

No. 23-997

IN THE
Supreme Court of the United States

KARYN D. STANLEY,

Petitioner,

v.

CITY OF SANFORD, FLORIDA,

Respondent.

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

**BRIEF FOR *AMICUS CURIAE* THE
INTERNATIONAL ASSOCIATION OF
FIRE FIGHTERS (“IAFF”) IN SUPPORT
OF PETITIONER**

JOHN R. MOONEY

Counsel of Record

ARTHUR R. TRAYNOR

MOONEY, GREEN, SAINDON, MURPHY
& WELCH, PC

1920 L Street, NW, Suite 400

Washington, DC 20036

(202) 783-0010

jmooney@mooneygreen.com

Counsel for Amicus Curiae

328760



COUNSEL PRESS

(800) 274-3321 • (800) 359-6859

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INTERESTS OF AMICUS CURIAE¹

The International Association of Fire Fighters (“IAFF”) is a 501(c)(5) labor organization headquartered in Washington, DC, representing more than 340,000 professional fire fighters, paramedics, and other emergency responders in the United States and Canada. IAFF members in more than 3,500 IAFF local affiliates protect citizens’ lives and property in nearly 6,000 communities in every state in the United States and province in Canada. This amicus brief is submitted in support of the Petition for Certiorari filed by Petitioner, Lt. Karyn D. Stanley (Ret.), who throughout her distinguished fire fighting career has been a member of one IAFF affiliate, the Sanford Professional Firefighters, IAFF Local 3996.

The IAFF’s local affiliates represent fire fighters throughout the country with respect to collective bargaining over the terms and conditions of employment, often including benefits for fire fighters forced into retirement by disabling occupational injury or illness. As an advocate for professional fire fighters, paramedics, and emergency responders in every one of the United States, the IAFF has an interest in ensuring all of its members, regardless of the federal appellate circuit in which they reside or are employed, have the same access to the nation’s federal courts to vindicate their federal statutory right to be free from disability discrimination. Because of its extensive experience and knowledge about the increasingly national character of emergency response

1. No counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae and its counsel, made any monetary contribution toward the preparation or submission of this brief. All parties were notified of amicus intent to file this brief at least ten days before its due date.

and the increased risk of disability shouldered by those who respond, the IAFF is uniquely situated to provide the Court with a perspective on the importance of a uniform interpretation of the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, to remedy serious harms caused by unlawful discrimination in the provision of disability benefits.

The IAFF is committed to supporting active and retired fire fighters who, like Petitioner Stanley, suffer injury or illness linked to the hazards of fire fighting that leaves them disabled. In pursuit of that commitment, the IAFF has pursued benefits and protections for fire fighters rendered disabled in the line of service at both the federal and state level.

For example, at the state level, the IAFF and its affiliates have been instrumental in securing enactment and appropriately remedial interpretation of presumptions in aid of fire fighters who are so frequently stricken and often disabled by job-related illness and disease.² Such presumptions alleviate the almost impossible burden of pinpointing the precise incident(s) or exposure(s) that caused a disease in order to prove a specific link between their illness and particular exposures. Instead, the

2. Recently, the Idaho Supreme Court in an opinion affirming application of a fire fighter cancer presumption cited the website of the IAFF's Presumptive Health Initiative, noting that as of April 2022, "49 states, including Idaho, have adopted statutory presumptions of occupational diseases for firefighters." *Nelson v. City of Pocatello*, 508 P.3d 1234, 1250, fn2 (Idaho 2022) (referencing a chart detailing state level fire fighter presumptive disability laws now current through December 2022 and available at <https://www.iaff.org/wp-content/uploads/Presumptive-Disability-Chart-12-16-2022.pdf>).

stricken fire fighter is afforded a rebuttable presumption of occupational causation upon a showing that they were engaged in hazardous duties for a specified period of time and that there is a general causal link between their illness and hazardous exposures common to fire fighting. IAFF affiliates have advocated in particular for legal presumptions in favor of benefit eligibility for the inordinate number of veteran fire fighters like Lt. Stanley who are stricken and disabled by Parkinson's disease. *See* Indiana Code, I.C. § 5-10-15-5.5; New York Consolidated Laws 2021, N.Y. Retirement and Social Security Law §§ 363-ff (2021).

As explained more fully below, the federal government's funding of scientific research into fire fighter occupational illness and injury has significantly increased in conjunction with the increased role the federal government in funding and coordinating emergency response activities since September 11, 2001. Federal funding has greatly expanded the scope of research and knowledge into the frequency and causes of injury and illness that disable fire fighters. The IAFF used this research in efforts to support and secure enactment of the *Federal Firefighters Fairness Act of 2022* (enacted as part of the National Defense Authorization Act of 2023, Pub. L. No. 117-263 (December 23, 2022)). The Act creates a rebuttable presumption that certain diseases contracted by federal fire fighters are job related for the purpose of compensation claims brought under the Federal Employees' Compensation Act (FECA), 5 U.S.C. § 8101 *et seq.*

In approximately the same twenty-year period, the federal circuit courts of appeal split on the question presented here: whether the ADA permits fire fighters to challenge disability discrimination under Title I once

their disability forces them from employment. In response to appellate court decisions reducing employee and former employee access to remedies under federal anti-discrimination statutes, the IAFF joined other worker representatives to urge Congress to expand disabled employees' access to benefits. Congress responded, taking action to expand access to remedies provided by the ADA in the *ADA Amendments Act of 2008*, Pub. L. 110-325, 122 Stat. 3553 (2008), and the *Lily Ledbetter Fair Pay Act of 2009*.

The IAFF and its members have a substantial interest in the Court resolving the circuit split in accord with Congress repeatedly expressed intent that the federally funded corps of fire fighters in agencies all over the country who increasingly fight the same fires and expose themselves to the same risks will have uniform access to their nation's courts to remedy unlawful discrimination only revealed after they are disabled by injury or illness.

SUMMARY OF ARGUMENT

Since September 11, 2001, fire and emergency management has evolved to become national in character, coordinated through increased involvement of the federal government in what was traditionally a state role. Simultaneously, increased funding and attention to the science of emergency response improved awareness that fire fighters labor under a heightened risk of disabling illness and injury. This in turn caused a wave of substantial changes to the legal landscape governing fire fighter disability benefits at both the state and federal level, some intended to rectify disparities in access to benefits by fire fighters from different jurisdictions injured or sickened working side by side at the same job.

Notwithstanding these developments, the federal courts continue to perpetuate unnecessary disparities in fire fighter access to benefits following disability by illness or injury. Too many federal courts – including the Eleventh Circuit in its decision below - have remained closed for decades to claims of unlawful disability discrimination that does not manifest until after disability forces a premature end to the employment relationship. Overly narrow applications of the ADA persist, despite Congress passing legislation amending the statute in response to judicial decisions it criticized for “unduly restricting the time period in which victims of discrimination can challenge and recover for discriminatory compensation decisions or other practices, contrary to the intent of Congress.” Pub. L. 111-2, 123 Stat. 5.

No disabled fire fighter, including Lt. Stanley, should be denied the opportunity to present a well pled complaint that the employer for whom she performed the essential work that likely contributed to her disability has unlawfully discriminated against her on account of that disability. Therefore, the IAFF has an interest in Title I of the ADA, as amended, being applied consistent with Congress direction to broaden the statute’s coverage. This direction is reflected in the *Fair Pay Act* and consistent with Congressional efforts to ensure uniform disability benefit coverage between federal and state fire fighters in the *Federal Firefighters Fairness Act*.

ARGUMENT

The Eleventh Circuit in the decision on review recognized that Title I of the ADA “protects against discrimination in fringe benefits, such as health insurance.” *Stanley v. City of Sanford*, 83 F.4th 1333, 1337 (11th Cir.

2023). But it considered itself bound by its earlier decision in *Gonzales v. Garner Food Servs., Inc.*, 89 F.3d 1523 (11th Cir. 1996), to hold that “a former employee who does not hold or desire to hold an employment position cannot sue over discriminatory post-employment benefits” because they are not ‘qualified individuals’ as that term is defined in the ADA. *Stanley*, 83 F.4th at 1337.

The Eleventh Circuit “acknowledge[d] that the circuits are split” and that its decision “align[ed] with the Sixth, Seventh, and Ninth Circuits.” *Id.* at 1341. On the other side of the split, the Second and Third Circuits have read Title I’s anti-discrimination provision “in favor of former employees,” explaining that “[a]n interpretation [of Title I] that would prevent former employees who are no longer ‘qualified individuals’ from bringing claims of discrimination in the provision of post-employment fringe benefits would [] undermine the plain purpose of sections 12112(a) and (b)(2): to provide comprehensive protection from discrimination in the provision of fringe benefits.” *Castellano v. City of New York*, 142 F.3d 58, 68 (2d Cir. 1998); accord *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 606 (3d Cir. 1998). The Second and Third Circuits applied the simple logic of this Court’s analogous interpretation of the statutory scheme for enforcement of Title VII of the Civil Rights Act in *Robinson v. Shell Oil Co.*, recognizing that because “sections of [Title VII] plainly contemplate that former employees will make use of the remedial mechanisms of Title VII,” the term “employees” “includes former employees.” 519 U.S. 337, 345 (1997).

In the decades since the cases cited in the previous paragraph were decided, a series of Congressional actions taken in response to September 11, 2001 have significantly changed fire fighting and emergency response in

this country. Since the creation of the Department of Homeland Security (DHS), fire and emergency response are increasingly funded and coordinated federally, which was a role traditionally reserved to the states. Congress has also dramatically increased funding for research into the causes and prevention of injury and illness to fire fighters, the published results of which led to an equally dramatic refashioning of state and federal legal frameworks designed to ensure benefits are available to veteran fire fighters disabled by injury or illness understood to be generally associated with fire fighting.

Two decades of Congressional action subsequent to rulings by the Sixth, Seventh, Ninth and Eleventh Circuits holding that disabled fire fighters do not have a right under Title I of the ADA to sue a former employer for discrimination in the provision of fringe benefits demonstrate that those decisions are contrary to Congress expectation that fire fighters who are increasingly part of the same federally funded and coordinated emergency response not have disparate access to lawfully designed and administered disability benefits.³ All fire fighters whose careers are ended by disability and then discover their employer provides fringe benefits that are discriminatorily inferior to benefits the employer provides non-disabled fire fighters are treated disparately. In the Eleventh Circuit, disabled fire fighters, like Petitioner, are twice treated disparately. First their employer treats

3. The Eleventh and other Circuits that adopted a narrow view of former employees' right to sue for fringe benefit discrimination were always wrong to do so. The more recent legal history of Congressional amendments to the ADA and other efforts to ensure fire fighters have access to disability benefits underscore that the ADA never was supposed to prevent people like Ms. Stanley from having access to the courts.

them disparately from fellow members of the fire service who are not disabled and therefore receive better fringe benefits. And second, courts in the Eleventh Circuit treat them differently from fellow members of the fire service who are also disabled, but able to bring Title I ADA claims to obtain relief from unlawful discrimination from federal courts in the Second and Third Circuits.

The distressing and economically devastating occasion of a premature retirement forced by disability is precisely the time all fire fighters in service to the United States – regardless of the arbitrary fact of which circuit court’s border encircles their employer - need a remedy to fringe benefit discrimination prohibited throughout the United States by the ADA and its recent amendments.⁴ The instant petition filed on behalf of Lt. Stanley, who was struck by an illness generally known to be causally linked to fire fighting that drove her out of the fire service and continues to subject her to unlawful discrimination, presents a compelling opportunity for the Court to resolve the circuit split.⁵

4. Before the Eleventh Circuit, the United States Government indicated its agreement with the view of the Second and Third Circuits, advocated by Petitioner and the IAFF in this matter, as reflected in an amicus brief the Department of Justice filed with the Eleventh Circuit prior to its decision on review.

5. Legal uniformity has long been recognized as paramount for the administration of justice, and the Court’s position at the top of the judicial hierarchy is meant to ensure nationwide uniformity in federal law. *See* Federalist 80 (“If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative, may be ranked among the number. The mere necessity of uniformity in the interpretation of the national laws, decides the question. Thirteen independent courts of final jurisdiction over the same

I. Emergency and Fire Response Are An Increasingly National Project Whose Disabled Workers Should Have A Uniformly Enforceable Right to Be Free From Disability Discrimination

In addition to Congressional amendments to the ADA enacted since the Eleventh Circuit's decision in *Gonzales v. Garner Food Servs., Inc.*, 89 F.3d 152, the federal government's efforts toward centralized coordination of fire and emergency response in the years following September 11, 2001 has been accompanied by efforts to expand access to disability benefits for fire fighters. In light of these developments, the circuit split over coverage of Title I's anti-discrimination protections should be resolved in favor of Lt. Stanley and other fire fighters whose careers are prematurely ended by disability.

The Congressional Research Service reported in 2004 that “[s]ince the September 11, 2001 terrorist attacks, the importance of first responders and their ability to prepare for and respond to such incidents has become evident. To assist first responders (who include fire fighters, emergency medical service personnel, emergency managers, and law enforcement personnel), the 108th Congress appropriated a combined total of \$7.8 billion in FY2003 and FY2004. More specifically, Congress appropriated \$3.8 billion for these programs in FY2003, and \$3.9 billion in FY2004.”⁶

causes, arising upon the same laws, is a hydra in government, from which nothing but contradiction and confusion can proceed.”)

6. Reese, Shawn, Congressional Research Service, *First Responder Grant Formulas: The 9/11 Commission Recommendation and Other Options for Congressional Action*, (Updated October 7, 2004) available at (<https://www.crs.org>).

With this massive and continued funding of first responder agencies throughout the country, the federal government commenced an active role in the management of large-scale emergency response. This was accomplished in part by funding and encouraging state and local fire and emergency response agencies to enter into mutual aid agreements for the coordination of responses to significant emergencies that are increasingly national in scale. “Mutual aid agreements establish the terms under which assistance is sent between two or more entities including different states, municipalities, Tribal Nations, jurisdictions within a state, and even with and between private sector entities, NGOs and other whole community partners. These agreements facilitate access to potentially needed resources, both prior to and following incidents or planned events.” *See* National Incident Management System, *Guideline for Mutual Aid* at 3-8 (March 2024).⁷ Pursuant to these agreements, fire

everycrsreport.com/files/20041007_RL32475_772803b8d63f3b3b06b6306fc3129380ed79495f.pdf) (last visited Apr. 4, 2024).

7. These guidelines (available at https://www.fema.gov/sites/default/files/documents/fema_nims-guideline-for-mutual-aid.pdf) (last visited April 4, 2024) describe several large mutual aid agreements, including, for example: the Emergency Management Assistance Compact is a congressionally ratified agreement that provides form and structure to interstate mutual aid during governor-declared states of emergency or disaster. The Mid-America Mutual Aid Consortium supports interstate mutual aid for emergency situations that do not result in a state or local declaration of emergency or disaster. State and Province Emergency Management Assistance Memorandum of Agreement is an agreement ratified by the United States and Canada that allows for participating jurisdictions from each country to enact or adopt it. This agreement is open to all 50 states and U.S.

fighters now regularly cross jurisdictional lines to respond to emergencies in localities and states sometimes far from home. Fire fighters are routinely dispatched to respond to such emergencies.

The primary sponsor of the *Federal Firefighters Fairness Act* in the House of Representatives, Rep. Salud Carbajal, described at a December 2, 2021 hearing on the proposed legislation his then recent experience with a nationally coordinated emergency fire response:

Last month, over a thousand firefighters put their lives on the line to battle the Alisal Fire in my district on the Central Coast of California. I am so thankful for the federal, state, and local firefighters who worked together to put out the blaze and keep our community safe. All of them performed the same job, but [federal firefighters] experience a disparity in health benefits. It is not fair that federal firefighters are being denied access to benefits that their local counterparts receive, *especially when they fight the same fires and expose themselves to the same risks.*

U.S. House, Education and Labor Cmte., Federal Firefighters Fairness Act of 2022. (H. Rpt. 117-306) (quoting from the statement of Rep. Salud Carbajal made at the *Strengthening the Safety Net for Injured Workers: Hearing Before the Subcomm. on Workforce Protections of the H. Comm. on Educ. & Lab., 117th Cong. (Dec. 2,*

territories, and to all 10 provinces and three territories in Canada. *Id.* at 3-8.

2021) (emphasis supplied). Notably, the Act was passed in part to address disparities in access to benefits between fire fighters stricken by illness or injury who are employed by the federal government and fire fighters dispatched to the same fire or emergency by state and local agencies. As Congress has expanded the federal role in fire response, it has demonstrated a consistent intent to protect fire fighters not only from injury and illness, but also from disparate access to disability benefits.

In addition to dramatically increased federal funding for fire and emergency preparedness and coordination, Congressional funding since 2001 has led to significant advances in the science of disabling illness and injury among fire fighters. The Department of Homeland Security (DHS), established in the aftermath of the September 11, 2001 terrorist attacks, coordinates with the Federal Emergency Management Agency (FEMA) to administer the Fire Protection & Safety (FP&S) Grant Program - one of three grant programs that “focus on enhancing the safety of the public and fire fighters with respect to fire and fire-related hazards.” *See* FEMA, *Fire Prevention and Safety Grant Program Fact Sheet* (February 2024) (stating that “[s]ince FY 2002, the FP&S Grant Program has awarded approximately \$852 million in grant funding to provide critically needed resources to strengthen community fire prevention programs and enable scientific research on innovations that improve fire fighter safety, health, and wellbeing.”)

This science, in turn, prompted a wave of legislative enactments at the state and federal level providing benefits and legal presumptions in favor of fire fighters stricken by one of many illnesses associated with their

dangerous occupation. In the last two decades, Congress has persistently demonstrated a commitment to ensuring laws governing benefits to disabled fire fighters are interpreted inclusively, in favor of coverage.

II. Increased Risk of Job-Related Disability Makes Fire Fighters Especially Reliant on Access to the Courts to Remedy Unlawful Disability Discrimination in Post-Employment Benefit Design and Administration

The substantial increase in federal funding for scientific research into fire fighter health and safety, including the frequency and causes of potentially disabling injuries and illness, created a body of research that motivated Congress to address disparities in disability benefits between federal and state fire fighters. Much of this research was cited by the House Committee Report accompanying the *Federal Firefighters Fairness Act* as support for the decision to provide a legal presumption that a number of illnesses and injuries common to fire fighters have an occupational origin and entitle claimants who meet federal years of service and other eligibility criteria to benefits. U.S. House, Education and Labor Cmte., *Federal Firefighters Fairness Act of 2022*. (H. Rpt. 117-306). This is further evidence of Congress persistent intention that any ambiguities in the constellation of federal laws now addressing fire fighter access to disability benefits should be resolved in favor of their inclusion and coverage.

Unsurprisingly, the substantial body of scientific research into fire fighter illness and injury published in the last twenty years demonstrates that fire fighting is strenuous and dangerous work. Research shows that fire

fighters are more likely than other workers to develop certain cancers and diseases and suffer physical injury and cardiac events because of their daily exposure to stress, smoke, heat, carbon monoxide, and toxic substances. Fire fighters are 3.5 times more likely to suffer a workplace injury and 3.8 times more likely to suffer a work-related musculoskeletal disorder such as sprain, strain, or muscle pains than private-sector workers.⁸

United States fire fighters experienced an average of 22,589 non-fatal injuries on the fireground each year from 2017 through 2021.⁹ Injuries involving exposure to a hazard (such as heat, smoke, or toxic agents) and overexertion or strain were the most common injuries experienced by fire fighters in the study.¹⁰ *Id.* One-quarter of such injuries (24 percent) resulted in lost work time, while another 16 percent of the injuries required treatment by a physician but resulted in no lost time.¹¹ *Id.*

In addition to the immediate physical risks of strain or burns, fire fighters also face the danger of suffering

8. Seth A. Seabury & Christopher F. McLaren, *The Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters in California*, NAT'L LIBR. MED. (Sept. 1, 2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4945236/> (last visited Apr. 5, 2024).

9. Richard Campbell, *Firefighter Injuries on the Fireground*, NAT'L FIRE PROT. ASS'N (December 2023), <https://www.nfpa.org/education-and-research/research/nfpa-research/fire-statistical-reports/patterns-of-firefighter-fireground-injuries>, (last accessed Apr. 4, 2024).

10. *Id.*

11. *Id.*

disabling illness associated with occupational exposure to toxins. Smoke at fire scenes now contains more complex combustion products due to the increased number of synthetics in U.S. homes and businesses. American homes, cars, and businesses are increasingly constructed and furnished with synthetic material.¹² In an early study that measured air contaminant levels at more than 200 structural fires, the carcinogen benzene was detected in 181 of 197 of samples taken at fire scenes.¹³ More recent studies have observed increased smoke density related to synthetics, such as styrene and vinyl-based materials.¹⁴ Because of the known increased toxicity of structural fires, as well as the uncertain risks of exposure to fires originating in new technologies and materials, fire fighters face increased risk of contracting disabling illness, often prematurely.

Cancer is a significant contributor to fire fighter disability.¹⁵ There are at least 11 chemicals frequently

12. Stephen Kerber, *Analysis of Changing Residential Fire Dynamics and Its Implications on Firefighter Operational Timeframes*, 48 *Fire Technol.* 865 (2011), available at <https://link.springer.com/content/pdf/10.1007/s10694-011-0249-2.pdf> (last accessed Apr. 4, 2024).

13. Robert D. Treitman et al., *Air Contaminants Encountered by Firefighters*, 41 *Am. Indus. Hygiene Ass'n J.* 796 (1980), available at <https://pubmed.ncbi.nlm.nih.gov/7457369/> (last accessed Apr. 4, 2024)

14. Thomas Fabian et al., *Firefighter Exposure to Smoke Particulates* (2010), <https://fsri.org/research/firefighter-exposure-smoke-particulates#tabs-findings>. (last accessed Apr. 4, 2024).

15. Alarmed by these findings and encouraged by the IAFF, Congress passed, and President Trump signed into law

present in the fire fighting environment that are classified by the International Agency for Research on Cancer (IARC) as carcinogenic to humans, such as arsenic, asbestos, benzene, and formaldehyde. In 2022, the IARC published a study that concluded the occupation of firefighting is itself carcinogenic.¹⁶ As a result of laboring for years in a carcinogenic occupation, fire fighters are more likely to develop cancer compared to the general population. A meta-analysis of 32 studies identified 10 cancers that fire fighters have a statistically significant increased risk of developing: testicular (102% greater risk), multiple myeloma (53%), non-Hodgkin lymphoma (51%), skin and malignant melanoma (39% and 32%, respectively), brain (32%), rectum (29%), prostate (28%), stomach (22%), and colon (21%).¹⁷

Fire fighters are at greater risk of sudden and disabling cardiac events due to smoke inhalation and strenuous activity. Sudden cardiac arrest is most likely to occur during or shortly after emergency duties.¹⁸ The

the *Firefighter Cancer Registry Act of 2018*, which requires the Centers for Disease Control and Prevention (CDC) to develop and maintain a National Firefighter Registry to collect data regarding the incidence of cancer in firefighters. Pub L. No. 115–19 (2018).

16. See Demers, Paul A., et al., *Carcinogenicity of occupational exposure as a Firefighter*, 23.8 *The Lancet Oncology*, 985-86 (2022), [https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045\(22\)00390-4/abstract](https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(22)00390-4/abstract) (last accessed Apr. 4, 2024).

17. Grace K. LeMasters et al., *Cancer Risk Among Firefighters: A Review and Meta-Analysis of 32 Studies*, 48 *J. Occup. & Env'tl. Med.* 1189 (2006), <https://pubmed.ncbi.nlm.nih.gov/17099456/> (last accessed Apr. 4, 2024)

18. Stefanos N. Kales et al., *Firefighters and On-Duty Deaths from Coronary Heart Disease: A Case Control Study*, 2

risk of sudden cardiac events is increased by four elements common to emergency and fire response: chemical exposures, physical exertion, heat exertion, and shift work.¹⁹

Finally, researchers have identified a general causal link between hazardous exposures common to fire fighting and Parkinson's disease, which is the illness that disabled and ended the fire fighting career of Lt. Stanley.²⁰ One such study concluded, "Firefighters have an increased risk for [Parkinson's disease] symptoms as a result of the toxin exposures that are frequently present in fires. Our study showed that the number of years working as a firefighter, the number of days per week working, and the number of fires worked correlated with higher reports of Parkinson symptoms such as hyposmia, micrographia, and decreased walking pace." *Id.*

In summary, a developing body of federally funded research on the occupational hazards of fire fighting demonstrates that the physical and chemical dangers of fire scenes and fire stations result in excess disabling illness and injury for fire fighters compared to the general

Envtl. Health 14 (2003), available at <https://pubmed.ncbi.nlm.nih.gov/14613487/>, (last accessed Apr. 4, 2024).

19. See e.g., Elpidoforos S. Soteriades et al., *Cardiovascular Disease in US Firefighters A Systematic Review*, 19 *Cardiol. in Rev.* 202 (2011), available at <https://pubmed.ncbi.nlm.nih.gov/21646874/> (last accessed Apr 4, 2024).

20. See Roshni Kotwani, Andrea N. Clapp, Haley E. Huggins et al., *Assessment of Parkinson's Disease symptoms and toxin exposures in firefighters: a cross-sectional survey*, (Feb. 2021), available at <https://doi.org/10.21203/rs.3.rs-223780/v1> (last accessed Apr. 4, 2024).

population. That is why in recent decades the IAFF and its affiliates have spearheaded efforts that have resulted in nearly every state and the federal government legislating presumptions and other legal frameworks to expand benefit eligibility that recognize the link between firefighting and disabling injury and illness. It is also why the Court should ensure fire fighters, demonstrably more likely than the general population to become disabled, have access to court for enforcement of their right to be free from disability discrimination, even after (and especially) when disability ends their employment.

III. Lt. Stanley Was a Qualified Individual at the Time the Discriminatory Benefit Modification was Adopted and Remains Affected By It, Entitling Her to Bring Suit Under Title I of the ADA as Modified by the Fair Pay Act

This case presents an opportunity for the Court to ensure that federal courts uniformly provide a remedy to fire fighters disabled by illness or injury and then discriminated against by unlawful design or administration of fringe benefit plans. The Eleventh Circuit failed to properly apply amendments to the ADA accomplished by the *Fair Pay Act*, resorting to the stale logic of its prior decision in *Gonzalez* that employees forced into disability retirement are not for the purposes of the prohibition on discrimination at 42 U.S.C. § 12112(a) a “qualified individual” as that term is defined in 42 U.S.C. §§ 12111(8), because a disabled retiree is a person who no longer “can perform the essential functions of the employment position that such individual holds or desires...”.

After nearly two decades of fire fighting, Parkinsons disease robbed Lt. Stanley of her ability to perform the essential duties of her demanding position at age 47. Pet. App. 2a. But she first suffered discrimination within the purview of the ADA as modified by the *Fair Pay Act*, when a benefit plan that initially paid a monthly stipend to all service eligible retired employees until age 65 was modified so that employees who retired as a result of disability were only provided the monthly stipend for 24 months after retirement. Pet. App 3a. This benefit plan was unlawfully modified in or around 2003, while Lt. Stanley worked for the City. *Id.* Thus, she was a ‘qualified individual’ at the time a “discriminatory compensation decision or other practice is adopted,” 42 U.S.C. § 2000e-5(e)(3)(A).

In the more than twenty years since the Eleventh Circuit decided *Gonzalez*, Congress and many state legislatures have recognized the disabling hazards of fire fighting and taken affirmative legislative action to expand access to disability benefits. Congress, in particular, has evidenced in that time a persistent intent that there be no disparity in access to disability benefits among an increasingly federally funded fire service, comprised of fire fighters employed by federal and state fire agencies frequently dispatched for coordinated response to the same fires and emergencies. Thus, the ADA as modified by the *Fair Pay Act* should be applied in this and every case in a uniform manner consistent with Congressional direction that laws governing benefits to disabled fire fighters must be interpreted inclusively, in favor of coverage and to avoid discrepancy in access to disability benefits between fire fighters working side by side.²¹

21. The *Fair Pay Act* provides in pertinent part that that ADA Title I claims accrue (or re-accrue) “when a discriminatory

Lt. Stanley's entitlement to maintain a claim under ADA Title I should be recognized as having vested when she was a 'qualified individual' and the City implemented its unlawful benefits change, rather than being invalidated when disability compelled her into retirement. The Eleventh Circuit's contrary interpretation, which asserts that Lt. Stanley cannot sue as a "qualified individual" because she was disabled and no longer employed by Respondent from the time she began receiving the monthly benefit, leads to illogical conclusions. According to this interpretation, Lt. Stanley would lack standing to sue under Title I until the discriminatory modification impacted her, which occurred twenty-four months after her employment ended and her monthly benefits ceased prematurely due to disability retirement. Standing requires actual injury. However, to qualify for these disability benefits initially, Lt. Stanley would have had to demonstrate disability and a corresponding inability to perform job functions. Paradoxically, by proving herself disabled, Lt. Stanley would render herself perpetually unable to sue as a "qualified individual" under Title I.

Allowing the circuit split and the Eleventh Circuit's outdated application to persist would effectively bar Lt. Stanley and any other plaintiff from challenging an employer's discriminatory provision of fringe benefits

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." Pub. L. 111-2, 123 Stat. 5, § 4 (2009) (amending 42 U.S.C. § 2000e-5(e)(3)(A)).

under Title I of the ADA, even as they remain affected in retirement by of an unlawful act that occurred during their employment. Such a result contradicts the statute designed to prohibit such discrimination.

CONCLUSION

The IAFF respectfully requests that Petitioner's Writ of Certiorari be granted.

Respectfully submitted,

JOHN R. MOONEY

Counsel of Record

ARTHUR R. TRAYNOR

MOONEY, GREEN, SAINDON, MURPHY
& WELCH, PC

1920 L Street, NW, Suite 400

Washington, DC 20036

(202) 783-0010

jmooney@mooneygreen.com

Counsel for Amicus Curiae