No. 25-183

In the Supreme Court of the United States

THOMAS CROWTHER, ET AL., PETITIONERS

v.

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

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENTS

D. JOHN SAUER
Solicitor General
Counsel of Record
HARMEET K. DHILLON
Assistant Attorney General
HASHIM M. MOOPPAN
Deputy Solicitor General
MAX E. SCHULMAN
Assistant to the Solicitor General
DAVID N. GOLDMAN
JOSHUA R. ZUCKERMAN
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, provides employees of federally funded educational institutions a private right of action to sue for sex discrimination in employment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Cases—Continued: Page

In the Supreme Court of the United States

No. 25-183

THOMAS CROWTHER, ET AL., PETITIONERS

v.

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

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENTS

INTEREST OF THE UNITED STATES

The United States is responsible for enforcing Title IX of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, and Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.* The United States thus has a substantial interest in whether private plaintiffs may sue for employment discrimination under Title IX instead of Title VII. At the Court's invitation, the United States filed a brief at the petition stage advocating that certiorari should be granted and the decision below should be affirmed.

INTRODUCTION

This Court has "virtually eliminated the practice of fashioning" implied rights of action, *Cisco Sys., Inc.* v. *Doe*, 146 S. Ct. 1882, 1891 (2026), and has reaffirmed that "Congress, not the Judiciary, decides who may enforce the law," *FS Credit Opportunities Corp.* v. *Saba Capital Master Fund, Ltd.*, 146 S. Ct. 1546, 1551 (2026). A straightforward application of that principle resolves this case: Congress did not implicitly authorize private suits under Title IX for employment discrimination at federally funded educational institutions. To the contrary, it foreclosed that implication by contemporaneously authorizing such suits under Title VII, subject to a critical administrative process and calibrated remedial limitations that Title IX conspicuously lacks. Congress thus decided exactly when and how far to open the courthouse door to claims of sex discrimination in employment, specifically including claims by employees of educational institutions. Title VII's express remedy remains available to employees like petitioners, and their desire to avoid its express limitations—which is the only apparent reason they prefer to sue under Title IX—does not justify judicial circumvention of Congress's chosen means to redress sex discrimination in employment.

Precedents interpreting Title IX, Title VII, and analogous statutes reinforce that conclusion. Although this Court long ago inferred a private right of action under Title IX for sex discrimination in education, see *Cannon* v. *University of Chicago*, 441 U.S. 677, 717 (1979), it has repeatedly recognized in recent decades that the implied right of action is more limited than the scope of Title IX's substantive ban on discrimination and cannot be expanded in a manner inconsistent with statutory text and structure, see, *e.g.*, *Gebser* v. *Lago Vista Indep. Sch. Dist.*, 524

U.S. 274, 283-285 (1998); *Davis* v. *Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 639 (1999); *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022). In other words, the Court applies its normal, rigorous standards to limit *Cannon*'s implied remedy: As in other contexts, courts cannot extend implied rights of action in a manner inconsistent with the limits on other statutory remedies, including Title VII's. *E.g.*, *Great Am. Fed. Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 376 (1979) ("Title VII provides the exclusive remedy for employment discrimination claims of those federal employees that it covers.") (citing *Brown* v. *GSA*, 425 U.S. 820 (1976)). Those are the on-point precedents here, rather than inapposite cases that did not involve employment-discrimination claims subject to Title VII, *e.g.*, *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167 (2005), or legislative-history-parsing decisions from the *ancien regime* that the Court has repudiated and cabined, *e.g.*, *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454 (1975).

Petitioners do not attempt to satisfy the Court's usual strict requirements to extend an implied right of action. They instead make a plea for Title IX exceptionalism, contending that Congress's 1986 ratification of *Cannon* means that courts must maximally extend it alone (unlike all other implied remedies) to the statute's outer limits. But that argument contravenes precedents from *Gebser* to *Cummings*, which recognize that *Cannon*'s implied right of action remains just that—implied—and is therefore constrained, like all implied remedies, by express and implied statutory limitations. That is why the federal government's settled authority to terminate funding for educational institutions that discriminate in employment, see *North Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 514-516 (1982), does not compel the novel inference that employees may bypass Title VII to bring employment-discrimination claims under Title IX. Petitioners miss that crucial distinction, dedicating much of their brief to relitigating the underlying scope of Title IX even though that is not in dispute.

More generally, petitioners' request to expand *Cannon* flies in the face of this Court's sustained "retreat[] from *Cannon*'s reasoning, which 'exemplified' an 'expansive rights-creating approach' that later decisions 'abandoned.'" *Medina* v. *Planned Parenthood S. Atl.*, 606 U.S. 357, 369 n.1 (2025). And petitioners' policy arguments amount to the misguided proposition that Congress raised too many roadblocks to Title VII suits, so courts should cut a new road to relief under Title IX. That quarrel with Congress's policy judgments shows exactly why petitioners' claims must fail in court.

While Title IX is a "landmark law" that serves an important role in combating discrimination, *West Virginia* v. *B.P.J.*, 146 S. Ct. 2356, 2367 (2026), so too is Title VII. Respecting Congress's handiwork means respecting all of it, not expanding the later statute's implied remedy to end-run the earlier statute's express one. The Eleventh Circuit faithfully applied that principle to reject petitioners' claims.

STATEMENT

A. 1. Enacted in 1964, Title VII makes it unlawful for a covered employer to "discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. 2000e-2(a)(1).

Title VII "sets forth 'an integrated, multistep enforcement procedure' that enables the [Equal Employment Opportunity Commission (EEOC or Commission)] to detect and remedy instances of discrimination." *University of Pa.* v. *EEOC*, 493 U.S. 182, 190 (1990). A person claiming to be aggrieved by an unlawful employment practice must first file a charge with the EEOC within 180 days (or within 300 days if she first sought state or local administrative relief). 42 U.S.C. 2000e-5(b) and (e)(1). The Commission then notifies the employer and investigates. 42 U.S.C. 2000e-5(b). If it finds reasonable cause to believe the charge, the Commission "shall endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." *Ibid.* If those methods fail, the EEOC or Attorney General may sue the employer. 42 U.S.C. 2000e-5(f)(1). In any event, the complainant is entitled to a "right-to-sue" notice 180 days after the charge is filed. See *ibid.* Within 90 days of that notice, "a civil action may be brought against the [employer] by the [complainant]." *Ibid.* The plaintiff may seek relief including damages up to a limit tied to the employer's size. 42 U.S.C. 1981a.

This Court has emphasized the "crucial role" of Title VII's enforcement scheme. *Great Am. Fed. Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 376 (1979). The obligation for the EEOC to attempt conciliation "is a key component of the statutory scheme," in which "Congress chose 'cooperation and voluntary compliance' as its 'preferred means'" for "bringing employment discrimination to an end." *Mach Mining, LLC* v. *EEOC*, 575 U.S. 480, 486 (2015) (brackets omitted). Congress also "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). And Title VII's "time-limitations provisions themselves promote important interests," including Congress's "value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Delaware State Coll.* v. *Ricks*, 449 U.S. 250, 259-260 (1980).

As originally enacted, Title VII did "not apply * * * to an educational institution 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. 255 (July 2, 1964) (42 U.S.C. 2000e-1 (1964)), or to state and local governments, § 701(b), 78 Stat. 253 (42 U.S.C. 2000e(b) (1964)). On March 24, 1972, Congress amended Title VII to eliminate those exceptions. Equal Employment Opportunity Act of 1972, Pub. L. No. 92-261, §§ 2-3, 86 Stat. 103-104 (42 U.S.C. 2000e(b) and 2000e-1 (1976)). Today, Title VII applies to all private, state, and local government employers with 15 or more employees, 42 U.S.C. 2000e(b), with exceptions not relevant here, 42 U.S.C. 2000e-1.[1]

2. Title IX was enacted three months after the Equal Employment Opportunity Act of 1972. Pub. L. No. 92-318, 86 Stat. 373-375 (June 23, 1972). It provides: "No 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). This Court has construed that substantive pro-

---

[1] "A different provision of Title VII, 42 U.S.C. § 2000e-16, prohibits employment discrimination by the Federal Government and sets out procedures applicable to claims by federal employees." *Fort Bend County* v. *Davis*, 587 U.S. 541, 545 n.1 (2019). Congress also provided an express private right of action for sex-based wage discrimination under the Equal Pay Act of 1963. See 29 U.S.C. 206(d); 29 U.S.C. 216(b) (Supp. V 2023). Those provisions are not at issue here, as respondents' claims do not involve federal employment or unequal pay.

hibition to reach employment discrimination in federally funded education. *North Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 535-536 (1982).

"Title IX contains no express private remedy"; its "only express enforcement mechanism, [20 U.S.C.] 1682, is 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, 255-256 (2009); see *North Haven*, 456 U.S. at 514, 538-540 (upholding Title IX regulations permitting the government to "terminate funds" for "employment" discrimination). This Court, however, held in *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979), that Title IX provided an "implied" private right of action for a prospective student to sue for sex discrimination in admissions, "despite the absence of any express authorization for it in the statute." *Id.* at 717; see *id.* at 680.

The Rehabilitation Act Amendments of 1986, Pub. L. No. 99-506, Tit. X, § 1003, 100 Stat. 1845, expressly abrogated States' sovereign immunity from suit for violations of Title IX, 42 U.S.C. 2000d-7(a)(1), and provided that "remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State," 42 U.S.C. 2000d-7(a)(2). This Court has concluded that Congress thereby ratified *Cannon*'s creation of a private right of action. See *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022). The Court's cases "have defined the contours of" that "implied" right of action. *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 171, 173 (2005).

B. 1. Petitioner MaChelle Joseph was fired from her position as a coach at the Georgia Institute of Technology.

Pet. App. 66a-67a. She sued respondents (the Board of Regents of the University System of Georgia (Board) and Georgia Tech Athletic Association) and others in the Superior Court of Fulton County. *Id.* at 10a, 167a. As relevant here, her complaint asserted claims for sex discrimination in employment under Title IX. *Id.* at 10a.

Respondents removed the case to the Northern District of Georgia and moved to dismiss in part. Pet. App. 167a. The district court granted respondents' motions in relevant part. *Id.* at 66a-114a. The court held that Title VII precludes Title IX claims for employment discrimination. *Id.* at 76a. The court later granted respondents' motions for summary judgment against Joseph's remaining claims. *Id.* at 164a-258a.

2. Petitioner Thomas Crowther's contract as a professor at Augusta University was not renewed. Pet. App. 34a, 41a. Crowther sued the Board and others in the Northern District of Georgia. *Id.* at 33a-34a. As relevant here, his complaint asserted claims for sex discrimination in employment under Title IX. *Id.* at 2a, 43a.

The Board moved to dismiss. Pet. App. 33a-34a. The district court denied the motion in relevant part. *Id.* at 33a-65a. The court held that "Title VII does not preclude employment discrimination claims under Title IX." *Id.* at 52a. But it certified its order for interlocutory appeal under 28 U.S.C. 1292(b). Pet. App. 4a.

C. The Eleventh Circuit permitted the Board to appeal in Crowther's case, consolidated that appeal with Joseph's, and issued a unanimous panel decision. Pet. App. 1a-32a. On the Title IX employment-discrimination claims, the court affirmed the dismissal as to Joseph and reversed the denial of the motion to dismiss as to Crowther. *Id.* at 22a.

The Eleventh Circuit held that Title IX does not provide a private right of action for employment discrimination. Pet. App. 12a-22a. It read this Court's precedents to instruct that courts "cannot expand the[] scope" of implied rights of action "without assuring [themselves] that Congress unambiguously intended a right of action to cover more people or more situations than courts have yet recognized." *Id.* at 14a. And it noted that this Court "has never extended the implied private right of action under Title IX to claims of sex discrimination for employees." *Id.* at 17a. Considering "the text of Title IX and its statutory context," including its structure in relation to Title VII, the Eleventh Circuit rejected petitioners' request to extend *Cannon*'s implied remedy to such claims. *Id.* at 19a.

D. An Eleventh Circuit judge *sua sponte* called for a poll on rehearing en banc. Pet. App. 116a. The court denied rehearing. *Id.* at 116a-117a.

Chief Judge William Pryor, joined by Judge Luck, wrote an opinion respecting the denial of rehearing en banc. Pet. App. 117a-122a. He reiterated that his panel opinion for the court "faithfully applied Supreme Court precedent" establishing that, "in the absence of unambiguous congressional intent, we must decline to imply private rights of action." *Id.* at 117a.

Judge Rosenbaum, joined by Judges Jill Pryor, Abudu, and Kidd in full and by Judge Jordan in part, dissented from the denial of rehearing en banc. Pet. App. 123a-163a. She concluded that the decision below "departs from" *Cannon*, *North Haven*, and *Jackson*. *Id.* at 130a. She also deemed the availability of Title IX relief "important" because "Title VII comes with several procedural roadblocks" that "educators don't have spare time" to comply with. *Id.* at 158a-159a.

SUMMARY OF ARGUMENT

I. Title IX does not provide an implied right of action for employment discrimination at federally funded educational institutions.

A. This Court's decisions strongly disfavor not just the creation of implied private rights of action to sue, but the extension of previously implied ones. Precedent establishes a stringent and demanding standard that is virtually never satisfied: Plaintiffs must show that statutory text and structure unambiguously created a private right; that Congress further intended to create a private remedy; and that extending relief would not be inconsistent with other statutory remedies.

B. The Eleventh Circuit correctly applied that precedent to reject petitioners' request to extend an implied remedy. This Court has never recognized an implied right of action for employment discrimination under Title IX. No such "private *right*" is clearly implied by the statute's text, *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 284 (2002), which focuses on education rather than employment; and a "private *remedy*," *ibid.*, is clearly foreclosed by the statutory structure, including Congress's contemporaneous choice to subject employees of educational institutions to Title VII's comprehensive scheme. That makes this a straightforward case under precedents declining to extend Title IX's implied right of action, *e.g.*, *Gebser* v. *Lago Vista Indep. Sch. Dist.*, 524 U.S. 274 (1998), and holding that Title VII generally precludes invocation of implied remedies, *e.g.*, *Brown* v. *GSA*, 425 U.S. 820 (1976).

II. Petitioners do not attempt to satisfy the ordinary, rigorous requirements to expand an implied right of action to a new context. They instead rest on a series of erroneous arguments why the normal rules should not apply.

A. This Court did not already answer the question presented when addressing different Title IX issues in *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979); *North Haven Board of Education* v. *Bell*, 456 U.S. 512 (1982); or *Jackson* v. *Birmingham Board of Education*, 544 U.S. 167 (2005). None of those cases recognized an implied remedy for employment discrimination under Title IX or addressed Title VII's preclusive effect. *Cannon* addressed discrimination against students, not employees; and it has repeatedly been cabined. *North Haven* addressed the government's administrative authority to terminate funds, not private suits; and it acknowledged even in that context that Title IX does not expressly include employees. *Jackson* addressed retaliation for discrimination against students, not employment-discrimination claims cognizable under Title VII.

B. Nor do this Court's cases involving Title VII and 42 U.S.C. 1981 justify petitioners' attempted evasion of Title VII's remedial regime. Petitioners rely on inapposite and long-abrogated cases while ignoring on-point precedents holding that elaborate express remedies preclude implied rights of action, including *Brown* in an analogous context involving Title VII's comprehensive scheme.

C. Other statutes invoked by petitioners do not support them either. The Rehabilitation Act Amendments of 1986 implicitly ratified *Cannon*'s creation of an implied remedy, but they did not exempt that right of action from the usual limits on extending such remedies, as confirmed by subsequent Title IX cases and an array of analogous securities-law and *Bivens* precedents. The 1986 law thus did not ratify an implied right of action for employment discrimination that this Court had never recognized, under Title IX or any other statute. Petitioners' Title VI and Rehabilitation Act analogies fail for additional reasons, including their conflation of substantive statutory prohibitions with the scope of implied remedies, and their relitigation of arguments rejected by *Alexander* v. *Sandoval*, 532 U.S. 275 (2001), and other cases.

D. Petitioners' policy arguments are misdirected and wrong. Congress decides who may enforce the law, and courts lack authority and expertise to second-guess that policy judgment. Here, Congress reasonably chose to channel employment-discrimination claims on the basis of sex through Title VII's comprehensive administrative process and tailored remedial limitations. Petitioners' desire to end-run those requirements is a bug, not a feature.

E. The Court should decide this case on the ground that petitioners fail the standard test for extending implied private rights of action. As in *Sandoval*, that straightforward statutory rationale makes it unnecessary to reach, and prudent to avoid, the parties' further dispute over the constitutional notice requirement for legislation enacted under Congress's spending power.

ARGUMENT

I. TITLE IX DOES NOT IMPLY A PRIVATE RIGHT OF ACTION FOR EMPLOYMENT DISCRIMINATION AT FEDERALLY FUNDED EDUCATIONAL INSTITUTIONS

This Court has never recognized a private right of action for employment discrimination under Title IX. The statutory text and structure do not support expanding the remedy inferred in *Cannon* v. *University of Chicago*, 441 U.S. 677 (1979), to reach such claims. "Congress, not this Court, should extend th[at] implied cause[] of action" if it so chooses. *Cummings* v. *Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 231 (2022) (Kavanaugh, J., concurring).[2]

A. Extending Implied Rights Of Action Is Strongly Disfavored

Congress alone "determines who may sue to enforce federal law," and "it usually does so expressly." *FS Credit Opportunities Corp.* v. *Saba Capital Master Fund, Ltd.*, 146 S. Ct. 1546, 1552 (2026). In a prior era "exemplified" by *Cannon*, this Court "inferred new private causes of action" where private suits were perceived "to make effective a statute's purpose." *Medina* v. *Planned Parenthood S. Atl.*, 606 U.S. 357, 368, 369 n.1 (2025). More recently, however, "the Court has retreated from *Cannon*'s reasoning," *id.* at 369 n.1, and "firmly committed" to the rejection of implied causes of action "in almost every circumstance," *Cisco Sys., Inc.* v. *Doe*, 146 S. Ct. 1882, 1891 (2026). Now, if a statute's "text and structure" do not "manifest an intent to create a private remedy," then "a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute." *Alexander* v. *Sandoval*, 532 U.S. 275, 286-289 (2001). A plaintiff seeking to infer a right of action thus "must show" both that the statute "unambiguously" creates a private right, and that it "manifests an intent 'to create not just a private *right* but also

---

[2] In 1996, at the Court's invitation, the United States filed a brief recommending that the Court hold that Title IX provides a private right of action for employment discrimination, based largely on an analysis of "legislative history." See U.S. Amicus Br. at 11, 12 n.3, 13, 19, *Lakoski* v. *University of Tex. Med. Branch*, 519 U.S. 947 (1996) (No. 95-1439); see also U.S. Amicus Br. at 25-30, *Doe* v. *Mercy Catholic Med. Ctr.*, 850 F.3d 545 (3d Cir. 2017) (No. 16-1247) (similar). Following developments in this Court's jurisprudence, percolation in the courts of appeals, and multiple changes in Administration, the United States has reconsidered that view.

a private *remedy*.'" *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 283-284 (2002) (quoting *Sandoval*, 532 U.S. at 286).[3]

The same "concerns with the judicial creation of a private cause of action" also "caution against its expansion" to new types of violations, parties, or remedies. *Janus Capital Grp., Inc.* v. *First Derivative Traders*, 564 U.S. 135, 142 (2011) (brackets omitted); see *Jesner* v. *Arab Bank, PLC*, 584 U.S. 241, 264 (2018) ("The Court's recent precedents cast doubt on the authority of courts to extend or create private causes of action," both of which are matters "better left to legislative judgment in the great majority of cases"); *Cummings*, 596 U.S. at 231 (Kavanaugh, J., concurring) (cautioning courts neither to "extend [existing] implied causes of action" nor to "expand available remedies"). A "corollary" of the rule that

[3] *Gonzaga* required an "unambiguously conferred right" in the context of 42 U.S.C. 1983. 536 U.S. at 283. The Court, however, "reject[ed] the notion that our implied right of action cases are separate and distinct from our § 1983 cases," explaining that the requirement of "clear and unambiguous terms" is "no less and no more than what is required for Congress to create new rights enforceable under an implied private right of action." *Id.* at 283, 290; see, *e.g.*, *Franklin* v. *Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 72 (1992) (implying remedies where a statute "cannot be read" otherwise). That requirement is not limited to spending-power statutes, as made clear by *Gonzaga*'s categorical rule statement—"In sum, if Congress wishes to create new rights enforceable under § 1983, it must do so in clear and unambiguous terms," 536 U.S. at 290—and by its reliance on cases from outside the spending-power context, *e.g.*, *id.* at 284 (citing *Touche Ross & Co.* v. *Redington,* 442 U.S. 560 (1979)). See also *Medina*, 606 U.S. at 367-372 (distinguishing *Gonzaga*'s rules for all implied rights (Part II-A) from additional spending-power considerations (II-B)). The Eleventh Circuit therefore correctly invoked *Gonzaga*'s clear-statement rule. Pet. App. 13a-14a. Regardless, text and structure foreclose petitioners' claims under any standard. See pp. 17-20, *infra*.

implied private rights of action must remain grounded in the statute is that "the breadth of [a] right once recognized should not, as a general matter, grow beyond the scope congressionally intended." *Virginia Bankshares, Inc.* v. *Sandberg*, 501 U.S. 1083, 1102 (1991); see *id.* at 1110 (Scalia, J., concurring in part and concurring in the judgment) ("[T]he more narrow we make it (within the bounds of rationality) the more faithful we are to our task."); cf. *Ziglar* v. *Abbasi*, 582 U.S. 120, 147 (2017) ("[E]ven a modest extension is still an extension.").

A new remedial context matters because, as noted, a plaintiff "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. The same statute may have different implications for different remedies given what it and other statutes expressly say about other remedies. The Court's concerns about expanding implied rights of action therefore "are pertinent not only to the scope of the implied right, but also to the scope of the available remedies." *Gebser* v. *Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 284 (1998). And those concerns may "preclude" extension of a private remedy "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." *Sandoval*, 532 U.S. at 290 (quoting *Massachusetts Mut. Life Ins. Co.* v. *Russell*, 473 U.S. 134, 145 (1985)); see, *e.g.*, *Daily Income Fund, Inc.* v. *Fox*, 464 U.S. 523, 541 (1984) (rejecting an implied remedy for investment companies even though they "are undoubtedly within 'the class for whose *especial* benefit' [the statutory provision] was enacted").

Accordingly, in new contexts beyond the one presented in *Cannon*, there remains a "critical" difference between the threshold showing of discrimination required "to establish a Title IX violation" and the further showing required for private parties "to recover damages" or other "relief" for that violation. *Gebser*, 524 U.S. at 283 (emphasis omitted). "Because the private right of action under Title IX is judicially implied," courts must "shape a sensible remedial scheme that best comports with the statute" by "ensur[ing] that [they] do not fashion the scope of [the] implied right in a manner at odds with the statutory structure." *Id.* at 284. Even where the challenged conduct violates Title IX and entitles the government to terminate federal funding, 20 U.S.C. 1682, a putative plaintiff must further show that the statute supports extending judicial relief for private parties to that context.

For example, *Gebser* addressed "when a school district may be held liable in damages in an implied right of action under [Title IX] for the sexual harassment of a student by one of the district's teachers." 524 U.S. at 277. The Court acknowledged that, applying agency principles, the district might be held responsible "whenever a teacher's authority over a student facilitates the harassment." *Id.* at 282. But the Court set aside the distinct question whether those principles could establish "a Title IX violation." *Id.* at 283. It held that, regardless, "statutory structure" supported limiting "the implied damages remedy" to cases where the district had "actual knowledge of," and exhibited "deliberate indifference to," the teacher's misconduct. *Id.* at 284-285, 290; see *Davis* v. *Monroe Cnty. Bd. of Educ.*, 526 U.S. 629, 639 (1999) (again distinguishing, in the context of student-on-student harassment, between "defin[ing] the scope of the behavior that Title IX proscribes" and "determin[ing] whether [that behavior] can support a private suit").

Similarly, *Sandoval* considered "whether private individuals may sue to enforce disparate-impact regulations promulgated under Title VI of the Civil Rights Act of 1964," a statute that *Cannon* had reasoned provides an implied remedy analogous to Title IX's. 532 U.S. at 278. The Court held that, even "assum[ing]" the regulations were "valid" and enforceable by the government, statutory "text and structure" did not support extending the implied remedy to "reach[]" conduct that violated the regulations. *Id.* at 282, 288. Such cases confirm that, here as elsewhere, the "scope" of the implied "private right of action is more limited than the scope of the statute[] upon which it is based." *Chadbourne & Parke LLP* v. *Troice*, 571 U.S. 377, 382 (2014).

B. Statutory Text And Structure Do Not Support Extending *Cannon*'s Implied Right To The New Context Of Employment Discrimination

In this case, the Eleventh Circuit correctly invoked the governing principle that courts "cannot expand the[] scope" of an implied right of action "without assuring [themselves] that Congress unambiguously intended a right of action to cover more people or more situations than courts have yet recognized." Pet. App. 14a. Because this Court has never recognized a right of educational employees to sue for employment discrimination under Title IX, petitioners must make the heightened showing required to "extend the scope" and "expand the class of plaintiffs" under "a right of action implied by a federal statute," *Virginia Bankshares*, 501 U.S. at 1102, in order "to ensure that [courts] do not fashion the scope of an implied right in a manner at odds with the statutory structure," *Gebser*, 524 U.S. at 284.

The Eleventh Circuit also correctly applied that principle to reject petitioners' requested extension of *Cannon* to the new context of employment discrimination. The court of appeals began with Title IX's text, which provides that "no person . . . shall, on the basis of sex, be excluded from *participation in*, be denied the *benefits of*, or be subjected to discrimination *under any education program or activity* receiving Federal financial assistance." Pet. App. 19a (quoting 20 U.S.C. 1681(a)) (brackets omitted). That language refers principally to students, who are the primary participants in and beneficiaries of educational programs, rather than employees. Indeed, this Court has recognized that "Title IX does not expressly include * * * employees" and divided over whether Title IX's substantive prohibition reaches employment discrimination at all. *North Haven Bd. of Educ.* v. *Bell*, 456 U.S. 512, 522 (1982); compare *id.* at 535-536, with *id.* at 540-542 (Powell, J., joined by Burger, C.J., and Rehnquist, J., dissenting). For suits like petitioners', therefore, Title IX does not meet the "stringent and demanding" requirement that "the statute must display an unmistakable focus on individuals like the plaintiff" to support extension of an implied right of action. *Medina*, 606 U.S. at 368 (quotation marks omitted).

The court of appeals bolstered that analysis with "statutory context" and "'structure.'" Pet. App. 19a (quoting *Gebser*, 524 U.S. at 284). The conclusion that Title IX "fail[s] to confer enforceable rights" on petitioners "is buttressed by the mechanism that Congress chose" to address sex discrimination in employment. *Gonzaga*, 536 U.S. at 289. Just "three months" before enacting Title IX, Congress "exposed employment decisions in educational institutions to the same enforcement procedures applicable to other employment decisions under Title VII—the integrated, multistep enforcement procedure that enables" the EEOC "to detect and remedy instances of discrimination." Pet. App. 20a-21a (brackets and quotation marks omitted). In light of the "complexity" and importance of "Title VII's express remedial scheme, it would be anomalous to conclude that the implied right of action under Title IX would allow employees of educational institutions immediate access to judicial remedies unburdened by any administrative procedures." *Id.* at 21a-22a; see *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 736 (1975) ("It would indeed be anomalous 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."); *Gross* v. *FBL Fin. Servs., Inc.*, 557 U.S. 167, 175 (2009) ("[N]egative implications raised by disparate provisions are strongest when the provisions were considered simultaneously.") (quotation marks omitted).

For similar reasons, even assuming that Title IX clearly confers "a private *right*" on petitioners, it clearly does not "also" manifest an intent to create "a private *remedy*." *Gonzaga*, 536 U.S. at 284. Especially given the closeness in time between Congress's enactments, Title IX's "judicially created" remedy "cannot be extended, consistently with the intent of Congress," in a manner that would "nullify the effectiveness of the carefully drawn procedural restrictions on" Title VII's "express" remedy for employees, including employees of federally funded educational institutions. *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 210 (1976); see *Armstrong* v. *Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) (judicially implied remedies are "subject to express and implied statutory limitations"). Where "Congress has created an alternative remedial structure," as here, "*that alone* precludes" an implied cause of action. *Cisco*, 146 S. Ct. at 1891 (quotation marks omitted).

Indeed, this Court has held that Title VII's "comprehensive" and "detailed administrative and judicial process" precludes enforcement of employment-discrimination claims on the basis of race under 42 U.S.C. 1985(3), an express cause of action (enacted in 1871) against conspiracies to interfere with civil rights. *Great Am. Fed. Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 372-373 (1979); see *id.* at 370-371, 378. The Court also has held that "Title VII provides the exclusive remedy for employment discrimination claims of those federal employees that it covers"; it thus precludes extension to that context of an implied cause of action for race discrimination in contracting under 42 U.S.C. 1981 (enacted in 1866), notwithstanding the presumption against "implied repeal" of pre-existing statutes. *Novotny*, 442 U.S. at 376 (citing *Brown* v. *GSA*, 425 U.S. 820, 832 (1976)). *A fortiori*, the *subsequent* enactment of Title IX cannot be read as impliedly "bypass[ing]" Title VII's comprehensive enforcement scheme. *Ibid.*

II. PETITIONERS' CONTRARY POSITION IS FLAWED

Petitioners acknowledge (Br. 52) it is "clear that the Court should not imply new causes of action or extend causes of action without congressional authorization." But they offer a series of arguments for an effective exception from that rule in this case. Each one fails.

A. The Court's Title IX Cases Do Not Adopt Petitioners' View

Petitioners and the judges dissenting from denial of rehearing primarily contend (Br. 22-23, 27-35, 45-46, 52; Pet. App. 130a-145a) that their position does not seek to "extend" an implied right of action because *Cannon*, *North Haven*, and *Jackson* v. *Birmingham Board of Education*, 544 U.S. 167 (2005), already hold that a Title IX suit can be brought here. But as the Eleventh Circuit explained, "[n]one" of those precedents "speak[s] to whether Title IX created an implied right of action for sex discrimination in employment." Pet. App. 18a.

Cannon held only that "Title IX provided an implied right of action for a prospective *student* because 'the language of the statute explicitly conferred a right directly on a class of persons that included the plaintiff in the case' and was 'phrased in terms of the persons benefited.'" Pet. App. 16a (emphasis added); see *Cannon*, 441 U.S. at 688-689 ("Our review of [such] factors persuades us * * * that petitioner does have a statutory right to pursue her claim that respondents rejected her application on the basis of her sex."). As this Court has since admonished, *Cannon*'s more "'expansive'" "'language' no longer controls." *Medina*, 606 U.S. at 369 n.1. Yet petitioners defy that instruction and overread *Cannon*, asserting (Br. 23) that the right it inferred "extended to all" Title IX violations. This Court has never embraced that extravagant reading of *Cannon*, which contravenes *Gebser* and other cases recognizing the "critical" distinction between "a Title IX violation" and the substantive "scope of an implied right," 524 U.S. at 283-284. Petitioners' misreading "improperly conflates 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," which is "analytically distinct." *Gomez-Perez* v. *Potter*, 553 U.S. 474, 483 (2008).

North Haven is even further afield. It "considered only the administrative remedy evident on the face of Title IX, not any implied private right of action." Pet. App. 18a. In that distinct context, *North Haven* upheld regulations permitting the government to "terminat[e]" Title IX funds based on employment discrimination. 456 U.S. at 514; see Pet. Br. 32-33 (discussing regulations, while ignoring that they do not allow private enforcement). Because *North Haven* did not involve private suits subject to Title VII's comprehensive enforcement scheme, the Court did not address that important aspect of Title VII or its relation to private Title IX suits.

Jackson held only that "Title IX provides a private right of action for *retaliation* for an employee's complaint about discrimination *against students*." Pet. App. 16a (second emphasis added). Such retaliation claims "vindicate the rights of * * * students," such as "the rights of the girls' basketball team" in *Jackson*. 544 U.S. at 176, 181. They are not employment-discrimination claims and are "unavailable under Title VII." Pet. App. 122a (opinion of W. Pryor, C.J.); see *Jackson*, 544 U.S. at 175 (explaining that Title VII prohibits retaliation only against conduct protected by Title VII). Due to that lack of overlap, *Jackson* had no occasion to consider whether Title VII's "'elaborate enforcement provisions' foreclose[] the 'implication of additional judicial remedies'" for employment-discrimination claims, a further question that the Court in this case now must "also examine." *FS Credit*, 146 S. Ct. at 1553 (quoting *Middlesex Cnty. Sewerage Auth.* v. *National Sea Clammers Ass'n*, 453 U.S. 1, 13-14 (1981)) (brackets omitted).

Petitioners misread *Jackson* even worse in claiming that it stands for the proposition that "Title IX's private right of action enforces the statute's prohibition—no more *and no less*." Br. 3 (emphasis added); see Br. 54 (erroneously asserting that *Jackson* "rejected precisely th[e] 'extension' argument" raised here). The cited passages of *Jackson* first confirmed the truism that the implied right of action cannot extend "beyond" Title IX to reach "conduct not prohibited by that statute," and then emphasized that the implied right of action covered retaliation for complaints about sex discrimination in education because the majority viewed such conduct as "clearly" barred by the statute's text and "plainly" contrary to its purposes. See 544 U.S. at 178-179 & nn.2-3. The Court never suggested that the implied right of action *necessarily* extends to *any* conduct within the outer limits of Title IX, regardless of any conflicts that would create with Title VII. That radical proposition would contradict the reasoning of *Gebser* and *Davis*, see pp. 15-16, *supra*, and the principle that implied rights are "more limited" than their underlying statutes in various respects, see *Chadbourne & Parke*, 571 U.S. at 382.

B. The Court's Title VII And Section 1981 Cases Do Not Support Petitioners

Like the en banc dissenters (Pet. App. 158a-162a), petitioners contend that Title VII does not preclude their Title IX claims because the two statutes are not completely "coextensive" (Br. 48) and because Title IX's legislative history mentions employment and does not exclude it (Br. 31, 50). They rely for both points on *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454 (1975), which held that Title VII does not preclude inferring a right of action for private-sector race discrimination in employment under 42 U.S.C. 1981, based largely on an analysis of "legislative history," while also noting in passing that "Section 1981 is not coextensive in its coverage with Title VII." *Johnson*, 421 U.S. at 459-460.

This Court has since repudiated both of the implications that petitioners draw from *Johnson*. To start, *Johnson* never said that Title VII precludes only "coextensive" implied remedies (which would make little sense because the pursuit of *more extensive* remedies is the reason plaintiffs ask courts to imply rights of action). And *Novotny* rejected that view, distinguishing *Johnson* when holding that the Title VII's "comprehensive plan" precludes a claim for race discrimination in employment under 42 U.S.C. 1985(3) even though a Section 1985(3) remedy "would not be coextensive with Title VII." See 442 U.S. at 373, 377-378; cf. *Smith* v. *Robinson*, 468 U.S. 992, 1016, 1019 (1984) (a "comprehensive scheme" precludes other remedies whether "coextensive" or not).

Novotny built on *Brown*, which also distinguished and cabined *Johnson*'s analysis of legislative history. See pp. 19-20, *supra*. The Court reasoned that while the legislative history of Title VII's *private*-sector provision in 1964 expressly contemplated continued availability of suits under the 19th-century law codified in Section 1981, "[t]here is no such legislative history behind the 1972 amendments" extending Title VII to *federal*-sector employees. See *Brown*, 425 U.S. at 833-834. Similarly, here, Title VII's legislative history of course says nothing about its interaction with the *subsequently enacted* Title IX, and nothing in Title IX's legislative history expressly contemplated an implied right of action for *employees* of educational institutions that would permit them to end-run the pre-existing Title VII enforcement scheme. This case is therefore governed by *Brown*'s "well-established principle that, in most contexts, 'a precisely drawn, detailed statute pre-empts more general remedies.'" *Hinck* v. *United States*, 550 U.S. 501, 506 (2007) (quoting case quoting *Brown*, 425 U.S. at 834). Yet petitioners' brief fails to address *Brown*, *Novotny*, or their progeny.

More generally, this Court has admonished that *Johnson*, like *Cannon*, should be narrowly construed as a relic of "a period when the Court often '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. *National Ass'n of African Am.-Owned Media*, 589 U.S. 327, 334 (2020) (discussing *Johnson*). Further, whereas *Johnson* relied on "legislative history" in inferring a right of action, 421 U.S. at 459, the Court now "disregard[s]" such material as irrelevant to the inquiry—even where, unlike here, a committee report actually "speaks of implying causes of action." *FS Credit*, 146 S. Ct. at 1556 n.4, 1558. The Court should reject petitioners' request to "revert in this case to the understanding of private causes of action that held sway [51] years ago" in *Johnson*. *Sandoval*, 532 U.S. at 287.

Petitioners also invoke (Br. 48-49) *CBOCS West, Inc.* v. *Humphries*, 553 U.S. 442 (2008), which held that Section 1981 authorizes claims for retaliation against complaints of race discrimination; and *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974), which held that Title VII's express right of action is not precluded by arbitration under a collective-bargaining agreement. But *CBOCS* "rest[ed] in significant part upon principles of *stare decisis*" regarding retaliation-specific precedents not applicable here. 553 U.S. at 446. And *Gardner-Denver* (which relied on "legislative history," 415 U.S. at 48) does not address implied remedies at all; it is limited to how a "contractual" right interacts with "independent statutory rights," see *Novotny*, 442 U.S. at 377-378, an issue not presented here.

C. Other Statutes Do Not Support Petitioners

Petitioners and the dissenters invoke several additional statutes. Br. 24-27, 35-55; Pet. App. 148a, 152a-154a. None aids their position.

Contrary to their assertions, the Rehabilitation Act Amendments of 1986, see 42 U.S.C. 2000d-7, did not make "what was once an implied cause of action effectively bec[o]me an express one," Pet. App. 148a (Rosenbaum, J., dissenting), or permit "extend[ing] *Cannon*'s private right of action" pursuant to "congressional authorization." Pet. Br. 52. The 1986 law "acknowledged" *Cannon*'s implied remedy by abrogating States' sovereign immunity, *Barnes* v. *Gorman*, 536 U.S. 181, 185 (2002); see p. 7 , *supra*, but it provides "no express authorization for private lawsuits [under] Title IX," *NCAA* v. *Smith*, 525 U.S. 459, 467 n.5 (1999), let alone "details how the right of action should operate," *FS Credit*, 146 S. Ct. at 1555. Because *Cannon*'s right of action remains implied, this Court's post-1986 Title IX decisions have continued to apply all the ordinary restraints on extensions of implied rights. See pp. 13-17, *supra*.

Petitioners' overbroad reading of the 1986 law is also inconsistent with the Court's approach to other congressional interventions regarding implied rights of action. Even after a federal statute "ratified the implied right of action" for securities fraud under an earlier securities law, the Court nevertheless committed to "extend it no further," *Stoneridge Inv. Partners, LLC* v. *Scientific-Atlanta, Inc.*, 552 U.S. 148, 165-166 (2008), and "held that [courts] must give narrow dimensions to a right of action Congress did not authorize when it first enacted the statute and did not expand when it revisited the law," *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U.S. 258, 274 (2014) (ellipsis and quotation marks omitted); see pp. 14-17, *supra* (citing additional securities cases). Similarly, the Court has concluded that a federal statute exempting *Bivens* suits from the statutory scheme governing torts against federal employees "simply left *Bivens* where it found it" and "certainly" is "not a license to create a new *Bivens* remedy in a context we have never before addressed." *Hernandez* v. *Mesa*, 589 U.S. 93, 111 n.9 (2020). Those lines of precedent are instructive in this context because they, too, rest on the basic principle that "Congress, not this Court, should extend [judicially] implied causes of action." *Cummings*, 596 U.S. at 231 (Kavanaugh, J., concurring) (citing *Her-*

nandez); see, *e.g.*, *Gebser*, 524 U.S. at 284 (relying on securities cases limiting implied rights of action).

Petitioners more narrowly (but no more plausibly) contend (Br. 40) that the 1986 law "ratified Title IX's private right of action against a clear legal background confirming that employees can sue under Title IX for sex discrimination." That argument rests (Br. 36-37, 40-44) on just three decisions of this Court, none of which held that an implied right of action for employment discrimination exists under any statute. *North Haven*, as explained, addressed government enforcement of Title IX, not private suits. See pp. 21-22, *supra*. *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984), expressly reserved the question whether the Rehabilitation Act "create[s] a private right of action for employment discrimination" on the basis of disability, an issue "unnecessary" to decide in that case addressing distinct questions, *id.* at 630 n.7. As for *Guardians Ass'n* v. *Civil Service Commission*, 463 U.S. 582 (1983), the fact that the putative Title VI cause of action there happened to involve employment discrimination was an issue that "merely lurk[ed] in the record" without having been raised and "ruled upon," *Cooper Indus., Inc.* v. *Aviall Servs., Inc.*, 543 U.S. 157, 170 (2004), and this Court has rejected a similar *Guardians*-based ratification argument in light of the case's narrow holding and fractured opinions, see *Sandoval*, 532 U.S. at 282-284, 291. In sum: "No one," including Congress, "can reasonably rely" on precedent for a cause of action that "this Court has never created." *Cisco*, 146 S. Ct. at 1886, 1892.

Petitioners' reliance on Title VI and the Rehabilitation Act (Br. 35-40, 49-50) has additional flaws. They invoke 42 U.S.C. 2000d-3, but that provision merely states that "administrative action" by a government "department or agency" under Title VI generally cannot reach employment practices. Like so much else in petitioners' brief, this concerns only the substantive statutory prohibition, not the availability of private enforcement. And "disability" discrimination in violation of the Rehabilitation Act, 29 U.S.C. 794(a), is not separately covered by Title VII, see 42 U.S.C. 2000e-2(a)(1), so it lacks the overlap with Title VII that independently precludes petitioners' claims.

Petitioners also suggest (Br. 42-43) that the Rehabilitation Act Amendments of 1986 implicitly acquiesced in decisions of "lower courts generally recogniz[ing] that Title IX allowed claims brought by employees," citing four cases. But three of them did not even "speak to the question" of an implied right of action, so they plainly did not "settle" the issue. *Lightfoot* v. *Cendant Mortg. Corp.*, 580 U.S. 82, 96 (2017).[4] That leaves petitioners with a single district-court case, *Minor* v. *Northville Pub. Sch.*, 605 F. Supp. 1185, 1197 (E.D. Mich. 1985), which conflicted with others of the era, see *Storey* v. *Board of Regents of Univ. of Wisconsin Sys.*, 604 F. Supp. 1200, 1205 (W.D. Wis. 1985); *Sobel* v. *Yeshiva Univ.*, 477 F. Supp. 1161, 1167 (S.D.N.Y. 1979). That inconsistent "smattering of lower court opinions" is far from the type of "judicial consensus so broad and unquestioned that we must presume Congress knew of and endorsed it," particularly where "the text and structure of the statute" point the other way. *BP P.L.C.* v. *Mayor & City Council of Baltimore*, 593 U.S. 230, 244 (2021).

---

[4] See *O'Connor* v. *Peru State Coll.*, 781 F.2d 632, 642 n.8 (8th Cir. 1986) (stating, in a footnote, that an employee had "standing" to bring a Title IX claim); *Saffer* v. *Town of Whitman*, No. 85-cv-4470, 1986 WL 14090, at *1 (D. Mass. Dec. 2, 1986) (addressing Section 1983 claim); *Selzer* v. *Board of Educ.*, 112 F.R.D. 176, 180 (S.D.N.Y. 1986) (certifying class, not addressing right of action).

Finally, petitioners' invocation (Br. 24, 42-44) of the Civil Rights Restoration Act of 1987 "is even less on point." *Sandoval*, 532 U.S. at 292. While that law revised Title IX's definition of "program or activity," "[i]t is impossible to understand what this has to do with implied causes of action." *Ibid.*; see 20 U.S.C. 1687. The law did not "in any way alter[] the existing right[] of action and the corresponding remedies permissible under Title IX." *Franklin* v. *Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 73 (1992).

D. Petitioners' Policy Arguments Are Unavailing

Petitioners and the dissenters frankly acknowledge that the sole reason to pursue an implied remedy for employment discrimination under Title IX is to bypass "procedural roadblocks that make claims harder to file" under Title VII's express right of action. Pet. App. 158a. They would prefer that Congress had not enacted Title VII's "tight limits on any compensatory damages" or "forc[ed] [plaintiffs] to jump through hoops" including a "statute of limitations," *id.* at 159a-160a, "administrative" procedures, and "notice provisions," Pet. Br. 48. But "Congress is better positioned than courts to evaluate the policy tradeoffs of creating liability," *Cisco*, 146 S. Ct. at 1891, and the same Congress that enacted Title IX also subjected educational institutions' employees to Title VII's requirements, p. 6, *supra*. Courts cannot override that legislative balance based on their opinion that "hard-working teachers" deserve special solicitude compared to other employees, Pet. App. 160a (Rosenbaum, J., dissenting), "no matter how desirable that might be as a policy matter," *Sandoval*, 532 U.S. at 287.

Moreover, petitioners' policy critique is unpersuasive on its own terms. The "detailed, multi-step procedure through which the Commission enforces [Title VII's] prohibition on employment discrimination" is a "key component" of the legislative design, not a defect to be evaded. *Mach Mining, LLC* v. *EEOC*, 575 U.S. 480, 483, 486 (2015). So too for the statute's important time limits and damages caps. See pp. 4-6, *supra*.

Petitioners' end-run, by contrast, threatens significant adverse consequences for courts and the federal government. It would crowd judicial dockets with premature lawsuits that could often be avoided through proper use of Title VII's administrative process, which successfully resolves numerous cases. See EEOC, *Fiscal Year 2025 Agency Performance Report* 10 (Dec. 31, 2025) (EEOC administratively obtained $528 million for 13,351 victims of employment discrimination that year), https://www.eeoc.gov/fy-2027-agency-performance-plan-app-and-fy-2025-agency-performance-report-apr. And it would undermine the government's primary authority to enforce both Title VII, "a system in which the [government] was intended 'to bear the primary burden of litigation,'" *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279, 286 (2002), and Title IX, in which the administrative termination of federal funds is the "core" enforcement method, *North Haven*, 456 U.S. at 514.

Petitioners are also wrong (Br. 50-52) that there will be intractable workability problems in deciding whether a plaintiff is suing under Title IX for employment discrimination. Of course, in this case, petitioners are not students and undisputedly sued over "employment" discrimination. Pet. i; see pp. 7-8, *supra*. Even for other plaintiffs who are both employees and students, there is no reason to think it will generally be difficult to distinguish the gravamen of their claim—*e.g.*, claims of discriminatory firing or "unequal pay," Pet. Br. 52, are clearly about employment. To the extent some claims may present closer calls, Congress has drawn numerous lines based on employee status, and courts and agencies administering such laws draw on well-developed precedent. See, *e.g.*, *Clackamas Gastroenterology Assocs., P.C.* v. *Wells*, 538 U.S. 440, 444, 447 (2003) ("the common law" and "our cases construing similar language give us guidance"); *Raymond B. Yates, M.D., P.C. Profit Sharing Plan* v. *Hendon*, 541 U.S. 1, 16 (2004) (interpreting statute under which someone "can wear two hats, as an employer and employee"). Notably, the Fifth and Seventh Circuits have rejected petitioners' position for more than 30 years, see Pet. App. 12a, yet petitioners identify no evidence of administrability problems in those jurisdictions, see Br. 51 (citing only one anodyne discovery order). While certain plaintiffs may face "hardship" from having to bring some claims under Title VII and others under Title IX, such "considerations of policy" cannot "override [statutory] meaning." *United States* v. *Tohono O'odham Nation*, 563 U.S. 307, 316-317 (2011).

E. The Court Should Not Address Spending-Power Issues

The Eleventh Circuit bolstered its holding by invoking the notice requirement for legislation enacted pursuant to Congress's spending power. Pet. App. 14a-16a, 22a. Petitioners challenge that reasoning (Br. 55-57), while respondents defend it (Br. 28-29, 41). This Court should not resolve that ancillary dispute.

As in *Sandoval*, the Court need "not address [that] additional argument" because the statutory text and structure clearly preclude petitioners' claims under the "standard test for discerning private causes of action." 532 U.S. at 293. Petitioners' claims fail as a matter of "statutory interpretation" alone. *FS Credit*, 146 S. Ct. at 1558; see Pet. App. 22a (noting merely that petitioners' position "becomes even weaker" given the spending-power context).

"[I]t is 'a well-established principle * * * that normally the Court will not decide a constitutional question if there is some other ground upon which to dispose of the case.'" *Bond* v. *United States*, 572 U.S. 844, 855 (2014). Although that rule is "prudential," *Landor* v. *Louisiana Dep't of Corr. & Pub. Safety*, 146 S. Ct. 1931, 1939 n.1 (2026), prudent reasons exist to follow it in this case. The question presented here turns solely on the kind of claim at issue (employment discrimination) without any additional dispute over the nature of available relief. This case is therefore unlike *Landor*, where a constitutional issue proved "narrower" because it allowed the Court to decide "only" one question (the availability of suits against nonconsenting individuals) while reserving a separate, broader question ("whether [the statute] *ever* authorizes money damages"). *Id.* at 1939 & n.1.

Moreover, the spending-power issue would be far more complicated than the simple plain-text holding described above. While the Constitution requires that Congress "clearly and unambiguously alert a grant recipient to any condition on federal funds," *Landor*, 146 S. Ct. at 1941, this Court has not squarely resolved how much clarity is required when construing the *scope* of a condition that is unambiguously imposed, such as Title IX's prohibition on sex discrimination in federally funded educational opportunities. Indeed, this Court has upheld Title IX liability even where multiple Justices dissented on the ground that the statute was best construed not to prohibit the challenged conduct at all, let alone clearly. See *Jackson*, 544 U.S. at 184-190 (Thomas, J., dissenting); *Davis*, 526 U.S. at 658-662 (Kennedy, J., dissenting). At minimum, because the Court recently addressed the spending-power analysis in *Landor*, it would be prudent to allow further percolation before revisiting the issue.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

D. JOHN SAUER
Solicitor General
HARMEET K. DHILLON
Assistant Attorney General
HASHIM M. MOOPPAN
Deputy Solicitor General
MAX E. SCHULMAN
Assistant to the Solicitor General
DAVID N. GOLDMAN
JOSHUA R. ZUCKERMAN
Attorneys

AUGUST 2026