future generations of Americans, ANC is considering alternative actions that could be taken. Repair of the Monument is a viable alternative, as verified by experts in the field of marble. Another alternative is that the definition of disability may be interpreted more broadly.

There is more information in this report on the potential replacement option than there is for other options, because the replacement option is much more complex than the other options under consideration. Also, the potential replacement option has undergone the most scrutiny through the Section 106 review process. The preponderance of information on replacement should not be construed as favoring this option over the other options under consideration.

In response to ANC’s request to provide a Tomb Monument replacement, the Department of Veterans Affairs (VA) entered into a Memorandum of Understanding (MOU) with the Department of the Army in 2004 that outlines respective responsibilities. VA will be responsible for the procurement, transportation, and shopping of a replacement for the base, main die block, and cap of the Tomb Monument, while the Department of the Army is responsible for the engagement, training, and scripting of a replacement for the base, main die block, and cap of the Tomb Monument when and if Army decides to replace the current one. Both agencies have compliance requirements under Section 106 of the National Historic Preservation Act and the National Environmental Policy Act (NEPA). A covered action will be made until both agencies fulfill their respective responsibilities under both of these laws.

IV. EXPLANATION OF THE BILL AND COMMITTEE VIEWS

The purpose of S. 3406, the “ADA Amendments Act of 2008” is to clarify and enhance the protections of the Americans with Disabilities Act of 1990, landmark civil rights legislation that provided “a clear and comprehensive definition of disability,” and to ensure that “a disability includes an impairment that constitutes a disability.” In particular, the ADA Amendments Act amends the definition of disability by providing clarification and instruction about the terminology used in the definition, by expanding the definition, and by rejecting several opinions of the United States Supreme Court that 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, the Senate Health, Education, Labor, and Pensions Committee to explore the issues addressed in this legislation. The bill has been crafted to achieve the following objectives in a way that maximizes bipartisan consensus and minimizes unintended consequences.

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

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

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

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

Second, the bill affirmatively provides that the definition of disability “shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by law.” 1980

Finally, the bill clarifies that the agencies that currently issue regulations under the ADA have regulatory authority related to the definition of disability must be “be interpreted strictly to create a demanding standard for qualifying as disabled,” as well as the Court’s interpretation that “substantially limits” means “prevents or severely restricts.”

Third, the bill prohibits consideration of mitigating measures such as medication, assistance technology, accommodations, or adjustments when determining whether an impairment constitutes a disability. This provision and relevant purpose language rejects the Supreme Court’s holdings in Sutton v. United Air Lines, Inc. and cases that mitigating measures must be considered. The bill also provides that impairments that are episodic or in remission are to be assessed individually, still subject to discrimination claims.

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

II. BACKGROUND AND NEED FOR LEGISLATION

When Congress passed the ADA in 1980, 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 recognition of disability as a threshold issue but focused primarily on whether unlawful discrimination had occurred.

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

Some 18 years later we are faced with a situation in which physical or mental impairments that would previously have been
found to constitute disabilities are not con-
considered disabilities under the Supreme 
Court’s narrower standard. These can in-
clude individuals with impairments such as 
amply, spina bifida, diabetes, and cancer. The result-
ing court decisions contribute to a legal environ-
ment in which courts demonstrate an inappropriately high degree of functional 
limitation in order to be protected from dis-
advantage under the ADA.

The ADA Amendments Act rejects the high 
burden required in these cases and reiterates 
that Congress intends that the scope of the 
American Disabilities Act be broad and in-
clusive. It will provide for more 
generous coverage and application of the 
ADA’s prohibition on discrimination through 
a framework that is more predictable, con-
istent, and workable for all entities subject 
to responsibilities under the ADA.

FINDINGS AND PURPOSES

Given the importance the Court has placed 
upon findings and purposes in civil rights statutes like the 
ADA, the ADA Amendments Act contains a detailed 
Findings and Purposes. The managers believe 
give clear guidance to the courts and 
that they intend to be applied appropri-
ately and consistently. As described 
above, thelegislation deletes two findings in the 
ADA that have been interpreted by the 
Supreme Court to require a narrow defini-
tion of disability. We continue to believe 
that the courts should not have been faced with 
restrictions and limitations, sub-
jected to a history of purposeful unequal 
treatment, and relegated to a position of 
political powerlessness in our society, based on 
characteristics that are beyond the control 
of such individuals and resulting from 
stereotypic assumptions not truly indicative 
of the individual ability of such individuals 
to participate in, and contribute to, soci-
ety.”

In addition to deleting the findings form-
ing the basis of the Sutton and Toyota deci-
sions, the bill states explicitly its purpose to 
reject the holdings in those cases (and their 
progeny), clarifying that the key focus of ADA. To be clear, the purposes 
section conveys our intent to clarify not only 
that “substantially limits” must be 
measured by a lower standard than that used 
in Toyota, but also that the definition of 
disability should not be unduly used as a 
tool for excluding individuals from the 
protections.

The bill expresses the clear intent of Con-
gress that the EEOC will revise its regula-
tions so as to no longer be bound by the 
Court in Toyota goes beyond what we believe 
the appropriate standard to create cov-
ere under this law.

We have extensively deliberated with re-
gard to whether a new term, other than the terms substantially limits, is 
used in this Act. For example, in its ADA Amend-
ments Act, H.R.3196, the House of Representa-
tives attempted to accomplish this goal by 
using the term “materially restricts.” While the term “substantial 
ly on the threshold issue of disability to the primary issue of dis-
advantage under this law.

We believe that a better way is to express 
the term “substantially limits” along with the current EEOC regulation) is to re-
tain the words “substantially limits,” but 
clarify that it is not meant to be a demand-
ing standard. In addition, we believe elimi-
ating the source of the Supreme Court’s deci-
sions narrowing the definition and providing 
more appropriate findings and purposes 
with the primary focus of discrimination 
will accomplish our goal without introducing 
new statutory terms.

We believe that the manner in which we 
will accomplish the goal of “substantially limits” in 1990 continues to capture 
our sense of the appropriate level of coverage
under this law for purposes of placing on em-
ployers and other covered entities the obli-
gation of providing reasonable accommoda-
tions and modifications to individuals with
impairments, or for purposes for which they can be performed in comparison to most people. A person who can walk for 10 miles continuously is not substantially limited in walking merely because he or she begins to experience pain because most people would not be able to walk eleven miles without experiencing some discomfort.” S. Rep. No. 101–14, Pub. L. No. 101–337, 104 Stat. 971.

We particularly believe that this test, which articulated an analysis that consid-
ered whether a person’s activities are limited in a todlent manner to those courts that a useful one. We reiterate that using the cor-
rect standard—one that is lower than the strict or demanding standard created by the Supreme Court—will allow the disability determination an appropriate threshold issue but not an onerous burden for those seeking accommodations or modi-
fications. At the same time, plaintiffs should not be constrained from offering evidence needed to establish that their impairment is substantially limited.

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

Major life activities

The bill provides significant new guidance and clarification on the subject of major life activities. We believe that the rule of construction clari-
ifies that that an impairment need only sub-
stantially limit one major life activity to be considered a disability under the ADA. This response to the Supreme Court’s decision in Sutton v. Urban, 526 U.S. 471 (1999), will allow an employer to demonstrate that an individual who has a chronic impairment need only substantially limit in activities such as learning, reading, writing, thinking, or speaking.

Rules of construction on the definition of disa-

bility

The bill further clarifies the definition of disability with a series of rules of construc-
tion. The rules of construction specifically require that the definition of disability be interpreted broadly and that the term “substantially limits” be interpreted in the context of the legislative purpose. This construction is also intended to reinforce the general rule that civil rights statutes must be broadly construed to achieve their remedial purpose. In addition, the rules of construction provide that imp-
airments that are episodic or in remission be assessed in their active state for purposes of determining coverage under the ADA.

Mitigating measures

The bill also prohibits consideration of the ameliorative effects of mitigating measures when determining whether an individual’s impairment substantially limits a major life activity, overturning the Supreme Court’s decision in Sutton and its companion cases. This provision is intended to eliminate the situation described in Sutton, in which impairments that are mitigated do not constitute disabilities but are the basis for dis-

crimination. We expect that when such miti-
gating measures are ignored, some individu-
als previously found not disabled will now be able to claim the ADA’s protection against discrimination.

The legislative history includes an illustrative but non-exhaustive list of the types of miti-
gating measures that are not to be consid-
ered. This list includes dietary devices, eye-
devices, which are devices that magnify, en-
hance, or otherwise augment a visual image, such as magnifiers, closed circuit television, larger-print items, and instruments that pro-
vide voice instructions. The absence of any particu-
lar mitigating measure from this list should not convey a negative implication as to whether the measure is a mitigating measure under the ADA.

We also believe that an individual with an impairment that substantially limits a major life activity should not be penalized when seeking protection under the ADA sim-
ply because he or she managed their own adaptive strategies or received accommoda-
tions. For example, individuals who use one-
handers (six months or less) and minor. Pro-
viding this exception concerns to persons raised by employer organizations and is rea-
sable under the “regarded as” prong of the definition of disability seeking cov-

erage under this prong need not meet the functional limitation requirement contained in the first two prongs of the definition. A accommodation is unnecessary as the func-
tional limitation requirement already ex-
cludes claims by individuals with ailments that are minor and short term.

Accommodations

The bill establishes that entities covered under the ADA do not need to provide rea-
sonable 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” disabled.

Transitory and minor

The bill provides an exception that clari-
ifies that coverage for individuals under the “regarded as” prong is not available where an individual’s impairment is both transi-
tory (six months or less) and minor. Pro-
viding this exception concerns to persons raised by employer organizations and is rea-
sable under the “regarded as” prong of the definition of disability seeking cov-

rage under this prong need not meet the functional limitation requirement contained in the first two prongs of the definition. A accommodation is unnecessary as the func-
tional limitation requirement already ex-
cludes claims by individuals with ailments that are minor and short term.

Accommodations

The bill establishes that entities covered under the ADA do not need to provide rea-
sonable 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 dis-
ability.

Under current law, a number of courts have required employers to provide reason-
able accommodations for individuals who are not “regarded as” disabled but rather are covered under the ADA solely by being “regarded as” disabled.

In each of those cases, the plaintiffs were found not to be covered under the first prong of the definition of disability because the plaintiffs did not have a disability under the ADA, and the courts had been interpreting that prong. Be-

cause of our strong belief that accommo-
dating individuals with disabilities is a key goal of the ADA, senators continue to have reservations about this provision. How-

ever, we believe it is an acceptable com-
promise given our strong expectation that these individuals would not be covered under the first prong of the definition, properly ap-
plied.
DISCRIMINATION ON THE BASIS OF DISABILITY

The bill amends Section 102 of the ADA to mirror the structure of nondiscrimination protection provision in Title VII of the Civil Rights Act of 1964. It changes the language from requiring discrimination against a qualified individual “with a disability because of the disability of such individual” to prohibiting discrimination against a qualified individual “with a disability.”

This ensures that the emphasis in questions of disability discrimination is properly on the critical inquiry of whether a qualified person has been discriminated against on the basis of disability, and not unduly focused on the preliminary question of whether a particular person is a “person with a disability.”

RULES OF CONSTRUCTION

Benefits under state worker’s compensation laws

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

Fundamental alteration

The bill reiterates that no changes are being made to the Equal Employment Opportunity Commission’s rulings that no accommodations or modifications in policies are required when a covered entity can demonstrate that making such modifications would fundamentally alter the essence 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 as among the types of policies, practices, and procedures that may be shown to be fundamentally altered by the requirements for accommodations that reconfirm current law. It is included solely to provide assurances that the bill does not alter current law with regard to the obligations of academic institutions under the ADA, which we believe is already demonstrated in case law on this topic. Specifically, the reference to academic standards in postsecondary education is unrelated to the ADA, as amended, and is properly the subject of another piece of legislation.

CONFORMING AMENDMENT

The bill ensures that the definition of disability in Section 7 of the Rehabilitation Act of 1973, which shares the same definition, is consistent with the definition in the Rehabilitation Act of 1973. The bill also amends Section 504 of the Rehabilitation Act to provide overlapping coverage for many entities, including public schools, institutions of higher education, 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 are currently harmonious with Congressional intent under both the ADA and the Rehabilitation Act.

CONCLUSION

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

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

In general, individuals may find it easier to establish disability under this bill’s more generous standard than under the Supreme Court’s demanding standard. To repeat, we intend that these amendments will properly reconfirm current law. It is included solely to provide assurances that the bill does not alter current law with regard to the obligations of academic institutions under the ADA, which we believe is already demonstrated in case law on this topic. Specifically, the reference to academic standards in postsecondary education is unrelated to the ADA, as amended, and is properly the subject of another piece of legislation.

REGULATORY AUTHORITY

In Sutton v. United Airlines, 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.” 38 The bill clarifies that the authority to issue regulations is granted to the Equal Employment Opportunity Commission, the Attorney General, and the Secretary of Transportation and specifically includes the authority to issue regulations implementing the definition of disability as amended and clarified by this legislation.

We anticipate that the agencies charged with implementing the new requirements under the ADA will make any necessary modifications to their regulations to reflect the changes and clarifications embodied in the ADA Amendments Act, including the addition of major bodily functions as major life activities and the broadening of the “regarded as” prong.

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

On July 26, 2007, Senator Tom Harkin introduced S. 1881, the ADA Restoration Act of 2007. The bill was referred to the Senate Committee on Education, Health, 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.

On July 31, 2007, the Senate HELP Committee introduced S. 1935, the ADA Restoration Act of 2007, with 144 original cosponsors. The bill was referred to the Committee on Education and Labor, Judiciary, Transportation and Infrastructure, and Energy and Commerce.

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

On November 15, 2007, the Senate HELP Committee held a hearing on Senator Tom Harkin, “Restoring Congressional Intent and Protections under the Americans with Disabilities Act.” 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. Five witnesses appeared before the committee: 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 and Professor of Law, Georgetown Law Center; 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 and Professor of Law, Georgetown Law Center.

On January 29, 2008, the House Committee on Education and Labor held a hearing on H.R. 3195. Five witnesses appeared before the committee: Carey McClure, Electrician (Plaintiff in McClure v. General Motors); JoAnne Simon, Disability Rights Attorney; Chai Feldblum, Director, Federal Legislation Clinic and Professor of Law, Georgetown Law Center.

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 10–0.

On June 25, 2008 the United States House of Representatives held a vote on H.R. 3195 and passed the legislation onto the Senate.

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, University of Chicago; 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 and Professor of Law, Georgetown Law Center; Michael Eastman, Executive Director of Labor Policy, U.S. Chamber of Commerce; Andrew Grossman, Senior Legislative Manager, Disability Policy Analyst, and Bipartisan Policy Center; 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 and Professor of Law, Georgetown Law Center.

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

V. APPLICATION OF THE LAW TO THE LEGISLATIVE BRANCH

Section 107 of the Public Law 104-1, the Congressional Accountability Act (CAA), requires a description of the application of this bill to the legislative branch. S. 3604 does not amend any act that applies to the legislative branch.

VI. REGULATORY IMPACT STATEMENT

The managers have determined that the bill may result in some additional paperwork, time, and costs to the Equal Employment Opportunity Commission, which would be entrusted with implementation and enforcement of the act. It is difficult to estimate the volume of additional paperwork necessity by the CAA. 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 comprehensive, coordinated, and flexible standard for the elimination of discrimination against individuals with disabilities" and to provide broad coverage, and that the U.S. Supreme Court subsequently erroneously narrowed the definition of disability in a series of cases. The purposes of the Act are to reestablish a broad scope of protection to be available under the ADA, to reassert several Supreme Court decisions, and to reestablish original Congressional intent related to the definition of disability.

Sec. 3. Amended Findings. Amends one finding in the ADA to acknowledge that many people with physical or mental impairments have been subjected to discrimination, and strikes one finding related to describing the population of individuals with disabilities as "a discrete and insular minority." Sec. 4. Revised and Rules of Construction. Amends the definition of "disability" and provides rules of construction for applying the definition. The term "disability" is defined as having, or being regarded as having, an individual, a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such an impairment; provides an illustrative list of "major life activities" including major bodily functions; and defines "regarded as having such an impairment" as protecting individuals who have been subject to an action prohibited under the ADA because of an actual or perceived impairment, whether or not the impairment limits a major life activity.

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

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


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

TOM HARKIN,
U.S. Senator.
DESCHAMPS,
U.S. Senator.

ENDNOTES

2. This rule of construction is consistent with earlier judicial precedents and parallels the rule of construction in the Religious Land Use and Institutionalized Persons Act, which Congress unanimously passed in 2002.
4. Id. at 197.
5. Id. at 198. See also, 29 CFR 1630.2.
10. Ordinary eyeglasses and contact lenses are excluded from this prohibition.
12. Ordinary eyeglasses and contact lenses are excluded from this prohibition.
13. Note that the definition of disability is found in Section 705(b)(2)(B).
14. This bill does not change any current statutory requirement that an individual must be able to perform the essential functions of the job.
15. Under the first prong, of course, a plaintiff must still provide evidence that he or she is a qualified individual whose impairment is substantially limiting.
16. See Holt v. Grand Lake Mental Health Center, Inc., 443 F. 3d 762 (10th Cir. 2006) holding an individual with a cerebral palsy who could not independently perform certain specified manual tasks was not substantially limited in her ability to perform a "broad range" of manual tasks.
17. We expect that this illustrative list of major life activities (including major bodily functions), in combination with the rejection of the "demanding and significant" test, will make it easier for individuals to show that they are eligible for the ADA's protections under the first prong of the definition of disability. While it is impossible to predict the type of cases that will be brought under the Act, we expect that the bill will make it easier for individuals in cases like the following to qualify for the protections of the ADA—Office of War-Month Combat Veteran, Fed. Appx. 874 (11th Cir. 2007) (individual with intellectual disability); Furnish v. SVI Syst., Inc., 279 F. 3d 445, 450 (7th Cir. 2001) (person who had high levels of exposure to the Hepatitis B); and Pimental v. Dartmouth-Hitchcock Clinic, 236 F. Supp. 2nd 177 (D.N.H. 2002) (individual with advanced breast cancer).
19. The following courts have held that the ADA requires that reasonable accommodations be provided to individuals who are able to establish coverage under the ADA under the "regarded as" prong of the definition of disability:


Some courts have held that reasonable accommodations need not be provided to an employee who is merely regarded or perceived as disabled. See Kaplan v. City of N. Las Vegas, 323 F.3d 1226, 1231–33 (9th Cir. 2003); Weber v. Strippit, Inc., 186 F.3d 907, 916–17 (9th Cir. 1999); Workman v. Fishing Vessel Owners, Inc., 163 F.3d 469, 472 (8th Cir. 1999); Newbury v. E. Texas State Univ., 161 F.3d 276, 280 (5th Cir. 1998); Cf. Brady v. Wal-Mart Stores, Inc., et al., No. 00-866cv (2d Cir. July 2, 2003) (accommodations available under either first or third prong). 20. 527 U.S. at 479 (1999).

For example, an individual with diabetes might demonstrate coverage by showing either that he was substantially limited in endocrine functioning or that his diabetes substantially limited a major life activity, such as eating or sleeping.

IDAHOANS SPEAK OUT ON HIGH ENERGY PRICES

Mr. CRAPO. Mr. President, in mid-June, I asked Idahoans to share with