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Alternative Means of Relief for Employment Sex Discrimination

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ALTERNATIVE MEANS OF RELIEF FOR EMPLOYMENT SEX DISCRIMINATION

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INTRODUCTION

As society has evolved, businesses, organizations, and communities have acknowledged and responded to change. Accordingly, the laws of our federal government have provided avenues, both in interpretation and in legislative intent, to speak to and address that evolution. Most recently, men and women have confronted inappropriate conduct that has been tolerated for far too long. Sexual misconduct has been either ignored or justified within the workplace, in sports medicine, in education, and backstage. Sexual misconduct has resulted in individuals feeling extreme mental and physical discomfort, isolation, inferiority, and fear. Victims of sexual misconduct have both feared and experienced retaliation for seeking resolution to such a degree that they have been forced to weigh the level of misery in tolerating abuse versus punishment for pursuing intervention. Thankfully, the social climate has warmed to welcoming and supporting victims who can no longer remain silent.

As more individuals find their voice, the search for judicial justice may also increase. Statutory law has been in place for some time. The Civil Rights Act of 1964 is a landmark federal law that consists of eleven sections prohibiting discrimination in various settings as well as strengthening regulations that prohibit other discriminatory practices. Title VI prohibits discrimination on the basis of race, color, and national origin in programs receiving federal financial assistance.[1] Title VII prohibits discriminatory practices against employees on the basis of sex, race, color, national origin, and religion.[2] Title IX, a federal law enacted as part of the Educational Amendments of 1972, filled the gap left by Title VI by offering protection against discrimination

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1.42 U.S.C. § 2000e-2.

2. 42 U.S.C. § 2000e-2.

based on sex/gender in those same educational programs and activities receiving federal funds.[3]

There has been conflict among the circuits in interpreting Title IX as it applies to private actions filed by employees alleging sex discrimination and their possible remedies. The First and Fourth Circuits have agreed that an educational employee's right to file a private action exists under Title IX.[4] The First Circuit highlighted legislative intent in its creation of Title IX as one that fills the gap left by Title VII.[5] Similarly, the Fourth Circuit recognized that an implied right of private action is present under Title IX.[6] The Fifth and Seventh Circuits disregarded the First and Fourth Circuits' earlier decisions and held that Title VII is the exclusive means of relief for employees' private actions for sex discrimination notwithstanding the fact that the discrimination occurred in an educational institution or setting.[7]

In *Doe v. Mercy Catholic Med. Ctr.*, the United States Court of Appeals for the Third Circuit began by reversing the lower court's determination that Mercy Catholic's residency program was not an educational program or activity.[8] The court held that educational institutions are not exclusively on campus.[9] Furthermore, the sweeping language of Title IX broadened the scope to also include employees as part of the protected class.[10] Lastly, the court ruled that employees may file private actions to protect their own interests and dismissed the notion that Title VII is the exclusive remedy for employment sex discrimination.[11] In essence, the Third Circuit's ruling weighed the conflicting holdings from other federal circuits and widened victims' path to be made whole after suffering the indignity and shame of sex discrimination.

This note will discuss the decision in *Mercy Catholic* concerning Title IX as it is written as well as its purpose. Foundational cases that initially interpreted Title IX's meaning and scope will be dissected. Decisions from the four federal circuits falling on either side of the debate will also be introduced to fully set the stage as the note proceeds to reflect the possible impact of *Mercy Catholic* on possibilities available to employees of federally funded educational institutions. Finally, the guiding principles presented in *Mercy*

3. PL 92-318, June 23, 1972, 86 Stat. 235; 20 U.S.C. § 1681(a).
4. *Lippsett v. Univ. of Puerto Rico*, 864 F.2d 881, 897 (1st Cir. 1998).
5. *Id.* at 897.
6. *Preston v. Commonwealth of Va. ex rel. New River Comty. Coll.*, 31 F.3d 203 (4th Cir.1994).
7. *Lakoski v. James*, 66 F.3d 751 (5th Cir. 1995); *Waid v. Merrill Area Pub. Sch.,* 91 F.3d 857 (7th Cir. 1996).
8. *Doe v. Mercy Catholic Med. Ctr.,* 850 F.3d 545, 558 (3rd Cir. 2017).
9. *Id.* at 555.
10. *Id.* at 562.
11. *Id.*

Catholic will be employed to compare and contrast against prior circuit decisions in an effort to offer much needed clarity and hope-filled direction to injured parties.

THE CASE

Plaintiff, identified as Doe to protect her identity, joined Mercy Catholic Medical Center's ("Mercy") radiology residency program as a second year resident (or "R2") in 2011.[12] Mercy's residency program offered training by providing both hands-on experience and didactic teaching in the community-based hospital setting.[13] Radiology residents attended daily morning lectures presented by faculty, attended afternoon case presentations, completed mandatory classes, attended monthly radiology lectures and society meetings, and sat for annual examinations to assess residents' progress and competence.[14]

Plaintiff filed a private civil action against Mercy, claiming sexual harassment and retaliation.[15] Dr. James Roe, Director of Mercy's residency program, stood at the center of Plaintiff's claims. Dr. Roe's alleged behavior displayed persistence in pursuing a relationship with Plaintiff. [16]According to Plaintiff, Dr. Roe created opportunities to see and speak with her more than would be expected, looked at her in a suggestive manner, wanted to meet with her while attending a conference, and later initiated inappropriate physical contact with her after being reported a second time.[17] Plaintiff's attempts to communicate her need for professionalism and lack of desire for a relationship were reported to Human Resources (HR).[18] Plaintiff was later placed on a corrective action plan.[19] On April 20, 2013, Plaintiff received a termination letter from Mercy that also stated that she could appeal the decision.[20] Despite her efforts, Plaintiff's appeal was denied and she declined to bring another appeal.[21] As a result, no other residency program accepted her, which blocked her from full licensure.[22]

12. *Id.* at 550.
13. *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 550 (3rd Cir. 2017).
14. *Id.*
15. *Id.* at 552.
16. *Id.* at 550.
17. *Id.* at 550-51.
18. *Id.* at 550.
19. *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 551 (3rd Cir. 2017).
20. *Id.*
21. *Id.*
22. *Id.* at 552.

Plaintiff filed a claim against Mercy exactly two years after she learned she had been dismissed.[23] Plaintiff alleged six claims against Mercy, including three under Title IX: retaliation, *quid pro quo*, and hostile environment; and three under Pennsylvania law: contract-based sex discrimination, wrongful termination, and breach of the covenant of good faith and fair dealing.[24] Plaintiff never filed a complaint with the Equal Employment Opportunity Commission (EEOC) under Title VII.[25] The District Court dismissed the Title IX complaints for failure to state a claim for which relief can be granted.[26] The lower court held: (1) Title IX did not apply because Mercy is not an "education program or activity" under 20 U.S.C. § 1681(a); (2) even if Title IX applied, Plaintiff cannot use Title IX to circumvent Title VII's administrative requirements; and (3) Congress intended Title VII to be the "exclusive avenue for relief" for employment discrimination.[27]

The Third Circuit Court of Appeals affirmed the dismissal of the hostile environment claim, but held Plaintiff's Title IX retaliation and *quid pro quo* claims endured and reversed the dismissal of her state law claims.[28] The court determined Title VII was not the exclusive remedy for employment sex discrimination cases and that Plaintiff may sue the hospital under Title IX, avoiding the administrative requirements associated with Title VII.[29] Plaintiff's case was remanded for further proceedings.[30]

The Court of Appeals for the Third Circuit based its finding on four guiding principles ascertained from prior United States Supreme Court cases. The court first found that, despite Title VII's range and comprehensive design to serve as a solution, employees who wish to file a private action are not limited to Title VII in their search for relief from employment discrimination.[31] Second, the court found that Congress determines, by manner of policy and statutory construction, whether another form of relief would circumvent the administrative process required under Title VII.[32] Courts interpret statutes and should not fill the silence or attempt to augment the statute by incorporating guidelines that are not there.[33] Third, the court reasoned that Congress could have easily identified beneficiaries, a specific class, or a particular group of people to be protected within the statute rather than using

23. *Id.*
24. *Id.*
25. *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 552 (3rd Cir. 2017).
26. *Id.*
27. *Id.*
28. *Id.* at 566.
29. *Id.* at 563.
30. *Id.* at 567.
31. *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 562 (3rd Cir. 2017).
32. *Id.*
33. *Id.*

broad language to refer to protected parties under Title IX.[34] Congress also could have included exempt parties in its exceptions to exclude individuals who were not meant to be protected by Title IX.[35] Finally, the court concluded that Congress provided remedies that sometimes overlap; Title IX may be an avenue for relief while Title VII may be as well.[36] Title VII protects against discrimination while intentional discrimination, such as retaliation or *quid pro quo* harassment, may serve as cause for a Title IX private action.[37]

BACKGROUND

Title IX states that, "[n]o 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."[38] Title VI, which only bars discrimination based on race, color, and national origin, served as a model for Title IX.[39] Title IX addresses sex/gender discrimination and empowers agencies to restrict funding from educational institutions that engage in such discrimination.[40]

Under Title IX, individuals are ensured equal opportunity "to pursue, engage or participate in, and benefit from academic, extracurricular, research, occupational training, employment, or other educational programs or activities" without regard to sex.[41] This protection covers all aspects of employment including, but not limited to, selection, hiring, compensation, benefits, job assignments and classification, promotions, demotions, tenure, training, transfers, leave, layoffs, and termination.[42] Title IX broadens the scope of educational programs to noneducational institutions such as prisons, museums, and job training institutes.[43] Furthermore, "program or activity" is interpreted in 20 U.S.C. § 1687 as "all of the operations" of several different

34. *Id.*
35. *Id.*
36. *Id.* at 563-64.
37. *Doe v. Mercy Catholic Med. Ctr.*, 850 F.3d 545, 562 (3rd Cir. 2017).
38. 20 U.S.C. § 1681(a).
39. Dep't. of Just., *Title IX Legal Manual*, Part I. Overview of Title IX: Interplay of Title IX with Title Vi, Section 504, Title VII, and the Fourteenth Amendment, https://www.justice.gov/crt/title-ix.
40. 20 U.S.C. § 1682.
41. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance, 65 Fed. Reg. 52,858, 52,859 (Aug. 30, 2000).
42. *Id.*
43. *Id.*

entities outlined within the statute that extend beyond the borders of a university's campus who also receive federal funding.[44] Most notably, as mentioned in *Mercy Catholic*, § 1687(3)(A) highlights "an entire corporation, partnership, or other private organization, or an entire sole proprietorship—(i) if assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or (ii) which is *principally engaged in the business of providing education, health care, housing, social services, or parks and recreation*… ."[45]

Title IX does not have the administrative hurdles indicative of Title VII but does require an appropriate person to have notice of the alleged discrimination so the organization or institution has an opportunity to address it.

Cannon v. Univ. of Chicago identified a dual purpose Congress sought to achieve under Title IX: the intent to avoid the use of federal funding to support discriminatory practices, and to also provide individuals with effective protection against discriminatory practices.[46] The Court rationalized this interpretation by presenting the danger of extremes.[47] If the only purpose of Title IX was to restrict funding, the termination of funds would be too severe if based on only one occurrence of discriminatory practices.[48] In addition, the burden placed upon an individual to substantiate such inappropriate conduct would be undue and nonsensical when an individual's only interest is to protect themselves.[49] The Court further held that the statute's silence and failure to create an express remedy is insufficient for refusing to imply an appropriate remedy for individuals wishing to pursue a private action.[50]

> There would be far less reason to infer a private remedy in favor of individual persons if Congress, instead of drafting Title IX with an unmistakable focus on the benefited class, had written it simply as a ban on discriminatory conduct by recipients of federal funds or as a prohibition against the disbursement of public funds to educational institutions engaged in discriminatory practices.[51]

Thus, the statute's failure to create or deny a private remedy indicated Congress' intent for individuals to have a private remedy available to them.

N. Haven Brd. of Educ. v. Bell expanded upon *Cannon* by holding that Title IX also prohibits employment discrimination.[52] The statute refers to par-

44. 20 U.S.C § 1687 (2016).
45. 20 U.S.C. § 1687(3)(A) (emphasis added).
46. *Cannon v. Univ. of Chicago*, 441 U.S. 677, 704, 99 S. Ct. 1946, 1961 (1979).
47. *Id.* at 744, 99 S. Ct. at 1982.
48. *Id.* at 705, 99 S. Ct. at 1962.
49. *Id.*
50. *Id.* at 739, 99 S. Ct. at 1979, n.11.
51. *Id.* at 690-93, 99 S. Ct. at 1954-955.
52. *North Haven Bd. of Ed. v. Bell,* 456 U.S. 512, 102 S. Ct. 1912 (1982).

ties protected as "persons" rather than restricting its scope to students or another type of beneficiary of educational programs or activities.[53] Title IX does not expressly or impliedly exclude employees from its protection or reach.[54] Furthermore, the exceptions included in the statute identify a number of entities and persons who are exempt, but employees are not included.[55] The Court held that, "if we are to give [Title IX] the scope that its origins dictate, we must accord it a sweep as broad as its language."[56]

Circuits are split as to whether Title VII is the exclusive remedy for employment sex discrimination cases. The Fifth and Seventh Circuits have held that employees' remedy for sex discrimination is exclusively through a Title VII action.[57] In contrast, the First and Fourth Circuits have held that employees are not limited to Title VII and may be awarded a remedy under a Title IX private action.[58]

In *Lakoski v. James*, the United States Court of Appeals for the Fifth Circuit reversed the lower court's decision and held that Title VII was the exclusive means of relief for employees alleging sex discrimination against federally funded educational institutions.[59] In *Lakoski*, the plaintiff was a collegiate professor who was denied tenure on several occasions and ultimately terminated following her final appointment.[60] The plaintiff alleged that her evaluations required that she meet standards not required of her male colleagues.[61] Rather than filing a charge with the EEOC pursuant to a Title VII claim, she chose to pursue damages under Title IX.[62] The plaintiff argued that *Cannon* and *North Haven*, among other cases, provided an implied private right of action for employment sex discrimination.[63] The court rejected the plaintiff's argument stating *Cannon* was inapplicable because the case involved prospective students and *North Haven* challenged the Department of Health, Education, and Welfare's authority to terminate funding in an effort to regulate employment practices.[64] Further, the court stated that neither case required the court to address the relationship between Title VII and Title IX.[65] The court continued by characterizing Title VII's presence in *Cannon*

53. *Id.* at 520, 102 S. Ct. at 1918.
54. *Id.* at 521, 102 S. Ct. at 1918.
55. *Id.* at 522, 102 S. Ct. at 1918.
56. *Id.* at 521, 102 S. Ct. at 1918.
57. *James*, 66 F.3d at 758; *Merrill Area Pub. Sch.*, 91 F.3d at 866.
58. *Lippsett*, 864 F.2d at 897; *Preston*, 31 F.3d at 208.
59. *James,* 66 F.3d 751.
60. *Id.* at 752.
61. *Id.* at 753.
62. *Id.*
63. *Id.*
64. *Id.* at 754.
65. *Lakoski v. James*, 66 F.3d 751, 758, 754 (5th Cir. 1995).

and *North Haven* as merely "hover[ing] on the distant horizon..."[66] According to the court, the plaintiff's claim would, otherwise, "disrupt a carefully balanced remedial scheme for redressing employment discrimination by employers."[67] In addition, *Lakoski*'s holding referenced 20 U.S.C. § 1682 which states, in part, "[c]ompliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity."[68] Thus, the court held that Congress intended termination of federal funding to be the sole remedy expressly available for violations of Title IX,[69] individuals may not bypass Title VII's administrative procedures by pursuing damages under Title IX,[70] and Title VII excludes Title IX as a damages remedy for parties alleging employment discrimination.[71]

In *Waid v. Merrill Area Pub. Sch.*, the Seventh Circuit also held that a plaintiff's only avenue to achieve "make-whole relief" was Title VII.[72] The plaintiff wished to file a claim against the school system alleging she was denied a full-time teaching position because of her sex.[73] She wished to file a claim under Title IX in addition to her successful claim she previously filed under Wisconsin's Fair Employment Act.[74] The court stated that a plaintiff is required to only sue under a particular statute if Congress intended it to be the exclusive way for vindication.[75] According to the Seventh Circuit Court of Appeals, Title IX serves its purpose by providing schools with a strong incentive to adopt and administer policies that protect civil rights.[76] If educational institutions do not "adequately safeguard the civil rights of their students and employees, Title IX provides that they may lose the funds supplied by a myriad of federal agencies."[77] Thus, plaintiffs must seek equitable relief under Title VII if the administrative requirements prove insufficient in providing adequate relief.

In contrast, the First Circuit held that a plaintiff could file private actions against educational institutions under Title IX if the plaintiff could show: (1) university officials knew or should have known of hostile environment sexual harassment and (2) the plaintiff was discharged by university officials

66. *Id.*
67. *Id.*
68. *James,* at 754; 20 U.S.C. § 1682.
69. *James*, at 754.
70. *Id.* at 758.
71. *Id.* at 755.
72. *Merrill Area Pub. Sch.,* at 862.
73. *Id.* at 860.
74. *Id.*
75. *Id.* at 861.
76. *Id.* at 862.
77. *Id.*

because of her sex.[78] In *Lipsett v. Univ. of P.R.*, a medical resident filed a claim against the University of Puerto Rico alleging she was sexually harassed while in residency and later dismissed from the program because of her sex.[79] The Court referred to the House Report and determined it strongly suggested Congress intended the same substantive standards of Title VII to apply to Title IX.[80]

> One of the single most important pieces of legislation which has prompted the cause of equal employment opportunity is Tile VII of the Civil Rights Act of 1964. …Title VII, however, specifically excludes education institutions from its terms. [Title IX] would remove that exemption and bring those in education under the equal employment provision.[81]

Therefore, Title IX ensures individuals are protected in all settings and, in turn, provides employees of educational institutions, programs, and activities with an additional avenue in their search for relief.

In *Preston v. Commonwealth of Va. ex. rel. New River Cmty. Coll.*, the Fourth Circuit aligned with the First Circuit.[82] In *Preston,* the plaintiff brought a private action against New River Community College alleging the defendant retaliated against her for filing a claim of discrimination with the EEOC.[83] The court cited *Cannon* and held that an implied right of action exists for enforcement of Title IX and extends to employment discrimination on the basis of gender in educational institutions who are recipients of federal funds.[84] While the plaintiff was not ultimately victorious because evidence showed she would not have been selected for the position, her claim was not dismissed because Title IX did not imply a right to file a private action.[85] Two principles are necessary to establish a violation of Title IX: (1) the petitioner was excluded from participation because of her sex and (2) the educational programs were receiving federal funding at the time the plaintiff was excluded.[86]

ANALYSIS

The Third Circuit's decision in *Mercy Catholic* provided a thoughtful and structurally-sound blueprint in its interpretation of Title IX's intended purpose to provide shelter to those in need of its refuge. By building upon the

78. *Lipsett*, 864 F.2d at 914.
79. *Id.* at 884.
80. *Id.* at 897.
81. H.R. Rep. No. 554, 92d Cong., 2d Sess., *reprinted in* 1972 U.S. Code Cong. & Admin.News 2462, 2512.
82. *Preston,* 31 F.3d 203.
83. *Id.* at 205.
84. *Id.* at 205-06.
85. *Id.* at 208-09.
86. *Cannon,* 441 U.S. at 680, 99 S. Ct. at 1949.

cornerstones of *Cannon* and *North Haven*, *Mercy Catholic* appropriately painted broad strokes in applying Title IX's sweeping language while also zeroing in on the clear purpose of Congress to implement a means of accountability for federally funded educational programs and activities while also protecting those employees who may be exposed to harmful, discriminatory practices. *Mercy Catholic* highlighted the flaws present in the Fifth Circuit's and the Seventh Circuit's decisions that limited Congress' intent and joined the First and Fourth Circuit in building upon those cornerstone cases already secured.

First, Title VII does not preempt other alternatives available for relief in private employment. In *Johnson v. Ry Express Agency, Inc.*, the plaintiff wished to file a race discrimination claim under 42 U.S.C. § 1981 in addition to filing an EEOC charge.[87] The United States Supreme Court rejected the argument that filing a claim under § 1981 wrongly permitted the plaintiff to circumvent Title VII's administrative requirements.[88] In the decision, the Court stated that there were times when one approach may be more favorable than another depending upon the circumstances of that particular situation.

> Conciliation and persuasion through the [EEOC's] administrative process [under Title VII] . . . often constitute a desirable approach to settlement of disputes based on sensitive and emotional charges of invidious employment discrimination. We recognize, too, that the filing of a lawsuit . . . might tend to deter efforts at conciliation, that lack of success in the legal action could weaken the [EEOC's] efforts to induce voluntary compliance, and that a suit is privately oriented and narrow, rather than broad, in application, as successful conciliation tends to be. *But these are the natural effects of the choice Congress has made available to the claimant by its conferring upon him independent administrative and judicial remedies.* The choice is a valuable one. Under some circumstances, the administrative route may be highly preferred over the litigatory; under others the reverse may be true.[89]

Thus, the pursuit of an alternative means of relief is not an intentional maneuver to evade the EEOC administrative process associated with Title VII. Rather, a private employee's decision may be the best strategy based on surrounding circumstances. *Mercy Catholic* appropriately cited and concurred with *Johnson* in its opinion by also underlining *Johnson*'s point that Congress "provided a variety of remedies, at times overlapping, to eradicate employment discrimination."[90] Therefore, it is of no consequence whether or

87. *Johnson v. Railway Express Agency, Inc.,* 421 U.S. 454, 95 S. Ct. 1716 (1975).
88. *Id.* at 460, 95 S. Ct. at 1720.
89. *Mercy Catholic*, 850 F.3d at 560 (*quoting Johnson,* at 461, 95 S. Ct. at 1720) (emphasis added).
90. *Id.* at 561.

not an employee could proceed under Title VII—such a course does not, expressly or impliedly, eliminate other alternatives potentially available for relief.

Second, Title IX's language referring to members of the protected class as "persons" includes employees.[91] 20 U.S.C. § 1681(1) – (9) outlines a number of entities that are exempt from Title IX's reach.[92] Employees are not included in the list of exceptions.[93] Furthermore, Congress could have specifically identified Title IX's beneficiaries by substituting "students" or another narrowly identifiable class to reflect their purpose in writing this protective provision. *Lakoski* improperly refused to apply *Cannon* and *North Haven* because those cases did not require an analysis of the relationship between Title IX and Title VII.[94] In contrast, *Preston's* first principle necessary to establish a Title IX violation was that the *petitioner* was excluded from participation because of her sex.[95] Building upon *Cannon* and *North Haven*, *Preston* chose language that mirrored the spirit of Title IX's language by choosing not to assume displaced responsibility in their interpretation. If Congress intended to only protect students, that intent would have been evident and carefully worded to aid in the law's interpretation.

Finally, termination of federal funding is not the only remedy available under Title IX. The Fifth Circuit advocated for the "balanced remedial scheme" established in these sections to redress employment discrimination by basing their finding on § 1682 of Title IX.[96] The Court held that termination of federal funding was the exclusive means of relief under Title IX.[97] However, there are two options within the statute in response to failure to comply: (1) termination of or refusal to grant or to continue assistance *or* (2) by any other means authorized by law.[98] *Cannon* warned of the danger in limiting relief to termination of federal funding.[99] If the only remedy for noncompliance is a refusal to grant or continue to offer financial assistance, the response may be too severe if the decision was based on only one finding.[100] In addition, the responsibility placed upon an individual to prove an institution's failure to comply would be unduly burdensome and unreasonable

91. *Id.* at 562.
92. 20 U.S.C. § 1681 (2011).
93. *Id.*
94. *James*, 66 F.3d at 753-54.
95. *Preston*, 31 F.3d at 206.
96. *Mercy Catholic*, 850 F.3d at 563.
97. *James,* 66 F.3d at 754.
98. 20 U.S.C. § 1682.
99. *Cannon*, 441 U.S. at 705, 99 S. Ct. at 1962.
100. *Id.*

when the victim's only purpose is to protect their own interests.[101] The second option, "by any means authorized by law," effectively opens the door to imply a cause of action providing remedies to the injured party.

CONCLUSION

Mercy Catholic arrived at the proper conclusion by acknowledging Plaintiff's ability to pursue alternative remedies in her search for relief notwithstanding the fact that those remedies may overlap. The Third Circuit also appropriately aligned their stance with *North Haven* by including employees as members of the class of "persons" identified in the statute. *Mercy Catholic*'s recognition of remedies available under Title IX resulted in Plaintiff's case being remanded for further proceedings so victory in her search for relief could be a renewed possibility. The Third Circuit artfully applied and cemented each piece of the puzzle in their decision. Armed with proper interpretation and perspective, the Third Circuit may positively impact victims within its region and hopefully inspire resolution among the circuits so that all who suffer discrimination based on sex can be made whole.

101. *Id.*