SUPREME COURT OF THE UNITED STATES

No. 97–1943

KAREN SUTTON AND KIMBERLY HINTON, PETITIONERS *v.* UNITED AIR LINES, INC.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 22, 1999]

JUSTICE BREYER, dissenting.

We must draw a statutory line that either (1) will include within the category of persons authorized to bring suit under the Americans with Disabilities Act of 1990 some whom Congress may not have wanted to protect (those who wear ordinary eyeglasses), or (2) will exclude from the threshold category those whom Congress certainly did want to protect (those who successfully use corrective devices or medicines, such as hearing aids or prostheses or medicine for epilepsy). Faced with this dilemma, the statute's language, structure, basic purposes, and history require us to choose the former statutory line, as JUSTICE STEVENS (whose opinion I join) well explains. I would add that, if the more generous choice of threshold led to too many lawsuits that ultimately proved without merit or otherwise drew too much time and attention away from those whom Congress clearly sought to protect, there is a remedy. The Equal Employment Opportunity Commission (EEOC), through regulation, might draw finer definitional lines, excluding some of those who wear eyeglasses (say, those with certain vision impairments who readily can find corrective lenses), thereby cabining the overly broad extension of the statute that the majority fears.

The majority questions whether the EEOC could do so,

for the majority is uncertain whether the EEOC possesses typical agency regulation-writing authority with respect to the statute's definitions. See *ante*, at 6–7. The majority poses this question because the section of the statute, 42 U. S. C. §12116, that says the EEOC "shall issue regulations" also says these regulations are "to carry out *this subchapter*" (namely, §12111 to §12117, the employment subchapter); and the section of the statute that contains the three-pronged definition of "disability" precedes "*this* subchapter," the employment subchapter, to which §12116 specifically refers. (Emphasis added).

Nonetheless, the employment subchapter, *i.e.*, "*this* subchapter," includes other provisions that use the defined terms, for example a provision that forbids "discriminat[ing] against a qualified individual with a disability because of the disability." §12112(a). The EEOC might elaborate through regulations the meaning of "disability" in this last-mentioned provision, if elaboration is needed in order to "carry out" the substantive provisions of "this subchapter." An EEOC regulation that elaborated the meaning of this use of the word "disability" would fall within the scope *both* of the basic definitional provision and also the substantive provisions of "*this*" later subchapter, for the word "disability" appears in both places.

There is no reason to believe that Congress would have wanted to deny the EEOC the power to issue such a regulation, at least if the regulation is consistent with the earlier statutory definition and with the relevant interpretations by other enforcement agencies. The physical location of the definitional section seems to reflect only drafting or stylistic, not substantive, objectives. And to pick and choose among which of "*this* subchapter[']s" words the EEOC has the power to explain would inhibit the development of law that coherently interprets this important statute.