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.,
Respondents.

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

BRIEF OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

JENNIFER B. DICKEY
JORDAN L. VON BOKERN
U.S. CHAMBER LITIGATION CENTER
1615 H Street, N.W.
Washington, D.C. 20062

CHRISTOPHER G. MICHEL
Counsel of Record
CAROLINE STEPHENS MILNER
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 389-5000
christopher.michel@kirkland.com

SETH SMITHERMAN
DAVID HUTCHISON
KIRKLAND & ELLIS LLP
401 West 4th Street, Ste. 4000
Austin, TX 78701

Counsel for Amicus Curiae

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INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business organization. As the nation's leading advocate for business, the Chamber represents companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Chamber has a substantial interest in this case because petitioners seek an implied right of action that Congress did not create and that could be used to sue businesses. As this Court has consistently explained in recent years, including at the Chamber's urging, that result defies the separation of powers. Simply put, no defendant should be subject to suit under federal law unless Congress—acting through the democratic process, with opportunities for input from private parties and compromise on policy tradeoffs—decided to make such a suit available. *See, e.g.*, *Cisco Sys., Inc. v. Doe I*, 146 S. Ct. 1882, 1890-91 (2026). Because Congress did not make such a choice here, suits like petitioners' may not proceed.

[1] No counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amicus*, its members, or its counsel, made any monetary contribution intended to fund the brief's preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioners allege that respondents discriminated against them on the basis of sex by engaging in adverse employment practices. Congress has created a cause of action to remedy that wrong. It is in Title VII of the Civil Rights Act of 1964, one of the most familiar provisions of federal law for American employers. In that provision, which has been amended and refined many times over six decades, Congress expressly permitted employees to sue their employers for sex-based employment discrimination, 42 U.S.C. § 2000e-5(f)—but it did so subject to numerous carefully defined conditions and limitations, *see, e.g.*, *Fort Bend County v. Davis*, 587 U.S. 541, 544-45 (2019).

Before this Court, petitioners assert no Title VII claims. Instead, they seek to proceed under Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681(a). But Title IX does not expressly create any private cause of action, let alone one allowing employees to sue employers for sex-based employment discrimination. That should make this a straightforward case. After all, as the Court confirmed twice just last Term, "the power to create causes of action belongs to Congress," not to courts. *Cisco Sys., Inc. v. Doe I*, 146 S. Ct. 1882, 1890 (2026); *see FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 146 S. Ct. 1546, 1553 (2026).

Petitioners rely almost entirely on prior decisions of this Court that have allowed a few narrowly prescribed private claims to proceed under Title IX.

But none of those decisions, each dating from a bygone era of statutory interpretation, permitted an implied Title IX claim for employment discrimination. Petitioners thus seek to *extend* this Court's decisions to create a *new* implied right of action that this Court has never approved. But the "decision to extend [a] cause of action," no less than the decision to create one, "is for Congress, not" courts. *Stoneridge Inv. Partners, LLC v. Sci.-Atlanta, Inc.*, 552 U.S. 148, 165 (2008). And having "firmly committed to the view that judicially created causes of action offend the separation of powers in almost every circumstance," *Cisco*, 146 S. Ct. at 1891, this Court should decline petitioners' invitation to continue further down a road that it never should have taken.

Recognizing petitioners' proposed private right of action would also have far-reaching implications. Although Title IX's substantive prohibition applies most often to public educational institutions like those in this case, the statutory text has been interpreted broadly enough to reach many other entities receiving federal funding, including for-profit businesses. S*ee, e.g.*, *Peltier v. Charter Day Sch., Inc.*, 37 F.4th 104, 113, 127 (4th Cir. 2022) (en banc). In addition, the Affordable Care Act (ACA) extends Title IX's antidiscrimination bar and "enforcement mechanisms" to a vast array of healthcare entities receiving federal funds. 42 U.S.C. § 18116(a). Accepting petitioners' position thus could create multiple new channels for employment-discrimination suits against large numbers of private businesses entirely separate from the "detailed administrative and judicial process" that Congress created for such suits under Title VII. *Great Am. Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 372-73 (1979).

At the very least, those significant consequences for businesses provide "a *single* sound reason to defer to Congress" before further extending the implied right of action under Title IX. *Cisco*, 146 S. Ct. at 1891 (quoting *Egbert v. Boule*, 596 U.S. 482, 491 (2022)). That is particularly true because the Court is "reluctant to conclude that Congress implicitly created a private remedy in one provision when it explicitly did so in another." *Saba*, 146 S. Ct. at 1555. At bottom, employment-discrimination suits like petitioners' should proceed under the Title VII framework that Congress expressly created after public debate and compromise, not a framework that would have to be fashioned on the fly by courts.

ARGUMENT

I. PETITIONERS' PROPOSED PRIVATE RIGHT OF ACTION WOULD HAVE FAR-REACHING ADVERSE CONSEQUENCES

The question whether Title IX includes an implied private right of action for employment discrimination implicates much more than public education. Courts have broadly interpreted Title IX's substantive prohibition to apply far beyond that traditional confine. And because the ACA incorporates Title IX's enforcement mechanisms, the practical scope of the question presented reaches further still. Employees covered by Title IX directly or through the ACA—

likely tens of millions in total—could use an implied remedy to bypass the requirements for the express cause of action for employment discrimination in Title VII. The Court should not allow such circumvention of the framework that Congress has carefully crafted through the democratic process.

A. Courts Have Broadly Interpreted Title IX's Scope

Title IX's antidiscrimination mandate reaches far beyond "traditional educational institutions." *Jeldness v. Pearce*, 30 F.3d 1220, 1225-26 (9th Cir. 1994). It applies to "any education program or activity receiving Federal financial assistance." 20 U.S.C. § 1681(a). A "'program or activity' means '*all* of the operations'" of certain "kinds of entities, 'any part of which' is extended federal funding." *Doe v. Mercy Cath. Med. Ctr.*, 850 F.3d 545, 553 (3d Cir. 2017) (quoting 20 U.S.C. § 1687). In addition to traditional educational institutions, the listed entities include any "corporation, partnership, or other private organization, or … sole proprietorship" that "is principally engaged in the business of providing education, *health care, housing, social services, or parks and recreation*." 20 U.S.C. § 1687(3) (emphasis added).

Courts have interpreted Title IX to apply to an expansive selection of seemingly unexpected entities. In *Mercy*, for example, the Third Circuit held that a medical resident employed at a private hospital could sue under Title IX because its residency program qualified as an education program or activity. 850 F.3d at 552-58; *see also Castro v. Yale Univ.*, 518 F.

Supp. 3d 593, 604-05 (D. Conn. 2021) (similar). Several circuits have applied Title IX to prison systems offering inmates educational and vocational programs. *Jeldness*, 30 F.3d at 1226; *Klinger v. Dep't of Corr.*, 107 F.3d 609, 615 (8th Cir. 1997). And the Fourth Circuit applied Title IX to both a nonprofit charter school *and* a for-profit entity helping operate it. *Peltier*, 37 F.4th at 127; *see Wells v. Hense*, 235 F. Supp. 3d 1, 4 (D.D.C. 2017) (similar).[2]

Once any part of an entity is subject to Title IX, moreover, the coverage has been applied entity-wide, reaching beyond the educational part of that entity. *See Cohen v. Brown Univ.*, 991 F.2d 888, 894 (1st Cir. 1993) ("[I]f any arm of an educational institution receive[s] federal funds, the institution as a whole must comply with Title IX's provisions."); *Klinger*, 107 F.3d at 615 (concluding state "prison system as a whole" qualifies as an education program or activity). An implied cause of action for employment discrimination under Title IX would thus have far-reaching and unpredictable consequences well beyond traditional educational institutions.

Broad and sometimes inconsistent interpretations about what qualifies as "Federal financial assistance" add even more opportunity for an implied claim to apply in unanticipated ways. For example, several

[2] Administrative interpretations of Title IX reinforce the vast scope of entities potentially covered. For example, the Department of Justice issued an opinion concluding that Title IX applies to youth rodeo competitions offered by South Dakota's 4-H program. Sex Segregation in Youth Rodeo Events Under Title IX Reguls., 2021 WL 222745, at *2 (O.L.C. Jan. 13, 2021).

courts have held that Paycheck Protection Program loans issued by private lenders qualify. *Karanik v. Cape Fear Acad., Inc.*, 608 F. Supp. 3d 268, 280 (E.D.N.C. 2022); *E.H. ex rel. Herrera v. Valley Christian Acad.*, 616 F. Supp. 3d 1040, 1049 (C.D. Cal. 2022). And courts are split about whether Medicare funds or even tax-exempt status subject an entity to Title IX. *Compare Mercy*, 850 F.3d at 558 (assuming Medicare funding sufficient), *and Valley Christian*, 616 F. Supp. 3d at 1049-50 (tax-exempt status sufficient), *with Campbell v. Drexel Univ.*, 785 F. Supp. 3d 48, 56-57 (E.D. Pa. 2025) ("Medicare and Medicaid payments … are not qualifying federal financial assistance[.]"), *and Buettner-Hartsoe v. Balt. Lutheran High Sch. Ass'n*, 96 F.4th 707, 714 (4th Cir. 2024) ("Tax exemption is not 'Federal financial assistance.'").

To be clear, the Chamber cites these cases not to endorse them, but to illustrate the many contexts in which a newly minted cause of action *could* operate.

B. The ACA May Further Expand Title IX's Reach

Congress's incorporation of Title IX's remedial scheme in the ACA means that the Court's resolution of the question presented in this case could also have a domino effect on the healthcare sector. The ACA provides in relevant part:

> [A]n individual shall not, on the ground prohibited under … title IX … be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any health

> program or activity, any part of which is receiving Federal financial assistance[.] … The enforcement mechanisms provided for and available under … title IX … shall apply for purposes of violations of this subsection.

42 U.S.C. § 18116(a).

It is easy to see how implying a cause of action under Title IX could work a considerable expansion of the ACA. Any cause of action for employment discrimination recognized here would likely be treated as an "enforcement mechanism[] … available under … title IX," and would thus "apply" equally to "discrimination under" "any health program or activity." *Id.*; *see Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022) (observing that the ACA "expressly incorporates the rights and remedies provided under Title VI," which is listed alongside Title IX in the ACA); *see also Anderson v. Crouch*, 169 F.4th 474, 493 (4th Cir. 2026) ("[T]he [ACA] ties its antidiscrimination provision directly to Title IX's[.]").[3] Courts have had no trouble incorporating causes of

[3] Several circuits have also held that the ACA incorporates the entire remedial scheme of the listed statutes. *E.g.*, *Tomei v. Parkwest Med. Ctr.*, 24 F.4th 508, 514-15 (6th Cir. 2022) (holding the ACA "adopt[s] the Rehabilitation Act's … limitations on compensatory or punitive damages"). Thus, where the relevant underlying statute lacks some remedial limitation, so does the ACA. *See Doe v. BlueCross BlueShield of Tenn., Inc.*, 926 F.3d 235, 239-40 (6th Cir. 2019) (noting that "Title VI, Title IX, and § 504 do not require the exhaustion of administrative remedies before bringing a private cause of action").

action into the ACA, even where they were only implied. *E.g.*, *L.B. v. Premera Blue Cross*, 781 F. Supp. 3d 1128, 1135 (W.D. Wash. 2025). In fact, the Fourth Circuit has already found the ACA has an implied retaliation claim by importing *Jackson* from the Title IX context. *Lucas v. VHC Health*, 128 F.4th 213, 222-23 (4th Cir. 2025) (citing *Jackson v. Birmingham Bd. of Educ.*, 544 U.S. 167, 173-74 (2005)).

Any new implied cause of action under Title IX thus might well be incorporated as a matter of course under the ACA to cover countless healthcare employees. Courts have interpreted the ACA's "health program or activity" just as expansively as Title IX's education program or activity, including by encompassing "all" of an entity's operations. *See, e.g.*, *Pritchard v. Blue Cross Blue Shield of Ill.*, 159 F.4th 646, 658-60 (9th Cir. 2025). If a cause of action for employment discrimination is implied under Title IX, courts could apply it across *all* operations of "healthcare entities receiving federal funds" under the ACA. *Cummings*, 596 U.S. at 218.

Petitioners' position thus risks sprawling spillover effects. In a case about whether to extend an implied employment-discrimination cause of action to a basketball coach and art teacher at a public university, the Court could open the door to all kinds of unlikely plaintiffs—for example, a secretary at a dentist office, a salesman at a health insurance company, a scientist at a pharmaceutical manufacturer, or in-house counsel at a hospital system. Indeed, the healthcare and education industries alone employ roughly 18 million and 13 million workers, respectively.[4] So about 18 percent of the nation's total labor force could avail themselves of a new, freestanding cause of action for employment discrimination if this Court creates one.[5]

C. Implying A Cause Of Action For Employment Discrimination Under Title IX Would Undermine Title VII

The implied cause of action proposed by petitioners would not just be far-reaching; it would circumvent Congress's carefully defined limits on the express cause of action for employment discrimination that Congress created in Title VII. "Title VII prohibits employment discrimination 'because of … sex.'" *West Virginia v. B.P.J. ex rel. Jackson*, 146 S. Ct. 2356, 2373 (2026) (citation omitted); *see* 42 U.S.C. § 2000e-2(a)(1). But "[u]nlike Title IX, Title VII contains an express cause of action, and specifically provides for relief in the form of monetary damages" subject to numerous limitations carefully chosen by Congress. *Gebser v. Lago Vista Indep. Sch. Dist.*, 524 U.S. 274, 283 (1998) (citing 42 U.S.C. §§ 2000e-5(f), 1981a).

At the outset, before suing their employers, would-be Title VII plaintiffs must file a charge with the

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[4] National Center for Health Workforce Analysis, *State of the U.S. Health Care Workforce, 2025*, at 2 (Dec. 2025), https://tinyurl.com/mr2f2znx; *The Economics Daily*, U.S. BUREAU OF LABOR STATISTICS (Nov. 18, 2024), https://tinyurl.com/ynzzrryx.

[5] *Economics News Release*, U.S. BUREAU OF LABOR STATISTICS (Aug. 7, 2026), https://tinyurl.com/35z5exsd.

Equal Employment Opportunity Commission (EEOC), generally within 180 days of the discriminatory act. *Fort Bend*, 587 U.S. at 544. The EEOC must then either attempt conciliation or dismiss the charge. *Id.* at 544-45; *see Mach Mining, LLC v. EEOC*, 575 U.S. 480, 486-87 (2015) (explaining that the EEOC's "obligation" to attempt to resolve the dispute through "conciliation" is "a key component of the statutory scheme"). The EEOC must also provide the complainant with a right-to-sue notice. *Fort Bend*, 587 U.S. at 545. Only then may the complainant sue—within 90 days of receiving that notice. *Id.* Importantly, Title VII also caps compensatory damages. *See* 42 U.S.C. § 1981a(b)(3). And it limits liability to employers with 15 or more employees. *See Garcia v. Salvation Army*, 918 F.3d 997, 1006 (9th Cir. 2019) (citing 42 U.S.C. § 2000e(b)).

Title IX has none of these limits. To begin, it "has no administrative exhaustion requirement and no notice provisions." *Fitzgerald v. Barnstable Sch. Comm.*, 555 U.S. 246, 255 (2009). Those omissions are significant because Congress permitted a suit against an employer under Title VII only following "an opportunity for nonjudicial and nonadversary resolution of claims." *Novotny*, 442 U.S. at 372-73. As this Court has explained, "Congress intended cooperation and conciliation to be the preferred means of enforcing Title VII," and "[c]ritical to the compliance scheme is the Commission's role in settling Title VII disputes through conference, conciliation, and persuasion before a Title VII plaintiff or the Commission may bring suit." *W.R. Grace & Co.*

v. Loc. 759, Int'l Union of United Rubber, 461 U.S. 757, 770-71 (1983). Petitioners' proposed cause of action under Title IX would sidestep all of that.

An implied Title IX employment-discrimination claim also would lack Title VII's limitations period, damages cap, and small-employer exception. These limits, along with the exhaustion requirement, are not paper tigers. For example, courts regularly dismiss Title VII claims on failure-to-exhaust grounds. *E.g.*, *Handlon v. Rite Aid Servs., LLC*, 513 F. App'x 523, 528 (6th Cir. 2013); *Kopko v. Lehigh Valley Health Network*, 776 F. App'x 768, 775 (3d Cir. 2019). Even absent dismissal, the process can "amplify, clarify, or more clearly focus" the dispute by limiting it to that "which can reasonably be expected to grow out of the charge." *Gregory v. Ga. Dep't of Hum. Res.*, 355 F.3d 1277, 1279-80 (11th Cir. 2004) (per curiam). As for the limitations period, this Court has long held "that the statute precludes recovery for discrete acts of discrimination or retaliation that occur outside the statutory time period." *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101, 105 (2002).

Offering millions of employees a parallel employment-discrimination regime without Title VII's restrictions "would disrupt a carefully balanced remedial scheme" without any obvious benefit. *Lakoski v. James*, 66 F.3d 751, 754 (5th Cir. 1995). It would also force companies to price expanded litigation into their cost of doing business, which will be reflected in higher costs to their consumers, lower wages to their employees, less capital for innovation, or some combination of the three. *See Stoneridge*, 552

U.S. at 163-64 (explaining that expanding an implied cause of action would "allow plaintiffs with weak claims to extort settlements from innocent companies," thus "rais[ing] the costs of doing business"); *Cannon v. Univ. of Chi.*, 441 U.S. 677, 747 (1979) (Powell, J., dissenting) (explaining that judicially implying a Title IX cause of action will result in the "burden of expensive, vexatious litigation").[6] While employers would face a maximum of $300,000 for most compensatory damages for a Title VII employment-discrimination claim, *see* 42 U.S.C. § 1981a(b)(3)(D), they would have to price for potentially endless liability under petitioners' implied Title IX claim. What's worse, small employers will likely face the brunt of such costs.[7] Not only did Congress exempt employers with less than 15 employees from Title VII liability altogether, 42 U.S.C. § 2000e(b), it capped most compensatory damages for businesses with 15 to 100 employees at only $50,000, *id.* § 1981a(b)(3)(A).

The Court has previously considered "practical consequences" as a "reason to reject" the "expansion" of an implied right of action. *Stoneridge*, 552 U.S. at

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[6] U.S. Chamber of Commerce Institute for Legal Reform, *Ill-Suited: Private Rights of Action and Privacy Claims* 14 (July 2019), https://tinyurl.com/24fnawz8 (implying rights of action often "hinder[s] innovation and consumer choice by threatening companies with frivolous, excessive, and expensive litigation").

[7] *See* U.S. Chamber of Commerce Institute for Legal Reform, *The U.S. Lawsuit System Costs America's Small Businesses $160 Billion* (Jan. 4, 2024), https://tinyurl.com/47nnwzke.

163-64 (citing *Va. Bankshares, Inc. v. Sandberg*, 501 U.S. 1083, 1104-05 (1991); *Blue Chip Stamps v. Manor Drug Stores*, 421 U.S. 723, 737 (1975)). There are ample reasons to do the same here.

II. TITLE IX DOES NOT CREATE AN IMPLIED PRIVATE RIGHT OF ACTION FOR EMPLOYMENT DISCRIMINATION

Even setting aside the many adverse consequences that could result from implying the cause of action petitioners seek, this Court should not do so for an elementary reason: Congress did not create one. Indeed, one would scour Title IX in vain for any language concerning employment discrimination whatsoever, let alone creating a cause of action to remedy it. That makes sense. As outlined above, Title VII already creates the cause of action petitioners seek, but meticulously limits its scope. Discontent with those limits created by Congress, petitioners ask this Court to create a private right of action under Title IX by extending outmoded precedent. But such an extension would violate the separation of powers and cannot be squared with this Court's rigorous test for implying a cause of action.

A. Under The Separation Of Powers, Only Congress Can Create Private Rights Of Action

The Constitution vests the legislative power in Congress. U.S. Const. art. I. That power includes authority both to create federal law and to decide "who may sue to enforce" it. *Saba*, 146 S. Ct. at 1552. By contrast, the Constitution vests courts with judicial power. U.S. Const. art. III. That power includes authority to "interpret" statutes, but not to "augment[]" them. *Saba*, 146 S. Ct. at 1553. And "creating a cause of action is a legislative endeavor," not a judicial one. *Egbert*, 596 U.S. at 491.

That allocation of authority makes sense because authorizing a private party to enforce a "statutory right poses delicate questions of public policy." *Medina v. Planned Parenthood S. Atl.*, 606 U.S. 357, 369 (2025). And as between branches, "Congress is better positioned than courts to evaluate th[os]e policy tradeoffs." *Cisco*, 146 S. Ct. at 1891; *see Medina*, 606 U.S. at 369 ("The job of resolving how best to weigh those competing costs and benefits belongs to the people's elected representatives, not unelected judges charged with applying the law as they find it.").

Despite that seeming clarity, "there was a time in the mid-20th century when 'the Court assumed it to be a proper judicial function to provide' whatever 'remedies' it deemed 'necessary to make effective a statute's purpose.'" *Medina*, 606 U.S. at 368 (quoting *Ziglar v. Abbasi*, 582 U.S. 120, 131-32 (2017)). Those were the "bad old days." Transcript of Oral Argument at 45:11, *CBOCS West, Inc. v. Humphries*, 553 U.S. 442 (2008) (No. 06-1431) (Scalia, J.). The Court has "since rejected the practice of fashioning rights of action as [it] see[s] fit." *Saba*, 146 S. Ct. at 1553. Instead, the Court "interpret[s] the statute" to determine if *Congress* created a cause of action. *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001).

When a statute lacks an express cause of action, the Court exercises extreme "caution." *Hernandez v.*

Mesa, 589 U.S. 93, 101 (2020). To "create a federal right," the statute must use "clear and unambiguous terms." *Gonzaga Univ. v. Doe*, 536 U.S. 273, 283, 290 (2002). And it must "manifest[] an intent 'to create not just a private *right* but also a private *remedy*.'" *Id.* at 284 (quoting *Sandoval*, 532 U.S. at 286). Put simply, "a private right of action" must be "unambiguously conferred"—a high bar to meet. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 332 (2015) (plurality).

When courts imply a cause of action based on a statute's purpose, they "usurp[] Congress's role." *Medina*, 606 U.S. at 383. That is because "no statute pursues any single 'purpos[e] at all costs.'" *Id.* at 368 (citation omitted). Rather, legislation "involves balancing interests and often demands compromise." *Hernandez*, 589 U.S. at 100. Sometimes Congress "may not wish to pursue the provision's purpose to the extent of authorizing private suits for damages." *Id.* Implying a private right of action thus "upset[s] the careful balance of interests struck by" Congress, *Nestle USA, Inc. v. Doe*, 593 U.S. 628, 637 (2021) (plurality), which is the Branch constitutionally empowered and "better positioned … to evaluate the policy tradeoffs of creating liability," *Cisco*, 146 S. Ct. at 1891.

Implying private rights of action also interferes with the Executive Branch's enforcement of the law. Rather than empower private claimants, Congress often vests agencies with sole enforcement power to "achiev[e] 'the expertise, uniformity, widespread consultation, and resulting administrative guidance that can accompany agency decisionmaking.'" *Armstrong*, 575 U.S. at 328-29 (quoting *Gonzaga*, 536 U.S. at 292 (Breyer, J., concurring in judgment)). These agencies are politically accountable and serve on the public's behalf. *See Trump v. Slaughter*, 146 S. Ct. 2283, 2310 (2026). Judicially implying a private cause of action, however, permits unaccountable "plaintiffs' lawyers to set policy nationwide," often based on personal, not public, interest. *Ill-Suited*, *supra*, at 13; *see also Alden v. Maine*, 527 U.S. 706, 755-56 (1999) ("A suit which is commenced and prosecuted … in the name of the United States … differs in kind from the suit of an individual," as "[s]uits brought by the United States itself require the exercise of political responsibility[,] a control which is absent from a broad delegation to private persons[.]"). Private enforcement also "risk[s]" creating a patchwork "of inconsistent interpretations," as well as "misincentives" because of "inappropriate application[s] of the statute." *Armstrong*, 575 U.S. at 328-29. Business growth and investment are harmed in the process.

The same separation-of-powers concerns that weigh against judicially implying a cause of action in the first place further "caution against its expansion." *Stoneridge*, 552 U.S. at 165. The "decision to extend" an existing implied cause of action—just like the decision to create one—"is for Congress, not for" the Judiciary. *Id.* Thus, "the breadth of the right once recognized should not, as a general matter, grow beyond the scope congressionally intended." *Va. Bankshares*, 501 U.S. at 1102; *see Cummings*, 596

U.S. at 230-31 (Kavanaugh, J., concurring) ("[W]ith respect to existing implied causes of action, Congress, not this Court, should extend those implied causes of action and expand available remedies.").

The Court's treatment of Section 10(b) of the Securities Exchange Act is instructive. Although the Court initially recognized an implied cause of action under that section, *see Superintendent of Ins. of N.Y. v. Bankers Life & Cas. Co.*, 404 U.S. 6, 13 n.9 (1971), it has repeatedly declined to expand that cause of action despite numerous requests from plaintiffs to do so. For example, the Court refused to "extend" the "implied § 10(b) action" to "aiders and abettors when none of the express causes of action in the securities Acts included that liability." *Stoneridge*, 552 U.S. at 157 (citing *Cent. Bank of Denver, N.A. v. First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 180 (1994)). And the Court has also strictly applied the implied Section 10(b) action's reliance requirement to maintain "the narrow dimensions [it] must give to a right of action Congress did not authorize." *Id.* at 166-67. As another example, the Court has refused to "expand liability beyond the person or entity that ultimately has authority over a false statement" to ensure "the narrow scope that [it] must give [this] implied private right of action." *Janus Cap. Grp., Inc. v. First Derivative Traders*, 564 U.S. 135, 144 (2011).

So too with the right of action implied in *Bivens v. Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971). In *Bivens*, the Court "recognized an implied cause of action for damages against federal officers for certain alleged violations of the Fourth Amendment."

Goldey v. Fields, 606 U.S. 942, 942 (2025) (per curiam). Shortly thereafter, the Court implied a *Bivens* cause of action in "two additional contexts." *Id.* But since 1980, the Court has "declined more than 10 times to extend *Bivens* to cover other constitutional violations." *Id.* For example, although the Court once supplied a *Bivens* cause of action for an Eighth Amendment claim of deliberate indifference against prison officials, *see Carlson v. Green*, 446 U.S. 14, 16 & n.1, 19 (1980), it has since declined to "extend[] *Bivens* to allow an Eighth Amendment claim for excessive force" against prison officials, *Goldey*, 606 U.S. at 944. And the Court recently refused to "extend[]" *Bivens* to permit a Fourth Amendment claim involving "allegations of excessive force … 'almost parallel'" to those in *Bivens* itself. *Egbert*, 596 U.S. at 495 (citation omitted).

B. Title IX's Text, Structure, And Context Do Not Create A Private Cause Of Action For Employment Discrimination

Title IX 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). Nothing about Title IX's text, structure, or surrounding context evinces any intent whatsoever to create a private right of action for employment discrimination.[8]

As a threshold matter, Title IX's language does not provide a clear and unambiguous right for employees. To create a federal right, the "statute must display 'an unmistakable focus' on individuals like the plaintiff," *Medina*, 606 U.S. at 368, and "aim[] at protecting 'a particular class of persons,'" *Saba*, 146 S. Ct. at 1553 (citation omitted). This "'stringent' and 'demanding' test" is "rare[ly]" satisfied. *Medina*, 606 U.S. at 368. And it is not satisfied here. Title IX nowhere mentions employees or employment, let alone displays "an unmistakable focus" on employees. *Id.*

Even if Title IX included an antidiscrimination *right* for employees (it does not), recognizing a private cause of action would be permissible only if the statute also separately provided "a private *remedy*" for employees to vindicate that right. *Gonzaga*, 536 U.S. at 284. It plainly does not. Indeed, this Court has repeatedly recognized that Title IX contains "no legislative expression of the scope of available remedies." *Gebser*, 524 U.S. at 283-84; *see Barnes v. Gorman*, 536 U.S. 181, 187 (2002) (noting that "Title IX" "mentions no remedies"); *Cummings*, 596 U.S. at 220 (Title IX is "silent as to available remedies."). That "silence is enough to settle the issue." *Cisco*, 146 S. Ct. at 1893; *see also Sandoval*, 532 U.S. at 293 n.8 ("'[A]ffirmative' evidence of congressional intent must be provided *for* an implied

[8] The Court can reach this result without recourse to the Spending Clause. *See Sandoval*, 532 U.S. at 293.

remedy, not against it, for without such intent, 'the essential predicate for implication of a private remedy simply does not exist.'" (citation omitted)).

Title IX's structure also forecloses implying a private remedy for employees. When a statute expressly provides one method of enforcement, it "suggests that Congress intended to preclude others." *Sandoval*, 532 U.S. at 290. Here, Congress included "only [one] express enforcement mechanism" for Title IX: "an administrative procedure resulting in the withdrawal of federal funding from institutions that are not in compliance." *Fitzgerald*, 555 U.S. at 255; *see* 20 U.S.C. § 1682. This enforcement mechanism has "teeth." *Medina*, 606 U.S. at 384. And by spelling it out, Congress removed any plausible inference that it "absentmindedly forgot to mention an intended private action." *Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 20 (1979).

The broader statutory context confirms why no private cause of action should be implied in Title IX for employment discrimination: Three months before Title IX's passage, Congress extended Title VII to cover education. *See* Equal Employment Opportunity Act, Pub. L. No. 92-261, §§ 2-3, 86 Stat. 103-104 (Mar. 24, 1972). Yet Title VII has both an express cause of action and authorizes money damages. *Gebser*, 524 U.S. at 283. "Obviously, then, when Congress wished to provide a private damages remedy" for employment discrimination based on sex—including in education—"it knew how to do so and did so expressly." *TAMA*, 444 U.S. at 21.

Not only is implying a Title IX claim for employment discrimination unsupported by the text, it would also circumvent Title VII's carefully crafted enforcement scheme. As explained above, a Title VII claim has limits created by Congress, including an exhaustion requirement, a limitations period, a damages cap, and a small-employer exception. *See supra* I.C. Not so for Title IX. The absence of these limits is easily explained by the fact that Title IX was never meant to facilitate employment-discrimination claims. Implying a private remedy for employment discrimination under Title IX would "'circumvent[]'" Title VII's "presuit procedures" and give "'plaintiffs access to tangible benefits' … 'unavailable under'" Title VII. *Health & Hosp. Corp. of Marion Cnty. v. Talevski*, 599 U.S. 166, 189 (2023) (citation omitted); *see also Fernandez v. United States*, 146 S. Ct. 1292, 1301-02 (2026) (foreclosing relief that "circumvents the exacting requirements" of another statutory scheme, including its "time limit[s]"). And it would expose small employers to liability for employment discrimination that Congress did not want them to face. Surely Congress did not intend Title IX to implicitly erase its reticulated employment-discrimination rules in the education sector—three months after extending Title VII there.

C. Petitioners Provide No Grounds To Justify An Implied Title IX Cause Of Action For Employment Discrimination

Without statutory text or context on their side, petitioners point to precedent and Title IX's abrogation of state sovereign immunity. Neither supports their desired implied cause of action.

1. To justify their expansion of a Title IX implied cause of action, petitioners rely heavily on *Cannon* and a few other decisions allowing private claims to proceed under Title IX. To start, however, "[t]he Court has retreated from *Cannon*'s reasoning, which 'exemplified' an 'expansive rights-creating approach' that later decisions 'abandoned.'" *Medina*, 606 U.S. at 369 n.1 (citation omitted). Indeed, "the decision's 'language' no longer controls"; only its "holding" remains. *Id.* (citation omitted).

Petitioners also overstate *Cannon*'s surviving holding and seek to extend it to a new context. Petitioners mistakenly claim that *Cannon* offered a cause of action to "all 'private victims of discrimination'" in the education context by relying on generic language in that opinion. Pet.Br.23 (quoting *Cannon*, 441 U.S. at 709). But this Court does not "parse[]" its prior opinions "as though [it] were dealing with a statute." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 373 (2023) (citation omitted). To the contrary, "general expressions, in every opinion, are to be taken in connection with the case in which those expressions are used." *Cohens v. Virginia*, 19 U.S. 264, 399 (1821); *see Int'l Bhd. of Teamsters v. Hanke*, 339 U.S. 470, 480 n.6 (1950) (explaining that the Court has a "duty to restrict general expressions in opinions in earlier cases to their specific context").

Nor is the Court shackled by the interpretive methodology applied in *Cannon*. As "a doctrine of preservation, not transformation," stare decisis "counsels deference to past mistakes, but provides no justification for making new ones." *Citizens United v. FEC*, 558 U.S. 310, 384 (2010) (Roberts, C.J., concurring). Precedential force attaches to the "specific" result reached in a prior case, not to the obsolete "interpretive methodology" used in getting there. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024); *see* Amy Coney Barrett, *Originalism and Stare Decisis*, 92 Notre Dame L. Rev. 1921, 1939 (2017) ("[T]here is a difference between leaving the result of precedent in place … and accepting its decisional theory as governing new contexts."). Thus, *Cannon*'s "narrow holding about the meaning of the [statute] at issue in that case may be entitled to stare decisis effect," but its "interpretive methods" lack "the full force of horizontal stare decisis." *Kisor v. Wilkie*, 588 U.S. 558, 624-25 (2019) (Gorsuch, J., concurring in judgment).

Applying those principles, *Cannon*'s holding must be limited to the "specific context" in which this Court implied a cause of action. *Teamsters*, 339 U.S. at 480. In *Cannon*, the Court considered a Title IX suit brought by a prospective student and simply "concluded that petitioner may maintain her lawsuit." 441 U.S. at 717. *Cannon* thus recognized a cause of action for students facing discrimination; it did not analyze whether there is an implied discrimination claim for all comers, as petitioners suggest. *See Sandoval*, 532 U.S. at 282 (reading *Cannon* narrowly because it "had no occasion to consider" an issue raised years later).

Petitioners also invoke *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982). But *North Haven* merely upheld regulations that purported to apply Title IX to employees. The Court held only that "the statutory language … *seems* to favor inclusion of employees," but "does not expressly include or exclude employees from its scope." *Id.* at 522 (emphasis added). Faced with that ambiguity, the Court "turn[ed] to the Act's legislative history" and "postenactment history" to uphold the challenged regulations. *Id.* at 522-36. Yet a "court charged with asking whether Congress has spoken clearly has its answer long before it might have reason to consult the Congressional Record." *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 49 (2024). *North Haven* thus confirms that employees have no *clear* and *unambiguous* right under Title IX, defeating an implied cause of action.

Even if *North Haven* can be overread to hold that employees clearly have a private *right* under Title IX, it never considered whether employees have a private *remedy*. That case did not involve a private Title IX suit by employees against their employers, as here. Rather, it involved consolidated suits by "public school boards" challenging Title IX regulations that "reach[ed] the employment practices of educational institutions." *N. Haven*, 456 U.S. at 517. *North Haven* therefore concerned only Title IX's substantive reach, not its private remedies. And "even where a statute is phrased in [] explicit rights-creating terms, a plaintiff suing under an implied right of action still must show that the statute manifests an intent 'to create not just a private *right* but also a private *remedy*.'" *Gonzaga*, 536 U.S. at 284 (quoting *Sandoval*, 532 U.S. at 286).

Petitioners likewise read *Jackson* for more than it is worth. The Court in *Jackson* only "consider[ed] … whether the private right of action implied by Title IX encompasses claims of retaliation" and held that it does. 544 U.S. at 171; *see also id.* at 178. It did not consider whether employees have a general Title IX discrimination claim. In fact, *Jackson* kept its focus on *students* facing discrimination, as in *Cannon*. The Court emphasized that its implied right for employees facing retaliation was meant "to vindicate the rights of their students." *Id.* at 181. The discrimination there was "on the basis of sex" only because *students* were discriminated against based on *their* sex. *Id.* at 179-80. The narrow context in which *Jackson* implied a cause of action is thus limited to situations where students face sex discrimination.

2. Petitioners also rely on the post-*Cannon* abrogation of sovereign immunity for Title IX violations, but that says nothing to support an implied cause of action. This provision says that "State[s] shall not be immune under the Eleventh Amendment … from suit in Federal court for a violation of … title IX." 42 U.S.C. § 2000d-7(a)(1). It then reiterates that in "suit[s] against a State for a violation" of Title IX, "remedies … 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." *Id.* § 2000d-7(a)(2).

Textually, this provision creates no cause of action. It merely abrogates state sovereign immunity. At most, this provision "presupposes that parties are already before the court and directs the court's use of its remedial authority." *Saba*, 146 S. Ct. at 1554. "It says nothing about conferring a right to sue in the first place." *Id.* at 1555-56. And even after this provision's adoption, the Court has explained that "Title IX … mentions no remedies." *Barnes*, 536 U.S. at 187.[9] There is no reason to read a private cause of action for employment discrimination into Title IX that Congress did not create.

* * *

This case demonstrates why this Court has gotten out of the business of implying causes of action. What begins as one drink at the well (*Cannon*), becomes another (*Jackson*), and creates the temptation for yet another one. In statutory and constitutional cases alike, the Court has reaffirmed its commitment to the idea that "creating a cause of action is a legislative endeavor" in which "Congress is far more competent than the Judiciary." *Egbert*, 596 U.S. at 491; *see also Medina*, 606 U.S. at 369 ("The job of resolving how best to weigh those competing costs and benefits belongs to the people's elected representatives."). Just last Term, the Court "rejected the practice of fashioning rights of action as [it] see[s] fit," *Saba*, 146 S. Ct. at 1553, and reiterated its "firm[] commit[ment]

[9] Even if this provision created a Title IX right of action, the scope of that right is limited to "*Cannon*'s 'holdin[g].'" *Medina*, 606 U.S. at 369 n.1 (citation omitted). So it would (at most) recognize a right of action for students, not employees.

to the view that judicially created causes of action offend the separation of powers in almost every circumstance," *Cisco*, 146 S. Ct. at 1891. There is no reason to retreat from that commitment now. The Court should not imply a cause of action in Title IX for employment discrimination.

CONCLUSION

This Court should affirm the judgment below.

Respectfully submitted,

JENNIFER B. DICKEY
JORDAN L. VON BOKERN
U.S. CHAMBER LITIGATION CENTER
1615 H Street, N.W.
Washington, D.C. 20062

CHRISTOPHER G. MICHEL
Counsel of Record
CAROLINE STEPHENS MILNER
KIRKLAND & ELLIS LLP
1301 Pennsylvania Ave., N.W.
Washington, D.C. 20004
(202) 389-5000
christopher.michel@kirkland.com

SETH SMITHERMAN
DAVID HUTCHISON
KIRKLAND & ELLIS LLP
401 West 4th Street, Ste. 4000
Austin, TX 78701

Counsel for Amicus Curiae

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