No. 15-10602

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

RICHARD M. VILLARREAL,

Plaintiff-Appellant,

v.

R.J. REYNOLDS TOBACCO CO., et al.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, MACON DIVISION
CASE NO. 2:12-CV-00138-RWS

UNOPPOSED MOTION OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITION FOR REHEARING

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Villarreal v. R.J. Reynolds Tobacco Co., No. 15-10602

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

Pursuant to 11th Cir. R. 26.1-1, counsel for *amicus curiae* the Chamber of Commerce of the United States of America states that it is not a subsidiary of any corporation, and no publicly held corporation owns 10% or more of its stock. Counsel further states a belief that the certificate of interested persons filed by Defendants-Appellees is complete.

UNOPPOSED MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE*

1. Pursuant to Federal Rule of Appellate Procedure 29(b) and Eleventh Circuit Rule 35-6, the Chamber of Commerce of the United States of America hereby moves for leave to file a brief as *amicus curiae* in support of Defendants-Appellees' petition for rehearing.

2. The Chamber has sought consent to this filing from the parties, and the motion is unopposed by all parties.

3. The Chamber believes that the petition for rehearing merits close attention and that the attached brief will aid the Court's review. The petition stresses the panel decision's inconsistency with the Supreme Court's and other Courts of Appeals' precedent. The Chamber's attached brief does not repeat Defendants-Appellees' legal arguments, and instead addresses in more detail the decision's practical consequences for businesses in this Circuit and beyond. Those consequences counsel strongly in favor of rehearing.

4. The Chamber has a direct and substantial interest in the outcome of this appeal. The Chamber's members frequently litigate claims under the Age Discrimination in Employment Act, including disparate-impact claims asserted under § 4(a)(2) of the Act. A ruling that incorrectly expands the scope of § 4(a)(2) by permitting unsuccessful applicants' disparate-impact claims, as well as permitting equitable tolling in the absence of reasonable diligence or extraordinary

circumstances, subjects the Chamber's members to costly, unwarranted litigation that Congress never intended.

5. The Chamber is uniquely situated, by virtue of its members' considerable experience with litigation under the Age Discrimination in Employment Act in general, and disparate-impact claims in particular, to address those issues of exceptional importance.

Respectfully submitted,

/s/ Hyland Hunt

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January 14, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 14, 2016, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit using the CM/ECF system. All participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I also certify that I deposited in an overnight delivery service one paper copy of the motion and 15 copies of the brief to the Clerk of this Court and copies to counsel of record for the parties.

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STATEMENT OF COUNSEL

I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of the Supreme Court of the United States and the precedents of this Circuit and that consideration by the full court is necessary to secure and maintain uniformity of decisions in this Court:

1. With respect to whether the Age Discrimination in Employment Act authorizes disparate-impact claims for failure to hire: *Smith v. City of Jackson*, 544 U.S. 228 (2005); and

2. With respect to whether the plaintiff in a failure-to-hire case may satisfy equitable tolling without alleging either that he acted diligently or that extraordinary circumstances prevented a timely filing, the panel majority's decision contradicts, among others, the following decisions of the Supreme Court and this Court:

Petrella v. Metro-Goldwyn-Mayer, Inc., 134 S. Ct. 1962 (2014);

Lozano v. Montoya Alvarez, 134 S. Ct. 1224 (2014);

Credit Suisse Sec. (USA) LLC v. Simmonds, 132 S. Ct. 1414 (2012);

Holland v. Fla., 560 U.S. 631, 649 (2010);

Wallace v. Kato, 549 U.S. 384, 396 (2007);

Pace v. DiGuglielmo, 544 U.S. 408 (2005);

Irwin v. Department of Veterans Affairs, 498 U.S. 89 (1990);

Baldwin Cty. Welcome Ctr. v. Brown, 466 U.S. 147 (1984);

Motta ex rel. A.M. v. United States, 717 F.3d 840 (11th Cir. 2013);

Brotherhood of Locomotive Eng'rs & Trainmen Gen. Comm. of Adjustment CSX Transp. N. Lines v. CSX Transp., Inc., 522 F.3d 1190 (11th Cir. 2008);

Downs v. McNeil, 520 F.3d 1311 (11th Cir. 2008);

Arce v. Garcia, 434 F.3d 1254 (11th Cir. 2006);

Bost v. Fed. Express Corp., 372 F.3d 1233 (11th Cir. 2004);

Jones v. Dillard's, Inc., 331 F.3d 1259 (11th Cir. 2003);

Drew v. Department of Corrections, 297 F.3d 1278 (11th Cir. 2002);

Sturniolo v. Sheaffer, Eaton, Inc., 15 F.3d 1023 (11th Cir. 1994);

Justice v. United States, 6 F.3d 1474 (11th Cir. 1993);

Ross v. Buckeye Cellulose Corp., 980 F.2d 648 (11th Cir. 1993);

Cocke v. Merrill Lynch & Co., 817 F.2d 1559 (11th Cir. 1987); and

Reeb v. Economic Opportunity Atlanta, Inc., 516 F.2d 924 (5th Cir. 1975).

I express a belief, based on a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance:

1. Whether Section 4(a)(2) of the Age Discrimination in Employment Act (ADEA), 29 U.S.C. § 623(a)(2), authorizes unsuccessful applicants for employment to assert disparate-impact claims.

2. In ADEA disparate-impact and other failure-to-hire cases, whether plaintiffs should be allowed to obtain equitable tolling of the statutes of limitations without alleging either reasonable diligence or extraordinary circumstances.

/s/Hyland Hunt
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STATEMENT OF THE ISSUES

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II. In ADEA disparate-impact and other failure-to-hire cases, whether plaintiffs should be allowed to obtain equitable tolling of the statutes of limitations without alleging either reasonable diligence or extraordinary circumstances.

STATEMENT OF FACTS

The Chamber adopts the Petition's statement of relevant facts.

INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation, representing more than 300,000 direct members and an underlying membership of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent its members' interests before Congress, the Executive Branch, and the courts, including this Court. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of national concern to American business.

[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than the *amicus*, its members, or its counsel made a monetary contribution intended to fund the brief's preparation or submission.

This case presents a question of exceptional importance to members of the business community. As discussed below, the Age Discrimination in Employment Act strikes a careful balance between prohibiting irrational barriers to the employment of older workers and preserving employers' ability to adopt sound hiring policies. The panel decision disrupts that balance by recognizing failure-to-hire disparate-impact claims under the Act, and by applying an equitable tolling rule to those claims that effectively eviscerates any statute of limitations. The Chamber's membership has a strong interest in preserving the balance struck by Congress, which warrants this Court's en banc review of the panel decision.

ARGUMENT

Section 4(a)(2) of the Age Discrimination in Employment Act of 1967 (ADEA) makes it unlawful for an employer "to limit, segregate, or classify his employees in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's age." 29 U.S.C. § 623(a)(2). For the reasons stated in the Petition (at 4-12), the Chamber agrees that the Act's text, structure, and history—as well as comparison to the contrasting provision found in Title VII of the Civil Rights Act, 42 U.S.C. § 2000e-2(a)(2)—compel the conclusion reached by every court to have considered the issue before this case: Congress chose not to make it an unlawful employment practice for employers to adopt hiring practices

that may have a disparate impact on applicants by age. The Chamber also agrees that the panel's application of equitable tolling in the absence of reasonable diligence or extraordinary circumstances cannot be squared with the Supreme Court's and other Courts of Appeals' precedent. Pet. 12-15.

The Chamber writes separately to emphasize the far-reaching consequences of expanding not only the substantive scope of Section 4(a)(2), but also the time limits for bringing such claims. If allowed to stand, the panel decision will stamp a large number of long-standing hiring and recruiting practices as *prima facie* violations of the ADEA, a result that would invite unwarranted litigation and may cause some employers to abandon legitimate and valuable hiring practices as a result. The decision's substantive error is compounded by the approval of an equitable tolling doctrine that invites litigation over actions taken well outside the statute of limitations and unreasonably burdens employers with defending stale claims. The Chamber therefore urges rehearing to ensure adherence to Congress's careful delineation of unlawful employment practices within Section 4(a)(2) of the ADEA.

I. THE PANEL'S DECISION WILL UNREASONABLY BURDEN LONGSTANDING, LAWFUL HIRING PRACTICES THAT HAVE A DISPARATE IMPACT BASED ON AGE

1. As the Petition explains (8-12), Congress plainly chose to impose ADEA liability only for those hiring practices that involved *intentional* discrimination on

the basis of age. That line-drawing makes sense because, unlike with employee promotions or terminations, employers have long engaged in a wide range of legitimate hiring practices that are age neutral, but are likely to have a disparate impact based on age. Federal courts have interpreted the ADEA not to trench upon those policies. *See* Pet. 6-7 (collecting cases). Yet the panel's decision, breaking ranks with the Supreme Court and other Courts of Appeals, has now stamped these policies as *prima facie* violations of the ADEA.

For example, businesses regularly recruit students and recent graduates from college and university campuses using a variety of means—including on-campus interviewing and externship relationships with colleges and universities.[2] Federal agencies, too, operate similar recruitment programs. For instance, the Department of Justice's "Honors Program is 'the exclusive means by which the Department hires' all of its entry-level attorneys, including 'recent law school graduates and judicial law clerks who do not have prior legal experience.'" *Gerlich v. U.S. Dep't of Justice*, 711 F.3d 161, 164 (D.C. Cir. 2013) (citation omitted). Likewise, since 2000, the EEOC has run its own "Attorney Honor Program," seeking to "hire[]

[2] *See, e.g.*, PAUL GILLIS, THE BIG FOUR AND THE DEVELOPMENT OF THE ACCOUNTING PROFESSION IN CHINA 165 (1st ed. 2014) (noting "the ubiquitous presence of the Big Four [accounting firms] on college campuses worldwide"); Press Release, Coll. Emp't Research Inst., Mich. State Univ., Rapid Growth in Job Opportunities for College Graduates in 2014-15 (Oct. 7, 2014) (discussing on-campus recruiting activities and state of college labor market), http://www.ceri.msu.edu/wp-content/uploads/2014/10/press-release-1-10-7-14.pdf.

recent graduates." U.S. Equal Employment Opportunity Commission, EEOC Attorney Honor Program (last visited Jan. 11, 2016).[3]

Because recent graduates of colleges and professional schools are overwhelmingly under the age of 40,[4] many of these recruiting practices could be expected to have a disparate impact based on age. Yet they are critical to many businesses' (and federal agencies') operations. On-campus recruiting is a key part of strategies for retaining and developing the best talent. Companies that hire the most new college graduates have a "common thread" of a "promote-from-within model," not because they prefer employees of a certain age, but rather because recent graduates enables them to produce "[h]omegrown leaders" that "have a familiarity with the company and understand its future." Seth Cline, *The Companies Hiring the Most New College Grads*, FORBES.COM, June 21, 2010.[5]

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[3] http://www.eeoc.gov/eeoc/jobs/honorprogram.cfm.

[4] *See, e.g.*, Frederick Hess, *Old School: College's Most Important Trend is the Rise of the Adult Student*, THE ATLANTIC, Sept. 28, 2011 (discussing report on college student age), http://www.theatlantic.com/business/archive/2011/09/old-school-colleges-most-important-trend-is-the-rise-of-the-adult-student/245823/; KIMBERLY DUSTMAN & PHIL HANDWERK, LAW SCHOOL ADMISSIONS COUNCIL, ANALYSIS OF LAW SCHOOL APPLICANTS BY AGE GROUP, at 2 (Oct. 2010) (5% of law school applicants are over 40), http://www.lsac.org/docs/default-source/data-%28lsac-resources%29-docs/analysis-applicants-by-age-group.pdf; Columbia Business School, Class Profile (last visited Jan. 11, 2016) (80% of students are 25-31), https://www8.gsb.columbia.edu/programs-admissions/mba/admissions/class-profile.

[5] http://www.forbes.com/2010/06/21/companies-hiring-college-graduates-leadership-careers-jobs.html.

Employers also look to recent graduates to bring cutting-edge advances from the classroom to the workplace. *See, e.g.*, *Sack v. Bentsen*, 51 F.3d 264, 1995 WL 153645, at *4 (1st Cir. 1995) (unpublished table decision) (rejecting ADEA disparate treatment claim because recent law school graduates "had more current legal knowledge, as evidenced by their recent legal education"). These practices have become increasingly important in the Internet age, whether because employers are conducting "virtual" on-campus recruiting,[6] or instead believe that in-person recruiting gives them a competitive edge.[7]

Congress never intended to subject these age-neutral policies to ADEA liability, with good reason: such policies do not consign individuals to a lifetime of disadvantage, such that neutral policies could freeze in place the effects of prior discriminatory practices. Disparate-impact liability is premised in large part on the view that valid business judgments having nothing to do with a protected trait may need to be altered as an affirmative remedy to eliminate "built-in headwinds' for minority groups" created by past intentional discrimination. *Connecticut v. Teal*, 457 U.S. 440, 448-49, 102 S. Ct. 2525, 2531 (1982). Thus, in interpreting Title VII to authorize disparate-impact claims, the Supreme Court explained that

[6] John A. Byrne, *The Online MBA Comes of Age*, FORTUNE (May 29, 2013), http://fortune.com/2013/05/29/the-online-mba-comes-of-age/.

[7] Richard White, *Getting the Competitive College Recruiting Edge*, Monster.com (last visited Jan. 11, 2016), http://hiring.monster.com/hr/hr-best-practices/workforce-management/emerging-workforce/college-recruiting.aspx.

"[u]nder the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained *if they operate to 'freeze' the status quo of prior discriminatory employment practices*." *Griggs v. Duke Power Co.*, 401 U.S. 424, 430, 91 S. Ct. 849, 853 (1971) (emphasis added).

By contrast, when considering laws to protect older workers, Congress did not face the same impetus to guard against neutral employment policies that could perpetuate a status quo created by decades of discrimination against a discrete, fixed group. Because the workers who are older than 40 today were younger than 40 yesterday, their educational achievements, social position, and employment prospects when they entered the protected class were not shaped by discrimination *on account of their age*. Accordingly, Congress sensibly precluded disparate impact as a basis for hiring claims under the ADEA.

2. There are substantial practical consequences of disregarding Congress's choice not to permit ADEA disparate-impact hiring claims. Such claims invite litigation targeting important and long-standing lawful hiring practices. And the high costs of defending against disparate-impact claims will create pressure for employers to modify or abandon these entirely legitimate practices.

First, the bare fact that a business has a practice or policy with a disparate impact based on age—such as on-campus recruiting—is likely to expose businesses to large collective action claims by virtue of mere statistics.

Plaintiffs already attempt to shoehorn meritless on-campus recruiting claims into the ADEA's disparate treatment framework. *See, e.g.*, *Grossmann v. Dillard Dep't Stores, Inc.*, 109 F.3d 457, 459 (8th Cir. 1997) (dismissing ADEA disparate treatment claim because fact that "Dillards recruits recent college graduates" is "not evidence it discriminates against older workers"); *Stone v. First Union Corp.*, 203 F.R.D. 532, 549 (S.D. Fla. 2001) (decertifying class action disparate treatment claim regarding "recruiting on college campuses for . . . a management training program"). The panel decision invites more claims premised on nothing more than the makeup of a student body.

It is no answer that those claims would likely fail due to the affirmative defenses available to employers under the ADEA. The ADEA "contains language that significantly narrows its coverage by permitting any 'otherwise prohibited' action 'where the differentiation is based on reasonable factors other than age,'" *Smith v. City of Jackson, Miss.*, 544 U.S. 228, 233, 125 S. Ct. 1536, 1541 (2005); *see* 29 U.S.C. § 623(f)(1)—including "recruiting concerns," *Pippin v. Burlington Res. Oil & Gas Co.*, 440 F.3d 1186, 1201 (10th Cir. 2006). But employers must nonetheless incur risk and significant costs litigating those suits, especially because this so-called RFOA defense frequently cannot be resolved until summary judgment. *See, e.g.*, *Loffredo v. Daimler AG*, 500 F. App'x 491, 498 (6th Cir. 2012) (RFOA defense may not be resolved on motion to dismiss); *Cummins v. City*

of Yuma, Ariz., 410 F. App'x 72, 73 (9th Cir. 2011) (RFOA defense may only form basis for dismissal if plaintiff pleads necessary facts in complaint). Employers often must proceed through discovery—no trivial imposition—in order to prevail, barring facial deficiencies in the complaint. *See, e.g.*, *Smith*, 544 U.S. at 241, 125 S. Ct. at 1545 (holding complaint is deficient if plaintiff does not "isolat[e] and identify[] the *specific* employment practices that are allegedly responsible for any observed statistical disparities").

Second, the panel decision invites courts to second-guess unnecessarily the reasonableness of age-neutral hiring policies. Congress's intent in guarding against discriminatory employment practices has never been to task the judiciary with micromanaging the employer-employee relationship. *See McKennon v. Nashville Banner Publ'g Co.*, 513 U.S. 352, 361, 115 S. Ct. 879, 886 (1995) ("The ADEA . . . is not a general regulation of the workplace but a law which prohibits discrimination."). Because failure-to-hire disparate-impact claims involve facially neutral policies by definition, and typically will center on the RFOA defense, such claims will force courts to be armchair human resource managers, subjecting many routine hiring practices to *post hoc* judgments regarding reasonableness.

Third, these suits will not only impose direct costs on employers named as defendants, but will also create pressure for employers to abandon perfectly lawful and legitimate age-neutral hiring practices in order to avoid these burdens. *See*

Watson v. Ft. Worth Bank & Trust, 487 U.S. 977, 993, 108 S. Ct. 2777, 2788 (1988) (describing possibility that disparate-impact liability could cause employers to adopt worse alternatives as a "cost-effective means of avoiding expensive litigation and potentially catastrophic liability"). These policies have real benefits for employers and recent graduates, and it is critical to keep the disparate impact "analysis within its proper bounds," *id.* at 994, 108 S. Ct. at 2788, in order to avoid an unnecessary abandonment of widespread hiring practices.

Congress did not intend to subject employers to the burden of litigating ADEA suits merely because employers adopt routine, widespread, and important recruiting practices embraced by the private sector and the government alike. En banc rehearing is warranted in light of the considerable consequences of the panel's decision expanding ADEA liability beyond the statute's terms.

II. PERMITTING REVIVAL OF STALE CLAIMS WITHOUT A FINDING OF DILIGENCE OR EXTRAORDINARY CIRCUMSTANCES IS NOT NECESSARY TO PROTECT ACCESS TO ANTI-DISCRIMINATION REMEDIES AND WILL UNREASONABLY BURDEN EMPLOYERS

In the ADEA, as with Title VII, Congress chose "what are obviously quite short deadlines . . . to encourage the prompt processing of all charges of employment discrimination." *Mohasco Corp. v. Silver*, 447 U.S. 807, 825, 100 S. Ct. 2486, 2497 (1980). Those short deadlines reflect a compromise, including a judgment "that the costs associated with processing and defending stale or dormant

claims outweigh the federal interest in guaranteeing a remedy to every victim of discrimination." *Id.* at 820, 100 S. Ct at 2494 (discussing deadlines in the Civil Rights Act of 1964). Indeed, legislative efforts to extend the charge-filing period to two years have failed. *Compare* Civil Rights Act of 1991, Pub. L. No. 102-166, § 115, 105 Stat. 1071, 1079 (no amendment of ADEA charge-filing period), *with* H.R. 1, 102d Cong. § 17(a) (as introduced in the House of Representatives, Jan. 3, 1991) (seeking to extend charge-filing period to two years). Although the "time period for filing a charge is subject to equitable doctrines such as tolling," they "are to be applied sparingly." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 113, 122 S. Ct. 2061, 2072 (2002).

The equitable tolling rule adopted by the panel majority does not apply the doctrine "sparingly." As the Petition explains (at 12-14), the panel's approach conflicts with numerous decisions of the Supreme Court and this Court permitting equitable tolling only when the plaintiff has exercised due diligence but was unable to make a timely filing due to extraordinary circumstances. Moreover, in adopting a "less stringent," Op. 32 n.13, equitable tolling standard for failure-to-hire claims that effectively eliminates any statute of limitations, the panel decision invites forum shopping, and imposes tremendous and unwarranted burdens on businesses.

The panel's decision would effectively permit tolling in every hiring case, because it affirmatively holds that no "extraordinary circumstances" are necessary,

Op. 32 n.13—or, said another way, tolling is available in the ordinary course—and assumes that any diligence with respect to an employer's hiring practices would be "entirely futile," Op. 34 & n.14. But if no diligence or extraordinary circumstance is required, claims for failures to hire can be raised whenever some specific information regarding a hiring practice emerges at some point in the future, no matter how long ago an individual applied for a position. The panel decision thus effectively undoes the ADEA timely filing requirements enacted by Congress.

This evisceration of the statute of limitations will impose costly burdens on employers, in contravention of Congress's carefully crafted deadlines. As just one example, the EEOC's regulations require employers and employment agencies to maintain records related to applicants and recruiting for only one year. *See* 29 C.F.R. §§ 1627.3(b)(1), 1627.4(a)(1); *see also EEOC v. Shell Oil Co.*, 466 U.S. 54, 78, 104 S. Ct. 1621, 1636 (1984) (holding that in order to "enable employers to demonstrate that they have adhered to [Title VII's] dictates, it is important that employers be given sufficient notice to ensure that documents pertaining to allegations of discrimination are not destroyed"). Compounding the problem, the EEOC's regulations do not require employers to maintain *any* records with respect to the age of applicants. *Cf.* 29 C.F.R. § 1607 (requiring collection of applicant data for Title VII purposes). If the panel's tolling rule stands, however, employers would be forced to create records regarding applicants' ages and preserve them in

perpetuity—notwithstanding the possibility that such inquiries would be considered discrimination, 29 C.F.R. § 1625.5. Otherwise, employers would be left with no meaningful way to defend against a statistics-intensive disparate-impact claim. Beyond recordkeeping, as time goes on, witnesses' memories fade and it becomes increasingly difficult for an employer to demonstrate its compliance with the ADEA. Forcing employers to defend against long-stale claims would thus impose indiscriminately the very harms that Congress intended to avoid through a short charge-filing deadline.

Moreover, the panel's no-diligence tolling rule is not necessary to protect the ability of employees to pursue discrimination claims. A claimant need not be able to obtain detailed information to file a charge; a charge need only "generally allege the discriminatory act(s)." 29 C.F.R. § 1626.6. Accordingly, there is no basis to assume, as the panel did, that a diligent unsuccessful applicant will be unable to obtain any material information about an employer's hiring decisions, whether through inquiries with the employer or otherwise. The panel cited no allegation or evidence to support its statement that any request for R.J. Reynolds to inform an unsuccessful applicant of overqualification would be futile. Moreover, the internet has opened up substantial amounts of information regarding companies and their employees. It is not difficult to discover basic demographic information about individuals who were hired for a territory manager position, permitting an

unsuccessful applicant to become aware that the individuals who are hired are largely outside the protected age group. For example, a search on one professional networking site reveals nearly 1400 profiles including the job title "Territory Manager" for R.J. Reynolds.[8]

Beyond being burdensome and unnecessary, the panel's effective elimination of any statute of limitations is unproductive. Congress's choice to require the prompt filing of employment discrimination claims serves more than the employer's interest in preserving its ability to defend against untimely, unmeritorious claims. It also serves the goal of promptly starting an administrative process that may result in voluntary conciliation so that "violations of the statute could be remedied without resort to the courts." *Shell Oil*, 466 U.S. at 78, 104 S. Ct. at 1635. By eliminating any requirement of reasonable inquiry into the circumstances surrounding a failure to hire, the panel's tolling rule would disserve the very anti-discrimination goals that the ADEA is designed to serve. En banc review is necessary so that this Court can reinstate its well-established equitable tolling precedents, which respect the balance struck by Congress.

[8] *See* LinkedIn, https://www.linkedin.com/title/territory-manager-at-rj-reynolds (last visited January 11, 2016).

CONCLUSION

For the foregoing reasons, the Court should grant the petition for rehearing.

Respectfully submitted,

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