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

CBOCS WEST, INC. *v.* HUMPHRIES

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

No. 06–1431. Argued February 20, 2008—Decided May 27, 2008

Claiming that petitioner CBOCS West, Inc., dismissed him because he is black and because he complained to managers that a black co-employee was also dismissed for race-based reasons, respondent Humphries filed suit charging that CBOCS' actions violated both Title VII of the Civil Rights Act of 1964 and 42 U. S. C. §1981, the latter of which gives "[a]ll persons . . . the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens." The District Court dismissed the Title VII claims for failure to timely pay filing fees and granted CBOCS summary judgment on the §1981 claims. The Seventh Circuit affirmed on the direct discrimination claim, but remanded for a trial on Humphries' §1981 retaliation claim, rejecting CBOCS' argument that §1981 did not encompass such a claim.

Held: Section 1981 encompasses retaliation claims. Pp. 2–14.

(a) Because this conclusion rests in significant part upon *stare decisis* principles, the Court examines the pertinent interpretive history. (1) In 1969, *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229, 237, as later interpreted and relied on by *Jackson* v. *Birmingham Bd. of Ed.*, 544 U. S. 167, 176, recognized that retaliation actions are encompassed by 42 U. S. C. §1982, which provides that "[a]ll citizens . . . shall have the same right, . . . , as is enjoyed by white citizens . . . to inherit, purchase, lease, sell, hold, and convey real and personal property." (2) This Court has long interpreted §§1981 and 1982 alike because they were enacted together, have common language, and serve the same purpose of providing black citizens the same legal rights as enjoyed by other citizens. See, *e.g., Runyon* v. *McCrary*, 427 U. S. 160, 183, 197, 190. (3) In 1989, *Patterson* v. *McLean Credit Union*, 491 U. S. 164, 177, without mention of retaliation, narrowed §1981 by excluding from its scope conduct occurring after formation

of the employment contract, where retaliation would most likely be found. Subsequently, Congress enacted the Civil Rights Act of 1991, which was designed to supersede *Patterson,* see *Jones* v. *R. R. Donnelley & Sons Co.*, 541 U. S. 369, 383, by explicitly defining §1981's scope to include post-contract-formation conduct, §1981(b). (4) Since 1991, the Federal Courts of Appeals have uniformly interpreted §1981 as encompassing retaliation actions. *Sullivan,* as interpreted by *Jackson,* as well as a long line of related cases where the Court construes §§1981 and 1982 similarly, lead to the conclusion that the view that §1981 encompasses retaliation claims is well embedded in the law. *Stare decisis* considerations strongly support the Court's adherence to that view. Such considerations impose a considerable burden on those who would seek a different interpretation that would necessarily unsettle many Court precedents. Pp. 2–8.

(b) CBOCS' several arguments, taken separately or together, cannot justify a departure from this well-embedded interpretation of §1981. First, while CBOCS is correct that §1981's plain text does not expressly refer to retaliation, that alone is not sufficient to carry the day, given this Court's long recognition that §1982 provides protection against retaliation; *Jackson*'s recent holding that Title IX of the Education Amendments of 1972 includes an antiretaliation remedy, despite Title IX's failure to use the word "retaliation," 544 U. S., at 173–174, 176; and *Sullivan*'s refusal to embrace a similar argument, see 396 U. S., at 241. Second, contrary to CBOCS' assertion, Congress' failure to include an *explicit* antiretaliation provision in its 1991 amendment of §1981 does not demonstrate an intention not to cover retaliation, but is more plausibly explained by the fact that, given *Sullivan* and the new statutory language nullifying *Patterson,* there was no need to include explicit retaliation language. Third, the argument that applying §1981 to employment-related retaliation actions would create an overlap with Title VII, allegedly allowing a retaliation plaintiff to circumvent Title VII's detailed administrative and procedural mechanisms and thereby undermine their effectiveness, proves too much. Precisely the same kind of Title VII/§1981 "overlap" and potential circumvention exists in respect to employment-related direct discrimination, yet Congress explicitly and intentionally created that overlap, *Alexander* v. *Gardner-Denver Co.*, 415 U. S. 36, 48–49. Fourth, contrary to its arguments, CBOCS cannot find support in *Burlington N. & S. F. R. Co.* v. *White*, 548 U. S. 53, 63, and *Domino's Pizza, Inc.* v. *McDonald*, 546 U. S. 470. While *Burlington* distinguished discrimination based on status (*e.g.,* as women or black persons) from discrimination based on conduct (*e.g.,* whistleblowing that leads to retaliation), it did not suggest that Congress must separate the two in all events. Moreover, while *Domino's Pizza*

and other more recent cases may place greater emphasis on statutory language than did *Sullivan,* any arguable change in interpretive approach would not justify reexamination of well-established prior law under s*tare decisis* principles. Pp. 9–14.

474 F. 3d 387, affirmed.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, SOUTER, GINSBURG, and ALITO, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA, J., joined.