No. 97-1008

In the Supreme Court of the United States

OCTOBER TERM, 1998

CAROLYN C. CLEVELAND, PETITIONER

v.

POLICY MANAGEMENT SYSTEMS CORP., ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICI CURIAE SUPPORTING PETITIONER

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QUESTIONS PRESENTED

1. Whether the application for or receipt of disability insurance benefits under the Social Security Act, 42 U.S.C. 423 (1994 & Supp. II 1996), creates a rebuttable presumption that the applicant or recipient is judicially estopped from asserting that she is a "qualified individual with a disability" under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12111(8).

2. If it does not create a presumption, what weight, if any, should be given to the application for, or receipt of, disability insurance benefits when a person asserts she is a "qualified individual with a disability" under the ADA?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and regulations: Page

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INTEREST OF THE AMICI CURIAE

This case concerns the appropriate impact of an employee's application for or receipt of disability insurance benefits under the Social Security Act, 42 U.S.C. 423 (1994 & Supp. II 1996), on the employee's suit against her employer alleging that the employer discharged her in violation of the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101 *et seq.* The Equal Employment Opportunity Commission (EEOC) is authorized to issue regulations to carry out Title I of the ADA and to enforce it with respect to private employers. 42 U.S.C. 12116, 12117(a). The Attorney General enforces Title I of the ADA with respect to public employers. 42 U.S.C. 12117(a). The Social Security Administration (SSA) administers the disability standards of the Social Security Act. 42 U.S.C. 901. While the petition for certiorari in this case was pending, the United States sub-

mitted a brief as amicus curiae in response to an order of this Court inviting its views.

STATEMENT

1. Petitioner Carolyn Cleveland began working for respondent Policy Management Systems Corporation in August 1993. Pet. App. 2a. Petitioner suffered a stroke in January 1994 and took a leave of absence from work. *Ibid.* On January 26, 1994, she signed an application for Social Security disability benefits prepared by her daughter in which she certified, using the standard language on forms generated by SSA's computerized application system, that she was "'unable to work because of [her] disabling condition on January 7, 1994' and that she was 'still disabled.'" *Ibid.* (quoting application).

In April 1994, petitioner's physician released her to return to work. Pet. App. 2a. Petitioner resumed her job with respondent and notified the SSA of the change in her condition. *Id.* at 2a-3a. The SSA subsequently confirmed that petitioner would not be entitled to benefits because she had returned to work full time and was earning more than $500 a month. See J.A. 38-39.

Petitioner encountered difficulties performing her job on her return to work and asked for several accommodations that would assist her in performing the essential functions of the job. Pet. App. at 3a. Respondent denied all of petitioner's requested accommodations and, in July 1994, terminated her employment. *Ibid.*

On September 14, petitioner renewed her application for Social Security disability benefits by filing a "Request for Reconsideration." Pet. App. 3a. Again using the standard language contained on forms generated by the SSA, petitioner represented that she "continue[d] to be disabled." *Ibid.* (quoting Request for Reconsideration). Petitioner also stated that her employer discharged her because she "could no longer do the job because of [her] condition." *Ibid.*

(quoting Work Activity Report submitted in conjunction with Request for Reconsideration). Petitioner filed a second Request for Reconsideration in January 1995, reaffirming that she was "unable to work," *ibid.*, again using the standard language in SSA forms.

Petitioner made no statement about her ability to perform her prior job with reasonable accommodations in any of her submissions to the SSA, and she was not asked to make such a statement. The matter was subsequently referred to an administrative law judge (ALJ), who, in September 1995, awarded petitioner disability benefits effective retroactively to January 7, 1994. Pet. App. 3a.

2. One week before the ALJ's decision, petitioner brought suit under the ADA. Pet. App. 3a-4a. She claimed that respondent terminated her employment because of her disability. Compl. ¶ 7. Petitioner further alleged that respondent unlawfully failed to accommodate her disability. *Ibid.*

Respondent moved for partial summary judgment, arguing that "[petitioner] could not establish a prima facie case under the ADA, as her representations in her application for, and her receipt of, social security disability benefits estopped her from claiming that she is a 'qualified individual with a disability.'" Pet. App. 4a. In response to the motion, petitioner submitted an affidavit detailing various accommodations that she had requested. See J.A. 95-98. The affidavit alleged that all of the accommodations were denied and that petitioner's condition worsened as a consequence of her firing. *Ibid.* Petitioner also submitted an affidavit from her physician stating, "[p]rior to [petitioner's] termination, I had anticipated that [she] would ultimately reach a near 100% recovery" but, following her termination, "she became depressed and her aphasia became worse." J.A. 100-101. Petitioner's physician opined that "had [petitioner] been given training, time and assistance on the job, instead of being terminated, she would have continued to recover from

the stroke." J.A. 101. The district court granted partial summary judgment for respondent. Pet. App. 4a.

3. On appeal, the Fifth Circuit affirmed. Pet. App. 1a-13a. The court first rejected "a per se rule that automatically estops an applicant for or recipient of social security disability benefits from asserting a claim of discrimination under the ADA." *Id.* at 8a. The court recognized that, because of the different legal standards involved, claims under the Social Security Act and the ADA "would not necessarily be mutually exclusive." *Id.* at 9a. The court nonetheless adopted a rule that calls for the application of estoppel in the vast majority of cases in which an individual applies for or receives social security disability benefits. *Id.* at 11a-12a.

Specifically, the court ruled that "the application for or the receipt of Social Security disability benefits creates a *rebuttable* presumption that the claimant or recipient of such benefits is judicially estopped from asserting that he is a 'qualified individual with a disability.'" Pet App. 11a. The court opined that an individual would be able to overcome that presumption, if at all, only "under some limited and highly unusual set of circumstances." *Id.* at 9a. Applying that standard, the court ruled that petitioner had not "raised a genuine issue of material fact to rebut the presumption that, while she remains disabled for purposes of Social Security, she is estopped from asserting that she is a 'qualified individual with a disability.'" *Id.* at 12a.

Petitioner sought rehearing. The EEOC filed a brief as *amicus curiae* in her support. Pet. App. 18a-35a. The panel denied the petition for rehearing without explanation. *Id.* at 16a-17a.

SUMMARY OF ARGUMENT

Neither application for nor receipt of Social Security disability benefits warrants a rebuttable presumption that the applicant or recipient is judicially estopped from asserting that she is a "qualified individual with a disability" (42 U.S.C.

12111(8)) under the ADA. A person may have a medical condition that entitles her to disability benefits under the Social Security Act and nevertheless be a qualified individual with a disability under the ADA for several reasons. First, an individual is "qualified" under the ADA if she could perform the essential functions of her job with "reasonable accommodation." *Ibid.* In contrast, a person may be entitled to benefits under the Social Security Act even if she could have performed her prior job with reasonable accommodation, because the SSA does not speculate whether the ADA might require an employer to make specific accommodations that the employer has not in fact made. Second, a person may qualify for Social Security disability benefits based on one of a series of regulatory presumptions that she is unable to work, even though the person is not actually prevented by her impairment from performing all jobs. In contrast, presumptions play no part in the ADA qualification analysis. Third, the Social Security Act permits recipients to receive benefits in certain circumstances even though they are employed in order to encourage recipients to return to work if possible. Finally, disability status may change over time, so that a person who was discharged in violation of the ADA because she was able to work at that time may become progressively more disabled and then properly apply for and receive disability benefits.

Because there is no necessary inconsistency between receipt of or application for Social Security disability benefits and status as a "qualified individual with a disability" under the ADA, there is no justification to presume that a benefit applicant or recipient is judicially estopped from asserting that she is "qualified" under the ADA. Indeed, the use of judicial estoppel to bar ADA actions would frustrate the purposes of both the ADA and the disability provisions of the Social Security Act. Social Security benefits and the ADA are not necessarily alternative remedies between which people with disabilities must choose. Rather, they are

complementary measures that provide financial support to people with physical or mental impairments who face practical barriers to work while at the same time encouraging and facilitating their efforts to move off the benefit rolls and to return to work.

Statements made in connection with a benefits application, where relevant, should be considered as evidence in a subsequent ADA action, but they should not trigger either a per se bar to the ADA suit or a heightened evidentiary burden on the plaintiff. General statements invoking the standard language of SSA benefit applications that the claimant is "unable to work" or "disabled" have little, if any, relevance to the issue of qualification in an ADA action, because the connotations of those terms under the Social Security Act are quite different from their meanings under the ADA. In certain cases, however, an applicant for disability benefits may make specific factual statements concerning her functional capacities. In some of those cases, there may be an inconsistency between those factual statements and her later statements in support of an ADA claim. In that case, the prior statements to the SSA may be relevant to the qualification issue in the ADA action and may lead to a determination that relief under the ADA is not available or should be limited.

ARGUMENT

I. NEITHER APPLICATION FOR NOR RECEIPT OF DISABILITY INSURANCE BENEFITS UNDER THE SOCIAL SECURITY ACT CREATES A REBUTTABLE PRESUMPTION THAT THE APPLICANT OR RECIPIENT IS JUDICIALLY ESTOPPED FROM ASSERTING THAT SHE IS A "QUALIFIED INDIVIDUAL WITH A DISABILITY" UNDER THE ADA

A person may have a medical condition that entitles her to disability benefits under the Social Security Act and also be a qualified individual with a disability under the ADA. The

court of appeals acknowledged that fact (Pet. App. 10a-11a) but considered it only "theoretically conceivable that under some limited and highly unusual set of circumstances the two claims would not necessarily be mutually exclusive" (*id.* at 8a-9a). The court therefore held that petitioner's application for and receipt of Social Security disability benefits created a rebuttable presumption that she was estopped from asserting that she is a qualified individual under the ADA and that petitioner failed to rebut that presumption. The court of appeals erred because the situation in which a person is both eligible for Social Security disability benefits and "qualified" under the ADA is neither theoretical nor unusual. Moreover, because "disability" and "inability to work" have substantially different meanings under the Social Security Act and under the ADA, petitioner's assertions to the SSA that she was "disabled" and "unable to work" within the meaning of the Social Security Act are in no way inconsistent with her ADA claim. The court of appeals mistakenly viewed Social Security disability benefits and the ADA as alternative remedies between which a disabled person must ordinarily choose, rather than complementary mechanisms that provide financial support for disabled people and facilitate their return to work.

A. A Claim For Social Security Disability Benefits Is Not Inconsistent With A Valid ADA Claim

The ADA was enacted in 1990 to eradicate widespread discrimination against individuals with disabilities and, among other things, to enable disabled people to move off government benefit rolls and to return to work. See 42 U.S.C. 12101; H.R. Rep. No. 485, 101st Cong., 2d Sess. Pt. 2, at 32-34 (1990) (1990 House Report). To that end, the ADA prohibits employers from discriminating against a "qualified individual with a disability" because of the disability. 42 U.S.C. 12112(a). A "qualified individual with a disability" is "an individual with a disability who, with or without rea-

sonable accommodation, can perform the essential functions" of his job. 42 U.S.C. 12111(8). Reasonable accommodations may include "job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations." 42 U.S.C. 12111(9)(B).

The disability provisions of the Social Security Act are designed to provide certain disabled individuals with benefits that, although not based on need, are intended to compensate them for lost income or to protect them from indigence. See, *e.g.*, H.R. Rep. No. 1189, 84th Cong., 1st Sess. 4-5 (1955) (1955 House Report); *Mathews* v. *Eldridge*, 424 U.S. 319, 340-341 & n.24 (1976). The Act provides that an insured individual has a "disability" and is entitled to benefits if he is unable to engage in "substantial gainful activity" because of a "physical or mental impairment" that is expected to result in death or that has lasted or can be expected to last for 12 months or more. 42 U.S.C. 423(a)(1)(D), 423(d)(1)(A). The impairment must be "of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C. 423(d)(2)(A).[1]

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[1] The citations and discussion in this brief relate to the Social Security Disability Insurance program (SSDI), authorized by Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*, the program for which petitioner applied and was found eligible. That program provides benefits to disabled workers, their dependents, and their widows or widowers for workers insured under the program. Title XVI of the Social Security Act authorizes the Supplemental Security Income program (SSI), 42 U.S.C. 1381 *et seq.*, which provides benefits to disabled individuals whose incomes and assets fall below a specified level. Although the eligibility criteria under the two programs differ in some respects (primarily in that SSI is need-based and SSDI is insurance-based), the basic statutory definitions of disability for adults under the two programs are the same. See *Bowen*

The SSA applies a five-step process to determine whether an adult claimant qualifies for benefits. See *Bowen* v. *Yuckert*, 482 U.S. 137, 140-142 (1987). First, the claimant must not be engaged in "substantial gainful activity." 20 C.F.R. 404.1520(b). Second, the claimant must have a medical impairment that is severe enough to limit significantly his ability to do basic work activities. 20 C.F.R. 404.1520(c), 404.1521. Third, if the impairment is the same as, or equivalent to, one of the impairments listed by the Secretary at 20 C.F.R. Part 404, Subpart P, Appendix 1, benefits are awarded without further inquiry into the claimant's actual ability to work. 20 C.F.R. 404.1520(d), 404.1525, 404.1526; see also *Yuckert*, 482 U.S. at 153; *Heckler* v. *Campbell*, 461 U.S. 458, 460 (1983). Fourth, if the claimant's impairment does not meet or equal one on the list, the claimant must be unable to perform his "*past relevant work*," see 20 C.F.R. 404.1520(e); and, fifth, he must be unable to perform other work that exists in significant numbers in the national economy, considering his age, education, and work experience, see 20 C.F.R. 404.1520(f), 404.1560(c).

Given the different but complementary statutory schemes, application for and receipt of Social Security disability benefits are often fully consistent with a valid ADA claim. First, a person is a "qualified individual with a disability" under the ADA if he could perform the essential functions of his job if his employer made reasonable accommodations, but he may nonetheless be eligible for Social Security disability benefits if his employer has not made those accommodations. Second, a person may qualify for disability benefits based on one of several presumptions adopted by the SSA about the effect of certain physical

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v. *Yuckert*, 482 U.S. 137, 140 (1987). Most of the reasoning in this brief applies equally to both programs, and under neither program should application for or receipt of benefits estop the applicant or recipient from suing under the ADA.

conditions and other characteristics on ability to work, but presumptions play no part in determining whether a person is "qualified" under the ADA. Third, in certain circumstances, a disability beneficiary may continue to receive benefits under the Social Security Act even though he is able to work. Finally, disability status may change over time, so that an individual may be able to work when he is terminated in violation of the ADA but become unable to work so that he later properly applies for and receives disability benefits.

1. As the EEOC has explained, the ADA's definition of the term "qualified individual with a disability" expressly requires consideration whether a person could perform the essential functions of his job *with reasonable accommodation*. See 42 U.S.C. 12111(8); 29 C.F.R. 1630.2(m); *EEOC: Benefits Applications and ADA Claims* (Feb. 12, 1997), *reprinted in* Bureau of Nat'l Affairs, Inc., *Americans with Disabilities Act Manual* (*EEOC Guidance*), No. 62, at 70:1255 (1997). In contrast, neither the Social Security Act nor its implementing regulations preclude award of disability benefits because the claimant could have performed his prior job if his employer had made reasonable accommodations or because he might be able to perform other jobs if other employers made such accommodations. See Memorandum from Daniel L. Skoler, Assoc. Comm'r for Hearings and Appeals, SSA, to Administrative Appeals Judges (June 2, 1993), *reprinted in* 2 *Social Security Practice Guide* (*SSA Guidance*), App. § 15C[9], at 15-401 to 15-402 (1997), cited in U.S. Amicus Br. at 8, in *Swanks* v. *Washington Metro. Area Transit Auth.*, No. 96-7078 (D.C. Cir.) (*Swanks* Br.), *reprinted at* Pet. App. 43a-44a.

The Social Security Act requires consideration of a claimant's ability to do "his previous work." 42 U.S.C. 423(d)(2)(A). It does not require consideration of his ability to perform his prior job with a possible ADA-mandated accommodation that the employer, in fact, never provided. See

SSA Guidance at 15-401. Similarly, the Act requires consideration whether a claimant is able to do other work that "exists" in the national economy. 42 U.S.C. 423(d)(2)(A). It does not require consideration whether he could do jobs as they might be modified by reasonable accommodations that the ADA might require but that employers have not actually made. See *SSA Guidance* at 15-401.

Thus, when the SSA, in step four of the sequential evaluation process, considers whether an individual can perform his "*past relevant work*," the SSA does not consider potential accommodations that the employer did not actually make. *SSA Guidance* at 15-401. Nor does the SSA speculate whether employers might be required by the ADA to make specific accommodations, when, at step five, the SSA determines whether the claimant could perform other work that exists in significant numbers in the national economy. *Id.* at 15-401 to 15-402.

That practice advances the Social Security Act's purposes to compensate disabled individuals for lost income and to protect them from indigence. If the SSA denied benefits to a disabled individual based on speculation that he would prevail in an ADA suit, he would be deprived of financial support for the lengthy period until the suit was resolved. Moreover, because the reasonable-accommodation inquiry is intensely fact specific, and the SSA has no special expertise in applying the ADA, the SSA's speculation might well prove incorrect, in which case the claimant would have been improperly denied benefits.[2] Finally, providing benefits to a disabled person who might be able to return to work if he prevailed in an ADA suit advances the common goal of the

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[2] In addition, speculation about a highly fact-specific issue on which the SSA has no special expertise would risk drawing the agency into long evidentiary disputes that would consume government resources and impair the efficiency of the disability program. Cf. *Schweiker* v. *Gray Panthers*, 453 U.S. 34, 48 (1981); *Weinberger* v. *Salfi*, 422 U.S. 749, 782-785 (1975); see also *Eldridge*, 424 U.S. at 347-348.

Social Security Act and the ADA to facilitate the return of people with disabilities to the work force, see pp. 14-15, *infra*, by providing vital financial support while the person pursues his remedy under the ADA.

Many ADA cases, including this one, turn on disputes over reasonable accommodations rather than whether the plaintiffs could work without any accommodations. Any such case is potentially one in which the employee is eligible for disability benefits under the Social Security Act but able to work with reasonable accommodation under the ADA.

2. Another significant difference between the two statutory schemes is that someone may qualify for disability benefits based on one of several generalized presumptions about his inability to work, but the determination whether someone is "qualified" under the ADA must always be an individualized one. See *Yuckert*, 482 U.S. at 153; *Campbell*, 461 U.S. at 460; *EEOC Guidance* at 70:1251, 70:1255. Because of the use by the SSA of generalized presumptions, a finding that a person is disabled for purposes of Social Security benefits does not mean that there is no job that he can perform. For example, at step three of the Social Security determination process, an individual with an impairment listed in the regulations (such as blindness) is conclusively presumed to be "disabled" and "unable to work" without any inquiry into his ability to do his past work or other work that exists in the national economy (and even though many people with that impairment may in fact be working). See 20 C.F.R. 404.1520(d), 404.1525, 404.1526; *Swanks* Br., Pet. App. 39a, 44a-45a; see also *Whitbeck* v. *Vital Signs, Inc.*, 116 F.3d 588, 591 (D.C. Cir. 1997). Similarly, at step five of the determination process, the SSA may award benefits to someone who can perform a broad range of jobs (involving sedentary, light, or even medium work), based on a presumption that his age, education, or lack of transferrable skills from past employment make it

unlikely that he could adjust to other work. See generally *Campbell*, 461 U.S. at 460-462.

The SSA relies to some extent on generalized presumptions in order to ensure uniformity and efficiency in determining eligibility for disability benefits. See *Yuckert*, 482 U.S. at 153; *Campbell*, 461 U.S. at 461, 468. Efficiency is important to the ability of the disability program to fulfill its mission. Disability benefits enable recipients to sustain themselves while they pursue other remedies that may be available, such as the right to require their employers to make reasonable accommodations under the ADA. Any delay in eligibility determinations thus risks material harm to applicants.

Efficiency is also vital given the volume of benefit applications processed by the SSA. As this Court has noted, the Social Security hearing system is probably the largest adjudicative agency in the world. See *Campbell*, 461 U.S. at 461 n.2. The SSA estimates that it received more than 2.5 million claims for disability benefits in 1997 and conducted nearly 700,000 reviews of the disability status of existing recipients. See Social Security Admin., *Disabled Workers Beneficiary Statistics* 2 (July 2, 1998); Social Security Admin., *Annual Report of the Supplemental Security Income Program* 25 (May 1998); Social Security Admin., *Annual Report of Continuing Disability Reviews* 4 (Aug. 1998). Thus, as this Court has repeatedly recognized, some reliance on general rules is essential. See *Yuckert*, 482 U.S. at 153; *Campbell*, 461 U.S. at 461, 468.

The Court has therefore upheld as reasonable the SSA's use of general rules at step five of the evaluation process when the SSA determines whether an applicant can perform other work that exists in significant numbers in the national economy. See *Campbell*, 461 U.S. at 467-468. The Court has also described favorably the SSA's rule under which an individual with an impairment listed in the regulations is presumed to be "disabled" and "unable to work" without any

inquiry into his actual ability to do his past work. See *Yuckert*, 482 U.S. at 153. And, Congress itself approved that practice when it crafted the current definition of disability in 1967. See S. Rep. No. 744, 90th Cong., 1st Sess. 49 (1967).

In contrast, the determination whether a person with a disability is "qualified" to sue under the ADA always "requires an individualized, case-by-case assessment of the specific abilities of the person, the specific requirements of the position that the person holds or desires, and the manner in which the person may be able or enabled to meet those requirements." *EEOC Guidance* at 70:1255. See also 29 C.F.R. 1630.2(o)(3) (accommodation process requires consideration of the "precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations"). The ADA was intended to substitute individualized assessment for stereotyped assumptions, see 42 U.S.C. 12101(a)(7), and, in the employment context, it requires a detailed evaluation of an individual's ability to work with reasonable accomodations and an employer's ability to make those accommodations. Those evaluations are time consuming and are inconsistent with the more streamlined decision-making necessary for the efficient administration of the Social Security Act.

3. A third reason that "qualified" status under the ADA is not inconsistent with receipt of Social Security disability benefits is that the Social Security Act allows disability insurance benefit recipients a trial work period of up to nine months during which they can continue to receive full benefits while they also work. See 42 U.S.C. 422(c), 423(e)(1); 20 C.F.R. 404.1592; *Overton* v. *Reilly*, 977 F.2d 1190, 1192 (7th Cir. 1992). Individuals can also remain entitled to benefits for a further period of time in any month during the period in which their earnings fall below a specified level. See 20 C.F.R. 404.1592a. Those work incentives reflect the Social Security Act's purpose to encourage individuals with disabilities to work whenever possible, see 42 U.S.C. 422(a);

1955 House Report, *supra*, at 5; Statement by the President upon Signing the Social Security Amendments of 1956, Pub. Papers ¶ 158, at 639 (Aug. 1, 1956), and demonstrate that Congress recognized that persons who legitimately apply for and receive Social Security disability benefits may nonetheless be or become able to work.

In that respect, the Social Security Act works in tandem with the pro-work policies of the ADA. In enacting the ADA, Congress assumed that many individuals on the disability benefit rolls could, with assistance or accommodation, obtain employment. See 1990 House Report, *supra*, at 32-34. Congress envisioned the reasonable-accommodation requirement, in particular, as a device for alleviating the "staggering levels of unemployment and poverty" among the approximately "8.2 million people with disabilities [who] want to work but cannot find a job," the majority of whom are dependent upon "insurance payments or government benefits for support." *Id.* at 32, 33.

Congress thus did not intend to limit the protections of the ADA to those individuals who fall outside the eligibility standards for disability benefits under the Social Security Act. Nor did it intend that the ADA would disqualify from the benefit rolls disabled individuals who might be capable of performing their prior work with reasonable accommodations that had not been provided. To the contrary, Congress enacted the ADA with the very goal of maximizing the employment opportunities of individuals actually receiving disability benefits. 1990 House Report, *supra*, at 32-34. There is thus nothing either contradictory or inappropriate in a disability beneficiary's use of the ADA to break down the barriers to employment imposed by disability-based discrimination. In fact, because many recipients of disability benefits could work only if reasonable accommodations were made, their only route from reliance on benefits to financial independence is through the ADA's protections.

4. The work incentive provisions in the Social Security Act reflect not only the congressional goal of facilitating the return of people with disabilities to the work force but also the fact that disability status may change over time. That fact provides a final reason why claims under the two Acts may be fully consistent.

Under the ADA, the "determination of whether an individual with a disability is qualified is to be made at the time of the employment decision." *Interpretive Guidance on Title I of the Americans with Disabilities Act*, 29 C.F.R. Pt. 1630 App. at 351. An individual may apply for disability benefits, however, a significant period of time after the individual has been discharged. The individual may not be able to work at that time even though she could have performed her job at the time she was terminated. It is not unusual for an individual with a disability to be capable of performing a job, with or without accommodations, only to have her condition worsen over time to the point that she can no longer work. See *EEOC Guidance* at 70:1264-70:1265; see also *D'Aprile* v. *Fleet Servs. Corp.*, 92 F.3d 1, 4 (1st Cir. 1996) (receipt of private disability benefits not inconsistent with state law discrimination claim because disability worsened after, and as a result of, adverse employment action). Conversely, an individual may apply for benefits because of a disability that prevents her from working but may gradually recover so that, at a certain point, she is again capable of working, perhaps with accommodations.

5. Because of the differences described above, neither the application for and receipt of disability benefits nor the applicant's assertion of "disability" and "inability to work" within the meaning of the Social Security Act is factually inconsistent with a claim that the person is a "qualified individual with a disability" under the ADA. Those words are terms of art under the respective statutes. Thus, when SSA forms (often generated by the agency's computerized application system) use standard language asserting that the ap-

plicant is "unable to work" and "disabled," see, *e.g.*, *Mohamed* v. *Marriott Int'l, Inc.*, 944 F. Supp. 277, 279 (S.D.N.Y. 1996); *Griffith* v. *Wal-Mart Stores, Inc.*, 930 F. Supp. 1167, 1168-1169 (E.D. Ky. 1996), rev'd on other grounds, 135 F.3d 376 (6th Cir. 1998), petition for cert. pending, No. 97-1991, those standardized assertions incorporate the meaning of the terms they use under the Social Security Act and its implementing regulations.[3] The forms do not ask whether the applicant can perform the essential functions of her prior job with reasonable accommodations, *i.e.*, whether she is a "qualified individual" under the ADA. And the forms do not suggest that a claimant may qualify the statements attesting to her disability and inability to work by noting that she would be able to work if she were provided reasonable accommodations. Therefore, when petitioner filed a claim for disability benefits under the Social Security Act, she was not making any representation about her status as a "qualified individual" under the ADA, and the court of appeals erred in suggesting that she should have qualified her statements attesting her disability and inability to work. See Pet. App. 12a & n.19.[4]

Neither respondent nor the court of appeals disputes the interpretations of the ADA and the Social Security Act set forth above, see Pet. App. 10a-11a; Br. in Opp. 18-19, nor is

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[3] Indeed, some of SSA's standardized forms were revised after petitioner submitted her application and requests for reconsideration and now explicitly state that the terms they use have the meaning given those terms in the Social Security Act.

[4] To the contrary, SSA regulations state that, if a person "*believe[s]*" that she "*may* be entitled to benefits," she "should file an application," 20 C.F.R. 404.603 (emphasis added), on forms prescribed by the SSA. 20 C.F.R. 404.610(a), 404.611(a). Thus, someone who files a benefits application with the SSA and invokes the standardized claims that she is "disabled" and "unable to work" is, in essence, simply requesting that the SSA apply its technical and specialized rules to determine if she is entitled to disability benefits.

there any basis to do so. If there were any question of the validity of the interpretations, which there is not, this Court should defer to the agencies charged with administering the statutes. The SSA's interpretation of the Social Security Act is entitled to great deference. See *Yuckert*, 482 U.S. at 145; *Campbell*, 461 U.S. at 466. The EEOC's interpretation of Title I of the ADA is entitled to comparable deference because the EEOC has been directed by Congress to issue regulations to implement the statute, 42 U.S.C. 12116, and has responsibility to enforce it in court with respect to private employers, 42 U.S.C. 12117(a). See *Bragdon* v. *Abbott*, 118 S.Ct. 2196, 2209 (1998) (Justice Department's interpretation of ADA Title III receives deference under *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), because of Department's regulatory and enforcement responsibility for that Title). Cf. *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 257-258 (1991) (declining to accord deference to EEOC's Guideline on extraterritorial application of Title VII because EEOC lacks regulatory authority over Title VII). In any event, the EEOC's interpretation of the requirements of the ADA is a "well-reasoned view[] of the agenc[y] implementing [the] statute" to which the Court "may properly resort for guidance." *Bragdon*, 118 S.Ct. at 2207 (quoting *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 139-140 (1944)). Finally, because there is no dispute that those interpretations did in fact govern the application and award of benefits in this case and petitioner's claim for relief under the ADA, there is no support for the suggestion that petitioner has taken inconsistent positions by making claims under both statutes.

B. The Court Of Appeals Erred In Adopting A Rebuttable Presumption That An Applicant For Or Recipient Of Social Security Disability Benefits Is Judicially Estopped From Asserting That She Is A "Qualified Individual With A Disability"

1. Because there is no inconsistency between the receipt of or application for Social Security benefits and status as a "qualified individual" under the ADA, the court of appeals erred in presuming that a benefit applicant or recipient is judicially estopped from asserting that she is qualified under the ADA. Judicial estoppel is an equitable doctrine, accepted by some jurisdictions, that seeks to protect the integrity of the judicial process by barring a party from asserting in a legal proceeding a position contrary to a position that the party took in the same or an earlier proceeding. See Pet. App. 8a; see generally C. Wright et al., *Federal Practice and Procedure* § 4477 (1981 & Supp. 1998); *Konstantinidis* v. *Chen*, 626 F.2d 933, 937-938 (D.C. Cir. 1980). Judicial estoppel is properly invoked only when a litigant seeks to advance a position that conflicts with a prior position. See Wright, *supra*, § 4477, at 782-784.[5]

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[5] The doctrine of judicial estoppel has not been universally applied even when there are specific contradictory statements under oath. Although this Court has recognized the related doctrine of equitable estoppel (which requires that the party that seeks the benefit of estoppel have actually relied on the prior inconsistent position), see *Davis* v. *Wakelee*, 156 U.S. 680, 689-691 (1895), the Court has not passed on the propriety of judicial estoppel. Two courts of appeals do not recognize the doctrine at all and instead treat prior inconsistent statements as relevant, but not preclusive, in a subsequent judicial action. See *UMWA 1974 Pension* v. *Pittston Co.*, 984 F.2d 469, 477-478 (D.C. Cir.), cert. denied, 509 U.S. 924 (1993); *United States* v. *49.01 Acres of Land, More or Less*, 802 F.2d 387, 390 (10th Cir. 1986). Other courts have limited the doctrine to cases in which prior inconsistent statements were made in judicial proceedings. See, *e.g.*, *Smith* v. *Travelers Ins. Co.*, 438 F.2d 373, 377 (6th Cir.), cert. denied, 404 U.S. 832 (1971). Still other courts apply estoppel

Presumptions, in turn, are appropriate when proof of a particular fact renders the existence of another fact sufficiently "probable" to make it "sensible and timesaving to assume the truth of [that other fact] until the adversary disproves it." 2 *McCormick on Evidence* § 343, at 454-455 (J. Strong ed., 4th ed. 1992). See, *e.g.*, *Furnco Constr. Corp.* v. *Waters*, 438 U.S. 567, 577 (1978) (presumption created by prima facie Title VII case is appropriate because those facts, if unexplained, suggest "it is more likely than not" that the employer's acts were discriminatory); *Manning* v. *Insurance Co.*, 100 U.S. 693, 698 (1879) ("presumed fact must have an immediate connection with or relation to the established fact from which it is inferred"); *Insurance Co.* v. *Weide*, 78 U.S. (11 Wall.) 438, 441-442 (1870) ("A presumption is an inference as to the existence of a fact not actually known, arising from its usual connection with another which is known.").

Here, there is no empirical basis for concluding that the fact that an individual has applied for or received Social Security disability benefits means that it is probable, likely, or usual that the disability and ADA claims are in conflict. As discussed above, the two claims are reconcilable in a variety of ways: because as in this case, the ADA claim turns on the issue of reasonable accommodation; or because disability payments were awarded based on regulatory presumptions; or because the claimant was receiving benefits under one of the Social Security Act's work incentive provisions; or because the claimant's disability status has changed. The two Acts serve persons with mental or physical impairments in complementary ways, and there is no conflict between claims under both statutes.

2. More fundamentally, "[c]ourts do not, of course, have free rein to impose rules of preclusion, as a matter of policy,

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only if the prior inconsistent position was actually accepted by the court. See, *e.g.*, *Lowery* v. *Stovall*, 92 F.3d 219, 224 (4th Cir. 1996), cert. denied, 519 U.S. 1113 (1997).

when the interpretation of a statute is at hand." *Astoria Fed. Sav. & Loan Ass'n* v. *Solomino,* 501 U.S. 104, 108 (1991). The use of judicial estoppel to bar an action under the ADA is inconsistent with the statutory scheme and would frustrate the purposes of both the ADA and the Social Security Act. Like many other anti-discrimination statutes, the ADA relies in large part on private suits to vindicate the statute's anti-discrimination goal. See 42 U.S.C. 12117(a) (incorporating Title VII's remedial scheme); *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 45 (1974). Litigation under the ADA promotes the public interest of "forcing employers to consider and examine their motivations, and of penalizing them for employment decisions that spring from * * * discrimination." *McKennon* v. *Nashville Banner Publ'g Co.*, 513 U.S. 352, 362 (1995). Thus, the objectives of the ADA are furthered whenever "a single employee establishes that an employer has discriminated against him or her." *Id.* at 358. "The disclosure through litigation of incidents or practices which violate national policies respecting nondiscrimination in the work force is itself important, for the occurrence of violations may disclose patterns of noncompliance resulting from misappreciation of the Act's operation or entrenched resistance to its command, either of which can be of industry-wide significance." *Id.* at 358-359.

As this Court has recognized, application of equitable bar doctrines is therefore inappropriate "where a private suit serves important public purposes." See *McKennon*, 513 U.S. at 360 (quoting *Perma Life Mufflers, Inc.* v. *International Parts Corp.*, 392 U.S. 134, 138 (1968)). Cf. *Oubre* v. *Entergy Operations, Inc.*, 118 S.Ct. 838, 841-842 (1998) (rejecting equitable estoppel and ratification defenses to ADEA claim because they would "frustrate the statute's practical operation as well as its formal command"). See also *In re Morristown & Erie R.R.*, 677 F.2d 360, 368 n.10 (3d Cir. 1982) (judicial estoppel is not applied when the plaintiff's suit "implicates not only the relevant interests of the litigating parties,

but also the public's interest in promoting the policies underlying the statute"). In those circumstances, "broad interests of public policy" "make it important to allow a change of positions that might seem inappropriate as a matter of merely private interests." Wright, *supra*, § 4477, at 784.

Application of judicial estoppel would also frustrate the common purpose of the ADA and the Social Security Act to enable persons with disabilities to move off the benefit rolls and to return to work. Individuals with potentially meritorious ADA claims frequently apply for disability benefits in order to support themselves following their discharge from employment. They apply for (and often properly receive) benefits because they face real-world barriers to employment, even though they could work with reasonable accommodations. They are therefore qualified individuals with disabilities under the ADA. If they are able to bring ADA actions, they may ultimately return to work, as Congress envisioned. The application of judicial estoppel improperly bars them from maintaining actions under the ADA and thus increases the likelihood that they will remain on the benefit rolls.

Finally, application of judicial estoppel ignores the practical difficulties of requiring an individual who has stopped working because of health problems to choose between seeking disability benefits and pursuing a remedy under the ADA. It is often uncertain whether such a person ultimately will be determined to be disabled and thus entitled to benefits under the Social Security Act and at least equally uncertain whether he could obtain relief under the ADA. Resolution of those issues can be a lengthy process. Given the uncertainties and delays, a rule that application for Social Security benefits precludes ADA relief would place that individual in what several courts have described as an "untenable" position. See *Swanks* v. *Washington Metro. Area Transit Auth.*, 116 F.3d 582, 586 (D.C. Cir. 1997);

Mohamed, 944 F. Supp. at 284. That result is not justified by the language of either the two statutes or their implementing regulations and would undermine the purposes of both statutes. See pp. 7-22, *supra*.

3. Both the SSA and the EEOC have therefore concluded that application for or receipt of Social Security disability benefits should not estop the applicant or recipient from bringing an ADA claim. See *EEOC Guidance* at 70:1251-70:1252, 70:1254-70:1257; *SSA Guidance* at 15-400 to 15-402. Those well-reasoned views, coming from the agencies responsible for administering the statutes at issue, are entitled to deference. See p. 18, *supra*.

The majority of the courts of appeals have likewise rejected both the presumptive and the automatic application of judicial estoppel based on application for or receipt of disability benefits. See, *e.g.*, *Rascon* v. *US West Communications, Inc.*, 143 F.3d 1324, 1330-1332 (10th Cir. 1998); *Johnson* v. *Oregon*, 141 F.3d 1361, 1366-1371 (9th Cir. 1998); *Moore* v. *Payless Shoe Source, Inc.*, 139 F.3d 1210, 1212 (8th Cir. 1998), petition for cert. pending, No. 98-5286; *Griffith*, 135 F.3d at 380-383; *Talavera* v. *School Bd.*, 129 F.3d 1214, 1217-1220 (11th Cir. 1997); *Weigel* v. *Target Stores*, 122 F.3d 461, 465-468 (7th Cir. 1997); *Swanks*, 116 F.3d at 584-587. Those courts have recognized that, primarily because of the different legal standards involved, claims for disability benefits under the Social Security Act are not "conclusive as to the ADA [qualification] issue." *E.g.*, *Weigel*, 122 F.3d at 468.[6]

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[6] Although those courts agree that the doctrine of judicial estoppel should not automatically or presumptively apply in the present context, they have taken different views of the evidentiary weight to be accorded a prior claim for disability benefits. Compare, *e.g.*, *Griffith*, 135 F.3d at 383 (statements made in support of a benefit claim should be analyzed "under traditional summary judgment principles" as possibly relevant evidence bearing on the ADA qualification issue) with *Moore*, 139 F.3d at 1213 (ADA plaintiff must produce "strong countervailing evidence" to over-

II. THE WEIGHT, IF ANY, TO BE GIVEN TO STATEMENTS MADE IN CONNECTION WITH THE APPLICATION FOR OR RECEIPT OF DISABILITY INSURANCE BENEFITS DEPENDS UPON THE NATURE OF THE STATEMENTS

In the absence of estoppel, a court entertaining an ADA claim is free to give statements that the ADA claimant made in connection with an application for Social Security disability benefits the evidentiary weight that the statements deserve. Although, for the reasons set forth above, those statements will seldom be dispositive of the ADA claim, where relevant, they should be considered as evidence in the ADA action.

A. General Statements Made In Support Of A Claim For Disability Benefits Have Little Relevance To A Claim Of Discrimination Under The ADA

Primarily because of the different legal standards applied under the two statutes, general statements made in support of a claim for disability benefits have little, if any, relevance to a discrimination claim under the ADA. In assessing the weight to be given statements on a disability benefit application, one must consider the context in which those statements were made. As one court of appeals has noted, terms such as "'totally disabled,' 'wholly unable to work,' or some other variant to the same effect" are terms of art, deriving their meaning from a particular statutory context. *Weigel*, 122 F.3d at 467-468. The fact that an individual states that he or she is "disabled" or "unable to work" within the mean-

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come prior sworn statements of a disability); see also *Johnson*, 141 F.3d at 1369 (leaving open the possibility that estoppel might apply in some cases but stating that, "in most cases," "'[s]traightforward summary judgment analysis, rather than theories of estoppel' will be appropriate") (quoting *Griffith*, 135 F.3d at 382-383)); *Krouse* v. *American Sterilizer Co.*, 126 F.3d 494, 502-503 & nn.3-5 (3d Cir. 1997) (suggesting that estoppel might apply when there are unconditional assertions of an inability to work).

ing of the legal standards applied by the SSA does not preclude the possibility that the individual is a "qualified individual" under the ADA. It simply means that the individual believes that he or she may meet the eligibility standards for disability benefits, as those standards are applied by the SSA. See pp. 16-17 & n.4, *supra*. The mere certification of eligibility for disability benefits, using the vernacular of the SSA, thus has little bearing on the ADA qualification issue.[7]

This case illustrates the point. In applying for Social Security disability benefits, petitioner made representations on a computerized application generated by the SSA, using the terminology supplied by the SSA. She claimed that she was "unable to work" but only in the narrow context of the legal standards applied by the SSA. Petitioner never claimed that she was unable to perform her prior job with reasonable accommodation. Petitioner, in fact, said nothing in her application that was incompatible with her claim that she was a "qualified individual" under the ADA. Petitioner's application represents the prototypical case of a general claim for disability benefits that is marginally relevant, if at all, to the issue of qualification in an ADA action. Yet, in holding that petitioner was estopped from asserting that she was "qualified" under the ADA, the court of appeals focused exclu-

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[7] The Social Security Act is not the only disability benefit program. Many private insurance plans and state disability insurance programs (such as workers' compensation) award benefits upon similar findings of "disability" or "inability to work" within the meaning of the legal standards applied under those plans or programs. The EEOC has carefully studied the legal standards used in the private insurance and workers' compensation contexts and has concluded that most of those plans and programs do not "distinguish between marginal and essential functions and do not consider whether an individual can work with reasonable accommodation." *EEOC Guidance* at 70:1257-70:1258. Statements made in support of a claim for disability benefits in those other contexts are ordinarily entitled to no more weight in an ADA action than assertions made in support of a claim for disability benefits under the Social Security Act.

sively on petitioner's use of standardized language contained in SSA's forms that asserted her disability and inability to work, without even considering what that language means in the context of the Social Security disability program. See Pet. App. 12a.

The fact that the SSA awarded benefits to petitioner does not change the analysis. As described above, the SSA relies upon a complex five-step process to determine eligibility for disability benefits. The legal standards applied under that process are not tailored to the ADA's qualification standards. See pp. 7-15, *supra*. Standing alone, an award of disability benefits under the Social Security Act means one thing only—that the applicant is disabled within the meaning of the legal standards applied under the Social Security Act.[8]

The Eighth Circuit has erroneously suggested that an ADA plaintiff who has applied for or received disability benefits must produce "strong countervailing evidence" to withstand summary judgment on the qualification issue. See *Moore*, 139 F.3d at 1213. As we explain below, in some circumstances, statements made in a disability benefit application may well have relevance to an ADA claim. In no case, however, should the mere application for or receipt of disability benefits or a conclusory statement that one is "disabled" or "unable to work" (under SSA's legal scheme) re-

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[8] This Court has held that administrative findings (unreviewed by a court) "enjoy no preclusive effect in subsequent judicial litigation" under either Title VII of the Civil Rights Act of 1964 or the Age Discrimination in Employment Act of 1967. *Astoria Fed. Sav. & Loan Ass'n*, 501 U.S. at 113; accord *University of Tenn.* v. *Elliott*, 478 U.S. 788, 794-796 (1986). Those holdings logically extend to Title I of the ADA, which incorporates Title VII's enforcement procedures. See 42 U.S.C. 12117(a). Thus, even if the legal standards under the two Acts were the same, findings made in an SSA proceeding in support of an award of disability benefits would not be binding in a subsequent ADA action. The findings might, however, be relevant evidence in the subsequent action. See *Astoria Fed. Sav. & Loan Ass'n*, 501 U.S. at 114; *Chandler* v. *Roudebush*, 425 U.S. 840, 863 n.39 (1976).

quire the plaintiff to meet a heightened evidentiary burden in order to survive summary judgment. When, under normal summary judgment standards, there is competent evidence to support a finding that an individual "with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires," 42 U.S.C. 12111(8), the individual should be permitted to pursue her ADA claim, notwithstanding a prior claim for disability insurance benefits. Any other standard would threaten to interpose, under the guise of an evidentiary standard, the equivalent of the estoppel doctrine applied by the court of appeals in this case. The result would be an effective bar to many ADA actions, leaving significant numbers of disabled individuals without the legal recourse for disability discrimination to which they are entitled under the ADA.[9]

B. Specific Factual Assertions Made Or Evidence Offered In Support Of An Application For Disability Benefits Is Relevant To An ADA Action If Those Representations Are Inconsistent With Specific Factual Assertions Made In Support Of The ADA Claim

Although a general claim of disability status under the Social Security Act has little relevance to a subsequent ADA claim, in some cases, the applicant for disability benefits will have made specific factual assertions or offered specific evidence concerning her functional capacities. In those

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[9] Approximately 7.8 million adults received disability benefits under the Social Security Act as of the end of 1997. Memorandum from Peter Wheeler, Assoc. Comm'r for Research, Education, and Statistics, SSA, to Jane Ross, Deputy Comm'r for Policy, SSA, 2 (June 3, 1998). That number accounts for nearly 25% of the approximately 32 million working-age people with a disability in the United States. See S. Stoddard et al., U.S. Dep't of Educ., *Chartbook on Work and Disability in the United States* 4 (InfoUse 1998).

cases, the assertions or evidence may be relevant to the individual's ability to perform the essential functions of a particular job and thus to the individual's claim under the ADA.

The relevance of those assertions or evidence depends upon the circumstances. One critical circumstance is timing. Because disability status may change over time, as explained above, see p. 16, *supra,* an applicant's representations about her functional capacities at the time she applies for benefits may not be probative of her functional capacities at the time of the challenged employment decision, which is the critical time for assessing her qualification to sue under the ADA. In addition, an applicant's representations about her functional capacities may not have addressed how those functional capacities might be expanded if an employer provided reasonable accommodations.

Specific factual representations in connection with a benefits application that are indeed inconsistent with later assertions in support of an ADA claim (representations which are not present in this case) would be relevant evidence in the ADA action. They might be used to impeach the claimant and thus make it difficult for her to prevail on her ADA claim. Whether she prevails, however, should depend on whether the statements made in support of the ADA claim are determined to be true or false, not on the invocation of a legal bar against even taking the assertedly inconsistent positions. See pp. 20-23, *supra* (explaining why judicial estoppel is never appropriate in an ADA suit).

If the plaintiff prevails in the ADA action in part because she disclaims the truth of prior statements or evidence on which the SSA relied to award benefits, that fact may be taken into account at the relief stage of the case. For example, amounts received as disability benefits might be offset against any monetary relief obtained under the ADA. Alternatively, the SSA could seek to terminate the benefits and to recoup any overpayments, see 42 U.S.C. 405(u); 20

C.F.R. 404.988(c), so that neither the employee nor the discriminating employer would reap a windfall from misstatements to the SSA.[10] Those options would avoid a double recovery but permit the ADA action to go forward. Cf. *McKennon*, 513 U.S. at 360-362 (after-acquired evidence of misconduct on the plaintiff's part, although not a bar to the plaintiff's age discrimination suit, can limit the relief awarded in that suit).

In its opinion in this case, the Fifth Circuit correctly remarked that the law has an interest in protecting "the integrity of the judicial process." Pet. App. 8a & n.10. The integrity of the process can be preserved, however, without resort to preclusion doctrines that undermine the objectives of the ADA and the Social Security Act. See *Johnson*, 141 F.3d at 1369.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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DECEMBER 1998

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[10] It should be noted, however, that there can be practical difficulties in recovering overpayments when the person who received them is no longer receiving benefits.