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# Supreme Court rules that emotional injury damages are not recoverable under Spending Clause statutes, which include Title VI and Title IX

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## The Court's ruling will have a significant impact upon lawsuits against colleges and universities under Spending Clause laws.

### What's the Impact

- In lawsuits under Title VI, Title IX, or the Rehabilitation Act, colleges and universities will be protected from emotional distress damage awards, which have often been difficult to value and predict.
- The ruling may result in more modest and prompt settlements of claims or lower verdicts.
- The dissent warns that the majority's ruling may leave victims of intentional discrimination with no remedy under Spending Clause laws.

In *Cummings v. Premier Rehab Keller, P.L.L.C.*,[1] the United States Supreme Court held 6–3 that emotional distress damages cannot be recovered in private causes of action against recipients of federal financial assistance under Spending Clause statutes. In a 6–3 split between its

[1] No. 20-219, slip op. (April 28, 2002)

conservative and liberal block of justices, the Court reasoned that causes of action under Spending Clause statutes are limited to remedies generally available for breach of contract. Because emotional injuries are not generally recoverable in contract actions, they are unavailable under Spending Clause laws. This ruling will have significant impact upon discrimination lawsuits brought against colleges and universities.

## Spending Clause statutes

Under the Spending Clause of the United States Constitution (Art. I, § 8, cl.1), Congress conditions the receipt of federal funding on the recipient's agreement not to engage in discrimination on grounds codified in the statute. Congress has enacted four antidiscrimination statutes imposing such restrictions: Title VI of the Civil Rights Act ("Title VI," prohibiting race discrimination), Title IX of the Education Amendments of 1972 ("Title IX," prohibiting sex discrimination), the Rehabilitation Act of 1973 ("Rehabilitation Act," prohibiting disability discrimination), and the Affordable Care Act ("ACA," prohibiting race, sex, disability, and age discrimination).

The Supreme Court has 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). Funding recipients are "generally on notice" of the remedies "traditionally available in suits for breach of contract." *Id.* at 187.

In *Barnes*, the Court explained that compensatory damages are recoverable under Spending Clause statutes because federal-funding recipients are on notice that accepting such funds exposes them to liability for monetary damages under general contract law. *Id.* The Court then addressed whether punitive damages are available under Spending Clause laws. It held that, because "punitive damages, unlike compensatory damages and injunctions, are generally not available for breach of contract," federal-funding recipients are not "on notice" that they could be liable for such damages. *Id*. The question presented in *Cummings* concerned whether emotional injury damages are recoverable in causes of action under Spending Clause statutes.

## Background in *Cummings*

Jane Cummings is deaf, legally blind, and communicates primarily in American Sign Language ("ASL"). She sought physical therapy services from Premier Rehab Keller ("Premier Rehab"), a small business in the Dallas-Fort Worth area. Because Premier Rehab receives reimbursement through Medicare and Medicaid for the provision of some of its services, it qualifies as a recipient of federal financial assistance for purposes of the Rehabilitation Act and the ACA. Cummings requested that Premier Rehab provide an ASL interpreter at her appointments. Premier Rehab declined to do so, telling Cummings that she could communicate with the therapist using written notes, lip reading, or gesturing. Cummings sought and obtained care from another provider.

Cummings filed a federal court lawsuit against Premier Rehab, alleging that the company's failure to provide a sign-language interpreter constituted discrimination under the

Rehabilitation Act and the ACA. Premier Rehab moved to dismiss the complaint. The Northern District of Texas granted the dismissal, noting that the only compensable damages that Cummings alleged Premier Rehab caused were "humiliation, frustration, and emotional distress." 2019 WL 227411, *4 (N.D. Tex. Jan. 16, 2019). The district court concluded that damages for emotional harm are not recoverable in private actions brought to enforce the Rehabilitation Act and the ACA. *Id.* On appeal, the United States Court of Appeals for the Fifth Circuit affirmed, adopting the same conclusion. 948 F.3d 673 (5th Cir. 2020). The Supreme Court granted certiorari to hear Cummings' appeal.

## The Majority Opinion

In Chief Justice Roberts' opinion for the majority, the analysis asked a simple question: Would a prospective funding recipient, at the time that it determined whether to accept federal dollars, have been aware that it would face emotional damages under a Spending Clause law. Slip op. at 5. Because the Spending Clause statutes are silent on available remedies, the Court noted that "it is not obvious how to decide whether funding recipients would have had the requisite clear notice regarding the liability at issue [.]" *Id.* (citation omitted). The Court noted that "[u]nder *Barnes*, . . . we may presume that a funding recipient is aware that, for breaching its Spending Clause 'contract' with the Federal Government, it will be subject to the usual contract remedies in private suits." *Id.* at 6.

Applying *Barnes*' framework, the Court concluded that the analysis is "straightforward." *Id.* at 7. Citing to hornbook law, the Court stated that "emotional distress is generally not compensable in contract." *Id.* The Court rejected Cummings' argument that the right to recover emotional distress damages should be recognized because several contract treatises put forth a special rule that "recovery for emotional disturbance" is allowed in particular circumstances: where "the contract or the breach is of such a kind that serious emotional disturbance was a particularly likely result." *Id.* at 8 (quoting Restatement (Second) of Contracts § 353)). The Court found that this argument suffers from two independently fatal flaws. *Id.*

First, the Court viewed Cummings' reliance on language recognizing the recovery of emotional damages, as found in the Restatement § 353, to constitute a "more fine-grained" remedy, rather than the *usual* remedy available in contract actions. *Id.* "It is one thing to say that funding recipients will know the basic, general rules. It is quite another to assume that they will know the contours of every contract doctrine, no matter how idiosyncratic or exceptional." *Id.* at 11. The Court stated that *Barnes* placed a clear limit requiring courts to imply only those remedies "that [are] normally available for contract action." *Id.* (alteration in original).

Second, even if it were appropriate to treat funding recipients as recognizing that they may be subject to "rare" contract law rules applicable only in particular circumstances, a clear majority rule does not exist regarding the permissibility of recovering emotional distress damages in a contract claim. *Id.* at 12. For example, several states reject the Restatement's view and altogether forbid recovery of emotional distress damages. *Id.* at 13.

"In the end, it is apparent that the closest our legal system comes to a universal rule—or even a widely followed one—regarding the availability of emotional distress damages in contract actions is 'the conventional wisdom . . . that [such] damages are for highly unusual contracts, which do not fit into the core of contract law.'" *Id.* at 15 (citation omitted). "As to which 'highly unusual contracts' trigger the exceptional allowance of such damages, the only area of agreement is that there is no agreement. There is thus no basis in contract law to maintain that emotional distress damages are 'traditionally available in suits for breach of contract.'" *Id.* (quoting *Barnes*, 536 U.S. at 187).[2] Consequently, federal funding recipients lack "clear notice" that they would face such a remedy in a private lawsuit under a Spending Clause law. *Id.*

## The Dissent

The dissent, authored by Justice Breyer, warned that the majority looks too broadly at all contracts. Dissent at 2. Rather, the focus must be on contracts analogous to the anti-discrimination laws enacted under the Spending Clause. As stated in Restatement (Second) of Contracts § 353, emotional distress damages have traditionally been available when "the contract or the breach" was "of such a kind that serious emotional disturbance was a particularly likely result." *Id.* (quoting Restatement (Second) of Contracts § 353). Statutes prohibiting "intentional invidious discrimination" should similarly allow for the recovery of emotional injuries caused by the discrimination. *Id.*

Because most contracts are commercial contracts entered for pecuniary gain, pecuniary remedies are often sufficient to compensate the contractual breach. *Id.* at 4. Yet, "[c]ontract law treatises make clear that expected losses from the breach of a contract entered for *nonpecuniary* purposes might reasonably include *nonpecuniary* harms," which would allow for emotional distress recovery to compensate for a serious emotional disturbance. *Id.* at 4-5 (citing treatises). Most notably, the dissent contended that it would be "difficult to believe that prospective funding recipients would be unaware that intentional discrimination based on race, sex, age, or disability is particularly likely to cause emotional suffering." *Id.* at 6. "The contract rule allowing emotional distress damages under such circumstances is neither obscure nor unsettled, as the Court claims." *Id.* at 6-7.

The dissent portrayed the Court's decision as creating an anomaly, "where other antidiscrimination statutes, for which Congress has provided an express cause of action, permit the recovery of compensatory damages for emotional distress." *Id.* at 10 (citing 42 U.S.C. § 1981a(b)(3) and Title VII of the Civil Rights Act of 1964). By contrast, employees or students suing under a Spending Clause statute are unable to recover damages for emotional suffering. *Id.* "[U]ntil Congress acts to fix this inequity, the Court's decision today means that those same

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[2] In a short concurrence, Justice Kavanaugh (joined by Justice Gorsuch) wrote that, given the "dueling and persuasive" majority and dissenting opinions analyzing contract law, the better focus should be rooted in separation of powers. Congress, not the judiciary, should create new causes of action. Judicial restraint cautions against the Court's recognition of emotional distress damages under Spending Clause legislation.

remedies will be denied to students who suffer discrimination at the hands of their teachers, patients who suffer discrimination at the hands of their doctors, and others." *Id*. Because victims of intentional discrimination can suffer significant emotional injury without any attendant pecuniary harm, the dissent stressed that "[t]he Court's decision today will leave those victims with no remedy at all." *Id.* at 11.

## Takeaways

*Cummings* will have an immediate significant impact in lawsuits against colleges and universities under Spending Clause laws such as Title VI, Title IX, or the Rehabilitation Act. For example, in Title IX lawsuits (whether filed by a complainant or a respondent), emotional distress damages are typically central to the sought recovery. With such damages unavailable, the valuation of cases will be directly impacted, with perhaps fewer cases filed (unless emotional injuries are recoverable under another theory such as a state common law claim for intentional infliction of emotional distress), greater incentives to settle cases at more modest sums, or lower jury verdicts focusing only on proven economic losses. We should reasonably expect that there will be congressional efforts to amend statutes such as Title VI, Title IX, and the Rehabilitation Act, in order to allow for the recovery of emotional injury damages, but the pace and success of any such legislative initiatives in a highly partisan environment remain to be seen.

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