No. 23-997

IN THE

Supreme Court of the United States

KARYN D. STANLEY,

Petitioner,

v.

CITY OF SANFORD, FLORIDA,

Respondent.

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

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC also works to ensure that courts remain faithful to the text and history of important federal statutes like the Americans with Disabilities Act. CAC therefore has a strong interest in ensuring that the Act is understood, in accordance with its text, history, and Congress's plan in passing it, to prohibit discrimination in fringe benefits distributed post-employment.

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress enacted the Americans with Disabilities Act (ADA) "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Title I of the law prohibits discrimination "against a qualified individual on the basis of disability" in "compensation" and "other terms, conditions, and privileges of employment," *id.* § 12112(a), including "fringe benefits," *id.* § 12112(b)(2). Title I also authorizes suit by "any person alleging discrimination on the basis of disability." *Id.* § 12117(a). And Title I incorporates the "[e]nforcement" provision of

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

Title VII of the Civil Rights Act of 1964, which states that "an unlawful employment practice occurs" whenever that practice is "adopted," an individual becomes "subject to" it, or "an individual is affected" by it. *Id.* § 2000e-5(e)(3)(A).

Put those three things together, and it is clear that Karyn Stanley experienced actionable discrimination under Title I. After the progression of Parkinson's disease forced her to retire early from her job as a firefighter—a job she had held for nearly two decades—Lt. Stanley received inferior retirement benefits from her employer solely because it classified her as a "disabled," as opposed to "normal," retiree. J.A. 36. This sort of facial distinction in employer-provided benefits fits the archetype of discrimination "on the basis of disability" that Congress outlawed in Title I. 42 U.S.C. § 12112(a).

But the court below rejected Lt. Stanley's claim. Instead of adopting this common-sense interpretation of Title I's various complementary provisions, it fixated on two isolated words in the statutory definition of "qualified individual" and construed them as substantively narrowing Title I's "[g]eneral rule" barring "discriminat[ion] against a qualified individual on the basis of disability." *Id.* Specifically, the court held that because Title I defines a "qualified individual" as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual *holds* or *desires*," *id.* § 12111(8) (emphasis added), and a retiree does not "hold[] or desire[]" a position with her former employer, a retiree cannot be a "qualified individual" under the ADA. Thus, according to the court below, a retiree's employer may *legally* discriminate against her on the basis of disability.

That cannot be right. For one thing, the court below fundamentally misunderstood the role of the definition of the term "qualified individual" in Title I's statutory scheme. That definition makes clear that *if* an individual "holds or desires" an employment position, he or she must be able to perform the "essential functions" of that position, with or without a reasonable accommodation. In this manner, the definition expands employers' obligations with respect to individuals who, with certain reasonable accommodations, could *become qualified* to "perform the essential functions of the employment position that such individual holds or desires," *id.* At the same time, it protects employers against lawsuits for refusing to hire individuals who *could not become qualified* to "perform the essential functions of the employment position that such individual holds or desires," *id.*, even *with* a reasonable accommodation. This is precisely why the verbs "holds" and "desires" are written in the present tense: they refer to the time when a person must be capable of "perform[ing] the essential functions of the employment position" (with a reasonable accommodation, if necessary), *not* the time when actionable discrimination must occur. *Id.*

Thus, ceasing to hold or desire a job does not mean that an individual is categorically excluded from Title I's protections against unlawful discrimination in the distribution of employment benefits. Indeed, nothing in the definition of "qualified individual" in 42 U.S.C. § 12111(8) suggests that retirees cannot be "qualified individuals."

At the same time, other aspects of Title I's text demonstrate that "retirees" *can* and *should* be considered "qualified individuals" within the meaning of the statute. For one thing, the term "qualified individual" appears in a "[g]eneral rule" against discrimination, 42

U.S.C. § 12112(a), but the statutory subsection that immediately follows that general rule provides a non-exhaustive list of *specific* examples of actionable discrimination, several of which could easily be applied to retirees. *See, e.g.*, *id.* § 12112(b)(3) ("utilizing standards, criteria, or methods of administration—(A) that have the effect of discrimination on the basis of disability; or (B) that perpetuate the discrimination of others who are subject to common administrative control").

For another thing, one of the other examples in 42 U.S.C. § 12112(b) specifically defines as actionable discrimination "not making reasonable accommodations to the known physical or mental limitations of an otherwise *qualified individual* with a disability *who is an applicant or employee*." *Id.* § 12112(b)(5)(A) (emphasis added). There would have been no need to include the phrase "who is an applicant or employee" if the term "qualified individual" were already limited to current or prospective job holders.

And perhaps most fundamentally, none of the other provisions of Title I or the enforcement provisions of Title VII that Title I incorporates bars suit for discrimination experienced by former employees. To the contrary, as noted above, Title I expressly bars discrimination in "fringe benefits," *id.* § 12112(b)(2), and this Court has made clear that "[a] benefit need not accrue before a person's employment is completed to be a term, condition, or privilege of that employment relationship," *Hishon v. King & Spalding*, 467 U.S. 69, 77 (1984). Moreover, the provision of Title VII incorporated into Title I that expressly deals with *when* actionable discrimination in compensation happens states that it "occurs" whenever a discriminatory practice is "adopted," an individual becomes "subject to" it, or "an individual is affected" by it, "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). This text directly conflicts with the cramped construction of Title I espoused by the court below.

The history of Title I is also at odds with that construction. Congress wrote the ADA "to bring persons with disabilities into the economic and social mainstream of American life." H.R. Rep. No. 101-485, pt. 2, at 22 (1990). Rather than write a narrow statute, lawmakers passed a "comprehensive" law, *id.*—one that would serve as a paradigm-shifting "civil rights act for people with disabilities," National Council on Disability, *Equality of Opportunity: The Making of the Americans with Disabilities Act* 69 (2010).

Title I in particular fulfilled this mandate by prohibiting discrimination in a "range of employment decisions," including decisions regarding benefits that are distributed after retirement. H.R. Rep. No. 101-485, pt. 2, at 54-55. As members of Congress consistently emphasized, Title I would cover discrimination in "any . . . form of compensation," including "fringe benefits available by virtue of employment." *Id.* The precise issue of discrimination in retirement benefits distributed post-employment came up multiple times during congressional hearings. *See, e.g.*, Oversight Hearing on H.R. 4498 Before a Subcomm. of H. Comm. Educ. & Labor, 100th Cong., 2d Sess. (1988), at 54 (describing the importance of ensuring that people with disabilities in the workplace "are fairly protected with the usual benefits for their health and retirement"). Congress even approached the study of employment discrimination with an interest in reducing dependence on government services by people with disabilities—the idea being that eliminating discrimination by employers would make people with disabilities less

likely to rely on government subsidies. Lawmakers sought to reduce dependence on social security benefits, which are generally used by retirees, by ensuring that individuals with disabilities could access *all* the benefits of employment, including those that are distributed during retirement. *See* S. Rep. No. 101-116, at 17 (1989) (statement of Attorney General Thornburgh).

In modeling Title I of the ADA on Title VII of the Civil Rights Act of 1964, Congress also sought to ensure that "civil rights protections for persons with disabilities . . . are parallel to those available to minorities and women," H.R. Rep. No. 101-485, pt. 3, at 48. But the decision of the court below sets Title I on a collision course with Title VII, which "plainly contemplate[s] that former employees will make use of" its "remedial mechanisms." *Robinson v. Shell Oil Co.*, 519 U.S. 337, 345 (1997). Now, in the Eleventh Circuit, if two former employees experience the exact same discrimination—with the exception that one individual's employer unlawfully distinguishes on the basis of sex, while the other does so on the basis of disability—their cases may result in different outcomes. This defies Congress's choice to expressly incorporate into Title I of the ADA the "powers, remedies, and procedures set forth in" Title VII. 42 U.S.C. § 12117(a).

And so the text and history of the ADA both lead to the same conclusion: Title I prohibits discrimination with respect to fringe benefits distributed post-employment. This Court should reverse.

ARGUMENT

I. The Text of Title I Prohibits Discrimination with Respect to Retirement Benefits Distributed After Employment.

A. Fringe Benefits Distributed Post-Employment Are Subject to Title I's Protection Against Discrimination in "Employee Compensation" and the "Terms, Conditions, and Privileges of Employment."

Title I of the ADA bars "discriminat[ion] against a qualified individual on the basis of disability in regard to . . . employee compensation . . . and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). Retirement benefits like a post-employment health insurance subsidy fall into both categories. They are "compensation" because they constitute "[r]emuneration for services rendered," or "recompense . . . for some loss, injury, or service." *Black's Law Dictionary* 283 (6th ed. 1990); *see The New Merriam-Webster Dictionary* 163 (1989) (similar). They are a "privilege" because they constitute "a right or immunity granted as an advantage or favor esp. to some and not others." *Id.* at 578 (defining "privilege"); *see, e.g.*, *The American Heritage Dictionary* 546 (1987) (a "privilege" is a "special right, immunity, or benefit granted to or enjoyed by an individual or group"). And in both cases, retirement benefits are directly linked to employment: recipients of those benefits are eligible by virtue of their employment relationship with the grantor of the benefits; those who never worked for the grantor are, of course, ineligible.

Significantly, Congress provided several examples of "discriminat[ion] against a qualified individual" that, by their terms, plainly apply to discrimination

with respect to post-employment retirement benefits. 42 U.S.C. § 12112(b). Among other things, Title I outlaws "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 . . . discrimination" with respect to "fringe benefits." *Id.* § 12112(b)(2). Title I also prohibits covered entities from "utilizing standards, criteria, or methods of administration . . . that have the effect of discrimination on the basis of disability"—discriminatory acts that are in no way limited to current or prospective employees. *Id.* § 12112(b)(3)(A). Taken together, these provisions underscore that administering a "fringe benefit," *id.* § 12112(b)(2), such as a health insurance subsidy for retirees, in a manner that facially distinguishes between "disabled" and "normal" retirees and provides favorable treatment to the latter group, J.A. 36, is unlawful under Title I.

The fact that certain "fringe benefits," such as health insurance subsidies for retirees, are, by their very nature, distributed after employment, does not make those benefits any less a form of employee compensation or a term, condition, or privilege of employment. Just because an employer chooses to *distribute* fringe benefits post-employment does not change the fact that those benefits are *earned* because of employment. Put another way, discrimination on the basis of disability "is no more permissible at the pay-out stage of a retirement plan than at the pay-in stage." *Ariz. Governing Comm. for Tax Deferred Annuity & Deferred Comp. Plans v. Norris*, 463 U.S. 1073, 1081 (1983) (Marshall, J., joined by Brennan, White, Stevens and O'Connor, JJ.); *cf. Oncale v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 78 (1998) (The broad phrase "terms, conditions, and privileges of employment" "evinces a congressional intent to strike at the

entire spectrum of disparate treatment . . . in employment." (quoting *Meritor Sav. Bank, FSB v. Vinson*, 477 U.S. 57, 64 (1986))).

Accordingly, this Court has repeatedly stated that the term "fringe benefits" includes post-employment benefits like pensions and disability insurance. *See, e.g.*, *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 654 (2006); *United States v. Burke*, 504 U.S. 229, 239 (1992); *Morrison-Knudsen Constr. Co. v. Dir., Off. of Workers' Comp. Programs*, 461 U.S. 624, 633 (1983). So too for the term "compensation." *See, e.g.*, *Allied Chem. & Alkali Workers of Am., Loc. Union No. 1 v. Pittsburgh Plate Glass Co., Chem. Div.*, 404 U.S. 157, 180 (1971) ("the future retirement benefits of active workers are part and parcel of their overall compensation"); *Norris*, 463 U.S. at 1079 (Marshall, J., joined by Brennan, White, Stevens and O'Connor, JJ.) ("retirement benefits constitute a form of 'compensation'"); *Barker v. Kansas*, 503 U.S. 594, 604-05 (1992) ("military retirement benefits" should be considered "deferred compensation" for "past services"). And consistent with those cases, this Court has expressly held that "[a] benefit need not accrue before a person's employment is completed to be a term, condition, or privilege of that employment relationship." *Hishon*, 467 U.S. at 77. That holding is directly applicable here: a health insurance subsidy for retirees may "not accrue before a person's employment is completed," but it is still "employee compensation" and "a term, condition, or privilege" of employment under this Court's precedents. *Id.*

B. Discrimination in "Employee Compensation" and the "Terms, Conditions, and Privileges of Employment" Is Actionable Even if It Occurs After the Period of Active Employment Has Ended.

Just as a benefit need not accrue before a person's employment is completed to be "employee compensation" or a "term[], condition[], [or] privilege[] of employment," discrimination with respect to a benefit of employment need not occur while the person is employed or seeking employment to be actionable under Title I. And that makes perfect sense. Many people will not be aware of discriminatory practices or policies with respect to retirement benefits until they are eligible for them, which, of course, happens upon retirement. Indeed, in cases involving the discriminatory application of retirement-benefits policies—as opposed to policies that facially discriminate against people with disabilities—the initial discriminatory act itself may not even *happen* for the first time until the post-employment period.

The text of Title I reflects this common-sense interpretation. The substantive definitions of unlawful "discrimination" provide no temporal restriction on when the discrimination must occur to be actionable under the ADA. *See* 42 U.S.C. § 12112(a), (b); *cf. Robinson*, 519 U.S. at 342 ("Title VII's definition of 'employee' . . . lacks any temporal qualifier and is consistent with either current or past employment."). Rather, the one provision of Title I that directly addresses the timing of actionable discrimination could not be clearer in its authorization of suits to remedy discrimination experienced post-employment.

Specifically, Title I's "[e]nforcement" provision states that "*any person* alleging discrimination on the

basis of disability" may file suit, and it incorporates by reference the "powers, remedies, and procedures" set forth in Title VII to govern discrimination suits. 42 U.S.C. § 12117(a) (emphasis added). Those incorporated provisions, in turn, state that actionable discrimination 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." *Id.* § 2000e-5(e)(3)(A) (emphases added). Such unlawful discrimination reoccurs "each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice." *Id.*; *see* Lilly Ledbetter Fair Pay Act of 2009, Pub. L. No. 111-2, § 2(1), 123 Stat. 5, 5.

Note Congress's use of the term "individual" to describe the victim of actionable discrimination in the incorporated enforcement provision. 42 U.S.C. § 2000e-5(e)(3)(A). An "unlawful employment practice occurs . . . 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 . . . ." *Id.* (emphasis added). Not a current employee. Not a prospective employee. Simply an "individual."

Moreover, the "unlawful employment practice" takes place, among other times, "when an individual is *affected by* [it]." *Id.* (emphasis added). In the real world, the time when an individual is "affected" by an employer's discriminatory practice is not necessarily bound by the start and end of active employment, as the facts of Lt. Stanley's case illustrate. That is precisely why Congress did not insert any temporal

qualifiers into its definition of actionable discrimination under Title I.

Congress's broad language with respect to the timing of an "unlawful employment practice"—that is, actionable discrimination—under the incorporated Title VII provision coheres with the rest of Title I's statutory scheme. For one thing, it accords with Title I's authorization of suit by "*any person* alleging discrimination on the basis of disability," *id.* § 12117(a) (emphasis added), not *any current or prospective employee*. *See Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 197 (2017) (holding that a nearly identical provision of the Fair Housing Act evinces "a congressional intention to define" who can invoke the law's protections "as broadly as is permitted by Article III of the Constitution" (quotation marks and citation omitted)).

For another thing, given that retirement benefits are "employee compensation" and "terms, conditions, and privileges of employment," *id.* § 12112(a); *see supra* Part I.A, and unlawful discrimination with respect to them reoccurs "*each time* wages, benefits, or other compensation is paid," former employees *must* be able to sue for discrimination that "affected" them after the termination of employment. *Id.* § 2000e-5(e)(3)(A) (emphasis added). After all, retirement benefits often do not even accrue until after an individual's employment is terminated. *See Hishon*, 467 U.S. at 77. In other words, not just "each time," 42 U.S.C. § 2000e-5(e)(3)(A), but *every time* such benefits are paid, the retired individual is, of course, no longer actively employed or seeking employment.

Other provisions of Title I reinforce its application to former employees. The statute prohibits discrimination in "discharge," 42 U.S.C. § 12112(a), and it incorporates a provision of Title VII authorizing "reinstatement" as an equitable remedy, *id.* § 2000e-5(g)(1).

In *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997), where this Court held that an individual could sue his former employer for retaliatory post-employment acts under Title VII, this Court made clear that claims for unlawful discharge would "necessarily be brought by a former employee," foreclosing the argument that discrimination experienced after the termination of the employment relationship was not actionable. *Id.* at 345. So too here.

Put simply, there is no language in Title I or its incorporated provisions that, properly interpreted, limits actionable discrimination to acts that occur while an individual is currently employed or seeking employment. The text authorizes former employees who are subjected to discriminatory treatment in post-employment retirement benefits to file suits to remedy such unlawful practices.

C. The Court Below Misunderstood the Role of the "Qualified Individual" Definition in Title I, and Misinterpreted the Text of that Definition in Any Event.

1. Perplexingly, the court below acknowledged that retirement benefits such as health insurance subsidies "have always been recognized as one example of a term, condition, or privilege of employment," Pet. App. 5a, yet it held that discrimination with respect to such benefits is only actionable if it occurs while that person "holds or desires" her job, 42 U.S.C. § 12111(8) (defining "qualified individual" as "an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires"). Because a retiree no longer "holds or desires" her job, according to the court below, she loses the right to sue for discrimination in post-employment fringe benefits as soon as she becomes eligible for them—that is, at the

moment she is "affected" by the discrimination, *id.* § 2000e-5(e)(3)(A).

The text of Title I belies that logic. First, and most fundamentally, the court below misunderstood the role of the "qualified individual" definition in the statutory scheme. *See Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 666 (2007) ("[T]he words of a statute must be read . . . with a view to their place in the overall statutory scheme."). "The point of . . . this phrase" is to "ensure that employers can continue to require that all applicants and employees, including those with disabilities, are able to perform the essential, i.e., the non-marginal functions of the job in question." H.R. Rep. No. 101-485, pt. 2, at 55. In other words, the term "qualified individual" is included in Title I's "[g]eneral [r]ule" against disability discrimination, 42 U.S.C. § 12112(a), as a term of art that, under the definition provided in 42 U.S.C. § 12111(8), *protects* employers from suit in cases where an individual was, say, fired once she became disabled because she was no longer able to perform the essential functions of her job *even with a reasonable accommodation*. *Id.*; *see also id.* § 12113(a) ("It may be a defense" that an individual's "performance cannot be accomplished by reasonable accommodation, as required under this subchapter."). At the same time, it also *expands* employers' obligations with respect to individuals who, with certain reasonable accommodations, could *become* qualified to "perform the essential functions of the employment position that such individual holds or desires," *id.* § 12111(8).

In this vein, the tense of "holds or desires" in the definition of "qualified individual" *does* matter, but not for the reason given by the court below. The present tense "holds or desires" does not restrict the timing of a discriminatory act, or when an individual can sue for

a discriminatory act. Rather, it specifies the timing of when a person must be able to "perform the essential functions of the employment position"—that is, she must be able to perform those "essential functions" when she "holds or desires" the job. *Id.* § 12111(8).

Thus, it is *not* actionable discrimination if a trucking company refuses to hire Person A, whose disability prevents him, even with the benefit of a reasonable accommodation, from being able to drive a truck. Person A is not a "qualified individual" because he is *unable* to "perform the essential functions of the employment position that [he] holds or desires." *Id.* But Person B, who was able to perform the essential functions of his job as a trucker until he retired, is still a "qualified individual." After all, he is *not unable* to perform the essential functions of any job that he currently holds or desires—he simply does not hold or desire any job. Thus, if Person B's employer refuses to distribute post-employment pension benefits to him on the basis of his disability, he has an actionable claim under Title I.

Applying that logic here, it is obvious that Lt. Stanley has continuously been a "qualified individual" since the time she applied for her job as a firefighter, and at all times that she experienced employment discrimination. Throughout the time that she held or desired her job, she was able to perform its essential functions. She only ceased to be able to perform those essential functions (even with a reasonable accommodation) when she no longer held or desired her job—that is, when she took disability retirement. At that point, her employer did not newly gain the right to discriminate against her in compensation or privileges of her employment. It merely gained the right not to *hire* her in the first instance—but that is not what this case is about.

2. By concluding otherwise, the court below erroneously read the words "holds or desires" and "qualified individual" in isolation. But "statutory language cannot be construed in a vacuum." *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 809 (1989). "Over and over," this Court has "stressed that '[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy.'" *U.S. Nat'l Bank of Or. v. Indep. Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993) (quoting *United States v. Heirs of Boisdore*, 49 U.S. 113, 122 (1849)). In other words, "statutory interpretation [is] a 'holistic endeavor' which determines meaning by looking not to isolated words, but to text in context." *Gundy v. United States*, 588 U.S. 128, 140 (2019) (quoting *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988)).

Accordingly, it is critical both that the term "qualified individual" appears in a "[g]eneral rule" against discrimination, 42 U.S.C. § 12112(a), and that the statutory subsection that follows this "[g]eneral rule" provides express guidance on how to properly "[c]onstru[e]" it, *id.* § 12112(b). Indeed, 42 U.S.C. § 12112(b), provides a non-exhaustive list of various examples of actionable discrimination. *Id.* § 12112(b) ("As used in subsection (a), the term "discriminate against a qualified individual on the basis of disability" includes . . . ."). While some of these examples seem to refer to current employees or those seeking employment, others plainly do not. *Compare, e.g.*, *id.* § 12112(b)(6) ("using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability"), *with id.* § 12112(b)(3) ("utilizing standards, criteria, or methods of administration—(A) that have the effect of

discrimination on the basis of disability; or (B) that perpetuate the discrimination of others who are subject to common administrative control").

Moreover, one example of actionable discrimination in 42 U.S.C. § 12112(b) expressly states that it applies only to "an otherwise qualified individual with a disability *who is an applicant or employee*." *Id.* § 12112(b)(5)(A) (emphasis added); *see id.* (requiring employers to make "reasonable accommodations to the known physical or mental limitations" of these individuals). If a "qualified individual" were *required* to be "an applicant or employee"—that is, someone who "holds or desires" his or her job—Congress would not have had to use the modifier "who is an applicant or employee" in this example of actionable discrimination. *Id.* And "[a]s this Court has noted time and time again," courts are "'obliged to give effect, if possible, to every word Congress used.'" *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 128-29 (2018) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)). The court below did not just defy that command—it created surplusage in "another part of the *same* statutory scheme," where the "canon against surplusage is strongest." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (emphasis added).

It also matters that, as explained above, *see supra* Part I.A, the discrimination that Lt. Stanley experienced fits within the language of several specific examples of "discrimination against a qualified individual" given in 42 U.S.C. § 12112(b): her employer administered a "fringe benefit," *id.* § 12112(b)(2), in a manner that has the "effect of discrimination on the basis of disability," *id.* § 12112(b)(3)(A). Critically, if Lt. Stanley's alleged discrimination fits under one or several of the *specific* examples of actionable discrimination described in 42 U.S.C. § 12112(b), then it does

not separately have to meet the *general* rule under 42 U.S.C. § 12112(b) (even though it does). Under the "ancient interpretive principle" of *generalia specialibus non derogant*, "the specific governs the general," *Nitro-Lift Techs., L.L.C. v. Howard*, 568 U.S. 17, 21 (2012)—that is, where "the specific provision comes closer to addressing the very problem posed by the case at hand," it is "more deserving of credence." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 183 (2012).

3. Interpreting the "holds or desires" language in a vacuum as a temporal limitation on actionable discrimination claims would also lead to absurd results at odds with the rest of Title I. Under the test created by the court below, all Lt. Stanley would have to do to have an actionable Title I claim would be to plead that she still "desired" her job after she retired and was affected by her employer's discriminatory retirement benefits policy. The record certainly supports that view—like many people with disabilities, Lt. Stanley did not necessarily *want* to stop working. Rather, she was forced to do so by circumstances beyond her control.

So the requirement that an individual "hold[] or desire[]" her job at the same time that she experiences discrimination is not some sort of practical limitation, as Respondents would have it. *See* BIO 27-29. Instead, by misinterpreting the text of Title I, the court below unwittingly created a difficult-to-administer requirement that courts hold mini trials on the subjective question of whether an individual still "desires" her job at the time that she experiences post-employment discrimination. The oddity of this result only reinforces the conclusion that the phrase "holds or desires" does not impose a substantive limitation on when actionable discrimination occurs.

4. Finally, to the extent the court below suggested that not only must an individual "hold or desire" her job to be a "qualified individual," but also that she must be a "qualified individual" *with a disability* to file suit, that is also wrong. Again, "any person alleging discrimination on the basis of disability" may sue under the express terms of Title I's "[e]nforcement" provision. 42 U.S.C. § 12117(a). This makes sense: if a company has a policy on its books of paying employees with disabilities only 75% of what other employees make, that is unlawful whether or not the company happens to employ any "qualified individual" with a disability at any given moment.

Of course, if an individual were to sue for a violation of that policy, he or she would have to show that the policy caused a concrete and particularized injury sufficient to "meet "the irreducible constitutional minimum of standing." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). And he or she would have to meet this Court's "lenient" zone-of-interests test, *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 130 (2014), by asserting an "interest arguably [sought] to be protected by the statute," *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 1778 (2011) (quoting *Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 495 (1998)).

But critically, Title I also authorizes government officials to enforce Title I—specifically, the Equal Employment Opportunity Commission (EEOC) and the Attorney General. *See* 42 U.S.C. § 12117(a). In a suit brought by the EEOC, the Commission would not have to point to a "qualified individual" with a disability to prove that a policy of paying people with disabilities 75 cents on the dollar constitutes unlawful disparate treatment on its face.

So too here. Lt. Stanley has standing to challenge her employer's discriminatory policy with respect to post-employment health insurance benefits because she personally suffered an injury—namely, being denied the same subsidy given to those who retired for reasons other than disability. But even if she did not have standing to sue, the policy she challenges is still unlawful, and the EEOC or Attorney General could initiate an enforcement proceeding. Indeed, the policy facially distinguishes between "disabled" and "normal" retirees, providing favorable treatment to the latter group. J.A. 36.

In sum, the text of Title I demonstrates that the term "qualified individual" includes retirees like Lt. Stanley—retirees may, as "qualified individual[s]," experience actionable discrimination in "employee compensation" and the "terms, conditions, [or] privileges of employment" within the meaning of Title I. 42 U.S.C. § 12112(a). Lt. Stanley can sue for that discrimination because she is a "person alleging discrimination on the basis of disability." *Id.* § 12117(a). In concluding otherwise, the court below fundamentally misunderstood how Title I operates.

II. The Decision Below Is at Odds with the History of the ADA and Congress's Plan in Passing It.

A. Congress Wrote Title I of the ADA to Create a Comprehensive Remedy for Employment Discrimination on the Basis of Disability.

Congress wrote the ADA to provide far-reaching protection against discrimination on the basis of disability. The lawmakers who drafted the Act conceived of it as a paradigm-shifting "civil rights act for people with disabilities." National Council on Disability,

supra, at 69. They envisioned a "clear and comprehensive national mandate to end discrimination against individuals with disabilities and to bring persons with disabilities into the economic and social mainstream of American life." H.R. Rep. No. 101-485, pt. 2, at 22.

Title I of the Act fulfilled the ADA's mandate by broadly prohibiting discrimination in a "range of employment decisions," including decisions regarding benefits that are distributed after retirement. *Id.* at 54-55. As members of Congress repeatedly emphasized, discrimination in the terms of "any . . . form of compensation," including "fringe benefits available by virtue of employment," would be covered by Title I. *Id.* at 55; *see also* S. Rep. No. 101-116, at 25 (same); *id.* at 6 ("Discrimination also includes exclusion, or denial of benefits, services, or other opportunities that are as effective and meaningful as those provided to others."). Lawmakers made clear that Title I's protection against discrimination regarding "fringe benefits," in turn, would include "health insurance coverage" and "employer benefits plans." *See* H.R. Rep. No. 101-485, pt. 2, at 136-37; *id.* pt. 3, at 71; S. Rep. No. 101-116, at 85.

The breadth of Title I of the Act—and the concurrent breadth of discriminatory policies it prohibits—makes sense in light of the movements that inspired the Act's employment protections. The ADA emerged from years of "organized social and political movements of people with disabilities who sought the right to . . . participate in the social, economic, and political mainstream." Richard Scotch, *From Good Will to Civil Rights: Transforming Federal Disability Policy* 169-70 (2001). The antidiscrimination mandate in Section 504 of the Rehabilitation Act of 1973 galvanized this movement. In the 1970s, advocates engaged in various forms of "political pressure" to encourage the U.S.

Department of Health, Education, and Welfare (HEW) to enact regulations enforcing that provision, including a twenty-eight-hour sit-in in at HEW's headquarters. *Id.* at 116 (quoting Judy Heumann, Director of the Center for Independent Living). Eventually, HEW enacted expansive regulations that prohibited recipients of federal funding from discriminating on the basis of disability in "all decisions concerning employment," including those involving "fringe benefits available by virtue of employment." 42 Fed. Reg. 22,676, 22,680 (1977)

The movement to provide equal employment opportunities to individuals with disabilities only gained steam after the passage of HEW's anti-discrimination regulations. In the 1980s, the National Council on Disability (NCD) conducted extensive research on the barriers faced by people with disabilities. At numerous state-level hearings, "individuals with disabilities repeatedly cited discrimination as the greatest obstacle to full participation in the community." Arlene Mayerson, *The Americans with Disabilities Act—An Historic Overview*, 7 Labor Lawyer 1, 4 (Winter 1991). Citing this research, the NCD advocated for the passage of "comprehensive" antidiscrimination protections with "broad coverage and . . . clear, consistent, and enforceable standards," and proposed the provisions that would eventually become Title I of the ADA. *See* National Council on Disability, *Toward Independence: An Assessment of Federal Laws and Programs Affecting Persons with Disabilities* 18 (1986); Scotch, *supra*, at 175.

Congress's own extensive study of disability discrimination echoed the NCD's conclusions. In the years leading up to the ADA's passage, lawmakers heard testimony from hundreds of individuals with disabilities regarding their experiences with

discrimination, marking the "first instance in which a congressional hearing regarding disability was dominated by the presence of people with disabilities." National Council on Disability, *supra*, at 71.

These hearings underscored the importance of prohibiting discrimination in all aspects of employment. Lawmakers heard testimony reiterating that workers with disabilities faced discrimination involving the "benefits for their health and retirement." *See* Oversight Hearing on H.R. 4498 Before a Subcomm. of H. Comm. Educ. & Labor, 100th Cong., 2d Sess., at 54 (1988) ("[W]ith so many persons with disabilities in the workplace, there is a need for guaranteeing them their civil rights as employees: [including] that they are fairly protected with the usual benefits for their health and retirement."); *Americans with Disabilities Act of 1989*, Hearing Before S. Comm. Labor & Human Resources, 101st Cong., 1st Sess. (1989), at 404 (describing a caregiver who "lost all medical and pension benefits" due to others' discriminatory attitudes toward her patients with disabilities); 135 Cong. Rec. 19800 (1989) (Sen. Harkin) (describing the hope that covered individuals would "live [their] retirement years in dignity"). Preventing former employees from suing under Title I for discrimination in fringe benefits directly undermines these goals.

Furthermore, Congress approached the study of employment discrimination with an interest in reducing dependence on social services by people with disabilities—an interest at odds with the interpretation of Title I espoused by the court below. As the NCD later explained, advocacy for anti-discrimination protections reflected a "dual concern" for improving the lives of people with disabilities while at the same time reducing their dependence on government support. National Council on Disability, *supra*, at 43. Lawmakers

shared this focus, emphasizing that "discrimination results in dependency on social welfare programs," creating "unnecessary expenses" and projecting "paternalistic" attitudes and fundamental unfairness. S. Rep. No. 101-116, at 6, 16-17; *see id.* at 17 (statement of Justin Dart) (noting that discrimination leaves "ever-increasing millions of potentially productive Americans in unjust, unwanted dependency"). Avoiding unnecessary use of the social security system, a government program that primarily benefits retirees, was of particular concern, *id.* at 17 (statement of Attorney General Thornburgh), suggesting that lawmakers' vision of Title I as a cost-saving measure can only be realized by applying the provision to former employees challenging discrimination in post-employment benefits.

More recently, Congress confirmed its plan to provide broad protection against employment discrimination in amendments to the ADA. In the Lilly Ledbetter Fair Pay Act of 2009, Congress reiterated that the ADA should have a "robust application" and apply to decisions regarding "benefits" writ large. 123 Stat. at 5-7. That Act amended the ADA to clarify that an "unlawful employment practice occurs" under the Act *whenever* an "an individual is affected by application of a discriminatory compensation decision or other practice," in addition to when an individual is initially subjected to the discriminatory practice. 42 U.S.C. § 2000e-5(e)(3)(A); *see supra* Part I.B. Specifically, lawmakers provided that an unlawful employment practice occurs "*each time* wages, benefits, or other compensation is paid." 123 Stat. at 6 (emphasis added). By doing so, Congress reiterated that Title I bars discrimination with respect to all employment benefits, including those that are distributed after an employee retires. *See also* 155 Cong. Rec. 1395 (2009)

(Sen. Feingold) (describing the impact of the amendments on "retirement benefits"); *id.* at 1370 (Sen. Harkin) ("income in retirement").

B. Title I Was Modeled on Title VII, and Interpreting the Former but not the Latter to Bar Suit by Former Employees Would Cause Anomalous Results.

Because the "passage of the ADA would require the full backing of the civil rights community," supporters of the legislation felt that "it was important to advocate [for] the same protections" under the ADA and Title VII. National Council on Disability, *supra*, at 53. For this reason, Congress explicitly incorporated Title VII's enforcement procedures into Title I and otherwise sought to ensure that people with disabilities would receive the same protections under Title I as individuals covered by Title VII. *See* H.R. Rep. No. 101-485, pt. 3, at 48.

Indeed, lawmakers repeatedly made clear that they sought to provide protections that were "identical[]" to the civil rights protections available under Title VII. *Id.*; *see also id.* ("[I]f the powers, remedies and procedures change in title VII of the 1964 Act, they will change identically under the ADA for persons with disabilities."); *id.* ("The Committee intends that the powers, remedies and procedures available to persons discriminated against based on disability shall be the same as, and parallel to, the powers, remedies and procedures available to persons discriminated against based on race, color, religion, sex or national origin."); S. Rep. No. 101-116, at 43 (emphasizing that the "Committee determined that the case law under title VII of the Civil Rights Act of 1964 already provides protection" in a certain circumstance, making a specific provision in the ADA "unnecessary").

Notably, although this Court had not yet decided *Robinson* when Congress passed the ADA, every single court of appeals that had at that point addressed the issue had held that Title VII's protections were available to former employees. *See, e.g.*, *Rutherford v. Am. Bank of Comm.,* 565 F.2d 1162, 1166 (10th Cir. 1977) ("There is no ground for affording any less protection to defendant's former employees than to its present employees."); *Pantchenko v. C.B. Dolge Co., Inc.*, 581 F.2d 1052, 1055 (2d Cir. 1978) ("In short, [Title VII] prohibits discrimination related to or arising out of an employment relationship, whether or not the person discriminated against is an employee at the time of the discriminatory conduct."); *Bailey v. USX Corp.*, 850 F.2d 1506, 1509-10 (11th Cir. 1988) (a "common sense reading" of Title VII is "that former employees may sue"); *see also City of Los Angeles, Dep't of Water & Power v. Manhart*, 435 U.S. 702, 706 (1978) (considering a Title VII challenge to a pension plan on behalf of a class of women "employed or formerly employed" by a city department). Congress was presumably "aware of [this] relevant judicial precedent." *Ryan v. Gonzales*, 568 U.S. 57, 66 (2013) (quoting *Merck & Co. v. Reynolds*, 559 U.S. 633, 634 (2010)). It could have set the record straight and expressly exempted post-employment benefits from the protections of the ADA. It chose not to do so.

Later amendments to the ADA underscore this point. For example, when Congress amended Section 12112(a) to prohibit discrimination against a qualified individual "on the basis of disability," ADA Amendments Act of 2008, Pub. L. No. 110-325, 122 Stat. 3553, 3557, it reiterated its plan to "harmonize[]the ADA with other civil rights laws," H.R. Rep. No. 110-730, pt. 2, at 21 (2008); *see also* 154 Cong. Rec. 13765 (2008) (joint statement of Reps. Hoyer and Sensenbrenner)

("[T]he bill modifies the ADA to conform to the structure of Title VII and other civil rights laws by requiring an individual to demonstrate discrimination 'on the basis of disability.'"). And in the Fair Pay Act, Congress made clear that legislative changes responding to a Supreme Court decision regarding Title VII would also "modify the operation" of the ADA. *See* 123 Stat. at 5; *see* 155 Cong. Rec. 1662 (2009) (Rep. Miller) (describing a desire to "provide the[] same protections for victims of . . . disability discrimination" as provided to those covered by Title VII).

This Court has now held that at least certain provisions of Title VII "plainly contemplate that former employees will make use of" its "remedial mechanisms," *Robinson*, 519 U.S. at 345, and courts have repeatedly permitted former employees to raise challenges to discriminatory administration of post-employment benefits under Title VII, *see Manhart*, 435 U.S. at 706; *Norris*, 463 U.S. at 1079; *Florida v. Long*, 487 U.S. 223, 228 (1988) (considering Title VII challenge by plaintiffs-retirees to pension plans); Barbara J. Van Arsdale et. al., 45B Am. Jur. 2d Job Discrimination § 955 (Aug. 2024 update) ("Title VII protects former employees"). By adopting an interpretation of Title I that conflicts with this precedent, the decision of the court below puts Title I on a collision course with Title VII. Despite Congress's decision to expressly incorporate into Title I of the ADA the "powers, remedies, and procedures set forth in" Title VII, 42 U.S.C. § 12117(a), it is now possible that those same remedies will lead to different outcomes for a plaintiff protected by Title VII of the Civil Rights Act and one protected by Title I of the ADA in the Eleventh Circuit. That is not what lawmakers sought to accomplish when they passed Title I to provide protections that were

"identical[]" to the civil rights protections available under Title VII. *See* H.R. Rep. No. 101-485, pt. 3, at 48.

* * *

In sum, interpreting Title I to allow discrimination in employment-linked retirement benefits is at odds with the text and structure of the ADA, and would undermine Congress's effort to ensure that Title I protects against discrimination across all aspects of the employment relationship, just as Title VII does. Under a proper interpretation of Title I's text—one that is consistent with Congress's plan for the statute—Lt. Stanley has an actionable claim for discrimination in compensation and the terms, conditions, and privileges of her employment. This Court should rule accordingly.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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