Toyota Motor Manufacturing v. Williams: A Case of Carpal Tunnel Syndrome Weakens the Grip of the Americans with Disabilities Act

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Toyota Motor Manufacturing v. Williams: A Case of Carpal Tunnel Syndrome Weakens the Grip of the Americans with Disabilities Act

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I. INTRODUCTION

On February 1, 2001, only days after taking office, President George W. Bush announced the New Freedom Initiative, a proposal to “[t]ear down the barriers to equality” by increasing access to assistive technology for the 54 million Americans with disabilities.1 In his comments, Bush described the Americans with Disabilities Act of 1990 as the “last great reform in this cause.”2 “But there is more to do,” Bush also said.3 Indeed, there is much more to do, because even as President Bush is advocating for more efforts to tear down barriers for the disabled, our judiciary is erecting a new barrier for Americans who have disabilities.

Title I of the Americans with Disabilities Act of 1990 (“ADA”) provides that “[n]o covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to... terms, conditions, and privileges of employment.”4 In passing the ADA, Congress intended to “provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”5 When the ADA became law, the term “disability” was defined broadly and encompassed all individuals with non-trivial medical conditions, as well as those who were unfairly regarded as being disabled.6 However, “disability” is slowly being redefined in a way that excludes many from the ADA’s protections.7

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3. Id. at 45.
6. See discussion infra Part V.
The latest redefinition of disability occurred in January 2002, in the Supreme Court’s unanimous decision in Toyota Motor Manufacturing, Kentucky, Inc. v. Williams. In Toyota, the Supreme Court set out a new, more stringent test for determining if an individual is disabled and issued dicta encouraging the lower courts to use an extremely high standard when making this determination. The Toyota decision will dramatically limit the number of Americans who qualify as disabled and therefore are protected by the ADA. The decision is a landmark victory for employers, but will impose significant hardships on employees who suffer from medical conditions that limit their performance of everyday tasks.

This case note analyzes the Toyota decision and its effects upon the ADA. Part II outlines the ADA and the Supreme Court decisions that led up to Toyota. Part III gives the facts of the case, and Part IV analyzes the opinion itself and its bases of support. Part V critiques the opinion. Finally, Part VI of this note discusses the future of ADA litigation after Toyota and the decision’s probable impact on the workplace.

II. HISTORICAL BACKGROUND

A. ADA Basics

The ADA was enacted in 1990 with strong bipartisan support in Congress and the full support of the first Bush administration. The stated purpose of the ADA is to eliminate discrimination against persons with disabilities and to allow those with disabilities, who have historically been isolated and segregated, the opportunity to compete with other Americans on an equal basis for employment and other opportunities. Title I of the ADA drew heavily from and expanded upon sections 501, 503, and 504 of the Rehabilitation Act of 1973, which prohibited the federal government,
federal contractors, and recipients of federal funds from discriminating against “handicapped individuals” in their employment decisions.\textsuperscript{16} Specifically, the ADA took its definition of “disability” almost word for word from the Rehabilitation Act’s definition of “handicapped individual.”\textsuperscript{17}

To establish a prima facie case of disability discrimination under the ADA, a plaintiff must show that he or she a) is a disabled individual as defined by the ADA, b) is a “qualified individual,” and c) has suffered an adverse employment decision because of the disability.\textsuperscript{18} There is no list of covered disabilities.\textsuperscript{19} Instead, “disability” is identified on a case-by-case basis by use of a three-prong test.\textsuperscript{20} Under this test, an individual is disabled if he or she has either a) “a physical or mental impairment that substantially limits one or more of the major life activities of such individual,” b) “a record of such an impairment,” or c) is “regarded as having such an impairment.”\textsuperscript{21} This article will deal primarily with the first prong of the test, known as the actual disability prong, because that prong was at issue in \textit{Toyota}.\textsuperscript{22} Despite the ADA’s use of the pre-existing and already-tested Rehabilitation Act definition of disability, litigation regarding the actual disability prong has produced “inconsistent and implausible” results.\textsuperscript{23} The
definition is difficult for courts to apply because it uses the subjective terms "major" and "substantially limits." 24

The EEOC regulations interpreting Title I of the ADA provide guidance for courts that must determine who qualifies as disabled by explaining the terms "substantially limits" and "major life activity." 25 "Substantially limited" means:

[unable to perform a major life activity that the average person in the general population can perform; or [s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.] 26

According to the regulations, major life activities include "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 27 In addition, the Supreme Court has held that reproduction is a major life activity. 28 The various circuit courts have found that a variety of other activities, such as eating, social functioning, thinking, and sleeping, are also major life activities. 29

24. Id. at 244. However, the term "physical or mental impairment" generally does not present the problem of subjectivity. The Code of Federal Regulations defines physical or mental impairment as:

[a]ny 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; or [a]ny mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

25. Id. at 25. However, the term "physical or mental impairment" generally does not present the problem of subjectivity. The Code of Federal Regulations defines physical or mental impairment as:

[unable to perform a major life activity that the average person in the general population can perform; or [s]ignificantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the general population can perform that same major life activity.] 26

The regulations interpreting Title I of the ADA were issued by the Equal Employment Opportunity Commission ("EEOC") pursuant to statutory authority. 42 U.S.C. § 12116 (2000). They also closely mirror the regulations interpreting the Rehabilitation Act issued by the Department of Health, Education, and Welfare ("HEW"). 29

26. 29 C.F.R. § 1630.2(j)(1) (2002). The regulations interpreting the Rehabilitation Act Act did not contain a definition of "substantially limits" because the HEW believed that a definition of this term was not possible when those regulations were issued. 45 C.F.R. Pt. 84, app. A, subpart A (2002).

27. 29 C.F.R. § 1630.2(i) (2002). This list is identical to the list in the regulations interpreting the Rehabilitation Act of 1973. See 45 C.F.R. § 84.3(j)(2)(ii) (2002).


29. Gillen v. Fallon Ambulance Serv., Inc., 283 F.3d 11, 21 (1st Cir. 2002) (lifting is a major life activity); MX Group, Inc., v. City of Covington, 293 F.3d 326, 337 (6th Cir. 2002) (social
Although the statute’s definition of disability is broad, the ADA does take employers’ legitimate business concerns into consideration. The ADA does not prohibit an employer from considering an individual’s abilities or disabilities, nor does it mandate that all disabled individuals be offered employment. Instead, it balances the importance of utilizing disabled persons’ talents and abilities with employers’ business concerns by requiring that a disabled individual be “qualified” for the job. An individual is qualified if he or she can perform all of the “essential” functions of the job either with or without “reasonable accommodation.” If an individual is both disabled and qualified, then the protections of the ADA attach and an employer must provide “reasonable accommodation” to allow the disabled individual to hold the position. An employer is never required to employ a person who is not qualified for the position, to provide accommodations that would create undue hardship for the employer, or to modify any “essential” job functions in order to accommodate a person’s disability.


33. 42 U.S.C. § 12111(8) (2000); 29 C.F.R. § 1630.2(m) (2002). In determining what job functions are “essential,” courts defer to the employer, considering the employer’s assessment of what is essential and any written job description. 29 C.F.R. § 1630.2(n)(3)(i)-(ii) (2002). Regular work attendance is generally an essential job function. Darby v. Bratch, 287 F.3d 673, 682 (8th Cir. 2002). A task may be essential even if it could potentially be reassigned if the employer believes that it is better performed by that employee. Basith v. Cook County, 241 F.3d 919, 929-30 (7th Cir. 2001) (holding that delivering medication is essential to pharmacy technician job even though other employees could have performed the task). Furthermore, a job function need not consume a large amount of an employee’s time to be essential. Emerson v. N. States Power Co., 256 F.3d 506, 513 (7th Cir. 2001) (holding that handling safety calls was an essential job function even though it consumed only five percent of the employee’s time at work).

34. 42 U.S.C. § 12112(b)(5)(A) (2000). Reasonable accommodations may include, but are not limited to the following: 1) “making existing facilities used by employees readily accessible to and usable by individuals with disabilities,” 2) job restructuring, 3) part time or modified work schedules, 4) modifying equipment or acquiring new equipment, 5) modifying examinations, training materials, or policies, and 6) providing readers or interpreters. 42 U.S.C. § 12111(9) (2000).

35. See 42 U.S.C. § 12111(10) (2000). Whether an accommodation creates an “undue hardship” is determined by considering the cost and nature of the accommodation, the size and financial resources of the employer as a whole and the particular facility at which the person is employed, and the impact that the accommodation may have on the facility. Id.

36. See 42 U.S.C. § 12111(8) (2000) (stating that an individual is not “qualified” if he or she cannot perform all essential job functions).
B. Recent pre-Toyota ADA case law both expanded and dramatically limited who is considered disabled.

1. In Bragdon v. Abbott, the Court increased the number of individuals protected by the ADA by interpreting “major life activity” very broadly.

When the Supreme Court decided the 1998 case of Bragdon v. Abbott, scholars and newspapers alike heralded it as a landmark, pro-plaintiff decision. In Bragdon, plaintiff Sidney Abbott, who was HIV positive, went to see Dr. Randon Bragdon for a dental exam. Bragdon found a cavity in Abbott’s tooth but refused to fill it in his office because Abbott was HIV positive. He offered to fill the cavity at a hospital instead. Abbott declined to have the cavity filled at the hospital and sued for discrimination under the ADA.

Bragdon specifically held that HIV infection is a disability under the ADA even during its asymptomatic stages. In making this determination, the Supreme Court applied the three-step process outlined in the ADA itself. The Court first reviewed the effects of the HIV virus on the body and concluded that HIV infection is an impairment. Next, the Court determined that HIV infection affects the major life activity of reproduction. Finally, the Court decided that HIV’s effect on reproduction was “substantial” because an infected woman who reproduces has a 25% chance of transmitting the virus to the child. Therefore, the Court determined that Abbott was disabled and protected by the ADA. The

40. Id. at 629.
41. Id.
42. Id. Abbott sued under Title III of the ADA, which prohibits discrimination in public accommodations. Id. (citing 42 U.S.C. § 12182). Bragdon is relevant precedent for Toyota because the definition of disability is the same under all five titles of the ADA. See 42 U.S.C. § 12102 (2000).
43. Bragdon, 524 U.S. at 641.
44. Id. at 631.
45. Id. at 637. The Court described the effects of the virus on the body and the progression of the disease in great detail. Id. at 633-37.
46. Id. at 637.
47. Id. at 639-40. Antiretroviral drug therapy can reduce the risk of infecting the child to 8%. Id. at 640. The Court indicated that an 8% risk would still constitute a substantial limitation. Id. at 641.
48. Id. at 641.
Court noted that this result was supported by the interpretative regulations promulgated by both the Department of Justice and the EEOC.49

Bragdon's greatest significance is in its analysis of "major life activity."50 The suggested major life activity at issue was reproduction,51 which is not an activity listed in the relevant Rehabilitation Act regulations.52 However, the Court stated that the list in the regulations was merely illustrative, not exhaustive.53 The Court had "little difficulty" determining that reproduction is a major life activity, stating that "reproduction and the sexual dynamics surrounding it are central to the life process itself."54 The Court reasoned that the word "major" was a broad term.55 Furthermore, nothing in the definition of disability implied that a major life activity must be "public, economic, or daily" in nature.56

After Bragdon, it appeared that the Court would define disability very broadly.57 After all, in order to invoke the ADA's protections, the Court had engaged in what one scholar subsequently described as a "bizarre" inquiry into the reproductive limitations of an individual who was discriminated against in the completely unrelated area of dental care.58 It appeared that the Court intended to define disability to protect as many people as possible, including those with non-traditional disabilities.59

2. The 1999 Sutton trilogy sharply reduced the number of individuals who are considered disabled by interpreting "substantially limits" very narrowly.

On June 22, 1999, the Supreme Court handed down three decisions that dramatically limited the number of people who qualify as "disabled" under the ADA.60 In Sutton v. United Air Lines, Inc., the Supreme Court ruled that

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49. Id. at 646-47. Like the EEOC has the authority to issue regulations pursuant to Title I of the ADA, the Department of Justice has authority to promulgate regulations interpreting Titles II and III of the ADA. 42 U.S.C. § 12134(a) (2000) (Title II); 42 U.S.C. § 12186(b) (2000) (Title III).
51. Id. at 638.
52. Id. at 638-39 (citing 45 C.F.R. § 84.3(j)(2)(ii) (1997) and 28 C.F.R. § 41.31(b)(2) (1997)).
53. Id. at 639.
54. Id. at 638.
55. Id.
56. Id.
59. See Colker, supra note 38, at 99 ("[I]t was now clear that the 'law would also cover other conditions . . . including infertility, well-controlled diabetes, and cancer that is in remission after treatment."). (quoting Linda Greenhouse, Ruling on Bias Law: Infected People Can Be Covered Even With No Symptoms Present, N.Y. TIMES, June 26, 1998, at A1).
60. See infra notes 83-85 and accompanying text.
the determination of whether an individual is substantially limited in a major life activity must be made "with reference to measures that mitigate the individual's impairment." United Airlines had refused to hire the Sutton plaintiffs as pilots because of their extremely poor uncorrected vision. However, with glasses or contacts, both plaintiffs had 20/20 vision. The Supreme Court held that the Sutton plaintiffs were not disabled under the ADA because, with correction, their poor vision did not substantially limit them in any major life activity. The Court reasoned that the term "substantially limits" is a present indicative verb, which requires a present substantial limitation, not a "potentia[l] or hypothetica[l]" one. The Court also relied heavily on the congressional finding of fact accompanying the ADA that there are 43 million Americans with disabilities. The Court observed that more than 100 million Americans have vision impairments requiring corrective lenses and stated that "[h]ad Congress intended to include all persons with corrected physical limitations among those covered by the Act, it undoubtedly would have cited a much higher number of disabled persons in the findings." In holding that corrective measures must be considered, the Court explicitly declined to follow the EEOC interpretation of the Act, which specifically states that mitigating measures should not be considered in determining if an individual is disabled. In a bit of very significant dictum, the Court also questioned whether working is a major life activity. However, since the case did not turn on resolution of that issue, the Court only noted that "there may be some conceptual difficulty in defining 'major life activities' to include work," and expressly reserved judgment on that question. Justices Stevens and Breyer dissented in Sutton, stating that "in order to be faithful to the remedial purpose of the
Act, we should give it a generous, rather than a miserly, construction." The dissent examined the legislative history of the statute and found ample evidence that Congress intended to assess the existence of disability without regard to mitigating measures.

In Sutton’s companion cases, Albertson’s, Inc. v. Kirkingburg and Murphy v. United Parcel Service, Inc., the Court applied Sutton’s basic holding, that mitigating measures must be considered in determining if an individual is disabled, to additional fact patterns. In Albertson’s, the Supreme Court held that the human body’s own ability to compensate for a physical or mental impairment must be considered in determining if a person is disabled. The Court reasoned that Kirkingburg’s impairment, monocular vision—using only one eye to see, was not a disability because his other eye was able to compensate. Therefore, Kirkingburg’s monocular vision was simply a difference in the manner of seeing, not a substantial limitation on the major life activity of seeing. In Murphy, the Court held that medication was a mitigating measure that must be considered in determining if a person is disabled. Murphy suffered from severe hypertension that was partially controlled by medication. The Court held that Murphy’s medication was a mitigating measure that must be considered even though it only partly corrected his condition and caused additional negative side effects.

Following the Sutton trilogy, it is very difficult for an individual to qualify as “disabled” if the individual’s impairment can be mitigated in any way. Applying Sutton, lower courts have found, among other things, that

72. Sutton, 527 U.S. at 495 (Stevens, J., dissenting).
73. Id. at 499-500. Justice Stevens cited the Senate and House Committee Reports. Id. The Senate Committee Report on the ADA states that “whether a person has a disability should be assessed without regard to the availability of mitigating measures.” S. REP. No. 101-116, at 23 (1989). The Report of the House Committee on the Judiciary states that “[t]he impairment should be assessed without considering whether mitigating measures, such as auxiliary aids or reasonable accommodations, would result in a less-than-substantial limitation.” H.R. REP. NO. 101-485, pt. III, at 28 (1990).
76. Albertson’s, Inc. v. Kirkingburg, 527 U.S. 555, 565-66 (1999) (“We see no principled basis for distinguishing between measures undertaken with artificial aids, like medications and devices, and measures undertaken, whether consciously or not, with the body’s own systems.”).
77. Id. at 564-65.
78. Id.
80. Id. at 519-20. Murphy had suffered from hypertension since the age of ten. Id. at 519. His unmedicated blood pressure was 250/160. Id. Justice Stevens’s dissent noted that without medication Murphy would probably be hospitalized. Id. at 525 (Stevens, J., dissenting). With medication, his blood pressure was 186/124, which was still high enough to disqualify him from the Department of Transportation health certification required by his employer. Id. at 519.
81. Id. at 519-21.
82. Rothstein et al., supra note 23, at 255-56. For further discussion of the Sutton trilogy, see Bonnie Poitras Tucker, The Supreme Court’s Definition of Disability Under the ADA: A Return to the Dark Ages, 52 ALA. L. REV. 321 (2000) (discussing the effects of the Sutton trilogy); Wendy E. Parmet, Plain Meaning and Mitigating Measures: Judicial Interpretations of the Meaning of Disability, 21 BERKELEY J. EMP. & LAB. L. 53, 71 (2000) (arguing that the Sutton trilogy reflects an increase in “plain meaning” statutory interpretation); Mark R. Freitas, Closing the Floodgates: The

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depression with suicidal tendencies,\(^{83}\) epilepsy,\(^{84}\) and diabetes\(^{85}\) are not disabilities.

3. Recent Eleventh Amendment jurisprudence has further limited who the ADA protects.

In *Board of Trustees of the University of Alabama v. Garrett*, the Supreme Court held that state governments cannot be sued under the ADA for employment discrimination.\(^{86}\) The Court reasoned that, in enacting Title I of the ADA, Congress did not intend to abrogate the states’ constitutional immunity from lawsuits.\(^{87}\) While *Garrett* was an Eleventh Amendment case and did not directly interpret the ADA,\(^{88}\) its result is that 4,758,000 state employees, or 3.4% of the workforce, are no longer protected by the ADA.\(^{89}\)

### III. SUMMARY OF FACTS

Ella Williams began working at Toyota’s automobile manufacturing plant in 1990.\(^{90}\) She initially worked on an engine fabrication assembly line that required use of pneumatic tools.\(^{91}\) Using these tools caused Williams pain in her hands, wrists, and arms.\(^{92}\) She was diagnosed with bilateral carpal tunnel syndrome and bilateral tendonitis,\(^{93}\) and as a result her doctor...
restricted the types of work that she could perform. The doctor advised that she should never lift more than twenty pounds, frequently lift or carry smaller objects, perform overhead work, do work requiring constant repetitive motion of the wrists or elbows, or use vibratory or pneumatic tools. For the next two years, Toyota attempted to accommodate these restrictions by assigning Williams to modified duty jobs. Nevertheless, Williams took some medical leave and eventually filed a workers’ compensation claim, which was settled. Williams returned to work as part of the settlement, but was unsatisfied with Toyota’s accommodation of her medical restrictions. She then brought a lawsuit against Toyota alleging violations of the Americans with Disabilities Act, which was also settled.

Following the settlement, Williams again returned to work and was placed in the Quality Control Inspection Operations (“QCIO”) department. The QCIO team handled four tasks. Williams was assigned to do two of the four tasks and rotated weekly between them. In the “assembly paint” position, she visually inspected newly painted cars for flaws in the paint job. Williams’ second task was “paint second inspection,” which required her to wipe each newly painted car with a glove as it moved down a conveyor belt. Williams performed these two tasks from December 1993 until the fall of 1996, and all parties agreed that her performance was “satisfactory.”

In 1996, Toyota decided that all QCIO employees should perform all four of the department’s tasks. As a result, the “shell body audit” task was

an additional 588,000 report tendonitis or similar disorders. About one percent of those individuals who experience carpal tunnel develop permanent injuries. NATIONAL INSTITUTE OF NEUROLOGICAL DISORDERS AND STROKE, NATIONAL INSTITUTES OF HEALTH, NINDS Carpal Tunnel Syndrome Information Page, at http://www.ninds.nih.gov/health_and_medical/disorders/carpal_doc.htm. The vast majority have no permanent impairment and can vary their performance of tasks so as to avoid recurring injuries. Id. Compelling testimony as to the more severe effects of carpal tunnel syndrome, tendonitis, and similar disorders can be found in the records of testimony before the Occupational Safety and Health Administration in 2000, at http://www.osha.gov/doc/accsh/transcripts/accsh09l400transcript.html. For a good discussion of the ADA’s treatment of carpal tunnel syndrome pre-Toyota, see Kathleen M. Sheil, The Americans with Disabilities Act: Are Your Wrists Protected?, 23 J. CORP. L. 325 (1998).

94. Toyota, 534 U.S. at 187.
95. Id. at 187-88.
96. Id. at 188.
97. Id.
98. Id.
99. Id.
100. Id.
101. Id.
102. Id.
103. Id. When Williams was first assigned to QCIO, this task included opening and shutting the doors, trunk, and hood of each car. Id. At some point the task was modified to eliminate these duties. Id. However, there is no indication that this modification was made to accommodate Williams. See id.
104. Id. at 188-89.
105. Id. at 189.
106. Id.
added to Williams’ rotation. This task required her to apply a highlight oil to various parts of each car as it passed by on a conveyor belt. Applying the oil required Williams to hold her arms up at shoulder height for extended periods of time, which caused her pain in her neck and shoulders. After seeking medical advice, Williams requested that she be allowed to return to performing only the “assembly paint” and “paint second inspection” tasks.

What happened next is unclear. Williams claimed that Toyota refused to accommodate her limitations and forced her to continue performing the “shell body audit” task, which exacerbated her injuries. Toyota claimed that Williams began missing work regularly. All parties agree that on December 6, 1996, the last day that she went to work, Williams’ doctor placed her under a no-work-of-any-kind order. Toyota subsequently terminated Williams’ employment on January 27, 1997, ostensibly for poor attendance.

Williams sued Toyota claiming that it had violated the ADA by refusing to reasonably accommodate her disability. Williams claimed that she was disabled because she suffered from physical impairments that substantially limited her in the major life activities of performing manual tasks, lifting, working, gardening, doing housework, and playing with children. The trial court agreed that performing manual tasks, lifting, and working are major life activities. However, the court found that Williams was not disabled because her impairments did not “substantially limit” her ability to perform manual tasks, lift, or work. Speaking specifically to the life activity of performing manual tasks, the court found that Williams’ claim of disability was “irretrievably contradicted by [Williams’] continual insistence

107. Id.
108. Id.
109. Id.
110. Id.
111. Id.
112. Id.
113. Id.
114. Id.
115. Id. at 189-90.
116. Id. at 190.
117. Id. Williams also alleged violations of the Kentucky Civil Rights Act and the Family and Medical Leave Act of 1993. Id.
118. Id. In addition, Williams unsuccessfully argued that she was disabled under either the second or third prong of the disability test. Id. See supra, Part II(A) for a discussion of the three prongs under which an ADA plaintiff may qualify as disabled.
119. Id. at 688.
120. Id. Toyota did not argue that Williams did not suffer from a physical impairment. Id.
that she could perform the tasks in assembly and paint inspection without difficulty."

The Sixth Circuit Court of Appeals reversed, holding that Williams was disabled because she was substantially limited in the major life activity of performing manual tasks. In reaching this conclusion, the Sixth Circuit looked to Sutton v. United Air Lines, Inc., in which the Supreme Court held that to be substantially limited in the major life activity of working, an individual must be unable to perform a "class" of jobs. The court then applied this class-based analysis to the major life activity of performing manual tasks and found that Williams was substantially limited in her ability to perform the class of manual tasks required for her job and similar jobs. Therefore, Williams was disabled within the meaning of the ADA.

IV. THE COURT'S OPINION

The Supreme Court granted certiorari to decide what a plaintiff must show in order to establish a substantial limitation in the major life activity of performing manual tasks. Justice O'Connor delivered the unanimous opinion of the court. Justice O'Connor began by noting that there are two potential sources of guidance in interpreting the ADA's definition of "disability." The first of these sources is the regulations interpreting the Rehabilitation Act of 1973. These regulations are a clear source of authority because Congress drew the ADA definition of "disability" directly from the Rehabilitation Act's definition of "handicapped individual," and "Congress' repetition of a well-established term generally implies that Congress intended the term to be construed in accordance with pre-existing regulatory interpretations." Furthermore, Congress explicitly adopted the Rehabilitation Act regulations in the statutory language of the ADA. The second potential source of authority is the EEOC regulations interpreting the

121. Id.
123. Id. at 843 (citing Sutton v. United Air Lines, Inc., 527 U.S. 471, 491-92 (1999)).
124. Id. In finding that Williams was unable to perform this class of manual tasks, the Sixth Circuit noted that "[Williams'] set of impairments to her arms, shoulders and neck . . . are analogous to having missing, damaged or deformed limbs." Id.
125. Id.
126. Toyota Motor Mfg., Ky., Inc., v. Williams, 534 U.S. 184, 192 (2002). The Ninth Circuit case of Thornton v. McClatchy Newspapers, 261 F.3d 789 (9th Cir. 2001), may also have influenced the Court's decision to grant certiorari. Thornton reached the opposite result from the Sixth Circuit Toyota on comparable facts. See Thornton, 261 F.3d at 792-93. After the Supreme Court handed down Toyota, the Ninth Circuit issued a supplementary order affirming its original judgment but giving different reasoning. Thornton v. McClatchy Newspapers, Inc., 292 F.3d 1045 (9th Cir. 2002).
127. Toyota, 534 U.S. at 187.
128. Id. at 193.
129. Id.
131. Id. at 193-94 (quoting 42 U.S.C. § 12201(a) (1994)).
ADA. The Court stated that the “persuasive authority of the EEOC regulations is less clear” because “no agency has been given authority to issue regulations interpreting the term ‘disability’ in the ADA.” However, since the parties did not contest the validity of the EEOC regulations, the Court did not decide the level of deference that they should be given.

The Court’s inquiry into whether Williams was disabled was guided “first and foremost” by the words of the ADA itself. In interpreting each of the words and phrases used by the statute to define “disability,” the Court drew from Webster’s dictionary definitions. The Court first addressed the meaning of “substantially limits.” Since substantially means “considerable” or “to a large degree,” the Court concluded that “impairments that interfere in only a minor way with the performance of manual tasks” are not disabilities. Since the word “major” means “important,” the phrase “major life activities” encompasses only activities “of central importance to daily life.” The Court then combined these two definitions and concluded that in order to have a disability based on the major life activity of performing manual tasks, a plaintiff must “have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people’s daily lives.” “The impairment’s impact also must be permanent or long term.” The Court opined that “these terms need to be interpreted strictly to create a demanding standard for qualifying as disabled.” The Court’s basis for this opinion was Congress’ findings of

132. Id. at 193.
133. Id. The EEOC has statutory authority to promulgate regulations interpreting only Title I of the ADA, which is found at 42 U.S.C. §§ 12111-12117. 42 U.S.C. § 12116 (2000) (“The Commission shall issue regulations in an accessible format to carry out this subchapter . . . .”). The overarching definition of “disability,” which applies to Titles I-V of the ADA, is found in 42 U.S.C. § 12102, a separate definitional section that precedes Title I. See 42 U.S.C. § 12102 (2000). Therefore, the EEOC has not been given authority to define “disability” as used in section 12102. The Court previously addressed this issue in Sutton and concluded, as it did in Toyota, that there was no need to decide what deference was due to the regulations. Sutton v. United Air Lines, Inc., 527 U.S. 471, 480 (1999). Justice Breyer’s Sutton dissent responded to the majority’s questioning of the EEOC regulations by noting that the EEOC is authorized to promulgate regulations for Title I of the ADA, and that Title I also uses the word “disability.” Id. at 514 (Breyer, J., dissenting). Therefore, in Justice Breyer’s view, even if the EEOC lacks authority to issue regulations as to the meaning of “disability” in the ADA’s overarching definitional section, it certainly has authority to define “disability” as used in Title I. Id.
134. Toyota, 534 U.S. at 194.
135. Id. at 196.
136. Id. at 196-97. The Court used Webster’s Third New International Dictionary (1976). Id.
137. Id. at 196.
138. Id. at 196-97.
139. Id. at 197. Individual manual tasks may be of “central importance to daily life” standing alone. Id. Alternatively, a number of manual tasks which individually are not of “central importance to daily life” may, in the aggregate, meet this standard. Id.
140. Id. at 198. (emphasis added).
141. Id. (citing 29 C.F.R. § 1630.2(j)(2)(ii)-(iii) (2001)).
142. Id. at 197.
fact accompanying the ADA. Since Congress found that there are 43 million disabled Americans, the Court concluded that Congress did not intend to include individuals who have difficulty performing "isolated" or "unimportant" manual tasks.

The Court next reiterated the well-settled proposition that existence of a disability must be determined on a case-by-case basis. The Court reasoned that individualized assessment is mandated by the fact that Congress defined disability "with respect to an individual." The Court also found support for individualized evaluation in the EEOC regulations interpreting the ADA. Therefore, since an individualized assessment is required, the Court stated that a mere medical diagnosis of impairment is never sufficient to establish the existence of a disability. Furthermore, individual assessment is necessary because the effects of certain medical impairments vary greatly from person to person. The Court explained that one of Williams’ impairments, carpal tunnel syndrome, is a good example of an impairment in which symptoms vary greatly from person to person.

In the Court’s view, the Sixth Circuit erred in two crucial ways. First, the circuit court erroneously interpreted the 1999 Sutton decision as standing for the proposition that a class-based analysis should be used to determine the existence of a disability in the major life activity of performing manual tasks. The Court stated that "[n]othing in the text of the Act, our previous opinions, or the regulations suggests that a class-based framework should apply outside the context of the major life activity of working." However, the Court was also quick to add that the Court had not decided that working

143. Id. (quoting 42 U.S.C. § 12101(a)(1)).
144. Id. (citing Sutton v. United Air Lines, Inc., 527 U.S. 471, 487 (1999)).
145. Id. at 198 (citing Sutton, 527 U.S. at 483; Albertson’s, Inc. v. Kirkingburg, 527 U.S. 555, 566 (1999); Bragdon v. Abbott, 524 U.S. 624, 641-42 (1998)).
146. Id. at 198 (citing 42 U.S.C. § 12102(2)).
147. Id. (quoting 29 C.F.R. pt. 1630, app. § 1630.2(j) (2001)) ("The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual.").
148. Id. at 197. Using medical criteria to determine whether an individual is disabled would make the definition less subjective, which would make it easier for both employers and employees to predict who the courts would find to be disabled. Rothstein et al., supra note 23, at 244. The Rothstein article is a well-reasoned argument that medical standards can be used to define disability in a way that accomplishes the case-by-case evaluation mandated by the ADA, while also providing more predictability in the disability determination. See Rothstein, et al., supra note 23.
149. Toyota, 534 U.S. at 199.
150. Id. Symptoms of mild carpal tunnel syndrome include numbness and tingling, while severe cases can involve muscle atrophy. Id. Twenty-five percent of all cases last only one month, but 22% last for eight years or longer. Id.
151. Id. at 199-201.
152. Id. at 199. Sutton held that when an individual claims substantial limitation in the major life activity of working, the individual must allege that he or she cannot work in a "broad class" of jobs. Sutton v. United Air Lines, Inc., 527 U.S. 471, 491 (1999). The Sutton Court also held that inability to work in a specific job of one’s choice is not a substantial limitation on the major life activity of working. Id. at 492.
153. Toyota, 534 U.S. at 200.
is a major life activity at all, and noted that there are "conceptual difficulties inherent in the argument."\textsuperscript{154}

Second, the circuit court focused only on the effect that Williams' impairment had on her ability to perform manual tasks at work.\textsuperscript{155} By focusing only on manual tasks performed at work rather than all manual tasks, a plaintiff would be able to recast the inability to do one specific job, which is not a disability under the \textit{Sutton} reasoning,\textsuperscript{156} as a disability in performing a class of manual tasks, thus circumventing \textit{Sutton}'s holding.\textsuperscript{157} Instead, the circuit court should have focused on whether Williams was able to perform tasks "central to most people's daily lives," both at work and outside of work.\textsuperscript{158} For example, it should have considered the fact that Williams could brush her teeth, wash her face, bathe, care for a flower garden, fix meals, and do laundry as evidence of her ability to perform tasks central to most people's lives.\textsuperscript{159} Although her impairments caused her to avoid sweeping, quit dancing, occasionally seek help in dressing, and reduce her gardening, driving, and playing with her children, "these changes in her life did not amount to such severe restrictions in the activities that are of central importance to most people's daily lives that they establish[ed] a manual task disability as a matter of law."\textsuperscript{160} Furthermore, the Court stated that "occupation-specific tasks may have only limited relevance to the manual task inquiry" because the tasks necessary to perform a specific job are not necessarily central to most people's lives.\textsuperscript{161} In Williams' case, "'repetitive work with hands and arms extended at or above shoulder levels for extended periods of time'" is not an important activity to most people.\textsuperscript{162}

\textsuperscript{154} \textit{Id.} The Court also expressly declined to reach this issue in \textit{Sutton}. In that case, the Court assumed, without deciding, that working was a major life activity. \textit{Sutton}, 527 U.S. at 492. For a discussion of the potential conceptual difficulties in the major life activity of working, see \textit{infra}, Part V.

\textsuperscript{155} \textit{Toyota}, 534 U.S. at 200.

\textsuperscript{156} See \textit{infra} note 152.

\textsuperscript{157} \textit{Toyota}, 534 U.S. at 200-01. Between \textit{Sutton} and \textit{Toyota}, most lower courts handled claims of disability caused by carpal tunnel syndrome by analyzing the major life activity of working. Maria Greco Danaher, \textit{U.S. Supreme Court: Inability to Perform Certain Tasks is not "Disability" Under ADA}, \textit{LAW. J.}, February 8, 2002, at 11. These courts determined that carpal tunnel only limits the employee in one type of job, and therefore decided that there was no substantial limit on the major life activity of working. \textit{Id}. The Sixth Circuit's focus on the major life activity of performing manual tasks instead of working was an end run around that usual analysis. \textit{Id}.

\textsuperscript{158} \textit{Toyota}, 534 U.S. at 200-01.

\textsuperscript{159} \textit{Id.} at 202.

\textsuperscript{160} The opinion is unclear, however, on whether these restrictions were insufficient because they were not severe enough, because these particular manual tasks are not central to most people's daily lives, or both. See John W. Borkowski et al., \textit{The 2001-2002 Term of the United States Supreme Court and Its Impact on Public Schools}, \textit{WEST'S EDUC. L. REP.}, Sept. 12, 2002, at 1, 17 (stating that the Court provided little guidance on what constitutes a "major life activity").

\textsuperscript{161} \textit{Toyota}, 534 U.S. at 201.

\textsuperscript{162} \textit{Id.} (quoting Williams v. Toyota Motor Mfg., Ky., Inc., 224 F.3d 840, 843 (6th Cir. 2000)).
Therefore, Williams’ inability to perform these work related tasks was insufficient to establish a manual task disability.\textsuperscript{163}

V. CRITIQUE OF THE COURT’S OPINION

Although the Supreme Court’s decision in \textit{Toyota} is difficult to reconcile with \textit{Bragdon v. Abbott},\textsuperscript{164} it is a logical continuation of the trend, begun in the \textit{Sutton} trilogy, toward limiting the protections of the ADA.\textsuperscript{165} \textit{Toyota} demonstrates that the Court will not necessarily follow or defer to the EEOC’s interpretation of the ADA or its regulations enforcing the Act.\textsuperscript{166} It also shows that the Court intends to interpret the ADA narrowly even if this requires the Court to disregard both the history and the precedent behind the statute.\textsuperscript{167}

A. The Court failed to consider the legislative history of the ADA.

Justice O’Connor’s statement that ADA terms must be interpreted strictly to create a demanding standard for qualifying as disabled is “the clearest statement to date from the Court that it will interpret the ADA narrowly to conform with what it views as Congress’ intention to protect only individuals who are truly disabled.”\textsuperscript{168} However, numerous scholars and authors have pointed out that the legislative history of the ADA does not indicate that Congress intended for the Act to be interpreted narrowly.\textsuperscript{169} The \textit{Toyota} Court failed to consider the legislative history of the statute at all, relying instead on Congress’ one sentence finding of fact that there are 43 million individuals with disabilities.\textsuperscript{170} In light of all the evidence

\begin{itemize}
\item \textsuperscript{163} \textit{Id.}
\item \textsuperscript{164} Annas, supra note 57, at 839.
\item \textsuperscript{166} See Michael Delikat, \textit{Discrimination Law Update, Litig. & Admin. Practice Course Handbook Series}, June 2002, at 49, 77-78. The \textit{Bragdon} Court considered the EEOC regulations persuasive, but the \textit{Sutton} Court, like the \textit{Toyota} Court, refused to defer to the EEOC. See discussion supra, Part II. However, just months after \textit{Toyota} in \textit{Chevron U.S.A., Inc. v. Echazabal}, the Court upheld EEOC regulations concerning the employers’ “direct threat” defense to an ADA claim without any comment whatsoever on the amount of deference the EEOC regulations were due. See \textit{Chevron U.S.A., Inc. v. Echazabal}, 536 U.S. 73, 75 (2002).
\item \textsuperscript{167} See Delikat, supra note 166, at 77.
\item \textsuperscript{168} Id. at 76 (emphasis added); see also Thomas D. Colbridge, \textit{The Americans with Disabilities Act: The Continuing Search for Meaning}, 71 F.B.I. L. ENFORCEMENT BULL. 27, 29, August 2002 (noting that the Court intends to read the language of the ADA to protect only those who are “truly” and “substantially” limited).
\item \textsuperscript{169} See, e.g., Feldblum, supra note 15. Professor Feldblum was legislative counsel with the American Civil Liberties Union from 1988-91. \textit{Id.} at 91 n.1. He was one of the lawyers who negotiated and drafted the ADA. \textit{Id.}; see also Annas, supra note 57, at 846; Parmet, supra note 82, at 60; Tucker, supra note 82, at 322.
\item \textsuperscript{170} \textit{Toyota Motor Mfg., Ky., Inc. v. Williams}, 534 U.S. 184, 197-98 (2002). The Court explored the origin of this finding of fact in greater detail in \textit{Sutton}, which is probably why this section of the \textit{Toyota} opinion is quite cursory. See \textit{Sutton v. United Air Lines, Inc.}, 527 U.S. 471, 484-88 (1999). The \textit{Sutton} court relied on the same finding of fact even though it concluded that “the exact source of the 43 million figure is not clear.” \textit{Id.} at 484. Professor Feldblum asserts that the decision to use the
regarding congressional intent that was available to the Court, this single sentence is scant evidence upon which to base an entire opinion.\textsuperscript{171}

The legislative history and the plain language of the ADA both indicate that Congress intended that "disability" be defined in the same way that the phrase "individual with handicaps" was defined under the Rehabilitation Act of 1973.\textsuperscript{172} When the ADA was passed, the courts defined "individual with handicaps" very broadly.\textsuperscript{173} In the 1987 case of \textit{School Board of Nassau County, Florida v. Arline}, which was handed down just three years before the ADA was passed, the Supreme Court interpreted the term "handicapped individual" to include a plaintiff who had been hospitalized for tuberculosis in 1957 and had suffered a relapse after many years in remission.\textsuperscript{174} In 1987, the broad definition of "handicapped individual" was so certain that the school board even conceded that plaintiff Arline was part of the Rehabilitation Act's protected class.\textsuperscript{175} Following \textit{Arline}, disability law scholars believed that the definition was so broad that "any individual who had been discriminated against because of any impairment" would be included.\textsuperscript{176} In addition, the Department of Health, Education, and Welfare ("HEW") interpreted "handicapped individual" broadly, as evidenced by the following comment in the HEW's regulations interpreting the Rehabilitation Act:

Comments suggested narrowing the definition [of handicapped individual] in various ways. The most common recommendation was that only "traditional" handicaps be covered. The Department continues to believe, however, that it has no flexibility within the statutory definition to limit the term to persons who have those severe, permanent, or progressive conditions that are most commonly regarded as handicaps.\textsuperscript{177}

The Senate Report on the ADA and the Congressional Record also indicate that Congress intended to include a broad range of impairments,
including many non-traditional disabilities, in the ADA’s disability definition.\textsuperscript{178} The senators who supported the ADA believed that arthritis was a covered disability.\textsuperscript{179} HIV infection, even prior to the development of symptoms or AIDS, was expressly included.\textsuperscript{180} Bending restrictions and limited use of an arm due to stroke were referred to as disabilities during Senate debate over the bill.\textsuperscript{181} Most significant to this article, carpal tunnel syndrome was specifically cited as a disability by Senator Harkin, one of the ADA’s primary sponsors.\textsuperscript{182} Only very minor conditions were cited as examples of impairments that were not believed to be disabilities.\textsuperscript{183} For example, the Senate Report stated that an infected finger is not a disability.\textsuperscript{184} Because it recognized that the scope of the term “disability” was very broad, the legislature was careful to specifically exclude politically disfavored conditions such as drug addiction,\textsuperscript{185} transvestites,\textsuperscript{186} and certain mental disorders like compulsive gambling, kleptomania, and sexual behavior disorders from the definition.\textsuperscript{187}

Furthermore, the legislative history shows that Congress believed that one of the ADA’s primary purposes was to allow disabled persons to be successfully included in the workforce,\textsuperscript{188} and that “[r]easonable accommodation [was] a key requirement” in accomplishing this objective.\textsuperscript{189} However, the purposes of inclusion and accommodation are defeated by a narrow definition of disability.\textsuperscript{190} If an individual with a physical or mental limitation is not “disabled” within the meaning of the ADA, no reasonable accommodation is required\textsuperscript{191} and the individual will often remain excluded. Therefore, a broad definition of disability is necessary to carry out the

\textsuperscript{178} See, e.g., 135 CONG. REC. S10711 (1990); 135 CONG. REC. S10722-23 (1989); 135 CONG. REC. S4986 (1989); S. REP. No. 101-116 (1989).

\textsuperscript{179} 135 CONG. REC. S10711 (1989) (“It could be an elderly grandmother with arthritis, but determined to fend for herself and live her retirement years in dignity.”) (statement of Sen. Harkin, one of the primary sponsors of the bill).

\textsuperscript{180} 135 CONG. REC. S10722-23 (1989).

\textsuperscript{181} 135 CONG. REC. S4986 (1989).

\textsuperscript{182} Id.

\textsuperscript{183} See S. REP. 101-116, at 23 (1988).

\textsuperscript{184} Id.


\textsuperscript{186} 42 U.S.C. § 12208 (2000).

\textsuperscript{187} 42 U.S.C. § 12211(b) (2000).

\textsuperscript{188} “[T]his bill will help our country use an immense amount of talent, intelligence, and other human resources which heretofore have been underestimated, underdeveloped, and underutilized.” 136 CONG. REC. H2421-02 (1990) (statement of Rep. Luken). “[O]ur economy can no longer afford not to enlist the unique abilities and talents of people with disabilities.” 135 CONG. REC. S10791 (1989) (statement of Sen. Riegle).


\textsuperscript{190} See Feldblum, supra note 15, at 95-100 (arguing that a narrow definition of “disability” was historically associated with dependency on the social welfare system, and that in a civil rights context, like the ADA, a broader definition is more appropriate); Jennifer Lav, Conceptualizations of Disability and the Constitutionality of Remedial Schemes Under the Americans with Disabilities Act, 34 COLUM. HUM. RTS. L. REV. 197, 204-10 (2002) (arguing that the ADA uses a socio-political concept of disability, which posits that disability comes from the failure of the environment to adjust to the needs of impaired individuals rather that the individual’s inability to fit into society).

clearly stated congressional purposes of encouraging reasonable accommodation and including as many disabled persons as possible in the workforce.\textsuperscript{192}

The \textit{Toyota} Court completely overlooked all of this evidence that Congress intended a broad construction of the term “disability” and erroneously concluded that a “demanding” standard was required.\textsuperscript{193}

\textbf{B. The “severely restricted” test is a departure from precedent.}

An additional difficulty with the Court’s opinion is that the origin of the “severely restricted” is unclear. This language is not found in the ADA, the EEOC regulations, or any previous case law.\textsuperscript{194} Both the ADA and the EEOC regulations interpreting the ADA state that a disability is a \textit{substantial limitation} on a major life activity.\textsuperscript{195} It appears that the \textit{Toyota} Court simply accepted the more stringent “severely restricted” language urged by Toyota in its brief, without giving any reason for this change.\textsuperscript{196}

The problem with this standard is that it is so high that if an individual is impaired enough to qualify as disabled, he is also probably too impaired to work at all.\textsuperscript{197} As an amicus brief from the National Association of Employment Lawyers observed, “it would be hard to imagine any plaintiff meeting this standard who could then go on to prove, as is a plaintiff’s burden, that he or she is qualified to perform the essential functions of the job they hold or desire.”\textsuperscript{198} The “severely restricted” test also appears to be in tension with the Court’s holding in \textit{Bragdon v. Abbott}.\textsuperscript{199} In \textit{Bragdon}, the Court stated that “[t]he Act [ADA] addresses substantial limitations on major life activities, not utter inabilities.”\textsuperscript{200} By adopting the “severely

\begin{itemize}
\item \textsuperscript{192} See Feldblum, \textit{supra} note 15, at 100-02 (arguing that a broader definition of “disability” is more appropriate in a civil rights context like the ADA).
\item \textsuperscript{193} See \textit{Toyota Motor Mfg., Ky., Inc. v. Williams}, 534 U.S. 184, 197 (2002).
\item \textsuperscript{195} 42 U.S.C. § 12102(2)(A); 29 C.F.R. § 1630.2(g)(1).
\item \textsuperscript{196} Compare \textit{Toyota}, 534 U.S. at 198 with Petitioner’s Brief at *12, \textit{Toyota} (No. 00-1089), 2001 WL 741092 (“[A] disabling impairment must be one that imposes severe restrictions on an important, basic function in life.”).
\item \textsuperscript{197} Annas, \textit{supra} note 57, at 843 (stating that disabled individuals who use mitigating measures cannot rely on the ADA to protect them from discrimination, even though they may still be too disabled to work); Shell, \textit{supra} note 93, at 326 (stating that individuals with carpal tunnel syndrome have not always qualified for ADA coverage, though they are in too much pain to work); Amicus Brief of The National Employment Lawyers Association in support of Respondent at *24-25, \textit{Toyota} (No. 00-1089), 2001 WL 1023526; Amicus Brief of National Council on Disability in support of Respondent at *5, \textit{Toyota}, (No. 00-1089), 2001 WL 1023525 (noting the extreme consequences of the elevated standard that a plaintiff must meet).
\item \textsuperscript{198} Amicus Brief of The National Employment Lawyers Association in support of Respondent at 24-25, \textit{Toyota} (No. 00-1089), 2001 WL 1023526.
\item \textsuperscript{200} Id.
\end{itemize}
restricted" test, the Toyota Court moved away from the tried and true "substantially limits" test and closer towards requiring "utter inability."201

C. The suggestion that working is not a major life activity is contrary to precedent.

The Court again left unresolved the question, first raised in Sutton, of whether working is a major life activity.202 The fact that the Court raised this issue a second time suggests that at least some of the Justices think that working is not a major life activity.203 In addition, the Court's statement that there are "conceptual difficulties inherent in the argument that working could be a major life activity" leaves a "potential time-bomb" in the Court's reasoning.204 The Court briefly explained this supposed conceptual difficulty in Sutton, saying that "it seems 'to argue in a circle to say that if one is excluded, for instance, by reason of [an impairment, from working with others] ... then that exclusion constitutes an impairment, when the question you're asking is, whether the exclusion itself is by reason of handicap.'"205 In other words, the inability to work cannot logically be both the cause of a disability and the result of the same disability; such reasoning is circular.206

Assuming that there is a logical problem with working being a major life activity,207 the Court will encounter two problems if it wishes to decide, at some point in the future, that working is not a major life activity. First, precedent treats working as a major life activity. As the Toyota Court noted, when the ADA was passed, Congress expressly incorporated the standards of the Rehabilitation Act and "the regulations issued by Federal agencies

201. See Toyota, 534 U.S. at 198.
204. Parry, supra note 12, at 16.
206. Freitas, supra note 82, at 482 ("Clearly, the inability to work cannot also be the reason for the exclusion. Such a concept creates a circular argument that was not intended in the ADA.").
207. This article's author does not think there is a logical difficulty. The argument that inability to work cannot be both the cause and the result of the disability ignores the fact that inability to work is only one of many results being disabled. In addition, inability to work is not really the cause of the disability, it is a way in which we identify the existence of a disability. When an individual suffers from a number of physical and mental impairments that separately would not rise to the level of disability, but collectively cause a great enough interference with the individual's life to prevent working, that individual is fairly considered disabled.

Professor Freitas contends that the argument is circular and posits two questions which he believes illustrate the logical problems with the concept. Freitas, supra note 82, at 482. First, how does an employer "reasonably accommodate" someone whose disability is in working. Id. Second, how does one formulate clear standards so that employers can determine when inability to work rises to the level of disability if the definition of a working disability is necessarily vague and specific to the individual? Id. This author believes that Professor Freitas points out two practical, not logical, problems. While there are admittedly many practical problems with the definition of disability, since it is riddled with subjective terms and requires a case-by-case evaluation, to tangle oneself in logical formalities misses the practical problems that are really at issue.
pursuant to such title” into the Act.\footnote{208} Those very regulations list working as a major life activity.\footnote{209} Furthermore, in School Board of Nassau County, Florida v. Arline, the Court accepted working as a major life activity and rejected the argument that it was based on circular reasoning.\footnote{210} In Arline, the Court specifically stated “[t]he argument is not circular, however, but direct.” More recently, in Bragdon v. Abbott the Court endorsed a list of major life activities that included working.\footnote{211} If the Court plans to hold that working is not a major life activity in the future, it will need to somehow explain away these precedents.

The second barrier to the Court holding that working is not a major life activity is common sense.\footnote{213} Given that the average American spends a minimum of eight hours each day working, and that most individuals must work to provide for their basic needs, it is difficult to see how work could not be both “major” and central to most people’s daily lives.\footnote{214}

What is going on behind the Toyota Court’s complete departure from the history and precedent of the ADA? Commentators suggest that an increase in textualism is propelling the Court in its current direction.\footnote{215} Textualism is a method of interpretation that relies on the “plain meaning” of the words being interpreted, rather than looking to other sources like history, precedent, or interpretive regulations.\footnote{216} The Court’s inclination towards textualism was evident, though not determinative, in the 1998 Bragdon decision.\footnote{217} The Court adopted a wholesale textualist approach in both the 1999 Sutton\footnote{218} and 2002 Toyota decisions.\footnote{219}

\footnote{208} See id. at 689 (quoting 42 U.S.C. § 12201(a) (1994)) (emphasis added); see also Colker, supra note 38, at 134 (noting that Congress expressed its approval of the section 504 Rehabilitation Act regulations by directly incorporating them into the ADA).
\footnote{209} 45 C.F.R. § 84.3(j)(2)(ii) (2002).
\footnote{211} Id.
\footnote{213} See Issacharoff & Nelson, supra note 58, at 333 (“But if work is not a major life activity, what else is a major life activity? . . . [i]t would be extremely peculiar for Congress to have brought disability status within the rubric of employment discrimination law if working were not intended to satisfy the threshold statutory definition.”); see also Erwin Chemerinsky, One Defeat, One Victory for Civil Rights Plaintiffs, 38 TRIAL 72, 73 (2002) (arguing that “since a major purpose of the ADA was to end workplace discrimination,” it makes no sense to then say that work is not a major life activity).
\footnote{214} E.E.O.C. v. R.J. Gallagher Co., 181 F.3d 645, 654 (5th Cir. 1999).
\footnote{216} Parmet, supra note 82, at 55.
\footnote{217} See Bragdon, 524 U.S. at 638 (stating that “the plain meaning of the word ‘major’ denotes comparative importance”) (quoting Abbott v. Bragdon, 107 F.3d 934, 939-40 (1st Cir. 1997)).
\footnote{218} Parmet, supra note 82, at 80; see Sutton v. United Air Lines, Inc. 527 U.S. 471, 482 (1999).
Despite the *Toyota* Court’s heavy reliance on the actual words of the ADA as defined by Webster’s Dictionary,²²⁰ the text of the ADA certainly is not crystal clear and cannot be made so by simply consulting a dictionary.²²¹ The ADA’s key terms—*major* life activity, *substantial* limitation, and *reasonable* accommodation—are extraordinarily ambiguous and open to interpretation.²²² It is unfortunate that the *Toyota* Court interpreted these ambiguous words in a way that rendered the ADA highly ineffective, under the guise of “plain meaning” jurisprudence.²²⁴

VI. IMPACT

The *Toyota* opinion is “full of nuances, which...[will] be the subject of discussions for many years to come.”²²³ *Toyota* will have effects in the judicial arena and, as the lower courts’ probable interpretation of disability becomes apparent to human resource managers and labor lawyers, also in the workplace.²²⁶ This section first describes *Toyota’s* effects on lower courts’ treatment of ADA lawsuits and then considers the practical impact on the workplace.

A. Judicial Impact

The *Toyota* decision is a clear indication that the Supreme Court interprets the ADA much more narrowly than the EEOC regulations would suggest that it should be interpreted.²²⁷ The effect of the decision is to “curb the breath of the ADA by requiring strict interpretation of the law’s key definition of ‘disability,’ potentially limiting the number of persons who meet the definition in much the same way as did the Court’s trio of ADA decisions in 1999.”²²⁸ The limitation is so severe that bringing an ADA employment discrimination claim is “increasingly futile.”²²⁹

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²²⁰. *Id.* at 196 (relying “first and foremost” on the words used in the definition of disability).
²²³. *Id.* at 308.
²²⁵. *Id.*
²²⁶. *Delikat, supra* note 166, at 77.
²²⁷. *Id.* at 75-76; see also John M. Husband, *The U.S. Supreme Court Toyota Case: Further Limits to the ADA*, 31 COLO. LAW. 65, 65 (2002) (noting that the Court “continued the trend toward reducing the possible impact of the Americans with Disabilities Act”).
²²⁸. *Id.* at 165, at 39.
1. Lower courts may be unwilling to hold that carpal tunnel syndrome or similar physical impairments are disabilities, no matter how severe these impairments are.

*Toyota* did not hold that carpal tunnel syndrome is never a disability.\(^{230}\)

It is theoretically possible for carpal tunnel and physical impairments with similar symptoms to qualify as disabilities if they are severe enough.\(^{231}\)

However, in practice it is highly unlikely that lower courts will find that plaintiffs are disabled because of carpal tunnel syndrome.\(^{232}\)

This is true for two reasons, which are aptly illustrated by the cases of *Richard v. United States Postal Service*\(^{233}\) and *Thornton v. McClatchy Newspapers*.\(^{234}\)

a. *Richard v. United States Postal Service*

The first reason is that it is hard to imagine a case of carpal tunnel syndrome that is severe enough to qualify as a disability using *Toyota*’s very high standard.\(^{235}\)

The impairment at issue in *Richard* was not actually carpal tunnel, but manifested itself in similar symptoms such as limited motion and pain in the arm.\(^{236}\)

The *Richard* plaintiff suffered from ulnar nerve damage and was diagnosed with a 30% disability in his left shoulder, arm, and hand.\(^{237}\)

He had difficulty dressing himself, required assistance to bathe some body parts, could not do household chores that required pushing, pulling or reaching with his left hand, and was not able to pick up his children.\(^{238}\)

In a mere one paragraph of analysis,\(^{239}\) the federal district court reasoned that the plaintiff’s limitations were similar to Williams’ limitations in *Toyota*, and thus held that he was not disabled.\(^{240}\)

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232. *Id.* at 257-58.


234. 261 F.3d 789 (9th Cir. 2002). Other recent carpal tunnel cases in which the courts have found no disability exists as a matter of law include Heimann v. Roadway Express, Inc., 228 F. Supp. 2d 886 (N.D. Ill. 2002) (plaintiff who suffered from carpal tunnel for over a year and required surgery on both hands held not disabled); Philip v. Ford Motor Co., 2002 WL 391348 (D. Minn. Mar. 8, 2002) (rejecting ADA claim because carpal tunnel plaintiff was limited only in performing work-related tasks and not in performing tasks central to daily life); Serrano v. Terence Cardinal Cooke Health Care Ctr., 2002 WL 31027183 at *4 (E.D.N.Y. Sept. 9, 2002) (carpal tunnel not a disability because plaintiff was still able to perform most work functions even though the injury “complicated [her] ability to perform daily functions ”).


237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.* at 179.
The Richard decision seems correct under the Toyota standard because Richard’s limitations were indeed quite comparable to the Toyota Court’s description of Williams’ impairments.241 However, this standard is unrealistically high; it defies common sense to claim that a plaintiff who cannot bathe himself is not disabled.

b. Thornton v. McClatchy Newspapers, Inc.

The second reason that lower courts may be reluctant to find that carpal tunnel syndrome and similar impairments are disabilities is simply because of the Court’s negative reception in Toyota.242 The case of Thornton v. McClatchy Newspapers, Inc. illustrates the interpretive gymnastics that lower courts may perform in order to find that a plaintiff with carpal tunnel is not disabled.243 In Thornton, the Ninth Circuit held that a newspaper reporter with myofascial pain syndrome (injuries to the shoulders, arms, and wrists) was not disabled.244 The reporter’s condition was severe enough that she was required to take a leave of absence to undergo intensive physical therapy.245 When she returned to work, she was unable to write for more than five minutes at a time or more than thirty minutes intermittently per day.246 In addition, she was unable to keyboard for more than thirty minutes at a time or more than a total of sixty minutes intermittently per day.247 The Ninth Circuit found that Thornton was not disabled because handwriting and keyboarding for these periods are not “activities that are of central importance in most people’s daily lives.”248 The court reasoned that Thornton’s ability to handwrite and keyboard were merely “diminished,” not “substantially limited.”249

In light of the nature and importance of handwriting and the amount that many Americans use computers to perform essential daily tasks, the court’s assertion that these activities are not central to daily life is somewhat incredible.250 In addition, the Court’s distinction between “substantially

242. Mazura & Young, supra note 231, at 258.
244. Thornton, 292 F.3d at 1046. The Ninth Circuit originally decided the case and issued an opinion before the Supreme Court decided Toyota. See Thornton, 261 F.3d at 789.
245. Thornton, 261 F.3d at 793.
246. Id.
247. Id.
248. Thornton, 292 F.3d at 1046.
249. Id.
250. See id. at 1048-49 (Berzon, J., dissenting). Judge Berzon reasoned:
For many students, for most of the wide variety of employees who work at jobs that require computer use, and for many individuals who use computers for such daily tasks as making travel arrangements, e-mailing to friends and relatives, paying bills, filing tax returns and other forms, and shopping, the inability to use a computer—or alternatively, to handwrite—for more than 60 minutes total in a day could fundamentally alter the way they live their lives . . .
Id. (emphasis in original).
limited” and “diminished” seems artificial. However, after Toyota, many courts may prefer to engage in this type of strained analysis rather than simply finding that a disability exists.

2. The number of cases resolved in favor of employers on motion for summary judgment may increase.

The Toyota Court reversed the Sixth Circuit’s grant of partial summary judgment to Williams, but it did not reinstate the district court’s grant of summary judgment to Toyota because Toyota’s brief did not request reinstatement.\textsuperscript{251} Since Toyota failed to make that request, the Court was able to carefully sidestep an issue that amici had strongly urged the Court to address: whether the federal district court had properly applied the standard for summary judgment.\textsuperscript{252}

Trial courts frequently use, and often misuse, summary judgment to dispose of Title I ADA cases in favor of employers by finding that the plaintiff is not disabled as a matter of law.\textsuperscript{253} One study of the use of summary judgment in ADA cases showed that in 2001 federal district courts resolved 328 Title I ADA cases.\textsuperscript{254} Employers prevailed in 314 of these cases.\textsuperscript{255} However, employers won only 4 of these 314 victories (1.2\%) after a trial on the merits.\textsuperscript{256} The other 310 cases were dismissed on summary judgment motions.\textsuperscript{257} A second researcher’s analysis of all publicly available, unappealed ADA cases brought between 1992 and 1998 (under all five titles of the ADA) revealed that 38.7\% of these cases were resolved on summary judgment in favor of employers, while only 1\% were resolved on summary judgment in favor of plaintiffs.\textsuperscript{258} These studies raise serious concern that the courts may have abused summary judgment to employees’ detriment. In addition, these numbers may understate the true problem because plaintiffs win four times more often in published opinions than in unpublished opinions at the district court level.\textsuperscript{259}

There are two different ways in which summary judgment is being abused.\textsuperscript{260} First, judges are refusing to send questions of fact, such as

\begin{footnotesize}
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\item[251.] Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 203 (2002).
\item[252.] Amici Curiae Brief of the National Employment Lawyers Association in Support of Respondent at 3, Toyota (No. 00-1089), 2001 WL 1023526; Amicus Brief of The National Council on Disability in Support of Respondent at 26-27, Toyota (No. 00-1089), 2001 WL 1023525.
\item[253.] Colker, \textit{supra} note 38, at 119.
\item[255.] \textit{Id.}
\item[256.] \textit{Id.} at 395.
\item[257.] \textit{Id.} at 396.
\item[258.] Colker, \textit{supra} note 38, at 126.
\item[259.] \textit{Id.} at 104.
\item[260.] \textit{Id.} at 101-02.
\end{itemize}
\end{footnotesize}
whether the plaintiff is disabled, to a jury. Second, courts are creating an "impossibly high threshold of proof" that the plaintiff must meet in order to survive the summary judgment motion, despite the fact that at summary judgment all facts must be taken as true and all reasonable inferences must be made in favor of the non-moving party (usually the plaintiff).

In the present case, the district court granted summary judgment to Toyota despite the fact that the major dispute was a question of fact--whether Williams was "substantially limited." The district court also imposed a high burden of proof on Williams and did not make all reasonable inferences in Williams' favor. In addition, the district court ruled that Williams did not offer any evidence regarding the nature and severity of her impairment even though she had presented her doctor's reports and medical records. In short, Toyota presented an opportunity in which the Supreme Court could have addressed the problem of improperly granted summary judgments. The Court's failure to address the issue is an implicit approval of the lower court's handling of the case. As a result, the number of summary judgments granted to employers may increase even more. At the very least, courts that are inclined to grant summary judgments will be encouraged to do so because of the Supreme Court's extreme emphasis in Toyota on creating a rigorous standard for ADA plaintiffs.

261. Id. at 101. This situation is clearly illustrated by Katz v City Metal Co., Inc. In Katz, the trial court judge first refused to let the plaintiff's doctor testify for procedural reasons, and then granted the employer's summary judgment motion with the following comments:

   In order for the Plaintiff to recover in this case, the Plaintiff must make a showing that he has some type of permanent impairment . . . . The only evidence is that he has a blocked artery that was opened up by balloon angioplasty . . . . People recover from heart attacks and go on with life's functions. I know, I've done it, and I had an artery that was completely blocked and not reopened . . . . I have decided it as a matter of law. I have decided the Plaintiff failed to prove that he had a permanent disability resulting from his heart attack.

Katz v. City Metal Co., Inc., 87 F.3d 26, 30 (1st Cir. 1996). The court of appeals reversed and remanded the case for trial. Id.

262. Colker, supra note 38, at 102.


264. Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 196-97 (2002); see also Colker, supra note 38, at 114 (stating that whether a plaintiff is substantially limited is a decision for the jury).

265. See Amicus Curiae Brief of the Association of Trial Lawyers of America in Support of Respondent at 10-11, Toyota (No. 00-1089), 2001 WL 1023524.

266. Id.

267. Id. at 9-10.

268. See id.

269. John W. Parry, Highlights, 26 MENTAL AND PHYSICAL DISABILITY L. REP. 387, 389 (2002); see also Allbright, supra note 254, at 395 (noting that between January and June of 2002, immediately after the Toyota decision, the number of ADA decisions on the merits involving the definition of disability decreased even further).

270. See Toyota, 534 U.S. at 197 (stating that "these terms need to be interpreted strictly to create a demanding standard for qualifying as disabled").
3. Use of the argument that working is a major life activity will slowly decrease.

Following the dictum in *Sutton v. United Air Lines, Inc.* questioning whether working is a major life activity, the circuit courts were thrown into confusion regarding this issue. 271 Four circuits have addressed the issue since the *Toyota* opinion was handed down and they have come to three different conclusions. In *E.E.O.C. v. Gallagher Co.*, the Fifth Circuit unequivocally held that working is a major life activity. 272 The court reasoned that this is true because "[f]or many, working is necessary for self-sustenance... The choice of an occupation often provides the opportunity for self-expression and for contribution to productive society... jobs are an important element of how we define ourselves and how we are perceived by others." 273 The Fifth Circuit felt that the plain language of the ADA compelled this result and therefore did not decide what amount of deference should be given to the EEOC regulations. 274 Citing *Gallagher*, the Second Circuit also held that working is a major life activity. 275 The Eleventh Circuit has stated simply that, until the Supreme Court rules otherwise, it will stand by its precedent treating working as a major life activity. 276 Most recently, the D.C. Circuit discussed this issue at length, but then declined to make a decision. 277

The Court's repetition of this question in *Toyota* is sure to rouse further debate about whether or not working is a major life activity, and the uncertainty may lead the courts to take working claims less seriously or consider them only as a last resort. 278 Because working is the life activity most frequently relied upon by ADA plaintiffs, courts' reluctance to entertain working claims will further reduce ADA plaintiffs' already minuscule success rate. 279 In addition, after *Toyota*, there is the potential

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273. Id. at 654.
274. Id. at 654 n.5.
275. *Bartlett*, 226 F.3d at 80.
276. Mullins v. Crowell, 228 F.3d 1305, 1313 (11th Cir. 2000).
277. Duncan v. Washington Metro. Area Transit Auth., 240 F.3d 1110, 1117-18 (D.C. Cir. 2001) (Randolph, J., concurring). The D.C. Circuit court pointed out that if working is a major life activity, whether a plaintiff is disabled or not will depend partly upon factors such as the job market, and that a definition of disability that depends on such factors is not easy to apply. Id. at 1118. However, the court also pointed out that the Rehabilitation Act, 29 U.S.C. § 794 (2000), *School Board of Nassau County, Florida v. Arline*, 480 U.S. 273 (1987), and *Bragdon v. Abbott*, 524 U.S. 624 (1998), all seemed to accept working as a major life activity. Id. at 1117.
279. Annas, supra note 57, at 850-51.
that one circuit might take the hint from the Court and hold that working is not a major life activity, which would greatly reduce the number of persons that could even bring suit under the ADA in that circuit. The result would be a wide geographic disparity in the amount of protection the ADA offers.

B. Workplace Effects

The Toyota decision is a “significant legal victory” for employers.282 Because carpal tunnel syndrome nearly always interferes with the performance of some manual tasks, a decision in favor of Williams would have essentially made carpal tunnel a per se disability. Therefore, a decision for Williams would have dramatically increased the number of employees who employers have a duty to reasonably accommodate. Instead, the opposite is true. Because the Court raised the standard that plaintiffs must meet to qualify as disabled, the number of employees who are entitled to reasonable accommodation under the ADA will decrease.

The Toyota opinion provides employers with a more concrete, easily applied test than was previously available for determining whether an employee has a manual task disability, so that employers can correctly decide if they must provide reasonable accommodation.287 Toyota teaches that employers should focus not only on what employees cannot do, but on what they can do. Thus, when assessing an employee’s claim that he is disabled and/or needs an accommodation, employers should ask questions of the employee, and/or request medical documentation, with the aim of establishing their ability, as well as their inability, to perform important activities.

Of course, gathering detailed information on employees is expensive and time consuming, and so employers’ costs may increase, especially in cases that end in litigation.290 All of these effects assume that plaintiffs will continue to sue for employment discrimination under the ADA. However, some states have discrimination laws that define disability more broadly and provide more

280. See Allbright, supra note 254, at 395.
281. See id.
282. Delikat, supra note 166, at 77.
283. Danaher, supra note 157, at 19.
284. Id. at 19.
285. Delikat, supra note 166, at 77.
286. Id.
287. Id. at 77-78.
288. Id.
289. Id.
290. See Borkowski, et al., supra note 160, at 17.
protections to employees than the ADA.\textsuperscript{292} For example, New York statute defines disability as “a physical, mental, or medical impairment . . . which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques.”\textsuperscript{293} New York law does not require a substantial limitation on a major life activity.\textsuperscript{294} Williams would clearly be disabled under New York law.\textsuperscript{295} In states like New York, \textit{Toyota} will have little practical effect on the workplace because employers will still be held to more stringent state non-discrimination standards.\textsuperscript{296}

It is clear that employers will benefit from \textit{Toyota}, but at what cost to individual employees? The \textit{Toyota} decision sets such a high standard for disability that it creates a “[c]atch-22” situation for many individuals.\textsuperscript{298} Plaintiff Ella Williams’ situation aptly illustrates this catch-22 and its potentially devastating effects.\textsuperscript{299} For several years, Williams was physically able, despite her struggles with carpal tunnel syndrome, to satisfactorily perform her assembly line job.\textsuperscript{300} It was only when new tasks were added to her position that her symptoms worsened, causing her to request the reasonable accommodation of returning to her previous job.\textsuperscript{301} Toyota refused to let Williams return to her old job and forced her to continue performing the tasks that were causing her injuries.\textsuperscript{302} Faced with few choices, Williams continued working, which exacerbated her condition until she was clearly “disabled” enough to invoke the protections of the ADA.\textsuperscript{303} But by that time, the ADA could not help her because she was no longer physically capable of working at all.\textsuperscript{304}

As Williams’ story illustrates, \textit{Toyota}’s unreasonable standard places employees in an impossible situation: many individuals are impaired enough that they are unable to work without some accommodation, but not impaired enough to receive accommodation under the \textit{Toyota} standard.\textsuperscript{305} This places
the burden on the employee to choose either to stop working, or to continue working and risk further injury, which, ironically, may make the employee impaired enough for reasonable accommodation.\textsuperscript{306} The burden is on the employee even when, as in Williams' case, an employer could easily offer an alternative that would allow the individual to continue to work and be a productive part of society.\textsuperscript{307} Williams' story is not unique.\textsuperscript{308} Following Toyota, many more similarly situated individuals may become caught in this catch-22 situation and become unable to work.\textsuperscript{309} This result is clearly incompatible with the ADA's goals of "full participation, independent living, and economic self-sufficiency"\textsuperscript{310} and reduction of "unnecessary expenses resulting from ... nonproductivity."\textsuperscript{311}

\textbf{VII. CONCLUSION}

"The ADA appears radically different than it did just a few years ago," in large measure because of the Supreme Court's recent decision in Toyota.\textsuperscript{312} Despite a legislative history that clearly demonstrates the intention of the ADA's drafters to act expansively to eliminate discrimination against all those who are disabled, the Supreme Court has chosen to limit the statute's protections to only a few.\textsuperscript{313} With the unanimous Toyota decision following in the path of the Sutton trilogy, the Court has undoubtedly charted its course and will likely continue to narrow and limit the ADA.\textsuperscript{314} This means that for lower courts an expansive reading of the ADA is no longer legally supportable, even though socially desirable.\textsuperscript{315}

Congress could attempt to repair the Court's damage to the ADA by amending the Act.\textsuperscript{316} However, it would be very difficult, if not impossible, to define disability in a way that removes subjectivity—and thus puts the definition beyond the Court's reach—but still employs a case-by-case analysis. Because Congress felt strongly that a case-by-case analysis was

\textsuperscript{306} See id.
\textsuperscript{307} See Toyota, 534 U.S. at 188 (noting that Williams had performed two tasks at the Toyota plant for three years without difficulty, and that she had asked to be reassigned to those tasks).
\textsuperscript{308} For example, in \textit{Chanda v. Engelhard/ICC}, plaintiff, a foam board cutter, developed work related injuries to his hands. \textit{Chanda v. Engelhard/ICC}, 234 F.3d 1219, 1220-21 (11th Cir. 2000). After being denied reassignment to at least two other positions for which he was qualified, he continued in his foam board cutting position until he was unable to use his right hand to grasp, lift, turn, or write. \textit{Id.} He was then discharged for inability to perform the job. \textit{Id.} See also \textit{Sheil}, \textit{supra} note 93, at 328, 332 (noting that almost half of all occupational injuries are due to carpal tunnel syndrome or other related injuries and that employees are filing an increasing number of discrimination claims after being denied reasonable accommodation for these impairments).
\textsuperscript{309} Annas, \textit{supra} note 57, at 848.
\textsuperscript{312} See Reinert & Mahusky, \textit{supra} note 165, at 39.
\textsuperscript{313} See discussion \textit{supra} Part V.
\textsuperscript{314} See Delikat, \textit{supra} note 166, at 77-78.
\textsuperscript{315} See Parry, \textit{supra} note 12, at 15.
\textsuperscript{316} Parmet, \textit{supra} note 82, at 88.
important when it enacted the ADA in 1990, it is unlikely that it would now be willing to dispense with this requirement.\textsuperscript{318} Another option would be to adopt New York’s state law approach and define disability so broadly that anyone with any impairment is included.\textsuperscript{319} However, this would likely increase employers’ costs significantly.\textsuperscript{320} In 1990, Congress was very aware of the need to balance employers’ concerns with the ADA’s goals, and Congress would probably believe that this option places too great a burden on employers.\textsuperscript{322} In addition, it is politically inadvisable to attempt to amend the ADA in the current uncertain, economics-focused political climate, because ground might be lost rather than gained.\textsuperscript{323} These factors suggest that any action in Congress to amend the ADA will have to wait for another day.

Two questions remain unanswered after \textit{Toyota}: Is working a major life activity? Will the Supreme Court intervene and establish clear, consistent, and equitable standards for granting summary judgment in ADA cases?\textsuperscript{324} Meanwhile, advocates of disability rights can only hope that when the Court chooses to answer these questions, it will do so in a way that is more consistent with the history and purpose of the ADA than recent decisions have been.

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\textsuperscript{318} See discussion supra notes 12-24 and accompanying text.
\textsuperscript{319} See discussion supra notes 292-296 and accompanying text.
\textsuperscript{322} See discussion supra Part II(A).
\textsuperscript{323} See Tucker, supra note 82, at 373-74.
\textsuperscript{324} See discussion supra Part VI(A).
\textsuperscript{325} J.D. Pepperdine University School of Law, May 2004.