

Supreme Court Holds That Damages For Emotional Distress Are Categorically Unavailable In Discrimination Actions Against Recipients Of Federal Financial Assistance

Client Alert | April 28, 2022

[Click for PDF](#) Decided April 28, 2022 *Cummings v. Premier Rehab Keller, P.L.L.C.*, No. 20-219 Today, the Supreme Court held 6-3 that emotional-distress damages are not available in discrimination actions against recipients of federal financial assistance. **Background:** In a string of statutes, including Title VI of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, the Patient Protection and Affordable Care Act of 2010 (“ACA”), and Title IX of the Education Amendments of 1972, Congress has invoked its authority under the Spending Clause to prohibit recipients of federal funds from discriminating based on race, sex, or disability. Under Title VI, individuals may recover “compensatory damages” for intentional discrimination, and each of the other statutes listed above incorporates this remedial scheme.

The Fifth Circuit held that emotional-distress damages aimed at compensating for humiliation or other noneconomic injuries resulting from intentional discrimination are categorically unavailable under Title VI, the Rehabilitation Act, and the ACA. The Supreme Court has employed a “contract-law analogy” to assess remedies available under Title VI because the conditioning of federal funds on statutory compliance is similar to the formation of a contract: recipients of federal funds agree to take on certain liabilities in exchange for funding. Drawing on that contract-based analogy, the Fifth Circuit reasoned that funding recipients lack notice of their potential liability for emotional-distress damages because that remedy generally is not available for breach of contract actions.

Issue: Whether damages for emotional distress are available in discrimination actions brought against recipients of federal funds under Title VI and the statutes that incorporate its remedial scheme, including the Rehabilitation Act and the ACA. **Court's Holding:** Damages for emotional distress may not be recovered in such actions.

“Cummings would have us treat statutory silence as a license to freely supply remedies we cannot be sure Congress would have chosen to make available.”

Chief Justice Roberts, writing for the Court

What It Means:

- The Court’s ruling protects funding recipients, including states, local governments, and businesses, from potential liability for emotional-distress damages, which can be significant and unpredictable.
- The Court’s ruling also suggests federal funding recipients will only “be subject to

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the *usual* contract remedies in private suits,” not “more fine-grained” exceptions to general rules.

- The Court’s decision underscores that where a right of action is implied, as is the case here, congressional silence as to the available remedies should not be taken as an endorsement of all possible remedies.

The Court’s opinion is available [here](#).

Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding developments at the Supreme Court. Please feel free to contact the following practice leaders:

Appellate and Constitutional Law Practice

Allyson N. Ho +1 214.698.3233 aho@gibsondunn.com	Thomas H. Dupree Jr. +1 202.955.8547 tdupree@gibsondunn.com	Julian W. Poon +1 213.229.7758 jpoon@gibsondunn.com
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Lucas C. Townsend +1 202.887.3731 ltownsend@gibsondunn.com	Bradley J. Hamburger +1 213.229.7658 bhamburger@gibsondunn.com
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Related Practice: Labor and Employment

Jason C. Schwartz +1 202.955.8242 jschwartz@gibsondunn.com	Katherine V.A. Smith +1 213.229.7107 ksmith@gibsondunn.com
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