

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 RESPONDENTS

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QUESTION PRESENTED

Whether Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681, et seq., implicitly 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.

TABLE OF CONTENTS

	<i>Page</i>
QUESTION PRESENTED	i
PARTIES TO THE PROCEEDING	ii
INTRODUCTION	1
STATEMENT	5
A. Legal Background.	5
1. The Civil Rights Act of 1964.	5
2. Title IX.	8
B. Proceedings Below	9
1. Joseph	9
2. Crowther	11
3. Consolidated Appeals	11
SUMMARY OF ARGUMENT	12
ARGUMENT.	15
I. Title IX does not unambiguously create a private right of action to sue for sex discrimination in employment	15

Table of Contents

	<i>Page</i>
A. Recognizing or extending any implied right of action requires specific remedial intent and Spending Clause consent	15
B. Title IX does not authorize private suits for sex discrimination in employment	22
II. Petitioners offer no reason to ignore this Court's strict limits on recognizing or extending implied rights of action	29
A. Precedent does not create, or compel the creation of, Petitioners' desired cause of action	29
B. Congress has not ratified Petitioners' desired cause of action.	38
C. Decisions applying other statutes do not salvage Petitioners' case	44
D. Petitioners' policy arguments fail	47
CONCLUSION	51

TABLE OF CITED AUTHORITIES

	<i>Page</i>
Cases	
<i>AMG Cap. Mgmt., LLC v. FTC</i> , 593 U.S. 67 (2021)	39
<i>Alexander v. Gardner-Denver Co.</i> , 415 U.S. 36 (1974)	25
<i>Alexander v. Sandoval</i> , 532 U.S. 275 (2001)	1, 2, 12, 14-17, 19, 22, 26, 28-31, 33, 35, 41-44, 47
<i>Armour & Co. v. Wantock</i> , 323 U.S. 126 (1944)	30
<i>Astra USA, Inc. v. Santa Clara Cnty.</i> , 563 U.S. 110 (2011)	17
<i>BP P.L.C. v. Mayor & City Council of Baltimore</i> , 593 U.S. 230 (2021)	40
<i>Barnes v. Gorman</i> , 536 U.S. 181 (2002)	5, 20
<i>Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics</i> , 403 U.S. 388 (1971)	22, 42, 43
<i>Blue Chip Stamps v. Manor Drug Stores</i> , 421 U.S. 723 (1975)	18, 19

Cited Authorities

	<i>Page</i>
<i>Bostock v. Clayton Cnty.</i> , 590 U.S. 644 (2020)	2, 5
<i>Brecht v. Abrahamson</i> , 507 U.S. 619 (1993).	30
<i>Brown v. Davenport</i> , 596 U.S. 118 (2022).	31, 33
<i>Brown v. GSA</i> , 425 U.S. 820 (1976).	13, 24, 25, 27
<i>Cannon v. University of Chicago</i> , 441 U.S. 677 (1979).	4, 5, 8, 13, 14, 21, 30-32, 38, 42, 44
<i>Carlson v. Green</i> , 446 U.S. 14 (1980).	43
<i>CBOCS W., Inc. v. Humphries</i> , 553 U.S. 442 (2008)	25
<i>Cent. Va. Cmty. Coll. v. Katz</i> , 546 U.S. 356 (2006)	32
<i>Cisco Sys., Inc. v. Doe I</i> , 609 U.S. __ (2026).	1, 13, 15, 17, 18, 22, 23, 26, 43
<i>Cohens v. Virginia</i> , 6 Wheat. 264 (1821)	30, 32

Cited Authorities

	<i>Page</i>
<i>Consol. Rail Corp. v. Darrone</i> , 465 U.S. 624 (1984).	40, 46
<i>Cuddeback v. Fla. Bd. of Educ.</i> , 381 F.3d 1230 (11th Cir. 2004).	49
<i>Cummings v. Premier Rehab Keller, PLLC</i> , 596 U.S. 212 (2022).	13, 19, 20, 47
<i>Davis v. Monroe Cnty. Bd. of Educ.</i> , 526 U.S. 629 (1999).	3, 21, 28, 36
<i>Del. State Coll. v. Ricks</i> , 449 U.S. 250 (1980).	28
<i>Egbert v. Boule</i> , 596 U.S. 482 (2022)	15, 18, 22, 43
<i>Fitzgerald v. Barnstable Sch. Comm.</i> , 555 U.S. 246 (2009)	27
<i>Fitzpatrick v. Bitzer</i> , 427 U.S. 445 (1976).	6, 41
<i>Food Mktg. Inst. v. Argus Leader Media</i> , 588 U.S. 427 (2019).	39, 40
<i>Franklin v. Gwinnett Cnty. Pub. Schs.</i> , 503 U.S. 60 (1992).	7, 23

Cited Authorities

	<i>Page</i>
<i>FS Credit Opportunities Corp. v.</i> <i>Saba Cap. Master Fund, Ltd.</i> , 608 U.S. __ (2026)	1, 15-17, 21
<i>Gebser v. Lago Vista Indep. Sch. Dist.</i> , 524 U.S. 274 (1998)	7, 8, 19, 21, 28, 30
<i>Gomez-Perez v. Potter</i> , 553 U.S. 474 (2008)	4, 16, 22, 26, 37, 38
<i>Gonzaga Univ. v. Doe</i> , 536 U.S. 273 (2002)	15, 20
<i>Great Am. Fed. Sav. & Loan Ass’n v. Novotny</i> , 442 U.S. 366 (1979)	3, 6, 23, 25
<i>Guardians Ass’n v. Civil Serv. Comm’n</i> , 463 U.S. 582 (1983)	5, 28, 41, 44, 46
<i>Hackley v. Roudebush</i> , 520 F.2d 108 (D.C. Cir. 1975)	7
<i>Hamilton v. Dallas Cnty.</i> , 79 F.4th 494 (5th Cir. 2023)	49
<i>Hernandez v. Mesa</i> , 589 U.S. 93 (2020)	42
<i>Hishon v. King & Spalding</i> , 467 U.S. 69 (1984)	48, 49

Cited Authorities

	<i>Page</i>
<i>Jackson v. Birmingham Bd. of Educ.</i> , 309 F.3d 1333 (11th Cir. 2002)	34
<i>Jackson v. Birmingham Board of Education</i> , 544 U.S. 167 (2005) 4, 8, 11, 13, 14, 21, 29, 33-38, 47, 48	
<i>Jama v. ICE</i> , 543 U.S. 335 (2005) 4, 14, 39-41	
<i>Janus Cap. Grp. v. First Derivative Traders</i> , 564 U.S. 135 (2011)	19
<i>Johnson v. Ry. Express Agency, Inc.</i> , 421 U.S. 454 (1975)	25
<i>Karahalios v. Nat’l Fed’n of Fed. Emps., Loc. 1263</i> , 489 U.S. 527 (1989)	17
<i>Kimble v. Marvel Ent., LLC</i> , 576 U.S. 446 (2015)	48
<i>Kimel v. Fla. Bd. of Regents</i> , 528 U.S. 62 (2000)	39, 41
<i>Lakoski v. James</i> , 66 F.3d 751 (5th Cir. 1995)	23
<i>Landor v. La. Dep’t of Corr. & Pub. Safety</i> , 609 U.S. __ (2026) 1, 20-22, 28, 41	

Cited Authorities

	<i>Page</i>
<i>Lexmark Int’l, Inc. v.</i> <i>Static Control Components, Inc.,</i> 572 U.S. 118 (2014)	20
<i>Lowrey v. Tex. A&M Univ. Sys.,</i> 117 F.3d 242 (5th Cir. 1997)	34
<i>Mach Mining, LLC v. EEOC,</i> 575 U.S. 480 (2015)	6, 28
<i>Mass. Mut. Life Ins. Co. v. Russell,</i> 473 U.S. 134 (1985)	16, 17
<i>Mawakana v. Bd. of Trs. of Univ. of D.C.,</i> 926 F.3d 859 (D.C. Cir. 2019)	23
<i>Medina v. Planned Parenthood S. Atl.,</i> 606 U.S. 357 (2025)	1, 3, 4, 8, 13, 15, 16, 20, 21, 31
<i>Middlesex Cnty. Sewerage Auth. v.</i> <i>Nat’l Sea Clammers Ass’n,</i> 453 U.S. 1 (1981)	18
<i>Minor v. Northville Pub. Schs.,</i> 605 F. Supp. 1185 (E.D. Mich. 1985)	40
<i>Mistretta v. United States,</i> 488 U.S. 361 (1989)	50
<i>Morton v. Mancari,</i> 417 U.S. 535 (1974)	24

Cited Authorities

	<i>Page</i>
<i>N. Haven Bd. of Educ. v. Bell</i> , 456 U.S. 512 (1982)	3, 13, 22, 26-28, 32, 33, 37, 39, 40, 45, 46
<i>NLRB v. Noel Canning</i> , 573 U.S. 513 (2014)	35, 36
<i>Nw. Airlines, Inc. v.</i> <i>Transp. Workers Union of Am., AFL-CIO</i> , 451 U.S. 77 (1981)	1, 2, 16, 17, 23
<i>Oklahoma v. Castro-Huerta</i> , 597 U.S. 629 (2022)	38, 39
<i>O'Connor v. Peru State Coll.</i> , 781 F.2d 632 (8th Cir. 1986)	40
<i>Pasquantino v. United States</i> , 544 U.S. 349 (2005)	33
<i>SAS Inst., Inc. v. Iancu</i> , 584 U.S. 357 (2018)	5, 47
<i>Selzer v. Bd. of Educ. of City of N.Y.</i> , 112 F.R.D. 176 (S.D.N.Y. 1986)	40
<i>Seminole Tribe of Fla. v. Fla.</i> , 517 U.S. 44 (1996)	30, 31
<i>Sosa v. Alvarez-Machain</i> , 542 U.S. 692 (2004)	22, 43

Cited Authorities

	<i>Page</i>
<i>Stoneridge Inv. Partners, LLC v. Sci.-Atlanta</i> , 552 U.S. 148 (2008)	19
<i>Summy-Long v. Pa. State Univ.</i> , 715 F. App'x 179 (3d Cir. 2017)	50
<i>Touche Ross & Co. v. Redington</i> , 442 U.S. 560 (1979)	18
<i>Town of Chester, N.Y. v. Laroe Ests., Inc.</i> , 581 U.S. 433 (2017)	19
<i>TransUnion LLC v. Ramirez</i> , 594 U.S. 413 (2021)	20
<i>Transamerica Mortg. Advisors Inc. (TAMA) v.</i> <i>Lewis</i> , 444 U.S. 11 (1979)	3, 16, 17, 23, 48
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	29
<i>Univ. of Pa. v. EEOC</i> , 493 U.S. 182 (1990)	6
<i>Vengalattore v. Cornell Univ.</i> , 36 F.4th 87 (2d Cir. 2022)	50
<i>Virginia Bankshares, Inc. v. Sandberg</i> , 501 U.S. 1083 (1991)	3, 16, 19, 26

Cited Authorities

	<i>Page</i>
<i>Webster v. Fall</i> , 266 U.S. 507 (1925)	32
<i>Weise v. Syracuse Univ.</i> , 522 F.2d 397 (2d Cir. 1975)	7
<i>West Virginia v. B.P.J.</i> , 609 U.S. __ (2026)	2, 26
<i>Ziglar v. Abbasi</i> , 582 U.S. 120 (2017)	43

Constitutional Provisions

U.S. Const. amend. IV	42
U.S. Const. amend. XI	38, 41
U.S. Const. amend. XIV	6

Statutes

20 U.S.C. § 1681(a)	8, 22
20 U.S.C. § 1682	8, 36
29 U.S.C. § 201	49
29 U.S.C. § 206(d)	49
29 U.S.C. § 794a(a)(2)	46

Cited Authorities

	<i>Page</i>
29 U.S.C. § 2601	49
42 U.S.C. § 1981	24, 25
42 U.S.C. § 1981a.	7
42 U.S.C. § 1983	44
42 U.S.C. § 1985	24, 25
42 U.S.C. § 2000d	5
42 U.S.C. § 2000d-1.	5
42 U.S.C. § 2000d-3.	45
42 U.S.C. § 2000d-7.	42
42 U.S.C. § 2000d-7(a)(1).	38
42 U.S.C. § 2000e	6, 48
42 U.S.C. § 2000e-2.	6, 48
42 U.S.C. § 2000e-5.	6
42 U.S.C. § 2000e-5(b).	6
42 U.S.C. § 2000e-5(e)(1).	6
42 U.S.C. § 2000e-5(f)(1).	6, 7

Cited Authorities

	<i>Page</i>
42 U.S.C. § 12112(a)	46
42 U.S.C. § 12117	46
O.C.G.A. § 45-19-20, <i>et seq.</i>	49
Pub. L. No. 88-352, § 702, 78 Stat. 253	7, 23
Pub. L. No. 92-261, 86 Stat. 103-13 (1972)	7
Pub. L. No. 92-318, 86 Stat. 235-381 (1972)	8
Pub. L. No. 93-112, § 501, 87 Stat. 355 (1973)	45
Pub. L. No. 102-569, § 506, 106 Stat. 4344 (1992)	46

Regulations

29 C.F.R. § 1600, <i>et seq.</i>	48
--	----

Other Authorities

110 Cong. Rec. 11,615 (1964) (Sen. Cooper)	45
A. Scalia & B. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012)	38, 39, 41
Resp. Br., <i>Jackson v. Birmingham Bd. of Educ.</i> , No. 02-1672 (Oct. 7, 2004)	34

INTRODUCTION

In recent decades—and especially over the last 20 years—this Court has “firmly committed to the view that judicially created causes of action offend the separation of powers in almost every circumstance,” and has therefore “virtually eliminated the practice of fashioning them.” *Cisco Sys., Inc. v. Doe I*, 609 U.S. __ (2026) (slip op. 10). Along the way, it has enforced constitutional guardrails with strict doctrinal limits on recognizing or expanding atextual remedies.

Foremost among them, this Court demands more than bare congressional intent to protect a group, or even to confer rights on its members: It also requires evidence confirming that Congress sought to *enforce* that protection by way of a private remedy. The old approach rested on false assumptions about statutory purpose and legislative history that this Court has wisely abandoned. *See, e.g., Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 368-69 (2025); *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd*, 608 U.S. __ (2026) (slip op. 4). Instead, the proper “judicial task is to interpret” a statute’s text and structure “to determine whether it displays an intent to create not just a private right but also a private remedy.” *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). And an express remedy elsewhere, especially in a “comprehensive” remedial scheme, raises a strong “presumption” that Congress did not imply others. *See Nw. Airlines, Inc. v. Transp. Workers Union of Am., AFL-CIO*, 451 U.S. 77, 97 (1981). Finally, when Congress legislates pursuant to its spending power, its remedial intent must be clear and unambiguous to funding recipients. *See Landor v. La. Dep’t of Corr. & Pub. Safety*, 609 U.S. __ (2026) (slip op. 7).

This case requires nothing more, and nothing less, than a straightforward application of those familiar principles. Petitioners, two former public-university employees, were terminated for (respectively) sexually harassing students and mistreating student-athletes, including by cultivating a toxic team environment. They sued, alleging sex discrimination in the terms and conditions of their employment. But Petitioners were not satisfied with the express remedies available to enforce “Title VII’s prohibition of sex discrimination in employment.” *Bostock v. Clayton Cnty.*, 590 U.S. 644, 680 (2020). One ignored Title VII altogether; both raised claims under Title IX. But unlike Title VII, Title IX’s text contains no private right of action.

All agree that Title IX has transformed American education for the better. See *West Virginia v. B.P.J.*, 609 U.S. __ (slip op. 4). But it has done so without authorizing private employment-discrimination suits. Nothing in Title IX’s “text and structure,” read in its context, “manifest[s] an intent to create [that] private remedy.” *Sandoval*, 532 U.S. at 288-89. Indeed, every signpost points in the opposite direction. Mere weeks before Congress passed Title IX, it extended Title VII’s protection—and reticulated enforcement scheme—to employees of educational institutions. As this Court observed in its latest Title IX case, “Title VII concerns employment,” *B.P.J.*, 609 U.S. __ (slip op. 13)—and specifically, *private* enforcement of workplace anti-discrimination law. Private suits are a crucial part of Title VII’s “integrated” and “comprehensive” remedial “system,” which features a mix of public and private enforcement mechanisms, plus fine-tuned procedures and limitations. *Nw. Airlines*, 451 U.S. at 97.

This Court will not recognize or extend an implied cause of action where Congress enacts such a scheme in “companion legislation.” *Transamerica Mortg. Advisors Inc. (TAMA) v. Lewis*, 444 U.S. 11, 20 (1979). Ignoring that rule here would attribute to the same Congress an inexplicable about-face: Immediately after giving a set of employees a private employment-discrimination remedy mediated by a “detailed administrative and judicial process,” *Great Am. Fed. Sav. & Loan Ass’n v. Novotny*, 442 U.S. 366, 372 (1979), it silently gave the same employees a second private right of action, to attack the same basic harm, with no strings attached.

Inferring a cause of action under Title IX for such claims would mark a stunning departure from this Court’s well-settled approach and understanding of the judicial role. Petitioners all but cede that ground. Instead, they say Title IX is unique—that its implied private enforceability automatically mirrors its reach. Br.3, 33-34. They are wrong. All agree that Title IX’s prohibition reaches employment discrimination, and that federal agencies may deny funding to violators. *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521 (1982). But today’s case asks whether Title IX’s text and context *also* establish “specific[] [congressional] intent to authorize a private cause of action” for sex discrimination in employment. *Virginia Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1103 (1991). As with any other law, answering that question requires “more than defin[ing] the scope of the behavior that Title IX proscribes.” *Davis v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 639 (1999). Any other approach would usurp the power of “elected representatives” to weigh the “delicate” policy tradeoffs that private suits inevitably present. *Medina*, 606 U.S. at 369.

Petitioners search in vain for an excuse to exempt Title IX from that basic constitutional insight. They start with *Cannon v. University of Chicago*, in which this Court first recognized an implied cause of action under Title IX. 441 U.S. 677 (1979). But *Cannon* did not confront a private Title IX suit for discrimination in *employment*. Without a holding, Petitioners turn to *Cannon*’s “language,” “reasoning,” and “approach”—but those don’t bind the Court, which has “abandoned” all three to boot. *Medina*, 606 U.S. at 369 n.1.

Undeterred, Petitioners say that course correction simply came too late: By some point in the late 1980s, Congress had (somehow) “ratified” not only *Cannon*, but also their proposed *expansion* of Title IX’s implied right of action to this distinct context. Setting aside Petitioners’ penchant for time travel, their failure to muster evidence for their view—let alone a “judicial consensus,” *Jama v. ICE*, 543 U.S. 335, 349 (2005)—confirms that *Cannon* did *not* resolve this case in 1979.

Petitioners ultimately pin their hopes on *Jackson v. Birmingham Board of Education*, which held that teachers and coaches may sue under Title IX if their employers retaliate against them for reporting Title IX violations against their students. 544 U.S. 167, 181 (2005). But *Jackson* allowed the plaintiff to proceed only after identifying congressional intent to permit his specific variety of private lawsuit—concluding that such actions were necessary to avoid “subvert[ing]” Title IX’s entire “enforcement scheme,” including its express funding remedy. *Id.* The same cannot be said of employment-discrimination suits. On top of that, the Court has already rejected Petitioners’ misreading of *Jackson*. See *Gomez-Perez v. Potter*, 553 U.S. 474, 483-85 (2008).

Finally, Petitioners “attempt[] a policy argument.” *SAS Inst., Inc. v. Iancu*, 584 U.S. 357, 368 (2018). But oddly—or perhaps not, given the facts of these cases—they say little about employees. Instead, they focus on students and student-athletes. But today’s case is not about Title IX’s protections for students who face sex discrimination in school programs: The express threat of funding termination, traditional *Cannon* suits, and *Jackson*’s anti-retaliation backstop remain available. This case asks whether Congress, fresh off extending Title VII to educational employees, silently gave them another, more direct path to federal court to remedy the same basic harm. And Petitioners offer no reason to fear that Title VII—“a major piece of federal civil rights legislation” with “starkly broad terms”—can protect all American workers *except* those employed by federally funded schools. *Bostock*, 590 U.S. at 680. Petitioners can make that policy pitch to Congress, but it does not justify a judicial rewrite of Title IX.

STATEMENT

A. Legal Background

1. The Civil Rights Act of 1964

Two components of the Civil Rights Act of 1964 are relevant. First, Title VI prohibits discrimination in federally funded programs based on “race, color, or national origin,” but not sex. 42 U.S.C. § 2000d. Congress enacted Title VI under the Spending Clause, *Barnes v. Gorman*, 536 U.S. 181, 185-86 (2002), and did not legislate an express private right of action to enforce it, *Guardians Ass’n v. Civil Serv. Comm’n*, 463 U.S. 582, 597 (1983) (Op. of White, J.). Instead, the federal government could terminate funds to noncompliant recipients. 42 U.S.C. § 2000d-1.

Second, Title VII, 42 U.S.C. § 2000e, *et seq.*, which Congress enacted under its Fourteenth Amendment and Commerce Clause powers, *Fitzpatrick v. Bitzer*, 427 U.S. 445, 453 n.9 (1976), prohibits employment discrimination based on “race, color, religion, sex, or national origin,” 42 U.S.C. § 2000e-2. Unlike Title VI, Title VII expressly authorizes a private right of action for individual suits. *See id.* § 2000e-5.

In addition to creating individual rights against sex discrimination in employment, Title VII features a “comprehensive” and “detailed administrative and judicial process” for vindicating those rights. *Novotny*, 442 U.S. at 373. Its centerpiece is an “integrated, multistep enforcement procedure that enables the [Equal Employment Opportunity Commission] to detect and remedy instances of discrimination.” *Univ. of Pa. v. EEOC*, 493 U.S. 182, 190 (1990).

An individual may file an EEOC charge within a defined period after an alleged unlawful employment practice, after which the EEOC notifies the employer and begins an investigation. 42 U.S.C. § 2000e-5(b), (e)(1). If it finds reasonable cause to believe a violation occurred, the EEOC “shall endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion,” *id.* § 2000e-5(b), and may sue if those efforts fail, *see id.* § 2000e-5(f)(1) (EEOC “shall refer” government violators to Attorney General, “who may bring a civil action”). These efforts are “a key component of the ... scheme,” because “Congress chose cooperation and voluntary compliance as its preferred means” to “end” workplace discrimination. *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015) (cleaned up).

The complainant is entitled to a “right-to-sue” notice 180 days after the charge is filed. *See* 42 U.S.C. § 2000e-5(f)(1). Within 90 days of that notice, “a civil action may be brought against the [employer] by the [complainant].” *Id.* Private plaintiffs may seek relief including damages, *see id.* § 1981a, but Congress has “carefully limited the amount recoverable in any individual case, calibrating the maximum recovery to the size of the employer,” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998).

Educational institutions were originally exempt from Title VII “with respect to the employment of individuals to perform work connected with the educational activities of such institution,” Pub. L. No. 88-352, § 702, 78 Stat. 253, 255, and “no alternative federal ... remedy” enabled these employees to “pursue their claims of discrimination,” *Weise v. Syracuse Univ.*, 522 F.2d 397, 410 (2d Cir. 1975). While the Act established the EEOC, the Commission initially lacked “enforcement powers ... under the original Title VII.” *Hackley v. Roudebush*, 520 F.2d 108, 122 (D.C. Cir. 1975).

Congress significantly amended Title VII in the Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, 86 Stat. 103-13. The EEOA eliminated the exemption for educational institutions in “response to the widespread and compelling problem of invidious discrimination in [those] institutions.” *Univ. of Pa.*, 493 U.S. at 190. Congress also brought federal, state, and local government employees within Title VII’s coverage, 86 Stat. at 103, 111, and empowered the EEOC to sue on behalf of aggrieved employees, *id.* at 104-05.

2. Title IX

Three months after the EEOA's changes to Title VII, Congress enacted the Education Amendments of 1972, Pub. L. No. 92-318, 86 Stat. 235-381. Title IX of that statute extended the Civil Rights Act to prohibit sex discrimination in federally funded educational programs. It provides 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).

Title IX was an exercise of Spending Clause power, *Gebser*, 524 U.S. at 287, and its sole "express ... means of enforcement is administrative," *id.* at 280. Federal agencies must "establish requirements to effectuate" its "nondiscrimination mandate," and can "enforce those requirements through 'any ... means authorized by law,' including ... the termination of federal funding." *Id.* at 280-81 (quoting 20 U.S.C. § 1682).

Unlike Title VII, Title IX does not contain a private remedy. But *Cannon*, employing "an expansive rights-creating approach," *Medina*, 606 U.S. at 369 n.1, held that Title IX provided an implied right of action for a prospective student who alleged she had been denied admission because she was a woman, *Cannon*, 441 U.S. at 717. The Court later held that Title IX offers a private remedy for retaliation against employees who report sex discrimination against students; otherwise, whistleblowers "would have no recourse," and Title IX's entire "enforcement scheme" would be "short circuited." *Jackson*, 544 U.S. at 180-81. The Court has not addressed whether Title IX authorizes private employment-discrimination suits.

B. Proceedings Below

1. Joseph

MaChelle Joseph was the head coach of the Georgia Tech women's basketball team from 2003 until 2019. Pet.App.4a. The latter years of her tenure were rife with misconduct and mistreatment of players and staff. In 2015, Joseph received a written reprimand for appearing drunk at a football game. Pet.App.6a. In 2016, Georgia Tech issued her a written warning and placed her on a corrective action plan following a complaint by her administrative assistant. *Id.* In 2017, Joseph was again investigated after one of her assistant coaches accused her of creating a hostile work environment and throwing a clipboard at her. *Joseph*.Doc.212-1 at 10 n.2. In 2018, the team's personnel administrator "raised concerns about Joseph's treatment of the team's staff." Pet. App.6a. That same year, the NCAA informed Georgia Tech it was investigating alleged recruiting violations by Joseph or her staff. *Id.* After initial on-court success, the program began to decline under Joseph's leadership and did not qualify for the NCAA tournament between 2014 and 2018. *Joseph*.Doc.212-1 at 2-3.

The 2018-19 season brought more staff complaints, plus allegations by players and parents that Joseph had created an abusive and toxic environment for the student-athletes. Pet.App.6a-7a. Two staff members complained to human resources in early 2019 about Joseph's bullying. Pet.App.6a. Several players met with the university's general counsel in January 2019 to discuss Joseph's treatment of the team, expressing what the general counsel characterized as "genuine terror" of Joseph. Pet.App.6a-7a.

In February 2019, Georgia Tech hired an outside investigator to assess these complaints. Pet.App.7a-8a. During that process, two of Joseph’s players quit the team—shortly before the regular season ended, with the team’s postseason hopes still alive—because they were unwilling to play for Joseph. Pet.App.212a. The investigation revealed that Joseph’s behavior created a hostile environment that players described as “toxic,” “suffocating,” “draining,” “miserable,” and “unhealthy.” Pet.App.9a. Staff were concerned about players’ physical wellbeing and feared they suffered weight loss and sleeplessness due to Joseph’s abuse. *Id.* Players described her as “emotionally, mentally, and verbally abusive”; explained that she routinely referred to players using terms like “bitch,” “pussy,” “fucking stupid,” “fucking idiot,” “cancer of the team,” and “whore”; and noted that she threw items, possibly even at players. *Id.*; *Joseph*.CA11.Doc.28-3 at 176-78.

After explaining that “every member of [Joseph’s] team reported serious concerns regarding player mistreatment”—and finding those reports credible—the investigator concluded it was “more likely than not that Coach Joseph’s actions f[ell] outside acceptable behavior under the [University System of Georgia’s] Ethics Policy.” Pet.App.9a. The athletic director fired Joseph in March 2019. Pet.App.10a.

Joseph obtained an EEOC right-to-sue letter, then sued the Board of Regents, the Georgia Tech Athletic Association, and individual defendants. *Id.* Joseph brought claims of employment discrimination and retaliation under Title VII, Title IX, and state law. *Id.* The district court dismissed Joseph’s Title IX sex-discrimination claims as precluded by Title VII. Pet.App.10a-11a. After extensive discovery, the court

granted summary judgment on all remaining claims, including Joseph’s Title IX *Jackson* retaliation claim and Title VII sex-discrimination claims. *Id.*

2. Crowther

Thomas Crowther alleges that he began teaching art at Augusta University in 2006 and was promoted to senior lecturer in February 2020. *Crowther.Doc.1* at 25-26. That year, the Title IX coordinator informed Crowther that Augusta University was investigating allegations about Crowther’s sexual harassment of female students, including using his cell phone to photograph nude models without their consent. Pet. App.3a; *Crowther.Doc.44* at 3-4. After a 13-month investigation and suspension, the University declined to renew Crowther’s contract for the 2021-22 academic year. Pet.App.3a; *Crowther.Doc.44* at 4-10.

Crowther sued the Board of Regents and school officials for sex discrimination and retaliation under Title IX, Pet.App.3a, and also raised equal-protection claims, *Crowther.Doc.1* at 67. Crowther alleged “a biased, prejudiced and explicitly unfair [investigation] process,” and that he was “retaliated against due to ... anti-male bias.” *Id.* at 62, 66. The district court dismissed Crowther’s equal-protection claims but not his Title IX claims. Pet.App.3a-4a.

3. Consolidated Appeals

The Eleventh Circuit consolidated the two cases for argument and decision. The State defendants argued that Title VII precludes employment-discrimination claims under Title IX, *Crowther.CA11.Doc.16* at 32-44, and that Title IX does not include a cause of action for such claims in the first place, *id.* at 44-61.

The Eleventh Circuit held, in a unanimous opinion by Chief Judge Pryor, that Title IX does not create an implied right of action for claims of sex discrimination in employment. Pet.App.22a. The court explained that, especially given the Spending Clause backdrop, Title IX’s text does not “indicate[] congressional intent to provide a private right of action to employees of educational institutions.” Pet.App.19a. And because Congress passed Title IX immediately after extending “Title VII’s express private right of action” to employees of educational institutions, “it would be anomalous to conclude that the implied right of action under Title IX would allow [those same] employees ... immediate access” to court. Pet.App.21-22a. At a minimum, it was “dubious that recipients of federal funds would understand that they have ... accepted potential liability” for private claims of “employment discrimination under Title IX when those kinds of claims are expressly provided for and regulated by Title VII.” Pet.App.22a. The Eleventh Circuit denied rehearing *en banc*. Pet.App.117a.

SUMMARY OF ARGUMENT

I. A. The path to a judicially implied private right of action under any statute—including Title IX—is restricted by several interpretive principles that police constitutional limits. Crucially, a law’s substantive reach determines neither the existence nor the scope of an implied private remedy to enforce it. “Statutory intent” to create such a remedy requires strong textual evidence of intent to authorize private enforcement, *Sandoval*, 532 U.S. at 286, which Congress’s creation of an *express* remedial scheme generally precludes. In addition, one plaintiff’s ability to sue does not open the courthouse doors to every claim; courts must identify

clear remedial intent behind each proposed extension. Finally, a plaintiff who sues under a Spending Clause statute must run this gauntlet burdened by a further requirement that the statute’s imposition of “liability” must be clear and unambiguous to funding recipients. *Cummings v. Premier Rehab Keller, PLLC*, 596 U.S. 212, 219-20 (2022).

B. Title IX does not unambiguously create a private right of action to sue for sex discrimination in employment. Its sparse, student-focused text does not suggest that private remedy, and contextual evidence confirms none exists. Weeks before enacting Title IX, Congress specifically subjected educational employers to Title VII’s remedial scheme with its express right of action. And if Title VII can displace even preexisting express remedies, *Brown v. GSA*, 425 U.S. 820, 833 (1976), it surely offers a “sound reason to conclude that Congress might not” have silently granted Title IX employees a second private remedy free of Title VII’s procedures, *Cisco Sys.*, 609 U.S. __ (slip op. 10).

II. A. Petitioners insist that Title IX precedents compel the creation of their desired implied right. But *Cannon* did not assess an employment-discrimination claim, and the Court has repudiated *Cannon*’s broader “language” as a product of its discredited “approach.” *Medina*, 606 U.S. at 369 n.1. *Bell* held only that the government could terminate funding for employment discrimination; it did not consider Title IX’s private enforceability. And *Jackson* allowed employees to sue if a school retaliates against them for reporting sex discrimination against “their students,” because Title IX’s entire “enforcement scheme would be subverted” otherwise. 544 U.S. at 181.

B. Petitioners contend that Congress “ratified” their interpretation of Title IX in 1986, but they point to no decision of this Court—or, really, anything else—recognizing their desired cause of action before then. Congress cannot “endorse[]” a judicial construction that doesn’t exist, *Jama*, 543 U.S. at 349, much less encode an implicit “expectation” that courts will apply a misguided interpretive methodology in future cases, *Sandoval*, 532 U.S. at 287.

C. Comparisons to Title VI and the Rehabilitation Act are unavailing. This Court has assumed, without definitively holding, that Title VI permits private suits for the narrow category of employment discrimination that statute prohibits. But that sheds no meaningful light on Congress’s intent to (silently) hand another private remedy in Title IX to employees to whom it had just extended Title VII. And the history of the Rehabilitation Act, which includes a 1992 amendment expressly incorporating employment-discrimination standards, looks nothing like Title IX’s.

D. Finally, Petitioners and amici advance a policy argument that Congress’s extension of Title VII did not adequately protect school employees or students. But as to employees, that dubious complaint is best directed to Congress, which has been willing to amend Title VII when needed. And as for students, this case will neither augment nor weaken their protection from sex discrimination through Title IX’s express funding remedy, *Cannon* suits, and *Jackson* retaliation claims. Nor would Petitioners’ remedy solve the “workability” problems they hypothesize. Br.50.

ARGUMENT

I. Title IX does not unambiguously create a private right of action to sue for sex discrimination in employment.

This Court has repeatedly refused to recognize new implied rights of action or even extend existing ones. *See, e.g., Cisco Sys.*, 609 U.S. __ (slip op. 10); *FS Credit*, 608 U.S. __ (slip op. 8); *Egbert v. Boule*, 596 U.S. 482, 491 (2022). In a prior era “exemplified” by *Cannon*’s “expansive ... approach,” the Court readily implied private remedies by making policy-laden assumptions about statutory “purpose” and legislative history. *Medina*, 606 U.S. at 368-69 & n.1. But today, it better appreciates that authorizing “private enforcement actions” involves “delicate” policy judgments reserved to “elected representatives, not unelected judges.” *Id.* at 369. To safeguard the separation of powers—and police the borders of Congress’s spending authority—the Court has imposed restrictions on courts’ ability to find or expand implied private remedies. Applying them confirms that Title IX does not authorize private suits for sex discrimination in employment.

A. Recognizing or extending any implied right of action requires specific remedial intent and Spending Clause consent.

1. Assuming it is ever constitutionally permissible, courts may judicially imply a private right of action only when “the statute ... displays an intent to” confer on the plaintiff “not just a private right, but also a private remedy” for his claimed injury. *Sandoval*, 532 U.S. at 286; *Gonzaga Univ. v. Doe*, 536 U.S. 273, 284 (2002). Whether Congress has implicitly conferred a private remedy on a class it “intended to protect” is

not controlled by a statute’s substantive scope; “[t]he dispositive question [is] whether Congress intended to create any such remedy.” *TAMA*, 444 U.S. at 24. The Court has not minced words: “Statutory intent on this latter point is determinative.” *Sandoval*, 532 U.S. at 286; *see also Nw. Airlines*, 451 U.S. at 91; *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985).

The basis for that rule is simple but fundamental: “No statute pursues any single purpose at all costs,” and a privately enforceable remedy imposes costs in spades. *Medina*, 606 U.S. at 368. Whether to create such a remedy thus “poses delicate questions of public policy”—and in our system, “elected representatives” perform “[t]he job of resolving how best to weigh those competing costs and benefits.” *Id.* at 369.

As such, this Court warns against “conflat[ing] the question whether a statute confers a private right of action with the question whether [its] substantive prohibition reaches” certain “conduct.” *Gomez-Perez*, 553 U.S. at 483. Because those questions must remain “analytically distinct,” *id.*, courts “focus[] squarely” and “specifically” on a search for “intent to authorize a private cause of action”—“as distinct from the [law’s] substantive objects,” *Virginia Bankshares*, 501 U.S. at 1103. Given this Court’s teaching that “[t]he judicial task is to read words, not minds,” that remedial intent cannot be inferred from legislative history, *FS Credit*, 608 U.S. at __ (slip op. 11 & n.5), or musings about legislative “purpose,” *Medina*, 606 U.S. at 368, but must be “manifest” in “text and structure,” *Sandoval*, 532 U.S. at 288-89. And that heavy burden is the plaintiff’s alone; “affirmative evidence of congressional intent must be provided *for* an implied remedy, not *against* it.” *Id.* at 293 n.8 (emphases added).

2. Congressional intent to imply a private cause of action is exceedingly unlikely where Congress has legislated an express remedial scheme in the same statute, in “companion legislation,” *TAMA*, 444 U.S. at 20, or even two centuries later, *Cisco Sys.*, 609 U.S. __ (slip op. 11). “The express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others.” *Sandoval*, 532 U.S. at 290; *see also FS Credit*, 608 U.S. __ (slip op. 7-8); *Nw. Airlines*, 451 U.S. at 93-94; *Karahalios v. Nat’l Fed’n of Fed. Emps., Loc. 1263*, 489 U.S. 527, 533 (1989). And that negative inference often “precludes a finding of congressional intent to create a private right of action, even though other aspects of the statute (such as language making the would-be plaintiff ‘a member of the class for whose benefit the statute was enacted’) suggest the contrary”—indeed, even where the statute “create[s] substantive private rights.” *Sandoval*, 532 U.S. at 290 (quoting *Mass Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 145 (1985)).

“The presumption that a remedy was deliberately omitted from a statute is strongest when Congress has enacted a comprehensive legislative scheme including an integrated system of procedures for enforcement.” *Nw. Airlines*, 451 U.S. at 97 (holding that Title VII is “such [a] statute[]”). And this Court’s skepticism is at its apex when Congress’s express scheme legislates an important role for the federal government—a textual policy choice privileging uniformity and oversight over maximal private enforcement. *See Astra USA, Inc. v. Santa Clara Cnty.*, 563 U.S. 110, 114, 119-20 (2011); *FS Credit*, 608 U.S. __ (slip op. 6-7).

Moreover, this presumption does not require a one-to-one match between Congress's express remedy and the plaintiff's desired implied one. It also arises where a plaintiff asks a court "to imply a cause of action ... significantly broader than the remedy that Congress chose." *Touche Ross & Co. v. Redington*, 442 U.S. 560, 574 (1979); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 736 (1975) (refusing "to impute to Congress an intention to expand the plaintiff class for a judicially implied cause of action beyond the bounds it delineated for comparable express causes of action"). Likewise, if plaintiffs "invoking" an express remedy "first must comply with specified procedures" that implied remedies would sidestep, there is every reason to think "Congress provided precisely the remedies it considered appropriate." *Middlesex Cnty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 14-15 (1981).

In short, what matters is that an express remedial "structure exists," not that it is identical to the one a plaintiff would prefer. *Cisco Sys.*, 609 U.S. __ (slip op. 11) (express remedy was "limited ... to specific subject matter"). After all, no plaintiff would seek an implied remedy that mirrors an express one—he would use the latter. Accordingly, speculation that Congress created "overlapping remedies," Br.6, cannot carry the day. Instead, because the risk of usurping legislative power makes inferring private rights of action a "disfavored judicial activity," *Egbert*, 596 U.S. at 491, even one "sound reason" to doubt that Congress created a cause of action is "reason to stop," *Cisco Sys.*, 609 U.S. __ (slip op. 10-11). And as this Court has repeatedly held, an express remedial scheme with its own substantive and procedural requirements is exactly the kind of "judicial caution" flag that precludes the creation or extension of an implied remedy. *See id.*

3. The same demanding analysis applies when this Court considers whether to expand an existing implied right. See, e.g., *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta*, 552 U.S. 148, 164-65 (2008); *Gebser*, 524 U.S. at 284; *Virginia Bankshares*, 501 U.S. at 1102; *Blue Chip Stamps*, 421 U.S. at 736; see also *Cummings*, 596 U.S. at 231 (Kavanaugh, J., concurring). The same “concerns with the judicial creation of a private cause of action” also “caution against its expansion.” *Janus Cap. Grp. v. First Derivative Traders*, 564 U.S. 135, 142 (2011) (quoting *Stoneridge*, 552 U.S. at 165). As a result, the Court must consider anew statutory text, structure, context, and the “[p]ractical consequences” of expanding private enforcement to new plaintiffs, claims, or remedies. *Stoneridge*, 552 U.S. at 163-64. Judicial “recognition of any private right of action”—for *any* plaintiff and claim—“must ultimately rest on congressional intent to provide” the desired remedy. *Virginia Bankshares*, 501 U.S. at 1102.

The key underlying point is that the Court does not “dispense” implied rights of action “in gross.” Cf. *Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017). That this Court has previously allowed a plaintiff alleging a violation of federal law to sue without express authorization does not dictate that result for other plaintiffs alleging other violations of the same law. See *Sandoval*, 532 U.S. at 287 (“Not even when interpreting the same [statute] that was at issue in *Borak* have we applied *Borak*’s method for discerning and defining causes of action.”).

And that makes sense, because the object of this interpretive enterprise is to determine whether a plaintiff enjoys a “statutory cause of action to sue a

defendant over the defendant’s violation of ... law,” *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021)—*i.e.*, whether the plaintiff “falls within the class ... whom Congress has authorized to sue,” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). Ordinarily, answering that question simply requires courts to identify “the meaning of the congressionally enacted provision creating a cause of action,” *id.*—these plaintiffs and claims are in, those others are out. But when Congress doesn’t enact an express remedial “provision” identifying *any* “class,” *id.*, that once-and-for-all statutory construction is impossible. Instead, a court must confirm case-by-case whether a “plaintiff suing under an implied right of action” falls within a class to whom Congress implicitly granted “a private *remedy*.” *Gonzaga*, 536 U.S. at 284.

4. A plaintiff’s odds grow even longer if he asks a court to read a remedy into a Spending Clause statute. “Unlike ordinary legislation, which” operates “on regulated parties involuntarily, [such] legislation operates based on consent: in return for federal funds, the recipients agree to comply with federally imposed conditions.” *Cummings*, 596 U.S. at 219 (quotation omitted). Thus, Congress “must ask and others must agree to face liability should they violate a funding condition.” *Landor*, 609 U.S. __ (slip op. 6). And to ensure consent, the scope and form of private liability must be “unambiguous[]” to fund recipients. *Barnes*, 536 U.S. at 186; *Medina*, 606 U.S. at 376 (“consent to answer private” suits alleging violations of funding conditions “cannot be fairly inferred” without “clear and unambiguous notice”).

5. These doctrinal limits on courts and Congress enforce bedrock constitutional principles. *See, e.g., FS Credit*, 608 U.S. __ (slip op. 4); *Landor*, 609 U.S. __ (slip op. 5-6). Title IX is obviously not immune from those principles—and no case suggests otherwise. To the contrary, this Court has recognized the “critical” distinction between establishing “a Title IX violation” and the distinct doctrinal burdens that face plaintiffs seeking “to recover damages” without an express right to sue. *Gebser*, 524 U.S. at 283. It has distinguished “defin[ing] the scope of the behavior that Title IX proscribes” from “determin[ing] whether” that conduct “can support a private suit.” *Davis*, 526 U.S. at 639. It has examined Title IX’s “enforcement scheme” to test whether Congress intended private suits to close a “gap” that would “subvert” it. *Jackson*, 544 U.S. at 181. And it has enforced the consent requirement on Congress’s spending power. *Gebser*, 524 U.S. at 287.

True, *Cannon* applied a different methodology to permit a private claim by a prospective student for sex discrimination in admissions. But even *Cannon* noted that “the fact that a federal statute has been violated and some person harmed does not automatically give rise to a private cause of action in favor of that person.” 441 U.S. at 688. Moreover, this Court has repudiated *Cannon*’s other “reasoning,” its “expansive rights-creating approach,” and its broad “language”—leaving only its “holding” intact. *Medina*, 606 U.S. at 369 n.1. Indeed, that is clear even from later Title IX cases; had *Cannon* opened the courthouse doors to every plaintiff traveling under Title IX, much of their analysis would have been unnecessary. Nor, of course, can *Cannon*’s discredited approach force this Court to flout

constitutional restraints today. *See, e.g., Egbert*, 596 U.S. at 491, 494 (no *Bivens* remedy for “excessive-force claim”); *Cisco Sys.*, 609 U.S. __ (slip op. 12) (abrogating *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004)).

B. Title IX does not authorize private suits for sex discrimination in employment.

1. Nothing in Title IX’s text or context supports an implied right of action for employment discrimination. Its text focuses most clearly on students, who directly “participat[e] in,” and “benefit[]” from, an institution’s “education program[s] or activit[ies].” 20 U.S.C. § 1681(a). Had Congress wished to enact a private remedy for employment discrimination, it could have done so in innumerable ways. This text does not come close; it certainly does not “unambiguously” impose such “liability.” *Landor*, 609 U.S. __ (slip op. 6-7).

To be sure, this Court held in *Bell* that Title IX authorizes regulations prohibiting employment discrimination by federally funded schools. 456 U.S. at 521. But *Bell* concerned only Title IX’s “reach,” *id.* at 517, and even on that point did not identify unambiguous text: After observing that Title IX’s “language seem[ed] to favor inclusion of employees,” *Bell* hung its hat on pre- and post-enactment legislative history. *See id.* at 523-35. *Bell* had no reason to, and did not, consider whether Congress created a private remedy atop the express one the challenged regulations implemented.

All contextual indications are starkly negative on that “analytically distinct,” *Gomez-Perez*, 553 U.S. at 483, and “determinative” question of “[s]tatutory intent,” *Sandoval*, 532 U.S. at 286. Indeed, Title IX was enacted by the same Congress that, just weeks

earlier, had expressly extended Title VII’s “integrated, multistep enforcement procedure” to the educational workplace. *Univ. of Pa.*, 493 U.S. at 190. Educational employers were initially exempt from Title VII. Pub. L. No. 88-352, § 702, 78 Stat. 253, 255. In the EEOA, Congress “respon[ded] to ... discrimination in educational institutions,” *Univ. of Pa.*, 493 U.S. at 190, by “subject[ing] [them] to Title VII’s restrictions,” *Mawakana v. Bd. of Trs. of Univ. of D.C.*, 926 F.3d 859, 864 (D.C. Cir. 2019).

That is enough to end this case. The commonsense “presumption” that Congress has encoded its desired private remedies in statutory text “is strongest” when those remedies are a component of “a comprehensive ... scheme” with “an integrated system of procedures for enforcement.” *Nw. Airlines*, 451 U.S. at 97. As this Court has held, “Title VII” is just “such [a] statute[.]” *Id.* And reading Petitioners’ cause of action into Title IX attributes to the *same* Congress the intent to grant the *same* set of employees, asserting the *same* basic injury, an implicit workaround to Title VII’s “detailed administrative and judicial process.” *Novotny*, 442 U.S. at 368, 372-73. Where inferring a private remedy would circumvent or undermine express “companion legislation,” *TAMA*, 444 U.S. at 20, that strong “reason for judicial caution ... is reason not to proceed at all,” *Cisco Sys.*, 609 U.S. __ (slip op. 10).

The near-simultaneous enactment of Title IX and the EEOA makes plain that “Congress chose two remedies” for sex discrimination in employment—one administrative, one private—not two private rights of action “addressing the same problem.” *Lakoski v. James*, 66 F.3d 751, 757 (5th Cir. 1995). Indeed, in a case involving *the same two laws*, this Court found it

“improbable, to say the least, that the same Congress which affirmatively approved and enacted” Indian-preference laws in the Education Amendments of 1972 had silently displaced similar laws just “three months” earlier in the EEOA. *Morton v. Mancari*, 417 U.S. 535, 548-49 (1974).

It is at least as improbable to assume that Congress in June 1972 intended for Title IX to silently exempt educational employees from Title VII’s “requirements and ... limitations,” *Brown*, 425 U.S. at 833, after subjecting those same institutions to Title VII in March. Far more likely, Title VII’s regime struck Congress’s desired policy balance for private enforcement of workplace anti-discrimination law.

2. Title VII preclusion cases confirm the point. In *Brown*, 425 U.S. at 833, this Court held that Title VII precludes discrimination claims by federal employees under 42 U.S.C. § 1981. *Brown* reasoned that “[t]he balance, completeness, and structural integrity of” Title VII’s scheme defeated any inference that it “was designed merely to supplement other putative judicial relief.” *Id.* at 832. Title VII, unlike § 1981, prescribed “a careful blend of administrative and judicial enforcement powers.” *Id.* at 833. But those “rigorous ... exhaustion requirements and time limitations[] would be driven out of currency” by “immediate access to the courts under other, less demanding statutes.” *Id.* And “[i]t would require the suspension of disbelief to ascribe to Congress the design to allow [Title VII’s] careful and thorough remedial scheme to be circumvented by artful pleading.” *Id.* In an analysis “closely akin” to *Brown*’s, the Court later held that Title VII precludes employment-discrimination suits under 42 U.S.C.

§ 1985—otherwise, plaintiffs could “bypass the administrative process, which plays such a crucial role in the scheme established by Congress in Title VII.” *Novotny*, 442 U.S. at 376.

Notably, *Brown* was one of the Court’s first chances to consider the scope of Title VII’s remedies following the EEOA. Indeed, *Brown* marked a striking about-face from the decision a year earlier in *Johnson*, which held that Title VII did not bar § 1981 claims against *private* employers. See *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 461 (1975). *Brown* identified an “unambiguous congressional perception” that the EEOA, unlike the original Civil Rights Act, “create[d] an exclusive, preemptive administrative and judicial scheme for the redress of federal employment discrimination.” 425 U.S. at 828-29. *Johnson*, which “rested upon the ... legislative history of the 1964 Act,” was thus “inapposite.” *Id.* at 833-34.¹

Just as the EEOA expressly extended Title VII’s protections to cover federal employees, it did the same for employees of educational institutions. The notion that *Brown* would have ended differently had the plaintiff been an educational employee who sought to “circumvent” Title VII via Title IX likewise “require[s] the suspension of disbelief.” 425 U.S. at 833. But to

¹ Petitioners also cite *CBOCS W., Inc. v. Humphries*, which declined to disturb *Johnson*’s holding. 553 U.S. 442, 455 (2008). But both asked whether Title VII displaces a century-old remedy; neither suggests Congress silently gave educational employees a workaround to Title VII immediately after bringing them within its reach. As for *Alexander v. Gardner-Denver Co.*, 415 U.S. 36 (1974), the Court has cabined that decision to its “contractual” context, *Novotny*, 442 U.S. at 378.

be clear, it is not Respondents’ burden to prove that Title VII *precludes* Title IX claims—it is Petitioners’ to negate every “sound reason” to suspect Congress did not silently *create* this Title IX remedy. *Cisco Sys.*, 609 U.S. __ (slip op. 10); *Sandoval*, 532 U.S. at 293 n.8. Title VII’s recognized capacity to displace even *express* and *preexisting* private remedies surely forecloses any inference that Title IX, enacted weeks later, created a competing *implied* one.

3. Petitioners briefly contend that Title IX’s text compels this Court to infer their private remedy, but their analysis starts and stops with the scope of Title IX’s “statutory prohibition.” Br.28. The fact that Title IX *reaches* employment discrimination cannot *also* resolve whether Congress “specifically ... inten[ded] to authorize a private cause of action” to enforce that reach. *Virginia Bankshares*, 501 U.S. at 1103. On that “analytically distinct” question, *Gomez-Perez*, 553 U.S. at 483, Petitioners’ cursory textual arguments are useless—just like their appeals to *Bell*’s analysis of legislative history and to regulations implementing Title IX’s express funding remedy. Br.31-33.

Turning to context, Petitioners argue that their proposed Title IX remedy and Title VII’s express one merely “overlap,” which is un concerning because the two laws are “vastly different.” Br.6 (quoting *B.P.J.*, 609 U.S. __ (slip op. 13)); *id.* at 47-48. The statutes certainly differ: Title VII (unlike Title IX) confers an express private remedy and regulates directly rather than proposing a conditional funding offer. And again, a plaintiff will rarely (if ever) seek an implied right of action substantively or procedurally *identical* to an express one. *See supra*, 18. But for mine-run claims

of intentional sex discrimination against employees by employers, “overlap” is an obvious understatement: Petitioners’ rule would allow such plaintiffs to elect a remedy, with predictable results. *See Brown*, 425 U.S. at 833. Indeed, they told the Eleventh Circuit that “[a] Title IX employment discrimination claim is analyzed under the same standards as a Title VII claim.” *Joseph*.CA11.Doc.26 at 28 n.5; *Crowther*.CA11.Doc.24 at 10. Under Petitioners’ approach, then, the primary “differen[ce],” Br.6, is that a Title IX plaintiff need not “comply with [Title VII’s] procedures and/or to exhaust [its] particular administrative remedies prior to filing suit,” *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 254 (2009). That runs headlong into this Court’s firm refusal to imply private enforcement mechanisms that compete with Congress’s express ones.²

To support their overlap theory, Petitioners point to *Bell*’s holding that Title IX covers employees even as Title VII reaches their employers. Br.45-46. That betrays a basic misunderstanding of *Bell*, which had nothing to do with private remedies. Thus, when *Bell* noted Congress’s “overlapping” remedies “to eradicate employment discrimination,” 456 U.S. at 535 n.26, it was not randomly speculating that Congress provided Title IX employees two *private* rights of action—one express and tightly conditioned, the other implicit but

². Petitioners suggest Title VII is more generous than Title IX in some ways, arguing that it permits additional discrimination theories and categories of damages. Br.47-48. How that helps Petitioners is a mystery: If Title VII’s express remedy is broader than Title IX’s implied one, that is a reason for plaintiffs to invoke the former, not for this Court to expand the latter.

unrestrained. *Bell* was referring instead to Congress’s “multi-remedy system,” Pet.App.122a, which attacks sex discrimination in employment administratively (Title IX) and privately (Title VII).

4. The Spending Clause’s “consent requirement” resolves any remaining doubt, *Landor*, 609 U.S. __ (slip op. 12), because Title IX does not unambiguously authorize private employment-discrimination suits. A look at the statutory “text and structure,” *Sandoval*, 532 U.S. at 288, would not put anyone on notice of the remedy Petitioners hypothesize. And widening the lens does not bring their desired remedy into focus: “[I]t is surely not obvious that” funding recipients are “aware” that Congress silently gave their employees a no-strings-attached route to federal court under Title IX despite expressly subjecting them to Title VII. *See Guardians*, 463 U.S. at 598 (Op. of White, J.). Again, liability under that regime is limited by “key” pre-suit conciliation and exhaustion procedures, *Mach Mining*, 575 U.S. at 486, “carefu[l]” damages caps, *Gebser*, 524 U.S. at 286, and “important” timing rules, *Del. State Coll. v. Ricks*, 449 U.S. 250, 259-60 (1980). After *Bell*, schools know that employment discrimination *violates* Title IX’s funding condition. But they would not also find in Title IX’s terms a “clear[] and unambiguous[]” imposition of private “liability,” *Landor*, 609 U.S. __ (slip op. 6-7), substantively akin to Title VII’s express remedy but devoid of its many procedural conditions.

This Court has previously found Spending Clause consent where recipients were aware not only that their alleged intentional acts violated Title IX, but also that they could be sued for those violations under Title IX. *See Davis*, 526 U.S. at 640; *Gebser*, 524 U.S. at 287.

Those cases do not control here. Schools are “on notice that that they [can] be subjected to private suits for intentional sex discrimination under Title IX” brought by students and by educators “vindicat[ing] the rights of their students.” *Jackson*, 544 U.S. at 181-82. Whether it is unambiguous to schools covered by Title IX and Title VII that they also face employment-discrimination liability under the former, despite the comprehensive remedial scheme in the latter, is a very different question—with a very different answer.³

II. Petitioners offer no reason to ignore this Court’s strict limits on recognizing or extending implied rights of action.

Rather than defend their desired right of action under this Court’s well-settled rules, Petitioners seek immunity from them. But while the letterhead might look different, Petitioners’ invitation is just the latest to “one last drink” from the same toxic well. *Sandoval*, 532 U.S. at 287. The Court must decline yet again.

A. Precedent does not create, or compel the creation of, Petitioners’ desired cause of action.

Petitioners’ dominant theme is that whatever this Court understands about the scope of judicial power *today* and for *other* statutes, its approach to Title IX is “trapped in amber.” *United States v. Rahimi*, 602 U.S. 680, 691 (2024). They barely dispute that Title

³. If this Court concludes that Title IX creates an implied right of action here, it should remand for the court below to consider Respondents’ argument that Title VII precludes such claims.

IX does not yield their remedy under ordinary rules. Instead, they insist “the *ancien regime*” must forever reign on Title IX’s doctrinal island. *Sandoval*, 532 U.S. at 287. But the Court’s cases interpreting Title IX, and “shap[ing] a sensible remedial scheme” under it, *Gebser*, 524 U.S. at 284, have not recognized a private right of action for sex discrimination in employment—nor do they require that step today.

1. Start with *Cannon*, which Petitioners suggest resolved today’s dispute in 1979. Br.22-23. It did not. *Cannon* involved a “disappointed applicant” suing to dispute an “admissions decision[],” and held that she could “maintain her lawsuit, despite the absence of any express authorization for it in” the text of Title IX. 441 U.S. at 709, 717. *Cannon* did not even consider, let alone “squarely address[],” the question presented in this case. *Brecht v. Abrahamson*, 507 U.S. 619, 631 (1993). And while *Cannon* contains broad references to “private victims of discrimination,” 441 U.S. at 709, those “general expressions” must, as always, “be taken in connection with the case in which” they appear, *Cohens v. Virginia*, 6 Wheat. 264, 399-400 (1821) (Marshall, C.J.); *Armour & Co. v. Wantock*, 323 U.S. 126, 133 (1944). Nor can the Court blithely assume that *Cannon* would have reached the same result had it confronted Petitioners’ claims, which raise their own unique questions of congressional “intent.” 441 U.S. at 688. For instance, *Cannon* required “consideration of [Title IX’s] legislative history,” *id.* at 694, and the Court did not comb that record for comments about employment-discrimination suits. At a minimum, no language that Petitioners read to resolve *this* case was “necessary to th[e] result” in *Cannon* itself. *Seminole*

Tribe of Fla. v. Fla., 517 U.S. 44, 67 (1996). “[R]espect for past judgments also means respecting their limits.” *Brown v. Davenport*, 596 U.S. 118, 141 (2022).⁴

Reflexively interpreting *Cannon* to decide issues it did not consider would be *especially* mistaken, because *Cannon*’s “language” was a byproduct of its “expansive rights-creating approach.” *Medina*, 606 U.S. at 369 n.1. *Cannon* saw little need to cabin its “language” to its “holding[.]” *Sandoval*, 532 U.S. at 282, because it was decided before important “shift[s] in this Court’s approach,” *Medina*, 606 U.S. at 369 n.1. For one thing, *Cannon* considered text that “identifie[d] the class Congress intended to benefit” powerful evidence in favor of inferring a private right of action for those beneficiaries. 441 U.S. at 690. But because Congress often “seeks to *benefit* one group or another,” the Court no longer infers private enforceability unless the law *both* “unmistakabl[y] focus[es] on individuals like the plaintiff,” *Medina*, 606 U.S. at 368, *and* “manifest[s] an intent to create a private remedy” for the plaintiff’s injury, *Sandoval*, 532 U.S. at 289.

⁴. Petitioners suggest (Br.30-31) that *Cannon* blessed private employment claims in a footnote discussing the preamble to an “abandon[ed]” regulation. 441 U.S. at 708 n.42. That’s every bit as implausible as it sounds. *Cannon* was merely offering support for the federal government’s view that it lacked “the resources necessary to enforce Title IX,” *id.*, and therefore that an “individual remedy [would] provide effective assistance to achieving [Title IX’s] statutory purposes,” *id.* at 707. But that is *precisely* the form of analysis the Court has rejected. See *Medina*, 606 U.S. at 368-39 & n.1. Regardless, the federal government sees things very differently in this case. CVSG Br.21 (Petitioners’ right of action would “undermine[.]” Title VII).

Even if *Cannon*'s discredited methodology does not govern, Petitioners suggest the Court has expanded *Cannon*'s holding by stating it in broad terms. Br.23. But subsequent descriptions of a case's holding cannot extend it. Even if those "statements"—in opinions "in which the point now at issue was not fully debated"—*did* somehow "reflect[] an assumption that the holding in [*Cannon*] would apply" here, they cannot bind this Court today. *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006); *Cohens*, 6 Wheat. at 400 (statements that "go beyond the case ... ought not to control the judgment ... when the very point is presented for decision"); *Webster v. Fall*, 266 U.S. 507, 511 (1925).

2. Petitioners next suggest that *Bell* retroactively grafted employment-discrimination claims into the remedy announced in *Cannon*. Br.31, 37-38, 45. But the only question "[a]t issue" in *Bell* was "the validity of" Title IX regulations that "prohibit[ed] federally funded" schools "from discriminating on the basis of gender with respect to employment." 456 U.S. at 514. The *Bell* Court rejected the view that Title IX did not "reach the employment practices of educational institutions," *id.* at 517, holding that the government may "terminate funds" if funding recipients engage in sex discrimination against employees, *id.* at 538. *Bell* did not consider the private enforceability of Title IX's prohibition on employment discrimination—an issue wholly irrelevant to the administrative-law question presented. Confirming as much, *Bell* cites *Cannon* rarely, and never to adopt its implied-right analysis. *Id.* at 518 n.8, 529, 535 & n.26, 538.

Petitioners repeatedly trumpet (Br.6, 42, 46, 49) a footnote in which this Court included a "*cf.*" to *Cannon*

while noting that “Congress has provided a variety of remedies, at times overlapping, to eradicate employment discrimination.” *Bell*, 456 U.S. at 535 n.26. But the only Title IX remedy at issue in *Bell* was its express one: “funds may be terminated.” *Id.* *Bell* held that Title IX *covers* employees despite “other” statutory remedies, including Title VII’s. *Id.* It did not assess whether Congress gave these employees *an additional private remedy* in Title IX. *Id.* *Bell* simply “had no reason to pass on the argument [Petitioners] present[.]” *Davenport*, 596 U.S. at 141.

3. The cornerstone of Petitioners’ case is *Jackson*, but it “cannot bear the weight” Petitioners place on it. *Pasquantino v. United States*, 544 U.S. 349, 363 (2005). *Jackson* did not involve a claim of employment discrimination. It had no reason to ask whether Title VII undermines an inference of congressional intent to confer “not just a private right, but also a private remedy” in Title IX. *Sandoval*, 532 U.S. at 286. And much of *Jackson*’s analysis distinguishes this case. In short, unlike *Jackson*, Petitioners are not asking this Court to fill some remedial “gap in [Title IX’s] scheme,” 544 U.S. at 181—they just want an exemption from Title VII’s comprehensive procedures. But nothing in *Jackson* supports that request.

Start with common ground: *Jackson* did not find an implied cause of action to sue for sex discrimination in employment. The Court made clear that the alleged retaliation was based on “Jackson’s advocacy of the rights of the girls’ basketball team.” *id.* at 176; *see also id.* at 181 (“[T]eachers and coaches ... are often in the best position to vindicate the rights of their students.”). *Jackson* cites *Bell* just once, and only for a generic point.

Id. at 175. And *Jackson* favorably cited a Fifth Circuit decision that found an implied remedy for retaliation claims like Jackson’s, but also held that “Title IX does not afford a private right of action for employment discrimination.” *Lowrey v. Tex. A&M Univ. Sys.*, 117 F.3d 242, 247 (5th Cir. 1997).

In the end, Petitioners wisely abandon any argument that *Jackson*’s holding directly controls—a concession that Jackson’s retaliation claim is legally distinct from their employment-discrimination claims. Indeed, the Eleventh Circuit *rejected* Joseph’s *Jackson* claim on summary judgment, Pet.App.27a-29a, and Joseph did not seek certiorari to revive it.

Jackson does not otherwise support Petitioners. Jackson was the male coach of a women’s basketball team who alleged that the school board removed him for trying to “vindicate the rights of” his players—namely, by complaining about their discriminatory treatment. 544 U.S. at 171-72, 181. The lower courts “dismissed Jackson’s complaint on the ground that Title IX does not prohibit retaliation.” *Id.* at 171; *Jackson v. Birmingham Bd. of Educ.*, 309 F.3d 1333, 1346 (11th Cir. 2002). And the board argued to this Court that “Title IX does not encompass retaliation.” Resp.Br.17 (No. 02-1672, Oct. 7, 2004); *id.* at 14 (arguing Jackson would “expand” Title IX”).⁵

⁵ As should be obvious, that is *not* “precisely” the “argument” the Eleventh Circuit accepted here. Br.54. Unlike Petitioners, the court below did not conflate Title IX’s reach with its private enforceability. Pet.App.17a-18a.

This Court started with the parties’ core dispute: Whether the board’s retaliation was “discrimination” prohibited by Title IX. It held that “discrimination” is a sufficiently “broad term” to “cover retaliation against those who advocate the rights of groups protected by that prohibition.” *Jackson*, 544 U.S. at 175-76. The Court thus rejected the board’s theory that Jackson sought “an ‘impermissible extension of’” Title IX by relying on its regulations. *Id.* at 178. That argument “entirely misse[d] the point” because Jackson—unlike “petitioners in *Sandoval*”—didn’t need regulations, nor did the Court “rely on [them] at all, because the statute *itself* contains the necessary prohibition” on retaliation. *Id.* In short, the board was wrong to argue that Jackson “assert[ed] claims under Title IX for conduct not prohibited by that statute.” *Id.* at 178 n.2.

Petitioners say this discussion enshrined a blanket rule that *any* conduct that transgresses Title IX is *automatically* fodder for a private claim—no matter the competing evidence of congressional intent. Br.34-35, 54-55.⁶ But in reality, *Jackson* merely rejected the board’s analogy to *Sandoval*, which “held that private parties may not invoke Title VI regulations to obtain redress for disparate-impact [claims] because Title VI itself prohibits only intentional discrimination.” 544 U.S. at 178. That does not logically imply, and *Jackson* did not mandate, the inverse proposition that any plaintiff may sue whenever alleged “conduct [is] prohibited” by Title IX. Br.33; *see NLRB v.*

⁶ Petitioners characterize this as a “common thread run[ning] through” Title IX cases, Br.33, but never actually argue that any *other* case applies the analysis they (mis)attribute to *Jackson*.

Noel Canning, 573 U.S. 513, 589 (2014) (Scalia, J., concurring in judgment) (noting that “if P implies Q, then not-P implies not-Q” is a logical “fallacy”). Moreover, Petitioners’ misreading of *Jackson* assumes a momentary and unexplained deviation from this Court’s decades-long commitment to the fundamental distinction between a statute’s substantive scope and its implied private enforceability—*i.e.*, that deciding whether a plaintiff may bring “a private suit” requires “more than defin[ing] the scope of ... behavior that Title IX proscribes.” *Davis*, 526 U.S. at 639.

Confirming as much, the next section of *Jackson* (which Petitioners ignore) asked whether the plaintiff could “invoke” Title IX to litigate his retaliation claim and rejected “the Board’s argument” that he could not. 544 U.S. at 179. The Court reiterated that Title IX covered the board’s alleged retaliation, *id.*, *then* found congressional intent to allow private suits *enforcing* that prohibition. “Congress enacted Title IX” to stop sex discrimination, but without “effective protection against retaliation,” that “objective would be difficult, if not impossible, to achieve.” *Id.* at 180. “If recipients were permitted to retaliate freely,” teachers and coaches “who witness discrimination would be loath to report it.” *Id.* Thus, because “Title IX’s enforcement scheme” *depends* on “notice” of sex discrimination, accepting the board’s argument would “subvert[]” and “short-circuit” that remedial structure—including efforts to “terminate funding.” *Id.* at 181 (citing 20 U.S.C. § 1682). The Court was unwilling to “assume that Congress left such a gap in its scheme.” *Id.*

In short, *Jackson* consulted indicia of congressional intent relevant to Title IX’s private *enforceability* but

distinct from its substantive *scope*. And none of those indicia are present here. Victims of sex discrimination in employment typically do not lack “recourse,” *id.* at 180, thanks to the express right of action in Title VII. Nor would rejecting Petitioners’ desired remedy create a strange “gap” that “subvert[s]” Title IX’s protection for “students.” *Id.* at 181. Students can sue for sex discrimination in educational or athletic programs, and “coaches [and] teachers,” Br.5, can sue if schools retaliate against them for “vindicat[ing] the rights of their students,” *Jackson*, 544 U.S. at 181. Finally, the inability of employment-discrimination plaintiffs to sue under Title IX does not undermine the statute’s *express* “enforcement scheme,” *id.*, because (as in *Bell*) victims can alert federal agencies directly, 456 U.S. at 517, and Title VII suits—which necessarily involve the EEOC—can only provide federal agencies with *more* notice of unlawful discrimination.

Rather than grapple with this portion of *Jackson*, Petitioners rely on *Gomez-Perez*. Br.25; Lambda Legal Br.10-12. But that decision squarely forecloses their argument that *Jackson* ended independent remedial analysis. *Gomez-Perez* reiterated that courts *cannot* “conflate[] the question whether a statute confers a private right of action with the question whether the statute’s substantive prohibition reaches a particular form of conduct”—those “questions are analytically distinct.” 553 U.S. at 483. The Court then explained *how* it had answered those questions in *Jackson*. With respect to the parties’ core dispute over “the statute’s substantive prohibition,” it explained, “the holding in *Jackson* was based on an interpretation of ‘the text of Title IX’” and concluded “that Title IX prohibits

retaliation.” *Id.* at 484. As for “whether the statute confers a private right of action,” *id.* at 483, *Gomez-Perez* (predictably) pointed to *Jackson*’s analysis of the statute’s remedial system—including “the particular importance of reports of Title IX violations by third parties such as teachers and coaches”—offered to rebut the argument that Jackson could not “assert [his Title IX] claim” in court, *id.* at 484. And that analysis cannot aid Petitioners. *See supra*, 37.

B. Congress has not ratified Petitioners’ desired cause of action.

Petitioners argue that if this Court’s precedent has not immunized Title IX from its default approach to implied rights of action, then Congress has. Br.40-44, 50, 53. But their unusual ratification theory bears little resemblance to the classic “reenactment canon” sometimes applied by this Court. *See, e.g., Oklahoma v. Castro-Huerta*, 597 U.S. 629, 644 (2022); A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 256 (2012). Petitioners never argue that Congress reenacted Title IX in the wake of a holding from this Court construing its text to authorize suits alleging sex discrimination in employment. For good reason: No such decision or enactment exists.

Instead, Petitioners rely on Congress’s abrogation of Eleventh Amendment immunity to “suit in Federal court” under Title IX and other statutes. *See* 42 U.S.C. § 2000d-7(a)(1). In fairness, this Court has deemed that 1986 statute “a validation of *Cannon*’s holding.” *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 72 (1992). But *Cannon* did not—could not—issue a “holding” that Title IX creates a private remedy for employment discrimination. *See supra*, 30. Thus,

Petitioners must combine two speculative leaps: (1) Though the Court has never held that their desired cause of action exists, it has *implied* as much; (2) Congress *implicitly* enshrined *that* implication in a statute. But ratification (of all stripes) applies only to holdings—not to broader language littering opinions, much less implications extracted from that language. *See, e.g., Castro-Huerta*, 597 U.S. at 644; *Jama*, 543 U.S. at 351 n.12; Scalia & Garner, *supra*, at 323-24.

Petitioners therefore swiftly pivot from *Franklin*’s narrow observation to a more ambitious theory that Congress ratified “the state of the law” in 1986—which (they contend) “generally recognized” that “Title IX’s prohibition *and cause of action* include employment discrimination.” Br.41-42 (emphasis added). As it has before, the Court should reject Petitioners’ request to radically expand a modest interpretive principle. *See, e.g., AMG Cap. Mgmt., LLC v. FTC*, 593 U.S. 67, 81 (2021); *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 439 (2019). Accepting it would be especially absurd where Congress’s purported ratification comes in a law abrogating state sovereign immunity—which must be narrowly construed. *See, e.g., Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73-74 (2000).

Regardless, Petitioners cannot show that their rule was, in fact, “the state of the law” in 1986. They turn to *Bell*, Br.41-42, but because that case held *nothing* about Title IX’s private enforceability, *Bell* is a clear mismatch even for *Franklin*’s ratification logic—to say nothing of Petitioners’. Petitioners cite the Title IX regulations discussed in *Bell*, Br.43, but those reflect an “understanding” that “employment practices” are

“subject to regulation as a condition of federal financial assistance,” Br.32, so they add nothing to Petitioners’ mistaken reliance on *Bell* itself.

Petitioners look to lower courts but come up empty. It appears the sole appellate authority for their “clear” “state of the law,” Br.41, is a line of unreasoned dicta in a footnote of a decision holding that Title IX does not apply to athletics, *O’Connor v. Peru State Coll.*, 781 F.2d 632, 642 & n.8 (8th Cir. 1986). Petitioners toss in two published district court orders, but one said nothing relevant, *Selzer v. Bd. of Educ. of City of N.Y.*, 112 F.R.D. 176 (S.D.N.Y 1986), and the other involved a “state contract claim” construed as a Title IX claim for statute-of-limitations reasons, *Minor v. Northville Pub. Schs.*, 605 F. Supp. 1185, 1197 (E.D. Mich. 1985). That’s hardly a “consensus so broad and unquestioned that [this Court] must presume Congress knew of and endorsed it.” *Jama*, 543 U.S. at 349; *BP P.L.C. v. Mayor & City Council of Baltimore*, 593 U.S. 230, 244 (2021) (describing eight Court of Appeals holdings as “a smattering of lower court opinions”).

Running out of Title IX options, Petitioners offer decisions applying Title VI and the Rehabilitation Act. Br.42. But the scope of Congress’s abrogation of state immunity to Title IX suits is obviously not controlled by inferences drawn from cases about *other* statutes—our focus must be on “the *same* statute.” *Food Mktg. Inst.*, 588 U.S. at 439. Their cases are inapt anyway: In one, the defendant “abandoned” any argument that the Rehabilitation Act “does not create a private right of action for employment discrimination,” so the Court declined “to address the question.” *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 630 n.7 (1984). In the other,

the Court did not definitively resolve whether Title VI offered an implied remedy for employment claims. *See Guardians*, 463 U.S. at 593-95 (Op. of White, J.); *id.* at 610 (Powell, J., concurring in judgment); 612 & n.1 (O'Connor, J., concurring in judgment).

Certainly, Petitioners' ratification theory does not render private Title IX employment-discrimination liability "clear[] and unambiguous[]" as required by the Spending Clause. *Landor*, 609 U.S. __ (slip op. 7). After all, Title VII also abrogated states' Eleventh Amendment immunity to such claims, *Fitzpatrick*, 427 U.S. at 448, and a reasonable funding recipient would understand *that* statute—not Title IX—as the far likelier route to private liability, Part I.B, *supra*. That federal statutes abrogating sovereign immunity must *themselves* be unambiguous, *Kimel*, 528 U.S. at 73-74, only confirms the point.⁷

Petitioners sometimes hint at a yet-bolder theory that Congress ratified not only "existing rights of action ... under Title IX," *Franklin*, 503 U.S. at 73, but also future decisions expanding Title IX's implied cause of action. Br.54. But ratification is a backward-looking "presum[ption]" that "Congress knew of and endorsed" an *existing* "judicial consensus," *Jama*, 543 U.S. at 349; later interpretations cannot retroactively expand the scope of that implied endorsement. *See* Scalia & Garner, *supra*, at 326 ("[T]his canon applies only to presumed

⁷ Petitioners also point to the Civil Rights Restoration Act of 1987, but it remains "impossible to understand what [that] has to do with implied causes of action." *Sandoval* 532 U.S. at 292. Regardless, Petitioners offer no intervening developments since 1986, so a 1988 statute cannot change things.

legislative approval of prior judicial ... interpretations in statutes adopted after those interpretations.”).

Thus, even if Congress has enacted laws that “left [*Cannon*] where [they] found it,” that “is not a license to create a new [Title IX] remedy in” this distinct “context.” See *Hernandez v. Mesa*, 589 U.S. 93, 111 n.9 (2020). Nor, as Petitioners suggest, Br.41, does *Sandoval* support a theory that § 2000d-7 (or any other provision) automatically launders every judicial expansion of Title IX’s implied right into a ratified one. Indeed, *Sandoval* rejected an argument that the Court must imply new remedies to satisfy congressional “expectations” of that outcome under “contemporary” doctrine. 532 U.S. at 287-88.

In sum, Petitioners argue that a five-decade-old decision—employing outdated interpretive methods—announced a broadly worded implied cause of action; that Congress ratified that implied right by legislating against its backdrop; and that the Court extended it in later cases. Setting aside the flaws in each premise, they do not compel Petitioners’ conclusion, not least because each of those arguments could have been—and *was*—advanced to justify the continued expansion of another judge-made cause of action: that of *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Bivens, too, spoke in sweeping language about an implied right to sue for Fourth Amendment violations. *Id.* at 395-97. After *Bivens*, this Court extended its reasoning to new claims—and justified that approach in part on ratification grounds, finding it “crystal clear

that Congress views [the Federal Tort Claims Act] and *Bivens* as parallel, complementary causes of action.” *Carlson v. Green*, 446 U.S. 14, 20 (1980). And as late as 2017, this Court emphasized the “continued force, or even necessity, of *Bivens* in the search-and-seizure context in which it arose.” *Ziglar v. Abbasi*, 582 U.S. 120, 133. Nevertheless, when Robert Boule brought a seemingly “conventional” excessive-force claim, as in *Bivens*,” the Court admitted that it is “ill suited”—and likely lacks authority—to decide whether Boule could sue to redress *the same harm* inflicted on Webster Bivens 50 years before. *Egbert*, 596 U.S. at 495.

The point is not that this case requires an analysis *identical* to *Egbert*’s (although it might, *see Cisco Sys.*, 609 U.S. __ (slip op. 10-11)). It is that this Court’s past willingness to overlook enacted text and risk violating the separation of powers does not compel more errors today. If this Court has “applied” a mistaken “method for discerning and defining causes of action,” it need not follow it even in later cases involving “the same” statute—even when Congress might “expect[]” it to, or when earlier decisions assumed it would. *Sandoval*, 532 U.S. at 287. Indeed, the Court just “close[d] the door” on *Sosa*’s “assert[ion] that courts” may “create causes of action” under the Alien Tort Statute. *Cisco Sys.*, 609 U.S. __ (slip op. 4-5, 12). But nothing so ambitious is required here—the Court need only heed limits on the “disfavored judicial activity” Petitioners invite. *Egbert*, 596 U.S. at 491.

C. Decisions applying other statutes do not salvage Petitioners' case.

Petitioners next offer several arguments extracted from precedents applying two other statutes: Title VI and the Rehabilitation Act. Br.35-40. But even if this mode of analysis was acceptable in 1979, *Cannon*, 441 U.S. at 699-703, nothing in the Court's contemporary approach supports it. It also fails on its own terms.

1. Start with Title VI. *Cannon*, along the way to implying a private right under Title IX, reasoned that Title VI features its own. *Sandoval*, 532 U.S. at 280. But Petitioners' assumption that "Title VI authorizes private suits for employment discrimination" rests on far shakier ground. Br.36. They cite only *Guardians* for this proposition, but that is an extremely thin reed on which to rest Petitioners' desired cause of action. *Guardians*—which badly splintered the Court—never analyzed specific congressional intent to authorize a Title VI remedy for employment discrimination. And because the plaintiffs sued under multiple statutes, including § 1983, *see Guardians*, 463 U.S. at 586 (Op. of White, J.), the Court did not definitively resolve the cause-of-action question. Only two Justices who voted for the Court's judgment suggested that Title VI conferred an implied right of action for the plaintiffs' claims. *Id.* at 594-95. The others disagreed, *id.* at 610 (Powell, J., concurring in judgment), or declined to address the question, *id.* at 612 & n.1 (O'Connor, J., concurring in judgment). Even Justice Stevens's dissent ultimately concluded that the plaintiffs were "entitled to the compensation they sought under 42 U.S.C. § 1983." *See id.* at 645 & n.18.

The rest of Petitioners' Title VI argument suffers from a familiar flaw: an assumption that the scope of "Title VI's antidiscrimination prohibition" controls the distinct question of implied private enforceability. Br.37. Petitioners note that Title VI "carves out" most employment discrimination, *see* 42 U.S.C. § 2000d-3, which (they say) implies that Title VI's "prohibition"—like Title IX's—would "otherwise encompass" that conduct. Br.37. But again, *Bell already held* that Title IX reaches discrimination against employees. Today's case presents a different issue.

On the question of Title IX's private enforceability in the employment context *specifically*, Title VI does not help Petitioners. Whether Title VI permits suits for § 2000d-3's narrow category of employment discrimination would say virtually nothing about whether Congress intended Title IX to cover Title VII's private-enforcement waterfront. And if (per Petitioners) legislative history matters, it suggests Title VI was *not* meant "to secure or influence compliance with respect to employment practices" that "are properly the subject of Title VII." 110 Cong. Rec. 11,615 (1964) (Sen. Cooper).

2. Petitioners' Rehabilitation Act arguments fare no better. Br.38-40. The analogy is flimsy even at a surface level: The Rehabilitation Act has always been a far more detailed and targeted statute than Title IX. *See, e.g.*, Pub. L. No. 93-112, § 501, 87 Stat. 355, 390-91 (1973) (expressly banning disability discrimination by the federal government as employer). Moreover, the Rehabilitation Act is part of a series of laws that culminated in the Americans with Disabilities Act, which broadly prohibited disability discrimination in

employment and authorized private suits. 42 U.S.C. §§ 12112(a), 12117. Congress then incorporated the ADA’s employment-discrimination “standards” into the Rehabilitation Act, including its Spending Clause provision, § 504. *See* Pub. L. No. 102-569, § 506, 106 Stat. 4344, 4428 (1992). Congress has never amended Title IX to incorporate Title VII’s rules, procedures, or standards—and the *actual* statutory history makes this case a straightforward one.

Petitioners’ specific arguments fail, too. They rely on *Darrone*, but there, the Court found it “unnecessary to address” whether § 504 “create[s] a private right of action for employment discrimination.” 465 U.S. at 630 n.7. Thus, when *Darrone* rejected an argument that the Rehabilitation Act only covered employment discrimination covered by Title VI, it was interpreting the “reach” of its “prohibit[ion],” *id.* at 632—just as it had construed Title IX’s “reach” in *Bell*, 456 U.S. at 530.

Petitioners note that *Darrone* allowed a plaintiff to “recover backpay.” 465 U.S. at 631; Br.39. But the grounds for that ruling were *Guardians*—discussed above—and a 1978 law making all Title VI “remedies” available under the Rehabilitation Act. 29 U.S.C. § 794a(a)(2). Neither speaks directly to Title IX, so Petitioners reach for *Franklin*. But *Franklin*, which involved discrimination against a student, simply rejected the federal government’s argument that Title IX remedies “should ... be limited to backpay and prospective relief.” 503 U.S. at 75. It did not consider, much less decide, whether Title IX authorizes suits that could *generate* a backpay remedy.

D. Petitioners’ policy arguments fail.

As a last resort, Petitioners and their amici argue that implying their private Title IX remedy would be “desirable ... as a policy matter.” *Sandoval*, 532 U.S. at 287. Those “arguments are properly addressed to Congress.” *SAS Inst.*, 584 U.S. at 368. If Congress has changed its mind since 1972 and believes educational employees require an exemption from Title VII’s procedures, then it, “not this Court, should extend [Title IX’s] implied cause[] of action” to their employment-discrimination claims. *Cummings*, 596 U.S. at 231 (Kavanaugh, J., concurring). Regardless, Petitioners’ arguments do not persuade.

1. Petitioners and their amici hypothesize that the Eleventh Circuit’s rule hinders Title IX’s effectiveness in stopping sex discrimination against *students*—particularly girls and women in sports. Respondents are no less committed to equality in athletics. But no matter the outcome here, student-athletes are triply protected—by the federal government, which wields tremendous bargaining power under Title IX; by traditional Title IX suits alleging sex discrimination in programs and activities; and by *Jackson*’s remedy, which ensures that coaches are not silenced when they raise alarms about discrimination against student-athletes. To be clear, affirming the Eleventh Circuit does not require overruling *Jackson*. *Contra* Women’s Sports Found. Br.17-20.

Instead, today’s case is about claims of employment discrimination. And while sex discrimination against teachers and coaches can certainly affect students and players, teachers and coaches do not lack “recourse.”

Jackson, 544 U.S. at 180. Instead, thanks to Title IX’s “companion legislation,” *TAMA*, 444 U.S. at 20, they have a right of action under Title VII. And the mere “*availability* of [those] private suits ... influences institutional compliance behavior.” NEA Br.15. The sole issue is whether Congress created *another* private remedy for employment discrimination in Title IX.

On that point, Petitioners and amici speculate that Title VII does not adequately protect educational employees from discrimination, which in turn harms students. But their narrative is incomplete: Students and student-athletes harmed *by* their teachers and coaches go unmentioned. What about when a university investigates a professor who sexually harasses his female students? Or when a university fires a women’s basketball coach for creating—in part through her own sexist insults—a hostile environment so “emotionally, mentally, and verbally abusive” that every player “report[s] serious concerns”? *Supra*, 10. Should *those* former employees enjoy a cause of action unmediated by Title VII’s procedures? “Maybe. Or, then again, maybe not.” *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 464 (2015). Petitioners are certainly free to take their policy pitch to Congress, but they should not pretend the tradeoffs are straightforward.

2. Petitioners and amici also argue that Title IX must confer an implied right to sue for employment discrimination because it is too hard to “determin[e] whether a student-employee’s claim” alleges that kind of discrimination under Title VII. Br.51. But with the aid of statutory text, *see* 42 U.S.C. §§ 2000e, 2000e-2; agency regulations and guidance, *see* 29 C.F.R. § 1600, *et seq.*; and this Court’s precedents, *see, e.g., Hishon v.*

King & Spalding, 467 U.S. 69, 74-78 (1984), able lower courts routinely perform such Title VII analysis with “little difficulty,” *Hamilton v. Dallas Cnty.*, 79 F.4th 494, 503 (5th Cir. 2023). Those courts would also be surprised to hear that the student-employee question hasn’t been “create[d],” Br.50, given their precedents answering it, *see, e.g., Cuddeback v. Fla. Bd. of Educ.*, 381 F.3d 1230, 1235 (11th Cir. 2004). And while edge cases inevitably arise, resolving them falls squarely in the judicial wheelhouse.

Petitioners and their amici highlight one specific group: student-athletes who might eventually secure “employee” status. Br.29 n.4. Of course, it ought to go without saying that this Court should not rewrite Title IX to preemptively answer future policy questions in areas that may well present novel challenges. That is the role of elected legislatures, state and federal—and all are aware of this controversial topic. Agencies, too, may issue regulations to clarify statutory boundaries. And, stepping back, employment status comes with *many* benefits. *See, e.g.*, 29 U.S.C. §§ 201 (Fair Labor Standards Act), 206(d) (Equal Pay Act), 2601 (Family and Medical Leave Act); O.C.G.A. § 45-19-20, *et seq.* (Georgia Fair Employment Practices Act). This Court has neither the authority nor the capacity to select the optimal mix of statutory rights and limitations.

Regardless, a victory for Petitioners would not mitigate the difficulty they hypothesize. They argued below that “[a] Title IX employment discrimination claim is analyzed under the same standards as a Title VII claim.” *See supra*, 27. While Respondents take no position on the question, lower courts that permit Title IX employment-discrimination claims have analyzed

them as they would Title VII claims. *See Vengalattore v. Cornell Univ.*, 36 F.4th 87, 103 (2d Cir. 2022); *Summy-Long v. Pa. State Univ.*, 715 F. App'x 179, 182 (3d Cir. 2017). Even under Petitioners' rule, then, courts must analyze whether a Title IX claim alleges employment discrimination.

But if Petitioners have changed their minds, that hardly simplifies things. If Title VII rules *don't* apply, then recognizing their novel cause of action will force courts—without the aid of text—to develop employment-discrimination standards, frameworks, and procedures under Title IX. If the Eleventh Circuit requires ordinary judicial analysis, Petitioners would deputize the courts as a “junior-varsity Congress.” *Mistretta v. United States*, 488 U.S. 361, 427 (1989) (Scalia, J., dissenting).

CONCLUSION

For the reasons above, this Court should affirm.

Respectfully submitted,

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