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Media Contact: Glenn Lammi | glammi@wlf.org | 202-588-0302

WLF Urges Supreme Court Not To Create A Remedy Congress Did Not Authorize

(Cummings v. Premier Rehab Keller)

“Companies that accept federal funding should not have to guess at their potential liability under laws that they otherwise need not comply with.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC—Washington Legal Foundation (WLF) today filed an *amicus curiae* brief urging the U.S. Supreme Court to hold that plaintiffs cannot recover emotional-distress damages under Section 504 of the Rehabilitation Act of 1973. The Eleventh Circuit has held that plaintiffs can pursue emotional-distress damages under Section 504. This decision conflicts with a well-reasoned Fifth Circuit opinion. WLF’s brief urges the Supreme Court to side with the Fifth Circuit and not create uncertainty for businesses accepting federal funds.

The appeal arises from a disabled woman’s suit against a physical rehabilitation facility. The plaintiff claims that the facility violated Section 504 by not providing her with an American Sign Language interpreter. She sought money damages for the emotional disturbance she suffered as a result of not having an ASL interpreter. Under the Patient Protection and Affordable Care Act, those who see providers that receive federal funds can sue for disability discrimination. But rather than provide an independent remedy, the ACA merely incorporates Section 504’s remedy provision.

As WLF’s brief shows, the Supreme Court has declined to create a federal remedy when other remedies are available. Here, all 50 States and the District of Columbia recognize the tort of intentional infliction of emotional distress. The elements necessary to prove the tort are satisfied when emotional-distress damages would be available at common law for breach of contract. Because the Court has held that plaintiffs can recover under Section 504 only those damages available at common law for breach of contract, the tort will allow recovery in cases of insidious discrimination.

WLF’s brief also explains the separation-of-powers concerns that arise from allowing emotional-distress damages under Section 504. As the Court implied the private right of action under Section 504, the Court should be wary of expanding potential remedies. Otherwise, more remedies will be available for causes of action Congress did not create than for causes of action Congress authorized. WLF therefore urges the Supreme Court to bar emotional-distress damages under Section 504.

Celebrating its 44th year, WLF is America’s premier public-interest law firm and policy center advocating for free-market principles, limited government, individual liberty, and the rule of law.

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