ages to respondent" under "agency principles." *Ante,* at 2126. That is a question that neither of the parties has ever addressed in this litigation and that respondent, at least, has expressly disavowed. When prodded at oral argument, counsel for respondent twice stood firm on this point. "[W]e all agree," he twice repeated, "that that precise issue is not before the Court" Tr. of Oral Arg. 49. Nor did any of the 11 judges in the Court of Appeals believe that it was applicable to the dispute at hand—presumably because promotion decisions are quintessential "company acts," see 139 F.3d 958, 968 (C.A.D.C.1998), and because the two executives who made this promotion decision were the executive director[553] of the Association and the acting head of its Washington office. *Id.,* at 974, 979 (Tatel, J., dissenting). See also 108 F.3d, at 1434, 1439. Judge Tatel, who the Court implies raised the agency issue, in fact explicitly (and correctly) concluded that "[t]his case does not present these or analogous circumstances." 108 F.3d, at 1439.

The absence of briefing or meaningful argument by the parties makes this Court's gratuitous decision to volunteer an opinion on this nonissue particularly ill advised. It is not this Court's practice to consider arguments—specifically, alternative defenses of the judgment under review—that were not presented in the brief in opposition to the petition for certiorari. See this Court's Rule 15.2. Indeed, on two occasions in this very Term, we refused to do so despite the fact that the issues were briefed and argued by the parties. See *South Central Bell Telephone Co. v. Alabama,* 526 U.S. 160, 171, 119 S.Ct. 1180, 1186, 143 L.Ed.2d 258 (1999); *Roberts v. Galen of Va., Inc.,* 525 U.S. 249, 253–254, 119 S.Ct. 685, 686–687, 142 L.Ed.2d 648 (1999) *(per curiam)*. If we declined to reach alternative defenses under those circumstances, surely we should do so here.

Nor is it accurate for the Court to imply that the Solicitor General, representing Government *amici,* advocates a course similar to that which the Court takes regarding the agency question. Cf. *ante,* at 2126. The Solicitor General, like the parties, did not brief any agency issue. At oral argument, he correspondingly stated that the issue "is not really presented here." Tr. of Oral Arg. 19. He then responded to the Court's questions by stating that the Federal Government believes that whenever a tangible employment consequence is involved § 1981a incorporates the "managerial capacity" principles espoused by § 217 C of the Restatement (Second) of Agency. See Tr. of Oral Arg. 23. But to the extent that the Court tinkers with the Restatement's standard, it is rejecting the Government's view of its own statute without giving it an opportunity to be heard on the issue.

[554]Accordingly, while I agree with the Court's rejection of the en banc majority's holding on the only issue that it confronted, I respectfully dissent from the Court's failure to order a remand for trial on the punitive damages issue.

527 U.S. 516, 144 L.Ed.2d 484

[516]**Vaughn L. MURPHY, Petitioner,**

v.

UNITED PARCEL SERVICE, INC.

No. 97–1992.

Argued April 27, 1999.

Decided June 22, 1999.

Employee, whose mechanics position required him to drive commercial vehicles, sued employer under Title I of the Americans with Disabilities Act (ADA) when he was fired upon discovery that his blood pressure exceeded Department of Transportation (DOT) health certification requirements for drivers of commercial vehicles. The United States District Court for the District of Kansas, 946 F.Supp. 872, entered summary judgment for employer. The Court of Appeals affirmed in an unpublished opinion. Mechanic petitioned for certiorari. The Supreme Court, Justice O'Connor, held that: (1) determination whether employee's impairment "substantially limits" one or more major life activities is

made with reference to the mitigating measures he employs; (2) employee's high blood pressure did not substantially limit his major life activities when he was medicated for his position and thus he was not disabled under ADA; and (3) employee was not "regarded as" substantially limited in major life activity of working by reason of his dismissal for inability to obtain DOT certification as he remained generally employable in mechanics positions that did not require driving commercial vehicle.

Affirmed.

Justice Stevens filed dissenting opinion, in which Justice Breyer joined.

1. Civil Rights ⇐173.1

Under Americans with Disabilities Act (ADA), determination whether employee's impairment "substantially limits" one or more major life activities is made with reference to the mitigating measures he employs. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

2. Civil Rights ⇐173.1

Employee was not "disabled" due to his high blood pressure, within meaning of Americans with Disabilities Act (ADA), where, when he was medicated for his condition, his high blood pressure did not substantially limit him in any major life activity. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

3. Civil Rights ⇐173.1

Employee is "regarded as disabled" within the meaning of Americans with Disabilities Act (ADA) if covered entity mistakenly believes that employee's actual, nonlimiting impairment substantially limits one or more major life activities. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.

See publication Words and Phrases for other judicial constructions and definitions.

4. Civil Rights ⇐173.1

To be regarded as substantially limited in the major life activity of working for purposes of Americans with Disabilities Act (ADA), employee must be regarded as precluded from more than a particular job. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.; 29 C.F.R. § 1630.2(j)(3)(i).

5. Civil Rights ⇐173.1

Mechanic who was fired because he had hypertension that prevented him from obtaining Department of Transportation (DOT) health certification for operation of commercial vehicles, which was essential function of his job, was not "regarded as" disabled, or substantially limited in the major life activity of working, for purposes of Americans with Disabilities Act (ADA); at most, mechanic was regarded as unable to perform job of mechanic when that job required driving commercial motor vehicle, rather than unable to perform other mechanic jobs that did not require driving commercial vehicles, and thus he was not unable to perform class of jobs by reason of his high blood pressure. Americans with Disabilities Act of 1990, § 2 et seq., 42 U.S.C.A. § 12101 et seq.; 49 C.F.R. § 390.5.

Syllabus *

Respondent United Parcel Service, Inc. (UPS), hired petitioner as a mechanic, a position that required him to drive commercial vehicles. To drive, he had to satisfy certain Department of Transportation (DOT) health certification requirements, including having "no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a commercial vehicle safely." 49 CFR § 391.41(b)(6). Despite petitioner's high blood pressure, he was erroneously granted certification and commenced work.

* 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, 26 S.Ct. 282, 50 L.Ed. 499.

After the error was discovered, respondent fired him on the belief that his blood pressure exceeded the DOT's requirements. Petitioner brought suit under Title I of the Americans with Disabilities Act of 1990(ADA), the District Court granted respondent summary judgment, and the Tenth Circuit affirmed. Citing its decision in *Sutton v. United Air Lines, Inc.*, 130 F.3d 893, 902, aff'd, 527 U.S. 471, 119 S.Ct. 2139, 144 L.Ed.2d 450, that an individual claiming a disability under the ADA should be assessed with regard to any mitigating or corrective measures employed, the Court of Appeals held that petitioner's hypertension is not a disability because his doctor testified that when medicated, petitioner functions normally in everyday activities. The court also affirmed the District Court's determination that petitioner is not "regarded as" disabled under the ADA, explaining that respondent did not terminate him on an unsubstantiated fear that he would suffer a heart attack or stroke, but because his blood pressure exceeded the DOT's requirements for commercial vehicle drivers.

Held:

1. Under the ADA, the determination of whether petitioner's impairment "substantially limits" one or more major life activities is made with reference to the mitigating measures he employs. *Sutton*, 527 U.S., at 471, 119 S.Ct. 2139. The Tenth Circuit concluded that, when medicated, petitioner's high blood pressure does not substantially limit him in any major life activity. Because the question whether petitioner is disabled when taking medication is not before this Court, there is no occasion here to consider whether he is "disabled" due to limitations that persist despite his medication or the negative side effects of his medication. P. 2137.

2. Petitioner is not "regarded as" disabled because of his high blood pressure. Under *Sutton*, 527 U.S., at 489, 119 S.Ct. 2139, a person is "regarded as" disabled 517 within the ADA's meaning if, among other things, a covered entity mistakenly believes that the person's actual, nonlimiting impairment substantially limits one or more major life activities. Here, respondent argues that it does not regard petitioner as substantially limited in the major life activity of working, but, rather, regards him as unqualified to work as a UPS mechanic because he is unable to obtain DOT health certification. When referring to the major life activity of working, the Equal Employment Opportunity Commission (EEOC) defines "substantially limits" as "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." 29 CFR § 1630.2(j)(3)(i). Thus, one must be regarded as precluded from more than a particular job. Assuming without deciding that the EEOC regulations are valid, the Court concludes that the evidence that petitioner is regarded as unable to meet the DOT regulations is not sufficient to create a genuine issue of material fact as to whether he is regarded as unable to perform a class of jobs utilizing his skills. At most, petitioner has shown that he is regarded as unable to perform the job of mechanic only when that job requires driving a commercial motor vehicle—a specific type of vehicle used on a highway in interstate commerce. He has put forward no evidence that he is regarded as unable to perform any mechanic job that does not call for driving a commercial motor vehicle and thus does not require DOT certification. Indeed, it is undisputed that he is generally employable as a mechanic, and there is uncontroverted evidence that he could perform a number of mechanic jobs. Consequently, petitioner has failed to show that he is regarded as unable to perform a class of jobs. Rather, the undisputed record evidence demonstrates that petitioner is, at most, regarded as unable to perform only a particular job. This is insufficient, as a matter of law, to prove that petitioner is regarded as substantially limited in the major life activity of working. Pp. 2137–2139.

141 F.3d 1185, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and SCALIA, KENNEDY, SOUTER, THOMAS, and GINSBURG, JJ., joined. STEVENS, J., filed a dissenting opinion, in which BREYER, J., joined, *post*, p. 2139.

Stephen R. McAllister, Lawrence, KS, for petitioner.

James A. Feldman, Washington, DC, for United States as amicus curiae, by special leave of the Court.

[518]William J. Kilberg, Washington, DC, for respondent.

For U.S. Supreme Court briefs, see:

1999 WL 86488 (Pet.Brief)

1999 WL 164440 (Resp.Brief)

1999 WL 199527 (Reply.Brief)

Justice O'CONNOR delivered the opinion of the Court.

Respondent United Parcel Service, Inc. (UPS), dismissed petitioner Vaughn L. Murphy from his job as a UPS mechanic because of his high blood pressure. Petitioner filed suit under Title I of the Americans with Disabilities Act of 1990 (ADA or Act), 104 Stat. 328, 42 U.S.C. § 12101 *et seq.,* in Federal District Court. The District Court granted summary judgment to respondent, and the Court of Appeals for the Tenth Circuit affirmed. We must decide whether the Court of Appeals correctly considered petitioner in his medicated state when it held that petitioner's impairment does [519]not "substantially limi[t]" one or more of his major life activities and whether it correctly determined that petitioner is not "regarded as disabled." See § 12102(2). In light of our decision in *Sutton v. United Airlines, Inc.,* 527 U.S. 471, 119 S.Ct. 2139, we conclude that the Court of Appeals' resolution of both issues was correct.

I

Petitioner was first diagnosed with hypertension (high blood pressure) when he was 10 years old. Unmedicated, his blood pressure is approximately 250/160. With medication, however, petitioner's "hypertension does not significantly restrict his activities and . . . in general he can function normally and can engage in activities that other persons normally do." 946 F.Supp. 872, 875 (D.Kan. 1996) (discussing testimony of petitioner's physician).

In August 1994, respondent hired petitioner as a mechanic, a position that required petitioner to drive commercial motor vehicles. Petitioner does not challenge the District Court's conclusion that driving a commercial motor vehicle is an essential function of the mechanic's job at UPS. *Id.,* at 882–883. To drive such vehicles, however, petitioner had to satisfy certain health requirements imposed by the Department of Transportation (DOT). 49 CFR § 391.41(a) (1998) ("A person shall not drive a commercial motor vehicle unless he/she is physically qualified to do so and . . . has on his/her person . . . a medical examiner's certificate that he/she is physically qualified to drive a commercial motor vehicle"). One such requirement is that the driver of a commercial motor vehicle in interstate commerce have "no current clinical diagnosis of high blood pressure likely to interfere with his/her ability to operate a commercial vehicle safely." § 391.41(b)(6).

At the time respondent hired him, petitioner's blood pressure was so high, measuring at 186/124, that he was not qualified for DOT health certification, see App. 98a–102a (Department of Transportation, Medical Regulatory Criteria for Evaluation Under Section 391.41(b)(6), attached as exhibit to [520]Affidavit and Testimony of John R. McMahon) (hereinafter Medical Regulatory Criteria). Nonetheless, petitioner was erroneously granted certification, and he commenced work. In September 1994, a UPS medical supervisor who was reviewing petitioner's medical files discovered the error and requested that petitioner have his blood pressure retested. Upon retesting, petitioner's blood pressure was measured at 160/102 and 164/104. See App. 48a (testimony of Vaughn Murphy). On October 5, 1994, respondent fired petitioner on the belief that his blood pressure exceeded the DOT's requirements for drivers of commercial motor vehicles.

Petitioner brought suit under Title I of the ADA in the United States District Court for the District of Kansas. The court granted respondent's motion for summary judgment. It held that, to determine whether petitioner is disabled under the ADA, his "impairment should be evaluated in its medicated state."

946 F.Supp., at 881. Noting that when petitioner is medicated he is inhibited only in lifting heavy objects but otherwise functions normally, the court held that petitioner is not "disabled" under the ADA. *Id.,* at 881–882. The court also rejected petitioner's claim that he was "regarded as" disabled, holding that respondent "did not regard Murphy as disabled, only that he was not certifiable under DOT regulations." *Id.,* at 882.

The Court of Appeals affirmed the District Court's judgment. 141 F.3d 1185 (C.A.10 1998) (judgt. order). Citing its decision in *Sutton v. United Air Lines, Inc.,* 130 F.3d 893, 902 (C.A.10 1997), aff'd, 527 U.S. 471, 119 S.Ct. 2139, that an individual claiming a disability under the ADA should be assessed with regard to any mitigating or corrective measures employed, the court held that petitioner's hypertension is not a disability because his doctor had testified that when petitioner is medicated, he " 'functions normally doing everyday activity that an everyday person does.' " App. to Pet. for Cert. 4a. The court also affirmed the District Court's determination that petitioner is not "regarded as" disabled under the ADA. It [521] explained that respondent did not terminate petitioner "on an unsubstantiated fear that he would suffer a heart attack or stroke," but "because his blood pressure exceeded the DOT's requirements for drivers of commercial vehicles." *Id.,* at 5a. We granted certiorari, 525 U.S. 1063, 119 S.Ct. 790, 142 L.Ed.2d 653 (1999), and we now affirm.

II

[1, 2] The first question presented in this case is whether the determination of petitioner's disability is made with reference to the mitigating measures he employs. We have answered that question in *Sutton* in the affirmative. Given that holding, the result in this case is clear. The Court of Appeals concluded that, when medicated, petitioner's high blood pressure does not substantially limit him in any major life activity. Petitioner did not seek, and we did not grant, certiorari on whether this conclusion was correct. Because the question whether petitioner is disabled when taking medication is not before us, we have no occasion here to consider whether petitioner is "disabled" due to limitations that persist despite his medication or the negative side effects of his medication. Instead, the question granted was limited to whether, under the ADA, the determination of whether an individual's impairment "substantially limits" one or more major life activities should be made without consideration of mitigating measures. Consequently, we conclude that the Court of Appeals correctly affirmed the grant of summary judgment in respondent's favor on the claim that petitioner is substantially limited in one or more major life activities and thus disabled under the ADA.

III

[3] The second issue presented is also largely resolved by our opinion in *Sutton.* Petitioner argues that the Court of Appeals erred in holding that he is not "regarded as" disabled because of his high blood pressure. As we held in *Sutton,* 527 U.S., at 489, 119 S.Ct. 2139, a person is "regarded as" disabled within the [522] meaning of the ADA if a covered entity mistakenly believes that the person's actual, nonlimiting impairment substantially limits one or more major life activities. Here, petitioner alleges that his hypertension is regarded as substantially limiting him in the major life activity of working, when in fact it does not. To support this claim, he points to testimony from respondent's resource manager that respondent fired petitioner due to his hypertension, which he claims evidences respondent's belief that petitioner's hypertension—and consequent inability to obtain DOT certification—substantially limits his ability to work. In response, respondent argues that it does not regard petitioner as substantially limited in the major life activity of working but, rather, regards him as unqualified to work as a UPS mechanic because he is unable to obtain DOT health certification.

As a preliminary matter, we note that there remains some dispute as to whether petitioner meets the requirements for DOT certification. As discussed above, petitioner was incorrectly granted DOT certification at his first examination when he should have

instead been found unqualified. See *supra*, at 2136. Upon retesting, although petitioner's blood pressure was not low enough to qualify him for the 1–year certification that he had incorrectly been issued, it was sufficient to qualify him for optional temporary DOT health certification. App. 98a–102a (Medical Regulatory Criteria). Had a physician examined petitioner and, in light of his medical history, declined to issue a temporary DOT certification, we would not second-guess that decision. Here, however, it appears that UPS determined that petitioner could not meet the DOT standards and did not allow him to attempt to obtain the optional temporary certification. *Id.*, at 84a–86a (testimony of Monica Sloan, UPS' company nurse); *id.*, at 54a–55a (testimony and affidavit of Vaughn Murphy). We need not resolve the question whether petitioner could meet the standards for DOT health certification, however, as it goes only to whether petitioner is qualified [523] and whether respondent has a defense based on the DOT regulations, see *Albertson's, Inc. v. Kirkingburg,* 527 U.S. 555, 119 S.Ct. 2162, 144 L.Ed.2d 518, issues not addressed by the court below or raised in the petition for certiorari.

[4] The only issue remaining is whether the evidence that petitioner is regarded as unable to obtain DOT certification (regardless of whether he can, in fact, obtain optional temporary certification) is sufficient to create a genuine issue of material fact as to whether petitioner is regarded as substantially limited in one or more major life activities. As in *Sutton,* 527 U.S., at 491–492, 119 S.Ct. 2139, we assume, *arguendo,* that the Equal Employment Opportunity Commission (EEOC) regulations regarding the disability determination are valid. When referring to the major life activity of working, the EEOC defines "substantially limits" as: "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." 29 CFR § 1630.2(j)(3)(i) (1998). The EEOC further identifies several factors that courts should consider when determining whether an individual is substantially limited in the major life activity of working, including "the number and types of jobs utilizing similar training, knowledge, skills or abilities, within [the] geographical area [reasonably accessible to the individual], from which the individual is also disqualified." § 1630.2(j)(3)(ii)(B). Thus, to be regarded as substantially limited in the major life activity of working, one must be regarded as precluded from more than a particular job. See § 1630.2(j)(3)(i) ("The inability to perform a single, particular job does not constitute a substantial limitation in the major life activity of working").

[5] Again, assuming without deciding that these regulations are valid, petitioner has failed to demonstrate that there is a genuine issue of material fact as to whether he is regarded as disabled. Petitioner was fired from the position of UPS mechanic because he has a physical impairment—hypertension [524]—that is regarded as preventing him from obtaining DOT health certification. See App. to Pet. for Cert. 5a (UPS terminated Murphy because "his blood pressure exceeded the DOT's requirements for drivers of commercial vehicles"); 946 F.Supp., at 882 ("[T]he court concludes UPS did not regard Murphy as disabled, only that he was not certifiable under DOT regulations"); App. 125a, & ¶ 18 (Defendant's Memorandum in Support of Motion for Summary Judgment) ("UPS considers driving commercial motor vehicles an essential function of plaintiff's job as mechanic"); *id.*, at 103a (testimony of John R. McMahon) (stating that the reason why petitioner was fired was that he "did not meet the requirements of the Department of Transportation").

The evidence that petitioner is regarded as unable to meet the DOT regulations is not sufficient to create a genuine issue of material fact as to whether petitioner is regarded as unable to perform a class of jobs utilizing his skills. At most, petitioner has shown that he is regarded as unable to perform the job of mechanic only when that job requires driving a commercial motor vehicle—a specific type of vehicle used on a highway in interstate commerce. 49 CFR § 390.5 (1998) (defining "commercial motor vehicle" as a vehicle weighing over 10,000 pounds, designed to

carry 16 or more passengers, or used in the transportation of hazardous materials). Petitioner has put forward no evidence that he is regarded as unable to perform any mechanic job that does not call for driving a commercial motor vehicle and thus does not require DOT certification. Indeed, it is undisputed that petitioner is generally employable as a mechanic. Petitioner has "performed mechanic jobs that did not require DOT certification" for "over 22 years," and he secured another job as a mechanic shortly after leaving UPS. 946 F.Supp., at 875, 876. Moreover, respondent presented uncontroverted evidence that petitioner could perform jobs such as diesel mechanic, automotive mechanic, gas-engine repairer, and gas-welding 525 equipment mechanic, all of which utilize petitioner's mechanical skills. See App. 115a (report of Lewis Vierling).

Consequently, in light of petitioner's skills and the array of jobs available to petitioner utilizing those skills, petitioner has failed to show that he is regarded as unable to perform a class of jobs. Rather, the undisputed record evidence demonstrates that petitioner is, at most, regarded as unable to perform only a particular job. This is insufficient, as a matter of law, to prove that petitioner is regarded as substantially limited in the major life activity of working. See *Sutton*, 527 U.S., at 492–493, 119 S.Ct. 2139. Accordingly, the Court of Appeals correctly granted summary judgment in favor of respondent on petitioner's claim that he is regarded as disabled. For the reasons stated, we affirm the judgment of the Court of Appeals for the Tenth Circuit.

It is so ordered.

Justice STEVENS, with whom Justice BREYER joins, dissenting.

For the reasons stated in my dissenting opinion in *Sutton v. United Airlines, Inc.*, 527 U.S., at 495, 119 S.Ct. 2139, 144 L.Ed.2d 450, I respectfully dissent. I believe that petitioner has a "disability" within the meaning of the ADA because, assuming petitioner's uncontested evidence to be true, his very severe hypertension—in its unmedicated state—"substantially limits" his ability to perform several major life activities. Without medication, petitioner would likely be hospitalized. See App. 81. Indeed, unlike *Sutton*, this case scarcely requires us to speculate whether Congress intended the Act to cover individuals with this impairment. Severe hypertension, in my view, easily falls within the ADA's nucleus of covered impairments. See *Sutton*, 527 U.S., at 496–503, 119 S.Ct. 2139 (STEVENS, J., dissenting).

Because the Court of Appeals did not address whether petitioner was qualified or whether he could perform the essential job functions, App. to Pet. for Cert. 5a, I would reverse and remand for further proceedings.

527 U.S. 471, 144 L.Ed.2d 450

471 Karen SUTTON and Kimberly Hinton, Petitioners,

v.

UNITED AIR LINES, INC.

No. 97–1943.

Argued April 28, 1999.

Decided June 22, 1999.

Severely myopic job applicants brought disability discrimination action against airline, under Americans with Disabilities Act (ADA), challenging airline's minimum vision requirement for global pilots. The United States District Court for the District of Colorado, Sparr, J., 1996 WL 588917, dismissed action, and applicants appealed. The Court of Appeals for the Tenth Circuit, Barrett, Senior Circuit Judge, affirmed, 130 F.3d 893. Applicants' petition for certiorari was granted. The Supreme Court, Justice O'Connor, held that: (1) corrective and mitigating measures should be considered in determining whether individual is disabled under ADA; (2) applicants were not disabled under ADA; and (3) applicants failed to state claim that