

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 THE NATIONAL SCHOOL
ATTORNEYS ASSOCIATION AND OTHER
PUBLIC SCHOOL PROFESSIONAL
ORGANIZATIONS AS *AMICI CURIAE* IN
SUPPORT OF RESPONDENTS**

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INTEREST OF *AMICI CURIAE*¹

This brief is submitted on behalf of six organizations that represent U.S. public school districts, their state school board associations, their attorneys, and their administrators. These associations and their members have a strong interest in this case because public school districts are among the largest recipients of federal education funding and the entities most directly affected by any expansion of Title IX's implied private right of action. Unlike large universities with dedicated legal departments, public school districts typically operate with limited legal and administrative staff. Expanding Title IX's implied private right of action to cover claims against employees not only would contravene the separation of powers, but would impose disproportionate compliance and litigation burdens on public school districts and diminish the limited resources they have to educate students. *Amici curiae* file this brief to explain the unique burdens that public school districts would face if this Court expands Title IX's implied private right of action to reach employment discrimination claims.

The National School Attorneys Association (NSAA) is a non-profit membership organization of attorneys who advocate on behalf of elementary and secondary public school districts across the United States. NSAA's approximately 1000 members regularly advise public school districts on federal laws governing their civil rights obligations.

¹ No counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

AASA, The School Superintendents Association is a professional organization for more than 10,000 educational leaders in the United States and beyond. AASA members range from chief executive officers, superintendents, and senior school administrators to cabinet members, professors, and aspiring school system leaders. As school system leaders, AASA members set the pace for academic achievement. They help shape policy, oversee its implementation, and represent school districts to the public at large.

The Association of School Business Officials International (ASBO) is the leading association dedicated to advancing the school business profession. ASBO serves more than 12,000 members and, through its network of affiliates, reaches more than 20,000 additional school business leaders. Through professional learning, certification, advocacy, research, recognition, trusted resources, and a vast online community, ASBO equips members at every stage of their careers to strengthen their school systems and effectively allocate educational resources to support student success.

The Consortium of State School Boards Associations (COSSBA) is a nonpartisan, national alliance of 27 state school board associations that serve over 7,500 school boards comprised of 52,000 members who work in service to nearly 27 million students. COSSBA is dedicated to sharing resources and information to support, promote, and strengthen state school boards associations as they serve their local school districts and board members.

The Georgia School Boards Association (GSBA) is a voluntary organization composed of all the local boards of education in the State of Georgia. The association's mission is to ensure excellence in the

governance of local school systems by providing leadership, advocacy, and services and by representing the collective resolve of Georgia's 180 elected boards of education.

The National School Boards Association (NSBA) is a nonprofit organization ensuring that each student everywhere has access to excellent and equitable public education governed by high-performing school board leaders and supported by the community. NSBA firmly believes that school boards must ensure students and staff are not subjected to discrimination on the basis of gender, race, disability, or other protected characteristics. Representing approximately 13,000 public school districts nationwide, NSBA has a vital interest in preserving the proper statutory avenues for addressing workplace claims.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court should reject Petitioners' request to create a new private right of action under Title IX that Congress did not. By its plain terms, Title IX's focus is eliminating sex discrimination among students, the participants and beneficiaries of education programs. The implied private right of action this Court has recognized under Title IX has been for students, or for employees alleging retaliation because they complained about sex discrimination against students. Petitioners now ask this Court to create a new private right of action under Title IX for employees alleging sex discrimination against themselves. This Court should decline Petitioners' invitation.

Congress legislated a private right of action for employment discrimination in Title VII, which Congress extended to employees of educational institutions just three months before it enacted Title IX. Under Title VII, Congress required employees to promptly file their complaints and follow a carefully calibrated administrative process designed to encourage voluntary conciliation before litigation. Judicial implication of a new Title IX avenue for employment discrimination claims would entirely undercut that process. It would allow employees to proceed straight to court, avoid Title VII's carefully designed constraints, and dramatically increase employers' litigation and liability exposure.

Judicial implication of a new private right of action for employment discrimination claims under Title IX would also flout this Court's precedents emphasizing that it is Congress's role to create private rights of action through legislation, not the courts' through implication. *See Alexander v. Sandoval*, 532 U.S. 275, 286 (2001); *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1552 (2026).

For the nation's approximately 13,000 public school districts, the practical consequences of implying such a new private right of action under Title IX also would be severe and immediate. K-12 districts do not have the resources of large universities with dedicated legal departments. They operate on razor-thin budgets with minimal administrative staff, often relying on a single individual to manage compliance with Title IX's extensive regulatory regime, as well as with the countless other statutes and regulations that apply to public schools. Title VII's administrative process

serves a critical gatekeeping function for these districts, allowing them to informally resolve employee complaints before scarce funds and resources must be diverted to litigation. If employees may proceed straight to court under Title IX instead, K-12 districts will be forced to divert still more time and money from classrooms to courtrooms.

Such upheaval is not only unauthorized, it is wholly unnecessary. The Title IX expansion Petitioners seek is not required to protect K-12 public school employees. These employees are already among the most heavily protected workers in America, shielded by Title VII, various constitutional protections, state tenure statutes, collective bargaining agreements, and comprehensive state anti-discrimination and anti-retaliation laws that in many cases provide greater protections and remedies than federal law. A new right of action under Title IX would add little to these already extensive protections, but it would effectively divert scarce resources away from students—the key population Title IX was designed to protect—by channeling funds for improving education to defending lawsuits.

This Court should decline to create a new avenue for employment discrimination claims different from the one Congress actually legislated. The judgment of the court of appeals should be affirmed.

ARGUMENT

“[P]rivate rights of action to enforce federal law must be created by Congress.” *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001). Congress “usually does so expressly.” *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1552 (2026). If a plaintiff sues to enforce a statute

that lacks an express private right of action, this Court examines the statute's text and structure to determine whether Congress "unambiguous[ly]" intended to provide an implied private right of action. *Gonzaga Univ. v. Doe*, 536 U.S. 273, 280 (2002) (citation omitted). This settled rule springs from the fact that judicially created "causes of action are difficult to reconcile with 'the Constitution's separation of legislative and judicial power.'" *FS Credit*, 146 S. Ct. at 1553 (citation omitted).

The case for implying a new private right of action for employment discrimination claims under Title IX is exceptionally weak. Nothing in Title IX supports such a right of action, much less *unambiguously* shows that Congress intended one. Meantime, Congress provided an express private right of action for employment discrimination claims under Title VII and extended it to educational institutions shortly before it passed Title IX. Judicially implying the same right under Title IX would entirely undercut the process Congress designed for employment discrimination claims under Title VII, burden employers beyond anything Congress intended, and particularly harm public school districts.

There is no reason for this Court to assume the role of legislator and take that drastic step.

I. CONGRESS CREATED A CAREFULLY CALIBRATED PRIVATE RIGHT OF ACTION FOR EMPLOYMENT DISCRIMINATION UNDER TITLE VII

Often, the temptation to infer a private right of action comes from the absence of any other remedy. Here, however, Congress has already enacted a private right of action governing employment

discrimination. The case for implying such a private right under Title IX is therefore especially weak.

Title VII and Title IX both prohibit sex discrimination at educational institutions—but in different ways. Title VII makes it unlawful for a covered employer “to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s . . . sex.” 42 U.S.C. § 2000e-2(a)(1). In 1972, Congress extended Title VII’s prohibition on employment discrimination to educational institutions. Equal Employment Opportunity Act, Pub. L. No. 92-261, §§ 2-3, 86 Stat. 103, 103-04 (1972). Congress undertook this extension in “response to the widespread and compelling problem of invidious discrimination in educational institutions.” *University of Pennsylvania v. EEOC*, 493 U.S. 182, 190 (1990).

Three months after Congress expanded Title VII to include employees of educational institutions, it enacted Title IX of the Education Amendments of 1972. Pub. L. No. 92-318, § 901, 86 Stat. 235, 373-74 (1972). The text of Title IX is notably different from Title VII. Under Title IX, “[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’s text focuses most clearly on students, the population that directly “participat[es] in” and “benefits” from “education program[s] or activit[ies].” *Id.*

Title VII and Title IX have very different enforcement schemes. “[A]n integrated, multistep

enforcement procedure” governs Title VII claims. *EEOC v. Shell Oil Co.*, 466 U.S. 54, 62 (1984) (citation omitted). First, a complainant must file a charge with the Equal Employment Opportunity Commission (EEOC) within 180 days of being aggrieved by the alleged unlawful employment practice. 42 U.S.C. § 2000e-5(b), (e)(1). Next, the EEOC notifies the employer of the charge, investigates it, determines whether there is reasonable cause to believe it is true, and if so, “endeavor[s] to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion.” *Id.* § 2000e-5(b). If those methods prove ineffectual, then—and only then—the EEOC or the Attorney General may bring a civil action against the employer. *Id.* § 2000e-5(f)(1). And if they do not do so within 180 days of the charge’s filing, then the complainant may bring such an action within the next 90 days. *Id.* The complainant may seek damages in that action up to a limit based on the size of the employer. *Id.* § 1981a(b)(3) (capping combined compensatory and punitive damages at \$50,000 to \$300,000, depending on employer size). The complainant may also seek backpay for up to two years. *Id.* § 2000e-5(g)(1).

This Court has recognized that Title VII’s administrative exhaustion process is “crucial.” *Great Am. Fed. Sav. & Loan Ass’n v. Novotny*, 442 U.S. 366, 376 (1979). Congress designed this process because it viewed “[c]ooperation and voluntary compliance . . . as the preferred means for achieving” equality in employment opportunity. *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 44 (1974). To that end, the EEOC’s conciliation obligation “is a key component of the statutory scheme.” *Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486 (2015). Also key are the carefully

calibrated “time limitations for administrative and judicial filing[s],” which “prevent[] immediate filing of judicial proceedings in order to encourage voluntary conciliation.” *Novotny*, 442 U.S. at 373-74. The limitations on damages likewise reflect Congress’s judgment that employers’ liability should be “carefully limited.” *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 286 (1998).

This process is carefully calibrated to balance the competing interests of preventing employment discrimination and preventing protracted or abusive litigation. In fiscal year 2025 alone, the EEOC recovered \$528 million for over 13,000 employees in the private sector and in state and local government workplaces through mediation, conciliation, and settlements. EEOC, *FY 2027 Agency Performance Plan and FY 2025 Agency Performance Report* 10 (Apr. 3, 2026).² Meanwhile, the EEOC recovered only \$27 million for about 2,500 individuals through actual litigation. *Id.* These results validate Congress’s judgment that employment discrimination claims should be resolved through conciliation, where possible, rather than costly and disruptive litigation.

In stark contrast to Title VII, Title IX contains no express enforcement mechanism besides “an administrative procedure resulting in the withdrawal of federal funding from institutions that are not in compliance.” *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009). In *Cannon v. University of Chicago*, however, this Court—in a different era—held that Title IX provides an “implied” private right of action for a prospective student alleging sex

² <https://www.eeoc.gov/fy-2027-agency-performance-plan-app-and-fy-2025-agency-performance-report-apr>.

discrimination in school admissions. 441 U.S. 677, 717 (1979). “In subsequent cases,” this Court “defined the contours of that right of action.” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005). But the right of action has remained limited to claims involving sex discrimination against students, *i.e.*, students alleging sex discrimination against themselves, or employees alleging retaliation because they complained about sex discrimination against students. *See id.* at 171-77.

As a result of the “implied” nature of Title IX lawsuits, Title IX litigation has none of the gatekeeping features Congress designed for Title VII litigation. For instance, Title IX claims are constrained by no express time limitations, so courts borrow state statutes of limitations for personal injury claims, which are typically far longer than Title VII’s 180-day deadline for filing a charge. *See, e.g., M.H.D. v. Westminster Schs.*, 172 F.3d 797, 802-03 (11th Cir. 1999) (applying Georgia’s two-year limitations period for personal injury claims to Title IX claim); *Purcell v. New York Inst. of Tech.-Coll. of Osteopathic Med.*, 931 F.3d 59, 63-65 (2d Cir. 2019) (applying New York’s three-year limitations period for personal injury claims to Title IX claim).

Title IX plaintiffs also do not have “to comply with particular procedures and/or to exhaust particular administrative remedies prior to filing suit.” *Fitzgerald*, 555 U.S. at 254. So while a Title VII claim may never reach court because it is resolved through voluntary conciliation, Title IX claims proceed

straight to court. And once there, they typically take longer than Title VII claims to resolve.³

Title IX claims also lack comparable damages limitations. “Congress carefully limited the amount recoverable in any individual case” under Title VII, “calibrating the maximum recovery to the size of the employer.” *Gebser*, 524 U.S. at 286; *see supra* at 8. But under Title IX, employers can incur uncapped compensatory damages. *See Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 76 (1992).

The upshot of this mismatch in enforcement schemes is that Title IX litigation is far costlier for employers than Title VII litigation. Title IX claims have a longer statute of limitations, do not undergo any administrative process that might obviate the need for litigation, and come with uncapped damages exposure. Creating a right of action under Title IX for employment discrimination claims would thus dramatically increase employers’ litigation exposure and uncertainty. Claims that previously had to be

³ *E.g., compare Goldblum v. University of Cincinnati*, 415 F. Supp. 3d 799, 807 (S.D. Ohio 2019) (Title VII claim dismissed), *with Goldblum v. University of Cincinnati*, No. 19-cv-398, 2022 WL 900623, at *7 (S.D. Ohio Mar. 28, 2022) (summary judgment on Title IX claim granted to employer three years later); *compare Kincaid v. Unified Sch. Dist. No. 500, Kansas City*, 572 F. Supp. 3d 1081, 1099 (D. Kan. 2021) (Title VII claim dismissed), *with Kincaid v. Unified Sch. Dist. No. 500, Kansas City*, 645 F. Supp. 3d 1134, 1176-77 (D. Kan. 2022) (summary judgment on Title IX claim granted to employer one year later); *see also Harrington v. Lesley Univ.*, 554 F. Supp. 3d 211, 241 (D. Mass. 2021) (Title VII claim dismissed, but Title IX claim allowed to proceed); *Pahlevani v. Pennsylvania State Univ.*, No. 23-cv-1189, 2026 WL 910226, at *21 (M.D. Pa. Mar. 31, 2026) (same); *Henschke v. New York Hosp.-Cornell Med. Ctr.*, 821 F. Supp. 166, 173 (S.D.N.Y. 1993) (same).

filed within a limited amount of time, undergo vetting by the EEOC, and were subject to damages limits would suddenly have none of those constraints.

Moreover, to avoid Title VII's constraints, employees would be incentivized to skip its administrative process altogether and go straight to court under Title IX in the hopes that they will either win a large damages payout or obtain a quick settlement if the employer wants to avoid litigation. Indeed, as this Court has recognized, Title VII, "with its rigorous administrative exhaustion requirements and time limitations, would be driven out of currency were immediate access to the courts under other, less demanding statutes permissible." *Brown v. General Servs. Admin.*, 425 U.S. 820, 833 (1976).

Rather than drive Title VII "out of currency" and dramatically increase employers' liability and litigation exposure for employment discrimination claims beyond anything Congress intended, this Court should confine Title IX's implied private right of action to claims involving sex discrimination against students. This Court has already "retreated from *Cannon's* reasoning" and the "expansive rights-creating approach" that decision "exemplified" and "later decisions 'abandoned.'" *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 369 n.1 (2025) (citation omitted). Nothing in Title IX's student-focused text or spare remedial structure justifies a return to the "since rejected . . . practice of fashioning rights of action as [the Court] see[s] fit" and implying a new private right of action under Title IX for employees. *FS Credit*, 146 S. Ct. at 1553.

II. CREATING A PRIVATE RIGHT OF ACTION FOR EMPLOYMENT DISCRIMINATION UNDER TITLE IX WOULD SEVERELY BURDEN PUBLIC SCHOOL DISTRICTS

The creation of a new Title IX avenue for employment discrimination claims would be particularly harmful for public school districts.

The nation’s school districts face rising costs but declining budgets. *See* Jake Bryant et al., *From surplus to scarcity: K-12 districts brace for leaner years*, McKinsey & Co. (Sept. 25, 2025).⁴ For the upcoming school year, “[m]ore than half of the country’s 50 largest school districts are poised to or already have made cuts, or are facing a reported deficit.” Lily Altavena, *School budgets are under pressure nationwide. Here’s what’s driving the cuts.*, Chalkbeat (May 28, 2026).⁵ These cuts include cancelling technology contracts and slashing specific medications from employee health plans. *Id.*

The new Title IX implied private right of action Petitioners seek here would apply not only to Respondent universities, but also to public school districts. These districts already devote substantial resources to Title IX compliance in a setting that presents distinct challenges. As this Court recognized when it extended Title IX’s implied private right of action to claims alleging student-on-student sexual harassment, “in the school setting, students often engage in insults, banter, teasing, shoving, pushing,

⁴ <https://www.mckinsey.com/industries/education/our-insights/from-surplus-to-scarcity-k-12-districts-brace-for-leaner-years>.

⁵ <https://www.chalkbeat.org/2026/05/28/schools-making-budget-cuts-and-layoffs-due-to-inflation-enrollment-declines/>.

and gender-specific conduct that is upsetting to the students subjected to it,” and it can be difficult to ascertain when “teasing and name-calling” rises to the level of actual harassment that the school must treat as such. *Davis ex rel. LaShonda D. v. Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 651-52 (1999). Public school districts regularly litigate the difficult line-drawing exercises present in such claims—litigation that often is only further complicated when young children are involved.⁶

Public school districts dealing with such claims must also comply with an extensive regulatory regime. In 2020, the Department of Education imposed new Title IX regulations that “increase[d] the obligations K-12 districts have for addressing sexual harassment” in several significant ways. Maggie Hickey et al., *Title IX regulations impose new requirements on K-12 districts*, K-12 Dive (June 4, 2020).⁷ These regulations create an extensive grievance procedure for student-on-student sexual harassment complaints, replete with requirements such as written notice of allegations, a presumption of

⁶ See, e.g., *T.Z. v. City of New York*, 634 F. Supp. 2d 263, 272 (E.D.N.Y. 2009) (involving question whether conduct at issue was “‘inevitable’ boy-girl horseplay” or “serious enough to have a systemic effect on plaintiff’s educational opportunities”); *Doe ex rel. Doe v. Dallas Indep. Sch. Dist.*, No. 01-CV-1092, 2002 WL 1592694, at *1 (N.D. Tex. July 16, 2002) (involving alleged sexual assault of a five-year-old by a five-year-old classmate in P.E. class); *Hunter ex rel. Hunter v. Barnstable Sch. Comm.*, 456 F. Supp. 2d 255, 259-60 (D. Mass. 2006) (involving alleged sexual harassment of a kindergartener by a third-grader on a school bus).

⁷ <https://www.k12dive.com/news/title-ix-regulations-impose-new-requirements-on-k-12-districts/579199/>.

non-responsibility for the accused student, a full investigation, equal access to the evidence, an impartial decisionmaker, a written determination, and appeal rights. *See* 34 C.F.R. § 106.45. These regulations also require that any time any employee—not only the Title IX coordinator, but also a bus driver, a cafeteria worker, or a substitute teacher—learn about a sexual harassment allegation, the school deploy an extensive response by promptly contacting the complainant, offering supportive measures, and providing parents the right to act on behalf of their children. *See id.* §§ 106.6(g), 106.44. These procedures apply even if the students involved are very young—*e.g.*, five or six years old. And the stakes are high: Failure to comply can result in penalties up to termination of federal financial assistance. *See* 20 U.S.C. § 1682.

This complex investigatory and adjudicatory scheme is just for one type of Title IX claim: student-on-student sexual harassment. Public school districts also comply with extensive Title IX regulations in other areas, including athletics. *See* 34 C.F.R. pt. 106. Public school districts' and their administrators' resources are already strained by an expansive Title IX regime. That strain would only increase if the regime were expanded to include an implied private right of action for employment discrimination claims. The ultimate outcome of the resulting increase in litigation would be diversion of funds from public schools' primary purpose—education of students—to legal expenses or insurance fees.⁸ This Court has

⁸ Public school districts already face massive litigation costs that are constantly climbing. *See United Educators, Large*

observed that a key purpose of Title IX’s enforcement design is “to avoid diverting education funding from beneficial uses.” *Gebser*, 524 U.S. at 289. Implying a new private right for employment discrimination claims under Title IX would thwart that purpose and compound public schools’ financial challenges.

Moreover, K-12 public schools have far less capacity to absorb rising litigation costs than higher education institutions. Public school administrators already navigate an extraordinarily complex legal landscape that involves not just Title IX compliance, but also compliance with the unique obligations imposed on K-12 public schools under the Individuals with Disabilities Education Act, Section 504 of the Rehabilitation Act, the First Amendment, and more. Yet while the volume of legal obligations has grown, staffing has not. Often, a single Title IX coordinator is responsible for investigating sexual harassment and assault complaints from students and employees, monitoring athletics equity, coordinating grievance procedures, training personnel, and maintaining seven years of records. *See* 34 C.F.R. § 106.8. And that same coordinator may also be responsible for ensuring compliance with several other civil rights regimes at the same time, or he or she may balance

Loss Report 2026, at 4, 16 (2026), <https://www.ue.org/globalassets/global/large-loss-report-2026.pdf> (from 2019 to 2024, the average cost of general liability and educators legal liability claims nearly doubled, and defense and settlement costs continue to rise due to “an increasingly complex litigation landscape”); John Rogers et al., *The Costs of Conflict: The Fiscal Impact of Culturally Divisive Conflict on Public Schools in the United States* 8 (2024), <https://idea.gseis.ucla.edu/publications/files/costs-of-conflict-report> (among the various costs schools incur as a result of culturally divisive conflict, “legal expenses comprised the largest area of costs”).

Title IX coordinator responsibilities with a full-time teaching position.⁹

The “parallel processes” imposed by different regulatory regimes “strain[] timelines and staff capacity, particularly in K-12 where school-based teams juggle discipline, safety, and service provision.” Brandon Wright, *Title IX’s Current Regulatory Landscape and Its Implications for Special Education*, Title IX Insights (Nov. 19, 2025).¹⁰ And Title IX alone imposes so many rules that “[t]he responsibilities of the Title IX coordinator can seem overwhelming.” Peg Pennepacker, *The Title IX Coordinator: Roles and Responsibilities*, NFHS (Apr. 27, 2021).¹¹ Creating yet another avenue for litigation under Title IX—for employment claims that already have an avenue under Title VII—would force public school districts and their administrators to

⁹ See, e.g., Anderson Sch. Dist. 5, *Title IX Compliance & Notice of Nondiscrimination Statement*, https://www.anderson5.net/apps/pages/index.jsp?uREC_ID=3709188&type=d&pREC_ID=2427486 (last visited Aug. 13, 2026) (designating a single individual to handle inquiries and complaints under Title VII, Title IX, the Age Discrimination Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans with Disabilities Act, and more); W. Scott Lewis & Patience Bartunek, *Title IX Regulation Study: Colorado Department of Education* 20, TNG, LLC (Mar. 27, 2023), <https://www.cde.state.co.us/cdedepcom/titleixstudy> (finding that only one of all K-12 personnel consulted “had a position that was fully Title IX focused,” while others must “balance their ‘regular’ job as well as the Title IX Coordinator position,” which “does not allow them to give 100% to either of the roles”).

¹⁰ <https://www.titleixinsights.com/2025/11/title-ixs-current-regulatory-landscape-and-its-implications-for-special-education/>.

¹¹ <https://nfhs.org/stories/the-title-ix-coordinator-roles-and-responsibilities>.

manage even more parallel processes and compliance responsibilities. The ultimate result would be more staff time and resources spent on consulting with attorneys, and less on instructing students.

Importantly, K-12 public school employees will not be left without protections if this Court declines to create the requested private right of action under Title IX. Employees alleging sex discrimination will, of course, still have access to Title VII's comprehensive remedy, which is working as Congress intended. *See supra* at 9. And employees facing retaliation for reporting sex discrimination against students can sue under Title IX, as this Court has previously held. *See id.* at 9-10.

In addition to the protections K-12 public school employees enjoy under federal statutory and regulatory schemes, they also enjoy certain constitutional and state law protections.

First, K-12 public school employees have unique protections under the First and Fourteenth Amendments. It has long been established that educators, like students, do not “shed” their First Amendment rights “at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969). Public K-12 employees who speak out about sex discrimination would thus be protected by the First Amendment. *Cf. Pickering v. Board of Educ. of Twp. High Sch. Dist. 205*, 391 U.S. 563, 574-75 (1968). Additionally, tenured public K-12 employees can invoke Fourteenth Amendment due process protections, entitling them to notice and an opportunity to be heard before they may be dismissed. *See Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985) (tenure creates property interest). And even non-tenured employees can invoke due

process protections under certain circumstances. *See Board of Regents v. Roth*, 408 U.S. 564, 573 (1972) (due process required where retaliatory non-renewal implicates reputational damage or foreclosure of other employment opportunities); *Perry v. Sindermann*, 408 U.S. 593, 602 (1972) (due process required where circumstances create “a legitimate claim of entitlement to job tenure”). Employees can also invoke the Equal Protection Clause. *See Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 636-38 (1974).

Second, at least 40 states have tenure laws in place that prevent school districts from dismissing tenured K-12 educators without a showing of good cause. *See* Nat’l Educ. Ass’n, *Teacher Tenure & Due Process Protections for Educators* (Apr. 4, 2023).¹² Tenure protection is both substantive and procedural. Substantively, tenure laws prohibit public school districts from terminating a tenured teacher unless he or she has demonstrated conditions such as incompetence, immorality, insubordination, and neglect of duty—and the burden of proof typically falls on the school district. *See, e.g.*, N.J. Stat. Ann. § 18A:6-10 (preventing dismissal of tenured persons “except for inefficiency, incapacity, unbecoming conduct, or other just cause”). And procedurally, tenure laws require that the tenured teacher receive written notice, a hearing, an opportunity to appeal to another entity—a state court, a tenure commission, the state board of education—and even further opportunities to appeal, meaning that a single termination decision could be reviewed four or five

¹² <https://www.nea.org/resource-library/teacher-tenure-due-process-protections-educators>.

times. *See, e.g., id.* (requiring “written charge” and “hearing”); N.Y. Educ. Law § 3020-a (similar); Iowa Code Ann. § 279.15 to -.19 (similar); Tex. Educ. Code Ann. §§ 21.251 to -.307 (requiring adversarial hearing before certified hearing examiner, followed by board review, appeal to Commissioner of Education, and judicial appeals). Consequently, public school districts must undergo protracted, complex, and expensive proceedings before they can terminate a tenured employee.¹³

Third, most states have collective bargaining statutes that permit K-12 public school employees to unionize and collectively bargain over the terms and conditions of their employment. Educ. Comm’n of the States, *50-State Comparison: Teacher Employment Contract Policies* (July 2020).¹⁴ Under collective bargaining agreements, public K-12 employees

¹³ *See, e.g., Gillespie v. Newark Bd. of Educ.*, No. 21-18990, 2025 WL 1839453, at *2 (D.N.J. June 13, 2025) (over 23 years of proceedings from the filing of initial charges in 2002 through the culmination of federal litigation in 2025); *Ortega v. Chicago Bd. of Educ.*, 280 F. Supp. 3d 1072, 1077, 1080-83 (N.D. Ill. 2017) (approximately eight years of proceedings involving pursuit of remedies through more than a dozen administrative agencies, a five-day jury trial, and post-verdict litigation); *Emri v. Evesham Twp. Bd. of Educ.*, 327 F. Supp. 2d 463, 465-66, 469, 474-75 (D.N.J. 2004) (four years of proceedings involving 56 original charges, 19 hearing days before an administrative law judge, a 70-page decision from the judge, and litigation before five separate forums); *Sapia v. Board of Educ. of City of Chicago*, 328 F.R.D. 506, 509 (N.D. Ill. 2019) (involving four years of discovery alone); *Baker v. Moon Area Sch. Dist.*, No. 15-cv-1674, 2021 WL 1111130, at *1-2 (W.D. Pa. Feb. 16, 2021) (over five years of proceedings, including statutory pre-termination hearings).

¹⁴ <https://reports.ecs.org/comparisons/teacher-employment-contract-policies-09>.

receive rights beyond those provided under federal and state law, including additional procedures for disciplinary proceedings and restrictions on what discipline is appropriate for various misconduct. Nat'l Educ. Ass'n, *Educator Rights & Discipline by the Employer* (Apr. 5, 2023).¹⁵ And employees who must undergo disciplinary proceedings often receive free legal representation from their unions. *See, e.g.*, Worthington Educ. Ass'n, *Member Benefits*, <https://worthingtonea.org/index.php/member-benefits/nea-member-benefits> (last visited Aug. 13, 2026) ("Your Association provides you with free legal representation for the defense of your employment rights."); Colo. Educ. Ass'n, *Union Member Benefits*, <https://coloradoea.org/member-benefits/> (last visited Aug. 13, 2026) ("[Y]ou don't have to pay a penny in legal fees!").

Fourth, on top of these protections, employees of public school districts enjoy robust protections under state anti-discrimination and anti-retaliation laws. Many states now have statutes protecting employees who report unlawful activity from adverse employment actions: Petitioner MaChelle Joseph, for example, also sued Respondent Board of Regents of the University System of Georgia under the Georgia Whistleblower Act, Ga. Code Ann. § 45-1-4, which is a broad statute that has no administrative prerequisites or caps on damages. Pet. App. 87a-88a. Nearly every state also has laws that forbid sex

¹⁵ <https://www.nea.org/resource-library/educator-rights-discipline-employer>.

discrimination in employment.¹⁶ Some have specifically applied this prohibition to educational

¹⁶ See, e.g., Ala. Code § 25-1-30(b); Alaska Stat. Ann. § 18.80.220; Ariz. Rev. Stat. Ann. § 41-1463; Ark. Code Ann. § 16-123-107; Cal. Gov't Code § 12940; Colo. Rev. Stat. Ann. § 24-34-402; Conn. Gen. Stat. Ann. § 46a-60(b); Del. Code Ann. tit. 19, § 711(b); Fla. Stat. Ann. § 760.10; Ga. Code Ann. § 45-19-29; Haw. Rev. Stat. Ann. § 378-2(a); Idaho Code Ann. § 67-5909; 775 ILCS 5/2-102; Ind. Code Ann. § 22-9-1-3; Iowa Code Ann. § 216.6; Kan. Stat. Ann. § 44-1009; Ky. Rev. Stat. Ann. § 344.040; La. Stat. Ann. § 23:332; Me. Rev. Stat. Ann. tit. 5, § 4572; Md. Code Ann., State Gov't § 20-606; Mass. Gen. Laws Ann. ch. 151B, § 4; Mich. Comp. Laws Ann. § 37.2202; Minn. Stat. Ann. § 363A.08; Mo. Ann. Stat. § 213.055; Mont. Code Ann. § 49-2-303; Neb. Rev. Stat. Ann. § 48-1104; Nev. Rev. Stat. Ann. § 613.330; N.H. Rev. Stat. Ann. § 354-A:7; N.J. Stat. Ann. § 10:5-12; N.M. Stat. Ann. § 28-1-7; N.Y. Exec. Law § 296; N.C. Gen. Stat. Ann. § 143-422.2; N.D. Cent. Code Ann. § 14-02.4-03; Ohio Rev. Code Ann. § 4112.02; Okla. Stat. Ann. tit. 25, § 1302; Or. Rev. Stat. Ann. § 659A.030; 43 Pa. Stat. and Cons. Ann. § 955; R.I. Gen. Laws Ann. § 28-5-7; S.C. Code Ann. § 1-13-80; S.D. Codified Laws § 20-13-10; Tenn. Code Ann. § 4-21-401(a); Tex. Lab. Code Ann. § 21.051; Utah Code Ann. § 34A-5-106; Vt. Stat. Ann. tit. 21, § 495; Va. Code Ann. § 2.2-3905; Wash. Rev. Code Ann. § 49.60.180; W.Va. Code Ann. § 16B-17-9; Wis. Stat. Ann. § 111.36; Wyo. Stat. Ann. § 27-9-105.

institutions.¹⁷ And 45 states and the District of Columbia have provided a private right of action.¹⁸

In some important respects, states' private rights of action are more generous than Title VII. For instance, over two dozen states cover employers smaller than those covered under Title VII.¹⁹ Several impose no administrative exhaustion requirement.²⁰

¹⁷ See, e.g., Fla. Stat. Ann. § 1000.05(2)(a) (prohibiting sex discrimination against employees in the state system of public K-20 education); Va. Code Ann. § 22.1-295.2(B) (prohibiting school boards and their agents or employees from discriminating in employment on the basis of sex); Ky. Rev. Stat. Ann. § 161.164(4) (prohibiting teachers or employees of a district board of education from being appointed, promoted, demoted, or dismissed because of sex); Wis. Stat. Ann. § 118.20(1) (prohibiting sex discrimination in the employment, assignment, or reassignment of teachers and administrative personnel in public schools).

¹⁸ See, e.g., Alaska Stat. Ann. § 18.80.220; Ariz. Rev. Stat. Ann. § 41-1463; Ark. Code Ann. § 16-123-107(b); Cal. Gov't Code § 12940; Colo. Rev. Stat. Ann. § 24-34-402; Conn. Gen. Stat. Ann. § 46a-60; Del. Code Ann. tit. 19, § 711; D.C. Code Ann. § 2-1402.11.

¹⁹ Title VII applies only to employers with 15 or more employees. 42 U.S.C. § 2000e(b); *cf.*, e.g., Wyo. Stat. Ann. §§ 27-9-102(b), 27-9-105 (applies to employers with 2+ employees); Iowa Code Ann. § 216.6(6)(a) (4+ employees); Alaska Stat. Ann. § 18.80.220 (no minimum); Colo. Rev. Stat. Ann. § 24-34-402 (no minimum); D.C. Code Ann. § 2-1402.11 (no minimum); Minn. Stat. Ann. § 363A.08(b) (no minimum); Mont. Code Ann. § 49-2-303 (no minimum); N.J. Stat. Ann. § 10:5-12 (no minimum).

²⁰ See, e.g., N.J. Stat. Ann. § 10:5-12; Mich. Comp. Laws Ann. § 37.2801; N.D. Cent. Code Ann. § 14-02.4-19(2); Vt. Stat. Ann. tit. 21, § 495b; Wash. Rev. Code Ann. § 49.60.180; Ark. Code Ann. § 16-123-107(c).

Many provide substantially longer filing deadlines.²¹ And still others impose no statutory cap on damages or allow other enhanced remedies.²²

Creating a new private right of action under Title IX for employment discrimination claims would not meaningfully enhance the extensive protections employees of public school districts already enjoy under existing federal and state laws. But it would dramatically increase public school districts' already immense regulatory and financial burdens, forcing them to reassign their limited resources to litigation and compliance rather than to students.

* * * * *

This Court's own avowal that it has sworn off the habit of implying private rights of action should be the beginning and end of the analysis in this case. See *Sandoval*, 532 U.S. at 286. But, here, there not only is no legal basis to infer a private right of action, there

²¹ Within 5 years: Or. Rev. Stat. Ann. § 659A.875(6)(b)-(c). Within 3 years: N.Y. Exec. Law § 297(5); Cal. Gov't Code § 12960(e)(5); Mass. Gen. Laws Ann. ch. 151B, § 9; Mich. Comp. Laws Ann. § 600.5805(2); Vt. Stat. Ann. tit. 12, § 512; Wash. Rev. Code Ann. § 4.16.080. Within 2 years: N.J. Stat. Ann. § 2A:14-2; Md. Code Ann., State Gov't § 20-1013(a)(1)(iii); Ohio Rev. Code Ann. § 4112.052(C)(1).

²² Cal. Gov't Code § 12940 (no cap on compensatory or punitive damages); Colo. Rev. Stat. Ann. § 24-34-402 (same); Conn. Gen. Stat. Ann. § 46a-60 (same); D.C. Code Ann. § 2-1402.11 (same); Md. Code Ann., State Gov't § 20-606 (same); Mich. Comp. Laws Ann. § 37.2202 (same); Minn. Stat. Ann. § 363A.08 (same); N.J. Stat. Ann. § 2A:15-5.14(c) (same); N.Y. Exec. Law § 296 (same); Ohio Rev. Code Ann. § 4112.02 (same); Or. Rev. Stat. Ann. § 659A.030 (same); 43 Pa. Stat. and Cons. Ann. § 955 (same); Vt. Stat. Ann. tit. 21, § 495 (same); 775 ILCS 5/2-102 (uncapped emotional distress damages); N.J. Stat. Ann. § 10:5-13(d) (treble damages).

is no practical need for the creation of such a right. Title VII already grants employees a private right of action against employment discrimination. That makes Petitioners' request for judicial implication of such a right under Title IX all the more perverse.

CONCLUSION

The judgment of the court of appeals should be affirmed.

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