

TOO OLD FOR THE OVAL? THE ADEA'S IMPACT ON PRESIDENTIAL AGE LIMITS

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“It’s just a denial of equal protection. It might be law, but it’s not justice. It’s completely unfair. Justice for all. That’s all we want.” – Janice Clark¹

INTRODUCTION

They say age is just a number, but in our society, it’s much more than that — it’s a gatekeeper. At 16, you can drive with a license;² at 21, you can drink;³ and, at 35, you can run for president.⁴ Age sets boundaries, shaping what we can and cannot do. This conversation surrounding age and its correlation with capabilities has become more prevalent than ever as questions have been raised as to whether President Joe Biden is too old for the Oval Office. So, the question remains, “is age a fair measure of capability, or have we allowed numbers to overshadow the qualities that truly define leadership?”

On November 3rd, 2020, Election Day for Joe Biden and Donald Trump arrived, a day marked by the lingering anxieties of the COVID-19 pandemic and the ongoing echoes of Black Lives

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2. *Driving Age by State: A Complete Guide to Graduated Driver Licensing (GDL) Programs*, THOMPSON LAW INJURY LAWYERS, <https://1800lionlaw.com/driving-age-by-state/>.

3. *The 1984 National Minimum Drinking Age Act*, NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM: ALCOHOL POLICY INFORMATION SYSTEM, <https://alcoholpolicy.niaaa.nih.gov/the-1984-national-minimum-drinking-age-act>.

4. U.S. CONST. art. II, § 1, cl. 5.

Matter protests.⁵ In the end, Joe Biden secured the 2020 election with 306 Electoral College votes and a margin of over seven million in the popular vote.⁶

In April 2023, former President Biden announced his bid for reelection.⁷ However, the first Presidential debate on June 27th would prove to be a turning point.⁸ Despite having enough delegates to win renomination, Biden appeared fatigued and stumbled over key points, sparking a wave of concern.⁹ The following morning, major networks and newspapers began questioning his fitness for office, igniting a political firestorm.¹⁰ Concerns over his health and chance for reelection dominated the mainstream media.¹¹ Consequently, President Biden ended his candidacy.¹² Vice President Kamala Harris swiftly stepped in as a younger candidate, determined to secure the Democratic Party's path to victory.¹³ For Harris, this was a full-circle moment. After her faltered 2020 campaign, she now had the opportunity to rewrite her political legacy.¹⁴ Her adept use of social media, particularly TikTok,¹⁵ garnered significant attention, helping her connect with a broad audience and boosting her approval ratings.¹⁶ With immense support from the public and higher approval

5. Editors of the Encyclopedia, *United States Presidential Election of 2020*, ENCYCLOPEDIA BRITANNICA, (Nov. 26, 2024), <https://www.britannica.com/event/United-States-presidential-election-of-2020>.

6. *Id.*

7. *Id.*

8. Zeke Miller et. al., *A Halting Biden Tries to Confront Trump at Debate but Sparks Democratic Anxiety about His Candidacy*, AP NEWS, (June. 28, 2024, 1:21 AM), <https://apnews.com/article/bidentrumpmpresidentialdebate-0e7577e9a354a69f50675494fea54ca9>.

9. Seung Min Kim, *Kamala Harris is Now Democratic Presidential Nominee, Will Face off Against Donald Trump this fall*, AP NEWS, (August 5, 2024, 11:21 PM), <https://apnews.com/article/harris-democratic-presidential-nomination-eb43b6b346cc644b2d195315cb2bfb20>.

10. *Id.*

11. *Id.*

12. *Id.*

13. Miller et. al., *supra* note 8.

14. *Id.*

15. Meg Kinnard & Curtis Yee, *Harris Steps into the Limelight. And the Coconut Trees and Memes have Followed*, AP NEWS (July 23, 2024, 4:27 PM), <https://apnews.com/article/kamala-harris-brat-coconut-meme-bc8988aa24a836b09dabf53ba4028295>

16. *Id.*

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ratings than Biden, it appeared that Vice-President Harris was going to win the Oval Office.¹⁷

As Election Day 2024 unfolded, the nation watched with anticipation.¹⁸ Trump secured 312 Electoral College votes, surpassing the 270 needed to reclaim the White House.¹⁹ Kamala Harris secured 226 votes, leaving her campaign supporters reflective of what had unfolded. In the popular vote, Trump garnered fewer votes with 77.2 million votes to Harris' 75 million votes—a result that underscored the nation's deeply divided political landscape.²⁰

The irony was unmistakable: Biden, who withdrew from the race due to concerns about his age at 82 years old, was succeeded by a 78-year-old Trump.²¹ President Trump, who assumed office on January 6, 2025, has surpassed Biden as the oldest individual to hold the position in the Oval Office.²² It is worth remembering that Trump will reach the age of 82 at the end of his presidency.²³ Yet, the debate over age in the Oval Office sparked a broader cultural reckoning: What truly defines a leader's ability to govern? Is it merely a matter of years, or does it hinge on qualities like vision, wisdom, and adaptability? To what extent does ageism – prejudice against individuals based on their age – influence the public opinion of the president? As the nation prepared for

17. Megan Brennan, *At 45%, Harris' Approval Rating Is Higher Than Biden's*, GALLUP: POLITICS, (Oct. 16, 2024), <https://news.gallup.com/poll/652178/harris-approval-rating-higher-biden.aspx>.

18. Caroline Linton, *The Electoral College Votes to Confirm Results for the 2024 Presidential Election. Here's what to know*, CBS NEWS: POLITICS, (Dec. 17, 2024, 5:22 AM), <https://www.cbsnews.com/news/electoral-college-vote-results-2024/>.

19. *Id.*

20. *Id.*

21. Mini Racker, *Why Biden's Age Has Become a Bigger Deal Than Trump's*, TIME: POLITICS, (Feb. 10, 2024, 8:00 AM), <https://time.com/6693305/biden-age-memory-trump-campaign/>.

22. Peter Baker, *As Debate Looms, Trump Is Now the One Facing Questions About Age and Capacity*, THE NEW YORK TIMES: NEWS ANALYSIS, (Nov. 6, 2024), <https://www.nytimes.com/2024/09/09/us/politics/debate-trump-age-capacity.html>.

23. Victoria Bisset et. al., *Trump is the Oldest Person to be Elected President: U.S. Presidents, by Age*, THE WASHINGTON POST: NATIONAL, (Nov. 8, 2024), <https://www.washingtonpost.com/politics/2024/11/08/oldest-us-presidents-trump/>.

Trump's return to the Oval Office, the age question remained more relevant than ever.²⁴ Are the spectators correct? Is Joe Biden too old for the Oval Office? — or has America yet to reconcile its evolving views on leadership, age, and power?

This comment explores the complex issue of ageism and the science of aging, challenging stereotypes about older leaders' capabilities. It questions whether age discrimination is a genuine issue or merely used as a political proxy. This comment concludes by advocating for an age limit on the Presidency, either through constitutional amendment or statutory age limit. If amended, the Constitution should set a maximum age of 75, determined by a comprehensive assessment of psychological, mental, and physical health.²⁵ Alternatively, if Congress imposes an age limit, it must be based on a nondiscriminatory, legitimate purpose under the Age Discrimination in Employment Act of 1967 ("ADEA").

I. FOUNDING FATHERS AND THEIR THOUGHTS ON AGE AND THE PRESIDENCY

As it turns out, the Founding Fathers such as Thomas Jefferson and George Washington were born into a world that respected age, but grew old in the world they had created—one in which younger men were assumed to reign supreme. After the American Revolution, Americans embraced a vision embracing youth as the guarantor of creativity and vitality. At the same time, they increasingly disparaged old age and the elderly. And yet, the founding generation waffled when it came to the age profile and expectations of their own political leadership. They were often younger than they had been before the Revolution, yet presidents were well into late middle age before taking office. What did the Founders think about aged political leadership? How might that shed light on our contemporary dilemmas?²⁶

While it's challenging to pinpoint the exact thoughts of the Founding Fathers, some scholars offer valuable insights into the historical context at that time. Costas Panagopoulos, a political

24. Linton, *supra* note 19.

25. *Id.*

26. Rebecca Brannon, *The Founding Fathers on Aging Political Leadership*, OAK PARK TEMPLE, (Nov. 12, 2020 7:30 PM), <https://www.oakparktemple.org/event/the-founding-fathers-on-aging-political-leadership.html>.

science professor at Northeastern University and Harvard University graduate, stated that “[the minimum age requirement] was adopted when the life expectancy in America was about that (mid-30s), on average. Clearly, the Founders expected presidents would be older, and likely experienced as a result.”²⁷ Did the Founding Fathers think anyone was too old for the Oval Office? Likely not. In their time, ageism — the prejudice against individuals based on age — wasn’t a recognized concept, and experience and wisdom, often linked to age, were highly valued. The Founders likely set a minimum age of 35 for the presidency to ensure a baseline of maturity and experience but chose not to impose an upper limit, reflecting the societal norms of the 18th century. However, we now live in an era of longer lifespans and advancements in healthcare. While the Founding Fathers valued experience in leadership, today’s discussions around age and the presidency have evolved. This modern dilemma forces us to strike a balance between respecting experience and addressing the contemporary challenges of ageism in politics.

II. AGEISM IN THE POLITICAL REALM

A. *Ageism and the Science Behind Aging: Understanding the Impact*

The term ageism was coined by Dr. Robert Butler, a well-respected physician and the first Director of the National Institute on Aging.²⁸ According to the World Health Organization, ageism is defined as “the stereotypes (how we think), prejudice (how we feel) and discrimination (how we act) towards others or oneself based on age.”²⁹ Essentially, it is where certain individuals are mistreated or discriminated against because of their age.³⁰ This

27. Mary Cunningham & Taylor Johnston, *See the Full List of the Youngest Presidents in U.S. History*, CBS NEWS (Nov. 1, 2024, 7:00 AM), <https://www.cbsnews.com/news/youngest-us-president/>.

28. Patricia A. Fletcher, *What is Ageism*, NATIONAL INSTITUTES OF HEALTH (May 1, 2024), <https://www.edi.nih.gov/blog/opinion/what-ageism>.

29. *Ageing: Ageism*, WORLD HEALTH ORGANIZATION, (Mar. 18, 2021), <https://www.who.int/news-room/questions-and-answers/item/ageing-ageism>.

30. *Id.*

can show up in medical treatment, workplace, or mainstream media.³¹

A concern among many is that imposing an age limitation on Presidents would not only establish a maximum age, but it could also portray older individuals in a negative light, a point that will be explored later.³² As with any form of discrimination, ageism is a result of prejudice and stereotypes against a category of people.³³ Joe Biden faced age-related discrimination when social media was flooded with memes and euphemisms, including the nickname ‘sleepy Joe.’³⁴

With the emergence of the term ageism, laws addressing age-based discrimination began to take shape, such as the Age Discrimination in Employment Act of 1967 and the establishment of the Equal Employment Opportunity Commission (“EEOC”).³⁵ Over time, societal attitudes have shifted—from viewing age as merely a number, to disregarding it as a consideration, to now recognizing it as a potential basis for discrimination. This evolution prompts a critical question: How far should we go in addressing age as a factor in the presidential candidacy?

III. FEDERAL STATUTES PROTECTING AGE DISCRIMINATION

A. *Age Discrimination in Employment Act of 1967*

The Age Discrimination in Employment Act of 1967 is a federal law that prohibits employment discrimination against individuals who are 40 years of age or older.³⁶ This law, which is enforced by the EEOC,³⁷ has undergone subsequent amendments

31. Kirsten Weir, *Ageism is one of the last Socially Acceptable Prejudices. Psychologists are Working to Change that*, AMERICAN PSYCHOLOGICAL ASSOCIATION: MONITOR ON PSYCHOLOGY, (Mar. 1, 2023), <https://www.apa.org/monitor/2023/03/cover-new-concept-of-aging>.

32. *Id.*

33. *Id.*

34. Andrew Stanton, ‘Sleepy Joe’ Becomes a Reality, NEWSWEEK, (July 5, 2024), <https://www.newsweek.com/sleepy-joe-becomes-reality-1921610>.

35. *Age Discrimination*, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, <https://www.eeoc.gov/age-discrimination>.

36. *Id.*

37. *What Employers need to know about Age Discrimination at Work*, THOMSON REUTERS: ARTICLE (June 24, 2024),

over the years.³⁸ Initially, it covered workers aged 40 to 75, but subsequent changes raised and eventually “eliminated the upper age limit, ending mandatory retirement for nearly all workers.”³⁹

The Act itself recognizes the prevalence of setting arbitrary age limits and the potential disadvantages faced by older individuals. The purpose of the Act is “to promote employment of older persons based on their ability rather than age; to prohibit arbitrary age discrimination in employment; to help employers and workers find ways of meeting problems arising from the impact of age on employment.”⁴⁰

B. Age Discrimination and The Oval Office

While the ADEA protects older workers from discrimination in traditional employment, no such safeguards—or limitations—exist for the presidency. This lack of regulation has sparked debates about the role of age in presidential performance. In 2023, the Pew Research Center made an interesting discovery: the median age for all U.S. Presidents is 55 years old.⁴¹ Furthermore, statistics reveal that out of the 21 presidents who were reelected, the median age is 58 years.⁴² As such, it is important to analyze the physical, cognitive, and mental aspects of aging on individuals, especially someone holding a high position of office. The complexities present a dual perspective: one view holds that advancing age correlates with a decline in cognitive abilities, while the other side argues that although cognitive decline may occur, it is often accompanied by a growth in wisdom and expertise.⁴³

<https://legal.thomsonreuters.com/en/insights/articles/what-is-the-age-discrimination-in-employment-act>.

38. *Id.*

39. David Neumark, *The Past and Future of the Age Discrimination in Employment Act*, THE BULLETIN ON AGING & HEALTH (2011).

40. Age Discrimination in Employment Act of 1967, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION <https://www.eeoc.gov/statutes/age-discrimination-employment-act-1967>.

41. Katherine Schaeffer, *Most U.S. Presidents have been in their 50s at Inauguration*, PEW RESEARCH CENTER: SHORT READS (Oct. 10, 2023), <https://www.pewresearch.org/short-reads/2023/10/10/most-us-presidents-have-been-in-their-50s-at-inauguration/>

42. *Id.*

43. Gary J. Schmitt & Bradley Schurman, *Matter of Debate: Should There Be an Age Limit for Presidents?* AMERICAN ENTERPRISE INSTITUTE (Mar. 10,

IV. SCIENTIFIC EVIDENCE

A. *Aging on the Brain*

In early childhood, the brain rapidly forms neural connections, creating over a million new ones per second.⁴⁴ By age six, the brain reaches about 90% of its adult size.⁴⁵ However, starting in the 30s and 40s, the brain begins to shrink, and this shrinkage accelerates by age 60.⁴⁶

An article by the National Library of Medicine reports that aging can affect brain size, vasculature, and cognition.⁴⁷ The volume of the brain begins to decline by the age of 70.⁴⁸ A cross-sectional study compiled “neuroimaging data from a total of 619 healthy aging individuals aged 18 to 88 years from the Cambridge Centre for Ageing and Neuroscience repository, excluding participants with poor image quality, excessive head motion or rotation, missing or incomplete data.”⁴⁹ The results found that “in older individuals, we observed reduced integration and segregation within the frontal-occipital regions and the cerebellum along the brain’s medial axis.”⁵⁰ Additionally, “functional brain networks displayed decreased integration and increased segregation in the prefrontal, centrottemporal, and occipital regions, and the cerebellum.”⁵¹ “An age-related decline in structure–function coupling was observed within sensory-motor, cognitive, and subcortical networks.... Overall, the network

2024), <https://www.aei.org/articles/matter-of-debate-should-there-be-an-age-limit-for-presidents/>.

44. *Changes that Occur to the Aging Brain: What Happens when we get Older*, COLUMBIA MAILMAN SCHOOL OF PUBLIC HEALTH (June 10, 2021), <https://www.publichealth.columbia.edu/news/changes-occur-aging-brain-what-happens-when-we-get-older>.

45. *Id.*

46. *Id.*

47. R. Peters, *Ageing and the brain*, 82 POSTGRADUATE MEDICAL JOURNAL 964 (2006).

48. *Id.*

49. Maedeh Khalilian et. al., *Age-Related Differences in Structural and Resting-State Functional Brain Network Organization Across the Adult Lifespan: A Cross-Sectional Study*, 5 AGEING BRAIN 100105 (2024).

50. *Id.*

51. *Id.*

vulnerability decreased significantly in subjects older than 70 in both networks.”⁵²

“Although some studies show that one-third of older adults struggle with declarative memory — that is, memories of facts or events that the brain has stored and can retrieve — other studies indicate that one-fifth of 70-year-olds perform cognitive tests just as well as people aged twenty (20).”⁵³

Interestingly enough, there are exceptional 80-year-olds that have memories as great as 20-year-olds: they are known as Superagers.⁵⁴ Research shows that the brains of Superagers shrink more slowly than those of others their age, which helps them resist typical memory loss associated with aging.⁵⁵ This challenges the idea that cognitive decline is an unavoidable part of getting older.⁵⁶

While scientific evidence has proven relative cognitive decline in older individuals, proponents against ageism often recognize the harmful effects that these narratives create.⁵⁷ Dr. Tracey Gendron at Virginia Commonwealth University believes that society concentrates on the negative effects of aging instead of realizing that “older age can benefit decision-making, critical thinking, resilience and coping skills. The knowledge and experience we gain as we age help us make more thoughtful and balanced decisions and weigh options and opinions.”⁵⁸ She explains that research shows older adults use both sides of the brain when performing tasks.⁵⁹ While fluid intelligence, which helps process new information, tends to decline with age, older

52. *Id.*

53. Seunggu Han, *What Happens to the Brain as we Age?* MEDICAL NEWS TODAY (May 26, 2023), <https://www.medicalnewstoday.com/articles/319185>.

54. *Id.*

55. *Id.*

56. *Id.*

57. *Should Age Matter in Politics? VCU Professor Discusses Ageism in the 2024 Presidential Election and Society*, VIRGINIA COMMONWEALTH UNIVERSITY <https://chp.vcu.edu/about/featured-news/articles/should-age-matter-in-politics-vcu-professor-discusses-ageism-in-the-2024-presidential-election-and-society.html>.

58. *Id.*

59. *Id.*

adults can still perform just as well as younger individuals on tasks when given more time.⁶⁰

“On a positive note, there’s growing evidence that the brain’s continued ability to change and evolve enables us to manage new challenges and respond better to life experiences. This adaptability, called neuroplasticity, can be thought of as a structural remodeling of the brain.”⁶¹

Cognitive decline can have serious implications for individuals in high-stakes, intellectual professions, including the presidency. “Attorneys with cognitive deficits might not be able to analyze their cases’ strengths and weaknesses, formulate appropriate arguments, or understand opposing counsels’ arguments. These problems, in turn, may lead to ethical misconduct, disciplinary measures, and legal malpractice claims.”⁶² Similarly, federal judges with lifetime appointments may face challenges in their decision-making if cognitive abilities decline.⁶³ In particular, federal judges with senior status (at least 65 years old) may continue work reduce caseloads while on a salary.⁶⁴

In other fields, age-related cognitive concerns have prompted structured interventions.⁶⁵ For instance, the Federal Aviation Administration mandates psychological testing for pilots.⁶⁶ The Yale New Haven Hospital faced legal action for requiring neuropsychological evaluations for employees aged 70 and older.⁶⁷ Studies also show that up to 28% of physicians aged 70 and above may experience mild cognitive impairment or

60. *Id.*

61. Dr. Jennifer Baker-Porazinski, *How your Brain Changes with Age*, CANYON RANCH (Apr. 6, 2022), <https://www.canyonranch.com/well-stated/post/how-your-brain-changes-with-age/>.

62. Sharona Hoffman, *Cognitive Decline and the Workplace*, 57 WAKE FOREST L. REV., 115, 131-136, (2022).

63. *Id.* at 133.

64. *Id.*

65. Hoffman, *supra* note 62, at 121.

66. FAA Exams, *Neurocognitive Specialty Group*, <https://www.neurocognitivespecialtygroup.com/faq-exams/#:~:text=The%20FAA%20requires%20these%20evaluations,safety%20and%20decision%2Dmaking%20ability.>

67. Baker-Porazinski, *supra* note 62.

dementia, which can affect their ability to provide safe and effective care.⁶⁸

While scientific research provides valuable insights into how aging affects cognitive and physical abilities, the real challenge lies in translating these findings into policy. If lawmakers were to act on these concerns, they would need to consider whether amending the Constitution or passing new legislation is the appropriate path forward. But what would such a change look like in practice?

V. PATHS TO REFORM: AMENDING THE CONSTITUTION OR LEGISLATIVE ACTION

A. *Amending the Constitution*

In order to amend the United States Constitution, Article V outlines that the amendment must be proposed either by a two-thirds majority of both the House and Senate or by a constitutional convention called by two-thirds of the state legislatures.⁶⁹ Once proposed, the amendment must then be ratified by three-fourths of the state legislatures or by conventions in three-fourths of the states.⁷⁰ In this case, establishing an upper-age limit for the presidency under Article II would require this rigorous process. The author proposes a maximum age limit of 65, as the median age of reelection for U.S. Presidents is 58 years old,⁷¹ – meaning by the end of a second term, they would be around 62 years old. Additionally, the author advocates for mandatory psychological, mental, and physical evaluations for all U.S. presidents to ensure assessments are fair, objective, and relevant to the demands of the office.

B. *Passing a Federal Statute*

The Age Discrimination in Employment Act of 1967 prohibits age discrimination in employment, protecting individuals who are 40 years of age or older from discrimination

68. Baker-Porazinski, *supra* note 62.

69. U.S. CONST. art. V.

70. *Id.*

71. Schaeffer, *supra* note 42.

based on their age.⁷² This would not only protect the rights of the President, but also uphold the values of fairness and equality in our democratic system.

C. Does the Age Discrimination in Employment Act of 1967 apply to the Presidential Office?

The President of the United States is not subject to the Age Discrimination in Employment Act of 1967.⁷³ The Act states that “the term “employee” shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof.”⁷⁴ In this case, the President is elected to public office by qualified voters, thereby excluding him from the protections against age discrimination afforded under the ADEA.⁷⁵

However, the author argues that the ADEA should be applicable to Presidents because it qualifies as a job in various ways. The Act broadly defines a job to include “all state employees except those excluded by one of the exceptions in 29 USCS 630(f).”⁷⁶ This expansive definition allows the Presidency to fall within its scope. Like many other hard-working Americans, The President has clearly defined duties and responsibilities that are outlined in the Constitution: acts as Commander-in-Chief, appoints inferior and superior officers, and executes treaties.⁷⁷ Congress sets the President’s salary, and under the Former Presidents Act, the President receives a lifetime of benefits including pension, medical care, and health insurance.⁷⁸ Additionally, the President’s performance is highly evaluated by other branches through the checks and balances system, the public, and the media.⁷⁹ Such characteristics closely align with the attributes of other jobs, reinforcing that the Presidency fits within the definition of a job under the ADEA.

72. Peters, *supra* note 48.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Gregory v. Ashcroft*, 501 U.S. 452, 467 (1991).

77. U.S. CONST. art. II, § 2

78. 3 U.S.C. § 102 (1958).

79. *Branches of the U.S. Government*, USAGOV (Sept. 8, 2024), <https://www.usa.gov/branches-of-government>.

D. What test/analysis should the courts employ to determine whether a law is a violation or permissible under the Age Discrimination in Employment Act of 1967?

Now that we've determined that the Presidency could fit within the definition of a job under the ADEA, the following is the analysis that the courts must use to determine if the age discrimination has occurred. "To establish age discrimination, a plaintiff must prove by the preponderance of the evidence that age was the but-for cause of the employment decision."⁸⁰ If the plaintiff does not allege direct evidence of age discrimination, then courts will analyze the claim under the burden-shifting framework established in *McDonnell Douglas Corp. v. Green*.⁸¹ To establish a prima facie case, a plaintiff must show she (1) was at least 40 years old, (2) suffered an adverse employment action, (3) was meeting [her] employer's legitimate expectations at the time of the adverse employment action, and (4) was replaced by someone substantially younger." If the plaintiff successfully establishes a prima facie case, the "the burden shifts to the employer to articulate a legitimate, nondiscriminatory reason for the adverse employment action. If the employer proffers such a reason, the burden shifts back to the plaintiff to show that the proffered "reason was mere pretext for discrimination" and that "age was the 'but-for' cause of the challenged adverse employment action."⁸²

The court defined an adverse employment action as "a significant change in employment status, such as hiring, firing, failing to promote, reassignment with significantly different responsibilities, or a decision causing a significant change in benefits."⁸³ Here, a significant change in the President's employment status may be resignation or impeachment due to a poor performance or inculpabilities. If Congress imposed an age limit of 80, this would qualify as an adverse employment action, as President Trump would reach 80 during his current term.

Moreover, the adverse action "must have occurred under circumstances that raise a reasonable inference of unlawful

80. *Starkey v. Amber Enters.*, 987 F.3d 758, 763 (8th Cir. 2021).

81. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973).

82. *Id.*

83. *Laster v. City of Kalamazoo*, 746 F.3d 714, 727 (6th Cir. 2014).

discrimination.”⁸⁴ In other words, the adverse action must not be merely a minor inconvenience of job responsibilities.⁸⁵ In this case, if Congress were to impose an age limitation on the Oval Office, the law must be for a legitimate, nondiscriminatory reason that will overcome the adverse employment action.

Courts have upheld the employer’s action as a legitimate, nondiscriminatory reason where the employee had poor work performance, such as lack of initiative and numerous mistakes as outlined in *Ray v. Tandem Computers*; *Kelly v. Signet Star Re, LLC*.⁸⁶ Similarly, in *Kelly v. Signet Star Re, LLC*, Kelly, a 55-year-old Vice President and underwriter, was terminated for making numerous mistakes and failing to meet performance standards.⁸⁷ The Court cited Kelly’s inadequate performance as a valid, nondiscriminatory reason for termination.⁸⁸ The Court stated in *Kelly* that “poor job performance is no doubt a legitimate, nondiscriminatory reason for termination.”⁸⁹ Therefore, it’s likely that Congress could justify poor job performance as a legitimate, nondiscriminatory purpose for an adverse action.

The ADEA has also considered mandatory age retirement for certain positions, such as firefighters, and law enforcement officers to be a legitimate, nondiscriminatory reason for the adverse action due to the high-stress nature of the job or safety-sensitive positions.⁹⁰ Certain jobs require safety and efficiency to ensure high performance, especially where physical capabilities are a necessity.⁹¹

In the case of *W. Air Lines v. Criswell*, the Court stated that “in certain types of particularly arduous law enforcement activity, there may be a factual basis for believing that substantially all

84. *Gaines v. Balt. Police Dep’t*, 657 F. Supp. 3d 708, 723 (D. Md. 2023).

85. *Id.*

86. *Ray v. Tandem Computs.*, 63 F.3d 429 (5th Cir. 1995); *Kelly v. Signet Star Re, LLC*, 971 F. Supp. 2d 237 (D. Conn. 2013).

87. *Kelly v. Signet Star Re, LLC*, 971 F. Supp. 2d 237, 247 (D. Conn. 2013).

88. *Id.* at 248.

89. *Id.*

90. 1 FED. EQUAL EMP. OPPORTUNITY PRAC. GUIDE § 17.02 (2024).

91. Ezekiel J. Emanuel, *The Fairest Way to Keep Cognitively Declining People from Being Elected*, THE ATLANTIC: HEALTH <https://www.theatlantic.com/health/archive/2024/09/age-limits-president/679726/>.

employees above a specified age would be unable to continue to perform safely and efficiently the duties of their particular jobs, and it may be impossible or impractical to determine through medical examinations, periodic reviews of current job performance and other objective tests the employees' capacity or ability to continue to perform the jobs safely and efficiently."⁹²

Furthermore, age stereotypes or the plaintiff's age cannot justify a challenged decision or policy, and employers may not use this reasoning to justify adverse actions.⁹³

The Supreme Court has defined legitimate expectations at the time of employment as the employer's perception of whether the employee was performing their job duties satisfactorily at the time the adverse action was taken.⁹⁴ The employee's own perception is irrelevant.⁹⁵ However, a plaintiff may offer evidence to rebut the employer's perception.⁹⁶ A plaintiff need not show that "he was a perfect or model employee. Rather, a plaintiff must show that she was qualified for the job and that she was meeting her employer's legitimate expectations."⁹⁷ "An employer's expectations of its employees are "legitimate" when they are honestly held; whether the employee agrees with those expectations is not the test."⁹⁸

In the case of *Jones v. Calvert Group, Ltd.*, Plaintiff Linda Jones was a former African American employee of Defendant Calvert Group who was bringing a claim of age, sex, and race discrimination based under Title VII and the ADEA.⁹⁹ Plaintiff received negative performance reviews from 2003-2006.¹⁰⁰ The Court ruled that she failed to produce evidence that she met or

92. *W. Air Lines v. Criswell*, 472 U.S. 400, 415 (1985).

93. 8 BUSINESS ORGANIZATIONS WITH TAX PLANNING § 103E.06 (2024).

94. *Jones v. Eli Lilly & Co.*, Civil Action No. ADC-20-3564, 2023 U.S. Dist. LEXIS 62362, at *14-15 (D. Md. Apr. 7, 2023)

95. *Id.*

96. *Id.*

97. *Palmer v. Liberty Univ., Inc.*, Nos. 21-2390, 21-2434, 2023 U.S. App. LEXIS 16635, at *25 (4th Cir. June 30, 2023).

98. *Brown v. City of Columbia*, No. 3:10-2860-JFA-PJG, 2012 U.S. Dist. LEXIS 125864, at *9 (D.S.C. July 18, 2012).

99. *Jones v. Calvert Grp., Ltd.*, No. DKC 06-2892, 2010 U.S. Dist. LEXIS 127715, at *1-2 (D. Md. Dec. 3, 2010).

100. *Id.*

exceeded her employer's expectations.¹⁰¹ To the contrary, the Defendant has produced numerous evidence to show plaintiff's underperformance.¹⁰² The Plaintiff's performance before her promotion is irrelevant to determining whether she was adequately performing her job at the time of termination.¹⁰³ The Maryland District Court also ruled that there was a legitimate, nondiscriminatory purpose for the adverse employment action (termination) because of the plaintiff's poor work performance.¹⁰⁴

In a similar fashion, the legitimate expectations for the Presidential Office are outlined in the Constitution, including leadership, executing laws, and fulfilling other duties.¹⁰⁵ These expectations are honestly held as they were established by the Founding Fathers through a formal process.¹⁰⁶ Here, the President need not be perfect, but he must demonstrate that he meets these legitimate expectations. In this case, if Congress were to impose an age limitation statute, it would bear the burden of proving the President's failure to perform his constitutional duties satisfactorily.

Just as employees must demonstrate that they meet their employer's legitimate expectations, the President must fulfill the constitutional duties outlined for the office. If challenged, the burden lies with the opposing party—in employment cases, the employer, and in constitutional matters, Congress—to prove failure to meet these expectations.

E. Analysis of Presidential Age Limitations under the Age Discrimination in Employment Act of 1967

A legitimate, nondiscriminatory purpose for Congress to impose the law may be to protect the integrity of the Oval Office by ensuring that the President can safely and efficiently perform his duties. If we impose an age limitation on the Presidential Office, then it is not a violation of the ADEA as long as Congress establishes a legitimate, nondiscriminatory purpose for the law that is not based on age or stereotypes.

101. *Jones v. Calvert Grp., Ltd.*, *supra* note 100, at 18.

102. *Id.*

103. *Id.*

104. *Jones v. Calvert Grp., Ltd.*, *supra* note 100, at 20.

105. *U.S. CONST.* art. II, *supra* note 78, § 2.

106. Brannon, *supra* note 27.

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F. What laws would this effect?

The issue of age and leadership extends beyond just the Presidency — it has implications for positions such as Senators, Representatives, and federal judges, including those in Louisiana. This debate also touches on whether Supreme Court Justices should have term limits.

Recently, there has been growing debate over implementing term limits for Supreme Court Justices.¹⁰⁷ President Joe Biden has proposed reforms to the Supreme Court, including term limits, citing concerns about “an extreme court... weaponized by those seeking to carry out an extreme agenda for decades to come.”¹⁰⁸ Recent decisions by the current Supreme Court have drawn significant attention, including the overturning of *Roe v. Wade*.¹⁰⁹ The ACLU criticized these decisions, stating, “this is a court ready to create brand new constitutional protections for former President Trump, while turning away the claims of the powerless.”¹¹⁰

In response, Representative Jo Khanna introduced the *Supreme Court Term Limits and Regular Appointments Act of 2021*, which establishes 18-year-terms for Justices, and the President would be required to appoint a new Justice every two years.¹¹¹

¹⁰⁷ Chris Walker, *Two-Thirds of Americans Say Supreme Court Justices Should Have Term Limits*, TRUTH OUT: POLITICS & ELECTIONS, (Aug. 8, 2024), https://truthout.org/articles/two-thirds-of-americans-say-supreme-court-justices-should-have-term-limits/?gad_source=1&gclid=CjwKCAiAg8S7BhATEiwAO2-R6nh970WfqZHLB35grJ_q_bIHne6Q3Y7gX_FpQQRdIAXgSKqdwEeisxoCUTIQA_vD_BwE.

¹⁰⁸ Jeff Mason & Andrea Shalal, *Biden Proposes Term Limits, Code of Conduct to Rein in 'Extreme' Supreme Court*, THOMSON REUTERS, (July 29, 2024 5:51 PM), <https://www.reuters.com/world/us/biden-propose-supreme-court-term-limits-binding-code-conduct-2024-07-29/>.

¹⁰⁹ Devon Ombres, *The Major SCOTUS Cases: Threats to the Rule of Law Posed by the Supreme Court's 2023 Term*, AMERICAN PROGRESS, (June 18, 2024), <https://www.americanprogress.org/article/the-major-scotus-cases-threats-to-the-rule-of-law-posed-by-the-supreme-courts-2023-term/>.

¹¹⁰ David Cole, *Supreme Court Term Ends with Win for Trump, First Amendment Rights*, AMERICAN CIVIL LIBERTIES UNION: NEWS & COMMENTARY, (July 10, 2024), <https://www.aclu.org/news/civil-liberties/supreme-court-term-ends-with-win-for-trump-first-amendment-rights>.

¹¹¹ H.R. 5140, 117th Cong. (2021).

This debate is not limited to the federal level. In Louisiana, judges like Janice Clark and Harry Cantrell have challenged the state's mandatory retirement age of 70, arguing that it is unconstitutional.¹¹² Both were unsuccessful in court, and Darleen Jacobs, representing Judge Cantrell, argued that "age is just a number" and that many lawyers over 70 continue to practice.¹¹³ The Court ruled that it found no merit in Clark's argument and that the mandatory retirement age could only be changed by state Constitution.¹¹⁴ In 2022, a proposal to raise the retirement age failed. Lawmakers like Representatives Larry Frieman and Abita Springs have pointed out that competent judges are being "aged out," making it difficult to find candidates willing to run for judgeships.¹¹⁵ Despite several failed attempts to amend the law, including a bill by former Governor John Bel Edwards,¹¹⁶ the Louisiana Supreme Court has defended the mandatory retirement age, citing the logistical burden of special elections and temporary judicial appointments whenever a judge reaches 70.¹¹⁷

¹¹² *New Orleans Judge Harry Cantrell, 72, Challenges Judicial Age Cap in Lawsuit*, WDSU NEW ORLEANS, (May 1, 2020 9:39 AM), <https://www.wdsu.com/article/new-orleans-judge-harry-cantrell-72-challenges-judicial-age-cap-in-lawsuit/32339231>.

¹¹³ Andrea Gallo & Matt Sledge, *Well-Known Judges Janice Clark, Harry Cantrell can't run again, new Supreme Court Ruling Says*, THE ADVOCATE, (July 22, 2020), https://www.theadvocate.com/baton_rouge/news/courts/well-known-judges-janice-clark-harry-cantrell-cant-run-again-new-supreme-court-ruling-says/article_0c631866-cbd7-11ea-95f4-57f9e8868f78.html.

¹¹⁴ Joe Gyan Jr., *Told She's Too Old to Run Again, Baton Rouge Judge Janice Clark Says it's 'Voter Suppression'*, THE ADVOCATE, (July 29, 2020), https://www.theadvocate.com/baton_rouge/news/politics/elections/told-shes-too-old-to-run-again-baton-rouge-judge-janice-clark-says-its-voter/article_bdac9f14-d1a6-11ea-b163-2f3dc16616fe.html.

¹¹⁵ Greg Larose, *Attempt to Raise Retirement Age for Judges in Louisiana Fails*, LOUISIANA ILLUMINATOR, (May 31, 2022 3:48 PM), <https://lailluminator.com/briefs/retirement-louisiana-judges/>.

¹¹⁶ *Louisiana Mandatory Judicial Retirement Age, Amendment 5*, BALLOTPEDIA, (2024), [https://ballotpedia.org/Louisiana_Mandatory_Judicial_Retirement_Age_Amendment_5_\(2014\)](https://ballotpedia.org/Louisiana_Mandatory_Judicial_Retirement_Age_Amendment_5_(2014)).

¹¹⁷ Michael Carroll, *Louisiana High Court Ends Debate Over Mandatory Judicial Retirement Age*, LOUISIANA RECORD, (Aug. 3, 2020), <https://louisianarecord.com/stories/544507277-louisiana-high-court-ends-debate-over-mandatory-judicial-retirement-age#:~:text=E2%80%9CHowever%2C%20despite%20these%20inequities%2C,age%20issue%20in%20the%20future.>

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While debates around age and leadership continue, scientific research offers a nuanced perspective on the cognitive abilities of older adults, which is that older individuals can still perform as well as younger individuals when more time is given.¹¹⁸ Though it's well-established that cognitive decline can occur with age, many retain the ability to contribute meaningfully to leadership roles. Research suggests that, rather than assuming older individuals are incapable, we should consider their continued adaptability and capacity to bring valuable perspectives to positions of power.¹¹⁹ However, concerns remain about the potential risks of electing individuals with cognitive impairments, such as dementia, to high office, raising important questions about the balance between respect for aging and the need for competent leadership.¹²⁰

VI. CONCLUSION

In conclusion, the question of whether to impose an age limit on the presidency is not merely about drawing a line in the sand between what is considered “too old” to lead. Instead, it invites us to critically examine the evolving relationship between age, experience, and the demands of leadership in a rapidly changing world. A proposed age limit of 75 is not just a response to ageism, but a reflection of the need to balance the invaluable insights gained through experience with the capacity to meet the dynamic demands of the office. As society continues to diversify and the pace of change accelerates, it may be time to reconsider our understanding of age and its role in shaping the future of leadership. By addressing this issue thoughtfully, we can ensure that our institutions remain both effective and inclusive for generations to come.

¹¹⁸ *Supra* note 143.

¹¹⁹ *Id.*

¹²⁰ *Id.*