

FEDERAL STATUTES AND REGULATION

*Americans with Disabilities Act — Disability Law —  
Statutory Interpretation — Stanley v. City of Sanford*

The Americans with Disabilities Act of 1990<sup>1</sup> (ADA) “provide[s] a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities.”<sup>2</sup> Title I of the ADA bars employers from “discriminat[ing] against a qualified individual on the basis of disability.”<sup>3</sup> A “qualified individual” is someone “who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires.”<sup>4</sup>

Last Term, in *Stanley v. City of Sanford*,<sup>5</sup> the Supreme Court held that retirees are not qualified individuals within the meaning of the ADA.<sup>6</sup> Instead, to state an ADA claim, a retired plaintiff challenging discrimination in postemployment benefits “must plead . . . that she held or desired a job, and could perform its essential functions with or without reasonable accommodation, at the time of” the alleged discriminatory act.<sup>7</sup> At first blush, *Stanley* appears to be a narrow ruling, given that it left open options for disabled retirees to seek relief under Title I and other federal and state laws.<sup>8</sup> Yet these alternate paths to recovery present challenges that meaningfully constrain their viability. After *Stanley*, many individuals with disabilities who retire will be excluded from the protections of antidiscrimination laws, widening the gap in the social safety net for retirees.

In 1999, Lieutenant Karyn Stanley began working as a firefighter in Sanford, Florida,<sup>9</sup> where she had planned to serve for twenty-five years.<sup>10</sup> The City offered health insurance until age sixty-five for both those “who retired after [twenty-five] years of service” and those who retired earlier due to disability.<sup>11</sup> However, the City subsequently changed its policy such that those who retired early due to disability or started receiving Medicare benefits would have only twenty-four

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<sup>1</sup> 42 U.S.C. §§ 12101–12213.

<sup>2</sup> *Id.* § 12101(b)(1).

<sup>3</sup> *Id.* § 12112(a).

<sup>4</sup> *Id.* § 12111(8).

<sup>5</sup> 145 S. Ct. 2058 (2025).

<sup>6</sup> *See id.* at 2064.

<sup>7</sup> *Id.* at 2071.

<sup>8</sup> *Id.* at 2068; *id.* at 2068–71 (opinion of Gorsuch, J.).

<sup>9</sup> Complaint & Demand for Jury Trial ¶¶ 13, 14, *Stanley v. City of Sanford*, No. 20-cv-629, 2021 WL 6333059 (M.D. Fla. Mar. 1, 2021).

<sup>10</sup> *Id.* ¶ 16.

<sup>11</sup> *Id.* ¶ 19.

months of coverage.<sup>12</sup> Lt. Stanley acquired a disability that “forced her to retire” after about twenty years of service.<sup>13</sup>

Lt. Stanley sued the City, alleging that it had violated the ADA and other federal and state laws by providing different health insurance benefits to those who retire early due to disability.<sup>14</sup> The City moved to dismiss her complaint for failure to state a claim.<sup>15</sup> The district court granted the motion in part, dismissing Lt. Stanley’s claims under the Florida Civil Rights Act of 1992,<sup>16</sup> the Rehabilitation Act of 1973,<sup>17</sup> and the ADA.<sup>18</sup> To proceed under each statute, the court required Lt. Stanley to allege facts sufficient to show that she was a “qualified individual” at the time of the City’s alleged discrimination.<sup>19</sup> The court found that Lt. Stanley did not face the alleged discrimination until after she could not “perform the essential functions of her job,” at which point she was no longer a “qualified individual.”<sup>20</sup> The district court separately dismissed Lt. Stanley’s claim under 42 U.S.C. § 1983 with leave to amend because she did not allege a constitutional violation independent of the rights protected by the ADA and the Rehabilitation Act.<sup>21</sup> But the district court denied the City’s motion as to Lt. Stanley’s requests for relief under the Declaratory Judgment Act<sup>22</sup> and the Equal Protection Clause.<sup>23</sup> The City then moved for summary judgment, which the district court granted.<sup>24</sup>

The Eleventh Circuit affirmed.<sup>25</sup> The panel reaffirmed the circuit’s prior decision in *Gonzales v. Garner Food Services, Inc.*,<sup>26</sup> which held that a former employee was not a “qualified individual” and thus could not sue under Title I.<sup>27</sup> The court rejected Lt. Stanley’s arguments that it should “ignore *Gonzales*,”<sup>28</sup> and held that she could not sue based on events that occurred after her retirement.<sup>29</sup> The question, then, was

<sup>12</sup> *Id.* ¶ 20.

<sup>13</sup> *Id.* ¶ 16.

<sup>14</sup> *Stanley*, 145 S. Ct. at 2062.

<sup>15</sup> *Id.*

<sup>16</sup> FLA. STAT. ANN. §§ 760.01–11 (West 2020).

<sup>17</sup> Pub. L. No. 93-112, 87 Stat. 355 (1973) (codified as amended in scattered sections of 29 U.S.C.).

<sup>18</sup> *Stanley v. City of Sanford*, No. 20-cv-629, 2021 WL 6333059, at \*2, \*5 (M.D. Fla. Mar. 1, 2021).

<sup>19</sup> *See id.* at \*2–3.

<sup>20</sup> *Id.* at \*3.

<sup>21</sup> *Id.* at \*4.

<sup>22</sup> 28 U.S.C. §§ 2201–2202.

<sup>23</sup> U.S. CONST. amend. XIV, § 1; *Stanley*, 2021 WL 6333059, at \*3–5.

<sup>24</sup> *Stanley v. City of Sanford*, No. 20-cv-629, 2021 WL 6333058, at \*6 (M.D. Fla. Dec. 7, 2021).

<sup>25</sup> *Stanley v. City of Sanford*, 83 F.4th 1333, 1336 (11th Cir. 2023).

<sup>26</sup> 89 F.3d 1523 (11th Cir. 1996).

<sup>27</sup> *Id.* at 1530 n.16, 1531; *Stanley*, 83 F.4th at 1336.

<sup>28</sup> *Stanley*, 83 F.4th at 1340.

<sup>29</sup> *See id.* at 1338, 1343–44. Earlier in the opinion, the court had noted that there existed a circuit split between the Second and Third Circuits, which permitted former employees to sue under Title I, and the Sixth, Seventh, Ninth, and Eleventh Circuits, which did not. *See id.* at 1336. In reaffirming *Gonzales*, the Eleventh Circuit remained in the latter camp.

whether she “suffered discrimination as a disabled employee at some unknown point *before* she retired but *after* she was diagnosed with Parkinson’s.”<sup>30</sup> Lt. Stanley argued as much at oral argument, but the court concluded that she had “waited too long”<sup>31</sup> and “specifically disclaimed the argument in [her] own brief.”<sup>32</sup> Therefore, the court rejected Lt. Stanley’s claims under the ADA, the Rehabilitation Act, and the Florida Civil Rights Act.<sup>33</sup> The court also concluded that the City’s benefits plan survived rational basis review, and that the City had lawfully exercised its discretion under Florida law such that it was entitled to summary judgment.<sup>34</sup>

The Supreme Court affirmed.<sup>35</sup> Writing for the majority,<sup>36</sup> Justice Gorsuch considered the question of “whether § 12112(a) addresses discrimination against retirees like Ms. Stanley.”<sup>37</sup> The Court focused on the meaning of “qualified individual” in the text of Title I.<sup>38</sup> It concluded that Congress’s use of the present tense in “holds or desires”<sup>39</sup> “suggest[s] that the statute does not reach retirees who neither hold nor desire a job at the time of an alleged act of discrimination.”<sup>40</sup> Other definitions in Title I supported the Court’s reading. For example, the definitions of “discrimination” and “reasonable accommodations” make sense only when applied to “current and prospective employees.”<sup>41</sup> Further, the Court contrasted the “qualified individual” language with another part of the ADA barring retaliation against “any individual”<sup>42</sup> and implied that “qualified individual” must be narrower in scope.<sup>43</sup> Title VII<sup>44</sup> provided another point of comparison, as it protects “employees,”<sup>45</sup> a term lacking “any temporal qualifier.”<sup>46</sup> However, when Title VII “links the term ‘employee’ to present-tense verbs like *work* and *has*,” it covers only current employees.<sup>47</sup> The Court concluded that, like in Title VII, the ADA’s combination of “qualified individual” with present-tense

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<sup>30</sup> *Id.* at 1343.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 1344.

<sup>33</sup> *Id.*

<sup>34</sup> *See id.*

<sup>35</sup> *Stanley*, 145 S. Ct. at 2071.

<sup>36</sup> *Id.* at 2060.

<sup>37</sup> *Id.* at 2063.

<sup>38</sup> *Id.* at 2063–64.

<sup>39</sup> *Id.* at 2064 (emphasis omitted) (quoting 42 U.S.C. § 12111(8)).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* (citing 42 U.S.C. §§ 12111(9), 12112(b)).

<sup>42</sup> 42 U.S.C. § 12203(a).

<sup>43</sup> *Stanley*, 145 S. Ct. at 2064.

<sup>44</sup> 42 U.S.C. §§ 2000e to -17.

<sup>45</sup> *Id.* § 2000e-3(a).

<sup>46</sup> *Stanley*, 145 S. Ct. at 2064 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 342 (1997)).

<sup>47</sup> *Id.* at 2065 (citing *Robinson*, 519 U.S. at 341 & n.2, 343).

verbs must be read to exclude retirees.<sup>48</sup> Justice Gorsuch reasoned that the Court’s precedent cohered with this textual evidence.<sup>49</sup>

The majority then rebutted Lt. Stanley’s and the dissent’s arguments. First, it rejected as textually impermissible the argument that the “qualified individual” language is a “conditional mandate,” applying only where a plaintiff alleges discrimination in connection with a job she holds or desires.<sup>50</sup> Second, it dismissed Lt. Stanley’s usage of the canon against superfluity.<sup>51</sup> Lt. Stanley had pointed to language in the ADA “defin[ing] discrimination to include the failure to reasonably accommodate ‘an otherwise qualified individual with a disability who is an applicant or employee’” and argued that the majority’s interpretation of “qualified individual” would render “applicant or employee” superfluous.<sup>52</sup> The Court rejoined that “applicant or employee” would retain independent meaning because it may exclude those who want a job but “do[] not apply.”<sup>53</sup> Regardless, the rule against surplusage was not dispositive.<sup>54</sup> Third, the majority rejected the argument that the “qualified individual” requirement did not apply to Lt. Stanley’s case, countering that “the [ADA] protects people, not benefits, from discrimination.”<sup>55</sup> Fourth, the Court refused “to look beyond text and precedent” to “extend[] Title I’s protections beyond those who hold or seek a job.”<sup>56</sup> Here, it briefly noted that “other laws . . . may protect retirees from discrimination with respect to postemployment benefits.”<sup>57</sup>

Next, writing only for a plurality of Justices,<sup>58</sup> Justice Gorsuch addressed whether Lt. Stanley’s complaint could satisfy the newly established standard under Title I.<sup>59</sup> He noted that this question was not precisely before the Court but it would nevertheless be “profitable” to “highlight[] how Title I might [still] provide relief for retirees” after the Court’s ruling.<sup>60</sup> Justice Gorsuch identified the “three points in time” at

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<sup>48</sup> *See id.*

<sup>49</sup> *Id.* (citing *Cleveland v. Pol’y Mgmt. Sys. Corp.*, 526 U.S. 795, 806 (1999); *Albertson’s, Inc. v. Kirkingburg*, 527 U.S. 555, 567 (1999)).

<sup>50</sup> *Id.* (quoting Brief of Petitioner at 28, *Stanley*, 145 S. Ct. 2058 (No. 23-997); *Stanley*, 145 S. Ct. at 2084 (Jackson, J., dissenting)).

<sup>51</sup> *Id.* at 2066.

<sup>52</sup> *Id.* (emphasis omitted) (quoting 42 U.S.C. § 12112(b)(5)(A)).

<sup>53</sup> *Id.* (citing *Davoll v. Webb*, 194 F.3d 1116, 1132 (10th Cir. 1999); *Daugherty v. City of El Paso*, 56 F.3d 695, 699 (5th Cir. 1995)).

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 2067.

<sup>57</sup> *Id.* at 2068.

<sup>58</sup> Justices Alito, Sotomayor, and Kagan joined this part of the opinion. *Id.* at 2060. Justice Jackson did not, but she “agree[d] fully with the plurality’s conclusion that § 2000e-5(e)(3)(A) ‘might be especially promising for plaintiffs in [Lt.] Stanley’s shoes.’” *Id.* at 2079 n.4 (Jackson, J., dissenting) (first alteration added) (quoting *id.* at 2070 (opinion of Gorsuch, J.)).

<sup>59</sup> *Id.* at 2068 (opinion of Gorsuch, J.).

<sup>60</sup> *Id.*

which “unlawful discrimination can take place”<sup>61</sup> — “when a discriminatory . . . practice is adopted,”<sup>62</sup> “when an individual ‘is affected by [its] application,’”<sup>63</sup> or when an individual “becomes subject to” it.<sup>64</sup> Under Justice Gorsuch’s formulation, a plaintiff must be a qualified individual at any of the three points in time to state a claim under Title I.<sup>65</sup>

Justice Gorsuch noted that the third option “might be especially promising for plaintiffs in Ms. Stanley’s shoes.”<sup>66</sup> Specifically, there was a “critical window” between Lt. Stanley’s diagnosis and retirement where she both had a disability and was a “qualified individual.”<sup>67</sup> However, this theory was unavailable to Lt. Stanley because her complaint did not specify the nature or onset of her disability.<sup>68</sup>

Justice Thomas concurred in part and concurred in the judgment.<sup>69</sup> He did not join the plurality opinion, as he disagreed with the decision to “opine on the additional question that Stanley raised for the first time in earnest at the merits stage.”<sup>70</sup> Unlike Justice Gorsuch, Justice Thomas thought “there [was] nothing exceptional about Stanley’s case”<sup>71</sup> to justify departing from the Court’s Rules, under which the Court may consider only the questions reasonably included in the petition for a writ of certiorari.<sup>72</sup>

Justice Sotomayor concurred in part and dissented in part.<sup>73</sup> She agreed with the majority that Lt. Stanley had “forfeited” the argument that she “was subject to the allegedly discriminatory policy . . . while she was both disabled and employed.”<sup>74</sup> Otherwise, she agreed with Parts III and IV of the dissent except for footnote twelve,<sup>75</sup> in which Justice Jackson critiqued the Court’s “pure textualism.”<sup>76</sup> Rather, Justice Sotomayor wrote that “the Court eschew[ed] th[e] common-sense understanding of the statutory text.”<sup>77</sup>

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 2069 (quoting 42 U.S.C. § 2000e-5(e)(3)(A)).

<sup>63</sup> *Id.* at 2068–69 (alteration added) (quoting 42 U.S.C. § 2000e-5(e)(3)(A)).

<sup>64</sup> *Id.* at 2069 (quoting 42 U.S.C. § 2000e-5(e)(3)(A)).

<sup>65</sup> *See id.* at 2068.

<sup>66</sup> *Id.* at 2070.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 2071 (Thomas, J., concurring in part and concurring in the judgment). Justice Barrett joined Justice Thomas’s concurrence.

<sup>70</sup> *Id.* at 2072.

<sup>71</sup> *Id.* at 2075.

<sup>72</sup> *Id.* at 2074 (citing SUP. CT. R. 14.1(a)).

<sup>73</sup> *Id.* at 2076 (Sotomayor, J., concurring in part and dissenting in part).

<sup>74</sup> *Id.* at 2076–77.

<sup>75</sup> *See id.* at 2076.

<sup>76</sup> *Id.* at 2089 n.12 (Jackson, J., dissenting).

<sup>77</sup> *Id.* at 2076 (Sotomayor, J., concurring in part and dissenting in part).

Justice Jackson dissented.<sup>78</sup> In her view, the complaint demonstrated that “the City subjected Lt. Stanley to the discriminatory policy *during* her employment, not only after she retired.”<sup>79</sup> She criticized the majority for ignoring “what Lt. Stanley actually allege[d] and us[ing] her case nonetheless to answer an important legal question that d[id] not arise from the facts.”<sup>80</sup> Further, Justice Jackson disputed the majority’s textual interpretation for misconstruing the “qualified individual” language “as a strict temporal limit on the reach of Title I’s protections.”<sup>81</sup> For Justice Jackson, Title I shields disabled workers and retirees from benefits discrimination, and the “qualified individual” language functions conditionally “to protect employers from having to extend employment to those who cannot do a job.”<sup>82</sup>

The legislative history and purpose of Title I, Justice Jackson wrote, confirmed this interpretation.<sup>83</sup> She criticized the Court for how it “often . . . closes its eyes to context, enactment history, and the legislature’s goals,” instead “twisting and turning [a statute’s] words until self-confirmatory observations solidify [the Court’s] ‘first blush’ assumptions.”<sup>84</sup> Footnote twelve further critiqued “pure textualism” as “turn[ing] the interpretive task into a potent weapon for advancing judicial policy preferences.”<sup>85</sup> To close, Justice Jackson wrote: “Americans with disabilities have proven time and again that they can overcome long odds in fighting for their own equality. When that happens, my one wish would be for this Court to stay out of their way.”<sup>86</sup>

*Stanley* sharply curtailed Title I’s protections for disabled retirees and those who have left their jobs. The Court’s decision excludes from the protections of Title I plaintiffs who do not hold or seek employment at the time of the alleged discrimination.<sup>87</sup> As Justice Jackson noted in dissent, per the majority’s reading, Title I does not cover an employee whose “employer waits until one day *after* that employee’s retirement” to discriminate in the provision of retirement benefits.<sup>88</sup> The decision therefore allows employers to discriminate against retirees who can no longer work because of their disabilities.

At the same time, the plurality opinion enumerated avenues for a plaintiff to state a claim under Title I,<sup>89</sup> and the Court cited “a variety

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<sup>78</sup> *Id.* at 2077 (Jackson, J., dissenting). Justice Sotomayor joined Justice Jackson’s dissent with respect to Parts III and IV, except for footnote twelve.

<sup>79</sup> *Id.* at 2079.

<sup>80</sup> *Id.* at 2082.

<sup>81</sup> *Id.* at 2078.

<sup>82</sup> *Id.* at 2084.

<sup>83</sup> *See id.* at 2085–87.

<sup>84</sup> *Id.* at 2089 (quoting *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997)).

<sup>85</sup> *Id.* at 2089 n.12.

<sup>86</sup> *Id.* at 2090.

<sup>87</sup> *See id.* at 2071 (majority opinion).

<sup>88</sup> *Id.* at 2086 (Jackson, J., dissenting).

<sup>89</sup> *See supra* text accompanying notes 58–68.

of other laws besides Title I” that “may protect retirees.”<sup>90</sup> Indeed, some commentators have seized on the plurality opinion as potentially limiting *Stanley*’s negative impact on retirees with disabilities.<sup>91</sup> Yet neither the plurality opinion nor the majority’s reference to other laws fully safeguards a retired plaintiff’s ability to challenge discrimination in postemployment benefits.

The avenues under Title I still require a plaintiff to show that she was a qualified individual.<sup>92</sup> This requirement imposes significant temporal restraints that evince a narrow understanding of disability, excluding individuals who can no longer work after developing a disability. For example, a plaintiff alleging discrimination based on when she became subject to a policy must identify the “critical window” after her diagnosis and before her retirement when she was a “qualified individual.”<sup>93</sup> Lt. Stanley was diagnosed with Parkinson’s, a degenerative neurological condition,<sup>94</sup> with which she could continue to perform the essential functions of her job for about two years.<sup>95</sup> But another employee may acquire a disability that immediately prevents her from continuing to perform the essential functions of her work. In that case, the retiree cannot challenge “discrimination in the benefits she earned while working.”<sup>96</sup>

Reading Title I to exclude individuals whose disabilities result in their retirement exemplifies the “*Goldilocks* dilemma” of the ADA, where “people with disabilities . . . are either too disabled or not disabled enough.”<sup>97</sup> “By . . . narrowing the meaning of disability,” *Stanley* is yet another decision that “weakened the ADA by severely constricting the scope of who qualifies for its protection.”<sup>98</sup>

Though the Court also noted that retirees may sue under “a variety of other laws,”<sup>99</sup> plaintiffs who do so will face obstacles to prevailing.

<sup>90</sup> *Stanley*, 145 S. Ct. at 2068.

<sup>91</sup> See Scott I. Unger, *United States Supreme Court Ruling Significantly Narrows Title I of the Americans with Disabilities Act*, NAT’L L. REV. (June 23, 2025), <https://natlawreview.com/article/united-states-supreme-court-ruling-significantly-narrows-title-i-americans> [https://perma.cc/96CP-WHXY] (“The Court did, however, leave open a potential narrow path for retirees who could show that they were disabled and qualified when the alleged discriminatory policy was adopted.”); Khorri Atkinson, *Justices’ Musings Offer New Workplace Litigation Strategies*, BLOOMBERG L. (July 2, 2025, at 05:10 ET), <https://news.bloomberglaw.com/daily-labor-report/justices-musings-offer-new-workplace-litigation-strategies> [https://perma.cc/VS7A-U9D4] (“Four justices used a plurality opinion in *Stanley v. City of Sanford* to create an opening for disabled retirees to sue under the Americans with Disabilities Act for denied post-employment benefits.”).

<sup>92</sup> See *Stanley*, 145 S. Ct. at 2069–70 (opinion of Gorsuch, J.); 42 U.S.C. § 12112(a)–(b).

<sup>93</sup> *Stanley*, 145 S. Ct. at 2070 (opinion of Gorsuch, J.).

<sup>94</sup> *Parkinson Disease*, WORLD HEALTH ORG. (Aug. 9, 2023), <https://www.who.int/news-room/fact-sheets/detail/parkinson-disease> [https://perma.cc/UJR4-E9R4].

<sup>95</sup> See *Stanley*, 145 S. Ct. at 2070 (opinion of Gorsuch, J.).

<sup>96</sup> *Id.* at 2086 (Jackson, J., dissenting).

<sup>97</sup> Bradley A. Areheart, *When Disability Isn’t “Just Right”: The Entrenchment of the Medical Model of Disability and the Goldilocks Dilemma*, 83 IND. L.J. 181, 181 (2008).

<sup>98</sup> *Id.*

<sup>99</sup> *Stanley*, 145 S. Ct. at 2068.

The majority alluded to a potential equal protection claim under § 1983, as well as claims under section 504 of the Rehabilitation Act, state law, and the Employee Retirement Income Security Act of 1974<sup>100</sup> (ERISA). But claims under the Equal Protection Clause will most likely fail. Disabled people are not a suspect class, and government-provided health insurance is not a fundamental right, so courts would apply rational basis review.<sup>101</sup> Under this lenient standard of review, there must be simply “any reasonably conceivable state of facts that could provide a rational basis for the” City’s benefits plan.<sup>102</sup> Indeed, it is because of decisions like *City of Cleburne v. Cleburne Living Center, Inc.*<sup>103</sup> that “[d]isability advocacy . . . has been primarily focused on legislative reform, culminating with the ADA, and litigation enforcing these statutory rights.”<sup>104</sup>

Plaintiffs suing under the remaining theories will likely fare no better, as those laws do not address disability discrimination or the unique position of retirees. To the extent that the laws do contemplate disability discrimination, plaintiffs will receive only limited recovery.

For example, retirees suing under section 504 of the Rehabilitation Act will face challenges both akin to and exceeding those encountered when suing under Title I. Section 504 of the Rehabilitation Act prohibits denying an “otherwise qualified individual with a disability . . . solely by reason of her or his disability . . . the benefits of . . . any program . . . receiving Federal financial assistance.”<sup>105</sup> As section 504 incorporates the “qualified individual” language, the district court and Eleventh Circuit found the resolution of Lt. Stanley’s Title I claim dispositive for resolving her Rehabilitation Act claim.<sup>106</sup> Thus, contrary to the Court’s suggestion, section 504 is not a true alternative for retirees challenging discrimination in the provision of postemployment benefits. Further, some courts have interpreted the causation requirement in section 504 — that a plaintiff must prove an entity denied her benefits “solely by reason of her . . . disability”<sup>107</sup> — to be more stringent than that of

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<sup>100</sup> Pub. L. No. 93-406, 88 Stat. 829 (1974) (codified as amended in scattered sections of 26 and 29 U.S.C.); see *Stanley*, 145 S. Ct. at 2068 (citing, inter alia, Brief of the Local Government Legal Center et al. as *Amici Curiae* in Support of Respondent at 13–14, *Stanley*, 145 S. Ct. 2058 (No. 23-997); *Weyer v. Twentieth Century Fox Film Corp.*, 198 F.3d 1104, 1112 (9th Cir. 2000)).

<sup>101</sup> See *City of Cleburne v. Cleburne Living Ctr., Inc.*, 473 U.S. 432, 437, 446 (1985).

<sup>102</sup> *Heller v. Doe ex rel. Doe*, 509 U.S. 312, 320 (1993) (quoting *FCC v. Beach Commc’ns, Inc.*, 508 U.S. 307, 313 (1993)). Both the district court and Eleventh Circuit dismissed Lt. Stanley’s equal protection claim on this ground. See *Stanley v. City of Sanford*, No. 20-cv-629, 2021 WL 6333059, at \*5 (M.D. Fla. Mar. 1, 2021); *Stanley v. City of Sanford*, 83 F.4th 1333, 1344 (11th Cir. 2023).

<sup>103</sup> 473 U.S. 432 (1985).

<sup>104</sup> Michael E. Waterstone, *Disability Constitutional Law*, 63 EMORY L.J. 527, 529 (2014).

<sup>105</sup> 29 U.S.C. § 794(a).

<sup>106</sup> See *Stanley*, 2021 WL 6333059, at \*2–3; *Stanley*, 83 F.4th at 1344.

<sup>107</sup> 29 U.S.C. § 794(a).

the ADA.<sup>108</sup> Courts have dismissed the claims of plaintiffs who could not meet this heightened standard.<sup>109</sup>

Even if plaintiffs could meet these pleading requirements, their recovery would be limited by Supreme Court precedent restricting the scope of statutory relief. In *Barnes v. Gorman*,<sup>110</sup> Jeffrey Gorman sued police officials and officers under section 504 of the Rehabilitation Act and Title II of the ADA for “failing to maintain appropriate policies for the arrest and transportation of persons with spinal cord injuries.”<sup>111</sup> The Court, applying a “contract-law analogy” to antidiscrimination Spending Clause<sup>112</sup> legislation,<sup>113</sup> held that punitive damages are unavailable in suits under section 504 and Title II.<sup>114</sup> Further, in *Cummings v. Premier Rehab Keller, P.L.L.C.*,<sup>115</sup> Jane Cummings sued a physical therapy center under section 504 and the Patient Protection and Affordable Care Act<sup>116</sup> for “fail[ing] to provide an ASL interpreter.”<sup>117</sup> There, the Court applied the same contract-law analogy to hold that plaintiffs alleging violations of these laws cannot recover emotional distress damages.<sup>118</sup> Plaintiffs who bring claims under Title I can recover punitive and compensatory damages.<sup>119</sup> But after *Stanley*, plaintiffs forced to turn to the Rehabilitation Act will recover neither punitive nor emotional damages, even though emotional damages are often “the *only* ‘available remedy to make good the wrong done.’”<sup>120</sup>

More expansive remedies schemes matter beyond their benefit to plaintiffs; the “enforcement” of civil rights statutes like the

<sup>108</sup> See, e.g., *Drasek v. Burwell*, 121 F. Supp. 3d 143, 154 (D.D.C. 2015); *Swain v. Wormuth*, 41 F.4th 892, 899 (7th Cir. 2022); cf. *Lewis v. Humboldt Acquisition Corp.*, 681 F.3d 312, 315–17 (6th Cir. 2012) (holding that “[t]he [sole-cause] standard does not apply to claims under the ADA,” *id.* at 317). But see, e.g., *Pinkerton v. Spellings*, 529 F.3d 513, 519 (5th Cir. 2008); *Natofsky v. City of New York*, 921 F.3d 337, 345 (2d Cir. 2019).

<sup>109</sup> See, e.g., *Drasek*, 121 F. Supp. 3d at 163 (finding that “the record evidence fail[ed] to satisfy the Rehabilitation Act’s stringent but-for causation requirement”); *Swain*, 41 F.4th at 900 (concluding that the plaintiff could not “persuade a reasonable juror that the Army denied him overtime work solely because he was disabled”).

<sup>110</sup> 536 U.S. 181 (2002).

<sup>111</sup> *Id.* at 184.

<sup>112</sup> U.S. CONST. art. I, § 8, cl. 1.

<sup>113</sup> *Barnes*, 536 U.S. at 186.

<sup>114</sup> *Id.* at 189. The ADA is “not Spending Clause legislation,” but the available remedies under the statute are expressly coextensive with those under § 505(a)(2) of the Rehabilitation Act, “which is Spending Clause legislation.” *Id.* at 189 n.3 (citing 42 U.S.C. § 12133).

<sup>115</sup> 142 S. Ct. 1562 (2022).

<sup>116</sup> Pub. L. No. 111-148, 124 Stat. 119 (2010) (codified as amended in scattered sections of the U.S. Code).

<sup>117</sup> *Cummings*, 142 S. Ct. at 1569.

<sup>118</sup> *Id.* at 1576. Additionally, “lower courts have . . . extend[ed] the Supreme Court’s decision in *Cummings* to dismiss plaintiffs’ claims for emotional distress damages under Title II of the ADA.” Jasmine E. Harris, Karen M. Tani & Shira Wakschlag, *The Disability Docket*, 72 AM. U. L. REV. 1709, 1728 (2023).

<sup>119</sup> See 42 U.S.C. § 1981a(a)(2).

<sup>120</sup> *Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173, 1199 (11th Cir. 2007) (quoting *Bell v. Hood*, 327 U.S. 678, 684 (1946)).

Rehabilitation Act “largely depends on lawyers who need to earn income on their cases to keep their practices viable.”<sup>121</sup> For example, plaintiffs suing under Title III of the ADA cannot recover damages,<sup>122</sup> which Professor Samuel Bagenstos argues is “the most likely culprit” for the title’s “massive[] underenforce[ment].”<sup>123</sup> After *Stanley*, then, retirees with disabilities have increasingly limited options to seek redress for discrimination.

Further, state contract law is not a substitute for the protection that the ADA provides against disability discrimination. The majority cited an amicus brief’s discussion of “state-law remedies,” suggesting that a disabled retiree facing benefits discrimination may sue for breach of contract.<sup>124</sup> However, employers may — and often do — retain discretion “to change their benefits plans” such that they can later amend the terms of the contract, often without incurring legal liability.<sup>125</sup>

By granting employers discretion over benefits plans, ERISA similarly fails to protect retirees from disability discrimination. In *Shaw v. Delta Air Lines, Inc.*,<sup>126</sup> the Court held that “ERISA does not mandate that employers provide any particular benefits, and does not itself proscribe discrimination in the provision of employee benefits.”<sup>127</sup> The Court cited the legislative history of ERISA, which revealed that certain members of Congress considered a nondiscrimination amendment unnecessary because “Title VII already prohibited discrimination in benefit plans.”<sup>128</sup> Given this statutory design, ERISA hardly limits employers from imposing insurance plans that discriminate against individuals with disabilities. As the Court held in *Alessi v. Raybestos-Manhattan, Inc.*,<sup>129</sup> ERISA defers “largely to the private parties” to define “the benefit that, once vested, cannot be forfeited.”<sup>130</sup> Employers can therefore defeat claims of discrimination by defining broadly the benefits that will not vest.<sup>131</sup> Additionally, ERISA does not cover government benefits plans,<sup>132</sup> and compensatory and punitive damages are unavailable to

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<sup>121</sup> Samuel R. Bagenstos, *The Perversity of Limited Civil Rights Remedies: The Case of “Abusive” ADA Litigation*, 54 UCLA L. REV. 1, 10 (2006).

<sup>122</sup> *See id.* at 3.

<sup>123</sup> *Id.* at 6.

<sup>124</sup> *Stanley*, 145 S. Ct. at 2068 (citing Brief of the Local Government Legal Center et al. as *Amici Curiae* in Support of Respondent, *supra* note 100, at 13–14).

<sup>125</sup> Brief of Disability Rights Legal Center et al. as *Amici Curiae* Supporting Petitioner at 22, *Stanley*, 145 S. Ct. 2058 (No. 23-997).

<sup>126</sup> 463 U.S. 85 (1983).

<sup>127</sup> *Id.* at 91.

<sup>128</sup> *Id.* at 104.

<sup>129</sup> 451 U.S. 504 (1981).

<sup>130</sup> *Id.* at 511.

<sup>131</sup> *See, e.g.*, *Am. Fed’n of Grain Millers v. Int’l Multifoods Corp.*, 116 F.3d 976, 982–83 (2d Cir. 1997); *Balestracci v. NSTAR Elec. & Gas Corp.*, 449 F.3d 224, 232–33 (1st Cir. 2006).

<sup>132</sup> *See* 29 U.S.C. §§ 1002(32), 1003(b).

prevailing plaintiffs.<sup>133</sup> Taken together, ERISA does not fill the gap *Stanley* created in disabled workers' legal protections.

The interaction between disability and retirement further intensifies *Stanley*'s impact. Developing a disability shortly before retirement frequently results in poverty,<sup>134</sup> and retirees are more likely to have a disability than are non-retirees.<sup>135</sup> After *Stanley*, the precise pleading requirements under Title I add to the existing challenges of bringing a claim under the already systemically "underenforced" ADA.<sup>136</sup> The decision, then, exacerbates existing gaps in the safety net for disabled retirees.

The *Stanley* Court purported to reach a narrow decision by suggesting that other laws can protect disabled workers. But the majority overlooked the degree to which these other legal theories may not help retirees suing for postemployment benefits discrimination. The Rehabilitation Act can demand more of plaintiffs than can Title I. State contract law and ERISA were not designed to combat disability discrimination, as evidenced by their wide grants of discretion to employers. To the extent that these laws do address discrimination, plaintiffs are unlikely to recover damages commensurate with the harm. As a result, many individuals with disabilities who retire from their jobs will be excluded from the protections of antidiscrimination laws.

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<sup>133</sup> See *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 255 (1993).

<sup>134</sup> See generally RICHARD W. JOHNSON, MELISSA M. FAVREAU & CORINA MOMMAERTS, URB. INST., *DISABILITY JUST BEFORE RETIREMENT OFTEN LEADS TO POVERTY 1* (2010), <https://www.urban.org/sites/default/files/publication/28281/412009-Disability-Just-Before-Retirement-Often-Leads-to-Poverty.PDF> [<https://perma.cc/7378-QAJQ>] (describing how Americans who acquire disabilities near retirement age are more likely to "fall into poverty").

<sup>135</sup> See *Disability Status by Age Group*, U.S. CENSUS BUREAU (Aug. 14, 2024), <https://www.census.gov/library/visualizations/2024/comm/disability-status-age-group.html> [<https://perma.cc/2FUJ-FRF7>].

<sup>136</sup> Michael Steven Stein & Emily Teplin, *Rational Discrimination and Shared Compliance: Lessons from Title IV of the Americans with Disabilities Act*, 45 VALPARAISO U. L. REV. 1095, 1115 (2011).