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Old vs. Older: Creating a Cause of Action for Reverse Age Discrimination under the ADEA in *Cline v. General Dynamics Land Systems, Inc.*

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**OLD VS. OLDER: CREATING A CAUSE OF
ACTION FOR REVERSE AGE DISCRIMINATION
UNDER THE ADEA IN *CLINE V. GENERAL
DYNAMICS LAND SYSTEMS, INC.***

I. INTRODUCTION

On July 22, 2002, the United States Court of Appeals for the Sixth Circuit decided *Cline v. General Dynamics Land Systems, Inc.*¹ and established an important precedent for opening the door to reverse age discrimination claims under the Age Discrimination and Employment Act (ADEA).² The court reversed the lower court's decision, which granted the defendant's motion to dismiss the plaintiff-employees' age discrimination claim. In so doing, the Sixth Circuit held that younger workers between the ages of forty and forty-nine, who are within the ADEA's protection, are entitled to bring a cause of action under the ADEA and claim that they have been treated with disfavor when compared to older workers.

The court held that, in determining legislative intent, the ADEA's plain and unambiguous language (providing such young members of the protected class with a cause of action) trumps its legislative history (which places emphasis on protecting "older workers"). The court declined to follow previous decisions in the First³ and Seventh⁴ Circuits, which denied a cause of action to plaintiffs alleging reverse age discrimination under the ADEA.

Congress enacted the ADEA in 1967 "to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; [and] to help employers and workers find ways of meeting problems arising from the impact of age on employment."⁵ The ADEA particularly shields individuals

1. 296 F.3d 466 (6th Cir. 2002).

2. 29 U.S.C. §§ 621–634 (2002).

3. *See Schuler v. Polaroid Corp.*, 848 F.2d 276 (1st Cir. 1988).

4. *See Hamilton v. Caterpillar, Inc.*, 966 F.2d 1226 (7th Cir. 1992).

5. 29 U.S.C. § 621(b).

forty years of age or older from experiencing discrimination in employment.⁶ However, because the statute mentions “older persons,”⁷ rather than “individuals who are at least 40 years of age,”⁸ in its “Congressional statement of findings and purpose,”⁹ many courts have assumed that individuals between the ages of forty and forty-nine do not receive the same protection under the ADEA as do individuals fifty years of age and older. As a result of this emphasis on “older persons,” and the underinclusion of the protected class of individuals between the ages of forty and forty-nine, there is a split in opinion between the First and Seventh Circuits (which hold that the ADEA does not provide a cause of action for reverse age discrimination) and the Sixth Circuit (which holds in *Cline* that it does).¹⁰

This Case Comment first provides a summary of the Sixth Circuit’s opinion in *Cline*. Second, it provides a summary of the contrary decisions of other circuits. Third, this Comment agrees that in holding that employees aged between forty and forty-nine have a cause of action under the ADEA, the Sixth Circuit provides the correct level of protection to younger workers because it reflects the true legislative intent in enacting the ADEA—that is, preventing employment age discrimination experienced by *all* individuals forty and older, not just those above fifty. Fourth, this Comment explores the impact of this decision on employee pension plans across the United States. Finally, this Comment concludes that by creating ADEA liability for employers who prefer older workers, the Sixth Circuit provides the better approach in interpreting the ADEA because it sufficiently promotes the elimination of employment age discrimination.

6. *See id.* § 631(a) (“The prohibitions in this chapter shall be limited to individuals who are at least 40 years of age.”).

7. *Id.* § 621(b).

8. *Id.* § 631(a).

9. *Id.* § 621.

10. *Cline v. Gen. Dynamics Land Sys.*, 296 F.3d 466 (6th Cir. 2002).

II. FACTS AND HISTORY OF *CLINE V. GENERAL DYNAMICS LAND SYSTEMS, INC.*

A. *The ADEA and Reverse Discrimination at General Dynamics*

The ADEA does not permit an employer “to fail or refuse to hire or to discharge any individual or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s age”¹¹ The ADEA also forbids an employer “to limit, segregate, or classify his employees in any way which would . . . otherwise adversely affect his status as an employee, because of such individual’s age”¹²

Based on these prohibitions of the ADEA, Dennis Cline and 195 other employees between the ages of forty and forty-nine sued their employer, General Dynamics. They alleged that, after they entered into a new collective bargaining agreement (CBA) with their labor union, the United Auto Workers (UAW) on July 1, 1997, General Dynamics discriminated against them based on their age in obtaining retirement health benefits.¹³

The first collective bargaining agreement (CBA1), which was in effect prior to July 1, 1997, provided all General Dynamics employees who had obtained thirty years of seniority in the company with full health benefits once they retired.¹⁴ The new collective bargaining agreement (CBA2) no longer provided full health benefits to all General Dynamics retirees with thirty years of seniority.¹⁵ It only provided full health benefits to employees who were fifty years or older on July 1, 1997.¹⁶

In response to CBA2, Cline and the other 195 employees of General Dynamics, who were denied health benefits to which they

11. 29 U.S.C. § 623(a)(1) (2002).

12. *Id.* § 623(a)(2).

13. *See Cline*, 296 F.3d 466 at 467–68; *see also Workers in Their 40s Can Sue Employer for Favoring Over-50 Workers*, EMPLOYMENT LAW REPORT, Sept. 2002, at 1 (summarizing the facts and outcome of the Sixth Circuit’s decision in *Cline*).

14. *See Cline*, 296 F.3d at 468.

15. *See id.*

16. *See id.*

were previously entitled under CBA1, “sought, and obtained, a determination from the Equal Employment Opportunity Commission that the CBA2 adversely affected General Dynamics employees who were between the ages of 40 and 49 on July 1, 1997.”¹⁷ The plaintiffs then filed suit under the ADEA alleging that the CBA2 discriminated against them in their employment based on age.¹⁸

The plaintiffs who were affected by the CBA2 divided into three subcategories. The first, called the “Cline group,” consisted of 183 present employees of the company who were not qualified for health benefits upon retirement under the CBA2, but were qualified under CBA1.¹⁹ The second, called the “Babb group,” consisted of ten General Dynamics employees who retired before the CBA2 came into effect in order to safeguard their health benefits under the CBA1.²⁰ Finally, the third, called the “Diaz group,” included three workers who did not receive the continuous benefits they would have received under CBA1 because they retired after CBA2 came into effect on July 1, 1997.²¹ Together, as a class, these plaintiffs sought declaratory and injunctive relief, damages, costs, and fees under the provisions of the ADEA.²²

B. Defendant’s Motion to Dismiss

In response to the plaintiffs’ age discrimination claim, the defendant filed a motion to dismiss in the District Court of Ohio in March of 2000. The defendant argued that the alleged age discrimination favoring workers age fifty and over did not infringe any federal or state anti-discrimination statutes.²³ The district court granted the defendant’s motion, stating that the plaintiffs’ claim lacked merit because “a claim of reverse age discrimination is not cognizable under [the] ADEA.”²⁴

The court confirmed that the ADEA generally forbids employee age discrimination.²⁵ Notably, the court acknowledged that the new

17. *Id.*

18. *See Cline*, 98 F. Supp. 2d at 846.

19. *See id.* at 847.

20. *See id.*

21. *See id.*

22. *See id.*

23. *See id.*

24. *Id.* at 848.

25. *See id.*

CBA facially discriminated by forming two categories of workers: (1) those ages fifty and older, entitled to health benefits upon retirement, and (2) those under fifty, who were no longer entitled to those same benefits.²⁶ Despite this finding of facial age discrimination, the court still dismissed the plaintiffs' claim.²⁷ The court framed the issue as whether the ADEA provided a cause of action for this alleged type of reverse discrimination where older employees are treated more favorably than younger employees.²⁸

In support of its dismissal, the court gave two main reasons why the plaintiffs did not make out a recognizable claim. First, the fact that the younger workers were entitled to the health benefits under the CBA1 was irrelevant in deciding whether the CBA2 violated the ADEA.²⁹ The court reasoned that because the health benefits are welfare benefits "not subject to statutory vesting requirements" of the Employee Retirement Insurance Security Act (ERISA), it would have been acceptable under ERISA for General Dynamics and the employees' union to take away the health benefits of all the employees under the CBA2.³⁰

Second, the court held that the plaintiffs could not make out a claim because no other federal court that previously heard the issue had provided for a reverse age discrimination cause of action under the ADEA.³¹ The court reasoned that the absence of any case in support of the plaintiffs' position was a result of Congress's purpose in enacting the ADEA, which was to protect "*older workers*" who faced discrimination in employment, "not workers who suffer discrimination because they are too young."³² Thus, for the aforementioned reasons, the district court dismissed the claim. The plaintiffs subsequently appealed to the Court of Appeals for the Sixth Circuit.

26. *See id.*

27. *See id.*

28. *See id.*

29. *See id.*

30. *Id.*

31. *See id.* (citing *Dittman v. Gen. Motors Corp.-Delco Chassis Div.*, 941 F. Supp. 284, 287 (D. Conn. 1996); *Parker v. Wakelin*, 882 F. Supp. 1131, 1140-41 (D. Me. 1995); *Hamilton v. Caterpillar, Inc.*, 966 F.2d 1226, 1227-28 (7th Cir. 1992)).

32. *Id.* (emphasis in original).

III. THE SIXTH CIRCUIT'S ANALYSIS AND DECISION

A. *The Circuit's Opinion*

The court's analysis can be summarized as follows: "[T]he language of the statute itself"³³ determines "how a statute is to be applied,"³⁴ and therefore "the protected class should be protected."³⁵ In reversing the district court's holding—thereby providing members of the protected class who are forty years of age and older with a cause of action—the court emphasized that the ADEA's clear and unambiguous language should control its interpretation and properly resolve the case.³⁶ The issue was whether the ADEA afforded a claim to employees "within the protected class who claim that their employer discriminated against them on the basis of age because of the employer's more favorable treatment of older employees, also within the class."³⁷

The court began its analysis by describing the predominantly accepted method of statutory application. It stated that the statute's basic words principally reveal the legislature's intent.³⁸ Especially where the statute contains simple and clear language, the court stated that there is no reason to look at the legislative history in determining Congress's intent in writing the law.³⁹ More importantly, if a court believes that the language of a statute does not accurately portray what it thinks the lawmaker "must have" meant, it cannot fix the perceived insufficiency by holding that "the legislators intended something other than what they declared."⁴⁰

The court highlighted the language of section 623(a)(1) of the ADEA, which reads: "It shall be unlawful for an employer . . . to . . . discriminate against *any individual* with respect to his compensation, terms, conditions, or privileges of employment, because of . . . age"⁴¹ The court then stated that the statute visibly forbids

33. *United States v. Ospina*, 18 F.3d 1332, 1335 (6th Cir. 1994); *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980).

34. *Cline*, 296 F.3d at 468–69.

35. *Id.* at 471.

36. *See id.* at 469.

37. *Id.* at 467.

38. *See id.* at 469.

39. *See id.*

40. *Id.*

41. 29 U.S.C. § 623(a)(1) (2002).

employers from discriminating against “any individual” based on age alone.⁴² Furthermore, the court pointed out that according to section 631(a), “any individual” means “individuals who are at least 40 years of age.”⁴³ Thus, the court concluded that, according to its plain words, the ADEA prohibited employers from discriminating against any of their employees, who were forty years of age and older, based on age.⁴⁴

Next, the court explained that it believed the district court was wrong by reading the statute to prohibit age discrimination only against those of the protected class who are “older,” meaning those employees at least forty years old and also “relatively older than any other group of employees with whom they are compared.”⁴⁵ The court also disagreed with the lower court’s holding because it did not find its analysis persuasive and did not agree with the majority of previous decisions which “have held that the ADEA does not provide a cause of action for ‘reverse discrimination.’”⁴⁶

The Sixth Circuit gave four reasons to support its decision to ignore previous interpretations of the ADEA, particularly that of *Hamilton v. Caterpillar, Inc.*⁴⁷ First, the court stated that the *Hamilton* decision gave too much weight to the “generalized language of Congress’s Statement of Findings and Purpose in the ADEA.”⁴⁸ Second, *Hamilton* overlooked and overturned the well-known rule of statutory interpretation that the express and exact words of a statute, and not its generalized words, govern.⁴⁹

42. *Cline*, 296 F.3d at 469 (emphasis added).

43. *Id.* at 469 (quoting 29 U.S.C. § 631(a) (2002)).

44. *See id.*

45. *Id.*

46. *Id.* at 470 (quoting *Hamilton v. Caterpillar, Inc.*, 966 F.2d 1226, 1228 (7th Cir. 1992) and citing *Schuler v. Polaroid Corp.*, 848 F.2d 276, 278 (1st Cir. 1988) (Breyer, J.); *Karlen v. City Colls. of Chicago*, 837 F.2d 314, 318 (7th Cir. 1988); *Dittman v. Gen. Motors Corp.-Delco Chassis Div.*, 941 F. Supp. 284, 287 (D. Conn. 1996), *aff’d on other grounds sub nom.* *Dittman v. Gen. Motors Corp.*, No. 96-9442, 1997 U.S. App. LEXIS 14980, at *1 (2d Cir. June 20, 1997); *Parker v. Wakelin*, 882 F. Supp. 1131, 1140 (D. Me. 1995) (additional citations omitted)).

47. 966 F.2d 1226 (7th Cir. 1992).

48. *Cline*, 296 F.3d at 470.

49. *See id.* (citing *Metro. Detroit Area Hosp. Servs., Inc. v. United States*, 634 F.2d 330, 334 (6th Cir. 1980)).

Quoting the language of sections 621(a) and 621(b) of the ADEA, the court agreed that Congress aimed to safeguard "older workers."⁵⁰ However, holding that the ADEA provides a cause of action for "any individual" who is at least forty years old is consistent with the legislature's intention to guard "older workers" from employment discrimination on the basis of age.⁵¹ The court reconciled section 621, which expresses the legislative intent to protect older workers, with section 623 and section 631, in which Congress acknowledges an older worker as "any individual" who is forty years of age and older.⁵² In sum, the court concluded that "§ 623(a)(1) and § 631(a), taken together, prohibit an employer from discriminating against 'any individual' 40 years of age or older based on that person's age."⁵³

Third, the court stated that it did not accept this particular case to be one of "reverse discrimination."⁵⁴ It stated that the district court and other circuits were wrong to hold that the "ADEA does not provide a cause of action for 'reverse discrimination.'"⁵⁵ Therefore, "otherwise prohibited discrimination is permitted if the victims are literally (statutorily) within the protected class, but are a group within the class who in most cases are the beneficiaries of discrimination against others."⁵⁶ The court stressed that the plaintiffs did not experience reverse discrimination, but rather "age discrimination."⁵⁷ Because all the plaintiffs fell within the protected class of the ADEA, all of them were entitled to make allegations that they suffered discrimination in obtaining benefits because of their age.⁵⁸

Finally, the court observed that courts that followed the *Hamilton* decision went against the Equal Employment Opportunity Commission's (EEOC) understanding of the ADEA, which the court believed to be an accurate reading of the statute's language.⁵⁹ The

50. *Id.*

51. *Id.*

52. *Id.* at 471.

53. *Id.* at 470.

54. *Id.* at 471.

55. *Id.* at 470.

56. *Id.* at 471.

57. *Id.*

58. *See id.*

59. *See id.*

EEOC states, "It is unlawful . . . for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals 40 and over."⁶⁰ For example, the EEOC prohibits an employer from turning down either of two applicants applying for the same job, one forty-two and the other fifty-two, because of their age.⁶¹

In its conclusion the court underscored that, though the facts of this case are atypical of the usual ADEA claim "in that the plaintiffs were younger than the employees who were to receive health benefits upon retirement under the CBA2," that did not invalidate application of the statute that bans age discrimination upon "any individual" who is forty years of age and older.⁶² If the legislature only wanted to protect those employees comparatively older than the rest, it could have done so.⁶³ Furthermore, the court dismissed all policy justifications to the contrary by emphasizing both that the court is bound by the statute's plain text and that the court has no reason to look beyond the statute, where its language is unambiguous, as it is here.⁶⁴

B. Judge Cole's Concurrence

While joining Judge Ryan's opinion based on the unambiguous language of the ADEA, Judge R. Guy Cole, Jr. wrote separately to express his thoughts as to whether Congress particularly expected the ADEA to provide a cause of action for reverse discrimination.⁶⁵ In emphasizing three main points, Judge Cole concluded that although Congress was primarily concerned with preventing the type of age discrimination that prefers younger over older workers, "Congress's choice of language . . . intended or not, also prohibits age discrimination that favors older over younger protected employees."⁶⁶

First, Judge Cole noted that, read together, section 623 and section 631 clearly ban any discrimination based on age against

60. 29 C.F.R. § 1625.2 (2002).

61. *See id.*

62. *Cline*, 296 F.3d at 472.

63. *See id.*

64. *See id.*

65. *See id.* (Cole, J., concurring).

66. *Id.*

employees who are forty years old and older.⁶⁷ For example, section 623 outlaws discrimination by an employer against “any individual” because of age,⁶⁸ and section 631 confines that discrimination to employees who are at least forty years old.⁶⁹ Thus, Judge Cole reaffirmed that “the text of the ADEA compels the conclusion that members in the protected class can sue for age discrimination that favors older over younger workers.”⁷⁰

Second, Judge Cole reaffirmed the majority’s conclusion that there is no reason to go beyond the plain language of the ADEA because of the well-established law of the Sixth Circuit. In construing a statute, a court should look beyond the statute’s text only if (1) its wording is vague; (2) there are inconsistencies with the other provisions of the statute; (3) a textual reading conflicts with the legislature’s objective; or (4) the simple understanding of the statute leads to ridiculous outcomes.⁷¹

Judge Cole declared that none of those situations was applicable in this specific case.⁷² First, the words of section 623 and section 631 are not vague because they clearly propose that age discrimination is wrong and employees who are forty years old and over may sue if their employer discriminates against them.⁷³ Second, Judge Cole stated that there is consistency among the provisions of the ADEA because the reference to “older workers” in section 621(a) can also consistently refer to employees over the age of forty.⁷⁴

Furthermore, section 623(l)(1)(A), which “allows an employer to set a minimum age as a condition for eligibility in a pension plan,” only has significance if section 623 and section 631 allow reverse age discrimination claims.⁷⁵ If younger workers in the protected class did not have a cause of action for reverse age discrimination for

67. *See id.* at 472.

68. *Id.* at 473 (quoting 29 U.S.C. § 623(a) (2002)).

69. *See id.* (quoting 29 U.S.C. § 631(a)).

70. *Id.* at 472–73.

71. *See id.* at 473 (citing *Ltd., Inc. v. Comm’n*, 286 F.3d 324, 332 (6th Cir. 2002); *Vergos v. Gregg’s Enters., Inc.* 159 F.3d 989, 990 (6th Cir. 1998); *Appleton v. First Nat’l Bank of Ohio*, 62 F.3d 791, 801 (6th Cir. 1995) (“Resort to legislative history is not appropriate, however, if the text of the statute may be read unambiguously and reasonably.”)).

72. *See id.*

73. *See id.*

74. *See id.*

75. *Id.*

the preferable treatment of older workers, “then the minimum age exception in § 623 (l)(1)(A) would not be necessary (because only younger employees could sue based on a minimum retirement age).”⁷⁶ Third, according to Cole, there is no need to look beyond the ADEA’s text because interpreting the statute as providing a cause of action for reverse discrimination claims is consistent with the legislature’s statutory intent, which is to prevent employment decisions based solely on age.⁷⁷

Finally, Judge Cole articulated that the court should only focus on the ADEA’s actual text because providing a cause of action for reverse discrimination to the plaintiffs, who are all within the statute’s protected class, is not ridiculous.⁷⁸ Because Congress determined that all types of age discrimination encumber commerce, providing a claim for reverse age discrimination can lessen this congressionally perceived strain on commerce.⁷⁹ Similarly, Cole dismissed the idea that allowing reverse age discrimination suits will open the door to claims against every retirement plan in the country,⁸⁰ because courts have already started to read state laws as permitting reverse discrimination suits.⁸¹

Third, Judge Cole concurred separately to reconcile the decision with that of the U.S. Supreme Court in *O’Connor v. Consolidated*

76. *Id.*

77. *See id.* at 473–74.

78. *See id.* at 474.

79. *See id.*; 29 U.S.C. § 621(a)(4) (2002) (stating that Congress finds that “[T]he existence in industries affecting commerce, of arbitrary discrimination in employment because of age, burdens commerce and the free flow of goods in commerce.”).

80. *See Cline*, 296 F.3d at 474 (Cole, J., concurring) (citing *Hamilton v. Caterpillar, Inc.*, 966 F.2d 1226, 1228 (7th Cir. 1992)).

81. *See id.* at 474; *Zanni v. Medaphis Physician Servs. Corp.*, 612 N.W.2d 845 (Mich. Ct. App. 2000) (holding that the Michigan Civil Rights Act “protects workers who are discriminated against on the basis of their youth”), *appeal denied*, 618 N.W.2d 596 (Mich. Ct. App. 2000); *Bergen Comm. Bank v. Sisler*, 723 A.2d 944 (N.J. 1999) (7-0 decision) (concluding that New Jersey’s Law Against Discrimination was broad enough to accommodate plaintiff’s claim of age discrimination based on youth); *Ogden v. Bureau of Labor*, 699 P.2d 189 (Or. 1985) (en banc) (interpreting Oregon age discrimination law as allowing claims by younger workers); *see also Graffam v. Scott Paper Co.*, 870 F. Supp. 389, 405 n.27 (D. Me. 1994) (noting that the Maine Human Rights Act does not limit age discrimination claims to a certain range of ages).

*Coin Caterers Corp.*⁸² Cole argued that *O'Connor* instructed that in order “to indirectly prove age discrimination, an ADEA plaintiff must demonstrate age discrimination that favors a substantially younger person.”⁸³ Cole noted that, although *Cline* is a direct discrimination case and therefore does not depend on the *O'Connor* prima facie test, the “substantially younger requirement” implies that the ADEA does not provide for reverse discrimination claims. The reason for this is that younger employees who are discriminated against in favor of older employees cannot demonstrate that “substantially younger persons were favored.”⁸⁴

Despite that inference, Cole asserted that the Supreme Court would agree with the opinion in *Cline* for three reasons.⁸⁵ First, *O'Connor* did not directly address the reverse age discrimination issue.⁸⁶ Second, *O'Connor* recognized that workers within the protected class of the ADEA could sue each other.⁸⁷ Finally, the Supreme Court in *O'Connor* similarly looked at the plain language of the statute in interpreting the ADEA.⁸⁸

Judge Cole took the position that had the *O'Connor* Court also decided the reverse discrimination issue, it would have required proof of “substantial difference in age,” rather than the “substantially younger” requirement, as the fourth part of its test.⁸⁹ Cole also highlighted that the Court of Appeals for the Sixth Circuit requires evidence of “substantial difference in age, not substantially younger proof.”⁹⁰ Cole concluded that the clear language of the ADEA permits claims for reverse age discrimination, and this result does not violate Supreme Court precedent.⁹¹

82. 517 U.S. 308 (1996) (deciding whether a fifty-six-year-old worker replaced by a forty-year-old worker satisfied the fourth element of the prima facie case, even though both employees belonged to the protected class); see *Cline*, 296 F.3d at 475 (Cole, J., concurring).

83. *Cline*, 296 F.3d at 475 (Cole, J., concurring).

84. *Id.*

85. *See id.*

86. *See id.*

87. *See id.*

88. *See id.*

89. *Id.*

90. *Id.* at 475–76.

91. *See id.* at 476.

C. Judge Williams' Dissent

Judge Glen M. Williams offered four reasons for his dissent. First, no American court has acknowledged a claim for reverse age discrimination.⁹² Second, Williams was persuaded by the decision by the Court of Appeals for the Seventh Circuit in *Hamilton*, which held that the ADEA does not "protect the young as well as the old," because discrimination based on age cannot be reversed.⁹³ Third, the ADEA's references to "older workers" displays the legislature's intent to prevent discrimination against only older employees.⁹⁴ Finally, the majority's opinion could potentially have a horrible impact on collective bargaining agreements by questioning the "validity of seniority and early retirement programs . . . across the country." The majority's opinion may thus harm "bargaining for all workers, regardless of age."⁹⁵ Thus, for these four mentioned reasons, Williams agreed with the district court's decision to dismiss the plaintiffs' claim.⁹⁶

IV. THE FIRST AND SEVENTH CIRCUIT'S HOLDINGS

The sixth circuit's decision in *Cline* diverges from most other circuits' interpretation of the ADEA. Unlike *Cline*, the First, Second, Seventh, and Ninth Circuits agree that the ADEA does not provide a cause of action for reverse age discrimination in employment.

A. Seventh Circuit's Holding in *Hamilton v. Caterpillar, Inc.*

In *Hamilton*, the plaintiffs, who were forty years of age and older, were denied early retirement benefits because they were too young when their jobs were terminated.⁹⁷ The Court of Appeals for the Seventh Circuit held that the ADEA does not provide a cause of action for reverse age discrimination.⁹⁸ In support of its decision, the court stated that "the ADEA 'does not protect the young as well as

92. See *id.* at 476 (Williams, J., dissenting).

93. *Id.* (quoting *Hamilton v. Caterpillar, Inc.*, 966 F.2d 1226, 1227 (7th Cir. 1992)).

94. See *id.*

95. *Id.*

96. See *id.* at 476.

97. See *Hamilton*, 966 F.2d at 1227.

98. See *id.* at 1228.

the old, or even . . . the younger *against* the older.”⁹⁹ By looking at the ADEA’s legislative history and its statement of purpose (which mentions the problems encountered by “older workers”), the court concluded that there is no proof that the legislature intended to protect younger employees who are discriminated against based on age.¹⁰⁰ Furthermore, the court refused to recognize reverse discrimination claims to prevent a multiplicity of suits against “every retirement plan because Congress chose more graceful language” in its statute than was necessary.¹⁰¹

B. Other Circuits’ Positions on Reverse Discrimination

The First, Second, and Ninth Circuits agree with the Seventh Circuit that the ADEA does not provide a cause of action for reverse age discrimination. For example, although the First Circuit, in *Schuler v. Polaroid Corp.*,¹⁰² did not specifically address the issue, it stated in dicta that the ADEA “does not forbid treating older persons *more* generously than others.”¹⁰³ Furthermore, in *Stone v. Travelers Corp.*,¹⁰⁴ the Ninth Circuit commented that the ADEA does not ban more favorable treatment of older workers, as opposed to younger workers.¹⁰⁵ Similarly, in *Dittman v. General Motors Corp.*,¹⁰⁶ the Second Circuit stated that because the ADEA allows minimum age conditions for retirement benefits,¹⁰⁷ the plaintiff employees could not successfully allege that the plan in question, which denied them benefits but provided them to employees over the age of fifty, violated the discrimination act.¹⁰⁸

99. *Id.* at 1227 (quoting *Karlen v. City Colls. of Chicago*, 837 F.2d 314, 318 (7th Cir. 1988) (emphasis in original)).

100. *See id.* at 1228.

101. *Id.* (citing *Karlen*, 837 F.2d at 318).

102. 848 F.2d 276 (1st Cir. 1988).

103. *Id.* at 278 (emphasis in original).

104. 58 F.3d 434 (9th Cir. 1995).

105. *See id.* at 437.

106. No. 96-9442, 1997 U.S. App. LEXIS 14980, at *1 (2d Cir. June 20, 1997).

107. *See id.* at *4; *see also* 29 U.S.C. § 623(l)(1)(A) (2002) (allowing the setting of a minimum age as a condition of eligibility for retirement benefits).

108. *See Dittman*, 1997 U.S. App. LEXIS 14980, at *4.

V. ANALYSIS OF THE SIXTH CIRCUIT'S DECISION

The Sixth Circuit, in *Cline v. General Dynamics Land Systems, Inc.*, was the first circuit to provide a reverse discrimination cause of action for plaintiffs within the protected class of the ADEA who sue their employers for treating older employees within the protected class better than them. Interestingly, until *Cline*, circuit courts took the position that the ADEA's purpose was to protect the *oldest workers* and *not all workers* forty and older, even though the ADEA specifically mentions that it protects all workers forty and older.¹⁰⁹ As such, the circuit courts that previously addressed this issue excluded the possibility of a reverse discrimination cause of action, mainly because they misunderstood the purpose of the ADEA.¹¹⁰

The Sixth Circuit, on the other hand, correctly held that plaintiffs who are forty to forty-nine years old have a cause of action for reverse discrimination for three main reasons. First, a literal reading of the statute strongly supports the Sixth Circuit's interpretation of the ADEA. Second, other sections of the ADEA, namely section 623(i) and section 623(l)(1)(A), which the *Cline* majority decision did not mention, also support this conclusion. Finally, from a policy perspective, the holding, which is consistent with the principal purposes of the ADEA, correctly facilitates the elimination of age discrimination faced by employees in the workplace.

A. The Court Correctly Held that a Literal Reading Controls the ADEA's Interpretation

In creating a cause of action for reverse discrimination, the Court of Appeals for the Sixth Circuit correctly conducted a literal reading of the ADEA, rather than resorting to legislative history, which is what previous circuits, such as the Seventh Circuit in *Hamilton*,¹¹¹ have done. When a court interprets a statute, it is established that "the language of the statute" itself controls.¹¹² It is

109. See 29 U.S.C. § 631(a).

110. For a summary of other circuits' holdings, see text accompanying notes 93–96.

111. See text accompanying notes 95–99.

112. *United States v. Johnson*, 855 F.2d 299, 305 (6th Cir. 1988).

appropriate to go beyond the wording of the statute only when it is ambiguous or unclear.¹¹³

For example, in *Metropolitan Detroit Area Hospital Services, Inc. v. United States*, the Sixth Circuit resorted to legislative history where there was a question as to whether section 501(e) of the Internal Revenue Code included laundry services as a type of hospital cooperative service entitled to a tax exemption under section 501(c)(3).¹¹⁴ In order to resolve the perceived ambiguity, the court specifically looked to the statements of congressional leaders made at a conference committee regarding the statute.¹¹⁵ The court determined that the statute was ambiguous as concerning the status of laundry services, because nowhere did it explicitly state that those services were included.¹¹⁶ Furthermore, the court read the plain language of the statute to mean that the list of qualifying tax-exempt hospital cooperatives mentioned in section 501(e) was a “definitive inventory rather than merely a descriptive list.”¹¹⁷

Unlike section 501(e), the ADEA is not ambiguous. Section 623(a)(1) simply reads that an employer may not discriminate against “any individual” in regards to his or her employment based on age.¹¹⁸ Furthermore, section 631(a) defines “any individual” as “individuals . . . at least 40 years of age.”¹¹⁹ Thus, unlike *Metropolitan*, where the statute at issue made no mention of the status of the disputed item, the ADEA clearly mentions both the actions employers are prevented from taking and who is protected from such proscribed actions. Contrary to *Metropolitan*, there is no need to resort to the legislative history, because the statute itself already addresses and resolves the issue at hand.

Furthermore, “[o]nly the most extraordinary showing of contrary intentions from [the legislative history] would justify a limitation on

113. *In re Comshare, Inc. Sec. Litig.*, 183 F.3d 542, 549 (6th Cir. 1999) (stating that “[w]hen interpreting a statute, we must begin with its plain language, and may resort to a review of congressional intent or legislative history only when the language of the statute is not clear.”).

114. *See Metro. Detroit Area Hosp. Servs., Inc. v. United States*, 634 F.2d 330, 333–34 (6th Cir. 1980).

115. *See id.* at 334.

116. *See id.*

117. *Id.*

118. *See* 29 U.S.C. § 623(a)(1) (2002).

119. *Id.* § 631(a).

the ‘plain meaning’ of the statutory language.”¹²⁰ In *Cline*, the defendants did not show that the legislative history of the ADEA demonstrated an “extraordinary showing of contrary intentions.”¹²¹ In fact, the legislative history of the ADEA appears consistent with the plain meaning of the statutory language. Thus, the legislative history of the ADEA also appears consistent with the Sixth Circuit’s interpretation.

Even though the legislative history places emphasis on protecting “older workers,” it does not specifically point out that the protected older workers are only those who are more than fifty years old. For example, the statute’s “statement of findings and purpose” states that Congress finds that because “older workers” face disadvantages in retaining and regaining employment, the statute’s purpose is “to promote employment of *older persons*”¹²² However, nowhere does the statute specifically define “older workers” as those only over the age of forty-nine. In fact, a closer look into the ADEA’s legislative history reveals that it remains completely consistent with its plain language which protects all employees forty and older. For example, the “Interpretive Notes and Decisions,” in section 621 states that the ADEA “was intended to alleviate serious economic and psychological suffering of people between the ages of 40 and 65 caused by widespread job discrimination against them . . . [and] to prevent persons aged 40 to 65 from having their careers cut off by unreasonable prejudice.”¹²³

Thus, the legislative history provides no compelling reason to disregard or limit the force of the plain language of the statute. In fact, the legislative history actually supports the Sixth Circuit’s holding that the ADEA protects all employees over forty years of age, and thus provides employees who are forty to forty-nine years old with a reverse age discrimination cause of action.

120. *Johnson*, 855 F.2d at 305 (quoting *Garcia v. United States*, 469 U.S. 70, 75 (1984)).

121. *Id.* at 306; see *Cline v. Gen. Dynamics Land Sys., Inc.*, 466, 472 (6th Cir. 2002).

122. 29 U.S.C. §§ 621(a)–(b) (emphasis added).

123. *Id.* § 621 annot. 1, para. 3.

B. Sections 623(i) and (l) Also Support the Court's Decision in Creating a Reverse Discrimination Cause of Action for Employees Denied Benefits Because of Age

Consistent with the court's literal reading of section 623(a) and section 631(a) of the ADEA, the plain wording of section 623(i) also prohibits an employer from practicing age discrimination against any employee who is forty years of age and older, specifically in the establishment or maintenance of employee pension benefit plans.¹²⁴ In pertinent part, section 623(i)(1)(A) prohibits an employer from establishing or maintaining "an employee pension benefit plan which requires or permits . . . the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual because of age."¹²⁵ Thus, read in conjunction with section 631, which defines "individuals" as those forty and over, the plain language of section 623(i) can also be read to forbid an employer from sustaining a pension plan that discriminates against *any* employee over thirty-nine solely because of age.

In *Cline*, the new CBA at issue provided that "only employees 50 years of age or older on July 1, 1997, remained eligible to receive full health benefits upon retirement."¹²⁶ Thus, the plaintiffs aged forty to forty-nine who were previously eligible were automatically denied these benefits simply because of their age.¹²⁷ This violated section 623(i), which prohibits the termination of an employee benefit plan solely because of an employee's age.¹²⁸

Although section 623(l)(1)(A) of the ADEA states that an employee pension benefit plan may contain a "minimum age" for eligibility, it specifies that such a minimum age requirement will "not be a violation of [only] subsection[s] (a), (b), (c), or (e)."¹²⁹ It makes no mention that such a minimum age requirement might or might not be a violation of subsection (i). "A statute should be read and construed as a whole and, if possible, given a harmonious,

124. *See id.* § 623(i).

125. *Id.*

126. *Cline*, 296 F.3d at 468.

127. *See id.*

128. *See* 29 U.S.C § 623(i).

129. *Id.* § 623(l)(2)(A).

comprehensive meaning.”¹³⁰ Thus, because section 623(l)(1)(A) does not specifically contend that a “minimum age” requirement is or is not a violation of section 623(i), which prevents any age discrimination in employment pensions, it is possible to read that such a minimum age requirement *may* be a violation of section 623(i). Even if section 623(i) might appear to conflict with section 623(l)(1)(A), a “harmonious [and] comprehensive” reading of all sections of the ADEA, namely section 623(i), section 623(l)(1)(A), and section 631(a), eliminates any ambiguity and produces a clear rule that is understandable on its face.¹³¹

Additionally, as Judge Cole correctly stated in his concurrence, the “minimum age” exception in section 623(l)(1)(A) only makes sense if the ADEA is read to allow reverse discrimination suits.¹³² Because only younger employees would protest a minimum age provision in an employee pension plan, the “minimum age” exception demonstrates that Congress, by the plain language of the ADEA, allowed for a reverse age discrimination cause of action.¹³³ Thus, not only is section 623(l)(1)(A) reconcilable with the rest of the ADEA, but it also demonstrates that the ADEA provides a reverse age discrimination cause of action for younger employees who have been discriminated in favor of the older employees within the ADEA’s protected class.

*C. The Sixth Circuit’s Holding Correctly Facilitates the
Eradication of Employment Age Discrimination*

As opposed to other circuits, which have all denied a plaintiff’s reverse age discrimination cause of action, the Sixth Circuit’s decision to interpret the ADEA as allowing plaintiffs a reverse discrimination claim was also correct because it encourages the promotion of the main purpose of the statute—the eradication of discrimination in all aspects of employment because of age. As

130. *United States v. Stauffer Chem. Co.*, 684 F.2d 1174, 1184 (6th Cir. 1982), *aff’d*, 460 U.S. 1080 (1983).

131. *Cline*, 296 F.3d at 471 (citing *Stauffer Chem. Co.*, 684 F.2d at 1174).

132. *See id.* at 473 (Cole, J., concurring).

133. *Cf. Dittman v. Gen. Motors Corp.*, No. 96-9442, 1997 U.S. App. LEXIS 14980, at *4 (2d Cir. June 20, 1997) (affirming decision to deny plaintiffs’ reverse age discrimination claim, but refusing to specifically address whether the ADEA actually allows a claim for reverse age discrimination); *see also* text accompanying notes 104–06.

Congress has found, discrimination against employees because of age is a great problem that has severe economic and social consequences.¹³⁴ Congress initially enacted the ADEA in 1967 because it found that “[h]undreds of thousands not yet old, not yet voluntarily retired, find themselves jobless because of arbitrary age discrimination.”¹³⁵ In 1965, the Secretary of Labor reported that about “half of all private job openings were barred to applicants over fifty-five; a quarter were closed to applicants over forty-five.”¹³⁶ Congress determined that, in economic terms, this was a serious and senseless problem “to a nation on the move.”¹³⁷ Additionally, it found that the bigger loss “is the cruel sacrifice in happiness and well-being which joblessness imposes on these citizens and their families.”¹³⁸ Thus, in enacting the ADEA, and limiting it to ages forty and older, Congress hoped to correct this problem.

However, recent data reveals that this problem has not been adequately solved, especially with regard to protecting employees between forty and forty-nine. For example, a statistical analysis of all claims made under the ADEA in 1996 revealed that there has been a “very significant rise in the percentage of younger plaintiffs—an increase of 41% more . . . in their forties, and . . . [a] decline of 18% in the percentage of plaintiffs in their fifties.”¹³⁹ The study explained the move “towards younger plaintiffs” as a result of greater layoff rates “for younger ADEA-protected workers, i.e., those in their forties and early fifties.”¹⁴⁰ In sum, the study demonstrates that the need to protect the relatively younger workers exists now more than ever. Consequently, by providing redress for these relatively younger workers, the Sixth Circuit facilitates the ADEA’s original intent, which is the elimination of age discrimination of all employees forty and older.

Additionally, from a policy perspective, a broad interpretation of the ADEA sustaining claims by younger employees against older

134. See Howard C. Eglit, *The Age Discrimination in Employment Act at Thirty: Where It's Been, Where It Is Today, Where It's Going*, 31 U. RICH. L. REV. 579, 583 (1997).

135. *Id.* (quoting 113 Cong. Rec. 1089–90 (Jan. 23, 1967)).

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.* at 603.

140. *Id.* at 604.

ones does not upset the objectives of the ADEA. To the contrary, a liberal reading enhances “the ADEA’s purpose of promoting individuals based on ability alone.”¹⁴¹

VI. IMPACT

The Sixth Circuit, in *Cline v. General Dynamics Land Systems, Inc.*, creates the appropriate remedy for employees between the ages of forty and forty-nine who feel that they have experienced age-based employment discrimination. By interpreting the ADEA to allow reverse age discrimination claims, the court established precedent for courts that deal with younger employees who feel that they have been discriminated against because of their age in the distribution of employee benefit plans.

However, this decision may have “far-reaching effects”¹⁴² on employee pension programs and health benefit arrangements that contain age limitations. There are many “benefit policies in which the starting age is not 40 but something older than that.”¹⁴³ Additionally, many severance plans only accept employees who are fifty-five years of age and above for early retirement eligibility.¹⁴⁴ Thus, a broad reading of the Sixth Circuit’s holding may encourage lawsuits by many employees between the ages of forty and forty-nine who are not covered by their employer’s benefit plan.

As Judge Williams articulated in his dissent, this may have a negative impact on all employees over the age of forty.¹⁴⁵ If employers are forced to provide benefits to all employees over forty, or none at all because they might be faced with a reverse discrimination suit, they might opt not to provide any benefits at all. Thus, *Cline* raises the question of whether any employer will be able to have “early-retirement options that start later than age 40.”¹⁴⁶

141. Chad A. Stewart, Comment, *Young, Talented, and Fired: The New Jersey Law Against Discrimination and the Right Decision in Bergen Commercial Bank v. Sisler*, 84 MINN. L. REV. 1689, 1723 (2000).

142. Gillian Flynn, *The Maturing of the ADEA*, WORKFORCE, Oct. 2002, at 87; see also text accompanying notes 92–96 (stating the dissent’s concern with potential adverse effects of the majority decision).

143. Flynn, *supra* note 142, at 87.

144. See *id.*

145. See text accompanying note 95.

146. Flynn, *supra* note 142, at 87.

Especially with the increase in cutbacks of medical benefits, the answer to this question may prove to be important.¹⁴⁷

However, a more narrow reading of the *Cline* decision might provide answers. Such a reading may lead employers into trouble only if such employers change or alter existing benefit plans based solely on age. By demonstrating that they have justifiable business reasons¹⁴⁸ for a change in an existing employee benefit plan, employers may avoid trouble under the ADEA and insulate themselves against reverse discrimination claims. Thus, the Sixth Circuit's decision does not prevent employers from making sound business judgments or force them to stop all benefits. In fact, a narrower reading of the decision merely suggests that if employers alter existing benefit plans, they should not do so solely on age-based decisions.

Reading the rule to provide that age may merely be one reason to change benefit plans may provide courts with some guidance in determining the validity of changes in existing employee benefit plans. Furthermore, a consideration of a set of factors may prove useful in assessing the lawfulness of such a change in an employee benefit plan that takes age into account. For example, courts might consider: (1) the adverse impact caused by the change in the existing plan on the age-based class of affected employees; (2) the severity of this impact on the class; (3) the viability of the employer's business without making the changes to the existing plan; (4) the availability of alternative means to preserve the employer's business—if the viability of the business is at stake; (5) the number of employees affected; and (6) the terms of similar benefit plans in other similarly-situated businesses.

In sum, although the decision in *Cline* may challenge existing employee plans and affect the ability of employers to alter existing benefit provisions to address their changing business needs, a narrow interpretation of the court's holding and the suggested six mentioned factors necessarily assures both that existing employee benefit programs remain intact, and that the goals of the ADEA in preventing age-based discrimination are met.

147. *See id.*

148. *See id.*

VII. CONCLUSION

In holding that the ADEA provides a cause of action for reverse age discrimination claims, the Sixth Circuit was the first to provide redress for such aggrieved plaintiffs between the ages of forty and forty-nine. It is usually thought that the oldest employees experience the most discrimination and thus deserve the most protection. However, that is not always the case. On the contrary, as the facts of *Cline* demonstrate, younger employees often suffer just as much, if not more, age-based discrimination.

The ADEA acknowledged this phenomenon when it extended its protection to all employees over the age of thirty-nine. In recognizing this concern, which is articulated in the plain language of the statute, the Sixth Circuit correctly extended the protections of ADEA to the aggrieved plaintiffs. Although critics have expressed concerns that the application of *Cline* may have negative impacts on existing employee benefit plans, recent developments in the case further eliminate such concerns.

Interestingly, since the Sixth Circuit's decision, the defendants in *Cline* have "already changed their policy."¹⁴⁹ This suggests two things: (1) that employers will find it more beneficial to both themselves and to their employees if their employer provides equal treatment to all employees of the protected class, or (2) if the employer chooses to change an existing plan, the employer will find it beneficial to ensure that age is not the sole distinguishing factor. Thus, in creating a reverse age discrimination cause of action, the Sixth Circuit protects the rights of all employees within the protected class and adequately furthers the goals of the ADEA in fighting age-based discrimination in the workplace.

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149. *See id.*

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