

Supreme Court: Emotional Distress Damages Unavailable Under Federal Anti-Discrimination Laws

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Notably, however, this decision does not apply to Title VII, which applies to entities regardless of whether they receive such funding.

But the Supreme Court's decision is also interesting for reasons unrelated to antidiscrimination law. Reading between the lines, the reasoning in the majority decision (along with the concurring opinion) may provide a window into how certain Supreme Court justices may view a challenge to the federal contractor vaccine mandate, if and when it reaches the high court.

But let's first turn to the case at hand.

Factual and Procedural Background

The Supreme Court's decision arises out of a case—*Cummings v. Premier Rehab Keller*—in which a plaintiff, who is deaf and legally blind, was denied an ASL interpreter at a physical rehabilitation facility operated by a small business in Texas. The plaintiff filed suit under the Rehabilitation Act and ACA after the denial, claiming only emotional distress damages.

Both the District Court and Fifth Circuit Court of Appeals found dismissal of her claim proper on the basis that neither the Rehabilitation Act nor the ACA allowed recovery of emotional distress damages. She then appealed to the Supreme Court, which agreed to review her case.

Majority Decision

In a 6-3 decision, the Supreme Court affirmed dismissal of her claims. In a majority opinion authored by Chief Justice John Roberts, the Court held emotional distress damages were not recoverable under federal antidiscrimination laws like the Rehabilitation Act or the ACA.

Justice Roberts' opinion began with the recognition that none of the laws at issue explicitly provide for recovery of emotional distress damages (or a right to file a lawsuit). But it was clear from prior cases interpreting these laws that individuals could sue for *some* damages. So, the question remained: what *types of damages*?

In his opinion, Justice Roberts adopted the “contract analogy” reasoning used by the Supreme Court in a prior decision that held punitive damages were unavailable under the same statutes. In that vein, he noted there is essentially a “contract” in place between the government and entities receiving federal funding as it relates to these laws. Such contracts involve the federal government putting conditions or rules in place—including the antidiscrimination prohibitions—on entities that receive funding from it.

Viewed through this lens, the Court asked whether such entities “accepted” the possibility of liability for emotional distress damages under these antidiscrimination laws. Finding that such laws did not provide “clear notice” of such potential liability, Justice Roberts ultimately concluded the answer was “no.” Accordingly, he held emotional distress damages were unavailable.

Concurring Decision and Takeaways

Justice Brett Kavanaugh authored a brief, 1-page concurring opinion, joined by Justice Neil Gorsuch. In it, Justice Kavanaugh confirmed he agreed with the result reached but clarified he would have reached it differently. Characterizing the “contract-law analogy” as an “imperfect way to determine the remedies for this implied cause of action,” Justice Kavanaugh stated he “would reorient the inquiry to focus on a background interpretive principle rooted in the Constitution’s separation of powers. Congress, not this Court, creates new causes of action.”

This concurrence undoubtedly signals Justice Kavanaugh’s disagreement with prior precedent wherein the court recognized the *implied* right of individuals to file lawsuits under these statutes (as none of the statutes contain explicit provisions allowing such suits).

But, reading between the lines, his concurrence may also subtly signal a disagreement or difference in perspective between him and the Chief Justice about the scope of federal government authority to place rules and restrictions on entities receiving federal funding, such as federal contractors. One could see the “contract analogy” reasoning (as broadly stated in the majority opinion) being used by the federal government to argue it has authority to mandate vaccination as part of federal contracting. Thus, it would be unsurprising if Justice Kavanaugh intentionally distanced himself from the majority opinion in this regard.

Both the Eleventh Circuit and Eighth Circuit are currently weighing challenges to the federal contractor vaccine mandate. Decisions in these appeals are expected within the next few weeks. And it is widely expected that these challenges will reach the Supreme Court once decided at the appellate level.

If such challenges reach the high court, the key Justice vote will likely be Chief Justice John Roberts, as it was in the healthcare vaccine mandate case. And while this case involves different legal questions, it does generally touch on the authority of the federal government to impose conditions on entities receiving federal funds. The law and reasoning in his majority opinion may speak to how he views any such challenge to the federal contractor vaccine mandate. But only time will tell.

Keep checking back for further updates.