THE AMERICANS WITH DISABILITIES AMENDMENTS ACT

I. Background

A. The Americans with Disabilities Act (ADA) was enacted in 1990 and was intended to address and provide remedies for disability discrimination by employers, unions, state and local governments, public and private transportation providers, public accommodations, and certain telecommunications providers. Most provisions of the ADA took effect in 1992.

B. The ADA reflected Congress's understanding that people with disabilities encounter discrimination in many forms, not merely intentional discrimination. Architectural and communication barriers, the failure to provide accommodations and auxiliary aids and services, and policies and practices that have an adverse impact on people with disabilities also must be remedied to provide persons with disabilities an equal opportunity to participate in society.

C. Although there were many compromises in the enactment of the ADA (*e.g.*, not requiring public entities, public accommodations, and transportation providers to retrofit their existing facilities to make them immediately accessible in all circumstances), there was little controversy about the definition of "disability" adopted by the ADA. In fact, the only issue about the scope of coverage involved relatively peripheral matters such as pedophilia, kleptomania, transvestism, and illegal drug use.

D. The ADA as originally enacted defined individuals with disabilities to include the following:

1. Individuals who have physical or mental impairments that substantially limit one or more major life activities (sometimes known as "actual disability"); or

2. Individuals who have records or histories of such impairments; or

3. Individuals who are regarded as having such impairments (sometimes known as "perceived disability" or "regarded as" disability).

II. **The Courts' Narrow Construction of the ADA's Disability Definition**

A. After the ADA took effect, many cases were filed. Defendants, particularly in employment cases, began to challenge whether the plaintiffs were persons with disabilities, as defined by the ADA. In seeking to narrow the definition of disability, defendants would secure a means to resolve cases without addressing the merits of whether they engaged in unlawful discrimination.

B. Two Supreme Court decisions narrowly construed the term "disability" under the ADA and, concomitantly, excluded many individuals from the protections of the ADA.

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

a. In *Sutton*, the Court held that a determination of whether an individual's impairment substantially limits a major life activity must be made with reference to measures that mitigate the individual's impairment, such as medication, corrective devices, or auxiliary aids. *Id.* at 482.

b. *Sutton* also established a high standard for an individual to show that he is "regarded as" having a disability. *See Sutton*, 527 U.S. at 489-94. The Court held that an employee must show not merely that the employer thought he had an impairment, but that the employer thought that he had an impairment that substantially limited a major life activity. This would require proof of what the employer subjectively believed about the impact of the actual or perceived impairment. This standard was more onerous than the broad understanding of disability recognized by the Supreme Court in *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 287 (1987), that Congress had intended courts to follow to protect people who were subject to discrimination due to perceptions based on unfounded concerns, mistaken beliefs, fear, myths, or prejudice. *See* H.R. Rep. No. 110-730, pt. 1, at 12-13 (2008).

c. The *Sutton* Court also emphasized that Congress did not delegate to any agency authority to promulgate regulations to interpret the term "disability" under the ADA. *Id.* at 479. In

doing so, the Court called into question whether the EEOC's and DOJ's interpretations of that term are entitled to deference by the courts.

2. *Toyota Motor Mfg., Inc. v. Williams*, 534 U.S. 184 (2002)

   a. The *Williams* Court held that the phrases "major life activity" and "substantially limits" must be interpreted strictly to create a demanding standard to qualify as a person with a disability. *Id.* at 197.

   b. The Court equated the term "substantially limits" with "prevents or severely restricts ...." *Id.* at 198.

   c. The Court held that a person could be considered substantially limited in performing manual tasks only if an impairment prevents or restricts her from performing tasks that are of central importance to most people's daily lives *Id.* at 187, 198.

   d. The Court, as in *Sutton*, questioned without deciding whether the EEOC's regulations relating to the definition of disability were entitled to deference. *Id.* at 193-94.

C. Many lower courts narrowly interpreted the ADA's definition of disability following the Supreme Court's rulings, barring from court some individuals with epilepsy, diabetes, cancer, mental illness and even mental retardation and cerebral palsy. For example:

1. In *Littleton v. Wal-Mart Stores, Inc.*, 231 Fed. Appx. 874, 877-78 (11th Cir. 2007) (per curiam), the court held that a person with a diagnosis of mental retardation failed to provide evidence that he was substantially limited in any major life activity.

2. In *Orr v. Wal-Mart Stores, Inc.*, 297 F.3d 720 (8th Cir. 2002), the court held that a man with diabetes that was controlled with insulin was not protected by the ADA.

3. In *McClure v. General Motors Corp.*, 75 Fed. Appx. 983 (5th Cir. 2003) (per curiam), the court ruled that an individual with muscular

dystrophy who successfully learned to live and work with his disability was not protected by the ADA.

4. In *Mancini v. Union Pacific R.R. Co.*, 98 Fed. Appx. 589, 590 (9th Cir. 2004), the court held that a person with epilepsy does not have disability if it is corrected through medication.

5. In *Wong v. Regents of Univ. of California*, 410 F.3d 1052, 1065-67 (9th Cir. 2005), the court held that an individual who has performed well academically could not be considered substantially limited in activities such as learning and reading.

6. In *Carr v. Publix Super Markets, Inc.*, 170 Fed. Appx. 57, 60 (11th Cir. 2006), the court held that a person who lost one arm does not have a disability because his ability to use one arm mitigates the loss of use of other arm.

7. In *Knapp v. Columbus*, 192 Fed. Appx. 323, 329 (6th Cir. 2006), the court held that control of ADHD through medication precludes finding of disability under ADA.

D. Simply to reach the merits of the case, many persons with disabilities were forced to expend substantial resources -- including hiring vocational experts -- to litigate the question of whether they were covered by the ADA.

III. <u>The Americans with Disabilities Act Amendments Act</u>

A. Reclaiming the ADA: Response to the Courts' Narrow Construction of Disability

1. The decisions by the Supreme Court and lower courts that narrowed the ADA's definition of disability were the primary motivation for Congress to amend the ADA in 2008 to restore protection for a broad range of individuals with disabilities, as the ADA originally intended. *See* H.R. Rep. No. 110-730, pt. 1, at 7 (2008); H.R. Rep. No. 110-730, pt. 2, at 5 (2008).

   a. Congress, in amending the ADA, observed that "the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations, and that the question of whether an individual's

impairment is a disability under the ADA should not demand extensive analysis." *ADA Amendments Act*, Pub. L. 110-325, § 2(b)(5), 122 Stat. 3553, 3554 (2008) (codified as amended at 42 U.S.C. § 12101 Note). In other words, the focus should be shift from whether a person has a disability to whether discrimination on the basis of disability has occurred. H.R. Rep. No. 110-730, pt. 1, at 7 (2008).

b. To achieve that change, Congress adopted a general rule of construction that "[t]he definition of disability in this Act shall be construed in favor of broad coverage of individuals under this Act, to the maximum extent permitted by this Act." *ADA Amendments Act*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3555 (2008) (codified as amended at 42 U.S.C. § 12102(4)(A)).

2. *Tripartite Definition Remains:* The ADAAA did not make changes in the definition of "disability." Individuals with actual disabilities, those with records or histories of disabilities; and those who are regarded as or perceived to have disabilities are covered by the Act.

3. *"Major Life Activities" Defined*

a. In order to have an actual disability or a record/history of a disability -- under both the original ADA and the ADAAA -- the individual must show that he is substantially limited in one or more "major life activity."

b. The ADA, as originally enacted, did not define the term "major life activity."

c. The Equal Employment Opportunity Commission (EEOC) (which implements the employment provisions of the ADA) and the Department of Justice (DOJ) (which implements the provisions related to public entities and public accommodations) promulgated regulations to define "major life activities."

(1) These agencies provided non-exhaustive -- and not very lengthy -- lists of basic major life activities, such as seeing, hearing, walking, caring for oneself,

performing manual tasks, speaking, breathing, learning, and working. 29 C.F.R. §§ 1630.2(i); 42 C.F.R. §§ 35.104, 36.104.

(2) The courts struggled with the question of what other activities -- such as sleeping, reading, interacting with others, and the operation of internal body systems -- could be considered major life activities under the ADA.

(3) Moreover, as noted above, the Supreme Court in *Williams* even limited the EEOC's definition of "major life activities" by holding that "performing manual tasks" was only a major life activity if the manual tasks are of central importance to most people's daily lives (such as household chores or brushing one's teeth).

d. Through the ADAAA, Congress sought to broadly define the concept of "major life activities."

(1) The ADAAA includes an extensive list of major life activities -- "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3555 (2008) (codified as amended at 42 U.S.C. § 12102(2)(A)).

(2) The ADAAA also defines major life activities to include "major bodily functions," such as immune system functions; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3555 (2008) (codified as amended at 42 U.S.C. § 12102(2)(B)).

(3) The lists of major life activities and major bodily functions are not intended to be exhaustive. *See* H.R.

Rep. No. 110-730, pt. 1, at 11 (2008). Other major life activities, for example, might include: interacting with others; writing; engaging in sexual activities; drinking; chewing; swallowing; reaching; and applying fine motor coordination. *Id.*

(4) The ADAAA also explicitly states that an impairment need only substantially limit a single major life activity to be considered a disability under the ADA. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3556 (2008) (codified as amended at 42 U.S.C. § 12102(4)(C)).

(a) Through this provision, Congress made clear that an individual is not excluded from coverage because he is able to perform many activities, provided that the individual has an impairment that substantially limits at least one major life activity. H.R. Rep. No. 110-730, pt. 1, at 12 (2008).

(b) This provision of the ADAAA thus overrules a case such as *Holt v. Grand Lake Mental Health Ctr.*, 443 F.3d 762, 767 (10th Cir. 2006), which held that an individual with cerebral palsy that affected her speech and ability to perform certain tasks was not substantially limited in any major life activity because she was able to perform other manual tasks.

4. *"Substantially Limits" Defined -- Sort Of*

a. The ADA, as originally enacted, did not define the phrase "substantially limits."

b. The EEOC defined "substantially limits" to mean that the person either (1) is unable to perform the activity, or (2) is *significantly* restricted as to the condition, manner, or duration in which s/he can perform the activity compared to the average person in the general population. 29 C.F.R. § 1630.2(j)(1) (emphasis added). DOJ did not define

"substantially limits," but indicated in its regulatory comments that it means that "a person is restricted as to the conditions, manner, or duration under which [the major life activities] can be performed in comparison to most people." 42 C.F.R. Pt. 35, App., § 35.104; 42 C.F.R. Pt. 36, App. B, § 36.104.

c. The Supreme Court in *Williams*, as noted above, held that "substantially limits" means "severely restricts."

d. Congress in the ADAAA did not include any specific definition of the phrase "substantially limits."

(1) Earlier versions of the ADA Amendments Act would have defined "substantially limits" to mean "materially restricts." *See* H.R. Rep. No. 110-730, pt. 1, at 2, 6, 9-10 (2008).

(a) The House Committee on Education and Labor explained that "'materially restricts' is meant to be less than a severe or significant limitation and more than a moderate limitation, as opposed to a minor limitation." *Id.* at 10.

(b) The "materially restricts" definition, however, was deleted from the final version of the legislation, and no alternative definition was included in the final legislation.

(2) Although Congress did not affirmatively define the phrase "substantially limits," the ADAAA provides some guidance as to what Congress intended that phrase to mean.

(a) The ADAAA includes a finding that the EEOC's regulations (which defined "substantially limits" as "significantly restricts") and the Supreme Court's holding in *Williams* (which defined "substantially limits" as "severely restricts") are both inconsistent with congressional intent by requiring a greater

degree of limitation than Congress intended. *ADA Amendments Act of 2008*, Pub. L. 110-325, §§ 2(a)(7)-(8), 122 Stat. 3553, 3554 (2008) (codified as amended at 42 U.S.C. § 12101 Note).

(b) The ADAAA also states that one of its purposes is to repudiate *Williams* and to request that the EEOC amend its definition of "substantially limits." *ADA Amendments Act of 2008*, Pub. L. 110-325, §§ 2(b)(4)-(6) , 122 Stat. 3553, 3554 (2008) (codified as amended at 42 U.S.C. § 12101 Note).

(c) The ADAAA also includes a "rule of construction" that requires the courts to interpret the term "substantially limits" in a way that is consistent with the findings and purposes of the ADA Amendments Act. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3554 (2008) (codified as amended at 42 U.S.C. § 12102(4)(B)).

(d) Together, these provisions of the ADAAA mean that the term "substantially limits" allows a person with an impairment to be considered a person with a disability if he is less than severely or significantly restricted in a major life activity.

(3) Congress in the ADAAA also authorized the EEOC (as well as the Attorney General and Secretary of Transportation) to promulgate regulations to interpret the definition of disability. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 6(a), 122 Stat. 3553, 3558 (2008) (codified as amended at 42 U.S.C. § 12206). Such regulations will likely provide a more certain definition of the term "substantially limits."

e. Mitigating Measures

(1) As described above, the Supreme Court in *Sutton* and its companion cases held that mitigating measures that ameliorate the impact of disabilities must be considered in assessing whether an individual is "substantially limited" in a major life activity so as to be protected by the ADA. The ADAAA partially overrules this holding. *See ADA Amendments Act of 2008*, Pub. L. 110-325, §§ 2(a)(4), 2(b)(2), 122 Stat. 3553, 3553-54 (2008) (codified as amended at 42 U.S.C. § 12101 Note).

(2) The ADAAA provides that, in determining whether an impairment substantially limits a major life activity, it is generally *not* appropriate to consider whether "mitigating measures" are available or used to lessen or even eliminate the impact of the impairment. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3556 (2008) (codified as amended at 42 U.S.C. § 12102(4)(E)(i)).

(3) The ADAAA provides an extensive list of mitigating measures that should not be considered by courts in assessing the impact of an impairment, including: medication, medical equipment, prosthetics, hearing aids and cochlear implants, mobility devices, reasonable accommodations, and learned behavioral or adaptive neurological modifications. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3556 (2008) (codified as amended at 42 U.S.C. § 12102(4)(E)(i)(I)-(IV)). The ADAAA's list of mitigating measures is non-exhaustive. H.R. Rep. No. 110-730, pt. 2, at 20 (2008). The use of a job coach or service animal, for example, might also be included in the list of mitigating measures. *Id.*

(4) Under the ADAAA, the only types of mitigating measures that can be considered to determine whether an impairment substantially limits a major life activity are ordinary eyeglasses or contact lenses that are intended to fully correct visual acuity or eliminate refractive error. *ADA Amendments Act of 2008*, Pub.

L. 110-325, § 4(a), 122 Stat. 3553, 3556 (2008) (codified as amended at 42 U.S.C. §§ 12102(4)(E)(ii), 12102(4)(E)(iii)(I)). In contrast, "low-vision devices" that magnify, enhance, or otherwise augment a visual image are mitigating measures that cannot be considered in assessing whether an individual has a disability. *Id.* (codified as amended at 42 U.S.C. §§ 12102(4)(E)(i)(I), 12104(E)(iii)(II)).

5. Impairments that Are Episodic or in Remission

a. Prior to the ADAAA, some courts had held that impairments that result in sporadic or intermittent limitations generally will not be considered to constitute disabilities. *See, e.g.*, *Corley v. Dep't of Veterans*, 218 Fed. Appx. 727, 734-36 (10th Cir. 2007) (intermittent seizures are not a disability); *Ware v. Jewel Food Stores, Inc.*, Civil Action No. 05-C-424, 2007 WL 551571 at *7 (N.D. Ill. Feb. 20, 2007) (sporadic limitations are not sufficient).

b. The ADAAA, however, specifically provides that an impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3556 (2008) (codified as amended at 42 U.S.C. § 12102(4)(D)).

(1) Individuals with disabilities, such as epilepsy, cancer, or multiple sclerosis, will thus be covered by the ADA if they can demonstrate that, when the impairment is active, it substantially limits a major life activity. *See* H.R. Rep. No. 110-730, pt. 2, at 19 (2008).

(2) For example, an individual with epilepsy who has seizures that result in short-term loss of control over major life activities (such as, ability to communicate, think, and major bodily functions) would have a disability under the ADA, even if those seizures occur only rarely. *See id.*

6. *"Regarded As" Disability Clarified*

a. The ADA provided that individuals who are simply "regarded" as having a disability will be protected against discrimination.

(1) The purpose of this provision is to prevent an individual from facing adverse job actions because of myths, fears, and prejudice about with disabilities. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 2(b)(3), 122 Stat. 3553, 3554 (2008) (codified as amended at 42 U.S.C. § 12101 Note); H.R. Rep. No. 110-730, pt. 1, at 13 (2008); 29 C.F.R. Pt. 1630, App. § 1630.2(*l*).

(2) However, this provision proved problematic. The definition of "regarded as" required, as the *Sutton* Court held, that individuals prove that defendants considered them to have impairments that substantially limited a major life activity.

b. Congress in the ADAAA retained the provision that a person who is "regarded as" having a disability will be protected by the ADA. However, the ADAAA clarified certain aspects of the "regarded as" category of disability.

(1) Under the ADAAA, an individual who asserts that he has a disability under the "regarded as" prong is *not* required to show that the impairment is perceived to substantially limit a major life activity. Rather, an individual will be "regarded as" having a disability, and, therefore, will be covered by the ADA, if she establishes that she was subject to discrimination barred by the ADA because of an actual or perceived mental or physical impairment, regardless of whether the impairment actually limits or is perceived to limit a major life activity. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3555 (2008) (codified as amended at 42 U.S.C. § 12102(3)(A)).

(2) Congress, however, provided that individuals will not be protected under the "regarded as" prong if they have impairments that are both transitory (with an actual or expected duration of 6 months or less) and minor. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3555 (2008) (codified as amended at 42 U.S.C. §§ 12102(3)(B)).

(3) Thus, for example, a person who is denied a job because he is HIV-positive would be able to establish liability under the "regarded as" prong of the ADA without any proof that the diagnosis impacts any major life activity in any way. On the other hand, an employer will not be liable for refusing to hire a person with a sprained ankle or the flu.

B. **Other Changes in the ADAAA** – In addition to modifying the definition of disability, the ADAAA includes several other important amendments to the ADA.

1. *Prohibiting Reverse Discrimination Claims* -- The ADAAA makes clear that individuals without disabilities cannot pursue claims under the ADA that they were subject to discrimination because of their lack of disability. ADA Amendments Act of 2008, Pub. L. 110-325, § 6(a)(1), 122 Stat. 3553, 3557 (2008) (codified as amended at 42 U.S.C. § 12201(g)).

2. *Barring Failure to Accommodate Claims by Individuals Who Are "Regarded As" Having Disabilities*

a. Because of the lower courts' narrow definition of the term "disability," many individuals with disabilities (such as epilepsy and diabetes) relied on the "regarded as" prong to establish that they were protected by the ADA. Some of these individuals asserted that they were subject to discrimination because they were not afforded reasonable accommodations. If an individual does not have an actual disability, the question arose as to whether he would be entitled to an accommodation.

b. The ADA, as originally drafted, did not distinguish between persons with actual disabilities and those who are regarded as having disabilities with respect to what claims of "discrimination" they could pursue. Thus, the statutory language seemed to support a failure to accommodate claim by persons who were regarded as having disabilities, even if they did not have actual disabilities.

c. Courts divided on the question of whether individuals who were simply "regarded" as having disabilities were entitled to accommodations. *Compare Williams v. Philadelphia Housing Auth. Police Dep't*, 380 F.3d 751, 772-76 (3d Cir. 2004) (ADA imposes duty to provide reasonable accommodations to persons "regarded as" having disabilities), *with Kaplan v. City of North Las Vegas*, 323 F.3d 1226, 1232-33 (9th Cir. 2003) (ADA does not impose duty to accommodate persons who are simply "regarded as" having a disability).

d. The ADAAA makes clear that an individual who meets the definition of "disability" solely under the "regarded as" prong cannot assert a claim for failure to provide reasonable modifications or reasonable accommodations. Pub. L. 110-325, § 6(a)(1), 122 Stat. 3553, 3558 (2008) (codified as amended at 42 U.S.C. § 12201(h)).

3. *Qualification Standards and Tests Related to Uncorrected Vision*

a. The ADAAA specifically prohibits employers from using job qualification standards based on an individual's uncorrected vision unless the standard is shown to be job-related for the position in question and consistent with business necessity. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 5(b), 122 Stat. 3553, 3557 (2008) (codified as amended at 42 U.S.C. § 12113(c)).

b. Thus, even though correctable vision is unlikely to qualify as an actual disability, a person with correctable vision who is excluded from a job due to the use of an unnecessary job qualification that measures uncorrected vision could still challenge the standard regardless of whether he or she has a

disability. In any event, a person who is excluded from a job due to such a qualification standard would ordinarily be "regarded as" having a disability.

4. *Academic Requirements in Higher Education*

a. The ADAAA cites learning, reading, concentrating, and thinking as specific examples of major life activities. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 4(a), 122 Stat. 3553, 3555 (2008) (codified as amended at 42 U.S.C. § 12102(2)(A)). The legislative history further explains that an individual with a learning disability who performs well academically or otherwise may still be substantially limited in activities such as reading, writing, thinking, speaking, or learning so as to qualify for protection as an individual with a disability under the ADA. *See* H.R. Rep. No. 110-730, pt. 1, at 10-11 (2008).

b. In light of these changes, higher education institutions were concerned about the scope of their obligations to accommodate students with disabilities, particularly those with learning disabilities. Accordingly, Congress in the ADAAA explicitly reiterated that Title III (which governs public accommodations, such as private universities) does not require a covered entity to make modifications if it "can demonstrate that making such modifications in policies, practices, or procedures, *including academic requirements in postsecondary education*, would fundamentally alter the nature of the goods, services, facilities, privileges, advantages, or accommodations involved." *Americans with Disabilities Amendments Act of 2008*, Pub. L. 110-325, § 6(a), 122 Stat. 3553, 3557 (2008) (codified as amended at 42 U.S.C. § 12201(f)).

c. As explained in the legislative history, this amendment is designed to assure that a university "would not be expected to eliminate academic requirements essential to the instruction being pursued by a student, although it may be required to make modifications in order to enable students with disabilities to meet those academic requirements." H.R. Rep. No. 110-730, pt. 1, at 11 (2008).

5. *Impact on Workers' Compensation and Other Benefits* -- The ADAAA clarifies that the ADA does not alter the standards for determining eligibility for benefits under state workers' compensation law or under state or federal disability benefit programs. *Americans with Disabilities Amendments Act of 2008*, Pub. L. 110-325, § 6(a), 122 Stat. 3553, 3557 (2008) (codified as amended at 42 U.S.C. § 12201(e)).

6. *Application to the Rehabilitation Act* -- The ADAAA also amends the Rehabilitation Act to assure that the same definition of "disability" is used under both the ADA and Rehabilitation Act. *ADA Amendments Act of 2008*, Pub. L. 110-325, § 7, 122 Stat. 3553, 3558 (2008) (codified as amended at 29 U.S.C. § 705).

7. *Effective Date* -- The ADA Amendments Act does not become effective until January 1, 2009. ADA Amendments Act of 2008, Pub. L. 110-325, § 8, 122 Stat. 3553, 3559 (2008). Since there is a presumption against retroactive application of legislation, it is unlikely that the ADAAA will be applied to cases that arise prior to the effective date.