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 MAIN STREET ALLIANCE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

Main Street Alliance represents a national network of approximately 30,000 small businesses across the United States. MSA helps small business owners realize their full potential as leaders for a just future that prioritizes good jobs, equity, and community through organizing, research, and policy advocacy on behalf of small businesses. MSA also seeks to amplify the voices of its small business membership by sharing their experiences with the aim of creating an economy where all small business owners have an equal opportunity to succeed.

Some MSA members are owned by individuals with disabilities, who—like so many other successful entrepreneurs—gained necessary skills and expertise through meaningful work opportunities. Some are owned by people who may sell their businesses and become employees in the future; they want every business held to the same standards by which they operate. And none want the ADA interpreted in a way that—counter to the entire purpose of the statute—drives workers with disabilities out of the workforce, leaving businesses without the insights, talents, and contributions of disabled employees. For these reasons, among others, MSA members have an interest in including former employees in the ADA's protections.

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[1] Under Rule 37.6, no party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund this brief, and no person other than *Amicus*, its members, and its counsel contributed money to fund this brief.

INTRODUCTION

Roughly 13% of people in the U.S. have a disability.[2] And although "physical or mental disabilities in no way diminish a person's right to fully participate in all aspects of society," 42 U.S.C. § 12101(a)(1), it has long been a harsh reality that "people with disabilities, as a group . . . are severely disadvantaged" in the workforce. *Id.* § 12101(a)(6). In 1990, Congress passed the Americans with Disabilities Act, a "clear and comprehensive national mandate" to eliminate "discrimination against individuals with disabilities." *Id.* § 12101(b)(1). And that mandate provides "strong, consistent, enforceable standards," *id.* § 12101(b)(2), including prohibiting discrimination on the basis of disability in hiring, firing, and the terms and conditions of employment. 42 U.S.C. § 12112(a).

Yet the Eleventh Circuit concluded that the ADA does not protect *any* former employees from discrimination by their former employers. That means the moment an employee clocks out on her last day, her employer could slash her benefits—undoubtedly part of her "compensation," *id.* § 12112(a)—and even tell her that it did so *because* she had a disability. And it means that an employer could, as here, cut benefits for only its former employees with disabilities, thus burdening only disabled individuals with that cost-cutting measure. Forbidding an individual in those circumstances to sue hardly honors the national mandate of "clear, strong, consistent, enforceable standards" Congress laid out. *Id.* § 12101(b)(2).

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[2] W. Lee C. Erickson & S. von Schrader, Cornell Univ., Yang-Tan Inst. on Emp. and Disability, *2022 Disability Status Report: United States* 10 (2024), https://tinyurl.com/3wtm53fj.

The Eleventh Circuit came to that upside-down conclusion by focusing on the verb tense of a clause at the end of a single definitional provision. Specifically, the ADA protects "qualified individuals" from being subject to workplace discrimination. A "qualified individual" is a person who "can perform the essential functions of the employment position that such individual holds or desires." 42 U.S.C. § 12111(8). Thus, according to the Eleventh Circuit, if one doesn't *currently* hold or desire a specific position, that person is not protected by the statute, even when it comes to retirement benefits—again, undoubtedly protected "compensation," *id.* § 12112(a)—and even though the ADA's enforcement provision makes clear that "any person alleging discrimination on the basis of disability in violation of" Title I of the ADA can sue. *Id.* § 12117(a).

We agree with Lt. Stanley that the Eleventh Circuit's reading of "qualified individuals" doesn't make sense. It ignores a better textual reading, disregards the context of the term, creates surplusage, and contradicts the entire purpose of the statute. If those weren't reasons enough for reversal, we write separately to explain how excluding former employees from the protections of the ADA isn't just bad for employees—it's bad for business.

ARGUMENT

I. Excluding former employees from the ADA will harm businesses.

A. Allowing discrimination against disabled former employees will harm employers by hampering employers' ability to bargain and driving valuable employees from the workforce.

1. As every employer and employee know, benefits are a critical component of compensation. Like salary, they are "a form of pay for the performance of services."[3] And they comprise about 30% of the average worker's pay.[4]

That makes sense—offering benefits instead of additional monetary compensation is a boon to both employers and employees. Benefits are often cost-effective for employers due to structural advantages, including tax benefits and group-plan discounts. They boost employee satisfaction, performance, and retention.[5] And they provide employees with peace of mind, knowing that, along with a paycheck, they get an investment into a secure future. So it is no surprise that job postings frequently tout "competitive" benefits to attract applicants.

Health benefits, in particular, are a significant part of a compensation package for prospective and current employees. Indeed, "[a] health plan can be one of the most important benefits provided by an employer."[6] Health benefits—including, and perhaps especially, retirement health benefits—can be a deciding factor for prospective employees when weighing a job offer and for current employees when deciding whether to remain with their employer.

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[3] IRS, *Employee benefits* (July 26, 2024), https://tinyurl.com/nw7zv9rc.

[4] Bureau of Lab. Stat., *Employer Costs for Employee Compensation – June 2024* (Sept. 10, 2024), https://tinyurl.com/yc55tbux.

[5] *See* Katherine Haan, *Employee Benefits In 2024: The Ultimate Guide*, Forbes (May 1, 2024), https://tinyurl.com/ujc99sfu; *The Impact of Employee Benefits on Recruitment and Retention*, Trinet (May 31, 2024), https://tinyurl.com/2kknju3h.

[6] IRS, *supra* note 3.

Employee health benefits are not, as the Eleventh Circuit described them, "free health insurance." JA2. Nor are they, as the City describes them, given "out of compassion," BIO 1. Health benefits are a portion of the compensation for an employee's service to the employer's enterprise. They are a bargained-for term of a position. *C.f. Morrison-Knudsen Constr. Co. v. Dir., Off. of Workers' Comp. Programs, U.S. Dep't of Lab.*, 461 U.S. 624, 641-42 (1983) (Marshall, J., dissenting) ("Such benefits are provided in exchange for labor and as a result of bargained agreements.").

As part of that bargain, employers and employees often agree that the employer will continue to provide health insurance to the employee after she has terminated her service. That promise of continuing health benefits is especially important to individuals with disabilities who already know that they may need to rely on healthcare beyond the term of employment. And those employees rightly expect that, after upholding their end of the bargain, they will receive the benefits they were guaranteed.

Likewise, long-term health benefits are critical in relatively dangerous professions, given the increased risk of becoming disabled on the job. This case is the perfect example: Firefighters like Lt. Stanley take a dangerous job to serve their communities. They take that job even though it comes with the documented, heightened risk of developing Parkinson's disease. *See* Stanley Br. 11-12. And they accept that risk with the understanding that they will receive certain benefits upon retirement. They do not accept that risk with the expectation that a disability—especially one developed *because of* their service—will be grounds for their employer to discriminate against them.

If employers can cut the benefits of only their disabled former employees with impunity, effective bargaining with prospective and current employees will be hampered. Honoring a commitment to an employee builds and maintains trust between the employer and employees.[7] Reneging on a commitment can destroy that trust. Prospective and current employees—especially disabled employees and employees in dangerous professions—will think twice before accepting an offer that includes postemployment benefits, knowing that employers have the option to cut costs by eliminating those benefits for former employees with disabilities. Even where an employer has no intention of cutting disabled former employees' benefits, the possibility of changed circumstances in the future reduces the value of anticipated postemployment benefits for a prospective or current employee.

2. Employers will lose more than bargaining power; they'll lose valuable employees. If this Court allows employers to discriminate against former employees with disabilities with no recourse under the ADA, employees with disabilities will be driven from the workforce. After all, Congress recognized that "equality of opportunity" in the workforce was necessary for "full participation." 42 U.S.C. § 12101(a)(7).

Research consistently shows that employees with disabilities add value in a host of ways. For one, individuals with disabilities provide unique talents that

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[7] *See, e.g.*, Indeed Editorial Team, *The Importance of Ethics in the Workplace: 6 Significant Benefits*, Indeed.com (Aug. 18, 2024), https://tinyurl.com/yzc45hxe.

make them better at particular jobs.[8] Having employees with disabilities "elevates the culture of [an] entire organization, making it more collaborative and boosting productivity."[9] A "reputation for inclusiveness" appeals to customers, "who become more willing to build long-term relationships."[10] And "being recognized as socially responsible" gives a business "an edge in the competition for capital and talent."[11]

A landmark 2018 report on the inclusion of workers with disabilities across 140 surveyed companies in the United States observed that businesses scoring high on disability inclusion achieved, on average, 28% higher revenue, double the net income, and 30% higher economic profit margins than other companies.[12] Five years later, the report authors reevaluated the study and concluded that "the business case for hiring persons with disabilities has become even stronger."[13]

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[8] Luisa Alemany & Freek Vermeulen, *Disability as a Source of Competitive Advantage*, Harv. Bus. Rev. (July-Aug. 2023), https://tinyurl.com/3k2r65jk.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] Accenture, *Getting to Equal: The Disability Inclusion Advantage* 6 (2018), https://tinyurl.com/yyusbm4x.

[13] Accenture, *The disability inclusion imperative* 2 (2023), https://tinyurl.com/37x73w9a.

Contrary to some employers' beliefs, the economic case for accommodations is strong too. According to a study endorsed by the U.S. Chamber of Commerce, "nearly 60% of accommodations cost absolutely nothing to make while the rest typically only cost $500 per employee with a disability." Dan Casarella, *America Works: How to Hire Workers With Disabilities*, U.S. Chamber of

Nevertheless, people with disabilities still face barriers to workforce participation. In 2023, the unemployment rate for people with disabilities was more than double the rate for people without disabilities.[14] An interpretation of the ADA that would drive that rate higher would not only run headlong into the express purpose of the statute, *see* 42 U.S.C. § 12101, it would rob employers of valuable team members.

B. What's more, under the Eleventh Circuit's rule, employers who fully intend to do right by their former employees in providing bargained-for benefits will suffer a competitive market disadvantage. That is because competitors could get a short-term advantage by cutting benefits to employees with disabilities and funneling that money to other business expenses.[15]

Consider an example: Employer A and Employer B are competitors. They are roughly the same size, have similar reserves, and are neck-in-neck in a highly competitive market. Both employers offer similar benefits to their respective employees. Say that Employer B discriminates against former employees with disabilities by slashing their bargained-for

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Commerce (Aug. 24, 2022), https://tinyurl.com/4xya6d8d; *see also* Job Accommodation Network, *Costs and Benefits of Accommodation* (Apr. 5, 2024), https://tinyurl.com/yc6j9yty. By comparison, the average cost of a new hire is $4,700. Liz Kislik, *Disabled People Are a Vital Part Of Your Workforce: Advice To Help You Manage*, Forbes (Jan. 17, 2023), https://tinyurl.com/38cpjax2.

[14] Bureau of Lab. Stat., *Persons with a Disability: Labor Force Characteristics—2023* 3 (Feb. 22, 2024), https://tinyurl.com/ycxaawe3.

[15] The employers that cut benefits would doubly profit—they would get all the above-listed attributes of employees with disabilities and then all the added cashflow from not honoring the bargain after those employees leave.

benefits. Employer B now has extra money available to pursue a greater market share. The City's brief in opposition highlights how much is potentially at stake: By discriminatorily eliminating the benefits of "just one employee like Petitioner," the City will save over $216,000. BIO 5. And that is "just one employee." *Id.* If Employer A upholds its promise to provide benefits (which is what it wants to do), then it is at a disadvantage to the tune of hundreds of thousands of dollars, potentially far more. In a competitive market—especially for small employers—that could mean losing critical ground to a competitor with an immediate cash advantage.

Worse yet, if former employees have no ADA protection, employers will be incentivized to target the benefits of employees with disabilities—a group that has long been the target of "unfair and unnecessary discrimination," 42 U.S.C. § 12101(a)(8)—and leave the bulk of postemployment benefits untouched.

Consider again Employer B, which decides that cutting benefits to former employees will provide a critical short-term market advantage over Employer A. Employer B provides benefits to 50 former employees—45 who do not have disabilities and 5 who do. Employer B could cut postemployment benefits by 10% for every employee, including those with disabilities, but that would send a signal to *every* employee that the employer doesn't keep its word. Alternatively, Employer B could cut benefits by 100% for only the 5 former employees with disabilities. Like the City here, the employer could make the cut "quietly" because the effect would be felt by far fewer people. *See* Stanley Br. 10. And to the extent it needed to say anything at all, the employer could tell the other 45 former employees that it simply needed to save some

money but that their own promised benefits were secure. *See* Stanley Br. 10. Meanwhile, the 5 disabled former employees would be further singled out from the other former employees (who the City described as "normal," *id.*), would be without benefits, and would have no legal recourse under the ADA.

The Eleventh Circuit's rule not only allows that result, it *incentivizes* it: Employers are encouraged to discriminate against former employees with disabilities because those who do not will suffer a market disadvantage. This is not how MSA's members wish to run their businesses. And it simply cannot be the outcome of Congress's "clear and comprehensive national mandate" to eliminate "discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1).

CONCLUSION

For these reasons, the Court should reverse the judgment of the court of appeals.

Respectfully submitted.

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