SUPREME COURT OF THE UNITED STATES

No. 02–1080

GENERAL DYNAMICS LAND SYSTEMS, INC., PETITIONER *v.* DENNIS CLINE ET AL.

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

[February 24, 2004]

JUSTICE THOMAS, with whom JUSTICE KENNEDY joins, dissenting.

This should have been an easy case. The plain language of 29 U. S. C. §623(a)(1) mandates a particular outcome: that the respondents are able to sue for discrimination against them in favor of older workers. The agency charged with enforcing the statute has adopted a regulation and issued an opinion as an adjudicator, both of which adopt this natural interpretation of the provision. And the only portion of legislative history relevant to the question before us is consistent with this outcome. Despite the fact that these traditional tools of statutory interpretation lead inexorably to the conclusion that respondents can state a claim for discrimination against the relatively young, the Court, apparently disappointed by this result, today adopts a different interpretation. In doing so, the Court, of necessity, creates a new tool of statutory interpretation, and then proceeds to give this newly created "social history" analysis dispositive weight. Because I cannot agree with the Court's new approach to interpreting anti-discrimination statutes, I respectfully dissent.

I

"The starting point for [the] interpretation of a statute is always its language," *Community for Creative Non-Violence*

v. *Reid,* 490 U. S. 730, 739 (1989), and "courts must presume that a legislature says in a statute what it means and means in a statute what it says there," *Connecticut Nat. Bank* v. *Germain,* 503 U. S. 249, 253–254 (1992). Thus, rather than looking through the historical background of the Age Discrimination in Employment Act of 1967 (ADEA), I would instead start with the text of §623(a)(1) itself, and if "the words of [the] statute are unambiguous," my "judicial inquiry [would be] complete." *Id.*, at 254 (internal quotation marks omitted).

The plain language of the ADEA clearly allows for suits brought by the relatively young when discriminated against in favor of the relatively old. The phrase "discriminate . . . because of such individual's age," 29 U. S. C. §623(a)(1), is not restricted to discrimination because of relatively *older* age. If an employer fired a worker for the sole reason that the worker was under 45, it would be entirely natural to say that the worker had been discriminated against because of his age. I struggle to think of what other phrase I would use to describe such behavior. I wonder how the Court would describe such incidents, because the Court apparently considers such usage to be unusual, atypical, or aberrant. See *ante*, at 8 (concluding that the "common usage of language" would exclude discrimination against the relatively young from the phrase "discriminat[ion] . . . because of [an] individual's age").

The parties do identify a possible ambiguity, centering on the multiple meanings of the word "age." As the parties note, "age," does have an alternative meaning, namely "[t]he state of being old; old age." American Heritage Dictionary 33 (3d ed. 1992); see also Oxford American Dictionary 18 (1999); Webster's Third New International Dictionary 40 (1993). First, this secondary meaning is, of course, less commonly used than the primary meaning, and appears restricted to those few instances where it is clear in the immediate context of the phrase that it could

have no other meaning. The phrases "hair white with age," American Heritage Dictionary, *supra,* at 33, or *"eyes . . . dim with age,"* Random House Dictionary of the English Language 37 (2d ed. 1987), cannot possibly be using "age" to include "young age," unlike a phrase such as "he fired her because of her age." Second, the use of the word "age" in other portions of the statute effectively destroys any doubt. The ADEA's advertising prohibition, 29 U. S. C. §623(e), and the bona fide occupational qualification defense, §623(f)(1), would both be rendered incoherent if the term "age" in those provisions were read to mean only "older age."[1] Although it is true that the "'presumption that identical words used in different parts of the same act are intended to have the same meaning'" is not "rigid" and can be overcome when the context is clear, *ante*, at 12 (quoting *Atlantic Cleaners & Dyers, Inc.* v. *United States,* 286 U. S. 427, 433 (1932)), the presumption is not rebutted here. As noted, the plain and common reading of the phrase "such individual's age" refers to the individual's chronological age. At the very least, it is manifestly unclear that it bars *only* discrimination against the relatively older. Only by incorrectly concluding that §623(a)(1) clearly and unequivocally bars only discrimination as

---

[1] Section 623(f)(1) provides a defense where "age is a bona fide occupational qualification." If "age" were limited to "older age," then §623(f)(1) would provide a defense only where a defense is not needed, since under the Court's reading, discrimination against the relatively young is always legal under the ADEA. Section 623(e) bans the "print[ing] . . . [of] any notice or advertisement relating to . . . indicating any preference, limitation, specification, or discrimination . . . based on age." Again, if "age" were read to mean only "older age," an employer could print advertisements asking only for young applicants for a new job (where hiring or considering only young applicants is banned by the ADEA), but could not print advertisements requesting only older applicants (where hiring only older applicants would be legal under the Court's reading of the ADEA).

"against the older," *ante*, at 8, can the Court then conclude that the "context" of §§623(f)(1) and 623(e) allows for an alternative meaning of the term "age." *Ante*, at 13–14.

The one structural argument raised by the Court in defense of its interpretation of "discriminates . . . because of such individual's age" is the provision limiting the ADEA's protections to those over 40 years of age. See 29 U. S. C. §631(a). At first glance, this might look odd when paired with the conclusion that §623(a)(1) bars discrimination against the relatively young as well as the relatively old, but there is a perfectly rational explanation. Congress could easily conclude that age discrimination directed against those under 40 is not as damaging, since a young worker unjustly fired is likely to find a new job or otherwise recover from the discrimination. A person over 40 fired due to irrational age discrimination (whether because the worker is too young or too old) might have a more difficult time recovering from the discharge and finding new employment. Such an interpretation also comports with the many findings of the Wirtz report, United States Dept. of Labor, The Older American Worker: Age Discrimination in Employment (1965), and the parallel findings in the ADEA itself. See, *e.g.*, 29 U. S. C. §621(a)(1) (finding that "older workers find themselves disadvantaged in their efforts to retain employment, and especially to regain employment when displaced from jobs"); §621(a)(3) (finding that "the incidence of unemployment, especially long-term unemployment with resultant deterioration of skill, morale, and employer acceptability is, relative to the younger ages, high among older workers").

This plain reading of the ADEA is bolstered by the interpretation of the agency charged with administering the statute. A regulation issued by the Equal Employment Opportunity Commission (EEOC) adopts the view contrary to the Court's, 29 CFR §1625.2(a) (2003), and the

only binding EEOC decision that addresses the question before us also adopted the view contrary to the Court's, see *Garrett* v. *Runyon*, Appeal No. 01960422, 1997 WL 574739, *1 (EEOC, Sept. 5, 1997). I agree with the Court that we need not address whether deference under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837 (1984), would apply to the EEOC's regulation in this case. See *ante*, at 16. Of course, I so conclude because the EEOC's interpretation is consistent with the best reading of the statute. The Court's position, on the other hand, is untenable. Even if the Court disagrees with my interpretation of the language of the statute, it strains credulity to argue that such a reading is so unreasonable that an agency could not adopt it. To suggest that, in the instant case, the "regular interpretive method leaves no serious question, not even about purely textual ambiguity in the ADEA," *ante*, at 18, is to ignore the entirely reasonable (and, incidentally, correct) contrary interpretation of the ADEA that the EEOC and I advocate.

Finally, the only relevant piece of legislative history addressing the question before the Court—whether it would be possible for a younger individual to sue based on discrimination against him in favor of an older individual—comports with the plain reading of the text. Senator Yarborough, in the only exchange that the parties identified from the legislative history discussing this particular question, confirmed that the text really meant what it said. See 113 Cong. Rec. 31255 (1967).[2] Although the statute is clear, and hence there is no need to delve into the legislative history, this history merely confirms that the plain reading of the text is correct.

---

[2] See *ante*, at 14 (citing exchange between Sens. Yarborough and Javits).

II

Strangely, the Court does not explain why it departs from accepted methods of interpreting statutes. It does, however, clearly set forth its principal reason for adopting its particular reading of the phrase "discriminate . . . based on [an] individual's age" in Part III–A of its opinion. "The point here," the Court states, "is that we are not asking in the abstract how the ADEA uses the word 'age,' but seeking the meaning of the whole phrase 'discriminate . . . because of [an] individual's age.' As we have said, *social history* emphatically points to the sense of age discrimination as aimed against the old, and this idiomatic understanding is confirmed by legislative history." *Ante*, at 14 (emphasis added). The Court does not define "social history," although it is apparently something different from legislative history, because the Court refers to legislative history as a separate interpretive tool in the very same sentence. Indeed, the Court has never defined "social history" in any previous opinion, probably because it has never sanctioned looking to "social history" as a method of statutory interpretation. Today, the Court takes this unprecedented step, and then places dispositive weight on the new concept.

It appears that the Court considers the "social history" of the phrase "discriminate . . . because of [an] individual's age" to be the principal evil that Congress targeted when it passed the ADEA. In each section of its analysis, the Court pointedly notes that there was no evidence of widespread problems of antiyouth discrimination, and that the primary concerns of Executive Branch officials and Members of Congress pertained to problems that workers generally faced as they increased in age.[3] The Court

---

[3] See *ante*, at 4 ("The [Wirtz] report contains no suggestion that re-

reaches its final, legal conclusion as to the meaning of the phrase (that "ordinary people employing the common usage of language" would "talk about discrimination because of age [as] naturally [referring to] discrimination against the older," *ibid.*) only after concluding both that "the ADEA was concerned to protect a relatively old worker from discrimination that works to the advantage of the relatively young" and that "[t]here is . . . no record indication that younger workers were suffering at the expense of their elders, let alone that a social problem required a federal statute to place a younger worker in parity with an older one." *Ibid.* Hence, the Court apparently concludes that if Congress has in mind a particular, principal, or primary form of discrimination when it passes an antidiscrimination provision prohibiting persons from "discriminating because of [some personal quality]," then the phrase "discriminate because of [some personal quality]" only covers the principal or most common form of discrimination relating to this personal quality.

The Court, however, has not typically interpreted nondiscrimination statutes in this odd manner. "[S]tatutory prohibitions often go beyond the principal evil to cover reasonably comparable evils, and it is ultimately the provisions of our laws rather than the principal concerns of our legislators by which we are governed." *Oncale* v. *Sundowner Offshore Services, Inc.,* 523 U. S. 75, 79 (1998).

---

sponses to age level off at some point, and it was devoid of any indication that the Secretary [of Labor] had noticed unfair advantages to older employees at the expense of their juniors."); *ante,* at 6 (finding from the records of congressional hearings "nothing suggesting that any workers registered complaints about discrimination in favor of their seniors"); *ante,* at 7 (finding that, with one exception, "all the findings and statements of objectives are either cast in terms of the effects of age, as intensifying over time, or are couched in terms that refer to 'older' workers, explicitly or implicitly relative to 'younger' ones").

The oddity of the Court's new technique of statutory interpretation is highlighted by this Court's contrary approach to the racial-discrimination prohibition of Title VII of the Civil Rights Act of 1964, 78 Stat. 253, as amended, 42 U. S. C. §2000e *et seq*.

There is little doubt that the motivation behind the enactment of the Civil Rights Act of 1964 was to prevent invidious discrimination against racial minorities, especially blacks. See 110 Cong. Rec. 6552 (1964) (statement of Sen. Humphrey) ("The goals of this bill are simple ones: To extend to Negro citizens the same rights and the same opportunities that white Americans take for granted"). President Kennedy, in announcing his Civil Rights proposal, identified several social problems, such as how a "Negro baby born in America today . . . has about one-half as much chance of completing a high school as a white baby . . . one-third as much chance of becoming a professional man, twice as much chance of becoming unemployed, . . . and the prospects of earning only half as much." Radio and Television Report to the American People on Civil Rights, Public Papers of the Presidents, John F. Kennedy, No. 237, June, 11, 1963, pp. 468–469 (1964). He gave no examples, and cited no occurrences, of discrimination against whites or indicated that such discrimination motivated him (even in part) to introduce the bill. Considered by some to be the impetus for the submission of a Civil Rights bill to Congress,[4] the 1961 Civil Rights Commission Report focused its employment section solely on discrimination against racial minorities, noting, for instance that the "twin problems" of unemployment and a lack of skilled workers "are magnified for minority groups that are subject to discrimination." 3 U. S. Com-

---

[4] See R. Loevy, To End All Segregation: The Politics of the Passage of the Civil Rights Act of 1964, p. 24 (1990).

mission on Civil Rights Report 1 (1961). It also discussed and analyzed the more severe unemployment statistics of black workers compared to white workers. See *id.*, at 1–4; see also *id.*, at 153 (summarizing findings of the Commission, listing examples only of discrimination against blacks). The report presented no evidence of any problems (or even any incidents) of discrimination against whites.

The congressional debates and hearings, although filled with statements decrying discrimination against racial minorities and setting forth the disadvantages those minorities suffered, contain no references that I could find to any problem of discrimination against whites. See, *e.g.,* 110 Cong. Rec. 7204 (1964) (statement of Sen. Clark) ("I turn now to the background of racial discrimination in the job market, which is the basis for the need for this legislation. I suggest that economics is at the heart of racial bias. The Negro has been condemned to poverty because of lack of equal job opportunities. This poverty has kept the Negro out of the mainstream of American life"); *id.,* at 7379 (statement of Sen. Kennedy) ("Title VII is directed toward what, in my judgment, American Negroes need most to increase their health and happiness. . . . [T]o be deprived of the chance to make a decent living and of the income needed to bring up children is a family tragedy"); *id.,* at 6547 (statement of Sen. Humphrey) ("I would like to turn now to the problem of racial discrimination in employment. At the present time Negroes and members of other minority groups do not have an equal chance to be hired, to be promoted, and to be given the most desirable assignments"); *ibid.* (citing disfavorable unemployment rates of nonwhites as compared to whites); *ibid.* ("Discrimination in employment is not confined to any region—it is widespread in every part of the country. It is harmful to Negroes and to members of other minority groups"); *id.*, at 6548 ("The crux of the problem is to open employment opportunities for Negroes in occupations which have been

traditionally closed to them"); *id.,* at 6562 (statement of Sen. Kuchel) ("If a Negro or a Puerto Rican or an Indian or a Japanese-American or an American of Mexican descent cannot secure a job and the opportunity to advance on that job commensurate with his skill, then his right to be served in places of public accommodation is a meaningless one . . . . And if a member of a so-called minority group believes that no matter how hard he studies, he will be confronted with a life of unskilled and menial labor, then a loss has occurred, not only for a human being, but also for our Nation"); *id.,* at 6748 (statement of Sen. Moss) ("All of us, that is except the person who is discriminated against on the basis of race, color, or national origin . . . . He frequently knows that he is not going to school to prepare for a job. . . . He frequently knows that no matter how hard he works, how diligently he turns up day after day, how much overtime he puts in, that he will never get to be the boss of a single work crew or the foreman of a single division. And that is what the fair employment practices title is about—not the right to displace a white man or be given preference over him—but simply the right to be in the running"). I find no evidence that even a single legislator appeared concerned about whether there were incidents of discrimination against whites, and I find no citation to any such incidents.

In sum, there is no record evidence "that [white] workers were suffering at the expense of [racial minorities]," and in 1964, discrimination against whites in favor of racial minorities was hardly "a social problem requir[ing] a federal statute to place a [white] worker in parity with [racial minorities]." *Ante*, at 8. Thus, "talk about discrimination because of [race] [would] naturally [be] understood to refer to discrimination against [racial minorities]." *Ibid.* In light of the Court's opinion today, it

appears that this Court has been treading down the wrong path with respect to Title VII since at least 1976.[5] See *McDonald* v. *Santa Fe Trail Transp. Co.,* 427 U. S. 273 (1976) (holding that Title VII protected whites discriminated against in favor of racial minorities).

In *McDonald*, the Court relied on the fact that the terms of Title VII, prohibiting the discharge of "any individual" because of "such individual's race," 42 U. S. C. §2000e–2(a)(1), "'are not limited to discrimination against members of any particular race.'" 427 U. S., at 278–279. Admittedly, the Court there also relied on the EEOC's interpretation of Title VII as given in its decisions, *id.*, at 279–280, and also on statements from the legislative history of the enactment of Title VII. See *id.*, at 280 (citing 110 Cong. Rec., at 2578 (remarks of Rep. Celler); *id.*, at 7218 (memorandum of Sen. Clark); *id.*, at 7213 (memorandum of Sens. Clark and Case); *id.*, at 8912 (remarks of Sen. Williams)). But, in the instant case, as I have already noted above, see *supra*, at 5–6, the EEOC has issued a regulation and a binding EEOC decision adopting the view contrary to the Court's and in line with the interpretation of Title VII. And, again as already noted, see *supra*, at 6, the only relevant piece of legislative history with respect to the question before the Court is in the same posture as the legislative history behind Title VII: namely, a statement that age discrimination cuts both ways and a relatively younger individual could sue when discriminated against. See 113 Cong. Rec., at 31255 (statement of Sen. Yarborough).

It is abundantly clear, then, that the Court's new approach to antidiscrimination statutes would lead us far astray from well-settled principles of statutory interpreta-

---

[5] The same could likely be said, of course, of most, if not all, of the other provisions of the Civil Rights Act of 1964.

tion. The Court's examination of "social history" is in serious tension (if not outright conflict) with our prior cases in such matters. Under the Court's current approach, for instance, *McDonald* and *Oncale*[6] are wrongly decided. One can only hope that this new technique of statutory interpretation does not catch on, and that its errors are limited to only this case.

Responding to this dissent, the Court insists that it is not making this "particular mistake," namely "confining the application of terms used in a broad sense to the relatively narrow class of cases that prompted Congress to address their subject matter." *Ante*, at 9 n. 5. It notes that, in contrast to the term "age," the terms "race" and "sex" are "general terms that in every day usage require modifiers to indicate any relatively narrow application." *Ante*, at 15. The Court, thus, seems to claim that it is merely trying to identify whether "the narrower reading" of the term "age" is "the more natural one in the textual setting." *Ibid.*[7] But the Court does not seriously attempt to analyze whether the term "age" is more naturally read narrowly in the context of §623(a)(1). Instead, the Court jumps immediately to, and rests its entire "common usage" analysis, *ante*, at 8, on, the "social history" of the "whole phrase 'discriminate . . . because of such individual's age.'"

---

[6] "[M]ale-on-male sexual harassment in the workplace was assuredly not the principal evil Congress was concerned with when it enacted Title VII." *Oncale*, 523 U. S., at 79. I wonder if there is even a single reference in all the committee reports and congressional debates on Title VII's prohibition of sex discrimination to any "social problem requir[ing] a federal statute [to correct]," *ante*, at 8, arising out of excessive male-on-male sexual harassment.

[7] The Court phrases this differently: it states that the "prohibition of age *discrimination* is readily read more narrowly than analogous provisions dealing with race and sex." *Ante*, at 15 (emphasis added). But this can only be true if the Court believes that the term "age" is more appropriately read in the narrower sense.

Ante, at 15. In other words, the Court concludes that the "common usage" of "age discrimination" refers exclusively to discrimination against the relatively old *only because* the "social history" of the phrase as a whole mandates such a reading. As I have explained here, the "social history" of the "whole phrase 'discriminate . . . because of such individual's age,'" *ibid.,* found in §623(a)(1) is no different than the "social history" of the whole phrase "discriminate . . . because of such individual's race." 42 U. S. C. §2000e-2(a)(1).

* * *

As the ADEA clearly prohibits discrimination because of an individual's age, whether the individual is too old or too young, I would affirm the Court of Appeals. Because the Court resorts to interpretive sleight of hand to avoid addressing the plain language of the ADEA, I respectfully dissent.