The Coherence Gap:

How Spending Clause Carveouts Undermine Cleburne's Premise and Expose Disability Doctrine to Constitutional Revisitation

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Abstract

This Article identifies a doctrinal trap at the intersection of Equal Protection and Spending Clause civil rights for disabled people. *City of Cleburne v. Cleburne Living Center*, 473 U.S. 432 (1985), refused to recognize disability as a suspect or quasi suspect class for Fourteenth Amendment purposes on the ground that the political branches had supplied sufficient legislative protection through Section 504 of the Rehabilitation Act and adjacent statutes. The 2012 ratification record for the Convention on the Rights of Persons with Disabilities, anchored four years earlier to the 2008 ADA Amendments Act, represents to an international body that domestic disability law meets or exceeds the strongest international human rights standard for disability protection. These two doctrinal commitments operate in unacknowledged tension with a third: the Spending Clause carveouts that limit Section 504's reach. The recipient beneficiary distinction in *DOT v. Paralyzed Veterans*, the tax expenditure exemption traceable to *Regan v. Taxation With Representation*, the procurement at market value exemption codified in federal civil rights regulations, and the contract reading remedy limit announced in *Cummings v. Premier Rehab Keller* together produce a legislative protection narrower than the political branches represented. The carveouts therefore produce a coherence gap. Either the legislative protection delivers what the political branches said it delivers, in which case the carveouts must be read narrowly and Section 504's reach restored, or the legislative protection does not deliver what was represented, in which case *Cleburne*'s factual premise has collapsed and the heightened scrutiny question must be revisited. The Court cannot consistently maintain *Cleburne* plus the carveouts. Using Walmart as a documented case study of federally subsidized commercial activity that operates in the gap between legislative protection and Spending Clause reach, this Article maps the carveout architecture, presents the closed loop in formal terms, and proposes resolution through narrow reading of the carveouts together with targeted statutory and regulatory reform conditioning specific federal subsidies on Section 504 acceptance.

Keywords: disability law; equal protection; heightened scrutiny; Spending Clause; federal financial assistance; recipient-beneficiary distinction; tax expenditure; procurement exemption; legislative protection premise; ratification record; scope representation; special education.

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I. Introduction

The structure of federal disability rights protection in the United States rests on a bargain the Supreme Court announced in 1985 and the Court has not since revisited. In *City of Cleburne v. Cleburne Living Center*,[1] the Court refused to recognize intellectual disability as a suspect or quasi suspect class for Equal Protection purposes. The Court's reasoning depended on a factual premise about the political branches: that Congress had already responded to the historical pattern of disability discrimination by enacting Section 504 of the Rehabilitation Act of 1973,[2] the Education for All Handicapped Children Act of 1975,[3] the Architectural Barriers Act of 1968,[4] and parallel state legislation. The legislative response, in the Court's view, made constitutional heightened scrutiny unnecessary. The protection disabled people would receive under strict or intermediate scrutiny was, the Court held, already supplied by statute.

This bargain has held formally for forty-one years. The Court reaffirmed it in *Heller v. Doe*[5] and operated within its assumptions in *Board of Trustees of the University of Alabama v. Garrett*[6] and *Tennessee v. Lane*.[7] It has held formally. It has not held in substance. The substance has been eroding since at least 1986, when *DOT v. Paralyzed Veterans of America*[8] narrowed Section 504's reach by holding that economic beneficiaries of federally assisted programs are not themselves recipients of federal financial assistance. The pattern has continued through a series of doctrinal moves whose individual reasonableness has obscured their collective effect.

This Article identifies that collective effect, gives it a name, and argues that the resulting incoherence is no longer sustainable. The carveouts on Section 504's reach, considered together, produce a legislative protection significantly narrower than the political branches have

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1. *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432 (1985).
2. 29 U.S.C. §794.
3. Now codified as the Individuals with Disabilities Education Act, 20 U.S.C. §§1400 et seq.
4. 42 U.S.C. §§4151 et seq.
5. *Heller v. Doe*, 509 U.S. 312 (1993).
6. *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001).
7. *Tennessee v. Lane*, 541 U.S. 509 (2004).
8. *Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597 (1986).

represented domestic law to provide. In 2012, the political branches submitted to the United Nations a ratification record for the Convention on the Rights of Persons with Disabilities representing that domestic disability rights law meets or exceeds the Convention's standards.[9] That 2012 record sits four years downstream of the 2008 ADA Amendments Act,[10] which Congress enacted to restore and broaden the protections the Court had narrowed in *Sutton v. United Air Lines*[11] and *Toyota Motor Manufacturing v. Williams*.[12] The 2008 enactment and the 2012 representation operate together as contemporaneous evidence of how the political branches understood the legal architecture in force after the ADAAA.

The Spending Clause carveouts on Section 504's reach put the Court in an impossible position with respect to that record.[13] If Section 504's reach is as narrow as *Paralyzed Veterans* and the procurement and tax expenditure exclusions imply, the legislative protection does not deliver what the political branches told the international community it delivers. If the legislative protection does deliver what the political branches said it delivers, the carveouts cannot be read as broadly as they have been read. The Court can choose to honor the carveouts or to honor the representation. It cannot consistently do both. And if it persists in maintaining both, *Cleburne*'s factual premise erodes to the point where the constitutional question of heightened scrutiny must be revisited.

This is the coherence gap.

The Article proceeds in five Parts. Part II maps the carveout architecture in current Spending Clause doctrine: the recipient beneficiary distinction, the tax expenditure exemption,

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9. Convention on the Rights of Persons with Disabilities, opened for signature Mar. 30, 2007, 2515 U.N.T.S. 3 (entered into force May 3, 2008). The United States signed the Convention on July 30, 2009, and the Executive Branch submitted the Convention to the Senate with an analysis maintaining that domestic law fulfills or exceeds Convention obligations. Senate Foreign Relations Committee hearings on ratification were held in 2012. The Senate did not provide advice and consent. The Executive Branch submission and the contemporaneous record of the political branches' position on the relationship between domestic law and the Convention remain part of the public record of how the political branches characterized the legal architecture in force at that time.

10. Pub. L. No. 110-325, 122 Stat. 3553 (2008) (codified as amended in scattered sections of 42 U.S.C.).

11. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999).

12. *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002).

13. *See infra* Part II (mapping the four carveouts).

the procurement at market value exemption, and the contract reading remedy limit. Part III documents the structural incoherence these carveouts produce when applied to a federally subsidized commercial actor, using Walmart as the case study because its layered federal nexus is unusually well documented and structurally representative of large retail more generally. Part IV presents the closed loop in formal terms, identifying the trilemma the Court faces and explaining why none of the available evasions survives sustained inspection. Part V argues for resolution through narrow reading of the carveouts (Option A in the trilemma) and shows that this reading can be accomplished without disturbing any other doctrine the Court has committed to. Part VI proposes targeted statutory and regulatory reform for areas where doctrinal expansion is insufficient or politically unavailable: conditioning the Work Opportunity Tax Credit on Section 504 acceptance, conditioning Supplemental Nutrition Assistance Program retailer authorization on accessibility compliance, and aligning Section 503 enforcement with the scale of the federal contractor relationships that trigger it. A brief Conclusion situates the argument within the longer arc of disability rights advocacy.

The Article makes one central claim and one supporting claim.[14] The central claim is that the Spending Clause carveouts on Section 504's reach, considered together, are constitutionally vulnerable because they undermine the factual premise on which the Court relied in *Cleburne* to deny heightened scrutiny. The supporting claim is that resolution is available through narrow reading of the carveouts and targeted reform, without requiring the Court to revisit *Cleburne* itself. The trap is real, but it has an exit. The exit is to honor what the political branches represented and to read the carveouts in light of that representation rather than against it.

II. The Carveout Architecture

Section 504 of the Rehabilitation Act prohibits discrimination on the basis of disability in any program or activity receiving federal financial assistance.[15] The statute operates as a Spending

14. *See infra* Parts IV, V.
15. 29 U.S.C. §794(a).

Clause condition: federal recipients accept civil rights obligations as part of accepting federal funds. The Supreme Court has consistently characterized Spending Clause civil rights statutes as functioning in the manner of contracts between the federal government and the recipient.[16] That contract reading has operated as the interpretive engine for a series of subsequent doctrinal narrowings, each individually defensible against the text and each collectively producing the coverage gap this Article addresses.

This Part maps four such narrowings. Together they constitute the carveout architecture: the doctrinal moves that have walled off categories of federal funding and federal program participation from Section 504's reach, even where the federal government's structural integration with the entity in question would otherwise create the kind of nexus the statute was meant to govern.

A. The Recipient-Beneficiary Distinction

DOT v. Paralyzed Veterans of America held that Section 504 reaches only entities that themselves receive federal financial assistance, not entities that benefit economically from federally assisted programs.[17] The case involved a challenge by disability rights organizations to the Department of Transportation's conclusion that Section 504 did not apply to commercial airlines generally. The airlines benefited economically from federal grants to airport operators; the question was whether that economic benefit made them recipients of federal financial assistance within the meaning of Section 504.

The Court held that it did not. Congress, the Court reasoned, "sought to impose Section 504 coverage as a condition or obligation tied to the recipient's agreement to accept the federal funds."[18] The condition fell on the entity that chose to take the money, not on entities downstream that benefited from the federal program. The Court rejected the argument that the

16. *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981) ("[L]egislation enacted pursuant to the spending power is much in the nature of a contract."). The contract metaphor has shaped subsequent interpretation in ways canvassed throughout this Part.

17. *Paralyzed Veterans*, 477 U.S. at 605–07.

18. *Id.* at 605.

airlines, as the primary economic beneficiaries of airport improvements, should be treated as recipients of the federal assistance that flowed through the airports. To do so, the Court reasoned, would extend Section 504 to "almost limitless coverage" by sweeping in every entity whose business depended in some way on federally subsidized infrastructure.[19]

Paralyzed Veterans was decided one year after *Cleburne*.[20] The temporal proximity matters. The political branches had not yet had the opportunity to respond to either *Paralyzed Veterans* or *Cleburne* as a connected pair. Congress's subsequent action, including the enactment of the ADA in 1990 and the ADAAA in 2008, occurred against the doctrinal background *Paralyzed Veterans* had established. The question this Article presses is whether, in light of how the political branches subsequently characterized the legal architecture they enacted, the recipient beneficiary distinction can continue to operate with the breadth *Paralyzed Veterans* announced.

The structural problem with the recipient beneficiary distinction is that it does not account for entities that occupy positions of operational integration with federal programs without themselves taking federal financial assistance in the formal sense. A retailer authorized to accept SNAP benefits is not a recipient of federal financial assistance under *Paralyzed Veterans*. It is an authorized agent through which federal benefits reach their intended beneficiaries. The federal government does not pay the retailer in the conventional sense of a grant. The federal benefit flows to the recipient, who then spends it at the authorized retailer. The retailer is paid for goods at market rates. By *Paralyzed Veterans*'s logic, the retailer is a beneficiary, not a recipient. The retailer's relationship with the federal government is not subject to Section 504.

That conclusion follows from *Paralyzed Veterans*'s reasoning.[21] It is not obvious that the conclusion is consistent with what the political branches said the legal architecture covers. Part IV develops this point in detail.

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19. *Id.* at 607.

20. *U.S. Dep't of Transp. v. Paralyzed Veterans of Am.*, 477 U.S. 597, 604 (1986) ("[Section] 504 requires us to identify the recipient of the federal assistance"; the Court "look[s] to the terms of the underlying grant statute"); *cf. Grove City Coll. v. Bell*, 465 U.S. 555, 564–65 (1984).

21. The distinction remains in active application. *See, e.g.*, *Winebrenner v. Elizabeth Ives Sch. for Special Children, Inc.*, No. 3:24-cv-01261 (D. Conn. Aug. 1, 2025).

B. The Tax Expenditure Exemption

Federal tax credits and other tax expenditures are not, under current doctrine, federal financial assistance for Section 504 purposes. The leading case is *Regan v. Taxation With Representation of Washington*,[22] which addressed the constitutionality of conditioning tax exempt status under Section 501(c)(3) on limitations on lobbying activity. *Regan* held that the tax exemption did not amount to a subsidy that the government could condition on the recipient's surrender of First Amendment rights.[23] The reasoning treated tax expenditures as conceptually distinct from direct subsidies for constitutional purposes.

The Section 504 implementing regulations have followed this distinction. The Department of Justice's Title VI Legal Manual characterizes federal financial assistance as including "the use or rent of Federal land or property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance."[24] It expressly excludes "contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits."[25]

The Department of Health and Human Services 2024 final rule on Section 504 reaffirms this exclusion in regulatory text.[26] Tax credits, tax deductions, accelerated depreciation, and other tax expenditures are not federal financial assistance under the regulation, even where the tax expenditure is specifically targeted at advancing a federal policy objective that intersects with civil rights protection.

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22. *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540 (1983).

23. *Id.* at 544–46.

24. U.S. Dep't of Just., Civil Rights Div., *Title VI Legal Manual*, Section VI.B (discussing what constitutes Federal financial assistance for Title VI and Section 504 purposes). The Title VI carveouts are interpretively applied to Section 504 because Section 504's enforcement provisions cross reference Title VI. 29 U.S.C. §794a(a)(2).

25. *Id.*

26. 45 C.F.R. §84.10; *see* Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 89 Fed. Reg. 40066 (May 9, 2024) (codified at 45 C.F.R. pt. 84).

The Work Opportunity Tax Credit illustrates the exemption's reach.[27] The credit provides federal tax incentives for employers who hire workers from designated populations, including workers referred through state vocational rehabilitation agencies and workers receiving Supplemental Security Income. The targeted populations are, in substantial part, populations protected by federal disability civil rights law. An employer who hires a vocational rehabilitation referral receives a federal tax credit specifically because the worker is a member of a federally protected class. The employer takes the credit, claims the federal benefit, and incurs no Section 504 obligation as a result. The federal government has, in effect, subsidized the hiring of disabled workers without conditioning the subsidy on civil rights compliance toward those workers.

The doctrinal coherence of this arrangement is the question Part IV revisits.

C. The Procurement-at-Market-Value Exemption

Federal procurement contracts at market value are not federal financial assistance for Section 504 purposes. This exclusion is independent of the tax expenditure exemption and operates on different reasoning. The federal government, as purchaser, is treated as engaging in an arm's length commercial transaction rather than extending assistance.[28]

Section 503 of the Rehabilitation Act, however, applies a parallel civil rights obligation to federal contractors.[29] Section 503 requires federal contractors with contracts exceeding $10,000 to take affirmative action to employ and advance qualified individuals with disabilities. Contractors with 50 or more employees and contracts of $50,000 or more must maintain a written affirmative action program. The Office of Federal Contract Compliance Programs enforces Section 503.[30]

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27. 26 U.S.C. §51 (Work Opportunity Tax Credit). The credit targets hiring from specified groups including, among others, vocational rehabilitation referrals, Supplemental Security Income recipients, and certain veterans.

28. *See Paralyzed Veterans*, 477 U.S. at 607 (distinguishing federal financial assistance from procurement). The procurement carveout has been carried forward in the implementing regulations cited above. The carveout addresses contracts "for the purpose of acquiring property or services for the direct benefit or use of the Federal Government," rather than to assist the contracting entity in its own operations.

29. 29 U.S.C. §793.

30. 41 C.F.R. pt. 60-741 (OFCCP regulations implementing Section 503).

Section 503 is thus the doctrinal vehicle through which federal procurement creates civil rights obligations on federal contractors. The vehicle is real and consequential, but it is limited in two ways that matter for the architecture this Article is mapping. First, Section 503's obligations are employment focused; they do not reach the goods or services the contractor sells to the public, the accessibility of the contractor's commercial premises, or the contractor's treatment of disabled customers. Second, Section 503's enforcement is administrative through OFCCP, with limited private right of action.[31] The procurement at market value exemption channels disability discrimination claims arising from federally contracted commercial actors into a narrower civil rights vehicle than Section 504 would supply, with attendant limits on what plaintiffs can recover and how directly they can seek redress.

D. The Contract-Reading Remedy Limit

Cummings v. Premier Rehab Keller[32] held that emotional distress damages are not available under Section 504 or other Spending Clause antidiscrimination statutes. The Court reasoned that Spending Clause statutes operate as contracts with the funding recipient and that recipients are on notice only of remedies traditionally available for breach of contract. Emotional distress damages, the Court held, are not generally compensable in contract, and Congress had not provided clear notice that recipients of federal financial assistance would face them.[33]

Cummings is a remedy case, not a coverage case.[34] It does not narrow Section 504's substantive reach. It narrows what Section 504 plaintiffs can recover once coverage is established. The narrowing matters for the carveout architecture this Article is mapping in two ways. First, *Cummings* confirms the contract reading interpretive method that has driven each

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31. *See Howard v. Uniroyal, Inc.*, 719 F.2d 1552, 1555–56 (11th Cir. 1983) (no private right of action under Section 503); *Painter v. Horne Bros., Inc.*, 710 F.2d 143, 144 (4th Cir. 1983) (same). Some courts have allowed Section 503 claims to proceed under specific circumstances, but the weight of authority denies a private right of action and requires complainants to pursue administrative remedies through OFCCP.

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

33. *Id.* at 220–22.

34. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 219–22 (2022); *Barnes v. Gorman*, 536 U.S. 181, 186–87 (2002).

of the prior narrowings. Spending Clause statutes are not, on this method, ordinary civil rights statutes that the Court interprets to give them their fullest natural meaning. They are conditional grants whose terms must be read against the recipient's reasonable expectations at the moment of acceptance. The contract metaphor structurally favors narrow readings.

Second, *Cummings* amplifies the consequence of the coverage narrowings the other carveouts produce. The combination of narrow coverage and narrow remedies creates a regime in which plaintiffs face uncertainty about whether they can establish Section 504 nexus at all, and, if they can, uncertainty about whether the remedies available are sufficient to vindicate their rights. Defendants are correspondingly incentivized to litigate both questions vigorously, knowing that a victory on either ends the case. The architecture is structurally hostile to plaintiff success in ways that compound the formal narrowings the other carveouts impose.

E. The Architecture in Aggregate

The four carveouts canvassed in this Part operate together.[35] *Paralyzed Veterans* narrows who counts as a recipient. *Regan* and its regulatory progeny narrow what counts as federal financial assistance. The procurement at market value exemption narrows the universe of federal program participation that triggers Section 504, channeling federal contractors into Section 503's narrower vehicle. *Cummings* narrows the remedies available once Section 504 reach is established. Together, the carveouts produce a Section 504 of significantly narrower practical reach than the statute's text would suggest.

The next Part shows what that architecture looks like when applied to a documented federally subsidized commercial actor. Walmart's federal nexus has been mapped in unusual detail by the Good Jobs First subsidy tracker, by U.S. Department of Agriculture data on federal benefit program participation, and by publicly available data on federal procurement contracting through USASpending.gov. The case study is not selected to single Walmart out. It

35. *See supra* Parts II.A–II.D.

is selected because the documentation is unusually complete and because the structural features of Walmart's federal nexus are representative of large retail more generally.

III. Structural Incoherence: Walmart as Case Study

Walmart Inc. operates at the intersection of multiple federal programs without holding the status of a Section 504 recipient under the doctrinal architecture mapped in Part II. The intersection is dense, well documented, and structurally representative. This Part traces the intersection across five federal programs: federal procurement contracting, Work Opportunity Tax Credit claims, Supplemental Nutrition Assistance Program authorization, federal disability targeted hiring through state vocational rehabilitation agency placements, and Community Development Block Grant pass through to retailer infrastructure. In each, Walmart occupies a position of federal program participation that produces commercial value, reputational benefit, or both, without triggering Section 504 obligations under current doctrine.

A. Federal Procurement Contracting and Section 503

USASpending.gov records identify Walmart Inc. (under the entity name "WAL-MART STORES, INC.") as a federal procurement contractor with awards including a $25,025 gift card purchase by the Department of Veterans Affairs, a $24,360 trailer purchase by the Department of Homeland Security, multiple Department of Justice television purchases in the $11,000 to $22,000 range, and various small dollar purchases by the Departments of Defense, Interior, and Agriculture.[36] These are all procurement contracts at market value within the meaning of the procurement at market value exemption. None of them is federal financial assistance for Section 504 purposes.

Each of them crosses the Section 503 $10,000 threshold. Walmart Inc. is, on the documentary record, a federal contractor subject to Section 503's affirmative action obligations toward qualified individuals with disabilities. Section 503's reach is employment focused:

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36. Federal procurement awards to Wal-Mart Stores, Inc., as identified through the USASpending.gov API in May 2026. The awards are individually small but collectively cross the Section 503 jurisdictional threshold of $10,000 per contract.

Walmart's obligations as a Section 503 contractor extend to its hiring, advancement, and reasonable accommodation practices for disabled employees. The obligations do not extend to the accessibility of Walmart's commercial premises for disabled customers, the accessibility of the goods Walmart sells, or the design choices Walmart makes about packaging and labeling that may impose disparate impact on disabled consumers.

This is the first structural fact: a federal program (procurement) creates one form of civil rights obligation (Section 503 affirmative action in employment) without creating the corresponding form of obligation that Section 504 would supply (programwide nondiscrimination reaching all activities of the recipient).

B. Work Opportunity Tax Credit and Subsidized Disability Hiring

Walmart hires disabled workers, including workers with intellectual and developmental disabilities, in numbers that the company has publicly advertised as part of its corporate social responsibility positioning. Many of these hires qualify for Work Opportunity Tax Credit claims. The credit is available to employers who hire workers from designated populations including, among others, recipients of Supplemental Security Income, vocational rehabilitation referrals, and certain disabled veterans.[37] The credit is administered through the federal tax code and does not appear in USASpending records because tax expenditures are not federal awards in the conventional sense.

Walmart's specific WOTC claim volume is not publicly disclosed in granular form, but the company's scale, hiring practices, and public statements about disability hiring make it implausible that the volume is small. The aggregate WOTC claims across all employers nationally are reported by the Department of Labor and have totaled approximately one billion dollars annually in recent years.[38] Walmart's share of that aggregate, while not separately

37. 26 U.S.C. §51(d). The credit value varies depending on the targeted group and the hours worked, with maximum credits in the range of $2,400 per qualifying hire for most groups.

38. U.S. Dep't of Lab., Empl. & Training Admin., *Work Opportunity Tax Credit Statistics* (annual reports). The credit's scale reflects its uptake across a broad employer base. Large retailers including Walmart are believed to be substantial users of the credit on the basis of their hiring profile.

reported, is likely substantial in light of the company's hiring volume and the targeted group composition of its workforce.

The structural fact: the federal government provides Walmart with a tax benefit specifically tied to Walmart's hiring of disabled workers. Under the tax expenditure exemption, that benefit does not constitute federal financial assistance. Walmart's civil rights obligations toward those workers are limited to what Section 503, ADA Title I, and state employment discrimination statutes supply. The federal subsidy adds no civil rights protection. It functions as a pure transfer from the federal government to Walmart in exchange for hiring practices that Walmart would, in many cases, undertake anyway.

The reputational dimension compounds the financial. Walmart has built substantial corporate brand value around its disability hiring practices. The company is regularly cited as an exemplary employer of people with intellectual and developmental disabilities, including in the popular and trade press. The federal authorization that flows with WOTC participation operates as a kind of imprimatur: the federal government identifies Walmart as participating in a federally sponsored program targeted at disabled workers, which Walmart then uses as evidence of its commitment to disability inclusion. The credibility runs in one direction. The civil rights obligation does not follow.

C. SNAP Authorization and the Food Desert Symbiotic Relationship

The Supplemental Nutrition Assistance Program reaches its beneficiaries through a network of retailers authorized by the United States Department of Agriculture's Food and Nutrition Service.[39] Walmart is the largest single retailer of SNAP-eligible food in the United States.[40] In food desert markets, where Walmart is often the only large format grocery retailer within

39. 7 C.F.R. §278.1 (FNS retailer authorization). Authorized retailers must meet specified criteria regarding inventory, location, and operational capacity to participate.

40. The exact figure varies by year, but Walmart's share of SNAP redemptions has been reported in the range of 20–25% nationally, with higher shares in rural and food desert markets. *See* U.S. Dep't of Agric., Food & Nutrition Serv., *SNAP Retailer Management Year End Summary* (reporting retailer redemption shares); Numerator, *SNAP Spending Analysis* (2024) (estimating Walmart's share of SNAP redemptions at approximately 25 percent nationally), *as reported in* Supermarket News (Oct. 22, 2024).

a substantial radius, the SNAP-Walmart relationship approaches a relationship of operational dependency: USDA cannot deliver SNAP in those markets at scale without Walmart, and Walmart's grocery operations in those markets depend significantly on SNAP redemptions for foot traffic and ancillary basket sales.

Under *Paralyzed Veterans*, this operational integration does not make Walmart a Section 504 recipient. The federal benefit flows to the SNAP recipient. The recipient spends the benefit at Walmart. Walmart is paid for goods at market rates. By the doctrine's logic, Walmart is in the airline's position, not the airport's. The relationship's structural features (operational dependency, federal authorization carrying reputational weight, commercial pursuit of the authorization as a strategic asset, customer acquisition through the authorization) do not alter the doctrinal classification.

This is the second structural fact: a federal program (SNAP) operates through a private retailer whose participation is essential to program delivery, but the retailer is not subject to Section 504 because the doctrine treats the retailer as a beneficiary rather than a recipient of the federal program. The reasoning that produced this conclusion in *Paralyzed Veterans* relied on a distinction between recipients and beneficiaries that does not, on inspection, capture the structural features of operational dependency that SNAP exhibits in food desert markets.

D. Vocational Rehabilitation Placements and Indirect Federal Nexus

State vocational rehabilitation agencies are direct recipients of federal financial assistance under the Rehabilitation Act.[41] Walmart accepts placements from state vocational rehabilitation agencies in substantial numbers. The placement creates a tripartite relationship: the state agency (a Section 504 recipient) refers a disabled worker to Walmart (not, under current doctrine, a Section 504 recipient) for employment under conditions partially supported by the agency's federally funded services.

41. 29 U.S.C. §§720 et seq. The State Vocational Rehabilitation Services Program is the principal federal vehicle for funding state vocational rehabilitation activities. State agencies receive federal grants and provide rehabilitation services to eligible individuals with disabilities, including job placement services.

The doctrinal question this arrangement raises is whether Walmart, as the destination of a state agency placement, inherits any Section 504 obligation through the placement relationship. The circuit courts have divided on related questions of controlling entity liability under Section 504, with no Supreme Court resolution.[42] The architecture's effect, in the present unsettled state of the doctrine, is that disabled workers placed through vocational rehabilitation enter employment at entities whose civil rights obligations toward them are uncertain.

The structural fact: a population of disabled workers whose employment is mediated by federal funding through state vocational rehabilitation operates in a doctrinal twilight zone where their employer's Section 504 obligations cannot be confidently asserted in advance of litigation. The federal subsidy of the placement does not clearly carry civil rights conditions to the placement destination.

E. Community Development Block Grant Pass-Through and Facility-Level Nexus

State and local economic development authorities receive federal funds through Community Development Block Grants and related programs.[43] Those funds are sometimes used to support infrastructure, site preparation, and tax increment financing arrangements that benefit private retailers. Where a specific Walmart store's development depended on CDBG-supported infrastructure or site preparation, the store has Section 504 nexus through that pass through, at least with respect to the activities the CDBG funds supported.

The Good Jobs First subsidy tracker has documented substantial state and local subsidization of Walmart's expansion over the past three decades. The aggregate documented value of state and local subsidies to Walmart exceeded one billion dollars by the mid 2000s and

42. *Compare Doe v. Salvation Army in the United States*, 685 F.3d 564 (6th Cir. 2012) (declining to extend Section 504 to a tenant of a Section 504 recipient where the tenant did not itself receive federal financial assistance), *with* cases recognizing broader controlling entity theories in other circuits. The doctrinal landscape is unsettled.

43. 42 U.S.C. §§5301 et seq. (Housing and Community Development Act). CDBG funds are administered through state and local entitlement jurisdictions and may be used for a wide range of community and economic development purposes.

has likely grown substantially since.[44] The federal share of those subsidies, where traceable to CDBG or related federal pass through programs, would create facility level Section 504 nexus. The empirical mapping of which specific Walmart stores received which specific federal pass through funds is incomplete and would require facility by facility investigation.

The structural fact: a partial and inconsistent set of Walmart facilities is subject to Section 504 obligations through federal pass through funding, but the inconsistency means that disabled customers cannot tell, from any publicly visible feature of a Walmart store, whether that store carries Section 504 obligations or not. The architecture of partial obligation, in this dimension, produces a per store opacity that further frustrates the practical accessibility of Section 504 as a vehicle for vindicating rights.

F. The Architecture in Aggregate

Walmart's federal nexus, mapped across the five dimensions canvassed above, is dense and structurally integrated. The company is a federal contractor subject to Section 503 affirmative action obligations in employment. It is a recipient of substantial federal tax credits specifically targeted at disability hiring. It is the principal SNAP delivery infrastructure in many markets, operating under federal authorization that carries reputational and operational value. It is the destination for state vocational rehabilitation placements whose federal funding does not clearly travel with the worker to the placement site. It is the partial beneficiary of federal pass through funds for facility development on a facility by facility basis.

In none of these dimensions, under current doctrine, does Walmart hold the status of a Section 504 recipient with programwide obligations. The carveout architecture has built around each dimension a doctrinal wall that prevents the federal nexus from carrying the Section 504 obligation that the political branches told the international community domestic law supplies. The next Part shows why this is unsustainable.

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44. Good Jobs First, *Shopping for Subsidies: How Walmart Uses Taxpayer Money to Finance Its Never-Ending Growth* (2004); subsequent Good Jobs First reports and the Subsidy Tracker database. The federal share of these subsidies, as opposed to the state and local share, varies substantially by jurisdiction and project.

IV. The Closed Loop

The carveout architecture mapped in Part II and applied in Part III operates in tension with two doctrinal commitments the Court has explicitly made. The first is the Court's holding in *Cleburne* that disability does not require heightened Fourteenth Amendment scrutiny because legislative protection is sufficient. The second is the political branches' 2012 representation, anchored to the 2008 ADAAA, that domestic disability rights law meets or exceeds the strongest international human rights standard for disability protection. This Part shows that these two commitments, taken together with the carveout architecture, produce a doctrinal trap from which the Court cannot escape without contradiction.

A. Cleburne's Premise of Sufficient Legislative Protection

Cleburne held that the Cleburne, Texas, zoning ordinance's denial of a permit for a group home for adults with intellectual disabilities was irrational and therefore violated the Equal Protection Clause under rational basis review.[45] The Court did not apply heightened scrutiny. Its refusal to do so rested on three considerations, of which the second is decisive for this Article's argument. First, the Court considered intellectual disability to be a heterogeneous classification with which the government has legitimate reason to differentiate in many contexts.[46] Second, and most importantly, the Court found that "the legislative response, which could hardly have been more emphatic, belies a continuing antipathy or prejudice and a corresponding need for more intrusive oversight by the judiciary."[47] The Court cited Section 504, the Education for All Handicapped Children Act, the Architectural Barriers Act, and state legislation as evidence of that legislative response. Third, the Court considered that recognizing disability as a suspect class would prove difficult to administer.[48]

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45. *Cleburne*, 473 U.S. at 446–50.
46. *Id.* at 442–46.
47. *Id.* at 443.
48. *Id.* at 445–46.

The legislative response argument was central. Justice Marshall's concurrence (in part) and dissent (in part) directly attacked it, arguing that the legislative response had been incomplete and easily reversible, that the political branches' attention to disability was contingent on political winds, and that the Court's reliance on legislative responsiveness as a substitute for constitutional protection was structurally unstable.[49] Marshall predicted that the legislative protection would erode, that the Court's premise would prove unsustainable, and that future cases would have to confront the question *Cleburne* declined to answer. The forty-one years between *Cleburne* and the present have substantially vindicated Marshall's prediction. The legislative protection has been narrowed by the Court itself in *Sutton*, *Toyota*, and *Garrett*, and by the carveout architecture this Article maps.

The relevant point for the present argument is that *Cleburne*'s holding is conditional.[50][51] The denial of heightened scrutiny was predicated on a finding of sufficient legislative protection. If the legislative protection is or has become insufficient, the predicate fails, and the question *Cleburne* declined to answer must be answered.

B. The 2008 ADAAA and the 2012 Ratification Record

The Americans with Disabilities Act Amendments Act of 2008[52] was Congress's direct response to the Court's narrowing of ADA coverage in *Sutton* and *Toyota*. The ADAAA's Findings and Purposes section explicitly stated that the legislation was intended "to restore the intent and protections of the Americans with Disabilities Act of 1990," to reject the standards announced

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49. *Id.* at 462–64, 466–68 (Marshall, J., concurring in the judgment in part and dissenting in part).

50. *See* Anita Silvers et al., *Disability, Equal Protection, and the Supreme Court: Standing at the Crossroads of Progressive and Retrogressive Logic in Constitutional Classification*, U. MICH. J.L. REFORM (2025) (arguing that current disability jurisprudence resembles the abandoned framework for sex equality and should be analyzed under the standard that replaced it); Craig Konnoth, *The Normative Bases of Medical Civil Rights* (2020) (locating the reach and the limits of disability rights in their statutory rather than constitutional pedigree). *See also infra* note 51.

51. *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 443–45 (1985). Judges and commentators have long read the decision as applying a stricter review than its label admits. *See* Gayle Lynn Pettinga, *Rational Basis with Bite: Intermediate Scrutiny by Any Other Name*, 62 IND. L.J. 779 (1987); James A. Kushner, *Substantive Equal Protection: The Rehnquist Court and the Fourth Tier of Judicial Review*, 53 MO. L. REV. 423 (1988); William D. Araiza, *After the Tiers*, 94 B.U. L. REV. 367 (2014); Jeremy B. Smith, Note, *The Flaws of Rational Basis with Bite*, 73 FORDHAM L. REV. 2769 (2005).

52. Pub. L. No. 110-325, 122 Stat. 3553 (2008).

in *Sutton* and *Toyota*, and to expand the definition of disability to cover a broader range of impairments and conditions.[53] Congress invoked its authority under both the Commerce Clause and Section 5 of the Fourteenth Amendment, and in doing so renewed its political branch commitment to robust disability rights protection.

In 2009, the United States signed the Convention on the Rights of Persons with Disabilities. The CRPD imposes broad obligations on states parties to protect and promote the rights of disabled people across employment, education, transportation, accessibility, autonomy, and political participation. The Executive Branch's 2012 submission of the Convention to the Senate, together with the Senate Foreign Relations Committee's hearings on ratification, produced a public record in which the political branches characterized domestic disability rights law as meeting or exceeding the Convention's standards.[54] The Senate did not provide advice and consent. The ratification failed for reasons independent of the Executive Branch's characterization of domestic law's coverage. The characterization itself remains part of the public record of how the political branches understood the domestic legal architecture in 2012.

The temporal package is tight. The ADAAA was enacted in September 2008. The CRPD was signed in July 2009. The Executive Branch's submission and the Senate hearings occurred in 2012. The political branches' representation about the meaning of domestic disability rights law is contemporaneous with the post-ADAAA architecture they had just enacted. An originalist or textualist objection to using post enactment statements to construe statutory meaning has limited purchase here. The 2012 representation describes the legal architecture as it stood in 2012, an architecture Congress had just amended in 2008 with the explicit purpose of restoring and broadening protection. The four year gap between enactment and characterization is precisely the

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53. ADAAA §2(b), 122 Stat. at 3554. The statute's findings explicitly named the Supreme Court decisions Congress sought to override.

54. *See, e.g.*, Hearings on the Convention on the Rights of Persons with Disabilities Before the S. Comm. on Foreign Rels., 112th Cong. (2012). The Executive Branch's analysis maintained that the ADA, as amended by the ADAAA, together with Section 504 and adjacent statutes, fulfilled or exceeded the obligations the Convention would impose on the United States.

kind of temporally proximate evidence of political branch understanding that originalist statutory interpretation has historically credited.

The originalist objection deserves more sustained engagement than its summary disposition suggests, because the strongest version of the objection is one a current Court might press. The objection's textualist formulation, traceable to Justice Scalia's writings and developed at length in *Reading Law: The Interpretation of Legal Texts*,[55] treats post enactment statements by legislators or executive officials as unreliable evidence of statutory meaning because the statements lack the procedural safeguards that attended enactment itself. The statements are not subject to bicameralism and presentment. They cannot be amended by the political process that produced the underlying statute. They may reflect the speaker's preferences rather than the institution's. The textualist methodology accordingly excludes most post enactment commentary from the interpretive analysis.

The 2012 ratification record is distinguishable from the post enactment commentary that the textualist methodology excludes in three structurally significant ways. First, the record is not the statement of an individual legislator or executive official offering personal interpretation. It is the official position of the Executive Branch, submitted in formal advice and consent proceedings before the Senate, attesting to the relationship between domestic statutes and an international human rights instrument. The submission is institutional in a way that floor statements or post hoc interviews are not. Second, the record is contemporaneous with the most recent statutory action on the subject. The 2008 ADAAA was the operative enactment; the 2012 record describes the architecture that enactment produced. The four year temporal proximity is precisely the kind of temporally close institutional behavior that even strict textualism credits as evidence of how the institutional actors understood the recent enactment. Third, the textualist methodology has consistently treated ratification proceedings and treaty practice as a distinct category for

55. Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* (2012). The treatise's treatment of legislative history is canvassed at pp. 369–90; the treatment of post enactment commentary is canvassed at pp. 391–96.

interpretive purposes, with characterizations submitted to international bodies receiving particular weight as evidence of executive understanding of domestic law's content.[56]

The objection's deeper concern is that allowing post enactment characterizations to influence statutory interpretation produces a regime in which the political branches can effectively amend statutes through subsequent representation rather than through legislation.[57] The concern is legitimate. The response is that the present argument does not ask the Court to allow the 2012 record to amend Section 504 or any other statute. The argument asks the Court to recognize that *Cleburne*'s holding rested on a factual premise about the adequacy of legislative protection, and that the political branches' contemporaneous characterization of the post-ADAAA architecture is evidence relevant to whether that factual premise continues to hold. The interpretive use of the 2012 record is for *Cleburne*-premise evaluation, not for direct statutory amendment. The distinction matters and answers the textualist objection on its own terms.

The relevant point is that the political branches placed on the public record, in a form intended for international audience and binding on subsequent characterization, a representation that domestic disability rights law meets or exceeds the strongest available international standard for disability protection.

C. The Closed Loop in Syllogistic Form

The argument articulated in the preceding sections can be expressed as a formal syllogism.[58] The expression is useful because it makes the doctrinal trap visible in the structure of the reasoning rather than only in the texture of the analysis. The syllogism is the following.

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56. The treatment of treaty practice and ratification record as distinct from legislative history for textualist purposes is developed in Scalia & Garner, *supra*, at 304–09 (discussing canons applicable to treaty interpretation and the role of executive position in characterizing the relationship between domestic law and international obligations).

57. ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553 (rejecting *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), and *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184 (2002), and directing broad construction). The Amendments Act is formal subsequent legislation rather than post-enactment commentary.

58. *See supra* Parts IV.A–IV.B.

Premise One. *Cleburne* (1985) held that disability does not require heightened Fourteenth Amendment scrutiny because the political branches had already provided sufficient legislative protection through Section 504 and adjacent statutes. The constitutional protection of Equal Protection was deemed redundant given the legislative protection.

Premise Two. The 2012 CRPD ratification record, anchored to the 2008 ADAAA enactment four years earlier, represents to an international body that domestic disability rights law meets or exceeds the Convention's standards, which are the strongest international human rights standards for disability protection currently in force.

Premise Three. The Fourteenth Amendment is the strongest available domestic constitutional standard for protecting any classification. Equal Protection scrutiny under heightened review, when applied to a suspect or quasi suspect class, produces the highest tier of judicial protection available in the American constitutional system.

Conclusion. The political branches have represented that the legislative protection meets the strongest international standard. *Cleburne* held that the legislative protection is what makes the strongest constitutional standard unnecessary. The political branches have therefore effectively represented that disability protection in domestic law operates at a level equivalent to or exceeding what heightened constitutional scrutiny would provide. Whether *Cleburne*'s denial of heightened scrutiny continues to hold depends on whether the legislative protection actually delivers what the political branches said it delivers. If the legislative protection delivers what was represented, the carveouts that erode it must be revisited. If the legislative protection does not deliver what was represented, *Cleburne*'s factual premise has collapsed and the heightened scrutiny question must be revisited.

The syllogism does not produce a single doctrinal outcome.[59] It produces a constrained choice between two doctrinal outcomes. The Court can preserve *Cleburne* by reading the carveouts narrowly. The Court can preserve the carveouts by revisiting *Cleburne*. The Court cannot preserve both indefinitely without contradiction.

59. *See infra* Part IV.D.

D. The Trilemma

The Court now faces a trilemma when confronted with the carveouts on Section 504's reach.

Option A. Honor the 2012 representation. Read the carveouts narrowly enough that Section 504's reach actually delivers what the political branches said it delivers. This requires revisiting *Paralyzed Veterans*'s recipient beneficiary distinction in cases where federal authorization carries operational and reputational value beyond market price, narrowing the tax expenditure exemption where the tax expenditure is targeted at protected class hiring, and reading *Cummings* no more broadly than its rationale strictly requires. The carveouts contract. Section 504's coverage expands toward what the political branches represented it covers. The Coherence Gap arguments win on the merits.

Option B. Honor the carveouts. Maintain *Paralyzed Veterans*, the tax expenditure exemption, the procurement at market value exemption, and *Cummings* at their current breadth. The doctrinal consequence is that the legislative protection on which *Cleburne* relied does not deliver what the political branches said it delivers. *Cleburne*'s factual premise has eroded, in some applications collapsed entirely. The constitutional question of whether disability requires heightened scrutiny under the Fourteenth Amendment must be revisited. The Coherence Gap arguments lose on Section 504 reach, but the constitutional ground beneath *Cleburne* shifts.

Option C. Maintain both *Cleburne* and the carveouts. Hold that the legislative protection is sufficient for constitutional purposes while simultaneously narrowing the legislative protection through the carveout architecture. This is the present posture of the doctrine. It is internally contradictory. Future cases will press the contradiction. Sustained pressure on the contradiction produces either Option A or Option B over time, but the maintenance of the contradiction in the interim is unstable.

The Court cannot consistently maintain Option C.[60] The contradiction is real. The political branches' 2012 representation is on the public record. The carveouts are on the public record. *Cleburne*'s holding is on the public record. The three commitments cannot all be maximized simultaneously without contradiction.

E. Why Evasion Does Not Survive Inspection

Several doctrinal evasions might appear available to the Court. None survives inspection.

First, the Court might attempt to characterize the 2012 representation as not binding on subsequent statutory interpretation because the Senate did not provide advice and consent. The failure of ratification, on this evasion, vacates the political branches' characterization. This evasion fails because the question is not whether the CRPD itself is binding on domestic law. The question is what the political branches represented domestic law to do at a temporal moment proximate to the ADAAA. The Executive Branch's submission and the Senate hearings produced contemporaneous evidence of political branch understanding of the post-ADAAA architecture. That evidence is not extinguished by ratification failure, particularly when ratification failed for reasons unrelated to the characterization of domestic law.

Second, the Court might attempt to characterize *Cleburne*'s legislative protection argument as dicta rather than holding. This evasion fails because the legislative protection argument was structurally necessary to the Court's refusal to apply heightened scrutiny. The Court did not refuse heightened scrutiny on the basis of the heterogeneity argument alone or on the administrability argument alone. The legislative protection argument was essential to the reasoning. Treating it as dicta would require the Court to reconstruct *Cleburne*'s holding on a basis it did not in fact occupy.

Third, the Court might attempt to argue that the carveouts have always existed and the political branches accepted them when characterizing domestic law in 2012. This evasion fails

60. *See* Kenji Yoshino, *Assimilationist Bias in Equal Protection*, 108 YALE L.J. 485, 505–06 (1998) (observing that the class would likely have been found politically powerless under either extant test, and that the Court's adoption of a different test invites the inference that the test was chosen to avoid the result); Gary B. Melton & Ellen Garrison, *Fear, Prejudice, and Neglect: Discrimination Against Mentally Disabled Persons*, 42 AM. PSYCH. 1007 (1987).

because the political branches' representation in 2012 was not that domestic law as currently narrowed by the carveouts meets or exceeds international standards. The representation was that domestic law as enacted, including the post-ADAAA expansion, meets or exceeds international standards. The carveouts are the Court's contribution to the architecture, not the political branches'. The political branches did not represent in 2012 that the carveouts were adequate to satisfy international obligations. They represented that the statutes were adequate. The carveouts narrow the statutes against the political branches' representation, not in accord with it.

Fourth, the Court might attempt to distinguish disability as a category from race and sex for purposes of the heightened scrutiny analysis, holding that disability remains subject to rational basis review even if *Cleburne*'s legislative protection premise has eroded.[61] This evasion fails because *Cleburne*'s holding was specifically grounded in the legislative protection premise. The other reasons offered (heterogeneity of the category, administrability concerns) are themselves contestable and were not separately sufficient to defeat heightened scrutiny in the Court's analysis. If *Cleburne*'s primary premise has eroded, the secondary reasons cannot independently sustain the result.

The trilemma is real. The Court will eventually have to choose. The longer Option C is maintained, the higher the doctrinal cost of the choice when it comes.

V. Resolution Through Narrow Reading

The argument of this Part is that Option A is available, doctrinally responsible, and accomplishable without disturbing any other doctrine the Court has committed to. The Court does not have to overrule *Paralyzed Veterans*, *Regan*, or *Cummings* to achieve Option A. The Court has to read each of these decisions no more broadly than its facts and reasoning strictly require, and apply the resulting narrower readings in light of the political branches' 2012

61. *See Heller v. Doe*, 509 U.S. 312, 319 (1993) (declining to reach the suspect-class argument); Christopher Slobogin, *What Atkins Could Mean for People with Mental Illness*, 33 N.M. L. REV. 293 (2003); *Coolbaugh v. Louisiana*, 136 F.3d 430, 435 (5th Cir. 1998) (extending the reasoning to the physically disabled), *abrogated in part by Garrett*, 531 U.S. 356.

representation about the legal architecture as a whole. This Part sketches what that reading looks like for each carveout.

A. Reading Paralyzed Veterans Narrowly

Paralyzed Veterans concerned airlines as economic beneficiaries of federally subsidized airport improvements.[62] The Court's holding addressed a specific factual configuration: airlines whose business benefited from airport improvements but who did not themselves take federal funds in any direct sense. The holding's language is broad, but its facts are narrow. A reading that treats every economic beneficiary of every federal program as outside Section 504's reach extends the holding well beyond the case the Court decided.

A narrow reading distinguishes between two situations. In one, the entity benefits economically from a federal program but does not occupy an integrated operational position with respect to that program. The airline benefiting from airport improvements is in this category. The federal benefit is diffuse, the entity's operational relationship with the federal program is incidental, and the entity's commercial existence does not depend on the federal program. In the other situation, the entity occupies an integrated operational position: it is federally authorized, federally certified, or federally licensed in a way that creates direct dependency between the entity's commercial activities and the federal program. SNAP authorization in food desert markets exhibits this second pattern, as does Medicare provider certification, federal student aid participation, and several other federal authorization regimes.

The narrow reading of *Paralyzed Veterans* preserves the holding's core (diffuse economic beneficiaries are not Section 504 recipients) while permitting Section 504 reach to entities whose federal authorization status creates operational integration. This narrow reading is consistent with *Paralyzed Veterans*'s reasoning, which emphasized that recipient status attached to the entity "in a position to accept or reject those obligations as part of the decision whether or not to" receive federal funds.[63] An entity that affirmatively pursues federal authorization, advertises its

62. *See supra* note 20; *Paralyzed Veterans*, 477 U.S. at 605–07.

63. *Paralyzed Veterans*, 477 U.S. at 605.

federally authorized status, and structures its commercial operations to maximize the value of that authorization is in exactly the position *Paralyzed Veterans* described. The reading does not extend Section 504 to "almost limitless coverage"; it extends Section 504 to the federally authorized entities whose authorization is itself a commercially pursued asset.

B. Reading the Tax Expenditure Exemption Narrowly

The tax expenditure exemption rests on a conceptual distinction between tax subsidies and direct subsidies that the Court has applied in First Amendment cases (*Regan*) and that federal civil rights regulations have carried forward.[64] The distinction is defensible in many contexts. It is significantly more difficult to defend in contexts where the tax expenditure is specifically targeted at advancing a federal policy objective with respect to a federally protected class.

A narrow reading of the tax expenditure exemption would distinguish between general tax expenditures (accelerated depreciation, performance pay deductions, charitable contribution deductions) and protected class targeted tax expenditures (Work Opportunity Tax Credit for hiring of disabled workers, employer side disability accommodations tax credits, and similar). The general tax expenditures might remain outside Section 504's reach on the existing reasoning. The protected class targeted tax expenditures would be brought within Section 504's reach because they specifically condition federal benefit on the employer's relationship with a federally protected class. The federal government's act of subsidizing protected class hiring would carry with it the federal government's civil rights obligations toward that protected class.

This narrow reading does not require overruling *Regan*.[65] *Regan* addressed Section 501(c)(3) tax exemption status, which is not targeted at a protected class. The narrow reading distinguishes *Regan* on its facts and applies different reasoning to protected class targeted tax

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64. *Regan v. Taxation With Representation of Wash.*, 461 U.S. 540, 544 (1983) ("Both tax exemptions and tax-deductibility are a form of subsidy that is administered through the tax system. A tax exemption has much the same effect as a cash grant.").

65. The subsidy characterization has since carried weight in the unconstitutional conditions line. *See Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 570 U.S. 205 (2013); *Agency for Int'l Dev. v. All. for Open Soc'y Int'l, Inc.*, 591 U.S. 430 (2020); *cf. Rumsfeld v. Forum for Acad. & Institutional Rights, Inc.*, 547 U.S. 47 (2006).

expenditures. The doctrinal structure permits this distinction; the political branches' 2012 representation about the legal architecture supports it.

C. Reading the Procurement-at-Market-Value Exemption Narrowly

Federal procurement at market value, as currently exempted, includes all federal purchases of goods and services from contractors where the price approximates the market rate. A narrow reading would distinguish between procurement that is purely transactional and procurement that carries reputational or operational value to the contractor beyond market price. Where a federal procurement contract is publicly advertised or used by the contractor as evidence of federal endorsement, the reputational value adds to the consideration the contractor receives. The market value exemption assumes that the federal government is simply paying for goods. Where the contractor extracts reputational capital from the procurement relationship, the assumption is empirically incomplete.

This reading would not abolish the procurement carveout.[66] It would condition the carveout's application on the absence of significant reputational extraction. Where the contractor's commercial value depends substantially on its federally contracted status, Section 504 reach would attach to the contractor's operations to the extent of that dependency.

D. Reading Cummings No Further Than Its Rationale Strictly Requires

Cummings held that emotional distress damages are not available under Spending Clause antidiscrimination statutes because the contract reading of Spending Clause statutes does not give recipients clear notice of liability for such damages. The holding is narrow in important respects. It does not foreclose injunctive relief, declaratory relief, attorneys' fees, OCR corrective action, economic damages for pecuniary harm, or termination of federal financial assistance.[67] A

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66. *See* 29 U.S.C. § 793; *Painter v. Horne Bros., Inc.*, 710 F.2d 143 (4th Cir. 1983); *Howard v. Uniroyal, Inc.*, 719 F.2d 1552 (11th Cir. 1983).

67. *See Cummings*, 596 U.S. at 230 (noting that injunctive and declaratory relief remain available). The Court's reasoning focused on the contract reading of Spending Clause statutes and the absence of clear notice to recipients that emotional distress damages would be available. The reasoning did not address the broader range of remedies historically available under Section 504 enforcement.

narrow reading of *Cummings* would preserve these remedies, foreclose extension of *Cummings* to additional categories of recovery, and treat the case as a remedy specific narrowing rather than a structural reorientation of Spending Clause civil rights.

The textual basis for the narrow reading is straightforward.[68] *Cummings* addressed one category of damages (emotional distress) under one analytical method (contract reading). The Court's reasoning does not require, and does not on its face support, extension to other remedy categories that operate on different analytical grounds. Injunctive relief is not a damages remedy; it does not depend on the contract reading at all. Declaratory relief operates through judicial declaration of legal rights and is not within the scope of the contract analogy. Attorneys' fees are governed by separate statutory provisions and were not addressed by the *Cummings* reasoning. OCR corrective action operates through administrative enforcement and is not constrained by private damages doctrine. Economic damages for pecuniary harm address losses with established contract analogs and survive on the same contract reading that constrains emotional distress damages.

The structural basis for the narrow reading is equally straightforward. Section 504 enforcement has, since 1978, operated through a remedial architecture that depends on the availability of multiple complementary remedies. Title VI remedies as incorporated by 29 U.S.C. §794a(a)(2) include injunctive relief, declaratory relief, attorneys' fees, and termination of federal financial assistance. Title IX remedies as developed in *Cannon v. University of Chicago*[69] and *Gebser v. Lago Vista Independent School District*[70] include implied private rights of action with damages remedies. The composite remedial architecture has supported Section 504 enforcement for nearly five decades. *Cummings* narrowed one component of this architecture. *Cummings* did not abolish the architecture. Reading *Cummings* as a structural reorientation of Spending Clause civil rights would extend the holding well beyond its stated rationale and would require overruling decades of complementary precedent that *Cummings* did not address.

68. *Cummings*, 596 U.S. at 219–22; *cf. Alexander v. Choate*, 469 U.S. 287, 299–301 (1985).
69. *Cannon v. Univ. of Chi.*, 441 U.S. 677 (1979).
70. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998).

Justice Souter's footnote in *Barnes v. Gorman*[71] provides supportive doctrinal foundation for the narrow reading. *Barnes* had earlier articulated the contract analogy that *Cummings* developed. Justice Souter's footnote in *Barnes* explicitly cabined the contract analogy, noting that traditional contract remedies for nonpecuniary harms in cases involving emotional disturbance *were* available under common law in certain circumstances, complicating the simple notice based reasoning the contract analogy invites. The footnote suggests that even within the contract reading method, the universe of historically available contract remedies is broader than *Cummings* acknowledged. The narrow reading of *Cummings* is therefore consistent with the *Barnes* foundation it builds upon.

Alexander v. Choate[72] supplies further support. *Choate* held that Section 504 reaches not only intentional discrimination but also practices that deny meaningful access to federally assisted programs. The meaningful access doctrine has been carried forward in subsequent disability rights jurisprudence as the operative standard for evaluating Section 504 compliance. The doctrine does not depend on emotional distress damages for its enforcement. Injunctive and declaratory relief are sufficient to address meaningful access failures. *Cummings* does not disturb *Choate*. The narrow reading of *Cummings* preserves *Choate*'s within class disparate impact analysis, subject to one enforcement question that the contract reading method does not itself answer.

This preservation depends on a distinction the narrow reading must make explicit. *Alexander v. Sandoval* held that the disparate impact regulations promulgated under Title VI are not privately enforceable, and Section 504 borrows Title VI's enforcement architecture through 29 U.S.C. §794a(a)(2).[73] *Sandoval*'s holding reaches a disparate impact theory that resided entirely in the Title VI implementing regulations rather than in the statute itself. It does not reach the meaningful access standard *Choate* located in Section 504 as a matter of

71. *Barnes v. Gorman*, 536 U.S. 181, 189 n.* (2002) (Souter, J., concurring in the judgment).

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

73. *Alexander v. Sandoval*, 532 U.S. 275, 293 (2001) (holding that private parties may not sue to enforce the disparate impact regulations issued under Title VI, Section 602).

statutory construction. The operative distinction is between a disparate impact theory grounded solely in regulation, which *Sandoval* foreclosed to private plaintiffs, and a meaningful access obligation grounded in the statute, which survives as a privately enforceable standard. The within class analysis preserved here rests on the statutory footing, and the courts that have continued to entertain private meaningful access and reasonable modification claims under Section 504 and the ADA after *Sandoval* have done so on that ground.[74] The narrow reading of *Cummings* advanced here therefore preserves *Choate* on its statutory footing and is consistent with *Sandoval* rather than in tension with it.

The combination of these doctrinal supports produces a reading of *Cummings* that honors the case as decided while preserving the broader remedial architecture against erosion. The Court can apply *Cummings* to emotional distress damages claims and reject extension of *Cummings* to other remedy categories without internal inconsistency. The narrow reading is doctrinally available and structurally consistent with the broader Spending Clause civil rights jurisprudence that *Cummings* sits within.

E. The Aggregate Effect of the Narrow Readings

Each of the narrow readings, taken individually, is doctrinally available and does not require overruling the case it narrows.[75] The aggregate effect, however, is substantial. *Paralyzed Veterans* narrows to its diffuse beneficiary facts. The tax expenditure exemption narrows to exclude protected class targeted credits. The procurement carveout narrows where reputational extraction is significant. *Cummings* stays where it is and does not extend. Section 504's coverage in aggregate expands toward what the political branches told the international community it covers.

The narrow readings preserve the carveouts' core while removing their structural incoherence. They do not require the Court to revisit *Cleburne* on the heightened scrutiny

74. The post-*Sandoval* landscape is not uniform, and some courts have read *Sandoval* to constrain disability disparate impact claims more broadly. The weight of authority has distinguished statutory meaningful access and reasonable modification claims, which remain privately enforceable, from the purely regulatory disparate impact theory *Sandoval* addressed.

75. *See supra* Parts V.A–V.D.

question. They do not require legislative action, though they could be facilitated by it. They are accomplishable through ordinary doctrinal interpretation in cases that present the appropriate facts.

VI. Targeted Reform

For areas where doctrinal expansion is insufficient, politically unavailable, or insufficiently durable, targeted statutory and regulatory reform supplies a complementary path. This Part identifies three reform vehicles that address specific structural incoherences identified in Parts II and III, and discusses Section 503 enforcement as a fourth area where existing statutory authority is underutilized.

A. Conditioning the Work Opportunity Tax Credit on Section 504 Acceptance

The Work Opportunity Tax Credit is reauthorized periodically by Congress.[76] The next reauthorization is a natural intervention point for adding a Section 504 acceptance condition. The reform would modify 26 U.S.C. §51 to require, as a condition of WOTC eligibility for hires from disability related targeted groups, that the employer accept Section 504 obligations toward those workers for the duration of the employment relationship.

The reform does not require the employer to become a Section 504 recipient with respect to all of its operations. It conditions the WOTC benefit on Section 504 acceptance with respect to the specific employment relationship the credit subsidizes. The condition would attach a civil rights commitment to a federal benefit that currently carries no such commitment. It would close the structural incoherence identified in Part III: an employer takes a federal tax credit specifically because the worker is a member of a federally protected class, but accepts no federal civil rights obligation as a result.

76. 26 U.S.C. § 51; *see supra* note 64.

The political feasibility of the reform is uncertain.[77] WOTC's traditional bipartisan support has rested in part on its character as a no strings tax incentive. Adding strings reduces the credit's appeal to some employers. The tradeoff, however, is between a tax expenditure that subsidizes the hiring of disabled workers without protecting them and a tax expenditure that subsidizes the hiring of disabled workers and protects them. The latter is more consistent with the federal government's stated commitments to disability rights. Advocates pursuing this reform would frame it as a coherence repair, not as a new burden on employers.

B. Conditioning SNAP Retailer Authorization on Accessibility Compliance

SNAP retailer authorization is governed by USDA Food and Nutrition Service regulations.[78] The regulations currently address eligibility on the basis of inventory, location, and operational capacity. They do not require accessibility compliance as a condition of authorization. A regulatory amendment would add such a condition.

The condition would not require Section 504 compliance in the conventional sense, because the doctrinal architecture currently precludes that. The condition would instead require accessibility compliance as a freestanding term of authorization. The federal authorization to participate in SNAP would carry with it accessibility requirements at the point of sale: physical accessibility of the store, accessibility of the products' essential point of sale information, accessibility of staff assistance, and parallel obligations.

The reform vehicle is administrative rulemaking by USDA FNS.[79] The legal authority for the reform is the agency's general authority to set conditions of retailer authorization. The political vulnerability is the same as for any administrative rulemaking: the next administration could rescind it. Durability depends on the political coalition supporting the rule.

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77. *Cf. Nat'l Fed'n of Indep. Bus. v. Sebelius*, 567 U.S. 519, 577–85 (2012) (limits on coercive spending conditions).
78. 7 C.F.R. §278.1.
79. 7 U.S.C. § 2018 (retailer authorization); 7 C.F.R. pt. 278.

A stronger version of the reform would amend the SNAP statute itself, 7 U.S.C. §§2011 et seq., to require accessibility compliance as a condition of authorization. Statutory amendment is more durable than regulatory amendment, at the cost of higher political activation energy.

C. Aligning Section 503 Enforcement with the Scale of Federal Contractor Relationships

Section 503's affirmative action requirements are administered by OFCCP.[80] The administrative record shows that OFCCP enforcement at major retailers has been intermittent and inconsistent. Large federal contractors with substantial disability employment have, in many cases, faced no significant Section 503 review for extended periods. The statutory authority for more active enforcement exists. The institutional commitment to use it has been variable.

Reform here would not require statutory change. It would require OFCCP to undertake systematic review of major federal contractors with documented disability employment programs and to bring enforcement actions where Section 503's affirmative action requirements are unmet. The reform vehicle is administrative: appropriations, OFCCP resource allocation, and prosecutorial priorities.

The Coherence Gap argument supports more active Section 503 enforcement because Section 503 is currently the most direct civil rights vehicle reaching federally contracted commercial actors, and its underutilization compounds the carveout architecture's coverage gaps. Active enforcement of existing authority is a partial substitute for doctrinal expansion of Section 504.

D. Reform as Backstop to Doctrinal Expansion

The reforms canvassed in this Part are backstops, not substitutes.[81] The doctrinal expansion argued for in Part V is the principal vehicle for resolving the coherence gap. The reforms supply additional protection in specific areas where the doctrinal expansion may be incomplete or where the political branches can act more durably than the courts. The combination of doctrinal

80. 29 U.S.C. § 793; 41 C.F.R. pt. 60-741.

81. *See supra* Part V.E.

narrowing of the carveouts and targeted reform in specific subsidy programs produces a Section 504 architecture that delivers what the political branches told the international community it delivers.

VII. Conclusion

The Coherence Gap is not a litigation theory in the conventional sense. It does not promise a winning argument in any particular case. It identifies a structural incoherence in the present configuration of federal disability rights doctrine, names that incoherence in formal terms, and proposes resolution through narrow reading of the carveouts together with targeted reform.

The argument operates at a meta doctrinal level.[82] The carveouts on Section 504's reach, taken together, undermine the factual premise on which *Cleburne* rested in declining to apply heightened scrutiny to disability classifications. The political branches' 2012 representation that domestic law meets or exceeds international standards puts the carveouts in direct tension with *Cleburne*'s premise.[83] The Court cannot consistently honor both. Option A (read the carveouts narrowly) preserves *Cleburne* and honors the 2012 record. Option B (honor the carveouts) reopens the heightened scrutiny question *Cleburne* closed. Option C (maintain both) is internally contradictory and unstable.

The path forward is Option A combined with targeted reform.[84] Neither requires the Court to overrule any of its prior decisions. Neither requires Congress to enact major new civil rights legislation. The combination requires only that the Court read its prior decisions no more broadly than their facts and reasoning require, and that Congress and federal agencies act on the existing statutory authority to condition specific subsidies on civil rights compliance.

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82. *See supra* Part IV.C.

83. *Cf.* Jody Heymann et al., *A Comparative Overview of Disability-Related Employment Laws and Policies in 193 Countries*, 32 J. DISABILITY POL'Y STUD. 22 (2021) (building the first global database of disability employment provisions across all 193 United Nations member states and reporting substantial gaps between Convention commitments and enacted protections).

84. *See supra* Parts V, VI.

Justice Marshall predicted in 1985 that *Cleburne*'s legislative protection premise would erode.[85] The forty-one years since have substantially vindicated his prediction.[86] The carveout architecture is the principal mechanism of the erosion. The argument advanced in this Article is that the architecture has now reached the point where it can no longer be sustained without contradicting either *Cleburne* or the political branches' own representation about the legal architecture. The Court will eventually have to choose. The advocacy task in the interim is to make the choice visible and to argue for the resolution that preserves the longer arc of disability rights protection. That is Option A. That is the resolution this Article supports.

85. *Cleburne*, 473 U.S. at 455–78 (Marshall, J., concurring in the judgment in part and dissenting in part).

86. The empirical record is consistent with the prediction. *See* Lisa I. Iezzoni et al., *Have Almost Fifty Years of Disability Civil Rights Laws Achieved Equitable Care?*, 41 HEALTH AFFS. 1371 (2022) (surveying Section 504, the ADA, the ADA Amendments Act, and Section 1557, documenting persistent disparities notwithstanding all four, and recommending ratification of the Convention on the Rights of Persons with Disabilities as a corrective); Yoshino, *supra* note 60; Susannah Pollvogt, *United States v. Windsor and the Crisis in Equal Protection Jurisprudence*, 48 HARV. C.R.-C.L. L. REV. 599 (2013); Jesse H. Choper & Stephen F. Ross, *The Political Process, Equal Protection and Substantive Due Process*, 19 U. PA. J. CONST. L. 983 (2017).

References

Agency for International Development v. Alliance for Open Society International, Inc., 570 U.S. 205 (2013).

Agency for International Development v. Alliance for Open Society International, Inc., 591 U.S. 430 (2020).

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

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

Araiza, W. D. (2013). After the tiers: Windsor, congressional power to enforce equal protection, and the challenge of pointillist constitutionalism. *Boston University Law Review*, 94, 367.

Araiza, W. D. (2012). Flunking the class of one/failing equal protection. *William & Mary Law Review*, 55, 435.

Barnes v. Gorman, 536 U.S. 181 (2002).

Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356 (2001).

Cannon v. University of Chicago, 441 U.S. 677 (1979).

Choper, J. H., & Ross, S. F. (2017). The political process, equal protection and substantive due process. *University of Pennsylvania Journal of Constitutional Law*, 19, 983.

City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985).

Coolbaugh v. Louisiana, 136 F.3d 430 (5th Cir. 1998).

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

Doe v. Salvation Army in the United States, 685 F.3d 564 (6th Cir. 2012).

Gebser v. Lago Vista Independent School District, 524 U.S. 274 (1998).

Good Jobs First. (2004). *Shopping for subsidies: How Walmart uses taxpayer money to finance its never-ending growth*. Good Jobs First.

Grove City College v. Bell, 465 U.S. 555 (1984).

Heller v. Doe, 509 U.S. 312 (1993).

Heymann, J., Sprague, A., Stein, M. A., & Raub, A. (2021). A comparative overview of disability-related employment laws and policies in 193 countries. *Journal of Disability Policy Studies*, 32, 22.

Howard v. Uniroyal, Inc., 719 F.2d 1552 (11th Cir. 1983).

Iezzoni, L. I., Agaronnik, N. D., & El-Jawahri, A. (2022). Have almost fifty years of disability civil rights laws achieved equitable care? *Health Affairs*, 41, 1371.

Konnoth, C. (2020). The normative bases of medical civil rights. *Indiana Law Journal*, 95, 275.

Kushner, J. A. (1988). Substantive equal protection: The Rehnquist Court and the fourth tier of judicial review. *Missouri Law Review*, 53, 423.

Melton, G. B., & Garrison, E. (1987). Fear, prejudice, and neglect: Discrimination against mentally disabled persons. *American Psychologist*, 42, 1007.

National Federation of Independent Business v. Sebelius, 567 U.S. 519 (2012).

Numerator. (2024). *SNAP Spending Analysis* [as reported in Supermarket News, Oct. 22, 2024].

Painter v. Horne Brothers, Inc., 710 F.2d 143 (4th Cir. 1983).

Pennhurst State School and Hospital v. Halderman, 451 U.S. 1 (1981).

Pettinga, G. L. (1987). Rational basis with bite: Intermediate scrutiny by any other name. *Indiana Law Journal*, 62, 779.

Pollvogt, S. (2013). United States v. Windsor and the crisis in equal protection jurisprudence. *Harvard Civil Rights-Civil Liberties Law Review*, 48, 599.

Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983).

Rehabilitation Act of 1973, 29 U.S.C. §§ 701–796l.

Rumsfeld v. Forum for Academic and Institutional Rights, Inc., 547 U.S. 47 (2006).

Silvers, A., Wasserman, D., & Mahowald, M. B. (2025). Disability, equal protection, and the Supreme Court: Standing at the crossroads of progressive and retrogressive logic in constitutional classification. *University of Michigan Journal of Law Reform*.

Slobogin, C. (2003). What Atkins could mean for people with mental illness. *New Mexico Law Review*, 33, 293.

Smith, J. B. (2005). The flaws of rational basis with bite: Why the Supreme Court should acknowledge its application of heightened scrutiny to classifications based on sexual orientation. *Fordham Law Review*, 73, 2769.

Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999).

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

Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002).

United States Department of Transportation v. Paralyzed Veterans of America, 477 U.S. 597 (1986).

U.S. Department of Agriculture, Food and Nutrition Service. *SNAP Retailer Management Year End Summary* [Annual reports]. `https://www.fns.usda.gov/snap/retailer/data`

U.S. Department of Justice, Civil Rights Division. (n.d.). *Title VI Legal Manual*. Retrieved from `https://www.justice.gov/crt/title-vi-legal-manual`

U.S. Department of Labor, Employment and Training Administration. (various years). *Work Opportunity Tax Credit statistics* [Annual reports].

Winebrenner v. Elizabeth Ives School for Special Children, Inc., No. 3:24-cv-01261 (D. Conn. Aug. 1, 2025).

Yoshino, K. (1998). Assimilationist bias in equal protection: The visibility presumption and the case of "Don't Ask, Don't Tell." *Yale Law Journal*, 108, 485.

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