To restore the intent and protections of the Americans with Disabilities Act of 1990.

IN THE HOUSE OF REPRESENTATIVES

Mr. HOYER introduced the following bill; which was referred to the Committee on [Blank]

A BILL

To restore the intent and protections of the Americans with Disabilities Act of 1990.

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 Restoration Act of 2007”.

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
“establish a clear and comprehensive prohibition of
discrimination on the basis of disability,” and pro-
vide broad coverage and vigorous and effective rem-
edies without unnecessary and obstructive defenses;

(2) decisions and opinions of the Supreme
Court have unduly narrowed the broad scope of pro-
tection afforded in the ADA, eliminating protection
for a broad range of individuals who Congress in-
tended to protect;

(3) in enacting the ADA, Congress recognized
that physical and mental impairments are natural
parts of the human experience that in no way dimin-
ish a person’s right to fully participate in all aspects
of society, but Congress also recognized that people
with physical or mental impairments having the tal-
ent, skills, abilities, and desire to participate in soci-
ety are frequently precluded from doing so because
of prejudice, antiquated attitudes, or the failure to
remove societal and institutional barriers;

(4) Congress modeled the ADA definition of
disability on that of section 504 of the Rehabilita-
tion Act of 1973, which, through the time of the
ADA’s enactment, had been construed broadly to en-
compass both actual and perceived limitations, and
limitations imposed by society;
(5) the broad conception of the definition had been underscored by the Supreme Court’s statement in its decision in School Board of Nassau County v. Arline, 480 U.S. 273, 284 (1987), that the section 504 definition “acknowledged that society’s accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment”;

(6) in adopting the section 504 concept of disability in the ADA, Congress understood that adverse action based on a person’s physical or mental impairment is often unrelated to the limitations caused by the impairment itself;

(7) instead of following congressional expectations that disability would be interpreted broadly in the ADA, the Supreme Court has ruled, in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184, 197 (2002), that the elements of the definition “need to be interpreted strictly to create a demanding standard for qualifying as disabled,” and, consistent with that view, has narrowed the application of the definition in various ways; and

(8) contrary to explicit congressional intent expressed in the ADA committee reports, the Supreme Court has eliminated from the Act’s coverage indi-
individuals who have mitigated the effects of their impairments through the use of such measures as medication and assistive devices.

(b) PURPOSE.—The purposes of this Act are—

(1) to effect 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 restoring the broad scope of protection available under the ADA;

(2) to respond to certain decisions of the Supreme Court, including Sutton v. United Airlines, Inc., 527 U.S. 471 (1999), Murphy v. United Parcel Service, Inc., 527 U.S. 516 (1999), Albertson’s, Inc. v. Kirkingburg, 527 U.S. 555 (1999), and Toyota Motor Manufacturing, Kentucky, Inc. v. Williams, 534 U.S. 184 (2002), that have narrowed the class of people who can invoke the protection from discrimination the ADA provides; and

(3) to reinstate original congressional intent regarding the definition of disability by clarifying that ADA protection is available for all individuals who are subjected to adverse treatment based on actual or perceived impairment, or record of impairment, or are adversely affected by prejudiced attitudes, such
as myths, fears, ignorance, or stereotypes concerning
disability or particular disabilities, or by the failure
to remove societal and institutional barriers, includ­
ing communication, transportation, and architectural
barriers, and the failure to provide reasonable modi­
fications to policies, practices, and procedures, rea­
sonable accommodations, and auxiliary aids and
services.

SEC. 3. CODIFIED FINDINGS.

Section 2(a) of the Americans with Disabilities Act
of 1990 (42 U.S.C. 12101) is amended—
(1) by amending paragraph (1) to read as fol­
follows:
“(1) physical or mental disabilities are natural
parts of the human experience that in no way dimin­
ish a person’s right to fully participate in all aspects
of society, yet people with physical or mental disabil­
ities having the talent, skills, abilities, and desires to
participate in society frequently are precluded from
doing so because of discrimination; others who have
a record of a disability or are regarded as having a
disability also have been subjected to discrimina­
tion;”.

(2) by amending paragraph (7) to read as fol­
lows:
“(7) individuals with disabilities have been subject to a history of purposeful unequal treatment, have had restrictions and limitations imposed upon them because of their disabilities, and have been relegated to positions of political powerlessness in society; classifications and selection criteria that exclude persons with disabilities should be strongly disfavored, subjected to skeptical and meticulous examination, and permitted only for highly compelling reasons, and never on the basis of prejudice, ignorance, myths, irrational fears, or stereotypes about disability;”.

SEC. 4. DISABILITY DEFINED.

Section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102) is amended—

(1) by amending paragraph (2) to read as follows:

“(2) Disability.—

“(A) In general.—The term ‘disability’ means, with respect to an individual—

“(i) a physical or mental impairment;

“(ii) a record of a physical or mental impairment; or

“(iii) being regarded as having a physical or mental impairment.
“(B) RULE OF CONSTRUCTION.—

“(i) The determination of whether an individual has a physical or mental impairment shall be made without considering the impact of any mitigating measures the individual may or may not be using or whether or not any manifestations of an impairment are episodic, in remission, or latent.

“(ii) The term ‘mitigating measures’ means any treatment, medication, device, or other measure used to eliminate, mitigate, or compensate for the effect of an impairment, and includes prescription and other medications, personal aids and devices (including assistive technology devices and services), reasonable accommodations, or auxiliary aids and services.

“(iii) Actions taken by a covered entity with respect to an individual because of that individual’s use of a mitigating measure or because of a side effect or other consequence of the use of such a measure shall be considered actions taken on the basis of a disability under this Act.”.
(2) by redesignating paragraph (3) as paragraph (7) and inserting after paragraph (2) the following:

“(3) PHYSICAL IMPAIRMENT.—The term ‘physical impairment’ means any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine.

“(4) MENTAL IMPAIRMENT.—The term ‘mental impairment’ means any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

“(5) RECORD OF PHYSICAL OR MENTAL IMPAIRMENT.—The term ‘record of physical or mental impairment’ means having a history of, or having been misclassified as having, a physical or mental impairment.

“(6) REGARDED AS HAVING A PHYSICAL OR MENTAL IMPAIRMENT.—The term ‘regarded as having a physical or mental impairment’ means being perceived or treated as having a physical or mental...
impairment whether or not the individual has an im-
pairment.”.

SEC. 5. DISCRIMINATION 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 “against a
qualified individual with a disability because of the
disability of such individual” and inserting “against
an individual on the basis of disability”; and

(2) in subsection (b), in the matter preceding
paragraph (1), by striking “discriminate” and in-
serting “discriminate against an individual on the
basis of disability”.

SEC. 6. QUALIFIED INDIVIDUAL.

Section 103(a) of the Americans with Disabilities Act
of 1990 (42 U.S.C. 12113(a)) is amended by striking
“that an alleged application” and inserting “that—
“(1) the individual alleging discrimination
under this title is not a qualified individual with a
disability; or

“(2) an alleged application”.

SEC. 7. RULE OF CONSTRUCTION.

Section 501 of the Americans with Disabilities Act
of 1990 (42 U.S.C. 12201) is amended by adding at the
end the following:
“(e) Broad Construction.—In order to ensure that this Act achieves its purpose of providing a comprehensive prohibition of discrimination on the basis of disability, the provisions of this Act shall be broadly construed to advance their remedial purpose.

“(f) Regulations.—In order to provide for consistent and effective standards among the agencies responsible for enforcing this Act, the Attorney General shall promulgate regulations and guidance in alternate accessible formats implementing the provisions herein. The Equal Employment Opportunity Commission and Secretary of Transportation shall then issue appropriate implementing directives, whether in the nature of regulations or policy guidance, consistent with the requirements prescribed by the Attorney General.

“(g) Deference to Regulations and Guidance.—Duly issued Federal regulations and guidance for the implementation of this Act, including provisions implementing and interpreting the definition of disability, shall be entitled to deference by administrative bodies or officers and courts hearing any action brought under this Act.”