

2021

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(2021). *Minnesota Law Review*. 3314.
<https://scholarship.law.umn.edu/mlr/3314>

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Essay

Disability Admin: The Invisible Costs of Being Disabled

Elizabeth F. Emens[†]

INTRODUCTION

Consider these two scenarios:

1. *Imagine you or someone you love begins to have an inexplicable array of symptoms. The symptoms might include feeling dizzy, forgetting common words, or sleeping twice as much as normal but never feeling fully alert. Imagine the steps you would take in response. These might include making a doctor's appointment and, when that doctor has no explanation, researching the symptoms online (if you have not already), then searching for other doctors, trying to find experts, looking for treatments to try, and hunting for people with similar symptoms who have learned anything about this constellation of symptoms. Imagine also that you do not have much money, and you*

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either have to go into debt to pay for medical specialists or you have to struggle with an insurer that refuses to pay for all these doctor visits because there is no diagnosis. Try to picture how much time and mental energy you or your loved ones would spend in response to this mysterious condition.

2. Imagine you live in a city where your local subway system has no stairs or escalators. The exits are all via elevator.¹ And imagine that the elevators break down regularly, so particular stations sometimes lack an exit route for hours or days. This means that, whenever you take the subway from station A to station B, you risk getting stuck at B unless you check an “elevator status” app online to make sure the elevators at B are in service. And even then, elevators at B may break down while you are en route. On such trips, you must research alternate routes on the spot—if you even have cell reception underground at B—and then get back on the train to travel more stops to find a serviceable exit (C). Once you are above ground at C, you must find your way to alternative transport back to where you were going, near B. Imagine you work far from home, and the subway is the only way to get to work in less than an hour. Picture the time and mental energy that navigating transportation would require.

Scenario 1 is familiar to anyone who has had an ailment that is unusual or difficult to diagnose—or whose loved one has had such an ailment. Scenario 2 builds on the reality of one subway station in a U.S. city that can be accessed only by elevators to conceptualize a subway system that would invite all readers to imagine the experience that wheelchair users face in unreliable subway systems.² Multiple

1. This is not so hard to imagine for some: The New York City subway at the Columbia Medical Center/168th Street station, for example, allows entry and exit by elevator alone. Cf. Sonny Esposito, *New York's 168th Street Subway Station Is Only Elevator to the Street*, CLASSICNEWYORKHISTORY.COM (2017), <https://classicnewyorkhistory.com/new-yorks-168th-street-subway-station-is-elevator-only-to-the-street> [<https://perma.cc/P3EL-NQNY>] (“If your [sic] one of those people who have [sic] a fear of elevators, our advice to you is never get off the subway train at 168th Street in Manhattan. For passengers headed to ground level at 168th street, there is only one way to the [S]treet, and that is by elevators.”). Scenario 2 extrapolates to an entire subway system built on this model.

2. See, e.g., James Barron, *For Disabled Subway Riders, the Biggest Challenge Can Be Getting to the Train*, N.Y. TIMES (July 26, 2018), <https://www.nytimes.com/2018/07/26/nyregion/disabled-subway-riders-elevators.html> [<https://perma.cc/R7ST-Z53Q>] (reporting that “on average, each subway elevator breaks down 53 times a year” and therefore, that “[m]any riders who rely on them make it a daily ritual to check apps and websites that track out-of-service elevators, but they say the sites can be slow to post updates”).

lawsuits catalogue the challenges faced by wheelchair users in cities where subway elevators are scarce and function poorly.³

In different ways, both Scenario 1 and Scenario 2 begin to adumbrate a particular form of labor that especially burdens people with disabilities.⁴ That labor is the *admin* of life, and it affects everyone.⁵ Life admin is all of the office-type work that it takes to run a life and a household—from everyday tasks like scheduling doctors' appointments and paying bills, to annual or periodic projects like paying taxes or making travel arrangements, to life-cycle events like planning a wedding or a funeral. This is the kind of work that managers and secretaries do in an office for pay but that we all do in our own lives for free.

Though admin plays a role in every life, some lives are unusually burdened by admin. Disability in particular can provoke admin onslaughts from multiple directions. This is something I have seen in my research on admin across varied lives.⁶ Almost as soon as I began to recognize and conceptualize life admin, I wanted to write

3. See *infra* note 162 (citing cases). As the plaintiffs explain in *Center for Independence of the Disabled v. Metropolitan Transportation Authority*, for instance, [u]ncontroverted class member testimony reflects that passengers with disabilities—unlike their non-disabled peers—cannot utilize the subway system for convenient, reliable, and rapid interborough transit because every trip comes with an unreasonably high probability of encountering at least one out-of-service elevator, a barrier that forces either a time-consuming, stressful detour or the dehumanizing and unreasonable safety risk of relying on strangers to compensate for the MTA's failures.

Reply Memorandum of Law in Further Support of Plaintiffs' Motion for Partial Summary Judgment at 1, *Ctr. for Indep. of the Disabled, N.Y. v. Metro. Transp. Auth.*, No. 17-cv-2990 (S.D.N.Y. Oct. 11, 2019).

4. I use both the "people first" language ("people with disabilities") and the language even more common in the United Kingdom ("disabled people"), the country commonly credited as the origin of the social model through the work of Michael Oliver. There are advantages to each approach—putting *people first* prioritizes people above impairment and emphasizes humanity, on the one hand; on the other hand, turning disability into the adjective *disabled* may more fully embody the social model, wherein disability is something done to people rather than a static thing people have.

5. Elizabeth F. Emens, *Admin*, 103 GEO. L.J. 1409, 1417 (2015) (identifying the term "admin" and focusing on the gender dimensions of its distribution).

6. See *id.* at 1424–26. For a discussion of the subject of life admin for a broader audience, see ELIZABETH F. EMENS, *LIFE ADMIN: HOW I LEARNED TO DO LESS, DO BETTER, AND LIVE MORE* (2019). These texts contain some preliminary mention and narratives involving people with disabilities who confront life admin, but they offer no insights about the ADA, see *infra* Part III, nor do they break down what constitutes disability admin or how it contributes to the social model's understanding of relevant expertise, see *infra* Part II.

something specifically focused on the admin of disability.⁷ Anyone who has dealt with a serious or unexplained medical condition, filled out the forms and provided the documentation required to apply for disability benefits or test accommodations, or faced direct discrimination or inaccessibility due to their disability—like that described in Scenario 2, to take one striking example—is likely to recognize how taxing this work can be.

The admin of disability may vary according to the particular disability, as well as its contours. Disability admin may differ based on whether the underlying impairment is static or progressive⁸ (e.g., permanent blindness versus Alzheimer’s), well-understood or novel (e.g., diabetes versus the early days of COVID-19⁹), amenable to treatment or not¹⁰ (e.g., melanoma¹¹ versus spinal cord injury¹²),

7. Much of my research, writing, and thinking over the past fifteen years has been focused on disability and disability law. Thus, my thinking about life admin, from early on, has included an interest in disability admin in particular. *See, e.g.*, Emens, *supra* note 5, at 1425–26. However, this Essay is my first opportunity to focus squarely on the subject and to address the implications for disability law.

8. *See* David Wasserman, Adrienne Asch, Jeffrey Blustein & Daniel Putnam, *Disability: Definitions, Models, Experience*, STAN. ENCYCLOPEDIA PHIL., <https://plato.stanford.edu/entries/disability> [<https://perma.cc/2RES-XCZS>] (May 23, 2016) (drawing this distinction).

9. *Cf., e.g.*, *Six Months of Coronavirus: Here’s What We’ve Learned*, N.Y. TIMES (June 18, 2020), <https://www.nytimes.com/article/coronavirus-facts-history.html> [<https://perma.cc/CSTW-YTRL>] (“Enormous questions loom.”).

10. A person may or may not seek treatment for a particular disability, but the availability of treatment at the very least poses the dilemma, which others may press on a disabled individual, whether or not the individual wants it. *See, e.g.*, SIMI LINTON, *MY BODY POLITIC: A MEMOIR* 69 (2006) (describing her mother’s interest in finding a cure for her paraplegia in a way dissonant with her experience and quoting her uncle as saying, “Simi will get used to it long before you ever will”).

11. *See, e.g.*, Aaron Kandola, *What Are the Most Curable Cancers?*, MED. NEWS TODAY (Aug. 7, 2018), <https://www.medicalnewstoday.com/articles/322700> [<https://perma.cc/LT9R-3LVN>].

12. *See, e.g.*, *Spinal Cord Injury*, MAYO CLINIC (Sept. 17, 2019), <https://www.mayoclinic.org/diseases-conditions/spinal-cord-injury/diagnosis-treatment/drc-20377895> [<https://perma.cc/3DVT-FH3Z>].

visible or not¹³ (e.g., achondroplasia¹⁴ versus dyslexia¹⁵), among other variables.¹⁶ The permutations and complexities are vast, but it is nonetheless worthwhile to consider disability as an umbrella category, for reasons that have been discussed elsewhere.¹⁷

Although this labor takes a serious toll, disability admin is typically invisible to most people and largely absent from the public discourse. In prior work, I focused on the gendered dimensions of life admin, as well as the disproportionate burdens of life admin for many people already disadvantaged in various ways.¹⁸ This Essay

13. On invisible disabilities, see *Did You Know? Invisible Disabilities*, CTR. FOR DISABILITY RTS., <https://www.cdrnys.org/blog/development/did-you-know-invisible-disabilities> [<https://perma.cc/W5LH-6ZPW>]; and Naomi Gingold, *People with 'Invisible Disabilities' Fight for Understanding*, NPR (Mar. 8, 2015, 5:18 PM), <https://www.npr.org/2015/03/08/391517412/people-with-invisible-disabilities-fight-for-understanding> [<https://perma.cc/7M4U-LTBU>]. On the ways invisible disabilities can still be recognized by others and stigmatized, see Lydia Aimone, *Living Under the Stigma of an Invisible Illness*, DISTORTED PERCEPTIONS (Nov. 17, 2019), <https://www.distortedperceptions.org/articles-main/2019/11/17/living-under-the-stigma-of-an-invisible-illness> [<https://perma.cc/5REK-WEKD>].

14. See, e.g., *Dwarfism*, MAYO CLINIC (Aug. 17, 2018), <https://www.mayoclinic.org/diseases-conditions/dwarfism/symptoms-causes/syc-20371969> [<https://perma.cc/JNR9-V3MN>] (“The most common cause of dwarfism is a disorder called achondroplasia, which causes disproportionately short stature.”); see also *What Is LPA?*, LITTLE PEOPLE AM., <https://www.lpaonline.org/about-lpa> [<https://perma.cc/W7K6-HTMM>] (“Little People of America, Inc., is a national nonprofit organization that provides support and information to people of short stature and their families.”).

15. See, e.g., Debbie Meyer, *I Took a Year off Work To Learn About Dyslexia Because My Son's Teachers Couldn't Teach Him To Read*, EDUC. POST (Jan. 11, 2019), <https://educationpost.org/i-took-a-year-off-work-to-learn-about-dyslexia-because-my-sons-teachers-couldnt-teach-him-how-to-read> [<https://perma.cc/79JX-TCVA>].

16. The definition of “disability” is contested, and the debates surrounding it, both legal and extra-legal, are intricate and intriguing. See, e.g., Robert L. Burgdorf Jr., “Substantially Limited” Protection from Disability Discrimination: The Special Treatment Model and Misconstructions of the Definition of Disability, 42 VILL. L. REV. 409, 519 (1997). Under the ADA Amendments Act of 2008, the definition has been broadened considerably. See, e.g., Kevin Barry, *Toward Universalism: What the ADA Amendments Act Can and Can't Do for Disability Rights*, 31 BERKELEY J. EMP. & LAB. L. 203, 203 (2010); Alex B. Long, *Introducing the New and Improved Americans with Disabilities Act: Assessing the ADA Amendments Act of 2008*, 103 NW. U. L. REV. COLLOQUY 217 (2008). This list of conditions is not meant, however, to come down on any side of those debates over its contours for legal purposes. It is meant merely to illustrate the point about how different the admin might be if it is associated with one type of condition or impairment versus another.

17. Cf. Michael Ashley Stein & Michael E. Waterstone, *Disability, Disparate Impact, and Class Actions*, 56 DUKE L.J. 861, 893–922 (2006).

18. See Emens, *supra* note 5. For a brief discussion of some of these other forms of admin, and of my longstanding interest in writing something about disability admin and especially about its intersections with disability law, see *supra* note 7; and EMENS, *supra* note 6, at 24–26, which discusses the “great divide” surrounding privilege.

illuminates the ways that disability law overlooks the costs of life admin for people with disabilities.

Most importantly, the cost-benefit analysis that courts and regulations have used to analyze “reasonableness” under the Americans with Disabilities Act (ADA) fails to account for the costs of the admin associated with particular means of “accommodation” or “modification.”¹⁹ In an earlier article, I illuminated a form of benefits previously overlooked in the “reasonableness” doctrine, an analysis that was subsequently adopted in the regulations to the ADA Amendments Act.²⁰ This Essay identifies another missing piece in that doctrinal framework.

This Essay comes in five parts. After this Introduction, Part I begins by briefly sketching the concept of *life admin* and setting out the understanding of disability that informs the ADA. Part II demonstrates the special burdens that admin places on people with disabilities and uses this argument to refine the social model of disability and clarify its implications. This theoretical insight lays the groundwork for Part III to fill a gap in the analysis of “reasonable” accommodation under Title I. This Part shows that, although courts have set out a cost-benefit analysis as the framework for determining the “reasonableness” of an accommodation, they have neglected a significant input: the costs of disability admin. This Part also sketches several examples of the many other doctrinal consequences of recognizing disability admin: strengthening the analysis of “readily accessible” public services like transportation under Title II of the ADA,²¹ reframing the “vexatious litigant” who brings multiple lawsuits against public accommodations under Title III of the ADA,²² and broadening our understanding of “caring” under the Family Medical Leave Act (FMLA).²³ The final Part concludes.

I. CONCEPTUAL BACKGROUND

Life is important. Our time here is important. . . . I feel outraged that my job doesn't want me to miss like six minutes of a workday but changed my health

19. Barry, *supra* note 16, at 220.

20. Regulations To Implement the Equal Employment Provisions of the Americans with Disabilities Act, as Amended, 76 Fed. Reg. 16,978, 16,997–98 (Mar. 25, 2011) (to be codified at 29 C.F.R. pt. 1630) (acknowledging these and other direct and indirect benefits of accommodation and citing Elizabeth F. Emens, *Integrating Accommodation*, 156 U. PA. L. REV. 839 (2008)).

21. See *infra* Part III.B.1.

22. See *infra* Part III.B.2.

23. See *infra* Part III.B.3.

insurance in such a way that's added at least eighty hours of annual labor on my part, on my own time.

—Lauren (not her real name²⁴), brainstorming session participant²⁵

Two key concepts form the building blocks of this Essay: *life admin* and *disability*. This Part briefly sketches them, as a prelude to a typology of the special burdens of life admin for disabled people in Part II and to novel insights for disability law in Part III.

A. LIFE ADMIN

Life admin is all the office-type work that it takes to run a life and a household. It includes the kind of work in the home that is analogous to what secretaries (aka “admins”) do in the office, like scheduling and ordering and answering calls and filling out forms, and the kind of work that managers do, like long-range planning and financial decision-making and overseeing the work of any helpers.

The office work of life is defined by two features. First, it is generally a means to an end rather than an end in itself. (In this way, admin could be understood to be a special kind of “transaction cost.”²⁶) Second, it is a particular kind of means: the kind of thing that is done in an office, whether by managers or by secretaries. Some life admin involves tasks that are literally done in an office, like ordering supplies, and other life admin involves tasks that are *akin* to what's done in an office, like planning a family reunion, which is analogous to planning an office event.

Admin can thus be distinguished from traditional household chores, like cooking and cleaning, as well as childcare, which are not office-type work. But chores and childcare often have an admin

24. All references made to participants in my interviews and brainstorming sessions on the subject of life admin apply pseudonyms and otherwise work to ensure anonymity.

25. This passage from a brainstorming session is also quoted in EMENS, *supra* note 6, at 17.

26. Transaction costs are “cost[s] connected with a process transaction, such as a broker’s commission, the time and effort expended to arrange a deal, or the cost involved in litigating a dispute.” *Transaction Cost*, BLACK’S LAW DICTIONARY (11th ed. 2019); see R.H. Coase, *The Problem of Social Cost*, 3 J.L. & ECON. 1, 15 (1960) (“In order to carry out a market transaction it is necessary to discover who it is that one wishes to deal with, to inform people that one wishes to deal and on what terms, to conduct negotiations leading up to a bargain, to draw up the contract, to undertake the inspection needed to make sure that the terms of the contract are being observed, and so on. These operations are often extremely costly, sufficiently costly at any rate to prevent many transactions that would be carried out in a world in which the pricing system worked without cost.”); see also Emens, *supra* note 5, at 1420.

component. For instance, making the grocery list is the admin of grocery shopping; planning meals and looking for recipes are the admin of cooking.

The boundaries around admin are imprecise, for two reasons. First, what is admin to one person won't be admin to another person, because, in some instances, one person's means are another person's end. (Think: writing thank-you notes or planning a party.) Second, the term is defined around an analogy and so there are core cases of admin, but much of admin is then reasoning by analogy to other examples.²⁷ (For core cases, think: filling out tax paperwork or disputing insurance-claim denials.) Boundary disputes are inevitable, but most people are likely to recognize the core cases.

Admin is relatively invisible compared to other kinds of labor in the sense, first, that it is often literally harder to see, and second, that it is not generally salient as labor.²⁸ Admin is often done in the interstices of everything else, and now, frequently, in our devices—and much of it is mental work.²⁹ A nearby person typically has no way of knowing if you are texting a friend or paying your phone bill in an app, or if you are thinking about what to cook for dinner or thinking about a movie you watched last night.

The costs of admin are different for different people. For people in poverty, for example, admin often involves dealing with public rather than private entities, with long waits and little flexibility as to the time or location of these dealings, and with high stakes if admin is not done. For example, not opening the mail for a week could mean losing your Section 8 housing.³⁰ For people of means, by contrast, admin often involves dealing with private entities, with an interest (at least in theory) of serving the customer and with multiple chances to get things right. In relationships between men and women, and in extended families, life admin often falls disproportionately to women.³¹

27. See Emens, *supra* note 5, at 1420 (“On the margins, determining whether something is admin involves reasoning by analogy, much as one does in the common-law method of case analysis.”).

28. See *id.* at 1463.

29. *Id.* at 1459.

30. See, e.g., EMENS, *supra* note 6, at 18–19.

31. See, e.g., Emens, *supra* note 5, at 1457; EMENS, *supra* note 6, at 44–54; see also Allison Daminger, *The Cognitive Dimension of Household Labor*, 84 AM. SOCIO. REV. 609, 610 (2019) (finding disproportionate burdens on women from what she calls “cognitive labor,” which captures a subset of life admin); Helen J. Mederer, *Division of Labor in Two-Earner Homes: Task Accomplishment Versus Household Management as*

This Essay concerns the heavy burdens of life admin that typically accompany disability in order to inform disability law and improve legal doctrine. Before turning to Part II's explication of the burdens of disability admin, the next Section explains the understanding of disability that underpins the ADA.

B. DISABILITY

The ADA is full of complexity, and a comprehensive analysis of this statute could fill volumes.³² One widely accepted idea, however, is that the *social model of disability* importantly informs the ADA's understanding of disability.³³

The social model of disability has been called the "big idea" of the disability rights movement.³⁴ According to the social model, disability

Critical Variables in Perceptions About Family Work, 55 J. MARRIAGE & FAM. 133, 139 tbl.1 (1993) (finding women disproportionately burdened by "household management," another category that overlaps with life admin); Jo A. Meier, Mary McNaughton-Cassill & Molly Lynch, *The Management of Household and Childcare Tasks and Relationship Satisfaction in Dual-Earner Families*, 40 MARRIAGE & FAM. REV. 61, 75 tbl.3 (2006).

32. For some of those volumes, see, for example, SAMUEL R. BAGENSTOS, *LAW AND THE CONTRADICTIONS OF THE DISABILITY RIGHTS MOVEMENT* (2009); *BACKLASH AGAINST THE ADA: REINTERPRETING DISABILITY RIGHTS* (Linda Hamilton Krieger ed., 2003); and *DISABILITY AND EQUALITY LAW* (Elizabeth F. Emens & Michael Ashley Stein eds., 2013).

33. See, e.g., Richard K. Scotch, *Models of Disability and the Americans with Disabilities Act*, 21 BERKELEY J. EMP. & LAB. L. 213, 214–15 (2000); BAGENSTOS, *supra* note 32, at 19 n.33; Emens, *supra* note 5, at 1426. For a discussion of what other models also inform the idea, and the tensions and challenges surrounding the competing ideologies bound up in it, see especially BAGENSTOS, *supra* note 32, at 34–54. For a discussion of the changing versions of the social model across the ADA and the ADA Amendments Act, see, for example, Elizabeth F. Emens, *Disabling Attitudes: U.S. Disability Law and the ADA Amendments Act*, 60 AM. J. COMPAR. L. 205, 214 (2012).

34. See TOM SHAKESPEARE, *DISABILITY RIGHTS AND WRONGS* 79 (2006) (quoting Francis Hasler, *Developments in the Disabled People's Movement*, in *DISABLING BARRIERS—ENABLING ENVIRONMENTS* 118 (John Swain, Sally French, Conlin Barnes & Carol Thomas eds., 2004)); Tom Shakespeare, *Critiquing the Social Model*, in *DISABILITY AND EQUALITY LAW*, *supra* note 32, at 67. For important critiques and refinements of the social model, see, for example, Shakespeare, *supra*, at 69; and Adam M. Samaha, *What Good Is the Social Model of Disability?*, 74 U. CHI. L. REV. 1251, 1262 (2007). See also Aimi Hamraie, *Mapping Access: Digital Humanities, Disability Justice, and Sociospatial Practice*, 70 AM. Q. 455, 459 (2018) ("The disability justice movement, which is led by disabled people of color and queer disabled people, shifts the conversation about access from compliance to principles such as 'intersectionality,' 'leadership of the most impacted,' 'anti-capitalist politic,' 'cross-disability solidarity,' 'interdependence,' 'collective access,' and 'collective liberation.'" (quoting *SINS INVALID, SKIN, TOOTH, AND BONE—THE BASIS OF MOVEMENT IS OUR PEOPLE: A DISABILITY JUSTICE PRIMER* (2016))); Zoie Sheets, *Disability Justice*, in *DISABILITY IN AMERICAN LIFE: AN ENCYCLOPEDIA OF CONCEPTS, POLICIES, AND CONTROVERSIES* 195–98 (Tamar Heller, Sarah Parker Harris,

inheres in the *interaction* between impairment and the surrounding social environment. The social model is set in contrast to the *medical model*, which is the traditional idea that disability is an individual medical problem.

Though the social model has been described by many, the origins of the idea are typically traced to the UK and Michael Oliver, who wrote:

Disability [is] the disadvantage or restriction of activity caused by a contemporary social organisation which takes no or little account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities.³⁵

Oliver defined “impairment” as “lacking part of or all of a limb, or having a defective limb, organism or mechanism of the body.”³⁶ Closer to home, Samuel R. Bagenstos has described the social model in this way:

Adherents to the social model argue that disability should not be considered to be the unmediated product of limitations imposed by a physical or mental impairment. To them, such a view erroneously regards existing social arrangements as a neutral baseline. The social model instead treats disability as the interaction between societal barriers (both physical and otherwise) and the impairment.³⁷

Carol J. Gill & Robert Gould eds., 2019) (“Disability justice is an intersectional framework of analysis that brings together marginalized people with disabilities and their allies and works as a vehicle of systemic change. This movement aims to identify and change the root causes of injustice for people with disabilities—namely, the systems that do not prioritize or fail to consider the wholeness of those with disabilities.”).

35. MICHAEL OLIVER, *THE POLITICS OF DISABLEMENT: A SOCIOLOGICAL APPROACH* 11 (1990) (citing UNION OF THE PHYSICALLY IMPAIRED AGAINST SEGREGATION (UPIAS), *FUNDAMENTAL PRINCIPLES OF DISABILITY* 3, 4 (1976)). Another helpful description comes from Mary Crossley:

In contrast to the medical model of disability, which views disadvantages as flowing naturally from a defect located in an individual, the social model of disability sees disadvantages as flowing from social systems and structures. Because members of society historically have not viewed persons with disabilities as part of the societal norm, no attempts have been made to avoid the creation of physical and attitudinal barriers built into the very framework of society—barriers that prevent persons with disabilities from fully participating in society. Thus, the disadvantaged status of persons with disabilities is the product of a hostile (or at least inhospitable) social environment, not simply the product of bodily defects.

Mary Crossley, *The Disability Kaleidoscope*, 74 NOTRE DAME L. REV. 621, 653–54 (1999).

36. OLIVER, *supra* note 35. For a critique of the evolution and uses of the “British social model,” see TOM SHAKESPEARE, *DISABILITY RIGHTS AND WRONGS REVISITED* 29–53 (2d ed. 2014).

37. Samuel R. Bagenstos, *Subordination, Stigma, and “Disability,”* 86 VA. L. REV. 397, 428 (2000); see also Harlan Hahn, *Civil Rights for Disabled Americans: The*

And in Michael Ashley Stein's words, under the social model, "the physical environment and the attitudes it reflects play a controlling (if not central) role in creating what society terms 'disability.' Thus, factors exogenous to a person's own impairments determine how much she can function in society."³⁸

The social model is built into the definition of "disability" under the ADA³⁹: the ADA defines "disability" to include not only actual disability—in the sense of actually having an impairment that substantially limits a person in a major life activity⁴⁰—but also a person's having a "record of" or being "regarded as" having an impairment that substantially limits them in a major life activity.⁴¹

The ADA's conception of disability under the social model is not the "radical social model," that is, the idea that there is no such thing as impairment but there are instead just neutral traits turned to disadvantage by the environment.⁴² For the ADA, as for most scholars of disability, the social model is a *reorienting* towards the interaction with the societal environment; this social-model orientation differs from society's stereotypical emphasis on individual impairment and belief that "a disabled person's limitations . . . naturally (and thus, properly) exclud[e] her from the mainstream."⁴³

Foundation of a Political Agenda, in IMAGES OF THE DISABLED, DISABLING IMAGES 181, 183–84 (Alan Gartner & Tom Joe eds., 1987); Jasmine E. Harris, *Cultural Collisions and the Limits of the Affordable Care Act*, 22 AM. U. J. GENDER SOC. POL'Y & L. 387, 407 (2014); MARTHA MINOW, MAKING ALL THE DIFFERENCE 173 (1990) (describing the "social-relations" model of difference).

38. Michael Ashley Stein, *Same Struggle, Different Difference: ADA Accommodations as Antidiscrimination*, 153 U. PA. L. REV. 579, 599 (2004).

39. For further discussion of the social model under the ADA and the ADA Amendments Act, see, for example, Emens, *supra* note 33, at 214.

40. 42 U.S.C. § 12102(2)(B).

41. *Id.* § 12102(1)(B)–(C).

42. See, e.g., Elizabeth F. Emens, *Framing Disability*, 2012 U. ILL. L. REV. 1383, 1422. In his vital work tracing the particular path of these concepts in the UK, Tom Shakespeare has used the term "British social model" for what I am calling the radical social model, and he would likely cast my more moderate account of the social model as among the "wider family of social-contextual approaches to disability." SHAKESPEARE, *supra* note 36, at 31–34. Erin Andrews distinguishes what she calls the "diversity model" from the social model by saying that the former is "talk[ing] explicitly about pride and a disabled identity." She writes, "In the social model, it's like, 'I'm not disabled, the environment is disabling me,' right? But in the diversity model, the difference is, 'I am disabled, and I'm identifying as someone who's disabled, and I'm taking pride in that, and I'm going to reject a lot of the norms that society is putting on me.'" *Disability as a Form of Diversity*, PSYCH. OFF CLOCK, at 45:30 (May 26, 2019), <https://offtheclockpsych.com/disability> [<https://perma.cc/429C-UUUQ>].

43. See Stein, *supra* note 38, at 599.

The social model will become important in the next Part, which offers a framework for understanding the categories of life admin that particularly burden disabled people and then uses this analysis of disability admin to contribute new insight about disability expertise under this model.

II. SEEING THE ADMIN OF DISABILITY

A lot of it is bureaucracy, not really disability.

—Cybele, interviewee⁴⁴

The epigraph quotes a young woman with several disabilities including cerebral palsy, whom I interviewed on the subject of life admin. Cybele recounted the time-consuming process of proving and re-proving her disabilities to the entities that pay for her benefits, wheelchair, and transportation. She has to present periodic documentation although her cerebral palsy is a lifelong impairment with which she was born. Her disabilities also affect the process of doing her disability admin: Because she can't write by hand, she needs to find someone else to fill out forms for her (unless the forms are online where she can type them). Getting to the benefits office or doctor's office requires booking an Access-a-Ride van and then contending with their delays and cancellations. (Among her disabled friends, this is known as the Stress-a-Ride.) A visit to the doctor's office may involve a medical exam that lasts "like fifteen minutes," but in total the event "can take the whole day."⁴⁵

In describing the role of admin in her life, Cybele offered a window into the social model of disability. Whereas the medical model would attribute Cybele's limitations to her impairments, like cerebral palsy, Cybele instead concluded, "A lot of it is bureaucracy, not really disability."⁴⁶

The central forms of disability admin set out in this Part each appear in Cybele's story. Visiting doctors, documenting disabilities for benefits, and dealing with an inadequate system of public transportation begin to limn the three categories discussed here: medical admin, benefits admin, and discrimination admin, respectively.

This Part first portrays the special relationship between disability and admin, centering on these categories. Then it turns to

44. This line from an interview is also quoted in EMENS, *supra* note 6, at 18–19, which tells a version of Cybele's story.

45. *Id.*

46. *Id.*

the role of admin in the social model of disability. It demonstrates the ways that admin has been largely overlooked in accounts of the social model and presents one practical implication of this refinement of the social model.

A. THE ADMIN COSTS OF DISABILITY

Disability steals time.

—Walter Y. Oi⁴⁷

Admin hits some people harder than others. Some people have more admin to do, and some people's admin is harder to do. Above a certain threshold, a greater quantity of admin demands can come to feel overwhelming in a qualitatively different sense. This we might call an *admin onslaught*.⁴⁸

For several reasons, disability is peculiarly prone to prompt onslaughts of admin, often of a particularly painful sort. For instance, receiving a diagnosis of a potentially terminal illness can spur a massive amount of medical admin—including researching outcomes, treatments, doctors; scheduling appointments and follow-ups; and dealing with medical bills and insurance companies—all tinged with the fear, sadness, and whole panoply of feelings associated with the prospect of declining health and death.⁴⁹

47. Walter Y. Oi, *Work for Americans with Disabilities*, 523 ANNALS AM. ACAD. POL. & SOC. SCI. 159, 166 (1992).

48. The idea of an "onslaught" and the qualitative difference of admin above a certain threshold number of demands are discussed in more detail in the sixth chapter of EMENS, *supra* note 6, at 68–81 (elaborating on "Admin That Can Wreck You").

49. See, e.g., DANI SHAPIRO, *DEVOTION* (2010) (describing the admin the author did during the year her infant son was diagnosed with an impairment that only fifteen percent of children survive); *id.* at 43 ("Beyond the MRIs, the Ct scans, the second opinions, the research on the internet, the national experts—what else was there to do but say *please?*"); *id.* at 94–95 ("I didn't write the year that Jacob was sick. Writing was my job, . . . [but] I sat in front of my computer, not writing. Instead, I spent hours on the internet looking for references to infantile spasms. . . . I was a warrior, fighting for every bit of knowledge that could possibly help."). Powerful creative depictions of medical admin can also be found in the work of artist Rachel Perry (formerly Rachel Welty). See, e.g., Martha Schwendener, *From the Everyday, Art*, N.Y. TIMES (Feb. 3, 2012), <https://www.nytimes.com/2012/02/05/nyregion/rachel-perry-welty-24-7-in-new-brunswick-review.html> [<https://perma.cc/B4TX-DJMS>] ("Ms. Welty transcribed onto 23 sheets of vellum paper her son's medical records during the course of a serious illness."); see also An Xiao, "Rachel Is": *An Interview with Rachel Perry Welty*, ART21 MAG. (Oct. 29, 2009), <https://magazine.art21.org/2009/10/29/rachel-is-an-interview-with-rachel-perry-welty> [<https://perma.cc/6JW3-MNQC>] ("My first body of work used the paper accountings, the remnants from a two-month hospital stay as a beginning. I transcribed by hand my son's 645-page medical chart onto large gridded

People with disabilities may well face all the kinds of admin that people without disabilities face—for happy life events and challenging ones, as well as everyday forms of admin. But disability has a special if not unique relationship to three broad categories of admin: what we might call *medical admin*, *benefits admin*, and *discrimination admin*.⁵⁰

1. Medical Admin

This category includes all the admin that goes with medical symptoms or diagnosis, from researching its causes and possible treatments, to finding doctors or clinics to address it, to scheduling appointments, to dealing with the financials of paying for treatments and submitting insurance claims and disputing insurance denials, to handling healthcare FSA admin and health-related tax admin, to deciding and obtaining and renewing health insurance or proving eligibility for low-income health insurance, to keeping track of pills and prescriptions, to remembering which appointments or surgeries require what preparation (such as fasting for a certain number of hours prior) and what follow-up (such as waiting some time to bathe), to rehabilitation or physical therapy, and more. At the time of this writing, medical admin is an especially salient category for many people, disabled and nondisabled, as they navigate complex systems to try to get appointments for the COVID-19 vaccine—for themselves or for loved ones.⁵¹ Some forms of medical admin will apply in some situations and not others, but this paragraph gives a picture of the category.

Disability, under the standard social model, starts with an impairment, and thus involves or involved some amount of medical

sheets of vellum, 23 drawings in total. I was trying to organize the pain of an experience.”). For visual selections of Perry’s work, see *Work*, RACHEL PERRY, <https://www.rachelperrystudio.com> [<https://perma.cc/6WRC-N337>].

50. There are other categorizations of administrative burdens that are placed on people, including those with disabilities, such as the categories of compliance costs, learning costs, and psychological costs. See PAMELA HERD & DONALD P. MOYNIHAN, *ADMINISTRATIVE BURDEN: POLICYMAKING BY OTHER MEANS* (2018). The aim in this Essay, however, is to frame the issue in ways that highlight the components of disability admin in particular and thus to show how admin contributes to making impairment disabling in U.S. society.

51. See, e.g., Karen Jordan, *Teen, 14, Helps Hundreds Secure COVID-19 Vaccine Appointments Through His Own Database, ‘Chicago Vaccine Angels,’* ABC EYEWITNESS NEWS (Feb. 24, 2021), <https://abc7chicago.com/covid-19-vaccine-covid-coronavirus-chicago-angels/10365152> [<http://perma.cc/W3YT-Z3Q6>]; Elizabeth Emens, *Giving the Gift of COVID Admin*, PSYCH. TODAY (May 4, 2021), <https://www.psychologytoday.com/us/blog/life-admin/202103/giving-the-gift-covid-admin> [<https://perma.cc/TB7V-NLW8>].

admin.⁵² Given that the impairment had to be significant enough for the surrounding social environment to render it disabling, it may well involve or have involved extensive medical admin.

Some figures give a sense of the scope of these costs. According to the American Time Use Survey, the average total time per “ambulatory”⁵³ medical visit is 121 minutes, with 37 minutes of travel time and 84 minutes of clinic time.⁵⁴ In addition, the “average opportunity cost per visit was \$43, which exceeds the average patient’s out-of-pocket payment.”⁵⁵ In 2010, the “total opportunity costs per year for all physician visits in the United States were \$52 billion.”⁵⁶ These figures include both time spent in medical admin (the office-work means to the end of medical care) and time spent actually getting medical care, so that figure may overstate the total opportunity cost of medical admin in a year.⁵⁷ In other respects, though, the figure is surely an understatement. The time spent filling out forms in doctors’ offices and navigating transportation there is just a fraction of the costs of medical admin. This form of admin encompasses many more tasks, and the time and mental energy those entail, including the following: researching conditions and identifying doctors, scheduling appointments, gathering and transferring medical records, paying bills, as well as the myriad forms, submissions, and

52. See, e.g., Tom Shakespeare, *Still a Health Issue*, 5 *DISABILITY & HEALTH J.* 129, 130 (2012). Most conceptualizations of the social model follow this approach—including impairment in the mix and shifting the emphasis from the individual’s medical condition to the interaction with the surrounding social environment. See, e.g., BAGENSTOS, *supra* note 32, at 18–20; see also *supra* note 42 and accompanying text (contrasting the standard social model with the “radical social model”).

53. “Ambulatory care” refers to “care given at a hospital to non-resident patients, including minor surgery and outpatient treatment.” *Ambulatory Care*, *DICTIONARY.COM*, <http://www.dictionary.com/browse/ambulatory-care> [<https://perma.cc/269K-JLRD>].

54. Kristin N. Ray, Amalavoyal V. Chari, John Engberg, Marnie Bertolet & Ateev Mehrotra, *Opportunity Costs of Ambulatory Medical Care in the United States*, 21 *AM. J. MANAGED CARE* 567, 569 (2015).

55. *Id.* at 567.

56. *Id.*

57. See *id.* at 568 (describing the study’s methodology). Moreover, this figure is not limited to people with disabilities. *Id.* (describing the study as measuring “noninstitutionalized civilians within the US population”). Definitions of disability vary, and its definition in the ADA Amendments Act of 2008 is now very broad. See *supra* note 16. By any definition, the category of disability would not include people going for well-patient visits and check-ups.

appeals entailed by insurers⁵⁸ or—in the absence of insurance, for some—debt and its consequences.⁵⁹

2. Benefits Admin

Benefits admin is the office-type work involved in applying for, justifying, renewing, and, where necessary, legally contesting government benefits. This includes benefits from federal, state, and local governments—both those that supplement income because of disability and those that provide healthcare or other services (like in-home aides or physical equipment such as wheelchairs or service animals) in response to disability, as well as those responding to particular experiences, such as veterans' benefits.⁶⁰ In the words of one veteran, "My adult life has been consumed trying to battle the bureaucracy."⁶¹

Listing the components of the various benefits and the work involved in securing them and retaining them is almost as laborious and uninteresting as doing that labor, or so it might seem to some readers.⁶² Information about the details of the various processes is

58. See, e.g., JAY M. FEINMAN, DELAY, DENY, DEFEND: WHY INSURANCE COMPANIES DON'T PAY CLAIMS AND WHAT YOU CAN DO ABOUT IT 24–40 (2010) (describing insurance company strategies to avoid paying insurance claims); Claudia Dreifus, *Seeking Autism's Biochemical Roots*, N.Y. TIMES (Mar. 24, 2014), <http://www.nytimes.com/2014/03/25/science/seeking-autisms-biochemical-roots.html> [<https://perma.cc/F3C4-5F3Q>] (describing the "Ph.D. in insurance" a neurobiologist had to undertake after her son was diagnosed with autism). On rationing by hassle, see *infra* note 73 and accompanying text.

59. See, e.g., ELIZABETH WARREN & AMELIA WARREN TYAGI, THE TWO-INCOME TRAP: WHY MIDDLE-CLASS PARENTS ARE GOING BROKE 84–87 (2003) (discussing the role of medical bills in causing bankruptcy, especially for families without health insurance).

60. See, e.g., Oren R. Griffin, *Social Security Disability Law and the Obstacles Facing Claimants with Mental Disabilities*, 36 LAW & PSYCH. REV. 147, 183 (2012) (explaining that "the nature, extent, and severity of a claimant's disability must be determined before [Social Security disability] benefits can be granted"); Frank S. Bloch, *Medical Proof, Social Policy, and Social Security's Medically Centered Definition of Disability*, 92 CORNELL L. REV. 189, 201 (2007) (discussing the requirements to meet Social Security's disability standard); Crossley, *supra* note 35, at 629–30 (discussing Social Security's definition of disability to qualify for benefits).

61. Dave Philipps, *Veterans Claiming Disability Pay Face Wall of Denials and Delays*, N.Y. TIMES (Nov. 13, 2017), <https://www.nytimes.com/2017/11/13/us/veterans-affairs-department-benefits-delays.html> [<https://perma.cc/D9C4-CEKW>] (featuring Jonathan Bey discussing the time he spends contesting his disability denials).

62. In fact, listing the forms of benefits admin is nowhere near as laborious as doing benefits admin, but a reader may nonetheless appreciate being spared pages of detail on these benefits processes. *Cf., e.g.*, KATIE SAVIN, "BEING ON SSI IS A FULL-TIME

readily available,⁶³ though narrative accounts of this work are more vivid, whether done to care for oneself or for a dependent. As Rachel Adams writes about the admin involved in caring for her son Henry, who has Down syndrome, for example,

Just days after Henry's services were approved, the therapists started to arrive. Our life had to be structured around his appointments. I had purposefully chosen a career that didn't require me to manage other people. Suddenly, I was in charge of finding, scheduling, and interacting with an entire staff of caregivers.⁶⁴

JOB:" HOW SSI AND SSDI BENEFICIARIES WORK AROUND AND WITHIN LABOR INCENTIVE PROGRAMS 12 (2019) ("SSI/SSDI beneficiaries felt that they could never satisfy SSA rules. Stevie, a 55 year-old, white, multiply-disabled, man advised the group; 'Never believe them if they tell you they don't need some paperwork because you know the next person you talk to will."); *id.* at 13 ("Melvin discussed the amount of work put into managing benefits and resources . . . 'Being on SSI—I just want to get that clear—people think you're not working. Being on SSI is work. For me, it's like I have to go to SSI office to give papers. Then I have to go . . .").

63. See, e.g., Bloch, *supra* note 60, at 211–12 (describing the "five-step 'sequential evaluation process'" employed by the Social Security Administration); Melissa Linebaugh, *How Long Does It Take To Get a Decision for Social Security Disability?*, NOLO, <https://www.nolo.com/legal-encyclopedia/how-long-does-it-take-get-decision-social-security-disability.html> [<https://perma.cc/GRM4-UMEA>]; Bethany K. Laurence, *How Do You Start an Appeal for Social Security Disability (Reconsideration)?*, NOLO, <https://www.disabilitysecrets.com/resources/how-do-you-start-appeal-social-security-disability.htm> [<https://perma.cc/2ZF9-LXNN>]; *What Happens at a Social Security Disability Hearing?*, NOLO, <https://www.disabilitysecrets.com/what-happens-hearing.html> [<https://perma.cc/NE9Q-NTT4>] (describing how SSDI hearings last fifteen minutes to an hour); *VA Fully Developed Claims Program*, U.S. DEPT VETERANS AFFS., <https://www.va.gov/disability/how-to-file-claim/evidence-needed/fully-developed-claims> [<https://perma.cc/WQW8-7NZC>] (discussing steps to take to expedite disability claims); Margaret Wadsworth, *What To Expect at a BVA Hearing for Veterans Benefits*, NOLO, <https://www.nolo.com/legal-encyclopedia/what-expect-bva-hearing-veterans-benefits.html> [<https://perma.cc/L493-GF68>]; Andrew M.I. Lee, *Individuals with Disabilities Education Act (IDEA): What You Need To Know*, UNDERSTOOD, <https://www.understood.org/en/school-learning/your-childs-rights/basics-about-childs-rights/individuals-with-disabilities-education-act-idea-what-you-need-to-know> [<https://perma.cc/2R8L-8U85>] (discussing the process for qualifying a child for education benefits under IDEA).

64. RACHEL ADAMS, *RAISING HENRY: A MEMOIR OF MOTHERHOOD, DISABILITY, & DISCOVERY* 82 (2013). She continues, "Even as I went about these tasks, there were many days when I wanted to scream with frustration as I thought of my colleagues teaching seminars, reading and writing, or jetting around the world to give talks and go to conferences." *Id.* at 87; see also Marjorie L. DeVault, *Comfort and Struggle: Emotion Work in Family Life*, 561 ANNALS AM. ACAD. POL. & SOC. SCI. 52, 56–57 (1999) ("In many situations, parents mobilize to support their children's encounters with outside institutions—work that often requires forceful assertion, patience, and tact. . . . When children have disabilities, child care expands to include not only specialized caregiving but also the work of monitoring the child's needs and organizing resources to meet those needs. . . . Rannveig Traustadottir . . . found that middle-class mothers,

This is the experience of a very privileged White person—who also has a postgraduate education, office-work skills, and resources—accessing benefits in a state with a well-funded benefits system.⁶⁵ Elsewhere, I have written about how everyone faces life admin in general—unless someone else does it for them—but how admin is very different for those with less privilege as compared to those with more privilege.⁶⁶

For a person who lacks privilege and resources, trying to navigate a disability benefits regime—for oneself or a loved one—may be at best overwhelming and at worst insurmountable.⁶⁷ Legal assistance may be necessary but also challenging to secure and to weather, as this account suggests:

“Does he have a good case?” Gibson[, a disability attorney,] asked his assistant.

“He hasn’t been to the doctor but twice this year,” she said.

“A semi-idiot then,” Gibson sighed, knowing that the severity of a medical condition mattered only so much as what was documented, and not enough was documented here.

“If I had money to go see the doctors, then I wouldn’t need help,” Sims said, exasperated.⁶⁸

especially, coordinate numerous professionals . . .” (citing Rannveig Traustadottir, *Disability Reform and the Role of Women: Community Inclusion and Caring Work* (Dec. 1992) (Ph.D. dissertation, Syracuse University) (ProQuest))).

65. See, e.g., ADAMS, *supra* note 64, at 81–82 (describing the author’s life as a university professor in New York). On the capitalization of White, I agree with the reasoning of Eve L. Ewing, *I’m a Black Scholar Who Studies Race. Here’s Why I Capitalize ‘White,’* MEDIUM (July 2, 2020), <https://zora.medium.com/im-a-black-scholar-who-studies-race-here-s-why-i-capitalize-white-f94883aa2dd3> [<https://perma.cc/ASR9-KQ3Z>].

66. See EMENS, *supra* note 6, at 25–26 (describing this as “the privilege divide” around admin).

67. Cf., e.g., *Henrietta D. v. Bloomberg*, 331 F.3d 261, 268 (2d Cir. 2003) (documenting myriad issues of meaningful access to a New York City benefits program); *Examining Changes to Social Security’s Disability Appeals Process: Hearing Before the Subcomm. on Soc. Sec. of the H. Comm. on Ways & Means*, 115th Cong. 63 (2018) (statement of Lisa Ekman, Co-Chair, Social Security Task Force, Consortium for Citizens with Disabilities) (“Changes that make the process more formal and complicated, add more procedural rules and obligations for claimants, or appear to be inconsistent with one another (for example, requiring the submission of all evidence that relates to an individual’s disability but not allowing the evidence to be considered in most circumstances if it is not submitted by a certain date) are nearly impossible for people with disabilities to even know about, let alone understand and comply with. This is especially true for people who have intellectual, cognitive, or mental impairments.”).

68. Terrence McCoy, *597 Days. And Still Waiting.*, WASH. POST (Nov. 20, 2017), <https://www.washingtonpost.com/sf/local/2017/11/20/10000-people-died>

Another individual, a veteran, describes his experience of disability admin in this way:

I recently filed a claim, [but] instead of using all the data the VA has in my case to decide my claim, the VA needs to send me to a doctor once again before they can drag out their decision process. Ok, fine! But why did they send me 250 miles round trip to see a doctor on a Friday night with an appointment at 500PM [sic]. I don't see well to drive at night anymore. 125 miles home at night in Friday night traffic. I guess that was a *thank you for your service*. I have been told I could have made another appointment, sure wait another six month [sic] for an appointment. When you get an appointment with the VA, you better keep that appointment. Now sit back and wait and hope you don't die before the VA makes a decision.⁶⁹

Another veteran found a pithy way to express a similar sentiment: "Delay, Deny until they Die. THAT is the status of the VAs [sic] appeals process. Been waiting years with NO END and NO HELP in sight. Pass it here, shuffle it there, request this, lose that, repeat request, remand, deny."⁷⁰ Similar reports are offered by those who have been through

-waiting-for-a-disability-decision-in-the-past-year-will-he-be-next [https://perma.cc/P64P-72HN]. The term "idiot" is an epithet with a troubling history related to disability in this country. See, e.g., Paul K. Longmore & Dianne Piastro, *Unhandicapping Our Language* (Feb. 1988) (unpublished manuscript) (on file with author).

69. Gene E Magann, Comment to *VA's Modernization of the Claims Process Continues*, U.S. DEP'T VETERANS AFFS.: VANTAGE POINT (Mar. 24, 2017, 2:08 PM), https://www.blogs.va.gov/VAntage/36122/vas-modernization-of-the-claims-process-continues-with-more-than-300000-digitalized-inactive-claim-records-removed-to-improve-process-service [https://perma.cc/54FE-K582] (emphasis added).

70. Joe Washburn, Comment to *VA's Modernization of the Claims Process Continues*, supra note 69 (Mar. 23, 2017, 4:16 PM); see also Paul Deutsch, Comment to *VA's Modernization of the Claims Process Continues*, supra note 69 (Mar. 20, 2017, 10:42 AM) ("I don't know who holds the record for the oldest claim still unresolved but it may be me. I filed in 1981 and my claim is still unresolved. I get a letter from the VA every years [sic] or so either telling me that nothing has been done or asking for something that I've already submitted. Appeal requests just seem to stack up with no action taken. Sending e-mails to the previous Head of the VA resulted in phone calls from one of the local claims processors but again no actions resulted and the claim is still unresolved.").

the process of applying for SSDI and Medicaid,⁷¹ as important work by Doron Dorfman has shown.⁷²

These admin costs are sometimes inadvertent, but an extensive literature documents the ways that benefits are often “rationed by hassle.”⁷³ The term “rationing by hassle” emerges from the insurance industry, so private entities also impose hassle costs.⁷⁴ (If in doubt, consider why companies offer rebates rather than just discounting the price of a sale.) But while no private insurer admits to rationing by hassle, rationing public benefits through administrative hassle is sometimes explicitly embraced as sound public policy—as if this approach will sort for those who most need the benefit.⁷⁵ Unfortunately, the person least able to navigate a complicated bureaucratic apparatus may be the person who most needs the

71. See, e.g., Amelia, *Why Doesn't the World Care?*, NEW HORIZONS UN-LIMITED INC.: DISABILITY EXPERIENCES: WRITINGS & PERSPS. (July 17, 2013), <http://www.new-horizons.org/pexame.html> [<https://perma.cc/C7MF-RXFP>] (“Because my disability is mental, I face discrimination and frustration every day. I have been denied Medicaid over five times in the past 13 years, only receiving it once when I was diagnosed with cancer. Once the cancer went into remission, my Medicaid was removed because I no longer had the disabling condition they gave me the Medicaid for - and now I am in the process of re-applying with my other health conditions that I have been consistently denied for (Severe arthritis, degenerative disc disease, Bipolar I, Borderline Personality Disorder, and a string of other conditions that are related to my Type 2 Diabetes). I have also been denied SSDI five times in the last 13 years for the same reason I just received my denial for Medicaid disability today and have to go through the appeals process again. I feel worn out; hopeless. I had my hearing for SSDI this month and await their denial as well. From my understanding, this is the last time I can apply for SSDI - this decision is final. . . . Do you know why? Because I didn't spend all those years wracking up tens of thousands of dollars getting necessary healthcare the right way. I now know that I should have had my eye on disability every time I visited a doctor or therapist. I should have had it documented consistently why I was disabled or how I was disabled or what was disabling.”).

72. See generally Doron Dorfman, *Disability Identity in Conflict: Performativity in the U.S. Social Security Benefits System*, 38 T. JEFFERSON L. REV. 47 (2015) (discussing the difficulties of meeting the admin requirements for Social Security disability benefits); Doron Dorfman, *Re-Claiming Disability: Identity, Procedural Justice, and the Disability Determination Process*, 42 LAW & SOC. INQUIRY 195 (2017) (describing the experience of people with disabilities as they navigate the process of claiming Social Security benefits).

73. See, e.g., Emens, *supra* note 5, at 1451–54 (discussing the use of rationing by hassle to make money from admin); EMENS, *supra* note 6, at 181–82 (discussing the problem and potential solutions).

74. See, e.g., EMENS, *supra* note 6, at 181.

75. HERD & MOYNIHAN, *supra* note 50, at 16; Matthew Diller, *Entitlement and Exclusion: The Role of Disability in the Social Welfare System*, 44 UCLA L. REV. 361, 461 (1996) (“[E]ligibility criteria are designed to track public conceptions of the ‘worthy’ poor . . .”).

benefit. The example of disability—for instance, individuals managing dual diagnoses—makes this point starkly.⁷⁶ Another striking example of disability admin compounding rather than reducing the burdens on those most needing benefits is the IDEA’s racially disparate effects and the failed structure of “parental participation” as a solution, set out powerfully in the work of LaToya Baldwin Clark.⁷⁷ This topic warrants far more discussion, but, before concluding, this Subsection will mention just one more layer of complexity: at the intersection of disability law and family law, some benefits programs, drawing on gendered and privatized assumptions, reduce or eliminate disability benefits if a person marries, thus subjecting some disabled people who would otherwise marry to the additional admin of living outside of formal marriage.⁷⁸

In 2004, Sam Bagenstos argued that “The Future of Disability Law” was welfare rather than antidiscrimination law.⁷⁹ Most experts would surely agree that antidiscrimination law remains relevant—including Bagenstos—but he rightly identified the vital importance of these forms of assistance for many people with disabilities.⁸⁰ The labor involved in obtaining and maintaining benefits can be a hefty undertaking for those who are eligible.

3. Discrimination Admin

Discrimination admin includes the office-type work of contesting biased and unfair treatment (*antidiscrimination work*) and of requesting legally mandated accommodations (*accommodation work*). I include both antidiscrimination and accommodation work

76. See, e.g., Shelley Tremain, *On the Government of Disability: Foucault, Power, and the Subject of Impairment*, in *DISABILITY STUDIES READER* 185, 192–93 (Lennard J. Davis ed., 2006) (discussing the role of a politically defined impairment determination in the United Kingdom’s Disability Living Allowance Policy); Margrit Shildrick & Janet Price, *Breaking the Boundaries of the Broken Body*, 2 *BODY & SOC’Y* 93, 101 (1996) (“[H]eterogeneity . . . is itself masked in the production of a regulatory category that operates as a homogeneous entity – disability – within the social body.”).

77. LaToya Baldwin Clark, *The Problem with Participation*, 9 *MOD. AM.* 20, 21–24 (2013); see also LaToya Baldwin Clark, *Beyond Bias: Cultural Capital in Anti-Discrimination Law*, 53 *HARV. C.R.-C.L. L. REV.* 381, 391 (2018).

78. See, e.g., Erez Aloni, *Deprivative Recognition*, 61 *UCLA L. REV.* 1276, 1313 (2014) (exploring forms of relationship recognition that deprive people of benefits); Rabia Belt, *Disability: The Last Marriage Equality Frontier* (Stanford L. Sch. Pub. L. Working Paper, Paper No. 2653117, 2015), <https://ssrn.com/abstract=2653117> (discussing the economic and legal disadvantages for people with disabilities and suggesting solutions).

79. See generally Samuel Bagenstos, *The Future of Disability Law*, 114 *YALE L.J.* 1 (2004).

80. *Id.* at 54–55.

under the same heading of “discrimination admin” in the spirit of the statutory language of the ADA. The statute defines “discrimination” on the basis of disability to encompass both direct and indirect discrimination, on the one hand, as well as “not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability,”⁸¹ on the other. (Lively debates have ensued over whether failure to accommodate should be understood to be a different kind of thing than “discrimination,” but those debates are beyond the scope of this Essay.⁸²)

Discrimination admin of course includes the admin costs of litigation, which can be sizable, and the prior steps that aim to resolve problems without litigation, for instance, through the “interactive process” between employers and employees to agree on workplace accommodations.⁸³ But much more commonly, discrimination admin

81. To fail to accommodate a disability is to “discriminate” under the fifth prong of the statutory definition of that term:

[T]he term “discriminate” includes ... not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity

42 U.S.C. § 12112(b)(5)(A).

82. Compare, e.g., Christine Jolls, *Antidiscrimination and Accommodation*, 115 HARV. L. REV. 642, 684 (2001) (arguing that accommodation and antidiscrimination involve similar and overlapping requirements), Stein, *supra* note 38, at 597 (proposing that disability accommodations operate as antidiscrimination provisions), and Bagenstos, *supra* note 79, at 55 (arguing that accommodation requirements are antidiscrimination requirements on a negligence model), with Amy L. Wax, *Disability, Reciprocity, and “Real Efficiency”: A Unified Approach*, 44 WM. & MARY L. REV. 1421, 1423 (2003) (suggesting that the costs added by required ADA accommodations could work against antidiscrimination goals), and Pamela S. Karlan & George Rutherglen, *Disabilities, Discrimination, and Reasonable Accommodation*, 46 DUKE L.J. 1, 4 (1996) (identifying differences between accommodation in the ADA and prior conceptions of discrimination law).

83. Under the ADA, an employer should engage in an interactive process in response to requests for accommodations. See 29 C.F.R. § 1630.2(o)(3) (2019) (“To determine the appropriate reasonable accommodation it may be necessary for the [employer] to initiate an informal, interactive process with the individual with a disability in need of the accommodation.”); *id.* § 1630.9 app. (“The appropriate reasonable accommodation is best determined through a flexible, interactive process that involves both the employer and the qualified individual with a disability.”). The enforcement guidance takes a stronger position on the interactive process than the regulations. See U.S. EQUAL EMP. OPPORTUNITY COMM’N, NOTICE NO. 915.002, ENFORCEMENT GUIDANCE: REASONABLE ACCOMMODATION AND UNDUE HARDSHIP UNDER THE

is the work of deciding when, whether, and how to speak up to challenge discriminatory treatment or words. And it is the work of deciding when, whether, and how to request accommodations of employers,⁸⁴ schools,⁸⁵ and public accommodations.⁸⁶ And it is the work of deciding when and how to navigate access with friends, acquaintances, and strangers. Adrienne Asch captured a tiny yet telling example of these interactions when she wrote:

The ADA may prevent a local health club or public pool from turning me away if I go to exercise or swim, but it will do nothing to help me persuade a group of new friends that I could join them for a carefree afternoon at a lake. To accomplish that I must be prepared to provide my athletic credentials and convince them that they are not “responsible” for my safety.⁸⁷

People’s reactions to these social dynamics differ, of course; for Asch they were painful “indignities.”⁸⁸ This social dimension to discrimination admin also includes the costs of explaining one’s own (or one’s child’s or other loved one’s) disability and any accoutrement to others, which can be taxing on multiple levels.⁸⁹

AMERICANS WITH DISABILITIES ACT (2002), <http://www.eeoc.gov/policy/docs/accommodation.html> [<https://perma.cc/5ALN-RGSQ>] (providing in-depth guidance and examples on what constitutes a valid interactive process, including proactive initiation by the employer in certain situations). For an insightful critique of the interactive requirements of the ADA, with particular attention to race, class, and gender, see Shirley Lin, *Bargaining for Integration*, 96 N.Y.U. L. REV. (forthcoming 2021), <https://ssrn.com/abstract=3791028>.

84. See, e.g., *Employees’ Practical Guide To Requesting and Negotiating Reasonable Accommodation Under the Americans with Disabilities Act*, JOB ACCOMMODATION NETWORK, <https://askjan.org/publications/individuals/employee-guide.cfm> [<https://perma.cc/KAN9-WQQ6>].

85. See, e.g., Lisa Linnell-Olsen, *How To Know If Your Child Needs an IEP*, VERYWELL FAM., <https://www.verywellfamily.com/when-to-ask-for-an-iep-2601418> [<https://perma.cc/4KU3-9G2G>].

86. Cf. Jacobus tenBroek, *The Right To Live in the World: The Disabled in the Law of Torts*, 54 CALIF. L. REV. 841, 843–47 (1966) (discussing how a national policy of integration of disabled people influences administration of disability benefits). Note that the term “accommodation” has two distinct meanings: the accommodations that people with disabilities may need, as in “reasonable accommodation,” and the “public accommodations,” such as restaurants and stores, which are the subject of Title III.

87. Adrienne Asch, *Critical Race Theory, Feminism, and Disability: Reflections on Social Justice and Personal Identity*, 62 OHIO ST. L.J. 391, 395–96 (2001).

88. She compared them to the effects of unconscious racism of the sort catalogued by Charles Lawrence. *Id.* at 396 (citing Charles R. Lawrence III, *The Id, the Ego, and Equal Protection Reckoning with Unconscious Racism*, in CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT 235, 235–36 (1987)).

89. See, e.g., Andrew Pulrang, *For People with Disabilities, Asking for Help Carries Hidden Costs*, FORBES (Nov. 12, 2019, 3:12 PM), <https://www.forbes.com/sites/andrewpulang/2019/11/12/for-people-with-disabilities-asking-for-help-carries-hidden-costs> [<https://perma.cc/BDC3-D2UW>]. See generally Elizabeth F. Emens,

The admin of locating places that are accessible is the work of countless interactions with hotels and restaurants and gyms and museums and airlines.⁹⁰ For a vivid, visual representation of the work involved in accessing art galleries in a wheelchair, one need only look at the work of Park McArthur entitled “Ramps,” which displayed the ramps she had to request or provide in order to enter galleries to view art, including her own work as an artist.⁹¹ Taking accessibility into account is something everyone could do when choosing a restaurant or a hotel. Everyone could look out for steps rather than ramps, for instance, and press the proprietor on whether such steps are necessary and whether they’re in compliance with the ADA and any state or local disability laws. Everyone could check the websites and PDFs they use (as well as those they create or contribute to) for screen-reader accessibility or find someone to check them for us. Some (though not nearly enough) resources exist to support people who are taking on these accessibility inquiries.⁹² But most people

Shape Stops Story, 15 J. SOC’Y FOR STUDY NARRATIVE 124 (2007) (discussing the common demand to tell the story of one’s disabilities).

90. See, e.g., Andrew Pulrang, *5 Ways To Avoid an Accessibility Fail*, FORBES (July 31, 2020, 2:00 PM), <https://www.forbes.com/sites/andrewpulrang/2020/07/31/5-ways-to-avoid-an-accessibility-fail> [<https://perma.cc/RFY4-TD5F>] (“It’s never really knowing what will and won’t be accessible to your particular type of disability. It’s having to revise and re-revise your daily plans at a moment’s notice. It’s watching the dominoes of your carefully arranged plans and coping techniques topple one after another, triggered by a single step, or a door that’s an inch too narrow. It’s all of these things happening week after week, month after month, year after year.”).

91. *Park McArthur at Essex Street*, CONTEMP. ART DAILY (Jan. 27, 2014), <https://contemporaryartdaily.com/2014/01/park-mcarthur-at-essex-street> [<https://perma.cc/PM7J-EU2R>]. McArthur has described the work with these words:

My show isn’t a show about ramps. It is a show of ramps that surveys the three years since I moved to New York; my interactions with the different art institutions that created portable ramps outside their buildings. It’s a show composed of these temporary fixes to structures that are ultimately inaccessible and will remain inaccessible [And this is a] relationship [that] requires you—a person—to have the time and space and energy to advocate for yourself. And of course the show doesn’t represent all the places that said: “No, we don’t have a ramp.” It doesn’t show how my participation at other places means getting carried up stairs, an event that requires multiple people’s work and organizing efforts.

Jennifer Burris, *Interview with Park McArthur*, BOMB (Feb. 19, 2014), <https://bombmagazine.org/articles/park-mcarthur> [<https://perma.cc/E42P-98E2>]. For further discussion of McArthur’s work and what it reveals, see generally Elizabeth F. Emens, *The Art of Access: Innovative Protests of an Inaccessible City*, 47 FORDHAM URB. L.J. 1359 (2020), which uses McArthur’s work to describe and understand the problems of inaccessible cities.

92. On finding accessible venues, see, for example, *Accessible NYC*, NYC OFF.

don't engage in all this discrimination admin unless they have to because of disability, their own or that of someone close to them. These are some of the costs of discrimination admin disproportionately borne by people with relevant disabilities and those who move with them.

The burdens of this form of disability admin can lead to what Carrie Griffin Basas calls *advocacy fatigue*:

The need for self-advocacy and community organizing is a constant in the lives of people with disabilities. In enforcing their rights under civil rights laws, people with disabilities are drawn into a game of attrition through litigation—where their limited economic means, community supports, and physical and mental resources are leveraged against them as they have to choose between basic needs and broader policy changes and legal justice for all. This phenomenon can best be described as “advocacy fatigue.”⁹³

Prominent DeafBlind lawyer and writer Haben Girma laments these costs in interviews and talks saying, for instance, “[T]here are a lot of barriers, especially for us disabled people. And I do get exhausted. There is advocacy fatigue.”⁹⁴ Advocacy fatigue is one of the many costs

GUIDE, <https://www.nycgo.com/plan-your-trip/basic-information/accessibility> [<https://perma.cc/49PS-MVMU>]; Frank Bruni, *When Accessibility Isn't Hospitality*, N.Y. TIMES (Sept. 12, 2007), <http://www.nytimes.com/2007/09/12/dining/12acce.html> [<https://perma.cc/JB3G-H8ZG>]; and *Accessibility Checklist for Hotel Accommodation*, TRIPADVISOR, https://www.tripadvisor.com/ShowTopic-g1-i12336-k4150249-Accessibility_Checklist_for_Hotel_Accommodation-Traveling_With_Disabilities.html [<https://perma.cc/762P-FP4R>]. On website accessibility, see, for instance, *Web Content Accessibility Guidelines*, WEB ACCESSIBILITY INITIATIVE, <https://www.w3.org/WAI/intro/wcag> [<https://perma.cc/P5FL-X3JC>]; *Introduction to Web Accessibility*, WEB ACCESSIBILITY INITIATIVE, <https://www.w3.org/WAI/fundamentals/accessibility-intro> [<https://perma.cc/YJ7X-VGRT>]; and Karol K, *Making Your Website Design Accessible*, ADOBE CREATIVE CLOUD (Sept. 22, 2015), <https://web.archive.org/web/20200815150002/https://blogs.adobe.com/creativecloud/making-your-website-design-accessible>.

93. Carrie Griffin Basas, *Advocacy Fatigue: Self-Care, Disability Discrimination, and Legal Attrition* (Aug. 11, 2014) (unpublished manuscript), <https://ssrn.com/abstract=2478900>. She continues,

I define advocacy fatigue as the increased strain on emotional, physical, material, social, and wellness resources that comes from continued exposure to system inequities and inequalities and the need to advocate for the preservation and advancement of one's rights and autonomy. Advocacy fatigue can diminish emotional and physical health, career prospects, and financial security because of the ongoing exposure to stress and discrimination.

Carrie Griffin Basas, *Advocacy Fatigue: Self-Care, Protest, and Educational Equity*, 32 WINDSOR Y.B. ACCESS TO JUST., no. 2, 2015, at 37, 51, 53.

94. No Barriers Podcast, *Advocate for Change: Haben Girma*, NO BARRIERS, <https://nobarriersusa.org/podcast/interview-with-haben-girma> [<https://perma.cc/EHA3-PFWE>]. Those barriers extend beyond what the law prohibits as discrimination,

of discrimination admin. Discrimination admin is a cost borne by anyone who faces discrimination along any axis of identity, including race, sex, gender, or religion; the pressure of advocacy fatigue is compounded for those who must confront discrimination from multiple directions.⁹⁵

* * *

Disability leads to medical, benefits, and discrimination admin and opens the door to admin onslaughts. In this way, people with disabilities bear a disparate burden of the office-work of life. Several conceptual and legal consequences follow from this observation, as the rest of this Part and the next Part will set out.

B. THE IMPACT ON THE SOCIAL MODEL

Disability admin plays an important role in the social model of disability. The labor that a disabled person—or those in her life—must do is a significant way that impairment interacts with the surrounding social environment. The interactions entailed by disability admin consume time and mental energy, which already may be taxed by consequences of impairment or of an inaccessible environment. It is therefore vital that we attend to disability admin as we attempt to understand disability on a social model.

The ADA is rooted in the social model of disability, as discussed earlier,⁹⁶ but the social model has generally neglected the admin component of impairment's interaction with the environment, as this Section will show. After doing so, this Section concludes by identifying a practical implication of this refinement of the social model.

1. Neglect of Disability Admin in Formulations of the Social Model

Although admin constitutes a major category of burdens on impairment through the surrounding social environment, writings about the social model have tended to neglect these costs. We can see this early on, with Michael Oliver's classic writings on the social

compounding advocacy fatigue. *See, e.g.,* Jamelia N. Morgan, *Toward a DisCrit Approach to American Law*, in *DISCRIT EXPANDED: INQUIRIES, REVERBERATIONS & RUPTURES* 1, 21 (forthcoming 2021), <https://ssrn.com/abstract=3730705> (observing that the ADA “does not require altering the fundamental social conditions that produce the inequality in the first place”).

95. *See, e.g.,* Morgan, *supra* note 94, at 3 (“An intersectional approach to, and examination of, disability law reveals how the ADA, despite its broad protections, leaves disabled people of color, in particular, under-protected.”). Discrimination admin will differ for different intersections of identities and warrants further investigation.

96. *See supra* text accompanying notes 33–35.

model, where the examples tend to emphasize physical architecture and discriminatory attitudes and actions:

[D]isability, according to the social model, is all the things that impose restrictions on disabled people; ranging from individual prejudice to institutional discrimination, from inaccessible public buildings to unusable transport systems, from segregated education to excluding work arrangements, and so on. Further, the consequences of this failure do not simply and randomly fall on individuals but systematically upon disabled people as a group who experience this failure as discrimination institutionalised throughout society.⁹⁷

Typical examples to illustrate the social model are stairs rather than ramps. A vivid illustration comes from Simi Linton, who uses a wheelchair, and to exemplify the social model asks her students, “If I want to go to vote or use the library, and these places are inaccessible, do I need a doctor or a lawyer?”⁹⁸ Of course, finding a lawyer can be a form of discrimination admin, but these depictions do not speak to that labor.

Rather than cataloguing holes in other people’s work, however, I will illustrate the way representations of the social model have neglected disability admin by pointing out the omissions in a narrative example from my own past writing on the subject.

In an article on the ways people discriminate on the basis of disability (as well as sex and race) in their dating, sex, and marital lives, I dramatized the social model of disability by contrasting two different imaginary towns—Accessible City and Inaccessible City—and showing how a female lawyer who is a triple amputee could have a very different dating life on account of the surrounding social environment. This passage describes the two imagined cities:

Imagine two towns: Accessible City (A-City, for short) and Inaccessible City (I-City). Janet, an attractive young lawyer and triple amputee who uses a wheelchair, lives in A-City, where she meets John, a nondisabled librarian, and they begin dating. In A-City, where everything is accessible, John and Janet can go wherever they please together—parks, museums, restaurants, bars. They go dancing and see movies; they take public transportation to the botanical gardens and the zoo. Most private buildings are accessible, at least on the ground floor, so they visit friends together, attend parties, and enjoy an easy and relaxed social life. In addition, the state in which A-City is located has a welfare system that provides personal assistance to Janet for daily self-care tasks (as needed), and were she to marry, Janet’s state assistance would continue as before.

Janet then moves to I-City, in a far away state, for a new job, prompting a breakup with John. In I-City she meets Tim, another lawyer, at a local Bar event, and they hit it off. Janet hopes their spark might develop into a relationship, but even dating proves difficult. Public transportation in I-City

97. MICHAEL OLIVER, UNDERSTANDING DISABILITY 33 (1st ed. 1996).

98. LINTON, *supra* note 10, at 120.

is only partly accessible—with most subway stops accessible only by stairs and more than half the city's buses without working lifts—and there are few accessible taxis. Difficulties with transportation make Janet late to work on numerous occasions, at first threatening her status in her new job, though she adjusts by leaving home at ridiculously early hours (something Tim, not a morning person, finds tedious). Most restaurants have steps up to their entrance or such narrow aisles between tables as to make movement in a chair impossible. (Some of these obstacles violate the public accommodations title of the ADA, but compliance is poor and lawsuits have been rare.) The few restaurants that are accessible have tables with big circular bases on the table legs, so Janet has to park her wheelchair back from the table, making intimacy challenging. Movie theaters and stores are all hit or miss in their accessibility. Almost no one's home is accessible, so they cannot attend dinner parties together. Tim's friends feel awkward about this and debate whether even to invite him to things, knowing Janet will not be able to join him. They begin to ask him, subtly and not so subtly, whether he would want to face a lifetime of such constraints. One of them, a social worker, points out that I-City's state revokes personal-assistance services if a disabled beneficiary marries, on the assumption that her spouse will take on those duties. Janet has many more daily frustrations in I-City, and feels a great deal more anger and hostility, which creates tension and conflict with Tim, who sees her perspective but also does not experience it as she does. When he encourages her to be positive, she feels alienated from him and accuses him of an inability to understand her world. He feels excluded, and the distance between them grows.⁹⁹

Though the primary purpose of these hypothetical cities was to demonstrate how law, policy, and norms could create the backdrop for very different experiences of dating, the article also used A-City and I-City to depict the social model of disability.¹⁰⁰ Though her impairment is the same, Janet is far more disabled in I-City due to the surrounding social environment.

What is noteworthy for our purposes here is that, of the multiple examples of how the surrounding social environment makes her impairment disabling, none of them is admin. If the hypos had incorporated admin, the contrast between the two cities would have been starker.

In I-City, Janet or her partner surely would have done much more research to find out what restaurants or movie theaters could accommodate them, as well as awkward social admin to find out which friends' apartments were open to her. Transportation in I-City would have involved finding out, through research or trial and error, which subway stations were accessible—and remembering that when commuting or going to a different part of town. I-City might have some

99. Elizabeth F. Emens, *Intimate Discrimination: The State's Role in the Accidents of Sex and Love*, 122 HARV. L. REV. 1307, 1370–71 (2009) (footnotes omitted).

100. For discussion of the impact of this hypothetical, see Emens, *supra* note 91, at 1388–89.

accessible cabs, but presumably not a reliable fleet of them, or an Access-a-Ride option plagued by unreliability—or not even that. In I-City, the personal assistance benefits could have required more documentation of her disability or more frequent renewal with more onerous documentation requirements.¹⁰¹ Discrimination admin would include deciding whether to contest inaccessibility and other forms of discrimination, which could be compounded by Janet's particular intersection of identities, and then the actual work of protest or legal action where Janet or her partner decides to take action.¹⁰² Since admin is sticky,¹⁰³ whoever starts doing it is likely to continue doing it, which may or may not be a happy situation for whichever partner is doing the admin. These are only a few of the external forms of admin. (A couple who disagrees about any of these matters, or about who should take care of the associated admin, may have to face unpleasant trying-to-solve-our-admin-problem admin, which may ultimately involve trying-to-find-a-couples'-therapist admin.) Janet's impairment appears to be static—rather than changing in ways that require further treatment or diagnosis¹⁰⁴—but where a person's condition or abilities are unpredictable, that throws additional uncertainty into all plans and may entail researching different questions of accessibility at different times, unless a place is highly and reliably accessible. These are just some of the examples of how a different texture of disability admin can make the texture of life very different for a person with a disability and also for her partner.

The two-cities hypothetical further underscores the role of factors beyond impairment in disabling someone—by showing that even a non-disabled partner is effectively disabled by the inaccessibility of one city as opposed to the other. Admin helps to strengthen that point: because the non-disabled partner may be the one who actually *does* the disability admin.

My interviewee Shira described to me an admin onslaught she faced while traveling with her husband, who has post-polio syndrome.¹⁰⁵ He fell and broke a leg during their cruise in a remote area, and she spent the rest of the trip “succumbing,” as she put it, to

101. Note that sometimes less admin is just the result of fewer benefits or fewer rights, though that often means more admin of another kind is needed to fill the gaps. See Emens, *supra* note 5, at 1410.

102. On the role of intersectionality in discrimination admin, see Morgan, *supra* note 94, at 11.

103. See *supra* Part I.

104. On static and non-static impairments, see Wasserman, *supra* note 8.

105. See EMENS, *supra* note 6.

spending every waking moment, when she wasn't engaged in direct care for him, figuring out and planning how to get them home.¹⁰⁶ Her attitude to the admin made it not unpleasant for her. In her words, "I kind of gave myself over to it. *Hey, this is a crisis. Let's see what we can do with this.*"¹⁰⁷ Although she "didn't hate it,"¹⁰⁸ it seems fair to say this was not the trip she'd planned and that doing the admin for his impairment controlled her experience during that time.¹⁰⁹

The argument here is not that disability scholars do not or would not see admin as part of what makes impairment disabling but rather that admin has generally been overlooked in articulations of the social model, which have focused more on physical architecture and societal attitudes per se. One notable exception to that trend comes in the work of Susan Wendell, who writes:

[D]isability is socially constructed through the failure or unwillingness to create ability among people who do not fit the physical and mental profile of 'paradigm' citizens. . . .

....

... Failure or unwillingness to provide help often takes the form of irrational rules governing insurance benefits and social assistance, long bureaucratic delays, and a pervasive attitude among those administering programs for people with disabilities that their 'clients' are trying to get more than they deserve.¹¹⁰

Wendell here focuses on the bureaucratic interactions entailed by disability. The emphasis is nonetheless on the attitudes and actions of others, rather than the admin actions taken by the people with disabilities, consistent with the trend in writing about the social model.

2. Reshaping Expertise

Recognizing the role of admin illuminates one practical payoff for the social model. Seeing admin's importance helps us to refine our understanding of what form of expertise is relevant to analyzing matters of disability law and policy. Before turning to legal

106. *See id.*

107. *See id.*

108. A version of this story is also told in EMENS, *supra* note 6, at 163.

109. Moreover, if she managed to make the best of a challenging situation, this does not discount the possibility that she was unfairly burdened. *Cf., e.g.,* JON ELSTER, *SOUR GRAPES: STUDIES IN THE SUBVERSION OF RATIONALITY* (Cambridge Philosophy Classics ed. 2016) (discussing how utilitarians should handle "adaptive preferences" formed under conditions of subordination).

110. SUSAN WENDELL, *THE REJECTED BODY: FEMINIST PHILOSOPHICAL REFLECTIONS ON DISABILITY* 41-42 (1996) (footnote omitted).

implications in the next Part, this Subsection therefore describes this conceptual implication.

In 2007, Adam Samaha published a provocative article entitled “What Good Is the Social Model of Disability?,” which excavated the concept.¹¹¹ Samaha sought to prove what the social model does and does not do. For our purposes the important part of this argument is that, for Samaha, a key payoff of the social model is that it designates a different class of experts on disability.¹¹² The traditional medical model would send us to doctors and mental health professionals to help dictate social and legal policy. The social model—which defines disability as impairment in interaction with the surrounding environment—should send us to “sociologists, architects, political scientists, social psychologists, anthropologists, historians, and others with unique skill sets.”¹¹³

Identifying the importance of disability admin in the social model points towards a further set of experts: those who measure time use and mental bandwidth. In an ideal world technological advances might allow us to measure directly and effortlessly the way we spend our time and even what occupies our minds. In reality, at present, a small cadre of empirical social scientists and researchers in management studies do their best to measure time use and mental labor.¹¹⁴ And their work suffers from limitations: notably, for instance, prominent surveys like the American Time Use Survey largely assess our time monolithically—as if we are only doing one thing at a time in a given hour.¹¹⁵ At work, we are working; when watching children, we

111. Samaha, *supra* note 34.

112. *Id.* at 1254 (“When the model is doing work within a normative framework, its insight may help suggest a class of decisionmakers different from the group that other perspectives suggest.”).

113. *Id.* at 1307. He also recognizes that the social model leaves room for a role for the expertise of people with disabilities, a vital point that Doron Dorfman and Mariela Yabo have recently developed. See Doron Dorfman & Mariela Yabo, *The Professionalization of Urban Accessibility*, 47 *FORDHAM URB. L.J.* 1213, 1232 (2020) (“Professionals from different fields have played, and continue to play, an important role in the lives of people with disabilities. Often, disability professionals use unique practice and language designed for establishing expertise. Those practices have been criticized for serving as a tool to preserve control and marginalizing people with disabilities. . . . In response, as part of their struggle towards rights and equal participation, disability advocates and scholars have been operating under the motto of ‘nothing about us without us’—meaning, people with disabilities should have the right to be involved in decision-making processes related to their everyday lives.”).

114. See, e.g., Anne E. Winkler & Thomas R. Ireland, *Time Spent in Household Management: Evidence and Implications*, 30 *J. FAM. ECON. ISSUES* 293, 301–02 (2009).

115. *Id.*; BUREAU OF LAB. STAT., U.S. DEP’T OF LAB., AMERICAN TIME USE SURVEY—2016

are watching children. Since admin so often happens in the interstices of everything else,¹¹⁶ through multitasking and in stolen moments, time-use surveys need to capture multiple activities. (If anyone doubted the need to multitask at home, at least by some, then sheltering in place during the COVID-19 pandemic should have cured them of that illusion.¹¹⁷) And studies of mental labor in the household need to increase their precision beyond what topic people are thinking about to capture whether people's thoughts are directed towards solving problems and thus contributing to their households.¹¹⁸ In an ideal world, instruments would also be developed to measure the mental bandwidth occupied by the tasks we have not yet completed, under the Zeigarnik effect, which is the way our minds remember a task that is unfinished more than a task that is finished.¹¹⁹ Attending to the admin costs of disability would require reliance on new kinds of experts and also improvements in their techniques.

In the federal government, the Paperwork Reduction Act requires agencies to justify any information collection in terms of the need for

RESULTS, at tbl.1 (2017), https://www.bls.gov/news.release/archives/atus_06272017.pdf [<https://perma.cc/ZP2V-TT52>].

116. See *supra* Part II.A.

117. See, e.g., Dyane O'Leary & Sarah J. Schendel, *Life Admin When Life Turns Upside Down: A Book Review (of Sorts)* (2021) (unpublished manuscript), <https://ssrn.com/abstract=3762654>; Anne Helen Peterson, *How Burnout Became the Norm for American Parents*, N.Y. TIMES (Sept. 22, 2020), <https://www.nytimes.com/2020/09/22/parenting/parental-burnout-pandemic.html> [<https://perma.cc/9WVH-YAY3>] ("Mothers exercise—with their children. Mothers cook—with their children. In quarantine, more than ever, mothers do everything—with their children."); Carol Hay, *How Privilege Structures Pandemic Narratives*, FEMINISM & PHIL. (Am. Phil. Ass'n, Newark, Del.), Sept. 2020, at 7, 10 ("As the pandemic progressed, we saw a lot of opinion pieces about how the stay-at-home orders during the pandemic forced women back into domestic roles that they thought they'd managed to shed by working outside the home full time: about how even with two straight parents working at home, it was still the women who were multitasking like no tomorrow, while the men would hop on and off Zoom calls and then veg out on the couch to 'decompress.' We also saw discussions of a few studies suggesting that men were 'doing a bit more than usual around the house' or at least, by being home all day, realizing for the first time just how much domestic and emotional labor their partners had been doing.").

118. Cf., e.g., Shira Offer, *The Costs of Thinking About Work and Family: Mental Labor, Work-Family Spillover, and Gender Inequality Among Parents in Dual-Earner Families*, 29 SOCIO. F. 916, 924, 931 (2014) (finding no significant difference in how much "family-specific mental labor" mothers and fathers did but defining family-specific mental labor simply as "thoughts about family, children, and spouse").

119. See Bluma Zeigarnik, *On Finished and Unfinished Tasks*, in A SOURCE BOOK OF GESTALT PSYCHOLOGY 300–14 (Willis D. Ellis ed., 1938); Timo Mäntylä & Teresa Sgaramella, *Interrupting Intentions: Zeigarnik-Like Effects in Prospective Memory*, 60 PSYCH. RSCH. 192, 197 (1997).

the information and the means adopted—and as a result, the federal government quantifies the time that it takes a person to complete its forms.¹²⁰ By all accounts, though, these assessments grossly underestimate the time that forms take.¹²¹ And they do not account for the ways that a disability could affect how long it takes a person to fill out the form. Attending to admin’s costs helps us to see the importance of accommodating the *process* surrounding the pursuit of benefits or the vindication of legal rights, in addition to accommodation being a substantive end in itself.¹²²

III. LEGAL IMPLICATIONS

Understanding disability through the lens of admin leads to a central insight about a lacuna in the law that governs workplace accommodations under the ADA. Specifically, illuminating disability admin calls attention to a missing piece in the cost-benefit analysis of “reasonableness” of an accommodation under the ADA. Explaining this insight is the primary focus of this Part. In addition, making disability admin visible promises to help reshape numerous other domains in disability law. This Part concludes by briefly sketching three examples of this under the ADA and the FMLA.

A. A NEW ELEMENT IN THE REASONABLENESS INQUIRY FOR TITLE I ACCOMMODATIONS

Under the ADA, covered employers are required to make “reasonable accommodations” for employees with disabilities, unless those accommodations would impose an “undue hardship” for the employer.¹²³ Key court decisions have interpreted “reasonable” to

120. See *supra* note 57 (discussing the Act and recent implementation efforts).

121. At the local level, a law reform effort in Connecticut has tried to push lawmakers to consider the admin costs of new legislation being considered and to require regulated industries to report on their “user experience.” See JUDICIARY COMM., CONN. GEN. ASSEMBLY, REPORT OF THE TASK FORCE TO IMPROVE ACCESS TO LEGAL COUNSEL IN CIVIL MATTERS 4, 23–24 (2016), http://www.rc.com/upload/O-Hanlan-Final-Report-of-CT-Leg-Task-Force-12_2016.pdf [<https://perma.cc/9U6Q-6525>].

122. Cf. Elizabeth F. Emens, *The Sympathetic Discriminator: Mental Illness, Hedonic Costs, and the ADA*, 94 GEO. L.J. 399, 461–64 (2006) (describing cases highlighting the need to accommodate the process of accommodation, for instance, for a plaintiff with schizophrenia for whom the “interactive process” was made more difficult because of his disability).

123. 42 U.S.C. § 12112(b)(5)(A). The employment title of the ADA prohibits “discriminat[ing] against a qualified individual with a disability because of the disability of such individual.” *Id.* § 12112(a). The ADA’s definition of disability raises many complicated issues, but these complications are not important to my discussion

depend on some rough comparison of costs and benefits.¹²⁴ An attention to life admin illuminates a missing piece of this cost-benefit analysis.

1. The ADA Framework for Reasonable Accommodations in the Workplace

The Seventh Circuit's decision in *Vande Zande v. State of Wisconsin Department of Administration*¹²⁵ was foundational in defining the term "reasonableness" in the absence of a statutory or regulatory definition. The plaintiff Vande Zande was a program assistant in the state's housing division, and her job mostly involved clerical duties.¹²⁶ She was paralyzed from the waist down, which led to pressure ulcers that sometimes required her to stay home for several weeks at a time.¹²⁷ The state had provided some accommodations, including offering backup so she could leave for medical appointments, paying to modify the bathrooms so she could use them, and purchasing adjustable furniture for her.¹²⁸ The two disputed issues in the case were the employer's decisions to decline her request to telecommute (and not to buy computer equipment to enable her to do so) and the employer's refusal, while the office building was still under construction, to alter the design of the kitchenette on her floor to install the counter two inches lower than planned (at a cost of \$150) so that she could use it rather than using

here. The basic definition of disability under the statute is as follows:

- (A) a physical or mental impairment that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment.

Id. § 12102(2). To fail to accommodate a disability is to "discriminate" by definition under the ADA. *See id.* § 12112(b)(1)–(b)(5)(A); *supra* note 81 (quoting the statutory language).

124. *See Vande Zande v. Wis. Dep't of Admin.*, 44 F.3d 538, 543 (7th Cir. 1995); *Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 140 (2d Cir. 1995); *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 399–402 (2002).

125. *Vande Zande*, 44 F.3d at 543. For a thoughtful discussion of the *Vande Zande* opinion and the numerous ways in which it fails to compare costs and benefits adequately, see generally Cass Sunstein, *Cost-Benefit Analysis Without Analyzing Costs or Benefits: Reasonable Accommodation, Balancing, and Stigmatic Harms*, 74 U. CHI. L. REV. 1895 (2007).

126. *Vande Zande*, 44 F.3d at 544. The exposition recounted in this Section of the Essay, which is background to the rest of this Part, draws heavily on an earlier article. *See generally* Elizabeth F. Emens, *Integrating Accommodation*, 156 U. PA. L. REV. 839 (2008).

127. *Vande Zande*, 44 F.3d at 543.

128. *Id.* at 544.

the bathroom sink for activities such as washing out her coffee cup.¹²⁹ In an opinion by Judge Posner, the court concluded that telecommuting was per se unreasonable because it interfered with teamwork and direct supervision and that the harm involved in using the different sink was “merely” stigmatic and therefore too insignificant to warrant accommodation.¹³⁰

A key question for the court was whether “reasonable” simply meant “effective” or whether it imposed an independent limitation on the kinds of accommodations that were required.¹³¹ Posner concluded that the term would be superfluous if it meant only “effective,”¹³² an interpretation the Supreme Court subsequently endorsed.¹³³ Though he thought quantifying costs and benefits would not always be necessary, and the cost “slightly” exceeding the benefit did not make an accommodation unreasonable, he said, “[A]t the very least, the cost could not be disproportionate to the benefit.”¹³⁴ Despite setting out the analysis of “reasonableness” (and the “undue hardship” defense as well) in terms of costs and benefits, Posner quantified neither costs nor benefits.¹³⁵ A similar approach was followed in the companion case of *Borkowski v. Valley Central School District*,¹³⁶ and this basic framework has remained central to the doctrine.¹³⁷

129. *Id.* at 544–46.

130. *Id.* at 545–46.

131. *Id.* at 542.

132. *Id.*

133. See *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400–01 (2002) (rejecting the argument that “reasonable” simply means “effective”).

134. *Vande Zande*, 44 F.3d at 542.

135. On the *Vande Zande* opinion’s failure to compare costs and benefits adequately, see also Sunstein, *supra* note 125, at 1895.

136. *Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, 140 (2d Cir. 1995).

137. As of February 6, 2021, *Vande Zande* has been cited in 590 decisions, 300 law reviews, and 40 treatises, according to LEXIS. *Shepard’s Vande Zande v. Wisconsin Dep’t of Admin.*, 44 F.3d 538, LEXIS, <https://plus.lexis.com/shepards/shepardspreviewpod/?pdmfid=1530671&crd=f81206cc-8256-4590-905a-0d63646acd99&pdshepid=urn%3AcontentItem%3A7XWN-0271-2NSF-C017-00000-00&pdshepcat=initial&ecomp=8gktk&prid=c055c55a-f729-456f-b87e-d97e24026ace> (last visited Feb. 6, 2021). None of the decisions specifically keyed to Headnote 4 (which concerns reasonableness and undue hardship) treat *Vande Zande* negatively or diverge from its model. *Id.* *Borkowski* has been cited in 510 decisions, 150 law reviews, and 26 treatises. *Shepard’s Borkowski v. Valley Cent. Sch. Dist.*, 63 F.3d 131, LEXIS, <https://plus.lexis.com/shepards/shepardspreviewpod/?pdmfid=1530671&crd=6047e864-a159-48a9-8694-e8cfde973620&pdshepid=urn%3AcontentItem%3A7XWN-0281-2NSF-C1XJ-00000-00&pdshepcat=initial&ecomp=8gktk&prid=647d8d8e-7826-427c-b345-d7f93c6d8cd1> (last visited Feb. 6, 2021). The only one of the citing decisions specifically keyed to Headnote 10 (which concerns the discussion of undue hardship

2. Overlooked Benefits

In an earlier article, I argued that the *Vande Zande* opinion—and other cases and regulatory guidance—overlooked an important element in this analysis: the potential third-party benefits of accommodation.¹³⁸ Detailing those third-party benefits is beyond the scope of this Essay, but briefly, accommodations designed for disabled people can benefit non-disabled people (as well as disabled people other than the one who requests a particular accommodation) directly or indirectly. These third-party benefits can be seen in innovations ranging from closed-captioning to ergonomic furniture and equipment design to ramps to telecommuting initiatives,¹³⁹ which was at issue in *Vande Zande*. (Nothing in this argument depends on accepting a particular accommodation as per se reasonable or unreasonable; specific examples, like telecommuting,¹⁴⁰ are offered merely to show how costs and benefits might accrue to particular parties.)

Various legal sources, including an important Supreme Court decision, have concluded that *costs* to third parties (such as coworkers) are relevant to determining the reasonableness of an accommodation.¹⁴¹ So in response, I wrote an article demonstrating

and reasonableness) that deviates from *Borkowski* does so on procedural grounds. *Id.*; see *Reed v. Lepage Bakeries, Inc.*, 244 F.3d 254, 258 (1st Cir. 2001).

138. Emens, *supra* note 20, at 840.

139. For the lively debates over whether telecommuting is advantageous to employers and whether it is a reasonable accommodation under the ADA, see, for example, *Work at Home/Telework as a Reasonable Accommodation*, U.S. EQUAL EMP. OPPORTUNITY COMM'N, <http://www.eeoc.gov/facts/telework.html> [<https://perma.cc/5KGY-JJR2>]; *Langon v. Dep't of Health & Hum. Servs.*, 959 F.2d 1053, 1061–62 (D.C. Cir. 1992); *Kvorjak v. Maine*, 259 F.3d 48, 58 (1st Cir. 2001); *Misek-Falkoff v. Int'l Bus. Machs. Corp.*, 854 F. Supp. 215, 228 (S.D.N.Y. 1994), *aff'd*, 60 F.3d 811 (2d Cir. 1995); Kristen M. Ludgate, Note, *Telecommuting and the Americans with Disabilities Act: Is Working at Home a Reasonable Accommodation?*, 81 MINN. L. REV. 1309, 1325–30 nn.104–34 (1997); Robert Ingle, *Telecommuting: "Taking Your Work Home with You" Will Never Be the Same Again*, MD. BAR J., Nov./Dec. 2000, at 3, 4; and Lori D. Bauer, *Telecommuting Tradeoffs: Freedom and the Law*, BUS. L. TODAY, Mar./Apr. 2002, at 17, 17.

140. On the debate over telecommuting, see *supra* note 139 and accompanying text.

141. *U.S. Airways, Inc. v. Barnett*, 535 U.S. 391, 400–01 (2002) (concluding that “a demand for an effective accommodation could prove unreasonable because of its impact, not on business operations, but on fellow employees—say, because it will lead to dismissals, relocations, or modification of employee benefits to which an employer, looking at the matter from the perspective of the business itself, may be relatively indifferent”).

that third-party *benefits* should be part of this (murky) analysis of costs and benefits. Figure 1 displays the point:

	Costs	Benefits
Principals (Employers & Employees)	Costs to Employer (e.g., financial costs)	Benefits to the Individual Employee with a Disability (e.g., allowing the person to do the job)
Third Parties (Coworkers & Customers)	Costs to Coworkers or Customers (e.g., morale costs; possible inconvenience of a worker working from home)	Benefits to Coworkers or Customers (e.g., employers discovering virtues of telecommuting and extending program to others)

Figure 1: Illustrating the doctrinal neglect of third-party benefits (exemplified in *Vande Zande*)¹⁴²

The top row displays the elements that courts traditionally take into account: the costs to the employer and the benefits to the individual with a disability who requests the accommodation. The left side of the second row shows the element that some courts and regulatory guidance had been factoring in to the analysis: third-party costs (such as burdens that might land on other workers in the telecommuting example or associated morale costs). The right side of the second row—the shaded box—is the box containing the element that had been overlooked: *third-party benefits*. (These could include, in the telecommuting example, a policy change prompted by the employer’s realizing that telecommuting saves money and works well, so the option should be expanded to cover more employees, disabled or nondisabled.¹⁴³) The reasons courts and commentators tended to

142. See Emens, *supra* note 20, at 866–82.

143. See *supra* note 139 and accompanying text (noting several examples and citing sources).

overlook third-party benefits are complicated, but among them is the way that disability is pervasively associated with loss and costs; its benefits to individuals and to society often remain unseen.¹⁴⁴

Implementing regulations to the ADA Amendments Act of 2008 subsequently included a section in the preamble discussing the concern that the EEOC's analysis of the costs and benefits of accommodations "did not adequately account for the benefits of reasonable accommodation."¹⁴⁵ The section then sets out direct benefits that have been overlooked as well as various indirect and intangible benefits:

The Commission also concludes that a wide range of qualitative, dignitary, and related intrinsic benefits must be considered Interpreting and applying the ADA as amended will further integrate and promote contact with individuals with disabilities, yielding third-party benefits that include both (1) diminishing stereotypes often held by individuals without disabilities and (2) promoting design, availability, and awareness of accommodations that can have general usage benefits and also attitudinal benefits.¹⁴⁶

This discussion in the regulations focuses on the analysis of the overall impact of reasonable accommodation and, in so doing, recognizes its relevance to the analysis of any particular accommodation.

3. The Overlooked Form of Costs to Disabled Workers: Disability Admin

A central aim of this Essay is to bring to light another missing piece in the cost-benefit analysis of reasonable accommodation. An attention to the burdens of life admin, particularly on people with disabilities, highlights another component that has been overlooked in the doctrine on reasonable accommodation: *the admin costs to the disabled individual requesting the accommodation*.

Expanding the diagram from the previous Subsection helps to demonstrate the point. Figure 1 showed the lacuna of third-party benefits, identified in an earlier article.¹⁴⁷ Now, in order to spotlight admin costs, the first row in Figure 1 (which had covered both employer and employee under the rubric of "principals") must be split into two rows in Figure 2 ("employer" in the first row and "employee" in the second row). In the new second row, Figure 2 shows (in the

144. For more on this, see Emens, *supra* note 33; and Emens, *supra* note 42.

145. Regulations To Implement the Equal Employment Provisions of the ADA, as Amended, 76 Fed. Reg. 16,978, 16,996 (Mar. 25, 2011) (to be codified at 29 C.F.R. pt. 1630).

146. *Id.* at 16,997–98 (citing Emens, *supra* note 20, at 850–59).

147. See Emens, *supra* note 20, at 866–82.

shaded box) the input to the cost-benefit analysis of reasonableness that is supplied by an attention to disability admin:

	Costs	Benefits
Employer	Costs to Employer (e.g., financial costs)	Benefits to Employer (e.g., retaining an employee; loyalty of employee; avoiding churning ¹⁴⁸)
Employee	Costs to the Individual Employee with a Disability (e.g., the time and effort involved in obtaining and utilizing a particular accommodation—that is, admin)	Benefits to the Individual Employee with a Disability (e.g., allowing the person to do the job)
Third Parties	Costs to Coworkers or Customers (e.g., morale costs; possible inconvenience of a worker working from home)	Benefits to Coworkers or Customers (e.g., employers' discovering virtues of telecommuting and extending program to others)

Figure 2: Illustrating the factor illuminated by an attention to disability admin

148. See, e.g., J.H. Verkerke, *Is the ADA Efficient?*, 50 UCLA L. REV. 903 (2003) (arguing that the statutory requirement of reasonable accommodation promotes labor market efficiencies by combating scarring and churning); Helen A. Schartz, D.J. Hendricks & Peter Blanck, *Workplace Accommodations: Evidence-Based Outcomes*, 27 WORK 345, 346 (2006) (discussing the indirect benefits of accommodating employees with disabilities).

Here, the top line from Figure 1 has been separated out into the first and second lines, so we can see both costs and benefits to the employer and to the employee. Even though the employee does not pay money towards accommodation (despite some academic arguments that have been made on this point¹⁴⁹), *the employee may be paying for some accommodations with his time and mental labor through admin.*

Imagine an employee who needs an ergonomically designed lifting device for taking boxes off of shelves and requests that as an accommodation. In version *A* of that accommodation, the employer buys the requested ergonomic lifting device. In version *B*, the employer tells the employee to borrow that device, as needed, from another employee who also needs it. In version *B*, the employee requesting the accommodation now has to spend time and energy navigating that relationship with the coworker. This may take a lot of time or a little. And it may be reasonable or not, depending on how much time it takes, how much the second lifting device would have cost, and all the other inputs that go into the balancing of costs and benefits. But the point here is that the admin costs to the employee should matter in that calculus. The disability admin should count.¹⁵⁰

This is especially important because, while employers are required to provide a reasonable accommodation to a qualified individual with a disability, the employer—not the employee—gets to choose between two reasonable accommodation options.¹⁵¹ So counting the admin costs for the employee in the determination of reasonableness could be decisive as to what options are available to the employer and thus to the employee.

149. See, e.g., Verkerke, *supra* note 148, at 945–46. The kinds of concerns about the interactive process raised by Shirley Lin’s new article would surely apply as much or more to an interactive process that permitted the kind of cost sharing that Verkerke contemplates. See Lin, *supra* note 83.

150. For a parallel example from another context, see TEDx Talks, *Why I Work To Remove Access Barriers for Students with Disabilities | Haben Girma | TEDxBaltimore*, YOUTUBE (Feb. 28, 2014), <https://www.youtube.com/watch?v=Mvoj-ku8zk0>, which describes Girma’s college cafeteria’s initial approach to her DeafBlindness—to email her the menu so she could read it on her braille computer—which involved forgetting to send the menus so she frequently did not know what she was ordering. For a more involved discussion of this episode, and other disability admin examples, see HABEN GIRMA, HABEN: THE DEAFBLIND WOMAN WHO CONQUERED HARVARD LAW (2019).

151. U.S. EQUAL EMP. OPPORTUNITY COMM’N, *supra* note 83, at 9.

B. OTHER EXAMPLES OF THE RAMIFICATIONS OF RECOGNIZING DISABILITY ADMIN

The central insight of this Essay is the argument, just presented, that the reasonable accommodation analysis under Title I should consider the costs of disability admin.¹⁵² In addition, recognizing the significance of disability admin promises to inform many other points of legal doctrine and argumentation. The final Section of this Essay briefly describes three examples: the application of “meaningful access” doctrine to public transportation under Title II of the ADA, the treatment of the “vexatious litigant” under Title III of the ADA, and the scope of “caring for” a family member under the FMLA.¹⁵³

1. The Burdens of Unreliable Transit: Clarifying “Readily Accessible” Under Title II

Title II of the ADA protects people with disabilities from discrimination in services, programs, or activities provided by state and local government entities,¹⁵⁴ including the provision of public transportation.¹⁵⁵ According to the regulations, “the program access requirement of Title II should enable individuals with disabilities to participate in and benefit from the services, programs, or activities of public entities in all but the most unusual cases.”¹⁵⁶ And yet some major municipal transit systems in this country offer only partial accessibility at best, as exemplified in Scenario 2 at the outset of this Essay.¹⁵⁷ For instance, in New York City, only 109¹⁵⁸ of 472¹⁵⁹ subway stations are labeled “wheelchair accessible,” and a significant subset of those (16 out of 99) are only “partially accessible,” meaning that

152. See *supra* Part IV.A.

153. 29 U.S.C. § 2612(a)(1)(C).

154. 42 U.S.C. § 12132 (“Subject to the provisions of this subchapter, 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 such entity.”).

155. See, e.g., 49 C.F.R. § 37.161(a) (2019).

156. Nondiscrimination on the Basis of Disability in State and Local Government Services, 56 Fed. Reg. 35,694, 35,708 (July 26, 1991) (to be codified at 28 C.F.R. pt. 35).

157. See *supra* text accompanying note 1.

158. See *MTA Accessible Stations*, MTA, <http://web.mta.info/accessibility/stations.htm> [<https://perma.cc/E36E-G3AE>] (Dec. 31, 2020); see also *New York City Subway with Accessible Stations Highlighted, Non-Accessible Stations Dimmed*, MTA, <https://new.mta.info/map/5346> [<https://perma.cc/R6TB-SF9A>] (displaying subway map with wheelchair accessible stations highlighted).

159. See *How To Ride the Subway*, MTA, http://web.mta.info/nyct/subway/howto_sub.htm [<https://perma.cc/FXK5-673C>] (“The New York City subway has 472 stations serving 27 subway lines . . .”).

elevators give access only to some lines or directions;¹⁶⁰ moreover, breakdowns are common.¹⁶¹

Numerous lawsuits have been brought against municipal transit systems for failure to make public transportation “readily accessible” to people with disabilities.¹⁶² Plaintiffs in these cases regularly confront the argument that partially accessible transit systems that break down regularly nonetheless meet the “readily accessible” standard if the city offers backup alternatives.¹⁶³ These defenses trivialize, dismiss, or simply ignore the time and energy involved in navigating the breakdown or using those alternatives.¹⁶⁴ Consider, for example, these lines from the defendants’ brief in one case against New York City: “Transit Defendants dispute Plaintiffs’ claim that relatively insignificant delays encountered by mobility disabled passengers who rely on elevators are sufficient to deny them meaningful access to the transit system.”¹⁶⁵ This is in a city where, “on average,” according to one study, “each subway elevator breaks down 53 times a year,”¹⁶⁶ and many stations have only one elevator—of the 109 out of 472 stations that even have elevators. Because of the unreliability of these elevators, “[m]any riders who rely on them make it a daily ritual to check apps and websites that track out-of-service elevators, but they say the sites can be slow to post updates.”¹⁶⁷

Recognizing the admin costs of unreliable transit demonstrates that transportation failures are not mere inconveniences causing passive delays, during which a disabled person can read a book or simply do something else. Rather, when public transportation fails, people have to find alternate routes. They have to recalculate and recalibrate, and then they have to contact people to report their delays

160. See *MTA Accessible Stations*, *supra* note 158.

161. Barron, *supra* note 2.

162. See, e.g., *Cupolo v. Bay Area Rapid Transit*, 5 F. Supp. 2d 1078, 1083 (N.D. Cal. 1997); *Martin v. Metro. Atlanta Rapid Transit Auth.*, 225 F. Supp. 2d 1362, 1373 (N.D. Ga. 2002); *Tandy v. City of Wichita*, 380 F.3d 1277, 1280 (10th Cir. 2004); *Walter v. Se. Pa. Transp. Auth.*, 434 F. Supp. 2d 346, 352 (E.D. Pa. 2006); *Rose v. Wayne Cnty. Airport Auth.*, 210 F. Supp. 3d 870, 880 (E.D. Mich. 2016); *Ash v. Md. Transit Admin.*, No. ELH-18-1216, 2019 WL 1129439, at *1 (D. Md. 2019); *DeJesus v. Metro. Transp. Auth.*, No. 17 CV 7054, 2019 U.S. Dist. LEXIS 35950, at *1 (S.D.N.Y. 2019); *Schulz v. Bay Area Motivate, LLC*, No. 19-cv-02134, 2019 U.S. Dist. LEXIS 209256, at *1 (N.D. Cal. 2019).

163. See, e.g., Reply Memorandum in Further Support of Transit Defendants’ Motion for Summary Judgment at 7–8, *Ctr. for Indep. of the Disabled, N.Y. v. Metro. Transp. Auth.*, No. 17 Civ. 2990 (S.D.N.Y. Mar. 30, 2020).

164. See, e.g., *id.* at 7.

165. *Id.*

166. Barron, *supra* note 2.

167. *Id.*

and sometimes to reschedule meetings. This work is part of “active waiting”—waiting wherein you have to do something, such that your time is actually occupied by the delay (like waiting on hold)—rather than “passive waiting,” wherein you are merely anticipating an event that is taking time to arrive (like a letter in the mail).¹⁶⁸

Quantifying the time and mental energy wasted by unreliable transit—for purposes of litigation—would benefit from the expertise of specialists in psychology and management studies—experts that become relevant to the social model once we take disability admin into account, as discussed earlier.¹⁶⁹ But such expert quantification should not even be necessary; the recognition of admin as a form of labor performed for pay in workplaces, and its special burdens on people with disabilities, should help demonstrate why such unreliable systems are not “readily accessible” to people with disabilities, nor are the alternative arrangements that take such time and mental energy “reasonable modifications” within the meaning of the statute.¹⁷⁰

2. Appreciating the Vexatious Litigant: Reconsidering Title III Enforcement

Title III of the ADA, which covers public accommodations, is widely under-enforced, and violations are legion.¹⁷¹ Because DOJ devotes very limited resources to enforcing the ADA, and the number of potential defendants is vast, individual lawsuits by private litigants shoulder much of the burden of enforcement. Given the limitations on remedies, few lawyers want to bring these suits—and it becomes cost-effective to bring these suits only if a lawyer has already become an

168. See Emens, *supra* note 5, at 1425. In a system like New York City’s, one broken elevator can mean needing to travel a long distance in the wrong direction to get to another accessible station. In some areas, the gap between stations with elevators is more than ten stops, and as of February 2020, 62 of the 122 neighborhoods served by New York City’s subways do not have any accessible subway stations; some have called these “transit deserts.” See *New York City Subway with Accessible Stations Highlighted, Non-Accessible Stations Dimmed*, *supra* note 158; Barron, *supra* note 2; Junfeng Jiao & Chris Bischak, *Dozens of U.S. Cities Have ‘Transit Deserts’ Where People Get Stranded*, SMITHSONIAN MAG. (Mar. 16, 2018), <https://www.smithsonianmag.com/innovation/dozens-us-cities-have-transit-deserts-where-people-get-stranded> [<https://perma.cc/F4HH-TFKC>].

169. See *supra* Part III.B.2.

170. See 49 C.F.R. § 37.5(i)(3) (2019) (mandating that entities “make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability or to provide program accessibility to their services”); *id.* § 37.169. For an argument about the role of admin in determining the “reasonableness” of accommodations, see *supra* Part IV.A.

171. See, e.g., Samuel R. Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of “Abusive” ADA Litigation*, 54 UCLA L. REV. 1, 4 (2006).

expert in this area of law.¹⁷² Nonetheless, courts have sometimes viewed with disfavor suits brought by plaintiffs and lawyers who sue multiple businesses under Title III—the “vexatious litigants.”¹⁷³ Numerous scholars have effectively critiqued courts’ treatment of this serial litigation.¹⁷⁴ Looking through an admin lens sets into relief why we should not only not penalize these serial litigants but should in fact support them.

Perhaps in an ideal world, litigants would provide notice of Title III violations—since the lawyers who litigate these suits are well-positioned to point out violations to those businesses that were unaware—and the lawyers would still be able to earn fees sufficient to motivate this labor.¹⁷⁵ But the Supreme Court has concluded otherwise on the latter point, holding against the award of attorneys’ fees under the ADA—and other statutes limiting recovery to a “prevailing party”¹⁷⁶—in the absence of a “judicially sanctioned change in the legal relationship of the parties”;¹⁷⁷ in other words, there are no attorneys’ fees for out-of-court settlement under the ADA. In the current context, then, litigants should not need to give notice, which would leave the attorneys with no way to recover for their time

172. See *id.* at 4–6.

173. See, e.g., *Molski v. Mandarin Touch Rest.*, 347 F. Supp. 2d 860, 860 (C.D. Cal. 2004) (declaring serial ADA plaintiff Jarek Molski a “vexatious litigant” and ordering his law firm to obtain leave of court before proceeding to file any future claims under the ADA), *aff’d in part and dismissed in part sub nom.* *Molski v. Evergreen Dynasty Corp.*, 500 F.3d 1047 (9th Cir. 2007).

174. See, e.g., *Dorfman & Yabo*, *supra* note 113, at 1241; Ruth Colker, *The Power of Insults*, 100 B.U. L. REV. 1, 46–48 (2020); Bagenstos, *supra* note 171, at 9–11; Michael Waterstone, *A New Vision of Public Enforcement*, 92 MINN. L. REV. 434, 443–49 (2007).

175. See Bagenstos, *supra* note 171, at 35–36 (arguing that since the private bar “cannot be induced to bring these cases without a promise of a profit,” attorney’s fees for out-of-court settlements and a damages remedy for ADA violations should be considered as possible solutions to both ADA underenforcement and serial litigation concerns); see also BAGENSTOS, *supra* note 32, at 132 (“The best response to [the current situation]—and to the widespread lack of enforcement of the statute—would be to (a) authorize a damages remedy, (b) require ADA public accommodations plaintiffs to provide presuit notice, and (c) pay attorneys’ fees to plaintiffs who succeed in eliminating ADA violations by providing such presuit notice.”).

176. Most fee-shifting provisions contain a “prevailing party” limitation. *Hardt v. Reliance Standard Life Ins. Co.*, 560 U.S. 242, 253 (2010). Compare 42 U.S.C. § 12205 (“[T]he court or agency . . . may allow the *prevailing party* . . . a reasonable attorney’s fee . . .” (emphasis added)), with *id.* § 7607(f) (“In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) *whenever it determines that such award is appropriate.*” (emphasis added)).

177. Bagenstos, *supra* note 171, at 11 (quoting *Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep’t of Health & Hum. Res.*, 532 U.S. 598, 605 (2001)).

and effort—and the disabled individuals representing themselves no way to recover for their efforts and the violation of their rights.

Courts should also be sparing in their dismissals of ADA public accommodations suits for lack of standing, and rather than looking skeptically on serial litigants, courts should appreciate the vital role they play in enforcing the statute and bearing the admin costs on behalf of others and the civil rights laws. Instead, as Bagenstos describes, “[i]n a large number of cases brought by serial ADA litigants, courts have relied on the distance between the plaintiff’s home and the defendant’s business as grounds for concluding that there is no ‘real and immediate threat’ that the plaintiff will visit the defendant’s business again.”¹⁷⁸ An example is the case of *Brother v. Tiger Partner, LLC*,¹⁷⁹ where the court held that, despite making a second hotel reservation after filing his case, a plaintiff could not meet the standing requirements where the plaintiff had previously been “involved in a multitude of lawsuits against the hotel industry.”¹⁸⁰ This type of reasoning

ignore[s] the significant difficulties people with disabilities have in enforcing the statute . . . [and the fact that] the disincentives to filing public accommodations lawsuits are so great that public accommodations suits are likely to be brought by a small number of individuals who litigate in a large number of communities.¹⁸¹

The decisions of those circuit courts that have addressed the question seem to be moving away from dismissing or disfavoring suits brought by serial litigants,¹⁸² but a number of circuits have yet to come

178. *Id.* at 26 (collecting cases).

179. 331 F. Supp. 2d 1368, 1373 (M.D. Fla. 2004); *see also* Bagenstos, *supra* note 171, at 28 n.127 (collecting cases).

180. Bagenstos, *supra* note 171, at 28 (quoting *Brother*, 331 F. Supp. 2d at 1374).

181. *Id.* at 29–30.

182. *See, e.g.*, *D’Lil v. Best W. Encina Lodge & Suites*, 538 F.3d 1031, 1040 (9th Cir. 2008) (observing that “[t]he attempted use of past litigation to prevent a litigant from pursuing a valid claim . . . warrants our most careful scrutiny” and emphasizing that on appeal the court must be “particularly cautious about affirming credibility determinations that rely on a plaintiff’s past ADA litigation”); *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1332, 1334 (11th Cir. 2013) (concluding that a plaintiff’s “status as a tester does not deprive him of standing to maintain his civil action for injunctive relief” while noting that tester status “alone is not enough” to confer standing, and a plaintiff “also must show a real and immediate threat of future injury”); *see also* *Harty v. Simon Prop. Grp., L.P.*, 428 F. App’x 69, 71 (2d Cir. 2011) (finding that that tester status does not defeat standing when the plaintiff alleges that he “plans to return both as a patron . . . and as a tester,” without further clarifying how courts should treat plaintiffs who file multiple lawsuits).

down,¹⁸³ and, even in those circuits that have ruled favorably, some district courts have continued to respond negatively.¹⁸⁴

From an admin perspective, the plaintiff who made the effort to book a second hotel reservation at the place that excludes him, and is pursuing litigation to enforce the ADA, should be recognized for his efforts, rather than dismissed for a lack of standing. Making the reservation is itself small but not insignificant, and of course litigation is a sizable undertaking, even with effective representation. Some research suggests that participating in litigation leads to worse outcomes, both physical and emotional, for people with disabilities.¹⁸⁵

183. These appear to include the First, Third, Fifth, and D.C. Circuits. The Eighth Circuit has not come down on the question but has allowed tester cases to proceed under Title I of the ADA. *See Shaver v. Indep. Stave Co.*, 350 F.3d 716, 724 (8th Cir. 2003) (allowing tester claims to proceed when plaintiff alleges employment discrimination).

184. From the Second Circuit, see, for example, *Taylor v. 312 Grand Street LLC*, No. 15 Civ. 5410, 2016 WL 1122027, at *4–5 (E.D.N.Y. Mar. 22, 2016), which describes two plaintiffs that filed 61 lawsuits in these words: “I don’t think it’s an undue degree of cynicism to picture plaintiff driving around or being driven around in a defined circumference looking for ‘mom and pop’ businesses that seem to have a step-up to get in or a ramp that looks like it’s at too steep an incline”; expresses skepticism that plaintiff would return and saying that “[i]t seem[ed] clear . . . that this case has little or nothing to do with Congress’s purpose in enacting the ADA”; and describes this as “an exercise in shooting ducks in a barrel—marginal businesses that barely have enough funds to defend themselves—in order to generate a small amount of attorneys’ fees.” From the Ninth Circuit, see, for example, *Thurston v. FCA US LLC*, No. EDCV 17-2183, 2018 WL 700939, at *4 n.3 (C.D. Cal. Jan. 26, 2018), which states, “Even if Plaintiff had made a conclusory allegation of an ‘intent to return,’ this Court would question such an allegation because Plaintiff is a serial litigant in that she has been a plaintiff in 19 separate cases in this Court alone”; and *Zimmerman v. GJS Group, Inc.*, No. 17-CV-00304, 2017 WL 4560136, at *7 (D. Nev. Oct. 11, 2017), which states, “Courts, however, have found a plaintiff’s allegations of an intent to return implausible where he has filed an extraordinary number of ADA actions, and other evidence casts doubt on the credibility of his purported intention.”

185. *See, e.g.*, Eléonore Bayen, Claire Jourdan, Idir Ghout, Pascale Pradat-Diehl, Emmanuelle Darnoux, Gaëlle Nelson, Claire Vallat-Azouvi, James Charenton, Philippe Aegerter, Alexis Ruet & Philippe Azouvi, *Negative Impact of Litigation Procedures on Patient Outcomes Four Years After Severe Traumatic Brain Injury: Results from the Paris-Traumatic Brain Injury Study*, 40 DISABILITY & REHAB. 2040, 2040, 2044 (2018) (finding that patients with “severe traumatic brain injury have a worse prognosis when involved in a litigation procedure” in the areas of “autonomy, participation, psychiatric and cognitive function” and “for self-reported symptoms (such as depression and anxiety), [and] also for objective indicators such as level of independence at home, social participation and return to work”); Michelle Heron-Delaney, Justin Kenardy, Erin Charlton & Yutaka Matsuoka, *A Systematic Review of Predictors of Posttraumatic Stress Disorder (PTSD) for Adult Road Traffic Crash Survivors*, 44 INJURY 1413, 1413 (2013) (finding that participating in litigation is a risk factor for developing PTSD after a car accident); Ellen J. MacKenzie et al., *Early*

Not only does litigation take time and mental energy, but litigation may also contribute to a growing self-conception as a victim.¹⁸⁶ For these and other reasons, a small number of expert plaintiffs and plaintiffs' lawyers is likely the best way to enforce the ADA's public accommodations title in the absence of significant government enforcement. In other words, a system that relies on private attorneys general should respect and value the work done by those who take up the mantle of private attorney general, rather than expecting every disabled person to use whatever spare time and energy they have to litigate each trip to the movies.

3. Admin as Caring: Refining Our Understanding of Care Under the FMLA

A final example is a bright spot: a court interpretation that paves the way for recognition of disability admin under the FMLA. The FMLA entitles eligible employees to up to twelve weeks of unpaid leave in a year "[i]n order to care for" an immediate family member with a "serious health condition."¹⁸⁷ Caring of course includes direct care. But recognizing disability admin also allows us to see a broader scope to "caring," including the wide range of admin that caring entails, such as scheduling doctors' appointments, researching medical conditions, applying for benefits or submitting insurance claims, and waiting for doctors' appointments and other forms of active waiting¹⁸⁸ (such as waiting on hold when calling about appointments or benefits), to name a few examples. Illuminating admin also allows us to see the disparate ways this labor burdens people of different financial means,

Predictors of Long-Term Work Disability After Major Limb Trauma, 61 J. TRAUMA: INJ. INFECTION & CRITICAL CARE 688, 688 (2006) (finding that people who have experienced limb trauma are more likely to return to work if they are not involved in litigation); cf. Samuel R. Bagenstos & Margo Schlanger, *Hedonic Damages, Hedonic Adaptation, and Disability*, 60 VAND. L. REV. 745, 785-87 (2007) (describing this kind of process specifically with regard to "hedonic damages" in torts cases and other contexts that involve proving disability).

186. See, e.g., Laura L. Rovner, *Perpetuating Stigma: Client Identity in Disability Rights Litigation*, 2001 UTAH L. REV. 247, 302-04 ("Repeatedly describing oneself as a victim may cause one to come to believe that she is a victim."); see also Martha Minow, *Surviving Victim Talk*, 40 UCLA L. REV. 1411, 1429 (1993) ("Victim talk can have a kind of self-fulfilling quality, discouraging people who are victimized from developing their own strengths or working to resist the limitations they encounter.").

187. 29 U.S.C. § 2612(a)(1)(C). The FMLA covers employers who have at least fifty employees within a seventy-five-mile radius, and employees who have worked at least 1,250 hours in the previous twelve months. See *Family and Medical Leave Act (FMLA)*, U.S. DEP'T LAB., <https://www.dol.gov/general/topic/workhours/fmla> [<https://perma.cc/7Q3G-89ML>].

188. See *supra* text accompanying note 168 (defining the term).

identities, and socioeconomic statuses—and to see how much harder doing admin is for someone who works shift labor, paid by the hour, not in an office supplied with office equipment.¹⁸⁹ For these reasons, the protection of the FMLA might be especially important for someone facing a disability-related admin onslaught.

The FMLA should therefore be interpreted to allow “car[ing] for” to include doing admin.¹⁹⁰ The case of *Wegelin v. Reading Hospital & Medical Center* offers an encouraging precedent.¹⁹¹ In *Wegelin*, the district court concluded that a hospital employee’s taking time off to find a suitable daycare for her autistic daughter after the hospital moved her parking spot far enough away that she could not pick up her daughter on time at the current daycare constituted “caring for” a family member with “a serious health condition.”¹⁹² And beyond the realm of law, employers could of course go further and provide paid leave in these and other admin-related circumstances. Many employers do provide at least some compensation during FMLA-type leave.¹⁹³ If admin were more visible, perhaps employers would receive more positive attention for taking steps to include admin-doing in such programs.

189. See *supra* Part III.A.2.

190. 29 U.S.C. § 2612(a)(1)(C). Note that this statutory section addresses only care, not treatment (although other sections, which both parties agreed were not relevant here, do use the term “treatment”).

191. 909 F. Supp. 2d 421 (E.D. Pa. 2012).

192. Bagenstos, *supra* note 37, at 428–30. On the legal significance of managerial work to “caring,” see David Fontana & Naomi Schoenbaum, *Unsexing Pregnancy*, 119 COLUM. L. REV. 309, 318 n.40, 324 (2019).

193. See JACOB ALEX KLERMAN, KELLY DALEY & ALYSSA POZNIAK, ABT ASSOCS. INC., FAMILY AND MEDICAL LEAVE IN 2012: EXECUTIVE SUMMARY, at ii (2013), <https://www.dol.gov/asp/evaluation/fmla/FMLA-2012-Executive-Summary.pdf> [<https://perma.cc/Y6jT-W25K>].

CONCLUSION

*This is the good news: [inaudible]
& we have a plan for you. Can you follow
what I'm saying? Follow me. Bless you,
[inaudible], there's no need to [inaudible].*

Doesn't this happen to you all the time? [Inaudible].

—Meg Day, “Deaf Erasure of the Gospel According to
the TSA Agent at Atlanta International”¹⁹⁴

People with disabilities face myriad forms of admin costs, from small incursions to major onslaughts. Inaccessibility complicates seemingly simple tasks like navigating the environment and requires time and effort to contest, formally and informally. Benefits procedures impose burdens in the name of assistance. Medical systems present forms to complete and other hoops to jump for information, healthcare, and coverage. Discrimination, benefits, and medical admin are not unique to disabled people, but they disproportionately burden people already bearing the added social cost of bodies or minds that do not conform to society's normative expectations. Recognizing disability admin sheds light on unseen costs that shift legal analysis and argumentation in concrete doctrinal areas—including the reasonable accommodation analysis under ADA Title I—in ways we are only beginning to see.

194. Meg Day, *Deaf Erasure of the Gospel According to the TSA Agent at Atlanta International*, in Khadijah Queen & Jillian Weise, Opinion, ‘Make No Apologies for Yourself,’ N.Y. TIMES (May 19, 2019), <https://www.nytimes.com/2019/05/19/opinion/disability-poems.html> [<https://perma.cc/342B-GZW5>].