

No. 25-183

IN THE
Supreme Court of the United States

THOMAS CROWTHER & MACHELLE JOSEPH,
Petitioners,

v.

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

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

BRIEF FOR PETITIONERS

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QUESTION PRESENTED

Whether Title IX provides employees of federally funded educational institutions a private right of action to sue for sex discrimination in employment.

PARTIES TO THE PROCEEDING

Petitioner MaChelle Joseph was plaintiff in the district court and appellant in the Eleventh Circuit. Respondents Board of Regents of the University System of Georgia and Georgia Tech Athletic Association were defendants in the district court and appellees in the Eleventh Circuit.

Petitioner Thomas Crowther was plaintiff in the district court and appellee in the Eleventh Circuit. Respondent Board of Regents of the University System of Georgia was defendant in the district court and appellant in the Eleventh Circuit.

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OPINIONS BELOW

Crowther and *Joseph* were consolidated on appeal by the Eleventh Circuit. The Eleventh Circuit's ruling is reported at 121 F.4th 855 and reproduced at Pet. App. 1a. The Eleventh Circuit's order denying rehearing *en banc* is reported at 133 F.4th 1284 and reproduced at Pet. App. 115a.

In *Crowther*, the district court's order is reported at 661 F. Supp. 3d 1342 and reproduced at Pet. App. 33a. In *Joseph*, the district court's order is unpublished and reproduced at Pet. App. 66a.

JURISDICTION

The Eleventh Circuit filed its decision in the consolidated appeals on November 7, 2024. On April 8, 2025, the Eleventh Circuit filed an order denying rehearing *en banc*.

On May 8, 2025, Justice Thomas extended the time to file a petition for a writ of certiorari in *Joseph* to August 6, 2025. On July 1, 2025, Justice Thomas extended the time to file in *Crowther* to August 6, 2025. Petitioners timely petitioned for a writ of certiorari on August 6, 2025. This Court granted the petition on May 18, 2026, and has jurisdiction under 28 U.S.C. 1254(1).

PROVISIONS INVOLVED

Title IX of the Education Amendments of 1972, 20 U.S.C. 1681(a), provides in relevant part:

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.

The Spending Clause, U.S. Const. art. I, § 8, cl. 1, provides:

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States.

INTRODUCTION

“Few laws have been as effective and consequential in day-to-day American life as Title IX.” *West Virginia v. B.P.J.*, 609 U.S. __ (2026), slip op. at 4. Title IX states that “[n]o 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(a). For almost five decades, this Court has consistently interpreted Title IX as granting a private cause of action to enforce its prohibition on intentional sex discrimination. *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173, 179 n.3 (2005); *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 74-75 (1992); *Cannon v. Univ. of Chicago*, 441 U.S. 677 (1979).

Title IX’s private right of action enforces the statute’s prohibition—no more and no less. See *Jackson*, 544 U.S. at 173, 178-79 & nn.2-3; *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001). While “plaintiffs may not assert claims under Title IX for conduct not prohibited by that statute,” they may bring claims for conduct that “falls within the statute’s prohibition of intentional discrimination on the basis of sex.” *Jackson*, 544 U.S. at 178-79 & n.2. Title IX “proscribes employment discrimination in federally funded education programs.” *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 535-36 (1982). Therefore, employees of such funding recipients may

sue to enforce Title IX's prohibition on intentional sex discrimination.

This conclusion flows ineluctably from this Court's caselaw. It alone is faithful to the text, scheme, and purpose of Title IX and accords with the cause of action that was ratified by Congress. As Justice Scalia explained for the Court in *Sandoval*, Congress's 1986 amendments to Title IX "cannot be read except as a validation of *Cannon's* holding": "that Title IX created a private right of action to enforce its ban on intentional discrimination." *Sandoval*, 532 U.S. at 280, 282 (quoting *Franklin*, 503 U.S. at 72); see *Franklin*, 503 U.S. at 78 (Scalia, J., concurring in the judgment).

Moreover, Congress ratified the private right of action in 1986 against a backdrop in which this Court had held that Title IX prohibited employment discrimination and recognized that the private rights of action under two other civil rights statutes with nearly identical wording (Title VI and the Rehabilitation Act) encompass suits for certain employment discrimination. "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." *Sandoval*, 532 U.S. at 284.

Interpreting Title IX's cause of action to cover employees is compelled by the statutory text, which states that "[n]o person" shall suffer "discrimination" "on the basis of sex." 20 U.S.C. 1681(a); see *Jackson*, 544 U.S. at 173 (the Court "relie[s] on the text of Title

IX” in construing the right of action). It also aligns Title IX with this Court’s interpretation of closely related statutes like Title VI and the Rehabilitation Act. See *Barnes v. Gorman*, 536 U.S. 181, 185 (2002) (“[T]he Court has interpreted Title IX consistently with Title VI[.]”).

Affording employees a right of action under Title IX advances the goals of the statute. Title IX cannot achieve its objective of eradicating sex discrimination in education without a robust remedial scheme for student-employees or for the coaches, teachers, support staff, and others who teach, mentor, instruct, and otherwise support students in federally funded education programs. “[S]ometimes adult employees are the only effective adversar[ies] of discrimination in schools.” *Jackson*, 544 U.S. at 181.¹

The Court should reject the Eleventh Circuit’s attempt to carve out intentional sex discrimination against employees from Title IX’s cause of action. The Circuit’s creation of a judicially implied exception is incompatible with the statutory text and cannot be reconciled with this Court’s precedents. This Court has made clear that the Spending Clause “does not preclude private suits for intentional acts that clearly violate Title IX.” *Id.* at 182. Among other things, the Circuit’s carveout disregards the fact that this Court *and* Congress have repeatedly confirmed the existence of a cause of action that covers intentional

¹ Unless otherwise noted, all internal quotation marks, citations, and alterations have been omitted from quotations and all emphasis is added.

sex discrimination barred under the statute. *E.g., id.* at 173-74.

The Circuit also deemed it “anomalous” and “unlikely” that Congress intended Title VII and Title IX to overlap. Pet. App. 21a-22a. But this Court has already rejected “arguments rely[ing] on policy judgments” such as that “the victims of employment discrimination have remedies other than those available under Title IX.” *Bell*, 456 U.S. at 535 n.26. “These policy judgments were for Congress to weigh, and we are not free to ignore the language and history of Title IX even were we to disagree with the legislative choice.” *Ibid.* The Court has repeatedly rejected the chestnut that Title VII precludes overlapping remedies. As this Court recently reaffirmed, Title IX and Title VII are “vastly different.” *B.P.J.*, 609 U.S. ___, slip op. at 13.

The United States’ approach fares no better. It proposes a *Bivens*-like analysis where a plaintiff would lack a cause of action under Title IX if her claim does not match a fact pattern the Court has endorsed before. U.S. Br. at 9, 12. Such an approach stymies Congress’s ratification of a cause of action to enforce the statute’s prohibition on intentional sex discrimination. It also contradicts decades of precedent and common sense. This Court has never suggested the private right of action applies only to the scenario in *Cannon*, where a prospective student was denied admission to a medical school. 441 U.S. at 680. Rather, the Court has consistently held that Title IX creates liability in various scenarios in which

funding recipients are culpable for intentional sex discrimination against students and employees.

The Court should reject these invitations to upend the law, vitiate its own precedent, and substitute judicial policymaking for congressional intent. Instead, the Court should uphold the approach it has used for decades: sustain the availability of “private damages action[s] under Title IX where the funding recipient engages in intentional conduct that violates the clear terms of the statute.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 642 (1999). Here, that well-settled method yields a clear answer: “Title IX’s private right of action encompasses suits for [employment discrimination], because [employment discrimination] falls within the statute’s prohibition of intentional discrimination on the basis of sex.” *Jackson*, 544 U.S. at 178.

STATEMENT

A. Legal Background

1. “Title IX transformed American sports and American life.” *B.P.J.*, 609 U.S. ___, slip op. at 1. Congress passed and President Nixon signed Title IX as part of the Education Amendments of 1972. Pub. L. No. 92-318, § 901, 86 Stat. 235, 373 (1972). “[L]ike its model Title VI”—which prohibits discrimination in federally funded programs on the basis of race, color, or national origin—Title IX “sought to accomplish two related, but nevertheless somewhat different, objectives.” *Cannon*, 441 U.S. at 704. “First, Congress wanted to avoid the use of federal resources to support

discriminatory practices; second, it wanted to provide individual citizens effective protection against those practices.” *Ibid.*

Thus, in furtherance of these aims, the “text of Title IX ... broadly prohibits a funding recipient from subjecting any person to ‘discrimination’ ‘on the basis of sex,’” and also contains “a list of narrow exceptions” that does not include employment discrimination. *Jackson*, 544 U.S. at 173 (quoting 20 U.S.C. 1681).

Although Title IX did not expressly provide for a private cause of action, in 1976, Congress enacted “the Civil Rights Attorney’s Fees Awards Act of 1976, 90 Stat. 2641, which authorize[d] an award of fees to prevailing private parties in actions to enforce Title IX.” *Cannon*, 441 U.S. at 685; see also 42 U.S.C. 1988 (“In any action or proceeding to enforce ... Title IX ... the court ... may allow the prevailing party, *other than the United States*, a reasonable attorney’s fee.”).

2. In 1979, the Court held that “a cause of action in favor of private victims of discrimination” existed under Title IX. *Cannon*, 441 U.S. at 709. It thus permitted a prospective student to maintain a lawsuit against the University of Chicago after it allegedly rejected her application to medical school due to her sex. *Id.* at 680.

Three years later, the Court rejected an attempt to narrow the “person[s]” protected by Title IX to a subset such as students. The Court ruled that Title IX protected “employees” and upheld regulations barring employment discrimination at federally funded

educational institutions. *Bell*, 456 U.S. at 520, 535-36. First, the Court emphasized that Title IX's "broad directive that 'no person' may be discriminated against on the basis of gender appears, on its face, to include employees as well as students." *Id.* at 520. The Court noted that "Congress easily could have substituted 'student' or 'beneficiary' for the word 'person' if it had wished to restrict the scope of § 901(a)." *Id.* at 521. The Court then reviewed legislative history and post-enactment evidence (including regulations) and concluded that this evidence provided additional support for the Court's "reading of the statutory language" as including employees. *Id.* at 520-35. Thus, the Court held that "employment discrimination comes within the prohibition of Title IX." *Id.* at 530.

3. Four years after *Bell*, Congress passed and President Reagan signed the Rehabilitation Act Amendments of 1986, which abrogated States' sovereign immunity in any "suit" "for a violation of" Title IX. 100 Stat. 1845, 42 U.S.C. 2000d-7. As this Court has explained, the Rehabilitation Act Amendments "cannot be read except as a validation of *Cannon's* holding," *Franklin*, 503 U.S. at 72, that "Title IX is enforceable through an implied right of action," *id.* at 65.

In 1988, "[w]ithout in any way altering the existing right[] of action and the corresponding remedies permissible under Title IX," Congress, over President Reagan's veto, enacted the Civil Rights Restoration Act of 1987. *Franklin*, 503 U.S. at 73. This

Act was enacted to abrogate this Court's decision in *Grove City College v. Bell*, 465 U.S. 555 (1984), and thereby broaden Title IX's coverage by specifying that any institution receiving federal funds must comply with civil rights laws across all of its operations. Pub. L. 100-259, 102 Stat. 28; *Franklin*, 503 U.S. at 73. In the 1988 legislation, "Congress made no effort to restrict the right of action recognized in *Cannon* and ratified in the 1986 Act[.]" *Franklin*, 503 U.S. at 73.

4. Post-1986, this Court has repeatedly interpreted *Cannon* as having "*held* that Title IX created a private right of action to enforce its ban on intentional discrimination." *Sandoval*, 532 U.S. at 282 (emphasis in original) (explaining "this Court is bound by holdings, not language").

For instance, in *Franklin*, this Court considered whether money damages were an available remedy in a Title IX suit. 503 U.S. at 63. The Court concluded they were, having analyzed Congress's ratification of the Title IX private cause of action and given "the general rule" that "the federal courts have the power to award any appropriate relief in a cognizable cause of action brought pursuant to a federal statute." *Id.* at 70-71, 76.

The Court in *Franklin* also rejected an argument that funding recipients lacked sufficient notice "because Title IX was enacted pursuant to Congress' Spending Clause power." *Id.* at 74. It held that a "notice problem does not arise in a case such as this, in which intentional discrimination is alleged." *Id.* at 74-75 ("Congress surely did not intend for federal

moneys to be expended to support the intentional actions it sought by statute to proscribe.”).

In *Gebser v. Lago Vista Independent School District*, this Court again emphasized that “Title IX supports a private action for damages ... ‘in a case ... in which intentional discrimination is alleged.’” 524 U.S. 274, 281 (1998) (quoting *Franklin*, 503 U.S. at 74-75). Similarly, in *Davis*, this Court held that where “a recipient intentionally violates Title IX” with respect to “discrimination in the form of student-on-student sexual harassment,” an individual could sue under Title IX. 526 U.S. at 639, 643, 649-53.

Finally, in *Jackson*, this Court confirmed the availability of a retaliation claim under Title IX by a school employee—a high-school girls’ basketball coach—on the basis that his claim alleged intentional sex discrimination. 544 U.S. at 178. The coach claimed that the school administration retaliated against him in his employment for complaining that the girls’ basketball team was under-resourced compared to the boys’ team. *Id.* at 171-72. The Court reasoned that “[r]etaliation against a person because that person has complained of sex discrimination is another form of intentional sex discrimination encompassed by Title IX’s private cause of action.” *Id.* at 173. Thus, this Court has recognized that employees can bring claims under Title IX when they are subjected to intentional sex discrimination in violation of the statute. *Ibid.* (noting that the retaliation suffered by Jackson is a “form of discrimination because the

complainant, [*i.e.*, the school employee,] is being subjected to differential treatment”).

5. Since *Jackson*, every Court of Appeals to consider the matter (except the Eleventh Circuit) has recognized that Title IX provides a private right of action for employees subjected to intentional sex discrimination by federal fund recipients. Pet. App. 124a (Rosenbaum, J., dissenting from denial of rehearing *en banc*).²

B. Factual & Procedural Background

1. MaChelle Joseph

a. Petitioner MaChelle Joseph is a veteran collegiate basketball coach with an extensive record of achievement. From 2003 until her termination in 2019, she served as the head coach of the women’s basketball team at the Georgia Institute of

² Given this clear legal backdrop, the United States—across administrations of both parties—has for decades interpreted Title IX’s private cause of action as permitting employees to sue for sex discrimination, consistent with the widespread understanding of the cause of action in 1986. See U.S. Br. at *4–5, *Cannon*, 1978 WL 207068 (Mar. 3, 1978) (No. 77-926); U.S. Br. at *10–14, *Cannon*, 1978 WL 223506 (Nov. 2, 1978) (No. 77-926); U.S. Br. at *12–14, *Bell*, 1981 WL 390417 (Sept. 3, 1981) (No. 80-986); U.S. Br. at *7–10, *Lakoski v. Univ. of Tx. Med. Branch at Galveston*, 1996 WL 33467394 (Sept. 24, 1996) (No. 95-1439), cert. denied, 519 U.S. 947 (1996); U.S. Br. at *11–12, *Jackson*, 2004 WL 1062111 (May 11, 2004) (No. 02-1672); U.S. Br. at *5–7, *Jackson*, 2004 WL 1900496 (Aug. 19, 2004) (No. 02-1672); U.S. Br. at *25–30, *Doe v. Mercy*, 2016 WL 3227568 (June 9, 2016) (No. 16-1247).

Technology. Pet. App. 66a-67a. By the time of her termination, Joseph was the winningest women's basketball coach in Georgia Tech's history, having secured over 300 victories across 16 seasons, which included reaching the "Sweet Sixteen" in the NCAA Division I Women's Basketball Tournament in 2012. Compl. ¶ 3.

In time, Joseph grew concerned about persistent disparities in the resources provided to her and her program compared to the men's program. Pet. App. 4a-6a. These disparities included differences in resources that negatively affected her ability to carry out her duties as head coach and her team's development and experience. Pet. App. 69a. Joseph raised these concerns through internal channels over several years. Pet. App. 4a-6a. Tensions between Joseph and university officials intensified over these and related concerns. Pet. App. 5a-8a.

On February 8, 2019, Joseph filed an internal complaint alleging, *inter alia*, that the University was discriminating against her and her program through its disparate allocation of resources. Pet. App. 6a, 9a. Less than two months later, the University terminated Joseph's employment purportedly based on the results of an investigation into her and her program, initiated approximately three weeks after she filed her internal complaint of discrimination. Pet. App. 8a.

b. Following her termination, Joseph filed a charge of discrimination with the EEOC. Pet. App. 10a. She then filed suit in the United States District

Court for the Northern District of Georgia. *Ibid.* Joseph's complaint asserted claims under Title VII, Title IX, and state whistleblower law. *Ibid.*

As relevant here, Joseph alleged Georgia Tech discriminated against her in the terms, conditions, and privileges of her employment on the basis of her sex and on the basis of the sex of the athletes she coached in violation of Title IX. She accused Georgia Tech of discriminating against her by providing her inferior resources to perform her job as head coach of the women's basketball team relative to the male coaches of the men's basketball team and by terminating her employment. Pet. App. 69a.

The district court dismissed Joseph's Title IX claims on the ground that Title IX does not allow a private cause of action for employees alleging sex-based employment discrimination. Pet. App. 75a-76a. In the court's view, Title VII provides the exclusive avenue for redress of employment discrimination. *Ibid.* Joseph timely appealed.

2. *Thomas Crowther*

a. Petitioner Thomas Crowther is a working artist and fine arts Professor who served on the faculty of Augusta University for fifteen years. Pet. App. 34a. Between 2006 and early 2020, Crowther received consistently positive student feedback, peer reviews, and annual evaluations, resulting in his promotion to Senior Lecturer in February 2020. Pet. App. 34a, 38a.

Around the time of his promotion, Augusta informed Crowther that an anonymous complaint had

been filed against him alleging sexual harassment. Augusta initiated a Title IX investigation in response and placed him on administrative leave, re-assigning the majority of his classes to female professors. Pet. App. 35a-36a, 55a. In April 2020, Crowther received a sharply negative performance evaluation—his first ever—which referenced the Title IX complaint and assigned him the lowest possible rating in all categories. Pet. App. 38a. He was then informed that he could either resign or face termination proceedings. Pet. App. 38a-39a. Crowther declined to resign. Pet. App. 39a.

Throughout the Title IX investigation, Augusta refused to provide Crowther with the identities of his accusers or details of purported incidents of misconduct. Pet. App. 38a-40a. Nonetheless, Crowther provided approximately twenty-five witness statements from his current and former students and others refuting the complainants' allegations of inappropriate behavior. Pet. App. 40a; Compl. ¶¶ 156-162, 180-84. The investigators refused to interview all but one of those witnesses. Pet. App. 40a.

While Augusta initially advised Crowther that he would be provided a hearing to resolve the accusations, the Title IX investigation was concluded with no hearing in July 2020, in violation of Augusta's policies. Pet. App. 37a, 40a-41a; Compl. ¶¶ 187-88. The investigation determined that Crowther had violated the University's sexual harassment policy, and it imposed a one-semester suspension, which Crowther appealed. Pet. App. 40a-41a.

While Crowther's appeal was pending, the University reassigned him to remedial duties and told him that his faculty contract would not be renewed for the 2021–2022 academic year. Pet. App. 41a-42a & n.4. Thus, Crowther was effectively terminated while his appeal was still pending. *Ibid.* Crowther's appeals were later denied. Pet. App. 42a.

b. Crowther then filed a charge with the EEOC and later filed suit in the Northern District of Georgia. Pet. App. 42a-43a; Compl. ¶ 11 n.1. He alleged that his termination constituted unlawful sex discrimination in violation of Title IX. Pet. App. 3a. Crowther argued that, throughout the investigation, he was treated differently because of sex. He maintained that comparable allegations against female faculty had not resulted in similar sanctions or job consequences. In his view, the disciplinary measures taken by the university constituted both sex discrimination and retaliation for asserting his rights under Title IX.

The Board of Regents moved to dismiss Crowther's Title IX claim, arguing that employment discrimination claims under Title IX are "preempted" by Title VII. Pet. App. 44a.

The district court denied the Board's motion. It concluded that "Title VII does not preclude employment discrimination claims under Title IX" because "nothing in Title VII 'in express terms, forbids or limits' Title IX employment discrimination claims." Pet. App. 50a (quoting *POM Wonderful LLC v. Coca-*

Cola Co., 573 U.S. 102, 111 (2014)). The court certified the order for interlocutory appeal.

3. *Eleventh Circuit Proceedings*

The appeals in *Joseph* and *Crowther* were consolidated before the Eleventh Circuit. A panel of the Eleventh Circuit affirmed the dismissal of Joseph’s Title IX claim and reversed the order denying the dismissal of Crowther’s claims. Pet. App. 2a.

The court held that Title IX does not “provide[] an implied right of action for sex discrimination in employment.” Pet. App. 12a, 21a. The panel acknowledged that other courts of appeals had held differently, but it viewed those courts as having “failed to grapple” with this Court’s Spending Clause precedents. Pet. App. 18a. It explained that “Title IX was enacted under the Spending Clause,” and it was “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.³

The full court declined to rehear the case *en banc*. Pet. App. 116a. Chief Judge Pryor, joined by Judge Luck, concurred in the denial of rehearing *en banc*. Pet. App. 117a-22a. Both judges had been on the panel, and they reiterated their view that Title IX

³ The Circuit also dismissed Joseph’s Title VII claim after finding that Title VII does not allow for claims of “associational discrimination.” Pet. App. 25a–27a.

does not provide “a duplicative right of action for employees” given the existence of Title VII. Pet. App. at 120a.

Judge Rosenbaum, joined by four other judges, dissented from the denial of rehearing *en banc*. She observed that the panel decision “defies ... binding precedent” from this Court. Pet. App. 145a. Judge Rosenbaum explained that the panel decision improperly “dismissed *Cannon* as irrelevant” merely because *Cannon* involved a Title IX challenge by a “prospective student, not an employee.” Pet. App. 135a-136a. However, as Judge Rosenbaum pointed out, “the Court determined that the statute contained a cause of action for the general category of ‘persons’ under Section 901(a) of Title IX.” Pet. App. 136a.

Judge Rosenbaum also observed that the panel opinion “is ... contrary to *Jackson*.” Pet. App. 143a. In the panel’s view, *Jackson* held that a teacher may sue for retaliation under Title IX only when he had complained about discrimination *against students*. Pet. App. 118a (Pryor, C.J., respecting denial of rehearing *en banc*). But, as Judge Rosenbaum noted, the panel’s purported distinction “ignores” the logic of *Jackson*, which held that the plaintiff’s retaliation claim could proceed because retaliation is a form of intentional sex discrimination. Thus, “the underlying claim recognized in *Jackson* was discrimination against an ‘employee.’” Pet. App. 144a (Rosenbaum, J., dissenting from denial of rehearing *en banc*).

SUMMARY OF ARGUMENT

I. Title IX’s text and structure, the legal backdrop surrounding Congress’s ratification of a right of action to enforce Title IX’s ban on intentional sex discrimination, and this Court’s caselaw all confirm that Title IX’s private right of action allows employees to bring claims for intentional sex discrimination.

A. To begin, the private right of action under Title IX enforces the statute’s prohibition on intentional sex discrimination. *Cannon* “held that Title IX created a private right of action to enforce its ban on intentional discrimination,” *Sandoval*, 532 U.S. at 282, and Congress ratified *Cannon*’s holding, *id.* at 280; see 42 U.S.C. 2000d-7(a). Therefore, Congress allowed employees to bring claims under Title IX to the extent those claims are based on intentional sex discrimination barred by the statute.

B. The traditional tools of statutory interpretation and this Court’s caselaw make it clear that Title IX’s private right of action encompasses suits for intentional employment discrimination perpetrated by a recipient of federal funds. *Jackson*, 544 U.S. at 178.

The text of Title IX plainly applies to all “person[s]” subjected to intentional discrimination, and the Court has interpreted the statutory text to prohibit employment discrimination. *Bell*, 456 U.S. at 520. That interpretation is consistent with Title IX’s implementing regulations.

Indeed, in *Jackson*, this Court permitted an employee to bring a Title IX claim for retaliation in his employment because retaliation is a form of intentional sex discrimination. 544 U.S. at 179.

C. The availability of claims for intentional employment discrimination under Title VI and the Rehabilitation Act further emphasizes that Title IX—which contains a nearly identical ban on discriminatory practices—should be similarly found to allow such claims. See 42 U.S.C. 2000d (Title VI); 29 U.S.C. 794(a) (Rehabilitation Act); 20 U.S.C. 1681(a) (Title IX). The import of this comparison is made even starker considering that Congress chose to include in Title VI, but *not* in Title IX, a provision carving out most claims of employment discrimination. 42 U.S.C. 2000d-3.

D. When Congress ratified Title IX’s private right of action in 1986, it did so against a clear legal backdrop in which it was widely understood that the prohibition and the private right encompass claims of intentional sex discrimination in employment. In the years leading up to 1986, this Court interpreted Title IX to cover such claims, *Bell*, 456 U.S. at 520, and also recognized private rights of action for intentional employment discrimination under other similar antidiscrimination statutes. “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.” *Sandoval*, 532 U.S. at 284. At the time of Congress’s ratification, the

“authoritative interpretation” of Title IX included intentional employment discrimination.

II. This Court should reject an invitation to disregard the will of Congress (and its own caselaw) by creating an atextual carve-out for intentional discrimination against employees in Title IX. This is not a case in which the Court is asked to imply a new private right of action or extend one without congressional authorization. For decades, this Court has applied the congressionally ratified private right of action to enforce Title IX’s prohibition on intentional sex discrimination in different scenarios involving prospective students, current students, and employees, and a claim brought by an employee for employment discrimination fits within that scope.

A. The fact that an employee might be able to bring a claim under both Title IX and Title VII does not justify carving such claims from the scope of Title IX’s private right of action, in contravention of the manifest intent of Congress. This Court has recognized that Congress has enacted overlapping remedies to eradicate employment discrimination, and Congress chose not to exclude employment discrimination from Title IX’s broad reach.

B. Permitting Petitioners’ claims here would not amount to a judge-crafted extension of Title IX’s private right of action. Congress ratified a private right of action that encompasses the statute’s prohibition on intentional sex discrimination in employment. This Court has already applied the text of Title IX to allow employees to challenge retaliation,

a form of discrimination that affects the terms of their employment. Moreover, “[f]unding recipients have been on notice that they could be subjected to private suits for intentional sex discrimination under Title IX since 1979,” so this Court’s Spending Clause precedents “do[] not preclude private suits for intentional acts that clearly violate Title IX.” *Jackson*, 544 U.S. at 182.

ARGUMENT

- I. Employees May Sue To Enforce Title IX’s Prohibition on Intentional Sex Discrimination By Funding Recipients.**
 - A. Title IX’s private right of action enforces the statute’s prohibition on intentional sex discrimination.**

The private right of action under Title IX that is recognized in this Court’s caselaw and ratified by Congress enforces the statute’s prohibition on intentional sex discrimination. While “plaintiffs may not assert claims under Title IX for conduct not prohibited by that statute,” they may bring claims for conduct that “falls within the statute’s prohibition of intentional discrimination on the basis of sex.” *Jackson*, 544 U.S. at 178-79 & n.2.

1. In *Cannon*, this Court held that Title IX provided “a cause of action in favor of private victims of discrimination” to further “the orderly enforcement of the statute.” 441 U.S. at 706, 709. The Court noted that “Title IX explicitly confers a benefit on persons discriminated against on the basis of sex.” 441 U.S. at

694. In addition to the text, the Court relied on other evidence—including the fact that Title IX was patterned after Title VI, which had been interpreted as affording a private right of action—indicating that any person discriminated against by a funding recipient under an educational program or activity could sue. *Id.* at 690-709. Thus, although *Cannon* involved a suit brought by a prospective student, the Court did not limit the Title IX right of action to students or to a particular form of intentional sex discrimination. Rather, the Court made clear that the private right extended to all “private victims of discrimination.” *Id.* at 709.

In subsequent cases, this Court has affirmed that *Cannon* held that a private right of action exists to enforce the statute’s prohibition on intentional sex discrimination. See *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022) (referring to “*Cannon*’s holding that private individuals may sue to enforce” Title IX); *Jackson*, 544 U.S. at 173 (“[I]n *Cannon* ... we held that Title IX implies a private right of action to enforce its prohibition on intentional sex discrimination.”); *Sandoval*, 532 U.S. at 282 & n.2 (*Cannon* “held that Title IX created a private right of action to enforce its ban on intentional discrimination”); *Gebser*, 524 U.S. at 281 (“The Court held in *Cannon* ... that Title IX is also enforceable through an implied private right of action[.]”); *Franklin*, 503 U.S. at 65 (“In *Cannon*, ... the Court held that Title IX is enforceable through an implied right of action.”).

2. As this Court has repeatedly acknowledged, Congress ratified *Cannon's* holding that Title IX provides a private right of action. *Sandoval*, 532 U.S. at 280. It did so through two enactments—the Rehabilitation Act Amendments of 1986 and the Civil Rights Restoration Act of 1987 (passed in 1988)—which “cannot be read except as a validation of *Cannon's* holding”—*i.e.*, “that Title IX created a private right of action to enforce its ban on intentional discrimination.” *Id.* at 282 & n.2; see *Franklin*, 503 U.S. at 72; *id.* at 78 (Scalia, J., concurring in the judgment). Thus, “it is beyond dispute that private individuals may sue to enforce” Title IX. *Cummings*, 596 U.S. at 218.

3. In approving *Cannon's* holding, Congress ratified a private right of action that enforces the clear terms of the statute. As Justice Scalia wrote for the Court 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, as *Sandoval* explained, “Section 1003 of the Rehabilitation Act Amendments of 1986 ... by its terms applies ... to suits ‘for a violation of a statute.’” *Id.* at 292 (quoting 42 U.S.C. 2000d-7(a)(2) (emphasis in *Sandoval*)). The Act therefore ratified the availability of suits enforcing “the statutory proscription.” *Ibid.*

Given that Title IX’s private right of action permits suits for intentional violations of the statutory prohibition, this Court has “relied on the

text of Title IX” when “defin[ing] the contours of that right of action” and “consistently interpreted Title IX’s private cause of action broadly to encompass diverse forms of intentional sex discrimination,” including retaliation, a “form of discrimination,” against employees. *Jackson*, 544 U.S. at 173, 174, 183; see *Gomez-Perez v. Potter*, 553 U.S. 474, 484 (2008) (“*Jackson* did not hold that Title IX prohibits retaliation because the Court concluded as a policy matter that such claims are important. Instead, the holding in *Jackson* was based on an interpretation of the ‘text of Title IX.’”).

Moreover, “Title IX’s beneficiaries plainly include all those who are subjected to ‘discrimination’ ‘on the basis of sex.’” *Jackson*, 544 U.S. at 179 n.3 (quoting 20 U.S.C. 1681(a)). Thus, the Court has upheld private Title IX suits by prospective students, current students, and employees. *E.g.*, *Jackson*, 544 U.S. at 173; *Gebser*, 524 U.S. at 292-93.

The upshot is that Congress ratified a cause of action tethered to the statutory language—*i.e.*, for any “person” subjected to intentional sex discrimination “under any education program or activity receiving Federal financial assistance.”

4. The Court has also made clear that damages are an available remedy in suits to enforce Title IX’s prohibition on intentional sex discrimination. In *Franklin*, this Court reviewed Congress’s ratification of the Title IX private right of action and concluded that “a money damages remedy is available under

Title IX for an intentional violation.” 503 U.S. at 72-73, 75 n.8.

In holding that plaintiffs may seek damages for intentional violations of Title IX, *Franklin* rejected the argument “that the normal presumption in favor of all appropriate remedies should not apply because Title IX was enacted pursuant to Congress’ Spending Clause power.” *Id.* at 74. This Court explained that the concern motivating its spending power caselaw—to ensure “the receiving entity of federal funds” has “notice that it will be liable for a monetary award”—“does not arise in a case ... in which intentional discrimination is alleged.” *Id.* at 74-75 (citing *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1 (1981)); see *id.* at 75 (“Congress surely did not intend for federal moneys to be expended to support intentional actions it sought by statute to proscribe.”).

In subsequent cases, this Court has reaffirmed the rule that damages are available in Title IX suits enforcing the statutory prohibition on intentional discrimination. See, e.g., *Barnes*, 536 U.S. at 187 (“[U]nder Title IX ... a recipient of federal funds is ... subject to suit for compensatory damages.”); *Davis*, 526 U.S. at 642 (“*Pennhurst* does not bar a private damages action under Title IX where the funding recipient engages in intentional conduct that violates the clear terms of the statute.”).

Thus, as Justice Scalia noted in his concurrence in *Franklin*, “[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”; Congress’s 1986 amendments “must be read ... as an implicit acknowledgment that damages are available.” 503 U.S. at 78.

B. Title IX’s text, structure, and context, and this Court’s case law confirm that the cause of action includes employment discrimination.

The traditional tools of statutory interpretation and this Court’s cases show that Title IX’s cause of action reaches sex discrimination in employment. “Title IX’s private right of action encompasses suits for [employment discrimination], because [employment discrimination] falls within the statute’s prohibition of intentional discrimination on the basis of sex.” *Jackson*, 544 U.S. at 178.

1. We start with Title IX’s text. This Court “relie[s] on the text of Title IX” to “define[] the contours of [its] right of action.” *Jackson*, 544 U.S. at 173-74. And the Court has explained that it “‘must accord’” Title IX “‘a sweep as broad as its language.’” *Id.* at 175 (quoting *Bell*, 456 U.S. at 521).

Section 901(a) provides in relevant part:

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(a).

Title IX's language clearly covers employment discrimination. Section 901(a) "broadly prohibits a funding recipient from subjecting *any* person to 'discrimination' 'on the basis of sex.'" *Jackson*, 544 U.S. at 173 (quoting 20 U.S.C. 1681(a)).

As the Court has recognized, the statute's breadth is deliberate. Take "discrimination," which is "a term that covers a wide range of intentional unequal treatment; by using such a broad term, Congress gave the statute a broad reach." *Id.* at 175. This Court has consistently interpreted the text of Section 901(a) to proscribe intentional sex discrimination writ large. *Id.* at 174; accord *Davis*, 526 U.S. at 642. As relevant here, "a female employee who works in a federally funded education program is 'subjected to discrimination under' that program if she is paid a lower salary for like work, given less opportunity for promotion, or forced to work under more adverse conditions than are her male colleagues." *Bell*, 456 U.S. at 521. Thus, intentional sex discrimination in employment is covered by the statutory prohibition.

Likewise, "[n]o person" means just that—no person. 20 U.S.C. 1681(a). "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. Thus, for over 40 years, it has been settled law that the term "person" in § 901(a) includes "employees." *Id.* at 520. "Under [Section 901(a)], employees, like other 'persons,' may not be 'excluded from participation in,' 'denied the

benefits of,’ or ‘*subjected to discrimination under*’ education programs receiving federal financial support.” *Ibid.*

The breadth of the words “no person” also recognizes that educational programs and activities are made up of a wide and overlapping variety of roles. Indeed, students are often university employees—athletic staff, lab assistants, and medical residents, to name just a few.⁴ By covering all “persons,” the text belies any suggestion that Congress intended Title IX to provide rights or remedies against intentional sex discrimination for only certain categories of persons.

As the statutory text makes plain and this Court has expressly held, “employment discrimination comes within the prohibition of Title IX.” *Id.* at 530. Thus, the cause of action for intentional violations of Title IX encompasses claims for employment discrimination.

2. In addition, the structure and goals of Title IX support Petitioners’ interpretation. This Court has

⁴ Recent estimates indicate that the Department of Education’s Federal Work-Study program provides approximately \$1 billion annually to support approximately 450,000 student-employees across 2,500 postsecondary institutions. See Veronica Minaya et al., *The Causal Effects of Federal Work-Study Offers on College Enrollment and Program Participation 1* (Annenberg Institute at Brown Univ., EdWorkingPaper No. 26-1400, 2026); see also U.S. Dep’t of Educ., *National Student Aid Profile: Overview of 2025 Federal Programs 8* (2025) (reporting 419,932 Federal Work-Study recipients during Award Year 2022–2023). And, of course, there are student-athletes. See *In re Coll. Athlete NIL Litig.*, 803 F. Supp. 3d 959, 975 (N.D. Cal. 2025) (approving settlement allowing universities to pay student athletes).

recognized that Title IX serves twin purposes: “to avoid the use of federal resources to support discriminatory practices” and “to provide individual citizens effective protection against those practices.” *Cannon*, 441 U.S. at 704. Consistent with this, Title IX contains a broad prohibition against discriminatory practices by funding recipients along with a list of specific exceptions. Notably, employment discrimination is not one of those exceptions. 20 U.S.C. 1681(a)(1)-(9).

This Court has also explained that “the termination of federal financial support for institutions” is “severe and often may not ... accomplish[]” effective protection against discrimination “if merely an isolated violation has occurred.” *Cannon*, 441 U.S. at 704-05. The private right of action thus serves the “effective protection” objective discussed in *Cannon*, which “would be difficult, if not impossible, to achieve” without a Title IX private remedy for the individuals the statute protects. *Jackson*, 544 U.S. at 180.

Cannon explicitly contemplated the need for private suits for employment discrimination. In approving the “unequivocal” and “correct” position of the Department of Health, Education, and Welfare (“HEW”) “that the individual remedy will provide effective assistance to achieving the statutory purposes,” *Cannon* observed that “HEW’s enforcement capabilities under Title IX are especially limited in precisely those areas where private suits can be most effective” and specifically referenced

“complaints involving sex discrimination in higher education academic *employment*.” 441 U.S. at 707-08 & n.42.

Bell further illuminated Title IX’s design and structure. As the Court observed, Title IX’s principal sponsor, Senator Bayh, described the “heart” of the provision that became Section 901(a) as covering “such crucial aspects as admissions procedures, scholarships, and *faculty employment*.” 456 U.S. at 524 & n.14 (quoting 118 Cong. Rec. 5803 (1972)). Bayh stated that Title IX addressed “three basically different types of discrimination”—“discrimination in admission to an institution, discrimination of available services or studies within an institution once students are admitted, and *discrimination in employment within an institution*, as a member of a faculty or whatever.” *Id.* at 526 & n.16 (quoting 118 Cong. Rec. 5812 (1972)).

Tellingly, none of the additional laws enacted by Congress between 1972 and 1988 purported to narrow the scope of who could enforce Title IX or what types of intentional sex discrimination triggered the private right. For instance, as noted above, the Rehabilitation Act Amendments of 1986 did not purport to limit the scope of Title IX or its cause of action in any way. The same is true of the Civil Rights Attorney’s Fees Awards Act of 1976, which permitted the award of attorney’s fees to any “prevailing party” who “enforce[d] ... Title IX,” and excluded only the U.S. government from its scope. 42 U.S.C. 1988.

3. Title IX's implementing regulations also show that its cause of action covers employment discrimination. "[I]nterpretations of those responsible for implementing particular statutes ... issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024); see *B.P.J.*, 609 U.S. ___, slip op. at 9 (explaining that "HEW's interpretation of Title IX" is "especially useful in determining the statute's meaning"); *Sandoval*, 532 U.S. at 284.

The implementing regulations under Title IX going back to 1975 (and through the present) confirm Title IX applies to employment discrimination. Title IX directs "[e]ach Federal department and agency" to issue "rules, regulations, or orders" to effectuate Title IX's nondiscrimination mandate. 20 U.S.C. 1682. As the Court explained in *Bell*, the 1975 regulations promulgated by HEW applied broadly to core aspects of educational programs, including admissions, textbooks, athletics, and *employment*. 456 U.S. at 515-16 (citing 34 C.F.R. 106.51-106.61). Those regulations, which have remained on the books in substance since shortly after the enactment of Title IX, reflected HEW's understanding that Title IX's prohibition applies to employment practices, and that such practices are therefore subject to regulation as a condition of federal financial assistance. *Bell*, 456 U.S. at 515-17.

Consistent with HEW's original framework, the Department of Education's current regulations expressly prohibit sex discrimination in employment by Title IX recipients. See 34 C.F.R. 106.51 (barring sex-based discrimination against employees). Other federal grant-making agencies have adopted materially identical regulations implementing Title IX's employment protections, including the Departments of Health and Human Services, Agriculture, and Justice, among others. See, e.g., 45 C.F.R. 86.51-86.61; 7 C.F.R. 15a.500-15a.550; 28 C.F.R. 54.510-54.516.

4. This Court's caselaw makes plain that employees subjected to intentional sex discrimination "under any educational program or activity" by a funding recipient may sue under Title IX.

A common thread runs through the Court's cases: Because "Title IX implies a private right of action to enforce its prohibition on intentional sex discrimination," the key question is whether the alleged conduct constitutes prohibited intentional sex discrimination by a funding recipient. *E.g.*, *Jackson*, 544 U.S. at 173. Thus, the Court has sustained Title IX suits for various forms of intentional sex discrimination against both students and employees beyond the fact pattern in *Cannon*—a prospective student who was denied admission. 441 U.S. at 680. As this Court explained in *Jackson*, Title IX's "private right of action encompasses" various forms of intentional sex discrimination, including deliberate indifference to teacher-student sexual harassment

(*Gebser*) and deliberate indifference to student-on-student sexual harassment (*Davis*). *Jackson*, 544 U.S. at 173, 183. In none of those cases did the Court limit Title IX’s private right of action based on the identity of the plaintiff. Instead, the Court’s “cases ... have consistently interpreted Title IX’s private cause of action broadly to encompass diverse forms of intentional sex discrimination.” *Id.* at 183.

The holding of *Jackson* is particularly instructive. The plaintiff in *Jackson* was an employee—a public-school girls’ basketball coach who alleged retaliation (losing his coaching duties) for complaining about sex discrimination against the girls’ team. The Court “reach[ed] th[e] result” that the employee could sue for retaliation under Title IX “based on the statute’s text.” *Id.* at 178. “[B]ecause retaliation falls within the statute’s prohibition of intentional discrimination on the basis of sex,” “Title IX’s private right of action encompasses suits for retaliation.” *Ibid.*

Notably, the *Jackson* Court did not require a separate analysis to determine that employees can enforce Title IX’s statutory prohibition. *Id.* at 179 (“The complainant is himself a victim of discriminatory retaliation, regardless of whether he was the subject of the original complaint.”). That is because, as *Jackson* stated in unambiguous terms, “Title IX’s beneficiaries plainly include all those who are subjected to ‘discrimination’ ‘on the basis of sex.’” *Id.* at 179 n.3 (quoting 20 U.S.C. 1681(a)). Indeed, neither the majority nor dissent expressed any doubt that employees could sue to enforce Title IX. 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 187 (Thomas, J., dissenting) (disputing retaliation is discrimination but recognizing that “claimant[s]” can bring claims for sex discrimination and citing *Bell*).

The Court’s cases, read together, lead to the inexorable conclusion that an employee who is a victim of intentional sex-based discrimination by a federally funded education program or activity has a private right of action to seek damages under Title IX. In other words, employees are persons protected by Title IX (*Bell, Jackson*), and protected persons have a private right of action to enforce Title IX (*Cannon, Sandoval, Jackson*) that includes a damages remedy for intentional sex-based discrimination (*Franklin, Davis, Gebser, Jackson*).

C. Other antidiscrimination statutes compel the same conclusion.

The conclusion that employees may bring damages actions under Title IX for employment discrimination is further confirmed by two other “statutes prohibiting recipients of federal financial assistance from discriminating based on certain protected grounds”—Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). *Cummings*, 596 U.S. at 217-18; *Franklin*, 503 U.S. at 70. As with Title IX, “monetary damages are available as a remedy for intentional violations of” Title VI and

the Rehabilitation Act. 596 U.S. at 218. And this Court has authorized employment-discrimination suits under both statutes.

1. Begin with Title VI. Because Title IX was “patterned after Title VI,” *Sandoval*, 532 U.S. at 280, “the Court has interpreted Title IX consistently with Title VI,” *Barnes*, 536 U.S. at 185.

Title VI prohibits discrimination on the basis of race, color, or national origin by federally funded programs or activities. 42 U.S.C. 2000d. Although Title VI lacks an express right of action, *Cannon’s* “reasoning ... embraced the existence of a private right of action to enforce Title VI as well,” *Sandoval*, 532 U.S. at 280, and Congress ratified the Title VI right of action, *Cummings*, 596 U.S. at 218. This Court has explained that the Title VI right of action is tethered to the statutory prohibition: “private individuals may sue to enforce § 601 of Title VI and obtain both injunctive relief and damages.” *Sandoval*, 532 U.S. at 279.

Thus, Title VI authorizes private suits for employment discrimination to enforce the statute’s prohibition on intentional discrimination. See *Guardians Ass’n v. Civ. Serv. Comm’n of N.Y.C.*, 463 U.S. 582 (1983); see also *Franklin*, 503 U.S. at 70 (in *Guardians*, a Title VI case brought by police officers for employment discrimination, “a clear majority expressed the view that damages were available under Title VI in an action seeking remedies for an intentional violation”); *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 630, 637 (1984) (“In *Guardians* ... a

majority of the Court expressed the view that a private plaintiff under Title VI could recover backpay; and no member of the Court contended that backpay was unavailable, at least as a remedy for intentional discrimination.”).

2. Title VI’s antidiscrimination prohibition is virtually identical to the language of Title IX. Compare 42 U.S.C. 2000d with 20 U.S.C. 1681(a). But in one important respect the statutes differ: Section 604 of Title VI expressly carves out employment discrimination except “where a primary objective of the Federal financial assistance is to provide employment.” *Id.* 2000d-3. No such carve-out for employment discrimination exists in Title IX.

The exception proves the rule: Congress would have no need to create a carve-out in Title VI for certain employment discrimination if the broad discrimination prohibition, Section 601, did not otherwise encompass employment discrimination. See *United States v. Morrow*, 266 U.S. 531, 534 (1925) (“The general office of a proviso is to except something from the enacting clause, or to qualify and restrain its generality and prevent misinterpretation.”).

As this Court explained in *Bell*, “whether § 604 clarified or altered the scope of Title VI, it is apparent that § 601 alone”—Title VI’s equivalent to Title IX’s Section 901—“was not considered adequate to exclude employees from the statute’s coverage.” 456 U.S. at 530. That is true even though Title VI and Title VII were enacted as part of the same Act, such that one could have argued that Title VII itself evinced the

requisite congressional intent to carve out employment discrimination from the ambit of Title VI. See Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964).

Despite “model[ing] Title IX after Title VI,” *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 258 (2009), Congress decided not to include a carve-out in Title IX for employment discrimination—either in the original 1972 enactment or when later amending the statute. That shows Congress intended the application of Title IX and its cause of action to employment discrimination. As this Court explained in *Bell*, “[i]f Congress had intended that Title IX have the same reach as Title VI, ... we assume that it would have enacted counterparts to both § 601 and § 604.” 456 U.S. at 530.

By creating a judicially implied carve-out for all employment-discrimination claims in Title IX, the Eleventh Circuit made Title IX more restrictive than Title VI, in which Congress expressly included a partial employment-discrimination limitation. That stymies Congress’s decision to omit a counterpart to Title VI’s Section 604 when it drafted Title IX and later ratified the private right.

3. The Circuit’s reasoning is also shown to be defective by this Court’s interpretation of the Rehabilitation Act. Tellingly, this Court relied on the absence of a provision like Title VI’s Section 604 to broadly uphold “suit[s] for employment discrimination” under the Rehabilitation Act, which uses “virtually identical” antidiscrimination language

to Title VI and Title IX for disabled individuals.⁵ *Darrone*, 465 U.S. at 626, 637; see 29 U.S.C. 794(a). In *Darrone*, the Court rejected the argument that Title VI's employment-discrimination carve-out should be imported into the Rehabilitation Act. Among other reasons, the Court explained that Section 504, the Rehabilitation Act's antidiscrimination provision, "itself contains no such limitation," so "the language of § 504 suggests that its bar on employment discrimination should not be limited" as Title VI's carve-out provides. *Darrone*, 465 U.S. at 631-35.

Moreover, the Court has confirmed that one of the available "remedies" under Title IX, Title VI, and the Rehabilitation Act is backpay, which is a classic employment-discrimination remedy. See *id.* at 630-31 (a plaintiff "may recover backpay" under Section 504 of the Rehabilitation Act because such relief is available under Title VI); cf. *Franklin*, 503 U.S. at 76 (rejecting limitation of Title IX remedies to backpay). Of course, "[b]ackpay does nothing" for students. *Franklin*, 503 U.S. at 76.

In short, employees may bring claims for intentional employment discrimination under

⁵ At the time *Darrone* was decided, § 504 read: "No otherwise qualified handicapped individual ... shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 465 U.S. at 626. In 1978, Congress amended the Rehabilitation Act to "ma[k]e available the 'remedies, procedure, and rights set forth in Title VI' ... to victims of discrimination" under the Rehabilitation Act. *Ibid.*

virtually identical antidiscrimination statutes—Title VI (where Section 604 permits) and the Rehabilitation Act. See *Guardians*, 463 U.S. at 600-01 (Title VI); *Darrone*, 465 U.S. at 637 (Rehabilitation Act).

4. The Court should hew to those interpretations here. See A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 322-23 (2012). (“[W]hen a statute uses the very same terminology as an earlier statute—especially in the very same field, such as ... civil-rights law—it is reasonable to believe that the terminology bears a consistent meaning.”). And the Court should decline the invitation to create a blanket exclusion for employment-discrimination suits under Title IX’s private cause of action that is absent from Title VI and the Rehabilitation Act, given the similarities between the statutes. See *Fitzgerald*, 555 U.S. at 258 (Title IX, like Title VI, can be enforced via Section 1983 because Congress “passed Title IX with the explicit understanding that it would be interpreted as Title VI was”); see also *Barnes*, 536 U.S. at 185 (conducting the same remedial analysis for Title IX, Title VI, and the Rehabilitation Act).

D. Congress ratified Title IX’s private right of action against a clear legal background confirming that employees can sue under Title IX for sex discrimination.

At the time Congress ratified Title IX’s right of action, Title IX was roundly understood to provide a right of action to redress intentional sex

discrimination in various forms, including employment discrimination.

1. 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 Comtys. Project, Inc.*, 576 U.S. 519, 536 (2015); see *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 243 n.11 (2009) (“When Congress amended [the Act] without altering the text of [the relevant provision], it implicitly adopted [this Court’s] construction of the statute”). “Congress is presumed to be aware of an administrative or judicial interpretation of a statute[.]” *Lorillard v. Pons*, 434 U.S. 575, 580 (1978). Indeed, “[i]f a word or phrase has been authoritatively interpreted by the highest court in a jurisdiction, ... a later version of that act perpetuating the wording is presumed to carry forward that interpretation.” Scalia & Garner, *Reading Law* 322. Moreover, “[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.” *Sandoval*, 532 U.S. at 284.

2. Here, the state of the law in the years preceding Congress’s ratification of the Title IX cause of action in 1986 was clear: Title IX’s prohibition and cause of action include employment discrimination.

In 1982, this Court held that “employment discrimination comes within the prohibition of Title

IX,” consistent with the view that Title IX’s broad language prohibits intentional discrimination against all persons. *Bell*, 456 U.S. at 530. The Court refused to hold that Title VII limited Title IX; it explained that “even if alternative remedies are available ... this Court repeatedly has recognized that Congress has provided a variety of remedies, at times overlapping, to eradicate employment discrimination.” *Id.* at 535 n.26.

In the four years between *Bell* and 1986, as previously noted, this Court upheld the availability of employment-discrimination suits under the causes of action in the virtually identical Title VI and Rehabilitation Act of 1973. *Guardians*, 463 U.S. at 593-97; *Darrone*, 465 U.S. at 630-32 & n.13.

Additionally, around the time of Congress’s 1986 and 1988 ratifications, lower courts generally recognized that Title IX allowed claims brought by employees for intentional sex discrimination. 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*)); *Minor v. Northville Pub. Schs.*, 605 F. Supp. 1185, 1197 (E.D. Mich. 1985) (“There is absolutely no question that a private cause of action exists under Title IX of the Education Amendment of 1972, [*Cannon*,] or that employment discrimination is within the prohibitions of Title IX[, *Bell*].”); *Saffer v. Town of Whitman*, 1986 WL 14090, at *1 (D. Mass. Dec. 2, 1986) (denying motion to dismiss Section 1983 employment discrimination claim brought to enforce

Title IX); *Selzer v. Bd. of Educ. of City of New York*, 112 F.R.D. 176, 180 (S.D.N.Y. 1986) (allowing class certification of employment discrimination claims brought under Title IX).

Finally, as discussed *supra* section I.B.2, HEW's own regulations interpreted Title IX as prohibiting employment discrimination. See *HUD v. Rucker*, 535 U.S. 125, 133 n.4 (2002) (relying on statutory amendment that did not disturb agency's interpretation).

3. With suits under Title IX in mind, Congress enacted the Rehabilitation Act Amendments of 1986. 42 U.S.C. 2000d-7. These amendments grouped Title IX together with Title VI, the Rehabilitation Act of 1973, and other related statutes, and confirmed that “[i]n a suit against a State for a violation of” these statutes, “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). The 1986 Amendments thus “expressly abrogated States’ sovereign immunity against suits brought in federal court to enforce” Title IX and the other antidiscrimination statutes. *Sandoval*, 532 U.S. at 280.

In 1988, Congress enacted the Civil Rights Restoration Act of 1987, which “broadened the coverage of these antidiscrimination provisions” “[w]ithout in any way altering the existing rights of action and the corresponding remedies permissible under Title IX.” *Franklin*, 503 U.S. at 73.

As this Court has recognized, the 1986 and 1988 Amendments “cannot be read except as a validation of *Cannon’s* holding.” *Franklin*, 503 U.S. at 72; *Sandoval*, 532 U.S. at 280; see *Cummings*, 596 U.S. at 218. Far from limiting the categories of plaintiffs who could sue, the 1986 Act spoke broadly: remedies are available in individual suits against States and “any public or private entity” for a “violation of” Title IX. 42 U.S.C. 2000d-7(a)(2).

Similarly, in the 1988 Amendments, Congress “made no effort to restrict the right of action recognized in *Cannon* and ratified in the 1986 Act.” *Franklin*, 503 U.S. at 72. In fact, the 1988 Amendments “correct[ed] what [Congress] considered to be an unacceptable decision,” *i.e.*, *Grove*, 465 U.S. 555, which narrowed civil rights in a separate context, *Franklin*, 503 U.S. at 73. These Amendments evidence Congress’s awareness of the Court’s decisions in this area of the law, and that Congress was actively considering which aspects of this Court’s jurisprudence comported with its intent. See *Inclusive Comtys.*, 576 U.S. at 536. Tellingly, Congress did not abrogate *Cannon*, *Bell*, *Guardians*, *Darrone*, or any other case recognizing the availability of private suits for employment discrimination.

II. The Court Should Decline To Carve Out Employment Discrimination Claims From Title IX’s Private Right of Action.

The Eleventh Circuit decided, and Respondents and the United States assert, that an atextual exception for intentional discrimination against

employees should be judicially created under Title IX. They stress two principal reasons: (1) overlap with Title VII; and (2) a holding that employment discrimination is covered would impermissibly “extend” the private right of action. Both arguments are meritless.

A. Title IX’s private right of action for employment discrimination does not impermissibly overlap with Title VII.

The Eleventh Circuit’s decision rests heavily on speculation that “[i]t is unlikely that Congress intended Title VII’s express private right of action and Title IX’s implied right of action to provide overlapping remedies” for intentional sex discrimination by funding recipients against employees. Pet. App. 21a.

But resort to the traditional tools of statutory interpretation—including considerations of Title IX’s text and structure, how Title VII interacts with other statutes, and interpretations of similar statutes—yields the conclusion that any overlap between Title VII and Title IX is by congressional design.

1. Start with *Bell*, which expressly considered and rejected a similar overlap argument. As noted, *Bell* explained that Title IX’s text, “on its face,” “include[s] employees as well as students.” 456 U.S. at 520. Nonetheless, the Court considered the contention that the plain reading would create improper “overlap” between Title VII and Title IX and held that those concerns did not support a crabbed interpretation of

Title IX. As the Court explained: The “policy” arguments “that the victims of employment discrimination have remedies other than those available under Title IX” “were for Congress to weigh, and we are not free to ignore the language and history of Title IX even were we to disagree with the legislative choice.” *Id.* at 535 n.26. “Moreover, even if alternative remedies are available and their existence is relevant, this Court repeatedly has recognized that Congress has provided a variety of remedies, *at times overlapping*, to eradicate employment discrimination.” *Ibid.*

Notably, the *Bell* dissenters primarily objected to reading Title IX to cover employment discrimination because it would create overlap with Title VII. *Id.* at 544-55 (Powell, J., dissenting); see *id.* at 552 (“[A] comparison of the provisions of Title VII and Title IX suggests that Congress would not have enacted the inconsistent provisions of the latter with respect to remedies and procedures.”). The Court correctly rejected the Title VII overlap argument as “not relevant” because the text and other evidence showed “that employment discrimination comes within the prohibition of Title IX.” *Id.* at 530, 535 & n.26.

2. *Bell*'s holding comports with the way Congress legislates in this area of the law. Despite some “necessary overlap” between Title VII and Title IX, *CBOCS W., Inc. v. Humphries*, 553 U.S. 442, 455 (2008), this Court has long recognized that Title VII and Title IX are “vastly different statute[s],” *Jackson*, 544 U.S. at 175; see *B.P.J.*, 609 U.S. ___, slip op. at 13

(same). Unlike Title VII, which specifically targets employment discrimination “because of such individual’s ... sex” (42 U.S.C. 2000e-2(a)) and “spells out in greater detail the conduct that constitutes discrimination in violation of that statute,” “Title IX is a broadly written general prohibition on discrimination” “on the basis of sex,” *Jackson*, 544 U.S. at 175; 20 U.S.C. 1681(a); see also *Univ. of Texas Sw. Med. Ctr. v. Nassar*, 570 U.S. 338, 355 (2013) (contrasting Title VII with Title IX because Title IX is a “broad, general bar[] on discrimination”).

The statutes differ in other important respects. For instance, Title IX’s prohibition focuses on “intentional discrimination” directly attributable to the funding recipient itself. See, e.g., *Gebser*, 524 U.S. at 287; *Jackson*, 544 U.S. at 173-74. Therefore, as with Title VI, individuals likely cannot bring disparate impact claims under Title IX, see *Sandoval*, 532 U.S. at 285 (no private right of action for disparate impact claim under Title VI regulations), or sexual harassment claims based on vicarious liability, see *Gebser*, 524 U.S. at 277 (allowing for damages suits only when “an official of the school district ... has actual notice of, and is deliberately indifferent to, the ... misconduct”). In contrast, Title VII specifically includes such claims. See 42 U.S.C. 2000e-2(k) (providing requirements for “disparate impact” claims); *Vance v. Ball State Univ.*, 570 U.S. 421, 428 (2013) (Under Title VII, “an employer may be vicariously liable for its employees’ creation of a hostile work environment.”).

In addition, the categories of damages available under Title IX are more limited. See *Barnes*, 536 U.S. at 187-88 (punitive damages unavailable); *Cummings*, 596 U.S. at 221-22 (emotional distress damages unavailable); see also 42 U.S.C. 1981a(b) (allowing these types of damages under Title VII but subjecting compensatory damages to a statutory cap based on the size of the company).

Finally, Title IX and Title VII differ with respect to the prerequisites for filing suit. While Title IX's private right of action "has no administrative exhaustion requirement and no notice provisions," *Fitzgerald*, 555 U.S. at 255, Title VII requires litigants to first utilize the administrative process available through the EEOC. *E.g.*, 42 U.S.C. 2000e-5(e)(1) (charge of discrimination must be brought before EEOC within 180 days of the discriminatory act).

All those differences show that Title IX "is not coextensive in its coverage with Title VII" such that preclusion makes sense. *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 460 (1975) (discussing the overlap between Section 1981 and Title VII). The "remedies available" under the statutes, "although related, and although directed to most of the same ends, are separate, distinct, and independent." *CBOCS*, 553 U.S. at 455 (quoting *Johnson*, 421 U.S. at 461).

3. Regardless, the existence *vel non* of "Title VII/[Title IX] 'overlap'" is irrelevant because, as the Court held in the Section 1981 context, "Congress explicitly created the overlap in respect to direct

employment discrimination.” *Ibid.* Indeed, as *Bell* noted, it is well-established that “Congress has provided a variety of remedies, at times overlapping, to eradicate employment discrimination.” 456 U.S. at 535 n.26. Congress plainly “inten[ded] to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes.” *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 48 (1974). This overlap reflects “congressional design.” *CBOCS*, 553 U.S. at 455; see also *Alexander*, 415 U.S. at 47-49 (“legislative enactments ... have long evinced a general intent to accord parallel or overlapping remedies against discrimination”).

Moreover, the Court has allowed claims under Section 1981 that could be brought under Title VII even though doing so would “circumvent” Title VII’s procedural and administrative requirements. *Ibid.* In so holding, this Court recognized that, “[d]espite Title VII’s range and its design as a comprehensive solution for the problem of invidious discrimination in employment, [an] aggrieved individual *clearly* is not deprived of other remedies he possesses and is not limited to Title VII in his search for relief.” *Johnson*, 421 U.S. at 459.

4. That Congress intended for overlap between Title IX and Title VII is made even clearer when Title IX is viewed alongside Title VI. As this Court has noted, Title VI’s textual limitation regarding employment discrimination reflected “Congress’ concern that the receipt of any form of financial assistance might render an employer subject to the

commands of Title VI rather than Title VII.” *Johnson v. Transp. Agency*, 480 U.S. 616, 628 n.6 (1987).

Yet, Congress chose not to include that limitation in Title IX even though Title IX was enacted just after Congress extended Title VII to cover educational institutions. See Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103, 42 U.S.C. 2000e(a) (Title VII extended in March 1972); Education Amendments of 1972, Pub. L. 92-318, 86 Stat. 373, 20 U.S.C. 1681 *et seq.* (Title IX enacted in June 1972); see also *Bell*, 456 U.S. at 530.

Moreover, despite amending Title IX numerous times since *Bell* was decided in 1982, Congress left the overlap between Title IX and Title VII undisturbed. See *Inclusive Comtys.*, 576 U.S. at 536-37; *Sandoval*, 532 U.S. at 284-85; Scalia & Garner, Reading Law 322. Congress’s considered decision to allow employment-discrimination claims should be respected. See *POM Wonderful*, 573 U.S. at 113-14 (Congress’s refusal to enact a provision addressing preclusion is “powerful evidence that Congress did not intend” a particular statutory scheme “to be the exclusive means” of addressing a particular problem); *Johnson*, 421 U.S. at 459 (noting that “in considering the Equal Employment Opportunity Act of 1972,” Congress “rejected” a proposed exclusivity provision for Title VII (citing 118 Cong. Rec. 3371-73 (1972))).

5. A judicial carve-out barring employment-discrimination claims under Title IX would also create thorny workability and administrability problems and undermine the effectiveness of Title IX.

As discussed, *supra* section I.B.1, there are many student-employees employed by and enrolled at our nation's universities. Of course, a student's employment by her educational institution cannot be meaningfully disentangled from her educational experience. Title IX, with its broad language and specific provisions targeted at the educational environment, is well suited to address all aspects of the educational experience, including employment.

Under the Circuit's holding, however, courts would be required to undertake the painstaking exercise of determining whether a student-employee's claim should be brought under Title IX or Title VII. To do so, courts would have to assess whether the claim is "really" about the student as an employee rather than about her participation in an "educational program or activity." *E.g.*, *Doe v. Prairie View A&M Univ.*, 2018 WL 1947804, at *5 (S.D. Tex. Apr. 25, 2018) (denying motion to dismiss but noting that "[d]iscovery and further litigation will ... clarify[] the nature of the job that Doe held, its relationship to her education, and other relevant considerations" that will "weaken her Title VII claim, her Title IX claim, or both").

It disserves the vital goals of Title IX to require courts to engage in such inquiries. It is also doubtful that such parsing is workable. Does a university's intentional discrimination against a university café barista have less of an educational impact than against athletics staff? If a lab assistant is intentionally given worse research opportunities than

her male peer on the basis of her sex, does that pertain foremost to her employment or educational experience? What about unequal pay?

By contrast, an interpretation of Title IX that allows employees to bring claims provides student-employees a clear path for relief via a statute that is focused on the complexities of the educational environment—Title IX.

B. A ruling for Petitioners does not “extend” Title IX’s private right of action.

The Eleventh Circuit, Respondents, and the United States also err in asserting that permitting employment discrimination claims under Title IX would impermissibly extend *Cannon*’s private right of action, in contravention of separation-of-powers principles and the caselaw concerning statutes passed under Congress’s spending powers. Those principles make clear that the Court should not imply new causes of action or extend causes of action without congressional authorization. But they are precisely why this Court should uphold the Title IX cause of action here. That cause of action was ratified by Congress to remedy intentional violations of the clear prohibition of the statute, which encompasses employment discrimination. See 42 U.S.C. 2000d-7(a).

1. First, although the Court has eschewed implying new private rights of action or extending those already found to exist without congressional authorization, it has recognized the continued vitality

of private rights of action, like that in Title IX, that have been ratified by Congress. See *Sandoval*, 532 U.S. at 280; *Franklin*, 503 U.S. at 78 (Scalia, J., concurring in the judgment).

Here, Congress ratified *Cannon's* holding recognizing “a cause of action in favor of private victims of discrimination” to enforce the statute’s ban on intentional discrimination. 441 U.S. at 709; see *Sandoval*, 532 U.S. at 280, 282. Indeed, the 1986 Amendments recognize the availability of “suit in Federal court for a violation of ... title IX.” 42 U.S.C. 2000d-7(a)(1). Congress did not abrogate State sovereign immunity for only some violations of Title IX or restrict which individuals may sue; it stated that all “remedies” available in suits against non-State entities are available in suits against States. And, as discussed, at the time of the 1986 Amendments courts had affirmed the availability of damages suits for employment discrimination under Title IX. Unlike the attempt to sue based on regulations that this Court rejected in *Sandoval*, Petitioners here invoke the right of action recognized by Congress: to bring “suit in Federal court for a violation of ... title IX.” 42 U.S.C. 2000d-7(a)(1).

While “plaintiffs may not assert claims under Title IX for conduct not prohibited by that statute,” “Title IX’s private right of action encompasses suits for” conduct that “falls within the statute’s prohibition of intentional discrimination on the basis of sex.” *Jackson*, 544 U.S. at 178 & n.2. Accordingly, this Court has “consistently interpreted Title IX’s private

cause of action broadly to encompass diverse forms of intentional sex discrimination.” *Id.* at 183.

Thus, Title IX’s right of action is not impermissibly “extended” by the Judiciary when the Court decides that certain conduct falls within the prohibition of Title IX. *E.g.*, Pet. App. 17a (arguing this Court “has never extended the implied private right of action under Title IX to claims of sex discrimination for employees of educational institutions”). Rather, the Court simply interprets the statute. See *Rivers v. Roadway Express, Inc.*, 511 U.S. 298, 312-13 (1994) (“A judicial construction of a statute is an authoritative statement of what the statute meant before as well as after the decision of the case giving rise to that construction.”). In determining employees may sue under Title IX for retaliation, the Court explained it reached that result “based on the statute’s text,” “because the statute *itself* contains the necessary prohibition.” *Jackson*, 544 U.S. at 178; see *Gomez-Perez*, 553 U.S. at 484. The same logic applies here.

Indeed, the Court rejected precisely this “extension” argument in *Jackson*. There, invoking *Sandoval*, the school board contended that “*Jackson*, like the petitioners in *Sandoval*, seeks an ‘impermissible extension of the statute’ when he argues that Title IX’s private right of action encompasses retaliation.” 544 U.S. at 178. The Court explained that “[t]his argument ... entirely misses the point”: “In step with *Sandoval*, we hold that Title IX’s private right of action encompasses suits for

retaliation, because retaliation falls within the statute's prohibition of intentional discrimination on the basis of sex." *Ibid.* Employment discrimination plainly does as well. See *supra* section I.B.1.

2. Next, the Circuit and Respondents fare no better in invoking this Court's cases concerning the Spending Clause to argue that funding recipients did not receive adequate notice they could be liable for damages actions under Title IX for employment discrimination. Because employment discrimination is prohibited by the clear terms of Title IX, the Spending Clause does not bar damages actions under Title IX for such conduct.

"[L]egislation enacted pursuant to the spending power is much in the nature of a contract: in return for federal funds, the [recipients] agree to comply with federally imposed conditions." *Pennhurst*, 451 U.S. at 17; *Cummings*, 596 U.S. at 216. Thus, "if Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." *Pennhurst*, 451 U.S. at 17.

Critically, this Court has repeatedly held that, under *Pennhurst* and its progeny, Title IX damages actions may be brought for intentional violations of the statute. "Funding recipients have been on notice that they could be subjected to private suits for intentional sex discrimination under Title IX since 1979, when we decided *Cannon*. *Pennhurst* does not preclude private suits for intentional acts that clearly violate Title IX." *Jackson*, 544 U.S. at 182. In *Davis*, the Court stated that "*Pennhurst* does not bar a

private damages action under Title IX where the funding recipient engages in intentional conduct that violates the clear terms of the statute.” 526 U.S. at 642. And in *Franklin*, the Court explained that the “notice problem does not arise in a case such as this, in which intentional discrimination is alleged,” as “[u]nquestionably, Title IX placed on the [funding recipient] the duty not to discriminate on the basis of sex.” 503 U.S. at 74-75. See *Bennett v. Ky. Dep’t of Educ.*, 470 U.S. 656, 665-66 (1985) (Congress need not “specifically identif[y] and proscrib[e]” each condition in legislation).

Thus, Respondents “should have been put on notice by the fact that [the Court’s] cases since *Cannon*, such as *Gebser* and *Davis*, have consistently interpreted Title IX’s private cause of action broadly to encompass diverse forms of intentional sex discrimination.” *Jackson*, 544 U.S. at 183. Further, “[t]he regulations implementing Title IX clearly prohibit [employment discrimination] and have been on the books for nearly [50] years.” *Ibid.*; see 34 C.F.R. § 106.51(a). “Indeed, [employment discrimination] presents an even easier case than deliberate indifference,” *Jackson*, 544 U.S. at 183, or, for that matter, retaliation. “Title IX itself therefore supplied sufficient notice to [Respondents] that [they] could not” intentionally discriminate against Petitioners in their employment. *Ibid.*

When this Court has “defined the contours of th[e] right of action,” *Jackson*, 544 U.S. at 173, it has excluded claims from its scope where the claims go

beyond “the statute’s prohibition of intentional discrimination on the basis of sex” or otherwise fail to comport with the statutory text, see *Gebser*, 524 U.S. at 277, or where they allow for forms of relief that do not comport with the contractual nature of the Spending Clause, see *Barnes*, 536 U.S. at 187-88 (punitive damages unavailable); *Cummings*, 596 U.S. at 221-22 (emotional distress damages unavailable). Neither situation applies here.

CONCLUSION

This Court should reverse the judgment of the Eleventh Circuit, and remand the cases for further proceedings.

Respectfully submitted,

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