

## Supreme Court: Emotional Distress Damages Not Available in Suits To Enforce the Rehabilitation Act or Affordable Care Act

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In *Cummings v. Premier Rehab Keller, P.L.L.C.*, the Supreme Court of the United States ruled that private plaintiffs cannot recover emotional distress damages under either the Rehabilitation Act of 1973 or the Affordable Care Act. The decision, based on an analogy from contract law, will make it difficult for plaintiffs asserting implied rights of action under similar federal statutes to recover anything beyond traditional contract remedies.

The plaintiff, Jane Cummings, is deaf and legally blind and communicates primarily through sign language. When Cummings sought physical therapy from the defendant, Premier Rehab, it refused to arrange for a sign-language interpreter, suggesting instead that Cummings either provide her own interpreter or communicate by other means, such as written notes or lip-reading.

Cummings sued Premier Rehab, alleging discrimination in violation of Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act. These provisions forbid organizations that receive federal funding—in Premier Rehab’s case, Medicare and Medicaid reimbursement—from denying services to individuals with disabilities. Both statutes were passed under the Constitution’s Spending Clause, which grants Congress the authority to condition the funding it provides on the recipient’s adherence to various terms and conditions.

The district court dismissed the suit, holding that Cummings’s only injuries were emotional and that damages for emotional distress could not be recovered in actions to enforce either statute. The Fifth Circuit affirmed.

In a 6–3 decision, the Supreme Court agreed. Writing for the majority, Chief Justice Roberts acknowledged that it is “beyond dispute” that the provisions in the Rehabilitation Act and Affordable Care Act conditioning federal funds on non-discrimination give victims of discrimination an implied right of action to enforce them. “[L]ess clear” is “what remedies are available.”

To answer that question, the Court analogized to basic principles of contract law because, by “conditioning an offer of federal funding on a promise by the recipient not to discriminate,” the federal government has entered into a contract with the recipient. The Court reasoned that, given the voluntary nature of contractual undertakings, “[a] particular remedy” is available in a private Spending Clause action “only if the funding recipient is *on notice* that, by accepting federal funding, it exposes itself to liability of that nature.”

Because neither the Rehabilitation Act nor the Affordable Care Act mention remedies, the question then became whether other sources placed recipients of federal funding on notice that they might be liable for emotional distress damages if they violate the statutes' non-discrimination provisions. A similar question previously arose in *Barnes v. Gorman* (2002), which decided whether punitive damages are available under the same statutes. The *Barnes* Court concluded that federal funding recipients were not on notice that they could be liable for punitive damages because punitive damages "are generally not available" in contract cases.

Applying the same analysis in *Cummings*, the Court held that private plaintiffs asserting implied rights of action under the Rehabilitation Act and Affordable Care Act cannot recover damages for emotional distress because "emotional distress is generally not compensable in contract." Given that damages for emotional distress are not "traditionally available in suits for breach of contract," recipients of federal funding do not have "clear notice" that, simply by contracting with the government, they could be liable for such damages.

Taken together, *Cummings* and *Barnes* make clear that in determining what damages are available in private actions to enforce the Rehabilitation Act and Affordable Care Act, the test is whether such damages are *generally* available under contract law. That a certain category of damages might be available in exceptional circumstances is not enough. Significantly, the Court did not limit this test to emotional distress damages. The Court's reasoning arguably subsumes other types of non-economic damages that victims of discrimination might allege.

Nor is the Court's rationale expressly limited to the Rehabilitation Act and the Affordable Care Act. To the contrary, the *Cummings* Court identified Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972 as other statutes enacted pursuant to the Spending Clause that condition funding on compliance with non-discrimination provisions.

In actions to enforce these statutes, *Barnes* and now *Cummings* offer recipients of federal funds a shield against emotional distress damages and other types of damages that are not generally available in contract actions.  
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