

US Supreme Court to Settle Whether Employees Can Sue Under Title IX

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September 30, 2026

The U.S. Supreme Court's October 2026 term will feature a case that could reshape sex-discrimination litigation on every federally funded college campus in the country. In *Crowther v. Board of Regents of the University System of Georgia*, the court will decide whether Title IX of the Education Amendments of 1972 gives employees at covered institutions—not just students—an implied private right of action to sue for sex discrimination. The court granted certiorari on May 18, 2026, and will hear argument later this term.

The decision in that case will resolve a long-standing circuit conflict, clarify the boundary between Title IX and Title VII, and likely signal how far this court will stretch to imply private remedies under spending clause legislation. For higher education counsel, plaintiffs' employment lawyers, and civil-rights litigators, the ruling could drive strategy for years.

The Statutory Framework

Title IX's text is spare. It provides that "no person" shall, "on the basis of sex," be denied the benefits of or subjected to discrimination "under any education program or activity receiving Federal financial assistance." See 20 U.S.C. Section 1681(a). The only express enforcement mechanism involves administrative proceedings through the U.S. Department of Education with the most significant potential penalty being withdrawal of federal funds. Congress said nothing



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about a private cause of action in Title IX. That silence has forced courts to decide whether one should be implied and, if so, for whom.

The Doctrinal Building Blocks

Three Supreme Court decisions form the background for this issue.

First, in *Cannon v. University of Chicago*, 441 U.S. 677 (1979), the court authorized a female student's private suit under Title IX against two federally funded medical schools based on allegations that the student was denied admission to those schools because of her sex.

Second, in *North Haven Board of Education v. Bell*, 456 U.S. 512 (1982), the court held that Title IX's ban on sex discrimination reaches employment practices at institutions receiving federal

educational funding. But *North Haven* addressed the Department of Education's regulatory authority to promulgate regulations barring employment-based discrimination under Title IX. It did not decide whether employees may sue in their own name.

Third, in *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005), in a 5-4 decision, the court held that an employee-coach could sue for retaliation under Title IX after complaining about unequal treatment of the high school girls' basketball team he coached. While *Jackson* permitted an employee to sue his employer under Title IX, the underlying claim vindicated students' rights since the employee-plaintiff in that case alleged that he was discriminated against after complaining about discrimination against the female students on the girls' basketball team.

Crowther, the case currently before the court, presents a different question. The U.S. Court of Appeals for the Eleventh Circuit consolidated the cases of Thomas Crowther, an art professor at Augusta University, and MaChelle Joseph, Georgia Tech's former women's basketball coach. See *Joseph v. Board of Regents of the University System of Georgia*, 121 F.4th 855 (11th Cir. 2024). Both cases involved Title IX claims for direct employment-based discrimination on the basis of sex and retaliation. The Eleventh Circuit dismissed the discrimination claims, holding that Title IX does not authorize the employee-plaintiffs to sue the federally funded educational institutions that employed them for employment-based sex discrimination.

The Modern Skepticism About Implied Rights and the Limited Scope of Remedies Under Title IX

The Supreme Court has grown noticeably reluctant to recognize implied rights of action since the court decided *Cannon* in the late 1970s. In *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001), the court refused to imply a private right to enforce Title VI's disparate-impact regulations, insisting that "private rights of action to enforce federal law must be created by Congress." The holding in *Gonzaga University v. Doe*, 536 U.S. 273 (2002), demanded that Spending Clause legislation—such

as Title IX—"unambiguously" confer an individual right to sue for private actions to be permitted.

Last term's decision in *Medina v. Planned Parenthood South Atlantic*, 606 U.S. 357 (2025), drove the point home. In a 6-3 opinion authored by Justice Neil Gorsuch, the court held that Medicaid's any-qualified-provider provision did not confer a right enforceable through private litigation under 42 U.S.C. Section 1983. The *Medina* majority stressed that spending clause statutes function as contracts between the federal government and recipients; ordinarily, only the federal government—not private beneficiaries—may enforce the bargain.

Even when the court has recognized private rights of action, it has significantly limited the scope of remedies available for violations of legislation passed under Congress' spending clause authority, such as Title IX. In *Cummings v. Premier Rehab Keller*, 596 U.S. 212 (2022), the court held that emotional-distress damages are not recoverable under Title VI, Title IX, the Rehabilitation Act, or the Affordable Care Act. Chief Justice John Roberts, writing for the majority in that case, reasoned that spending clause remedies mirror those available for breach of contract. Because emotional-distress damages generally are not recoverable for common law breach of contract claims, the majority in *Cummings* found that such remedies are unavailable when a party sues alleging violation of a statute passed under Congress' spending clause power. Thus, *Cummings* will continue to cap the recoverable damages even if the court holds in *Crowther* that private parties are permitted to sue their employers under Title IX.

The Circuit Split

The Eleventh Circuit is not alone. The Fifth Circuit has also held that employees lack a private right to sue for money damages under Title IX, treating Title VII as the exclusive remedy for employment discrimination at federally funded colleges, and universities. See *Lakoski v. James*, 66 F.3d 751, 753 (5th Cir. 1995).

In contrast, the Second, Sixth, Ninth, and Tenth Circuits have held that employees are permitted to

file suit against their employers asserting claims for violation of Title IX. Those courts have read Title IX's "no person" language expansively, treating Title IX and Title VII as complementary rather than mutually exclusive. See, e.g., *Vengalattore v. Cornell University*, 36 F.4th 87, 106 (2d Cir. 2022).

Why the Differences Matter

Title VII and Title IX are not interchangeable. The two statutes feature different administrative filing requirements and scope of recoverable damages.

Title VII requires the filing of a charge of discrimination with the EEOC or a state or local fair-employment agency within 180 or 300 days as a prerequisite to suing in federal or state court. See 42 U.S.C. Section 2000e-5(e)(1). Title IX imposes no such administrative exhaustion requirement, and its statute of limitations is significantly longer because Title IX borrows the forum state's personal-injury limitations period. These differences matter most to employees who miss the tight Title VII filing window.

Title VII caps compensatory and punitive damages between \$50,000 and \$300,000, depending on employer size. Title IX features no cap. But under *Cummings*, Title IX plaintiffs cannot recover emotional-distress damages at all. So high earners with substantial economic losses may prefer Title IX, while plaintiffs whose principal injuries are dignitary will fare better under Title VII.

Reading the Tea Leaves

No doubt, trying to predict this court's rulings in civil rights matters is a dangerous endeavor. On the one hand, the Roberts court seems to disfavor implied rights not fairly discernible in the underlying statute. *Sandoval*, *Gonzaga*, and *Medina* seem to all point in that same direction.

On the other hand, *North Haven* held that Title IX extends to employer-employee disputes at federally funded educational institutions, and *Jackson* greenlighted Title IX private suits for retaliation by employees against employers covered under Title IX. Moreover, Title IX's "no person" language does

not distinguish between students and employees, which might give this court the textualist hook to side with the majority of circuit courts, which have recognized a private right of action for employees under Title IX.

Conclusion

Crowther is not merely a technical dispute about implied rights. It is a test of how the Roberts court reads spending clause legislation, how it interprets comprehensive statutory schemes, and how it treats decades-old precedents like *Cannon* and *Jackson*.

For counsel representing colleges and universities covered by Title IX, the case will define the rules that govern the next generation of employment litigation. For plaintiffs lawyers, it will either open or close a valuable procedural door. A decision is expected by the end of the court's term in June 2027.

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