Court Limits Emotional Damages Recovery in Private Actions Under the Rehabilitation Act and Affordable Care Act

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***Cummings v. Premier Rehab Keller, P.L.L.C.*, 142 S. Ct. 1562 (April 28, 2022)**

In a 6 to 3 decision, the U.S. Supreme Court held in *Cummings v. Premier Rehab Keller* that a plaintiff may not recover damages for emotional distress in a private action under the anti-discrimination provisions of the Rehabilitation Act of 1973 or the Patient Protection and Affordable Care Act.

Jane Cummings asked Premier Rehab Keller, P.L.L.C. to provide an American Sign Language interpreter during physical therapy appointments. Premier Rehab declined that request and suggested that Cummings communicate using written notes, gestures, and lip reading. Cummings chose to receive physical therapy from another provider and sued Premier Rehab for violating her rights under the anti-discrimination provisions of the Rehabilitation Act and the Affordable Care Act.

Premier Rehab is subject to those anti-discrimination laws because it receives reimbursements through Medicare and Medicaid. Private plaintiffs may sue under those acts because both expressly incorporate the rights and remedies provided under Title VI of the Civil Rights Act of 1964, and the Supreme Court previously held that Title VI creates an implied right of action for private parties.

When Congress enacts a law under its Spending Clause authority, the remedies available to a private plaintiff asserting an implied right of action are those remedies traditionally available for breach of contract actions. The rationale for providing contract remedies is that a recipient has fair notice when it accepts federal funds that it will be liable for breaching the promises it makes and the conditions it accepts to receive those funds. Accordingly, the Court previously held that compensatory damages for economic losses are generally

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available for violating Spending Clause statutes, while punitive damages are not because compensatory damages are a traditional contract remedy but punitive damages are not.

In *Cummings*, the Supreme Court held that damages for emotional distress are likewise not available for violating the anti-discrimination provisions of the Rehabilitation Act or the Affordable Care Act. The Court reasoned that because "emotional distress is generally not compensable in contract," courts "therefore cannot treat federal funding recipients as having consented to be subject to damages for emotional distress."

Chief Justice John Roberts wrote the majority opinion. Justice Stephen Breyer, joined by Justices Sonia Sotomayor and Elena Kagan, dissented, arguing that damages for emotional distress should be available because those damages are compensatory, rather than punitive. The dissenters noted that although most contracts are for purely commercial purposes, some categories of contract give rise to emotional damages, and emotional damages are the most likely damages to result from a violation of anti-discrimination provisions.

Key Takeaways:

- *Cummings v. Premier Rehab Keller* reinforces the broad power given to Congress by the Spending Clause to set the terms on which it disburses its federal funds.
- The Court's analysis focuses on federal funding delegated pursuant to the Spending Clause as being contractual in nature, and the Court reasons that emotional distress is traditionally not a remedy for breach of contract.
- The Court follows earlier decisions providing plaintiffs with implied rights of action but indicates damages for those claims may face increasing scrutiny.

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