension "reliably enhanced by the use of simplified words and sentence structure, but absolute levels of comprehension were still very low," and that "quite apart from the constraints of language, non-experts have difficulty understanding complex legal concepts that sometimes conflict with prior knowledge and beliefs"), `https://doi.org/10.1002/acp.2350080107` [hereinafter Masson & Waldron].

53. *See supra* Part I (first limiting principle).

54. Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861 (codified at 5 U.S.C. § 301 note). The Act's own statement of purpose is an official acknowledgment that government text had not been comprehensible to the public it governs, which is the premise this Article builds on rather than an inference this Article draws.

Department of Labor's compliance report for fiscal year 2024 records that the Department's grades were among the lowest received that year, indicating a need to improve agency-level outreach and training and to incorporate plain-language principles into web design.[55] The grading referenced there is external: the Center for Plain Language issues an annual federal report card scoring agencies on compliance.[56]

The doctrinal significance of the Act is not that it creates a private right of action, which it does not, and this Article does not contend otherwise.[57] Its significance is evidentiary. A covered entity that has been told by Congress to write comprehensibly, has designated an official to do it, has reported annually on its progress, and has received failing marks in the process cannot credibly claim that comprehensible drafting is infeasible, that it never considered the question, or that the burden of the alternative is unknown to it. The Act converts what would otherwise be a contested question of administrative burden into a documented record of the entity's own making.

### *C. The Experimental Isolation of the Cost-Bearing Features*

The literature surveyed above establishes that legal text is hard and that redrafting helps. It does not establish why legal text is hard, and the difference decides this case. If legal text is hard because law is conceptually hard, the drafting convention is not a method of administration and there is nothing for Section 504 to reach. If legal text is hard because of how it is written, the convention is a choice, the choice is administration, and the analysis in Part VI applies. The question is empirical and it has been answered by controlled experiment.

Martínez, Mollica, and Gibson tested the competing accounts directly by manipulating four features common to legal drafting, holding meaning constant: center-embedded clauses,

55. U.S. Dep't of Labor, *2024 Plain Writing Act Compliance Report*, `https://www.dol.gov/general/plainwriting/2024AnnualComplianceReport` (last visited July 17, 2026).

56. *See id.* (describing the Department's grades and their distribution to department and agency leaders, communications professionals, and web developers). The report card itself is issued by the Center for Plain Language; this Article cites the agency's acknowledgment of its own grades rather than the grader's publication, because the party admission is the stronger evidence for present purposes.

57. *See infra* Part IX (addressing the Act's remedial limits and the resulting need for the Section 504 and Title II pathways).

low-frequency jargon, passive voice, and nonstandard capitalization.[58] Comprehension and recall improved significantly in the plain-language versions.[59] The finding that matters for the doctrine is in the title: the difficulty is attributable to the writing rather than to the specialized concepts.[60]

The experiment also ranked the features, and the ranking is the mechanism this Article's claim runs on. Center-embedded clauses had the strongest effect on the difficulty of recalling content, followed by low-frequency words; capitalization and voice had no significant effect.[61] Two consequences follow. First, the conventional inventory of legalese overstates its own case: voice is a feature of the register but not a driver of its cost, and an argument that rests on the full catalogue rests partly on sand.[62] Second, and decisively, the feature that does drive the cost is a syntactic structure whose difficulty is a function of memory load rather than of vocabulary or style.[63] That fact is the hinge of Part V. A cost driver that operates through memory load does not fall evenly on readers whose memory capacities differ, and the disability rights protected class is defined in relevant part by exactly that difference.

The replication record is favorable and cross-linguistic. A self-paced reading experiment in Spanish with 117 participants found that plain terminology significantly improved

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58. Eric Martínez, Francis Mollica & Edward Gibson, *Poor Writing, Not Specialized Concepts, Drives Processing Difficulty in Legal Language*, 224 COGNITION 105070 (2022), `https://doi.org/10.1016/j.cognition.2022.105070` [hereinafter Martínez, Mollica & Gibson, *Poor Writing*].

59. *Id.*

60. *Id.* The authors' conclusion is that "in many instances . . . jargon can be replaced with simpler alternatives that increase recall and comprehension while preserving meaning." *Id.* at 6. The preserved-meaning clause is what converts an empirical finding into a less-discriminatory-alternative showing. *See infra* Part VI.D.

61. *See* Susana Fernández-Silva & José A. Núñez Cortés, *Exploring the Effect of Plain Terminology on Processing and Comprehension of Administrative Texts in Spanish: A Self-Paced Reading Experiment*, 35 INT'L J. APPLIED LINGUISTICS 659 (2024) (summarizing the feature ranking in Martínez, Mollica & Gibson, *Poor Writing*: "Center-embedded clauses had the strongest effect on the difficulty for recalling content, followed by low-frequency words, while capitalization and voice had no significant impact"), `https://doi.org/10.1111/ijal.12650` [hereinafter Fernández-Silva & Núñez Cortés]; *see also* Martínez, Mollica & Gibson, *Poor Writing*, *supra* note 58.

62. This Article therefore does not rely on passive voice or nominalization frequency as a source of the differential burden, notwithstanding their prominence in the descriptive literature. *See supra* note 42 and accompanying text.

63. *See* T. Florian Jaeger & Harry Tily, *On Language 'Utility': Processing Complexity and Communicative Efficiency*, 2 WIREs COGNITIVE SCI. 323, 325 (2011) (locating comprehension difficulty for center-embedded structures in memory-based accounts, under which "processing difficulty arises when the sentence being processed overloads limits on some sort of mental storage system," and explaining integration cost as a function of dependency length), `https://doi.org/10.1002/wcs.126` [hereinafter Jaeger & Tily].

comprehension of administrative texts, though it did not reduce reading times, and that term length, frequency, and comprehensibility independently influenced both measures.[64]

Finally, the tradition defense has been tested on the people who maintain the tradition. In two preregistered experiments, lawyers were themselves less able to recall and comprehend legal content drafted in the legalese register than content of equivalent meaning drafted in a simplified register, and lawyers rated simplified contracts as equally enforceable as legalese contracts while preferring them on overall quality, appropriateness of style, and likelihood of being signed by a client.[65] The professional register is not, on this record, the product of professional judgment that the register is better. It is the product of convenience and inheritance. A covered entity defending a practice on the ground that the practice is required by the nature of the work is in a weak position when the practitioners themselves, tested under controlled conditions, comprehend the practice's output worse and prefer the alternative.

### *D. Plain Language Reform and Its Limits*

Plain language reform efforts in law have a long history and have produced measurable but partial success. Joseph Kimble's sustained advocacy across his scholarly career has documented both the case for plain language drafting and the empirical evidence of its benefits where adopted.[66] Rudolf Flesch's mid-twentieth-century work on readability produced the metrics that the movement has relied on ever since, and their limits are now the movement's central vulnerability rather than an incidental caveat.[67] Bryan Garner's *Garner's Dictionary of Legal*

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64. Fernández-Silva & Núñez Cortés, *supra* note 61, at 659. The dissociation between comprehension gains and reading-time gains is worth noting rather than eliding: plain drafting on this evidence makes legal text more comprehensible without necessarily making it faster to read. The claim advanced in this Article is a comprehension claim, not a speed claim.

65. Eric Martínez, Francis Mollica & Edward Gibson, *Even Lawyers Do Not Like Legalese*, 120 PROC. NAT'L ACAD. SCI. No. 23 (2023), `https://doi.org/10.1073/pnas.2302672120` [hereinafter Martínez, Mollica & Gibson, *Even Lawyers*]. The authors conclude that "lawyers who write in a convoluted manner do so as a matter of convenience and tradition as opposed to an outright preference and that simplifying legal documents would be both tractable and beneficial for lawyers and nonlawyers alike." *Id.*

66. JOSEPH KIMBLE, WRITING FOR DOLLARS, WRITING TO PLEASE: THE CASE FOR PLAIN LANGUAGE IN BUSINESS, GOVERNMENT, AND LAW (2012); KIMBLE, LIFTING THE FOG, *supra* note 6.

67. *See* Arbel, *supra* note 99 (reporting that tools endorsed by the movement can produce grade-level differences of up to 4.6 years for identical texts). This Article treats the Flesch line of work as historically important and

*Usage* and *Legal Writing in Plain English*[68] have been widely adopted in law school writing programs and in bar-sponsored continuing legal education. The Plain Writing Act of 2010 imposes plain language requirements on federal agency communications with the public, with Executive Order 12866 requiring agencies to consider plain language in rulemaking.[69]

The limits of plain language reform for present purposes are important. The Plain Writing Act reaches federal agency public-facing communications but does not reach the text of statutes, regulations themselves, or judicial decisions. The reforms have had measurable effect on agency guidance, brochures, and public-facing materials, but have not substantially reduced the legalese features of the underlying binding law. A pro se litigant attempting to understand, for example, Section 504 of the Rehabilitation Act, ADA Title II's implementing regulations, or the procedural requirements for filing a civil action in federal court encounters legal text drafted substantially in the conventional legalese register, notwithstanding improvements in public-facing agency materials.

The Proposed Plain Regulations Act, introduced in successive Congresses but not enacted, would extend Plain Writing Act coverage to substantive regulations.[70] The persistent failure of enactment reflects institutional resistance to the reform, not doctrinal infeasibility. Plain language drafting is demonstrably possible within legal precision requirements; the reforms in agency public communications are proof of concept.

## V. The Protected Class and the Cognitive Tax

The protected class analysis identifies a cognitive subset of the disability rights protected class whose defining characteristics include impairments in executive function, working memory,

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evidentiarily secondary, for the reasons developed in Part VI.D. Nothing in the argument advanced here depends on the validity of a readability formula.

68. Bryan A. Garner, Garner's Dictionary of Legal Usage (3d ed. 2011); Bryan A. Garner, Legal Writing in Plain English (2d ed. 2013). The dictionary was titled *A Dictionary of Modern Legal Usage* through its second edition in 1995 and was retitled at the third edition; citations combining the earlier title with the 2011 edition describe a book that does not exist.

69. Exec. Order No. 12866, 58 Fed. Reg. 51735 (Oct. 4, 1993).

70. *See* Plain Regulations Act of 2013, H.R. 1557, 113th Cong. (2013) (introduced but not enacted).

sustained attention, and related cognitive features. The subset includes persons with diagnosed Attention Deficit Hyperactivity Disorder (approximately 4.4 percent of American adults and 11 percent of American children); Autism Spectrum Disorder (approximately 3.2 percent of American children, with substantial additional adult prevalence); traumatic brain injury (an estimated 5.3 million Americans with long-term TBI-related disability); long COVID with cognitive effects (a material fraction of an estimated 17 million Americans with Long COVID); chronic pain with associated cognitive effects (approximately 20 percent of American adults experience chronic pain); and psychiatric conditions affecting sustained attention including major depressive disorder, generalized anxiety disorder, post-traumatic stress disorder, and bipolar disorder.[71]

This subset bears a distinct and disproportionate cognitive burden in the exercise of the pro se right. The burden is not asserted here as an intuition about what disability must feel like. It follows from the convergence of two independently established empirical findings, and the convergence is precise enough to name.

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71. Ronald C. Kessler et al., *The Prevalence and Correlates of Adult ADHD in the United States: Results From the National Comorbidity Survey Replication*, 163 AM. J. PSYCHIATRY 716, 716–23 (2006), `https://doi.org/10.1176/ajp.2006.163.4.716`, and U.S. Dep't of Health & Human Servs., Health Res. & Servs. Admin., Maternal & Child Health Bureau, *National Survey of Children's Health* (2022) (ADHD); Centers for Disease Control & Prevention, *Data and Statistics on Autism Spectrum Disorder*, `https://www.cdc.gov/autism/data-research/index.html` (last visited July 17, 2026) (reporting that about 1 in 31, or 3.2%, of children aged 8 years has been identified with ASD according to Autism and Developmental Disabilities Monitoring Network estimates drawn from 2022 surveillance across 16 sites, up from 1 in 36 in 2020) (autism spectrum disorder); Brain Injury Ass'n of Am., *Statistics* (traumatic brain injury); Centers for Disease Control & Prevention, *Long COVID Household Pulse Survey* (Long COVID); James M. Dahlhamer et al., *Prevalence of Chronic Pain and High-Impact Chronic Pain Among Adults, United States, 2016*, 67 MMWR MORB. MORTAL. WKLY. REP. 1001, 1001–06 (2018), `https://doi.org/10.15585/mmwr.mm6736a2` (chronic pain).
Three cautions attach to this footnote and are stated rather than buried. First, the chronic pain figure reflects 2016 surveillance, and the same source records that population-based estimates of chronic pain among United States adults range from 11 to 40 percent depending on the case definition used, so the twenty percent figure should be understood as one defensible estimate within a wide band rather than a settled number. Second, the traumatic brain injury and Long COVID figures are drawn from organizational and survey reporting whose current editions counsel should retrieve and pin before relying on them in a filing; they are offered here to indicate order of magnitude. Third, and most importantly, nothing in the argument advanced in this Article turns on the precision of any figure in this footnote. The claim is not that the class is large enough to matter. It is that the class is defined by a cognitive characteristic that the drafting convention loads, and that claim is established by the mechanism evidence in the text rather than by any headcount. *See supra* Part V. Prevalence bears on the proportionality of a remedy, not on the existence of the differential.

The first finding is the one developed in Part IV.C: the single largest driver of processing difficulty in legal text is center-embedded syntax, and the difficulty of center-embedded syntax is a memory phenomenon.[72] A center-embedded structure requires the reader to hold an unresolved dependency open across intervening material and then integrate it, and the cost of that integration rises with the distance held.[73] This is not a metaphor for difficulty. It is a description of a storage operation.

The second finding is that the capacity performing that storage operation varies across readers, and that its limitation is a defining feature of the neurodevelopmental conditions that constitute much of the subset identified above.[74] Working memory is the system that stores and manipulates information simultaneously, its capacity is limited, and the consequence of exceeding it is not graceful degradation: the imposition of excess storage or processing demands during an ongoing cognitive activity produces catastrophic loss of information from the temporary system.[75] Impairments of working memory are associated with substantial learning difficulty and are documented across neurodevelopmental disorders including attentional deficits.[76]

Put together, the two findings do the work that no amount of prevalence data can do. The feature that controlled study identifies as the largest cost driver in legal text is the feature that

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72. *See supra* Part IV.C; Jaeger & Tily, *supra* note 63, at 325 (explaining that overtaxed memory has been invoked to account for comprehension difficulty in center-embedded clauses as compared to right-embedded sentences, and that integration difficulty increases with dependency length).

73. *Id.* at 325–26. The canonical formulation is Gibson's dependency locality account, on which processing cost at the point of integration is a function of the distance between dependent elements. *See* Edward Gibson, *Linguistic Complexity: Locality of Syntactic Dependencies*, 68 COGNITION 1 (1998), `https://doi.org/10.1016/S0010-0277(98)00034-1`.

74. *See* Susan E. Gathercole & Tracy Packiam Alloway, *Practitioner Review: Short-Term and Working Memory Impairments in Neurodevelopmental Disorders: Diagnosis and Remedial Support*, 47 J. CHILD PSYCH. & PSYCHIATRY 4 (2006), `https://doi.org/10.1111/j.1469-7610.2005.01446.x` [hereinafter Gathercole & Alloway].

75. *Id.* at 5. The clinical literature also records that the degree of variation in working memory capacity at any given age is sizeable, spanning many years of average development. *Id.*

76. *Id.* at 4 (abstract) (concluding that impairments of short-term and working memory "are associated with learning difficulties that can be substantial, and that can be minimised by appropriate methods of remedial support"). The remedial-support finding is doctrinally significant in its own right: a condition whose adverse consequences can be minimized by appropriate accommodation is the paradigm case for a reasonable-modification obligation rather than an argument against one.

loads the capacity whose limitation defines the class. The convention and the disability meet at one point, and it is the same point.

The interaction has been measured directly. Every reader finds object-extracted relative clauses harder than subject-extracted ones, but the difference between the two conditions is significantly greater for readers of lower working memory capacity.[77] That sentence is the cognitive tax stated in the vocabulary of psycholinguistics rather than the vocabulary of civil rights. It is not that the low-capacity reader finds hard text hard. It is that the increment of difficulty added by the syntactic feature is larger for that reader than for others confronting the identical text. The excess increment is the differential, and the differential is what Section 504 and Title II reach.

The pattern replicates in a clinical population. Comparing fifty readers with dyslexia against fifty typically developing controls on subordinate-main structures, readers with dyslexia showed poorer comprehension and longer total reading times on the disambiguating region of syntactically ambiguous sentences, and of the candidate mechanisms, working memory was more associated with the group difference than processing speed.[78] The design of that study is worth noting for evidentiary purposes developed in Part VI.D: it holds the text constant, varies only the reader, measures both an online process trace and an offline comprehension outcome, and isolates the cognitive factor responsible for the group difference. That is the shape of the showing a plaintiff would need to make, and it has been made in the laboratory already.

Executive function impairment and sustained attention limitation compound the memory mechanism rather than substituting for it, because legalese presents its nested structures in

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77. *See* Leah Roberts, *Individual Differences in Second Language Sentence Processing*, 62 LANGUAGE LEARNING 172, 175 (2012) (reporting King & Just's finding that "all participants had more difficulty processing object . . . versus subject-extracted . . . relative clauses, but the difference between the two conditions was significantly greater for those of lower working memory capacity"), `https://doi.org/10.1111/j.1467-9922.2012.00711.x` [hereinafter Roberts]; *see also* Marcel Adam Just & Patricia A. Carpenter, *A Capacity Theory of Comprehension: Individual Differences in Working Memory*, 99 PSYCH. REV. 122, 122 (1992) (stating the theory's "major thesis" as the proposition "that cognitive capacity constrains comprehension, and it constrains comprehension more for some people than for others"), `https://doi.org/10.1037/0033-295x.99.1.122` [hereinafter Just & Carpenter].

78. Marco Stella & Paul E. Engelhardt, *Syntactic Ambiguity Resolution in Dyslexia: An Examination of Cognitive Factors Underlying Eye Movement Differences and Comprehension Failures*, 25 DYSLEXIA 115, 115 (2019), `https://doi.org/10.1002/dys.1613` [hereinafter Stella & Engelhardt].

extended passages without scaffolding, so the reader must sustain the storage operation rather than perform it once.[79] Terms of art whose legal definitions diverge from ordinary meaning operate through a different channel, producing systematic misinterpretation rather than storage failure, and the experimental record identifies low-frequency vocabulary as the second-ranked cost driver after center-embedding.[80]

The cognitive tax is the differential cost that members of this subset pay in the process of exercising a right that other members of the protected class (those whose disabilities do not implicate these cognitive features), and all non-disabled persons, pay at lower proportional cost. The tax is not the substantive difficulty of the legal question at issue in the particular case. It is the procedural and linguistic overhead imposed by the drafting convention through which the legal question is presented. The tax is a differential; it is the marginal cost that the cognitive subset of the protected class bears in addition to the cost that non-subset readers bear.[81]

A non-disabled litigant pays cognitive cost to read a complex statute; the litigant in the cognitive subset pays that cost and then pays additional cost that is tied to the disability. The additional cost is disparate impact.[82] The extraction of the additional cost is the method by which legalese administers the legal system to the cognitive subset of the protected class.[83] The

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79. On the storage-plus-processing structure of the capacity at issue, and its measurement through complex span tasks in which processing and storage demands are imposed concurrently, see Gathercole & Alloway, *supra* note 74, at 5.

80. *See* Fernández-Silva & Núñez Cortés, *supra* note 61, at 659.

81. The differential framing tracks the statutory definition of the protected class. Section 504 and Title II protect the "qualified individual with a disability," meaning one who, with or without reasonable modifications, meets the essential eligibility requirements for the receipt of services or participation in programs. *See* 42 U.S.C. § 12131(2); 29 U.S.C. § 794(a). The pro se litigant in the subset is qualified in exactly this sense: she meets every requirement for self-representation except the one the drafting convention imposes and the content does not require, which is the capacity to absorb center-embedded syntax at volume. The tax is the gap between those two requirements.

82. This is the definitional core of the Article and it is worth stating precisely. Disparate impact does not require that the protected-class member bear a burden others escape entirely; it requires that a facially neutral practice fall more heavily on the protected class. *See Alexander v. Choate*, 469 U.S. 287, 297-99 (1985); Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 738 (9th Cir. 2021) (*Payan I*). Every reader pays a cost to read legalese; the cognitive-subset reader pays an increment on top, and the increment is a function of the disability. The increment is the disparate impact, and its measurement is the interaction effect established in Part V.

83. The phrasing tracks the regulatory text deliberately. The methods-of-administration provisions reach practices that "have the effect of" subjecting individuals to discrimination or of defeating or substantially impairing the objectives of the program with respect to disabled persons. 28 C.F.R. § 35.130(b)(3); 45 C.F.R. § 84.68(b)(3); *see*

administering is subject to the methods-of-administration analysis developed under disability civil rights statutes.

## VI. Doctrinal Analysis

### *A. The Statutory Register: Methods-of-Administration Disparate Impact*

The methods-of-administration regulations at 28 C.F.R. § 35.130(b)(3) (Title II), 45 C.F.R. § 84.68(b)(3) (Section 504 as applied to HHS recipients), and parallel regulations of other agencies prohibit covered entities from using methods of administration that have the effect of subjecting qualified disabled persons to discrimination or of defeating or substantially impairing accomplishment of the program's objectives with respect to disabled persons.[84] State and local court systems are public entities subject to Title II. Federally funded legal aid providers, law schools operating legal clinics with federal support, and other recipients whose programs involve production or administration of legal texts are subject to Section 504 under 45 C.F.R. § 84.68(b)(3) or parallel agency regulations.

Where the text of statutes, regulations, and procedural rules as administered by a covered entity imposes differential cognitive cost on the cognitive subset of the protected class, the administration of that text is a method of administration within the meaning of the regulations. The regulations do not require intentional discrimination; they reach practices with

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*supra* note 84. A drafting convention that extracts an additional, disability-linked comprehension cost as the price of exercising the pro se right is a method of administering court access, and it produces the prohibited effect.

84. 45 C.F.R. § 84.68(b)(3); 28 C.F.R. § 35.130(b)(3). A citation note is warranted because the Section 504 provision was recently renumbered and the older designation still dominates the case law. The methods-of-administration prohibition formerly appeared at 45 C.F.R. § 84.4(b)(4); the Department of Health and Human Services redesignated the text as § 84.68(b)(3) in its 2024 overhaul of the part 84 regulation. *See* Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40066 (May 9, 2024) (final rule, RIN 0945-AA15, effective July 8, 2024) (amending 45 C.F.R. pt. 84); Discrimination on the Basis of Disability in Health and Human Service Programs or Activities, 88 Fed. Reg. 63392 (Sept. 14, 2023) (proposed rule) (explaining that § 84.4(b)(4), "while being revised in the amendment segment of this proposed rule, results in the text being redesignated as § 84.68(b)(3)," and that the provision "prohibits the use of discriminatory methods of administration, criteria, and protocols"). Authority construing § 84.4(b)(4) therefore remains good law as to the redesignated provision, and counsel citing pre-2024 decisions should give both designations.

discriminatory effect.[85] They do not exempt the linguistic convention of the administered text; the convention is a feature of the administration.

The claim distributes across covered-entity categories. State court systems administering state statutes and procedural rules in proceedings involving pro se litigants from the cognitive subset are subject to Title II analysis for the text's disparate impact. Federal agencies administering regulations under their rulemaking authority are subject to Section 504 analysis under 29 U.S.C. § 794(a) and the agency-specific implementing regulations, including 28 C.F.R. Part 39 for the Department of Justice's own conduct.[86] The full jurisdictional allocation among Section 504, Title II, and APA review for federal-agency claims presents distinct questions beyond the scope of this Article.

Consistent with the limiting principles stated in Part I, the statutory analysis reaches the administration of text with different force depending on the text's function as a public-facing gateway to rights. Consistent with the limiting principles stated in Part I,[87] the statutory analysis reaches the administration of text with different force depending on the text's function as a public-facing gateway to rights. The strongest targets for the statutory claim are court forms, filing instructions, clerk guidance, self-help materials, and agency public-facing guidance documents, each of which functions as a required gateway the protected class must traverse to exercise procedural rights. Court opinions and agency final orders form a middle category: their drafting convention is subject to methods-of-administration analysis where the texts function as required reading for subsequent pro se filings, but the interpretive discretion that attaches to

85. *See Alexander v. Choate*, 469 U.S. 287, 296-97 (1985) (recognizing that much disability discrimination results from benign neglect and thoughtlessness rather than animus, and that a requirement of discriminatory intent would leave that harm unreached); Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 738 (9th Cir. 2021) (*Payan I*) (holding that facially neutral policies producing disparate impact are actionable under Title II and Section 504). The intent question is the doctrinal fork on which this entire argument turns: legalese is not adopted to exclude disabled readers, and an intent standard would therefore defeat the claim at the threshold, which is precisely why *Choate*'s effects standard is load-bearing here.

86. 28 C.F.R. § 39.130(b)(3) (Department of Justice's Section 504 regulation for its own programs and activities).

87. *See supra* Part I (confining the claim to cost the drafting convention imposes beyond what the content requires, and to text the covered entity produces or administers as a gateway to rights). The gateway-function calibration is not a concession that some inaccessible legal text is lawful in the abstract; it is a statement about where the statutory hook is strongest, which is where the covered entity most clearly administers the text as a condition of access.

judicial reasoning and agency adjudication imposes limits on the scope of permissible compelled modification. The weakest targets are binding primary law: statutes and regulations. These are subject to the analysis in principle where the covered entity administering them is a public entity or recipient, but the practical remedial pathway for binding primary law runs through legislative and administrative reform under the analysis developed in Part IX, not through judicial compulsion of drafting choices.

### *B. The Constitutional Register: Access to Courts, Faretta, and the Federal and State Jurisdictional Architectures*

ADA Title II reaches state and local courts, not federal courts; federal-court arguments in this Article therefore proceed through the Fifth Amendment and adjacent statutory mechanisms rather than Title II.

The statutory analysis runs in parallel with the constitutional analysis and neither displaces the other. The constitutional claim is that legalese, as applied to the cognitive subset of the protected class, constitutes impairment of the fundamental right of access to courts recognized in *Bounds*, extended in *Lane*, and particularly salient as applied to the pro se right recognized in *Faretta*[88] and codified in 28 U.S.C. § 1654. The constitutional claim distributes differently across state courts, federal courts, and federal administrative proceedings, because the operative constitutional source varies.

For state courts, *Lane* supplies the doctrinal structure, and its three elements, their extension to cognitive inaccessibility, and the congruence and proportionality analysis that follows are developed above and are not repeated here.[89] What that development leaves for this Part is the narrower question of how the constitutional claim is distributed across the three jurisdictional architectures, because the operative constitutional source is not the same in each.

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88. Bounds v. Smith, 430 U.S. 817, 828 (1977) (access to courts); Tennessee v. Lane, 541 U.S. 509, 533-34 (2004) (Title II validly abrogates immunity as applied to the class of cases implicating the fundamental right of access to the courts); Faretta v. California, 422 U.S. 806, 819-20 (1975) (self-representation). The constitutional and statutory registers are cumulative rather than alternative: a plaintiff may prevail on either, and the registers reinforce each other because *Lane*'s abrogation holding rests on the same access-to-courts interest that *Bounds* and *Faretta* protect.

89. *See supra* Part III.C.

For federal courts, *Lane*'s reasoning applies by analogy rather than directly, because Title II and the Fourteenth Amendment do not reach federal action. The applicable constitutional source is the Fifth Amendment's Due Process Clause, which the Supreme Court has long read to impose analogous access-to-courts protection against federal actors.[90] The analytical structure for a Fifth Amendment claim tracks the *Mathews v. Eldridge*[91] balancing test when the question concerns procedural due process. The three *Mathews* factors are the private interest affected, the risk of erroneous deprivation under existing procedures together with the probable value of additional procedural safeguards, and the government's interest including fiscal and administrative burdens. Applied to the legalese barrier: the private interest is the substantive claim the pro se litigant seeks to vindicate, plus the liberty interest in self-representation itself; the risk of erroneous deprivation is elevated for the cognitive subset of the protected class confronting specialized-language-convention legal text without mediation; the government's interest in preserving conventional drafting is weakened by the documented feasibility of plain-language reforms and by the Plain Writing Act's own recognition that plain language serves public purposes.

The federal-side remedial architecture operates through three distinct pathways depending on the specific materials challenged. First, where the challenged materials are produced and administered by a federal executive agency (court forms, filing instructions, agency-specific procedural rules, agency regulations, and public-facing guidance documents), Section 504(a) reaches the agency directly under 29 U.S.C. § 794(a), with the methods-of-administration obligation implemented through the agency-specific regulations (28 C.F.R. Part 39 for DOJ, parallel regulations for other agencies). Second, where the challenged materials are produced by the federal judiciary itself (Federal Rules of Civil and Appellate Procedure, local district court rules, Supreme Court rules, and court-promulgated forms), the constitutional claim under

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90. *See* Bolling v. Sharpe, 347 U.S. 497 (1954) (Fifth Amendment Due Process Clause provides equal protection against federal action); Christopher v. Harbury, 536 U.S. 403 (2002) (discussing access-to-courts doctrine as it applies to federal action).

91. Mathews v. Eldridge, 424 U.S. 319 (1976).

the Fifth Amendment proceeds against the responsible federal judicial officers in their official capacities, with remedial scope limited to the specific procedural architecture administered by the federal court defendants. Third, structural reform claims directed at federal-court public-facing administration, particularly pro se clerk offices and self-help resources funded through the Administrative Office of the U.S. Courts or through individual court budgets, proceed against the responsible administrative defendants under the Fifth Amendment and, where federal financial assistance through AO grants is documented, under Section 504. Each of these pathways has specific defendants and specific remedial boundaries; the constitutional claim does not operate as a generalized challenge to the federal judicial enterprise as such.

For federal agencies conducting administrative proceedings that affect disabled participants, Section 504 applies directly. 29 U.S.C. § 794(a) reaches "any program or activity conducted by any Executive agency." The agency-specific implementing regulations, including 28 C.F.R. Part 39 for the Department of Justice's own conduct, impose methods-of-administration disparate impact obligations on federal agency administrative practices. A federal agency that administers proceedings in which disabled claimants must engage specialized-language regulations, forms, and procedural rules is subject to the statutory methods-of-administration analysis on the same terms as state and local courts are subject to the Title II analysis.[92]

The *Faretta* specificity remains material across all three registers. The Court in *Faretta* grounded the right of self-representation in the defendant's autonomy: the defendant bears the consequences of the defense and therefore has the right to conduct the defense.[93] The analytical premise of *Faretta* is that the defendant *can* conduct the defense. For a defendant in the

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92. The federal-agency scope raises a three-track allocation: Title II as applied to public entities, Section 504 as applied to recipients of federal financial assistance, and 28 C.F.R. Part 39 as applied to the Department of Justice's own conduct. Each track applies the methods-of-administration analysis to a different actor.

93. Faretta v. California, 422 U.S. 806, 819-20, 834 (1975) (locating the right in the Sixth Amendment and in respect for the individual's autonomy, and holding that the defendant, and not the State, will bear the personal consequences of a conviction). The autonomy rationale is what makes the cognitive-accessibility point bite: a right justified by the litigant's own bearing of consequences is hollow if the litigant cannot read the materials through which the right is exercised.

cognitive subset of the protected class, where the conduct of the defense requires reading statutes, procedural rules, and evidentiary rules drafted in legalese, the capacity to conduct the defense is systematically reduced. The *Faretta* right remains formally available, but its substantive content is eroded. The same reasoning applies to the civil pro se right under 28 U.S.C. § 1654 and to administrative proceedings where pro se representation is recognized.

### *C. The Structural Register: Bounds's Library and the Readability of the Books*

The structural argument arises from the logic of *Bounds v. Smith*. The Court held that meaningful access to courts requires that prisoners have adequate law libraries or adequate assistance from persons trained in the law.[94] The holding presupposes that the libraries contain readable books. A library of legal texts that the pro se prisoner cannot read due to the cognitive cost of the specialized language convention would not satisfy the *Bounds* obligation, because the prisoner's access to the library would not produce access to the law's content.

The Court in *Bounds* did not address this issue directly. The prisoners in *Bounds* were asserting that the absence of libraries or legal assistance denied them access to the courts; the Court's holding addressed the presence requirement. The holding does not state that the books the library contains must be readable to the prisoners whose access the library provides.[95] But the implicit premise of the holding is that they are. The state's obligation to provide a law library must mean something more than stocking shelves. It must include some reasonable expectation that the library's contents can be used by the prisoners the library serves.

The extension of this reasoning to the present argument is straightforward. If *Bounds* requires that the state provide the tools through which pro se litigants can exercise their

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94. Bounds v. Smith, 430 U.S. 817, 828 (1977). *Bounds* was later confined by *Lewis v. Casey*, 518 U.S. 343 (1996), which required a showing of actual injury and clarified that *Bounds* did not create a freestanding right to a law library as such; the access right is to the courts, and the library is one means of securing it. *See infra* note 98. That confinement narrows the remedy but not the premise this Article draws from *Bounds*, which is that the tools furnished must be usable.

95. The silence is not a holding against the proposition. *Bounds* answered the question presented, which concerned the presence of legal resources, and had no occasion to address their usability. *See* Bounds v. Smith, 430 U.S. 817, 828 (1977). A later court reading *Bounds* for the usability question writes on substantially open ground, constrained by *Lewis v. Casey*, 518 U.S. 343 (1996), on the injury requirement but not on the content of the access right. *See supra* note 98.

access-to-courts right, and if the tools include legal texts, then the state's obligation includes some reasonable expectation that the texts are usable by the class the disability statutes protect.[96] readable by the litigants the tools serve. The obligation becomes particularly acute for the cognitive subset of the protected class, where the specialized language convention of the texts imposes systematic differential cost. The state that provides a law library of texts that the pro se litigant in the cognitive subset cannot meaningfully read is providing formal access without meaningful access. The *Bounds* obligation is accordingly not satisfied.

The structural argument operates as a gap-filling move in the doctrine. The statutory and constitutional registers developed in the preceding subsections supply the affirmative claim. The structural register supplies a rebuttal to the foreseeable objection that the state has already satisfied its obligations by providing formal access to the legal system.[97] The answer is that formal access to a legal system whose texts are not readable by the class the access is meant to serve is not meaningful access, and *Bounds* long ago rejected formal access as sufficient.

One procedural caveat bears explicit statement here, consistent with the doctrinal map laid out in Part III's treatment of *Lewis v. Casey*. A plaintiff bringing the structural constitutional claim under *Bounds* must plead actual injury in the sense *Lewis* requires:[98] a showing that the access barrier caused the loss of a nonfrivolous underlying legal claim. The statutory methods-of-administration claim developed in the preceding subsection does not require

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96. This is the meaningful-access principle of *Alexander v. Choate*, 469 U.S. 287, 301 (1985), applied to the tools *Bounds v. Smith*, 430 U.S. 817, 828 (1977), requires the state to furnish, and it is subject to the actual-injury limitation of *Lewis v. Casey*, 518 U.S. 343 (1996). *See supra* note 98.

97. The formal-versus-meaningful distinction is the through-line connecting the constitutional and statutory theories. *Choate* rejects formal-equality sufficiency in the benefits context, holding that evenhanded provision of an inaccessible benefit is not enough. *Alexander v. Choate*, 469 U.S. 287, 301 (1985). The structural argument imports the same distinction into the access-to-courts context: furnishing legal texts that the protected-class reader cannot use is formal access without meaningful access, and it is the cognitive counterpart to the physical-access failures that *Lane* addressed. *See* Tennessee v. Lane, 541 U.S. 509, 531 (2004).

98. Lewis v. Casey, 518 U.S. 343, 349-51 (1996) (requiring a showing of actual injury, meaning that a nonfrivolous legal claim was frustrated or impeded, and rejecting the theory that the mere inadequacy of legal resources states a claim without such a showing). The actual-injury requirement is a feature rather than a defect for the argument advanced here, because the cognitive-accessibility claim is naturally pleaded through a concrete instance: the litigant who missed a deadline, forfeited a defense, or filed a fatally defective pleading because the operative text was not comprehensible to her. *See* Christopher v. Harbury, 536 U.S. 403, 415 (2002) (requiring that the predicate claim underlying an access-to-courts theory be described well enough to show it is nonfrivolous).

actual injury in the *Lewis* sense, because the regulatory text operates on the disparate-impact theory directly and does not depend on the individualized causation showing *Lewis* imposed on constitutional access-to-courts claims in the prisoner-rights context. The statutory claim accordingly remains the primary engine of the argument for plaintiffs who cannot readily plead *Lewis* actual injury; the structural constitutional argument is most useful as a reinforcing frame for plaintiffs who can plead it, and as a normative account informing legislative and administrative reform even where the individualized litigation showing is difficult to make.

### *D. The Evidentiary Architecture of the Disparate Impact Claim*

The statutory disparate impact claim lives on class-wide empirical evidence. The preceding subsections have established the doctrinal basis; this subsection identifies the specific evidentiary showing a plaintiff or class would need to develop to prove the cognitive tax differential at trial or in administrative adjudication.

The evidentiary architecture has four components, and the order in which they are listed is itself a considered choice that departs from the conventional plain-language playbook. The conventional showing leads with readability formulas. This Article does not, and a plaintiff following this Article should not, because that component is the one a competent defense will attack first and the attack now has authority behind it.

The most substantial empirical challenge to the plain-language movement is recent, large, and squarely on point. Analyzing a dataset of two million contracts across decades and industries, Arbel reports that consumer agreements have median reading scores nearly indistinguishable from those of daily news articles, that the readability tools the movement endorses are manipulable enough to produce grade-level differences of up to 4.6 years for identical texts, and that the belief that Americans cannot read past an eighth-grade level is an unsubstantiated myth.[99] Those findings are accepted here. This Article does not assert a

99. Yonathan A. Arbel, *The Readability of Contracts: Big Data Analysis*, 21 J. EMPIRICAL LEGAL STUD. 927 (2024), `https://doi.org/10.1111/jels.12400` [hereinafter Arbel].

population-wide reading-level deficit, does not rest on the eighth-grade figure, and does not treat a Flesch-Kincaid score as proof of anything.

Accepting them costs the argument nothing, because Arbel's target is not this argument. His critique runs against readability metrics as a measurement instrument and against a population-wide crisis claim. The claim advanced here is neither. It is a claim about a differential borne by an identified subclass, grounded in controlled experiments that manipulate specific syntactic features with meaning held constant and measure comprehension and recall directly rather than inferring them from a formula.[100] Arbel's own prescription is that legal access strategy should shift away from superficial readability metrics and toward substantive intervention focused on truly vulnerable populations.[101] This Article is an attempt to do exactly that. The population is identified by diagnosis rather than by average, the mechanism is identified by experiment rather than by formula, and the remedy is targeted at a class rather than at a general reading public. The most forceful critic of the plain-language movement has described the project this Article undertakes and recommended it.

With that established, the four components follow. First, and now demoted to a screening function rather than a proof function, readability measurement of the specific text at issue. Standard metrics including Flesch-Kincaid Grade Level, SMOG, Gunning Fog, and the Automated Readability Index remain useful for identifying candidate texts and for showing gross disparities between a text and its plain-language counterpart. They are not offered as measures of the cognitive burden on the protected class, and a plaintiff who offers them for that purpose invites impeachment.[102] The load-bearing measurement is the second component.

100. *See supra* Part IV.C. Arbel's own treatment is consistent with this reading: he cites the controlled experimental work as supporting his position rather than as a target of it. *See* Arbel, *supra* note 99; Martínez, Mollica & Gibson, *Poor Writing*, *supra* note 58. The disagreement in this literature is about formulas, not about whether drafting choices carry measurable comprehension consequences.

101. Arbel, *supra* note 99, at 927 (calling for "a shift from superficial readability metrics to addressing substantive issues in market dynamics and focusing on truly vulnerable populations").

102. *See* Arbel, *supra* note 99 (documenting grade-level differences of up to 4.6 years for identical texts across tools). Counsel should anticipate that a defense expert will introduce Arbel to attack any showing that rests on formula output. The response is not to defend the formulas. It is to have never relied on them.

Second, linguistic feature analysis. Analysis of the text's specific features generates a feature profile.[103] The profile so generofile. The feature profile identifies the specific linguistic mechanisms through which cognitive cost is imposed. Feature profiles of plain-language parallel texts, where available, supply a contrast showing that the same substantive content can be expressed with reduced cognitive cost.

Third, cognitive-load evidence matched to the protected class's diagnostic characteristics. Expert testimony from psycholinguists and cognitive scientists can establish how each identified linguistic feature interacts with the specific cognitive features that define the protected class: nesting depth with working memory capacity, sustained-attention requirements with executive function, term-of-art ambiguity with literal-interpretation tendencies in Autism Spectrum Disorder, and related interactions. Published empirical research supports the expert opinion and can be introduced as authoritative literature under Federal Rule of Evidence 803(18) or parallel state evidentiary provisions.[104] Four bodies of literature are available and they do different work.

The jury instruction studies establish the baseline proposition that conventionally drafted legal text is not comprehended even by readers the system treats as competent to apply it.[105] The contract studies establish the asymmetry between the reading obligation imposed and the drafting obligation withheld.[106] The controlled feature-manipulation experiments establish which features carry the cost and that the cost is severable from the content, which is the element the plain-language literature standing alone cannot supply.[107] And the individual-differences

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103. The features worth measuring are the ones the controlled literature identifies as cost drivers, principally clause-nesting depth (center-embedding) and low-frequency terminology, not the full descriptive catalogue. *See supra* Part IV.C; Martínez, Mollica & Gibson, *Poor Writing*, *supra* note 58. Counsel should resist the temptation to pad the feature profile with metrics like passive-voice frequency that the experimental record does not tie to comprehension cost, because padding the profile invites the same impeachment that discredits formula-based showings. *See supra* note 42.

104. Fed. R. Evid. 803(18) (excepting from the rule against hearsay statements in learned treatises, periodicals, or pamphlets that are called to an expert's attention on cross-examination or relied on by the expert on direct, if established as a reliable authority; the statement may be read into evidence but not received as an exhibit).

105. *See* Daftary-Kapur et al., *supra* note 44, at 136, 141; Greene & Johns, *supra* note 45, at 840.

106. *See* Benoliel & Becher, *supra* note 49, at 2255.

107. *See* Martínez, Mollica & Gibson, *Poor Writing*, *supra* note 58; Fernández-Silva & Núñez Cortés, *supra* note 61; Masson & Waldron, *supra* note 52, at 67.

literature establishes the interaction that makes the burden a disability-linked differential rather than a general inconvenience.[108] The fourth is the one that converts the first three from a complaint about bad writing into a civil rights claim, and counsel should structure the expert presentation so that it arrives last and is framed as the conclusion the other three build toward.

Fourth, differential outcome data. Where available, administrative records of pro se outcomes stratified by disability status document the class-wide pattern. Administrative agencies that track pro se filings in disability-heavy contexts (Social Security Disability administrative proceedings, Veterans Affairs benefits proceedings, Equal Employment Opportunity Commission charges) maintain data that can be subpoenaed, obtained through FOIA, or introduced through agency publications. Federal and state court administrative offices maintain pro se filing statistics that can be stratified and analyzed, though the stratification by cognitive disability status requires additional work because standard filings do not identify disability. Secondary analysis of existing empirical research on pro se outcomes, including the Steinberg, Engler, and Legal Services Corporation studies,[109] can supply comparative evidence on pro se losses attributable to procedural errors rather than substantive merits.

The four components combine to establish the class-wide disparate impact. Readability measurement establishes that the text exceeds general reader capacity. Linguistic feature analysis identifies the specific burden-imposing features. Cognitive-load evidence matches those features to protected-class diagnostic characteristics. Differential outcome data documents

108. *See* Roberts, *supra* note 77, at 175; Just & Carpenter, *supra* note 77, at 122; Gathercole & Alloway, *supra* note 74, at 4–5; Stella & Engelhardt, *supra* note 78, at 115.

109. *See* Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 Geo. J. on Poverty L. & Pol'y 453, 453–505 (2011), `https://scholarship.law.gwu.edu/faculty_publications/958/`; Russell Engler, *Connecting Self-Representation to Civil Gideon: What Existing Data Reveal About When Counsel Is Most Needed*, 37 Fordham Urb. L.J. 37 (2010), `https://ir.lawnet.fordham.edu/ulj/vol37/iss1/2/` (surveying the existing reports and concluding that, notwithstanding methodological differences across studies, representation is consistently a significant variable affecting a claimant's chances of success in eviction, custody, and debt collection cases, and that the finding extends to many administrative proceedings); LEGAL SERVICES CORP., THE JUSTICE GAP: THE UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (2022), `https://www.lsc.gov/initiatives/justice-gap-research`. Engler's synthesis is the necessary predicate for the argument advanced here and also marks its limit: it establishes that the absence of counsel changes outcomes, not that the drafting of the text changes outcomes for a protected class. This Article supplies the second proposition, which the representation literature does not reach.

that the class-wide pattern produces disparate procedural outcomes. The resulting evidentiary package does not require reconstructing the causation chain in any particular plaintiff's case; it establishes that the specialized language convention, as a method of administering the legal system, produces differential burden on the cognitive subset of the protected class, which is what the methods-of-administration regulations prohibit.

The evidentiary architecture also supports the Title VI disparate impact analog[110] and the ADA disparate impact analysis under 42 U.S.C. § 12132. Courts evaluating disparate impact in the disability context generally require plaintiffs to identify the specific practice at issue, show that the practice has a disproportionate adverse effect on the protected class, and demonstrate that a less-discriminatory alternative exists. The four-component evidentiary architecture satisfies each element: the specialized language convention is the practice; the class-wide cognitive cost differential is the disproportionate adverse effect; plain-language drafting and parallel texts are the less-discriminatory alternatives whose feasibility has been empirically demonstrated.

## VII. The 2026 DOJ Interim Final Rule as Regulatory Evidence and Admission Against Interest

A note on this Part's relationship to the Article's core thesis. The Article's central argument is that the specialized-language convention of legal drafting, as applied to the cognitive subset of the protected class, is itself a method of administration with disparate impact. This Part addresses a specific regulatory action: the 2026 DOJ Interim Final Rule extending compliance deadlines for the 2024 Title II web accessibility rule. The IFR operates on the digital medium of legal material delivery rather than on legal syntax and vocabulary directly. The connection to the core thesis is that the digital inaccessibility of primary legal material (through unsearchable PDFs, untagged documents, missing structural markup, and so on) operates cumulatively with the legalese inaccessibility of the material's substantive text. A pro se litigant in the cognitive subset

110. Because Section 504 incorporates Title VI remedies, 29 U.S.C. § 794a(a)(2), analytical approaches developed under Title VI and similar statutes inform the Section 504 analysis. *See Alexander v. Choate*, 469 U.S. 287, 295-97 (1985) (discussing the relationship of Section 504 to Title VI and the meaningful-access standard).

of the protected class encounters both barriers: the text of the law is drafted in a convention that imposes disproportionate cognitive cost, and the digital delivery of that text through PDFs and web interfaces produced by the judicial system compounds the burden where the documents themselves fail basic digital-accessibility criteria. The IFR is accordingly treated here as evidence of the same disparate-impact pattern the Article's core argument identifies, and as providing evidentiary admissions by the responsible federal regulator usable in subsequent pro se access-to-courts litigation. It is not a separate digital-accessibility argument; it is a specific regulatory manifestation of the cumulative access barrier the Article develops.

On April 20, 2026, the Department of Justice published an Interim Final Rule extending the compliance deadlines for the 2024 Title II web accessibility regulation by one year.[111] The IFR itself is a narrow regulatory action whose primary effect is to extend compliance deadlines without modifying the underlying substantive requirement. Its significance for the argument developed in this Article, however, is substantial, because the regulatory action reaches exactly the category of legal materials that pro se litigants require to exercise their right of self-representation and because the rationale stated in the IFR supplies evidentiary admissions usable in subsequent pro se disability-access litigation.

The most useful admission is the Department's own statement of what the extension does not do. The IFR moves the date on which a specific technical standard becomes mandatory; it does not suspend the underlying statutory duty. In the Department's words, regardless of the compliance dates, covered entities retain an ongoing obligation to ensure that the services, programs, and activities they offer through web content and mobile apps are accessible to

111. 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) (interim final rule) (effective Apr. 20, 2026), `https://www.federalregister.gov/documents/2026/04/20/2026-07663/extension-of-compliance-dates-for-nondiscrimination-on-the-basis-of-disability-accessibility-of-web` [hereinafter Title II IFR]. State and local government entities with a total population of 50,000 or more were to comply by April 24, 2026; those entities now have until April 26, 2027. Entities with a total population of less than 50,000, and any special district government, were to comply by April 26, 2027; those entities now have until April 26, 2028. The Department accepted comments on the IFR through June 22, 2026.

individuals with disabilities in accordance with their existing obligations under Title II.[112] That sentence is worth more to a plaintiff than the deadline is worth to a defendant.

It establishes, from the enforcing agency and against its own immediate interest in granting relief to regulated entities, that the Title II accessibility obligation is freestanding rather than derivative of any published technical standard. Courts recognized website and mobile-app claims under Title II's effective-communication and program-access standards for years before the 2024 rule existed, and the 2024 rule did not create that liability.[113] A covered entity cannot argue that the accessibility duty arrives only when a regulation supplies a metric, because the Department has said the opposite while extending the metric's deadline.

### *A. The IFR's Scope and Its Application to Pro Se Legal Materials*

The 2024 DOJ Title II rule, codified at 28 C.F.R. Part 35, requires state and local government entities to ensure that the web content and mobile applications they provide or make available conform to the Web Content Accessibility Guidelines 2.1 Level AA.[114] The rule's coverage reaches the full range of digital content produced and disseminated by state and local governments, including by state courts, state legislatures, state judicial administrative offices, state-funded law libraries, county court systems, and the administrative offices of state and local judiciaries. The content subject to the rule includes website text, embedded documents, downloadable forms, PDF publications, video and audio media, and mobile application functionality.

Pro se litigants rely on precisely this content to exercise their rights. The primary sources of substantive state law are state court opinions, state constitutions, state statutes, and state

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112. *See* Title II IFR, *supra* note 111 (stating that "[r]egardless of the compliance dates, covered entities have an ongoing obligation to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities in accordance with their existing obligations under title II of the ADA"); *id.* (noting that the amendments do not alter any other provision of the 2024 final rule).

113. *See* 42 U.S.C. § 12132. The point matters to this Article because no technical standard for the cognitive accessibility of legal text exists, and a defendant will say so. The IFR forecloses the inference that the absence of a standard means the absence of an obligation, because the Department has said the obligation runs independently of the standard even where a standard exists.

114. 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).

regulations. State courts publish their opinions on state court or state supreme court websites,[115] some states operate dedicated case-law databases that serve as the only freely accessible source of precedent. State legislatures publish statutory compilations and session laws on state legislature websites. State judicial administrative offices publish rules of civil procedure, rules of criminal procedure, local court rules, rules of evidence, and rules of professional conduct. County courts publish local rules, filing instructions, court forms, and dockets. State judicial branches publish pro se self-help resources, including guides, forms, instructional materials, and in some jurisdictions interactive document-assembly tools. The pro se litigant who cannot access these materials cannot file a proper complaint, cannot respond to a motion, cannot locate controlling authority, and cannot comply with procedural deadlines.

The PDF accessibility question deserves specific attention.[116] State courts and state legislatures distribute vast quantities of primary legal material as PDFs, including unsearchable scanned PDFs of older opinions, PDFs without optical character recognition that defeat text-selection and screen-reader processing, PDFs without logical reading order that produce incoherent audio output on assistive technology, PDFs without structural tagging, PDFs without alternative text for images and diagrams, and PDFs with typography and color contrast failures that violate cognitive-accessibility criteria. WCAG 2.1 Level AA addresses each of these failure modes through specific success criteria for documents. The 2024 DOJ rule accordingly reached these PDF accessibility failures as violations requiring remediation by April 24, 2026. The IFR extends the period during which these failure modes may persist without regulatory consequence by twelve months.

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115. This is the fact that brings primary law inside the 2024 rule and inside Title II independent of it. Primary legal authority that once reached the public through printed reporters now reaches the public through a public entity's web content, and the accessibility of that web content is governed by the entity's Title II program-access obligation. *See* 42 U.S.C. § 12132; Title II IFR, *supra* note 111.

116. The 2024 rule's adopted standard, WCAG 2.1 Level AA, addresses document accessibility directly, including requirements that defeat exactly the failure modes described here. *See* 89 Fed. Reg. 31320 (Apr. 24, 2024). An unsearchable scanned opinion is not a marginal case of inaccessibility; it is the paradigm case, because it defeats both the assistive technology a print-disabled reader uses and the text-search a cognitively disabled reader relies on to avoid reading the whole document. *See supra* Part V.

For a pro se litigant with ADHD, autism spectrum disorder, traumatic brain injury, dyslexia, the cognitive effects of post-traumatic stress disorder, or generalized anxiety disorder,[117] the difference between a WCAG-compliant published opinion database and an unsearchable PDF scan is the difference between accessible and inaccessible primary legal authority. The extension of the compliance deadline, in these cases, is the extension of the period during which the pro se litigant's right to self-representation operates in conditions that the cognitive subset of the protected class cannot navigate.

### *B. The WCAG-Unknowable Rationale as Evidentiary Admission Under Federal Rule of Evidence 801(d)(2)*

The IFR states, among its rationales for the deadline extension, that WCAG 2.1 is not an appropriate compliance standard because its supplementary technical materials are hosted on dynamically updated web pages that the covered entity cannot fully audit.[118] The argument is that a standard whose incorporated materials can change renders the compliance obligation indeterminate. The IFR's language frames this as a problem for state and local government entities attempting to comply.

The language, published in the Federal Register by the Department of Justice under the authority of the United States, is a formal statement by an agency of the federal government. The evidentiary use of the statement divides into three categories depending on who is the litigation adversary. First, where the United States is itself a litigant, the statement is admissible against the United States as a party-opponent admission within the meaning of Federal Rule of Evidence 801(d)(2), because the Department of Justice is an agency of the party against which the statement is offered. Second, where the litigation is between private parties or between a

117. *See supra* Part V (identifying the cognitive subset of the protected class and the working-memory mechanism through which the drafting convention imposes a differential burden on it).

118. *See* Title II IFR, *supra* note 111. The 2024 rule adopted WCAG 2.1 Level AA as the technical standard, and the IFR left that standard and every other substantive provision of the 2024 rule undisturbed while moving only the dates. *See* 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) (final rule). The rationale is quoted here because the Article uses it as an admission, not because the Article endorses it.

private plaintiff and a state or local government defendant, the IFR language is admissible as persuasive authority on the interpretation of federal regulatory standards but does not operate as a party-opponent admission because the United States is not the litigation adversary. Third, the IFR language is admissible for its evidentiary significance on the feasibility of compliance in any proceeding, regardless of party alignment, under the general evidentiary use of public records and formal agency statements. The careful distinction matters because party-opponent admission carries particular procedural weight (statements are admissible as substantive evidence, not merely for impeachment) that should not be claimed where the party requirement is not satisfied.

The evidentiary consequence for pro se disability-access litigation is direct. Defendants in pro se access cases, including state courts, state legislatures, state judicial administrative offices, and the federal government itself, have relied on the position that web accessibility compliance is reasonable and feasible. Such defenses have grounded settlement positions, enforcement strategies, and judicial decisions for more than two decades.[119] The DOJ IFR states the federal government's current position that the standard is unknowable. The statements cannot coexist. In pro se disability-access cases brought during and after the IFR extension period, the plaintiff is entitled to introduce the IFR language as evidence that the defendant's position on compliance is inconsistent with the federal agency's formal admission. The defendant's options are to concede the feasibility of compliance (in which case the delay has no justification) or to accept the unknowability of the standard (in which case the defendant's historical non-compliance cannot be attributed to plaintiff's failure to meet an impossible-to-meet standard).

The admission operates at a second doctrinal level relevant to the Part VI disparate impact analysis. The methods-of-administration analysis asks whether a covered entity's practice produces disparate impact on the protected class and whether less-discriminatory alternatives are feasible. When the federal agency charged with enforcing the underlying civil rights

119. The evidentiary point is that a party cannot maintain both that accessibility compliance is infeasible and that it is feasible, and the federal government has now committed on the record to the latter. *See* Title II IFR, *supra* note 111; Fed. R. Evid. 801(d)(2) (opposing-party statement). Where the litigation adversary is the United States, the published rationale is a direct party admission; where the adversary is a state entity, it is the considered position of the enforcing agency, admissible as evidence of feasibility even though it is not that party's own admission.

statute publishes a rulemaking stating that the compliance standard is unknowable, the agency supplies evidence for the defendant's affirmative defense of infeasibility. When the same agency publishes, in the same document, an extension of the compliance deadline rather than a repeal of the standard, the agency implicitly concedes that the standard is feasible enough to remain in effect. The two positions are in tension, and the tension operates to the plaintiff's advantage. A defendant cannot simultaneously rely on the IFR for infeasibility defenses and argue that the underlying standard remains enforceable against the plaintiff's own access claims.

### *C. The Regulatory Action as Affirmative Federal Conduct Extending the Discriminatory Condition*

The IFR is not the passive continuation of an existing condition. It is an affirmative federal act that extends the period during which the discriminatory condition persists. State and local governments that would have been required to conform their digital publications to WCAG 2.1 Level AA by April 24, 2026 are, by federal regulatory action, permitted to maintain non-conforming publications for an additional twelve months or, in the case of smaller entities, for an additional year beyond their existing extended deadline. The party extending the period is the Department of Justice. The beneficiaries of the extension are state and local government entities whose publications include the legal materials pro se litigants require. The parties bearing the cost of the extension are the pro se litigants with cognitive disabilities who must continue to operate under conditions of constructive denial of meaningful access to the courts.

The principle articulated in *Alexander v. Choate* that Section 504 reaches thoughtlessness and indifference toward the protected class, rather than only animus-based discrimination,[120] applies to the IFR with direct force. The IFR is not an act of animus against disabled pro se litigants. It is an act of administrative convenience undertaken with reference to regulatory burden on state and local governments, without documented consideration of the effect on the protected class that relies on the accessibility of state-published legal materials. The IFR's

120. Choate, 469 U.S. at 295.

published rationale does not address pro se disability access at all. The absence of documented consideration is itself evidence of the *Choate* thoughtlessness standard. The regulatory action proceeded as if the population most directly affected by the extension did not exist.

The doctrinal consequence for the argument of this Article is that the IFR supplies both an evidentiary record and a target for remedial response. Administrative Procedure Act challenges to the IFR, framed as failures of the Department of Justice to conduct the analysis its own governing law requires,[121] under *Choate* and implementing regulations before extending the deadlines, are available pathways for enforcement by disability rights organizations, pro se litigants, and potentially state attorneys general. The plain-language drafting requirements discussed in Part X below apply to federal agency action no less than to state law: an agency action that extends a disability-rights compliance deadline without consideration of the effect on the protected class is an action that fails the substantive requirements Choate imposes on agency decision-making under Section 504 and Title II.

### *D. Separation of Evidentiary and Remedial Uses to Avoid Collateral-Attack Dismissal*

The evidentiary use developed in Part VII.B and the remedial use sketched in the preceding paragraphs operate on distinct procedural tracks. Conflating the two risks dismissal of the civil rights claim on collateral-attack grounds. Federal administrative law generally channels challenges to agency rulemakings into direct-review proceedings and disfavors collateral attack in proceedings whose primary purpose is not review of the agency action.[122] Defendants representing the Department of Justice, and state defendants seeking to benefit from the IFR's extension, will argue that challenges to the IFR's substantive validity must proceed through direct

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121. *See* 5 U.S.C. § 706(2)(A); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (agency must examine the relevant data and articulate a satisfactory explanation, including a rational connection between the facts found and the choice made). This Article notes the availability of the APA theory without developing it, and flags in the text that it travels on a different procedural track than the civil rights claim.

122. The consequence for pleading is the one stated in the text: the evidentiary use of the IFR does not require its invalidation and should not be pleaded as if it did. A claim that uses the rule as a party admission and as feasibility evidence survives even if the rule is valid, whereas a claim that depends on the rule being unlawful imports every defense available to the agency's rulemaking. The two should not be merged into a single count.

APA litigation properly framed to review the agency action, not through collateral civil rights claims brought against state or local government defendants.

The analysis developed in this Article respects that constraint, and plaintiffs should plead their claims consistently with it. The evidentiary use of the IFR does not depend on the IFR's invalidation. A Section 504 disparate impact claim, or a parallel ADA Title II claim, against a state court, a state legislature, a state judicial administrative office, a state law library, or a county court proceeds on the factual predicate that the state defendant's web publications and PDFs fail WCAG 2.1 Level AA, that the failure has disparate impact on the protected class, and that the defendant's affirmative defense of infeasibility is inconsistent with the federal government's position in published rulemakings. The IFR functions as evidence regarding the state defendant's feasibility position and the contested reasonableness of accommodation. The IFR itself is not the target of the civil rights claim and need not be invalidated, modified, or enjoined for the plaintiff to prevail. A civil rights complaint pleaded in this manner does not collaterally attack the IFR; it uses the IFR as evidence of a separate defendant's inconsistent position.

The remedial use of the IFR as a target for APA review is a distinct procedural matter with distinct elements. APA challenges to the IFR must be brought as direct APA counts under 5 U.S.C. §§ 702-706, properly pleaded with standing allegations specific to the APA plaintiff's injury from the rulemaking, and properly venued. Arbitrary-and-capricious review under § 706(2)(A) is the operative standard, with *Motor Vehicle Manufacturers Association v. State Farm Mutual Automobile Insurance Co.*[123] supplying the standard. The APA plaintiff alleges, on the record, that the IFR failed to consider the effect on the population the underlying statute is designed to protect (the *Choate* thoughtlessness argument developed in the preceding subsection) and that the IFR failed procedurally under the good-cause exception to notice-and-comment rulemaking in 5 U.S.C. § 553(b)(B).

Strategic pleading considerations follow. An APA challenge to the IFR and a Section 504 disparate impact claim against a state defendant can be brought in the same litigation only

123. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29 (1983).

if the counts are clearly severable, the standing allegations for each are distinct, the relief sought on the APA count does not prejudice the Section 504 analysis, and the court can resolve each count on its independent procedural track. For most plaintiffs, filing the APA challenge in a separate action, venued appropriately for administrative review, will avoid pleading confusion and minimize the defendant's ability to characterize the civil rights claim as a disguised collateral attack. The scholarship and litigation strategy in this area can and should proceed on both tracks in parallel, with separate counsel and separate pleadings as appropriate, rather than as an integrated attack that a defendant can fracture by drawing attention to the collateral-attack doctrine.

The broader analytical lesson concerns the recursive nature of the accessibility failure documented throughout this Article. The regulatory architecture that exists to enforce disability civil rights against state and local governments has, in the IFR, produced an extension of the period during which those governments may continue to fail the accessibility standard. The enforcement failure is not external to the civil rights architecture; it is internal to it. The federal agency charged with enforcing the rule against state and local government has issued a rule extending the state and local governments' obligation to comply. This pattern is the recursion that marks a structural failure of disability rights enforcement architecture. The pattern recurs in the pro se context with particular force because the pro se litigant has no intermediary to absorb the cost of the enforcement failure.

## VIII. Pro Se Specificity

The general analysis developed in the preceding Parts reaches any covered entity that administers legal text to the protected class. The particular salience of the analysis for pro se litigants deserves separate treatment because pro se litigants bear the legal-text burden directly, without the intermediation of counsel who conventionally carries the cognitive cost of legalese on the litigant's behalf.[124]

A represented litigant's cognitive cost is mediated by counsel. Counsel reads the statute, parses the regulation, synthesizes the applicable case law, applies the law to the client's facts, and explains the result to the client in terms the client can absorb.[125] The client is not required to read the underlying texts. The cognitive cost of legalese falls on counsel, who is (in principle) trained to bear that cost and (in practice) compensated for doing so. The client who cannot read the statute does not need to read the statute because counsel reads it for her.

The pro se litigant has no such mediator. The pro se litigant must read the statute, parse the regulation, synthesize the applicable case law, apply the law to her own facts, and act on the result. The cognitive cost of legalese falls on the litigant directly.[126] Where the pro se litigant is in the cognitive subset of the protected class, the direct imposition of the cost produces disparate impact of substantial magnitude.

The pro se population is not a marginal one, and the point deserves numbers rather than adjectives, because the scale of the class bears directly on the proportionality of any remedy ordered.

The largest multi-jurisdiction study of state civil caseloads examined 925,344 civil cases disposed over a one-year interval in state courts exercising civil jurisdiction in ten urban counties,

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124. This is why the doctrine treats self-representation as a distinct posture rather than as representation minus a lawyer. *See* Faretta v. California, 422 U.S. 806, 834-35 (1975); Haines v. Kerner, 404 U.S. 519, 520 (1972) (per curiam) (holding pro se pleadings to less stringent standards than those drafted by lawyers). The less-stringent-standard rule is an acknowledgment, already embedded in the case law, that the pro se litigant confronts the legal text without the mediation the system otherwise assumes.

125. The mediation function is precisely the service the represented litigant purchases and the pro se litigant does without. The cognitive tax analysis does not claim that legalese is costless to lawyers; Part IV.C establishes that it is not. *See* Martínez, Mollica & Gibson, *Even Lawyers*, *supra* note 65. The claim is that counsel absorbs and translates that cost, so that for the represented litigant the burden is discharged by a trained intermediary, while for the pro se litigant it lands unmediated on the person the disability statutes protect.

126. The point compounds the mechanism established in Part V. Where the represented litigant's working-memory limitation is never engaged by the operative text because counsel processes it, the pro se litigant in the cognitive subset engages that text personally, at the moment of highest stakes and often under deadline. The disability-linked increment identified in Part V is therefore not merely present in the pro se setting; it is the setting in which the increment is actually paid.

a dataset representing roughly five percent of state civil caseloads nationally.[127] At least one party was self-represented in approximately seventy-six percent of those cases, most often the defendant.[128] Tort cases were the only category in which attorneys represented both parties in a majority of cases.[129] That distribution is itself significant to the argument: representation concentrates where damages are large enough to support a contingent fee, and self-representation concentrates in the dockets where the litigant is defending rather than choosing to sue.

The composition of those dockets compounds the problem. More than half of the LANDSCAPE cases were low-value debt collection, landlord-tenant, and small claims matters, and three-quarters of judgments entered were for modest sums.[130] These are the proceedings in which housing, credit, and subsistence are decided, they are resolved predominantly through administrative rather than adversarial process, and they are populated by litigants without counsel. The cognitive tax is not levied at the margins of the civil justice system. It is levied at its center of mass.

Federal practice shows the same structure at a lower rate. Prisoner civil rights cases are overwhelmingly pro se, housing and family law cases are substantially pro se, and consumer

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127. PAULA HANNAFORD-AGOR, SCOTT GRAVES & SHELLEY SPACEK MILLER, NATIONAL CENTER FOR STATE COURTS, THE LANDSCAPE OF CIVIL LITIGATION IN STATE COURTS (2015), `https://www.ncsc.org/` [hereinafter LANDSCAPE]; *see* State Justice Institute, *New Report on the Landscape of Civil Litigation in State Courts*, `https://www.sji.gov/new-report-on-the-landscape-of-civil-litigation-in-state-courts/` (last visited July 17, 2026) (describing the study's scope as 925,344 civil cases disposed during a one-year interval across ten urban counties, comprising approximately five percent of state civil caseloads nationally).

128. *See* LANDSCAPE, *supra* note 127; Thomas M. Susman, *Rebuild Our Courts: State Chief Justices Call for Action to Achieve Civil Justice for All*, JUDICATURE, `https://judicature.duke.edu/articles/rebuild-our-courts-state-chief-justices-call-for-action-to-achieve-civil-justice-for-all/` (last visited July 17, 2026) (characterizing as "[o]ne of the most striking findings in the Landscape dataset" the "relatively large proportion of cases (76 percent) in which at least one party was unrepresented, usually the defendant"). This Article cites the secondary characterizations of the LANDSCAPE figures alongside the study itself; counsel relying on these numbers in litigation should cite the study directly and confirm the current edition.

129. *Id.* (reporting attorney representation of both parties in 64 percent of tort cases).

130. State Justice Institute, *supra* note 127 (reporting that more than half of the LANDSCAPE cases were low-value debt collection, landlord/tenant, and small claims cases, and that three-quarters of judgments entered were $5,200 or less).

debt and employment cases carry meaningful pro se representation.[131] State civil courts report pro se majorities on one or both sides in landlord-tenant, small claims, and family law dockets. Self-representation in criminal matters is less common but does occur, with *Faretta* waivers at trial and post-conviction stages. Administrative proceedings before federal agencies have high pro se rates, including immigration, Social Security disability, and veterans' benefits proceedings.

The intersection of the cognitive subset of the protected class with the pro se population is not marginal. It is substantial. Disability disproportionately affects the lower-income population that is also disproportionately pro se in civil matters.[132] The interaction produces a substantial subclass that is simultaneously subject to the protected class's disability rights coverage and to the pro se population's direct-exposure-to-legalese cognitive burden. The remedial urgency for this subclass is correspondingly high.

## IX. Objections and Responses

### *A. "Law Is Inherently Technical"*

The principal objection to the plain-language claim is that law is inherently technical, that technical subjects require specialized vocabulary, and that the burden legalese imposes is accordingly not an artifact of drafting convention but a necessary feature of legal substance. The objection is familiar and has force in limited respects, but it does not support the legalese convention as a whole.

Technical subjects do require some specialized vocabulary. Medicine, engineering, and physics each employ specialized terms whose definitions are more precise than

131. *See* Administrative Office of the U.S. Courts, *Judicial Business: Civil Filings by Nature of Suit and Action* (annual reports). Counsel should retrieve the fiscal-year table corresponding to the period at issue rather than relying on a general characterization.

132. The association between disability and low income is well documented in federal data, and low income is in turn the strongest predictor of self-representation in civil cases. *See* LANDSCAPE, *supra* note 127 (self-representation concentrated in low-value debt, eviction, and small-claims dockets); LEGAL SERVICES CORP., THE JUSTICE GAP (2022), *supra* (unmet civil legal need concentrated among low-income households). The two distributions overlap, which means the cognitive subset of the protected class is overrepresented, not merely present, in the pro se population. Counsel should develop the specific overlap with current jurisdictional data rather than relying on the general proposition.

ordinary-language equivalents. But specialized vocabulary in technical subjects is accompanied by expository practice that translates specialized terms to non-specialists when the technical content must be communicated to them. A physician writing an informed-consent form for a patient does not use the full professional vocabulary of the medical literature; she translates. A physicist teaching an undergraduate course does not use the full professional vocabulary of the research literature; she scaffolds the specialized terms with ordinary-language explanation. The legal drafting convention does not include this translation and scaffolding practice for texts addressed to the public. The binding law is drafted in the professional register regardless of the audience to whom it is binding.

The objection conflates two different propositions: that law requires some specialized vocabulary, which is true, and that the full legalese convention is required for legal substance, which is false. The Mellinkoff and Tiersma documentation shows that the convention's features are largely historical accretion rather than substantive necessity. The plain-language reforms in jury instructions, agency guidance, and consumer documents demonstrate that substantial simplification is possible without loss of substantive content.

The proper response to the objection is therefore calibrated. Where specialized vocabulary is substantively required, the use of such vocabulary in binding law is defensible. Where the specialized vocabulary is accretion rather than substance, it is subject to the disparate impact analysis. Where the binding law must use specialized vocabulary, the law may be accompanied by plain-language parallel texts or authoritative glossaries that mediate between the binding convention and the reader in the cognitive subset of the protected class.

### *B. "Precision Requires Specialized Language"*

A related objection is that legal drafting requires precision of a kind that ordinary language cannot supply, and that the cost of plain-language drafting is ambiguity that creates interpretive problems for courts, parties, and reviewing agencies. The objection has limited force.

Precision in legal drafting is indeed important. A statute whose operative provisions can be read multiple ways produces litigation, uncertainty, and unequal application. But precision is not a property of legalese specifically; it is a property of careful drafting that can be achieved in either the legalese register or in a plain-language register. Kimble's work on plain-language drafting argues that plain-language texts can be at least as precise as legalese texts, and in many cases more precise, because the plain-language drafting process forces the drafter to be explicit about distinctions that legalese conceals through nested syntax or formulaic redundancy.[133]

The objection is now answerable without relying on advocacy, because it has been tested on the profession that raises it. Asked to evaluate contracts drafted in both registers, lawyers rated the simplified contracts as equally enforceable as the legalese contracts.[134] Enforceability is precision's operative consequence in the law; a provision that means one thing determinately enough to be enforced is precise enough for the purpose the objection invokes. The practitioners whose professional judgment the objection appeals to, tested under preregistered conditions, do not believe that the simplified instrument is less enforceable. They also preferred it on overall quality, on appropriateness of style, and on likelihood of being signed by a client.[135]

The objection therefore proves the opposite of what it asserts. If the specialized register were doing precision work that plain drafting cannot do, the people trained in the register would say so when asked, and would rate the plain instrument as weaker. They do not. What the record shows instead is a register maintained by convenience and tradition rather than by a judgment that it performs better.[136] Convenience and tradition are not defenses to a disparate impact claim. They are a description of a method of administration that the covered entity has not examined.

The objection also proves too much. If precision required legalese, the substantial simplifications achieved in agency guidance under the Plain Writing Act would have produced

133. KIMBLE, LIFTING THE FOG, *supra* note 6.

134. Martínez, Mollica & Gibson, *Even Lawyers*, *supra* note 65.

135. *Id.* The same experiments found that lawyers, like laypeople, recalled and comprehended legalese-register content worse than content of equivalent meaning in a simplified register. *Id.*

136. *Id.* (concluding that lawyers who write in a convoluted manner "do so as a matter of convenience and tradition as opposed to an outright preference").

widespread interpretive failures. They have not. The simplifications have generally improved clarity and reduced interpretive disputes. The plain-language civil rules in some federal districts, the plain-language jury instruction reforms in several states, and the plain-language contract reforms in various consumer domains have all produced improved precision or at worst equal precision, not reduced precision.

### *C. "Plain Language Introduces Ambiguity"*

A variant of the precision objection is the specific claim that plain-language drafting introduces ambiguity where legalese's formulaic precision eliminates it. The claim is substantially answered by the experimental record, though it should not be overstated, and this Article declines to overstate it. Plain-language revision generally improves comprehension, and lawyers themselves rate simplified instruments as equally enforceable.[137] But the literature does record that particular revisions can introduce new sources of complexity rather than removing them, and honesty about that finding costs the argument nothing.[138] The claim also misunderstands the purpose of legal formulas. Many of legalese's formulaic redundancies are not precision mechanisms; they are historical survivals ("null and void" is redundant; either term alone would suffice). The formulas survive because they have been used for centuries, not because their use produces precision unachievable through alternative drafting.

Where a particular plain-language formulation does introduce ambiguity, the response is to refine the plain-language formulation, not to return to legalese. The interpretive tools of statutory construction, the canons of interpretation, and the ordinary resources of judicial review are available to address the ambiguity. The ambiguity cost of plain-language drafting, where it exists, is bounded and remedial. The cognitive cost of legalese to the protected class is systemic and affects every reader in the cognitive subset who must engage the text.

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137. *See supra* Part IV.C; Martínez, Mollica & Gibson, *Even Lawyers*, *supra* note 65.

138. *See* Greene et al., *supra* note 47, at 501 (noting that "some revisions can actually introduce new sources of complexity"). The finding is a caution about drafting quality, not a vindication of the incumbent register: a revision that introduces complexity is a bad revision, and the remedy for a bad revision is a better one.

### *D. "The Difficulty Tracks Exposure, Not Disability"*

The most serious objection to the argument advanced here is not raised in the legal literature at all. It is raised in the psycholinguistic literature, and a defendant who reads that literature will raise it. It runs as follows. The memory-based account of processing difficulty on which Part V depends is contested. On a competing account, the difficulty of syntactically complex structures is a function of the reader's prior exposure to those structures rather than of the reader's memory capacity. If that account is correct, the pro se litigant's difficulty with legal text is a training deficit rather than a disability-linked burden, the appropriate response is education rather than accommodation, and Section 504 has nothing to reach.

The objection must be stated at full strength before it is answered. The role of working memory in sentence comprehension is genuinely disputed.[139] Some studies find that a concurrent memory load affects sentence processing regardless of the sentence's syntactic complexity, which is the opposite of the interaction the argument requires.[140] At least one study of listening comprehension found that working memory explained no unique variance in either native or non-native comprehension.[141] And there is affirmative evidence for the exposure account: the processing cost of object-relative clauses tracks how well the sentence matches distributional patterns in the language rather than clause type as such, and participants trained on the relevant structures show reduced difficulty with them afterward.[142] The contested status of the capacity

139. *See* Roberts, *supra* note 77, at 175 ("[T]he role of working memory in sentence comprehension is not without contention.").

140. *See* Dagmar Divjak, Petar Milin, Srdan Medimorec & Maciej Borowski, *Behavioral Signatures of Memory Resources for Language: Looking Beyond the Lexicon/Grammar Divide*, 46 COGNITIVE SCI. (2022), `https://doi.org/10.1111/cogs.13206` (reporting results in line with Waters, Caplan & Yampolsky, in that "even relatively simple subordination patterns showed an effect of concurrent task demands"); *see also* Roberts, *supra* note 77, at 175 (collecting the contrary findings).

141. Sible Andringa, Nomi Olsthoorn, Catherine van Beuningen, Rob Schoonen & Jan Hulstijn, *Determinants of Success in Native and Non-Native Listening Comprehension: An Individual Differences Approach*, 62 LANGUAGE LEARNING 49, 49 (2012) ("Working Memory did not explain unique variance in listening comprehension in either group."), `https://doi.org/10.1111/j.1467-9922.2012.00706.x`.

142. *See* Roberts, *supra* note 77, at 175–76 (describing Reali & Christiansen's corpus and self-paced reading findings that "processing cost was a function of whether or not the sentences were in line with the observed distributions in the corpus," and Wells et al.'s training experiment concluding that "individual differences in sentence processing may be due to previous processing experiences").

account is visible in its citation record: the canonical statement of the theory carries substantial contrasting engagement alongside its support.[143]

The answer is available, it is empirical, and it disposes of the objection on the objector's own terms.

If processing difficulty in legal text were driven by exposure rather than by capacity, then the readers with the greatest exposure to legal text would not show the difficulty. The prediction is clean and it is testable, because that population exists and is identifiable: lawyers. They have been tested. In preregistered experiments, lawyers were less able to recall and comprehend content drafted in the legalese register than content of equivalent meaning drafted in a simplified register.[144] Decades of immersion in the register did not eliminate the cost the register imposes. The exposure account predicts that it should have. It did not.

That result does not resolve the psycholinguistic dispute, and this Article does not claim that it does. It does something narrower and sufficient: it forecloses the legal use of the dispute. A defendant arguing that the pro se litigant's difficulty is remediable by training must explain why the most trained readers in the jurisdiction still pay the cost. On the present record there is no answer to that question, and a defense that cannot survive its own best case is not a defense.

Two further points close the gap. First, the exposure account and the capacity account are not mutually exclusive, and the leading treatments describe their interaction as the live research question rather than treating either as exclusive.[145] A differential that is partly capacity-linked is still capacity-linked, and Section 504 does not require that a disability be the sole cause of a differential burden before the burden becomes cognizable. Second, the clinical evidence is not vulnerable to the exposure critique in the same way, because it compares diagnosed and control

143. *See* Just & Carpenter, *supra* note 77. This Article does not represent the capacity account as settled and does not need it to be.

144. Martínez, Mollica & Gibson, *Even Lawyers*, *supra* note 65.

145. *See* Himanshu Yadav, Ashwini Vaidya, Vishakha Shukla & Samar Husain, *Word Order Typology Interacts With Linguistic Complexity: A Cross-Linguistic Corpus Study*, 44 COGNITIVE SCI. (2020), `https://doi.org/10.1111/cogs.12822` (concluding that "while it is certain that both linguistic exposure and working-memory constraints are critical to understanding linguistic complexity . . . no extant theory has been rigorously tested to explicate and account for such an interaction"). A mechanism to which both exposure and capacity contribute still produces a capacity-linked differential; it simply does not produce one attributable to capacity alone.

groups drawn from the same reading population and isolates working memory as the factor associated with the group difference.[146]

There is also a doctrinal answer that does not depend on winning the empirical dispute at all, and it is the stronger ground. Suppose the objection were entirely correct, and the pro se litigant's difficulty were purely a function of insufficient exposure to a specialized register. The covered entity has still chosen to administer a required gateway to rights in a register that demands exposure the protected class does not have and that the entity does not supply. Conditioning access to a fundamental right on training the state neither provides nor requires is not a defense to a methods-of-administration claim. It is a restatement of the claim.

## X. Remedial Pathways

### *A Staged Approach*

The remedial discussion proceeds in stages of increasing scope. The reason for staging is that the accessibility obligation is strongest for text that the state produces and administers as a required gateway to rights, and weakest for binding primary law, where countervailing concerns about legislative prerogative and stability of text bear most heavily. A plaintiff seeking relief under the analysis developed in this Article, and a reviewing court evaluating the relief sought, can work through the stages in order, reaching the broader remedies only where the narrower ones are insufficient.[147] The stages are:

1. Court forms and instructions, including clerk-issued procedural instructions and fillable form templates used in pro se filings.

146. *See* Stella & Engelhardt, *supra* note 78, at 115 (finding working memory "more associated with group differences than was processing speed" between fifty readers with dyslexia and fifty typically developing controls).

147. The staging is a design choice with a doctrinal warrant. *Choate* confines Section 504 to remedies whose bounds are "manageable," 469 U.S. at 299, and the staged approach answers that concern directly by placing the least intrusive remedy first and requiring a showing of insufficiency before the next is reached. A plaintiff who demands plain-language redrafting of a state code in the first instance invites the manageability objection; a plaintiff who demands accessible court forms does not.

2. Court-maintained self-help materials, including self-help center handouts, court-website procedural guides, and pro se staff attorney office materials.

3. Agency guidance, including public-facing agency materials governing how the public interacts with agency programs, where the agency is a Section 504 recipient or a federal executive agency subject to the Plain Writing Act.

4. Plain-language parallel texts, in which an authoritative non-binding plain-language companion accompanies the binding legal text for reader reference.

5. Plain-language drafting requirements for binding law, as the broadest remedy, with the most significant implementation and institutional-design questions.

The stages are cumulative in effect: each stage builds on the prior, and collectively they produce the meaningful-access outcome the analysis requires. A court entering structural relief need not order the broadest remedy in the first instance. The subsections that follow address each stage.

### *A. Stage 1 and 2: Court Forms, Instructions, and Self-Help Materials*

Court forms, clerk instructions, and court-maintained self-help materials are the cleanest remedial target. They are produced by covered entities.[148] They are public-facing. They are public-facing. They function as required gateways to pro se rights. They are not binding primary law and thus do not implicate the legislative-prerogative concerns that bind the later stages. Plain-language redrafting of these materials is achievable within existing court administrative authority.[149]

148. State courts are public entities under Title II, and the Supreme Court has already held that Title II validly abrogates state sovereign immunity as applied to the class of cases implicating the fundamental right of access to the courts. *Tennessee v. Lane*, 541 U.S. 509, 533-34 (2004); *see supra* Part III.C. Federal courts are outside Title II and Section 504's recipient definition and are therefore reached, if at all, by the constitutional analysis rather than the statutory one. *See supra* Part VI.

149. The feasibility point is not speculative and does not depend on this Article's own assessment. Congress has already directed federal agencies to write comprehensibly and required them to designate responsible officials and report on progress, which establishes that the drafting task is one a public body can be ordered to perform and can be held to. *See supra* note 54. A defendant contending that plain-language redrafting of forms exceeds institutional capacity must explain why Congress imposed a materially similar obligation on the entire federal executive branch.

The meaningful-access standard of *Alexander v. Choate* applies with full force at this stage. A court system that maintains procedural forms and instructions incompatible with the cognitive capacity of the protected class has failed to provide meaningful access to the court system within the meaning of Section 504 and ADA Title II, and has failed the reasonable-modifications obligation the statutes impose.[150]

### *B. Stage 3: Agency Guidance to the Public*

Federal agencies are subject to the Plain Writing Act of 2010, which requires that covered agency documents be written in plain language.[151] Compliance has been uneven, and the agencies say so themselves.[152] The statute imposes reporting requirements but limited enforcement, and agencies retain substantial discretion in classifying which communications are covered.[153] The analysis developed in this Article supplies an additional obligation: where an agency's public-facing guidance functions as a required gateway to rights, disability civil rights statutes impose an accessibility obligation that operates alongside the Plain Writing Act. The Section 504 obligation reaches federal executive agencies; the Title II obligation reaches state and local agencies implementing federal guidance.[154] A gap in Plain Writing Act enforcement is not a

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Counsel should document the specific state court system's existing plain-language or self-help form initiatives in the jurisdiction at issue rather than relying on a general assertion that such initiatives exist; the record is uneven across states and the availability of a local comparator is a fact question.

150. *Alexander v. Choate*, 469 U.S. 287, 301 (1985) (holding that an otherwise qualified handicapped individual must be provided meaningful access to the benefit the grantee offers); 28 C.F.R. § 35.130(b)(7)(i) (requiring reasonable modifications in policies, practices, or procedures where necessary to avoid discrimination on the basis of disability, unless the entity demonstrates that the modification would fundamentally alter the nature of the service, program, or activity); 45 C.F.R. § 84.68(b)(3); *see supra* note 84. The fundamental-alteration defense is the covered entity's burden, and a form that says the same thing in different words has not altered the service it is a form for.

151. Plain Writing Act of 2010, Pub. L. No. 111-274, 124 Stat. 2861; *see supra* note 54 and accompanying text.

152. *See supra* Part IV.B (collecting the Department of Labor's own compliance report conceding that its grades were among the lowest received that year). Agency self-reporting is the best available evidence on this question and it is adverse to the agencies, which is what makes it useful.

153. The enforcement gap is the Act's structural weakness and it is why the Act cannot carry this Article's remedy on its own. A reporting requirement without a private right of action produces a documented record of noncompliance and no mechanism to end it. That combination is unusual and it is exactly what makes the Act valuable as evidence rather than as a cause of action. *See infra* note 155.

154. 29 U.S.C. § 794(a) (extending the nondiscrimination requirement to any program or activity conducted by any Executive agency); 28 C.F.R. § 39.130(b)(3) (the Department of Justice's Section 504 regulation governing its own programs and activities, carrying the methods-of-administration prohibition); 42 U.S.C. § 12132 (Title II). The two-track structure matters because the federal-agency track does not depend on the receipt of federal financial

gap in accessibility obligation, and the disability civil rights statutes supply the enforcement mechanism the Plain Writing Act itself lacks.[155]

### *C. Stage 4: Plain-Language Parallel Texts*

Where plain-language redrafting of binding law is infeasible or delayed, covered entities can provide plain-language parallel texts. The parallel text would not be binding; the specialized-language version would remain the operative legal instrument. But the parallel text would be an authoritative reference that mediates the binding text for readers in the cognitive subset. The parallel text approach has an analogue in multilingual statutory drafting, in which a single enactment exists in more than one language and the relationship between versions is specified by law.[156] The extension to plain-language parallel texts raises one genuine difficulty and it should not be minimized: a non-binding companion that diverges from the operative text creates a reader who has relied on the wrong document.[157]

The remedial landscape for plain-language parallel materials distinguishes between text that courts author or endorse (which raises judicial neutrality and due process concerns) and text that non-judicial sources produce and that courts merely make available or refer

assistance and therefore does not raise the Spending Clause questions that attend the recipient track. *See supra* Part VI.

155. The proposition that the absence of one statute's enforcement mechanism does not contract another statute's obligation is not novel, and the Department of Justice has recently supplied a direct analogue. In extending the compliance dates for its own web accessibility standard, the Department stated that covered entities retain an ongoing Title II obligation regardless of the compliance dates. *See supra* note 111. The structure is identical: a specific standard's timetable or enforcement architecture does not measure the underlying civil rights duty.

156. The analogy is offered as structural rather than as authority, and its limits should be stated. Multilingual drafting regimes vary in whether the versions are co-equal or whether one controls, and the choice between those models is contested within those systems on grounds that have no counterpart here. Counsel advancing a parallel-text remedy should develop the specific comparator regime rather than relying on a general reference to multilingual drafting, and should expect the covered entity to argue that any non-controlling version invites interpretive dispute. That objection is answered in the text.

157. This is the strongest objection to Stage 4 and it is a real cost rather than a rhetorical one. The response is that the divergence risk is a function of drafting quality, is bounded by the companion's express non-binding status, and is small relative to the status quo, in which the protected-class reader does not comprehend the operative text at all. A reader who relies on an accurate companion is better positioned than a reader who cannot parse the original. *See supra* Part IV.C (finding that meaning can be preserved across registers). The empirical premise that plain drafting preserves meaning is what makes the divergence risk manageable, and it is the reason this Article does not rest Stage 4 on readability formulas. *See supra* Part VI.D.

to (which does not). The latter is the appropriate remedial pathway. A systematic remedial architecture for plain-language pro se resources can be built from four non-judicial sources. First, state bar associations and their analogues in federal practice are well-positioned to produce authoritative plain-language guides to statutes, procedural rules, and case law. Second, legal aid organizations, many of which are federally funded and thus Section 504 recipients, produce pro se guidance materials as part of their core program activities. Third, state and federal agencies with subject-matter jurisdiction over specific legal domains are statutorily charged with making their programs accessible to the public they serve. Fourth, nongovernmental organizations and academic clinical programs produce plain-language pro se materials in various subject areas.

The role of courts in this architecture is not to author or endorse plain-language interpretations of binding law. It is to make the non-judicially-produced materials available to pro se litigants through clerks, self-help centers, and court websites, with clear disclaimers that the materials are informational rather than authoritative and that the binding text remains the operative legal instrument.

### *D. Stage 5: Plain-Language Drafting Requirements for Binding Law*

Stages 1 through 4 above are judicially enforceable remedies. Plaintiffs bringing claims under the analysis developed in this Article can seek and obtain, through ordinary civil-rights litigation, injunctive relief directed at court forms, self-help materials, agency public guidance, and the provision of plain-language parallel texts as reasonable modifications. Stage 5, addressed in this subsection, is categorically different. It is a legislative and administrative policy recommendation, not a judicial remedy. Courts cannot enjoin legislatures on how to draft binding primary law, and nothing in the argument developed here suggests otherwise. What follows is accordingly a discussion of policy reform pathways available to Congress, state legislatures, and federal administrative agencies acting within their rulemaking authority, not a map of judicially imposable relief.

The broadest reform is the extension of plain-language drafting requirements, currently applicable to federal agency public communications, to the text of statutes and regulations themselves. The Proposed Plain Regulations Act provides a model. The extension would require covered agencies to draft regulations at readability levels that accommodate the cognitive subset of the protected class. The extension would not prevent technical terms where substantively required; it would require that such terms be accompanied by accessible explanation and be used only where necessary.

The extension to statutes is more complex because Congress's drafting is not subject to the executive branch's plain-language requirements. But Congress can impose plain-language requirements on itself through rules of the House and Senate, through provisions in specific legislation, or through statutory provisions governing codification. The Uniform Law Commission has experimented with plain-language approaches to uniform state laws in limited domains. These approaches can be expanded through ordinary legislative and administrative processes. They are not available as judicial remedies, and the analysis developed here does not argue for judicial orders directed at legislative drafting choices.

### *E. Accessibility-in-Drafting Obligations Under Title II and Section 504*

Where the above legislative and administrative reforms do not advance, covered entities (state courts, federal agencies, federally funded legal aid) can be the subject of method-of-administration disparate impact actions seeking declaratory and injunctive relief under the regulations analyzed in Part VI.A. The relief would require the covered entity to adopt plain-language drafting practices for texts within its control, or to provide plain-language parallel texts, as consistent with the *Olmstead* remedial model in which the court identifies the outcome benchmarks and the agency develops the specific plan.[158]

This Article's independent contribution is the argument that legal text itself, when drafted according to the legalese convention, constitutes a method of administration with cognizable

158. *Olmstead v. L.C.*, 527 U.S. 581 (1999).

disparate impact on the cognitive subset of the protected class, and that public-facing legal materials function as required gateways to rights whose accessibility is subject to the same statutory methods-of-administration analysis that governs other institutional conduct.

## XI. Adjacent Elements of the Legal System

Adjacent elements of the legal system are subject to parallel analysis under the doctrine developed here. The structure of legal education; the architecture of the legal profession including admissions requirements, continuing legal education, and professional responsibility standards; the legal publishing industry that controls access to primary and secondary legal materials; and the integration of generative AI into legal practice: each of these elements is a legitimate subject of disparate impact analysis under Section 504 and ADA Title II where the relevant covered entity status is established. Each imposes cognitive cost differentials that are tied to the same cognitive-disability characteristics documented here. The comprehensive treatment of those elements exceeds the scope of this Article; the present Article establishes the ground for the text-of-the-law element and flags the path for the further elements.

## XII. Conclusion

The Constitution guarantees the right of self-representation. The right presupposes the possibility of its exercise. Its exercise requires reading the law. The law is drafted in a specialized language convention whose cognitive cost is disproportionate for the cognitive subset of the disability rights protected class. The resulting disproportionate denial of the constitutional right is cognizable under the Due Process Clauses of the Fifth and Fourteenth Amendments, under the access-to-courts doctrine of *Bounds v. Smith*, under the *Lane* rule for ADA Title II's abrogation of state sovereign immunity in access-to-courts claims, and under the methods-of-administration disparate impact regulations at 28 C.F.R. § 35.130(b)(3), 28 C.F.R. § 39.130(b)(3), and 45 C.F.R. § 84.68(b)(3).

The argument does not require any claim of intentional drafting to exclude. It requires only the documented fact of differential cognitive cost and the settled doctrine that disability civil rights statutes reach facially neutral practices with discriminatory effect. The remedial pathways are concrete, incremental, and have precedents in reforms already adopted in analogous contexts. The extension is doctrinally straightforward, rests on established precedent, and addresses a pattern of disability-based exclusion from the exercise of a fundamental constitutional right that has been operative since the founding. What is required is the articulation.