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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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BRAGDON *v.* ABBOTT ET AL.

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

No. 97–156. Argued March 30, 1998– Decided June 25, 1998

Respondent is infected with the human immunodeficiency virus (HIV), but had not manifested its most serious symptoms when the incidents in question occurred. At that time, she went to petitioner's office for a dental examination and disclosed her HIV infection. Petitioner discovered a cavity and informed respondent of his policy against filling cavities of HIV-infected patients in his office. He offered to perform the work at a hospital at no extra charge, though respondent would have to pay for use of the hospital's facilities. She declined and filed suit under, *inter alia*, the Americans with Disabilities Act of 1990 (ADA), which prohibits discrimination against any individual "on the basis of disability in the . . . enjoyment of the . . . services . . . of any place of public accommodation by any person who . . . operates [such] a place," 42 U. S. C. §12182(a), but qualifies the prohibition by providing: "Nothing [herein] shall require an entity to permit an individual to participate in or benefit from the . . . accommodations of such entity where such individual poses a direct threat to the health or safety of others," §12182(b)(3). The District Court granted respondent summary judgment. The First Circuit affirmed, agreeing with the lower court that respondent's HIV was a disability under the ADA even though her infection had not yet progressed to the symptomatic stage, and that treating her in petitioner's office would not have posed a direct threat to the health and safety of others. In making the latter ruling, the court relied on the 1993 Dentistry Guidelines of the Centers for Disease Control and Prevention (CDC) and on the 1991 American Dental Association Policy on HIV.

Held:

1. Even though respondent's HIV infection had not progressed to the so-called symptomatic phase, it was a "disability" under

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§12102(2)(A), that is, "a physical . . . impairment that substantially limits one or more of [an individual's] major life activities." Pp. 3–21.

(a) The ADA definition is drawn almost verbatim from definitions applicable to §504 of the Rehabilitation Act of 1973 and another federal statute. Because the ADA expressly provides that "nothing [herein] shall be construed to apply a lesser standard than . . . under . . . the Rehabilitation Act . . . or the regulations issued . . . pursuant to [it]," §12201(a), this Court must construe the ADA to grant at least as much protection as the regulations implementing the Rehabilitation Act. Pp. 4–5.

(b) From the moment of infection and throughout every stage of the disease, HIV infection satisfies the statutory and regulatory definition of a "physical impairment." Applicable Rehabilitation Act regulations define "physical or mental impairment" to mean "any physiological disorder or condition . . . affecting . . . the . . . body['s] . . . hemic and lymphatic [systems]." HIV infection falls well within that definition. The medical literature reveals that the disease follows a predictable and unalterable course from infection to inevitable death. It causes immediate abnormalities in a person's blood, and the infected person's white cell count continues to drop throughout the course of the disease, even during the intermediate stage when its attack is concentrated in the lymph nodes. Thus, HIV infection must be regarded as a physiological disorder with an immediate, constant, and detrimental effect on the hemic and lymphatic systems. Pp. 4–10.

(c) The life activity upon which respondent relies, her ability to reproduce and to bear children, constitutes a "major life activity" under the ADA. The plain meaning of the word "major" denotes comparative importance and suggests that the touchstone is an activity's significance. Reproduction and the sexual dynamics surrounding it are central to the life process itself. Petitioner's claim that Congress intended the ADA only to cover those aspects of a person's life that have a public, economic, or daily character founders on the statutory language. Nothing in the definition suggests that activities without such a dimension may somehow be regarded as so unimportant or insignificant as not to be "major." This interpretation is confirmed by the Rehabilitation Act regulations, which provide an illustrative, nonexhaustive list of major life activities. Inclusion on that list of activities such as caring for one's self, performing manual tasks, working, and learning belies the suggestion that a task must have a public or economic character. On the contrary, the regulations support the inclusion of reproduction, which could not be regarded as any less important than working and learning. Pp. 10–12.

(d) Respondent's HIV infection "substantially limits" her major

life activity within the ADA's meaning. Although the Rehabilitation Act regulations provide little guidance in this regard, the Court's evaluation of the medical evidence demonstrates that an HIV-infected woman's ability to reproduce is substantially limited in two independent ways: If she tries to conceive a child, (1) she imposes on her male partner a statistically significant risk of becoming infected; and (2) she risks infecting her child during gestation and childbirth, *i.e.*, perinatal transmission. Evidence suggesting that antiretroviral therapy can lower the risk of perinatal transmission to about 8%, even if relevant, does not avail petitioner because it cannot be said as a matter of law that an 8% risk of transmitting a dread and fatal disease to one's child does not represent a substantial limitation on reproduction. The decision to reproduce carries economic and legal consequences as well. There are added costs for antiretroviral therapy, supplemental insurance, and long-term health care for the child who must be examined and treated. Some state laws, moreover, forbid HIV-infected persons from having sex with others, regardless of consent. In the context of reviewing summary judgment, the Court must take as true respondent's unchallenged testimony that her HIV infection controlled her decision not to have a child. Pp. 12–15.

(e) The uniform body of administrative and judicial precedent interpreting similar language in the Rehabilitation Act confirms the Court's holding. Every agency and court to consider the issue under the Rehabilitation Act has found statutory coverage for persons with asymptomatic HIV. The uniformity of that precedent is significant. When administrative and judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, Congress' intent to incorporate such interpretations as well. See, *e.g.*, *Lorillard* v. *Pons*, 434 U. S. 575, 580–581. Pp. 15–19.

(f) The Court's holding is further reinforced by the guidance issued by the Justice Department and other agencies authorized to administer the ADA, which supports the conclusion that persons with asymptomatic HIV fall within the ADA's definition of disability. The views of agencies charged with implementing a statute are entitled to deference. See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844. Pp. 19–21.

2. In affirming the summary judgment, the First Circuit did not cite sufficient material in the record to determine, as a matter of law, that respondent's HIV infection posed no direct threat to the health and safety of others. The ADA's direct threat provision, §12182(b)(3), stems from *School Bd. of Nassau Cty.* v. *Arline*, 480 U. S. 273, 287, in which this Court reconciled competing interests in prohibiting discrimination and preventing the spread of disease by construing the

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Rehabilitation Act not to require the hiring of a person who posed "a significant risk of communicating an infectious disease to others," *id.*, at 287, and n. 16. The existence of a significant risk is determined from the standpoint of the health care professional who refuses treatment or accommodation, and the risk assessment is based on the medical or other objective, scientific evidence available to him and his profession, not simply on his good-faith belief that a significant risk existed. See *id.*, at 288; *id.*, at 288, n. 18, distinguished. For the most part, the First Circuit followed the proper standard and conducted a thorough review of the evidence. However, it might have mistakenly relied on the 1993 CDC Dentistry Guidelines, which recommend certain universal precautions to combat the risk of HIV transmission in the dental environment, but do not actually assess the level of such risk, and on the 1991 American Dental Association Policy on HIV, which is the work of a professional organization, not a public health authority, and which does not reveal the extent to which it was based on the Association's assessment of dentists' ethical and professional duties, rather than scientific assessments. Other evidence in the record might support affirmance of the trial court's ruling, and there are reasons to doubt whether petitioner advanced evidence sufficient to raise a triable issue of fact on the significance of the risk, but this Court's evaluation is constrained by the fact that it has not had briefs and arguments directed to the entire record. A remand will permit a full exploration of the issues through the adversary process. Pp. 21–29.

107 F. 3d 934, vacated and remanded.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a concurring opinion, in which BREYER, J., joined. GINSBURG, J., filed a concurring opinion. REHNQUIST, C. J., filed an opinion concurring in the judgment in part and dissenting in part, in which SCALIA and THOMAS, JJ., joined, and in Part II of which O'CONNOR, J., joined. O'CONNOR, J., filed an opinion concurring in the judgment in part and dissenting in part.