Fordham Law Review

Volume 67 | Issue 6 Article 14

1999

A Title I Dilemma: May Disabled Former Employees Sue for Discrimination Regarding Post-Employment Benefits

Jason D. Myers

A Title I Dilemma: May Disabled Former Employees Sue for Discrimination Regarding Post-Employment Benefits

Cover Page Footnote

To my loving parents, David and Cindy.

A TITLE I DILEMMA: MAY DISABLED FORMER EMPLOYEES SUE FOR DISCRIMINATION REGARDING POST-EMPLOYMENT BENEFITS?

*Jason D. Myers**

INTRODUCTION

Title I of the Americans with Disabilities Act[1] ("ADA") prohibits employment discrimination on the basis of disability.[2] In addition, it prohibits employers from discriminating against disabled individuals in the provision of fringe benefits.[3] Title I restricts the class of plaintiffs to qualified individuals with disabilities.[4] Further, a Title I plaintiff's prima facie case must include evidence that she is capable of working with or without reasonable accommodations, and that she has a disability.[5] A strict reading of this definition suggests a paradox: Title I claimants must be disabled, yet concurrently must be able to perform their jobs.

Suppose, for example, that Employee X enrolls in the employee welfare benefits plan offered by Company Y. Under this plan, disabled employees receive benefits until they reach the age of sixty-five, if their disability persists. After dedicating twenty-five years of service to Company Y, Employee X is terminated because of her disability and is denied payment of benefits under the welfare benefits plan. Although Employee X could bring a claim under Title I for the discriminatory firing, it is questionable whether she, as a disabled former employee, could bring a claim under Title I for Company Y's latter action. At the time of the discriminatory denial of benefits, Employee X did not hold an "employment position," nor could she perform the essential functions of her former job. As such, she is not a "qualified individual with a disability" as defined under Title I. Courts differ, under these circumstances, about whether disabled former employees are eligible to sue for discrimination in fringe benefits.

The Sixth, Seventh, and Eleventh Circuits have held that the plain language of Title I of the ADA protects only currently employable individuals who are disabled.[6] According to these courts, individuals formerly employed fall outside of this protected class.[7] These courts

---

* To my loving parents, David and Cindy.

1. *See* Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101–12213 (1994).
2. *See id.* § 12112(a).
3. *See id.* § 12112(b)(2).
4. *See id.* § 12111(8).
5. *See id.*
6. *See* Parker v. Metropolitan Life Ins. Co., 99 F.3d 181, 186-87 (6th Cir. 1996); EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1044 (7th Cir. 1996); Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523, 1526 (11th Cir. 1996).
7. *See Parker*, 99 F.3d at 187; *CNA Ins.*, 96 F.3d at 1045; *Gonzales*, 89 F.3d at 1531.

reason that Congress failed to provide sufficiently broad definitions to bring disabled former employees within Title I's coverage.[8] The Second and Third Circuits, however, have held that only a broad reading of Title I gives full effect to the statute's remedial purpose:[9] to prohibit disability discrimination in all aspects of the employment relationship, with specific, comprehensive protection from discrimination in the provision of fringe benefits.[10] Rather than resolve legislative ambiguity in favor of no protection, these courts rely on policy and the law's remedial purposes to protect disabled former employees.[11]

Prior to the Second and Third Circuit decisions, which dealt with this issue directly, the Supreme Court decided *Robinson v. Shell Oil Co.*[12] In *Robinson*, the Supreme Court recognized that former employees have a Title VII claim under the Civil Rights Act for post-employment retaliation by their former employers, consistent with the broad remedial purpose of the statute.[13] The Court reached this conclusion even though former employees are not mentioned in the anti-retaliation provision of Title VII.[14] *Robinson*, however, did not overrule the decisions of the Sixth, Seventh, and Eleventh Circuits because the Court was considering a Title VII ambiguity that involved the statute's use of the term "employees."[15] The present issue, in contrast, concerns a Title I ambiguity that involves the statute's use of the term "qualified individual with a disability."[16]

The Second and Third Circuits followed *Robinson's* reasoning in deciding this issue.[17] Other courts, however, have continued to adhere to the pre-*Robinson* decisions of the Sixth, Seventh, and Eleventh Circuits, refusing to revisit these decisions in the absence of a direct ruling from the Supreme Court.[18] Thus, the issue is ripe for resolution by the Court.

---

8. *See Parker*, 99 F.3d at 187.

9. *See* Ford v. Schering-Plough Corp., 145 F.3d 601, 608 (3d Cir. 1998); Castellano v. City of New York, 142 F.3d 58, 69 (2d Cir. 1998); *see also* Carparts Distribution Ctr., Inc. v. Automotive Wholesaler's Ass'n, 37 F.3d 12, 18 (1st Cir. 1994) (finding that a former employee with AIDS who was totally disabled and could no longer work had standing to challenge a disparity in health benefits provided by his former employer).

10. *See* 42 U.S.C. § 12101(b); *see also Castellano*, 142 F.3d at 68 (citing 42 U.S.C. § 12112(a), (b)(2)).

11. *See Ford*, 145 F.3d at 606-08; *Castellano*, 142 F.3d at 67-69.

12. 519 U.S. 337 (1997).

13. *See id.* at 346. Title VII of the Civil Rights Act establishes a federal right to equal opportunity in employment. This title expressly prohibits an employer from discriminating against an employee because of the employee's race, color, religion, sex, or national origin. *See* 42 U.S.C. § 2000e-2(a).

14. *See* Civil Rights Act of 1964, § 704(a), 42 U.S.C. § 2000e-3(a).

15. *See Robinson*, 519 U.S. at 339, 341.

16. *See* 42 U.S.C. § 12111(8).

17. *See* Ford v. Schering-Plough Corp., 145 F.3d 601, 606-07 (3d Cir. 1998); Castellano v. City of New York, 142 F.3d 58, 68-69 (2d Cir. 1998).

18. *See* Fennell v. Aetna Life Ins. Co., No. Civ. 97-716, 1999 WL 118294, at *3 (D.D.C. Feb. 26, 1999); Erwin v. Northwestern Mut. Life Ins. Co., 999 F. Supp. 1227, 1230 (S.D. Ind. 1998); Fobar v. City of Dearborn Heights, 994 F. Supp. 878, 884 (E.D.

This Note addresses this conflict, building on previous scholarship that considered the circuit split in general terms.[19] Part I of this Note discusses the rules of statutory interpretation. Part II provides a brief overview of the relevant employment provisions in Title VII of the Civil Rights Act[20] and Title V of the Rehabilitation Act,[21] statutes similar to the ADA. Part II also offers a general overview of Title I of the ADA and addresses its purpose, relevant statutory provisions, and the Equal Employment Opportunity Commission's ("EEOC") regulatory authority. Part III discusses the Eighth Circuit's decision in *Beauford v. Father Flanagan's Boys' Home*[22] and the Supreme Court's decision in *Robinson v. Shell Oil Co.*,[23] which interpret provisions in statutes similar to Title I. Part IV considers and examines the arguments for and against a narrow interpretation of Title I. Part V argues that the Supreme Court should resolve the ambiguity in Title I, holding that it covers disabled former employees. In the absence of Supreme Court resolution of this issue, part V recommends that Congress amend Title I to ensure that disabled former employees receive Title I protection, particularly in the provision of fringe benefits.

I. THE RULES OF STATUTORY INTERPRETATION

The exercise of statutory interpretation involves the search for the legislative meaning of a statute in the context of a particular dispute that is before the court.[24] Unquestionably, courts have the power to

Mich. 1998). *But see* Conners v. Maine Med. Ctr., No. Civ. 98-273, 1999 WL 130307, at *10 (D. Me. Mar. 3, 1999) (finding disabled former employees may sue under Title I of the ADA for discrimination in disability benefits that they receive post-employment); Lewis v. Aetna Life Ins. Co., 982 F. Supp. 1158, 1163 (E.D. Va. 1997) (holding that a disabled former employee is a "qualified individual" for the purpose of bringing a discrimination suit in disability benefits).

19. *See* Robert L. Burgdorf Jr., *"Substantially Limited" Protection from Disability Discrimination: The Special Treatment Model and Misconstructions of the Definition of Disability*, 42 Vill. L. Rev. 409, 506-11 (1997) (providing a brief discussion of the former-employee issue prior to the Supreme Court's decision in *Robinson*, the Second Circuit's decision in *Castellano*, and the Third Circuit's decision in *Ford*, which created the circuit split); Nicole Martinson, *Inequality Between Disabilities: The Different Treatment of Mental Versus Physical Disabilities in Long-Term Disability Benefit Plans*, 50 Baylor L. Rev. 361, 363- 69 (1998) (providing a brief overview of the current circuit split, as part of a larger article addressing the differing treatment between physical and mental disabilities in long-term disability benefit plans); *see also* Recent Case, *Statutory Interpretation—Americans with Disabilities Act—Third Circuit Holds That Unemployable Former Employees May Sue Employers*, 112 Harv. L. Rev. 1118, 1118-23 (1999) (discussing the Third Circuit's decision in *Ford* and criticizing the court's rationale as quasi-legislative decision-making).

20. 42 U.S.C. §§ 2000e–2000e-17(1994).

21. 29 U.S.C. §§ 791–794 (1994).

22. 831 F.2d 768 (8th Cir. 1987).

23. 519 U.S. 337 (1997).

24. *See* Abner J. Mikva & Eric Lane, An Introduction to Statutory Interpretation and the Legislative Process 6 (1997).

interpret the law.[25] With respect to statutes, however, courts may not infer any meaning they choose to satisfy their policy objectives.[26] Rather, the separation-of-powers doctrine dictates that the judiciary must defer to the command of Congress.[27] As such, courts must conduct this statutory exercise within a traditional framework of interpretive rules that seek to comply with these principles.

The traditional theory of statutory interpretation instructs courts to begin with the language of a statute.[28] There are circumstances, however, when courts are unable to apply the plain meaning of the statute because it provides an absurd result or it contravenes the intent of Congress.[29] In these cases, courts turn to other interpretive tools, which include the legislative history and purpose of the statute.[30] Accordingly, this part addresses the framework of statutory interpretation.

A. *The Plain Meaning of the Statute*

A court's first task in interpreting a statute is to determine whether the meaning of the statute is clear or ambiguous.[31] In making such a determination, a court must begin with the statutory language in question.[32] The plain meaning rule dictates that if the plain language is unambiguous, then the judicial inquiry must cease.[33] In such cases, the congressional intent is plain from the language of the statute and, therefore, a court usually must refrain from using other tools of construction.[34]

It is permissible, however, for a court to look beyond the literal language of a statute when its meaning is ambiguous.[35] Further, even

25. *See* Marbury v. Madison, 5 U.S. 137, 173-79 (1803).

26. *See* Mikva & Lane, *supra* note 24, at 4.

27. *See id.*; Richard A. Posner, The Problems of Jurisprudence 265 (1990); Cass R. Sunstein, After the Rights Revolution 113 (1990).

28. *See* Mikva & Lane, *supra* note 24, at 9; 2A George Sutherland, Statutes and Statutory Construction § 45.01, at 1 (5th ed. 1992).

29. *See* 2A Sutherland, *supra* note 28, § 46.07, at 126; *see also* Church of the Holy Trinity v. United States, 143 U.S. 457, 460 (1892) ("If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity.").

30. *See Church of the Holy Trinty*, 143 U.S. at 462-65.

31. *See* Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997).

32. *See* Mikva & Lane, *supra* note 24, at 9.

33. *See Robinson*, 519 U.S. at 340 (observing that the "inquiry must cease if the statutory language is unambiguous and the 'statutory scheme is coherent and consistent'" (quoting United States v. Ron Pair Enters., Inc., 489 U.S. 235, 240 (1989))); Caminetti v. United States, 242 U.S. 470, 485 (1917) (stating that the inquiry should end "if that is plain, and if the law is within the constitutional authority of the lawmaking body which passed it, the sole function of the courts is to enforce it according to its terms"); 2A Sutherland, *supra* note 28, § 46.01, at 81.

34. *See Caminetti*, 242 U.S. at 485 (observing that if the statutory language "is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion").

35. *See Robinson*, 519 U.S. at 345.

if the statutory language is unambiguous, there are rare circumstances when a court may go beyond the plain language of the statute.[36] These circumstances include instances when a literal application of the statutory language would lead to an absurd result or would produce a result that obviously runs counter to the intent of Congress.[37] In such cases, the statute "must be so construed to avoid the absurdity."[38] The remainder of this part discusses other sources courts use to discern a statute's effect.

B. *Legislative History*

A court may use the legislative history of a statute to construe its meaning when the court is unable to determine this meaning from the statute's plain language.[39] For this purpose, the court's use of the legislative history of a statute is reasonable because it frequently provides relevant information that enables a court to understand the circumstances that surrounded the statute's enactment.[40] Such knowledge may permit a court to determine the legislative intent regarding the statutory language in question more precisely[41] and, in doing so, honor the will of Congress.[42]

The legislative history of a statute can be derived from many sources.[43] Most commonly, a court may rely on congressional floor debates or committee reports[44] to determine Congress's intent.[45] A court, however, may not construe the meaning of a statute on the ba-

36. *See* Public Citizen v. United States Dep't of Justice, 491 U.S. 440, 454-55 (1989); *see also* United States v. American Trucking Ass'ns, 310 U.S. 534, 543-44 (1940) ("When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no 'rule of law' which forbids its use, however clear the words may appear on 'superficial examination.'" (citations omitted)).

37. *See Public Citizen*, 491 U.S. at 454; *see also Ron Pair Enters.*, 489 U.S. at 242 (stating that "[t]he plain meaning of legislation should be conclusive, except in the 'rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" (quoting Griffin v. Oceanic Contractors, Inc., 458 U.S. 564, 571 (1982))).

38. Church of the Holy Trinity v. United States, 143 U.S. 457, 460 (1892).

39. *See* Mikva & Lane, *supra* note 24, at 29.

40. *See id.*; 2A Sutherland, *supra* note 28, § 48.02, at 308.

41. *See* Stephen Breyer, *On the Uses of Legislative History in Interpreting Statutes*, 65 S. Cal. L. Rev. 845, 848 (1992).

42. *See id.* at 845.

43. *See* 2A Sutherland, *supra* note 28, §§ 48.01–48.19, at 301-74 (providing an extensive discussion of the different pieces of legislative history).

44. Reports of conference committees are viewed as the most important pieces of legislative history in determining congressional intent. *See id.* § 48.08, at 340; *see also* Patricia M. Wald, *The Sizzling Sleeper: The Use of Legislative History in Construing Statutes in the 1988-89 Term of the United States Supreme Court*, 39 Am. U. L. Rev. 277, 306 (1990) (arguing that the use of the legislative history of a statute is legitimate because it represents the "authoritative product of the institutional work of the Congress").

45. *See* 2A Sutherland, *supra* note 28, §§ 48.08–48.11, at 339-49.

sis of congressional statements made in favor of a rejected or failed bill.[46]

Some have criticized courts' use of legislative history to construe the meaning of a statute.[47] Much of the criticism questions the reliability of a statute's legislative history and courts' overuse of such evidence.[48] Nevertheless, such criticism generally provides no alternative statutory guides for courts to use when the language of a statute is silent or ambiguous on a particular question of legal significance.[49] As a general rule, courts must act prudently when they explore the legislative history of a statute.[50]

Though a statute's legislative history is not the place to begin, it does serve as a useful statutory guide when a court must determine the meaning of ambiguous statutory language. There are circumstances, however, when the legislative history itself is also ambiguous or inconclusive. In these cases, a court may look to additional statutory tools, such as the purposes of the statute, to construe legislative meaning.

C. *Statutory Purpose*

When both the plain meaning of a statute and its legislative history prove unfruitful in determining how the statute should be applied, courts have used a statute's purpose to guide their interpretations.[51] Indeed, the Supreme Court has instructed lower courts to avoid a strict interpretation of a statute if the result would contradict the remedies that Congress intended to provide.[52]

---

46. *See id.* § 48.01, at 302.

47. *See* Mikva & Lane, *supra* note 24, at 29-31; *see also* Conroy v. Aniskoff, 507 U.S. 511, 519 (1993) (Scalia, J., concurring) (paraphrasing Judge Harold Leventhal that "[courts'] use of legislative history [is] the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends").

48. *See* Mikva & Lane, *supra* note 24, at 39-42; *see also* Breyer, *supra* note 41, at 861-69 (discussing the arguments against the use of legislative history in statutory interpretation).

49. *See* Breyer, *supra* note 41, at 869.

50. *See* Mikva & Lane, *supra* note 24, at 40-41; *see also* Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 543 (1947) ("Spurious use of legislative history must not swallow the legislation so as to give point to the quip that only when legislative history is doubtful do you go to the statute.").

51. *See* Robinson v. Shell Oil Co., 519 U.S. 337, 345 (1997); *see also* 2A Sutherland, *supra* note 28, § 46.01, at 82 (holding that a court must enforce the statute's plain meaning unless "the natural and customary import of the statute's language is either repugnant to the general purview of the act or for some other compelling reason").

52. *See* NLRB v. Plasterers' Local Union No. 79, 404 U.S. 116, 130 (1971) (observing the Court's refusal to "construe legislation aimed to protect a certain class in a fashion that will run counter to the goals Congress clearly intended to effectuate"); *see also* Olmstead v. United States, 277 U.S. 438, 469 (1928) (Holmes, J., dissenting) (criticizing courts for being "apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them"); Church of the Holy Trinity v. United States, 143 U.S. 457, 463 (1892) (noting that a statutory guide to the meaning of a statute is found "in the evil which it is designed to remedy").

A court may discover the statute's purpose by examining the specific reasons underlying Congress's enactment of the statute.[53] In addition, Congress may have included the purpose within a particular statutory provision.[54] Indeed, some reason that courts' use of the statute's purpose is vital to "preserve the concept of legislative supremacy and separation of powers."[55]

In short, the rules of statutory interpretation provide courts with a framework to guide them when they must exercise their judicial function to determine the legislative meaning of a statute. Before examining how courts apply these rules with respect to Title I of the ADA, however, part II provides a brief overview of the statute itself, as well as two similar predecessor statutes.

II. OVERVIEW OF TITLE I OF THE ADA

The Americans with Disabilities Act ("ADA") was signed into law on July 26, 1990.[56] Through the ADA's enactment, Congress broke down barriers that had prevented individuals with disabilities from enjoying the same employment opportunities and public accommodations that are available to persons without disabilities.[57] Thus, the ADA is arguably the most significant civil rights legislation since the Civil Rights Act of 1964.[58]

Notably, the ADA marks the first civil rights statute that has broad application for disabled individuals.[59] The law prohibits disability discrimination in employment,[60] public accommodations and services offered by private entities,[61] public services offered by governmental entities,[62] and telecommunications services.[63] Toward this end, Congress established both a national policy to eliminate discrimination against individuals with disabilities and a federal law to provide clear and concise standards to enforce this policy.[64]

---

53. *See* Mikva & Lane, *supra* note 24, at 8.

54. *See id.*

55. *Id.* at 11.

56. *See* Americans with Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 327 (codified as 42 U.S.C. §§ 12101–12213 (1994)).

57. *See* H.R. Rep. No. 101-485, pt. 1, at 24 (1990) (stating that the ADA would bring disabled individuals into the mainstream of American society), *reprinted in* 1990 U.S.C.C.A.N. 267, 268.

58. *See* John W. Parry, *Employment Under the ADA: A National Perspective*, 15 Mental & Physical Disability L. Rep. 525, 525 (1991); Steven A. Holmes, *Sweeping U.S. Law to Help Disabled Goes into Effect: Gains Seen for Millions*, N.Y. Times, Jan. 27, 1992, at A1.

59. *See* Nancy Lee Jones, *Overview and Essential Requirements of the Americans with Disabilities Act*, 64 Temp. L. Rev. 471, 471 (1991).

60. *See* 42 U.S.C. §§ 12111–12117.

61. *See id.* §§ 12181–12189.

62. *See id.* §§ 12131–12165.

63. *See* 47 U.S.C. § 225 (1994).

64. *See* 42 U.S.C. § 12101(b)(1)–(2) ("It is the purpose of this chapter—(1) to provide a clear and comprehensive national mandate for the elimination of discrimina-

Prior to the ADA, Congress had passed two other civil rights statutes that offered similar employment protections. This part first provides a brief overview of these statutes: Title VII of the Civil Rights Act and Title V of the Rehabilitation Act. This part then considers the employment discrimination provisions of Title I, along with the EEOC's enforcement authority of these provisions.

A. *Employment Protections Under Other Civil Rights Statutes*

Employment discrimination against certain classes of individuals has plagued American society for many years.[65] Such discrimination denies a person the opportunity to achieve independence and to become a productive member of society.[66] Accordingly, Congress responded to this injustice by enacting several civil rights statutes that primarily sought to combat employment discrimination against individuals who have been historically the subjects of such action. Most prominently, these statutes include Title VII of the Civil Rights Act of 1964[67] and Title V of the Rehabilitation Act of 1973.[68]

1. Title VII of the Civil Rights Act

Congress passed Title VII of the Civil Rights Act[69] during a period of civil unrest in the United States.[70] Congress, by its enactment, sought to provide minorities with equal opportunities in all aspects of American life, particularly in the workplace.[71] In doing so, Congress sent a message that the United States would no longer tolerate employment discrimination.[72]

Title VII of the Civil Rights Act covers discrimination in the workplace.[73] This title may be the most significant portion of the Civil Rights Act because employment provides "the key to independence."[74] Title VII establishes a federal right to equal opportunity in

---

tion against individuals with disabilities; [and] (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities.").

65. *See* Harish C. Jain & Peter J. Sloane, Equal Employment Issues: Race and Sex Discrimination in the United States, Canada, and Britain 1 (1981).

66. *See* Elizabeth Clark Morin, *Americans with Disabilities Act of 1990: Integration Through Employment*, 40 Cath. U. L. Rev. 189, 195 (1990).

67. 42 U.S.C. § 2000e–2000e-17.

68. 29 U.S.C. §§ 791–794 (1994).

69. *See* Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (codified as amended at 42 U.S.C. § 2000e–2000e-17).

70. *See* Charles Whalen & Barbara Whalen, The Longest Debate: A Legislative History of the 1964 Civil Rights Act at xv-xx (1985).

71. *See* S. Rep. No. 88-872, at 8 (1964) ("The time has come to assure equal access for all Americans to all areas of community life."), *reprinted in* 1964 U.S.C.C.A.N. 2355, 2362-63.

72. *See* Culpepper v. Reynolds Metals Co., 421 F.2d 888, 891 (5th Cir. 1970).

73. *See* H.R. Rep. No. 88-914, at 26 (1964), *reprinted in* 1964 U.S.C.C.A.N. 2391, 2401.

74. Parry, *supra* note 58, at 525.

employment[75] and expressly prohibits an employer from discriminating against an employee because of the employee's race, color, religion, sex, or national origin.[76] Title VII also protects employees who utilize the remedial mechanisms of the statute from retaliation by their employers.[77] This protection unquestionably extends to both current and former employees.[78]

Over the years, some members of Congress attempted to amend the Civil Rights Act of 1964 to include individuals with disabilities.[79] These attempts failed, however, because traditional civil rights groups feared that any substantive amendments to this Act would compromise the original statutory protections.[80] Thus, individuals with disabilities were left without protection against discrimination in the workplace until Congress finally enacted Title V of the Rehabilitation Act in 1973.

2. Title V of the Rehabilitation Act

Title V of the Rehabilitation Act[81] marked the first significant piece of legislation to provide equal protection to individuals with disabilities.[82] Through its enactment, Congress sought to empower disabled

---

75. *See* Civil Rights Act of 1964, § 703(a), 42 U.S.C. § 2000e-2(a) (1994).

76. Section 703(a) states in relevant part:

> It shall be an unlawful employment practice for an employer—
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(a).

77. Section 704(a) states in relevant part:

> It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment . . . because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Id. § 2000e-3(a).

78. *See* Robinson v. Shell Oil Co., 519 U.S. 337, 346 (1997) (holding that former employees have a Title VII claim for post-employment retaliation by their former employers).

79. *See* Robert L. Burgdorf Jr., *The Americans with Disabilities Act: Analysis and Implications of a Second-Generation Civil Rights Statute*, 26 Harv. C.R.-C.L. L. Rev. 413, 429 (1991) [hereinafter Burgdorf, *Analysis and Implications*].

80. *See id.*

81. *See* Rehabilitation Act of 1973, Pub. L. No. 93-112, 87 Stat. 355 (codified as 29 U.S.C. §§ 791–794 (1994)).

82. *See* Bonnie P. Tucker, *Section 504 of the Rehabilitation Act After Ten Years of Enforcement: The Past and the Future*, 1989 U. Ill. L. Rev. 845, 847-48.

individuals to obtain employment independence, economic self-sufficiency, and inclusion and integration into American society.[83] Title V provides disabled individuals with an array of protections against employment discrimination.[84] Sections 501 and 503 require federal agencies and most federal contractors to take affirmative measures to employ and advance in employment individuals with disabilities.[85] Further, section 504 operates as the general provision that provides explicit protection to disabled individuals. This section prohibits federal employers and private employers who receive federal assistance from discriminating against disabled individuals.[86]

The plain language of section 504 only covers "otherwise qualified individual[s] with a disability."[87] Although the Rehabilitation Act does not define this term,[88] the Department of Health, Education and Welfare ("DOH")[89] issued regulations that provide some interpretive guidance.[90] With respect to employment, these regulations define "otherwise qualified handicapped person[s]" as persons who can perform the essential functions of the job in question with a reasonable accommodation.[91]

Title V, unlike Title VII of the Civil Rights Act, creates a protected class of individuals that must prove that they are "otherwise qualified

---

83. *See* 29 U.S.C. § 701(b)(1).

84. *See id.* §§ 791–794.

85. *See id.* §§ 791, 793.

86. Section 504 states in relevant part:

> No otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by any Executive agency or by the United States Postal Service.

Id. § 794(a).

87. *See id.*

88. The Rehabilitation Act defines an individual with a disability as "any person who (i) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment." 29 U.S.C. § 706(8)(b). The Act, however, did not define the "otherwise qualified" requirment. *See* Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523, 1529 (11th Cir. 1996) (observing that the phrase "otherwise qualified handicapped individual" is not defined in the Rehabilitation Act).

89. Now known as Health and Human Services ("HHS"), this agency has the authority to promulgate regulations under the Rehabilitation Act. *See* 29 U.S.C. § 794. The responsibility for implementing regulations under § 504 of the Rehabilitation Act was transferred from HEW/HHS to the Department of Justice (DOJ) in 1980, and the regulations promulgated by HEW/HHS were adopted by the DOJ. *See* 45 Fed. Reg. 72,995, 72,997 (1980); Laura F. Rothstein, Disabilities and the Law § 1.02, at 5 (1992).

90. *See* 28 C.F.R. . §§ 41.31–41.32 (1998).

91. *See id.* § 41.32 (defining the term "qualified handicapped person" as meaning "a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question"). These regulations define this term with respect to service as "a handicapped person who meets the essential eligibility requirements for receipt of such services." *See id.*

individuals with handicaps."[92] Inclusion of this requirement limits the extent of the statute's coverage to individuals who can meet the applicable employment standards.[93] Further, Title V's coverage provides no protection to disabled individuals who work for employers that receive no federal funding.[94] Many criticized this limited coverage offered by Title V.[95] Accordingly, Congress enacted Title I of the ADA to expand protections for disabled employees in the private sector.[96]

B. *Title I of the ADA*

Title I of the ADA ostensibly ensures equal access to employment opportunities for qualified individuals with disabilities.[97] Moreover, Congress sought to eliminate disability discrimination in all aspects of the employment relationship, including the administration of fringe benefits.[98] Title I specifies that an employer must not discriminate "against a qualified individual with a disability because of the disability of such individual 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."[99] The statute provides that "discriminate" includes "participating in a contractual or other arrangement or relationship that has the effect of subjecting a covered entity's qualified applicant or employee with a disability to the discrimination prohibited by this subchapter."[100] This provision protects individuals with disabilities from discrimination in the area of fringe benefits,[101] which include pensions, health and life insurance benefits, and other post-employment benefits.[102]

Title I protection extends to individuals with many different types of disabilities. The ADA defines a disability as "a physical or mental impairment that substantially limits one or more of the major life activities of such individual [or] a record of such an impairment or being regarded as having such an impairment."[103] Although the ADA de-

92. *See* Burgdorf, *Analysis and Implications*, *supra* note 79, at 442 (stating that Title VII focuses on "the discriminatory acts that occur, not the qualities of the person discriminated against").

93. *See* 28 C.F.R. § 41.32.

94. *See* Jones, *supra* note 59, at 475-78.

95. *See, e.g.*, Robert E. Rains, *A Pre-History of the Americans with Disabilites Act and Some Initial Thoughts as to Its Constitutional Implications*, 11 St. Louis U. Pub. L. Rev. 185, 188-91 (1992) (explaining the deficiencies of the Rehabilitation Act in the protection of individuals with disabilities); Tucker, *supra* note 82, at 848-50 (same).

96. *See* Jones, *supra* note 59, at 481-84.

97. *See* 42 U.S.C. § 12101(b) (1994).

98. *See* Castellano v. City of New York, 142 F.3d 58, 68 (2d Cir. 1998) (citing 42 U.S.C. § 12112(a), (b)(2)).

99. 42 U.S.C. § 12112(a).

100. *Id.* § 12112(b)(2).

101. *See id.*

102. *See Castellano*, 142 F.3d at 68.

103. 42 U.S.C. § 12102(2).

fines the term "disability" broadly, Title I restricts the type of plaintiff who may sue under its provisions to a "qualified individual with a disability."[104]

Title I defines a "qualified individual with a disability" as an "individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires."[105] Congress inserted the phrase "essential functions"[106] to ensure that employers could continue to require, without repercussion, that all workers be able to perform the non-marginal functions of their employment positions.[107] In addition, Congress indicated that employers must not consider an individual's potential for future incapacity when deciding whether an individual is qualified for employment.[108] Rather, employers must make this determination at the time of the employment action in question.[109] Thus, Congress, by including the term "qualified individual with a disability" in Title I, sought to preserve an employer's ability to select and maintain the most qualified workers.[110]

Title I's broad statutory language demonstrates Congress's intent to extend protection to all individuals with disabilities.[111] It is reasonable, however, that courts could find such language ambiguous and subsequently apply the statute in a way that is inconsistent with the intent of Congress.[112] Therefore, Congress gave the EEOC the authority to promulgate regulations to implement the provisions of Title I.[113]

---

104. *See id.* § 12111(8).

105. *Id.* An employer, however, need not provide a reasonable accommodation if such accommodation would pose an undue hardship on the operation of its business. *See id.* § 12111(9)–(10).

106. The House Report describes the phrase "essential functions" as "job tasks that are fundamental and not marginal." H.R. Rep. No. 101-485, pt. 2, at 55 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 337.

107. *See id.*, *reprinted in* 1990 U.S.C.C.A.N. 303, 337.

108. *See id.* (explaining that the determination of whether a person is qualified should be made at the time of the employment action, for example, hiring or promotion, and should not be based on the possibility that the employee or applicant will become incapacitated and unqualified in the future), *reprinted in* 1990 U.S.C.C.A.N. 303, 337.

109. *See id.*, *reprinted in* 1990 U.S.C.C.A.N. 303, 337.

110. *See id.* at 55-56 (using the term "qualified individual with a disability" to "reaffirm that [the ADA] does not undermine an employer's ability to choose and maintain qualified workers," and to allow employers to select the most qualified applicant available rather than be obliged to "prefer applicants with disabilities over other applicants on the basis of disability"), *reprinted in* 1990 U.S.C.C.A.N. 303, 337-338.

111. *See* Jones, *supra* note 59, at 479 n.58.

112. *See* Thomas H. Barnard, *The Americans with Disabilities Act: Nightmare for Employers and Dream for Lawyers?*, 64 St. John's L. Rev. 229, 239-42 (1990).

113. *See* 42 U.S.C. § 12116 (1994).

C. *The EEOC's Regulatory Authority Under Title I*

Congress created the EEOC in Title VII of the Civil Rights Act of 1964.[114] The EEOC serves as an extension of the federal government and focuses on the eradication of employment discrimination.[115] The EEOC is responsible for enforcing both Title I of the ADA and Title VII of the Civil Rights Act.[116] Additionally, the ADA incorporates, by reference, the administrative and remedial scheme of Title VII.[117]

At Congress's command,[118] the EEOC issued regulations regarding the ADA in 1991, one year prior to the ADA's effective date, to provide employers and employees adequate time to understand the law.[119] Turning to the relevant Title I regulations, the EEOC defined an employee as "an individual employed by an employer."[120] In addition, the EEOC defined a "qualified individual with a disability" as "an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires, and who, with or without reasonable accommodation, can perform the essential functions of such position."[121] Within this definition, the phrase "essential functions" means the "fundamental job duties of the employment position the individual with a disability holds or desires."[122] Furthermore, the EEOC regulations state that an employer may not discriminate against individuals with disabilities regarding "[f]ringe benefits available by virtue of employment, whether or not administered by the covered entity."[123]

The EEOC regulations do not specifically exclude disabled former employees from the coverage of Title I. In fact, one regulation suggests that Title I affords more inclusive protection to disabled former employees. This regulation states that an employer may not discrimi-

114. *See id.* § 2000e-4. *See generally* Rebecca Hanner White, *The EEOC, the Courts, and Employment Discrimination Policy: Recognizing the Agency's Leading Role in Statutory Interpretation*, 1995 Utah L. Rev. 51 (discussing the EEOC's administrative and enforcement responsibilities under several federal statutes).

115. *See* White, *supra* note 114, at 53.

116. *See* 42 U.S.C. § 12116.

117. *See id.* § 12117. An aggrieved individual must exhaust the administrative process by timely filing a claim with the EEOC. *See id.* § 2000e-5(b), (e), (f). The EEOC may investigate, attempt to conciliate the charges, and prosecute violators. *See id.* After receiving a "right to sue" letter from the EEOC, the individual may file a private suit in state or federal court. *See id.* § 2000e-5(f).

118. *See id.* § 12116; *see also* H.R. Rep. No. 101-485, pt. 2, at 82 (1990) (stating that the these regulations will have "the force and effect of law"), *reprinted in* 1990 U.S.C.C.A.N. 303, 364-65.

119. *See* 56 Fed. Reg. 35,726 (July 26, 1991) (codified at 29 C.F.R. §§ 1630.1–1630.16 (1998)).

120. *See* 29 C.F.R. § 1630.2(f). Title VII of the Civil Rights Act defines the term "employee" in the same manner. *See* 42 U.S.C. § 2000e(f).

121. *See* 29 C.F.R. § 1630.2(m).

122. *See id.* § 1630.2(n).

123. *See id.* § 1630.4(f).

nate against individuals with disabilities regarding the "[h]iring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring."[124] With respect to "rehiring," this term necessarily refers to former employees because an employer does not ordinarily hire individuals who are already employees.

The EEOC also issued interpretive guidelines to courts, explaining how to resolve certain ADA issues.[125] Specifically, the EEOC suggested how courts should determine whether a disabled individual is a "qualified individual with a disability" for purposes of Title I protection,[126] with the determination being made at the time of the employment decision.[127]

The Supreme Court's decision in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*[128] provided courts with a two-step analysis that they should follow when considering an agency's interpretation of a statute.[129] A court's first step is to decide whether Congress has spoken to the specific statutory question at issue in the plain text of the statute.[130] If the statutory language is silent or ambiguous with respect to this issue, and Congress explicitly delegated an agency with the authority to interpret a statute by regulation,[131] then the court must accept the agency interpretation unless it is "arbitrary, capricious, or manifestly contrary to the statute."[132]

With these principles in mind, the EEOC regulations to Title I of the ADA bind courts because Congress ordered the EEOC to issue them.[133] The interpretive guidelines to Title I, however, do not bind

124. *See id.* § 1630.4(b).

125. *See id.* § 1630 interpretive guideline (1998) (stating that the purpose of these guidelines is to "ensure that qualified individuals with disabilities understand their rights under this part and to facilitate and encourage compliance by covered entities").

126. *See id.* § 1630.2(m) interpretive guideline (instructing that it must first be determined whether the individual satisfies the prerequisites for the employment position, and next whether the individual can perform the essential functions of the position held or desired, with or without reasonable accommodation).

127. *See id.* (declaring that the "determination should be based on the capabilities of the individual with a disability at the time of the employment decision, and should not be based on speculation that the employee may become unable in the future or may cause increased health insurance premiums or workers compensation").

128. 467 U.S. 837 (1984).

129. *See id.* at 842-44; *see also* Robert A. Anthony, *Which Agency Interpretations Should Bind Citizens and the Courts?*, 7 Yale J. on Reg. 1, 16-17 (1990) (discussing the various forms of agency interpretation and examining the circumstances when courts are bound to accept an agency's interpretation of a statute).

130. *See Chevron*, 467 U.S. at 842.

131. *See id.* at 843-44.

132. *See id.* at 844 ("[A] court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administration of an agency.").

133. *See* 42 U.S.C. § 12116 (1994).

courts.[134] Although these guidelines do not have the force of law, courts nonetheless defer to them because of the EEOC's expertise in administering Title I of the ADA.[135]

Congress's enactment of the ADA demonstrates a national commitment to eradicating discrimination against protected classes of individuals in all aspects of the employment relationship.[136] Courts, however, have struggled to carry out this intention. Proponents of both narrow and broad interpretations of Title I of the ADA have relied on court decisions that interpret similar provisions under Title V of the Rehabilitation Act and Title VII of the Civil Rights Act.[137] Part III discusses these decisions.

III. Decisions Interpreting Similar Provisions Under the Rehabilitation Act and Title VII

Whether disabled former employees fall within Title I's coverage depends upon how a court interprets the statutory language. Whereas a narrow construction of Title I deprives disabled former employees of a Title I claim, a broad construction of Title I permits disabled former employees to bring such a claim. Both of these interpretive approaches find support in court decisions that interpret similar provisions under Title V of the Rehabilitation Act and Title VII of the Civil Rights Act. The Eighth Circuit's decision in *Beauford v. Father Flanagan's Boys' Home*[138] supports a narrow interpretation of Title I of the ADA. On the other hand, the Supreme Court's decision in *Robinson v. Shell Oil Co.*[139] supports a broad interpretation. Accordingly, this part examines the court decisions and the rationales they offer.

A. Beauford v. Father Flanagan's Boys' Home

Section 504 of the Rehabilitation Act, like Title I of the ADA, prohibits discrimination on the basis of disability in regard to fringe bene-

134. *See* Anthony, *supra* note 129, at 55-58 (stating that agency guidelines do not have the force of law and, therefore, are not controlling on courts even if they represent a reasonable interpretation of the statute).

135. *See* Meritor Savings Bank, FSB v. Vinson, 477 U.S. 57, 65 (1986) (observing that an agency's guidelines, "while not controlling upon the courts by reason of their authority, do constitute a body of experience and informed judgment to which Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944))); Washington v. HCA Health Servs. of Texas, Inc., 152 F.3d 464, 470 (5th Cir. 1998) (giving "more than minimal deference to the EEOC's Interpretive Guidelines" when analyzing a statutory issue under Title I of the ADA); *see also* Anthony, *supra* note 129, at 55-59 (explaining that agency guidelines do not have the force of law, but courts often defer to these guidelines in light of the agency's expertise and status as the delegate of Congress).

136. *See* 42 U.S.C. § 12101(b)(1)-(2).

137. *See infra* Part III.

138. 831 F.2d 768 (8th Cir. 1987).

139. 519 U.S. 337 (1997).

fits.[140] The plain language of section 504 extends coverage only to "otherwise qualified individual[s] with a disability."[141] Section 504, unlike Title I of the ADA, does not define this term.[142] The DOJ regulations, however, provide courts with some interpretive guidance.[143] Furthermore, the Supreme Court, in *Southeastern Community College v. Davis*,[144] interpreted "otherwise qualified handicapped individuals" under section 504 as persons who, despite their disability, are able to satisfy the requirements of a particular program.[145]

The Eighth Circuit's decision in *Beauford v. Father Flanagan's Boys' Home*[146] supports a narrow interpretation of Title I of the ADA.[147] In *Beauford*, the plaintiff was unable to continue working as a school teacher because of mental and physical problems.[148] After the defendant denied the plaintiff disability and health benefits, the plaintiff brought suit under section 504 of the Rehabilitation Act.[149] She claimed that her benefits had been denied because of her handicap.[150]

The district court granted the defendant's motion to dismiss the complaint.[151] The Eighth Circuit affirmed, holding that employees who are no longer able to do their jobs are not "otherwise qualified handicapped individuals" covered by the Rehabilitation Act.[152] In reaching its decision, the Eighth Circuit reasoned that the plain language of section 504 reflects the will of the legislature to protect only those disabled individuals who are able to perform the duties of their employment positions.[153] According to the court, the statutory language of section 504 does not contemplate protection for those dis-

140. *See* Beauford v. Father Flanagan's Boys' Home, 831 F.2d 768, 770 (8th Cir. 1987) (citing 45 C.F.R. § 84.11(b)(6) (1986)).

141. *See* 29 U.S.C. § 794(a) (1994).

142. *See* Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523, 1529 (11th Cir. 1996).

143. *See* 28 C.F.R. § 41.32 (1998) (defining "qualified handicapped person[s]").

144. 442 U.S. 397 (1979). In this case, a clinical registered nurse training program excluded a woman with a serious hearing disability. *See id.* at 402. The Court determined that there were no modifications that the college could make that would enable the plaintiff to successfully participate in the program. *See id.* at 407-13. Thus, the Court held that § 504 did not cover the plaintiff because she was not an otherwise qualified handicapped individual. *See id.* at 413-14.

145. *See id.* at 406 (holding that an otherwise qualified handicapped individual "is one who is able to meet all of a program's requirements in spite of his handicap").

146. 831 F.2d 768 (8th Cir. 1987).

147. Indeed, the Sixth and the Seventh Circuits incorporated the *Beauford* rationale into their holdings that deprived disabled former employees of a Title I claim in the provision of fringe benefits. *See* Parker v. Metropolitan Life Ins. Co., 99 F.3d 181, 186 (6th Cir. 1996); EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1045 (7th Cir. 1996).

148. *See Beauford*, 831 F.2d at 770.

149. *See id.*

150. *See id.*

151. *See id.* at 771.

152. *See id.* ("[B]oth the language of the statute and its interpretation by the Supreme Court [in *Davis*] indicate that section 504 was designed to prohibit discrimination within the ambit of an employment relationship in which the employee is potentially able to do the job in question.").

153. *See id.*

abled individuals who are unable to do their jobs.[154] The Eighth Circuit recognized that such discrimination is "an undesirable thing,"[155] but nonetheless refused to employ other interpretive guides to avoid the apparent absurdity.[156]

B. Robinson v. Shell Oil Co.

Title VII of the Civil Rights Act prohibits an employer from discriminating against an employee on the basis of "race, color, religion, sex, or national origin."[157] In addition, section 704(a) of Title VII prohibits employers from retaliating against employees and applicants for employment.[158] This section, however, does not specifically refer to former employees. Thus, circuit courts were divided on the issue of whether former employees could sue for retaliatory acts after the employment relationship has ended. While the majority of circuits had held that former employees are included within the coverage of section 704(a),[159] which preserves Title VII's remedial purpose of eliminating employment discrimination,[160] a few circuits had found that former employees fell beyond the scope of this section.[161] To resolve this conflict, the Supreme Court granted certiorari in *Robinson v. Shell Oil Co.*[162]

In *Robinson*, Shell Oil Company ("Shell") had terminated Charles T. Robinson from its employ in 1991.[163] Shortly thereafter, Robinson filed a complaint with the EEOC, claiming that he was fired because of his race.[164] While that complaint was pending, Robinson applied for a job with another company that contacted Shell for an employment reference.[165] According to Robinson, Shell gave him a negative

154. *See id.*
155. *Id.* at 773.
156. *See id.*
157. 42 U.S.C. § 2000e-2(a) (1994).
158. *See id.* § 2000e-3(a).
159. *See* Charlton v. Paramus Bd. of Educ., 25 F.3d 194, 200 (3d Cir. 1994); Bailey v. USX Corp., 850 F.2d 1506, 1509-1510 (11th Cir. 1988); O'Brien v. Sky Chefs, Inc., 670 F.2d 864, 869 (9th Cir. 1982); Pantchenko v. C.B. Dolge Co., 581 F.2d 1052, 1054-55 (2d Cir. 1978); Rutherford v. American Bank of Commerce, 565 F.2d 1162, 1165 (10th Cir. 1977); *see also* Patricia A. Moore, *Parting Is Such Sweet Sorrow: The Application of Title VII to Post-Employment Retaliation*, 62 Fordham L. Rev. 205, 206 (1993) (arguing that section 704(a) of Title VII should protect former employees against acts of employer retaliation, but restricting liability to only those post-employment actions that relate to an employment relationship).
160. *See* Moore, *supra* note 159, at 206.
161. *See* Robinson v. Shell Oil Co., 70 F.3d 325, 330 (4th Cir. 1995) (holding that Title VII's anti-retaliation provision does not apply to former employees), *rev'd*, 519 U.S. 337 (1997); Reed v. Shepard, 939 F.2d 484, 492 (7th Cir. 1991) (declining to extend protection to former employees under section 704(a) of Title VII).
162. 517 U.S. 1154 (1996).
163. *See* 519 U.S. at 339.
164. *See id.*
165. *See id.*

reference.[166] Robinson claimed that this reference was given in retaliation for his EEOC complaint.[167] Robinson subsequently filed suit under the anti-retaliation provision, section 704(a), of Title VII of the Civil Rights Act of 1964.[168] Shell moved to dismiss the complaint, arguing that section 704(a) did not provide former employees a cause of action against their former employers for post-employment retaliation.[169] The district court dismissed the complaint, adhering to Fourth Circuit precedent that held that section 704(a) does not apply to former employees.[170] On appeal, the Fourth Circuit affirmed.[171]

The Supreme Court followed the rules of statutory interpretation, looking first to section 704(a) to determine whether its meaning was plain or ambiguous.[172] In making this determination, the Court considered several factors, including "reference to the language itself, the specific context in which the language is used, and the broader context of the statute as a whole."[173] With respect to the language of section 704(a), the Court provided several reasons as to why the term "employee" was ambiguous. According to the Court, the ambiguity stemmed from section 704(a)'s lack of a temporal qualifier of the term "employee."[174] For example, the Court pointed out that the phrases "current employees" and "former employees" are not in the language of Title VII.[175] Moreover, Title VII defines the term "employee" as "an individual employed by an employer."[176] The Court found this definition lacked a plain meaning: it could be read to mean *was* employed just as easily as *is* employed.[177]

The Court also examined other provisions within Title VII that used the term "employee" to refer to someone other than a current employee. For example, the Court noted that sections 706(g)(1) and 717(b) authorize affirmative remedial action that "may include . . . reinstatement or hiring of employees."[178] Because one does not reinstate current employees, the Court reasoned that this language arguably refers to former employees.[179] At the same time, however, the

166. *See id.*
167. *See id.*
168. *See id.* at 340.
169. *See id.*
170. *See id.*
171. *See id.*
172. *See id.*
173. *Id.* at 341.
174. *See id.*
175. *See id.*
176. 42 U.S.C. § 2000e(f) (1994).
177. *See Robinson*, 519 U.S. at 342. The Court also rejected a similar argument asserted by Shell. Shell argued that the addition of the term "his" before "employees" narrows the scope of section 704(a). *See id.* at 344. The Court disagreed, noting that the use of the term "employee" alone does not demonstrate whether an individual ever had been, or currently was, an employee. *See id.*
178. *See id.* at 342 (quoting 42 U.S.C. §§ 2000e-5(g)(1), 2000e-16(b)).
179. *See id.*

Court found that there are occasions when Title VII unambiguously describes an employee as one who is currently in an employment position.[180] The Court concluded, therefore, that these examples illustrate that the meaning of "employee" may change in context.[181]

Based on the foregoing analysis, the Court determined that the term "employees" in section 704(a) of Title VII was ambiguous.[182] As such, it proceeded to an analysis of the broader context and primary purpose of the statute to resolve the ambiguity.[183] The Court relied upon those sections in Title VII that plainly demonstrate "former employees" may take advantage of the law's remedial mechanisms.[184] In addition, Title VII protects employees from retaliation,[185] and a charge of unlawful discharge would necessarily have to be brought by former employees. Thus, the Court reasoned, it was more consistent to include former employees within section 704(a)'s coverage.[186]

Noting that section 704(a)'s primary purpose was to maintain unrestricted access to remedial relief in the law, the Court found that an inclusive interpretation of this section to protect former employees was more consistent with the broader context of Title VII. Thus, the Court reversed the Fourth Circuit and held that former employees are included within section 704(a)'s coverage.[187]

Although the decisions were not directly on point, the *Beauford* and *Robinson* rationales have led courts to interpret Title I of the ADA differently. One can readily appreciate the impact of these decisions by examining the arguments offered for a narrow and broad interpretation of Title I. Accordingly, part IV considers and examines these arguments.

IV. Arguments For and Against a Narrow Interpretation of Title I

Title I of the ADA does not explicitly state whether a former employee is a "qualified individual with a disability" for the purpose of bringing a discrimination suit in fringe benefits.[188] The Sixth, Seventh, and Eleventh Circuits interpret Title I's statutory language narrowly, holding that disabled former employees are not included within the

180. *See id.* at 343.
181. *See id.*
182. *See id.* at 345.
183. *See id.* at 345-46; *supra* notes 35-55 and accompanying text.
184. *Robinson*, 519 U.S. at 345.
185. *See id.* at 342-43 (observing that section 703(a) expressly includes discriminatory discharge as one of the unlawful employment practices against which Title VII is directed).
186. *See id.* at 346.
187. *See id.*
188. *See* 42 U.S.C. § 12111(8) (1994).

statute's coverage.[189] In part, these courts relied on *Beauford v. Father Flanagan's Boys' Home*[190] to justify their reasoning. On the other hand, the Second[191] and Third[192] Circuits held that disabled former employees are qualified individuals with disabilities within Title I for the purpose of challenging post-employment discrimination in fringe benefits.[193] These courts were guided largely by the Supreme Court's recent decision in *Robinson v. Shell Oil Co.*,[194] which was decided after the line of cases[195] precluding former employees from suing under Title I for discrimination in post-employment benefits. This part examines the rationales offered on both sides of the debate.

A. *Interpreting Title I Narrowly*

Strict interpreters reason that disabled former employees may not challenge post-employment discrimination in fringe benefits under Title I. In doing so, they utilize the plain meaning and legislative history of Title I to reach this conclusion. This section looks at these arguments.

1. The Plain Language Excludes Disabled Former Employees

Proponents of a narrow interpretation of Title I that excludes disabled former employees from its protection rely on a plain meaning analysis. Title I prohibits an employer from discriminating against individuals in regards to hiring, promotions, and firing because of their disabilities.[196] Title I also prohibits an employer from discriminating against qualified individuals with disabilities in the provision of fringe benefits.[197] Noting this general prohibition, a plain meaning analysis examines Title I's definition of a "qualified individual with a disability."[198] Reading these two provisions in concert, strict interpreters conclude that the term "qualified individual with a disability" excludes disabled former employees.[199]

189. *See* Parker v. Metropolitan Life Ins. Co., 99 F.3d 181, 183 (6th Cir. 1996); EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1045 (7th Cir. 1996); Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523, 1531 (11th Cir. 1996).

190. 831 F.2d 768, 769 (8th Cir. 1987) (holding that individuals who are no longer able to perform the essential functions of their jobs are not qualified to sue under section 504 of the Rehabilitation Act).

191. *See* Castellano v. City of New York, 142 F.3d 58 (2d Cir. 1998).

192. *See* Ford v. Schering-Plough Corp., 145 F.3d 601 (3d Cir. 1998).

193. *See Ford*, 145 F.3d at 608; *Castellano*, 142 F.3d at 69.

194. 519 U.S. 337 (1997); *see also supra* Part III.B (examining the Court's decision in *Robinson* and the rationale it offers).

195. *See* Parker v. Metropolitan Life Ins. Co., 99 F.3d 181 (6th Cir. 1996); EEOC v. CNA Ins. Cos., 96 F.3d 1039 (7th Cir. 1996); Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523 (11th Cir. 1996).

196. *See* 42 U.S.C. § 12112(a) (1994).

197. *See id.* § 12112(b)(2).

198. *See id.* § 12111(8).

199. *See Gonzales*, 89 F.3d at 1530.

According to this rationale, the ADA's definitions of the terms "qualified individual with a disability," "employee," and "discriminate" support a narrow interpretation of Title I. Title I bifurcates the term "qualified individual with a disability" into two elements: an individual must have a disability, and must also be able to perform the essential functions of an employment position with or without a reasonable accommodation.[200] Within this framework, the plain meaning of Title I provides that a disabled individual who can work is "qualified" for Title I protection.[201] Conversely, then, an individual who does not meet these two elements is afforded no protection under Title I. Thus, if the alleged discriminatory action in fringe benefits occurs after a disabled individual is no longer employed and is unable to perform his former employment position, it naturally follows that the individual is not included within Title I's coverage.[202]

Similarly, strict interpreters reason that the plain meaning of this definition provides no other alternative than to restrict Title I protection solely to job applicants and current employees.[203] For example, in previous cases, the Eleventh Circuit held that the term "employee" under section 704(a) of Title VII included former employees.[204] This court reasoned that a narrow interpretation of the term "employee" that excluded former employees would undermine Title VII's remedial purpose.[205] In the context of Title I of the ADA, however, the Eleventh Circuit found that excluding former employees from protection was not inconsistent with ADA policy;[206] to do otherwise would vitiate the "qualified individual with a disability" requirement.[207]

Additional support for a narrow interpretation of Title I rests in the ADA's definition of the terms "employee" and "discriminate." The ADA defines "employee" as "an individual employed by an employer."[208] In defining the term "discriminate," the ADA refers to

200. *See* 42 U.S.C. § 12111(8).

201. *See* Parker v. Metropolitan Life Ins. Co., 99 F.3d 181, 186-87 (6th Cir. 1996); EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1043-44 (7th Cir. 1996); *Gonzales*, 89 F.3d at 1526-27; *see also* Beauford v. Father Flanagan's Boys' Home, 831 F.2d 768, 771 (8th Cir. 1987) (finding that "qualified" individuals under Title V of the Rehabilitation Act are individuals who can do their jobs).

202. *See Parker*, 99 F.3d at 186-87; *CNA Ins.*, 96 F.3d at 1044-45; *Gonzales*, 89 F.3d at 1526.

203. *See Gonzales*, 89 F.3d at 1529.

204. *See* Bailey v. USX Corp., 850 F.2d 1506, 1509-10 (11th Cir. 1988).

205. *See id.* at 1509 (stating that courts should not strictly construe a statute "to produce a result which is actually inconsistent with the policies underlying the statute").

206. *See Gonzales*, 89 F.3d at 1529.

207. *See id.* ("[I]nterpreting the ADA to allow any disabled former employee to sue a former employer essentially renders the QID requirement under the Act, that an individual with a disability *hold or desire* a position the essential functions of which he or she can perform, meaningless.").

208. 42 U.S.C. § 12111(4) (1994).

both "job applicants" and "employees."[209] According to the statute, then, Congress chose to distinguish "job applicants" from regular "employees" under the ADA.[210] Therefore, if Congress had desired to provide disabled former employees with Title I protection, it would have expressly done so, given that it chose to distinguish applicants from employees.[211] By not doing so, strict interpreters reason, Congress contemplated the plain meaning of these provisions to include "discrimination encountered solely by job applicants and current employees."[212]

Finally, proponents of a narrow interpretation of Title I dismiss any attempt to redefine Title I's "qualified individual with a disability" requirement. The EEOC has argued on several occasions that a disabled former employee is a "benefits recipient."[213] Though this term does not appear anywhere in Title I's statutory language, the EEOC suggests that post-employment status fits within the definition of the term "employment position" as used in the definition of the term "qualified individual with a disability."[214] Strict interpreters dismiss this line of reasoning, however, because it confuses the plain meaning of Title I's statutory language.[215] Though Congress may have intended to include disabled former employees within Title I coverage, any such oversight is for Congress to remedy, rather than the courts.[216]

2. The Legislative History of Title I Is Clear

Proponents of a narrow interpretation of Title I of the ADA, in addition to the plain language, also analyze the ADA's legislative history. Specifically, strict interpreters examine the purpose of the "essential functions" within the "qualified individual with a disability" definition and the primary purpose of Title I. Strict interpreters reason that the inclusion of the phrase "essential functions" within the definition of a "qualified individual with a disability" suggests that Congress intended to limit Title I protection solely to job applicants and current employees.[217] Congress inserted this phrase to allow employers flexibility in whom they choose to employ and maintain as

209. *See id.* § 12112(b)(1).
210. *See id.* § 12112(a).
211. *See Gonzales*, 89 F.3d at 1526-27.
212. *Id.* at 1527 n.11.
213. *See* Parker v. Metropolitan Life Ins. Co., 99 F.3d 181, 186-87 (6th Cir. 1996); EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1043 (7th Cir. 1996).
214. *See CNA Ins.*, 96 F.3d at 1043-44.
215. *See id.*; *see also Parker*, 99 F.3d at 187 ("The concept of 'benefits recipient' as an 'employment position' relies on a convoluted construction of the statutory language, which conflicts with the plain meaning of the words.").
216. *See Parker*, 99 F.3d at 187 ("We should not try to rewrite the [ADA] in a way that conflicts with what appears to be fairly clear language.").
217. *See* Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523, 1527 (11th Cir. 1996).

employees.[218] Moreover, Congress did not want to force employers to hire, promote, or retain unqualified, disabled employees.[219]

Further, strict interpreters find that Congress's primary purpose for enacting Title I of the ADA suggests that disabled former employees are not included within Title I's coverage.[220] In enacting Title I, Congress sought to ensure equal access to employment opportunities for qualified individuals with disabilities.[221] With this purpose in mind, Title I does not provide absolute protection in the administration of fringe benefits. Rather, Title I only ensures that disabled individuals can obtain and keep employment positions.[222] Thus, strict interpreters reason that former employees who are unable to work because of their disabilities were never contemplated to fall under the umbrella of Title I protections.[223]

B. *Interpreting Title I Broadly*

Broad interpreters reason that a strict reading fails to recognize the textual ambiguity in Title I and undermines the remedial purpose of the statute. Accordingly, they look beyond the literal language of the Title I to permit disabled former employees to challenge post-employment discrimination in fringe benefits.

1. The Term "Qualified Individual with a Disability" Under Title I Is Ambiguous

Although Title I provides a definition for the term "qualified individual with a disability," proponents of a broad interpretation of Title I find that this term is ambiguous.[224] They point to the apparent disjunction between Title I's definition of "qualified individual with a disability" and the explicit rights that the ADA otherwise confers.[225] Furthermore, broad interpreters believe that disabled former employees are eligible to sue under Title I because its plain meaning does not specifically limit its protection to current employees.[226] To bring an action under Title I, a person must have a disability, and must also be able to perform the essential functions of an employment position

218. *See* H.R. Rep. No. 101-485, pt. 2, at 55 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 337.

219. *See id.* at 55-56, *reprinted in* 1990 U.S.C.C.A.N. 303, 337-38.

220. *See Parker*, 99 F.3d at 185-87.

221. *See* 42 U.S.C. § 12101(b) (1994).

222. *See Parker*, 99 F.3d at 186 (stating that "the main purpose of Title I was to ensure that disabled persons could obtain and keep employment, and therefore, it was not intended to provide relief for [plaintiff]").

223. *See id.*

224. *See Ford*, 145 F.3d at 606; *Castellano*, 142 F.3d at 66-69.

225. *See Castellano*, 142 F.3d at 69.

226. *See* Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523, 1531-32 (11th Cir. 1996) (Anderson, J., dissenting).

with or without a reasonable accommodation.[227] Proponents of a broad interpretation of Title I reason that this definition does not clearly exclude former employees because it contains an internal contradiction.[228] If Title I's eligibility requirements really did prevent disabled former employees from challenging post-employment discrimination in the provision of fringe benefits, such an outcome would undoubtedly undermine the clear remedial purpose of Title I.[229]

Whether Title I contains a temporal qualifier of the term "qualified individual with a disability" adds to the inconsistency within the statutory framework of the statute. Broad interpreters reason that the term "qualified individual with a disability" includes both current and former employees.[230] Title I's definition for this term does not demonstrate when a putative plaintiff must be qualified to bring suit.[231] Faced with a similar issue in *Robinson*, the Supreme Court reasoned that Title VII's definition of "employee" lacks any temporal qualifier that limits the scope of protection to current employees.[232] Accordingly, this term may include former employees who were once employed with or without a reasonable accommodation yet who, at the time of suit, are completely disabled.[233] Indeed, the governing language of the general statutory provision of Title I employs the broader term "individual."[234] Therefore, use of the term "individual" in Title I further supports more inclusive protection than simply current employees.

Finally, the EEOC has raised a novel argument in support of a broad interpretation of Title I: a former employee who is unable to work because of her disability holds the position of "benefits recipient."[235] Under this line of reasoning, the relevant "employment position" in cases involving post-employment benefits is the position the disabled former employee actually occupies, that of "benefits recipient."[236] The disabled former employee is not expected to perform the functions of the employment position she previously held.[237] On the

227. *See* 42 U.S.C. § 12111(8) (1994).

228. *See Ford*, 145 F.3d at 605-06.

229. *See* 42 U.S.C. § 12101(b)(1)–(2).

230. *See Ford*, 145 F.3d at 606-07; *Castellano*, 142 F.3d at 67-69. Similarly, in *Gonzales v. Garner Food Services, Inc.*, Judge Anderson agreed that nothing in the plain meaning of the term "employee" limits its scope to current employees as opposed to former employees. *See Gonzales*, 89 F.3d at 1531 (Anderson, J., dissenting).

231. *See* 42 U.S.C. § 12111(8).

232. *See* Robinson v. Shell Oil Co., 519 U.S. 337, 342 (1997).

233. *See Ford*, 145 F.3d at 606; *Castellano*, 142 F.3d at 67.

234. *See Gonzales*, 89 F.3d at 1532-33; *see also* 42 U.S.C. § 12112(a) (stating that no covered entity shall discriminate against a qualified individual with a disability).

235. *See* Parker v. Metropolitan Life Ins. Co., 99 F.3d 181, 186-87 (6th Cir. 1996); EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1043-44 (7th Cir. 1996); Leonard F. v. Israel Discount Bank, No. 95 Civ. 6964, 1996 WL 634860, at *3 (S.D.N.Y. Sept. 24, 1996).

236. *See Leonard*, 1996 WL 634860, at *3.

237. *See CNA Ins.*, 96 F.3d at 1043-44.

contrary, the former employee is only expected to meet the non-discriminatory criteria for receipt of benefits, such as making the appropriate election and paying the premiums.[238] Furthermore, if the former employee satisfies these criteria, then she is a "qualified individual with a disability" within the meaning of Title I of the ADA.[239]

Based on this analysis, proponents of a broad interpretation of Title I find that the term "qualified individual with a disability" is ambiguous.[240] As such, the rules of statutory interpretation permit one to move beyond the literal language of the statute to construe its meaning.[241]

2. The Legislative History Is Inconclusive

While the legislative history provides some support for the inclusion of disabled former employees within Title I coverage, the House Committee Report that accompanied the ADA[242] suggests that disabled former employees are not "qualified individuals with a disability" for purposes of challenging post-employment discrimination in fringe benefits under Title I. In determining whether an individual is "qualified," the House Report instructs that such a determination should be made at the time of the discriminatory employment action, rather than on the possibility that the employee will become unable to work in the future.[243] A literal reading of this section suggests that "at the time of the employment action" refers to the actual moment when the employer withholds or provides unequal benefits.[244] Such a reading, however, focuses on the situation where the inability to perform essential functions may not have arisen at the time of the discriminatory employment action.[245]

Broad interpreters reason that a strict reading of the House Committee Report leads to absurd results in the fringe benefit context.[246] Such a reading permits employers to discriminate against disabled individuals who have been "qualified" up to the point of termination, but who no longer hold employment positions or are no longer able to perform the essential functions of their former employment due to their disability.[247] For example, an employer could deny post-employment benefits on the basis of disability to an employee the day after,

238. *See Parker*, 99 F.3d at 187.
239. *See Leonard*, 1996 WL 634860, at *3.
240. *See* Ford v. Schering-Plough Corp., 145 F.3d 601, 606 (3d Cir. 1998); Castellano v. City of New York, 142 F.3d 58, 66-69 (2d Cir. 1998).
241. *See supra* notes 35-55 and accompanying text.
242. *See* H.R. Rep. No. 101-485, pt. 2, at 55 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 337.
243. *See id.*, *reprinted in* 1990 U.S.C.C.A.N. 303, 337.
244. *See Castellano*, 142 F.3d at 67.
245. *See id.*
246. *See id.* at 66-67.
247. *See id.* at 67.

but not on the day before, that individual retires because of his disability.[248] A strict reading would also permit irrational discrimination among disabled individuals, some of whom could perform the essential functions of their former employment and others of whom could not.[249] These examples illustrate that a literal reading of the House Committee Report fails to consider that many employment benefits, such as disability benefits, are earned during the years of service before the employment has terminated, and are provided in the years after the employment relationship has ended.

In addition to this inconclusive legislative history, proponents of a broad interpretation of Title I look to the purpose of the "essential functions" requirement within the definition of the term "qualified individual with a disability."[250] In drafting the ADA, the legislative history suggests that Congress did not intend to compel employers to hire, promote, or retain unqualified disabled employees.[251] As a result, Congress employed the phrase "qualified individual with a disability" within the statutory language of Title I to reaffirm this intention.[252] Within this definition, Congress used the term "essential functions" to ensure that employers could continue to require that all individuals are capable of fulfilling the responsibilities of their employment position.[253]

This legislative history demonstrates Congress's concern with employee qualifications. Nevertheless, broad interpreters reason that it does not determine the relevancy of such concern in the post-employment context.[254] According to this logic, Congress's concern is no longer implicated in the post-employment context, because former employees who receive post-employment benefits no longer work or seek to work for their former employers and, therefore, need not perform any functions of their former employment position.[255] In the context of post-employment benefits, then, if disabled former employees could perform the essential functions of their position while employed, it is irrelevant whether they could also perform such functions at or after termination of their employment.

Finally, proponents of a broad interpretation of Title I find that the legislative history does not provide clear congressional intent that Ti-

248. *See id.* at 67 (explaining that "an employer could terminate an employee in violation of the ADA and then deny him fringe benefits, yet the employee could bring no ADA claim for the latter violation because at the time of the discriminatory denial of fringe benefits he was a former employee who did not 'hold' an employment position").

249. *See id.*

250. *See id.* at 67-68.

251. *See* H.R. Rep. No. 101-485, pt. 2, at 55-56 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 337-38.

252. *See id.*, *reprinted in* 1990 U.S.C.C.A.N. 303, 337-38.

253. *See id.* at 55, *reprinted in* 1990 U.S.C.C.A.N. 303, 337.

254. *See* Castellano v. City of New York, 142 F.3d 58, 68 (2d Cir. 1998).

255. *See id.*

tle I protection is limited to current employees and job applicants.[256] Congress could have specifically restricted eligibility to sue under Title I to "current employees" by selectively using that term.[257] At the same time, it could have broadened eligibility to include "former employees" by incorporating that term within the statutory language of Title I. Though Congress did not use specific language to make clear what it meant by the term "qualified individual with a disability," it did expressly create rights for disabled individuals regarding fringe benefits.[258] In doing so, broad interpreters reason that this further complicates the ambiguity in Title I's statutory language concerning a disabled former employee's eligibility to sue for discrimination in fringe benefits.[259]

3. The Remedial Purposes Protect Disabled Former Employees

Although the legislative history of the ADA offers little interpretive guidance regarding Title I's statutory language, it does state Congress's purpose for creating the ADA in general,[260] and Title I in particular.[261] Proponents of a broad interpretation utilize these policy objectives to construe the meaning of Title I.[262]

Congress sought to remove barriers that prevented individuals with disabilities from enjoying the same private and public opportunities that are available to persons without disabilities.[263] Congress created Title I to eliminate disability discrimination in all aspects of the employment relationship, including in the administration of post-employment benefits.[264] Ultimately, such legislation will be one of the methods by which disabled individuals fully enjoy all of their rights.[265] With these remedial purposes in mind, broad interpreters contend that a construction that prevents disabled former employees to challenge post-employment discrimination in fringe benefits effectively vitiates the express protections of the ADA.[266]

Turning to Title I's provision regarding post-employment benefits, the provision "provide[s] comprehensive protection from discrimination in the provision of fringe benefits."[267] Under this section, fringe benefits include pensions, health and life insurance, and other post-

256. *See* Ford v. Schering-Plough Corp., 145 F.3d 601, 606 (3d Cir. 1998).
257. *See id.*
258. *See* 42 U.S.C. § 12112(b)(2) (1994).
259. *See Ford*, 145 F.3d at 607; *Castellano*, 142 F.3d at 67.
260. *See supra* notes 56-64 and accompanying text.
261. *See* 42 U.S.C. § 12101(b).
262. *See Ford*, 145 F.3d at 607; *Castellano*, 142 F.3d at 68-69.
263. *See supra* notes 56-64 and accompanying text.
264. *See Castellano*, 142 F.3d at 68.
265. *See* 42 U.S.C. § 12101(b).
266. *See Ford*, 145 F.3d at 606; *Castellano*, 142 F.3d at 68-69.
267. *Castellano*, 142 F.3d at 68 (citing 42 U.S.C. § 12112(a), (b)(2)).

employment benefits.[268] These types of benefits routinely cover current employees and former employees. Indeed, pension and profit-sharing plans are designed for individuals to enjoy in the post-employment years of their lives.[269] Moreover, it is not unusual that disability benefits are paid to individuals because they can no longer work for their employer.[270] In extending Title I protection to fringe benefit plans, therefore, broad interpreters infer that Congress aimed to protect those routinely and commonly covered by such employer-provided plans, namely, current *and* former employees.[271]

In light of the conflict among the circuits, disabled former employees deserve a judicial or legislative resolution of this issue. Accordingly, part V argues that the Supreme Court should resolve this conflict and hold that disabled former employees are included within Title I's coverage. Alternatively, part V suggests that Congress should amend Title I to ensure that disabled former employees receive adequate protection in the provision of fringe benefits.

V. A JUDICIAL AND LEGISLATIVE RESOLUTION TO THE TITLE I ISSUE

As part IV demonstrates, courts have arrived at different definitions of the "protected class" of individuals under Title I of the ADA.[272] A narrow interpretation of Title I strips employees with disabilities of their protection once their formal employment ends.[273] On the other hand, a broad interpretation of Title I permits disabled former employees to pursue discrimination claims.[274] These conflicting opinions concerning the scope of the "protected class" under Title I only complicate the status of disabled individuals once their formal employment ends. Prolonging this uncertainty in the Title I context is likely to produce unjustified discrimination against disabled former employees in the provision of fringe benefits.[275] Therefore, either the

268. *See id.*

269. *See id.* at 67-68.

270. *See id.* at 68.

271. *See Ford*, 145 F.3d at 607; *Castellano*, 142 F.3d at 68; *see also* Gonzales v. Garner Food Servs., Inc., 89 F.3d 1523, 1532 (11th Cir. 1996) (Anderson, J., dissenting) ("It would be counter-intuitive, and quite surprising, to suppose (as the majority nevertheless does) that Congress intended to protect current employees' fringe benefits, but intended to then abruptly terminate that protection upon retirement or termination, at precisely the time that those benefits are designed to materialize.").

272. *See supra* Part IV.

273. *See supra* Part IV.A.

274. *See supra* Part IV.B.

275. After *Robinson*, courts continue to disagree on this issue. At least two district courts followed the Sixth Circuit's holding in *Parker* and the Seventh Circuit's holding in *CNA Ins.* *See* Erwin v. Northwestern Mut. Life Ins. Co., 999 F. Supp. 1227 (S.D. Ind. 1998); Fobar v. City of Dearborn Heights, 994 F. Supp. 878 (E.D. Mich. 1998). These courts refused to apply the *Robinson* rationale to allow disabled former employees to pursue discrimination claims regarding their fringe benefits under Title I. These courts did not explicitly address the Supreme Court's rationale in *Robinson*. In

Supreme Court should finally intervene to resolve this issue, or Congress should take immediate action and amend Title I accordingly.

A. *A Supreme Court Resolution*

To narrowly construe Title I in a way that affords disabled former employees no protection against Title I discrimination serves no judicial or societal purpose. Proponents of a narrow interpretation of Title I refuse to look beyond Title I's ambiguous statutory language, stating that it is the role of Congress to remedy such oversights.[276] This approach fails to recognize that the plain meaning rule is "rather an axiom of experience than a rule of law."[277] Thus, the Supreme Court must resolve Title I's ambiguity by broadly interpreting Title I to include disabled former employees within its coverage. This is consistent with the broader context and remedial purpose of the ADA.

1. The Broader Context of Title I

A holding that disabled former employees are included within Title I's coverage is more consistent with the broader context of the ADA. Other sections of the ADA contemplate that disabled former employees can make use of its remedial mechanisms.[278] For example, the ADA's anti-retaliation provision explicitly protects "any individual" from retaliation by his employers.[279] The language in this provision parallels the language of Title VII's anti-retaliation provision, with the difference that Title VII refers to "employees" rather than "individuals."[280] In any event, "individual" is a broader term than "employee," and its use in the ADA provision arguably refers to both current and former employees.[281]

Strict interpreters, however, distinguish post-employment benefit claims from Title VII anti-retaliation claims on the ground that former employees' protected interest arises during the period of employment

---

the absence of a clear ruling by the Supreme Court, these courts declined to revisit the circuit court decisions. *See Erwin*, 999 F. Supp. at 1230; *Fobar*, 994 F. Supp. at 884.

276. *See* Parker v. Metropolitan Life Ins. Co., 99 F.3d 181, 187 (6th Cir. 1996); *supra* notes 213-16 and accompanying text.

277. Public Citizen v. United States Dep't of Justice, 491 U.S. 440, 455 (1989) (quoting Boston Sand & Gravel Co. v. United States, 278 U.S. 41, 48 (1928)).

278. *See, e.g.*, 42 U.S.C. § 12203(a)–(b) (1994) (prohibiting retaliation and coercion against "any individual").

279. *See id.* § 12203(a) ("No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this chapter.").

280. *See id.*; *see also id.* § 2000e-3(a) (setting forth unlawful employment practices with regard to employees).

281. *See supra* notes 229-33 and accompanying text. 1996); *Gonzales*, 89 F.3d at 1528.

only in the latter case.[282] Therefore, they reason that a broad interpretation of the term "employee" is necessary to effectuate the remedial purposes of Title VII.[283] This characterization, however, is unpersuasive. Employees enter fringe benefit programs and pay into such programs during the course of their employment. As such, employees' entitlement to such benefits arises during their period of employment. Thus, it is no more necessary with respect to Title VII retaliation than it is with Title I post-employment benefits to include disabled former employees to provide meaning to the statute.[284]

2. The Remedial Purposes of Title I

A holding that permits disabled former employees to challenge post-employment discrimination in fringe benefits is also more consistent with Title I's remedial purpose.[285] Employees have a variety of fringe benefit opportunities to participate in because of their employment. These fringe benefits include pensions, health and life insurance, and other post-employment benefits.[286] With respect to disability benefit programs, employees often enter such programs prior to developing physical or mental disabilities. Indeed, some employees never reap the benefits of such programs because they are fortunate enough to have no disability when their employment ends.[287] Many employees, however, develop disabilities that become so debilitating that they are no longer able to continue in their current employment positions.[288]

As certain benefits are meaningful only in the post-employment context, it is only logical that Title I's coverage reaches the period when individuals are to reap such benefits. In the context of disability benefits, once individuals become disabled and eligible for such benefits, those individuals should not lose their right to sue under Title I. Whether they can work with or without a reasonable accommodation is irrelevant. It is only important that they were able to perform the essential functions of their employment positions when the benefits

282. *See* EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1044 (7th cir. 1996); *Gonzales*, 89 F.3d at 1528.

283. *See CNA Ins.*, 96 F.3d at 1044-45; *Gonzales*, 89 F.3d at 1528-29.

284. Indeed, the Eleventh Circuit, in *Bailey v. USX Corp.*, 850 F.2d 1506 (11th Cir. 1988), a Title VII case, observed that the "plain-meaning rule should not be applied to produce a result which is actually inconsistent with the policies underlying the statute." *Id.* at 1509.

285. *See supra* Part IV.B.3.

286. *See* Castellano v. City of New York, 142 F.3d 58, 68 (2d Cir. 1998).

287. *Cf.* Ford v. Schering-Plough Corp., 145 F.3d 601, 603-04 (3d Cir. 1998) (noting that plaintiff developed a mental disorder and received disability benefits under employer benefit plan for two years); EEOC v. CNA Ins. Cos., 96 F.3d 1039, 1041-42 (7th Cir. 1996) (noting that plaintiff was diagnosed with severe depression and bipolar disorder and was eligible to receive employer-provided disability benefits for a two-year period).

288. *See Ford*, 145 F.3d at 603; *CNA Ins.*, 96 F.3d at 1041.

accrued. Congress, through Title I, expressly prohibits discrimination in fringe benefits.[289] It is not reasonable that Congress would, in the same breath, permit employers to discriminatorily deny or limit such benefits to former employees who cease to be "qualified" according to a literal interpretation of Title I.

Similarly, courts look to Title VII when interpreting the ADA because of their similar statutory language and remedial purposes.[290] Some circuit courts have held that discrimination in connection with fringe benefits is actionable by former employees under Title VII.[291] Title I provides the same protection to disabled individuals.[292] As such, it is unreasonable to distinguish this employment discrimination law from Title VII by abrogating coverage of disabled former employees who challenge discrimination that arises out of their employment relationship because they can no longer work.

In short, strict interpreters' misuse of the plain meaning rule to analyze Title I fails to resolve its textual ambiguity. Such misuse subsequently produces the kind of absurd results that the Supreme Court instructs courts to avoid.[293] Thus, the Supreme Court should resolve Title I's ambiguity to include disabled former employees within the scope of Title I's protection. A broad interpretation of Title I allows disabled former employees to challenge post-employment discrimination in fringe benefits. Such an interpretation is consistent with the broader context and remedial purpose of the statute.

Nevertheless, it is uncertain when the Supreme Court may have the opportunity to resolve this issue. Permitting employers to deprive disabled former employees of a Title I claim is undesirable. Therefore, it may be appropriate for Congress to take immediate action and amend Title I to ensure that disabled former employees receive equal treatment in their post-employment years.

B. *A Legislative Resolution*

In the absence of a Supreme Court resolution to this issue, Congress should end the debate and amend Title I of the ADA. In its current form, Title I's statutory language and legislative history permit employers to hire the most qualified applicants available.[294] So long

289. *See* 42 U.S.C. § 12112(a), (b)(2) (1994).

290. *See Ford*, 145 F.3d at 606 (observing that the purpose of the ADA is "to provide civil rights protections for persons with disabilities that are parallel to those available to minorities and women" (citations omitted)).

291. *See* EEOC v. J.M. Huber Corp., 927 F.2d 1322, 1330 (5th Cir. 1991); Brown v. New York State Teachers' Retirement Sys., 834 F.2d 299, 300 (2d Cir. 1987).

292. *See* Castellano v. City of New York, 142 F.3d 58, 68 (2d Cir. 1998) (citing 42 U.S.C. § 12112(a), (b)(2)).

293. *See* Public Citizen v. United States Dep't of Justice, 491 U.S. 440, 454-55 (1989).

294. *See* H.R. Rep. No. 101-485, pt. 2, at 55 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 337.

as employers do not turn away individuals because of their disabilities, the result is reasonable because Congress never intended Title I to operate as an affirmative action program.[295] Indeed, Congress used the term "qualified individual with a disability" to reaffirm that the ADA does not undermine an employer's ability to choose and maintain qualified workers.[296]

A literal reading of Title I's statutory language and legislative history, however, permits employers to discriminate freely against disabled former employees regarding their fringe benefits.[297] This result is unreasonable in light of the broader context and remedial purposes of Title I. Thus, Congress should amend Title I by inserting terms such as "current" and "former" to indicate when a potential plaintiff is "qualified" to bring a claim for discrimination in the provision of fringe benefits.[298] Such congressional action effectuates the full panoply of rights that the ADA guarantees.

CONCLUSION

The Supreme Court should resolve the conflict among the circuits on the issue of whether disabled former employees are qualified individuals under Title I of the ADA. To resolve the ambiguity in Title I's statutory language, the Supreme Court should hold that disabled former employees are within the class of individuals protected by Title I. This holding is consistent with the broader context and remedial purposes of the ADA.

Alternatively, Congress should take immediate action and amend Title I of the ADA. Congress should amend Title I by inserting terms such as "current" and "former" to demonstrate when a potential plaintiff is "qualified" to bring a claim of discrimination in fringe benefits. Whether Congress or the Supreme Court take the first step, such action ensures disabled former employees the necessary Title I remedy to challenge discriminatory denials in fringe benefits.

295. *See* 29 C.F.R. § 1630 interpretive guidelines (1998).

296. *See* H.R. Rep. No. 101-485, pt. 2, at 55-56 (1990), *reprinted in* 1990 U.S.C.C.A.N. 303, 337-38.

297. *See supra* Part IV.A.

298. The § 12111(8) requirement under Title I should not apply to disabled former employees who can no longer work and seek to challenge post-employment discrimination regarding their benefits.