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 OF PETITIONER

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, FL 32807
(407) 694-4378

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

JENNIFER D. BENNETT
JESSICA GARLAND
GUPTA WESSLER LLP
505 Montgomery Street
San Francisco, CA 94111
(415) 573-0336

Counsel for Petitioner

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QUESTION PRESENTED

Under the Americans with Disabilities Act, does a former employee—who was qualified to perform her job and who earned post-employment benefits while employed—lose her right to sue over discrimination with respect to those benefits solely because she no longer holds her job?

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INTRODUCTION

Imagine a local government that provides health insurance to its retirees, but not if they're Black. Or a university that pays a pension to former employees, but not if they're Jewish. Such blatant discrimination is unquestionably actionable under Title VII of the Civil Rights Act of 1964. No court would entertain the notion that former employees are barred from challenging these odious policies solely because they no longer hold their jobs. To the contrary, this Court has unanimously held that Title VII's protections extend to former employees. *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997).

The Americans with Disabilities Act is no different. Congress explicitly modeled the ADA on Title VII. It conferred Title VII's full "powers, remedies, and procedures" on ADA plaintiffs, 42 U.S.C. § 12117(a), and established comprehensive "civil rights protections for persons with disabilities that are parallel to" Title VII. H.R. Rep. No. 101-485, pt. 3, at 48 (1990).

In this case, the Eleventh Circuit upended Congress's design by holding that a retired firefighter disabled in the line of duty may be subjected to discrimination with impunity. That holding is fundamentally mistaken in two respects, each of which independently warrants reversal.

First, the court misread what the ADA, as amended by the Lilly Ledbetter Fair Pay Act, says about *who* may sue, *what* they may sue over, and *when* they may sue.

The ADA's enforcement provision tells us *who* may sue: "any person alleging discrimination on the basis of disability in violation of [the Act]." 42 U.S.C. § 12117(a). That does not exclude retirees.

The statute also tells us *what* retirees may sue over: the ADA, like Title VII, bans discrimination in "compensation" and "terms, conditions, and privileges of employment"—words this Court has long read to include post-employment benefits over which retirees may sue. *Hishon v. King & Spalding*, 467 U.S. 69, 77 (1984).

And, most importantly, the Lilly Ledbetter Fair Pay Act clarifies *when* discrimination occurs and when a plaintiff may sue: when a benefits policy is "adopted," *or* when the plaintiff "becomes subject to" it, *or* when the plaintiff "is affected by" it. 42 U.S.C. § 2000e-5(e)(3)(A). The ADA thus prohibits discrimination on the basis of disability in the provision of a benefit earned during a plaintiff's employment—even if the plaintiff does not receive that benefit until she is no longer employed.

Together, these provisions—who, what, when—make clear that the Eleventh Circuit was wrong to preclude the petitioner here from invoking the ADA's protections. The allegedly discriminatory policy at issue was adopted in 2003, while Lt. Karyn Stanley was still employed and able to perform her job as a firefighter and was therefore indisputably what the statute calls a "qualified individual." Thus, even if she needed to be employed when the alleged discrimination occurred—as the court below erroneously concluded—she *was*, and her suit may proceed.

Second, the Eleventh Circuit erred in holding that retirees are not "qualified individuals" under the ADA.

A "qualified individual means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 2111(8). The court of appeals read this to mean that one must "hold or desire" a job. But that isn't what the statute says and, at the very

least, isn't a reading demanded by the statute's words or syntax. To see why, try some examples:

- "A 'cleared passenger' means a passenger who can complete an x-ray screening of the luggage that such passenger carries or checks. Only 'cleared passengers' may board the aircraft." Can you get on the plane if you don't have any bags?
- "You must silence your cell phone to visit the library." May you visit if you didn't bring a phone?
- "To live in this apartment building, you must be able to clean up after the pets that you own." If you don't own a pet, may you live in the building?

In each case, we naturally understand this language to mean that certain requirements apply conditionally—only if the relevant condition (carrying luggage, bringing a phone, owning pets) is met does it trigger an obligation (screen bags, silence your phone, clean up). In the pets example, "that you own" tells us *which* pets—the ones you own. The "qualified individual" definition works the same way: It requires you to be able to perform the functions of a job only to the extent that you "hold" or "desire" one.

But nothing in the text *requires* that you currently "hold" or "desire" a job. It would be eccentric to read the pets rule to mean: "You must own a pet." But that's akin to what the court did here. It rewrote the statute to impose two requirements rather than one: you (a) must hold or desire a job and (b) must be able to perform its functions.

This redrafting transforms how the statute works. The ADA prohibits discrimination "against a qualified individual on the basis of disability." *Id.* § 12112(a). The "qualified individual" definition's role in the statutory scheme is to make clear that employers don't violate that

rule when they make necessary job-related decisions—insisting that a lifeguard be able to swim, for example. The definition is not there, however, to arbitrarily exclude entire categories of people from the Act's protection.

To be sure, we concede that syntax alone doesn't answer the question, and that Congress could have been clearer. But "in its legal context," *Pulsifer v. United States*, 601 U.S. 124, 141 (2024), the definition is best read to require that, to the extent that an individual holds a job, they must be able to perform its essential functions. That reading aligns with common usage, grammar, and logic, as well as the ADA's text, structure, and purpose. It harmonizes the ADA with Title VII, as Congress intended. It avoids unnecessary surplusage. And it avoids the absurd result of leaving retirees unprotected against even the most egregious discrimination in the distribution of valuable benefits that they earned during their careers.

The consequences of the contrary reading are starkly illustrated here. Lt. Stanley served as a firefighter for nearly two decades, risking life and limb to protect her community. The benefits she seeks to protect were earned through years of dedicated, dangerous service. Yet under the Eleventh Circuit's rule, she loses protections that would have safeguarded those benefits—at the moment the protections matter most. This perverse outcome would pull the rug out from under firefighters, police officers, teachers, and others who become disabled through years of service to their communities and country.

Congress never enacted this arbitrary regime, which makes outright discrimination unlawful up until an employee's last day of work—and then perfectly *lawful* the moment she clocks out for the last time. This Court should reverse.

OPINIONS BELOW

The Eleventh Circuit's opinion is reported at 83 F.4th 1333 and reproduced at App. 1. The district court's order is unreported but is available at 2021 WL 6333059 and reproduced at App. 20.

JURISDICTIONAL STATEMENT

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Eleventh Circuit entered judgment on October 11, 2023. A petition was timely filed on March 8, 2024, and the Court granted certiorari on June 24, 2024.

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the ADA are reproduced in a statutory appendix to this brief.

STATEMENT

A. Statutory background

"Congress enacted the ADA in 1990 to remedy widespread discrimination against disabled individuals." *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 674 (2001). Congress found that, "historically, society has tended to isolate and segregate individuals with disabilities," and "despite some improvements," that discrimination "continue[d] to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2). It "persist[ed] in such critical areas as employment," "access to public services," and "public accommodations," among others. *Id.* § 12101(a)(3).

In view of those findings, the ADA provides "a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities" with "clear, strong, consistent, enforceable standards addressing discrimination." *Id.* § 12101(b)(1)–(2). And "[t]o effectuate its sweeping purpose, the ADA forbids discrimination against disabled individuals in major areas

of public life," including, in Title I, employment. *Martin*, 532 U.S. at 675.

1. *Title I's discrimination provision.* In keeping with the ADA's "broad mandate" and "comprehensive" approach, *Martin*, 532 U.S. at 675, Title I establishes an expansive approach to what constitutes disability discrimination in employment.

a. *The general rule.* Section 12112 sets out a "general rule" governing discrimination: "[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). This reaches discrimination from before employment begins ("application procedures" and "hiring") through in-role performance ("advancement") to termination ("discharge") and all the way through to post-employment benefits that "accrue" after "a person's employment is completed." *Hishon v. King & Spalding*, 467 U.S. 69, 77 (1984) (interpreting Title VII). As this Court put it when interpreting identical language in Title VII, "[t]here is no question" that this prohibition extends to cover "retirement benefits." *Ariz. Governing Comm. for Tax Deferred Annuity & Deferred Comp. Plans v. Norris*, 463 U.S. 1073, 1081 (1983) (Marshall, J., joined by Brennan, White, Stevens, and O'Connor, JJ.). The upshot of this comprehensive list of the "incidents of employment" is that, if something is "part and parcel of the employment relationship," the ADA shields it from discrimination. *Hishon*, 467 U.S. at 75.

b. *The construction provision.* Title I couples the reach of its "general rule" with a flexible "[c]onstruction" provision that explains what "'discriminate against a

qualified individual on the basis of disability [in the general rule] includes." 42 U.S.C. § 12112(b). That provision makes clear that, like all anti-discrimination statutes, Title I prohibits animus-based disparate treatment. *See, e.g.*, *id.* § 12112(b)(1). It also reaches policies that have a disparate impact on people with disabilities, specifically singling out "standards, criteria, or methods of administration that have the effect of discrimination on the basis of disability," *id.* § 12112(b)(3)(A), and "standards" that "tend to screen out … a class of individuals with disabilities," *id.* § 12112(b)(6).

But, unlike most other anti-discrimination statutes, the ADA doesn't equate "discriminate" with an equal-treatment mandate. Instead, it at times requires "preferential[]" treatment to "achieve [its] basic equal opportunity goal." *US Airways, Inc. v. Barnett*, 535 U.S. 391, 397 (2002). The "construction" provision accomplishes this by defining "discriminate" to include the failure to provide a "reasonable accommodation." 42 U.S.C. § 12112(b)(5)(A). This affirmative mandate can demand significant changes: "job restructuring," "modified work schedules," "reassignment," the modification of equipment and "facilities" to make them "readily accessible to and usable by individuals with disabilities," and "other similar accommodations." *Id.* § 12111(9).

c. *The "qualified individual" definition.* While the sweep of the discrimination provision demonstrates the ADA's plan to aggressively root out disability discrimination in employment, Congress also sought to ensure that Title I would not "demand action beyond the realm of the reasonable." *Barnett*, 535 U.S. at 401. A number of its provisions thus balance the Act's ambitions against employers' legitimate interests: The Act requires

only "reasonable" accommodations and carves out accommodations that impose "undue hardship" on employers, *see, e.g.*, 42 U.S.C. § 12112(b)(5)(A), and it provides a "business necessity" defense against disparate-impact discrimination stemming from "standards, tests, or selection criteria," *id.* § 12113(a).

Chief among these provisions is the general rule's prohibition of discrimination against "qualified individuals." 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." *Id.* § 12111(8). The role of this definition—and its placement in the general rule—is to "reaffirm" that Title I "does not undermine an employer's ability to choose and maintain qualified workers." H.R. Rep. No. 101-485, pt. 2, at 55 (1990). An employer, for instance, may refuse to hire someone whose disability prevents them (even with the benefit of an accommodation) from "lift[ing] fifty pounds" if doing so is necessary for performing the job. H.R. Rep. No. 101-485, at 56. Title I thus allows employers cabined authority to act on the basis of disability; they may do so only to ensure that the people they hire can perform the core, or "essential," functions of the job at issue—a limited role that the definition of "qualified individual" underscores by requiring deference to the "employer's judgment as to what functions of a job are essential," but nothing more. 42 U.S.C. § 12111(8).

2. *Title I's enforcement provision.* To vindicate its substantive prohibition on disability-based discrimination, Title I adopted what was, by the time the ADA became law, a proven remedial mechanism. Section 12117, entitled "Enforcement," provides that the "powers, remedies, and procedures" available under Title VII may be invoked by

"any person alleging discrimination on the basis of disability in violation of" Title I. *Id.* § 12117(a). Even before the ADA was enacted, retirees had used those remedies and procedures to enforce their rights under Title VII with respect to post-employment benefits. *See, e.g.*, *Florida v. Long*, 487 U.S. 223, 225 (1988); *Norris*, 463 U.S. at 1074; *City of Los Angeles, Dep't of Water & Power v. Manhart*, 435 U.S. 702, 704 (1978).

3. *The Fair Pay Act.* Title VII's enforcement mechanism has since been expanded through the Lilly Ledbetter Fair Pay Act. *See* Pub. L. No. 111-2, § 3, 123 Stat. 5 (2009). That Act clarifies that an unlawful employment practice "occurs"—and thus restarts the time to sue—when:

> (1) the "discriminatory compensation decision or other practice is adopted,"
>
> (2) the person is "subject to a discriminatory compensation decision," or
>
> (3) "when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid."

Id. § 2000e-5(e)(3)(A). This means that "every discriminatory paycheck or other compensation resulting, in whole or in part, from an earlier discriminatory pay decision or other practice" is another occurrence for which a person can seek redress. *See* H.R Rep. No. 110-237, at 3 (2007).

B. Factual background

In 1999, after serving in the military, Karyn Stanley began her career as a firefighter for the City of Sanford, Florida. Pet. App. 2a. In 2005, she was promoted to Fire

Lieutenant. All told, Lt. Stanley served the City for almost two decades as a firefighter. Doc. 1 at 3.

When the City offered her the job, her employment package included a "health insurance subsidy." Pet. App. 3a. This benefit covered most of the cost of participating in the City's health-insurance plan. *Id.*; Doc. 1 at 5. So although Lt. Stanley's monthly health-insurance premium under the City's health plan was approximately $1,300, the City's subsidy covered $1,000 of that cost, requiring her to pay only $300. The City told her that this benefit applied both to current employees and to qualifying retirees until they reached age sixty-five. Doc. 38-15 at 11. A retiree was eligible regardless of whether she "retire[d] with twenty-five (25) years of service" or "retire[d] for disability reasons." Doc. 38-6 at 2; Pet. App. 21a.

This health-insurance subsidy was an especially important benefit for firefighters like Lt. Stanley because they have one of the "highest rates of injuries and illnesses of all occupations." Bureau of Lab. Stats., *Occupational Outlook Handbook*, *Firefighters*, https://perma.cc/F8CP-UJL8. Indeed, for many critical public-service jobs that come with lower salaries, post-employment benefits are a major draw for potential employees, representing an important part of the compensation for which they undertake (and stay in) their roles as police officers, firefighters, or other first responders. *See* Bureau of Lab. Stats., *Employee Benefits*, https://perma.cc/PLP6-7GHL.

In 2003, unbeknownst to Lt. Stanley, the City quietly changed its subsidy policy to distinguish between "disabled" and "normal" retirees. Doc. 1 at 12. The new policy changed the benefits eligibility for "all employees retiring as a result of full disability" so that it would run only "until the disabled retiree receives Medicare benefits

or until 24 months have elapsed from the date of retirement, whichever comes first." Pet. App. 22a; Doc. 38-11 at 4. By contrast, "normal retirees" remained eligible until age sixty-five. Doc. 39-16 at 13. So if a firefighter is injured in the line of duty or develops a career-ending illness one year before she completes her twenty-five years of service, the subsidy lasts for only twenty-four months.

The City claimed that the new policy was a necessary "cost cutting measure[]." Doc. 38 at 7. But it never offered any justification for cutting costs associated with disabled employees alone. The City's HR director had no explanation, Doc. 39-4 at 10, 13–14, and it was unable to identify any "data, mathematical calculations, [or] correspondence … upon which [it] based its decision" to rescind benefits from disabled retirees and not "normal retirees." Doc. 39-16 at 5, 40. Indeed, city employees could not even point to any "financial estimates" of "the cost of continuing the disability retirees['] [subsidy] longer than 24 months" before enacting the policy. Doc. 39-9 at 46.

Whatever the reason for the change, the new policy decimated Lt. Stanley's promised retirement benefits because her career as a firefighter was cut short by Parkinson's disease. After nearly twenty years of service, Lt. Stanley began to develop "stiffness [and] rigidity … as well as [a] loss of dexterity in her extremities." Doc. 38-4 at 3. In 2016, she was officially diagnosed with Parkinson's. Pet. App. 2a. For a longtime firefighter like Lt. Stanley, that diagnosis was tragic but not surprising. Some states have adopted a legal presumption that firefighters who develop Parkinson's did so in the line of duty based on the frequency with which the disease afflicts

firefighters. *See* N.Y. Gen. Mun. Law § 207-kkk (Consol.); Ind. Code Ann. § 5-10-15-5.5.

For two years after her diagnosis, Lt. Stanley continued to work as a lieutenant. Pet. App. 2a. But eventually it became clear that Lt. Stanley's disability was preventing her from meeting the physical demands of her job. Pet. App. 2a. In 2018, at the age of forty-seven, Lt. Stanley took disability retirement with the City's agreement. Pet. App. 2a.

At that point, Lt. Stanley expected the employer she had served for almost twenty years to stand by the bargain that it had struck with her when she was hired. The City had explained her original benefits package when she first joined, and it had never told her about any change in policy. Doc. 38-15 at 9. She had never received an updated human resources manual explaining that she would no longer receive the retirement benefits she was expecting. Doc. 38-15 at 9, 11. But just twenty-four months after she retired, the City discontinued Lt. Stanley's health-insurance subsidy, leaving her financially responsible for all of her health insurance. Pet. App. 3a.

For the past few years, Lt. Stanley has paid out of pocket for the entire cost of the City's health-insurance policy, which she relies on for her Parkinson's treatment. Doc 39-9 at 23; Doc. 38-15 at 11, 21. The cost to Lt. Stanley of covering the $1,000 monthly subsidy until she is sixty-five—if she is even able to do so—would be more than $150,000. Doc. 1 at 6–7. Due to the high cost of the City's health-insurance premium without the subsidy, no other disabled retirees have been able to stay on the City's insurance after the loss of the subsidy. Doc. 39-9 at 25; *see* Doc. 39-16 at 3–4. Non-disabled retirees, however,

typically remain on the City's health insurance until they become eligible for Medicare. Doc. 39-4 at 69.

C. Procedural background

Lt. Stanley filed this lawsuit alleging that the City's policy violated the ADA. Pet. App. 24a. The district court dismissed Lt. Stanley's Title I claim. The court found itself bound by circuit precedent holding that a "disabled former employee" like Lt. Stanley has "no standing to sue" over post-employment benefits under Title I because she is "no longer" a qualified individual. Pet. App. 24a.

The Eleventh Circuit affirmed. It held that Lt. Stanley, as a former employee, could not sue about discrimination in her benefits under the ADA because she was not a "qualified individual" at the time that the City terminated her subsidy payments in 2020. Pet. App. 11a–12a. The court emphasized that section 12111(8) defines "qualified individual" using the "present tense" words "[c]an," "holds," and "desires." Pet. App. 11a. Thus, it held, a plaintiff "must desire or already have a job with the defendant at the time the defendant commits the discriminatory act." *Id.* And since Lt. Stanley was a "retiree, not [an] employee," in 2020, she was not a "qualified individual." Pet. App. 16a.

The panel further concluded that Lt. Stanley was not a "qualified individual" at any other discrete moment in which discrimination could have occurred. Pet. App. 16a–17a. The court announced that Lt. Stanley "concede[d]" that the City's change of the policy in 2003 could not amount to actionable discrimination. Pet. App. 16a. And it "agree[d]" with Lt. Stanley's (alleged) concession that her claim could not turn on the 2003 policy change because she was "not yet disabled at that time." *Id.* Nor, the court reasoned, could Lt. Stanley's claim turn on the City's

actions in the period after she was diagnosed with Parkinson's but before she retired because she (allegedly also) "conceded that … she was [not] impacted" until after she retired. Pet. App. 18a.

SUMMARY OF ARGUMENT

I. The ADA permits former employees to sue over post-employment benefits.

The who: The ADA's enforcement provision allows suit by "any person alleging discrimination" in violation of the Act who "claim[s] to be aggrieved." 42 U.S.C. §§ 12117(a), 2000e-5(f)(1). This language doesn't limit suits to "employees," "applicants," or "qualified individuals."

The what: The ADA targets discrimination not just in hiring and firing but also in "employee compensation … and other terms, conditions, and privileges of employment." *Id.* § 12112(a). By the time the ADA was enacted in 1990, this Court had already interpreted Title VII's parallel language as protecting retirement benefits.

The when: The Fair Pay Act further clarifies that retirees may bring suit under the ADA when they are "affected by application of" discriminatory benefits plans "adopted" while they were working. *Id.* § 2000e-5(e)(3)(A). This allows a plaintiff to challenge a decision to adopt a discriminatory benefits policy each time that she is adversely affected, even after her employment ends. So even if Ms. Stanley didn't feel the effects of the City's policy until she retired, these provisions together make clear that her claim may proceed.

II. The court of appeals independently erred in holding that the ADA protects only those who "hold[] or desire[]" a job. Nothing in the ADA's text requires that result,

which would leave retirees unprotected against even the most egregious discrimination.

The ADA doesn't require a person to "hold[] or desire[]" a job to be a qualified individual. The definition asks if an individual "*can* perform the essential functions of the employment position that such individual holds or desires." In other words, it tests if you can do a job, not if you have or want one.

This makes sense given the definition's role in the statutory scheme: It affords employers necessary, but circumscribed, flexibility to restrict employment on the basis of disability to preserve the functioning of a business. It allows employers to screen out people who can't perform core job functions, not to implement discriminatory policies unrelated to job performance.

This understanding avoids treating key statutory terms as surplusage. The ADA's reasonable-accommodation provision applies to a "qualified individual with a disability *who is an applicant or employee*." *Id.* § 12112(b)(5)(A) (emphasis added). This tells us that the Act contemplates at least *some* qualified individuals who are neither applicants nor employees—a category that would not exist under the court of appeals' reading.

Common usage, grammar, and logic all show that the text doesn't demand the Eleventh Circuit's reading. Consider this rule: "An individual may not watch the movie unless the individual silences the electronic devices that such individual carries." If you come to the theater without a device, can you stay? Of course. The rule requires patrons to turn off their devices only to the extent that they have them. The "qualified individual" definition works the same way: It requires individuals to be able to perform essential job functions only to the extent they hold or desire jobs with such functions.

Even granting that the "qualified individual" definition could be read in a vacuum to support the Eleventh Circuit's view, ours is the better reading in the context of the statute as a whole. Treating retirees as "qualified individuals" allows the definition to fulfill its role in screening out those who can't perform job functions, without turning it into an arbitrary license to discriminate. It avoids rendering key language superfluous. It gives force to the ADA's protections for retirement benefits. And it maintains congruity between the ADA and Title VII. In short, it is the reading that is far "more consistent with the broader context of" the Act and the "primary purpose" of the definition. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 346 (1997).

ARGUMENT

By allowing employers to discriminate against disabled retirees with impunity—in ways that would never be tolerated for race, religion, sex, or national origin—the Eleventh Circuit's decision frustrates Congress's plan for a "comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). The decision is flawed in two key respects, each of which independently warrants reversal:

First, it fundamentally misunderstands the ADA's text and structure. The ADA allows "any person alleging discrimination" to sue, including retirees who are later "affected by the application of" discriminatory policies that were "adopted" while they were working. That description fits the allegations in this case to a T.

Second, it misreads the ADA's "qualified individual" definition as excluding retirees from the Act's protection. The text doesn't compel that reading, and an "inquiry into text and context" makes the statute's contrary meaning

clear. *Pulsifer v. United States*, 601 U.S. 124, 141 (2024). Reading the ADA to protect retirees makes sense of the scheme as a whole, harmonizes Title VII and the ADA, avoids turning key provisions into surplusage, and escapes an outcome that puts the statute "at war with itself." *Groff v. DeJoy*, 600 U.S. 447, 472 (2023).

I. The ADA permits former employees to bring suit with respect to post-employment benefits.

The ADA permits retirees to sue over their benefits. This conclusion follows from the ADA's enforcement provision, its coverage of post-employment benefits, and the Fair Pay Act's clarification of when plaintiffs may sue over benefits. Together they make clear that Lt. Stanley's suit, which challenges a policy "adopted" while she was employed, and to which she was "subjected" while working for the City, may proceed. This Court therefore need not even reach the court of appeals' erroneous holding that the Act only prohibits discrimination against people who currently "hold[] or desire[]" a job.

A. *The who*: The ADA's enforcement provision allows suit by "any person alleging discrimination" in violation of the Act.

To enforce the ADA's "broad mandate," *Martin*, 532 U.S. at 674–75, section 12117, titled "Enforcement," provides "to any person alleging discrimination on the basis of disability in violation of" Title I the full range of remedies provided for in Title VII. 42 U.S.C § 12117(a). Noticeably absent from this authority to sue is a requirement that the plaintiff be a "qualified individual." Instead, "any person" who alleges a discriminatory act in violation of the statute can invoke Title VII's remedial framework. And that framework contains no relevant limitation either: It allows any "person claiming to be

aggrieved" to bring a "civil action." 42 U.S.C. § 2000e-5(f)(1).

Despite its breadth, Title VII's remedial provision does have its limits: Only plaintiffs who assert an "interest arguably sought to be protected by the statute" may invoke these remedies. *Thompson v. N. Am. Stainless, LP*, 562 U.S. 170, 177–78 (2011). But this "zone-of-interests" test is "not meant to be especially demanding." *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 224–25 (2012). It bars a plaintiff only if her asserted "interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Thompson*, 562 U.S. at 178; *see also, e.g.*, *Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 200 (2017) (holding that Miami could sue under the Fair Housing Act for financial injury incurred from discriminatory lending practices). Which is to say, this textual limitation cuts off only suits that are far afield from the statute's purposes—for example, a "shareholder" suit against a corporation over its "firing [of] a valuable employee for racially discriminatory reasons." *Thompson*, 562 U.S. at 177.

Assuming that the same zone-of-interest test applies, retirees in Lt. Stanley's shoes satisfy it. The ADA's "comprehensive" mandate to "eliminat[e]" discrimination, 42 U.S.C. § 12101(b)(1), aims not just at the "persist[ence]" of discrimination in "jobs," but also in the distribution of "benefits," *id.* § 12101(a)(5). So there could be no doubt that retirees' claims would fall within the Act's zone of interests. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 131 (2014) (explaining that, when a statute contains a "detailed statement of [its]

purposes," no "guesswork" is required to determine the zone of interests). It's hard to imagine anyone better situated to bring *this* claim—over *her* benefits stemming from *her* job—than Lt. Stanley.

B. *The what*: The ADA protects against discrimination with respect to post-employment benefits.

The ADA's substantive prohibitions—the *what*—also reach claims from retirees. The ADA specifically guards against discrimination in post-employment benefits. It targets not just discrimination in hiring and firing but also forbids "discriminat[ing] against a qualified individual on the basis of disability in regard to … employee compensation … and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a). By the time the ADA was enacted in 1990, this Court had already made clear that Title VII's parallel language protected post-employment benefits. *See, e.g.*, *Hishon*, 467 U.S. at 77; *Norris*, 463 U.S. at 1081.

That's because "[a] benefit need not accrue before a person's employment is completed" to be protected. *Hishon*, 467 U.S. at 77. What matters, instead, is that the benefit is "part and parcel of the employment relationship"; if it is, it may not be "doled out in a discriminatory fashion." *Id.* at 75. That common-sense conclusion means that "[t]here is no question" that "retirement benefits" are protected. *Norris*, 463 U.S. at 1079; *see also Hishon*, 467 U.S. at 77. In the twenty-five years between Title VII's passage and the ADA's passage, this Court repeatedly entertained Title VII claims about post-employment benefits. *See Long*, 487 U.S. at 225; *Norris*, 463 U.S. at 1074; *Manhart*, 435 U.S. at 705.

When the ADA adopted Title VII's terminology, it carried forward this settled meaning. "[T]he enactment of a new provision that mirrors the existing statutory text indicates … that the new provision has that same meaning." *Lightfoot v. Cendant Mortg. Corp.*, 580 U.S. 82, 95 (2017). And the ADA's protection of post-employment benefits is confirmed by other sections. For example, the ADA prohibits employers from contracting with an "organization providing fringe benefits" in a way that "has the effect" of discriminating on the basis of disability. 42 U.S.C. § 12112(b)(2). "[F]ringe benefits" has a well-accepted meaning, and it encompasses post-employment benefits. *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 654 (2006); *see also* 135 Cong. Rec. S10712 (daily ed. Sept. 7, 1989) (statement of Sen. Harkin) (describing the hope that covered individuals would "live [their] retirement years in dignity"); Oversight Hearing on H.R. 4498 before a Subcomm. of H. Comm. Educ. & Labor, 100th Cong. 2d Sess. 54 (1988) (describing the ADA's focus on protecting disabled Americans' "benefits for … health and retirement").

Add that all together, and it is clear that a retiree in Lt. Stanley's position has a right to sue. Whether or not such a retiree is a "qualified individual" when they experience the effects of the discrimination, they are a disabled employee claiming that their employer applied a discriminatory policy (which the ADA prohibits) to strip them of their benefits (which the ADA protects).

In fact, a benefits policy that facially discriminates against people with disabilities—everyone in the company receives a pension, except for people with disabilities—necessarily runs afoul of the ADA. It obviously "discriminate[s] … on the basis of disability." 42 U.S.C.

§ 12112(a). And it does so with regard to "compensation," *id.*, which is paid to people in exchange for their "perform[ance of] the essential functions" of an "employment position," *id.* § 12111(8).

In other words, in understanding what the statute protects, the "qualified individual" language is largely beside the point in a case of this kind. As a general proposition, employers only pay "compensation" to "qualified individuals" who "can perform the essential functions of the employment position that" they "hold[] or desire[]." *Id.* And we know from preexisting usage that such "compensation" includes benefits employees receive after retirement. So when employers discriminate "in regard to … compensation," they necessarily do so "against a qualified individual." *Id.* § 12112(a). And as the next section explains, it is proper for an employee (or former employee) to sue whenever such a discriminatory compensation policy affects them—including when they receive their benefits only after retiring.

C. *The when*: The Lilly Ledbetter Fair Pay Act and Title I's enforcement provision taken together mean that retirees can sue over post-employment benefits.

It is clear, then, that retirees are among the "any person[s]" "claiming to be aggrieved" who can invoke Title I's enforcement mechanism. 42 U.S.C. § 2000e-5. So too is it clear that their retirement benefits are "compensation" protected by the Act. *Id.* § 12112(a). The Lilly Ledbetter Fair Pay Act of 2009, which Title I incorporates, brings Lt. Stanley's claim across the finish line: It allows retirees to bring suit when they are "affected by application of" discriminatory benefits plans "adopted" while they were working. *Id.* § 2000e-5(e)(3)(A).

1. Before the Fair Pay Act, those seeking to challenge discriminatory policies affecting post-employment benefits faced a challenge: Like Lt. Stanley, they may not have learned about their discriminatory benefits policies until they were affected after retiring. That could be years after the policies were adopted. Because such a claim could have been characterized as merely seeking redress for the "adverse effects resulting from the past discrimination," it could well have been barred by the statute of limitations. *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 628 (2007).

The Fair Pay Act resolved this dilemma. It provides that an unlawful employment practice occurs with respect to discrimination in compensation:

> [1] when a discriminatory compensation decision or other practice is adopted, [2] when an individual becomes subject to a discriminatory compensation decision or other practice, or [3] when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

42 U.S.C. § 2000e-5(e)(3)(A). This provision applies to the ADA through its incorporation of Title VII's enforcement mechanisms. *See* 42 U.S.C. § 12117(a).

The Fair Pay Act thus makes clear that a claim under the ADA is timely if the plaintiff sues when she "becomes subject to" or "is affected by" discrimination that occurred during her tenure. This is true even if the plaintiff doesn't receive the benefit in question until after her employment has concluded. As a result, the Act permits a plaintiff to challenge an employer's earlier decision to adopt a

discriminatory benefits policy when she is adversely affected, either by receiving a reduced benefit or by being denied the benefit entirely.

Crucially, the Fair Pay Act allows a plaintiff's claim to accrue or re-accrue even after the plaintiff's employment has concluded. As long as the plaintiff "becomes subject to" or "is affected by application of" the employer's earlier discriminatory decision after leaving her job, the employer's liability will accrue or re-accrue then. 42 U.S.C. § 2000e-5(e)(3)(A), (B). The Eleventh Circuit's view that a former employee is no longer a "qualified individual" because she neither "holds" nor "desires" a job has no bearing on this analysis. 42 U.S.C. 12111(8). The Fair Pay Act doesn't treat each discrete payment (or nonpayment) as a new discriminatory act that must independently satisfy all of the ADA's elements. Rather, it allows a claim to accrue based on the past discriminatory decision when the plaintiff is affected by that decision.

The Fair Pay Act eliminates any doubt about a potential mismatch between Congress's intent to broadly prohibit disability-based discrimination in retirement benefits and the ADA's text. It ensures that plaintiffs can timely enforce the settled rule that "classification of employees on the basis of [disability] is no more permissible at the pay-out stage of a retirement plan than at the pay-in stage." *Norris*, 463 U.S. at 1081. And it reinforces what the ADA's text, structure, and purpose already make clear: Former employees are protected from discrimination as to post-employment benefits.

2. When Lt. Stanley began her career as a firefighter, the City promised to continue paying her health-insurance subsidy until the age of 65 so long as she "retire[d] with twenty-five (25) years of service" or "retire[d] for

disability reasons." Doc. 38-6 at 2; Pet. App. 21a. That retirement subsidy was, without a doubt, part of her "compensation" and thus protected by Title I. 42 U.S.C. § 12112; *see supra* 19–21. Four years later, and while Lt. Stanley was still working as a firefighter, the City changed its policy to distinguish between "disabled" and "normal" retirees. Doc. 1 at 12; *see also* Doc. 39-16 at 27–28. The latter were still eligible for the full retirement benefit, but the former would now receive only two years of the health care subsidy (or less, if they qualified for Medicare benefits). Pet. App. 22a.

Lt. Stanley was, of course, employed by the City in 2003 when this "discriminatory compensation decision" that she challenges was "adopted." 42 U.S.C. § 2000e-5(e)(3)(A). Thus, even if Lt. Stanley did need to hold or desire a job when the City discriminated against her (*but see infra* Part II), she did. The City "adopted," *id.*, its policy in 2003 when Lt. Stanley indisputably was a qualified individual, and that policy discriminated "on the basis of disability in regard to … employee compensation" (her benefits), *id.* § 12112(a). Lt. Stanley's claim then re-accrued in 2020 when she was "affected by application of" the policy (she was denied the health care subsidy). *Id.* § 2000e-5(e)(3)(A). That means that she could bring this lawsuit exactly when she did to challenge exactly what she challenged.

The Eleventh Circuit rejected this reasoning by announcing that Lt. Stanley "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." App. 16. Nothing supports the assertion that Lt. Stanley made that concession. To the contrary, Lt. Stanley repeatedly argued the opposite, insisting that the

adoption of the policy did constitute unlawful discrimination against her. *See, e.g.*, Doc. 1 at 4 (allegations in complaint addressing 2003 change); Op. Br. at viii–ix (expressly adopting similar argument made in the United States' amicus brief); Reply Br. at 6 ("In this case, the City's decision to enact the facially discriminatory 24-Month Rule in 2003 is the initial 'challenged employment decision.' … Thus, [Lt.] Stanley was a 'Qualified Individual' able to perform her firefighter duties at the time of the 'challenged employment decision.'") (emphasis omitted); Oral Arg. 4:59–5:05 ("At the time of the discriminatory act in 2003 she was a qualified individual.").

To the extent the Eleventh Circuit held that the 2003 policy change could not be actionable discrimination because Lt. Stanley "was not yet disabled at that time," it misapplied the statute. App. 16. A person need not be disabled to be subjected to unlawful discrimination under Title I. The statute was specifically amended to avoid that outcome: It broadly prohibits discrimination "on the basis of disability" rather than, as it had previously provided, only against a qualified individual "with a disability." *Compare* 42 U.S.C. § 12112(a), *with* Pub. L. No. 101-336, Title I, § 102, 104 Stat. 331 (1990). Here, the City acted "on the basis of disability" when it adopted a policy that, on its face, limits the amount of time that a person receives a subsidy based on whether that person has a disability. *See UAW v. Johnson Controls, Inc.*, 499 U.S. 187, 200 (1991) ("[A]n explicit gender-based policy is sex discrimination under" Title VII).

It is of no matter, then, that Lt. Stanley was not yet disabled when the City changed its policy. Even if that was (somehow) relevant, it was inevitable that the facially

discriminatory policy would harm employees when they became disabled and had to retire before twenty-five years of service. The Court may thus conceive of this claim as encompassing two moments of time that complete the whole: when the facially discriminatory policy was adopted in 2003, and when Lt. Stanley became disabled. This Court has recognized that certain Title VII claims can encompass events occurring at different points in time as the basis for an action challenging a "single discriminatory act." *Green v. Brennan*, 578 U.S. 547, 562 n.7 (2016). By analogy, the same holds true here.

The Fair Pay Act also demonstrates that the City discriminated against Lt. Stanley again when that same discriminatory policy was applied to her as she neared her inevitable early retirement. At that point, although she did not yet feel the effects of the policy, Lt. Stanley became "subject to" it, 42 U.S.C. § 2000e-5(e)(3)(A); the policy conclusively determined what benefits she would receive once her fast-approaching forced retirement began and, in that way, removed her access to the more expansive benefits package available to people without disabilities. *See Castellano v. City of New York*, 142 F.3d 58, 68 (2d Cir. 1998) ("[A]n employee's entitlement to post-employment fringe benefits arises … during his period of employment."). That too is an "unlawful employment practice" that "occur[ed]" during Lt. Stanley's employment. 42 U.S.C. § 2000e-5(e)(3)(A).[1]

[1] The third way in which an unlawful employment practice occurs—the individual becoming "affected" by the discriminatory decision—remains relevant here because it removes any doubt that Lt. Stanley's claim is timely. She was "affected" when her subsidy ended.

The Eleventh Circuit declined to address that alleged discrimination too, because Lt. Stanley "affirmatively conceded" that she was not "impacted by [the City's policy] during her employment." App. 18. But that Lt. Stanley was not yet "impacted" (in terms of receiving a decreased health care subsidy) in no way undermines her claim. That's what the Fair Pay Act makes clear: A person can be discriminated against when a "decision" or "practice" is "adopted," or when they "become[] subject to" it, even if they are not "affected by" it until later. 42 U.S.C. § 2000e-5(e)(3)(A).

II. The ADA does not require a person to "hold[] or desire[]" a job to be a "qualified individual."

The Eleventh Circuit's holding was wrong for another, independent reason: One does not need to currently "hold[] or desire" a job to be a "qualified individual" under the ADA. The court below reached its holding by focusing on the definition of discrimination in section 12112(a) and of "qualified individual" in section 12111(8). Based on those provisions, it held that it is *legal* for employers to discriminate against former employees on the basis of disability.

Nothing in the statute's text demands that surprising result. The Eleventh Circuit's error is explained by its misunderstanding of the definition of "qualified individual." In the court's view, because section 12112(a) prohibits discrimination against "qualified individuals" and the definition of "qualified individual" speaks in the present tense—referring to a person who "can perform" a job that the person "holds" or "desires"—the ADA prohibits discrimination only against a person *while* they hold (or are applying to) a job. App. 11.

But the court of appeals effectively rewrote the statutory definition to impose two distinct requirements: "Qualified individual means an individual who (a) holds or desires an employment position and (b) can perform the essential functions of that employment position." The text only imposes one requirement: "[Q]ualified individual means an individual who … can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. 12111(8). The text asks only one question—what "can" you do?

This understanding of the definition's text makes perfect sense given its role in the statute: It operates to afford employers cabined authority to act on the basis of disability when doing so is necessary to preserve the functioning of the business. That is why the term is defined with reference to "*essential* functions," not "*any* function." Its text is best read to impose only a conditional mandate, which tracks that role. If a person has (or seeks) a job, that person must be able to perform its essential functions; if no such job exists—because the person is retired—the definition does not operate as a limit on the ADA's prohibition on discrimination. In other words, the definition asks if you "*can*" perform the functions of a job that you hold or desire, not if you have or want one.

A. The text of section 12111(8) and its place in the statutory scheme confirm that the "qualified individual" definition tests if you *can* do a job, not if you *have* one.

The definition of "qualified individual" exists to give employers the cabined ability to act on the basis of job-related concerns so that they are not forced to hire or retain people who are incapable, even with the benefit of reasonable accommodations, of performing essential

tasks. We know that is the definition's role because of its plain text, its place in the statutory scheme, and its relationship to other sections of the statute.

1. *Text and purpose.* "Start with the text." *Arellano v. McDonough*, 598 U.S. 1, 8 (2023). The definition asks if an individual "*can perform* the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8) (emphasis added). It does not ask if an individual "*holds or desires* an employment position whose essential functions she can perform." The latter formulation would impose the "must hold or desire a job" requirement that the Eleventh Circuit perceived. The former asks if you "can" do a thing, not if you are doing that thing or would do it.

That the definition asks what an individual "can" do makes sense given its role in the statutory scheme. The definition gives employers necessary, but circumscribed, flexibility in light of the Act's sweeping impact. Title I provides protection in all aspects of the employment relationship. It broadly prohibits "discriminat[ion]" in "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). That covers everything from job applications to post-employment benefits—if something is "part and parcel of the employment relationship," an employer cannot "discriminate." *Hishon*, 467 U.S. at 75; *supra* at 19–21.

Title I prohibits both "disparate treatment" and "disparate impact." *Raytheon Co. v. Hernandez*, 540 U.S. 44, 52 (2003). But it also goes further, "requir[ing] affirmative conduct" to ensure "those with disabilities … obtain the same workplace opportunities

that those without disabilities [] enjoy." *Barnett*, 535 U.S. at 397, 401; 42 U.S.C. § 12112(b)(5)(A). Accordingly, the Act at times requires employers not to treat people with disabilities equally, but instead to treat them "preferentially." *Barnett*, 535 U.S. at 397. That affirmative mandate is reflected in the Act's definition of discrimination, which "includes … not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee." 42 U.S.C. § 12112(b)(5)(A).

Because of the Act's "bold ambitions" and "far-reaching" scope, though, Congress recognized the need for delineated "limits." *Kincaid v. Williams*, 143 S. Ct. 2414, 2415–16 (2023) (Alito, J., dissenting from the denial of certiorari). As this Court has held, the ADA achieves its important "objectives" within "the realm of the reasonable." *Barnett*, 535 U.S. at 401. Without some qualification, the statute would prevent employers from denying employment to people whose disabilities, no matter the steps taken to accommodate them, prevent them from performing their jobs. A swimming pool could face liability for refusing to hire as a lifeguard a person whose disability left her unable to swim. Congress, unsurprisingly, did not want to prohibit that sort of rational, and necessary, decision-making.

The "qualified individual" definition ensures that employers have the necessary leeway. The only people who employers must hire, retain, and accommodate are those who, "with or without" accommodations, "can perform the essential functions of the employment position." 42 U.S.C. § 12111(8). The definition, then, exists to allow employers to screen out people who can't perform

the core, or "essential," functions of the job at issue. What it does not do, however, is grant employers a license to implement discriminatory employment policies or individual employment actions that have nothing to do with an individual's ability to do a relevant job.

2. ***Statutory scheme.*** This understanding of the "qualified individual" definition—as a screen that prevents employers from being obligated to hire and accommodate those who can't perform a job—neatly aligns with the rest of the statutory scheme that Congress devised. Several provisions of the Act allow employers to take actions that are justified in relation to the operation of their business. None of them invite employers to take discriminatory actions that have nothing to do with legitimate business needs.

For example, even when employers must provide accommodations, they need only be "reasonable," and even those they can forego if they "can demonstrate that the accommodation would impose an undue hardship" on their "operation." *Id.* § 12112(b)(5)(A). "[Q]ualification standards" that screen out people with disabilities are impermissible, unless that standard "is shown to be job-related for the position in question and is consistent with business necessity." *Id.* § 12112(b)(6). Other examples are sprinkled across the statute. *See, e.g.*, *id.* § 12112(b)(7) (making it unlawful to administer "tests concerning employment" unless those tests measure a person's aptitude and skills rather than merely reflecting any impairments); *id.* § 12112(d)(2) (prohibiting pre-employment medical examinations but permitting "inquiries into the ability of an applicant to perform job-related functions").

Each of these provisions reflects a balance struck in the Act: Discrimination is prohibited—from application through retirement—but employers have leeway to act on the basis of disability where a sufficiently weighty and legitimate business need calls for it. The "qualified individual" definition does just that—nothing more, nothing less. It is not concerned with whether you have a job; it is concerned with employers' needs in relation to their current and future employees. Reading it to allow discrimination against former employees, by contrast makes it do work in the statute that it simply is not doing.

3. ***Surplusage.*** The court of appeals' reading also turns key provisions of the Act into surplusage. It is a "'cardinal principal' of interpretation that courts must give effect, if possible, to every clause and word of a statute." *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 602 (2019). Accordingly, the canon against surplusage instructs that a statute should be construed "so that no part will be inoperative or superfluous, void or insignificant." *Rubin v. Islamic Republic of Iran*, 583 U.S. 202, 213 (2018).

The ADA's definition of discrimination, section 12112(b)(5)(A), states that discrimination "includes … not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability *who is an applicant or employee*." 42 U.S.C. § 12112(b)(5)(A) (emphasis added).

This language tells us that the Act contemplates the existence of some qualified individuals who are neither "applicant[s] [n]or employee[s]." If the court of appeals was right that the qualified individual definition already screens out individuals who do not "hold[] or desire[]" a job, then this modifier—"who is an applicant or employee"

—would be surplusage. And an interpretation that "treat[s]" those "statutory terms as surplusage," particularly when they're found in such a "pivotal [] place in the statutory scheme" (the reasonable-accommodation provision), should give us pause. *Duncan v. Walker*, 533 U.S. 167, 174 (2001). "The canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *City of Chicago v. Fulton*, 592 U.S. 154, 159 (2021).

That there are "qualified individual[s]" not covered by section 12112's reasonable-accommodation mandate is confirmed by the other way its reach is narrowed. Employers need only make reasonable accommodations for "qualified individual[s] *with a disability*." 42 U.S.C. § 12112(b)(5)(A) (emphasis added). To be a "qualified individual," though, you need not have a disability. The ADA was specifically amended to extend the "general" antidiscrimination mandate not only to discrimination against persons "with a disability," but to more broadly reach discrimination "on the basis of disability." *Compare* Pub. L. No. 101-336, Title I, § 102, 104 Stat. 331 (1990), *with* 42 U.S.C. § 12112(a). Because there are "qualified individual[s]" who are not disabled, as well as those who no longer hold or desire a job, then, the reasonable-accommodation provision makes perfect sense. That section recognizes the breadth of who can be a "qualified individual," and then subtracts from its mandate the need to accommodate any "qualified individual" who is not a person "with a disability" and who is not "an applicant or employee," 42 U.S.C. § 12112(b)(5)(A)—because only disabled individuals engaged in (or seeking) active employment actually need "accommodations."

Section 12112 thus demonstrates that, when Congress intended to limit the reach of a substantive protection to applicants and employees, it did so explicitly.

B. Common usage, grammar, and logic all demonstrate that the text does not compel reading "qualified individual" to exclude retirees.

Nothing in the text of the definition of "qualified individual" demands reading it to require that an individual currently hold or desire a job. The Eleventh Circuit concluded otherwise, reasoning that, because of the definition, the "plain language" of the anti-discrimination rule "expressly applie[s] only to 'qualified individuals with a disability' who 'hold[]' or 'desire[]' an 'employment position.'" App. 7. But that reading seemed plain only because the court of appeals misunderstood a key part of the definition:

> The term "qualified individual" means an individual who, with or without reasonable accommodation, *can perform the essential functions* of the employment position that such individual holds or desires.

42 U.S.C. § 12111(8) (emphasis added). It is the "can perform" clause that makes the definition carry out its important role in the statute. *See supra* 29–31. That's how it tests an employee's capabilities. And retirees are not unable to pass this test—that is, they're not unable to perform the essential functions of a job that they hold or desire.

To be sure, testing the job capabilities of someone who is no longer working may seem logically awkward. But that doesn't mean that retirees *fail* the test; it instead

highlights the conditional nature of the requirement. And, as we explain below, common sense, common usage, and logic all suggest that the best reading (or at least an equally plausible one) is that retirees *are* "qualified individuals." But even if one thought that the test was ambiguous when applied to retirees, that still would require rejecting the Eleventh Circuit's reading, which is "[in]consistent with the broader context" of Title I "and the primary purpose of" the "qualified individual" definition. *Robinson*, 519 U.S. at 849; *see id.* (holding that "the term 'employees,' as used in § 704(a) of Title VII" covers "former employees" despite the text being "ambiguous" because that reading is "more consistent with the broader context of Title VII and the primary purpose of § 704(a)").

1. ***Common usage.*** Title I defines a "qualified individual" 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). The Eleventh Circuit mistakenly read that definition to require that an individual currently hold or desire a job. But that is not the only (or best) way to read the definition. A few parallel examples demonstrate how an ordinary reader interprets a sentence like this one.

"You can't watch the movie unless you silence your cell phone." If you come to the theater without a phone, do you violate this rule? Surely no. That's because this rule requires that patrons turn off their phones only to the extent that they have phones to turn off. For the same reason, a person without a phone can attend court despite a rule that says "[y]ou must turn off your cell phone before

entering the courtroom."[2] The rules—and their respective purposes—are satisfied. "[C]ommon sense," *Pereira v. Sessions*, 585 U.S. 198, 211 (2018), tells us how to read these rules. *See Bond v. United States*, 572 U.S. 844, 857 (2014) ("The notion that some things 'go without saying' applies to legislation just as it does to everyday life.").

Consider another example. NASA gives an award each year to the "amateur astronomer" who "discovered the intrinsically brightest near-Earth asteroid" in the previous year. 51 U.S.C. § 30902(c)(3)(A). As defined by the statute, "amateur astronomer means an individual whose employer does not provide any funding, payment, or compensation to the individual for the observation of asteroids and other celestial bodies." *Id.* § 30902(b)(1). Is an unemployed person with a home telescope eligible to win that prize? Of course. What this rule obviously means in context is that, *if* you have an employer and *if* that employer pays for your stargazing, you can't be an "amateur astronomer." Unemployed people don't fail that test; they easily pass it.

Or try this one: "A passenger may not board an aircraft unless it is determined that the passenger is a 'cleared individual.'" "A 'cleared individual' means an individual who can successfully complete an x-ray screening of the baggage that such individual carries or checks." Does this hypothetical rule prohibit passengers with no bags from boarding a plane? Obviously not. This rule doesn't require that a passenger have a carry-on or checked bag; it requires the screening of any bag *to the extent* that a passenger has such luggage.

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[2] Thomas F. Eagleton U.S. Courthouse Self-Guided Tour, https://perma.cc/2BVB-2K4P.

Indeed, an actual TSA regulation provides that "[n]o individual may … board an aircraft without submitting to the screening and inspection of" her "accessible property[.]" 49 C.F.R. § 1540.107(a). This regulation obviously doesn't require that a passenger carry any "accessible property," only that she submit to the screening of that property to the extent she has any.

Another federal statute requires the government to pay individuals for the "cost of a comparable replacement dwelling" when a federal project displaces them. 42 U.S.C. § 4623(a)(1)(A). Whether something qualifies as a "comparable replacement dwelling" requires considering how far away it is from the displaced person's original home "with respect to public utilities, facilities, services, *and the displaced person's place of employment*." *Id.* § 4601(10) (emphasis added). The lack of a "place of employment" can't possibly bar retirees from financial support.

Notably, Title II of the ADA has a similar textual feature. That section forbids discrimination in public "services, programs, or activities." 42 U.S.C. § 12132. Like Title I, it makes use of "qualified individual" language: "[N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." *Id.* And its definition of "qualified individual" has a similar structure to Title I's: "[Q]ualified individual with a disability means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices … *meets the essential eligibility requirements* for the receipt of services or the

participation in programs or activities provided by a public entity." *Id.* § 12131(2) (emphasis added).

Now consider a "recreational" program covered by the Act, *United States v. Georgia*, 546 U.S. 151, 157 (2006) (discussing definition of "services, programs, or activities"), like the Washington & Old Dominion trail, which has no "essential eligibility requirements" for "participation," 42 U.S.C. § 12131(2). The trail is open to everyone free of charge. Except that it has one rule: "No people in wheelchairs." That blatant exclusion certainly violates Title II. The fact that the trail has no "essential eligibility requirements" does not mean the excluded person with a disability ceases to be a "qualified individual." Instead, Title II is naturally read to say that, to the extent there are "essential eligibility requirements," an individual must meet them.

Although rules written this way can sometimes read awkwardly when their implicit condition fails, courts routinely figure out how to interpret them. Take the federal compassionate-release statute. That law authorizes a court to "modify a term of imprisonment" when, among other things, the "reduction is consistent with applicable policy statements issued by the Sentencing Commission." 18 U.S.C. § 3582(c)(1)(A). In the period after Congress passed the First Step Act, but before the Sentencing Commission revised its policy statement, the "overwhelming majority of circuits … agreed that" the only potentially relevant policy statement was not "applicable." 3 Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. Crim. § 638.2 (5th ed. 2024). But courts didn't get hung up on whether modifying a term of imprisonment was or wasn't "consistent" with a non-existent set of "policy

statements." Instead, they (sensibly) read the text to mean that a sentence reduction must be consistent with the applicable policy statements to the extent there are any. *Id.* at nn. 23–24 (explaining that eight of nine circuits who considered the question took this view, with the Eleventh Circuit as the lone "outlier").

As the compassionate-release cases demonstrate, "courts can … find implied conditionality as a function of a statute's syntax" and "the nature of written language." Eric S. Fish, *Severability As Conditionality*, 64 Emory L.J. 1293, 1337–39 (2015); Michael McCarthy & Ronald Carter, *Cambridge Grammar of English: A Comprehensive Guide* 755–56 (2006) (explaining that "[c]onditions can be conveyed without any overt conditional subordinator" and that "conditions can be expressed" with "the omission of conjunctions such as if"); *see, e.g.*, *Boesche v. Udall*, 373 U.S. 472, 479 (1963) (in a case where there was "no lease to cancel," declining to read a provision on lease cancellation—which "sp[oke] entirely in terms of post-lease occurrences" and "assume[d] the existence of a valid lease"—to render the Act as a whole "self-defeating").[3]

In each example above, the rule presumes that some predicate condition exists (you have an employer, luggage,

[3] The proposition that some sentences are implicitly conditional is unextraordinary. "When a command is conditional, its condition may be either overt or explicit on the one hand ('*When it rains, close the windows!*') or tacit or implicit on the other ('*Drive carefully!*' [means] '*When you drive, drive carefully!*')." Nicholas Rescher, *The Logic of Commands* 24 (1966); see also Chi-Hé Elder, *Context, Cognition, and Conditionals* 2 (2019) ("[W]hile conditional sentences in English are often associated with the canonical form 'if *p, q*,' we also know that neither the use of 'if' nor a two-clause structure is essential for expressing a conditional thought.").

or a phone; the program has eligibility requirements), and your compliance with the rule is determined in relation to that predicate. But as each example makes clear, the absence of the thing presumed doesn't mean that you necessarily violate the rule. Instead, it will often mean (as it does in each one of those examples) that the rule is effectively satisfied or that its requirement controls only to the extent that the predicate condition actually exists.

The "qualified individual" definition in Title I can easily be read like each of those examples. The rule tests whether an individual is sufficiently qualified for a job. *See supra* 29–31. Where there is no job and there are no "essential functions," the test is satisfied. And because its application to retirees has no relationship to its textual function in the statute, common sense says it should not be applied to bar claims by retirees who no longer "hold[]or desire[]" an "employment position." *See Biden v. Nebraska*, 143 S. Ct. 2355, 2379 (2023) (Barrett, J., concurring) ("Context also includes common sense."); The Federalist No. 83, at 559 (Alexander Hamilton) ("The rules of legal interpretation are rules of common sense.").

2. *Grammar.* The grammatical structure of the definition—and the role of the "holds or desires" clause in the sentence in particular—further demonstrates that the text does not compel the Eleventh Circuit's reading. Because "[w]ords are to be given the meaning that proper grammar and usage would assign them," Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 140 (2012), the "rules of grammar govern" statutory interpretation "unless they contradict legislative intent or purpose," *id.* (citing *Costello v. INS*, 376 U.S. 120, 122–126 (1964)).

Consider this rule at an apartment complex: "You must clean up after the pets that you own." Here, "that you own" tells us *which* pets we're talking about: the ones you own, if you own any. It doesn't mean that you *must* own a pet, or that all pets are owned by you, or that you have to clean up after other people's pets. The rule is telling us that, *if* you own a pet, you've got to clean up after it. Similarly, in the ADA's definition, the clause "that such individual holds or desires" modifies "employment position." *See Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) ("[A] limiting clause or phrase … should ordinarily be read as modifying only the noun or phrase that it immediately follows."). It is introduced by the pronoun "that," which sets up what grammarians call a "restrictive clause." Bryan A. Garner, *Modern English Usage* 1086–87 (5th ed. 2022). This clause simply tells us *which* position's functions matter, *see id.*—here, "the essential functions of the employment position *that such individual holds or desires*." 42 U.S.C. § 12111(8) (emphasis added).

The restrictive clause thus does not create a freestanding temporal requirement that an individual must currently hold a job. *See Heredia v. Sessions*, 865 F.3d 60, 69 (2d Cir. 2017) (explaining that "a restrictive clause" that modifies a noun in an immigration statute "does not impose a separate temporal requirement"). Rather, it specifies *which* job's functions are relevant *if* the individual either holds or desires a job.

The court of appeals, however, misread this clause. It treated "holds or desires" as though it imposed a separate requirement, rather than simply identifying the relevant job. This misreading assumes that a clause doing one thing (specifying which job matters) is instead doing something else entirely (requiring current or future employment).

The Eleventh Circuit's emphasis on the present tense-verbs thus reflects a basic misunderstanding of the restrictive clause's grammatical function.

3. ***Logic.*** Reading the "qualified individual" definition to include retirees like Lt. Stanley not only reflects common sense and common usage but is also sound as a matter of basic logic: Lt. Stanley satisfies the "qualified individual" definition because she is *not unable* to perform the essential functions of any job that she currently holds or desires. The definition doesn't require her to be able to perform her former job; it only asks about her ability to perform the functions of a job that she now "holds or desires," which is none.

This simple conclusion—that *can perform* is logically equivalent to *not unable to perform*—follows from a basic principle of "classical logic." *Bethel v. Jefferson*, 589 F.2d 631, 639 n.49 (D.C. Cir. 1978) (reasoning that a plaintiff who wasn't in a "unit" of government "in the competitive service" necessarily fell under a Title VII provision governing everyone else). It "holds simply that every alternation of a sentence with its negation is true." *Id.* (quoting Willard Van Orman Quine, *Philosophy of Logic* 15, 83–87 (1970)).[4]

[4] This law of double negation comes from the "law of the excluded middle," one of Aristotle's three laws of thought. Irving Copi, *Introduction to Logic* 372–73 (1994). An explanation goes like this: "If you have a proposition *P*, either *P* is true, or *P* is false; that is, either *P* is true or non-*P* is true. We cannot have a third possibility. As a consequence of the excluded middle, we have the principle of double negation: Negation of negation is equivalent to affirmation." Alain Badiou, *The Three Negations*, 29 Cardozo L. Rev. 1877, 1878 (2008).

C. Reading "qualified individual" in context to include retirees is consistent with the statutory scheme and avoids creating surplusage and absurd consequences.

As everything above demonstrates, the court of appeals' reading of the "qualified individual" definition is certainly not compelled by the text. But reading the definition to include retirees isn't necessarily compelled by the text alone, either. The only way to answer the question is with some context. Indeed, "interpretation always depends on context." Scalia & Garner, *Reading Law* at 63; *see Graham Cnty. Soil & Water Conservation Dist. v. United States ex rel. Wilson*, 545 U.S. 409, 415 (2005) ("Statutory language has meaning only in context."). Ours is the only reading that makes sense of the statutory scheme as a whole.

1. *The text must be read in context, not in isolation.*

We concede that some implicitly conditional rules that read like the "qualified individual" definition might be naturally read in context as excluding those who can't satisfy the condition. Others, however, go the other way. Consider these two airport security rules:

> (A) "To get through security, a passenger must complete an x-ray screening of the baggage that such individual carries." Can you get through with no bags?
>
> (B) "To get through security, a passenger must scan the boarding pass that such individual carries." Can you get through with no boarding pass?

The syntax is the same. But our inclination is probably to say yes to the first question, and no to the second. If you don't have a boarding pass, you likely won't get through.

Yet we somehow know that the person without bags is in the clear. A gadfly passenger might point out that rule (B) literally only requires scanning a pass "that such individual carries." That hyperliteralism likely won't persuade the security officers. But he'd have a point— the rule surely could have been written more clearly to express that you must have a boarding pass: "No individual may go through security without a boarding pass."

As with the airport rules, Congress could have written the "qualified individual" definition to more obviously include, or exclude, retirees. You might think that Congress could have clarified that retirees are covered by using the word "any." But referring to "any employment position that such individual … desires" would have been awkward and confusing. The point of the restrictive clause is to tell us *which* position a job seeker must qualify for (a particular position), not to suggest *any* position she might want. So "we can see why a Congress," with our reading in mind, "might have chosen" against "any," despite its surface appeal. *Pulsifer*, 601 U.S. at 138. The indefinite article "an" might have been clearer; but it too would have carried a similar risk of confusion, which may explain why the drafters used "the." (They were focused on tying qualifications to "the" position at issue.)

Even if Congress had used "any" or "an," though, the City would presumably still be here with the same arguments. So it's not clear that even this would have "delivered us from interpretive controversy" and ended the "grammatical back-and-forth." *Id.* On the other hand, it would have been easy to clearly exclude retirees: "A qualified individual means an individual who holds or

desires an employment position and who can perform the essential functions of that position."

In any event, conceding that Congress could have drafted the definition more clearly to include retirees doesn't mean that it's not the right reading. *See Gardner v. Collins*, 27 U.S. 58, 86–87 (1829) (Story, J.) (holding that, although "the words 'if any there be' [were] omitted" from one version of the same statute, "the legislative intention in both acts was the same"). This Court does not "demand (or in truth expect) that Congress draft in the most translucent way possible." *Pulsifer*, 601 U.S. at 137. "The question, then, is not: Could Congress have indicated" its intent to protect retirees "in more crystalline fashion"? *Torres v. Lynch*, 578 U.S. 452, 472–73 (2016). "The question is instead, and more simply: Is that the right and fair reading of the statute" that Congress actually wrote? *Id.* at 473.

Ultimately, there's no single "grammatical principle" that conclusively answers that question. *Pulsifer*, 601 U.S. at 137. Instead, what each of the examples shows is that deciding whether a rule like this one includes or excludes retirees requires considering its "content" and "context." *Id.* at 138 n.5. "[S]tated in the usual language of statutory construction, the answer [] lie[s] in considering the [definition's] text in its legal context." *Id.* at 141.

2. *The statutory context makes clear that retirees are protected by the ADA.*

Reading the "text" in "context" is how we know that retirees are "qualified individual[s]." *Id.* The definition's text asks if you "can" do a job. It asks that question because the provision's role is to screen out from the Act's protections those who can't perform essential functions of a job, and whose inclusion would therefore impede the

employer's legitimate business prerogatives. *See supra* 29–31. There's no "plausible, or even cogent, explanation" for why a definition with this function would exclude retirees, who are not asked to perform any essential functions at all. *Pulsifer*, 601 U.S. at 148 n.7; *see* Scalia & Garner, *Reading Law* at 20 (explaining that an "essential element of context that gives meaning to words" is the "evident purpose of what a text seeks to achieve").

Interpreting the definition to include former employees also avoids creating "superfluity." *Pulsifer*, 601 U.S. at 142. On the court of appeals' reading, there's no role for the language limiting the reasonable-accommodation mandate to a "qualified individual … who is an applicant or employee." 42 U.S.C. § 12112(b)(5)(A). By contrast, interpreting "qualified individual" to include retirees means that there is no surplusage; this, too, is relevant "legal context." *Pulsifer*, 601 U.S. at 141.

There's more. Recognizing that the definition does not exclude retirees gives force to the various provisions of the Act that protect retirees: Its inclusion of retirement benefits as part and parcel of "compensation," 42 U.S.C. § 12112(a), and its express allowance for a particular kind (but not the kind alleged in this case) of decision-making, "based on underwriting risks, classifying risks, [and] administering such risks," when "establishing" or "administering" "benefit[s] plans," *id.* § 12201(c)(2).

This reading also maintains congruity between the ADA and Title VII, the statute on which much of Title I was "modeled." *Barnett*, 535 U.S. at 420 (Souter, J., dissenting). As this Court made clear in *Robinson v. Shell Oil Co.*, many of Title VII's protections apply with full force to "former employees." 519 U.S. at 342.

Finally, interpreting the "qualified individual" definition to include retirees avoids the absurd results that the Eleventh Circuit's interpretation invites. The court of appeals' view means that employers are free to do the day after retirement what they certainly could not do the day before. An employer motivated by nothing but raw animus could lawfully strip a former employee who becomes disabled after retiring of their benefits—benefits that the statute protects and that were earned while "perform[ing] the essential functions of the employment position" the retiree held. And they could do so while openly stating that the decision was based solely on their preference for "normal" retirees over "disabled" ones. *See* Doc. 1 at 12.

An interpretation that allows that result—which the Eleventh Circuit's does—would "negate [the ADA's] own stated purposes." *New York State Dep't of Soc. Servs. v. Dublino*, 413 U.S. 405, 420 (1973). Had Congress made a deliberate choice to adopt that surprising and dramatic departure from the design of Title VII, it's hard to believe that it would have done so through the use of present-tense verbs in an ambiguous restrictive clause at the end of a definitional provision. *See Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress … does not, one might say, hide elephants in mouseholes.").

The "qualified individual" definition might, "at first blush," then, allow the Eleventh Circuit's interpretation. *Robinson*, 519 U.S. at 341. But any confidence in that first impression gives way on a closer look, and resort to the ordinary tools of statutory construction—text and "the broader context of" the ADA—all lead to the same conclusion: The ADA does not allow employers to freely discriminate against their former employees. *Id.* at 346.

CONCLUSION

The court of appeals' judgment should be reversed.

Respectfully submitted,

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

JENNIFER D. BENNETT
JESSICA GARLAND
GUPTA WESSLER LLP
505 Montgomery Street
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, FL 32807
(407) 694-4378

Counsel for Petitioner

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APPENDIX

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-5(e)(3)(A) provides:

> For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this subchapter, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

42 U.S.C. § 2000e-5(f)(1) provides:

> [A] civil action may be brought against the respondent named in the charge … by the person claiming to be aggrieved[.]

42 U.S.C. § 12111(8) provides:

> The term "qualified individual" means an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires. …

42 U.S.C. § 12112(a) provides:

> No covered entity shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other

terms, conditions, and privileges of employment.

42 U.S.C. § 12112(b) provides:

> (5)(A) not making reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity; or
>
> (B) denying employment opportunities to a job applicant or employee who is an otherwise qualified individual with a disability, if such denial is based on the need of such covered entity to make reasonable accommodation to the physical or mental impairments of the employee or applicant[.]

42 U.S.C. § 12117(a) provides:

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