

CONTENTS

Analyzing WONG V. REGENTS OF THE UNIVERSITY OF CALIFORNIA 25

Ali Tehrani

Ali introduces and then carefully scrutinizes the Supreme Court's recent, narrow definition of a qualifying "disability" for purposes of protection under the federal Americans with Disabilities Act. In the process, he explains why he believes a medical student with a learning disability was unfairly denied the opportunity to raise a potential claim under the Act.

Cite as:

4 UCI L. Forum J. 25 (Fall 2006).

Analyzing
WONG V. REGENTS OF THE UNIVERSITY OF CALIFORNIA

*Ali Tehrani**

INTRODUCTION

Becoming a doctor is no small feat. Andrew Wong was willing to devote whatever it took to become a doctor, which was a particular challenge since Wong had a learning disability. In 1990, President George H.W. Bush and the United States Congress took a significant step to ensure that individuals like Wong would not need to surrender their dreams simply because they had disabilities. The legislative intent of the 1990 Americans with Disabilities Act [ADA] was to provide legal accommodations to persons with disabilities so that these individuals could combat stereotypes and participate in mainstream society. However, under existing case precedent, this legislative intent has not been fully realized. In *Wong v. Regents of the University of California*, the Ninth Circuit Court of Appeals upheld the decision of the University of California at Davis to dismiss Andrew Wong from its medical school. The Ninth Circuit took the position that Wong's learning impairment, which the university itself had diagnosed, did not qualify as a "disability" worthy of ADA protection.¹

The Ninth Circuit sought to interpret and apply precedent in the *Wong* case; however, the legal standard employed by the Court was excessively strict in nature. The Ninth Circuit had no choice but to follow this precedent; however, the legal standard should never have reached this point in the first place. In addition to explaining the Ninth Circuit's ruling, this article will explore how the legal standard has evolved to the point that influenced the *Wong* Court's decision. This evolution in the legal standard has caused the courts to stray from the ADA's original intent, thereby leaving many persons with disabilities like Andrew Wong without the statutory protection that Congress intended to provide.

* Ali Tehrani is majoring in Political Science and will graduate from UCI in the spring of 2007. In addition to his contribution as an author, Ali has served as an editor for the Journal. He plans to continue his education by attending law school.

¹ *Wong v. Regents of the Univ. of Cal.*, 410 F.3d 1052, 1056 (9th Cir. 2005).

BACKGROUND

Throughout his life, Andrew Wong devoted himself to his studies and schoolwork in the hope of becoming a doctor. However, a number of obstacles stood in his way, the most notable being a learning disability that limited his ability to process information.² In kindergarten, Wong was identified by his school as having a learning impairment “that affects the way he processes written and verbal information and expresses himself verbally.”³ However, Wong developed compensatory means to overcome his impairment, and by “spend[ing] all of his extra time outside of school reading for classes” he was able to achieve considerable academic success.⁴ Wong’s determination in grammar school resulted in his certification as a gifted student.

In high school, Wong realized that if he were to continue his high level of academic success, he would require special accommodations to offset his learning impairment. As such, he often requested extra time on homework assignments and essay examinations. When provided extra time, Wong performed at high levels. After high school, Wong continued his education at San Francisco State University, where he devoted himself entirely to his studies and graduated *magna cum laude*.⁵

After graduation, Wong began his quest to gain admission to graduate school. Without any special accommodations, Wong gained entrance to the University of California, Davis, School of Medicine. In his first two years of medical study, Wong took academic courses in the basic sciences. In these courses, Wong performed admirably, garnering over a 3.0 grade point average without accommodations.⁶

During his third year in medical school, Wong was required to take special clerkship classes with a clinical, rather than academic, emphasis. In this setting, the extra accommodation was not always available. Without such accommodation, Wong failed his first clerkship. Soon after, however, his father was diagnosed with cancer and Wong requested time out of medical

² *Id.* at 1058.

³ *Id.* at 1056.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

school to be with him. During this period, he was able to devote extra time to his studies, and he successfully passed his next three clerkships.⁷ All the while, he still had to devote considerably more time to his studies than his classmates.

Upon eventual referral to the University's Disability Resource Center (DRC), Wong was diagnosed with a learning impairment that "affects the way he processes written and verbal information and expresses himself verbally."⁸ Wong had the capacity to comprehend his reading assignments, but his impediment made him a very slow reader. In fact, it was determined that Wong's "reading comprehension scores were in the 99th percentile when he was allowed to read without time limits, but ... under time constraints his scores dropped to the eighth grade level."⁹ The DRC recommended that Wong ask for "extra time to read and prepare for his clerkships."¹⁰

When given this extra time, Wong completed his clerkships with positive evaluations. However, he was later denied extra time to study for one of his clerkships and he consequently failed. He was then dismissed from the medical school on grounds of failing to meet the prescribed academic standards. Wong filed suit against the University, seeking accommodation for his disability under the Americans with Disabilities Act (ADA).¹¹

LEGAL STANDARD

General Legal Standard

When President George H.W. Bush signed the ADA into law in 1990, he stated that the "signing of the landmark ADA [would allow] every man, woman and child with a disability [to] pass through once-closed doors into a bright new era of equality, independence and freedom."¹² The ADA's stated goals included an end to disability discrimination, opening of new opportunities, and protection for over 43 million Americans with a wide range

⁷ *Id.*

⁸ *Id.* at 1058.

⁹ *Id.* at 1070.

¹⁰ *Id.* at 1057.

¹¹ *Id.* at 1056 (referencing the ADA, 42 U.S.C. § 12132 (1990)).

¹² Steny H. Hoyer, *Not Exactly as We Intended, Justice O'Connor*, Wash. Post, Jan. 20, 2002, at B01.

of disabilities.¹³ This figure, alone, demonstrates the massive scope of the group of persons meant to benefit from the ADA.

The ADA is organized into multiple titles. Title I deals with reasonable accommodations in the workplace, Title II deals with public services, and Title III applies to private parties who offer public accommodations and services.¹⁴ In order to obtain accommodation under the statute, a plaintiff with a disability must address three basic issues. First, the plaintiff must demonstrate that he has proper standing under the statute, otherwise referred to as a “qualifying disability.” Second, the plaintiff must demonstrate which of the three titles applies to his case, since the requirements and exceptions found within these titles vary somewhat. Third, the plaintiff must demonstrate that the accommodation he or she seeks can be deemed as “reasonable” under the specifications of the relevant title.

The focus of this article is the first step in the analysis, to determine whether Wong had a right to sue under the ADA at all. This means that the *Wong* Court did *not* reach the point of considering whether Wong’s specific request for accommodation was “reasonable.” Instead, this first step in the analysis targets the fact that not everyone with an impairment was to be considered “disabled” under the statute. To ensure that ADA protection was afforded only to those who were intended to receive it, a legal standard was specified. The ADA defines a “qualifying disability” as:

- (A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; and
- (B) a record of such impairment; or being regarded as having such an impairment.

The focus of attention in the *Wong* case was on subsection (A).¹⁵ In other words, did Wong have the type of “physical or mental impairment” (i.e., “disability”) that qualifies for protection under the ADA?

¹³ *Wong*, 410 F.3d at 1056.

¹⁴ The statute gives many illustrations of public accommodations, such as public parks, movie theaters, laundromats, hotels and restaurants, et cetera. ADA, 42 U.S.C. § 36203 (1990).

¹⁵ *Wong*, 410 F.3d at 1063.

Courts have dissected the ADA's language and held that identifying a statutorily protected disability involves three inquiries under subsection (A):

- (1) whether the condition is a *physical or mental impairment*,
- (2) whether the life activity in question is a *major life activity*, and
- (3) whether the impairment *substantially limits* the identified major life activity.¹⁶

Three cases involved in the evolution and interpretation of this standard — *Toyota Motor Manufacturing of Kentucky v. Williams*, *Price v. National Board of Medical Examiners*, and *Fraser v. Goodale* — will be examined in this article. All three cases contributed to the current judicial interpretation of the language at issue. Although the University itself diagnosed Andrew Wong with a “mental impairment,” Wong still needed to convince the court that his impairment “substantially limited” a “major life activity” in order to qualify for protection under the ADA.

“A Major Life Activity”

The *Toyota* case dealt specifically with the issue of what it takes to identify a “major life activity” under the ADA. Ella Williams suffered from carpal tunnel syndrome, a physical impairment which she claimed left her “disabled from performing her automobile assembly line job” and limited her in the ability to engage “in [the] constant repetitive ... extension of her wrists or elbows.”¹⁷ Though she was unable to perform repetitive activities at work, she was still able to engage in other manual tasks in her life, such as brushing her teeth and bathing.¹⁸ Toyota Motors, after initially accommodating her needs in the workplace, later required Ms. Williams to engage in tasks that her impairment prevented her from doing. As a result of her inability to perform the tasks, Toyota terminated Ms. Williams' employment, stating that she missed work too often.¹⁹ Ms. Williams filed suit claiming disability discrimination and requested ADA protection.

¹⁶ *Id.* at 1056 (emphasis added).

¹⁷ *Toyota Motor Mfg. Kentucky, Inc. v. Williams*, 534 U.S. 184, 188 (2002).

¹⁸ *Id.* at 201-02.

¹⁹ *Id.* at 190.

**University of California
Irvine
Law Forum Journal**

Vol. 4

Fall 2006

Although it was acknowledged that Ms. Williams had an impairment, the Supreme Court unanimously decided that her impairment did not qualify for ADA protection. In making this determination, the Court examined the applicable statutory definition for a qualifying disability:

a physical or mental impairment that substantially limits one or more of the *major life activities* of such individual.²⁰

Looking at the text of the ADA, the Court interpreted the word “major” in the phrase “major life activity” to mean “important.” The Court then went on to define the word “important” very narrowly, ruling that only “those activities that are of central importance to the [daily lives]” of the general population could be considered “major life activities.”²¹ Thus, walking, seeing and hearing, in addition to bathing or brushing one’s teeth, would be considered major life activities because such activities were considered central to the lives of the general population.²² Therefore, according to the Court, only a plaintiff who was limited in general activities of this type could seek accommodation under the ADA.

In applying this legal standard to the facts of the *Toyota* case, the Supreme Court found that Ms. Williams was not substantially limited in the major life activity of “performing manual tasks,” but rather in the specific activities of “repetitive work with hands and arms extended at or above shoulder levels for extended periods of time.”²³ The Court then ruled that, since repetitive extension of the wrists or elbows is not central to the daily lives of the general population, these actions could not be considered as “major life activity.”²⁴ This further led the Court to conclude that Ms. Williams was not “substantially limited” in any “major life activity,” and she therefore could not seek protection under the ADA.²⁵

The *Toyota* case significantly narrowed the scope of the ADA by stating that a very limited number of activities could be considered “major life

²⁰ *Wong*, 410 F.3d at 1063 (emphasis added).

²¹ *Toyota*, 534 U.S. at 197.

²² *Id.* The Court also interpreted the meaning of the word “substantially” to preclude impairments that interfere only in a *minor* way with performing a certain task. *Id.*

²³ *Id.* at 201.

²⁴ *Id.*

²⁵ *Id.* at 202.

activities.” This decision honed the relevant legal standard by stating that a “major life activity” must be of “central importance to daily life” of the population at large.²⁶ In other words, to determine the importance of the activity in which the plaintiff is experiencing a limitation, the court must look at the *importance* of that activity to the public at large.

“*Substantial Limitation*”

The facts of *Price v. National Board of Medical Examiners* are remarkably similar to the facts of the *Wong* case. The plaintiffs (Price and several fellow students who had achieved outstanding academic success without any special accommodations) claimed that they had been diagnosed with ADHD.²⁷ Insisting that this impairment qualified them for protection under the ADA, the students requested special accommodations in taking the United States Medical Licensing Exam [USMLE].²⁸ The National Board of Medical Examiners denied their request, and the students subsequently filed suit seeking ADA protection.

Price is significant because it interprets what it means for an individual to be “substantially limited” in a major life activity. Once again, recall that the ADA defines a qualifying disability as:

a physical or mental impairment that *substantially limits* one or more of the major life activities of such individual.²⁹

In *Price*, the court ruled that “an impairment *substantially limits* a person’s major life activity when the individual’s important life activities are restricted

²⁶ *Id.* at 197.

²⁷ *Price v. Nat’l Bd. of Med. Exam’rs.*, 966 F. Supp. 419, 422-23 (S.D. W. Va. 1997). Attention Deficit Hyperactive Disorder is commonly referred to as ADHD. “ADHD is characterized by a wide range of symptoms, including inability to concentrate, being easily distracted, fidgeting and restlessness, among others. Left untreated, ADHD can interfere with academic progress and social and emotional development.” Johns Hopkins Medicine, *Popular ADHD Drug Safe and Effective for Pre-Schoolers*, Oct. 23, 2006, http://www.hopkinsmedicine.org/Press_releases/2006/10_20_06.html.

²⁸ *Price*, 966 F. Supp. at 421.

²⁹ *Wong*, 410 F.3d at 1063 (emphasis added).

as to the conditions, manner, or duration under which they can be performed in comparison to most people in the general population.”³⁰

The *Price* Court concluded that “an individual is not substantially limited in a major life activity if the limitation does not amount to a significant restriction when compared with the abilities of the average person.”³¹ For instance, “a person who can walk for ten miles continuously is not substantially limited in walking merely because, on the eleventh mile, he or she begins to experience pain because *most people* would not be able to walk eleven miles without experiencing some discomfort.”³² Here, the person who can walk for ten miles must be compared to average people, not with a class of people who painlessly walk ten miles every day. Thus, to determine if a plaintiff’s disability presents a substantial limitation, the plaintiff’s abilities with regard to the relevant activity must be compared to the *abilities* of the rest of the population at large.

The *Price* Court then applied this standard to the facts of the case by focusing on the students’ abilities in comparison to most people in the general population, as opposed to most of their peers in medical school. The court assumed that since the students involved in this case had superb academic records, they must be better learners than the majority of the population; the majority of the population could not achieve the academic success that the students in question had achieved.³³

Since most members of the general population do not have the ability to enter medical school in the first place, the fact that these students gained entry was viewed as evidence that they were not “substantially limited” in the “major life activity of learning,” even if they could not learn as well as their fellow medical students at the University. Thus, the students with ADHD were denied ADA protection.³⁴

³⁰ *Price*, 966 F. Supp. at 422-23 (emphasis added).

³¹ *Id.* at 425.

³² *Id.*

³³ *Id.* at 427-28.

³⁴ *Id.* at 428.

An Individualized Inquiry

The case of *Fraser v. Goodale* highlights one more element in the evolution of the legal standard for a qualifying disability under the ADA.³⁵ While the *Toyota* Court interpreted a “major life activity” to be an activity that is central to the lives of the *general public*, and the *Price* decision stated that a plaintiff’s disability must “substantially limit” him when compared to *most people*, the *Fraser* decision called for an individualized inquiry of each person’s impairment.

Rebecca Fraser filed suit under the ADA claiming that she was dismissed from her job at a bank because she was diabetic.³⁶ Fraser did not suffer a benign form of diabetes, but was instead afflicted with “brittle” diabetes, meaning that her blood sugar levels were difficult to control. As such, Fraser had to take extreme precautionary measures before eating by checking her blood sugar levels several times a day. Without such measures, her life could be at risk.³⁷

One day Fraser’s supervisor, Jeff Erwin, informed her that she would no longer be permitted to eat at her desk.³⁸ Fraser obeyed her supervisor’s orders, but after her blood pressure dropped to thirty-four,³⁹ she informed him that she desperately needed to eat, explaining that her low blood pressure was the reason for her need. Erwin denied her request to eat, telling her to come back to him only when “she had an intelligent question to ask.”⁴⁰ Moments later, Fraser fainted. Fraser later filed a complaint against Erwin, although he was never disciplined. Shortly thereafter, Fraser was dismissed from her position at the bank and she later filed for ADA protection.⁴¹

³⁵ *Fraser v. Goodale*, 342 F.3d 1039 (9th Cir. 2004).

³⁶ *Id.* at 1034.

³⁷ *Id.* at 1035.

³⁸ *Id.*

³⁹ The normal range for blood pressure is between 100 to 130. Vaughn Aubuchon, *Blood Pressure Chart* (May 10, 2006), <http://www.vaughns-1-pagers.com/medicine/blood-pressure.htm>.

⁴⁰ *Fraser*, 342 F.3d at 1035.

⁴¹ *Id.*

In determining whether Fraser had a qualifying disability under the ADA, the Ninth Circuit Court of Appeals relied upon the legal standard provided in the *Toyota* case.⁴² Applying the general legal standard, the Ninth Circuit reviewed the lower court's reasoning to:

- (1) determine whether Fraser's diabetes was a *physical impairment*,
- (2) identify a life activity on which Fraser relied and determine if that *life activity* was "major," and
- (3) decide whether Fraser's impairment "*substantially limited*" her in that major life activity.

The Ninth Circuit found that Fraser's diabetes was indeed a physical impairment. The court then identified the life activity on which Fraser relied as "eating." Using the *Toyota* standard, the court ruled that eating is "central to the life process itself," and is of "central importance to most people's daily lives."⁴³ As such, the majority of the appellate panel found that eating was definitely a *major life activity*.⁴⁴

Next, the court considered whether Fraser was "substantially limited" in the major life activity of eating, stating that to meet the standard she had to be "significantly restricted as to the condition, manner or duration under which [she] can perform a major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity."⁴⁵

The *Fraser* Court interpreted this to mean not only that an impaired individual must be compared with other people to determine whether or not the individual is substantially limited, but also that a case-specific, "individualized" inquiry into the abilities of each plaintiff must be made to determine if that individual is substantially limited.⁴⁶ According to the court, "[W]e do not decide whether every diabetic is disabled, and we do not decide whether every

⁴² *Id.* at 1040.

⁴³ *Id.* at 1039-40.

⁴⁴ *Id.* at 1040. In a dissenting opinion, Judge Richard Tallman applied the definition of "eating" from the *Webster's New Collegiate Dictionary* to argue that Frasier was not substantially limited in her ability to eat because her ability to "take in (food) through the mouth" was not affected by her disability. *Id.* at 1045.

⁴⁵ *Id.* at 1035.

⁴⁶ *Id.* at 1039.

severely obese person is not disabled. Instead, whether a person is disabled under the ADA is an individualized inquiry.”⁴⁷ In its *individualized inquiry*, the court concluded that because Fraser’s diabetes regimen was perpetual, severely restrictive, and highly demanding, her ability to eat *was* substantially limited, and she did qualify for ADA protection.⁴⁸

APPLICATION OF THE LEGAL STANDARD IN *WONG*

The Majority Opinion

To review, the ADA defines a disability as “a physical or mental impairment that substantially limits one or more of the major life activities of such individual.”⁴⁹ As such, considering whether Wong’s condition constitutes a qualifying disability involves three inquiries:

- (1) whether the condition is a *physical or mental impairment*,
- (2) whether the life activity in question is a *major life activity*, and
- (3) whether the impairment *substantially limits* the identified major life activity.⁵⁰

The cases of *Toyota*, *Price*, and *Fraser* all contribute to the interpretation of this standard. *Toyota* defined a “major life activity” to be an activity central to the lives of the general public. *Price* specified that an impaired person is only “substantially limited” to the degree that he or she cannot engage in a major life activity in comparison with other members of the general public. Finally, *Fraser* calls for an individualized inquiry into these factors with regard to each particular plaintiff. Against this backdrop, the Ninth Circuit applied the standard to the facts of the *Wong* case to conclude that Andrew Wong did *not* have a qualifying disability under the ADA.

⁴⁷ *Id.*

⁴⁸ *Id.* at 1045.

⁴⁹ *Wong*, 410 F.3d at 1063.

⁵⁰ *Id.* at 1056 (emphasis added).

First, both Wong and the University's Disability Resource Center believed that Wong had a *mental impairment*. On its own, that fact was not in dispute. Instead, the parties disagreed as to how the next two elements of the legal standard should be applied.

Second, in order for Wong's learning impairment to be a qualifying disability under the ADA, it must have substantially limited him in a "*major life activity*."⁵¹ Using the *Toyota* case precedent, the *Wong* Court interpreted the facts of the case narrowly, deciding that Wong was not "substantially limited" in the "major life activit[ies]" of learning or reading. The court interpreted reading to be a "major life activity" only when the reading is of a nature that is *central to the lives of the general population*. However, Wong was not concerned with "read[ing] newspapers, government forms, street signs, or the like[.]" but rather with reading graduate level biology textbooks.⁵² Thus, the specific type of learning or reading at issue in his case did not rise to the level that the court was willing to treat as a major life activity for the general population.

Third, the court employed the legal reasoning of *Price* to conclude that even if the activity in which Wong claimed to be limited *was* a major life activity, he would not be "substantially limited" in such activity because an average person in the population would also fail in the comprehension of graduate level biology material. The court felt that "the relevant question for determining whether Wong [was] disabled under the Act [was] not whether he might be able to prove to a trier of fact that his learning impairment [made] it impossible for him to keep up with a rigorous medical school curriculum;" rather the question "was whether his impairment substantially limited his ability to learn as a whole, for purposes of daily living, as compared to most people."⁵³

The court ruled that Wong's high level of performance in his first two years of medical school "made implausible his contention that he was disabled in the activity of 'learning' as compared to most people," since most people could not do well in advanced biology classes.⁵⁴ Thus, using the comparative standard set forth in *Price*, the Ninth Circuit Majority ruled that Wong could not be considered "substantially limited" in a "major life activity." Therefore,

⁵¹ *Id.* at 1064 (emphasis added).

⁵² *Id.* at 1066.

⁵³ *Id.* at 1065.

⁵⁴ *Id.*

he did not qualify for ADA protection and the University was under no statutory obligation to accommodate his disability.⁵⁵

Judge Thomas' Dissent

In applying the legal standard, which states that a “physical or mental impairment [must] substantially [limit] one or more of the major life activities of the individual,” Judge Thomas of the Ninth Circuit argued that Wong’s mental impairment does indeed substantially limit him in the major life activity of reading.⁵⁶ In analyzing the facts of the case, Thomas observed that when given extra time, Wong performed well in his classes. Thomas also observed that while Wong read at an eighth grade level when faced with time constraints, he read at the 99th percentile when there were no time limits.

Judge Thomas employed these facts to illustrate that in comparison with other people, Wong did perform significantly worse than a person in the general population in the major life activity of reading.⁵⁷ For this reason, Thomas believed that Wong was “substantially limited” in his reading and learning.

Furthermore, Judge Thomas argued that it is “uncontested” that “learning” is a major life activity under the ADA.⁵⁸ However, the Majority ruled that Wong was limited in the activity of learning *complex medical school material*, not limited in learning in general. Thomas, in contrast, took a broader view. He urged the Majority not to assume that “success definitely disproves the existence of a learning disability.”⁵⁹ Citing *Fraser* and its call for individual assessment, Judge Thomas argued that the court cannot assume a student is not disabled simply because he is successful. In Thomas’ view, Wong *is* “substantially limited” in the “major life activity of learning,” and as such, he should be afforded protection under the ADA.⁶⁰

⁵⁵ *Id.* at 1066.

⁵⁶ *Id.* at 1069-70.

⁵⁷ *Id.* at 1070.

⁵⁸ *Id.* at 1069.

⁵⁹ *Id.* at 1067.

⁶⁰ *Id.* at 1070.

ANALYSIS

The *Wong* Majority erred in ruling that Wong was not “substantially limited” in the “major life activity” of learning, primarily because the court based its reasoning on the faulty legal standard developed in the *Toyota* case. Hence, before one can understand how the Ninth Circuit came to its decision in *Wong*, one must first understand the faults evident within the *Toyota* legal standard.

Defining “Major Life Activity”

The *Toyota* case set forth an excessively strict standard, under which an individual such as Andrew Wong is not protected under the ADA unless he is “unable to perform the variety of tasks central to most people’s daily lives.”⁶¹ In examining how the Supreme Court arrived at this standard, several fallacies in the reasoning of the *Toyota* Court become evident. Again, recall that the ADA defines a disability as:

“a physical or mental impairment that substantially limits one or more of the *major life activities* of such individual.”

The *Toyota* Court primarily focused on the meaning of “major life activities” in its decision. However, the Court did not examine legislative history to interpret what the ADA’s phrase “major life activities” means.

Rather, the Court employed Webster’s dictionary to interpret the phrase “major life activities” and found that:

“Major” in the phrase “major life activities” means important. See Webster’s ... (defining “major” as greater in dignity, rank, importance or interest). “Major life activities” thus refers to those activities that are of *central* importance to *daily life*.⁶²

The reasoning of the Court here is erroneous and invalid. The Court equates “major life activities” to “important.” As a result of this equation, the Court concludes that “major life activities” thus refers to those activities that are of “central importance to daily life.”

⁶¹ *Toyota*, 534 U.S. at 201.

⁶² *Id.* at 195 (emphasis added).

However, the Court does not provide any reasoning as to how or why “major life activities” thus refers to those activities that are of central importance to daily life.” That conclusion simply does not follow from the premises the Court lays out. The inclusion of the word “central” in the Court’s conclusion is completely arbitrary.

The reasoning of the Court does not logically establish its conclusion that major life activities “are of central importance to daily life.” Instead, what *does* logically follow from the Court’s reasoning is that “major life activities” refer to “important life activities,” since if “major” means “important,” then “major life activities” should mean “important life activities.” However, “important life activities” are not necessarily of central importance to daily life. For instance, most would agree that learning at a university is an “important life activity.” As such, under the construct of the Court’s reasoning, one would expect that learning at a university level would be considered a “major life activity.” However, because the *Toyota* Court erroneously included the term “central” in its reasoning, the *Wong* Court, following the *Toyota* standard, was forced to rule that learning at a university level is *not* a “major life activity.”

In addition to the arbitrary inclusion of the term “central” in its definition of “major life activities,” the *Toyota* Court’s definition includes the phrase “daily life.” Like the term “central,” the phrase “daily life” is arbitrarily included in the Court’s definition of “major life activity.” Certainly, “important life activities” exist that do not directly pertain to daily life. For instance, the activity of test-taking has enormous importance for all students; however, most people do not take a test as often as they brush their teeth or bathe. Yet, one’s performance on a test can affect the rest of one’s life. Therefore, test-taking should be considered a “major life activity.” However, because the *Toyota* Court, without any logical basis, included the phrase “daily life” in its definition of “major life activity,” test-taking is not considered a “major life activity” under the ADA.

Thus, as a result of the terms “central” and “daily life” that were erroneously placed in the definition of “major life activity” by the *Toyota* Court, the *Wong* Court was required to work with a faulty interpretation of the ADA’s legal standard in deciding Andrew Wong’s case.

Applying the Toyota Legal Standard to Wong

The *Wong* Court, using the excessively narrow standard developed by *Toyota*, ruled that Andrew Wong did not qualify for protection under the ADA. The *Wong* Court's main issue was to determine whether or not Wong was disabled. Again, the ADA defines disability to mean:

“a physical or mental impairment that substantially limits one or more of the *major life activities of such individual*.”

However, the *Wong* Court did not apply this exact wording to determine Wong's claim of disability. Instead, the *Wong* Court relied on the strict standard articulated by the Supreme Court in *Toyota*. The *Wong* Court stated that “the question ... is whether Wong presented sufficient evidence to demonstrate that he was substantially limited in the specified major life activities for purposes of *daily living*.”⁶³ Thus, the *Toyota* Court's arbitrary inclusion of the phrase “daily living” in its interpretation of the ADA had great influence in the *Wong* Court's eventual decision to deny Wong ADA protection.

The *Wong* Court, in explaining its interpretation of the *Toyota* standard, stated that “the ability to perform manual tasks should be evaluated not by what claimant's job might require, but by claimant's ability to perform household chores, bathe and brush [one's] teeth.”⁶⁴ In other words, in determining what constitutes a disability, the court was only willing to consider those vital tasks that are a part of the *daily lives* of the *general public*, as opposed to those tasks unique to the individual plaintiff.

The court then proceeded to reason that “[in] this case, Wong [did] not [establish] that he was unable to read newspapers, government forms, street [signs] or the like.”⁶⁵ Thus, since Wong is not substantially limited in that form of reading that is “central to most peoples' daily lives,” the court did not believe his disability qualified for ADA protection.

By arbitrarily employing the words “daily life” and “central” in its legal standard, the *Toyota* Court significantly narrowed the scope of the ADA at the expense of arguably legitimate disabilities. As mentioned earlier, reading and studying in a graduate school context are indeed “important life activities” for

⁶³ *Wong*, 410 F.3d at 1065 (emphasis added).

⁶⁴ *Id.* at 1066.

⁶⁵ *Id.*

Andrew Wong and other graduate students. Had the *Wong* Court been able to employ a legal standard that simply stated a disabled individual is one who is substantially limited in “important life activities,” reading and studying for a university class could have been legitimately taken into consideration and Andrew Wong may have been afforded protection under the ADA.

Defining “Substantially Limited”

While the *Toyota* decision primarily focused on the definition of “major life activity,” the *Price* case dealt with the definition of “substantially limited” in the ADA’s definition of disability. Again, the ADA defined a disability to be:

“a physical or mental impairment that *substantially limits* one or more of the major life activities of such individual.”

In *Price*, the court stated “an impairment substantially limits a person’s major life activity when the individual’s important life activities are restricted as to the conditions, manner, or duration under which they can be performed *in comparison to most people in the general population.*”⁶⁶

The *Wong* Court used the spirit of this language to find that “Wong’s claim to be ‘disabled’ was contradicted by his ability to achieve academic success.”⁶⁷ In other words, the court viewed Wong’s success as evidence that his abilities somehow exceeded those of the general population. The *Wong* Court further stated that “the relevant question for determining whether Wong [was] disabled ... was whether his impairment substantially limited his ability to learn as a whole, for purposes of daily living, as compared to most people.”⁶⁸ Ultimately, the court ruled that since, in comparison with most people, Wong had achieved great academic success, he could not be considered disabled.

The core problem with this legal standard is that it fallaciously implies that “success definitely disproves the existence of a learning disability.”⁶⁹ The *Wong* Court failed to consider that simply because an individual performs at a high level does not preclude the possibility that the individual is disabled. The

⁶⁶ *Price*, 966 F. Supp. at 422 (emphasis added).

⁶⁷ *Wong*, 410 F.3d at 1065.

⁶⁸ *Id.*

⁶⁹ *Id.* at 1067.

court fallaciously reasoned that because Wong had a history of academic success, he was a better learner than the average person. However, Wong's academic achievement was not an indicator of his ability to learn; it was simply an indicator of his hard work and his prior grades.

Wong did not necessarily learn better or read faster than his peers *or* the average person. In fact, Wong was a slower reader and learner than his peers as evidenced by the fact that he read at an eighth grade level when given time restraints. Rather, Wong's will to succeed academically led him to address his disability by devoting extra time to his studies. He also achieved most of these high marks when he *was* allowed the extra reading time he needed to keep up with his peers. Without the power of the ADA to ensure continued accommodation, Wong would *not* be able to achieve the same academic success. The need to implement accommodations for his disability illustrates that Wong *was* substantially limited in his reading ability within the context of ADA protection.

However, Wong chose not to submit to his impairment; he devoted himself to his study and his will to succeed academically brought him academic success. Thus, as a result of working too hard, Wong essentially worked himself out of ADA protection. While an individual may perform at a high level, it should not preclude the possibility that the individual is also dealing with a disability worthy of accommodation under the ADA.

By comparing Wong's achievement with the achievement of others, the *Price* standard has the effect of penalizing Wong for his will power. If Wong studied as much as his peers and performed poorly, he probably would have been afforded protection. However, since he put more effort into his studies than his peers, he was denied ADA protection. The goal of the ADA should not be to make people average; the goal of the ADA should be to give everyone an *equal opportunity to excel*. Unfortunately, the comparative standard of *Price*, with its emphasis on the abilities of the general public, precluded Wong from entitlement to this opportunity. Because Wong refused to be average, he was not afforded the ADA protection that he deserved.

Reconciling Toyota and Price with Fraser and the Spirit of the ADA

President George H.W. Bush believed the ADA would have the effect of allowing "every man, woman and child with a disability [to] pass through once-closed doors into a bright new era of equality, independence and

freedom."⁷⁰ Yet, in practice, the spirit of the ADA has not translated well into actual legal implementation. Steny H. Hoyer, who led the House of Representatives in passing the ADA, writes that, "[t]he ADA was designed to extend protection to people working in the private sector and seeking access to public accommodations...."⁷¹ However, the *Toyota* ruling set a standard at odds with this design. The ADA was intended to bring equal opportunity to individuals with disabilities. The *Toyota* ruling, however, altered its effect by narrowing its scope.

Because of *Toyota*, the ADA does not ensure equality to the disabled in the manner envisioned by its legislators. The *Toyota* decision stated that "the central inquiry [in determining a disability] must be whether the claimant is unable to perform the tasks central to most people's daily lives, not whether the claimant is unable to perform the tasks associated with [one's] specific job."⁷² This is incompatible with Hoyer's belief that the ADA was designed to "extend protection to people working in the private sector."⁷³ The tasks central to most people's daily lives are not the ones that are valued in the private sector. Very few people, if any, earn a living and support themselves simply by bathing or brushing their teeth.

The tasks that are of true importance to those in the private sector are those unique tasks that are associated with one's job, the very sort of tasks that the *Toyota* Court ruled the ADA does *not* cover. Thus, a person who can only perform a unique task at work with special accommodations will not be afforded ADA protection because specialized tasks are not central to the lives of the *general public*. Interpreted in such a manner, the ADA becomes too restrictive and inflexible to achieve its stated goal. Because most jobs consist of specialized tasks, rather than "major life activities" that are of central importance to most people's daily lives such as "household chores, bathing and brushing one's teeth," this interpretation of the ADA is excessively narrow.

In his dissent to the *Wong* decision, Judge Thomas also pointed out:

One of the central purposes ... of the Americans with Disabilities Act is to provide equal opportunity for those

⁷⁰ Hoyer, *supra*.

⁷¹ Hoyer, *supra*.

⁷² *Toyota*, 534 U.S. at 200-01.

⁷³ Hoyer, *supra*.

individuals who are qualified to receive government services but cannot complete the program requirements without a reasonable accommodation of their disability.⁷⁴

The ADA's purpose of providing equal opportunity was thwarted by *Toyota* and *Price*.

Rather than providing for an individualized inquiry about the specific needs of persons with disabilities, as the *Fraser* Court did, the *Toyota* Court developed a legal standard under which no individual's unique needs are served and in which an individual's opportunity to strive for one's unique ambitions are not protected. If one's disability stands in the way of an activity that may be of great importance to one's own life, but to few others, then that person is afforded no protection under the ADA.

No account of individuality is made in the *Toyota* case. Rather, the only activities and opportunities protected are those considered to be "major life activities" central to the lives of the general population. However, the ADA did not need to be so narrow in scope. Recall the argument that the terms "central" and "daily lives" were added erroneously to the *Toyota* standard. If "major life activities" central to the daily lives of the general population were simply considered to be "important life activities," courts would be able to consider life activities unique to one's own self as "major life activities." Instead, such unique activities, however important they may be to an individual, are considered negligible by the *Toyota* standard unless the activity is central to the daily lives of the general population.

Slight variations in the wording used by the *Toyota* Court could have prevented this restrictive interpretation of the statute. Had the *Toyota* Court inquired deeper into the legislative intent behind the law, instead of turning to the vague entry found in a dictionary, the current reach of the statute might be quite different and Andrew Wong might have obtained the reading accommodation he sought. At the very least, Wong would have been given a chance to proceed with the next steps of his case under the ADA.

⁷⁴ *Wong*, 410 F.3d at 1067.

CONCLUSION

Though Andrew Wong suffers from a learning impairment, the Ninth Circuit Court of Appeals denied him protection under the ADA by using a faulty, excessively narrow legal standard developed within the *Price* and *Toyota* decisions. The Ninth Circuit is required to work within the framework of the legal system, and as such, it was obligated to follow the faulty standard set by the Supreme Court in the *Toyota* decision. However, a close examination of the standard developed by the Supreme Court shows that standard to be flawed and erroneous. The scope of the ADA was significantly narrowed by the *Toyota* decision. As interpreted by *Toyota*, the ADA does not offer those with disabilities a chance to be unique, but protects them only to the extent needed to make them average.

The ADA was intended to protect a diverse group of people with different goals and aspirations; however, the *Toyota* Court's interpretation of the ADA provides those with disabilities a chance to pursue only the most mundane jobs – those jobs which consist solely of the basic tasks of central importance to the lives of the general population. What is needed now are appeals to the Supreme Court in ADA cases to overrule the standard set by *Toyota* in favor of a standard that ensures persons with disabilities an equal opportunity to compete and take part in all activities, not just those activities that are of central importance to the lives of the general population. There may come a time when those with disabilities can live a life of inclusion, a life with opportunities equal to the opportunities available to those without disabilities. However, before this time can be realized, the narrow definition of ADA protection crafted by the *Toyota* Court must be overruled.