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Supreme Court Watch

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By Reginald C. Oh

In *General Dynamics Land Systems, Inc. v. Cline,* 124 S. Ct. 1236 (2004), the U.S. Supreme Court settled a circuit court conflict over the viability of "reverse age discriminations" claim under the Age Discrimination in Employment Act (ADEA). The Court, in a 6–3 decision, held that statutorily protected workers over the age of forty may not bring an ADEA claim alleging that their employer discriminated against them in favor of older employees.

In *Cline,* employees between the ages of forty and forty-nine sued their employer, General Dynamics, alleging that a 1997 collective bargaining agreement violated the ADEA. The ADEA makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." 29 U.S.C. § 623(a)(1). However, only workers who are at least forty years old are permitted to bring a cause of action under the ADEA. 29 U.S.C. § 631(a).

Under the collective bargaining agreement, General Dynamics eliminated its previous obligation to provide full health care benefits to employees upon retirement. General Dynamics, however, agreed to continue to provide full health care benefits upon retirement to current employees who were at least fifty years of age on July 1, 1997. The plaintiffs in *Cline* were alleging that General Dynamics committed age discrimination by providing health insurance to employees over fifty years of age while denying health insurance to employees between the ages of forty and forty-nine.

The question presented in *Cline* is whether the claim of age discrimination by members of the protected class because of their relative youth is cognizable under the ADEA. If the *Cline* plaintiffs had brought a traditional ADEA claim, they would have alleged that their employer somehow discriminated against them, employees over forty, in favor of employees younger than forty. In *Cline,* however, these same workers between the ages of forty to forty-nine were alleging age discrimination in being denied health care benefits upon retirement, not because of their relative *old age,* but because of their *relative youth* in comparison to workers over the age of fifty. In both a traditional age discrimination situation and in a reverse age discrimination situation, the same protected class, workers between the ages of forty and forty-nine, is alleging that age was used as the basis for an adverse employment decision.

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To decide the "reverse age discrimination" issue requires an inquiry into the central purpose of the ADEA. Was the ADEA meant to prohibit discrimination against the old in favor of the young, or was the ADEA meant to protect against any discrimination on the basis of age, as long as the class or person alleging discrimination is at least forty years old?

In *Cline,* the federal district court dismissed the lawsuit, ruling that the ADEA does not recognize a claim for "reverse age discrimination," a claim in which younger employees allege that they were discriminated against in favor of older employees. A divided panel of the Sixth Circuit reversed the district court ruling, holding that the plain meaning of the ADEA prohibits age discrimination regardless of whether it is discrimination against the younger in favor of the older, or discrimination against the older in favor of the younger. The Sixth Circuit's decision was contrary to the decisions in other circuits, which held that reverse age discrimination was not cognizable under the ADEA.

The Court granted certiorari and reversed the Sixth Circuit decision. The Court, in a majority decision written by Justice Souter, held that the "reverse age discrimination claims" are not cognizable based upon the language of the ADEA, because the "text, structure, purpose, and history of the ADEA" shows that the statute "does not mean to stop an employer from favoring an older worker over a younger one." 124 S. Ct. at 1248–49. The Court reasoned that when the ADEA prohibits discrimination because of an individual's "age," the use of the term "age" in the ADEA means the commonly understood, narrow sense of "*old age,*" rather than the broader definition of age as marking the length of a person's life. In other words, the Court held that under the ADEA, the statute effectively prohibits an employer from discriminating against an employee on account of his or her *old age,* rather than prohibiting employers from discriminating on the basis of age generally.

The Court justified its narrow statutory construction of the term "age" on several grounds. First, the Court concluded that upon review of the legislative history surrounding the enactment of the ADEA, the core concern of Congress in enacting the statute was to protect "a relatively old worker from discrimination that works to the advantage of the relatively young." 124 S. Ct. at 1243.

Second, the Court supported its statutory analysis by emphasizing that the statute restricts the protected class that may bring suit under the ADEA to those forty years old and older. The Court reasoned, "If Congress had been worrying

about protecting the younger against the older, it would not likely have ignored everyone under 40." *Id.*

Third, the Court rejected the argument made by dissenting Justice Clarence Thomas that the term "age" must be treated in the same way that the terms "race" and "sex" are treated for Title VII purposes. Title VII prohibits discrimination in employment on the basis of race and sex. While the original purpose of Title VII was to protect racial minorities and women, Title VII's language has been expanded to include all racial discrimination claims, whether made by whites or racial minorities, and it has been expanded to include all sex discrimination claims, whether made by men or women. Similarly, Justice Thomas contended that the term "age" should be understood to prohibit all age discrimination, whether the discrimination is against the relatively young or the relatively old.

In rejecting the dissent's analysis, the Court used a linguistic move to conclude that the term age should not be treated in the same way that the terms race and sex are employed for Title VII purposes. The Court reasoned:

> "Race" and "sex" are general terms that in every day usage require modifiers to indicate any relatively narrow application. We do not commonly understand "race" to refer only to the black race, or "sex" to refer only to the female. But the prohibition of age discrimination is readily read more narrowly than analogous provisions dealing with race and sex.

Id. at 1247. In other words, the Court reasoned that statutory interpretation should be influenced by the common usage of terms in everyday usage.

Whether the result in *Cline* makes sense from a policy standpoint, the *Cline* Court's reasoning is flawed. A strong argument can be made that the central purpose of the ADEA was not *only* to protect relatively older workers from discrimination in favor of relatively younger workers. Rather, an argument can be made that the central purpose of the ADEA was to protect the class of *older workers,* regardless of whether these workers above the age of forty are being adversely treated based on their relatively youth or based on their relative agedness. In other words, even accepting the Court's interpretation of "age" for ADEA purposes to mean "old age," that interpretation still supports permitting the workers in *Cline* to make a cognizable reverse age discrimination claim.

To understand the last point more clearly, a hypothetical is in order. Imagine that an employer decided to provide full health care benefits upon retirement only to workers over the age of eighty. An employee aged seventy-nine wants to sue under the ADEA and allege age discrimination. This admittedly unlikely scenario presents the same issue of "reverse age discrimination" raised in *Cline.* Under the *Cline* Court's reasoning, however, the seventy-nine year old would not have a cognizable ADEA claim, because he or she is claiming discrimination on the basis of his or her relative youth in comparison to relatively older eighty year old employees.

A strong argument can be made that the hypothetical reverse discrimination claim alleged by a seventy-nine year old worker presents a fairly compelling case of age discrimination that ought to be prohibited by the ADEA. It should be irrelevant that the seventy-nine year old is being disfavored in comparison to workers even older than him or her, because the bottom line is, a statutorily defined elderly worker is being treated adversely on account of his age. In other words, it could be argued that the class of forty to forty-nine year olds in *Cline* is in actuality still alleging discrimination based on "*old age*" as defined by the ADEA.

Ultimately, even if the Court's statutory reasoning lay on untenable grounds, its restriction of the scope of the ADEA implicitly acknowledges that the ADEA has strayed very far off course from its original purposes. As Professor Samuel Issacharoff argues, contrary to original beliefs, the phenomenon of aging in the workplace does not fit in neatly with the anti-discrimination paradigm associated with constitutional and statutory prohibitions against invidious racism and sexism. *See* Samuel Issacharoff & Erica Worth Harris, *Is Age Discrimination Really Age Discrimination? The ADEA's Unnatural Solution,* 72 N.Y.U. L. REV. 780 (1997). Discrimination against elderly workers reflects costs rather than animus or prejudice for the simple reason that older workers tend to be more expensive workers. Thus, Professor Issacharoff challenges the use of an anti-discrimination framework to deal with age-related issues involving economics and not animus or prejudice. "If the source of risk to older workers is economics . . . a real question emerges as to why this problem should be folded into the antidiscrimination rubric." *Id.* at 800. Accordingly, in *Cline,* the denial of health benefits to workers under fifty years old probably does not reflect hostility to "younger-older" workers but instead, it likely reflects the employer's attempt to draw an admittedly arbitrary line to save costs.

The Court's decision to reject "reverse age discrimination" claims under the ADEA, then, does not reflect a straightforward application of techniques of statutory construction and interpretation. Instead, it may reflect the Court's notion that the discrimination that occurred in *Cline* reflects the realities and legitimacy of economic-based age discrimination engaged by employers, age-based employment practices that are increasingly denying benefits to "younger-older" workers. Such practices include Early Retirement Incentive Plans provided for employees only over a certain age. The complexities raised by the problem of reverse age discrimination should spark Congress to consider amending the ADEA to reflect the economic realities behind age-based decision-making in the employment context.