

The State as Deployer

Title II of the Americans with Disabilities Act and Government Artificial Intelligence

When a government runs a public service through an AI system, disability law reaches the government directly: no federal money required, no physical place required. A public entity cannot escape the statute by purchasing a discriminatory tool instead of building one.

THERE IS DRY GROUND

The recipient-and-funding terrain was always the wrong ground on which to fight AI harm.

SECTION 504

Reaches only recipients of federal financial assistance, and only while the assistance continues. The litigant chases grants and lapsed cooperative agreements.

TITLE III

Reaches private business, but a circuit split over whether a digital service must be tied to a physical place strands the purely digital provider in much of the country.

TITLE II

Governs state and local government. No federal money required. No physical place required. The two doctrines that defeat the company defeat nothing here.

THE ROUTE THAT DOES NOT DEPEND ON WINNING THE HARDEST FIGHT

The state that deploys the model is already standing in the open.

A government delivering a benefits determination, a public-facing portal, or constituent communication through a purchased model is delivering a service, program, or activity. Title II reaches that delivery whether the government performs it by hand, by employee, or by model.

The public entity behind the automated decision has already signed the contract. The task is to name it.

The Route

Why Title II reaches the deploying government, and why the vendor defense fails

The defendant is covered because it is a government delivering a service. It never reaches the nexus question and never reaches the funding question.

The pilots are internal today. The trajectory is not speculative.

THE ENTRY POINT

Pennsylvania piloted a commercial generative AI tool for state employees in January 2024; Tennessee followed in spring 2025, expanding to more than 5,000 licensed employees. Internal tools have a weak public-facing hook; the strong claim does not arise there.

THE PRECEDENT PATTERN

Arkansas replaced a registered nurse's discretion with an allocation algorithm; almost half of affected beneficiaries received service reductions. Idaho's budget algorithm capped covered services. The general-purpose model is the next iteration, with broader reach.

The strong case arrives the moment the model touches a public-facing service or a benefits determination, when the output reaches a person with a disability seeking something the government is obligated to deliver.

SOURCES Office of Admin., Commonwealth of Pa., Shapiro Administration and OpenAI Launch First-in-the-Nation Generative AI Pilot (Jan. 9, 2024); Inside Tennessee's Deployment of ChatGPT Enterprise, StateScoop (Mar. 9, 2026); Elder v. Gillespie, 54 F.4th 1055 (8th Cir. 2022); K.W. ex rel. D.W. v. Armstrong, 789 F.3d 962 (9th Cir. 2015).

42 U.S.C. § 12132

Title II reaches the government without a nexus or a dollar of federal money.

"No qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

NO FUNDING TRIGGER

The duty attaches because the defendant is a government, not because it took a federal dollar.

NO PLACE REQUIREMENT

"Services, programs, or activities" reaches everything a public entity does; the textual hook behind the Title III split has no analog here.

A government cannot contract out of the ADA.

THE CONTRACTUAL ARRANGEMENTS RULE

A public entity "may not, directly or through contractual, licensing, or other arrangements" deny participation, afford unequal opportunity, or limit enjoyment of a service on the basis of disability. The discrimination is no less the public entity's because it is delivered through a purchased system.

THE METHODS OF ADMINISTRATION RULE

No criteria or methods of administration that have the effect of subjecting qualified individuals with disabilities to discrimination. A model a government routes its service through is a method of administration, whether the method is a paper rule, a human reviewer, or a model.

MOBLEY V. WORKDAY · FUNCTION, NOT MANNER

The law looks to the function delegated, not the manner in which the agent carries it out.

An AI vendor whose tools perform a traditional hiring function, screening and rejecting candidates, qualifies as an agent of the employer. "Nothing in the language of the federal anti-discrimination statutes or the case law interpreting those statutes distinguishes between delegating functions to an automated agent versus a live human one."

THE BOUNDARY DRAWN

A spreadsheet that sorts data is not an agent, because it does not participate in the decision. A system that screens and disposes candidates is, because it does.

Offered as analogy, not Title II authority: when a government delegates administering a benefit to a model, the model's output is the government's act, just as the screening tool's output was the employer's.

The Boundary and the Theory

What keeps the argument honest, and what makes it cognizable

A theory that swept in every private actor a government touches would be naive. The boundary should be stated before a court states it adversely.



Licensing an industry is not delivering a service. Hiring a model to run your program is.

THE LINE'S SURVIVING ANCHOR

Noel: the city's licensing and pervasive regulation of the taxi industry did not make that industry "a program or activity of a public entity." Binding in the Second Circuit.

THE VACATED ECHO

Ivy v. Williams, the line's most quoted statement, was vacated as moot by the Supreme Court. A vacated opinion binds no court, including the court that issued it. It persists only as persuasive reasoning.

THE FAR SIDE OF THE LINE

The deployment case concerns an actor the state hired to perform the state's own function. There is a contract. The agency relationship whose absence decided Ivy is exactly what procurement supplies. The boundary confirms coverage.

ALEXANDER V. CHOATE · PAYAN

The question is meaningful access, and intent is not required.

Discrimination against people with disabilities "would be difficult if not impossible to reach if the Act were construed to proscribe only conduct fueled by a discriminatory intent." A facially neutral policy that denies meaningful access to a public service is cognizable.

SYSTEMIC, NOT INDIVIDUALIZED

A single denied request is a failure to modify claim. A model that degrades a service across an entire class is a systemic barrier; disparate impact is the natural fit.

Honest caveat: the disparate impact holding is a Ninth Circuit position not every circuit shares. Outside it, treat the theory as available but unsettled, and plead failure to modify in the alternative.

SOURCES Alexander v. Choate, 469 U.S. 287, 296–97, 299, 301 (1985); Crowder v. Kitagawa, 81 F.3d 1480, 1484–86 (9th Cir. 1996); Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729, 740 (9th Cir. 2021); Payan, No. 24–1809 (9th Cir. Mar. 11, 2026).

The regulation supplies the cause of action in three forms.

- 1** Methods of administration § 35.130(B)(3)
Reaches an automated method with a discriminatory effect on a class of people with disabilities.
- 2** Eligibility criteria § 35.130(B)(8)
Reaches an automated screen that tends to screen out people with disabilities, unless shown necessary for the service.
- 3** Reasonable modification § 35.130(B)(7)(i)
Imposes an affirmative duty to modify policies, practices, or procedures, subject only to a fundamental alteration defense.

The duty is one of design and process: test the system, mitigate the effect, provide an accessible alternative. Nothing in the theory requires proof of intent, and nothing in it requires a place.

The leading algorithm cases left the disability theory on the table.

Two circuits resolved high-profile challenges to government benefit algorithms on procedural due process, and both expressly declined to reach the disability discrimination theory or the validity of the algorithm. The clean Title II disparate impact holding is unplanted across both.

ELDER V. GILLESPIE · 8TH CIR. 2022

Arkansas beneficiaries won on the clearly established right to adequate notice. No Title II disparate impact holding, no Section 504 holding, no ruling on the algorithm itself.

K.W. V. ARMSTRONG · 9TH CIR. 2015

Idaho's budget reductions enjoined on Medicaid fair-hearing and due process grounds. The same disability theory, left on the same table.

Immunity, Evidence, Remedy

The hurdle addressed head-on, and the modest order that clears it

The obstacle cannot be skipped. It can be navigated, on two separate tracks.



TRACK ONE · EX PARTE YOUNG

Prospective injunctive relief is the safe harbor.

The Eleventh Amendment does not bar a suit seeking declaratory and injunctive relief against a state officer to halt an ongoing violation of federal law. A recurring automated deployment is the paradigm of an ongoing violation.

Elder: the state had no plans to change its tool or notices, so "[t]he very harm alleged remains likely to recur barring a change in the state's operation of the program or judicial intervention."

K.W.: an order restoring benefit levels prospectively is permissible relief, because it restores class members going forward and is not measured by past monetary loss.

TRACK TWO · THE WAIVER THE STATE ALREADY SIGNED

Against the funded deployer, Section 504 returns as the carrier of damages.

COVERAGE WITHOUT TRACING

When any part of a department receives federal assistance, the covered program is all of that department's operations. No dollar need touch the AI procurement; the deployment is covered because the department is.

THE EXPRESS WAIVER

A state "shall not be immune under the Eleventh Amendment" from Section 504 suits. The Supreme Court calls the waiver unambiguous; the circuits enforce it department by department, treating funds as fungible.

THE BOUNDED RECOVERY

No emotional distress damages after Cummings; no punitive damages after Barnes. What remains: economic loss, wrongly denied benefits, fees. Damages require deliberate indifference, and a department on notice that continues the deployment unchanged is assembling that record itself.

Pleaded together, the statutes divide the labor: Title II supplies the conduct standards and the prospective relief; Section 504 carries the damages. The state signed up for both, one by governing and one by taking the money.

SOURCES 29 U.S.C. § 794(b)(1)(A); 42 U.S.C. § 2000d-7(a)(1); Lane v. Pena, 518 U.S. 187, 200 (1996); Koslow v. Pennsylvania, 302 F.3d 161 (3d Cir. 2002); Cummings v. Premier Rehab Keller, P.L.L.C., 596 U.S. 212 (2022); Barnes v. Gorman, 536 U.S. 181 (2002); Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001).

One frontier stays contested. One zone is already secure.

TITLE II DAMAGES · THE CONTESTED FRONTIER

Abrogation is valid where the conduct independently violates the Fourteenth Amendment; otherwise it is tested by congruence and proportionality, and disability draws only rational-basis review. Reserve this fight for the rare deployer that took no federal dollar, won case by case.

ACCESS TO THE COURTS · THE SECURE ZONE

Tennessee v. Lane sustained Title II abrogation categorically for cases implicating access to the courts. Court systems now deploy online dispute resolution, e-filing assistants, triage services, and automated fee-waiver screening. When such a tool screens out a litigant with a disability, the damages question is already answered.

ONE BASE MODEL, MANY SURFACES

The modification that already exists in the provider's catalog is neither a fundamental alteration nor an undue burden.

A single base model runs the consumer, enterprise, government, and API surfaces; the principal variable is the safety configuration. The common base model proves a safer configuration was demonstrably available, which answers both defenses to a reasonable modification claim.

Discovery condition, stated plainly: the showing fires only if discovery reaches the harm-relevant output behavior of the configurations, not merely the data-privacy handling that distinguishes an enterprise tier from a consumer tier.

CONFIGURATION AND PROCESS, NOT ABSTENTION

The duty is to test, mitigate, and accommodate.

- 1 Testing of the deployed system for disparate effects on classes of people with disabilities.
- 2 An accessible alternative channel for the service the system administers.
- 3 A human appeal path for any automated adverse decision.

The point is not that the government cannot use the model. The point is that the government must use it in a manner that does not deny meaningful access, and must offer a path around it when it does. The overstated abstention position is wrong on the law and deters the plaintiffs and courts the theory needs.

The public entity behind the automated decision has already signed the contract. The task is to name it.

The state is covered because it is a government, without a nexus and without a federal dollar. It cannot contract out of the duty, and the leading algorithm cases left the disability theory unplanted while resolving on notice.

Immunity does not bar the prospective relief the theory most needs; the funded deployer signed the damages waiver when it took the money; and where the deployment touches the courts, even abrogation is already resolved.

Table of Authorities

Travis Gilly, The State as Deployer: Title II of the Americans with Disabilities Act and Government Artificial Intelligence, Working draft, June 2026 (v3). Authorities compiled from the paper's footnotes.

CASES

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

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

Battle v. State of Tennessee, No. 3:22-cv-00022 (M.D. Tenn. Sept. 24, 2025).

Bd. of Trustees of Univ. of Ala. v. Garrett, 531 U.S. 356 (2001).

Carparts Distribution Ctr., Inc. v. Auto. Wholesaler's Ass'n of New England, 37 F.3d 12 (1st Cir. 1994).

City of Boerne v. Flores, 521 U.S. 507 (1997).

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

Crowder v. Kitagawa, 81 F.3d 1480 (9th Cir. 1996).

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

Duvall v. County of Kitsap, 260 F.3d 1124 (9th Cir. 2001).

Elder v. Gillespie, 54 F.4th 1055 (8th Cir. 2022).

Elder v. Gillespie, No. 3:19-CV-00155 KGB, 2021 WL 1226671 (E.D. Ark. Mar. 31, 2021).

Estate of Jacobs v. Gillespie, No. 3:16-cv-00119 (E.D. Ark. Nov. 1, 2016).

Ex parte Young, 209 U.S. 123 (1908).

Ivy v. Morath, 580 U.S. 956 (2016)(mem.).

Ivy v. Williams, 781 F.3d 250 (5th Cir. 2015), vacated as moot sub nom. Ivy v. Morath, 580 U.S. 956 (2016).

K.W. ex rel. D.W. v. Armstrong, 789 F.3d 962 (9th Cir. 2015).

Koslow v. Pennsylvania, 302 F.3d 161 (3d Cir. 2002).

Lane v. Pena, 518 U.S. 187 (1996).

Mobley v. Workday, Inc., 740 F. Supp. 3d 796 (N.D. Cal. 2024).

Noel v. New York City Taxi & Limousine Comm'n, 687 F.3d 63 (2d Cir. 2012).

Pallozzi v. Allstate Life Ins. Co., 198 F.3d 28 (2d Cir. 1999).

Payan v. Los Angeles Cmty. Coll. Dist., 11 F.4th 729 (9th Cir. 2021).

Payan v. Los Angeles Cmty. Coll. Dist., No. 24-1809 (9th Cir. Mar. 11, 2026).

Prado v. City of Berkeley, No. 3:23-cv-04537 (N.D. Cal. Aug. 6, 2024).

Price v. Shibinette, 2021 DNH 179 (D.N.H. 2021).

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

United States v. Georgia, 546 U.S. 151 (2006).

United States v. Munsingwear, Inc., 340 U.S. 36 (1950).

U.S. Dep't of Transp. v. Paralyzed Veterans of Am., 477 U.S. 597 (1986).

Weyer v. Twentieth Century Fox Film Corp., 198 F.3d 1104 (9th Cir. 2000).

STATUTES AND REGULATIONS

28 C.F.R. § 35.130(a).
28 C.F.R. § 35.130(b)(1); id. § 35.130(b)(1)(v).
28 C.F.R. § 35.130(b)(3)(i)–(ii).
28 C.F.R. § 35.130(b)(7)(i).
28 C.F.R. § 35.130(b)(8).
29 U.S.C. § 794(a).
29 U.S.C. § 794(b)(1)(A).
42 U.S.C. § 2000d-7(a)(1).
42 U.S.C. §§ 12131–12132; § 12131(1); § 12132.

GOVERNMENT AND PRESS MATERIALS

Office of Admin., Commonwealth of Pa., Shapiro Administration and OpenAI Launch First-in-the-Nation Generative AI Pilot (Jan. 9, 2024), <https://www.pa.gov/agencies/oa/newsroom/shapiro-administration-and-openai-launch-first-in-the-nation-generative-ai-pilot.html>.
Inside Tennessee's Deployment of ChatGPT Enterprise, StateScoop (Mar. 9, 2026), <https://statescoop.com/tennessee-chatgpt-enterprise-kristin-darby/>.