

# The Supreme Court of the United States, Disability Rights, and Implications for Mental Health Parity

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It was the evening of Monday, May 2, 2022, at the Society of Teachers of Family Medicine (STFM) Annual Spring Conference. Attendees were learning to dance the tango and watching a Backstreet Boys routine at the MediPalooza fundraising event for the STFM Foundation. Then the text messages started flying. Leaked information from the Supreme Court of the United States (SCOTUS) indicated that *Roe v Wade* was likely to be overturned. Many of us were stunned and experienced strong emotions. Many of our members immediately began to consider actions to take in response. Then, on June 24, 2022, the Supreme Court did overturn *Roe v Wade*, undoing nearly 50 years of legalized abortion in the United States. The ramifications of this are profound. STFM has published a statement opposing “any laws that interfere with the clinician-patient relationship, restrict residency education to anything less than the full scope of reproductive health care, restrict patient access to care, compound inequities that already exist in health care, or reward vigilante behavior against patients and their health care team.”<sup>1</sup>

Another ruling by the Supreme Court has gone under the radar recently as well, *Cummings v Premier Rehab Keller, PLLC*. On my way to the airport to fly to Indianapolis for the STFM Annual Spring Conference, I received a phone call from my daughter, an attorney for Disability Rights North Carolina. Her distress over the ruling was intense. I knew we needed to bring some awareness to the potential impact of this ruling, and thus we decided to collaboratively write this column.

## The Ruling

On April 28, 2022, SCOTUS upended decades of previously well-settled law governing compensation for victims of disability-based discrimination. In *Cummings v Premier Rehab Keller, PLLC*,<sup>2</sup> a deaf-blind woman sued a physical therapy provider under the Rehabilitation Act of 1974 and the Affordable Care Act for refusing to provide her with an American Sign Language (ASL) interpreter during treatment. She sought damages due to “humiliation, frustration, and emotional distress” resulting from the provider’s refusal to provide her with an ASL interpreter. In its written opinion, SCOTUS determined that emotional distress damages are not recoverable under either of the aforementioned statutes. This ruling consequently implies that the emotional distress compensation provisions of many civil rights laws, including Title IX, Title VI, and the Americans With Disabilities Act, may be similarly invalid. Let that sink in for a moment.

Prior to this ruling, many courts noted that a frequent consequence of discrimination, and sometimes the only quantifiable consequence of discrimination, is that the victim suffers emotional distress (see, for example, references<sup>3-6</sup>). Until SCOTUS’ opinion in *Cummings*, courts found that

“emotional damages are plainly a form of compensatory damages designed to ‘make good the

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wrong done,' and we have particular reason to exercise our discretion to award them where, as here, emotional distress is the only alleged damage to the victim and thus the only 'available remedy to make good the wrong done.'" (Reference<sup>3</sup> citing reference<sup>7</sup>)

As such, many advocates in the disability rights community have been left shaken by this controversial decision. If we can no longer hold entities that discriminate against individuals with disabilities financially accountable for their bad acts, then what will deter their discriminatory practices?

**Another Implication: The Value of Mental Health**

In addition to the potential negative impact for individuals with disabilities, this ruling sends a strong negative message regarding the value of mental health in our society. Why is compensation allowed for physical damages, yet not emotional injuries? Implicit in this ruling is that mental health and physical health are not equally valued. After so many years of fighting to reduce stigma around mental health issues and care, *Cummings* has the potential to set us back in significant ways.

We see this same disparity in the payment for mental health/substance use disorder (MH/SUD) treatment when compared to physical health. While there have been important attempts to increase MH/SUD treatment parity (Table 1), the reality is that many payors are not in compliance with the federal parity rules.<sup>8-9</sup> Additionally, consumers are often not aware that parity rules and cost concerns, along with stigma and lack of access,

are significant barriers to individuals receiving critical mental health care.<sup>11</sup>

We need to recognize that mental health is critical to overall health and impacts us all. The World Health Organization (WHO) defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."<sup>12</sup> Thus, mental health is broader than the absence of mental health disorders. The WHO makes a critical and bold statement: "Mental health is an integral part of health; indeed, there is no health without mental health."<sup>12</sup> We must continue to challenge the perception that mental health is less important or of less value than physical health.

**Back to Cummings**

While many attorneys in the disability rights community are crafting legal arguments as to why *Cummings* shouldn't apply to Americans With Disabilities Act cases, these theories have yet to be tested by the courts. On May 23, 2022, attorneys for Ms Cummings filed a petition for rehearing with SCOTUS, in the hope that these long-held remedies would be restored. Unfortunately, on June 21, 2022, SCOTUS denied the petition for rehearing. For now, disability rights advocates will continue creative problem-solving, pursuing protection and accountability around critical issues of accessibility.

**Resources**

Every state has a federally-mandated Protection and Advocacy (P&A) agency, such as Disability Rights North Carolina, that works to advance and defend the legal and human

**Table 1: Mental Health Treatment Parity Legislation**

Year	Legislation	Description
1996	Mental Health Parity Act (MHPA)	"Large group health plans cannot impose annual or lifetime dollar limits on mental health benefits that are less favorable than any such limits imposed on medical/surgical benefits." <sup>10</sup>
2008	Mental Health Parity and Addiction Equity Act (MHPAEA)	Requires "group health plans and health insurance issuers to ensure that financial requirements (such as co pays, deductibles) and treatment limitations (such as visit limits) applicable to mental health or substance use disorder (MH/SUD) benefits are no more restrictive than the predominant requirements or limitations applied to substantially all medical/surgical benefits." <sup>10</sup>  However, the MHPAEA did not require health plans to cover mental health or substance use services.
2010	Affordable Care Act	Requires coverage of mental health and substance use disorder services as an essential health benefit. <sup>10</sup>

Abbreviations: MH, mental health; SUD, substance use disorder.

rights of people with disabilities. Engaging with your state P&A is one way to learn more about the services offered to protect the rights of vulnerable populations and to support this important work.

Another important resource for individuals interested in doing work in this space is the STFM Collaborative on Caring for and Supporting People With Disabilities. This collaborative focuses on

“improving the health care of persons with disabilities by developing educational materials for health care providers, providing advocacy at all levels of government, doing research; and creating medical centers of excellence that are accessible, provide needed accommodations, and support for persons with disabilities and their caregivers, and increasing the number of physicians with disabilities by providing support for current medical students, residents, and practicing physicians with disabilities and increasing the number of students with disabilities accepted by US medical schools.”<sup>13</sup>

*“There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest.”* —Elie Wiesel

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