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

AMICUS CURIAE BRIEF OF THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICUS CURIAE*[1]

The International Association of Fire Fighters ("IAFF") is a 501(c)(5) labor organization headquartered in Washington, DC, representing more than 350,000 professional fire fighters, paramedics, and other emergency responders in the United States and Canada. IAFF members in more than 3,500 IAFF local affiliates protect citizens' lives and property in nearly 6,000 communities in every state in the United States and province in Canada. This amicus brief is submitted in support of the Petition for Certiorari filed by Petitioner, Lt. Karyn D. Stanley (Ret.), who throughout her distinguished fire fighting career was a member of an IAFF affiliate, the Sanford Professional Firefighters, IAFF Local 3996.

The IAFF's local affiliates represent fire fighters throughout the country in collective bargaining over the terms and conditions of employment, often including benefits for fire fighters forced into retirement by disabling occupational injury or illness. As an advocate for professional fire fighters, paramedics, and emergency responders throughout the United States, the IAFF has an interest in ensuring its members can access the nation's federal courts to vindicate their federal statutory right to be free from disability discrimination whether they become disabled during their years of service or thereafter. Because of its extensive knowledge of the increased risk of disability shouldered by those who

1. No counsel for any party authored this brief in whole or in part and no entity or person, aside from amicus curiae and its counsel, made any monetary contribution toward the preparation or submission of this brief.

respond, the IAFF is uniquely situated to provide the Court with a perspective on how the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*, can remedy serious harms caused by unlawful discrimination in the provision of disability benefits.

BACKGROUND

In 1999, Karyn Stanley took on a difficult, dangerous job to serve her community. *Stanley v. City of Sanford*, 83 F.4th 1333, 1336 (11th Cir. 2023). A then 28-year-old military veteran, she became a fire fighter in Sanford, Florida—a fast-developing suburb of Orlando. *Id.* Sanford's sunshine and proximity to Disney World belied the threatening situations its emergency responders face. Stanley and her colleagues protected tens of thousands of Floridians from the hazards that come with living in a region with a booming population, a rising number of opioid overdoses, and hurricanes growing ever stronger amid climate change.[2]

Stanley eventually rose to the rank of Fire Lieutenant. Plaintiff's Deposition at *9, No. 38-15, *Stanley v. City of Sanford*, No. 6:20-cv-629-WWB-GJK, 2021 BL 500518

2. *See*, *e.g.*, Seminole Collaborative Opioid Response Efforts, Seminole County Sheriff's Office, https://www.seminolesheriff.org/page.aspx?id=155 (last visited Sept. 4, 2024) (describing response to increased opioid deaths in county where Sanford is located); Molly Duerig & Lillian Hernández Caraballo, *Decades-old maps don't fully capture Central Florida's flooding risk*, WUSF (May 25, 2024), https://www.wusf.org/weather/2024-05-25/decades-old-maps-central-florida-flooding-risk-sanford ("Sanford is flooding more often these days, partly because the city's 100-year-old stormwater infrastructure can't keep up with demand from new development. . . .").

(M.D. Fla. Mar. 1, 2021). The physically demanding position requires rescuing victims from vehicles, drowning, accidents, and fire while managing others who do the same.[3] In recognition of these demands and the significant risk of occupational illness and injury they present, the City of Sanford offered its fire fighters, including Lt. Stanley, a retirement benefit: partial payment of health insurance premiums for employees who retired after twenty-five years of service until age sixty-five. Defendant changed its policy on October 1, 2003, limiting health insurance premiums for disabled retirees to twenty-four months following their retirement or their receipt of Medicare benefits, whichever comes first. The change did not apply to non-disabled retirees, who continue to receive the benefit until they reach sixty-five. *Stanley*, 2021 BL 500518, at *1.

Unfortunately, Lt. Stanley's fire fighting career was cut short when she developed stiffness, rigidity, slowness of movement, loss of dexterity in her extremities, and a diminished vocal volume.[4] In 2016, she was diagnosed with Parkinson's disease. 83 F.4th at 1336. The condition—one endemic among fire fighters—struck at the very physical capabilities Lt. Stanley depended on to protect people as a member of the military and as a Fire Lieutenant. Though she served two more years in her position, she retired from

3. "Fire Lieutenant," City of Sanford, https://agency.governmentjobs.com/sanford/default.cfm?action=specbulletin&ClassSpecID=779971 (providing job description from 2022) (last visited Sept. 4, 2024).

4. Plaintiff 's Disability Application at *3, No. 38-4, *Stanley v. City of Sanford*, No. 6:20-cv-629, 2021 BL 500518 (M.D. Fla. Mar. 1, 2021).

the Sanford Fire Department in 2018 at age 47. *Id.* For some years after she retired, Lt. Stanley worked part-time at a nearby technical college as her condition permitted. Plaintiff 's Deposition at *7.

The Sanford Fire Department informed Lt. Stanley during her career that if she were forced into retirement by disability, she would continue to receive subsidized health insurance until she turned 65. 83 F.4th at 1336. She signed up for that benefit when she first joined the Department in 1999 and, for years, other Sanford fire fighters had enjoyed that benefit. *Id.* After her retirement from fire fighting, though, Lt. Stanley met with an unpleasant surprise. Without Lt. Stanley's knowledge, Sanford had moved the goalposts, changing its benefits in 2003. *Id.* Now, fire fighters with disabilities receive a health insurance subsidy for just two years after retiring. *Id.* The result: just in time for the pandemic, the Department cancelled Lt. Stanley's insurance, citing an obscure change in policy that she had never heard about while she was working. Plaintiff 's Deposition at *39.

By reducing benefits to its disabled retirees, Sanford broke the promise of benefits Lt. Stanley relied on. And it did so in violation of the Americans with Disabilities Act ("ADA"). 42 U.S.C. § 12101, *et seq.*

Lt. Stanley brought this lawsuit eight months before her benefits were set to expire, alleging the Department's quiet change was unlawful discrimination under the ADA. 83 F.4th at 1336. Both the Middle District of Florida and the Eleventh Circuit decided the door to her claims closed the moment she was forced into retirement because of her disability.

SUMMARY OF ARGUMENT

The ADA was enacted to prohibit disability discrimination related to employment, including in the administration of retirement benefits. Lt. Stanley and other fire fighters disabled after public service connected to occupational illness or injury must be able to enforce this right. She and other public safety employees are often induced to perform particularly dangerous jobs by the promise of fringe benefits and to accept wages generally lower than those in comparable private sector employment.

Courts have interpreted the phrase "qualified individual" in a manner that does not defeat the usefulness of the protection against disability discrimination in other contexts—*e.g.*, the protection against discriminatory medical examinations. The Second and Third Circuits have avoided the anomalous result of creating a right without a remedy by applying a similar interpretation to the right to be free from disability discrimination in the provision of retirement benefits. This Court should not take from disabled, retired public servants their only recourse to stop a former employer from unlawfully cutting their promised benefits at the very moment they most depend on them.

No disabled fire fighter, including Lt. Stanley, should be denied the opportunity to present a well-pled complaint that an employer for whom she performed essential, life-saving work—work that likely contributed to her disability—has unlawfully discriminated against her on account of that disability. The decision of the Eleventh Circuit on review should be reversed.

ARGUMENT

I. Fire Fighters Face Increased Risk of Job-Related Disability

Lt. Stanley's story—a life of public service derailed by the risks that come with helping neighbors survive calamity and catastrophe—is tragic. It is also common. Fire fighters and other first responders put their bodies on the line with each emergency call, staring down disability and death in the course of their daily work.

Statistics tell the tale. Fire fighters suffered an average of 21,955 non-fatal injuries on the fireground each year from 2018 through 2022.[5] Injuries involving exposure to hazards—heat, smoke, toxic agents—and injuries involving overexertion or strain were the most common traumas. Around one-quarter resulted in lost work time, jeopardizing not only fire fighters' health but their ability to earn a living. This is a stark contrast to the private sector. Fire fighters are 3.5 times more likely than private-sector workers to suffer a workplace injury and 3.8 times more likely to suffer a work-related musculoskeletal disorder such as sprain, strain, or muscle pains.[6] By any reasonable measure, theirs is a treacherous occupation.

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5. Richard Campbell, *Firefighter Injuries on the Fireground*, Nat'l Fire Prot. Ass'n (Aug. 1, 2024), https://www.nfpa.org/education-and-research/research/nfpa-research/fire-statistical-reports/patterns-of-firefighter-fireground-injuries (last visited Sept. 4, 2024).

6. Seth A. Seabury & Christopher F. McLaren, *The Frequency, Severity, and Economic Consequences of Musculoskeletal Injuries to Firefighters in California*, 2 Rand Health Q. 4 (2012), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4945236 (last visited Sept. 4, 2024).

In addition to an elevated risk of injury, fire fighters must accept a significantly greater risk of disabling illness associated with their public service.

In the last twenty years, scientific research—much of it funded by Congress in the wake of the Sept. 11 attacks—shows that fire fighting causes an inordinate amount of disability. Fire fighters are more likely to suffer cardiac events than other workers because of their daily exposure to stress, smoke, heat, carbon monoxide, and toxic substances. In addition, fire fighters have a statistically significant increased risk of developing testicular cancer (102% greater risk); multiple myeloma (53%); non-Hodgkin lymphoma (51%); skin melanoma (39%); malignant melanoma (32%); brain cancer (32%); rectal cancer (29%); prostate cancer (28%); stomach cancer (22%); and colon cancer (21%).[7] Such high rates of disease are likely linked to the toxic substances fire fighters are exposed to over many years, including but not limited to the carcinogenic group of chemicals known as per- and polyfluoroalkyl substances (PFAS) commonly incorporated into fire fighters' turnout gear and the chemical foam used to extinguish fires.[8]

Studies show that fire fighters have higher blood levels of some types of PFAS "due to their increased exposure

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7. Grace K. LeMasters et al., *Cancer Risk Among Firefighters: A Review and Meta-Analysis of 32 Studies*, 48 J. Occup. & Envtl. Med. 1189 (2006), https://pubmed.ncbi.nlm.nih.gov/17099456 (last accessed Sept. 4, 2024).

8. G. F. Peaslee et al., *Another Pathway for Firefighter Exposure to Per- and Polyfluoroalkyl Substances: Firefighter Textiles*, 7 Environ. Sci. Technol. Lett. 594 (2020), https://pubs.acs.org/doi/10.1021/acs.estlett.0c00410 (last visited Sept. 11, 2024).

to these substances when compared to the general population."[9] Most disturbing: one 2022 study concluded the occupation of fire fighting is *itself* carcinogenic.[10] Though fire fighters' duties may vary from region to region, the combination of brutal conditions to which they are exposed—structural fires, wildland fires, vehicle accidents, medical incidents, hazardous material releases, building collapses, PFAS and other chemicals in turnout gear and flame retardants, exhausting shift work, and stress—leave them especially vulnerable.[11] Indeed, dangerous chemical exposures may occur even when fire fighters are merely at a fire scene and not even fighting a fire.[12]

Parkinson's disease is another disability connected to fire fighting. Researchers have linked Parkinson's with hazardous exposures common to the occupation, finding fire fighters are more than ***twice*** as likely to develop the disease as members of the general population.[13] One such

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9. Press Release, U.S. Fire Administration, Results of First 2 National Institute of Standards and Technology Studies on PFAS in Turnout Gear (Feb. 1, 2024), https://www.usfa.fema.gov/blog/results-of-2nd-nist-study-on-pfas-in-turnout-gear (last visited Sept. 4, 2024).

10. Paul A. Demers et al., *Carcinogenicity of occupational exposure as a firefighter*, 23 The Lancet Oncology, 985 (2022), https://www.thelancet.com/journals/lanonc/article/PIIS1470-2045(22)00390-4/abstract (last accessed Sept. 24, 2024).

11. *Id.*

12. *Id.*

13. *See, e.g.*, Roshni Kotwani et al., *Assessment of Parkinson's Disease symptoms and toxin exposures in firefighters: a cross-sectional survey* (Feb. 2021), https://doi.org/10.21203/

study found "the number of years working as a firefighter, the number of days per week working, and the number of fires worked correlated with higher reports of Parkinson symptoms."[14] In effect, Lt. Stanley has been punished twice: once by the devastating illness connected to her long service as a fire fighter—and again by courts who have proven unwilling to rule on the merits of her case.

In recent decades, the IAFF and its affiliates have asked the federal government and every state to expand benefit eligibility by recognizing the link between fire fighting and disabling illness. The federal government and nearly every state did. Some created legal presumptions that certain disabilities among fire fighters have an occupational origin. Such presumptions alleviate the almost impossible burden a disabled fire fighter faces: establishing legal causation by pinpointing the precise incident or exposure that led to a disabling condition. Crucially, the stricken fire fighter is afforded a rebuttable presumption of occupational causation upon showing they were engaged in hazardous duties for a specified period and that there is a general causal link between their illness and common hazardous fire fighting exposures. Such presumptions can change the lives of veteran fire fighters like Lt. Stanley who are stricken and disabled by Parkinson's disease.[15]

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rs.3.rs-223780/v1 (last accessed Sept. 4, 2024) ("The frequency of [Parkinson's] in firefighters is extremely high (1/30 people) compared to the general population (1/100 people over age 60), which may be due to the high amounts of toxin exposures firefighters experience [. . .].").

14. *Id.*

15. *See*, *e.g.*, Indiana Code, I.C. § 5-10-15-5.5; New York Consolidated Laws 2021, N.Y. Retirement and Social Security Law § 363-ff (2021).

Today, fire fighters call on the Court to hear their cases when discrimination threatens the retirement benefits that they were promised. Fire fighters are demonstrably more likely than the general population to become disabled and reliant on post-retirement support. Where fire fighters have earned a right to post-retirement benefits through perilous service, timely payment of premiums, or both, the nation's courts should be open to claims that their employers unlawfully discriminated against them by taking that support away.

II. The ADA Prohibition on Discrimination Requires Disabled Retirees Have the Right to Sue a Former Employer For Discriminatory Changes to Retirement Benefits

Even though the term "qualified individual" does not clearly limit who may sue under the ADA, the Eleventh Circuit found that Lt. Stanley may not sue because she is not a qualified individual who "desire[s] or already ha[s] a job with the defendant at the time the defendant commits the discriminatory act." *Stanley*, 83 F.4th at 1340. This is a misapplication of the ADA.

The ADA includes in a section captioned "Definitions" the definition of a "qualified individual," who is "someone who, 'with or without reasonable accommodation[,]' is able 'to perform the essential functions of the employment position that such individual holds or desires. . . . " *Stanley*, 83 F.4th at 1342 (*citing* 42 U.S.C. § 12111(8)). In another Section of the ADA captioned "Discrimination," Congress sets out a "General Rule" providing that "[n]o covered entity shall *discriminate against a qualified individual on the basis of disability* in regard to job application

procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a) (emphasis added). The Section then lists a series of prohibited discriminatory practices, specifying at the top of the list that "the term 'discriminate against a qualified individual on the basis of disability' includes . . . " 42 U.S.C. § 12112(a).

But these sections of the statute do not delineate who Congress intended to confer a right to sue. They simply identify certain types of discrimination outlawed by the ADA. The inquiry as to who may initiate an action challenging discriminatory conduct was specifically answered by Congress in the statutory section entitled "Enforcement." There, Congress plainly provided a right to sue to "*any person* alleging discrimination on the basis of disability . . . concerning employment." 42 U.S.C. § 12117(a) (emphasis added).

Congress also provided that the ADA's enforcement provision is tied to the enforcement mechanism created in the Civil Rights Act at Title VII, 42 U.S.C. 2000e, where it states that "the powers, remedies, and procedures set forth in [the Civil Rights Act]" apply to "any person alleging discrimination on the basis of disability in violation of any provision of " the ADA. 42 U.S.C. § 12117(a). Included in these "powers, remedies and procedures" is a right provided to "any person claiming to be aggrieved" to sue over an "unlawful employment practice." *Id.* § 2000e-5(f)(1).

Congress enacted a broad anti-discrimination mandate that does not require that a claimant meet the

definition of "qualified individual" at 42 U.S.C. § 12111(8)) in order to pursue a claim unless he or she is alleging a failure to accommodate. The statutory language does not compel a reading that the term "qualified individual"—used to differentiate between disabled active workers able to perform the essential functions of a job with reasonable accommodation from those who cannot—can be applied to deny retired disabled employees the right to sue over alleged discrimination. Yet that is exactly what the Eleventh Circuit did by deciding that "to be a victim of unlawful disability discrimination, the plaintiff must desire or already have a job with the defendant at the time the defendant commits the discriminatory act." 83 F.4th at 1340. *Accord McKnight v. Gen. Motors Corp.*, 550 F.3d 519, 520 (6th Cir. 2008); *Morgan v. Joint Admin. Bd.*, 268 F.3d 456, 457-59 (7th Cir. 2001); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1112 (9th Cir. 2000).

Notably, even circuits like the Eleventh that have misapplied the definition of "qualified individual" to strip retired employees of the right to sue their former employer for discriminatory administration of retirement benefits have not disqualified other categories of ADA plaintiffs who do not meet the definition of "qualified individual" from access to the courts on this unfounded basis. For example, in a case examining the right of non-disabled applicants for employment to sue under the ADA provision limiting the scope of employment medical examinations, the Ninth Circuit reversed a district court and held "plaintiffs need not prove that they are qualified individuals with a disability in order to bring claims challenging the scope of medical examinations under the ADA." *Fredenburg v. Contra Costa Cnty. Dep't of Health Servs.*, 172 F.3d 1176, 1182 (9th Cir. 1999). The

court explained that "protecting only qualified individuals would defeat much of the usefulness of those sections . . . plaintiffs need not prove that they are qualified individuals with a disability in order to bring claims challenging the scope of medical examinations under the ADA." *Id.* *Accord Owusu-Ansah v. The Coca-Cola Co.*, 715 F.3d 1306, 1310 *(11th Cir. 2013); Lee v. City of Columbus*, 636 F.3d 245 (6th Cir. 2011); *Cossette v. Minn. Power & Light*, 188 F.3d 964, 969 (8th Cir. 1999) (rejecting application of the "qualified individual" definition to deny a right to sue when "persuaded by the holdings of the Ninth and Tenth Circuits that a plaintiff need not be disabled to state a claim for the unauthorized gathering or disclosure of confidential medical information."); *Roe v. Cheyenne Mountain Conference Resort, Inc.*, 124 F.3d 1221, 1229 (10th Cir. 1997) ("Unlike suits based on a failure to provide a reasonable accommodation, this provision [providing protection from discriminatory medical exams] is not limited to qualified individuals with disabilities.").

Fortunately, other appellate courts have steered a path away from the anomalous result of recognizing a right to be free from disability discrimination without providing disabled retirees access to the courts. The Second Circuit held directly contrary to the Eleventh Circuit's decision on review in this case that an

> interpretation that would prevent former employees who are no longer "qualified individuals" from bringing claims of discrimination in the provision of post-employment fringe benefits would also undermine the plain purpose of [the relevant portions of the ADA]: to provide comprehensive

> protection from discrimination in the provision of fringe benefits.

Castellano v. City of New York, 142 F.3d 58, 68 (2d Cir. 1998). The Third Circuit similarly decided to "resolve this ambiguity" other Circuits observed between the definition of "qualified individual" and the clear statutory right to be free from discrimination in post-employment benefits, interpreting 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." *Ford v. Schering-Plough Corp.*, 145 F.3d 601, 607 (3d Cir. 1998).

These decisions hew more closely to the statutory framework established by Congress and are a roadmap this Court should use to ensure Lt. Stanely and other public servants' right to be free from discrimination is not illusory. Though the ADA sought to end discrimination in provision of *all* compensation, including retirement benefits, the Eleventh Circuit in this case ignored this clear design to reach the absurd result that disabled retirees cannot sue their former employer for disability discrimination under a comprehensive statutory scheme unquestionably designed to prohibit such discrimination.

Moreover, the Eleventh Circuit's decision on review fails to account for the 2009 Fair Pay Act's amendments to the ADA, under which claims accrue (or re-accrue):

> . . . 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.

Pub. L. 111-2, 123 Stat. 5, § 4 (2009) (amending 42 U.S.C. § 2000e-5(e)(3)(A)).

Under this intentionally expansive language passed by Congress, Lt. Stanley accrued a right to sue when she became "affected" by application of the discriminatory reduction to her benefits, which occurred only upon the City's failure to provide payments beyond the twenty-four-month period—a period discriminatorily reduced only for disabled but no other retirees.

The Eleventh Circuit's contrary interpretation, which asserts that Lt. Stanley is not a "qualified individual" because Sanford no longer employs her, leads to absurd results. Employees forced into retirement by disability cannot perform their jobs. This is a brutal Catch-22: in the Eleventh Circuit, fire fighters cannot sue to challenge a discriminatory change to their disability retirement benefits until their disability retirement benefits are changed—but once their disability retirement benefits are changed, they can no longer sue to restore discriminatorily reduced or denied disability benefits because they are already retired. Such an outcome undermines the ADA, a statute designed to prohibit such discrimination.

III. Disabled Fire Fighters are Especially Reliant on Judicial Enforcement of Their Right to Be Free From Retirement Benefit Discrimination

In the ADA, Congress gave workers the specific right to be free from discriminatory harm by "an organization providing fringe benefits to an employee." 42 U.S.C. § 12112(b)(2); *Hopman v. Union Pac. R.R.*, 68 F.4th 394, 396 (8th Cir. 2023) (discussing Congress's intent "to bar employer discrimination in providing such benefits and privileges."); *Kurtzhals v. County of Dunn*, 969 F.3d 725, 729 (7th Cir. 2020) (explaining adverse employment actions under the ADA include "cases in which the employee's compensation, fringe benefits, or other financial terms of employment are diminished.") (internal quotations and citations omitted). This Court has held this statutory language applies to *retirement benefits. Hishon v. King & Spalding*, 467 U.S. 69, 77 (1984). And there is no dispute among the parties to this case or federal courts that have addressed the issue: the ADA gives disabled employees a right to be free from discrimination in the provision of fringe benefits, including retirement benefits. The question presented here is whether such disabled retirees have access to the courts to enforce this right.

This Court has long held that a statutory right is meaningless without access to a court to enforce it. *See, e.g.*, *Marbury v. Madison*, 5 U.S. 137, 163 (1803) (quoting Blackstone to explain "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit, or action at law, whenever that right is invaded."); *Peck v. Jenness*, 48 U.S. 612, 623 (1849) ("A legal right without a remedy would be an anomaly in

the law.").[16] Without the ability to sue, the substantive right against fringe benefit discrimination that the ADA provides is illusory and results in an anomaly. Thus, disabled, retired workers must be able to bring claims that their employers unlawfully cut or reduced their retirement benefits on account of their disability.

Their significantly increased risk of disabling occupational illness or injury means fire fighters like Lt. Stanley are especially reliant on access to courts to adjudicate their post-retirement claims that their disability benefits were discriminatorily denied. The enforceability of the ADA right to be free from discrimination on the basis of disability in the provision of benefits promised while working or promised to induce work that are set to begin or to continue after retirement is crucially important to fire fighters and other public safety employees, who are often induced to perform particularly dangerous jobs by the availability of fringe benefits to accept wages generally lower than those in comparable private sector

16. Redress for employees denied timely payment of wages for labor—including deferred compensation—is one of the oldest claims courts in the United States adjudicate. For example, historical records indicate "[a] large part of the time of the Courts of Assistants of the Massachusetts Bay Colony was given to adjudicating disputes involving seamen's wages." U.S. Dep't of labor, bureau of labor statistics, bulletin No. 604, History of Wages in the U.S. from colonial times to 1928 (1934), at 95, https://fraser.stlouisfed.org/files/docs/publications/bls/bls_0604_1934.pdf (last accessed Sept. 4, 2024). And records of the Massachusetts Bay Colony General Court indicate that one of Boston's first lawyers represented a servant whose employer "promised . . . three suits of apparel and six shirts" at the end of his six-year term of service (1639-1645) without paying this post-employment benefit. *Id.*

employment. *Dist. of Columbia v. Greater Washington Bd. of Trade*, 506 U.S. 125, 134 (1992) (observing that "an employee who receives health insurance benefits typically has a correspondingly reduced average weekly wage.").

Fringe benefits—such as the health care subsidy at issue here—are compensation fire fighters anticipate receiving if injury or illness so frequently tied to their hazardous service compels them to leave the active workforce. If those benefits are diminished or deprived in a discriminatory manner, they expect the courts will provide a forum in which they may petition for enforcement of the rights Congress granted in the ADA irrespective of when such discriminatory conduct occurs. *See*, *e.g.*, *Thornton v. Graphic Communications Conference of the Intl. Bhd. of Teamsters Supplemental Ret. & Disability Fund*, 566 F.3d 597 (6th Cir. 2009) ("pension benefits [are] painstakingly accumulated by an employee in the service of his or her employer in anticipation of, and reliance on, promised benefits"); *Rochester Corp. Rochester*, 450 F.2d 118, 121 (4th Cir. 1971) (finding employee's pension benefits "are earned no less than the salary paid to him . . . in the nature of delayed compensation for former years of faithful service.") (internal quotations and citations omitted); *see also Hishon*, 467 U.S. at 77 ("A benefit need not accrue before a person's employment is completed to be a term, condition, or privilege of that employment relationship.").

State courts have also recognized that public safety employees rely on promises of retirement benefits as an inducement to perform hazardous work for what are generally lower wages than those paid in the private sector, underscoring the importance of protecting such promises from discriminatory administration. *See*, *e.g.*,

Middletown Twp. Policemen's Benevolent Assn. Local No. 124 v. Twp. of Middletown, 744 A.2d 649, 655 (N.J. 2000) (public employee's benefits may not be cut where employee "relied in good faith on the assurances that health insurance benefits would be a part of his retirement package"); *Dullea v. Mass. Bay Transp. Auth.*, 421 N.E.2d 1228, 1236 n. 9 (Mass. App. Ct. 1981) (*citing Hickey v. Pittsburgh Pension Bd.*, 378 Pa. 300, 302 (1954)) ("Public employees are likely to rely on promises of retirement benefits when initially accepting employment, when deciding whether to continue in government service, and when planning their future."); *Schlosser v. Allis-Chalmers Corp.*, 86 Wis. 2d 226, 247 (1978) ("an employer cannot offer a retirement system as an inducement to employment and . . . withdraw or terminate the program after an employee has complied with all the conditions entitling him to retirement rights thereunder.") (internal quotations and citations omitted).

Denying fire fighters who reach retirement the right to sue over discriminatory reductions to their benefits, especially in cases of retirement occasioned by disability, is notably troublesome because disabled fire fighters may have few post-employment prospects. Retirement requires planning that is easily upset by benefit changes. Retirees sell longtime homes to buy new ones. They make commitments to assisted-living facilities and plans for health and end-of-life care. They adopt standards of living not easily altered. For persons disabled by illness or injury, retirement budgets planned while healthy are further tightened by increased costs of disability related care. In these circumstances, an unlawful reduction to retirement benefits can destroy lives, requiring abandonment of routines, homes, and doctors, undermining the very

security disability benefits are supposed to provide. That is not a result Congress intended when it enacted the ADA.

Moreover, many likely to be adversely affected by post-employment benefit discrimination could not anticipate the reduction or early termination of their benefits—let alone the elimination of their right to sue. With knowledge that federal courts would not enforce her right to be free from benefits discriminationonce retired, a talented, healthy military veteran like Lt. Stanley may have chosen to work in the private sector for higher wages in a less dangerous job.

Here, the discriminatory, premature termination of Lt. Stanley's retirement benefit had an immediate impact: she now must find an extra $1,300 per month to purchase the health coverage she desperately requires. Plaintiff 's Deposition at *34. She and her husband, who works as a nurse, have struggled to cover the shortfall. *Id.* at *19. For a veteran entering middle age with a chronic disease, the impact of her employer's discrimination is an extraordinary burden. Referencing the discriminatorily reduced payment she was provided instead of her promised benefit, Lt. Stanley stated simply and truthfully "[t]hat's not the benefit that I was promised." *Id.* at *39.

Retirement benefits promised to fire fighters who become disabled by occupational injury or illness are especially worthy of judicial protection from unlawful discrimination given their willingness to undertake years of extraordinarily hazardous public service in reliance on those benefits. Lt. Stanley relied on her employer's promise that she would receive certain benefits if forced into retirement by disability. Indeed, such reliance is

common among fire fighters. Perhaps because their vocation is so life-threatening, people who rescue others from burning buildings are focused on benefits, with 75 percent reporting that retirement benefits are "highly important" to making job decisions and 81 percent reporting that death and disability are an important part of their compensation package.[17] When fire fighters accept reduced wages to secure such compensation, they expect it will be paid when promised—later in their lives. And when courts are not open to enforce those promises, disabled retired fire fighters have few opportunities to make money elsewhere.

The City of Sanford and other public employers have some ability to plan for and insure against the heightened risks to employee health and safety associated with fire fighting. They are the parties best positioned to reduce those risks by ensuring the use of safe practices and well-designed, effective personal protective equipment. Disabled retirees like Lt. Stanley do not have this ability at all: they have the promise of post-retirement healthcare earned over a lifetime of hazardous work and nothing more. The nation's courts must be open to provide a remedy to unlawful discrimination that undermines that promise.

These promises must be enforced not only to provide justice to those like Lt. Stanley who have already sacrificed their health but also to ensure the continued willingness

17. Tyler Bond & Kelly Kenneally, *State and Local Employee Views on Their Jobs, Pay and Benefits*, Nat'l Inst. on Ret. Sec. (2019), https://www.nirsonline.org/wp-content/uploads/2019/11/NIRS_OR_PublicEmployee2019_FINAL-1.pdf (last visited Sept. 4, 2024).

of citizens to take up the burden of such service. If the Eleventh Circuit's decision is upheld, any city, town, county, village or municipality in America will be able to rip away benefits promised to its first responders with impunity any time they use such benefits because they have become disabled in the line of duty. The Court should correct the Eleventh Circuit's misinterpretation of the ADA and failure to apply the Fair Pay Act to ensure the nation's courts are open to claims for redress by public servants who, like Lt. Stanley, experience discriminatory reductions or loss of promised retirement benefits.

CONCLUSION

The IAFF respectfully requests that the Court open the nation's courts to Lt. Karyn Stanley and other disabled workers' post-employment discrimination claims.

Respectfully submitted,

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