

**UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT**

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No. 14-3858

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Melvin Morriss, III,  
Appellant,  
v.  
BNSF Railway Company,  
Appellee.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA – LINCOLN

Civil Action No. 8:13-cv-00024  
The Hon. Richard G. Kopf, U.S.D.J., Presiding

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**ADDENDUM TO BRIEF OF APPELLEE  
BNSF RAILWAY COMPANY IN SUPPORT OF AFFIRMANCE**

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*/s/ Bryan P. Neal*

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Dated: May 14, 2015

calculation is necessary to comply with this requirement.

(Sec. 12(c)(1) of the Age Discrimination In Employment Act of 1967, as amended by sec. 802(c)(1) of the Older Americans Act Amendments of 1984, Pub. L. 98–459, 98 Stat. 1792))

[44 FR 66797, Nov. 21, 1979, as amended at 50 FR 2544, Jan. 17, 1985; 53 FR 5973, Feb. 29, 1988]

**PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT**

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APPENDIX TO PART 1630—INTERPRETIVE GUIDANCE ON TITLE I OF THE AMERICANS WITH DISABILITIES ACT

AUTHORITY: 42 U.S.C. 12116.

SOURCE: 56 FR 35734, July 26, 1991, unless otherwise noted.

**§ 1630.1 Purpose, applicability, and construction.**

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*) (ADA), requiring equal employment opportunities for qualified individuals with disabilities, and sections 3(2), 3(3), 501, 503, 506(e), 508, 510, and 511 of the ADA as those sections

pertain to the employment of qualified individuals with disabilities.

(b) *Applicability.* This part applies to “covered entities” as defined at § 1630.2(b).

(c) *Construction*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this part.

**§ 1630.2 Definitions.**

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(e) *Employer*—(1) *In general.* The term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, from July 26, 1992 through July 25, 1994, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in

the current or preceding year and any agent of such person.

(2) *Exceptions.* The term employer does not include—

(i) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) A bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(f) *Employee* means an individual employed by an employer.

(g) *Disability* means, with respect to an individual—

(1) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(2) A record of such an impairment; or

(3) Being regarded as having such an impairment.

(See §1630.3 for exceptions to this definition).

(h) *Physical or mental impairment* means:

(1) 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; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) *Major Life Activities* means functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(j) *Substantially limits*—(1) The term *substantially limits* means:

(i) Unable to perform a major life activity that the average person in the general population can perform; or

(ii) 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 that same major life activity.

(2) The following factors should be considered in determining whether an individual is substantially limited in a major life activity:

(i) The nature and severity of the impairment;

(ii) The duration or expected duration of the impairment; and

(iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment.

(3) With respect to the major life activity of *working*—

(i) 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.

(ii) In addition to the factors listed in paragraph (j)(2) of this section, the following factors may be considered in determining whether an individual is substantially limited in the major life activity of “working”:

(A) The geographical area to which the individual has reasonable access;

(B) The job from which the individual has been disqualified because of an impairment, and 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 (class of jobs); and/or

(C) The job from which the individual has been disqualified because of an impairment, and 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 (broad range of jobs in various classes).

(k) *Has a record of such impairment* means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(l) *Is regarded as having such an impairment* means:

which is enforced by the Department of Justice, becomes effective on January 26, 1992. See 28 CFR part 35.

The term "covered entity" is not found in title VII. However, the title VII definitions of the entities included in the term "covered entity" (*e.g.*, employer, employment agency, etc.) are applicable to the ADA.

#### Section 1630.2(g) Disability

In addition to the term "covered entity," there are several other terms that are unique to the ADA. The first of these is the term "disability." Congress adopted the definition of this term from the Rehabilitation Act definition of the term "individual with handicaps." By so doing, Congress intended that the relevant caselaw developed under the Rehabilitation Act be generally applicable to the term "disability" as used in the ADA. Senate Report at 21; House Labor Report at 50; House Judiciary Report at 27.

The definition of the term "disability" is divided into three parts. An individual must satisfy at least one of these parts in order to be considered an individual with a disability for purposes of this part. An individual is considered to have a "disability" if that individual either (1) has a physical or mental impairment which substantially limits one or more of that person's major life activities, (2) has a record of such an impairment, or, (3) is regarded by the covered entity as having such an impairment. To understand the meaning of the term "disability," it is necessary to understand, as a preliminary matter, what is meant by the terms "physical or mental impairment," "major life activity," and "substantially limits." Each of these terms is discussed below.

#### Section 1630.2(h) Physical or Mental Impairment

This term adopts the definition of the term "physical or mental impairment" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. It defines physical or mental impairment as any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of several body systems, or any mental or psychological disorder.

It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural and economic characteristics that are not impairments. The definition of the term "impairment" does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight or muscle tone that are within "normal" range and are not the result of a physiological disorder. The definition, likewise, does not include characteristic predisposition to illness or disease. Other conditions, such as pregnancy, that are not the result of a physiological disorder

are also not impairments. Similarly, the definition does not include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. Environmental, cultural, or economic disadvantages such as poverty, lack of education or a prison record are not impairments. Advanced age, in and of itself, is also not an impairment. However, various medical conditions commonly associated with age, such as hearing loss, osteoporosis, or arthritis would constitute impairments within the meaning of this part. See Senate Report at 22-23; House Labor Report at 51-52; House Judiciary Report at 28-29.

#### Section 1630.2(i) Major Life Activities

This term adopts the definition of the term "major life activities" found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. "Major life activities" are those basic activities that the average person in the general population can perform with little or no difficulty. Major life activities include caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working. This list is not exhaustive. For example, other major life activities include, but are not limited to, sitting, standing, lifting, reaching. See Senate Report at 22; House Labor Report at 52; House Judiciary Report at 28.

#### Section 1630.2(j) Substantially Limits

Determining whether a physical or mental impairment exists is only the first step in determining whether or not an individual is disabled. Many impairments do not impact an individual's life to the degree that they constitute disabling impairments. An impairment rises to the level of disability if the impairment substantially limits one or more of the individual's major life activities. Multiple impairments that combine to substantially limit one or more of an individual's major life activities also constitute a disability.

The ADA and this part, like the Rehabilitation Act of 1973, do not attempt a "laundry list" of impairments that are "disabilities." The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. Some impairments may be disabling for particular individuals but not for others, depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairment disabling or any number of other factors.

Other impairments, however, such as HIV infection, are inherently substantially limiting.

**PART 1630—REGULATIONS TO IMPLEMENT THE EQUAL EMPLOYMENT PROVISIONS OF THE AMERICANS WITH DISABILITIES ACT**

Sec.

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- 1630.9 Not making reasonable accommodation.
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**APPENDIX TO PART 1630—INTERPRETIVE GUIDANCE ON TITLE I OF THE AMERICANS WITH DISABILITIES ACT**

AUTHORITY: 42 U.S.C. 12116 and 12205a of the Americans with Disabilities Act, as amended.

SOURCE: 56 FR 35734, July 26, 1991, unless otherwise noted.

**§ 1630.1 Purpose, applicability, and construction.**

(a) *Purpose.* The purpose of this part is to implement title I of the Americans with Disabilities Act (ADA), as amended by the ADA Amendments Act of 2008 (ADAAA or Amendments Act), 42 U.S.C. 12101, *et seq.*, requiring equal employment opportunities for individuals with disabilities. The ADA as amended, and these regulations, are intended to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, and to provide clear, strong, consistent, enforceable standards addressing discrimination.

(b) *Applicability.* This part applies to “covered entities” as defined at §1630.2(b).

(c) *Construction*—(1) *In general.* Except as otherwise provided in this part, this part does not apply a lesser standard than the standards applied under title V of the Rehabilitation Act of 1973 (29 U.S.C. 790–794a, as amended), or the regulations issued by Federal agencies pursuant to that title.

(2) *Relationship to other laws.* This part does not invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision of any State or jurisdiction that provides greater or equal protection for the rights of individuals with disabilities than is afforded by this part.

(3) *State workers’ compensation laws and disability benefit programs.* Nothing in this part alters the standards for determining eligibility for benefits under State workers’ compensation laws or under State and Federal disability benefit programs.

(4) *Broad coverage.* The primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA. Consistent with the Amendments Act’s purpose of reinstating a broad scope of protection under the ADA, the definition of “disability” in this part shall be construed broadly in favor of expansive coverage to the maximum extent permitted by the terms of the ADA. The primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether the individual meets the definition of disability. The question of whether an individual meets the definition of disability under this part should not demand extensive analysis.

[76 FR 16999, Mar. 25, 2011]

**§ 1630.2 Definitions.**

(a) *Commission* means the Equal Employment Opportunity Commission established by section 705 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–4).

(b) *Covered Entity* means an employer, employment agency, labor organization, or joint labor management committee.

(c) *Person, labor organization, employment agency, commerce and industry affecting commerce* shall have the same meaning given those terms in section 701 of the Civil Rights Act of 1964 (42 U.S.C. 2000e).

(d) *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(e) *Employer*—(1) *In general.* The term employer means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, from July 26, 1992 through July 25, 1994, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year and any agent of such person.

(2) *Exceptions.* The term employer does not include—

(i) The United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) A bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(f) *Employee* means an individual employed by an employer.

(g) *Definition of “disability.”*

(1) *In general. Disability* means, with respect to an individual—

(i) A physical or mental impairment that substantially limits one or more of the major life activities of such individual;

(ii) A record of such an impairment; or

(iii) Being regarded as having such an impairment as described in paragraph (1) of this section. This means that the individual has been subjected to an action prohibited by the ADA as amended because of an actual or perceived impairment that is not both “transitory and minor.”

(2) An individual may establish coverage under any one or more of these

three prongs of the definition of disability, i.e., paragraphs (g)(1)(i) (the “actual disability” prong), (g)(1)(ii) (the “record of” prong), and/or (g)(1)(iii) (the “regarded as” prong) of this section.

(3) Where an individual is not challenging a covered entity’s failure to make reasonable accommodations and does not require a reasonable accommodation, it is generally unnecessary to proceed under the “actual disability” or “record of” prongs, which require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. In these cases, the evaluation of coverage can be made solely under the “regarded as” prong of the definition of disability, which does not require a showing of an impairment that substantially limits a major life activity or a record of such an impairment. An individual may choose, however, to proceed under the “actual disability” and/or “record of” prong regardless of whether the individual is challenging a covered entity’s failure to make reasonable accommodations or requires a reasonable accommodation.

NOTE TO PARAGRAPH (g): See §1630.3 for exceptions to this definition.

**(h) Physical or mental impairment** means—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, circulatory, hemic, lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as an intellectual disability (formerly termed “mental retardation”), organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(i) *Major life activities*—(1) *In general.* Major life activities include, but are not limited to:

(i) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating,

should not be unduly used as a tool for excluding individuals from the ADA's protections''; id. (this principle ''sends a clear signal of our intent that the courts must interpret the definition of disability broadly rather than stringently''); 2008 House Judiciary Committee Report at 5 (''The purpose of the bill is to restore protection for the broad range of individuals with disabilities as originally envisioned by Congress by responding to the Supreme Court's narrow interpretation of the definition of disability.'').

Further, as the purposes section of the ADAAA explicitly cautions, the ''primary object of attention'' in cases brought under the ADA should be whether entities covered under the ADA have complied with their obligations. As noted above, this means, for example, examining whether an employer has discriminated against an employee, including whether an employer has fulfilled its obligations with respect to providing a ''reasonable accommodation'' to an individual with a disability; or whether an employee has met his or her responsibilities under the ADA with respect to engaging in the reasonable accommodation ''interactive process.'' ADAAA section 2(b)(5); See also 2008 Senate Statement of Managers at 4 (''[L]ower court cases have too often turned solely on the question of whether the plaintiff is an individual with a disability rather than the merits of discrimination claims, such as whether adverse decisions were impermissibly made by the employer on the basis of disability, reasonable accommodations were denied, or qualification standards were unlawfully discriminatory.''); 2008 House Judiciary Committee Report (criticizing pre-ADAAA court decisions which ''prevented individuals that Congress unquestionably intended to cover from ever getting a chance to prove their case''). Accordingly, the threshold coverage question of whether an individual's impairment is a disability under the ADA ''should not demand extensive analysis.'' ADAAA section 2(b)(5).

Section 1630.2(g)(2) provides that an individual may establish coverage under any one or more (or all three) of the prongs in the definition of disability. However, to be an individual with a disability, an individual is only required to satisfy one prong.

As §1630.2(g)(3) indicates, in many cases it may be unnecessary for an individual to resort to coverage under the ''actual disability'' or ''record of'' prongs. Where the need for a reasonable accommodation is not at issue—for example, where there is no question that the individual is ''qualified'' without a reasonable accommodation and is not seeking or has not sought a reasonable accommodation—it would not be necessary to determine whether the individual is substantially limited in a major life activity (under the actual disability prong) or has a record of a substantially limiting impair-

ment (under the record of prong). Such claims could be evaluated solely under the ''regarded as'' prong of the definition. In fact, Congress expected the first and second prongs of the definition of disability ''to be used only by people who are affirmatively seeking reasonable accommodations \* \* \*'' and that ''[a]ny individual who has been discriminated against because of an impairment—short of being granted a reasonable accommodation \* \* \*—should be bringing a claim under the third prong of the definition which will require no showing with regard to the severity of his or her impairment.'' Joint Hoyer-Sensenbrenner Statement at 4. An individual may choose, however, to proceed under the ''actual disability'' and/or ''record of'' prong regardless of whether the individual is challenging a covered entity's failure to make reasonable accommodation or requires a reasonable accommodation.

To fully understand the meaning of the term ''disability,'' it is also necessary to understand what is meant by the terms ''physical or mental impairment,'' ''major life activity,'' ''substantially limits,'' ''record of,'' and ''regarded as.'' Each of these terms is discussed below.

#### Section 1630.2(h) Physical or Mental Impairment

Neither the original ADA nor the ADAAA provides a definition for the terms ''physical or mental impairment.'' However, the legislative history of the Amendments Act notes that Congress ''expect[s] that the current regulatory definition of these terms, as promulgated by agencies such as the U.S. Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ) and the Department of Education Office of Civil Rights (DOE OCR) will not change.'' 2008 Senate Statement of Managers at 6. The definition of ''physical or mental impairment'' in the EEOC's regulations remains based on the definition of the term ''physical or mental impairment'' found in the regulations implementing section 504 of the Rehabilitation Act at 34 CFR part 104. However, the definition in EEOC's regulations adds additional body systems to those provided in the section 504 regulations and makes clear that the list is non-exhaustive.

It is important to distinguish between conditions that are impairments and physical, psychological, environmental, cultural, and economic characteristics that are not impairments. The definition of the term ''impairment'' does not include physical characteristics such as eye color, hair color, left-handedness, or height, weight, or muscle tone that are within ''normal'' range and are not the result of a physiological disorder. The definition, likewise, does not include characteristic predisposition to illness or disease. Other conditions, such as pregnancy,



that are not the result of a physiological disorder are also not impairments. However, a pregnancy-related impairment that substantially limits a major life activity is a disability under the first prong of the definition. Alternatively, a pregnancy-related impairment may constitute a “record of” a substantially limiting impairment,” or may be covered under the “regarded as” prong if it is the basis for a prohibited employment action and is not “transitory and minor.”

The definition of an impairment also does not include common personality traits such as poor judgment or a quick temper where these are not symptoms of a mental or psychological disorder. Environmental, cultural, or economic disadvantages such as poverty, lack of education, or a prison record are not impairments. Advanced age, in and of itself, is also not an impairment. However, various medical conditions commonly associated with age, such as hearing loss, osteoporosis, or arthritis would constitute impairments within the meaning of this part. See 1989 Senate Report at 22-23; 1990 House Labor Report at 51-52; 1990 House Judiciary Report at 28-29.

#### Section 1630.2(i) Major Life Activities

The ADAAA provided significant new guidance and clarification on the subject of “major life activities.” As the legislative history of the Amendments Act explains, Congress anticipated that protection under the ADA would now extend to a wider range of cases, in part as a result of the expansion of the category of major life activities. See 2008 Senate Statement of Managers at 8 n.17.

For purposes of clarity, the Amendments Act provides an illustrative list of major life activities, including caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. The ADA Amendments expressly made this statutory list of examples of major life activities non-exhaustive, and the regulations include sitting, reaching, and interacting with others as additional examples. Many of these major life activities listed in the ADA Amendments Act and the regulations already had been included in the EEOC’s 1991 now-superseded regulations implementing title I of the ADA and in sub-regulatory documents, and already were recognized by the courts.

The ADA as amended also explicitly defines “major life activities” to include the operation of “major bodily functions.” This was an important addition to the statute. This clarification was needed to ensure that the impact of an impairment on the operation of a major bodily function would not be overlooked or wrongly dismissed as falling outside the definition of “major life activities” under the ADA. 2008 House Judi-

ary Committee Report at 16; See also 2008 Senate Statement of Managers at 8 (“for the first time [in the ADAAA], the category of ‘major life activities’ is defined to include the operation of major bodily functions, thus better addressing chronic impairments that can be substantially limiting”).

The regulations include all of those major bodily functions identified in the ADA Amendments Act’s non-exhaustive list of examples and add a number of others that are consistent with the body systems listed in the regulations’ definition of “impairment” (at §1630.2(h)) and with the U.S. Department of Labor’s nondiscrimination and equal employment opportunity regulations implementing section 188 of the Workforce Investment Act of 1998, 29 U.S.C. 2801, *et seq.* Thus, special sense organs, skin, genitourinary, cardiovascular, hemic, lymphatic, and musculoskeletal functions are major bodily functions not included in the statutory list of examples but included in §1630.2(i)(1)(ii). The Commission has added these examples to further illustrate the non-exhaustive list of major life activities, including major bodily functions, and to emphasize that the concept of major life activities is to be interpreted broadly consistent with the Amendments Act. The regulations also provide that the operation of a major bodily function may include the operation of an individual organ within a body system. This would include, for example, the operation of the kidney, liver, pancreas, or other organs.

The link between particular impairments and various major bodily functions should not be difficult to identify. Because impairments, by definition, affect the functioning of body systems, they will generally affect major bodily functions. For example, cancer affects an individual’s normal cell growth; diabetes affects the operation of the pancreas and also the function of the endocrine system; and Human Immunodeficiency Virus (HIV) infection affects the immune system. Likewise, sickle cell disease affects the functions of the hemic system, lymphedema affects lymphatic functions, and rheumatoid arthritis affects musculoskeletal functions.

In the legislative history of the ADAAA, Congress expressed its expectation that the statutory expansion of “major life activities” to include major bodily functions (along with other statutory changes) would lead to more expansive coverage. See 2008 Senate Statement of Managers at 8 n.17 (indicating that these changes will make it easier for individuals to show that they are eligible for the ADA’s protections under the first prong of the definition of disability). The House Education and Labor Committee explained that the inclusion of major bodily functions would “affect cases such as *U.S. v. Happy Time Day Care Ctr.* in which the courts struggled to analyze whether the impact of HIV infection substantially limits various