SUPREME COURT OF THE UNITED STATES

No. 94–372

DONNA E. SHALALA, SECRETARY OF HEALTH AND HUMAN SERVICES, PETITIONER *v.* MARGARET WHITECOTTON ET AL.

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

[April 18, 1995]

JUSTICE O'CONNOR, with whom JUSTICE BREYER joins, concurring.

Margaret Whitecotton was born in 1975 with a condition known as microcephaly, defined commonly (but not universally) as a head size smaller than two standard deviations below the norm. At the age of four months, she received a diphtheria, pertussis, and tetanus (DPT) vaccination. Prior to receiving her vaccine, Margaret had never had a seizure. The day after receiving her vaccine, she suffered a series of seizures that required three days of hospitalization. Over the next five years, Margaret had intermittent seizures. She now has cerebral palsy and hip and joint problems and cannot communicate verbally. In 1990, Margaret's parents applied for compensation for her injuries under the National Childhood Vaccine Injury Act of 1986. The Special Master denied compensation, and the Court of Federal Claims agreed. The Court of Appeals for the Federal Circuit reversed, 17 F. 3d 374 (1994), finding that the Whitecottons had made out a prima facie case for compensation.

Although I join the Court's opinion rejecting the Court of Appeals' reading of the pertinent statutory provision, I write separately to make two points. First, I wish to indicate an additional factor supporting my conclusion that the Court of Appeals' reading of 42 U. S. C. §300aa-11(c)(1)(C)(i) is inconsistent with congressional intent. Second, I wish to underscore

the limited nature of the question the Court decides.

Examining the language of §300aa-11(c)(1)(C)(i), the Court properly rejects the Court of Appeals' determination that a claimant may make out a prima facie "onset" case simply by proving that she experienced a symptom of a "table illness" within the specified period after receiving a vaccination. *Ante*, at 5–6. To establish a table case, the statute requires that a claimant prove by a preponderance of the evidence either (1) that she suffered the first symptom or manifestation of the onset of a table condition within the period specified in the table or (2) that she suffered the first symptom or manifestation of a significant aggravation of a pre-existing condition within the same period. As the Court rightly concludes, proof that the claimant suffered *a* symptom within the period is necessary but not sufficient to satisfy either burden; the word "first" is significant and requires that the claimant demonstrate that the postvaccine symptom, whether of onset or of significant aggravation, was in fact the very first such manifestation.

The Court relies on a commonsense consideration of the words "first" and "onset" in reaching this conclusion: "[i]f a symptom or manifestation of a table injury has occurred before a claimant's vaccination, a symptom or manifestation after the vaccination cannot be the first, or signal the injury's onset." *Ante*, at 6. I find equally persuasive the observation that the Court of Appeals' reading deprives the "significant aggravation" language in the provision of all meaningful effect. The term "significant aggravation" is defined in the statute to mean "any change for the worse in a preexisting condition which results in markedly greater disability, pain, or illness accompanied by a substantial deterioration of health." 42 U. S. C. §300aa-33(4). If, as the Court of Appeals determined, a claimant makes out an "onset" case any time she can demonstrate that *any* symptom occurred within the

relevant period, all cases in which children experience postvaccine symptoms within the table period become "onset" cases. The phrase "significant aggravation," and any limitations Congress sought to impose by including language like "*markedly* greater disability" and "*substantial deterioration* of health," are altogether lost.

To the extent possible, we adhere to "the elementary canon of construction that a statute should be interpreted so as not to render one part inoperative." *Department of Revenue of Oregon* v. *ACF Industries, Inc.*, 510 U. S. ___, ___ (1994) (slip op., at 7) (internal quotation marks omitted); *Pennsylvania Dept. of Public Welfare* v. *Davenport*, 495 U. S. 552, 562 (1990). The construction adopted by the Court of Appeals contravenes this principle. Our reading gives effect to the "onset" and the "significant aggravation" language while according "first" its commonsense meaning.

Today's decision is quite limited. The Court of Appeals had no occasion to address the Whitecottons' challenges to the Special Master's factual findings with respect to their daughter's condition. We assume, *arguendo*, the soundness of his conclusions that Margaret Whitecotton suffered a pre-existing encephalopathy that was manifested by her prevaccine microcephaly. But this may not be the case, and the Whitecottons of course may challenge these findings as clearly erroneous on remand. The Court of Appeals also did not address the Whitecottons' argument, rejected by the Special Master, that their daughter suffered a significant aggravation of whatever pre-existing condition she may have had as a result of the vaccine. This factual challenge appears to be open as well, as does a challenge to the legal standard used by the Special Master to define "significant aggravation."

We also do not pass the Secretary's argument that the Court of Appeals misstated petitioner's burden

under 42 U. S. C. §300aa-13(a)(1)(B) in rebutting a claimant's prima facie case. Given our holding with respect to the claimant's burden, it is speculative at this time whether any effort on our part to evaluate the Court of Appeals' approach to the “facto[r] unrelated” standard will find concrete application in this case. That said, the approach taken by the Court of Appeals, under which the Secretary may not point to an underlying condition that predated use of a vaccine and obviously caused a claimant's ill health, if the cause of that underlying condition is unknown, may well warrant our attention in the future.