No. 25-183

IN THE

Supreme Court of the United States

THOMAS CROWTHER AND MACHELLE JOSEPH,

Petitioners,

v.

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF GEORGIA AND GEORGIA TECH ATHLETIC ASSOCIATION,

Respondents.

On Writ of Certiorari to the Unites States Court of Appeals for the Eleventh Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in protecting meaningful access to the courts and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

In *Cannon v. University of Chicago*, 441 U.S. 677 (1979), this Court held that Title IX should be read to include "a cause of action in favor of private victims of discrimination," *id.* at 709. Although this Court has since retreated from *Cannon*'s reasoning, it has repeatedly acknowledged that Congress "ratified *Cannon*'s holding" in the Rehabilitation Act Amendments of 1986, leaving it "beyond dispute that private individuals may sue to enforce [Title IX]." *Alexander v. Sandoval*, 532 U.S. 275, 280 (2001).

Neither this Court in *Cannon* nor Congress in its ratification of *Cannon* ever drew a line limiting *which* "victims of discrimination"—students versus employees of federally funded schools—may sue to enforce Title IX's broad prohibition on sex discrimination. And this Court expressly affirmed in *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982), that the very

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

same text of Title IX from which the *Cannon* Court derived a private right of action—"No person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance," 20 U.S.C. § 1681(a)—prohibits intentional sex discrimination against employees of federally funded education programs. On top of that, in *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005), this Court held that Title IX's private right of action "encompasses suits for retaliation" brought by school employees "because retaliation falls within the statute's prohibition of intentional discrimination on the basis of sex," *id.* at 178.

These precedents—and Congress's ratification of *Cannon*'s holding—should resolve this case. Collectively, they leave no doubt that Title IX "implicitly provides [a private right of action]" to Petitioners to sue their respective universities for sex-based discrimination. *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1553 (2026).

Yet the court below cast them aside, seemingly concluding that they were either irrelevant or insufficient to meet the clear-notice requirement that this Court has required for Spending Clause legislation. In either case, the court below was wrong.

Particularly in the context of Title IX, this Court has repeatedly imputed to federal funding recipients notice of this Court's binding precedents and, where applicable, Congress's ratification of those precedents. The question for purposes of ascertaining notice has always been straightforward: whether a reasonable "state official who is engaged in the process of deciding whether the State should accept [federal] funds . . . would clearly understand . . . the obligations" attached to those funds. *Arlington Cent. Sch. Dist. Bd. of Educ. v. Murphy*, 548 U.S. 291, 296 (2006).

Thus, in *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992), this Court held that damages were available for an intentional violation of Title IX because the funding recipient "[u]nquestionably" should have understood "the duty not to discriminate on the basis of sex" and that, under this Court's precedents, "when a supervisor sexually harasses a subordinate because of the subordinate's sex," that amounts to intentional discrimination "on the basis of sex." *Id.* at 75 (quoting *Meritor Sav. Bank, FSB v. Vinson,* 477 U.S. 57, 64 (1986)). In reaching that conclusion, this Court charged funding recipients with knowledge of Title IX's broad prohibition of intentional sex discrimination, as well as this Court's holding in *Cannon*, Congress's ratification of *Cannon*, and other relevant precedents. *Id.* at 72-75.

This Court has taken the same approach in other Title IX cases. For instance, in *Davis ex rel. LaShonda D. v. Monroe County Board of Education*, 526 U.S. 629 (1999), this Court explained that *Franklin* and other precedents provided clear notice that Title IX proscribes "sexual harassment," despite never using that precise phrase. *Id.* at 649-50; *see also Gebser v. Lago Vista Ind. Sch. Dist.*, 524 U.S. 274, 281 (1998). Likewise, in *Jackson*, this Court held that Title IX's private right of action encompasses retaliation claims by employees, reasoning that the funding recipient "should have been put on notice by the fact that our 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." 544 U.S. at 183. In each of these cases, Title IX's statutory text, as well as authoritative interpretations of that text by Congress and this Court, served as sources of notice about the scope of Title IX's private right of action. This Court has never artificially limited the sources from which clear notice might be derived for purposes of the Spending Clause.

That approach makes perfect sense. Statutory context, subsequent congressional actions, and binding interpretations of Title IX necessarily must play a significant role in the interpretation of a private right of action that has been judicially implied and then ratified by Congress. *See Franklin*, 503 U.S. at 71 ("Because the cause of action was inferred by the Court in *Cannon*, the usual recourse to statutory text and legislative history in the period prior to that decision necessarily will not enlighten our analysis.").

That approach also coheres with foundational principles of contract law, which matters to the extent that statutes enacted pursuant to Congress's spending power are "much in the nature of a contract," *Pennhurst State Sch. & Hosp. v. Halderman*, 451 U.S. 1, 17 (1981). Leading authorities on contract law all agree that knowledge of the law, including case law, is imputed to contracting parties, *see, e.g.*, 11 Samuel Williston & Richard A. Lord, *A Treatise on the Law of Contracts* § 30:19 (4th ed.), Westlaw (database updated May 2026), and misunderstanding of the application of the law is not typically grounds to escape obligations under a contract, "especially where the rights of third parties might be prejudiced thereby," *id.* § 70:128.

If the court below had followed this Court's approach to the clear-notice question and given proper weight to Congress's ratification of *Cannon* and this Court's decisions in *Bell* and *Jackson*, it would have recognized that no reasonable person—let alone sophisticated repeat-players like the federally funded universities in this case—could lack clear notice that accepting federal funds creates the possibility of liability in Title IX suits for sex discrimination against employees. Put another way, even though none of these precedents have identical facts to Petitioners' cases, together they make it so obvious that funding recipients may be subject to Title IX suits for intentional sex discrimination against employees that they easily satisfy the clear-notice requirement for Spending Clause legislation that this Court has adopted. This Court should reverse.

ARGUMENT

I. Under this Court's Spending Clause Jurisprudence, Parties Are Charged with Notice of the Relevant Legal Landscape, Including Binding Precedents and Congress's Actions Against the Backdrop of Those Precedents.

A. In *Pennhurst*, this Court first introduced the idea of a clear-notice requirement for statutes enacted pursuant to Congress's spending power. The Court invoked a contract-law analogy to explain the new rule, characterizing the spending power as "much in the nature of a contract: in return for federal funds, the States agree to comply with federally imposed conditions." 451 U.S. at 17. Thus, according to the Court, the "legitimacy of Congress'[s] power to legislate under the spending power . . . rests on whether the State voluntarily and knowingly accepts the terms of the 'contract,'" which the State cannot do if it "is unaware of the conditions or is unable to ascertain what is expected of it." *Id.*

While using the contract-law analogy as an explanatory aid, the Court in *Pennhurst* made clear that the clear-notice rule was grounded in principles of basic fairness. It was developed to ensure that federal funding recipients "exercise their choice knowingly, cognizant of the consequences of their participation." *Id.* In other words, this Court concluded that it would be fundamentally unfair to hold states (or other funding recipients) to terms and conditions of which they may not have been aware at the time that they accepted federal funds.

Applying these principles to the question presented, the Court in *Pennhurst* determined that the Developmentally Disabled Assistance and Bill of Rights Act of 1975 (DDA) did not require funding recipients to provide "appropriate treatment" for people with intellectual disabilities in the "least restrictive" setting. *Id.* at 24-25. The Court reached that conclusion by applying the traditional tools of statutory interpretation, including examining the DDA's text, structure, history, practical effects, and even agency interpretations. In particular, the Court emphasized the need to analyze statutory text in context by "look[ing] to the provisions of the whole law," *id.* at 18 (quoting *Philbrook v. Glodgett*, 421 U.S. 707, 713 (1975)), as well as the need to understand the interpretive question against the backdrop of the Court's own precedents, *see id.* at 27 (analogizing to *Southeastern Community College v. Davis*, 442 U.S. 397 (1979)). Thus, the Court in *Pennhurst* did not treat its new notice requirement as a substantive limit on its approach to statutory interpretation. The notice requirement was not a thumb on the scale against Congress so much as a canon that "buttressed" its conclusion that the DDA did not create the obligation in question. *Id.* at 24.

To be sure, over the last forty-five years, this Court's characterization of the clear-notice requirement has evolved. Perhaps most significantly, this Court expanded the notice requirement to require clear notice to funding recipients of the scope of available *remedies* for violation of funding conditions, as opposed to just the conditions themselves. *See, e.g.*, *Barnes v. Gorman*, 536 U.S. 181 (2002). And just last term, drawing again on its analogy to contract law, this Court in *Landor v. Louisiana Department of Corrections & Public Safety*, No. 23-1197, 2026 WL 1791277 (U.S. June 23, 2026), held that clear notice may not be imputed to individuals who are not the direct recipients of federal funding—that is, individuals who have not "entered any agreement with the federal government" in their "personal" capacities. *Id.* at *6.

But despite these expansions of the *applicability* of the clear-notice requirement, this Court has never limited the *sources* of notice available to funding recipients under the Spending Clause. Instead, the question of whether a funding recipient had clear notice of a condition or remedy has frequently required this Court to examine a variety of different sources. This has been particularly true in cases involving Title IX—a statute with a judicially implied private right of action that was subsequently ratified by Congress. Because Title IX lacks express text delineating the scope of its private cause of action, this Court has incrementally built upon its construction of that scope, charging parties to so-called Title IX "contracts" with knowledge of all previous Title IX case law.

The first in this line of cases was *Franklin*, which presented the question whether damages were available to a private plaintiff alleging an intentional violation of Title IX. This Court applied the traditional presumption in favor of "the availability of all appropriate remedies," 503 U.S. at 66, and held that damages were available. It rejected the argument that *Pennhurst*'s clear-notice requirement for Spending Clause statutes rendered the "normal presumption" inapplicable. *Id.*

at 74. Reasoning that the principle of fundamental fairness served by the notice requirement was designed to avoid subjecting funding recipients to liability for "*unintentional*" statutory violations, the Court determined that "*intentional* violations" like the one alleged in the case did not implicate *Pennhurst*'s rule in the same manner. *Id.* at 74-75.

While unintentional violations of Spending Clause legislation would, by definition, fail to satisfy *Pennhurst*'s clear-notice requirement, *id.* at 74, the Court in *Franklin* concluded that funding recipients *did* have clear notice that Title IX barred intentional sex discrimination, and that damages were available for such violations in private actions, *id.* at 74-75. The Court relied on multiple distinct sources of notice to reach that conclusion.

To start, the Court concluded that Title IX's broad text "[u]nquestionably" prohibited intentional sex discrimination. *Id.* at 75. Further, the Court stated that its decision in *Meritor Savings Bank* provided notice to the school district that sexual harassment of a high school student by a coach or teacher amounted to intentional sex discrimination. *Id.* (citing *Meritor Sav. Bank*, 477 U.S. at 64). And perhaps most significantly, the Court determined that clear notice of the availability of damages as a remedy had been provided by its own recognition of a private right of action under Title IX in *Cannon*, as well as Congress's subsequent amendment of Title IX to more clearly abrogate state sovereign immunity, which the Court viewed as congressional ratification both of *Cannon* and of the availability of damages in actions brought to enforce Title IX pursuant to *Cannon*. *Id.* at 72-73. That point was underscored, according to the Court, by Congress's enactment of the Civil Rights Restoration Act of 1987, Pub. L. 100-259, 102 Stat. 28, in which Congress "broadened the coverage of [Title IX]" while making "no effort to restrict the right of action recognized in *Cannon* and ratified in the 1986 Act." *Franklin*, 503 U.S. at 73. Even Justice Scalia—who wrote separately to question *Cannon*'s approach and the soundness of implied rights of action in general—agreed that *Cannon*'s substantive holding and Congress's actions subsequent to *Cannon* provided sufficient notice to the funding recipient to put the recipient on the hook for damages for intentional violations of Title IX. *See id.* at 78 (Scalia, J., joined by Rehnquist, C.J., and Thomas, J., concurring in the judgment).

A pair of cases interpreting the scope of Title IX's cause of action following *Franklin* similarly recognized that understanding the scope of a congressionally ratified cause of action not appearing on the face of a statute "necessarily" requires the Court to look beyond the four corners of the statutory text to discern the scope of conduct for which fair notice could be imputed to funding recipients. *Id.* at 71 (majority opinion). In *Gebser*, this Court looked to the contours of Title IX's express remedial scheme for the federal government, Title IX's implementing regulations, and basic principles of fundamental fairness in the analogous context of Section 1983 claims for municipal liability to hold that a funding recipient may not be held liable for damages under Title IX based on "principles of constructive notice or *respondeat superior*" for teacher-on-student sexual harassment, 524 U.S. at 287, but that it could be held liable for "deliberate indifference" to such known acts, *id.* at 290.

A year later, in *Davis*, this Court applied the same deliberate-indifference standard to acts of student-on-student sexual harassment. Citing *Gebser* and *Franklin*, the Court made explicit that although Title IX only bars sex-based "discrimination," those cases and the broader statutory context of Title IX meant that the statute "proscribes harassment with sufficient clarity to satisfy *Pennhurst*'s notice requirement"—even though Title IX does not use the word "harassment." *Davis*, 526 U.S. at 649-50.

This Court applied the same basic principles to Title IX in *Jackson*, where it held that the Birmingham Board of Education had sufficient notice under the *Pennhurst* standard to be subject to private damages suits for intentional sex discrimination in the form of retaliation—again, even though the word "retaliation" does not appear in Title IX. The Court explained that because "Title IX is a broadly written general prohibition on discrimination" that does "not list *any* specific discriminatory practices, . . . its failure to mention one such practice does not tell us anything about whether it intended that practice to be covered." 544 U.S. at 175.

On the question of notice, the Court reasoned that its own case law should have provided clear notice to the Board of Education that it could be held liable in private actions challenging retaliation for complaints of intentional sex discrimination. *Cannon* itself provided notice to funding recipients in 1979 "that they could be subjected to private suits for intentional sex discrimination under Title IX." *Id.* at 182. And "the Board should have been put on notice by the fact that our 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." *Id.* at 183.

In sum, the throughline in this Court's cases involving Spending Clause statutes, particularly Title IX, has been to use all the tools of statutory interpretation to interpret those laws and to consider all available sources of notice.[2]

B. A comprehensive approach to the clear-notice requirement also makes sense given this Court's direction to "turn to contract principles for guidance" about the proper approach to interpreting Spending Clause statutes. *Landor*, 2026 WL 1791277, at *6. After all, the leading authorities on contract law all agree that contracting parties are charged with knowledge of existing law, including governing case law. *See, e.g.*, Williston & Lord, *supra*, at § 30:19 ("valid applicable laws existing at the time of the making of a contract enter into and form a part of the contract as fully as if expressly incorporated in the contract"); 17A Am. Jur. 2d *Contracts* § 363, Westlaw (database updated May 2026) ("Contracting parties are presumed to contract in reference to the existing law, and to have in mind all the existing laws relating to the contract, or to the subject matter thereof."); *cf.* Restatement (Second) of Contracts § 180 (1981) ("parties are generally charged with knowledge of policies affecting enforceability").

This presumption is remarkably broad. It applies "regardless of whether the agreement refers to the governing law," and it applies to all types of governing

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[2] Even last month, concurring in *West Virginia v. B.P.J. ex rel. Jackson*, No. 24-38, 2026 WL 1868739 (U.S. June 30, 2026), Justice Gorsuch emphasized the need to "[p]ut[] all the[] pieces together" in the statutory interpretation puzzle to assess whether Title IX "clearly and unambiguously alerts funding recipients that they are prohibited from restricting a school-sponsored sports team to biological women or girls." *Id.* at *18. Justice Gorsuch looked first to the text of Title IX, but then also considered contemporaneous dictionaries, the statutory context, and even "contemporaneously issued and longstanding" implementing regulations to shed light on the scope of funding recipients' notice. *Id.*

law, including not only statutes but also regulations, ordinances, constitutional provisions, and the common law, both state and federal. Williston & Lord, *supra*, at § 30:19. The presumption has also been expressly endorsed by this Court. *See, e.g.*, *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 285 (1827) (opinion of Johnson, J.) ("a knowledge of the laws, policy, and jurisprudence of a State, is necessarily imputed to every one entering into contracts within its jurisdiction"); *Von Hoffman v. City of Quincy*, 71 U.S. (4 Wall.) 535, 550 (1866) (deeming it "settled" that "the laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as if they were expressly referred to or incorporated in its terms").

Thus, even if Title IX were simply a contract rather than a federal statute, a court interpreting a federal funding recipient's obligations under that contract would necessarily charge the funding recipient with notice of *Cannon*, Congress's ratification of *Cannon*, *Bell*, *Jackson*, and all of this Court's relevant Title IX precedents that collectively leave no question that Respondents should have known they could be subject to suits under Title IX for sex discrimination against their employees.

C. By discounting the power of this Court's Title IX precedents and Congress's ratification of *Cannon* to provide clear notice to funding recipients that they might be subject to suits for sex discrimination against employees, the court below set up a test that Title IX was doomed to fail. After all, the statute's private right of action derives from *Cannon* itself and Congress's subsequent ratification of that decision. Without examining the scope of *Cannon* and the scope of what Congress ratified in the Rehabilitation Act Amendments of 1986, the court below left itself with little to go on. *Cf. Franklin*, 503 U.S. at 71-72 (explaining that it is "hardly surprising" that a statute with an implied cause of action is "'silent' on the issue of available remedies" under that cause of action, but that looking to Congress's actions "[i]n the years *after* the announcement of *Cannon*" is illuminating "because Congress was legislating with full cognizance of that decision").

It is thus unsurprising that the court below struggled to follow even its own rule for clear notice and in fact looked well beyond the text of Title IX to address the notice question. Indeed, the court below rested its holding that Respondents lacked sufficient notice largely on its interpretation of the operation of a different statute—Title VII—which contains an express private right of action for employees who experience sex-based discrimination, and which it viewed as precluding congressional intent to create a parallel cause of action in Title IX "unburdened by any administrative procedures." Pet. App. 22a. The court below offered no explanation for why intimate knowledge of Title VII's operation could be imputed to funding recipients to preclude notice of the scope of Title IX's private right of action, but binding Title IX precedents and a statutory amendment ratifying *Cannon* were insufficient to supply the clear notice to funding recipients that this Court requires.

None exists. Just as this Court regularly imputes knowledge of prevailing contract-law principles to federal funding recipients, *see, e.g.*, *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 220-21 (2022); *Barnes*, 536 U.S. at 187, and just as the court below imputed knowledge of Title VII's operation to Respondents, the court below should have charged Respondents with notice of the body of Title IX precedents demonstrating that employees of federally funded schools may bring suit under Title IX against their employers for sex discrimination. The next Section details that body of law.

II. This Court's Robust Title IX Case Law, As Well As Congress's Ratification of *Cannon*, Provided Respondents with Clear Notice That They Could Face Title IX Suits Brought by Their Employees for Sex Discrimination.

In *Cannon*, this Court applied the four factors from *Cort v. Ash*, 422 U.S. 66 (1975), to ascertain whether "Congress intended to make a remedy available to a special class of litigants" through Title IX. *Cannon*, 441 U.S. at 688. The Court declared that all four factors—"[n]ot only the words and history of Title IX, but also its subject matter and underlying purposes"—counseled "implication of a cause of action in favor of private victims of discrimination." *Id.* at 709. Although this Court has since "retreated from *Cannon*'s reasoning," it has always emphasized that "it remains bound by *Cannon*'s 'holdin[g]'" that victims of intentional sex-based discrimination have a cause of action under Title IX. *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 369 n.1 (2025) (alteration in original) (quoting *Sandoval*, 532 U.S. at 282).

The statutory text that this Court concluded contained an implied private right of action in *Cannon* was Title IX's substantive prohibition: "No person in the United States shall, on the basis of sex, . . . be subjected to discrimination under any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). Though *Cannon* itself involved a student applicant to medical school, the Court in *Cannon* never purported to limit the private right of action that it inferred to student applicants. Instead, in recognition of the broad "[n]o person" text of Title IX, *id.*, the

Court in *Cannon* consistently referred to the class for which it implied a cause of action as "private victims of [sex] discrimination," *Cannon*, 441 U.S. at 709; *see id.* at 694 (referring to "persons discriminated against on the basis of sex" as the "class for whose special benefit the statute was enacted"); *id.* at 702 ("private right of action for the victims of illegal discrimination").

Congress then ratified *Cannon*'s holding through the Rehabilitation Act Amendments of 1986. *See* Pub. L. 99-506, § 1003, 100 Stat. 1807, 1845 (codified at 42 U.S.C. § 2000d-7). It "expressly abrogated States' sovereign immunity against suits brought in federal court to enforce" Title IX, *Sandoval*, 532 U.S. at 280; *see* 42 U.S.C. § 2000d-7(a)(1), and it specified that "remedies both at law and in equity[] are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State," *id.* § 2000d-7(a)(2). As previously noted, this Court has consistently treated these 1986 amendments as a ratification of *Cannon*'s holding. *See, e.g.*, *Medina*, 606 U.S. at 369 n.1; *Sandoval*, 532 U.S. at 279-80; *Franklin*, 503 U.S. at 72. And neither Congress nor this Court has ever provided any reason to believe that *Cannon*'s holding does not reach employees of federally funded schools who experience intentional sex discrimination.

To the contrary, this Court expressly held that Title IX's substantive prohibition of sex discrimination *does* cover employees in *Bell*. The Court reached this conclusion based on the text of the *exact same statutory provision* of Title IX from which it had previously implied a private right of action in *Cannon*. Specifically, the *Bell* majority explained that 20 U.S.C. § 1681(a)'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." *Bell*, 456 U.S. at 520; *see id.* at 521 ("Congress easily could have substituted 'student' or 'beneficiary' for the word 'person' if it had wished to restrict the scope of [Title IX]."). Put simply, "[u]nder that provision, employees, like other 'persons,' may not be . . . 'subjected to discrimination under' education programs receiving federal financial support." *Id.* at 520 (quoting 20 U.S.C. § 1681(a)).

Thanks to *Bell*, the legal landscape here is markedly different than it was in *Sandoval*, where this Court found that despite *Cannon*'s recognition of a private right of action to enforce Title VI's bar on intentional discrimination, there was no private right of action to enforce regulations barring disparate-impact discrimination. In *Sandoval*, although the Court assumed for the purposes of deciding the case that the disparate-impact regulations under Title VI were valid, *Sandoval*, 532 U.S. at 281-82, the Court also emphasized its prior holding that the operative statutory text of Title VI "prohibits *only* intentional discrimination," *id.* at 280-81 (emphasis added) (citing *Regents of Univ. of Cal. v. Bakke*, 438 U.S. 265 (1978); *Guardians Ass'n v. Civ. Serv. Comm'n of N.Y.*, 463 U.S. 582 (1983); *Alexander v. Choate*, 469 U.S. 287 (1985)). Thus, because *Cannon* had merely recognized that Title VI itself (and not any regulations) contained a private right of action, and other cases had held that the text of Title VI itself did *not* bar disparate-impact discrimination, the Court in *Sandoval* did not view *Cannon* as compelling the conclusion that Title VI contained a private right of action for enforcing disparate-impact regulations.[3]

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[3] To be sure, *Cannon* involved only a Title IX claim, but as this Court explained in *Sandoval*, "the reasoning of that decision em-

The opposite is true here. Unlike in *Sandoval*, here, there is no case law *foreclosing* the possibility that the statutory provision containing a private right of action bars the challenged conduct. Instead, we have a case—*Bell*—*affirmatively holding* that the statutory provision containing a private right of action does indeed bar the challenged conduct. In other words, *Cannon* held that 20 U.S.C. § 1681(a) contains a private right of action for victims of intentional sex discrimination, and *Bell* affirmatively held that 20 U.S.C. § 1681(a) prohibits intentional sex discrimination against employees and not just students. Thus, *Cannon* and *Bell* together compel the conclusion that Title IX's private right of action extends to employees of federally funded education programs who experience intentional sex discrimination.

Cannon and *Bell* together are more than sufficient to give Respondents clear notice that they might be subject to the suits brought by Petitioners. Respondents knew that under binding case law, "private victims of [sex] discrimination" had a cause of action against them. *Cannon*, 441 U.S. at 709. They also knew that under binding case law, "employment discrimination comes within the prohibition of Title IX." *Bell*, 456 U.S. at 530. The idea then that Respondents lacked clear notice that by accepting Title IX funds, they might have to answer to suits from employees alleging intentional sex discrimination in violation of Title IX beggars belief. Moreover, there is nothing fundamentally unfair about deeming Respondents to have "consent[ed]" to such suits. *Landor*, 2026 WL 1791277, at *6; *cf. Hope v. Pelzer*, 536 U.S. 730, 741

braced the existence of a private right to enforce Title VI as well," and Congress subsequently ratified *Cannon* with respect to both Title IX and Title VI. *Sandoval*, 532 U.S. at 280 (citing *Cannon*, 441 U.S. at 699).

(2002) (holding in the context of qualified immunity that where a violation of the law is "so obvious" from this Court's precedents, defendants are charged with "fair warning" that their conduct was prohibited, even where there is no factually identical precedent).

But that is not all. *Jackson* made it even clearer that employees of federally funded education programs have a cause of action for intentional sex discrimination under Title IX. As discussed above, *Jackson* presented the question whether Title IX's private right of action recognized in *Cannon* and ratified by Congress in the Rehabilitation Act Amendments of 1986 extended to employees of federally funded education programs who "complain[] of sex discrimination" that they have witnessed. 544 U.S. at 174. To answer that question, this Court had to resolve as a matter of first impression whether the intentional sex discrimination barred by 20 U.S.C. § 1681(a) included retaliation. In other words, the substantive reach of Title IX with respect to retaliation against employees was unsettled when the issue came to this Court in *Jackson*.

Relying on the text of Title IX and its previous decisions construing Title IX "broadly to encompass diverse forms of intentional sex discrimination," *id.* at 183, this Court held that retaliation for complaints of sex discrimination constitutes intentional sex discrimination barred by 20 U.S.C. § 1681(a), *Jackson*, 544 U.S. at 178. And because *Cannon* gave a private right of action to all victims of intentional sex discrimination, the *Jackson* Court's first holding that Title IX barred retaliation as part of its prohibition of intentional sex discrimination necessarily led to its second holding that those victims of retaliation also had a cause of action pursuant to *Cannon*.

Thus, to find a private right of action for retaliation in *Jackson*, the Court had to do significantly more work than is required here. It first had to decide whether 20 U.S.C. § 1681(a) even covered retaliation as part of its *substantive prohibition* on sex discrimination before determining whether *Cannon*'s private right of action extended to retaliation claims.

Here, unlike in *Jackson*, this Court has *already decided* in *Bell* that 20 U.S.C. § 1681(a) substantively bars intentional sex discrimination against employees. The hard work has already been done. The easy job is thus recognizing that the cause of action to enforce 20 U.S.C. § 1681(a)'s prohibition on intentional sex discrimination from *Cannon* extends to employees who complain of intentional sex discrimination pursuant to that same provision. Indeed, that task was so easy for this Court in *Jackson* that it barely even separated out the cause-of-action question in its analysis. Rather, this Court in *Jackson* treated its cause-of-action holding as a natural outgrowth of its holding on the scope of Title IX's substantive prohibition: "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." *Jackson*, 544 U.S. at 178.

Accordingly, thanks to *Bell* and *Jackson*, Respondents have even more notice than the school board did in *Jackson* of their potential liability in private Title IX suits for sex discrimination against employees. Because of *Cannon* and Congress's ratification of *Cannon*, they know that Title IX has a private right of action for victims of intentional sex discrimination. Because of *Bell*, they know that that same provision of Title IX bars intentional sex discrimination against employees. And because of *Jackson*, they know two things: (1) that this Court has previously construed Title IX's private right of action as extending to employees, and (2) that this Court interprets Title IX's private right of action derived from 20 U.S.C. § 1681(a) to necessarily extend to conduct prohibited by the same statutory provision. Altogether, these precedents provided clear notice to Respondents that they might have to answer to suits alleging intentional sex discrimination experienced by their employees. And these precedents show that Title IX, including its authorization of suits for intentional sex-based employment discrimination, satisfies the special requirements this Court has imposed on Spending Clause statutes.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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