

IN THE 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

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rules 28.4 and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting petitioner and that the United States be allowed ten minutes of argument time. Petitioner has agreed to cede ten minutes of argument time to the United States and therefore consents to this motion.

1. Respondent Entertainment Studios Networks, Inc. is an African-American-owned operator of television networks. Pet. App. 2a. After Entertainment Studios sought and failed to secure a carriage contract with petitioner, respondents brought suit under 42 U.S.C. 1981. Ibid. Section 1981 provides that “[a]ll persons within the jurisdiction of the United States shall have the same right * * * to make and enforce contracts * * * as is enjoyed by white citizens.” 42 U.S.C. 1981(a). This case presents the question whether a plaintiff alleging racial discrimination in the making of a contract under Section 1981 must establish that, but for the consideration of race, the defendant would have made the contract.

2. The United States has a substantial interest in the resolution of the question presented. This Court’s construction of Section 1981 may have repercussions for other federal anti-discrimination laws that the United States enforces or that apply to the federal government. Indeed, the Court has pending before it this Term the question whether the federal-sector provision of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a(a), requires a plaintiff to prove that age was a but-for cause of the challenged personnel action. See Babb v. Wilkie, cert. granted, No. 18-882 (June 28, 2019).

The United States has participated in oral argument as an amicus curiae in other cases concerning the scope of Section 1981

where, as here, the Court's interpretation of Section 1981 could affect the interpretation of statutes that the United States enforces or that apply to the federal government. See, e.g., CBOCS W., Inc. v. Humphries, 553 U.S. 442 (2008); Jones v. R.R. Donnelley & Sons Co., 541 U.S. 369 (2004); McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273 (1976). In light of the substantial federal interest in the question presented, the United States' participation at oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

NOEL J. FRANCISCO
Solicitor General
Counsel of Record

SEPTEMBER 2019