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

REPLY BRIEF IN SUPPORT OF CERTIORARI

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

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

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

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

May 28, 2024

Counsel for Petitioner

TABLE OF CONTENTS

Table of authorities ii

Reply brief in support of certiorari 1

I. The City concedes that there is a deep circuit split. 2

II. The City's arguments about Ms. Stanley's underlying discrimination case are not relevant to the threshold legal question presented by the split. 3

III. The split is ripe for resolution. 6

IV. The decision below is wrong. 8

Conclusion 11

TABLE OF AUTHORITIES

Cases

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

Citizens United v. Federal Election Commission,
558 U.S. 310 (2010) 10

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

Heller v. Doe,
509 U.S. 312 (1993) 5

McKnight v. General Motors Corp.,
550 F.3d 519 (6th Cir. 2008) 2

Morgan v. Joint Administration Board, Retirement Plan,
268 F.3d 456 (7th Cir. 2001) 2

Morrison v. Circuit City Stores, Inc.,
317 F.3d 646 (6th Cir. 2003) 8

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

Smith v. Town of Ramapo,
745 F. App'x 424 (2d Cir. 2018) 2, 7

Tennessee v. Lane,
541 U.S. 509 (2004) 4

Weyer v. Twentieth Century Fox Film Corp.,
198 F.3d 1104 (9th Cir. 2000) 2

Statutes

42 U.S.C. § 200e-5..10

42 U.S.C. § 12111 ....4, 10

42 U.S.C. § 12112 ....4, 5, 10

42 U.S.C. § 12117 10

Other Authorities

Kevin M. Clermont & Stewart J. Schwab,
How Employment Discrimination Plaintiffs Fare in Federal Court, 1 J. Empirical Legal Stud. 429 (2004)..8

S. Rep. No. 101-116 (1989)...8

REPLY BRIEF IN SUPPORT OF CERTIORARI

The City's brief in opposition only confirms that certiorari is warranted here. It concedes that there is a deep and entrenched circuit split over whether the Americans with Disabilities Act gives former employees the right to sue with respect to their post-employment benefits. Two circuits answer yes. Four circuits answer no. The City identifies no obstacle that would prevent this Court from resolving that legal disagreement in this case.

Unable to contest the split or identify any impediment to review, the City tries to shift the focus to the merits of the underlying discrimination case that would go forward if Ms. Stanley were to prevail on the question presented and the case were then remanded to the district court. But the factual and legal merits of Ms. Stanley's individual ADA discrimination claim are distinct from the question on which the circuits are split—namely, whether former employees have the right to sue under the ADA.

The City also tries to downplay the question's importance by pointing out that, in the past three decades, this Court has denied three prior petitions. But this is the first petition on the issue in fifteen years, and the first since the circuits entrenched their positions despite statutory amendments clarifying that the decision below is wrong. The issue is therefore ripe for resolution now.

Nor can the City show that the ADA's current text supports the decision below. Instead, it invents strawmen arguments and contends that the arguments Ms. Stanley actually made—and that were actually passed upon by the Eleventh Circuit—are waived. Even assuming that the decision below was correct, the entrenched split will not be resolved without an answer from this Court. This case offers the perfect vehicle to provide that answer.

I. The City concedes that there is a deep circuit split.

The City concedes that there is a longstanding "circuit split" over whether former employees can sue for discrimination with respect to their post-employment benefits under the ADA. BIO 9, 17–18. It recognizes the same two-to-four split outlined in the petition: Although the Second and Third Circuits permit former employees to sue with respect to post-employment benefits, the Sixth, Seventh, Ninth, and Eleventh Circuits do not. *Id.*

The City doesn't deny the split for good reason: Every circuit in the split has acknowledged that this question has "divided the circuits." *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 615 (3d Cir. 1998) (Alito, J., concurring); *see Castellano v. City of New York*, 142 F.3d 58, 66 (2d Cir. 1998); *McKnight v. Gen. Motors Corp.*, 550 F.3d 519, 522 (6th Cir. 2008); *Morgan v. Joint Admin. Bd., Ret. Plan*, 268 F.3d 456, 458 (7th Cir. 2001); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1112 (9th Cir. 2000); Pet. App. 12a. And courts in other circuits have likewise taken note of this "intractable" "affirmative inter-circuit split." *Hatch v. Pitney Bowes, Inc.*, 485 F. Supp. 2d 22, 33 (D.R.I. 2007); *see EEOC v. Aramark Corp.*, 208 F.3d 266, 268 (D.C. Cir. 2000) (recognizing that its "sister circuits are divided"); Pet. 21–22.

Nor, despite the City's assertion to the contrary (at 27), did a 2018 Second Circuit case narrow the key issue in this split. Rather, the Second Circuit reaffirmed its longstanding precedent holding that "retired employees who were qualified to perform the essential functions of their jobs while employed remain entitled to receive post-employment benefits." *Smith v. Town of Ramapo*, 745 F. App'x 424, 426 (2d Cir. 2018). Whether the ADA protects

retired employees' right to sue over post-employment benefits is the heartland of the split and the question presented here.

II. The City's arguments about Ms. Stanley's underlying discrimination case are not relevant to the threshold legal question presented by the split.

Because the City is unable to contest the split, it tries to sidestep it by shifting the focus to the merits of the individual discrimination case that would be litigated on remand if this Court were to grant certiorari and Ms. Stanley were to prevail here. *See* BIO 9–21. But, contrary to the City's suggestion, neither court below ever reached the merits of Ms. Stanley's underlying ADA claim. The Eleventh Circuit therefore did not affirm the district court on that basis, even in the alternative. And the City points to nothing about the factual or legal merits of Ms. Stanley's underlying discrimination case that could somehow impede this Court's review of the clean legal question presented. The City puts the cart before the horse by focusing its opposition on its anticipated defenses to Ms. Stanley's discrimination claim. This petition presents the question whether former employees in Ms. Stanley's shoes may sue under the ADA at all—not whether they win or lose on the merits once they do.

For example, although the City disputes (at 9) whether Ms. Stanley can be properly said to have "earned" retirement benefits during her employment, it doesn't explain how or why that bears on the question presented. The City doesn't contest that, when the City offered her the firefighter job, her employment package included a retirement "health insurance subsidy." Pet. App. 3a. Nor does it dispute, as the courts below recognized, that this subsidy was "a stand-alone fringe benefit of employment

with [the] Defendant." Pet. App. 21a. The fringe benefit was thus covered by the ADA as part of the "terms, conditions, and privileges of [her] employment." 42 U.S.C. §§ 12111(8), 12112(a). That doesn't mean that on remand the City won't be able to argue that Ms. Stanley's twenty years of service didn't sufficiently "earn" her the subsidy she was promised. The City can make whatever arguments it wants on remand. But none of that bears on whether litigants in Ms. Stanley's shoes can bring suit under the ADA in the first place.

The City's other arguments on the merits of the underlying discrimination case are no more relevant to the question presented. The City argues (at 16) that Equal Protection Clause analysis governs ADA claims like Ms. Stanley's. It asserts that the merits of her ADA claim have therefore already been determined by the district court's summary-judgment ruling on her equal-protection claim. And, it argues, there is no "practical consequence" of resolving the question presented for other cases because employees can always bring similar claims under the Equal Protection Clause instead of the ADA. BIO 16–17.

But that's not true. Only public employees can invoke the Equal Protection Clause against their employers. And Congress enacted the ADA precisely because it found, "after decades of deliberation and investigation," that the Equal Protection Clause did not adequately protect the rights of disabled Americans. *Tennessee v. Lane*, 541 U.S. 509, 516 (2004). The ADA therefore prohibits a "broader swath of conduct" than that "forbidden by the [Fourteenth] Amendment's text." *Id.* at 518. And that's not just because the ADA (unlike the Equal Protection Clause) covers private employers. The ADA expressly forbids employers from discriminating on the basis of

disability. *See* 42 U.S.C. § 12112(a). The Equal Protection Clause, by contrast, does not prohibit such discrimination by governments "if there is a rational relationship between the disparity of treatment and some legitimate governmental purpose." *Heller v. Doe*, 509 U.S. 312, 320 (1993).

Congress therefore did not incorporate a requirement that ADA claims must also survive equal-protection analysis. If the courthouse door remains closed to former employees bringing suit under the ADA, employers could adopt policies that, while permissible under the Equal Protection Clause, are exactly what the ADA was enacted to prevent. Private employers, for instance, could deny post-employment benefits to disabled retirees even for reasons of pure animus, and the retirees would have no way to vindicate the rights Congress gave them.

Finally, the City argues that, because the government's amicus brief below focused on the question presented by the circuit split rather than the merits of Ms. Stanley's underlying discrimination claim, this case is somehow unworthy of review. *See* BIO 8, 18. But that gets the import of the government's brief backwards. The government filed its brief precisely because there is "an important question regarding whether [the ADA] prohibits discrimination on the basis of disability in the provision of post-employment fringe benefits." Amicus Br. of the United States 1, *Stanley v. City of Sanford*, No. 22-10002 (11th Cir. Apr. 13, 2022). The government emphasized that it "has a substantial interest in the proper resolution" of this specific question because the Circuit's rule conflicts with the position the "EEOC has long taken." *Id.* at 2. And, the Government explained, the ADA amendments have only further clarified the

magnitude of the error on the Eleventh Circuit's side of the split. *Id.* at 18–19. That the government did not address the merits of Ms. Stanley's underlying discrimination claim only means they are not relevant to its interests in this case and the important legal question presented here.

III. The split is ripe for resolution.

The City asks this Court to let the conflict fester. It argues that, because the Court has declined to grant three related petitions in the past twenty-seven years, there is no reason to grant this one. BIO 21–23. But the prior attempts only demonstrate the persistence of this question about who can sue under a major civil rights law.

The Court should grant this petition because it is ripe for resolution: This is the first time that the question has been teed up in fifteen years and the first time that it has been presented with the benefit of the clarification in the ADA amendments. This case is a clean vehicle with no impediments. And despite the City's unfounded assertions to the contrary, the question presented is an important issue with repercussions for millions of Americans.

Despite all this, the City seizes on a twenty-seven-year-old denial of certiorari, in 1997, even before the Second and Third Circuits had issued the decisions that created the split. *See* BIO 22–23. The 1997 petition argued that the Eleventh Circuit's decision in *Gonzales*, which similarly held that former employees could not bring suit, must be overturned because it conflicted with this Court's decision in *Robinson*. *See* Pet. for Writ of Cert. at 6, *Wood v. Garner Food Servs., Inc.*, No. 96-1478, 1997 WL 33557145 (Mar. 12, 1997). Because that petition was denied, the City argues that Ms. Stanley's should also be denied. But Ms. Stanley doesn't make the same argument

as the 1997 petition—instead she argues that the text of the statute, as clarified by the amendments, resolves the question. *Robinson* reached a similar conclusion under a slightly different statute, a holding which does not control the outcome here. *Robinson* does, however, "demonstrate the obvious importance of the question presented" because Ms. Stanley's case similarly asks whether former employees' rights are protected under a "key civil rights statute." Pet. 33.

And in the fifteen years since the other two petitions were filed (in 1998 and 2009), the split has only become more entrenched. It even appears impervious to Congress's clarification in the ADA amendments—as the decision below confirms. *See* Pet. App. 13a ("We are also confident that *Gonzales* survived Congress's amendments to the ADA."); *Ostrowski v. Lake Cnty.*, 33 F.4th 960, 966 (7th Cir. 2022) (declining to "reconsider" prior decisions that "former workers are not protected"); *Smith*, 745 F. App'x at 426 (reaffirming 1998 holding permitting former employees to bring post-employment benefit discrimination claims). Only this Court can resolve the split and clarify whether millions of Americans can bring a claim under the ADA.

Still, the City tries to downplay the continuing importance of the split. But, in just the past six years, the question presented has been addressed, in conflicting ways, in three different circuits. *See* Pet. App. 2a; *Ostrowski*, 33 F.4th at 966; *Smith,* 745 F. App'x at 426. And appellate cases are just the tip of the iceberg. In the two circuits where former employees *can* clearly sue, employers are very likely to settle out of court. *See* Kevin M. Clermont & Stewart J. Schwab, *How Employment Discrimination Plaintiffs Fare in Federal Court*, 1 J.

Empirical Legal Stud. 429, 440 (2004) (roughly 70% of employment discrimination cases settle out of court). In the circuits that have already precluded those claims, because employment discrimination cases are mostly brought on a contingency-fee basis, lawyers are unlikely to even *file* post-employment benefit cases, let alone appeal. *See Morrison v. Circuit City Stores, Inc.*, 317 F.3d 646, 664 (6th Cir. 2003). And in the circuits where the issue is unresolved, contingency-fee lawyers may be unwilling to challenge the majority rule given the lopsided split.

Furthermore, letting the split fester doesn't resolve the forum-shopping problem. *See* Pet. 32. National employers incorporated in Delaware, where employees can sue, with offices in circuits where employees do not have the right to sue, will have every incentive to use forum-selection clauses to keep ADA suits in employer-friendly circuits. The City argues (at 24) that "the alleged threat of forum shopping is meritless" because a disabled retiree could bring, for example, a "contract" claim rather than an ADA claim. But the potential availability of other legal theories doesn't prevent employers from using forum-selection clauses to restrict ADA claims. Nor does the fact that a retired employee might also bring a contract claim prevent him from forum shopping for an ADA claim. Congress enacted the ADA to remedy the very type of "patchwork quilt" of disability rights that this split has entrenched. S. Rep. No. 101-116, at 19 (1989). In any event, other legal theories can't vindicate all of the rights that the ADA guarantees—that's why Congress enacted the statute in the first place.

IV. The decision below is wrong.

Finally, the City attempts to avoid review by defending the decision below on the merits. If this Court

grants certiorari, there will be time enough for the parties to present their competing accounts of how the ADA should be interpreted. That there is a vigorous disagreement on this important question of statutory interpretation—about who may sue under a major civil rights statute—is a reason to grant certiorari, not deny it.

In any event, the City focuses largely on arguments that Ms. Stanley has never made—for example, that "the amendments to the ADA redefined a 'qualified individual.'" BIO 30. Ms. Stanley never argued—either here or below—that the ADA amendments "redefined" part of the statute or changed whether the statute applies to post-employment benefits. Rather, she explained that the amendments "clarifie[d]" that the Second and Third Circuits' interpretation was correct. Pet. 24–25.

The City similarly confuses what the United States said in its amicus brief below. The City says (at 30) that the government made an unpreserved argument that "the Ledbetter Act allowed Petitioner to sue during her employment." That's not what the amicus brief said. The government explained how the Lilly Ledbetter Act "clarified that such benefits can be challenged during the post-employment period"—and thus that Ms. Stanley should have been able to sue *after* her employment. Amicus Br. of United States at 5–6, 17–18 *Stanley v. City of Sanford*, No. 22-10002 (11th Cir. Apr. 13, 2022).

Falling back, the City claims (at 30) that Ms. Stanley's textual arguments regarding the ADA Amendments are waived. But her argument that the Amendments clarified the error in circuit precedent was passed upon—and expressly rejected—by the Eleventh Circuit. *See* Pet. App. 13a (holding that neither "the ADA Amendments Act of 2008" nor "the Lily Ledbetter Fair Pay Act" requires

"depart[ing] from *Gonzales*'s interpretation of the original text of the ADA"). That is all that is necessary for an argument to be properly preserved. *See Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 330 (2010) ("Our practice permits review of an issue not pressed below so long as it has been passed upon.").

Nor is the City's defense of the Eleventh Circuit's reasoning any more persuasive. The City (at 26) follows the decision below in focusing on the ADA's provisions that refer to "qualified individual[s]." *See* 42 U.S.C. §§ 12111(8), 12112. But those provisions only govern what types of conduct is prohibited; they don't tell us *who* can sue, *when* they can sue, or *when* an injury gives rise to suit.

By contrast, the ADA's "[e]nforcement" provision in section 12117 *does* give us that information. 42 U.S.C. § 12117. As the ADA amendments have since clarified, it permits plaintiffs to sue whenever they are "affected by" or "subject to" a discriminatory compensation policy "after the alleged unlawful employment practice occurred." 42 U.S.C. § 200e-5(e); *see id* § 12117(a). Ms. Stanley therefore had the right to sue once she became "affected by" the City's discriminatory policy not to provide her with a "privilege[] of employment" after she retired. 42 U.S.C. § 200e-5(e); *id.* § 12112(a).

That reading vindicates Congress's deliberate prohibition of discrimination in the provision of post-employment benefits. *See id.* § 12112(b) (prohibiting "discriminat[ion]" in "fringe benefits"). The City's interpretation would, to the contrary, nullify this statutory protection.

That's not merely an academic difference. It has widespread consequences for millions of Americans, especially for first responders like Ms. Stanley who are at

a higher risk of becoming disabled in the line of duty. Under the decision below, they will lose the right to sue over discriminatory benefits the moment they need those benefits the most.

CONCLUSION

This Court should grant the petition for certiorari.

Respectfully submitted,

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

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

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

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

May 28, 2024

Counsel for Petitioner