
SECTION 504 · REHABILITATION ACT · ADA TITLE II · *FARETTA V. CALIFORNIA* · *TENNESSEE V. LANE* · *BOUNDS V. SMITH* · *LEWIS V. CASEY* ·
ALEXANDER V. CHOATE · ACCESS TO COURTS · PRO SE REPRESENTATION · 28 U.S.C. § 1654 · LEGALESE · PLAIN LANGUAGE · DISPARATE IMPACT
· METHODS OF ADMINISTRATION · CENTER-EMBEDDING · WORKING MEMORY · COGNITIVE ACCESSIBILITY · FUNDAMENTAL RIGHTS ·
DISABILITY RIGHTS

A CIVIL RIGHTS READING OF LEGALESE

Pro Se and the Cognitive Tax

Legalese and the fundamental right of access to courts

When you go to court without a lawyer, the law assumes you can read the law. For a large, identifiable group of people, the way the law is written makes that impossible, and the civil rights statutes already on the books reach the problem.

START HERE

The right to represent yourself assumes you can read the law. Often you cannot.

In most civil cases in state courts, at least one side has no lawyer, usually the person being sued. That person has to read statutes, rules, and opinions to defend themselves. Those documents are written in a specialized style that is hard for anyone and, for some readers, close to unusable. The right to appear without counsel is real. The ability to use it depends on a reading task the law never checks anyone can do.

WHAT THIS PAPER ARGUES

Writing the law in legalese is a choice, and it discriminates.

A court that hands people legal documents they cannot understand is administering the court system in a way that falls hardest on readers whose disabilities affect how they process dense language. Civil rights law calls that a discriminatory method of administration. It does not require anyone to have meant harm. It only requires that a neutral-looking practice land unequally on a protected group. This one does.

WHERE THE RIGHT COMES FROM

Self-representation runs on two tracks.

Criminal cases

The Constitution itself protects the choice to defend yourself. The Sixth Amendment guarantees it, because the person who bears the consequences of a conviction gets to decide how the defense is run.

Civil cases

A federal statute gives every party the right to plead and conduct their own case. Due process principles and parallel state guarantees back it up. This is the track most self-represented people are on.

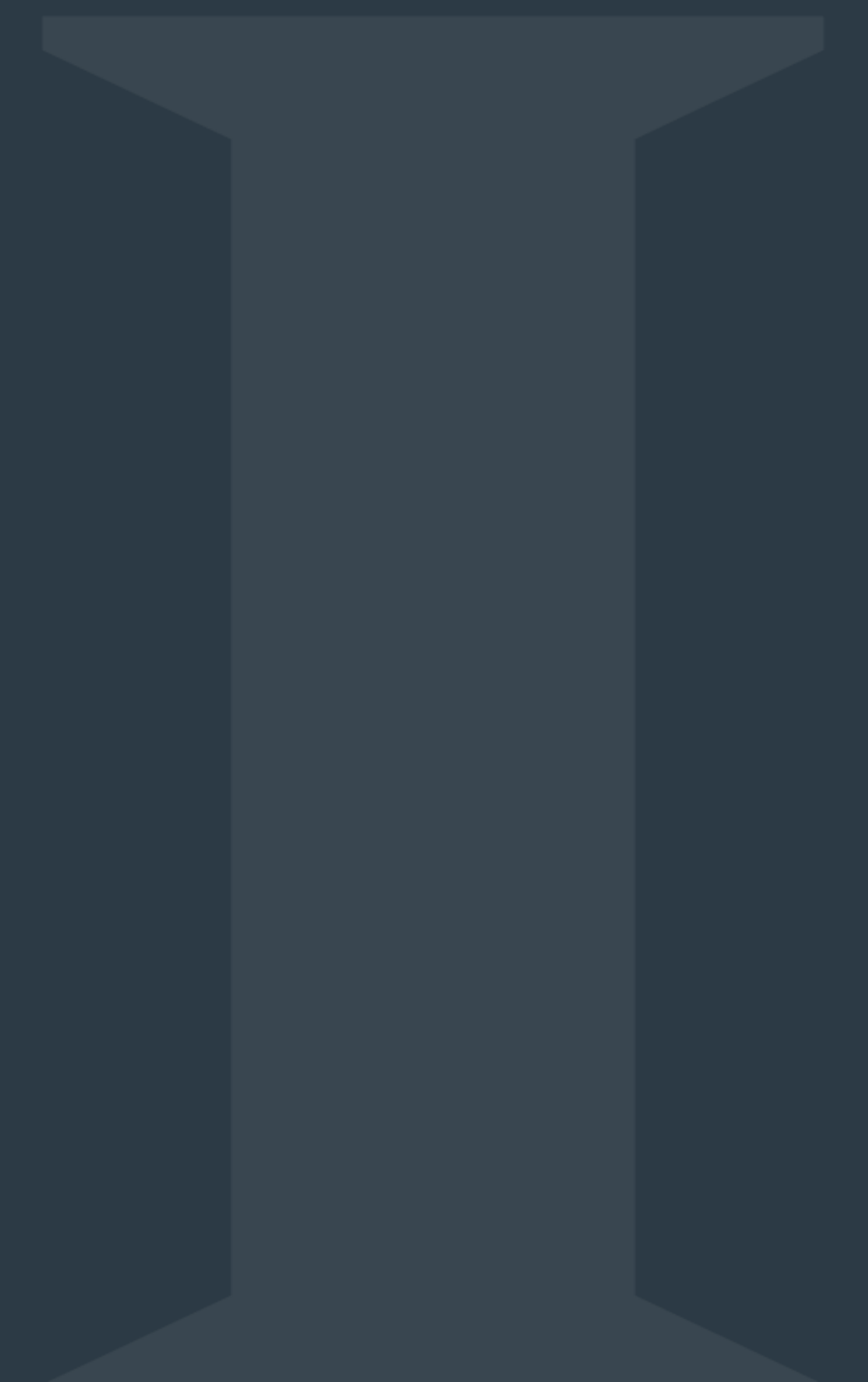
Either way, exercising the right is first an act of reading. You cannot conduct a case in a language you cannot parse.

THE MECHANISM

What legalese does to a reader, and why not to all readers equally

The cost is real, it is measurable, and it is not shared evenly.

The difficulty of legal writing is a memory problem, and memory is exactly where the protected class differs.



TESTED, NOT ASSUMED

Experiments show what actually makes legal writing hard.

Researchers rewrote legal texts to change one feature at a time while keeping the meaning identical, then measured comprehension. The result names the culprit.

Sentences inside sentences

The biggest driver. Clauses buried in the middle of other clauses force you to hold an unfinished thought open while you read past it.

Rare and technical words

The second driver. Terms that mean something other than their everyday sense produce steady misreading.

Passive voice, odd capitals

No measurable effect. Features people blame for legalese turn out not to be what makes it hard.

THE TAX, MEASURED



The penalty for a buried clause is *larger* for readers with lower working memory.

Everyone finds a sentence-inside-a-sentence harder than a straightforward one. But the size of that extra difficulty is not the same for everyone. Readers with less working memory pay a bigger penalty on the identical sentence. That difference, the extra cost carried by the reader with less capacity, is the cognitive tax. It is not that hard text is hard for everyone. It is that the same text costs some readers measurably more, and the reason is a capacity the protected class is short of.

WHO CARRIES THE COST

The people who pay the tax are the ones the statutes already protect.

Working memory is impaired, in documented and clinical ways, across a set of recognized disabilities: attention and executive-function conditions, autism, dyslexia, the lasting effects of traumatic brain injury, and more. These are disabilities under the Rehabilitation Act and the ADA. The feature that controlled study names as the main cost driver in legal text loads the exact capacity these conditions limit. The writing and the disability meet at one point, and it is the same point.

THE LAW

The statutes already do this work

No new law is needed. The duty and the remedy are already on the books.

Meaningful access, not just formal access, has been the disability-rights standard for forty years.

THE GOVERNING STANDARD

Access has to be meaningful, not just formal.

The Supreme Court settled long ago that handing a disabled person the same benefit everyone else gets is not enough if they cannot actually use it. What the law requires is meaningful access to the benefit, which sometimes means a reasonable change in how the benefit is delivered. A court that publishes forms and rules a protected-class reader cannot understand has given formal access to the courts without meaningful access, and the reasonable change is comprehensible drafting.

THE HINGE OF THE CASE

No one has to have meant harm.

Nobody writes statutes in legalese in order to shut out disabled readers. If the law required proof of that intent, this claim would fail at the door. It does not. The Court has recognized that most disability discrimination comes from neglect and thoughtlessness, not malice, and that a rule reaching only intentional acts would leave that harm untouched. The standard is effect, and the effect here is documented.

TWO WAYS IN

The argument has a primary route and a backup.

- 1** **The statutory route** PRIMARY
Section 504 and ADA Title II ban discriminatory methods of administration. This route is primary because it can win money damages against funded institutions and carries a reasonable-modification duty with settled contours.
- 2** **The constitutional route** BACKUP
The access-to-courts line of cases protects the tools people need to use the courts. This route mainly yields court orders rather than damages, and carries heavier questions about suing states, so it runs second.

THE CONSTITUTIONAL BACKUP

The tools the state must provide have to be usable.

The Court has held that the right of access to the courts requires the state to furnish the tools people need to bring their claims. The case law asks whether the tools are present. It has not yet asked whether they are readable by the people they are given to. A law library of books a reader cannot parse is the physical version of the problem; incomprehensible forms and rules are the cognitive version. A furnished tool the protected-class reader cannot use is not meaningful access.

THE PROOF

How you prove it, and what the government already admitted

The evidence is experimental, and one key concession is on the record.

The strongest proof is a controlled comparison of readers, and the government has conceded the duty runs regardless of any technical standard.

BUILDING THE CASE

What a plaintiff actually puts in front of a court.

- 1** **Compare readers, not formulas** LEAD WITH THIS
Hold the text constant, vary the reader, and measure comprehension. That is the showing that isolates the disability-linked penalty.
- 2** **Expert testimony on the mechanism**
Cognitive scientists explain how buried clauses load working memory and why that falls harder on the protected class.
- 3** **The specific text at issue**
Show the form or rule the plaintiff actually had to use, and its plain-language counterpart, to prove a less-discriminatory alternative exists.

ANSWERING THE BEST OBJECTION

The biggest counter-study points the same way.

The largest analysis in this field, covering two million contracts, shows that popular readability scores are easy to game and that broad claims about national reading levels do not hold up. That study looks like a threat until you read what it recommends: stop relying on crude readability scores and focus on genuinely vulnerable populations. This paper does exactly that. It does not lean on readability formulas, and it targets an identified disabled class rather than the general public. The field's sharpest skeptic described this project and endorsed it.

ON THE RECORD, AGAINST INTEREST

“Regardless of the compliance dates, covered entities have an ongoing obligation to ensure that their services, programs, and activities offered using web content and mobile apps are accessible to individuals with disabilities.”

United States Department of Justice, Title II Interim Final Rule, 91 Fed. Reg. 20902 (Apr. 20, 2026)

A defendant will say there is no official standard for cognitive accessibility, so there is no duty. The government has already answered: the duty runs even where a standard exists, so its absence cannot excuse anyone.

THE REMEDY

What a court can actually order

Start small and provable, reach further only when the smaller fix is not enough.

Staging the remedy is what keeps it within the bounds the Court requires.



LEAST INTRUSIVE FIRST

A staged remedy, narrow to broad.

- 1** **Court forms and instructions** EASIEST
Rewrite the public-facing procedural materials in plain language. Squarely within a court's own administrative power.
- 2** **Agency guidance**
Public agency documents already fall under a plain-writing mandate. Enforcement, not obligation, is what has been missing.
- 3** **Plain-language companion texts**
An accurate, clearly-marked plain-language version alongside the binding text, the way multilingual law already works.
- 4** **Binding primary law** HARDEST, LAST
The strongest separation-of-powers concerns live here, which is why it comes last and only if the narrower fixes fail.

WHY THE ORDER MATTERS

Staging is what keeps the remedy within bounds.

Disability law limits remedies to ones with manageable bounds. A plaintiff who marches in demanding that a legislature rewrite the state code invites the objection that the fix is unmanageable. A plaintiff who asks first for readable court forms does not. Putting the smallest, most administrable fix first, and requiring proof that it is not enough before reaching further, is how the remedy stays inside the line the Court drew.

WHERE IT LANDS

76%

of cases in the largest state-court study had at least one side without a lawyer, usually the defendant.

More than half of those cases were low-value debt, eviction, and small-claims matters, the proceedings where housing, credit, and basic subsistence are decided. Disability tracks lower income, and lower income is the strongest predictor of appearing without a lawyer. The groups overlap. The cognitive tax is not levied at the edges of the civil justice system. It is levied at its center of mass.

WHAT THIS DOES NOT CLAIM

The honest boundaries of the argument.

Not all complexity is unlawful

Some legal difficulty comes from the concepts themselves, and simplifying language cannot remove it. The claim reaches only the extra cost the writing style adds on top of what the content requires.

The training objection, answered

One reply is that difficulty is just lack of exposure, not disability. But lawyers, the most exposed readers alive, still show the deficit. Conditioning a right on training the state never provides only restates the problem.

THE CLAIM, RESTATED

The duty is already law. What is new is naming the barrier.

Nothing here requires Congress to pass anything. The meaningful-access standard, the ban on discriminatory methods of administration, the reasonable-modification duty, and the access-to-courts right are all settled law. The contribution is to see the writing itself as the method of administration, to measure the differential cost it imposes on the protected class, and to stage a remedy a court can manage. The ADA already does this work. It just has not been asked this question.

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29 U.S.C. § 794.
42 U.S.C. § 12132.
5 U.S.C. § 706.
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