

## New Law Restores and Clarifies ADA Rights

By Cynthia A. Smith, MS, CAS, JD

**DURING AN ELECTION YEAR**, the months of August and September are usually a quiet time on Capitol Hill, as members of Congress turn their attention to campaigning for their respective offices and parties. But this past September, members of Congress came together to pass a historic piece of bipartisan civil rights legislation for people with disabilities. Years of intense negotiations between representatives of the business, civil rights, and disability communities preceded the bicameral passage of this legislation. Earlier this year, the Employer and Disability Alliance was formed to move the negotiations forward. CHADD was involved in Alliance activities to advocate for the needs of people affected by AD/HD and to help move the legislation toward passage. On September 25, 2008, President George W. Bush signed the Americans with Disabilities Amendments Act into law, continuing his father's legacy of recognizing the importance of ensuring equal opportunity and access for persons with disabilities, so they are able to lead independent and economically self-sufficient lives within their communities.

When George H. W. Bush signed the Americans with Disabilities Act into law on July 26, 1990, one of its purposes was “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” Congress intended the ADA, which was modeled on the Rehabilitation Act of 1973, to provide clear direction to administrative agencies and the courts regarding who was supposed to be protected by the law. The ADA defines a person with a disability as an individual who:

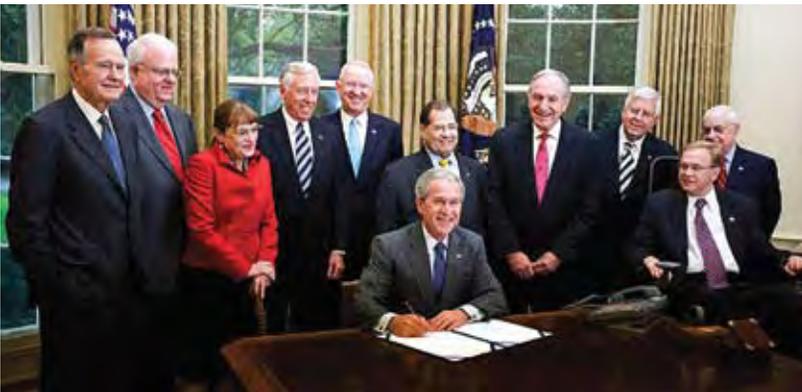
› has a physical or mental impairment that substantially limits one or more major life activities,

› has a record of such impairment, or

› is regarded as having a such an impairment.

Beginning in 1999 with a series of decisions known as the Sutton trilogy, the Supreme Court significantly altered the original intent of Congress. In *Sutton v. United Airlines*, the Supreme Court ruled that the determination of whether a person was disabled and entitled to protections under the ADA was to be “made in reference to measures that mitigate the individual’s impairment.” Furthermore, the Court stated that a “person whose physical or mental impairment is corrected by mitigating measures still has an impairment, but if that impairment is corrected it does not ‘substantially limit’ a major life activity.” The Court’s decision was in direct conflict with the legislative history of the ADA, but the Court ignored this history. *Sutton v. United Airlines* and the cases that came after it narrowed eligibility for ADA protections, and large numbers of people who would commonly be considered individuals with disabilities found themselves stuck in circular reasoning that ultimately denied them protection.

People with AD/HD, as well as those with numerous other disabilities, have found that they were not considered by the courts to be “substantially limited in a major life activity,” and thus were not entitled to reasonable accommodations and other protections under the ADA, because they used medication, behavioral modifications, or other interventions to mitigate the effects of their disability. Furthermore, if someone chose not to use or was



President George W. Bush signs the Americans with Disabilities Amendment Act on September 25, 2008. Joining him, from left: Former President George H.W. Bush, Rep. James Sensenbrenner (R-WI) and his wife, Cheryl; Rep. Steny Hoyer (D-MD); Rep. Buck McKeon (R-CA); Rep. Jerry Nadler (D-NY); Sen. Tom Harkin (D-IA); Sen. Mike Enzi (R-WY); Rep. Jim Langevin (D-RI); and U.S. Attorney General Michael Mukasey.

unable to access mitigating measures, then frequently he or she would be found not able to perform the essential functions of the job, and therefore not entitled to protection under the ADA. And yet it is the use of mitigating measures, such as medication and learned behaviors, that enables many individuals with disabilities to lead independent, economically self-sufficient lives and to fully participate in their community.

Eighteen years after his father signed the original ADA, President Bush signed the ADA Amendments Act into law. The ADAAA amends the ADA, and its interpretation by the courts, to reinstate protections to the broad class of people that Congress intended to be covered by the ADA in 1990. The ADAAA takes effect on January 1, 2009.

#### **What entities are required to comply with the ADAAA?**

The ADAAA makes no changes to the entities that are required to comply with the law:

- private employers with 15 or more full-time employees;
- state and local government services;
- places of public accommodations, including for example, restaurants, movie theaters, stadiums; and
- telecommunications.

Since most of the Court decisions adversely affecting individuals with disabilities have been in the area of employment (Title I), the greatest impact will likely be felt by individuals seeking protection under Title I.

Entities such as “public schools, institutions of higher education, childcare facilities, and other entities receiving federal funds” are required to comply with both the Rehabilitation Act of 1973 and Title II or III of the ADAAA. To ensure that these entities operate under “one consistent standard,” the ADAAA contains an amendment conforming the definition of disability in the two acts. The Senate expects that the U.S. Department of Education



will issue new regulations as needed to ensure consistent protection of civil rights in settings where both acts apply. The Senate believes the current US ED Office of Civil Rights Section 504 regulations are “harmonious” with Congressional intent under both laws.

#### **Who is protected by the ADAAA?**

The ADAAA retains the definition of disability in the ADA, but “further defines and clarifies three critical terms within the existing definition (‘substantially limits,’ ‘major life activities,’ and ‘regarded as having such impairment’).” As the bill’s cosponsors wrote in the Senate’s Statement of Managers, the definition of disability is of “critical importance because as a threshold issue it determines whether an individual is covered by the ADA.”

Like the ADA, the ADAAA does not include a list of diagnoses or conditions that entitle a person to protections from discrimination by a covered entity. Therefore, a diagnosis of AD/HD or a related disorder does not automatically entitle an individual to the protections of the ADAAA; like the ADA, it requires that an individual be “substantially limited” in a “major life activity.” The ADAAA explicitly states that major life activities include such activities as “learning, reading, concentrating, thinking and communicating.” In addition, the law adds to the definition of a major life activity by including the operation of a major bodily function, such as

neurological or brain functions.

The Senate’s statement said that “we intend that the sum of these changes will make the threshold definition of disability in the ADA—under which individuals qualify for protection from discrimination—more generous, and will result in the coverage of some individuals who were previously excluded from those protections.” The intent of the ADAAA is to allow “courts to focus primarily on whether discrimination has occurred or accommodations improperly refused.” Visit [www.archiveada.org](http://www.archiveada.org) or the public policy section of the CHADD website, [www.chadd.org](http://www.chadd.org), for more information. ●