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Part 2

ADA AMENDMENTS ACT OF 2008

JUNE 23, 2008.—Ordered to be printed

Mr. CONYERS, from the Committee on the Judiciary, submitted the following

R E P O R T

together with

ADDITIONAL VIEWS

[To accompany H.R. 3195]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3195) to restore the intent and protections of the Americans with Disabilities Act of 1990, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

THE AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "ADA Amendments Act of 2008".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage;

(2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(3) while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of handicap under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in Sutton v. United Airlines, Inc., 527 U.S. 471 (1999) and its companion cases, and in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002) have narrowed the broad scope of protection intended to be afforded by the ADA, thus eliminating protection for many individuals whom Congress intended to protect; and

(5) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that people with a range of substantially limiting impairments are not people with disabilities.

(b) PURPOSES.—The purposes of this Act are—

(1) to carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA;

(2) to reject the requirement enunciated by the Supreme Court in Sutton v. United Airlines, Inc., 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures;

(3) to reject the Supreme Court's reasoning in Sutton v. United Airlines, Inc., 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in School Board of Nassau County v. Arline, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973;

(4) to reject the standards enunciated by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that the terms "substantially" and "major" in the definition of disability under the ADA "need to be interpreted strictly to create a demanding standard for qualifying as disabled," and that to be substantially limited in performing a major life activity under the ADA "an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives"; and

(5) to provide a new definition of "substantially limits" to indicate that Congress intends to depart from the strict and demanding standard applied by the Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams and by numerous lower courts.

SEC. 3. CODIFIED FINDINGS.

Section 2(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101) is amended—

(1) by amending paragraph (1) to read as follows:

"(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;"; and

(2) by striking paragraph (7).

SEC. 4. DISABILITY DEFINED AND RULES OF CONSTRUCTION.

(a) DEFINITION OF DISABILITY.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended to read as follows:

"SEC. 3. DEFINITION OF DISABILITY.

"As used in this Act:

"(1) DISABILITY.—The term 'disability' means, with respect to an individual—

"(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 (as described in paragraph (4)).

"(2) SUBSTANTIALLY LIMITS.—The term 'substantially limits' means materially restricts.

"(3) MAJOR LIFE ACTIVITIES.—

"(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

"(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

"(4) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(C):

"(A) An individual meets the requirement of 'being regarded as having such an impairment' if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

"(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

"(5) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.—The definition of 'disability' in paragraph (1) shall be construed in accordance with the following:

"(A) To achieve the remedial purposes of this Act, the definition of 'disability' in paragraph (1) shall be construed broadly.

"(B) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

"(C) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

"(D)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

"(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

"(II) use of assistive technology;

"(III) reasonable accommodations or auxiliary aids or services; or

"(IV) learned behavioral or adaptive neurological modifications.

"(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

"(iii) As used in this subparagraph—

"(I) the term 'ordinary eyeglasses or contact lenses' means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

"(II) the term 'low-vision devices' means devices that magnify, enhance, or otherwise augment a visual image.".

(b) CONFORMING AMENDMENT.—The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is further amended by adding after section 3 the following:

"SEC. 4. ADDITIONAL DEFINITIONS.

"As used in this Act:

"(1) AUXILIARY AIDS AND SERVICES.—The term 'auxiliary aids and services' includes—

"(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

"(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

"(C) acquisition or modification of equipment or devices; and

"(D) other similar services and actions.

"(2) STATE.—The term 'State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.".

(c) AMENDMENT TO THE TABLE OF CONTENTS.—The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by striking the item relating to section 3 and inserting the following items:

"Sec. 3. Definition of disability.
"Sec. 4. Additional definitions.".

SEC. 5. DISCRIMINATION ON THE BASIS OF DISABILITY.

(a) ON THE BASIS OF DISABILITY.—Section 102 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12112) is amended—

(1) in subsection (a), by striking "with a disability because of the disability of such individual" and inserting "on the basis of disability"; and

(2) in subsection (b) in the matter preceding paragraph (1), by striking "discriminate" and inserting "discriminate against a qualified individual on the basis of disability".

(b) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Section 103 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12113) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and inserting after subsection (b) the following new subsection:

"(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(5)(D)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.".

(c) CONFORMING AMENDMENT.—Section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)) is amended—

(1) in the paragraph heading, by striking "WITH A DISABILITY"; and

(2) by striking "with a disability" after "individual" both places it appears.

SEC. 6. RULES OF CONSTRUCTION.

Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201) is amended—

(1) by adding at the end of section 501 the following:

"(e) BENEFITS UNDER STATE WORKER'S COMPENSATION LAWS.—Nothing in this Act alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

"(f) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by a person without a disability that he or she was subject to discrimination because of his or her lack of disability.

"(g) REASONABLE ACCOMMODATIONS AND MODIFICATIONS.—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C).";

(2) by redesignating section 506 through 514 as sections 507 through 515, respectively, and adding after section 505 the following:

"SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.

"The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions contained in sections 3 and 4."; and

(3) in the table of contents contained in section 1(b), by redesignating the items relating to sections 506 through 514 as sections 507 through 515, respec-

tively, and by inserting after the item relating to section 505 the following new item:

"Sec. 506. Rule of construction regarding regulatory authority.".

SEC. 7. CONFORMING AMENDMENTS.

Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 705) is amended—

(1) in paragraph (9)(B), by striking "a physical" and all that follows through "major life activities", and inserting "the meaning given it in section 3 of the Americans with Disabilities Act of 1990"; and

(2) in paragraph (20)(B), by striking "any person who" and all that follows through the period at the end, and inserting "any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990.".

SEC. 8. EFFECTIVE DATE.

This Act and the amendments made by this Act shall become effective on January 1, 2009.

PURPOSE AND SUMMARY

H.R. 3195, the "ADA Amendments Act of 2008," amends the definition of "disability" in the Americans with Disabilities Act of 1990 ("ADA"), Pub. L. No.101–336 (1990), 42 U.S.C. §§ 12101–12213, and provides related rules of construction for applying the amended definition. The purpose of the bill is to restore protection for the broad range of individuals with disabilities as originally envisioned by Congress by responding to the Supreme Court's narrow interpretation of the definition of disability. Through its decisions, the Supreme Court has set a restrictive standard for qualifying as disabled within the meaning of the ADA, which has prevented individuals that Congress unquestionably intended to cover from ever getting a chance to prove their case. H.R. 3195 restores Congressional intent by prohibiting consideration of mitigating measures that help control or lessen the impact of an impairment when determining the threshold question of whether an impairment is sufficiently limiting to qualify as a disability. It also reduces the burden of establishing that an impairment qualifies as a disability by defining terms in the definition that have proven most troubling for the courts. H.R. 3195 requires a broad construction of the definition of disability and clarifies agency authority to promulgate regulations.

BACKGROUND AND NEED FOR THE LEGISLATION

The ADA was intended "to provide a clear and comprehensive national mandate," with "clear, strong, consistent, enforceable standards," for eliminating disability-based discrimination.[1] Through this broad mandate, Congress sought to protect anyone who is treated less favorably because of a current, past, or perceived disability.[2] Congress did not intend for the threshold question of disability to be used as a means of excluding individuals from coverage.[3] Nevertheless, as the courts began interpreting and applying the definition of disability strictly, individuals have been excluded from the protections that the ADA affords because they are unable to meet the demanding judicially imposed standard for qualifying as disabled. Legislative action is a necessary step toward

[1] 42 U.S.C. § 12101(b)(1), (2) (2007).

[2] 42 U.S.C. § 12102(2) (setting forth a three-prong definition that covers current, past, or perceived disabilities).

[3] *See* Steny H. Hoyer, *Not Exactly What We Intended Justice O'Connor,* WASH. POST., Jan. 20, 2002, at B01.

restoring protection for the broad range of individuals with disabilities, as originally intended by Congress.

CONGRESS MODELED THE ADA'S THREE-PRONG DEFINITION OF "DISABILITY" ON THE BROAD DEFINITION OF "HANDICAP" IN THE REHABILITATION ACT OF 1973.

The ADA defines the term "disability" as, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment.[4]

As with other civil rights laws, individuals seeking protection under the ADA must first allege and prove that they are members of the protected class—i.e., show that they have a "disability" as defined in the Act. Under the ADA, an individual qualifies as a member of the protected class if he or she comes within at least one of the three prongs of the ADA's definition. Thus, the individual must: (1) have an actual, substantially limiting impairment; (2) have a record of a substantially limiting impairment; or (3) be regarded as having a substantially limiting impairment, whether the individual has such an impairment or not. An individual who does not qualify as disabled under at least one of these three prongs does not meet this threshold question of coverage in the protected class and is therefore not permitted to attempt to prove his or her claim of discriminatory treatment. There is no consideration of whether the individual is qualified for a job or to participate in a service or program, and no consideration of whether unlawful discrimination occurred.

Congress modeled the ADA definition of disability on the definition of "handicapped individual" contained in the Rehabilitation Act of 1973, 29 U.S.C. § 790 et seq.,[5] which the courts had interpreted broadly to include persons with a wide range of physical and mental impairments such as epilepsy, diabetes, multiple sclerosis, and intellectual and developmental disabilities.[6] These impairments were recognized as disabilities even where a mitigating measure—like medication or a hearing aid—might lessen their impact on the individual.[7] In most cases, defendants and the courts accepted that a plaintiff was a member of the protected class (i.e., a "handicapped individual") and moved on to the merits of the case.

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[4] 42 U.S.C. § 12102(2) (2007). This definition applies to the entire Act.

[5] The Rehabilitation Act definition is now codified at 29 U.S.C. § 705(20) (2007). In 1992, the term "disability" replaced "handicap" in the Rehabilitation Act. See Pub. L. No. 102–569, § 102, 106 Stat. 4344, 4355–56 (1992).

[6] *See, e.g.,* Reynolds v. Brock, 815 F.2d 571, 574 (9th Cir. 1987) (epilepsy); Bolthouse v. Cont'l Wingate Co., 656 F.Supp. 620, 625–26 (W.D. Mich. 1987) (cerebral palsy); Strathie v. Dep't of Transp., 716 F.2d 227, 230 (3rd Cir. 1983) (hearing impairment); Flowers v. Webb, 575 F.Supp. 1450, 1456 (E.D.N.Y. 1983) ("mental retardation"); Bentivegna v. United States Dep't of Labor, 694 F.2d 619, 621 (9th Cir. 1982) (diabetes); Bey v. Bolger, 540 F.Supp. 910, 927 (E.D. Pa. 1982) (heart disease); Pushkin v. Regents of Univ. of Colo., 658 F.2d 1372, 1377, 1387 (10th Cir. 1981) (multiple sclerosis); Kampmeier v. Nyquist, 533 F.2d 296, 299 n.7 (2nd Cir. 1977) (vision in only one eye).

[7] *See, e.g.,* Reynolds, 815 F.2d at 574 (individual with epilepsy had a cognizable handicap under the Rehabilitation Act "even though medication controls her seizures . . ."); *see also* Strathie, 716 F.2d at 228–29 (undisputed that individual with hearing impairment was handicapped under the Rehabilitation Act even though hearing was corrected by use of a hearing aid); Bentivegna, 694 F.2d at 621–22 (accepting, without discussion, that individual with insulin-dependent diabetes was handicapped under the Rehabilitation Act).

The courts would then examine, for example, whether the plaintiff had shown that the adverse action was undertaken because of disability, whether the plaintiff was qualified to perform the job, or whether a requested accommodation might cause an undue burden.

In addition to favorable treatment by the lower courts, the Supreme Court also had endorsed a broad interpretation of the definition of "handicapped individual" before Congress decided to adopt this model for the definition of "disability" in the ADA. In *School Bd. of Nassau County v. Arline*,[8] the Supreme Court found that a school teacher who was fired after suffering relapses of tuberculosis had a handicap under the second *and* third prongs of the definition.

In so ruling, the Supreme Court acknowledged that "the definition of 'handicapped individual' is broad, but only those individuals who are both handicapped *and* otherwise qualified are eligible for relief."[9] Thus, the definition was structured to cover more—rather than fewer—individuals, who then have the opportunity—but also the burden—to prove unlawful discrimination. As the Court recognized in *Arline*, clearing the initial threshold is critical, as individuals who are excluded from the definition "never have the opportunity to have their condition evaluated in light of medical evidence and a determination made as to whether they [are] 'otherwise qualified.'"[10] Because of this, it was the Court's view that a broad definition appropriately ensured that individuals were not left "vulnerable to discrimination on the basis of mythology—precisely the type of injury Congress sought to prevent."[11]

In enacting the ADA, Congress issued extensive reports expressing its intent and expectation that the definition it adopted from the Rehabilitation Act would continue to be interpreted broadly.[12] Explaining the first prong of the definition, Congress made it clear that mitigating measures should not be considered:

> Whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids. For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, even though the loss may be corrected through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, which substantially limit a major life activity are covered under the first prong of the definition of disability, even if the effects of the impairment are controlled by medication.[13]

Congress included the second prong to protect individuals who have recovered from impairments that substantially limited them in the past, as well as individuals who have been incorrectly classified as having such impairments. "Examples include a person who

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[8] 480 U.S. 273, 285 (1978).
[9] *Id.* (original emphasis).
[10] *Id.*
[11] *Id.*
[12] H.R. REP. NO. 101–485, pt. 2, at 50 (1990) (expressing intent to incorporate the definition used in Rehabilitation Act of 1973, and endorsing Federal agency analysis of that definition); *id.*, pt. 3, at 27 (same).
[13] H.R. REP. NO. 101–485, pt. 2, at 52; *id.,* pt. 3, at 28 ("The impairment should be assessed without considering whether mitigating measures, such as auxiliary aids or reasonable accommodations, would result in a less-than-substantial limitation."); see also S. REP. NO. 101–116, at 23 (1989).

had, but no longer has, cancer, or a person who was misclassified as being mentally retarded."[14]

With the third prong, Congress sought to cover individuals who are treated as disabled whether or not they actually are. Congress expressed its intent to adopt the rationale articulated by the Supreme Court in *Arline* that "although an individual may have an impairment that does not in fact substantially limit a major life activity, the reaction of others may prove just as disabling. 'Such an impairment might not diminish a person's physical or mental capabilities, but could nevertheless substantially limit that person's ability to work as a result of the negative reactions of others to the impairment.'"[15]

COURT RULINGS HAVE NARROWED ADA PROTECTION, RESULTING IN THE EXCLUSION OF INDIVIDUALS THAT CONGRESS CLEARLY INTENDED TO PROTECT.

Through a series of decisions interpreting the ADA's definition of "disability," the Supreme Court has narrowed the ADA in ways never intended by Congress. First, in three cases decided on the same day in 1999, the Supreme Court ruled that the determination of "disability" under the first prong of the definition—i.e., whether an individual has a substantially limiting impairment—should be made after considering whether mitigating measures had reduced the impact of the impairment.[16] In all three cases, the undisputed reason for the adverse action was the employee's medical condition, yet all three employers argued—and the Supreme Court held—that the plaintiffs were not protected by the ADA because their impairments, when considered in a mitigated state, were not limiting enough to qualify as disabilities under the ADA.[17]

Three years later, the Supreme Court revisited the definition of "disability" in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*.[18] In that case, the plaintiff alleged that her employer discriminated against her by failing to accommodate her disabilities, which included carpal tunnel syndrome, myotendonitis, and thoracic outlet compression.[19] While her employer previously had adjusted her job duties, making it possible for her to perform well despite these conditions, Williams was not able to resume certain job duties when requested by Toyota and ultimately lost her job.[20] She challenged the termination, also alleging that Toyota's refusal to continue accommodating her violated the ADA. Looking to the defi-

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[14] H.R. REP. NO. 101–485, pt. 3, at 29; *id.,* pt. 2, at 52–3 ("Frequently occurring examples of the first group (i.e., those who have a history of an impairment) are persons with histories of mental or emotional illness, heart disease, or cancer; examples of the second group (i.e., those who have been misclassified as having an impairment) are persons who have been misclassified as mentally retarded.").

[15] *Id.,* pt. 3, at 30 (*citing* Arline, 480 U.S. at 283).

[16] Sutton v. United Airlines, Inc., 527 U.S. 471 (1999); Murphy v. United Parcel Service, Inc., 527 U.S. 516 (1999); Albertson's, Inc. v. Kirkingburg, 527 U.S. 555 (1999).

[17] Sutton, 527 U.S. at 475, 488 (concluding that the Sutton twins were not disabled because their vision was correctable to 20/20 or better through glasses or contact lenses); Murphy, 527 U.S. at 519–21 (concluding that Murphy, who was diagnosed with hypertension at age 10 and whose unmedicated blood pressure is 250/160, was not disabled because he can engage in most life activities when taking medication); Albertson's, 527 U.S. at 565–67 (concluding that Kirkinburg, who can only see out of one eye, might not be disabled because his brain had compensated for his visual impairment).

[18] 534 U.S. 182 (2002).

[19] *Id.* at 189, 196 (myotendinitis is an inflammation of the muscles and tendons; thoracic outlet compression is a condition that causes pain in the nerves leading to the upper extremities).

[20] *Id.* at 188–90.

nition of "disability," the Court noted that an individual "must initially prove that he or she has a physical or mental impairment," and then demonstrate that the impairment "substantially limits" a "major life activity."[21] Identifying the critical questions to be whether a limitation is "substantial" and whether a life activity is "major," the Court stated that "these terms need to be interpreted strictly to create a demanding standard for qualifying as disabled."[22] The Court then concluded that "substantial" requires a showing that an individual has an impairment that "prevents or severely restricts" the individual; and "major" life activities requires a showing that the individual is restricted from performing tasks that are "of central importance to most people's daily lives."[23]

While these cases involved claims brought under Title I of the ADA, the definition of disability applies to the entire Act and the Court's analysis has proven equally problematic for individuals seeking protection under its other titles.[24] Thus, in the wake of these rulings, individuals with disabilities that had been covered under the Rehabilitation Act and that Congress intended to include under the ADA—people with serious health conditions like epilepsy, diabetes, cancer, cerebral palsy, multiple sclerosis, intellectual and developmental disabilities—have been excluded from protection.[25] The courts say either that the person is not impaired enough to substantially limit a major life activity, or that the impairment substantially limits something—like liver function[26]—that they do not consider a major life activity.

A hearing held on October 4, 2007 before the Committee's Subcommittee on Constitution, Civil Rights, and Civil Liberties provided an opportunity for the Constitution Subcommittee to examine how the Supreme Court's decisions regarding the definition of disability have affected ADA protection for individuals with disabilities and to consider the need for legislative action. Majority Leader Steny H. Hoyer (D-MD), one of the lead sponsors of the ADA in 1990, and lead House co-sponsor along with Representative James F. Sensenbrenner, Jr. (R-WI) of the ADA Restoration Act of 2007,

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[21] *Id.* at 194–95.

[22] *Id.* at 197.

[23] *Id.* at 198. Finding that the changes to Williams's life caused by her impairments "did not amount to such severe restrictions in the activities that are of central importance to most people's daily lives that they establish a manual task disability as a matter of law," the Court reversed the Sixth Circuit's grant of summary judgment in Williams's favor and remanded the case for further consideration. *Id.* at 202, 203.

[24] *See, e.g.,* Bartlett v. New York State Bd. of Law Exam'rs., 226 F.3d 69 (2nd Cir. 2000) (reconsidering whether individual bringing claims under Titles II and III of the ADA met the definition of "disability" following the Supreme Court's remand for reconsideration in light of its rulings in *Sutton, Murphy,* and *Albertson's*); Gonzales v. Nat'l Bd. of Med. Exam'rs, 225 F.3d 620 (6th Cir. 2000) (applying Supreme Court rulings in determining whether an individual bringing a claim under Title III of the ADA is disabled).

[25] *See, e.g.,* Orr v. Wal-Mart Stores, Inc., 297 F.3d 720 (8th Cir. 2002) (individual with diabetes, managed through insulin and diet, not disabled enough to be protected by the ADA); Todd v. Academy Corp., 57 F.Supp. 2d 448 (S.D. Tex. 1999) (individual with epilepsy who was able to reduce the duration and intensity of his seizures through medication is not disabled enough to claim protection under the ADA as his weekly seizures amount only to "momentary physical limitations which could not be classified as substantial"); Eckhaus v. Consolidated Rail Corp., No. Civ. 00–5748, 2003 WL 23205042 (D.N.J. Dec. 24, 2003) (individual fired because of a hearing impairment was not protected by the ADA because a hearing aid helped correct that impairment); McMullin v. Ashcroft, 337 F.Supp. 2d 1281 (D.Wyo. 2004) (individual fired because of clinical depression not protected by the ADA because of the successful management of the condition with medication for the past fifteen years).

[26] *See, e.g.,* Furnish v. SVI Sys., Inc., 270 F.3d 445, 450 (7th Cir. 2001) (employee with cirrhosis of the liver caused by Hepatitis B is not disabled because liver function—unlike eating, working, or reproducing—"is not integral to one's daily existence").

explained the need to respond to court decisions "that have sharply restricted the class of people who can invoke protection under the law and [reinstate] the original congressional intent when the ADA passed."[27] Explaining Congress's choice to adopt the definition of "disability" from the Rehabilitation Act because it had been interpreted generously by the courts, Majority Leader Hoyer testified that Congress had never anticipated or intended that the courts would interpret that definition so restrictively:

> [W]e could not have fathomed that people with diabetes, epilepsy, heart conditions, cancer, mental illnesses and other disabilities would have their ADA claims denied because they would be considered too functional to meet the definition of disabled. Nor could we have fathomed a situation where the individual may be considered too disabled by an employer to get a job, but not disabled enough by the courts to be protected by the ADA from discrimination. What a contradictory position that would have been for Congress to take.[28]

Cheryl Sensenbrenner, Chair of the American Association of People with Disabilities, and wife of Representative Sensenbrenner, made a similar point. She noted the absurdity of penalizing individuals who make efforts to manage their medical conditions:

> A multitude of people who manage their disabilities effectively through medication, prosthetics, hearing aids, or other "mitigating measures" are viewed as "too functional"—or not "disabled enough"—to be protected under the ADA[29]
>
> * * *
>
> It seems to me that the last message we would want to send to Americans with disabilities—particularly youth with disabilities and returning war veterans—is the less you manage your disability, the less you try, the more likely you are to be protected under civil rights laws.[30]

A pharmacist, Stephen Orr, testified that, after being fired because of his diabetes, the courts ruled that he was not protected by the ADA because he had managed his condition through use of an insulin pump, exercise, and strict diet and, therefore, was not substantially limited in any major life activity.[31] Majority Leader Hoyer, joined by all of the witnesses except the representative on behalf of the U.S. Chamber of Commerce, urged Congress to respond to these restrictive rulings by passing H.R. 3195 to amend the definition of disability. The representative for the Chamber of Commerce opposed H.R. 3195, as introduced, as an overly broad response to the Supreme Court's decisions.[32]

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[27] *ADA Restoration Act of 2007: Hearing on H.R. 3195 Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on the Judiciary,* 110th Cong., tr. at 17 (2007) (oral statement of Majority Leader Hoyer).
[28] *Id.* at 18.
[29] *Id.* at 25 (prepared statement of Cheryl Sensenbrenner).
[30] *Id.* at 26 (prepared statement of Cheryl Sensenbrenner).
[31] *Id.* at 27 (oral statement of Stephen C. Orr).
[32] *Id.* at 50 (oral statement of Lawrence Z. Lorber).

HEARINGS

The Committee's Subcommittee on Constitution, Civil Rights, and Civil Liberties held 1 day of hearings on H.R. 3195 on October 4, 2007. Testimony was received from Majority Leader Steny H. Hoyer (D-MD); Cheryl Sensenbrenner, Chair, American Association of People with Disabilities; Stephen C. Orr, plaintiff in *Orr. v. Wal-Mart*; Michael C. Collins, Executive Director, National Council on Disability; Lawrence Z. Lorber, U.S. Chamber of Commerce; Chai R. Feldblum, Professor, Georgetown University Law Center. Additional material was submitted by Charles Littleton and Darbara Littleton; Robert L. Burgdorf, Jr., Professor, David A. Clarke School of Law; David Ferleger, Esq; National Council on Independent Living (NCIL); Disability Policy Collaboration, A Partnership of The Arc & United Cerebral Palsy; American Psychological Association; Paralyzed Veterans of America, Blinded Veterans Association, Disabled American Veterans, Jewish War Veterans of the USA, Veterans of Foreign Wars of the United States, Vietnam Veterans of America.

COMMITTEE CONSIDERATION

On June 18, 2008, the Committee met in open session and ordered the bill H.R. 3195 favorably reported with an amendment, by a rollcall vote of 27 to 0, a quorum being present.

COMMITTEE VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following rollcall vote occurred during the Committee's consideration of H.R. 3195: motion to report H.R. 3195, as amended, favorably. Passed 27 to 0.

ROLLCALL NO. 1

	Ayes	Nays	Present
Mr. Conyers, Jr., Chairman	X		
Mr. Berman			
Mr. Boucher			
Mr. Nadler	X		
Mr. Scott	X		
Mr. Watt	X		
Ms. Lofgren	X		
Ms. Jackson Lee			
Ms. Waters	X		
Mr. Delahunt			
Mr. Wexler			
Ms. Sánchez			
Mr. Cohen	X		
Mr. Johnson	X		
Ms. Sutton	X		
Mr. Gutierrez			
Mr. Sherman			
Ms. Baldwin	X		
Mr. Weiner			
Mr. Schiff			
Mr. Davis			
Ms. Wasserman Schultz	X		
Mr. Ellison	X		
Mr. Smith (Texas)	X		
Mr. Sensenbrenner, Jr.	X		

ROLLCALL NO. 1—Continued

	Ayes	Nays	Present
Mr. Coble	X		
Mr. Gallegly	X		
Mr. Goodlatte	X		
Mr. Chabot	X		
Mr. Lungren			
Mr. Cannon	X		
Mr. Keller	X		
Mr. Issa	X		
Mr. Pence			
Mr. Forbes	X		
Mr. King	X		
Mr. Feeney	X		
Mr. Franks	X		
Mr. Gohmert	X		
Mr. Jordan	X		
Total	27	0	

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee advises that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of rule XIII of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 3195, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 23, 2008.

Hon. JOHN CONYERS, Jr., *Chairman,*
Committee on the Judiciary,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3195, the ADA Amendments Act of 2008.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz, who can be reached at 226–2860.

Sincerely,

PETER R. ORSZAG,
DIRECTOR.

Enclosure

cc: Honorable Lamar S. Smith.
Ranking Member

H.R. 3195—ADA Amendments Act of 2008.

SUMMARY

H.R. 3195 would make several amendments to the Americans with Disabilities Act (ADA) of 1990 (Public Law 101–336). The bill would amend the definition of disability and clarify the prohibition on discrimination on the basis of disability. Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 3195 would cost about $25 million over the 2009–2013 period for the Equal Employment Opportunity Commission (EEOC) to handle additional discrimination cases. Enacting H.R. 3195 would not affect direct spending or revenues.

Section 4 of the Unfunded Mandates Reform Act (UMRA) excludes from the application of that act any legislative provision that establishes or enforces statutory rights that prohibit discrimination on the basis of disability. CBO has determined that sections 3 through 6 of H.R. 3195 fall within that exclusion; therefore, we have not reviewed them for intergovernmental or private-sector mandates. The remaining provisions of H.R. 3195 contain no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments, or the private sector.

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 3195 is shown in the following table. The costs of this legislation fall within budget function 750 (administration of justice).

By Fiscal Year, in Millions of Dollars

	2009	2010	2011	2012	2013	2009–2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	3	5	5	6	6	25
Estimated Outlays	3	5	5	6	6	25

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 3195 would cost about $25 million over the 2009–2013 period, assuming appropriation of the necessary amounts. For this estimate, CBO assumes that the necessary amounts will be appropriated near the start of each fiscal year and that outlays will follow the historical spending pattern of those activities. The bill would not affect direct spending or revenues.

The EEOC's current caseload for ADA actions is about 20,000 annually. CBO expects that H.R. 3195 would increase this workload by no more than 10 percent in most years, or roughly 2,000 cases annually. Based on EEOC staffing levels necessary to handle the agency's current caseload, we expect that implementing H.R. 3195 would require 50 to 60 additional employees. CBO estimates that the costs to hire those new employees would reach $5 million by

fiscal year 2010, subject to appropriation of the necessary amounts. In 2008, the agency received an appropriation of $329 million.

The additional cases resulting from H.R. 3195 also could increase the workload of the Department of Justice and the federal judiciary. However, CBO estimates that increased costs for those agencies would not be significant because of the relatively small number of cases likely to be referred to them.

ESTIMATED INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

Section 4 of UMRA excludes from the application of that act any legislative provision that establishes or enforces statutory rights that prohibit discrimination on the basis of disability. CBO has determined that sections 3 through 6 of H.R. 3195 fall within that exclusion; therefore, we have not reviewed them for intergovernmental or private-sector mandates. The remaining provisions of H.R. 3195 contain no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on State, local, or tribal governments, or the private sector.

PREVIOUS CBO ESTIMATE

On June 23, 2008, CBO transmitted a cost estimate for H.R. 3195 as ordered reported by the House Committee on Education and Labor on June 18, 2008. The two versions of the bill are identical as are the cost estimates.

ESTIMATE PREPARED BY:

Federal Costs: Mark Grabowicz (226–2860)
Impact on State, Local, and Tribal Governments: Lisa Ramirez-Branum (225–3220)
Impact on the Private Sector: Paige Piper/Bach (226–2940)

ESTIMATE APPROVED BY:

Theresa Gullo
Deputy Assistant Director for Budget Analysis

PERFORMANCE GOALS AND OBJECTIVES

The Committee states that pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, H.R. 3195 amends the definition of "disability" in the Americans with Disabilities Act of 1990 ("ADA"), and provides related rules of construction for applying the amended definition in order to restore broad protection for the wide range of individuals with disabilities as originally intended by Congress.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I, section 8, clauses 3 and 18 of the Constitution and Amendment XIV, section 5.

ADVISORY ON EARMARKS

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 3195 does not contain any congressional

earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e), or 9(f) of Rule XXI.

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act, requires a description of the application of this bill to the legislative branch. H.R. 3195 amends the definition of "disability" in the Americans with Disabilities Act and provides related rules of construction for applying the amended definition in order to clarify that the definition shall be construed broadly, which includes coverage under Section 509, 42 U.S.C § 12209, and through the Congressional Acountability Act, 42 U.S.C. §§ 1311, 1331, for the United States Senate and House of Representatives.

SECTION-BY-SECTION ANALYSIS

The following discussion describes the bill as reported by the Committee.

Sec. 1. Short Title. Section 1 sets forth the short title of the bill as the ADA Amendments Act of 2008.

Sec. 2. Findings and Purposes. Section 2 explains Congress's original intent and expectation that the definition of disability contained in the ADA would provide coverage for a broad range of individuals, consistent with how that definition had been interpreted by the courts under the Rehabilitation Act of 1973. Section 2 further explains that certain Supreme Court rulings have narrowed that definition in ways not expected or intended by Congress. Section 2 finds that, as a result of the Supreme Court's rulings in *Sutton v. United Airlines, Inc.*,[33] *Murphy v. United Parcel Service, Inc.*,[34] *Albertson's, Inc. v. Kirkinburg*,[35] and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*,[36] courts incorrectly have excluded individuals with qualifying disabilities from the ADA's protection. The purposes of the bill are to reinstate a broad scope of protection under the ADA by superseding aspects of these Supreme Court rulings and providing new definitions and standards regarding the definition of disability.

Sec. 3. Codified Findings. Section 3 modifies two findings in the ADA that have been used by the Supreme Court to support a narrow reading of "disability." Specifically, the bill strikes the ADA finding pertaining to "43 million Americans,"[37] and the ADA finding pertaining to "discrete and insular minority."[38] The Supreme Court relied upon both of these findings in determining that the ADA's definition of disability should be interpreted strictly, rather than broadly as Congress had intended.[39] Striking these findings is necessary because both have been interpreted in a manner that is inconsistent with the intent to protect the broad range and class of individuals with disabilities. The modified finding in paragraph (1) of the ADA is consistent with Congress's prior finding that individuals with disabilities have been subject to a history of purpose-

[33] 527 U.S. 471 (1999).
[34] 527 U.S. 516 (1999).
[35] 527 U.S. 555 (1999).
[36] 534 U.S. 184 (2002).
[37] 42 U.S.C. § 12101(a)(1).
[38] 42 U.S.C. § 12101(a)(7).
[39] *See* Sutton, 527 U.S. at 484, 494–5; Williams, 534 U.S. at 197.

ful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the ability of any such individuals to participate in, and contribute to, society.

Sec. 4. Disability Defined and Rules of Construction. Section 4 amends the definition of "disability" in Section 3(2) of the ADA,[40] and provides standards for applying the amended definition. Section 4 retains the essential structure of the three-prong definition of disability, which protects individuals with current, past, or perceived disabilities. While retaining this structure, the Act amends some of the terms of the definition that have been construed strictly by the courts ("substantially limits," "major life activities," and "regarded as having such an impairment") and lessens the burden of proving that one has a disability for purposes of coverage under the ADA. Section 4 also provides several rules of construction for the definition, providing standards that must be applied when considering the definition of disability.

Section 4(a) of the bill amends Section 3(2) of the ADA.[41] Section 4(a) retains the requirement that a physical or mental impairment "substantially limits" a major life activity under the first and second of the ADA's three-prong definition, but defines "substantially limits" as "materially restricts" in order to reject the Supreme Court's ruling in *Williams*,[42] which set an overly demanding standard. The new definition—"materially restricts"—adopts a less demanding standard. While the limitation imposed by an impairment must be important, it need not rise to the level of severely or significantly restricting the performance of a major life activity in order to qualify as a disability. On the severity spectrum, "materially restricts" is meant to be less than "severely restricts," and less than "significantly restricts," but more serious than a moderate impairment which would be in the middle of the spectrum. This standard is intended to return the courts to the standard used under the Rehabilitation Act prior to adoption of the definition into the ADA and that also had been employed by some of the lower courts in deciding cases under the ADA before the Supreme Court's restrictive ruling in *Williams*.[43]

Section 4 of the Act further amends the ADA definition of disability by providing an illustrative list of "major life activities" to exemplify the types of activities that are of central importance to most people's daily lives. The illustrative list of "major life activities" includes many common daily activities like eating, sleeping, walking, and thinking and clarifies that "major bodily functions" also should be considered major life activities under the ADA. This clarification was needed to ensure that the impact of an impairment on the operation of major bodily functions is not overlooked or wrongly dismissed as falling outside the definition of "major life activities" under the ADA. Thus, following this clarifying amend-

[40] 42 U.S.C. § 12102(2).
[41] 42 U.S.C. § 12102(2).
[42] 534 U.S. 196–97.
[43] 534 U.S. 196–97. *See, e.g.,* Bartlett v. New York State Bd. of Law Examiners, 226 F.3d 69, 80–81 (2nd Cir. 2000) (explaining the standard for determining "substantial limitation" after remand by the Supreme Court for further consideration in light of its determination in *Sutton, Murphy,* and *Albertson's* requiring the consideration of mitigating measures but before its restrictive interpretation of the terms of the definition in *Williams*).

ment, individuals in cases like *U.S. v. Happy Time Day Care Ctr.*[44] or *Furnish v. SVI Sys., Inc.*[45] could establish a material restriction on major bodily functions that would qualify them for protection under the ADA. An impairment can materially restrict the operation of a major bodily function if it causes the operation to overproduce or under-produce in some harmful fashion. Since it would be impossible to guarantee comprehensiveness in finite lists, the examples of major life activities and major bodily functions are illustrative and non-exhaustive. The absence of an activity or bodily function from these lists does not convey a negative implication as to whether it constitutes a major life activity under the ADA.

In addition to these definitions of "substantially limits" and "major life activities," Section 4 also clarifies the meaning of the phrase "regarded as having such an impairment" in the third prong of the ADA's definition of disability. While retaining the basic language contained in existing law, Section 4 makes clear that an individual meets the requirement of "being regarded as having such an impairment" if the individual shows that a prohibited action was taken based on an actual or perceived impairment, whether or not that impairment limits or is perceived to limit a major life activity. This makes it clear that an individual who is "regarded as" having an impairment need not meet the functional limitation, or severity, requirement contained in the first and second prongs of the definition (i.e., the individual is not required to show that the perceived impairment limits performance of a major life activity).

This clarification is necessary because the third prong incorporates the "substantial limitation" requirement from the first prong by reference (i.e., prong three protects only those individuals who are "regarded as having *such* an impairment"). While the plain language used by Congress when it passed the ADA in 1990 incorporates this requirement, Congress did not expect or intend that this would be a difficult standard to meet. On the contrary, when Congress passed the ADA, it intended and believed that the fact that an individual was discriminated against because of a perceived or actual impairment would be sufficient. As the House Committee on the Judiciary explained: "if a person is disqualified on the basis of an actual or perceived physical or mental condition, and the employer can articulate no legitimate job-related reason for the rejection, a perceived concern about employment of persons with disabilities could be inferred and the plaintiff would qualify for coverage under the 'regarded as' test."[46]

This third, "regarded as," prong was meant to express Congress's understanding that unfounded concerns, mistaken beliefs, fear, or prejudice about disabilities are just as disabling as actual impairments and its corresponding desire to prohibit discrimination founded on such concerns or fears.[47] Early decisions under the

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[44] 6 F.Supp. 2d 1073 (W.D. Wis. 1998) (struggling to analyze whether the impact of HIV infection substantially limits various major life activities of a 5-year-old child, and recognizing, among other things, that "there is something inherently illogical about inquiring whether" a 5-year-old's ability to procreate is substantially limited by his HIV infection)

[45] 270 F.3d 445, 450 (7th Cir. 2001) (finding that individual with cirrhosis of the liver caused by Hepatitis B is not disabled because liver function—unlike eating, working, or reproducing—"is not integral to one's daily existence")

[46] H.R. REP. NO. 101–485, pt. 3, at 30–31.

[47] *See, e.g.,* H.R. REP. NO. 101–485, pt. 3, at 30 (1990) (*citing Arline*, 480 U.S. at 284).

ADA reflected this understanding, as did guidance from Federal agencies like the Department of Justice.[48]

In line with the Supreme Court's restrictive interpretation of the first prong of the definition, however, the Court also has restrictively construed prong three, increasing the burden of proof required to establish that one has been regarded as disabled.[49] These restrictive rulings are at odds with the Court's earlier recognition in *Arline* that the negative reactions of others—exhibited through disqualification from a single job, program, or service—are as disabling as the actual impact of an impairment, a conclusion endorsed by Congress when it adopted the "'regarded as" prong. Section 4 therefore restores Congress's original intent by making clear that an individual meets the requirement of "being regarded as having such an impairment" if the individual shows that a prohibited action (e.g., disqualification from a job, program, or service) was taken because of an actual or perceived impairment, whether or not that impairment actually limits or is believed to limit a major life activity. Because there is no functional limitation requirement under prong three of the definition, the requirement for proving substantial limitation of the major life activity of working under the first and second prongs is not applicable to the analysis under prong three, and Equal Employment Opportunity Commission regulations regarding the major life activity of working under prongs one and two are not impacted by this change. The Committee is not intending to convey that Equal Employment Opportunity Commission regulations regarding class of jobs/range of jobs under prongs one and two need to be revisited as a result of the clarification of prong three.

Section 4 further clarifies that coverage for individuals under the "regarded as" prong is not available where the impairment that an individual is regarded as having is a transitory and minor impairment. Providing such an exception for claims at the lowest end of the spectrum of severity was deemed necessary under prong three of the definition because individuals seeking coverage under this prong need not meet the functional limitation requirement contained in prongs one and two of the definition. Therefore, absent this exception, the third prong of the definition would have covered individuals who are regarded as having common ailments like the cold or flu, and this exception responds to concerns raised by members of the business community regarding potential abuse of this provision and the misapplication of resources on individuals with minor ailments that last only a short period of time. A similar exception is not necessary for prongs one and two as the functional limitation test adequately prevents claims by individuals with common ailments that do not materially restrict a major life activity. However, as an exception to the general rule for broad coverage under the "regarded as" prong, this limitation on coverage should be construed narrowly.

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[48] *See, e.g.,* U.S. v. Happy Time Day Care Ctr., 6 F.Supp. 2d 1073, 1083–84 (rejecting the argument that a day care center's refusal to enroll a child with HIV did not establish that they believed that his HIV infection was substantially limiting, and concluding that the child was protected under the "regarded as" prong because "defendants" misapprehensions and fears' about HIV infection were substantially limiting); *see also* 28 C.F.R. Pt. 36, App. B, at 612.

[49] *See, e.g.,* Sutton, 527 U.S. at 491–92 (disqualification from a single job is insufficient; individuals seeking coverage under prong three must show that they were perceived as unable to perform a broad range of jobs utilizing the same skills).

Section 4 adds several rules of construction that specify standards that must be applied when interpreting the ADA's definition of disability. The first such rule responds to the Supreme Court's strict construction of the terms in the definition of disability in *Williams*[50] and directs courts to construe the definition of "disability" broadly to advance the ADA's remedial purposes. This brings treatment of the ADA's definition of disability in line with treatment of other civil rights laws, which should be construed broadly to effectuate their remedial purposes.[51] The next rule of construction for the definition of disability in section 4 of the Act clarifies that an impairment need only substantially limit one major life activity to be considered a disability under the ADA. This responds to and corrects those court decisions that have required individuals to show that an impairment substantially limits more than one life activity or that, with regard to the major life activity of "performing manual tasks," have offset substantial limitation in the performance of some tasks with the ability to perform others.[52]

The third rule of construction related to the definition of disability contained in section 4 of the bill provides that an impairment that is episodic or in remission must be considered a disability if that impairment would be substantially limiting in its active state. Thus, for example, an individual with epilepsy who experiences seizures that result in the short-term loss of control over major life activities, including major bodily functions (e.g., uncontrollable shaking, loss of consciousness) or other major life activities (e.g., ability to communicate, walk, stand, think) is disabled under the ADA even if those seizures occur daily, weekly, monthly, or rarely. This third rule of construction thus rejects the reasoning of the courts in cases like *Todd v. Academy Corp.*[53] where the court found that the plaintiff's epilepsy, which resulted in short seizures during which the plaintiff was unable to speak and experienced tremors, was not sufficiently limiting, at least in part because those seizures occurred episodically. It similarly rejects the results reached in cases where the courts have discounted the impact of an impairment that may be in remission as too short-lived to be substantially limiting.[54] It is thus expected that individuals with impairments that are episodic or in remission (e.g., epilepsy, multiple sclerosis, cancer) will be able to establish coverage if, when active,

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[50] 534 U.S. at 197.

[51] *Cf.* Sullivan v. Little Hunting Park, Inc., 396 U.S. 229, 237 (1969) (refusing to adopt a "narrow construction" of the language of the term "lease" in § 1982 as "quite inconsistent with the broad and sweeping nature of the protection meant to be afforded" by the Civil Rights Act of 1866) and Scheidemantle v. Slippery Rock Univ. State Sys. of Higher Ed., 470 F.3d 535, 538–39 (3rd Cir. 2006) ("Title VII is a remedial statute, so it must be interpreted broadly") *with* Williams, 534 U.S. at 197 (the terms in the ADA's definition of disability "need to be interpreted strictly to create a demanding standard for qualifying as disabled. . . .").

[52] *See, e.g.,* Holt v. Grand Lake Mental Health Center, Inc., 443 F.3d 762 (10th Cir. 2006) (finding that an individual whose cerebral palsy adversely affected her speech and ability to perform various tasks, including eating and chewing food and buttoning her clothing, was not substantially limited because of her ability to perform other manual tasks).

[53] 57 F.Supp. 448, 453 (S.D. Tex. 1999).

[54] *See, e.g.,* Pimental v. Dartmouth-Hitchock Clinic, 236 F.Supp. 2d 177, 182–83 (D.N.H. 2002) (discounting the "terrible effect the cancer had" upon plaintiff as too "short-lived" to constitute a disability despite fact that plaintiff's cancer required a modified radical mastectomy, radiation treatment, and chemotherapy that resulted in early menopause and impaired her concentration, ability to sleep, and memory, among other things). The Committee also expects that plaintiffs with conditions like cancer might also qualify for coverage by establishing a material restriction on major bodily functions.

the impairment or the manner in which it manifests (e.g., seizures) substantially limits a major life activity.

The fourth rule of construction related to the definition of disability contained in section 4 of the bill prohibits consideration of the ameliorative effects of mitigating measures when determining whether an individual's impairment substantially limits major life activities. This restores Congress's original intent and overturns the Supreme Court's determination that the effect of mitigating measures must be considered. Section 4 provides an illustrative list of measures whose use might mitigate the impact of an impairment. Mitigating measures include medicine, equipment, hearing aids, and adaptive or learned behaviors undertaken by the body (e.g., neurological adjustments made by individuals to cope with visual impairments, as was the case in *Albertson's*, where the court required consideration of the "body's own systems" as a mitigating measure).[55] Mitigating measures include low vision devices, which are devices that magnify, enhance, or otherwise augment a visual image, such as magnifiers, closed circuit television, larger-print items, and instruments that provide voice instructions. Low vision devices do not include ordinary eyeglasses or contact lenses, which are lenses that are intended to fully correct visual acuity or eliminate refractive error. A narrow exception exists for ordinary eyeglasses or contact lenses, requiring consideration of the ameliorative effects of these two mitigating measures in determining whether an impairment substantially limits a major life activity.

As it would be impossible to guarantee comprehensiveness in a finite list, the list of mitigating measures is non-exhaustive and the absence of a mitigating measure from the list is not intended to convey a negative implication as to whether that measure is a mitigating measure under the ADA. For example, measures like the use of a job coach, personal assistant, service animal, or adaptive strategy that might mitigate, or even allow an individual to otherwise avoid performing particular major life activities, also would not be considered in determining whether an impairment substantially limits a major life activity.

Once the ameliorative effects of a mitigating measure can no longer be considered in determining whether an impairment is substantially limiting, it is expected that individuals who were improperly excluded from the ADA's protected class will be found to be substantially limited and entitled to protection from disability-based discrimination. Examples of cases that likely would be decided differently with regard to the threshold question of whether one qualifies as disabled once the effects of mitigating measures are not taken into account include: *McClure v. General Motors Corp.*,[56] where the court found that an individual with muscular dystrophy who successfully learned to live and work with his disability was not protected by the ADA; *Orr v. Wal-Mart Stores, Inc.*,[57] where, after noting that the Supreme Court's *Sutton* decision required consideration of the impact of the plaintiff's careful regimen of medicine, exercise, and diet, the court declined to consider the impact of uncontrolled diabetes on plaintiff's ability to

[55] Albertson's, 527 U.S. at 565–66.
[56] 75 Fed. Appx. 983 (5th Cir. 2003).
[57] 297 F.3d 720 (8th Cir. 2002).

see, speak, read, and walk; *Todd v. Academy Corp.*,[58] where the court found that, "without medication, Plaintiff would suffer daily seizures, including grand mal seizures which involve loss of consciousness, general thrashing, and tonoclonic activity," but concluding that the plaintiff was not disabled because medication reduced the frequency and intensity of these seizures; *Gonzales v. National Bd. Of Medical Examiners*,[59] where the court found that an individual with a diagnosed learning disability was not substantially limited after considering the impact of self-accommodations that allowed him to read and achieve academic success, and also failing to consider whether these required self-accommodations sufficiently restricted plaintiff as to the condition, manner or duration under which he performed these activities; *McMullin v. Ashcroft,*[60] where "[v]iewing Plaintiff's impairment in light of the corrective measures of his medication," the court concluded that the plaintiff was not substantially limited enough to be protected by the ADA.

Sec. 5. Discrimination on the Basis of Disability. Section 5 amends certain provisions contained in Title I of the ADA, which is within the jurisdiction of the Education and Labor Committee. Section 5 prohibits discrimination "on the basis of disability" rather than "against a qualified individual with a disability because of the disability of such individual."[61] This change harmonizes the ADA with other civil rights laws by focusing on whether a person who has been discriminated against has proven that the discrimination was based on a personal characteristic (disability), not on whether he or she has proven that the characteristic exists. Section 5 also makes clear that an individual who suffers an adverse employment action as the result of an employer's use of qualification standards, employment tests, or other selection criteria that are based on uncorrected vision may challenge those visions requirements and that the covered entity must show that such requirements are job-related and consistent with business necessity. This provision is needed to ensure that vision requirements are job-related and consistent with business necessity in light of the provision requiring consideration of the ameliorative effects of ordinary eyeglasses and contact lenses in determining whether an individual has a disability.

Sec. 6. Rules of Construction. Section 6 clarifies that nothing in the ADA alters the standards for determining eligibility for benefits under State workers' compensation laws or under State and Federal disability benefits programs. In addition, section 6 prohibits reverse discrimination claims by disallowing claims based on the lack of disability (e.g., a claim by someone without a disability that someone with a disability was treated more favorably by, for example, being granted a reasonable accommodation or modification to services or programs).

Section 6 also specifies that the duty to provide reasonable accommodations under Title I or the duty to modify policies, practices, or procedures under Titles II or III is not triggered where an individual qualifies for coverage under the ADA solely by being "regarded as" disabled under the third prong of the definition of dis-

[58] 57 F.Supp.2d 448, 452 (S.D. Tex. 1999)
[59] 225 F.3d 620 (6th Cir. 2000).
[60] 337 F.Supp. 2d 1281, 1289 (D. Wyo. 2004)
[61] 42 U.S.C. § 12112(a).

ability. This makes clear that the duty to accommodate or modify arises only when an individual establishes coverage under the first or second prong of the definition. This change responds to court decisions that have interpreted the ADA to require accommodation or modification for individuals who qualify as being "regarded as" disabled and may have been limited in a major life activity, but who were not able to meet the Supreme Court's demanding standard for being substantially limited under the first prong of the definition.[62] Because the changes made by this bill should restore the correct interpretation of the first prong, courts should no longer need to resort to a strained interpretation of prong three in order to require reasonable accommodations or modifications. This clarification is not intended to diminish the obligation to provide accommodations or modifications as required under titles I, II, or III, or any other provision of the ADA. For example, under Section 509 of the ADA, the Architect of the Capitol is responsible for ensuring that, in all matters other than employment, the rights and protections afforded by the ADA shall be applied to the Senate and House of Representatives. The Committee believes that, in fulfilling this obligation, the Architect of the Capitol should replace all round doorknobs with lever door handles or install push-bar doors in all principle entryways in any office of the House of Representatives or the Senate (not including the Capitol building).

Finally, section 6 responds to Supreme Court decisions that question whether any agency has authority to issue regulations or guidance for the definition of "disability" contained in Section 3 of the ADA.[63] Section 6 clarifies that the regulatory authority granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under the ADA includes the authority to issue regulations implementing the generally applicable definition sections of the ADA, including the definition of disability.

Sec. 7. Conforming Amendments. Section 7 ensures that the definition of disability in Section 7 of the Rehabilitation Act of 1973, which uses the same definition of disability as the ADA, remains consistent with the ADA. The Rehabilitation Act of 1973 preceded the ADA in providing civil rights protections to individuals with disabilities and Congress modeled the ADA's definition on the Rehabilitation Act and its implementing regulations. The ADA (under Titles II and III), and Section 504 of the Rehabilitation Act provide overlapping coverage for many entities, including public schools, institutions of higher education, childcare facilities, and other entities receiving Federal funds. As a result, maintaining uniform definitions in the two Federal statutes is critical so that such entities will operate under one consistent standard, and the civil rights of individuals with disabilities will be protected in all settings.

Sec. 8. Effective Date. Section 8 provides that the amendments made by the bill take effect January 1, 2009.

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[62] *See, e.g.,* Kelly v. Metallics West, Inc., 410 F.3d 670 (10th Cir. 2005) (individual who needed supplemental oxygen after being discharged from the hospital due to a pulmonary embolism did not have a substantially limiting impairment but was regarded as disabled and should have been accommodated by being allowed to use her supplemental oxygen while at work).

[63] 42 U.S.C. § 12102(2); *See, e.g.,* Sutton, 527 U.S. at 479 ("no agency, however, has been given authority to issue regulations implementing the generally applicable provisions of the ADA.").

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

AMERICANS WITH DISABILITIES ACT OF 1990

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) * * *

(b) TABLE OF CONTENTS.—The table of contents is as follows:

* * * * * * *

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—The Congress finds that—

[(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older;]

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

* * * * * * *

[(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;]

* * * * * * *

[SEC. 3. DEFINITIONS.

[As used in this Act:

[(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

[(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

[(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

[(C) acquisition or modification of equipment or devices; and

[(D) other similar services and actions.

[(2) DISABILITY.—The term "disability" means, with respect to an individual—

[(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;

[(B) a record of such an impairment; or

[(C) being regarded as having such an impairment.

[(3) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.]

SEC. 3. DEFINITION OF DISABILITY.

As used in this Act:

(1) DISABILITY.—The term "disability" means, with respect to an individual—

(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 (as described in paragraph (4)).

(2) SUBSTANTIALLY LIMITS.—The term "substantially limits" means materially restricts.

(3) MAJOR LIFE ACTIVITIES.—

(A) IN GENERAL.—For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working.

(B) MAJOR BODILY FUNCTIONS.—For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(4) REGARDED AS HAVING SUCH AN IMPAIRMENT.—For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this Act because of an actual or perceived

physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(5) RULES OF CONSTRUCTION REGARDING THE DEFINITION OF DISABILITY.—The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) To achieve the remedial purposes of this Act, the definition of "disability" in paragraph (1) shall be construed broadly.

(B) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(C) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(D)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

SEC. 4. ADDITIONAL DEFINITIONS.

As used in this Act:

(1) AUXILIARY AIDS AND SERVICES.—The term "auxiliary aids and services" includes—

(A) qualified interpreters or other effective methods of making aurally delivered materials available to individuals with hearing impairments;

(B) qualified readers, taped texts, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(C) acquisition or modification of equipment or devices; and

(D) other similar services and actions.

(2) STATE.—The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

TITLE I—EMPLOYMENT

SEC. 101. DEFINITIONS.

As used in this title:

(1) * * *

* * * * * * *

(8) QUALIFIED INDIVIDUAL [WITH A DISABILITY].—The term "qualified individual [with a disability]" means an individual [with a disability] who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this title, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

* * * * * * *

SEC. 102. DISCRIMINATION.

(a) GENERAL RULE.—No covered entity shall discriminate against a qualified individual [with a disability because of the disability of such individual] *on the basis of disability* in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

(b) CONSTRUCTION.—As used in subsection (a), the term "[discriminate] *discriminate against a qualified individual on the basis of disability*" includes—

(1) * * *

* * * * * * *

SEC. 103. DEFENSES.

(a) * * *

* * * * * * *

(c) QUALIFICATION STANDARDS AND TESTS RELATED TO UNCORRECTED VISION.—Notwithstanding section 3(5)(D)(ii), a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

[(c)] *(d)* RELIGIOUS ENTITIES.—

(1) * * *

* * * * * * *

[(d)] *(e)* LIST OF INFECTIOUS AND COMMUNICABLE DISEASES.—
(1) * * *

* * * * * * *

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. CONSTRUCTION.

(a) * * *

* * * * * * *

(e) BENEFITS UNDER STATE WORKER'S COMPENSATION LAWS.—Nothing in this Act alters the standards for determining eligibility for benefits under State worker's compensation laws or under State and Federal disability benefit programs.

(f) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by a person without a disability that he or she was subject to discrimination because of his or her lack of disability.

(g) REASONABLE ACCOMMODATIONS AND MODIFICATIONS.—A covered entity under title I, a public entity under title II, and any person who owns, leases (or leases to), or operates a place of public accommodation under title III, need not provide a reasonable accommodation or a reasonable modification to policies, practices, or procedures to an individual who meets the definition of disability in section 3(1) solely under subparagraph (C).

* * * * * * *

SEC. 506. RULE OF CONSTRUCTION REGARDING REGULATORY AUTHORITY.

The authority to issue regulations granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation under this Act includes the authority to issue regulations implementing the definitions contained in sections 3 and 4.

SEC. [506] *507*. TECHNICAL ASSISTANCE.

(a) * * *

* * * * * * *

SEC. [507] *508*. FEDERAL WILDERNESS AREAS.

(a) * * *

* * * * * * *

SEC. [508] *509*. TRANSVESTITES.

For the purposes of this Act, the term "disabled" or "disability" shall not apply to an individual solely because that individual is a transvestite.

SEC. [509] *510*. INSTRUMENTALITIES OF THE CONGRESS

The General Accounting Office, the Government Printing Office, and the Library of Congress shall be covered as follows:

(1) * * *

* * * * * * *

SEC. [510] *511*. ILLEGAL USE OF DRUGS.

(a) * * *

* * * * * * *

SEC. [511] *512*. DEFINITIONS.

(a) * * *

* * * * * * *

SEC. [512] *513*. AMENDMENTS TO THE REHABILITATION ACT.

(a) * * *

* * * * * * *

SEC. [513] *514*. ALTERNATIVE MEANS OF DISPUTE RESOLUTION.

Where appropriate and to the extent authorized by law, the use of alternative means of dispute resolution, including settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials, and arbitration, is encouraged to resolve disputes arising under this Act.

SEC. [514] *515*. SEVERABILITY.

Should any provision in this Act be found to be unconstitutional by a court of law, such provision shall be severed from the remainder of the Act, and such action shall not affect the enforceability of the remaining provisions of the Act.

REHABILITATION ACT OF 1973

* * * * * * *

SEC. 7. DEFINITIONS.

For the purposes of this Act:

(1) * * *

* * * * * * *

(9) DISABILITY.—The term "disability" means—

(A) * * *

(B) for purposes of sections 2, 14, and 15, and titles II, IV, V, and VII, [a physical or mental impairment that substantially limits one or more major life activities] *the meaning given it in section 3 of the Americans with Disabilities Act of 1990*.

* * * * * * *

(20) INDIVIDUAL WITH A DISABILITY.—

(A) * * *

(B) CERTAIN PROGRAMS; LIMITATIONS ON MAJOR LIFE ACTIVITIES.—Subject to subparagraphs (C), (D), (E), and (F), the term "individual with a disability" means, for purposes of sections 2, 14, and 15, and titles II, IV, V, and VII of this Act, [any person who—

[(i) has a physical or mental impairment which substantially limits one or more of such person's major life activities;

[(ii) has a record of such an impairment; or

[(iii) is regarded as having such an impairment.]
any person who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990.

* * * * * * *

ADDITIONAL VIEWS

The Americans with Disabilities Act ("ADA"), enacted almost 18 years ago, removed many physical barriers disabled people faced in their daily lives. It also helped remove the mental barriers that often prevented non-disabled Americans from looking beyond wheel chairs and walking canes and seeing disabled Americans as the friends and co-workers they are. We support H.R. 3195, as amended, in the hopes that it will further these worthy goals.

These additional views are written with the expectation that courts will focus on the statutory text of the legislation, not the language placed in committee reports, when interpreting this legislation. When the Supreme Court, in previous decisions, interpreted the ADA, it did so based largely if not exclusively on the meaning and import of its statutory text, not its "legislative history."[1]

Nevertheless, we offer these additional views to emphasize our own understanding of how H.R. 3195, as amended, restores the original meaning of the Americans with Disabilities Act when it was originally enacted.

That legislative history from both the House Education and Labor and the Senate committee reports provided that "[p]ersons with *minor, trivial impairments* such as a simple infected finger are not impaired in a major life activity,"[2] and consequently those who had such minor and trivial impairments would not be covered under the ADA.

We believe that understanding remains consistent with the statutory language and is entirely appropriate, and we expect the courts to agree with and apply that interpretation. If that interpretation were not to hold but were to be broadened improperly by the judiciary, an employer would be under a federal obligation to accommodate people with stomach aches, a common cold, mild seasonal allergies, or even a hangnail. Consequently, we want to make clear that we believe that the drafters and supporters of this legislation, including ourselves, intend to exclude minor and trivial impairments from coverage under the ADA, as they have always been excluded.

Also, the Supreme Court in *Toyota Motor Manufacturing v. Williams* held that under the original ADA, "[t]he impairment's impact must also be permanent or long term."[3] While the findings in H.R. 3195, as amended, state that the purpose of the legislation is "to provide a new definition of 'substantially limits' to indicate that Congress intends to depart from the strict and demanding standard applied by the Supreme Court in *Toyota Motor Manufacturing*," we

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[1] For example, in *Sutton v. United Air Lines, Inc.,* 527 U.S. 471 (1999), the Supreme Court analyzed the ADA by "[l]ooking at the Act as a whole," and in doing so the Court concluded "we have no reason to consider the ADA's legislative history." *Id.* at 482.

[2] S. Rep. No. 116, 101st Cong. 1st Sess. pt. 1 (1989) at 23; H.R. Rep. No. 485, 101st Cong. 2d Sess., pt. 2 (1990) at 52.

[3] 534 U.S. 184, 198 (2002).

understand that this finding does not and is not meant to express disagreement with or to overturn the Court's determination in that case that the ADA applies only to individuals with impairments that are permanent or long term in impact.

We hope and expect that these understandings of H.R. 3195, as amended, will prevail, for if they do not, the courts may be flooded with frivolous cases brought by those who were not intended to be protected under the original ADA. If that happens, those who would have been clearly covered under the original ADA, such as paralyzed veterans or the blind, may be forced to wait in line behind untold numbers of others filing cases regarding minor or trivial impairments. We do not believe anyone supporting this new language wants that to happen, and we want to make that clear for the record.

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CHRIS CANNON.
RIC KELLER.
DARRELL ISSA.
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TRENT FRANKS.
LOUIE GOHMERT.
JIM JORDAN.

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