

# NEUROLOGICAL INJURY PROTECTION ACT OF 2011

## Findings and purpose

### (a) Findings

The Congress will find that

(1) physical, cognitive, and/or emotional disabilities caused by neurological injury or by trauma in no way diminish a person's right to the protections guaranteed by the U.S. Constitution and the right to fully participate in all aspects of society, yet many military veterans and/or civilians with physical, cognitive, and/or emotional disabilities directly related to the traumas of war have been precluded from doing so because of discrimination and willful ignorance; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination and require legal protection(s);

(2) historically, society has tended to isolate and segregate military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war, and, despite some improvements, such forms of discrimination against military veterans and/or civilians with these disabilities continue to be a serious and pervasive social problem;

(3) discrimination against military veterans and/or civilians with physical, cognitive, and/or emotional disabilities directly related to the traumas of the Iraq and Afghanistan wars persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting and access to public services;

(4) a fiduciary standard regarding the relationship between a guardian and a military veteran and/or civilian with physical, cognitive, and/or emotional disabilities associated with the traumas of war is necessary; the standard will be a Clear and Convincing Evidence standard for what is necessary to be a guardian of people affected by these traumas;

(5) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, age, or developmental disability, military veterans and/or civilians who have experienced discrimination on the basis of neurological injury related to the trauma of war have often had no legal recourse to redress such discrimination;

(6) military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war continually encounter various forms of discrimination, including outright intentional exclusion, the

discriminatory effects of architectural, transportation needs, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(7) census data, national polls, and other studies have documented military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(8) the Nation's proper goals regarding military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war are to assure equality of opportunity, full participation, independent living to the maximum extent possible, and economic self-sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denied military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting in dependency and non-productivity.

(10) NIDRR (National Institute of Disability and Rehabilitation Research) generated medical data over 20-years show that morbidity, post neurological injury, for non-military survivors of brain injury is poor. Examples of full recovery from brain injury (GCS<4) are so rare, they were excluded from the civilian study.

#### (b) Purpose

It is the purpose of this Act

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war;

(3) while Congress expected that the definition of disability under NIPA (Neurological Injury Protection Act of 2011) would be interpreted broader and

with more detail than how veteran courts and non-veteran courts had applied the definition previously;

(4) to ensure that the Federal Government plays a central role in enforcing the standards established in this Act on behalf of military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war;

(5) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of war;

(6) to eliminate societal barriers attached to military veterans and/or civilians who are: (i) Homeless, and who suffer from (ii) PTS and/or (iii) Chronic Depression;

(7) to conduct a 1-year, 3-year, and 5-year epidemiological study funded through the VA, NIH and DOE annual budgets to examine the pros and cons associated with real life experiences of military veterans diagnosed with TBI/PTS/Depression as they proceed through the community reintegration process; and

(8) to identify a non-partisan board to evaluate the results of each stage of the epidemiological study bi-yearly and make immediate changes to the community reintegration process to reflect the aforementioned results.

#### (a) Findings

Congress finds that–

(1) in enacting the Neurological Injury Protection Act of 2011 (NIPA), Congress intended that the Act “provide a clear and comprehensive national mandate for the elimination of discrimination against military veterans and/or civilians with physical, cognitive, and/or emotional disabilities associated with the traumas of the Iraq & Afghanistan wars” and provide broad coverage;

(2) ) in enacting the Neurological Injury Protection Act of 2011 (NIPA), Congress intended that the Act “provide a fiduciary standard regarding the relationship between a guardian and individuals with physical, cognitive, and/or emotional disabilities associated with the traumas of war is necessary.” The standard will be a Clear and Convincing Evidence standard for what is necessary to be a guardian of people affected by these traumas;

(3) in enacting the NIPA, Congress recognized that physical, cognitive, and/or emotional disabilities in no way diminishes a military veteran's and/or civilian's right to fully participate in all aspects of society, but that military veterans and/or civilians with physical, cognitive, and/or emotional disabilities are frequently precluded from doing so because of prejudice, antiquated attitudes, or the failure to remove societal and institutional barriers;

(4) the NIPA will expand the holdings of the Supreme Court in *Sutton v. United Air Lines, Inc.*, 527 U.S. 471 (1999), and its companion cases, which have narrowed the broad scope of protection intended to be afforded by the ADA, thus improving protection for many military veterans and/or civilians with physical, cognitive, and/or emotional disabilities whom both Houses of Congress intended to protect;

(5) the holding of the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), further narrowed the broad scope of protection intended to be afforded by the ADA;

(6) as a result of these Supreme Court cases, lower courts have incorrectly found in individual cases that military veterans and/or civilians with a range of substantially limiting impairments are not people with disabilities;

(7) in particular, the Supreme Court, in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), interpreted the term "substantially limits" to require a greater degree of limitation than was intended by Congress;

(8) the military veterans and/or civilians medical disability board should be compelled to determine a percentage of disability (ten percent - one hundred percent) assessment within a 45 day period for all military veterans and/or civilians seeking compensation under for the aforementioned illnesses stipulated herein;

(9) the relevant VA employee needs to be retrained in assessing the definitive medical disabilities discussed in this Act upon determining compensation for their medical condition; and

(10) Congress finds that the current Equal Employment Opportunity Commission ADA regulations defining the term "substantially limits" as "significantly restricted" are inconsistent with congressional intent, by expressing too high a standard.

(b) Purposes

The purposes of this Act are–

(1) to carry out the NIPA’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 NIPA;

(2) to carry out the NIPA’s objectives of providing a fiduciary standard regarding the relationship between a guardian and a military veteran and/or civilian with physical, cognitive, and/or emotional disabilities associated with the traumas of war” by reinstating a broad scope of protection to be available under the NIPA;

(3) 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;

(4) 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;

(5) to reject the standards enunciated by the Supreme Court in *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), that the terms “substantially” and “major” in the definition of disability under the ADA “need to be interpreted broadly to satisfy the “Modica standard” for qualifying as disabled,” and that to be substantially limited in performing a major life activity under the NIPA “a veteran must have a physical, cognitive, and/or emotional impairment that prevents or severely restricts the veteran from doing activities that are of central importance to most people’s daily lives”;

(6) to convey congressional intent that the standard created by the Supreme Court in the case of *Toyota Motor Manufacturing, Kentucky, Inc. v. Williams*, 534 U.S. 184 (2002), for “substantially limits”, and applied by lower courts in numerous decisions, has created an inappropriately high level of limitation necessary to obtain coverage under the ADA, to convey that it is the intent of Congress that the primary object of attention in cases brought under the NIPA should be whether entities covered under the NIPA have complied with their obligations, and to convey that the question of whether an individual’s impairment is a disability under the NIPA should not demand extensive analysis; and

(7) to express Congress’ expectation that the Equal Employment Opportunity Commission will revise that portion of its current regulations that defines the term

“substantially limits” as “significantly restricted” to be consistent with this Act, including the amendments made by this Act.