

The ADA Already Does That

Statutory originalism, the CRPD ratification record, and the scope of disability rights in the United States.

61–38

SIX VOTES SHORT OF RATIFICATION

The treaty failed. The record did not.

The Senate fell six short of the sixty-seven votes a treaty requires, and the United Nations Convention on the Rights of Persons with Disabilities was not ratified. But the proceedings produced a formal evidentiary record of how the political branches understood the reach of United States disability rights law. Subsequent analysis has treated the failure as the main event. This paper treats the record as the resource.

A permanent, untapped resource for reading the statutes broadly.

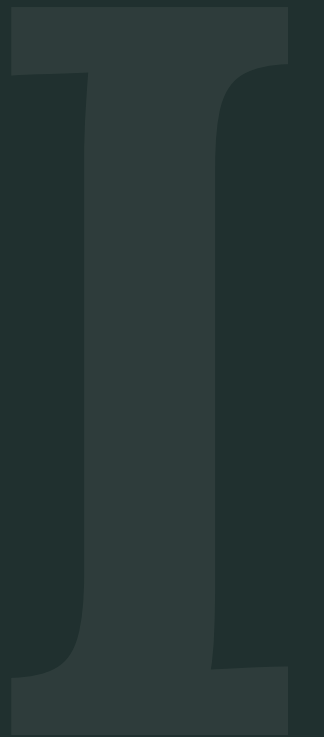
The argument runs on the same foundation as constitutional originalism: contemporaneous statements by the political actors responsible for a legal instrument are privileged evidence of its meaning. The 2012 ratification record is authoritative evidence of the scope of the Americans with Disabilities Act and Section 504, and it can be deployed in brief-writing, administrative advocacy, and statutory construction to recover ground lost in three decades of narrowing.

"Current United States law fulfills or exceeds the obligations of the Convention for the United States."

Adopted by the Senate Foreign Relations Committee on a vote of fourteen to five. Not a floor statement, not a private letter, not a staff memorandum, but a formally voted declaration attached to the proposed ratification instrument. Its plain text sets a floor of protection at the treaty standard, not a ceiling.

The Record

Five formal sources, made under adversarial scrutiny, and against the speaker's interest.



A presidential transmittal letter, a voted Senate committee declaration, a committee executive report, and testimony by senior State and Justice officials. Each addresses the scope of existing law. Each says it already suffices.

Five formal sources, on the record.

1	Presidential transmittal letter	Existing law is "consistent with and sufficient to implement" the Convention, naming the ADA, the Rehabilitation Act, and IDEA.
2	Senate committee declaration <i>Voted 14-5</i>	The load-bearing element: a voted instrument attached to the proposed treaty, stating existing law "fulfills or exceeds" the obligations.
3	Committee executive report	"In the large majority of cases, existing federal and state law meets or exceeds the requirements of the Convention."
4	State Department testimony	The Special Adviser for International Disability Rights: the Convention "does not create new rights" and "no new legislation would be required."
5	Justice Department testimony	The senior civil-rights counselor: ratifying "will not require new legislation or create new rights." The voice of the chief enforcement agency.

A statement made against the speaker's interest.

The executive branch had no reason to oversell existing law. Overselling weakened the case for ratifying, because it made the treaty appear unnecessary. The scope representation was a concession to opponents, offered to show that ratification would change nothing at home. From the standpoint of statutory interpretation, it is a statement against interest, and such statements receive heightened weight.

THE BIPARTISAN FLOOR

Opponents argued the treaty was unnecessary precisely because existing law already sufficed. Supporters and opponents agreed on the scope; they differed only on whether to ratify. No one in the debate argued that US law was actually narrower.

Stronger evidence than constitutional originalism usually has.

CONSTITUTIONAL ORIGINALISM		THE 2012 RECORD
Recency	Two centuries old; sources lost or contested.	From 2012. The officials are still alive; the sources are complete.
Formality	Newspaper essays and private correspondence.	Voted instruments and formal submissions to the Senate.
Adverse interest	The founders advocated for the document they described.	Spoken against the speakers' own ratification interest.

SOURCES Cf. *District of Columbia v. Heller*, 554 U.S. 570 (2008). · A. Scalia & B. Garner, *Reading Law* (2012).

The Method

Four doctrinal categories, three of them textualist-proof, deployed as a shield.

II

The record is not one undifferentiated lump of legislative history. It is four distinct kinds of evidence, each carrying weight under established principles, and most of them survive even a strict textualist forum.

A synthesis of the statutes as they actually stood.

Constitutional originalism anchors meaning in the contemporaneous understanding of those responsible for a text. The 2012 branches were doing the analogous work for statutes: taking account of the original enactments, the 2008 amendments, the judicial decisions, and the administrative interpretations, and stating where the law then stood. The record is best read not as a separate doctrine but as ordinary statutory interpretation, informed by an unusually formal and unified political-branch account of scope.

Four doctrinal categories, not one.

Skidmore-weight interpretation

TEXTUALIST-PROOF

Formal executive interpretation by the enforcing agencies. It survived *Loper Bright*, which kept the persuasive weight of reasoned interpretation.

Admissions against interest

TEXTUALIST-PROOF

Made under adversarial scrutiny and confirmed, not challenged, by opponents. The hostile attention is a verification mechanism.

Party-opponent admissions

TEXTUALIST-PROOF

When the United States is a litigant, its 2012 statements are admissible against it under Federal Rule of Evidence 801(d)(2).

Subsequent legislative history

WEAKEST, ONE PART ONLY

The committee materials. Even here the record post-dates the 2008 amendments, so it is contemporaneous with the operative text.

A shield, not a sword.

After *Loper Bright*, a court is protective of its own authority to say what the law is. The posture decides whether the record helps or invites resistance.

SWORD · INVITES RESISTANCE

"This Court should defer to the 2012 determination and read the statute accordingly."

Framed as an administrative-deference claim the court is disposed to reject, and defeated by the reply that administrations change.

SHIELD · CONFIRMS THE TEXT

"The plain text reaches this conduct. The 2012 record independently confirms the political branches read it the same way."

Preserves the court's interpretive independence, and the objection that administrations change becomes irrelevant.

The Applications

Five contested doctrines where a narrow reading must now contend with the record.



From the definition of disability to the reach of federal-agency coverage, the record is offered honestly: strongest on scope of right, weakest on scope of remedy.

Five contested doctrines.

Sutton · Toyota · ADAAA	The scope of "disability." The record incorporates the broad definition the 2008 amendments restored.	STRONGEST
Guaranty exemption	A regulatory carve-out not grounded in statutory text, narrowing Section 504's covered entities.	STRONG
Sandoval	Private disparate-impact actions, reached through the meaningful-access route of <i>Choate</i> and <i>Lemahieu</i> .	SUPPORTING
Cummings	Damages. The weakest application, because the record concerns scope of right, not scope of remedy.	WEAKEST
Federal-agency coverage	Section 504's reach over federal agencies, anchored by the access-to-justice obligation and <i>Tennessee v. Lane</i> .	STRONG

SOURCES *Sutton v. United Air Lines*, 527 U.S. 471 (1999); *Alexander v. Sandoval*, 532 U.S. 275 (2001); *Cummings v. Premier Rehab Keller*, 142 S. Ct. 1562 (2022); *Tennessee v. Lane*, 541 U.S. 509 (2004).

The definition cannot be narrowed back.

The Court narrowed the meaning of "disability" in *Sutton* and *Toyota*. Congress reversed both in the 2008 amendments and directed that the ADA be read broadly. Because the 2012 record post-dates that, it incorporates the restored definition. A formal representation that existing law fulfills or exceeds a treaty defining disability broadly cannot be squared with any attempt to re-introduce the old narrowing.

1999–2002 *Sutton* and *Toyota* narrow the definition.

2008 **The Amendments Act reverses both, restoring broad scope.**

2012 The record represents that restored law "fulfills or exceeds" the treaty.

The objections, and the answers.

"The treaty was not ratified."

The record is invoked for statutory meaning, not treaty effect. Non-ratification does not expunge statements that were made.

"The branches have changed."

Later positions are weighed, not superseding. None has formally repudiated the 2012 record, which is more formal and bipartisan.

"It was a qualifying reservation."

The text says existing law "fulfills or exceeds." That sets a floor of protection at the treaty standard, not a ceiling.

"Textualists discount it."

Three of the four categories are not legislative history. Skidmore weight, party admissions, and against-interest statements all survive.

A statement scrutinized by hostile counsel for weakness is more carefully vetted, not less.

If the declaration had overstated existing law, opponents had every incentive to say so, because that would have made their own case: the treaty is unnecessary. They did not. They challenged sovereignty and federalism, never the scope. The failure to attack the scope is evidence the scope was stated accurately. The political pressure operated as a verification mechanism, not a ground for discount.

Where the record gets deployed.

Plaintiff briefs

Lead with the plain text; bring in the record afterward as confirmation that the political branches read it the same way.

Comments on regulations

An agency narrowing coverage is reducing protection below the level the branches formally represented, a defect that carries into later challenges.

Administrative complaints

Contextual authority on scope, especially in methods-of-administration complaints reaching effects-based practices.

Amicus participation

Where there is space to develop the historical and institutional material the parties cannot fully reach.

That documentation remains.

Opponents of ratification argued that domestic law was sufficient. In considering ratification, the political branches formally documented the scope of the statutes that were said to suffice. The ADA and Section 504 were, in 2012, represented as already fulfilling or exceeding the protections a comprehensive human-rights treaty requires. The record is recent, formal, and made against interest. Every effort to read those statutes more narrowly must now contend with it.

Gilly, T. (2026). *The ADA Already Does That: Statutory Originalism, the CRPD Ratification Record, and the Scope of Disability Rights in the United States*. Real Safety AI Foundation. Working paper, April 2026.

CASES

Alexander v. Choate, 469 U.S. 287 (1985).
Alexander v. Sandoval, 532 U.S. 275 (2001).
Cummings v. Premier Rehab Keller, 142 S. Ct. 1562 (2022).
District of Columbia v. Heller, 554 U.S. 570 (2008).
Liese v. Indian River County Hospital District, 701 F.3d 334 (11th Cir. 2012).
Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024).
Marbury v. Madison, 5 U.S. 137 (1803).
Mark H. v. Lemahieu, 513 F.3d 922 (9th Cir. 2008).
New Hampshire v. Maine, 532 U.S. 742 (2001).
Skidmore v. Swift & Co., 323 U.S. 134 (1944).
Sutton v. United Air Lines, Inc., 527 U.S. 471 (1999).
Tennessee v. Lane, 541 U.S. 509 (2004).
Toyota Motor Mfg., Ky. v. Williams, 534 U.S. 184 (2002).
United States v. Morgan, 581 F.2d 933 (D.C. Cir. 1978).
United States v. Paccione, 949 F.2d 1183 (2d Cir. 1991).

STATUTES, RULES & INSTRUMENTS

Americans with Disabilities Act, 42 U.S.C. §12101 et seq.
ADA Amendments Act of 2008, Pub. L. No. 110-325.
Rehabilitation Act §504, 29 U.S.C. §794, §794a.
Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106 (2006).
Fed. R. Evid. 801(d)(2), 804(b)(3).
Exec. Order No. 12250 (1980); 28 C.F.R. pt. 41, §41.3(e).

RECORD & SCHOLARSHIP

S. Treaty Doc. No. 112-7 (presidential transmittal, May 2012).
2012 Senate Foreign Relations Committee Executive Report (declaration adopted 14–5).
Testimony of J. Heumann (State) and E. Hill (DOJ), July 12, 2012.
158 Cong. Rec. S7326 (Dec. 4, 2012); CRS Report R42749 (2015).
A. Scalia & B. Garner, *Reading Law* (2012); W. Eskridge et al., *Legislation and Regulation* (6th ed. 2020).