

IN THE
Supreme Court of the United States

THOMAS CROWTHER, ET AL.,
Petitioners,

v.

BOARD OF REGENTS OF THE UNIVERSITY SYSTEM OF
GEORGIA, ET AL.,
Respondents.

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

**BRIEF OF THE NATIONAL EDUCATION
ASSOCIATION AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONERS**

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TABLE OF CONTENTS

	Page(s)
TABLE OF AUTHORITIES	iii
INTEREST OF <i>AMICUS CURIAE</i>	1
INTRODUCTION AND SUMMARY OF ARGUMENT	2
ARGUMENT.....	4
I. Title IX’s Core Purpose Is Nondiscrimination in Education, and That Purpose Necessarily Encompasses the Treatment of Educators	4
A. Title IX’s Comprehensive Nondiscrimination Mandate.....	4
B. Title IX Regulates Institutional Conduct.....	5
II. The Educator Workforce Is Facing a Recruitment and Retention Crisis that Sex Discrimination Compounds	8
A. Sex Discrimination Pervades Fields with Severe Teacher Shortages.....	8
B. Sex Discrimination Is a Driver of Attrition	11
III. The Legal Framework Shapes the Professional Environment in Which Recruitment and Retention Decisions Are Made	12
A. Legal Protections Are Part of the Professional Environment	12

B. The Private Right of Action Deters Discrimination and Supports Educator Retention	14
C. Educators Possess Valued, Transferable Skills	17
D. Nationwide Teacher Shortages Are Already Dire	19
IV. The Inseparability of Educator Working Conditions and Student Educational Opportunity	22
A. Education Is Structurally Distinct from Other Employment	22
B. Workforce Attrition Caused by Discrimination Directly Diminishes Educational Quality	23
C. Without the Private Right of Action, Title IX's Mandate Loses Its Most Effective Enforcement Mechanism	24
CONCLUSION	26

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>Cannon v. Univ. of Chi.</i> , 441 U.S. 677 (1979)	6
<i>Gebser v. Lago Vista Indep. Sch. Dist.</i> , 524 U.S. 274 (1998)	5
<i>Jackson v. Birmingham Bd. of Educ.</i> , 544 U.S. 167 (2005)	15, 25
<i>Loper Bright Enters. v. Raimondo</i> , 603 U.S. 369 (2024)	7
<i>N. Haven Bd. of Educ. v. Bell</i> , 456 U.S. 512 (1982)	5
<i>West Virginia v. B.P.J.</i> , 609 U.S. ____ (2026)	7
 Statutes	
42 U.S.C. § 1981a(b)(3)	15
42 U.S.C. § 2000e-5(f)(1)	15
Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688	1, 2, 4, 6
 Other Authorities	
118 Cong. Rec. 5,808 (1972)	5
Carly Knight <i>et al.</i> , <i>Under the Radar: Visibility and the Effects of Discrimination Lawsuits on Workforce Diversity</i> , 87 Am. Socio. Rev. 175 (2022)	15

Colleen Flaherty, <i>Calling It Quits</i> , Inside Higher Ed (July 4, 2022).....	3
Eli Garza, <i>Male Teachers in Elementary Settings: Perceptions of a Teaching Career</i> , Int'l J. on Soc. and Educ. Scis., 4(1), 135 (2022)	10
Elizabeth D. Steiner <i>et al.</i> , <i>All Work and No Pay – Teachers' Perceptions of Their Pay and Hours Worked</i> , RAND Corp. (2023).....	11
Erin Buzuvis, <i>Sidelined: Title IX Retaliation Cases and Women's Leadership in College Athletics</i> , 17 Duke J. Gender L. & Pol'y 1 (2010)	24
Frank Dobbin, <i>Inventing Equal Opportunity</i> (2009)	15
Geoffrey D. Borman & N. Maritza Dowling, <i>Teacher Attrition and Retention: A Meta- Analytic and Narrative Review of the Research</i> , 78 Rev. of Educ. Research 367 (2008)	11
Jacqueline McDowell <i>et al.</i> , <i>The Collective Think Tank, Women in NCAA Intercollegiate Athletics: The Legacy Revisited</i> (Feb. 2026)	10
Jake Bryan <i>et al.</i> , <i>K-12 Teachers Are Quitting. What Would Make Them Stay?</i> (McKinsey & Co. 2022).....	12

John J. Donohue, III, & James Heckman, <i>Continuous Versus Episodic Change: The Impact of Civil Rights Policy on the Economic Status of Blacks</i> , 29 J. Econ. Lit. 1603 (1991).....	13
K. Hunter Wapman <i>et al.</i> , <i>Quantifying Hierarchy and Dynamics in US Faculty Hiring and Retention</i> , 610 Nature 120 (2022)	17
K. Spoon <i>et al.</i> , <i>Gender and Retention Patterns Among U.S. Faculty</i> , 9 Science Advances 42 (Oct. 2023).....	9, 11, 18
Lauren B. Edelman, <i>Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law</i> , 97 Am. J. Socio. 1531 (1992)	14
Learning Pol’y Inst., <i>Fact Sheet: An Overview of Teacher Shortages: 2025</i> (2025)	20
Learning Pol’y Inst., <i>Teacher Shortages by Subjects Across States</i> (2025).....	9
Lisette Partelow, <i>What to Make of Declining Enrollment in Teacher Preparation Programs</i> , Center for American Progress (Dec. 3, 2019).....	19
Matthew M. Chingos & Martin R. West, <i>Do More Effective Teachers Earn More Outside the Classroom?</i> , 14 Educ. Fin. & Pol’y 68 (2019).....	17

Nat'l Acad. of Scis. <i>et al.</i> , <i>Beyond Bias and Barriers: Fulfilling the Potential of Women in Academic Science and Engineering</i> (2007)	9, 21
Navjotpal Kaur <i>et al.</i> , <i>Men in Nursing: A Qualitative Examination of Students' Stereotypes of Male Nurses through the Framework of Social Role Theory and Stereotype Content Model</i> , 31 J. Men's Stud. 157 (2023).....	10
Patricia Saenz-Armstrong, <i>Data Brief: How Do Trends in Teacher Preparation Enrollment and Completion Vary by State?</i> , Nat'l Council on Teacher Quality (2023)	19
R. Vivian Acosta & Linda Jean Carpenter, <i>Women in Intercollegiate Sport: A Longitudinal, National Study Thirty-Seven Year Update, 1977–2014</i> (2014).....	10
Richard M. Ingersoll, <i>Is There Really a Teacher Shortage?</i> 3, 5–6 (Ctr. for the Study of Teaching & Pol'y, Rsch. Rep. No. R-03-4, 2003)	19, 20
Sean Farhang, <i>Legislative-Executive Conflict and Private Statutory Litigation in the US: Evidence from Labor, Civil Rights, and Environmental Law</i> at 5, Goldman Sch. of Pub. Pol'y, Working Paper No. GSPP10-008 (2010).....	14

Susan Moore Johnson <i>et al.</i> , <i>How Context Matters in High-Need Schools: The Effects of Teachers' Working Conditions on Their Professional Satisfaction and Their Students' Achievement</i> , 114 Teachers College Record 1 (2012)	11
Sylvia Allegretto, <i>The Teacher Pay Penalty Has Hit a New High</i> , Econ. Policy Inst. (2022)	12
Tiffany S. Tan <i>et al.</i> , <i>State Teacher Shortages 2025 Update</i> (Learning Pol'y Inst. 2025).....	21
Tiffany S. Tan <i>et al.</i> , <i>Teacher Turnover in the United States: Who Moves, Who Leaves, and Why</i> (Learning Pol'y Inst. 2026)	12, 18
Tuan D. Nguyen <i>et al.</i> , <i>Teacher Workforce Shortages: A Systematic Examination of Reports of Teacher Vacancy and Shortages</i> (Aug. 2023), https://teachershortages.com	19
U.S. Dep't of Educ., <i>Teacher Shortage Areas Nationwide Listing, 2024–25</i> , https://tsa.ed.gov	9
U.S. Gov't Accountability Off., GAO-23-105180, <i>K-12 Education: Education Should Assess Its Efforts to Address Teacher Shortages</i> (2022); U.S. Dep't of Educ., <i>Teacher Shortage Areas Nationwide Listing</i> (2024–25)	19

U.S. Gov't Accountability Off., GAO-26-108320, <i>Department of Education: Full Costs and Savings Estimate Needed for Reduction-in-Force and Restructuring of the Office for Civil Rights</i> (2026)	16
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INTEREST OF *AMICUS CURIAE*¹

The National Education Association (“NEA”) is the nation’s largest professional association and union, representing nearly three million members. These members serve not only as teachers, coaches, counselors, and education support professionals in our nation’s K–12 public schools, but also as faculty, staff, and graduate workers of our nation’s colleges and universities. NEA seeks to advance a great public education for every student.

NEA members work in schools, colleges, and universities across all 50 states and the District of Columbia. They serve in every capacity essential to delivering educational programs: classroom instruction, student counseling, athletic coaching, academic research, and institutional administration. Their professional conditions are inseparable from the quality of education their students receive.

NEA has a direct and substantial institutional interest in this case. The question presented—whether Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681–1688, provides a private right of action to educators who experience sex discrimination in federally funded education programs—directly affects the working conditions, professional security, and legal protections of NEA members nationwide.

For NEA’s members, any diminution of Title IX’s protections against sex discrimination in employment

¹ *Amicus* states that no party’s counsel authored the brief in whole or in part; no party’s counsel contributed money that was intended to fund preparing or submitting the brief; and no person—other than *Amicus*—contributed money that was intended to fund preparing or submitting the brief.

threatens not merely abstract legal interests, but their concrete ability to pursue their professional calling free from unlawful discrimination. Sex discrimination in educational employment is a persistent reality that NEA members confront across every level of education. The Eleventh Circuit’s decision below, if allowed to stand, would strip Title IX’s private enforcement mechanism from the very professionals who are key components of the educational programs that Title IX is designed to protect. Removing this enforcement tool would weaken deterrence against institutional discrimination and diminish the professional protections that help attract and retain qualified educators—ultimately undermining educational quality and harming the students that Title IX was enacted to safeguard.

NEA respectfully submits this brief to provide the Court with the perspective of the nation’s educators on the practical consequences of the question presented and to explain why affirming Title IX’s private right of action for educators is essential to achieving the statute’s comprehensive nondiscrimination mandate.

INTRODUCTION AND SUMMARY OF ARGUMENT

Title IX promises education free from sex discrimination. That promise cannot be fully realized if the professionals doing the educating are denied legal tools to challenge discrimination within the programs they serve.

Title IX prohibits sex discrimination “under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). This language imposes no categorical exclusion for discrimination experienced by educators. Because

educators deliver educational programs, discrimination against them occurs “under” those programs within the statute’s plain meaning. Title IX regulates *institutional conduct*—it asks whether the institution operates its program free from sex-based barriers, not whether the harmed individual holds the title of “student” or “employee.”

The American education system faces a severe and worsening crisis in educator recruitment and retention. Unfilled teaching positions have increased dramatically; enrollment in teacher-preparation programs continues to decline; and schools nationwide are unable to provide students with the qualified instruction that federal law contemplates. The crisis is not confined to K–12 schools; in a 2022 survey of college and university chief academic officers, nearly four in five provosts reported that faculty members were leaving at higher rates than in the past—with 19 percent reporting significantly higher rates and 60 percent reporting somewhat higher rates. *See* Colleen Flaherty, *Calling It Quits*, Inside Higher Ed (July 4, 2022). Sex discrimination compounds this crisis.

The legal framework governing the workplace is not external to the professional environment; it shapes the environment. Anti-discrimination protections affect whether talented professionals enter, remain in, or depart from careers. Research demonstrates that the strength of anti-discrimination enforcement correlates with labor-force participation by protected groups. Educators are highly trained professionals with transferable skills and meaningful alternative career options. The private right of action functions as a deterrence mechanism that influences institutional behavior and supports educator retention.

Education is structurally distinct from other employment. In most sectors, the employee’s working conditions and the beneficiary’s experience are separate. In education, they are one and the same: the educator *is* the educational program as experienced by the student. Discrimination against the educator is not merely an employment harm that occurs in proximity to the educational program—it is a harm *within* the educational program. When sex discrimination drives talented educators from the profession, the consequences extend beyond individual career harm and cause systemic degradation of educational quality. Eliminating Title IX’s private right of action narrows the remedial options available to educators and leaves students without recourse for discrimination that degrades their educational experience. This outcome is the precise opposite of what Congress intended.

ARGUMENT

I. Title IX’s Core Purpose Is Nondiscrimination in Education, and That Purpose Necessarily Encompasses the Treatment of Educators

A. Title IX’s Comprehensive Nondiscrimination Mandate

The statutory text of Title IX is unambiguous in its breadth: it provides that no person shall, “on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance.” 20 U.S.C. § 1681(a). The plain terms of this prohibition impose no categorical exclusion for employment-related discrimination occurring within covered programs. Congress did not limit the statute’s reach to a particular class of individuals; rather, it directed the prohibition at the

conduct of federally funded institutions and the programs they operate. The purpose of the statute, properly understood, is to ensure that sex plays no role in determining opportunity or access to educational environments. See 118 Cong. Rec. 5,808 (1972) (statement of Sen. Bayh).

Because educators are the instruments through which educational programs are delivered, discrimination against them occurs “under” those programs within the plain meaning of the statute. A school district that pays its female coaches less than their male counterparts or denies tenure to a female professor on the basis of sex is discriminating *under* its educational program. See *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521–22 (1982). Indeed, the discriminatory act is inseparable from the operation of the program itself. That’s because the educator does not stand outside the program looking in; the educator is central to the program itself. To hold otherwise would require the implausible conclusion that Congress meant to prohibit sex discrimination in educational programs while permitting such discrimination against the very people responsible for conducting those programs.

B. Title IX Regulates Institutional Conduct

Title IX is Spending Clause legislation that “condition[s] an offer of federal funding on a promise by the recipient not to discriminate, in what amounts essentially to a contract between the Government and the recipient of funds.” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998). Thus, the statute’s operative question is whether the recipient institution operates its educational program free from sex-based barriers, not whether a particular plaintiff fits a

designated category. This structural feature is critical. The statute's regulatory framework is directed at the institution as an entity: it is the institution that receives federal funds, the institution that agrees to nondiscrimination conditions, and the institution whose conduct determines whether those conditions have been violated. The focus, at every level of analysis, is on what the institution does, not on who suffers the consequences of its unlawful action.

This institutional-conduct focus distinguishes educator claims from those of third parties—such as parents—who experience discrimination only derivatively through their children's participation in an educational program. Title IX's private right of action reaches only those who are personally “excluded from participation in, [] denied the benefits of, or [] subjected to discrimination under” a covered program. 20 U.S.C. § 1681(a); *see Cannon v. Univ. of Chi.*, 441 U.S. 677, 689–93 (1979) (emphasizing the statute's “unmistakable focus on the benefited class”). Educators, by contrast, are personally subjected to discriminatory treatment in the operation of the program—they do not stand outside the program looking in.

It follows that the institution's discriminatory conduct—not the role of the individual harmed—determines coverage under the statute. Consider these all-too-common cases: a school district compensates female coaches at lower rates than male coaches performing substantially identical work; a university denies female faculty equitable laboratory space, research funding, or administrative support; an institution retaliates against educators who report Title IX violations affecting students. In each instance, discrimination occurs in the operation of the

educational program and is perpetrated by the institution. The fact that the person harmed holds an employment relationship with the institution does not transform the nature of the conduct from discrimination *under* an educational program into something categorically different. Moreover, the line between “employee” and “student” is not always cleanly drawn. NEA’s graduate instructor members—who often face more challenging working conditions while having fewer protections than regular faculty—are employed as educators, but they are students as well. In fact, many graduate programs impose teaching requirements as conditions of degree program participation and funding. Ultimately, discrimination is no less a violation of the statute’s nondiscrimination mandate because its immediate effect falls on an individual who carries the title of “employee.”

This reading is consistent with how Title IX has been enforced throughout its history. The Department of Education’s implementing regulations have long addressed employment discrimination under Title IX. *See* 34 C.F.R. §§ 106.51–106.61. As this Court recently confirmed, because the Department of Health, Education, and Welfare—the predecessor agency to the Department of Education—“issued [its Title IX regulations] contemporaneously with the statute” and the regulations have “remained consistent over time,” the Title IX regulations are “especially useful in determining the statute’s meaning.” *West Virginia v. B.P.J.*, 609 U.S. ___, slip op. at 9 (2026) (quoting *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024)). The Eleventh Circuit’s contrary rule is not only textually unfounded, but also would upend settled

expectations and withdraw protections that educators have relied upon since the statute’s enactment.

The Eleventh Circuit’s approach fundamentally misframes the statutory question by treating the plaintiff’s employment status as dispositive of coverage. But Title IX does not ask “who are you?” It asks, “what did the institution do?” By converting a statute addressed to institutional conduct into one that sorts potential plaintiffs by their relationship to the institution, the court below substituted a categorical inquiry, which Congress never adopted, for the functional inquiry that the statutory text demands. This error is not merely analytical; it produces results irreconcilable with the statute’s purpose. Under the Eleventh Circuit’s framework, an institution could engage in the most egregious sex discrimination against its female faculty and coaches—including in full view of students—with impunity under Title IX and without fear of financial liability.

II. The Educator Workforce Is Facing a Recruitment and Retention Crisis That Sex Discrimination Compounds

The legal question before this Court does not exist in a vacuum. The practical consequences extend far beyond abstract doctrinal concerns; they implicate a nationwide educator workforce crisis, the professional environment in which recruitment and retention decisions are made, and ultimately the quality of education available to students across the country.

A. Sex Discrimination Pervades Fields with Severe Teacher Shortages

The United States faces severe and well-documented educator shortages. Notably, these

shortages are concentrated in precisely those fields marked by persistent sex-based discrimination and bias, and consequently where Title IX's protections are most essential. STEM disciplines, special education, and intercollegiate athletics coaching—each identified by the Department of Education as an area of critical shortage—are also domains in which sex discrimination has been extensively documented. U.S. Dep't of Educ., *Teacher Shortage Areas Nationwide Listing, 2024–25*, <https://tsa.ed.gov>; Learning Pol'y Inst., *Teacher Shortages by Subjects Across States* (2025) (45 states reporting shortages in special education, 41 in science, 40 in math); Eliza Van Kirk, *Title IX and Its Impact on Opportunities for Women in NCAA Coaching and Administrative Leadership*, *The Sport Journal* (2020). The intersection is not coincidental: discriminatory workplace conditions can deter entry and accelerate departure, compounding shortages in fields that already struggle to attract and retain qualified professionals.

Women in STEM education face persistent barriers rooted in sex-based bias. NEA members in these fields corroborate what research has consistently demonstrated: that women encounter biased hiring practices, inequitable evaluation standards, disparate access to resources, and systematic exclusion from professional networks that facilitate career advancement. See Nat'l Acad. of Scis. *et al.*, *Beyond Bias and Barriers: Fulfilling the Potential of Women in Academic Science and Engineering* (2007). These barriers operate cumulatively: a woman denied equitable research startup funding is less likely to achieve tenure benchmarks, less likely to be promoted, and ultimately more likely to leave the profession

entirely. See K. Spoon *et al.*, *Gender and Retention Patterns Among U.S. Faculty*, 9 *Science Advances* 42 (Oct. 2023); Nat'l Acad. of Scis. *et al.*, *Beyond Bias and Barriers*, *supra*.

In intercollegiate athletic coaching, the evidence is equally stark. Although women's participation in collegiate sports has grown dramatically since Title IX's enactment—from approximately 16,000 participants in 1970 to more than 220,000 today—the proportion of head coaching positions held by women has *declined* over the same period. See Jacqueline McDowell *et al.*, *The Collective Think Tank, Women in NCAA Intercollegiate Athletics: The Legacy Revisited* (Feb. 2026); R. Vivian Acosta & Linda Jean Carpenter, *Women in Intercollegiate Sport: A Longitudinal, National Study Thirty-Seven Year Update, 1977–2014* (2014). Women remain dramatically underrepresented in athletic directorships and other senior leadership positions. See *id.* This paradox of more female athletes but fewer female coaches reflects entrenched discriminatory structures that Title IX was designed to dismantle.

Disparities also affect male educators who face sex-based barriers in female-dominated fields. Men who enter elementary education, nursing education, or other disciplines in which they are numerically underrepresented report experiencing stereotyping, role channeling, and disparate treatment that discourages their continued participation. See Eli Garza, *Male Teachers in Elementary Settings: Perceptions of a Teaching Career*, *Int'l J. on Soc. and Educ. Scis.*, 4(1), 135–48 (2022); Navjotpal Kaur *et al.*, *Men in Nursing: A Qualitative Examination of Students' Stereotypes of Male Nurses through the Framework of Social Role Theory and Stereotype*

Content Model, 31 J. Men's Stud. 157 (2023). Title IX's protections extend with equal force to these educators. The statute protects all individuals from sex discrimination regardless of whether they are in the numerical majority or minority, ensuring that its workforce-protective function is not limited to a single sex.

B. Sex Discrimination Is a Driver of Attrition

Research demonstrates that sex-based disparities in workplace climate contribute to educator attrition, exacerbating teacher shortages nationwide. A comprehensive study of faculty retention found that women leave academia at higher rates than men at every career stage, and that the most common reasons women reported for leaving were workplace climate factors including harassment, discrimination, dysfunctional leadership, and feelings of not belonging. See Spoon *et al.*, *supra*. More broadly, studies of educator attrition consistently identify workplace conditions, including perceived fairness of institutional processes, the quality of administrative support, and the availability of meaningful recourse against mistreatment, as among the strongest predictors of whether educators remain in or depart from their positions. See Susan Moore Johnson *et al.*, *How Context Matters in High-Need Schools: The Effects of Teachers' Working Conditions on Their Professional Satisfaction and Their Students' Achievement*, 114 Teachers College Record 1 (2012); Geoffrey D. Borman & N. Maritza Dowling, *Teacher Attrition and Retention: A Meta-Analytic and Narrative Review of the Research*, 78 Rev. of Educ. Research 367 (2008). While compensation is a significant factor, research indicates that

improvements in pay alone are insufficient to improve educator retention without corresponding improvements in working conditions and administrative support. See Elizabeth D. Steiner *et al.*, *All Work and No Pay – Teachers’ Perceptions of Their Pay and Hours Worked*, RAND Corp. (2023). Of course, the likelihood of experiencing workplace discrimination—including based on sex—is a material part of an employee’s working conditions, potentially implicating mental health or even physical safety.

III. The Legal Framework Shapes the Professional Environment in Which Recruitment and Retention Decisions Are Made

A. Legal Protections Are Part of the Professional Environment

The decision to enter and remain in a profession is shaped by the totality of the professional environment. Compensation is one factor, but it is not the only one. Working conditions, institutional support, professional autonomy, organizational culture, and the availability of labor-market alternatives all bear on an individual’s assessment of whether a given position warrants continued investment of effort and expertise. See Tiffany S. Tan *et al.*, *Teacher Turnover in the United States: Who Moves, Who Leaves, and Why* (Learning Pol’y Inst. 2026); *see also* Jake Bryan *et al.*, *K-12 Teachers Are Quitting. What Would Make Them Stay?* (McKinsey & Co. 2022). These considerations are particularly salient for educators, whose compensation rarely matches that available in alternative occupations requiring comparable credentials. See Sylvia Allegretto, *The Teacher Pay Penalty Has Hit a New High*, Econ. Policy Inst. (2022) (finding public school teachers earn 23.5 percent less

in weekly wages than comparably educated professionals, and that total compensation including benefits still reflects a 14.2 percent penalty).

Legal protections against discrimination are not separate from the employment relationship; they are part of the terms based on which individuals decide whether to enter, remain in, or leave a profession. NEA members routinely turn to their union for guidance regarding educators' rights and obligations under the law—including regarding discrimination. When the law provides meaningful remedies for sex discrimination, current and aspiring educators learn—through their union's guidance or through their own research and experiences—that their institutions are accountable for fairness. Conversely, when the law takes those remedies away, it signals that discrimination may go unchecked. Rational professionals incorporate these signals into their career decisions.

More directly, whether or not employees themselves know the full scope of their rights—or lack thereof—their employers do. Institutions that do not fear liability for discrimination are, unsurprisingly, more likely to discriminate. And when educators sense that their workplaces are rife with discrimination and lack of accountability, they are more likely to leave. Some may even leave the profession entirely.

History bears this out. The enactment and enforcement of federal civil rights legislation—including but not limited to Title VII—coincided with sustained, statistically significant improvements in Black relative earnings and employment status, supporting the conclusion that governmental antidiscrimination efforts were a major contributor to those gains. See John J. Donohue, III, & James

Heckman, *Continuous Versus Episodic Change: The Impact of Civil Rights Policy on the Economic Status of Blacks*, 29 J. Econ. Lit. 1603 (1991) (documenting episodic post-1964 Black relative wage gains concentrated in the South and attributing them primarily to multifaceted federal civil rights enforcement). The research is consistent with a broader pattern: strengthening legal protections correlates with increased participation by previously excluded groups, while weakening protections correlates with reduced participation and increased discriminatory behavior. There is no reason to suppose that Title IX operates differently with respect to sex discrimination in educational employment. That is, taking away legal protections that educators currently enjoy is likely to increase discrimination at educational institutions and ultimately exacerbate teacher shortages. And, as discussed below, Title VII does not offer sufficient protections on its own.

Legal protections function as a component of total compensation broadly understood. They reduce the expected costs of discrimination borne by those who experience it, thereby increasing the net expected value of employment in covered institutions. Removing those protections raises expected costs and diminishes the attractiveness of the position relative to alternatives.

***B. The Private Right of Action Deters
Discrimination and Supports
Educator Retention***

The private right of action under Title IX operates as a deterrence mechanism. Congress has repeatedly chosen to enforce statutory mandates through private litigation precisely because the prospect of suit disciplines institutional behavior more effectively than

administrative oversight alone. Sean Farhang, *Legislative-Executive Conflict and Private Statutory Litigation in the US: Evidence from Labor, Civil Rights, and Environmental Law* at 5, Goldman Sch. of Pub. Pol’y, Working Paper No. GSPP10-008 (2010). Studies examining Title VII’s enforcement confirm that the *availability* of private suits—not merely their outcomes—influences institutional compliance behavior. See, e.g., Lauren B. Edelman, *Legal Ambiguity and Symbolic Structures: Organizational Mediation of Civil Rights Law*, 97 Am. J. Socio. 1531 (1992); Frank Dobbin, *Inventing Equal Opportunity* (2009); Carly Knight *et al.*, *Under the Radar: Visibility and the Effects of Discrimination Lawsuits on Workforce Diversity*, 87 Am. Socio. Rev. 175 (2022). Employers adjust their practices in anticipation of potential liability, adopting policies and procedures designed to prevent violations before they occur.

However, Title VII by itself does not offer the full protections to which employees of education programs are entitled. Title IX provides protections that Title VII does not, and eliminating Title IX’s private right of action would reduce deterrence in precisely those areas. For example, Title IX reaches programmatic resource disparities—inequitable allocation of funding, facilities, and institutional support between men’s and women’s programs—that fall outside Title VII’s scope. Title IX also protects against retaliation directed at employees who advocate for students’ rights to equal treatment, a form of protected activity that may not qualify for Title VII protection. See *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 179–80 (2005). Moreover, Title VII imposes statutory damages caps and requires exhaustion of

administrative remedies through the EEOC, constraints that Title IX does not impose and that limit Title VII's deterrent force. *See* 42 U.S.C. §§ 1981a(b)(3), 2000e-5(f)(1).

Administrative enforcement through the U.S. Department of Education's Office for Civil Rights ("OCR") does not substitute for private litigation. OCR complaints are designed to secure institutional compliance, not to provide individual remedies. OCR's limited resources constrain both the number of complaints it can investigate and the speed with which it resolves them. OCR cannot provide interim injunctive relief to an educator facing ongoing retaliation. It cannot award damages or backpay. These limitations are not defects in OCR's design; they reflect a deliberate congressional choice to supplement administrative enforcement with private litigation. And these limitations exist even when OCR is fully staffed and actively pursuing its statutory mandate. When OCR is instead severely understaffed, complaints pile up, go unresolved, or are summarily dismissed. *See* U.S. Gov't Accountability Off., GAO-26-108320, *Department of Education: Full Costs and Savings Estimate Needed for Reduction-in-Force and Restructuring of the Office for Civil Rights* (2026). OCR has recently experienced dramatic staffing reductions, and the most recent Interagency Agreement transfers Title IX enforcement responsibility to the Department of Justice—casting further doubt on the availability of meaningful administrative relief. In this environment, the private right of action is not merely a supplement to administrative enforcement; it is the most reliable mechanism through which Title IX's nondiscrimination mandate can be vindicated and

educators' rights to deliver educational programs free from sex discrimination can be protected.

When the threat of private litigation exists, it logically follows that employers are more likely to maintain equitable compensation structures, allocate resources fairly between men's and women's programs, respond promptly and seriously to internal complaints, and refrain from retaliating against employees who raise concerns about sex discrimination. Remove that threat, and the rational institutional calculus shifts: the expected cost of discriminatory conduct declines, and the incentive to invest in compliance diminishes. The educators who bear the consequences of that shift and who possess the skills and credentials to seek employment elsewhere may make career decisions accordingly. This, in turn, decreases the quality of students' educational experience.

C. Educators Possess Valued, Transferable Skills

The recruitment and retention consequences of diminished legal protections are amplified by the practical reality that educators are highly educated professionals with transferable skills and meaningful alternative career options. They are not captive to educational employment. A mathematics or science teacher with a graduate degree can obtain employment in the private sector, such as in technology, finance, or data analysis, at substantially higher compensation. STEM teachers face a particularly acute wage penalty because their non-teaching alternatives command a premium, and this differential drives subject-specific attrition. See Matthew M. Chingos & Martin R. West, *Do More Effective Teachers Earn More Outside the Classroom?*,

14 Educ. Fin. & Pol’y 68 (2019). A university professor with expertise in economics, computer science, or engineering routinely has options in industry, government, and the nonprofit sector. See K. Hunter Wapman *et al.*, *Quantifying Hierarchy and Dynamics in US Faculty Hiring and Retention*, 610 Nature 120, 120–27 (2022) (documenting faculty attrition to industry and government positions).

The transferability of educators’ skills means that retention depends on the overall quality of the professional environment, not on the absence of alternatives. When educators perceive that their institution does not provide adequate protection against discrimination, or that the legal system has been stripped of mechanisms for redress, they can and do exercise their option to leave. National data further confirm the pattern at the K–12 level: nearly 3 in 4 educators who moved or left teaching voluntarily did so for reasons other than retirement, with the remainder citing pursuit of other careers, the need for higher salary, and dissatisfaction with working conditions. See Tan *et al.*, *Teacher Turnover*, *supra*. A comprehensive study of nearly 250,000 tenure-track and tenured faculty found that women leave academia at higher rates than men at every career stage, citing workplace climate factors—harassment, discrimination, and lack of belonging—over work-life balance as reasons for leaving. See Spoon *et al.*, *supra*. A single department that loses its most productive researcher to industry, or a school district that cannot retain experienced STEM teachers, suffers consequences that compound over years.

These professionals choose educational employment because they value its distinctive rewards: the opportunity to advance knowledge, to

shape the next generation, and to participate in institutions dedicated to inquiry and public service. But that choice is conditioned on the professional environment meeting baseline standards of fairness. A culture of accountability is among those baseline conditions, and that stems from the availability of viable legal recourse against sex discrimination. It assures professionals that if they experience unlawful treatment, they will not be without remedy.

D. Nationwide Teacher Shortages Are Already Dire

Across the country, teacher shortages are not confined to any single region or grade level; they pervade elementary and secondary schools and extend throughout the country. *See* U.S. Gov’t Accountability Off., GAO-23-105180, *K-12 Education: Education Should Assess Its Efforts to Address Teacher Shortages* (2022); U.S. Dep’t of Educ., *Teacher Shortage Areas Nationwide Listing* (2024–25). The K-12 educator workforce crisis is among the most pressing structural challenges confronting the American educational system. In K–12 schools, unfilled positions have increased dramatically, and enrollment in teacher-preparation programs continues to decline. According to an analysis of teacher data, unfilled teaching positions increased by more than 50 percent between August 2022 and August 2023, *see* Tuan D. Nguyen *et al.*, *Teacher Workforce Shortages: A Systematic Examination of Reports of Teacher Vacancy and Shortages* (Aug. 2023), <https://teachershortages.com>, and enrollment in teacher-preparation programs has declined significantly, *see* Lisette Partelow, *What to Make of Declining Enrollment in Teacher Preparation Programs*, Center for American Progress (Dec. 3, 2019); Patricia Saenz-Armstrong, *Data Brief: How Do*

Trends in Teacher Preparation Enrollment and Completion Vary by State?, Nat'l Council on Teacher Quality (2023).

These shortages directly and demonstrably degrade the quality of education available to students. Schools operating with unfilled positions, long-term substitutes, or underqualified instructors cannot deliver the full scope of educational programs contemplated by federal law. See Richard M. Ingersoll, *Is There Really a Teacher Shortage?* 3, 5–6 (Ctr. for the Study of Teaching & Pol'y, Rsch. Rep. No. R-03-4, 2003) (concluding that “one of the pivotal causes of inadequate school performance is the inability of schools to adequately staff classrooms with qualified teachers”). The harms are particularly acute in subjects requiring specialized expertise—such as science, mathematics, special education, and career and technical education—where qualified replacements are most difficult to recruit. See *id.* at 13–14 (finding that math, science, and special education teachers have higher turnover rates, with approximately 40 percent of secondary schools reporting difficulty filling math positions and 34 percent reporting difficulty filling special education positions); see also Learning Pol'y Inst., *Fact Sheet: An Overview of Teacher Shortages: 2025* (2025). Yet, as discussed above, those same positions face the fiercest headwinds of sex discrimination, which further impedes recruitment and retention. When positions remain vacant for extended periods, curricular offerings contract, class sizes expand, and remaining educators bear unsustainable workloads that accelerate further departures.

The crisis is worsening rather than stabilizing. Despite substantial federal and state investment in

recruitment incentives, loan-forgiveness programs, and alternative certification pathways, the pipeline of new educators continues to narrow. *See* Ingersoll, *supra*, at 17–19. The data reveal a “revolving door” in which large numbers of teachers depart their positions for reasons other than retirement, and recruitment alone cannot solve the problem if retention remains unaddressed. *See id.* at 11. As of 2025, more than 411,000 teaching positions nationally are either unfilled or filled by educators who are not fully certified for their assignments—a figure that has increased each year and shows no sign of stabilizing absent significant policy intervention. *See* Tiffany S. Tan *et al.*, *State Teacher Shortages 2025 Update* (Learning Pol’y Inst. 2025). In higher education, the costs of faculty attrition are similarly acute: replacing a single faculty member costs an institution between \$110,000 and \$1.5 million, depending on field and rank. *See* Nat’l Acad. of Scis. *et al.*, *supra*, at 100. Against this backdrop, any condition that needlessly drives qualified professionals from the field or deters prospective entrants imposes compounding harm on students, institutions, and the public interest.

A holding that Title IX does not encompass employment discrimination claims would remove a critical deterrent against sex-based mistreatment of educators, exacerbate an already dire workforce crisis, and ultimately compromise the quality of education available to millions of students nationwide.

IV. The Inseparability of Educator Working Conditions and Student Educational Opportunity

A. Education Is Structurally Distinct from Other Employment

In most sectors of the economy, the working conditions of employees and the experience of the ultimate beneficiary remain conceptually and practically distinct. A factory worker's shift schedule may affect product quality indirectly, but the consumer does not experience the worker's conditions firsthand. A hospital administrator's office environment shapes his job satisfaction but does not directly constitute the patient's care. Education is fundamentally different. The educator does not produce a product that is subsequently delivered to the student; the educator *is* the educational program experienced by the student.

The teacher in the classroom is simultaneously performing job duties and creating the student's instructional experience. These are not parallel activities that happen to occur in the same space—they are one and the same activity viewed from two vantage points. A teacher's class size is both a working condition that affects professional capacity and a determinant of the individualized attention each student receives. A professor's laboratory equipment is both a professional resource enabling scholarly productivity and the research infrastructure through which students are trained. A coach's budget, support staff, and access to facilities are simultaneously terms of employment and the conditions under which student-athletes develop, train, and compete. This overlap is not a coincidence; it is the nature of education.

It follows that discrimination against educators is not merely an employment harm that occurs in proximity to the educational program. It is a harm *within* the educational program. When a school district pays female coaches less, assigns them inferior facilities, or denies them the support staff afforded to male counterparts, the resulting degradation of the athletic program is immediate, direct, and experienced by students as a diminution of their educational opportunity. Any attempt to draw a clean line between employment conditions and educational conditions ignores this reality.

***B. Workforce Attrition Caused by
Discrimination Directly Diminishes
Educational Quality***

When sex discrimination drives talented educators from the profession or deters them from entering it, the resulting harm extends far beyond the individual's career trajectory; it inflicts systemic harm to educational programs and the students they serve. Every experienced teacher who leaves because discriminatory conditions have become intolerable means the education program loses years of teaching expertise, institutional knowledge, mentoring relationships, and the accumulated trust of students and families. These losses cannot be replaced by simply filling a vacancy; they represent irreversible diminishment of program quality that students bear as surely as the departing educator.

These individual losses aggregate into patterns of structural harm. As women are driven from coaching by persistent pay inequities and resource disparities, the number of female role models available to student-athletes, particularly young women, steadily shrinks. As female faculty in science, technology, engineering,

and mathematics leave institutions where discriminatory conditions prevail, the pipeline responsible for training the next generation of scientists narrows, with disproportionate effects on female students who benefit most from same-sex mentorship. As female administrators exit leadership roles, institutional decision-making becomes less responsive to the particular needs and concerns of female students.

As NEA members know well, this causal chain is neither speculative nor attenuated. Discrimination degrades working conditions; degraded conditions drive attrition; attrition diminishes program quality; diminished program quality harms students. A legal framework that treats educator discrimination as wholly distinct from student educational opportunity severs these causal links by drawing an artificial boundary that the real world does not respect.

***C. Without the Private Right of Action,
Title IX's Mandate Loses Its Most
Effective Enforcement Mechanism***

The Eleventh Circuit's rule creates a remedial gap that simultaneously harms both educators and students. On the one hand, educators cannot sue under Title IX because the court has classified their claims as employment matters outside the statute's reach. Yet, on the other hand, students lack standing to challenge employment decisions—hiring, compensation, resource allocation, termination—even when those decisions directly degrade their educational programs. The result is that discrimination goes unchecked. A female coach paid less than her male counterparts may be forced to leave, thereby harming the student-athletes who depended on that coach—a pattern documented across a series

of Title IX cases brought by female coaches and athletic administrators. See Erin Buzuvis, *Sidelined: Title IX Retaliation Cases and Women's Leadership in College Athletics*, 17 Duke J. Gender L. & Pol'y 1 (2010). This same dynamic can arise outside of athletics: a female professor denied laboratory resources may relocate, and students lose a mentor and research advisor.

This outcome is the precise opposite of what Congress intended; it enacted Title IX with the understanding that comprehensive protection against sex discrimination in education required safeguarding the entire educational environment, including institutions, programs, activities, and the personnel who make them function. In *Jackson v. Birmingham Board of Education*, this Court recognized that Title IX must be interpreted to give it the broadest possible protective reach, including implied rights of action for individuals whose protection is necessary to vindicate the statute's core guarantee. 544 U.S. at 179–83. The same logic applies here with even greater force: if educators cannot challenge the discrimination they experience, then discrimination that harms both educators and students will persist unchecked, and Title IX's promise of equal educational opportunity will remain unfulfilled for millions of students nationwide.

Educators are not ancillary to Title IX's mission; they are essential to delivering its promise. They are the individuals through whom equal educational opportunity is realized or denied, and the professionals whose daily work constitutes the educational programs that students experience. Weakening legal protections for educators necessarily undermines the statute's capacity to achieve its broader goals. This

Court should make clear that Title IX's private right of action extends to educators who experience sex discrimination in federally funded educational programs, thereby preserving the comprehensive enforcement framework that Congress designed and that students, no less than educators, depend upon for the vindication of their civil rights.

CONCLUSION

For the foregoing reasons, the National Education Association respectfully urges this Court to reverse the judgment of the United States Court of Appeals for the Eleventh Circuit and to hold that Title IX's private right of action encompasses claims by educators who experience sex discrimination within federally funded education programs.

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