

Supreme Court Unanimously Holds That A Plaintiff Suing For Discrimination Under 42 U.S.C. § 1981 Must Allege But-For Causation

Client Alert | March 23, 2020

Decided March 23, 2020

Comcast Corp. v. National Association of African American-Owned Media, No. 18-1171

Today, the Supreme Court held 9-0 that a plaintiff who sues for racial discrimination under 42 U.S.C. § 1981 must plead facts plausibly showing that the discrimination was a “but-for” cause of the challenged action.

Background:

The Civil Rights Act of 1866—codified, in relevant part, at 42 U.S.C. § 1981—prohibits discrimination in the making and enforcement of contracts. Entertainment Studios Network (ESN) sued Comcast, alleging that Comcast’s decision not to carry several ESN television channels was motivated by racial bias. The district court dismissed the complaint three times, the final time without leave to amend. The Ninth Circuit reversed, holding that ESN stated a claim under Section 1981 simply by alleging that race was a “motivating factor” in, rather than a but-for cause of, Comcast’s decision.

Issue:

Whether a plaintiff who brings a claim for racial discrimination under 42 U.S.C. § 1981 must allege that the challenged action would not have occurred but for the discrimination.

Court’s Holding:

Yes. To survive a motion to dismiss, a plaintiff suing for racial discrimination under 42 U.S.C. § 1981 must plead facts plausibly showing that race was the but-for cause of challenged action.

“[A] plaintiff bears the burden of showing that race was a but-for cause of its injury. And, while the materials the plaintiff can rely on to show causation may change as a lawsuit progresses from filing to judgment, the burden itself remains constant.”

Justice Gorsuch, writing for the unanimous Court

Gibson Dunn represented the winning party: Comcast Corporation

What It Means:

- The Court unanimously held that a Section 1981 plaintiff must plausibly allege but-for causation in the complaint. ESN conceded that a plaintiff ultimately must prove but-for causation to prevail on the merits at summary judgment or at trial, but

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argued that a less stringent, motivating-factor standard should apply at the pleading stage. The Court disagreed, holding that the same but-for standard applies at all stages of litigation for a Section 1981 claim, and remanded for the Ninth Circuit to determine whether ESN's complaint met that standard.

- The Court reasoned that but-for causation is the default rule against which Congress is presumed to have legislated. Section 1981's language, structure, and history, as well as the Court's own precedent, persuaded the Justices that this default rule applies to Section 1981 claims. The Court also held that the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), does not alter the pleading standard for Section 1981 claims.
- The Court's decision restores uniformity to the law interpreting Section 1981 and other federal anti-discrimination statutes. Before the Ninth Circuit's opinion, no other court of appeals had held that a Section 1981 plaintiff could prevail without pleading but-for causation.
- The Court's ruling also means that Section 1981 cannot be used to avoid the limits on the type of relief and damages that are available under Title VII for claims that are proven using a motivating-factor standard.

The Court's opinion is available [here](#).

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

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