No. 22-

IN THE
Supreme Court of the United States

VETERAN WARRIORS, INC., ANDREW D. SHEETS, KRISTIE SHEETS,

Petitioners,

v.

SECRETARY OF VETERAN AFFAIRS,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The central premise of deference to agency interpretations under *Chevron U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), is that statutory ambiguity marks a delegation of authority from Congress. Because Congress legislates against the backdrop of canons of statutory construction, courts must employ all applicable canons to determine whether Congress has in fact delegated interpretative authority to an agency. *Id.* at 843 n.9. Here, the Federal Circuit concluded that provisions in the Caregiver Act were ambiguous and therefore interpretations from the Department of Veterans Affairs were entitled to deference without first applying the Pro-Veteran Canon.

The questions presented are:

1. Whether courts can defer to the construction of a statute by the Department of Veterans Affairs without first considering whether the statute permits a pro-veteran construction pursuant to the Pro-Veteran Canon.

2. Whether *Chevron* should be clarified or replaced to protect canons of construction, including the Pro-Veteran Canon, from becoming a nullity.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners Veteran Warriors, Inc., Andrew D. Sheets and Kristie Sheets were the petitioners in the U.S. Court of Appeals for the Federal Circuit.

The Secretary for Veterans Affairs, Denis McDonough, was the respondent in the U.S. Court of Appeals for the Federal Circuit. Mr. McDonough is being sued in his official capacity only.

Pursuant to this Court's Rule 29.6, Petitioner Veteran Warriors, Inc. states as follows: Veteran Warriors, Inc. is a non-profit organization with no parent corporation.

RELATED PROCEEDINGS

Veteran Warriors, Inc. v. *Sec'y of Veterans Affs.*, 29 F.4th 1320 (Fed. Cir. 2022).

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Veteran Warriors, Inc., Andrew Sheets, and Kristie Sheets (collectively, "Veteran Warriors") respectfully petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Federal Circuit in this case.

OPINIONS AND ORDERS BELOW

The Federal Circuit's opinion is reported at 29 F.4th 1320 and is reproduced at Pet. App. 1a-58a.

JURISDICTION

The Federal Circuit entered judgment on March 25, 2022 (Pet. App. 59a) and denied Veteran Warriors' timely petition for rehearing and rehearing en banc on June 17, 2022 (Pet. App. 60a-61a). This Court has jurisdiction under 28 U.S.C. § 1254.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

The statutory provision involved is 38 U.S.C. § 1720G and is set out in the appendix to this petition. Pet. App. 62a-77a. VA's Final Rule is reported at 85 Fed. Reg. 46,226 (July 31, 2020).

INTRODUCTION

The Federal Circuit disregarded a cardinal principle underlying *Chevron* and this Court's related precedents by concluding that courts need not employ all canons of construction before determining that a statutory provision is ambiguous and, accordingly, that Congress has delegated interpretive authority to an agency. In reviewing challenges to a rule adopted by the Department of Veteran Affairs ("VA"), the court of

appeals deferred to the agency's interpretations of the statute at issue without first employing the Pro-Veteran Canon of construction. See, *e.g.*, Pet. App. 10a-11a. Indeed, the Federal Circuit declined to apply the Pro-Veteran Canon at any point in its analysis, instead holding that VA was free to adopt a construction against the veteran because the statute neither compelled nor excluded the pro-veteran construction. See, *e.g.*, *id*. The Federal Circuit's holding conflicts with this Court's precedents on statutory construction, agency deference, and veterans' benefits.

In *Chevron* v. *Natural Resources Defense Council, Inc.*, the Court held that courts must apply all the traditional tools of construction before deciding whether a statute is truly ambiguous. 467 U.S. 837, 843 n.9 (1984). "The judiciary is the final authority on issues of statutory construction and must reject administrative constructions which are contrary to clear congressional intent." *Id.* "If a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect." *Id.*; see *Kisor* v. *Wilkie*, 139 S. Ct. 2400, 2415 (2019). This is because Congress legislates against the backdrop of canons of construction, and *Chevron* is premised on the pursuit of congressional intent. *Chevron*, 467 U.S. at 842-43.

The Pro-Veteran Canon has been a well-established tool of statutory construction for almost 80 years. See *Boone* v. *Lightner*, 319 U.S. 561, 575 (1943); see also *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). Yet, the court below refused to employ the canon before reaching the conclusion that the statutory provisions at issue are ambiguous and the agency's interpretations are owed deference. The Fed-

eral Circuit's decision conflicts with this Court's instruction that a court must consider the Pro-Veteran Canon, see *Henderson ex rel. Henderson* v. *Shinseki*, 562 U.S. 428, 440 (2011) (unanimous decision), before it can properly decide that the "legal toolkit is empty," see *Kisor*, 139 S. Ct. at 2415. The Court should grant certiorari to resolve this conflict and ensure that the Federal Circuit, which has been entrusted with reviewing veterans' benefits appeals, is adjudicating these important matters in line with this Court's cases.

Certiorari is also warranted to resolve inconsistency and disagreement within the Federal Circuit regarding the Pro-Veteran Canon's use within the *Chevron* framework. As judges within the Federal Circuit have recognized, both the Pro-Veteran Canon and *Chevron* prescribe rules to follow in the event of statutory ambiguity. Guidance from this Court is necessary regarding how these doctrines operate together, if at all. See *Kisor* v. *McDonough*, 995 F.3d 1347, 1358 (Fed. Cir. 2021) (Prost, C.J., concurring in the denial of rehearing en banc). The questions and confusion arising from the interplay of *Chevron* and the Pro-Veteran Canon call out for this Court's guidance and clarity.

The need for further direction from the Court on the interplay between the Pro-Veteran Canon and *Chevron* deference cannot be overstated. The Veterans' Judicial Review Act of 1988 makes the Federal Circuit and the U.S. Court of Appeals for Veterans Claims (the "Veterans Court") the sole judicial arbiters of disputes over the proper construction of statutes for veterans' benefits. See 38 U.S.C. §§ 502, 511(a), 7292. No splits among the regional Circuits are possible. Here the split is between the judges of the Federal Circuit. Thus, it is critical that the Federal Circuit acts consistently with Supreme Court precedent.

STATEMENT OF THE CASE

I. LEGAL BACKGROUND

A. The Pro-Veteran Canon

The Pro-Veteran Canon has been part of this Court's jurisprudence for almost 80 years. See *Kisor*, 995 F.3d at 1366 (O'Malley, J., dissenting from denial of rehearing en banc) (collecting cases). In 1943, this Court instructed in *Boone* v. *Lightner* that "[t]he Soldiers' and Sailors' Civil Relief Act is always to be liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation." 319 U.S. at 575. This principle recognizes the sacrifices that veterans have made for the United States, and the country's corresponding obligations to them. See Chadwick J. Harper, *Give Veterans the Benefit of the Doubt: Chevron, Auer, and the Veteran's Canon*, 42 Harv. J.L. & Pub. Pol'y 931, 948 (2019).

A few years later, in *Fishgold* v. *Sullivan Drydock & Repair Corp.*, this Court reinforced that veterans statutes are "to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need." 328 U.S. at 285. This Court clarified that the Court's "problem is to construe the separate provisions of the [Selective Service] Act as parts of an organic whole and give each as liberal a construction for the benefit of the veteran as a harmonious interplay of the separate provisions permits." *Id.*

In the nearly 80 years since *Boone* and *Fishgold*, this Court has consistently applied the Pro-Veteran Canon as a tool of statutory construction for the benefit of veterans. In 1961, this Court explained in *United States* v. *Oregon* that "[t]he solicitude of Congress for veterans is of long standing." 366 U.S. 643, 647 (1961). In 1980, this Court reinforced in *Coffy* v. *Republic Steel Corp.* that "[t]he statute is to be liberally construed for

the benefit of the returning veteran." 447 U.S. 191, 196 (1980).

In 1991, this Court held in *King* v. *St. Vincent's Hospital* that it "would ultimately read the provision in [the veteran's] favor under the *canon* that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." 502 U.S. 215, 220 n.9 (1991) (emphasis added). Not only did this Court make clear that the Pro-Veteran Canon is a tool of statutory construction, but it also clarified that it "will presume congressional understanding of such interpretive principles," and that "Congress legislates with knowledge of our basic rules of statutory construction." *Id.* (citing and quoting *McNary* v. *Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991)).

Shortly thereafter, the Court explained in *Brown* v. *Gardner* that the Pro-Veteran Canon is "the rule that interpretive doubt is to be resolved in the veteran's favor." 513 U.S. 115, 117-18 (1994). The Court further questioned whether it was even "possible" for "the existence of an ambiguity to be resolved" against the veteran "after applying th[is] rule." *Id.*

In 2009, this Court once again recognized in *Shinsheki* v. *Sanders* that "Congress has expressed special solicitude for the veterans' cause." 556 U.S. 396, 412 (2009). "A veteran, after all, has performed an especially important service for the Nation, often at the risk of his or her own life," "[a]nd Congress has made clear that the VA is not an ordinary agency." *Id.* "Rather, the VA has a statutory duty to help the veteran develop his or her benefits claim." *Id.* In that regard, "the adjudicatory process is not truly adversarial, and the veteran is often unrepresented during the claims proceedings." *Id.*

In 2011, this Court stated in *Henderson ex rel. Henderson* v. *Shinseki* that "[t]he solicitude of Congress for veterans is of long standing," and this "solicitude is plainly reflected in the VJRA, as well as in subsequent laws that 'place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions.'" 562 U.S. at 440. The Court noted that while "[w]hile the terms and placement of § 7266 provide some indication of Congress' intent, what is most telling here are the singular characteristics of the review scheme that Congress created for the adjudication of veterans' benefits claims." *Id.*

After setting out those singular characteristics, this Court concluded: "*We have long applied* '*the canon* that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor,'" and "[p]articularly in light of this *canon*, we do not find any *clear indication* that the 120–day limit was intended to carry the harsh consequences that accompany the jurisdiction tag." *Id.* at 411 (emphases added).

B. *Chevron* Deference

Nearly forty years after *Boone* and *Fishgold*, the Court in *Chevron* established a two-step process to determine the extent to which a court reviewing agency action should give deference to the agency's construction of a statute that the agency has been delegated to administer. *Chevron*, 467 U.S. at 842. Under *Chevron*, "[f]irst, always, is the question whether Congress has directly spoken to the precise question at issue." *Id.* If yes, "that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress." *Id.* at 842-43. "The inquiry ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent."

Barnhart v. *Sigmon Coal Co.*, 534 U.S. 438, 450 (2002) (cleaned up).

Second, if "the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." *Chevron*, 467 U.S. at 843; see also *Michigan* v. *EPA*, 576 U.S. 743, 751 (2015) ("Even under this deferential standard [*Chevron* Step Two], however, 'agencies must operate within the bounds of reasonable interpretation.'"); *cf. Kisor*, 139 S. Ct. at 2416 (for ambiguous regulations, an agency answer must "come within the zone of ambiguity" and the "outer bounds of permissible interpretation" set by the "traditional tools" of construction).

Critically, at step one, courts must employ canons of construction to determine whether statutory provisions are ambiguous or speak to the issue at hand. "Even under *Chevron*, [the Court] owe[s] an agency's interpretation of the law no deference unless, after 'employing traditional tools of statutory construction,' [the Court] find[s] [itself] unable to discern Congress's meaning." *SAS Inst. Inc.* v. *Iancu*, 138 S. Ct. 1348, 1358 (2018) (quoting *Chevron*, 467 U.S. at 843 n.9).

Recently, in the context of interpreting a regulation on veterans' benefits in *Kisor* v. *Wilkie*, the Court reiterated that a court must consider all the tools of construction before deciding that a statutory provision is ambiguous. 139 S. Ct. at 2415. On remand from this Court, however, the Federal Circuit declined to include the Pro-Veteran Canon as one of those tools of construction, and the Federal Circuit instead proceeded directly to finding that the text at issue was unambiguous. *Kisor* v. *McDonough*, 995 F.3d 1316, 1322, 1325-26 (Fed. Cir. 2021) (panel opinion on remand), *cert. denied*, 142 S. Ct. 756 (2022); *Kisor* v. *McDonough*, 995

F.3d at 1358 (Fed. Cir. 2021) (denying rehearing en banc).

Four judges disagreed with that approach, explaining in dissent from rehearing en banc that the panel erred by ignoring the Pro-Veteran Canon in deciding whether the text is ambiguous. *Kisor*, 995 F.3d at 1363-76 (O'Malley, J., dissenting; Reyna, J., dissenting).

Five judges, however, concurred in the Federal Circuit's denial of rehearing en banc. These judges joined in pertinent part a concurring opinion by then-Chief Judge Prost, who explained that *Auer/Chevron* deference and the Pro-Veteran Canon are in tension with one another because (in Chief Judge Prost's view) each doctrine is triggered by ambiguity, and there is no guidance regarding which doctrine operates first after such ambiguity is found. *Kisor*, 995 F.3d at 1358 (Prost, C.J., concurring). Chief Judge Prost did not propose how to ultimately resolve this question, but she noted that "[f]urther guidance is necessary to reconcile these competing doctrines." *Id.*

This confusion is not new, extending back to at least 2012, when the Federal Circuit observed that "[i]t is not clear where the *Brown* canon fits within the *Chevron* doctrine." *Heino* v. *Shinseki*, 683 F.3d 1372, 1379 n.8 (Fed. Cir. 2012). And in 2018, Judge O'Malley dissented from the denial of a petition for rehearing en banc in *Kisor* v. *Shulkin*. 880 F.3d 1378 (Fed. Cir. 2018). While that case also focused on interpreting a veterans' benefits regulation, Judge O'Malley's opinion underscored the tension between the Pro-Veteran Canon and agency deference, noting that "where the agency's interpretation of an ambiguous regulation and a more veteran-friendly interpretation are in conflict, it is unclear from our precedent which interpre-

tation should control." *Id.* at 1380 (O'Malley, J., dissenting). Judge O'Malley reasoned that the Pro-Veteran Canon requires departing from *Chevron* deference due to the "special strength of this canon" that stems from *Boone*. *Id.* at 1381. She further explained that "the Supreme Court has long applied the pro-veteran canon of interpretation to the statutory scheme" due to the uniquely pro-claimant nature of the veteran's compensation system. *Id.* at 1382 (citing *Henderson*, 562 U.S. at 441).

Recognizing this conflict between the Pro-Veteran Canon and agency deference, the Federal Circuit in 2019 requested en banc briefing on the role of the Pro-Veteran Canon in the context of the Agent Orange Act of 1991 and VA's implementation of that statute. *Procopio* v. *Wilkie*, 913 F.3d 1371, 1376 (Fed. Cir. 2019) (en banc). However, the Federal Circuit ultimately determined under *Chevron* step one that Congress's intent was clear in defining service in "the Republic of Vietnam" to include "naval personnel who served in the territorial sea," without applying the Pro-Veteran Canon or agency deference.[1] *Id.*

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1 The Federal Circuit's failure to resolve definitively the conflict between the Pro-Veteran Canon and Chevron has also impacted the decisions of the Veterans Court, which is bound by Federal Circuit precedent. *See Pacheco* v. *Gibson*, 27 Vet. App. 21, 29 (2014) (en banc) (per curiam) (deferring to VA under *Auer*); *id.* at 42 (Davis, J., concurring in part and dissenting in part) (four out of nine judges dissenting from the majority's "fail[ure] to resolve interpretive doubt in favor of the veteran, as we are bound to do under *Gardner*."). And previously, in 2004, the Veterans Court invited "guidance from the Supreme Court" "to resolve this matter definitively." *DeBeaord* v. *Principi*, 18 Vet. App. 357, 368 (2004).

II. BACKGROUND OF THE CASE

This case concerns the Caregiver Act, a veterans' benefits statute for which VA issued implementing regulations. Veterans Warriors challenged those regulations because they fell short of providing the measure of benefits that Congress intended.

A. The Caregiver Act and VA Mission Act

In 2010, Congress passed the "Caregivers and Veterans Omnibus Health Services Act" ("Caregiver Act"). 124 Stat. 1130 (2010). The Caregiver Act directed VA to establish a "Program of comprehensive assistance for family caregivers," and a "Program of general caregiver support services," and it provided "Definitions" for the terms, "caregiver," "family caregiver," "family member," and "personal care services." 38 U.S.C. § 1720G(a), (b), (d).

The Caregiver Act also provided an open-ended definition referring to a "serious injury" as "including traumatic brain injury, psychological trauma, or other mental disorder." *Id.* § 1720G(a)(2). To qualify for benefits, the Caregiver Act generally provided two alternative statutory eligibility criteria: (1) an inability to perform one or more activities of daily living; or (2) a need for supervision or protection. *Id.*

In 2018, Congress expanded the Caregiver Act (in the VA Mission Act) to include veterans who incurred a serious injury prior to September 11, 2001. 132 Stat. 1393, 1441-42 (2018). Congress also generally expanded benefits eligibility by adding a third alternative statutory eligibility criterion: "a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired." 38 U.S.C. § 1720G(a)(2)(C)(iii).

B. Proceedings Below

In July 2020, VA promulgated its Final Rule pursuant to the 2018 VA Mission Act (with an October 2020 effective date), but instead of expanding eligibility as that statute directed, VA actually narrowed eligibility for benefits, by restricting both the number of veterans who qualify for benefits and the amount of benefits for those veterans who do qualify. See 85 Fed. Reg. 46,226 (July 31, 2020) ("Final Rule").

VA's Final Rule narrowed eligibility for and reduced the quantity of caregiver benefits by imposing seven new requirements: (1) in-person personal care services; (2) a service connected disability rating with a rating of 70% or higher; (3) receipt of personal care services each time a veteran completes a single activity of daily life (i.e., 100% of the time); (4) a "functional impairment that directly impacts the individual's ability to maintain his or her personal safety on a daily basis"; (5) residence in a State of the United States; (6) reducing the benefit amount by using a General Schedule that corresponds to government employee salaries instead of rates comparable to a commercial home health aide; and (7) reducing the benefit amount by requiring an inability to self-sustain before a veteran can qualify for full benefits. 85 Fed. Reg. at 46,293-95.

Veteran Warriors challenged these seven new requirements through a petition to the Federal Circuit. The Federal Circuit partially ruled in favor of Veteran Warriors, because VA's Final Rule limited personal caregiver benefits to only those veterans whose impairments threatened their ability to maintain their personal safety on a daily basis, contrary to the unambiguous meaning of the statute. Pet. App. 40a-41a. However, the Federal Circuit deferred to VA under *Chevron* in rejecting Veteran Warriors' six remaining challenges to the Final Rule.

Veteran Warriors' first challenge objected to VA's Final Rule that veterans must require "in-person" personal care services to qualify for benefits. 38 C.F.R. § 71.15. The Caregiver Act provides that an eligible veteran "is *in need of* personal care services *because of*– (i) an inability to perform one or more activities of daily living; (ii) a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury; … or (iv) such other matters as [VA] considers appropriate." 38 U.S.C. § 1720G(a)(2)(C) (emphasis added). Veteran Warriors contended that because the statute speaks directly to "in need of personal care services," VA has no authority to restrict the statutory eligibility criteria for personal care services to be in-person, and "that is the end of the matter." See *Chevron*, 467 U.S. at 842; see also *Pereira* v. *Sessions*, 138 S. Ct. 2105, 2114 (2018) ("The statutory text alone is enough to resolve this case."). Veteran Warriors also explained that "[t]o the extent that VA could validly claim that it is resolving a statutory ambiguity in favor of an in person requirement, any such ambiguity should be resolved in favor of the veteran based on the veteran canon." D.I. 33 at 43.

Veteran Warriors' second challenge concerned VA's definition of "[s]erious injury." 38 C.F.R. § 71.15. The statute defines an eligible veteran as "any individual who . . . has a *serious injury* (including traumatic brain injury, psychological trauma, or other mental disorder) incurred or aggravated in the line of duty," 38 U.S.C. § 1720G(a)(2) (emphasis added). VA's Final Rule, however, applied a new definition of serious injury: "[A]ny service-connected disability that: (1) Is rated at 70 percent or more by VA; or (2) Is combined with any other service-connected disability or disabilities, and a combined rating of 70 percent or more is assigned by VA." 38 C.F.R. § 71.15. Veteran Warriors

explained that the statutory text foreclosed VA's definition because serious injury must include traumatic brain injury, but "[t]o the extent that VA could validly claim the existence of a statutory ambiguity that could ordinarily be resolved in favor of a service-connected disability requirement, that ambiguity should instead be resolved in the veteran's favor based on the veteran's canon." D.I. 33 at 46.

Veteran Warriors' third challenge objected to VA's definition of "inability to perform one or more activities of daily living." 38 U.S.C. § 1720G(a)(2)(C)(i). VA's Final Rule amended the definition of inability to perform an activity of daily living to mean a veteran or service member requires personal care services *each time* he or she performs an activity of daily living. 38 C.F.R. § 71.15. Veteran Warriors argued that VA's Final Rule regarding an inability to perform activities of daily living *each time* (*i.e.*, 100% of the time) does not comport with the statute, which does not permit VA to deny benefits because a veteran requires assistance only 99% or less of the time. Veteran Warriors also argued that "[t]o the extent that VA could validly claim the existence of a statutory ambiguity on the amount of assistance required for each [activity of daily living], that ambiguity should be resolved in the veteran's favor under the veteran's canon." D.I. 33 at 48.

Veteran Warriors' fifth challenge objected to VA's Final Rule requiring residence in a State (38 C.F.R. § 71.10) because the statutory structure contemplates that both the Caregiver Program and the Foreign Medical Program can provide veterans with access to same kind of noninstitutional extended care services. Because the Caregiver Program and the Foreign Medical Program can both provide the same kind of noninstitutional extended care services, VA's suggestion that the Caregiver Program could not be administered

through VA's Foreign Medical Program (85 Fed. Reg. 46,227) defies common sense. Veteran Warriors also argued that "[e]ven if there were any remaining statutory ambiguity, that ambiguity should be construed in the veteran's favor under the veteran's canon." D.I. 33 at 53.

Veteran Warriors' sixth challenge concerned VA's reduction of the benefit amount by using a General Schedule that corresponds to government employee salaries instead of rates comparable to a commercial home health aide as the statute at issue requires. 38 C.F.R. § 71.10. Veteran Warriors also argued that "[a]ny doubt should be construed in the veteran's favor under the veteran's canon." D.I. 33 at 54.

Veteran Warriors' seventh challenge aimed to set aside VA's schedule for stipend payments. Prior to the VA's Final Rule, VA reasonably calculated the monthly stipend based on the amount and degree of personal care services provided by the family caregiver, by using an average across seven activities of daily living and reasonably permitting a lower rating in a single activity of daily living to be offset by a higher rating in another activity of daily living. *Id.* at 56. Veteran Warriors explained that VA's Final Rule radically departs from VA's prior calculations and uses an arbitrarily high threshold that a veteran is only "unable to self-sustain" if he or she requires assistance on three or more activities of daily living 100% of the time, or he or she needs "supervision, protection, or instruction on a continuous basis." 38 C.F.R. 71.15; *id.* § 71.40(c)(4)(i)(A). Veteran Warriors also argued that "[e]ven if VA could claim a statutory ambiguity to be resolved in favor of an inability to self-sustain requirement, any such ambiguity should be resolved in the veteran's favor under the veteran's canon." D.I. 33 at 57.

For each of these challenges, the Federal Circuit deferred to VA's construction of the statute. And in doing so, it declined to apply the Pro-Veteran Canon, even though the statute at issue permitted (and Veteran Warriors explicitly argued for) a pro-veteran construction for each challenge. See Pet. App. 7a n.4. Indeed, Veteran Warriors argued that "[e]ven if a statute is ambiguous, VA and the Court must consider the canon that provisions for veterans' benefits should be construed in their favor." D.I. 33 at 17 (all challenges). Veteran Warriors also argued that "[t]o the extent that VA's Final Rule is within any zone of statutory ambiguity, VA's Final Rule should be set aside under the canon that benefits for veterans should be construed in their favor" (D.I. 33 at 41 (all challenges)). Despite this, the Federal Circuit held that Veteran Warriors waived arguments regarding the Pro Veteran Canon, holding that Veteran Warriors "fail[ed] to develop those arguments, just asserting the rule without explanation." See Pet. App. 7a n.4 (refusing to apply the Pro-Veteran Canon).

The court's ducking of the issue was inappropriate. As is evident from the description above, Veteran Warriors did more than "just asserting the rule without explanation." Pet. App. 7a n.4. But, had it done only that much, even that would have been enough. The *Pro-Veteran* Canon's very name discloses what it does: it tips the balance in favor of the veteran. To claim that more elucidation was needed is untenable given the simplicity of the point that the Pro-Veteran Canon takes precedence over agency deference: exactly what Veteran Warriors argued, and enough to dispose of this case in favor of the Petitioners.

REASONS FOR GRANTING THE PETITION

I. CERTIORARI IS NEEDED BECAUSE THE DECISION BELOW IS INCONSISTENT WITH THIS COURT'S PRECEDENTS AND SOWS FURTHER CONFUSION.

The Federal Circuit refused to apply the Pro-Veteran Canon, despite the fact that this canon is a long-standing tool of construction and this Court's instruction to apply all such tools before deferring to an agency interpretation. See *Chevron*, 467 U.S. at 843 n.9.

Based on its long-recognized role as a means to discern congressional intent, "the pro-veteran canon should be used alongside traditional tools of statutory construction." See *Kisor* v. *McDonough*, 995 F.3d at 1372 (O'Malley, J., dissenting). "Where differing plausible, reasonable interpretations of the terms of a regulation are possible, Congress has spoken: it wants veterans' benefits to be administered in a 'pro-claimant' manner." See *id.*

The Federal Circuit's division on the interaction between the Pro-Veteran Canon and *Chevron* deference highlights the need for this Court's intervention. Resolution of this conflict is crucial to the proper construction of veterans' benefits statutes. The issue stems from the fact that *Chevron* and the Pro-Veteran Canon suggest competing rules for courts to follow: *Chevron* says that statutory ambiguity reveals an implicit delegation of authority that warrants deference to an agency; the Pro-Veteran Canon says that to the extent there is any ambiguity in a statute, it must be resolved in favor of the veteran, not the agency.

As the more specific of these two doctrines, the Pro-Veteran Canon should obviate any need to resort to

Chevron deference. The Court should grant the petition to resolve the Federal Circuit's internal split and clarify that the Pro-Veteran Canon must be considered and applied before determining that the statute is ambiguous pursuant to *Chevron* Step One.

"Given the importance of the issue—the scope and applicability of a canon of construction—and the enormous impact" of the Pro-Veteran Canon on veterans' benefits statutes, see 995 F.3d at 1374 (O'Malley, J., dissenting), which in this case could impact millions of caregivers for veterans and involve billions of dollars, see *infra* Argument § II.B, this Court should grant the petition for a writ of certiorari.

A. The Federal Circuit's Decision Conflicts with *Chevron*'s Requirement to Apply All the Tools of Construction.

Chevron's "principle of deference to administrative interpretations" expressly requires a court to apply all "traditional tools of statutory construction" before deciding that the statute is ambiguous. 467 U.S. at 843 n.9, 844. As the Court recently explained in *SAS Institute*, a court "owe[s] an agency's interpretation of the law no deference unless, after 'employing traditional tools of statutory construction,' [the court] find[s] [itself] unable to discern Congress's meaning." 138 S. Ct. at 1358 (quoting *Chevron*, 467 U.S. at 843 n.9). The Court further confirmed in *Epic Systems Corp.* v. *Lewis* that "deference is not due unless a court, employing traditional tools of statutory construction, is left with an unresolved ambiguity," and "[w]here … the canons supply an answer, *Chevron* leaves the stage." 138 S. Ct. 1612, 1630 (2018) (cleaned up).

Most recently, in the context of interpreting a veterans' regulation in *Kisor* v. *Wilkie*, the Court empha-

sized that when it uses the term, "genuinely ambiguous," the Court "mean[s] it—genuinely ambiguous, even after a court has resorted to all the standard tools of interpretation." See 139 S. Ct. at 2414-15. These "standard tools" and "traditional tools" include the "text, structure, history, and purpose" of the statute, and "will resolve many seeming ambiguities out of the box." *Id.* "The inquiry ceases if the statutory language is unambiguous and the statutory scheme is coherent and consistent." *Barnhart*, 534 U.S. at 450 (cleaned up). A court "cannot wave the ambiguity flag just because it found the regulation impenetrable on first read." See *Kisor* v. *Wilkie*, 139 S. Ct. at 2415.

Under these principles, "hard interpretive conundrums, even relating to complex rules, can often be solved." See *id.* Deference to an agency is warranted "only when that legal toolkit is empty and the interpretive question still has no single right answer." See *id.* Here, however, the Federal Circuit did not use its entire legal toolkit, because the Pro-Veteran Canon went unused. Accordingly, deference to VA was improper.

B. The Pro-Veteran Canon Is a Traditional Tool of Construction That Must Be Applied Under *Chevron* Step One.

The Pro-Veteran Canon is a long-standing tool of statutory construction. This Court has consistently applied the canon in interpreting statutes for nearly 80 years. See *supra* Statement of the Case § I.A. And the canon speaks directly to congressional intent—it holds that courts must interpret statutes in favor of veterans and that Congress legislates with this principle in mind when enacting legislation.

The liberal construction principle does not force courts to automatically adopt any pro-veteran construction that is argued, but it does require that "separate provisions" of veterans' benefits statutes be given "as liberal a construction for the benefit of the veteran as a harmonious interplay of the separate provisions permits." *Fishgold*, 328 U.S. at 285. This Court thus explained as early as 1946 that the structure of a veterans' benefits statute—"the harmonious interplay of the separate provisions"—must be given as liberal a construction as possible under the Pro-Veteran Canon. *Id.* This Court also confirmed as recently as 2011 that Congress's "solicitude is plainly reflected in the VJRA, as well as in subsequent laws that 'place a thumb on the scale in the veteran's favor.'" *Henderson*, 562 U.S. at 440. This longstanding history of the Pro-Veteran Canon in the Court's jurisprudence further supports that the Pro-Veteran Canon must be considered before deciding that the veterans' benefits statute is truly ambiguous.

This Court has also instructed that the Pro-Veteran Canon is a traditional *canon* of construction. This Court explained in *King* that the Pro-Veteran Canon is "the *canon* that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." 502 U.S. at 220 n.9 (emphasis added). Because the Pro-Veteran Canon is a *canon* and a "rule," it must be applied to resolve "interpretive doubt" in favor of the veteran. *Brown*, 513 U.S. at 118.

And in *Henderson*, this Court confirmed in a unanimous decision that not only is the Pro-Veteran Canon a *canon*, but it is also a longstanding one: "We have long applied 'the *canon* that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor.'" 562 U.S. at 440 (emphasis added).

The Pro-Veteran Canon also reflects Congress' intent. Not only has this Court emphasized that the Pro-Veteran Canon is a *canon* for the benefit of veterans, but it has also underscored that courts "will presume *congressional understanding* of such interpretive principles." *King*, 502 U.S. at 220 n.9 (emphasis added) (quoting *McNary*, 498 U.S. at 496 (emphasis added) ("It is presumable that *Congress legislates with knowledge of our basic rules of statutory construction*.")). "[W]here a common-law principle is well established ... the courts may take it as given that Congress has legislated with an expectation that the principle will apply except when a statutory purpose to the contrary is evident." *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 108 (1991) (cleaned up).

This Court also explained in *Henderson* that the "singular characteristics of the review scheme that Congress created for the adjudication of veterans' benefits claims" are "most telling" in providing an "indication of *Congress' intent*." 562 U.S. at 440 (emphasis added). The Court further underscored that Congress' "solicitude is plainly reflected in the VJRA, as well as in subsequent laws that 'place a thumb on the scale in the veteran's favor in the course of administrative and judicial review of VA decisions.'" *Id.* Because "[a] veteran, after all, has performed an especially important service for the Nation, often at the risk of his or her own life," this Court explained, "Congress has made clear that the VA is not an ordinary agency," and "VA has a statutory duty to help the veteran develop his or her benefits claim." *Shinseki*, 556 U.S. at 412. Because the Pro-Veteran Canon shows *Congress' intent*, it must be applied before deciding the statute at issue is ambiguous.

Thus, even if "[c]anons of construction are an unruly team, often pulling in opposite directions," "when the

text yields competing plausible interpretations, all of the canons ought to be consulted and weighed in the analysis." *Kisor* v. *McDonough*, 995 F.3d at 1374 (O'Malley, J., dissenting) (cleaned up). The Pro-Veteran Canon must be applied as "one of the many canons of construction to be *collectively* employed when interpreting veterans benefit provisions." *Id.* at 1371.

The Federal Circuit's decision thus conflicts with this Court's cases. The Pro-Veteran Canon is a traditional tool of statutory construction, and *Chevron* therefore instructs that it must be employed before concluding that a statutory provision is ambiguous. The Federal Circuit's refusal to apply the canon warrants review and correction by this Court.

C. The Federal Circuit's Reasoning Is Unavailing.

The Federal Circuit, ignoring this Court's precedent, side-stepped application of the Pro Veteran canon by finding that Veteran Warriors had waived the argument. Pet. App. 7a n.4. This maneuver fails.

First, the question of whether the statute speaks directly to the questions at hand—or is ambiguous—was put directly to the court of appeals. And *Chevron* instructs that when such questions arise, *courts* must employ all tools of statutory construction because the central inquiry is whether Congress has spoken directly to the issue before the court. *Chevron,* 467 U.S. at 842-43. Once the issue of agency deference was raised, it is not sufficient for a court to simply duck the central inquiry because it disagrees with how it was briefed. Courts have a singular duty—employ the tools of statutory construction to divine Congress's intent.

Second, while the Federal Circuit has held that "arguments that are not fleshed out and are merely raised in footnotes are not preserved," and are thus waived,

that description is inapt here. See *SmithKline Beecham Carp*. v. *Apotex Corp.*, 439 F.3d 1312, 1320 (Fed. Cir. 2006) (discussing footnotes in appeals briefs); see also *Halliburton Energy Servs., Inc.* v. *M-I LLC*, 514 F.3d 1244, 1250 n.2 (Fed. Cir. 2008). In its opening brief to the Federal Circuit, Veteran Warriors explained in extensive detail, for each of VW's remaining six challenges, why and how the Final Rule contravened the unambiguous meaning of the statute at issue, including with respect to all relevant authorities, including the text, structure, history, and purpose of the statute at issue. Further, Veteran Warriors expressly explained that even if there were any ambiguity after considering the text, structure, history, and purpose of the statute, no deference was warranted to VA because the Pro-Veteran Canon operated as a tie-breaker in favor of the pro-veteran construction. D.I. 33 at 17, 41, 43-44, 46, 48, 50, 53-54, 57; Statement of the Case § II.B.

Despite recognizing that Veteran Warriors raised the Pro-Veteran Canon for each of its six remaining challenges, the Federal Circuit declined to address the issue because Veteran Warriors had allegedly provided too little detail on how it applies. Pet. App. 7a n.4. In asserting that additional detail was necessary, the Federal Circuit misconstrued Veteran Warriors' argument. Veteran Warriors did not contend that the Pro-Veteran Canon applies in some special way to a subset of veterans' benefits statutes, including this one. Rather, VW argued (and continues to argue) that the Pro-Veteran Canon is a canon of construction that applies to all veterans' benefits statutes, including the statute at issue here. D.I. 33 at 17, 41, 43-44, 46, 48, 50, 53-54, 57. Put simply, Veteran Warriors argued that the Pro-Veteran Canon is a tie-breaker that must

be considered as part of the legal toolkit before deferring to VA. *Id.* Applying this canon does not require a detailed, nuanced elaboration of its mechanics; the canon simply tips the balance in favor of the veteran when there are two competing, plausible readings.

The Federal Circuit appeared to distinguish between a statutory ambiguity and a gap or silence. See Pet. App. 13a-18a, 41a-44a, 49a. But the *Chevron* inquiry is the same in either instance; *Chevron* requires a court to consider "all the 'traditional tools' of construction," regardless of whether there is a gap, silence, or ambiguity in the statute. See *United States* v. *Home Concrete & Supply, LLC*, 566 U.S. 478, 487 (2012) ("The fact that a statute is unambiguous means that there is 'no gap for the agency to fill' and thus 'no room for agency discretion.'").

The Pro-Veteran Canon must be considered as part of the analysis when dealing with a statutory ambiguity, gap, and/or silence, even if only at the very end of the analysis. When there is a tie, such as the Federal Circuit found in this case, the Pro-Veteran Canon means that the veteran should win, similar to other deference-doctrine tools of construction recognized by this Court such as the Pro-Indian Canon and the Rule of Lenity. See *Wilson* v. *Omaha Indian Tribe*, 442 U.S. 653, 666 (1979) (cleaned up) ("Furthermore, statutes passed for the benefit of dependent Indian tribes . . . are to be liberally construed, [with] doubtful expressions being resolved in favor of the Indians."); *Dixson* v. *United States*, 465 U.S. 482, 501 (1984) ("The rule of lenity demands that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.").

That is exactly what this Court's jurisprudence requires for the Pro-Veteran Canon. See *Brown*, 513 U.S. at 118. That is also fully consistent with this Court's

longstanding treatment of the Pro-Veteran Canon as a *canon*, and the well-known and well-settled principle that "VA must give the veteran the benefit of any doubt." See *Henderson*, 562 U.S. at 440.

II. CERTIORARI IS WARRANTED TO PROTECT THE PRO-VETERAN CANON FROM BECOMING A NULLITY.

A. The Pro-Veteran Canon Is a Tie-Breaker That Must Be Considered Before Deferring to the Agency Under *Chevron*.

As this Court has explained, the Pro-Veteran Canon is a "rule" mandating that "interpretive doubt is to be resolved in the veteran's favor." *Brown*, 513 U.S. at 118. However, *Chevron* deference is also based on the existence of interpretive doubt. Both of these doctrines resolve ambiguity, but each one resolves it in a different direction. Accordingly, the choice of which one operates first will ordinarily (perhaps always) be dispositive. This case therefore raises a more fundamental question—whether *Chevron* deference can ever be reached in cases concerning the interpretation of veterans benefits statutes.

In her concurrence in the Federal Circuit's denial of rehearing en banc in *Kisor* v. *McDonough*, then-Chief Judge Prost recognized this tension between the Pro-Veteran Canon and *Chevron*, explaining that each doctrine is triggered by ambiguity, and this Court has not instructed courts on which doctrine operates first after such apparent ambiguity is found. 995 F.3d at 1358 (Prost, C.J., concurring). Chief Judge Prost did not propose a solution to this conundrum, noting "further guidance is necessary to reconcile these competing doctrines." *Id.*

Chief Judge Prost also discussed two formulations of the Pro-Veteran Canon, the "Boone" formulation that

a veterans' benefits statute is to be "liberally construed" in the veterans' favor, and the "Brown" formulation that "interpretive doubt" in a veterans' benefits statute must be resolved in the veterans' favor. *Id.* at 1351 (Prost, C.J., concurring) (citing *Boone*, 319 U.S. at 575, and *Brown*, 513 U.S. at 118). Under either approach, Chief Judge Prost proposed that the Pro-Veteran Canon "should be considered only after descriptive tools fail to yield a best meaning of the provision." *Id.*

Chief Judge Prost recognized that "if the pro-veteran canon is used at step one of *Chevron* to resolve ambiguity in a veteran's favor, then step two of *Chevron* will never be reached." *Id.* at 1358. The converse is also true: because the Pro-Veteran Canon almost always arises in a dispute between a veteran and VA, relegating the Pro-Veteran Canon until after *Chevron* deference would render the Pro-Veteran Canon a nullity. *Kisor*, 995 F.3d at 1370 n.4 (O'Malley, J., dissenting); see also Harper, 42 Harv. J.L. & Pub. Pol'y at 949-50 (citing *Justice Scalia Headlines the Twelfth CAVC Judicial Conference*, Veterans L.J. 1, 1 (2013)) (explaining that "Justice Scalia, in a speech to the Judicial Conference of the Court of Appeals for Veterans Claims, suggested that *Chevron* and the veteran's canon simply could not co-exist").

The Pro-Veteran Canon has a long history of application in this Court's jurisprudence, including after *Chevron* was decided. See Statement of the Case § I.A, *supra*. The Court's continued use of the canon implies that it retains vitality; the rule favoring veterans is not swamped by *Chevron*'s generic rule of deference to agencies. The Court should grant certiorari to confirm that *Chevron* deference does not take precedence over, and thereby effectively nullify, the Pro-Veteran Canon.

B. The Importance of Veterans' Benefits Warrants Both a Grant of Certiorari and a Skepticism Toward Agency Deference Here.

There is ample reason to conclude that Congress did not intend for courts to defer to VA's constructions, given the "deep economic and political significance" of veteran's rights. *King* v. *Burwell*, 576 U.S. 473, 485 (2015) (cleaned up). Yet the Federal Circuit improperly dismissed Veteran Warriors' arguments in this regard, by suggesting that the Caregiver Program does not "involve[] billions of dollars" or "affect[] millions of people," based on an excerpt from The United States Government Accountability Office, GAO 14-675, *Report to Congressional Requesters, VA Health Care: Actions Needed to Address Higher-Than-Expected Demand for the Family Caregiver Program* (Sept. 2014) ("GAO Report"). See Pet. App. 9a n.5 (citing *King*, 576 U.S. at 486 and D.I. 34 at Appx396). Not only did the Federal Circuit ignore the title of this GAO Report, which requests action to address "Higher-Than-Expected Demand," see D.I. 34 at Appx396, but it also ignored the fact that the second excerpted page of this GAO Report in the Joint Appendix shows that among post-9/11 veterans alone, there are more than 1 million caregivers providing personal caregiver services valued at $3 billion. See D.I. 34 at Appx399.

And most recently, this Court has continued to cabin the scope of *Chevron* deference to ensure that agencies do not exceed statutory authority. In *West Virginia* v. *EPA*, this Court held that the Environmental Protection Agency ("EPA") exceeded its power under the Clean Air Act when the EPA changed its prior policies of setting performance standards for power plants to reduce pollution, and instead required power plants to

reduce their own production of electricity or to subsidize increased production of electricity by natural gas, wind, or solar sources. 142 S. Ct. 2587, 2599 (2022). This Court held that under the "major questions" doctrine, the EPA had no authority to require power plants to reallocate power generation from existing power plants to newer cleaner sources of energy. *Id.* at 2615. Instead, "[a] decision of such magnitude and consequence rests with Congress itself, or an agency acting pursuant to a clear delegation from that representative body." *Id.* at 2616.

The same principle applies here. The proper application of the Pro-Veteran Canon to veterans' benefits statutes, such as the Caregiver Act and VA Mission Act, is crucial in preventing VA from adopting a construction of statutory benefits against the veteran that will adversely impact the distribution of benefits to millions of veterans and their caregivers. See D.I. 34 at Appx399 ("A RAND study estimated that there are 1.1 million family caregivers of post-9/11 veterans and that each year they provide personal care services valued at $3 billion"). Proper application also has nationwide implications because the Federal Circuit reviews veterans benefits cases. It is also critical because of Congress' long-standing solicitude for veterans, see *supra* Statement of the Case § I.A, and this Court's longstanding application of the Pro-Veteran Canon as a *canon* of construction, see *supra* Argument § I.B.

Proper application of the Pro-Veteran Canon to veterans' benefits statutes has a huge impact on veterans. It impacts not only the Caregiver Program, but all veterans' benefits statutes. Each year, VA processes more than 1 million veterans' benefits claims and disburses about $88 billion. See U.S. Gov't Accountability Off., GAO-21-348, *VA Disability Benefits: Veterans Benefits Administration Could Enhance Management of*

Claims Processor Training 1 (June 2021), https://www.gao.gov/assets/gao-21-348.pdf. Because there is no doubt that the Caregiver Program, as well as other veterans' benefits statutes, involve billions of dollars in benefits and affect millions of people, this Court should reaffirm the importance of the Pro-Veteran Canon to ensure that VA does not exceed its statutory authority. See *King*, 576 U.S. at 486.

III. CERTIORARI IS PARTICULARLY WARRANTED HERE TO ADDRESS WHETHER *CHEVRON* MUST BE CLARIFIED OR REPLACED TO PROTECT OTHER CANONS FROM BECOMING A NULLITY.

The conflict between the Pro-Veteran Canon and agency deference also touches upon the broader questions that continue to vex the courts—namely, the wider controversy surrounding deference to agency interpretations. *Kisor* v. *McDonough*, 995 F.3d at 1358 (Prost, C.J., concurring) ("Further guidance is necessary to reconcile these competing doctrines."); *Procopio*, 913 F.3d at 1387 (O'Malley, J., concurring) ("I write separately to lament the court's failure—yet again—to address and resolve the tension between the pro-veteran canon and agency deference."); see also *Kisor*, 139 S. Ct. at 2425 (Gorsuch, J., concurring in part) (explaining in the context of *Auer* deference that "today's decision is more a stay of execution than a pardon," and "[t]he Court cannot muster even five votes to say that *Auer* is lawful or wise.").

As the controversy in *Kisor* shows, how and when canons apply in the *Chevron* framework continues to plague judges. Chief Judge Prost flags in her concurrence to the denial of rehearing en banc in *Kisor* that this conundrum is not limited to the Pro-Veteran Canon. 995 F.3d at 1358 n.16 (Prost, C.J., concurring). While "the D.C. Circuit has prioritized the Indian

canon over *Chevron* step two, the Ninth Circuit has not." *Id.* (comparing *Cobell* v. *Norton*, 240 F.3d 1081, 1100–01 (D.C. Cir. 2001), with *Rancheria* v. *Jewell*, 776 F.3d 706, 713 (9th Cir. 2015)).

Indeed, the Pro-Veteran Canon shares many parallels with the Pro-Indian Canon, including that both canons "reflect the unique relationships between particular groups and the government, and the duties owed by the government to those groups," "[b]oth canons are traditional tools of interpretation," and "both canons can help hold the government to its promises." See Harper, 42 Harv. J.L. & Pub. Pol'y at 956-57. The Pro-Indian Canon holds the government to its promises by establishing that provisions "should be construed liberally in favor of the Indians," "with ambiguous provisions interpreted to their benefit." *Cnty. of Oneida* v. *Oneida Indian Nation*, 470 U.S. 226, 247 (1985). This Court has also held that "statutes are to be construed liberally in favor of the Indians, with ambiguous provisions interpreted to their benefit." *Montana* v. *Blackfeet Tribe of Indians*, 471 U.S. 759, 766 (1985). That is exactly the same analysis that this Court has used in discussing the Pro-Veteran Canon.

How canons such as the Pro-Veteran Canon apply in the *Chevron* framework requires clarification because ambiguity is often in the eye of the beholder. *American Hospital Association* v. *Becerra*, highlights this. There the D.C. Circuit held that the statutory text was ambiguous and applied *Chevron* deference, but this Court held that the statute was clear and unambiguous. *Am. Hosp. Ass'n* v. *Becerra*, 142 S. Ct. 1896, 1906 (2022). *Becerra* also highlights the fact that the government sometimes argues for and wins cases based on *Chevron* deference in the Circuit Courts, but then changes its position to discount the necessity of *Chevron* deference when those cases reach this Court. *See, e.g.*, Gov't Br.

47, *Am. Hosp. Ass'n* v. *Becerra*, No. 20-1114 (U.S. Oct. 20, 2021), 2021 WL 4937288 (arguing that *Chevron* deference is "[w]arranted [b]ut [u]nnecessary," after successfully arguing for *Chevron* deference in the D.C. Circuit). Reaffirming the importance of the Pro-Veterans Canon obviates these issues by giving courts a different rule to follow in the search for congressional intent.

Also currently pending before the Court is another petition for a writ of certiorari on the conflict between the Pro-Veteran Canon and *Chevron* deference. See *Buffington* v. *McDonough*, No. 21-972 (U.S. Jan. 6, 2022) (seeking review of *Buffington* v. *McDonough*, 7 F.4th 1361 (Fed. Cir. 2021)) ("Buffington Petition"). If the Court grants the Buffington Petition, it should also grant this Petition to ensure review of the full scope of the Federal Circuit's current position on these issues. At a minimum, the Court should hold this petition pending review of the Buffington Petition.

Veteran Warriors requests that the Supreme Court grant certiorari to clarify that *Chevron* footnote 9 requires a court to consider all the tools of statutory construction, including the Pro-Veteran Canon, before deciding that the statute at issue is truly ambiguous and deferring to the agency construction, to protect the Pro-Veteran Canon from becoming a nullity. If a reviewing court employs all the traditional tools of construction, a court will almost always reach a conclusion on the best interpretation. This result would also help clarify and protect all the other canons of construction, such as the Pro-Indian Canon, from becoming a nullity. Certiorari should further be granted because it will permit this Court to resolve the open questions concerning the competing doctrines of the Pro-Veteran Canon and *Chevron* deference, and nothing would be gained from further delaying review.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari.

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