

The Only Door:

Facial Neutrality, Indifference, and the Inaccessible Sole Channel Under ADA Title III

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Abstract

A growing class of sellers reaches every customer through one channel and one channel only: a website or an application, with no counter, aisle, or human intermediary anywhere in the transaction. When that sole channel is built so that a blind, deaf, or motor-disabled customer cannot use it, the operator's first answer is that the site is identical for everyone, and that identical treatment cannot be discrimination.

This Article argues the opposite. In the sole-channel case, facial neutrality does not defend the operator; it locates the violation. The Americans with Disabilities Act and Section 504 were enacted to reach exclusion produced by indifferent design and not merely by animus, and their measure is meaningful access rather than formal sameness. Under Title II of the ADA and Section 504, a facially neutral channel that fails an entire disabled class is a recognized disparate impact claim. Under Title III, the identical wrong runs through the statute's affirmative duties: the bar on eligibility criteria that screen out, the duty to make reasonable modifications, and the duty to furnish auxiliary aids and services sufficient for effective communication. On either path, the uniformity of the channel is the condition that triggers the duty, not a reason to excuse its breach.

The contribution is to isolate the merits from the coverage question and to show that the sole inaccessible channel is the cleanest case the meaningful-access standard reaches, because when there is no other route to the goods, the access failure is total. The operator who says that everyone meets the same page has described the violation, not answered it.

Keywords: ADA Title III; Section 504; disparate impact; auxiliary aids; effective communication; meaningful access; *Alexander v. Choate*; *Payan v. LACCD*; website accessibility.

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I. Introduction

Consider the seller whose entire storefront is a screen. There is no aisle to walk, no counter to approach, no clerk to ask.¹ Every customer, disabled or not, reaches the goods through the same website or application. When a blind customer using a screen reader, a deaf customer who needs captioning, or a customer who cannot operate a pointing device finds that channel closed to them, the operator reaches for a single sentence: the site is the same for everyone, so no one has been singled out, so there is no discrimination.

That sentence is the subject of this Article, and the claim here is that it is exactly backwards. When the channel is the only one a customer can use, its sameness for all users is the condition that the antidiscrimination duty was written to address, and its facial neutrality names the violation rather than excusing it. The duty to make the one channel usable does not depend on proof that the operator meant to exclude anyone. It depends on the design's effect on a class that the statute protects.

A word on scope. Whether a seller that operates only online is a place of public accommodation at all, and whether its site must bear a nexus to some physical location, is a contested coverage question that the courts have divided over and that this Article does not relitigate.² The argument here assumes that coverage is established, whether because the forum reads the public-accommodation categories to include the operator directly or because the operator concedes a covered place, and it asks the merits question that follows: once the sole inaccessible channel is covered, what does the operator owe, and why does neutrality not

1. See generally Y. Tony Yang & Brian Chen, *Web Accessibility for Older Adults: A Comparative Analysis of Disability Laws*, 55 GERONTOLOGIST 854 (2015) (documenting the growing centrality of Internet access to commerce, government benefits, and health information, and the age- and disability-based digital divide that follows when access is not extended to private entities).

2. See 42 U.S.C. §12181(7) (enumerating physical categories of public accommodation). The courts have taken three paths. Compare *Nat'l Ass'n of the Deaf v. Netflix, Inc.*, 869 F. Supp. 2d 196, 200–02 (D. Mass. 2012) (holding, on the reasoning of *Carparts Distrib. Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England, Inc.*, 37 F.3d 12, 19 (1st Cir. 1994), that a web-only streaming service may itself be a place of public accommodation), with *Robles v. Domino's Pizza, LLC*, 913 F.3d 898, 905 (9th Cir. 2019) (resting coverage on the nexus between the operator's website and its physical restaurants, and expressly declining to decide whether the ADA reaches a business with no physical location), and *Gil v. Winn-Dixie Stores, Inc.*, 993 F.3d 1266, 1277 (11th Cir. 2021) (holding that public accommodations are limited to physical places), *vacated as moot*, 21 F.4th 775 (11th Cir. 2021).

answer for it. The coverage question is a different chapter, and it is developed on its own terms elsewhere.

II. The Staircase

Begin with a building. Its only entrance is a flight of stairs. Every visitor who arrives meets the same stairs; the wheelchair user is not turned away by name, and the owner adopted no rule against anyone. Identical treatment, uniform for all. And a sole staircase entrance is the paradigm accessibility barrier, the very image the disability statutes were written around. The Supreme Court said as much in describing what the Rehabilitation Act reaches: the elimination of architectural barriers was a central aim of the Act, and such barriers were not erected with any intent to exclude disabled people.³ The stairs discriminate not because someone chose to keep the wheelchair user out, but because the structure, offered identically to all, is usable by some and closed to others.

The inaccessible website that is a seller's only channel is that staircase rebuilt in code. The same page loads for everyone; the screen reader meets a wall. The operator's insistence on sameness describes the staircase and mistakes it for a defense.

Formal identity of treatment has never been the measure of an antidiscrimination duty.⁴ The point is familiar from the race context, where the Supreme Court held under Title VII that the statute reaches practices that are, in its words, "fair in form, but discriminatory in operation."⁵ What matters is result, because Congress "directed the thrust of the Act to the consequences of employment practices, not simply the motivation."⁶ Title VII is a different statute with a different

3. *Alexander v. Choate*, 469 U.S. 287, 296–97 (1985) (identifying the removal of architectural barriers as a central aim of the Rehabilitation Act and observing that such barriers were not erected to exclude the handicapped).

4. See generally Anita Silvers, *Reconciling Equality to Difference: Caring (F)or Justice for People with Disabilities*, 10 HYPATIA 30 (1995) (developing the critique of formal equality on which disability antidiscrimination law rests: uniform treatment of nonuniform bodies reproduces exclusion).

5. *Griggs v. Duke Power Co.*, 401 U.S. 424, 431 (1971) (holding that the Act proscribes practices "fair in form, but discriminatory in operation" and that the touchstone is business necessity).

6. *Id.* at 432.

test, and the analogy is offered only for the proposition it establishes plainly: a showing that everyone met the same requirement does not answer the discrimination question. It restates it.

III. Indifference, Not Animus

The disability statutes carry this insight in their own text and history, and more explicitly than Title VII does. When the Supreme Court construed Section 504 in *Choate*, it grounded the statute in a factual premise about how disability exclusion happens. Congress understood such discrimination to be “most often the product, not of invidious animus, but rather of thoughtlessness and indifference,” a matter of “benign neglect.”⁷ A statute aimed at indifferent design cannot be read to require proof of a design to exclude, because the harms Congress named, the barrier no one meant as a barrier, would fall outside its reach.

From that premise the Court drew the operative standard. Section 504 requires that an otherwise qualified disabled individual “be provided with meaningful access to the benefit that the grantee offers,” and the benefit cannot be defined so as to deny that access; to secure it, reasonable accommodations may be required.⁸ Meaningful access, not formal sameness, is the yardstick.

The standard has a ceiling as well as a floor, and a careful advocate states both. *Choate* did not hold that any disproportionate effect on disabled people states a claim. It assumed, without deciding, that Section 504 reaches at least some conduct with an unjustifiable disparate impact, while rejecting the broader notion that every impact showing makes out a prima facie case.⁹ And on the facts before it, a neutral fourteen-day limit on inpatient coverage that applied to disabled and nondisabled Medicaid users alike did not deny meaningful access, because the statute assures evenhanded treatment and does not guarantee equal results.¹⁰ *Choate* is therefore

7. *Choate*, 469 U.S. at 295.

8. *Id.* at 301.

9. *Id.* at 299 (assuming without deciding that Section 504 reaches “at least some conduct that has an unjustifiable disparate impact upon the handicapped,” while declining to hold that all impact showings state a prima facie case).

10. *Id.* at 304 (holding that Section 504 seeks to assure evenhanded treatment and does not guarantee the handicapped equal results, and does not require redefining a benefit to meet greater medical needs).

authority for two things and not a third: for the principle that indifferent, facially neutral design can discriminate, and for the meaningful-access measure, but not for the proposition that any adverse effect wins.

That distinction is what makes the sole inaccessible channel the strong case rather than the weak one. The plaintiff in *Choate* still received fourteen days of identical, usable hospital care; the neutral limit left the benefit meaningfully available. The disabled customer at a closed sole channel receives nothing usable at all, and has no other route to the goods. Where the inaccessible thing is the only thing, the meaningful-access failure is not partial. It is complete.

IV. Where the Wrong Lives

The account of why a neutral channel discriminates is a disparate impact account: a uniform practice, adopted without animus, that burdens a protected class in operation. But naming the theory is not the same as naming the cause of action, and the vehicle depends on which command of the law applies. Getting this right matters, because a plaintiff who pleads the wrong label hands the operator a motion to dismiss.

A. Under Title II and Section 504, Disparate Impact Is a Named Theory

Where the operator is a public entity or a recipient of federal financial assistance, disparate impact is not a theory to be inferred; it is one of the recognized ways to plead the claim. The Ninth Circuit has held that a disability discrimination claim may rest on “one of three theories of liability: disparate treatment, disparate impact, or failure to make a reasonable accommodation.”¹¹ And it applied that theory to the precise fact pattern at issue here. A community college ran its student web portal on software that was not compatible with screen reading programs, a facially neutral practice that denied blind students an equal opportunity to review their grades or register for classes; the court held that this systemic barrier, because it burdened all blind users rather than one requester, was properly analyzed as disparate impact,

11. *Payan v. Los Angeles Cmty. Coll. Dist.*, 11 F.4th 729, 738 (9th Cir. 2021) (quoting *Davis v. Shah*, 821 F.3d 231, 260 (2d Cir. 2016)).

and that “systemic barriers call for systemic reasonable modifications.”¹² The court took care to hold that this private right of action survives, reasoning that the Supreme Court’s decision in *Alexander v. Sandoval* did not disturb *Choate* and that private disparate impact claims remain enforceable under Title II and Section 504.¹³

Payan arises under Title II and Section 504, so it does not itself settle the Title III path. What it settles is that the inaccessible sole channel, described as a systemic barrier that burdens an entire class, is the textbook disparate impact case, and that the disabled plaintiff need not show anyone intended the exclusion.

B. Under Title III, the Same Wrong Runs Through the Affirmative Duties

Title III does not announce a freestanding disparate impact count in the manner of Title VII, and a plaintiff should not plead one by that name. It does not need to. Title III’s general command is full and equal enjoyment of the goods and services of a place of public accommodation,¹⁴ and the statute then specifies the forms that discrimination takes, three of which carry the sole-channel case on their own terms.

First, it is discrimination to impose eligibility criteria that “screen out or tend to screen out” individuals with disabilities, unless the criteria are shown necessary.¹⁵ An interface that can be operated only by sight, or only by hearing, or only with a mouse is a criterion of exactly that kind, screening out a class by the way it is built. Second, it is discrimination to fail to make reasonable modifications to policies, practices, and procedures where necessary to afford access,

12. *Id.* at 739–40. District courts have since policed this allocation between the two theories. *See, e.g., Prado v. City of Berkeley*, No. 23-cv-04537, slip op. (N.D. Cal. Aug. 6, 2024) (restating *Payan*’s rule that challenges to policies that fail to remedy systemic barriers proceed as disparate impact, and channeling claims pleaded as individualized accommodation requests into the accommodation theory instead); *Mayer v. City of San Jose*, No. 20-cv-06710, slip op. (N.D. Cal. Sept. 16, 2024) (treating as undisputed that a facially neutral practice of locking doors disparately restricted access for wheelchair users, and confining the summary-judgment dispute to whether the proposed modification was reasonable).

13. *Id.* at 737. The question is contested. *See id.* at 746 (Lee, J., dissenting) (arguing that the statutes bar intentional discrimination only and that *Sandoval* forecloses a private disparate impact action).

14. 42 U.S.C. §12182(a).

15. *Id.* §12182(b)(2)(A)(i).

unless the modification would fundamentally alter what is offered.¹⁶ Third, and most directly, it is discrimination to fail to take the steps necessary to ensure that no individual with a disability is excluded or treated differently for want of auxiliary aids and services, absent fundamental alteration or undue burden.¹⁷ The implementing regulation names the aids at issue for a digital channel without ambiguity: screen reader software, magnification software, and “accessible electronic and information technology” are auxiliary aids for individuals who are blind or have low vision, and a public accommodation must furnish appropriate aids where necessary to ensure effective communication.¹⁸

These duties reach the channel itself, not merely conduct inside a physical store. The Ninth Circuit has held that the ADA “applies to the services of a place of public accommodation, not services in a place of public accommodation,” so that the auxiliary-aids obligation extends to a covered operator’s website and application.¹⁹ The theory that explains the wrong is disparate impact; the provisions that carry the claim into a Title III court are the screen-out bar, the reasonable-modification duty, and the auxiliary-aids duty. Impact is the engine. The affirmative duties are the vehicle.

V. Neutrality as Confession

Return now to the operator’s sentence: the site is the same for everyone. Set it against the auxiliary-aids duty and it collapses on contact. That duty obligates the operator to take steps so that no individual with a disability is “excluded, denied services, segregated or otherwise

16. *Id.* §12182(b)(2)(A)(ii); *see PGA Tour, Inc. v. Martin*, 532 U.S. 661, 688 (2001) (holding that Title III requires without exception that the policies, practices, or procedures of a public accommodation be reasonably modified for disabled individuals as necessary to afford access unless doing so would fundamentally alter what is offered).

17. *Id.* §12182(b)(2)(A)(iii).

18. 28 C.F.R. §36.303(b)(2), (c) (2024), <https://www.ecfr.gov/current/title-28/chapter-I/part-36/section-36.303> (last visited July 10, 2026).

19. *Robles*, 913 F.3d at 905 (quoting *Nat’l Fed’n of the Blind v. Target Corp.*, 452 F. Supp. 2d 946, 953 (N.D. Cal. 2006)); *accord Netflix*, 869 F. Supp. 2d at 200–01 (holding that the ADA covers the services “of” a public accommodation rather than services “at” or “in” one, so that streaming video accessed exclusively in the home remains a service of a public accommodation subject to the effective-communication duty).

treated differently . . . because of the absence of auxiliary aids and services.”²⁰ The uniformly delivered channel is the setting in which that duty operates, because a single format offered to all is precisely what fails the customer who needs a different one. Sameness does not rebut the duty. Sameness is the fact that calls the duty into being. The operator who says everyone meets the same page has stated the condition the law addresses and imagined it a defense.

The sole channel sharpens the point past argument. When the inaccessible interface is one option among several, an operator can gesture at the alternatives and contest how meaningful the access really was. When the interface is the only way to the goods, there is nothing to gesture at. The meaningful-access failure is total, which places the sole-channel case at the center of what *Choate*’s standard reaches rather than at its uncertain edge.²¹ Nothing in this asks for more than equal footing. The claim is not for a superior interface or for guaranteed outcomes, which the statute does not promise,²² but for access to the single channel every customer must use.

Two defenses remain, and each has its place. Fundamental alteration and undue burden are real limits, written into the auxiliary-aids provision itself, and they are decided on the facts of the particular operator and the particular fix.²³ But the feasibility of making a digital channel usable is not an open question in the abstract: courts have treated conformance with the Web Content Accessibility Guidelines as an available equitable remedy, and have held that the absence of a specific accessibility regulation does not erase the statutory duty.²⁴ The other defense, that a purely digital operator is not covered at all, is a serious argument, but it is a coverage argument, and it lives in the chapter this Article set aside at the start.

20. 28 C.F.R. §36.303(a) (2024).

21. *See Choate*, 469 U.S. at 301; *see supra* Part III.

22. *Choate*, 469 U.S. at 304.

23. 42 U.S.C. §12182(b)(2)(A)(iii) (preserving the fundamental-alteration and undue-burden defenses).

24. *Robles*, 913 F.3d at 907–08 (holding that the lack of specific regulations does not eliminate the statutory obligation and that a court may order conformance with the Web Content Accessibility Guidelines as an equitable remedy). The court also rejected a vagueness challenge, holding that “full and equal enjoyment” and “effective communication” are comprehensible standards to which conduct must conform. *Id.* at 907. *See also* Peter Blanck, *On the Importance of the Americans with Disabilities Act at 30*, 34 J. DISABILITY POL’Y STUD. 176 (2021) (surveying Title III website-accessibility litigation at the statute’s thirtieth anniversary and the consequences of leaving digital channels outside its reach).

VI. Conclusion

The sole inaccessible channel is a staircase with no ramp, poured in code instead of concrete. Every customer meets the same steps, and the operator offers that sameness as its answer. It is not an answer. Under Title II and Section 504 the uniform barrier that closes a class out is a disparate impact claim by name, and under Title III it is a breach of the duties to avoid screen-out criteria, to modify, and to furnish the aids that make the one channel usable. The operator who says that everyone climbs the same stairs has not raised a defense. It has described the violation.