

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

Respondents and the United States concede that Congress ratified *Cannon*'s holding. *Cannon* “held that Title IX created a private right of action to enforce its ban on intentional discrimination.” *Alexander v. Sandoval*, 532 U.S. 275, 282 (2001) (emphasis in original). And they concede that Title IX prohibits intentional employment discrimination. Because the private right enforces Title IX’s prohibition on intentional discrimination, and because intentional employment discrimination falls within Title IX’s prohibition, employees may bring these claims. That resolves this case.

In response, the opposing briefs ask the Court to hold, for the first time, that a form of intentional discrimination barred by Title IX is categorically beyond the right of action. The Court should decline the invitation.

The opposing briefs assign Congress’s ratification of *Cannon*’s holding no substantive effect. They argue that Petitioners must satisfy a “heightened showing” for an “exten[sion]” and “expan[sion]” to any fact pattern that has not been previously approved by this Court. U.S.Br.17; accord Resp.Br.18-20, 42-43. But that position cannot be reconciled with this Court’s Title IX cause-of-action cases. None stated that a Title IX suit beyond the facts of *Cannon* would “extend” the cause of action. And none suggested limitations on plaintiffs—unsurprisingly, as Title IX’s text lacks any basis for such distinctions.

The question before the Court is the scope of the congressionally ratified cause of action—not whether to judicially create or expand a right of action for employees. The answer is settled: the ratified cause of action enforces the ban on all intentional discrimination. Thus, this Court’s Title IX cases have never confined the ratified cause of action to particular plaintiffs or forms of intentional discrimination. The opposing briefs supply no justification to start here. The creation of such a wholesale exclusion has no basis in Title IX’s text. While claiming their approach avoids judicial policymaking, the opposing briefs ask the Court to engage in that sorry practice by drawing lines unmoored from Title IX’s text.

The Court should follow its approach “[i]n all of these cases”: “rel[y] on the text of Title IX,” which “broadly prohibits a funding recipient from subjecting any person to ‘discrimination’ ‘on the basis of sex.’” *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005) (quoting 20 U.S.C. 1681). It is undisputed that employees are protected “persons.” And the Court has held that Title IX’s text bars employment discrimination, noting that Congress omitted from Title IX the employment carve-out it included in Title VI. *North Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 521, 530, 535-36 (1982).

The opposing briefs also have no persuasive answer to the statutory history. Because *Bell* preceded Congress’s 1986 and 1988 amendments, Congress ratified the cause of action against a legal

backdrop in which this Court had already held that Title IX bars employment discrimination. Nothing in those amendments suggests Congress silently carved out employee claims from the ratified cause of action.

Thus, no apology for “the *ancien regime*” of “the expansive rights-creating approach exemplified by *Cannon*” is required to rule for Petitioners—just adherence to the statute and Congress’s intent. *Franklin v. Gwinnett Cnty. Pub. Schs.*, 503 U.S. 60, 77-78 (1992) (Scalia, J., concurring in judgment). Petitioners’ approach honors the maxim that “Congress, not the Judiciary, decides who may enforce the law.” *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 608 U.S. 608, 611 (2026).

The opposing briefs also invoke Title VII, but Title VII cannot supply the missing carve-out. Mere overlap with Title VII does not overcome Title IX’s text. *Bell*, 456 U.S. at 530, 535 n.26. Moreover, overlap is the norm when it comes to Title VII and other federal statutes. Respondents advocate for an implicit preclusion rule, but the cases they rely on do not support the proposition, resurrected from the *Bell* dissent, that Title VII is preclusive of Title IX.

Finally, the government declines to defend the Eleventh Circuit’s conclusion that the Spending Clause forbids Title IX suits for employment discrimination. Respondents try to have it both ways by invoking Title IX cases while ignoring their holdings that “*Pennhurst* does not preclude private suits for intentional acts that clearly violate Title IX.” *Jackson*, 544 U.S. at 182. Because Respondents

concede intentional employment discrimination is such a violation, the Spending Clause does not bar Petitioners' claims.

The Court should reverse.

ARGUMENT

I. Title IX's Private Right of Action Enforces Its Ban on Intentional Discrimination, Including Employment Discrimination.

The opposing briefs' principal argument is that Petitioners cannot meet the test "to expand an existing implied right." Resp.Br.19; accord U.S.Br.17; *e.g.*, U.S.Br.2 (citing *Cisco Sys., Inc. v. Doe I*, 146 S. Ct. 1882, 1891 (2026)).¹ But that argument fails because Petitioners seek no new or expanded private right. Rather, they invoke the cause of action Congress ratified to enforce Title IX's prohibition on intentional discrimination. Because that prohibition indisputably includes sex-based employment discrimination, Petitioners' claims fall within the ratified cause of action.

A. The Ratified Cause of Action Enforces Title IX's Ban on Intentional Discrimination.

It is settled that Congress ratified a cause of action that enforces Title IX's ban on intentional discrimination. *Sandoval*, 532 U.S. at 280-82. The

¹ Unless otherwise noted, all internal quotation marks, citations, and alterations have been omitted from quotations.

opposing briefs try to avoid that settled premise by ignoring the case law and recasting *Cannon*'s holding as limited to its facts. Resp.Br.42; U.S.Br.15-17. They argue that any new context beyond *Cannon* requires a heightened showing for an expansion. There is no support for that notion.

1. Respondents characterize *Cannon*'s holding as limited to "a private claim by a prospective student for sex discrimination in admissions." Resp.Br.21; see U.S.Br.15. They contend that the Court's subsequent cases "cannot extend" "*Cannon*'s holding by stating it in broad terms." Resp.Br.32. And they argue that *Sandoval* should be read to limit *Cannon*'s holding to the narrowest facts. Resp.Br.31.

Respondents misread *Cannon* and subsequent cases. *Cannon* held that Title IX grants "a cause of action in favor of private victims of discrimination," *Cannon v. Univ. of Chicago*, 441 U.S. 677, 709 (1979), not a cause of action limited to prospective students seeking admission. Nothing in *Cannon* suggested that the right was so limited. In later cases, the Court has explained that Congress "ratified *Cannon*'s holding that private individuals may sue to enforce" Title IX, *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022), and the Court has repeatedly described the ratified cause of action as enforcing Title IX's ban on "intentional discrimination," *e.g.*, *Jackson*, 544 U.S. at 174; *Sandoval*, 532 U.S. at 282; *Franklin*, 503 U.S. at 64-65, 75.

In *Sandoval*, the Court could not have been clearer: “[T]his Court is bound by holdings, not language,” and *Cannon* “held that Title IX created a private right of action to enforce its ban on intentional discrimination.” *Sandoval*, 532 U.S. at 282 (emphasis in original). That statement was not dicta. It was central to *Sandoval*’s analysis of Title VI’s cause of action, which *Cannon* also recognized and Congress later ratified. *Id.* at 280. Because Congress ratified private rights to enforce the prohibitions of Title IX and Title VI, the Court rejected a bid to enforce disparate-impact regulations that “forbid” conduct the statutory prohibition “permits.” *Id.* at 285. Thus, *Sandoval* confirms the governing principle: the ratified cause of action enforces statutory violations, not conduct outside the statute’s prohibition.

That understanding of *Cannon*’s holding and Congress’s ratification formed the basis for the Court’s remedial and cause-of-action decisions. See *Cummings*, 596 U.S. at 218; *Jackson*, 544 U.S. at 173; *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 281 (1998); Pet.Br.23. Contrary to Respondents’ assertions (Resp.Br.32), the descriptions of *Cannon*’s holding in these cases were central to their reasoning, not passing dicta.

2. The Court’s Title IX cases do not treat new applications of Title IX’s prohibition beyond *Cannon*’s facts as expansions requiring special justification. Instead, when deciding whether “Title IX’s private right of action encompasses suits for” particular conduct, the Court asks whether that conduct “falls

within the statute's prohibition of intentional discrimination on the basis of sex." *Jackson*, 544 U.S. at 178. If yes, the claims fall within the ratified cause of action.

Jackson held that "Title IX's private right of action encompasses suits for retaliation, because retaliation falls within the statute's prohibition of intentional discrimination on the basis of sex." 544 U.S. at 178. *Davis v. Monroe County Board of Education* asked "whether the misconduct ... amounts to an intentional violation of Title IX, capable of supporting a private damages action," 526 U.S. 629, 643 (1999), and construed *Gebser* as doing the same, *id.* at 641-43. And *Franklin* held damages were available in a private suit where the alleged misconduct was "intentional discrimination" proscribed by Title IX. 503 U.S. at 75.

The government invokes *Gebser* and *Davis* as supporting its narrow construction of the cause of action, but neither case helps it. U.S.Br.16. Neither excluded intentional discrimination from the purview of the right of action.

Gebser held that a school district can be held liable in damages for a teacher's sexual harassment of a student only where there is actual notice to an appropriate school official and deliberate indifference. 524 U.S. at 285, 290. That rule determined when such harassment is properly deemed the funding recipient's own intentional misconduct, consistent with Title IX's text, its express administrative

scheme, and the Spending Clause’s clear-notice requirement. *Id.* at 287-90.

Davis likewise concerned a funding recipient’s liability for harassment—there, student-on-student harassment—and also tied private damages liability to the recipient’s own intentional violation. 526 U.S. at 641-43. As in *Gebser*, the Court held that “a recipient of federal funds may be liable in damages under Title IX only for its own misconduct.” *Id.* at 640. The Court relied on Title IX’s text, which “confines the scope of prohibited conduct based on the recipient’s degree of control over the harasser and the environment in which the harassment occurs.” *Id.* at 644.

3. Respondents also try to reshape *Jackson*, which upheld an employee’s Title IX claim, into a decision driven by a policy concern about gap-filling and limited to protecting students. Resp.Br.13. The Court has rejected that interpretation, and *Jackson* cannot be squared with their view.

The Court concluded that Jackson’s claim fell within Title IX’s right of action because the retaliation he experienced—being removed as the girls’ basketball coach—was “another form of intentional sex discrimination.” *Jackson*, 544 U.S. at 173; see *id.* at 179 (“The complainant is himself a victim of discriminatory retaliation[.]”).² The Court did not

² Respondents argue that “*Jackson* did not involve a claim of employment discrimination.” Resp.Br.33. But the alleged injury was an employment action. 544 U.S. at 171-72. The dispute was

limit its holding to retaliation for student advocacy. It “interpret[ed] Title IX’s text to clearly prohibit retaliation for *complaints about sex discrimination*.” *Id.* at 178 n.2.

Nor can Respondents find support for their reading of *Jackson* in *Gomez-Perez*. There, this Court explained that “the holding in *Jackson* was based on an interpretation of the text of Title IX,” not “because the Court concluded as a policy matter that [retaliation] claims are important.” *Gomez-Perez v. Potter*, 553 U.S. 474, 484 (2008). *Jackson*, like *Sandoval*, could not have been clearer:

In step with *Sandoval*, we hold that Title IX’s private right of action encompasses suits for retaliation, because retaliation falls within the statute’s prohibition of intentional discrimination on the basis of sex.

544 U.S. at 178; see *CBOCS W., Inc. v. Humphries*, 553 U.S. 442, 453 (2008) (“[T]he Court held in *Jackson* that the statute’s language encompassed such a claim.”).

4. The opposing briefs next argue that Petitioners impermissibly “conflate[] the question whether a statute confers a private right of action with the question whether [its] substantive prohibition

whether employment retaliation constituted discrimination “on the basis of sex.” *Id.* at 173-74; *id.* at 184-85 (Thomas, J., dissenting).

reaches’ certain ‘conduct.’” Resp.Br.16; U.S.Br.21. In fact, the opposing briefs conflate the two inquiries.

Contorting *Gomez-Perez*, the opposing briefs contend that every new application of Title IX’s substantive prohibition requires a separate cause-of-action analysis. But *Gomez-Perez* does not support that view. The Court rested its conclusion regarding the ADEA on *Jackson*’s analysis of Title IX’s text. And it criticized the First Circuit for considering the implied nature of Title IX’s private right. The Court treated *Jackson* as relevant because whether the Title IX right is implied or express does not affect the scope of the prohibition the right enforces. The questions are “analytically distinct.” 553 U.S. at 483.

That does not mean that Title IX’s private right reaches the “outer limits” of conduct the statute proscribes. Contra U.S.Br.3. *Sandoval* makes clear that the private right as ratified does not reach the recipient’s unintentional conduct, 532 U.S. at 280-82, and *Davis* and *Gebser* clarify that a recipient is liable for damages only for its own intentional conduct. Thus, in Title IX employee suits, plaintiffs must show intentional discrimination attributable to the funding recipient.

5. The opposing briefs’ non-Title IX cases involve materially different problems: whether courts should create a cause of action in the first place, expand judge-made liability beyond an established statutory violation, police remedial features of a judicially implied securities action, or expand an implied constitutional cause of action. None supports the

proposition that Title IX's congressionally ratified right applies only to previously adjudicated fact patterns.

Cisco Systems is illustrative. There, the plaintiffs asked the Court to “create causes of action” that did not previously exist, and the Court refused because that task belongs to Congress. 146 S. Ct. at 1890. This case is the opposite. The question is not whether to create or expand a cause of action, but whether sex-based employment discrimination falls within the prohibition the ratified right enforces. It does.

Respondents' securities cases fare no better. The cases following the Private Securities Litigation Reform Act recognize that the private right should accord with “the scope congressionally intended.” *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 165 (2008). In *Stoneridge*, the Court emphasized that “restraint is appropriate in light of the PSLRA,” whereby Congress not only “reassert[ed] its authority” and imposed “heightened” requirements for private actions but also “determin[ed] that this class of defendants should be pursued by the SEC and not by private litigants.” *Id.* at 158, 162-63, 165. By contrast, Congress ratified Title IX's broad private right of action without narrowing its scope or abrogating *Cannon* or cases treating employee claims as available under the related statutes. 42 U.S.C. 2000d-7(a)(1); *Franklin*, 503 U.S. at 73; *supra* 4-6; Pet.Br.22-25.

The securities cases do not support excluding categories of prohibited conduct. Rather, they “adhere to the statutory text” and “structure.” *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 188 (1994); see *id.* at 173 (“[O]ur cases considering the scope of conduct prohibited by § 10(b) in private suits have emphasized adherence to the statutory language[.]”). Both text and structure favor Petitioners here. Pet.Br.27-31.

Nor should the Court graft a *Bivens*-style analysis onto Title IX. The scope of a statutory right of action involves questions entirely distinct from those raised by implying rights directly under the Constitution. Compare *Comcast Corp. v. Nat’l Ass’n of Afr. Am.-Owned Media*, 589 U.S. 327, 341 (2020) (applying “the traditional tools of statutory interpretation” to Section 1981 implied-right action) with *Corr. Servs. Corp. v. Malesko*, 534 U.S. 61, 75 (2001) (Scalia, J., concurring) (doubting Congress can “repudiate[]” implied constitutional right).

B. Employment Discrimination Falls Within Title IX’s Prohibition.

The opposing briefs label Title IX “student-focused,” Resp.Br.13; U.S.Br.18, but the Court has already construed Title IX’s text to hold that “employment discrimination comes within the prohibition of Title IX.” *Bell*, 456 U.S. at 530. Because the ratified cause of action enforces that prohibition,

Petitioners' employment-discrimination claims are cognizable.

1. The opposing briefs concede that *Bell* construed Title IX's "substantive prohibition to reach employment discrimination." U.S.Br.6-7; Resp.Br.22. But they try to defuse *Bell* by wrongly claiming its conclusion rested on "legislative history." Resp.Br.22; U.S.Br.18.

The Court's "starting point" in *Bell* was "the statutory language," not legislative history. 456 U.S. at 520. The Court noted that Title IX's "broad directive that 'no person' may be discriminated against on the basis of gender appears, on its face, to include employees as well as students." *Ibid.* And it emphasized that "Congress easily could have substituted 'student' or 'beneficiary' for the word 'person' if it had wished to restrict the scope of § 901(a)." *Id.* at 521. The Court also found the "absence of a specific exclusion for employment" significant because it confirmed that "Title IX's broad protection of 'person[s]' does extend to employees." *Id.* at 521-22. Thus, construing the text, the Court held that discrimination against a female employee in her employment violates Title IX. *Id.* at 521.³

The Court consulted legislative history only after its textual analysis, and only to confirm that Congress did not "mean somehow to limit the expansive

³ *Bell* upheld employment regulations because HEW interpreted Title IX to protect employees. 456 U.S. at 515-17, 520-21, 535-36, 540.

language of § 901.” *Id.* at 522. After surveying the pre-enactment history, the Court concluded it “corroborate[d] [the Court’s] reading of the statutory language.” *Id.* at 530.⁴

2. The opposing briefs offer no basis to disturb *Bell*’s reading of Title IX’s text. Their “student-focused” construction cannot be squared with a statute that does not differentiate among the “person[s]” protected from discrimination. Nor can it be squared with Congress’s decision to omit from Title IX the express employment carve-out in Title VI. See 42 U.S.C. 2000d-3. As *Bell* explained, “[i]f Congress had intended that Title IX have the same reach as Title VI,” the Court “assume[s] that it would have enacted counterparts to both § 601 and § 604.” 456 U.S. at 530. The opposing briefs thus ask the Court to insert an employment limitation Congress specifically omitted. See U.S.Br., *Bell*, 1981 WL 390417, at *35-36 (same). But “this Court may not narrow a provision’s reach by inserting words Congress chose to omit.” *Lomax v. Ortiz-Marquez*, 590 U.S. 595, 600 (2020).

⁴ Nor did *Bell* “h[a]ng its hat” on “post-enactment legislative history.” Resp.Br.22. The Court addressed post-enactment history only after concluding that the text, corroborated by pre-enactment history, established that Title IX bars employment discrimination. *Bell*, 456 U.S. at 530-35.

3. The opposing briefs next note that *Bell* addressed “the government’s administrative authority to terminate funds” rather than the private right of action. U.S.Br.11; Resp.Br.32. True, but beside the point. *Bell* authoritatively construed Title IX to proscribe employment discrimination, as all agree. U.S.Br.6-7; Resp.Br.22. So *Bell* confirms that Petitioners’ claims fall within the prohibition that the right enforces.

Jackson further confirms the point. In upholding an employee claim, the Court explained that “Title IX’s beneficiaries plainly include all those who are subjected to ‘discrimination’ ‘on the basis of sex.’” 544 U.S. at 179 n.3. Employees are such beneficiaries when subjected to a recipient’s intentional sex-based discrimination. *Bell*, 456 U.S. at 520-21.

4. The statutory history and related statutes confirm there is no silent carve-out for employee claims.

Consider the following timeline:

- (1) In 1972, Congress enacted Title IX, which it modeled after Title VI. Congress omitted Title VI’s express partial carve-out for employment discrimination.
- (2) In 1976, Congress authorized fee awards to prevailing private parties in suits to enforce Title IX. 42 U.S.C. 1988.

- (3) In 1979, *Cannon* held that a cause of action “in favor of private victims of discrimination” enforces Title IX’s prohibition. 441 U.S. at 709.
- (4) In 1982, *Bell* interpreted Title IX’s text to bar employment discrimination. 456 U.S. at 530.
- (5) In 1983 and 1984, this Court recognized claims for damages and backpay in employment-discrimination suits under closely related statutes. See *Franklin*, 503 U.S. at 70-71 (describing *Guardians Ass’n v. Civ. Serv. Comm’n of City of New York*, 463 U.S. 582 (1983)—a Title VI employment-discrimination case—as one in which “a clear majority” of the Court deemed damages available for an intentional violation); *Consol. Rail Corp. v. Darrone*, 465 U.S. 624, 631, 637 (1984) (backpay available in a “suit for employment discrimination” under the Rehabilitation Act).⁵
- (6) In 1985, this Court rejected a Rehabilitation Act employment-discrimination claim on the ground that Congress had not unequivocally abrogated state sovereign immunity. *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 246-47 (1985).

⁵ The opposing briefs minimize *Guardians* and *Darrone*, Resp.Br.41, 46; U.S.Br.27, but the Court has relied on both in Title IX cases to confirm the availability of damages for intentional violations. *Davis*, 526 U.S. at 642; *Franklin*, 503 U.S. at 70-71, 75.

- (7) In 1986, Congress responded to *Atascadero* and abrogated States’ immunity from “suit in Federal court for a violation” of Title IX, Title VI, and the Rehabilitation Act, among others. 42 U.S.C. 2000d-7(a); *Lane v. Pena*, 518 U.S. 187, 198 (1996).⁶ Congress thereby ratified private rights of action “for a violation of a statute,” *Sandoval*, 532 U.S. at 292 (emphasis in original), and did not add the exclusion for employee claims that Respondents seek.
- (8) In 1988, Congress “correct[ed]” another decision to “broaden[] ... these antidiscrimination provisions,” without “restrict[ing] the right of action recognized in *Cannon*.” *Franklin*, 503 U.S. at 73.

This sequence leaves no room for an unstated employee-claim exclusion.

II. Title VII Does Not Supply the Missing Carve-Out for Employment-Discrimination Claims.

Employment-discrimination claims fall within Title IX’s ratified cause of action. The opposing briefs claim Title VII supplies an implicit carve-out, but it does not.

⁶ Contra Respondents, Title IX’s substantive scope should not be narrowly construed on the ground that Section 2000d-7 abrogates States’ sovereign immunity. See *Gomez-Perez*, 553 U.S. at 491.

**A. The Court Has Already Rejected
the Title VII Overlap Objection.**

The opposing briefs relitigate *Bell*, just as they relitigate this Court's post-1986 cases. Like the dissent in *Bell*, they rely on the proximity between Title VII's extension to educational institutions and Title IX's enactment to argue that Congress intended to preclude overlap, despite the lack of any text to support this position. Compare 456 U.S. at 551-52 (Powell, J., dissenting) with Resp.Br.23-24; U.S.Br.18-20. Like the dissent, they contend that Title VII's procedures and remedies make it implausible that Congress intended overlapping Title IX remedies. Compare 456 U.S. at 552 (Powell, J., dissenting) with Resp.Br.23-28; U.S.Br.18.

In *Bell*, the Court refused to narrow Title IX to avoid overlap with Title VII. The Court explained that the "policy" argument that "victims of employment discrimination have remedies other than those available under Title IX" was "for Congress to weigh." 456 U.S. at 535 n.26. Congress chose to draft Title IX to reach employment discrimination, consistent with its provision of "a variety of remedies, at times overlapping, to eradicate employment discrimination." *Ibid.*

The opposing briefs' position rests on the premise that overlap with Title VII is so anomalous that this Court should restrict Title IX claims to avoid it. But overlap was not a reason to narrow Title IX's prohibition in *Bell*, and it is not a reason to narrow the cause of action that enforces that prohibition now.

Nor can the opposing briefs confine *Bell* to administrative enforcement of Title IX. Respondents attempt to recast *Bell* as approving a “multi-remedy system” comprised of administrative enforcement of Title IX and private Title VII suits. Resp.Br.28. But that appears nowhere in *Bell*. To the contrary, the Court cited both *Cannon* and *Johnson*, each involving private enforcement. See 456 U.S. at 535 n.26 (citing, e.g., *Cannon*, 441 U.S. at 711, and *Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 459 (1975)).

Bell’s point was not that administrative Title IX remedies may overlap with private Title VII suits. It was that overlap between remedies to eradicate employment discrimination is not an anomaly warranting a judicial rewrite. The same is true here.

**B. Overlap Between Title
VII and Other Independent
Federal Remedies Is the Norm.**

The opposing briefs further insist that allowing Title IX employment-discrimination claims would create an improper “workaround” to Title VII’s procedures. Resp.Br.23-27; U.S.Br.19-20. This Court, however, has repeatedly rejected the premise that Title VII’s remedial scheme silently displaces independent federal rights.

1. *CBOCS*—which Respondents relegate to a footnote—confirms the point in its analysis of Section 1981’s implied-right scheme. There, an employer argued that permitting “employment-related retaliation actions” under Section 1981’s implied right of action would impermissibly allow plaintiffs “to circumvent Title VII’s ‘specific administrative and procedural mechanisms.’” 553 U.S. at 454-55. The Court held that argument “proves too much,” because “Congress explicitly created the overlap in respect to direct employment discrimination.” *Id.* at 455. “[A]ny overlap in reach between § 1981 and Title VII,” the Court added, “is by congressional design.” *Id.* at 457.

The same logic defeats the Title VII argument here. *Bell* rejected Title IX/Title VII overlap as a valid basis to cabin Congress’s choices. 456 U.S. at 535 n.26. And *Jackson* rejected the argument that Title IX excludes retaliation claims because Title VII expressly covers retaliation, as the statutes are “vastly different.” 544 U.S. at 168. Title IX and Title VII, like Section 1981 and Title VII, provide private remedies that are “separate, distinct, and independent.” *CBOCS*, 553 U.S. at 455; Pet.Br.46-48.

The opposing briefs fail to distinguish *CBOCS*. The government says the case rested on *stare decisis*, U.S.Br.25, but the Court invoked *stare decisis* to reject the employer’s request to “revisit the holding in *Sullivan*,” not the Title VII overlap objection. 553 U.S. at 457. And Respondents say *CBOCS* concerned a different statute, Resp.Br.25.n.1, which is true but beside the point. The relevant point is broader:

recognizing Congress’s intent, this Court “has accepted overlap between a number of civil rights statutes.” *CBOCS*, 553 U.S. at 456.

2. *Johnson* and *Gardner-Denver* confirm that Title VII supplements, rather than precludes, other substantive remedies. “Despite Title VII’s range and its design as a comprehensive solution for the problem of invidious discrimination in employment,” an aggrieved employee “is not deprived of other remedies he possesses and is not limited to Title VII in his search for relief.” *Johnson*, 421 U.S. at 459. The Court was therefore “disinclined ... to infer any positive preference” for Title VII over Section 1981 without a “more definite expression” from Congress. *Id.* at 461. Indeed, the Senate had rejected an amendment blocking the right to sue under Section 1981. *Id.* at 459.

Gardner-Denver is in accord. Noting that civil-rights enactments “have long evinced a general intent to accord parallel or overlapping remedies against discrimination,” the Court found Congress “inten[ded] to allow an individual to pursue independently his rights under both Title VII and other applicable state and federal statutes.” *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 47-49 (1974).

The opposing briefs dismiss *Johnson* as part of the “*ancien regime*” (U.S.Br.3) and as resting upon legislative history (Resp.Br.25). But *CBOCS* expressly relied on *Johnson* and *Gardner-Denver* to reaffirm the core point that Title VII is not

automatically exclusive well after *Sandoval* and other cited cases. 553 U.S. at 455.

Other civil rights statutes confirm the same pattern. Title VII coexists with the Equal Pay Act for pay-discrimination claims, even though the statutes provide different procedures and remedies. See *Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618, 640 (2007). And Title VI permits overlapping employment-discrimination claims within the limits of Section 604. See 42 U.S.C. 2000d-3; *Guardians*, 463 U.S. 582.

3. The timing of the 1972 enactments does not change the result. In *Morton v. Mancari*, which Respondents cite (Resp.Br.24), the Court held the Equal Employment Opportunity Act of 1972 did not displace an employment provision enacted close in time. 417 U.S. 535, 547-51 (1974). The Court explained that because “repeals by implication are not favored,” when two statutes are “capable of co-existence,” courts must “give effect to both.” *Id.* at 549, 551. The same principle confirms that Title VII does not preclude Title IX claims.

4. The government also cannot avoid overlap by recasting *Jackson* as limited to complaints about student discrimination. U.S.Br.22. *Jackson* held that retaliation against a person complaining of sex discrimination is intentional discrimination under Title IX, “regardless” of whether he complained of discrimination against himself or others. 544 U.S. at 173-74, 178-79. And given *Bell*, it follows that retaliation for reporting employment discrimination

is retaliation for reporting a Title IX violation. The opposing briefs’ rule would permit employees to sue for experiencing retaliation but not underlying direct discrimination. Neither law nor common sense supports that aberrant rule.

* * *

Title VII is not a master statute that silently displaces every overlapping federal remedy. The Court has never before so held, and it should not do so now for Title IX based on the opposing briefs’ policy concerns.

**C. The Opposing Briefs’ Preclusion Cases
Do Not Show Title VII Displaces Title IX
Claims.**

While disclaiming any request that this Court decide preclusion, Respondents invoke what they call “Title VII preclusion cases.” Resp.Br.24-26, 29.n.3.⁷ These cases do not show that Title VII displaces Title IX employee claims. Because the Court’s “role is to apply the law, not rewrite it,” a party arguing that a federal statute displaces another bears a “heavy burden”—one not met here. *Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 63 (2024).

⁷ Respondents’ footnote confirms that their Title VII argument requests an implied carve-out, not affirmance on preclusion grounds.

1. The Court “approach[es] federal statutes touching on the same topic with a strong presumption they can coexist harmoniously.” *Ibid.* The opposing briefs give no reason to disturb that presumption.

The opposing briefs do not cite any express provision stating that Title VII precludes Title IX claims, and none exists. *POM Wonderful LLC v. Coca-Cola Co.*, 573 U.S. 102, 113 (2014); see *Bell*, 456 U.S. at 535 n.26. Nor does Title VII “disclose[] a purpose to bar” Title IX claims. *POM*, 573 U.S. at 113. That textual “absence is of special significance” because Title VII and Title IX have “coexisted” since 1972, and Title VII has long coexisted with other federal civil-rights statutes. *Ibid.*; see *CBOCS*, 553 U.S. at 456. Congress did more than just decline to make Title VII preclusive; it omitted the Title VI employment carve-out from Title IX. Pet.Br.37-38.

2. In asking the Court to cabin Title IX because of Title VII, the opposing briefs primarily invoke two cases: *Brown v. GSA*, 425 U.S. 820 (1976), and *Great American Federal Savings & Loan Association v. Novotny*, 442 U.S. 366 (1979). Neither helps them.

Brown held that Title VII’s federal-sector remedy was exclusive. The Court found dispositive Congress’s unique concerns regarding federal employees. See *Brown*, 425 U.S. at 833 (distinguishing *Johnson* as involving “no problems of sovereign immunity”). Analyzing the legislative history, the Court noted that “Congress was persuaded that federal employees” had “no effective judicial remedy,” so Congress’s “intent in 1972 was to create an exclusive, pre-emptive

administrative and judicial scheme for the redress of federal employment discrimination.” *Id.* at 828-29.

Nothing in *Brown* supports the conclusion that Title VII is generally preclusive, let alone preclusive of Title IX claims. To the contrary, *Brown* rested on the conclusion that Congress singled out federal employees specifically. *Id.* at 828-29. And rather than being an “about-face” from *Johnson* (Resp.Br.25), *Brown* treated its conclusion as compatible with *Johnson*’s holding that Title VII does not “pre-empt[] other remedies” in different contexts. *Id.* at 833. The opposing briefs identify no “unambiguous congressional perception” that Title VII precludes Title IX claims. *Id.* at 828.

The United States invokes *Brown*’s observation that a “precisely drawn, detailed statute” can “preempt more general remedies.” U.S.Br.24 (quoting 425 U.S. at 834). But *Brown* involved a unique federal-employee scheme and sovereign immunity considerations. The other preclusion cases generally involve plaintiffs using a pass-through vehicle that creates no substantive rights, like Section 1983, to enforce a statute while bypassing its mandates. See, e.g., *Middlesex Cnty. Sewerage Auth. v. Nat’l Sea Clammers Ass’n*, 453 U.S. 1, 20 (1981); *City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 126-27 (2005).

Novotny proves the point. That case involved no independent substantive right. There, the plaintiff tried to use 42 U.S.C. 1985(3) to assert a violation of Title VII while seeking relief beyond Title VII’s remedies. 442 U.S. at 372-78. But Section 1985(3)

“*creates* no rights” and is “a purely remedial statute,” so the “only question” was “whether the rights created by Title VII may be asserted within the *remedial* framework of § 1985(3).” *Id.* at 376-77 (emphasis in original). The Court determined such actions would undermine Title VII’s scheme. *Id.* at 378. *Novotny* expressly distinguished cases like this one, involving an “independent” source for a substantive right. *Ibid.*

III. The Remaining Arguments Confirm the Need To Follow Title IX’s Text.

A. The Spending Clause Does Not Bar Petitioners’ Claims.

The United States declines to defend the Eleventh Circuit’s Spending Clause rationale, and for good reason. U.S.Br.31-32. This Court has repeatedly held that “*Pennhurst* does not preclude private suits for intentional acts that clearly violate Title IX.” *Jackson*, 544 U.S. at 182; see *Cummings*, 596 U.S. at 217-18, 221; *Davis*, 526 U.S. at 641-42.

Respondents identify no basis for treating employment discrimination differently from every other form of intentional sex discrimination. The Court’s Spending Clause cases ensure funding recipients have clear notice of remedies and are liable for their own intentional conduct; they do not exclude categories of intentional discrimination that Title IX clearly proscribes. Because intentional employment discrimination violates Title IX’s clear terms, see *Bell*,

456 U.S. at 530, CAC.Br.14-20, the notice requirement is satisfied.

**B. Limiting Title IX to “Student-Focused”
Claims Is Unworkable and Detached
from the Text.**

Respondents contend that Title IX claims must be limited to “protection for ‘students.’” Resp.Br.37. In addition to appearing nowhere in Title IX’s text or this Court’s cases, that proposition is divorced from the realities of the school environment and unworkable. See NEA.Br.22-23; WSF.Br.21-22.

Respondents admit that discrimination against “teachers and coaches can certainly affect students and players.” Resp.Br.47. But they offer no administrable test to decide when employee discrimination is sufficiently “student focused.” For example, Title IX regulations measure “equal athletic opportunity” for both sexes in part through the “assignment and compensation of coaches and tutors.” 34 C.F.R. 106.41(c)(5)-(6). Is a coach- or tutor-compensation claim sufficiently student-focused? What about unequal staffing or teaching assignments? Respondents would mire courts in fact-bound line-drawing lacking any guide in a statutory text that protects all persons.

The government’s answer is that the Court should deal with these problems later. U.S.Br.29-31. But these administrability concerns counsel against creating an implied carve-out and leaving it to lower courts to manage resulting problems. Congress did

not “draw[] [a] line[] based on employee status” and delegate gap-filling to the courts. U.S.Br.30-31. Title IX’s text does the opposite. The Court should follow the text.

C. The Opposing Briefs’ Policy Arguments Cannot Justify a Judicial Carve-Out.

Respondents and their *amici* claim that recognizing Title IX employment-discrimination claims would cause disruption. See States.Br.12-14; Commerce.Br.4-14; NSAA.Br.13-25. But despite decades of experience with such claims in the circuits, the opposing briefs identify no ongoing havoc.⁸

The remaining arguments fare no better. The opposing briefs say that Title VII “adequately protect[s] educational employees” and that Title IX suits would “crowd judicial dockets.” Resp.Br.48-50; U.S.Br.30. These are arguments for Congress. Nor is it true that Title IX and Title VII claims are always coterminous (Resp.Br.26-27), given the statutes’ “vast[] differen[ces].” *Jackson*, 544 U.S. at 175; Pet.Br.46-47; Pet.App.25a-27a.

Restricting the Title IX cause of action simply because of overlap with Title VII would “show

⁸ This includes the Fourth Circuit, belying West Virginia’s assertions. States.Br.12-14. And the assertion that a parade of horrors will follow under the Affordable Care Act (Commerce.Br.7-10) rests on a speculative chain of reasoning and ignores that the ACA incorporates the “enforcement mechanisms” of antidiscrimination statutes that indisputably permit employee claims, Pet.Br.35-40. If there is a Rubicon, Congress already chose to cross it.

disregard for the congressional design.” *POM*, 573 U.S. at 115. Congress can enact the exclusion Respondents seek, but this Court should not.

CONCLUSION

The Court should reverse and remand.

Respectfully submitted,

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