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Understanding Judiciary Interpretation of a Qualified Disability Post-ADA Amendments

Daniel Frank Hallman
Walden University

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Daniel F. Hallman, Jr.

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Walden University
2017

Abstract

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by

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MBA, Baker College Graduate Studies, 2014

BGS, Baker College, 2012

ABS, Macomb Community College, 2010

AGS, Macomb Community College, 2010

Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

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Law and Public Policy Administration

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Abstract

In 1990, the Americans with Disability Act (ADA) was enacted to support disabled Americans as they sought to procure equality in society and the workplace. Despite these intentions, full implementation of the ADA has been fraught with court challenges and legislative amendments. As it currently stands, it is unclear as to how the judicial system is collectively interpreting a qualified disability. Using Clark and Connolly's interpretation of legal textualism as the theoretical foundation, the purpose of this case study of the Americans with Disabilities Act was to better understand and explore how the judiciary is currently interpreting qualified disability post-ADA amendments. Data for this study included court interpretations and post-ADA amendment cases among the 12 United States Circuit Courts. These data were coded through a multi-stage coding procedure that included evaluating coding, cycle coding, hand coding, and subcoding. Coded data were analyzed using a thematic analysis procedure. The key theme emerging from this study indicated that the ADA amendments still do not promote congressional intent in the judiciary. This study has implications for positive social change by informing Congress, legal practitioners, legal scholars, social scientists, and the disability community on the ways in which the judiciary is interpreting ADA amendments collectively among the 12 federal circuit courts.

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Dedication

I would like to dedicate this study to my mother, father, and my daughter Pamela, in which, without their unwavering support and help I would not have achieved this academic pinnacle within my life. Thank you for giving me the support and help needed to ensure academic success of the highest caliber.

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Chapter 1: Introduction to the Study

Background

In 1990, then-President George H. W. Bush signed a bill proposed by Congress that protected disabled individuals from discriminatory actions in American society (Valenti, 2014). The bill was titled as the Americans with Disabilities Act (ADA). The ADA was implemented into law on July 26, 1990 and was swiftly established as a venerated part of legislative history (Valenti, 2014; Knapp, 2013). Congressional intent of the Act regarding a qualified disability was deemed an individual with “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment” (42 U.S.C. § 12102 (1) (A) (B) (C)). The protective equality proposed in the bill would help disabled individuals when obtaining or sustaining gainful employment, as well as promoting equality in society from discriminatory actions (Valenti, 2014). The ADA would grant disabled individuals the opportunity to seek redress within the judiciary when discriminated against (Valenti, 2014).

The statutory language of Congress’ Act explicitly illustrated a number in their *Findings and Purposes*, which stated: “some 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” (42 U.S.C. § 12101 (a) (1)). The Act went on to specify that “individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society” (42 U.S.C. § 12101

(a) (7)). Therefore, Congress' main reason for the Act was to negate unequal treatment of disabled individuals in society, and an estimated 43 million Americans would benefit from the Act. However, this suggested number was not supposed to be the end all number of disabled Americans that would potentially benefit from the Act. Hence, this number was just a starting point, but later the courts would use this number as Congress' exact number to narrowly interpret a qualified disability and/or impairment. This narrow interpretation of a qualified disability was a misinterpretation to congressional intent (Valenti, 2014).

Congress further asserted that disabled individuals must have "full participation, independent living, and economic self-sufficiency" (42 U.S.C. § 12101 (a) (8)). Congress noted as well, within the ADA, that not granting disabled individuals these salient rights would ultimately cost the American government billions of dollars, because disabled individuals were unnecessarily dependent upon the government (42 U.S.C. § 12101 (a) (9)). Congress defined a disability as stated above as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment" (42 U.S.C. § 12102 (1) (A) (B) (C)). This definition was not transformed after ADA amendments were attached, only expounded upon regarding a qualified disability. The reason why the amendments were implemented to the ADA was because the courts consistently misinterpreted congressional intent.

Valenti (2014) and Befort (2013) pointed out that Congress' newly clarified ADA amendments would likely be misinterpreted again in the courts. Despite Congress'

clarifying amendments, as to what qualifies as a disability or impairment that is substantially limiting remain because the primary definition did not change. This was evident in a recent 2015 Colorado District Court case, *Ortega v. South Colorado Clinic, P. C.*, (U.S. Dist, 2015), which the court used pre-ADA amendment reasoning, even though clarifying ADA amendments were in effect. Thus, allowing the case to be dismissed or summary disposition, against the plaintiff's employment discrimination suit. This case and others, as well as the literature, will be addressed in Chapter 2.

According to Befort (2013), within 4 years after the implementation of the ADA, litigation in relation to employment discrimination cases increased by 128% in the federal judiciary. From 1992 through 1998, disability discrimination charges increased in the Equal Employment Opportunity Commission (EEOC) with more than 108,000 claims (Befort, 2013). The reason why litigation increased at a high rate after ADA's inception, was due to previously unavailable judiciary redress under the ADA (Martin, Martin, & Terman, 1996). The courts, in the case of *Pedigo v. P.A.M. Transp.*, (W.D. Ark. 1994) stated that ADA interpretation, as it arises in the federal judiciary, had all the earmarks of becoming an outlandish litigation producer, severely doubting whether Congress truly intended such litigation to result. Thus, because of the amount of litigation developing in the judiciary, as well as the number of EEOC discriminatory complaints, induced the judiciary to interpret congressional intent in relation to a qualified disability (Befort, 2013). As previously noted, Congress did specify that the ADA would be consequential to 43 million Americans (42 U.S.C. §12101 (a) (1)). This precise number quoted in the statute was the primary reason why the judiciary felt it had to interpret what a qualified

disability was, because the language regarding the exact number was deemed ambiguous as to how many individuals could seek haven under the Act (*Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 2002; *Pedigo v. P.A.M. Transp.*, 1994).

Addressing when the judiciary should interpret congressional intent or leave it unaccompanied is often confusing. Powell (1985) suggested that establishing original intent is often advised by most legal scholars to not contradict the primary intent of the framers and/or Congress. In *Commissioner v. Engle* (1984), it was asserted that the "sole task of the Court in statutory interpretation is to determine congressional intent" (p. 214). Whereas, *Staples v. United States* (1994) suggested that statutory analysis should begin with the plain language of the statute at hand. And *Ardestani v. INS*, (1991), as cited in *American Public Power Association v. NRC*, (D.C. Cir. 1993) emphasized "the plain language of [a] statute expresses congressional intent." Lastly, it is customary for the courts to assume that the legislative body when establishing statutory legislation that the statute means what it says (*Connecticut Nat'l Bank v. Germain*, 1992; *U.S. v. Bost*, (D.C. Cir. 1996).

However, McNollgast (1994) wrote there are three contemporary theories in relation to statutory interpretation. First, is that pragmatically "words mean precisely what the person in authority [Congress] says they mean" (McNollgast, 1994, p. 4). Second, and often referenced as textualism, is "that common law and private arrangements have greater claims to legitimacy than statutory law" (McNollgast, 1994, p. 4). Thus, textualism in relation to a statute is often narrowly interpreted, because if the statute is unclear concerning the language in the statute, the statute should not be

explicitly adhered to (McNollgast, 1994). Last, McNollgast (1994) posited that when statutory interpretation is necessary or compulsory, adhering to the following five steps would invoke comprehensive statutory intent for a statute that is implicit.

McNollgast (1994) asserted that the Step 1 is to simply “read the text” (p. 5). Step 2 is to try and understand the primary purpose of the statute when it was written or promulgated, as well as looking at other statutes that could offer clarification (McNollgast, 1994). Step 3, and pragmatically, is to look at the legislative history in relation to whether the elected officials explained the ambiguities that might be problematic within the statute. Step 4, taking all previous steps together an individual should “ascertain when statutory provisions in question reflect politically legitimate values or the pathologies of representative democracy” (McNollgast, 1994, p. 5). If ambiguities still exist in the statute, an individual should proceed to the final step. Step 5 “invoke(s) normative principles...to determine whether the statute should be applied, and if so, how to resolve the ambiguities and compensate for the pathologies” (McNollgast, 1994, p. 5). McNollgast (1994) further noted that the preceding steps could assist judges and other legal professionals when trying to establish congressional intent of a statute that is ambiguous, or when the intent is not explicit in the statute.

The overall understanding in relation to congressional intent regarding judiciary interpretation is whether the statute is ambiguous; and, if so, the judiciary has the above-noted specific tools to interpret congressional intent, (i.e., congressional hearings, floor debates, other statutes, as well as court rulings). Nevertheless, for this study, congressional intent used McNollgast’s (1994) rule of thumb. And commencement of

judiciary interpretation was understood to mean when the judiciary deemed a statute to be ambiguous.

Now that an understanding has been offered concerning what congressional intent is and when the judiciary needs to interpret a statute, a more thorough understanding as to why ADA litigation flourished in the courts can be further explored. Fairclough, Robinson, Nichols, and Cousley (2013) stated, as ADA litigation increased in the judiciary, that two significant cases played a striking role in setting primary case precedent relating to the meaning of a qualifying disability (Fairclough et al., 2013). These Supreme Court cases were *Sutton v. United Airlines* (1999), and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002). Subsequently, it was *Sutton v. United Airlines* (1999) that directly addressed what qualified as a physical or mental impairment concerning disability.

The court established in *Sutton* that if the impairment “could be ameliorated through mitigating measures” (*Sutton v. United Airlines*, 1999, as cited in Fairclough et al., 2013, p. 279), and if it did not “substantially limit one or more major life activities... it could not be a disability protected under the Act” (*Sutton v. United Airlines*, 1999; Fairclough et al., 2013, p. 279). Specifically, the court reasoned that if medication controlled or corrected an impairment, then an individual was no longer impaired, because the disabled individual could now perform daily activities that did not impact their daily lives in a major way (*Sutton v. United Airlines*, 1999, pp. 499 – 500). This reasoning by the Supreme Court was once again echoed in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002).

Moreover, *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002) established a pertinent definition that “‘major life activities’ means important... [and] refers to those activities that are central to daily life” (p. 197). The Court further explained that if Congress truly intended that all impairments constitute a disability, Congress would have surely recognized or proposed a greater number than that of 43 million as those to be aided by the Act (*Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 2002). Per Waterstone (2015), Webber (2014), and Valenti (2014), these Supreme Court cases were the catalyst for implementation of the ADA amendments in 2008, formally promulgated into law in 2009. Webber (2014) stated these Supreme Court decisions inherently misinterpreted congressional intent by significantly mounting a narrow definition of a qualified disability. Congress asserted, in 42 U.S.C. § 12101 (a) (5)-(8), that the Supreme Court established narrow and inept definitions relating to substantial limits vis-à-vis major life activities when establishing a qualified disability. Thus, Congress implemented amendments to the ADA, correcting and negating Supreme Court holdings that misinterpreted Congress’ actual intent as to the definition of a qualified disability (Valenti, 2014). Hence, these new amendments would now establish The Americans with Disability Act Amended Act (ADAAA).

There is a gap in the extant literature about judicial interpretation of these post-ADA amendments (see Chapter 2). Currently, there is consensus among scholars that the ADAAA will be misinterpreted once again by the judicial system, as the amendments do not inherently overcome challenges of the original ADA (Waterstone, 2015; Webber, 2014; Valenti, 2014; Befort, 2013; Fairclough et al., 2013). This is not because the

amendments are not clearer, or poorly drafted, but rather that there are sections in the ADAAA that could be considered ambiguous due to those sections not having been properly interpreted or tested (Weber, 2014; Cavaliere et al., 2012; Ara, 2010). As previously mentioned, *Ortega v. South Colorado Clinic, P. C.*, (U.S. Dist, 2015) used pre-ADA court rulings during post-ADA amendments to dismiss a litigant's case after a motion for summary disposition. This topic will be expanded on in Chapter 2. Valenti (2014), Webber (2014), and the National Council on Disability (NCD, 2013), an independent federal agency, all suggested in tandem that the ADA amendments need further social scientific research to understand how the judiciary is applying the amendments, collectively, concerning a qualified disability under the new ADAAA.

Introduction to the ADA and Amendments

The pragmatics of the ADA and subsequent ADA amendments were to repudiate continuous discriminatory actions placed onto individuals with disabilities in and out of the workplace (42 U.S.C § 12101note: (a) (1), as cited by Valenti, 2014). It was the 101st Congress that implemented the Americans with Disabilities Act of 1990, signed into law on July 26, 1990 (Knapp, 2013). After implementation, it was recognized as a pertinent Act having full legal cogency from discriminating against individuals with disabilities (Williams, Devaux, Fuschetti, & Salomon, 2013). What came next for the ADA is that it was quickly interpreted by the judiciary incorrectly vis-à-vis a qualified disability concerning congressional intent (42 U.S.C. note: §12101 (a)(3); as cited by Webber, 2014). Congress expected “that the definition of disability under the original Americans with Disabilities Act of 1990, would be interpreted consistently with how courts had

applied the definition of a handicapped individual under the Rehabilitation Act of 1973, [Congress noted] that expectation has not been fulfilled” (42 U.S.C. note: §12101 (a)(3)). Furthermore, the judiciary interpretation of a qualified disability established a narrow definition (42 U.S.C. note: §12101 (a) (4) -(8)) that did not allow permissible protection for disabled individuals as Congress initially intended (42 U.S.C. note: §12101 (a)(3); Valenti, 2014).

Congress, being dissatisfied, was forced to amend the ADA due to Supreme Court decisions that narrowly interpreted a qualified disability (Webber, 2014; Valenti, 2014). Congress’ new primary purpose was to establish a “broader scope of protection” for disabled individuals under the ADA amendments (42 U.S.C. note: §12101 (b) (1)). Congress also wished to negate past court rulings of the Supreme Court holdings established in *Sutton v. United Air Lines* (1999), and *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002) that erroneously applied congressional intent in relation to a qualified disability (42 U.S.C. note: §12101 (b) (2) -(5)). The court rulings of the noted cases will be further addressed in the literature review. Therefore, then-President George W. Bush, and the 110th Congress, amended the ADA of 1990, in 2008, becoming law in 2009, to negate Supreme Court decisions and lower court rulings that misinterpreted congressional intent as to a qualified disability, as well as other subsections in the Act (42 U.S.C. §12101 et seq; as cited by Webber, 2014).

Webber (2014) suggested that the implementation of the Americans with Disability Act Amended Act (ADAAA) inherently did not change the definition under the previous ADA, as it only implemented “instructional amendments’ which direct the

courts to reject the prior precedent and to interpret the *same* statutory language in a different way" (Webber, 2014, p. 307). Williams et al. (2013) put forward that the judiciary had incorrectly interpreted major life activities, and substantially limits in relation to a qualified disability, when the judiciary assumed that major life activities need to be "of central importance to most people's daily lives.... [And] [e]pisodic or intermittent conditions were not... impairments because they did not consistently interfere with major life activities" (pp. 109 – 110). Thus, the judiciary cases held that the phrase, *substantially limits* fundamentally should be interpreted as pertinent conditions that "prevent or severely restrict' accomplishment of a major life activity" (*Toyota Motor Manufacture, v. Williams*, 2002, p. 198; as cited in Williams et al., 2013, p. 110). Hence, Congress, in implementing the ADAAA, clarified that the judiciary interpretations were not Congress' intent, and that the narrowing judiciary interpretations excluded disabled individuals from obtaining equality in society (42 U.S.C. 12101, 2008).

Congress noted that a qualified disability should have a lower threshold when the courts interpret the new ADA as amended regarding a qualified disability (Weber, 2014). Crosgrave, Fink, Dillion, and Wedding (2015) pointed out that the amended ADA for employment practices prohibited discriminatory actions against disabled individuals. As a result, the ADAAA fundamentally provided a more precise and comprehensive guide as to how a qualified disability should be interpreted, (i.e., not restrictively narrowing Valenti, 2014). This was obvious during the 2008 ADA amendments Senate floor discussion. Senator Orrin Hatch pointed out to Congress that the above-noted Supreme

Court decisions “had the effect of narrowing the ADA's coverage and the protection it affords.... these decisions ignored what Congress intended in the Americans with Disabilities Act. Others explained them by saying the Court had to reconcile everything Congress said in the ADA” (ADA Amendments Act; Floor Speech, para. 7, September 11, 2008). Senator Hatch further pointed out that, “when it comes to legislation, when Congress does not like something, Congress can change it, and that is what we are doing today” (ADA Amendments Act; Floor Speech, para. 8, September 11, 2008). Senator Hatch’s floor speech is extremely important because this speech established and alerted Congress the necessity for the ADA amendments.

Moreover, Senator Hatch stated to Congress that the original Americans with Disabilities Act of 1990, which 43 million Americans could benefit from, was the catalyst for the judiciary to place a pertinent cap as to how many million Americans could seek haven under the Act, and was an incorrect presumption by the judiciary (ADA Amendments Act; Floor Speech, September 11, 2008). Senator Hatch further articulated that the bill would lower the threshold when an impairment constitutes a disability (ADA Amendments Act; Floor Speech, September 11, 2008). Lastly, the new bill, or ADA amendments, from that point forward, would define a qualified disability more broadly (ADA Amendments Act; Floor Speech, September 11, 2008). Thus, Congress understood by and through these floor debates that a problem existed with the original ADA, ultimately leading to the amendments. Hence, Senator Hatch’s floor speech plea was subsequently adhered to in the formal ADA amendments.

Webber (2014) stated that the judiciary would adhere to prior ADA misinterpretations of a qualified disability because of the Supreme Court's history of narrowly defining discriminatory statutes against public policy stakeholders—the primary reason why the Americans with Disabilities Act of 1990 was misinterpreted in the first place. Accordingly, scholars further stated that the ADAAA needed examination continually to ensure that the judiciary does, in fact, adhere to congressional intent (Valenti, 2014; Webber, 2014; National Council on Disability, 2013; Cavaliere, Mulvaney, & Swerdlow, 2012). Therefore, the ADAAA is important primarily due to its pragmatic ability to institute equality for disabled individuals in society at large, as well as negating discriminatory insolence through judicial redress.

Statement of the Problem

There is a problem in the judiciary concerning the Americans with Disability Act Amended Act (ADAAA), and how the judicial system is collectively interpreting a qualified disability (Weber, 2014; Cavaliere et al., 2012; Ara, 2010). The literature review in Chapter 2 has suggested that the amendments do not inherently prevent the judiciary from misinterpreting the ADAAA, because the amendments require only that a qualified disability be interpreted broadly (Weber, 2014; Cavaliere et al., 2012; Ara, 2010). This still allows the judiciary to interpret how broad a qualified disability should be, even after congressional clarification (Weber, 2014; Cavaliere et al., 2012; Ara, 2010). Moreover, what disabilities and/or impairments will fall under the new ADAAA in the judiciary are still being determined (Weber, 2014; Cavaliere et al., 2012; Ara, 2010). There is now sufficient empirical evidence to research how the judiciary

collectively is interpreting qualified disability post-ADA amendments. This problem impacts the disabled community relating to procurement of equality in society and in the workplace, (i.e., if the judiciary is not adhering to congressional intent). There are various possible contributors to this problem, but this study sought to ascertain whether the ADA amendments were being adhered to in the judiciary as Congress intended, and, if so, what disabilities and/or impairments were being deemed to have coverage under the ADAAA. This non-collegial question has prompted scholarly debate that the ADA amendments do not rectify the problem in the judicial system to misinterpret congressional intent once again (Weber, 2014; Cavaliere et al., 2012; Ara, 2010). This is because the broadening definition of a qualified disability may perhaps be established by the judiciary to be ambiguous and interpret again (Weber, 2014; Cavaliere et al., 2012; Ara, 2010). Lastly, Weber (2014), Cavaliere et al. (2012), and Ara (2010) further suggested there are other ways that the ADAAA can be found problematic by the judiciary, and allowing them to interpret.

The National Council on Disability (NCD, 2013) reported to the President that how a qualified disability, and other parts of the ADA amendments, were being interpreted in the judicial system, is currently not fully understood at present. However, the NCD did see signs in their research that suggested advantageous and disadvantageous rulings among the district and circuit courts. Nevertheless, the NCD (2013) report strongly suggested to the President that subsequent research was needed, as more empirical evidence would likely become available. Now, more than 3 years after the NCD (2013) report was published, there is new empirical evidence that can be further

analyzed in judicial rulings. Thus, there are now supplementary adjudicated judiciary opinions in the courts for empirical study and review.

Webber (2014) emphasized that the judicial system has a long history of undermining congressional intent when it comes to discriminatory statutes, and that the judiciary will interpret a qualified disability again in a restrictive manner against congressional intent because of this history. Webber's thought process is not implausible, or a fanciful conceptualization, primarily because Congress was reasonably explicit as to the ADA's intent for integrating disabled individuals into mainstream American life. Pragmatically, legislative amendments, in and of themselves, fundamentally establish pre-existing complications with a congressional statute (Valenti, 2014). To that end, the current impediment is simply whether the ADA amendments overcome past challenges of the Americans with Disabilities Act of 1990.

Nonetheless, two subsequent cases can be used as predictors to assert the issue of judiciary misinterpretation of the ADAAA. (Note, these cases will be fully articulated in Chapter 2.) *Ortega v. South Colorado Clinic, P. C.*, (U.S. Dist., 2015), used pre-ADA reasoning or court rulings during post-ADA amendments. And *Smothers v. Solway Chemicals Inc.* (10th Cir., 2014), established a specific number of doctor visits to determine a sleep disorder, which would be used in *Ortega v. South Colorado Clinic, P. C.*, (U.S. Dist., 2015), as a primary precedent to disallow ADAAA coverage for the plaintiff's alleged sleep disorder. Therefore, this endeavor is worth understanding scientifically, primarily because of the impact the ADA amendments would have on the disabled community if the amendments are being misconstrued again. Thus, this would

allow judiciary standards to once more implement a narrowing interpretation relating to qualified disabilities and impairments under the new the ADAAA.

Purpose of the Study

The primary purpose of this qualitative case study was to understand and explore how the judiciary is currently interpreting the ADAAA regarding a qualified disability, as well as what disabilities and/or impairments are presently covered under the ADA amendments. This case study will also explore whether judiciary interpretation is adhering to congressional intent. Webber (2014), Valenti (2014), and Cavaliere et al. (2012) asserted that the likelihood of the judiciary misinterpreting congressional intent once again is a continuing belief. Congress' purpose for the ADA and subsequent amendments was to integrate disabled individuals into mainstream America without discriminatory engagement (Valenti, 2014).

Thus, the primary purpose of this study was to understand how the judicial system is interpreting post-ADA amendments in relation to a qualified disability, and to understand how this main purpose will provide explicit insight as to how Congress' intent for disabled individuals is currently working in the judicial system, (i.e., either with or against congressional intent). And, the secondary purpose is what disabilities and/or impairments are being considered a qualified disability that perhaps were not before ADA amendments. The scholarly consensus, as noted above, suggested that the ADA amendments still allow judicial interpretation, since the judicial system can still find ambiguities in the law, even with Congress' explicit clarification of the Act.

Nature of the Study

The primary landscape of this study for the methodology was qualitative in nature, and the interior research design was case study. Furthermore, qualitative and case study are indicative types of analysis when trying to ascertain *how* and *why* a phenomenon happened (O'Sullivan, Rassel, & Berner, 2008). Pragmatically, this has been the primary intent of this study, (i.e., to understand not only how the judiciary is interpreting a qualified disability after ADA amendments, but if their interpretations are adhering to congressional intent). Understanding this primary intent has also sought to ascertain *how* and *why* the judiciary determined that the first Americans with Disabilities Act of 1990 was ambiguous in nature, consequently, misinterpreting congressional intent. Therefore, this understanding has assisted in addressing the literary gap of whether the new ADA is being applied per congressional intent.

Regarding research questions, Creswell (2013) asserts qualitative studies should dominantly be open-ended, promoting probative inquiry; this pertinent study used Creswell's thought process. Utilizing open-ended questions promoted evidentiary investigation which did not allow me, as the researcher, to be skewed by leading or subjective questions. Therefore, purposeful sampling was employed when obtaining archival data or adjudicated ADA court cases in ADA jurisprudence. This sampling strategy's primary goal was "to focus on particular characteristics of a population that is of interest, which will best enable to answer research questions" (Laerd, 2012, para. 4). Wherefore, the population of interest for this dissertation has been all 12 federal circuit courts.

Data Sources

The United States Court of Appeals, commonly known as the circuit courts, was the primary data sources used when procuring archival data or adjudicated ADA cases. Thus, all 12 circuit courts were analyzed. The circuit courts commonly review cases derived from the federal district court rulings, and pragmatically are decided upon appeal from a proper litigant, as to whether the lower court ruling was proper or improper, applying various standards of review when doing so (Federal Courts of Appeal, 2016). The primary reason why the United States Court of Appeals or Circuit Courts were selected as the primary data source was to compare and contrast all ADA decisions.

Hence, this study provides an understanding as to how the circuit courts are collectively interpreting a qualified disability after ADA amendments, as well as what disabilities and impairments are also being considered a qualified disability in the current judiciary. It should be mentioned that the reason why the Supreme Court was not selected as a primary data source is that there are no current Supreme Court rulings regarding a qualified disability after ADA amendments. According to Yin (2003), six possible sources of evidence exist for case studies, which are “documents, archival records, interviews, direct observation, participant-observation, and physical artifacts” (pp. 83, 85-96). Therefore, documents and archival records were used as the primary data sources.

This level of documents and archival records as a primary expertise will be established further in Chapter 3. Furthermore, it is posited by me, as the researcher, that by procuring all documents, and/or archival records, I established reasonable coverage

for the phenomenon while achieving saturation or redundancy. By acquiring all archival records or adjudicated cases among the 12 federal circuits regarding post-ADA amendment cases I have established saturation, thus, encompassing all information available. Patton (2002) asserted that redundancy is established when no new information can be ascertained. However, I have been mindful of Patton's thinking that often an appropriate sample size should be flexible and emergent in nature.

Based upon the National Council on Disability (2013), which presented a similar report as this dissertation to the President of the United States in 2013, only 23 cases were presented as to how the current ADAAA fared in the federal district and circuit courts. Only *seven* cases were found for review in the federal *circuit* courts. For this study, I used LexisNexis legal database to ascertain how many ADAAA cases could be found currently in the noted database, and it was estimated that over 80 circuit court cases were found mentioning the ADAAA, and over 800 district court cases after 2009. The primary query used for the ADAAA cases was entering Boolean phrases that addressed a qualified disability, and the ADAAA. Thus, LexisNexis legal database was used to procure a purposeful criterion sample of ADAAA adjudicated cases from 2009 through 2017, hence, only selecting those cases that addressed judicial decisions of a qualified disability and/or impairment.

Subsequently, it should be noted that some of the same cases, as presented by the NCD (2013), are inserted in this study because the date span of 2009 through 2017 is only three years after NCD's (2013) report to the President. Last, I made use of Patton's Criterion Sampling, as I selected only those cases meeting a pertinent criterion (2002).

And, the relevant criterion sampling for this dissertation was to reveal how the judiciary has interpreted qualified disability post-ADA amendments, as well as what disabilities and impairments are now being encompassed as a qualified disability in the judiciary.

Qualitative Research Questions

The research questions and subquestions used in this qualitative case study are as follows:

1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?
 - A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?
 - B. What disabilities and impairments have been added as a qualified disability since ADA amendments?

Theoretical Framework

This study used textualism as its theoretical framework. Clark and Connolly (2006) suggested, "textualism focuses on the words and phrases of the statute and deemphasizes the role of the reader (usually, the judge) in creating meaning" (p. 13). Primarily, textualism focuses on the plain meaning of the statute and intrinsically does not utilize legislative history as a main tool when interpreting the statute (Clark & Connolly, 2006, p. 13). During the review of the literature there is a temperament

amongst scholars that the courts will continue to use textualism as the dominant legal tool when interpreting the ADA, and one of the reasons why the courts will not change their disposition despite ADA amendments (Webber, 2014; Cavaliere et al., 2012). Pragmatically, the reason why the courts will not change their prior analysis is because they are still utilizing textualism, and not looking toward legislative intent. For example, Justice Scalia endorsed the primary use of dictionaries to ascertain definitions when deriving the plain meaning of words in a statute and not typically looking at the legislative intent for the meaning (Clark & Connolly, 2006, p. 13).

The case as cited in the preceding paragraphs, known as *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002) did just that; the court used a dictionary when interpreting the plain meaning of the word *major*. Specifically, *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002), established that “‘major life activities’ means important. . . . [and] refers to those activities that are of central to daily life” (p. 197). This United States Supreme Court case was the dominant case that led to the ADA amendments, because Congress specified that the noted case, as well as other judiciary cases, did not adhere to congressional intent vis-à-vis a qualified disability. This was expounded upon in the Act under 42 U.S.C. § 12101 (a) (5)-(8), stating that the Supreme Court established narrow and inept definitions for substantially limits vis-à-vis major life activities when determining a qualified disability. This happened when the court used a dictionary to interpret the word, *major* as meaning *important*. Congress vehemently stated that this was not their legislative intent.

Subsequently, *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002), arguably used textualism when interpreting the Americans with Disabilities Act of 1990 regarding its interpretation of a disability and impairments by fixating on the exact number illuminated by Congress that, “if Congress truly intended all impairments as establishing a disability that, Congress would surely have recognized or proposed a greater number than that of 43 million, as those to be helped by the Act” (*Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 2002). McGinnis (2009) also suggested in tandem with Clark and Connolly (2006) that textualism, when understanding legislators’ intent of a statute, the practical meaning of the word of the statute should be given the greatest weight.

However, McGinnis (2009) stated that if words are uncertain or dubious in nature “that judges should look to the reason and spirit of the law.... if judges... believe it is necessary to further a legislature’s intent” (p. 789). McNollgast (1994) pronounced that in statutory interpretation often “words mean precisely what the person in authority [Congress] says they mean” (p. 4). Hence, it is undeniable that the judiciary, as well as the Supreme Court, used textualism by precisely looking at the plain meaning of the statute, and the words in the statute or Act, to derive the statutory interpretation of a qualified disability. Textualism as a theoretical framework can support the understanding of *why* and *how* the judiciary and the United States Supreme Court hypothesized, and derived at their interpretation of a qualified disability by only looking at the plain meaning of the statute and words within, to discover statutory congressional intent.

Furthermore, understanding if textualism will be used in the judiciary when interpreting the plain meaning of the ADAAA is highly probable because the ADA amendments do not change the primary definition of a qualified disability, only that it should be interpreted broadly (Weber, 2014; Cavaliere et al., 2012; Ara, 2010). Hence, the ADA amendments explicitly suggested that the judiciary needs to interpret the ADAAA in a more “broader scope of protection” (42 U.S.C. note: §12101 (b) (1)) for disabled individuals under the ADA amendments (42 U.S.C. note: §12101 (b) (1)). Therefore, this congressional direction to the judiciary allows the judiciary to determine a qualified disability again. That is, how broad a disability and/or impairment should be interpreted; hence, establishing procedures that will identify disabilities and/or impairments currently in the judiciary and in the future.

This was recently evident in the case known as, *Ortega v. South Colorado Clinic, P. C.*, (2015), in which the court specified a specific number of times an individual need to establish a sleep disorder, relying upon the 2014 case known as *Smothers v. Solway Chemicals Inc.*, (10th Cir. 2014). Under the new ADA amendments, sleep disorders are now included as a qualified disability. Nevertheless, as mentioned above in the *Smothers v. Solway Chemicals Inc.*, (10th Cir. 2014) case, the court specified a specific number, that being 12 doctor visits, to establish a sleep disorder. Thus, the judiciary found it necessary to interpret the ADA amendments regarding sleep disorders, when the amendments clearly expressed that sleep disorders are now protected under the Act without requiring a specific number of doctor visits. Thus, not looking at legislative intent, as to what quantifies a sleep disorder, but interpreting by and through textualism.

The *Smothers v. Solway Chemicals Inc.*, (10th Cir. 2014) case would be used as a catalyst to produce a sleep disorder under the ADA amendments, which would subsequently be used in the *Ortega v. South Colorado Clinic, P. C.*, (U.S. Dist, 2015) case, to set a precedent to permit summary disposition against the plaintiff, since she could not rise to the level created by *Smothers* judiciary standards. Furthermore, and again, the courts interpreted congressional intent by and through textualism when the court did not directly look at legislative history. Hence, the courts still are utilizing textualism as they previously did to understand preconceived ambiguities post-ADA amendments. Therefore, the theoretical framework for this dissertation will be textualism. This theoretical framework, textualism, as well as the cases offered above will be fully articulated and expounded upon in Chapter 2, literature review.

Definitions of Terms

Adjudicated: "1) In a judicial proceeding, the act of resolving a dispute or deciding a case. 2) A judicial ruling or decision" (Cornell University Law School, 2016a, para. 1).

Americans with Disabilities Act of 1990: "A federal law that prohibits discrimination against people with physical or mental disabilities in employment, public services, and places of public accommodation.... The law also requires employers to make reasonable accommodations to allow employees with disabilities to do their jobs" (Cornell University Law School, 2016b, para 1).

Attorney: "a class of persons admitted by the state's highest court or by a federal court to practice law in that jurisdiction" (Gifis, 2003, p. 38).

Court's Holding: "in procedure, any ruling of the court, including rulings upon the admissibility of evidence are other questions presented during trial, may be termed a 'holding'" (Gifis, 2003, p. 236).

Court's Opinion: "statement that is prepared by a judge or court announcing the decision after a case is tried... and is usually presented in writing, though occasionally an oral opinion is rendered" (Legal Dictionary, 2016, para 1).

Defendant: "the party responding to the complaint; 'one who was sued and called upon to make satisfaction for a wrong complained by another, [the plaintiff].' In criminal proceedings, also called the accused" (Gifis, 2003, p. 134).

Disabled Individual: "(1) 'disability' means, with respect to an individual—(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment" (42 U.S.C. 12102 (1) (A) (B) (C), 2016).

Discriminatory or Discrimination: "the unequal treatment of parties who are similarly situated" (Gifis, 2003, p. 150).

Federal Circuit and District Courts: "the courts of the United States, as distinguished from the courts of the individual states.... Presently, the principal federal courts are the district courts... The Court of Appeals (formerly circuit courts of appeals; principally appellate review courts)" (Gifis, 2003, p. 199).

Judicial System: See judiciary below.

Judiciary: "department of government establish to interpret and administer the law. The courts and all those connected with the practice of law" (Gifis, 2003, p. 278).

Lawsuit or suit: "a very comprehensive [word] ,... understood to apply to any proceeding in a court of justice by which an individual pursues [a] remedy which the law affords" (Gifis, 2003, p. 502).

Litigant: "part[y] involved in a lawsuit" (Gifis, 2003, p. 301).

Post Hoc: "Lat: after this, therefore because of this; a maximum setting for the false logic that because one event occurs after another event, it was caused by the prior event" (Gifis, 2003, p. 385).

Prima Facie Case: "the case sufficient on its face, being supported by at least the requisite minimum of evidence, and being free from palpable defects" (Gifis, 2003, p. 395).

Qualified Disability: A qualified individual with a disability is a person who meets legitimate skill, experience, education, or other requirements of an employment position that he or she holds or seeks, and who can perform the "essential functions" of the position with or without reasonable accommodation. Requiring the ability to perform "essential" functions assures that an individual will not be considered unqualified simply because of inability to perform marginal or incidental job functions. If the individual is qualified to perform essential job functions except for limitations caused by a disability, the employer must consider whether the individual could perform these functions with a reasonable accommodation. If a written job description has been prepared in advance of advertising or interviewing applicants for a job, this will be considered as evidence, although not necessarily conclusive evidence, of the essential functions of the job. (U.S. Equal Employment Opportunity Commission, 2016, para. 4).

Statute: "an act of the legislature, adopted pursuant to its constitutional authority, by prescribed means and in certain form such that it becomes the law governing conduct within its scope" (Gifis, 2003, p. 492).

Summary Disposition: See summary judgment below.

Summary Judgment: "preverdict judgment rendered by the court in response to a motion by plaintiff or defendant, who claims that the absence of factual dispute on one or more issues eliminates the need to send those issues to the jury" (Gifis, 2003, p. 503).

Assumptions

1. It was assumed that I will be able to obtain access to documentation and adjudicated cases by visiting congressional websites, legal databases, or visiting libraries in search of research material.
2. It was assumed that my personal disability protected under the ADAAA will not preclude my ability to present the findings in this study in a non-bias manner; thus, promoting and adhering to all the elements of validity in a qualitative scientific research study.
3. It was assumed that all documentation selected will reflect the current court rulings and/or holdings of judicial interpretation of a qualified disability and no documents will be dismissed to promote a skewed view of the current facts.

Scope

The scope of this study was chosen due to the problematic history of jurisprudence relating to judicial interpretation and congressional intent of a qualified

disability. The current literature distinctly posited that judicial misinterpretation for the ADAAA will continue, primarily because the ADA amendments do not pragmatically cure the challenges regarding congressional intent (Webber, 2014; Cavaliere et al., 2012). This is the dominant motive why this study regarding a qualified disability was chosen. Moreover, the theoretical framework selected is textualism, which is dominantly used to understand *how* and *why* a statute is deemed ambiguous and in need of judiciary interpretation. Therefore, textualism will support an understanding of *how* and *why* judicial interpretation led to the new ADAAA, its prior policy breakdown, as well as continuing monitoring as suggested by the noted scholars (Valenti, 2014; Webber, 2014; National Council on Disability, 2013; Cavaliere, Mulvaney, & Swerdlow, 2012).

The identified population in this qualitative multiple case study was the 12 federal circuit courts, because a comprehensive and holistic understanding was obtained about how a qualified disability is being interpreted in the judicial system. That is, either against congressional intent or with. It was contemplated to interview disabled individuals, concerning how they perceive the ADA amendments when trying to procure or obtain equality in society. Nonetheless, since disabled individuals are protected individuals of a protected class, it would be problematic to acquire University approval. For that reason, direct contact with disabled individuals was excluded as a possible research study. Thus, the research study focused directly on the courts. Other theoretical frameworks may also be amenable to this research and subsequently evolve as this research study cultivates and progresses. As elucidated by Creswell (1994), qualitative research does not necessarily commence with a pertinent theory. However, "theory may

emerge during the data collection and analysis phase or be used relatively late in the research process as a basis for comparison with other theories" (pp. 94-95). Therefore, taking Creswell's (1994) thought process, I remained cognizant of alternating theories that have emerged during the data process.

Certain theories were eliminated from use in this study for a variety of reasons. The first of these is intentionalism, which according to Clark and Connolly (2006), is a doctrine wherein the meaning of a given statute is explicit, as to legislature's intent. However, the primary difference between intentionalism and textualism is that intentionalism *does* consider legislative history, whereas, textualism inherently *does not*, as textualism primarily focuses on the words and plain meaning of the statute within its current context. Thus, because it is unconcealed that the judiciary openly used textualism to determine words and their pertinent meanings within the statute, and did not look to legislative intent that intentionalism was not an ideal theoretical candidate.

Secondly, pragmatism was also *not* used as a theoretical framework because it "focuses on the role of the reader in giving meaning to the statute by interpreting it" (Clark & Connolly, 2006, p. 18). Furthermore, pragmatism adheres to the thinking that a single meaning of a statute is not objective, and various other ways of thinking concerning interpretations are allowable (Clark & Connolly, 2006). Therefore, and as suggested above, the judiciary did not determine that the Americans with Disabilities Act of 1990 concerning congressional intent, as meaning something else when interpreting, but focused on specific *words* and their *meanings* to interpret what they believed to be ambiguous. Hence, pragmatism was also deemed not to be an ideal contender.

And, thirdly, punctuated equilibrium theory (PET), typically "explains why and how political processes, generally characterized by stability and incrementalism produce large scale departures from the past" (Sabatier & Weible, 2014, p. 368). Hence, PET was *not* selected because the implementation of the ADA never fundamentally had stability from the onset, and did not produce a large-scale departure from its primary premise.

Fourthly, whereas diffusion of innovations (DOI), is dominantly associated with "how policies diffuse across states and other jurisdictions" (Sabatier & Weible, 2014), this theory was *not* selected because the ADA was inherently being interpreted from the onset in a restrictive manner throughout the judiciary, and was not fundamentally divergent, in judiciary interpretation.

Fifth, narrative policy framework (NPF) was also *not* selected as a pertinent theory. NPF "looks at how narratives influence public opinion, how these narratives are structured, and how they reflect policy beliefs" (Sabatier & Weible, 2014, p. 368). Because the Americans with Disabilities Act of 1990 and its subsequent amendments are dominantly found in legal jurisprudence, understanding how narratives correlate about public opinion would be of little assistance for understanding why the judiciary misinterpreted congressional intent. Ideally, it was not because of any pertinent narrative in public policy that formulated the judiciary's opinion that the ADA was ambiguous, and thus, needing judiciary interpretation.

Sixth, advocacy coalition framework (ACF) was not selected as a relevant theory because it "digs into questions around coalition formulation and learning for example" (Sabatier & Weible, 2014, p 368). However, the ACF might be a pertinent theory that

could be used about understanding judiciary subversion, if there could be a correlation in the judicial system wherein an appropriate alliance was formulated and intentionally tried to subvert congressional intent. Logically, this does not seem to be a realistic endeavor.

And finally, both social construction framework (SCF) and policy feedback theory (PFT) "address policy formulation and change, they focus more on questions of policy design and dynamics, such as the feedback of policies into society" (Sabatier & Weible, 2014, p. 386). Although it could be argued that both SCF and PFT might be used to understand the inception of the ADA, and as to how the ADA would implement change by asking questions that would elicit feedback after ADA implementation into society. This theory grants little assistance in understanding why the judiciary misinterpreted congressional intent as to a qualified disability when it seemed that Congress' Act was self-evident as to their primary purpose about disabled individuals, and what was asserted as a qualified disability under the Act. For the reasons depicted above, these theories were not chosen, because they do not deal with understanding how the courts deal with ambiguity.

Limitations

The limitations concerning methodological weaknesses is that using only archival data does not necessarily produce a correlation between how attorneys perceive the ADAAA and the archival data. However, understanding the written holdings in the circuits did provide a correct understanding of how the judiciary is interpreting qualified disability, post-ADA amendments. Nevertheless, this alternative perception can be

obtained with future research after it is understood how the judiciary is interpreting a qualified disability, (i.e., with or against congressional intent).

Significance of Study

This study promoted knowledge, as to whether the judiciary is adhering to congressional intent when interpreting a qualified disability under ADA amendments. That is, were they still finding ambiguity even with Congress' expanded clarification of what is a qualified disability? And what disabilities, as well as impairments are now being considered a qualified disability under the new ADA amendments? This study is important to the legal community, because it answered the question whether the ADA amendments were having Congress' intended impact on disabled individuals. Furthermore, and as asserted by the noted literature, six years have passed since the implementation of the ADA amendments, and now new empirical evidence is available to ascertain this salient posited question, thus, making this study ripe for review.

Last, this study impacted knowledge for legal professionals when bringing forth a prima facie case before the judiciary, but also benefits Congress, EEOC, and other legal professionals when understanding the current temperament regarding judiciary interpretation of ADA amendments. This study illuminates to the disabled community whether the ADA amendments are promoting equality for disabled individuals in society, as well as procuring or sustaining gainful employment. Thus, the social impact that this study acquired was a comprehensive understanding concerning how the ADA amendments when adjudicated in the courts have encouraged advantageous social change for disabled individuals.

Summary

In summary, Chapter 1 elucidated the background of this study concerning the implementation of the ADA and successive amendments. The ADA amendments' primary challenge was identified as to how the judicial system is interpreting a qualified disability, post amendments, as well as what disabilities and impairments are currently being considered in the judiciary, post-ADA amendments. This challenge was suggested due to reviews of peer-reviewed literature asserting that the ADA amendments do not fundamentally overcome difficulties found in the former ADA. This was because Congress only expounded upon a qualified disability, and suggested to the judiciary that a qualified disability should be broadly interpreted, but not *how* broad, thus granting judiciary interpretation yet again.

The primary purpose of this study was articulated to understand how the judiciary is currently interpreting a qualified disability after ADA amendments and impairments collectively among the federal circuit courts. And whether the posited literature declared as previously asserted is correct, that there is a strong likelihood the judicial system will continue to misinterpret congressional intent despite congressional clarification.

The nature of the study concerning its methodology was articulated as being qualitative in nature and the research design as case study, primarily because case studies help to answer *how* and *why* a phenomenon happened (O'Sullivan, Rassel, & Berner, 2008). The data sources were depicted, and all 12 federal circuit courts were selected as the primary locations for procuring data sources. The archival data was depicted as

adjudicated ADA cases from 2009 through current date to assist with this research endeavor.

The theoretical framework was identified as being textualism because judiciary interpretation concerning the ADA used the plain meaning in the statute vis-à-vis their words and phrases to ascertain a qualified disability. And in the predictor cases noted above that textualism is still being used to interpret the ADA. The definition of terms was articulated to assist in the understanding of legal terminology that may not be characteristically understood by the reader, as well as other terminologies used throughout this study that may not be readily understood or known by the reader. Subsequently, an enumerated list of assumptions was also offered, scope and limitations concerning methodological weaknesses, and all United States Court of Appeals or circuit courts were selected for the geographical location.

Last, the primary significance of this study is to understand how the judiciary is interpreting a qualified disability as noted throughout. This understanding supported not only disabled individuals when procuring or sustaining gainful employment, but further supported the legal community, and litigating attorneys when bringing forth a prima facie case, Congress, and the EEOC. Therefore, the primary focus that will ensue in Chapter 2 will identify peer-reviewed articles, law reviews, statutes, congressional floor debates, House of Representatives Bills, Senate Bills, and other legal authorities that directly speak to the problem addressed throughout this study. Chapter 3 will introduce the research and rationale, methodology, role of the researcher, developed instruments and collection of instruments, procedures for recruitment, participation and data collection,

data analysis plan, issue of trustworthiness, and ethical procedures; and Chapter 4 will introduce the data results. Last, Chapter 5 will provide a discussion of the data, conclusion, and recommendation for further studies.

Chapter 2: Literature Review

Introduction

The literature review presents background on the judicial interpretation of a “qualified disability” under the Americans with Disability Act of 1990, as Amended (ADAAA). The ADA was amended in 2009 by Congress because, in its view, the judiciary had misapplied congressional intent as to the meaning of a qualifying disability (42 U.S.C. note: §12101 (a) (3); Webber, 2014; Valenti, 2014; NCD, 2013; Befort, 2013; Cavaliere et al., 2012).

The review relied upon the definition of congressional intent of a qualified disability throughout. Furthermore, this literature review established that the latter of the two Congresses that implemented the ADA amendments did not fundamentally change the direct meaning of a qualified disability; they only suggested that the definition should be broader in scope (Weber, 2014; Cavaliere, et al., 2012). This literature review has presented peer-reviewed journals, law reviews, congressional bills, statutes, federal district and circuit court opinions, debated in a scholarly manner, concerning this phenomenon, while utilizing a purposive criterion sample

This literature review was organized from a historical format providing a comprehensive overview of the ADA of 1990, as well as the ADA amendments. The first part of this literature review addressed why the ADA of 1990 was passed, and subsequent challenges that ensued. Supreme Court cases were analyzed, which strictly narrowed Congress’ intent of a qualified disability, ultimately disallowing numerous qualified individuals from acquiring equality, as well as sustaining or procuring gainful

employment, when bringing forth a prima facie discriminatory case before the courts. It was also prudent to clarify Congress' new *Findings and Purposes* within 42 U.S.C. note: §12101, in which Congress explicitly defined a qualified disability, as well as the Equal Employment Opportunity Commission's (EEOC) powers as a regulatory agency for the ADAAA.

Hence, understanding that the EEOC's clarified and expanded regulatory powers addressed by Congress is extremely salient because, by doing so, they have assisted in the current shaping of judicial interpretation as to what exactly is a qualified disability under the Act. Last, predictor cases of ADAAA have been analyzed to validate the current scholarly literature proposed throughout this literature review that the ADA amendments do not solve the challenges of a *qualified disability* in the judiciary. That is, there are still many ways for the courts to find ambiguity, despite congressional clarification in the amendments (Webber, 2014; Valenti, 2014; NCD, 2013; Befort, 2013; Cavaliere et al., 2012).

Literature Search Strategy

To identify prospective, peer-reviewed articles and books, the following databases were used: Walden University electronic library, ProQuest, governmental websites, Library of Congress, Google Scholar, and LexisNexis legal database were searched for the years of 1990–2016 using the following keywords: qualified disability, qualified impairment, The Americans with Disability Act of 1990, and The Americans with Disability Act Amended Act. I used the Boolean operators, AND and OR to optimize the

results. Abstracts were used to judge an article's relevancy to the research questions. The references of significant articles were scanned for additional sources.

Theoretical Framework Expanded

The theoretical framework used for this study is *textualism*, as asserted in Chapter 1. Typically, a theoretical framework serves best if it can answer two fundamental and specific questions (University of Southern California, 2017). First, identify the research problem or question, and second, how attainable is the theoretical approach to ascertain an appropriate solution to the research problem or question than other subsequent theoretical frameworks (University of Southern California, 2017). As previously established in Chapter 1, textualism was widely used by the judiciary to ascertain congressional intent when the judiciary felt ambiguity existed in the ADA of 1990 (Parmet, 2000). And current scholarly literature, as well as new case precedent has been addressed in subsequent paragraphs, which posited that textualism is still being used to understand statutory intent when interpreting ADA amendments (Dorrian, 2014; Webber, 2014; Cavaliere et al., 2012). Chapter 1 previously conscripted further possible theoretical frameworks, and provided pertinent reasons as to why those theoretical frameworks were not warranted as a leading contender in this study. Therefore, textualism as a theoretical framework will measure what type of relationships exist, if any, as to judiciary interpretation and congressional intent of a qualified disability, post-ADA amendments.

The primary research problem presented in the scholarly literature, as a pertinent gap, is that the judiciary collectively still has the ability to interpret a qualified disability,

and other portions of the Act, post-ADA amendments, primarily because the amendments do not overcome previous ADA challenges (Webber, 2014; Cavaliere et al., 2012).

Moreover, will the judiciary observe congressional clarification that ADA amendments need to be interpreted broadly regarding a qualified disability? And what disabilities and impairments are now being considered a qualified disability under the Act's more explicit explanation?

Subsequently, the use of textualism as a theoretical framework has assisted in discovering whether the judiciary ought to rely upon textualism as its primary statutory interpretation tool when it fails in granting, or leading to, congressional intent during judiciary interpretation. If factual, that textualism is not aiding congressional intent then, consequently, Congress would need to formulate a more precise and concise statutory tool to explicitly detail congressional intent. Therefore, the using of textualism as a theoretical framework has demonstrated that the judiciary, in the past, has applied the use of textualism to interpret the ADA incorrectly. And current scholarly literature and cases presented suggested that textualism is still being used as a statutory tool to understand ADA amendments and not looking at legislative intent when doing so (Dorrian, 2014; Webber, 2014; Cavaliere et al., 2012).

Pragmatically, and because of the past history of the ADA of 1990, leading to being amended, it would only seem logical for the courts to look toward legislative or congressional intent, since Congress specifically asserted in their amendments that the judiciary had severely misinterpreted their intent (42 U.S.C. 12101 note). Reasonably, if the judiciary, specifically with ADA amendments should find ambiguity or uncertainty in

the statute, that it should now be a perfunctory method to utilize legislative intent if faced with such ambiguities or uncertainties. Conversely, in the data analysis, which will ensue in Chapter 4 and 5, in all instances of cases directly examined in this study, that textualism was still widely used to interpret the ADAAA and not looking toward legislative intent. However, textualism was not necessarily used to interpret a qualified disability/impairment solely, but more to what is a reasonable accommodation, *regarded as* having a disability prong, undue hardship, as well as other elements that were deemed to be ambiguous or needing clarification for the courts to ascertain a pertinent position. In these specific instances, the courts did not directly look to legislative intent and/or congressional intent and interpreted these ambiguities by using textualism, which will become evident in Chapter 4 and 5.

Historically textualism in the Supreme Court has often been used as a statutory interpretive tool to understand statutes as to their plain meaning ascribed in the text (Rasmussen, 1993). Rasmussen (1993) further asserted that the Supreme Court is infrequently concerned with legislative intent vis-à-vis legislative history. Similarly, Clark and Connolly (2006) suggested that textualism, when interpreted by the courts, relies upon the plain meaning of the statute, and that by doing so “will produce an interpretation that is neither lenient nor strict” (p. 13). Thus, utilizing the plain meaning of the text should provide inclusive clarification as to statutory intent (Clark & Connolly, 2006). Often judges who endorse textualism use dictionaries to arrive at the precise meaning of a word to, or intending to, advance the statute’s plain meaning (Clark &

Connolly, 2006). However, this can be problematic depending on which dictionaries the courts utilize to derive the plain meaning of statutory intent (Clark & Connolly, 2006).

As previously suggested the Supreme Court case, *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002) used dictionaries to derive the meaning of congressional intent when interpreting the ADA of 1990. The Supreme Court directly used dictionaries when interpreting words, or phrases, such as, *major* and *substantially limits* when deciding how these words or phrases directly apply to a qualified disability. The Supreme Court further used textualism by looking at the direct wording to understand how many individuals Congress suggested to relieve under the Act. Furthermore, this was done by directly pinpointing the numerical number of 43 million as the end-all number that the Act or ADA pursued to aid vis-à-vis, disabled individuals.

Congress later found that particular number to be against congressional intent, and that the number of 43 million was not to be interpreted as a direct number that the ADA of 1990 pursued to aid under the Act (42 U.S.C. note: §12101 (a) (3); Webber, 2014; Valenti, 2014; NCD, 2013; Befort, 2013; Cavaliere et al., 2012). Hence, Congress negated Supreme Court rulings that misinterpreted Congress' intent when the judiciary used textualism to interpret the Act, for the reason that it did not produce their true intent for the Act. Therefore, my posited thought process is that textualism when directly used to interpret the ADA of 1990, and further the ADA amendments, may not be the best method to determine congressional intent when the judiciary interprets the ADA.

In two recent cases, and as noted above, *Smother's v. Solway Chemicals Inc.*, (10th Cir. 2014), and *Ortega v. South Colorado Clinic, P. C.*, (10th Cir. 2015), that when

analyzed, it was apparent that the Courts are still utilizing textualism when interpreting the ADA amendments. Primarily, because both cases determined that a sleep disorder, now covered under the ADAAA, as depicted in the ADA amendments, did not explicitly define what quantified a relevant sleep disorder under ADA protection. Thus, a sleep disorder needs to have a quantified number of doctor visits to establish as a qualified disability (Stylinski, 2015). The number that was depicted in *Smother v. Solway Chemicals Inc.*, (10th Cir. 2014) was 12 doctor visits, and because the *Ortega v. South Colorado Clinic, P. C.*, (U. S. Dis., 2015) case did not rise to this pertinent number of doctor visits, it therefore did not meet the requirements of a sleep disorder under the ADA amendments. In *Ortega v. South Colorado Clinic, P. C.*, (U. S. Dis., 2015), and more problematic in recent ADAAA rulings, exposed that the Court still relied on pre-ADA court rulings or holdings for certain aspects asserted in their holdings to disavow ADAAA coverage in *Ortega* as a proper plaintiff.

In the cases mentioned above, there is no reasoning offered by the courts that they sought to explore legislative history concerning what established a sleep disorder as to Congress' intent. Accordingly, the Courts used textualism to understand that a sleep disorder is covered under the ADA amendments. However, the judiciary determined that Congress did not clarify as to what enumerated a sleep disorder under the Act, and that the Courts interpreted without the help of legislative history, which is indicative of textualism (Clark & Connolly, 2006). Thus, understanding textualism as a theoretical framework when analyzing current federal circuit court cases assisted this research endeavor to understand that the courts' reliance upon textualism to interpret the ADAAA

was the primary catalyst causing problematic judiciary interpretation against congressional intent. The case known as *Nelly v. PSEG Texas* (5th Cir., 2013) further asserted that although ADA amendments implement a less rigorous standard than that of its predecessor, they still do not preclude the burden of a proper plaintiff to establish his or her disability as being covered under the ADAAA.

However, under 42 U.S.C. § 12102(4)(B); ADAAA § 2(b)(5) “the question of whether an individual’s impairment is a disability under the ADA should not demand extensive analysis” (as cited in *Americans with Diabetes Association* [for attorneys], 2015, p. 11). Thus, again the circuit court case in *Nelly v. PSEG Texas* (5th Cir., 2013) is still looking at the statute in a textualism fashion, as the court is asserting that an individual still needs to establish his or her disability, but does not address how he or she will ascertain what is a less stringent standard for a covered disability. Pragmatically, this question when being interpreted by the judiciary should look to legislative history.

Therefore, textualism has been the theoretical framework used when analyzing federal circuit court cases directly interpreting a qualified disability, as well as what disabilities and impairments are now being covered under the new ADA amendments. Furthermore, what are the specific standards being used by the courts when determining what disabilities and impairments are covered in the ADAAA? Textualism as a theoretical framework has aided in understanding the research questions, the problem statement, and the primary purpose of this doctorate study, by pragmatically looking at how the courts in the federal circuits are collectively interpreting the ADAAA. Conversely, it should be noted that the theoretical framework of textualism did not fit

every case analyzed, but established how the circuit courts are collectively interpreting, as to its main thought process when faced with ambiguity or unclear ADA amendments. Nevertheless, the predictor cases asserted above, and those that are illustrated in this chapter are dominantly emphasizing textualism as being used under the ADA.

Why the ADA Was Passed

On July 26, 1990, Congress brought forth a salubrious Act that would help 43 million disabled Americans (Valenti, 2014). The Act would be known as the Americans with Disability Act of 1990 (ADA), and its primary intent was “to establish a clear and comprehensive prohibition of discrimination on the basis of disability” (Pub. L. 101-336, 104 Stat. 327, 1990, para. 1). The ADA of 1990 was sponsored by Senator Tom Harkin, a Democrat from Ohio, in the 101st Congress, and first introduced on May 8, 1989 (Congress.gov, 2015). Subsequently, the ADA of 1990 enjoyed widespread bipartisan support, as well as having support of then-acting President, George H. W. Bush (Webber, 2014). The 101st Congress 2nd U. S. Senate session votes tallied of the Act were 91 yeas, 6 nays, and 3 not voting (United States Senate, 2015). And in the House of Representatives tallied votes were 377 yeas, 28 nays, and 27 not voting (Clerk.house.gov, 2015).

This widespread bipartisan support of the ADA of 1990 was considered a historic piece of legislation for disabled individuals and disability advocates alike (Valenti, 2014; Cavaliere et al., 2012). Likewise, Waterstone (2015) asserted that the ADA of 1990 fundamentally adopted the original premise of the Civil Rights Act of 1964; however, its primary intent “was...to express a national sentiment that people with disabilities were to

be brought into full citizenship” (Waterstone, 2015, p. 833). Waterstone suggested these sentiments were overtly formulated in the original ADA of 1990, 42 U.S.C. 12101(a) (2) (3) (4), which stated in pertinent part that:

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; (3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services; (4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination.

Hence, the noted statute, 42 U.S.C. 12101 (a) (2) (3) (4), of the original ADA of 1990 addressed its primary intent was to assist disabled individuals with the procurement of equality in a civilized society. Valenti (2014) suggested that committee reports strongly asserted the ADA of 1990 was intensely needed to address the issue regarding the necessity to establish a “clear and comprehensive national mandate” (H. R. Rep. No.101 – 485, pt. 2 at 50, 1990) to compel society from discriminatory actions against the disabled (Valenti, 2014). Bernstein (2014) asserted that the ADA of 1990 unambiguously expressed disabled individuals are dominantly “a discrete and insular minority” (42 U.S.C. 12101 (b) (1) – (2), 1990; as cited in Bernstein, 2014, p. 127).

Bernstein (2014) further stated that Congress explained there is a rich need to protect disabled individuals, primarily “because less than twenty – five percent of disabled men and only thirteen percent of disabled women have full-time jobs” (p. 127). Therefore, Congress’ purpose for implementing and promulgating the ADA of 1990 was not only to address equality of disabled individuals in a civilized society, but to assure that disabled individuals, when discriminated against in and out of the workplace, could establish redress against their discriminators. Conversely, the haven that the ADA of 1990 was to offer about absolute preclusion from discriminatory actions against disabled individuals was profoundly undermined by judiciary interpretation of congressional intent of a qualified disability (Webber, 2014; Cavaliere, et al., 2012).

ADA Challenges

The ADA of 1990, was implemented to negate “unjustified segregation and exclusion of persons with disabilities [in] the mainstream of American life” (Switzer, 2001, p. 629; as cited in Valenti, 2014, p. 90). Whereas, Jones (2012) suggested that before the ADA implementation, disabled individuals were inherently "treated as worthless or nonexistent, and discriminated against solely on the basis of their disabilities" (p. 559). As discriminatory cases were brought forth by plaintiff litigants trying to establish prima facie cases before the courts, the judicial system found that congressional intent as to a qualified disability was ambiguous, thus, necessitating interpretation (Porter, 2015). The judicial system determined that Congress’ intent as to the meaning of a qualified disability was not explicitly defined and in need of interpretation as to what they believed congressional intent was (Hoffman, 2012).

Moreover, the most prolific cases that solidified judicial interpretation as to a qualified disability were *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams* (2002) and *Sutton v. United Airlines, Inc.*, (1999), both to be discussed in detail in the subsequent paragraphs. Thus, it is important to understand explicitly how the judicial system determined its authority to interpret the ADA statute, as well as how the judicial system determines when a statute requires such interpretation.

ADA Judiciary Cases that Defined Qualified Disability

According to Bowman (2011) and Miller (2011), the cases that stimulated judiciary misinterpretation of congressional intent of a qualified disability were *Albertsons, Inc. v. Kirkinberg* (1999), *Murphy v. United Parcel Service* (1999), and *Sutton et al., v. United Air Lines* (1999). It was in these cases that the judicial system determined that the ADA needed to be interpreted, because a qualified disability was ambiguous as to congressional intent (Bowman, 2011; Miller, 2011). Furthermore, these cases directly led to the Supreme Court case known as *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002), which explicitly necessitated a qualified disability to be interpreted narrowly by the courts (Bowman, 2011). The *Toyota* case will be discussed further in subsequent paragraphs under its own title, but in a *brief precis* the Supreme Court reasoned that the respondent's claim that she was "'substantially limited' [in relation to a] 'major life activity'" (42 U.S.C. §12 102 (2) (A)) was unfounded, primarily because the respondent in the noted case could perform:

personal hygiene [and] carrying out personal or household chores... [such as]

bathing, and brushing one's teeth are among the types of manual tasks of central

importance to people's daily lives, and should have been part of the assessment of whether respondent was substantially limited in performing manual tasks. (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002, pp. 201 – 202).

Subsequently, and because of this ruling, according to Chen (2015), before the courts would allow a discrimination suit to move past summary disposition, the court first needed to address whether the litigant was a qualified individual under the Act. And once the Supreme Court in the *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002) ruling established that if an individual could perform simple tasks, such as brushing one's teeth, a determination was made that he/she was therefore not deemed to be disabled, and thus, not a qualified member under the Act.

The Court also reasoned that because the respondent could do household chores, and had the ability to brush his/her teeth, these repetitive tasks did not severely restrict the respondent, and could not constitute in establishing a severe restriction in relation to central importance of an individual's daily life's regime (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002). This reasoning by the Supreme Court led them to uphold the lower Court's ruling for summary disposition. Typically, a motion for summary judgment, or summary disposition, is deemed to be appropriate "if the movant shows that there is no genuine dispute as to any material fact, and the movant is entitled to judgment as a matter of law" (Fed. R. Civ. P. 56 (a); as cited in Cosgrove, Fink, Dillion, & Wedding, 2015, p. 44). However, if a litigant could establish they were a protected individual under the ADA of 1990 "[t]hen the court must decide whether the [individual] was disabled" (Chen, 2015, p. 161). Due to the *Toyota Motor Manufacturing,*

Kentucky, Inc., v. Williams (2002) ruling, it became extremely laborious, if not impossible, for a disabled litigant to establish a qualified disability in the judiciary with these new restricting definitions implemented by the Supreme Court (Valenti, 2014). To that end, over 90% of ADA litigants could never surpass the threshold in the judicial system to qualify as disabled under the ADA of 1990, and thus, litigant cases were generally dismissed during motion hearings for summary judgment (Crosgrove, Fink, Dillion, & Wedding, 2015; Chen, 2015; Valenti, 2014).

As asserted throughout this dissertation, the ADA of 1990 defined a disability as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment” (42 U.S.C. § 12102 (2) (A) – (C), 2012; as cited in Chen, 2015, p. 161). Thus, the *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002) Supreme Court decision disallowed many individuals from establishing a discriminatory case before the courts (Bowman, 2011; & Miller, 2011). Simply, disabled individuals could not establish their disability claim in a court of law, because of the Supreme Court’s narrow definition of a qualified disability (Bowman, 2011; & Miller, 2011). An earlier Supreme Court case, known as *Sutton v. United Air Lines* (1999), established that an individual was not disabled under the ADA of 1990 if that disability was ameliorated, or mitigated (McCrone, 2011), that is, if the disability could be corrected by or through medication, or an apparatus, subsequently an individual was no longer disabled, and thus, not protected under the ADA of 1990.

Moreover, Miller (2011) suggested that the ADA intent was misinterpreted when *Albertsons, Inc. v. Kirkinberg* (1999) established that a disabled individual could not qualify as being disabled, or substantially limited in a major life activity if "after applying mitigating measures [it] may help one function better" (*Albertsons, Inc. v. Kirkinberg*, 1999, p. 527; as cited in Miller, 2011, p. 51); hence, the individual was no longer deemed disabled, because the disability was ostensibly corrected (Miller, 2011). This was even despite the Equal Employment Opportunity Commission (EEOC) regulatory guidelines, in 29 C.F.R. 1630.2 (j) (1998), explicated a "disability to be assessed in its pre-corrected state" (Miller, 2011, p. 51). Miller (2011) asserted that an employer could pragmatically regulate if "physical characteristics or medical conditions that do not rise to the level of an impairment... [or that] some limiting, but not *substantially* limiting, impairments [would] make individuals less than ideally suited for a job" (*Sutton v. United Air Lines*, 1999, pp. 490-491).

Last, Miller (2011) continued that *Sutton v. United Air Lines* (1999) "held that [a] disability had to significantly limit one's ability to perform 'a broad class of jobs' not merely one specific job, to satisfy the 'substantially limited' requirement" (*Sutton v. United Air Lines*, 1999, p. 491; as cited in Miller, 2011, p. 51). The court was quick to incorporate the EEOC's pre-ADA requirement concerning an impairment, if that impairment "significantly restrict[s] one's ability to perform either a class of jobs or a broad range of jobs" (29 C.F.R. 1630.2 (j) (3) (i), 1998; as cited in Miller, 2011, p. 51). The key words in the quote above that were deemed problematic by Congress during the amendments were *significantly restricted*, which was then deemed by Congress to be too

demanding of a standard (42 U.S.C. 12101 note: (a) (8)). Hence, the cases known as *Albertsons, Inc. v. Kirkinberg* (1999), *Murphy v. United Parcel Service* (1999), and *Sutton v. United Air Lines* (1999) all established precedent that narrowly defined a qualified disability granting viability to the case known as *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002).

Significance of the Toyota case (2002) and the ADA

The precedent established in *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002) significantly narrowed the definition of a qualified disability in that the court interpreted the ADA of 1990 concerning "major life activities as" (Knapp, 2013, p. 721) "those activities that are of central importance to daily life" (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002, p. 185; as cited in Knapp, 2013, p. 721). Knapp (2013) suggested the courts held that their interpretation of the ADA's qualified disability "need[s] to be interpreted strictly to create a demanding standard for qualifying as disabled" (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002 p. 197; as cited in Knapp, 2013, p. 721). This strict interpretation asserted by the Supreme Court established that disabled individuals were either "not 'disabled enough' to warrant protection under the Act or were 'too disabled' to qualify for the jobs they desired" (Knapp, 2013, p. 721). Knapp's (2013) statements relied upon the *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002) holding that "[w]hen addressing the major life activity of performing manual tasks, the central inquiry must be whether the claimant is unable to perform the variety of tasks central to most people's daily lives" (p. 200 – 201).

Knapp (2013) further suggested that employment discrimination cases only displayed a 2.7% triumph for litigants, and litigants that filed non-employment discriminatory cases only succeeded 17.2% of the time. Whereas, Valenti (2014) asserted that in the "first seven years after [ADA's] passage, defendant employers won 94% of cases at the trial court level, and 84% of cases appealed by losing plaintiffs" (Colker, 2005; as cited in Valenti, 2014, p. 90). Subsequently, because the ADA of 1990 was promoted to help 43 million Americans, the Supreme Court inferred that this number expressed how many individuals Congress intended to assist; and those with only impairments were not part of Congress' intent for protection under the ADA of 1990 (Valenti, 2014; *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002).

The Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002) further asserted that if Congress intended for more individuals to establish a qualified disability under the Act, that the stated number would be greater than 43 million (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002). Beffort (2013) asserted that *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002) further held "'substantially limits'[and] 'major life activity' 'need be interpreted strictly to create a demanding standard for qualifying as disabled'" (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002, pp. 196 – 197; Beffort, 2013, p. 2037).

Hoffman (2012) suggested, and pointed out, that the Supreme Court case determined that the words or phrase, *substantially limits* would conclude that "to be substantially limited... 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" (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002, pp. 196 – 197; as cited in Hoffman, 2012, p. 917). The case expanded that the words, or phrase, *substantially limits* need be interpreted in a more restrictive manner, which precluded most impairments from being deemed, no matter what, a disability (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002). Subsequently, the Supreme Court looked at what *major life activities* are under the Act, which the Court determined that congressional intent was silent and needed interpretation (Hoffman, 2012).

The Supreme Court case preceded to define *major* by looking up the definition in Webster's Third New International Dictionary, and determined that the fundamental meaning meant "*important*" (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002; as cited in Hoffman, 2012). Thus, the court concluded that the definition of *major* in relation to *major life activities* would now be activities that are of *central importance* to *daily life* (*Toyota Motor Manufacturing, Kentucky, Inc., v. Williams*, 2002; as cited in Hoffman, 2012).

Hoffman (2012) further asserted that the court manipulated the wording of the Act, and established that if an individual who was disabled, but was utilizing corrective measures to correct their disability, such a disability was determined null and void. Last, the court expounded and concurred with *Sutton v. United Air Lines* (1999), in the sense that Congress had originally established 43 million Americans would benefit from the ADA of 1990. Furthermore, and contrariwise, this "figure reflects an understanding that those whose impairments are largely corrected by medication or other devices are not 'disabled' in the meaning of the ADA" (*Sutton v. United Air Lines*, 1999; as cited in

Hoffman, 2012, p. 922). Therefore, *Sutton* and *Toyota* dominantly misinterpreted congressional intent as to a qualified disability under the Act with its narrow definitions. This forced Congress to implement amendments to the ADA to explicitly define congressional intent as to a qualified disability (McCormick, 2015).

Understanding Congressional Overrides of U.S Supreme Court Cases

It should be noted that Congress can negate Supreme Court decisions when those decisions are reasoned to be in direct conflict or simply disruptive to congressional intent. This is salient because many perceive Supreme Court decisions to be the end-all with no pertinent or simple remedy. According to Christiansen and Eskridge (2014), “[o]nce upon a time, law professors, and political scientists assumed that the Supreme Court was...the final word on matters of statutory interpretation” (p. 317). However, and as previously stated, Congress can merely implement congressional overrides when Supreme Court decisions or the judiciary are misinterpreting congressional intent (Christiansen & Eskridge, 2014). The case known as *Neal v. United States* (1996) explained that it is Congress’ responsibility “to correct statutes that are thought to be unwise or unfair” (p. 295). To that end, Congress can negate Supreme Court decisions by purely amending the statute that was misinterpreted by a Supreme Court ruling, which negates the Supreme Court decision, and grants no further validity.

What’s New in the ADA Amendments

According to Hsieh (2014), Congress negated the precedents that were largely established in *Toyota Motor Manufacturing, Kentucky, Inc., v. Williams* (2002) opinion, as well as *Sutton v. United Air Lines* (1999) when Congress implemented the ADA

amendments in 2009. Hsieh (2014) asserted that the ADA amendments should assist litigants when bringing forth a prima facie case before the courts about disability discrimination, as Congress had further expanded as to their congressional intent. Thus, now litigants would not be subjected to early dismissal if a motion was filed by the defense for summary judgment. Travis (2012) elucidated that scholars perceived that the ADAAA would fundamentally restore congressional intent for a qualified disability for disabled Americans. However, to clarify the changes to the ADA of 1990 versus the ADA after amendments, it has been necessary and prudent to evaluate the new ADA with the subsequent amendments to establish why Congress negated the Supreme Court rulings, and how they expected a qualified disability would be interpreted in the judicial system. Congress established in the ADA amendments under 42 U.S.C. 12101 note: Findings and Purpose of ADA Amendments Act of 2008, Pub. L. 110-325, § 2, Sept. 25, 2008, 122 Stat. 3553 that:

(a) Findings:

Congress finds that-(1) in enacting the Americans with Disabilities Act of 1990 (ADA), Congress intended that the Act "provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" and provide broad coverage; (2) in enacting the ADA, Congress recognized that physical and mental disabilities in no way diminish a person's right to fully participate in all aspects of society, but that people with physical or mental disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers; (3)

while Congress expected that the definition of disability under the ADA would be interpreted consistently with how courts had applied the definition of a handicapped individual under the Rehabilitation Act of 1973, that expectation has not been fulfilled. (42 U.S.C. 12101 note: (a) (1) (2) (3), 2008).

Congress would further acknowledge that the Supreme Court holdings in *Sutton*, and *Toyota*, and other cohort cases, had narrowed the anticipated wide protection that the ADA of 1990 was supposed to offer disabled individuals, as well as those with impairments (42 U.S.C. 12101 note: (a) (4) (5) (6), 2008). Congress addressed that the EEOC's definition concerning the term *substantially limits* to mean *significantly restricted* are not Congress' intent, because it is too high a standard (42 U.S.C. 12101 note: (a) (6) (7) (8), 2008).

Congress subsequently turned their attention to the primary purpose of the ADA, and succeeding amendments by elucidating their purposes in the Act, which states in pertinent part that:

(b) Purposes:

The purposes of this Act are to carry out the ADA's objectives of providing "a clear and comprehensive national mandate for the elimination of discrimination" and "clear, strong, consistent, enforceable standards addressing discrimination" by reinstating a broad scope of protection to be available under the ADA; (2) to reject the requirement enunciated by the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) and its companion cases that whether an impairment substantially limits a major life activity is to be determined with

reference to the ameliorative effects of mitigating measures; (3) to reject the Supreme Court's reasoning in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999) with regard to coverage under the third prong of the definition of disability and to reinstate the reasoning of the Supreme Court in *School Board of Nassau County v. Arline*, 480 U.S. 273 (1987) which set forth a broad view of the third prong of the definition of handicap under the Rehabilitation Act of 1973. (42 U.S.C. 12101 note: (b) (1) (2) (3), 2008).

Moreover, Congress would articulate in the subsequent paragraphs of its *purposes* of the Act, largely outlining the deficiencies of the Supreme Court rulings concerning how they narrowed and misinterpreted the primary intent of the ADA of 1990 for disabled individuals. Thus, the EEOC henceforth would be required to acknowledge the primary *purposes* of the Act that Congress intended, and furthermore that the EEOC would be consistent when revising their definition of *substantially limits* not to be *significantly restricted* (42 U.S.C. 12101 note: (b) (4) (5) (6) (7) (8), 2008).

Although Congress explained their main *purpose* for the ADA and amendments, they did not explicitly state how broad a qualified disability should be interpreted, only not to encompass "extensive analysis" (42 U.S.C. note: (b) (5), 2008). Congress stated in its *findings* section that "'substantially limits' to require a greater degree of limitation than was intended by Congress" (42 U.S.C. note: (a) (7), 2008). Again, Congress did not explicitly define what a "greater degree of limitation" (42 U.S.C. note: (a) (7), 2008) was, only greater (Webber, 2014). Congress also did not overtly redefine a qualified disability and used the same wording as the original ADA when defining such, that is, "a physical

or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment..." (42 U.S.C. 12102 (1) (A) (B) (C), 2008). This same wording could cause the judicial system to misinterpret congressional intent, because a disability was not redefined, only expanded upon (Webber, 2014).

Congress did define what major life activities in general should encompass, and stated that, "major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working" (42 U.S.C. 12102 (2) (A) (1), 2008). The ADA amendments now include major bodily functions and state that "a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions" (42 U.S.C. 12102 (2) (B) (1), 2008). Thus, Congress explicitly clarifying their intent for a qualified disability.

Understanding Congressional Delegation to the EEOC

Congress' amendments to the ADA explicitly clarified the EEOC's regulatory power when enforcing the ADA as Amended (42 U.S.C. 12205a). Congress also granted authority to the EEOC, explicitly stating that "the authority to issue regulations granted to the Equal Employment Opportunity Commission...under this chapter includes the authority to issue regulations implementing the definitions of disability" (42 U.S.C. 12205a). Greenberg (2014) asserted that the Fourth Circuit Court of Appeals recently

affirmed congressional intent about EEOC's interpretive power in the case known as *Summers v. Altarum Inst., Corp.*, (2014).

However, Greenberg (2014) proposed that the Fourth Circuit Court of Appeals was the first appellate court since the ADA amendments to grant the EEOC deference concerning their interpretive powers. And it is unknown at this time if other appellate courts will act in tandem (Greenberg, 2014). Whereas, Williams, Devaux, Fuschetti, and Salmon (2013) asserted "[t]he EEOC regulations of the amended ADA reinforce the reduce threshold" (ADA Amendments Act (2) (b), 122 Stat. at 3554; as cited in Williams et al., 2013, p. 115). Furthermore, Williams et al. (2013) emphasized that EEOC's current regulations should allow disabled individuals explicit coverage when establishing a qualified disability under the Act. However, Congress did clarify that the EEOC needs to amend its current regulations defining the term *substantially limits* as *significantly restricted* to properly fit with the new Act, as well as the amendments in the Act (42 U.S.C. (b) (6), 2008).

Congress also illuminated that the EEOC's "ADA regulations defining the term "substantially limits" as "significantly restricted" are inconsistent with congressional intent, by expressing too high a standard (42 U.S.C. 12101 note: (a) (8), 2008). Congress identified the EEOC as a regulatory agency regarding the definition of disability, as well as definitions implemented in the new amendments (42 U.S.C. 12205a). Although, Congress defined the EEOC's regulatory power, they did address preceding challenges with their regulatory rules with past ADA regulations inserting the "'term substantially limits' [to not be defined as] 'significantly restricts'" (42 U.S.C. note: (b) (6), 2008). The

EEOC's definition of the term was inherently too restricting, and misinterpreted congressional intent.

According to Kim (2015), the amendments implemented in 1972 in relation to Title VII which "preserved the earlier structure mandating that aggrieved individuals file charges with the EEOC as a prerequisite to a private suit and requiring the EEOC to investigate those charges and to seek conciliation before filing suit" (*Occidental Life Ins. Co. of Cal. v. EEOC*, 1977, pp. 359-360; as cited in Kim, 2015, p. 1137). The EEOC (2015a) stated that fundamentally the legalities of implementing a discriminatory complaint first be initiated by and through administrative proceedings to settle a discriminatory complaint; however, if it should become clear that this would be an exercise in futility, or that no settlement could be negotiated, the discriminatory complaint might then formally proceed in the courts. Nevertheless, there are some exceptions, (e.g., suing due to age discrimination, or under the equal pay act) (EEOC, 2015). The EEOC also has authority to sue on behalf of a discriminated disabled individual from the statutory language in Title VII (*General Telephone Co. of the Northwest v. EEOC*, 1988; as cited in Allbright, 2011).

Limitations of EEOC Regulatory Power Concerning the ADA

Despite, congressional intent regarding EEOC regulatory power, Allbright (2011) asserted that the EEOC's ability to do so was diminished due to economic resources, notwithstanding its statutory responsibility. Further, Allbright (2011) suggested that although "funding levels for the agency have been roughly level for the past several years...the number of authorized personnel has declined" (p. 1143). Recently "in 2012,

federal courts across the nation issued rulings that strike at the heart of the EEOC's attempts to secure a broad interpretation of the limitations period under section 707 of Title VII of the Civil Rights Act of 1984" (Maatman & Strumwasser, 2013, para. 1). This would preclude the EEOC from filing a discriminatory claim under Title VII Section 707 if the claim is 300 days old for the alleged discrimination (Maatman & Strumwasser, 2013). Maatman and Strumwasser asserted that the statute of limitations applied to the statute is extremely obfuscating in nature and in need of interpretation by the Court of Appeals, or Supreme Court.

If the EEOC is obligated to adhere to the 300-day rule, its declining economic resources, as well as declining personnel, will further constrain the EEOC from bringing forth such discriminatory suits. Thus, the ability for the EEOC to effectively bringing forth lawsuits on behalf of discriminated litigants, as Congress intended, will become somewhat specious if the 300-day rule is adhered to in the courts. Primarily, because this will add to the current vast and immense workload existing in the EEOC. Another formidable problem the EEOC is now currently facing in relation to the rise of discriminatory complaints by disabled individuals, is retaliation claims under Title VII, which increased by 1,500 cases during the period between 2010 through 2012 (Long-Daniels & Hall, 2013). In 2014, the EEOC reported 88,778 discriminatory complaints; which entailed 25,369 (28.6 %) (EEOC, 2015b, 2014, para. 7).

The Equal Employment Opportunity Act of 1972 grants the EEOC litigation power under the Act and the ADA amendments illuminated the EEOC's explicit power in regulating the ADA (42 U.S.C. 12205a). Congress' intent for EEOC regulatory power

is clear in the ADAAA, which grants them statutory obligation to oversee the ADAAA and implement regulations accordingly. However, with seemingly never-ending EEOC complaints, Congress' primary intention for the EEOC may simply become too burdensome for the EEOC to adjudicate over. Therefore, the EEOC may not be able to implement congressional intent and assist the courts with subsequent interpretation concerning the ADAAA, when needed.

Literature Gap

Presently, the gap in current literature is about how the federal judiciary is collectively interpreting qualified disability post-ADA amendments. And will the judicial system adhere to congressional clarification that the ADA amendments need to be interpreted broadly, regarding a qualified disability (42 U.S.C. 12101 et seq)? Moreover, what types of disabilities and impairments are, or are not, now being considered as a qualified disability under judicial interpretation? According to Valenti (2014), Webber (2014), Cavaliere et al. (2012), there are yet multiple ways for the judiciary to misinterpret congressional intent because the amendments do not inherently overcome the past of the ADA. Valenti (2014) Webber, (2014), Cavaliere et al. (2012), have all further proclaimed that research concerning by what means is a qualified disability being interpreted in the judiciary system; it remains essential to understand if the judiciary is adhering to congressional intent. Webber further suggested that the courts would misinterpret congressional intent primarily because Congress did not explicitly specify how a qualified disability should be interpreted, only that the clarification threshold should inherently be lowered. Travis (2012) emphasized that since the ADAAA has been

implemented, and is presently being interpreted in the judiciary the time has come to extract a better understanding that the ADA offers a disabled litigant under the new ADAAA.

After Congress implemented the ADAAA and expounded its primary intent for the Act, that subsequent cases under the new amendments did not formulate a fruitful impact when brought forth before the courts (Allbright, 2011). Moreover, Allbright (2011) asserted that in her survey of 446 cases, only 6 disability discriminatory suits were victorious, with 335 embodied employer victories and 105 of the discriminatory employment suits brought forth by plaintiff litigants ended with "no resolution of the merits" (2011, para. 6). Comparing the federal circuits "the Fifth Circuit – for the second year in a row – had the highest percentage of employee wins at 7.3, followed by the Sixth and Seventh Circuits at 2.9 and 2.4, respectively. Employees had no wins [in] 8 Circuits" (Allbright, 2011, para. 6). Allbright (2011) further stated that discriminatory suits brought forth by plaintiff litigants claiming a disability before the courts largely failed when trying to present "a prima facie case of discrimination" (para. 8). Allbright additionally asserted that cases were dismissed during summary judgment when defendant litigants argued that plaintiff litigants were not disabled, and proffered no protection under the ADAAA. Lastly, Allbright explained that a 1. % reduction of EEOC filed complaints were seen after amendments. Thus, Allbright surmised that the ADAAA offered diminutive results in its first year of passage (2011).

Creta (2014) asserted that many of the federal circuit courts are determining that Congress intended the ADA to be a non-affirmative action statute, and because the statute

is an anti-discrimination statute, it precludes disabled individuals from acquiring preferential treatment because of their disability when competing with a non-disabled individual for the same or similar job. Nevertheless, the ADA amendments specify in the statute a reassignment clause for disabled individuals; thus far, in two recent United States Supreme Court cases *Jackson v. Fuji Photo Film, Inc.*, (2012), and *EEOC v. United Air Lines, Inc.*, (2013) the courts have "decline(d) to confront the ADA's reassignment clause" (Creta, 2014, p. 1709). Creta (2014) also suggested that the legislative history of the ADA, as well as the EEOC's enforcement guidance put forward automatic reassignment for disabled employees who are eligible for such reassignment. However, despite the amendments, individuals may have expanded protection under the Act, yet there are numerous ways for the courts to misinterpret Congress' intent (McKendall, Holland & Knight, 2011). For example, utilizing the reasonable accommodations and reassignment clause under the ADA, and because this is still an area that is not explicitly defined by Congress, thus allowing judicial interpreting, which could be contrary to congressional intent (Brennan, 2014).

Therefore, remembering that 42 U.S.C. 12102 (1) (A) (B) (C) defined a disability as "a physical or mental impairment that substantially limits one or more major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment" that "substantially limits one or more major life activity" 42 U.S.C. 12102 (1) (A) (B) (C)) was significantly misinterpreted by the judiciary, which forced Congress to implement amendments to the ADA to express congressional intent of a qualified disability (Fairclough, Robinson, Nicholas, Cousley, 2013). Webber (2014)

asserted that the ADA amendments are "‘instructional amendments’ which direct the courts to reject the prior precedent and to interpret the *same* statutory language in a different way" (p. 307). Hence, if the judicial system determines the amendments are still ambiguous, it will interpret; and, if the judiciary does interpret the ADA amendments it could subsequently establish a comparable interpretation, because it only must apply broader coverage, and Congress does not explicitly specify just how broad the coverage should be (Webber, 2014). Therefore, in the subsequent paragraphs, an evaluation will ensue as a predictor to how current disability cases are now being interpreted in the judicial system concerning a qualified disability, under the amendments.

Predictor Cases Post-ADA Amendments

On July 23, 2013, the National Council on Disability (NCD) presented a report to the president of the United States regarding current ADA cases that had been brought forth before the judiciary, a report which furthermore analyzed how a qualified disability was being interpreted by the judiciary, to date. The National Council on Disability (NCD, 2013), case analysis determined that in the federal circuit courts, six of the seven decisions did find that a plaintiff had met the burden of proof under the ADA guidelines for establishing a disability (NCD, 2013). Moreover, in the federal district court decisions plaintiffs also dominantly prevailed vis-à-vis developing a disability "in more than three out of four decisions" (NCD, 2013, p. 3). However, the NCD further asserted that despite expanded coverage under the ADA for disabled individuals in the judiciary, the determination of a qualified disability did not necessarily equate to plaintiffs’ winning their discriminatory cases or discrimination suits (NCD, 2013). The

NCD clarified that they understood that the ADAAA had only been in effect for a short time and because of that factor a decisive conclusion could not be rendered if the ADAAA was being granted congressional intent. (NCD, 2013).

Subsequently, the NCD (2013) also asserted that among ADA cases brought forth after the amendments were in effect, one third of such cases in the judicial system "did not apply the ADAAA" (NCD, 2013, p. 9). The NCD, (2013) analyzed the case known as, *Allen v. South Crescent Hosp.*, (2011) in the 10th Circuit Court of Appeals, in which the plaintiff was not able to establish a qualified disability under the ADAAA. The plaintiff in the case filed a claim under the ADA and subsequent amendments "for failure to accommodate and wrongful termination" (*Allen v. South Crescent Hosp.*, 2011, p. 5). The plaintiff was suffering from migraines and subsequently hospitalized; however, the Court of Appeals for the Tenth Circuit asserted that the plaintiff "was required, even after the enactment of the ADAAA and the modified EEOC regulations, to demonstrate that she was substantially limited in performing a class of jobs or broad range of jobs... compared to most people" (*Allen v. South Crescent Hosp.*, 2011, p. 18). Thus, the Court of Appeals determined that the plaintiff was not able to meet the threshold to qualify as disabled, and rendered summary judgment on behalf of the defendant (*Allen v. South Crescent Hosp.*, 2011).

The courts further determined that this particular plaintiff failed to establish that her migraines substantially limited her regarding a "major life activity of care for herself as compared to the average person in the general population" (29 C.F.R. 1630.2 (j); as cited in *Allen v. South Crescent Hosp.*, 2011, p. 12). Last, the 10th Circuit further asserted

and relied upon the case known as *Johnson v. Weld Cty.*, (10th Cir., 2010) in that "allegation of sleep disturbance that included no basis for comparison with average person was insufficient to carry plaintiff's burden" (*Johnson v. Weld Cty.*, 10th Cir., 2010, p. 1218 & n. 10; as cited in *Allen v. South Crescent Hosp.*, 2011). As a result, the NCD (2013) asserted that this pertinent case could establish a regression about impending decisions concerning the ADAAA, and should furthermore be diligently observed.

The NCD further announced that, although some progress was being made in the courts for disabled individuals, many courts were still emphasizing a substantial amount of "time and energy on the medical and other details and circumstances of an individual's impairment" (p. 14). The NCD explained that disabled individuals who have alleged discrimination claims due to their disability have not successfully established a prima facie case regarding a "legally cognizable disability" (p. 14). Subsequently, the NCD (2013) reasoned that many disabled individuals have not succeeded with discriminatory lawsuits due to insufficient legal pleadings prepared by attorneys. Furthermore, education is significantly needed in this area for attorneys, as well as judges, as to adequately promote the ADAAA's primary intent (NCD, 2013).

The NCD also illuminated that congressional intent may still not be adhered to in the judiciary regarding how particular impairments will fundamentally be interpreted as to a qualified disability under the ADA. Thus, needing additional analysis, as well as how impairments that substantially limits an individual regarding major life activities will fundamentally be interpreted (NCD, 2013). Lastly, the NCD illuminated that additional analysis in relation to pertinent court decisions "will hopefully be conducted by scholars

and public agencies in the future, and such comprehensive statistical studies can be expected to yield invaluable information about the implementation and efficiency of the ADA and its various significant provisions" (p. 18). Therefore, because there is no current or perpetual study being performed thus far regarding ADA amendments, and if they are being adhered to in the judicial system concerning congressional intent, the significance of this study is ripe for scholarly review.

Summary

The gap in the literature has compelled this author to investigate and understand how circuit courts are interpreting a qualified disability, per congressional intent (Valenti, 2014; Webber, 2014; & Cavaliere et al., 2012). Moreover, Travis (2012) in suggesting that understanding how the judiciary is interpreting a qualified disability, either against or with congressional intent, mandates that it is now time "to render more explicit [understanding concerning] the full opportunity that the ADA presents for a disability civil rights agenda" (p. 941). The NCD (2013) strongly emphasized that empirical evidence by and through political, and academic scholars is necessary and should ensue, primarily because their research presented to the President of the United States was not inherently conclusive.

Congress was explicit as to why the amendments were implemented; however, the primary definition of a qualified disability remains pragmatically the same, only expanded upon. Nevertheless, despite congressional expansion as to a qualified disability, the statute in and of itself only expounded that the judiciary should broadly interpret a qualified disability. However, they did not explicitly define how broad the judiciary

should fundamentally interpret the new ADA amendments vis-à-vis a qualified disability (Webber, 2014). Under 42 U.S.C. (b) (5), 2008, the judiciary should not extensively analyze what a qualified disability is, and once again, the statute is more implicit than explicit as to how the judiciary should determine how extensive their analysis should be.

Styllinsky (2015) posited that currently the courts had, by that time, misinterpreted ADA amendments and "if the courts continue to interpret the terms of the ADA as narrowly as in *Ortega*, [a recent court case] it will set an example for other courts to ignore the specifications of this prospective legislation" (para. 10). The *Ortega v. South Colorado Clinic, P. C.*, (2015) case as referred to throughout this dissertation, that the court has used pre-ADAAA court holdings, thus applying outdated case precedent to disqualify the plaintiff from establishing her disability. The Court asserted that because *Ortega* filed suit under a state statute, parallel to the ADA, and because the state statute was not amended, thus pre-ADAAA case law must be used (*Ortega v. South Colorado Clinic, P. C.*, (U.S. Dist, 2015).

However, the Court in the *Ortega*, case further relied upon the *Smothers v. Solway Chemicals Inc.*, (10th Cir., 2014) case to assert that because *Ortega*, could only proffer three medical doctor visits to support her sleep disorder, this did not qualify as a substantial limitation according to the Court, because the *Smothers*, case was able to provide 12 instances for medical treatment. The *Ortega* case not only used pre-ADAAA court rulings, but the Court also narrowly interpreted definition of a sleep disorder (Styllinsky, 2015). Many states have statutes that parallel the ADA statute, and many of the states have not amended their statute to comply with the ADA amendments, hence,

establishing a Supremacy Clause argument. Therefore, it has become apparent that continued analysis needs to persist in understanding how the judiciary is interpreting a qualified disability. Therefore, Chapters 3 will introduce the research and rationale, methodology, role of the researcher, developed instruments and collection of instruments, procedures for recruitment, participation and data collection, data analysis plan, issue of trustworthiness, and ethical procedures; and Chapter 4 will introduce the data results. Last, Chapter 5 will provide a discussion of the data, conclusion, and recommendation for further studies.

Chapter 3: Research Methodology

Introduction

The primary purpose of this study was to understand how the judiciary collectively interprets qualified disability post-ADA amendments, as well as how the judiciary is interpreting congressional clarification that the ADA amendments need to be interpreted broadly regarding a qualified disability. This posited problem by legal scholars suggested that the amendments do not fundamentally remedy previous or new ADA challenges (Waterstone, 2015; Webber, 2014; & Valenti, 2014). For example, there has not been a study, thus far, directly looking at how judicial interpretation post-ADA amendments in all 12 federal circuit courts collectively are being interpreted under the new ADA. Therefore, the primary purpose was to understand and explore how the judiciary is interpreting a qualified disability under the new ADA.

Research Design and Rationale

The following research questions and subquestions were used in this qualitative case study:

1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?
 - A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?

B. What disabilities and impairments have been added as a qualified disability since ADA amendments?

The research design selected for this study was a qualitative case study. The main reason and as articulated below why a qualitative approach was utilized versus quantitative was primarily because “the qualitative approach to research is focused on understanding a phenomenon from a closer perspective. The quantitative approach tends to approximate phenomena from a larger number of individuals using survey methods” (Ben-Eliyahu, 2017, para.1). Thus, this study was focused on understanding *how* and *why* the ADA and now the ADAAA phenomenon occurred by implementing a close perspective of adjudicated case data during data analysis, and not independently surveying legal practitioners.

According to O’Sullivan, Rassel, and Berner (2008), a qualitative case study promotes an appropriate understanding of a phenomenon when ascertaining *how* and *why* a phenomenon occurred. Creswell (2013) stated that "case study approach is familiar to social scientist due to its popularity in psychology... medicine... law (case law), and political science (case reports)" (p. 97). Creswell further stated that case studies deal with "current, real-life cases that are in progress so that they can gather accurate information... a single case can be selected, or multiple cases identified so they can be compared" (p. 98). Creswell, (2013) further specified, "case study research begins with the identification of a specific case. This case may be a concrete entity, such as an individual, small group, an organization, or partnership" (p. 98). Hence, the research design was a qualitative case study, widely used in political science as well as law, as it deals with real-life situations

in an organization. Therefore, because the ADA is a law dealing with real-life situations, and the judiciary is the identified organization, that qualitative case study assisted in understanding unknown factors concerning judiciary interpretation of ADA amendments, vis-à-vis a qualified disability.

Other approaches that were not used were narrative, phenomenological, grounded theory, or ethnographic studies. Narrative studies typically employ "*stories* from individuals (and documents, and group conversations) about individuals' lives and told experiences" (Creswell, 2013, p. 71). Phenomenological studies dominantly deal with a "common meaning for several individuals of their lived experiences of a concept or phenomenon" (Creswell, 2013, p. 76). Whereas, grounded theory seeks to "generate or discover theory, a 'unified theoretical explanation'" (Corbin & Strauss, 2007, p. 107; as cited in Creswell, 2013, p. 83). Lastly, ethnographic studies dominantly immerse a researcher in "the day-to-day lives of the people and observe and interview the group participants" (Creswell, 2013, p. 90); thus, this type of research is typically extremely burdensome and time consuming on a researcher (Creswell). None of the noted approaches were chosen as a contender because they were deemed not holistic enough for this study. Creswell (2013) explained that "qualitative case study can be composed to illustrate a unique case, a case that has unusual interest in and of itself and needs to be described in detail" (p. 98). To that end, the ADA amendments can be depicted as an unusual phenomenon, because historically Congress does not characteristically negate Supreme Court rulings, which in and of itself is unusual. Thus, a qualitative case study

can elicit why the judiciary misinterpreted congressional intent, and what is the likelihood of this phenomenon happening again.

Methodology

The methodology selected was qualitative; nevertheless, criterion case sampling was also used as the sampling procedure. Furthermore, criterion case sampling implements a case selection that is determined upon a specific measure that will elicit the best information or a pertinent primary importance (Patton, 2002). Moreover, criterion sampling is often used for identifying cases that are information rich (Patton, 2002). Using criterion case sampling allowed a pertinent hierarchy as to how the sample is collected, thus only utilizing specific cases that would elicit the best primary evidence for this study. For example, archival data selected will only use ADAAA cases that are unique about the definition of a qualified disability in the judiciary.

The sampling strategy for its geographical location will be all 12 federal circuit courts. To reiterate, there are currently no United States Supreme Court cases concerning the ADA amendments. Patton, (2002) asserted that "it makes strategic sense to pick the site that would yield the most information and have the greatest impact on the development of knowledge" (p. 236). Hence, utilizing all 12 federal circuit courts was a good place to procure ADAAA cases because it allowed for a complete and comprehensive understanding concerning how the judiciary is interpreting qualified disability, post-ADA amendments. The NCD (2013) report found 23 cases, both federal and circuit, and only 7 circuit cases concerning ADA amendments that did not adhere to the spirit of congressional intent. However, it was asserted in current literature that this

number has amplified because it has been over three years of elapsed time. Therefore, criterion sampling was used as the sampling strategy, hence, depicting cases that only meet pertinent criteria that will offer informative, rich information about the research study (Patton, 2002).

Role of the Researcher

My role in data gathering was to be the primary data gatherer of all archival data. I recorded and logged all data personally. Moreover, I did not have any professional relationships with any of the geographical locations selected for data collection nor did I hold a supervisory or instructor relationship. No professional, supervisory or instructor relationship existed between me as the researcher and the selected locations used during the sought-after archival data.

Researcher bias may exist because I am a protected individual under the ADAAA. However, procuring introspectiveness was necessary regarding any bias that I may have about this study. Thus, this was pronounced and understood, so that these biases would not infiltrate this study. Therefore, dominantly the current bias foreseen as being problematic was that I did perceive that the ADAAA was currently being misinterpreted, as well as utilizing other areas in the ADA amendments to misinterpret congressional intent, despite Congress' clarified explanation.

Nevertheless, this presumed bias that exists with me, the researcher, was only a perceived bias, thus, not having any empirical evidence at such time. Understanding that this bias existed going into the study is paramount, because it allowed me as the researcher to control the bias, by continually using objectivity in this study. This allowed

the study not to be skewed in any particular direction. Therefore, being cognizant of this bias allowed me as the researcher to take all precautions necessary to ensure that all data was procured and managed in a manner that is protective and conducive to this study, hence, promoting nonbiased findings that are empirically based in the field of social science.

Developed Instruments and Collection of Instruments

The developed instrument used for this study was a protocol checklist (See Appendix A). This protocol checklist assisted when collecting archival data. Subsequently, a consent form was not deemed necessary because all archival data relevant to this study is open to the public. Thus, there was no potential risk associated with this study to possible participants.

In relation to the archival data, the ADAAA adjudicated cases were used as a primary data source because of its ability, as a legal document, to represent the best possible data available when understanding how the judiciary is interpreting a qualified disability.

As depicted above, the selection of archival data, or ADAAA adjudicated cases, was chosen using criterion sampling in order to ascertain which cases offered the best available informative information. The collection of archival data was obtained by understanding its significance in ADAAA jurisprudence, concerning the question as to how the judiciary is interpreting a qualified disability, and if the data did not meet this first criteria it was not used for this research.

Procedures for Recruitment, Participation, and Data Collection

The data collection used archival data, or ADAAA adjudicated cases that directly spoke regarding the question of how the judiciary interpreted a qualified disability. Therefore, all data was collected from all 12 federal circuit courts. I collected all data personally after receiving IRB approval number 03-06-17-0482609. The duration of data collection was approximately 30 days. The archival data was recorded directly into software, such as NVivo, that can house large amounts of information. The NCD had a similar study in 2013, and identified 7 cases in the federal circuit courts for evaluation; it was confirmed that this number increased since 2013; however, some of the 7 cases used in the noted report have been used again for further direct evaluation. Last, member-checking was employed for all gathered archival data to ensure researcher accuracy.

Data Analysis Plan

I used NVivo as the data analysis plan, an all-inclusive computer software package. NVivo can house all Word documents, transcripts, field notes, PDFs, video, and audio, in one comprehensive database. I used hand-coding, as well as NVivo software coding to illuminate a pertinent theme among the archival data. According to Miles, Huberman, and Saldana (2014), "evaluating coding is appropriate for policy, critical, action, organizational, and evaluation studies, particularly across multiple cases and extended periods of time" (p. 76). However, the coding process first began with cycle coding, typically encompassing a whole paragraph, to single words, subsequently leading to the second cycle process, which was similar to the first process, but usually reconfigures codes (Miles, Huberman, & Saldana, 2014). Ideally, the first two steps of

coding help to “retrieve and categorize similar data...so the researcher can quickly find...segments relating to a particular research question” (Miles, Huberman, & Saldana, 2014, p. 72), thus, illuminating collective data for explanatory meaning (Miles, Huberman, & Saldana, 2014).

Subcoding was also used to illuminate codes and patterns. Miles, Huberman, and Saldana (2014) stated that subcoding is typically employed “when general code entry will later require more extensive indexing, categorizing, and subcategorizing into hierarchies” (p. 80). The first two cycles of coding were used to illuminate chunks of primary data, and subcoding was furthermore used to employ a less broad aspect of the first two types of coding to illustrate a central theme. Once the findings were established, they were not validated, but verified, primarily because Creswell (2013) explained that procedures such as "persistent observation, triangulation, peer review, negative case analysis, clarifying researcher bias, member checks, rich and thick description, or external audits" (pp. 201 – 203) are pertinent steps in order to verify qualitative research findings. Thus, the procedures above were used in various forms to confirm the results.

Issues of Trustworthiness

Because the study procured information from legal documentation, (i.e., ADA/AAJ adjudicated cases), no harm to participants existed. Furthermore, archival data acquired is open to the public and deemed not to be protected data. All files, field notes, digital audio recordings, and transcripts have been directly stored in a fireproof, waterproof safe with a lock and passcode, that was only known by me, the researcher.

Ethical Procedures

Ethical concerns should be initiated during the elementary stages of a research study and not after. It will be the practice of this study to ensure that all procured data will be destroyed after seven years of completion of the approved dissertation. Last, and perhaps most importantly, obtaining permission with the University's Internal Review Board was established so that every aspect of this research study has been approved accordingly. It is also a good rule of thumb to seek out relevant associations that directly assess ethical issues to promote validity, and I have used this appropriate method accordingly.

Summary

In summary, the research questions were reiterated, as well as the primary purpose of the study, which was to understand how the judicial system is interpreting qualified disability post-ADA amendments. Moreover, a case study was the selected research design, and qualitative criterion case sampling was the overall methodology. The role of the researcher was depicted and identified as being observational; nonetheless the researcher was the general procurer of all archival data. The sample size was illustrated as a representation of all 12 federal circuit courts, and over 80 posited adjudicated ADA cases in the noted geographical locations. The archival data was described as ADA cases adjudicated case decisions made between 2009 through 2017. Trustworthiness of the study and ethical safeguards were also established in the chapter above by utilizing member-checking to determine validity. Nvivo was used to house all the research studies, as well as offering coding to develop a related theme, and hand-

coding was depicted as an additional data analysis used. Chapter 4 will introduce the data results. Last, Chapter 5 will provide a discussion of the data, conclusion, and recommendation for further studies.

Chapter 4: Data Analysis

Introduction

The purpose of this qualitative case study was to understand how each federal circuit court, collectively, interpreted the post-ADA amendments regarding a qualified disability, as well as what disabilities and impairments are presently being covered in all federal circuits post-ADA amendments. This chapter will report on the collected data, analyze it with verified results, and then introduce the major themes of the study. The research questions presented throughout this dissertation were identified as:

1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?
 - A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?
 - B. What disabilities and impairments have been added as a qualified disability since ADA amendments?

The data collection procedure used to answer the research questions will be given in the following subsection, Data Collection. No data collection was acquired until Walden University granted such approval, which occurred on March 6, 2017, by creating an IRB approval number of 03-06-17-0482609. Walden University validated that the data collection met all ethical guidelines and University standards.

Data Collection

The first step in the data collection process was to use LexisNexis to acquire all ADAAA-adjudicated cases from January 1, 2009 through April 18, 2017. To reiterate, post-ADA amendments were promulgated into law on January 1, 2009 and this was the main reason for using the data collection dates. The second step of the data collection among each of the 12 federal circuit courts was to use Boolean operators with keyword searches in the LexisNexis legal database search engine to identify and retrieve adjudicated cases from January 1, 2009 through April 18, 2017. During these searches, the keyword that received the most hits was, the “Americans with Disability Act Amended Act (ADAAA)” and “qualified disability,” as well as a “qualified impairment.” These explicit keyword searches, revealed 83 ADAAA adjudicated cases post-ADA amendments, in all 12 federal circuit courts.

This dataset was then compared with other legal databases, known as Westlaw, and Find Law, by looking at each individual federal circuit which assimilated results that matched those in LexisNexis legal database. To be certain the dataset explicated above was, in fact, all adjudicated cases during the above-noted dates, an extremely broad keyword search was input in LexisNexis legal database search engine, as well as the other noted legal databases. Hence, utilizing only *ADAAA* as a singular keyword search established an overly broad search. However, this also replicated the same data results as using the *ADAAA* and *qualified disability/impairment*. Moreover, the dataset was then member-checked at the Library of Congress in Washington, DC., by visiting the Library of Congress and obtaining a Library of Congress reader card, card number R 3219111,

issued on March 28, 2017. I verified the dataset with one of the staff librarians who specializes in legal research, and the keywords used independently by me were then used by the staff librarian in Westlaw legal database; the same results were presented as my previous independent dataset research. Therefore, it was at this time that the dataset search of ADAAA adjudicated cases from January 1, 2009 through April 18, 2017 was exhausted, and accepted as the dataset to be used for this qualitative case study concerning adjudicated post-ADA amendments. The dataset can be verified at: <http://www.lexisnexis.com.ezp.waldenulibrary.org/hottopics/lnacademic/>.

However, because the ADAAA did not go into effect until January 1, 2009, and Congress was not addressing whether post-ADA amendments would be applied retroactively (*Larry Rohr v. Salt River Project Agricultural Improvement and Power District*, 2009), 60 cases identified in the dataset were removed. Pragmatically, this was because the federal circuit courts deemed those cases had taken place before ADA amendments took effect, and were thus not granted protection under the ADAAA.

Therefore, 23 adjudicated cases were properly identified as being cases where the federal circuit courts used the ADAAA when adjudicating over the cases. Below is a relevant graph among the federal circuit courts displaying the specific number of cases each circuit court adjudicated over utilizing the ADAAA concerning a qualified disability and/or an impairment. Hence, these pertinent cases identified among the circuit courts were used as the primary dataset.

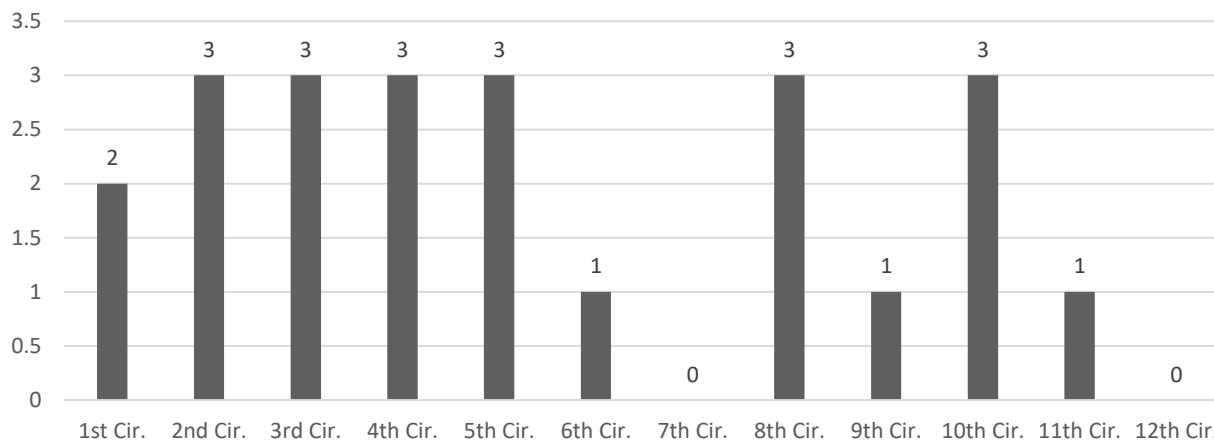


Figure 1. Federal circuit court cases post-ADA amendments from 1/1/2009 – 4/18/2017.

Furthermore, after the dataset was established, Nvivo coding software, as well as hand-coding, was applied to illuminate a relevant theme among the dataset that correlated directly to the research questions. Evaluating coding was employed concerning each case of the dataset since “evaluating coding is appropriate [for] evaluation studies, particularly across multiple cases [during an] extended period of time” (Miles et al., 2014, p. 76). During the coding process, cycle coding was implemented as depicted in Chapter 3, afterward leading to specific categorized data that was similar in nature vis-à-vis the qualitative research questions. Subsequently, subcoding was used to elicit pertinent codes and patterns, also described in Chapter 3. Once the findings illuminated a relevant theme regarding the research questions, a central theme began to emerge, which allowed the results to be linked in relation to the research questions. Therefore, the results that emerged in the dataset are depicted in the subsequent paragraphs by each of the 12 federal circuit courts through directly linking each qualitative research question to each of the 12 federal circuit courts dataset individually.

Data Results in the First Circuit

As previously addressed in Figure 1, two circuit cases were found in the United States Court of Appeals for the First Circuit. Thus, the two cases identified are as follows:

1. *Jones v. Nationwide Life Insurance Companys*, (2012)
2. *Mercado v. Puerto Rico*, (2016)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The first case addressed in the First Circuit was *Jones v. Nationwide Life Insurance Companys*, (2012). This particular case dealt with the plaintiff/appellant requesting reasonable accommodations due to a motorcycle accident that left the plaintiff/appellant with residual chronic pain (*Jones v. Nationwide Life Insurance Companys*, 2012). Due to this continuing chronic pain, the plaintiff/appellant was prescribed morphine and opiates for pain management (*Jones v. Nationwide Life Insurance Companys*, 2012). Subsequently, his medical physician cleared the plaintiff/appellant to return to work while continuing his pain management regimen (*Jones v. Nationwide Life Insurance Companys*, 2012). Sometime after the plaintiff/appellant returned to work he was notified by his employer that his current job required him to pass a series 65 test (*Jones v. Nationwide Life Insurance Companys*, 2012).

Despite taking the test three times, and failing during each attempt, the plaintiff/appellant blamed his inability to pass the test on his prescribed pain management medication. However, the First Circuit did confirm the ADA amendments involving

Congressional expansion and clarification in relation to a disability, which needed to be interpreted broadly, but because his claims occurred before and after the ADA amendments pre-ADA court rulings were used in the First Circuit's holdings; ultimately the lower court's decision affirmed that the plaintiff/appellant's claims did not establish he was a qualified individual under the Act entitling him to reasonable accommodations (*Jones v. Nationwide Life Insurance Companies*, 2012). Pragmatically, the first court reasoned that the plaintiff/appellant was not entitled to reasonable accommodations because he never notified his employer that his current medication was affecting his ability to pass the test (*Jones v. Nationwide Life Insurance Companies*, 2012). Nevertheless, the First Circuit was extremely cognizant about ADA amendments vis-à-vis a disability being interpreted broadly pursuant to 42 U.S.C. § 12102(4)(A); conversely, it did not ultimately aid the plaintiff/appellant in winning his case.

In the second case, *Mercado v. Puerto Rico*, (2016), the plaintiff/appellant asserted that she was denied public service and discriminated against because she was not *regarded as* having a physical or mental impairment. Furthermore, The First Circuit agreed in their holding that the plaintiff/appellant was regarded as having a physical or mental impairment by the public service entity under the new ADA amendments pursuant to 42 U.S.C. §§ 12102, 12132. The court established that the ADA amendments “after the enactment of the ADA... a plaintiff bringing a ‘regarded as’ claim under the ADA needs to plead and prove only that she was regarded as having a physical or mental impairment” (*Mercado v. Puerto Rico*, 2016, p. 589). The plaintiff does not need to establish in the pleading proof of such impairment that substantially limited one or more

major life activities (*Mercado v. Puerto Rico*, 2016; Pub. L. No. 110-325, sec. 4, § 3 (3)(A)).

The First Circuit went on to state that the “ADAAA quite clearly broadened the definition of being ‘regarded as’ having an impairment beyond what it had been under the previously controlling Supreme Court interpretation of that phrase” (*Mercado v. Puerto Rico*, 2016, p. 589; Pub. L. No. 110-325, sec. 2, § 2(b)(3), sec. 4, § 3(3)(A)). This elucidation by the court established that the lower court’s ruling was erroneous and reversed, in favor of the plaintiff/appellant, because she was “regarded as” having a pertinent physical and/or mental impairment. Therefore, the First Circuit did acknowledge and establish that Congress mandated the ADAAA to be interpreted broadly concerning the issue of a physical or mental impairment when asserting a qualified disability under post-ADA amendments.

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? In regard to the major changes between judicial decisions in the First Circuit, during the first ADA, and now under post-ADA amendments, the First Circuit established precedent. This was established in *Mercado v. Puerto Rico*, (2016), wherein the lower court’s incorrect conclusion that the “ADA’s definition of ‘disability’ were ‘identical’ pre and post amendment” (p. 589). Pragmatically, the First Circuit’s explanation of congressional intent concerning the broad coverage Congress intended for the Act speaks volumes to the lower courts that pre-ADA court holdings should not be used post-ADA amendments. Therefore, the major changes in both of the cases reviewed above dominantly established

that judicial decision-making regarding a qualified disability needs to be broadly interpreted pursuant to the ADA amendments (*Jones v. Nationwide Life Insurance Companys*, 2012; *Mercado v. Puerto Rico*, 2016).

Subquestion A: What types of disabilities and impairments are, or are not, being considered a qualified disability in the judicial system? Concerning this question, the first case addressed dominantly dealt with an employer not granting an employee reasonable accommodations due to a disability. Even though the court in *Jones V. Nationwide Life Insurance Companys*, (2012) decided that the plaintiff/appellant did not establish a prima facie case regarding a disability discriminatory action by an employer, because he was cleared to go back to work by his primary physician, and never openly acknowledged to his employer that his impairment and/or disability necessitated reasonable accommodations. The court further held that after he was cleared to go back to work by his physician, and even after several failed attempts to take the mandatory series 65 test and the plaintiff/appellant's employer offered him another position (*Jones v. Nationwide Life Insurance Companys*, 2012). However, the position was for less pay.

The second case evaluated, *Mercado v. Puerto Rico*, (2016), acknowledged that the *regarded as* having a physical or mental impairment need only establish that the individual was *regarded as* having a physical or mental impairment, and does not need to elicit proof in pleadings, (i.e., if an employer or entity deems an individual as having a physical or mental impairment, such an individual is already perceived as having a physical or mental impairment).

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? The First Circuit has not added specifically what disabilities and impairments are explicitly deemed a qualified disability post-ADA amendments. Furthermore, both noted cases were not specific disability cases that had not been addressed before the courts in previous instances. Thus, the only difference is that the cases in the First Circuit either applied or recognized the ADAAA as being an Act that was amended with direct clarification as to congressional intent. See Table 1., below, entitled *Collective Case Results of Research Questions in the First Circuit*.

Table 1.

Collective Case Results of Research Questions in the First Circuit

Question	First Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability, and disallow prior precedent set by the U.S. Supreme Court that narrowly interpreted a qualified disability.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	The question of whether a person has a qualified disability has shifted in the First Circuit cases evaluated to whether an individual is entitled to <i>reasonable accommodations</i> or has established the <i>regarded as</i> prong under the ADA amendments.

Table 1.
Collective Case Results of Research Questions in the First Circuit

Question	First Circuit
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	In the First Circuit, the only issues addressed is whether <i>reasonable accommodations</i> are warranted, and <i>regarded as</i> prong rise to the level of a qualified disability under the ADAAA.
B. What disabilities and impairments have been added as a qualified disability since ADA? Amendments?	None specifically reported.

Data Results in the Second Circuit

The cases found in the United States Court of Appeals for the Second Circuit were identified as follows:

1. *Mcelwee v. County of Orange*, (2012)
2. *Rodriguez v. Village Green Realty Inc.*, (2015)
3. *B.C., individually and on behalf of her minor child J.C.; T.H., individually and on behalf of her minor child T.H., v. Mount Vernon School District, et al.*, (2016)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments. The first case reviewed in the Second Circuit was, *Mcelwee v. County of Orange*, (2012). The Second Circuit addressed the ADA amendments concerning the definition of disability

“shall be construed broadly ‘to the maximum extent permitted by the terms of this chapter’ and ‘[t]he term ‘substantially limits’ shall be interpreted consistently with the findings and purposes of the [ADAAA]” (p. 642; 42 U.S.C. §12102 (4) (A) (B)).

Conversely, the plaintiff/appellant in the noted case was deemed to be disabled under the new amendments, but despite the new amended ADA coverage did not help with the plaintiff/appellant winning his discrimination suit for reasonable accommodations.

The plaintiff/appellant was sexually harassing other volunteer members in the program, and the fact that the volunteer program did not accommodate the plaintiff/appellant with therapy in order to stop or curtail his sexual harassment was deemed by the court not to be a reasonable accommodation, despite plaintiff/appellant’s disability. The court reasoned that since the plaintiff/appellant’s abnormal behavior due to neurodevelopmental disorder was not something that could be easily corrected, thus reasonable accommodations did not exist for the plaintiff/appellant (*Mcelwee v. County of Orange*, 2012). Therefore, neither the ADA amendments nor the broadening definition of a qualified disability aided this plaintiff/appellant’s case.

The second case analyzed, *Rodriguez v. Village Green Realty Inc.*, (2015), did recognize that the ADAAA amended the antiquated Supreme Court rulings, which severely limited how a qualified disability was determined and that “an impairment [that] substantially limits a major life activity is to be determined with reference to the ameliorative effects of mitigating measures” (p. 43; 42 U.S.C. § 2 (b) (2), (4)). However, the court determined that because the plaintiff/appellant brought his discrimination action under the Fair Housing Act, 42 U.S.C. § 3601 *et seq.*, (FHA) and the ADAAA in relation

to discrimination based on a disability that because the “FHA was not similarly amended [that]... [] FHA interpretation is still guided by pre-ADAAA cases including *Toyota Motor and Sutton*” (*Rodriguez v. Village Green Realty Inc.*, 2015 p. 43). Nevertheless, the plaintiff/appellant’s discrimination suit was vacated and remanded back to the lower court, because the Second Circuit held the evidence offered by the plaintiff/appellant did not qualify him as being disabled under the FHA (*Rodriguez v. Village Green Realty Inc.*, 2015, p. 43). Therefore, and although the court did recognize the new standing of the ADA amendments, but because the FHA was not amended to correlate with the ADAAA, pre-ADA court holdings were used; however, the plaintiff/appellant was still deemed to be disabled under the ADA.

The last case identified in the Second Circuit was, *B.C et al., v. Mount Vernon School District, et al.*, (2016). The court in this case did “note that the ADAAA rejected the Supreme Court’s construction of ‘substantially limits’ [to] be interpreted consistently with the findings and purposes of the ADAAA” (*B.C et al., v. Mount Vernon School District, et al.*, 2016, p. 161). However, the disability action of the plaintiff/appellant was filed under the Individuals with Disabilities Education Act (IDEA). Subsequently, the court held that “students with disabilities under the IDEA.... Do[es] not necessarily constitute a disability under the ADA or section 504” (*B.C et al., v. Mount Vernon School District, et al.*, 2016, p. 162). Thus, because the IDEA, and the ADAAA, section 504, defines a disability differently a prima facie case could not be established (*B.C et al., v. Mount Vernon School District, et al.*, 2016). Consequently, and as noted in the previous case, *Rodriguez v. Village Green Realty Inc.*, (2012), the Courts, being fully aware of the

ADA amendments, did not necessarily support the plaintiffs/appellants with their disability claims. The court did acknowledge in all three cases that Congress' primary intent vis-à-vis the ADAAA was to broadly interpret a qualified disability under the Act.

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? The Second Circuit changes between the ADA of 1990 and post-ADA amendments in the three cases noted did acknowledge the court's understanding of congressional intent concerning the ADA amendments; however, the ADA amendments were found not to be applicable in discriminatory suits when filed in conjunction with another Act that had not been amended to correlate with post-ADA amendments.

Subquestion A: What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system? The first case mentioned, *McElwee v. County of Orange*, (2012) stated that the plaintiff/appellant's disability of Persuasive Developmental Disorder was deemed a disability, but ultimately did not establish a discriminatory case based on that disability alone. The second case, *Rodriguez v. Village Green Realty Inc.*, (2012), a disability of the Autism Spectrum Disorder and epilepsy were deemed disabilities, but post-ADA amendments could not be used because they did not correlate with the FHA definition of a disability; however, the court held that the noted disabilities were recognized disability under the FHA. The last case, *B.C et al., v. Mount Vernon School District, et al.*, (2016) dealt with a disability under the Individuals with Disabilities Education Act (IDEA), but because the ADAAA, section

504 defines a disability differently than the IDEA a prima facie case could not be established.

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? None of the cases established additional disabilities or impairments; however, they did establish that although the ADAAA was to be interpreted broadly in the courts, these cases did not fundamentally correlate with a plaintiff/appellant winning their discrimination case. See Table 2., below, entitled *Collective Case Results of Research Questions in the Second Circuit*.

Table 2.

Collective Case Results of Research Questions in the Second Circuit

Question	Second Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability, and disallowed prior precedent set by the U.S. Supreme Court that narrowly interpreted a qualified disability.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	The question of whether a person has a qualified disability has shifted in the Second Circuit cases evaluated as to when an individual is entitled to <i>reasonable accommodations</i> . And, if a case is filed under the ADAAA, and another state or federal Act that is not amended with the ADAAA established a dichotomy as to what definition is applicable.

Table 2.

Collective Case Results of Research Questions in the Second Circuit

Question	Second Circuit
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	The Second Circuit used pre-ADA court rulings when parallel statutes conflicted with the ADAAA. In the Second Circuit that Persuasive Developmental Disorders, Autism Spectrum Disorder and Epilepsy, as well as Educational Disabilities were found as a disability, but ultimately having these types of disabilities did not always aid the plaintiff/appellant winning their case.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	None specifically reported.

Data Results in the Third Circuit

The cases found in the United States Court of Appeals for the Third Circuit were identified as follows:

1. *Matthews v. Pennsylvania Department of Corrections, et al.*, (2015)
2. *Cunningham v. Novo Nordisk*, (2015)
3. *Alston v. Park Pleasant, Inc.*, (2017)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The first case reviewed in the Third Circuit was *Matthews v. Pennsylvania Department of*

Corrections et al., (2015). This case was a disability complaint filed by an inmate requesting reasonable accommodations due to an impairment hindering his ability to walk during several months. Congressional clarification and expansion of a qualified disability in the noted case by the Third Circuit acknowledged that the ADAAA “was enacted to clarify that the definition of ‘disability’ should be construed ‘in favor of broad coverage of individuals...to the maximum extent permitted’” (*Matthews v. Pennsylvania Department of Corrections et al.*, 2015, p. 167; 42 U.S.C. § 12102 (4) (A)). The Third Circuit further acknowledged that *substantially limits* as updated by the EEOC in their “regulations to provide that impairments lasting fewer than six months may be substantially limiting [thus] covered under the first prong concerning the definition of a disability” (*Matthews v. Pennsylvania Department of Corrections et al.*, 2015, p. 167; 29 C.F.R. §1630.2 (j) (1) (ix)). Furthermore, because this case concerning an impairment for a short duration was one of first impressions in the court, the court used the Fourth Circuit’s holdings of a prior case, *Summers v. Altarum Institute, Corporation*, (2014), which addressed a short-term disability claim as being a disability even though it may be temporary in duration. Thus, the Third Circuit ruled that the plaintiff/appellant did have an impairment that was recognized under the new ADA amendments.

The second case reviewed in the Third Circuit was, *Cunningham v. Novo Nordisk*, (2015). This particular case was an employment discrimination claim where the plaintiff/appellant suffered a heart attack ensuing in quadruple bypass surgery and subsequently filed a claim for discrimination and retaliation by her then employer. However, the Third Circuit in this case did not establish that the plaintiff/appellant was

disabled under the ADA amendments because the Third Circuit posited that a disability concerning substantially limiting must still establish that her limitation is substantial, with the courts citing (42 U.S.C. § 12102 (1) – (2)) as reasoning for their ruling. Furthermore, the Third Circuit reasoned that because the plaintiff/appellant openly admitted that upon returning to work she was able to complete her work obligations, and was able to care for herself in a fully capable manner, this admission was considered by the court to establish that the plaintiff/appellant was not disabled, since she was not perceived as being disabled by her employer or colleagues (*Cunningham v. Novo Nordisk*, 2015).

The last case reviewed in the Third Circuit was, *Alston v. Park Pleasant, Inc.*, (2017). This particular case was a discriminatory case in which the plaintiff/appellant alleged that after being diagnosed with breast cancer she was terminated from her employment. Nevertheless, the plaintiff/appellant was not deemed by the court to have established a prima facie case under the ADA amendments because during all stages of litigation she never asserted that her cancer substantially limited her in regard to major life activities, such as work, driving, hygiene, or household chores (*Alston v. Park Pleasant, Inc.*, 2017). Conversely, the court did acknowledge that under the ADA amendments cancer was a qualified disability in relation to an impairment because it dealt with the “functioning of one’s immune system [which] is a major life activity” (*Oehmke v. Medtronic, Inc.*, 2016, p. 756). Therefore, despite the congressional clarification concerning the ADA that cancer by itself was not deemed to be a disability, unless the plaintiff/appellant acknowledged it substantially limited her major life activities.

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? A major change in the Third Circuit concerning the case, *Matthews v. Pennsylvania Department of Corrections et al.*, (2015) was that it established in their holdings that impairments were disabilities even if they were for a short duration, which would not have been the standard under the ADA of 1990. Therefore, this should be seen as an improvement concerning judicial decision-making relating to short-term disabilities and/or impairments. The second case reviewed, *Cunningham v. Novo Nordisk*, (2015) primarily established a change that although an employee can suffer a heart attack, that inherently the heart attack does not establish a qualified disability under the ADA amendments if the plaintiff/appellant openly admits that the heart attack did not diminish or hinder her ability to perform her tasks; and, because she was not perceived as being disabled by her employer and colleagues, this was also considered as evidence that the plaintiff/appellant was not disabled pursuant to the ADAAA. The last case reviewed, *Alston v. Park Pleasant, Inc.*, (2017), used the same holdings in *Cunningham v. Novo Nordisk*, (2015), as direct evidence that the plaintiff/appellant was not disabled pursuant to the ADAAA.

Subquestion A: What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system? In the *Matthews v. Pennsylvania Department of Corrections et al.*, (2015), a short-term impairment that affected an individual's ability to walk was considered to be an impairment covered under post-ADA amendments. The second case reviewed *Cunningham v. Novo Nordisk*, (2015) established that a heart attack alone does not qualify a disability without the individual

establishing that the heart attack disabled and/or impaired her ability under the new ADA amendments. Lastly, *Alston v. Park Pleasant, Inc.*, (2017) established in the Third Circuit that cancer was not necessarily protected under the ADA amendments if the individual did not assert that his/her cancer caused any substantial limitation in relation to major life activities.

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? In the case of *Matthews v. Pennsylvania Department of Corrections et al.*, (2015), an impairment that was added as a qualified disability under ADA amendments was that which affected an individual's ability to walk, even though it was for a short duration. The second case reviewed, *Cunningham v. Novo Nordisk*, (2015) offered no added qualified disabilities under the ADA amendments. The last case reviewed in the Third Circuit, *Alston v. Park Pleasant, Inc.*, (2017) added no disabilities and/or impairments under ADA amendments that were not recognized under the ADA of 1990. See Table 3., below, entitled *Collective Case Results of Research Questions in the Third Circuit*.

Table 3.
Collective Case Results of Research Questions in the Third Circuit.

Question	Third Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability, and disallow prior precedent set by the U.S. Supreme Court that narrowly interpreted a qualified disability.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA?	The major changes between judicial decisions in the Third Circuit between the old ADA and new ADA amendments is that impairments of short duration are considered a qualified disability.
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	That a heart attack or breast cancer were not considered to be a qualified disability in the Third Circuit because the plaintiff/appellants did not assert that their medical issues were substantially limiting concerning major life activities, as well as not being a perceived disability by the employer or colleagues. Thus, not a qualified disability under the ADAAA.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	Impaired ability to walk even though it was considered of short duration was established an impairment under the ADAAA.

Data Results in the Fourth Circuit

The cases found in the United States Court of Appeals for the Fourth Circuit were identified as follows:

1. *Summers v. Altarum Institute Corporation*, (2014)
2. *Jacobs v. N.C. Administrative Office of the Courts*, (2015)
3. *Gentry v. East West Partners Club Management Company, Inc.*, (2016)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The first case reviewed in the Fourth Circuit was *Summers v. Altarum Institute Corporation*, (2014). This case was a discriminatory case concerning wrongful termination due to an alleged disability of the plaintiff/appellant, who in this case had fractured his left leg with other ensuing injuries pertaining to his left knee and right ankle. The Fourth Circuit acknowledged that the ADA amendments were to be construed broadly concerning a qualified disability and that “[t]he ADA makes it unlawful for covered employees to ‘discriminate against a qualified individual on the basis of disability’” (*Summers v. Altarum Institute Corporation*, 2014, p. 328). Furthermore, because the plaintiff/appellant established that his injuries were substantially limiting, thus establishing a disability, even though his injuries and/or impairment was expected to last less than six months, that pursuant to 29 C.F.R. 1630.2 (j) (1) (ix) the plaintiff/appellant was protected under the ADA amendments because the noted code established that “short-term impairments qualify as disabilities ... If they are ‘sufficiently severe’” (*Summers v. Altarum Institute Corporation*, 2014, p. 330). Therefore, congressional expansion and clarification did

allow the plaintiff/appellant the ability to seek safe haven under the ADA amendments despite his disability being short-term.

The second case reviewed was *Jacobs v. N.C. Administrative Office of the Courts* (2015). The plaintiff/appellant suffered from social anxiety disorder, which led her to request for reasonable accommodations when her employer assigned her to a job that induced social tasks that exacerbated her social anxiety disorder (*Jacobs v. N.C. Administrative Office of the Courts*, 2015). The plaintiff/appellant alleged that her employer terminated her employment due to her reasonable accommodation request and subsequently filed suit against her employer for disability discrimination under the ADA, failure to provide reasonable accommodations, and retaliation under the ADA (*Jacobs v. N.C. Administrative Office of the Courts*, 2015). Although this particular case was not directly filed under the new ADAAA the Fourth Circuit adequately addressed congressional intent regarding ADA amendments. Pragmatically, the Fourth Circuit elucidated within their opinion that “[t]he ADA Amendments Act (ADAAA) was intended to make it ‘easier for people with disabilities to obtain protection under the ADA’” (*Jacobs v. N.C. Administrative Office of the Courts*, 2015, p. 572; 29 C.F.R. §1630.1 (c) (4)). Moreover, the Fourth Circuit also posited that a social anxiety disorder in regard to directly interacting with others was a *major life activity* pursuant to 42 U.S.C. §12102 (2) (A); and that the EEOC’s determination within their regulations pursuant to 29 C.F.R. §1630.2 (i) (1) (i) was reasonable to postulate “that interacting with others falls in the same category... [as] a major life activity” (*Jacobs v. N.C. Administrative Office of the Courts*, 2015, p. 573). Therefore, the Fourth Circuit surmised within their opinion that

a social anxiety disorder in regard to interacting with others is a qualified disability under the ADA and EEOC's regulations.

The last case analyzed was *Gentry v. East West Partners Club Management Company, Inc.*, (2016). The plaintiff/appellant filed a claim for disability discrimination after the plaintiff/appellant fell at work, subsequently injuring her left foot, as well as her ankle. This led to her filing for workers' compensation, and subsequently her being fired by defendant/appellee. Although the Fourth Circuit did elucidate a pertinent understanding of the ADA amendments, nevertheless it upheld the jury verdict, because the jury fundamentally believed that the plaintiff/appellant's impairment pragmatically did not establish the definition of substantially limiting concerning a disability.

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? The major judicial decision in the first case analyzed is that short-term disabilities, that is, less than six months, are now considered to be a qualified disability under the ADAAA if the injury is "sufficiently severe" (*Summers v. Altarum Institute Corporation*, 2014, p. 330). Thus, this is a major change between the ADA of 1990 and the ADA amendments because short term disabilities were not covered under the ADA. The second case reviewed was *Jacobs v. N.C. Administrative Office of the Courts* (2015). The major change between judicial decision-making during the implementation of the first ADA and now under post-ADA amendments is that in the noted case the Fourth Circuit did find the plaintiff/appellant disabled under the ADA because her social anxiety disorder interfered with "interacting with others [and] falls in the same category... [as] a major life activity"

(*Jacobs v. N.C. Administrative Office of the Courts*, 2015, p. 573). Last case reviewed in the Fourth Circuit was, *Gentry v. East West Partners Club Management Company, Inc.*, (2016), where the court posited that the plaintiff/appellant's impairment was not substantially limiting concerning a major life activity and was not protected under the ADAAA. Thus, no major changes in judicial decisions in the last case analyzed

Subquestion A: What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system? In the noted cases, *Summers v. Altarum Institute Corporation*, (2014), and *Jacobs v. N.C. Administrative Office of the Courts*, (2015) supported that *short-term disabilities*, and *social anxiety disorders* are now being considered a qualified disability in the Fourth Circuit.

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? The Fourth Circuit fundamentally adapted to the thought that if an impairment and/or disability was "sufficiently severe" pursuant to 29 C.F.R. 1630.2 (j) (1) (ix), then it was indeed a covered disability pursuant to the ADAAA, even if it was a short-term disability, as well as social anxiety disorders when it interfered with "interacting with others [which] falls in the same category... [as] a major life activity" (*Jacobs v. N.C. Administrative Office of the Courts*, 2015, p. 573). See Table 4., below, entitled *Collective Case Results of Research Questions in the Fourth Circuit*.

Table 4.
Collective Case Results of Research Questions in the Fourth Circuit

Question	Fourth Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability and disallow prior precedent set by the U.S. Supreme Court that narrowly interpreted a qualified disability.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	The major changes between the old ADA and new ADA regarding judicial decisions of a qualified disability is that the Fourth Circuit determined if a disability and/or impairment lasting less than six months was substantially limiting that it was protected under the ADAAA; conversely, if it was not substantially limiting it was not deemed to be protected as a qualified disability under the ADAAA. However, when determining substantially limiting it need not be determined to be significantly or severely restricting, but sufficiently severe.
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	The Fourth Circuit determined that short term disabilities not substantially limiting are not covered under the ADAAA.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	That short term disabilities in duration that are considered substantially limiting are protected under the ADAAA and social anxiety disorders.

Data Results in the Fifth Circuit

The cases found in the United States Court of Appeals for the Fifth Circuit were identified as follows:

1. *Burton v, Free Scale Semiconductor, Inc., et al.*, (2015)
2. *Ball, et al., v. James M. LeBlanc, Security, Department of Public Safety and Corrections, et al.*, (2015)
3. *Canon v. Jacobs Field Services North America, Inc.*, (2016)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The first case reviewed was *Burton v, Free Scale Semiconductor, Inc., et al.*, (2015). The plaintiff/appellant filed a wrongful termination lawsuit due to a work-related incident causing the plaintiff/appellant to allege a disability impairment based on exposure to fumes that caused heart palpitations. The Fifth Circuit recognized that congressional expansion concerning the ADA amendments did include a qualified impairment to be a particular impairment when it distresses the “respiratory and cardiovascular systems” (*Burton v, Free Scale Semiconductor, Inc., et al.*, 2015, p. 230). The Fifth Circuit reasoned that the defendant/appellee’s argument that they were unaware of the plaintiff/appellant’s disability was not factual, and that they were aware of such disability (*Burton v, Free Scale Semiconductor, Inc., et al.*, 2015).

Moreover, the Fifth Circuit concluded that the ADAAA was quite clear that the court should overrule prior authority in relation to a plaintiff having to establish “that the

employer regarded him or her as being substantially limited in a major life activity” (*Burton v. Free Scale Semiconductor, Inc.*, et al., 2015, p. 230). Therefore, the Fifth Circuit disagreed with the lower court’s ruling for summary judgment in relation to the ADAAA claim, and remanded the case back to the lower court for further proceedings regarding plaintiff/appellant’s ADAAA claim (*Burton v. Free Scale Semiconductor, Inc.*, et al., 2015). To that end, the Fifth Circuit armed with the ADAAA congressional clarification did aid the plaintiff/appellant to survive summary disposition and proceed further.

The second case viewed in the Fifth Circuit was *Ball, et al., v. James M. LeBlanc, Security, Department of Public Safety and Corrections*, et al., (2015). This particular case arose from multiple inmates on death row who filed a lawsuit alleging that the facility’s failure to air condition the inmates’ cells violated the ADAAA. The inmates asserted that the court needed to establish that thermoregulation “is a major bodily function (and thus a major life activity) because the ADA’s list is not exhaustive” (*Ball, et al., v. James M. LeBlanc, Security, Department of Public Safety and Corrections*, et al., 2015, p. 597; 42 U.S.C. §12102 (2) (B)). The Fifth Circuit pointed out that thermoregulation has not been deemed by any court as a major bodily function, and the EEOC has not establish regulations concerning thermoregulation as a major bodily function (29 C.F.R. §1630.2 (i) (1) (ii)). Therefore, the Fifth Circuit held that under the ADAAA as expanded and clarified, thermoregulation is not a disability claim.

The last case viewed in the Fifth Circuit was *Canon v. Jacobs Field Services, North America Inc.*, (2016). In this particular case, the defendant/appellee, the owner of a

construction company, offered the plaintiff/appellant a job as a field engineer (*Canon v. Jacobs Field Services, North America Inc.*, 2016). However, when the defendant/appellee discovered that the plaintiff/appellant suffered from a rotator impairment, which negated him from lifting his right arm any higher than his shoulder, defendant/appellee rescinded their job offer (*Canon v. Jacobs Field Services, North America Inc.*, 2016). Summary judgment was granted in the lower court, but reversed in the first circuit, because the Fifth Circuit pointed out that the ADAAA expanded the definition of a disability and that the lower court had ignored this salient fact (*Canon v. Jacobs Field Services, North America Inc.*, 2016). Therefore, the Fifth Circuit's understanding that the ADA amendments were implemented to clarify and "correct the perceived misconception that the *substantially limits* standard to be a more demanding one than Congress had intended" (*Canon v. Jacobs Field Services, North America Inc.*, 2016, p. 590; 42 U.S.C. §12101 note).

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? A major change between the two different ADA's in *Burton v. Free Scale Semiconductor, Inc.*, et al., (2015), *Ball, et al., v. James M. LeBlanc, Security, Department of Public Safety and Corrections*, et al., (2015), and *Canon v. Jacobs Field Services, North America Inc.*, (2016) was that the Fifth Circuit concluded the ADA amendments concerning a qualified disability/impairment were to be interpreted broadly.

Subquestion A: What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system? In the *Burton v. Free Scale*

Semiconductor, Inc., et al. (2015) case, the Fifth Circuit concluded the ADA amendments now included the respiratory system, as well as the cardiovascular system. The second case, *Ball, et al. v. James M. LeBlanc, Security, Department of Public Safety and Corrections*, et al. (2015), concluded that thermoregulation was not considered a plausible argument to file a discriminatory claim alleging a disability and/or impairment. The last case reviewed, *Canon v. Jacobs Field Services, North America Inc.*, (2016), established that a rotator impairment of the right arm did constitute as a disability under the new expanded and clarified ADA amendments. These amendments negated an employer's right to rescind a job offer because of an impairment, since the ADA amendments established an individual having a disability if "an individual suffers from a 'disability,' if that individual has 'a physical... impairment that substantially limits one or more major life activities'" (*Canon v. Jacobs Field Services, North America Inc.*, 2016, p. 590), then such individual has asserted his or her disability (*Canon v. Jacobs Field Services, North America Inc.*, 2016).

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? *Burton v. Free Scale Semiconductor, Inc.*, et al. (2015) established that the respiratory system, as well as the cardiovascular system, are qualifying impairments under the ADAAA. Conversely, *Ball, et al., v. James M. LeBlanc, Security, Department of Public Safety and Corrections*, et al., (2015), established no added qualified disabilities under the new ADA amendments. However, *Canon v. Jacobs Field Services, North America Inc.*, (2016) did establish that a rotator impairment of an individual's arm was to be considered an impairment due to the now more-expanded and

clarified ADAAA. See Table 5., below, entitled *Collective Case Results of Research Questions in the Fifth Circuit*.

Table 5.
Collective Case Results of Research Questions in the Fifth Circuit

Question	Fifth Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability, and disallow prior precedent set by the U.S. Supreme Court that narrowly interpreted a qualified disability.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	The major change between the old ADA and new ADA amendments concerning judicial decisions is that the Fifth Circuit acknowledged that they should overrule prior judicial precedent as to if an employer regarded he or she as being substantially limited in a major life activity.
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	The Fifth Circuit did include that the respiratory system and cardiovascular system are impairments when these systems are distressed. However, thermoregulation was not considered a disability or impairment under the ADAAA. Last, rotator impairment was also considered in the Fifth Circuit to be an impairment.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	None specifically reported.

Data Results in the Sixth Circuit

One case found in the United States Court of Appeals for the Sixth Circuit was identified as follows:

1. *Horn v. Night Facilities Management – GM, Inc.*, (2014)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The only case identified in the Sixth Circuit was *Horn v. Night Facilities Management – GM, Inc.*, (2014). In this case, the plaintiff/appellant was a janitor who developed sensitivity to the cleaning supplies used to perform her work duties (*Horn v. Night Facilities Management – GM, Inc.*, 2014). The plaintiff/appellant asked for reasonable accommodations, which were “eliminating restrooms on her cleaning route or... provid[e] her with a respirator” (*Horn v. Night Facilities Management – GM, Inc.*, 2014, p. 455).

However, the Sixth Circuit held that her reasonable accommodation request placed an undue hardship upon the company because the accommodation is not reasonable, since the plaintiff/appellant’s physician specifically ordered that she have “no exposure to cleaning solutions” (*Horn v. Night Facilities Management – GM, Inc.*, 2014, p. 455). The Sixth Circuit further held that they need not establish whether the plaintiff/appellant is disabled under the ADAAA, because her reasonable accommodation request placed an undue hardship upon the company (*Horn V, Night Facilities Management – GM, Inc.*, 2014). Although, in this case the Sixth Circuit did acknowledge

the ADAAA, but did not go out of its way to explicitly detail the clarification or expansion of the amendments.

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? In relation to the above-noted case, no significant changes in relation to judicial decisions between the first ADA and now-new ADA amendments.

Subquestion A: What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system? This case offered no pertinent answer to this question.

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? This case offered no pertinent answer to this question. See Table 6., below, entitled *Collective Case Results of Research Questions in the Sixth Circuit*.

Table 6.

Collective Case Results of Research Questions in the Sixth Circuit

Question	Sixth Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA? Amendments?	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability, and disallow prior precedent set by the U.S. Supreme Court that narrowly interpreted a qualified disability.

Table 6.
Collective Case Results of Research Questions in the Sixth Circuit

Question	Sixth Circuit
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	The Sixth Circuit held that because the plaintiff/appellant's request for reasonable accommodations placed an undue hardship upon the employer that the plaintiff/appellant's request was rightfully not granted by the employer.
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	None specifically reported.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	None specifically reported.

Data Results in the Seventh Circuit

No results found in the Seventh Circuit.

Data Results in the Eighth Circuit

The cases found in the United States Court of Appeals for the Eighth Circuit were identified as follows:

1. *Tramp v. Associated Underwriters, Inc.*, (2014)

2. *Minnihan v. Mediacom Communications Corporation*, (2015)

3. *Morriss, III v. BNSF Railway Company, et al.*, (2016)

RQI: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The first case reviewed in the Eighth Circuit was *Tramp v. Associated Underwriters, Inc.*, (2014). The plaintiff/appellant asserted several claims against her employer; however, her claim regarding the ADAAA was the only one analyzed. The plaintiff/appellant declared that her knee pain “limited her ability to perform her daily tasks” (*Tramp v. Associated Underwriters, Inc.*, 2014, p. 798). The plaintiff/appellant alleges that one day prior to her scheduled knee surgery her employer decided to terminate her employment (*Tramp v. Associated Underwriters, Inc.*, 2014). The Eighth Circuit did apply the expansion and clarification under post-ADA amendments in the noted case.

Nevertheless, because the plaintiff/appellant could not ultimately persuade the court with the presented evidence on her behalf “to prove the allegation that [her employer] regarded her as disabled in violation of the ADA” (*Tramp v. Associated Underwriters, Inc.*, 2014, p. 804), the Eighth Circuit decided it did not have to establish whether the plaintiff/appellant’s alleged knee pain constituted a disability under the ADAAA (*Tramp v. Associated Underwriters, Inc.*, 2014). Subsequently, the Eighth Circuit also reasoned that “[t]hough the ADAAA makes it *easier* to prove a disability, it does not *absolve* a party from proving one” (*Neely v. PSEG Tex., P’ship*, 5th Cir., 2013, p. 245). Therefore, the Eighth Circuit upheld the lower court’s reasoning that the plaintiff/appellant was not *regarded as* having a disability and had no direct proof that

could be established that her termination was explicitly motivated by the alleged disability. Thus, the plaintiff/appellant was not able to sustain a claim (*Tramp v. Associated Underwriters, Inc.*, 2014). Hence, despite congressional clarification and expansion, did not clearly benefit the plaintiff/appellant's ability to establish a disability under the ADAAA since the Eighth Circuit did not find she was *regarded as* having a disability either *actual* or *perceived* pursuant to 42 USC §12102 (3) (A).

The second case reviewed in the Eighth Circuit was, *Minnihan v. Mediacom Communications Corporation*, (2015). In the noted case the plaintiff/appellant suffered from several seizures, which resulted in driving restrictions for six months. Since the plaintiff/appellant's job requirement necessitated him to drive to jobsites as a cable installer, as well as a supervisor and trainer for other technicians, his employer stated they could no longer accommodate the plaintiff/appellant. Furthermore, the plaintiff/appellant filed a discrimination case under the ADAAA. The Eighth Circuit indicated throughout their opinion that they were aware of the clarified and expansions added to the ADA amendments.

However, because the plaintiff/appellant's job required a great deal of driving, the Eighth Circuit relied upon a former ruling that established potential accommodations pursuant to the ADA that stated an employer "is not required to relocate the essential functions of a job.... An accommodation that would cause other employees to work harder, longer, or be deprived of opportunities is not mandated" (*Minnihan v. Mediacom Communications Corporation*, 2015, p. 813) under post-ADA amendments (*Minnihan v. Mediacom Communications Corporation*, 2015). Therefore, the Eighth Circuit posited in

the case that reasonable accommodations upon this employer would fundamentally establish an accommodation that would be unreasonable; thus, the plaintiff/appellant could not establish a prima facie case vis-à-vis disability discrimination, and the employer, or defendant/appellee, “was entitled to judgment as a matter of law” (*Minnihan v. Mediacom Communications Corporation*, 2015, p. 813). Hence, the Eighth Circuit did acknowledge that the plaintiff/appellant pragmatically was disabled under the ADA, but failed in the above case because the accommodations requested were unreasonable (*Minnihan v. Mediacom Communications Corporation*, 2015).

The last case reviewed in the Eighth Circuit was, *Morriss, III v. BNSF Railway Company*, et al., (2016). The plaintiff/appellant filed a discriminatory suit against the defendant/appellee for allegedly discriminating against him because he was clinically diagnosed with obesity, with a BMI at or over 40% (*Morriss, III v. BNSF Railway Company*, et al., 2016). However, the Eighth Circuit did acknowledge congressional expansion and clarification regarding ADA amendments but determined that obesity was not a qualified disability under post-ADA amendments. Furthermore, the Eighth Circuit held that post-ADA amendments do not “define physical impairment, but the EEOC, [does] exercise[.]... statutory authority to issue regulations implement[ed] [to] the ADA” (42 U.S.C. §12205a; as cited in *Morriss, III v. BNSF Railway Company*, et al., 2016, p. 1108). However, the Eighth Circuit disagreed with the EEOC’s interpretive guidance pursuant to 29 C.F.R. §1630.2 (h) (1) that “any *psychological 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” (*Morriss, III v. BNSF Railway Company*, et al., 2016, p. 1108), but does not address obesity, unless a psychological disorder is a contributing factor (*Morriss, III v. BNSF Railway Company*, et al., 2016). Thus, the Eighth Circuit overtly expressed in its holding that obesity is not a qualified disability, in and of itself, because they looked at the plain language regarding the Code of Federal Regulations, hence, utilizing textualism for interpretation.

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? In the case, *Tramp v. Associated underwriters, Inc.*, (2014), the Eighth Circuit determined that if the plaintiff/appellant could not establish that they were regarded as having a disability and/or impairment that a claim under the ADAAA could not be established. In the second case reviewed in the Eighth Circuit, *Minnihan v. Mediacom Communications Corporation*, (2015), the major changes are that although the Eighth Circuit did establish that the plaintiff/appellant was ostensibly a qualified individual under the ADAAA, but because his accommodations upon the employer were unreasonable, that the employer did not discriminate against the plaintiff/appellant, since they were not able to reasonably accommodate (*Minnihan v. Mediacom Communications Corporation*, 2015). The last case reviewed in the Eighth Circuit, *Morriss, III v. BNSF Railway Company*, et al., (2016), established that the court in the Eighth Circuit is looking at the plain language when interpreting, thus, establishing textualism for the statutory interpretation. This in and of itself is not a significant change between the ADA of 1990 and post-ADA

amendments, but establishes the judiciary's mindset when interpreting something they find to be ambiguous, or when trying to quantify whether something is or is not a disability.

Subquestion A: What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system? In regard to discriminatory employer claims that if the plaintiff/appellant does not establish that the employer regarded him/her as having a disability and/or impairment, the Eighth Circuit reasoned that such a claim cannot be established in the court (*Tramp v. Associated underwriters, Inc.*, 2014). The second case reviewed in the Eighth Circuit, *Minnihan v. Mediacom Communications Corporation*, (2015), established that epilepsy was indeed a qualified disability under the new ADA amendments, but failed to establish a discriminatory case because the plaintiff/appellant's request for reasonable accommodations was unreasonable toward the employer. The last case reviewed in the Eighth Circuit, *Morriss, III v. BNSF Railway Company, et al.*, (2016), established that obesity was not a qualified disability under the ADA amendments, unless it was a psychological disorder.

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? In *Tramp v. Associated underwriters, Inc.*, (2014), no disabilities and/or impairments were added to post-ADA amendments. The Eighth Circuit ruled in *Minnihan v. Mediacom Communications Corporation*, (2015) that epilepsy was a qualified disability and/or impairment under post-ADA amendments; however, despite having a qualified disability and/or impairment under post-ADA amendments, epilepsy did not equate with the plaintiff/appellant winning his discriminatory case. In *Morriss, III*

v. BNSF Railway Company, et al., (2016), no disabilities and/or impairments were added as a qualified disability under the new ADA amendments. See Table 7., below, entitled *Collective Case Results of Research Questions in the Eighth Circuit*.

Table 7.
Collective Case Results of Research Questions in the Eighth Circuit

Question	Eighth Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA Amendments?	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability, and disallow prior precedent set by the U.S. Supreme Court that narrowly interpreted a qualified disability.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	The major changes in the Eighth Circuit concerning judicial decisions under the old ADA and now the new ADA is that a qualified disability was easier to establish; however, establishing whether a qualified disability entitled that individual to reasonable accommodations or if their employer did not regard the individual as being impaired or disabled than the Eighth Circuit routinely found that the individual is not protected under the ADAAA.
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	The Fifth Circuit did include seizures as being a qualified disability, but the employer was not obligated to reasonably accommodate; and obesity was found in the Eighth Circuit to not be a qualified disability.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	None specifically reported.

Data Results in the Ninth Circuit

The case found in the United States Court of Appeals for the Ninth Circuit were identified as follows:

1. *Rohr v. Salt River Agricultural Improvement and Power District*, (2009)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The Ninth Circuit, in the case, *Rohr v. Salt River Agricultural Improvement and Power District*, (2009), did not apply the ADA amendments; however, they did overtly express pertinent knowledge concerning congressional clarification and expansion regarding the ADAAA. Hence, the residual research questions will not be answered, because this case offers no empirical evidence to substantiate a qualified answer to expand upon in the remaining research questions. Conversely, it was important from my perspective to mention this case since they did acknowledge the ADAAA regarding congressional clarification and expansion for judiciary reviews. See Table 8., below, entitled *Collective Case Results of Research Questions in the Ninth Circuit*.

Table 8.

Collective Case Results of Research Questions in the Ninth Circuit

Question	Ninth Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability, and disallow prior precedent set by the U.S. Supreme Court that

Table 8.

Collective Case Results of Research Questions in the Ninth Circuit

Question	Ninth Circuit
interpretation of a qualified disability post-ADA amendments?	narrowly interpreted a qualified disability. However, did not specifically apply the ADA amendments in the above-noted case.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	None specifically reported.
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	None specifically reported.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	None specifically reported.

Data Results in the Tenth Circuit

The cases found in the United States Court of Appeals for the Tenth Circuit were identified as follows:

1. *Hawkins v. Schwan's Home Service Inc.*, (2015)
2. *Adair v. City of Muskogee, Oklahoma*, (2016)
3. *DeWitt v. Southwestern Bell Telephone*, (2017)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The first case reviewed in the Tenth Circuit was *Hawkins v. Schwan's Home Service Inc.*, (2015). The Tenth Circuit asserted that the lower court was correct in concluding that the appellant/plaintiff did not present a qualified disability under the ADAAA. Furthermore, the Tenth Circuit did acknowledge the understanding of the ADAAA and its expanded and clarifying agenda for the Act, but asserted that the plaintiff/appellant could not persuade the court that he could perform his work duties with or without reasonable accommodation (*Hawkins v. Schwan's Home Service Inc.*, 2015). The plaintiff/appellant's specific health conditions were "heart problems and fainting spells and very high blood pressure'....minor stroke.... [and] pacemaker implant []" (*Hawkins v. Schwan's Home Service Inc.*, 2015, p. 881). The Tenth Circuit further held that when establishing whether the plaintiff/appellant was a qualified individual with a disability under the ADAAA that if the plaintiff/appellant could not establish that he could perform his job functions "with or without reasonable accommodations.... [that] under the statute 'consideration *shall* be given to the employer's judgment as to what functions of the job are essential'" (42 U.S.C. §12111 (8); *Hawkins v. Schwan's Home Service Inc.*, 2015, p. 884). Therefore, because the plaintiff/appellant could not secure a DOT-certification for driving he was not able to perform the functions of the job regardless of the employer providing reasonable accommodations (*Hawkins v. Schwan's Home Service Inc.*, 2015).

The second case reviewed in the Tenth Circuit was *Adair v. City of Muskogee, Oklahoma*, (2016). This case, as well as the last case reviewed, *DeWitt v. Southwestern*

Bell Telephone, (2017), are both discriminatory claims were the plaintiff/appellants filed such claims due to the company not reasonably accommodating. In the case, *Adair v. City of Muskogee, Oklahoma*, (2016) the plaintiff/appellant had lifting restrictions and the Tenth Circuit held that because the plaintiff/appellant could not essentially perform his firefighting duties he was no longer “qualified for the position of firefighter” (p. 1304). Furthermore, the Tenth Circuit held that because *Adair* in the above-noted case could not establish that the requested accommodations were reasonable that the city could not accommodate (*Adair v. City of Muskogee, Oklahoma*, 2016).

The last case evaluated in the Tenth Circuit, *DeWitt v. Southwestern Bell Telephone*, (2017), also was a case regarding reasonable accommodations due to Type I diabetes. However, the plaintiff/appellant’s employer asserted that the plaintiff/appellant, who worked in a call center, was intentionally hanging up on clients or dropping calls and did not ask for reasonable accommodations because of her diabetes that ostensibly led to her work deficiencies, but asked for leniency instead (*DeWitt v. Southwestern Bell Telephone*, 2017). Therefore, the Tenth Circuit held that because the plaintiff/appellant did not actually ask for reasonable accommodations but leniency, her reasonable accommodation claim fundamentally failed (*DeWitt v. Southwestern Bell Telephone*, 2017). Despite the noted cases, and their pertinent claims, essentially failing in the Tenth Circuit, the circuit court did acknowledge the ADAAA was implemented to aid a qualified disability to be broadly interpreted in the court.

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? The Tenth

Circuit major changes concerning judicial decision-making of a qualified disability is that the court is not focusing on whether an individual has a qualified disability, but whether an accommodation is reasonable or whether the employer must grant reasonable accommodations if the claimant cannot perform the job duties with or without reasonable accommodations.

Subquestion A: What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system? In the Tenth Circuit the court did not establish what disabilities and/or impairments are, or are not, a qualified disability, but rather were faced with whether the requested *accommodations* were reasonable. Therefore, because the accommodations were not deemed to be reasonable in the Tenth Circuit, the Court did not address whether the plaintiff/appellant had a qualified disability. Primarily, if the employers were not deemed responsible to accommodate, the plaintiff/appellants' cases failed.

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? None specifically reported in the Tenth Circuit. See Table 9., below, entitled *Collective Case Results of Research Questions in the Tenth Circuit*.

Table 9.

Collective Case Results of Research Questions in the Tenth Circuit

Question	Tenth Circuit
1. How has congressional expansion and clarification of a qualified	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the

Table 9.
Collective Case Results of Research Questions in the Tenth Circuit

Question	Tenth Circuit
disability impacted judicial interpretation of a qualified disability post-ADA amendments?	issues of a qualified disability, and disallowed prior precedent set by the U.S. Supreme Court that narrowly interpreted a qualified disability. However, did not ultimately end with plaintiff/appellant winning their case.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	The major changes between judicial decisions regarding a qualified disability during the first ADA and now under ADA amendments is that the Tenth Circuit was not focusing on whether an individual has a qualified disability, but whether an accommodation is reasonable or whether the employer must grant reasonable accommodations if the claimant cannot perform the job duties with or without reasonable accommodations.
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	None specifically reported. However, type I diabetes, and lifting restrictions were specific disabilities discussed in the Tenth Circuit.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	None specifically reported.

Data Results in the Eleventh Circuit

The one case found in the United States Court of Appeals for the Eleventh Circuit was identified as follows:

1. *Mazzeo v. Colorado Resolutions International*, (2014)

RQ1: How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments? The only case reviewed in the Eleventh Circuit was *Mazzeo v. Colorado Resolutions International*, (2014). This case was a wrongful termination suit; the plaintiff/appellant sued his employer for age discrimination and disability discrimination regarding his disc herniation problems, which hindered the plaintiff/appellant's "ability to walk, bend, sleep, and lift more than ten pounds" (*Mazzeo v. Colorado Resolutions International*, 2014, p. 1268). The lower court used pre-ADA court holdings, which ultimately established that the plaintiff/appellant did not prove a qualified disability (*Mazzeo v. Colorado Resolutions International*, 2014). However, the Eleventh Circuit pointed out that Congress intended the ADAAA to not be "overly complex nor difficult, and expect[ed] that the [ADAAA] will lessen the standard of establishing whether an individual has a disability for purposes of coverage under the ADA" (*Mazzeo v. Colorado Resolutions International*, 2014, p. 1268). Therefore, the Eleventh Circuit asserted that under the new ADAAA that the plaintiff/appellant did have a qualified disability, hence, reversing the lower court's summary judgment and remanding the case back to the lower court in accordance with their opinion (*Mazzeo v. Colorado Resolutions International*, 2014).

RQ2: What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments? The Eleventh Circuit in the noted case established that the ADAAA explicitly necessitated the judicial system to consider a qualified disability not to be “overly complex nor difficult” (*Mazzeo v. Colorado Resolutions International*, 2014, p. 1268).

Subquestion A: What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system? The Eleventh Circuit in the noted case concluded that the plaintiff/appellant’s disc herniation problems were a qualified disability under the ADA (*Mazzeo v. Colorado Resolutions International*, 2014).

Subquestion B: What disabilities and impairments have been added as a qualified disability since ADA amendments? *Mazzeo v. Colorado Resolutions International*, (2014) concluded that elements regarding one’s “ability to walk, bend, sleep, and lift more than ten pounds” (p. 1268) did establish a qualified disability and/or impairment (*Mazzeo v. Colorado Resolutions International*, 2014). See Table 10., below, entitled *Collective Case Results of Research Questions in the Eleventh Circuit*.

Table 10.

Collective Case Results of Research Questions in the Eleventh Circuit

Question	Eleventh Circuit
1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?	Acknowledged that Congress mandated the ADAAA to be interpreted broadly regarding the issues of a qualified disability, and disallowed prior precedent set by the United States Supreme Court that narrowly interpreted a qualified

Table 10.

Collective Case Results of Research Questions in the Eleventh Circuit

Question	Eleventh Circuit
	disability. Also, that the ADA amendments, establishing a qualified disability should not be complex or difficult when proving.
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?	Established that the ADAAA explicitly necessitated the judicial system to consider a qualified disability not to be excessively complex or difficult.
A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?	Established that one's ability to walk, bend, sleep, and lift more than ten pounds was a qualified disability and/or impairment.
B. What disabilities and impairments have been added as a qualified disability since ADA amendments?	The ability to walk, bend, sleep, and lift more than ten pounds was a qualified disability and/or impairment.

Data Results in the Twelfth Circuit

No cases found in the United States Court of Appeals for the Twelfth Circuit were identified.

Summary

In conclusion, the resolution of Chapter 4 was to report a comprehensive analysis of the qualitative case study and to introduce the results. Moreover, major themes were presented from the 23 ADAAA adjudicated cases that correlated and answered the

research questions. The purpose statement was reintroduced, and established that the dominant research goal was to understand judiciary interpretation in all federal circuit courts regarding a qualified disability, as well as what impairments and/or disabilities were being considered under the ADA amendments. A restatement of the research questions was introduced, as well as a step-by-step report of how the data was gathered and subsequently organized, ultimately arranging it by looking at each federal circuit individually. Furthermore, a comprehensive table was entered after each circuit court analysis to summarize and display the overall illuminated theme(s) in relation to the research questions.

Therefore, the major theme illuminated throughout all the federal circuit courts was that they were fundamentally acknowledging the pragmatics of the ADA amendments. However, this did not necessarily establish that a plaintiff/appellant was victorious in their appeal. Rather, the courts were looking at other elements in the ADAAA, such as *reasonable accommodations*, and the *regarded as* factor concerning a qualified disability being overtly acknowledged by an employer, as well as if a *reasonable accommodation* placed an *undue hardship* upon the employer. The federal circuit courts had a few occurrences where the ADAAA and a parallel state statute or other federal Acts were filed in tandem with the ADAAA, which caused problems concerning which definition of a disability was controlling.

Nevertheless, since the definition of a disability did not coincide with the ADAAA in the cases reviewed by the federal circuit courts, those courts used pre-ADA rulings in order to establish cohesiveness between the parallel statutes. This was

dominantly because the state statute, and/or another federal statute addressing the definition of a disability, was not amended to correlate with the ADA amendments. Pragmatically, and pursuant to the Supremacy Clause, U.S. Const. art. VI, stating that if a state statute conflicts with a federal statute, the federal statute controls. And in the instance when federal statutes are against one another the doctrine of *implied repeal* controls, (i.e., the appeal portion or amended portion of the statute controls). This, in and of itself, is problematic, because the cases reviewed in the circuits, when challenged with such, did not utilize the Supremacy Clause or the implied repeal doctrine.

Conversely, the federal circuit courts seem to have no problem expanding the definition of a qualified disability and/or impairment with congressional intent; nonetheless, the courts seemed to be more focused on an employer's ability to reasonably accommodate, and whether an employee was regarded as having a disability and/or impairment by the employer. This ultimately was determined in the courts on a case-by-case analysis. Thus, if plaintiff/appellant were unable to prove they were *regarded as* having such an impairment or disability, the federal circuit courts typically stated that the plaintiff/appellant's lack of proof did not establish a qualified disability under the ADAAA. To that end, in the cases analyzed, 65% did not win their appeal, whereas, 35% did. Thus, a more comprehensive discussion will ensue concerning these data results in Chapter 5, in the summary of findings, conclusions, and recommendations.

Chapter 5: Summary, Conclusions, and Recommendations

Introduction

In Chapter 5, I will:

- Discuss and interpret the summary of the findings, collectively among the circuits.
- Provide recommendations for further study.
- List the limitations of the study.
- Discuss the implications for social change.
- Examine who will benefit from this study.
- Interpret the cases cited throughout Chapter 4 in the data analysis as to how the federal circuit courts are responding to the research questions presented herein.

To reiterate, Valenti (2014), Webber (2014), Cavaliere et al., (2012), Brennan (2014), and McKendall et al. (2011) asserted that despite clarifying amendments, the courts still have numerous ways to misinterpret congressional intent: They can misinterpret congressional intent by only looking at the plain language of the statute, and furthermore not looking toward congressional or legislative intent. Pragmatically, ADA amendments do not explicitly cure past challenges of the ADA (Webber, 2014; McKendall et al., 2011). Therefore, the research questions presented to establish whether the ADA amendments were having a pertinent impact as Congress intended were as follows:

1. How has congressional expansion and clarification of a qualified disability impacted judicial interpretation of a qualified disability post-ADA amendments?
2. What are the major changes between judicial decisions regarding a qualified disability during the first ADA and now the new ADA amendments?
 - A. What types of disabilities and impairments are or are not being considered a qualified disability in the judicial system?
 - B. What disabilities and impairments have been added as a qualified disability since ADA amendments?

Summary of Findings

With respect to the research questions, the federal circuit courts explicitly acknowledged Congress' primary intent regarding the ADA amendments that a qualified disability should be interpreted broadly, as well as negating all prior precedent set in the judicial system that narrowly interpreted a qualified disability. Therefore, this no longer is at issue in the federal circuit courts that a qualified disability should be interpreted broadly. The federal circuit courts established that short-term disabilities that are *sufficiently severe*, pursuant to 29 C.F.R. 1630.2 (j) (1) (ix), are indeed a covered disability. Whereas, under the ADA of 1990 short-term disabilities were not. Conversely, in each circuit, the courts are either not directly ascertaining whether an individual has a qualified disability, or they are simply just deferring the fact that the individual is disabled, but directly looking at what the plaintiff/appellant suit is alleging. That is, if the plaintiff/appellant is bringing forth a discriminatory employment suit for reasonable

accommodations, wrongful termination, or whether the employer regarded them as having a disability are now the dominant issues addressed first in the courts. For example, if a plaintiff/appellant brought forth a suit for reasonable accommodations and the courts asserted that the individual could not be reasonably accommodated, or posed an undue hardship upon the employer if they were to be accommodated, the courts asserted that the plaintiff/appellant did not establish a ADAAA claim before the court.

Moreover, if a plaintiff/appellant did have a disability in the realms of the ADAAA, but the employer never regarded him or her as having a disability, because the plaintiff/appellant never declared their disability to their employer, a discriminatory suit against the employer under the ADAAA failed in the federal circuit courts. Furthermore, if the employer asserted that a reasonable accommodation placed an undue hardship upon them, typically the federal circuit courts evaluated what constituted as an undue hardship on a case-by-case basis. In the Fifth Circuit, when the court evaluated as to whether a reasonable accommodation placed an undue hardship upon the employer, the court used the reasoning that if the employer granted this accommodation could the plaintiff/appellant perform his or her duties? The Fifth Circuit held that the plaintiff/appellant could not perform these specific duties, and because of this holding the court asserted the employer did not have to reasonably accommodate if that accommodation placed an undue hardship upon the employer.

In the federal circuit courts, nine of the cases examined dealt with reasonable accommodation suits brought forth by a plaintiff/appellant. In the nine cases examined where a plaintiff/appellant requested reasonable accommodations, only one case, which

was in the Second Circuit, held that the employer had the duty to reasonably accommodate. Thus, the federal circuit courts reasoned that the other eight cases brought forth by a plaintiff/appellant that the employer did not have to reasonably accommodate for various reasons. The most prevalent reason asserted by the courts was that the plaintiff/appellant could not perform their duties with or without reasonable accommodations; hence, the employer was not mandated to accommodate. Therefore, if the plaintiff/appellant could not establish they could perform their duties with or without reasonable accommodations subsequently the court did not have to establish whether the accommodation was reasonable or placed an undue hardship upon the employer.

Moreover, five of the federal circuit court cases examined were due to wrongful termination alleged by the plaintiff/appellant. Three of the cases were won by the plaintiff/appellant and the other two cases were lost in the U.S. Court of Appeals. The three cases that had positive outcomes for the plaintiff/appellant were in the Fourth Circuit and Fifth Circuit. Both circuits asserted that 29 C.F.R. 1630.2 (j) (1) (ix) stated that when establishing if an impairment substantially limits a major life activity it should be done so on a case-by-case basis; but, the term *substantially limits* shall have an interpretation that is a lower threshold than was previously applied to the ADA of 1990. Thus, the circuit courts reasoned that the lower district courts did not implement 29 C.F.R. 1630.2 (j) (1) (ix) when interpreting *substantially limits* to have a lower threshold. Conversely, the courts used pre-ADA court rulings which misinterpreted substantially limiting or *substantially limits*.

The other cases analyzed in the dataset dominantly dealt with the *regarded as* prong in order to establish a qualified disability and/or impairment under the ADAAA. If the plaintiff/appellant could not establish that their employer regarded them as having a disability, because the plaintiff/appellant never made it known to the employer, thus the employer does not have to reasonably accommodate an employee pursuant to 29 C.F.R. § 1630.2(1)(3). The other few cases in the circuits that directly dealt with individuals claiming to have a qualified disability under the ADAAA or ADAAA coverage were an obesity claim and thermoregulation. The courts reasoned that obesity was not a qualified disability directly on its own unless it was coupled with another qualified disability and/or impairment. Hence, obesity alone does not establish a qualified disability. Whereas, the courts asserted that thermoregulation was not covered under the ADAAA because the ADAAA did not establish in the Act that alleged extreme heat conditions qualified as a disability and/or impairment under the ADAAA.

Therefore, and as asserted above, each individual federal circuit court did acknowledge in every instance that the ADAAA was implemented by Congress in order to correct the courts' misinterpretation of a qualified disability and/or impairment, to be interpreted broadly, and to negate prior judicial precedents. Even with this clarified understanding that Congress extended to the judicial system, still did not inherently promote a major impact concerning judicial interpretation when correlating with the first research question in regard to establishing a qualified disability under the ADA amendments. This was dominantly because the courts either did not directly address whether the individual had a qualified disability or simply established that even if they

did have a qualified disability their claim would fail under the ADAAA for the various reasons asserted above. The second research question was to understand the major changes between judicial decisions during the ADA of 1990 and now under the new ADA amendments which established that the federal circuit courts are not fixated whether an individual has a qualified disability and/or impairment, but whether their allegations regarding not being reasonably accommodated, or wrongfully terminated, as well as the regarded as prong establishes a prima facie case under the ADAAA.

Another interesting illumination when evaluating the cases in the dataset is that if a state statute was asserted in a plaintiff/appellant's claim, and if the state statute was not amended to correlate with the federal statute or ADAAA, then the federal circuit courts used pre-ADA court holdings even though they were determining a case directly under the ADAAA. Last, the two subquestions did not fundamentally establish what disabilities and/or impairments are now being covered under the ADAAA, because as noted, the courts are not dominantly fixating on this pertinent question concerning if a plaintiff/appellant has established a prima facie case under the ADAAA in relation to other elements of the ADAAA. Conversely, the two instances where the federal circuit courts did address whether the plaintiff/appellant asserted a qualified disability and/or impairment, were in the cases of obesity and thermoregulation, which were not deemed a qualified disability and/or impairment under the ADAAA.

Conclusion of Data Results Collectively among the Circuits

When the ADA of 1990 was implemented and multiple years after the fact, over 90% of all cases were dismissed by the courts when a plaintiff brought forth a

discriminatory suit under the ADA of 1990 (Valenti, 2014). However, the courts dominantly narrowed the definition of a qualified disability and/or impairment, which directly caused a plaintiff to inherently lose his or her suit because they were either not disabled enough or too disabled to qualify under the ADA. Furthermore, what this study discovered is that the circuit courts collectively have heard Congress' intent for the ADA amendments, and have acknowledged that a qualified disability and/or impairment should be interpreted broadly, as well as to negate prior legal precedents established under the ADA of 1990. The federal circuit courts have established that short-term disabilities that are *sufficiently severe* pursuant to 29 C.F.R. 1630.2 (j) (1) (ix) are indeed a covered disability pursuant to the new ADA amendments, whereas, under the ADA of 1990, short-term disabilities were not. Conversely, this collective understanding in the federal circuit courts still does not dominantly establish that a plaintiff/appellant will win an alleged discriminatory case in the courts. In fact, of the 23 cases analyzed in the dataset, only 35% of the cases won their appeal, whereas, 65% of the cases analyzed in the dataset ultimately lost their appeal. Nevertheless, 35% of the cases winning at the circuit court level is producing a better outcome than the cases brought under the ADA of 1990, which was less than 20% in the circuit courts, and less than 10% in the district courts (Valenti, 2014).

Therefore, the most noteworthy illumination of this pertinent study is that the cases brought before the federal circuit courts concerning reasonable accommodations, wrongful terminations, and whether an employer regarded the employee as having a disability under the *regarded as* prong, are dominantly being lost in the federal circuit

courts. Thus, when the courts are faced with parallel statutes they are utilizing pre-ADA court rulings, because the statutes have not been amended to correlate with the ADAAA. Hence, this is a specific area that should be monitored, because the standard that the courts are utilizing in order to determine, for example, reasonable accommodations may be too strict of a guideline than was initially intended by Congress.

Recommendations for Further Study

The recommendation for further study that should ensue is why reasonable accommodations are characteristically being lost in the federal circuit courts. Furthermore, nearly all the cases reviewed were employment discriminatory cases, and the clear majority of the cases reviewed dealt with the issue of reasonable accommodations. However, even when the court evaluated whether an accommodation was reasonable, they first determined whether the plaintiff/appellant could perform his or her job duties with or without reasonable accommodations. If a plaintiff/appellant was not able to prove that they could perform his/her job duties with or without reasonable accommodations, the court simply stated that the plaintiff/appellant did not establish a prima facie case before the courts under the ADAAA.

For example, in the cases examined, there were multiple instances where a plaintiff/appellant was on a restrictive work duty, such as lifting limitations, and because of the restricted work duty the plaintiff/appellant was now unable to perform their duties with or without reasonable accommodations; therefore, they were not entitled to ADAAA protection. Hence, reasonable accommodations pursuant to 29 C.F.R. § 1630.9 do not include removing job functions that are primarily important, or changing a pertinent part

of the job function that is primarily important. Therefore, the federal circuit courts reasoned in many of the cases that if an individual has medical restrictions that would not allow the individual to perform his or her work tasks, then the employer does not have to change the job requirements, if those requirements are essentially important to the job.

Pragmatically, if an employer cannot reasonably accommodate an employee, then an employer has an onus to reassign the employee to another position. However, an employer does not have to reassign an employee if it would place an undue hardship on the employer, or reassigning the employee is not applicable because he or she is unqualified for an equal or lesser position (29 C.F.R. app. § 1630.2(o)). The reassignment clause is seldom used to reasonably accommodate because there are multiple ways for an employer to simply suggest it would place an undue hardship, or that the employee is not qualified for said position. Hence, a study should be performed, perhaps in the federal district courts, regarding how the courts are interpreting what is a reasonable accommodation, and correlate that interpretation with congressional intent. That is, how did Congress expect reasonable accommodations to be interpreted in the court? Nevertheless, the federal circuit court cases examined herein are not directly answering the question of what is reasonable concerning accommodations, but rather, if an employee can perform his or her job duties with or without reasonable accommodations; and if they cannot, then the employer does not have to reasonably accommodate, because there are no accommodations to be made.

Implications for Social Change

The implications for social change this study has promoted is that in the federal circuit courts, such courts are acknowledging congressional clarification concerning ADA amendments, as well as negating prior precedent established under the ADA of 1990 in the courts. However, and as previously asserted, Congress' clarification regarding ADA amendments, and how a qualified disability should be interpreted is inherently not fundamentally promoting plaintiffs'/appellants' cases to be won. This study contributed this phenomenon to be happening in the federal circuit courts, because the courts are not interpreting what are the elements of a qualified disability and/or impairment, but are rather looking at other factors, such as reasonable accommodations, and the regarded as prong when determining whether a plaintiff/appellant has established a prima facie case before the courts. Subsequently, if the courts have determined that a prima facie case cannot be established in regard to reasonable accommodations, or other factors depicted throughout this study, the courts do not have to answer the question concerning whether a plaintiff/appellant has a qualified disability and/or impairment. Therefore, this study will aid governmental entities, such as the EEOC, Congress, legal professionals, and the disability community regarding how the federal circuit courts are interpreting ADA amendments, and the specific challenges, such as what is a reasonable accommodation, that are being faced in the courts when bringing forth ADAAA claims.

Limitation of Study

The dominant limitation of this study concerning the findings is that no federal district circuit courts were examined regarding the research questions. Conversely, the

primary focus was directly looking at the federal circuit courts collectively, and not the federal district courts. Furthermore, because over 800 cases were identified in the federal district courts, the dataset would have been too vast of a research endeavor for this study. Therefore, because only 23 cases were identified in the federal circuit courts collectively, it is not currently known how the federal district courts would have contributed to the study. Nevertheless, and understanding that federal district court cases are appealed by a proper litigant to the U.S. Court of Appeals, or the applicable federal circuit court, that this was dominantly a good place to start to understand how the ADA amendments are proceeding in the federal circuit courts.

Summary

The dominant aspect of the new ADAAA that this study revealed is that the federal circuit courts collectively have acknowledged that a qualified disability should be interpreted broadly, and to negate prior legal precedents established under the ADA of 1990. However, what was an interesting illumination of this study is that the federal circuit courts are not fixating as to whether a plaintiff/appellant has a qualified disability and/or impairment, but asserting and utilizing other methods to establish whether a plaintiff/appellant has established a prima facie case before the courts under the ADAAA. It was determined in this study that 65% of all ADAAA cases heard in the federal circuit courts did not ultimately win their appeal. Conversely, 35% of the cases did promote positive results in the federal circuit courts. Therefore, although only 35% of the cases heard at the federal circuit courts are establishing positive results for a plaintiff/litigant,

this is a much higher level of results than under the ADA of 1990, which only established 10% of plaintiffs'/appellants' winning their cases at the federal circuit level.

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Appendix A: Data Protocol Checklist

Data Protocol Checklist (internal).

Date: _____

Location: _____

Potential Archival Data Name: _____

1. How many years has the potential archival data been primary precedent law?

Answer: _____

2. How will the archival data assist with answering the research questions?

Answer: _____

3. What type of archival data is being used, (i.e., statute, legal case, floor speech, etc.)?

Answer: _____

4. Is the archival data primary or secondary precedent, and how will it benefit this research study?

Answer: _____

Archival data Qualifications:

Yes____ the archival data has met the requirements necessary for this research study.

No____ the participant has not met the necessary requirements for this research study.