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 policies that will be put in place before September 30, 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.’

That said, 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 was created 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 overseas 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 implement our 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, the majority is seeking 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 delaying 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 action from the majority leadership. 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 6 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 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 mean 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) 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.—Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended by adding—

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

‘‘(II) use of assistive technology;”

(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—

‘‘(I) qualified interpreters or other effective methods of making orally delivered materials available to individuals with hearing impairments;

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

‘‘(III) acquisition or modification of equipment or devices; and

‘‘(IV) 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, 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 “discriminating 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 (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(b) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(b)) 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 12132(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12123(a)) is amended by striking “the term ‘qualified individual with a disability’” and all that follows through “at that time.”

SEC. 6. RULES OF CONSTRUCTION.
(a) Title V of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) is amended—
(1) by adding at the end of section 501 the following:

(b) Benefits Under State Worker’s Compensation Laws.—Nothing in this Act alters the standards for determining eligibility for benefits under State and Federal disability benefit programs.

II. BACKGROUND AND NEED FOR LEGISLATION
SEC. 7. CONFORMING AMENDMENTS.
Section 7 of the Rehabilitation Act of 1973 (29 U.S.C. 796) 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 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 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 has had the effect of reducing and comprehensive national mandate for the elimination of discrimination on the basis of disability. In particular, the ADA Amendments Act amends the definitions of disability by providing clarification and instruction about the terminology used in the definition, by expanding the definition, and by clarifying that 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 address 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 the ADA to provide that no covered entity may require that an individual with a disability be able to perform a function as an essential function of an employment position. The bill provides that an individual with a disability is a qualified individual in an employment position if the individual is able to perform the function with reasonable accommodation, unless the individual cannot perform the function with reasonable accommodation because of a specified physical or mental inability. The bill also provides that impairments that are episodic or in remission are to be assessed in an active state.

The bill removes from the third “regarded as” prong of the disability definition the requirement that an individual demonstrate to others that he or she has been subjected to an action prohibited under the Act because of an actual or perceived physical or mental impairment. However, the bill retains the specification that the prohibited action must have occurred.

Fourth, the bill prohibits consideration of mitigating measures, such as assistive technology, accommodations, or modifications when determining whether an individual constitutes a disability. This provision and relevant purpose language reflect 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 an impairment that is episodic or in remission is to be assessed in an active state.

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. Conformity to those amendments to 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 whether a disability existed as a threshold question 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 v. EFS Inc. and Toyota v. Williams, there must be continuing evidence that the plaintiff’s condition or impairment is a substantial limitation on a major life activity. The substantiality of the limitation need not be as severe or as permanent as the courts have previously required, but must be more than de minimis. This standard is more predictable, and the Administration of President George W. Bush 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 individuals with chronic health conditions, have the opportunity to pursue the American dream. This bill lowers the standard for determining disability and reaffirms the intent of Congress once again demonstrates the commitment of this Congress to the primary issue of discrimination.

The purpose of this bill is to reaffirm the intent of Congress that impairments must be considered in all facets of society, including the workplace. The resulting need for further judicial scrutiny of the ADA's prohibition on discrimination under 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 legal conclusions in the ADA that have been interpreted by the Supreme Court to require a narrow definition of disability must be considered in an individual basis. What will change is the standard required for making this determination. This bill lowers the standard for determining what constitutes a disability and reaffirms the intent of Congress that the definition of disability in the ADA is to be interpreted broadly and inclusively.

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. In the ordinary course of medicine, physical and contact lenses, impairments must be examined in their unmitigated state.

The purposes are specifically incorporated into the statement of construction providing that the term “substantially limits” shall be construed consistently with the findings and purposes of the ADA. The purpose of this bill is to reaffirm the intent of Congress together with the rule of construction providing that the definition of disability shall be construed in favor of broad coverage of individuals with disabilities, rather than stringently.

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.

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.3196, the House of Representatives attempted to accomplish this goal by stating that the key phrase “substantially limits” means “materally restricts” in order to convey that Congress intended to depart from the strict and demanding standard established by the Supreme Court in Sutton and Toyota.

We have concluded that adopting a new, undefined term that is subject to widely divergent interpretations 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 would detract from the focus on the threshold issue of disability to the primary issue of discrimination.
We believe that we are expressing our dissatisfaction with Sutton and Toyota (along with the current EEOC regulation) is to retain the words “substantially limits,” but clarifying it as not to mean to be a disfavoring standard. In addition, we believe eliminating the source of the Supreme Court’s decisions narrowing the definition and providing the disfavoring standard. This disfavoring standard would not be the appropriate standard for purposes of placing on employers and others 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 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 in our committee report to the original ADA in 1989:

“The bill provides new guidance and clarification on the subject of major life activities. First, a rule of construction clarifies that an impairment need only substantially limit one major life activity to be considered a disability under the ADA. The rules of construction provide that impairments that are minor and short term. The qualification standard is job-related and consistent with business necessity. Regarded as

Under this bill, the third prong of the disability definition will be limited, 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, and other negative stereotypes 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. We believe that the fact that an individual was discrimination against because of a perceived or actual impairment is sufficient. Thus, the bill clarifies that contrary to the Supreme Court’s decision in Sutton and its companion cases. Under this bill, the third prong of the disability definition will apply to impairments, constituting a “major life activity” under the ADA. The bill establishes that entities covered under the third 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.

This provision is subject to two important limitations. First, individuals with impairments that are transitory or 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.

The bill contains an exception that clarifies that coverage for individuals under the “major life activities” prong of the definition 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 criteria 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 criteria already excludes claims by individuals with ailments that are minor and short term.

Accommodations

The bill establishes that entities covered under the ADA must 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 the 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 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, we members of the Committee 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 Title I of the Labor-Management Reporting and Disclosure Act 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

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 included academic requirements in postsecondary education, facilities, and other programs. 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 the bill and should be given no meaning in interpreting the definition of disability.

Claims of No Disability

The bill prohibits reverse discrimination 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 ADA 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 concerning the threshold 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. The first prong of the 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 Amendments

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 Amendments Act. The 1973 Act preceded the ADA in providing civil rights protections to individuals with disabilities, and in drafting the definition of disability in the ACA, 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 the rehabilitation agencies, including the Department of Education, which generally operate under one consistent standard, and the civil rights of individuals with disabilities will be protected in all settings. The definition of disability in the ADA, the authors relied on in the statute and implementing regulations implementing 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 under 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 under Section 504 of the Rehabilitation Act provide currently harmonious with Congressional intent under both the ADA and the Rehabilitation Act.

Conclusion

We intend that the bill’s changes will make the threshold definition of disability in the ADA—under which individuals’ disabilities are determined and discrimination more generic, and will result in the coverage of some individuals who were previously excluded from those protections. We note that 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 precedent. In addition, we intend this bill to return the legal analysis to the balance that existed before the Supreme Court’s Sutton and Toyota decisions. The new “substantially limits” threshold issue is much easier, because 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. 181, 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: Senator Arlen Specter, the Majority Leader; Cheryl Sensenbrenner, Chair of the Board, American Association of People with Disabilities; Stephen Orr, Professor, Seyfarth & Shaw; Michael Collins, Executive Director, National Council on Disability; Lawrence Lorber, Attorney, on behalf of the U.S. Chamber of Commerce; Chai Feldblum, 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, Kinki Knight & Lockhart; Steven Orr, Attorney, Seyfarth & Shaw; Camille Olson, Labor and Employment Attorney, Seyfarth & Shaw; and Chai Feldblum, 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 and Labor held a hearing on H.R. 3195. The committee heard testimony on the bill from: Thomas Aquilino, Assistant Secretary for Administration; John Jay Eggers, Director, Social Security Administration; William House, Office of Management and Budget; and Michael J. McLaughlin, Senior Advisor, Disability Policy Project, RespectAbility.

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 49 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 412 to 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, Yale Law School; and Steny H. Hoyer (D-MD).
S8348

CONGRESSIONAL RECORD — SENATE
September 11, 2008

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, George Washington University Law Center, Washington, DC; Michael Eastman, Executive Director of Labor Policy, U.S. Chamber of Commerce; Andrew Grossman, Senior Legal and Legislative 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 calendar under general order (pursuant to Rule XVII).

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. 3694 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 necessary, and 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 opinions 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 and required 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 a finding related to describing the population of individuals with disabilities as "a discrete and insular minority."

Sec. 4. Disability Defined and Rules of Construction. Defines "disability" and provides rules of construction for applying the definition. The term "disability" is defined to mean, with respect to an individual, 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 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, or 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 meet only one major life activity; clarifying that an impairment is episodic or in remission is a disability only if it substantially limits a major life activity when active; and prohibiting the consideration of the ameliorative effects of mitigating measures such as medication, corrective 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. "Discrimination" 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 paragraph 11(b) of Title I, as amended by the ADA Amendments Act of 2008, shall be construed to apply to the definition of "disability benefit programs. Allows the Secretary of Labor to promulgate regulations implementing the definition of disability and rules of construction related to the definition.

Sec. 7. 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 this Act take effect January 1, 2009.

Sec. 9. Enactment. Made by the Act take effect January 1, 2009.

Senator HARKIN, U.S. Senator,

Orrin Hatch, U.S. Senator.

Mr. HARKIN. Madam President, I am extremely grateful to each 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 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 friend and has deeply appreciated 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, this bill would not have been 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 bipartisan 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 cuộc 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 this bill in the Senate, I worked very closely with a great number of people on both sides of the aisle, both 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—Senator Bob Dole, of Massachusetts recuperating at home in Massachusetts recuperating and getting better so he can be here with us next year when we take up

Of course, passage of the original ADA was also a bipartisan effort.

But I would be remiss if I didn't state Fortightly 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 a bill who enabled this Senator to be the chair 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 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 this together, 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 back to the days when the ADA was just a 1-page mandate 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 and, in the process, education 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 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 that 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 now 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 my remarks today, I will focus on a few:

What we do is we have committee reports. We have 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 Republican 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 viewed 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 using a prosthetic to taking medication.

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, we said before, that should not be taken into account.

In the case of Albertsons v. Kirkburg—we call it the Kirkburg 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 subconscious responses in an individual may use to compensate for his or her impairment. What were they talking about? Kirkburg was an individual who was blind in one eye. Through experience and coping with it, he compensated 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 that there must be a "demanding standard 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 broad enough 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 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 may 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, 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. I want 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 what 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, to negotiate those issues, they are not covered by the Americans with Disabilities Act.

As a result, we have to have this bill, because I want a job. 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.

I would like to submit for the RECORD this letter from 23 veteran’s groups supporting this legislation. I ask unanimous consent that letter be printed in the RECORD.

As leaders of organizations that represent veterans, we write to you today to express our support for S. 3604, the Veterans for ADA Restoration, which was introduced by Senator Harkin.

The bill would give clear direction to the courts on exactly what we mean. It would reinforce the Supreme Court decisions—as I said, the Sutton trilogy and Toyota case that has been so problematic.

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

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

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. But 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 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.

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 number of major body functions. The latter point is important for people with immune disorders or cancers 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.

The bill will give effective coverage under ADA will now be covered, and we will get rid of that Catch-22 situation that confronts so many people right now without any accommodations.

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 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 this 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 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 number of major body functions. The latter point is important for people with immune disorders or cancers 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 unani-
mously. 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 that 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.
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 work each and every week after 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 the driving forces behind the ADA amendments, 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 Council 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 Nancy 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 my key staff members: Tom Jipping and Chris Campbell of Senator Harkin’s staff—who I work with—a real blessing, 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 did 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 experiencing the thanks and thanks to those 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, how can I get 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 Ken- 
nedy. We were able to get the first ADA act passed.

I have told 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 an interpreter to inter- 
pret for my brother as he was watching the proceedings here on the floor of the Senate. Well, then a police- 
man came out. Actually, one of my bro- 
thers said: The policemen are up there questioning why we need an 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 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 re- 
member 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 at-
titude 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 acces-
sible for people with all kinds of dis-
abilities. But I relate that story as a way of 
teaching about the necessity of making 
changes, which are covered under the law.

It 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 at-
titude 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 acces-
sible for people with all kinds of dis-
abilities. But I relate that story as a way of 
teaching about the necessity of making 
changes, which are covered under the law.

It 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 at-
titude 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 acces-
sible for people with all kinds of dis-
abilities. But I relate that story as a way of 
teaching about the necessity of making 
changes, which are covered under the law.
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. What did we do? 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 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 that impairments must be interpreted strictly to create a deformation. The quotation marks the Court was referring to is as follows:

"If an impairment, 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 definition of disability 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 the 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 remedial available under this provision. This example of how to 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 Amendments Act. As chairman of the Senate Committee on Health, Education, Labor, and Pensions, which has jurisdiction over this issue, I have pursued the need for this legislation with vigor. For that, I am truly grateful.

I yield the floor.

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 not come home to pray that 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 worked on and got a 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 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 come to admire him 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 more productive, functional 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.
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 protection to individuals who are 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 testimony establishing 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 will be permitted to introduce. 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 exceptionally trained 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 without altering the licensing standards.

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 re-affirming 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 remain 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 are almost two 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 and equal 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 throughout 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 ground breaking 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 were considered not 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. It 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 corrections. It 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.

Equally 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 not only preserved, but, 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 legislation becomes 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 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 the right 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.

The next few 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—so that thermometer is hot out history. I have discussed the specific precedent of the 1992 campaign with its promise of middle-class tax cuts and