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 PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT*

**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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## 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.

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## INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be granted.

## STATEMENT

A. 1. Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e *et seq.*, makes it unlawful for a covered employer "to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's * * * sex." 42 U.S.C. 2000e-2(a)(1).

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 discrimina-

tion." *University of Pa.* v. *EEOC*, 493 U.S. 182, 190 (1990). First, a person claiming to be aggrieved by an unlawful employment practice may file a charge with the EEOC within 180 days (or within 300 days if the person first sought relief from a state or local agency). 42 U.S.C. 2000e-5(b) and (e)(1). The Commission then notifies the employer and investigates the allegations. 42 U.S.C. 2000e-5(b). If it finds reasonable cause to believe the charge is true, then the EEOC "shall endeavor to eliminate [the] alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion." *Ibid.* If those informal methods fail, then the Commission or Attorney General may sue the employer. 42 U.S.C. 2000e-5(f)(1). Whether or not the government acts on the charge, 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 for intentional discrimination, up to a limit tied to the size of the employer. 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)). In 1972, Congress amended Title VII to eliminate those exceptions. Equal Employment Opportunity Act, Pub. L. No. 92-261, §§ 2-3, 86 Stat. 103-104 (Mar. 24, 1972) (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 of the Education Amendments of 1972, 20 U.S.C. 1681 *et seq.*, was enacted three months after the Equal Employment Opportunity Act. 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 prohibition to reach employment discrimination in

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[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).

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 the validity of 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 medical-school admissions, "despite the absence of any express authorization for it in the statute." *Id.* at 717; see *id.* at 680.

Congress later 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). And its cases "have defined the contours of that right of action." *Jackson* v. *Birmingham Bd. of Educ.*, 544 U.S. 167, 173 (2005).

B. 1. Petitioner MaChelle Joseph worked as a basketball coach at the Georgia Institute of Technology from 2003 until she was fired in 2019. Pet. App. 66a-67a. Joseph filed a charge of discrimination with the EEOC,

which provided her a right-to-sue notice. *Id.* at 77a, 167a. She then sued respondents (the Board of Regents of the University System of Georgia (Board) and the Georgia Tech Athletic Association) and others in the Superior Court of Fulton County. *Id.* at 10a, 167a. Joseph's complaint asserted several claims, including claims for sex discrimination in employment under both Title VII and Title IX. *Id.* at 10a. She sought damages as well as declaratory and injunctive relief. *Ibid.*

Respondents removed the case to the United States District Court for the Northern District of Georgia and moved to dismiss the complaint in part. Pet. App. 10a, 167a. The district court granted respondents' motions in part and denied them in part. *Id.* at 66a-114a. The court dismissed Joseph's Title IX claims for employment discrimination on the ground that Title VII precludes such claims "in the employment context," although it acknowledged "a split of authority" on that issue. *Id.* at 75a-76a. Following discovery, the court granted respondents' motions for summary judgment against Joseph's remaining claims, including her Title VII claims for sex discrimination. *Id.* at 164a-258a.

2. Petitioner Thomas Crowther worked as an art professor at Augusta University from 2006 until he was "effectively terminated" by the non-renewal of his contract in 2021. Pet. App. 41a; see *id.* at 34a. Crowther sued the Board and others in the United States District Court for the Northern District of Georgia. *Id.* at 33a-34a. His complaint asserted several claims, including a claim for sex discrimination in employment under Title IX, but no claims under Title VII. *Id.* at 43a. He sought damages and injunctive relief. *Id.* at 3a.

The Board moved to dismiss the complaint. Pet. App. 33a-34a. The district court granted the motion in part

and denied it in part. *Id.* at 33a-65a. The court held that "Title VII does not preclude employment discrimination claims under Title IX," although it acknowledged "a circuit split on the issue." *Id.* at 44a, 52a. The court then certified its order for interlocutory appeal under 28 U.S.C. 1292(b) based on that question. Pet. App. 4a.

C. The Eleventh Circuit granted Crowther permission to appeal, consolidated his appeal with Joseph's appeal from the final judgment against her, and issued a unanimous panel decision. Pet. App. 1a-32a. The court affirmed the judgment against Joseph, including the dismissal of her Title IX claims for employment discrimination. *Id.* at 22a, 32a. The court reversed the denial of the motion to dismiss Crowther's Title IX claim for employment discrimination and remanded with instructions to dismiss that claim. *Ibid.*

The Eleventh Circuit held that Title IX does not provide a private right of action for sex discrimination in employment. 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 "[a]lthough the Supreme Court has reaffirmed *Cannon* several times, it has never extended the implied private right of action under Title IX to claims of sex discrimination for employees of educational institutions." *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 private right of action to such claims. *Id.* at 19a.

The Eleventh Circuit acknowledged that other "circuits are split" as to the availability of "claims for employment discrimination under Title IX." Pet. App. 12a (collecting citations). It concluded, however, that those "circuits that have allowed claims of sex discrimination in employment under Title IX to proceed have failed to grapple with the inquiry required by" this Court's precedents limiting the scope of implied rights of action. *Id.* at 18a.

D. After the Eleventh Circuit's decision, a 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 had "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 "contradicts a long line of Supreme Court precedent." *Id.* at 128a. She also faulted the panel for departing from the recent decisions of other circuits. *Id.* at 155a-157a. And she stressed that this case "raises a question of 'exceptional importance'" that bears "tangible consequences for litigants." *Id.* at 157a-158a.

## DISCUSSION

Title IX does not provide employees of federally funded educational institutions a private right of action to sue for sex discrimination in employment. The Eleventh Circuit correctly so held in the decision below. But that ruling conflicts with the decisions of other circuits. The petition should be granted because that conflict on an important question of federal law warrants this Court's review—as the United States urged when the split first arose (and as has become clearer since then with the deepening of the split).[2]

### A. The Eleventh Circuit's Decision Is Correct

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 right of action 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).

1. "Like substantive federal law itself, private rights of action to enforce federal law must be created by Con-

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[2] See U.S. Amicus Br. at 14-17, 20, *Lakoski* v. *University of Tex. Med. Branch*, 519 U.S. 947 (1996) (No. 95-1439) (*Lakoski* Br.). In *Lakoski*, at the Court's invitation, the United States filed a brief recommending that the Court grant certiorari and hold that Title IX provides a private right of action to sue for sex discrimination in employment, based largely on an analysis of "legislative history." *Id.* at 11, 12 n.3, 13, 19; see 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 on the merits.

gress." *Alexander* v. *Sandoval*, 532 U.S. 275, 286 (2001). In a prior era "'exemplified'" by *Cannon*, this Court was willing to "infer[] new private causes of action" when suits by injured private persons were perceived to be necessary or helpful to effectuate a statute's purposes. *Medina* v. *Planned Parenthood S. Atl.*, 606 U.S. 357, 369 n.1 (2025) (quoting *Franklin* v. *Gwinnett Cnty. Pub. Sch.*, 503 U.S. 60, 77 (1992) (Scalia, J., concurring in the judgment)). More recently, however, "the Court has retreated from *Cannon*'s reasoning," *ibid.*, and held that 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," *Sandoval*, 532 U.S. at 286-289. In light of the "separation-of-powers concerns" raised by *Cannon*'s defunct approach, a plaintiff seeking to infer a right of action now "must show" both that the statute "unambiguous[ly]" creates a private right, and that it "manifests an intent 'to create not just a private *right* but also a private *remedy*.'" *Gonzaga Univ.* v. *Doe*, 536 U.S. 273, 284, 286, 290 (2002); cf. *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 even in the realm of domestic law, where this Court has 'recently and repeatedly said that a decision to create a private right of action is one better left to legislative judgment in the great majority of cases.'").

The same "concerns with the judicial creation of a private cause of action" also "caution against its expansion" to new types of parties, violations, or remedies. *Janus Cap. Grp., Inc.* v. *First Derivative Traders*, 564 U.S. 135, 142 (2011) (brackets omitted); see *Cummings*,

596 U.S. at 231 (Kavanaugh, J., concurring) (cautioning courts neither to "extend [existing] implied causes of action" nor to "expand available remedies"); cf. *Cox Commc'ns, Inc.* v. *Sony Music Entm't*, 146 S. Ct. 959, 967 (2026) ("we are loath to expand" implied secondary copyright liability "beyond" the "specific forms" previously recognized). A "corollary" of the rule that 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.").

A new remedial context matters because 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[]" the 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 at issue] was enacted").

Accordingly, in new contexts beyond *Cannon*, there remains a "critical" difference between the threshold showing required "to establish a Title IX violation" and the additional, heightened 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. Thus, 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 the extension of private judicial relief to that context.

For example, *Gebser* addressed the question of "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 to Title IX, the district arguably could be deemed responsible "whenever a teacher's authority over a student facilitates the harassment." *Id.* at 282. But the Court set aside the distinct issue of whether "a Title IX violation" could be "based on theories of *respondeat superior*." *Id.* at 283. It held that, regardless, "the statutory structure" supported limiting "the implied damages remedy" to cases where the district had "actual knowledge of," and exhibited "deliberative indifference to," the teacher's misconduct. *Id.*

at 284-285, 290; see also *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 right of action analogous to Title IX's. 532 U.S. at 278; see *id.* at 279-280. The Court held that, even "assum[ing]" the regulations were "valid" and enforceable by the government, the statutory "text and structure" did not support extending the implied right of action 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).

2. In this case, the Eleventh Circuit correctly recognized 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 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 most directly to students, who are the primary participants in and beneficiaries of educational programs. 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); see *id.* at 540-541 (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" in order to support extension of an implied right of action. *Medina*, 606 U.S. at 368 (quotation marks omitted).

The court of appeals bolstered that conclusion with "statutory context" and "'structure.'" Pet. App. 19a (quoting *Gebser*, 524 U.S. at 284). Even assuming Title IX clearly confers "a private *right*" on employees, it clearly does not "also" confer "a private *remedy*." *Gonzaga*, 536 U.S. at 284. After all, just "three months" before enacting Title IX, Congress "exposed employment decisions in educational institutions to the same enforce-

ment 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); see p. 3, *supra*. "In the light of the complexity of Title VII's express remedial scheme"—as well as that scheme's importance—"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." Pet. App. 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."). Especially given the closeness in time between Congress's enactments, Title IX's "judicially created" right of action "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" right of action 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").

Indeed, this Court has held that Title VII's "comprehensive" and "detailed administrative and judicial process" precludes enforcement of employment-discrimination claims even under 42 U.S.C. 1985(3), which dates to "the Civil Rights Act of 1871." *Great Am. Fed. Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 368, 372-373 (1979); see

*id.* at 378. The Court also has held that Title VII "provides the exclusive remedy for employment discrimination claims of those federal employees that it covers," precluding extension in that context of a judicially implied cause of action under 42 U.S.C. 1981 (a statute dating to 1866) notwithstanding the presumption against "implied repeal" of pre-existing statutes. *Id.* at 376 (citing *Brown* v. *GSA*, 425 U.S. 820, 832 (1976)). *A fortiori*, Congress's *subsequent* enactment of Title IX cannot be read as impliedly circumventing the express requirements of Title VII's enforcement scheme.

3. Petitioners and the judges dissenting from denial of rehearing have contended that the decision below conflicts with various precedents of this Court. No such conflict exists.

Petitioners and the dissenters primarily contend (Pet. 21-22, 24-25; Pet. App. 130a-145a) that the decision below conflicts with *Cannon*, *North Haven*, and *Jackson* v. *Birmingham Board of Education*, 544 U.S. 167 (2005). But as the Eleventh Circuit explained, "[n]one of these Supreme Court 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). As this Court has admonished, any of *Cannon*'s more "'expansive'" "'language' no longer controls." *Medina*, 606 U.S. at 369 n.1. *North Haven* "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 the validity of regulations permitting the government to "terminat[e]" Title IX funds based on employment discrimination. 456 U.S. at 514. But whether regulations are valid and enforceable by the government does not resolve the separate, more demanding question of an implied private right of action's reach, as *Sandoval* makes clear. See p. 12, *supra*. And *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). That claim, which was "unavailable under Title VII," was not based on employment discrimination at all. *Id.* at 122a (opinion of W. Pryor, C.J.).

Petitioners also invoke (Pet. 22-23; Reply Br. 4, 12-13) *Alexander* v. *Gardner-Denver Co.*, 415 U.S. 36 (1974), which held that an employee may both submit a grievance to arbitration under a collective-bargaining agreement and sue under Title VII, as well as *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454 (1975), which held that Title VII did not preclude inferring a right of action for private-sector employment discrimination in the 19th-century civil-rights law codified at 42 U.S.C. 1981. But this Court has limited *Gardner-Denver* to the context of a "contractual" right's interaction with "independent statutory rights," which is not presented here. *Novotny*, 442 U.S. at 378. Likewise, this Court narrowed *Johnson* in *Brown*, reasoning that while the legislative history of Title VII's *private*-sector provision in 1964 expressly contemplated continued availability of implied Section 1981 suits, "[t]here is no such legislative history behind the 1972 amendments" extending Title VII to *federal*-sector employees. 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 federally funded educational institutions that would permit them to end-run the pre-existing Title VII enforcement scheme. 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.'" See *Comcast Corp.* v. *National Ass'n of African Am.-Owned Media*, 589 U.S. 327, 334 (2020) (citing *Johnson*, 421 U.S. at 459).[3]

**B. The Courts Of Appeals Are Divided**

The courts of appeals have split on the question presented, as recognized by petitioners, the Eleventh Circuit panel opinion, the dissent from denial of rehearing, and both district courts below. See Pet. 15-21; pp. 5-7, *supra*. Like the Eleventh Circuit, the Fifth Circuit has held that "Title IX does not provide a private right of action for employment discrimination." *Lakoski* v. *James*, 66 F.3d 751, 752 (1995), cert. denied, 519 U.S. 947 (1996). The Seventh Circuit similarly has held that "Title VII preempt[s] any" such Title IX claims. *Waid* v. *Merrill Area Pub. Sch.*, 91 F.3d 857, 862 (1996), abrogated on other grounds by *Fitzgerald* v. *Barnstable Sch. Comm.*,

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[3] Petitioners also contest (Pet. 23-24) the Eleventh Circuit's reliance (Pet. App. 14a-16a, 22a) on the notice requirement for legislation enacted pursuant to Congress's spending power. But as in *Sandoval*, because the statutory text and structure clearly preclude petitioners' claims under the "standard test for discerning private causes of action," the Court need "not address [that] additional argument." 532 U.S. at 293.

555 U.S. 246 (2009).[4] By contrast, the Third Circuit has "decline[d] to follow *Lakoski* and *Waid*" and instead agreed with "the First and Fourth Circuits[]" that "*Cannon* extends to 'employment discrimination'" by federally funded educational institutions. *Doe* v. *Mercy Catholic Med. Ctr.*, 850 F.3d 545, 563 (2017) (quoting *Preston* v. *Virginia ex rel. New River Cmty. Coll.*, 31 F.3d 203, 206 (4th Cir. 1994), and citing *Lipsett* v. *University of P.R.*, 864 F.2d 881, 895-897 (1st Cir. 1988)). The Second Circuit has "agree[d] with *Mercy*" and "h[e]ld that Title IX allows a private right of action for * * * discrimination with respect to employment." *Vengalattore* v. *Cornell Univ.*, 36 F.4th 87, 106 (2022). That makes at least a 3-4 split, including a 1-2 split among decisions considering the issue after *Gebser*, *Sandoval*, and *Jackson*.[5]

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[4] The Seventh Circuit in *Waid* framed its holding in terms of claims seeking "equitable relief" because the plaintiff's claim arose "before the enactment of the amendments to Title VII in the Civil Rights Act of 1991," when "Title VII provided equitable remedies, but not compensatory or punitive damages." 91 F.3d at 862. In subsequent cases, courts in the Seventh Circuit "have interpreted *Waid* as holding that Title VII preempts any Title IX employment discrimination suit." *Ludlow* v. *Northwestern Univ.*, 125 F. Supp. 3d 783, 789 (N.D. Ill. 2015) (collecting cases); accord Pet. 20; Br. in Opp. 17.

[5] Petitioners also cite (Pet. 15-18) the Sixth, Eighth, Ninth, and Tenth Circuits as part of their side of the split. Although those circuits have entertained claims resembling petitioners', none of them has squarely rendered a holding on the question presented here. See *Snyder-Hill* v. *Ohio State Univ.*, 48 F.4th 686, 707-708 (6th Cir. 2022) (referring to "the availability of Title IX claims to employees," in a discussion of claims by "non-employee" plaintiffs), cert. denied, 143 S. Ct. 2659 (2023); *O'Connor* v. *Peru State Coll.*, 781 F.2d 632, 642 n.8 (8th Cir. 1986) (rejecting an argument that an employee lacked "standing" to bring Title IX claims); *Campbell* v. *Hawaii Dep't of Educ.*, 892 F.3d 1005, 1024 (9th Cir. 2018) (affirming judg-

Respondents attempt (Br. in Opp. 16-20) to deny the split by distinguishing this suit involving state universities from suits against private educational institutions. But no circuit, on either side of the split, has suggested that the state/private distinction matters to the question presented. In particular, contrary to respondents' assertion (*id.* at 19), the Third Circuit in *Mercy* did not "ma[k]e clear that its reasoning would not apply" to state-government employers like respondents. *Mercy* noted that "*federal*" government employers present distinct issues under the special Title VII scheme for those employers. 850 F.3d at 560 (citing *Brown*, 425 U.S. at 829); see p. 16, *supra*. But the Third Circuit did not suggest that its reasoning would be inapplicable to state or local governments; to the contrary, it approvingly cited cases involving Title IX claims against public educational institutions. *Mercy*, 850 F.3d at 563-565 (citing *Lipsett* and *Preston*). Nor do respondents explain the relevance of state "sovereign immunity concerns" to the question presented, Br. in Opp. 19, given that, as they fail to acknowledge, Congress expressly abrogated States' sovereign immunity from suit for violations of Title IX, see p. 4, *supra*.

Respondents also appear to question (Br. in Opp. 18-19) whether the Second Circuit would hold that "Title IX provides a private right of action in cases *where Title VII governs*." But Title VII plainly did govern in *Vengalattore*, where the defendant Cornell University (which had "15 or more" employees, Reply Br. 3) affirmatively argued on appeal that "Vengalattore could have pursued a Title VII gender discrimination claim." 20-1514 C.A.

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ment against employment-discrimination claims without analyzing whether Title IX provides a cause of action for such claims); *Hiatt* v. *Colorado Seminary*, 858 F.3d 1307, 1323 (10th Cir. 2017) (same).

Doc. 63, at 41 (2d Cir. Nov. 20, 2020). Regardless, respondents admit (Br. in Opp. 19) that this purported distinction cannot eliminate the split because *Mercy* squarely "holds that Title IX provides a private right of action even where Title VII governs."

The split is entrenched and has deepened over the 30 years since the United States first recommended that the Court grant certiorari. See *Lakoski* Br. 14-17, 20. Appellate judges have repeatedly reached conflicting results on the question presented across circuits and in the separate opinions accompanying the denial of rehearing en banc below. There is no indication that the conflict will subside absent this Court's intervention.

**C. The Question Presented Warrants Review In This Case**

1. The question presented has significant consequences for litigants. Extending a right of action under Title IX enables plaintiffs to circumvent the "detailed, multi-step procedure through which the Commission enforces [Title VII's] prohibition on employment discrimination." *Mach Mining, LLC* v. *EEOC*, 575 U.S. 480, 483 (2015); see pp. 1-3, *supra*. That end-run deprives regulated parties of the opportunity to resolve allegations "by informal methods of conference, conciliation, and persuasion," 42 U.S.C. 2000e-5(b), a "key component of the statutory scheme." *Mach Mining*, 575 U.S. at 486. And it bypasses other important components of the statutory scheme, including Title VII's "carefully limited" damages provisions, *Gebser*, 524 U.S. at 286, and its relatively short "time-limitations provisions," which "promote important interests" in finality, *Delaware State Coll.* v. *Ricks*, 449 U.S. 250, 259 (1980).

Petitioners' end-run also has significant consequences for courts and the federal government. It crowds courts' 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 2024 Annual Performance Report* 11 (Jan. 17, 2025) (EEOC administratively obtained over $469.6 million for 13,516 victims of employment discrimination that year), https://www.eeoc.gov/2024-annual-performance-report. And it undermines 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.

The question presented additionally raises issues of broader jurisprudential significance. This Court "has retreated from *Cannon*'s reasoning, which 'exemplified' an 'expansive rights-creating approach' that later decisions 'abandoned,'" and "has emphasized that the decision's 'language' no longer controls." *Medina*, 606 U.S. at 369 n.1. But the circuits on petitioners' side of the split improperly "extend *Cannon*" to a new "setting." *Mercy*, 850 F.3d at 564. It would be appropriate for the Court to reaffirm that federal courts are "out of that business of 'implying causes of action not explicit in the statutory text itself.'" Br. in Opp. 1 (quoting *Ziglar* v. *Abbasi*, 582 U.S. 120, 132 (2017)) (brackets omitted).

2. This case is an appropriate vehicle to decide the question presented. The Eleventh Circuit's ruling on that question was the dispositive legal ground on which it held that petitioners' Title IX employment-discrimination claims must be dismissed. See pp. 6-7, *supra*. Petitioners preserved their claims in the courts below, and respondents do not contend otherwise.

Review is warranted despite the parties' ancillary dispute (Br. in Opp. 20-23; Reply Br. 8-9) over whether petitioners' claims would fail on the merits for alternative reasons not reached by the courts below. "Consistent with [its] usual practice," the Court may, if needed, "leave that issue for remand" after deciding the question presented. *McLaughlin Chiropractic Assocs., Inc.* v. *McKesson Corp.*, 606 U.S. 146, 169 (2025).

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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