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 SCALIA, dissenting.

The Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. §§621–634, makes it unlawful for an employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's age." §623(a)(1). The question in this case is whether, in the absence of an affirmative defense, the ADEA prohibits an employer from favoring older over younger workers when both are protected by the Act, *i.e.*, are 40 years of age or older.

The Equal Employment Opportunity Commission (EEOC) has answered this question in the affirmative. In 1981, the agency adopted a regulation which states, in pertinent part:

> "It is unlawful in situations where this Act applies, for an employer to discriminate in hiring or in any other way by giving preference because of age between individuals 40 and over. Thus, if two people apply for the same position, and one is 42 and the other 52, the employer may not lawfully turn down either one on the basis of age, but must make such decision on the basis of some other factor." 29 C.F.R. §1625.2(a) (2003).

This regulation represents the interpretation of the agency

tasked by Congress with enforcing the ADEA. See 29 U. S. C. §628.

The Court brushes aside the EEOC's interpretation as "clearly wrong." *Ante*, at 17. I cannot agree with the contention upon which that rejection rests: that "regular interpretive method leaves no serious question, not even about purely textual ambiguity in the ADEA." *Ante*, at 18. It is evident, for the reasons given in Part II of JUSTICE THOMAS's dissenting opinion, that the Court's interpretive method is anything but "regular." And for the reasons given in Part I of that opinion, the EEOC's interpretation is neither foreclosed by the statute nor unreasonable.

Because §623(a) "does not unambiguously require a different interpretation, and . . . the [EEOC's] regulation is an entirely reasonable interpretation of the text," *Barnhart* v. *Thomas*, 540 U. S. ___, ___ (2003) (slip op., at 10), I would defer to the agency's authoritative conclusion. See *United States* v. *Mead Corp.*, 533 U. S. 218, 257 (2001) (SCALIA, J., dissenting). I respectfully dissent.