Deliverables from the DARPA trusted circuits project, supplemented by procedures to assure trust in design, packaging and assembly need to be employed. It should also be recognized that a comprehensive strategy needs to include acquisition of mass-produced commercial parts which have low risk of sabotage.

The Under Secretary of Defense for Acquisition, Technology, and Logistics is requested to be available to brief Congress on its assessment of methods and standards no later than December 31, 2009. These need to be done in consultation with the intelligence community, private industry, and academia.

Mr. CORNYN. Mr. President, the right to vote is one of the most cherished civil rights, enshrined in the 15th, 17th, and 19th amendments of the Constitution. It is the cornerstone of democratic government, and it is what makes us a government ''of the people, by the people, and for the people.''

Throughout our history, whenever we have seen people deprived of this right, whether by law or by practice, brave Americans have stood up to fight for their right to vote. Today there is a significant portion of our population that has been disenfranchised.

Today, the very men and women who have joined the military to defend our right to vote have been effectively cut out of the democratic process. Make no mistake; this is one of the most important civil rights issues we face today, and we cannot afford to delay action to address it.

The Secretary of Defense has delegated the responsibility for safeguarding the voting rights of our troops to an office called the Federal Voting Assistance Program. Unfortunately, as our troops serve on far-away bases overseas and fight in foreign theaters of conflict, the Department of Defense's Federal Voting Assistance Program has failed to protect their most basic right as American citizens. This failure is twofold.

First, the DOD's voting office has failed to adequately educate our men and women in uniform about how to vote. Second, it has failed to take adequate steps to put in place a system that provides our troops a reasonable opportunity to vote—one which ensures their votes are counted.

Already, the DOD is required by law to provide troops with voting assistance, and information on how to get ballots, and how to cast their votes. But, its efforts have fallen woefully short. A recent survey found that less than 60 percent of troops knew where to obtain voting information on base.

Of our overseas troops who did ask for mail-in ballots, less than half of their completed ballots actually arrived at the local election office. What is worse, many of those arrived late, resulting in them being rejected and thus not counted at all.

It is absolutely shameful that so many of our troops and their families have been cut out of the democratic process through bureaucratic inefficiency.

In order to prevent this disenfranchisement from happening again, I introduced the Military Voting Protection Act, or MVP Act, to require the DOD to collect our overseas troops' completed ballots and expedite their delivery through express shipping. Electronic tracking would be required as well, so our troops would have the peace of mind of knowing their ballots actually arrived at the election office. The MVP Act would markedly improve the current system and help protect our troops' right to vote.

But yesterday, when I asked to bring this important, time-critical legislation forward as an amendment to the DOD authorization bill, the majority objected, saying they needed to hear from the Rules Committee first. My legislation would apply only to military servicemembers. We are working on the DOD authorization bill, so I am not sure why members of the Armed Services Committee need to wait and see what the Rules Committee thinks of an amendment this important. I am left scratching my head.

Rather than even considering this legislation, and debating how best to fix our broken military voting system, Democrats cited weak excuses for blocking this amendment. With a national election looming, and a disgraceful track record over the past two election cycles of our widespread troop disenfranchisement, I am dumbfounded as to why my colleagues would put off this civil rights issue and effectively cheat our troops out of a better, more reliable system for voting from overseas.

Last night, the Rules Committee offered me a counterproposal, which seeks to make the implementation of these important improvements to our troops' voting system optional. In essence, by making the implementation of this program optional, the Democrats are saying to our troops that their civil rights are not guaranteed but an option. That is an outrage.

I am afraid this is going to be just another item on a long list of critical issues the majority has put off, despite calls for action from the American people. Another notable example is gas prices—we have been waiting for over 2 years to address gas prices, but still no meaningful action from the majority leadership. Democrats have stonewalled and delayed qualified judicial nominees and have yet to pass a single appropriations bill for the fiscal year that starts in less than 3 weeks.

The rights of our troops to vote cannot fall victim to politics. Our military men and women stand vigilant in the defense of freedom and help safeguard the personal liberties of their fellow Americans. Now, we must be every bit as vigilant in defense of their personal liberties and civil rights. They willingly step into harm's way to ensure the safety of their fellow Americans at home, and they deserve better than a broken voting system and a refusal by their elected leaders to fix it.

Mr. President, I subject the absence of a quorum.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. KLOBUCHAR). Without objection, it is so ordered.

ADA AMENDMENTS ACT OF 2008

Mr. HARKIN. Mr. President, I ask unanimous consent that the Senate now proceed to Calendar No. 927, S. 3406, a bill to restore the intent and protections of the Americans with Disabilities Act of 1990; that the bill be read three times, passed, and the motion to reconsider be laid upon the table, without intervening action or debate; that upon passage, Senator HATCH and I be recognized to speak for a period not to exceed 40 minutes total.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (S. 3406) was ordered to be engrossed for a third reading, was read the third time, and passed, 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.''; and

(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 it 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.

Mr. HARKIN. Mr. President, I ask unanimous consent that the Statement of Managers to Accompany S. 3406, the Americans With Disabilities Act Amendments Act of 2008, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF THE MANAGERS TO ACCOMPANY S. 3406, THE AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT OF 2008

I. PURPOSE AND SUMMARY OF THE LEGISLATION

The purpose of S. 3406, the ''ADA Amendments Act of 2008'' is to clarify the intention and enhance the protections of the Americans with Disabilities Act of 1990, landmark civil rights legislation that provided ''a clear and comprehensive national mandate for the elimination of discrimination on the basis of disability.'' In particular, the ADA Amendments Act amends the definition of disability by providing clarification and instruction about the terminology used in the definition, by expanding the definition, and by rejecting several opinions of the United States Supreme Court that have had the effect of restricting the meaning and application of the definition of disability.

S. 3406 is the product of an extensive bipartisan effort that included many hours of meetings and negotiation by legislative staff as well as by stakeholders including the disability, business, and education communities. In addition, two hearings were held in the Senate Health, Education, Labor, and Pensions Committee to explore the issues addressed in this legislation. The goal has been to achieve the ADA's legislative objectives in a way that maximizes bipartisan consensus and minimizes unintended consequences.

This legislation amends the Americans with Disabilities Act of 1990 by making the changes identified below.

Aligning the construction of the Americans with Disabilities Act with Title VII of the Civil Rights Act of 1964, the bill amends Title I of the ADA to provide that no covered entity shall discriminate against a qualified individual ''on the basis of disability.''

The bill maintains the ADA's inherently functional definition of disability as a physical or mental impairment that substantially limits one or more life activities; a record of such impairment; or being regarded as having such an impairment. It clarifies and expands the definition's meaning and application in the following ways.

First, the bill deletes two findings in the ADA which led the Supreme Court to unduly restrict the meaning and application of the definition of disability. These findings are that there are ''some 43,000,000 Americans have one or more physical or mental disabilities'' and that ''individuals with disabilities are a discrete and insular minority.'' The Court treated these findings as limitations on how it construed other provisions of the ADA. This conclusion had the effect of interfering with previous judicial precedents holding that, like other civil rights statutes, the ADA must be construed broadly to effectuate its remedial purpose. Deleting these findings removes this barrier to construing and applying the definition of disability more generously.

Second, the bill affirmatively provides that 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.'' It retains the term ''substantially limits'' from the original ADA definition but makes it clear that this is intended to be a less demanding standard than that enunciated by the U.S. Supreme Court in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams. With this rule of construction and relevant purpose language, the bill rejects the Supreme Court's holding in Toyota v. Williams that the terms ''substantially'' and ''major'' in the definition of disability must be ''be interpreted strictly to create a demanding standard for qualifying as disabled,'' as well as the Court's interpretation that ''substantially limits'' means ''prevents or severely restricts.''

Third, the bill prohibits consideration of mitigating measures such as medication, assistive technology, accommodations, or modifications when determining whether an impairment constitutes a disability. This provision and relevant purpose language rejects the Supreme Court's holdings in Sutton v. United Air Lines and its companion cases that mitigating measures must be considered. The bill also provides that impairments that are episodic or in remission are to be assessed in an active state.

Fourth, the bill provides new instruction on what may constitute ''major life activities.'' It provides a non-exhaustive list of major life activities within the meaning of the ADA. In addition, the bill expands the category of major life activities to include the operation of major bodily functions.

Fifth, the bill removes from the third ''regarded as'' prong of the disability definition the requirement that an individual demonstrate that he or she has, or is perceived to have, an impairment that substantially limits a major life activity. Under the bill, therefore, an individual can establish coverage under the law by showing that he or she has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment. Because the bill thus broadens application of this third prong of the disability definition, entities covered by the ADA will not be required to provide accommodations or to modify policies and procedures for individuals who fall solely under the third prong. Such entities will, however, still be subject to discrimination claims.

Finally, the bill clarifies that the agencies that currently issue regulations under the ADA have regulatory authority related to the definitions contained in Section 3. Conforming amendments to Section 7 of the Rehabilitation Act of 1973 are intended to ensure harmony between federal civil rights laws.

II. BACKGROUND AND NEED FOR LEGISLATION

When Congress passed the ADA in 1990, it adopted the functional definition of disability from the Section 504 of the Rehabilitation Act of 1973, in part, because after 17 years of development through case law the requirements of the definition were well understood. Within this framework, with its generous and inclusive definition of disability, courts treated the determination of disability as a threshold issue but focused primarily on whether unlawful discrimination had occurred.

More recent Supreme Court decisions imposing a stricter standard for determining disability had the effect of upsetting this balance. After the Court's decisions in Sutton that impairments must be considered in their mitigated state and in Toyota that there must be a demanding standard for qualifying as disabled, lower courts more often found that an individual's impairment did not constitute a disability. As a result, in too many cases, courts would never reach the question whether discrimination had occurred.

Thus, some 18 years later we are faced with a situation in which physical or mental impairments that would previously have been found to constitute disabilities are not considered disabilities under the Supreme Court's narrower standard. These can include individuals with impairments such as amputation, intellectual disabilities, epilepsy, multiple sclerosis, diabetes, muscular dystrophy, and cancer. The resulting court decisions contribute to a legal environment in which individuals must demonstrate an inappropriately high degree of functional limitation in order to be protected from discrimination under the ADA.

The ADA Amendments Act rejects the high burden required in these cases and reiterates that Congress intends that the scope of the Americans with Disabilities Act be broad and inclusive. It is the intent of the legislation to establish a degree of functional limitation required for an impairment to constitute a disability that is consistent with what Congress originally intended, a degree that is lower than what the courts have construed it to be. In addition, the bill provides for application of this standard to a wider range of cases by expanding the category of major life activities. These steps, resulting from extensive bipartisan negotiation and discussion among legislators and stakeholders, are intended to provide for more generous coverage and application of the ADA's prohibition on discrimination through a framework that is more predictable, consistent, and workable for all entities subject to responsibilities under the ADA.

III. EXPLANATION OF THE BILL AND MANAGER'S VIEWS

Overview

The Americans with Disabilities Act of 1990 (''the ADA'') is a landmark statute that has fundamentally changed the lives of many millions of Americans with disabilities. The managers of this legislation were proud to be leaders in that effort that was accomplished in a deliberative careful manner that allowed for the development of a strong bipartisan coalition in both Houses of Congress and the Administration of President George H. W. Bush and led to Senate passage with a definitive vote of 91–6.

However, as discussed in more detail below, a series of Court decisions have restricted the coverage and diminished the civil rights protections of the ADA, especially in the workplace, by narrowing its definition of disability. As a result, lower court cases have too often turned solely on the question of whether the plaintiff is an individual with a disability rather than the merits of discrimination claims, such as whether adverse decisions were impermissibly made by the employer on the basis of disability, reasonable accommodations were denied inappropriately, or qualification standards were unlawfully discriminatory.

The managers have introduced the ADA Amendments Act of 2008 to restore the proper balance and application of the ADA by clarifying and broadening the definition of disability, and to increase eligibility for the protections of the ADA. It is our expectation that because this bill makes the definition of disability more generous, some people who were not covered before will now be covered. The strong bipartisan support for this legislation once again demonstrates the continuing bipartisan commitment to protecting the civil rights of individuals with disabilities among members of the Senate Committee on Health Education Labor and Pensions and the Senate as a whole.

The ADA Amendments Act renews our commitment to ensuring that all Americans with disabilities, including a new generation of disabled veterans who are just beginning to grapple with the challenge of living to their full potential despite the limitations imposed by their disabilities, are able to participate to the fullest possible extent in all facets of society, including the workplace. We acknowledge and applaud the substantial improvements in medical science and the courageous efforts of individuals with disabilities to overcome the impact of those disabilities, but in no way wish to exclude them thereby from protection under the ADA.

By retaining the essential elements of the definition of disability including the key term ''substantially limits'' we reaffirm that not every individual with a physical or mental impairment is covered by the first prong of the definition of disability in the ADA. An impairment that does not substantially limit a major life activity is not a disability under this prong. That will not change after enactment of the ADA Amendments Act, nor will the necessity of making this determination on an individual basis. What will change is the standard required for making this determination. This bill lowers the standard for determining whether an impairment constitute a disability and reaffirms the intent of Congress that the definition of disability in the ADA is to be interpreted broadly and inclusively.

Findings and Purposes

Given the importance the Court has placed upon findings and purposes particularly in civil rights statutes like the ADA, the ADA Amendments Act contains a detailed Findings and Purposes section that the managers believe gives clear guidance to the courts and that they intend to be applied appropriately and consistently. As described above, the legislation deletes two findings in the ADA that have been interpreted by the Supreme Court to require a narrow definition of disability. We continue to believe that individuals with disabilities ''have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.''

In addition to deleting the findings forming the basis of the Sutton and Toyota decisions, the bill states explicitly its purpose to reject the holdings in those cases (and their progeny), and to ensure broad coverage under the ADA. To be clear, the purposes section conveys our intent to clarify not only that ''substantially limits'' should be measured by a lower standard than that used in Toyota, but also that the definition of disability should not be unduly used as a tool for excluding individuals from the ADA's protections.

The bill expresses the clear intent of Congress that the EEOC will revise its regulations that similarly improperly define the term ''substantially limits'' as ''significantly restricted''; again, this sets too high a standard.

The bill's purposes also reject the Supreme Court's holding that mitigating measures must be considered when determining whether an impairment constitutes a disability. With the exception of ordinary eyeglasses and contact lenses, impairments must be examined in their unmitigated state.

These purposes are specifically incorporated into the statute by the rule of construction providing that the term ''substantially limits'' shall be construed consistently with the findings and purposes of the ADA Amendments Act of 2008. This rule of construction, together with the rule of construction providing that the definition of disability shall be construed in favor of broad coverage of individuals sends a clear signal of our intent that the courts must interpret the definition of disability broadly rather than stringently.

Definition of Disability

In the ADA of 1990, Congress sought to protect anyone who experiences discrimination because of a current, past, or perceived disability. Under the ADA, there are three prongs of the definition of disability, with respect to an individual:

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

(2) a record of such an impairment; or

(3) being regarded as having such an impairment.

This definition is of critical importance because as a threshold issue it determines whether an individual is covered by the ADA. The ADA Amendments Act retains the definition of disability but further defines and clarifies three critical terms within the existing definition (''substantially limits,'' ''major life activities,'' ''regarded as having such impairment'') and, under the rules of construction for the definition, adds several standards that must be applied when considering the definition of disability.

Physical or Mental Impairment

The bill does not provide a definition for the terms ''physical impairment'' or ''mental impairment.'' The managers expect that the current regulatory definition of these terms, as promulgated by agencies such as the U.S. Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ) and the Department of Education Office of Civil Rights (DOE OCR) will not change.

Substantially Limits

We do not believe that the courts have correctly instituted the level of coverage we intended to establish with the term ''substantially limits'' in the ADA. In particular, we believe that the level of limitation, and the intensity of focus, applied by the Supreme Court in Toyota goes beyond what we believe is the appropriate standard to create coverage under this law.

We have extensively deliberated with regard to whether a new term, other than the term ''substantially limits'' should be used in this Act. For example, in its ADA Amendments Act, H.R.3195, the House of Representatives attempted to accomplish this goal by stating that the key phrase ''substantially limits'' means ''materially restricts'' in order to convey that Congress intended to depart from the strict and demanding standard applied by the Supreme Court in Sutton and Toyota.

We have concluded that adopting a new, undefined term that is subject to widely disparate meanings is not the best way to achieve the goal of ensuring consistent and appropriately broad coverage under this Act. The resulting need for further judicial scrutiny and construction will not help move the focus from the threshold issue of disability to the primary issue of discrimination.

We believe that a better way is to express our disapproval of Sutton and Toyota (along with the current EEOC regulation) is to retain the words ''substantially limits,'' but clarify that it is not meant to be a demanding standard. In addition, we believe eliminating the source of the Supreme Court's decisions narrowing the definition and providing more appropriate findings and purposes for properly construing that definition will accomplish our goal without introducing novel statutory terms.

We believe that the manner in which we understood the intended scope of ''substantially limits'' in 1990 continues to capture our sense of the appropriate level of coverage under this law for purposes of placing on employers and other covered entities the obligation of providing reasonable accommodations and modifications to individuals with impairments. As we described this in our committee report to the original ADA in 1989:

''A person is considered an individual with a disability for purposes of the first prong of the definition when [one or more of] the individual's important life activities are restricted as to the conditions, manner, or duration under which they can be performed in comparison to most people. A person who can walk for 10 miles continuously is not substantially limited in walking merely because on the eleventh mile, he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort. S. Rep. No 101–116, at 23 (1989).''

We particularly believe that this test, which articulated an analysis that considered whether a person's activities are limited in condition, duration and manner, is a useful one. We reiterate that using the correct standard—one that is lower than the strict or demanding standard created by the Supreme Court in Toyota—will make the disability determination an appropriate threshold issue but not an onerous burden for those seeking accommodations or modifications. At the same time, plaintiffs should not be constrained from offering evidence needed to establish that their impairment is substantially limiting.

Thus, we believe that the term ''substantially limits'' as construed consistently with the findings and purposes of this legislation establishes an appropriate functionality test for determining whether an individual has a disability.

Major Life Activities

The bill provides significant new guidance and clarification on the subject of major life activities. First, a rule of construction clarifies that that an impairment need only substantially limit one major life activity to be considered a disability under the ADA. This responds to and corrects those courts that have required individuals to show that an impairment substantially limits more than one life activity. It is additionally intended to clarify that the ability to perform one or more particular tasks within a broad category of activities does not preclude coverage under the ADA.

For purposes of clarity, the bill provides an illustrative list of ''major life activities'' including activities such as caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating and working. In addition, for the first time, the category of ''major life activities'' is defined to include the operation of major bodily functions, thus better addressing chronic impairments that can be substantially limiting. Major bodily functions include functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

Both the list of major life activities and major bodily functions are illustrative and non-exhaustive, and the absence of a particular life activity or bodily function from the list does not create a negative implication as to whether such activity or function constitutes a ''major life activity'' under the statute.

Finally, we also want to illuminate one area which may be easily misunderstood, with respect to individuals with specific learning disabilities. When considering the condition, manner, or duration in which an individual with a specific learning disability performs a major life activity, it is critical to reject the assumption that an individual who has performed well academically cannot be substantially limited in activities such as learning, reading, writing, thinking, or speaking.

Rules of Construction on the Definition of Disability

The bill further clarifies the definition of disability with a series of rules of construction. As discussed elsewhere, the rules of construction specifically require that the definition of disability be interpreted broadly and that the term ''substantially limits'' be interpreted consistent with this legislation. This construction is also intended to reinforce the general rule that civil rights statutes must be broadly construed to achieve their remedial purpose. In addition, the rules of construction provide that impairments that are episodic or in remission be assessed in their active state for purposes of determining coverage under the ADA.

Mitigating Measures

The bill also prohibits consideration of the ameliorative effects of mitigating measures when determining whether an individual's impairment substantially limits major life activities, overturning the Supreme Court's decision in Sutton and its companion cases. This provision is intended to eliminate the situation created under current law in which impairments that are mitigated do not constitute disabilities but are the basis for discrimination. We expect that when such mitigating measures are ignored, some individuals previously found not disabled will now be able to claim the ADA's protection against discrimination.

The legislation provides an illustrative but non-comprehensive list of the types of mitigating measures that are not to be considered. This list also includes low vision devices, which are devices that magnify, enhance, or otherwise augment a visual image, such as magnifiers, closed circuit television, larger-print items, and instruments that provide voice instructions. The absence of any particular mitigating measure from this list should not convey a negative implication as to whether the measure is a mitigating measure under the ADA.

We also believe 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 accommodations (including informal or undocumented ones) that have the effect of lessening the deleterious impacts of their disability.

The bill provides one exception to the rule on mitigating measures, specifying that ordinary eyeglasses and contact lenses are to be considered in determining whether a person has a disability. The rationale behind this exception is that the use of ordinary eyeglasses or contact lenses, without more, is not significant enough to warrant protection under the ADA. Nevertheless, if an applicant or employee is faced with a qualification standard that requires uncorrected vision (as the sisters in the Sutton case were), an employer will be required to demonstrate that the qualification standard is job-related and consistent with business necessity.

Regarded As

Under this bill, the third prong of the disability definition will apply to impairments, not only to disabilities. As such, it does not require a functional test to determine whether an impairment substantially limits a major life activity.

This section of the definition of disability was meant to express our understanding that unfounded concerns, mistaken beliefs, fears, myths, or prejudice about disabilities are often just as disabling as actual impairments, and our corresponding desire to prohibit discrimination founded on such perceptions. In 1990 we relied extensively on the reasoning of School Board of Nassau County v. Arline that the negative reactions of others are just as disabling as the actual impact of an impairment. This legislation restates our reliance on the broad views enunciated in that decision and we believe that courts should continue to rely on this standard.

We intend and believe that the fact that an individual was discriminated against because of a perceived or actual impairment is sufficient. Thus, the bill clarifies that contrary to Sutton, an individual who is ''regarded as having such an impairment'' is not subject to a functional test. If an individual establishes that he or she was subjected to an action prohibited by the ADA because of an actual or perceived impairment—whether the person actually has the impairment or whether the impairment constitutes a disability—then the individual will qualify for protection under the Act.

This provision is subject to two important limitations. First, individuals with impairments that are transitory and minor are excluded from eligibility for the protections of the ADA under this prong of the definition, and second, the bill relieves entities covered under the ADA from the obligation and responsibility to provide reasonable accommodations and reasonable modifications to an individual who qualifies for coverage under the ADA solely by being ''regarded as'' disabled.

Transitory and Minor

The bill contains an exception that clarifies that coverage for individuals under the ''regarded as'' prong is not available where an individual's impairment is both transitory (six months or less) and minor. Providing this exception responds to concerns raised by employer organizations and is reasonable under the ''regarded as'' prong of the definition because individuals seeking coverage under this prong need not meet the functional limitation requirement contained in the first two prongs of the definition. A similar exception for the first two prongs of the definition is unnecessary as the functional limitation requirement already excludes claims by individuals with ailments that are minor and short term.

Accommodations

The bill establishes that entities covered under the ADA do not need to provide reasonable accommodations under Title I or modify policies, practices, or procedures under Titles II or III when an individual qualifies for coverage under the ADA solely by being ''regarded as'' having a disability under the third prong of the definition of disability.

Under current law, a number of courts have required employers to provide reasonable accommodations for individuals who are

covered solely under the ''regarded as'' prong. In each of those cases, the plaintiffs were found not to be covered under the first prong of the definition of disability because of the overly stringent manner in which the courts had been interpreting that prong. Because of our strong belief that accommodating individuals with disabilities is a key goal of the ADA, some members continue to have reservations about this provision. However, we believe it is an acceptable compromise given our strong expectation that such individuals would now be covered under the first prong of the definition, properly applied.

Discrimination on the Basis of Disability

The bill amends Section 102 of the ADA to mirror the structure of nondiscrimination protection provision in Title VII of the Civil Rights Act of 1964. It changes the language from prohibiting discrimination against a qualified individual ''with a disability because of the disability of such individual'' to prohibiting discrimination against a qualified individual ''on the basis of disability.'' This ensures that the emphasis in questions of disability discrimination is properly on the critical inquiry of whether a qualified person has been discriminated against on the basis of disability, and not unduly focused on the preliminary question of whether a particular person is a ''person with a disability.''

Rules of Construction

Benefits Under State Worker's Compensation Laws

The bill provides that nothing in the Act alters the standards for determining eligibility for benefits under State worker's compensation laws or other Federal or State disability benefit programs.

Fundamental Alteration

The bill reiterates that no changes are being made to the underlying ADA provision that no accommodations or modifications in policies are required when a covered entity can demonstrate that making such modifications would fundamentally alter the nature of the service being provided. This provision was included at the request of the higher education community and specifically includes ''academic requirements in postsecondary education'' among the types of policies, practices, and procedures that may be shown to be fundamentally altered by the requested modification or accommodation to reaffirm current law. It is included solely to provide assurances that the bill does not alter current law with regard to the obligations of academic institutions under the ADA, which we believe is already demonstrated in case law on this topic. Specifically, the reference to academic standards in postsecondary education is unrelated to the purpose of this legislation and should be given no meaning in interpreting the definition of disability.

Claims of No Disability

The bill prohibits reverse discrimination claims by disallowing claims based on the lack of disability, (e.g., a claim by someone without a disability that someone with a disability was treated more favorably by, for example, being granted a reasonable accommodation or modification to services or programs). Our intent is to clarify that a person without a disability does not have the right under the Act to bring an action against an entity on the grounds that he or she was discriminated against ''on the basis of disability'' (i.e., on the basis of not having a disability).

Regulatory Authority

In Sutton, the Supreme Court stated that ''[n]o agency . . . has been given authority to issue regulations implementing the generally applicable provisions of the ADA which fall outside Titles I–V.'' The bill clarifies that the authority to issue regulations is granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation and specifically includes the authority to issue regulations implementing the definition of disability as amended and clarified by this legislation.

We anticipate that the agencies charged with regulatory authority under the ADA will make any necessary modifications to their regulations to reflect the changes and clarifications embodied in the ADA Amendments Act, including the addition of major bodily functions as major life activities and the broadening of the ''regarded as'' prong. We also expect that the Equal Employment Opportunity Commission (EEOC) will revise the portion of its ADA regulations that defines ''substantially limits'' as ''unable to perform a major life activity. . . . or significantly restricted as to . . . a particular major life activity . . . .'' given the clear inconsistency of that portion of the regulation with the intent of this legislation.

Conforming Amendment

The bill ensures that the definition of disability in Section 7 of the Rehabilitation Act of 1973, which shares the same definition, is consistent with the ADA. The Rehabilitation Act of 1973 preceded the ADA in providing civil rights protections to individuals with disabilities, and in drafting the definition of disability in the ADA, the authors relied on the statute and implementing regulations of the Rehabilitation Act. Maintaining uniform definitions in the two federal statutes is important so that such entities will generally operate under one consistent standard, and the civil rights of individuals with disabilities will be protected in all settings. The ADA, under Title II and Title III, and Section 504 of the Rehabilitation Act provide overlapping coverage for many entities, including public schools, institutions of higher education, childcare facilities, and other entities receiving federal funds.

We expect that the Secretary of Education will promulgate new regulations related to the definition of disability to be consistent with those issued by the Attorney General under this Act. We believe that other current regulations issued by the Department of Education Office of Civil Rights under Section 504 of the Rehabilitation Act are currently harmonious with Congressional intent under both the ADA and the Rehabilitation Act.

Conclusion

We intend that that the sum of these changes will make the threshold definition of disability in the ADA—under which individuals qualify for protection from discrimination more generous, and will result in the coverage of some individuals who were previously excluded from those protections.

We note that with the changes made by the ADA Amendments Act, courts will have to address whether an impairment constitutes a disability under the first and second, but not the third, prong of the definition of disability. The functional limitation imposed by an impairment is irrelevant to the third ''regarded as'' prong.

In general, individuals may find it easier to establish disability under this bill's more generous standard than under the Supreme Court's demanding standard. To repeat, we intend this bill to return the legal analysis to the balance that existed before the Supreme Court's Sutton and Toyota decisions. The determination of disability is a necessary threshold issue in many cases, but an appropriately generous standard on that issue will allow courts to focus primarily on whether discrimination has occurred or accommodations improperly refused.

IV. LEGISLATIVE HISTORY AND COMMITTEE ACTION

Prior to introduction of the ADA Amendments Act of 2008 on July 31, 2008 with 55 original cosponsors the following actions occurred in the 110th Congress.

On July 26, 2007, Senator Tom Harkin introduced S. 1881, the ADA Restoration Act of 2007 together with Senator Arlen Specter. Senator Edward Kennedy, the Chairman of the Senate Health, Education, Labor and Pensions Committee cosponsored the legislation along with Senator Ted Stevens. The bill was referred to the Senate Health, Education, Labor, and Pensions Committee.

Similarly, on July 26, 2007, Representatives Steny H. Hoyer (D-MD) and James F. Sensenbrenner (R-WI) introduced H.R. 3195, the ADA Restoration Act of 2007, with 144 original cosponsors. The bill was referred to the House Committees on Education and Labor, Judiciary, Transportation and Infrastructure, and Energy and Commerce.

On October 4, 2007, the House Judiciary Committee held a hearing on H.R. 3195. Six witnesses appeared before the committee: Honorable Steny Hoyer (D-MD), House Majority Leader; Cheryl Sensenbrenner, Chair of the Board, American Association of People with Disabilities; Stephen Orr, Pharmacist (Plaintiff in Orr v. Wal-Mart); Michael Collins, Executive Director, National Council on Disability; Lawrence Lorber, Attorney, on behalf of the U.S. Chamber of Commerce; Chai Feldblum, Director, Federal Legislation Clinic and Professor of Law, Georgetown Law Center.

On November 15, 2007, the Senate HELP Committee held a hearing chaired by Senator Tom Harkin, ''Restoring Congressional Intent and Protections under the Americans with Disabilities Act'' Five witnesses appeared before the committee: John D. Kemp, President, United States International Council on Disabilities; Dick Thornburgh, Former United States Attorney General and Counsel, Kirkpatrick & Lockhart; Steven Orr, Pharmacist (Plaintiff in Orr v. Wal-Mart), Camille Olson, Labor and Employment Attorney, Seyfarth & Shaw; Chai Feldblum, Director, Federal Legislation Clinic and Professor of Law, Georgetown Law Center.

On January 29, 2008, the House Committee on Education and Labor held a hearing on H.R. 3195. Five witnesses appeared before the committee: Honorable Steny Hoyer (D-MD), House Majority Leader; Andrew Imparato, President and CEO, American Association of People with Disabilities; Carey McClure, Electrician (Plaintiff in McClure v. General Motors); Robert L. Burgdorf, Professor of Law, University of the District of Columbia; David K. Fram, Director, ADA & EEO Services, National Employment Law Institute.

On June 18, 2008, the House Committee on Education & Labor held a markup to consider H.R. 3195. An amendment was offered as a substitute to the original bill, and it was reported out of the Committee by a vote of 43 to 1.

On June 18, 2008, the Committee on the Judiciary held a markup to consider H.R. 3195. An amendment was offered as a substitute to the original bill, and it was reported out of the Committee by a vote of 27 to 0.

On June 25, 2008, the United States House of Representatives held a vote on H.R. 3195 and passed the legislation by a vote of 402–17.

On July 15, 2008, the Senate HELP Committee held a Roundtable: ''H.R. 3195 and Determining the Proper Scope of Coverage for the Americans with Disabilities Act'' Eight individuals gave testimony before the committee: Samuel R. Bagenstos, Professor of

Law, Washington University School of Law; Carey McClure, Electrician (Plaintiff in McClure v. General Motors); JoAnne Simon, Disability Rights Attorney; Sue Gamm, Elementary and Secondary Education Consultant; Terry Hartle, Senior Vice President, American Council on Education; Chai Feldblum, Professor, Federal Legislation Clinic, Georgetown University Law Center, Washington, DC; Michael Eastman, Executive Director of Labor Policy, U.S. Chamber of Commerce; Andrew Grossman, Senior Legal Policy Analyst, Heritage Foundation.

On July 31, 2008, Senators Tom Harkin and Orrin Hatch introduced S. 3406, The ADA Amendments Act of 2008. The bill was placed on the Senate calendar (under general orders/pursuant to Rule XVI?).

V. APPLICATION OF THE LAW TO THE LEGISLATIVE BRANCH

Section 102(b)(3) of Public Law 104–1, the Congressional Accountability Act (CAA), requires a description of the application of this bill to the legislative branch. S. 3604 does not amend any act that applies to the legislative branch.

VI. REGULATORY IMPACT STATEMENT

The managers have determined that the bill may result in some additional paperwork, time, and costs to the Equal Employment Opportunity Commission, which would be entrusted with implementation and enforcement of the act. It is difficult to estimate the volume of additional paperwork necessity by the bill, but the committee does not believe it will be significant. Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the committee has determined that the bill will not have a significant regulatory impact.

VII. SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title. This Act may be cited as the 'ADA Amendments Act of 2008.'

Sec. 2. Findings and Purposes. Acknowledges Congressional intent of the Americans with Disabilities Act of 1990 (ADA) to ''provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities'' and to provide broad coverage, and that the U.S. Supreme Court subsequently erroneously narrowed the definition of disability in a series of cases. The purposes of the Act are to reinstate a broad scope of protection to be available under the ADA, to reject several Supreme Court decisions, and to re-establish original Congressional intent related to the definition of disability.

Sec. 3. Codified Findings. Amends one finding in the ADA to acknowledge that many people with physical or mental impairments have been subjected to discrimination, and strikes one finding related to describing the population of individuals with disabilities as ''a discrete and insular minority.''

Sec. 4. Disability Defined and Rules of Construction. Amends the definition of ''disability'' and provides rules of construction for applying the definition. The term ''disability'' is defined to mean, with respect to an individual, a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such an impairment; provides an illustrative list of 'major life activities' including major bodily functions; and defines 'regarded as having such an impairment' as protecting individuals who have been subject to an action prohibited under the ADA because of an actual or perceived impairment, whether or not the impairment is perceived to limit a major life activity. Requires the definition of disability to be construed broadly and consistent with the findings and purposes. Provides rules of construction regarding the definition of disability, requiring that impairments need only limit one major life activity; clarifying an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active; and prohibiting the consideration of the ameliorative effects of mitigating measures such as medication, learned behavioral modifications, or auxiliary aids or services, in determining whether an impairment is substantially limiting, while excluding ordinary eyeglasses and contact lenses.

Sec. 5. Discrimination on the Basis of Disability. Prohibits discrimination under Title I of the ADA 'on the basis of disability' rather than 'against a qualified individual with a disability because of the disability of such individual.' Clarifies that covered entities that use qualification standards based on uncorrected vision must show that such a requirement is job-related and consistent with business necessity.

Sec. 6. Rules of Construction. Provides that nothing in this Act alters the standards for determining eligibility for benefits under State worker's compensation laws or other disability benefit programs. Prohibits reverse discrimination claims by disallowing claims based on the lack of disability. Provides that nothing in this Act alters the provision in Title III that a modification of policies or practices is not required if it fundamentally alters the nature of the service being provided. Establishes that entities covered under all three titles of the ADA are not required to provide reasonable accommodations or modifications to an individual who meets the definition of disability only as a person 'regarded as having such an impairment.' Authorizes the EEOC, Attorney General, and the Secretary of Transportation to promulgate regulations implementing the definition of disability and rules of construction related to the definition.

Sec. 7. Conforming Amendments. Amends Section 7 of the Rehabilitation Act of 1973 to cross-reference the definition of disability under the ADA.

Sec. 8. Effective Date. Amendments made by the Act take effect January 1, 2009.

September 11, 2008.

TOM HARKIN,
U.S. Senator.
ORRIN HATCH,
U.S. Senator.

Mr. HARKIN. Madam President, I am extremely proud to be the chief sponsor of the ADA Amendments Act of 2008, along with the distinguished senior Senator from Utah, Senator ORRIN HATCH. This bipartisan legislation will allow us to advance and fulfill the original promise of the Americans With Disabilities Act, which was signed into law 18 years ago.

I am especially grateful to Senator HATCH for his leadership and for his friendship through all these years in helping to craft and move this bill here in the Senate. Senator HATCH was one of the key players in helping get through the original ADA back in 1989 and 1990 when we passed it. And in this effort we have here today, he has become a true partner. I deeply appreciate his willingness to take on this critical role. I think it is safe to say that without the help and intense interest of Senator HATCH on this issue, and especially on the whole ADA process, the bill would not be here today. Again, I am so grateful to Senator HATCH for his friendship and his support through all of this long process.

And it has been a long process. We are not here today because we just met the other day to put this together. It has been a couple of years or more in the making, and at least over a year of very intense negotiations with the business community, the disability community, and others to get to where we are today.

This bill is similar to legislation that was introduced in the other body by the majority leader, STENY HOYER, and Congressman JIM SENSENBRENNER of Wisconsin. That bill passed by a 402-to-17 margin in June, and of course the bill we have here today is going to pass unanimously.

I am also grateful that from the outset these bills have been conceived and crafted in a spirit of genuine bipartisanship, with Members of both parties coming together to do the right thing for Americans with disabilities. Today, we have nearly 80 Senators cosponsoring this bill. Of course, passage of the original ADA was also a bipartisan effort.

As the chief sponsor of that bill in the Senate, I worked very closely with a great number of people on both sides of the aisle, both here and in the administration—Senator Bob Dole, of course, and others on both sides of the aisle. We received invaluable support from then-President George Herbert Walker Bush and key members of his administration, including White House counsel Boyden Gray, who worked so hard to get the original bill through; and Attorney General Richard Thornburgh, who helped us craft the bill and made sure we did it in the right way. Dick Thornburgh was so instrumental in that initial passage, and ever since then, for the last 18 years, I have kept in contact with Attorney General Thornburgh periodically, talking about the ADA, what it was doing, how it was being implemented, and of course because of the recent court decisions, discussing with him how we could get to this point today and have a bill that would overturn those court decisions. Former Transportation Secretary Sam Skinner was very involved in this also.

But I would be remiss if I didn't state forthrightly the one person through all these years who was the key mover of the Americans With Disabilities Act of 1990, without whose leadership we could not have gotten it done, and who enabled this Senator to be the chairman of the Disability Policy Subcommittee and to get this bill moved through both subcommittee and committee. He was there from the very beginning to the end and has never let up in all his years on his interest in and support of legislation that would fully incorporate people with disabilities in all aspects of American life. Of course I speak of Senator Ted Kennedy, the chairman of the HELP Committee, who can't be here with us today. He is at home in Massachusetts recuperating and getting better so he can be here with us next year when we take up

health care reform. But if Senator KENNEDY is watching, I wish to say: Ted, this one is for you. We finally got here. We finally got the bill up.

I thank Senator KENNEDY for all of his help in the last 2 to 3 years in pulling everything together, and I am going to have more to say about that at the end when I thank all those wonderful staff members who helped. But Senator KENNEDY has been there from the beginning, in the 1980s, when we were doing this, and all through the 1990s, to now, and I am sorry he can't be here with us today. I know he is here with us in spirit, and that spirit has been strong to get us to this point today.

I also thank Senator ENZI. Prior to a couple of years ago, he was chairman of the HELP Committee and was also very interested in helping to move this legislation along. Since he has been ranking member, he has also been involved, and his staff involved, in making sure we could get this bill here today.

The fact is that Americans from all walks of life take enormous pride in what we have done in the last 18 years since the passage of ADA. No one wants to go backwards. The ADA was one of the landmark civil rights statutes of the 20th century, a long overdue emancipation proclamation for Americans with disabilities. Thanks to that law, we have removed most physical barriers to movement and access for Americans with disabilities. We required employers to provide reasonable accommodations so people with disabilities could have equal opportunity in the workplace. We have greatly advanced the four goals of the ADA: equality of opportunity, full participation, independent living, and economic self-sufficiency.

I think the triumph of the ADA revolution is all around us. I remember a couple of years ago attending a Washington convention of several hundred disability rights advocates, many with significant disabilities. They arrived in Washington on trains and airplanes and buses built to accommodate people with mobility impairments. They came to the hotel on Metro and on regular buses, all seamlessly accessible by wheelchair. They navigated the city streets equipped with curb cuts and ramps. The hotel where the convention took place was equipped in countless ways to accommodate all manner of people with all kinds of disabilities. There were sign language interpreters on the dais so the people with hearing disabilities could be full participants. And the list goes on and on. In other words, a kind of seamless approach to making sure that anyone could participate regardless of their disability.

For many Americans, these many changes are kind of invisible. We kind of take them for granted. We take curb cuts for granted and ramps, and widened doorways for granted. The fact is, every building—think about this—every building being built in America today is fully accessible, with a universal design. A universal design. Now, these changes may be invisible to most people, but for people with disabilities, they are transforming and liberating. The provisions in the ADA outlawed discrimination against qualified individuals with disabilities in the workplace, requiring employers to provide reasonable accommodations. Again, these are liberating and transforming for people with disabilities.

But despite all this progress over the last 18 years, we have a problem. We have a big problem. And the problem arises because of a series of Supreme Court decisions that have greatly narrowed the scope of who is protected by the ADA. As a consequence, people with conditions that common sense would tell us are disabilities are being told by the courts that they are not in fact disabled and, therefore, not eligible for the protections of the law. For example, in a ruling last year, the 11th Circuit Court concluded that a person with an intellectual disability was not ''disabled'' under the ADA.

When I try to explain to people what the Supreme Court has done, they are shocked. Impairments that the Court says are not to be considered disabilities under the law—at least in some cases—include amputation, intellectual disabilities, epilepsy, multiple sclerosis, diabetes, muscular dystrophy, cancer, and others.

In three decisions on the same day in June of 1999—what we now know as the Sutton trilogy—the Supreme Court held that corrective and mitigating measures must be considered in determining whether an individual has a disability under the ADA. This is in complete contradiction to congressional intent as we expressed in our committee reports.

When we pass laws around here, we don't put every single little thing in the law; we would have huge bills. What we do is we have committee reports and findings to instruct the courts as to what our intent is. We expect the courts to follow them.

In the Senate committee report, here is what we said:

> Whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids.

You cannot get much clearer than that. The House report said basically the same thing. It said:

> For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, even though the loss may be corrected through the use of a hearing aid. Likewise, persons with impairments, such as epilepsy or diabetes, which substantially limit a major life activity are covered under . . . the definition of disability, even if the effects of the impairment are controlled by medication.

That was in our report 18 years ago. The Supreme Court ignored that. They ignored it.

In the Sutton case, Sutton v. United Airlines, the Supreme Court held that for persons taking corrective measures to mitigate a physical or mental impairment, the effect of those measures must be taken into account when judging whether a person is ''disabled''—and therefore covered under the law.

That could include anything from visual aids to prostheses.

In Murphy v. the United Parcel Service, the Court applied the same analysis to medication used to treat hypertension, and concluded an employee who was fired because he had high blood pressure and hypertension was not covered because he took medication to alleviate the symptoms. But, again, in our report, as we said before, that should not be taken into account.

In the case of Albertsons v. Kirkingburg—we call it the Kirkingburg case—the Supreme Court went further and declared mitigating measures to be considered in the determination of whether someone is disabled included not only artificial aids such as devices and medications but also subconscious measures that an individual may use to compensate for his or her impairment. What were they talking about? Kirkingburg was an individual who was blind in one eye. Through experience and coping with it, he had been able to compensate for the fact he was blind in one eye. The Court said subconsciously he was able to compensate for that, therefore he must not be disabled. People hear this and they say how could the Supreme Court have decided that?

Last, in another case, the Toyota case, the Court held there must be a ''demanding standing for qualifying as disabled.'' Again, restricted; a demanding standard. We have never said that in the ADA bill. We didn't say that at all.

What has happened is that countless individuals have been excluded from ADA, even though the general rule of all civil rights laws is they should be broadly construed to achieve their remedial purposes, and the ADA is a civil rights statute.

Again, what does all this mean? What this means is the Supreme Court decisions have led to a supreme absurdity, a Catch-22 situation that so many people with disabilities find themselves in today. For example, the more successful a person is at coping with a disability, the more likely it is the Court will find that they are no longer disabled and therefore no longer covered under the ADA. If they are not covered under ADA, then any request that they might make for a reasonable accommodation can be denied. If they do not get the reasonable accommodation, they cannot do their job; and they can get fired and they will not be covered by the ADA and they will not have any recourse.

Let's look at it this way. If you are disabled and you take medication or use an assistive device, then you will be able to do your job, right? If you take the medication, use the assistive device, now you can do your job, but you will not be covered by the ADA.

Therefore, if you ask for a reasonable accommodation, the employer will say: No, you can't do your job, you are fired and, guess what, you go to court and the court will say: You are not disabled, you use an assistive device, you take medication. On the other hand, if you do not take the medication or you do not use an assistive device, you will not be qualified to do the job.

So what is a person with a disability supposed to do? If I use medication or use an assistive device, it enables me to become economically self-sufficient, become independent, become fully integrated in society. If I take medication or use my assistive device I can do that, I can get a job. But then I am no longer covered by ADA, and I can be fired or terminated. I will not get a reasonable accommodation.

You can see what this has done to so many millions of people with disabilities. What am I to do? I want to get a job. But I want the coverage of ADA. But I have to give that up if I use medication or use an assistive device—an absolute absurdity. This is not what I intended. It is not what anyone intended when we passed the ADA 18 years ago.

It boggles the mind that any court would say that multiple sclerosis, muscular dystrophy or epilepsy is not a disability covered by the ADA, but that is where we are today. Think about the troops coming home from Iraq, losing limbs, getting prostheses. The Court might find they are not disabled. If they might need some reasonable accommodations to get a decent job, the Court would find they are not covered by the Americans with Disabilities Act.

As a result, we have to have this bill, and that is what this bill is all about. This bill is about restoring the Americans with Disabilities Act back to where we intended it to be 18 years ago and to give clear directions to the courts about how they should decide these cases. This bill will overturn the so-called Sutton trilogy and Toyota v. Williams and will give clear direction to the courts on exactly what we mean. It will restore the proper balance, it will clarify and broaden the definition of disability, it will increase eligibility for the protections of the ADA.

People who are denied coverage under ADA will now be covered, and we will get rid of that Catch-22 situation that confronts so many people right now with disabilities.

I tell you, this is extremely important in the employment context. According to most recent data, more than 60 percent of individuals with disabilities are not employed. That is shameful, in our society, that we have an unemployment rate among people with disabilities of 60 percent. These are people who want to work, who are capable of work. They want to go out and become fully functioning members of society and contribute to society. All they need is the opportunity.

I can tell you employers find people with disabilities are sometimes the most exemplary of workers. All they need is the opportunity, a reasonable accommodation, and they can do their job. This bill before us today renews our promise to all Americans with disabilities. We basically say we keep the basic language of the original bill, but we also make sure the bill overturns the basis for the reasoning in the Supreme Court decisions—as I said, the Sutton trilogy and Toyota case that has been so problematic.

We clearly state mitigating measures—such as the medication or assistive devices I talked about earlier—are not to be considered in determining whether someone is entitled to the protections of the ADA. No longer is it report language. We put this in bill language so the Supreme Court can't skirt around it again.

The bill will make it easier for people with disabilities to be covered. It expands the definition of disability to include many more life activities, including a new category of major body functions. The latter point is important for people with immune disorders or cancer or kidney disease or liver disease because they no longer need to show what specific activity they are limited in, in order to meet the statutory definition of disability. The bill rejects the current EEOC regulation which says that ''substantially limits'' means ''significantly restricted'' as too high a standard. We indicate Congress's expectation that the regulation be rewritten in a less stringent way and we provide the authority in this bill to do so.

The bill also revives the ''regarded as'' prong of the definition of disability. It makes it easier for those who suffer from discrimination because of a perceived disability to be able to seek relief if they have been fired or subjected to another adverse action. We also say the definition of disability is to be interpreted broadly, to the maximum extent permitted by the ADA.

Again, this bill will give clear direction, of course, as to exactly what we intend: A broad definition, more people covered, and getting rid of that problem of having that Catch-22 situation.

Eighteen years ago, the Americans with Disabilities Act passed with overwhelming bipartisan support, and I am proud to say we have that same level of support today in passing this unanimously. I am grateful for the bipartisan spirit with which we have considered this bill. We have an opportunity to come together to make an important difference for millions of Americans with disabilities.

I might say the bill enjoys strong support in the country. I have a letter I will submit for the RECORD from over 250 business, faith, disability, labor, and military organizations that support this bill and urge its passage.

Madam President, I ask unanimous consent that letter be printed in the RECORD at the conclusion of the statements of both mine and Senator HATCH.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See Exhibit 1.)

Mr. HARKIN. The bill is supported by all the national disability organizations as well the U.S. Chamber of Commerce, the National Association of Manufacturers, the Society for Human Resource Management, and the Human Resources Policy Association.

The genesis of the legislation is a result of direct conversations between the disability and business communities that should serve as a model for other legislative efforts.

I wish to say, there were a lot of negotiations that went on between disability groups, the Chamber of Commerce, the Human Resource Policy Association, National Association of Manufacturers, other business groups. They were long. They were involved. They were tough negotiations. There was a lot of give and take. I think that is the way we have to do things.

To those who say we cannot get anything done around here, I point to this bill. We can get things done around here as long as people of good will are willing to work together. It may take a little time. Sometimes good things take a little time. It takes a lot of negotiations, reaching across the aisle, reaching across to one another, and we can reach these kind of agreements. We can move this country forward, and we can make American society more fair and just and accommodating for all.

I have two last things. I wish to take a moment to recognize our veterans with disabilities. This bill we have before us renews our commitment to ensure that all Americans with disabilities, including a new generation of disabled veterans who are just beginning to grapple with the challenges of living to their full potential, despite any limitations imposed by the disabilities, are able to participate to the fullest possible extent in all facets of society, including the workplace. They deserve equality, access, and opportunity.

I would like to submit for the RECORD a letter from 23 veterans groups supporting this legislation. I ask unanimous consent it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

VETERANS FOR ADA RESTORATION,
Silver Spring, MD, September 9, 2008.

Re Support for new ADA Amendments Act of 2008. S. 3604

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.
Hon. ORRIN HATCH,
U.S. Senate,
Washington, DC.

DEAR SENATORS HARKIN AND HATCH: When a disabled veteran recovers enough to return to the workforce, it's a slap in the face to run into employment discrimination. That is why we salute you for your leadership in sponsoring S. 3406 to restore the protections of the Americans with Disabilities Act (ADA) that have been eroded by the courts.

As leaders of organizations that represent men and women who have served honorably

in our nation's military, we are proud to support the Senate version of the ADA Amendments Act of 2008 (S. 3406).

This revised ADA bill has broad bipartisan support and the support of an unusual coalition of business, disabilities, civil rights and veterans/military groups who are working together to reverse narrow court interpretations of the ADA that had deprived people with many kinds of disabilities from ADA protection.

It confirms that veterans and other people with disabilities should not lose their civil rights because their conditions can be managed with mitigating measures such as medication, prosthetics and therapy, and assistive technology.

The honorable men and women who have become disabled in the service of our country deserve our support in every way. Often the best healing agent for both mind and body is to return to the workforce with a decent job at a living wage. This bill will help make sure they are protected from unlawful discrimination.

Disabled veterans have already sacrificed so much. The very least we owe our disabled veterans is to make sure they have a remedy when they face discrimination in the workplace because of their disability. It is the patriotic duty of all Americans to protect these patriots against this indignity.

Again, thank you for your leadership in sponsoring the ADA Amendments Act, S. 3406.

Sincerely,

Paul J. Tobin, President and CEO, United Spinal Association; John Rowan, National President, Vietnam Veterans of America; Joseph Violante, National Legislative Director, Disabled American Veterans; Randy L. Pleva, Sr., President, Paralyzed Veterans of America; Lawrence Schulman, National Commander, Jewish War Veterans of the USA; John ''JP'' Brown III, National Commander, AMVETS.

Hershel W. Gober, Legislative Director, Military Order of the Purple Heart; Julie Mock, President, Veterans of Modern Warfare, Inc.; Michael M. Dunn, President & CEO, Air Force Association; VADM Norbert R. Ryan, Jr., USN (Ret.), President, Military Officers Association of America; Thomas Zampieri, Ph.D., Director of Government Relations, Blinded Veterans Association; Joseph A. Wynn, II, Legislative Director, National Association for Black Veterans.

Beth Moten, Legislative and Political Director, American Federation of Government Employees; Rick Jones, Legislative Director, National Association for Uniformed Services; Todd Bowers, Director of Government Affairs, Iraq and Afghanistan Veterans of America; Lupe G. Saldana, National Commander Emeritus, American GI Forum of the U.S; MSG Michael P. Cline, USA (Ret), Executive Director, Enlisted Association of the National Guard of the United States; Patricia M. Murphy, Executive Director, Air Force Women Officers Associated.

Richard M. Dean, CMSgt (Ret), Chief Executive Officer, Air Force Sergeants Association; Daniel I. Puzon, Legislative Director, Naval Reserve Association; Richard C. Schneider, Executive Director of Government Affairs, Non-Commissioned Officers Association; Dennis M. Cullinan, Director, National Legislative Service, Veterans of Foreign Wars; Lani Burnett, CMSgt. USAF (Ret.), Executive Director, Reserve Enlisted Association.

Mr. HARKIN. I last would like to thank those who helped us get to this day, including those who are no longer with us. My friend, Justin Dart, who was so instrumental in helping us get the ADA passed. We are fortunate that his wife Yoshiko continues to carry on his legacy, day after day, week after week, year after year. Ed Roberts, the father of the Independent Living movement, whose work and vision live on.

And all the disability advocates and people with disabilities who have been so dedicated to the goals of the ADA, without whose hard work and dedicated efforts today would not have been possible—people such as Jim Ward and his family, who dedicated almost 2 years of their lives traveling on a bus around the country to every State, showing people about the importance of restoring the protections of ADA. Bob Kafka of ADAPT, who was so instrumental in passage of the ADA, and who has dedicated his life to fulfilling the goals of the ADA.

I wish to say a special thank-you to Jennifer Mathis of the Bazelon Center for her practical and practiced advice; Sandy Finucane of the Epilepsy Foundation; of course to Andy Imparato of the American Association of People With Disabilities for always being there in that leadership position—for his level-headed leadership, for bringing different groups together, and sometimes that is like herding cats to get all of us together. Andy did a great job in making sure we were always there and making sure we had our conferences and negotiations and keeping us all headed in the same direction. So to Andy Imparato I give my highest thanks and my deepest thanks for all of his helpfulness.

Thanks to Nanzy Zirkin of the Leadership Conference on Civil Rights; and to Professor Chai Feldblum of the Georgetown Law Center for creative and innovative thinking, for always being willing to testify before our committee.

Thanks to Randy Johnson and Mike Eastman of the U.S. Chamber of Commerce; to Mike Peterson of the H.R. Policy Association; to Jeri Gillespie of the National Association of Manufacturers; and to Mike Aitken of the Society of Human Resource Management.

Thanks to our key staff members: Tom Jipping and Chris Campbell of Senator HATCH's staff—great to work with—and Lee Perselay, Beth Stein, and Pam Smith of my own staff. Again, they have worked tirelessly on this day after day.

I wish to thank the House committee staff, Sharon Lewis and Heather Sawyer, and Leader HOYER's staff, Keith Abouchar and Michelle Stockwell, as well as a wish for them to make quick work of passing this bill when it gets over to the House.

Of course, I also thank the staff of the HELP Committee, the chairman's staff, Michael Myers, Connie Garner, and Charlotte Burrows, and Brian Hayes with Ranking Member ENZI.

I thank my colleagues on both sides of the aisle who have supported this bill in overwhelming numbers and made it possible to pass the bill and hopefully get it signed into law and advance the original intent of the original Americans with Disabilities Act.

You know, there may not be a lot of people here on the floor of the Senate today, but I can tell you, though, throughout the country there are millions of Americans with disabilities who know what we are doing here. They have been told. They know what we have done over the last couple or 3 years to overturn those Supreme Court decisions. They are waiting anxiously for this bill to be passed, for the House to pass it, and for President Bush to sign it into law so that once again they can go out with full knowledge that they are covered by this civil rights bill, that they can go out and seek employment, that they can travel, that they can seek the accommodations that will make them fully functioning members of our society and knowing that they are covered by the law. So there are millions of Americans with disabilities and their families all over this country today who I know are expressing thanks to all the people who have been involved in getting this done. Again, so many are not here with us today. They know what we are doing, and they are anxiously waiting for this to pass and to get it to the President, and hopefully we will get that done—hopefully by next week.

The last thing was—I thanked a lot of people, but I would be remiss if I did not thank the one person who more than any other set my feet on this course many years ago, who taught me a lot about being disabled, and who taught me a lot about discrimination against people with disabilities. And, of course, I speak of my brother, Frank.

He was here when we passed the original ADA, but he has since passed on. But it was my brother who first said to me many years ago when he was sent to the Iowa School for the Deaf—they called it the Iowa School for the Deaf and Dumb—he said, ''I may be deaf, but I am not dumb.'' It was also my brother who one time said to me that the only thing deaf people cannot do is hear. He wanted to do a lot of things in his life, but because of prejudices, because of discrimination, he was held back and discriminated against. I saw it time after time after time. He was able to persevere and carve out a life of independence and dignity for himself, but I often thought, why did he have to do that? I mean, why did it require an extraordinary effort on his part just to be a contributing member of our society, just to enjoy a lot of things we take for granted?

So I thought so much about that. I thought, you know, if I ever got in a position to do anything about it, I was going to do something. Well, as fortune would have it, I was elected to the House and then later elected to the

Senate and found myself as chairman of the Disability Policy Subcommittee under the tutelage of Senator KENNEDY. We were able to get the first ADA act passed.

I have to tell you a story here, just talking about discrimination. I was sworn into the Senate in January of 1985. I had my brother, Frank; he along with my whole family was here sitting up there in the gallery right back here. I had provided for an interpreter to interpret for my brother as he was watching the proceedings here on the floor of the Senate. Well, then a policeman came out. Actually, one of my brothers said: The policemen are up there and asked the interpreter to leave because she could not be there. I went up to the gallery. I am about to get sworn into the Senate.

I went up to find out what was going on.

The officer said: We cannot let people up in the gallery stand up and do this interpreting.

I said: Why not?

He said: It is against the rules.

What rules?

Well, it is against the rules.

Well, I was furious. So I came down on the floor, and in 1985, you might remember the Senate majority leader was Senator Bob Dole. So I went right to Dole and I said: Senator Dole, here is my problem. I got my brother up there, and they won't let an interpreter interpret.

He said: Really? Well, I will take care of that.

And he took care of it. He took care of it. So we got an interpreter. Of course, now we have closed captioning and all kinds of things now for Senate activities. But, again, it is just that attitude people have. This was in 1985. That would not happen today. Of course, we have access for people who have mobility disabilities to come in, and we have made the Capitol accessible for people with all kinds of disabilities.

But I relate that story as a way of again thanking my brother, Frank, for setting my feet on this path so many years ago. For me, it has been a labor of love, not without its frustrations, not without saying—one day at the Supreme Court, with Bob Dole by my side, listening to the Supreme Court hand down one of these decisions, I said: What could they possibly be thinking? We went out and talked to the press after, Senator Dole and I did. So it has had its frustrations.

We are not to the promised land yet with 60 percent unemployment among people with disabilities. We have a long way to go. But this, the Americans with Disabilities Act, is the civil rights statute that says to people: You cannot discriminate. Just as we passed the civil rights bills that said: You cannot discriminate on the basis of race or sex or national origin or religion, now you cannot discriminate on the basis of disability either, plus you have to take some other steps; we have to have reasonable accommodations. So this is the civil rights statute that emancipates and frees people with disabilities so they can be fully contributing members of our society.

I close my remarks by thanking the President for her indulgence, the indulgence of other Senators for permitting me to speak for so long. As I said, this, for me, for all of my adult life, is a cause to which I have committed myself, much of my staff, much of our time and effort. I am grateful to the leadership of the Senate, both on the Republican and Democratic side, and again to my great friend and partner Senator HATCH for making it possible for us to bring up this bill today and get it passed unanimously. Unanimously. That is even better than what we did with the ADA. We only had six votes against it in 1990. This is unanimous. I think it sends a clear signal that whether you are Republican or Democratic, it does not make any difference—it does not make any difference, we are going to stand behind people with disabilities. We are going to make sure the ADA takes its rightful place once again as the umbrella civil rights statute for all Americans with disabilities.

I thank all of my colleagues. I look forward to the passage of this bill in the House. I look forward to the President hopefully signing it as early as next week.

EXHIBIT 1

AUGUST 21, 2008

Re: The ADA Amendments Act of 2008

Hon. TOM HARKIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR HARKIN: The undersigned groups, representing a broad range of interests, write in support of the ADA Amendments Act of 2008 (S. 3406). This bill introduced on July 31, 2008, had 64 cosponsors as of August 1, with 55 of those joining as original cosponsors.

S. 3406, the ADA Amendments Act, would revise the ADA, in a manner designed to work for both people with disabilities and for entities governed under the law. The bill is a result of sustained efforts between Senators from both sides of the aisle and intensive and thoughtful talks between representatives of the disability community and entities governed by the law. For that reason, we believe that S. 3406 strikes a delicate balance between the needs of individuals with disabilities and the realities experienced by entities including employers and public accommodations, which are covered under the law.

We urge your support in making enactment of S. 3406, the ADA Amendments Act, a reality as soon as Congress returns to work in September. We stand ready to work with you towards that end.

Sincerely,

ABC Business Services, Illinois; Abilities in Motion, Pennsylvania; ADA Watch/National Coalition for Disability Rights; ADA Help, Inc., Florida; Air Force Association; Air Force Sergeants Association; Air Force Women Officers; Associated Alliance of Disability Advocates Center for Independent Living, North Carolina; Alpha-1 Association; Alpha-1 Foundation; ALS Association; Alzheimer's Association; American Association for Affirmative Action; American Association for Respiratory Care; American Academy of Nursing; American Association of Diabetes Educators; American Association of People with Disabilities (AAPD); American Association of University Women; American Autoimmune Related Diseases Association; American Bakers Association; American Cancer Society Cancer Action Network; American Civil Liberties Union (ACLU); American Composites Manufacturers Association; American Council of the Blind; American Diabetes Association; American Federation of Government Employees—Veterans Council.

American Federation of Labor—Congress of Industrial Unions (AFL–CIO); I American Federation of State, County & Municipal Employees (AFSCME); American Federation of Teachers (AFT); American Foundation for the Blind; American Foundry Society; American GI Forum; American Islamic Congress; American Jewish Committee; American Kidney Fund; American Liver Foundation; American Lung Association; American Medical Rehabilitation Providers Association; American Mental Health Counselors Association; American Physical Therapy Association; American Psychological Association; American Society of Employers; AMVETS; ANCOR; Anixter Center, Illinois; Anti-Defamation League; APEERS (Alternative Peer Edu/Enrichment Recovery Society), West Virginia; APSE: The Network on Employment; Arab Anti-Discrimination Committee; The Arc of Tucson, Arizona; The Arc of the United States.

The Arc of Utah; Arthritis Foundation; ARISE, New York; Asian American Justice Center; Associated Builders and Contractors, Inc.; Association of Jewish Family & Children's Agencies; Association of Programs for Rural Independent Living (APRIL); Association of University Centers on Disabilities (AUCD); Asthma and Allergy Foundation of America; Autism Society of America; The Autistic Self-Advocacy Network; AZ Bridge to Independent Living; Bazelon Center for Mental Health Law; BH Electronics, Inc.; Bimba Manufacturing; B'nai B'rith International; Brain Injury Association of America; Breast Cancer Network of Strength; Business and Institutional Furniture; Manufacturers Association; Capital Associated Industries, Inc.; Care4Dystonia, Inc.; Central Conference of American Rabbis; Center for Women Policy Studies; Children and Adults with AttentionDeficit/Hyperactivity Disorder; Christopher and Dana Reeve Foundation.

The Christian Church (Disciples of Christ) in the United States and Canada; CIGNA Corporation; Coastal Health District, Georgia; Coleman Global Telecommunications, LLC; Community Action Partnership; Community Health Charities of America; Community Resources for Independent Living, California; Control Technology, Inc.; COPD Foundation; Council of Parent Attorneys and Advocates; Council of State Administrators of Vocational Rehabilitation (CSAVR); Crohn's and Colitis Foundation of America; Disabled American Veterans; Disability Policy Consortium, Inc.; Disability Rights Wisconsin (WI P&A); DTE Energy Company; Easter Seals; Eastman Chemical; Ellwood Group Inc.; Enlisted Association of the National Guard of the United States; Epilepsy Foundation; Evangelical Lutheran Church in America; Freedom Resource Center for Independent Living, Minnesota; Freedom Resource Center for Independent Living, North Dakota; Friends Committee on National Legislation;

Friends of the National Institute of Dental, and Craniofacial Research.

Georgia Voice That Count; Granite State Independent Living; Guide Dog Foundation for the Blind, Inc.; Hearing Loss Association of America; Hearing Loss Association of America, Manhattan Chapter; Hearing Loss Association of America, Mid Hudson Chapter; Hearing Loss Association of America, North Shore Chapter of Long Island; Hearing Loss Association of America, Queens at Lexington; Hearing Loss Association of America, Western New York Chapter; Heat Transfer Equipment Company; Higher Education Consortium for Special Education; Hindu American Foundation; HR Policy Association; Human Rights Campaign; Huntington's Disease Society of America; Hydrocephalus Association; Idaho State Independent Living Council; Illinois Manufacturers' Association; International Association of Official Human Rights Agencies; International Franchise Association; International Paper Company; Iraq & Afghanistan Veterans of America; Islamic Society of North America; Japanese American Citizens League; Jewish Council for Public Affairs.

Jewish Reconstructionist Federation; J.T. Fennell Co.; Koller-Craft Plastic Products; Lakeside Equipment Corporation; The LAM Foundation; Lambda Legal; Lawyers' Committee for Civil Rights Under Law; Leadership Conference on Civil Rights (LCCR); Learning Disabilities Association of America (LDA); The Leukemia & Lymphoma Society; Life, Inc., Georgia; Liz Thurber Slipcovers; Lupus Foundation of America; The Management Association of Illinois; Manufacturer & Business Association (Erie, PA); March of Dimes; Mental Health America; Michigan Alliance of State Employees with Disabilities (Michigan ASED); Michigan Chapter of Paralyzed Veterans; Michigan Rehabilitation Association; Military Officers Association of America; Molded Fiber Glass Companies; Monadnock Paper Mills, Inc.; Motorola; Mullinix Packages, Inc.

Muslim Public Affairs Council; Myasthenia Gravis Foundation of America; NAACP Legal Defense & Educational Fund, Inc.; National Advocacy Center of the Sisters of the Good Shepard; National Alliance on Mental Illness (NAMI); National Alopecia Areata Foundation; National Association for the Advancement of Colored People (NAACP). National Association for Black Veterans; National Association for Employment of People who are Blind (NAEPB); National Association for Uniformed Services; National Association of Councils on Developmental Disabilities; National Association of County Behavioral Health and Developmental Disability Directors; National Association of Governors' Committees on People with Disabilities (NAGC); National Association of Human Rights Workers; National Association of Manufacturers; National Association of the Physically Handicapped (Manistee County Chapter); National Association of Social Workers; National Association of State Directors of Special Education; National Association of State Head Injury Administrators; National Association of the Deaf; National Center for Learning Disabilities (NCLD); National Congress of Black Women, Inc.; National Council for Community Behavioral Healthcare; National Council of Churches in the USA.

National Council of Jewish Women; National Council of La Raza (NCLR); National Council on Independent Living (NCIL); National Disability Rights Network (NDRN); National Down Syndrome Congress; National Down Syndrome Society; National Education Association (NEA); National Employment Lawyers Association; National Fair Housing Alliance; National Family Caregivers Association; National Federation of Filipino American Associations (NaFFAA); The National Foundation for Ectodermal Dysplasias; National Health Council; National Health Law Program; National Industries for the Blind (NIB); National Kidney Foundation; National Legal Aid and Defender Association; National Marfan Foundation; National Multiple Sclerosis Society; National MS Society, Hawaii Chapter; National Organization for Women; National Organization on Fetal Alcohol Syndrome (NOFAS); National Psoriasis Foundation; National Women's Law Center; Naval Reserve Association; NCEP Brain Injury Rehabilitation Program, Nevada.

NETWORK: A National Catholic Social Justice Lobby; Nevadans for Equal Access, Inc.; New Jersey Protection and Advocacy; NISH; Non-Commissioned Officers Association; Northeast Pennsylvania Manufacturers and Employers Association; Northwestern Mutual; Ohio Disability Action Coalition; Oregon Family Support Network; Organization of Chinese Americans; Osteogenesis Imperfecta Foundation; Our Children Left Behind; The Paget Foundation; Paralyzed Veterans of America; Parent Project Muscular Dystrophy; People Escaping Poverty Project, Minnesota; People First of Nevada; Portland General Electric; PPG Industries; Precision Metalforming Association; Presbyterian Church (USA), Washington Office; Prevent Blindness America; Reserve Enlisted Association; RESOLVE: The National Infertility Association.

RTC Paratransit Evaluation Services, Nevada; Roaring Spring Blank Book Co.; Ryder System, Inc.; SEIU—Service Employees International Union; Self-Advocacy Association of New York State, Inc.; Services for Independent Living, Missouri; Sikh American Legal Defense and Education Fund (SALDEF); Sjogren's Syndrome Foundation; Society for Human Resource Management; Southeast Kansas Independent Living Resource Center, Inc. (SKIL); Southern Champion Tray LP; Spina Bifida Association; State of Nevada TBI Advisory Council; Stuller, Inc.; The Taylor-Winfield Corporation; Teacher Education Division of the Council for Exceptional Children; Texas Association of the Deaf; Textile Rental Services Association of America; Ultra Tech Machinery Inc.; United Cerebral Palsy; United Cerebral Palsy of Central Ohio; United Church of Christ, Justice and Witness Ministries; United Food and Commercial Workers International Union; United Methodist Church, General Board of Church and Society.

Union for Reform Judaism; Unitarian Universalist Association of Congregations; United Jewish Communities; United Spinal Association; Uniweld Products Inc.; U.S. Chamber of Commerce; U.S. Conference of Catholic Bishops; U.S. Psychiatric Association; U.S. Psychiatric Rehabilitation Association; US TOO International; Vanamatic Company; Veterans of Foreign Wars of the United States; Veterans of Modern Warfare; Vietnam Veterans of America; West Suburban Access News Association; Wisconsin Manufacturers & Commerce; Women of Reform Judaism; The Workmen's Circle/Arbeter Ring; World Institute on Disability.

Mr. HATCH. Madam President, this is an important day in our ongoing effort to expand opportunities for individuals with disabilities to participate in the American dream.

Passage of the ADA Amendments Act establishes that the Americans with Disabilities Act will continue to help change lives. Nearly two decades ago, Senator HARKIN and I stood on this same Senate floor as partners in this cause. Of course, my good friend from Iowa, TOM HARKIN, has been a great leader in this area, and others as well.

In 1990, we worked together to produce a compromise that passed the Congress overwhelmingly. We stand here again today to do the same thing.

Why did we need to do this? The Americans with Disabilities Act defines a disability as an impairment that substantially limits a major life activity. It prohibits discrimination on the basis of a present, past, or perceived disability.

As the ADA was put into practice and used in actual cases, the courts had to construe and apply its meaning. In Sutton v. United Airlines, the Supreme Court said that impairments must be examined in their mitigated state to determine whether they constitute a disability.

In Toyota v. Williams, the Court said the definition of ''disability'' must be interpreted strictly to create a demanding standard for qualifying as disabled.

These decisions had the effect of narrowing the ADA's coverage and the protection it affords. Some explain these decisions by saying that the Court ignored what Congress intended in the Americans with Disabilities Act. Others explained them by saying the Court had to reconcile everything Congress said in the ADA.

Either way, when it comes to legislation, when Congress does not like something, Congress can change it, and that is what we are doing today.

The authority over Federal disability policy remains right here with the Congress, and it is our responsibility to establish, change, expand, redirect, or amend it whenever and however we see fit. That is what we are doing today with this bill.

The bill we pass today is the third and final round of a long process that started more than a year ago.

First came the introduction of the ADA Restoration Act, then passage of the House ADA Amendments Act—wonderful work done by our colleagues in the House—and now passage of the Senate ADA Amendments Act.

Stakeholders, including disability, business, and education groups contributed to this process. House and Senate

committees held hearings, and staff participated in what no doubt seemed at times as endless rounds of negotiation.

The result is a true compromise that establishes more generous coverage and protection under the ADA in a way that maximizes consensus and minimizes unintended consequences.

First, the bill removes what the Supreme Court said led it to narrowly construe the ADA in the first place. Congress stated in the ADA that there are 43 million Americans with disabilities. The Supreme Court treated this as a cap and answered the questions regarding mitigating measures and the standard for applying the disability definition to fit under that cap.

Removing that finding removes the cap and allows the Court to construe and apply the definition more generously.

Secondly, the bill lowers the threshold for determining when an impairment constitutes a disability without using new undefined terms.

Removing the finding that served to raise that threshold and using more appropriate findings and purpose language to explain its meaning made departing from the ADA's existing definitional language unnecessary.

Third, the bill directs that the definition of disability be construed in favor of broad coverage. This reflects what courts have held about civil rights statutes in general and what courts held about the ADA in particular before the Toyota decision; namely, that they should be broadly construed to effect their remedial purpose.

I was not comfortable with the open-ended rule of broad construction in the House bill. The rule in our bill parallels a similar provision in the Religious Land Use and Institutionalized Persons Act, a bill I introduced and the Senate unanimously passed in 2002.

Fourth, the bill does what the ADA did not by prohibiting consideration of mitigating measures. The committee reports on the ADA say mitigating measures should be ignored, but the ADA itself does not.

Courts consult committee reports to clarify ambiguous statutory language but cannot use those reports as a substitute for nonexistent statutory language. So we make it clear that with the exception of eyeglasses and contacts impairments are to be considered in their unmitigated state when determining whether they are disabilities.

Fifth, the bill makes the current prohibition of discrimination on the basis of being regarded as having a disability apply to the broader category of impairments. I have to say this is a significant step because individuals will no longer have to prove they have a disability or that their impairment limits them in any way.

The bill balances this by limiting the remedies available under this provision. This is a good example of how we work to balance the impact of the bill and to accommodate the interests of the parties affected by it.

Finally, we tried to minimize the impact this bill would have in the educational arena. While the issues that made this legislation necessary arose in the employment context, any change we make could impact educators. So we affirmed in this bill what the courts have already ruled, that institutions of higher education are not required to fundamentally alter educational standards when providing reasonable accommodations to students with disabilities.

This bill is supported by hundreds of groups on both the disability and business side and by dozens of veterans organizations.

We introduced this bill on July 31 with 55 original cosponsors, and as of today that number tops 70, more than the original ADA. More than two-thirds of the Democratic and Republican caucuses have cosponsored this legislation, and I believe everyone else is for it as well.

This is a great achievement that continues the tradition of the Rehabilitation Act of 1973 and the ADA in 1990 in removing barriers and increasing opportunities for our fellow citizens with disabilities.

The work was long and hard. Many pieces had to be put in the right place for this puzzle to become clear. But the picture that resulted is beautiful indeed.

Our commitment, our obligation, our promise did not end with the ADA, and it will not end with today's passage of the ADA Amendments Act.

I want to particularly thank my friend and colleague, Senator HARKIN, for his continuing leadership, as well as Chairman KENNEDY. He cannot be here today mainly because he is mending up there in Massachusetts. I just chatted with him again yesterday. But he deserves a lot of credit on this bill. Of course, also deserving great credit is the ranking member of the Health, Education, Labor, and Pensions Committee, Senator ENZI, for his support of this bill and for the facilitation of this development, and others as well. All the cosponsors deserve a great deal of credit on this bill.

I want to particularly thank staff members who labored long and hard, including Tom Jipping on my staff, Chris Campbell on my staff, and Michael Madsen on my staff, and Lee Perselay, Pam Smith, and Beth Stein on Senator HARKIN's staff. This bill would not have come along as well as it has without these wonderful staff people who worked so long and prodigiously to help make this work.

There were times when people thought that divergent interests and diverse viewpoints simply could not be reconciled, especially in this area. They thought the same thing back in 1990. Since we came together then to produce the ADA, I knew we would ultimately come together now to produce the ADA Amendments Act, and we did.

I know this will make a real difference in the lives of real people, and for that I am humbled and grateful.

When we argued the original Americans With Disabilities Act on this floor, I mentioned how I carried my brother-in-law, Raymon Hansen, in my arms through the Los Angeles temple of the Church of Jesus Christ of Latter-Day Saints. He weighed very little. He had to go home to an iron lung every night. This young man, who was an athlete in both high school and college, and a great athlete at that, got both types of polio, yet he finished his undergraduate degree in education and went on and got a master's degree in engineering. He worked at Edgerton, Germeshausen & Greer, one of the great engineering firms, and he worked every day, right up until the day he died.

I have to admit I have been in the presence of so many people who have disabilities, major disabilities, who suffer long and hard, but who have more courage, more ability, and more verve than a lot of us who are not suffering from disabilities.

I know Senator HARKIN mentioned his brother and others, and I am sure he will do that again today. I have a great deal of affection for Senator HARKIN, and I had it before this bill back in 1990, but I have certainly had it even more greatly since. He is a good man, and he has a great desire to do what is right in this area, and so do I.

There are millions and millions of people with disabilities who can be very good, functioning members of our society and who will benefit from this bill, and I personally express my gratitude to all of the cosponsors, but especially to Senator HARKIN, Senator KENNEDY, and Senator ENZI. These are great people who are trying to do great things here, and for a very bad election year, this is one of the greatest things we will have done in this whole year. For that, I am truly grateful.

I yield the floor.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

• Mr. KENNEDY. Madam President, I strongly support the Americans with Disabilities Act Amendments Act of 2008, and I commend Senator HARKIN and Senator HATCH for their leadership on this important measure to restore the vitality of the Americans with Disabilities Act. As chairman of the Senate Committee on Health, Education, Labor and Pensions, which has jurisdiction over this legislation, I know too well how urgently this legislation is needed to protect the civil rights of persons with disabilities.

America's strength and success as a nation have been fueled by its founding promise of equal justice for all. Yet for much of the Nation's history, persons with disabilities were treated as people who needed charity, not opportunity. Out of ignorance, the Nation accepted discrimination for decades, and yielded to fear and prejudice.

In the 35 years since passage of the Rehabilitation Act of 1973, which outlawed discrimination against persons

with disabilities in programs and activities receiving Federal funds, our Nation has made great progress toward making the promise of equal justice a reality for such persons. The Fair Housing Amendments Act of 1988 continued this progress by extending housing protections to persons with disabilities, but it was the Americans with Disabilities Act of 1990 which opened wide the doors of opportunity by providing long-overdue protections against job discrimination and greater access to public accommodations. The 1990 act was a giant step toward guaranteeing that persons with disabilities would be full participants in the American dream.

Unfortunately, however, in many job discrimination cases, the courts have interpreted the act so narrowly that many of us who were original sponsors of the act barely recognize it today. Courts have ruled that many of the very persons the act was designed to protect are not covered by its provisions. These decisions have improperly shifted the emphasis in ADA cases away from the central question of whether discrimination occurred.

The bill we are considering today reaffirms Congress's intent that the courts should interpret the ADA broadly to fulfill its important purpose. In deciding whether to grant relief under the act, courts should respect the act's goal of expanding opportunities for persons with disabilities.

In particular, courts have narrowed the first prong of the ADA's definition of disability, which defines a disability as a physical or mental impairment that ''substantially limits'' one or more life activities. As explained in the statement of managers, the bill seeks to remedy this problem by clearly rejecting the reasoning of cases like Toyota Motor Manufacturing, Kentucky, Inc. v. Williams in 2002, in which the Supreme Court held that this prong of the definition must be ''be interpreted strictly to create a demanding standard for qualifying as disabled,'' and that ''substantially limits'' means ''prevents or severely restricts.''

The bill also rejects the Supreme Court's earlier holding in Sutton v. United Air Lines, which also imposed too heavy a burden on plaintiffs seeking relief under the act.

Although the House of Representatives' consideration of the pending legislation was of significant assistance to the Senate on this issue, in one important respect the Senate diverged from the reasoning expressed in the reports of the committees of jurisdiction in the House. The House version of the bill defined ''substantially limits'' as ''materially restricts,'' and the House Committee reports explained this term with reference to a spectrum or range of severity. The term ''materially restricts'' in the House bill and these portions of the House reports set an inappropriately high standard for the determination of whether an individual is substantially limited in a major life activity and pose the risk of confusing the threshold determination of who is covered by the act. Fortunately, our Senate bill avoids this problem and provides the broader coverage needed to correct the excessively restrictive and unintended interpretation in the litigation.

In addition, the bill's findings and purposes section states that ''the question of whether an individual's impairment is a disability under the ADA should not demand extensive analysis.'' This statement makes clear that courts normally should not require an extensive examination of an individual's disability in cases under the ADA. In such cases the main focus should be on whether discrimination has occurred, not on the threshold issue of whether an individual's impairment qualifies as a disability. As the Senate Statement of Managers explains, courts should not interpret this statement to constrain plaintiffs from offering evidence needed to establish that their impairment is substantially limiting. Of course, this statement in the bill does not impose any limitation on what evidence the party with the burden of proof on the issue of disability may offer. Indeed, such a position would be inconsistent with clearly established evidentiary and procedural rules, and constitutional requirements as well. The party with the burden of proving disability is free to introduce all the evidence of disability that he or she believes is appropriate, consistent with evidentiary and procedural rules. As the Equal Employment Opportunity Commission has stated in a related context, the plaintiff's evidentiary burden is minimal.

Our goal in this bill is to greatly enhance the protections against discrimination for persons with disabilities, and I hope these clarifications will avoid further confusion in future litigation. I am proud to join with Senators HARKIN and HATCH and the other sponsors in support of the act, and I strongly urge the Senate to approve it.●

Mr. BARRASSO. Madam President, this act has opened the door to hundreds of thousands of individuals to actively participate and contribute to our great Nation. It has raised the conscience of our Nation regarding disabilities and the impact they have on their lives. The fair treatment of the citizens of the United States is paramount. Every citizen, regardless of the obstacles in their lives, should have the opportunity to work, live and fully participate in our society.

There are many individuals with disabilities who are exceptional physicians and professionals. It is clear that situations will arise in which an individual desiring to become a licensed physician has a legitimate disability and a reasonable accommodation can be made during standardized testing.

Licensing boards have the responsibility to accurately measure an applicant's skills and abilities to practice in a professional field. The purpose of standardized examinations is to create a set environment in which to carefully determine and ensure that applicants have the knowledge, skill, and ability to perform in the real world. Certain performance measurements can only be evaluated under set parameters. It is vital that standardized testing organizations not be required to fundamentally alter key performance measurements when providing reasonable accommodations to students with disabilities.

As a doctor, I understand the need to ensure that future physicians have the ability to safely and skillfully provide medical care. Patients should not have to worry about whether their treating physician is qualified.

Public health and safety is based on the ability of these physicians to work under pressure, respond quickly, and do so in a manner that protects the well-being of the patient. The real world requires a physician to concentrate and think clearly, often within a very small timeframe.

Licensed physicians throughout the country are required to take a standardized test to meet the requirements expected of the profession. Determining whether an accommodation is reasonable should be left to the licensing board. When a testing organization or a licensing board has made a decision in good faith about an appropriate accommodation, the decision should be given great deference. This is particularly true in light of the important role these examinations play in the licensing process and the safety of the general public.

It is important that the integrity of standardized tests for the licensing of professionals in the field of medicine is maintained. The legislation does not require accommodations which would alter key performance measurements. There is no record that this legislation would require standardized testing organizations, such as the State Boards of Medicine, to fundamentally alter their examinations with accommodations that will undermine the essential purpose of their exam.

Mr. DURBIN. Madam President, in passing the ADA Amendments Act of 2008 on this day—September 11—the Senate has managed to recapture, at least for a time, the sense of unity and purpose that sustained our nation on this day 7 years ago. This is not a Democratic or Republican victory. This is a major victory for all Americans.

The Americans with Disabilities Act is one of the major civil rights laws in our nation's history, but recent court decisions have narrowed its scope and mistakenly excluded many people who should be protected.

The Supreme Court has created a cruel catch-22: If you can manage your disability you might not be protected by the ADA. People end up with terrible choices. Should I take the medication I need to stay healthy and be denied the protections of the ADA? Or do

I stop taking my medication so that I can be protected from discrimination? That is not what Congress intended when it passed the ADA.

By passing the ADA Amendments Act, the Senate is undoing the damage caused by the Supreme Court and reaffirming the principle that America will not tolerate discrimination based on real or perceived disability, fears and stereotypes.

America has made real progress since President George H.W. Bush signed the ADA in 1990. Many of the physical changes the ADA has brought about—like curb cuts—benefit all Americans, not just those with disabilities. Because of the ADA and other disability rights laws millions of Americans with disabilities have gained access to public accommodations, quality educations, and equal housing opportunities.

But too many people remained locked out of the workplace. Employment rates for men and women with disabilities have actually declined steadily since the ADA became law. Today, more than 60 percent of working-age Americans with disabilities are unemployed, and Americans with disabilities who do work are almost three times more likely to live in poverty than workers without disabilities. That is wrong, and it must end.

The march of progress in America can be marked by the expansion of freedom. Slaves who were denied full citizenship under our Constitution were given their rights with amendments after our Civil War and civil rights legislation almost a century later. Women denied the right to vote in America for generations finally won that right a century ago.

It is time indeed, it is past time—to expand our concept of freedom and acknowledge the rights of another group of Americans who have suffered discrimination through history: people with disabilities. It is my hope and expectation that the House and Senate can work together to resolve minor differences between our two bills and send the President a bill that he can sign that will protect all Americans with disabilities.

Mr. DODD. Madam President, I rise to support wholeheartedly the ADA Amendments Act of 2008. Nearly 20 years ago Congress passed the groundbreaking Americans with Disabilities Act. Because of its enactment and implementation, our country has made progress in eliminating the historical stigma previously associated with disability and guaranteeing basic civil rights and liberties to people with disabilities. I was a proud supporter of the ADA then, and I am a strong supporter of the ADA Amendments Act of 2008 now. In the years since the ADA became law, the courts have inappropriately limited its scope, and many Americans with disabilities have been denied the rights the law was intended to give them. This legislation will serve to ensure that those rights are protected and that people with disabilities are fully protected. It is my hope that this legislation will also help America become more accepting of diversity.

I would like to take a moment to applaud Senator HARKIN for his leadership on the ADA. Without his leadership neither the ADA, nor this legislation, would have been possible. I also would like to praise my good friends Senator KENNEDY and Senator HATCH, whose commitment to the issue made the passage of this legislation possible.

For decades, we have fought for the civil rights of people with disabilities, combating the antiquated mindsets of segregation, discrimination, and ignorance. Our Nation has come from a time when the exclusion of people with disabilities was the norm. We have come from a time when doctors told parents that their children with disabilities were better left isolated in institutions. We have come from a time when individuals with disabilities were not considered contributing members of society. Those times have thankfully changed. The passage of the ADA in 1990 provided the first step toward that change our country so desperately needed.

Although we have come along way in the past 18 years, the Americans with Disabilities Act has not afforded the full protections that this antidiscrimination statute originally intended to provide. The law has been repeatedly misinterpreted by the courts that have used an extremely narrow definition of disability. This definition is so narrow that many defendants with clear disabilities cannot even get their case heard in a courtroom because they do not qualify as having a disability. People with disabilities excluded from protections under the ADA include those with amputations, muscular dystrophy, epilepsy, diabetes, multiple sclerosis, cancer, and intellectual disabilities.

Ultimately, a series of Supreme Court rulings established precedents that leave many of our fellow citizens with disabilities little or no protections under current law. These decisions created a platform for future courts to say that a person does not have a disability when they benefit from mitigating measures such as medications, therapies, or other corrective devices. Ironically, this means that people with disabilities who use measures such as assistive technology to help them lead more self-sufficient lives are ultimately not protected from discrimination related to their disability. The Supreme Court decisions further narrowed the definition of disability by imposing a strict and demanding standard to the definition of disability—barring Americans coping with intellectual disabilities from the law's protections.

Equal protection under the law in the United States of America is not a privilege, but rather, it is a fundamental right due every citizen of our Nation, regardless of race, gender, national origin, religion, sex, age, or disability. It is unacceptable to deny any individual his or her right to those protections because of a misconstrued definition of disability. Our country has an obligation to its citizens to ensure that their fundamental rights are protected, and, if those rights are violated, that the option of recourse is available.

This antidiscrimination legislation would move us forward as one Nation in the direction that was intended 18 years ago. If this bill is signed into law, it will provide much needed clarification on the definition of disability, covering those individuals that rightly need protections under this law. The bill rejects the findings of the Supreme Court cases and specifies that mitigating measures are not to be considered in disability determining and clarifies that the definition should be more broadly interpreted.

Fortunately, we are a changing society, and we have come a long way since those times of segregation and stigma. Recognizing that our society needs to take yet another step to improve the civil rights of our fellow citizens, I urge my colleagues to join with us and pass the ADA Amendments Act of 2008.

I sincerely hope my colleagues will join me in bettering our country by passing the ADA Amendments Act. As we are a just society, I will continue to fight for the rights of my fellow Americans with disabilities so that we all have an equal chance to achieve the American dream. I urge my fellow colleagues to support this essential piece of legislation on behalf of the American people.

Mr. HARKIN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GRASSLEY. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TAX POLICY

Mr. GRASSLEY. Madam President, today I wish to continue my discussions about one of the big choices facing voters this fall. That choice is which of our colleagues, Senator MCCAIN or Senator OBAMA, should we follow in terms of future tax policy. I speak as ranking member and former chairman of the Committee on Finance that has jurisdiction over tax policy.

In recent weeks—when I say in recent weeks, I mean in July because we weren't in session in August—I have talked about the history of party control and the likelihood of broad-based tax increases. I will use the tax increase thermometer—and that thermometer is up here—to point out history. I have discussed the specific precedent of the 1992 campaign with its promise of middle-class tax cuts and