

Opinion of THOMAS, J.

**SUPREME COURT OF THE UNITED STATES**

No. 06–1505

CLIFFORD B. MEACHAM, ET AL., PETITIONERS *v.*  
KNOLLS ATOMIC POWER LABORATORY,  
AKA KAPL, INC., ET AL.

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

[June 19, 2008]

JUSTICE THOMAS, concurring in part and dissenting in part.

I write separately to note that I continue to believe that disparate-impact claims are not cognizable under the Age Discrimination in Employment Act of 1967, 29 U. S. C. §621 *et seq.* See *Smith v. City of Jackson*, 544 U. S. 228, 247–268 (2005) (O’Connor, J., joined by KENNEDY and THOMAS, JJ., concurring in judgment). Moreover, I disagree with the Court’s statement that the “reasonable factors other than age” (RFOA) exception, §623(f)(1), is principally relevant in disparate-impact cases. Compare *City of Jackson, supra*, at 251–253 (opinion concurring in judgment), with *ante*, at 10–11 (citing *City of Jackson, supra*, at 239 (plurality opinion)). I therefore join only Parts I and II–A of the Court’s opinion because I agree that the RFOA exception is an affirmative defense—when it arises in disparate-treatment cases. Here, although the Court of Appeals erred in placing the burden of proof on petitioners, I would nonetheless affirm because the only claims at issue are disparate-impact claims.