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 STEVENS, with whom JUSTICE BREYER joins, dissenting.

When it enacted the Americans with Disabilities Act in 1990, Congress certainly did not intend to require United Air Lines to hire unsafe or unqualified pilots. Nor, in all likelihood, did it view every person who wears glasses as a member of a "discrete and insular minority." Indeed, by reason of legislative myopia it may not have foreseen that its definition of "disability" might theoretically encompass, not just "some 43,000,000 Americans," 42 U. S. C. §12101(a)(1), but perhaps two or three times that number. Nevertheless, if we apply customary tools of statutory construction, it is quite clear that the threshold question whether an individual is "disabled" within the meaning of the Act– and, therefore, is entitled to the basic assurances that the Act affords– focuses on her past or present physical condition without regard to mitigation that has resulted from rehabilitation, self-improvement, prosthetic devices, or medication. One might reasonably argue that the general rule should not apply to an impairment that merely requires a nearsighted person to wear glasses. But I believe that, in order to be faithful to the remedial purpose of the Act, we should give it a generous, rather than a miserly, construction.

There are really two parts to the question of statutory

construction presented by this case. The first question is whether the determination of disability for people that Congress unquestionably intended to cover should focus on their unmitigated or their mitigated condition. If the correct answer to that question is the one provided by eight of the nine Federal Courts of Appeals to address the issue,[1] and by all three of the Executive agencies that have issued regulations or interpretive bulletins construing the statute– namely, that the statute defines "disability" without regard to ameliorative measures– it would still be necessary to decide whether that general rule should be applied to what might be characterized as a "minor, trivial impairment." *Arnold* v. *United Parcel Service, Inc.*, 136 F. 3d 854, 866, n. 10 (CA1 1998) (holding that unmitigated state is determinative but suggesting that it "might reach a different result" in a case in which "a simple, inexpensive remedy," such as eyeglasses, is available "that can provide total and relatively permanent control of all symptoms"). See also *Washington* v. *HCA Health Servs.*, 152 F. 3d 464 (CA5 1998) (same), cert. pending, No. 98–1365. I shall therefore first consider impairments that Congress surely had in mind before turning to the special facts of

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[1] See *Bartlett* v. *New York State Bd. of Law Examiners*, 156 F. 3d 321, 329 (CA2 1998), cert. pending, No. 98–1285; *Washington* v. *HCA Health Servs. of Texas*, 152 F. 3d 464, 470–471 (CA5 1998), cert. pending, No. 98–1365; *Baert* v. *Euclid Beverage, Ltd.*, 149 F. 3d 626, 629–630 (CA7 1998); *Arnold* v. *United Parcel Service, Inc.*, 136 F. 3d 854, 859–866 (CA1 1998); *Matcza* v. *Frankford Candy & Chocolate Co.*, 136 F. 3d 933, 937–938 (CA3 1997); *Doane* v. *Omaha*, 115 F. 3d 624, 627 (CA8 1997); *Harris* v. *H & W Contracting Co.*, 102 F. 3d 516, 520–521 (CA11 1996); *Holihan* v. *Lucky Stores, Inc.*, 87 F. 3d 362, 366 (CA9 1996). While a Sixth Circuit decision could be read as expressing doubt about the majority rule, see *Gilday* v. *Mecosta County*, 124 F. 3d 760, 766–768 (1997) (Kennedy, J., concurring in part and dissenting in part); *id.*, at 768 (Guy, J., concurring in part and dissenting in part), the sole holding contrary to this line of authority is the Tenth Circuit's opinion that the Court affirms today.

this case.

I

"As in all cases of statutory construction, our task is to interpret the words of [the statute] in light of the purposes Congress sought to serve." *Chapman* v. *Houston Welfare Rights Organization*, 441 U. S. 600, 608 (1979). Congress expressly provided that the "purpose of [the ADA is] to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U. S. C. §12101(b)(1). To that end, the ADA prohibits covered employers from "discriminat[ing] against a qualified individual *with a disability* because of the disability" in regard to the terms, conditions, and privileges of employment. 42 U. S. C. §12112(a) (emphasis added).

The Act's definition of disability is drawn "almost verbatim" from the Rehabilitation Act of 1973, 29 U. S. C. §706(8)(B). *Bragdon* v. *Abbott*, 524 U. S. 624, 631 (1998). The ADA's definition provides:

> "The term 'disability' means, with respect to an individual–
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> "(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual;
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> "(B) a record of such an impairment; or
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> "(C) being regarded as having such an impairment." 42 U. S. C. §12102(2).

The three parts of this definition do not identify mutually exclusive, discrete categories. On the contrary, they furnish three overlapping formulas aimed at ensuring that individuals who now have, or ever had, a substantially limiting impairment are covered by the Act.

An example of a rather common condition illustrates this point: There are many individuals who have lost one

or more limbs in industrial accidents, or perhaps in the service of their country in places like Iwo Jima. With the aid of prostheses, coupled with courageous determination and physical therapy, many of these hardy individuals can perform all of their major life activities just as efficiently as an average couch potato. If the Act were just concerned with their present ability to participate in society, many of these individuals' physical impairments would not be viewed as disabilities. Similarly, if the statute were solely concerned with whether these individuals viewed themselves as disabled– or with whether a majority of employers regarded them as unable to perform most jobs– many of these individuals would lack statutory protection from discrimination based on their prostheses.

The sweep of the statute's three-pronged definition, however, makes it pellucidly clear that Congress intended the Act to cover such persons. The fact that a prosthetic device, such as an artificial leg, has restored one's ability to perform major life activities surely cannot mean that subsection (A) of the definition is inapplicable. Nor should the fact that the individual considers himself (or actually is) "cured," or that a prospective employer considers him generally employable, mean that subsections (B) or (C) are inapplicable. But under the Court's emphasis on "the present indicative verb form" used in subsection (A), *ante*, at 9, that subsection presumably would not apply. And under the Court's focus on the individual's "presen[t]– not potentia[l] or hypothetica[l]"– condition, *ibid.*, and on whether a person is "precluded from a broad range of jobs," *ante*, at 18, subsections (B) and (C) presumably would not apply.

In my view, when an employer refuses to hire the individual "because of" his prosthesis, and the prosthesis in no way affects his ability to do the job, that employer has unquestionably discriminated against the individual in violation of the Act. Subsection (B) of the definition, in

fact, sheds a revelatory light on the question whether Congress was concerned only about the corrected or mitigated status of a person's impairment. If the Court is correct that "[a] 'disability' exists only where" a person's "present" or "actual" condition is substantially impaired, *ante*, at 9–10, there would be no reason to include in the protected class those who were once disabled but who are now fully recovered. Subsection (B) of the Act's definition, however, plainly covers a person who previously had a serious hearing impairment that has since been completely cured. See *School Bd. of Nassau Cty.* v. *Arline*, 480 U. S. 273, 281 (1987). Still, if I correctly understand the Court's opinion, it holds that one who *continues to wear* a hearing aid that she has worn all her life might not be covered– fully cured impairments are covered, but merely treatable ones are not. The text of the Act surely does not require such a bizarre result.

The three prongs of the statute, rather, are most plausibly read together not to inquire into whether a person is currently "functionally" limited in a major life activity, but only into the existence of an impairment– present or past– that substantially limits, or did so limit, the individual before amelioration. This reading avoids the counterintuitive conclusion that the ADA's safeguards vanish when individuals make themselves more employable by ascertaining ways to overcome their physical or mental limitations.

To the extent that there may be doubt concerning the meaning of the statutory text, ambiguity is easily removed by looking at the legislative history. As then-JUSTICE REHNQUIST stated for the Court in *Garcia* v. *United States*, 469 U. S. 70 (1984): "In surveying legislative history we have repeatedly stated that the authoritative source for finding the Legislature's intent lies in the Committee Reports on the bill, which 'represen[t] the considered and collective understanding of those Con-

gressmen involved in drafting and studying the proposed legislation.'" *Id.*, at 76 (quoting *Zuber* v. *Allen*, 396 U. S. 168, 186 (1969)). The Committee Reports on the bill that became the ADA make it abundantly clear that Congress intended the ADA to cover individuals who could perform all of their major life activities only with the help of ameliorative measures.

The ADA originated in the Senate. The Senate Report states that "whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids." S. Rep. No. 101–116, p. 23 (1989). The Report further explained, in discussing the "regarded as" prong:

> "[An] important goal of the third prong of the [disability] definition is to ensure that persons with medical conditions that are under control, and that therefore do not currently limit major life activities, are not discriminated against on the basis of their medical conditions. For example, individuals with controlled diabetes or epilepsy are often denied jobs for which they are qualified. Such denials are the result of negative attitudes and misinformation." *Id.*, at 24.

When the legislation was considered in the House of Representatives, its Committees reiterated the Senate's basic understanding of the Act's coverage, with one minor modification: They clarified that "correctable" or "controllable" disabilities were covered in the first definitional prong as well. The Report of the House Committee on the Judiciary states, in discussing the first prong, that, when determining whether an individual's impairment substantially limits a major life activity, "[t]he impairment should be assessed without considering whether mitigating measures, such as auxiliary aids or reasonable accommodations, would result in a less-than-substantial limitation." H. R. Rep. No. 101–485, pt. III, p. 28 (1990). The

Report continues that "a person with epilepsy, an impairment which substantially limits a major life activity, is covered under this test," *ibid.*, as is a person with poor hearing, "even if the hearing loss is corrected by the use of a hearing aid." *Id.*, at 29.

The Report of the House Committee on Education and Labor likewise states that "[w]hether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable accommodations or auxiliary aids." *Id.*, pt. II, at 52. To make matters perfectly plain, the Report adds:

> "For example, a person who is hard of hearing is substantially limited in the major life activity of hearing, *even though the loss may be corrected through the use of a hearing aid*. Likewise, persons with impairments, such as epilepsy or diabetes, which substantially limit a major life activity are covered under the first prong of the definition of disability, *even if the effects of the impairment are controlled by medication*." *Ibid.* (emphasis added).

All of the Reports, indeed, are replete with references to the understanding that the Act's protected class includes individuals with various medical conditions that ordinarily are perfectly "correctable" with medication or treatment. See *id.*, at 74 (citing with approval *Straithe* v. *Department of Transportation*, 716 F. 2d 227 (CA3 1983), which held that an individual with poor hearing was "handicapped" under the Rehabilitation Act even though his hearing could be corrected with a hearing aid); H. R. Rep. No. 101–485, pt. III, at 51 ("[t]he term" disability includes "epilepsy, . . . heart disease, diabetes"); *id.*, pt. III, at 28 (listing same impairments); S. Rep. No. 101–116, at

22 (same).[2]

In addition, each of the three Executive agencies charged with implementing the Act has consistently interpreted the Act as mandating that the presence of disability turns on an individual's uncorrected state. We have traditionally accorded respect to such views when, as here, the agencies "played a pivotal role in setting [the statutory] machinery in motion." *Ford Motor Credit Co.* v. *Milhollin*, 444 U. S. 555, 566 (1980) (brackets in original; internal quotation marks and citation omitted). At the very least, these interpretations "constitute a body of experience and informed judgment to which [we] may properly resort" for additional guidance. *Skidmore* v. *Swift & Co.*, 323 U. S. 134, 139–140 (1944). See also *Bragdon*, 524 U. S., at 642 (invoking this maxim with regard to the Equal Employment Opportunity Commission's (EEOC) interpretation of the ADA).

The EEOC's Interpretive Guidance provides that "[t]he determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis, without regard to mitigating measures such as medicines, or assistive or prosthetic devices." 29 CFR pt. 1630, App. §1630.2(j) (1998). The EEOC further explains:

> "[A]n individual who uses artificial legs would . . . be substantially limited in the major life activity of

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[2]The House's decision to cover correctable impairments under subsection (A) of the statute seems, in retrospect, both deliberate and wise. Much of the structure of the House Reports is borrowed from the Senate Report; thus it appears that the House Committees consciously decided to move the discussion of mitigating measures. This adjustment was prudent because in a case in which an employer refuses, out of animus or fear, to hire an individual who has a condition such as epilepsy that the employer knows is controlled, it may be difficult to determine whether the employer is viewing the individual in her uncorrected state or "regards" her as substantially limited.

> walking because the individual is unable to walk without the aid of prosthetic devices. Similarly, a diabetic who without insulin would lapse into a coma would be substantially limited because the individual cannot perform major life activities without the aid of medication." *Ibid.*

The Department of Justice has reached the same conclusion. Its regulations provide that "[t]he question of whether a person has a disability should be assessed without regard to the availability of mitigating measures, such as reasonable modification or auxiliary aids and services." 28 CFR pt. 35, App. A, §35.104 (1998). The Department of Transportation has issued a regulation adopting this same definition of "disability." See 49 CFR pt. 37.3 (1998).

In my judgment, the Committee Reports and the uniform agency regulations merely confirm the message conveyed by the text of the Act– at least insofar as it applies to impairments such as the loss of a limb, the inability to hear, or any condition such as diabetes that is substantially limiting without medication. The Act generally protects individuals who have "correctable" substantially limiting impairments from unjustified employment discrimination on the basis of those impairments. The question, then, is whether the fact that Congress was specifically concerned about protecting a class that included persons characterized as a "discrete and insular minority" and that it estimated that class to include "some 43,000,000 Americans" means that we should construe the term "disability" to exclude individuals with impairments that Congress probably did not have in mind.

II

The EEOC maintains that, in order to remain allegiant to the Act's structure and purpose, courts should always answer "the question whether an individual has a disabil-

ity . . . without regard to mitigating measures that the individual takes to ameliorate the effects of the impairment." Brief for United States and EEOC as *Amicus Curiae* 6. "[T]here is nothing about poor vision," as the EEOC interprets the Act, "that would justify adopting a different rule in this case." *Ibid.*

If a narrow reading of the term "disability" were necessary in order to avoid the danger that the Act might otherwise force United to hire pilots who might endanger the lives of their passengers, it would make good sense to use the "43,000,000 Americans" finding to confine its coverage. There is, however, no such danger in this case. If a person is "disabled" within the meaning of the Act, she still cannot prevail on a claim of discrimination unless she can prove that the employer took action "because of" that impairment, 42 U. S. C. §12112(a), and that she can, "with or without reasonable accommodation, . . . perform the essential functions" of the job of a commercial airline pilot. See §12111(8). Even then, an employer may avoid liability if it shows that the criteria of having uncorrected visual acuity of at least 20/100 is "job-related and consistent with business necessity" or if such vision (even if correctable to 20/20) would pose a health or safety hazard. §§12113(a) and (b).

This case, in other words, is not about whether petitioners are genuinely qualified or whether they can perform the job of an airline pilot without posing an undue safety risk. The case just raises the threshold question whether petitioners are members of the ADA's protected class. It simply asks whether the ADA lets petitioners in the door in the same way as the Age Discrimination in Employment Act of 1967 does for every person who is at least 40 years old, see 29 U. S. C. §631(a), and as Title VII of the Civil Rights Act of 1964 does for every single individual in the work force. Inside that door lies nothing more than basic protection from irrational and unjustified discrimi-

nation because of a characteristic that is beyond a person's control. Hence, this particular case, at its core, is about whether, assuming that petitioners can prove that they are "qualified," the airline has any duty to come forward with some legitimate explanation for refusing to hire them because of their uncorrected eyesight, or whether the ADA leaves the airline free to decline to hire petitioners on this basis even if it is acting purely on the basis of irrational fear and stereotype.

I think it quite wrong for the Court to confine the coverage of the Act simply because an interpretation of "disability" that adheres to Congress' method of defining the class it intended to benefit may also provide protection for "significantly larger numbers" of individuals, *ante*, at 13, than estimated in the Act's findings. It has long been a "familiar canon of statutory construction that remedial legislation should be construed broadly to effectuate its purposes." *Tcherepnin* v. *Knight*, 389 U. S. 332, 336 (1967). Congress sought, in enacting the ADA, to "provide a . . . comprehensive national mandate for the discrimination against individuals with disabilities." 42 U. S. C. §12101(b)(1). The ADA, following the lead of the Rehabilitation Act before it, seeks to implement this mandate by encouraging employers "to replace . . . reflexive reactions to actual or perceived handicaps with actions based on medically sound judgments." *Arline*, 480 U. S., at 284–285. Even if an authorized agency could interpret this statutory structure so as to pick and choose certain correctable impairments that Congress meant to exclude from this mandate, Congress surely has not authorized us to do so.

When faced with classes of individuals or types of discrimination that fall outside the core prohibitions of antidiscrimination statutes, we have consistently construed those statutes to include comparable evils within their coverage, even when the particular evil at issue was be-

yond Congress' immediate concern in passing the legislation. Congress, for instance, focused almost entirely on the problem of discrimination against African-Americans when it enacted Title VII of the Civil Rights Act of 1964. See, *e.g., Steelworkers* v. *Weber*, 443 U. S. 193, 202–203 (1979). But that narrow focus could not possibly justify a construction of the statute that excluded Hispanic-Americans or Asian-Americans from its protection– or as we later decided (ironically enough, by relying on legislative history and according "great deference" to the EEOC's "interpretation"), Caucasians. See *McDonald* v. *Santa Fe Trail Transp. Co.*, 427 U. S. 273, 279–280 (1976).

We unanimously applied this well-accepted method of interpretation last Term with respect to construing Title VII to cover claims of same-sex sexual harassment. *Oncale* v. *Sundowner Offshore Services, Inc.*, 523 U. S. 75 (1998). We explained our holding as follows:

> "As some courts have observed, male-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII. But statutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed. Title VII prohibits 'discriminat[ion] . . . because of . . . sex' in the 'terms' or 'conditions' of employment. Our holding that this includes sexual harassment must extend to sexual harassment of any kind that meets the statutory requirements." *Id.*, at 79–80.

This approach applies outside of the discrimination context as well. In *H. J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U. S. 229 (1989), we rejected the argument that the Racketeer Influenced and Corrupt Organization Act (RICO) should be construed to cover only "organized

crime" because Congress included findings in the Act's preamble emphasizing only that problem. See Pub. L. 91–452 §1, 84 Stat. 941. After surveying RICO's legislative history, we concluded that even though "[t]he occasion for Congress' action was the perceived need to combat organized crime, . . . Congress for cogent reasons chose to enact a more general statute, one which, although it had organized crime as its focus, was not limited in application to organized crime." 492 U. S., at 248.[3]

Under the approach we followed in *Oncale* and *H. J. Inc.*, visual impairments should be judged by the same standard as hearing impairments or any other medically controllable condition. The nature of the discrimination alleged is of the same character and should be treated accordingly.

Indeed, it seems to me eminently within the purpose and policy of the ADA to require employers who make hiring and firing decisions based on individuals' uncorrected vision to clarify why having, for example, 20/100 uncorrected vision or better is a valid job requirement. So long as an employer explicitly makes its decision based on an impairment that in some condition is substantially limiting, it matters not under the structure of the Act whether that impairment is widely shared or so rare that it is seriously misunderstood. Either way, the individual

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[3]The one notable exception to our use of this method of interpretation occurred in the decision in *General Elec. Co.* v. *Gilbert*, 429 U. S. 125 (1976), in which the majority rejected an EEOC guideline and the heavy weight of authority in the federal courts of appeals in order to hold that Title VII did not prohibit discrimination on the basis of pregnancy-related conditions. Given the fact that Congress swiftly "overruled" that decision in the Pregnancy Discrimination Act of 1978, 92 Stat. 2076, 42 U. S. C. §2000e(k), I submit that the views expressed in the dissenting opinions in that case, 429 U. S., at 146 (opinion of Brennan, J.), and *id.*, at 160 (opinion of STEVENS, J.), should be followed today.

has an impairment that is covered by the purpose of the ADA, and she should be protected against irrational stereotypes and unjustified disparate treatment on that basis.

I do not mean to suggest, of course, that the ADA should be read to prohibit discrimination on the basis of, say, blue eyes, deformed fingernails, or heights of less than six feet. Those conditions, to the extent that they are even "impairments," do not substantially limit individuals in any condition and thus are different in kind from the impairment in the case before us. While not all eyesight that can be enhanced by glasses is substantially limiting, having 20/200 vision in one's better eye is, without treatment, a significant hindrance. Only two percent of the population suffers from such myopia.[4] Such acuity precludes a person from driving, shopping in a public store, or viewing a computer screen from a reasonable distance. Uncorrected vision, therefore, can be "substantially limiting" in the same way that unmedicated epilepsy or diabetes can be. Because Congress obviously intended to include individuals with the latter impairments in the Act's protected class, we should give petitioners the same protection.

III

The Court does not disagree that the logic of the ADA requires petitioner's visual impairment to be judged the same as other "correctable" conditions. Instead of including petitioners within the Act's umbrella, however, the Court decides, in this opinion and its companion, to expel all individuals who, by using "measures [to] mitigate [their] impairment[s]," *ante,* at 1, are able to overcome substantial limitations regarding major life activities. The

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[4] J. Roberts, Binocular Visual Acuity of Adults, United States, 1960–1962, p. 3 (National Center for Health Statistics, Series 11, No. 30 Department of Health and Welfare, 1968).

Court, for instance, holds that severe hypertension that is substantially limiting without medication is not a "disability," *Murphy* v. *United Parcel Service, Inc.*, *post,* p. ___ and– perhaps even more remarkably– indicates (directly contrary to the Act's legislative history, see *supra*, at 7) that diabetes that is controlled only with insulin treatments is not a "disability" either, *ante,* at 10.

The Court claims that this rule is necessary to avoid requiring courts to "speculate" about a person's "hypothetical" condition and to preserve the Act's focus on making "individualized inquiries" into whether a person is disabled. *Ante,* at 9–10. The Court also asserts that its rejection of the general rule of viewing individuals in their unmitigated state prevents distorting the scope of the Act's protected class to cover a "much higher number" of persons than Congress estimated in its findings. And, I suspect, the Court has been cowed by respondent's persistent argument that viewing all individuals in their unmitigated state will lead to a tidal wave of lawsuits. None of the Court's reasoning, however, justifies a construction of the Act that will obviously deprive many of Congress' intended beneficiaries of the legal protection it affords.

The agencies' approach, the Court repeatedly contends, "would create a system in which persons often must be treated as members of a group of people with similar impairments, rather than individuals, [which] is both contrary to the letter and spirit of the ADA." *Ante,* at 10. The Court's mantra regarding the Act's "individualized approach," however, fails to support its holding. I agree that the letter and spirit of the ADA is designed to deter decision making based on group stereotypes, but the agencies' interpretation of the Act does not lead to this result. Nor does it require courts to "speculate" about people's "hypothetical" conditions. Viewing a person in her "unmitigated" state simply requires examining that individual's abilities in a different state, not the abilities of every

person who shares a similar condition. It is just as easy individually to test petitioners' eyesight with their glasses on as with their glasses off.[5]

Ironically, it is the Court's approach that actually condones treating individuals merely as members of groups. That misdirected approach permits any employer to dismiss out of hand every person who has uncorrected eyesight worse than 20/100 without regard to the specific qualifications of those individuals or the extent of their abilities to overcome their impairment. In much the same way, the Court's approach would seem to allow an employer to refuse to hire every person who has epilepsy or diabetes that is controlled by medication, or every person who functions efficiently with a prosthetic limb.

Under the Court's reasoning, an employer apparently could not refuse to hire persons with these impairments who are substantially limited even with medication, see *ante,* at 14–15, but that group-based "exception" is more perverse still. Since the purpose of the ADA is to dismantle employment barriers based on society's accumulated myths and fears, see 42 U. S. C. §12101(a)(8); *Arline,* 480

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[5] For much the same reason, the Court's concern that the agencies' approach would "lead to the anomalous result" that courts would ignore "negative side effects suffered by an individual resulting from the use of mitigating measures," *ante,* at 10, is misplaced. It seems safe to assume that most individuals who take medication that itself substantially limits a major life activity would be substantially limited in some other way if they did not take the medication. The Court's examples of psychosis, Parkinson's disease, and epilepsy certainly support this presumption. To the extent that certain people may be substantially limited only when taking "mitigating measures," it might fairly be said that just as contagiousness is symptomatic of a disability because an individual's "contagiousness and her physical impairment each [may result] from the same underlying condition," *School Bd. of Nassau Cty.* v. *Arline,* 480 U. S. 273, 282 (1987), side effects are symptomatic of a disability because side effects and a physical impairment may flow from the same underlying condition.

U. S., at 283–284, it is especially ironic to deny protection for persons with substantially limiting impairments that, when corrected, render them fully able and employable. Insofar as the Court assumes that the majority of individuals with impairments such as prosthetic limbs or epilepsy will still be covered under its approach because they are substantially limited "notwithstanding the use of a corrective device," *ante*, at 14–15, I respectfully disagree as an empirical matter. Although it is of course true that some of these individuals are substantially limited in any condition, Congress enacted the ADA in part because such individuals are *not* ordinarily substantially limited in their mitigated condition, but rather are often the victims of "stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society." 42 U. S. C. §12101(a)(7).

It has also been suggested that if we treat as "disabilities" impairments that may be mitigated by measures as ordinary and expedient as wearing eyeglasses, a flood of litigation will ensue. The suggestion is misguided. Although vision is of critical importance for airline pilots, in most segments of the economy whether an employee wears glasses– or uses any of several other mitigating measures– is a matter of complete indifference to employers. It is difficult to envision many situations in which a qualified employee who needs glasses to perform her job might be fired– as the statute requires– "because of," 42 U. S. C. §12112, the fact that she cannot see well without them. Such a proposition would be ridiculous in the garden-variety case. On the other hand, if an accounting firm, for example, adopted a guideline refusing to hire any incoming accountant who has uncorrected vision of less than 20/100– or, by the same token, any person who is unable without medication to avoid having seizures– such a rule would seem to be the essence of invidious discrimination.

In this case the quality of petitioners' uncorrected vision

is relevant only because the airline regards the ability to see without glasses as an employment qualification for its pilots. Presumably it would not insist on such a qualification unless it has a sound business justification for doing so (an issue we do not address today). But if United regards petitioners as unqualified because they cannot see well without glasses, it seems eminently fair for a court also to use uncorrected vision as the basis for evaluating petitioners' life activity of seeing.

Under the agencies' approach, individuals with poor eyesight and other correctable impairments will, of course, be able to file lawsuits claiming discrimination on that basis. Yet all of those same individuals can already file employment discrimination claims based on their race, sex, or religion, and– provided they are at least 40 years old– their age. Congress has never seen this as reason to restrict classes of antidiscrimination coverage. Indeed, it is hard to believe that providing individuals with one more antidiscrimination protection will make any more of them file baseless or vexatious lawsuits. To the extent that the Court is concerned with requiring employers to answer in litigation for every employment practice that draws distinctions based on physical attributes, that anxiety should be addressed not in this case, but in one that presents an issue regarding employers' affirmative defenses.

In the end, the Court is left only with its tenacious grip on Congress' finding that "some 43,000,000 Americans have one or more physical or mental disabilities," 42 U. S. C. §12101(a)(1)– and that figure's legislative history extrapolated from a law review "article authored by the drafter of the original ADA bill introduced in Congress in 1988." *Ante,* at 11. We previously have observed that a "statement of congressional findings is a rather thin reed upon which to base" a statutory construction. *National Organization for Women, Inc.* v. *Scheidler,* 510 U. S. 249, 260 (1994). Even so, as I have noted above, I readily agree

that the agencies' approach to the Act would extend coverage to more than that number of people (although the Court's lofty estimates, see *ante*, at 13–14, may be inflated because they do not appear to exclude impairments that are not substantially limiting). It is equally undeniable, however, that "43 million" is not a fixed cap on the Act's protected class: By including the "record of" and "regarded as" categories, Congress fully expected the Act to protect individuals who lack, in the Court's words, "actual" disabilities, and therefore are not counted in that number.

What is more, in mining the depths of the history of the 43 million figure– surveying even agency reports that predate the drafting of any of this case's controlling legislation– the Court fails to acknowledge that its narrow approach may have the perverse effect of denying coverage for a sizeable portion of the core group of 43 million. The Court appears to exclude from the Act's protected class individuals with controllable conditions such as diabetes and severe hypertension that were expressly understood as substantially limiting impairments in the Act's Committee Reports, see *supra*, at 6–7– and even, as the footnote in the margin shows, in the studies that produced the 43 million figure.[6] Given the inability to make the 43 million figure fit any consistent method of interpreting the word "disabled," it would be far wiser for the Court to follow– or at least to mention– the documents reflecting

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[6] See National Council on Disability, Toward Independence 12 (1986) (hypertension); U. S. Dept. of Commerce, Bureau of Census, Disability, Functional Limitation, and Health Insurance Coverage: 1984/85, p. 51 (1986) (hypertension, diabetes); National Institute on Disability and Rehabilitation Research, Data on Disability from the National Health Interview Survey 1983–1985, p. 33 (1988) (epilepsy, diabetes, hypertension); U. S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States 114–115 (1989) (Tables 114 and 115) (diabetes, hypertension); Mathematica Policy Research, Inc., Digest of Data on Persons with Disabilities 3 (1984) (hypertension, diabetes).

Congress' contemporaneous understanding of the term: the Committee Reports on the actual legislation.

IV

Occupational hazards characterize many trades. The farsighted pilot may have as much trouble seeing the instrument panel as the near sighted pilot has in identifying a safe place to land. The vision of appellate judges is sometimes subconsciously obscured by a concern that their decision will legalize issues best left to the private sphere or will magnify the work of an already-overburdened judiciary. See *Jackson* v. *Virginia*, 443 U. S. 307, 326, 337–339 (1979) (STEVENS, J., dissenting). Although these concerns may help to explain the Court's decision to chart its own course– rather than to follow the one that has been well marked by Congress, by the overwhelming consensus of circuit judges, and by the Executive officials charged with the responsibility of administering the ADA– they surely do not justify the Court's crabbed vision of the territory covered by this important statute.

Accordingly, although I express no opinion on the ultimate merits of petitioners' claim, I am persuaded that they have a disability covered by the ADA. I therefore respectfully dissent.