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Cover Page Footnote

I would like to thank the Editors and Staff of the Fordham Urban Law Journal for the time and dedication they put into editing this Comment. Special thanks goes to Professor Sheila Foster, who helped me sort out my ideas until we both realized a strong and consistent theme for this work. Gail Glidewell, Alex Sauchik, and Kim Smith were instrumental in editing this Comment. I dedicate this work to my parents, Togay and Zinnur Ulgen, and my closest friends. Without their sacrifice, commitment, and laughter everything that I have accomplished would not be as meaningful. I also dedicate this Comment to Ella Williams, who has demonstrated an amazing amount of courage and resilience over the past decade. I hope that this Comment encourages people to learn more about the Americans with Disabilities Act, a fascinating and important piece of legislation.

FROM HOUSEHOLD BATHROOMS TO THE WORKPLACE: BRINGING THE AMERICANS WITH DISABILITIES ACT BACK TO WHERE IT BELONGS: AN ANALYSIS OF *TOYOTA MOTOR MANUFACTURING V. WILLIAMS*

*Argun M. Ulgen**

INTRODUCTION

Ella Williams has endured the following impairments over the past ten years: bilateral carpal tunnel syndrome,¹ myotendinitis and myositis bilateral, and thoracic outlet compression.² Williams's carpal tunnel syndrome could lead to muscle atrophy and extreme sensory deficits.³ Her other conditions are equally unpleasant: myotendinitis bilateral periscapular is an inflammation of the muscles and tendons around both shoulder blades;⁴ myotendinitis and myositis bilateral affects the forearms by causing median nerve irritation,⁵ and thoracic outlet compression is characterized by pain in the nerve leading to the upper extremities.⁶ As a result of these

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1. *Toyota Motor Mfg., Ky. v. Williams*, 534 U.S. 184 (2002). Bilateral carpal tunnel syndrome has symptoms that vary widely from person to person. *Id.* at 199. Severe cases are characterized by muscle atrophy, and twenty-two percent of cases have symptoms that last eight years or longer. *Id.* In Williams's case, her carpal tunnel syndrome began in the early 1990s and has grown increasingly severe ever since. *Id.* at 187-90.

2. *Id.* at 189.

3. *See id.* at 199 (stating that severe cases of carpal tunnel syndrome can include these symptoms).

4. *Id.* at 189.

5. *Id.*

6. *Id.*

afflictions, Williams needs help getting dressed.⁷ She cannot drive long distances with her family.⁸ She cannot garden as much as she would like, has quit dancing, and must limit her participation in other recreational activities.⁹ She cannot sweep the floors of her home.¹⁰ Most importantly, Williams must limit the time she spends playing with her children.¹¹

Although Ella Williams's impairments resulted in several changes in her lifestyle, she still wanted to be a productive citizen in the workforce.¹² Williams's employer, Toyota Motor Manufacturing, made a small adjustment to her work schedule, and assigned Williams to tasks that did not require any activity that could worsen her impairments.¹³ While she was not able to frequently lift objects weighing ten pounds or more, constantly extend her wrists or elbows, maintain her arms above her shoulders for extended periods of time, or use vibratory tools, she proved valuable in other jobs within the workplace.¹⁴ For three years, Williams was assigned to the assembly line to scan products for flaws.¹⁵ Throughout that time, her employer said her performance was satisfactory.¹⁶

In 1996, however, Toyota Motor Manufacturing revamped its policies to require those who worked in Williams's division to do certain physical tasks.¹⁷ Those tasks worsened Williams's impairments.¹⁸ Williams took several days off from work due to severe pain.¹⁹ Eventually, according to Williams, she was fired because of her inability to perform these tasks.²⁰ In response, she sued Toyota

7. *Id.* at 202.

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *See id.* at 188-89 (stating that Williams wanted to work in Quality Control Inspection Operations performing visual inspections that required few or no manual tasks after she was diagnosed); *cf.* Eric Wade Richardson, Comment, *Who is a Qualified Individual With a Disability Under The Americans with Disabilities Act*, 64 U. CIN. L. REV. 189, 189 (1995) (noting that at the time when the Americans with Disabilities Act was passed, between sixty and seventy percent of the disabled population in the United States indicated a desire for full-time work).

13. *Toyota Motor Mfg.*, 534 U.S. at 188-89.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.* at 189.

18. *Id.*

19. *Id.* at 189-90.

20. *Id.*

Motor Manufacturing for discrimination under the Americans with Disabilities Act (“ADA” or “Act”).²¹

Under the ADA, Toyota Motor Manufacturing is required to provide Williams with “reasonable accommodations”²² for her “known physical or mental limitations,”²³ if Williams is “an otherwise qualified individual with a disability,”²⁴ provided that the accommodation does not pose an “undue hardship” on the business.²⁵ In *Toyota Motor Manufacturing v. Williams*,²⁶ the Supreme Court had to decide whether Williams was disabled under the ADA as a matter of law.²⁷ Justice Sandra Day O’Connor wrote the opinion for a unanimous Court, holding that she was not.²⁸ The effect of this decision is that Williams, a seven-year Toyota employee, may lose her job permanently. The severe combination of impairments she has incurred has not been interpreted as a disability under the ADA. Justice O’Connor’s “strict” interpretation²⁹ of the ADA may bar many employees with impairments similar to Williams who request reasonable workplace accommodation from pursuing lawsuits under the ADA because they do not fit within the ADA definition of being disabled.³⁰

In deciding that Williams was not disabled under the ADA, Justice O’Connor was most concerned with deferring to the “legislative findings and purposes that motivate the Act.”³¹ Recognizing that Congress cited forty-three million people as being disabled,³² Justice O’Connor justified her strict interpretation of the ADA as follows: “If Congress intended everyone with a physical impairment that precluded the performance of some isolated, unimpor-

21. *Id.* at 190. The Court unanimously held that Williams was not disabled under Title I of the ADA as a matter of law. This Comment will concentrate specifically on the meaning of the term “disability” under 42 U.S.C. § 12112(b) (1995), and the Court’s application of that section in *Toyota Motor Manufacturing*.

22. 42 U.S.C. § 12112(b)(5)(A).

23. *Id.*

24. *Id.*

25. *Id.*

26. *Toyota Motor Mfg.*, 534 U.S. at 187.

27. *Id.* (stating that certiorari was granted to decide the proper standard for assessing whether an individual is substantially limited in performing a manual task).

28. *Id.* at 202-03.

29. *See id.* at 197 (stating that the terms of the ADA need “to be interpreted strictly to create a demanding standard for qualifying as disabled.”).

30. Based on the Equal Employment Opportunity Commission (“EEOC”) regulations, the plaintiff in an ADA claim has the burden of proving that she is disabled as a matter of law. If she cannot prove that she is disabled, the court will grant the defendant summary judgment under 29 C.F.R. § 1630.2(g) (2001).

31. *Toyota Motor Mfg.*, 534 U.S. at 197.

32. *Id.* at 197-98.

tant, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher.”³³ On its face, this argument seems plausible. An analysis of the economic remedial goals that Congress sought to achieve with the ADA, however, illustrates that Congress intended to allow thousands of people like Ella Williams to overcome “stereotypic assumptions not truly indicative of individual ability”³⁴ and contribute to the economy by attaining “economic self-sufficiency.”³⁵

The purpose of this Comment is two-fold. First, it will analyze how the Supreme Court’s treatment of the ADA in *Toyota Motor Manufacturing* deviated from the economic goals that Congress targeted when it passed the ADA, and argue that plaintiffs such as Ella Williams are exactly whom Congress had in mind when enacting the ADA. In accordance with Congress’s intent under Title I of the ADA, “to provide clear, strong, consistent, and enforceable standards addressing discrimination against individuals,”³⁶ this Comment then attempts to establish a clearer, more formal definition of disability, centered on Congress’s remedial economic purposes in enacting the ADA.

Part I of this Comment will discuss the background of the ADA, concentrating on the Act’s economic goals and their relation to the intended interpretation of the term “disability.” Part II discusses in detail the Supreme Court’s decision in *Toyota Motor Manufacturing*, contrasting the congressional intent behind the ADA with its recent flawed interpretation by the Court. Finally, Part III attempts to create a clearer test to guide courts in interpreting the term “disability” to conform to Congress’s intent.

I. BACKGROUND OF THE ADA

A. General Statutory Provisions of the ADA

In *Toyota Motor Manufacturing*, the Court analyzed the definition of the term “disability” under the ADA.³⁷ The ADA defines disability as an impairment that substantially limits a major life activity.³⁸ If an ADA plaintiff proves that she is disabled, she must

33. *Id.* at 197.

34. See 42 U.S.C. § 12101(a)(7) (1995). One of the central tenets behind the ADA was that disabled individuals were qualified to work and that stereotypes indicating otherwise needed to be eliminated. See *infra* notes 42-69 and accompanying text (discussing the legislative history of the ADA).

35. See 42 U.S.C. § 12101(a)(8).

36. See *id.* § 12101(b)(2).

37. *Toyota Motor Mfg.*, 534 U.S. at 193.

38. 42 U.S.C. § 12102(2)(A).

then show that she would still be qualified for the job in question. The ADA defines a “qualified individual with a disability” as “an individual with a disability who, with or without reasonable accommodation, can perform essential functions of the employment position that such individual holds or desires.”³⁹ Once an ADA plaintiff establishes that she is a “qualified disabled” individual,⁴⁰ it must be shown that a reasonable accommodation can be established by the employer, without an undue hardship on the business.⁴¹

B. Economic Circumstances That Led to the Passage of the ADA

A primary purpose of the ADA was to create more full-time employment opportunities for the disabled.⁴² Numerous studies throughout the mid-to-late 1980s indicated that of all the “discrete and insular”⁴³ minorities, disabled individuals⁴⁴ were by far the most economically disadvantaged.⁴⁵ About two-thirds of working-age individuals with disabilities are not working, a number that exceeded that of all other demographic groups under age sixty-five of

39. *Id.* § 12111(8).

40. *See supra* notes 38-39 and accompanying text (discussing the requirements that a plaintiff must be “disabled” and “qualified” under the ADA).

41. 42 U.S.C. § 12111(9)-(10) (discussing the terms “reasonable accommodation” and “undue hardship,” which measure the economic consequences that an employer will have to suffer if it accommodates a disabled employee. These modifications include “job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices . . . [and] other similar accommodations for individuals with disabilities.” *Id.* § 12111(9)).

42. *See S. REP. NO.* 101-116, at 17-18 (1989).

43. 42 U.S.C. § 12101(a)(7).

44. The various studies presented in this Section have different definitions for the term “disabled.” For instance, under the “health conditions approach,” which looks at all conditions that impair the health of an individual, 160 million people are disabled. *See Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 485 (1999). Under a “work disability approach,” which focuses strictly on an individual’s reported ability to work, only 22.7 million people are disabled. *See id.* What these studies have in common, however, is that they concentrate specifically on the economic implications of discrimination against disabled individuals, and the importance of legislation to remedy these problems.

45. LOUIS HARRIS & ASSOC., *THE ICD SURVEY OF DISABLED AMERICANS: BRINGING DISABLED AMERICANS INTO THE MAINSTREAM* 23 (1986) [hereinafter *ICD SURVEY*]. For purposes of the survey, a person was considered disabled if: (1) she had a disability or health problem that prevented her from participating fully in work, school, or other activities; (2) she claimed to have a physical disability, a seeing, hearing, or speech impairment, an emotional or mental disability, or a learning disability; or (3) considered herself disabled or said others would consider her disabled. *Id.* at iii.

any significant size, including young African-Americans, a group often singled out as having an extremely high unemployment rate.⁴⁶ The number of underemployed disabled people was even higher.⁴⁷ There was no concrete business reason, however, as to why so many disabled people were either unemployed or underemployed—with over two-thirds of all disabled people interviewed expressing a desire to become full-time employees.⁴⁸ Further, disabled individuals employed full-time maintained above-average work attendance and productivity.⁴⁹ Studies also indicated that employer fears about expensive insurance premiums or modifications to the worksite have proven unfounded.⁵⁰ These facts led to the conclusion that discrimination was the primary reason for the exclusion of disabled individuals from the workplace.⁵¹

The extraordinarily high number of unemployed disabled individuals leads to unfortunate results. The National Council on the Handicapped noted that twenty percent of working-age people with disabilities lived in poverty as of 1988.⁵² Further, during this period, approximately half the people with disabilities were living in households having an annual income of \$15,000 or less—double the percentage of people without disabilities who had such low incomes.⁵³

Studies also reflected that although disabled individuals were willing to find work, the type of work available was limited because forty percent of disabled people have not finished high school,⁵⁴ and an even smaller percentage of these individuals completed college.⁵⁵ As a result, many disabled people took jobs in unskilled labor fields, typically jobs involving physical tasks that, without

46. *See id.* at 23-24.

47. Peter David Blanck, *The Economics of the Employment Provisions of the Americans with Disabilities Act: Workplace Accommodations*, in *EMPLOYMENT, DISABILITY, AND THE AMERICANS WITH DISABILITIES ACT 222* (Peter David Blanck ed., 2000).

48. Richardson, *supra* note 12, at 189.

49. H.R. REP. NO. 101-485, at 37 (1990).

50. *Id.*

51. *Id.*

52. NAT'L COUNCIL ON THE HANDICAPPED, *ON THE THRESHOLD OF INDEPENDENCE: A REPORT TO THE PRESIDENT AND TO THE CONGRESS OF THE UNITED STATES 11-18* (1988).

53. *Id.* at 23-24.

54. *Id.* at 23 (indicating that this number is much higher than the fifteen percent of non-disabled Americans who did not graduate from high school).

55. *Id.* (indicating that only twenty-nine percent of individuals with disabilities had gone to college in 1988, when the survey was compiled).

reasonable and cost-effective accommodations, were not available to “otherwise qualified” individuals.⁵⁶

By 1990, the high level of unemployment and poverty among disabled individuals contributed to high levels of federal government spending on social welfare programs. Congressional research on the effect of disability discrimination on government spending generally concluded “discrimination results in dependency on social welfare programs that cost the taxpayers unnecessary billions of dollars each year.”⁵⁷ Sandy Parrino, the chairwoman of the National Council on Disability, testified that discrimination places people with disabilities in “chains,” making such dependency “a major and totally unnecessary contributor to public deficits and private expenditures.”⁵⁸ Further, President George H. W. Bush stated:

On the cost side, the National Council on the Handicapped states that current . . . spending on disability benefits and programs exceeds \$60 billion annually. Excluding the millions of disabled who want to work from the employment ranks costs society literally billions of dollars annually in support payments and lost income tax revenues.⁵⁹

A central goal behind the ADA was to increase the supply of qualified workers. President Bush summarized the argument as follows: “The United States is now beginning to face labor shortages as the baby boomers move through the work force. The disabled offer a pool of talented workers whom we simply cannot afford to ignore, especially in connection with the high tech growth industries in the future.”⁶⁰

More importantly, Senate committees noted that the number of disabled individuals in this country should not be interpreted strictly, recognizing that the number of disabled individuals in the United States is not static. Justin Dart, a leading figure in the

56. For instance, “the total losses in earnings for men with musculoskeletal impairments is \$11.5 billion which represents forty-three percent of the total \$26.5 billion in annual earnings losses attributed to wage and employment discrimination against all men with disabilities.” Marjorie L. Baldwin, *Estimating the Potential Benefits of the ADA on the Wages and Employment of Persons with Disabilities*, in *EMPLOYMENT, DISABILITY, AND THE AMERICANS WITH DISABILITIES ACT*, *supra* note 47, at 274 (indicating that any disabled individual who had a physical impairment and a lack of a high school or college education (or both), had a small chance of finding full-time employment).

57. H.R. REP. NO. 101-485, at 43 (1990).

58. *Id.*

59. *Id.*

60. *Id.* at 44.

American disability rights movement, noted the direct relationship between spending and the number of disabled individuals in the United States. According to Dart, discrimination is “driving us inevitably towards an economic and moral disaster of giant, paternalistic welfare bureaucracies. We [are] already paying unaffordable and rapidly escalating billions in public and private funds to maintain ever-increasing millions of potentially productive Americans in unjust, unwanted dependency.”⁶¹

Congress noted that keeping people with disabilities from the workforce would effectively remove a “full range of . . . talents and abilities” from contributing further to society.⁶² Congress acknowledged that disabled individuals who were qualified to work had both tangible and intangible qualities to add to the competitiveness of the economy.⁶³ Businessman Robert Mosbacher Jr., president of the Mosbacher Energy Company and chairman of the Greater Houston Partnership’s Education and Workforce Advisory Committee, stated:

From the perspective of a private sector employer, this legislation is also extremely important. If we are to remain competitive as a nation in the international marketplace, we must have a well trained, well educated and highly motivated workforce . . .

What is more, they [disabled individuals] are some of the most highly motivated people in our society today.⁶⁴

In light of these findings, it became clear that § 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in all programs or activities administered by recipients of federal financial assistance,⁶⁵ was not a proper mechanism for integrating disabled individuals into the workplace. One of the key purposes of the ADA was to expand the scope of the Rehabilitation Act to include private businesses not receiving federal funds.⁶⁶

The Rehabilitation Act had interpretation problems that the ADA sought to correct. One of the biggest problems with the Act was its omission of definitive interpretive guidelines, leading to erratic judicial interpretations.⁶⁷ The result was that such matters as

61. *Id.*

62. *Id.* at 45.

63. *Id.*

64. *Id.*

65. 29 U.S.C. § 701 (2002).

66. See *Coleman v. Zatecha*, 824 F. Supp. 1360, 1367 (D. Neb. 1993) (stating that the ADA is not limited to programs that receive federal funds).

67. See, e.g., Robert L. Burgdorf Jr., *The Americans With Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 HARV. C.R.-C.L. L.

reasonable accommodations and discriminatory qualification standards never really developed into agreed-upon judicial tests for the courts.⁶⁸ As a result, in 1990, the ADA was passed by a vote of 377 to twenty-eight in the House of Representatives and a ninety-one to six vote in the Senate.⁶⁹

C. Analysis of the ADA: Purpose and Economic Implications

1. *The ADA Text Related to the Rehabilitation Act of 1973*

In passing the ADA, Congress built upon the Rehabilitation Act of 1973 in several ways. First, it intended to borrow as much of the flexibility of the 1973 Act as it could. The Senate noted that much of the substantive framework of the Rehabilitation Act should be borrowed by the ADA.⁷⁰ More importantly, emphasizing how comprehensive it wanted the ADA to be, the Senate specifically praised the flexible nature of the reasonable accommodation and undue hardship standards of the Rehabilitation Act, and suggested that the ADA should adapt that flexibility directly from the older statute.⁷¹ An elastic interpretation of these standards would ease the burden on already qualified disabled individuals of proving that their employment was cost-justified. This interpretation is consistent with Congress's goal of altering the workplace to integrate qualified disabled individuals.⁷²

In addition, Congress intended to fix the Rehabilitation Act's more troublesome nebulosity by ensuring the passage of a "clear and comprehensive national mandate,"⁷³ that would "provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities."⁷⁴ It may be inferred that Congress explicitly stated these goals in order to eliminate the inconsistent judicial interpretations of § 504 of the Rehabilitation Act. In order to establish these standards, the Equal Employment Opportunity Commission ("EEOC") issued regulations interpreting each provision of the Act.⁷⁵

REV. 413, 431 (1991) (discussing the Rehabilitation Act's potential for erratic interpretation in more detail).

68. *Id.* at 431 n.96.

69. *Id.* at 433-34.

70. S. REP. NO. 101-116, at 26, 31 (1989).

71. *Id.* at 32.

72. H.R. REP. NO. 101-485, at 43-45 (1990).

73. 42 U.S.C. § 12101(b)(1) (2002).

74. *Id.* § 12101(b)(2).

75. 29 C.F.R. § 1630.2 (2001).

Further, the ADA was designed to expound upon the Rehabilitation Act primarily by increasing the scope of statutory protection afforded disabled individuals.⁷⁶ One congressional finding concerning the ADA was that "some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older."⁷⁷ Because Congress took this number from data collected by the National Council on the Handicapped,⁷⁸ it is important to note that the research discusses the variations in estimates based on different definitions of the term "disability" and the difficulty in arriving at a single, reliable overall number of individuals with disabilities. Adding to the murky nature of this statistic is the fact that the Congressional Research Service report was not presented "as a number of persons with disabilities but as a figure representing the number of persons with impairments or chronic conditions."⁷⁹ The use of the disjunctive "or" in the report makes the number of disabled individuals in the United States even less clear.

In addition, Congress was careful not to provide a list of covered conditions in the ADA "because of the difficulty of insuring the comprehensiveness of such a list, particularly in light of the fact that new disorders may develop in the future."⁸⁰ This statement by the Senate Committee cautions against relying too heavily on the forty-three million figure when defining a disability under the ADA. Congress explicitly noted that problems could arise in associating a particular number of disabled people with the ADA and acknowledged that the definition of "disability" is complicated and may change.

By recognizing that the number of disabled people is increasing, Congress used the forty-three million figure as a benchmark from which to make the more important point that, as a result of the growth of the number of disabled people in the United States, the substantial amount of private and public funds spent on disability welfare would continue to grow as well. In noting the increasing population of disabled individuals in the United States, Congress was specifically referring to the "baby boom" generation and the

76. Burgdorf, *supra* note 67, at 431. The Rehabilitation Act only covered employers that received federal grants.

77. 42 U.S.C. § 12101(a)(1).

78. See Robert L. Burgdorf Jr., *Disability Discrimination in Employment Law* 48 (1995).

79. *Id.*

80. S. REP. NO. 101-116, at 22 (1989).

correlation of increasing disabilities and age.⁸¹ In fact, most of the congressional reports concerning the number of disabled individuals in the United States centered around the growing number of disabled individuals and their disproportionate number in the workplace—not on setting a specific number of disabled individuals to be used in judicial interpretation.⁸² This leads to the inference that the ADA's primary concern was to open the workplace to disabled individuals, and that Congress did not want to concentrate on setting a strict limit on who was disabled under the Act because such a limit would negate the ADA's economic purpose.

2. *The Economic Cost-Benefit Analysis Underlying Congress's Passage of the ADA*

The ADA is regarded as a unique civil rights act because, unlike acts that protect other classes from discrimination, a qualified disabled individual under the ADA may require her employer to spend money for a "reasonable accommodation" so the employee may maintain her employment at the workplace.⁸³ Employers are consistently encouraging courts to take a narrow interpretation of the term disability in deciding who will qualify under the ADA. Studies have shown, however, that in several cases, the cost of a reasonable accommodation is far less than the overall positive economic effects of maintaining a less-strict and consistent standard of interpretation of the number of qualified disabled individuals under the ADA.⁸⁴

The positive economic impact of the ADA is widespread. Every time the ADA is invoked, "Assistant technology ["AT"] inventors and producers enjoy increased profits because of demand in the highly diversified and rapidly expanding AT market."⁸⁵ This is especially true because a great deal of AT technology is inexpensive.⁸⁶ Further, taxpayers benefit when capable workers are taken off the welfare rolls.⁸⁷

81. BURGDORF, *supra* note 78, at 48.

82. H.R. REP. NO. 101-485, at 43-46 (1990). It is important to note that all of the statements cited in this hearing concentrated on the economic and social remedial effects of the ADA.

83. 42 U.S.C. § 12111(8) (2002).

84. *See, e.g.*, Heidi M. Bervin & Peter David Blanck, *Assistive Technology and the Workplace*, in EMPLOYMENT, DISABILITY, AND THE AMERICANS WITH DISABILITIES ACT, *supra* note 47, at 343-44.

85. *Id.* at 343.

86. *Id.* at 344.

87. *Id.* at 343.

Employers, in general, benefit by drawing on a largely untapped productive workforce.⁸⁸ Under the ADA, the value of a disabled worker's productivity should equal or exceed the worker's wage in a given labor market.⁸⁹ Therefore, the employer suffers no loss in worker ability by hiring a disabled individual, but may enjoy an economic gain. Employers will not have to pay increased social welfare taxes to support disability welfare. Employers will take comfort in the fact that disabled individuals generally make above-average attendance efforts,⁹⁰ and have above-average motivation⁹¹ and employee evaluations⁹² than do non-disabled workers. Finally, the low direct costs of accommodations for employees with disabilities have been shown to produce substantial economic benefits overall, including injury prevention, reduced workers' compensation costs, and better workplace effectiveness and efficiency.⁹³

The costs to an employer and the economy by less stringently interpreting the term "disability" under the ADA are miniscule compared to the potential economic gains. Scholars note that there is a gross misconception by employers that the establishment of AT for disabled workers would cut into profits.⁹⁴ Quite to the contrary, the findings of one study suggest that AT is typically low-tech, inexpensive, and can represent capital improvements from which all may benefit.⁹⁵ A study conducted by Sears, Roebuck and Co. from 1978 to 1997 found:

[N]early all of five hundred accommodations sampled at Sears required little or no cost. Effective accommodations included improved physical access (such as closer parking spaces), changed schedules, assistance by others, and changed job duties. During the years 1990 to 1997, the average direct cost for accommodations was less than \$45 per person.⁹⁶

It has also been shown that the small AT cost has enabled qualified employees with disabilities to perform essential job functions.⁹⁷ Therefore, when an employer spends money on a reasonable accommodation under the ADA, the action is cost-just-

88. *Id.*

89. *See id.* at 343-46.

90. Blanck, *supra* note 47, at 215-18.

91. *Id.*

92. *Id.*

93. Bervin & Blanck, *supra* note 84, at 345-47.

94. *See id.* at 343.

95. *Id.* at 345.

96. *Id.*

97. *Id.* at 346.

tified. The employer receives a return on the investment made in accommodating the disabled employee. While this cost-benefit analysis has been criticized in other areas of the law for not being well-suited to measure social policy effects, particularly those relating to quality of life factors, such a criticism fails when using this analytical method under the ADA. Dart, in his Congressional testimony, noted that the small cost to the employer to provide disabled individuals with opportunities were clearly less than the costs that a capable, yet unemployed, disabled individual endures. Dart said:

We can go just so long constantly reaching dead ends. I am broke, degraded, and angry, have attempted suicide three times. I know hundreds. Most of us try, but which way and where can we go? What and who can we be? If I were understood, I would have something to live for.⁹⁸

Thus, based on the legislative history and a cost-benefit analysis of the ADA, it may be concluded that the term “disability” was not to be narrowly interpreted. Rather, the Act’s main purpose was to find qualified individuals with impairments and to introduce their capability and skill into the marketplace. Further, because the ADA would force employers to make accommodations, albeit reasonably, it was important for the EEOC to promulgate clear and comprehensive standards that would allow employers to identify which employees were disabled under the Act.⁹⁹

D. The EEOC Regulations: How They Conform to Congress’s Economic Intent

In accordance with Congress’s economic goals, the EEOC promulgated a set of clear, comprehensive, and consistent standards to define the term “disability” under the ADA.¹⁰⁰ Providing interpretive guidelines in accordance with Congress’s intent would facilitate inclusion of a broad range of impaired individuals into the workforce while preventing prohibitive costs to employers. The EEOC established a two-pronged test to determine whether an individual is disabled under the ADA.¹⁰¹ To qualify as disabled under this test:

98. H.R. REP. NO. 101-485, at 43 (1990).

99. See 42 U.S.C. § 12101(b)(2) (2002).

100. *Id.*

101. 29 C.F.R. § 1630.2(g)(1) (2001).

1. The individual must have a physical or mental impairment;¹⁰²
2. The impairment must substantially limit the person in performing one or more major life activities.¹⁰³

An analysis of these standards and, again, the underlying legislative intent, show that Congress did not intend for the term “disability” to be interpreted narrowly.

First, to qualify as disabled, the individual must have an actual impairment.¹⁰⁴ The EEOC defines a physical impairment as “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.”¹⁰⁵ In accord with congressional reports, this regulatory definition is not an exhaustive list of specific impairment categories covered by the ADA.¹⁰⁶ Just as the number forty-three million was used only as a benchmark, this list provides a non-exhaustive digest of better-known physical impairments. The fact that the EEOC regulations implementing the ADA decline to make an all-inclusive laundry list of impairments that constitute disabilities further supports the strong inference that Congress’s intent behind the ADA was to take a loose interpretive stance on the definition of a “disability” and to make the ADA as “comprehensive” as possible, in accord with legitimate economic concerns.¹⁰⁷

Further, the impairment must substantially limit the individual in performing one or more major life activities.¹⁰⁸ To further understand the terms “substantially limits” and “major life activity,” the second prong of the test needs to be broken down into its component parts. According to the EEOC, the term “substantially limits” means “unable to perform a major life activity that the average person in the general population can perform.”¹⁰⁹ More precisely,

102. *Id.*

103. *Id.*

104. *Id.* § 1630.2(h).

105. *Id.*

106. See EEOC COMPLIANCE MANUAL § 902.2(b)(2)) (2001) [hereinafter EEOC COMPLIANCE MANUAL], available at <http://www.eeoc.gov/docs/902cm.html> (last visited Jan. 15, 2003).

107. For a discussion of Congress’s goals when passing the ADA, see *supra* notes 57-64 and accompanying text.

108. For a discussion of cost-benefit analysis of the ADA, see *supra* notes 90-107 and accompanying text.

109. 29 C.F.R. § 1630.2(j)(1)(i).

the term may be interpreted as “significantly 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 the same major life activity.”¹¹⁰

The language “substantially limits” was selected to determine whether a particular individual’s condition is too minor to constitute a disability.¹¹¹ It is designed to eliminate “temporary impairments of short duration.”¹¹² The EEOC cites “broken limbs, sprained joints, concussions, appendicitis, influenza . . . [and] common colds” as examples of impairments that are not “substantially limiting.”¹¹³ All of the examples of non-substantial impairments contained in the EEOC are temporary or merely trivial in nature. The term “substantially limits” acts as a barrier to frivolous lawsuits and eliminates unnecessary administrative and transaction costs, while still maintaining the broad and comprehensive reach of the ADA for qualified individuals with disabilities.

The EEOC defines “major life activities” to mean “functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.”¹¹⁴ The EEOC did not intend for this list of major life activities to be exhaustive. It provided an even broader definition of “major life activity” that includes basic activities that the average person in the general population can perform with little or no difficulty, such as sitting and standing.¹¹⁵

The inclusion of major life activity as a part of the ADA’s two-pronged test has sparked debate.¹¹⁶ Such a limit was not included in either the original ADA bill proposed by the National Council on Disability, or in the ADA bills discussed in previous Congressional debate.¹¹⁷ In addition to more extensive Congressional discussion of the term “substantially limits,” this history may imply that Congress was more interested in the durational and progressive severity of one’s impairment rather than the impairment’s relation to various major societal life activities.

110. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(b)(1)(ii).

111. S. REP. NO. 101-116, at 23-24 (1989).

112. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(b).

113. *Id.* § 902.4(d).

114. *Id.*

115. *Id.*

116. *See* Burgdorf, *supra* note 67, at 449.

117. *Id.* at 448.

Assuming that Congress intended the term “major life activity” to be included as part of the two-pronged test, the rationale for this limitation was to clarify that disability does not include “minor, trivial impairments,” such as a simple infected finger.¹¹⁸ In its analysis of major life activity, Congress also noted that disabilities should not be limited to severe or permanent conditions.¹¹⁹ Therefore, just as with the “substantially limit” term, it may be inferred that Congress included major life activities as a means to eliminate frivolous or weak ADA claims. The phrase was not established to bring about a strict interpretation of the term “disability” under the ADA.

Based on the definitional nature of “substantially limits” and “major life activity,” the combination of these terms indicates that a plaintiff must prove that she is either unable or severely restricted from doing a basic activity that an average person can perform with little or no difficulty.¹²⁰ The test should be applied on an ad hoc basis—the issue being whether the impairment substantially limits the major life activities of the person in question, not whether the impairment is substantially limiting in general. The test may take one of two forms, depending on which major life activity a plaintiff claims is affected.

The first form involves major life activities specifically mentioned by the EEOC, such as walking, seeing, hearing, standing, lifting, or manual tasks. The EEOC did not intend for these terms to be interpreted broadly, stating, “there has been little dispute about what is meant by such terms as ‘breathing,’ ‘walking,’ ‘hearing,’ or ‘seeing.’”¹²¹ For instance, in reference to walking, the EEOC stated, “if an individual’s arthritis makes it unusually difficult (as compared to most people or to the average person in the general population) to walk, then the individual is substantially limited in the ability to walk.”¹²² Neither the EEOC nor Congress questions whether the impaired individual may walk slowly, but not fast, nor one mile, but not two. Here, as with other specific major life activities, the emphasis is more on the duration and se-

118. H.R. REP. NO. 101-485, at 52 (1990); S. REP. NO. 101-116, at 23 (1989).

119. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance, 29 C.F.R. § 32.3(b)(3) (Oct. 1, 2002).

120. *See id.* § 32.3(b)(2)-(3).

121. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(c).

122. *Id.*

verity of the individual's disability, than on the range of given major life activities that can be accomplished.¹²³

The second form of the test that the EEOC established concerns "working," a term that by its very nature is open to broad interpretation.¹²⁴ Because the EEOC hoped to avoid dispute over the term "major life activity,"¹²⁵ it stated that when an ADA plaintiff shows that another major life activity may be substantially limited by her impairment, "one need not determine whether the impairment substantially limits the person's ability to work."¹²⁶

The EEOC guidelines, used to determine whether the impairment substantially limits an individual's ability to work, have been set to provide courts with clear and consistent standards to use in considering each individual's qualifications. According to the test:

The term substantially limits means significantly restricted in the ability to perform either a *class of jobs* or a *broad range of jobs* in various classes as compared to the average person having comparable training, skills and abilities. The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working.¹²⁷

The test includes factors that may be considered when determining whether an individual is substantially limited in working: (1) the geographical area to which the individual has reasonable access; (2) the job from which the individual has been disqualified because of an impairment; (3) the number and types of jobs utilizing *similar* training, knowledge, skills or abilities, within that geographical area, from which the individual is also disqualified because of the impairment.¹²⁸ The third factor is known as the "class of jobs" factor, because it analyzes a particular set of jobs and skills linked to the job from which the plaintiff has been disqualified.¹²⁹

An alternative view of the third factor considers "the number and types of other jobs *not* utilizing similar training, knowledge, skills or abilities within that geographical area, from which the individual is also disqualified because of the impairment."¹³⁰ This has

123. *Id.* § 902.3(a).

124. *Id.* § 902.4(c).

125. *Id.* § 902.3(a).

126. *Id.* § 902.4(c).

127. *Id.* § 902.4(c)(3)(i) (emphasis added).

128. *Id.* § 902.4(c)(3)(ii)(A)-(C) (emphasis added).

129. *Id.* § 902.4(c)(3)(ii)(C).

130. *Id.*

been categorized as the "broad range of jobs" requirement.¹³¹ In analyzing a plaintiff's burden of proof, the EEOC states that the "number and types of jobs" requirement is not meant to demand an onerous evidentiary showing.¹³² The reference does not mean that an individual must identify the exact number of jobs using similar or dissimilar skills in a certain area.

For the most part, this interpretation is consistent with Congress's intent to provide clear and consistent standards that would lead to a sufficiently broad interpretation of the term "disability." The central interpretative problem in determining the scope of the term "work," however, is whether a court should analyze the extent to which an impaired individual is substantially limited in selecting a job within the class of work with which she is familiar (the "class of jobs" requirement), or a broader class of jobs.¹³³

The "class of jobs" requirement fits nicely with the economic cost-benefit rationale behind the ADA.¹³⁴ First, the requirement forces the court to assess the plaintiff's training, education, and skills within a specific class of work related to the job for which plaintiff is disqualified.¹³⁵ For instance, if a plaintiff had a back injury resulting from manual labor, she would have to show only that the back injury prevented her from doing other manual labor jobs.¹³⁶ Failing to meet this burden of proof would not force the plaintiff to choose another profession she has neither the experience nor desire to do, simply because she can do it.¹³⁷ If the plaintiff is capable of performing part of the class of jobs considered by the court, it will at least be established that there are opportunities to take jobs that she is qualified and motivated to do. In other words, the "class of work" analysis gives plaintiffs the opportunity to work within a legal framework that considers the jobs for which they are most qualified.¹³⁸ Further, plaintiffs do not have to search

131. *Id.*

132. *Id.*

133. See *Murphy v. United Parcel Serv.*, 527 U.S. 516, 523 (1999).

134. See Blanck, *supra* note 47, at 202-08 (discussing the economic circumstances that led to the passage of the ADA).

135. See *Murphy*, 527 U.S. at 523-25.

136. See EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(c)(3)(ii)(C).

137. See Steven S. Locke, *The Incredible Shrinking Protected Class: Redefining the Scope of Disability Under the Americans with Disabilities Act*, 68 U. COLO. L. REV. 107, 124-25 (1997).

138. See Blanck, *supra* note 47, at 215-18 (inferring that a disabled individual who works in a job that she is motivated to perform, and in which she has more experience, will perform even more "above average" than someone who is forced to take a job she does not want to do, just for the sake of working).

for all the jobs for which they are qualified. Rather, only a rough estimate of the class of jobs for which she has training and experience need be provided.¹³⁹ This reduces a plaintiff's evidentiary burden.

On the other hand, the "broad class of jobs" requirement is contrary to the intent of the ADA and its cost-benefit analysis. Congress passed the ADA with the intention of allowing qualified and motivated people into the workforce. This idea implies that Congress not only wanted to place individuals in jobs that they could perform, but also in jobs where the individual could utilize the best combination of her skills and intangible qualities.¹⁴⁰ Under a "broad class of jobs" analysis, an individual who spent several years doing manual labor at a factory, a job in which she took pride, may find herself working in a totally different profession in which she is not experienced, but is "qualified." For instance, in *E.E. Black, Ltd. v. Marshall*,¹⁴¹ which dealt in part with the construction and interpretation of sections of the Rehabilitation Act, the District Court of Hawaii concluded:

While many jobs exist which could be classified as heavy labor, they are relatively few when measured as a percentage of all jobs available in the labor force. Accordingly, an impairment that disqualifies a person from performing heavy labor would not necessarily affect his ability to perform a vast majority of jobs.¹⁴²

This position detracts from the value a disabled person may offer as an employee, and is inconsistent with Congress's economic goals.¹⁴³ Further, proof of preclusion from a broad class of jobs puts an onerous burden on the plaintiff—a burden the EEOC specifically rejects.¹⁴⁴ The plaintiff would be prevented from doing any type of job for which she may be qualified, proving that she cannot perform the job because of her disability.

The "broad class of jobs" test also has a particularly harmful effect upon individuals with fewer skills and less education.¹⁴⁵ Courts applying this test deem uneducated and unskilled workers "as 'not

139. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.3(b).

140. See H.R. REP. NO. 101-485, at 45-47 (1990).

141. 497 F. Supp. 1088 (D. Haw. 1980).

142. *Id.* at 1094.

143. If courts follow the "broad class of jobs" test, then a worker's talents may be minimized if she is simply doing a job that she can do, as opposed to one that she specializes in. This would hamper the economy's productivity.

144. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(c)(2).

145. See Locke, *supra* note 137, at 125.

disabled' by associating their lack of education and skill with an ability and willingness to perform any job."¹⁴⁶ When one considers that disabled individuals are disproportionately undereducated compared to individuals who are not disabled,¹⁴⁷ the pervasive discriminatory effects felt by disabled persons are inadequately remedied under "broad class of jobs" test.

Most importantly, as has been noted, the broad requirement that essentially states that the plaintiff must show that she is prevented from obtaining any employment, presents her with a "Catch-22" situation.¹⁴⁸ If the plaintiff meets the onerous burden of showing that she is not qualified to perform a broad class of jobs, she is also essentially showing that she is not a qualified individual under the ADA.¹⁴⁹ While the "class of jobs" test focuses on a plaintiff's ability to do a specific job in which she has experience, the "broad range of jobs" test requires the plaintiff to show that she is not qualified for employment purposes in general.¹⁵⁰

Although the EEOC did not explicitly state whether it preferred the "class of jobs" or "broad class of jobs" test,¹⁵¹ its language on the issue leads to the conclusion that it prefers the "class of jobs" analysis. The language concerning the definition of "impairments" and of "substantial relationship" is geared toward a broad interpretation of the ADA.¹⁵² Further, the EEOC explicitly states that courts should be careful not to hold an ADA plaintiff to providing an exact numerical accounting of jobs for which she is disqualified, and that burdens of proof should not be onerous.¹⁵³

The Supreme Court's opinion in *Murphy v. United Parcel Service*¹⁵⁴ contains language favoring the "class of jobs" requirement. In this decision, also written by Justice O'Connor, an ADA plaintiff's impairment was held not to have substantially limited his ability to work.¹⁵⁵ Justice O'Connor's language in the decision supports the EEOC's "class of jobs" analysis:

Indeed, it is undisputed that petitioner is generally employable as a mechanic. Petitioner has "performed mechanic jobs that

146. *Id.*

147. *Id.*

148. *See id.* at 127.

149. *See id.* at 128.

150. *Id.* at 125-28.

151. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(c)(2).

152. *See supra* notes 100-133 and accompanying text.

153. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(c)(2).

154. 527 U.S. 516, 525 (1999).

155. *Id.*

did not require DOT certification” for “over 22 years,” and he secured another job as a mechanic shortly after leaving UPS Moreover, respondent presented uncontroverted evidence that petitioner could perform jobs such as diesel mechanic, automotive mechanic, gas-engine repairer and gas welding equipment mechanic, all of which utilize petitioner’s mechanical skills.¹⁵⁶

While Justice O’Connor does not explicitly cite the “class of jobs” requirement,¹⁵⁷ her analysis is consistent with that test. Justice O’Connor’s discussion of jobs that the plaintiff could perform is confined solely to those within his profession, a mechanic.¹⁵⁸ Further, within that profession, Justice O’Connor made it a point to list types of work that the plaintiff had been able to do without being hampered by his impairment.¹⁵⁹ She noted that many professions utilize the petitioner’s “mechanical skills.”¹⁶⁰ She also noted that the plaintiff had secured another job as a mechanic,¹⁶¹ pointing directly to the “class of jobs” test. Therefore, the language of *Murphy* and of the EEOC support a strong inference that the “class of jobs” test should be preferred under the ADA over the “broad class of jobs” requirement.

II. CRITICISM OF *TOYOTA MOTOR MANUFACTURING* IN LIGHT OF CONGRESS’S ECONOMIC INTENT

In *Toyota Motor Manufacturing*, the Supreme Court interpreted the ADA “strictly.”¹⁶² This interpretation strongly deviated from Congress’s economic goals in passing the Act.¹⁶³ This Part of the Comment illustrates the flaws of the *Toyota Motor Manufacturing* decision by comparing it with Congress’s motivation in passing the ADA and with the EEOC’s regulatory framework. These flaws will spur the negative economic consequences that accompany workplace discrimination against those with disabilities that Congress intended to eliminate in passing the ADA.

156. *Id.* at 524-25.

157. *Id.* at 525.

158. *Id.* at 524-25.

159. *Id.*

160. *Id.*

161. *Id.* at 524.

162. *Toyota Motor Mfg., Ky. v. Williams*, 534 U.S. 184, 197-98 (2002).

163. *See supra* notes 57-69 and accompanying text (discussing the various economic problems involving disability discrimination and Congress’s intent to remedy those problems through the ADA).

A. Justice O'Connor's Test in *Toyota Motor Manufacturing and Its Economic Consequences*

In *Williams v. Toyota Motor Manufacturing*, the Sixth Circuit, ruling in favor of Williams, stated that she satisfied the "substantial limitation" test¹⁶⁴ because her impairments:

prevent[ed] her from doing the tasks associated with certain types of manual assembly line jobs, manual product handling jobs and manual building trade jobs (painting, plumbing, roofing, etc.) that require the gripping of tools and repetitive work with hands and arms extended at or above shoulder levels for extended periods of time.¹⁶⁵

The circuit court disregarded evidence that the plaintiff could tend to her personal hygiene and do certain household chores because that evidence was not necessary to show the ability to do manual tasks associated with an assembly line job.¹⁶⁶

The United States Supreme Court rejected the Sixth Circuit's analysis for several reasons. According to the Court, the Sixth Circuit erroneously created a class of manual activities (assembly line work) and then erroneously decided that because the plaintiff's impairments substantially limited her from performing this class of work, she was disabled under the ADA.¹⁶⁷ According to the Court, "*Sutton*¹⁶⁸ did not suggest that a class-based analysis should be applied to any major life activity other than working."¹⁶⁹ The Court also criticized the Sixth Circuit's decision by stating that there is no support in the Act for the proposition that whether an impairment constitutes a disability is to be answered only by analyzing the effect of the impairment in the workplace.¹⁷⁰ Therefore, the Court concluded that the Sixth Circuit's analysis was inconsistent with the ADA.¹⁷¹

The Court's alternative "substantial limitation" test makes "the central inquiry . . . whether the claimant is unable to perform the

164. *Williams v. Toyota Motor Mfg., Ky.*, 224 F.3d 840, 843 (6th Cir. 2000), *rev'd & remanded*, *Toyota Motor Mfg.*, 534 U.S. at 202-03.

165. *Id.*

166. *Id.*

167. *Toyota Motor Mfg.*, 534 U.S. at 199-202.

168. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999). In *Sutton*, the Court ruled that simply because the plaintiff could not meet the requirements as a commercial airline pilot does not mean that he is restricted from performing a "class of jobs." *Id.* at 493. Rather, the Court stated that he must show that he cannot perform a wider range of work. *Id.* at 491-92.

169. *Toyota Motor Mfg.*, 534 U.S. at 200.

170. *Id.*

171. *Id.* at 200.

variety of tasks central to most people's daily lives."¹⁷² The Court defines "variety of tasks" to include household chores, bathing, and brushing one's teeth because they are "of central importance to people's daily lives."¹⁷³ On the other hand, "the manual tasks unique to any particular job are not necessarily important parts of people's lives,"¹⁷⁴ and while the Court did not explicitly say so, they are impliedly not as important as household chores, bathing, and brushing one's teeth.¹⁷⁵

Applying this test to Williams's case, the Court noted that even after her condition worsened, she could still brush her teeth, wash her face, bathe, tend her flower garden, fix breakfast, do laundry, and pick up around the house.¹⁷⁶ Although the plaintiff's medical conditions caused her to "avoid sweeping, to quit dancing, to occasionally seek help dressing, and to reduce how often she plays with her children, gardens, and drives long distances,"¹⁷⁷ the Court ruled that "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 a manual-task disability as a matter of law."¹⁷⁸

The irony of the Court's substantive test is that it expounds upon the same problems that it sought to avoid. The Court stated that the only time a "class" test should be used is when discussing the major life activity of "work."¹⁷⁹ The test for substantial limitation in performing "manual activities," however, is a class test as well. Justice O'Connor set out a list of manual activities that an ADA plaintiff is required to show she cannot do in order to qualify as disabled.¹⁸⁰ Just as both class of jobs tests require a plaintiff to show that she is disqualified from a variety of jobs, Justice O'Connor's "variety of tasks" test requires the plaintiff to prove that she is excluded from a certain set of manual tasks.¹⁸¹

If one laments that the Sixth Circuit's "manual tasks" test is not found in the EEOC regulations, Justice O'Connor's test will be even more upsetting. Nowhere does the EEOC's regulatory

172. *Id.* at 200-01.

173. *Id.* at 201-02.

174. *Id.* at 201.

175. *See id.* at 201-02.

176. *Id.* at 202.

177. *Id.*

178. *Id.*

179. *Id.* at 200-01.

180. *Id.* at 201.

181. *Id.* at 202.

framework provide for a “variety of tasks” test to be applied when discussing whether one is substantially limited in performing manual tasks.¹⁸² It does not, in any of its language, set up exemplary standards that require a plaintiff to show that she is unable to perform household chores or brush her teeth in order to be considered disabled under the ADA.¹⁸³ Nor does the EEOC establish a balancing test in which job-related manual work will be rated as less important, or not considered at all, compared to activities “central to most people’s daily lives,” when deciding whether an individual is “disabled.”¹⁸⁴

Justice O’Connor’s opinion creates problems similar to those delineated in her criticism of the Sixth Circuit’s analysis. This leads to the following interpretive question: assuming that the Supreme Court and the courts of appeals run into the interpretational problems that Justice O’Connor discusses, which analysis is most conducive to the ADA’s intent and the regulatory framework of the EEOC? The Sixth Circuit decision, while perhaps imperfect, comes closer to Congress’s intent because it is a minor variation of the EEOC’s “class of jobs” test, and keeps the ADA plaintiff’s burden of proof within tasks associated with the plaintiff’s job experience.

Justice O’Connor’s analysis in *Toyota Motor Manufacturing* goes well beyond the intent of the ADA and the regulatory language of the EEOC. One of the central purposes of the ADA is to diversify the labor force, eliminate unnecessary spending on social welfare in both the public and private sectors, and improve workplace quality by engaging workers who have been underutilized for several years.¹⁸⁵ The key to accomplishing these purposes was to create a comprehensive set of clear and consistent standards, intended to eliminate trivial claims.

Further, to encourage a productive economy, the standards aim to establish that an ADA plaintiff is actually “qualified” to do her job if she is reasonably accommodated. The Court’s analysis in *Toyota Motor Manufacturing* goes well beyond this framework. It may be inferred that the reason neither the EEOC nor Congress created a “variety of tasks” test was to avoid placing too heavy a burden on an ADA plaintiff.

182. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(b)(c).

183. *Id.*

184. *Id.*

185. *See* H.R. REP. NO. 101-485, at 43-45 (1990).

Justice O'Connor's test, in effect, places such a heavy burden on the plaintiff that it presents the plaintiff with a "Hobson's choice."¹⁸⁶ If Ella Williams could have proven that she could not brush her teeth, bathe, or do household chores, she would have been well on her way to showing that she was no longer qualified to perform the job that she had spent a great portion of her life doing.¹⁸⁷ A requirement that would have forced Williams to show that she could not perform simple mechanical motions such as moving her hand back and forth to brush her teeth, in order to be qualified as disabled, is detrimental to her case. Therefore, the Court's test severely impedes the economic benefits that Congress sought to reap when passing the ADA. It eliminates a qualified worker like Ella Williams, who had been working with Toyota Motor Manufacturing for ten years,¹⁸⁸ from advancing her case to the other requirements of the ADA—specifically, that Toyota Motor Manufacturing could have made low-cost accommodations to allow her to be a productive employee.¹⁸⁹ Thousands of cases similar to Williams's will suffer the same fate under *Toyota Motor Manufacturing*, a case that will undermine Congress's goals of opening the workplace and the economy to large numbers of qualified, motivated individuals. While businesses would make small financial gains, the overall effects of a "strict" analysis under the ADA could very well be to bring about the problems the ADA tried to prevent.

Forcing a plaintiff to show impairment outside of the workplace,¹⁹⁰ while having the desirable effect of narrowing the number of plaintiffs under the ADA, is contrary to Congress's intent in enacting the Act. Justice O'Connor rejected the proposition that whether an impairment constitutes a disability is to be answered only by analyzing the effect of the impairment in the workplace.¹⁹¹ In doing so she failed to fully realize that the central intent behind the ADA was not judicial analysis of what an ADA plaintiff can do around the house.

Justice O'Connor also failed to realize that one of the ADA's central goals was to allow the disabled population in the United States to become more productive, mainly through equal opportu-

186. See Burgdorf, *supra* note 67, at 465.

187. See *supra* notes 7-11 and accompanying text (describing the activities in which she was limited).

188. *Toyota Motor Mfg., Ky. v. Williams*, 534 U.S. 184, 187 (2002).

189. For a discussion of the costs and benefits of providing "reasonable accommodations" for disabled employees, see *supra* notes 86-99 and accompanying text.

190. *Toyota Motor Mfg.*, 534 U.S. at 201-02.

191. *Id.* at 201.

nity in the workplace.¹⁹² Therefore, a judicial test to determine whether a plaintiff is disabled under the ADA should focus on what a plaintiff can do professionally, and not on speculation as to whether she can brush her teeth or garden. Such manual tasks are generally irrelevant to determining whether a plaintiff can do her job to the point where she may be considered “disabled” yet “qualified” to be a productive employee with “reasonable accommodation.”¹⁹³ The economic benefits that Congress wanted to achieve will not be affected by whether Williams can drive long distances. The benefits will be effected, however, by whether Williams can use vibrating tools on an assembly line, and thus perform her job effectively.

B. Interpretive Problems: *Toyota Motor Manufacturing* in Conjunction with the ADA and EEOC

An analysis of Justice O'Connor's judicially created “manual tasks” test is important to illustrate how that test deviates from the economic intent behind the ADA. This Section further breaks down the reasoning behind Justice O'Connor's “manual tasks” test by comparing it to the language of the ADA and EEOC. Justice O'Connor's reasoning in *Toyota Motor Manufacturing* conflicts with the plain language of the ADA, its regulatory framework, and its economic goals.

1. Deference Given to the EEOC in Toyota Motor Manufacturing

To begin her ADA analysis, Justice O'Connor discussed the difficulty of finding a source for definitions of “substantial life activity” and “major life activity.”¹⁹⁴ While admitting that the EEOC established guidelines for both terms, she stated that the EEOC's persuasive authority has not been clearly established because no agency has yet been given authority to issue regulations interpreting the term “disability” under the ADA.¹⁹⁵ Justice O'Connor reasoned that because Congress did not explicitly give the EEOC

192. See *supra* notes 42-69 and accompanying text. Generally, most of the legislative history concerning the ADA focuses on the disabled individual's exclusion from the marketplace economy, and how this affects both the economy and the lives of the disabled population in the United States.

193. 42 U.S.C. § 12101(c)(3) (1995).

194. *Toyota Motor Mfg.*, 534 U.S. 184, 195-96.

195. *Id.* at 193-94.

authority to define the ADA's terms,¹⁹⁶ the Court had "no occasion to decide what level of deference, if any, they are due."¹⁹⁷

Justice O'Connor uses strong language when discussing the level of deference the Court should show administrative agencies. In *Toyota Motor Manufacturing*, Justice O'Connor quotes Congress as stating that nothing in the ADA will require lesser standards than those applied under Title V of the Rehabilitation Act of 1973 "or the regulations issued by federal agencies pursuant to such title."¹⁹⁸ Under the Rehabilitation Act, however, the EEOC has authority to regulate § 504, related to employment.¹⁹⁹ Further, nowhere in the legislative findings or the language of the ADA does Congress "provide otherwise," indicating that Congress wanted the EEOC to continue having the "force of law" in making its regulations.²⁰⁰ In fact, because Congress borrowed much of the Rehabilitation Act's language in constructing the ADA,²⁰¹ it seems logical that it meant for the same regulatory agency that generally governs employment matters to build on its seventeen years of regulatory experience in employment and disabilities law and to regulate the ADA with the "force of law." It is presumptuous for the Court to conclude that Congress did not maintain the EEOC guidelines as having the "force of law" behind the ADA without explicit language in either its Committee reports,²⁰² or the ADA.

The Court's language, which strongly implies that the EEOC's ADA regulations should not have the "force of law," contradicts the economic goals behind the Congressional passage of the Act. The EEOC's regulatory framework was established to provide enforceable standards.²⁰³ Further, EEOC language does not support a strict interpretation of the ADA, but rather sets out minimal standards that an ADA plaintiff must satisfy in order to prevent plaintiffs from bringing frivolous lawsuits.²⁰⁴ If the EEOC frame-

196. *Id.* at 194.

197. *Id.*

198. *Id.* at 194 (quoting 42 U.S.C. § 12201(a)).

199. 29 U.S.C. § 701 (1999) (granting the EEOC explicit authority to establish regulations commensurate with the Rehabilitation Act of 1973).

200. *See* 42 U.S.C. § 12101. Nowhere in the ADA does Congress make any statement saying that it wanted a change in its regulatory framework.

201. *See, e.g.*, S. REP. NO. 101-116, at 26, 31-32 (1989).

202. *Id.* at 44. In this report, discussing the legislative intent of the ADA in detail, there is discussion of reliance on the Rehabilitation Act's framework when passing the ADA. What is not discussed is eliminating the EEOC as the regulatory agency that governs the ADA.

203. 42 U.S.C. § 12101(b)(2).

204. EEOC Compliance Manual, *supra* note 106, §§ 902.2-902.4 (discussing the definitions of "substantially limits" and "major life activity," and the broad interpretation

work did not have the force of law, courts would be free to make their own-inevitably conflicting-judicial tests. Without a regulatory framework that has the force of law, future cases like *Toyota Motor Manufacturing* could create judicial tests that place onerous burdens on ADA plaintiffs, thereby limiting economic opportunities available to disabled people. Therefore, Justice O'Connor's administrative analysis of EEOC power is flawed and perhaps dangerous to the ADA's goals.

2. *Justice O'Connor's Interpretation of "Substantially Limits" and "Major Life Activity"*

This analysis begins by noting that in determining whether an individual is "substantially limited," the EEOC regulations "instruct that the following factors should be considered: the nature and severity of the impairment; the duration or expected duration of the impairment; and the permanent or long-term impact, or the expected permanent or long-term impact of or resulting from the impairment."²⁰⁵ Justice O'Connor stated this test and deferred to the EEOC guideline that when deciding whether an ADA plaintiff is disabled, courts are to concentrate on the severity and duration of one's impairment.²⁰⁶ If the Court had weighted its analysis more toward the severity of Williams's impairment, *Toyota Motor Manufacturing* could have been decided rather easily.²⁰⁷ Over the preceding ten years, Williams's carpal tunnel syndrome had caused constant suffering.²⁰⁸ Because she continued to do simple manual labor at work, the syndrome may have caused other physical impairments.²⁰⁹ Because Williams's impairments have lasted for a long time, and have become increasingly severe, it seems most likely that her impairment would fall within the "nexus of the ADA,"²¹⁰ and be considered a disability. Nevertheless, Justice

necessarily applied to each so as to allow conformity with the Congressional intent in the enactment of the ADA).

205. *Toyota Motor Mfg., Ky. v. Williams*, 534 U.S. 184, 196 (2002) (quoting 29 C.F.R. § 1630.2(j)(2)(i-iii) (2001)).

206. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.3.

207. For a discussion on Williams's impairments, see *supra* notes 1-11 and accompanying text.

208. *Toyota Motor Mfg.*, 534 U.S. at 188.

209. *Id.*

210. *Id.* at 188-89. Justice Breyer's dissent in *Sutton* states that a strict numerical analysis of the ADA ignores many of the EEOC's specific regulations and the remedial effects behind the ADA. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 513-14 (1999) (Breyer, J., dissenting). Working within an interpretive framework to analyze

O'Connor chose to adopt her own judicially created test to decide whether Williams was disabled under the Act.²¹¹

After discussing the EEOC requirements, Justice O'Connor made a curious statement. She said that analyzing the "substantial limitation of major life activities" test "requires us to address an issue about which the EEOC regulations are silent: what a plaintiff must demonstrate to establish a substantial limitation in the specific major life activity of performing manual tasks."²¹² Even if one looks past the contradiction between her prior statement of the EEOC's "substantial relationship" test, and the EEOC's newfound "silence,"²¹³ Justice O'Connor's claim that the EEOC's regulations are silent would still be flawed. The EEOC's guidance on this topic, while not specific, is adequate to form a judicial test that is not geared toward "strictly"²¹⁴ interpreting the ADA. With the exception of the term "working,"²¹⁵ to which even the EEOC admits a dispute exists, the EEOC intends for the other major life activities listed under the ADA to be analyzed in light of the broad and comprehensive purposes of the ADA, with more attention placed on the severity and duration of the disability.²¹⁶ Therefore, as one example states, "if [someone] . . . experiences severe back and joint pain . . . [and] as a result . . . often cannot walk for more than very short distance . . . he is to be considered disabled."²¹⁷

Because Justice O'Connor concluded that the EEOC was "silent" on this topic, she provided her own judicial definition as to when an impairment "substantially limits" an individual from "performing manual tasks." The Court's consideration of this issue, according to Justice O'Connor, "is guided first and foremost by the words of the disability definition itself."²¹⁸ Justice O'Connor chose to define the "major life activity" test by referring to *Webster's Dictionary* and the *Oxford English Dictionary*.²¹⁹

Justice O'Connor's use of *Webster's Dictionary* presents a problem regarding her definition of "major" in the phrase "major life

the "nexus" of the ADA and its remedial intent is more consistent with the statute's comprehensive approach. *Id.*

211. See *Toyota Motor Mfg.*, 534 U.S. at 200-01.

212. *Id.* at 196.

213. *Id.*

214. *Id.* at 197.

215. For a discussion of the major life activity test regarding "work," see *supra* note 133 and accompanying text.

216. See *supra* notes 130-140 and accompanying text.

217. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.3.

218. *Toyota Motor Mfg.*, 534 U.S. at 196.

219. *Id.* at 196-97.

activities.” She quotes *Webster’s*, stating that it defines “major” as “greater in dignity, rank, importance, or interest.”²²⁰ It is a “category that includes . . . basic abilities . . . central to daily life.”²²¹ She concludes that “[i]f each of the tasks included in the major life activity of performing manual tasks does not independently qualify as a major life activity, then together they must do so.”²²²

None of these definitional standards for “major life activity,” based strictly on extrapolations from *Webster’s Dictionary*, are listed in the House Committee Reports,²²³ the ADA,²²⁴ or the EEOC’s regulatory scheme. Justice O’Connor’s judicial standard ignores much of the legislative rationale behind the inclusion of major life activity in the ADA. The term “major life activity” was not an issue for Congress in passing the ADA.²²⁵ The phrase was not mentioned in prior drafts of the Act.²²⁶ In fact, when discussing “major life activity,” Congress did so in the context of preventing lawsuits that fell well outside the reach of the ADA, such as pricking one’s finger.²²⁷ When referring to major life activity, the EEOC states that a major life activity is to be interpreted generally as a basic activity.²²⁸ While the EEOC did not elaborate on a definition of the term “basic” (perhaps because neither the ADA nor the EEOC intended for there to be an aggressive judicial interpretation of the term), the use of the word “general” appears to mean that the term should be interpreted loosely and without much dispute.²²⁹

Apart from a purely definitional analysis, Justice O’Connor’s use of the term “central” has the potential to place too high an evidentiary burden on the ADA plaintiff. Rather than simply concentrating more on the “substantially limit” term of the ADA, adding undesired sub-prongs to the “major life activity” requirement (such as for the activities to become “central” in one’s life) deviates from Congress’s much less extreme intent to use “major life activity” to discourage large numbers of frivolous law suits.

220. *Id.* at 197.

221. *Id.*

222. *Id.*

223. See H.R. REP. NO. 101-485 (1990).

224. See 42 U.S.C. § 12102 (2002).

225. For a discussion on the Congressional debate concerning inclusion of the term “major life activity” in the ADA, see *supra* notes 120-122 and accompanying text.

226. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.2.

227. H.R. REP. NO. 101-485, at 35-37.

228. EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.3(a).

229. See *id.*

Because Justice O'Connor's definitional analysis ventures well outside the framework of the ADA and EEOC, it also deviates from Congress's economic intent in enacting the ADA. Justice O'Connor's definition of "major life activity" is both overbroad and too narrow at the same time. It is broad because use of such a general, dictionary-based definition allows courts to impute their own subjective determinations as to what types of activities are of great "rank" or "importance." This subjectivity will lead to inconsistent judicial opinions. At the same time, the definition is over inclusive because it will allow some courts to place onerous burdens of proof on plaintiffs, making them prove that they are not capable of performing basic life activities (for instance, brushing their teeth). All of these consequences are contrary to the ADA's economic goals. Rather than supporting the consistent integration of disabled individuals into the workplace, Justice O'Connor's strict definitional analysis may instead lead to closing the marketplace to disabled individuals.

3. Justice O'Connor's "Forty-Three Million" Justification

Justice O'Connor justifies her interpretation as to when a major life activity is substantially limited by pointing to the first section of the ADA.²³⁰ Specifically, Congress found that "some 43,000,000 Americans have one or more physical or mental disabilities."²³¹ Justice O'Connor did not quote the rest of the finding, which states that this number will continue to increase.²³² Further, the forty-three million statistic is somewhat amorphous. Congress indicated that this number would increase, and that a specific economic intent existed behind the Act.²³³ Thus, the number should be viewed as a strong indication of just how many individuals in the United States are disabled, not as a limit constraining the scope of the term "disability" under the Act. To cite Justice O'Connor's forty-three million argument by itself to argue for a strict interpretation of the ADA is to severely curtail the Act's purpose.

Even if Justice O'Connor were correct to rely on the forty-three million person argument, her use of this statistic to decide against the plaintiff in *Toyota Motor Manufacturing* is weak. Justice O'Connor stated, "[I]f Congress intended everyone with a physical impairment that precluded the performance of some isolated, un-

230. *Toyota Motor Mfg., Ky. v. Williams*, 534 U.S. 184, 197 (2002).

231. 42 U.S.C. § 12101(a)(1) (2002).

232. *Toyota Motor Mfg.*, 534 U.S. at 197-98.

233. BURGDORF, *supra* note 78, at 48.

important, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher.”²³⁴ Justice O’Connor derived this statement from her own opinion in *Sutton v. United Air Lines, Inc.*²³⁵ In *Sutton*, the Court dealt with an individual who needed corrective lenses in order to be a commercial airline pilot.²³⁶ On the other hand, the plaintiff in *Toyota Motor Manufacturing* was having difficulty performing more mundane tasks—including lifting twenty pounds, using vibrating tools, and even performing some household and family activities.²³⁷

Justice O’Connor’s decision seems to at least partially ignore the EEOC’s interpretive guidelines positing that an individual whose back condition prevents her from performing heavy labor would be substantially limited in the major life activity of working because the limitation would encompass a “class of jobs.”²³⁸ Although this EEOC guideline does not directly support the plaintiff’s case in *Toyota Motor Manufacturing* (as it involves manual tasks), its spirit and intent should not be substituted for an argument based on numerical misconstruction. If this were allowed, the economic intent of the ADA would be completely ignored. The idea that with an increasing number of disabled individuals should come an increasingly proportionate number of job opportunities for those who are “qualified,” would be directly altered by a static forty-three million statistic in the Act. The result of this numerical misconstruction would be the increase in social welfare costs that Congress sought to avoid when it passed the ADA.

Justice O’Connor, in comparing what Williams could and could not do because of her impairments, gave far more weight to what she could do.²³⁹ Under this analysis, ADA plaintiffs are faced with the onerous burden that the EEOC explicitly tried to avoid. If a court finds that the plaintiff can perform enough tasks, it may outweigh what the plaintiff cannot do and disqualify the plaintiff from

234. *Id.*

235. *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 490 (1999).

236. *Id.* at 475.

237. *Toyota Motor Mfg.*, 534 U.S. at 188.

238. For a discussion on the class of jobs test, see EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(3)(i); see also 29 C.F.R. § 1630.2(j)(3)(ii)(B) (1995).

239. *Toyota Motor Mfg.*, 534 U.S. at 202. For instance, Justice O’Connor did not give much weight to the fact that Williams was unable to play with her children at times, or that she could not garden anymore. *Id.* This presents a problem with Justice O’Connor’s test—what may be a major life activity in the opinion of one judge, may not be for another. Such a subjective test may lead to erratic judicial opinions and run afoul of Congress’s intent behind the ADA.

coverage under the ADA. This was probably not the intent of the EEOC, which refers to both a “class of jobs” and “broad range of jobs” within various classes.²⁴⁰

III. CORRECTING THE EEOC’S REGULATORY FRAMEWORK TO KEEP THE ADA WITHIN THE WORKPLACE

Justice O’Connor was partially correct in stating that the EEOC is “silent” when discussing the “substantially limit a major life activity” test. For instance, the EEOC does not explicitly state when one’s inability to perform manual tasks is to be considered a disability, nor does it provide clear examples of the degree of visual impairment required to be considered disabled under the ADA.²⁴¹ It is relatively clear, however, that a major focus of the ADA’s legislative and the EEOC’s regulatory framework was to concentrate on expanding the labor force and to provide disabled individuals with work opportunities, not on creating strict standards to render the ADA subject to the forty-three million limitation.²⁴²

Because one of the major goals of the ADA was to allow qualified disabled individuals to participate in the economy, it would be beneficial for Congress or the EEOC to establish an even clearer and more consistent standard that concentrates on whether an individual’s impairment substantially limits that person in work-related activities. The first step for the EEOC would be to eliminate the “broad class of jobs” standard.²⁴³ The “broad class of jobs” standard places an onerous standard of proof on a plaintiff and puts her in a Catch-22 situation. It hinders placement of qualified disabled individuals in the workplace by essentially stating that if they can do any job at all, despite the lack of experience or motivation to perform it, they will not to be considered “disabled” under the ADA.

Further, the EEOC should not make the major life activity of “work” the last option for an ADA plaintiff. As has been shown in *Toyota Motor Manufacturing*, a court can very well formulate a “variety of activities” test when dealing with major life activities other than work. The result of such a test is an unclear standard of

240. 29 C.F.R. § 902.4(3)(i). The “class of jobs” test notably is different from Justice O’Connor’s “manual tasks” test because the former uses objective standards that can be based on empirical data.

241. 29 C.F.R. § 902.4.

242. *Toyota Motor Mfg.*, 534 U.S. at 197.

243. For a discussion on the “broad class of jobs” test, see *supra* notes 140-150 and accompanying text.

proof that could lead to inconsistent results. For instance, while the Supreme Court may consider a person's ability to brush their teeth a major disadvantage to their ADA claims, another court may not. From the list of several major tasks that can be listed as "central to our daily lives," each court may consider different items as more important than others. Even more problematic are the differing views of judges as to the "manual tasks" they consider important. To ask a plaintiff to make a case based on having to predict the values of any given court is an overly strict burden contrary to the ADA's intent.

Utilizing the narrower "class of jobs" test to evaluate work as a major life activity is the best option to make decisions consistent with the goals of the ADA. As discussed, the "class of jobs" test does not impose an onerous burden of proof on the ADA plaintiff.²⁴⁴ While it forces an ADA plaintiff to prove that she is disqualified from performing jobs in her profession, the plaintiff does not have to provide specific numerical evidence to prove her claim. If the plaintiff fails this test, it means that she is capable of getting the same type of job that she is most qualified for and is motivated to do. The test is not unclear because it demands empirical evidence from the plaintiff—specifically, the number of jobs within her geographic area that she can perform in the area of work from which she has been disqualified because of her disability.²⁴⁵ The Supreme Court's analysis in *Murphy* supports this test.

In reexamining the major life activity requirement of the ADA, Congress and the EEOC should further define the "class of jobs" test. They should establish a more precise guide as to the geographic area in which a plaintiff can find work. This area should be reasonable when considering first, the plaintiff's ability to get to and from work, and second, the evidentiary burden that the plaintiff will need to meet in showing the number of jobs within the area from which she is disqualified from because of her disability. Further, the class of jobs standard should not be construed broadly. For instance, if a plaintiff is an auto mechanic, the "class of jobs" considered should be jobs open to an auto mechanic and include positions for which she is qualified based on her training and experience. To ensure that the person is qualified for the jobs consid-

244. For a discussion of the evidentiary benefits of the "class of jobs" test as compared to the "broad class of jobs" test, see *supra* notes 148-161 and accompanying text.

245. See EEOC COMPLIANCE MANUAL, *supra* note 106, § 902.4(3)(ii).

ered, the EEOC should require the plaintiff's training and past work experience to control the "class of jobs" test.²⁴⁶

It may very well be that when applying this test to Ella Williams, she may lose her case. This test, however, will give Williams the opportunity to show whether her impairment restricts her from doing the work that she has done for the past ten years. It will also provide her with reasonable evidentiary standards. More importantly, it will not force her to delve into her personal life (her ability to play with her children) and to deal with unclear and onerous standards. A clearer and better-defined version of the "class of jobs" test would give Williams a fair chance under the ADA. Further, it will sustain Congress's economic goals, whether or not Williams qualifies under the ADA. If Williams fails to show that she is "disabled," at least we know that there are jobs in her area that she has the experience and motivation to perform.

CONCLUSION

Congress and the EEOC should consider creating an empirical test to determine whether an individual is "disabled" under the ADA. This framework should focus on the plaintiff's abilities in the workplace, because it is the development of equitable opportunity in the economic marketplace that is the central intent behind the ADA. Such a framework will ensure the doors of the marketplace will be open to disabled individuals, while fostering economic profitability. Indeed, with minor adjustments in the ADA, we can come one step closer to fulfilling the goals of an efficient capitalistic economy.

246. *See id.* § 902.4(3)(i); *see also supra* notes 140-161 and accompanying text. The EEOC does not specify just how important controlling factors such as training and past work experience are in either the "class of jobs" or "broad class of jobs" test. If the EEOC made more explicit the qualitative value of these terms, it would reduce the evidentiary burden on an ADA plaintiff, for example, providing examples of how training and experience may be used to assess an ADA plaintiff's limitations in finding work. It may also give the employer some foresight into whether an impaired employee is disabled under the ADA, which may reduce ADA litigation as well. *See EEOC COMPLIANCE MANUAL, supra* note 106, § 902.4(3)(i).

