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Emotional Distress Damages Not Recoverable Under Anti-Discrimination Statutes, Including Section 504, Title VI, and Title IX

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The United States Supreme Court has ruled that emotional distress damages are not available in private actions pursuant to various anti-discrimination statutes authorized under the Spending Clause of the United States Constitution, including Section 504 of the Rehabilitation Act of 1973, the Affordable Care Act (ACA), Title VI, and Title IX. *Cummings v. Premier Rehab Keller*, No. 20-219 (Roberts, C.J.).

Jane Cummings, who is deaf, brought suit against her physical therapy provider for failing to provide a sign language interpreter during her treatment sessions. She alleged that the provider's failure to do so constituted disability discrimination in violation of the Rehabilitation Act and the ACA. The United States District Court for the Northern District of Texas dismissed Cummings' complaint on the basis that her only compensable damages were humiliation, frustration, and emotional distress. The Fifth Circuit affirmed the dismissal and the Supreme Court granted certiorari.

In its opinion, the Supreme Court observed that Congress, pursuant to its Spending Clause authority, enacted four statutes prohibiting recipients of federal financial assistance from discriminating based on certain protected grounds. Specifically, Title VI of the Civil Rights Act of 1964 forbids race, color, and national origin discrimination; Title IX of the Education Amendments of 1972 prohibits sex-based discrimination; the Rehabilitation Act bars funding recipients from discriminating because of disability; and the Affordable Care Act forbids discrimination on the basis of race, sex, disability, and age. As noted by the Court, these statutes are silent regarding the availability of emotional distress damages.

In both the majority and minority opinions, the Court framed the question at hand as whether a prospective funding recipient, at the time it engaged in the process of deciding whether to accept federal funding, would have been aware that it would face liability for emotional distress damages. The Court proceeded to answer this question via a contract analysis, in as much as the Spending Clause statutes operate by "conditioning an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds." The Court found that emotional distress damages could not be recovered because such remedies

are typically unavailable in breach of contract actions. The dissent posited that because emotional distress damages are available in *some* breach of contract cases, they should be available under Spending Clause statutes. The dissent recognized that, while Cummings' claims were brought under the Rehabilitation Act and the ACA, the majority opinion has equal applicability to bar emotional distress damages under Title VI and Title IX.

Pursuant to *Cummings*, plaintiffs who bring Rehabilitation Act and ACA as well as Title VI and IX discrimination claims against federal funding recipients (including many colleges, universities, school districts, and health care entities) will likely be unable to recover emotional distress damages. Emotional distress damages will still be available under the Americans with Disabilities Act and Title VII of the Civil Rights Act, as those statutes specifically permit the recovery of such damages.