

Lofgren, Zoe	Perlmutter	Snyder
Lowey	Price (NC)	Solis
Lynch	Ramstad	Speier
Maloney (NY)	Rangel	Stark
Markey	Richardson	Sutton
Matsui	Rothman	Tauscher
McCarthy (NY)	Roybal-Allard	Thompson (MS)
McCollum (MN)	Ruppersberger	Tierney
McDermott	Rush	Towns
McGovern	Sánchez, Linda	Tsongas
McNulty	T.	Van Hollen
Meeks (NY)	Sanchez, Loretta	Velázquez
Miller (NC)	Sarbanes	Visclosky
Miller, George	Schakowsky	Wasserman
Moore (WI)	Schiff	Schultz
Moran (VA)	Schwartz	Waters
Murphy (CT)	Scott (GA)	Watson
Nadler	Scott (VA)	Watt
Napolitano	Serrano	Waxman
Neal (MA)	Sestak	Weiner
Olver	Shays	Wexler
Pallone	Sherman	Woolsey
Pascarell	Slaughter	Wu
Pastor	Smith (NJ)	Yarmuth
Payne	Smith (WA)	

ANSWERED "PRESENT"—1

Obey

NOT VOTING—14

Bishop (NY)	Dreier	Lampson
Brady (TX)	Ehlers	Neugebauer
Cantor	Hoekstra	Pitts
Cleaver	Hulshof	Regula
Cubin	King (IA)	

□ 1116

Mr. HARE changed his vote from "aye" to "no."

So the bill was passed.

The result of the vote was announced as above recorded.

The title was amended so as to read: "A bill to restore Second Amendment rights in the District of Columbia."

A motion to reconsider was laid on the table.

Stated against:

Mr. SIRE. Mr. Speaker, when I voted on final passage of H.R. 6842, the Second Amendment Enforcement Act, I incorrectly voted aye. I meant to vote no on final passage of that bill.

Mr. ETHERIDGE. Mr. Chairman, Earlier today, the House took sequential votes on an amendment to and final passage of the National Capital Security and Safety Act, H.R. 6842. On roll number 601 when I cast my vote on final passage an "aye" vote was recorded when a "no" vote should have been recorded.

#### PERSONAL EXPLANATION

Mr. EHLERS. Mr. Speaker, (Mr. Chairman), on rollcall No. 600 and 601, I missed these votes due to illness (influenza). Had I been present, I would have voted "aye" on both.

#### ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later.

#### ADA AMENDMENTS ACT OF 2008

Mr. GEORGE MILLER of California. Mr. Speaker, I move to suspend the

rules and pass the Senate bill (S. 3406) to restore the intent and protections of the Americans with Disabilities Act of 1990.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 3406

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### 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 a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled;

(4) the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases 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;

(5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) 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;

(7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress; and

(8) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term "substantially limits" as "significantly restricted" are inconsistent with congressional intent, by expressing too high a standard.

(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 Air Lines, 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 Air Lines, 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";

(5) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002) for "substantially limits", and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations, and to convey that the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis; and

(6) to express Congress' expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term "substantially limits" as "significantly restricted" to be consistent with this Act, including the amendments made by this Act.

#### 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";

(2) by striking paragraph (7); and

(3) by redesignating paragraphs (8) and (9) as paragraphs (7) and (8), respectively.

#### 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 (3)).

"(2) 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.

“(3) 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.

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

“(A) The definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.

“(B) The term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

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

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

“(E)(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 of the United States, 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(4)(E)(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 AMENDMENTS.—

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

(A) in the paragraph heading, by striking “WITH A DISABILITY”; and

(B) by striking “with a disability” after “individual” both places it appears.

(2) Section 104(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12114(a)) is amended by striking “the term ‘qualified individual with a disability’ shall” and inserting “a qualified individual with a disability shall”.

#### SEC. 6. RULES OF CONSTRUCTION.

(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12201 et seq.) 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) FUNDAMENTAL ALTERATION.—Nothing in this Act alters the provision of section 302(b)(2)(A)(ii), specifying that reasonable modifications in policies, practices, or procedures shall be required, unless an entity can

demonstrate that making such modifications in policies, practices, or procedures, including academic requirements in postsecondary education, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved.

“(g) CLAIMS OF NO DISABILITY.—Nothing in this Act shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual’s lack of disability.

“(h) 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) of such section.”

(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 of disability in section 3 (including rules of construction) and the definitions in section 4, consistent with the ADA Amendments Act of 2008.”

(3) in section 511 (as redesignated by paragraph (2)) (42 U.S.C. 12211), in subsection (c), by striking “511(b)(3)” and inserting “512(b)(3)”.

(b) The table of contents contained in section 1(b) of the Americans with Disabilities Act of 1990 is amended by redesignating the items relating to sections 506 through 514 as the items relating to sections 507 through 515, respectively, 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 in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102)”; 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 (42 U.S.C. 12102).”

#### SEC. 8. EFFECTIVE DATE.

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

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. GEORGE MILLER) and the gentleman from California (Mr. McKEON) each will control 20 minutes

The Chair recognizes the gentleman from California Mr. GEORGE MILLER).

#### GENERAL LEAVE

Mr. GEORGE MILLER of California. Mr. Speaker, I ask unanimous consent for 5 legislative days during which Members may revise and extend their remarks and insert extraneous material on S. 3406 into the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise today in strong support of final passage of S. 3406, the Americans with Disabilities Amendments Act of 2008.

Since 1990, the Americans with Disabilities Act has provided protection from discrimination for millions of productive, hardworking Americans so that they may fully participate in our Nation's schools, communities and workplace. Among other rights, the law guaranteed that workers with disabilities would be judged on their merits and not on an employer's prejudice.

But since the ADA's enactment, several Supreme Court rulings have dramatically reduced the number of individuals with disabilities who are protected from discrimination under the law. Workers like Carey McClure, an electrician with muscular dystrophy who testified before our committee in January, have not been hired or passed over for promotion by an employer regarding them as too disabled to do the job. Yet when these workers seek justice for this discrimination, the courts rule that they are not disabled enough to be protected by the Americans with Disabilities Act. This is a terrible catch-22 that Congress will change with the passage of this bill today.

S. 3406, like H.R. 3195 passed in June, remedies this catch-22 situation in several ways by reversing flawed court decisions to restore the original congressional intent of the Americans with Disabilities Act. Workers with disabilities who have been discriminated against will no longer be denied their civil rights as a result of these erroneous court decisions.

To do this, S. 3406 reestablishes the scope of protection of the Americans with Disabilities Act to be generous and inclusive. The bill restores the proper focus on whether discrimination occurred rather than on whether or not an individual's impairment qualifies as a disability.

S. 3406 ensures that individuals who reduce the impact of their impairments through means such as hearing aids, medications, or learned behavioral modifications will be considered in their unmitigated state.

For people with epilepsy, diabetes and other conditions who have successfully managed their disability, this means the end of the catch-22 situation that Carey McClure and so many others have encountered when attempting to seek justice.

For our returning war veterans with disabilities, S. 3406 will ensure that the transition to civilian life will not include another battle here at home, a battle against discrimination on the basis of disability.

And students with physical and mental impairments will have access to the accommodations and modifications they need to successfully pursue an education.

Much of the language contained in S. 3406 is identical to the House-passed H.R. 3195. This includes provisions concerning mitigating measures, episodic conditions, major life activities, treatment of claims under the "regarded as" prong, regulatory authority for the definition of disability, and the conforming amendments to section 504 of the Rehabilitation Act.

We expect the courts and agencies to apply this less demanding standard when interpreting "substantially limits." S. 3406 directs the courts and the agencies to interpret the term consistent with the findings and purposes of the ADA Amendments Act.

We intend that the ADA Amendments Act will reduce the depth of analysis related to the severity of the limitation of the impairment and return the focus to where it should be: the question of whether or not discrimination, based upon the disability, actually occurred.

This legislation has broad support: Democrats and Republicans; employers, civil rights groups, and advocates for individuals with disabilities. I'm pleased that we were able to work together to get to this point.

In particular, I'd like to thank the members of the Employer and Disability Alliance, including the Leadership Conference on Civil Rights, the Epilepsy Foundation, the American Association of People with Disabilities, the U.S. Chamber of Commerce, the National Association of Manufacturers, and the Society for Human Resource Management for all of their hard work and long hours of negotiations with each other and with our staff.

Of course, much credit is due to Majority Leader STENY HOYER and Congressman JIM SENSENBRENNER for their leadership and tenacity in the House; and Senator HARKIN, Senator KENNEDY, Senator HATCH for their skill in moving this legislation through the Senate with unanimous support.

It is time to restore the original intent of the ADA and ensure that the tens of millions of Americans with disabilities who want to work, attend school, and fully participate in our communities will have the chance to do so.

I look forward to the passage of this legislation and encourage my colleagues to support it.

I reserve the balance of my time.

Mr. MCKEON. Mr. Speaker, I yield myself such time as I may consume.

I am pleased to rise in support of ADA Amendments Act of 2008, a bill we first approved earlier this year. The bill we passed was the product of good-faith negotiation and careful compromise, and I appreciate that the framework of our bill has been maintained.

At the same time, our counterparts on the other side of the Capitol were able to further refine and improve the legislation. Thanks to that effort, the bill before us today represents an important step forward for Americans

with disabilities and the employers that benefit from their many contributions.

The Americans with Disabilities Act was enacted in 1990 with broad bipartisan support. Among the bill's most important purposes was to protect individuals with disabilities from discrimination in the workplace.

By many measures, the law has been a huge success. I firmly believe that the employer community has taken the ADA to heart, with businesses adopting policies specifically aimed at providing meaningful opportunities to individuals with disabilities.

However, despite the law's many success stories, it is clear today that for some, the ADA is failing to live up to its promise.

In the years since its enactment, court cases and legal interpretations have left some individuals outside the scope of the act's protections. Some individuals the law was clearly intended to protect have been deemed "not disabled enough," an interpretation we all agree needs correcting.

In response, however, proposals were put forward to massively expand the law's protections to cover virtually all Americans. This is an equally dangerous proposition.

Our task with this legislation was to focus relief where it is needed, while still maintaining the delicate balance embodied in the original ADA.

In the months since this bill was first introduced and moved through the House, I am pleased to say that we were able to do exactly that.

Mr. Speaker, this is a good bill, and the time to enact it is now. It ensures that meaningful relief will be extended to those most in need, while the ADA's careful balance is maintained as fully as possible.

Once again, I want to thank my colleagues on both sides of the aisle for honoring our shared commitment to work together on this issue that has the potential to touch the lives of millions of Americans.

I would especially like to recognize Majority Leader HOYER, Representative SENSENBRENNER, and Chairman MILLER for their leadership and commitment to enactment of these important bipartisan reforms. I also want to thank the many stakeholders, especially the ones that Chairman MILLER mentioned in his remarks, who were involved in this process for their efforts.

I reserve the balance of my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER), a member of the Judiciary Committee, which also had jurisdiction over this legislation and was very helpful in its passage.

Mr. NADLER. I thank the gentleman.

I thank the distinguished majority leader and the gentleman from Wisconsin (Mr. SENSENBRENNER). Under their leadership, the House passed the ADA Amendments Act in June by an overwhelming vote of 402-17.

The Senate, under the leadership of Senators HARKIN and HATCH, has taken up our bipartisan call to restore the promise of the ADA and has passed a nearly identical bill, S. 3406.

Like the House bill, S. 3406 overturns Supreme Court decisions that have narrowed the scope of protection under the ADA. These decisions have created a catch-22, in which an individual who is able to lessen the adverse impact of an impairment by use of a mitigating measure like medicine or a hearing aid can be fired from a job or otherwise face discrimination on the basis of that impairment and yet not be considered sufficiently disabled to be protected by the ADA. Congress never intended such an absurd result.

Like the House bill, S. 3406 cures this problem by prohibiting courts from considering “mitigating measures”—things like medicine, prosthetic devices, hearing aids, or the body’s own compensation and ability to adapt—when determining whether an individual is disabled. On this important point, S. 3406 retains the exact same language as H.R. 3195.

S. 3406 also retains the House language on the treatment of episodic conditions, major life activities, claims brought under the “regarded as” prong of the definition, regulatory authority, and conforming the definition contained in section 504 of the Rehabilitation Act so that entities covered by the ADA and Rehabilitation Act operate under a consistent standard.

While the approach taken in the two bills is somewhat different, congressional intent and the result achieved by both bills is the same.

Both bills make clear that the courts and Federal agencies have set the standard for qualifying as disabled under the ADA too high. Both bills reject court and agency interpretation of the term “substantially limits” as “preventing” or “significantly restricting” the ability to perform a major life activity. Both bills require the courts and Federal agencies to set a less demanding standard by interpreting the term “substantially limits” more generously to ensure broad coverage for the wide range of individuals with disabilities.

For that reason, I support and urge all of you to join me in supporting S. 3406. These changes are long overdue. Countless Americans with disabilities have already been deprived of the opportunity to prove that they have been victims of discrimination, that they are qualified for a job, or that a reasonable accommodation would afford them an opportunity to participate fully at work and in community life.

It is our sincere hope that, with less fighting over who is or is not disabled, we will finally be able to focus on the important questions: Is an individual qualified? And might a reasonable accommodation afford that person the same opportunities that his or her neighbors enjoy? Our Nation simply cannot afford to squander the talents

and contributions of our people based on antiquated misconceptions about people with disabilities.

I urge my colleagues to join me in voting for passage of S. 3406 and restoring the ADA to its rightful place among this Nation’s great civil rights laws.

I thank the gentleman again.

Mr. Speaker, I rise in support of S. 3406, the “ADA Amendments Act of 2008.”

I thank the distinguished Majority Leader, the gentleman from Maryland, and the gentleman from Wisconsin, Mr. SENSENBRENNER. Under their leadership, the House passed the ADA Amendments Act (H.R. 3195) in June by an overwhelming vote of 402–17.

The Senate, under the leadership of Senators HARKIN and HATCH, has taken up our bipartisan call to restore the promise of the ADA and has passed a nearly identical bill, S. 3406.

Like the House bill, S. 3406 overturns Supreme Court decisions that have narrowed the scope of protection under the ADA. These decisions have created a Catch-22, in which an individual who is able to lessen the adverse impact of an impairment by use of a mitigating measure like medicine or a hearing aid can be fired from a job or otherwise face discrimination on the basis of that impairment and yet not be considered sufficiently disabled to be protected by the ADA. Congress never intended such an absurd result.

Like the House bill, S. 3406 cures this problem by prohibiting courts from considering “mitigating measures”—things like medicine, prosthetic devices, hearing aids, or the body’s own compensation and ability to adapt—when determining whether an individual is disabled. On this important point, S. 3406 retains the exact same language as H.R. 3195.

S. 3406 also retains the House language on the treatment of episodic conditions, major life activities, claims brought under the “regarded as” prong of the definition, regulatory authority, and conforming the definition contained in Section 504 of the Rehabilitation Act so that entities covered by the ADA and Rehabilitation Act operate under a consistent standard.

Over the past two Congresses, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the Committee on the Judiciary has studied these issues extensively, holding multiple hearings and meetings with stakeholders in the disability and business communities. Our colleagues in the House Committee on Education and Labor have done the same. The findings and insights that we presented in the committee reports accompanying H.R. 3195 reflect our understanding and intent regarding the language shared by H.R. 3195 and S. 3406 and should guide courts and Federal agencies when interpreting and applying these aspects of the amended definition of disability.

While the language of the House and Senate bills is identical in most respects, the bills differ in how they address the term “substantially limits” in the ADA’s definition of disability. But while the approach taken in the bills is different, congressional intent and the result achieved by both bills is the same.

Both bills make clear that the courts and Federal agencies have set the standard for qualifying as disabled under the ADA too high. Both bills reject court and agency interpreta-

tion of the term “substantially limits” as “preventing” or “significantly restricting” the ability to perform a major life activity. Both bills require the courts and federal agencies to set a less demanding standard by interpreting the term “substantially limits” more generously to ensure broad coverage for the wide range of individuals with disabilities.

In H.R. 3195, we achieved these goals by redefining the term “substantially limits” to mean “materially restricts.” Thus, to show a “substantial”—meaning “material” rather than “significant” limitation—an individual need show only an important or noticeable limit on the ability to perform a major life activity. This is not an onerous burden.

As explained in the Senate statement of managers, they chose an alternate route to achieve the same result. Rather than redefining the term “substantially limits,” the Senate left this language intact but, through findings and purposes and a statutory rule of construction, rejected court and agency interpretation of this term as meaning “prevents” or “significantly restricts.” Like our bill, S. 3406 directs the courts and Federal agencies to set a lower standard that provides broad coverage. As explained in the Senate Statement of Managers, their bill—like ours—ensures that the burden of showing that an impairment limits one’s ability to perform common activities is not onerous.

Thus, while the approach taken is different, the intent—and the standard established by both bills—is identical. As such, the guidance provided in House reports regarding application of this less burdensome standard for showing a “substantial” limitation remains valid and relevant, with the exception of our use of a “spectrum” of severity to describe a relative level of limitation. With regard to the “spectrum,” we accept concerns expressed by Senator KENNEDY that this could be construed as keeping the standard inappropriately high, and reject the usefulness of this approach.

Like H.R. 3195, the lower standard demanded by S. 3406 will provide broad coverage, consistent with how courts had approached cases under the Rehabilitation Act prior to enactment of the ADA, where individuals with a wide range of physical and mental impairments such as epilepsy, diabetes, multiple sclerosis and intellectual and developmental disabilities qualified for protection, even where a mitigating measure might lessen the impact of their impairment. In most of these cases, defendants and the courts simply accepted that a plaintiff was a member of the protected class and moved on to the merits of the case. Congress expected and intended the same thing when it passed the ADA in 1990, and we are again attempting to make this crystal clear. As stated in S. 3406, the focus should be on whether discrimination has occurred and “the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis.”

Under the lower standard for qualifying as disabled, for example, an individual who is disqualified from his or her job of choice because of an impairment should be considered substantially limited in the major life activity of working. Previously, in providing guidance on what the term “substantially limits” means with respect to the major life activity of working, the Equal Employment Opportunity Commission indicated that “the inability to perform a single, particular job” was not a “substantial” (i.e.,

"significant") enough limitation. S. 3406 states that interpreting "substantial" to require a "significant" limitation sets too high a standard and that we expect the EEOC to redefine this portion of its regulations. Naturally, this change will require reconsideration of the meaning of "substantial" limitation in the major life activity of working, as well as other major life activities.

The courts and Federal agencies also will be called upon to interpret our changes to the third, "regarded as" prong of the definition. These changes are identical in S. 3406 and H.R. 3195. As we made clear in our committee reports, 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, regardless of whether this impairment limits (or is perceived to limit) performance of a major life activity. Thus, an individual with an actual or perceived impairment who is disqualified from a job, program, or service and who alleges that the disqualification was based on the actual or perceived impairment is a member of the protected class and then entitled to prove that the adverse action violated the ADA.

In clarifying the scope of protection under the third, "regarded as" prong of the definition, we also clarified that reasonable accommodation need not be provided for those individuals who qualify for coverage only because they have been "regarded as" disabled. We, and the Senate, expressed our confidence that individuals who need accommodations will receive them because, with reduction in the burden of showing a "substantial limitation," those individuals also qualify for coverage under prongs 1 or 2 (where accommodation still is required). Of course, our clarification here does not shield qualification standards, tests, or other selection criteria from challenge by an individual who is disqualified based on such standard, test, or criteria. As is currently required under the ADA, any standard, test, or other selection criteria that results in disqualification of an individual because of an impairment can be challenged by that individual and must be shown to be job-related and consistent with business necessity or necessary for the program or service in question.

The changes made by S. 3406 are long overdue. Countless Americans with disabilities have already been deprived of the opportunity to prove that they have been victims of discrimination, that they are qualified for a job, or that a reasonable accommodation would afford them an opportunity to participate fully at work and in community life.

Like our bill, S. 3406 ensures that individuals like Mary Ann Pimental—a mother and nurse who died from breast cancer a few months after the courts told her that her cancer was too temporary and short-lived to qualify her for protection from job discrimination under the ADA—are covered by the law when they need it. S. 3406 also ensures vital protections for our returning veterans. Thousands of our brave men and women in uniform are returning home with serious injuries, including the loss of limbs, head trauma, and a variety of other life-altering injuries. These veterans have faced great risk and sacrificed much in service of their country and should return home knowing that they are protected from discrimination.

It is our sincere hope that, with less battling over who is or is not disabled, we will finally

be able to focus on the important questions— is an individual qualified? And might a reasonable accommodation afford that person the same opportunities that his or her neighbors enjoy? Our Nation simply cannot afford to squander the talents and contributions of our people based on antiquated misconceptions about people with disabilities.

I urge my colleagues to join me in voting for passage of S. 3406 and restoring the ADA to its rightful place among this Nation's great civil rights laws.

Mr. McKEON. Mr. Speaker, at this time I yield 3 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), who has done so much to bring this bill to this point.

Mr. SENSENBRENNER. Mr. Speaker, in 1990, a bipartisan Congress took significant steps to break down the physical and societal barriers that for far too long kept disabled Americans from fully participating in the American Dream. Today, the House takes the final step towards righting the wrongs that courts have made in their interpretation of this landmark law.

□ 1130

It has been a long road to finally reach this point.

As chairman of the House Judiciary Committee last Congress, I first introduced this bill with House Majority Leader STENY HOYER. Although the Judiciary Committee held a hearing on the bill in 2006, it was too late in the legislative session to move it but that bill marked our intent and promise to tackle the issue in the 110th Congress.

Last year on the ADA's anniversary, Leader HOYER and I introduced the bill again. The purpose of this legislation is to resolve the intent of Congress to cover a broad group of individuals with disabilities under the ADA and to eliminate the problem of courts focusing too heavily on whether individuals are covered by the law rather than on whether discrimination occurred. We worked with advocates from the disability community and business interests over the past year to craft a balanced bill with bipartisan support.

President Ronald Reagan once said, "There is no limit to what you want to accomplish if you don't care who gets the credit." That statement rings true about negotiations with this bill. Interest groups that did not see eye-to-eye at the outset worked diligently over many months. After intense discussions, they came to a compromise that both sides could support.

The bill we pass today will restore the full meaning of equal protection under the law and all of the promises that our Nation has to offer. As Members are well aware by now, the Supreme Court has slowly chipped away at the broad protections of the ADA and has created a new set of barriers for disabled Americans. The Court's rulings currently exclude millions of disabled Americans from the ADA's protection—the very citizens that Congress expressly sought to include within the scope of the Act in 1990.

The impact of these decisions is such that disabled Americans can be discriminated against by their employer because of their conditions but are not considered disabled enough by our Federal courts to invoke the protections of the ADA. This is unacceptable. Today's vote will enable disabled Americans utilizing the ADA to focus on the discrimination that they have experienced rather than having to first prove that they fall within the scope of the ADA's protection.

Finally, I would like to pay tribute to my wife, Cheryl. As the chairman of the board of the American Association of People With Disabilities, she has been dogged in her advocacy of this legislation and has presented real life situations on why this bill ought to pass. Without her efforts, a lot of the progress that has been made would not have occurred, and I salute her for that.

The ADA has been one of the most effective civil rights laws passed by Congress. I encourage my colleagues to vote in favor of the ADA Amendments Act.

Mr. GEORGE MILLER of California. Will the gentleman yield?

Mr. SENSENBRENNER. I am out of time.

Mr. GEORGE MILLER of California. I will yield you 30 seconds.

If I might, I just want to recognize the tenacity of Mr. SENSENBRENNER in pushing for this legislation, and I wanted to do it while he was in the well and also to recognize the contribution of your wife, Cheryl, who has talked to all of us about this and has been so determined that this bill pass in this Congress. I think without that energy, I'm not sure we would have gotten here today. But certainly what you and Mr. HOYER have done in the House has been absolutely outstanding, and I want you to know how much I appreciate Cheryl's involvement, also.

Mr. SENSENBRENNER. I thank the gentleman for yielding, and the gentleman is absolutely right.

Mr. GEORGE MILLER of California. I yield to the gentleman from California (Mr. STARK) for the purposes of engaging in a colloquy.

Mr. STARK. I thank the gentleman for yielding.

I am pleased that this bill, S. 3406, will sustain the rights and remedies available to individuals with disabilities, including individuals with learning disabilities just as in the measure passed by the House, H.R. 3195.

Would the Chairman agree that the measure before us rejects the assumption that an individual who has performed well academically cannot be substantially limited in activities such as learning reading, writing, thinking, or speaking?

Mr. GEORGE MILLER of California. Yes, I would.

As chairman of the Education and Labor Committee, I agree that both H.R. 3195 and S. 3406 reject the holding that academic success is inconsistent

with the finding that an individual is substantially limited in such major life activities. As such, we reject the findings in *Price v. National Board of Medical Examiners*, *Gonzalez v. National Board of Medical Examiners*, and *Wong v. Regents of University of California*.

Mr. STARK. I thank the Chairman.

Specific learning disabilities, such as dyslexia, are neurologically based impairments that substantially limit the way these individuals perform major life activities, like reading or learning, or the time it takes to perform such activities often referred to as the condition, manner, or duration.

This legislation will reestablish coverage for these individuals by ensuring that the definition of this ability is broadly construed and the determination does not consider the use of mitigating measures.

Given this, would the chairman agree that these amendments support the finding in *Bartlett v. New York State Board of Law Examiners* in which the court held that in determining whether the plaintiff was substantially limited with respect to reading, *Bartlett's* ability to "self-accommodate" should not be taken into consideration when determining whether she was protected by the ADA?

Mr. GEORGE MILLER of California. Yes, I would.

As we stated in the committee report on H.R. 3195, the committee supports the finding in *Bartlett*. Our report explains that "an individual with an impairment that substantially limits a major life activity should not be penalized when seeking protection under the ADA simply because he or she managed their own adaptive strategies or received informal or undocumented accommodations that have the effect of lessening the deleterious impacts of their disability."

Mr. STARK. I want to thank the chairman. It is indeed our full intention to ensure that the civil rights law retains its focus on protecting individuals with disabilities and not the interests of entities that may need to address their practices in accordance with the ADA.

I look forward to working with the chairman to continue to protect individuals with specific learning disabilities to ensure that unnecessary barriers are not being erected in their path.

I want to thank the chairman, the distinguished ranking member, our colleague from Wisconsin, and the majority leader for their work on this landmark legislation.

Mr. GEORGE MILLER of California. I reserve the balance of my time.

Mr. McKEON. Mr. Speaker, I am happy to yield now 3 minutes to the gentleman from Illinois (Mr. SHIMKUS).

Mr. SHIMKUS. I thank the gentleman.

Mr. MILLER, thank you for the good work on this. I'm planning, as many of us are, to be highly supportive of it.

I just want to bring to the attention of the Chamber an article that was in

USA Today, September 4. We're talking about disabilities here and the disabilities act, and also remind people, as a teacher of government and history of 4 years, the process of how a bill becomes a law.

We had a vote last night that passed a bill. It has not yet become law. In essence, we still have done nothing to ease the energy crisis, and this article highlights "Gas Prices Confine Sick People." Some have to cut back on traveling, treatment, such as dialysis or chemotherapy. The picture here is a visit to a Lou Gehrig's, ALS, clinic; and one of the quotes is saying, "People are going to depend on us more because their friends and families can't afford to transport them in their cars."

When we've been fighting so hard for an energy policy and energy debate, many times I would come to the floor to say energy is a variable in everything that we do in our society. It's a variable in the cost of doing the job here as we use power to generate electricity, air-conditioning, and, of course, communications. It's a part of the educational environment as we find schools having to adjust transportation schedules on diesel fuel. It is a critical portion of how we can meet the needs of the disabled.

And one of the places they point out here is in Sacramento, the disabled individuals can't get services because they can't afford to drive to reach the services. Again, this is not me. This is USA Today on 4 September. Pretty big article.

We have to move a bill that the President will sign. We have to have a comprehensive policy that brings in all the above. I personally like coal. I personally like renewable fuels. I personally like nuclear power. I personally like oil shale, and I like oil sands. I like wind. I like solar.

If we do not have a comprehensive energy policy that helps stabilize and bring costs down, we can pass all the pieces of legislation we want to in the world but the disabled are still going to be harmed, especially in areas that I represent, which is rural southern Illinois, where to get a job, get health care, you have to drive a long distance.

Mr. GEORGE MILLER of California. I yield myself 30 seconds to say I think the House addressed many of the concerns, Mr. SHIMKUS, yesterday in the legislation, the comprehensive energy legislation that we passed that deals with the issues of lowering costs to consumers and taxpayers and increasing the energy resources of the United States.

I would also say if we don't pass this piece of legislation, they won't have any jobs to drive to because they continue to get discriminated against.

With that, I would like to yield 3 minutes to the gentleman from New Jersey (Mr. ANDREWS), a member of the committee.

(Mr. ANDREWS asked and was given permission to revise and extend his remarks.)

Mr. ANDREWS. Mr. Speaker, I rise in strong support of this legislation. I would like to add my voice in congratulations to Mr. HOYER, Mr. SEN-SENRENNER, Chairman MILLER, and Mr. McKEON for their outstanding cooperation in this regard.

Today is Constitution Day. Over 200 years ago, the Constitution of our country was ratified. As majestic a document as it is, it has been an imperfect delivery and realization of that document because, over time, people have been left out of its benefits and privileges. Throughout our history, people with a disability have been among those left out of the many privileges of governments and economy in our country.

In 1990, the Congress, under the first President Bush, took a major step forward in remedying that injustice and discrimination. But sadly, since 1990, erroneous court decisions have stripped persons with a disability of the rights that they thought they had under that 1990 law.

Today we are working together to remedy that problem and fix it. This is a victory for common sense and for merit over ignorance and obliviousness. More importantly, it's a victory for human beings who will be very profoundly helped by this law.

There was a man who got a job with a major retail corporation in this country, and he's diabetic. When he first started work, his supervisor understood that for this worker to be productive, he needed a special lunch break in the middle of his work day so he could deal with his blood sugar needs and stay healthy and be productive.

So the man gets a new supervisor. The new supervisor comes in and doesn't understand that need, doesn't permit the lunch break, and the man's unable to do his work. So he files suit under the Americans with Disabilities Act, and the court says he doesn't win the case because he's not disabled. Diabetes is not enough of a disability to remedy this person's concern.

Now that's just wrong. And the other body understands it, both parties in this body understand it, the American people understand it.

What we have done in this Act is to restore the commonsense, meaningful definition of what "disability" means, not so that people with disabilities get special privileges, but so they get the same rights and opportunities that everybody else is guaranteed in this country under the law.

Again, I congratulate Mr. HOYER and Mr. SENSENRENNER, in particular, for working together and bringing together a broad coalition behind this bill. And on this Constitution Day, the House will set a mark in history and continue the progress so that people who work with a disability can achieve and thrive and succeed in our country and in our economy.

I would urge both Republicans and Democrats to vote "yes" on this very substantial piece of legislation.



Mr. McKEON. Mr. Speaker, I reserve my time.

Mr. GEORGE MILLER of California. Mr. Speaker, I now yield 3 minutes to the gentleman from Rhode Island (Mr. LANGEVIN).

□ 1145

Mr. LANGEVIN. I thank the gentleman for yielding.

Mr. Speaker, I rise in strong support of S. 3406, the Senate-approved ADA Amendments Act of 2008. Passage of this bill will clear the way for the President's signature and finally renew our promise to the American people that discrimination in any form will never be tolerated.

I would like to thank my good friend, Majority Leader STENY HOYER, who has been a real leader and champion on behalf of the disabilities community. I would also like to express my appreciation to Chairman MILLER for his continued leadership on this critical issue, as well as Congressman JIM SENSENBRENNER. This has truly been a bipartisan effort.

The ADA was groundbreaking civil rights legislation. And as someone who has lived with the challenges of a disability both before and after the ADA's enactment in 1990, I have experienced firsthand the profound changes that this law has effected within our society.

The bill before us today reaffirms the protections of the ADA and upholds the ideals of equality and opportunity on which this country was founded. In July, we celebrated the 18th anniversary of the ADA. It was a day to reflect on our past accomplishments, our current challenges, and future opportunities. I can think of no better way to honor the spirit of this landmark bill and the spirit of all those who fought for its passage than by passing the ADA Amendments Act and restoring Congress' intent to ensure the ADA's broad protections.

Mr. Speaker, people with disabilities represent a tremendously valuable, and yet in many ways untapped, resource in this country. By fostering an environment of inclusion and empowerment, we can provide the means for every individual to fulfill his or her God-given potential.

The ADA Amendments Act will help us realize this important goal. I strongly urge my colleagues to support the passage of this bill and send it to the President for his signature. Again, I thank all those who were part of making this day possible, particularly, again, our majority leader, STENY HOYER, for his great leadership.

Mr. McKEON. Mr. Speaker, may I inquire as to how much time is remaining?

The SPEAKER pro tempore. The gentleman from California has 11 minutes. The gentleman from California has 3½ minutes.

Mr. GEORGE MILLER of California. Mr. Speaker, I yield 1 minute to the gentleman from Maryland, the major-

ity leader, Mr. HOYER. And as he's taking the well, I just wanted to again acknowledge what all of our colleagues have acknowledged and so many people in the disabilities community have acknowledged and known for a long time, his champion of this act. And he has done it year after year after year. He has tended to it, he has watched after it, he has argued about it, and he has encouraged many of us to get involved in these amendments. And these are crucial amendments so that the original intent and the purpose and the opportunities provided by this act are realized. He and Mr. SENSENBRENNER did a magnificent job of shepherding this.

Many people don't know this who haven't been involved, but the negotiations around this legislation were sort of 24-7 for the last year, with a very diverse group of people, all of whom wanted to see the act amended and improved, and finally came together under the leadership of Mr. HOYER. And that's why we're here today. And that's why the Senate and the House are going to pass this and we're going to have a ceremony with the President signing these amendments. Thank you very much.

Mr. HOYER. I thank the chairman for his remarks. And I thank Mr. McKEON for his leadership and willingness to work together on a difficult issue.

I certainly want to acknowledge and thank my friend JIM SENSENBRENNER, Congressman SENSENBRENNER, who has been chairman of the committee, the Judiciary Committee, who has been a leader in this Congress, and his wife, Cheryl. Cheryl, like the young man we just saw speak, Congressman JIM LANGEVIN, has shown great courage, but also has shown that disability is not disabling; that we ought to look at the ability people have, what they can do, not what they can't do. All of us can't do certain things. I urge people to look at what people can do. And that's what this bill was about in 1990. That's what this bill is about today.

And I am very pleased to be here to speak on behalf of this bill. I think this bill may well pass unanimously, and the public might conclude, therefore, that this was not contentious and difficult, it was both—not contentious in terms of enabling those with disabilities to be fully included in our society, but how to do that; how to do that in the context of making sure that the business community could live with this, that the disabilities community could live with this, and that we did, in fact, accomplish the objectives that we intended.

I want to thank as well the Chamber of Commerce, the National Association of Manufacturers and other business groups who came together with the disabilities community with a common objective. Randy Johnson worked on behalf of the Chamber of Commerce. And Randy Johnson, at a press conference that was held when the Senate passed this bill just a few days ago,

said that he was a staffer here in 1988 and '89 and '90 when we passed the Americans with Disabilities Act. And he made the observation that—he sat on the floor, he worked with the leadership on the Republican side and the Democratic side, worked particularly with my friend, Steve Bartlett, Congressman Steve Bartlett from Texas, who was intimately involved in fashioning and working out the compromises necessary to overwhelmingly pass the ADA in 1990. And he said it was clear then that the intent of Congress had been misconstrued by the Supreme Court—this is Randy Johnson, Republican staffer, leader now in the Chamber of Commerce of the United States who helped fashion this bill. And this bill really says, yes, we agree with that in a bipartisan way. The Supreme Court misinterpreted what our intent was. And our intent was to be inclusive.

Civil rights bills are intended to be interpreted broadly. Why? Because we want to make sure that every American has the benefits that America has to offer, the opportunities that America has to offer, and to empower them to help America be a better country, to bring their talents and their skills and their motivation to bear in the public and private sectors.

I want to thank as well Nancy Zirkin, Andy Imperato, my—as I call him my lawyer, Chai Feldblum, who has worked so hard on this for now 20-plus years. It's been 18 years since we passed the ADA, but as Mr. MILLER knows, it's been 20-plus years—25 years really—that we've been working on getting to this point.

I also want to thank Mike Peterson of H.R. Policy and Jerry Gillespie of the National Association of Manufacturers.

There are so many people that I could spend the next 5 or 10 minutes mentioning just name after name after name who made this happen. I won't do that, not to diminish them in any way, but to say that this is the result of the efforts of many—not of me, but of many; not of Mr. MILLER alone or the ranking member alone or Mr. SENSENBRENNER, but many dedicated to this cause.

We are here to build on the accomplishments of the landmark Disabilities Act of 1990. We wouldn't be here at all, however, without the hard work, frankly, of a very close friend of mine, former Member of Congress, Tony Coelho. Tony Coelho had a vision. Tony Coelho suffers from epilepsy. There is nobody who knows Tony Coelho that thinks he is not able to do anything, everything, and all things. Tony Coelho empowered all of us to think larger, to understand how to bring about real change for those with disabilities.

Tony Coelho, an epileptic, was asked to leave the seminary because he had epilepsy because the church concluded he really couldn't do the job. It was the church's loss and our gain. He made a tremendous contribution to this institution. But much more importantly, in

the last some 20 years that he has not been a Member of this institution he continued to make an extraordinary contribution, not just to those with disabilities, but to our society, in expanding our consciousness and inclusion.

And I mention his name, but I also want to thank my friend, Steve Bartlett. Steve Bartlett, Congressman, then the Mayor of Dallas, now in the private sector, but engaged in the eighties and nineties and engaged in the passage of this bill today, was extraordinarily helpful to us. In 1990, the original ADA was the product of the vision of so many.

I also want to thank my former staffer, Melissa Schulman, who worked indefatigably as we passed the ADA in 1990.

When the first President Bush signed the Americans with Disabilities Act 18 years ago, America became the world's leader on this central test of human rights. The ADA was a project in keeping with our oldest principles and founding ideals. As President Bush the first, as I call him, put it at the signing ceremony, and I quote, "Today's legislation," he said, "brings us closer to that day when no Americans will ever again be deprived of their basic guarantee of life, liberty and the pursuit of happiness."

Thanks to the ADA, that day became closer on July 26, 1990. Thanks to the passage of this bill today and the signatures Mr. MILLER indicated next week, and the expected signatures of the President, with hopefully the first President Bush present, tens of millions of Americans with disabilities will now enjoy even fuller rights, and the rights that we intended them to enjoy when we passed the ADA—the right to use the same streets, theaters, restrooms or offices, the right to prove themselves in the workplace, to succeed on their talent and drive alone.

We've accomplished much in terms of public accommodations, in terms of reasonable accommodations. I was sitting there with Michele Stockwell, my policy director, as we watched JIM LANGEVIN give his speech. What a wonderful accommodation he has in that chair that stands up. Weren't all of you impressed when he said, "I rise to support this legislation?" "I rise." And he does rise. Why? Because he has a reasonable accommodation which, notwithstanding the failure of his legs to work the way he would like them to work, his chair reasonably accommodates and has him rise to speak to this body as a testimony to the consciousness of having been raised to make sure that a person like JIM LANGEVIN—of great ability, of great ability, not disability, but of great ability—can come here, having been shot at the age of 16 inadvertently, by accident, disabled, graduated from high school, graduated from college, elected to the Rhode Island House, elected to Secretary of State of his State, and now a Member of this body. What a testimony to mak-

ing sure that we made sure JIM LANGEVIN could get through the door; we made sure JIM LANGEVIN could get the kind of education he wanted and have access to that education. What a testimony to what this Congress has done, but more importantly, what so many courageous people with a disability have shown us all, that a disability is not disabling. It may rob us of a single or maybe even multiple ways that some people do things, but not of all things.

Sadly, as a result of the Supreme Court's decision, we have yet to live up to our promise fully. That's what we're trying to do today. We've made progress on access, we've made progress on listening devices, a lot of progress. One of the places we haven't made the progress we wanted to was employment. So many people want to work, want to be self-sufficient, want to be enterprising, want to have the self-respect of earning their own way, but have been shut out. And the Supreme Court didn't help us. That's what this bill is about.

Over the last 18 years, the Court has chipped away at that promise and at Congress' clear original intent. We said we wanted broad coverage for people with disabilities and people regarded as disabled. Important phrase, "regarded as disabled." What the Supreme Court really said, well, if you can make sure that your disability does not disable you. Tony Coelho takes medicine for his epilepsy, and so he functions. And if you saw him, you would say he's functioning fine. But if I said, but I won't hire you, Tony, because you have epilepsy, the Court said that was okay. Nobody on this floor believed that was the case. If he was discriminated against because he had a disability but could do the job, we said that's wrong. The Court did not agree with us, and we're now changing that and making sure that our intent will be lived out.

We never expected that the people with disabilities who work to mitigate their conditions would have their efforts held against them, but the courts did exactly that. Those narrow rulings, which will be changed by this legislation, have closed the door of opportunity for millions of Americans. We're here today to bring those millions of our fellow citizens back to where they belong—where we want them, where we need them, under the protection of the ADA.

By voting for final passage of the ADA Amendment Act, we ensure that the definition of disability will henceforth be construed broadly and fairly. We make it clear that those who manage to mitigate their disabilities can still be subject to discrimination; we know that intuitively and practically. This legislation says we know it legislatively. And we recognize that those regarded as having a disability are equally at risk and deserve to be equally protected.

□ 1200

This bill, which was approved by the Senate last week unanimously, has come so close to a signature thanks to the tireless work of the members of the disability community, leaders from both parties and business groups, a coalition as broad and deep as the one that created the original ADA.

I want to recognize the cosponsor of this bill, as I said earlier, JIM SENSENBRENNER, tireless in his advocacy, and his wife, Cheryl. I want to thank my good friend Tony Coelho. As I said at a press conference last week, I have served in the Congress for 28 years. There will be a time when I will retire. And I will look back on my career. And one of the proudest achievements I will have is the work that I have done at Tony's insistence and request on behalf of the Americans with Disabilities Act and those who are challenged by being shut out of our society.

Finally, it is my honor to dedicate this bill to a pioneering disability advocate and an inspiration behind the ADA. He is listening to us. He died some years ago. His name was Justin Dart. Justin Dart, like JIM LANGEVIN, was in a wheelchair. It didn't disable him. Indeed, it empowered him. It empowered him to educate all of us. It empowered him to educate those with disabilities as to what they could do and accomplish by their efforts to join together, to educate us and to educate the country. His bride, Yoshiko Dart, carries on that torch.

When Justin Dart spoke last that I heard him at the White House, he said I may not be with you for a long time. But I want you to keep on keeping on. Justin, that is what we do today.

Mr. McKEON. Mr. Speaker, I yield myself the balance of the time.

I commend the leader for his eloquence and for the great work that he has done on this bill; likewise Mr. SENBRENNER, Mr. MILLER, Mr. LANGEVIN, and all those who have worked so hard for bringing forth this bill and for bringing it to this point.

Back in June, I had the privilege to join advocates for Americans with disabilities and many of the Congressional leaders who made that bill possible at a rally in support of this bill. At that time, we made it clear that we needed to get a bill to the President for his signature this year. This is a bill that cannot wait another year. That is why I'm so pleased to be standing here preparing to give final approval to this important legislation.

Once again I want to recognize Chairman MILLER, the leaders of the Judiciary, Transportation and Infrastructure, Energy and Commerce Committees and the members of leadership on both sides of the aisle for shepherding this bill through the process and insisting on an open, inclusive process. This bill is better for it. I also want to recognize the members of my staff who worked hard on this legislation, Jim Paretti, Ken Serafin and Ed Gilroy from my staff helped to make this bill



a reality. This is a bill that fulfills our goal of providing strong, balanced and workable protections to ensure that individuals with disabilities can participate more fully in the workforce and in our society.

Mr. Speaker, there are some other comments I would like to make at this time. I think this bill has been a marvelous example of how Congress can work together. It's one that we've worked on now for a number of years. In the last Congress, Chairman SENBRENNER introduced this bill. It was introduced in many committees. Many hearings were held. Markups were held. It carried over into this Congress. Under a change of leadership it moved forward. Again, hearings were held. Markups were held. It was passed through the body here in the House. It went to the other side. The other body took this bill up, passed it through regular order and improved the bill. And we find it now back before us in the concluding weeks of this Congress. All of us have worked together to make it a good product that will help the individuals with disabilities that it's meant to help. And I think it makes me proud to be a part of this body to have been able to participate in this process.

Last night we participated in a process that made me not so proud of this body. I understand political process. I understand that we have an election coming up. And I understand that there are times when politics rises above policy. But it still disappointed me to see a bill presented Monday night, no bipartisanship, no hearings, no regular process. Right up here above us it says, "Let us develop the resources of our land, call forth its powers, build up its institutions." It's a direction that we're supposed to be operating under.

This bill was brought up Monday night to address a very, very important issue in our country. We are dependent upon other countries for resources to run our energy, to run this country. It puts us in a very difficult position. It's an issue that is equally as important I think as this bill that we are working on here right now. If it had been addressed in the same way, if we had been able to work together the way we've worked on this bill, I think the country would have been much better served. As it is, we are left with a political statement, a bill that everybody in this body knows is going nowhere, that will do nothing to actually solve the problem of energy, something that will be pushed into the next Congress. Hopefully at that point we can sit down and as adults, as Americans, as leaders that have been elected by the people we serve to come here and work through a good process to really solve a problem that is very, very important to our constituents and to our Nation and to our growth in a time of very serious issues confronting our country. It's my hope that we will be able to do that. I'm saddened by what happened yester-

day. But as I said, I understand the process. I understand we're facing an election.

Having said that, seeing this body work at its best and I think at very, very far from its best, I do urge passage of the ADA Amendments Act.

I yield back the balance of my time.

Mr. GEORGE MILLER of California. Madam Speaker, I yield myself such time as I may consume.

The SPEAKER pro tempore (Mrs. TAUSCHER). The gentleman is recognized for 1½ minutes.

Mr. GEORGE MILLER of California. I fully understand the deep disappointment on behalf of the Republican Members, not all, but those who did not vote for the legislation last night to create a comprehensive energy policy for the future of this Nation. They were intent upon killing it. They fell short. They fell short because it was a bipartisan bill. A number of their Members crossed the aisle to vote for the legislation because they recognize this was about taking us to a new energy future, a future that no longer continued year after year after year, as we have under Republican control, increased dependence upon international oil from nations that are hostile to us in so many ways, of nations who inflate our economy in so many ways.

This legislation will make available billions of barrels of oil that is from the Minerals Management leasing, the administration of oil on the Outer Continental Shelf, more billions of barrels of oil in Alaska, in the National Petroleum Reserve that holds probably more oil than the OCS, that can be opened under legislation. And the royalties that are due this Nation will be put into a trust fund to create the research and the development of renewable and alternative energy resources that are so important if in fact we are going to break our dependence on foreign oil and on fossil fuels as a bedrock of the energy policy of this Nation. It is also going to stop the royalty holidays that oil companies who are making the largest record earnings in history are doing.

With that, I would like to return to the matter at hand and to thank the ranking member from across the aisle, Mr. McKEON, for all his work. I want to thank again Mr. HOYER and Mr. SENBRENNER. I certainly want to thank the staffs of this committee, on our side Sharon Lewis who demonstrated great leadership on this issue, Jody Calemene, Brian Kennedy, Chris Brown, our intern Tom Webb; on their side Jim Paretti, Ed Gilroy and Ken Sarafin; and Mr. HOYER's staff, Michelle Stockwell and Keith Aboshar; and on the Judiciary staff Heather Sawyer and David Lockman. And I failed to mention the Bazelon Center and the Human Resources Policy Association.

Mr. HOYER. Madam Speaker, Mr. SENBRENNER and I submit the following regarding S. 3406:

For over a decade, courts have narrowed the scope of the ADA and have thereby ex-

cluded many individuals whom Congress intended to cover under the law. The unfortunate impact of too narrow an interpretation has been to erode the promise of the ADA.

With the passage of the ADA Amendments Act (ADAAA) today, we ensure that the ADA's promise for people with disabilities will be finally fulfilled. Our expectation is that this law will afford people with disabilities the freedom to participate in our community, free from discrimination and its segregating effects, that we sought to achieve with the original ADA.

The House of Representatives passed the ADA Amendments Act, H.R. 3195, on June 25, 2008, by an overwhelming vote of 402-17. The purpose of this legislation was to restore the intent of Congress to cover a broad group of individuals with disabilities under the ADA and to eliminate the problem of courts focusing too heavily on whether individuals were covered by the law rather than on whether discrimination occurred.

That commitment has now been echoed by passage in the Senate of the ADA Amendments Act, S. 3406, by unanimous consent. We welcome the opportunity to pass today the version of the ADA Amendments Act passed by the Senate, here in the chamber where it began its journey on July 26th, 2007.

We are particularly pleased with the alliance of business and disability representatives who came together to work with us on this bill and support its passage throughout both houses of Congress. Last January, we personally encouraged these groups to work together to reach an agreement that would work well for both people with disabilities and for entities covered under the law. We are pleased that they have been able to do so throughout this bill's legislative process.

H.R. 3195, the ADA Amendments Act passed by the House, and S. 3406, the ADA Amendments Act passed by the Senate, are identical in most important respects.

Both H.R. 3195 and S. 3406 contain identical language concerning mitigating measures, episodic conditions, major life activities including major bodily functions, treatment of claims under the "regarded as" prong, ensuring regulatory authority over the definition of disability, and conforming Section 504 of the Rehabilitation Act to be consistent with the changes made by the ADAAA.

Hence, the Report of the House Committee on Education and Labor and the Report of the House Committee on the Judiciary, as well as our Joint Statement introduced into the CONGRESSIONAL RECORD on June 25, 2008, continue to accurately convey our intent with regard to the bill we are passing today.

While the intent is the same, as discussed more fully below, S. 3406 takes a slightly different approach than H.R. 3195. Consequently, we want to make it clear that where the House Committee Reports and our joint statement used the term "materially restricts" to establish points in various examples, those examples should be read to convey the same points, and the term "materially restricts" should be understood to refer to the less demanding standard for the term "substantially limits" prescribed by both H.R. 3195 and S. 3406. For example, the statement in the House Education and Labor Report that "the Committee expects that a plaintiff such as Littleton could provide evidence of material restriction in the major life activities of thinking, learning, communicating and interacting with others" should be understood to mean that the Committee expects that a plaintiff such as Littleton could provide evidence of substantial limitation in thinking, communicating and interacting with others. (See *Littleton v. Wal-Mart Stores, Inc.*, 231 Fed. Appx. 874 (11th Cir. 2007)).

The key difference between the two bills is that S. 3406 uses a different means to achieve

the same goal that we achieved with H.R. 3195. As we explain below, we are comfortable accepting this approach.

In H.R. 3195, we achieved this goal by redefining the term “substantially limits” to mean “materially restricts” in order to indicate to the courts that they had incorrectly interpreted the term “substantially limits” in *Toyota Motor Mfg. of Kentucky, Inc. v. Williams*, and to convey to the courts our expectation that they would apply a less demanding standard of severity than had been applied by the Supreme Court.

Our colleagues in the Senate, however, were uncomfortable with creating a new term in the statute. Hence, they achieved the same goal through a different means.

Instead of redefining the term “substantially limits,” S. 3406 states that such term “shall be interpreted consistently with the findings and purposes” of the ADA Amendments Act. This is a textual provision that will legally guide the agencies and courts in properly interpreting the term “substantially limits.” With regard to the findings and purposes that the textual provision requires the agencies and court to use, S. 3406 incorporates all of the findings and purposes of H.R. 3195, including statements that Congress intended for the ADA to provide broad coverage and that this legislation rejects the Supreme Court’s decisions in *Sutton* and *Williams* that inappropriately narrowed the scope of protection of the ADA.

In order to explain how it intended the definition of “substantially limits” to be interpreted, the Senate added findings which highlighted the fact that the *Williams* decision placed a too high threshold on the definition of substantially limits and that the EEOC’s interpretative regulations were similarly drafted or interpreted to create a burden not contemplated by the Congress. Consistent with these findings, the Senate added two purposes which directed the EEOC to amend its regulations to reflect the purposes of the ADA as amended by the ADAAA and which noted that the thrust of ADA inquiry should be directed to the compliance obligations of the covered entities rather than the scope of the disability experienced by the individual asserting coverage under the Act.

While we believe that the approach we adopted in H.R. 3195 would have been workable for the courts—i.e., providing a new definition of “substantially limits” in order to convey to courts our intention that they should apply a lower standard of severity than they previously had—we accept the considered judgment of our colleagues in the Senate that their approach achieves the same end, but in a manner more suitable to their interests.

S. 3406 also modifies the rule of construction that we had placed in H.R. 3195. Under the Senate’s construction, the definition of disability “shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by the terms of this Act.” We understand that this provision will have the same meaning as the rule of construction that we had included in H.R. 3195, but with a clarification that the courts may not interpret the definition of disability in a manner inconsistent with the terms of the ADA. That, of course, is true.

In addition, the changes made by S. 3406 will send an important signal to the courts. We expect that courts interpreting the ADA after these amendments are enacted will not demand such an extensive analysis over whether a person’s physical or mental impairment constitutes a disability. Our goal throughout this process has been to simplify that analysis.

With the passage of the ADA Amendments Act today, we finally fulfill our promise to tear down the barriers of ignorance and mis-

interpretation that make up an unpardonable “wall of exclusion” against people with disabilities. See George H. W. Bush, Remarks on Signing the Americans with Disabilities Act of 1990 (July 26, 1990).

We are grateful to the individuals and advocates who have worked tirelessly to ensure the civil rights and inclusion of people with disabilities in every aspect of life. This includes work during various stages of the bill to bring it to a successful conclusion.

A large group of individuals worked closely with us as we developed the second ADA Restoration Act that was introduced on July 26, 2007:

Tony Coelho, Immediate Past Board Chair of the Epilepsy Foundation and Former U.S. Representative; Cheryl Sensenbrenner, Board Chair of the American Association of People with Disabilities (AAPD); Andy Imparato, AAPD; Sandy Finucane, Epilepsy Foundation and her lawyers at the Georgetown Federal Legislation and Administrative Clinic; Heather Sawyer, Kevin Barry and Chai Feldblum; Jennifer Mathis, Bazelon Center for Mental Health Law; Abby Bownas and Shereen Arent, American Diabetes Association (ADA); Curt Decker and Ken Shiotani, National Disability Rights Network (NDRN); Arlene Mayerson and Marilyn Golden, Disability Rights Education and Defense Fund (DREDF); Claudia Center, Legal Aid Society of CA; Janna Starr, Paul Marchand and Erika Hagensen of The Arc/UCP Public Policy Collaboration; Denise Rozell, Easter Seals; Lee Page, Paralyzed Veterans Association; Bobby Silverstein, Center for the Study and Advancement of Disability Policy, and John Lancaster, National Council on Independent Living (NCIL).

In January 2008, we urged representatives from both communities to sit down with each other and to understand each other’s needs and concerns. We appreciate the leadership role displayed in these conversations by the following individuals on behalf of the disability community: Sandy Finucane, Epilepsy Foundation; Professor Chai Feldblum, Georgetown Law; Andy Imparato, AAPD; Jennifer Mathis, Bazelon Center for Mental Health Law; Curt Decker, NDRN; John Lancaster, NCIL.

We appreciate the leadership role displayed in these conversations by the following individuals on behalf of the business community: Randy Johnson and Michael Eastman, U.S. Chamber of Commerce; Mike Peterson, HR Policy Association; Jeri Gillespie, National Association of Manufacturers; Mike Aitken and Mike Layman, Society for Human Resource Management.

We appreciate the intensive work done by the core legal team in these discussions, led by Professor Chai Feldblum and Jennifer Mathis for the disability negotiators, ably assisted by Kevin Barry, Jim Flug, John Muller and Emily Benfer, and led by Mike Eastman, Lawrence Lorber, Proskauer Rose, LLP, and Mike Peterson. We know that this group greatly appreciated the wise counsel of lawyers from each of their respective communities as they went through this process, including Camille A. Olson, Seyfarth Shaw; HR Policy Association’s Employment Rights Committee, chaired by Susan Lueger of Northwestern Mutual; Kevin McGuiness; and David Fram, who provided wise counsel for the business community and Professor Sam Bagenstos; Brian East, Advocacy, Inc.; Claudia Center, Legal Aid of CA; Shereen Arent, ADA, Arlene Mayerson, DREDF and JoAnne Simon, who provided wise counsel for the disability community.

We benefited greatly from the fact that former colleagues in both Congress and the Administration lent their support to this effort, including former U.S. Representative

Steve Bartlett, former U.S. Representative Tony Coelho, former Senator Robert Dole, and former Attorney General Richard Thornburgh.

We appreciate the personal leadership role taken by Nancy Zirklin and Lisa Bornstein of the Leadership Conference in Civil Rights in making this a priority for the civil rights community.

Finally, at the risk of leaving out some individuals, we want to recognize some of the additional countless individuals who helped with educating Members of Congress, doing important coalition and media work, and providing legal input on the bill as it progressed through Congress, from its first stages through the final vote today: Anne Sommers, AAPD; Angela Ostrom, Donna Meltzer, Hans Friedhoff, Ken Lowenberg, Kimberli Meadows, and Lisa Boylan, Epilepsy Foundation; Day Al Mohamed, American Psychological Association; Deb Cotter, NCIL; Joan Magagna and Ron Hager, NDRN; Mistique Cano, Maggie Kao and Robyn Kurland, Leadership Conference for Civil Rights; Peggy Hathaway and Jim Wiseman, United Spinal Association; Annie Acosta, The Arc/UCP Disability Policy Collaboration; Lewis Bossing, Bazelon Center for Mental Health Law; John Kemp, U.S. International Council on Disabilities; Bebe Anderson, Lambda Legal Defense Fund; Robert Burgdorf, UDC law professor; Rosaline Crawford, National Association of the Deaf (NAD); Mark Richert, American Foundation for the Blind; Eric Bridges, American Council for the Blind; Jessica Butler, Council of Parent Attorneys and Advocates; Michael Collins, Julie Carroll and Jeff Rosen, NCD; Steve Bennett, UCP, Lise Hamlin, Hard of Hearing Association of America; Laura Kaloi, National Center for Learning Disabilities; Donna Lenhoff and Gary Phelan, National Employment Lawyers Association (NELA); Darrin Brown and Evelyn Morton, AARP; Dan Kohrman, AARP Foundation and NELA; Katy Beh Neas, Easter Seals; Andrew Sperling, National Alliance on Mental Illness; Toby Olson, Washington State Governor’s Committee on Disability Issues and Employment; Myrna Mandlawitz, Learning Disabilities Association; Ari Ne’eman, Autistic Self Advocacy Network; Shawn O’Neil, National Multiple Sclerosis Society; Laura Owens, APSE: The Network on Employment; Cindy Smith, CHADD; Jim Ward, ADA Watch/National Council on Disability Rights; Nathan Vafaie, National Health Council; David Webber, Johnson & Webber; Joanne Lin, Michelle Richardson, and Deborah Vagins, ACLU Washington Legislative Office; Lynne Landsberg and Kate Bigam, Religious Action Center of Reform Judaism, Amy Rosen, United Jewish Communities; Elissa Froman, National Council of Jewish Women; Jayne Mardock, National Kidney Foundation; Jack Clark and Mark Freedman, U.S. Chamber of Commerce; Tim Bartl, HR Policy Association; Ricardo Gibson, SHRM; Bo Bryant, McDonald’s; Keith Smith, Ryan Modlin and Bob Shepler, National Association of Manufacturers; Ty Kelley, Food Marketing Institute; and Jason Straczewski, International Franchise Association.

Regardless of the work done by advocates, however, it is ultimately we in Congress who must get the job done. We applaud the commitment of Congressman George Miller, Chair, and Congressman Buck McKeon, Ranking Member, Committee on Education and Labor; Congressman John Conyers, Chair, and Congressman Lamar Smith, Ranking Member, Committee on Judiciary; Congressman Jerry Nadler, Chair, and Congressman Trent Franks, Ranking Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties; Congressman John Dingell, Chair, and Congressman Joe

Barton, Ranking Member, Committee on Energy and Commerce; Congressman James Oberstar, Chair, and Congressman John Mica, Ranking Member, Committee on Transportation and Infrastructure for bringing this bill successfully through their committees. We applaud our 400 colleagues who voted with us to pass the ADA Amendments Act this past June and we applaud the Senate that unanimously passed the ADA Amendments Act last week.

And, of course, there is no way we could have done all the work that we did on this bill without the dedicated assistance of our staff and the staff of the committees. So, we would particularly like to thank Michele Stockwell, Keith Abouchar, Michael Lenn, Sharon Lewis, Heather Sawyer, Mark Zuckerman, Jim Paretti, Ed Gilroy, Brian Kennedy, Paul Taylor, David Lachmann, Alex, Nock, Thomas Webb, Jody Calamine, Tico Almeida, Chris Brown, and Ken Serafin.

What really matters, when all is said and done, is the work done by people with disabilities every day across this great nation. The passage of the ADA Amendments Act today is intended to ensure that they receive the simple, basic opportunity to participate fully in all aspects of society. We are grateful to have played a role in helping to make that happen.

Mr. VAN HOLLEN. Madam Speaker, I rise in strong support of S. 3406, the ADA Amendments Act of 2008. This bipartisan legislation, which will restore the original intent of the Americans with Disabilities Act, ADA, is long overdue.

The passage of the ADA in 1990 helped millions of Americans with disabilities succeed in life and the workplace by making essential services that most Americans take for granted more accessible to individuals with disabilities. It was truly a landmark civil rights law to ensure that people with disabilities have protection from discrimination in the same manner as individuals are protected from discrimination on the basis of race, gender, national origin, religion, or age.

In recent years, the Federal courts have erroneously eroded the protections for individuals under the ADA, which has created a new set of barriers for those with disabilities. This bill rejects the courts' narrow interpretation of the definition of disability, and makes it absolutely clear that the ADA is intended to provide broad coverage to protect anyone who faces discrimination on the basis of disability. It strikes a careful balance between the needs of individuals with disabilities and realities confronted by employers.

Madam Speaker, the Congress is taking an important step towards restoring the original intent of the ADA. By doing so, we will help ensure that Americans with disabilities can lead independent and self-sufficient lives. I urge my colleagues to support this much-needed legislation.

Mr. COURTNEY. Madam Speaker, I rise in strong support of the Americans With Disabilities Act Amendments Act of 2008 (ADAAA), S. 3406. I want to commend Majority Leader HOYER and Chairman MILLER for moving this bill so quickly after Senate passage late last week.

As the Education and Labor Committee said in its report on H.R. 3195, this bill provides "an important step towards restoring the original intent of Congress. The scope of protection under the ADA was intended to be broad and inclusive. Unfortunately, the courts have narrowed the interpretation of disability and

found that a large number of people with substantially limiting impairments are not to be considered people with disabilities."

Unfortunately, the ADA has been misinterpreted by the courts resulting in a narrow view of those eligible to receive certain reasonable accommodations including individuals with learning disabilities. Historically, certain individuals with learning disabilities seeking accommodations in higher education—including high stakes exams—have seen their access to testing accommodations severely undercut by testing companies not willing to consider and support that learning disabilities are neurologically based, lifelong disabilities that may exist in students with high academic achievement because the individual has been able to cope and mitigate the negative impact while simultaneously being substantially limited in one or more major life activities.

Too many individuals with documented learning disabilities, including dyslexia, are denied access to easily administered and often low-cost accommodations that would make the critical difference in allowing them to demonstrate their knowledge. These amendments to the ADA do not provide any special treatment, but rather, ensure that each individual with a learning disability has every opportunity to apply for and receive a reasonable accommodation so he/she can move forward in his/her chosen educational and career paths.

This bill continues to reinforce what we stated in our bipartisan committee report, that "the determination of whether an impairment substantially limits a major life activity is to be made on an individualized basis." There should be no attempt to discriminate against a class of individuals based on any one disability. For example, people with dyslexia are diagnosed based on an unexpected difficulty in reading. This requires a careful analysis of the method and manner in which this impairment substantially limits an individual's ability to read, which may mean a difference in the duration, condition or manner of reading—for example, taking more time—but may not result in a less capable reader.

Together, we can ensure that the ADA is accurately interpreted to provide access to accommodations for those that have appropriately documented disabilities. By supporting and fostering the academic potential for these individuals, we reap the benefits when talented, ambitious and creative individuals are able to fulfill their education dreams and contribute in a meaningful way to our society.

Ms. JACKSON-LEE of Texas. Madam Speaker, I rise today in support of S. 3406, the "ADA Restoration Act of 2007." I wholeheartedly support this bill and urge my colleagues to support it also. The changes embodied by this Act, that restore the with Disabilities Act of 1990 ("ADA") to its original purpose, are long overdue.

S. 3406, the "ADA Restoration Act of 2007," amends the definition of "disability" in the ADA in response to the Supreme Court's narrow interpretation of the definition, which has made it extremely difficult for individuals with serious health conditions—epilepsy, diabetes, cancer, muscular dystrophy, multiple sclerosis and severe intellectual impairments—to prove that they qualify for protection under the ADA. The Supreme Court has narrowed the definition in two ways: (1) by ruling that mitigating measures that help control an impairment like medicine, hearing aids, or any other treatment

must be considered in determining whether an impairment is disabling enough to qualify as a disability; and (2) by ruling that the elements of the definition must be interpreted "strictly to create a demanding standard for qualifying as disabled." The Court's treatment of the ADA is at odds with judicial treatment of other civil rights statutes, which usually are interpreted broadly to achieve their remedial purposes. It is also inconsistent with Congress's intent.

The Committee will consider a substitute that represents the consensus view of disability rights groups and the business community. That substitute restores Congressional intent by, among other things:

Disallowing consideration of mitigating measures other than corrective lenses (ordinary eyeglasses or contacts) when determining whether an impairment is sufficiently limiting to qualify as a disability;

Maintaining the requirement that an individual qualifying as disabled under the first of the three-prong definition of "disability" show that an impairment "substantially limits" a major life activity but defining "substantially limits" as a less burdensome "materially restricts";

Clarifying that anyone who is discriminated against because of an impairment, whether or not the impairment limits the performance of any major life activities, has been "regarded as" disabled and is entitled to the ADA's protection.

#### BACKGROUND ON LEGISLATION

Eighteen years ago, President George H.W. Bush, with overwhelming bipartisan support from the Congress, signed into law the ADA. The Act was intended to provide a "clear and comprehensive mandate," with "strong, consistent, enforceable standards," for eliminating disability-based discrimination. Through this broad mandate, Congress sought to protect anyone who is treated less favorably because of a current, past, or perceived disability. Congress did not intend for the courts to seize on the definition of disability as a means of excluding individuals with serious health conditions from protection, yet this is exactly what has happened. A legislative action is now needed to restore congressional intent and ensure broad protection against disability-based discrimination.

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," however, the Supreme Court has narrowed the ADA in ways never intended by Congress. First, in three cases decided on the same day, 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. 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 agreed—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.

Three years later, the Supreme Court revisited the definition of "disability" in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*. In that case, the plaintiff alleged that

her employer discriminated against her by failing to accommodate her disabilities, which included carpal tunnel syndrome, myotendinitis, and thoracic outlet compression. 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. She challenged the termination, also alleging that Toyota's refusal to continue accommodating her violated the ADA. Looking to the definition 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." 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." 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.'"

In the wake of these rulings, disabilities that had been covered under the Rehabilitation Act and that Congress intended to include under the ADA—serious health conditions like epilepsy, diabetes, cancer, cerebral palsy, multiple sclerosis—have been excluded. Either, the courts say, the person is not impaired enough to substantially limit a major life activity, or the impairment substantially limits something—like liver function—that the courts do not consider a major life activity. Courts even deny protection when the employer admits that it took adverse action based on the individual's impairment, allowing employers to take the position that an employee is too disabled to do a job but not disabled enough to be protected by the law.

On October 4, 2007, the Subcommittee on the Constitution, Civil Rights, and Civil Liberties held a legislative hearing on S. 3406, the "ADA Restoration Act of 2007." Witnesses at the hearing included Majority Leader STENY H. HOYER (D-MD); Cheryl Sensenbrenner, Chair, American Association of People with Disabilities; Stephen C. Orr, pharmacist and plaintiff in *Orr v. Wal-Mart Stores, Inc.*; Michael C. Collins, Executive Director, National Council on Disability; Lawrence Z. Lorber, U.S. Chamber of Commerce; and Chai R. Feldblum, Professor, Georgetown University Law Center.

The hearing 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. Representative HOYER, one of the lead sponsors of the original act and, along with Representative SENSENBRENNER, lead House co-sponsor of the ADA Restoration Act, 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." Explaining Congress's choice to adopt the definition of "disability" from the Rehabilitation Act be-

cause it had been interpreted generously by the courts, Representative HOYER testified that Congress had never anticipated or intended that the courts would interpret that definition so narrowly:

[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.

Representative HOYER, joined by all of the witnesses except Mr. Lorber, urged Congress to respond by passing H.R. 3195, the House companion, to amend the definition of "disability." Mr. Lorber, appearing on behalf of the Chamber of Commerce, opposed H.R. 3195 as an overly broad response to court decisions that accurately reflected statutory language and congressional intent.

Since the subcommittee's hearing, several changes have been made to the bill, which are reflected in the substitute that will likely be considered by the committee. The substitute, described section-by-section below, represents the consensus of the disability rights and business groups and is supported by, among others, the Chamber of Commerce.

Importantly, Section 4 of the bill amends the definition of "disability" and provides standards for applying the amended definition. While retaining the requirement that a disability "substantially limits" a "major" life activity under prongs 1 and 2 of the definition of disability, section 4 redefines "substantially limits" as "materially restricts" to indicate a less stringent standard. Thus, while the limitation imposed by an impairment must be important, it need not rise to the level of preventing or severely restricting the performance of major life activities in order to qualify as a disability. Section 4 provides an illustrative list of life activities that should be considered "major," and clarifies that an individual has been "regarded as" disabled and is entitled to protection under the ADA if discriminated against because of an impairment, whether or not the impairment limits the performance of any major life activities. Section 4 requires broad construction of the definition and prohibits consideration of mitigating measures (with the exception of ordinary glasses or contact lenses) in determining whether an impairment substantially limits a major life activity.

I support this bill, and I urge my colleagues to support it also.

Ms. BALDWIN. Madam Speaker, I rise in support of S. 3406, the Americans with Disabilities Act (ADA) Amendments Act.

This vital legislation restores the civil rights protections that Congress intended for people with disabilities in passing the ADA in 1990. In the years since passage of the ADA, courts—including the U.S. Supreme Court—have narrowed the protective reach of this law, undermining Congress' intent. It is flatly unacceptable that Americans who experienced disability-based discrimination have been denied protection of the ADA and barred from challenging discriminatory conduct. This bill is an important and necessary remedy, and I'm grateful to our champions in the House, Mr.

HOYER and Mr. SENSENBRENNER, as well as Senator HARKIN and others who shepherded the ADA Amendments Act through the Senate.

Importantly, the ADA Amendments Act addresses the restrictive interpretation of what it means to have a "disability" and therefore be protected against disability discrimination. In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, the Supreme Court ruled that the definition of disability must be read "strictly to create a demanding standard for qualifying as disabled" and, to meet the definition, 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."

Due to that and other narrow court interpretations, people with HIV who have been fired, not hired, or suffered other adverse employment actions have been denied the protections of the ADA. Although the ADA clearly intended to protect people living with HIV from being discriminated against based on having HIV, many have had their lawsuits derailed by disputes over whether they meet a narrowly interpreted definition of the term "disability." For people living with HIV, all too often whether or not they could proceed with their discrimination claim has turned on the court's view of evidence as to their child-bearing ability and intentions: highly personal, intimate matters that are completely unrelated to the discrimination they experienced.

The ADA Amendments Act remedies the courts' misinterpretation of the ADA by explicitly stating that the definition of "disability" must be interpreted broadly to achieve the ADA's remedial purposes, by clarifying the definition of "disability" through examples of "major life activities," and by providing that the determination of whether an impairment substantially limits a major life activity must be made without regard to the ameliorative effects of mitigating measures. Of significance for people living with HIV, among the listed examples of "major life activities" are "functions of the immune system," as well as "reproductive functions." Under these new provisions, many individuals who were incorrectly denied coverage under the ADA will now be protected from discrimination. Some examples follow:

Rubin Cruz Carrillo was fired from his job as a flight attendant 1 day after he told his employer that he had been diagnosed with HIV and asked to speak with his supervisors about this under "strict confidentiality." Because he was fired immediately after disclosing his HIV status, Rubin believed that the airline terminated him because of his disability and filed suit under the ADA. To show that his HIV infection "substantially limits" a "major life activity," Rubin explained that he decided not to have children because of the risk of infecting his female partner or their resulting child through unprotected sexual intercourse. The trial judge discounted his testimony, saying that Rubin was "not an expert in the medical field of immunology or reproduction." The court concluded that Rubin had not established that he had a "disability" because he failed to introduce medical evidence that HIV substantially limits a man's ability to reproduce. Therefore, the court ruled Rubin was not entitled to the protections of the ADA.

In contrast, another judge on the same Federal district court found that a female with HIV was entitled to ADA protection. Yesenia Rodriguez alleged that she was discharged

from an assignment because she had HIV. The court found that she was “disabled” under the meaning of the ADA, based on her testimony that she decided not to have more children due to the possibility of transmitting HIV to her child if she did.

Other courts have granted summary judgment for employers (dismissing discrimination claims) on the grounds that the employee with HIV did not establish that his HIV was a “disability.” For example, Fabio Gutwaks’ discrimination claim was dismissed after the court concluded that he had failed to establish that he was substantially limited in the major life activity of reproduction because he testified that he did not currently, or previously, desire to father children. Similarly, Albenjamin Blanks’ claim was dismissed after he testified that he and his wife had decided not to have any more children long before the discriminatory conduct occurred and that his wife had undergone a procedure to prevent her from having any more children.

The ADA was meant to prohibit discrimination against people with disabilities. Yet, many people with HIV have been denied coverage under the ADA and therefore left without any legal recourse against discrimination. Under the ADA Amendments Act, these men and women will all be assured legal protection for discrimination based on their HIV status, irrespective of their child-bearing intentions or lack of expert testimony about HIV’s impact on child-bearing.

By passing the ADA Amendments Act, we reaffirm the right for American workers—including any American living with HIV—to be judged based upon their skills, talents, loyalty, character, integrity and work ethic. I am pleased to support this bill to ensure that all Americans have a fair opportunity to work.

The SPEAKER pro tempore. All time has expired.

The question is on the motion offered by the gentleman from California (Mr. GEORGE MILLER) that the House suspend the rules and pass the Senate bill, S. 3406.

The question was taken; and (two-thirds being in the affirmative) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

#### SSI EXTENSION FOR ELDERLY AND DISABLED REFUGEES ACT

Mr. McDERMOTT. Madam Speaker, I move to suspend the rules and concur in the Senate amendments to the bill (H.R. 2608) to amend section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide, in fiscal years 2008 through 2010, extensions of supplemental security income for refugees, asylees, and certain other humanitarian immigrants, and to amend the Internal Revenue Code to collect unemployment compensation debts resulting from fraud.

The Clerk read the title of the bill.

The text of the Senate amendments is as follows:

Senate amendments:

In the Senate of the United States, August 1, 2008.

*Resolved*, That the bill from the House of Representatives (H.R. 2608) entitled “An Act to amend section 402 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 to provide, in fiscal years 2008 through 2010, extensions of supplemental security income for refugees, asylees, and certain other humanitarian immigrants, and to amend the Internal Revenue Code to collect unemployment compensation debts resulting from fraud.”, do pass with the following amendments:

Strike all after the enacting clause and insert the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “SSI Extension for Elderly and Disabled Refugees Act”.

#### SEC. 2. SSI EXTENSIONS FOR HUMANITARIAN IMMIGRANTS.

Section 402(a)(2) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C. 1612(a)(2)) is amended by adding at the end the following:

“(M) SSI EXTENSIONS THROUGH FISCAL YEAR 2011.—

“(i) TWO-YEAR EXTENSION FOR CERTAIN ALIENS AND VICTIMS OF TRAFFICKING.—

“(I) IN GENERAL.—Subject to clause (ii), with respect to eligibility for benefits under subparagraph (A) for the specified Federal program described in paragraph (3)(A) of qualified aliens (as defined in section 431(b)) and victims of trafficking in persons (as defined in section 107(b)(1)(C) of division A of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386) or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act), the 7-year period described in subparagraph (A) shall be deemed to be a 9-year period during fiscal years 2009 through 2011 in the case of such a qualified alien or victim of trafficking who furnishes to the Commissioner of Social Security the declaration required under subclause (IV) (if applicable) and is described in subclause (III).

“(II) ALIENS AND VICTIMS WHOSE BENEFITS CEASED IN PRIOR FISCAL YEARS.—Subject to clause (ii), beginning on the date of the enactment of the SSI Extension for Elderly and Disabled Refugees Act, any qualified alien (as defined in section 431(b)) or victim of trafficking in persons (as defined in section 107(b)(1)(C) of division A of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386) or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act) rendered ineligible for the specified Federal program described in paragraph (3)(A) during the period beginning on August 22, 1996, and ending on September 30, 2008, solely by reason of the termination of the 7-year period described in subparagraph (A) shall be eligible for such program for an additional 2-year period in accordance with this clause, if such qualified alien or victim of trafficking meets all other eligibility factors under title XVI of the Social Security Act, furnishes to the Commissioner of Social Security the declaration required under subclause (IV) (if applicable), and is described in subclause (III).

“(III) ALIENS AND VICTIMS DESCRIBED.—For purposes of subclauses (I) and (II), a qualified alien or victim of trafficking described in this subclause is an alien or victim who—

“(aa) has been a lawful permanent resident for less than 6 years and such status has not been abandoned, rescinded under section 246 of the Immigration and Nationality Act, or terminated through removal proceedings under section 240 of the Immigration and Nationality Act, and the Commissioner of Social Security has verified such status, through procedures established in consultation with the Secretary of Homeland Security;

“(bb) has filed an application, within 4 years from the date the alien or victim began receiving supplemental security income benefits, to be-

come a lawful permanent resident with the Secretary of Homeland Security, and the Commissioner of Social Security has verified, through procedures established in consultation with such Secretary, that such application is pending;

“(cc) has been granted the status of Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422), for purposes of the specified Federal program described in paragraph (3)(A);

“(dd) has had his or her deportation withheld by the Secretary of Homeland Security under section 243(h) of the Immigration and Nationality Act (as in effect immediately before the effective date of section 307 of division C of Public Law 104-208), or whose removal is withheld under section 241(b)(3) of such Act;

“(ee) has not attained age 18; or

“(ff) has attained age 70.

“(IV) DECLARATION REQUIRED.—

“(aa) IN GENERAL.—For purposes of subclauses (I) and (II), the declaration required under this subclause of a qualified alien or victim of trafficking described in either such subclause is a declaration under penalty of perjury stating that the alien or victim has made a good faith effort to pursue United States citizenship, as determined by the Secretary of Homeland Security. The Commissioner of Social Security shall develop criteria as needed, in consultation with the Secretary of Homeland Security, for consideration of such declarations.

“(bb) EXCEPTION FOR CHILDREN.—A qualified alien or victim of trafficking described in subclause (I) or (II) who has not attained age 18 shall not be required to furnish to the Commissioner of Social Security a declaration described in item (aa) as a condition of being eligible for the specified Federal program described in paragraph (3)(A) for an additional 2-year period in accordance with this clause.

“(V) PAYMENT OF BENEFITS TO ALIENS WHOSE BENEFITS CEASED IN PRIOR FISCAL YEARS.—Benefits paid to a qualified alien or victim described in subclause (II) shall be paid prospectively over the duration of the qualified alien’s or victim’s renewed eligibility.

“(ii) SPECIAL RULE IN CASE OF PENDING OR APPROVED NATURALIZATION APPLICATION.—With respect to eligibility for benefits for the specified program described in paragraph (3)(A), paragraph (1) shall not apply during fiscal years 2009 through 2011 to an alien described in one of clauses (i) through (v) of subparagraph (A) or a victim of trafficking in persons (as defined in section 107(b)(1)(C) of division A of the Victims of Trafficking and Violence Protection Act of 2000 (Public Law 106-386) or as granted status under section 101(a)(15)(T)(ii) of the Immigration and Nationality Act), if such alien or victim (including any such alien or victim rendered ineligible for the specified Federal program described in paragraph (3)(A) during the period beginning on August 22, 1996, and ending on September 30, 2008, solely by reason of the termination of the 7-year period described in subparagraph (A)) has filed an application for naturalization that is pending before the Secretary of Homeland Security or a United States district court based on section 336(b) of the Immigration and Nationality Act, or has been approved for naturalization but not yet sworn in as a United States citizen, and the Commissioner of Social Security has verified, through procedures established in consultation with the Secretary of Homeland Security, that such application is pending or has been approved.”.

#### SEC. 3. COLLECTION OF UNEMPLOYMENT COMPENSATION DEBTS RESULTING FROM FRAUD.

(a) IN GENERAL.—Section 6402 of the Internal Revenue Code (relating to authority to make credits or refunds) is amended by redesignating subsections (f) through (k) as subsections (g) through (l), respectively, and by inserting after subsection (e) the following new subsection: