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SUPREME COURT OF THE UNITED STATES

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GOMEZ-PEREZ *v.* POTTER, POSTMASTER GENERALCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FIRST CIRCUIT

No. 06–1321. Argued February 19, 2008—Decided May 27, 2008

Petitioner, a 45-year-old postal worker, filed suit claiming that her employer had violated the federal-sector provision of the Age Discrimination in Employment Act of 1967 (ADEA), 29 U. S. C. §633a(a)—which requires that “[a]ll personnel actions affecting employees . . . at least 40 years of age . . . be made free from any discrimination based on age”—by subjecting her to various forms of retaliation after she filed an administrative ADEA complaint. The District Court granted respondent summary judgment. The First Circuit affirmed on the ground that §633a(a)’s prohibition of “discrimination based on age” does not cover retaliation.

Held: Section 633a(a) prohibits retaliation against a federal employee who complains of age discrimination. Pp. 3–16.

(a) In so concluding, the Court follows the reasoning of two prior decisions ruling that retaliation is covered by similar language in other antidiscrimination statutes. First, in *Sullivan v. Little Hunting Park, Inc.*, 396 U. S. 229, 237, the Court held that a retaliation claim could be brought under 42 U. S. C. §1982, which provides that “[a]ll citizens . . . shall have the same right . . . as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property.” While §1982 does not use the phrase “discrimination based on race,” that is its plain meaning. See, e.g., *Jackson v. Birmingham Bd. of Ed.*, 544 U. S. 167, 177. Second, the *Jackson* Court, *id.*, at 173–174, relied on *Sullivan* in holding that Title IX of the Education Amendments of 1972, 20 U. S. C. §1681(a), which prohibits “discrimination” “on the basis of sex” in educational programs receiving federal aid, reached retaliation against a public school teacher for complaining about sex discrimination in his school’s athletic program. 544 U. S., at 176–177. The ADEA language at issue

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(“discrimination based on age”) is not materially different from the language at issue in *Jackson* and is the functional equivalent of the language at issue in *Sullivan*, see *Jackson, supra*, at 177. And the context in which the statutory language appears is the same in all three cases: remedial provisions aimed at prohibiting discrimination. Respondent neither asks the Court to overrule *Sullivan* or *Jackson* nor questions those decisions’ reasoning, and the Government, both in *Jackson* and in *CBOCS West, Inc. v. Humphries, ante*, p. ___, has specifically urged the Court to follow *Sullivan*’s reasoning. Pp. 3–6.

(b) The three grounds on which the First Circuit sought to distinguish *Jackson* in support of the Circuit’s perception that there is a clear difference between causes of action for discrimination and for retaliation are not persuasive. Pp. 6–9.

(1) The Circuit places too much reliance on the fact that the ADEA expressly creates a private right of action, whereas the right of action under Title IX, the statute at issue in *Jackson*, is implied and not express, see *Cannon v. University of Chicago*, 441 U. S. 677. The assertion that this distinction allowed the *Jackson* Court greater leeway to adopt an expansive interpretation of Title IX improperly conflates the analytically distinct questions whether a statute confers a private right of action and whether the statute’s substantive prohibition reaches a particular form of conduct. Moreover, confusing these questions would lead to exceedingly strange results. For example, Title IX’s prohibition of “discrimination” “on the basis of sex” either does or does not reach retaliation, and the presence or absence of another statutory provision expressly creating a private right of action cannot alter §1681(a)’s scope. Pp. 6–7.

(2) Also unavailing is the Circuit’s attempt to distinguish *Jackson* on the ground that retaliation claims play a more important role under Title IX than under the ADEA. This argument ignores the basis for *Jackson*, which did not hold that Title IX prohibits retaliation because such claims are important as a policy matter, but, instead, relied on an interpretation of the “text of Title IX.” 544 U. S., at 173, 178. *Jackson*’s statement that “teachers . . . are often in the best position to vindicate [student] rights,” *id.*, at 181, did not address the question whether the statutory term “discrimination” encompasses retaliation, but was made in response to the school board’s argument that only a “victim of the discrimination,” not third parties, should be allowed to assert a retaliation claim, *id.*, at 179–182. P. 8.

(3) Finally, the Circuit’s attempt to distinguish *Jackson* on the ground that Title IX was adopted in response to *Sullivan*, whereas there is no evidence in the ADEA’s legislative history that §633a was adopted in a similar context, is rejected. *Jackson* did not identify any legislative history evidence, but merely observed that because “Con-

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gress enacted Title IX just three years after *Sullivan*,” it was “‘realistic to presume that Congress was thoroughly familiar with [*Sullivan*] and . . . expected [Title IX] to be interpreted in conformity with [it].” 544 U. S., at 176. What *Jackson* said about the relationship between *Sullivan* and Title IX’s enactment can also be said about the relationship between *Sullivan* and §633a’s enactment, since the latter provision was enacted just five years after *Sullivan* was decided and two years after Title IX was enacted. Pp. 8–9.

(c) Respondent’s other arguments supporting the contention that §633a(a) does not encompass retaliation claims are rejected. Pp. 10–16.

(1) Respondent places too much reliance on the presence of an ADEA provision specifically prohibiting retaliation against individuals complaining about private-sector age discrimination, §623(d), and the absence of a similar provision in §633a. Because §§623 and 633a were enacted seven years apart rather than simultaneously, see *Lindh v. Murphy*, 521 U. S. 320, 330, and because they are couched in very different terms—with §§623(a)(1)–(3) listing specific forbidden employer practices in contrast to §633a(a)’s broad prohibition of “discrimination”—the absence of a federal-sector provision similar to §623(d) does not provide a sufficient reason to depart from *Sullivan* and *Jackson*. Pp. 10–12.

(2) There is even less merit in respondent’s reliance on §633a(f), which provides that personnel actions by a federal entity covered by §633a “shall not be subject to, or affected by, any provision of this chapter” other than §633a and §631(b), which restricts ADEA coverage to persons at least 40 years old. Respondent’s contention that recognizing federal-sector retaliation claims would make §623(d) applicable to federal-sector employers in contravention of §633a(f) is unsound because the Court’s holding today is not based on §623(d) but on §633a(a) itself, “unaffected by other [ADEA] sections,” *Lehman v. Nakshian*, 453 U. S. 156, 168. P. 13.

(3) Also unavailing is respondent’s argument that the history of congressional and Executive Branch responses to discrimination in federal employment demonstrates that when Congress enacted §633a, it anticipated that the pre-existing reprisal regulations of the Civil Service Commission (CSC) would be extended to cover federal-sector age discrimination and be the exclusive avenue for asserting retaliation claims. This argument is not supported by direct evidence, but rests on unsupported speculation, and, in any event, is self-contradictory in that, if §633a(a) does not confer an antiretaliation right, there is no reason to assume that Congress expected the CSC to issue new regulations prohibiting retaliation. Pp. 13–14.

(4) Respondent’s final argument—that sovereign immunity prin-

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ciples require that §633a(a) be read narrowly as prohibiting substantive age discrimination but not retaliation—is unpersuasive. The rule of construction requiring that “[a] waiver of the Federal Government’s sovereign immunity . . . be unequivocally expressed in statutory text” and “strictly construed . . . in favor of the sovereign,” *Lane v. Peña*, 518 U. S. 187, 192, is satisfied here by §633a(c), which unequivocally waives sovereign immunity for a claim brought by “[a]ny person aggrieved” by a §633a violation. Unlike §663a(c), §633a(a) is not a waiver of sovereign immunity; it is a substantive provision outlawing “discrimination.” That the §633a(c) waiver applies to §633a(a) claims does not mean that §633a(a) must surmount the same high hurdle as §633a(c). Pp. 15–16.

476 F. 3d 54, reversed and remanded.

ALITO, J., delivered the opinion of the Court, in which STEVENS, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. ROBERTS, C. J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined as to all but Part I. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.