No. _____

In the Supreme Court of the United States

KARYN D. STANLEY,
Petitioner,

v.

CITY OF SANFORD, FLORIDA,
Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

PATRICIA R. SIGMAN
SIGMAN & SIGMAN, P.A.
211 Maitland Avenue
Altamonte Springs, FL 32701
(407) 332-1200

MARTHA A. CHAPMAN
MARTHA A. CHAPMAN, P.A.
2937 Dawley Avenue
Orlando, Florida 32807
(407) 694-4378

DEEPAK GUPTA
Counsel of Record
ERIC F. CITRON
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741
deepak@guptawessler.com

JESSICA GARLAND
GUPTA WESSLER LLP
505 Montgomery Street
Suite 625
San Francisco, CA 94111
(415) 573-0336

Counsel for Petitioner

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QUESTION PRESENTED

Under the Americans with Disabilities Act, does a former employee—who was qualified to perform her job and who earned post-employment benefits while employed—lose her right to sue over discrimination with respect to those benefits solely because she no longer holds her job?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioner Karyn D. Stanley was the plaintiff in the district court and the appellant in the court of appeals.

Respondent City of Sanford, Florida, was the defendant in the district court and the appellee in the court of appeals.

RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *Stanley v. City of Sanford, Florida*, No. 6:20-cv-00629-WWB-GJK (M.D. Fla. 2022) (judgment entered Dec. 8, 2021)
- *Stanley v. City of Sanford, Florida*, No. 22-10002 (11th Cir. 2023) (judgment entered Oct. 11, 2023)

There are no related proceedings within the meaning of this Court's Rule 14.1(b)(iii).

TABLE OF CONTENTS

Question presented i

List of parties to the proceedings..... ii

Related proceedings..... ii

Table of authorities v

Introduction 1

Opinions below.....4

Jurisdiction.....4

Statutory provisions involved 4

Statement 5

A. Statutory background.....5

B. Factual background 9

C. Procedural background 12

Reasons for granting the petition 15

I. The circuits are split over whether a former employee—because she no longer holds her position—loses her right to sue for discrimination in the provision of benefits that she earned during employment.....15

A. The Second and Third Circuits allow a former employee to sue her employer under the ADA for discrimination in the provision of post-employment benefits. 16

B. The Sixth, Seventh, Ninth, and Eleventh Circuits preclude a former employee from suing her employer

under the ADA for discrimination in post-employment benefits. 18

C. This deep, persistent, and well-recognized circuit split is unlikely to be resolved without this Court's intervention. 21

II. The decision below is at odds with the text, structure, and purpose of the ADA. 23

III. The question presented is important 30

Conclusion 33

Appendix A Opinion of the United States Court of Appeals for the Eleventh Circuit (October 11, 2023) ..... App. 1a

Appendix B Order of the United States District Court for the Middle District of Florida Granting Motion to Dismiss (March 1, 2021) ..... App. 20a

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Castellano v. City of New York,
142 F.3d 58 (2d Cir. 1998).....16, 17, 24, 26

Conners v. Maine Medical Center,
42 F. Supp. 2d 34 (D. Me. 1999).....22

EEOC v. Aramark Corp.,
208 F.3d 266 (D.C. Cir. 2000).....16, 21

EEOC v. CNA Insurance Cos.,
96 F.3d 1039 (7th Cir. 1996).....19

EEOC v. Group Health Plan,
212 F. Supp. 2d 1094 (E.D. Mo. 2002).....21

Fitts v. Federal National Mortgage Association,
44 F. Supp. 2d 317 (D.D.C. 1999).....21

Fletcher v. Tufts University,
367 F. Supp. 2d 99 (D. Mass. 2005).....22

Ford v. Schering-Plough Corp.,
145 F.3d 601 (3d Cir. 1998).....2, 15, 17, 18, 33

Gonzales v. Garner Food Services, Inc.,
89 F.3d 1523 (11th Cir. 1996).....12

Hatch v. Pitney Bowes, Inc.,
485 F. Supp. 2d 22 (D.R.I. 2007).....15, 22, 23

Hishon v. King & Spalding,
467 U.S. 69 (1984).....28

Howard Delivery Service, Inc. v. Zurich American Insurance Co.,
547 U.S. 651 (2006).....28

Johnson v. K Mart Corp.,
273 F.3d 1035 (11th Cir. 2001) 12, 13, 18

Ledbetter v. Goodyear Tire & Rubber Co.,
550 U.S. 618 (2007) 8

Lewis v. Aetna Life Insurance Co.,
982 F. Supp. 1158 (E.D. Va. 1997) 22

Lomax v. Ortiz-Marquez,
140 S. Ct. 1721 (2020) 29

McKnight v. General Motors *Corp.*,
550 F.3d 519 (6th Cir. 2008) 20

Morgan v. Joint Administration Board, Retirement Plan,
268 F.3d 456 (7th Cir. 2001) 19

Ostrowski v. Lake County,
33 F.4th 960 (7th Cir. 2022) 19, 21

Parker v. Metropolitan Life Insurance Co.,
99 F.3d 181 (6th Cir. 1996) 20

Robinson v. Shell Oil Co.,
519 U.S. 337 (1997) 1, 12, 25, 29, 30, 33

Seese v. Prudential Insurance Co. of America,
2015 WL 5672940 (D. Minn. Sept. 23, 2015).....21

Smith v. Town of Ramapo,
745 F. App'x 424 (2d Cir. 2018).....16, 21

Weyer v. Twentieth Century Fox Film Corp.,
198 F.3d 1104 (9th Cir. 2000) 19, 20

Statutes

28 U.S.C. § 1254 4

42 U.S.C. § 12101 6

42 U.S.C. § 12111 .....1, 4, 6, 23

42 U.S.C. § 12112 .....1, 5, 6, 7, 8, 12, 23, 26, 27, 28, 29

42 U.S.C. § 12117 .....1, 6, 24, 25, 27, 29, 30

42 U.S.C. § 2000e-2 29

42 U.S.C. § 2000e-5 .....4, 8, 9, 24, 25, 27, 29

American with Disabilities Act,
Pub. L. No. 101-336, 104 Stat. 327 (1990) 7, 27, 31

Lilly Ledbetter Fair Pay Act of 2009,
Pub. L. No. 111-2, 123 Stat. 5 8

Ind. Code Ann. § 5-10-15-5.5 11

N.Y. Gen. Mun. Law § 207-kkk (Consol.) 11

Legislative History

124 Cong. Rec. 36817 (1978) 28

H.R. Rep. 110-730, pt. 1 (2008) 7

H.R. Rep. No. 101-485, pt. 2 (1990) 6

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S. Rep. No. 101-116 (1989) 31

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Litigating Employment Discrimination Cases
(2020) 22

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By 2030, All Baby Boomers Will Be Age 65 or Older, U.S. Census Bureau (Dec. 10, 2019) 31

Bureau of Labor Statistics,
Employee Benefits 10

Bureau of Labor Statistics,
Occupational Outlook Handbook, *Firefighters* 9, 32

Delaware Division of Corps.,
Annual Report Statistics 32

Donna L. Mack,
Note, *Former Employees' Rights to Relief under the Americans with Disabilities Act*, 74 Wash. L. Rev. 425 (1999).....22

Employee Benefits Law,
(Russell L. Hirschhorn ed., 4th ed. 2022).....22

Jason D. Myers,
A Title I Dilemma: May Disabled Former Employees Sue for Discrimination Regarding Post-Employment Benefits?, 67 Fordham L. Rev. 3371 (1999).....22

Matthew S. Smith,
Protecting Former Employees with Disabilities Who Receive Fringe Benefits Under Title I of the ADA, 29 ABA J. Lab. & Emp. L. 349 (2014) 22

Paola Scommegna,
Aging U.S. Baby Boomers Face More Disability, Population Reference Bureau (Mar. 4, 2013).....31

Todd Prall,
Note, *Why Can't Discrimination Be Discrimination? Johnson v. K Mart Corp. and the Meaning of "Discrimination" Under the Americans with Disabilities Act*, 2003 B.Y.U. L. Rev. 1419 (2003).....22

University of Illinois Chicago: Law Enforcement Epidemiology Project, *Law Enforcement Safety*.....32

Webster's Third New International Dictionary of the English Language (1961).....28

INTRODUCTION

This case presents an important and recurring question about who is entitled to invoke the protections of the Americans with Disabilities Act and when they may do so: When employees leave their jobs, do they lose their right to sue for discrimination with respect to post-employment benefits that they earned while on the job?

The ADA allows plaintiffs to invoke the full "powers, remedies, and procedures" available under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 12117(a). In *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997), this Court granted certiorari to decide whether former employees may sue under Title VII. This Court unanimously held that they may. But several circuits have reached a different result under the ADA, which provides that employers may not "discriminate against a qualified individual on the basis of disability in regard to . . . terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). These circuits, including the Eleventh Circuit below, have focused on the definition of "qualified individual" as someone who "can perform the essential functions of the employment position that such individual *holds or desires*." 42 U.S.C. § 12111(8) (emphasis added).

The circuits are split two-to-four over whether a former employee—solely because she no longer "holds or desires" the position for which she was indisputably qualified—loses her right to sue for discrimination with respect to benefits that she earned while employed. In the decision below, the Eleventh Circuit reaffirmed its position that former employees may not "sue under Title I of the Americans with Disabilities Act for discrimination in post-employment distribution of fringe benefits." Pet. App. 2a. The Sixth, Seventh, and Ninth Circuits agree.

By contrast, the Second and Third Circuits have adopted the opposite rule: A former employee doesn't lose the ability to sue her employer for discriminatory practices that harm her simply because she no longer holds or seeks to hold her former position.

The decision below "acknowledge[s] that the circuits are split." Pet. App. 12a. As then-Judge Alito recognized two decades ago, this question has long "divided the circuits." *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 615 (3d Cir. 1998) (Alito, J., concurring). And this divide has proved remarkably persistent, with circuits in both camps adhering to their positions in recent years.

There are several clear indications in the ADA's text and structure that the Second and Third Circuits are correct and that the decision below is not. Among other things, the decision below misunderstands the role of the term "qualified individual" in the ADA, and the reference in its definition to someone who "holds or desires" a position. That language defines what conduct counts as discrimination. It includes a reference to "the position" a person "holds or desires" only because the ADA's capacious understanding of discrimination includes denying accommodation to anyone otherwise qualified for a job. It has nothing to do with who may bring suit or when they may do so to complain about conduct that plainly constitutes discrimination. That procedural question is governed by provisions that the ADA expressly incorporates from Title VII, and this Court has already held that Title VII permits suit by former employees.

The entrenched circuit split on this question affects millions of Americans who are currently disabled and who rely on retirement benefits that they earned while employed. And it is especially salient for millions of aging

Americans who will become disabled in the future, including first responders (like the petitioner here, a former firefighter) who are more susceptible to injury in the line of duty. These individuals are unlikely to know about their employer's discriminatory benefits policies until they become disabled and are forced to retire—the exact moment that they lose their right to sue under the law of the Sixth, Seventh, Ninth, and Eleventh Circuits.

This case cleanly tees the issue up for this Court's resolution as a pure question of law with no relevant factual disputes. After more than two decades of service, Karyn Stanley was forced to take disability retirement after her Parkinson's disease progressed to a stage that made it impossible for her to continue her work as a firefighter. She brought an ADA claim challenging her former employer's discriminatory benefits policy—which expressly treats disabled retirees worse than others—but was stymied by the Eleventh Circuit's determination that she wasn't a "qualified individual" at the time of the discrimination.

The circuit split is dispositive here. Under the law of the Second and Third Circuits, Ms. Stanley would have had her day in court, and her ADA claim would have been resolved on the merits. But in the Sixth, Seventh, Ninth, and Eleventh Circuits, a person in Ms. Stanley's position loses her right to sue for disability discrimination at the moment that she is forced to stop working due to her disability. The right to sue under an important federal civil rights statute should not turn entirely on geography and happenstance. Only this Court can resolve the longstanding disagreement among the circuits on this fundamental question, and this case presents an ideal vehicle to do so.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 83 F.4th 1333 and reproduced at Pet. App. 1a. The district court's opinion is unreported but is available at 2021 WL 6333059 and reproduced at Pet. App. 20a.

JURISDICTION

The court of appeals entered judgment on October 11, 2023. On December 15, 2023, Justice Thomas extended the time within which to file a petition for a writ of certiorari to February 8, 2024, and on January 30, 2024, Justice Thomas further extended the time within which to file this petition to March 8, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-5(e)(3)(A) provides:

> For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

42 U.S.C. § 12111(8) provides:

> The term "qualified individual" means an individual who, with or without reasonable

> accommodation, can perform the essential functions of the employment position that such individual holds or desires. …

42 U.S.C. § 12112(a) provides:

> No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment.

42 U.S.C. § 12112(b)(2) provides:

> As used in subsection (a), the term "discriminate against a qualified individual on the basis of disability" includes— … (2) participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter (such relationship includes a relationship with an employment or referral agency, labor union, an organization providing fringe benefits to an employee of the covered entity, or an organization providing training and apprenticeship programs)[.]

STATEMENT

A. Statutory Background

1. The Americans with Disabilities Act, enacted in 1990, provides "enforceable standards addressing

discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). One such standard is found in Title I of the ADA, which governs employment: It prohibits employers from discriminating "against a qualified individual on the basis of disability in regard to . . . [the] terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). The ADA enforces this standard with the full "powers, remedies, and procedures" of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 12117(a), thus ensuring "civil rights protections for persons with disabilities that are parallel to those available to minorities and women," H.R. Rep. No. 101-485, pt. 3, at 48 (1990).

The term "qualified individual" appears in § 12112—the provision defining what kind of conduct counts as prohibited discrimination—because the ADA uniquely requires affirmative accommodations from employers to allow employees who are disabled but otherwise qualified to do the relevant jobs. Accordingly, the ADA defines a "qualified individual" as someone who, "with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). Section 12111(8) clarifies that the ADA "does not undermine an employer's ability to choose and maintain qualified workers." H.R. Rep. No. 101-485, pt. 2, at 55 (1990). But the term "qualified individual," which is defined with reference to a "reasonable accommodation," also emphasizes that employers must offer their employees "the reasonable accommodation that will then make the individual" qualified for the job. *See id.* at 64–65.

Notably, both § 12112's definition of discrimination and § 12111(8)'s definition of a "qualified individual" exist to describe what kinds of conduct by an employer count as

impermissible discrimination under the ADA—employers cannot do anything that provides inferior "terms, conditions, and privileges of employment" to any "qualified individual" "on the basis of disability." None of this language describes when an employee must be injured by this conduct for it to count as discrimination or describes when or how a suit may be brought to remedy such injury.

2. This statutory role for § 12112(a) was reinforced by the ADA Amendments Act of 2008, which further "harmonize[d]" the ADA with Title VII by emphasizing that the discrimination inquiry focuses on whether someone "has been discriminated against on the basis of disability," regardless of "whether a particular person is even a 'person with a disability.'" H.R. Rep. 110-730, pt. 1, at 16 (2008). Under the old definition, the ADA mandated that:

> No covered entity shall discriminate against a qualified individual *with a disability because of the disability of such individual*.

Pub. L. No. 101-336, § 102(a), 104 Stat. 327, 331–32 (1990) (emphasis added). By contrast, the amended text provides that:

> No covered entity shall discriminate against a qualified individual *on the basis of disability*.

42 U.S.C. § 12112(a) (emphasis added). This new language clarifies that the statute is focused in § 12112(a) on the quality of the employer's behavior rather than the disability status of the employee: Prohibited discrimination includes any conduct that treats disabled but otherwise qualified individuals or individuals who are

just perceived to be disabled worse than their counterparts. Accordingly, Congress eliminated the prior requirement that the discrimination occur against a person "*with a disability*" as long as disability is the "basis" for differential treatment. *Id.* (emphasis added).

3. In 2009, the Lilly Ledbetter Fair Pay Act added another important textual overlay by explicitly defining the time at which an "unlawful employment practice occurs" under the ADA. 42 U.S.C. § 2000e-5(e)(3)(A).

After this Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), Congress worried that certain victims of discrimination would not have enough time to file their claims. *Ledbetter* required victims to file within a certain window from when a discriminatory decision first occurred, even if the employee later determined that the act of discrimination was having an ongoing effect on every paycheck. Congress sought to expand "the time period in which victims of discrimination [could] challenge and recover for discriminatory compensation decisions or other practices." Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, § 2(1), 123 Stat. 5, 5. It accomplished this goal by adopting an explicit provision defining the moment at which an unlawful employment practice occurs. Under the amended rule:

> [A]n unlawful employment practice occurs . . . when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or *when an individual is affected* by application of a discriminatory compensation decision or

> other practice, *including each time wages, benefits, or other compensation is paid*, resulting in whole or in part from such a decision or other practice.

42 U.S.C. § 2000e-5(e)(3)(A) (emphasis added). The textual effect of this amendment is that, if a "decision or other practice" is the kind of discrimination prohibited by the statute, an "unlawful employment practice" for which a plaintiff can seek redress now "occurs" anew each time that practice or decision results in the plaintiff receiving less generous "benefits." *Id.*

B. Factual Background

In 1999, after serving in the military, Karyn Stanley began her career as a firefighter for the City of Sanford, Florida—a role in which she ultimately served for almost two decades. Pet. App. 2a.

When the City offered her the firefighter job, her employment package included, as a fringe benefit, a retirement "health insurance subsidy." Pet. App. 3a. The subsidy covered the cost of health insurance for qualifying retirees until they reached age sixty-five. *Id.* A retiree was eligible regardless of whether she "retire[d] with twenty-five (25) years of service" or "retire[d] for disability reasons." Doc. 38-6 at 2; Pet. App. 21a.

This health-insurance subsidy was an especially important benefit for firefighters like Ms. Stanley because they have one of the "highest rates of injuries and illnesses of all occupations." Bureau of Lab. Stats., *Occupational Outlook Handbook*, *Firefighters*, https://perma.cc/F8CP-UJL8. Indeed, for many public-service jobs that come with lower salaries, fringe benefits are a major draw for potential employees, representing a critical part of the

compensation for which they undertake (and stay in) their roles as police officers, firefighters, or other government workers. *See* Bureau of Lab. Stats., *Employee Benefits*, https://perma.cc/PLP6-7GHL.

In 2003, unbeknownst to Ms. Stanley, the City quietly changed its subsidy policy to distinguish between "disabled" and "normal" retirees. Pet. App. 3a. The new policy limited the benefits eligibility for "all employees retiring as a result of full disability" so that it would run only "until the disabled retiree receives Medicare benefits or until 24 months have elapsed from the date of retirement, whichever comes first." Pet. App. 22a; Doc. 38-11 at 4. By contrast, "normal retirees" remained eligible until age sixty-five. Doc. 39-16 at 13.

This new policy produces vastly different results for disabled and non-disabled retirees. A firefighter retiring after twenty-five years of service is eligible for the subsidy until she turns sixty-five (which could amount to as many as twenty-two years). If that same firefighter is injured in the line of duty or develops a career-ending illness one year before she completes her twenty-five years of service, the subsidy lasts only for twenty-four months.

The City claimed that the new policy was a necessary "cost cutting measure[]," Doc. 38 at 7. But it never offered any justification for discriminating on the basis of disability and was unable to put forward any evidence in its defense. Fred Fosson, the City's Director of Human Resources and Risk Management and the person who self-admittedly knows more about the policy than anyone else, Doc. 39-4 at 13–14, could not explain why the City changed the subsidy eligibility policy for only disabled retirees, Doc. 39-4 at 10. And during litigation, the City could not produce or identify any "data, mathematical calculations,

[or] correspondence . . . upon which [it] based its decision" to rescind benefits from disabled retirees and not "normal retirees." Doc. 39-16 at 5, 40.

Whatever the reason for the change, it first affected Ms. Stanley—to her great detriment—when her career as a firefighter was cut short by Parkinson's disease. After nearly twenty years of service, Ms. Stanley began to develop "stiffness [and] rigidity … as well as [a] loss of dexterity in her extremities." Doc. 38-4 at 3. In 2016, she was officially diagnosed with Parkinson's. Pet. App. 2a. For a longtime firefighter like Ms. Stanley, that diagnosis was tragic but not entirely surprising: Based on data suggesting a link between firefighting and Parkinson's, some states have adopted a legal presumption that firefighters who develop Parkinson's did so in the line of duty. *See* N.Y. Gen. Mun. Law § 207-kkk (Consol.); Ind. Code Ann. § 5-10-15-5.5.

For two years after her diagnosis, Ms. Stanley continued to work as a Fire Lieutenant. Pet. App. 2a. She had hoped to serve the Fire Department for 25 years before retiring. Doc. 1 at 3. But eventually it became clear that Ms. Stanley's disability was preventing her from meeting the physical demands of her job. Pet. App. 2a. In 2018, at the age of forty-seven, Ms. Stanley took disability retirement, with the City's agreement. Pet. App. 2a.

At that point, Ms. Stanley expected the employer she had served for almost twenty years to stand by the benefits bargain that it had struck with her when she was hired. Instead, just 24 months after she retired, the City discontinued Ms. Stanley's health-insurance subsidy, leaving her financially responsible for all of her health insurance. Pet. App. 3a.

C. Procedural Background

1. Ms. Stanley filed this lawsuit alleging that the City's subsidy policy discriminated against her "on the basis of disability" in violation of Title I of the ADA. Pet. App. 24a.

The district court dismissed Ms. Stanley's Title I claim. Observing that the circuits are split on the issue, the court concluded that, under *Gonzales v. Garner Food Servs., Inc.*, 89 F.3d 1523 (11th Cir. 1996), "disabled former employee[s]" like Ms. Stanley have "no standing to sue" under Title I because they are no longer "qualified individuals." Pet. App. 24a; 42 U.S.C. § 12112(a).

2. The Eleventh Circuit affirmed. It held that because Ms. Stanley was not a "qualified individual" at the time that the City terminated her subsidy payments in 2020, she could not bring a claim under Title I of the ADA. Pet. App. 11a–12a. Like the district court, the panel "acknowledge[d] that the circuits are split," Pet. App. 12a, but it ultimately found itself bound by its prior ruling in *Gonzales* that "a former employee could not sue for alleged discrimination in post-employment fringe benefits." Pet. App. 8a–9a.

The Eleventh Circuit recognized that, in *Johnson v. K Mart Corp.*, 273 F.3d 1035 (11th Cir. 2001), a prior panel of the Eleventh Circuit had "briefly disturbed" this rule. Pet App. 9a. The panel in *Johnson* held that this Court's decision in *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997), "mandate[d] the conclusion that *Gonzales* is no longer good law." Pet App. 9a; *Johnson*, 273 F.3d at 1037. In *Robinson*, this Court unanimously held that "former employees are included" within the protection of Title VII's anti-retaliation provision. 519 U.S. at 338. Relying on this reasoning, *Johnson* concluded that a "former employee" must be "entitled to bring a claim against his

former employer under section 12112(a) of Title I of the ADA." *Johnson*, 273 F.3d at 1048. The panel decision in *Johnson* was procedurally vacated, however, when the Eleventh Circuit granted rehearing en banc, even though an intervening settlement prevented the full court from hearing and deciding the case. Pet. App. 9a.

Unlike the vacated decision in *Johnson*, the panel below rejected the notion that this Court's holding in *Robinson* undermined *Gonzales* enough to justify "ignoring a prior precedent." Pet. App. 12a. It distinguished *Robinson* on the grounds that it interpreted the term "employee" in Title VII, while the term at issue in the ADA (according to the Eleventh Circuit) was "qualified individual." Pet. App. 10a–11a. Emphasizing that section 12111(8) defines "qualified individual" using the "present tense" words "can," "holds," and "desires." Pet. App. 11a, the court reasoned that the ADA, unlike Title VII, is unambiguous about who it protects. *Id.* And it concluded that the "clear temporal qualifiers" indicate that a plaintiff "must desire or already have a job with the defendant at the time the defendant commits the discriminatory act" to maintain a right to sue under the ADA. *Id.*

In the panel's eyes, subsequent amendments to the ADA did not affect its conclusion. Pet. App. 13a. It recognized that the ADA Amendments Act expanded the scope of unlawful discrimination by removing the requirement that the discrimination occur against a person "with a disability." *See* Pet. App. 14a. Nonetheless, the panel summarily concluded that the text upon which *Gonzales* relied "is still the operative text in the statute." *Id.* The Court's reasoning was similar with respect to the Ledbetter Act. It acknowledged that the Ledbetter Act

amended the ADA to allow plaintiffs to sue under the ADA when they become "subject to" or "affected by" discriminatory decisions or practices—not just when the discrimination first occurs. Pet. App. 16a. But the panel nonetheless reaffirmed *Gonzales*'s rule because the Ledbetter Act "did not change the statutory language … relied on in *Gonzales*." Pet. App. 15a.

The panel further concluded that Ms. Stanley was not a "qualified individual" at any discrete moment in which discrimination could have occurred. Pet. App. 16a–17a. At the time the City amended its subsidy policy in 2003, she was "not yet disabled." Pet. App. 16a. But when her subsidy benefits ended in 2020, she was a "retiree, not [an] employee," and could no longer be a "qualified individual" because she no longer held or desired her position. *Id.* Accordingly, the court held that Ms. Stanley was barred by her retirement from challenging the discriminatory fringe-benefit policy.

In reaching this conclusion, the panel had the benefit of briefing from the United States as amicus curiae in support of Ms. Stanley. In keeping with its longstanding position, the United States maintained that "Title I of the ADA prohibits discrimination in the provision of fringe benefits earned during an employee's tenure but distributed after her employment concludes." Amicus Brief of the United States at 4. The Eleventh Circuit nonetheless affirmed.

REASONS FOR GRANTING THE PETITION

I. The circuits are split over whether a former employee—because she no longer holds her position—loses her right to sue for discrimination in the provision of benefits that she earned during employment.

This case presents a fundamental question about *who* is entitled to invoke the protections of the ADA and *when* they may do so: If an employee no longer holds or seeks to hold an employment position, does she lose the right to sue for discriminatory policies that harm her post-employment? As then-Judge Alito acknowledged, this issue has long "divided the circuits." *Schering-Plough Corp.*, 145 F.3d at 615. And this long-running split shows no signs of going away. To the contrary, as the decision below illustrates, circuits in both camps have produced recent decisions reaffirming their opposing positions.

On one side of the divide, the Eleventh Circuit holds that a former employee, because she no longer holds or seeks to hold her position, loses the ability to sue under the ADA for discrimination that harms her post-employment. Pet. App. 2a. The Sixth, Seventh, and Ninth Circuits have adopted the same rule.

By contrast, the Second and Third Circuits have adopted the opposite rule. Within these circuits, an employee does not lose the ability to sue her employer for discriminatory practices that harm her simply because she no longer holds or seeks to hold the position.

This issue has spawned an "intractable," "affirmative inter-circuit split." *Hatch v. Pitney Bowes, Inc.*, 485 F. Supp. 2d 22, 33 (D.R.I. 2007). Even the circuits that have not yet squarely resolved the question recognize that their

"sister circuits are divided." *EEOC v. Aramark Corp.*, 208 F.3d 266, 268 (D.C. Cir. 2000) (Tatel, J.). This Court's intervention is necessary to resolve widespread disagreement over this foundational issue.

A. The Second and Third Circuits allow a former employee to sue her employer under the ADA for discrimination in the provision of post-employment benefits.

Two circuits have held that a former employee does not lose her right to sue under the ADA for discriminatory policies that harm or continue to harm her post-employment.

Under this rule, Ms. Stanley's claims would have been heard on the merits. Those circuits would recognize that, although she was a former employee when she was affected by the City's discriminatory subsidy policy, her retirement does not bar her from bringing suit.

1. Second Circuit. The Second Circuit has long held that a "former employee" can sue her former employer under the ADA "for the purpose of challenging alleged discrimination in the provision of [a] fringe benefit" earned during her employment. *Castellano v. City of New York*, 142 F.3d 58, 69 (2d Cir. 1998). And it recently affirmed that it continues to adhere to this rule. *See Smith v. Town of Ramapo*, 745 F. App'x 424 (2d Cir. 2018).

The Second Circuit adopted this rule because it viewed coverage of former employees as more consistent with the ADA's text and structure. It found the statute's use of the term "qualified individuals" ambiguous because it "fails to specify when a potential plaintiff must have been a 'qualified individual with a disability.'" *Castellano*, 142 F.3d at 67. And it resolved that ambiguity in favor of

former employees for several reasons. First, the statute explicitly prohibits discrimination in the provision of "fringe benefits," which are often "earned during years of service before the employment has terminated" but provided "after the employment relationship has ended." *Id.* If suit by former employees is barred, an employer could "deny post-employment fringe benefits on the basis of disability to any retiree the day after (but not the day before) his retirement." *Id.* Second, the statutory term "qualified individuals" is defined as encompassing individuals able to "perform the essential functions" of the job, but it is "irrelevant" whether former employees who earned post-employment entitlements while employed "could also perform such essential functions at or after termination of their employment." *Id.* at 68.

At the time it adopted this rule, the Second Circuit recognized that it created a circuit split. *See id.* at 66 (noting that "three circuits" preclude ADA protections for former employees "in the context of challenges to alleged discrimination in the provision of fringe benefits").

2. Third Circuit. The Third Circuit likewise holds that "the ADA does permit disabled individuals to sue their former employers regarding their disability benefits." *Schering-Plough Corp.*, 145 F.3d at 608. Adopting similar reasoning to the Second Circuit, the Third Circuit holds that the ADA's text and structure require this rule.

In doing so, the Third Circuit also recognized that it further entrenched a circuit split by "part[ing] ways" with the Seventh and Eleventh Circuits. *Id.* at 607. Then-Judge Alito similarly recognized in an opinion concurring in the judgment that this question had "divided the circuits." *Id.* at 615. For that reason, he would have resolved the case

on other grounds without reaching this "more difficult issue[]." *Id.*

B. The Sixth, Seventh, Ninth, and Eleventh Circuits preclude a former employee from suing her employer under the ADA for discrimination in post-employment benefits.

By contrast, four circuits hold that employees lose the right to sue their employers for discriminatory policies the moment they no longer hold their positions.

1. Eleventh Circuit. Today, the rule in the Eleventh Circuit is clear: Former employees may not "sue under Title I of the Americans with Disabilities Act for discrimination in post-employment distribution of fringe benefits." Pet. App. 2a.

The Eleventh Circuit has long recognized a circuit split on this issue. The decision below "acknowledge[d] that the circuits are split," and that its holding is "at odds with the Second and Third Circuits but in league with the Sixth, Seventh, and Ninth Circuits." *Id.*; Pet. App. 12a. Prior Eleventh Circuit judges have also acknowledged this "fracture[]," *Johnson*, 273 F.3d at 1040, and the resulting "split [with] the other circuits that have addressed" this issue, *id.* at 1070 (Carnes, J., dissenting).

Indeed, this issue has so closely divided the Eleventh Circuit that it arrived at its current rule only after issuing published panel opinions on both sides of the divide. Pet. App. 9a. As this history shows, the disagreement on this issue is pronounced and is dictated in large measure by prior circuit rulings. This question thus merits the attention of this Court, which can clarify the correct statutory interpretation without the overlay of prior circuit precedent.

2. Seventh Circuit. The Seventh Circuit likewise departs from the Second and Third Circuits. It prohibits "retired and other former workers" from suing under the ADA. *Morgan v. Joint Admin. Bd., Ret. Plan*, 268 F.3d 456, 457–58 (7th Cir. 2001); *see also EEOC v. CNA Ins. Cos.*, 96 F.3d 1039, 1045 (7th Cir. 1996) ("Because [plaintiff] no longer has an 'employment position' with [her former employer], nor is she an applicant, she has no claim."). Two years ago, the Seventh Circuit again reaffirmed its position that "retired and other former workers are not protected" by the ADA. *Ostrowski v. Lake Cnty.*, 33 F.4th 960, 966 (7th Cir. 2022).

The Seventh Circuit justifies this rule on the grounds that disabled former employees have "no rights" under the ADA. *Morgan*, 268 F.3d at 458. On its view, the ADA only protects "qualified individuals," *id.*, and former employees with disabilities are not "qualified" because they are "totally disabled and so utterly unable to work," *id.* at 458–59.

And again, like the Eleventh Circuit, the Seventh Circuit explicitly acknowledged the circuit split at the time that it adopted its current rule. *See id.* at 458 (noting the division among "sister circuits").

3. Ninth Circuit. The Ninth Circuit, too, has adopted the rule that the Eleventh Circuit followed below, while explicitly rejecting the "contrary" holdings of "the Second and Third Circuits." *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1112 (9th Cir. 2000). Like the Eleventh Circuit, its reasoning relies on the "present tense" usage of "holds" and "desires" in the definition of "qualified individual," which it views as excluding former employees "no longer able to work" from the ADA's protection. *Id.* The court also found that the "present

tense" use of "can perform" is a "temporal qualifier" suggesting that one must be a qualified individual "at the time that one is discriminated against" to have the right to sue under the ADA. *Id.*

Once again, in adopting this rule, the Ninth Circuit recognized that its position deepened "an inter-circuit conflict." *Id.* Indeed, it noted that it could "not avoid" this conflict "because the Second and Third Circuits have held contrary to the Seventh and Eleventh Circuits." *Id.*

4. Sixth Circuit. Finally, the Sixth Circuit also takes the view that "former disabled employees do not have standing under Title I of the ADA" to sue over post-employment harm. *McKnight v. Gen.* Motors *Corp.*, 550 F.3d 519, 525 (6th Cir. 2008). In so holding, it reasoned that "Title I is unambiguous" and "does not apply to former employees who are unable to perform the essential functions of their jobs." *Id.* at 528.

McKnight affirmed the Sixth Circuit's longstanding rule, first articulated in *Parker v. Metropolitan Life Insurance Co.*, 99 F.3d 181, 185–86 (6th Cir. 1996). The Sixth Circuit granted rehearing en banc in *Parker*, but fully affirmed. 121 F.3d 1006 (6th Cir. 1997).

Like its counterparts, the Sixth Circuit recognizes that whether "disabled former employees are 'qualified individuals'" under the ADA has "divided the circuits." *McKnight*, 550 F.3d at 522. Its rule rejects the "Second and Third Circuits' finding of ambiguity" and adopts the "position taken by the Ninth and Seventh Circuits." *Id.* at 527.

C. This deep, persistent, and well-recognized circuit split is unlikely to be resolved without this Court's intervention.

There is no realistic prospect that the deep, persistent, and well-recognized circuit split on the question presented will resolve itself absent this Court's intervention. The disagreement was fully recognized by the lower courts when they adopted their respective rules, and they have made no effort to reconcile their disagreement since.

Instead, circuits on both sides of the divide have recently reaffirmed their precedent, just as the Eleventh Circuit did below. Two years ago, the Seventh Circuit reiterated in a published opinion that it has already "decided that 'retired and other former workers are not protected'" by the ADA. *Ostrowski*, 33 F.4th at 966 (quoting *Morgan*, 268 F.3d at 457–58). And, on the other side of the split, the Second Circuit recently confirmed its rule that "retired employees who were qualified to perform the essential functions of their jobs while employed remain entitled to receive post-employment benefits." *Town of Ramapo*, 745 F. App'x at 426.

Meanwhile, the confusion and disagreement is only growing. Some courts have recognized that their "sister circuits are divided" and avoided the issue by ruling on other grounds. *Aramark Corp.*, 208 F.3d at 268 (Tatel, J.). That lack of guidance from the circuits has left district courts at sea. Some hold that former employees can't sue for discrimination in post-employment benefits,[1] while

[1] *Fitts v. Fed. Nat'l Mortg. Ass'n*, 44 F. Supp. 2d 317, 323 (D.D.C. 1999); *EEOC v. Grp. Health Plan*, 212 F. Supp. 2d 1094, 1099 (E.D. Mo. 2002); *Seese v. Prudential Ins. Co. of Am.*, 2015 WL 5672940, at *3 (D. Minn. Sept. 23, 2015).

others hold the opposite.[2] Courts in different districts within the First Circuit, for example, have landed on both sides while they wait for the court of appeals "to squarely address this issue." *Hatch*, 485 F. Supp. 2d at 27.[3]

Commentators have likewise taken note of the split and the need for this Court to resolve it. The disagreement has been flagged everywhere from law reviews to leading treatises.[4] And the commentary has further recognized that the circuits' disagreement "remain[s] largely undisturbed since the issuance of" the 2008 amendments. Employee Benefits Law, ch. 15, § VI.B.2 (Russell L. Hirschhorn ed., 4th ed. 2022).

It is thus clear that the "different positions staked out by circuit courts are intractable and create an affirmative

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[2] *Lewis v. Aetna Life Ins. Co.*, 982 F. Supp. 1158, 1162 (E.D. Va. 1997); *Fletcher v. Tufts Univ.*, 367 F. Supp. 2d 99, 106 (D. Mass. 2005).

[3] *See also Conners v. Maine Med. Ctr.*, 42 F. Supp. 2d 34, 45 (D. Me. 1999), *aff'd on reconsideration*, 70 F. Supp. 2d 40 (D. Me. 1999).

[4] *See* 1 Andrew H. Friedman, *Litigating Employment Discrimination Cases*, ch. 1, § 1:108 (2020) ("Courts have split on the issue of whether former employees can pursue ADA challenges to allegedly discriminatory post-employment benefits."); Jason D. Myers, *A Title I Dilemma: May Disabled Former Employees Sue for Discrimination Regarding Post-Employment Benefits?*, 67 Fordham L. Rev. 3371, 3372 (1999) (arguing this issue is "ripe for resolution by the Court"); 6 Labor and Employment Law § 156.03, n.44 (2023) (same); Matthew S. Smith, *Protecting Former Employees with Disabilities Who Receive Fringe Benefits Under Title I of the ADA*, 29 ABA J. Lab. & Emp. L. 349, 358 (2014) (same); Donna L. Mack, Note, *Former Employees' Rights to Relief under the Americans with Disabilities Act*, 74 Wash. L. Rev. 425, 430 (1999) (same); Todd Prall, Note, *Why Can't Discrimination Be Discrimination? Johnson v. K Mart Corp. and the Meaning of "Discrimination" Under the Americans with Disabilities Act*, 2003 B.Y.U. L. Rev. 1419, 1422 n.18 (2003).

inter-circuit split." *Hatch*, 485 F. Supp. 2d at 33. Only this Court can resolve it, and it should do so now.

II. The decision below is at odds with the text, structure, and purpose of the ADA.

Given the deep and persistent disagreement among the circuits, this Court should grant review regardless of the merits. But it should also grant review because the rule adopted by the Second and Third Circuits is correct, and like the panel below, the four circuits on the other side will not correct their error until this Court intervenes.

A. First, and most importantly, the decision below conflates the ADA's provisions that refer to "qualified individual[s]" with the Act's provisions governing enforcement. But each has its own distinctive role: The former provisions define what conduct counts as prohibited discrimination and the latter provisions say who can sue and when. The former provisions thus do not speak to the question presented here, while the latter affirmatively resolve it in favor of former employees.

Begin with the provisions defining the conduct that the ADA prohibits. Section 12112(a) states the "[g]eneral rule" prohibiting discrimination "against a qualified individual on the basis of disability," 42 U.S.C. § 12112(a), while section 12111(8) defines a "qualified individual" by reference to the job that an employee "holds or desires," 42 U.S.C. § 12111(8). These provisions are necessary because, unlike most antidiscrimination statutes, the ADA requires employers to take affirmative steps to accommodate the disabilities of otherwise qualified workers, and Congress needed to limit that effect to employees "who, with or without reasonable accommodation, can perform the essential functions of the employment position" at issue. *Id.* Simply put, these

provisions address the question "what kind of action counts as discrimination?"

But these provisions are not about who counts as a valid plaintiff or when an injury from discrimination occurs or gives rise to a right to sue. Likewise, they say nothing about *timing*; they do not say a person must have a disability at the time that a discriminatory decision is made, at the time they feel the effects of that decision, or at the time they sue. *See Castellano*, 142 F.3d at 67 (noting that § 12111(8) "fails to specify when" a plaintiff must be a qualified individual "in the context of a claim that the provision of retirement or fringe benefits is discriminatory"). Indeed, apart from being written in the present tense—which is an ordinary English-language convention—these provisions do not use timing-related language of any kind at all.

Contrast that with section 12117, which is the ADA's "[e]nforcement" provision. It applies to "any person alleging discrimination on the basis of disability" and incorporates by reference the "powers, remedies, and procedures" of Title VII. 42 U.S.C. § 12117(a). One such incorporated provision, section 2000e-5, gives ADA plaintiffs the right to sue for discrimination whenever they are "affected by" or "subject to" a discriminatory compensation policy "after the alleged unlawful employment practice occurred." 42 U.S.C. §§ 200e-5(e)(1), (3)(A). In fact, since the amendments created by the Ledbetter Act, this provision expressly clarifies that an unlawful employment practice "occurs" whenever an individual is "*affected by* application of a discriminatory compensation decision or other practice," and clarifies that this "include[s] *each time* wages, *benefits*, or other

compensation is paid, resulting in whole or in part from such a decision or other practice." *Id.* (emphasis added).

In concluding that a former employee cannot sue under the ADA about post-employment benefits, the decision below misunderstands the separate roles of these two sets of provisions. The Eleventh Circuit gave no weight to a provision that explicitly governs when an unlawful employment practice "occurs." Instead, it looked to a provision that says nothing about timing, concluding that its "present tense" verbs required Ms. Stanley to somehow show that she was both a "qualified individual" (who "holds" or "desires" a position) and harmed by a policy that discriminates with respect to *retirement* benefits at the exact same time.

At a minimum, section 12112(a), which is not drawn to such timing questions, cannot *unambiguously* require this counterintuitive result, where Ms. Stanley loses the right to sue over her retirement benefits precisely when she retires and actually feels the effects of her employer's discriminatory policy. *Cf. Robinson*, 519 U.S. at 345–46 (adopting the more sensible, contrary rule for retaliation claims under Title VII after determining that the statute was at best ambiguous). To the contrary, the ADA provides that "any person" can sue for discriminatory compensation policies "each time . . . benefits . . . [are] paid." 42 U.S.C. §§ 12117(a), 2000e-5. This latter provision is right on point and should be given its plain-textual effect.

Importantly, this reading still gives critical compass to the "qualified individual" language in section 12111(8). If Ms. Stanley was not qualified for her job in the first place, she would not have suffered actionable discrimination, no matter how blatant her employer might have been in

excluding disabled employees or providing them inferior compensation or retirement benefits. But that is irrelevant here because no one disputes that the fringe benefits at issue were "earned for actual service in employment" by someone qualified for her job. *Castellano*, 142 F.3d at 68. And the fact that Ms. Stanley has since retired and so no longer "holds or desires" her position does not logically (or textually) affect the discriminatory nature of the policy her employer adopted or the occurrence of an unlawful employment practice "each time" that discriminatory policy now affects her retirement benefits.

B. Relatedly, the Eleventh Circuit's decision ignores key textual and structural clues that the term "qualified individual" does not do the work being heaped upon it. The statute's reference to "a qualified individual" as a way of defining what counts as discrimination simply does not require that *the plaintiff* be *the* "qualified individual" referenced in the statute at the moment when a discriminatory decision happens or the plaintiff files suit.

For one, section 12112 expressly defines "the term 'discriminate against a qualified individual on the basis of disability'" to include "utilizing standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability." 42 U.S.C. 12112(b)(3). This definition does not *mention* any "qualified individual," let alone require matching up the timing of a particular plaintiff's "qualification" with the discriminatory decision or effect. And that is because the effect of a policy on "qualified individual[s]" determines the character of the defendant's conduct—whether it is prohibited discrimination or not—and not who can sue or when.

Or consider the ADA Amendments Act of 2008. In that Act, Congress explicitly removed the requirement that discrimination be "against a qualified individual *with a disability* because of the disability of such individual," Pub. L. 101-336, § 102(a), 104 Stat. at 331–32 (emphasis added), leaving behind only the requirement that the discrimination be "on the basis of disability." 42 U.S.C. § 12112(a). That change clarifies section 12112(a)'s role as defining what counts as bad conduct *by an employer* (rather than when *an employee* can sue), because it means that employers who adopt discriminatory policies are still unlawfully discriminating, even if they have no employees "with a disability" at that time.

Similarly, the Eleventh Circuit's reading ignores that section 12112(a) governs what counts as discriminatory in an action brought by a public enforcer like the Equal Employment Opportunity Commission, *see* 42 U.S.C. §§ 12117, 2000e-5(a), (b), where there is no plausible need or reason to identify a particular person who was qualified and subjected to a discriminatory decision at the same time. And that's because the function of section 12112(a) within the statutory structure is to define the prohibited conduct and not to specify who can sue and when. Instead, as the provisions creating and empowering the EEOC themselves demonstrate, the latter questions are governed by the provisions of Title VII that the ADA expressly incorporates in providing for its "[e]nforcement." *See* 42 U.S.C. § 12117(a). And, again, those provisions manifestly permit suits by plaintiffs like petitioner.

C. The Eleventh Circuit's narrow interpretation of "qualified individual" also undermines Congress's

deliberate choice in the ADA to bar discrimination in the provision of fringe benefits.

Congress was clear that the ADA protects post-employment benefits, like those at issue here, from discrimination. Section 12112(a) forbids an employer from "discriminat[ing] against a qualified individual on the basis of disability" in the "terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). And section 12112(b)—which enumerates types of prohibited "discriminat[ion]"—explicitly refers to discrimination in "fringe benefits."

This Court has described "fringe benefits" as "typically" including benefits that are distributed post-employment, including "pension plans and group health, life, and disability insurance." *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 654 (2006). Indeed, the ordinary meaning of "fringe benefits" includes benefits that are only enjoyed after employment. *See Webster's Third New International Dictionary of the English Language* 912 (1961) (defining "fringe benefit" to include a "pension, a paid holiday, or health insurance").[5] Thus the "terms, conditions, [and] privileges of [] employment" include "benefit[s]" that "need not accrue before a person's employment is completed." *Hishon v. King & Spalding*, 467 U.S. 69, 77 (1984).

Nonetheless, the decision below imports a severe limitation on the protected "fringe benefits" without any

[5] This understanding aligns with the usage of the term throughout the law. *See, e.g.*, 2 C.F.R. § 200.431 (interpreting "fringe benefits" in the tax code to include "pensions[] and unemployment benefit[s]" received post-employment); 124 Cong. Rec. 36817 (1978) (noting that Pregnancy Discrimination Act protected women "with regard to fringe benefit programs, such as . . . disability insurance programs").

textual basis. Section 12112(b)(2) does not attach a "temporal qualifier" to "fringe benefits." The plain text of the statute encompasses "fringe benefits," regardless of when they are distributed. 42 U.S.C. § 12112(b)(2). Yet the Eleventh Circuit's decision effectively limits the "fringe benefits" that the statute protects from discrimination to fringe benefits *distributed while an employee is employed*. Courts "may not narrow a provision's reach by inserting words Congress chose to omit." *Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1725 (2020).

D. Finally, despite the similar language and structure of Title VII and the ADA, the decision below creates a sharp contrast between these two parallel antidiscrimination statutes and leads to bizarre results.

The ADA mirrors Title VII's provision granting employees the right to be free from discrimination in the "terms, conditions, and privileges of employment." *Compare* 42 U.S.C. § 2000e-2, *with* 42 U.S.C. § 12112(a). It also mirrors Title VII's remedies by expressly incorporating its enforcement provisions. *Compare* 42 U.S.C. § 2000e-5, *with* 42 U.S.C. § 12117(a).

Nonetheless, the decision below guarantees that the same discrimination claim by the same employee will be treated differently depending on whether the plaintiff sues under the ADA or Title VII. Under Title VII, discrimination claims accrue whenever an employee is "affected by" a discriminatory post-employment benefits program. 42 U.S.C. § 2000e-5(e)(3). And *Robinson* recognized that sections of Title VII "plainly contemplate that former employees will make use of" its remedial scheme. 519 U.S. at 345. That was particularly true because the substance of Title VII's protections (like its prohibition on retaliation) clearly extend to plaintiffs who

are no longer employed, and it would be "effectively vitiate[d]" by adopting a reading of its enforcement provisions that did not extend to retired or terminated employees. *See id.* at 345–46. The same is true here.

Under the Eleventh Circuit's reading of the same provision in the ADA context, however, *see* 42 U.S.C. § 12117(a), a former employee loses the right to sue over the discriminatory provision of long-term disability, pension, or other post-employment benefits the moment she begins receiving them, even though the statute expressly extends to such fringe benefits. Congress could hardly have intended to lay such a trap for unwary employees. And if Congress intended for the same provision to mean different things in different contexts, the text would say so.

III. The question presented is important.

Although a deep and persistent circuit conflict is reason enough for this Court to intervene, *see* S. Ct. R. 10, the importance of the question presented here—who may bring suit under a major federal civil rights statute—further merits this Court's review now.

1. The circuit split matters for the forty-four million Americans with disabilities whose rights under the ADA, until the split is resolved, may depend on their employers' zip codes.[6] Despite Congress's intention to create a "national mandate for the elimination of discrimination against individuals with disabilities," the persistence of

[6] Cornell Univ., Yang-Tan Inst. on Emp. and Disability, *2022 Disability Status Report: United States* 10, 18, 32, https://perma.cc/ME67-CJZQ (forty-four million Americans–roughly 13% of the population–have a disability, and ten million disabled Americans are currently employed).

the circuit split means that disabled former employees only in certain parts of the country can vindicate their rights under the ADA. Pub. L. 101-336, § 2(b)(1), (2), 104 Stat. at 329. This split thus resurrects the pre-ADA "patchwork quilt" that Congress sought to "repair" when it created a "comprehensive" legal framework for disability law. *See* S. Rep. No. 101-116, at 19 (1989) (quoting testimony of Richard L. Thornburgh, U.S. Attorney General).

Nor is the impact of the split limited to those who are currently disabled. Under the Eleventh Circuit's holding, many Americans who become disabled unexpectedly will lose their legal protections at the very moment that they find themselves most in need of their post-employment benefits. That bizarre result is not required by the statute.

The number of older Americans who will develop disabilities later in life is growing.[7] For workers who become disabled before retirement, fringe benefits like pensions and long-term disability insurance provide a crucial lifeline of support. Unfortunately, these employees often do not learn about discriminatory fringe-benefits policies until it is too late. Ms. Stanley, for example, could only have learned about the City of Sanford's 2003 policy change if she made it a regular practice to comb through local ordinances. When employees do finally learn about their employer's discriminatory benefits policies, they are often already unable to work. But in four circuits, the

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[7] *See* Paola Scommegna, *Aging U.S. Baby Boomers Face More Disability*, Population Reference Bureau (Mar. 4, 2013), https://perma.cc/CXX3-F6FP (Americans nearing retirement age are more likely to have disabilities than previous generations); America Counts Staff, *By 2030, All Baby Boomers Will Be Age 65 or Older*, U.S. Census Bureau (Dec. 10, 2019), https://perma.cc/X3A3-7RR9 (the number of Americans approaching retirement age is growing).

moment that a disabled employee like Ms. Stanley qualifies for post-employment disability benefits is the very moment she loses the right to sue.

First responders like Ms. Stanley are especially susceptible to this Catch-22 because they are at a higher risk of becoming disabled in the line of duty.[8] Under the decision below, a police officer forced to take disability retirement after sustaining an injury on the job will lose the right to sue over a discriminatory benefits policy exactly when she needs those benefits most. Even assuming that the ADA's text requires that harsh result (it doesn't), it should apply equally in both New York and Florida, and an opinion of this Court should alert Congress to the need for a potential amendment.

2. If left unresolved, the circuit split will encourage forum shopping. Imagine a national employer incorporated in Delaware (where former employees can sue) with offices in Ohio (where they cannot), Pennsylvania (where they can), and West Virginia (where the law is unclear). The employer will have every incentive to use forum-selection clauses to keep ADA suits in an employer-friendly court within the Sixth Circuit. And the employer's former employees will have every incentive to bring their suits within the Third Circuit, regardless of where they work.

Nor are hypotheticals like this unrealistic given the nature of the circuit fracture. The Third Circuit is home to sixty-eight percent of America's Fortune 500 companies, Del. Div. of Corps., *Annual Report Statistics*, https://perma.cc/7UP4-KN7F. Many national companies

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[8] *See* Univ. of Ill. Chi.: L. Enf't Epidemiology Project, *Law Enforcement Safety*, https://perma.cc/64H4-BY3A; Bureau of Lab. Stats., *Occupational Outlook Handbook, Firefighters.*

headquartered in Delaware may be vulnerable to suit on both sides of the split. A national rule will prevent these companies from being subjected to conflicting legal regimes.

3. This Court's past decisions further demonstrate the obvious importance of the question presented. The Court granted certiorari to resolve a circuit split on the same question in the context of Title VII, another key civil rights statute, on which the ADA was expressly modeled. *See Robinson*, 519 U.S. at 339. Because "the ADA is essentially a sibling statute of Title VII," *Schering-Plough Corp.*, 145 F.3d at 606, it follows that Title VII's and the ADA's enforcement provisions should be read in parallel, and should equally merit this Court's attention.

CONCLUSION

This Court should grant the petition for certiorari.

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Respectfully submitted,

DEEPAK GUPTA
Counsel of Record
ERIC F. CITRON
GUPTA WESSLER LLP
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741
deepak@guptawessler.com

JESSICA GARLAND
GUPTA WESSLER LLP
505 Montgomery Street
Suite 625
San Francisco, CA 94111

(415) 573-0336

PATRICIA R. SIGMAN
SIGMAN & SIGMAN, P.A.
211 Maitland Avenue
Altamonte Springs, FL 32701
(407) 332-1200

MARTHA A. CHAPMAN
MARTHA A. CHAPMAN, P.A.
2937 Dawley Avenue
Orlando, Florida 32807
(407) 694-4378

Counsel for Petitioner