

No. 26-3549

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Jerry Darst,
Plaintiff-Appellant,

v.

Meigs County, OH; Scott Fitch,
Defendants-Appellees.

On Appeal from the United States District Court
for the Southern District of Ohio

**BRIEF OF THE EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION AS AMICUS CURIAE IN SUPPORT OF
APPELLANT AND IN FAVOR OF VACATUR**

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STATEMENT OF INTEREST

This appeal raises important questions concerning the appropriate causation standard for age-discrimination claims under the Age Discrimination in Employment Act of 1967 (ADEA), 29 U.S.C. § 621 *et seq.* The Equal Employment Opportunity Commission (EEOC) administers and enforces the ADEA and thus has a substantial interest in the proper resolution of these questions. The EEOC files this brief under Federal Rule of Appellate Procedure 29(a)(2).

STATEMENT OF THE ISSUE¹

The ADEA makes it unlawful for an employer to fire or otherwise discriminate against any individual “because of” his age. 29 U.S.C. § 623(a)(1). The issue presented is:

Whether a plaintiff pursuing an age-discrimination claim under the ADEA may prevail by showing that his age was *one* but-for cause of an adverse employment action rather than the *sole* cause.

¹ The EEOC takes no position on any other issue presented in this appeal.

STATEMENT OF THE CASE

A. Statement of the Facts²

At age fifty-one, Jerry Darst began working for Meigs County as a deputy sheriff. *Darst v. Meigs Cnty.*, No. 2:24-cv-01150, 2026 WL 1723624, at *1 (S.D. Ohio June 15, 2026). A few months into Darst's probationary period, Scott Fitch became the County Sheriff. *Id.*

With a new sheriff in town, Darst's employment prospects took a turn for the worse. Before Sheriff Fitch assumed his new role, he rejected Darst's request to work with a canine, telling him something to the effect of, "isn't it about time you hang it up old man," meaning it was time for Darst to "leave ... that aspect" of his job behind. *Id.* at *2. After taking the reins, Sheriff Fitch continued referring to Darst in age-related terms, calling him the "old colonel," "grandpa," and "old-timer." *Id.* Darst's colleagues often referred to him in similar age-related terms, calling him "pa" or "grandpa," and they mocked Darst for being so old he "had a stone tablet to write on" and needed "help crossing the street." *Id.*

² We draw these facts from the district court's opinion and order granting summary judgment. The record must be viewed in the light most favorable to Darst. See *Smith v. City of Union*, 144 F.4th 867, 873 (6th Cir. 2025).

Near the end of Darst's probationary period, Sheriff Fitch fired him. *Id.* at *3. In a letter explaining the decision, Sheriff Fitch stated that Darst's "performance was unsatisfactory." *Id.* The letter listed several alleged deficiencies, including "lack of motivation" and "poor attitude." *Id.* After firing Darst, the County replaced him with someone seventeen years younger. *Id.* at *9.

B. District Court's Decision

Darst filed this action, asserting a claim for age discrimination under the ADEA (among other claims). *Darst*, 2026 WL 1723624, at *3. The district court granted summary judgment to the County. *Id.* at *13.

The court's ruling on Darst's age-discrimination claim turned entirely on causation grounds: whether Darst could show that the County discriminated against him "because of" his age. *Id.* at *8 (quoting *Pelcha v. MW Bancorp, Inc.*, 988 F.3d 318, 325 (6th Cir. 2021)). In assessing that question, the court initially recited a but-for causation standard, under which an ADEA plaintiff "must show that age was the 'but-for' cause of an adverse employment decision." *Id.* at *7. To meet that standard, the court said, Darst had to "show that his age was the 'but-for' cause of his termination." *Id.* at *13.

But the court then applied something akin to a sole-cause standard, under which a plaintiff must show that his age was the *sole* cause of an adverse employment action. Specifically, relying on recent decisions from this Court, the district court reasoned that Darst could not prevail “if his termination was *at least partly* caused by [the County’s] non-discriminatory reasons.” *Id.* (emphasis added) (quoting *McNeal v. City of Blue Ash*, 117 F.4th 887, 896 (6th Cir. 2024)). Instead, the court stated, Darst had to prove that “the *true* motive for his firing was his age.” *Id.* at *9 (emphasis added) (alterations omitted) (quoting *Pelcha*, 988 F.3d at 326).

In other words, according to the district court’s reasoning, Darst’s claim would necessarily fail if his firing had multiple causes and his age was merely one cause rather than the only cause. Applying that standard, the court concluded that Sheriff Fitch’s “discriminatory remarks alone fail to call into question [the County’s] reason for terminating [Darst],” and thus did not suffice to establish causation. *Id.* at *13.³

This appeal followed.

³ The court also rejected Darst’s reliance on various other pieces of circumstantial evidence. *See Darst*, 2026 WL 1723624, at *9-13. We take no position on those portions of the court’s ruling.

ARGUMENT

I. The ADEA requires a plaintiff to show that his age was *one* but-for cause of an adverse employment action, not the *sole* cause.

A. The ADEA incorporates the traditional standard of but-for causation, under which an employment action may have multiple but-for causes.

It is well settled that a but-for causation standard governs age-discrimination claims under the ADEA. The Supreme Court held as much in *Gross v. FBL Financial Services, Inc.*, 557 U.S. 167 (2009). As the Court explained, the statute makes it unlawful for an employer to fire or otherwise discriminate against an individual “because of” his age, 29 U.S.C. § 623(a)(1), and the phrase “because of” requires but-for causation, *Gross*, 557 U.S. at 176-77. That outcome comports with the Court’s reading of the same language in Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* See *Univ. of Tex. Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 346-60 (2013) (“because” in Title VII’s anti-retaliation provision indicates but-for causal relationship); *Bostock v. Clayton Cnty.*, 590 U.S. 644, 656 (2020) (same with respect to Title VII’s anti-discrimination provision).⁴

⁴ As we explain in greater detail below, in *Bostock* the Supreme Court relied exclusively on Title VII’s “because of” provision in 42 U.S.C. § 2000e-(a)(1), which incorporates a but-for causation standard, rather than Title VII’s “more forgiving” motivating-factor provision in 42 U.S.C. § 2000e-2(m),

It is also well settled that but-for cause does not mean sole cause. The Supreme Court has long recognized that under the “traditional standard of but-for causation,” an event can “have multiple but-for causes.” *Bostock*, 590 U.S. at 656 (citation modified); *see also McDonald v. Santa Fe Trail Transp. Co.*, 427 U.S. 273, 282 n.10 (1976) (“[N]o more is required to be shown than that [a protected trait] was a ‘but for’ cause.” (emphasis added)). That principle applies across multiple areas of law. In tort law, for example, “if a car accident occurred *both* because the defendant ran a red light *and* because the plaintiff failed to signal his turn at the intersection, we might call each a but-for cause of the collision.” *Bostock*, 590 U.S. at 656. Likewise, in criminal law, “if poison is administered to a man debilitated by multiple diseases, it is a but-for cause of his death even if those diseases played a part in his demise, so long as, without the incremental effect of the poison,

which does not require but-for causation. 590 U.S. at 656-57. The Court explained: “[B]ecause nothing in our analysis depends on the motivating factor test [in § 2000e-2(m)], we focus on the more traditional but-for causation standard [in § 2000e-2(a)(1)] that continues to afford a viable, if no longer exclusive, path to relief under Title VII.” *Id.* at 657; *see also Desert Palace, Inc. v. Costa*, 539 U.S. 90, 93-94 (2003) (describing “motivating factor” test in § 2000e-2(m) as an “alternative” to because-of test in § 2000e-2(a)(1) in proving disparate-treatment discrimination). For reasons that will become apparent, that distinction is crucial.

he would have lived.” *Burrage v. United States*, 571 U.S. 204, 211 (2014); see also *United States v. Miller*, 767 F.3d 585, 601 (6th Cir. 2014) (“[A] criminal act in the abstract may have more than one but-for cause....”).

These examples reflect the basic principle that an act may be a but-for cause of an event even if the act “combines with other factors to produce the result, so long as the other factors alone would not have done so – if, so to speak, [the act] was the straw that broke the camel’s back.” *Burrage*, 571 U.S. at 211. More simply, a but-for cause need not be the sole cause.

The same principle applies to employment actions. If an employer takes an adverse action against an employee *both* because of a protected trait *and* because of some other non-discriminatory reason, each could be a but-for cause of the action. To prove discrimination under a but-for causation standard, a plaintiff need only show that a protected trait “was *one* but-for cause of that decision.” *Bostock*, 590 U.S. at 656 (emphasis added). He does not need to show his employer made the decision “solely on the basis of his [protected trait].” *McDonald*, 427 U.S. at 282 n.10. See also, e.g., *Nathan v. Great Lakes Water Auth.*, 992 F.3d 557, 567 (6th Cir. 2021) (Title VII “asks only whether the plaintiff’s sex was a ‘but for’ cause of harassment,” and “[t]here can be multiple ‘but for’ causes of harassment”);

Banks v. Gen. Motors, LLC, 81 F.4th 242, 275 (2d Cir. 2023) (“[T]here can be more than one ‘but-for’ cause of an adverse employment action.”).

These premises lead to one conclusion: The ADEA requires a plaintiff to show that his age was *one* but-for cause of an adverse action, but it does not require a plaintiff to prove that his age was the *sole* cause of the action. Multiple courts of appeals have held as much, using the same logic. *See Richardson v. Nw. Mem’l HealthCare*, 183 F.4th 895, 900-01 (7th Cir. 2026) (district court erred in applying sole-cause standard under ADEA because “a ‘but-for’ cause need not be the sole one”); *United States ex rel. Barrick v. Parker-Migliorini Int’l, LLC*, 79 F.4th 1262, 1276 (10th Cir. 2023) (but-for causation standard does not mean “age must be the *sole* cause of the adverse action” (citing *Jones v. Okla. City Pub. Schs.*, 617 F.3d 1273, 1276-78 (10th Cir. 2010))); *Leal v. McHugh*, 731 F.3d 405, 415 (5th Cir. 2013) (for purposes of ADEA, “‘but-for cause’ does not mean ‘sole cause’”); *see also Black v. Grant Cnty. Pub. Util. Dist.*, 820 F. App’x 547, 551-52 (9th Cir. 2020) (reaching same conclusion with respect to ADEA’s anti-retaliation provision).

As the Second Circuit succinctly explains, “[t]he condition that a plaintiff’s age must be the ‘but for’ cause of the adverse employment action

is not equivalent to a requirement that age was the employer[']s *only* consideration.” *Delaney v. Bank of Am. Corp.*, 766 F.3d 163, 169 (2d Cir. 2014) (quoting *Fagan v. U.S. Carpet Installation, Inc.*, 770 F. Supp. 2d 490, 496 (E.D.N.Y. 2011)).

This conclusion is bolstered by the fact that when Congress wishes to impose a sole-cause standard, it knows how to say so. *See Foltice v. Guardsman Prods., Inc.*, 98 F.3d 933, 939 (6th Cir. 1996) (declining read into a statute a rule that Congress “knows how to” create). As one example, the Bankruptcy Code prohibits discrimination against individuals “*solely* because” they have filed for bankruptcy, been insolvent, or not paid a dischargeable debt, 11 U.S.C. § 525(a) (emphasis added), which the Supreme Court has interpreted to mean “the sole cause,” *FCC v. NextWave Pers. Commc’ns Inc.*, 537 U.S. 293, 301 (2003). Congress did not add a similar qualifier in the ADEA. “If ‘Congress knows how to say something but chooses not to, its silence’ deserves respect.” *Flight Options, LLC v. United States*, 177 F.4th 709, 716 (6th Cir. 2026) (quoting *Black Farmers & Agriculturalists Ass’n v. Rollins*, 154 F.4th 473, 477-78 (6th Cir. 2025)).

B. A claim premised on multiple but-for causes is distinct from a “mixed motive” claim.

Importantly, the “concept of multiple but-for causes” is distinct from the “concept of mixed motives.” *Yelling v. St. Vincent’s Health Sys.*, 82 F.4th 1329, 1339-40 (11th Cir. 2023). To prevail on a mixed-motive theory of discrimination, a plaintiff need only show that her protected trait was a “motivating factor” in the employer’s adverse action. *See Wright v. Murray Guard, Inc.*, 455 F.3d 702, 711-13 (6th Cir. 2006) (describing mixed-motive theory); *see also Bostock*, 590 U.S. at 656-57 (explaining difference between “traditional but-for causation standard” and “motivating factor test”); *Desert Palace*, 539 U.S. at 93-94 (describing motivating-factor test as an “alternative” method for proving disparate treatment).

But a motivating factor is not the same as a but-for cause. *See, e.g., Doe v. R.I. Interscholastic League*, 137 F.4th 34, 42 (1st Cir. 2025) (distinguishing motivating factor from but-for cause); *Malin v. Hospira, Inc.*, 762 F.3d 552, 562 n.3 (7th Cir. 2014) (same); *Zann Kwan v. Andalex Grp. LLC*, 737 F.3d 834, 846 n.5 (2d Cir. 2013) (same). Rather, as the Supreme Court explained in *Bostock*, an employer may be liable under a motivating-factor standard,

“even if [a protected trait] *wasn’t* a but-for cause of the employer’s challenged decision.” 590 U.S. at 657.

Accordingly, the “motivating-factor causation standard ... is distinct from, and ‘more forgiving’ than, a but-for standard.” *Akridge v. Alfa Ins. Cos.*, 93 F.4th 1181, 1192 (11th Cir. 2024) (quoting *Bostock*, 590 U.S. at 657). And by extension, “[a] mixed-motive theory is distinct from a theory based on ‘multiple but-for causes.’” *Subotic v. Jabil, Inc.*, No. 22-13880, 2024 WL 797140, at *7 (11th Cir. Feb. 27, 2024) (quoting *Yelling*, 82 F.4th at 1339); *see also Parker-Migliorini Int’l*, 79 F.4th at 1276-77 (rejecting defendant’s argument that jury instruction stating that events may “have multiple ‘but-for’ causes” implicitly “reflect[ed] the motivating factor test”).

In the ADEA context, the distinction between multiple but-for causes and mixed motives is especially salient. The ADEA does not authorize mixed-motive claims. *See Gross*, 557 U.S. at 175. Thus, a plaintiff may not prevail merely by showing that his age was a motivating factor in an adverse action. But the statute *does* allow a plaintiff to prevail where there are multiple but-for causes of an adverse action — so long as age was one of them. *See Richardson*, 183 F.4th at 900-01; *Jones*, 617 F.3d at 1277-78; *Leal*, 731 F.3d at 415; *Delaney*, 766 F.3d at 169; *see also Simmons v. Sykes Enters., Inc.*,

647 F.3d 943, 949 (10th Cir. 2011) (“A plaintiff alleging age discrimination must ... prove age was *a* ‘but for’ cause of her termination.” (emphasis added)).

II. This Court’s precedent rejecting a sole-cause standard is both controlling and consistent with traditional but-for causation principles.

A. This Court has offered conflicting statements about whether a sole-cause standard governs ADEA claims.

Despite the ADEA’s language requiring but-for causation and the Supreme Court’s edict that but-for cause does not mean sole cause, this Court’s decisions have offered potentially conflicting statements about whether ADEA claims are subject to a sole-cause standard.

On one side of the ledger is *Lewis v. Humboldt Acquisition Corp.*, 681 F.3d 312 (6th Cir. 2012) (en banc), which correctly rejected a sole-cause standard. There, this Court held that Title I of the Americans with Disabilities Act (ADA), which then prohibited employment discrimination “because of” disability, does not impose a sole-cause standard, stating: “A law establishing liability against employers who discriminate ‘because of’ an employee’s disability does not require the employee to show that the disability was the ‘sole’ cause of the adverse employment action.” *Id.* at

315-16. In so holding, the court highlighted that the ADEA uses the same causal language, explaining: “The ADEA and the ADA bar discrimination ‘because of’ an employee’s age or disability, meaning that they prohibit discrimination that is a “‘but-for” cause of the employer’s adverse decision.” *Id.* at 321 (quoting *Gross*, 557 U.S. at 176). Thus, the court reasoned, “[t]he same standard applies to both laws.” *Id.*

That ironclad logic again leads to one conclusion: Since the ADEA “establish[es] liability against employers who discriminate ‘because of’ an employee’s [age],” the statute “does not require the employee to show that [his age] was the ‘sole’ cause of the adverse employment action.” *Id.* at 315-16.⁵

⁵ *Lewis* also noted that the ADA is unlike the Rehabilitation Act, which contains language prohibiting discrimination “solely by reason of” an individual’s disability. 681 F.3d at 315 (emphasis supplied by court) (quoting 29 U.S.C. § 794(a)). Based on that language, some courts have held that the Rehabilitation Act adopts a sole-cause standard. *See Lewis v. Ind. Dep’t of Transp.*, 173 F.4th 876, 882-83 (7th Cir. 2026); *Soledad v. U.S. Dep’t of Treasury*, 304 F.3d 500, 505 (5th Cir. 2002). *But see Natofsky v. City of N.Y.*, 921 F.3d 337, 345-46 & n.1 (2d Cir. 2019) (rejecting sole-cause standard for employment-discrimination claims under Rehabilitation Act and noting circuit split on the question). As explained above (*supra* at 9), the ADEA similarly lacks a “solely” qualifier.

On the other side of the ledger are *Pelcha v. MW Bancorp, Inc.*, 988 F.3d 318 (6th Cir. 2021), and *McNeal v. City of Blue Ash*, 117 F.4th 887 (6th Cir. 2024), which at least arguably, if somewhat ambiguously, suggest a sole-cause standard. See *Moat v. Metro. Gov't of Nashville*, No. 3:21-cv-00807, 2023 WL 4035909, at *8 (M.D. Tenn. June 15, 2023) (“*Pelcha* admittedly contains some confusing language.”). In *Pelcha*, the panel rejected an argument that the ADEA encompasses “terminations with multiple motivations.” 988 F.3d at 324.⁶ Along similar lines, *McNeal* stated that an ADEA plaintiff “cannot proceed if his termination was *at least partly* caused by [an employer’s] non-discriminatory reasons.” 117 F.4th at 896 (emphasis

⁶ Adding to the confusion, the original panel opinion in *Pelcha* expressly applied a sole-cause standard. It stated that ADEA plaintiffs “must show that age was *the* reason why they were terminated, not that age was one of multiple reasons,” and that “[u]nder *Gross*, either a termination is motivated by age, or it wasn’t.” *Pelcha v. MW Bancorp, Inc.*, 984 F.3d 1199, 1205 (6th Cir. 2021) (emphasis in original). After the plaintiff filed a rehearing petition and multiple amici (including the EEOC) filed briefs supporting rehearing, the *Pelcha* panel issued an amended opinion omitting that language. 988 F.3d at 324; see also Brief of the EEOC as Amicus Curiae in Support of Rehearing, *Pelcha v. MW Bancorp, Inc.*, No. 20-3511 (6th Cir. Feb. 10, 2021), <https://www.eeoc.gov/litigation/briefs/pelcha-v-mw-bancorp>. Nonetheless, the amended opinion still retained or added language arguably suggesting a sole-cause standard.

added). Those statements could be read as suggesting that an age-discrimination claim will necessarily fail if the challenged action has multiple causes. By implication, that would mean a plaintiff must show his age was the *sole* cause.

B. This Court's en banc decision in *Lewis*, which rejected a sole-cause standard, controls.

As the earlier – and en banc – precedent, *Lewis* controls. *Lewis* squarely held that the statutory phrase “because of” requires a but-for cause, not a sole cause. 681 F.3d at 321. To the extent *Pelcha* and *McNeal* suggested otherwise, this Court remains bound by *Lewis*. See *Habich v. City of Dearborn*, 331 F.3d 524, 530 n.2 (6th Cir. 2003) (“When an opinion of this court conflicts with an earlier precedent, we are bound by the earliest case.”). After all, “a later panel of the court cannot overrule the published decision of a prior panel – particularly an en banc panel – in the absence of en banc review or an intervening opinion on point by the Supreme Court.” *United States v. Lee*, 793 F.3d 680, 684 (6th Cir. 2015).

No such intervening authority exists here. On the contrary, the intervening Supreme Court opinions on point, *Bostock* and *Burrage*, reinforced *Lewis*'s conclusion that but-for cause does not mean sole cause.

See Bostock, 590 U.S. at 656; *Burrage*, 571 U.S. at 211-12. A few district court judges within this Circuit have even refused to read *Pelcha* as adopting a sole-cause standard in part because such a holding would conflict with *Lewis*. *See Moat*, 2023 WL 4035909, at *8 (“Insofar as *Pelcha* might be construed as interpreting ‘but for’ causation to be equivalent to ‘sole cause,’ the court declines to adopt such a reading, as *Pelcha* did not squarely reach that conclusion, and, if it had, it would appear to be inconsistent with Sixth Circuit opinions both preceding and following *Pelcha*.”); *Lawrence v. Metro. Gov’t of Nashville & Davidson Cnty.*, No. 3:22-cv-00680, 2024 WL 1313879, at *3 n.2 (M.D. Tenn. Mar. 27, 2024) (quoting *Moat* for the same proposition). It also bears mention that *Pelcha* and *McNeal* did not cite *Lewis* or attempt to distinguish its reasoning.

C. *Lewis* was correctly decided and accords with the holdings of other courts of appeals.

Aside from constituting binding precedent, *Lewis* correctly interpreted the ADEA. Again, a straightforward syllogism shows why: The ADEA prohibits discrimination “because of” age; the phrase “because of” means but-for causation; a but-for cause need not be a sole cause because an action can have multiple but-for causes. *See Lewis*, 681 F.3d at 315-16,

321. Thus, the ADEA “does not require the employee to show that [his age] was the ‘sole’ cause of the adverse employment action.” *Id.* at 316. Other courts of appeals have reached precisely the same conclusion about the ADEA. *See Richardson*, 183 F.4th at 900-01; *Jones*, 617 F.3d at 1277-78; *Leal*, 731 F.3d at 415; *Delaney*, 766 F.3d at 169. And the Supreme Court has reached the same conclusion in interpreting materially identical language in Title VII’s anti-discrimination and anti-retaliation provisions. *See Bostock*, 590 U.S. at 656; *Nassar*, 570 U.S. at 346-60.

By contrast, to the extent *Pelcha* and *McNeal* suggested support for a sole-cause standard, their analyses rested on a nuanced misunderstanding about but-for causation. Most fundamentally, both appeared to misapprehend a critical aspect of the Supreme Court’s decision in *Gross*. In *Gross*, the Court held that the ADEA does not authorize mixed-motive claims – that is, an ADEA plaintiff cannot prevail by showing that his age was merely a motivating factor in an adverse employment action. 557 U.S. at 175-76. *Pelcha* and *McNeal* seemed to suggest that *Gross*’s holding meant an ADEA plaintiff cannot prevail if a challenged action had multiple causes – which would mean that age must be the sole cause. *See Pelcha*, 988 F.3d at 324 (rejecting plaintiff’s argument that ADEA covers “terminations

with multiple motivations”); *McNeal*, 117 F.4th at 896 (ADEA plaintiff “cannot proceed if his termination was at least partly caused by [the employer’s] non-discriminatory reasons”).

But that logic simply “conflates the concept of multiple but-for causes with the concept of mixed motives.” *Yelling*, 82 F.4th at 1339. Because those concepts are distinct, *Gross*’s holding that mixed-motive claims are unavailable under the ADEA does not mean that a plaintiff must show age was the *only* but-for cause of an adverse action. As a result, *Gross* did not reject the possibility of multiple but-for causes.⁷

In imposing what potentially amounted to a sole-cause standard, *Pelcha* and *McNeal* also appeared to rely on *Gross*’s statement that a plaintiff’s protected trait must have been “determinative” in the employer’s decision. *Gross*, 557 U.S. at 176 (emphasis omitted) (quoting *Hazen Paper Co.*

⁷ This Court has recognized that “[s]ome statements in [its] cases have (wrongly) equated th[e] motivating-factor test with but-for causation.” *Lemaster v. Lawrence Cnty.*, 65 F.4th 302, 309 (6th Cir. 2023). See, e.g., *Leonard v. Robinson*, 477 F.3d 347, 355 (6th Cir. 2007) (“A ‘motivating factor’ is essentially but-for cause....”). As we have already explained (*supra* at Part I.B), the motivating-factor standard is distinct from and less demanding than the but-for causation standard. See *Bostock*, 590 U.S. at 657; *Desert Palace*, 539 U.S. at 93-94.

v. Biggins, 507 U.S. 604, 610 (1993)); see *Pelcha*, 988 F.3d at 324; *McNeal*, 117 F.4th at 894. But a determinative factor in an outcome is nothing more than a necessary reason for the outcome — one without which the outcome would not have happened. And that is just another way of describing but-for causation. As the Eleventh Circuit explains: “[B]ut-for causation requires an employee to show that a cause was outcome determinative, meaning that ‘a particular outcome would not have happened “but for” the purported cause.’” *Akridge*, 93 F.4th at 1192-93 (quoting *Bostock*, 590 U.S. at 656); see also *LeBoon v. Lancaster Jewish Cmty. Ctr. Ass’n*, 503 F.3d 217, 232 n.8 (3d Cir. 2007) (to prove retaliation under Title VII, a plaintiff “need not prove that retaliation was the *sole* reason for [her employer’s] decision; she must prove, however, that it was a *determinative factor* of the employment decision, meaning that she would not have been terminated but for her protected activity”).

And just as an effect may have multiple but-for causes, an outcome may have multiple determinative factors. See *Lewis v. Univ. of Pittsburgh*, 725 F.2d 910, 917 n.8 (3d Cir. 1983) (“There may be several determinative factors which lead to any given decision, all of which can be ‘but for’ causes of the challenged action.”). To prevail on an ADEA claim, a plaintiff need

only show that his age was one such determinative factor, not the sole factor. *See Cooper v. Asplundh Tree Expert Co.*, 836 F.2d 1544, 1551 (10th Cir. 1988) (“[A] basic finding of liability under the [ADEA] requires that age be at least one of possibly several ‘determinative factors’ in the employer’s conduct[.]”).

Pelcha further reasoned that because *Bostock* interpreted Title VII, its ruling regarding but-for causation was confined to that context and did not “stretch to the ADEA.” 988 F.3d at 324. It is unclear why that would be so. That portion of *Bostock* merely interpreted the “because of” language in Title VII and explicated traditional but-for causation principles. 590 U.S. at 656. Nothing in that analysis turned on anything unique about Title VII. The Court expressly said as much, explaining that it was relying on “the more traditional but-for causation standard” rather than Title VII’s “more forgiving” motivating-factor test. *Id.* at 657 (“[N]othing in our analysis depends on the motivating factor test....”).

To be sure, the Court cautioned that it did not “prejudge” whether its ultimate holding—that Title VII prohibits an employer from firing an employee because of that employee’s sexual orientation or gender identity—extended to other laws that “prohibit sex discrimination.” *Id.* at

681. That is a far cry from suggesting that “because of” means something different in Title VII than it does in the ADEA or that Title VII adopts a different kind of but-for causation standard than the ADEA. Indeed, the Supreme Court has noted that “interpretation[s] of Title VII” generally “appl[y] with equal force in the context of age discrimination, for the substantive provisions of the ADEA ‘were derived *in haec verba* from Title VII.’” *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 121 (1985) (quoting *Lorillard v. Pons*, 434 U.S. 575, 584 (1978)); see also *Everson v. Mich. Dep’t of Corr.*, 391 F.3d 737, 748 n.15 (6th Cir. 2004) (noting “the usual practice of interpreting Title VII and the ADEA in identical fashion”).

Aside from that, *Bostock*’s treatment of but-for causation did not break new ground. The decision simply recognized that under the “traditional standard of but-for causation,” an event can “have multiple but-for causes.” *Bostock*, 590 U.S. at 656 (citation modified). That was true well before *Bostock*. As explained above, the Supreme Court has long recognized the possibility of multiple but-for causes in the Title VII context, see *McDonald*, 427 U.S. at 282 n.10, and in other contexts, see *Burrage*, 571 U.S. at 211-12. So too have courts of appeals, including this Court. See, e.g., *McCowen v. Vill. of Lincoln Heights*, 624 F. App’x 380, 384 (6th Cir. 2015)

(explaining in Title VII retaliation case that, under traditional but-for causation principles, “actions may have more than one ‘but-for’ cause”); *Miller*, 767 F.3d at 601 (“[A] criminal act in the abstract may have more than one but-for cause....”).⁸ Accordingly, even if *Bostock*’s ruling were somehow limited to Title VII, that traditional but-for causation standard would still govern in the ADEA context.

III. This Court should clarify that ADEA claims are not subject to a sole-cause standard and remand for the district court to apply the proper standard.

Given the conflicting statements canvassed above, we respectfully urge this Court to clarify that the ADEA requires a plaintiff to show only that his age was *one* but-for cause of an adverse employment action, not the *sole* cause. *See Poynter ex rel. Fernandez v. Shirley*, --F.4th--, 2026 WL 2641092, at *9 (6th Cir. Sept. 8, 2026) (en banc) (explaining that where “intra-Circuit

⁸ Many pre-*Bostock* decisions across various legal contexts say the same thing. *See, e.g., Loughman v. Consol-Pa. Coal Co.*, 6 F.3d 88, 106 (3d Cir. 1993) (“As both tort law and common sense tell us, there may be multiple but-for causes of a single loss....”); *Zann Kwan*, 737 F.3d at 846 n.5 (“[A] plaintiff’s injury can have multiple ‘but-for’ causes....”); *Malin*, 762 F.3d at 562 n.3 (“A single event can have multiple but-for causes....”); *United States v. Ruiz-Hernandez*, 890 F.3d 202, 212-13 (5th Cir. 2018) (“A particular result can be caused by ... multiple but-for causes....”); *United States v. Feldman*, 936 F.3d 1288, 1316 (11th Cir. 2019) (“*Burrage* made clear that there can be multiple but-for causes of an event.”).

conflicts” exist, “we owe it to ourselves, the district courts, and the litigants in our Circuit alike to resolve the debate with finality”). This Court “retains the independent power to identify and apply the proper construction of governing law,” and “is not limited to the particular legal theories advanced by the parties.” *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991); *see also United States v. Cabbage*, 91 F.4th 1228, 1231 (6th Cir. 2024) (“[C]ourts have an independent obligation to get the law right.”); *Whyde v. Sigsworth*, No. 22-3581, 2024 WL 4719649, at *3 (6th Cir. Nov. 8, 2024) (“[W]e must apply the correct governing law, even if the parties urge otherwise.”).

This case presents a good opportunity to clarify the proper causation standard because the district court here may well have applied the wrong one. Although the court ostensibly recognized that a but-for causation standard governs, it appeared to apply something akin to a sole-causation standard. It reasoned that Darst could not prevail on his ADEA claim “if his termination was *at least partly* caused by [the County’s] non-discriminatory reasons.” *Darst*, 2026 WL 1723624, at *13 (emphasis added) (quoting *McNeal*, 117 F.4th at 896). That statement suggests that Darst’s claim would fail if his termination had multiple but-for causes, which

would mean that Darst could prevail only if his age was the sole cause of his termination.

Under the appropriate standard, Darst did not need to prove that the County's legitimate, non-discriminatory reasons for firing him played *no* causal role in its decision – Darst needed to prove only that his age was *one* but-for cause. And since an action may have multiple but-for causes, it was entirely possible that *both* Darst's age *and* the County's legitimate reasons were but-for causes of his termination. *See Ismael v. Roundtree*, 161 F.4th 752, 761 (11th Cir. 2025) (“[T]he employer’s reason might be both factually grounded and directly causal – in other words, unassailable as pretext. If we require the plaintiff to negate their counterparty’s rationale, we permit the absurd result of a plaintiff losing on summary judgment for failing to demonstrate a falsity that she would not need to show at trial.”).

Because it is not clear that the district court applied the correct causation standard, this Court should remand for the district court to apply the correct legal standard in the first instance. *See, e.g., United States v. Hostettler*, 170 F.4th 539, 543 (6th Cir. 2026) (“When a district court has not applied the correct legal standard in the first instance, remand is the ordinary course.” (citation omitted)); *Siding & Insulation Co. v. Alco Vending*,

Inc., 822 F.3d 886, 901 (6th Cir. 2016) (“[A] remand is required for the district court to apply the correct legal standard.”).

We express no view on whether Darst’s age-discrimination claim would succeed under the proper causation standard.

CONCLUSION

For the foregoing reasons, we respectfully urge this Court to clarify that ADEA claims are not subject to a sole-cause standard, vacate the district court’s grant of summary judgment on Darst’s age-discrimination claim, and remand for the district court to apply the appropriate causation standard in the first instance.

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September 15, 2026

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7)(B) because it contains 5,344 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and 6th Cir. R. 32(b)(1).

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CERTIFICATE OF SERVICE

I certify that on September 15, 2026, I electronically filed the foregoing brief in PDF format with the Clerk of Court via the appellate CM/ECF system. I certify that all counsel of record are registered CM/ECF users, and service will be accomplished via the appellate CM/ECF system.

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