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Client Advisory

## Supreme Court Clarifies that Emotional Distress Damages Are Not Available Under the Rehabilitation Act and the Affordable Care Act

In a recent ruling with implications for recipients of federal funding, the Supreme Court of the United States held that emotional distress damages are unavailable in private actions to enforce either the Rehabilitation Act of 1973 or the Patient Protection and Affordable Care Act. By extension of the Court's reasoning, these damages would likely be unavailable under two other statutes authorized by Congress' Spending Clause power: Title VI of the Civil Rights Act of 1964 and Title IX of the Education Amendments of 1972.

The case, *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. \_\_\_ (2022), involved discrimination claims under the Rehabilitation Act and the Affordable Care Act. Both the District Court and the Court of Appeals for the Fifth Circuit concluded that plaintiff's complaint should be dismissed because damages for emotional harm are not recoverable under those statutes. A majority of the Supreme Court agreed.

The Court's 6-3 decision focused on the unique manner in which Spending Clause antidiscrimination statutes function: by conditioning federal funding on a promise not to discriminate. Relying on a contract law analogy because the statutes operate based on consent, the Court determined that the availability of emotional distress damages turned on whether the federal funding recipient would have been aware that it would be liable for emotional distress damages if it accepted federal funding. The Court noted that a federal funding recipient would know that typical contract remedies would apply for breaching its Spending Clause "contract." But, because emotional distress damages are generally not recoverable under contract law, the Court found that emotional distress damages are not recoverable under the Rehabilitation Act and the Affordable Care Act.

The Court's ruling is an important one for recipients of federal funding such as local governments, schools, and healthcare providers. Unless Congress amends the Rehabilitation Act, the Affordable Care Act, and by extension, Title VI, or Title IX to provide an express remedy for emotional distress damages, federal funding recipients can rely on *Cummings* to argue that plaintiffs suing under these statutes cannot recover such damages.

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