



Appellate Courts Divided Over School Employee Discrimination Lawsuits and Title IX

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Federal appellate courts have split over how two federal laws that bar sex discrimination in certain settings and programs relate to one another. Title VII of the Civil Rights Act of 1964 (Title VII) **bars** (among other things) sex discrimination in the workplace. Section 901(a) of the Education Amendments of 1972 (Title IX) similarly **prohibits** sex discrimination in federally funded education programs. Both laws authorize individuals subjected to discrimination to bring lawsuits to enforce their provisions. Title VII clearly protects employees, including employees of **educational institutions**, and Title IX undoubtedly protects **students** in federally funded educational programs. Courts have split, however, on whether employees of federally funded educational institutions subjected to sex discrimination may bring Title IX lawsuits in addition to Title VII ones. As this Sidebar explains, given the differences between the two statutes, including when individuals may bring a lawsuit and potential damages remedies, the availability of employee Title IX lawsuits matters for federally funded schools. A recent **decision** from the U.S. Court of Appeals for the Eleventh Circuit (this Sidebar identifies further U.S. Court of Appeals references by circuit and number only), *Joseph v. Board of Regents of the University System of Georgia*, has deepened a split among appellate courts on whether such lawsuits are available to employees of federally funded schools.

This Sidebar begins by briefly describing Title VII and Title IX, as well as several Supreme Court decisions relevant to how Title IX applies in the employment context. The Sidebar continues with a discussion of how appellate courts have addressed Title IX lawsuits brought by school employees and examines the Eleventh Circuit's recent decision. It concludes with considerations for Congress.

Title VII and Title IX

Title VII and Title IX both prohibit sex discrimination in specific contexts. In some ways, what it means to discriminate based on sex under both laws is similar. Thus, courts interpreting the meaning of sex discrimination **under** Title IX often **draw** on Title VII cases. However, there are important differences between the two laws. One is the constitutional authority under which Congress passed them. Title VII **rests** on Congress's powers under the **Commerce Clause** and Section Five of the **Fourteenth Amendment**.

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Title IX, by contrast, was enacted pursuant to Congress's power under the [Spending Clause](#). The Supreme Court has characterized Spending Clause legislation as akin to a contract: in exchange for funds, recipients agree to comply with "[federally imposed conditions](#)." Because a recipient must voluntarily and knowingly accept the terms of this "contract," the [Court](#) requires that the terms set forth in legislation be "clear" and "unambiguous[.]" This contrasts with "ordinary legislation," which can [impose](#) requirements on regulated parties without their consent.

Title VII and Title IX also operate and are enforced differently. Title VII expressly [prohibits](#) both intentional and disparate impact discrimination (the former [requires](#) discriminatory [intent](#); the latter is a [challenge](#) to a [policy](#) that may be facially neutral but has a disproportionate and negative effect on a particular group without sufficient justification). Lawsuits to enforce Title IX are [limited](#) to intentional discrimination. Title VII contains an exhaustion [requirement](#), whereby a potential plaintiff must generally first file a charge with the Equal Employment Opportunity Commission (EEOC) (though [sometimes](#) a complaint with a state or local agency suffices) and receive a right to sue letter before filing a lawsuit. Title IX [lacks](#) any such requirement, meaning that [plaintiffs](#) may "file directly in court." While the EEOC is the federal agency entrusted with enforcing Title VII, Title IX is enforced by multiple federal agencies that fund education programs. Federal agencies that distribute funding to education programs—most prominently the Department of Education (ED)—[enforce](#) the law administratively [by](#) seeking to obtain voluntary compliance and by suspending or terminating [assistance](#) for noncompliance. The Department of Justice may initiate [judicial proceedings](#) to obtain compliance and enforce assurances of compliance.

Title VII also [contains](#) an express cause of action allowing an aggrieved individual to file suit in court, while Title IX's cause of action is implied. Further, as [described](#) by the Supreme Court, "Title IX is a broadly written general prohibition on discrimination, followed by specific, narrow exceptions to that broad prohibition." In [contrast](#), "Title VII spells out in greater detail the conduct that constitutes discrimination in violation of that statute," such as by providing examples of unlawful employment practices.

The available remedies for successful plaintiffs are different under these laws as well. Title VII [allows](#) for punitive damages and compensatory damages for "emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other nonpecuniary losses." In cases addressing Spending Clause statutes similar to Title IX, the Court has ruled that [punitive](#) damages and [emotional distress](#) damages are not available because Congress did not provide clear notice that they would be. Recipients of federal financial assistance have notice that they are subject to "remedies traditionally available in suits for breach of contract," which generally do not [include](#) punitive and emotional distress damages. Finally, Title VII contains a [statutory damages](#) cap on liability depending on the size of the employer; Title IX [does not](#).

Relevant Supreme Court Decisions

Several Supreme Court decisions have particular relevance for determining whether employees of federally funded schools may bring Title IX lawsuits for sex discrimination. As an initial matter, as indicated above, while Title VII contains an express cause of action authorizing private lawsuits, Title IX does not. In 1979, the Supreme Court ruled in *Cannon v. University of Chicago* that Title IX nonetheless is enforceable in court via an implied private right of action. The Court reasoned that "Title IX explicitly confers a benefit on persons discriminated against on the basis of sex, and [the prospective student plaintiff] is clearly a member of that class for whose special benefit the statute was enacted." In addition, according to the Court, the legislative history revealed that Congress [intended](#) to create a private right of action. Further, while the possibility of fund termination through administrative enforcement serves Title IX's purpose of avoiding using federal resources to support discrimination, the availability of a private remedy also supports the law's purpose by [providing](#) "individual citizens effective protection against" discrimination.

A few years later, the Court specifically addressed Title IX's application to employment. In *North Haven Board of Education v. Bell*, the Court upheld the validity of Title IX regulations that prohibit federally funded schools from discriminating based on sex in employment. While Section 901(a) of the law contains the ban against sex discrimination, Section 902 authorizes and directs agencies that distribute federal financial assistance to education programs to issue regulations implementing the law. The Court observed that Section 901(a) provides that “no person” shall be subjected to discrimination based on their sex, which appears to include both employees and students. The Court reasoned that because the law does not expressly include or exclude employees, the Court would read the term to include employees “unless other considerations counsel to the contrary.” The Court pointed out that Congress could have used the term “student” rather than “person” if it wanted to narrow the scope of Section 901(a). Looking at the legislative history of Title IX, as well as developments after the law's passage, the Court concluded that Title IX prohibits sex discrimination in the employment context. The Court also rejected the argument that Title IX should not apply to employment settings given the existence of other legal remedies for employees, observing that “Congress has provided a variety of remedies, at times overlapping, to eradicate employment discrimination.”

In 2005, the Court again addressed a Title IX case with implications for employees. In *Jackson v. Birmingham Board of Education*, the Court considered a case brought by a male teacher and coach who alleged that the school retaliated against him for complaining about unequal treatment of the girls' basketball team. The Court ruled that Title IX's private right of action extends to retaliation when an individual complains about sex discrimination. The Court reasoned that retaliation against a person because they complain of sex discrimination is intentionally discriminating against them “on the basis of sex” in violation of the law. The Court rejected the argument that Title IX should not extend to retaliation claims because the statute does not expressly mention the term “retaliation,” as Title VII does. Because Congress failed to “list any specific discriminatory practices when it wrote Title IX, its failure to mention one such practice does not tell us anything about whether it intended that practice to be covered,” the Court explained. Construing Title IX to prohibit retaliation, the Court added, aligns with one of the main purposes of Title IX—protecting individuals from discrimination. If recipient schools can retaliate without consequence, then individuals aware of discrimination “would be loath to report it” and violations would not be addressed, the Court emphasized. Coaches and teachers, the Court observed, are often in the best position to defend the rights of students by identifying and reporting discrimination to school administrators.

Division in the Lower Courts

While the Supreme Court has ruled that Title IX is enforceable in court through an implied private right of action, upheld Title IX regulations pertaining to employment discrimination, and allowed lawsuits brought by employees alleging retaliation, it has not squarely addressed whether employees of federally funded schools may bring lawsuits under Title IX alleging sex discrimination outside of the retaliation context. Lower courts have divided as to whether such lawsuits are available.

Some courts have looked to the broad language of Title IX and the reasoning in the Supreme Court cases described above and concluded that employee lawsuits alleging sex discrimination are allowed under Title IX outside the retaliation context. For instance, both the Second and Third Circuits have drawn on the reasoning in *North Haven*—that Congress could easily have restricted Section 901(a)'s scope by barring discrimination against a “student,” rather than a “person”—and concluded that employment discrimination claims are allowed under Title IX. The Third Circuit also observed that the Court in *Jackson* “explicitly recognized an employee's private claim under *Cannon*” and that the decision “repeatedly underscores Title IX's wide range.” The First, Fourth, Eighth, and Tenth Circuits likewise have recognized employee Title IX claims.

Not all courts agree. After the Supreme Court's decision in *North Haven*, but before *Jackson*, some courts went the other way, limiting the ability of school employees to sue for sex discrimination under Title IX. These courts focused on the remedial scheme that Congress enacted to address workplace discrimination in Title VII and its relationship with Title IX. For instance, the [Fifth Circuit](#) ruled that, at least in the context of a suit for damages, "Title VII provides the exclusive remedy for individuals alleging employment discrimination on the basis of sex in federally funded educational institutions." The Fifth Circuit distinguished *Cannon* and *North Haven* because neither case required the Court to consider the relationship between Title IX and Title VII. The court further asserted that allowing a private right of action for employment discrimination under Title IX [would](#) "disrupt a carefully balanced remedial scheme" established by Congress under Title VII to address workplace discrimination. The court was unwilling "to do such violence to the congressionally mandated procedures of Title VII." Likewise, the [Seventh Circuit](#) ruled [that](#) Title VII is the "comprehensive statutory scheme for protecting rights against discrimination in employment," preempting Title IX employment discrimination claims.

Eleventh Circuit Decision

While the Fifth and Seventh Circuit decisions limiting the availability of employment lawsuits under Title IX predated the Supreme Court's opinion in *Jackson*, the Eleventh Circuit on November 7, 2024, issued a decision on the matter in *Joseph v. Board of Regents of the University System of Georgia*. The panel in *Joseph* [acknowledged](#) the circuit split on the availability of Title IX employment suits. However, the court framed the legal question somewhat differently than the Fifth and Seventh circuits. Rather than ask whether Title VII precludes such claims, the Eleventh Circuit focused instead on [whether](#) Title IX includes an implied right of action for employment discrimination in the first place.

The panel emphasized the relevance of another Supreme Court case from 2001, *Alexander v. Sandoval*. That "landmark decision," the court [explained](#), taught that when Congress does not expressly create a private right of action, courts must look to whether Congress intended to create both a private right and a private remedy. Without a clear indication of congressional intent to create a cause of action, courts may not create new ones, the court made clear. The Eleventh Circuit [accepted](#) that it "must honor" the implied rights of action that exist, but stressed that courts may not "expand their scope" unless "Congress unambiguously intended a right of action to cover more people or more situations than courts have yet recognized."

With that in mind, the Eleventh Circuit [reasoned](#) that neither *Cannon*, *North Haven*, nor *Jackson* directly "speak to whether Title IX created an implied private right of action for sex discrimination in employment." For the court, the sister circuits that allowed such Title IX claims "failed to grapple with the inquiry" required by *Sandoval*. In order to determine the proper scope of Title IX's implied right of action, the court determined that it must look to the text of Title IX and its statutory context.

Looking to the text of Title IX, the court explained that while the statute clearly aims to offer new antidiscrimination protections for students, that is not obviously so for employees. The panel observed that Congress [extended](#) Title VII's protections to educational institutions three months before passing Title IX, which extended the protections of [Title VI of the Civil Rights Act of 1964](#) (banning race discrimination in federally funded programs) to cover sex discrimination in educational institutions. For the court, these laws create a "comprehensive antidiscrimination remedial scheme." Title VII and Title IX thus "work in tandem," [where](#) the former compensates victims of discrimination and the latter protects against discrimination by the recipients of federal funding.

According to the [court](#), Title VII and Title IX accomplish their goals with "different remedies." Title VII sets up an [administrative process](#) requiring individuals to first go to the EEOC before filing in court, while Title IX authorizes agencies to condition funding on compliance with the nondiscrimination mandate. While Title IX thus [contains](#) an implied right of action for students, who would otherwise lack a

statutory remedy to enforce their rights, the statute does not embrace one for employees. The panel [concluded](#) that it was unlikely Congress intended the express right of action in Title VII and an implied right in Title IX to offer “overlapping remedies.” Given the complexity of Title VII’s express remedial scheme, it would be “anomalous,” in the court’s view, to interpret the implied right under Title IX to allow employees “immediate access to judicial remedies unburdened by any administrative procedures.” Further, given the Spending Clause [authority](#) for Title IX, the court viewed it as “dubious” that recipient schools would understand that they accepted damages liability for employment discrimination under Title IX when such claims are available expressly under Title VII.

Considerations for Congress

While Title VII prohibits sex discrimination in the workplace generally, including at educational institutions, its provisions operate differently than Title IX, so allowing employment discrimination lawsuits under the latter statute has significant consequences for federally funded schools. Congress is free to leave these statutes as they are; it also has authority to repeal these laws or modify them. Congress may, for instance, pass legislation if it wants to resolve the disagreement among federal appellate courts. In the past, Congress has sometimes reacted to judicial decisions interpreting Title VII by amending the text of the statute. For instance, when the Supreme Court held in *General Electric Co. v. Gilbert* that Title VII did not prohibit discrimination based on pregnancy, Congress [amended](#) Title VII to do so.

Congress also has broad authority to set civil rights conditions on the receipt of federal funding. It could amend Title IX to indicate whether employees may bring lawsuits to enforce the law. One initial consideration in doing so concerns the authority generally regarded as underlying Title IX—the Spending Clause. As mentioned above, unlike legislation enacted on other constitutional bases, the Supreme Court has [characterized](#) Spending Clause legislation as akin to a contract that must have clear and unambiguous terms.

Were Congress to amend Title IX, a relevant example it might draw from could be the [Civil Rights Restoration Act of 1987](#) (enacted in 1988), in which Congress amended [Title IX](#), [Title VI](#), and [Section 504](#) of the Rehabilitation Act (as well as the [Age Discrimination Act](#) of 1975). The legislation superseded portions of a Supreme Court [decision](#) that concluded Title IX applied only to the specific program that receives federal funds, rather than to an entire institution that receives funds. For all four statutes, Congress provided a new, expansive statutory definition of “program or activity.”

Congress could also enact legislation directing federal agencies to promulgate regulations on the matter consistent with standards Congress adopts. Thus, if Congress decided that Title IX regulations should no longer cover employment discrimination, it could amend the law accordingly. Were Congress to disagree with agency rules, pursuant to the [Congressional Review Act](#), it could pass a joint resolution of disapproval within the time limits [established](#) by that statute.

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