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In Victory For WLF, Supreme Court Holds Emotional-Distress Damages Are Unavailable Under Rehabilitation Act

(Cummings v. Premier Rehab Keller)

“The Supreme Court’s decision reflects the reality that emotional-distress damages are generally unavailable for breach of contract.”

—John Masslon, WLF Senior Litigation Counsel

WASHINGTON, DC— The U.S. Supreme Court today correctly resolved a circuit split on the scope of damages available under Section 504 of the Rehabilitation Act of 1973. The 6-3 ruling was a victory for Washington Legal Foundation, which filed an *amicus curiae* brief urging the Court to affirm a Fifth Circuit decision denying emotional-distress damages under Section 504.

The case arose when a disabled woman sued a physical rehabilitation facility claiming that the facility violated Section 504 by not providing her with an American Sign Language interpreter. She sought money damages for the emotional distress she suffered as a result of not having an ASL interpreter. Today, the Court held that she could not recover emotional-distress damages for a Section 504 violation.

As WLF’s brief showed, 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 explained the separation-of-powers concerns that arise from allowing emotional-distress damages under Section 504. Justice Kavanaugh’s concurring opinion, which Justice Gorsuch joined, focused on this argument. It explained that the Court’s recent separation-of-powers precedent calls into question prior decisions implying remedies in Spending Clause cases so long as they were available at common law for breach of contract.

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