No. 23-997

IN THE

Supreme Court of the United States

KARYN D. STANLEY,

Petitioner,

v.

CITY OF SANFORD, FLORIDA,

Respondent.

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

BRIEF FOR THE GEORGIA ADVOCACY OFFICE, EMORY LAW VOLUNTEER CLINIC FOR VETERANS, AND THE EMORY LAW SCHOOL DISABLED LAW STUDENTS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

The Georgia Advocacy Office is a non-profit corporation that advocates with and for oppressed and vulnerable individuals in Georgia who have significant disabilities. The Georgia Advocacy Office has been designated by Georgia as the agency to implement Protection and Advocacy systems within the state. *See, e.g.*, 42 U.S.C. § 15041 et seq.; 29 U.S.C. § 794e. The Georgia Advocacy Office's work is guided by the understanding that people with disabilities have the right to self-determination, protections from harm, and the opportunity to fully exercise their citizenship rights and responsibilities, including through self-advocacy. The legal issues presented in this case are of interest to the Georgia Advocacy Office because of their vast implications on the availability of the courts to disabled individuals seeking to vindicate their rights.

The Emory Law Volunteer Clinic for Veterans ("VCV") assists those who have served our country with legal issues, including claims for service-connected disability before the Veterans Administration and in subsequent appellate proceedings. Protecting former employees' access to post-employment benefits under the Americans with Disabilities Act ("ADA") is essential to the VCV's

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[1] Pursuant to Sup. Ct. R. 37.6, *amici curiae* affirm that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than amici curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

mission to serve military veterans and fits squarely within its purpose.

The Emory Law School Disabled Law Students Association ("DLSA") is a student organization dedicated to empowering disabled legal education. DLSA's members are students within the Emory Law School community, which has over 800 students. DLSA seeks to confront ableism in the legal system and promote disability justice locally and nationally. Protecting former employees' access to post-employment benefits under the ADA fits squarely within DLSA's purpose to promote disability justice.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Eleventh Circuit held a former employee is not a "qualified individual with a disability" under the ADA, and therefore is not permitted to bring a claim for discrimination as to post-employment benefits.

As more fully elaborated below, the Eleventh Circuit's decision creates significant hardships for military veterans seeking access to post-employment benefits, and *amici* urge the Court to reverse the judgment of the court of appeals.

ARGUMENT

I. A decision adverse to petitioner would lead to significant hardships for military veterans

While a decision adverse to petitioner will have a devastating impact for all individuals with disabilities, this brief's principal focus is on one particular group of individuals who will be affected by such a decision: military veterans.

As of February 2023, more than 2 million individuals were serving in the U.S. Armed Forces with nearly 1.3 million on active duty.[2] Because military service often places individuals in situations with increased risk of serious injury or death,[3] veterans are more likely to have disabilities protected by the ADA than the general population.[4] In fact, since 9/11, 46% of all veterans suffer from a disability related to their military service, bringing the overall average to 30%—that is, 5.2 million veterans as of August 2023.[5]

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[2] Bureau of Labor Statistics, U.S. Dep't of Labor, Occupational Outlook Handbook, Military Careers, available at https://www.bls.gov/ooh/military/military-careers.htm (last visited Sept. 16, 2024).

[3] *Id.*

[4] *See generally* Gary R. Bond, PhD, et al., *Transition from Military Service: Mental Health and Well-being Among Service Members and Veterans with Service-connected Disabilities*, 49 J. BEHAVIORAL HEALTH SERVS. & RES. 282-98 (Jan. 26, 2022), available at https://link.springer.com/article/10.1007/s11414-021-09778-w (last visited Sept. 18, 2024).

[5] News Release, Bureau of Labor Statistics, *Employment Situation of Veterans—2023*, U.S. Dept. of Labor, Mar. 20, 2024,

Upon completing their military service, 95% of veterans pursue secondary careers.[6] As they do so, veterans with disabilities are confronted by discrimination, or the possibility thereof, throughout the employment process. Statistics indicate veterans with disabilities are employed at a significantly lower rate than their non-disabled counterparts.[7] One study indicates 57% of veterans fear they will be discriminated against in the hiring process because of their disability.[8] This fear results in decreased reporting of disabilities to potential employers, as only 36% of surveyed veterans intend to disclose their disability to an employer, and leads many veterans to deprive themselves of necessary disability accommodations in order to find employment.[9]

10:00 AM ET, available at https://www.bls.gov/news.release/pdf/vet.pdf (last visited Sept. 16, 2024).

[6] Kim Parker, et al., *The American Veteran Experience and the Post-9/11 Generation*: *The transition to post-military employment*, Pew Res. Ctr. (Sept. 10, 2019), https://www.pewresearch.org/social-trends/2019/09/10/the-transition-to-post-military-employment/ (last visited Sept. 16, 2024).

[7] *Employment Data for Veterans with Disabilities*, ADA Nat'l Network, https://adata.org/factsheet/employment-data-veterans-disabilities#_edn9 (last visited Sept. 18, 2024).

[8] H. Rudstam, W. Strobel Gower, & L. Cook, *Beyond yellow ribbons: Are employers prepared to hire, accommodate and retain returning veterans with disabilities?*, 36 J. OF VOCATIONAL REHABILITATION, 87–95 (2012), available at https://doi.org/10.3233/jvr-2012-0584 (last visited Sept. 16, 2024).

[9] Only 27% of veterans intended to request accommodations while employed. *Employment Data for Veterans with Disabilities*, *supra* note 7.

A decision adverse to petitioner would sanction yet another phase in the life cycle of workplace discrimination faced by veterans with disabilities: post-employment discrimination. Indeed, insulating an employer from liability for post-employment discrimination simply because the individual impacted by the decision no longer holds their position results in multiple unreasonable outcomes, loopholes, and paradoxes.

Initially, the Eleventh Circuit's holding undermines the well-settled procedural exhaustion requirements specified by Congress preceding the right to file a discrimination suit in court. Specifically, pursuant to 42 U.S.C. § 12117(a), an ADA claimant is statutorily provided the same 180-day period "after the alleged unlawful employment practice occurred" to file a charge of discrimination with the EEOC as a Title VII claimant is provided under 42 U.S.C. § 2000e-5(e)(1).[10] Yet under the Eleventh Circuit's decision, an ADA claimant asserting discrimination as to an employer's post-employment benefits decision would never get to avail themselves of this 180-day window. Most notably, such a reading would treat ADA claimants differently than Title VII claimants, contradicting Congress's express statement that "[t]he powers, remedies, and procedures set forth in section[] . . . 2000e-5, . . . shall be the powers, remedies, and procedures [the ADA] provides . . . to

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[10] *See* 42 U.S.C. § 2000e-5(e)(1) (setting forth 180-day administrative filing period under Title VII); 42 U.S.C. § 12117(a) (indicating § 2000e-5 applies to the ADA).

any person alleging discrimination on the basis of disability in violation of any provision" of the ADA.[11]

Moreover, upholding the Eleventh Circuit's decision would ignore certain "realities of the workplace"[12]—that some people leave their employment because of acts or omissions by their employers. For example, an individual may choose to leave their employment because of how their employer treats their colleagues. The employer does not even need to directly discriminate against the employee who chooses to leave—the workplace is made inhospitable by the mere observation of such acts. Many vulnerable people in the workplace, including those with disabilities, are forced to make decisions where neither option is in their best interest—either remain in an inhospitable workplace or risk their benefits because they will not wait around for those injustices to happen to them.

In turn, the Court's ruling would reward these employers—careless at best and malicious at worst—for permitting an inhospitable workplace by allowing them to engage in subsequent discrimination through altering post-employment benefits without fear of former employees bringing claims under the ADA. In short, it would create a perverse incentive for employers to allow a workplace to be so inhospitable to their employees that they would have no desire to continue employment with that employer. Many

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[11] 42 U.S.C. § 12117(a).

[12] *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 646 (2007) (Ginsburg, J. dissenting).

workers who are fully capable of performing the essential functions of their employment experience conditions in the workplace so inhospitable they do not desire to continue employment with that employer—who would want to? The Second Circuit succinctly articulated the Eleventh Circuit's interpretation of "qualified individual with a disability" and what it implied about both congressional intent and the ADA's coverage against discrimination as "inconceivable."[13]

CONCLUSION

Our military veterans are asked to make the ultimate sacrifice for our country.[14] The Court's decision should protect them. For the foregoing reasons, *amici* respectfully request that the Court reverse the decision of the court of appeals.

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[13] *Castellano v. City of New York*, 142 F.3d 58, 66 (2d Cir. 1998) ("[I]t is inconceivable to us that Congress would in the same breath expressly prohibit discrimination in fringe benefits, yet allow employers to discriminatorily deny or limit post-employment benefits to former employees who ceased to be "qualified" at or after their retirement, although they had earned those fringe benefits through years of service in which they performed the essential functions of their employment.")

[14] *See Regan v. Taxation with Representation*, 461 U.S. 540, 550-51 (1983) ("Veterans have been obliged to drop their own affairs to take up the burdens of the nation, subjecting themselves to the mental and physical hazards as well as the economic and family detriments which are peculiar to military service . . . .") (internal citations and quotations omitted).

Respectfully submitted.

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