

Syllabus

ALBERTSON'S, INC. *v.* KIRKINGBURGCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT

No. 98–591. Argued April 28, 1999—Decided June 22, 1999

Before beginning a truckdriver's job with petitioner, Albertson's, Inc., in 1990, respondent, Kirkingburg, was examined to see if he met the Department of Transportation's basic vision standards for commercial truckdrivers, which require corrected distant visual acuity of at least 20/40 in each eye and distant binocular acuity of at least 20/40. Although he has amblyopia, an uncorrectable condition that leaves him with 20/200 vision in his left eye and thus effectively monocular vision, the doctor erroneously certified that he met the DOT standards. When his vision was correctly assessed at a 1992 physical, he was told that he had to get a waiver of the DOT standards under a waiver program begun that year. Albertson's, however, fired him for failing to meet the basic DOT vision standards and refused to rehire him after he received a waiver. Kirkingburg sued Albertson's, claiming that firing him violated the Americans with Disabilities Act of 1990 (ADA). In granting summary judgment for Albertson's, the District Court found that Kirkingburg was not qualified without an accommodation because he could not meet the basic DOT standards and that the waiver program did not alter those standards. The Ninth Circuit reversed, finding that Kirkingburg had established a disability under the Act by demonstrating that the manner in which he sees differs significantly from the manner in which most people see; that although the ADA allowed Albertson's to rely on Government regulations in setting a job-related vision standard, Albertson's could not use compliance with the DOT regulations to justify its requirement because the waiver program was a legitimate part of the DOT's regulatory scheme; and that although Albertson's could set a vision standard different from the DOT's, it had to justify its independent standard and could not do so here.

Held:

1. The ADA requires monocular individuals, like others claiming the Act's protection, to prove a disability by offering evidence that the extent of the limitation on a major life activity caused by their impairment is substantial. The Ninth Circuit made three missteps in determining that Kirkingburg's amblyopia meets the ADA's first definition of disability, *i. e.*, a physical or mental impairment that "substantially limits" a major life activity, 42 U. S. C. § 12101(2)(A). First,

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although it relied on an Equal Employment Opportunity Commission regulation that defines “substantially limits” as requiring a “significant restrict[ion]” in an individual’s manner of performing a major life activity, see 29 CFR § 1630.2(j)(ii), the court actually found that there was merely a significant “difference” between the manner in which Kirkingburg sees and the manner in which most people see. By transforming “significant restriction” into “difference,” the court undercut the fundamental statutory requirement that only impairments that substantially limit the ability to perform a major life activity constitute disabilities. Second, the court appeared to suggest that it need not take account of a monocular individual’s ability to compensate for the impairment, even though it acknowledged that Kirkingburg’s brain had subconsciously done just that. Mitigating measures, however, must be taken into account in judging whether an individual has a disability, *Sutton v. United Airlines, Inc.*, ante, at 482, whether the measures taken are with artificial aids, like medications and devices, or with the body’s own systems. Finally, the Ninth Circuit did not pay much heed to the statutory obligation to determine a disability’s existence on a case-by-case basis. See 42 U. S. C. § 12101(2). Some impairments may invariably cause a substantial limitation of a major life activity, but monocularity is not one of them, for that category embraces a group whose members vary by, *e. g.*, the degree of visual acuity in the weaker eye, the extent of their compensating adjustments, and the ultimate scope of the restrictions on their visual abilities. Pp. 562–567.

2. An employer who requires as a job qualification that an employee meet an otherwise applicable federal safety regulation does not have to justify enforcing the regulation solely because its standard may be waived experimentally in an individual case. Pp. 567–578.

(a) Petitioner’s job qualification was not of its own devising, but was the visual acuity standard of the Federal Motor Carrier Safety Regulations, and is binding on Albertson’s, see 49 CFR § 391.11. The validity of these regulations is unchallenged, they have the force of law, and they contain no qualifying language about individualized determinations. Were it not for the waiver program, there would be no basis for questioning petitioner’s decision, and right, to follow the regulations. Pp. 567–570.

(b) The regulations establishing the waiver program did not modify the basic visual acuity standard in a way that disentitles an employer like Albertson’s to insist on the basic standard. One might assume that the general regulatory standard and the regulatory waiver standard ought to be accorded equal substantive significance, but that is not the case here. In setting the basic standards, the Federal Highway Admin-

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istration, the DOT agency responsible for overseeing the motor carrier safety regulations, made a considered determination about the visual acuity level needed for safe operation of commercial motor vehicles in interstate commerce. In contrast, the regulatory record made it plain that the waiver program at issue in this case was simply an experiment proposed as a means of obtaining data, resting on a hypothesis whose confirmation or refutation would provide a factual basis for possibly relaxing existing standards. Pp. 570–576.

(c) The ADA should not be read to require an employer to defend its decision not to participate in such an experiment. It is simply not credible that Congress enacted the ADA with the understanding that employers choosing to respect the Government's visual acuity regulation in the face of an experimental waiver might be burdened with an obligation to defend the regulation's application according to its own terms. Pp. 577–578.

143 F. 3d 1228, reversed.

SOUTER, J., delivered the opinion for a unanimous Court with respect to Parts I and III, and the opinion of the Court with respect to Part II, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, THOMAS, and GINSBURG, JJ., joined. THOMAS, J., filed a concurring opinion, *post*, p. 578.

Corbett Gordon argued the cause for petitioner. With her on the briefs were *Heidi Guettler* and *Kelliss Collins*.

Scott N. Hunt argued the cause for respondent. With him on the brief was *Richard C. Busse*.

Edward C. DuMont argued the cause for the United States et al. as *amici curiae* urging affirmance. On the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Lee*, *Deputy Solicitor General Underwood*, *James A. Feldman*, *Jessica Dunsay Silver*, *Timothy J. Moran*, *Philip B. Sklover*, *Lorraine C. Davis*, and *Robert J. Gregory*.*

*Briefs of *amici curiae* urging reversal were filed for the American Trucking Associations, Inc., et al. by *James D. Holzhauer*, *Timothy S. Bishop*, and *Robert Digges*; for the Equal Employment Advisory Council et al. by *Ann Elizabeth Reesman*, *Corrie L. Fischel*, *Stephen A. Bokart*, and *Robin S. Conrad*; and for the United Parcel Service of America, Inc.,

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JUSTICE SOUTER delivered the opinion of the Court.*

The question posed is whether, under the Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 327, as amended, 42 U. S. C. § 12101 *et seq.* (1994 ed. and Supp. III), an employer who requires as a job qualification that an employee meet an otherwise applicable federal safety regulation must justify enforcing the regulation solely because its standard may be waived in an individual case. We answer no.

I

In August 1990, petitioner, Albertson's, Inc., a grocery-store chain with supermarkets in several States, hired respondent, Hallie Kirkingburg, as a truckdriver based at its Portland, Oregon, warehouse. Kirkingburg had more than a decade's driving experience and performed well when petitioner's transportation manager took him on a road test.

Before starting work, Kirkingburg was examined to see if he met federal vision standards for commercial truckdrivers. 143 F. 3d 1228, 1230–1231 (CA9 1998). For many decades the Department of Transportation and its predecessors have been responsible for devising these standards for individuals who drive commercial vehicles in interstate commerce.¹ Since 1971, the basic vision regulation has required corrected distant visual acuity of at least 20/40 in each eye

by William J. Kilberg, Thomas G. Hungar, Pamela L. Hemminger, and Patricia S. Radez.

Briefs of *amici curiae* urging affirmance were filed for Justice for All et al. by Catherine A. Hanssens, Beatrice Dohrn, Bennett Klein, and Wendy Parmet; for the National Employment Lawyers Association by Gary Phelan, Paula A. Brantner, and Daniel S. Goldberg; and for James Strickland, Sr., et al. by Douglas L. Parker.

*JUSTICE STEVENS and JUSTICE BREYER join Parts I and III of this opinion.

¹See Motor Carrier Act, § 204(a), 49 Stat. 546; Department of Transportation Act, § 6(e)(6)(C), 80 Stat. 939–940; 49 CFR § 1.4(c)(9) (1968); Motor Carrier Safety Act of 1984, § 206, 98 Stat. 2835, as amended, 49 U. S. C. § 31136(a)(3); 49 CFR § 1.48(aa) (1998).

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and distant binocular acuity of at least 20/40. See 35 Fed. Reg. 6458, 6463 (1970); 57 Fed. Reg. 6793, 6794 (1992); 49 CFR § 391.41(b)(10) (1998).² Kirkingburg, however, suffers from amblyopia, an uncorrectable condition that leaves him with 20/200 vision in his left eye and monocular vision in effect.³ Despite Kirkingburg's weak left eye, the doctor erroneously certified that he met the DOT's basic vision standards, and Albertson's hired him.⁴

In December 1991, Kirkingburg injured himself on the job and took a leave of absence. Before returning to work in November 1992, Kirkingburg went for a further physical as required by the company. This time, the examining physician correctly assessed Kirkingburg's vision and explained that his eyesight did not meet the basic DOT standards. The physician, or his nurse, told Kirkingburg that in order to be legally qualified to drive, he would have to obtain a waiver of its basic vision standards from the DOT. See 143

² Visual acuity has a number of components but most commonly refers to "the ability to determine the presence of or to distinguish between more than one identifying feature in a visible target." G. von Noorden, *Binocular Vision and Ocular Motility* 114 (4th ed. 1990). Herman Snellen was a Dutch ophthalmologist who, in 1862, devised the familiar letter chart still used to measure visual acuity. The first figure in the Snellen score refers to distance between the viewer and the visual target, typically 20 feet. The second corresponds to the distance at which a person with normal acuity could distinguish letters of the size that the viewer can distinguish at 20 feet. See C. Snyder, *Our Ophthalmic Heritage* 97–99 (1967); D. Vaughan, T. Asburg, & P. Riordan-Eva, *General Ophthalmology* 30 (15th ed. 1999).

³ "Amblyopia," derived from Greek roots meaning dull vision, is a general medical term for "poor vision caused by abnormal visual development secondary to abnormal visual stimulation." K. Wright et al., *Pediatric Ophthalmology and Strabismus* 126 (1995); see *id.*, at 126–131; see also Von Noorden, *supra*, at 208–245.

⁴ Several months later, Kirkingburg's vision was recertified by a physician, again erroneously. Both times Kirkingburg received certification although his vision as measured did not meet the DOT minimum requirement. See 143 F. 3d 1228, 1230, and n. 2 (CA9 1998); App. 49–50, 297–298, 360–361.

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F. 3d, at 1230; App. 284–285. The doctor was alluding to a scheme begun in July 1992 for giving DOT certification to applicants with deficient vision who had three years of recent experience driving a commercial vehicle without a license suspension or revocation, involvement in a reportable accident in which the applicant was cited for a moving violation, conviction for certain driving-related offenses, citation for certain serious traffic violations, or more than two convictions for any other moving violations. A waiver applicant had to agree to have his vision checked annually for deterioration, and to report certain information about his driving experience to the Federal Highway Administration (FHWA or Administration), the agency within the DOT responsible for overseeing the motor carrier safety regulations. See 57 Fed. Reg. 31458, 31460–31461 (1992).⁵ Kirkingburg applied for a waiver, but because he could not meet the basic DOT vision standard Albertson's fired him from his job as a truckdriver.⁶ In early 1993, after he had left Albertson's, Kirkingburg received a DOT waiver, but Albertson's refused to rehire him. See 143 F. 3d, at 1231.

Kirkingburg sued Albertson's, claiming that firing him violated the ADA.⁷ Albertson's moved for summary judgment

⁵ In February 1992, the FHWA issued an advance notice of proposed rulemaking to review its vision standards. See 57 Fed. Reg. 6793. Shortly thereafter, the FHWA announced its intent to set up a waiver program and its preliminary acceptance of waiver applications. See *id.*, at 10295. It modified the proposed conditions for the waivers and requested comments in June. See *id.*, at 23370. After receiving and considering the comments, the Administration announced its final decision to grant waivers in July.

⁶ Albertson's offered Kirkingburg at least one and possibly two alternative jobs. The first was as a "yard hostler," a truckdriver within the premises of petitioner's warehouse property, the second as a tire mechanic. The company apparently withdrew the first offer, though the parties dispute the exact sequence of events. Kirkingburg turned down the second because it paid much less than driving a truck. See App. 14–16, 41–42.

⁷ The ADA provides: "No covered entity shall discriminate against a qualified individual with a disability because of the disability of such individual in regard to job application procedures, the hiring, advancement,

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solely on the ground that Kirkingburg was “not ‘otherwise qualified’ to perform the job of truck driver with or without reasonable accommodation.” App. 39–40; see *id.*, at 119. The District Court granted the motion, ruling that Albertson’s had reasonably concluded that Kirkingburg was not qualified without an accommodation because he could not, as admitted, meet the basic DOT vision standards. The court held that giving Kirkingburg time to get a DOT waiver was not a required reasonable accommodation because the waiver program was “a flawed experiment that has not altered the DOT vision requirements.” *Id.*, at 120.

A divided panel of the Ninth Circuit reversed. In addition to pressing its claim that Kirkingburg was not otherwise qualified, Albertson’s for the first time on appeal took the position that it was entitled to summary judgment because Kirkingburg did not have a disability within the meaning of the Act. See *id.*, at 182–185. The Court of Appeals considered but rejected the new argument, concluding that because Kirkingburg had presented “uncontroverted evidence” that his vision was effectively monocular, he had demonstrated that “the *manner* in which he sees differs significantly from the *manner* in which most people see.” 143 F. 3d, at 1232. That difference in manner, the court held, was sufficient to establish disability. *Ibid.*

The Court of Appeals then addressed the ground upon which the District Court had granted summary judgment, acknowledging that Albertson’s consistently required its truckdrivers to meet the DOT’s basic vision standards and that Kirkingburg had not met them (and indeed could not). The court recognized that the ADA allowed Albertson’s to establish a reasonable job-related vision standard as a prerequisite for hiring and that Albertson’s could rely on Government regulations as a basis for setting its standard. The court held, however, that Albertson’s could not use compli-

or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.” 42 U. S. C. § 12112(a).

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ance with a Government regulation as the justification for its vision requirement because the waiver program, which Albertson's disregarded, was "a lawful and legitimate part of the DOT regulatory scheme." *Id.*, at 1236. The Court of Appeals conceded that Albertson's was free to set a vision standard different from that mandated by the DOT, but held that under the ADA, Albertson's would have to justify its independent standard as necessary to prevent "a direct threat to the health or safety of other individuals in the workplace." *Ibid.* (quoting 42 U.S.C. § 12113(b)). Although the court suggested that Albertson's might be able to make such a showing on remand, 143 F.3d, at 1236, it ultimately took the position that the company could not, interpreting petitioner's rejection of DOT waivers as flying in the face of the judgment about safety already embodied in the DOT's decision to grant them, *id.*, at 1237.

Judge Rymer dissented. She contended that Albertson's had properly relied on the basic DOT vision standards in refusing to accept waivers because, when Albertson's fired Kirkingburg, the waiver program did not rest upon "a rule or a regulation with the force of law," but was merely a way of gathering data to use in deciding whether to refashion the still-applicable vision standards. *Id.*, at 1239.

II

Though we need not speak to the issue whether Kirkingburg was an individual with a disability in order to resolve this case, that issue falls within the first question on which we granted certiorari,⁸ 525 U.S. 1064 (1999), and we think it worthwhile to address it briefly in order to correct three missteps the Ninth Circuit made in its discussion of the matter. Under the ADA:

⁸ "Whether a monocular individual is 'disabled' per se, under the Americans with Disabilities Act." Pet. for Cert. i (citation omitted).

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“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).

We are concerned only with the first definition.⁹ There is no dispute either that Kirkingburg’s amblyopia is a physical impairment within the meaning of the Act, see 29 CFR § 1630.2(h)(1) (1998) (defining “physical impairment” as “[a]ny physiological disorder, or condition . . . affecting one or more of the following body systems: . . . special sense organs”), or that seeing is one of his major life activities, see § 1630.2(i) (giving seeing as an example of a major life activity).¹⁰ The question is whether his monocular vision alone “substantially limits” Kirkingburg’s seeing.

In giving its affirmative answer, the Ninth Circuit relied on a regulation issued by the Equal Employment Opportunity Commission (EEOC), defining “substantially limits” as “[s]ignificantly restrict[s] as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner, or duration under which the average person in the gen-

⁹The Ninth Circuit also discussed whether Kirkingburg was disabled under the third, “regarded as,” definition of “disability.” See 143 F. 3d, at 1233. Albertson’s did not challenge that aspect of the Court of Appeals’s decision in its petition for certiorari, and we therefore do not address it. See this Court’s Rule 14.1(a); see also, *e. g.*, *Yee v. Escondido*, 503 U. S. 519, 535 (1992).

¹⁰As the parties have not questioned the regulations and interpretive guidance promulgated by the EEOC relating to the ADA’s definitional section, 42 U. S. C. § 12102, for the purposes of this case, we assume, without deciding, that such regulations are valid, and we have no occasion to decide what level of deference, if any, they are due, see *Sutton v. United Airlines, Inc.*, *ante*, at 479–480.

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eral population can perform that same major life activity.” § 1630.2(j)(ii). The Ninth Circuit concluded that “the manner in which [Kirkburg] sees differs significantly from the manner in which most people see” because, “[t]o put it in its simplest terms [he] sees using only one eye; most people see using two.” 143 F. 3d, at 1232. The Ninth Circuit majority also relied on a recent Eighth Circuit decision, whose holding it characterized in similar terms: “It was enough to warrant a finding of disability . . . that the plaintiff could see out of only one eye: the *manner* in which he performed the major life activity of seeing was different.” *Ibid.* (characterizing *Doane v. Omaha*, 115 F. 3d 624, 627–628 (1997)).¹¹

But in several respects the Ninth Circuit was too quick to find a disability. First, although the EEOC definition

¹¹ Before the Ninth Circuit, Albertson’s presented the issue of Kirkburg’s failure to meet the Act’s definition of disability as an alternative ground for affirmance, *i. e.*, for a grant of summary judgment in the company’s favor. It thus contended that Kirkburg had “failed to produce any material issue of fact” that he was disabled. App. 182. Parts of the Ninth Circuit’s discussion suggest that it was merely denying the company’s request for summary judgment, leaving the issue open for factual development and resolution on remand. See, *e. g.*, 143 F. 3d, at 1232 (“Albertson’s first contends that Kirkburg failed to raise a genuine issue of fact regarding whether he is disabled”); *ibid.* (“Kirkburg has presented uncontroverted evidence showing that . . . [his] inability to see out of one eye affects his peripheral vision and his depth perception”); *ibid.* (“if the facts are as Kirkburg alleges”). Moreover the Government (and at times even Albertson’s, see Pet. for Cert. 15) understands the Ninth Circuit to have been simply explaining why the company was not entitled to summary judgment on this score. See Brief for United States et al. as *Amici Curiae* 11, and n. 5 (“The Ninth Circuit therefore correctly declined to grant summary judgment to petitioner on the ground that monocular vision is not a disability”). Even if that is an accurate reading, the statements the Ninth Circuit made setting out the standards governing the finding of disability would have largely dictated the outcome. Whether one views the Ninth Circuit’s opinion as merely denying summary judgment for the company or as tantamount to a grant of summary judgment for Kirkburg, our rejection of the sweeping character of the Court of Appeals’s pronouncements remains the same.

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of “substantially limits” cited by the Ninth Circuit requires a “significant restrict[ion]” in an individual’s manner of performing a major life activity, the court appeared willing to settle for a mere difference. By transforming “significant restriction” into “difference,” the court undercut the fundamental statutory requirement that only impairments causing “substantial limitat[ions]” in individuals’ ability to perform major life activities constitute disabilities. While the Act “addresses substantial limitations on major life activities, not utter inabilities,” *Bragdon v. Abbott*, 524 U. S. 624, 641 (1998), it concerns itself only with limitations that are in fact substantial.

Second, the Ninth Circuit appeared to suggest that in gauging whether a monocular individual has a disability a court need not take account of the individual’s ability to compensate for the impairment. The court acknowledged that Kirkingburg’s “brain has developed subconscious mechanisms for coping with [his] visual impairment and thus his body compensates for his disability.” 143 F. 3d, at 1232. But in treating monocularity as itself sufficient to establish disability and in embracing *Doane*, the Ninth Circuit apparently adopted the view that whether “the individual had learned to compensate for the disability by making subconscious adjustments to the *manner* in which he sensed depth and perceived peripheral objects,” 143 F. 3d, at 1232, was irrelevant to the determination of disability. See, e. g., *Sutton v. United Air Lines, Inc.*, 130 F. 3d 893, 901, n. 7 (CA10 1997) (characterizing *Doane* as standing for the proposition that mitigating measures should be disregarded in assessing disability); *EEOC v. Union Pacific R. Co.*, 6 F. Supp. 2d 1135, 1137 (Idaho 1998) (same). We have just held, however, in *Sutton v. United Airlines, Inc.*, *ante*, at 482, that mitigating measures must be taken into account in judging whether an individual possesses a disability. We see no principled basis for distinguishing between measures undertaken with artificial aids, like medications and devices, and

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measures undertaken, whether consciously or not, with the body's own systems.

Finally, and perhaps most significantly, the Court of Appeals did not pay much heed to the statutory obligation to determine the existence of disabilities on a case-by-case basis. The Act expresses that mandate clearly by defining "disability" "with respect to an individual," 42 U.S.C. § 12102(2), and in terms of the impact of an impairment on "such individual," § 12102(2)(A). See *Sutton, ante*, at 483; cf. 29 CFR pt. 1630, App. § 1630.2(j) (1998) ("The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual"); *ibid.* ("The determination of whether an individual is substantially limited in a major life activity must be made on a case by case basis"). While some impairments may invariably cause a substantial limitation of a major life activity, cf. *Bragdon, supra*, at 642 (declining to address whether HIV infection is a *per se* disability), we cannot say that monocularity does. That category, as we understand it, may embrace a group whose members vary by the degree of visual acuity in the weaker eye, the age at which they suffered their vision loss, the extent of their compensating adjustments in visual techniques, and the ultimate scope of the restrictions on their visual abilities. These variables are not the stuff of a *per se* rule. While monocularity inevitably leads to some loss of horizontal field of vision and depth perception,¹² consequences the Ninth

¹² Individuals who can see out of only one eye are unable to perform stereopsis, the process of combining two retinal images into one through which two-eyed individuals gain much of their depth perception, particularly at short distances. At greater distances, stereopsis is relatively less important for depth perception. In their distance vision, monocular individuals are able to compensate for their lack of stereopsis to varying degrees by relying on monocular cues, such as motion parallax, linear perspective, overlay of contours, and distribution of highlights and shadows. See Von Noorden, *supra* n. 2, at 23–30; App. 300–302.

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Circuit mentioned, see 143 F. 3d, at 1232, the court did not identify the degree of loss suffered by Kirkingburg, nor are we aware of any evidence in the record specifying the extent of his visual restrictions.

This is not to suggest that monocular individuals have an onerous burden in trying to show that they are disabled. On the contrary, our brief examination of some of the medical literature leaves us sharing the Government's judgment that people with monocular vision "ordinarily" will meet the Act's definition of disability, Brief for United States et al. as *Amici Curiae* 11, and we suppose that defendant companies will often not contest the issue. We simply hold that the Act requires monocular individuals, like others claiming the Act's protection, to prove a disability by offering evidence that the extent of the limitation in terms of their own experience, as in loss of depth perception and visual field, is substantial.

III

Petitioner's primary contention is that even if Kirkingburg was disabled, he was not a "qualified" individual with a disability, see 42 U. S. C. § 12112(a), because Albertson's merely insisted on the minimum level of visual acuity set forth in the DOT's Motor Carrier Safety Regulations, 49 CFR § 391.41(b)(10) (1998). If Albertson's was entitled to enforce that standard as defining an "essential job functio[n] of the employment position," see 42 U. S. C. § 12111(8), that is the end of the case, for Kirkingburg concededly could not satisfy it.¹³

¹³ Kirkingburg asserts that in showing that Albertson's initially allowed him to drive with a DOT certification, despite the fact that he did not meet the DOT's minimum visual acuity requirement, he produced evidence from which a reasonable juror could find that he satisfied the legitimate prerequisites of the job. See Brief for Respondent 36, 37; see also *id.*, at 6. But petitioner's argument is a legal, not a factual, one. In any event, the ample evidence in the record on petitioner's policy of requiring adherence to minimum DOT vision standards for its truckdrivers, see, *e. g.*,

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Under Title I of the ADA, employers may justify their use of “qualification standards . . . that screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability,” so long as such standards are “job-related and consistent with business necessity, and . . . performance cannot be accomplished by reasonable accommodation” § 12113(a). See also § 12112(b)(6) (defining discrimination to include “using qualification standards . . . that screen out or tend to screen out an individual with a disability . . . unless the standard . . . is shown to be job-related for the position in question and is consistent with business necessity”).¹⁴

Kirkingburg and the Government argue that these provisions do not authorize an employer to follow even a facially applicable regulatory standard subject to waiver without making some enquiry beyond determining whether the applicant or employee meets that standard, yes or no. Before an employer may insist on compliance, they say, the employer must make a showing with reference to the particular job that the waivable regulatory standard is “job-related . . . and . . . consistent with business necessity,” see § 12112(b)(6), and that after consideration of the capabilities of the individual a reasonable accommodation could not fairly resolve the competing interests when an applicant or employee cannot wholly satisfy an otherwise justifiable job qualification.

App. 53, 55–56, 333, would bar any inference that petitioner’s failure to detect the discrepancy between the level of visual acuity Kirkingburg was determined to have had during his first two certifications and the DOT’s minimum visual acuity requirement raised a genuine factual dispute on this issue.

¹⁴The EEOC’s regulations implementing Title I define “[q]ualification standards” to mean “the personal and professional attributes including the skill, experience, education, physical, medical, safety and other requirements established by a covered entity as requirements which an individual must meet in order to be eligible for the position held or desired.” 29 CFR § 1630.2(q) (1998).

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The Government extends this argument by reference to a further section of the statute, which at first blush appears to be a permissive provision for the employer's and the public's benefit. An employer may impose as a qualification standard "a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace," § 12113(b), with "direct threat" being defined by the Act as "a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation," § 12111(3); see also 29 CFR § 1630.2(r) (1998). The Government urges us to read subsections (a) and (b) together to mean that when an employer would impose any safety qualification standard, however specific, tending to screen out individuals with disabilities, the application of the requirement must satisfy the ADA's "direct threat" criterion, see Brief for United States et al. as *Amici Curiae* 22. That criterion ordinarily requires "an individualized assessment of the individual's present ability to safely perform the essential functions of the job," 29 CFR § 1630.2(r) (1998), "based on medical or other objective evidence," *Bragdon*, 524 U. S., at 649 (citing *School Bd. of Nassau Cty. v. Arline*, 480 U. S. 273, 288 (1987)); see 29 CFR § 1630.2(r) (1998) (assessment of direct threat "shall be based on a reasonable medical judgment that relies on the most current medical knowledge and/or on the best available objective evidence").¹⁵

¹⁵ This appears to be the position taken by the EEOC in the Interpretive Guidance promulgated under its authority to issue regulations to carry out Title I of the ADA, 42 U. S. C. § 12116, see 29 CFR pt. 1630, App. §§ 1630.15(b) and (c) (1998) (requiring safety-related standards to be evaluated under the ADA's direct threat standard); see also App. § 1630.10 (noting that selection criteria that screen out individuals with disabilities, including "safety requirements, vision or hearing requirements," must be job-related, consistent with business necessity, and not amenable to reasonable accommodation); *EEOC v. Exxon Corp.*, 1 F. Supp. 2d 635, 645 (ND Tex. 1998) (adopting the EEOC's position that safety-related qualification standards must meet the ADA's direct-threat standard). Although it might be questioned whether the Government's interpretation, which

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Albertson's answers essentially that even assuming the Government has proposed a sound reading of the statute for the general run of cases, this case is not in the general run. It is crucial to its position that Albertson's here was not insisting upon a job qualification merely of its own devising, subject to possible questions about genuine appropriateness and justifiable application to an individual for whom some accommodation may be reasonable. The job qualification it was applying was the distant visual acuity standard of the Federal Motor Carrier Safety Regulations, 49 CFR §391.41(b)(10) (1998), which is made binding on Albertson's by §391.11: "[A] motor carrier shall not . . . permit a person to drive a commercial motor vehicle unless that person is qualified to drive," by, among other things, meeting the physical qualification standards set forth in §391.41. The validity of these regulations is unchallenged, they have the force of law, and they contain no qualifying language about individualized determinations.

If we looked no further, there would be no basis to question petitioner's unconditional obligation to follow the regulations and its consequent right to do so. This, indeed, was the understanding of Congress when it enacted the ADA, see *infra*, at 573–574.¹⁶ But there is more: the waiver program.

The Court of Appeals majority concluded that the waiver program "precludes [employers] from declaring that persons determined by DOT to be capable of performing the job of commercial truck driver are incapable of performing that job by virtue of their disability," and that in the face of a waiver

might impose a higher burden on employers to justify safety-related qualification standards than other job requirements, is a sound one, we have no need to confront the validity of the reading in this case.

¹⁶The implementing regulations of Title I also recognize a defense to liability under the ADA that "a challenged action is required or necessitated by another Federal law or regulation," 29 CFR §1630.15(e) (1998). As the parties do not invoke this specific regulation, we have no occasion to consider its effect.

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an employer “will not be able to avoid the [ADA’s] strictures by showing that its standards are necessary to prevent a direct safety threat,” 143 F. 3d, at 1237. The Court of Appeals thus assumed that the regulatory provisions for the waiver program had to be treated as being on par with the basic visual acuity regulation, as if the general rule had been modified by some different safety standard made applicable by grant of a waiver. Cf. *Conroy v. Aniskoff*, 507 U. S. 511, 515 (1993) (noting the “‘cardinal rule that a statute is to be read as a whole’” (quoting *King v. St. Vincent’s Hospital*, 502 U. S. 215, 221 (1991))). On this reading, an individualized determination under a different substantive safety rule was an element of the regulatory regime, which would easily fit with any requirement of 42 U. S. C. §§ 12113(a) and (b) to consider reasonable accommodation. An employer resting solely on the federal standard for its visual acuity qualification would be required to accept a waiver once obtained, and probably to provide an applicant some opportunity to obtain a waiver whenever that was reasonably possible. If this was sound analysis, the District Court’s summary judgment for Albertson’s was error.

But the reasoning underlying the Court of Appeals’s decision was unsound, for we think it was error to read the regulations establishing the waiver program as modifying the content of the basic visual acuity standard in a way that dis-entitled an employer like Albertson’s to insist on it. To be sure, this is not immediately apparent. If one starts with the statutory provisions authorizing regulations by the DOT as they stood at the time the DOT began the waiver program, one would reasonably presume that the general regulatory standard and the regulatory waiver standard ought to be accorded equal substantive significance, so that the content of any general regulation would as a matter of law be deemed modified by the terms of any waiver standard thus applied to it. Compare 49 U. S. C. App. § 2505(a)(3) (1988 ed.) (“Such regulation shall . . . ensure that . . . the physical

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condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely”),¹⁷ with 49 U. S. C. App. § 2505(f) (1988 ed.) (“After notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any regulation issued under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles”).¹⁸ Safe operation is supposed to be the touchstone of regulation in each instance.

As to the general visual acuity regulations in force under the former provision,¹⁹ affirmative determinations that the selected standards were needed for safe operation were indeed the predicates of the DOT action. Starting in 1937, the federal agencies authorized to regulate commercial motor vehicle safety set increasingly rigorous visual acuity standards, culminating in the current one, which has remained unchanged since it became effective in 1971.²⁰ When

¹⁷This provision is currently codified at 49 U. S. C. § 31136(a)(3).

¹⁸Congress recently amended the waiver provision in the Transportation Equity Act for the 21st Century, Pub. L. 105-178, 112 Stat. 107. It now provides that the Secretary of Transportation may issue a 2-year renewable “exemption” if “such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.” See § 4007, 112 Stat. 401, 49 U. S. C. § 31315(b) (1994 ed., Supp. IV).

¹⁹At the time the FHWA promulgated the current visual acuity standard, the agency was acting pursuant to § 204(a) of the Interstate Commerce Act, as amended by the Motor Carrier Act, 49 U. S. C. § 304(a) (1970 ed.), see n. 1, *supra*, which likewise required the agency to regulate to ensure “safety of operation.”

²⁰The Interstate Commerce Commission promulgated the first visual acuity regulations for interstate commercial drivers in 1937, requiring “[g]ood eyesight in both eyes (either with or without glasses, or by correction with glasses), including adequate perception of red and green colors.” 2 Fed. Reg. 113120 (1937). In 1939, the vision standard was changed to require “visual acuity (either without glasses or by correction with glasses) of not less than 20/40 (Snellen) in one eye, and 20/100 (Snellen) in the other eye; form field of not less than 45 degrees in all meridians from the point of fixation; ability to distinguish red, green,

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the FHWA proposed it, the agency found that “[a]ccident experience in recent years has demonstrated that reduction of the effects of organic and physical disorders, emotional impairments, and other limitations of the good health of drivers are increasingly important factors in accident prevention,” 34 Fed. Reg. 9080, 9081 (1969) (Notice of Proposed Rule Making); the current standard was adopted to reflect the agency’s conclusion that “drivers of modern, more complex vehicles” must be able to “withstand the increased physical and mental demands that their occupation now imposes.” 35 Fed. Reg. 6458 (1970). Given these findings and “in the light of discussions with the Administration’s medical advisers,” *id.*, at 6459, the FHWA made a considered determination about the level of visual acuity needed for safe operation of commercial motor vehicles in interstate commerce, an “area [in which] the risks involved are so well known and so serious as to dictate the utmost caution.” *Id.*, at 17419.

For several reasons, one would expect any regulation governing a waiver program to establish a comparable substantive standard (albeit for exceptional cases), grounded on known facts indicating at least that safe operation would not be jeopardized. First, of course, safe operation was the criterion of the statute authorizing an administrative waiver scheme, as noted already. Second, the impetus to develop a waiver program was a concern that the existing substantive standard might be more demanding than safety required. When Congress enacted the ADA, it recognized that federal safety rules would limit application of the ADA as a matter of law. The Senate Labor and Human Resources Committee Report on the ADA stated that “a person with a disability applying for or currently holding a job subject to [DOT standards for drivers] must be able to satisfy these physical qualification standards in order to be considered a qualified individual with a disability under title I of this legislation.”

and yellow.” 57 Fed. Reg. 6793–6794 (1992) (internal quotation marks omitted). In 1952, the visual acuity standard was strengthened to require at least 20/40 (Snellen) in each eye. *Id.*, at 6794.

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S. Rep. No. 101-116, pp. 27-28 (1998). The two primary House Committees shared this understanding, see H. R. Rep. No. 101-485, pt. 2, p. 57 (1990) (House Education and Labor Committee Report); *id.*, pt. 3, at 34 (House Judiciary Committee Report). Accordingly, two of these Committees asked “the Secretary of Transportation [to] undertake a thorough review” of current knowledge about the capabilities of individuals with disabilities and available technological aids and devices, and make “any necessary changes” within two years of the enactment of the ADA. S. Rep. No. 101-116, at 27-28; see H. R. Rep. No. 101-485, pt. 2, at 57; see also *id.*, pt. 3, at 34 (expressing the expectation that the Secretary of Transportation would “review these requirements to determine whether they are valid under this Act”). Finally, when the FHWA instituted the waiver program it addressed the statutory mandate by stating in its notice of final disposition that the scheme would be “consistent with the safe operation of commercial motor vehicles,” just as 49 U.S.C. App. § 2505(f) (1988 ed.) required, 57 Fed. Reg. 31460 (1992).

And yet, despite this background, the regulations establishing the waiver program did not modify the general visual acuity standards. It is not that the waiver regulations failed to do so in a merely formal sense, as by turning waiver decisions on driving records, not sight requirements. The FHWA in fact made it clear that it had no evidentiary basis for concluding that the pre-existing standards could be lowered consistently with public safety. When, in 1992, the FHWA published an “[a]dvance notice of proposed rule-making” requesting comments “on the need, if any, to amend its driver qualification requirements relating to the vision standard,” *id.*, at 6793, it candidly proposed its waiver scheme as simply a means of obtaining information bearing on the justifiability of revising the binding standards already in place, see *id.*, at 10295. The agency explained that the “object of the waiver program is to provide objective data

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to be considered in relation to a rulemaking exploring the feasibility of relaxing the current absolute vision standards in 49 CFR part 391 in favor of a more individualized standard.” *Ibid.* As proposed, therefore, there was not only no change in the unconditional acuity standards, but no indication even that the FHWA then had a basis in fact to believe anything more lenient would be consistent with public safety as a general matter. After a bumpy stretch of administrative procedure, see *Advocates for Highway and Auto Safety v. FHWA*, 28 F. 3d 1288, 1290 (CA DC 1994), the FHWA’s final disposition explained again that the waivers were proposed as a way to gather facts going to the wisdom of changing the existing law. The waiver program “will enable the FHWA to conduct a study comparing a group of experienced, visually deficient drivers with a control group of experienced drivers who meet the current Federal vision requirements. This study will provide the empirical data necessary to evaluate the relationships between specific visual deficiencies and the operation of [commercial motor vehicles]. The data will permit the FHWA to properly evaluate its current vision requirement in the context of actual driver performance, and, if necessary, establish a new vision requirement which is safe, fair, and rationally related to the latest medical knowledge and highway technology.” 57 Fed. Reg. 31458 (1992). And if all this were not enough to show that the FHWA was planning to give waivers solely to collect information, it acknowledged that a study it had commissioned had done no more than “‘illuminat[e] the lack of empirical data to establish a link between vision disorders and commercial motor vehicle safety,’” and “‘failed to provide a sufficient foundation on which to propose a satisfactory vision standard for drivers of [commercial motor vehicles] in interstate commerce,’” *Advocates for Highway and Auto Safety, supra*, at 1293 (quoting 57 Fed. Reg. 31458 (1992)).

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In sum, the regulatory record made it plain that the waiver regulation did not rest on any final, factual conclusion that the waiver scheme would be conducive to public safety in the manner of the general acuity standards and did not purport to modify the substantive content of the general acuity regulation in any way. The waiver program was simply an experiment with safety, however well intended, resting on a hypothesis whose confirmation or refutation in practice would provide a factual basis for reconsidering the existing standards.²¹

²¹ Though irrelevant to the disposition of this case, it is hardly surprising that two years after the events here the waiver regulations were struck down for failure of the FHWA to support its formulaic finding of consistency with public safety. See *Advocates for Highway and Auto Safety v. FHWA*, 28 F. 3d 1288, 1289 (CA DC 1994). On remand, the agency “re-validated” the waivers it had already issued, based in part on evidence relating to the safety of drivers in the program that had not been included in the record before the District of Columbia Circuit. See 59 Fed. Reg. 50887, 50889–50890 (1994); *id.*, at 59386, 59389. In the meantime the FHWA has apparently continued to want things both ways. It has said publicly, based on a review of the data it collected from the waiver program itself, that the drivers who obtained such waivers have performed better as a class than those who satisfied the regulation. See *id.*, at 50887, 50890. It has also recently noted that its medical panel has recommended “leaving the visual acuity standard unchanged,” see 64 Fed. Reg. 16518 (1999) (citing F. Berson, M. Kuperwaser, L. Aiello, and J. Rosenberg, Visual Requirements and Commercial Drivers, Oct. 16, 1998), a recommendation which the FHWA has concluded supports its “view that the present standard is reasonable and necessary as a general standard to ensure highway safety.” 64 Fed. Reg. 16518 (1999).

The waiver program in which Kirkingburg participated expired on March 31, 1996, at which point the FHWA allowed all still-active participants to continue to operate in interstate commerce, provided they continued to meet certain medical and other requirements. See 61 Fed. Reg. 13338, 13345 (1996); 49 CFR §391.64 (1998). The FHWA justified this decision based on the safety record of participants in the original waiver program. See 61 Fed. Reg. 13338, 13345 (1996). In the wake of a 1996 decision from the United States Court of Appeals for the Eighth Circuit requiring the FHWA to justify the exclusion of further participants in the waiver program, see *Rauenhorst v. United States Dept. of Transporta-*

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Nothing in the waiver regulation, of course, required an employer of commercial drivers to accept the hypothesis and participate in the Government's experiment. The only question, then, is whether the ADA should be read to require such an employer to defend a decision to decline the experiment. Is it reasonable, that is, to read the ADA as requiring an employer like Albertson's to shoulder the general statutory burden to justify a job qualification that would tend to exclude the disabled, whenever the employer chooses to abide by the otherwise clearly applicable, unamended substantive regulatory standard despite the Government's willingness to waive it experimentally and without any finding of its being inappropriate? If the answer were yes, an employer would in fact have an obligation of which we can think of no comparable example in our law. The employer would be required in effect to justify *de novo* an existing and otherwise applicable safety regulation issued by the Government itself. The employer would be required on a case-by-case basis to reinvent the Government's own wheel when the Government had merely begun an experiment to provide data to consider changing the underlying specifications. And what is even more, the employer would be required to do so when the Government had made an affirmative record indicating that contemporary empirical evidence was hard to come by. It is simply not credible that Congress enacted the ADA (before there was any waiver program) with the understanding that employers choosing to respect the Government's sole substantive visual acuity regulation in the

tion, *FHWA*, 95 F. 3d 715, 723 (1996), the agency began taking new applicants for waivers, see, *e. g.*, 63 Fed. Reg. 66226 (1998). The agency has now initiated a program under the authority granted in the Transportation Equity Act for the 21st Century, Pub. L. 105-178, 112 Stat. 107, to grant exemptions on a more regular basis, see 63 Fed. Reg. 67600 (1998) (interim final rule implementing the Transportation Equity Act for the 21st Century). The effect of the current exemption program has not been challenged in this case, and we have no occasion to consider it.

THOMAS, J., concurring

face of an experimental waiver might be burdened with an obligation to defend the regulation's application according to its own terms.

The judgment of the Ninth Circuit is accordingly reversed.

It is so ordered.

JUSTICE THOMAS, concurring.

As the Government reads the Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 327, as amended, 42 U. S. C. § 12101 *et seq.* (1994 ed. and Supp. III), it requires that petitioner justify the Department of Transportation's (DOT) visual acuity standards as job related, consistent with business necessity, and required to prevent employees from imposing a direct threat to the health and safety of others in the workplace. The Court assumes, for purposes of this case, that the Government's reading is, for the most part, correct. *Ante*, at 569, and n. 15. I agree with the Court's decision that, even when the case is analyzed through the Government's proposed lens, petitioner was entitled to summary judgment in this case. As the Court explains, *ante*, at 577 and this page, it would be unprecedented and nonsensical to interpret § 12113 to require petitioner to defend the application of the Government's regulation to respondent when petitioner has an unconditional obligation to enforce the federal law.

As the Court points out, though, *ante*, at 567, DOT's visual acuity standards might also be relevant to the question whether respondent was a "qualified individual with a disability" under 42 U. S. C. § 12112(a). That section provides that no covered entity "shall discriminate against a qualified individual with a disability because of the disability of such individual." Presumably, then, a plaintiff claiming a cause of action under the ADA bears the burden of proving, *inter alia*, that he is a qualified individual. The phrase "qualified individual with a disability" is defined to mean:

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“an individual with a disability who, *with or without reasonable accommodation*, can perform the *essential functions* of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer’s judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job this description shall be considered evidence of the essential functions of the job.” §12111(8) (emphasis added).

In this case, respondent sought a job driving trucks in interstate commerce. The quintessential function of that job, it seems to me, is to be able to drive a commercial truck in interstate commerce, and it was respondent’s burden to prove that he could do so.

As the Court explains, *ante*, at 570, DOT’s Motor Carrier Safety Regulations have the force of law and bind petitioner—it may not, by law, “permit a person to drive a commercial motor vehicle unless that person is qualified to drive.” 49 CFR §391.11 (1999). But by the same token, DOT’s regulations bind respondent, who “shall not drive a commercial motor vehicle unless he/she is qualified to drive a commercial motor vehicle.” *Ibid.*; see also §391.41 (“A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so”). Given that DOT’s regulation equally binds petitioner and respondent, and that it is conceded in this case that respondent could not meet the federal requirements, respondent surely was not “qualified” to perform the essential functions of petitioner’s truckdriver job without a reasonable accommodation. The waiver program might be thought of as a way to reasonably accommodate respondent, but for the fact, as the Court explains, *ante*, at 571–576, that the program did nothing to modify the regulation’s unconditional requirements.

THOMAS, J., concurring

For that reason, requiring petitioner to make such an accommodation most certainly would have been *unreasonable*.

The result of this case is the same under either view of the statute. If forced to choose between these alternatives, however, I would prefer to hold that respondent, as a matter of law, was not qualified to perform the job he sought within the meaning of the ADA. I nevertheless join the Court's opinion. The Ninth Circuit below viewed respondent's ADA claim on the Government's terms and petitioner's argument here appears to be tailored around the Government's view. In these circumstances, I agree with the Court's approach. I join the Court's opinion, however, only on the understanding that it leaves open the argument that federal laws such as DOT's visual acuity standards might be critical in determining whether a plaintiff is a "qualified individual with a disability."

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OLMSTEAD, COMMISSIONER, GEORGIA DEPARTMENT OF HUMAN RESOURCES, ET AL. *v.* L. C.,
BY ZIMRING, GUARDIAN AD LITEM AND NEXT
FRIEND, ET AL.

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

No. 98–536. Argued April 21, 1999—Decided June 22, 1999

In the Americans with Disabilities Act of 1990 (ADA), Congress described the isolation and segregation of individuals with disabilities as a serious and pervasive form of discrimination. 42 U.S.C. §§ 12101(a)(2), (5). Title II of the ADA, which proscribes discrimination in the provision of public services, specifies, *inter alia*, that no qualified individual with a disability shall, “by reason of such disability,” be excluded from participation in, or be denied the benefits of, a public entity’s services, programs, or activities. § 12132. Congress instructed the Attorney General to issue regulations implementing Title II’s discrimination proscription. See § 12134(a). One such regulation, known as the “integration regulation,” requires a “public entity [to] administer . . . programs . . . in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 CFR § 35.130(d). A further prescription, here called the “reasonable-modifications regulation,” requires public entities to “make reasonable modifications” to avoid “discrimination on the basis of disability,” but does not require measures that would “fundamentally alter” the nature of the entity’s programs. § 35.130(b)(7).

Respondents L. C. and E. W. are mentally retarded women; L. C. has also been diagnosed with schizophrenia, and E. W., with a personality disorder. Both women were voluntarily admitted to Georgia Regional Hospital at Atlanta (GRH), where they were confined for treatment in a psychiatric unit. Although their treatment professionals eventually concluded that each of the women could be cared for appropriately in a community-based program, the women remained institutionalized at GRH. Seeking placement in community care, L. C. filed this suit against petitioner state officials (collectively, the State) under 42 U.S.C. § 1983 and Title II. She alleged that the State violated Title II in failing to place her in a community-based program once her treating professionals determined that such placement was appropriate. E. W. intervened, stating an identical claim. The District Court granted partial summary judgment for the women, ordering their

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placement in an appropriate community-based treatment program. The court rejected the State's argument that inadequate funding, not discrimination against L. C. and E. W. "by reason of [their] disability[ies]," accounted for their retention at GRH. Under Title II, the court concluded, unnecessary institutional segregation constitutes discrimination *per se*, which cannot be justified by a lack of funding. The court also rejected the State's defense that requiring immediate transfers in such cases would "fundamentally alter" the State's programs. The Eleventh Circuit affirmed the District Court's judgment, but remanded for reassessment of the State's cost-based defense. The District Court had left virtually no room for such a defense. The appeals court read the statute and regulations to allow the defense, but only in tightly limited circumstances. Accordingly, the Eleventh Circuit instructed the District Court to consider, as a key factor, whether the additional cost for treatment of L. C. and E. W. in community-based care would be unreasonable given the demands of the State's mental health budget.

Held: The judgment is affirmed in part and vacated in part, and the case is remanded.

138 F. 3d 893, affirmed in part, vacated in part, and remanded.

JUSTICE GINSBURG delivered the opinion of the Court with respect to Parts I, II, and III–A, concluding that, under Title II of the ADA, States are required to place persons with mental disabilities in community settings rather than in institutions when the State's treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. Pp. 596–603.

(a) The integration and reasonable-modifications regulations issued by the Attorney General rest on two key determinations: (1) Unjustified placement or retention of persons in institutions severely limits their exposure to the outside community, and therefore constitutes a form of discrimination based on disability prohibited by Title II, and (2) qualifying their obligation to avoid unjustified isolation of individuals with disabilities, States can resist modifications that would fundamentally alter the nature of their services and programs. The Eleventh Circuit essentially upheld the Attorney General's construction of the ADA. This Court affirms the Court of Appeals decision in substantial part. Pp. 596–597.

(b) Undue institutionalization qualifies as discrimination "by reason of . . . disability." The Department of Justice has consistently advocated that it does. Because the Department is the agency directed

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by Congress to issue Title II regulations, its views warrant respect. This Court need not inquire whether the degree of deference described in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844, is in order; the well-reasoned views of the agencies implementing a statute constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance. *E. g.*, *Bragdon v. Abbott*, 524 U. S. 624, 642. According to the State, L. C. and E. W. encountered no discrimination “by reason of” their disabilities because they were not denied community placement on account of those disabilities, nor were they subjected to “discrimination,” for they identified no comparison class of similarly situated individuals given preferential treatment. In rejecting these positions, the Court recognizes that Congress had a more comprehensive view of the concept of discrimination advanced in the ADA. The ADA stepped up earlier efforts in the Developmentally Disabled Assistance and Bill of Rights Act and the Rehabilitation Act of 1973 to secure opportunities for people with developmental disabilities to enjoy the benefits of community living. The ADA both requires all public entities to refrain from discrimination, see § 12132, and specifically identifies unjustified “segregation” of persons with disabilities as a “for[m] of discrimination,” see §§ 12101(a)(2), 12101(a)(5). The identification of unjustified segregation as discrimination reflects two evident judgments: Institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life, *cf.*, *e. g.*, *Allen v. Wright*, 468 U. S. 737, 755; and institutional confinement severely diminishes individuals’ everyday life activities. Dissimilar treatment correspondingly exists in this key respect: In order to receive needed medical services, persons with mental disabilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice. The State correctly uses the past tense to frame its argument that, despite Congress’ ADA findings, the Medicaid statute “reflected” a congressional policy preference for institutional treatment over treatment in the community. Since 1981, Medicaid has in fact provided funding for state-run home and community-based care through a waiver program. This Court emphasizes that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community settings. Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it. In this case, however, it is not genuinely disputed that L. C. and E. W. are individuals “quali-

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fied” for noninstitutional care: The State’s own professionals determined that community-based treatment would be appropriate for L. C. and E. W., and neither woman opposed such treatment. Pp. 597–603.

JUSTICE GINSBURG, joined by JUSTICE O’CONNOR, JUSTICE SOUTER, and JUSTICE BREYER, concluded in Part III–B that the State’s responsibility, once it provides community-based treatment to qualified persons with disabilities, is not boundless. The reasonable-modifications regulation speaks of “reasonable modifications” to avoid discrimination, and allows States to resist modifications that entail a “fundamenta[al] alter[ation]” of the States’ services and programs. If, as the Eleventh Circuit indicated, the expense entailed in placing one or two people in a community-based treatment program is properly measured for reasonableness against the State’s entire mental health budget, it is unlikely that a State, relying on the fundamental-alteration defense, could ever prevail. Sensibly construed, the fundamental-alteration component of the reasonable-modifications regulation would allow the State to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities. The ADA is not reasonably read to impel States to phase out institutions, placing patients in need of close care at risk. Nor is it the ADA’s mission to drive States to move institutionalized patients into an inappropriate setting, such as a homeless shelter, a placement the State proposed, then retracted, for E. W. Some individuals, like L. C. and E. W. in prior years, may need institutional care from time to time to stabilize acute psychiatric symptoms. For others, no placement outside the institution may ever be appropriate. To maintain a range of facilities and to administer services with an even hand, the State must have more leeway than the courts below understood the fundamental-alteration defense to allow. If, for example, the State were to demonstrate that it had a comprehensive, effectively working plan for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State’s endeavors to keep its institutions fully populated, the reasonable-modifications standard would be met. In such circumstances, a court would have no warrant effectively to order displacement of persons at the top of the community-based treatment waiting list by individuals lower down who commenced civil actions. The case is remanded for further consideration of the appropriate relief, given the range of the State’s facilities for the care of persons with diverse mental disabilities, and its obligation to administer services with an even hand. Pp. 603–606.

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JUSTICE STEVENS would affirm the judgment of the Court of Appeals, but because there are not five votes for that disposition, joined the Court's judgment and Parts I, II, and III-A of its opinion. Pp. 607–608.

JUSTICE KENNEDY concluded that the case must be remanded for a determination of the questions the Court poses and for a determination whether respondents can show a violation of 42 U. S. C. § 12132's ban on discrimination based on the summary judgment materials on file or any further pleadings and materials properly allowed. On the ordinary interpretation and meaning of the term, one who alleges discrimination must show that she received differential treatment vis-à-vis members of a different group on the basis of a statutorily described characteristic. Thus, respondents could demonstrate discrimination by showing that Georgia (i) provides treatment to individuals suffering from medical problems of comparable seriousness, (ii) as a general matter, does so in the most integrated setting appropriate for the treatment of those problems (taking medical and other practical considerations into account), but (iii) without adequate justification, fails to do so for a group of mentally disabled persons (treating them instead in separate, locked institutional facilities). This inquiry would not be simple. Comparisons of different medical conditions and the corresponding treatment regimens might be difficult, as would be assessments of the degree of integration of various settings in which medical treatment is offered. Thus far, respondents have identified no class of similarly situated individuals, let alone shown them to have been given preferential treatment. Without additional information, the Court cannot address the issue in the way the statute demands. As a consequence, the partial summary judgment granted respondents ought not to be sustained. In addition, it was error in the earlier proceedings to restrict the relevance and force of the State's evidence regarding the comparative costs of treatment. The State is entitled to wide discretion in adopting its own systems of cost analysis, and, if it chooses, to allocate health care resources based on fixed and overhead costs for whole institutions and programs. The lower courts should determine in the first instance whether a statutory violation is sufficiently alleged and supported in respondents' summary judgment materials and, if not, whether they should be given leave to replead and to introduce evidence and argument along the lines suggested. Pp. 611–615.

GINSBURG, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and III-A, in which STEVENS, O'CONNOR, SOUTER, and BREYER, JJ., joined, and an opin-

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ion with respect to Part III–B, in which O’CONNOR, SOUTER, and BREYER, JJ., joined. STEVENS, J., filed an opinion concurring in part and concurring in the judgment, *post*, p. 607. KENNEDY, J., filed an opinion concurring in the judgment, in which BREYER, J., joined as to Part I, *post*, p. 608. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA, J., joined, *post*, p. 615.

Beverly Patricia Downing, Senior Assistant Attorney General of Georgia, argued the cause for petitioners. With her on the briefs were *Thurbert E. Baker*, Attorney General, *Kathleen M. Pacious*, Deputy Attorney General, *Jefferson James Davis*, Special Assistant Attorney General, and *Jeffrey S. Sutton*.

Michael H. Gottesman argued the cause for respondents. With him on the brief were *Steven D. Caley*, *Susan C. Jamieson*, and *David A. Webster*.

Irving L. Gornstein argued the cause for the United States as *amicus curiae* urging affirmance. With him on the brief were *Solicitor General Waxman*, *Acting Assistant Attorney General Lee*, *Deputy Solicitor General Underwood*, *Jessica Dunsay Silver*, and *Gregory B. Friel*.*

*Briefs of *amici curiae* urging reversal were filed for the State of Nevada et al. by *Frankie Sue Del Papa*, Attorney General of Nevada, and *Anne B. Cathcart*, Special Assistant Attorney General, *Mike Moore*, Attorney General of Mississippi, and *Robert E. Sanders*, Assistant Attorney General, *John Cornyn*, Attorney General of Texas, *Andy Taylor*, First Assistant Attorney General, *Linda S. Eads*, Deputy Attorney General, and *Gregory S. Coleman*, Solicitor General, and by the Attorneys General for their respective States as follows: *Ken L. Salazar* of Colorado, *Jeffrey A. Modisett* of Indiana, *Margery S. Bronster* of Hawaii, *Richard P. Ieyoub* of Louisiana, *Thomas F. Reilly* of Massachusetts, *Joseph P. Mazurek* of Montana, *Charles M. Condon* of South Carolina, *Paul G. Summers* of Tennessee, *Christine O. Gregoire* of Washington, and *Gay Woodhouse* of Wyoming; and for the National Conference of State Legislatures et al. by *Richard Ruda* and *James I. Crowley*.

Briefs of *amici curiae* urging affirmance were filed for the American Association on Mental Retardation et al. by *Alan M. Wiseman*, *Timothy K. Armstrong*, and *Ira A. Burnim*; for the American Civil Liberties Union et al. by *Laurie Webb Daniel* and *Steven R. Shapiro*; for the American

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JUSTICE GINSBURG announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and III–A, and an opinion with respect to Part III–B, in which JUSTICE O’CONNOR, JUSTICE SOUTER, and JUSTICE BREYER join.

This case concerns the proper construction of the anti-discrimination provision contained in the public services portion (Title II) of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 337, 42 U. S. C. §12132. Specifically, we confront the question whether the proscription of discrimination may require placement of persons with mental disabilities in community settings rather than in institutions. The answer, we hold, is a qualified yes. Such action is in order when the State’s treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. In so ruling, we affirm the decision of the Eleventh Circuit in substantial part. We remand the case, however, for further consideration of the appropriate relief, given the range of facilities the State maintains for the care and treatment of persons with diverse mental disabilities, and its obligation to administer services with an even hand.

Psychiatric Association et al. by *Richard G. Taranto*; for 58 Former State Commissioners and Directors of Mental Health and Developmental Disabilities et al. by *Neil V. McKittrick*; for the National Council on Disability by *Robert L. Burgdorf, Jr.*; for the National Mental Health Consumers’ Self-Help Clearinghouse et al. by *Loralyn McKinley*; for Dick Thornburgh et al. by *Mr. Thornburgh, pro se*, *James E. Day*, and *David R. Fine*; for People First of Georgia et al. by *Thomas K. Gilhool*; and for the Voice of the Retarded et al. by *William J. Burke* and *Tamie Hopp*.

Stephen F. Gold filed a brief for ADAPT et al. as *amici curiae*.

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I

This case, as it comes to us, presents no constitutional question. The complaints filed by plaintiffs-respondents L. C. and E. W. did include such an issue; L. C. and E. W. alleged that defendants-petitioners, Georgia health care officials, failed to afford them minimally adequate care and freedom from undue restraint, in violation of their rights under the Due Process Clause of the Fourteenth Amendment. See Complaint ¶¶ 87–91; Intervenor’s Complaint ¶¶ 30–34. But neither the District Court nor the Court of Appeals reached those Fourteenth Amendment claims. See Civ. No. 1:95–cv–1210–MHS (ND Ga., Mar. 26, 1997), pp. 5–6, 11–13, App. to Pet. for Cert. 34a–35a, 40a–41a; 138 F. 3d 893, 895, and n. 3 (CA11 1998). Instead, the courts below resolved the case solely on statutory grounds. Our review is similarly confined. Cf. *Cleburne v. Cleburne Living Center, Inc.*, 473 U. S. 432, 450 (1985) (Texas city’s requirement of special use permit for operation of group home for mentally retarded, when other care and multiple-dwelling facilities were freely permitted, lacked rational basis and therefore violated Equal Protection Clause of Fourteenth Amendment). Mindful that it is a statute we are construing, we set out first the legislative and regulatory prescriptions on which the case turns.

In the opening provisions of the ADA, Congress stated findings applicable to the statute in all its parts. Most relevant to this case, Congress determined that

“(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

“(3) discrimination against individuals with disabilities persists in such critical areas as . . . institutionalization . . . ;

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“(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, . . . failure to make modifications to existing facilities and practices, . . . [and] segregation” 42 U. S. C. §§ 12101(a)(2), (3), (5).¹

Congress then set forth prohibitions against discrimination in employment (Title I, §§ 12111–12117), public services furnished by governmental entities (Title II, §§ 12131–12165), and public accommodations provided by private entities (Title III, §§ 12181–12189). The statute as a whole is intended “to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.” § 12101(b)(1).²

This case concerns Title II, the public services portion of the ADA.³ The provision of Title II centrally at issue reads:

“Subject to the provisions of this subchapter, no qualified individual with a disability shall, by reason of such

¹The ADA, enacted in 1990, is the Federal Government’s most recent and extensive endeavor to address discrimination against persons with disabilities. Earlier legislative efforts included the Rehabilitation Act of 1973, 87 Stat. 355, 29 U. S. C. § 701 *et seq.* (1976 ed.), and the Developmentally Disabled Assistance and Bill of Rights Act, 89 Stat. 486, 42 U. S. C. § 6001 *et seq.* (1976 ed.), enacted in 1975. In the ADA, Congress for the first time referred expressly to “segregation” of persons with disabilities as a “for[m] of discrimination,” and to discrimination that persists in the area of “institutionalization.” §§ 12101(a)(2), (3), (5).

²The ADA defines “disability,” “with respect to an individual,” as
“(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.” § 12102(2).

There is no dispute that L. C. and E. W. are disabled within the meaning of the ADA.

³In addition to the provisions set out in Part A governing public services generally, see §§ 12131–12134, Title II contains in Part B a host of provisions governing public transportation services, see §§ 12141–12165.

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disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.” §201, as set forth in 42 U.S.C. §12132.

Title II’s definition section states that “public entity” includes “any State or local government,” and “any department, agency, [or] special purpose district.” §§12131(1)(A), (B). The same section defines “qualified individual with a disability” as

“an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” §12131(2).

On redress for violations of §12132’s discrimination prohibition, Congress referred to remedies available under §505 of the Rehabilitation Act of 1973, 92 Stat. 2982, 29 U.S.C. §794a. See §203, as set forth in 42 U.S.C. §12133 (“The remedies, procedures, and rights set forth in [§505 of the Rehabilitation Act] shall be the remedies, procedures, and rights this subchapter provides to any person alleging discrimination on the basis of disability in violation of section 12132 of this title.”).⁴

⁴Section 505 of the Rehabilitation Act incorporates the remedies, rights, and procedures set forth in Title VI of the Civil Rights Act of 1964 for violations of §504 of the Rehabilitation Act. See 29 U.S.C. §794a(a)(2). Title VI, in turn, directs each federal department authorized to extend financial assistance to any department or agency of a State to issue rules and regulations consistent with achievement of the objectives of the statute authorizing financial assistance. See 78 Stat. 252, 42 U.S.C. §2000d–1. Compliance with such requirements may be effected by the termination or denial of federal funds, or “by any other means authorized by law.” *Ibid.* Remedies both at law and in equity are available for violations of the statute. See §2000d–7(a)(2).

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Congress instructed the Attorney General to issue regulations implementing provisions of Title II, including § 12132's discrimination proscription. See § 204, as set forth in § 12134(a) ("[T]he Attorney General shall promulgate regulations in an accessible format that implement this part.").⁵ The Attorney General's regulations, Congress further directed, "shall be consistent with this chapter and with the coordination regulations . . . applicable to recipients of Federal financial assistance under [§ 504 of the Rehabilitation Act]." § 204, as set forth in 42 U.S.C. § 12134(b). One of the § 504 regulations requires recipients of federal funds to "administer programs and activities in the most integrated

⁵ Congress directed the Secretary of Transportation to issue regulations implementing the portion of Title II concerning public transportation. See 42 U.S.C. §§ 12143(b), 12149, 12164. As stated in the regulations, a person alleging discrimination on the basis of disability in violation of Title II may seek to enforce its provisions by commencing a private lawsuit, or by filing a complaint with (a) a federal agency that provides funding to the public entity that is the subject of the complaint, (b) the Department of Justice for referral to an appropriate agency, or (c) one of eight federal agencies responsible for investigating complaints arising under Title II: the Department of Agriculture, the Department of Education, the Department of Health and Human Services, the Department of Housing and Urban Development, the Department of the Interior, the Department of Justice, the Department of Labor, and the Department of Transportation. See 28 CFR §§ 35.170(c), 35.172(b), 35.190(b) (1998).

The ADA contains several other provisions allocating regulatory and enforcement responsibility. Congress instructed the Equal Employment Opportunity Commission (EEOC) to issue regulations implementing Title I, see 42 U.S.C. § 12116; the EEOC, the Attorney General, and persons alleging discrimination on the basis of disability in violation of Title I may enforce its provisions, see § 12117(a). Congress similarly instructed the Secretary of Transportation and the Attorney General to issue regulations implementing provisions of Title III, see §§ 12186(a)(1), (b); the Attorney General and persons alleging discrimination on the basis of disability in violation of Title III may enforce its provisions, see §§ 12188(a)(1), (b). Each federal agency responsible for ADA implementation may render technical assistance to affected individuals and institutions with respect to provisions of the ADA for which the agency has responsibility. See § 12206(c)(1).

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setting appropriate to the needs of qualified handicapped persons.” 28 CFR §41.51(d) (1998).

As Congress instructed, the Attorney General issued Title II regulations, see 28 CFR pt. 35 (1998), including one modeled on the §504 regulation just quoted; called the “integration regulation,” it reads:

“A public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 CFR §35.130(d) (1998).

The preamble to the Attorney General’s Title II regulations defines “the most integrated setting appropriate to the needs of qualified individuals with disabilities” to mean “a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible.” 28 CFR pt. 35, App. A, p. 450 (1998). Another regulation requires public entities to “make reasonable modifications” to avoid “discrimination on the basis of disability,” unless those modifications would entail a “fundamenta[l] alter[ation]”; called here the “reasonable-modifications regulation,” it provides:

“A public entity shall make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.” 28 CFR §35.130(b)(7) (1998).

We recite these regulations with the caveat that we do not here determine their validity. While the parties differ on the proper construction and enforcement of the regulations, we do not understand petitioners to challenge the regulatory formulations themselves as outside the congressional authorization. See Brief for Petitioners 16–17, 36, 40–41;

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Reply Brief 15–16 (challenging the Attorney General’s interpretation of the integration regulation).

II

With the key legislative provisions in full view, we summarize the facts underlying this dispute. Respondents L. C. and E. W. are mentally retarded women; L. C. has also been diagnosed with schizophrenia, and E. W. with a personality disorder. Both women have a history of treatment in institutional settings. In May 1992, L. C. was voluntarily admitted to Georgia Regional Hospital at Atlanta (GRH), where she was confined for treatment in a psychiatric unit. By May 1993, her psychiatric condition had stabilized, and L. C.’s treatment team at GRH agreed that her needs could be met appropriately in one of the community-based programs the State supported. Despite this evaluation, L. C. remained institutionalized until February 1996, when the State placed her in a community-based treatment program.

E. W. was voluntarily admitted to GRH in February 1995; like L. C., E. W. was confined for treatment in a psychiatric unit. In March 1995, GRH sought to discharge E. W. to a homeless shelter, but abandoned that plan after her attorney filed an administrative complaint. By 1996, E. W.’s treating psychiatrist concluded that she could be treated appropriately in a community-based setting. She nonetheless remained institutionalized until a few months after the District Court issued its judgment in this case in 1997.

In May 1995, when she was still institutionalized at GRH, L. C. filed suit in the United States District Court for the Northern District of Georgia, challenging her continued confinement in a segregated environment. Her complaint invoked 42 U. S. C. § 1983 and provisions of the ADA, §§ 12131–12134, and named as defendants, now petitioners, the Commissioner of the Georgia Department of Human Resources, the Superintendent of GRH, and the Executive Director of the Fulton County Regional Board (collectively,

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the State). L. C. alleged that the State's failure to place her in a community-based program, once her treating professionals determined that such placement was appropriate, violated, *inter alia*, Title II of the ADA. L. C.'s pleading requested, among other things, that the State place her in a community care residential program, and that she receive treatment with the ultimate goal of integrating her into the mainstream of society. E. W. intervened in the action, stating an identical claim.⁶

The District Court granted partial summary judgment in favor of L. C. and E. W. See App. to Pet. for Cert. 31a–42a. The court held that the State's failure to place L. C. and E. W. in an appropriate community-based treatment program violated Title II of the ADA. See *id.*, at 39a, 41a. In so ruling, the court rejected the State's argument that inadequate funding, not discrimination against L. C. and E. W. "by reason of" their disabilities, accounted for their retention at GRH. Under Title II, the court concluded, "unnecessary institutional segregation of the disabled constitutes discrimination *per se*, which cannot be justified by a lack of funding." *Id.*, at 37a.

In addition to contending that L. C. and E. W. had not shown discrimination "by reason of [their] disabilit[ies]," the State resisted court intervention on the ground that requiring immediate transfers in cases of this order would "fundamentally alter" the State's activity. The State reasserted that it was already using all available funds to provide services to other persons with disabilities. See *id.*, at 38a. Re-

⁶ L. C. and E. W. are currently receiving treatment in community-based programs. Nevertheless, the case is not moot. As the District Court and Court of Appeals explained, in view of the multiple institutional placements L. C. and E. W. have experienced, the controversy they brought to court is "capable of repetition, yet evading review." No. 1:95-cv-1210-MHS (ND Ga., Mar. 26, 1997), p. 6, App. to Pet. for Cert. 35a (internal quotation marks omitted); see 138 F. 3d 893, 895, n. 2 (CA11 1998) (citing *Honig v. Doe*, 484 U. S. 305, 318–323 (1988), and *Vitek v. Jones*, 445 U. S. 480, 486–487 (1980)).

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jecting the State's "fundamental alteration" defense, the court observed that existing state programs provided community-based treatment of the kind for which L. C. and E. W. qualified, and that the State could "provide services to plaintiffs in the community at considerably *less* cost than is required to maintain them in an institution." *Id.*, at 39a.

The Court of Appeals for the Eleventh Circuit affirmed the judgment of the District Court, but remanded for reassessment of the State's cost-based defense. See 138 F.3d, at 905. As the appeals court read the statute and regulations: When "a disabled individual's treating professionals find that a community-based placement is appropriate for that individual, the ADA imposes a duty to provide treatment in a community setting—the most integrated setting appropriate to that patient's needs"; "[w]here there is no such finding [by the treating professionals], nothing in the ADA requires the deinstitutionalization of th[e] patient." *Id.*, at 902.

The Court of Appeals recognized that the State's duty to provide integrated services "is not absolute"; under the Attorney General's Title II regulation, "reasonable modifications" were required of the State, but fundamental alterations were not demanded. *Id.*, at 904. The appeals court thought it clear, however, that "Congress wanted to permit a cost defense only in the most limited of circumstances." *Id.*, at 902. In conclusion, the court stated that a cost justification would fail "[u]nless the State can prove that requiring it to [expend additional funds in order to provide L. C. and E. W. with integrated services] would be so unreasonable given the demands of the State's mental health budget that it would fundamentally alter the service [the State] provides." *Id.*, at 905. Because it appeared that the District Court had entirely ruled out a "lack of funding" justification, see App. to Pet. for Cert. 37a, the appeals court remanded, repeating that the District Court should consider, among other things, "whether the additional expenditures necessary to treat L. C. and E. W. in community-based care would be unreason-

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able given the demands of the State's mental health budget." 138 F. 3d, at 905.⁷

We granted certiorari in view of the importance of the question presented to the States and affected individuals. See 525 U. S. 1054 (1998).⁸

III

Endeavoring to carry out Congress' instruction to issue regulations implementing Title II, the Attorney General, in the integration and reasonable-modifications regulations, see *supra*, at 591–592, made two key determinations. The first concerned the scope of the ADA's discrimination proscription, 42 U. S. C. § 12132; the second concerned the obligation of the States to counter discrimination. As to the first, the Attorney General concluded that unjustified placement or retention of persons in institutions, severely limiting their exposure to the outside community, constitutes a form of discrimination based on disability prohibited by Title II. See 28 CFR § 35.130(d) (1998) ("A public entity shall administer services . . . in the most integrated setting appropriate to the needs of qualified individuals with disabilities."); Brief for United States as *Amicus Curiae* in *Helen L. v. DiDario*, No. 94–1243 (CA3 1994), pp. 8, 15–16 (unnecessary segregation of persons with disabilities constitutes a form of discrimination prohibited by the ADA and the integration

⁷After this Court granted certiorari, the District Court issued a decision on remand rejecting the State's fundamental-alteration defense. See 1:95–cv–1210–MHS (ND Ga., Jan. 29, 1999), p. 1. The court concluded that the annual cost to the State of providing community-based treatment to L. C. and E. W. was not unreasonable in relation to the State's overall mental health budget. See *id.*, at 5. In reaching that judgment, the District Court first declared "irrelevant" the potential impact of its decision beyond L. C. and E. W. 1:95–cv–1210–MHS (ND Ga., Oct. 20, 1998), p. 3, App. 177. The District Court's decision on remand is now pending appeal before the Eleventh Circuit.

⁸Twenty-two States and the Territory of Guam joined a brief urging that certiorari be granted. Ten of those States joined a brief in support of petitioners on the merits.

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regulation). Regarding the States' obligation to avoid unjustified isolation of individuals with disabilities, the Attorney General provided that States could resist modifications that "would fundamentally alter the nature of the service, program, or activity." 28 CFR § 35.130(b)(7) (1998).

The Court of Appeals essentially upheld the Attorney General's construction of the ADA. As just recounted, see *supra*, at 595–596, the appeals court ruled that the unjustified institutionalization of persons with mental disabilities violated Title II; the court then remanded with instructions to measure the cost of caring for L. C. and E. W. in a community-based facility against the State's mental health budget.

We affirm the Court of Appeals' decision in substantial part. Unjustified isolation, we hold, is properly regarded as discrimination based on disability. But we recognize, as well, the States' need to maintain a range of facilities for the care and treatment of persons with diverse mental disabilities, and the States' obligation to administer services with an even hand. Accordingly, we further hold that the Court of Appeals' remand instruction was unduly restrictive. In evaluating a State's fundamental-alteration defense, the District Court must consider, in view of the resources available to the State, not only the cost of providing community-based care to the litigants, but also the range of services the State provides others with mental disabilities, and the State's obligation to mete out those services equitably.

A

We examine first whether, as the Eleventh Circuit held, undue institutionalization qualifies as discrimination "by reason of . . . disability." The Department of Justice has consistently advocated that it does.⁹ Because the Department

⁹ See Brief for United States in *Halderman v. Pennhurst State School and Hospital*, Nos. 78–1490, 78–1564, 78–1602 (CA3 1978), p. 45 ("[I]nstitutionalization result[ing] in separation of mentally retarded persons for no

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is the agency directed by Congress to issue regulations implementing Title II, see *supra*, at 591–592, its views warrant respect. We need not inquire whether the degree of deference described in *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844 (1984), is in order; “[i]t is enough to observe that the well-reasoned views of the agencies implementing a statute ‘constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.’” *Bragdon v. Abbott*, 524 U. S. 624, 642 (1998) (quoting *Skidmore v. Swift & Co.*, 323 U. S. 134, 139–140 (1944)).

The State argues that L. C. and E. W. encountered no discrimination “by reason of” their disabilities because they were not denied community placement on account of those disabilities. See Brief for Petitioners 20. Nor were they subjected to “discrimination,” the State contends, because “‘discrimination’ necessarily requires uneven treatment of similarly situated individuals,” and L. C. and E. W. had identified no comparison class, *i. e.*, no similarly situated individuals given preferential treatment. *Id.*, at 21. We are satisfied that Congress had a more comprehensive view of the concept of discrimination advanced in the ADA.¹⁰

permissible reason . . . is ‘discrimination,’ and a violation of Section 504 [of the Rehabilitation Act] if it is supported by federal funds.”); Brief for United States in *Halderman v. Pennhurst State School and Hospital*, Nos. 78–1490, 78–1564, 78–1602 (CA3 1981), p. 27 (“Pennsylvania violates Section 504 by indiscriminately subjecting handicapped persons to [an institution] without first making an individual reasoned professional judgment as to the appropriate placement for each such person among all available alternatives.”); Brief for United States as *Amicus Curiae* in *Helen L. v. DiDario*, No. 94–1243 (CA3 1994), p. 7 (“Both the Section 504 coordination regulations and the rest of the ADA make clear that the unnecessary segregation of individuals with disabilities in the provision of public services is itself a form of discrimination within the meaning of those statutes.”); *id.*, at 8–16.

¹⁰The dissent is driven by the notion that “this Court has never endorsed an interpretation of the term ‘discrimination’ that encompassed disparate treatment among members of the *same* protected class,” *post*, at 616 (opinion of THOMAS, J.), that “[o]ur decisions construing various

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The ADA stepped up earlier measures to secure opportunities for people with developmental disabilities to enjoy the benefits of community living. The Developmentally Disabled Assistance and Bill of Rights Act, a 1975 measure, stated in aspirational terms that “[t]he treatment, services, and habilitation for a person with developmental disabilities . . . *should be* provided in the setting that is least restrictive of the person’s personal liberty.” 89 Stat. 502, 42 U.S.C. § 6010(2) (1976 ed.) (emphasis added); see also *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 24 (1981) (concluding that the § 6010 provisions “were intended to be hortatory, not mandatory”). In a related legislative endeavor, the Rehabilitation Act of 1973, Congress used mandatory language to proscribe discrimination against persons with disabilities. See 87 Stat. 394, as amended, 29 U.S.C. § 794 (1976 ed.) (“No otherwise qualified individual with a disability in the United States . . . *shall*, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal fi-

statutory prohibitions against ‘discrimination’ have not wavered from this path,” *post*, at 616, and that “a plaintiff cannot prove ‘discrimination’ by demonstrating that one member of a particular protected group has been favored over another member of that same group,” *post*, at 618. The dissent is incorrect as a matter of precedent and logic. See *O’Connor v. Consolidated Coin Caterers Corp.*, 517 U.S. 308, 312 (1996) (The Age Discrimination in Employment Act of 1967 “does not ban discrimination against employees because they are aged 40 or older; it bans discrimination against employees because of their age, but limits the protected class to those who are 40 or older. The fact that one person in the protected class has lost out to another person in the protected class is thus irrelevant, so long as he has lost out *because of his age*.”); cf. *Oncale v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 76 (1998) (“[W]orkplace harassment can violate Title VII’s prohibition against ‘discriminat[ion] . . . because of . . . sex,’ 42 U.S.C. § 2000e–2(a)(1), when the harasser and the harassed employee are of the same sex.”); *Jefferies v. Harris County Community Action Assn.*, 615 F.2d 1025, 1032 (CA5 1980) (“[D]iscrimination against black females can exist even in the absence of discrimination against black men or white women.”).

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nancial assistance.” (Emphasis added.)) Ultimately, in the ADA, enacted in 1990, Congress not only required all public entities to refrain from discrimination, see 42 U. S. C. § 12132; additionally, in findings applicable to the entire statute, Congress explicitly identified unjustified “segregation” of persons with disabilities as a “for[m] of discrimination.” See § 12101(a)(2) (“historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem”); § 12101(a)(5) (“individuals with disabilities continually encounter various forms of discrimination, including . . . segregation”).¹¹

Recognition that unjustified institutional isolation of persons with disabilities is a form of discrimination reflects two evident judgments. First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life. Cf. *Allen v. Wright*, 468 U. S. 737, 755 (1984) (“There can be no doubt that [stigmatizing injury often caused by racial discrimination] is one of the most serious consequences of discriminatory government action.”); *Los Angeles Dept. of Water and Power v. Manhart*, 435 U. S. 702, 707, n. 13 (1978) (“‘In forbidding employers to discriminate against individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes.’” (quoting *Sprogis v. United Air Lines, Inc.*, 444 F. 2d 1194, 1198 (CA7

¹¹ Unlike the ADA, § 504 of the Rehabilitation Act contains no express recognition that isolation or segregation of persons with disabilities is a form of discrimination. Section 504’s discrimination proscription, a single sentence attached to vocational rehabilitation legislation, has yielded divergent court interpretations. See Brief for United States as *Amicus Curiae* 23–25.

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1971)). Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment. See Brief for American Psychiatric Association et al. as *Amici Curiae* 20–22. Dissimilar treatment correspondingly exists in this key respect: In order to receive needed medical services, persons with mental disabilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice. See Brief for United States as *Amicus Curiae* 6–7, 17.

The State urges that, whatever Congress may have stated as its findings in the ADA, the Medicaid statute “reflected a congressional policy preference for treatment in the institution over treatment in the community.” Brief for Petitioners 31. The State correctly used the past tense. Since 1981, Medicaid has provided funding for state-run home and community-based care through a waiver program. See 95 Stat. 812–813, as amended, 42 U. S. C. § 1396n(c); Brief for United States as *Amicus Curiae* 20–21.¹² Indeed, the United States points out that the Department of Health and Human Services (HHS) “has a policy of encouraging States to take advantage of the waiver program, and often approves more waiver slots than a State ultimately uses.” *Id.*, at 25–26 (further observing that, by 1996, “HHS approved up to 2109 waiver slots for Georgia, but Georgia used only 700”).

We emphasize that nothing in the ADA or its implementing regulations condones termination of institutional settings for persons unable to handle or benefit from community

¹²The waiver program provides Medicaid reimbursement to States for the provision of community-based services to individuals who would otherwise require institutional care, upon a showing that the average annual cost of such services is not more than the annual cost of institutional services. See § 1396n(c).

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settings. Title II provides only that “qualified individual[s] with a disability” may not “be subjected to discrimination.” 42 U.S.C. § 12132. “Qualified individuals,” the ADA further explains, are persons with disabilities who, “with or without reasonable modifications to rules, policies, or practices, . . . mee[t] the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.” § 12131(2).

Consistent with these provisions, the State generally may rely on the reasonable assessments of its own professionals in determining whether an individual “meets the essential eligibility requirements” for habilitation in a community-based program. Absent such qualification, it would be inappropriate to remove a patient from the more restrictive setting. See 28 CFR § 35.130(d) (1998) (public entity shall administer services and programs in “the most integrated setting *appropriate* to the needs of qualified individuals with disabilities” (emphasis added)); cf. *School Bd. of Nassau Cty. v. Arline*, 480 U.S. 273, 288 (1987) (“[C]ourts normally should defer to the reasonable medical judgments of public health officials.”).¹³ Nor is there any federal requirement that community-based treatment be imposed on patients who do not desire it. See 28 CFR § 35.130(e)(1) (1998) (“Nothing in this part shall be construed to require an individual with a disability to accept an accommodation . . . which such individual chooses not to accept.”); 28 CFR pt. 35, App. A, p. 450 (1998) (“[P]ersons with disabilities must be provided the option of declining to accept a particular accommodation.”). In this case, however, there is no genuine dispute concerning the status of L. C. and E. W. as individuals “quali-

¹³ Georgia law also expresses a preference for treatment in the most integrated setting appropriate. See Ga. Code Ann. § 37-4-121 (1995) (“It is the policy of the state that the least restrictive alternative placement be secured for every client at every stage of his habilitation. It shall be the duty of the facility to assist the client in securing placement in noninstitutional community facilities and programs.”).

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fied” for noninstitutional care: The State’s own professionals determined that community-based treatment would be appropriate for L. C. and E. W., and neither woman opposed such treatment. See *supra*, at 593.¹⁴

B

The State’s responsibility, once it provides community-based treatment to qualified persons with disabilities, is not boundless. The reasonable-modifications regulation speaks of “reasonable modifications” to avoid discrimination, and allows States to resist modifications that entail a “fundamenta[l] alter[ation]” of the States’ services and programs. 28 CFR §35.130(b)(7) (1998). The Court of Appeals construed this regulation to permit a cost-based defense “only in the most limited of circumstances,” 138 F. 3d, at 902, and remanded to the District Court to consider, among other things, “whether the additional expenditures necessary to treat L. C. and E. W. in community-based care would be unreasonable given the demands of the State’s mental health budget,” *id.*, at 905.

The Court of Appeals’ construction of the reasonable-modifications regulation is unacceptable for it would leave the State virtually defenseless once it is shown that the plaintiff is qualified for the service or program she seeks. If the expense entailed in placing one or two people in a community-based treatment program is properly measured for reasonableness against the State’s entire mental health budget, it is unlikely that a State, relying on the fundamental-alteration defense, could ever prevail. See Tr. of Oral Arg. 27 (State’s attorney argues that Court of Appeals’ understanding of the

¹⁴ We do not in this opinion hold that the ADA imposes on the States a “standard of care” for whatever medical services they render, or that the ADA requires States to “provide a certain level of benefits to individuals with disabilities.” Cf. *post*, at 623, 624 (THOMAS, J., dissenting). We do hold, however, that States must adhere to the ADA’s nondiscrimination requirement with regard to the services they in fact provide.

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fundamental-alteration defense, as expressed in its order to the District Court, “will always preclude the State from a meaningful defense”); cf. Brief for Petitioners 37–38 (Court of Appeals’ remand order “mistakenly asks the district court to examine [the fundamental-alteration] defense based on the cost of providing community care to just two individuals, not all Georgia citizens who desire community care”); 1:95–cv–1210–MHS (ND Ga., Oct. 20, 1998), p. 3, App. 177 (District Court, on remand, declares the impact of its decision beyond L. C. and E. W. “irrelevant”). Sensibly construed, the fundamental-alteration component of the reasonable-modifications regulation would allow the State to show that, in the allocation of available resources, immediate relief for the plaintiffs would be inequitable, given the responsibility the State has undertaken for the care and treatment of a large and diverse population of persons with mental disabilities.

When it granted summary judgment for plaintiffs in this case, the District Court compared the cost of caring for the plaintiffs in a community-based setting with the cost of caring for them in an institution. That simple comparison showed that community placements cost less than institutional confinements. See App. to Pet. for Cert. 39a. As the United States recognizes, however, a comparison so simple overlooks costs the State cannot avoid; most notably, a “State . . . may experience increased overall expenses by funding community placements without being able to take advantage of the savings associated with the closure of institutions.” Brief for United States as *Amicus Curiae* 21.¹⁵

As already observed, see *supra*, at 601–602, the ADA is not reasonably read to impel States to phase out institutions, placing patients in need of close care at risk. Cf. *post*, at

¹⁵ Even if States eventually were able to close some institutions in response to an increase in the number of community placements, the States would still incur the cost of running partially full institutions in the interim. See Brief for United States as *Amicus Curiae* 21.

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610 (KENNEDY, J., concurring in judgment). Nor is it the ADA's mission to drive States to move institutionalized patients into an inappropriate setting, such as a homeless shelter, a placement the State proposed, then retracted, for E. W. See *supra*, at 593. Some individuals, like L. C. and E. W. in prior years, may need institutional care from time to time "to stabilize acute psychiatric symptoms." App. 98 (affidavit of Dr. Richard L. Elliott); see 138 F. 3d, at 903 ("[T]here may be times [when] a patient can be treated in the community, and others whe[n] an institutional placement is necessary."); Reply Brief 19 (placement in a community-based treatment program does not mean the State will no longer need to retain hospital accommodations for the person so placed). For other individuals, no placement outside the institution may ever be appropriate. See Brief for American Psychiatric Association et al. as *Amici Curiae* 22–23 ("Some individuals, whether mentally retarded or mentally ill, are not prepared at particular times—perhaps in the short run, perhaps in the long run—for the risks and exposure of the less protective environment of community settings"; for these persons, "institutional settings are needed and must remain available."); Brief for Voice of the Retarded et al. as *Amici Curiae* 11 ("Each disabled person is entitled to treatment in the most integrated setting possible for that person—recognizing that, on a case-by-case basis, that setting may be in an institution."); *Youngberg v. Romeo*, 457 U. S. 307, 327 (1982) (Blackmun, J., concurring) ("For many mentally retarded people, the difference between the capacity to do things for themselves within an institution and total dependence on the institution for all of their needs is as much liberty as they ever will know.").

To maintain a range of facilities and to administer services with an even hand, the State must have more leeway than the courts below understood the fundamental-alteration defense to allow. If, for example, the State were to demonstrate that it had a comprehensive, effectively working plan

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for placing qualified persons with mental disabilities in less restrictive settings, and a waiting list that moved at a reasonable pace not controlled by the State's endeavors to keep its institutions fully populated, the reasonable-modifications standard would be met. See Tr. of Oral Arg. 5 (State's attorney urges that, "by asking [a] person to wait a short time until a community bed is available, Georgia does not exclude [that] person by reason of disability, neither does Georgia discriminate against her by reason of disability"); see also *id.*, at 25 ("[I]t is reasonable for the State to ask someone to wait until a community placement is available."). In such circumstances, a court would have no warrant effectively to order displacement of persons at the top of the community-based treatment waiting list by individuals lower down who commenced civil actions.¹⁶

¹⁶We reject the Court of Appeals' construction of the reasonable-modifications regulation for another reason. The Attorney General's Title II regulations, Congress ordered, "shall be consistent with" the regulations in part 41 of Title 28 of the Code of Federal Regulations implementing § 504 of the Rehabilitation Act. 42 U.S.C. § 12134(b). The § 504 regulation upon which the reasonable-modifications regulation is based provides now, as it did at the time the ADA was enacted:

"A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program." 28 CFR § 41.53 (1990 and 1998 eds.).

While the part 41 regulations do not define "undue hardship," other § 504 regulations make clear that the "undue hardship" inquiry requires not simply an assessment of the cost of the accommodation in relation to the recipient's overall budget, but a "case-by-case analysis weighing factors that include: (1) [t]he overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget; (2) [t]he type of the recipient's operation, including the composition and structure of the recipient's workforce; and (3) [t]he nature and cost of the accommodation needed." 28 CFR § 42.511(c) (1998); see 45 CFR § 84.12(c) (1998) (same).

Under the Court of Appeals' restrictive reading, the reasonable-modifications regulation would impose a standard substantially more

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* * *

For the reasons stated, we conclude that, under Title II of the ADA, States are required to provide community-based treatment for persons with mental disabilities when the State's treatment professionals determine that such placement is appropriate, the affected persons do not oppose such treatment, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities. The judgment of the Eleventh Circuit is therefore affirmed in part and vacated in part, and the case is remanded for further proceedings.

It is so ordered.

JUSTICE STEVENS, concurring in part and concurring in the judgment.

Unjustified disparate treatment, in this case, "unjustified institutional isolation," constitutes discrimination under the Americans with Disabilities Act of 1990. See *ante*, at 600. If a plaintiff requests relief that requires modification of a State's services or programs, the State may assert, as an affirmative defense, that the requested modification would cause a fundamental alteration of a State's services and programs. In this case, the Court of Appeals appropriately remanded for consideration of the State's affirmative defense. On remand, the District Court rejected the State's "fundamental-alteration defense." See *ante*, at 596, n. 7. If the District Court was wrong in concluding that costs unrelated to the treatment of L. C. and E. W. do not support such a defense in this case, that arguable error should be corrected either by the Court of Appeals or by this Court in review of that decision. In my opinion, therefore, we should simply affirm the judgment of the Court of Appeals.

difficult for the State to meet than the "undue burden" standard imposed by the corresponding § 504 regulation.

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But because there are not five votes for that disposition, I join the Court's judgment and Parts I, II, and III–A of its opinion. Cf. *Bragdon v. Abbott*, 524 U.S. 624, 655–656 (1998) (STEVENS, J., concurring); *Screws v. United States*, 325 U.S. 91, 134 (1945) (Rutledge, J., concurring in result).

JUSTICE KENNEDY, with whom JUSTICE BREYER joins as to Part I, concurring in the judgment.

I

Despite remarkable advances and achievements by medical science, and agreement among many professionals that even severe mental illness is often treatable, the extent of public resources to devote to this cause remains controversial. Knowledgeable professionals tell us that our society, and the governments which reflect its attitudes and preferences, have yet to grasp the potential for treating mental disorders, especially severe mental illness. As a result, necessary resources for the endeavor often are not forthcoming. During the course of a year, about 5.6 million Americans will suffer from severe mental illness. E. Torrey, *Out of the Shadows* 4 (1997). Some 2.2 million of these persons receive no treatment. *Id.*, at 6. Millions of other Americans suffer from mental disabilities of less serious degree, such as mild depression. These facts are part of the background against which this case arises. In addition, of course, persons with mental disabilities have been subject to historic mistreatment, indifference, and hostility. See, e.g., *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 461–464 (1985) (Marshall, J., concurring in judgment in part and dissenting in part) (discussing treatment of the mentally retarded).

Despite these obstacles, the States have acknowledged that the care of the mentally disabled is their special obligation. They operate and support facilities and programs, sometimes elaborate ones, to provide care. It is a continu-

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ing challenge, though, to provide the care in an effective and humane way, particularly because societal attitudes and the responses of public authorities have changed from time to time.

Beginning in the 1950's, many victims of severe mental illness were moved out of state-run hospitals, often with benign objectives. According to one estimate, when adjusted for population growth, "the actual decrease in the numbers of people with severe mental illnesses in public psychiatric hospitals between 1955 and 1994 was 92 percent." Brief for American Psychiatric Association et al. as *Amici Curiae* 21, n. 5 (citing Torrey, *supra*, at 8–9). This was not without benefit or justification. The so-called "deinstitutionalization" has permitted a substantial number of mentally disabled persons to receive needed treatment with greater freedom and dignity. It may be, moreover, that those who remain institutionalized are indeed the most severe cases. With reference to this case, as the Court points out, *ante*, at 593, 603, it is undisputed that the State's own treating professionals determined that community-based care was medically appropriate for respondents. Nevertheless, the depopulation of state mental hospitals has its dark side. According to one expert:

"For a substantial minority . . . deinstitutionalization has been a psychiatric *Titanic*. Their lives are virtually devoid of 'dignity' or 'integrity of body, mind, and spirit.' 'Self-determination' often means merely that the person has a choice of soup kitchens. The 'least restrictive setting' frequently turns out to be a cardboard box, a jail cell, or a terror-filled existence plagued by both real and imaginary enemies." Torrey, *supra*, at 11.

It must be remembered that for the person with severe mental illness who has no treatment the most dreaded of confinements can be the imprisonment inflicted by his own mind,

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which shuts reality out and subjects him to the torment of voices and images beyond our own powers to describe.

It would be unreasonable, it would be a tragic event, then, were the Americans with Disabilities Act of 1990 (ADA) to be interpreted so that States had some incentive, for fear of litigation, to drive those in need of medical care and treatment out of appropriate care and into settings with too little assistance and supervision. The opinion of a responsible treating physician in determining the appropriate conditions for treatment ought to be given the greatest of deference. It is a common phenomenon that a patient functions well with medication, yet, because of the mental illness itself, lacks the discipline or capacity to follow the regime the medication requires. This is illustrative of the factors a responsible physician will consider in recommending the appropriate setting or facility for treatment. JUSTICE GINSBURG's opinion takes account of this background. It is careful, and quite correct, to say that it is not "the ADA's mission to drive States to move institutionalized patients into an inappropriate setting, such as a homeless shelter" *Ante*, at 605.

In light of these concerns, if the principle of liability announced by the Court is not applied with caution and circumspection, States may be pressured into attempting compliance on the cheap, placing marginal patients into integrated settings devoid of the services and attention necessary for their condition. This danger is in addition to the federalism costs inherent in referring state decisions regarding the administration of treatment programs and the allocation of resources to the reviewing authority of the federal courts. It is of central importance, then, that courts apply today's decision with great deference to the medical decisions of the responsible, treating physicians and, as the Court makes clear, with appropriate deference to the program funding decisions of state policymakers.

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II

With these reservations made explicit, in my view we must remand the case for a determination of the questions the Court poses and for a determination whether respondents can show a violation of 42 U. S. C. § 12132's ban on discrimination based on the summary judgment materials on file or any further pleadings and materials properly allowed.

At the outset it should be noted there is no allegation that Georgia officials acted on the basis of animus or unfair stereotypes regarding the disabled. Underlying much discrimination law is the notion that animus can lead to false and unjustified stereotypes, and vice versa. Of course, the line between animus and stereotype is often indistinct, and it is not always necessary to distinguish between them. Section 12132 can be understood to deem as irrational, and so to prohibit, distinctions by which a class of disabled persons, or some within that class, are, by reason of their disability and without adequate justification, exposed by a state entity to more onerous treatment than a comparison group in the provision of services or the administration of existing programs, or indeed entirely excluded from state programs or facilities. Discrimination under this statute might in principle be shown in the case before us, though further proceedings should be required.

Putting aside issues of animus or unfair stereotype, I agree with JUSTICE THOMAS that on the ordinary interpretation and meaning of the term, one who alleges discrimination must show that she "received differential treatment vis-à-vis members of a different group on the basis of a statutorily described characteristic." *Post*, at 616 (dissenting opinion). In my view, however, discrimination so defined might be shown here. Although the Court seems to reject JUSTICE THOMAS' definition of discrimination, *ante*, at 598, it asserts that unnecessary institutional care does lead to "[d]issimilar treatment," *ante*, at 601. According to the Court, "[i]n order to receive needed medical services, persons with mental dis-

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abilities must, because of those disabilities, relinquish participation in community life they could enjoy given reasonable accommodations, while persons without mental disabilities can receive the medical services they need without similar sacrifice.” *Ibid.*

Although this point is not discussed at length by the Court, it does serve to suggest the theory under which respondents might be subject to discrimination in violation of § 12132. If they could show that persons needing psychiatric or other medical services to treat a mental disability are subject to a more onerous condition than are persons eligible for other existing state medical services, and if removal of the condition would not be a fundamental alteration of a program or require the creation of a new one, then the beginnings of a discrimination case would be established. In terms more specific to this case, if respondents could show that Georgia (i) provides treatment to individuals suffering from medical problems of comparable seriousness, (ii) as a general matter, does so in the most integrated setting appropriate for the treatment of those problems (taking medical and other practical considerations into account), but (iii) without adequate justification, fails to do so for a group of mentally disabled persons (treating them instead in separate, locked institutional facilities), I believe it would demonstrate discrimination on the basis of mental disability.

Of course, it is a quite different matter to say that a State without a program in place is required to create one. No State has unlimited resources, and each must make hard decisions on how much to allocate to treatment of diseases and disabilities. If, for example, funds for care and treatment of the mentally ill, including the severely mentally ill, are reduced in order to support programs directed to the treatment and care of other disabilities, the decision may be unfortunate. The judgment, however, is a political one and not within the reach of the statute. Grave constitutional concerns are raised when a federal court is given the author-

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ity to review the State's choices in basic matters such as establishing or declining to establish new programs. It is not reasonable to read the ADA to permit court intervention in these decisions. In addition, as the Court notes, *ante*, at 592, by regulation a public entity is required only to make "reasonable modifications in policies, practices, or procedures" when necessary to avoid discrimination and is not even required to make those if "the modifications would fundamentally alter the nature of the service, program, or activity." 28 CFR §35.130(b)(7) (1998). It follows that a State may not be forced to create a community-treatment program where none exists. See Brief for United States as *Amicus Curiae* 19–20, and n. 3. Whether a different statutory scheme would exceed constitutional limits need not be addressed.

Discrimination, of course, tends to be an expansive concept and, as legal category, it must be applied with care and prudence. On any reasonable reading of the statute, § 12132 cannot cover all types of differential treatment of disabled and nondisabled persons, no matter how minimal or innocuous. To establish discrimination in the context of this case, and absent a showing of policies motivated by improper animus or stereotypes, it would be necessary to show that a comparable or similarly situated group received differential treatment. Regulations are an important tool in identifying the kinds of contexts, policies, and practices that raise concerns under the ADA. The congressional findings in 42 U. S. C. § 12101 also serve as a useful aid for courts to discern the sorts of discrimination with which Congress was concerned. Indeed, those findings have clear bearing on the issues raised in this case, and support the conclusion that unnecessary institutionalization may be the evidence or the result of the discrimination the ADA prohibits.

Unlike JUSTICE THOMAS, I deem it relevant and instructive that Congress in express terms identified the "isolat[ion] and segregat[ion]" of disabled persons by society as a "for[m]

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of discrimination,” §§ 12101(a)(2), (5), and noted that discrimination against the disabled “persists in such critical areas as . . . institutionalization,” § 12101(a)(3). These findings do not show that segregation and institutionalization are always discriminatory or that segregation or institutionalization are, by their nature, forms of prohibited discrimination. Nor do they necessitate a regime in which individual treatment plans are required, as distinguished from broad and reasonable classifications for the provision of health care services. Instead, they underscore Congress’ concern that discrimination has been a frequent and pervasive problem in institutional settings and policies and its concern that segregating disabled persons from others can be discriminatory. Both of those concerns are consistent with the normal definition of discrimination—differential treatment of similarly situated groups. The findings inform application of that definition in specific cases, but absent guidance to the contrary, there is no reason to think they displace it. The issue whether respondents have been discriminated against under § 12132 by institutionalized treatment cannot be decided in the abstract, divorced from the facts surrounding treatment programs in their State.

The possibility therefore remains that, on the facts of this case, respondents would be able to support a claim under § 12132 by showing that they have been subject to discrimination by Georgia officials on the basis of their disability. This inquiry would not be simple. Comparisons of different medical conditions and the corresponding treatment regimens might be difficult, as would be assessments of the degree of integration of various settings in which medical treatment is offered. For example, the evidence might show that, apart from services for the mentally disabled, medical treatment is rarely offered in a community setting but also is rarely offered in facilities comparable to state mental hospitals. Determining the relevance of that type of evidence would require considerable judgment and anal-

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ysis. However, as petitioners observe, “[i]n this case, no class of similarly situated individuals was even identified, let alone shown to be given preferential treatment.” Brief for Petitioners 21. Without additional information regarding the details of state-provided medical services in Georgia, we cannot address the issue in the way the statute demands. As a consequence, the judgment of the courts below, granting partial summary judgment to respondents, ought not to be sustained. In addition, as JUSTICE GINSBURG’s opinion is careful to note, *ante*, at 604, it was error in the earlier proceedings to restrict the relevance and force of the State’s evidence regarding the comparative costs of treatment. The State is entitled to wide discretion in adopting its own systems of cost analysis, and, if it chooses, to allocate health care resources based on fixed and overhead costs for whole institutions and programs. We must be cautious when we seek to infer specific rules limiting States’ choices when Congress has used only general language in the controlling statute.

I would remand the case to the Court of Appeals or the District Court for it to determine in the first instance whether a statutory violation is sufficiently alleged and supported in respondents’ summary judgment materials and, if not, whether they should be given leave to replead and to introduce evidence and argument along the lines suggested above.

For these reasons, I concur in the judgment of the Court.

JUSTICE THOMAS, with whom THE CHIEF JUSTICE and JUSTICE SCALIA join, dissenting.

Title II of the Americans with Disabilities Act of 1990 (ADA), 104 Stat. 337, as set forth in 42 U.S.C. § 12132, provides:

“Subject to the provisions of this subchapter, no qualified individual with a disability shall, *by reason of such disability*, be excluded from participation in or be denied the benefits of the services, programs, or activities

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of a public entity, *or be subjected to discrimination* by any such entity.” (Emphasis added.)

The majority concludes that petitioners “discriminated” against respondents—as a matter of law—by continuing to treat them in an institutional setting after they became eligible for community placement. I disagree. Temporary exclusion from community placement does not amount to “discrimination” in the traditional sense of the word, nor have respondents shown that petitioners “discriminated” against them “by reason of” their disabilities.

Until today, this Court has never endorsed an interpretation of the term “discrimination” that encompassed disparate treatment among members of the *same* protected class. Discrimination, as typically understood, requires a showing that a claimant received differential treatment vis-à-vis members of a different group on the basis of a statutorily described characteristic. This interpretation comports with dictionary definitions of the term discrimination, which means to “distinguish,” to “differentiate,” or to make a “distinction in favor of or against, a person or thing based on the group, class, or category to which that person or thing belongs rather than on individual merit.” Random House Dictionary 564 (2d ed. 1987); see also Webster’s Third New International Dictionary 648 (1981) (defining “discrimination” as “the making or perceiving of a distinction or difference” or as “the act, practice, or an instance of discriminating categorically rather than individually”).

Our decisions construing various statutory prohibitions against “discrimination” have not wavered from this path. The best place to begin is with Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, the paradigmatic anti-discrimination law.¹ Title VII makes it “an unlawful em-

¹ We have incorporated Title VII standards of discrimination when interpreting statutes prohibiting other forms of discrimination. For example, Rev. Stat. § 1977, as amended, 42 U.S.C. § 1981, has been interpreted to forbid all racial discrimination in the making of private and

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ployment practice for an employer . . . to *discriminate* against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U. S. C. §2000e-2(a)(1) (emphasis added). We have explained that this language is designed "to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees." *Griggs v. Duke Power Co.*, 401 U. S. 424, 429-430 (1971).²

Under Title VII, a finding of discrimination requires a comparison of otherwise similarly situated persons who are in different groups by reason of certain characteristics provided by statute. See, e. g., *Newport News Shipbuilding & Dry Dock Co. v. EEOC*, 462 U. S. 669, 683 (1983) (explain-

public contracts. See *Saint Francis College v. Al-Khazraji*, 481 U. S. 604, 609 (1987). This Court has applied the "framework" developed in Title VII cases to claims brought under this statute. *Patterson v. McLean Credit Union*, 491 U. S. 164, 186 (1989). Also, the Age Discrimination in Employment Act of 1967, 81 Stat. 602, as amended, 29 U. S. C. §623(a)(1), prohibits discrimination on the basis of an employee's age. This Court has noted that its "interpretation of Title VII . . . applies with equal force in the context of age discrimination, for the substantive provisions of the ADEA 'were derived *in haec verba* from Title VII.'" *Trans World Airlines, Inc. v. Thurston*, 469 U. S. 111, 121 (1985) (quoting *Lorillard v. Pons*, 434 U. S. 575, 584 (1978)). This Court has also looked to its Title VII interpretations of discrimination in illuminating Title IX of the Education Amendments of 1972, 86 Stat. 373, as amended, 20 U. S. C. §1681 *et seq.*, which prohibits discrimination under any federally funded education program or activity. See *Franklin v. Gwinnett County Public Schools*, 503 U. S. 60, 75 (1992) (relying on *Meritor Savings Bank, FSB v. Vinson*, 477 U. S. 57 (1986), a Title VII case, in determining that sexual harassment constitutes discrimination).

²This Court has recognized that two forms of discrimination are prohibited under Title VII: disparate treatment and disparate impact. See *Griggs*, 401 U. S., at 431 ("The Act proscribes not only overt discrimination but also practices that are fair in form, but discriminatory in operation"). Both forms of "discrimination" require a comparison among classes of employees.

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ing that Title VII discrimination occurs when an employee is treated “‘in a manner which but for that person’s sex would be different’”) (quoting *Los Angeles Dept. of Water and Power v. Manhart*, 435 U.S. 702, 711 (1978)). For this reason, we have described as “nonsensical” the comparison of the racial composition of different classes of job categories in determining whether there existed disparate impact discrimination with respect to a particular job category. *Wards Cove Packing Co. v. Atonio*, 490 U.S. 642, 651 (1989).³ Courts interpreting Title VII have held that a plaintiff cannot prove “discrimination” by demonstrating that one member of a particular protected group has been favored over another member of that same group. See, e.g., *Bush v. Commonwealth Edison Co.*, 990 F.2d 928, 931 (CA7 1993), cert. denied, 511 U.S. 1071 (1994) (explaining that under Title VII, a fired black employee “had to show that although he was not a good employee, equally bad employees were treated more leniently by [his employer] if they happened not to be black”).

Our cases interpreting § 504 of the Rehabilitation Act of 1973, 87 Stat. 394, as amended, which prohibits “discrimination” against certain individuals with disabilities, have applied this commonly understood meaning of discrimination. Section 504 provides:

“No otherwise qualified handicapped individual . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be sub-

³ Following *Wards Cove*, Congress enacted the Civil Rights Act of 1991, Pub. L. 102-166, 105 Stat. 1071, as amended, which, *inter alia*, altered the burden of proof with respect to a disparate impact discrimination claim. See *id.*, § 105 (codified at 42 U.S.C. § 2000e-2(k)). This change highlights the principle that a departure from the traditional understanding of discrimination requires congressional action. Cf. *Field v. Mans*, 516 U.S. 59, 69-70 (1995) (Congress legislates against the background rule of the common law and traditional notions of lawful conduct).

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jected to discrimination under any program or activity receiving Federal financial assistance.”

In keeping with the traditional paradigm, we have always limited the application of the term “discrimination” in the Rehabilitation Act to a person who is a member of a protected group and faces discrimination “by reason of his handicap.” Indeed, we previously rejected the argument that § 504 requires the type of “affirmative efforts to overcome the disabilities caused by handicaps,” *Southeastern Community College v. Davis*, 442 U. S. 397, 410 (1979), that the majority appears to endorse today. Instead, we found that § 504 required merely “the evenhanded treatment of handicapped persons” relative to those persons who do not have disabilities. *Ibid.* Our conclusion was informed by the fact that some provisions of the Rehabilitation Act envision “affirmative action” on behalf of those individuals with disabilities, but § 504 itself “does not refer at all” to such action. *Ibid.* Therefore, “[a] comparison of these provisions demonstrates that Congress understood accommodation of the needs of handicapped individuals may require affirmative action and knew how to provide for it in those instances where it wished to do so.” *Id.*, at 411.

Similarly, in *Alexander v. Choate*, 469 U. S. 287, 302 (1985), we found no discrimination under § 504 with respect to a limit on inpatient hospital care that was “neutral on its face” and did not “distinguish between those whose coverage will be reduced and those whose coverage will not on the basis of any test, judgment, or trait that the handicapped as a class are less capable of meeting or less likely of having,” *id.*, at 302. We said that § 504 does “not . . . guarantee the handicapped equal results from the provision of state Medicaid, even assuming some measure of equality of health could be constructed.” *Id.*, at 304.

Likewise, in *Traynor v. Turnage*, 485 U. S. 535, 548 (1988), we reiterated that the purpose of § 504 is to guarantee that individuals with disabilities receive “evenhanded treatment”

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relative to those persons without disabilities. In *Traynor*, the Court upheld a Veterans' Administration regulation that excluded "primary alcoholics" from a benefit that was extended to persons disabled by alcoholism related to a mental disorder. *Id.*, at 551. In so doing, the Court noted that "[t]his litigation does not involve a program or activity that is alleged to treat handicapped persons less favorably than nonhandicapped persons." *Id.*, at 548. Given the theory of the case, the Court explicitly held: "There is nothing in the Rehabilitation Act that requires that any benefit extended to one category of handicapped persons also be extended to all other categories of handicapped persons." *Id.*, at 549.

This same understanding of discrimination also informs this Court's constitutional interpretation of the term. See *General Motors Corp. v. Tracy*, 519 U.S. 278, 298 (1997) (noting with respect to interpreting the Commerce Clause, "[c]onceptually, of course, any notion of discrimination assumes a comparison of substantially similar entities"); *Yick Wo v. Hopkins*, 118 U.S. 356, 374 (1886) (condemning under the Fourteenth Amendment "illegal discriminations between persons in similar circumstances"); see also *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 223–224 (1995); *Richmond v. J. A. Croson Co.*, 488 U.S. 469, 493–494 (1989) (plurality opinion).

Despite this traditional understanding, the majority derives a more "comprehensive" definition of "discrimination," as that term is used in Title II of the ADA, one that includes "institutional isolation of persons with disabilities." *Ante*, at 600. It chiefly relies on certain congressional findings contained within the ADA. To be sure, those findings appear to equate institutional isolation with segregation, and thereby discrimination. See *ibid.* (quoting §§ 12101(a)(2) and 12101(a)(5), both of which explicitly identify "segregation" of persons with disabilities as a form of "discrimination"); see also *ante*, at 588–589. The congressional findings, however, are written in general, hortatory terms and pro-

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vide little guidance to the interpretation of the specific language of § 12132. See *National Organization for Women, Inc. v. Scheidler*, 510 U.S. 249, 260 (1994) (“We also think that the quoted statement of congressional findings is a rather thin reed upon which to base a requirement”). In my view, the vague congressional findings upon which the majority relies simply do not suffice to show that Congress sought to overturn a well-established understanding of a statutory term (here, “discrimination”).⁴ Moreover, the majority fails to explain why terms in the findings should be given a medical content, pertaining to the place where a mentally retarded person is treated. When read in context, the findings instead suggest that terms such as “segregation” were used in a more general sense, pertaining to matters such as access to employment, facilities, and transportation. Absent a clear directive to the contrary, we must read “discrimination” in light of the common understanding of the term. We cannot expand the meaning of the term “discrimination” in order to invalidate policies we may find unfortunate. Cf. *NLRB v. Highland Park Mfg. Co.*, 341 U.S. 322, 325 (1951) (explaining that if Congress intended statutory terms “to have other than their ordinarily accepted meaning,

⁴ If such general hortatory language is sufficient, it is puzzling that this or any other court did not reach the same conclusion long ago by reference to the general purpose language of the Rehabilitation Act itself. See 29 U.S.C. § 701 (1988 ed.) (describing the statute’s purpose as “to develop and implement, through research, training, services, and the guarantee of equal opportunity, comprehensive and coordinated programs of vocational rehabilitation and independent living, for individuals with handicaps *in order to maximize their employability, independence, and integration into the workplace and the community*” (emphasis added)). Further, this section has since been amended to proclaim in even more aspirational terms that the policy under the statute is driven by, *inter alia*, “respect for individual dignity, personal responsibility, self-determination, and pursuit of meaningful careers, based on informed choice, of individuals with disabilities,” “respect for the privacy, rights, and equal access,” and “inclusion, integration, and full participation of the individuals.” 29 U.S.C. §§ 701(c)(1)–(3).

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it would and should have given them a special meaning by definition”).⁵

Elsewhere in the ADA, Congress chose to alter the traditional definition of discrimination. Title I of the ADA, § 12112(b)(1), defines discrimination to include “limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee.” Notably, however, Congress did not provide that this definition of discrimination, unlike other aspects of the ADA, applies to Title II. Ordinary canons of construction require that we respect the limited applicability of this definition of “discrimination” and not import it into other parts of the law where Congress did not see fit. See, *e. g.*, *Bates v. United States*, 522 U.S. 23, 29–30 (1997) (“‘Where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion’”) (quoting *Russello v. United States*, 464 U.S. 16, 23 (1983)). The majority’s definition of discrimination—although not specifically delineated—substantially imports the definition of Title I into Title II by necessarily assuming that it is sufficient to focus exclusively on members of one particular

⁵ Given my conclusion, the Court need not review the integration regulation promulgated by the Attorney General. See 28 CFR § 35.130(d) (1998). Deference to a regulation is appropriate only “if Congress has not expressed its intent with respect to the question, and then only if the administrative interpretation is reasonable.” *Reno v. Bossier Parish School Bd.*, 520 U.S. 471, 483 (1997) (quoting *Presley v. Etowah County Comm’n*, 502 U.S. 491, 508 (1992)). Here, Congress has expressed its intent in § 12132, and the Attorney General’s regulation—insofar as it contradicts the settled meaning of the statutory term—cannot prevail against it. See *NLRB v. Town & Country Elec., Inc.*, 516 U.S. 85, 94 (1995) (explaining that courts interpreting a term within a statute “must infer, unless the statute otherwise dictates, that Congress means to incorporate the established meaning of that term” (internal quotation marks omitted)).

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group. Under this view, discrimination occurs when some members of a protected group are treated differently from other members of that same group. As the preceding discussion emphasizes, absent a special definition supplied by Congress, this conclusion is a remarkable and novel proposition that finds no support in our decisions in analogous areas. For example, the majority's conclusion that petitioners "discriminated" against respondents is the equivalent to finding discrimination under Title VII where a black employee with deficient management skills is denied in-house training by his employer (allegedly because of lack of funding) because other similarly situated black employees are given the in-house training. Such a claim would fly in the face of our prior case law, which requires more than the assertion that a person belongs to a protected group and did not receive some benefit. See, *e. g.*, *Griggs*, 401 U. S., at 430–431 ("Congress did not intend by Title VII, however, to guarantee a job to every person regardless of qualifications. In short, the Act does not command that any person be hired simply because he was formerly the subject of discrimination, or because he is a member of a minority group").

At bottom, the type of claim approved of by the majority does not concern a prohibition against certain conduct (the traditional understanding of discrimination), but rather concerns imposition of a standard of care.⁶ As such, the major-

⁶ In mandating that government agencies minimize the institutional isolation of disabled individuals, the majority appears to appropriate the concept of "mainstreaming" from the Individuals with Disabilities Education Act (IDEA), 84 Stat. 175, as amended, 20 U.S.C. § 1400 *et seq.* But IDEA is not an antidiscrimination law. It is a grant program that affirmatively requires States accepting federal funds to provide disabled children with a "free appropriate public education" and to establish "procedures to assure that, to the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled." §§ 1412(1), (5). Ironically, even under this broad affirmative mandate, we previously rejected a claim that IDEA required the "standard of care"

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ity can offer no principle limiting this new species of “discrimination” claim apart from an affirmative defense because it looks merely to an individual in isolation, without comparing him to otherwise similarly situated persons, and determines that discrimination occurs merely because that individual does not receive the treatment he wishes to receive. By adopting such a broad view of discrimination, the majority drains the term of any meaning other than as a proxy for decisions disapproved of by this Court.

Further, I fear that the majority’s approach imposes significant federalism costs, directing States how to make decisions about their delivery of public services. We previously have recognized that constitutional principles of federalism erect limits on the Federal Government’s ability to direct state officers or to interfere with the functions of state governments. See, e.g., *Printz v. United States*, 521 U. S. 898 (1997); *New York v. United States*, 505 U. S. 144 (1992). We have suggested that these principles specifically apply to whether States are required to provide a certain level of benefits to individuals with disabilities. As noted in *Alexander*, in rejecting a similar theory under § 504 of the Rehabilitation Act: “[N]othing . . . suggests that Congress desired to make major inroads on the States’ longstanding discretion to choose the proper mix of amount, scope, and duration limitations on services” 469 U. S., at 307. See also *Bowen v. American Hospital Assn.*, 476 U. S. 610, 642 (1986) (plurality opinion) (“[N]othing in [§ 504] authorizes [the Secretary of Health and Human Services (HHS)] to commandeer state agencies [These] agencies are

analysis adopted by the majority today. See *Board of Ed. of Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U. S. 176, 198 (1982) (“We think . . . that the requirement that a State provide specialized educational services to handicapped children generates no additional requirement that the services so provided be sufficient to maximize each child’s potential commensurate with the opportunity provided other children” (internal quotation marks omitted)).

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not field offices of the HHS bureaucracy, and they may not be conscripted against their will as the foot soldiers in a federal crusade”). The majority’s affirmative defense will likely come as cold comfort to the States that will now be forced to defend themselves in federal court every time resources prevent the immediate placement of a qualified individual. In keeping with our traditional deference in this area, see *Alexander, supra*, the appropriate course would be to respect the States’ historical role as the dominant authority responsible for providing services to individuals with disabilities.

The majority may remark that it actually does properly compare members of different groups. Indeed, the majority mentions in passing the “[d]issimilar treatment” of persons with and without disabilities. *Ante*, at 601. It does so in the context of supporting its conclusion that institutional isolation is a form of discrimination. It cites two cases as standing for the unremarkable proposition that discrimination leads to deleterious stereotyping, *ante*, at 600 (citing *Allen v. Wright*, 468 U. S. 737, 755 (1984); *Manhart*, 435 U. S., at 707, n. 13)), and an *amicus* brief which indicates that confinement diminishes certain everyday life activities, *ante*, at 601 (citing Brief for American Psychiatric Association et al. as *Amici Curiae* 20–22). The majority then observes that persons without disabilities “can receive the services they need without” institutionalization and thereby avoid these twin deleterious effects. *Ante*, at 601. I do not quarrel with the two general propositions, but I fail to see how they assist in resolving the issue before the Court. Further, the majority neither specifies what services persons with disabilities might need nor contends that persons without disabilities need the same services as those with disabilities, leading to the inference that the dissimilar treatment the majority observes results merely from the fact that different classes of persons receive different services—not from “discrimination” as traditionally defined.

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Finally, it is also clear petitioners did not “discriminate” against respondents “by reason of [their] disabili[ties],” as § 12132 requires. We have previously interpreted the phrase “by reason of” as requiring proximate causation. See, *e. g.*, *Holmes v. Securities Investor Protection Corporation*, 503 U. S. 258, 265–266 (1992); see also *id.*, at 266, n. 11 (citation of cases). Such an interpretation is in keeping with the vernacular understanding of the phrase. See *American Heritage Dictionary* 1506 (3d ed. 1992) (defining “by reason of” as “because of”). This statute should be read as requiring proximate causation as well. Respondents do not contend that their disabilities constituted the proximate cause for their exclusion. Nor could they—community placement simply is not available to those without disabilities. Continued institutional treatment of persons who, though now deemed treatable in a community placement, must wait their turn for placement does not establish that the denial of community placement occurred “by reason of” their disability. Rather, it establishes no more than the fact that petitioners have limited resources.

* * *

For the foregoing reasons, I respectfully dissent.