

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SMITH ET AL. *v.* CITY OF JACKSON, MISSISSIPPI, ET
AL.

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

No. 03–1160. Argued November 3, 2004—Decided March 30, 2005

In revising its employee pay plan, respondent City granted raises to all police officers and police dispatchers in an attempt to bring their starting salaries up to the regional average. Officers with less than five years' service received proportionately greater raises than those with more seniority, and most officers over 40 had more than five years of service. Petitioners, a group of older officers, filed suit under the Age Discrimination in Employment Act of 1967 (ADEA), claiming, *inter alia*, that they were adversely affected by the plan because of their age. The District Court granted the City summary judgment. Affirming, the Fifth Circuit ruled that disparate-impact claims are categorically unavailable under the ADEA, but it assumed that the facts alleged by petitioners would entitle them to relief under *Griggs v. Duke Power Co.*, 401 U. S. 424, which announced a disparate-impact theory of recovery for cases brought under Title VII of the Civil Rights Act of 1964 (Title VII).

Held: The judgment is affirmed.

351 F. 3d 183, affirmed.

JUSTICE STEVENS delivered the opinion of the Court with respect to Parts I, II, and IV, concluding:

1. The ADEA authorizes recovery in disparate-impact cases comparable to *Griggs*. Except for the substitution of “age” for “race, color, religion, sex, or national origin,” the language of ADEA §4(a)(2) and Title VII §703(a)(2) is identical. Unlike Title VII, however, ADEA §4(f)(1) significantly narrows its coverage by permitting any “otherwise prohibited” action “where the differentiation is based on reasonable factors other than age” (hereinafter RFOA provision). Pp. 2–4.

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2. Petitioners have not set forth a valid disparate-impact claim. Two textual differences between the ADEA and Title VII make clear that the disparate-impact theory's scope is narrower under the ADEA than under Title VII. One is the RFOA provision. The other is the amendment to Title VII in the Civil Right Act of 1991, which modified this Court's *Wards Cove Packing Co. v. Atonio*, 490 U. S. 642, holding that narrowly construed the scope of liability on a disparate-impact theory. Because the relevant 1991 amendments expanded Title VII's coverage but did not amend the ADEA or speak to age discrimination, *Wards Cove*'s pre-1991 interpretation of Title VII's identical language remains applicable to the ADEA. Congress' decision to limit the ADEA's coverage by including the RFOA provision is consistent with the fact that age, unlike Title VII's protected classifications, not uncommonly has relevance to an individual's capacity to engage in certain types of employment. Here, petitioners have done little more than point out that the pay plan is relatively less generous to older workers than to younger ones. They have not, as required by *Wards Cove*, identified any specific test, requirement, or practice within the pay plan that has an adverse impact on older workers. Further, the record makes clear that the City's plan was based on reasonable factors other than age. The City's explanation for the differential between older and younger workers was its perceived need to make junior officers' salaries competitive with comparable positions in the market. Thus, the disparate impact was attributable to the City's decision to give raises based on seniority and position. Reliance on these factors is unquestionably reasonable given the City's goal. Pp. 11–14.

JUSTICE STEVENS, joined by JUSTICE SOUTER, JUSTICE GINSBURG, and JUSTICE BREYER, concluded in Part III that the ADEA's text, the RFOA provision, and Equal Employment Opportunity Commission (EEOC) regulations all support the conclusion that a disparate-impact theory is cognizable under the ADEA. Pp. 4–11.

JUSTICE SCALIA concluded that the reasoning in Part III of JUSTICE STEVENS' opinion is a basis for deferring, pursuant to *Chevron U. S. A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U. S. 837, to the EEOC's reasonable view that the ADEA authorizes disparate-impact claims. Pp. 1–5.

JUSTICE O'CONNOR, joined by JUSTICE KENNEDY and JUSTICE THOMAS, concluded that the judgment should be affirmed on the ground that disparate impact claims are not cognizable under the ADEA. Pp. 1–22.

STEVENS, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and IV, in which SCALIA,

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SOUTER, GINSBURG, and BREYER, JJ., joined, and an opinion with respect to Part III, in which SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed an opinion concurring in part and concurring in the judgment. O'CONNOR, J., filed an opinion concurring in the judgment, in which KENNEDY and THOMAS, JJ., joined. REHNQUIST, C. J., took no part in the decision of the case.