No. 25-183

In the Supreme Court of the United States

THOMAS CROWTHER & MACHELLE JOSEPH,
Petitioners,

v.

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

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

BRIEF OF *AMICI CURIAE* STATE OF WEST VIRGINIA AND 20 OTHER STATES IN SUPPORT OF RESPONDENTS

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INTRODUCTION AND INTERESTS OF *AMICI CURIAE*

The days of implying private rights of action left and right are over. For a stretch of the mid-twentieth century, the story was quite different: courts read causes of action into statutes about wherever a lawsuit seemed useful to a law's purpose. Not now, though. The Court has since confirmed that a private right to sue must come from Congress, not from the judiciary's sense of what might make a statute work better. Creating paths to relief on the fly is thus a disfavored enterprise. See *Alexander* v. *Sandoval*, 532 U.S. 275, 286-87 (2001). So a plaintiff who asks a court to imply an action now bears the burden of showing that Congress, in the statute's text and structure, meant to create one.

This presumption against *ad hoc* judicial lawmaking should be at its strongest here because Title IX is Spending Clause legislation. The federal government gives a school funding, and the school promises in return not to discriminate against any "person" on the basis of sex. This arrangement, like all other Spending Clause deals, requires consent. Congress must state the conditions on federal money clearly enough that a State knows the consequences of accepting it. See *Pennhurst State Sch. & Hosp.* v. *Halderman*, 451 U.S. 1, 17 (1981). But Title IX contains no express private right of action. So there's strong reason to think that the States never consented to private causes of action under the law.

And indeed, the expected answer proves to be the right one. Nothing in Title IX's text, purpose, or structure suggests the States knew that liability was part of the deal. States believed Title VII was the proper place for those claims. This Court, consistent with its modern precedent, should therefore refuse to imply a private employment discrimination claim in Title IX.

To be sure, Title IX prohibits sex discrimination—but that restraint says nothing about who may sue to enforce it. The statute's reach over discrimination against employees therefore doesn't put a damages action in their hands. Any such action would also let employees bypass the detailed remedy Congress built specifically for them in Title VII, a scheme it enacted just before Title IX. And Congress never later ratified an employee-brought action. Although Congress removed States' sovereign immunity and expanded the scope of programs subject to Title IX in 1986 and 1988, no decision of this Court had recognized an employee action at that point.

States like the Amici States are best positioned to say what Title IX's bargain contains, as they're the ones who've accepted it. They run nearly every public school and most of the Nation's largest universities. They receive more Title IX money than any other class of recipient. And they employ the teachers and coaches whose claims this case concerns. They've stood on the other side of the contract Petitioners describe—and they are the defendants who would pay the judgments Petitioners seek, from state treasuries, in a forum that bypasses the very state civil-rights agencies Congress made the first stop for these claims. 42 U.S.C. § 2000e-5(c)-(d). The States can say with firsthand authority that the deal they made did not include this.

"[T]he decision to create a private right of action is one better left to legislative judgment in the great majority of cases." *Cisco Sys., Inc.* v. *Doe I*, 146 S. Ct. 1882, 1890 (2026) (cleaned up). So too here. The Court should affirm.

SUMMARY OF ARGUMENT

I. When the federal government ties strings to money it hands to the States, it must spell its terms out clearly. A State must be able to look at the law and know exactly what it's agreeing to. Here, neither Title IX's text, purpose, nor its structure put States on notice that they could face liability for workplace sex discrimination. To the contrary, all the circumstances suggested to the States that Title VII was the rightful home for those cases.

Title IX's text provides only one remedy: the government can cut off funding to a school that breaks the rules. And while Petitioners note that employees count as "persons" the law protects, that argument misses the point. Being protected by a law and being allowed to sue under it are two different things.

Title IX's purpose and structure don't fill the gap the text leaves. Just three months before Title IX passed, Congress gave school employees a way to fight discrimination through another law—Title VII. That law comes with a careful set of steps: deadlines for complaining, a government agency that reviews the claim first, and limits on how much money a person can win. So employees have always had a way to vindicate their rights. And giving employees a Title VII workaround would render its carefully crafted scheme a nullity.

If Title IX is rewritten to offer new ways to sue, then the States will pay a hefty price, too. Congress didn't just build Title VII's careful process for employees—it made the States a working part of it. In most States, a worker's discrimination complaint goes first to the State's own civil-rights agency, which investigates and tries to resolve it before anyone ends up in court. The States have run these agencies for decades, handling exactly these kinds of complaints against their own schools and universities. A Title IX employment lawsuit throws all of that aside.

This Court's precedents also haven't yet recognized a Title IX employment action, contrary to what Petitioners suggest. Their principal authorities, *Jackson* v. *Birmingham Board of Education*, 544 U.S. 167 (2005), and *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979), blessed a private right of action for those vindicating sex discrimination against students—those with no other path for justice. But that rationale doesn't apply to employees with many other options.

II. As backup, Petitioners reason that Congress ratified a private cause of action for employees under Title IX when it passed two more laws in 1986 and 1988. It didn't.

Congress can only adopt an understanding that already exists. And in 1986 and 1988, Congress had no employment action to bless. No court had held that employees could sue under Title IX. This Court hadn't even decided that a Title IX lawsuit could win money damages at all until 1992—years after the laws Petitioners lean on. So, when Congress acted, it had no settled rule about employee lawsuits to approve. Petitioners try to fill that hole with a couple of stray footnotes and two old lower-court cases, but those are far too thin to give a State the clear warning it's owed before it can be sued and made to pay out of its own treasury.

And neither law created a Title IX employee action, anyway. The 1986 law says only that *if* someone already has the right to sue a State, the State can't hide behind its immunity to dodge the case. It assumes the right to sue comes from somewhere else—it doesn't hand out a new one. The 1988 law just widened which school programs the rules cover. Neither says a word about who may sue.

ARGUMENT

I. Congress did not unambiguously create a private cause of action for employees in Title IX.

"[P]rivate rights of action to enforce federal law must be created by Congress," and the "judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy." *Sandoval*, 532 U.S. at 286. This Court has "sworn off the habit of venturing beyond Congress's intent." *Id.* at 287. It has called the expansion of implied remedies a "disfavored judicial activity." *Ziglar* v. *Abbasi*, 582 U.S. 120, 135 (2017) (cleaned up). And it has instructed that decisions from the freewheeling era be read narrowly, as relics of a time when courts "assumed it to be a proper judicial function to provide such remedies as are necessary to make effective a statute's purpose." *Comcast Corp.* v. *Nat'l Ass'n of African Am.-Owned Media*, 589 U.S. 327, 334 (2020) (cleaned up).

Layered on top of this distaste for implied causes of action is Title IX's status as a piece of Spending Clause legislation. The Spending Clause vests Congress with the power to "spend money," not to "regulate conduct." *West Virginia* v. *B.P.J*, 146 S. Ct. 2356, 2382 (2026) (Gorsuch, J., concurring) (citing *Medina* v. *Planned Parenthood S. Atl.*, 606 U.S. 357, 370-71 (2025)). Yes, Congress may attach strings to federal funds it doles out. *Medina*, 606 U.S. at 365. But when it does so, it must state its terms "clearly and unambiguously" so that the recipient may accept them "voluntarily and knowingly." *Id.* at 373 & n.4;

Pennhurst, 451 U.S. at 17. A State cannot accept conditions knowingly if it "is unaware of the conditions or is unable to ascertain what is expected of it." *Pennhurst*, 451 U.S. at 17.

The necessary clarity needed for Spending Clause conditions extends to whether a private right of action exists. *Barnes* v. *Gorman*, 536 U.S. 181, 187 (2002). "[U]nless Congress speaks with a clear voice, and manifests an unambiguous intent to confer individual rights, federal funding provisions provide no basis for private enforcement." *Gonzaga Uni*v. v. *Doe*, 536 U.S. 273, 280 (2002) (cleaned up). And "Congress is in a far better position than a court to evaluate the impact of a new species of litigation against those who act on the public's behalf." *Wilkie* v. *Robbins*, 551 U.S. 537, 562 (2007) (cleaned up). The natural, default punishment for noncompliance is "not a private cause of action" but "action by the Federal Government to terminate funds." *Gonzaga*, 536 U.S. at 280 (cleaned up).

When the recipient of the relevant federal funding is a State, the Court considers whether "a state official" deciding to accept that funding "would clearly understand" the obligations and penalties that came with the money. *Arlington Cent. Sch. Dist. Bd. of Educ.* v. *Murphy*, 548 U.S. 291, 296 (2006). This clear-understanding requirement ensures that the State is really offering its "voluntary and knowing assent" to the condition. *Landor v. La. Dep't of Corr. & Pub. Safety*, 146 S. Ct. 1931, 1944 (2026) (cleaned up). And because Title IX lifts the States' immunity from whatever suits the law allows, 42 U.S.C. § 2000d-7, the state officials' understanding has special gravity, see Pet.App.15a-16a; see also, *e.g.*, *Fin. Oversight & Mgmt. Bd. for P.R.* v.

Centro de Periodismo Investigativo, Inc., 598 U.S. 339, 346-47 (2023).

State officials deciding whether to accept federal education funds under Title IX wouldn't have imagined that they might face an employment-discrimination suit thereunder. Neither Title IX's text, purpose, nor statutory structure suggests that employees who suffer from sex discrimination at educational institutions can bring suit under Title IX.

A. Title IX's text does not contain an express private right of action.

Title IX's text prohibits sex discrimination against any "person," but it says *nothing* about a private right of action. *Cannon*, 441 U.S. at 683. The statute is entirely silent on the latter. This Court has recognized as much, and Petitioners don't seriously dispute that fact. *Id.*

Instead, "Congress has provided" another "mechanism" for enforcing its prohibition on discrimination: the federal government can withdraw funding if a school is noncompliant. *FS Credit Opportunities Corp.* v. *Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1553 (2026) (cleaned up); see 20 U.S.C. § 1682. "And language establishing an express remedial scheme elsewhere in the statute may foreclose a private cause of action to enforce even those statutes that admittedly create substantive private rights." *FS Credit Opportunities Corp.*, 146 S. Ct. at 1553 (cleaned up).

Title IX's internal architecture aligns with that sole express remedy. The statute's exceptions are a catalog of program-access questions, addressing admissions at various classes of institutions, religious and military schools, social organizations, and similar subjects. 20

U.S.C. § 1681(a)(1)-(9). Its companion provisions preserve separate living facilities, *id.* § 1686, and Congress soon directed the agency to write regulations governing athletics, Education Amendments of 1974, Pub. L. No. 93-380, § 844, 88 Stat. 484, 612. This Court walked through that architecture recently and read the statute accordingly, as a regulation of federally funded education programs administered through its rules and its funding hammer. See *West Virginia*, 146 S. Ct. at 2371-73.

What is left of petitioners' textual case is merely a mistaken argument based on how employees are covered "person[s]." *North Haven* did say that "persons" include employees. *N. Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 520-21 (1982). But whether Title IX prohibits discrimination against a certain class of persons and whether it provides a cause of action for that class are different inquiries. *Sandoval*, 532 U.S. at 286-289. *North Haven* answered only a question about agency authority, not private enforcement. "[T]he 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." *Touche Ross & Co.* v. *Redington*, 442 U.S. 560, 568 (1979) (cleaned up). And even where a *right* can be found, "a plaintiff suing under an implied right of action still must show that the statute manifests an intent to create not just a private *right* but also a private *remedy.*" *Gonzaga*, 536 U.S. at 284 (cleaned up).

So the "plain language of the enacted text"—that is, "the best indicator of intent"—rejects Petitioners' position. *Nixon* v. *United States*, 506 U.S. 224, 232 (1993).

B. Title IX's purpose and context reinforce why this Court should not imply a private right of action.

Title IX's purpose and context—the two things thought to justify implying a remedy for students in *Cannon*—also point the other way here.

1. "Congress enacted Title IX in 1972 with two principal objectives in mind: to avoid the use of federal resources to support discriminatory practices and to provide individual citizens effective protection against those practices." *Gebser* v. *Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998) (cleaned up). An implied right of action for employment sex discrimination serves neither objective. It does not advance the first; federal funds are protected by the termination mechanism. *Cannon*, 441 U.S. at 704. And, unlike in *Cannon*, it is not helpful for or "necessary" to the second. *Id.* at 703. Title VII already provided educational employees "effective protection against [discriminatory] practices" when Georgia accepted Title IX funds. *Gebser*, 524 U.S. at 286 (cleaned up).

Shortly before Title IX became law, Congress gave school employees a remedy for sex discrimination through Title VII. The Equal Employment Opportunity Act of 1972 deleted Title VII's exemption for educational institutions and extended the statute to state and local governments. Pub. L. No. 92-261, §§ 2-3, 86 Stat. 103, 103-104. Congress acted against "the widespread and compelling problem of invidious discrimination in educational institutions," and its amendment "expose[d]" employment decisions at those institutions to the "same enforcement procedures applicable to other employment decisions," an "integrated, multistep enforcement procedure" run through the Commission. *Univ. of Pa.* v.

EEOC, 493 U.S. 182, 190 (1990) (cleaned up). And Title IX arrived *after* this overhaul. Education Amendments of 1972, Pub. L. No. 92-318, § 901, 86 Stat. 235, 373. So, while the *Cannon* student needed an implied action to secure the statute's second purpose (because fund termination to the institution would do nothing for the student), an employee never has. Title VII has always provided the effective protection that Title IX's purpose demands.

Title VII provides an important contrast, too. The 1972 Congress knew how to give employees a federal-court remedy against the States, because it had just done so, in detail, with deadlines, agencies, and defenses attached. Months later, it wrote no employment remedy into Title IX at all. Cf. *FS Credit Opportunities Corp.,* 146 S. Ct. at 1555 ("We have traditionally been reluctant to conclude that Congress implicitly created a private remedy in one provision when it explicitly did so in another."). And a "precisely drawn, detailed statute" sitting beside a general funding condition tells the reader which one governs the subject it details. *Brown* v. *Gen. Servs. Admin.*, 425 U.S. 820, 834 (1976).

2. An implied right of action in Title IX would also "frustrate the underlying purpose of the legislative scheme." *Cannon*, 441 U.S. at 703. Title IX employment claims would strip out every procedure Congress wrote into Title VII. Yet this Court warned early that Title VII rights may not be pursued through other vehicles, because a plaintiff otherwise "could completely bypass the administrative process, which plays such a crucial role in the scheme established by Congress in Title VII." *Great Am. Fed. Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 376 (1979).

Compare the statutes' pre-suit requirements. Under Title VII, a school employee must file a charge within 180 or 300 days. 42 U.S.C. § 2000e-5(e)(1). For a Title IX implied action, courts borrow state personal-injury limitations periods of two years or more. *King-White* v. *Humble Indep. Sch. Dist.*, 803 F.3d 754, 759-761 (5th Cir. 2015); *Stanley* v. *Trs. of Cal. State Univ.*, 433 F.3d 1129, 1134-36 (9th Cir. 2006). Some circuits then add discovery-rule accrual, under which institutional claims do not accrue until the plaintiff discovers the school's deliberate indifference, a rule that has revived claims decades old. *Snyder-Hill* v. *Ohio State Univ.*, 48 F.4th 686, 698-702 (6th Cir. 2022). Under Title VII, the State's own fair-employment agency and the Commission get the first look, and conciliation precedes any suit. 42 U.S.C. § 2000e-5(b)-(d). But a Title IX implied action has "no administrative exhaustion requirement and no notice provisions," so the plaintiff files directly in federal court. *Fitzgerald* v. *Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009).

The differences don't stop there. Under Title VII, compensatory and punitive damages are capped according to employer size. 42 U.S.C. § 1981a(b)(3). Title IX claims have no caps at all, and the defendants are the States. *Id.* § 2000d-7(a)(1).

So, if employees were allowed to sue under Title IX, they'd have a convenient workaround to all of Title VII's—intentional—roadblocks. But a judicially created remedy "cannot be extended, consistently with the intent of Congress," to "nullify the effectiveness of the carefully drawn procedural restrictions" on a comparable express action. *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 210 (1976); see *Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (implied remedies are subject to express and implied statutory limitations). Petitioners' own filings chart the migration from Title VII to Title IX, collecting district court decisions that let Title IX employment claims proceed precisely where Title VII claims applied. Pet'rs'.Supp.Br.6.

3. Petitioners answer with a catalog of cases blessing "overlapping" antidiscrimination remedies. Pet'rs.Br.45-51. The catalog proves the States' point, because in every case the overlap was Congress's undeniably intentional handiwork. *CBOCS* permitted Section 1981 retaliation claims alongside Title VII because "Congress explicitly created the overlap," preserving an express nineteenth-century statute when it enacted the modern one. *CBOCS West, Inc.* v. *Humphries*, 553 U.S. 442, 455-56 (2008). *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 459-61 (1975), and *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36, 47-49 (1974), rest on the same fact, that Title VII arrived against pre-existing rights Congress chose to leave standing.

But where the right originates in Title VII, that statute provides an exclusive remedy. The claim may not travel through another vehicle, because Congress's "detailed and specific provisions" would otherwise be optional. *Novotny*, 442 U.S. at 375-76. An implied Title IX claim falls into that camp.

4. If employees get a Title VII workaround, the States will suffer.

Where a State maintains its own fair-employment statute and agency, no federal charge may proceed until the state agency has had at least sixty days to act, and the Commission must accord substantial weight to the state agency's findings. 42 U.S.C. § 2000e-5(b)-(d). Congress made the States first-line enforcers of employment-discrimination law, including for their own workforces, and it authorized the Commission to formalize that partnership through cooperative agreements with the state agencies. *Id.* § 2000e-8(b). Those provisions are the means Congress chose for dividing this work between two sovereigns.

The Amici States built that machinery and ran it. West Virginia's Human Rights Act has long barred sex discrimination by the State's employers, and it supplies administrative and judicial remedies of its own. W. VA. CODE § 16B-17-1 et seq. The West Virginia Human Rights Commission investigates, conciliates, and adjudicates those complaints, against state and private employers alike, under precisely the design Congress contemplated. Its jurisdiction reaches the employees of the public colleges and universities overseen by the State's Higher Education Policy Commission, and of every county school system in the State. Fifty years of practice under that arrangement is what the States understood would govern employment claims.

An implied Title IX action casts that framework aside. A claim Congress routed first through the state agency would instead proceed straight to federal court, against the State, for uncapped damages, with the state commission never notified. The State would learn of the allegation for the first time in a complaint, years after the conduct, with no opportunity to investigate, conciliate, or correct. And the state agency would have no early window into cases Congress most clearly meant it to oversee, those brought by the State's own employees against the State's own institutions.

That reordering of the federal-state balance is what this Court refuses to find in statutory silence. If Congress intends to alter "the usual constitutional balance between the States and the Federal Government," it must make that intention "unmistakably clear in the language of the statute." *Gregory* v. *Ashcroft*, 501 U.S. 452, 460-61 (1991) (cleaned up). Decisions about who staffs and governs a State's public institutions lie close to "the heart of representative government." *Id.* at 463 (cleaned up). And while "Title VII merely provides a supplemental right to sue in federal court if satisfactory relief is not obtained in state forums," *N.Y. Gaslight Club, Inc. v. Carey*, 447 U.S. 54, 67 (1980), Title IX would push the state forums aside entirely.

5. Left with no support in Title IX itself, Petitioners turn to Title VI, the law Congress modeled Title IX on. Title VI contains a provision—Section 604—that mostly exempts discrimination in the workplace from its coverage. 42 U.S.C. § 2000d-3. Title IX has no such provision. From that difference, Petitioners reason that Title IX must cover sex discrimination in the workplace—and that employees must therefore be able to sue. Pet.Br.45-51. It's a dangerous game to "treat statutory silence as a license to freely supply remedies we cannot be sure Congress would have chosen to make available." *Cummings* v. *Premier Rehab Keller, PLLC*, 596 U.S. 212, 226 (2022). But anyway, Petitioners' logic proves too little. Section 604's exemption—at most—shows that Title IX *covers* discrimination against employees. But the inference ends there. Section 604 doesn't—unambiguously—show that employees may *sue.*

Read correctly, Title VI favors the States. Congress passed Title VI and Title VII together in 1964, and it used Section 604 to leave job discrimination mainly to Title VII. Months before passing Title IX, Congress made the same choice for schools, extending Title VII to cover them. See *supra* Part I.B.1. A State looking at Title IX against that history would have understood one thing: workplace discrimination belongs to Title VII.

C. Court decisions never put States on notice of Title IX employment claims.

Petitioners answer all of this with two of this Court's decisions—*Cannon* and *Jackson*—that they say put the States on notice that accepting Title IX funds meant accepting employment-discrimination liability. Pet'rs.Br.55. That's a dubious argument considering that Congress is the one who's supposed to provide notice of Spending Clause conditions, not this Court. See *Arlington Cent. Sch.*, 548 U.S. at 296 (contemplating that "legislation" will provide the requisite notice (cleaned up)). Finding notice through judicial precedent alone invites the kind of judge-driven construction of causes of action that is now considered so problematic. Even more when legislative history chiefly drives that precedent, see, *e.g.*, *Cannon*, 441 U.S. at 694-702, and "legislative history is not the law." *Martin* v. *United States*, 605 U.S. 395, 408 (2025) (cleaned up).

In any event, Petitioners overread both cases. Each concerned students, and any notice that either supplied ran to the students' charter alone.

Cannon implied a private action for a rejected medical-school applicant, and it did so precisely because the blunt remedy of fund termination could not protect the individual *student* wrongly denied an educational benefit. 441 U.S. at 704-05, 709-10. Whatever notice *Cannon* gave the States in 1979, it was notice that *students* excluded from federally funded programs could sue—not that *employees* could sue for workplace discrimination that Title VII already governed. And that might be less surprising given that "students are the statute's very focus." *Ollier* v. *Sweetwater Union High Sch. Dist.*, 768 F.3d 843, 866 (9th Cir. 2014).

Jackson extended the *Cannon* action to retaliation, but on a rationale that confirms its student-centered limit. Roderick Jackson coached a girls' basketball team, complained that the school shortchanged the girls, and was removed from coaching for saying so. *Jackson*, 544 U.S. at 171-72. The Court presupposed the *Cannon* action and asked only whether retaliation "falls within the statute's prohibition of intentional discrimination on the basis of sex" that the existing action enforces. *Id.* at 173-74, 178. It held that retaliation does, because without protection for those who report, Title IX's protection *of students* "would be difficult, if not impossible, to achieve," teachers and coaches being "often in the best position to vindicate the rights of their students." *Id.* at 180-81 (cleaned up). *Jackson* thus enforced the beneficiaries' charter through the adults who speak for them. It did not hold that every person the prohibition touches may sue for every injury the prohibition covers.

Petitioners lean hardest on *Jackson*'s statement that recipients "have been on notice" of "private suits for intentional sex discrimination" since *Cannon*, and that *Pennhurst* poses no bar to suits for "intentional acts that clearly violate Title IX." 544 U.S. at 181-83. But *Jackson* grounded that notice in a specific line of authority—*Cannon*, *Gebser*, and *Davis* v. *Monroe County Board of Education*, 526 U.S. 629 (1999), *id.* at 182-83—and every one of those decisions concerned discrimination *against students*: deliberate indifference to student harassment in *Gebser* and *Davis*, and exclusion of a student applicant in *Cannon*. Again, whatever might be said about grounding notice in precedents (rather than legislative enactments), the notice *Jackson* described is notice of *that* liability. Nothing in *Jackson*, and nothing in the cases it invoked, told a State that its acceptance of education funds also exposed it to an uncapped damages action by its *employees* for conduct Title VII had regulated since three months before Title IX became law. On petitioners' contrary reading, *Jackson* would have resolved *this* case in 2005. The Eleventh Circuit was right that none of the decisions petitioners stack "speak[s] to whether Title IX created an implied right of action for sex discrimination in employment." Pet.App.18a.

* * *

Text, structure, and purpose converge. A State accepting Title IX funds would understand employment discrimination to be Title VII's domain, governed by the procedures Congress had just built for it—not the subject of a silent, uncapped damages action against the State itself. That understanding controls. Congress did not speak clearly enough to bind the States to what Petitioners now ask this Court to imply, and under the Spending Clause that silence is dispositive.

II. Petitioners' ratification theory fails.

Separately, Petitioners argue that Congress ratified a Title IX employment action by enacting Section 2000d-7, which lifted States' sovereign immunity in 1986, and the Civil Rights Restoration Act, which extended covered programs in 1988. Pet'rs.Br.19, 24, 41. Their theory fails.

1. *First*, in 1986 and 1988, a Title IX employment claim wasn't widely recognized. Absent that settled understanding, the reenactment canon has nothing to carry. *E.g. Tex. Dep't of Hous. & Cmty. Affairs* v. *Inclusive Cmtys. Project, Inc.*, 576 U.S. 519, 536 (2015); see also *Forest Grove Sch. Dist.* v. *T.A.*, 557 U.S. 230, 243 n.11 (2009); *Lorillard* v. *Pons*, 434 U.S. 575, 580 (1978).

By 1988, all Congress had was *North Haven* and *Cannon*. And as discussed, *North Haven* said only that employees were "persons" covered by Title IX. *Cannon* recognized a private right of action for students who suffered from sex discrimination. Neither blessed a Title IX employment claim. Even more, this Court did not hold that the *Cannon* action carries damages at all until *Franklin*, in 1992, four years after the enactments. And *Franklin* reached that holding partly by reasoning forward from the 1986 Act itself. *Franklin* v. *Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 72-73 (1992).

What petitioners offer in place of a holding is a collection of fragments. They note that *Cannon* mentioned employment in a footnote and that *Franklin* declined to limit Title IX relief to backpay. Pet'rs.Supp.Br.10. Yet "the [reenactment] canon does not apply to dicta." *Oklahoma* v. *Castro-Huerta*, 597 U.S. 629, 644 (2022). The lower-court backdrop is just as thin; it consists of only two decisions. Pet'rs.Supp.Br.11. The first is *O'Connor* v. *Peru State College*, which mentioned employment claims in a footnote while affirming dismissal of the Title IX claim on other grounds. 781 F.2d 632, 642 & n.8 (8th Cir. 1986). The second is *Thompson* v. *Board of Education of Romeo Community Schools*, which resolved class-certification and standing questions and never analyzed whether the cause of action exists. 709 F.2d 1200, 1202, 1206 (6th Cir. 1983). Even taking all these together, Petitioners are far from proving that Title IX was "roundly understood" to provide a private right of action for employees. Pet'rs.Br.40. "Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *Webster* v. *Fall*, 266 U.S. 507, 511 (1925). So it's hard to see how Petitioners can invoke them as "a consistent judicial construction." *Cent. Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 185 (1994).

And under *Pennhurst*, the point is stronger still. Unreasoned statements in footnotes cannot deliver to a sovereign the unambiguous notice the Constitution requires before the States' treasuries are opened.

2. *Second*, even if a settled understanding existed in 1986 and 1988 that Title IX permits an employment claim, neither enactment actually adopted that understanding.

Subsection (a)(1) of Section 2000d-7 states that a State "shall not be immune" from suit in federal court "for a violation" of Title IX and the other listed statutes. Subsection (a)(2) states that "[i]n a suit against a State for a violation of a statute referred to in paragraph (1)," remedies at law and in equity "are available for such a violation to the same extent" as against other defendants. 42 U.S.C. § 2000d-7(a). Every operative phrase presupposes something outside the provision: a cause of action that already exists. Petitioners concede the point by emphasizing *Sandoval*'s observation that Section 2000d-7 "by its terms applies [only] to suits 'for a violation of a *statute*.'" Pet'rs.Br.24 (quoting 532 U.S. at 292). Just so. The section reaches suits that exist, but it nowhere says who may bring them, for what injuries, or on what terms.

Section 2000d-7's history confirms its function. It is "the 'equalization' provision," and it was "enacted in response to … *Atascadero*," where this Court held that the States retained immunity from Rehabilitation Act damages suits because Congress had not spoken with the required clarity. *Lane* v. *Peña*, 518 U.S. 187, 197-198 (1996). "By enacting Section 1003, Congress sought to provide the sort of unequivocal waiver that [Supreme Court] precedents demand." *Id.* at 198. So, Section 2000d-7 did repair work on immunity to preserve whatever suits the law otherwise allowed. And a waiver of immunity is "strictly construed, in terms of its scope, in favor of the sovereign." *Sossamon* v. *Texas*, 563 U.S. 277, 285 (2011) (cleaned up). Petitioners invert that canon, reading a strictly construed immunity provision as an implicit charter for new plaintiff classes.

The Civil Rights Restoration Act is further from the mark. It enlarged the definition of a covered "program or activity." 42 U.S.C. § 2000d-4a. *Franklin* described its effect precisely, saying that the Act broadened coverage "[w]ithout in any way altering the existing rights of action and the corresponding remedies permissible under" the statutes it amended. 503 U.S. at 73.

3. *Third*, this Court has addressed a ratification argument built on both provisions. In *Sandoval*, the plaintiffs and the United States argued that Section 2000d-7 and the Civil Rights Restoration Act ratified decisions recognizing a private action to enforce Title VI's disparate-impact regulations. 532 U.S. at 291. The Court held that ratification could not reach the asserted right, because "none of [its] decisions establishes (or even assumes)" it, so "[i]ncorporating [the Court's] cases in the amendments would thus not help." *Id.* at 291-92. The Court also recognized that Section 2000d-7 applies by its terms only to suits for a statutory violation and so says nothing about the action's scope. *Id.* at 292. Too, the Court said that the Restoration Act is "even less on point," because it is "impossible to understand what this has to do with implied causes of action." *Id.*

* * *

History did not stop after *Cannon*, Petitioners remind the Court. Pet'rs.Supp.Br.8. Yet history is their difficulty. What came after *Cannon* was *Sandoval*, *Gonzaga*, *Ziglar*, *Comcast*, *Cummings*, and *Medina*, each narrowing the space for judicially built remedies and each tightening the notice owed to funding recipients.

Congress's own conduct runs the same way. When Congress means to give employees remedies, it writes them. It wrote them in Title VII in March 1972, and again in 1991, capping them dollar-by-dollar according to employer size. 42 U.S.C. § 1981a(b)(3). Petitioners would have this Court believe that the same era of Congresses that carefully capped the express employment action silently blessed an uncapped one beside it. They would also assume that Congresses that have otherwise been active in creating paths to relief when they wanted to would stand silently by as several courts denied relief in precisely these circumstances. See Pet.18-20.

What Petitioners call ratification is *Cannon*'s method under a new label, purpose-first implication recast as congressional command. This Court has "sworn off" that method, *Sandoval*, 532 U.S. at 287, and a change of label does not revive it.

CONCLUSION

The Court should affirm.

Respectfully submitted.

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