

NCD

National Council on Disability

The Americans with Disabilities Act Policy Brief Series: Righting the ADA

No. 4

Broad or Narrow Construction of the ADA

December 16, 2002

In its decisions in the cases of *Sutton v. United Airlines*, *Murphy v. United Parcel Service*, and *Albertson's, Inc. v. Kirkingburg*, the Supreme Court of the United States made rulings that narrowed the interpretation of the concept of “disability” as that term is used in the Americans with Disabilities Act (ADA). In *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, the Court expressly declared what those prior decisions had strongly suggested—that the Court was embracing a view that the elements of the definition of “disability” in the ADA “need to be interpreted strictly to create a demanding standard for qualifying as disabled” (122 S.Ct. at 691).

This policy brief examines the language and legislative history of the ADA, and the legal principles in place at the time it was enacted, to determine what information can be found there regarding how narrowly or broadly Congress intended the definition of disability in the ADA to be construed, and to ascertain whether the Supreme Court’s narrow construction of the definition is consistent with or antagonistic to the statutory language, legislative history, and previously recognized legal principles.

CIVIL RIGHTS LAWS SUCH AS THE ADA HAVE TRADITIONALLY BEEN INTERPRETED LIBERALLY

The ADA falls within our Nation’s proud tradition of civil rights laws—laws that promote equal opportunities by outlawing discrimination. The ADA is manifestly a civil rights measure, one that is designed to remedy the problem of discrimination on the basis of disability. Upon his signing of the ADA into law, President George H. W. Bush heralded it as an “historic new civil rights act.” While ADA bills were pending in Congress, Attorney General Thornburgh, testifying on behalf of the Administration, termed the ADA “comprehensive civil rights legislation.” Senate and House Committee ADA reports characterized the Act as responding to the “need for omnibus civil rights legislation” and for “enacting comprehensive civil rights legislation for people with disabilities.” The House Judiciary Committee reports described the ADA as providing to persons with disabilities “the same civil rights protections provided to women and minorities.” Numerous statements during congressional debates on the ADA referred to it as civil rights legislation. The executive director of the Leadership Conference on Civil Rights called the Americans with Disabilities Act “the most comprehensive civil rights measure in the past two and a half decades.” The Department of Justice’s ADA regulations declare that the ADA “provides comprehensive civil rights protection to individuals with disabilities” On July 26, 2002, the 12th anniversary of the signing of the ADA, President George W. Bush proclaimed the Act to be “one of the most compassionate and successful civil rights laws in American history.”

A clear tradition of American law is that civil rights laws and other remedial statutes are to be construed liberally to achieve their remedial purposes. The classic statement in decisions of the Supreme Court has been that such legislation “must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results.”¹⁴ It is well-settled that

*The Americans with
Disabilities Act Policy Brief
Series: Righting the ADA*

civil rights legislation is a type of “remedial” legislation that warrants such favorable interpretation². In his dissenting opinion in the *Sutton* case, Justice Stevens, joined by Justice Breyer, articulated this tradition as follows:

It has long been a “familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes.” *Tcherepnin v. Knight*, 389 U.S. 332, 336 (1967). Congress sought, in enacting the ADA, to “provide a ... comprehensive national mandate for the discrimination against individuals with disabilities.”

He noted that even in situations involving classes of individuals falling outside “the core” or “immediate concern” of anti-discrimination prohibitions under other civil rights statutes, the Court had consistently construed those statutes to include comparable classes within their coverage. As an example, he observed that the Court had interpreted Title VII of the Civil Rights Act of 1964 to prohibit discrimination against Hispanic-Americans, Asian-Americans, and Caucasians, despite the fact that Congress focused almost entirely on the problem of discrimination against African-Americans when it enacted Title VII. He might also have pointed out that the courts have ruled that gender discrimination proscriptions can be invoked by males as well as females, that discrimination based on a person’s national origin is unlawful no matter what the country of origin happens to be, and that religious freedom is guaranteed to atheists and agnostics as well as to members of traditional deistic religions.

It was, then, quite a startling departure from the traditional practice in construing civil rights provisions for the Court to rule in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* that it was going to “interpret[] strictly” the elements of the definition of disability in the ADA to “create a demanding standard for qualifying as disabled.” Strict interpretation is the exact opposite of the customary application of liberal or broad interpretation to civil rights laws. And the element of the ADA accorded this strict interpretation was not some minor or secondary provision. It was the critical aspect of who is eligible to be protected by the law—the gateway to all the protections the ADA provides.

WHAT CONGRESS SAID ABOUT BREADTH VS. NARROWNESS OF THE ADA AND ITS DEFINITION OF DISABILITY

The deviation from the tradition of broad interpretation of civil rights laws could potentially be explained by congressional indications in the language or legislative history of the ADA that Congress intended a severe, exacting interpretation. A review of the statutory language and legislative record, however, discloses no such congressional intent of a restrictive application of the ADA.

Congress was quite clear that it intended the ADA to be “comprehensive.” The long title of the ADA declares it to be “An Act to establish a clear and comprehensive prohibition of

*The Americans with
Disabilities Act Policy Brief
Series: Righting the ADA*

discrimination on the basis of disability.” The purposes section of the statute identifies as the first objective of the Act: “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” The ADA also includes congressional findings that the segregation and isolation of individuals with disabilities is “a serious and pervasive social problem;” that such individuals “continually encounter various forms of discrimination;” that, unlike those protected by other civil rights laws, people with disabilities “have often had no legal recourse to redress such discrimination;” and that “the continuing existence of unfair and unnecessary discrimination and prejudice” results in denial of equal opportunity and engenders dependency and nonproductivity.

To address this “pervasive,” “continual,” “unfair and unnecessary,” unredressed discrimination, Congress declared, in other purpose statements, that it was invoking “the sweep of congressional authority” and that it wanted to impose “strong” standards prohibiting discrimination. In other words, in the ADA Congress expressly made use of the full scope of its legislative authority to fashion a comprehensive, efficacious remedy for a problem it found to be pervasive and continuing in American society. In pursuit of this ambitious enterprise, Congress adopted as the definition of disability in the ADA the expansive three-prong definition it had inserted in the Rehabilitation Act in 1974. The scope of that definition as it had been interpreted and applied prior to the enactment of the ADA will be discussed in a later section of this paper. The statutory language of the ADA all points in a single direction—toward the application of an inclusive, broad interpretation of the law’s provisions.

The legislative history underscores the congressional intent that the ADA be applied expansively to address discrimination on the basis of disability on a broad scale. While the ADA bill was pending in the Senate, Attorney General Thornburgh testified on behalf of President George H. W. Bush that “[o]ne of its most impressive strengths is its comprehensive character.” ADA Committee reports described the ADA as “responding to a compelling need” for a “comprehensive national mandate for the elimination of discrimination” on the basis of disability. The reports also referred to the ADA as “omnibus civil rights legislation.” The “comprehensive” and “omnibus” nature of the ADA was repeatedly cited by individual members of the Senate and House of Representatives during congressional debates on the ADA. In his comments on signing the ADA, the first President Bush termed it “the world’s first comprehensive declaration of equality for people with disabilities,” and in his formal written statement observed that “[t]his legislation is comprehensive because the barriers faced by individuals with disabilities are wide-ranging.”

The language and legislative history of the ADA indicate that Congress intended the comprehensiveness of the ADA to apply to the definition of disability the Act incorporates. In the ADA, Congress adopted the Rehabilitation Act definition of disability that contains three separate prongs—actual disabilities, a record of disability, or being regarded as having a disability.

Congress knew how to frame a more restrictive definition of disability, as it had done in Social Security benefits legislation and in the predecessor definition of disability in the Rehabilitation Act. It selected the three-prong formulation with full awareness that it was expansive in scope.

The ADA Committee reports indicate that Congress intended the definition of disability to be comprehensive; they state that the Act does not include a list of all the specific conditions, diseases, or infections that constitute physical or mental impairments under the first prong of the definition of disability “because of the difficulty of ensuring the comprehensiveness of such a list” Moreover, the reports stress the breadth of the third prong (“regarded as”) of the definition of disability that includes within the definition anyone who is excluded from activities because of a covered entity’s negative reactions to the person’s condition. Examples cited in the reports include burn victims, persons with epilepsy or diabetes (even if controlled by medication), people excluded because they use hearing aids, individuals excluded because of back abnormalities revealed on an x-ray, or persons denied jobs because of an employer’s belief that customers would have a negative reaction to the person’s condition or appearance.

Congressional critics of the ADA claimed that the definition of disability in the Act was too broad; no one suggested that the definition was a narrow one. Indeed, concerns by some that the definition was too inclusive led to an amendment adopted in the Senate to expressly exclude eleven conditions that a few Senators felt were objectionable. Neither proponents nor opponents contended that the definition of disability in the ADA would be given a narrow or restrictive interpretation, different from the “comprehensive” reading Congress intended for the rest of the ADA.

An eloquent description of the expected breath of ADA coverage of individuals with disabilities was provided by Representative Les AuCoin as the ADA was being debated on the House floor:

The Americans with Disabilities Act is more than just another law; it is a declaration of independence for all Americans with physical or mental disabilities or those afflicted by disease. It says that everyone has the same right as everyone else to hold a job, to ride a bus or to stay at a hotel, without fear of discrimination.
(136 *Cong. Rec.* H2449 (daily ed. May 17, 1990))

CONGRESS WAS ENTITLED TO EXPECT THAT THE DEFINITION WOULD BE INTERPRETED EXPANSIVELY BECAUSE THE COURTS AND REGULATIONS HAD INTERPRETED THE IDENTICAL DEFINITION IN THE REHABILITATION ACT BROADLY

At the time Congress chose the three-prong definition of disability in the ADA, it knew that the essentially identical definition in the Rehabilitation Act had been interpreted very broadly in

*The Americans with
Disabilities Act Policy Brief
Series: Righting the ADA*

administrative regulations and court decisions. The Supreme Court, in particular, had displayed a lenient interpretation of what a plaintiff needed to show to invoke the protection of the statute. At the time the ADA was adopted the most authoritative and recent decision of the Supreme Court on the meaning of disability under the Rehabilitation Act was *School Board of Nassau County v. Arline*. A previous paper in this series discussed the expansive and non-technical view of the definition that the Supreme Court took in that case. See, NCD's *A Carefully Constructed Law* (October 30, 2002) <http://www.ncd.gov/newsroom/publications/carefullyconstructedlaw.html>. The Supreme Court had observed in 1979, and repeated in *Arline* in 1987, that in adopting the last two categories of the three-prong definition, Congress had expanded the definition to include persons who "may at present have no actual incapacity at all."³ The Court's lenient interpretation of the definition led it to have little difficulty in finding that Ms. Arline had a disability under the statute. Several of the ADA Committee reports discussed the *Arline* ruling with approval in discussing the ADA definition of disability.

The Supreme Court, in its *Bragdon v. Abbott* and *Williams* decisions, had acknowledged that "Congress drew the ADA's definition of disability almost verbatim from the definition of 'handicapped individual' in the Rehabilitation Act." It also recognized that regulations interpreting the Rehabilitation Act were entitled to considerable persuasive authority in interpreting the ADA, since "Congress' repetition of a well-established term generally implies that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations." It stressed in both decisions that Congress had done more in the ADA than implicitly suggest such a construction; it had adopted a specific statutory provision directing that nothing in the ADA should "be construed to apply a lesser standard than the standards applied under Title V of the Rehabilitation Act" or under "the regulations issued by Federal agencies" to implement those Rehabilitation Act provisions. (42 U.S.C. § 12201(a))

The broad scope of the Rehabilitation Act definition of disability (originally "handicap") was recognized from its inception. When Congress first established the three-prong definition in 1974, the Senate Committee report declared that it had developed the new definition because the prior Rehabilitation Act definition had proven "far too narrow and constricting...." (S. Rep. No. 93-1297, at 63) In 1977, when the Department of Health, Education, and Welfare issued the original Section 504 regulations that became the model for regulations issued by a multitude of other federal agencies, the Department noted that some commenters had contended that the definition of "handicapped person" (subsequently "individual with a disability") was "unreasonably broad." The Department responded that the statutory definition left it with "no authority ... to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps." Faced with critics' claims that the regulatory definition was too broad, the Department found that the statutory definition was itself too broad to permit the Department to narrow it by regulation.

Moreover, in a conclusion that the ADA Committee reports and ADA regulations would later echo, the Department of Health, Education and Welfare declined to set forth a list of diseases and

conditions constituting physical or mental impairments under the definition “because of the difficulty of ensuring the comprehensiveness of any such list.”

In the ADA, Congress chose to replicate a definition of disability from the Rehabilitation Act, a definition that had been recognized as broad and comprehensive in authoritative regulations and in the courts. Congress was entitled to expect that the definition of disability in the ADA would be accorded a broad and inclusive interpretation.

THE COURT’S “MISERLY” APPROACH TO THE DEFINITION OF DISABILITY

Despite all the reasons for interpreting the ADA definition of disability expansively, the Supreme Court announced in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* that it was going to interpret the definition strictly and apply a demanding standard for establishing a disability under the Act. Justice Stevens, in his earlier dissent in *Sutton*, had contended that “in order to be faithful to the remedial purpose of the Act, we should give it a generous, rather than a miserly, construction.” In *Williams*, the Court opted for the “miserly” approach.

A close examination of the Court’s opinion in *Williams* discloses that the Court ultimately offered only a single justification for applying a restrictive construction to the definition of disability—the introductory ADA finding that 43 million people have disabilities. The Court’s use of the 43 million figure, including its ill-founded assumptions that Congress intended the figure to have a degree of mathematical exactitude and that only that number of people were to be protected by the ADA, are addressed in some depth in a prior policy brief in this series. See, NCD’s *Significance of the ADA Finding That Some 43 Million Americans Have Disabilities* (November 15, 2002) <http://www.ncd.gov/newsroom/publications/43million.html>. Suffice it to say here that the 43 million finding is far too insubstantial a reed to support the weighty and jarring conclusions the Court erects on it. And the Court’s analysis of the finding represents a very rare instance in which a congressional finding has been so intensely scrutinized and treated as determinative on a pivotal issue by the Supreme Court.

The harshness of the Court’s stance toward the definition of disability in *Williams* was exhibited in subsequent portions of the Court’s opinion. This can be seen in the Court’s interpretation of key terms in the definition. The terms “major” and “substantially limited” each have a range of possible meanings, some quoted in the Court’s opinion. Yet the Court selected highly restrictive interpretations for both terms. The Court identified a range of dictionary definitions for the term “substantially” in the phrase “substantially limits;” they varied from “considerable” or “to a large degree” to “essential.” The Court initially observed that the word “substantial” clearly precluded impairments that interfere in only a minor way. The Court also noted that the dictionary definition of the term “major” in the phrase “major life activities” is “important” or “greater in dignity, rank, importance, or interest.” After stating that the terms needed to be interpreted strictly, the Court settled on restrictive interpretations of both terms. It transformed the phrase “substantially limits” to mean “prevents or severely restricts,” thus selecting “severely restricts”

in preference to less extreme options such as “considerably restricts” or “in more than a minor way.” And the Court declared that major life activities “refers to those activities that are of central importance to daily life.” The word “central” was inserted by the Court and the meaning of “major” was thus transformed from “important” or even “greater in importance” to include, in effect, only those of the greatest importance.

The Court also added a further nonstatutory restriction to the concept of major life activities. The ADA’s definition of disability refers to “the major life activities of such individual.” The Court’s interpretation first restates the concept as “activities that are of central importance to daily life.” Subsequently, the Court converted the reference to “daily life” into “most people’s daily lives.” The task of an ADA plaintiff in showing a limitation to a major life activity “of such individual” is obviously much different and much less difficult than proving a limitation to an activity that is “of central importance to most people’s daily lives.” The change is from the particular to the universal, from the concrete to the conjectural, from a matter to be proven by personal testimony or immediate facts to one that may require the testimony of expert social science or vocational witnesses.

Not only is this heightening of the standard for establishing a disability under the Act contrary to the language of the definition, it is also directly contradictory to the ADA principle recognized elsewhere in the *Williams* decision and in other ADA decisions of the Court that the determination of whether an individual is substantially limited in a major life activity must be made on an individualized, case-by-case basis. The Court in *Williams* quoted with approval from the EEOC’s ADA regulations that “[t]he determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual.” The Court also added that “an individualized assessment of the effect of an impairment is particularly necessary when the impairment is one whose symptoms vary widely from person to person. Carpal tunnel syndrome, one of [Williams’] impairments, is just such a condition.” The Court does not explain how these principles can possibly be consistent with the change in focus from the major life activities of the individual to activities “of central importance to most people’s daily lives.” This unwarranted revision of the statute was critical to the specific determinations to be made in the *Williams* case. The evidence on the record made it absolutely clear that lifting and holding her arms at shoulder level was a major life activity for Ms. Williams in her particular employment situation. Without the Court’s narrow take on the definition, it should not have mattered whether these activities were important in other people’s lives.

Almost as an afterthought, the Court in *Williams* threw in an additional restriction, not relevant in the case itself and not found in the statute (although it is in the EEOC’s regulations) that an impairment’s impact must also be permanent or long-term. In each of these restrictive positions on the definition of disability, the Court made good on its declared intention to strictly interpret the elements of the definition to turn it into “a demanding standard for qualifying as disabled.”

The Court proved itself fully up to the task of taking a “miserly” approach to dispensing the ADA’s protection against discrimination.

CONCLUSION

The Court’s position that the definition of disability is to be construed narrowly ignores and contradicts clear indications in the statute and its legislative history that the ADA was to provide a “comprehensive” prohibition of discrimination based on disability, and legislative, judicial, and administrative commentary regarding the breadth of the definition of disability. It also flies in the face of an established legal tradition of construing civil rights legislation broadly. Congress knowingly chose a definition that to that time had been interpreted broadly in regulations and the courts; it was entitled to expect the definition to continue to receive a generous reading. The Court’s harsh and restrictive approach to defining disability—an approach that places difficult, technical, and sometimes insurmountable evidentiary burdens on persons who have experienced discrimination—was unwarranted and highly unfortunate.

1. *Voris v. Eikel*, 346 U.S. 328, 333 (1953); *Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249, 268 (1977); *Director, OWCP v. Perini North River Associates*, 459 U.S. 297, 315-16 (1983); *Estate of Covart v. Nicklos Drilling Co.*, 505 U.S. 469, 502 (1992); *Potomac Elec. Power Co. v. Director, OWCP*, 449 U.S. 268, 281 (1980); *Reed v. the Yaka*, 373 U.S. 410, 415 (1963); *Baltimore & Phila. Steamboat Co. v. Norton*, 284 U.S. 408, 414 (1932).

2. *Felder v. Casey*, 131, 153 (1988) (“remedial objectives of federal civil rights law”); *O’Sullivan v. Felix*, 233 U.S. 318, 324-25 (1914) (civil actions under Civil Rights Act are remedial); *Burnett v. Grattan*, 468 U.S. 42, 49 (1984) (“the broadly remedial purposes of the Civil Rights Acts”). *See, also*, *Patterson v. McLean Credit Union*, 491 U.S. 164, 181 (1989) (“detailed remedial scheme” of Title VII of Civil Rights Act of 1964).

3. *Southeastern Community College v. Davis*, 442 U.S. 397, 405-06 n. 6 (1979); *School Board of Nassau County v. Arline*, 480 U.S. 273, 279 (1987). The Court quoted from S. REP. NO. 1297, 93d Cong., 2d Sess. 50 (1974), (*reprinted in* 1974 U.S.C.C.A.N. 6400).

The National Council on Disability wishes to acknowledge the contributions of Professor Robert L. Burgdorf Jr. to this policy brief.

*The Americans with
Disabilities Act Policy Brief
Series: Righting the ADA*