

No. 25-183

IN THE
Supreme Court of the United States

THOMAS CROWTHER, *et al.*,

Petitioners,

v.

BOARD OF REGENTS OF THE UNIVERSITY
SYSTEM OF GEORGIA, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

**RESPONDENT BOARD OF REGENTS'
BRIEF IN OPPOSITION**

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QUESTION PRESENTED

Whether Title IX of the Education Amendments of 1972 provides employees of federally funded, state educational institutions with a private right of action to sue for sex discrimination in employment, displacing the reticulated scheme for employment discrimination claims that Congress provided in Title VII.

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INTRODUCTION

This Court has made clear for decades that it is out of that business of “imply[ing] causes of action not explicit in the statutory text itself.” *Ziglar v. Abbasi*, 582 U.S. 120, 131–32 (2017). That has included “abandon[ing] the expansive rights-creating approach exemplified by *Cannon [v. University of Chicago]*, 441 U.S. 677 (1979),” which recognized an implied private right of action under Title IX for students who complain of sex discrimination by schools that receive federal funds. *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60, 77 (1992) (Scalia, J., concurring). Expanding the judicially created Title IX private right of action to cover employment discrimination claims would run roughshod over this Court’s modern precedent, and even if it were otherwise, the judiciary should surely not expand Title IX’s judicially created cause of action where it would displace the *actual* comprehensive scheme for employment discrimination that Congress expressly created under Title VII. There is no reason for this Court to grant review here.

Petitioners are a college basketball coach who was fired because she treated her players and staff so poorly that athletes began to quit the team mid-season and an art professor who was fired after taking pictures of nude student models on his phone. They urge the Court to grant review in order to hold that *Cannon* compels the judicial creation of yet another implied cause of action under Title IX. Pet. at i. They are wrong from top to bottom.

First, there is no split at all on the question presented in this case—whether employees of a state school can sue under Title IX for employment discrimination claims already governed by Title VII. Most of the circuits

Petitioners identify as constituting one side of a supposed eight-to-three split on this question have simply assumed without holding (and apparently without the defendants raising the issue) that Title IX authorizes employment-discrimination claims. *See infra* at 18–19. And of the three circuits that have held Title IX creates a right of action, two did not consider the question whether Title VII’s express remedial scheme nevertheless precludes causes of action other than its own in the employment context. *See infra* at 19–20. That leaves only *Doe v. Mercy Catholic Medical Center*, 850 F.3d 545 (3d Cir. 2017), as an example of a court holding that Title IX provides a private right of action even where Title VII governs. Pet.16. But *Mercy* made clear that its analysis would not apply to cases, like this one, in which the defendant is a government entity. *Mercy*, 850 F.3d at 560–61 (explaining that “private employment doesn’t raise ‘problems of sovereign immunity’” (quoting *Brown v. General Services Administration*, 425 U.S. 820, 833 (1976))). In other words, Petitioners’ purported eight-to-three split in favor of their position is really three-to-zero against them. Even if the Court were inclined to consider this issue someday, it should do so in a case involving private employers, or wait until an actual split develops on the question of overlapping Title VII and Title IX claims against government employers.

Moreover, these cases would make poor vehicles for considering the question presented. Petitioner Joseph asserted four Title IX claims, two of which were dismissed as precluded by Title VII. But the courts below considered substantively identical versions of one of the dismissed claims under Title VII—that the university discriminated against her because of her sex—and concluded that Joseph had not introduced enough evidence on that claim even

to state a prima facie case. And Joseph’s other dismissed Title IX claim—that the university discriminated against her by providing her team with fewer resources than the men’s team—would not be cognizable under Title IX, even assuming this is somehow a claim for employment discrimination. *See* 34 C.F.R. 106.41(c) (providing that “[u]nequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams . . . will not constitute noncompliance with [Title IX]”). And of Petitioner Crowther’s two Title IX claims, the Eleventh Circuit explicitly addressed one—that the university retaliated against him for participating in the investigation into his *own* alleged misconduct—and held that it does not even state a claim on the merits. Pet. App.23a–24a.

The vehicle problems presage another reason to deny: the questions presented are of limited importance for plaintiffs like Petitioners, who still had every chance to prove their claims for employment-based sex discrimination under Title VII. Joseph asserted parallel Title VII versions of all of her claims, which both courts below rejected on the merits. *Id.* at 11a, 25a–32a. And Crowther had every chance to assert Title VII claims—he exhausted his administrative remedies and the district court urged him to add those claims—but for whatever reason chose not to. *Id.* at 64a. The availability of Title VII’s actual cause of action and its well-established legal framework undermines any supposed importance of answering the question whether Title IX provides another, redundant remedy.

On top of everything else, the decision below was correct. Title IX does not include a private right of action for sex discrimination in employment claims. “[W]ith

respect to existing implied causes of action, Congress, not this Court, should extend those implied causes of action and expand available remedies.” *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 230–31 (2022) (Kavanaugh, J., concurring). Petitioners rely heavily on *Jackson v. Birmingham Bd. of Ed.*, 544 U.S. 167 (2005), which held that Title IX provides employees a right to sue for retaliation. But as the Court explained, that decision was based on the notion that “individuals who *witness* discrimination” in this context but are “fired for speaking out” would have “no recourse” apart from Title IX. *Jackson*, 544 U.S. at 180 (emphasis added). In other words, without *Jackson*, the already existing, judicially created right of action for students would be undermined. But that problem is not implicated where the alleged conduct at issue *is* plainly governed by Title VII. So the question should be the ordinary test: has Congress spoken “with a clear voice” to “unambiguously confer[.]” a “right to support a cause of action.” *Gonzaga Univ. v. Doe*, 536 U.S. 273, 280, 283 (2002). It obviously has not.

Even if there were any doubt about whether Title IX includes an enforceable right in the employment context, Title VII would preclude it. When Congress enacts statutes with comprehensive remedial schemes, that ordinarily indicates its intent to preclude other, more general remedies. *Middlesex Cnty. Sewerage Auth. v. Nat’l Sea Clammers Ass’n*, 453 U.S. 1, 20 (1981). In particular, the presence of an administrative exhaustion requirement weighs strongly in favor of preclusion. When a “general” statute in which “exhaustion is not required” is at odds with another statute requiring exhaustion, permitting a plaintiff to sue under the former would “undermine the strong policy requiring exhaustion[.]”

Brown, 425 U.S. at 834. Title VII squarely fits both of these descriptions: it is a reticulated remedial scheme with demanding exhaustion requirements. This Court has pointed to these factors in holding that Title VII precludes claims under similarly general statutes like 42 U.S.C. § 1981, *id.* at 833, and § 1985, *Great Am. Fed. Sav. & Loan Ass’n v. Novotny*, 442 U.S. 366, 376 (1979). The same logic applies here, and dictates that Title VII’s “precisely drawn, detailed statute pre-empt[s] [the] more general remed[y]” of Title IX. *Brown*, 425 at 834.

The statutes at issue have been around for a long time. Had Congress desired that employees of educational institutions have a bonus remedy for employment discrimination under Title IX, unburdened by Title VII’s exhaustion requirements and damage caps, it could have provided as much. It has not. “Having sworn off the habit of venturing beyond Congress’s intent,” the Court should “not accept [Petitioners’] invitation to have one last drink.” *Alexander v. Sandoval*, 532 U.S. 275, 287 (2001). The Court should deny the petition.

STATEMENT

A. Legal Background

1. The Civil Rights Act of 1964 (Titles VI and VII)

Two parts of the Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241–68 (codified as amended at 42 U.S.C. § 2000e et seq.), are relevant here. *First*, Title VI of the Act prohibits discrimination in federally funded programs (including educational institutions) based on “race, color, or national origin,” but not sex. 42 U.S.C. § 2000d. Congress used its Spending Clause power to enact Title VI, *see Barnes v. Gorman*, 536 U.S. 181, 185–86 (2002),

and did not create a statutory private right of action to enforce it, *see Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 597 (1983). Instead, the federal government could cut off funds to recipients that failed to comply. 42 U.S.C. § 2000d-1.

Second, Title VII, enacted under Congress’ Fourteenth Amendment and Commerce Clause powers, *see Fitzpatrick v. Bitzer*, 427 U.S. 445, 453 n.9 (1976), prohibits employment discrimination based on “race, color, religion, sex, or national origin,” 42 U.S.C. § 2000e-2. It originally applied to all *private* employers with 25 or more employees. Pub. L. No. 88-352, 78 Stat. 253. Title VII not only “creates statutory rights against invidious discrimination in employment,” it also “establishes a comprehensive scheme for the vindication of those rights.” *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 457–58 (1975); *see also N.Y. Gaslight Club v. Carey*, 447 U.S. 54, 63 (1980). Title VII expressly authorizes a private right of action for aggrieved individuals to file lawsuits along with a comprehensive exhaustion and enforcement scheme. 42 U.S.C. § 2000e-5.

Educational institutions were originally exempt from Title VII “with respect to the employment of individuals to perform work connected with the educational activities of such institution.” § 702, 78 Stat. at 255; *see Weise v. Syracuse Univ.*, 522 F.2d 397, 410 (2d Cir. 1975) (noting that “there was no alternative federal administrative remedy by which [these employees] could pursue their claims of discrimination.”). And while the Act established the Equal Employment Opportunity Commission, the EEOC “had no enforcement powers whatever under the original Title VII of the Civil Rights Act of 1964.” *Hackley v. Roudebush*, 520 F.2d 108, 122 (D.C. Cir. 1975); *see also* § 705, 78 Stat. at 258–59.

2. The Equal Employment Opportunity Act of 1972

Congress significantly amended Title VII in the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103–13 (codified as amended at 42 U.S.C. § 2000e et seq.). The EEOA eliminated the exemption for educational institutions. *Univ. of Pa. v. EEOC*, 493 U.S. 182, 190 (1990). It also brought federal, state, and local employees within Title VII’s coverage, 86 Stat. at 103, 111, and empowered the EEOC to file suit on behalf of aggrieved employees, *id.* at 104–05.

3. Title IX

Three months after the EEOA amendments to Title VII became law, Congress enacted the Education Amendments of 1972. Pub. L. No. 92-318, 86 Stat. 235–381 (codified as amended at 20 U.S.C. § 1681 et seq.). Title IX of the Act extended Title VI of the Civil Rights Act of 1964 to prohibit discrimination in federally funded programs based on sex. 20 U.S.C. § 1681; *see also* 42 U.S.C. § 2000d. Title IX provides: “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681.

Like Title VI more generally, Title IX was an exercise of Congress’s Spending Clause power. *See Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 287 (1998). Its “express statutory means of enforcement is administrative.” *Id.* at 280. Federal agencies that “distribute education funding” must “establish requirements to effectuate [Title IX’s] nondiscrimination mandate,” and are “permit[ted] . . . to enforce those requirements through ‘any . . . means

authorized by law,’ including ultimately the termination of federal funding.” *Id.* at 280–81 (quoting 20 U.S.C. § 1682). In other words, Title IX “condition[s] an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds.” *Id.* at 286.

4. Title IX’s Judicially Created Cause of Action

Title IX does not contain a statutory private right of action. But beginning in the 1970s, this Court held that Title IX is nonetheless enforceable in some cases through an implied private right of action. In *Cannon*, the Court held that Title IX provided an implied right of action for a prospective student who alleged she had been denied admission to medical school because she was a woman. 441 U.S. at 680. The Court reached this conclusion by applying the long-since-abandoned “*Cort* analysis,” which relied heavily on legislative history (and a single lower-court decision interpreting Title VI). *Id.* at 688–99. *Cannon* provided a private right of action for *students* to sue under Title IX; it was not an employment case. *Id.* at 680. The Court would later also hold that damages are available in Title IX suits. *Franklin*, 503 U.S. at 76.

Of course, *Cannon* and its progeny “exemplified an expansive rights-creating approach that later decisions abandoned,” and this Court recently reiterated that while “it remains bound by *Cannon*’s holding . . . the decision’s language no longer controls.” *Medina*, 145 S. Ct. at 2230, n.1 (quoting *Franklin*, 530 U.S. at 77, and *Sandoval*, 532 U.S. at 282). Decisions in *Sandoval*, 532 U.S. at 293 (§ 602 of Title VI did not create private right of action for intentional discrimination), and *Gonzaga*, 536 U.S. at 290 (nondisclosure provisions of Family Educational

Rights and Privacy Act created no rights enforceable by § 1983), made clear that unless Congress “speaks with a clear voice, and manifests an unambiguous intent to confer individual rights, federal funding provisions provide no basis for private enforcement,” *id.* at 280 (quoting *Pennhurst State Sch. and Hosp. v. Halderman*, 451 U.S. 1, 17 (1981)).

The only time this Court has addressed whether employees have a right of action under Title IX was in *Jackson*, where the Court held that Title IX provides a private right of action for retaliation against educational employees who complain about discrimination *against students*. 544 U.S. at 171. The plaintiff was the male coach of a high school girls’ basketball team who alleged that the school retaliated against him for complaining that the school discriminated against the girls’ team. *Id.* at 171–72. The Court held that retaliation claims were covered, because “if Title IX’s private right of action does not encompass retaliation claims, the teacher would have no recourse if he were subsequently fired for speaking out.” *Id.* at 180. The Court did not address sex discrimination against an employee himself.

5. Title VII and Preclusion

This Court has frequently held that statutes with comprehensive remedial schemes foreclose alternative avenues of relief. *See, e.g., Middlesex*, 453 U.S. at 20-21 (Federal Water Pollution Control Act was sufficiently comprehensive to demonstrate Congressional intent to preclude suit under § 1983); *Smith v. Robinson*, 468 U.S. 992, 1012 (1984) (same reasoning in holding that Education of the Handicapped Act precluded equal protection claims under § 1983); *Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 127 (2005) (same for Telecommunications Act).

Title VII is a paradigmatic example of a statute that precludes alternative causes of action, which this Court has repeatedly reaffirmed. After holding that an earlier version of Title VII did not preclude alternative causes of action, the Court reversed course after the EEOA amendments and has held since then that plaintiffs cannot use alternative means.

Relying heavily on legislative history, the Court initially held in *Johnson* that the pre-EEOA Title VII did not preclude claims against private employers under 42 U.S.C. § 1981, which prohibits racial discrimination in contracting. *See* 421 U.S. at 459, 461 (quoting H.R. Rep. No. 92-238, p.19 (1971) (noting Congress’s statements indicating that Title VII would be coextensive with § 1981 and “that the two procedures augment each other and are not mutually exclusive”).

But the Court completely reversed course in its first opportunity to consider the scope of Title VII’s remedies after the enactment of the EEOA. The Court held in *Brown*, 425 U.S. at 828–29, that federal employees could not file employment-discrimination claims under § 1981. It distinguished *Johnson* on the grounds that “there were no problems of sovereign immunity” in that case, which involved only suits against private employers, *id.* at 833, and also that the legislative history of the EEOA amendments showed no intent to make Title VII remedies coextensive with those available under preexisting civil rights statutes; in fact, Congress’s understanding appeared “precisely to the contrary,” *id.* at 833–34. The Court concluded that Title VII was the sort of “precisely drawn, detailed statute that pre-empts more general remedies,” and was thus the exclusive remedy for claims of discrimination in federal employment. *Id.* at 834–35.

Later, in *Novotny*, 442 U.S. at 378, the Court held that Title VII also precludes employment discrimination claims brought under 42 U.S.C. § 1985(3). The Court viewed *Novotny* as differing “markedly” from *Johnson* in that the latter addressed whether substantive rights conferred in the 19th Century were withdrawn, *sub silentio*, through the subsequent passage of modern statutes, like Title VII, whereas the later-passed § 1985(3) did not raise any such concerns. *Id.* at 377. The Court also reiterated *Brown*’s reasoning that “the balance, completeness, and structural integrity of [Title VII] are inconsistent with the . . . contention that the judicial remedy afforded by [Title VII] was designed merely to supplement other putative judicial relief.” *Id.* at 376 (quoting *Brown*, 425 U.S. at 832).

B. Proceedings Below

1. Joseph

MaChelle Joseph served as the head coach of the Georgia Tech women’s basketball team from 2003 to 2019. Pet.App.4a. The last few years of Joseph’s tenure were rife with misconduct and mistreatment of players and staff members. For instance, in 2015, Joseph received a written reprimand for appearing drunk at a home football game. Pet.App.6a. The following year, the university issued her a written warning and placed her on a corrective action plan after a complaint by her administrative assistant. *Id.* In 2017, Joseph was again the subject of investigation after one of her assistant coaches accused her of creating a hostile work environment and throwing a clipboard at her. *Joseph*, Doc. 212-1 at 3 n.2. And in 2018 the team’s personnel administrator raised concerns about Joseph’s treatment of the team’s staff. Pet.App.6a. Moreover, after initial on-court successes, the program itself began

to decline under Joseph's leadership. The team did not qualify for the NCAA tournament between 2014 and 2018, and in 2018 the NCAA informed Georgia Tech that it had received and was investigating reports that Joseph or her staff members were impermissibly paying recruits. *Id.*

The 2018–19 season brought yet more staff complaints, as well as allegations by players and their parents that Joseph created an abusive and toxic environment for the athletes. *Id.* at 6a–7a. Two staff members complained to human resources in early 2019 about Joseph's bullying. *Id.* at 6a. Several of the team's players met with the university's general counsel around the same time about Joseph's mistreatment of the athletes, expressing what the general counsel characterized as "genuine terror" of Joseph. *Id.* at 6a–7a. Days later, the deputy athletic director told the athletic director that he planned to resign because he couldn't bear to continue working with Joseph. *Id.* at 7a. Joseph filed an apparently unrelated formal internal complaint of discrimination and retaliation the same week. *Id.*

In February 2019, the university hired an outside investigator to investigate the complaints about Joseph. *Id.* at 7a–8a. While the investigation was pending, two of Joseph's players quit the team with just three games left in the season because they were unwilling to continue playing for Joseph. *Id.* at 210a–212a. The investigation revealed that Joseph's bullying and manipulation created an environment that the players described as "toxic," "suffocating," "draining and miserable," and "unhealthy." *Id.* at 9a. Staff members reported concerns for the physical wellbeing of the athletes, including worries that players were experiencing sleeplessness and weight loss as a result of Joseph's abuse. *Id.* Players described Joseph

as “emotionally, mentally, and verbally abusive,” noted that Joseph called them by a variety of profane terms including “bitch,” “pussy,” “fucking stupid,” “fucking idiot,” “cancer of the team,” and “whore,” and that she threw items, possibly even at players. *Id.*; *Joseph*, Doc. 182-28 at 11–19. After noting that “every member of the team reported serious concerns regarding player mistreatment”—concerns the investigator deemed credible—the investigator concluded that it was “more likely than not that Coach Joseph’s actions f[ell] outside acceptable behavior under the [University System of Georgia’s] Ethics Policy.” Pet.App.9a. The athletic director fired Joseph in March 2019. *Id.* at 10a.

Joseph obtained a right-to-sue letter from the Equal Employment Opportunity Commission, then filed suit against the Board of Regents, athletic association, and several individual defendants. *Id.* She asserted claims of sex discrimination and retaliation under Title VII and Title IX, as well as a retaliation claim under the Georgia Whistleblower Act and a breach of contract claim. *Id.* at 10a. The district court granted the defendants’ motion to dismiss the Title IX sex-discrimination claims as precluded by Title VII and then, after extensive discovery, granted summary judgment on all remaining claims, including her mirror-image Title VII claims. *Id.* at 10a–11a.

2. Crowther

According to his complaint, Petitioner Thomas Crowther began teaching art at Augusta University in 2006 and received a promotion to Senior Lecturer in February 2020. *Crowther*, Doc. 1 at 25–26. That year, the University’s Title IX Coordinator informed Crowther that the University was investigating allegations about

Crowther’s sexual harassment of female students, including that he had used his cell phone to take pictures of nude models without their consent. Pet.App.3a; *Crowther*, Doc. 44 at 4. After a thirteen-month investigation and initial suspension, the University decided not to renew his contract for the 2021–22 school year, meaning he was effectively terminated after the Spring 2021 semester. Pet.App.3a; *Crowther*, Doc. 44 at 4–10. Crowther unsuccessfully appealed this decision up through the University’s President. Pet.App.3a.

Crowther then sued the Board of Regents and several school officials for sex discrimination and retaliation under Title IX. Pet.App.3a. He also asserted an equal protection claim under 42 U.S.C. § 1983. *Crowther*, Doc. 1 at 67. Crowther alleged he was “subjected to a biased, prejudiced and explicitly unfair [investigation] process,” and that he was “retaliated against due to . . . anti-male bias.” *Id.* at 62, 66. The district court granted the defendants’ motion to dismiss the equal protection claim but denied the motion as to the Title IX claims. Pet. App.3a–4a. The district court certified an interlocutory appeal on the question whether Title VII precludes claims for sex discrimination in employment under Title IX, and the court of appeals granted review. Pet.App.4a.

3. Consolidated Appeals

The Eleventh Circuit consolidated the two cases for argument and decision. The State Defendants argued that Title VII precludes employment-discrimination claims under Title IX, *Joseph*, CA11 Doc. 34 at 60–63; *Crowther*, CA11 Doc. 16 at 20–31, and that Title IX does not even include a private right of action for employment discrimination claims in the first place, *id.* at 32–49.

The court ruled on the latter argument. It noted that Title IX was enacted under the Spending Clause and that the “typical remedy for . . . noncompliance with federally imposed conditions is not a private cause of action . . . but rather action by the Federal Government to terminate funds.” Pet.App.14a (quoting *Gonzaga*, 536 U.S. at 280). And, the court explained, Title IX is no different: the statute’s language, which speaks to the “participation in” and “benefits of . . . any education program or activity receiving Federal financial assistance,” does not “indicate[] congressional intent to provide a private right of action to employees of educational institutions.” *Id.* at 19a (emphasis removed) (quoting § 901, 86 Stat. at 373). Indeed, considering that Congress passed Title IX a mere three months after extending Title VII’s “express private right of action” to employees of educational institutions, “it would be anomalous to conclude that the implied right of action under Title IX would allow [those] employees . . . immediate access to judicial remedies unburdened by any administrative procedures.” *Id.* at 21–22a. And because Spending Clause regulations function like a contract between the government and the recipients of its funding, the court reasoned that “it is dubious that recipients of federal funds would understand that they have knowingly and voluntarily accepted potential liability for damages for . . . employment discrimination [claims] under Title IX when those kinds of claims are expressly provided for and regulated by Title VII.” *Id.* at 22a. The court thus concluded that Title IX does not create an implied right of action for sex-discrimination-in-employment claims for employees of educational institutions like Crowther and Joseph. *Id.*

The court of appeals also held that Crowther had not stated a viable Title IX retaliation claim under *Jackson*.

Pet.App.23a–25a; *see Jackson*, 544 U.S. at 173. The court explained that *Jackson* “does not contemplate protections for an accused discriminator,” like Crowther, “who participates in a Title IX investigation of his *own* conduct.” Pet.App.24a (emphasis added).

As to Joseph’s remaining claims, the court held that Joseph’s Title VII discrimination claims failed because she made no argument that the alleged discrimination was based on her sex, failed to establish that she had been harmed by any alleged discrimination, and that all claims predicated on her termination, including her Title VII discrimination claims and her retaliation claims under Title VII, Title IX, and the Georgia Whistleblower Act, warranted summary judgment because her “strained inferences of a predetermined outcome, manipulation, and disbelief [could not] rebut the Board’s legitimate reasons for terminating her.” *Id.* at 25a–32a.

REASONS FOR DENYING THE PETITION

I. There is no real split on the question actually presented here.

Petitioners claim that the Eleventh Circuit’s decision below creates an eight-to-three split among the circuits on whether Title IX contains an implied right of action for sex discrimination in employment. Pet. 15–20. But for the types of claims *actually* raised in the consolidated cases below—i.e., sex-discrimination claims by employees of government educational institutions in cases that would otherwise be governed by Title VII—that supposed split evaporates. Indeed, Petitioners’ primary case, the Third Circuit’s decision in *Mercy*, examined the question whether Title IX provides a private right of action (even where Title VII would otherwise govern) only in the

context of a private suit against private parties, while specifically distinguishing situations where plaintiffs sued *government* parties—the situation presented here. 850 F.3d at 560–61.

To start, Petitioners correctly note that three circuits have held that Title IX claims are unavailable under these circumstances. In addition to the Eleventh Circuit, which ruled below that Title IX does not create a claim for employment discrimination at all, Pet.App. 22a, the Fifth and Seventh Circuits have held that any such claims would be precluded by Title VII, *see Lakoski v. James*, 66 F.3d 751, 753 (5th Cir. 1995); *Waid v. Merrill Area Pub. Schs.*, 91 F.3d 857, 862 (7th Cir. 1996), *abrogated in part on other grounds by Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 251 (2009). The Fifth Circuit concluded in *Lakoski* that it was highly unlikely that Congress could have “intended to create a bypass of Title VII’s administrative procedures . . . only months after extending Title VII” to these employees. 66 F.3d at 756. So, while the court acknowledged that Title VII and Title IX both prohibit employment discrimination on the basis of sex in federally funded educational institutions, the court was “persuaded that Congress intended Title VII to exclude a damage remedy under Title IX for individuals alleging employment discrimination.” *Id.* at 755. The Seventh Circuit similarly noted in *Waid* that Congress’ enactment of a comprehensive enforcement scheme in Title VII “impliedly express[ed] the intention that this scheme should be exclusive.” 91 F.3d at 861. The court thus held that Title VII “preempted any of [the plaintiff’s] claims for equitable relief under § 1983 or Title IX.” *Id.* at 862.

On the other hand, Petitioners’ assertion that “eight circuits interpret Title IX to permit private claims for

sex discrimination in employment,” Pet. 15, is woefully untrue. Several of Petitioner’s examples for this side of the purported split simply assume or state without argument that employees can pursue sex-discrimination or retaliation suits. In *Campbell v. Hawaii Department of Education*, 892 F.3d 1023, 1023 (9th Cir. 2018), for example, the plaintiff asserted Title IX claims that “mirror[ed]” her Title VII claims for sex discrimination. *Id.* at 1023. The defendant did not question the availability of the Title IX claims; to the contrary, it “concede[d]” that “the same analysis should apply to both” claims. *Id.* at 1024. The court thus considered the claims together with no further discussion. *Id.* Most of Petitioners’ cited cases likewise have no analysis and simply assume or state without argument that Title IX claims can encompass employment discrimination. *Hiatt v. Colo. Seminary*, 858 F.3d 1307, 1315 (10th Cir. 2017); *Lipsett v. Univ. of P.R.*, 864 F.2d 881, 896–97 (1st Cir. 1988), *Preston v. Virginia. ex rel. New River Cmty. Coll.*, 31 F.3d 203, 205–06 (4th Cir. 1994). See *United States v. Norman*, 935 F.3d 232, 241 (4th Cir. 2019) (“[A]n unchallenged and untested assumption is simply not a holding that binds future courts.”). One case, ironically for Petitioners, held in a suit by the women’s basketball coach that although “Title IX prohibits sex discrimination under any educational program or activity receiving federal assistance,” the federal funding in question was limited to “academics,” a category that did not include the college’s athletic programs. *O’Connor v. Peru State Coll.*, 781 F.2d 632, 639, 642 (8th Cir. 1986). The court thus held that the plaintiff’s Title IX claims warranted dismissal. *Id.*

And the few cases that *do* include an actual holding on a Title IX cause of action do not address the question

whether Title IX provides a private right of action in cases *where Title VII governs*. In *Vengalatorre v. Cornell University*, 36 F.4th 87, 102–04 (2d Cir. 2022), the Second Circuit mentioned Title VII only to borrow its substantive standards for Title IX, but never addressed the question whether Title VII precludes Title IX claims in circumstances where the former would ordinarily govern. And the court of appeals in *Snyder-Hill v. Ohio State University*, 48 F.4th 686 (6th Cir. 2022), did not even mention Title VII.

Only one of Petitioner’s cases, *Doe v. Mercy Catholic Medical Center*, 850 F.3d 545 (3d Cir. 2017), holds that Title IX provides a private right of action even where Title VII governs, and that case is plainly inapposite. The *Mercy* court made clear that its reasoning would not apply to *government* defendants. In holding that Title VII did not preclude the Title IX claims at issue, the first of the court’s “four guiding principles” was that “*private-sector* employees aren’t limited to Title VII in their search for relief from workplace discrimination.” *Id.* at 562 (emphasis added and citation omitted). The court derived this principle from *Brown*, which it quoted for the proposition that “private employment doesn’t raise ‘problems of sovereign immunity.’” *Id.* at 561 (quoting *Brown*, 425 U.S. at 833). The instant case, which involves government defendants, *does* implicate sovereign immunity. Indeed, the *Mercy* court distinguished this Court’s holding that Title VII “provides the exclusive judicial remedy for claims of discrimination in federal employment,” *Brown*, 425 U.S. at 835, entirely on the basis of sovereign immunity concerns. *Mercy*, in other words, made clear that its analysis would not apply to cases, like this one, involving government defendants.

That leaves no real split at all on the question the Court would need to resolve in *this* case—whether Title IX includes a cause of action for employment discrimination against government educational institutions in cases where Title VII would otherwise govern the claims at issue. The Court should wait to intervene until an actual split emerges on *that* question or, if it wishes to address the question with respect to private employers, do so in a case involving those sorts of defendants.

II. These cases are poor vehicles for addressing the question presented, which is of limited importance to employment-discrimination plaintiffs in any event.

In addition to the lack of a meaningful split, certiorari is unwarranted here because the Court’s answer to the question presented—whether there is an implied right of action under Title IX for employment discrimination—does not matter for these cases.

Start with Joseph. She asserted four claims under Title IX: that the university discriminated against her on the basis of her sex (Count 1), or on the basis of her association with the women she coached (Count 2), by providing fewer resources to the women’s basketball team than the men’s team and terminating her employment; that the university unlawfully retaliated against her by taking adverse employment action (Count 9) and creating a hostile work environment (Count 12) for opposing the allegedly disparate treatment of the women’s team. *Joseph*, Doc. 1 at 44–47, 57–58, 62–64. All of these claims were mirrored by substantively identical claims under Title VII (Counts 3, 4, 10, and 13). *Id.* at 47–49, 58–60, 64–66.

The question presented here has no bearing on the retaliation claims (counts 9, 10, 12 and 13), the Title IX

versions of which fall under *Jackson*'s judicially created right of action. 544 U.S. at 173. Those claims proceeded through discovery and summary judgment. The district court ruled, and the court of appeals agreed, that these claims failed because Joseph could not rebut the university's legitimate non-discriminatory reasons for the employment actions at issue. *See* Pet.App.32a (holding that Joseph's "strained inferences of a predetermined outcome, manipulation, and disbelief cannot rebut the Board's legitimate reasons for terminating her"). Joseph does not challenge those rulings in her petition.

Only Joseph's Title IX sex-discrimination claims (1 and 2), which the district court dismissed as precluded by Title VII, are even theoretically germane. But a ruling in Joseph's favor on the question presented would make no difference for their viability. That is because the district court and Eleventh Circuit ruled on the merits of the factually identical Title VII claims (Counts 3 and 4). Joseph presented so little evidence that she could not even make out a *prima facie* case of intentional sex discrimination. Pet.App.243a. The court of appeals quickly dispatched this afterthought claim, noting that "Joseph provide[d] little to no explanation of how her allegations are connected to her sex, beyond a few conclusory statements that she was treated differently for failing to conform to sex-based stereotypes." Pet.App.25a. Even courts that allow claims for employment discrimination under Title IX do not apply easier standards for proving a claim. *See, e.g., Hiatt*, 858 F.3d at 1315 n.8; *Preston*, 31 F.3d at 206. So if Joseph's identical Title IX claims had survived dismissal, the rulings below make clear they would not have succeeded.¹

1. Further, even assuming that Joseph could articulate a separate Title IX claim based on resource disparities between the men's and women's basketball teams, that claim would almost

On top of all this, there are factual problems, too. For example, the differences in compensation Joseph cited as evidence of discrimination would not support a Title IX claim. The Board of Regents paid Joseph the same salary as the (male) men’s basketball coach, *Joseph*, Docs. 1-2, 196-6; any additional (and allegedly disparate) compensation was negotiated in each coach’s contract and paid by the Georgia Tech Athletic Association, which is not a recipient of federal funding and thus not subject to Title IX. *Joseph*, Doc. 20 at 9–11.

The upshot is that a decision addressing the question presented would have zero impact on the outcome of Joseph’s case. She lost on the merits. The existence or not of a cause of action for employment discrimination under Title IX has no bearing on that ruling.

Crowther’s case does not fair much better. He asserted two Title IX claims, one for sex discrimination and the other for retaliation. Pet.App.3a. The Eleventh Circuit already held that the retaliation claim fails under Title IX because Crowther “seeks to protect only his participation in the Title IX investigation of complaints *against* him, not his reporting of other violations.” *Id.* at 24a (emphasis in original). *Jackson* plainly “does not contemplate protections for an accused discriminator who participates in a Title IX investigation of his own conduct.” *Id.* That decision is clearly correct and not implicated by Crowther’s petition, regardless. That leaves only Crowther’s sex-discrimination claim, which is based more on his observations about the shortcomings of Title

certainly not be cognizable. *See* 34 C.F.R. § 106.41(c) (providing that “[u]nequal aggregate expenditures for members of each sex or unequal expenditures for male and female teams . . . will not constitute noncompliance with [Title IX]”). Tellingly, Petitioners do not even attempt to argue otherwise here.

IX investigations nationwide, and supposed anti-male bias at Augusta University, than any specific allegations that the defendants discriminated against *him* based on his sex. *See Crowther*, Doc. 1 at 58–63.

As with *Joseph*, the *Crowther* claims are either irrelevant or doomed. If the Court is inclined to consider some version of that question, it should do so in a case where the answer is at least potentially helpful to the litigation.

These problems also highlight that the question presented is of limited importance to employment-discrimination plaintiffs, who would continue to have a cause of action under Title VII regardless of whether the Court grants review. Title VII provides a “comprehensive solution for the problem of invidious discrimination in employment.” *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 459 (1975). It makes it illegal for employers—including educational institutions—to discriminate against someone “because of . . . sex” in hiring, firing, compensation, promotion, or other terms and conditions of employment. 42 U.S.C. § 2000e-2(a). Title VII allows for a range of remedies including equitable relief, compensatory damages, punitive damages (where the employer acted with malice or reckless indifference), and attorney’s fees and costs. *See* 42 U.S.C. § 2000e-5(g)(1), (2)(A)(B). Title VII does have exhaustion requirements (one of the reasons it makes no sense at all to hold that Title IX allows employees to simply circumvent Title VII), but it certainly does not leave injured plaintiffs *without a remedy*.

These cases, specifically, emphasize just how unnecessary this Court’s intervention is. Both *Crowther* and *Joseph* had the option of asserting Title VII claims based on their allegations of sex discrimination. *Joseph*

did so, and the district court and court of appeals correctly *rejected* those claims on the merits. Pet.App.10a–11a. Were this Court to reverse on the availability of parallel Title IX claims, it would make no difference: for the same reasons that Joseph’s Title VII claims failed, her Title IX “claims” would fail as well. Crowther, by contrast, had every opportunity to assert a Title VII claim and chose not to. Indeed, the district court encouraged him to assert Title VII claims out of an abundance of caution. *Crowther*, Doc. 44 at 33. It is not the Eleventh Circuit’s (correct) ruling that has kept him from asserting an employment discrimination claim; it is his own inexplicable choice not to assert claims under the comprehensive statute Congress enacted to cover just these disputes.

In other words, nothing about the Eleventh Circuit’s ruling leaves employees of educational institutions without a legal remedy for workplace sex discrimination. They can still avail themselves of the comprehensive Title VII framework. There is no reason for this Court to intervene here to save plaintiffs from their own meritless claims or idiosyncratic litigation choices.

III. The decision below was correct

One final reason to deny the petition: the Eleventh Circuit was correct. This Court long ago exited the private-action-creation business. It certainly should not stage a comeback where Congress explicitly created Title VII to cover these claims.

A. “Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress.” *Sandoval*, 532 U.S. at 286. “Raising up causes of action where a statute has not created them” would mean reverting “to the understanding of private

causes of action that held sway 40 years ago,” as reflected by decisions like *Cannon*. *Id.* at 287 (citations omitted); *see also Medina v. Planned Parenthood S. Atlantic*, 145 S. Ct. 2219, 2230 n.1 (2025) (“[T]he Court has retreated from *Cannon*’s reasoning, which exemplified an expansive rights-creating approach that later decisions abandoned.”) (quoting *Franklin*, 503 U.S. at 77 (Scalia, J., concurring) (internal quotations omitted)). That is especially true for Spending Clause legislation like Title IX, which is “in the nature of a contract.” *Pennhurst*, 451 U.S. at 17. As with any other contract, the state must “voluntarily and knowingly accept[]” its terms. *Id.* A state cannot do so if it is “unaware of the conditions or is unable to ascertain what is expected of it,” so Congress must impose any spending conditions “unambiguously.” *Id.*

While the Court did create a private right of action for Title IX, it has not extended it to cover employment discrimination, and it should not start now. *Cannon* held only that Title IX provides an implied right of action for *students* who complain of sex discrimination by schools receiving federal funds. 441 U.S. at 690 n.13, 694. *Jackson* extended that right of action to school employees who are retaliated against for reporting sex discrimination *against students*. 544 U.S. at 171. And *North Haven Board of Education v. Bell*, 456 U.S. 512, 520 (1982), concerned the substantive reach of Title IX, not the reach of its judicially created caused of action.

Applying the ordinary test for private rights of action, Title IX’s judicially created right should not be extended to cover employment discrimination. *See Cummings*, 596 U.S. at 230–31 (Kavanaugh, J., concurring) (“[W]ith respect to existing implied causes of action, Congress, not this Court, should extend those implied causes of action

and expand available remedies.”). The text of the statute provides only that “[n]o person . . . shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” Education Amendments of 1972, Pub. L. No. 92-318, § 901, 86 Stat. 235, 373 (June 23, 1972) (codified as amended at 20 U.S.C. § 1681). Nothing about that language comes close to providing an “unambiguously conferred right to support a cause of action” under Title IX. *Gonzaga*, 536 U.S. at 283.

Even if the text left any doubt, the intertwined histories of Titles VII and IX show that Congress did not intend for Title IX to cover employment discrimination. Statutes are interpreted “with a view to their place in the overall statutory scheme,” *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989). Educational institutions were initially exempt from Title VII “with respect to the employment of individuals to perform work connected with the educational activities of such institution.” § 702, 78 Stat. at 255. Eight years later, however, “Congress eliminated that specific exemption by enacting” the EEOA in “response to the widespread and compelling problem of invidious discrimination in educational institutions.” *Univ. of Pa. v. EEOC*, 493 U.S. 182, 190 (1990). “Ever since the Congress ‘abandoned Title VII’s exemption for educational institutions’ in 1972,” these institutions have been “subject to Title VII’s restrictions.” *Mawakana v. Bd. of Trs. of Univ. of D.C.*, 926 F.3d 859, 864 (D.C. Cir. 2019) (citation omitted) (alteration accepted).

Title IX was enacted by the same Congress that, three months earlier, extended Title VII’s reach to include educational institutions via the EEOA. It beggars

belief that Congress in 1972 extended Title VII to educational institutions but then silently transferred sex-discrimination employment claims to Title IX a mere three months later. Why would Congress, in June 1972, *sub silentio* exempt employees of federally funded educational institutions from Title VII’s “rigorous administrative exhaustion requirements and time limitations,” *Brown*, 425 U.S. at 833, after the same Congress in March 1972 applied Title VII to educational institutions in the first place?

And recall that Title IX is simply a one-sentence extension of Title VI, which was part of the same congressional act as Title VII—the Civil Rights Act of 1964. It makes no sense that Congress meant to effectively eliminate Title VII for sex discrimination in employment claims at schools through an amendment to Title VI, which was, from the beginning, *complementary* to Title VII. It is also “dubious that recipients of federal funds would understand that they have knowingly and voluntarily accepted potential liability for damages for claims of employment discrimination under Title IX when those kinds of claims are expressly provided for and regulated by Title VII.” Pet.App 22a (citing *Gebser*, 524 U.S. at 286–87).

Petitioners argue that the decision below is “irreconcilable with . . . *Jackson*,” Pet.21, but they are simply wrong. *Jackson* held that a teacher who had faced an adverse employment action for complaining about sex discrimination against *students* could sue for retaliation under Title IX. 544 U.S. at 171. That makes a degree of sense, given that teachers and other school employees will often be the best situated to identify the sort of discrimination covered by the *Cannon* right of action—

i.e., discrimination against *students*. *Jackson* likewise recognized that teachers would lack a remedy under Title VII or otherwise for retaliation arising out of this same discrimination. *See* Pet.App.122a (noting that the *Cannon* and *Jackson* remedies “cover each ‘person’ Congress intended to protect from sex discrimination in schools through a multi-faceted, multi-*remedy* system.”). So without covering retaliation claims, Title IX’s protection of *students* is arguably undermined. But declining to extend Title IX to employment discrimination has no similar problem, since Congress has already addressed that type of discrimination through Title VII. *See also Gebser*, 524 U.S. at 284 (“Because the private right of action under Title IX is judicially implied, we have a measure of latitude to shape a sensible remedial scheme that best comports with the statute.”).

The text, context, and history of Title IX make clear that it provides no private right of action for employment-discrimination claims, and the Eleventh Circuit was thus correct to dismiss Petitioners’ employment-discrimination claims on that ground.

B. Even assuming Title IX *did* somehow create an enforceable private right, it would be precluded by Title VII in the employment discrimination cases that it governs. When Congress creates a comprehensive statutory scheme for protecting a right, it may impliedly express the intention that this scheme should be exclusive. *Novotny*, 442 U.S. at 372–78. So “a precisely drawn, detailed statute pre-empts more general remedies.” *Brown*, 425 at 834. A statute’s “balance, completeness, and structural integrity” also guide the analysis, *id.* at 832, as do available remedies: When one law’s “remedial devices . . . are sufficiently comprehensive, they may suffice

to demonstrate congressional intent to preclude” other statutory remedies. *Middlesex*, 453 U.S. at 20.

Based on these principles, the Court has repeatedly held that plaintiffs cannot look outside a detailed remedial scheme to find an easier cause of action elsewhere. For instance, the Court held that the “general language” of Public Vessels Act of 1925, which authorized suits against the United States for negligent maintenance or operation of a vessel, had to yield to Federal Employees Compensation Act of 1916, which established “comprehensive system” for claims by federal employees, thus precluding claims under the PVA by federal employees. *Johansen v. United States*, 343 U.S. 427, 431, 441 (1952). Similarly, 18 U.S.C. § 4126, which authorizes compensation to inmates injured while working for Federal Prison Industries, precludes damages claims under the Federal Tort Claims Act. *United States v. Demko*, 385 U.S. 149, 151, 154 (1966). The Court concluded that the later-enacted Torts Claims Act could not have supplemented rights under § 4126 because injured prisoners would then have greater protection than other government employees who were exclusively protected by the Tort Claims Act. *Id.* at 152. And in *Preiser v. Rodriguez*, 411 U.S. 475, 476–77 (1973), the Court held that the federal habeas corpus statute (not 42 U.S.C. § 1983) provided the exclusive remedy for prisoners challenging allegedly unconstitutional denials of good-conduct-time credits. The Court focused on the extensive exhaustion requirements of the habeas statute to conclude that “it would wholly frustrate explicit congressional intent to hold [that prisoners] could evade this [exhaustion] requirement by the simple expedient of putting a different label on their pleadings,” and that the specific terms of the habeas statute must thus “override the general terms of § 1983.” *Id.* at 489–90.

The upshot of these cases is that a “carefully tailored scheme” will preclude separate lawsuits under statutes providing a general remedy. *Fitzgerald*, 555 U.S. at 255 (quotation omitted). That is especially true if one of the statutes contains an administrative exhaustion requirement. *See, e.g., Preiser*, 411 U.S. at 489–92.

These principles prove preclusion here. Title VII, the earlier enacted statute, is a “comprehensive enforcement scheme,” *Carey*, 447 U.S. at 63, that requires a plaintiff to exhaust certain administrative remedies before filing a suit for employment discrimination, 42 U.S.C. § 2000e-5(e)–(f). Title IX, by contrast, “is a broadly written general prohibition on [sex] discrimination, followed by specific, narrow exceptions to that broad prohibition.” *Jackson*, 544 U.S. at 175. It does not “require[] plaintiffs to comply with particular procedures and/or to exhaust particular administrative remedies prior to filing suit,” *Fitzgerald*, 555 U.S. at 254, and its “remedies—withdrawal of federal funds and an implied cause of action—stand in stark contrast to [an] . . . elaborate, carefully tailored, and restrictive enforcement scheme” like Title VII, *id.* at 255 (internal quotation marks omitted).

In other words, “in enacting Title IX, Congress chose two remedies for the same right, not two rights addressing the same problem.” *Lakoski*, 66 F.3d at 757. “Title VII provided individuals with administrative and judicial redress for employment discrimination, while Title IX empowered federal agencies that provided funds to educational institutions to terminate that funding upon the finding of employment discrimination.” *Id.* (emphasis omitted). This, along with the statutes’ closely intertwined histories, *see supra* at 27–28, “suffice to demonstrate congressional intent to preclude” a parallel remedy under Title IX. *Sea Clammers*, 453 U.S. at 20.

Preclusion here is confirmed by this Court's cases addressing Title VII's preclusive effect on other, similarly general statutes. In holding that Title VII precluded claims for employment discrimination under § 1981 by federal employees, the Court reasoned in *Brown* that, without affording it preclusive effect, Title VII, "with its rigorous administrative exhaustion requirements and time limitations, would be driven out of currency were immediate access to the courts under other, less demanding statutes permissible." 425 U.S. at 833. "It would require the suspension of disbelief," the Court reasoned, "to ascribe to Congress the design to allow [Title VII's] careful and thorough remedial scheme to be circumvented by artful pleading." *Id.* So too for 42 U.S.C. § 1985 in *Novotny*, where the Court explained that holding otherwise would mean that a "complaint could completely bypass the administrative process, which plays such a crucial role in the scheme established by Congress in Title VII." 442 U.S. at 376; *see also id.* at 375–76 ("If a violation of Title VII could be asserted through § 1985(3), a complainant could avoid most if not all of [the] detailed and specific provisions of [Title VII].").

These cases make clear that when Title VII's comprehensive "remedial scheme" applies, plaintiffs cannot bypass its "careful blend of administrative and judicial enforcement powers" by simply choosing to proceed under a different statute. *Brown*, 425 U.S. at 833. Title VII thus precludes Title IX for sex-discrimination claims in employment.

CONCLUSION

For the reasons set out above, this Court should deny the petition.

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