No. 23-997

In the Supreme Court of the United States

KARYN D. STANLEY,

Petitioner,

v.

CITY OF SANFORD, FLORIDA,

Respondent.

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

JOINT APPENDIX

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APPENDIX A

United States Court of Appeals
for the Eleventh Circuit

No. 22-10002

KARYN D. STANLEY,
Plaintiff-Appellant,

v.

CITY OF SANFORD, FLORIDA,
Defendant-Appellee.

On Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:20-cv-00629-WWB-GJK

Before: WILSON, GRANT, and BRASHER, Circuit Judges.

BRASHER, Circuit Judge:

Can a former employee sue under Title I of the Americans with Disabilities Act for discrimination in post-employment distribution of fringe benefits? We answered "no" in *Gonzales v. Garner Food Services, Inc.*, 89 F.3d 1523 (11th Cir. 1996). *Gonzales* put us at odds with the Second and Third Circuits but in league with the Sixth, Seventh, and Ninth Circuits. In this appeal, we must decide whether *Gonzales* is still good law after (1) the Supreme Court's decision about Title VII retaliation in *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997), and (2) Congress's changes to the text of the ADA.

We believe *Gonzales* is still good law. We thus reaffirm 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. 42 U.S.C. § 12111(8). Because plaintiff Karyn Stanley is suing over the termination of retirement benefits when she neither held nor desired to hold an employment position with her former employer, the City of Sanford, *Gonzales* bars her claim. We therefore affirm the district court.

I.

Karyn Stanley became a firefighter for the City of Sanford, Florida, in 1999. She served the City in that capacity for about fifteen years until she was diagnosed with Parkinson's disease in 2016. Although she managed to continue working as a firefighter for about two more years, her disease and accompanying physical disabilities eventually left her incapable of performing her job. So, at the age of 47, Stanley took disability retirement on November 1, 2018.

When Stanley retired, she continued to receive free health insurance through the City. Under a policy in effect

when Stanley first joined the fire department, employees retiring for qualifying disability reasons, such as Stanley's Parkinson's disease, received free health insurance until the age of 65. But, unbeknownst to Stanley, the City changed its benefits plan in 2003. Under the new plan, disability retirees such as Stanley are entitled to the health insurance subsidy for only twenty-four months after retiring. Stanley was thus set to become responsible for her own health insurance premiums beginning on December 1, 2020. She filed this suit in April 2020, seeking to establish her entitlement to the long-term healthcare subsidy.

Stanley believes the City's decision to trim the health insurance subsidy was discriminatory against her as a disabled retiree. Her complaint alleged violations of Title I of the Americans with Disabilities Act, the Rehabilitation Act, and the Florida Civil Rights Act. She also asserted that, by changing the benefits plan, the City unconstitutionally discriminated against her in violation of the Equal Protection Clause of the Fourteenth Amendment. Finally, she brought a claim under Florida Statutes section 112.0801, which authorizes municipalities to offer employees health insurance.

The district court entered judgment for the City. On a motion to dismiss, the district court concluded that Stanley's claims under the ADA, the Rehab Act, and the Florida Civil Rights Act were insufficiently pleaded. Relying on our decision in *Gonzales*, the district court reasoned that Stanley could not state a plausible disability discrimination claim because the discriminatory act alleged—the cessation of the health insurance premium payments—would occur while Stanley was no longer employed by the City. The district court later granted

summary judgment to the City on Stanley's claims under the Equal Protection Clause and Florida Statutes section 112.0801(1). It reasoned that the City's decision satisfied rational basis review under the Equal Protection Clause and that nothing in the Florida statute prevented the amendment to the benefits plan.

Stanley timely appealed.

II.

We review a dismissal for failure to state a claim for which relief may be granted *de novo*. United States *ex rel. Osheroff v. Humana, Inc.*, 776 F.3d 805, 809 (11th Cir. 2015). We ask whether the complaint alleges "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Likewise, we review a grant of summary judgment *de novo*. *Sunbeam Television Corp. v. Nielsen Media Rsch., Inc.*, 711 F.3d 1264, 1270 (11th Cir. 2013). Summary judgment is proper if the movant shows that there is no genuine dispute about any material fact and the movant is entitled to judgment as a matter of law. *Id.* We view the summary judgment record in the light most favorable to the non-moving party, and we draw all reasonable inferences in favor of the non-moving party. *Id.*

III.

A.

We begin with Stanley's claims under Title I of the ADA, the Rehab Act, and the Florida Civil Rights Act. The parties agree that our disposition of Stanley's Title I claim will control all three statutory disability discrimination claims. *See Boyle v. City of Pell City*, 866

F.3d 1280, 1288 (11th Cir. 2017); *D'Angelo v. ConAgra Foods, Inc.*, 422 F.3d 1220, 1224 n.2 (11th Cir. 2005). Accordingly, our analysis of Title I and the viability of Stanley's claim under it applies with equal force to her claims under the Rehab Act and the Florida Civil Rights Act.

The dispute between the parties turns on the definition section of the ADA. Title I of the ADA, as originally enacted, made it unlawful to "discriminate against a qualified individual with a disability because of the disability of such individual in regard to . . . employee compensation, . . . and other terms, conditions, and privileges of employment." Americans with Disabilities Act of 1990, Pub. L. 101-336, § 102(a), 104 Stat. 331–32 (1990). The statute defined a "qualified individual with a disability" as someone "who, with or without reasonable accommodation, can perform the essential functions of the employment position *that such individual holds or desires*." *Id.* § 101(8), 104 Stat. 331 (emphasis added).

We held in *Gonzales* that a former employee who does not hold or desire to hold an employment position cannot sue over discriminatory post-employment benefits. 89 F.3d 1523, 1531. We recognized that the ADA protects against discrimination in fringe benefits, such as health insurance, because these benefits have always been recognized as one example of a term, condition, or privilege of employment. *See* Pub. L. 101-336, § 102(b)(2), 104 Stat. 331; *Gonzales*, 89 F.3d at 1526 & n.9. But because the ADA prohibits discrimination only as to those individuals who hold or desire to hold a job, we reasoned that a former employee cannot bring suit under Title I to remedy discrimination in the provision of post-employment fringe benefits. Under the "prior-panel-

precedent rule," we are required "to follow the precedent of the first panel to address the relevant issue, unless and until the first panel's holding is overruled by the Court sitting en banc or by the Supreme Court." *Scott v. United States*, 890 F.3d 1239, 1257 (11th Cir. 2018) (quotation marks and citation omitted). And any later en banc or Supreme Court decisions must "actually abrogate or directly conflict with, as opposed to merely weaken, the holding of the prior panel." *United States v. Kaley*, 579 F.3d 1246, 1255 (11th Cir. 2005).

Stanley argues that her claim is not barred by *Gonzales* for three reasons. First, she points to a Supreme Court case handed down shortly after *Gonzales*, which she says calls into question our reasoning in *Gonzales*. Second, she points to statutory changes in the text of the ADA, which she says undermine the result in *Gonzales*. Third, she argues that *Gonzales* is distinguishable. We will start by unpacking our reasoning in *Gonzales*, and then address each argument in turn.

1.

Gonzales was the first time we considered a former employee's ability to sue under Title I. Timothy Bourgeois, who suffered from AIDS, was fired from his job but kept receiving health insurance through his former employer. *Gonzales*, 89 F.3d at 1524. About six months after the termination, Bourgeois's former employer amended its health insurance plan by capping AIDS-related coverage. *Id.* In the time between that amendment and Bourgeois's death, he incurred significant treatment costs for which he was denied coverage. *Id.* at 1525. August Gonzales, the administrator of Bourgeois's estate, sued under Title I, alleging that the insurance plan amendment was unlawful disability

discrimination. *Id.* at 1524.

Relying on "the plain language of the ADA," we held that Bourgeois (and thus his estate) had no viable Title I claim "because he neither held nor desired to hold a position with [his former employer] at or subsequent to the time the alleged discriminatory conduct was committed." *Id.* at 1526. That conclusion followed from the text of Title I's anti-discrimination provision. It expressly applied only to "qualified individual[s] with a disability" who "hold[]" or "desire[]" an "employment position." Pub. L. 101-336, § 101(8), 104 Stat. 331. We also relied on Title I's listed examples of discrimination, which mentioned only "qualified individual[s] with a disability," "applicant[s]," and "employee[s]" as possible victims of disability discrimination. *Id.* § 102(b)(1), 104 Stat. 332; *see Gonzales*, 89 F.3d at 1526–27 & nn. 10–11. We explained that each of these terms had an inherent temporal qualification: a qualified individual with a disability held or desired to hold a job when the discrimination occurred; an employee was "an individual employed by an employer" when the discrimination occurred; and an applicant, although not defined by Title I, was necessarily someone who had applied for a job when the discrimination occurred. *Gonzales*, 89 F.3d at 1526–27 (citation omitted).

In interpreting the ADA in *Gonzales*, we recognized that other employment discrimination statutes, such as Title VII of the Civil Rights Act of 1964, have been construed to protect former employees. *See id.* at 1527–29. We noted, however, that the precedents adopting that interpretation arose in the context of retaliation, not discrimination. *See id.* We found that distinction important. As we had previously held, such a construction

was "necessary to provide meaning to anti-retaliation statutory provisions and effectuate congressional intent." *Id.* at 1529 (citing *Bailey v. USX Corp.*, 850 F.2d 1506, 1509 (11th Cir. 1998)). That is, by prohibiting retaliation, a statute necessarily contemplated that it would apply to individuals who accused a former employer of unlawful behavior. *See id.* at 1529 n.14 ("[W]e note that many retaliation claims are filed by former employees alleging, for example, post-employment blacklisting."). So we endorsed a broad interpretation of anti-retaliation provisions to avoid excluding an especially vulnerable class of people from the statute's protection and thus undermining Congress's remedial scheme.

We explicitly declined to extend this reasoning to Title I discrimination claims in *Gonzales*. Title I's "qualified individual" definition, we said, was dispositive evidence that "Congress intended to limit the protection of Title I to either employees performing, or job applicants who apply and can perform, the essential functions of available jobs which their employers maintain." *Id.* at 1527. We concluded that the plain language of Title I's anti-discrimination provision did not "frustrate the statute's central purpose"—i.e., protecting disabled people who can nevertheless perform the essential functions of a job—the way that a "literal interpretation" of other statutes' anti-retaliation provisions may have threatened to do. *Id.* at 1528–29. Instead, to construe Title I to apply to former employees would "essentially render[] the [qualified individual] requirement . . . meaningless." *Id.* at 1529.

Thus, after *Gonzales*, the rule in this circuit was settled. To 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. The result was that a former employee could not sue for alleged discrimination in post-employment fringe benefits.

That settled rule was briefly disturbed five years later when a panel of this Court declared *Gonzales* overruled by intervening Supreme Court precedent. *See Johnson v. K Mart Corp.*, 273 F.3d 1035 (11th Cir. 2001). The Supreme Court, in *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997), held that an individual could sue his or her former employer under Title VII for a post-employment retaliatory act. The *Johnson* majority considered *Robinson* to be a decision of such magnitude that it "mandate[d] the conclusion that *Gonzales* is no longer good law and must be deemed overruled." *Johnson*, 273 F.3d at 1037. The *Johnson* majority then held that Title I prohibits discriminatory acts against current and former employees alike. *See id.*

But *Johnson*'s precedential life was short-lived. The opinion was vacated when this Court voted to rehear the case en banc. *Id.* at 1070. K Mart later filed for bankruptcy, the parties settled, and the appeal was dismissed. *See Johnson v. K Mart Corp.*, 281 F.3d 1368 (11th Cir. 2002) (en banc). Because of the bankruptcy and settlement, we never issued an en banc opinion in *Johnson*. But the result of our en banc vacatur is that *Gonzales* regained its status as this Court's governing precedent on Title I's qualified individual requirement.

2.

We now turn to Stanley's arguments. The centerpiece of Stanley's appeal is her request that we resurrect *Johnson*, ignore *Gonzales*, and hold that, after *Robinson*, former employees can sue under Title I for post-

employment discrimination. But Stanley greatly overstates *Robinson*'s impact. "For a Supreme Court decision to undermine panel precedent to the point of abrogation, the decision must be clearly on point and *clearly contrary* to the panel precedent." *Edwards v. U.S. Att'y Gen.*, 56 F.4th 951, 965 (11th Cir. 2022) (quotation marks and citation omitted). This can happen "where the Supreme Court has clearly set forth a new standard to evaluate" a claim or issue. *United States v. Archer*, 531 F.3d 1347, 1352 (11th Cir. 2008). But *Robinson* did nothing of the sort.

The Supreme Court's holding in *Robinson*—a Title VII retaliation case—did not even upend our Title VII precedents, much less our Title I caselaw. Long before *Robinson*, we had held that Title VII's anti-retaliation provision allowed claims for post-employment retaliation. *See Gonzales*, 89 F.3d at 1528–29. *Robinson* adopted the same rule. But, in *Gonzales*, we distinguished Title I discrimination claims from our Title VII precedents based on the different text of the ADA. *Id.* Because *Robinson*'s interpretation of Title VII did not change our Title VII caselaw, it is hard to say it overruled our Title I caselaw. Judge Carnes said it best in his *Johnson* dissent: "It is a bit audacious . . . to say that a Supreme Court decision whose holding was anticipated, acknowledged, and considered by a prior panel when deciding a different issue has undermined that prior panel's decision on the different issue to such an extent that it may be disregarded." *Johnson*, 273 F.3d at 1068 (Carnes, J., dissenting).

Like its holding, *Robinson*'s reasoning also does little to undermine *Gonzales*. Title VII's anti-retaliation provision at issue in *Robinson* applies to "employees." 42

U.S.C. § 2000e-3(a). Neither the statutory definition of "employees" nor the anti-retaliation provision's specific use of that term provides any "temporal qualifier." *Robinson*, 519 U.S. at 341–42. Looking to the rest of Title VII, the *Robinson* Court found that Title VII regularly "use[s] the term 'employees' to mean something more inclusive or different than 'current employees.'" *Id.* at 342. For example, reinstatement is a Title VII remedy. *Id.* (quoting 42 U.S.C. §§ 2000e-5(g)(1), 2000e-16(b)). Because "one does not 'reinstate' current employees," the *Robinson* Court reasoned that Title VII's remedial provisions' use of "employees" "necessarily refers to former employees." *Id.* (brackets omitted). The term "employees" in Title VII's anti-retaliation provision was, therefore, ambiguous because it could be "consistent with either current or past employment." *Id.*

Title I's anti-discrimination provision is not afflicted with any such ambiguity. There is a clear temporal qualifier in Title I: Only someone "who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual *holds* or *desires*" is protected from disability discrimination. 42 U.S.C. §§ 12111(8) (emphases added), 12112(a); *see also Slomcenski v. Citibank, N.A.*, 432 F.3d 1271, 1280–81 (11th Cir. 2005). "Can," "holds," and "desires" are in the present tense. So, to be a victim of unlawful disability discrimination, the plaintiff must desire or already have a job with the defendant at the time the defendant commits the discriminatory act. *See McKnight v. Gen. Motors Corp.*, 550 F.3d 519, 520 (6th Cir. 2008); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1112 (9th Cir. 2000). And unlike Title VII's varied use of "employees," Title I consistently uses the term "qualified individual" to refer to active employees or

current applicants. *See* 42 U.S.C. §§ 12111(8), 12112(a)–(b), 12114.

We acknowledge that the circuits are split. Our reading of *Robinson* aligns us with the Sixth, Seventh, and Ninth Circuits. Each of those courts has held that (1) *Robinson* does not implicate Title I's anti-discrimination provision and (2) Title I does not protect people who neither held nor desired a job with the defendant at the time of discrimination. *See McKnight*, 550 F.3d at 522–28; *Morgan v. Joint Admin. Bd.*, 268 F.3d 456, 457–59 (7th Cir. 2001); *Weyer*, 198 F.3d at 1108–13. The Second and Third Circuits have held that Title I's anti-discrimination provision is ambiguous, however, and have resolved that purported ambiguity in favor of former employees. *See Castellano v. City of New York*, 142 F.3d 58, 66–69 (2d Cir. 1998); *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 604–08 (3d Cir. 1998).

We are not convinced by Stanley's argument that we should follow the Second and Third Circuits. The question we are answering here is whether *Robinson* is so compelling that it justifies ignoring a prior precedent. But neither the Second nor Third Circuit answered that question. Moreover, a review of those courts' decisions convinces us that we are on the right side of the split. Neither court established that the text of Title I's anti-discrimination provision is ambiguous. Instead, the Second and the Third Circuit expressed something between discomfort and disagreement with the policy choice underlying the line, drawn by the text of the ADA, between disabled individuals who hold or desire to hold a job and those who do not. *See Castellano*, 142 F.3d at 67–68; *Ford*, 145 F.3d at 605–06. But not "even the most formidable policy arguments" empower a court to ignore

unambiguous text. *BP P.L.C. v. Mayor & City Council of Baltimore*, 141 S. Ct. 1532, 1542 (2021) (quotation marks and citation omitted). Nothing in *Robinson*, *Castellano*, or *Ford* gives us a basis to ignore *Gonzales*.

3.

We are also confident that *Gonzales* survived Congress's amendments to the ADA. Stanley points to two pieces of post-*Gonzales* legislation—the ADA Amendments Act of 2008, Pub. L. 110-325, 122 Stat. 3553, and the Lily Ledbetter Fair Pay Act of 2009, Pub. L. 111-2, 123 Stat. 5—and argues that because both acts amended the ADA's text, we are free to, and should, depart from *Gonzales*'s interpretation of the original text of the ADA. It is of course true that when Congress amends a statute, we need not follow decisions interpreting discarded statutory language. But we consider a prior precedent overruled by subsequent legislation only if the congressional amendment represents "a clear change in the law." *Sassy Doll Creations, Inc. v. Watkins Motor Lines, Inc.*, 331 F.3d 834, 840 (11th Cir. 2003) (citation omitted). Neither the ADAAA nor the Fair Pay Act fits that bill.

Turning first to the ADAAA, we cannot say that the ADAAA upset *Gonzales*'s interpretation of Title I's qualified individual definition. The ADAAA altered Title I's anti-discrimination provision. Where Title I originally said that employers could not "discriminate against a qualified individual *with a disability because of the disability of such individual*," Pub. L. 101-336, § 102(a), 104 Stat. 331 (emphasis added), it now prohibits discrimination "against a qualified individual *on the basis of disability*," 42 U.S.C. § 12112(a) (emphasis added). But the definition of "qualified individual"—someone who,

"with or without reasonable accommodation" is able "to perform the essential functions of the employment position that such individual holds or desires"—was materially unchanged by the ADAAA and remains in effect today. *Compare* Pub. L. 101-336, § 101(8), 104 Stat. 331 *with* 42 U.S.C. § 12111(8); *see* Pub. L. 110-325, § 5(c), 122 Stat. 3557 (striking "with a disability" but otherwise leaving section 12111(8) as originally enacted). So the text upon which we relied in *Gonzales* is still the operative text in the statute.

Stanley contends that the result in *Gonzales* undermines Congress's purpose in adopting the ADAAA. The purpose of the ADAAA, says Stanley, was to broaden the scope of Title I. We have no doubt that is true; Congress said as much when passing the ADAAA. *See* Pub. L. 110-325, § 2(a)–(b), 122 Stat. 3553–54. But only the rare statute pursues its purpose to the exclusion of everything else. The ADAAA expanded Title I's protections by expanding the mental and physical conditions that satisfy the statutory definition of "disability." *See id.* Nobody disputes that Stanley is disabled. The issue here is whether Stanley was a "qualified individual" at the relevant point in time. And the substance of the qualified individual standard, including the temporal qualifications, was unaffected by the ADAAA. *See Adair v. City of Muskogee*, 823 F.3d 1297, 1306–07 (10th Cir. 2016); *Neely v. PSEG Tex., Ltd. P'ship*, 735 F.3d 242, 245–47 (5th Cir. 2013).

So too for the Fair Pay Act. To be sure, the Fair Pay Act effected a serious change in employment law. Before the Fair Pay Act, discriminatory compensation claims generally accrued at only one point in time: when the discriminatory compensation decision or practice was

made or adopted. *See Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618, 621 (2007). That rule posed serious statute of limitations problems for potential plaintiffs, who may not have even learned of the discriminatory compensation scheme until well after its initial adoption. *See id.* at 649–50 (Ginsburg, J., dissenting). The Fair Pay Act reflects Congress's decision to relax the statute of limitations. Pub. L. 111-2. § 2(1)–(2), 123 Stat. 5. Now, a claim for discriminatory compensation accrues "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 . . . ." 42 U.S.C. § 2000e-5(e)(3)(A); *see id.* § 12117(a); Pub. L. 111-2, § 5(a), 123 Stat. 6 (stating that the Fair Pay Act "shall apply to claims of discrimination brought under title I").

The Fair Pay Act made it easier to sue after discrimination—as defined by Title I—occurred. *Cf. AT&T Corp. v. Hulteen*, 556 U.S. 701, 713–16 (2009); *McReynolds v. Merrill Lynch & Co., Inc.*, 694 F.3d 873, 888 (7th Cir. 2012). But, like the ADAAA, the Fair Pay Act did not change the statutory language that we relied on in *Gonzales*. Both before and after the Fair Pay Act, a Title I discrimination claim requires a plaintiff to show that he or she was a "qualified individual" who was subject to discriminatory terms, conditions, or benefits of employment. The Fair Pay Act's relaxed statute of limitations helps a plaintiff only if that plaintiff otherwise has a claim for discrimination. Because nothing in the Fair Pay Act changes Title I's substantive requirements, *Gonzales* is still binding precedent with respect to a former employee's ability to sue under Title I.

4.

Because we hold that *Gonzales* is still good law, we must ask whether Stanley was a disabled employee or job applicant capable of performing the job at the time of the alleged discrimination. There are three points in time in which Stanley can 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.

Neither option 1 nor option 3 works for Stanley. Although she was employed by the City in October 2003, she concedes, and we agree, that her claim cannot turn on the 2003 amendment to the benefits plan because she was not yet disabled at that time. Although she was disabled at the time of the December 2020 termination of the health insurance premium payments, that option doesn't work because, by that time, Stanley's relationship with the City was as retiree, not employee. She did not hold or desire to hold, nor was she qualified to hold, an "employment position" with the City, as required by Title I's anti-discrimination provision and *Gonzales*.

In response to this reasoning, Stanley makes an argument similar to one advanced by the estate administrator in *Gonzales*. She argues that she was a "qualified individual" in December 2020 and remains so today because the "'employment position' that [she] now holds is that of a retired employee . . . ." But we rejected that argument in *Gonzales*, refusing to recognize "post-employment benefits recipient" as a job. 89 F.3d at 1530. In light of *Gonzales*, we must reject Stanley's identical

argument today.

The final option is that Stanley suffered discrimination as a disabled employee at some unknown point *before* she retired but *after* she was diagnosed with Parkinson's. Stanley argued at oral argument that, while working for the City in the two years after her Parkinson's diagnosis, the writing was on the wall that she would need to take disability retirement. So, the argument goes, the allegedly discriminatory benefits plan became a finalized term of her employment whenever disability retirement became a foregone conclusion. The upshot is that a completed claim of disability discrimination may have accrued while Stanley was a qualified individual performing her duties as a firefighter.

This argument, if successful, would distinguish Stanley's case from *Gonzales*, where the alleged discrimination occurred entirely after the employment relationship had already terminated. But it would not distinguish this case from decisions of the Sixth and Ninth Circuits. Those circuits have held that a Title I plaintiff must be a qualified individual, not only at the time of discrimination, but also when the plaintiff files suit. *See McKnight*, 550 F.3d at 528; *Weyer*, 198 F.3d at 1108–09. The Sixth and Ninth Circuits are on our side of the split. So, even though Stanley's argument is not foreclosed by our holding in *Gonzales*, there is some tension between this argument and our reasoning in *Gonzales*.

We need not resolve this tension today because Stanley waited too long to make this argument. In the district court, Stanley's sole argument in support of her qualified individual status was that the *Johnson* majority was correct, so the district court should ignore *Gonzales*. But Stanley did not try to distinguish her case from

Gonzales, essentially conceding that she loses if *Gonzales* applies. Then, in her initial brief on appeal, Stanley affirmatively conceded that "[i]n this action, Ms. Stanley does not claim she was impacted by the discriminatory 24-month rule during her employment." The first time this argument appeared was in the United States' brief as amicus curiae in this Court. We will not consider arguments raised only by amici. *Richardson v. Ala. State Bd. of Educ.*, 935 F.2d 1240, 1247 (11th Cir. 1991). That rule is particularly appropriate where, as here, a party did not make an argument to the district court and specifically disclaimed the argument in its own brief.

Because 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, her Title I claim fails. For the same reason, so do her claims under the Rehab Act and the Florida Civil Rights Act.

B.

Finally, we turn to Stanley's claims under the Equal Protection Clause and Florida Statutes section 112.0801. The district court concluded that the City was entitled to summary judgment on both claims. We agree.

The City's benefits plan does not run afoul of the Equal Protection Clause. Disabled persons are not a suspect class, and government-paid health insurance is not a recognized fundamental right, so we scrutinize the City's benefits plan under the lenient standard of rational basis review. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 445–46 (1985); *Morrissey v. United States*, 871 F.3d 1260, 1268 (11th Cir. 2017). We do not grade the wisdom of the City's decision. *See Heller v. Doe*, 509 U.S. 312, 319 (1993). If "there is any reasonably

conceivable state of facts that could provide a rational basis for the" City's decision, it will be upheld. *Id.* (citation omitted). The City's benefits plan advances the legitimate governmental purpose of conserving funds. And its chosen method—decreasing the number of employees for whom the City subsidizes health insurance—is rationally related to that legitimate purpose. So there is no equal protection problem here.

Neither does the City's benefits plan violate Florida Statutes section 112.0801. The statute requires that a "municipality . . . that provides . . . health . . . insurance . . . for its officers and employees and their dependents upon a group insurance plan or self-insurance plan shall allow all [retired] personnel . . . the option of continuing to participate in the group insurance plan or self-insurance plan." Fla. Stat. § 112.0801(1). The health insurance must be offered at the same "cost applicable to active employees," but "[f]or retired employees . . . , the cost of continued participation may be paid by the employer or by the retired employees." *Id.* Stanley receives exactly what she is owed under the statute: the *option* to remain on the City's health insurance plan. The statute does not require the City to pay Stanley's health insurance premiums. To the contrary, the statute grants the City discretion over whether to pay retirees' premiums. The City cannot violate a statute by exercising the discretion specifically granted by that statute.

IV.

The judgment of the district court is **AFFIRMED.**

APPENDIX B

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KARYN D. STANLEY, *Plaintiff*, v. CITY OF SANFORD, FLORIDA, *Defendant*.	Case No: 6:20-cv-629-WWB-GJK **ORDER**

ORDER

THIS CAUSE is before the Court on Defendant City of Sanford's Motion to Dismiss (Doc. 14) and Plaintiffs' Response (Doc. 17) thereto.

I. BACKGROUND

Plaintiff Karyn D. Stanley brought this action against Defendant, the City of Sanford, Florida, alleging claims under the Rehabilitation Act of 1973 ("**Rehabilitation Act**"), 29 U.S.C. § 701 *et seq.*, (Doc. 1, ¶¶ 27–35); the

Americans with Disabilities Act ("ADA"), as amended by the ADA Amendments Act of 2008, 42 U.S.C. § 12101 *et seq.*, (*id.* ¶¶ 36–38); the Florida Civil Rights Act ("FCRA"), Fla. Stat. § 760.01 *et seq.*, (*id.* ¶¶ 39–41); the Declaratory Judgment Act, 28 U.S.C. § 2201, (*id.* ¶¶ 42–52); and federal violations under 42 U.S.C. § 1983, (*id.* ¶¶ 53–61), arising out of the discontinuation of her health insurance benefits by Defendant.

Plaintiff was a firefighter with Defendant's Fire Rescue Department for approximately twenty years. (Doc. 1, ¶¶ 4b, 13–16). She was continuously employed in that position until she was placed on disability retirement on or about November 1, 2018, when she began to collect retirement benefits. (*Id.* ¶ 16). Due to her disability, Plaintiff had no choice but to retire before she completed her full twenty-five years of service. (*Id.*).

Until September 20, 2003, Defendant paid the health insurance premiums for its employees who retired after twenty-five years of service and its employees who retired on account of disability until they reached the age of 65. (*Id.* ¶ 19). Defendant changed its policy on October 1, 2003, only paying health insurance premiums for disabled retirees for twenty-four months following the effective date of their disability retirement or their receipt of Medicare benefits, whichever came first. (*Id.* ¶ 20). The change did not apply to non-disabled retirees who continue to receive the benefit to age sixty-five. (*Id.* ¶ 21). The policy is a stand-alone fringe benefit of employment with Defendant. (*Id.* ¶ 23). It is not a part of the pension plan, nor the health insurance plan itself. (*Id.*). Policy Section 2.45(C), states in pertinent part:

> Employees retiring for disability reasons and who meet the criteria for disability retirement as

> prescribed by the Florida Retirement System (F.R.S) or who meet the criteria for disability retirement as prescribed by the Police or Fire Pension Plan are eligible for continued City-Paid health insurance. Effective October 1, 2003, with regard to all employees retiring as a result of full disability and meet the criteria for disability retirement, City-Paid health insurance will begin upon retirement and will continue until the disabled retiree receives Medicare benefits or until 24 months have elapsed from the date of retirement, whichever comes first.

(*Id.* ¶ 24). Importantly, Plaintiff alleges that section 112.0801(1), Florida Statutes requires municipal employers such as Defendant to offer the same health insurance coverage to retirees and their eligible dependents as is offered to active employees at a total premium cost of no more than the total premium cost applicable to active employees. (*Id.* ¶ 17). Plaintiff alleges she was wrongfully deprived of the equal benefit of receiving health insurance until she reached age sixty-five because she has a disability. (*Id.* ¶ 26).

II. LEGAL STANDARD

"A pleading that states a claim for relief must contain … a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Pursuant to Federal Rule of Civil Procedure 12(b)(6), a party may move to dismiss a complaint for "failure to state a claim upon which relief can be granted." In determining whether to dismiss under Rule 12(b)(6), a court accepts the factual allegations in the complaint as true and construes them in a light most favorable to the non-moving party. *See United Techs. Corp. v. Mazer*, 556 F.3d

1260, 1269 (11th Cir. 2009). Nonetheless, "the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions," and "[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Furthermore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*

III. DISCUSSION

Defendant asks this Court to dismiss Plaintiff's Complaint as the allegations either fail as a matter of law or lack sufficient factual allegations to state a claim. Plaintiff responds that the law cited by Defendant is no longer good law and that her claims are otherwise sufficiently pleaded.

A. Rehabilitation Act, ADA, and FCRA

Defendant argues that Counts I, II, and III should be dismissed because Plaintiff has failed to present a prima facie case of discrimination under each claim as she does not qualify as an individual with a disability within the meaning of the Rehabilitation Act, the ADA, and the FCRA because she was retired from her employment when the alleged discrimination occurred. Plaintiff responds that she is qualified because the Acts protect former employees who receive fringe benefits, not just those currently employed. Because claims under the FCRA and the Rehabilitation Act must all meet the same standard required to establish a claim under the ADA,

Counts I, II, and III will be analyzed together. *See Boyle v. City of Pell City*, 866 F.3d 1280, 1288 (11th Cir. 2017); *Menzie v. Ann Taylor Retail Inc.*, 549 F. App'x 891, 893–94 & n.5 (11th Cir. 2013).

The ADA provides that "[n]o 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). Likewise, to establish a prima facie case of discrimination under the Rehabilitation Act, Plaintiff, in addition to alleging Defendant receives federal funding, must allege that (1) she had a disability; (2) she was otherwise qualified for the job; and (3) she was subjected to unlawful discrimination as the result of her disability. 29 U.S.C. § 794(a); *Garrett v. Univ. of Ala. at Birmingham Bd. of Trs.*, 507 F.3d 1306, 1310 (11th Cir. 2007). A qualified individual is defined as "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); *see also Boyle*, 866 F.3d at 1288 (finding that under the Rehabilitation Act "[a] person with a disability is 'otherwise qualified' if he is able to perform the essential functions of the job in question with or without a reasonable accommodation").

The majority of courts, including the Eleventh Circuit in *Gonzales v. Garner Food Servs., Inc.*, 89 F.3d 1523, 1531 (11th Cir. 1996), have held that a disabled former employee has no standing to sue his former employer for disability discrimination under the ADA or the Rehabilitation Act based on actions that occurred after the employment relationship ended. *See, e.g.*, *McKnight v.*

Gen. Motors Corp., 550 F.3d 519, 525–27 (6th Cir. 2008); *Morgan v. Joint Admin. Bd., Ret. Plan of Pillsbury Co. & Am. Fed'n of Grain Millers*, 268 F.3d 456, 457–58 (7th Cir. 2001); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1110 (9th Cir. 2000); *Smith v. Midland Brake, Inc.*, 180 F.3d 1154, 1161–62 (10th Cir. 1999); *Beauford v. Father Flanagan's Boys' Home*, 831 F.2d 768, 771–72 (8th Cir. 1987). The Second and Third Circuits, however, relying on *Robinson v. Shell Co.*, 519 U.S. 337 (1997), have held that former employees are covered by Title I of the ADA. *See Castellano v. City of New York*, 142 F.3d 58, 67–69 (2d Cir. 1998); *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 606–07 (3d Cir. 1999).

Plaintiff insists that the Eleventh Circuit followed the Second and Third Circuit's lead in *Johnson v. K Mart Corp.*, 273 F.3d 1035 (11th Cir. 2001), *vacated en banc*, 273 F.3d 1070 (11th Cir. 2001), by overruling *Gonzalez* and holding that a former employee is entitled to bring a claim against his former employer under § 12112(a) of Title I of the ADA. Yet, *Gonzalez* remains good law this Court is bound to follow because *Johnson* was subsequently vacated. *See Jaffree v. Wallace*, 705 F.2d 1526, 1533 (11th Cir. 1983) ("Judicial precedence serves as the foundation of our federal judicial system. Adherence to it results in stability and predictability.").

Plaintiff's argument that *Robinson* constitutes an intervening case is unavailing. The Supreme Court's decision in *Robinson* construed Title VII of the Civil Rights Act of 1964, not a Title I claim under the ADA, and the Title VII anti-retaliation provision does not require the complainant to be a "qualified individual." *See Weyer*, 198 F.3d at 1112 (emphasizing that Title I, unlike the section of Title VII at issue in *Robinson*, provides that

"[n]o covered entity shall discriminate against a *qualified individual* with a disability because of the disability of such individual" (emphasis added) (quotation omitted)). Therefore, because *Robinson* is not squarely on point, it cannot be said to be an intervening case that directly overrules *Gonzalez*. *See United States v. Chubbuck*, 252 F.3d 1300, 1305 n.7 (11th Cir. 2001) ("We are not at liberty to disregard binding case law that is so closely on point and has been only weakened, rather than directly overruled, by the Supreme Court." (quotation omitted)); *see also Johnson*, 273 F.3d at 1067 (Carnes, J., dissenting).

Case in point, *Bass v. City of Orlando*, issued after *Robinson* had been decided, applied *Gonzalez* to conclude that the ADA is limited to job applicants and current employees capable of performing the essential functions of available jobs. 57 F. Supp. 2d 1318, 1323 (M.D. Fla. 1999), *aff'd*, 203 F. 3d 841 (11th Cir. 1999). Specifically, the Court held that because the plaintiffs, disabled police officers, did not assert that they were individually discriminated against during their employment, their claims of discrimination did not accrue until they were awarded a line-of-duty disability pension. *Id.* at 1323–24. At that time, the plaintiffs were unable to perform the essential functions of their jobs with or without reasonable accommodations. *Id.* at 1324.

Here, Plaintiff has failed to allege that she was "otherwise qualified," an allegation essential to her claims, and under the current law amendment would be futile because the alleged discrimination did not occur until Plaintiff was no longer able to perform the essential functions of her job. Thus, Counts I, II, and III will be dismissed with prejudice.

B. Declaratory Judgment Act

In Count IV Plaintiff seeks relief under the Declaratory Judgment Act. Specifically, Plaintiff asks this Court to declare that Policy Section 2.45(C) violates section 112.0801(1), Florida Statutes, which requires municipal employers to offer the same health coverage to retirees as is offered to active employees. (Doc. 1, ¶¶ 42–52).

Defendant argues, without any legal support, that Plaintiff's request for declaratory relief should be dismissed because she has not set forth the elements of her claim with requisite facts and the underlying policy makes it clear that the difference in treatment is based on the length of service, not disability. (Doc. 14 at 6). Defendant makes no effort to identify which facts are lacking.

Conclusory, vague, and unsupported arguments are deemed waived and will not be considered by this Court. *U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1287 n.13 (11th Cir. 2007) (noting that the court need not consider "perfunctory and underdeveloped" arguments and that such arguments are waived). The Complaint sets forth the specific policy and the specific statute and alleges how the policy violates the statute. Accordingly, Defendant's motion as to Count IV will be denied.

C. Section 1983: Discrimination under ADA and Rehabilitation Act

Next, Defendant contends that Plaintiff's § 1983 claim is due to be dismissed because Plaintiff failed to plead a violation of both the ADA and the Rehabilitation Act and did not identify a separate constitutional right allegedly infringed upon. Defendant further insists that a claim is not viable where the only alleged deprivation is the

employee's rights created by the Rehabilitation Act and the ADA.

The Complaint alleges that Defendant's "intentional violation of Plaintiff's clearly established statutory rights to be free from discrimination in the provision of benefits based on her disability, under both the ADAA and the Rehabilitation Act, … also violated [§] 1983." (Doc. 1, ¶ 53). Plaintiff further alleges, without specificity, that "Defendant's health insurance continuation policy violated federal laws and deprived Plaintiff of rights provided to her under the ADAA and [t]he Rehabilitation Act." (*Id.* ¶ 56).

A "plaintiff may not maintain a section 1983 action in lieu of[—]or in addition to[—] a Rehabilitation Act or ADA cause of action if the only alleged deprivation is of the employee's rights created by the Rehabilitation Act and the ADA." *Holbrook v. City of Alpharetta*, 112 F.3d 1522, 1531 (11th Cir. 1997). In other words, a § 1983 claim must be based on a distinct violation of a constitutional right other than those set forth under the ADA and the Rehabilitation Act. *See Wright v. City of Tampa*, 998 F. Supp 1398, 1403–04 (M.D. Fla. 1998). As alleged, Plaintiff's § 1983 claim is firmly founded on her rights under the ADA and the Rehabilitation Act. *McNa v. Commc'ns Inter-Local Agency*, 551 F. Supp. 2d 1343, 1348 (M.D. Fla. 2008) (dismissing § 1983 claim because plaintiff may not maintain a § 1983 claim to the extent that she bases claim on underlying violations of the ADA). Thus, Count V will be dismissed. Nevertheless, because it is not clear that amendment would be futile, Plaintiff will be granted leave to amend this count to the extent that she can correct the deficiencies noted herein.

D. Section 1983: Equal Protection Clause

In Count VI, Plaintiff alleges that Defendant violated the Equal Protection Clause by classifying its disabled retirees as different from its "other" retirees without any rational relationship between the classification and any legitimate governmental goal. (Doc. 1, ¶¶ 58–60). Plaintiff alleges that Defendant has no legitimate governmental reason for having an insurance continuation policy that discriminates against its disabled retirees. (*Id.* ¶ 61). Defendant argues that Plaintiff's Equal Protection claim fails because she has only asserted conclusory statements that she was treated differently based on her disability and the policy clearly distinguishes based on years of service.

"The Equal Protection Clause requires the government to treat similarly situated persons in a similar manner." *Leib v. Hillsborough Cnty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1305–06 (11th Cir. 2009) (citation omitted). Therefore, in order to allege a claim under the Equal Protection Clause the complainant must include factual detail regarding the "similarly situated" requirement. *Id.*; *see also Glenn v. Brumby*, 632 F. Supp. 2d 1308, 1314 (N.D. Ga. 2009) ("Claims based on disparate treatment under the equal Protection Clause must generally allege that (1) plaintiff is similarly situated with other persons who were treated differently; and (2) the difference in treatment was based on a constitutionally protected interest."). Significantly, the Equal Protection clause protects individuals with disability from discrimination. *See City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 446 (1985). Here, Plaintiff has alleged that disabled retirees are treated differently from

other retirees for no other reason than that they are disabled.

In addition, Plaintiff must sufficiently allege that there is no rational basis for the disparate treatment. *Glenn*, 632 F. Supp. 2d at 1314. Indeed, "[a] statute is presumed constitutional and the burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record." *Heller v. Doe ex rel. Doe*, 509 U.S. 312, 320–21 (1993) (quotations and citations omitted). Defendant, however, does not proffer a rational basis for the distinction, nor does it argue dismissal is warranted because Plaintiff's Complaint fails to set forth facts that negate any proffered rational basis. Rather, it merely argues that the distinction is based on years of service, a claim that cannot be gleaned from the Complaint.

IV. CONCLUSION

For the reasons set forth herein, its **ORDERED** and **ADJUDGED** as follows:

1. Defendant's Motion (Doc. 14) is **GRANTED** in part. Counts I, II, and III of the Complaint (Doc. 1) are DISMISSED with prejudice and Count V is **DISMISSED** without prejudice. Defendant's Motion is otherwise **DENIED**.
2. On or before **March 8, 2021**, Plaintiff may file an amended complaint with respect Count V to correct the deficiencies noted in this Order. Failure to timely file an amended pleading in accordance with this Order may result in the dismissal of Count V with prejudice and without further notice.

DONE AND ORDERED in Orlando, Florida on March 1, 2021.

/s/ *Wendy W. Berger*
WENDY W. BERGER
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KARYN D. STANLEY, *Plaintiff*, v. CITY OF SANFORD, FLORIDA, *Defendant*.	Case No: 6:20-cv-629-WWB-GJK **ORDER**

ORDER

THIS COURT is before the Court on Defendant's Motion for Summary Judgment (Doc. 38), Plaintiff's Memorandum in Opposition (Doc. 39), and Defendant's Reply (Doc. 40). As set forth below, Defendant's Motion will be granted.

I. BACKGROUND

Plaintiff, Karyn D. Stanley, brought this action against Defendant, the City of Sanford, Florida (the "City"), alleging six claims arising out of the discontinuation of her health insurance benefits by the City. (*See generally* Doc. 1). This Court dismissed Counts I through III with prejudice and dismissed Count V without prejudice. (Doc. 27 at 11). Plaintiff did not replead Count V. Presently, two claims remain, Count IV, alleging entitlement to declaratory relief, and Count VI, alleging a violation of the Equal Protection Clause.

Plaintiff was hired as a firefighter with the City's Fire Rescue Department in February 1999. (Doc. 38-1 at 1). She was continuously employed in that position until she was placed on disability retirement on or about November 1, 2018. (Doc. 38-4 at 1–6; 6; Doc. 38-5 at 1). Due to her disability, Plaintiff had no choice but to retire before she completed her full twenty-five years of service. (Doc. 38-4 at 6).

The City's policy for providing health insurance to its employees and retirees is included in its Human Resources Manual (the "**Manual**"). Prior to September 20, 2003, Paragraph 2.45 of the Manual provided that "[a]n employee if hired before October 1, 2002 will have met the criteria for eligibility for continuation of city-paid health insurance at the time of retirement upon completion of twenty-five (25) years' service to the City of Sanford. Employees hired after October 1, 2002 who retire with twenty-five (25) years of service to the City shall not be eligible for any city paid health insurance in accordance with the foregoing retirement eligibility criteria in this paragraph." (Doc. 38-6 at 2). Paragraph 2.45 further provided that "[e]mployees retiring for disability reasons and who meet the criteria for disability retirement as

prescribed by the Florida Retirement System (F.R.S.) or who meet the criteria for disability retirement as prescribed by the Police or Fire Pension Plan are eligible for continued City-paid health insurance." (*Id.* at 2–3). This benefit was not conditioned on the employee's date of hire and ended when the employee reached sixty-five years of age. (*Id.*).

Pursuant to Ordinance No. 3806 ("the **Ordinance**"), the City amended this portion of its policy on October 1, 2003 "for the purpose of Continuing the City's Health Care Cost Containment Initiatives."[1] (Doc. 38-10 at 2). The pertinent amendment provides:

> Employees retiring for disability reasons and who meet the criteria for disability retirement as prescribed by the Florida Retirement System (F.R.S.) or who meet the criteria for disability retirement as prescribed by the Police or Fire Pension Plan are eligible for continued City-Paid health insurance. Effective October 1, 2003, with regard to all employees retiring as a result of full disability and meet the criteria for disability retirement, City-Paid health insurance will begin upon retirement and will continue until the disabled retiree receives Medicare benefits or until 24 months

[1] Although Fred W. Fosson, the City's Director of Human Resources and Risk Management, did not know why the City implemented the twenty-four-month rule for disabled retirees in 2003 or who would know the answer or where to find it, the Ordinance plainly states that it was implemented to contain costs. (Doc. 39-4 at 7:6–8, 10:13–23, 11:7–12; Doc. 38-10 at 2).

> have elapsed from the date of retirement, whichever comes first.

(Doc. 38-10 at 2, 4; Doc. 38-11 at 4). The change allows disability retirees to remain on the City's health insurance until they are Medicare age, but after twenty-four months of disability retirement they are required to pay the premiums themselves. (Doc. 39-9 at 9:23–10:3). "Normal" retirees[2], however, who were hired prior to October 1, 2002, and who have twenty-five years of service with the City continue to receive paid health care until they reach the age of sixty-five. (Id. at 10:7–14). The policy provides that the "retiring employee approved for disability reasons will be entitled to the same health insurance coverage as is afforded regular employees and the total premium will not exceed the total premium charged to the active group." (Doc. 38-9 at 5). The City's policy tracks the language in section 112.0801, Florida Statutes, which governs the terms under which municipal governments must offer health insurance benefits to retirees.

In accordance with the policy, twenty-four months after Plaintiff began her disability retirement, she was notified that she was no longer eligible to receive the City's paid contributions toward the cost of participating in the City's health insurance coverage. (Doc. 38-13 at 1). Instead, in order to remain on the City's health insurance coverage, Plaintiff was required to pay $1,359.00 per

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[2] "Normal Retirement Eligibility" is defined as "the earlier of the attainment of age 55 and the completion of 10 years credited service or upon the completion of 25 years of credited service, regardless of age." (Doc. 39-17 at 27).

month for Employee and Spouse coverage. (*Id.*). Even though the cost to Plaintiff went up, she still receives the same coverage. (Doc. 38-15 at 37:17–38:1).

Plaintiff alleges that the City's policy violates section 112.0801(1), Florida Statutes because it requires disability retirees to pay their entire health insurance premium after twenty-four months, while the City pays the cost of the premiums for retirees hired before October 1, 2002, who have contributed twenty-five years of service. (Doc. 1, ¶ 42–52). Plaintiff further alleges she was wrongfully deprived of the equal benefit of receiving health insurance until she reached age sixty-five because she is a disabled retiree as opposed to a normal retiree. (*Id.* ¶¶ 26, 58–61).

II. LEGAL STANDARD

Summary judgment is appropriate when the moving party demonstrates "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is material if it may "affect the outcome of the suit under the governing law." *Id.* "The moving party bears the initial burden of showing the court, by reference to materials on file, that there are no genuine issues of material fact that should be decided at trial." *Allen v. Bd. of Pub. Educ.*, 495 F.3d 1306, 1313–14 (11th Cir. 2007). Stated differently, the moving party discharges its burden by showing "that there is an absence of evidence to support the nonmoving party's case." *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

However, once the moving party has discharged its burden, "Rule56(e) . . . requires the nonmoving party to go beyond the pleadings and by her own affidavits, or by the depositions, answers to interrogatories, and admissions on file, designate specific facts showing that there is a genuine issue for trial." *Id.* at 324 (quotation omitted). The nonmoving party may not rely solely on "conclusory allegations without specific supporting facts." *Evers v. Gen. Motors Corp.*, 770 F.2d 984, 986 (11th Cir. 1985). Nevertheless, "[i]f there is a conflict between the parties' allegations or evidence, the [nonmoving] party's evidence is presumed to be true and all reasonable inferences must be drawn in the [nonmoving] party's favor." *Allen*, 495 F.3d at 1314. "Where a party does not respond to the moving party's assertion of a properly supported fact, the Court considers the fact undisputed." *Menster v. Allstate Ins. Co.*, No. 5:19-cv-77-Oc-30PRL, 2020 WL 5534462, at *1 n.1 (M.D. Fla. Aug. 5, 2020) (citing Fed. R. Civ. P. 56(c), (e)).

III. DISCUSSION

As set forth above, there are two remaining claims in this case. First, Plaintiff seeks a declaratory judgment that the City's policy fails to comply with section 112.0801, Florida Statutes. Second, Plaintiff argues that the City's policy violates the Equal Protection Clause. The City seeks summary judgment as to both claims.

A. Declaratory Relief

The City argues that Paragraph 2.45 does not violate section 112.0801, Florida Statutes because disabled retirees are offered the same health and hospitalization insurance coverage as is offered to active employees at a premium cost of no more than the premium cost applicable to active employees. (Doc. 38 at 13). The

City insists that the plain language of the statute does not prohibit it from "exercising its discretion to pay for, or to decline to pay for, its retirees' insurance coverage." (*Id.*). Plaintiff, relying on the definition of retirees, responds that section 112.0801 does not allow an employer to distinguish based on the individual's retirement status. (Doc. 39 at 16). In other words, Plaintiff argues that the statute prohibits the City from electing to pay the premiums for a normal retiree but refuse to pay the premiums for a disabled retiree. (*Id.* at 16–17). "In construing a statute we must begin, and often should end as well, with the language of the statute itself." *Merritt v. Dillard Paper Co.*, 120 F.3d 1181, 1185 (11th Cir. 1997) (citation omitted). "The first step 'is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case.'" *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997)). The Court "must presume that a legislature says in a statute what it means and means in a statute what it says there." *Merritt*, 120 F.3d at 1185 (quotation omitted). "The inquiry ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Barnhart*, 534 U.S. at 450 (quotation omitted).

Section 112.0801(1) provides:

> Any state agency, county, municipality, special district, community college, or district school board that provides life, health, accident, hospitalization, or annuity insurance, or all of any kinds of such insurance, for its officers and employees and their dependents upon a group insurance plan or self insurance plan shall allow all former personnel who retired before October

> 1, 1987, as well as those who retire on or after such date, and their eligible dependents, the option of continuing to participate in the group insurance plan or self-insurance plan. Retirees and their eligible dependents shall be
> offered the same health and hospitalization insurance coverage as is offered to active employees at a premium cost of no more than the premium cost applicable to active employees. For retired employees and their eligible dependents, the cost of continued participation may be paid by the employer or by the retired employees.

The statute defines a "retiree" as "any officer or employee who retires under a state retirement system or a state optional annuity or retirement program or is placed on disability retirement and who begins receiving retirement benefits immediately after retirement from employment." Fla Stat. § 112.0801(2).

Section 112.0801 is not ambiguous and in no way requires the municipality to pay the cost of continued participation. *See* Fla. Att'y Gen. Op. 2008-41 (Aug. 27, 2008) ("[S]ection 112.0801, Florida Statutes, provides that for the retired employees and their eligible dependents, the cost of any continued participation in any type of plan, or any part thereof, may be paid by the employer or by the retired employees. Thus, . . . while a local governmental entity may pay the costs, or a portion thereof, of the continued insurance coverage for its retirees and eligible dependents, it is not required to do so."). Here, the City offered Plaintiff health insurance coverage at the same cost as active employees, it just required her to pay the premiums. Moreover, there is nothing in the statute that prohibits the City from paying the premiums for a normal

retiree but refusing to pay the premiums for a disabled retiree. Accordingly, Paragraph 2.45 of the Manual does not violate the statute and the City's Motion will to be granted as to Plaintiff's claim for declaratory relief.

B. Equal Protection Clause

With respect to Plaintiff's equal protection claim, the City insists that the classifications contained in Paragraph 2.45 are legitimate governmental considerations as they exist to incentivize and reward long-term employment, contain costs by ending all payments once retirees reach sixty-five years of age, and provide compassion for employees who retire early due to illness or injury. (Doc. 38 at 21–22).

Plaintiff responds that the legitimate interests asserted by the City are arbitrary or irrational, creating a genuine issue of material fact as to whether the City was motivated by negative stereotypes surrounding those who qualify for disability retirement. (Doc. 39 at 8). First, Plaintiff argues that the City's assertion that it sought to incentivize and reward long-term employment is irrational because she worked for the City for twenty years and was unable to continue because she was stricken with Parkinson's disease, not because she chose to end her employment. (*Id.* at 9). Plaintiff suggests that the City's reference to "rewarding employee loyalty" implies that employees who retire based on a disability are "fakers, lazy, malingerers, disloyal, etcetera." (*Id.*). Plaintiff further notes that the Sanford Firefighters Pension allows employees to buy years of creditable service for military service and work at other fire departments. (*Id.* at 11–12).

Second, Plaintiff argues that the City's assertion of "compassion" for the disabled as a legitimate interest fails because for many years the City paid the disabled

retirees' health insurance premium to age sixty-five. (*Id.* at 10).

Third, Plaintiff contends that the City has provided no analysis for how its alleged legitimate reasons are rationally related to the twenty-four-month rule. (*Id.*). She asserts that the mere fact that twenty four months is an arbitrary time-period confirms that the ordinance is not rationally related to a legitimate government purpose. (*Id.* at 10–11). With respect to cost cutting, Plaintiff highlights that an employee who starts with the City at age nineteen and retires after twenty five years costs the City more in paid health insurance premiums than Plaintiff, who retired with Parkinson's at age forty-seven, and that only zero to two employees per year have retired as disabled since 2010. (*Id.* at 11). Accordingly, Plaintiff argues, the cost of disability retiree subsidies is de minimis relative to the City's healthcare subsidy totals each month. (*Id.*).

"The Equal Protection Clause requires the government to treat similarly situated persons in a similar manner." *Leib v. Hillsborough Cnty. Pub. Transp. Comm'n*, 558 F.3d 1301, 1305 (11th Cir. 2009) (citation omitted). "When legislation classifies persons in such a way that they receive different treatment under the law, the degree of scrutiny the court applies depends upon the basis for the classification." *Id.* at 1306. "[C]lassifications that neither implicate fundamental rights nor proceed along suspect lines are subject to rational basis review." *Jones v. Governor of Fla.*, 975 F.3d 1016, 1029 (11th Cir. 2020) (citing *Heller v. Doe ex rel. Doe*, 509 U.S. 312, 319–20 (1993)). Persons with a disability are not a suspect class, *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 446 (1985); *Glenn v. Brumby*, 724 F. Supp. 2d 1284, 1305–06 (N.D. Ga. 2010), *aff'd*, 663 F.3d 1312 (11th Cir. 2011), and government-paid health insurance is not a fundamental

right, *see Morrissey v. United States*, 871 F.3d 1260, 1268 (11th Cir. 2017). Accordingly, the Court must determine if the ordinance requiring disabled retirees to pay their own health insurance premiums is rationally related to a legitimate government interest. *Leib*, 558 F.3d at 1306.

"[A]lthough this rational-basis standard is 'not a toothless one,' it does not allow [the court] to substitute [its] personal notions of good public policy for those of [the municipality]." *Schweiker v. Wilson*, 450 U.S. 221, 234 (1981) (quoting *Mathews v. Lucas*, 427 U.S. 495, 510 (1976)). Particularly, "[i]n the area of economics and social welfare, a [municipality] does not violate the Equal Protection Clause . . . merely because the classifications made by its laws are imperfect." *Id.* (quotation omitted). "The Constitution does not require the City to draw the perfect line nor even to draw a line superior to some other line it might have drawn. It requires only that the line actually drawn be a rational line." *Armour v. City of Indianapolis*, 566 U.S. 673, 685 (2012). Furthermore, "[a]s long as the classificatory scheme chosen by [the municipality] rationally advances a reasonable and identifiable governmental objective, [the court] must disregard the existence of other methods of allocation that [it] . . . perhaps would have preferred." *Schweiker*, 450 U.S. at 235. Yet, the municipality "may not rely on a classification whose relationship to an asserted goal is so attenuated as to render the distinction arbitrary or irrational." *City of Cleburne*, 473 U.S. at 446.

The Supreme Court "has consistently refused to invalidate on equal protection grounds legislation which it simply deemed unwise or unartfully drawn" "in cases involving social and economic benefits[.]" *U.S. R.R. Ret. Bd. v. Fritz*, 449 U.S. 166, 175 (1980). In Fritz, the Supreme Court considered the constitutionality of the

Railroad Retirement Act of 1974, which restructured the 1937 Act that provided a system of retirement and disability benefits for those who pursued careers in the railroad industry. *Id.* at 168–71. Specifically, the 1974 Act changed who was qualified for a "windfall benefit" because payment of the windfall benefit threatened the railroad retirement system with bankruptcy by 1981. *Id.* at 168–69. In order to prevent potential bankruptcy, Congress amended the Act to eliminate future accruals of those benefits while preserving windfall benefits for certain classes of employees. *Id.* at 169–70. The Supreme Court held that "Congress could properly conclude that persons who had actually acquired statutory entitlement to windfall benefits while still employed in the railroad industry had a greater equitable claim to those benefits than the members of appellee's class who were no longer in railroad employment when they became eligible for dual benefits." *Id.* at 178. It found that the test utilized to effectuate the cut off was "not a patently arbitrary means for determining which employees are 'career railroaders,' particularly since the test has been used by Congress elsewhere as an eligibility requirement for retirement benefits." *Id.*

The Supreme Court further explained that "[b]ecause Congress could have eliminated windfall benefits for all classes of employees, it [wa]s not constitutionally impermissible for Congress to have drawn lines between groups of employees for the purpose of phasing out those benefits." *Id.* at 177 (citing *City of New Orleans v. Dukes*, 427 U.S. 297, 305 (1976)). Indeed, "[t]he task of classifying persons for . . . benefits . . . inevitably requires that some persons who have an almost equally strong claim to favored treatment be placed on different sides of the line, and the fact the line might have

been drawn differently at some points is a matter for legislative, rather than judicial, consideration." *Id.* at 179 (quotation omitted); *see also Schweiker*, 450 U.S. at 238 ("This Court has granted a strong presumption of constitutionality to legislation conferring monetary benefits because it believes that Congress should have discretion in deciding how to expend necessarily limited resources. Awarding this type of benefits inevitably involves the kind of line-drawing that will leave some comparably needy person outside the favored circle." (quotation omitted)); *Minn. Senior Fed'n, Metro. Region v. United States*, 273 F.3d 805, 808–09 (8th Cir. 2001) (containing costs and expanding health care delivery options are legitimate objectives); *Thompson v. Roberson*, No. TH00-099-C-M/H, 2000 WL 33281120, at *8 (S.D. Ind. Dec. 4, 2000) (finding that the desire to control costs and expenditure of public funds was rational basis for decision to limit benefits); *Doe v. Devine*, 545 F. Supp. 576, 584–85 (D.D.C. 1982) (finding the defendants offered a rational basis for limitations on mental health benefits—"the completely neutral rationale of reducing health care costs to the government"); *aff'd*, 703 F.2d 1319 (D.C. Cir. 1983)

Here, the City has placed retirees into several classifications. There are retirees who were hired before October 1, 2002, who have twenty-five years of service. Those are the only retirees who receive City-paid health insurance until they reach sixty-five years of age under the Ordinance. Disabled retirees receive City-paid health insurance for up to twenty-four months. All other retirees are required to pay their health insurance premiums. The Ordinance provides on its face that City-paid health insurance premiums for disabled retirees were limited to twenty-four months in order to contain costs. Indeed, once the retirees with twenty-five years of service who were

hired before October 1, 2002, are phased out, the ordinance will eliminate all City-paid premiums for retirees save for disabled retirees. Although Plaintiff presents several equations of how the present scheme does not reduce the City's costs, the Court's role is not to provide a more effective scheme. And while the Court sympathizes with the fact that Plaintiff was forced to retire just short of her twenty-five years due to Parkinson's disease, the City has demonstrated that it demarcated neutral lines that are rationally related to meet its legitimate goal—i.e., to contain future costs. The Court notes Plaintiff's insistence that the legitimate interests raised by the City are contradicted by deposition testimony. However, "[w]here, as here, there are plausible reasons for [the City's] action, [the] inquiry is at an end" as it is "constitutionally irrelevant whether this reasoning in fact underlay the legislative decision," because the legislative body is not required to "articulate its reasons for enacting a statute." *Fritz*, 449 U.S. at 179 (quotation omitted). Thus, summary judgment will be granted as to Plaintiff's Equal Protection claim.

IV. CONCLUSION

For the reasons set forth herein, it is **ORDERED** and **ADJUDGED** that Defendant's Motion for Summary Judgment (Doc. 38) is **GRANTED**. The Clerk is directed to enter judgment in favor of Defendant and against Plaintiff, providing that Plaintiff shall take nothing on her claims against Defendant. Thereafter, the Clerk is directed to terminate all pending motions and close this case

DONE AND ORDERED in Orlando, Florida on December 7, 2021.

/s/ *Wendy W. Berger*
WENDY W. BERGER
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

KARYN D. STANLEY, *Plaintiff,* v. CITY OF SANFORD, FLORIDA, *Defendant.*	Case No: 6:20-cv-629-WWB-GJK **JUDGMENT IN A CIVIL CASE**

Decision by Court. This action came before the Court and a decision has been rendered on Defendant's Motion for Summary Judgment.

IT IS ORDERED AND ADJUDGED

that the Plaintiff take nothing on his claims against the Defendant and judgment is entered in favor of Defendant,

City of Sanford, Florida, and against the Plaintiff, Karyn D. Stanley.

Date: December 8, 2021

ELIZABETH M. WARREN,
CLERK

s/LJ, Deputy Clerk