

STEVENS, J., concurring

SUPREME COURT OF THE UNITED STATES

No. 97-156

RANDON BRAGDON, PETITIONER v. SIDNEY
ABBOTT ET AL.

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

[June 25, 1998]

JUSTICE STEVENS, with whom JUSTICE BREYER joins,
concurring.

The Court's opinion demonstrates that respondent's HIV infection easily falls within the statute's definition of "disability." Moreover, the Court's discussion in Part III of the relevant evidence has persuaded me that the judgment of the Court of Appeals should be affirmed. I do not believe petitioner has sustained his burden of adducing evidence sufficient to raise a triable issue of fact on the significance of the risk posed by treating respondent in his office. The Court of Appeals reached that conclusion after a careful and extensive study of the record; its analysis on this question was perfectly consistent with the legal reasoning in JUSTICE KENNEDY's opinion for the Court; and the latter opinion itself explains that petitioner relied on data that was inconclusive and speculative at best, see *ante*, at 27-28. Cf. *General Electric Co. v. Joiner*, 522 U. S. ____ (1997).

There are not, however, five Justices who agree that the judgment should be affirmed. Nor does it appear that there are five Justices who favor a remand for further proceedings consistent with the views expressed in either JUSTICE KENNEDY's opinion for the Court or the opinion of THE CHIEF JUSTICE. Because I am in agreement with the

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legal analysis in JUSTICE KENNEDY's opinion, in order to provide a judgment supported by a majority, I join that opinion even though I would prefer an outright affirmation. Cf. *Screws v. United States*, 325 U. S. 91, 134 (1945) (Rutledge, J., concurring in result).