No. 06-1431

IN THE
Supreme Court of the United States

CBOCS WEST, INC.,
Petitioner,
v.
HEDRICK G. HUMPHRIES,
Respondent.

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

BRIEF FOR AMICI CURIAE LEADERSHIP CONFERENCE ON CIVIL RIGHTS AND LEADERSHIP CONFERENCE ON CIVIL RIGHTS EDUCATION FUND SUPPORTING RESPONDENT

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INTEREST OF AMICI CURIAE

The Leadership Conference on Civil Rights (LCCR) is a coalition of more than 200 national organizations committed to the protection of civil and human rights in the United States.[1] Founded in 1950 by three legendary leaders of the civil rights movement—A. Philip Randolph, of the Brotherhood of Sleeping Car Porters; Roy Wilkins, of the NAACP; and Arnold Aronson, of the National Jewish Community Relations Advisory Council—LCCR is the nation's oldest, largest, and most diverse civil and human rights coalition. Its member organizations represent men and women of all races and ethnicities.[2]

Among LCCR's members are organizations, including, *inter alia*, the American Civil Liberties Union, AFL-CIO, Anti-Defamation League, Asian American Justice Center, Lawyers' Committee for Civil Rights Under Law, Legal Momentum, Mexican American Legal Defense and Educational Fund, NAACP Legal Defense and Educational Fund, Inc., National Partnership for Women & Families, National Women's Law Center, and Women Employed, that have been at the forefront of advocacy before the courts to ensure equal employment opportunity for men and women from diverse

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[1] Pursuant to Supreme Court Rule 37.6, counsel for amici certify that this brief was not written in whole or in part by counsel for any party, and that no person or entity other than amici, their members, and their counsel has made a monetary contribution to the preparation and submission of this brief. Letters from the parties consenting to the filing of this brief are on file with the clerk.

[2] The appendix to this brief contains a complete list of LCCR member organizations.

communities, and to secure essential protections against workplace discrimination.

LCCR promotes effective civil rights legislation and policy as well as the strong enforcement of existing statutory and constitutional protections. Of particular relevance here, LCCR was actively involved in the development and passage of the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, including Congress's efforts to amend 42 U.S.C. § 1981 to clarify the statute's intended broad scope. Its members are dedicated to preserving the interest of individuals in raising issues of unlawful discrimination and the interest of society in having those issues brought to light.

The Leadership Conference on Civil Rights Education Fund (LCCREF) is the research, education, and communications arm of LCCR. It focuses on documenting discrimination in American society, monitoring efforts to enforce civil rights legislation, and fostering better public understanding of issues of prejudice.

LCCR and LCCREF strongly support respondent's position that Section 1981 affords redress for retaliation for complaints about unlawful race discrimination. Based on their long experience in supporting and monitoring the enforcement of federal anti-discrimination mandates, amici's unequivocal judgment is that a remedy for reprisal discrimination is indispensable to the efficient, effective enforcement of Section 1981, and of federal anti-discrimination laws generally.

SUMMARY OF ARGUMENT

One of the nation's oldest civil rights statutes, Section 1981, 42 U.S.C. § 1981(a), ensures that persons of all races can enjoy equal contractual rights. To achieve this fundamental goal, Section 1981's scope has always been deliberately broad. Indeed, in the Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, Congress made clear that Section 1981 encompasses no less than "the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." 42 U.S.C. § 1981(b). Thus, by its own terms, Section 1981 not only guarantees persons the right to enter into contractual relationships free of race discrimination, but also guarantees persons the right to enjoy all the corresponding benefits of those contractual relationships. Accordingly, where, as here, an employee is penalized for attempting to seek redress for an employer's alleged racial discrimination, he is, by definition, deprived of the benefits of the contractual relationship in violation of his rights under Section 1981.

The Court's decisions in *Sullivan* v. *Little Hunting Park, Inc.*, 396 U.S. 229 (1969), and *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167 (2005), support this reading of Section 1981. In *Sullivan*, while not explicitly using the term "retaliation," the Court nonetheless permitted the plaintiff to bring a claim under Section 1981's sister statute, 42 U.S.C. § 1982, based on retaliatory acts. *See* 396 U.S. at 236-237. Since its decision in *Sullivan*, the Court has repeatedly emphasized "the historical interrelationship" between Sections 1981 and 1982, *Tillman* v. *Wheaton-Haven Recreation Ass'n*, 410 U.S. 431, 440 (1973), cementing the conclu-

sion that the statutes are meant to be construed *in pari materia*. Likewise, in *Jackson*, the Court relied on *Sullivan* in holding that the implied private right of action under Title IX of the Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 373, *as amended*, 20 U.S.C. §§ 1681 *et seq.*, (Title IX), necessarily encompasses claims of retaliation for complaints about sex discrimination, even though Title IX does not mention retaliation expressly. The *Jackson* Court emphasized that "broadly written general prohibition[s] on discrimination" are meant to be interpreted in just that fashion—broadly. 544 U.S. at 175. *Jackson*, like *Sullivan*, thus supports the conclusion that Section 1981 protects against retaliation with respect to the making and enforcing of contracts.

Construing Section 1981 to provide protection against retaliation does not undercut the anti-retaliation provision of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a). As the Court has made clear, Title VII's administrative apparatus was intended to supplement, rather than supplant, Section 1981. *See Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 47 (1974). Although the remedies available under Section 1981 and Title VII are "related" and "directed to most of the same ends," they are nonetheless "separate, distinct, and independent." *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 461 (1975). That an employee might choose to file suit under Section 1981 directly, rather than invoke the administrative machinery of Title VII, is simply the "natural" consequence of the choice Congress made by conferring "independent administrative and judicial remedies." *Id.* Because the Court has recognized that this "choice is a valuable one," *id.*, it should not be taken away based on an unduly restrictive reading of Section 1981 (which, by its

own terms, is a broadly worded prohibition against race discrimination in the making and enforcing of contracts).

In addition to ignoring Congress's conscious choice—recognized by this Court—to have overlapping remedial schemes between Section 1981 and Title VII, petitioner also fails to acknowledge that Section 1981 reaches far beyond the employment context. *See Rivers* v. *Roadway Express, Inc.*, 511 U.S. 298, 303-304 (1994) (observing that Section 1981's protections extend to "*all* contracts" and "all aspects of the contractual relationship"). Thus, a ruling that retaliation claims are not cognizable under Section 1981 could undermine civil rights enforcement in many settings, including those where Title VII would be unavailable as an avenue for relief. Such a result would be inconsistent with the broad remedial purposes—and the correspondingly broad remedial language—of Section 1981.

Section 1981's broad scope has been memorialized in numerous decisions and now constitutes "an important part of the fabric of our law." *Runyon* v. *McCrary*, 427 U.S. 160, 190 (1976) (Stevens, J., concurring). Applying petitioner's narrow construction of Section 1981 would be wholly inconsistent with Congress's intent to ensure equal rights in contracting for all. To remain true to the plain text of Section 1981, its historical underpinnings, and the significant precedents interpreting this foundational statute, the Court should confirm that Section 1981 includes protection against retaliation in the making and enforcing of contracts.

ARGUMENT

I. SECTION 1981'S BROAD PROHIBITION AGAINST RACIAL DISCRIMINATION IN ALL ASPECTS OF THE CONTRACTUAL RELATIONSHIP INCLUDES PROTECTION AGAINST RETALIATION

Section 1981 is one of our nation's oldest civil rights statutes. It is no exaggeration to say that the passage of Section 1981 was integral to the emergence of the very concept of civil rights under law in the United States. As such, it plays an especially important role in the legal protection of civil rights in this country.

Derived from Section 1 of the Civil Rights Act of 1866, Section 1981's substantive provisions were passed in direct response to the "Black Codes" enacted in southern States that sought to deprive newly emancipated slaves of civil and economic rights, and thereby "circumvent the requirements of the Thirteenth Amendment" and "essentially continue[] a pattern of legal enslavement." JA124. Section 1981's scope is and always has been broad, for it was intended to ensure that persons of all races may enjoy the right of contract that is fundamental to this nation's free enterprise system. Thus, the Court has long interpreted Section 1981 to extend well beyond "the particular and immediate plight of the newly freed Negro slaves," *McDonald* v. *Santa Fe Trail Transp. Co.*, 427 U.S. 273, 296 (1976), and has recognized that its protections extend to "*all* contracts" and "all aspects of the contractual relationship," *Rivers* v. *Roadway Express, Inc.*, 511 U.S. 298, 303-304 (1994). As explained below, if Section 1981 is to retain its central role of ensuring that persons of all races enjoy equal contractual rights, then it should be read to prohibit retaliation against the exercise of the very rights that it protects.

A. By Its Own Terms, Section 1981 Protects Against Retaliation

1. The plain language of the statute supports the conclusion that Section 1981 protects against retaliation

Section 1981 provides that "[a]ll persons within the jurisdiction of the United States shall have the same right … to make and enforce contracts" without respect to race. 42 U.S.C. § 1981(a). When Congress amended the statute in 1991, the term "make and enforce contracts" was further defined to include "the making, performance, modification, and termination of contracts, and *the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship*." 42 U.S.C. § 1981(b) (emphasis added). Thus, by its plain terms, Section 1981 does more than proscribe racial discrimination in the opportunity to enter into a contractual relationship; it also guarantees that persons of all races will have the equal right to enjoy the benefits of their contractual relationships, including the right to invoke whatever measures are necessary to ensure that their contractual rights are protected.

Notably, when amending Section 1981 in 1991, Congress chose language that would parallel the statute's existing structure as a broadly worded prohibition, rather than compromising that structure by inserting specific causes of action for post-formation discrimination. The fact that Section 1981 does not use the specific term "retaliation" does not mean that retaliatory acts are not covered. Indeed, although Section 1981 makes no express mention of "discrimination" by contracting parties, 42 U.S.C. § 1981(a)-(b), the Court has long recognized that the statute provides broad protection against racial discrimination. *See, e.g.*, *Runyon* v. *McCrary*, 427 U.S. 160, 168-175 (1976); *Johnson* v.

Railway Express Agency, Inc., 421 U.S. 454, 459-461 (1975). Similarly, although Section 1981 does not expressly refer to "retaliation," it also bars retaliation against those who would seek to enjoy, on an equal basis, the benefits, privileges, terms, and conditions of their contractual relationships. As the Court has previously recognized with respect to discrimination on the basis of sex under Title IX, "[r]etaliation against a person because that person has complained of sex discrimination is *another form of intentional sex discrimination*[.]" *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005) (emphasis added). This is because, "by definition," retaliation is "an intentional act," *id.* at 173-174, by which "the complainant is being subjected to differential treatment," *id.* at 174. In *Jackson*, the Court explained that such differential treatment constitutes unlawful discrimination "on the basis of sex because it is an intentional response to the nature of the complaint: an allegation of sex discrimination." *Id.*

No less is true with respect to retaliation against a person for complaints of race discrimination under Section 1981. An employee who complains to a supervisor or otherwise engages an employer's internal complaint procedures to assert a race discrimination claim is attempting, in the words of the statute, to enforce his or her right to "the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." If that employee is penalized for taking such action, he is denied the equal right to the enjoyment of benefits under the contract in violation of Section 1981. Under petitioner's constricted view of the protections that Section 1981 affords, however, employers could terminate any employee—free of consequence—for attempting to do just that. This result would deter employees from seeking redress through either internal processes

or the EEOC, thereby undermining the very conciliation and other non-litigation alternatives that petitioner claims to support. Pet. Br. 22-26, 39-40. Furthermore, this reading also conflicts with the Court's recognition that Section 1981 covers "wholly *private* efforts to impede access to the courts or obstruct nonjudicial methods of adjudicating disputes about the force of binding obligations." *Patterson* v. *McLean Credit Union*, 491 U.S. 164, 177 (1989), *superseded by statute*, Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071. Section 1981 could hardly protect employees' equal access to processes (formal or informal) against discrimination if it did not also prohibit retaliation for invoking those very processes.

2. The legislative history further demonstrates that Section 1981 protects against retaliation

The legislative history of the Civil Rights Act of 1991 makes additionally clear that retaliation claims are covered under the statute. Before the Court's ruling in *Patterson*, courts routinely held that Section 1981 encompassed race-based retaliation claims. *See Andrews* v. *Lakeshore Rehab. Hosp.*, 140 F.3d 1405, 1410 (11th Cir. 1998) (citing cases). In *Patterson*, however, the Court held that Section 1981, as it was then framed, "d[id] not extend, as a matter of either logic or semantics, to conduct by the employer after the contract relation has been established, including breach of the terms of the contract or imposition of discriminatory working conditions." 491 U.S. at 177. Concerned about the likely consequences of *Patterson*'s constricted reading of Section 1981, Congress acted with dispatch. It enacted the 1991 Act, which amended Section 1981 "to embrace all aspects of the contractual relationship, including contract terminations," effectively "enlarg[ing] the category of conduct that is subject to § 1981 liabil-

ity," *Rivers*, 511 U.S. at 303, and making clear that Section 1981 applies broadly to post-formation conduct. By amending Section 1981 promptly after the Court's narrow reading of the same in *Patterson*, Congress clearly signaled that courts should interpret Section 1981's statutory language in accordance with its broad remedial purpose. *See id.* at 306-307.[3]

In discussing the amendment's scope, the House Committee Report stated that it intended Section 1981 "to bar all racial discrimination in contracts," which "would include, but is not limited to, claims of harassment, discharge, demotion, promotion, transfer, *retaliation*, and hiring." H.R. Rep. No. 102-40, pt. 2, at 37 (1991) (emphasis added). Even more specifically, the House Committee Report states that the 1991 Act was designed to codify Section 1981's retaliation protections to the extent that *Patterson* called them into question. *Id.*, pt. 1, at 92 n.92 (1991) ("In cutting back the scope of the rights to 'make' and 'enforce' contracts *Patterson* also has been interpreted to eliminate retaliation claims that the courts had previously recognized under [S]ection 1981…. *[The new subsection (b)] would restore rights to sue for such retaliatory conduct.*" (citations omitted; emphasis added)). The report issued by the Senate Committee on Labor and Human Resources with respect to the virtually identical 1990 civil rights bill that was passed by Congress, but vetoed by the

[3] It bears noting that the 1991 Act, which affirmed Section 1981's broad scope, was passed with significant bipartisan support, demonstrating strong congressional agreement as to the importance of preserving Section 1981's breadth. *See* 137 Cong. Rec. 29,066 (1991) (recording the Senate vote on the 1991 Act as 93-5 in favor of the Act); 137 Cong. Rec. 30,695 (1991) (recording the House vote as 381-38 in favor of the Act).

President, further confirms that Congress intended the amendment be given a broad reading: "The list set forth in the subsection (b) added by the Act is intended to be *illustrative* rather than exhaustive." S. Rep. No. 101-315, at 58 (1990) (emphasis added). Taken together, these statements demonstrate that Congress meant the statute's text to provide comprehensive protection against all interference in the making and enforcing of contracts—including claims of retaliation. *See Foley* v. *University of Houston Sys.*, 355 F.3d 333, 339 (5th Cir. 2003) ("It seems unreasonable to believe that in enacting the Civil Rights Act of 1991, Congress intended to make the scope of the new § 1981(b) narrower than that of the old § 1981 as it had been interpreted by this Court and many other federal courts before *Patterson*.").

3. The Court's prior decisions interpreting Section 1981 do not undercut the conclusion that it protects against retaliation

The Court's recent cases involving Section 1981, relied on by petitioner, do not suggest a different result.

First, in *Domino's Pizza* v. *McDonald*, 546 U.S. 470, 472 (2006), the Court examined "whether a plaintiff who lacks any rights under an existing contractual relationship with the defendant, and who has not been prevented from entering into such a contractual relationship" may bring suit under Section 1981. The Court answered this question in the negative, finding that "the plain text of the statute" requires "we hold that a plaintiff cannot state a claim under Section 1981 unless he has (or would have) rights under the existing (or proposed) contract that he wishes 'to make and enforce.' " *Id.* at 479-480. But in cases such as the present one, the respondent *did* have a contractual relationship with his

employer, and by complaining against racial discrimination, he was doing nothing more than attempting to secure his equal rights under that contractual relationship. Thus, "the retaliation [was] in response to the claimant's assertion of rights that were protected by § 1981." *Hawkins* v. *1115 Legal Serv. Care*, 163 F.3d 684, 693 (2d Cir. 1998).

Second, in *Rivers* v. *Roadway Express, Inc.*, the Court considered whether the 1991 Act should have retroactive application to Section 1981 cases that arose before its enactment. 511 U.S. at 303. Again, the Court answered in the negative, concluding that "the text of the Act does not support the argument that § 101 of the 1991 Act was intended to 'restore' prior understandings of § 1981 *as to cases arising before the 1991 Act's passage*."[4] *Id.* at 308 (emphasis added). That the 1991 Act was not meant to "restore prior understandings of § 1981" as to cases arising before its enactment, however, says nothing about the proper treatment of cases arising afterwards. Given the Court's acknowledgment that the 1991 Act "enlarged the category of conduct that is subject to § 1981 liability," *id.* at 303, there is no reason to read *Rivers* as precluding a finding that retaliation claims are cognizable under Section 1981.

Finally, petitioner's reliance on *Burlington N. & Santa Fe Ry. Co.* v. *White*, 126 S. Ct. 2405 (2006), is misplaced. Pet. Br. 11-13. The distinction drawn in *Burlington* between Title VII's anti-discrimination and anti-retaliation provisions served merely to clarify that, unlike its anti-discrimination provision, Title VII's anti-

[4] Section 101 of the Civil Rights Act of 1991 added the new subsection (b), defining the term "make and enforce contracts." Civil Rights Act of 1991, Pub. L. No. 102-166, 105 Stat. 1071, 1072.

retaliation provision encompasses harms outside the employment context. Specifically, explained the Court, "[a] provision limited to employment-related actions would not deter the many forms that effective retaliation can take" and "would fail to fully achieve the anti-retaliation provision's 'primary purpose,' namely, '[m]aintaining unfettered access to statutory remedial mechanisms.' " 126 S. Ct. at 2412 (citation omitted). *Burlington* thus stands for the proposition that broad-based protection against retaliation is crucial to protecting the substantive anti-discrimination right. That proposition supports, rather than undermines, the conclusion that Section 1981 provides protection against retaliation.

Congress enacted Section 1981 in broad terms to guarantee that persons of all races have an equal right to make and enjoy the benefits of contracts. In a free enterprise system such as ours in which the contract is the key economic engine, Section 1981 was a crucial step towards ensuring that persons of all races have equal opportunities to seek and make use of the benefits of contracting. The hollow interpretation of the statute that petitioner envisions and urges upon this Court is simply not the one Congress created in passing Section 1981.

B. The Court's Decisions In *Sullivan* And *Jackson* Further Bolster The Conclusion That Section 1981 Protects Against Retaliation

Even if the statute were unclear on this issue—and it is not—the Court's decisions in *Sullivan* v. *Little Hunting Park, Inc.*, 396 U.S. 229 (1969), and *Jackson* resolve any doubt as to whether Section 1981 reaches retaliation. In *Sullivan*, the Court held that a white homeowner could bring a claim under 42 U.S.C. § 1982

when a community nonprofit corporation refused to approve his proposed assignment of a membership interest in the corporation's recreation facilities to an African-American, and expelled him from the corporation when he protested its action.[5] 396 U.S. at 236-237. While not explicitly using the term "retaliation," the Court recognized that retaliatory acts comprised the heart of plaintiff's claim and allowed him to proceed on that basis: "If [plaintiff's expulsion from the corporation] . . . can be imposed, then [plaintiff] is punished for trying to vindicate the rights of minorities protected by [§] 1982. Such a sanction would give impetus to the perpetuation of racial restrictions on property." *Id.* at 237. Significantly, in ruling as it did, the Court observed that "[a] narrow construction of the language of [§] 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded by [§] 1 of the Civil Rights Act of 1866," from which *both* Section 1982 and Section 1981 derive.[6] *See id.*

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[5] Section 1982 provides that "[a]ll citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property." 42 U.S.C. § 1982.

[6] Petitioner erroneously suggests that *Sullivan* is no longer good law in light of norms of statutory interpretation set forth in *Cort* v. *Ash*, 422 U.S. 66 (1975). Pet. Br. 35. The Court, however, recently reaffirmed *Sullivan*'s core holding in *Jackson*. 544 U.S. at 176 & n.1 ("[*Sullivan*] plainly held that the white owner could maintain his *own* private cause of action under § 1982 if he could show that he was 'punished for trying to vindicate the rights of minorities.' " (citation omitted)). The Court has reaffirmed other aspects of *Sullivan* as well. *See City of Memphis* v. *Greene*, 451 U.S. 100, 121 (1981) (affirming *Sullivan*'s holding that the term "lease" in Section 1982 includes "an assignable membership share in recreational facilities"); *Cannon* v. *University of Chi.*, 441 U.S.

Since its decision in *Sullivan*, the Court has repeatedly emphasized "the historical interrelationship" between Sections 1981 and 1982.[7] This interrelationship is evident from the text of Section 1 of the Civil Rights Act of 1866, which stated in pertinent part that "citizens, of every race and color … *shall have the same right,* in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence, to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens[.]" 14 Stat. 27 (emphasis added). The opera-

677, 699 n.22 (1979) (affirming *Sullivan*'s holding finding a private cause of action for retaliation under Section 1982); *Runyon*, 427 U.S. at 173 (affirming *Sullivan*'s holding that Sections 1981 and 1982 reach private conduct); *Warth* v. *Seldin*, 422 U.S. 490, 501 (1975) (affirming *Sullivan*'s holding that third parties have standing to assert the rights of others under Section 1982); *Moor* v. *County of Alameda*, 411 U.S. 693, 703 (1973) (upholding *Sullivan*'s construction of 42 U.S.C. § 1988); *Tillman* v. *Wheaton-Haven Recreation Ass'n*, 410 U.S. 431, 435, 438 (1973) (holding that property-linked membership preferences in a swimming pool association are covered by Section 1982). There is thus no basis for petitioner's assertion that *Sullivan* is no longer good law.

[7] *See Tillman*, 410 U.S. at 440 ("[W]e see no reason to construe these sections differently when applied, on these facts, to the claim of [defendant] that it is a private club."); *see also Runyon*, 427 U.S. at 170-171 (recognizing the Court's holding in *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409 (1968), that Section 1982 "prohibits private racial discrimination in the sale or rental of real or personal property" applies equally to Section 1981, as "confirmed" by *Tillman* and *Johnson*); *id.* at 187 (Powell, J., concurring) (agreeing with the Court that the "considered holdings" of *Tillman*, *Sullivan*, and *Jones* "with respect to the purpose and meaning of § 1982 necessarily apply to both statutes in view of their common derivation").

tive language of Section 1 was that persons of all races "shall have the same right"—thus barring racial discrimination. The rest of Section 1 explicated the *scope* of that prohibition against racial discrimination, and extended it to matters such as contracting and ownership of real property. *See Runyon*, 427 U.S. at 170-171. Later, Section 1 was broken up by the codifiers into two separate sections of the Revised Statutes, R.S. 1977 and 1978 (now better known as 42 U.S.C. §§ 1981 and 1982), which address discrimination in the spheres of contracting and property separately; but the *substance* of the prohibition against discrimination in those two statutes remained parallel. *See id.*

Sections 1981 and 1982 are obviously meant to be construed *in pari materia*, for they have been, in a manner of speaking, conjoined twins since their birth. Because there is no doubt that *Sullivan* (which recognizes that Section 1982 protects against retaliation) remains good law, and because Section 1981 and Section 1982 share the same historical and statutory underpinnings, there is every reason to conclude that Section 1981 similarly protects against retaliation with respect to the making and enforcing of contracts.[8]

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[8] Significantly, in its recent brief on behalf of respondent in *Gomez-Perez* v. *Potter*, cert. granted, No. 06-1321, the Solicitor General similarly acknowledged *Sullivan*'s "particular salience" with respect to the interpretation of Section 1981. 06-1321 Resp. Br. 21 n.3. Specifically, after citing *Sullivan* for the proposition that Section 1982 provides a cause of action for " 'retaliation against those who advocate the rights of [protected] groups,' " the Solicitor General made express note of the Court's tendency to "construe[] Section 1981 and 1982 in parallel," given "their common history." *Id.* (citation omitted).

In *Jackson*, the Court relied heavily on *Sullivan* to support its conclusion that Title IX's implied private right of action encompasses claims of retaliation for complaints about sex discrimination, notwithstanding the statute's failure to mention retaliation expressly. Because Title IX was enacted three years after *Sullivan* was decided, the *Jackson* Court presumed Congress was " 'thoroughly familiar' " with the decision in *Sullivan* and " 'expected its enactment [of Title IX] to be interpreted in conformity with [it].' " *Jackson*, 544 U.S. at 176 (citations omitted; alterations in original). To this end, the Court explained that in *Sullivan*, it had "interpreted a general prohibition on racial discrimination *to cover retaliation* against those who advocate the rights of groups protected by that prohibition." *Id.* (emphasis added). The Court further emphasized the significance of this protection, noting that "[i]f recipients were permitted to retaliate freely, individuals who witness discrimination would be loath to report it, and all manner of Title IX violations might go unremedied as a result." *Id.* at 180; *see also Sullivan*, 396 U.S. at 237 (absent a right of protection against retaliation, the underlying discrimination would be perpetuated).

Jackson is particularly instructive because it demonstrates the Court's approach to interpreting broadly worded statutes, such as Section 1981, that address and remedy discrimination. In determining whether to apply a narrow or broad interpretation, the *Jackson* Court distinguished statutes that exhaustively list actionable conduct, such as Title VII, from those that are "broadly written general prohibition[s] on discrimination," like Section 1981. 544 U.S. at 175. The Court determined that general prohibitions should be afforded an expansive interpretation. *Id.* Specifically, when interpreting a broad statute like Section 1981, the Court

concluded that, "[b]ecause Congress did not list *any* specific discriminatory practices when it wrote Title IX, its failure to mention [retaliation] does not tell us anything about whether it intended that practice to be covered."[9] *Id.* Similarly, when interpreting Section 1981, this Court should not read retaliation out of the statute simply because Congress chose not to list *any* discriminatory practices.[10]

The Court's rationale for recognizing that Title IX bars retaliation (notwithstanding its failure to mention "retaliation" per se) carries equal if not greater weight in the instant matter, given *Jackson's* reliance on *Sullivan* and the Court's longstanding practice of constru-

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[9] In his dissent in *Jackson*, Justice Thomas submitted "that the text of Title IX does not mention retaliation is significant." 544 U.S. at 189 (Thomas, J., dissenting). Nonetheless, the Court in *Jackson* ruled that Title IX bars retaliation against those who oppose or complain about sex discrimination. The majority's reasoning is even more applicable to Section 1981, which does not expressly refer to either discrimination *or* retaliation, 42 U.S.C. § 1981(a)-(b), but has long been read—consistent with its foundational role in this nation's protections against racial discrimination—to ensure equal rights for persons of all races in any matters within its scope.

[10] As the Court has recognized, reading retaliation out of such a broadly written anti-discrimination statute would advance the very discrimination the statute was designed to combat. *Jackson*, 544 U.S. at 180-181 ("Without protection from retaliation, individuals who witness discrimination would not likely report it, indifference claims would be short-circuited, and the underlying discrimination would go unremedied."); *Sullivan*, 396 U.S. at 237 (concluding that the interpretation of Section 1982 to allow an individual's expulsion from a community nonprofit corporation as punishment for "trying to vindicate the rights of minorities protected by § 1982 … would give impetus to the perpetuation of racial restrictions on property").

ing Section 1981 *in pari materia* with Section 1982.[11] Thus, *Jackson*, like *Sullivan*, supports the conclusion that Section 1981 protects against retaliation with respect to the making and enforcing of contracts.

II. THE COURT HAS REPEATEDLY REJECTED THE ARGUMENT THAT THE PROTECTIONS AFFORDED BY SECTION 1981 HAVE BEEN SUPPLANTED BY TITLE VII

A. Notwithstanding Any Overlap With Title VII, Section 1981 Provides An Independent Avenue Of Relief Against Retaliation In The Employment Context

Petitioner's argument that construing Section 1981 to encompass a prohibition against retaliation, at least in the employment context, would interfere with the operation of Title VII's anti-retaliation provision, 42 U.S.C. § 2000e-3(a), Pet. Br. 21, is contrary to both clear congressional intent and well-established precedent. As this Court has recognized, in enacting Title VII, Congress deliberately created a statutory scheme that overlaps in both purpose and remedy with Section 1981. Thus, Section 1981 and Title VII provide independent and complementary avenues for relief in certain employment contexts.

Title VII was enacted "to assure equality of employment opportunities by eliminating those practices and devices that discriminate on the basis of race, color, religion, sex, or national origin." *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 44 (1974). To ensure that

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[11] If anything, the case for recognizing retaliation here is perhaps even stronger, as respondent himself, rather than a third party, was the victim of racial discrimination and was retaliated against for his subsequent allegations of discrimination. *See Domino's Pizza, Inc.*, 546 U.S. at 479 ("Injured parties 'usually will be the best proponents of their own rights.' " (citation omitted)).

these goals were met, and to ensure that individual employees would not have to attempt to enforce their rights against discrimination unaided against parties with greater resources, Congress created the Equal Employment Opportunity Commission (EEOC) and established procedures whereby the EEOC "would have an opportunity to settle disputes through conference, conciliation, and persuasion before the aggrieved party was permitted to file a lawsuit [against his employer]." *Id.*

Notwithstanding Title VII's "design as a comprehensive solution for the problem of invidious discrimination in employment," *Johnson*, 421 U.S. at 459, that statute was intended to supplement, not to replace, Section 1981. Legislative history pertaining to Title VII plainly bears out that point. *See* H.R. Rep. No. 92-238, at 19 (1971) (noting the "Committee's belief that the remedies available to the individual under Title VII are co-extensive with the individual's right to sue under the provisions of the Civil Rights Act of 1866, 42 U.S.C. § 1981, and that the two procedures augment each other and are not mutually exclusive"); S. Rep. No. 92-415, at 24 (1971) (noting the provisions governing an individual's right to sue under Title VII are not meant "to affect existing rights granted under other laws"). Congress's recognition in 1971—when it reexamined and broadly extended Title VII—that Title VII and Section 1981 are independent, but overlapping, remedies is particularly important because by that time the federal courts had already construed Section 1981 to provide a remedy against retaliation in the employment context independent of Title VII. *See Caldwell* v. *National Brewing Co.*, 443 F.2d 1044 (5th Cir. 1971); *Young* v. *International Tel. & Tel. Co.*, 438 F.2d 757 (3d Cir. 1971).

The Court has recognized that "legislative enactments in this area [*i.e.*, employment] have long evinced a general intent to accord parallel or overlapping remedies." *Alexander*, 415 U.S. at 47; *see also id.* at 48-49 ("Title VII was designed to supplement rather than supplant, existing laws and institutions relating to employment discrimination."). These remedies, "although related, and although directed to most of the same ends," are nonetheless "separate, distinct, and independent." *Johnson*, 421 U.S. at 461.

Thus, petitioner's contention that Congress, in amending Section 1981, "could not have intended to destroy Title VII's specific administrative and procedural mechanisms governing discrimination and retaliation in the employment relationship" misses the point. Pet. Br. 25. Although some employees may choose to file suit immediately under Section 1981 rather than pursue remedies under Title VII, there are many reasons why an employee would invoke the procedures of Title VII whenever they are available instead. That an employee might choose to pursue one avenue for redress rather than another is, as the Court has recognized, simply the "natural" consequence of the choice Congress made by conferring "independent administrative and judicial remedies." *See Johnson*, 421 U.S. at 461. Moreover, "*[t]he choice is a valuable one*" since, "[u]nder some circumstances, the administrative route may be highly preferred over the litigatory" while under others, "the reverse may be true."[12] *Id.* (emphasis added).

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[12] Chief Judge Easterbrook, dissenting from the decision below, suggested that the issue here "is not whether an employer may fire a worker who protested discrimination, but whether an employee may present a claim of retaliation even though he failed

Title VII offers many advantages to aggrieved employees, and so this Court should not presume that individuals who believe they have suffered unlawful retaliation will lightly skip over that remedial scheme and will simply sue under Section 1981. Most significantly, the administrative resources of the EEOC are not available if an aggrieved employee sues directly under Section 1981. These resources are available to the employee without charge or the need to hire an attorney. At the end of the administrative process, the EEOC may even decide to pursue litigation itself against the

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to file a timely charge under Title VII and engage in conciliation before turning to the court." JA160 (Easterbrook, C.J., dissenting in part). As respondent's brief points out, this is not a case in which plaintiff "slept" on his Title VII rights. Resp. Br. 5-6, 33 n.17; *cf. Johnson*, 421 U.S. at 466. More importantly, however, Chief Judge Easterbrook's assertion that, by recognizing an anti-retaliation rule in Section 1981, the majority "demolishes components of Title VII … Congress thought necessary to expedite the resolution of disputes and resolve many of them out of court" overlooks Congress's and the Court's longstanding recognition that the two avenues of redress are independent. JA160 (Easterbrook, C.J., dissenting in part). As *Johnson* makes clear, in enacting overlapping legislative schemes, Congress purposefully left the choice whether to litigate under Section 1981 or pursue administrative remedies under Title VII to the aggrieved individual. Thus, that an employee might choose to file suit pursuant to Section 1981 rather than engage in "the more elaborate and time-consuming procedures of Title VII," *Johnson*, 421 U.S. at 466, does not "demolish components" of the latter—rather, it is the natural consequence of Congress's decisions in this area. Even if, as a matter of policy, conciliation and persuasion might generally constitute the more "desirable approach to settlement of [employment] disputes," the Court has recognized that "without a more definite expression in the legislation Congress has enacted," there is no reason "to infer any positive preference for one [remedy] over the other." *Id.* at 461.

employer. 42 U.S.C. § 2000e-5. Further, should the EEOC not bring suit, but instead issue a right-to-sue letter, the federal district court in which a Title VII action may be brought "is empowered to appoint counsel for [the employee], to authorize the commencement of the action without the payment of fees, costs, or security," and to award reinstatement. *See Johnson*, 421 U.S. at 458.

That Section 1981's scope and available remedies extend beyond that of Title VII further evinces Congress's intent to provide two independent avenues of redress. As the Court has observed, "a substantial part of [§ 1981's] sweep does not overlap Title VII." *Rivers*, 511 U.S. at 304 (internal citations omitted). Section 1981, of course, reaches beyond the common-law employment relationship, and even in the employment context, its coverage is broader than that of Title VII, given that Title VII applies only to those employers with 15 or more employees.[13] 42 U.S.C. § 2000e(b); *see also Rivers*, 511 U.S. at 304 n.3; *Patterson*, 491 U.S. at

[13] Even if putative plaintiffs who work for employers with fewer than fifteen employees "may have recourse" under applicable state civil rights laws, most states do not in fact have a comparable statutory alternative that protects against retaliation and covers employers with fewer than fifteen employees. Chamber of Commerce Amicus Br. 14-15 & nn.5-6 (pointing to only twenty states with no numerosity requirements, numerosity requirements lower than Title VII's, and/or no prohibition against the application of its anti-retaliation provisions to statutory "employers"). Moreover, there is a profound irony to the argument that Section 1981 should be construed narrowly because of the theoretical availability of state remedies, for an undisputed purpose of Section 1981 was to protect individuals who, because of their race, could not obtain effective recourse in state courts. *See Runyon*, 427 U.S. at 200 (White, J., dissenting).

211 (Brennan, J., dissenting in part); *Johnson*, 421 U.S. at 460. Moreover, some remedies available under Section 1981 are broader than those available under Title VII. *See* 42 U.S.C. §§ 1981a, 2000e-5g(1), 2000e-16b(b) (capping compensatory and punitive damages and limiting accrual of backpay under Title VII).

While petitioner would have the Court brush these differences aside, they are hardly without meaning. Not only do they represent Congress's efforts to provide independent (albeit overlapping) causes of action for the putative plaintiff, but for the significant number of employees not covered by Title VII, Section 1981 may well represent their only available remedy.[14]

B. Petitioner's Argument Ignores The Fact That Employees Currently May File Discrimination Suits Under Section 1981 Without First Seeking Conciliation Under Title VII

Petitioner suggests that, if Section 1981 is read to provide redress against retaliation, then some putative plaintiffs with retaliation claims will eschew their Title VII remedies in favor of Section 1981 claims that will "end up clogging the judicial system," Pet. Br. 39. That alarmist claim is unwarranted.

There is no dispute (nor could there be) that discrimination claims are cognizable under both Title VII and Section 1981. *See Ash* v. *Tyson Foods, Inc.*, 546 U.S. 454 (2006). Although plaintiffs may choose to file

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[14] *See* Aston, Note, *"Fair and Full Employment": Forty Years of Unfulfilled Promises*, 15 Wash. U. J.L. & Pol'y 285, 311 (2004) (from 1992 to 2001 "between fourteen and twenty-six percent of the workers in private industry work[ed] for a business exempt from Title VII liability").

suit immediately under Section 1981 rather than resort to Title VII's "more elaborate and time-consuming" administrative scheme, the relevant evidence suggests that, by and large, plaintiffs continue to pursue their remedies with the EEOC. Indeed, "[f]rom 1998 to 2003 … of the 19% of all employment discrimination cases that featured a § 1981 claim, only 0.7% involved a § 1981 claim standing alone."[15] Further, "the EEOC has successfully conciliated over 4,000 disputes stemming from race-based charges" and "[a]pproximately 25,000 more claims were resolved in other cooperative fashions." Pet. Br. 39. The small numbers of plaintiffs pursuing Section 1981 claims in the absence of a companion statute, combined with the EEOC's proven experience in conciliating race-based charges, strongly suggests that aggrieved individuals are unlikely to clog the courts by pursuing retaliation claims under Section 1981, rather than invoking the administrative machinery of Title VII when that avenue is available to them.

III. A Refusal To Recognize Retaliation Claims Under Section 1981 Will Have Adverse Implications Far Beyond The Employment Context

In arguing that this Court should not read Section 1981 to interfere with Title VII, petitioner understandably trains its argument primarily on the employment context. Section 1981 reaches beyond the employment relationship, however, and a failure to recognize retaliation claims under Section 1981 will undermine the utility of Section 1981 and other antidiscrimination laws more generally.

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[15] Tarantolo, Note, *From Employment to Contract: Section 1981 and Antidiscrimination Law for the Independent Contractor Workforce*, 116 Yale L.J. 170, 190 (2006).

By its express terms, Section 1981 covers *all* contracts, not just those relating to employment. *Rivers*, 511 U.S. at 304; *see also Patterson*, 491 U.S. at 210 (Brennan, J., dissenting in part) ("Section 1981 is a statute of general application, extending not just to employment contracts, but to *all* contracts."); *Aleman* v. *Chugach Support Servs., Inc.*, 485 F.3d 206, 211 (4th Cir. 2007) ("Section 1981's prohibition on racial discrimination in the making and enforcement of contracts has long been applied to relationships far afield of employment."). The Court recognized, for example, that black parents were subjected to a "classic" violation of Section 1981 when their children were refused admission by two local private schools on the basis of race. *Runyon*, 427 U.S. at 172. Prospective members of community homeowners' associations,[16] government contractors,[17] purchasers of home leaseholds,[18] restaurant patrons,[19] and business owners facing racially-based boycotts,[20] among others, have similarly looked to Section 1981 for relief with respect to discrimination and retaliation claims alike. *See also Patterson*, 491 U.S. at 210-211 (Brennan, J., dissenting in part) (collecting cases).

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[16] *Tillman*, 410 U.S. at 439-440.

[17] *Webster* v. *Fulton County, Ga.*, 283 F.3d 1254 (11th Cir. 2002).

[18] *Pinchback* v. *Armistead Homes Corp.*, 907 F.2d 1447, 1448-1449 (4th Cir. 1990).

[19] *Lizardo* v. *Denny's, Inc.*, 270 F.3d 94, 101-106 (2d Cir. 2001).

[20] *Evans* v. *City of Browning, Mont.*, 953 F.2d 1386 (9th Cir. 1992).

Although petitioner limits its focus to employment discrimination, its argument that Section 1981 provides no remedy against retaliation threatens the efficaciousness of Section 1981 in a much broader array of settings. Were retaliation claims deemed not cognizable under Section 1981, a much wider swath of plaintiffs than petitioner seems willing to acknowledge would be denied a valuable avenue of relief. Because such persons could not sue based on an employment relationship, they could not turn to Title VII—petitioner's ready response to any employee who claims retaliation. In many circumstances, those persons will effectively be denied *any* possible relief for asserting rights the statute purports to protect.

Under petitioner's theory, anyone who has the audacity to assert his or her right to make and enforce contracts regardless of race could be fired, demoted, expelled from school,[21] or even face false criminal charges,[22] without recourse. If Section 1981 provides individuals no recourse against retaliation when they complain about racially discriminatory conduct, they will certainly be chilled from asserting their statutorily guaranteed right to the enjoyment of the benefits of their contracts without regard to race, even in a relatively informal setting such as an internal grievance procedure. Such a result is inconsistent with Con-

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[21] *See Fiedler* v. *Marmusco Christian Sch.*, 631 F.2d 1144 (4th Cir. 1980) (finding a Section 1981 violation where a white student was expelled for associating with a black child and the student's sister was expelled because their father took steps to challenge the initial expulsion as discriminatory).

[22] *See Burlington*, 126 S. Ct. at 2412 (citing *Berry* v. *Stevinson Chevrolet*, 74 F.3d 980, 984, 986 (10th Cir. 1996)).

gress's fundamental purpose in enacting Section 1981—to ensure that all persons have the basic civil and economic right to make and enforce contracts, without regard to their race. Congress could not have intended such a perverse result.

IV. THE COURT SHOULD CONTINUE TO INTERPRET SECTION 1981 BROADLY AND IN A MANNER CONSISTENT WITH OUR NATIONAL GOAL OF ERADICATING RACIAL DISCRIMINATION

This country's civil rights laws reflect our "society's deep commitment to the eradication of discrimination based on a person's race or the color of his or her skin." *Patterson*, 491 U.S. at 174.[23] Sections 1981 and 1982, in particular, reflect Congress's recognition that the social evil of discrimination has been pervasive, and its effort to address that evil in an equally pervasive manner. The Court has therefore given Sections 1981 and 1982 "a sympathetic and liberal construction" consistent with their general language.[24] *Runyon*, 427 U.S. at 192 (Stevens, J., concurring); *see also id.* at 172 (holding that Section 1981 prohibits private schools from excluding students because they are African-American); *McDonald*, 427 U.S. at 287 (holding that

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[23] *See also Johnson* v. *California*, 545 U.S. 162, 175 (2005) (recognizing "the overriding interest in eradicating discrimination from our civic institutions"); *Runyon*, 427 U.S. at 192 (Stevens, J., concurring) ("The policy of the Nation as formulated by the Congress in recent years has moved constantly in the direction of eliminating racial segregation in all sectors of society."); *NAACP* v. *FPC*, 425 U.S. 662, 665 (1976) (noting "the elimination of discrimination from our society is an important national goal").

[24] While the Court broke from tradition by narrowly interpreting Section 1981 in *Patterson*, Congress immediately responded by providing clarifying language to demonstrate its intention for Section 1981 to be read and applied broadly.

Section 1981 prohibits racial discrimination against whites as well as blacks); *Tillman* v. *Wheaton-Haven Recreation Ass'n*, 410 U.S. 431, 440 (1973) (holding that a private association is not exempt from either Section 1981 or Section 1982); *Sullivan*, 396 U.S. at 237 (interpreting Section 1982 to include a claim for retaliation, because to hold otherwise would "give impetus to the perpetuation of racial restrictions on property"); *Jones* v. *Alfred H. Mayer Co.*, 392 U.S. 409, 426-427 (1968) (interpreting the "broad language" of Section 1982 to prohibit discrimination by private individuals).

The broad interpretation adopted in *Jones*, *Sullivan*, and their lineage is "now an important part of the fabric of our law" and should continue to govern Section 1981. *See Runyon*, 427 U.S. at 190 (Stevens, J., concurring). Applying the narrow approach to Section 1981 that petitioner advocates would unravel that fabric. For example, under petitioner's constricted approach, it is doubtful that Section 1981 would protect white persons against discrimination, *see McDonald*, 427 U.S. at 293, or prohibit retaliation against those enforcing their rights under Section 1982, *see Sullivan*, 396 U.S. at 404-405. Petitioner offers no persuasive reason for this Court to turn its back on an interpretive approach to Section 1981 that broadly advances equal rights in contracting, regardless of race. To be consistent with its precedent and its well-settled understanding of the fundamental role of Section 1981 in promoting civil rights, this Court should confirm that Section 1981 prohibits retaliation.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

APPENDIX

LEADERSHIP CONFERENCE ON CIVIL RIGHTS (LCCR) PARTICIPATING ORGANIZATIONS, 2007-2008

A. Philip Randolph Institute
AARP
ACORN
ADA Watch
Advancement Project
African Methodist Episcopal Church
Alaska Federation of Natives
Alaska Inter-Tribal Council
Alliance for Retired Americans
Alpha Kappa Alpha Sorority, Inc.
Alpha Phi Alpha Fraternity, Inc.
American-Arab Anti-Discrimination Committee
American Association for Affirmative Action
American Association of People with Disabilities
American Association of University Women
American Baptist Churches, U.S.A.-National Ministries
American Civil Liberties Union
American Council of the Blind
American Ethical Union
American Federation of Government Employees
American Federation of Labor- Congress of Industrial Organizations
American Federation of State, County & Municipal Employees, AFL-CIO
American Federation of Teachers, AFL-CIO
American Friends Service Committee
American Jewish Committee
American Jewish Congress
American Nurses Association

American Postal Workers Union, AFL-CIO
American Society for Public Administration
American Speech-Language-Hearing Association
Americans for Democratic Action
Anti-Defamation League
Appleseed
Asian American Justice Center
Asian Pacific American Labor Alliance
Associated Actors and Artistes of America, AFL-CIO
Association for Education and Rehabilitation of the Blind and Visually Impaired
B'nai B'rith International
Brennan Center for Justice at New York University School of Law
Building & Construction Trades Department, AFL-CIO
Catholic Charities, USA
Center for Community Change
Center for Responsible Lending
Center for Women Policy Studies
Children's Defense Fund
Church of the Brethren-World Ministries Commission
Church Women United
Citizens' Commission on Civil Rights
Coalition of Black Trade Unionists
Common Cause
Communications Workers of America
Community Action Partnership
Community Transportation Association of America
DC Vote
Delta Sigma Theta Sorority
Disability Rights Education and Defense Fund
Division of Homeland Ministries-Christian Church (Disciples of Christ)
Epilepsy Foundation of America

Episcopal Church-Public Affairs Office
Evangelical Lutheran Church in America
FairVote: The Center for Voting and Democracy
Families USA
Federally Employed Women
Feminist Majority
Friends Committee on National Legislation
Global Rights: Partners for Justice
GMP International Union
Hadassah, The Women's Zionist Organization of America
Hotel and Restaurant Employees and Bartenders International Union
Human Rights Campaign
Human Rights First
Improved Benevolent & Protective Order of Elks of the World
International Association of Machinists and Aerospace Workers
International Association of Official Human Rights Agencies
International Brotherhood of Teamsters
International Union, United Automobile Workers of America
Iota Phi Lambda Sorority, Inc.
Japanese American Citizens League
Jewish Community Centers Association
Jewish Council for Public Affairs
Jewish Labor Committee
Jewish Women International
Judge David L. Bazelon Center for Mental Health Law
Kappa Alpha Psi Fraternity
Labor Council for Latin American Advancement
Laborers' International Union of North America
Lambda Legal

Lawyers' Committee for Civil Rights Under Law
League of Women Voters of the United States
Legal Momentum
Mashantucket Pequot Tribal Nation
Matthew Shepard Foundation
Mexican American Legal Defense and Education Fund
Na'Amat USA
NAACP Legal Defense and Educational Fund, Inc.
National Alliance of Postal & Federal Employees
National Association for Equal Opportunity in Higher Education
National Association for the Advancement of Colored People (NAACP)
National Association of Colored Women's Clubs, Inc.
National Association of Community Health Centers
National Association of Human Rights Workers
National Association of Negro Business & Professional Women's Clubs, Inc.
National Association of Neighborhoods
National Association of Protection and Advocacy Systems
National Association of Social Workers
National Bar Association
National Black Caucus of State Legislators
National Catholic Conference for Interracial Justice
National Coalition for the Homeless
National Coalition on Black Civic Participation
National Coalition to Abolish the Death Penalty
National Committee on Pay Equity
National Community Reinvestment Coalition
National Conference of Black Mayors, Inc.
National Congress for Community Economic Development
National Congress for Puerto Rican Rights
National Congress of American Indians

National Council of Catholic Women
National Council of Churches of Christ in the U.S.
National Council of Jewish Women
National Council of La Raza
National Council of Negro Women
National Council on Independent Living
National Education Association
National Employment Lawyers Association
National Fair Housing Alliance
National Farmers Union
National Federation of Filipino American Associations
National Gay & Lesbian Task Force
National Health Law Program
National Institute For Employment Equity
National Korean American Service and Education Consortium, Inc. (NAKASEC)
National Lawyers Guild
National Legal Aid & Defender Association
National Low Income Housing Coalition
National Organization for Women
National Partnership for Women & Families
National Puerto Rican Coalition
National Sorority of Phi Delta Kappa, Inc.
National Urban League
National Women's Law Center
National Women's Political Caucus
Native American Rights Fund
Newspaper Guild
Office of Communications of the United Church of Christ, Inc.
Omega Psi Phi Fraternity, Inc.
Open Society Policy Center
OCA (formerly known as Organization of Chinese Americans)
Paralyzed Veterans of America

Parents, Families, Friends of Lesbians and Gays
People for the American Way
Phi Beta Sigma Fraternity, Inc.
Planned Parenthood Federation of America, Inc.
Poverty & Race Research Action Council (PRRAC)
Presbyterian Church (USA)
Pride at Work
Progressive National Baptist Convention
Project Equality, Inc.
Puerto Rican Legal Defense and Education Fund, Inc.
Religious Action Center of Reform Judaism
Retail Wholesale & Department Store Union, AFL-CIO
Secular Coalition for America
Service Employees International Union
Servicemembers Legal Defense Network
Sigma Gamma Rho Sorority, Inc.
Sikh American Legal Defense and Education Fund
Southeast Asia Resource Action Center (SEARAC)
Southern Christian Leadership Conference
Southern Poverty Law Center
The Association of Junior Leagues International, Inc.
The Association of University Centers on Disabilities
The Justice Project
The National Conference for Community and Justice
The National PTA
Union for Reform Judaism
Unitarian Universalist Association
UNITE HERE!
United Association of Journeymen & Apprentices of the Plumbing& Pipe Fitting Industry of the U.S. & Canada-AFL-CIO
United Brotherhood of Carpenters and Joiners of America

United Church of Christ-Justice and Witness Ministries
United Farm Workers of America, AFL-CIO
United Food and Commercial Workers International Union
United Methodist Church-General Board of Church & Society
United Mine Workers of America
United States Conference of Catholic Bishops
United States Students Association
United Steelworkers of America
United Synagogue of Conservative Judaism
Women of Reform Judaism
Women's American ORT
Women's International League for Peace and Freedom
Workers Defense League
Workmen's Circle
YMCA of the USA, National Board
YWCA of the USA, National Board
Zeta Phi Beta Sorority, Inc.

12/07