No. 22-360

IN THE

Supreme Court of the United States

VETERAN WARRIORS, INC., ET AL.,
Petitioners,

v.

DENIS R. MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS,
Respondent.

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

BRIEF OF THE FEDERAL CIRCUIT BAR ASSOCIATION AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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INTEREST OF THE *AMICUS CURIAE*[1]

The Federal Circuit Bar Association ("FCBA") is a national organization for the bar of the United States Court of Appeals for the Federal Circuit. The organization unites different groups across the nation that practice before the Federal Circuit, seeking to strengthen and serve the court. As part of its efforts, the FCBA helps facilitate pro bono representation for veterans with potential or actual litigation within the Federal Circuit's jurisdiction, with a view to strengthening the adjudication process. The interpretation of veterans' benefit statutes and regulations is central to the representation of veterans, and the role of the Pro-Veteran Canon is a recurring source of uncertainty and unpredictability in veterans' cases before the Federal Circuit. In light of this uncertainty, the court's holding in this case that litigants must more substantially "develop" arguments under the Canon at the risk of waiver creates confusion that undermines the ability of FCBA members to effectively represent veterans' interests.

One of the FCBA's primary purposes is to render assistance to the Court of Appeals for the Federal Circuit in appropriate instances by submitting its views on the legal issues before that court. The FCBA also has an interest in assisting this Court by submitting its views on cases that implicate subject matter within

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[1] No counsel for a party authored any part of this brief, and no person other than *amicus curiae*, its members, or its counsel made a monetary contribution intended to fund its preparation or submission. *Amicus curiae* timely provided notice of intent to file this brief to all parties, and all parties have consented to the filing of this brief.

the appellate jurisdiction of the Court of Appeals for the Federal Circuit. These submissions further the FCBA's commitment to promoting the health of the legal system in furtherance of the public interest. It is with that interest in mind that the FCBA submits this amicus brief in support of petitioners on the first question presented: 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.

Because the respondent in this case is part of the federal government, FCBA members and leaders who are employees of the federal government have not participated in the Association's decision-making regarding whether to participate as an amicus in this litigation, developing the content of this brief, or the decision to file this brief.

SUMMARY OF ARGUMENT

Congress writes the statutes governing veterans' rights and benefits to be read under an established principle: doubt is resolved in the veteran's favor, and the government bears the risk of uncertainty. This Court has long applied this Pro-Veteran Canon as a guiding interpretive principle. *Henderson v. Shinseki*, 562 U.S. 428, 440-41 (2011) (citing *King v. St. Vincent's Hosp.*, 502 U.S. 215, 220-21 n.9, (1991); *Coffy v. Republic Steel Corp.*, 447 U.S. 191, 196 (1980); *Fishgold v. Sullivan Drydock & Repair Corp.,* 328 U.S. 275, 285 (1946)). Thus, when Congress established judicial review over the administration of claims for veterans' benefits by the Department of Veterans Affairs ("VA"), it legislated against the backdrop of this Canon. And the Canon serves a critical role in preserving the

uniquely pro-claimant system that Congress sought to protect through judicial review: it places a "thumb on the scale" for the veteran. *Henderson*, 562 U.S. at 440.

Because the Canon operates as a constraint on the government, it has an important role to play when a court reviews an interpretation by the VA for consistency with the agency's governing statutes. The Canon is one of the "traditional tools" of interpretation that judges must employ before resorting to deference. *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843 n.9 (1984); *Kisor v. Wilkie*, 139 S. Ct. 2400, 2415 (2019). This includes the assessment of whether Congress has "directly spoken to the precise question at issue" (*Chevron* Step 1), 467 U.S. at 842, and any subsequent inquiry into whether the VA's reading falls "within the bounds of reasonable interpretation" left by an ambiguous statute (*Chevron* Step 2), *City of Arlington v. FCC*, 569 U.S. 290, 296 (2013). Because the Canon is a persuasive guide to the meaning of congressionally enacted statutes, agency interpretations of those statutes cannot lawfully disregard it.

Yet the Court of Appeals for the Federal Circuit—which holds exclusive jurisdiction to review the VA's interpretations of law—has unsettled the established role of the Canon. The court is deeply divided over when and how the Canon applies in the face of agency deference. In particular, over pointed dissents, two recent decisions have relegated the Canon to a disfavored status and called into question whether it has any remaining practical application. In *Kisor v. McDonough*, 995 F.3d 1316 (Fed. Cir. 2021), on remand from this Court, the Federal Circuit held that the Canon, like agency deference, applies only *after* all other tools of

interpretation are exhausted and "interpretive doubt" remains. *Id*. at 1325-26. That holding generated five different opinions on denial of rehearing en banc over whether and how the Canon can co-exist with agency deference as two competing tie-breakers of last resort. *See Kisor v. McDonough*, 995 F.3d 1347, 1358-59 (Fed. Cir. 2021) (Prost, J., concurring in denial of rehearing en banc); *id.* at 1360 (Hughes, J., concurring in denial of rehearing en banc); *id.* at 1361 (Dyk, J., concurring in denial of rehearing en banc); *id.* at 1366 (O'Malley, J., dissenting from denial of rehearing en banc); *id.* at 1376 (Reyna, J., dissenting from denial of rehearing en banc). Then, in *Buffington v. McDonough*, 7 F.4th 1361 (Fed. Cir. 2021), the court held that the Canon does not apply at all, and the court may defer to the VA's interpretation, if the "the statutory scheme is silent" on the interpretive question at issue. *Id*. at 1366 n.5. Under these decisions, the Canon exists only in the nebulous zone where a statute instills the "interpretive doubt" required to trigger the Canon under *Kisor v. McDonough*, but is not "silent" in a way that renders the Canon inapplicable under *Buffington*.

This uncertainty has eroded both the role of the court and the substantive rights of veterans in pernicious ways, as highlighted in this case. Here, in reviewing the VA's regulation implementing a provision of the VA MISSION Act of 2018[2] enacted to expand compensation to family caregivers of disabled veterans, the court of appeals upheld *six* separate restrictions on the scope of eligible veterans and available benefits, all imposed by the VA with no basis in the statutory text. In each case, the court deferred to the agency's atextu-

[2] Pub. L. No. 115-182, § 161, 132 Stat. 1393, 1438-40.

al limitations as "reasonable" without ever considering the Canon. Failing in its duty to apply all available tools of interpretation, the court disposed of the Canon in a footnote by holding that petitioners' repeated arguments about its application were insufficiently "develop[ed]" and thus "waived." Pet. App. 7a n.4. But the Canon reflects, and petitioners invoked, a straightforward and settled principle that does not take pages of briefing to "develop": the risk of ambiguity falls on the government.

The Federal Circuit's decision leaves veterans and their counsel profoundly uncertain of what they must do to invoke the Canon, and seek its protection, in judicial review of benefit determinations. The Court should grant certiorari now to resolve that uncertainty and preserve the Canon's critical role in safeguarding the protections Congress intended for veterans.

ARGUMENT

I. The Pro-Veteran Canon Is a Long-Standing Guide to Statutory Meaning, Not a Tie-Breaker of Last Resort.

The Canon is a settled guide to the meaning of laws enacted for the benefit of veterans. Interpretive doubt is resolved in the veteran's favor, restrictions must be clearly indicated to be lawful, and the cost of uncertainty and error shall be borne by the government rather than the veterans who served and now depend on it. That is the Court's settled understanding of Congress's meaning. Congress has continued to write veterans' benefit statutes, like the one at issue here, fully expecting that the Canon will govern their interpretation. But the Federal Circuit has elevated agency deference above the Canon—and left the Canon as a non-

factor in the interpretation of benefit statutes. Restoring the Canon to that governing role will faithfully implement not only this Court's own precedent, but Congress's longstanding reliance on it.

This Court first articulated the Canon in a series of decisions dating back to World War II, in which the Court weighed competing interpretations of laws granting servicemembers a right to protections such as civilian re-employment during the term of their military service. *See Boone v. Lightner*, 319 U.S. 561, 575 (1943); *Fishgold v. Sullivan Drydock & Repair Corp.,* 328 U.S. 275, 285 (1946); *Coffy v. Republic Steel Corp.,* 447 U.S. 191, 196 (1980); *Alabama Power Co. v. Davis*, 431 U.S. 581, 584-85 (1977); *King v. St. Vincent's Hosp.,* 502 U.S. 215, 220-221 n.9, (1991). In this context, the Court explained that protections enacted for those "who left private life to serve their country in its hour of great need" should be "liberally construed" to guard against attempts by other interested parties to "cut down the … benefits which Congress has secured the veteran." *Fishgold*, 328 U.S. at 285. These cases represent the Court's traditional approach to discerning the best meaning of veterans' benefit statutes. Over time, this Court has described that pro-veteran approach as a "long applied" "canon," a "guiding principle," and a "basic rule of statutory construction" that is "presum[ed]" to be understood by Congress when enacting its laws. *Henderson*, 562 U.S. at 441; *Alabama Power Co.*, 431 U.S. at 584; *St. Vincent's Hosp.,* 502 U.S. at 220-21 n.9.

The Canon applies with full force to the Court's review of the rules and standards for administering and adjudicating veterans' benefits. *See Brown v. Gardner*, 513 U.S. 115, 117-18 (1994) (rejecting a "fault" re-

quirement for compensation for injuries sustained during VA medical care); *Henderson*, 562 U.S. at 441 (rejecting a jurisdictional reading of the deadline for appealing an adverse VA decision to the Court of Appeals for Veterans Claims). In this context, the Court invoked the Canon in *Henderson* as part of its discussion about the "singular characteristics of the review scheme that Congress created for the adjudication of veterans' benefits claims." 562 U.S. at 440. This included the long-standing solicitude for veterans "plainly reflected" in 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.* Applying the Canon as a thumb on the interpretive scale, the Court declined to adopt a "[r]igid jurisdictional treatment" of the statutory deadline at issue when there was no "clear indication" that Congress intended to impose the "harsh consequences" of that reading in a way that conflicted with purpose and character of the scheme as whole. *Id.* at 441.

As the Court recognized in *Henderson*, Congress enacted judicial review as part of an effort to improve and maintain the "beneficial non-adversarial system of veterans benefits" that it deliberately designed. H.R. Rep. No. 100-963, pt. I, at 13 (1988). Central to this "beneficial structure" are two provisions that Congress enacted in the same legislation that first secured veterans' access to judicial review over the VA's administration of benefits claims. Veterans' Judicial Review Act ("VJRA"), Pub. L. No. 100-687, 102 Stat. 4105 (1988). These provisions codified the VA's affirmative duty, in the resolution of factual questions, *first* to "fully and sympathetically" develop veterans' claims to their "optimum" by obtaining all relevant evidence in the veteran's favor, and *second* to give the veteran "the

benefit of any reasonable doubt" in adjudicating the claims. H.R. Rep. No. 100-963, pt. I, at 13; *see also* 38 U.S.C. §§ 5103, 5107.

These provisions reflect Congress's general intent that veterans be afforded the full scope of benefits to which they can reasonably be found to be entitled under the laws, and that the cost of uncertainty and error in the system should be borne by the government rather than the veterans the system was created to protect. *See Gilbert v. Derwinski*, 1 Vet. App. 49, 54 (1990) ("It is in recognition of our debt to our veterans that society has through legislation taken upon itself the risk of error…."). The Canon reflects that same Congressional intent and recognizes that the VA has affirmative obligations in interpreting laws that parallel its obligations in adjudicating facts. The agency, and reviewing courts, should strive to read the laws in the light most favorable to the veteran and resolve interpretive doubt in the veteran's favor.

This Court has accordingly treated the Canon as a general presumption of generosity for veterans' benefit laws, against which it weighs and assesses arguments that Congress had a more restrictive intent for a specific statutory provision. For example, in *Fishgold*, the Court began its interpretation of the Selective Training and Service Act of 1940 by describing its interpretive task in light of the Canon: "Our problem is to construe the separate provisions of the 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." 328 U.S. at 285 (emphasis added). Thus, while the Canon operates alongside other interpretive considerations such as statutory

structure, the *entire* statute is to be given a pro-veteran construction wherever possible.

Likewise in *St. Vincent's Hospital*, the Court relied on the Canon to explain why various interpretive arguments proffered against the veteran were not sufficient to overcome a pro-veteran interpretation that was otherwise consistent with the plain text. 502 U.S. at 220 n.9 (noting that even if length limitations expressly written into other provisions "unsettled" the no-limitation reading of the provision at issue, the Court "would ultimately read the provision in [the veteran's] favor under the [C]anon…."). Similarly, in *Gardner*, the Court pointed out that although the government's interpretation might be linguistically consistent with some dictionary definitions (but not others), it would still have to overcome "the rule that interpretive doubt is to be resolved in the veteran's favor." 513 U.S. at 117-18. In both instances, the Court weighed the Canon against arguments for competing interpretations as part of its reasoning in concluding that the veteran's interpretation was the best reading of the statute.

The Federal Circuit has turned this principle on its head. Even when instructed by this Court to apply all "traditional tools" of interpretation before deferring to an agency interpretation under *Auer*, *Kisor*, 139 S. Ct. at 2415, a majority of the Federal Circuit panel on remand failed to apply the Canon as one of those interpretive tools. Citing the *Gardner* rule that "interpretive doubt is to be resolved in the veteran's favor," *Gardner*, 513 U.S. at 117-18, the majority held that the Canon "does not apply unless 'interpretive doubt' is present," and that this "*precondition* is not satisfied where a sole reasonable meaning is identified through the use of ordinary textual analysis tools[] *before* con-

sideration of the pro-veteran canon." *Kisor*, 995 F.3d at 1325-26 (emphasis added). But the court identified little—other than a disputed reading of a related provision, its own precedent, and the fact that both litigants asserted that the text was unambiguous—in the way of "textual analysis tools" to justify its disregard of the Canon. *Id.* at 1324-26. The court did not address or even mention the regulatory history and other context supporting Mr. Kisor's interpretation that was detailed at length by the dissent. *Id.* at 1331-33 (Reyna, J., dissenting).

The court thus transformed the Canon's guiding principle into a tie-breaker of last resort. The result was that the veteran bore the cost of the interpretive uncertainty, and "Mr. Kisor, a veteran who was denied twenty-three years of compensation for his service-connected disability, after … a disgracefully inadequate VA review," was denied relief under "a regulation … specifically promulgated to benefit him and other veterans in his situation." *Id.* at 1327. This is plainly contrary to the beneficial scheme designed by Congress.

The Federal Circuit's treatment of the canon may stem in part from certain judges' mistaking the "thumb on the scale" discussed in *Henderson*, 562 U.S. at 440, for a lead weight—one that, once applied, would always force the court to adopt the veteran's proffered interpretation. That misreading of this Court's precedent has convinced some members of the court that the Canon should be relegated to the end of the interpretive hierarchy to protect other interpretive tools. *See, e.g.*, *Kisor*, 995 F.3d at 1358 (Prost, J., concurring in denial of rehearing en banc) ("For example, 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"). This concern is unwarranted. A canon *of construction* is an interpretive aid, not a rigid rule that one party always wins. The point is that the applicable canons *must be considered* in ascertaining the meaning of the statute. Sometimes the pro-veteran reading will not prevail as a result of other principles of textual interpretation. *See, e.g.*, *Fishgold*, 328 U.S. at 285. But the desire to ensure that "step two of *Chevron*" can sometimes "be reached" is not a valid reason to cut short step one—which is where the Canon belongs.

Ultimately, the Federal Circuit's "last-resort" treatment of the Canon is unworkable. If courts "can set aside the pro-veteran canon unless and until all other considerations are tied, then the canon is dead because there is no such 'equipoise' in legal arguments." *Kisor*, 995 F.3d at 1337 (Reyna, J. dissenting) (citing *Kisor*, 139 S. Ct. at 2429-30 (Gorsuch, J., concurring in the judgment)). This Court should grant certiorari to restore the Canon to its proper place.

II. Courts Cannot Disregard the Canon by Declaring That a Statute Is "Silent."

Subsequent Federal Circuit decisions have stripped the Canon out of the interpretive process altogether. Those decisions have deprived the Canon of even the status of last-resort tiebreaker—much less its proper role as a guide to statutory meaning. The Federal Circuit's decision in *Buffington* validated the government's strategy for disregarding the Canon: claiming that a statute is "silent" just because it does not *expressly forbid* the agency's interpretation, that the Canon therefore plays no role, and that the agency's

interpretation necessarily prevails. 7 F.4th at 1366-67 & n.5.

The *Buffington* panel deferred to the VA's interpretation and, as in petitioners' case, disposed of the Canon in a single footnote. *Id.* at 1366 n.5. There, the court held that when it concludes, at *Chevron* Step 1, that a statutory scheme is "silent" on the interpretive question at issue—an assessment conducted without first considering the Canon—then the Canon does not apply in assessing the reasonableness of the agency interpretation at *Chevron* Step 2. *Id.* For this holding, the court relied on its decision in *Terry v. Principi* that the Canon "does not affect the determination of whether an agency's regulation is a permissible construction of a statute" under *Chevron*. 340 F.3d 1378, 1384 (Fed. Cir. 2003) (citing *Nat'l Org. of Veteran's Advocs., Inc. v. Sec'y of Veterans Affs.*, 260 F.3d 1365, 1378 (Fed. Cir. 2001)).

This reasoning is inconsistent with the Court's precedent. Nothing in this Court's long line of cases suggests that the Canon can be ignored if Congress did not *specifically and expressly forbid* the particular restriction that the VA seeks to impose. Rather, the cases illustrate a critical role for the Canon in determining whether statutory "silence" on a particular restriction of benefits is permissive or prohibitive of that restriction. In *St. Vincent's Hospital*, this Court considered whether a provision guaranteeing a right to civilian reemployment after military service contained an implicit limit on the length of service for which the protection can extend. 502 U.S. at 216. While the text of the provision recited no length restriction, several courts of appeals had "engrafted a reasonableness requirement" onto the statutory protection, holding that

soldiers who served for years at a time were not entitled to their former jobs. *Id.* at 218. This Court overturned those holdings, declining to find "equivocation in the statute's silence," and citing the Canon in rejecting counterarguments that would merely "unsettle[]" the clarity of the text. *Id.* at 220, 220 n.9.

Likewise, in *Gardner*, this Court declined to read a fault requirement into "a statute keeping silent about any fault on the VA's part" as a requirement for obtaining disability benefits for an injury sustained or aggravated while under VA medical care. 513 U.S. at 120. Noting that the government's reliance on a subset of competing dictionary definitions would still have to overcome the Canon, the Court concluded that "[w]ithout some mention of the VA's fault, it would be unreasonable to read the text of § 1151 as imposing a burden of demonstrating it upon seeking compensation for a further disability." *Id.* Based on that conclusion, the Court declined to defer to the VA's interpretation of the statute under *Chevron*. *Id.*

More broadly, in almost any scenario where the VA reads a requirement or limitation into a statute, the statute can be characterized as "silent" on the permissibility of the particular restriction. In this case, for example, the VA imposed requirements on access to caregiver benefits that were unquestionably absent from the statute: *e.g.*, that the veteran's caregiver reside in the United States or that "serious injury" require disability greater than 70 percent. Pet. App. 26a, 43a. In each case, the court characterized the absence of the requirement in the statute as a permissive "silence" that could be filled with a policy choice by the VA. *Id.*

But this Court has expressly rejected the suggestion that the VA's interpretations of statutes can be upheld without genuine scrutiny whenever the VA's reading is not *specifically and expressly* contradicted by the plain text. In a decision reviewing a VA regulation interpreting the National Life Insurance Act of 1940, the Court recognized that the agency's regulations are "subject to more than casual judicial scrutiny when they are based upon a controverted construction of the statute." *United States v. Zazove*, 334 U.S. 602, 612 (1948). In particular, the Court made clear that "an administrative regulation purporting to construe an ambiguous subsection of [the statute] is not automatically to be deemed valid merely because [the regulation is] not plainly interdicted by the terms of the particular provision construed." *Id.* at 611. Rather, the Court recognized its own longstanding principle that "statutory provisions, where ambiguous, are to be construed liberally to effectuate the beneficial purposes that Congress had in mind." *Id.* at 610.

Moreover, the legislative history of the VJRA contradicts the assumption that Congress intended for courts to defer to any VA interpretation rooted in a "policy" decision. As explained in the House Committee Report, the establishment of judicial review was "intended to provide a more independent review by a body which is *not bound by the Administrator's view of the law*" and, in particular, Article III review of "*VA policy as expressed in VA regulations and interpretations*" was based on "the analysis of learned scholars that such review will aid in the achievement of a more accurate and fair system." H.R. Rep. No. 100-963, pt. I, at 26. The Committee hearings voiced substantial concerns about "policy decisions" reflected in VA regulations and other interpretations of law that may be mo-

tivated by executive branch pressures to reduce costs to the detriment of the veterans served by the agency.[3] Senator Cranston, Chairman of the Senate Committee on Veterans' Affairs and key sponsor of the VJRA, emphasized that one "basic reason for judicial review legislation [was] the need to establish a basis for review of questionable agency actions restricting, withholding, or withdrawing VA benefits."[4] This included "overly restrictive regulations" for implementing legislation enacted by Congress to extend the GI Bill and expand health care eligibility for radiation exposure and "stringent standards" for establishing PTSD service-connection for Vietnam veterans.[5] He also cited the "unduly restrictive legal opinions from the Office of the General Counsel which may operate to deny veterans' access to benefits to which they would otherwise b[e] entitled," such as the denial of reproductive care services to veterans with service-connected reproductive disorders.[6] Testimony from veterans services organizations expressed similar concerns.[7] As Senator Cranston recognized, "agency action that does not have

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[3] *Judicial Review Legislation: Hearing Before the S. Comm. on Veterans' Affs. on S.11 & S.2292*, 100th Cong. 109-122 (1988) (statement of Sen. Cranston) [hereinafter *Cranston Statement*].

[4] *Id.* at 112.

[5] *Id.* at 112-13.

[6] *Id.* at 113.

[7] *Judicial Review of Veterans' Affairs: Hearing Before the H. Comm. on Veterans' Affs.*, 100th Cong. 319 (1988) (statement of Gordon Mansfield, Associate Exec. Dir. for Gov't Relations, Paralyzed Veterans of America) ("[D]uring periods of fiscal restraint, [VA] regulations can be shaped more through the influence of the Office of Management and Budget and blatant political pressure than the intent of Congress.").

the benefit of outside scrutiny may fail to address fully the legitimate needs of those the agency exists to serve."[8] Thus, legislation was needed to provide "outside review by the independent branch of government established in our constitutional framework with the special responsibility of determining whether governmental action is legal and whether it is fundamentally fair."[9]

Tellingly, in testimony before Congress, the VA specifically requested that the statute provide substantial deference to the VA's interpretations: "In our view, the bill should explicitly state that the VA's interpretation of its statutory authority and regulations is to *be given conclusive weight* unless clearly shown to be arbitrary, capricious, an abuse of discretion, or contrary to law."[10] Congress rejected that proposal in the VJRA, which instead vested the Federal Circuit with "exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof" and to "interpret constitutional and statutory provisions, to the extent presented and necessary to a decision." 38 U.S.C. § 7292(c).

III. This Court Should Grant Certiorari to Restore the Pro-Veteran System of Judicial Review Congress Enacted

The Federal Circuit has imposed preconditions and limits on the use of the Canon that leave the long-

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[8] *Cranston Statement* at 114.

[9] *Id.* at 114.

[10] *Judicial Review Legislation: Hearing Before the S. Comm. on Veterans' Affs. on S.11 & S.2292*, 100th Cong. 508 (1988) (statement of Donald L. Ivers, General Counsel, Veterans Administration) (emphasis added).

established interpretive principle with no firm place in the court's reading of veterans' benefits laws. In the midst of this uncertainty, the court's holding in this case that veterans must fully "develop" their arguments under the Canon for the court to even consider them creates profound confusion for future litigants over what they can and should say to invoke the Canon's protections. That only heightens the need for certiorari.

By eroding and side-stepping the Canon, the Federal Circuit abdicates its obligation to hold the VA accountable to Congressional intent, and absolves the VA of its duty to administer the law sympathetically in the veteran's best interest. As the panel dissent in *Kisor v. McDonough* observed, the veterans who are now served by the VA "joined the armed services in their youth for modest pay, risking the rest of their lives … with the government's promise that upon their return, it would make them as whole as possible, if only financially, for their wounds, and that … they would be treated fairly and sympathetically in the process." 995 F.3d at 1338 (Reyna, J. dissenting). That promise is reflected in the VA's mission, drawn from Lincoln's Second Inaugural Address and carved into stone at its headquarters, "[t]o care for him who shall have borne the battle, and for his widow, and his orphan."[11] The strength and coherency of the Canon affects every stage of the administration of veterans' benefits, from the initial drafting of implementing regulations, to the interpretation of regulations in adjudicating claims, to the review of claims decisions by the Board, the Court of Appeals for Veterans Claims, and the Federal Circuit. Thus, the

[11] *About VA*, U.S. Dep't Veterans Affs. (Sept. 15, 2022), https://www.va.gov/ABOUT_VA/index.asp.

court's holdings, weakening the Canon in its own interpretive toolkit, has reverberating consequences for the scope of the VA's discretion and the pro-claimant protection afforded to veterans. This Court should grant certiorari now to prevent further erosion of these protections.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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