

## CASE COMMENTS

### **Employment Law**—Eleventh Circuit Requires Employers to Provide Reasonable Accommodations to Employees Erroneously Regarded as Disabled—*D’Angelo v. Conagra Foods, Inc.*, 422 F.3d 1220 (11th Cir. 2005)

Congress enacted the Americans with Disabilities Act of 1990 (ADA) to protect disabled individuals from societal discrimination.<sup>1</sup> The ADA requires employers to provide reasonable accommodations to qualified individuals with disabilities unless doing so would impose an undue hardship on their businesses.<sup>2</sup> In *D’Angelo v. Conagra Foods, Inc.*,<sup>3</sup> the Eleventh Circuit considered whether an employee who is *erroneously* regarded as disabled by his or her employer is entitled to a reasonable accommodation.<sup>4</sup> The court determined that the explicit language of the ADA mandates that employers

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1. See 42 U.S.C. § 12101(a) (2000) (outlining congressional findings on prevalence of societal discrimination against disabled persons); see also Michael D. Reisman, *Traveling “to the Farthest Reaches of the ADA” or Taking Aim at Employment Discrimination on the Basis of Perceived Disability?*, 26 CARDOZO L. REV. 2121, 2122 (2005) (discussing entities required to comply with ADA). The ADA prohibits discrimination on the basis of disability in employment, public services, public accommodations, and telecommunications. *Id.*

2. See 42 U.S.C. § 12112(b)(5)(A)-(B) (requiring employers to provide reasonable accommodations for qualified individuals with disabilities); see also Timothy McFarlin, Comment, *If They Ask for a Stool: Recognizing Reasonable Accommodation for Employees “Regarded as” Disabled*, 49 ST. LOUIS U. L.J. 927, 936 (2005) (noting importance of grasping basic eligibility requirements and definitions under ADA before considering complex issues). As a preliminary matter, the ADA requires an individual to be *disabled*. 42 U.S.C. § 12102(2)(A)-(C). An individual meets this definition if he or she has a physical or mental impairment that *substantially limits* one or more *major life activities*, a record of such impairment, or is *regarded as* having such impairment. *Id.* An individual also must be a *qualified individual with a disability*. 42 U.S.C. § 12111(8). A qualified individual with a disability is one who can perform the *essential functions* of a job with or without a *reasonable accommodation*. *Id.* Even if the person meets the first two requirements, however, an employer may legally decline to provide a reasonable accommodation by proving that the accommodation would result in an *undue hardship*. 42 U.S.C. § 12112(b)(5)(A). In addition to the statutory eligibility requirements, courts have considered the scope of various terms under the ADA, including: *essential functions*, *major life activities*, *substantially limits*, *reasonable accommodation*, and *undue hardship*. See *infra* notes 22-25 and accompanying text (discussing Supreme Court’s treatment of individual terms under ADA).

3. 422 F.3d 1220 (11th Cir. 2005).

4. See *id.* at 1235 (noting issue of whether employees *regarded as* disabled entitled to reasonable accommodations); see also 29 C.F.R. 1630.2(l) (outlining definition of “regarded as” disabled). A person is regarded as disabled if he or she

(1) has a physical or mental impairment that does not substantially limit major life activities but is treated by a covered entity as constituting such limitation; (2) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others towards such impairment; or (3) has none of the impairments defined in paragraph (h)(1) or (2) of this section but is treated by a covered entity as having a substantially limiting impairment.

provide reasonable accommodations to qualified individuals with disabilities even if the qualification is due to an error in judgment.<sup>5</sup>

Cris D'Angelo began working for Conagra Foods, Inc., (Conagra) as a spreader for the shrimp division in October 1998.<sup>6</sup> In September 2001, D'Angelo's supervisor assigned her to work on a conveyor belt.<sup>7</sup> D'Angelo complained to her supervisor that she was unable to work on the conveyor belt because she was suffering from severe dizziness.<sup>8</sup> To verify D'Angelo's claims, the supervisor requested written documentation.<sup>9</sup> On September 21, 2001, the day after receiving medical documentation indicating that D'Angelo suffered from vertigo, Conagra terminated D'Angelo.<sup>10</sup> D'Angelo sued Conagra for discriminating against her because of a disability.<sup>11</sup>

In considering Conagra's motion for summary judgment, the district court acknowledged that D'Angelo may have been disabled within the meaning of the ADA.<sup>12</sup> Despite this recognition, the court found that employers should not

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5. See 422 F.3d at 1235 (holding employees erroneously *regarded as* disabled entitled to reasonable accommodations).

6. See *id.* at 1222 (describing D'Angelo's job requirements at Conagra). The entry-level job required D'Angelo to stand in front of a moving conveyor belt and spread shrimp. *Id.* After D'Angelo's supervisor promoted her to a product transporter, D'Angelo's job required her to fill boxes with seafood and transport the boxes around the plant. *Id.*

7. See *D'Angelo v. Conagra Foods, Inc.*, No. 8:02-CV-1683-T-27TBM, slip op. at 4 (M.D. Fla. Jan. 8, 2004) (discussing D'Angelo's job assignment), *rev'd*, 422 F.3d 1220. The job required, in part, that D'Angelo observe boxes continuously passing by on a conveyor belt. *Id.*

8. See *D'Angelo v. Conagra Foods, Inc.*, No. 8:02-CV-1683-T-27TBM, slip op. at 4 (M.D. Fla. Jan. 8, 2004) (noting adverse effects of watching conveyor belt), *rev'd*, 422 F.3d 1220.

9. See *D'Angelo v. Conagra Foods, Inc.*, No. 8:02-CV-1683-T-27TBM, slip op. at 5 (M.D. Fla. Jan. 8, 2004) (quoting doctor's note explaining D'Angelo's disability), *rev'd*, 422 F.3d 1220. The doctor's note stated that

[D'Angelo] should not work more than 5 nights a week because of her medical condition. Also, she has a vertigo condition. This affects her when her eyes have to look at moving objects such as belts. She should avoid this situation since it could cause her to fall and sustain injury.

*Id.*

10. See 422 F.3d at 1224 (highlighting proffered reasons for termination). Conagra stated that it terminated D'Angelo because an integral part of the product transporter job includes working around moving conveyors and mechanized equipment, and also requires working more than five nights a week. *Id.*

11. See *id.* at 1224 (detailing complaint brought in federal court). D'Angelo alleged that Conagra discriminated against her by failing to comply with the ADA and provide a reasonable accommodation for her disability. *Id.* Specifically, she alleged that Conagra should have exempted her from working on the spreader belt and the box-former belt. *Id.* D'Angelo claimed to be disabled under the ADA because her vertigo constituted a physical impairment that substantially limited her ability to work and Conagra erroneously regarded her as disabled. *Id.*

12. See *D'Angelo v. Conagra Foods, Inc.*, No. 8:02-CV-1683-T-27TBM, slip op. at 8-11 (M.D. Fla. Jan. 8, 2004) (determining whether D'Angelo met definition of disabled under ADA), *rev'd*, 422 F.3d 1220. The district court concluded that vertigo did not substantially limit one or more major life activities as the ADA requires. *Id.* at 8. The court, therefore, granted summary judgment to Conagra on the issue of whether D'Angelo was physically disabled. *Id.* There was a genuine issue of material fact, however, as to whether Conagra *regarded* D'Angelo as disabled. *Id.* at 10. Indeed, there was evidence that Conagra interpreted the doctor's note as precluding D'Angelo from a broad range of jobs, suggesting that supervisors did regard her as

be required to provide reasonable accommodations for employees who meet the definition of disabled simply because they are *regarded as* disabled.<sup>13</sup> The court further found that even if D'Angelo was disabled within the meaning of the ADA, she was not a qualified individual due to her inability to perform the essential functions of the job with or without a reasonable accommodation.<sup>14</sup> Accordingly, the district court granted summary judgment.<sup>15</sup> The Eleventh Circuit reversed the district court's decision and held that the ADA requires employers who erroneously regard employees as disabled to provide reasonable accommodations.<sup>16</sup>

The ADA prohibits private employers from discriminating against qualified individuals with disabilities.<sup>17</sup> Congress passed the ADA to expand the limited scope of its predecessor, the Rehabilitation Act of 1973 (Rehabilitation Act).<sup>18</sup> Politicians praised the ADA as a critical step towards eliminating societal discrimination against people with disabilities.<sup>19</sup> Despite initial optimism, the ADA did not improve the low employment levels for disabled individuals.<sup>20</sup>

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disabled. *Id.*

13. See *D'Angelo v. Conagra Foods, Inc.*, No. 8:02-CV-1683-T-27TBM, slip op. at 11 (M.D. Fla. Jan. 8, 2004) (limiting reasonable accommodation requirement), *rev'd*, 422 F.3d 1220. The district court noted that the Eleventh Circuit had not yet determined whether employees who are not physically or mentally disabled, but are simply *regarded as* disabled by their employers, are entitled to reasonable accommodations. *Id.*

14. See *D'Angelo v. Conagra Foods, Inc.*, No. 8:02-CV-1683-T-27TBM, slip op. at 11-13 (M.D. Fla. Jan. 8, 2004) (discussing inability to perform essential functions of job), *rev'd*, 422 F.3d 1220. The court noted that working on a conveyer belt was an essential function of a product transporter and no reasonable accommodation would have made it possible for D'Angelo to perform this task. *Id.*

15. See *D'Angelo v. Conagra Foods, Inc.*, No. 8:02-CV-1683-T-27TBM, slip op. at 13 (M.D. Fla. Jan. 8, 2004) (granting Conagra's motion for summary judgment), *rev'd*, 422 F.3d 1220.

16. See 422 F.3d at 1222 (reversing district court's decision).

17. See 42 U.S.C. § 12112(a) (2000) (outlining general rule against discrimination). This section provides that "[n]o covered entity shall discriminate against a *qualified individual* with a *disability* because of the disability of such individual in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." *Id.* (emphasis added); see also 42 U.S.C. 12111(5) (2000) (outlining applicability of ADA to private employers).

18. See 42 U.S.C. § 12201(a) (2000) (discussing relevance of Rehabilitation Act); see also 29 U.S.C. §§ 701-796 (2000). The Rehabilitation Act requires federal agencies and federal contractors to hire people with disabilities. 29 U.S.C. §§ 791-792 (2000). Further, the Rehabilitation Act prohibits recipients of federal financial assistance from discriminating against people with disabilities. 29 U.S.C. § 794 (2000). The drafters of the ADA believed that any change in the law requiring more compliance from private employers would be viewed negatively. Chai R. Feldblum, *Definition of Disability Under Federal Anti-Discrimination Laws: What Happened? Why? And What Can We Do About It?*, 21 BERKELEY J. EMP. & LAB. L. 91, 92 (2000). During the signing ceremony, President George H.W. Bush commented that existing language and standards from the Rehabilitation Act were directly applicable to the ADA. Statement by President George Bush Upon Signing S. 933, 26 WEEKLY COMP. PRES. DOC. 1165 (July 30, 1990).

19. See Statement by President George Bush Upon Signing S. 933, 26 WEEKLY COMP. PRES. DOC. 1165 (July 30, 1990) (praising ADA at signing ceremony). *But see* 136 CONG. REC. S9684 (1990) (outlining concerns of certain senators before promulgation of ADA). Senator Orrin Hatch claimed that requiring *all* employers to provide reasonable accommodations would be an unreasonable expense and thus impractical. *Id.* at 9685.

20. See Samuel R. Bagenstos, *The Americans with Disabilities Act as Welfare Reform*, 44 WM. & MARY L. REV. 921, 1017-18 (2003) (discussing studies showing low levels of employment for disabled individuals);

Some critics attribute this lack of improvement to the ADA's confusing language and the judiciary's reluctance to fully extend its scope.<sup>21</sup>

Following the ADA's enactment, the Supreme Court struggled to determine when the statute requires an employer to provide a reasonable accommodation.<sup>22</sup> The Court frequently construed certain terms narrowly, causing many individuals to fall outside the statutory definition of disabled.<sup>23</sup> Even when an individual met the statutory definition, the Court narrowly considered whether he or she was a qualified individual.<sup>24</sup> Furthermore, if the Court determined that an individual was entitled to a reasonable accommodation, it excused the employer if the employer showed that the accommodation would pose an undue hardship.<sup>25</sup>

Prior to the ADA's enactment, the Supreme Court explicitly recognized that the Rehabilitation Act required employers to provide reasonable accommodations for individuals *regarded as* disabled.<sup>26</sup> The majority of

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*see also* Barbara Buchholz, *Disabled Job Seekers Struggle to Find Work. A Landmark Law Failed to Improve the Disabled's Employment Situation, Even in a Strong Economy. Now a Slowdown Has Made it Harder*, CHI. TRIB., Oct. 27, 2002, at C5 (discussing unemployment rates since implementation of ADA). In 2001, about 1.5 million people filed for social security disability insurance, an increase of thirteen percent from the previous year. *Id.*

21. *See* Feldblum, *supra* note 18, at 92 (highlighting courts' negative treatment of plaintiffs under ADA). The reluctance to extend ADA protection to certain individuals may be due, in part, to courts considering "disability" as synonymous with "unable to function". Feldblum, *supra* note 18, at 140; *see also* Lisa A. Sciallo, Note, *The ADA Through the Looking Glass*, 68 BROOK. L. REV. 589, 598 (2002) (discussing Supreme Court's distortion of ADA).

22. *See* Russell Powell, *Beyond Lane: Who is Protected by the Americans with Disabilities Act, Who Should Be?*, 82 DENV. U. L. REV. 25, 33 (2004) (highlighting conflicting views of justices on Supreme Court). The Supreme Court's treatment of reasonable accommodation cases has created complex and often inconsistent rules. *Id.* at 32.

23. *See* 42 U.S.C. § 12102(2)(A)-(C) (2000) (outlining definition of disability as impairment substantially limiting performance of major life activities). In *Sutton v. United Air Lines Inc.*, the Court considered the impact of corrective measures when determining whether an individual is substantially limited in performing a major life activity. 527 U.S. 471, 481 (1999). The plaintiffs, rejected for pilot positions due to poor vision, claimed that they were substantially limited in the major life activity of working. *Id.* at 475-76. The Court determined that they were not substantially limited in a major life activity because their vision, when corrected with eyeglasses, was twenty-twenty. *Id.* at 482. Further, in *Toyota Motor Mfg., Ky., Inc. v. Williams*, the Court narrowly defined major life activities, including basic abilities such as walking, seeing, and hearing. 534 U.S. 184, 197 (2002). Additionally, when working is the major life activity under consideration, the Court required that an individual must be unable to work in a broad class of jobs. *See Sutton v. United Airlines, Inc.*, 527 U.S. 471, 491 (1999). For example, if an employer erroneously regarded an individual as unable to drive a truck, that individual might not be considered substantially limited in the major life activity of working due to the availability of *other* jobs within that class. *See* *Murphy v. United Parcel Serv.*, 527 U.S. 516, 523-24 (1999).

24. *See* 42 U.S.C. § 12111(8) (2000) (defining qualified individuals as individuals able to perform essential functions with or without reasonable accommodations). In determining the essential functions of a job, courts give deference to the employer's own understanding of the job requirements. *See* Alison Steiner, *The Americans With Disabilities Act of 1990 and Workers' Compensation: The Employees' Perspective*, 62 MISS. L.J. 631, 639 n.42 (1993). Further, some employers will not consider an accommodation reasonable if the accommodation unduly trumps the rights of other employees. *See* *US Airways, Inc. v. Barnett*, 535 U.S. 391, 403 (2002).

25. *See* 42 U.S.C. § 12112(b)(5)(A) (2000) (outlining factors used for undue hardship analysis).

26. *See* Sch. Bd. of Nassau County v. Arline, 480 U.S. 273, 284 (1987) (discussing policy behind

circuits, however, have refused to require reasonable accommodations for employees *regarded as* disabled under the ADA.<sup>27</sup> The courts' reluctance is due to the perceived anomaly of requiring reasonable accommodations for individuals who are not actually *physically* disabled.<sup>28</sup> A minority of circuits, however, have concluded that the text of the ADA explicitly requires reasonable accommodations for employees *regarded as* disabled.<sup>29</sup>

In *D'Angelo v. Conagra Foods, Inc.*, the Eleventh Circuit joined the minority of circuits requiring reasonable accommodations for employees *regarded as* disabled.<sup>30</sup> As a preliminary matter, the court affirmed the district court's finding that vertigo does not qualify as a physical disability under the ADA.<sup>31</sup> Nevertheless, the court noted that there was a genuine issue of material fact as to whether Conagra *regarded* D'Angelo as disabled.<sup>32</sup> Further, the court reversed the district court's finding that D'Angelo was not a qualified individual with a disability.<sup>33</sup>

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protecting *regarded as* disabled plaintiffs). The Court highlighted that myths and fears about disabilities are "handicapping" as the physical limitations that flow from actual impairments. *Id.* at 284.

27. See, e.g., *Kaplan v. City of N. Las Vegas*, 323 F.3d 1226, 1232 (9th Cir. 2003) (noting "perverse and troubling" result of requiring reasonable accommodation for *regarded as* disabled employees); *Weber v. Strippit, Inc.*, 186 F.3d 907, 916 (8th Cir. 1999) (declining to require reasonable accommodation for employees *regarded as* disabled); *Workman v. Frito-Lay, Inc.*, 165 F.3d 460, 467 (6th Cir. 1999) (refusing to require reasonable accommodations for *regarded as* disabled employees).

28. See *Weber v. Strippit, Inc.*, 186 F.3d 907, 916 (8th Cir. 1999) (discussing potential results if reasonable accommodation required). The Eighth Circuit explained that requiring a reasonable accommodation may result in an employer affording more rights to an "impaired but not disabled" individual that it perceives as disabled, than to an equally impaired individual the employer does not perceive as disabled. *Id.* at 917.

29. See *Williams v. Phila. Hous. Auth. Police Dep't*, 380 F.3d 751, 776 (3d Cir. 2004) (holding employee entitled to reasonable accommodation because *regarded as* disabled). The court noted that the plain language of the ADA, in requiring reasonable accommodations, does not distinguish between physically disabled and *regarded as* disabled employees. *Id.*; see also *Katz v. City Metal Co.*, 87 F.3d 26, 33 (1st Cir. 1996) (holding *regarded as* disabled employee entitled to reasonable accommodation based on statutory text).

30. See 422 F.3d at 1235 (discussing circuit split).

31. See *id.* at 1226-27 (articulating adverse effects of vertigo). While in some circumstances vertigo may constitute a disability, D'Angelo failed to establish a genuine issue of material fact on whether her vertigo substantially limited her ability to work in a broad class of jobs. *Id.* at 1226. The vertigo only precluded D'Angelo from the product transporter job. *Id.* at 1227; see also *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 491 (1999) (examining major life activity of working). The Court determined that "[w]hen the major life activity under consideration is that of working, the statutory phrase 'substantially limits' requires, at a minimum, that plaintiffs allege they are unable to work in a *broad* class of jobs." *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 491 (1999) (emphasis added).

32. See 422 F.3d at 1229 (considering whether Conagra regarded D'Angelo as disabled). Despite the narrow scope of the doctor's note, D'Angelo's supervisors regarded her as unable to perform *any* job that would place her near moving equipment. *Id.* Thus, D'Angelo's supervisors believed that D'Angelo was unable to perform a broad class of jobs. *Id.* Consequently, this perception may have substantially limited her ability to work. *Id.* But see *id.* at 1240 (Fay, J., dissenting) (suggesting case truly about failure to communicate). The dissent argued that the employer legitimately decided to terminate D'Angelo because it would be dangerous for her to work as a product transporter. *Id.* at 1241. The dissent further noted that if Conagra allowed D'Angelo to continue working in her position, they may have been subjected to a lawsuit if D'Angelo became injured while working. *Id.*

33. See *id.* at 1234 (reversing district court's summary judgment on issue of essential functions of job). There was a genuine issue of material fact on whether working on the conveyer belt was an essential function

The court then considered whether the district court should have required Conagra to provide a reasonable accommodation.<sup>34</sup> The court reasoned that the plain language of the ADA does not yield a statutory basis for distinguishing among physically disabled individuals and individuals *regarded as disabled*.<sup>35</sup> Further, the Rehabilitation Act, which is explicitly mentioned in the ADA's legislative history, requires employers to accommodate employees *regarded as disabled*.<sup>36</sup> The court dismissed the rationale that offering reasonable accommodations to individuals *regarded as disabled* would lead to anomalous results.<sup>37</sup> It reasoned that others regarding an individual as disabled could be as debilitating as actually being physically disabled.<sup>38</sup> Accordingly, the court held that the ADA requires reasonable accommodations for qualified individuals *regarded as disabled*.<sup>39</sup>

The Eleventh Circuit's decision, requiring employers to provide qualified individuals *regarded as disabled* with reasonable accommodations, has widened the circuit split significantly.<sup>40</sup> Although the majority of circuits have concluded that the ADA does not require employers to provide reasonable accommodations when an employee is *regarded as disabled*, the Eleventh Circuit has joined a recent trend to the contrary.<sup>41</sup> Inevitably, other circuits will join the debate and the Supreme Court will likely intervene.<sup>42</sup>

The Eleventh Circuit plausibly reasoned that the explicit language of the ADA does not differentiate between individuals who are physically disabled and individuals who are *regarded as disabled*.<sup>43</sup> The majority of circuits,

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of the job. *Id.* at 1230.

34. *See id.* at 1234-40 (considering district court's interpretation of reasonable accommodation requirement).

35. *See* 422 F.3d at 1235-36 (noting explicit language of statute). The court emphasized that the text of the ADA offers no basis for differentiating among the three types of disabilities in determining reasonable accommodation eligibility. *Id.* at 1236; *see also supra* note 2 (outlining categories of disabled individuals).

36. *See* 422 F.3d at 1237 (addressing relevance of Rehabilitation Act legislative history); *see also* Sch. Bd. of Nassau County v. Arline, 480 U.S. 273, 284 (1987) (analyzing *regarded as* plaintiffs under Rehabilitation Act). The *Arline* Court did not allow employers to avoid providing reasonable accommodations for employees merely *regarded as disabled*. Sch. Bd. of Nassau County v. Arline, 480 U.S. 273, 284 (1987).

37. *See* 422 F.3d at 1237-39 (considering potential results of requiring reasonable accommodations for *regarded as disabled* employees). The court refuted the argument that a literal reading of the ADA would give an advantage to impaired but not disabled employees, explaining that such contention fails to recognize that these individuals *are* disabled under the ADA. *Id.* at 1239.

38. *See id.* (discussing impact of being *regarded as disabled*).

39. *See id.* at 1240 (holding reasonable accommodation requirement applicable).

40. *See supra* notes 26-29 and accompanying text (describing circuit split); *see also* McFarlin, *supra* note 2, at 948-58 (discussing circuit split and rationale of *Weber* and *Williams*).

41. *See supra* note 29 and accompanying text (discussing approach of minority of circuits).

42. *See* McFarlin, *supra* note 2, at 928-29 (documenting views of all circuits considering issue). Presently, there are six circuits that have yet to decide the issue. McFarlin, *supra* note 2, at 928-29.

43. *See* 42 U.S.C. § 12102(2)(A)-(C) (2000) (outlining three categories of disabled individuals under ADA); *see also* 42 U.S.C. § 12112(b)(5)(A)-(B) (2000) (setting forth reasonable accommodation requirement for qualified individuals with disabilities). Notably absent in the reasonable accommodation requirement is any distinction as to categories of disabled individuals entitled to a reasonable accommodation. 42 U.S.C. §

however, have failed to consider the language of the ADA that addresses this issue.<sup>44</sup> The concern of the majority of circuits is due to a blatant misunderstanding of the definition of a disability under the ADA.<sup>45</sup> The court's response to the concern that its holding would lead to anomalous results was convincing in light of the explicit language of the ADA.<sup>46</sup>

Despite the Eleventh Circuit's proper holding and reasoning, the Supreme Court will likely reverse the decision.<sup>47</sup> In the fifteen years since the enactment of the ADA, the Supreme Court and lower courts have narrowly interpreted the statute's definitions and terms.<sup>48</sup> As a result, many individuals who clearly should be covered under the ADA have been precluded from its protection.<sup>49</sup> Accordingly, the Supreme Court will likely follow the majority of circuits and conclude that the ADA was not intended to lead to any disparity.<sup>50</sup> This inevitable result is troubling because Congress probably never envisioned that courts would construe the ADA so strictly.<sup>51</sup>

In *D'Angelo v. Conagra Foods, Inc.*, the Eleventh Circuit considered whether the ADA requires employers to provide reasonable accommodations to employees erroneously *regarded as* disabled. The court's conclusion is logical considering the literal language of the ADA. The Supreme Court, however, will likely reverse the Eleventh Circuit and find that the statute should not force employers to comply with this requirement. In fact, in reversing the Eleventh Circuit, the Supreme Court would be following nearly two decades of illogical interpretation and treatment of the ADA.

*David J. Gold*

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12112(b)(5)(A)-(B) (2000). *But see* Kaplan v. City of N. Las Vegas, 323 F.3d 1226, 1232 (9th Cir. 2003) (noting absence of distinction not tantamount to explicit instruction). The *Kaplan* court reasoned that because a formalistic reading of the ADA may lead to "bizarre" results, the court must look beyond the literal reading of the ADA. *Id.*

44. See 42 U.S.C. § 12201(a) (2000) (pointing to relevancy and applicability of Rehabilitation Act to ADA). The Supreme Court has held that the Rehabilitation Act, to which the ADA explicitly refers, requires reasonable accommodations for individuals who are *regarded as* disabled. See *Sch. Bd. of Nassau County v. Arline*, 480 U.S. 273, 284 (1987).

45. See *supra* note 37 and accompanying text (discussing majority of circuits' failure to recognize *regarded as* disabled employees as actually disabled).

46. See *supra* note 37 and accompanying text (discussing court's consideration of potential anomalous results).

47. See 422 F.3d at 1234-40 (recognizing circuit split).

48. See, e.g., *Toyota Motor Mfg., Ky., Inc. v. Williams*, 534 U.S. 184, 197 (2002) (defining major life activities narrowly); *Murphy v. United Parcel Serv.*, 527 U.S. 516, 524 (1999) (construing working as major life activity); *Sutton v. United Air Lines, Inc.*, 527 U.S. 471, 482 (1999) (narrowing proper analysis for determining whether individual substantially limited).

49. See Sciallo, *supra* note 21, at 590 (criticizing Supreme Court for leaving congressionally-intended recipients without assistance from ADA). The author argues that instead of distorting statutory text, the Supreme Court should "circumvent statutory flaws and fissures and fashion its opinions to better adhere to legislative intent . . ." Sciallo, *supra* note 21, at 591.

50. See *supra* note 27 (outlining view of majority of circuits).

51. See Sciallo, *supra* note 21, at 590 (discussing mistreatment of ADA by Supreme Court).