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

REPLY BRIEF OF PETITIONER

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INTRODUCTION

The City concedes (at 47) that the ADA protects "retirement benefits" but offers no coherent account of how that protection may be meaningfully enforced. The City's reading would create an arbitrary regime in which discrimination becomes perfectly lawful the moment employment ends—just when benefits earned through years of service finally kick in. It would drive a wedge between Title VII and the ADA. And it would give employers a roadmap for implementing even the most egregious animus-based discrimination—of a kind that would never be tolerated based on race or religion—simply by waiting until the day after retirement.

Congress didn't enact such a self-defeating scheme. Just as a city official with anti-Catholic animus can't cut off benefits on that basis (regardless of whether an employee is Catholic while employed or later converts), the ADA forbids such treatment on the basis of disability.

I. As our opening brief demonstrates, and as the United States agrees, the ADA and the Fair Pay Act together provide that any person alleging discrimination can sue (the "who"), that the ADA covers retirement benefits (the "what"), and that a person can sue when they are subjected to or affected by a discriminatory policy (the "when"). Thus, a plaintiff alleging discrimination in the distribution of retirement benefits may sue at least where, as here, the policy existed prior to her retirement and she feels the effects after retirement—regardless of whether retirees are "qualified individuals."

The City doesn't respond to much of this legal framework. And the response it does offer tries mightily to dodge the question presented on case-specific grounds (which we address in Part III). When it finally gets to the statute, the City proposes two atextual limits. First, it

contends (at 18) that ADA plaintiffs must "have a disability" when they are discriminated against—even though the ADA was amended to make clear that there's no such requirement, and even though Lt. Stanley *did* have a disability before she retired. Second, the City contends (at 25) that the Fair Pay Act applies only to "secret" compensation decisions—even though the statute says that it governs *all* practices "with respect to compensation." Both of these arguments are at odds with the text. Neither can salvage the judgment below.

II. Our opening brief also shows that the decision below erred in holding that retirees are not "qualified individuals." This is an independent ground for reversal—one that would also reach cases where (unlike here) discrimination occurs entirely after employment ends.

The City's main response (at 28–32) is that Congress unambiguously excluded retirees by using present-tense verbs. According to the City, when the statute asks if someone "can perform" the functions of the position that she "holds or desires," it is requiring her to *currently* hold or desire a job. But this reading misses the definition's conditional nature. Like our hypothetical airline rule allowing boarding only for passengers who "can complete an x-ray screening of the luggage that such passenger carries or checks," the definition tests capability only to the extent that the predicate condition exists. Just as that rule doesn't exclude passengers who have no bags, the definition doesn't exclude those who no longer have a job.

Context confirms this reading. The definition's role is to let employers make necessary job-related decisions, not to license arbitrary discrimination unrelated to job performance. Other ADA provisions are specifically limited to "applicants or employees," showing that Congress knew how to exclude former employees when it

wanted to. These provisions would be superfluous if *all* qualified individuals had to currently hold or want jobs.

The United States (at 29–31) offers another textual path to the same result: The ADA prohibits discrimination in "employee compensation," meaning payment for work *as* a qualified individual—that is, for "perform[ing] the essential functions of the employment position that [an] individual holds." Applying logic similar to that employed by this Court in *Davis v. Michigan*, 489 U.S. 803, 808 (1989), "[d]iscrimination in the compensation or other terms, conditions, or privileges a plaintiff earned as a qualified individual is" thus "'discriminat[ion] against a qualified individual' within the meaning of Title I—even if that discrimination occurs only after the individual is no longer employed." U.S. Br. 31. The City ignores *Davis* and is unable to explain why its logic doesn't apply here.

III. Rather than face up to the interpretive and practical problems posed by its reading of the ADA, the City tries to derail this Court's review by rehashing its cert-stage challenges to the particular discrimination complaint in this case. These arguments fall outside the question presented. And, at any rate, this case comes to the Court on the assumption that Lt. Stanley adequately alleged her discrimination claim. U.S. Br. 26; Pet. App. 2a. The City also resurfaces its waiver objections from the brief in opposition. This Court necessarily considered and rejected those arguments when it granted certiorari, but regardless, as we have already explained, the City's arguments lack merit. Pet. Br. 24–25; U.S. Br. 27–28. The City's case-specific quibbles are therefore misplaced and provide no sound basis for avoiding the issue at hand: Did Congress enact a scheme that affords protection for post-employment benefits while ensuring that people can't actually enforce that protection? The answer is no.

ARGUMENT

I. The ADA and Fair Pay Act together permit former employees to sue with respect to post-employment benefits policies that were in effect while they were employed.

Our opening brief demonstrates that, under the ADA and the Fair Pay Act, a plaintiff alleging discrimination in the distribution of retirement benefits may sue at least where, as here, the policy existed prior to her retirement—regardless of whether retirees are "qualified individuals." Pet. Br. 17–27; U.S. Br. 11–28. The City leaves much of this unaddressed. Once the City's procedural objections about waiver and the like are set aside, *see* Part III, *infra*, what remains are two legal arguments directed at answering the question presented. Neither has merit.

1. The City's lead argument (at 18) is that the ADA prohibits discrimination only against individuals with a disability. That argument is largely irrelevant here: As the Eleventh Circuit recognized, Lt. Stanley's disability arose before her retirement, so she was an individual with a disability while employed. Pet. App. 2a; U.S. Br. 21–22, 26. But the City's argument is also just wrong. The ADA prohibits discrimination "against a qualified individual on the basis of disability." 42 U.S.C. § 12112(a). This language tests the employer's conduct, not the individual's status. Indeed, the statute lists, as an example of prohibited discrimination, taking adverse actions against a non-disabled person because of that person's association with a disabled person. *Id.* § 12112(b)(4). The City's argument is incompatible with that provision.

It is also incompatible with the statute's history. The ADA originally prohibited discrimination "against a

qualified individual *with a disability because of the disability of such individual*." Pub. L. No. 101–336, Title I, § 102(a), 104 Stat. 327, 331 (1990) (emphasis added). But the ADA Amendments Act of 2008 replaced that language with the current phrasing to clarify that the discrimination needn't be against someone with a disability so long as the employer has discriminated "on the basis of disability."

To require otherwise would undo that amendment. "When Congress amends legislation, courts must presume it intends the change to have real and substantial effect"—not "act[] as though the amendment … had not taken place." *Ross v. Blake*, 578 U.S. 632, 641–42 (2016) (cleaned up); *see also* U.S. Br. 23. The petitioner (and the United States) offer readings that honor the statute's text and history; the City reads the amendment out entirely.

In response, the City puzzlingly points (at 20) to lower-court cases holding that the ADA amendments left the statute's but-for causation standard unchanged. Resp. Br. 20 (citing *Akridge v. Alfa Ins. Cos.*, 93 F.4th 1181, 1192 (11th Cir. 2024)). But those cases are about the textual change from "because of the disability" to "on the basis of disability," not the elimination of the "with a disability" language at issue here. In fact, those cases confirm that the broader goal of the reformulation was "to decrease the emphasis on whether a person is disabled." *Natofsky v. City of N.Y.*, 921 F.3d 337, 350 (2d Cir. 2019). That's the opposite of what the City is arguing here.[1]

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[1] The City also tries to impose its disability requirement from another angle, arguing (at 20–21) that because the 2008 amendments weren't retroactive, any claim "accruing in 2003," when the City adopted its policy, would still have a "disability element." But as the United States explained (at 24 n.4), the 2008 amendments apply to any claim that arises after 2008 and the Fair Pay Act tells us that claims

2. The City's only remaining argument is equally atextual. According to the City, because the Fair Pay Act overruled *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007), that statute was intended to address only fact patterns like *Ledbetter* (where the discriminatory pay decision was made, and kept, behind closed doors). In the City's view (at 25), the statute thus applies only to "secret decisions" about compensation.

Were that true, the statute's text would presumably reflect it. But *nothing* in the Fair Pay Act's text supports this novel reading. Indeed, the City doesn't even mention the text. Resp. Br. 25–26. That's because the text belies its claim. Congress enacted an across-the-board rule that applies to all unlawful employment practices "with respect to discrimination in compensation." 42 U.S.C. § 2000e-5(e)(3)(A). And, as the City concedes (at 47), "compensation" "include[s] retirement benefits." *See Ariz. Governing Comm. for Tax Deferred Annuity & Deferred Comp. Plans v. Norris*, 463 U.S. 1073, 1079 (1983) (Marshall, J., joined by Brennan, White, Stevens, and O'Connor, JJ.); *see also Davis*, 489 U.S. at 809 ("'[P]ay or compensation' includes retirement benefits.").

Rather than ground its argument in the text, the City turns to policy. It speculates (at 26) that obeying the text would encourage plaintiffs to "delay suit indefinitely." But the Fair Pay Act only *restarts* the limitations period; it doesn't *eliminate* it. *See* 42 U.S.C. § 2000e-5(e)(3)(B). So even if judges were free to rewrite statutes based on policy, there's no reason why anyone would wait to sue over wrongly denied compensation. The Fair Pay Act thus

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arise and accrue not only when a discriminatory policy is initially adopted, but also when a plaintiff is "subject[ed] to" and "affected by" it. 42 U.S.C. § 2000e-5(e)(3)(A). So retroactivity plays no role in this case.

applies here just as it would in any other case respecting "discrimination in compensation."

3. Dispensing with these arguments is enough to resolve the question presented: A plaintiff alleging discrimination in the distribution of retirement benefits may, at the very least, sue when those benefits are denied post-retirement to challenge an allegedly discriminatory policy if that policy existed prior to her retirement.

The City attempts to resist this outcome by trying to reframe this case as involving discrimination occurring "entirely post-employment." Resp. Br. 11, 14. But there's no dispute that the allegedly discriminatory policy was adopted and maintained while Lt. Stanley was employed. That she did not suffer the financial effects until later doesn't change the fact that the discrimination occurred both before and after her retirement. The Fair Pay Act makes this clear: Discrimination occurs when a policy "is adopted," when someone "becomes subject to" it, or when they are "affected by" it. 42 U.S.C. § 2000e-5(e)(3)(A). Lt. Stanley was qualified when the discriminatory policy was adopted, she became disabled while still employed and qualified, and she was affected by the discrimination when her benefits were reduced. This Court may therefore resolve this case on that ground alone.

II. The ADA's "qualified individual" definition does not permit employers to discriminate against retirees.

Because retirees can sue when they feel the effects of discriminatory benefits policies adopted while they were working, the Court need not reach the "qualified individual" definition. If it does, however, the Court should make clear that employers are no more free to discriminate against former employees than current or

future ones. It is "implausible at best" that Congress would have prohibited discrimination with respect to retirement benefits but allowed discrimination against retirees. *Davis*, 489 U.S. at 810. Nothing in the definition's text compels that unlikely result.

A. The City's arguments highlight the need to consider the definition's statutory context.

1. The City's principal textual argument focuses on the three present-tense verbs ("can," "holds," and "desires") in the qualified-individual definition. The City insists (at 28–30) that these verbs alone mean that the ADA "unambiguous[ly]" allows discrimination against retirees.

That misreads the statute. The statutory text asks what an individual "can" do, not what status they have. As our opening brief explains (at 42), applying the ordinary meaning of "can" and a basic principle of logic proves why the definition—even when read in isolation—doesn't exclude retirees. "Can perform" means "able to perform." *See* Michael McCarthy & Ronald Carter, *Cambridge Grammar of English: A Comprehensive Guide* 185 (2006) (discussing modal phrases). And phrases of this kind are binary: An individual either is (1) able to perform or (2) unable to perform. *See* Randolph Quirk, et. al., *A Comprehensive Grammar of the English Language* 121 (2024). As with all binary tests, one who isn't in one bucket must be in the other. *See Bittner v. United States*, 598 U.S. 85, 93 (2023) (describing a "statutory obligation [as] binary" because one either does what the statute requires or "does not"). Because retirees are *not* unable to perform, they are able to perform—and therefore are qualified.

2. If that logic still sounds awkward as a matter of "conversational conventions," *Bostock v. Clayton Cnty.*, 590 U.S. 644, 666 (2020), it's because in daily life we

recognize that sentences like the "qualified individual" definition are implicitly conditional. Only if an individual "holds" or "desires" a job must she be able to perform the functions of that job. Recall a few parallel 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."
- "You must silence your cell phone to visit the library."

These examples and others (at 35–40) show that the absence of the assumed condition doesn't invariably mean that a person cannot satisfy the rule. Instead, the rule turns on its "content" and "context." Pet. Br. 45.

The City's response just helps to make our point. After rewriting our hypothetical about phone usage at a movie theater, the City explains (at 45) why its version of that rule doesn't protect people without phones: "At first blush, it may seem strange," the City says, but "[t]he focus" of the rule is "on protecting people with cell phones." If one's intuition about the City's version of the rule is different, that's only because the City explained its rule's broader "concern[s]." As we conceded (at 43), "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." But the only way to know how the rule works is to consider its context.

The City purports (at 45–46) to have identified a different unifying principle for interpreting implicitly conditional rules like these. The key, it says (at 44), is to ask if the rule regulates the party to whom the implicit condition applies or someone else. But that would-be interpretive guide ultimately collapses into context, too. Consider one of our examples rewritten to regulate a third

party (the airline) whose obligations turn on whether someone else (the passenger) can follow the rule:

- "No airline shall prohibit a 'cleared passenger' from boarding an airplane. A 'cleared passenger' means a passenger who can complete an x-ray screening of the luggage that such passenger carries or checks." Can airlines keep passengers without bags off their planes? Of course not. An ordinary reader understands that the rule is concerned with prohibiting dangerous luggage, not limiting flights to people with luggage.

For good measure, recall that another one of our examples (at 36) *already was* written (by Congress, in the U.S. Code) as the City says our examples need to be, telling the NASA Administrator what she "shall" do vis-à-vis "amateur astronomers."

- "The [NASA] Administrator shall make one annual award" to "[t]he amateur astronomer … who in the preceding calendar year discovered the intrinsically brightest near-Earth asteroid." 51 U.S.C. § 30902(b)–(c). "The term 'amateur astronomer' means an individual whose employer does not provide any funding, payment, or compensation to the individual for the observation of asteroids[.]" *Id.* Surely unemployed astronomers are eligible; this rule requires amateurism, not employment.

All these examples—both ours and the City's—point in the same direction: Context is everything.

3. Recognizing the rule's implicit conditionality doesn't create "an unwritten exception" to the "qualified individual" definition. *Contra* Resp. Br. 38–40. It simply recognizes that, in a subset of cases, individuals are as

qualified as the definition requires—exactly as written—because the implicit condition isn't met.

That Congress could have written the statute more clearly does not mean that our reading isn't the "right and fair reading." *Torres v. Lynch*, 578 U.S. 452, 473 (2016). The City itself arrives at its preferred rule only by rewriting the statute: It says (at 39) that Title I prohibits discrimination only "against an individual who presently holds or desires a job that she can perform." That formulation both reorders the definition and adds the word "presently." While the statute written by the City may indeed require an individual to hold or desire a job, the statute written by Congress does not.

B. The statutory context confirms that retirees are not excluded from protection.

Because everyone agrees that context matters, the real question is what role it plays here. The "statutory context, structure, and purpose all strongly indicate" (U.S. Br. 32) that retirees are qualified individuals. Nothing the City says suggests otherwise.

1. The City concedes (at 47) that the ADA prohibits discrimination in retirement benefits. That prohibition is an important "textual and structural clue[]" that retirees—who use those benefits—aren't categorically excluded from the Act's coverage. *Niz-Chavez v. Garland*, 593 U.S. 155, 160 (2021).

This Court's decision in *Davis v. Michigan Department of Treasury*, 489 U.S. 803 (1989), points up the unlikeliness that Congress excluded retirees from Title I's coverage. Because "retirement benefits are deferred compensation for past years of service rendered," the Court in *Davis* deemed it "implausible at best" that a statute prohibiting discrimination in

"compensation" would somehow *allow* discrimination against retirees. *Id.* at 808–10. So too here.

2. The qualified-individual definition's role in the statutory scheme supplies additional, crucial context. The City argues (at 33) that the purpose of the definition is to identify who deserves the Act's protections: those who can "presently work." Its only support for that conclusion is a single legislative finding that notes the costs of excluding people with disabilities from the workforce.

There's no dispute that one purpose of the ADA is to prevent the exclusion of people with disabilities from the workforce. But the statute serves that purpose with or without the qualified-individual provision. And the City's reading of that provision—under which employers can discriminate against people with disabilities, so long as they wait until a worker retires—would *undermine* the very purpose the City claims it serves. *See* Main St. All. Br. 6; AARP Br. 19.

As we explain in our opening brief (at 30–32), the purpose of the qualified-individual provision is not to license post-employment disability discrimination. As its text makes clear, the provision's purpose is to ensure that employers need not hire, accommodate, or retain individuals who "can['t] perform the essential functions of the employment position." 42 U.S.C. § 12111(8). Authorizing employers to discriminate when "dol[ing] out" benefits that are "part and parcel of the employment relationship" does nothing to advance this purpose. *Hishon v. King & Spalding*, 467 U.S. 69, 75 (1984). Indeed, the Act specifically addresses the employer's need to account for disability when designing a benefits plan by considering "underwriting risks" and "classifying risks."

42 U.S.C. § 12201(c).[2] While that provision allows employers to take those legitimate needs into account, it expressly prohibits using a benefits plan "as a subterfuge to evade the purposes" of the statute. *Id.*

3. Contrary to the City's assertion (at 42), our reading doesn't render any of the Act's provisions superfluous. In claiming that it does, the City points to Section 12112(b)(5)(A), which allows employers to decline to make reasonable accommodations when doing so "would impose an undue hardship on the operation of the business." The City claims that this provision would be unnecessary if "qualified individual" allowed employers to refuse to hire people who are unable to perform a given job. But as this Court explained in *US Airways, Inc. v. Barnett*, 535 U.S. 391, 398 (2002), the undue-hardship provision excuses employers from accommodating employees who "*can* perform the essential functions of the" employment position with reasonable accommodations if doing so would cause an undue hardship. On any reading, then, the undue-hardship provision isn't duplicative of the qualified-individual provision; it provides *additional* discretion. So too with the other employer-accommodating provisions the City identifies, each of which deals with a specific problem not addressed by the "qualified individual" provision. *See, e.g.*, 42 U.S.C. § 12112(b)(6) (addressing selection criteria and employment tests).

The City's interpretation, on the other hand, renders important language in the construction provision superfluous. That provision says that employers need only make reasonable accommodations to a "qualified

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[2] This provision answers the concern expressed by the City's amici that, unless employers can freely discriminate in the distribution of post-employment benefits, they will be unable to make necessary changes to benefits plans. *See, e.g.*, Chamber Br. 18–20.

individual with a disability *who is an applicant or employee*." 42 U.S.C. § 12112(b)(5)(A) (emphasis added). If all qualified individuals "hold[]" or "desire[]" jobs, there would have been no need for that italicized language.

The City doesn't argue otherwise. Instead, it points out (at 43) that other "construction" provisions also limit their reach to "applicant[s] or employee[s]." But that just means that its interpretation renders even *more* of the Act superfluous. The City argues that Congress was merely "emphasiz[ing] how important it was … that a plaintiff have an actual, present relationship with an employer." *Id.* That kind of argument can always be made in favor of interpretations that render language superfluous, and the City's too-much-surplusage argument runs counter to how the rule normally works. *See Fischer v. United States*, 603 U.S. 480, 496 (2024) ("surplusage is … disfavored" and a "construction that creates substantially less of it is better than a construction that creates substantially more"). Regardless, the City ignores that still other "construction" provisions describe prohibited forms of discrimination without mentioning "applicant[s] or employee[s]" at all. *See*, *e.g.*, 42 U.S.C. § 12112(b)(3).

4. The City's attempt to rely on the statute's anti-retaliation provision—which appears among various "miscellaneous" provisions, 42 U.S.C. §§ 12201–12213, not in Title I—fares no better. The City argues (at 37) that this provision—which forbids discrimination "against any individual," 42 U.S.C. § 12203(a)—shows that "when Congress wanted to prohibit discrimination against disabled former employees, it did so clearly and explicitly."

Not so. First, using "any individual" in Title I would have radically changed the statute in ways that have nothing to do with retirees (forcing employers to hire

individuals who cannot do the job even with accommodations). And second, the use of "any individual" in the retaliation provision has nothing to do with retirees, either. The ADA's retaliation provision applies to each chapter of the Act, not just Title I, *see* 42 U.S.C. § 12203(a), and Title III of the ADA (which isn't about employment) prohibits discrimination against any "individual," *id.* § 12182(a). The retaliation provision is drafted to cover those cases, not retirees.

5. Turn next to the ADA's stated purposes, which include "provid[ing] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities," and "provid[ing] clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b). Ours is the only "permissible" interpretation of the "qualified individual" definition that "produces a substantive effect that is compatible with" those stated purposes and "the rest of the law." *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988).

The City never disputes that, under its interpretation, an employer motivated by nothing but the desire to "intentional[ly] exclu[de]" need only wait until the day after retirement to strip disabled employees of benefits. 42 U.S.C. § 12101(a)(5). The City's explanation for this surprising result (at 50–51) is that Congress thought other remedies already addressed discrimination against retirees. This reasoning rests on two flawed premises.

The first (at 50) is that Title I's *only* concern was providing "a legal remedy for disabled workers that did not previously exist." That's unlikely; as this Court has repeatedly explained, "legislative enactments" addressing employment discrimination "have long evinced a general

intent to accord parallel or overlapping remedies against discrimination." *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47 (1974); *see also N. Haven Bd. of Ed. v. Bell*, 456 U.S. 512, 536 n.26 (1982). There's no reason to think Title I is any different.

The second (at 51) is that it was "clear" when Congress enacted the ADA that there were other remedies for disabled retirees. The City and its amici rely heavily on ERISA. But ERISA's anti-discrimination provision wasn't enacted until 1996—six years *after* the ADA. *See* Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104–191, 110 Stat. 1936 (codified as amended at 29 U.S.C. § 1182). And ERISA's remedies are more limited than Title I's. *Compare* 29 U.S.C. § 1132(a)(1)(B) (recovery limited to "benefits due … under the terms of [the] plan), *and Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993) (no compensatory or punitive damages available under section 502(a)(3) of ERISA), *with* 42 U.S.C. § 1981a(a)(2) (authorizing compensatory and punitive damages in most Title I suits).

Because ERISA doesn't apply to state or local governments, it also would do nothing for public employees after retirement. *See* 29 U.S.C. §§ 1002(32), 1003(b). That coverage gap is significant. Post-employment benefits are a major draw for many critical public service jobs. *See* AARP Br. 19 n.27. And the Equal Protection Clause is no safe haven. Governments that are able to rationalize (even post-hoc) the exclusion of disabled retirees on any basis other than animus will almost certainly survive rational-basis review. *See City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 442 (1985).

Nor do state-law contractual remedies fill the gap. An employer that contractually retains discretion over continued payment may stop those payments for *any*

reason. *See* Disability Rts. Legal Ctr. Br. 22 (noting that employers "routinely reserve for themselves the right to change their benefit plans"). And, unlike an ADA plaintiff, a retiree bringing a contractual claim—likely seeking to recover amounts that attorneys' fees would far outpace—generally can't recover those fees.

6. The City offers a handful of other reasons why it thinks that Title I doesn't apply to retirees. None is persuasive. Our understanding of the statute does not, as the City suggests (at 40), "create bizarre incentives for employees." The hypothetical it concocts—in which an employee who is "totally incapable of performing a certain position" and who "doesn't apply for [a] promotion or otherwise indicate that she 'desires' it" sues when she doesn't get promoted—plainly isn't actionable.

Nor can the City brush away (at 30–32, 48–49) the teachings of *Robinson v. Shell Oil Co.*, 519 U.S. 337 (1997). *Robinson* is relevant not for specific statutory text, but for its methodology: It demonstrates how to interpret terms in employment discrimination laws whose "broader context" favors one reading over another. *Id.* at 345.

And *Robinson* itself is part of that "broader context." "The central prohibitions of the ADA are all taken, directly or indirectly, from Title VII." Pamela S. Karlan & George Rutherglen, *Disabilities, Discrimination, and Reasonable Accommodation*, 46 Duke L.J. 1, 5 (1996). To be sure, the reasonable-accommodation requirement comes from the Rehabilitation Act. *See id.* at 7. But much of the discriminatory "behavior forbidden" by Title I is "borrowed virtually intact from the language of Title VII and case law" interpreting it. *Id.* at 5. And when Congress amended Title I in 2008, it did so "to mirror the structure of [the] nondiscrimination protection provision in Title VII." 154 Cong. Rec. S8840-01 (daily ed. Sept. 16, 2008).

III. This Court should ignore the City's misplaced attempts to derail the Court's consideration of the question presented.

This Court granted certiorari to consider a purely legal question about whether and when former employees can challenge allegedly discriminatory post-employment benefits policies. In an effort to dodge that question, the City complains extensively of waiver and attempts to litigate the adequacy of Lt. Stanley's discrimination complaint. Resp. Br. 1–2, 7–8, 16–18, 22–23.

The City aired these issues in opposing certiorari, and this Court is presumed to have "necessarily considered and rejected" them. *Stolt-Nielsen S.A. v. AnimalFeeds Int'l Corp.*, 559 U.S. 662, 670 n.2 (2010). Indeed, this Court couldn't have missed them: The City began and ended its opposition with these exact arguments. BIO 1–2, 30–31. The City offers no sound reason to revisit them now.

1. Nor have the City's waiver arguments improved. Lt. Stanley raised below the same core arguments that she offers here. *See* Pet. Br. 24–25; U.S. Br. 27–28. Her opening brief below expressly incorporated the government's argument that, under the Fair Pay Act, she may challenge allegedly discriminatory acts that occurred while she was employed. Pet. C.A. Br. at viii–ix; Pet. C.A. Reply Br. 4–6; *see* Fed. R. App. P. 28(i) ("[A]ny party may adopt by reference a part of another's brief."); *United States v. Eshetu*, 898 F.3d 36, 37 n.1 (D.C. Cir. 2018) (allowing adoption of amicus arguments under Rule 28(i)). And for her own part, Lt. Stanley's opening brief below explained that, because she didn't feel the impact of the City's policy until retirement, she would have been unable to bring this claim in the absence of the Fair Pay Act. Pet. C.A. Br. 20. She would have lacked Article III standing to recover damages if she had brought it when employed, but

been barred by the statute of limitations if she brought it when the subsidy was cut off. *Id.* The Fair Pay Act, she argued (analogizing to Goldilocks), allowed her to thread the needle based on the same underlying conduct—the City's allegedly unlawful policy. *Id.*[3]

2. The same goes for the City's "disclaimer" argument (at 15–16), which it ties to Lt. Stanley's acknowledgment that she would have lacked Article III standing to sue when the City adopted its discriminatory policy in 2003 because she was not yet disabled. As the government explains, it would be a mistake to confuse this "statement about standing as a concession on the merits." U.S. Br. 25 n.5. Acknowledging that she lacked standing to challenge the policy before experiencing its effects isn't remotely equivalent to conceding away her rights under the statute.

3. Finally, the City tries to derail review by rehashing its case-specific attacks on Lt. Stanley's discrimination complaint from its cert-stage opposition. Resp. Br. 22–23. These attacks fall outside the question presented. Pet. Cert. Reply 3. This Court's Rule 14.1(a) is clear: "Only the questions set out in the petition, or fairly included therein, will be considered by the Court." *See, e.g.*, *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 273 (2009). And, as the United States explains, "[t]his case comes to the Court on the assumption that Stanley … has adequately alleged that the City's policy facially discriminate[d] 'on the basis of disability.'" U.S. Br. 16–17. It likewise "comes to the Court

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[3] As the City acknowledges (at 18), "a party can make any argument in support of [a] claim" and is "not limited to the precise arguments they made below." *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995). The City never contends, nor could it, that Lt. Stanley is advancing a new claim in this Court. *See* U.S. Br. 28 n.6 (explaining that Lt. Stanley's arguments support her "consistent claim" that her status as a former employee does not preclude her from challenging the City's policy).

on the assumption that Stanley has adequately alleged that the City acted with discriminatory intent not only in adopting the allegedly discriminatory benefits policy in 2003, but also in maintaining that policy throughout the rest of her employment—including the period after she was diagnosed with Parkinson's disease in 2016, during which it eventually became apparent that Stanley would be forced to take disability retirement." U.S. Br. 26.[4]

The City attempts (at 7–8, 22–23) to challenge these assumptions. But this Court addresses issues subsidiary to the question presented only if the question "cannot genuinely be answered" otherwise. *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 579 n.4 (2008). That's not the case here. The petition "took as a given" that Lt. Stanley adequately alleged her underlying discrimination case. *Smith v. Arizona*, 602 U.S. 779, 801 (2024). The City's case-specific attacks on Lt. Stanley's complaint are "not now fit for [this Court's] resolution" and form "no part of the question [the Court] agreed to review." *Chiaverini v. City of Napoleon*, 602 U.S. 556, 565 (2024). The City will of course be free to raise these arguments, and whatever defenses it chooses, on remand.

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[4] The complaint makes clear that Lt. Stanley was disabled while she was employed. It alleges that, given the "physical demands and requirements of a Firefighter position" and "her physical disability," she "did not have a choice but to retire due to her disability." Compl. ¶ 16. The court of appeals itself recognized that Lt. Stanley "managed to continue working as a firefighter for about two more years" after her Parkinson's diagnosis, after which "her disease and accompanying physical disabilities left her incapable of performing her job." Pet. App. 2a. The City's brief in opposition never contended otherwise. *See* S. Ct. R. 15.2 ("Any objection to consideration of a question presented based on what occurred in the proceedings below, if the objection does not go to jurisdiction, may be deemed waived unless called to the Court's attention in the brief in opposition.").

CONCLUSION

The court of appeals' judgment should be reversed.

Respectfully submitted,

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