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

SUPPLEMENTAL BRIEF FOR PETITIONERS

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SUPPLEMENTAL BRIEF FOR PETITIONERS

The Government's brief confirms this Court should grant certiorari. As it sets out, the Eleventh Circuit's decision deepens an "entrenched" circuit split, and "[t]here is no indication that the conflict will subside absent this Court's intervention." U.S. Br. 20. The petition also presents "an important question of federal law [that] warrants this Court's review" because of its significant consequences. *Id.* at 8. And this petition is an excellent vehicle, as the lower court's "ruling on [the question presented] was the dispositive legal ground" for its decision and there are no preservation issues. *Id.* at 21.

The Government also ably rebuts Respondents' attempt to muddy the split and to create vehicle issues. *Id.* at 19-20, 22. Respondents' supplemental brief does not rehabilitate their arguments. Resp. Supp. Br. 4-8. Respondents again try to avoid the split through a tortured reimagination of the cases that cannot be reconciled with the language of those opinions, as shown by how other courts have interpreted those cases. *Id.* at 4-6. And Respondents' purported "vehicle problems" are inapposite rehashes of the merits of Petitioners' claims, which can be left for remand. *Id.* at 2, 6-7. Finally, in trying to downplay the importance of the question presented, Respondents do not meaningfully engage with Petitioners' or the Government's arguments. *Id.* at 8.

On the merits of the question presented, the Government's position is unavailing. The Government now argues—in a break from decades of bipartisan

consensus—that Title IX's private right of action does not extend to intentional sex discrimination in employment. U.S. Br. 8-17.

The Government has no meritorious argument from the statutory text. This Court "relie[s] on the text of Title IX" in "defin[ing] the contours of [Title IX's] right of action." *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005). And that text "broadly prohibits a funding recipient from subjecting *any person* to 'discrimination' 'on the basis of sex,'" *ibid.* (emphasis added) (quoting 20 U.S.C. § 1681), and "person" plainly "include[s] employees as well as students," *North Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 520 (1982). Thus, Title IX's cause of action extends to intentional sex discrimination in employment.

The Government contends that so holding would impermissibly "expand[]" the implied right of action. U.S. Br. 8; see Resp. Supp. Br. 3, 8. This argument has it backwards. As this Court has recognized, Congress "ratified" Title IX's private right of action in 1986 and 1987, *Alexander* v. *Sandoval*, 532 U.S. 275, 280 (2001), and it is now "beyond dispute that private individuals may sue to enforce" Title IX, *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022) (quotation marks omitted).

So the relevant question is whether, when it ratified Title IX's cause of action, Congress *limited* the private right of action to students. It did not. "Congress made no effort to restrict the right of action recognized in *Cannon* and ratified in the 1986 Act or to alter the traditional presumption in favor of any

appropriate relief for violation of a federal right." *Franklin* v. *Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 73 (1992) (citing *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979)).

The Government asks the Judiciary to imply an extra-textual limitation into the scope of Title IX's congressionally-ratified cause of action. But "[b]ecause of legislation enacted subsequent to *Cannon*, it is too late in the day to address whether a judicially implied exclusion of damages under Title IX would be appropriate." *Franklin*, 503 U.S. at 78 (Scalia, J., concurring in the judgment).

Similarly, there is no basis for the Government's assertion that Title VII precludes employment discrimination claims under Title IX. U.S. Br. 13-15; see Resp. Supp. Br. 3-4. This Court has already rejected this argument in *Bell* and other cases. See *Bell*, 456 U.S. at 535 n.26 ("[T]his Court repeatedly has recognized that Congress has provided a variety of remedies, at times overlapping, to eradicate employment discrimination.").

Regardless, as the Government recognizes, it has been over "30 years since the [Government] first recommended that the Court grant certiorari" on the question presented, and the split has not only remained "entrenched," but "deepened." U.S. Br. 20. The Court should grant certiorari and resolve this important question.

I. The Court Should Grant Certiorari

As the Government agrees, this petition should be granted because it is an appropriate vehicle to resolve an entrenched circuit split on an important federal question.

A. The Government agrees that the Circuits are mired in a long-running and deepening conflict over the question presented. *Id*. at 17-20. In the decision below, the Eleventh Circuit held that Title IX does not provide employees a private right of action for sex discrimination in employment, Pet. App. 12a-22a, aligning with the Fifth and Seventh Circuits, see U.S. Br. 17.

On the other side of the split are "at least" the First, Second, Third, and Fourth Circuits. *Id*. at 18; Pet. 15-18; *Lipsett* v. *Univ. of P.R.*, 864 F.2d 881 (1st Cir. 1988); *Vengalattore* v. *Cornell Univ.*, 36 F.4th 87 (2d Cir. 2022); *Doe* v. *Mercy Cath. Med. Ctr.*, 850 F.3d 545 (3d Cir. 2017); *Preston* v. *Virginia ex rel. New River Cmty. Coll.*, 31 F.3d 203 (4th Cir. 1994).

As the Government explains, "[a]ppellate judges have repeatedly reached conflicting results on the question presented across circuits and in the separate opinions accompanying the denial of rehearing en banc below." U.S. Br. 20.

The Government does not dispute that four other Circuits (the Sixth, Eighth, Ninth, and Tenth) have permitted employees' Title IX claims to proceed. It questions whether those decisions squarely addressed the question presented. *Id.* at 18-19 & n.5 (citing

cases). But as Petitioners noted (Pet. 12; Reply 5-7), the Eleventh Circuit acknowledged splitting with those four Circuits, and other courts have interpreted those Circuits' decisions as allowing employee Title IX suits. In any event, it is academic whether the split is 3-4 (as the Government says) or 3-8 (as Petitioners say). Under either view, there is a deep and entrenched split over a significant question of federal law. U.S. Br. at 20-21 (noting importance of question and unlikelihood of resolution absent the Court's intervention).

The Government also correctly explains why Respondents' attempts to minimize the split are meritless. *Id*. at 19-20.

In their brief in opposition, Respondents "attempt to deny the split" by arguing that this case, which involves state universities, cannot be compared with cases involving private institutions. *Id*. at 19 (citing BIO 16-20). But this basis for denying the split is illusory. "[N]o circuit, on either side of the split" has ever suggested that the "state/private distinction matters," and the Third Circuit's decision in *Mercy* shows the opposite; "it approvingly cited cases involving Title IX claims against public educational institutions." U.S. Br. 19. Respondents' supplemental brief merely repeats those arguments. Resp. Supp. Br. 6. Again, they fail. See Reply 3-4.

Respondents also question whether the Second Circuit would hold that "Title IX provides a private right of action in cases *where Title VII governs*," (BIO 19 (emphasis in original)), but this also fails because

"Title VII plainly did govern in *Vengalattore*," and the defendant raised Title VII on appeal, U.S. Br. 19-20. In their supplemental brief, Respondents again assert that *Vengalattore* did not resolve whether Title VII would preclude a cause of action under Title IX. Resp. Supp. Br. 5. Courts applying *Vengalattore* disagree; *Vengalattore* "agree[d] with *Mercy*," and foreclosed the argument that "Title IX claims are precluded by Title VII." *Hougham* v. *Trs. of Ithaca Coll.*, 2026 WL 555476, at *7 (N.D.N.Y. Feb. 27, 2026); see Reply 5 (citing, *e.g.*, *Simons* v. *Yale Univ.*, 712 F. Supp. 3d 267, 285 & n.13 (D. Conn. 2024)).

Respondents' remaining contentions fall flat. Respondents assert the First and Fourth Circuits should be discounted because the relevant opinions provide "no analysis on the question presented." Resp. Supp. Br. 4-5 (discussing *Lipsett*, 864 F.2d at 896-97 and *Preston*, 31 F.3d at 205-06). But Respondents cannot contest that the holdings, in two published cases, squarely address the question presented and bind their respective Circuits, as courts within and beyond those Circuits have acknowledged. *E.g.*, *Bartges* v. *Univ. of N. Carolina at Charlotte*, 908 F. Supp. 1312, 1332 (W.D.N.C. 1995); see Pet.App. 18a; *Mercy*, 850 F.3d at 563; *Vengalattore*, 36 F.4th at 105; Reply 6.

B. Petitioners and the Government agree that "[t]he question presented has significant consequences for litigants," and is worthy of this Court's intervention. U.S. Br. 20-21; Pet. 26-29. Respondents *agree* that the question carries "significant consequences" but unpersuasively argue this Court should

wait until a "Title IX plaintiff succeeds" in purportedly "circumventing Title VII." Resp. Supp. Br. 8 (quotation marks omitted and alteration removed). But Respondents' suggested trigger has already happened. See *Mercy*, 850 F.3d at 560. Some Circuits allow Title IX suits where Title VII applies, and some don't. Respondents' assertion there is no "truly worrisome" split, Resp. Supp. Br. 8, should be discounted including for the reasons given by the Government, U.S. Br. 20-21.

C. Finally, the Government confirms that this joint petition presents "an appropriate vehicle" to decide the question presented; "[t]he Eleventh Circuit's ruling on that question was the dispositive legal ground on which it held that petitioners' Title IX employment-discrimination claims must be dismissed." U.S. Br. 21; see Pet. 29; Reply 7-9.

In their supplemental brief, Respondents assert review is unwarranted because it would be "irrelevant to the ultimate outcome of the case." Resp. Supp. Br. 7. They are wrong; the district court held that Crowther properly stated a Title IX discrimination claim (and he did not bring a Title VII claim), and Joseph's Title IX claim can proceed on an associational theory, which Title VII does not recognize. Reply 8-9. Respondents' attempt to argue the merits (BIO 21-24; Resp. Supp. Br. 6-7), does not create a vehicle issue. What happens on remand should not affect the decision to grant. U.S. Br. 22; see *Waetzig* v. *Halliburton Energy Servs., Inc.*, 604 U.S. 305, 319 (2025) (leaving for remand other arguments against claims' validity).

* * *

As the Government recommends, certiorari should be granted.

II. The Decision Below Is Wrong

In advance of full merits briefing, Petitioners preview several points below.

A. Title IX's cause of action is not merely "implied." History did not stop after *Cannon*. In the 1980s, Congress ratified Title IX's private right of action to enforce the statute, and employees are within the class of "person[s]" who can sue under Title IX for sex discrimination.

1. Start with the text. Title IX, in relevant part, provides that "[n]o person" shall be discriminated against on the basis of sex. 20 U.S.C. § 1681. This term "include[s] employees as well as students," as this Court recognized in 1982 in *Bell*. 456 U.S. at 520; see U.S. Br. at *8-9, *Bell*, 1981 WL 390417 (U.S. Sept. 3, 1981) (agreeing the statute's "broad language" covers employees). "After all, Congress easily could have substituted 'student' or 'beneficiary' for the word 'person' if it had wished to restrict the scope of § 901(a)." *Bell*, 456 U.S. at 521. The Government does not dispute this point.

Next, as this Court has recognized, Congress enacted language expressly ratifying the existence of a private right of action permitting "private individuals [to] sue to enforce" Title IX. *Cummings*, 596 U.S. at 218 (quoting *Sandoval*, 532 U.S. at 280). Following

Cannon (which recognized the private right of action) and *Bell* (which confirmed the statute covered discrimination against employees), Congress enacted and the President signed the Rehabilitation Act Amendments of 1986. Congress therein provided that "remedies (including remedies both at law and in equity) are available … to the same extent as such remedies are available … in the suit against any public or private entity other than a State." 42 U.S.C. § 2000d-7(a)(2).

Congress did not limit the right of action to only some of the "person[s]" protected under Title IX. Indeed, the Court's precedents reflect that "private individuals" may sue, not just students. See *Sandoval*, 532 U.S. at 280; accord *Cummings*, 596 U.S. at 218 ("[I]t is 'beyond dispute that private individuals may sue to enforce' the antidiscrimination statutes we consider here[.]" (quoting *Barnes* v. *Gorman*, 536 U.S. 181, 185 (2002))).

The next year, Congress enacted the Civil Rights Restoration Act, which "broadened the coverage of these antidiscrimination provisions" "[w]ithout in any way altering the existing rights of action" or disagreeing with *Bell*. *Franklin*, 503 U.S. at 73. Taken together, these acts reflect Congress's express authorization of a broad private right of action, as this Court has repeatedly noted. *E.g.*, *Cummings*, 596 U.S. at 218; *Sandoval*, 532 U.S. at 280.

2. The Government contends *Cannon* was limited to students and that Congress's subsequent legislation thus created a private right of action only for

them. U.S. Br. 15-16; see Resp. Supp. Br. 2-3. This position fails for multiple reasons.

First, this Court has never held that *Cannon*'s recognition of the private right of action was limited to students. See *Sandoval*, 532 U.S. at 282; *Franklin*, 503 U.S. at 65 ("In *Cannon*[], the Court held that Title IX is enforceable through an implied right of action."). The statute's antidiscrimination provision makes no distinction between students and employees, *Cannon* expressly referred to employment discrimination, see *Cannon*, 441 U.S. at 708 & n.42, and in *Franklin*, the Court rejected the argument that Title IX remedies should be *limited* to "backpay," a traditional remedy for employee-plaintiffs, 503 U.S. at 75-76.

Second, just four years prior to the 1986 Amendments the Court decided *Bell*, which confirmed that Title IX bars sex discrimination against employees. Where Congress amends a statute "while still adhering to the operative language," this "is convincing support for the conclusion that Congress accepted and ratified" court decisions that it was "aware of." *Texas Dep't of Hous. & Cmty. Affs.* v. *Inclusive Communities Project, Inc.*, 576 U.S. 519, 536 (2015). While the Government may disagree with *Bell*, U.S. Br. 13, it remains good law and was in force at the time Congress confirmed that "private individuals may sue to enforce" Title IX, *Cummings*, 596 U.S. at 218. As this Court recognized in *Sandoval*, "[a] Congress that intends the statute to be enforced through a private cause of action intends the authoritative

interpretation of the statute to be so enforced as well." 532 U.S. at 284.

Indeed, at the time of the 1986 Amendments, several Circuits had held that employees could sue under Title IX. See, *e.g.*, *O'Connor* v. *Peru State Coll.*, 781 F.2d 632, 642 n.8 (8th Cir. 1986) ("Claims of discriminatory employment conditions are cognizable under Title IX." (citing *Bell*)); *Thompson* v. *Bd. of Educ. of Romeo Cmty. Schs.*, 709 F.2d 1200, 1202, 1206 (6th Cir. 1983) (adjudicating class action certification and standing of pregnant teachers suing under Title IX).

Further, the Civil Rights Restoration Act passed in 1987 "correct[ed] what [Congress] considered to be an unacceptable decision" narrowing civil rights in a separate context. *Franklin*, 503 U.S. at 73. Tellingly, Congress did *not* abrogate *Bell* or limit Title IX's cause of action to students.

In short, this Court has recognized (1) Title IX applies to employment discrimination and (2) Congress ratified a private right of action for all injured "person[s]" protected by Title IX.

B. In addition to text, structure, statutory history, and historical context, this Court's precedents lead to the inescapable conclusion that employees can bring claims for intentional sex-based discrimination under Title IX, as the Government previously recognized. U.S. Br. at *7-8, *Lakoski,* 1996 WL 33467394 (U.S. Sept. 24, 1996); U.S. Br. at *25-27, *Mercy*, 2016 WL 3227568 (3d Cir. June 9, 2016).

Cannon held that Title IX "contained a cause of action for the general category of 'persons.'" Pet. App. 136a (Rosenbaum, J., dissenting from denial of rehearing *en banc*). *Bell* explained that because Title IX "neither expressly nor impliedly excludes employees from its reach, we should interpret the provision as covering and protecting these 'persons.'" 456 U.S. at 521. And *Franklin* affirmed the availability of damages for violations of Title IX. 503 U.S. at 76.

These precedents coalesced in the Court's 2005 decision in *Jackson*, which confirmed the employee-plaintiff had a private right of action under Title IX against his employer. 544 U.S. at 171. In *Jackson*, the Court held that retaliation constituted a form of intentional sex discrimination actionable under Title IX, where the plaintiff alleged adverse employment actions as a result of reporting discrimination. *Id.* at 171-73. While the Court split over whether retaliation constituted sex discrimination, neither the majority nor dissent questioned whether employees could invoke Title IX's private right of action for intentional sex discrimination by their employer. Instead, the Court's analysis in *Jackson* reflected the well-settled view that all protected "private parties [can] seek monetary damages for intentional violations of Title IX," not just students. *Id.* at 173; see *id.* at 188 (Thomas, J., dissenting) (explaining that private Title IX suits typically "concerned a claimant who sought to recover for discrimination because of her own sex" and approvingly citing *Bell*, 456 U.S. at 517-18).

C. The Government's arguments with respect to the supposed preclusive effect of Title VII also do not carry the day. U.S. Br. 13-15; Resp. Supp. Br. 3-4. To begin, this argument incorrectly presupposes that the right at issue is merely implied.

Regardless, this Court has repeatedly rejected the proposition that the remedial scheme in Title VII is incompatible with providing employees relief outside that scheme. See *Bell*, 456 U.S. at 535 n.26 ("[T]his Court repeatedly has recognized that Congress has provided a variety of remedies, at times overlapping, to eradicate employment discrimination."); *CBOCS West, Inc. v. Humphries*, 553 U.S. 442, 454-55 (2008) (an overlap in remedies between Title VII and other statutes "reflects congressional design"). As the Government previously (and correctly) noted, "[n]othing in [*Cannon*, *Bell*, or *Franklin*] suggests that the availability of a Title VII remedy to redress employment discrimination affects the availability of remedies under Title IX." U.S. Br. at *25-27, *Mercy*, 2016 WL 3227568.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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