Syllabus

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

SUPREME COURT OF THE UNITED STATES

Syllabus

ALBERTSONS, INC. *v.* KIRKINGBURG

CERTIORARI 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, Albertsons, 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. Albertsons, however, fired him for failing to meet the basic DOT vision standards and refused to rehire him after he received a waiver. Kirkingburg sued Albertsons, claiming that firing him violated the Americans with Disabilities Act of 1990. In granting summary judgment for Albertsons, 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 Albertsons to rely on Government regulations in setting a job-related vision standard, Albertsons 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 Albertsons could set a vision standard different from the DOT's, it had to justify its independent standard and could not do so here.

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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, 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 ___, 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. 6–11.

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. 11–22.

(a) Albertsons' 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 Albertsons, 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 Albertsons' decision, and right, to follow the

regulations. Pp. 11–14.

(b) The regulations establishing the waiver program did not modify the basic visual acuity standards in a way that disentitles an employer like Albertsons to insist on the basic standards. 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 Administration, 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. 15–20.

(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. 21–22.

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.