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Supreme Court Increases Burden for Claims of Race Discrimination Under Crucial Civil Rights Statute

Today, the United States Supreme Court weakened a key provision of the Civil Rights Act of 1866, known as Section 1981, which requires that all citizens have the same rights to make and enforce contracts as white persons. In *Comcast v. National Association of African American-Owned Media (NAAAOM)*, the Court [ruled](#) that it is not sufficient for plaintiffs to present factual allegations in their complaint showing the defendant was motivated by racial discrimination in denying a contract opportunity. Under Section 1981, a plaintiff must now also present facts showing that the defendant's discrimination was a "but-for" cause of the plaintiff's injury. The decision will make it more difficult to hold entities engaged in discrimination accountable for their actions.

However, the Court did not adopt more extreme arguments that Comcast and the United States had advanced in the case. Comcast argued that a plaintiff could not maintain a Section 1981 claim if the defendant could point to any race-neutral justification for its conduct, and that Section 1981 does not apply at all to the process of forming a contract. As Justice Ginsburg explained in her concurring opinion, under Comcast's extreme position, a lender could require African American prospective borrowers to provide more reference letters than their white counterparts without violating Section 1981.

The case arises from a suit filed by the National Association of African American-Owned Media (NAAAOM) and Black-owned Entertainment Studios Networks, Inc. (ESN) against Comcast, alleging that Comcast refused a contract with ESN due to racial discrimination. They sued Comcast for violation of Section 1981, which prohibits racial discrimination in employment, banking, consumer and business transactions, and other economic relationships involving contracts. The NAACP Legal Defense and Educational Fund, Inc. (LDF), along with several other civil rights organizations, filed an [amicus brief](#) in the case in October 2019 asking the court to reject Comcast's arguments that would undermine this critical statute. Today's decision does not resolve the dispute between ESN and Comcast but instead returns the case to the Court of Appeals for further consideration.

"We are disappointed by the Supreme Court's decision in *Comcast v. NAAAOM*, which raises the hurdle that plaintiffs must clear in order to challenge racial discrimination

under Section 1981.” said Sherrilyn Ifill, LDF’s President and Director-Counsel. “The Court did not adopt the even more extreme positions Comcast and the Trump Administration advanced in this case, which would result in a dangerous rollback of civil rights protections. We will carefully monitor how the case is applied in the lower courts and push back forcefully against similar arguments by other defendants.”

“Justice Ginsburg’s opinion appropriately emphasized that the arguments advanced by Comcast and the United States are at war with Congress’s commitment to ensuring that racial discrimination does not limit economic opportunities for African Americans and other people of color,” said LDF Assistant Counsel Kristen A. Johnson. “While the decision is not what we hoped, Section 1981 remains a critical tool for victims of racial discrimination. Courts must continue to enforce it vigorously.”

Read the United States Supreme Court’s decision [here](#).

Read our amicus brief [here](#).

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Founded in 1940, the NAACP Legal Defense and Educational Fund, Inc. (LDF) is the nation’s first civil and human rights law organization. LDF has been completely separate from the National Association for the Advancement of Colored People (NAACP) since 1957—although LDF was originally founded by the NAACP and shares its commitment to equal rights. LDF’s Thurgood Marshall Institute is a multi-disciplinary and collaborative hub within LDF that launches targeted campaigns and undertakes innovative research to shape the civil rights narrative. In media attributions, please refer to us as the NAACP Legal Defense Fund or LDF.

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