No. 97-1943

In the Supreme Court of the United States

OCTOBER TERM, 1998

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

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

1. Whether the determination that a person has a disability within the meaning of the Americans with Disabilities Act (ADA), 42 U.S.C. 12102(2)(A), must be made without regard to mitigating measures, such as medicines, corrective lenses, or other prosthetic devices.

2. Whether petitioners' complaint stated a claim that respondent regarded them as substantially limited in the major life activity of working when it refused to hire them for any of its jobs as pilot because of their impairment.

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INTEREST OF THE UNITED STATES

This case concerns the proper definition of "disability," a threshold question addressed in virtually every case brought under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* Congress delegated to the Equal Employment Opportunity Commission (EEOC) and Department of Justice authority to promulgate regulations and to enforce the provisions of the ADA. Both agencies have issued extensive regulations and interpretive guidance concerning the definition of the term "disability." The EEOC participated as *amicus curiae* on the petition for rehearing and suggestion for rehearing en banc in this case in the

court of appeals. In response to the Court's invitation, the United States and the EEOC filed a brief as *amicus curiae* at the petition stage in this case.

STATEMENT

Petitioners brought this case under Title I of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.*, after they were denied the opportunity to compete for jobs because without corrective lenses their vision is poor. The district court dismissed petitioners' complaint on the ground that it failed to state a claim upon which relief may be granted under Federal Rule of Civil Procedure 12(b)(6). The court of appeals affirmed. Pet. App. A1-A25.

1. The complaint alleged that petitioners, who are identical twin sisters, sought commercial pilot positions with respondent in 1992. J.A. 20, 22. Petitioners alleged that they were regional airline pilots at the time, and that they amply satisfied the basic age, education, experience, and FAA certification qualifications for a pilot's job with respondent. J.A. 19-20. They claimed that respondent granted them interviews for pilot positions, but informed each of them at the time of the interview that her uncorrected vision did not comply with respondent's minimum requirements. J.A. 21, 23. Petitioners alleged that respondent "rejected [petitioners] on the basis of their disability, or because [respondent] regarded [petitioners] as having a disability." J.A. 26.

Each petitioner alleged that her uncorrected eyesight is 20/200 or worse in her right eye and 20/400 or worse in her left eye, but each petitioner also alleged that "[w]ith the use of corrective lenses, [she] has vision that is 20/20 or better." J.A. 23. They alleged that, without corrective lenses, each of them "effectively can-

not see to conduct numerous activities such as driving a vehicle, watching television or shopping in public stores." J.A. 24. They also alleged, however, that "[w]ith corrective measures, * * * [each of them] function[s] identically to individuals without a similar impairment." *Ibid.*

Petitioners alleged that respondent's policy of not hiring individuals with their vision deficiency as pilots "is not limited to certain models of aircraft, certain air routes, or certain flight conditions." J.A. 25-26. In addition, they alleged that respondent's rejection of them "is not based on an isolated mismatch between one employer and these applicants." J.A. 26. The complaint added that "[t]here is nothing unique about the job activities of United pilots that distinguishes United's requirements from other airlines." *Ibid.* The complaint stated that respondent's policy "blocks thousands of opportunities throughout the world." *Ibid.*

2. The district court ruled that petitioners had failed to state a claim upon which relief may be granted. Pet. App. A27-A37. Under the ADA:

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

42 U.S.C. 12102(2).

The district court first examined the existence of an actual limiting impairment under clause (A). The court stated that "numerous federal courts have concluded that the need for corrective eyewear is commonplace

and does not substantially limit major life activities," Pet. App. A32, and that petitioners therefore "have not stated a claim that they are substantially limited in the major life activity of seeing," *id.* at A33. The court also held that petitioners' "common moderate vision impairment * * * does not substantially limit their ability to work within the meaning of the ADA." *Id.* at A34. In the court's view, "the ADA was intended to protect only a limited class of persons; specifically, individuals who suffer from impairments significantly more severe than those encountered by the average person in everyday life, not people who suffer from slight shortcomings that are both minor and widely shared." *Id.* at A35.

The district court also held that petitioners had failed to state a claim that respondent "regarded" them as disabled under clause (C) of the disability definition. The court stated that "[t]he statutory reference to a substantial limitation indicates that an employer regards an employee as handicapped in his or her ability to work by finding the employee's impairment to foreclose generally the type of employment involved." Pet. App. A36-A37. In the court's view, "[a]t most, [petitioners] can establish that [respondent] regarded them as unable to satisfy the requirements of a particular passenger airline pilot position." *Id.* at A37. The court added that petitioners "have had no difficulty obtaining other jobs in their field prior to this one." *Ibid.*

3. The court of appeals affirmed. Pet. App. A1-A25. Guided by the EEOC's regulatory definition of "impairment," under which "[t]he existence of an impairment is to be determined without regard to mitigating measures such as medicines, or assistive or prosthetic devices," 29 C.F.R. Pt. 1630 App. § 1630.2(h), the court held that petitioners had adequately alleged that they had an "impairment" of vision under the ADA. Pet.

App. A9-A11. The court held, however, that "[t]he determination of whether an individual's impairment substantially limits a major life activity should take into consideration mitigating or corrective measures utilized by the individual." *Id.* at A16. The court concluded that "while [petitioners'] uncorrected vision would undoubtedly 'substantially limit' their major life activity of seeing," they "can prove no set of facts upon which relief may be granted" because their vision is correctable. *Id.* at A17-A18.

The court also held that they had not set forth a claim upon which relief could be granted under the "regarded as" prong of the statute. The court stated that "in order to establish a disability under the 'regarded as' prong of the ADA with respect to the major life activity of working, an individual must show that the employer regarded him or her as being substantially limited in performing either a class of jobs or a broad range of jobs in various classes." Pet. App. A21. Although the court accepted as true petitioners' allegation that they "were disqualified from 'all pilot positions' as they alleged in their Amended Complaint," the court nonetheless held that petitioners "cannot show disqualification from a 'class of jobs.'" *Id.* at A22 n.10.

SUMMARY OF ARGUMENT

Petitioners' complaint states a claim that they are disabled within the meaning of the ADA. There can be no dispute that "seeing" is a major life activity under the ADA. The complaint alleges that their vision is so impaired that, without eyeglasses, they cannot see well enough to conduct numerous everyday activities. Accordingly, petitioners alleged that they have a physical impairment that substantially limits a major life activity. That does not, of course, establish that myopia

is always a disability under the ADA. Because the inquiry into disability under the ADA must be undertaken on an individualized basis, other individuals with vision that is better than that of petitioners, but that is nonetheless somewhat impaired, may not satisfy the statutory definition of disability. Petitioners' complaint was sufficient, however, to allege that they are disabled.

The court of appeals held that petitioners had not stated a claim that they were disabled under the ADA because their complaint stated that their poor vision was fully correctable through the use of corrective lenses. As we explain in our brief in *Murphy* v. *United Parcel Service*, No. 97-1992, however, the question whether an individual has a disability under the ADA must be answered without regard to mitigating measures that the individual takes to ameliorate the effects of the impairment. Although *Murphy* involves high blood pressure, rather than poor vision, there is nothing about poor vision that would justify adopting a different rule in this case. Accordingly, the court of appeals erred in taking mitigating measures into account and thereby concluding that petitioners' complaint had not properly alleged a disability under the ADA.

Petitioners' complaint also adequately alleged that they were "regarded as" substantially limited in the major life activity of working by respondent. Petitioners' complaint alleges that respondent would not consider them for any of its pilot positions because of their poor uncorrected vision, and the reasonable inference can be drawn from the complaint that respondent adopted that policy because it regarded them as unable safely to operate an airplane. Those allegations are sufficient to state a claim that petitioners were "regarded as" disabled by respondents. While respondent

may ultimately show that petitioners are not qualified for the job or that its failure to hire petitioners is otherwise justified, the court improperly pretermitted the inquiry before petitioners were given the opportunity to support their claim.

ARGUMENT

I. MITIGATING MEASURES SHOULD NOT BE CONSIDERED IN DETERMINING WHETHER A PERSON HAS A "DISABILITY" UNDER THE AMERICANS WITH DISABILITIES ACT

The term "disability" within the meaning of the Americans with Disabilities Act of 1990, is defined in terms of three separate, alternative criteria. Under the first criterion—actual disability—a disability is "a physical or mental impairment that substantially limits one or more of the major life activities of [an] individual. 42 U.S.C. 12102(2)(A). Petitioners' poor vision is a "physical * * * impairment" that satisfies the regulatory definition of that term, *i.e.*, a "physiological disorder, or condition, * * * affecting * * * special sense organs." 29 C.F.R. 1630.2(h)(1). The remaining question is thus whether that impairment "substantially limits" any of petitioners' major life activities. The answer to that question turns on whether petitioners' impairment is analyzed in its mitigated or unmitigated state.

A. We explain in our brief as amicus curiae in *Murphy* v. *United Parcel Service*, No. 97-1992, that the existence of a disability under the ADA must be assessed without regard to mitigating or ameliorative measures. That is the most reasonable interpretation of the Act itself, and Congress's intent in this regard is set forth with unusual clarity in all three of the relevant committee reports. See 97-1992 U.S. Br. at 9-11.

Moreover, assessing the existence of a disability without regard to mitigating measures is most consistent with the ADA's basic purpose to eliminate the exclusion of individuals from the workplace because of outdated stereotypes and myths about those individuals' abilities. It is also most consonant with the structure of the statute, which generally addresses at a stage later than the threshold determination of disability issues regarding the various adjustments that may be required to enable a disabled person to work, *e.g.*, whether the employer is being required to make a reasonable accommodation, whether the employee is genuinely qualified for the job, and whether the employee poses a health or safety threat to others. See 97-1992 U.S. Br. at 11-15. To take mitigating measures into account at the threshold stage of determining the existence of a disability would distort the analysis required under the scheme that Congress enacted. It would also would inject uncertainty and instability into the system, because individuals would gain and lose status as "disabled" depending on the changing effectiveness of their regimen of mitigating measures and their changing decisions regarding whether they should continue taking those mitigating measures in light of their unwanted side effects. See 97-1992 U.S. Br. at 16-17.

Finally, we explain in our brief in *Murphy* that the agencies entrusted with issuing regulations to carry out the ADA have consistently taken the position that the existence of a disability should be assessed without regard to mitigating measures. The EEOC has taken that position in interpretive guidelines that were subject to notice and comment at the same time as—and together with—the formal ADA regulations. Because the EEOC's guidelines state its interpretation of its

own ADA regulations, they are entitled to controlling weight, and they therefore establish that mitigating measures should not be taken into account in assessing the existence of a disability. See 97-1992 U.S. Br. at 17-20.

B. Assessed in its unmitigated state, petitioners' impairment—as set forth in their complaint—unquestionably limits their major life activity of seeing. Indeed, the court of appeals conceded that fact. Pet. App. A18 ("[Petitioners'] uncorrected vision would undoubtedly 'substantially limit' their major life activity of seeing."). Because the question whether an impairment constitutes a disability must be assessed without taking mitigating measures into account, petitioners' complaint states a claim that they were actually disabled.

Some courts of appeals that have accepted the no-mitigation rule as a general matter have expressed reluctance to follow it in the context of correctable vision impairments. For example, the First Circuit in *Arnold* v. *United Parcel Service, Inc.*, 136 F.3d 854, 863 (1998), held unequivocally that disabilities (in that case, diabetes) are generally to be assessed under the ADA without regard to mitigating measures. The court nonetheless noted that it "might reach a different result in the case of a myopic individual whose vision is correctable with eyeglasses," because "[t]he availability of such a simple, inexpensive remedy, that can provide assured, total and relatively permanent control of all symptoms, would seem to make correctable myopia the kind of 'minor, trivial impairment[],' * * * that would not be considered a disability under the ADA." *Id.* at 866 n.10 (quoting S. Rep. No. 116, 101st Cong., 1st Sess. 23 (1989)). Similarly the Fifth Circuit in *Washington* v. *HCA Health Services*, 152 F.3d 464, 471 (1998), held that many disabilities (in that case Adult Stills disease)

should be assessed without mitigating measures, but noted that some mitigating measures, such as hip replacements, might amount to permanent corrections that remove the disability, and speculated that eyeglasses might be properly placed in the same category.

Nothing in the text or history of the ADA supports the suggestion in dicta of these two courts that mitigating measures should sometimes be considered at the threshold stage. Indeed, it would be difficult to find a principled basis for distinguishing for this purpose between myopia and other correctable disorders, such as epilepsy and diabetes, which Congress unquestionably intended to bring within the scope of the ADA. See S. Rep. No. 116, *supra*, at 31, 39, 62; H.R. Rep. No. 485, 101st Cong., 2d Sess., pt. 2, at 52, 62, 79, 104 (1990); *id.*, pt. 3, at 28, 42, 50. Congress adopted a test for identifying those impairments serious enough to warrant coverage under the ADA: the impairment must "substantially limit[] one or more of the major life activities." 42 U.S.C. 12102(2)(A). That test asks not whether the impairment is uncorrectable, but whether—in its uncorrected state—its effect is substantial. And the EEOC has elaborated on that test by providing that "*substantially limits* means * * * [s]ignificantly restricted * * * as compared to * * * the average person in the general population." 29 C.F.R. 1630.2(j)(1)(ii). Thus, moderate myopia might be excluded from coverage, not because it is correctable, but because it is quite prevalent in the general population;[1] an individual with moderate myopia therefore

[1] One government study found that 63% of adults wear eyeglasses or contact lenses. See National Center for Health Statistics, U.S. Dep't of Health & Human Servs., *Eye Care Visits and Use of Eyeglasses or Contact Lenses* 29 (Vital & Health Statistics

may not be "significantly restricted" compared with the average person.[2] But petitioners' complaint in this case alleges that they have a vision impairment severe enough to "constitute[] legal blindness for purposes of Supplemental Security Insurance disability classification and also under the law of numerous states" if it could not be corrected. J.A. 24. That is sufficient to state a claim that they are substantially limited in the major life activity of seeing.

Although petitioners have stated a claim, the limits on that claim are significant. As noted above, relatively few adults have vision as poor as that alleged by petitioners, and the fact that they have stated a claim that they are disabled therefore does not mean that others with better vision would necessarily be able to do so. See note 1, *supra*. In addition, although petitioners have stated a claim that respondent discriminated against them on the ground of their disability, that kind of claim is likely to be rare; employers do not commonly discriminate on the basis of poor uncorrected vision, at least outside a few contexts, such as the transportation industry and law enforcement. Finally,

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Series 10, No. 145, 1984). A recent article reporting data from older surveys of American adults under 75 indicates that about five to six percent of the population has uncorrected distance visual acuity of 20/200 or worse. See David J. Lee et al., *Prevalence of Uncorrected Binocular Distance Visual Acuity in Hispanic and Non-Hispanic Adults*, 105 Ophthalmology 552, 556 (1998).

[2] The Department of Justice and the EEOC have both reached that conclusion. See, *e.g.*, U.S. Dep't of Justice, *The Americans with Disabilities Act: Title II Technical Assistance Manual*, II-2.4000 (1992) ("A person with a minor vision impairment, such as 20/40 vision, does not have a substantial [limitation] of the major life activity of seeing."); *Young* v. *Runyon*, No. 01942399, 1995 WL 241476, at *4 (EEOC Apr. 19, 1995) (judging individual with uncorrected vision of 20/30 not substantially limited).

the fact that petitioners or others like them may be disabled and may suffer discrimination on account of their disability is not sufficient to make out a claim under the ADA. Employers like respondent may refuse to hire even disabled individuals on the ground that they are not "qualified" for the jobs they seek, 42 U.S.C. 12112(a), or if their disability would "pose a direct threat to the health or safety of other individuals," 42 U.S.C. 12113(b).

II. PETITIONERS ADEQUATELY ALLEGED THAT RESPONDENTS REGARDED THEM AS SUBSTANTIALLY LIMITED IN THE MAJOR LIFE ACTIVITY OF WORKING, AND THEY THEREFORE STATED A CLAIM THAT RESPONDENTS "REGARDED" THEM AS DISABLED

An individual is "disabled" under the ADA not only if the individual has an impairment "that substantially limits one or more of the major life activities of such individual," 42 U.S.C. 12102(2)(A), but also if the individual is "regarded as having such an impairment," 42 U.S.C. 12102(2)(C). Petitioners' complaint adequately states a claim that respondent regarded them as having impairments (their poor vision) that substantially limited them in the major life activity of working.[3] The Tenth Circuit erred in ruling to the contrary.

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[3] The court of appeals stated (Pet. App. A19 n.9) that the complaint alleged that respondent regarded petitioners as substantially limited only in the major life activity of working. The district court had read the complaint as alleging both seeing and working as the major life activities at issue (*id.* at A36), and petitioners had so argued in the court of appeals (*id.* at A19). Taking all allegations of the complaint as true and drawing all the inferences in favor of the petitioners, the complaint can fairly be read to claim

As noted above, the EEOC regulations generally provide that an individual is substantially limited in a major life activity if the individual is "[u]nable to perform a major life activity that the average person in the general population can perform" or is "[s]ignificantly restricted as to the condition, manner or duration under which" the individual can perform the activity as compared to the "average person in the general population." 29 C.F.R. 1630.2(j)(1).[4] The regulations provide special guidance, however, in determining the substantiality of a limitation on the major life activity of working. In that context, the regulations provide that "[t]he term *substantially limits* means significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." 29 C.F.R. 1630.2(j)(3)(i). The regulations add that "[t]he inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working." *Ibid.*

The requirement that plaintiffs identify "a class of jobs or a broad range of jobs in various classes," 29

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that respondent refuses to hire job applicants with uncorrected eyesight worse than 20/100 because respondent regards those applicants as substantially limited in the major life activity of seeing, as well as working. If so, petitioners stated a claim under this theory, as well as their theory relying on the major life activity of working. See *Doane* v. *City of Omaha*, 115 F.3d 624, 627-628 (8th Cir. 1997), cert. denied, 522 U.S. 1048 (1998).

[4] The regulations also provide that "[t]he following factors should be considered in determining whether an individual is substantially limited in a major life activity: (i) The nature and severity of the impairment; (ii) The duration or expected duration of the impairment; and (iii) The permanent or long term impact, or the expected permanent or long term impact of or resulting from the impairment." 29 C.F.R. 1630.2(j)(2).

C.F.R. 1630.2(j)(3)(i), was not intended to impose an onerous burden. It was intended to ensure that individuals who had impairments that excluded them from a small sub-set of jobs that required "extraordinary" skills, see 29 C.F.R. Pt. 1630 App. § 1630.2(j) at 349, but whose impairment would not bar them from using the same "training, skills and abilities" in a broader range of jobs, 29 C.F.R. 1630.2(j)(3)(i), were not deemed disabled.

A. Petitioners' complaint adequately alleges a "regarded as" disability because it alleges that respondent regarded them as significantly restricted in their ability to perform a class of jobs because of their poor vision. The court of appeals based its conclusion that petitioners had failed to state a claim on a single aspect of the "regarded as" analysis. The court did not question that petitioners properly alleged that respondent regarded them as having an impairment within the meaning of the ADA. Nor did the court question that petitioners properly alleged that working was for them a major life activity. The court held, however, that petitioners had failed to state a claim that respondents regarded them as substantially limited in that major life activity, because, in the court's view, petitioners had failed to state a claim that respondents regarded them as significantly restricted in their ability to perform a class of jobs. Pet. App. A22.

The court of appeals' conclusion is erroneous. Petitioners alleged that respondent stated that their "uncorrected vision disqualified [them] from employment as a United pilot." J.A. 21, 23. Moreover, petitioners alleged that "[respondent's] policy * * * is not limited to certain models of aircraft, certain air routes, or certain flight conditions." J.A. 25-26. They also alleged that respondent's policy "is not based on an isolated

mismatch between one employer and these applicants." J.A. 26. Indeed, they specifically alleged that "[t]here is nothing unique about the job activities of United pilots that distinguishes United's requirements from other airlines." *Ibid.*

Those allegations are ample to state a claim that respondent viewed petitioners as significantly restricted in their ability to perform a class of jobs. Indeed, petitioners' complaint is quite specific in alleging the basis for respondent's view—that respondent asserted its vision requirements were a "rational, job-related, safety requirement." J.A. 24.[5] In support of that allegation, petitioners could certainly attempt to prove that respondent believed that individuals with a visual impairment like that of petitioners could not safely fly an airplane. Such proof would be sufficient to demonstrate that respondent regarded petitioners as excluded from being airplane pilots—a "class of jobs" for which they were amply trained—and it would thereby demonstrate that respondent regarded them as substantially limited in their major life activity of working.

B. The court of appeals concluded that petitioners failed to state a claim of exclusion from a class of jobs or a broad range of jobs in various classes, because they allege only that respondent regards them as ineligible for positions as global airline pilots, but not for positions such as the ones they hold (at other airlines) as regional

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[5] Petitioners alleged that "[e]ach possessed (and still does) a First-Class medical certificate from the Federal Aviation Administration, which indicates fitness to fly in any capacity, including that of airline captain." J.A. 20. FAA regulations require "[d]istant visual acuity of 20/20 or better in each eye separately, with or without corrective lenses." 14 C.F.R. 67.103(a).

airline pilots. Pet. App. A22-A24. According to the court of appeals, the relevant class of jobs "would include, but not be limited to, all pilot positions at global airlines, national airlines, commuter/regional airlines, and cargo/courier airlines." *Id.* at A22-A23.

That conclusion misreads petitioners' complaint. Petitioners allege that respondent regards petitioners as unqualified for any pilot position, because respondent believes they cannot safely fly an airplane. Thus, while petitioners and respondent both acknowledge that other employers, such as petitioners' current employers, may have a different view, that fact does not in any way contradict the claim that respondent regards petitioners as ineligible for the entire broad class of jobs at issue.[6] As the court of appeals itself correctly noted,

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[6] If petitioners' complaint alleged (as it does not) that respondent regarded petitioners as qualified for positions as regional airline pilots, and disqualified only from positions as global airline pilots, that too might well state a claim under the ADA. The EEOC's interpretive guidance suggests that a person barred from work as a commercial pilot because of a vision impairment but eligible for work as a commercial co-pilot or a pilot for a courier service would not suffer a substantial limitation in the major life activity of working. 29 C.F.R. Pt. 1630 App. § 1630.2(j). That example is given, however, to illustrate the general principle in the EEOC's regulations that exclusion from one specialized job in a broader class does not constitute a "substantial limitation" unless the excluded individual is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." 29 C.F.R. 1630.2(j)(3)(i). Cf. *Bragdon* v. *Abbott*, 118 S. Ct. 2196, 2206 (1998) ("The Act addresses substantial limitations on major life activities, not utter inabilities."). Thus, the example assumes that commercial pilot positions are not sufficiently numerous or important that exclusion from them would "significantly restrict" a qualified and trained individual's ability to obtain work as a pilot generally. That assumption has been chal-

"[i]t is the perception of the employer in the case, not the perceptions or practices of others in the industry, that matters." Pet. App. A22. Nothing in the ADA suggests that a particular employer who regards an individual as disabled—perhaps because of the "prejudice, stereotypes, or unfounded fear," *School Bd.* v. *Arline*, 480 U.S. 273, 287 (1987), that the ADA and its predecessor statute were designed to eradicate—has a defense under the ADA solely because other employers have freed themselves from those prejudices. See 29 C.F.R. Pt. 1630 App. § 1630.2(*l*) ("An individual rejected from a job because of the 'myths, fears, and stereotypes' associated with disabilities would be covered under this part of the definition of disability, whether or not the employer's or other covered entity's perception were shared by others in the field."); H.R. Rep. No. 485, *supra*, pt. 3, at 30 (similar).

The court of appeals stated that petitioners' "reasoning would imply that anyone who failed to obtain a single job because of a single requirement of employment would become a 'disabled' individual because the employer would thus be regarding the applicant's failure as substantially limiting in the major life activity of working." Pet. App. A24. That is mistaken.

To be sure, evidence that an employer had denied a plaintiff a job on the basis of the plaintiff's impairment may well provide the basis for an inference that the employer viewed the plaintiff as substantially limited in the major life activity of working. But the employer

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lenged by petitioners, and in any event it appears to be premised on the counterfactual hypothesis that a person excluded for vision impairment from pilot positions could be hired as a co-pilot. To the extent the example may be premised on inaccurate factual assumptions, of course, the general principle and not the example controls.

could introduce contrary evidence that it regarded the plaintiff as unable to satisfy a particular requirement applicable only to that particular job.[7] The ultimate question in such a case would be whether the employer or the plaintiff was correct regarding the reason why the employer refused to hire the plaintiff; only if it were ultimately determined that the employer did in fact regard the plaintiff as unsuitable for a class of jobs would the plaintiff be "regarded as" disabled under the ADA.[8] In short, if the plaintiff prevailed, it would

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[7] Three leading cases decided under the Rehabilitation Act, 29 U.S.C. 701 *et seq.*, and relied on by the EEOC in its interpretive guidance, see 29 C.F.R. Pt. 1630 App. § 1630.2(j) at 349, illustrate the distinction between a particular job and a class of jobs. See *Forrisi* v. *Bowen*, 794 F.2d 931, 935 (4th Cir. 1986) (holding that employer "never doubted [plaintiff's] ability to work in his chosen occupation of utility systems repair," but "merely saw him as unable [because of his acrophobia] to exercise his acknowledged abilities above certain altitudes"); *Jasany* v. *United States Postal Serv.*, 755 F.2d 1244, 1250 (6th Cir. 1985) (holding that defendant whose strabismus (crossed eyes) precluded him from operating a particular machine at the post office, but whose condition "never had any effect whatsoever on any of his activities, including his * * * ability to carry out other duties at the post office," was not "regarded as" disabled); *E.E. Black, Ltd.* v. *Marshall*, 497 F. Supp. 1088, 1099 (D. Haw. 1980) (explaining that "[a] person who is disqualified from employment in his chosen field has a substantial handicap to employment, and is substantially limited in one of his major life activities," but that "[a]n individual with acrophobia who was offered 10 deputy assistant accountant jobs with a particular company, but was disqualified from one job because it was on the 37th floor" was not disabled).

[8] Issues regarding state of mind have long been recognized as particularly suitable for resolution by the ultimate trier of fact. See *Briscoe* v. *LaHue*, 460 U.S. 325, 343 n.29 (1983); *Hutchinson* v. *Proxmire*, 443 U.S. 111, 120 n.9 (1979); see also *Hardin* v. *Pitney-Bowes*, 451 U.S. 1008, 1008-1009 (1981) (Rehnquist, J., dissenting from the denial of certiorari).

simply establish that, based on all of the facts of the case, the plaintiff had made out her claim that the employer had denied the plaintiff the single job because the employer regarded the plaintiff as having an impairment that, in the employer's view, would disqualify plaintiff from a "class of jobs or a broad range of jobs in various classes." 29 C.F.R. 1630.2(j)(3).

C. Based on the above analysis, petitioners stated a claim that they were "regarded as" disabled. That conclusion does not, of course, establish that petitioners can in fact produce evidence to make out their claim or that respondent will not produce convincing evidence to the contrary. Nor does it preclude respondent from establishing that it is not liable because petitioners are not "qualified" for the jobs they seek, 42 U.S.C. 12112(a), or because petitioners' uncorrected vision would "pose a direct threat to the health or safety of other individuals," 42 U.S.C. 12113(b). Because their complaint adequately states a claim under the ADA, however, the court of appeals erred in holding that it must be dismissed.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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