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 CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS AMICUS CURIAE SUPPORTING RESPONDENT


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## INTEREST OF AMICUS CURIAE[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country.

An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

This case presents an important question of statutory interpretation that affects many of the Chamber's members. The court below properly adhered to the plain language of the Americans with Disabilities Act (ADA) in rejecting petitioner's disability discrimination claim. Several other circuits, in contrast, have construed that language expansively—largely out of concern that the statute's remedial purposes favor broader relief for disabled former employees. Such a purpose-driven approach contradicts the Court's repeated instructions to apply federal statutes as written. And in this context especially, that approach risks serious negative consequences by dissuading employers from ever offering more generous benefits

[1] Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

to disabled retirees in the first place. The Chamber and its members have a strong interest in rejecting petitioner's misinterpretation of the ADA and confining the statute to its terms.

## INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner asks this Court to decide whether a former employee can bring an ADA discrimination claim over post-employment benefits. But however one might answer that abstract question, the outcome of this case would stay the same. Petitioner is not just any former employee. She became a former employee for a specific reason: her disability prevented her from performing the essential functions of her job. Given that undisputed fact, the ADA's plain language forecloses her claim.

The key substantive provision prohibits covered entities from "discriminat[ing] against a qualified individual on the basis of disability." 42 U.S.C. 12112(a). Elsewhere, the statute defines who counts as a "qualified individual": "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). Unless a person can perform the essential functions of a position she holds or desires, she is not a qualified individual. And unless she is a qualified individual, the statute does not bar treating her differently because of her disability.

That is enough to resolve this case. Petitioner did not lose her right to relief "solely because she no

longer holds her job." Pet. Br. i. She has no right to relief because she cannot perform the essential functions of her former job. The Court need not grapple with theoretical questions not implicated in this case. It need not resolve how the statute's reference to the "position that [the] individual holds or desires" might apply to a former employee who could still perform that position's essential functions. 42 U.S.C. 12111(8). Nor need the Court decide whether, as a categorical rule, this language requires every plaintiff to currently hold or desire a job. When, as here, there is no job the plaintiff can perform for the defendant, the plaintiff is not a qualified individual and cannot obtain relief under Section 12112(a). Neither petitioner nor the government offers a persuasive argument to the contrary.

Petitioner largely tries to avoid explaining how respondent's alleged conduct toward her constitutes discrimination against a qualified individual. She does not argue that she was able to perform the essential functions of her former position—let alone a position she still held or desired—when respondent subjected her to the challenged policy for disabled retirees. On the contrary, she admits that she retired because she could no longer perform her job. Instead, she hopes to dispense with the qualified-individual requirement in cases brought by retirees. She argues (at 21) that "the 'qualified individual' language is largely beside the point in a case of this kind." But courts cannot treat statutory language as beside the point. The language here makes clear that a former employee who has not shown she can perform any job for the defendant employer is not covered by the ADA's antidiscrimination provision.

For its part, the government addresses the qualified-individual requirement by trying to shift the relevant timeframe. In its view, what matters is that petitioner was a qualified individual before she retired, when respondent adopted and maintained the allegedly discriminatory policy. But this argument also violates the statutory text. For a qualified individual to suffer a violation of Section 12112(a), the defendant must "discriminate against [the] qualified individual on the basis of disability." 42 U.S.C. 12112(a). The earliest that respondent could have discriminated *against petitioner* based on disability was after she retired, when she was subjected to the policy. No part of the statutory framework—including the Lilly Ledbetter Fair Pay Act of 2009 (Fair Pay Act)—supports the idea that respondent discriminated against petitioner before her 2018 retirement.

Petitioner falls back on policy arguments. But policy cannot override text. And even if it could, petitioner's concerns are ill founded. Congress reasonably chose not to use the ADA to guarantee certain levels of health benefits to retirees with serious health problems. Contrary to petitioner's comparisons, efforts to contain the expense of retiree health benefits are nothing like denying benefits based on race or religion. See Pet. Br. 1. If anything, adopting petitioner's proposal could harm the population she seeks to help. Here, for instance, respondent originally treated disabled retirees more favorably than it treated nondisabled retirees. But when it changed that policy to treat the two groups more evenly, petitioner accused them of discrimination. If that strategy succeeds, employers will have strong incentives not to afford more generous benefits to disabled retirees even when they

have the means. Doing so would only lock them into that arrangement, or subject them to litigation if they later need to change course. Properly applied, the statute does not lead to that result.

There is no doubt that the provision of retirement benefits for disabled former employees raises important, and challenging, policy questions. But Congress did not attempt to settle all those questions in the ADA. In particular, it did not try to address alleged discrimination against individuals who are not "qualified" under the statute's definition. It is Congress's prerogative to address this issue in a more comprehensive way. But until it does, courts should not attempt to provide answers of their own through untenable applications of the ADA's clear language. The judgment below should be affirmed.

## ARGUMENT

### I. The statute limits claims to individuals who are "qualified" for employment when the employer discriminates against them.

Petitioner starts her analysis with the ADA's enforcement provision, 42 U.S.C. 12117(a). That provision, as petitioner correctly notes, is not limited to a "qualified individual." But petitioner makes too much of this fact. While the enforcement provision is not confined to qualified individuals, it is confined to plaintiffs "alleging discrimination on the basis of disability in violation of any provision of this chapter." 42 U.S.C. 12117(a). And here, the provision that petitioner says was violated—42 U.S.C. 12112(a)—is

plainly limited to qualified individuals. That language must be given effect.

Section 12112 recognizes a violation only when the disability-based discrimination is "against a qualified individual":

> 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(a). So, as this Court has already explained, if a plaintiff alleging a Section 12112(a) violation was not "qualified" in the statute's sense when the discrimination occurred, "that is the end of the case." *Albertson's, Inc.* v. *Kirkingburg*, 527 U.S. 555, 567 (1999).

Notably, not every type of ADA violation requires discrimination against a "qualified" individual. The statute's separate antiretaliation provision offers an important contrast on this point. Unlike Section 12112(a), the antiretaliation provision prohibits "discriminat[ion] against *any individual* because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter." 42 U.S.C. 12203(a) (emphasis added). Under the ADA, a victim of retaliation, unlike a victim of employment-related disparate treatment, need not be a "qualified" individual. See, *e.g.*, *Morgan* v. *Joint Admin. Bd.*, 268 F.3d 456, 458-459 (7th Cir. 2001).

Congress thus differentiated between ADA violations that require discrimination against a qualified individual and those that do not. Such a significant difference in language within a single statute should be respected. See, *e.g.*, *Gallardo ex rel. Vassallo* v. *Marstiller*, 596 U.S. 420, 431 (2022) ("[W]e must give effect to, not nullify, Congress' choice to include limiting language in some provisions but not others."); *Russello* v. *United States*, 464 U.S. 16, 23 (1983) ("[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.").

The importance of giving effect to the "qualified individual" limitation is reinforced by the statute's express definition of that term. "When Congress takes the trouble to define the terms it uses, a court must respect its definitions as 'virtually conclusive.'" *Dep't of Agric. Rural Dev. Rural Hous. Serv.* v. *Kirtz*, 601 U.S. 42, 59 (2024) (citation omitted).

Here, the ADA's definition of "qualified individual" is indeed conclusive. Under the ADA, "[t]he 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). As discussed next, neither petitioner nor the government explains how a former employee challenging post-retirement conduct toward her can satisfy this definition if, like petitioner, she retired because she can no longer perform the essential functions of her job.

## II. Petitioner and the government fail to explain how petitioner's claim satisfies the qualified-individual requirement.

There is no dispute that petitioner retired from work because Parkinson's disease left her unable to perform the essential functions of her job. See Pet. C.A. Br. 3, 12; Pet. C.A. Reply Br. 4. Her complaint alleges that "her disability forced her to retire" because of her firefighting job's high "physical demands and requirements." Compl. ¶ 16. She apparently did not request an accommodation to help her continue performing her job, but rather determined that she had no "choice but to retire." *Ibid.* In applying for the employment benefit of a disability retirement at the age of forty-seven, petitioner represented that she was "totally and permanently disabled" and "no longer able to complete the required tasks of her job." Doc. 38-4, at 1, 3 (emphasis omitted).

Given the statute's definition of "qualified individual," these concessions and representations block any argument that petitioner was a qualified individual after her retirement. One cannot be a qualified individual if one cannot "perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. 12111(8). So "[a] totally disabled person who cannot 'perform the essential functions of the employment position' with or without reasonable accommodations * * * cannot be a 'qualified individual.'" *Weyer* v. *Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1108 (9th Cir. 2000). And if petitioner was not a qualified individual, she has no claim under Section 12112(a). See *Albertson's*, 527 U.S. at 567.

1. Petitioner has no answer to this problem. She admits that the statutory definition of "qualified individual" tests whether the plaintiff can perform a job. Pet. Br. 15, 28. Yet in the same breath, she faults the court of appeals for requiring that the plaintiff hold or desire an employment position. Pet. Br. 28. In her view, restricting relief to qualified individuals is "only a conditional mandate": "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." *Ibid.*

The problem is that the statutory language is not written conditionally. It does not say that a qualified individual must be able to "perform the essential functions of the employment position that such individual holds or desires, if any." Nor would such a definition make sense. If petitioner were correct, the statute's limitation of relief to qualified individuals would be meaningless in cases involving retirees. Under the statute, the only way for a plaintiff to be a qualified individual is to be able to perform a job that she holds or desires. There is no scenario in which a totally and permanently disabled retiree meets that criterion. That is strong confirmation that the statute was not meant to reach totally disabled retirees.

This should not be a controversial reading of Sections 12111(8) and 12112(a). Because of Section 12111(8)'s definition of "qualified individual," this Court has already observed that a "plaintiff's sworn assertion in an application for disability benefits that she is * * * 'unable to work' will appear to negate an essential element of her ADA case." *Cleveland* v. *Pol'y*

*Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999). In *Cleveland*, the Court recognized that a plaintiff's admission that she has a "total disability" creates an "apparent inconsistency with the necessary elements of an ADA claim." *Id.* at 807. Sometimes, such a plaintiff might be able to explain the apparent inconsistency. *Ibid.* But not here. Petitioner was undisputedly unable to perform her essential job functions, so there is no way to salvage her ADA claim.

Nor does petitioner argue that, after retiring, she meets the definition of "qualified individual." Instead, she argues that "the 'qualified individual' language is largely beside the point in a case of this kind." Pet. Br. 21. At most, she suggests that all retirees are "qualified" because the employer previously paid them compensation in return for work. *Ibid.* But the statute is written in the present tense: a qualified individual is someone who "*can* perform the essential functions of the employment position that such individual *holds* or *desires*." 42 U.S.C. 12111(8) (emphasis added). "'Can,' 'holds,' and 'desires' are in the present tense." Pet. App. 11a. And when Congress repeatedly uses the present tense in a statute, the statute cannot normally be read as reaching back to past circumstances that no longer exist. See, *e.g.*, *Carr* v. *United States*, 560 U.S. 438, 448-449 (2010) ("[T]he Dictionary Act instructs that the present tense generally does not include the past.").

An employee who used to be able to perform essential job functions was qualified then, but she is no longer qualified after she loses the ability to perform those job functions. Section 12112(a) does not obligate an employer to continue employing such a person—as

petitioner appears to concede (at 30). Nor does it impose other antidiscrimination obligations.

2. The government tries to overcome this problem by looking back to an earlier era when petitioner was able to perform her job's essential functions. In the government's view (at 17), it suffices that petitioner was a qualified individual when respondent adopted its challenged policy in 2003 and maintained that policy until her retirement in 2018. Petitioner has waived this argument. Resp. Br. 15-18. But even if she had not waived it, the argument would still fail.

While the government's interpretation gives effect to the qualified-individual requirement of Section 12112(a), it merely replaces one textual problem with another. To violate Section 12112(a), an employer must "discriminate against a qualified individual on the basis of disability." 42 U.S.C. 12112(a). But no one would say respondent engaged in disability-based *discrimination against petitioner* in 2003 or 2018. Respondent did not subject petitioner to unfavorable treatment based on disability at any time while she was working for respondent. The earliest any such discrimination against petitioner could have occurred was after she retired and suffered the alleged injury. See, *e.g.*, *Burlington N. & Santa Fe Ry. Co.* v. *White*, 548 U.S. 53, 59 (2006) ("No one doubts that the term 'discriminate against' refers to distinctions or differences in treatment that injure protected individuals."); 4 *The Oxford English Dictionary* 758 (2d ed. 1989) (defining "to discriminate against" as "to make an adverse distinction with regard to; to distinguish unfavourably from others"). But for the reasons discussed above, by the time petitioner was theoretically

discriminated against in retirement, she had ceased being able to perform her job's essential functions and was no longer a qualified individual.

The core problem with the government's position, then, is that there was never a moment when petitioner could meet both requirements for a Section 12112(a) violation. There was no point at which (1) respondent was discriminating against petitioner based on disability and (2) petitioner was a qualified individual. Those two conditions obtained, if at all, at separate times—the former after her retirement and the latter before it. But at no point did respondent violate Section 12112(a) with respect to petitioner.

The government suggests (at 20) that respondent engaged in disability-based discrimination against petitioner in 2003 when it adopted an allegedly facially discriminatory policy. But adopting that policy cannot constitute disability-based discrimination against petitioner personally when she had no disability at all and was not affected by the policy.

The court of appeals made this basic point when it rejected the idea that petitioner could have experienced discrimination in 2003. Pet. App. 16a. The government critiques the court of appeals (at 22-23) for not acknowledging that in 2008, Congress eliminated the statutory phrase limiting Section 12112(a) violations to discrimination against a person "with a disability because of the disability of such individual." And the government notes (at 24-25) that it is possible for a person who is not disabled to suffer discrimination based on disability under Section 12112(a)—as when a qualified individual is discriminated against "because of the known disability of an individual with

whom the qualified individual is known to have a relationship or association." 42 U.S.C. 12112(b)(4).

But the government's criticism misses the mark. Though Congress eliminated statutory language suggesting that only disabled individuals can be the victims of disability-based discrimination, it did not change the language requiring that the disability-based discrimination be "against" the qualified individual. Here, when petitioner was a qualified individual, respondent was not discriminating against her; and when respondent did purportedly discriminate against her, she was no longer qualified.

The government misses the mark for similar reasons when it argues that petitioner suffered a violation of Section 12112(a) upon her diagnosis in 2016. The government notes that as of 2016, petitioner was recognized to have a disability. But again, under the statute's language, the key question is not whether petitioner had a disability, but whether she was discriminated against based on disability. In 2016, petitioner may have had a disability, but she has not shown how respondent's policy was then discriminating *against her* based on disability. On the contrary, as the court of appeals noted (Pet. App. 17a), petitioner's opening brief below represented that she was "not claim[ing] she was impacted by the discriminatory 24-Month rule during her employment." Pet. C.A. Br. 22. Contrary to the government's description (at 27-28), this statement did not "simply reflect[] that she was not 'placed on disability retirement' until she retired." Rather, it reflected petitioner's actual argument below, which was that she could sue for alleged post-retirement discrimination because she still held

the "employment position" of "retired employee." Pet. C.A. Br. 22. For good reason, petitioner no longer pursues that theory. See, *e.g.*, *EEOC* v. *CNA Ins. Cos.*, 96 F.3d 1039, 1044 (7th Cir. 1996) (rejecting argument that "benefit recipient" could count as an employment position under the ADA because "[a]n 'employment position' is a job").

The government's argument would also yield absurd consequences. As noted already, it should be common ground that the ADA does not obligate an employer to retain an employee who can no longer perform a job's essential functions, even with reasonable accommodations. But it is easy to recast that ubiquitous practice as a violation of Section 12112(a) using the government's theories. For example, had respondent announced in 2003 that it would no longer retain employees who are totally disabled, petitioner could argue that such a policy facially discriminated against people with disabilities. And the government's view of this case would suggest that adopting that policy in 2003 discriminated against someone who, like petitioner, became totally disabled and subject to the policy years later. Or the government could argue that maintaining this policy in 2016 discriminated against someone in petitioner's position once she was diagnosed. If those are the implications, the government's reading of the statute cannot be correct.

3. Both petitioner and the government place significant weight on the Fair Pay Act. But it does not help them overcome the problems just discussed. The Fair Pay Act addresses when "an unlawful employment practice occurs" for one purpose only. 42 U.S.C. 2000e-5(e)(3)(A). The statute starts with an express

qualification, "[f]or purposes of this section." As a result, these amendments undoubtedly change how courts should apply the various statutory deadlines set in Section 2000e-5 for filing a timely administrative charge or filing a timely lawsuit. But there is no way to construe the Fair Pay Act provision as also changing how courts should apply a distinct statutory section, 42 U.S.C. 12112(a), to determine whether an employer has discriminated against a qualified individual based on disability.

## III. Policy concerns cannot justify petitioner's reading of the statute.

Much of petitioner's argument hinges on policy. Petitioner likens the majority view within the circuit split to permitting discrimination against retirees based on race or religion. Pet. Br. 1. This comparison is flawed. Reducing healthcare subsidies for former employees with serious health conditions can be the product of economic necessity, not animus—particularly when, as in this case, the challenged employer action did not treat disabled retirees any worse than similarly situated nondisabled retirees. Here, to cut costs, respondent changed its policy in 2003 to limit a subsidy that it had offered to totally disabled retirees with under 25 years of service but had not offered to nondisabled retirees with under 25 years of service. Resp. Br. 5-6. There is nothing discriminatory about treating disabled retirees the same way as similarly situated nondisabled retirees. And such a decision certainly bears no resemblance to petitioner's exam-

ple of "a local government that provides health insurance to its retirees, but not if they're Black." Pet. Br. 1.[2]

The courts on the minority side of the circuit split were also motivated by policy concerns. In their view, it is unfair not to extend Section 12112(a) to retirees.

Consider, for example, *Castellano* v. *City of New York*, 142 F.3d 58 (2d Cir. 1998). There, the court admitted that, according to the ADA's legislative history, courts should ask whether a person is qualified "at the time of the [discriminatory] employment action." *Id.* at 67 (citation omitted). But the court determined that this approach was poorly suited for "employment actions taken not only after the plaintiffs were no longer employees but after many of the plaintiffs had lost the ability to perform the essential functions of their former employment." *Ibid.* In the Second Circuit's view, such a construction "would permit employers to discriminate freely against disabled retirees who had been 'qualified individuals' up to the point of retirement, but who (i) no longer held employment positions, and/or (ii) were no longer able to perform the essential functions of their former employment due to infirmity." *Ibid.* So the court focused on the ADA's supposed purposes, including its "broad remedial purpose to prohibit disability discrimination in all aspects of the employment relationship." *Id.* at 68.

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[2] Unlike Section 12112(a), which prohibits only discrimination against a "qualified" individual, Title VII includes no such limitation. Title VII makes it unlawful "to discriminate against any individual." 42 U.S.C. 2000e-2(a)(1).

The Third Circuit followed similar purpose-based reasoning to conclude that the statutory language was "ambiguous":

> In order for the rights guaranteed by Title I to be fully effectuated, the definition of "qualified individual with a disability" would have to permit suits under Title I by more than just individuals who are currently able to work with or without reasonable accommodations.

*Ford* v. *Schering-Plough Corp.*, 145 F.3d 601, 606 (3d Cir. 1998). The court resolved the purported "ambiguity by interpreting Title I of the ADA to allow disabled former employees to sue their former employers regarding their disability benefits so as to effectuate the full panoply of rights guaranteed by the ADA." *Id.* at 607. The court found this approach "in keeping with the ADA's rationale, namely 'to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities * * * [and] to provide clear, strong, consistent, *enforceable* standards addressing [such] discrimination.'" *Id.* (quoting 42 U.S.C. 12101(b)(1)-(2)). This purpose-based reasoning fails to persuade for two main reasons.

First, a statute's general purposes, including remedial purposes, do not justify adopting anything other than fairest reading of the statute's language. *E.g.*, *Encino Motorcars, LLC* v. *Navarro*, 584 U.S. 79, 88-89 (2018). "[I]n interpreting a statute a court should always turn first to one, cardinal canon before all others": "courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank* v. *Germain*, 503

U.S. 249, 253-54 (1992). Because legislation is the product of compromise, "it is quite mistaken to assume * * * that whatever might appear to further the statute's primary objective must be the law." *Henson* v. *Santander Consumer USA Inc.*, 582 U.S. 79, 89 (2017) (citation, quotation marks, and brackets omitted).

Second, there are very good reasons for not relying on the ADA to regulate employers' obligations to provide a certain level of benefits to retirees who develop disabilities. For one, a separate law—the Employee Retirement Income Security Act (ERISA)—generally regulates employee health and retirement benefits. ERISA is "a 'comprehensive and reticulated statute,' the product of a decade of congressional study of the Nation's private employee benefit system." *Mertens* v. *Hewitt Assocs.*, 508 U.S. 248, 251 (1993).

As Judge Wood observed for the Seventh Circuit years ago, arguments that disabled retirees should receive higher levels of benefits may be "more grist for the ERISA mill or the national health care debate than for the ADA." *CNA Ins.*, 96 F.3d at 1044. Indeed, the text of the ADA supports a light touch on these fraught questions. The statute states that its antidiscrimination provisions for employees in Title I, including Section 12112(a), are generally not meant to interfere with state insurance laws or bona fide benefit plans regulated by ERISA. 42 U.S.C. 12201(c).

And at a practical level, expanding the ADA into this domain invites bad unintended consequences. On petitioner's view, an employer who initially affords retirement benefits to disabled employees that are more generous than those it provides to similarly situated

nondisabled employees should face litigation if it later revises that policy to treat the two groups equally. Such an interpretation would create perverse incentives, much as Judge Posner described in *Morgan*:

> Since there is no legal requirement that employers offer disability benefits as part of their menus of fringe benefits, compelling employers who do to maintain them in lockstep with other benefits would deter their provision. The employer would tell its employees to buy their own disability insurance or to rely on social security disability benefits should they become disabled. Since workers with a disability are more likely than other workers to become totally disabled and have to retire early, an interpretation of the Act that discouraged employers from offering disability benefits would make the workplace less attractive to such workers. The purpose of the Act's employment provisions is to draw workers with a disability into the workforce. * * * The interpretation for which the plaintiffs contend would have the opposite effect.

268 F.3d at 458.

Rising healthcare costs will create even greater pressure on employers as more and more Americans reach retirement age. See, *e.g.*, Aimee Picchi, *Baby boomers are hitting "peak 65." Two-thirds don't have nearly enough saved for retirement*, CBS News, Apr. 18, 2024, https://www.cbsnews.com/news/retirement-baby-boomers-peak-65-financial-crisis/. The government projects that the number of Americans aged 65 or older will increase from about 61 million in 2023 to

about 77 million by 2035. Social Security Administration, Fact Sheet, https://www.ssa.gov/news/press/factsheets/basicfact-alt.pdf. The rising numbers of retirees, coupled with longer life expectancy, further add to the costs of retirement benefits.

These issues have no easy answer. And policymakers continue to debate the best way to address them. But the difficulty of these issues should give one pause before assuming that Congress sought to take retirement benefits head-on in the ADA. There is no question that Congress prohibited discrimination against qualified individuals in the terms and conditions of employment, which can include many forms of benefits. But when Congress specifically defined "qualified individual" to exclude those who cannot perform essential job functions, the Court should take Congress at its word. If an individual retires because of an inability to perform the job's essential functions, the individual is no longer within the protection of Section 12112(a).

## CONCLUSION

The Court should affirm the judgment of the court of appeals.

Respectfully submitted,

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