No. 23-997

In the Supreme Court of the United States

KARYN D. STANLEY, PETITIONER

v.

CITY OF SANFORD, FLORIDA

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

For nearly 20 years, the City of Sanford employed Karyn Stanley as a firefighter. While Stanley was an employee, the City adopted a policy shortening the duration of a post-employment health-insurance subsidy it provides to employees who retire on account of disability. After Stanley retired because of a disability, she filed this suit alleging that the policy violates the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* The question presented is:

Whether the court of appeals erred in holding that Stanley cannot challenge the City's allegedly discriminatory post-employment benefits policy because the benefits were paid after Stanley was no longer employed.

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INTEREST OF THE UNITED STATES

This case concerns whether and under what circumstances a former employee can challenge an employer's allegedly discriminatory post-employment benefits policy under Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.* The Equal Employment Opportunity Commission (EEOC) enforces Title I against private employers, and the Attorney General enforces Title I against state- and local-government employers. See 42 U.S.C. 12117(a) (incorporating 42 U.S.C. 2000e-5(f)(1)). The United States accordingly has a substantial interest in the proper interpretation of Title I. The United States participated as an amicus curiae in this case in the court of appeals.

STATEMENT

A. Legal Background

Congress enacted the Americans with Disabilities Act of 1990 (ADA), Pub. L. No. 101-336, 104 Stat. 327 (42 U.S.C. 12101 *et seq.*), "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. 12101(b)(1). To achieve that objective, the ADA forbids discrimination on the basis of disability in "major areas" of public life, including employment (Title I), public services (Title II), and public accommodations (Title III). 42 U.S.C. 12101(b)(4); see *PGA Tour, Inc.* v. *Martin*, 532 U.S. 661, 675 (2001).

1. This case concerns Title I's provisions governing employment. Congress amended those provisions in the ADA Amendments Act of 2008 (ADAAA), Pub. L. No. 110-325, 122 Stat. 3553, to clarify the ADA and "reject" holdings of this Court that Congress viewed as adopting too "narrow[]" an interpretation of the statute's "broad scope of protection." ADAAA § 2(a)(4)-(7) and (b)(2)-(5), 122 Stat. 3553-3554. As amended, Title I's "[g]eneral rule" 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(a). Title I further provides that Section 12112(a)'s general rule should be construed to prohibit a variety of specific forms of discrimination, including the failure to make reasonable accommodations. 42 U.S.C. 12112(b).

The ADA defines a "covered entity" to mean, among other things, "an employer." 42 U.S.C. 12111(2). A "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. 12111(8). And "disability" means, "with respect to an individual—(A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment (as described in [42 U.S.C. 12102(3)])." 42 U.S.C. 12102(1).

2. Title I incorporates the enforcement provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* See 42 U.S.C. 12117(a). Specifically, Title I states that the "powers, remedies, and procedures set forth in" specified provisions of Title VII, including 42 U.S.C. 2000e-5, "shall be the powers, remedies, and procedures [Title I] provides to the [EEOC], to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of" Title I. 42 U.S.C. 12117(a).

Section 2000e-5, in turn, authorizes a person alleging an "unlawful employment practice" to file a charge with the EEOC. 42 U.S.C. 2000e-5(b). The charge "shall be filed" within 180 days "after the alleged unlawful employment practice occurred." 42 U.S.C. 2000e-5(e)(1). But if the "alleged unlawful employment practice" occurred in a State or political subdivision that has its own agency with authority to grant or seek relief, a person must commence proceedings with that agency first. 42 U.S.C. 2000e-5(c); see *EEOC* v. *Commercial Office Prods. Co.*, 486 U.S. 107, 111 (1988) (explaining that the EEOC may initiate state or local proceedings on behalf of a person by referring a charge that the person submitted

to the EEOC). In cases in which a person has "initially instituted proceedings with [the] State or local agency," a charge "shall be filed" with the EEOC within 300 days "after the alleged unlawful employment practice occurred" or within 30 days "after receiving notice that the State or local agency has terminated the proceedings," whichever is earlier. 42 U.S.C. 2000e-5(e)(1).

If the EEOC determines that "there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify" the individual who filed the charge. 42 U.S.C. 2000e-5(b). That notice is sometimes called a "right-to-sue letter." If, within 180 days, the EEOC has not resolved the matter through conciliation and the EEOC (or the Attorney General in cases involving public employers) has not brought a civil action, the individual is entitled to a right-to-sue letter upon request. 42 U.S.C. 2000e-5(f)(1); see 29 C.F.R. 1601.28(a)(1). Within 90 days of that notice, the individual may file a civil action. 42 U.S.C. 2000e-5(f)(1) and (3).

The Lilly Ledbetter Fair Pay Act of 2009 (Fair Pay Act), Pub. L. No. 111-2, § 3, 123 Stat. 5-6, amended Section 2000e-5(e) to add the following provision:

> For purposes of [Section 2000e-5], an unlawful employment practice occurs, with respect to discrimination in compensation * * * , [1] when a discriminatory compensation decision or other practice is adopted, [2] when an individual becomes subject to a discriminatory compensation decision or other practice, or [3] 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). Congress specified that the foregoing provision "shall apply to claims of discrimination in compensation brought under" Title I of the ADA. Fair Pay Act § 5(a), 123 Stat. 6.

B. Factual Background

In 1999, petitioner Karyn Stanley began working as a firefighter in the City of Sanford's Fire Department. Compl. ¶¶ 4(b), 13-14. The City provides its employees a health-insurance subsidy as a "fringe benefit of employment." Compl. ¶ 23. Through the subsidy, the City pays a portion of its employees' health-insurance premiums for a certain period after they retire. Compl. ¶ 19.

When Stanley was hired, the City provided the benefit until age 65 to both employees who retired after 25 years of service and employees who retired on account of disability. Compl. ¶ 19. In 2003, however, the City changed its policy. Compl. ¶ 20. Under the new policy, employees who retire after 25 years of service are still entitled to the benefit until they turn 65. Compl. ¶¶ 20, 21. In contrast, employees who retire on account of "disability" and who "meet the criteria for disability retirement" are entitled to the benefit only "until the disabled retiree receives Medicare benefits or until 24 months have elapsed from the date of retirement, whichever comes first." Compl. ¶ 24.

In 2016, Stanley was diagnosed with Parkinson's disease. Pet. App. 2a; D. Ct. Doc. 38-4, at 1 (Aug. 3, 2021). Eventually, "the physical demands and requirements" of being a firefighter left her no "choice but to retire due to her disability." Compl. ¶ 16. On November 1, 2018, the City placed Stanley on "disability retirement" and began providing her a post-employment monthly health-insurance subsidy of about $1000. *Ibid.*; see Compl. ¶¶ 4(b), 26. Under the policy adopted in 2003, Stanley

was scheduled to receive the benefit for 24 months—*i.e.*, until November 2020, about 15 years before reaching the age of 65. Compl. ¶ 26.

C. Procedural History

1. After retiring, Stanley filed charges with the Florida Commission on Human Relations and the EEOC alleging that the City's 2003 benefits policy discriminated on the basis of disability. Compl. ¶¶ 6, 9. Stanley filed her charge with the EEOC on June 3, 2019—214 days after the City had placed her on disability retirement. Compl. ¶¶ 6, 16. On January 13, 2020, the EEOC dismissed the charge and notified Stanley of her right to sue. Compl. ¶ 7.

On April 11, 2020—within 90 days after receiving the right-to-sue letter—Stanley brought suit against the City in federal district court. Compl. ¶ 8. As relevant here, Stanley alleged that the City's 2003 benefits policy "contain[ed] a disability-based distinction and [wa]s discriminatory on its face" because it provided the health-insurance subsidy to "disabled retirees" for "only up to 24 months." Compl. ¶¶ 30-31. Stanley alleged that "[b]y taking away the [subsidy] before age 65 from its disabled retirees," the City had violated the ADA. Compl. ¶ 37.[1]

2. The district court granted the City's motion to dismiss Stanley's ADA claim. Pet. App. 20a-31a. The court understood *Gonzales* v. *Garner Food Services, Inc.*, 89 F.3d 1523 (11th Cir. 1996), cert. denied, 520 U.S. 1229 (1997), to have held that because Title I prohibits discrimination against a "qualified individual" and defines

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[1] Stanley also brought other claims, which the district court dismissed or rejected on summary judgment. Pet. App. 23a-26a; J.A. 37-45. Those claims are not at issue here.

that term as someone who is able to perform the essential functions of the employment position that she holds or desires, a "disabled former employee" may not bring a claim "based on actions that occurred after the employment relationship ended." Pet. App. 24a. The court took the view that "the alleged discrimination" in this case "did not occur until" Stanley had retired. *Id.* at 26a. The court therefore concluded that *Gonzales* required dismissal of her ADA claim. *Ibid.*

3. The court of appeals affirmed. Pet. App. 1a-19a. Like the district court, the court of appeals understood *Gonzales* to have held that, "[t]o fall within Title I's anti-discrimination provision, a plaintiff's claim must depend on an act committed by the defendant while the plaintiff was either working for the defendant or seeking to work for the defendant"—meaning that "a former employee could not sue for alleged discrimination in post-employment fringe benefits." *Id.* at 8a-9a. After concluding that "*Gonzales* is still good law," the court asked "whether Stanley was a disabled employee or job applicant capable of performing the job at the time of the alleged discrimination." *Id.* at 16a. The court identified three "points in time" when Stanley could "theoretically root her Title I claim": "(1) in October 2003, when the City amended the benefits plan; (2) whenever she first became subject to the allegedly discriminatory provisions of the benefits plan as a disabled employee; or (3) in December 2020, when she was affected by the termination of the health insurance premium payments." *Ibid.*

The court of appeals held that "[n]either option 1 nor option 3 works." Pet. App. 16a. With respect to "option 1," the court acknowledged that Stanley "was employed by the City in October 2003." *Ibid.* But the court understood Stanley to have "concede[d]" that "her claim can-

not turn on the 2003 amendment to the benefits plan because she was not yet disabled at that time." *Ibid.* With respect to "option 3," the court acknowledged that Stanley "was disabled at the time of the December 2020 termination of the health insurance premium payments." *Ibid.* But the court concluded that her claim cannot turn on that termination because "by that time," she "did not hold or desire to hold, nor was she qualified to hold, an 'employment position' with the City." *Ibid.*

The court of appeals declined to consider option 2—*i.e.*, that "Stanley suffered discrimination as a disabled employee * * * while working for the City in the two years after her Parkinson's diagnosis." Pet. App. 17a. In the court's view, Stanley "did not make [that] argument to the district court and specifically disclaimed the argument in [her] own brief" on appeal. *Id.* at 18a. And although the court of appeals understood the United States to have raised the argument in an amicus brief, the court declined to "consider arguments raised only by" an amicus. *Ibid.* Because the court determined that "Stanley cannot establish that the City committed any discriminatory acts against her while she could perform the essential functions of a job that she held or desired to hold," it concluded that "her Title I claim fails." *Ibid.*

SUMMARY OF ARGUMENT

Title I of the ADA prohibits "discriminat[ion] against a qualified individual on the basis of disability" in "employee compensation" and "other terms, conditions, and privileges of employment." 42 U.S.C. 12112(a). The court of appeals held that Stanley cannot challenge the City's allegedly discriminatory post-employment benefits policy under Title I because the benefits were paid after Stanley was no longer employed. Pet. App. 2a. That holding is incorrect.

A. The ADA authorizes "any person alleging discrimination on the basis of disability in violation of" Title I to invoke the remedies available under Title VII. 42 U.S.C. 12117(a). Former employees are plainly among the "person[s]" who may invoke those remedies. *Ibid.* But like any other person seeking to enforce Title I, a former employee must adequately allege unlawful discrimination and file a timely charge with the EEOC.

B. This case comes to the Court on the assumption that Stanley is a "person" entitled to sue under 42 U.S.C. 12117(a) and that she has adequately alleged that the City's post-employment benefits policy facially "discriminate[s] * * * on the basis of disability in regard to * * * employee compensation * * * and other terms, conditions, and privileges of employment," 42 U.S.C. 12112(a). The only issue before this Court is whether the alleged discrimination was "against a qualified individual." *Ibid.*

The court of appeals interpreted Title I's definition of "qualified individual" to mean that a plaintiff "must 'hold[] or desire[]' an employment position with the defendant at the time of the defendant's allegedly wrongful act." Pet. App. 2a (quoting 42 U.S.C. 12111(8)). Here, however, Stanley *did* hold a job (and was capable of performing its essential functions) when the City adopted the challenged policy in 2003 and maintained it as part of her terms and conditions of employment thereafter. Thus, even if the court's interpretation were correct, Stanley adequately alleged that she was the victim of discrimination as a "qualified individual." And because Stanley filed her charge when she was later "subject to" or "affected by" the allegedly facially discriminatory policy, 42 U.S.C. 2000e-5(e)(3)(A), the charge was timely under the Fair Pay Act.

C. The court of appeals held that Stanley's "claim cannot turn on" the 2003 adoption of the policy "because she was not yet disabled at that time." Pet. App. 16a. But Title I does not require the victim of discrimination on the basis of disability to have a disability at the time of the allegedly discriminatory act. Congress clarified any ambiguity on that score when it amended Title I in 2008. As originally enacted, Section 12112(a) prohibited "discriminat[ion] against a qualified individual *with a disability because of the disability of such individual*." ADA § 102(a), 104 Stat. 331 (emphasis added). In 2008, Congress struck the italicized words and replaced them with the phrase "on the basis of disability." ADAAA § 5(a)(1), 122 Stat. 3557. That change makes clear that a Title I plaintiff need not allege that she had a disability at the time of the disability-based discrimination.

In any event, even if Title I required a plaintiff to establish that she had a disability at the time of the alleged discrimination, that requirement would be satisfied here. Stanley alleges that the City maintained a facially discriminatory benefits policy as part of the terms and conditions of her employment throughout her post-2003 tenure—including the period after she was diagnosed with Parkinson's disease in 2016, during which it eventually became apparent that Stanley would be forced to take disability retirement.

D. The fact that Stanley was an employee performing the essential functions of her job when the City engaged in the alleged discrimination suffices to resolve the question presented. But if this Court goes on to consider whether a Title I plaintiff must hold or desire a job at the time of the defendant's allegedly wrongful act, it should hold that Title I prohibits discrimination in post-employment benefits even if the discrimination occurs

only after the plaintiff is no longer employed. When an employer makes a discriminatory change in a plaintiff's post-employment benefits, it retroactively alters the plaintiff's terms or conditions of employment and changes the compensation she earned as an employee performing the essential functions of her job—that is, as a qualified individual. Such discrimination is naturally described as discrimination "against a qualified individual," 42 U.S.C. 12112(a), even if the individual is no longer employed.

ARGUMENT

This case presents the question whether and under what circumstances a "former employee" may "sue under Title I of the Americans with Disabilities Act for discrimination in [the] post-employment distribution of fringe benefits" earned during employment. Pet. App. 2a. Although post-employment benefits are unquestionably a critical aspect of the employment relationship, the court of appeals held that Stanley could not challenge the City's alleged facial discrimination in the administration of those benefits. The court reached that counterintuitive result based on Title I's definition of "qualified individual," holding that it requires a plaintiff to hold or desire a job at the time of the defendant's allegedly wrongful act and that Stanley cannot satisfy that requirement because she was retired at the time of the alleged discrimination. That was doubly mistaken.

Most obviously, Stanley alleges that the City adopted and maintained a facially discriminatory policy as part of her terms and conditions of employment while she was employed. Stanley was clearly a "qualified individual" at the time of those allegedly wrongful acts. And although the benefits she earned during her employment were not payable until after she retired, the Fair

Pay Act makes clear that a plaintiff may sue when she "becomes subject to" or "is affected by" an allegedly discriminatory compensation or benefits policy—even if that policy was adopted years earlier. 42 U.S.C. 2000e-5(e)(3)(A). That is just what Stanley seeks to do here.

In any event, the court of appeals was wrong to conclude that a Title I plaintiff must hold or desire a job at the time of the defendant's allegedly wrongful act. Post-employment benefits are earned during an employee's tenure as a qualified individual performing the essential functions of her job. If an employer later discriminates in the distribution of those benefits—by, say, terminating a retiree's pension or health insurance because she has a disability—it has discriminated against a qualified individual within the meaning of Title I.

A. Former Employees May Enforce Title I If They Suffer Prohibited Discrimination And File A Timely Charge

The answer to the question presented in this case turns on the interaction of separate statutory provisions governing (1) who may enforce Title I's prohibition on discrimination, (2) what counts as unlawful discrimination, and (3) when a charge of unlawful discrimination must be filed. We begin by setting forth those requirements and explaining how they operate together. In short, the Act makes clear that a former employee may enforce Title I's prohibition on discrimination—but like any other person seeking to enforce that prohibition, a former employee must adequately allege unlawful discrimination and file a timely charge.

1. Former employees are among the "persons" who may enforce Title I's prohibition on discrimination

Title I's prohibition on discrimination is set forth in 42 U.S.C. 12112(a), a section entitled "General rule."

See ADA § 102, 104 Stat. 331. That section proscribes certain actions by employers, but it does not specify who may enforce those proscriptions. Instead, Congress addressed enforcement in a separate provision of Title I: 42 U.S.C. 12117, entitled "Enforcement." See ADA § 107, 104 Stat. 336. Section 12117 states that the "powers, remedies, and procedures" set forth in 42 U.S.C. 2000e-5 and other provisions of Title VII "shall be the powers, remedies, and procedures" Title I provides to "any person alleging discrimination on the basis of disability in violation of" Title I. 42 U.S.C. 12117(a). Section 2000e-5, in turn, provides that a person alleging "an unlawful employment practice" may challenge it—first by filing a charge with the EEOC and later by filing a civil action. 42 U.S.C. 2000e-5(b); see 42 U.S.C. 2000e-5(f)(1).

Nothing in Section 12117 (or the provisions of Title VII it incorporates) bars former employees from enforcing Title I's prohibition on discrimination. To the contrary, Title I plainly contemplates that former employees will invoke the statute's enforcement provisions. After all, one of the employment practices that Title I proscribes is a discriminatory "discharge." 42 U.S.C. 12112(a). Employees who are unlawfully terminated often can challenge their discharges—and seek "reinstatement" as a remedy, 42 U.S.C. 2000e-5(g)(1)—only as *former* employees. Accordingly, in *Robinson* v. *Shell Oil Co.*, 519 U.S. 337 (1997), this Court recognized that the "language" of Section 2000e-5(g)(1) "necessarily refers to former employees" and contemplates that "former employees will make use of the remedial mechanisms" provided in Section 2000e-5. *Id.* at 342, 345. Former employees are thus among the "person[s]" who may enforce Title I's prohibition on discrimination. 42 U.S.C. 12117(a).

2. Former employees must adequately allege each element of unlawful discrimination under Title I

Although Section 12112 does not specify who may enforce its prohibition on discrimination, it does define what counts as unlawful discrimination under Title I. Section 12112(a)'s "[g]eneral rule" prohibits an employer from "discriminat[ing] 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(a). Section 12112(b) then specifies that the discrimination prohibited by Section 12112(a) includes not only disparate treatment, but also practices such as adopting policies that have a disparate impact or failing to make reasonable accommodations. See, *e.g.*, *Raytheon Co.* v. *Hernandez*, 540 U.S. 44, 52-53 (2003) (disparate impact); *US Airways, Inc.* v. *Barnett*, 535 U.S. 391, 396 (2002) (reasonable accommodations).

Like any other person seeking to enforce Title I's prohibition on discrimination, a former employee must adequately allege each element of a claim of unlawful discrimination under Section 12112. Different types of Title I claims require the plaintiff to establish different elements. Here, Stanley alleges that the City engaged in disparate treatment in violation of Section 12112(a)'s general rule. Compl. ¶¶ 30, 36-38. Such a claim has three elements.

First, the plaintiff must allege that the employer has "discriminate[d] * * * on the basis of disability," 42 U.S.C. 12112(a), by engaging in disparate treatment. The "central" feature of "disparate treatment" is "discriminatory intent." *Ledbetter* v. *Goodyear Tire & Rubber Co.*, 550 U.S. 618, 624 (2007), abrogated on other

grounds by the Fair Pay Act § 3, 123 Stat. 5-6 (42 U.S.C. 2000e-5(e)(3)(A)). As relevant here, an employer acts with discriminatory intent if it adopts and maintains a policy that facially discriminates based on disability. *Id.* at 634.

Second, the alleged discrimination must consist of disparate treatment "in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, [or] other terms, conditions, and privileges of employment." 42 U.S.C. 12112(a). As this Court has explained in interpreting the parallel text of Title VII, that broad language "evinces a congressional intent to strike at the entire spectrum of disparate treatment * * * in employment." *National R.R. Passenger Corp.* v. *Morgan*, 536 U.S. 101, 116 (2002) (citation and internal quotation marks omitted); see 42 U.S.C. 2000e-2(a)(1).

Third, the alleged discrimination must be discrimination "against a qualified individual." 42 U.S.C. 12112(a). "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. 12111(8). That limitation on the scope of Section 12112(a) ensures that employers can require that all applicants and employees, including those with disabilities, are able to "perform the essential functions" of the job in question. *Ibid.*

3. Former employees must file a timely charge of unlawful discrimination

A final set of provisions governs when a charge of unlawful discrimination must be filed. In general, a person alleging unlawful discrimination must file a charge with the EEOC within 180 days (or 300 days, if the per-

son has initially instituted proceedings with a relevant state or local agency) "after the alleged unlawful employment practice occurred." 42 U.S.C. 2000e-5(e)(1); see pp. 3-4, *supra*. In cases involving "discrimination in compensation," including benefits, the Fair Pay Act specifies when "an unlawful employment practice occurs." 42 U.S.C. 2000e-5(e)(3)(A). Under the Fair Pay Act, "an unlawful employment practice occurs, with respect to discrimination in compensation," at three points in time: (1) "when a discriminatory compensation decision or other practice is *adopted*"; (2) "when an individual becomes *subject to* a discriminatory compensation decision or other practice"; and (3) "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." *Ibid.* (emphases added). Thus, a former employee alleging unlawful discrimination in compensation must file a charge within 180 or 300 days of one of those occurrences.

B. Stanley Has Alleged Discrimination "Against A Qualified Individual" Because She Held A Job And Performed Its Essential Functions When The City Adopted And Maintained Its Allegedly Discriminatory Policy

In this case, Stanley alleges that the City discriminated against her on the basis of disability in regard to a "fringe benefit"—namely, a post-employment health-insurance subsidy. Compl. ¶ 23. This case comes to the Court on the assumption that Stanley is a "person" entitled to sue under 42 U.S.C. 12117 and that she has adequately alleged that the City's policy facially discriminates "on the basis of disability" with respect to "compensation" or other "terms, conditions, and privileges of

employment," 42 U.S.C. 12112(a). The only question is whether the alleged discrimination was "against a qualified individual." *Ibid.* The court of appeals rejected Stanley's claim on the ground that Section 12112(a) forbids discrimination only against a person who holds or desires a job (and is capable of performing its essential functions) "at the time of the alleged discrimination." Pet. App. 16a. But even if that premise were correct, Stanley *did* hold a job (and was capable of performing its essential functions) when the City adopted the challenged policy in 2003 and maintained it as part of her terms and conditions of employment thereafter. And under the Fair Pay Act, Stanley could challenge that allegedly discriminatory policy when she was later subject to or affected by it.

1. As an initial matter, Stanley is a "person alleging discrimination on the basis of disability in violation of" Title I who may enforce that title against the City. 42 U.S.C. 12117(a); see 42 U.S.C. 2000e-5(b) and (f)(1); pp. 12-13, *supra*. The courts below did not suggest otherwise.[2]

2. This case comes to this Court on the assumption that Stanley has adequately alleged the first two ele-

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[2] The court of appeals stated that the Sixth and Ninth Circuits have held that a former employee cannot enforce Title I because "a Title I plaintiff must be a qualified individual, not only at the time of discrimination, but also when the plaintiff files suit." Pet. App. 17a. To the extent that the Sixth and Ninth Circuits have adopted such a rule, it contradicts Title I's plain text. The term "qualified individual" appears in the Act's substantive prohibition on discrimination, not the separate provision governing enforcement. That separate provision does not require a plaintiff to be a qualified individual when a suit is filed; to the contrary, it explicitly provides that "any person alleging discrimination on the basis of disability" may invoke the remedies available under Title VII. 42 U.S.C. 12117(a).

ments of discrimination in violation of Section 12112(a)—that is, that the City's policy facially discriminates "on the basis of disability" and that the alleged discrimination involved "compensation" or "other terms, conditions, and privileges of employment." The only issue before the Court is whether Stanley has adequately alleged the third element: discrimination "against a qualified individual." 42 U.S.C. 12112(a). And even on the court of appeals' understanding of that element, it is satisfied here.

a. With respect to the first element, Stanley alleges that the City's policy is "discriminatory on its face" because it draws a "disability-based distinction" between "disabled" retirees and other retirees and treats "disabled" retirees worse by "taking away the City's Health Insurance Subsidy before age 65." Compl. ¶¶ 30, 37. Because the lower courts did not consider whether Stanley had adequately alleged that the City's policy is facially discriminatory under Section 12112(a), see Pet. App. 4a-18a, 23a-26a, this Court should resolve the question presented on the assumption that it is.[3] And an employer

[3] The United States takes no position on whether Stanley has adequately alleged that the City's policy facially "discriminate[s] * * * on the basis of disability." 42 U.S.C. 12112(a); see U.S. C.A. Amicus Br. 3 n.2. If this Court resolves the question presented in Stanley's favor, it should follow its usual practice and remand for further proceedings to consider the City's contention (Br. in Opp. 9-17) that Stanley has not adequately alleged that the policy is facially discriminatory—a question that the courts below have not addressed. See, *e.g.*, *Chiaverini* v. *City of Napoleon*, 144 S. Ct. 1745, 1751-1752 (2024) (remanding for further proceedings to address an "element" of the petitioner's claim that was "no part of the question [this Court] agreed to review"); see also J.A. 45 (concluding that the City had "demarcated neutral lines," but only in the context of granting summary judgment on Stanley's equal-protection claim).

acts with discriminatory intent—and thus engages in prohibited disparate treatment—when it "adopts and intentionally retains" a facially discriminatory policy. *Ledbetter*, 550 U.S. at 634.

b. With respect to the second element, there is no dispute that the discrimination Stanley alleges is "in regard to * * * employee compensation * * * and other terms, conditions, and privileges of employment." 42 U.S.C. 12112(a). "In today's world the typical employee's compensation is not just her take-home pay; it often includes fringe benefits such as vacation pay and health insurance." *District of Columbia* v. *Greater Wash. Bd. of Trade*, 506 U.S. 125, 133 (1992) (Stevens, J., dissenting). Accordingly, this Court has recognized that "[h]ealth insurance and other fringe benefits are 'compensation, terms, conditions, or privileges of employment.'" *Newport News Shipbuilding & Dry Dock Co.* v. *EEOC*, 462 U.S. 669, 682 (1983) (quoting 42 U.S.C. 2000e-2(a)). Indeed, Section 12112 specifically references "fringe benefits" in one of its enumerated examples of unlawful discrimination, making clear that it prohibits discrimination in regard to such benefits. 42 U.S.C. 12112(b)(2); see 42 U.S.C. 12101(a)(5) (finding that "individuals with disabilities continually encounter various forms of discrimination, including * * * relegation to lesser * * * benefits"). The court of appeals thus correctly recognized that "fringe benefits" have "always been recognized as one example of a term, condition, or privilege of employment." Pet. App. 5a.

Stanley alleges discrimination in regard to a health-insurance subsidy the City provides to employees after they retire. Compl. ¶ 19. The fact that the subsidy is paid after an employee has retired does not make it any less a part of "employee compensation" or the "terms,

conditions, and privileges of employment." 42 U.S.C. 12112(a). As this Court has recognized, "[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). Like pensions and other post-employment benefits, the subsidies at issue here "qualify as terms, conditions, or privileges of employment even though they are received only after employment terminates." *Ibid.*

c. The only issue before this Court is whether Stanley has adequately alleged the third element of unlawful discrimination under Title I—discrimination "against a qualified individual." 42 U.S.C. 12112(a). Here, the answer to that question is straightforward: The City adopted the allegedly discriminatory benefits policy in 2003 and maintained it for the rest of Stanley's employment. Compl. ¶ 20. There is no dispute that Stanley was a qualified individual throughout that time, capable of "perform[ing] the essential functions of the employment position that [she] h[e]ld[]," 42 U.S.C. 12111(8), until her disability ultimately forced her to retire in 2018, see Compl. ¶¶ 4(b), 13-16. If Stanley is correct that the City's 2003 policy facially discriminates based on disability, then the City discriminated "against a qualified individual," 42 U.S.C. 12112(a)—namely, Stanley herself—by adopting and maintaining a discriminatory benefits policy as part of Stanley's terms and conditions of employment while she was working.

3. Of course, Stanley did not file a charge with the EEOC until June 3, 2019, long after the City's adoption of the 2003 policy and after Stanley was no longer employed. Compl. ¶ 6. But the Fair Pay Act makes clear that Stanley's challenge is timely. The Fair Pay Act specifies that, "with respect to discrimination in com-

pensation" (including "benefits"), "an unlawful employment practice occurs" not only when the allegedly discriminatory policy is "adopted," but also each time an individual becomes "subject to" or is "affected by" the policy. 42 U.S.C. 2000e-5(e)(3)(A). Here, Stanley was subject to or affected by the allegedly discriminatory policy when the City "placed" her on "disability retirement" on November 1, 2018, Compl. ¶ 16; that placement meant that she would receive the health-insurance subsidy for only 24 months, Compl. ¶ 26. And because Stanley filed her charge within 300 days after November 1, 2018, see Compl. ¶ 6, her charge was timely.

C. The Court Of Appeals Erred In Holding That Stanley Cannot Base Her Claim On Allegedly Discriminatory Acts That Occurred While She Was Employed

The court of appeals did not question Stanley's allegation that the City's 2003 benefits policy facially discriminates on the basis of disability. Compl. ¶ 30. The court also acknowledged that Stanley was "employed by the City in October 2003," when the City adopted the policy. Pet. App. 16a. The court nevertheless concluded that Stanley's "claim cannot turn on" the 2003 adoption of the policy "because she was not yet disabled at that time." *Ibid.* That was error. It is true that Stanley did not have a disability in 2003; she was not diagnosed with Parkinson's disease until 2016. Pet. App. 2a. But Title I does not require the victim of discrimination on the basis of disability to have a disability at the time of the allegedly discriminatory act; indeed, the court of appeals' contrary holding cannot be squared with the statutory text, which Congress amended in 2008 to eliminate any doubt on that question. In any event, even if Title I did require the victim to have a disability at the time of the alleged disability-based discrimination, Stan-

ley satisfied that requirement here because she had a disability between her 2016 diagnosis and her 2018 retirement. Compl. ¶¶ 16, 26.

1. Title I does not require the victim of disability-based discrimination to have a disability at the time of the alleged discrimination

As explained above, there are three elements to an unlawful discrimination claim under Title I: (1) that the "discriminat[ion]" be "on the basis of disability"; (2) that the discrimination be "in regard to" specified practices; and (3) that the discrimination be "against a qualified individual." 42 U.S.C. 12112(a). The court of appeals interpreted the statute to impose a fourth element: that the individual be "disabled at th[e] time" of the alleged discrimination. Pet. App. 16a. That interpretation cannot be squared with the statutory text.

a. Section 12112(a) prohibits "discriminat[ion] against a qualified individual on the basis of disability in regard to" specified practices. 42 U.S.C. 12112(a). Establishing discrimination on the basis of disability against a qualified individual will often require, as a factual matter, showing that the individual had a disability at the time of the alleged discrimination. A plaintiff who claims that an employer refused to hire her because of a disability, for example, must show that she had a disability within the meaning of 42 U.S.C. 12102(1). But showing that the individual had a disability at the time of the alleged discrimination is not, in and of itself, an element of a Section 12112(a) claim. Congress clarified any ambiguity on that score when it amended the ADA in 2008.

As originally enacted, Section 12112(a) prohibited "discriminat[ion] against a qualified individual *with a disability because of the disability of such individual*." ADA § 102(a), 104 Stat. 331 (emphasis added). The orig-

inal version of Section 12111(8) likewise defined the term "qualified individual *with a disability*" as "an individual *with a disability* who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." ADA § 101(8), 104 Stat. 331 (emphases added). In 2008, however, Congress amended those provisions of the ADA. In Section 12112(a), Congress struck the words "with a disability because of the disability of such individual" and replaced them with the phrase "on the basis of disability." ADAAA § 5(a)(1), 122 Stat. 3557. And in Section 12111(8), Congress struck "with a disability" after the word "individual" in both the name of the defined term and the definition. ADAAA § 5(c)(1)(B), 122 Stat. 3557.

"When Congress acts to amend a statute," this Court "presume[s]" that Congress "intends its amendment to have real and substantial effect." *Intel Corp. Inv. Policy Comm.* v. *Sulyma*, 589 U.S. 178, 189 (2020) (citation omitted). Congress amended Title I to strike the words "with a disability because of the disability of such individual" from Section 12112(a)'s prohibition on discrimination. ADAAA § 5(a)(1), 122 Stat. 3557. The effect of that amendment was to make clear that a Title I plaintiff is not necessarily required to allege that she was an individual "with a disability" at the time of the alleged disability-based discrimination.

Here, Stanley's complaint alleges that the City "discriminated against a qualified individual on the basis of disability," 42 U.S.C. 12112(a), by adopting and maintaining a facially discriminatory benefits policy. Even if a particular employee is not yet disabled, the inclusion of such a facially discriminatory policy in her terms and conditions of employment still constitutes discrimina-

tion "on the basis of disability" because it reduces the benefits that will be available if the employee becomes disabled in the future. By requiring Stanley to further allege that she was "disabled at th[e] time" of the alleged discrimination, Pet. App. 16a, the court of appeals improperly read back into the statute the very words Congress removed.

Reading those words "back into the current version" of Section 12112(a) would be "particularly" misguided because "Congress chose to retain similar language" in other provisions of Title I. *Wilkinson* v. *Garland*, 601 U.S. 209, 224 (2024); see, *e.g.*, 42 U.S.C. 12112(b)(1) ("because of the disability of such applicant or employee"); 42 U.S.C. 12112(b)(2) ("qualified applicant or employee with a disability"); 42 U.S.C. 12112(b)(5) ("otherwise qualified individual with a disability"); 42 U.S.C. 12112(b)(6) ("individual with a disability").[4]

b. The court of appeals' interpretation also cannot be squared with Section 12112(b)(4). Entitled "Construction," Section 12112(b) instructs that "the term 'discriminate against a qualified individual on the basis of disability' includes" various specific practices. And under Section 12112(b)(4), one of those prohibited practices is discrimination against "a qualified individual because of the known disability of an individual with whom

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[4] The ADAAA's amendments became "effective on January 1, 2009," § 8, 122 Stat. 3559, and thus apply to claims that "arose after that date," *Mazzeo* v. *Color Resolutions Int'l, LLC*, 746 F.3d 1264, 1267 (11th Cir. 2014) (citation omitted). Under the Fair Pay Act, Stanley's ADA claim arose when she became "subject to" or was "affected by" the City's allegedly discriminatory benefits policy. 42 U.S.C. 2000e-5(e)(3)(A). Because that occurred after January 1, 2009, the ADAAA's amendments apply to Stanley's claim—as both the City and the lower courts have recognized, see, *e.g.*, Br. in Opp. 3-4, 32; Resp. C.A. Br. 10; Pet. App. 13a-14a, 21a, 24a.

the qualified individual is known to have a relationship or association." 42 U.S.C. 12112(b)(4). Accordingly, even if a "qualified individual" herself does not have a disability, she may still be the victim of discrimination "'on the basis of disability'" if the employer discriminates against her "because of the known disability" of someone else. *Ibid.* The court of appeals' interpretation—which would require that a qualified individual herself have a disability at the time of the alleged discrimination, including when an allegedly facially discriminatory policy was adopted—contradicts Congress's own "[c]onstruction" of Section 12112(a). *Ibid.*; see ADA § 102(b), 104 Stat. 332.

c. Although Stanley need not allege that she was an individual "with a disability" at the time of the City's adoption of the allegedly facially discriminatory policy in order to state a Section 12112(a) claim, that does not mean that her disability status is irrelevant, or that individuals without disabilities can routinely sue to enforce Section 12112(a). Stanley has Article III standing to challenge the City's policy only because she subsequently became an individual with a disability who was injured by the policy. Compl. ¶¶ 16, 26.[5] Likewise, the

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[5] Indeed, Stanley acknowledged below that "she would have lacked standing" if she had brought her Title I claim as "a non-disabled employee" in 2003. Pet. C.A. Br. 22 & n.5. The court of appeals mistook that statement about standing as a concession on the merits of her Title I claim, stating that she "concede[d]" that "her claim cannot turn" on the 2003 adoption of the allegedly discriminatory policy "because she was not yet disabled at that time." Pet. App. 16a. But as Stanley explains (Pet. Br. 24-25), she made no such concession. On the merits of her Title I claim, she has consistently maintained that the City's adoption of the policy "violate[d]" the ADA, even though she did not have a disability at the time. Compl. ¶ 37; see, *e.g.*, Pet. C.A. Br. 22 n.5 (describing the 2003 adoption of the

charge that Stanley filed with the EEOC was timely only because, after being diagnosed with a disability, she was subject to or affected by the policy. See pp. 20-21, *supra*. Thus, to say that an individual need not have a disability at the time of the alleged discrimination is to say only that such a temporal connection is not an element of the underlying Section 12112(a) claim. The court of appeals erred in rejecting Stanley's claim on the ground that it did not satisfy that nonexistent element. Pet. App. 16a.

2. Even if Title I required the victim of disability-based discrimination to have a disability at the time of the alleged discrimination, that requirement was satisfied here

Even if the court of appeals were correct that the victim of disability-based discrimination under Section 12112(a) must be "disabled at th[e] time" of the alleged discrimination, Pet. App. 16a, that requirement was satisfied here. This case comes to the Court on the assumption that Stanley has adequately alleged that the City acted with discriminatory intent not only in adopting the allegedly discriminatory benefits policy in 2003, but also in maintaining that policy throughout the rest of her employment—including the period after she was diagnosed with Parkinson's disease in 2016, during which it eventually became apparent that Stanley would be forced to take disability retirement. See Compl. ¶ 16; Pet. App. 2a; pp. 18-19, *supra*. It is undisputed that during that period, Stanley was an individual with a disabil-

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policy as the "original discriminatory decision"); Pet. C.A. Reply Br. 6 ("[T]he City's decision to enact the facially discriminatory 24-Month Rule in 2003 is the initial 'challenged employment decision.'") (emphasis omitted).

ity. Compl. ¶ 16. And it is likewise clear that, for at least part of that period, Stanley was a "qualified individual" because she could still perform the essential functions of her job. See *ibid.* Accordingly, Stanley's complaint adequately alleges that she "was a disabled employee * * * capable of performing the job at the time of the alleged discrimination." Pet. App. 16a.

The court of appeals did not suggest otherwise. To the contrary, it acknowledged the possibility that "a completed claim of disability discrimination may have accrued while Stanley was a qualified individual performing her duties as a firefighter" because she "suffered discrimination as a disabled employee" during the period "*before* she retired but *after* she was diagnosed with Parkinson's." Pet. App. 17a. And the court acknowledged that the United States had made precisely that argument. *Id.* at 18a; see U.S. C.A. Amicus Br. 11-12. But the court declined to consider that argument because it believed that Stanley herself had "specifically disclaimed" it. Pet. App. 18a.

That is incorrect. Although such an argument appeared for the "first time" in the United States' amicus brief in the court of appeals, Pet. App. 18a, the court overlooked the fact that the United States filed that brief *before* Stanley filed her opening brief, which expressly adopted the United States' arguments, Pet. C.A. Br. viii-ix, 10, 20; see Pet. C.A. Reply Br. 4 ("The City inserted [its] facially discriminatory policy 'on the basis of disability' into the terms and conditions of Ms. Stanley's employment in 2003 and kept it there every day throughout her employment while she was a Qualified Individual."). And although Stanley stated in her opening brief that she was not "impacted by the discriminatory 24-month rule during her employment," Pet.

C.A. Br. 22, that statement simply reflects that she was not "placed on disability retirement" until she retired, Compl. ¶ 16. As explained above, that fact does not undermine the validity of her Title I claim. See pp. 20-21, 25-27, *supra*.[6]

D. The Court Of Appeals Erred In Holding That A Title I Plaintiff Must Hold Or Desire A Job At The Time Of The Alleged Discrimination

Because Stanley held a job and was performing its essential functions when the City adopted and maintained its allegedly discriminatory policy, this Court can resolve this case without deciding whether the court of appeals was correct to hold that "a Title I plaintiff must 'hold[] or desire[]' an employment position with the defendant at the time of the defendant's allegedly wrongful act." Pet. App. 2a (quoting 42 U.S.C. 12111(8)) (brackets in original). That question will have practical significance only in cases where, unlike here, "the alleged discrimination occurred entirely after the employment re-

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[6] The court of appeals also faulted Stanley for failing to raise this argument in the district court. Pet. App. 17a-18a. But the City raised that asserted forfeiture in opposing certiorari, see Br. in Opp. 30-31, and this Court presumably "considered and rejected that contention" in nonetheless granting review, *United States* v. *Williams*, 504 U.S. 36, 40 (1992). That is for good reason. "Once a federal claim is properly presented, a party can make any argument in support of that claim." *Yee* v. *Escondido*, 503 U.S. 519, 534 (1992). The contention that Stanley "suffered discrimination as a disabled employee" during the period "*before* she retired but *after* she was diagnosed with Parkinson's," Pet. App. 17a, is "not a new claim," but a "new argument" in support of her "consistent claim" that her status as a former employee does not preclude her from challenging the City's allegedly discriminatory benefits policy under Title I, *Lebron* v. *National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995); see Pet. C.A. Reply Br. 12-13.

lationship had already terminated." *Id.* at 17a. But if the Court reaches the issue, it should hold that Title I prohibits discrimination in post-employment benefits even if the discrimination occurs only after the victim is no longer employed. Otherwise, Title I's comprehensive prohibition on disability discrimination in employment would fail to cover a key aspect of the employment relationship—and employers would have free rein to engage in even the most blatant discrimination against retirees with disabilities. The court of appeals reached a different conclusion only because it misread the definition of "qualified individual" to impose a temporal limit on the scope of Title I's prohibition on discrimination, which instead reaches any discrimination in a qualified individual's "employee compensation" or other "terms, conditions, and privileges of employment"—including deferred compensation paid after the employment relationship ends. 42 U.S.C. 12112(a).

1. Title I prohibits discrimination in "*employee* compensation." 42 U.S.C. 12112(a) (emphasis added). By definition, the covered compensation is payment for work as a qualified individual—that is, for "perform[ing] the essential functions of the employment position that [an] individual holds," 42 U.S.C. 12111(8). Although "retirement pay" and other post-employment benefits are "not actually disbursed during the time an individual is working," they are "deferred compensation for past years of service." *Davis* v. *Michigan Dep't of the Treas.*, 489 U.S. 803, 808 (1989). Similarly, Title I's prohibition on discrimination in other "terms, conditions, and privileges *of employment*," 42 U.S.C. 12112(a) (emphasis added), reaches only terms, conditions, and privileges that are "part and parcel of the employment relationship" —and that remains true even if a particular benefit is

"received only after employment terminates," *Hishon*, 467 U.S. at 75, 77.

Accordingly, when an employer makes a discriminatory change in a plaintiff's post-employment compensation or other benefits, it is retroactively altering the plaintiff's terms or conditions of employment and changing the compensation she earned as an employee performing the essential functions of her job—*i.e.*, as a qualified individual. And because such a retroactive change constitutes discrimination in the terms and conditions of the plaintiff's employment *as* a qualified individual, it is naturally described as discrimination "against a qualified individual," 42 U.S.C. 12112(a), even if the plaintiff is no longer employed.

This Court reached a similar conclusion in *Davis*. There, a statute consented to state taxation of "pay or compensation for personal services as an officer or employee of the United States," provided that the taxation did not "discriminate against the officer or employee because of the source of the pay or compensation." *Davis*, 489 U.S. at 808 (citation omitted). The Court "ha[d] no difficulty concluding" that federal retirement benefits qualify as compensation for service as a federal employee. *Ibid.* And the Court rejected the argument that the prohibition on discrimination against an "'employee'" applied "only to *current* employees." *Ibid.* (emphasis added; citation omitted). The Court explained that because the provision covered any compensation earned *as* an employee, discrimination against a retiree constituted discrimination against an "employee" within the meaning of the statute even though the retiree had ceased to be an employee by the time the discrimination occurred. *Id.* at 809. The same logic applies here.

The court of appeals emphasized that Title I's definition of "qualified individual" uses present-tense verbs, referring to someone who "can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. 12111(8); see Pet. App. 11a. That use of the present tense makes clear that a person's status as a qualified individual depends on her present abilities; someone who ceases to be able to perform the essential functions of her job ceases to be a qualified individual and thus is not protected from termination or entitled to a reasonable accommodation. But that does not mean that Title I permits discrimination in the distribution of compensation or other benefits that a plaintiff earned while she was a qualified individual.

Imagine, for example, a statute prohibiting airlines from discriminating against a "qualified passenger" in the "terms, conditions, or privileges of carriage" and defining a "qualified passenger" to mean someone who "meets the carrier's eligibility requirements for the flight on which the passenger is flying or seeks to fly." If an airline discriminated against a plaintiff in the handling of her baggage at her destination, it could not escape liability on the theory that the flight had landed—and thus the plaintiff was no longer a "qualified passenger"—when the discrimination occurred. So too here: Discrimination in the compensation or other terms, conditions, or privileges a plaintiff earned as a qualified individual is "discriminat[ion] against a qualified individual" within the meaning of Title I—even if that discrimination occurs only after the individual is no longer employed. 42 U.S.C. 12112(a).

2. Stanley offers (Pet. Br. 27-47) a different textual pathway to essentially the same result. She argues that

Section 12111(8)'s definition of "qualified individual" is "best read to impose only a conditional mandate": "If a person has (or seeks) a job, that person must be able to perform its essential functions; if no such job exists—because the person is retired—the definition does not operate as a limit on the ADA's prohibition on discrimination." *Id.* at 28. On Stanley's view, therefore, she continued to be a qualified individual even after she retired because the requirement that she be able to perform the essential functions of her job simply ceased to apply.

We have offered a somewhat different understanding of the statute, under which a retiree is no longer a qualified individual but remains protected from discrimination in the distribution of benefits that she earned as a qualified individual. In our view, that is the most natural reading of the statutory text, and the powerful contextual arguments that Stanley advances (Pet. Br. 45-47) generally support our reading as well. But we agree that Stanley's alternative approach is also a textually permissible interpretation of Section 12111(8)'s definition of qualified individual. Indeed, as Stanley explains (*id.* at 34-42), similarly phrased directions are often understood to impose only conditional requirements. And we agree with Stanley (*id.* at 45-47) that statutory context, structure, and purpose all strongly indicate that Title I prohibits discrimination in all of the terms, conditions, or privileges of employment, including post-employment benefits. The Court should not adopt an interpretation of the statute that would exclude that important aspect of the employment relationship—which, as this case illustrates, can be especially important for individuals with disabilities.

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

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APPENDIX

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APPENDIX

1. 42 U.S.C. 12101 provides:

Findings and purpose

(a) Findings

The Congress finds that—

(1) physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society, yet many people with physical or mental disabilities have been precluded from doing so because of discrimination; others who have a record of a disability or are regarded as having a disability also have been subjected to discrimination;

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodations, education, transportation, communication, recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architectural, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals; and

(8) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter—

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal Government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

2. 42 U.S.C. 12102 provides:

Definition of disability

As used in this chapter:

(1) Disability

The term "disability" means, with respect to an individual—

(A) a physical or mental impairment that substantially limits one or more major life activities of such individual;

(B) a record of such an impairment; or

(C) being regarded as having such an impairment (as described in paragraph (3)).

(2) Major life activities

(A) In general

For purposes of paragraph (1), major life activities include, but are not limited to, caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working.

(B) Major bodily functions

For purposes of paragraph (1), a major life activity also includes the operation of a major bodily function, including but not limited to, functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(3) Regarded as having such an impairment

For purposes of paragraph (1)(C):

(A) An individual meets the requirement of "being regarded as having such an impairment" if the individual establishes that he or she has been subjected to an action prohibited under this chapter because of an actual or perceived physical or mental impairment whether or not the impairment limits or is perceived to limit a major life activity.

(B) Paragraph (1)(C) shall not apply to impairments that are transitory and minor. A transitory impairment is an impairment with an actual or expected duration of 6 months or less.

(4) Rules of construction regarding the definition of disability

The definition of "disability" in paragraph (1) shall be construed in accordance with the following:

(A) The definition of disability in this chapter shall be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter.

(B) The term "substantially limits" shall be interpreted consistently with the findings and purposes of the ADA Amendments Act of 2008.

(C) An impairment that substantially limits one major life activity need not limit other major life activities in order to be considered a disability.

(D) An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active.

(E)(i) The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures such as—

(I) medication, medical supplies, equipment, or appliances, low-vision devices (which do not include ordinary eyeglasses or contact lenses), prosthetics including limbs and devices, hearing aids and cochlear implants or other implantable hearing devices, mobility devices, or oxygen therapy equipment and supplies;

(II) use of assistive technology;

(III) reasonable accommodations or auxiliary aids or services; or

(IV) learned behavioral or adaptive neurological modifications.

(ii) The ameliorative effects of the mitigating measures of ordinary eyeglasses or contact lenses shall be considered in determining whether an impairment substantially limits a major life activity.

(iii) As used in this subparagraph—

(I) the term "ordinary eyeglasses or contact lenses" means lenses that are intended to fully correct visual acuity or eliminate refractive error; and

(II) the term "low-vision devices" means devices that magnify, enhance, or otherwise augment a visual image.

3. 42 U.S.C. 12111 provides:

Definitions

As used in this subchapter:

(1) Commission

The term "Commission" means the Equal Employment Opportunity Commission established by section 2000e-4 of this title.

(2) Covered entity

The term "covered entity" means an employer, employment agency, labor organization, or joint labor-management committee.

(3) Direct threat

The term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.

(4) Employee

The term "employee" means an individual employed by an employer. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(5) Employer

(A) In general

The term "employer" means a person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year, and any agent of such person, except that, for two years following the effective date of this subchapter, an employer means a person engaged in an industry affecting commerce who has 25 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding year, and any agent of such person.

(B) Exceptions

The term "employer" does not include—

(i) the United States, a corporation wholly owned by the government of the United States, or an Indian tribe; or

(ii) a bona fide private membership club (other than a labor organization) that is exempt from taxation under section 501(c) of title 26.

(6) Illegal use of drugs

(A) In general

The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act [21 U.S.C. 801 et seq.]. Such term does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of Federal law.

(B) Drugs

The term "drug" means a controlled substance, as defined in schedules I through V of section 202 of the Controlled Substances Act [21 U.S.C. 812].

(7) Person, etc.

The terms "person", "labor organization", "employment agency", "commerce", and "industry affecting commerce", shall have the same meaning given such terms in section 2000e of this title.

(8) Qualified individual

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. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer

has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

(9) Reasonable accommodation

The term "reasonable accommodation" may include—

(A) making existing facilities used by employees readily accessible to and usable by individuals with disabilities; and

(B) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

(10) Undue hardship

(A) In general

The term "undue hardship" means an action requiring significant difficulty or expense, when considered in light of the factors set forth in subparagraph (B).

(B) Factors to be considered

In determining whether an accommodation would impose an undue hardship on a covered entity, factors to be considered include—

(i) the nature and cost of the accommodation needed under this chapter;

(ii) the overall financial resources of the facility or facilities involved in the provision of the reasonable accommodation; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such accommodation upon the operation of the facility;

(iii) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and

(iv) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the covered entity.

4. 42 U.S.C. 12112 provides:

Discrimination

(a) General rule

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.

(b) Construction

As used in subsection (a), the term "discriminate against a qualified individual on the basis of disability" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(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);

(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;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) 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, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

(c) Covered entities in foreign countries

(1) In general

It shall not be unlawful under this section for a covered entity to take any action that constitutes discrimination under this section with respect to an employee in a workplace in a foreign country if compliance with this section would cause such covered entity to violate the law of the foreign country in which such workplace is located.

(2) Control of corporation

(A) Presumption

If an employer controls a corporation whose place of incorporation is a foreign country, any practice that constitutes discrimination under this section and is engaged in by such corporation shall be presumed to be engaged in by such employer.

(B) Exception

This section shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(C) Determination

For purposes of this paragraph, the determination of whether an employer controls a corporation shall be based on—

(i) the interrelation of operations;

(ii) the common management;

(iii) the centralized control of labor relations; and

(iv) the common ownership or financial control,

of the employer and the corporation.

(d) Medical examinations and inquiries

(1) In general

The prohibition against discrimination as referred to in subsection (a) shall include medical examinations and inquiries.

(2) Preemployment

(A) Prohibited examination or inquiry

Except as provided in paragraph (3), a covered entity shall not conduct a medical examination or make inquiries of a job applicant as to whether such applicant is an individual with a disability or as to the nature or severity of such disability.

(B) Acceptable inquiry

A covered entity may make preemployment inquiries into the ability of an applicant to perform job-related functions.

(3) Employment entrance examination

A covered entity may require a medical examination after an offer of employment has been made to a job applicant and prior to the commencement of the employment duties of such applicant, and may condition an offer of employment on the results of such examination, if—

(A) all entering employees are subjected to such an examination regardless of disability;

(B) information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that—

(i) supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

(ii) first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and

(iii) government officials investigating compliance with this chapter shall be provided relevant information on request; and

(C) the results of such examination are used only in accordance with this subchapter.

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

(B) Acceptable examinations and inquiries

A covered entity may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health pro-

gram available to employees at that work site. A covered entity may make inquiries into the ability of an employee to perform job-related functions.

(C) Requirement

Information obtained under subparagraph (B) regarding the medical condition or history of any employee are subject to the requirements of subparagraphs (B) and (C) of paragraph (3).

5. 42 U.S.C. 12117 provides:

Enforcement

(a) Powers, remedies, and procedures

The powers, remedies, and procedures set forth in sections 2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 of this title shall be the powers, remedies, and procedures this subchapter provides to the Commission, to the Attorney General, or to any person alleging discrimination on the basis of disability in violation of any provision of this chapter, or regulations promulgated under section 12116 of this title, concerning employment.

(b) Coordination

The agencies with enforcement authority for actions which allege employment discrimination under this subchapter and under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.] shall develop procedures to ensure that administrative complaints filed under this subchapter and under the Rehabilitation Act of 1973 are dealt with in a manner that avoids duplication of effort and prevents imposition of inconsistent or conflicting standards for the same requirements under this subchapter

and the Rehabilitation Act of 1973. The Commission, the Attorney General, and the Office of Federal Contract Compliance Programs shall establish such coordinating mechanisms (similar to provisions contained in the joint regulations promulgated by the Commission and the Attorney General at part 42 of title 28 and part 1691 of title 29, Code of Federal Regulations, and the Memorandum of Understanding between the Commission and the Office of Federal Contract Compliance Programs dated January 16, 1981 (46 Fed. Reg. 7435, January 23, 1981)) in regulations implementing this subchapter and Rehabilitation Act of 1973 not later than 18 months after July 26, 1990.

6. 42 U.S.C. 2000e-5 provides:

Enforcement provisions

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for

disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d). If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such infor-

mal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection shall be fined not more than $1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d), from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a)[1] by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commence-

[1] So in original. Probably should be subsection "(b)".

ment of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge

(including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) 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.

(B) In addition to any relief authorized by section 1981a of this title, liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d), the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmen-

tal agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b), is dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d), whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the pay-

ment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employ-

ment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of title 28, the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2)(A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this title.

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title and a respondent demonstrates that the respondent would have taken

the same action in the absence of the impermissible motivating factor, the court—

(i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title; and

(ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders

In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) shall be subject to appeal as provided in sections 1291 and 1292, title 28.

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing

party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

7. 42 U.S.C. 12111(8) (2006) provides:

Definitions

As used in this subchapter:

* * * * *

(8) **Qualified individual with a disability**

The term "qualified individual with a disability" means an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. For the purposes of this subchapter, consideration shall be given to the employer's judgment as to what functions of a job are essential, and if an employer has prepared a written description before advertising or interviewing applicants for the job, this description shall be considered evidence of the essential functions of the job.

* * * * *

8. 42 U.S.C. 12112(a) and (b) (2006) provide:

Discrimination

(a) General rule

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

(b) Construction

As used in subsection (a) of this section, the term "discriminate" includes—

(1) limiting, segregating, or classifying a job applicant or employee in a way that adversely affects the opportunities or status of such applicant or employee because of the disability of such applicant or employee;

(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);

(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;

(4) excluding or otherwise denying equal jobs or benefits to a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a relationship or association;

(5)(A) 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, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or

(B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant;

(6) using qualification standards, employment tests or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities unless the standard, test or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and is consistent with business necessity; and

(7) failing to select and administer tests concerning employment in the most effective manner to ensure that, when such test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, such test results accurately reflect the skills, aptitude, or whatever other factor of such applicant or employee that such test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant (except where such skills are the factors that the test purports to measure).

* * * * *