No. 24-1206

In the Supreme Court of the United States

DARYAO S. KHATRI,

Petitioner,

v.

BOARD OF TRUSTEES OF THE UNIVERSITY OF THE DISTRICT OF COLUMBIA,

Respondent.

On Petition for a Writ of Certiorari to the District of Columbia Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

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May 21, 2025
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QUESTIONS PRESENTED

Federal employees' rights are determined under statutes which require that "all personnel actions effecting employees or applicants for employment . . . in executive agencies as defined in Title 5 . . . shall be made free from any discrimination . . . " *See* 42 U.S.C. § 2000e-16(a) (race, color, religion, sex, or national origin) (emphasis added); 29 U.S.C. § 633a(a) (age). This Court, in *University of Texas Southwestern Medical Center v. Nassar*, 570 U.S. 338 (2013) and *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009), interpreted the private-sector statutory language "because" in 42 U.S.C. § 2000e-3(a), and "because of" in 29 U.S.C. § 623(a)(1), respectively, as requiring a private-sector plaintiff to prove but-for causation.

The District of Columbia and by extension the employees of the University of the District of Columbia are covered by the same rules as Federal employees when dealing with age discrimination. Employees of the District government shall have certain rights to file complaints with the United States Equal Employment Opportunity Commission (EEOC) pursuant to § 706 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5, and to pursue remedies provided for in the Age Discrimination in Employment Act, as amended, 29 U.S.C. §§ 626 and 633. The Question Presented Is:

Whether the District of Columbia Court of Appeals (DCCA) and the lower courts erred on two counts: (1) by not considering the Supreme Court ruling of April 6, 2020 (No. 18-882) in the case of *Babb* and *Wilkie* where the court held: "The plain meaning of § 633a(a) demands that personnel actions be untainted by any consideration of age"; and (2) by believing the defendant's

misleading narrative as true and ignoring the facts that have come to light during court proceedings and during the 2022-2024 timeframe.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- Daryao Khatri

Respondent and Defendant-Appellee below

- Board of Trustees of the University of the District of Columbia

Note: Appellant Hailemichael Seyoum passed away

LIST OF PROCEEDINGS

District of Columbia Court of Appeals

Nos. 23-CV-0874 & 23-CV-0875

Hailemichael Seyoum & Daryao Khatri, *Appellants*, v. Board of Trustees of the University of the District of Columbia, *Appellee*.

Date of Final Opinion: January 6, 2025

Date of Rehearing Denial: January 31, 2025

District of Columbia Court of Appeals

Nos. 22-CV-0077 & 22-CV-0078

Hailemichael Seyoum, et al., *Appellants*, v. Board of Trustees of the University of the District of Columbia, *Appellee*.

Date of Final Opinion: August 30, 2023

District of Columbia Court of Appeals

Nos. 20-CV-0240 & 20-CV-0314

Hailemichael Seyoum, et al., *Appellants*, v. Board of Trustees of the University of the District of Columbia, *Appellee*.

Final Opinion: February 7, 2023

Superior Court of the District of Columbia Civil Division

Nos. 2018 CA 004939 B, 2018 CA 004941 B

Hailemichael Seyoum & Daryao Khatri, *Plaintiff*, v. Board of Trustees of the University of the District of Columbia, *Defendant*.

Final Order: February 26, 2020

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The final opinion of the D.C. Court of Appeals, dated January 6, 2025 is included at App.1a-7a. This opinion affirmed the February 26, 2020 decision of the D.C. Superior Court, which is included at App.39a-62a.

JURISDICTION

The decision of the D.C. Court of Appeals was entered on January 6, 2025. App.1a. A timely petition for rehearing and rehearing *en banc* was denied on January 31, 2025. App.64a. This Court has jurisdiction pursuant to 28 U.S.C. § 1257.

STATUTORY PROVISIONS INVOLVED

Section 15(a) of the Age Discrimination in Employment Act of 1967 ("ADEA"), 29 U.S.C. § 633a(a), provides in pertinent part:

> All personnel actions affecting employees or applicants for employment who are at least 40 years of age . . . in executive agencies as defined in section 105 of Title 5 . . . shall be made free from any discrimination based on age.

Section 717(a) of Title VII of the Civil Rights Act of 1964 (hereafter, "Title VII"), 42 U.S.C. § 2000e-16(a), provides in pertinent part:

> All personnel actions affecting employees or applicants for employment . . . in executive agencies as defined in section 105 of Title 5 . . . shall be made free from any discrimination based on race, color, religion, sex, or national origin.

INTRODUCTION

This case presents the Court with another opportunity to continue providing coherence and clarity to the statutory framework applicable to federal-sector discrimination and retaliation claims. According to this Court, "[s]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose." *Engine Mfrs. Assn. v. South Coast Air Quality Mgmt. Dist.*, 541 U.S. 246, 252 (2004) (internal quotation marks omitted) *accord Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 168, 175 (2009). Federal employees' rights are determined under statutes which require that "all personnel actions effecting employees or applicants for employment . . . in executive agencies as defined in Title 5 . . . shall be made free from any discrimination . . . " *see* 42 U.S.C. § 2000e-16(a) (race, color, religion, sex, or national origin); 29 U.S.C. § 633a(a) (age).

At the current time, federal employees filing claims under Title VII and ADEA face inexplicably differing standards of proof depending on where they file. The only post-*Gross* federal court to consider and

resolve the textual differences between the private- and federal-sector provisions of the statutes recognized that the "free from" language recognizes an actionable claim if age discrimination is "a factor" in the claim. *See Ford v. Mabus*, 629 F.3d 198, 206-07 (D.C. Cir. 2010) (discussing case-law interpretations of similar language along with the fact that Congress deliberately prescribed a distinct statutory scheme applicable only to federal employees using "sweeping language"). When considering federal-sector discrimination claims, including retaliation claims, within their jurisdiction the Equal Employment Opportunity Commission (EEOC) and the Merit Systems Protection Board (MSPB) have come to the same conclusion. *See Complainant v. Dep't of Homeland Sec.*, EEOC DOC 0720140014, 2015 WL 5042782, at *5-6 (Aug. 19, 2015) (retaliation under Title VII or ADEA); *Complainant v. Dep't of Homeland Sec.*, EEOC DOC 0720140037, 2015 WL 3542586, at *4-5 (May 29, 2015) (retaliation under Title VII); *see also Petitioner v. Dep't of Interior*, EEOC DOC 0320110050, 2014 WL 3788011, at *10 n.6 (July 16, 2014) (holding that the "but-for" standard does not apply in federal-sector Title VII or ADEA cases); *Savage v. Dep't of Army*, 122 M.S.P.R. 612, 634 (Sept. 3, 2015) (retaliation under Title VII); *Wingate v. U.S. Postal Serv.*, 118 M.S.P.R. 566 (Sept. 27, 2012) (concluding that a federal employee may prove age discrimination by showing that age was 'a factor" in the personnel action, even if it was not the "but for" cause).

The EEOC is the executive agency to which Congress gave enforcement authority on federal-sector EEO matters. 42 U.S.C. § 2000e-16(b); *see also* Exec. Order No. 12067, 43 Fed. Reg. 28967 (June 30, 1978).

EEOC has addressed the separate standard for federal employees in its *EEOC Enforcement Guidance on Retaliation and Related Issues*, No. 915.004 (Aug. 25, 2016) (available at www.EEOC.gov/laws/guidance/retaliation-guidance.com). In Section II.C, the guidelines address causation. Subsection II.C.1.b provides the following:

> By contrast, in federal sector Title VII and ADEA retaliation cases, the Commission has held that the "but for" standard does not apply because the relevant federal sector statutory provisions do not employ the same language on which the Court based its holding in *Nassar*. The federal sector provisions contain a "broad prohibition of 'discrimination' rather than a list of specific prohibited practices," requiring that employment "be made free from any discrimination," including retaliation. Therefore, in Title VII and ADEA cases against a federal employer, retaliation is prohibited if it is a motivating factor.

Given the broad, general, sweeping "free from" language, a federal employee should be able to establish a retaliation claim under 42 U.S.C. § 2000e-16 where a prohibited consideration was a factor or motivating factor in the contested personnel action, even if it was not the only reason.

In the case of *Babb v. Wilkie* (Case # 18-882) on April 6, 2020, this court has agreed with this interpretation. Specifically, this court held: The plain meaning of § 633a(a) demands that personnel actions be untainted by any consideration of age. To obtain reinstatement, damage, or other relief related to the end

result of an employment decision, a showing that a personnel action would have been different if age had not been taken into account is necessary, but if age discrimination played a lesser part in the decision, other remedies may be appropriate.

The District of Columbia Superior Court and the District of Columbia Court of Appeals determined that it is bound by a prior decision applying a *McDonnell Douglas* test and a but-for causation standard to a federal-sector retaliation case. Specifically, the DCCA ruled as:

> The DCHRA makes it an "unlawful discriminatory practice" for an employer to "discharge" any individual "wholly or partially for a discriminatory reason based upon the actual or perceived . . . age" of the individual. D.C. Code § 2-1402.1 l(a). District of Columbia courts and their federal counterparts have repeatedly held that claims brought under the DCHRA are analyzed in the same manner as claims under the federal Age Discrimination in Employment Act *("DEA"). See, e.g., Musgrove v. Dist. of Columbia,* 775 F.Supp.2d 158, 171-72. Thus, when considering age discrimination claims under the DCHRA, District of Columbia courts apply the familiar burden-shifting framework established by the Supreme Court for federal discrimination cases in *cf McDonnell Douglas Corp. v. Green,* 411 U.S. 792, 802 (1973). *See Hollins v. Fannie Mae,* 760 A.2d 563, 571 (D.C. 2000)

At both levels of the DC superior court and DC Court of Appeals, the courts ruled as follows:

> The court on 2/26/2020 ruled that, "the plaintiffs have demonstrated a prima facie case of age discrimination in connection with their inclusion in the reduction-in-force." However, the court using *McDonnell Douglas framework,* ruled that that a reduction-in-force for budgetary reasons may constitute a legitimate, non-discriminatory justification for an adverse employment action.

On February 7, 2023, DCCA ruled as follows:

> To make a prima facie case of discrimination, Drs. Seyoum and Khatri were required to put forward some evidence that they were members of a protected class, they suffered adverse employment actions, and the circumstances of the adverse actions gave rise to an inference of discrimination. *Kumar v. D.C. Water & Sewer Auth.*, 25 A.3d 9, 17 (D.C. 2011). An inference of discrimination can arise from evidence that similarly situated employees who were not in the protected class were not similarly terminated. *Little v. D.C. Water & Sewer Auth.*, 91 A.3d 1020, 1027-28 (D.C. 2014). The trial court correctly concluded that Drs. Seyoum and Khatri established such a prime facie case. Both former professors were over 60 years old when fired and it is evident from the record that the RIF disproportionately affected older professors.
>
> In its analysis, the court stated, "we employ the same three-part, burden-shifting test articulated by the Supreme Court for Title VII cases in *McDonnell Douglas Corp. v.*

> *Green*, 411 U.S. 792, 802 (1973)." *Id.* at 346 (parallel citations omitted). First, the employee must present evidence establishing a prima facie case of discrimination. *Blackman v. Visiting Nurses Ass'n*, 694 A.2d 865, 868 (D.C. 1997). Second, if the employee makes that showing, then "the burden shifts to the employer to articulate a legitimate basis for the employee's termination." *Id.* Third, if the employer does so, then "the burden shifts back to the employee to demonstrate that the employer's action was pretextual."

As these analyses by DC Court of Appeals and the DC Superior court is contrary to the ruling of the US Supreme court (April 6, 2020 (No. 18-882), Pro Se Petitioner, Daryao Khatri, respectfully prays that this Court grant a writ of certiorari to review the judgment and opinions of the DC Court of Appeals entered of January 6, 2025, and resolve these disparities.

STATEMENT OF THE CASE

This case presents questions of fundamental importance to the application of the Title VII (and ADEA) cases of thousands of federal employees in light of the decision of this court of April 6, 2020, in the case of *Babb v. Wilkie* (Case # 18-882).

The decision of this court states the following:

> The Government has no answer to this parsing of the statutory text. It makes correct points about the meaning of particular words but draws the unwarranted conclusion that

> the statutory text requires something more than a federal employer's mere consideration of age in personnel decisions. The Government's only other textual argument is that the term "made" refers to a particular moment in time, *i.e.*, the moment when the final employment decision is made. That interpretation, however, does not mean that age must be a but-for cause of the ultimate outcome.

The court decision also states that:

> But-for causation is nevertheless important in determining the appropriate remedy. Plaintiffs cannot obtain compensatory damage or other forms of relief related to the end result of an employment decision without showing that age discrimination was a but-for cause of the employment outcome. This conclusion is supported by basic principles long employed by this Court, *see, e.g., Steel Co. v. Citizens for Better Environment*, 523 U.S. 83, 103, and traditional principles of tort and remedies law. Remedies must be tailored to the injury. Plaintiffs who show that age was a but-for cause of differential treatment in an employment decision, but not a but-for cause of the decision itself, can still seek injunctive or other forward-looking relief.

A. Legal Background

In *Babb v. Wilkie*, this court has ruled as follows:

> The plain meaning of § 633a(a) demands that personnel actions be untainted by any consideration of age. To obtain reinstatement, damage, or other relief related to the

> end result of an employment decision, a showing that a personnel action would have been different if age had not been taken into account is necessary, but if age discrimination played a lesser part in the decision, other remedies may be appropriate.
>
> It is not anomalous to hold the Federal Government to a stricter standard than private employers or state and local governments. *See* § 623(a). When Congress expanded the ADEA's scope beyond private employers, it added state and local governments to the definition of employers in the private-sector provision. But it "deliberately prescribed a distinct statutory scheme applicable only to the federal sector," *Lehman v. Nakshian,* 453 U.S. 156, 166, eschewing the private-sector provision language. That Congress would want to hold the Federal Government to a higher standard is not unusual. *See, e.g.,* 5 U.S.C. § 2301(b)(2). Regardless, where the statute's words are unambiguous, the judicial inquiry is complete.

This court also ruled as follows:

> But-for causation is nevertheless important in determining the appropriate remedy. Plaintiffs cannot obtain compensatory damage or other forms of relief related to the end result of an employment decision without showing that age discrimination was a but-for cause of the employment outcome. This conclusion is supported by basic principles long employed by this Court, *see, e.g., Steel Co. v. Citizens for Better Environment,* 523 U.S. 83, 103, and

> traditional principles of tort and remedies law. Remedies must be tailored to the injury. Plaintiffs who show that age was a but-for cause of differential treatment in an employment decision, but not a but-for cause of the decision itself, can still seek injunctive or other forward-looking relief.

B. Factual Background

(1) Petitioner, Dr. Daryao Khatri, was hired as an Assistant professor of Physics in 1973. He was subsequently promoted to the ranks of Associate Professor in 1977 and to the rank of full professor in 1980-81. He was granted a tenure status (also called Reserved Interest Status (RIS)) during the 1981 timeframe. A typical contract letter of employment stated,

> This appointment is made with tenure. You will be granted all of the rights and privileges associated with tenure identified in the applicable District of Columbia Municipal Regulations, Title 8, the applicable University policies, and terms of the Fifth Master Agreement with the University of the District of Columbia Faculty Association,

(2) The physics program teaches four levels of classes, 100-400 levels. The 100-200 levels of courses are taught for majors which require physics as a required course (there are about 11-13 majors that require physics for their majors before students can graduate from those majors). 300-400 levels of physics classes are meant for physics majors. Because of the research nature of these courses and the number of full-time faculty available (just two), the enrollment is limited to 1-2 students per class by university and

departmental policies; these policies, in turn, lead to only a few students graduating with physics degrees. UDC is no exception to these numbers because the physics programs throughout the whole country graduate very few students every year; this is simply the nature of the program.

(3) During the 2013-1014 academic year, UDC falsely called these enrollments and graduation rates of 1-2 students in physics as low enrollments and low graduation rates and used these slogans to terminate the degree granting program in physics and its faculty under false pretexts. If this was true, UDC should have eliminated both chemistry and math programs because both programs have enrollments and graduation rates of 1-2 student during the 2022-2024 academic years; UDC has not denied this assertion by the plaintiff.

(4) Facing financial difficulties for the city during the 2012-2013 budget year, the city council of the District of Columbia, regarding UDC, passed the following resolution:

> In 2012, the Council of the District of Columbia enacted the Fiscal Year 2013 Budget Support Act of 2012 ("Budget Act"), which included the University of the District of Columbia Right-Sizing Plan Act of 2012. D.C. Law 19-168, 59 D.C. Reg. 8025 (Sept. 20, 2012), §§ 4031-32. The Budget Act required UDC to transmit to the Council a "right-sizing plan," approved by the Board of Trustees, to "bring the University's costs, staff, and faculty size in line with other comparable public universities." *Id.* § 4032(a). UDC was directed to "identif[y] under-enrolled and under-performing programs" and provide a "timeline

> and plan for improving or eliminating" them, as well as a "staff and faculty reduction strategy and timeline."
>
> In response to this mandate from the city council, UDC Board of trustees passed resolution # 2013-01 that addressed the city's "Budget Act". The resolution identified the staff and faculty positions that were eliminated resulting in a saving of $5.8 million. Knowing that the DC government has a budget cycle of one year, this Board resolution (2013-01) addressed the budget concerns of the city council. Because the city Budgets are for a period of one year, the only remaining issue for the University during the 2013-2014 academic year was to restructure the academic programs to strengthen academic offerings; it was <u>not</u> meant to terminate faculty.

(5) On November 19, 2013, the Board of Trustees approved the elimination of degree-granting programs in 17 disciplines, including physics; during this meeting the Board of trustees failed to follow protocols and did not consider a report from the Faculty Senate, which it is required to do as part of shared-governance structure at the university.

(6) As part of this degree-program elimination (only the upper two levels of courses eliminated), the Board of Trustees identified 17 faculty positions to be eliminated. Out of this list of 17, the University terminated 13 older faculty members but retained four younger faculty members who are still employed full-time at the university.

(7) EEOC requires as follows before conducting a RIF:

> Before implementing a layoff or reduction in force (RIF), employers are required to review the process to determine if it will result in the disproportionate dismissal of older employees, employees with disabilities, or any other group protected by federal employment discrimination laws[1]. The Age Discrimination in Employment Act (ADEA) prohibits age-based discrimination in all aspects of employment, including hiring, firing, promotion, layoff, compensation, benefits, job assignments, and training 34. Employers may need to disclose "eligibility factors" to allow employees to determine whether age discrimination motivated the termination selections.
>
> As required by the EEOC, the University has conceded that it did not do an age-impact study before carrying out this RIF.

(8) Knowing fully well that during the 2014 academic year, UDC's budget is not an issue, the Board of trustees passed resolutions # 2014-06, 2014-10, 2014-18, and the one during its meeting of 1/19/2013 to terminate the offering of degree-granting programs in Physics, Sociology, History, and a number of other disciplines. The pertinent Board resolution states as follows:

> The resolution explained that, under the Master Agreement, UDC was authorized to "relieve employees of duties because of lack of work or other legitimate reasons," their tenure status notwithstanding. The resolution

> set forth two separate reasons for terminating the full-time jobs of certain faculty. First, the resolution relied on the elimination of a total of 17 degree-granting programs, including physics, explaining that without an academic program there was "no need for continuing full-time faculty appointments." Second, the resolution noted that "certain faculty members . . . [did] not hold the qualifying degree to teach in the academic program in which they [were] assigned," and that UDC also had "no need" to continue those full-time faculty appointments.

(9) In its decision of 2/7/2023, DCCA noted that "As Drs. Seyoum and Khatri acknowledge, UDC has not hired any fulltime physics faculty in the intervening years."

> This was the case up until 2021-2022. Since then, the University has conceded that it hired two full-time faculty with benefits to teach physics classes. Therefore, the conclusion of DCCA was premature and incorrect.

(10) In its decision of 2/7/2023, DCAA further notes as follows:

> (2) in response and after extensive, transcribed discussion, UDC issued a resolution eliminating a number of degree-granting programs including the one in physics, which had one to two students in its upper-level courses, had only produced two graduates with degrees in physics between 2010 and 2014, and would have needed significant investment to bring its infrastructure up to

> par; (3) thereafter and again after extensive, transcribed discussion, UDC terminated the faculty affiliated with the eliminated degree-granting programs. *See supra* Part I. UDC informed the professors of this rationale in their termination letters and specifically cited to the Board resolutions that eliminated the physics degree program and the associated full-time faculty positions.

The court erred here because the court never asked and UDC never provided any figures for the savings that will result as a consequence of terminating two physics faculty; after all, UDC had a budget of over $150 million during the 2013-2014 academic years The statement by UDC regarding savings was superfluous because UDC hired about 91 full-time faculty during the 2015-2018 academic years; a large number of these new hires were younger. Moreover, UDC never provided a figure for the savings that would have resulted in terminating the physics faculty.

(11) Based on UDC's misguided answers, DCAA's conclusion that it resulted in "substantial cost-savings by hiring adjuncts to teach the lower-level classes needed for other majors" is totally unsubstantiated. The record has no numbers, just language with no substance.

(12) In its decision, DCCA notes that, "But even assuming the professors sufficiently established that the other faculty they identify as points of comparison were substantially younger and that UDC was aware of this, we see no evidence in the record indicating that similarly situated younger faculty received preferential treatment."

The facts speak differently. Three younger faculty members (Ufland, Chatman, Jowers) whose names were on the faculty list to be terminated are younger, and the documents show that they are still employed full-time in programs that do not offer a degree.

C. Proceedings Below

(1) Petitioner Khatri commenced this action in the Superior Court of the District of Columbia on November 20, 2019 after receiving a negative response from DCOHR and EEOC, alleging that he was subject to discrimination in violation of Title VII of the Civil Rights Act and the Age Discrimination in Employment Act of 1967. Specifically, he alleged that he was the victim of age discrimination in violation of Title VII and the ADEA. This case was later consolidated with the case of Dr. Hailemichael Seyoum, another physics professor from the University. In their cases, the plaintiffs invoked the federal Age Discrimination Act of 1967, 29 U.S.C. §§ 621 *et seq.*, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, in addition to the DCHRA.

The court on 2/26/2020 ruled that, "the plaintiffs have demonstrated a prima facie case of age discrimination in connection with their inclusion in the reduction-in-force." However, the court using *Donnell Douglas framework,* ruled that that a reduction-in-force for budgetary reasons may constitute a legitimate, non-discriminatory justification for an adverse employment action.

(2) An appeal was filed with the District of Columbia Court of Appeals (DCCA) on 7/27/2020. The case was argued on March 17, 2021. A judgement was entered for the defendant on February 7, 2023.

In its analysis, the court stated,

> [W]e employ the same three-part, burden-shifting test articulated by the Supreme Court for Title VII cases in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802 (1973)." *Id.* at 346 (parallel citations omitted). First, the employee must present evidence establishing a prima facie case of discrimination. *Blackman v. Visiting Nurses Ass'n*, 694 A.2d 865, 868 (D.C. 1997). Second, if the employee makes that showing, then "the burden shifts to the employer to articulate a legitimate basis for the employee's termination." *Id.* Third, if the employer does so, then "the burden shifts back to the employee to demonstrate that the employer's action was pretextual.

In addition, the court stated, "The trial court correctly concluded that Drs. Seyoum and Khatri established such a prima facie case."

However, the court incorrectly believed that the University had a different reason for terminating their employment, the reason being the elimination of the BS degree granting program in physics.

The court also stated that, "As Drs. Seyoum and Khatri acknowledge, UDC has not hired any fulltime physics faculty in the intervening years."

These conclusions by the court are inaccurate because the University has hired full-time faculty to teach physics classes since the 2022-2023 academic year, and the University still employs full-time faculty in the History program which was eliminated along with physics in 2013.

(3) The plaintiff filed a motion with DC Superior court requesting reconsideration under rules 60(b)(6) and 60(d)(2) on 11/17/2021. The motion for reconsideration was denied by this court on 2/4/2022 stating, "the plaintiffs present no evidence that this delay was caused by circumstances beyond their control or that they could not have taken earlier action."

(4) The DCCA remanded the case to the superior court for further consideration on 8/30/2023 stating, "It is therefore our judgment that in the overall circumstances here, the order denying the motion under Rule 60(b)(6) should be vacated and the case remanded for further consideration by the trial court." On 10/12/2023, the superior court denied the Plaintiffs' motion for reconsideration under Civil Rule 60(b)(6) upon remand.

(5) The pro se plaintiffs filed an appeal with DCCA on 10/15/2023. The appeal was submitted to DCCA on 12/18/2024 and a decision by the court was made on 1/6/2025 where the court stated, "Finally, again deferring to the trial court's determination that the documents at issue were immaterial or unpersuasive, we likewise discern no abuse of discretion in the trial court's denial of the professors' motion to file newly discovered documents." Additionally, the court stated, "Moreover, the grounds offered by the professors for Rule 60(b)(6) relief appear to fall more appropriately under Rule 60(b)(2) ("newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b)") or Rule 60(b)(3) ("fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party"). But the "catchall" Rule 60(b)(6) provision "requires asserting some 'other reason' aside from the grounds for relief provided elsewhere in Rule

60(b) ." *Reshard v. Stevenson*, 270 A.3d 274, 281 n.10 (D.C. 2022).

(6) A timely petition for rehearing and rehearing *en banc* was denied on January 31, 2025.

REASONS FOR GRANTING THE PETITION

In the case of *Babb v. Wilkie* (Case # 18-882, dated: 4/6/2020), this court has already ruled that, "

> The plain meaning of § 633a(a) demands that personnel actions be untainted by any consideration of age. To obtain reinstatement, damage, or other relief related to the end result of an employment decision, a showing that a personnel action would have been different if age had not been taken into account is necessary, but if age discrimination played a lesser part in the decision, other remedies may be appropriate.

In this case, the court writes further as: "Which interpretation is correct? To decide, we start with the text of the statute, *see Gross v. FBL Financial Services, Inc.*, 557 U.S. 167, 175 (2009), and as it turns out, it is not necessary to go any further. The plain meaning of the statutory text shows that age need not be a but-for cause of an employment decision in order for there to be a violation of § 633a(a). To explain the basis for our interpretation, we will first define the important terms in the statute and then consider how they relate to each other."

Additionally, the court writes, "Under § 633a(a), the type of discrimination forbidden is "discrimination based on age," and "[i]n common talk, the phrase 'based on' indicates a but-for causal relationship." *Safeco Ins. Co. of America v. Burr*, 551 U.S. 47, 63 (2007); *cf. Comcast Corp. v. National Assn. of African American-Owned Media, ante*, at 6. Therefore, § 633a(a) requires that age be a but-for cause of the discrimination alleged."

Under Opinion of the court, this court writes, "As a result, age must be a but-for cause of discrimination —that is, of differential treatment—but not necessarily a but-for cause of a personnel action itself". . . . "If age discrimination plays any part in the way a decision is made, then the decision is not made in a way that is untainted by such discrimination". . . "This is the straightforward meaning of the terms of § 633a(a), and it indicates that the statute does not require proof that an employment decision would have turned out differently if age had not been taken into account."

> . . . By contrast, the provision in our case, § 633a(a), prohibits any age discrimination in the "mak[ing]" of a personnel decision, not just with respect to end results.
>
> While *Babb* can establish that the VA violated § 633a(a) without proving that age was a but-for cause of the VA's personnel actions, she acknowledges—and we agree—that but-for causation is important in determining the appropriate remedy."
>
> To obtain such remedies, these plaintiffs must show that age discrimination was a but-for cause of the employment outcome.

> Although unable to obtain such relief, plaintiffs are not without a remedy if they show that age was a but-for cause of differential treatment in an employment decision but not a but-for cause of the decision itself. In that situation, plaintiffs can seek injunctive or other forward-looking relief. Determining what relief, if any, is appropriate in the present case is a matter for the District Court to decide in the first instance if *Babb* succeeds in showing that § 633a(a) was violated."

In conclusion, this court writes, "The judgment of the United States Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion."

CONCLUSION

For the foregoing reasons and based on this court decision in the case of *Babb v. Wilkie*, this Court should grant this petition and issue a writ of certiorari to review the judgment and opinion of the District of Columbia Court of Appeals.

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May 21, 2025