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THE MEANING OF LIFE: DEFINING "MAJOR LIFE ACTIVITIES" UNDER THE AMERICANS WITH DISABILITIES ACT

KIREN DOSANJH ZUCKER*

I. INTRODUCTION

"[S]ome 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,"¹ denying them "the opportunity to compete on an equal basis... and cost[ing] the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity."² With that proclamation, Congress enacted the Americans with Disabilities Act (ADA).³ The ADA's intent is clear, but the extent of its protection has been an object of confusion among employers, and a subject of scrutiny by the federal courts. What makes these estimated 43,000,000 Americans "disabled" within the meaning of the ADA?

In defining "disability" under the ADA, Congress turned to the definition of what it means to be handicapped under the Rehabilitation Act of 1973 (Rehabilitation Act).⁴ Under the Rehabilitation Act, handicap means "a physical or mental impairment that substantially limits one or more major... life activities" of the individual, "a record of such an impairment," or "being regarded as having such an

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³ Id. § 12101(a)(9).

⁴ The Americans with Disabilities Act not only prohibits disability discrimination in employment, but also provides that failure to make reasonable accommodation is a form of unlawful discrimination. The ADA states that a covered employer must provide "reasonable accommodations" for the "physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless [the employer] can demonstrate that the accommodation would impose an undue hardship." Id. § 12112(b)(5). A "qualified individual with a disability" is defined as an individual "who, with or without reasonable accommodation, can perform the essential functions of the employment position" at issue. Id. § 12111(8).

impairment." Such reliance offered comfort to disability rights advocates and congressional supporters of the ADA, who were confident that the same individuals who had been covered under the existing federal anti-discrimination protections would be covered under the ADA. This confidence, however, was short-lived: For the past ten years, challenges to the ADA's coverage have led to judicial parsing of every term in the definition of disability, and the subsequent failure to protect individuals with a wide range of impairments from discrimination.

This Article will focus on the United States Supreme Court's unanimous decision in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* which dissected the meaning of the terms "substantial limitation" and "major life activities." Without attempting to review judicial interpretation of each segment of the statutory definition of disability, this Article will analyze *Toyota* as an example of the Court's narrowing approach to the ADA's coverage. Part III will then discuss recent federal court decisions applying *Toyota* that demonstrate the confusion caused by this decision. The Article will conclude with possible solutions that could resolve the confusion and protect the ADA from further dilution in the wake of *Toyota*, including a suggestion to employers planning to implement *Toyota* in their employment practices.

II. WORK VS. "REAL LIFE:" *TOYOTA MOTOR MANUFACTURING V. WILLIAMS*

The threshold question in most cases brought under the ADA is whether the plaintiff has a physical or mental impairment that substantially limits that person in at least one major life activity. In

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5. *Id.* In adopting this language, Congress changed "handicap" to "disability." 42 U.S.C. § 12102(2).
7. *Id.* at 93.
9. *Id.* at 193–94.
addressing this question, federal courts have not been without guidance. The EEOC regulations define "major life activities" as "functions such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." The appendix to the regulations clarifies that "this list is not exhaustive." Further, "major life activities' are those basic activities that the average person in the general population can perform with little or no difficulty."

An impairment substantially limits a major life activity if the individual is either unable to perform or is "significantly restricted as... to the condition, manner, or duration under which the average person in the general population can perform" the activity in question. The EEOC regulations emphasize individualized assessments of whether an individual's impairment rises to the level of a disability.

The facts of Toyota offered a rather typical ADA scenario. The employer did not dispute that the worker's carpal tunnel syndrome amounted to a physical impairment. The controversy centered on whether the impairment substantially limited her in the major life activity of performing manual tasks. The fact that the worker's job on an assembly line required her to perform manual tasks would add complexity to the issue reviewed by the United States Supreme Court.

(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 physiological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.


11. Edmonds, supra note 10, at 323–24 (quoting 29 C.F.R. §. 1630.2(i)).
12. Id. at 324 (quoting 29 C.F.R. App. § 1630.2(i)).
13. Id. at 323–24 (quoting 29 C.F.R. App. § 1630.2(i)).
14. 29 C.F.R. § 1630.2(2). The EEOC regulations also set forth the factors to consider when determining substantial limitation: the nature, severity, duration, and permanence of the impairment. See id. § 1630.2(2).
15. Feldblum, supra note 6, at 140.
17. Id.
18. Writing for a unanimous Court, Justice O'Connor stated that "[w]e express no opinion on the working, lifting, or other arguments [sic] for disability status... not ruled upon by the Court of Appeals." Id. at 193. Nevertheless, O'Connor's reference to the major life activity of working later in the opinion is the probable source of the lower courts' confusion discussed infra at Part III. See id. at 200.
A. Facts

Williams began work on the assembly line at the Georgetown, Kentucky Toyota automobile manufacturing plant in 1990. Her duties required the use of pneumatic tools, which eventually caused pain that was diagnosed as bilateral carpal tunnel syndrome by her employer's in-house medical service. Her personal physician placed her on work restrictions that led to her assignment in various "modified duty" jobs. Despite the availability of these modifications and her continued employment, Williams decided to go on medical leave and filed a state workers' compensation claim. Dissatisfied with her employer's effort to accommodate her work restrictions, Williams brought a claim under the ADA, alleging that her employer had unlawfully refused to accommodate her disability. After settling this suit, Williams returned to work at the plant in 1993 in an assignment as a quality-control inspector.

According to Williams, her condition worsened while in this new position and the company once again refused to accommodate her. Her employer denied those allegations, maintaining that she began missing work on a regular basis, and eventually cited poor attendance as the reason for her second termination from the company in 1997.

B. Procedural History

After receiving a right-to-sue letter from the EEOC, Williams filed suit against Toyota claiming that it had violated the ADA by failing to reasonably accommodate her disability and by terminating her employment. Addressing the threshold issue of whether she was "disabled" under the ADA, Williams averred that "her physical impairments substantially limited her in [performing]: (1) manual tasks; (2) housework; (3) gardening; (4) playing with her children; (5) lifting; and (6) working," and argued that all of these constituted major life
activities under the ADA.\textsuperscript{28} Alternatively, she asserted, she was protected under the ADA because she had both a record of a "substantially limiting impairment" and was regarded "as having such an impairment."\textsuperscript{29}

The United States District Court for the Eastern District of Kentucky granted summary judgment to Toyota.\textsuperscript{30} After rejecting Williams's arguments that gardening, housework, and playing with children are major life activities, the district court reasoned that Williams had failed to offer sufficient evidence that she was substantially limited in manual tasks, lifting, and working, finding that such a claim was "irretrievably contradicted" by her insistence that she could perform the tasks in assembly and inspection "without difficulty."\textsuperscript{31}

On appeal, the Court of Appeals for the Sixth Circuit reversed the district court's ruling that Williams was not disabled at the time she sought an accommodation, holding that her impairment prevented her from doing the range of tasks associated with certain types of manual assembly-line jobs.\textsuperscript{32} Therefore, the court concluded that Williams was entitled to partial summary judgment on the issue of whether she was "disabled" under the ADA.\textsuperscript{33}

The Supreme Court granted certiorari to consider the proper standard for assessing whether an impairment substantially limits an individual in performing manual tasks.\textsuperscript{34} The Court reversed the Sixth Circuit's decision to grant partial summary judgment.\textsuperscript{35}

\textbf{C. Justice O'Connor's Opinion}

In seeking guidance for interpreting the meaning of "disability" under the ADA, Justice O'Connor, writing for a unanimous Court, noted "two potential sources: First, the regulations issued by the Department of Health, Education and Welfare (HEW) interpreting the Rehabilitation Act of 1973, and second, the EEOC regulations regarding the ADA.\textsuperscript{36} However, Justice O'Connor expressed concern

\begin{itemize}
\item \textsuperscript{28} Id.
\item \textsuperscript{29} Id. (citing 42 U.S.C. §§ 12102(2)(B-C) (1994)).
\item \textsuperscript{30} Id.
\item \textsuperscript{31} Id. at 191.
\item \textsuperscript{32} Id. at 191–92.
\item \textsuperscript{33} Id. at 192.
\item \textsuperscript{34} See Toyota Mfg., Ky., Inc. v. Williams, 532 U.S. 970 (2001) (mem.) (granting certiorari).
\item \textsuperscript{35} 543 U.S. at 192–93.
\item \textsuperscript{36} Id. at 193. Justice O'Connor noted that the express provision in the ADA directing
that the EEOC may have overstepped its authority in defining the term "disability" under the ADA. The EEOC "created its own definition" of disability for the purposes of the ADA, but as Justice O'Connor recognized, it did so because the HEW regulations did not address the meaning of "substantial limitation" of major life activities. Nevertheless, given the parties' acceptance of the EEOC regulations' reasonableness, the Court "assume[d] without deciding" that the regulations were reasonable, although Justice O'Connor reserved judgment on the level of deference to which the regulations should be accorded.

Regulations issued by both HEW and EEOC include the performance of manual tasks in the definition of major life activities. How should the Sixth Circuit have determined whether Williams was substantially limited in this major life activity? While acknowledging the EEOC's definition of substantial limitation, Justice O'Connor asserted that the Court must address an issue on which the EEOC regulations are silent—the definition of substantial limitation in the "specific major life activity of performing manual tasks." While not expressly at issue, Justice O'Connor nevertheless implicitly communicated the level of deference given to the EEOC regulations by turning to Webster's Dictionary as the primary source of interpretive

37. Toyota, 534 U.S. at 194. According to Justice O'Connor, "no agency has been given authority to issue regulations interpreting the term 'disability' under the ADA." Id. Given the EEOC's role in federal anti-discrimination legislation, including the ADA, perhaps this critique is unwarranted. Further, as recognized in Bragdon v. Abbott, agencies charged with statutory implementation hold a "body of experience and informed judgment to which courts and litigants may properly resort for guidance." 524 U.S. 624, 642 (1998) (citing Skidmore v. Swift & Co., 323 U.S. 134 (1944)); see also Sutton v. United Air Lines, Inc., 527 U.S. 471, 501 (1999) (Stevens, J., dissenting) (stating that the opinion of an "agency charged with implementation" of a statute should be "accorded respect") (citing Ford Motor Credit Co. v. Milhollin, 444 U.S. 555, 556 (1980)).

38. 534 U.S. at 195.
39. Id. at 194 (stating that the "level of deference" to which the regulations should be accorded was not at issue); see also supra note 37 and accompanying text.
40. Id. (citing 45 C.F.R. § 84.3(j)(2)(ii) (2001)); see also supra note 10.
41. See supra note 14.
42. Toyota, 534 U.S. at 196.
43. See supra note 37.
MAJOR LIFE ACTIVITIES UNDER THE ADA

1. Webster's Definition of "Substantially" and "Major"

According to Webster's Third New International Dictionary, "substantial" means "considerable in amount, value, or worth." Justice O'Connor interpreted this definition to mean "considerable" or "to a large degree." Thus, "[t]he word 'substantial' clearly precludes impairments that interfere in only a minor way with the performance of manual tasks from qualifying as disabilities" under the ADA. While it may be assumed that Justice O'Connor was merely referring to the major life activity relevant to Toyota, this statement, read literally, seems to emphasize that disabilities must be evaluated solely in the context of manual tasks and to the exclusion of other major life activities cited in the EEOC regulations.

"'Major' means important," asserted Justice O'Connor. Once again referring to Webster's Dictionary, Justice O'Connor noted that "major" is defined as "greater in dignity, rank, importance, or interest." Of course, the application of this term requires some subjective evaluation, as does the literal use of the word "substantial." What is an activity of great importance or interest to one person may be relatively insignificant to another.

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44. See Toyota, 534 U.S. at 196.
45. Id. (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 2280 (1976)).
46. Id. at 197.
47. Id.
48. See supra notes 10–13 and accompanying text. The House Judiciary Report (Report) on the ADA highlights the potential impact of this emphasis on performance of manual tasks. In analyzing the meaning of "substantial limitation" in the context of work, the Report offered this scenario:

[If] a person is employed as a painter and is assigned to work with a unique paint which caused severe allergies, such as skin rashes or seizures, the person would be substantially limited in a major life activity, by virtue of the resulting skin disease or seizure disorder . . . . In such a case, a reasonable accommodation to the employee may include assignment to other areas where the particular paint is not used. Feldblum, supra note 6, at 133 (citing H.R. REP. No. 485 (III) (1990), reprinted in 1990 U.S.C.C.A.N. 445). Professor Feldblum notes the ease with which the Report assumed that a person with a severe allergic reaction would be considered to be substantially limited in some major life activity other than working. Id. at 134.
49. Toyota, 534 U.S. at 197. If the "manual tasks" emphasis is taken and applied literally to the Report's scenario, see supra note 48, then the painter would probably not be considered disabled, as that person could arguably still perform the manual tasks defined as "major" under Toyota.
50. Id. (citing WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1363 (1976)).
However, the Court seemed to purposefully ignore the relativity of assigning an activity this level of importance. Using the literal definition of the word "major," Justice O'Connor then offered that major life activities refers to "those activities that are of central importance to daily life." In order for the performance of manual tasks to qualify as a major life activity under this definition, Justice O'Connor continued, the manual tasks "must be central to daily life." To whose daily life was the Court referring?

2. Individualized Assessment\textsuperscript{33} vs. "Majority Rules:" Defining "Major Life Activities"

Taking the terms of the "disability" definition and applying that definition to the facts at hand, Justice O'Connor set forth the standard for determining whether Ms. Williams was disabled under the ADA. According to the Court, in order "to be substantially limited in performing manual tasks, an individual must have an impairment that prevents or severely restricts the individual from doing activities that are of central importance to most people's daily lives." Thus, "daily life" did not refer to the individual, but rather to the majority of society. Federal courts would be left to determine whether a particular activity played a significant role in, not just the impaired individual's life, but in most individuals' lives.

The \textit{Toyota} Court's categorical approach to defining major life activities appears to contradict a fundamental concept behind the ADA; the existence of a disability should be determined on a case-by-case basis.\textsuperscript{35} The United States Supreme Court recognized this emphasis on individualized assessment in \textit{Toyota} and other recent cases, including \textit{Sutton v. United Air Lines, Inc.} and \textit{Albertson's, Inc. v. Kirkingburg}.\textsuperscript{36}

\begin{flushleft}
\textsuperscript{31} Id.
\textsuperscript{32} Id.
\textsuperscript{33} See Feldblum, \textit{supra} note 6, at 110, for a discussion of the history of "individualized assessment" in defining disability under anti-discrimination statutes.
\textsuperscript{34} \textit{Toyota}, 534 U.S. at 198 (emphasis added). Note that in the appendix to the EEOC regulations defining major life activities, the EEOC used the \textit{average person} in the general population as its measure. See \textit{supra} note 14 and accompanying text. Justice O'Connor's reference to the majority deviates significantly from this measure.
\textsuperscript{35} See \textit{supra} note 14 and accompanying text.
\textsuperscript{36} \textit{Toyota}, 534 U.S. at 198 (citing \textit{Sutton}, 527 U.S. 471, 483 (1999) and \textit{Albertson's}, 527 U.S. 555, 566 (1999)). Both \textit{Sutton} and \textit{Albertson's} are part of a line of decisions holding that impairments must be evaluated in their corrected states. Thus, an impairment's impact on major life activities would be determined in light of mitigating measures such as medical devices and medication. See Marcia Coyle, \textit{U.S. Supreme Court Rulings Limit ADA's Scope},
\end{flushleft}
The Court's emphasis on typical lives rather than the life of the impaired individual is also contrary to its ruling in another seminal ADA case, *Bragdon v. Abbott*.\(^{57}\) As Justice O'Connor noted in *Toyota*, the Court in *Bragdon* relied on unchallenged testimony that the respondent's HIV infection led her to decide not to have a child.\(^{58}\) The *Bragdon* Court stated that "[t]he 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*."\(^{59}\) If *Toyota* had been decided before *Bragdon*, perhaps the Court would have analyzed whether childbearing was an activity of central importance to most people's daily lives to determine whether the respondent was truly "disabled" by her HIV infection.\(^{60}\)

Justice O'Connor criticized the Court of Appeals for the Sixth Circuit for ignoring Ms. Williams's ability to bathe, brush her teeth, and perform household chores. According to the Court, these activities "are among the types of manual tasks of central importance to people's daily lives."\(^{61}\) As such, the Sixth Circuit erred in treating these activities as irrelevant in assessing whether Ms. Williams was "substantially limited" in performing manual tasks.\(^{62}\) By including personal hygiene in its list of "manual tasks" that are central to daily life, the Court appears to submerge the major life activity of caring for oneself into the performance of manual tasks.\(^{63}\)

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59. *Id.* at 198 (citing *Bragdon*, 524 U.S. at 641–42 (emphasis added)).

60. As noted by Edmonds, *supra* note 10, at 351, several cases after *Bragdon* have addressed whether one of the activities involved in childbearing, namely sexual relations, is a separate major life activity. For example, in *McAlindin v. County of San Diego*, the Ninth Circuit ruled that an individual whose panic disorder impaired his ability to engage in sexual relations was "disabled" under the ADA. 192 F.3d 1226, 1234 (9th Cir. 1999). The Ninth Circuit found that "[t]he number of people who engage in sexual relations is plainly larger than the number who choose to have children." *Id.* This reference to the number of those engaging in sexual relations in determining it to be a major life activity seems to foreshadow *Toyota*.


62. *Id.*

63. Edmonds *supra* note 10, at 369 (noting that "the activities of bathing and brushing one's teeth would seem to be part of caring for oneself but were specifically cited by the Court [in *Toyota*] as examples of manual tasks.").
3. "Working" vs. "Performing Manual Tasks:" A Line is Drawn

While the Toyota Court focused on the "performance of manual tasks," the Court also addressed "working" as a major life activity. Justice O'Connor stated that the "conceptual difficulties" raised by the inclusion of working as a major life activity made the Court hesitant to hold as much. In declaring that the Court need not have decided "this difficult question" at that time, Justice O'Connor nevertheless reviewed the standard utilized in determining whether an impaired individual is "substantially limited" in their ability to work under the ADA.

As noted in Sutton, assuming that work is a major life activity, "a claimant would be required to show an inability to work in a 'broad range of jobs,' rather than a specific job." The EEOC regulations also set forth that, with respect to working, substantially limits means "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs." The EEOC did not suggest that this "class-based framework" applies to other major life activities. Therefore, Justice O'Connor emphasized that the Sixth Circuit erred in assuming that Ms. Williams's inability to perform a "class" of manual tasks supported a finding of "disability" under the ADA. Interestingly, the Court appeared comfortable in creating a class of manual tasks regarding personal hygiene.

A claimant's inability to perform a "class of manual tasks" unique to her job does not support a finding that she is "disabled" under the ADA. This point appears to be the driving force behind Justice O'Connor's detailed discussion of the "'class' concept." The Sixth Circuit focused on the manual tasks required of Ms. Williams's positions at Toyota in determining that she was within the ADA's protection. Justice O'Connor urged that such an approach would allow an impaired individual to fashion ADA claims based on that individual's inability to perform a specific job as opposed to a broad range of jobs—tasks

64. 534 U.S. at 199.
65. Id. (citing Williams v. Toyota Motor Mfg., Ky., Inc., 224 F.3d 840, 843 (6th Cir. 2000)). Justice O'Connor noted that the court of appeals had raised the issue by asserting that Ms. Williams must show that her manual disability involves a "class of manual activities" that "affect the ability to perform tasks at work." Id. (citation omitted).
66. Id. at 200 (quoting Sutton v. United Air Lines, Inc., 527 U.S. 471, 492 (1999)).
67. Id. (quoting 29 C.F.R. § 1630.2(j)(3) (2001)).
68. The EEOC regulations regarding the meaning of "substantial limitation" with respect to work were designed to address the unique situation of an individual whose impairment "manifests itself only at work." Feldblum, supra note 6, at 137–38.
69. Toyota, 534 U.S. at 200.
associated with a specific job could be "recast as an inability to perform a 'class' of tasks."

Perhaps in an effort to further protect against claims based on inability to perform a specific job, Justice O'Connor then urged that "occupation-specific tasks may have only limited relevance to the manual task inquiry" because they are "not necessarily important parts of most people's lives." For example, Ms. Williams's inability to do "repetitive work with hands and arms extended at or above shoulder levels for extended periods of time . . . is not an important part of most people's daily lives." Therefore, the Sixth Circuit should not have considered the limitation sufficient proof that Ms. Williams was "disabled" under the meaning of the ADA.

Most people do not work on assembly lines, but for those who do, perhaps such an inability would render them ineligible for the range of jobs for which they are trained, especially if their employers were not required to provide them with reasonable accommodation. Thus, while Justice O'Connor intensely focused on keeping the major life activities of "performance of manual tasks" and "working" separate, the two are inextricably linked in those occupations requiring manual labor.

4. The Numbers Game: 43 Million Seems Low

Toyota revealed the Court's intent behind its strict interpretation of the ADA's definition of "disability." Ironically, Justice O'Connor turned to the congressional findings set forth in the first section of the ADA that support the stated purpose of the statute's protections:

"[I]f Congress intended everyone with a physical impairment that precluded the performance of some isolated, unimportant, or particularly difficult manual task to qualify as disabled, the number of disabled Americans would surely have been much higher [than 43 million]."

70. Id. at 201.
71. Id.
72. Id.
73. Id. (quoting Williams v. Toyota Motor Mfg., Ky., Inc., 224 F.3d 840, 843 (6th Cir. 2000)).
74. See infra Part III.B.
76. Toyota, 534 U.S. at 197 (quoting 42 U.S.C. § 12101). Justice O'Connor also cited Sutton: "[G]iven that 100 million people need corrective lenses to see properly, h]ad Congress intended to include all persons with corrected physical limitations among those covered by the Act, it undoubtedly would have cited a much higher number [than 43 million] . . . ." Id. at 197–98 (citing Sutton v. United Air Lines, Inc., 527 U.S. 471, 487 (1999)). Interestingly, in his dissenting opinion in Sutton, Justice Stevens, joined by Justice Breyer, stated that "by reason
While Congress chose to assert a figure in approximating the number of Americans who qualify as disabled under the ADA, it gave a more general estimate under the Rehabilitation Act, stating that "millions of Americans have one or more physical or mental disabilities." Additionally, Congress averred that "the number of Americans with such disabilities is increasing." Taken together, the numerical statements made in the Rehabilitation Act and the ADA appear to be intended to simply emphasize that there is a significant percentage of the American population who are socially disadvantaged due to their disability.

Creating a demanding standard for defining "disability" under the ADA obviously limits the number of those who qualify for protection. Employers may view this restriction as a victory that reduces the burden of compliance with the ADA. However, as discussed below, Toyota may create other concerns for employers as it raises new factual issues in ADA cases.

III. "LIFE AFTER TOYOTA:" FEDERAL COURTS' POST-TOYOTA DEFINITION OF "DISABILITY"

Toyota does not offer solid boundaries separating work-related manual tasks from those manual tasks that are of "central importance to most people's daily lives." The Court stated only that occupation-specific tasks "are not necessarily important parts of most people's lives," and therefore may not meet the definition of major life activity under the ADA. Do tasks such as keyboarding and writing, which may be fundamental to certain professions, constitute a major life activity? Another issue left to the federal courts is whether an impaired individual's inability to complete tasks associated with an occupation for

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78. Id.
79. See § 701(a)(2) ("[I]ndividuals with disabilities constitute one of the most disadvantaged groups in society.").
80. See supra note 3.
81. See infra Part IV.
82. Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 198 (2002); see also supra note 54.
83. Toyota, 534 U.S. at 201 (emphasis added).
which he is trained would "substantially limit" the major life activity of working. Finally, an issue indirectly raised by *Toyota* is whether an impaired individual's ability to perform the essential job functions with reasonable accommodation revokes his protection under the ADA. The following ADA decisions from the lower federal judiciary illustrate the confusion created in *Toyota's* wake.

A. Work and Daily Life: Mutually Exclusive or One and the Same?

In *Thornton v. McClatchy Newspapers, Inc.*,

the Court of Appeals for the Ninth Circuit reviewed whether a newspaper reporter inflicted with carpal tunnel syndrome was "disabled" under the ADA. Two members of the three-judge panel remained unpersuaded that Thornton was an "individual with a disability" under the ADA by virtue of her diminished capacity to engage in "continuous keyboarding or handwriting." Writing for the majority, Judge Hawkins implied that keyboarding and writing might be manual tasks that are major life activities. However, "continuous keyboarding and handwriting is different . . . ." Judge Hawkins noted that "lawyers and law office personnel would undoubtedly consider continuous keyboarding and handwriting to be activities of central importance to their lives." Nevertheless, the majority was unsure as to whether these activities are centrally important to "most people's daily lives." If continuous keyboarding and writing are not centrally important to most people's daily lives, but intermittent keyboarding and writing are, the issue remained as to whether Thornton was "substantially limited" in these major life activities. While conceding that her life has been "diminished" by her

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84. 292 F.3d 1045 (9th Cir. 2002).
85. The Ninth Circuit Court of Appeals affirmed the district court's grant of the defendant's motion for summary judgment on Ms. Thornton's ADA claims prior to the Supreme Court's resolution of *Toyota*. See 261 F.3d 789 (9th Cir. 2001). After staying its mandate pending the announcement of *Toyota*, the court solicited and considered the parties' views on the impact of that decision, and wrote to clarify its earlier opinion in light of *Toyota*. *Thornton*, 292 F.3d at 1045.
86. *Thornton*, 261 F.3d at 793.
87. *Thornton*, 292 F.3d at 1046.
88. *Id.*
89. *Id.*
90. *Id.*
reduced keyboarding and writing capacity, Judge Hawkins averred without explanation that this diminishment did not amount to a substantial limitation.\textsuperscript{91}

Dissenting, Judge Berzon asserted that the majority treated workplace activities as irrelevant in determining whether such an activity is "of central importance in most people's daily lives."\textsuperscript{92} Correctly noting that under \textit{Toyota}, an inability to complete work-related tasks is not dispositive in an ADA inquiry, Judge Berzon then reminded the court that \textit{Toyota} nevertheless allowed for work-related tasks to bear on the manual task inquiry.\textsuperscript{93} Further, Judge Berzon argued, using a computer and writing by hand are not tasks confined to Thornton's occupation, but could be considered to be "tool[s] fundamental in the modern economy."\textsuperscript{94} Judge Berzon also took exception to the majority's characterization of using a keyboard for thirty minutes as "continuous keyboarding."\textsuperscript{95} Additionally, given the prevalence of computer use in modern daily life, the inability to "keyboard" for more than an hour a day would fundamentally alter most people's lives, absent accommodation.\textsuperscript{96}

Judge Berzon's dissenting opinion then segued into a discussion of the impact that Thornton's impairment had on her ability to work. Thornton would not only be unable to keep her job, but would have to give up her profession as a newspaper reporter. Judge Berzon predicted that Thornton "would have a hard time" transferring her skills into another occupational field.\textsuperscript{97} Thus, Judge Berzon implied that Thornton's impairment not only impacts her personal life, but also substantially limits her ability to engage in the major life activity of working. Judge Berzon posited that the jury could have determined that the impact of Thornton's impairment on her professional and personal life, weighed together, was indeed substantially limiting.\textsuperscript{98}

\footnotesize
\begin{itemize}
\item \textsuperscript{91} \textit{Id.} at 1053–54 (citation omitted).
\item \textsuperscript{92} \textit{Id.} at 1048 (Berzon, J., dissenting) (quoting Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 198 (2002)).
\item \textsuperscript{93} \textit{Id.} Interestingly, Judge Berzon quoted Justice O'Connor as stating that occupation-specific tasks "\textit{may have limited relevance} to the manual task inquiry." \textit{Id.} at 1048 (quoting \textit{Toyota}, 534 U.S. at 198 (emphasis added)). As noted above, Justice O'Connor's statement was that "occupation-specific tasks may have only limited relevance" in such an inquiry. \textit{Toyota}, 534 U.S. at 201 (emphasis added); see also supra note 89 and accompanying text.
\item \textsuperscript{94} \textit{Thornton}, 292 F.3d at 1048 (Berzon, J., dissenting).
\item \textsuperscript{95} \textit{Id.} (Berzon, J., dissenting).
\item \textsuperscript{96} \textit{Id.} (Berzon, J., dissenting).
\item \textsuperscript{97} \textit{Id.} at 1049 (Berzon, J., dissenting).
\item \textsuperscript{98} \textit{Id.} (Berzon, J., dissenting).
\end{itemize}
The Ninth Circuit's majority and dissenting opinions in *Thornton* illustrate the confusion created by Justice O'Connor's efforts to distinguish between occupation-specific tasks and those manual tasks that are central to daily life. The majority treated manual tasks related to an occupation, such as continuous keyboarding or writing, as irrelevant to Thornton's ADA claim, as most people do not need to continuously keyboard or write. Judge Berzon's dissent focuses on *Toyota's* begrudging recognition of the possible relevance of occupation-specific tasks to the "manual tasks inquiry." However, Judge Berzon may have been trying to blur the line between work and daily life to a greater extent than allowed under the ADA. The suggestion that the impact of Thornton's impairment should be determined by weighing both her personal and professional lives together ignores the statutory definition of disability: "[A]n impairment that substantially limits one or more major life activities of [the] individual." The substantial limitation on each major life activity must therefore be considered separately, not collectively.

Similarly, keeping separate the issues of whether a task is a major life activity and whether the individual's impairment substantially limits it would help reduce the confusion created by *Toyota*. In ADA cases involving claims of actual disability in performing manual tasks, the first question should be whether the task or tasks are of central importance to most people's daily lives. If the court decides that they are, then the impact of the individual's impairment on this major life activity should be weighed to determine whether the individual is substantially limited in the major life activity. If the impaired individual can prove substantial limitation, then the inquiry need go no further. If the individual fails to show that a substantial limitation in the performance of manual tasks as a major life activity, then other major life activities, such as working, should be considered. The inquiry

99. Id. at 1047 (Berzon, J., dissenting).
101. The suggested approach is limited to claims raised under § 12102(2)(A): a "physical or mental impairment that substantially limits one or more major life activities." Analyses of claims based on a record of impairment under § 12102(2)(B) or being regarded as having such an impairment under § 12102(2)(C) are not included in this discussion.
102. This inquiry utilizes *Toyota's* standard for performance of manual tasks as a major life activity.
103. If the case involves an employer's failure to accommodate, then the issue of whether the individual is "qualified" for the job in question would be considered. In this inquiry, the individual's ability to perform the essential job functions with or without reasonable accommodation would then be analyzed. See 42 U.S.C. § 12111.
should then proceed to whether the impairment substantially limits the individual from working by severely restricting the ability to do a "class" or "broad range" of jobs. This approach would avoid confusing the separate issues of whether a manual task is a major life activity and whether an individual's impairment substantially limits a major life activity. Additionally, this method would maintain the distinction between impairments that affect only the ability to do a specific job and those that substantially limit one or more major life activities.

B. "Class of Jobs": Where Does the "Broad Range" End?

The Court of Appeals for the Sixth Circuit discussed Toyota's impact on that court's treatment of ADA claims in Mahon v. Crowell. Mr. Mahon, who had suffered a work-related herniated disk injury, sued his former employer, the Tennessee Valley Authority (TVA), for disability discrimination after he lost his job as a steamfitter, which he had held for over twenty years.

Prior to Toyota, the Sixth Circuit allowed ADA claimants to prove substantial limitation in the major life activity of working if their impairments "barred them from a significant percentage of available jobs." The Sixth Circuit cited its decision in Burns v. Coca Cola Enterprises, Inc., in which the claimant was considered disabled because his impairment "precluded him from performing at least 50% of the jobs he was qualified to perform given his education, background, and experience." In Mahon, a disability analyst had concluded that, given Mahon's work restrictions, and a study of the geographically relevant labor market, he "had 'suffered a 47% loss of access to his job market.'"

The Sixth Circuit stated that it was bound by the Supreme Court's

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104. 295 F.3d 585 (6th Cir. 2002).
105. Mr. Mahon brought his claim under Section 501 of the Rehabilitation Act of 1973. Id. at 587. The Sixth Circuit Court of Appeals recognized that analyses and standards of the ADA apply to the Rehabilitation Act. Id. at 588–89 (citing McPherson v. Mich. High Sch. Athletic Ass'n, 119 F.3d 453, 459–60 (6th Cir. 1997)).
106. Id. at 591.
107. 222 F.3d 247 (6th Cir. 2000).
108. 295 F.3d at 591–92 (quoting Burns, 222 F.3d at 253). The EEOC regulations set forth factors that might be considered in determining whether an individual is substantially limited in the major life activity of working, including: the geographical area to which the individual has reasonable access and the number and types of jobs utilizing similar training, knowledge, skills or abilities within that area from which the individual is disqualified because of the impairment.
109. Id. at 591 (citation omitted).
admonition in Toyota to read the ADA's definition of disability "strictly to create a demanding standard" for claimants. Since Mahon was "still qualified for over half the jobs" for which he had been qualified before his injury, the circuit court stated that it "would be using a less-than-demanding standard" were it to find that Mahon was "disabled." Given that Congress intended the ADA to boost productivity and independence, this "demanding standard" may undermine the actual goal of the statute.

The folly of this demanding standard is further shown by the post-Toyota decision of Mink v. Wal-Mart Stores, Inc. Mink was employed as a truck driver for Wal-Mart in Mississippi. After nine years of employment, he underwent back surgery for non-work-related injuries, and then developed a "left foot drop," rendering him unable to lift his leg properly. Mink's physician mandated that he could only drive a truck for two minutes a day and could not use his left foot to operate a foot control. Mink subsequently failed to take the required Department of Transportation physical exam, and thus was terminated from his job at Wal-Mart. A year later, he took and passed the physical exam. Mink filed suit under the ADA, claiming that at the time of his termination he was "disabled" and that Wal-Mart unlawfully discriminated against him based on his disability.

In granting Wal-Mart's motion for summary judgment, the court determined that Mink was not substantially limited in the major life activity of working. Although Mink may not have been able to perform the tasks required of a truck driver, he was "not prohibited from finding employment in another occupation" that did not require him to drive a commercial vehicle. A physical impairment left Mink, a truck driver, unable to drive a commercial vehicle. That he was "unable to perform a class of jobs" appears obvious. The court's ruling to the contrary dims

110. Id. at 590 (quoting Toyota Motor Mfg., Ky., Inc. v. Williams, 534 U.S. 184, 197 (2002)).
111. Id. at 592.
112. See supra note 2 and accompanying text.
113. 185 F. Supp. 2d 659 (N.D. Miss. 2002).
114. Id. at 661.
115. Id.
116. Id.
117. Id. at 661–62.
118. Id. at 662.
119. Id. at 663.
the prospects for success of claims based on substantial limitation in the major life activity of working.

C. Reasonable Accommodation: An Employer's Duty or Defense Strategy?

While *Toyota* did not reach the issue of reasonable accommodation, a post-*Toyota* decision demonstrates the effect the Court's stringent definition of disability might have on the ADA's protections. In *Scarborough v. Natsios*, the United States District Court for the District of Columbia applied *Toyota* to an employment discrimination claim brought under the Rehabilitation Act of 1973. In determining that the plaintiff was not substantially limited in the major life activity of working, the court considered his assertion that the defendants should have accommodated him by assigning him to a different position. By asserting that he could be reasonably accommodated, the district court declared, the plaintiff "seriously undercut[] his argument that his ability to work was substantially limited [by his impairment]."

Under the ADA, employers are required to provide reasonable accommodation to "qualified individuals with disabilities." Certainly, this duty is not triggered unless the individual meets the definition of "disabled" under the ADA. Nevertheless, to use a request for reasonable accommodation, or a claim of failure to accommodate, as proof that the individual is not protected under the statute seems counterintuitive. That the assertion or exercise of a statutory right can be used to bar a claim under the statute seems to seriously undercut the intent of the ADA.

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122. *Id.* at 21 (concluding that it is "appropriate" to use the definition of substantially limits under the ADA to interpret the Rehabilitation Act's same phrase).
123. *Id.* at 20-21.
124. *Id.* at 23.
125. *See* 42 U.S.C. § 12112. During its 2001-2002 term, the United States Supreme Court issued two decisions narrowing the meaning of "reasonable accommodation" under the ADA. In *U.S. Airways v. Barnett*, the Court held that if a requested accommodation conflicts with a seniority rule, then ordinarily, but not necessarily, this is sufficient to show that the requested accommodation is not "reasonable" under the ADA. 535 U.S. 391, 394-95 (2002). In *Chevron U.S.A., Inc. v. Echazabal*, a unanimous Court held that an EEOC regulation allowing employers to refuse to hire applicants on the grounds that their disabilities would pose a "direct threat" to their own safety in the workplace was permissible. 536 U.S. 73, 74-75 (2002).
IV. "Life's Troubles:" Potential Impact of Toyota and Possible Solutions

Although Toyota may be deemed to be an employers' victory, its long-term impact may reveal that the winner cannot be so easily identified. Arguably, Toyota provides ADA defendants great incentive to hire a private investigator to determine whether plaintiffs are accurately portraying their impairment's effect on their daily life. Ironically, the subjective nature of these inquiries could make it easier for plaintiffs to defeat employers' motions for summary judgment—whether the plaintiff is severely restricted in performing daily activities is a question of fact best left for the jury.  

As discussed above, ADA claimants basing their allegations of disability on their inability to work are now confronted with a very difficult standard to meet. The threshold for protection may now be set so high that the very goal of the ADA, to promote employment of those with disabilities, could become elusive.  

In order to meet this goal, the ADA should be amended to set forth a non-exhaustive list of major life activities, along with an adoption of the EEOC's regulatory standard for what constitutes a substantial limitation in working. This would allow for the realities of limitations posed by geographical location, training, education, skills, and experience to be considered in determining whether an individual is unable to perform a "class" or "broad range" of jobs.

In lieu of a legislative solution, employers should be wary of embracing Toyota in their employment practices. Faced with a request for accommodation from an "otherwise qualified" employee or applicant, employers should seriously consider not challenging the existence of the impairment, but instead focus on whether the requested

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127. Arguably, under the stringent standard for determining "disability," those claimants who are considered "disabled" under the ADA will likely not be "qualified individuals with a disability: one who is able to perform the essential job functions with or without reasonable accommodation." Accommodating individuals who are so severely restricted may be either impracticable or impossible, thus creating an "undue hardship" on the employer, the provision of which the employer has no duty to provide under the ADA. See supra note 3 for a discussion of § 12112(b)(5).

128. The "sophisticated management bar trained in seminars to carefully parse the statutory text of the definition" of disability under the ADA might consider advising clients to seek internal resolution of applicants' and employees' requests for accommodation. See Feldblum, supra note 6, at 140.
accommodation is reasonable.\textsuperscript{129} Providing the accommodation may be more efficient than engaging in a determination of whether individuals' impairments substantially limit their daily activities.\textsuperscript{130}

Efforts to fulfill duties under the ADA without challenging an individual's assertion of disability under the ADA arguably invites an ADA claim based on being "regarded as having an impairment." However, if an employer carefully considers each request for accommodation as one strategy used to create healthy working relationships with and among employees, perhaps that employer may be able to deter such claims. Ultimately, employment practices may make legislative changes addressing \textit{Toyota} unnecessary.

\textsuperscript{129} Under 29 C.F.R. § 1630.2(o)(3) (2001), an employer may find it necessary to "initiate an informal, interactive process" to identify possible reasonable accommodations.

\textsuperscript{130} If the decision in \textit{Scarborough v. Natsios} indicates a judicial trend, then an employer facing an ADA claim after making efforts to provide the requested accommodation will have a defense: The individual's impairment may not be "severely restrictive" enough to qualify as a disability under the ADA, given the individual's accommodation request. 190 F. Supp. 2d 5 (D.D.C. 2002).