No. 21-1010

In the Supreme Court of the United States

TRACY NIX,

Petitioner,

v.

ADVANCED UROLOGY INSTITUTE OF GEORGIA, P.C.

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondent restates the Question Presented as follows:

Whether the Court should grant review when: (1) the circuits agree nominal damages claims under Spending Clause statutes require evidence of intentional discrimination; (2) the decision below comports with this Court's holding that non-intentional violations of Spending Clause statutes support only injunction and declaratory judgment claims; and (3) Petitioner voluntarily dismissed her injunction and declaratory judgment claims?

RULE 29.6 DISCLOSURE STATEMENT

Advanced Urology Institute of Georgia, P.C. has no parent corporation, and no publicly held company owns 10% or more of its stock.

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BRIEF IN OPPOSITION

The courts below held Petitioner's failure to provide evidence of intentional discrimination entitled Respondent to summary judgment on Petitioner's statutory damages claims, brought pursuant to the Rehabilitation Act and the Patient Protection and Affordable Care Act.

The Petition's primary basis for review rests on an asserted two-circuit split, between the Eleventh and Second Circuits. According to the Petition, the two circuits differ regarding the requirements for nominal damages claims under Spending Clause statutes.

There is no such split. Both circuits recognize the same rule: Damages claims under Spending Clause statutes require proof of intentional discrimination; non-intentional discrimination supports only injunction and declaratory judgment claims. Petitioner's assertion of a split results from her mistaken reliance on a Second Circuit case with different facts, not a different rule of law. Indeed, the Eleventh and Second Circuits' uniform rule of law derives from this Court's consistent holding that, absent intentional discrimination, only injunction and declaratory judgment claims are available under Spending Clause statutes. Petitioner presents no contrary authority.

In the district court, Petitioner withdrew her claims for injunction and declaratory judgment. As a result, Petitioner's failure to present evidence of intentional discrimination entitled Respondent to summary judgment on all her statutory claims.

STATEMENT

I. Statutory Background

The Rehabilitation Act (RA) prohibits disability discrimination by federal fund recipients. 29 U.S.C. § 794. The Patient Protection and Affordable Care Act (ACA) prohibits the same discrimination and incorporates the RA's "enforcement mechanisms." 42 U.S.C. § 18116(a). The RA incorporates the enforcement mechanisms—*i.e.*, the remedies, procedures, and rights—for claims under Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq*.; 29 U.S.C. § 794A(a)(2). This Court has determined the rights and remedies for Title VI actions. *See, e.g., Guardians Ass'n. v. Civil Serv. Comm'n of New York*, 103 S.Ct. 3221, 3230 (1983).

II. Factual Background

Respondent is a medical practice specializing in urological health. (Pet. App. 9a). On February 5, 2018, Petitioner contacted Respondent for an appointment. (Pet. App. 9a). Due to the emergency nature of Petitioner's symptoms, Respondent scheduled Petitioner for a February 7, 2018 appointment. (*Id*.). On February 6, 2018, Petitioner first informed Respondent she needed an American Sign Language interpreter for her appointment the next day. (*Id.* at 8a-9a). After discussion, Respondent's Vice-President of Clinical Strategy, its Chief Executive Officer, and its Surgery Center Director concluded there was not sufficient time to procure an interpreter through their usual agency. (*Id*. at 9a). As they attempted to find an

interpreter, the Vice-President of Clinical Strategy learned one of Respondent's employees had a friend, Dalton Belew, who "could do basic signing." (*Id.* at 10a). Based upon a mistaken belief Mr. Belew had interpreted for another medical practice, Respondent asked him to interpret for Petitioner. (*Id.*). During the appointment, Petitioner experienced difficulties communicating with Mr. Belew, eventually resorting to writing and gesturing to communicate with the medical staff. (*Id*. at 11a).

III. Procedural Background

Petitioner filed a complaint on October 5, 2018, and an Amended Complaint on January 3, 2019. (Pet. App. 11a-12a). The Amended Complaint sets forth: injunction claims pursuant to Title III of the Americans with Disabilities Act; injunction and compensatory damages claims pursuant to the RA; injunction and compensatory damages claims pursuant to the ACA; and injunction, punitive, and compensatory damages claims pursuant to fraud, negligence, and intentional infliction of emotional distress common law. (Pet. App. 12a, 29a, 31a, 32a).

On March 18, 2020, Respondent moved for summary judgment on all claims. (Pet. App. 12a). In her opposition brief, Petitioner expressly withdrew her statutory injunction claims. (*Id*. at 15a). Petitioner asserted in her opposition brief that she continued to make claims for declaratory judgment, but she subsequently also withdrew those claims. (*Id.*; R. 89 at

12-13).[1] The district court granted summary judgment on all claims. As regards Petitioner's statutory damages claims, the district court found Petitioner had not presented evidence of intentional discrimination, and that Petitioner could not prevail on damages claims (nominal or otherwise) absent such evidence. (*Id*. at 25a, 27a-28a).

Petitioner appealed the summary judgment order regarding her statutory claims. The Eleventh Circuit affirmed the district court's grant of summary judgment. The Eleventh Circuit held that what remained of Petitioner's statutory claims (including for nominal damages) failed absent evidence of intentional discrimination, and that Respondent is entitled to summary judgment because Petitioner presented no such evidence. (Pet. App. 7a). The Eleventh Circuit also denied rehearing and rehearing en banc. (Pet. App. 39a).

[1] "R.__" refers to the district court's docket entries and related page numbers or paragraphs.

REASONS FOR DENYING THE PETITION

I. The Purported Two-Circuit Split Does Not Exist.

Petitioner's certiorari request relies on an asserted split between the Eleventh Circuit and the Second Circuit. Petitioner claims the two circuits differ regarding the availability of nominal damages claims pursuant to Spending Clause statutes.

There is no such split. Both circuits recognize the same rule: Damages claims under Spending Clause statutes require proof of intentional discrimination; non-intentional discrimination can support only injunction or declaratory judgment claims. In the decision below, the Eleventh Circuit thus held Petitioner could not recover nominal damages because RA and ACA monetary damages claims require evidence of intentional discrimination and she had none. "Nix's cause of action distinguishes between injunctive and monetary relief based on whether the plaintiff proves intentional discrimination." (Pet. App. 7a). The Second Circuit recognizes the same rule: "Plaintiff's [RA, ADA, and FHA] damages claims must be dismissed because it is well-settled that injunctive relief is the only relief available for non-intentional violations of these statutes." *Forziano v. Indep. Group Home Living Program, Inc.*, 613 F. App'x 15, 18-19 (2d Cir. 2015).

The Petition's incorrect assertion of a split results from a misunderstanding of the Second Circuit's opinion in *Tolbert v. Queens College*, 242 F.3d

58 (2d Cir. 2001). To be sure, *Tolbert* does state: "[A] plaintiff who has proven a civil rights violation, but has not proven *actual* compensable injury, is entitled as a matter of law to an award of nominal damages." *Id.* at 74 (emphasis supplied). But the jury in *Tolbert* found Mr. Tolbert *had proved intentional discrimination*. *Id.* at 67, 78. A key issue on appeal was how to reconcile that finding with the jury's finding that Mr. Tolbert failed to prove any resulting actual damages. *Id.* at 74. The district court entered judgment as a matter of law for defendant. In reversing, the Second Circuit's statement thus merely recognizes nominal damages as a substitute for *actual* damages, when the plaintiff has proved the intent required for a damages claim but has not proved he actually suffered such damages. The different result in *Tolbert* regarding the award of nominal damages is a consequence of different facts, not different law. Mr. Tolbert had evidence of intentional discrimination; Petitioner did not.

II. There Is No Departure From "Settled Practice."

Petitioner next claims that the decision upsets "settled practice." Even if "settled practice" were a Rule 10 consideration, it would not help Petitioner. Indeed, Petitioner cites no authority from any circuit holding that a claim for nominal damages pursuant to the RA or ACA can survive summary judgment without evidence of intentional discrimination.

The actual "settled practice" of federal courts comports with the decision below. In *Guardians*, regarding claims pursuant to Spending Clause

statutes, this Court held: "[A]bsent clear congressional intent or guidance to the contrary, the relief in private actions should be limited to declaratory and injunctive relief ordering future compliance with the declared statutory and regulatory obligations. Additional relief in the form of money or otherwise based on past unintentional violations should be withheld. . . [O]nly limited injunctive relief should be granted as a remedy for unintended violations of statutes passed pursuant to the spending power." 103 S.Ct. at 3230, 3232 (analyzing damage claims available under Title VI). Numerous decisions cite *Guardians* as authority in determining what kind of damages claims are available in Spending Clause statute cases. *See, e.g., Gebser v. Lago Vista Indep. Sch. Dist.*, 118 S.Ct. 1989, 1997-98 (1998); *Meagley v. City of Little Rock*, 639 F.3d 384, 389 (8th Cir. 2011); *Rendelman v. Rouse*, 569 F.3d 182, 188 (4th Cir. 2009); *Nieves-Marquez v. Puerto Rico*, 353 F.3d 108, 126 n. 20 (1st Cir. 2003); *Horner v. Ky. High Sch. Athletic Ass'n.*, 206 F.3d 685, 689-93 (6th Cir. 2000); *Smith v. Metro. School Dist. Perry Tp.*, 128 F.3d 1014, 1028-29 (7th Cir. 1997); *Carter v. Orleans Parish Public Sch.*, 725 F.2d 261, 264 (5th Cir. 1984); *Wood v. President and Trustees of Spring Hill College in the City of Mobile*, 978 F.2d 1214, 1219 (11th Cir. 1992).[2]

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[2] These decisions may use different words to describe the *Guardians* rule, but not in any situation where the verbiage choice matters. That is, some decisions state the rule as non-intentional violations being entitled only to injunction or declaratory judgment, while some phrase it in terms of damages (or monetary or compensatory damages) claims requiring intentional discrimination. Petitioner cites no cases supporting a "settled practice" of awarding RA or ACA claimants nominal

Rather than addressing the nominal damages issue raised by her question, Petitioner bases her claim of "settled practice" on a different, immaterial issue. Petitioner asserts that a plaintiff may have an RA or ACA claim without proof of intentional discrimination. That may be so, but the decision below never departs from any such "settled practice." The Eleventh Circuit never held that the RA or ACA proscribes or remedies only intentional discrimination. Consistent with *Guardians*, the Eleventh Circuit simply held that proving intentional discrimination is required for RA and ACA *damages* claims (which were the only claims before it). As regards the injunction and declaratory judgment claims that *Guardians* does permit for non-intentional discrimination, the Eleventh Circuit had no occasion to address that issue other than to note Petitioner had voluntarily withdrawn such claims.

III. Petitioner Overstates The Importance Of The Issue.

Petitioner's policy argument similarly fails to establish an issue requiring this Court's attention. Petitioner suggests that nominal damages must be available to her, lest such violations of the RA and ACA go without "repercussions." (Pet. 23). Not so.

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damages absent evidence of intentional discrimination, nor any supporting her implicit suggestion that an opinion holding that compensatory damages claims require intentional conduct somehow implies that nominal damages claims do not. The original rule set forth in *Guardians* makes clear non-intentional claims support only injunction and declaratory judgment claims.

First, intentional violations are obviously subject to repercussion in the form of damages claims. Second, unintentional violations also are already subject to judicial repercussion, in the form of injunction and declaratory judgment. The facts that Petitioner has no evidence to support *her* damages claims, and that Petitioner voluntarily dismissed *her* claims for injunction and declaratory judgment, do not warrant overstretching the statutes or undoing settled law. Indeed, Petitioner's identification of a nominal damages award as a "judicial declaration that the plaintiff's right has been violated" reinforces Respondent's point (Pet. 22). If nominal damages serve as a judicial declaration of rights, the availability of direct declaratory judgment (and injunction) claims, including for unintentional discrimination, makes the expansion of the settled law and this Court's review particularly unnecessary.

IV. Summary Judgment Was Correctly Granted.

A. Petitioner Provided No Evidence Of An Element Of Her Claim.

A federal district court correctly grants summary judgment where the plaintiff fails to provide evidence supporting an essential element of her claim. *Celotex Corp. v. Catrett*, 106 S.Ct. 2548, 2552 (1986). Petitioner brought RA and ACA compensatory damages claims, as well as RA, ACA, and ADA injunction and declaratory judgment claims. Petitioner withdrew her statutory injunction and declaratory judgment claims. The remaining statutory

claims—*i.e.*, Petitioner's damages claims under the RA and ACA—require proving intentional discrimination, which in this context means proving deliberate indifference. (Pet. App. 4a, 7a, 28a). Petitioner did not present the district court any evidence of deliberate indifference or other intentional discrimination. (Pet. App. 5a-7a, 25a). Accordingly, the decisions below are correct.

B. Petitioner's Contract Law Analogy Does Not Help Her.

Despite decades of decisions addressing damages claims pursuant to Spending Clause statutes, Petitioner cites no authority—in or out of the Eleventh Circuit—that if followed would have precluded summary judgment. Instead, Petitioner's claim of error relies on analogizing her statutory claims to contract claims.

Contract law, however, does not govern the propriety of summary judgment on Petitioner's statutory claims. Moreover, Petitioner's argument-by-analogy fails even on its own terms. First, it was in the very context of analogizing to contract claims that this Court concluded that only injunction and declaratory judgment claims are available in Spending Clause statute cases, absent evidence of intentional discrimination. *See Guardians*, 103 S.Ct. at 3231-32 ("This legislative history clearly shows that Congress intended Title VI to be a typical 'contractual' spending power provision."); *see also Pennhurst State Sch. and Hosp. v. Halderman*, 101 S.Ct. 1531, 1539-40 (1981) (describing Spending Clause legislation as "in the

nature of a contract"), *cited in, Guardians*, 103 S.Ct. at 3232 ("In summary, there is no legislative history that in any way rebuts the *Pennhurst* presumption that only limited injunctive relief should be granted as a remedy for unintended violations of statutes passed pursuant to the spending power."). Second, in response to prior efforts to overstretch the contract law analogy, this Court has emphasized that Spending Clause statutory claims are not contract claims, that contract-law principles do not apply to all issues raised by such claims, and that the contract analogy has only been used to limit liability. *Sossamon v. Texas*, 131 S.Ct. 1651, 1661 (2011). Third, Petitioner's reliance on the Restatement only reinforces Respondent's position. The Restatement recognizes nominal damages in contract cases as an equivalent substitute for compensatory damages—*i.e.*, a remedy awarded where the plaintiff proves breach of contract (but does not or cannot show actual resulting damages). Restatement (Second) of Contracts, §346(2) (Am. Law. Inst. 2021). Applying the contract analogy thus yields a requirement that, to become entitled to nominal damages, a RA or ACA plaintiff must prove the same cause of action required for compensatory damages. Because Petitioner could not prove intentional discrimination, which is undisputedly required for compensatory damages claims, the contract analogy reinforces that the courts below correctly concluded she is not entitled to nominal damages.

C. Petitioner's "Precedent" Claim Does Not Withstand Scrutiny.

Petitioner's final argument asserts that the decisions below somehow conflict with this Court's precedent. They do not.

Petitioner cites the venerable *Marbury v. Madison* for the proposition that "every right, when withheld, must have a remedy, and every injury its proper redress." 5 U.S. 137, 147 (1803). Petitioner does not cite, however, to anything in *Marbury* answering the question as to exactly what remedy and redress are "proper" for violation of a Spending Clause statute. Nor can Petitioner dispute that violations of the RA and ACA are, in fact, already subject to redress through various remedies. Petitioner's real complaint seems to be about what evidence is required to prove claims for particular remedies. The decisions below, however, do not conflict with this Court's precedent on that point—they follow it.

Petitioner's citations to *Franklin v. Gwinnett Cty. Public Sch.*, 112 S.Ct. 1028, 1033 (1992) and *Barnes v. Gorman*, 122 S.Ct. 2097, 2100 (2002) only reinforce Respondent's position. First, Petitioner repeats the mistake she made citing *Marbury* when she cites *Franklin* for the generic proposition that "federal courts may use any available remedy to make good the wrong done." In fact, it is in *Barnes* that this Court points out that, despite its recognition in *Franklin* of "the traditional presumption in favor of any appropriate relief for violation of a federal right," the Court did not in *Franklin* "describe the scope of

'appropriate relief.'" *Barnes*, 122 S.Ct. at 2100. Second, *Barnes* makes clear that "any available remedy" for a Spending Clause statute violation does not mean that all remedies are "available," as it holds punitive damages are not available. Third, both *Franklin* and *Barnes* cite the *Pennhurst*, *Guardians*, *Gebser* line of cases that stand for the proposition that "only limited injunctive relief should be granted as a remedy for unintended violations of statutes passed pursuant to the spending power." *Guardians*, 103 S.Ct. at 3233 (citing *Pennhurst*).

Petitioner's reliance on *Uzuegbunam v. Preczewski*, 141 S.Ct. 792 (2021) is particularly misplaced. True, the decision discusses nominal damages, but that superficial connection is where the similarity ends. First, unlike *Guardians*, *Uzuegbunam* does not involve a Spending Clause statute at all, much less what kind of evidence is required to prove particular claims pursuant to such statutes. Second, *Uzuegbunam* addresses the requirements for Article III standing, which is not at issue in this case. Indeed, *Uzuegbunam* addresses only one of the requirements for Article III standing (redressability), asking whether a request *only* for nominal damages meets that requirement. The decisions below assume Petitioner would have been entitled to nominal damages (despite her *lack* of a request for them in the Amended Complaint), if only she had proved intentional discrimination. Third, the *Uzuegbunam* Court itself makes explicit that "[o]ur holding concerns only redressability, and that "[i]t remains for the plaintiff to establish the other elements of standing . . . [and to] plead a cognizable

cause of action." *Id.* at 802. If *Uzuegbunam* does not address what it takes to plead any cause of action, it certainly does not address what it takes to prove a particular RA or ACA claim, nor conflict with the holdings of this Court or the Eleventh Circuit that do address the salient issue.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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