

May 4, 2022

Supreme Court Holds That Emotional Distress Damages Are Not Recoverable under Spending Clause Statutes

On April 28, 2022, the Supreme Court held in *Cummings v. Premier Rehab Keller* that damages for emotional distress are not available in the implied private action to enforce the Rehabilitation Act of 1973 or the Affordable Care Act, which prohibit recipients of federal funding from discriminating based on certain protected grounds, including disability. This decision will also apply to Title VI of the Civil Rights Act of 1964, which forbids race, color, and national origin discrimination in federally funded programs or activities, Title IX of the Education Amendments of 1972, which prohibits sex-based discrimination in federally funded education programs, and Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination in services provided by state and local governments.

Background

Section 504 of the Rehabilitation Act of 1973 and Section 1557 of the Patient Protection and Affordable Care Act (ACA) invoke Congress's power under the Spending Clause to condition the receipt of federal funding on the recipient's agreement not to engage in discrimination on certain grounds. A private party aggrieved by a violation of those conditions may file suit against the funding recipient under the implied right of action recognized in Title VI of the Civil Rights Act of 1964. A coextensive implied right of action is available under Title IX of the Education Amendments of 1972, which includes the prohibition on sex discrimination in federally funded education programs.

The Supreme Court has long held that, because Spending Clause legislation is "much in the nature of a contract," the only remedies available are those for which "the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature." *Barnes v. Gorman*, 536 U.S. 181, 186–187 (2002) (citation omitted). The Court has further concluded that funding recipients are "generally on notice" of the availability of any remedies "explicitly provided in the relevant legislation" and those remedies "traditionally available in suits for breach of contract." *Id.* at 187.

Premier Rehab is a small business that provides physical therapy and receives federal funding. Jane Cummings, who is deaf and legally blind, sought Premier Rehab's services and requested a sign-language interpreter at her appointments. Premier Rehab offered alternative accommodations but declined Ms. Cummings's request absent further consultation. After obtaining physical therapy from another provider, Ms. Cummings filed suit against Premier Rehab in federal court. Among other things, the complaint alleged that Premier Rehab had discriminated against Ms. Cummings on the basis of her disability in violation of the funding conditions in the Rehabilitation Act and the ACA. Ms. Cummings sought injunctive relief, declaratory relief and damages for emotional distress.

The district court dismissed the case. After concluding that Ms. Cummings lacked standing to seek injunctive relief, the court held that damages for emotional distress are not available under the implied right of action to enforce the Rehabilitation Act or the ACA. On appeal, Ms. Cummings challenged only the district court's holding on emotional distress damages, and the court of appeals affirmed. It reasoned that funding recipients lack notice of potential liability for damages for emotional distress, given

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the general common-law rule prohibiting that remedy for breach of contract. The court of appeals rejected Ms. Cummings's argument that the requisite notice was provided by contract law's recognition of a narrow exception for contracts involving personal matters, the breach of which would be particularly likely to result in serious emotional distress.

The Supreme Court granted review to determine whether damages for emotional distress are available in the implied right of action to enforce Section 504 of the Rehabilitation Act or Section 1557 of the ACA. Paul, Weiss represented Premier Rehab at the Supreme Court.

The Supreme Court's Decision

In an opinion written by Chief Justice Roberts, the Supreme Court held that damages for emotional distress are not available in an implied private action to enforce Spending Clause statutes that prohibit discrimination. The Court emphasized that those statutes are much in the nature of contracts because they depend on the consent of the federal funding recipient: in return for federal funds, the recipient agrees not to discriminate on the basis of certain enumerated grounds. But those statutory provisions do not expressly provide victims of discrimination a private right of action. Accordingly, to determine what remedies are available under the right of action that has been judicially implied and congressionally ratified, the Court asks a "simple" question: At the time a federal funding recipient decided to accept federal dollars, would it have been aware that it would face liability for emotional distress?

The Court answered that question in the negative. Applying *Barnes*, the Court held that a federal funding recipient may be considered "on notice" that it is subject not only to those remedies explicitly provided in the relevant legislation, but also to those remedies "traditionally available" in suits for breach of contract. In other words, a funding recipient is aware that it will be subject to "the usual contract remedies in private suits" for breaching its Spending Clause "contract" with the federal government. Relying on treatises, the Court held that, because it is "hornbook law" that emotional distress is "generally not compensable in contract," federal funding recipients cannot be treated as having consented to be subject to damages for emotional distress. The Court declined to focus narrowly on whether those remedies would be recoverable in suits for breaches of "the type of contractual commitments at issue" in any particular case. In fact, the Court noted, were that the proper frame of inquiry, *Barnes* would have come out the opposite way. In that case, the Court declined to recognize the availability of punitive damages, even though the case involved intentional discrimination that would have been subject to such damages based on an exception for breaching conduct that is also a tort for which punitive damages are available.

The Court also noted that permitting recovery for emotional distress damages would be contrary to how precedent has applied the "contract analogy" to Spending Clause statutes. For example, the Restatement of Contracts treats punitive damages and emotional distress damages similarly, deeming both unrecoverable for breaches of contract "unless" certain exceptions are met. But those exceptions do not expand liability, the Court reasoned, because the contract analogy can only operate as a "limitation on liability" compared to that which would exist under nonspending statutes. Moreover, the Court found no "consensus among American jurisdictions" on the applicability of the exceptions that permit recovery for emotional distress damages in certain categories of cases, such that funding recipients "lack the requisite notice."

Justice Kavanaugh, joined by Justice Gorsuch, concurred in the judgment. Rather than resorting to the contract analogy, Justice Kavanaugh would have ruled in Premier Rehab's favor based on the "background interpretative principle" that, with respect to existing implied causes of action, Congress should be the one to "expand" available remedies.

Justice Breyer, along with Justices Sotomayor and Kagan, dissented. According to the dissent, the contract analogy should focus on contracts analogous to the ones at issue in the particular case. Under that framework, emotional distress damages were traditionally available when the contract or the breach were of such a kind that serious emotional disturbance was a particularly likely result—such as personal contracts or breaches involving intentional discrimination.

Implications

The Court's decision in *Cummings* reaffirmed the limited nature of the implied private right of action available under Spending Clause legislation. The decision confirmed that implied rights of action under Spending Clause statutes entitle plaintiffs only to compensatory damages. The Court stressed that "statutory silence" is not "a license to freely supply remedies," which would be an "untenable result in any context." The Court also made clear that claims under Spending Clause legislation are not "literal suits in contract," and that it will employ the contract analogy "only" as a potential limitation on liability.

In addition, although *Cummings* arose in the context of a disability-discrimination claim against a private recipient of federal funding, the Court's ruling will extend to emotional distress damages for race, sex, and age discrimination claims brought against any funding recipient. The Court appeared to take for granted that its holding would necessarily render emotional distress damages unavailable under Title VI and Title IX. And although none of the opinions referred to Title II of the Americans with Disabilities Act of 1990, which prohibits disability discrimination in services provided by state and local governments, that statute incorporates the same implied right of action and the same remedies.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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