

No. 25-183

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IN THE  
**Supreme Court of the United States**

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THOMAS CROWTHER, *et al.*,

*Petitioners,*

*v.*

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

*Respondents.*

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

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**SUPPLEMENTAL BRIEF OF RESPONDENTS**

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## ARGUMENT

The Solicitor General agrees with Respondents and the Eleventh Circuit that Title IX does not implicitly provide a private right of action to sue for sex discrimination in employment, and that Title VII would preclude such claims. SG Br. 8–17. He likewise agrees that four of the eight circuits Petitioners leverage to identify a split have not actually “rendered a holding” on the question presented. *Id.* at 18 n.5. Nevertheless, the Solicitor General urges this Court to grant certiorari. *Id.* at 1, 20–21. This Court should reject that invitation for all the reasons in Respondents’ brief in opposition, and because the Solicitor General’s new arguments do not provide a sound basis on which to grant review.

*First*, the Solicitor General exaggerates the breadth and depth of the asserted circuit split. Again, he agrees that half of the decisions Petitioners place on their side of the split *never resolved* the question presented. And, as Respondents have explained, two of the other four decisions—those of the First and Fourth Circuits—simply state, with zero analysis, that Title IX provides a private right of action for sex discrimination in employment. BIO 18. The Solicitor General never disputes that point—or discusses these circuit decisions at all—but uses them to pad the split anyway. As for the two remaining decisions—those of the Second and Third Circuits—Respondents disagree with the Solicitor General about how best to interpret their reasoning and account for their distinctions. The mere existence of that disagreement indicates that any split here is a shallow one, and that every circuit remains capable of aligning its precedent with this Court’s modern approach.

*Second*, the Solicitor General overlooks vehicle problems. Most obviously, he ignores that the answer to the question presented will have precious little relevance to the fate of Petitioners’ sex-discrimination claims. The Solicitor General dismisses that concern by labeling it an “ancillary dispute.” SG Br. 22. But whether a plaintiff whose original Title VII claim loses on the merits may bring that claim under Title IX is “ancillary” only in the sense that it doesn’t affect the litigants before the Court. *See* BIO 21. And such case-specific considerations are certainly appropriate at the certiorari stage—which is why the Solicitor General routinely cites them in his own briefs in opposition.

This Court’s review is unnecessary, and it should deny the petition.

**I. The decision below is correct.**

Respondents and the Solicitor General are aligned on the merits of the question presented: Title IX does not provide a private right of action for sex discrimination in employment. BIO 24–31; SG Br. 8–17. In a different jurisprudential era, this Court concluded that Title IX creates an implied private right of action for students to complain of sex discrimination, *Cannon v. Univ. of Chicago*, 441 U.S. 677, 717 (1979), and later held that Title IX’s student protections may go unenforced if employees who report discrimination against students could not bring retaliation claims, *Jackson v. Birmingham Bd. of Ed.*, 544 U.S. 167, 171, 180–81 (2005). But this Court has definitively “retreated from *Cannon*’s reasoning” and approach to identifying implied private rights of action. *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 369 n.1 (2025). Instead, whether “[to] extend” *Cannon*’s “implied cause[] of action” any further is properly a

question for “Congress, not this Court.” *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 231 (2022) (Kavanaugh, J., concurring). That is especially true in the Spending Clause context. BIO 25.

Here, nothing in the text of Title IX, *Cannon*, *Jackson*, or any other source of law provides employees an implied cause of action for sex discrimination in employment. BIO 24–26. And Congress’s express extension of Title VII to educational institutions three months before it enacted Title IX forecloses any such implication. Pet.App.20a–21a; BIO 26–27; SG Br. 13–15. That timing, coupled with Title VII’s carefully constructed “comprehensive scheme for the vindication of [employees’] rights,” *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 457–58 (1975), renders absurd the notion that Congress silently handed a no-strings-attached right of action to employees of Title IX institutions. And contrary to Petitioners’ insistence, *Jackson* did not compel that unlikely result when it held merely that “Title IX provides a private right of action for *retaliation* for an employee’s complaint about discrimination *against students*.” Pet.App.16a (second emphasis added).

The Solicitor General agrees across the board: He correctly explains that this Court would have to apply and expand *Cannon*’s discredited approach to extend an implied right of action to this distinct context, SG Br. 8–12, that nothing in Title IX’s text or context suggests a private right of action for sex discrimination in employment, *id.* at 13–15, and that neither *Jackson* nor any other precedent provides otherwise, *id.* at 15–17. The Solicitor General also agrees that Title VII, with its stringent pre-suit requirements, “provides the exclusive remedy” for sex discrimination in employment, foreclosing any implied

Title IX remedy. *Id.* at 14–15 (quotation omitted). In sum, Respondents, the Solicitor General, and the Eleventh Circuit below all agree on the question presented. That is reason enough to deny review.

**II. The question presented does not merit further review in this case.**

Despite embracing the Eleventh Circuit’s view of the merits, the Solicitor General urges this Court to grant review to resolve an “entrenched” circuit split. SG Br. 20. But while the Solicitor General comes closer to the mark than Petitioners, he still exaggerates both the breadth and depth of the asserted split. And he overlooks other serious reasons to deny review in these cases.

A. The Solicitor General posits a significantly smaller split than Petitioners. All agree that the Fifth, Seventh, and now the Eleventh Circuits hold that Title IX does not provide a private right of action for sex discrimination in employment. *See* Pet.App.22a; *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); SG Br. 17. Petitioners contend that eight circuits go the other way. Pet. 15–18. But the Solicitor General agrees with Respondents that four of those courts have not, in fact, “rendered a holding on the question presented.” SG Br. 18 n.5 (citing decisions from Sixth, Eighth, Ninth, and Tenth Circuits); BIO 17–18. So, the Solicitor General is left to claim a 4-3 split, with the First, Second, Third, and Fourth Circuits populating Petitioners’ preferred side. SG Br. 18.

That split is still overstated, however. The relevant First and Fourth Circuit decisions feature no analysis on the question presented here, just *ipse dixit* assertions that Title IX provides a private remedy in this context. *See* BIO 18 (citing *Lipsett v. Univ. of P.R.*, 864 F.2d 881,

896–97 (1st Cir. 1988), and *Preston v. Virginia. ex rel. New River Cmty. Coll.*, 31 F.3d 203, 205–06 (4th Cir. 1994)). The Solicitor General does not dispute Respondents’ reading of those decisions. Instead, he simply observes that the Third Circuit purported to agree with *Lipsett* and *Preston*. See SG Br. 18 (quoting *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 563 (3d Cir. 2017)). But the Third Circuit’s misguided reliance on a pair of unreasoned decisions did not retroactively transform them into relevant data points for Petitioners’ claimed circuit split.

That leaves only the Second Circuit’s decision in *Vengalattore v. Cornell Univ.*, 36 F.4th 87, 106 (2d Cir. 2022), and the Third Circuit’s in *Mercy*, 850 F.3d 545. See SG Br. 18. But both are distinguishable—and both leave room for their respective circuits to course correct, if necessary, in future cases.

In *Vengalattore*, the Second Circuit imported Title VII’s *substantive standards* into the Title IX context but never addressed whether Title IX’s *remedy* is precluded where Title VII directly governs. See 36 F.4th at 102–04; BIO 19. The Solicitor General responds that the plaintiff in *Vengalattore* could have pursued a Title VII claim instead. SG at 19. But the point remains that the Second Circuit simply did not address whether Title VII’s remedy in any way forecloses an implied cause of action to vindicate the same right under Title IX. Instead, as the Eleventh Circuit observed, *Vengalattore* held that a “Title IX right of action was viable without deciding the preclusion question.” Pet. App.12a. As such, *Vengalattore* does not limit a future Second Circuit panel’s latitude to correctly hold that Title VII bars a parallel Title IX remedy, see BIO 28–31, even accounting for the “breadth of Title IX’s language,” *Vengalattore*, 36 F.4th at 106.

In the end, the Solicitor General relies on *Mercy*—if all else fails, that Third Circuit decision means Respondents cannot “eliminate the split” altogether. SG Br. 20. But as Respondents have explained, *Mercy*’s facts and reasoning were addressed specifically to *private* employers. BIO 19. The Third Circuit was not shy about this: One of the “four guiding principles” of its analysis involved considerations unique to “private-sector employees,” *Mercy*, 850 F.3d at 562, and the court repeatedly cabined its discussion to the “private employment setting,” *id.* at 564. Rather than taking the Third Circuit’s reasoning at face value, the Solicitor General posits that the court was concerned with only federal employment, and that no circuit “has suggested that the state/private distinction matters to the question presented.” SG Br. 19. But that is precisely what the Third Circuit’s carefully chosen language suggests. And regardless, *Mercy*’s scrupulously narrow approach means the Third Circuit has left itself ample room to hold that Title IX does not provide an implied right of action against state government employers. *Cf. United States v. Warren*, 338 F.3d 258, 265 (3d Cir. 2003) (statements “that do not implicate the adjudicative facts of the case’s specific holding do not have the bite of precedent”).

But even if the Solicitor General is right about *Vengalattore* and *Mercy*, that leaves only a narrow, shallow split that does not require this Court’s intervention. Especially given intervening decisions from this Court, *see, e.g. Medina*, 606 U.S. at 369 n.1, and the Eleventh Circuit’s comprehensive treatment of the question below, there is every reason to expect a return to uniformity.

**B.** These cases are also poor vehicles for resolving the question presented. As Respondents have explained, this Court’s intervention would have virtually no practical

effect on the resolution of Petitioners’ patently meritless claims. BIO 20–23. The court below rejected the mirror-image Title VII employment discrimination claims pleaded in Joseph’s operative complaint, so her ability to press those claims under Title IX hardly matters. *Id.* at 20–22. As for Crowther, the only claim he could assert under Title IX is not remotely cognizable for independent reasons. *Id.* at 22–23.

The Solicitor General does not disagree with any of this—he simply asks this Court to leave such “ancillary dispute[s]” for remand. SG Br. 22. He never justifies that label, but regardless, whether the question presented is “irrelevant to the ultimate outcome of the case” has always been an important consideration at the certiorari stage. *See* S. Shapiro, et al., *Supreme Court Practice* § 4.4(f) (11th ed. 2019); *cf. Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994) (“[A]s matters have developed it is not clear that our resolution of the constitutional question will make any difference even to these litigants.”). As the Solicitor General has argued elsewhere, when the “[r]esolution of the question presented [will] . . . make no difference to petitioner’s request for relief,” a “case [is] an unsuitable vehicle in which to address that question.” SG BIO at 5, *Lairy v. United States*, No. 25-821 (2026).<sup>\*</sup> Indeed, any other approach would be unfair to the individual litigants before this Court and would waste judicial resources.

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<sup>\*</sup> *See also, e.g.*, SG BIO at 7, 11, *Abdulla v. Bondi*, No. 25-641 (2026); SG BIO at 15–16, *Ebu v. United States Citizenship & Immigr. Servs.*, No. 25-467 (2025); SG BIO at 6–7, *Vanda Pharms., Inc. v. FDA*, No. 24-1187 (2025) (“[T]his case would be a poor vehicle to review the question presented because, at this point in the drug-development process, fast-track status would offer few, if any, benefits to petitioner.”).

Finally, the question presented is of limited importance to employment-discrimination plaintiffs because they enjoy a Title VII remedy. BIO 23–24. Both Joseph and Crowther had that option: Joseph brought Title VII claims but lost; Crowther simply did not try. *Id.* at 24. For his part, the Solicitor General argues that the question presented is one of “broader jurisprudential significance” because *expanding* Title IX’s implied private right of action to Petitioners’ claims would have “significant consequences for courts and the federal government.” SG Br. 20–21. That is certainly true, and Respondents of course agree that Petitioners tried to “end-run” Title VII’s critical pre-suit procedures. *Id.* at 20. But the Eleventh Circuit already ended Petitioners’ gambit, so the “significant consequences” the Solicitor General aptly decries, *id.*, could transpire *only* if this Court grants certiorari—and then *reverses*—despite the obvious correctness of the Eleventh Circuit’s judgment. Absent a truly worrisome division of binding circuit authority (*but see* Part II.A, *supra*), that attempt to reverse-engineer “importance” makes little sense. In short, this Court should intervene only when a Title IX plaintiff succeeds in “circumvent[ing]” Title VII. SG Br. 20. Thankfully, Petitioners did not. This Court should deny further review.

**CONCLUSION**

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

Respectfully submitted,

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