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Chevron U.S.A., Inc. v. Echazabal 122S. Ct. 2045 (2002)

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CHEVRON U.S.A., INC. v. ECHAZABAL
122 S. Ct. 2045 (2002)

INTRODUCTION

The United States Supreme Court unanimously held in *Chevron U.S.A., Inc. v. Echazabal*[1] that an Equal Employment Opportunity Commission ("EEOC") regulation permitting an employer to deny disabled job applicants employment because job performance may endanger their health does not violate the Americans with Disabilities Act of 1990 ("ADA").[2]

I. FACTS

Beginning in 1972, Mario Echazabal worked for an independent contractor at a Chevron oil refinery in California.[3] Twice he applied directly to Chevron for a job.[4] Each time, Chevron extended an offer to hire Echazabal provided that he take and pass a physical examination.[5] However, Echazabal failed each examination, because both results showed liver abnormality and damage caused by Hepatitis C.[6] Fearing that continued exposure to the toxins at the

1. 122 S. Ct. 2045 (2002).

2. 42 U.S.C. §§ 12101-12213 (1994 & Supp. 2002).

3. *See* David G. Savage, *Supreme Court Rules Employers may Deny Impaired Applicants Work if the Post might Threaten their Health or Safety*, L.A. TIMES, June 11, 2002, at A10 (explaining the origin of Echazabal's lawsuit against Chevron).

4. *See High Court Ruling Called Setback for Disabled, Ill*, S.F. CHRON., June 11, 2002, at A4 [hereinafter *High Court Ruling*] (reporting that Echazabal sought permanent employment with Chevron in order to gain more benefits and better job security than he had as a contractor); *see also Chevron U.S.A.*, 122 S. Ct. at 2047-48.

5. *See* 42 U.S.C. § 12112(d)(3) (1994 & Supp. 2002) (permitting employers to require all job applicants to undergo a medical examination after obtaining an employment offer but before beginning work, if all entering employees are subject to such examination regardless of disability).

6. *See* NAT'L CTR. FOR INFECTIOUS DISEASES, CTR. FOR DISEASE CONTROL, VIRAL HEPATITIS C (last visited July 21, 2002) (stating that Hepatitis C is a liver disease caused by the Hepatitis C virus), *at* http://www.cdc.gov/ncidod/diseases/hepatitis/c/index.htm. Symptoms of Hepatitis C include jaundice, fatigue, dark urine, abdominal pain, loss of appetite and nausea. *See* NAT'L CTR. FOR INFECTIOUS DISEASES, CTR. FOR DISEASE CONTROL, FACT SHEET: VIRAL HEPATITIS C (last visited July 21, 2002), *at* http://www.cdc.gov/ncidod/diseases/hepatitis/c/facts.htm. Hepatitis

plant would exacerbate Echazabal's liver condition, Chevron rescinded both offers.[7] Upon Chevron's request to either reassign Echazabal to reduce his exposure to the harmful chemicals, or remove him altogether, the contractor fired Echazabal in 1996.[8]

Echazabal filed suit claiming, among other things, that Chevron violated the ADA by refusing to hire him because of his liver condition.[9] Chevron asserted the EEOC's direct threat defense, which permits employers to deny job offers to disabled job applicants if the job would pose a direct threat to the health of disabled employee candidates.[10] Granting summary judgment to Chevron, the District Court for the Central District of California held that Echazabal offered no genuine issue of material fact as to whether Chevron acted reasonably upon its own doctors' medical advice.[11]

On appeal, the Ninth Circuit Court of Appeals addressed whether the EEOC's regulation, recognizing a threat-to-self defense against a charge of employment discrimination, violated the ADA.[12] Ruling that it did, the Ninth Circuit explained that the ADA explicitly specifies that threats to other persons, including disabled persons, are not included within the scope of the direct threat defense.[13] In addition, the Ninth Circuit indicated that "any such regulation would

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C can be transmitted when a person's blood or bodily fluids infected with Hepatitis C enters that of a non-infected person, such as by needle sharing. *Id.* Currently, there is no vaccine for Hepatitis C. *Id.*

7. *See* Chevron U.S.A., Inc. v. Echazabal, 122 S. Ct. 2045, 2048 (2002) (explaining that when Echazabal applied for a job a second time the results of the medical exam showed liver abnormality, which the company's doctors determined would be aggravated by continued exposure to toxins at the refinery, and that the company also asked the contractor employing Echazabal to reassign him in order to remove him from exposure to harmful chemicals).

8. *Id.*

9. *See id.* (alleging that Chevron also refused to allow Echazabal to continue working at the plant).

10. *See* 29 C.F.R. § 1630.15(b)(2) (2002) (stating that a direct threat may be used as a qualification standard). A "qualification standard" may include a requirement that a person shall not impose a direct health or safety threat-to-self or others in the workplace. *Id.* A direct threat is defined as a significant risk of substantial harm to a person's own health and safety or that of others, which cannot be reduced or eliminated by reasonable accommodation. 29 C.F.R. § 1630.2(r) (2002).

11. *See Chevron U.S.A.*, 122 S. Ct. at 2048 (stating that the district court granted summary judgment despite testimony from two medical witnesses who disputed Chevron's judgment that Echazabal's liver was impaired and continued exposure would exacerbate his liver condition). The district court reasoned that Echazabal raised no genuine issue of material fact as to whether Chevron reasonably relied on its own doctor's medical advice, regardless of accuracy. *Id.*

12. *See* Echazabal v. Chevron U.S.A., Inc., 226 F.3d 1063, 1066 n.3 (9th Cir. 2000) (requesting that all parties prepare oral argument on the question of whether a direct threat defense includes threats-to-oneself).

13. *See Chevron U.S.A.*, 122 S. Ct. at 2048 (focusing on the ADA statutory language "by specifying only threats to 'other individuals in the workplace'").

unreasonably conflict with congressional policy against paternalism in the workplace."[14] Furthermore, the Ninth Circuit rejected Chevron's argument that job performance without risking one's health is not an essential function of a job.[15]

Because the Ninth Circuit's decision conflicted with other circuit courts' decisions in similar ADA-related employment discrimination cases,[16] the Supreme Court granted certiorari.[17]

II. HOLDING

Justice David H. Souter delivered the opinion for a unanimous Court. The Court held that the EEOC struck an appropriate balance between employment regulations and workers' rights.[18] The Court stated that "the EEOC was certainly acting within the reasonable zone when it saw a difference between rejecting workplace paternalism and ignoring specific and documented risks to the employee himself, even if the employee would take his chances for the sake of getting a job."[19] The Court reversed the Ninth Circuit Court of Appeals' decision and remanded the case for proceedings consistent with its opinion.[20]

III. ANALYSIS

In *Chevron U.S.A.*, the Court first examined the ADA's prohibition

14. *Id.*; *see also Echazabal*, 226 F.3d at 1067-68 (noting that the ADA's legislative history does not support the conclusion that the direct threat provision includes threats-to-oneself).

15. *See Chevron U.S.A.*, 122 S. Ct. at 2048; *see also Echazabal*, 226 F.3d at 1071 (stating that although an employer may determine which job functions are essential, employers may not turn every condition of employment which it adopts into a job function by merely including it in the job description). Job functions are acts or actions that constitute a part of job performance. *Id.*

16. *See* Koshinski v. Decatur Foundry, Inc., 177 F.3d 599, 603 (7th Cir. 1999) (holding that because appellant could not establish a prima facie case that he was entitled ADA protection, and where the record firmly established that he could not perform the essential job functions, the direct threat defense issue need not be asserted); Moses v. Am. Nonwovens, Inc., 97 F.3d 446, 447-48 (11th Cir. 1996) (concluding that the employer did not violate the ADA when it fired Moses, where Moses, who has epilepsy and an seizure disorder, failed to produce probative evidence that he was not a direct threat to himself while performing essential job functions).

17. Echazabal v. Chevron U.S.A., Inc., 226 F.3d 1063 (9th Cir. 2000), *cert. granted*, 122 S. Ct. 456 (2001).

18. *See High Court Ruling*, *supra* note 4 (narrowing the scope of employment rights under the ADA, and holding that EEOC's interpretation of the law was reasonable since the ADA is silent with respect to an employer's right to reject disabled job applicants who pose a health or safety threat to themselves).

19. *Chevron U.S.A.*, 122 S. Ct. at 2053.

20. *See id.*

of discriminatory hiring practices.[21] The ADA not only covers what employers may do to deny disabled persons a job or job advancements,[22] but also creates an affirmative defense for employers.[23] Reinforcing ADA protection for employers, the EEOC regulation allows employers to exclude disabled persons who may cause harm to either themselves or to fellow employees in the workplace.[24]

Seeking a defense under this regulation, Chevron attempted to rely on the concept of "Chevron deference," which is a level of judicial deference given to the implementation of a particular statutory provision when it appears that Congress delegated authority to make rules carrying the force of law to an agency generally and that the agency interpretation for which deference is claimed was promulgated under the exercise of such authority.[25] Chevron contended that the position Echazabal sought posed a direct threat to his health, that nothing in the statute unambiguously precludes job exclusion, and that Congress explicitly authorized the EEOC to adopt such regulation.[26] In opposition, Echazabal argued that the statute left no gap for the EEOC to fill and that the statute precluded

21. *See id.* at 2048 (prohibiting, discrimination "against a qualified individual with a disability because of the disability of such individual in regard" to a number of actions including "hiring") (quoting 42 U.S.C. § 12112(a) (1994 & Supp. 2002)).

22. *See Chevron U.S.A.*, 122 S. Ct. at 2049 (explaining the deference afforded to employers under the ADA); 42 U.S.C. § 12112(b)(6) (1994 & Supp. 2002) (defining discrimination in part as the exercise of qualification standards, employment tests or other job selection criteria to screen out disabled applicants, except where such standards or tests are shown to be job-related for the position in question and are consistent with business necessity).

23. *See Chevron U.S.A.*, 122 S. Ct. at 2049 (permitting employers to assert the defense of ADA protection where a qualification standard screening out disabled individuals is "job-related and consistent with business necessity"). A "qualification standard" may include a requirement prohibiting an individual from posing a direct threat to the health and safety of others in the workplace. *Id.*; *see also* 42 U.S.C. § 12113(b) (1994 & Supp. 2002).

24. *See* 29 C.F.R. § 1630.15(b)(2) (1990) (allowing employers to screen out disabled job applicants who pose a direct threat of health or safety to themselves or others in the workplace).

25. *See* United States v. Mead Corp., 533 U.S. 218, 226-27 (2001) (holding that Congress authorized agencies to interpret and implement particular statutory provisions, and make rules carrying the force of law); Chevron U.S.A., Inc. v. Natural Res. Def. Counsel, Inc., 467 U.S. 837, 843-44 (1984) ("If Congress has explicitly left a gap for the agency to fill, there is an express delegation of authority to the agency to elucidate a specific provision of the statute by regulation. Such legislative regulations are given controlling weight unless they are arbitrary, capricious, or manifestly contrary to the statute."). Delegation of authority may be shown through notice-and-comment rulemaking or some other indication of comparable congressional intent. *Mead Corp.*, 533 U.S. at 227.

26. *See Chevron U.S.A.*, 122 S. Ct. at 2049.

the regulation as a matter of law.[27] Relying on an EEOC regulation issued under the Rehabilitation Act of 1973,[28] a precursor to the ADA, Echazabal asserted that a literal reading of the ADA implies that self-directed threats are not applicable.[29]

A. The Supreme Court's Three Strike Reasoning Approach

The Supreme Court applied a three-strike analytical approach in deciding the case. Strike one was applied to the text of the ADA that Echazabal quoted.[30] Using the harm-to-others provision as an example of a qualification standard that is "job related and consistent with business necessity," the Court found that Congress intended to provide government agencies and courts broad discretion in setting limits to permissible qualification standards.[31] The expansive textual phrase "may include" further confirms this discretion by allowing employers to hire disabled applicants who might directly harm others in the workplace.[32] Moreover, as statutory language suggesting exclusiveness is missing, so are the series of terms connoting negative implications.[33]

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27. *See id.* (arguing that the ADA does not cover direct threats-to-oneself because the ADA only recognizes threats that extend to others).

28. 29 U.S.C. §§ 701-796*l* (1994 & Supp. 2002) (promoting and maximizing employment opportunities, economic self-sufficiency, independence and inclusion and integration into society for disabled individuals, excluding those who would pose a direct threat to the health and safety of oneself or others).

29. *See Chevron U.S.A.*, 122 S. Ct. at 2049-50 (contrasting the explicit language of the ADA defining "direct threat" in terms of risk to others with an EEOC regulation under the Rehabilitation Act recognizing an employer's right to consider threats both to other workers and to the threatening employee himself). The Court understood this argument to follow the recent Ninth Circuit interpretation of the canon, *expressio unius exclusio alterius*, which means "expressing one item of a commonly associated group or series excludes another left unmentioned." United States v. Vonn, 122 S. Ct. 1043, 1049 (2002). However, this canon is meant only to be a guide, where adopting a provision or statute contradicts another does not mean excluding relative provisionary or statutory commonalties. *Id.*

30. *See Chevron U.S.A.*, 122 S. Ct. at 2050 ("Qualification standards may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace."). Echazabal interpreted the ADA statute to recognize threats only if they extend to another, and therefore implying as a matter of law that threats to the worker himself cannot serve as a basis for denying employment. *Id.*

31. *See id.* (maintaining legitimate qualifications as broad defenses, which protect an agency's discretionary power in setting limits on qualification standards).

32. *See id.* (confirming broad agency discretion by indicating that the words "may include" also allow employers to veto a qualification standard that prohibits the hiring of disabled persons who pose direct threats to the health and safety of others in the workplace).

33. The maxim *expressio unius exclusio alterius* means "expressing one item of an associated group or series excludes another left unmentioned." *Id.* at 2049. It properly applies "only when in the natural association of ideas in the mind of the reader that which is expressed is so set over by way of strong contrast to that which is

Strike two concerned Echazabal's failure to identify any statutory language suggesting that Congress deliberately omitted threats-to-self as an affirmative defense.[34] Echazabal compared the EEOC's rule interpreting the Rehabilitation Act with the current version of the ADA.[35] However, like the ADA, the Rehabilitation Act does not address the threats-to-self issue that employment might pose.[36]

Still, the omission may not be treated as a clear implication of congressional intent for two reasons.[37] First, because various agencies construe the continued enforceability of the Rehabilitation Act differently, the Court declined to adopt a standard usage that connected threats-to-others with threats-to-self.[38] Second, the Court suggested that, setting aside administrative differences, Congress left a gap to fill by deciding to only address threats-to-others under the ADA.[39]

Strike three pertained to the application of the expression-exclusion rule.[40] The Court found that the expression-exclusion rule is not applicable in Echazabal's situation; there would be no end to the argument that by specifying a threat-to-others defense, Congress intended a negative implication about compromising the safety of others.[41]

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omitted that the contrast enforces the affirmative inference." *Id.* at 2050.

34. *See Chevron U.S.A.*, 122 S. Ct. at 2050 (arguing that Echazabal's brief does not establish proof that Congress intentionally omitted threats-to-self as an affirmative defense).

35. *See id.* (noting that the EEOC's rule under the Rehabilitation Act excepted from the definition of a "qualified individual with a handicap" anyone who posed a "direct threat to the health or safety of other individuals").

36. *See id.* (suggesting that the EEOC expanded the scope of the Rehabilitation Act to cover threats directed at oneself that an individual may face while employed because the Rehabilitation Act said nothing about potential threats-to-oneself in a particular job). However, because this extension is neither present in the Rehabilitation Act nor the ADA, Echazabal asserted that Congress intentionally omitted threats-to-self. *Id.*

37. *See id.* at 2046-47 (finding that the exclusion does not necessarily indicate congressional will).

38. *See id.* (acknowledging that unlike the EEOC, agencies such as the Department of Justice, Department of Labor and Department of Health and Human Service have not broadened the Rehabilitation Act to include both threats-to-self and threats-to-others).

39. *See id.* (explaining that whether Congress intended to alert the EEOC that it was incorrectly interpreting the Rehabilitation Act to include threats-to-self, or permit the EEOC to interpret the ADA freely, Congress nonetheless knowingly established the ADA by using identical language to the Rehabilitation Act). No negative inference is possible because "omitting the EEOC's reference to self-harm while using the very language EEOC had read as consistent with recognizing self-harm is equivocal at best." *Id.* at 2051.

40. *See supra* note 33 and accompanying text.

41. *See Chevron U.S.A.*, 122 S. Ct. at 2047 (questioning whether, for example, a

B. EEOC's Reasonable Regulation

Because "Congress has not spoken exhaustively on threats to a worker's own health," the Court concluded that an agency can claim Chevron deference so long as the qualification standards remain "job-related and consistent with business necessity."[42] Furthermore, the Court asserted that the EEOC regulation advanced the goals of the Occupational Health and Safety Act of 1970[43] and therefore supported Chevron's defense.[44]

Echazabal responded that there are no known instances of Occupational Health and Safety Act enforcement against an employer who relied on the ADA to hire a disabled person willing to accept health risks on the job.[45] However, the Court believed that in Echazabal's mind, this fact was "a red herring to excuse covert discrimination."[46] With this understanding, the Court replied that the Occupational Health and Safety Act requires employers to provide hazard-free working conditions, and compels employees to

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meat packer would have been defenseless if Typhoid Mary, who would have qualified as disabled under the ADA, sued the meat packer after being turned away from a job). *But see* U.S. Term Limits v. Thorton, 514 U.S. 779, 793 n.9 (1995) (concluding that the maxim *expressio unius exclusio alterius* applies where the Constitution established certain qualifications necessary to run for Congress or the United States Senate). Individuals who did not meet such qualifications were thus excluded. *Id.*

42. *See Chevron U.S.A.*, 122 S. Ct. at 2051-52 (limiting agency discretion to the conditions of qualification standards) (quoting 42 U.S.C. § 12113(a) (1994 & Supp. 2002)).

43. 29 U.S.C. §§ 651-678 (1994 & Supp. 2002) (intending to reduce safety and health hazards, injuries and illness in work environments); *see also id.* § 651(b) (assuring "every working man and woman in the Nation safe and healthful working conditions"). The Occupational Safety and Health Administration's ("OSHA") mission is to work closely with state and federal governments to save lives, prevent injuries and protect the health of American workers. *See* O.S.H.A., U.S. DEP'T OF LAB., OSHA'S MISSION (last visited Nov. 6, 2002), *available at* http://www.osha.gov/oshinfo/mission.html.

44. *See Chevron U.S.A.*, 122 S. Ct. at 2046-47 (dismissing Echazabal's allegations that Chevron's reasons for calling the EEOC regulation reasonable are illegitimate). Chevron claimed that the EEOC regulation helps avoid lost time due to illness, curb excessive turnover caused by medical retirement or death, decrease state tort litigation and minimize the risks of violating the Occupational Safety and Health Act. *Id.*

45. *See* Brief for Respondent at 36, Chevron U.S.A., Inc. v. Echazabal, 122 S. Ct. 2045 (2002) (No. 00-1406) (indicating that OSHA has no rule requiring employers to exclude employees with Hepatitis C). Echazabal further argues that although Chevron relies heavily on the Occupational Safety and Health Act's "general duty" clause, imposing only a duty of feasible prevention, Chevron has not identified any case in which OSHA enforced such clause. *Id.* at 37-38; *see also* 29 U.S.C. § 654(a)(1) (1994 & Supp. 2002) (mandating that employers furnish employees employment free from recognizable hazards that may cause serious bodily harm or death).

46. *See Chevron U.S.A.*, 122 S. Ct. at 2046 (emphasizing that employers would escape liability just by merely disclosing all risks and "taking all feasible steps to mitigate those risks."); *see also* Brief for Respondent at 37.

comply with the Occupational Safety and Health Act while on the job.[47] In addition, although the Occupational Safety and Health Act and the ADA may appear to operate at cross-purposes in cases such as this,[48] agencies are expected to make substantive choices, such as resolving conflicting statutes, when permitted by Congress.[49]

Furthermore, the Court found that the EEOC acted reasonably when it distinguished between rejecting workplace paternalism and ignoring specific and documented risks to the employee himself.[50] On one hand, when Congress passed the ADA, they intended to dissolve workplace paternalism, such as overprotective rules and regulations.[51] The EEOC, on the other hand, interpreted Congress' actions as attempting to punish employers who refused to treat handicapped individuals equally, while simultaneously claiming that, based on untested and pretextual stereotypes, unequal treatment was for handicapped individuals' own good.[52] Thus, the EEOC's regulation focused on eliminating such sham workplace protections.[53]

Finally, Echazabal argued that a permissible and reasonable regulation reduces the direct threat provision to "surplusage."[54] Dismissing this contention, the Court explained that an explicit defense for threats-to-others does not mean Congress failed to accomplish anything.[55] Quite the contrary, the defense provision clearly was operable, even though the EEOC could have either adopted the language as stated or exercised its option to expand the

47. *See* 29 U.S.C. § 654 (1994 & Supp. 2002) (outlining duties of employers and employees' compliance with occupational safety and health standards).

48. *See Chevron U.S.A.*, 122 S. Ct. at 2047 (contrasting the Occupational Safety and Health Act with the ADA by indicating that the Occupational Safety and Health Act seeks to ensure the safety of workers, whereas the ADA seeks to eliminate, inter alia, employment discrimination against individuals with disabilities).

49. *See id.* at 2047 (highlighting that the EEOC's efforts exemplify an agency's responsibility to resolve statutory or provisionary conflicts when Congress leaves competing objectives subject to administrative resolution).

50. *See id.* (suggesting that it would be unfair to accuse the EEOC regulation of allowing the "paternalism the ADA meant to outlaw").

51. *See* 42 U.S.C. § 12101(a)(5) (1994 & Supp. 2002) (asserting that overprotective rules and policies, inter alia, are examples of discrimination that disabled persons encounter daily).

52. *See Chevron U.S.A.*, 122 S. Ct. at 2052-53 (citing, for example, Senator Kennedy's statement in an ADA Conference Report that employers could not use as an excuse the claim that a refusal to hire an HIV positive person would protect that person from other opportunistic diseases).

53. *See id.* at 2053 (seeking to prevent employers from discriminating against individuals with disabilities who do not pose a direct threat).

54. *See id.*

55. *See id.* (noting that a direct threat-to-others defense provision may nevertheless be useful without requiring congressional attention).

language.[56]

IV. IMPLICATIONS

For the fourth time, the Supreme Court reconfirmed its current support for employers regarding issues concerning the ADA.[57] Yet, despite narrowing the scope of the ADA, the Court did not grant employers the right to automatically deny jobs to disabled persons based on health and safety concerns.[58] Employers still bear the legal obligation of welcoming disabled persons into the workplace and treating them fairly by making reasonable accommodations under the ADA.[59] However, allowing disabled persons to work in conditions that are hazardous to their health is not an option.[60]

V. CONCLUSION

The Court's decision in *Chevron U.S.A.* has been hailed as "a victory for common sense."[61] This is because it is not wise for a disabled person to be subjected to hazardous working conditions in order to earn a living. In upholding the validity of the EEOC regulation, the

56. *See id.* (implying that requiring a threat-to-self defense to be job related preempted any potential litigation or administrative rulemaking); *see also Disabling Common Sense; Workers Have No Right to Endanger Themselves*, PITT. POST-GAZETTE, June 12, 2002, at A18 [hereinafter *Disabling Common Sense*] (noting the absurdity of suggesting the same Congress that regulated health and safe work conditions intended to create a loophole and allow disabled persons to demand unsafe working conditions).

57. *See Chevron U.S.A.*, 122 S. Ct. at 2045; *see also, e.g.*, U.S. Airways, Inc. v. Barnett, 122 S. Ct. 1516, 1524 (2002) (holding that the ADA does not necessarily trump a company's seniority system simply to accommodate disabled workers seeking less physically challenging jobs); Toyota Motor Mfg. v. Williams, 122 S. Ct. 681, 690 (2002) (narrowing the scope of the ADA in favor of the employer by holding that a person's inability to perform major life activities, such as walking, seeing and hearing, must be severe enough to trigger ADA coverage); Sutton v. United Air Lines, Inc., 119 S. Ct. 2139, 2145-47 (1999) (expressing that the ADA does not apply to those whose physical or mental impairment may be mitigated or corrected through medication or other measures).

58. *See* Paul Adams, *Justices' Ruling on Hiring Disabled Favors Employers; They would Reject People whom Job can Imperil*, BALT. SUN, June 11, 2002, at 1C (reporting that the Court did not give employers overarching discretion to deny jobs to the disabled when it limited the scope of the ADA). Employers must support their claims with strong medical evidence that a job poses a health and safety risk to the disabled job applicant. *Id.*

59. *See Disabling Common Sense*, *supra* note 56 (stating that the ADA mandates employers to integrate disabled persons into the workforce and provide them with reasonable accommodations).

60. *See id.* (indicating that requiring employees to work in hazardous conditions is not a reasonable accommodation under the ADA).

61. *See* Charles Lane, *Supreme Court Limits Disabilities Act on Safety Issue*, WASH. POST, June 11, 2002, at A07 (quoting Ann Elizabeth Reesman, general counsel of the Equal Employment Advisory Council).

Supreme Court ruled that employers may refuse to hire a disabled worker when a company determines that the job would threaten the disabled applicant's life or health.[62] This right of refusal even extends to disabled job applicants who insist on applying for jobs involving conditions that threaten their health.[63]

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62. *See* Savage, *supra* note 3 (reporting that the Court permits employers to turn away disabled job applicants if the job sought may endanger their life or health).

63. *See* Anne Gearan, *Disabled Don't have Right to Risky Jobs*, DESERET NEWS (Salt Lake City, UT), June 11, 2002, at A02 (announcing that the Court's decision clearly allows the EEOC regulation to cover those who are willing to risk their health for a job).