

SCOTUS Opinion: Civil Rights Plaintiffs Must Prove But-For Causation

24 Mar 2020

For years, Entertainment Studios Network, an African-American owned company, sought to have Comcast Corp. carry its channels. Comcast refused and ESN sued, alleging racial discrimination under 42 U.S.C. § 1981. ESN alleged that Comcast's legitimate business reasons for refusing to carry ESN channels were pretextual. The district court dismissed the complaint, holding that ESN had failed to allege but-for causation based on racial animus. The Ninth Circuit reversed, holding that ESN only had to plead facts plausibly showing that race played "some role" in the decision.

The Court, in a unanimous opinion by Justice Gorsuch that resolved a circuit split, reversed, holding that the text and history of §1981 supported treating its pleading requirements the same as straight negligence claims, which require "but-for" causation. The Court remanded for a determination of whether ESN's complaint met that standard. Justice Ginsburg filed a concurrence arguing that the determination of causation should be broader than any one point of the decision-making process. A link to the opinion in *Comcast v. Nat. Assn. of African American-Owned Media* is [here](#).

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