Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JACKSON *v.* BIRMINGHAM BOARD OF EDUCATION

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

No. 02–1672. Argued November 30, 2004—Decided March 29, 2005

After petitioner, the girls' basketball coach at a public high school, discovered that his team was not receiving equal funding and equal access to athletic equipment and facilities, he complained unsuccessfully to his supervisors. He then received negative work evaluations and ultimately was removed as the girls' coach. He brought this suit alleging that respondent school board (Board) had retaliated against him because he had complained about sex discrimination in the high school's athletic program, and that such retaliation violated Title IX of the Education Amendments of 1972, 20 U. S. C. §1681(a), which provides that "[n]o person . . . shall, on the basis of sex, be . . . subjected to discrimination under any education program . . . receiving Federal financial assistance." The District Court dismissed the complaint on the ground that Title IX's private cause of action does not include claims of retaliation, and the Eleventh Circuit agreed and affirmed. The appeals court also concluded that, under *Alexander* v. *Sandoval*, 532 U. S. 275, the Department of Education's Title IX regulation expressly prohibiting retaliation does not create a private cause of action, and that, even if Title IX prohibits retaliation, petitioner is not within the class of persons the statute protects.

Held: Title IX's private right of action encompasses claims of retaliation against an individual because he has complained about sex discrimination. Pp. 3–15.

(a) When a funding recipient retaliates against a person *because* he complains of sex discrimination, this constitutes intentional "discrimination" "on the basis of sex," in violation of Title IX. This Court has held that Title IX implies a private right of action to enforce its prohibition on intentional sex discrimination, *Cannon* v. *University of Chicago*, 441 U. S. 677, 690–693, and that that right includes actions

for monetary damages by private persons, *Franklin* v. *Gwinnett County Public Schools*, 503 U. S. 60, and encompasses intentional sex discrimination in the form of a recipient's deliberate indifference to sexual harassment of a student by a teacher, *Gebser* v. *Lago Vista Independent School District*, 524 U. S. 274, 290–291, or by another student, *Davis* v. *Monroe County Bd. of Ed.*, 526 U. S. 629, 642. In all of these cases, the Court relied on Title IX's broad language prohibiting a funding recipient from intentionally subjecting any person to "discrimination" "on the basis of sex." Retaliation is, by definition, an intentional act. It is a form of "discrimination" because the complainant is subjected to differential treatment. Moreover, it is discrimination "on the basis of sex" because it is an intentional response to the nature of the complaint: an allegation of sex discrimination. The Eleventh Circuit's conclusion that Title IX does not prohibit retaliation because it is silent on the subject ignores the import of this Court's repeated holdings construing "discrimination" under Title IX broadly to include conduct, such as sexual harassment, which the statute does not expressly mention. The fact that Title VII of the Civil Rights Act of 1964 expressly prohibits retaliation is of limited use with respect to Title IX. Title VII is a vastly different statute, which details the conduct that constitutes prohibited discrimination. Because Congress did not list *any* specific discriminatory practices in Title IX, its failure to mention one such practice says nothing about whether it intended that practice to be covered. Moreover, Congress' enactment of Title IX just three years after *Sullivan* v. *Little Hunting Park, Inc.*, 396 U. S. 229—in which this Court interpreted 42 U. S. C. §1982's general prohibition of racial discrimination to include retaliation against a white man for advocating the rights of blacks—provides a realistic basis for presuming that Congress expected Title IX to be interpreted in conformity with *Sullivan*. Pp. 3–7.

(b) The Board cannot rely on this Court's holding in *Sandoval, supra*, at 285, that, because Title VI of the Civil Rights Act of 1964 itself prohibits only intentional discrimination, private parties could not obtain redress for disparate-impact discrimination based on the Justice Department's Title VI regulations forbidding federal funding recipients from adopting policies with such an impact. Citing the Education Department's Title IX retaliation regulation, the Board contends that Jackson, like the *Sandoval* petitioners, seeks an impermissible extension of the statute when he argues that Title IX's private right of action encompasses retaliation. This argument, however, entirely misses the point. The Court does not here rely on the Education Department regulation at all, because Title IX's text *itself* contains the necessary prohibition: Retaliation against a person who speaks out against sex discrimination is intentional "discrimination"

"on the basis of sex" within the statute's meaning. Pp. 7–9.

(c) Nor is the Court convinced by the Board's argument that, even if Title IX's private right of action encompasses discrimination, Jackson is not entitled to invoke it because he is an "indirect victi[m]" of sex discrimination. The statute is broadly worded; it does not require that the victim of the retaliation also be the victim of the discrimination that is the subject of the original complaint. Where the retaliation occurs because the complainant speaks out about sex discrimination, the statute's "on the basis of sex" requirement is satisfied. The complainant is himself a victim of discriminatory retaliation, regardless of whether he was the subject of the original complaint. Cf. *Sullivan, supra*, at 237. Congress enacted Title IX not only to prevent the use of federal dollars to support discriminatory practices, but also "to provide individual citizens effective protection against those practices." *Cannon, supra*, at 704. This objective would be difficult to achieve if persons complaining about sex discrimination did not have effective protection against retaliation. Pp. 9–12.

(d) Nor can the Board rely on the principle that, because Title IX was enacted as an exercise of Congress' Spending Clause powers, a private damages action is available only if the federal funding recipient had adequate notice that it could be held liable for the conduct at issue, see, *e.g., Pennhurst State School and Hospital* v. *Halderman*, 451 U. S. 1, 17. *Pennhurst* does not preclude such an action where, as here, the funding recipient engages in intentional acts that clearly violate Title IX. See, *e.g., Davis, supra*, at 642. Moreover, the Board should have been put on notice that it could be held liable for retaliation by the fact that this Court's cases since *Cannon* have consistently interpreted Title IX's private cause of action broadly to encompass diverse forms of intentional sex discrimination; by Title IX itself, which expressly prohibits intentional conduct that violates clear statutory terms, *Davis,* 526 U. S., at 642; by the regulations implementing Title IX, which clearly prohibit retaliation and have been on the books for nearly 30 years; and by the holdings of all of the Courts of Appeals that had considered the question at the time of the conduct at issue that Title IX covers retaliation. The Board could not have realistically supposed that, given this context, it remained free to retaliate against those who reported sex discrimination. Cf. *id.*, at 644. Pp. 12–14.

(e) To prevail on the merits, Jackson will have to prove that the Board retaliated against him *because* he complained of sex discrimination. At the present stage, the issue is not whether he will ultimately prevail, but whether he is entitled to offer evidence to support his claims. P. 15.

309 F. 3d 1333, reversed and remanded.

O'CONNOR, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and KENNEDY, JJ., joined.