

Civil Rights Remedies in *Cummings* and Implications for Title VI and Title IX

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Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act (ACA) prohibit various types of discrimination in federally funded programs and other covered entities. The Supreme Court recently held in *Cummings v. Premier Rehab Keller* that a plaintiff bringing suit to enforce [Section 504](#) and [Section 1557](#) cannot recover emotional distress damages. Emotional distress damages are a form of relief aimed at compensating individuals for emotional harm or injury caused by the unlawful conduct at issue. As neither Section 504 nor Section 1557 contains statutory text specifying whether emotional distress damages are available in a private suit, the Court interpreted the statutes in light of common law contract doctrine to conclude that neither statute permits such a remedy. Under *Cummings*, it appears that compensatory relief in a private suit will now be limited to recovery for economic harm caused by unlawful discrimination under those statutes.

This Sidebar discusses the Court’s analysis in *Cummings*, including its reliance on common law contract principles to interpret statutes like Section 504, which the Court reads as legislation enacted based on Congress’s Spending Clause power. The Spending Clause basis and operation of several civil rights statutes are more fully explored in other [CRS reports](#). This Sidebar reviews the likely impact of the Court’s decision on the availability of emotional distress damages under other statutes, such as [Title VI](#) of the Civil Rights Act of 1964 (Title VI) and [Title IX](#) of the Education Amendments of 1972 (Title IX), and potential considerations for Congress.

Legal Background: Private Suits and Remedies

The Supreme Court’s reasoning in *Cummings* builds on judicial precedent and legislative action linking together the remedial schemes of Title VI, Title IX, Section 504, and the Age Discrimination Act. [Section 504](#) prohibits federally funded programs from discriminating against individuals based on disability. [Section 1557](#) prohibits covered entities from discriminating on the grounds prohibited under Section 504, [Title VI](#) (race, color, or national origin), [Title IX](#) (sex in federally funded education programs), and the [Age Discrimination Act](#) (age). Section 1557 also states that the “enforcement mechanisms provided for and available under” Title VI, Title IX, Section 504, and the Age Discrimination Act apply to Section 1557 violations. In light of such legislative action and earlier judicial decisions, courts have generally

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treated remedies under these four statutes in a largely parallel manner: if a remedy is permitted or foreclosed under one, courts have permitted or [foreclosed them](#) under another.

When [Title VI](#) was enacted in 1964, followed by [Title IX](#) several years later, neither statute expressly addressed whether an individual harmed by unlawful discrimination could bring a private suit seeking relief for these statutory violations. The Supreme Court has long interpreted Title VI and Title IX to permit private suits to enforce their provisions and has separately addressed the remedies available in such private rights of action. For example, in 1979, the Court interpreted Title IX in [Cannon v. University of Chicago](#) to permit a private suit in light of several considerations relating to Title VI. The Court pointed out that lower courts had consistently interpreted Title VI to permit a private suit and presumed that Congress was aware of these interpretations. Stating that Congress modeled Title IX after Title VI, and Title IX's drafters explicitly assumed it would be interpreted as Title VI had been, the Court concluded that Congress intended Title IX to likewise permit individual enforcement. In 1992, the Court reached the question in [Franklin v. Gwinnett County Public Schools](#) of available relief in a Title IX suit to hold that a plaintiff could recover monetary damages.

While the Court has interpreted Title IX's remedial scheme in relation to Title VI, Congress has also legislatively linked the remedies of another statute to Title VI. [Section 504](#), enacted nearly a decade after Title VI, provides that the "remedies, procedures, and rights set forth in Title VI" shall apply to aggrieved individuals under Section 504. Section 504 does not otherwise specify types of relief available in a private suit for statutory violations. In addition, [implicitly endorsing Cannon](#), Congress enacted [legislation in 1986](#) (the Civil Rights Remedies Equalization provision) to permit private suits in federal court against *state* entities under Title VI, Title IX, Section 504, and the Age Discrimination Act, but without specifying particular remedies.

Given this legislative coupling of Section 504 remedies to Title VI, when the Court considered in [Barnes v. Gorman](#) whether punitive damages were available in a Section 504 suit, it also had to address whether Title VI permitted the award of punitive damages. In the absence of text in Title VI expressly addressing punitive damages, however, the Court turned to common law contract doctrine as an interpretive tool. In the Court's view, Spending Clause-based statutes operate much like a contract in which the federal government offers federal financial assistance in exchange for recipients' agreement to comply with certain requirements. Extending that contract analogy, the Court [has explained](#) that recipients must have clear notice of those requirements. In the context of remedies, the Court reasoned in *Barnes* that—in the absence of express statutory text—a federal funding recipient would lack the requisite notice that it was liable for damages for which common law doctrine did not traditionally provide a damages remedy for a breach of contract. The Court concluded that because common law contract doctrine treats punitive damages as a special remedy, and not as ordinarily available for a contract breach, funding recipients did not have adequate notice that they were subject to punitive damages. The Court in *Barnes* held that it would read Title VI—and by extension, Section 504—to foreclose the recovery of punitive damages.

Although *Barnes* addressed the relationship between Section 504 and Title VI, Section 504 is not the only civil rights statute that links its remedies to Title VI. In 2010, Congress enacted Section 1557 and linked [that statute's enforcement](#) to the "enforcement mechanisms provided for and available under" Title VI, Title IX, Section 504, and the Age Discrimination Act. Section 1557 does not otherwise address or specify available remedies.

The Supreme Court's Analysis in *Cummings*

The *Cummings* plaintiff, who is deaf and legally blind, alleged that a federally funded health care provider's refusal to provide a sign language interpreter violated Section 504 and Section 1557. A federal district court dismissed the complaint, reasoning that relief for emotional harm was unavailable under

these statutes in light of the Supreme Court’s decision in *Barnes*. On appeal, the U.S. Court of Appeals for the [Fifth Circuit affirmed](#).

In an opinion authored by Chief Justice Roberts, the Supreme Court held that compensatory relief for emotional harm is unavailable in suits brought under Section 504 and Section 1557. In reaching this conclusion, the Court once again drew upon common law contract doctrine. Observing that “the statutes at issue are silent as to available remedies,” the Court stated that it was “not obvious how to decide whether funding recipients would have had the requisite ‘clear notice’” regarding liability in a private right of action for emotional distress damages. Looking to its analysis in *Barnes*, the Court explained that it had held that punitive damages were not available there because punitive damages under common law contract doctrine were an “exception to the general rule,” and therefore “not enough to give funding recipients the requisite notice that they could face such damages.”

Extending that analysis to *Cummings*, the Court reasoned that because emotional distress damages are generally unavailable as a remedy for a breach of contract under common law, under *Barnes*, it could not treat federal funding recipients as having the requisite notice that they could be subject to emotional distress damages. When judicially implying a remedy in these Spending Clause civil rights statutes, the Court explained, it will imply only those remedies “‘normally available for contract actions.’” While the Court acknowledged that the [Restatement](#) of Contracts, a legal treatise, discusses “the special rule that ‘recovery for emotional disturbance’ is allowed” when the contract or breach at issue is “‘of such a kind that serious emotional disturbance was a particularly likely result,’” the Court described that relief as an exception and an unusual or narrowly applied remedy. The Court also stated that the Restatement “does not reflect the consensus rule,” pointing to legal commentaries discussing the absence of a majority rule for emotional harm in contract breach actions.

The [Court’s opinion drew a dissent](#) by Justice Breyer, joined by Justices Sotomayor and Kagan. While the dissenting Justices agreed that its precedent instructed the Court to apply contract law, they disagreed with the majority’s application of the relevant doctrine. Traditional contract law, the dissent stated, made emotional distress damages available where a contract breach was “‘particularly likely to result in serious emotional disturbance.’” In such contracts—like a contract for marriage, or the delivery of a sensitive telegram—emotional distress damages were traditionally available to address the non-economic nature of a breach in those circumstances. Civil rights statutes addressing “intentional invidious discrimination”—such as a teacher’s sexual assault of a student—also have “clearly nonpecuniary” purposes, the dissent stated, and are analogous to those contracts whose breach is likely to result in emotional suffering. Given that emotional distress damages were traditionally available for such types of breach, the dissent contended that contract law supported the conclusion that “victims of intentional violations of these antidiscrimination statutes can recover compensatory damages for emotional suffering.” Under the majority’s decision, the dissent stated, victims of discrimination must now provide proof of economic harm to recover compensatory damages, “even though the primary harm inflicted by discrimination is rarely economic.” The dissent further asserted that the Court’s interpretation departed from the remedial schemes of other civil rights statutes for which Congress expressly allowed recovery for emotional harm, such as Title VII of the Civil Rights Act of 1964.

Implications for Other Civil Rights Statutes

While the Supreme Court in *Cummings* addressed emotional distress damages in the context of a suit brought under Section 504 and Section 1557, its reasoning in that case could be read to foreclose emotional distress damages for claims under Title VI, Title IX, and the Age Discrimination Act.

The Court’s analysis in *Cummings* arguably has the most immediate effect on Title VI, as the Court held that emotional distress damages are not recoverable under Section 504, which defines its remedies as those available under Title VI. In addition, and more broadly, the Court’s reasoning in *Cummings* also

appears to implicate emotional distress damages under Title IX and the Age Discrimination Act. Under the rationale of *Cummings*, entities subject to Section 504 and Section 1557 lack adequate notice that they could be liable for emotional distress damages in a private suit because common law contract doctrine does not typically award such damages for a contract breach. Because the [Court interprets Title IX](#) to require clear notice to covered entities, and the text of Title IX also does not address emotional distress damages, some litigants might argue that the rationale of *Cummings* likewise forecloses emotional distress damages in Title IX suits because covered entities lack the requisite notice that they could be liable for emotional distress damages in a private suit under that statute. To the extent lower courts construe the Age Discrimination Act as Spending Clause legislation modeled after Title VI and Title IX, litigants might raise such arguments under the Age Discrimination Act as well.

The Court's *Cummings* decision, however, does not change the availability of injunctive relief in such cases, nor attorney's fees authorized under other statutory provisions expressly permitting that recovery in suits brought under Title VI and Title IX (*see* [42 U.S.C. § 1988\(b\)](#)), Section 504 (*see* [29 U.S.C. § 794a\(b\)](#)), and the Age Discrimination Act (*see* [42 U.S.C. § 6104\(e\)](#)).

Considerations for Congress

Congress has broad authority to determine the remedies available for violations of federal statutes. At present, the statutory text in Section 504, Section 1557, Title VI, and Title IX does not specify the availability of compensatory relief for emotional harm, punitive damages, or any other relief apart from attorney's fees, nor does the text explicitly foreclose certain types of relief. (As noted above, attorney's fees are expressly made available in provisions addressing the recovery of those fees in private suits under Title VI, Title IX, Section 504, and the Age Discrimination Act.) Apart from attorney's fees and injunctive relief, the Age Discrimination Act also lacks text addressing relief in a private suit.

Congress could amend some or all of these statutes to explicitly provide for or foreclose specific forms of relief. Title VII of the Civil Rights Act, for example, contains statutory text specifically providing for court-ordered [equitable relief such as back pay awards, injunctive relief, punitive damages, and compensatory damages](#) for "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." Should there be legislative interest in amending civil rights statutes enacted based on Congress's power, Supreme Court precedent applicable to such legislation requires that the remedies available for liability are set out [in clear and unambiguous terms](#). In [an earlier decision](#), for example, the Court held that "expert fees" were not recoverable in a private suit brought under another Spending Clause statute because its statutory text did not expressly refer to expert fees or otherwise plainly indicate that such fees were recoverable.

More generally, while the Supreme Court has previously construed the remedies under Title VI, Title IX, Section 504, and the Age Discrimination Act in a parallel manner, and Congress has previously cross-referenced certain remedies to those available under one of those statutes, Congress could choose to differentiate among these statutes in terms of the remedies available. Congress could also provide specific remedies depending on the type of discriminatory conduct or nature of the claim at issue.

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