Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

COMCAST CORP. *v.* NATIONAL ASSOCIATION OF AFRICAN AMERICAN-OWNED MEDIA ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 18–1171. Argued November 13, 2019—Decided March 23, 2020

Entertainment Studios Network (ESN), an African-American-owned television-network operator, sought to have cable television conglomerate Comcast Corporation carry its channels. Comcast refused, citing lack of programming demand, bandwidth constraints, and a preference for programming not offered by ESN. ESN and the National Association of African American-Owned Media (collectively, ESN) sued, alleging that Comcast's behavior violated 42 U. S. C. §1981, which guarantees "[a]ll persons . . . the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens." The District Court dismissed the complaint for failing plausibly to show that, but for racial animus, Comcast would have contracted with ESN. The Ninth Circuit reversed, holding that ESN needed only to plead facts plausibly showing that race played "some role" in the defendant's decisionmaking process and that, under this standard, ESN had pleaded a viable claim.

Held: A §1981 plaintiff bears the burden of showing that the plaintiff's race was a but-for cause of its injury, and that burden remains constant over the life of the lawsuit. Pp. 3–13.

(a) To prevail, a tort plaintiff typically must prove but-for causation. See *University of Tex. Southwestern Medical Center* v. *Nassar,* 570 U. S. 338, 347. Normally, too, the essential elements of a claim remain constant throughout the lawsuit. See, *e.g., Lujan* v. *Defenders of Wildlife,* 504 U. S. 555, 561. ESN suggests that §1981 creates an exception to one or both of these general principles, either because a §1981 plaintiff only bears the burden of showing that race was a "motivating factor" in the defendant's challenged decision or because, even when but-for causation applies at trial, a plausible "motivating factor" showing is all that is necessary to overcome a motion to dismiss at the pleading

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stage. Pp. 3–12.

(1) Several clues, taken collectively, make clear that §1981 follows the usual rules. The statute's text suggests but-for causation: An ordinary English speaker would not say that a plaintiff did not enjoy the "same right" to make contracts "as is enjoyed by white citizens" if race was not a but-for cause affecting the plaintiff's ability to contract. Nor does the text suggest that the test should be different in the face of a motion to dismiss. The larger structure and history of the Civil Rights Act of 1866 provide further clues. When enacted, §1981 did not provide a private enforcement mechanism for violations. That right was judicially created, see *Johnson* v. *Railway Express Agency, Inc.,* 421 U. S. 454, 459, but even in that era, the Court usually insisted that the legal elements of implied causes of action be at least as demanding as those found in analogous statutory causes of action. That rule supplies useful guidance here, where a neighboring section of the 1866 Act uses the terms "on account of" and "by reason of," §2, 14 Stat. 27—phrases often held to indicate but-for causation—and gives no hint that a different rule might apply at different times in the life of a lawsuit. Another provision provides that in cases not provided for by the Act, the common law shall govern, §3, *ibid.*, which in 1866, usually treated a showing of but-for causation as a prerequisite to a tort suit. This Court's precedents confirm what the statute's language and history indicate. *See, e.g., Johnson,* 421 U. S., at 459–460; *Buchanan* v. *Warley,* 245 U. S. 60, 78–79. Pp. 4–8.

(2) ESN urges applying the "motivating factor" causation test in Title VII of the Civil Rights Act of 1964 to §1981 cases. But this Court has already twice rejected such efforts in other contexts, see, *e.g., Gross* v. *FBL Financial Services, Inc.*, 557 U. S. 167, and there is no reason to think it would fit any better here. Moreover, when that test was added to Title VII in the Civil Rights Act of 1991, Congress also amended §1981 without mentioning "motivating factors." Even if ESN is correct that those amendments clarified that §1981 addresses not just contractual *outcomes* but the whole contracting *process*, its claim that a process-oriented right necessarily pairs with a motivating factor causal standard is mistaken. The burden-shifting framework of *McDonnell Douglas Corp.* v. *Green,* 411 U. S. 792, also supplies no support for the innovations ESN seeks. Pp. 8–12.

(b) The court of appeals should determine in the first instance how the operative amended complaint in this case fares under the proper standard. P. 13.

743 Fed. Appx. 106, vacated and remanded.

GORSUCH, J., delivered the opinion of the Court, in which ROBERTS, C. J., and THOMAS, BREYER, ALITO, SOTOMAYOR, KAGAN, and KAVANAUGH,

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Syllabus

JJ., joined, and in which GINSBURG, J., joined except for the footnote. GINSBURG, J., filed an opinion concurring in part and concurring in the judgment.

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SUPREME COURT OF THE UNITED STATES

No. 18–1171

COMCAST CORPORATION, PETITIONER *v.* NATIONAL ASSOCIATION OF AFRICAN AMERICAN-OWNED MEDIA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[March 23, 2020]

JUSTICE GORSUCH delivered the opinion of the Court.

Few legal principles are better established than the rule requiring a plaintiff to establish causation. In the law of torts, this usually means a plaintiff must first plead and then prove that its injury would not have occurred "but for" the defendant's unlawful conduct. The plaintiffs before us suggest that 42 U. S. C. §1981 departs from this traditional arrangement. But looking to this particular statute's text and history, we see no evidence of an exception.

I

This case began after negotiations between two media companies failed. African-American entrepreneur Byron Allen owns Entertainment Studios Network (ESN), the operator of seven television networks—Justice Central.TV, Comedy.TV, ES.TV, Pets.TV, Recipe.TV, MyDestination.TV, and Cars.TV. For years, ESN sought to have Comcast, one of the nation's largest cable television conglomerates, carry its channels. But Comcast refused, citing lack of demand for ESN's programming, bandwidth constraints, and its preference for news and sports programming that

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ESN didn't offer.

With bargaining at an impasse, ESN sued. Seeking billions in damages, the company alleged that Comcast systematically disfavored "100% African American-owned media companies." ESN didn't dispute that, during negotiations, Comcast had offered legitimate business reasons for refusing to carry its channels. But, ESN contended, these reasons were merely pretextual. To help obscure its true discriminatory intentions and win favor with the Federal Communications Commission, ESN asserted, Comcast paid civil rights groups to advocate publicly on its behalf. As relevant here, ESN alleged that Comcast's behavior violated 42 U. S. C. §1981(a), which guarantees, among other things, "[a]ll persons . . . the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens."

Much motions practice followed. Comcast sought to dismiss ESN's complaint, and eventually the district court agreed, holding that ESN's pleading failed to state a claim as a matter of law. The district court twice allowed ESN a chance to remedy its complaint's deficiencies by identifying additional facts to support its case. But each time, the court concluded, ESN's efforts fell short of plausibly showing that, but for racial animus, Comcast would have contracted with ESN. After three rounds of pleadings, motions, and dismissals, the district court decided that further amendments would prove futile and entered a final judgment for Comcast.

The Ninth Circuit reversed. As that court saw it, the district court used the wrong causation standard when assessing ESN's pleadings. A §1981 plaintiff doesn't have to point to facts plausibly showing that racial animus was a "but for" cause of the defendant's conduct. Instead, the Ninth Circuit held, a plaintiff must only plead facts plausibly showing that race played "some role" in the defendant's decisionmaking process. 743 Fed. Appx. 106, 107 (2018);

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