

LEGAL UPDATES

PUBLISHED: APRIL 29, 2022

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Supreme Court Holds That Emotional Distress Damages Are Not Available Under Title VI, Title IX, and Other Spending Clause Statutes

In *Cummings v. Premier Rehab Keller, P.L.L.C.*, the Supreme Court of the United States held that a plaintiff suing under Title VI (prohibiting race, color, and national origin discrimination), Title IX (prohibiting sex discrimination), the Rehabilitation Act (prohibiting disability discrimination), and the Patient Protection and Affordable Care Act (ACA) may not recover emotional distress damages. The Court reasoned that the scope of available remedies under these Spending Clause statutes is limited to only those remedies generally available for breach of contract. Because emotional distress damages are not generally available for breach of contract, the Court reasoned that emotional distress damages are not available under these Spending Clause laws. *Cummings* will substantially reduce the scope of available damages in a wide range of civil rights lawsuits brought by students against colleges and universities, including Title IX cases where a plaintiff claims emotional distress arising from sexual harassment, sexual assault, or the erroneous outcome of a Title IX investigation.

In *Cummings*, the plaintiff, who was deaf and legally blind, sought physical therapy services from a private provider and requested that the provider hire a sign language interpreter to help the plaintiff communicate during physical therapy sessions. The provider declined to provide an interpreter, and the plaintiff sued the provider under the Rehabilitation Act and the ACA. The provider was subject to the Rehabilitation Act and ACA because it agreed to comply with those laws as a condition of receiving payments under Medicare and Medicaid programs. The plaintiff sought injunctive relief and damages,

including damages for emotional distress that the plaintiff claimed she suffered from being unable to obtain the requested services.

The district court held that the plaintiff could not recover damages for “humiliation, frustration, and emotional distress,” 2019 WL 227411, at *4 (N.D. Tex. Jan. 16, 2019) and the Fifth Circuit affirmed. 948 F.3d 673 (2020). The plaintiff asked the Supreme Court to reverse these lower courts and was supported by numerous groups (amici) who argued that Spending Clause legislation prohibiting discrimination should be construed broadly to include recovery for emotional distress damages. Plaintiff and her amici argued, among other things, that because emotional distress is particularly likely to result from discrimination, emotional distress is a foreseeable type of damage that should be recoverable even under contract law principles.

The Supreme Court, adhering to its prior precedent in *Barnes v. Gorman*, 536 U.S. 181 (2002), did not agree. In *Barnes*, the Supreme Court held that because Spending Clause legislation operates like a contract—that is, a funding recipient agrees not to engage in discrimination in exchange for certain federal funds—it was appropriate to use a contract-law analogy to define the scope of recoverable damages. Under this analogy, a plaintiff is permitted to pursue particular relief only “if the funding recipient is *on notice* that, by accepting federal funding, it exposes itself to liability of that nature.” *Id.* at 187. In *Barnes*, this reasoning resulted in a holding that punitive damages—not generally available for breach of contract—cannot be recovered under Spending Clause statutes. *Cummings* applied *Barnes*’ analysis to the separate category of emotional distress damages, finding them also to be not generally available for breach of contract and, therefore, not available for claims under Title VI, Title IX, the Rehabilitation Act, and the ACA.

The dissent recognized that *Cummings*’ holding applies to bar the recovery of emotional distress damages under Title IV, Title IX, the Rehabilitation Act, and the ACA, even though the plaintiff’s claims in the case directly implicated only the Rehabilitation Act and the ACA. The dissent argued that emotional distress is particularly likely to result from breach of the contract at issue in Spending Clause cases—that is, an agreement not to discriminate—and should thus be recoverable. In other words, the dissent would have accepted the plaintiff’s argument that because emotional distress damages are available in *some* breach of contract actions, they should be available under Spending Clause legislation as well.

The dissent also made an important observation regarding employment discrimination. *Cummings* limits recovery of emotional distress damages under Title VI and Title IX, which prohibit discrimination against students at colleges and universities, but *Cummings* does not limit recovery of emotional distress damages under Title VII, which prohibits multiple forms of protected-status discrimination against *employees* in the workplace. This is because Title VII was not enacted pursuant to the Spending Clause (it was enacted as part of Congress’ authority under Fourteenth

Amendment) and a separate federal statute specifically permits the recovery of emotional distress damages for Title VII and other non-Spending Clause civil rights laws. Thus, unless Congress chooses to act, a student who experiences sex discrimination in a college or university will not be able to recover emotional distress damages under Title IX, whereas an employee of a college or university who experiences sex discrimination in the workplace will be able to recover emotional distress damages under Title VII.

What this means to you

Cummings will have an immediate impact on the valuation of lawsuits where a plaintiff claims discrimination by a college or university under Title VI, Title IX, or the Rehabilitation Act. Higher education institutions are rarely sued under the ACA. Under *Cummings*, plaintiffs in such suits will not be able to recover emotional distress damages and the scope of recovery will be limited to traditional compensatory damages, like out-of-pocket costs a plaintiff has experienced due to discrimination.

The most profound impact of *Cummings* may prove to be in two specific types of Title IX lawsuits. First, *Cummings* will impact cases brought by victims of third-party sexual assault who claim an institution was deliberately indifferent to the risk of sexual assault. Prior to *Cummings*, the most significant element of damage in such cases was typically emotional distress resulting from the sexual assault itself, which plaintiffs often asserted should be valued in hundreds of thousands if not millions of dollars. With the emotional distress theory of damage no longer available, *Cummings* may result in fewer such lawsuits being filed, more modest settlements, and/or diminished verdicts for those cases that proceed to trial.

Second, *Cummings* will impact cases in which students found responsible for committing acts of sexual harassment or sexual assault sue educational institutions claiming that the institution reached an “erroneous outcome.” Emotional distress typically forms a significant part of the damage theory in those cases as well.

Contact us

For more information about the implications of this ruling for your institution, please contact Derek Teeter, Michael Raupp or your Husch Blackwell attorney.

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