

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

BACKGROUND ON LEGISLATION

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

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

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

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