

The Accessibility Paradox

Method-of-administration disparate impact and the recursive failure of disability rights enforcement architecture

Seven days before the 2024 Title II web-accessibility deadline took effect, the Department of Justice used an Interim Final Rule to push it back a year, the first such use in the history of the ADA. The retreat is not an episode; it is the pattern. The procedural system built to vindicate disability rights is itself a method of administration that disparately burdens the class it exists to protect.

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days before the compliance deadline, DOJ extended it by a year, by Interim Final Rule, with no notice and comment.

The first use of an IFR to modify disability accessibility regulation in the ADA's history.

The agency charged with enforcing the right pushed the deadline past the people the rule was for.

The class encounters a protection; the protection is narrowed or delayed; the class organizes to invoke it; the cycle repeats. Thirty-six years after the ADA, fifty-three after the Rehabilitation Act, **the pattern has not substantially changed.**

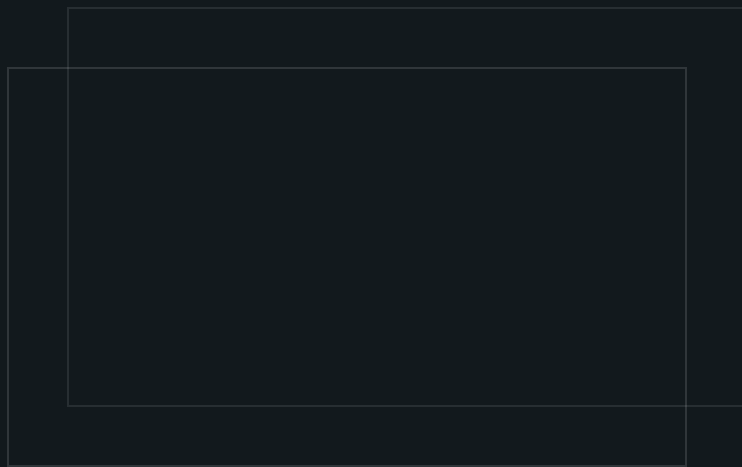
The procedural system for invoking a disability right is not exempt from the disability analysis it was built to conduct.

The components are settled. The methods-of-administration disparate-impact regulations have been in force since 1977 and 1980; *Alexander v. Choate*'s meaningful-access standard is Supreme Court precedent. Nothing here asks for new doctrine.

Only the object is new. If the class bears systematically higher cost to invoke the protection than any comparator, and the architecture can be redesigned, then the architecture is itself a method of administration that violates the statute.

The Three-Track Framework

The pond, the jurisdictional allocation, and the meaningful-access anchor



Gilly, T. (2026). The Accessibility Paradox. Working paper, April 2026 (v5), sec. II.

A federal agency drips into a pond. The states draw from it. The class drinks.

No single statute reaches the whole causal chain. Three, run in parallel, do.

TRACK 1 • THE DRIP Section 504 Reaches DOJ and executive agencies for their own conduct, 29 U.S.C. §794(a), MOA at 28 C.F.R. §39.130(b)(3).	TRACK 2 • THE DRAW ADA Title II Reaches state and local entities whose implementation produces downstream impact, 28 C.F.R. §35.130(b)(3).	TRACK 3 • THE DRIP, NAMED APA review Reaches discrete final actions, the IFR, the guaranty exemption, under 5 U.S.C. §§702, 706.
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Federal agencies are not "public entities" under Title II, so DOJ's own conduct is reached through **Section 504 and the APA, not Title II.**

Sources 29 U.S.C. §794(a); 42 U.S.C. §12131(1); 5 U.S.C. §§702, 706; Cellular Phone Taskforce v. FCC, 205 F.3d 82 (2d Cir. 2000); Gilly, sec. II.D.

Not the disparate-impact theory Sandoval foreclosed. The meaningful-access theory Choate requires.

THE STANDARD • ALEXANDER V. CHOATE

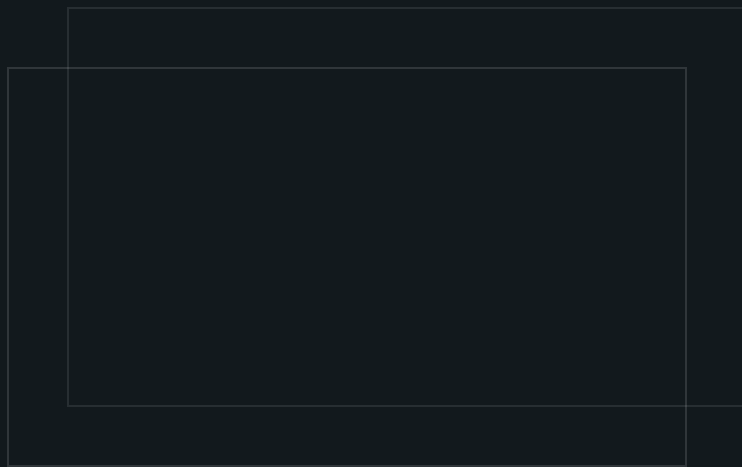
Section 504 reaches practices that deny **meaningful access**, more than formal availability, measured against the comparator's access. Discrimination is "most often the product, not of invidious animus, but of thoughtlessness and indifference, of benign neglect."

THE ANSWER • MARK H. V. LEMAHIEU

Section 504's regulations are privately enforceable where they **construe** the statute's prohibition rather than extend it. A method of administration that produces the outcome Choate forbids violates the statute as Choate read it.

The Architecture as Method of Administration

Four structural features whose cumulative effect is the disparate impact



Gilly, T. (2026). The Accessibility Paradox. Working paper, April 2026 (v5), sec. III.

No single feature need be defective. The cumulative burden is the impact.

The benefit is the protection itself; imposing differential cost to invoke it is discrimination under the methods-of-administration regulations.

01 Overlapping pathways At least six federal regimes, each with its own exhaustion, agency, remedies, and limitations.	02 Regulatory carve-outs Coverage narrowed without statutory text; the claimant must rebut each exception in turn.	03 Procedural complexity Aggregate cognitive, temporal, and financial cost of invoking the protection.	04 Legalese The drafting convention itself, cost layered atop the substance, and reserved for fuller treatment.
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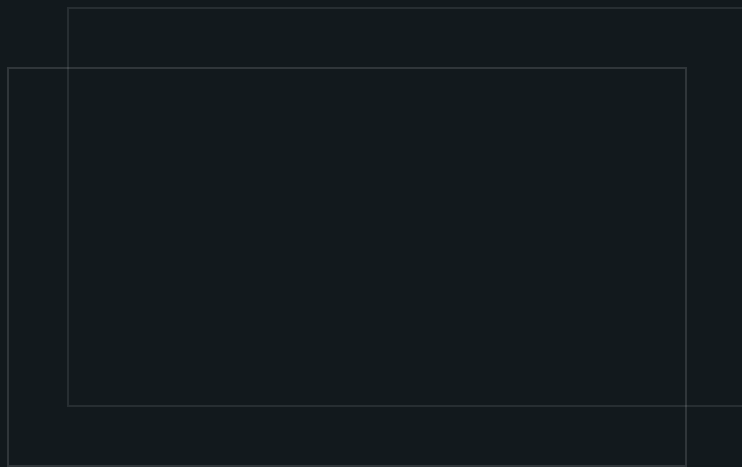
Non-disabled persons also struggle with stairs. The law does not treat that as a defense.

The comparison is not disabled versus non-disabled in the abstract. It is the disabled person seeking disability-rights protection against the non-disabled person seeking **any other** legal protection, Title VII with one agency, against Title II plus Section 504 plus state law plus more.

The claimant's procedural cost is tied to the **same characteristics that entitle the claimant to the protection**. That coincidence is not accidental. It is constitutive of the claim.

The Guaranty Exemption

A carve-out with no statutory anchor, and why Loper Bright changed its footing



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Chevron made the carve-out's legality a non-question. Loper Bright reopened it.

Section 504 does not exclude "a contract of insurance or guaranty." The regulation does, with no textual anchor. Once agency interpretations get independent judicial review rather than deference, **a coverage-narrowing carve-out with no statutory basis is exposed.**

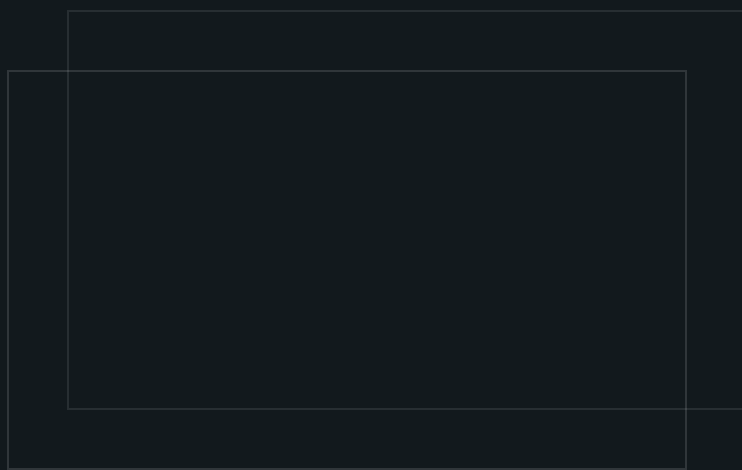
THE GOVERNMENT'S OWN INCONSISTENCY

The CFDA lists OPIC insurance and SBA guaranties as assistance; SBA treats PPP recipients as covered (applied in *Buettner-Hartsoe*); the 2024 HHS rule reaches "other arrangements." **The DOJ regulation is the outlier.**

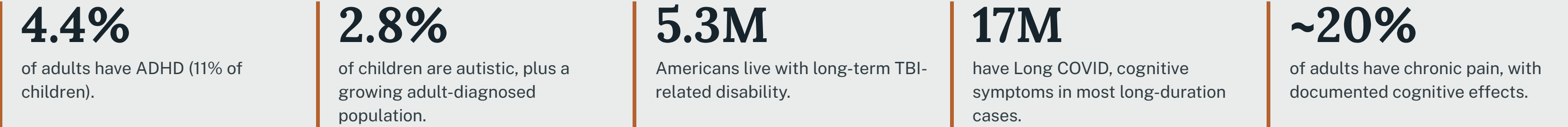
Its effect: civil rights coverage turns on the **transactional structure** of the federal relationship rather than the fact of federal support, treating the same protected class differently for an unrelated reason.

The Protected Class and Cognitive Accessibility

The cognitive subset is not an edge case, and the doctrine self-reinforces against them



The architecture demands exactly the executive function these conditions impair.



Add psychiatric conditions affecting attention, and the subset is **substantial and overlapping**. For these members, engaging the enforcement architecture is itself a disabling task.

Sources Kessler et al., 163 Am. J. Psychiatry 716 (2006); CDC NSCH (2022); CDC ADDM (2023); Brain Injury Ass'n of Am. (2023); CDC Household Pulse (2024); Dahlhamer et al., 67 MMWR 1001 (2018); Gilly, sec. V.A.

The barrier keeps out the cases that would prove the barrier exists.

Doctrine develops where cases are brought. Cases are brought where counsel can navigate the system. The system imposes the burden. Those who cannot overcome it do not file, so the frontier recedes from the very issues that most affect the cognitive subset.

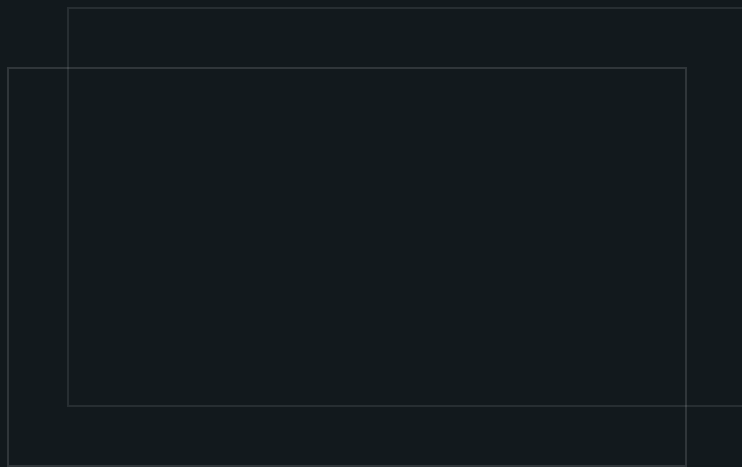
A PARTIAL OPENING • 2024 HHS RULE

WCAG 2.1 Level AA, incorporated at 45 C.F.R. §84.84, carries cognitive-accessibility criteria: predictable navigation, plain language, avoidance of disadvantaging patterns.

It establishes cognitive accessibility as cognizable. The argument extends it from interfaces to **the enforcement architecture itself.**

Remedies

Injunctive relief survives Cummings, and the Olmstead model answers separation of powers



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The agency designs the plan. The court sets, and keeps, the benchmarks.

Cummings barred emotional-distress damages, not remedies. Injunctive relief, declaratory relief, and fees remain, and structural injunctive relief has anchored every major disability-rights victory since *Davis* and *Olmstead*. The remedy sought is redesign of the architecture, not accommodation for one complainant.

THE FOUR STEPS

- i** Declare the identified features an unlawful method of administration.
- ii** Order the agency to develop a responsive plan.
- iii** Set benchmarks, cognitive-accessibility outcomes, intake completion rates.
- iv** Retain jurisdiction to review plan and implementation.

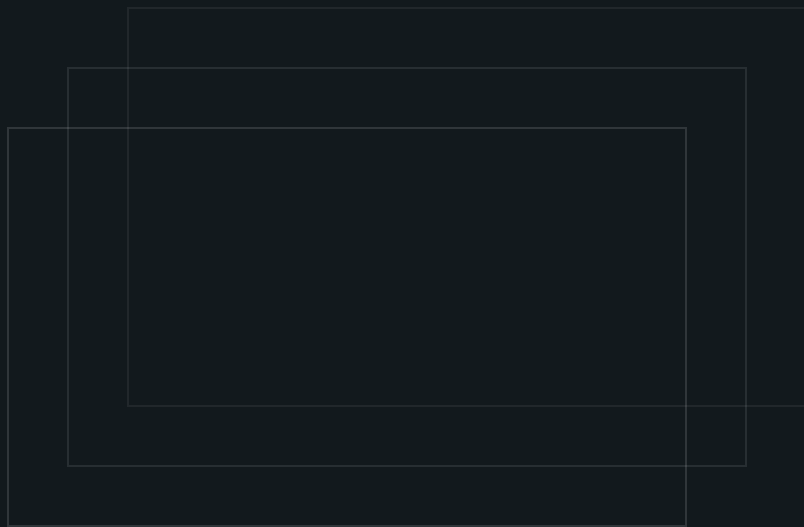
The curb cut helps the wheelchair first, and everyone after.

Unified intake portal One entry across §504 and Title II, distinctions preserved.	Plain-language guidance Written for the cognitive subset's reading level.	Carve-out repair Narrow or drop the guaranty exemption per Loper Bright.	Accessible intake Oral, telephonic, video, and staff-assisted filing.	Notice-and-comment A binding commitment against IFR retreats.
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The statutes do not require that only disabled persons benefit, only that the remedy address the demonstrated impact. That it helps everyone makes it more consistent with their objectives, not less.

Reflexive Disclosure: Publication as Method of Administration

The architecture that gates this scholarship is itself part of the enforcement architecture



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The architecture that decides which arguments reach decision-makers is itself part of the architecture.

Law reviews sit inside universities that receive federal assistance; under the Civil Rights Restoration Act the whole university is covered. Their formatting demands, fees, expedite norms, and months-long timelines fall differentially on the cognitive subset, **and venue-by-venue restriction of AI and speech-to-text tools operates as restriction of accommodation.**

THE MORAL ASYMMETRY

The same tools, spellcheck, autocomplete, search, used invisibly by the non-disabled draw no objection. Used visibly by disabled scholars, they attract "concern for intellectual integrity." **It is not concern for integrity. It is the accommodation debate the disability community has had since corrective lenses.**

"AI can make mistakes; verify important information" is a transfer of labor, and a method of administration.

The disclaimer shifts verification from the provider, who can reduce the error rate, to the user, who cannot. And the population most likely to use AI as accommodation **overlaps with the population least able to verify its output**, because the same disability drives both.

Production burden is diffuse; verification burden is episodic, high-stakes, concentrated. For a constrained user the verification may **exceed the cognitive budget even as production eases**. Providers should flag high-risk output, not issue blanket disclaimers.

What Is Required Is the Filing

Four pathways from settled doctrine to structural relief

1	Count-addition in existing litigation	Add an MOA count to ongoing §504/Title II suits, low marginal cost, less separation-of-powers cover for private defendants, and doctrine accumulates across contexts.
2	Administrative complaint	A predicate to federal-agency litigation; DOJ won't find against itself but must investigate and issue a written determination, building the record.
3	Declaratory & structural injunctive action	The ambitious version, DOJ and the Attorney General named, the APA §702 waiver supplying immunity relief for a direct §504 claim.
4	Clear the programmatic-challenge bar	Target discrete final actions (the IFR, the guaranty exemption) and plead §504 as a direct cause of action, not APA review of aggregate practice, to sidestep Lujan and Norton.

Sources 5 U.S.C. §702; Lane v. Pena, 518 U.S. 187 (1996); Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871 (1990); Norton v. S. Utah Wilderness All., 542 U.S. 55 (2004); Gilly, secs. VIII.A–E.

The framework is available. The doctrinal foundation is stable. The remedy is injunctive and is not foreclosed by Cummings. The pathways are administrative, declaratory-judgment, and count-addition in existing litigation. The argument does not depend on condemning any single regulatory choice, only on the cumulative effect the settled framework already makes cognizable.

What is required **is the filing.**

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