SUPREME COURT OF THE UNITED STATES

No. 97–156

RANDON BRAGDON, PETITIONER *v.* SIDNEY ABBOTT ET AL.

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

[June 25, 1998]

JUSTICE GINSBURG, concurring.

HIV infection, as the description set out in the Court's opinion documents, *ante*, at 8–10, has been regarded as a disease limiting life itself. See Brief for American Medical Association as *Amicus Curiae* 20. The disease inevitably pervades life's choices: education, employment, family and financial undertakings. It affects the need for and, as this case shows, the ability to obtain health care because of the reaction of others to the impairment. No rational legislator, it seems to me apparent, would require nondiscrimination once symptoms become visible but permit discrimination when the disease, though present, is not yet visible. I am therefore satisfied that the statutory and regulatory definitions are well met. HIV infection is "a physical . . . impairment that substantially limits . . . major life activities," or is so perceived, 42 U. S. C. §§12102(2)(A),(C), including the afflicted individual's family relations, employment potential, and ability to care for herself, see 45 CFR §84.3(j)(2)(ii) (1997); 28 CFR §41.31(b)(2) (1997).

I further agree, in view of the "importance [of the issue] to health care workers," *ante*, at 28, that it is wise to remand, erring, if at all, on the side of caution. By taking this course, the Court ensures a fully informed determination whether respondent Abbott's disease posed "a signifi-

cant risk to the health or safety of [petitioner Bragdon] that [could not] be eliminated by a modification of policies, practices, or procedures . . . .” 42 U. S. C. §12182(b)(3).