

No. ____-____

IN THE
Supreme Court of the United States

»»««

JASON DOHERTY,

Petitioner,

v.

PATRICIA BICE, INDIVIDUALLY AND AS DEAN OF STUDENT AFFAIRS
FOR PURCHASE COLLEGE, STATE UNIVERSITY OF NEW YORK,
JARED STAMMER, INDIVIDUALLY AND AS CONDUCT OFFICER FOR
PURCHASE COLLEGE, STATE UNIVERSITY OF NEW YORK, QUI QUI
BALASCIO, INDIVIDUALLY AND AS ASSOCIATE DEAN OF STUDENT
AFFAIRS FOR PURCHASE COLLEGE, STATE UNIVERSITY OF NEW YORK,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Compensatory Damages Available Under Title II of the ADA include Compensation for Emotional Distress?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jason Doherty (“Petitioner”) respectfully requests the issuance of a writ of certiorari to review the Judgment of the United States Court of Appeals for the Second Circuit.

DECISION BELOW

The Decision of the United States Court of Appeals for the Second Circuit is published at 101 F.4th 169 (2d Cir. 2024) and is reproduced at Pet. App. 1a.

JURISDICTION

The Second Circuit entered Judgment on May 10, 2024. See, Pet. App. 1a. This Court’s jurisdiction is invoked under 28 U.S.C. §1254.

FEDERAL RULE INVOLVED

Title II (“Title II”) of the American with Disabilities Act (“ADA”). 42 U.S.C. §§12131-12133.

INTRODUCTION

After discovery was complete in this matter, this Court decided the case of Cummings v. Premier Rehab Keller, P.L.L.C., 142 S. Ct. 1562 (2022) (“Cummings”). The Cummings Court considered the very limited issue of whether compensatory damages for emotional distress are available under §504 of the Rehabilitation Act, 42 U.S.C. §12133, a statute that was enacted by Congress pursuant to the Spending Clause. The Second Circuit here improperly expanded Cummings to preclude emotional distress damages sought pursuant to a completely different statute than the one that was involved in Cummings - Title II of the ADA.

This Court’s intervention is needed to interpret an extremely important issue of law and prevent a dangerous and erroneous extension of Cummings. The circumscribing of remedies is contrary to Congress’ purpose in enacting anti-discrimination statutes, and these statutes would eventually be rendered meaningless. Guidance is needed to prevent: 1) the deprivation of a vital remedy to victims; 2) the destruction of a key mechanism for preventing future discrimination; and 3) a patchwork of different laws throughout the Country. Additionally, the Second Circuit’s decision here creates a conflict with other Circuits around the Country that have traditionally permitted recovery of emotional distress damages pursuant to Title II of the ADA. A Uniform body of law is urgently needed to prevent piecemeal determinations. This Court should grant certiorari, reject the Second Circuit’s outlier approach and allow emotional distress

damages to continue to be a form of relief available under the ADA, even after Cummings.

STATEMENT OF THE CASE

Plaintiff-Petitioner Jason Doherty (“Petitioner”) is an individual on the Autism spectrum who attended SUNY Purchase. By the Amended Complaint dated March 13, 2019 (“Amended Complaint”) Petitioner alleges that the Defendants, current and former employees of SUNY Purchase, violated his due process rights and rights under Title II of the American with Disabilities Act of 1990 (the “ADA”) by issuing “No Contact Orders” requested by students who sought to ostracize him because of his disability. At the time the No Contact Orders were issued there was no requirement for the student requesting one to give a reason and there was no process or protections for the misuse of No Contact Orders against disabled students like the Petitioner.

By Opinion and Order dated September 16, 2020, the United States District Court for the Eastern District (Roman, J.) granted, in part, the Defendants’ motion and dismissed the Petitioner’s due process cause of action. However, the Court expressly permitted the ADA claim to proceed. After fact discovery was completed, this Court issued the decision in Cummings v. Premier Rehab Keller P.L.L.C., 142 S. Ct. 1562 (2022) (“Cummings”), holding that emotional distress damages may not be recovered under the Rehabilitation Act. The District Court implemented a stay and permitted Defendants to move to dismiss the Petitioner’s ADA

claims for monetary and equitable relief, with Defendants relying on Cummings.

Thereafter, the District Court, by Opinion and Order filed August 9, 2023, granted the Defendants' motion and dismissed the Petitioner's ADA claims with prejudice on the basis that the claim for compensatory damages is barred by Cummings. Relying on Cummings, the District Court cited language in the ADA that the "remedies, procedures, and rights" in the Rehabilitation Act shall be the "remedies, procedures and rights" the ADA provides to any person alleging discrimination.

The Petitioner appealed this determination arguing that the District Court's applying the limitation of contract damages to emotional distress claims makes no sense for statutes that are not based on a party's status as the recipient of federal funds. The ADA is a generally applicable anti-discrimination law and is not based on the federal government's spending power. Further, nowhere in the ADA is there any reference to a limitation on the type of damages recoverable, and the Rehabilitation Act does permit compensatory damages. In fact, the ADA allows remedies in excess of the Rehabilitation Act because it allows claims against non-recipients of federal funds.

The Circuit Court Decision

The United States Circuit Court of Appeals for the Second Circuit affirmed the District Court's determination in an Order dated May 10, 2024. 101 F.4th 169. The Circuit Court agreed with the District

Court that the Petitioner's claims for emotional distress damages "failed as a matter of law because such damages are unavailable under Title II of the ADA after the Supreme Court's decision in *Cummings*". *Id.*, at 170. The Circuit Court concluded that "because recovery for emotional distress damages is unavailable under the Rehabilitation Act's cause of action, we now hold that such recovery is likewise unavailable under Title II of the ADA, which explicitly borrows the "remedies, procedures, and rights" of the Rehabilitation Act". *Id.* at 170.

REASONS FOR GRANTING THE WRIT

This case satisfies this Court's traditional certiorari criteria. First, the issue of law directly involved is critical and recurring in defining the relief available under frequently litigated antidiscrimination laws. Additionally, there is a conflict in the Circuits regarding availability of emotional distress damages in actions under Title II of the ADA. Finally, the Second Circuit's determination is wrong inasmuch as barring emotional distress damages would undermine the entire purpose of antidiscrimination laws enacted pursuant to the Commerce Clause.

A. The Availability of Damages, Particularly in ADA Cases, is A Critical and Recurring Question Of Federal Law

In recent years, this Court has repeatedly granted review to decide whether damages are

available for a violation of a federal statute. See, e.g., Warner Chappell Music, Inc. v. Sherman Nealy, __ U.S. __, 144 S. Ct. 478 at *1 (2023) (No. 22-1078) (availability of damages under 17 U.S.C. 507(b)); Cummings, 142 S. Ct. at 1569 (availability of damages under 29 U.S.C. § 794(a); 42 U.S.C. § 18116); Tanzin v. Tanvir, 192 U.S. 43, 45 (2020) (availability of damages under 42 U.S.C. § 2000bb).

Now, this Court’s review is warranted on the issue of whether emotional distress damages are available in ADA Title II cases. This issue involves a vitally important question of federal law that has not been, but should be, settled by this Court. This issue is critical to the effective enforcement of the antidiscrimination laws.

Title II of the ADA ensures that people with disabilities are not excluded from public facilities. See, State of Tennessee v. Lane, 541 U.S. 509, 513-14 (2004). Statutory schemes that seek to end discrimination hinge on the availability of damages. Emotional distress damages have been an important form of relief for individuals with disabilities who have suffered discrimination. As Justice Breyer noted in his dissenting opinion in Cummings, “Often, emotional injury is the primary (sometimes the only) harm caused by discrimination.” Id.

Because Title II of the ADA, via its cross-references, is ultimately silent as to the scope of available remedies, a court must apply the general rule: that any appropriate relief is available to “make good the wrong done” for violations of a

federal right. See Franklin v. Gwinnett County Public Schools, 503 U.S. 60, 69 (1992) (quoting Bell v. Hood, 327 U.S. 678 (1946)). This presumption only yields to the “clear direction from Congress”. Id., at 70.

Nothing in Cummings limited the relief available under Title II of the ADA. In Cummings, this Court considered the narrow issue of whether compensatory damages were recoverable under Section §504 of the Rehabilitation Act. The Cummings Court made clear that its holding only applied to Spending Clause legislation and it therefore does not apply to the ADA. This Court’s guidance is now needed to limit the illogical expansion of Cummings which could result in the complete annihilation of emotional distress damages for future claims brought under Title II of the ADA, in addition to other antidiscrimination statutes.

It is difficult to harmonize the extension of Cummings to Title II of the ADA with the basic purposes that antidiscrimination laws seek to serve, including the vindication of human dignity. Victims of discrimination may suffer profound emotional injury without any corresponding pecuniary harms. The expansion of Cummings would limit victims of discrimination to recover damages only if they can prove that they have suffered economic harm, even though the primary harm inflicted by discrimination is rarely economic. This may leave those victims with no remedy at all.

This is an especially important issue of law because it is undisputed that the ADA was a step forward in disability advocacy and protecting against discrimination. The threat of narrowing the remedies available to victims of discrimination, particularly when noneconomic injuries are present, might disincentivize plaintiffs from bringing their claims. The extension of *Cummings* to Title II of the ADA would clearly restrict the statute's usefulness. Claims of discrimination may go unaddressed because of lack of available damages. This is because many times only emotional distress damages are often the only appropriate compensation. To hold that emotional distress damages are unavailable to victims of disability discrimination will mean that they have no remedy at all. This would undermine the ADA's national mandate to prevent discrimination.

**B. There is Now a Conflict in the
Circuits Regarding the
Availability of Emotional
Distress Damages Pursuant to
Title II ADA**

In addition, this Court's guidance is needed due to the conflict of law in the Circuit Courts resulting from the Second Circuit's holding in this matter.

Emotional distress damages have been available as a remedy under Title II of the ADA since the inception of the controlling antidiscrimination statutes. This Court's decision in *Cummings* did not change this because it did not involve the viability of

emotional distress damages under Title II of the ADA. Cummings is limited to Spending Clause enactments and cannot be read to overturn authority under Title II of the ADA for compensatory damage claims. Notwithstanding this, relying on Cummings, the Second Circuit held that emotional distress damages were not available to the Petitioner. This holding is in direct conflict with the other Circuits that have addressed this issue.

The Sixth Circuit has held that compensatory damages for emotional harm are available under Title II of the ADA. Johnson v. City of Saline, 151 F.3d 564 (6th Cir. 1998). Similarly, the Seventh Circuit held that compensatory damages are available under the ADA. Reed v. Columbia St. Mary's Hosp., 782 F.3d 331 (7th Cir. 2015). The Eleventh Circuit also found that non-economic damages are permitted for intentional violations of the ADA. Sheely v. MRI Radiology Network, P.A., 505 F.3d 1173 (11th Cir. 2007).

The Second Circuit's illogical expansion of Cummings to somehow proscribe emotional distress damages under Title II of the ADA expressly conflicts with these decisions, upsets prior practice, and departs from a broad understanding about the relief available under Title II of the ADA. This Court's guidance is desperately needed to clarify this issue. See also, Perez v. Sturgis Pub. Sch., 598 U.S. 142, 151 (2023) (this Court expressly declining to hold that ADA compensatory damages for emotional distress were limited by Cummings); Bell v. Williams, 2024 U.S. App. LEXIS 17660, fn 2 (9th Cir.

July 18, 2024) (“Whether emotional distress damages are available under Title II of the ADA after Cummings is an open question in this Circuit”); Lartigue v. Northside Indep. Sch. Distr., 100 F.4th 510 (5th Cir. 2024) (“We have previously expressly declined to decide whether Cummings extends to claims under Title II of the ADA which, unlike Section 504 of the Rehabilitation Act and Section 1557 of the Affordable Care Act, is not a Spending Clause statute”).

C. The Second Circuit Decision is Wrong

The Second Circuit extended Cummings to find that emotional distress damages are not available under Title II of the ADA. Respectfully, this holding was wrong. This Court expressly limited the reach of Cummings to “Spending Clause” legislation like Section 504, explaining that the “contract analogy” is “‘only a potential limitation on liability’ compared to that ‘which would exist under non spending statutes.’” Cummings, 142 S. Ct. at 1573.

The Cummings Court drew clear distinctions between Spending Clause legislation, “which operates based on consent,” and “ordinary legislation,” which “‘imposes Congressional policy’ on regulated parties ‘involuntarily.’” Id. at 1570. And it carefully characterized its constraint on available remedies under Section 504 and the ACA as only a “potential limitation on liability compared to that which would exist under non-spending

statutes.” Id. at 1573. Title II is a non-spending statute, rooted in Congress’ Commerce Clause.

The Court in Cummings carefully fashioned a narrow holding that does not apply to ADA claims, which falls under the Commerce Clause. The expansion of Cummings to serve as a bar on emotional distress damages to Title II of the ADA is completely illogical and would eliminate an essential remedy that Congress intended to make available to victims of disability discrimination when the ADA was enacted. To hold that a party who discriminates against the disabled is only liable for breach of contract damages, is senseless and to impose this judicial limitation because the remedies of the Rehabilitation Act apply generally to ADA claims is a pernicious argument.

Other Courts that have examined Commerce Clause legislation have permitted recovery of emotional distress damages. See e.g., Harris v. FedEx Corps. Servs., 92 F.4th 286 (5th Cir. 2024) (permitting emotional distress damages pursuant to Title VII of the Civil Rights Act); Hudson v. AFGE, 2022 U.S. App. LEXIS 30119 (D.C. Cir. Oct. 28, 2022) (allowing emotional distress damages pursuant to Title VII of the Civil Rights Act); Blount v. Stanley Eng’g Fastening, 55 F.4th 504 (6th Cir. 2022) (implicitly recognizing right to recover emotional distress damages under Title VII of the Civil Rights Act).

The Second Circuit’s reliance on Barnes v. Gorman, 536 U.S. 181 (2002), is misguided. The

issue in Barnes, supra, was whether punitive damages are recoverable under the ADA. Because punitive damages are a specific category of damages, Barnes cannot be extended to limit the amount that may be recovered under a completely separate category of damages.

A review of Congress' intent highlights the Second Circuit's erroneous holding here. The House Report before the enactment of the ADA explained that the "full panoply of remedies" should be available for violations of Title II. See, H.R. Rep. No. 101-485 (III), at 52 (1990). Congress codified its purposes in enacting the ADA: "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;" "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;" and "to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities." 42 U.S.C. § 12101(b)(1), (2), (4). Congress particularly found that "individuals who have experienced discrimination on the basis of disability have often had no legal recourse to redress such discrimination." Id. at § 12101(a)(4).

Simply stated, Congress found that current laws were inadequate to prevent and remedy the discrimination being experienced by people with disabilities. It is clear that to achieve its purpose,

Congress meant to confer compensatory damages, including emotional distress damages, as part of the remedies. If a Title II claimant can overcome the already significant barriers to recover damages, then all remedies should be available to them, and federal courts should remedy the wrong done.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Dated: August 6, 2024

Respectfully submitted,

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