No. 22-888

In the Supreme Court of the United States

JAMES R. RUDISILL,

Petitioner,

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 NATIONAL VETERANS LEGAL SERVICES PROGRAM, SERVICE WOMEN'S ACTION NETWORK, AND VETERANS EDUCATION SUCCESS AS AMICI CURIAE SUPPORTING PETITIONER

MICHAEL E. KENNEALLY
Counsel of Record
JAMES D. NELSON
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
(202) 739-3000
michael.kenneally@
morganlewis.com

QUESTION PRESENTED

Whether a veteran who has served two separate and distinct periods of qualifying service under the Montgomery GI Bill, 38 U.S.C. § 3001 *et seq.*, and under the Post-9/11 GI Bill, 38 U.S.C. § 3301 *et seq.*, is entitled to receive a total of 48 months of education benefits as between both programs, without first exhausting the Montgomery benefit in order to obtain the more generous Post-9/11 benefit.

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INTEREST OF AMICI CURIAE[1]

Amicus National Veterans Legal Services Program (NVLSP) is a nonprofit organization that since 1981 has worked to ensure that the federal government delivers to the Nation's 22 million veterans and active-duty personnel the benefits to which they are entitled. NVLSP and its attorneys have won important legal gains for veterans, including by ensuring that the Department of Veterans Affairs (VA) uses Congress's pro-claimant process for veterans and filing countless appeals before the U.S. Court of Appeals for Veterans Claims to ensure veterans obtain the benefits the law affords them. NVLSP also trains and supervises non-lawyer advocates to represent veterans in claims for VA benefits; publishes the *Veterans Benefits Manual*, a comprehensive guide for veterans' advocates; and files amicus briefs on veterans' behalf.

Amicus Service Women's Action Network (SWAN) is a member-driven community network advocating for the individual and collective needs of service women. It is committed to seeing that all service women receive the opportunities, protections, benefits, and respect they deserve. Its goal is to ensure all service women and women veterans have access to the information, tools, and support they need to reach their personal and professional goals.

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[1] In accordance with Supreme Court Rule 37.2, the parties received timely notice of amici's intent to file this brief. In accordance with Rule 37.6, amici affirm that no counsel for a party authored this brief in whole or in part, no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than amici or their counsel made such a monetary contribution.

Amicus Veterans Education Success advances higher education success for veterans, service members, and military families, including by protecting the integrity and promise of the GI Bill and other federal education programs. Veterans Education Success accomplishes this mission by marshalling the expertise of its bipartisan policy experts, academic researchers, lawyers and advocates to: offer free legal services, advice, and college and carrier counseling under the GI Bill; research issues of concern to student veterans, including federal oversight; assist policy makers on a non-partisan basis to improve higher education quality for veterans; help veterans achieve greater civic engagement; and provide free legal assistance to military-connected students and whistleblowers.

Amici offer a unique and important perspective on veteran benefits and the history and purposes of Congress's GI Bill legislation. Petitioner and similarly situated veterans who have earned benefits under two GI Bills have a right to choose how to use both benefits they earned (up to the general 48-month cap) because they are entitled to both benefits under Congress's statutes. Amici urge the Court to grant the petition and reaffirm Congress's creation of two separate benefits programs by reversing the en banc Federal Circuit.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner persuasively explains why this Court should grant certiorari and reverse. Contrary to the decision below, petitioner is entitled to the benefits he

claims under the correct interpretation of the statutory text. And the Federal Circuit's decision is not just wrong; it is wrong on a matter of immense importance to countless veterans. No further percolation is possible because of the Federal Circuit's exclusive jurisdiction and, now, en banc ruling. Only this Court can correct the problem.

This brief elaborates on how the history and purposes of the GI Bill enactments, dating back to World War II, reinforce veterans' statutory right to dual earned benefits. Congress has long relied on the promise of a quality education to attract individuals to serve their country in times of war. Over the years, as the country has faced different military conflicts, Congress has created overlapping education benefits and consistently permitted veterans to use any benefits for which they qualified, subject to a 48-month maximum. Nothing in the Post-9/11 GI Bill suggests Congress wanted to depart from that approach. On the contrary, Congress expressly found that the existing educational benefits were outmoded and needed to be enhanced because the Nation was now at war. Yet in respondent's view, Congress sought to arbitrarily restrict these enhanced benefits for those who had already qualified for and started to use the peacetime Montgomery benefits, even if they went on to serve long combat tours that independently qualified under the Post-9/11 GI Bill. For this unlucky group, the three years of enhanced benefits would be cut short. But individuals who had the same service after the new statute and no prior service could receive the enhanced benefits for the full three years. Surely if Congress had intended that bizarre result, the statute would clearly say so.

The lack of such clarity means that the issue must be resolved in petitioner's favor. Under longstanding principles, statutory silence weighs in favor of more generous veteran benefits. Here, at the very worst, the statute is silent on whether veterans in petitioner's position must sacrifice some of their Post-9/11 benefits to receive any of them. The Federal Circuit's crabbed view of the pro-veteran canon reverses venerable principles of statutory construction. For that reason, too, this Court should grant review and reverse.

ARGUMENT

I. The Federal Circuit's textual analysis is flawed and unpersuasive.

The Post-9/11 GI Bill states that "an individual entitled to educational assistance under this chapter is entitled to a number of months of educational assistance under section 3313 *equal to 36 months*." 38 U.S.C. § 3312(a) (emphasis added). Read fairly, this provision and its surrounding context make clear that any veteran who credits a qualifying period of service to the Post-9/11 GI Bill is entitled to receive three years of Post-9/11 education benefits, with two main limitations.

The first limitation is that the veteran cannot obtain three full years of Post-9/11 GI Bill education benefits if the veteran receives more than one year of education benefits under another program. That would violate the 48-month statutory cap on education benefits in the aggregate. 38 U.S.C. §§ 3312(a), 3695(a).

The second limitation is that a veteran cannot credit service already used to receive benefits under

another program, like the Montgomery GI Bill. 38 U.S.C. § 3322(h)(1). The veteran can, however, make an election to effectively recredit that service to the Post-9/11 statute, by exchanging the older set of benefits for the newer. See 38 U.S.C. § 3327.

The ruling below gives outsized importance to this ability to elect a benefit exchange. In the Federal Circuit's cramped view, the election mechanism is the *exclusive* way for veterans who were entitled to Montgomery benefits when the Post-9/11 statute went into effect, and who have not used up their full Montgomery entitlement, to receive any Post-9/11 benefits. Pet. App. 14a-15a.

The Federal Circuit's view is wrong. On its face, the election provision is written in permissive terms, allowing that "[a]n individual *may* elect" to switch if the individual has already started using a period of service to receive benefits under an earlier program. 38 U.S.C. § 3327(a) (emphasis added). Elsewhere, the statute describes this election as a matter of "coordination" for those veterans who already qualified for benefits under the earlier programs. 38 U.S.C. § 3322(d). Nowhere does the statute say that the election is mandatory for veterans who, like petitioner, may have been qualified as of August 1, 2009 for Montgomery but would separately qualify for Post-9/11 benefits through lengthy separate service. See Pet. 12-13 (describing petitioner's service from November 2007 to August 2011).

The best reading of the statutory language, in context, is that the election mechanism of 38 U.S.C. § 3327 is optional but not required. If a veteran was already entitled to Montgomery benefits "as of August

1, 2009," the effective date of the Post-9/11 GI Bill, Congress wanted to give them additional options. 38 U.S.C. § 3327(a)(1). It was important to do so because these veterans had become entitled to Montgomery benefits only after making significant personal financial contributions—usually $1,200—toward those benefits. 38 U.S.C. §§ 3011(b), 3012(c). Going forward, such contributions were unnecessary for the new Post-9/11 benefits. But many veterans who qualified under the new program had already paid into the old system. To treat them fairly, Congress gave them an option to elect to switch out of Montgomery benefits, stop further contributions, and obtain a refund. 38 U.S.C. § 3327(b), (f). If they made that choice, however, they would not get *longer* benefits; they were limited to the remainder of their original term. 38 U.S.C. § 3327(d).[2]

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[2] The Federal Circuit assumed that under petitioner's reading, a veteran in petitioner's position would be *forbidden* from making an election under § 3327(a) to obtain the benefits of § 3327(f) and (g). Pet. App. 15a-16a. Amici disagree. Veterans with multiple periods of service are free to elect to exchange their Montgomery benefits for Post-9/11 benefits under § 3327, if they think the election is in their best interest. The statute's direction that the Secretary should help veterans make elections "in the best interests of the individual" reinforces that Congress understood the wide range of individual circumstances and wanted to help veterans as much as possible. 38 U.S.C. § 3327(h). Notably, many of the VA's own regulations also support veteran flexibility. They recognize, for instance, that individuals entitled to benefits in addition to Post-9/11 benefits "may choose to receive payment under another * * * program at any time," but cannot change "more than once during a certified term, quarter, or semester." 38 C.F.R. § 21.9690(b); see also 38 C.F.R. § 21.4022.

Nothing about this election mechanism suggests Congress was addressing veterans who qualified for Post-9/11 benefits through a period of service wholly distinct from the period of service that qualified them for Montgomery benefits. But as explained next, the history and purpose of the GI Bills and pro-veteran canon of construction provide further reason to reject the Federal Circuit's view. The court's failure to meaningfully grapple with these two points further counsels in favor of certiorari and reversal.

II. The Federal Circuit's holding conflicts with the history and purpose of the GI Bills.

For nearly eighty years, the Nation has shown its gratitude and commitment to its veterans through education benefits. These vital benefits help veterans transition into a successful civilian career after they hang up their uniforms.

The history and purposes of the GI Bill programs show that Congress made veterans eligible for all education benefits they earn through their service, subject to a 48-month aggregate cap. And Congress deliberately made the Post-9/11 GI Bill more generous than its predecessors. Yet the Federal Circuit wrongly read into its web of interlocking provisions an unprecedented limitation on veterans' ability to use the full 48 months of benefits. That decision defeats clear congressional policy, and only this Court can set things right.

A. Education benefits under the GI Bills have tremendous impacts on veterans and society.

Veterans' education benefits originated with the original GI Bill, the Servicemen's Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284. This path-breaking legislation for veterans of World War II was hailed as "one of the most important measures that ha[d] ever come before Congress." 90 Cong. Rec. A1477, A1560 (1944) (statement of Sen. Ernest McFarland). It was "more extensive and more generous to the veterans than any other bill ever introduced for veterans of this war or of any other." Lora D. Lashbrook, *Analysis of the G.I. Bill of Rights*, 20 Notre Dame L. Rev. 122, 123 (1944). And, as described by President Franklin D. Roosevelt, it gave "emphatic notice to the men and women in our armed forces that the American people do not intend to let them down." Glynn Sullings, Centre for Public Impact, *The US' GI Bill: The "New Deal for Veterans"* (Sept. 2, 2019), https://www.centreforpublicimpact.org/case-study/us-gi-bill-new-deal-veterans (citation omitted).

The original GI Bill had far-reaching effects. It offered crucial resources so returning veterans could obtain needed services, own homes and businesses, and continue contributing to society. "It is said," according to the VA, that "the GI Bill had more impact on the American way of life than any law since the Homestead Act of 1862." U.S. Dep't of Veterans Affairs, *VA History* (May 27, 2021), https://department.va.gov/history/history-overview/.

Among the GI Bill's various benefits, the education benefits had "the most permanent and far-reaching effects." Lashbrook, 20 Notre Dame L. Rev. at 128. Representative Sonny Montgomery—who later authored the GI Bill legislation that bears his name—celebrated these new educational opportunities in striking terms:

> With the stroke of his pen, President Roosevelt transformed the face and future of American Society. Higher education, which had been the privilege of the fortunate few, became part of the American dream—available to all citizens who served their country through military service. No longer were the hopes and expectations of young Americans of modest economic means restricted because the key to advancement—higher education—was beyond their reach. Few, if any, more important pieces of legislation have been enacted by Congress, and *no government investment has paid higher dividends to us all*.

Katherine Kiemle Buckley & Bridgid Cleary, *The Restoration and Modernization of Education Benefits under the Post-9/11 Veterans Assistance Act of 2008*, 2 Veterans L. Rev. 185, 185 (2010) (citation omitted; emphasis added). Indeed, Congress has estimated that the economy received seven dollars for each dollar spent through the GI Bill. See, *e.g.*, Ryan Katz, *The History of the GI Bill* (Sept. 3, 2015), https://www.apmreports.org/episode/2015/09/03/the-history-of-the-gi-bill; cf. President's Comm'n on Veterans' Pensions, *Veterans' Benefits in the United States* 298-299 (Apr. 1956), https://www.va.gov/vetdata/docs/

Bradley_Report.pdf (cataloguing economic benefits from veteran benefits, including GI Bills).

The Nation's armed forces greatly benefited, too. Their "recruitment campaigns rely heavily on educational assistance to advertise the benefits of military service." Buckley & Cleary, 2 Veterans L. Rev. at 203; see also 110 Cong. Rec. S42, 57 (daily ed. Jan. 4, 2007) (statement of Sen. Jim Webb) ("[A] strong GI Bill will have a positive effect on military recruitment, broadening the socio-economic makeup of the military and reducing the direct costs of recruitment."). These benefits have "linked the idea of service to education" for many Americans: "You serve the country; the government pays you back by allowing you educational opportunities you otherwise wouldn't have had, and that in turn helps you improve this society." Peter S. Gaytan et al., *For Service to Your Country: The Insider's Guide to Veteran Benefits* 6 (2008).

These benefits have transformed higher education. An influx of student-veterans changed the perception of who belonged in American colleges and universities. Before World War II, "only a small proportion of Americans attended college * * * and most of them came directly out of high school and directly from our wealthier classes." James B. Hunt Jr., *Educational Leadership for the 21st Century*, *in American Higher Education: How Does It Measure Up for the 21st Century?* 1 (May 2006), https://files.eric.ed.gov/fulltext/ED491912.pdf. That perception shattered when a surge of veterans suddenly had access to college. See *ibid.*

B. Congress has a settled approach to limit overlapping GI Bill education benefits.

Over the decades, new enactments have raised the question of how to treat veterans who qualify for education benefits under multiple GI Bills. Congress's repeated answer to that question helps illuminate the issue here.

Just a few years after the original GI Bill, Congress extended benefits to veterans of later conflicts. This statute, the Korean Conflict GI Bill, see Veterans' Readjustment Assistance Act of 1952, Pub. L. No. 82-550, 66 Stat. 663, explicitly addressed how to treat veterans who had served in multiple wars. Veterans eligible under both statutes were not limited to benefits under one or the other. They instead would receive benefits under both, subject to a 48-month aggregate cap. § 214(a)(3), 66 Stat. at 665.

That aggregate cap was distinct from the individual GI Bills' limits for the benefits they created. The Korean GI Bill, for instance, afforded up to 36 months of education benefits. § 214(a)(2), 66 Stat. at 665. So, under the aggregate cap, a veteran who used the full 36-month entitlement under the Korean GI Bill could use no more than 12 months of benefits under another GI Bill, even if that other GI Bill provided benefits for longer. This approach ensured that veterans would be able to use multiple statutes to pursue their educations. And it presumed that some veterans would qualify for, and take advantage of, more than just the 36 months of benefits under the Korean GI Bill, up to a maximum of 48 months of combined benefits. Those 48 months, of course, are enough for a four-year degree.

Congress stuck to this approach in later GI Bills. It repeatedly allowed veterans to receive education benefits under multiple statutes, subject to an aggregate 48-month limit. That includes, for example: the Post-Korean Conflict and Vietnam Era GI Bill, see Act of Oct. 23, 1968, Pub. L. No. 90-631, § 1(d), 82 Stat. 1331, 1331; the Post-Vietnam Era Veterans Educational Assistance Program, see Veterans' Rehabilitation and Education Amendments of 1980, Pub. L. No. 96-466, § 404, 94 Stat. 2171, 2201-2202 (codified as amended at 38 U.S.C. § 3231(a)(1)); and the Montgomery GI Bill, see Veterans' Educational Assistance Act of 1984, Pub. L. No. 98-525, § 702(a)(1), 98 Stat. 2553, 2557 (codified as amended at 38 U.S.C. § 3013(a)(1)). Today, a wide variety of GI Bill education benefits are subject to the 48-month aggregate cap. See 38 U.S.C. § 3695(a); *Carr* v. *Wilkie*, 961 F.3d 1168, 1169, 1174-1175 (Fed. Cir. 2020) (discussing this statutory framework and part of this history).

C. The Post-9/11 GI Bill created more generous education benefits and did not depart from Congress's settled limits for multiple benefits.

Congress renewed the Nation's commitment to the members of the Armed Services after the September 11, 2001, terrorist attacks. See Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, tit. V, 122 Stat. 2357 (codified as amended at 38 U.S.C. ch. 33). While past GI Bills continued to offer important benefits, the rising cost of education left those benefits with diminished value.

By 2007, the level of benefits available had "fall[en] substantially below the rising cost of college

tuition." Buckley & Cleary, 2 Veterans L. Rev. at 203. This unfortunate reality became "one of the most common sources of bitterness and frustration" for veterans of the post-9/11 conflicts, *ibid.*, and garnered increasing public attention. As one commentator noted, "[f]ew Americans realize[d] that the young people who are serving their country in Iraq and Afghanistan [would] not receive the kind of assistance that their grandfathers received when they returned from World War II." Joseph B. Keillor, *Veterans at the Gates: Exploring the New GI Bill and Its Transformative Possibilities*, 87 Wash. U. L. Rev. 175, 178 (2009) (quoting James Wright, *The New GI Bill: It's a Win-Win Proposition*, Chron. Higher Educ. (May 16, 2008)).

Congress saw the need for a new GI Bill to ensure veterans could continue to access higher education into the 21st century. Senator Jim Webb, himself a veteran and recipient of GI Bill education benefits, took up the cause. In introducing the Post-9/11 GI Bill legislation, he criticized past legislative efforts for not being "as generous as our Nation's original G.I. Bill," and announced that the new statute would usher in a more generous era of assistance and "expand the educational benefits that our Nation offers." 110 Cong. Rec. S42, 56 (daily ed. Jan. 4, 2007).

These objectives are expressly written into the statutory text. Congress's findings note that active-duty service had become "especially arduous" after the 9/11 terrorist attacks. § 5002(2), 122 Stat. at 2358. But "[t]he current educational assistance program for veterans [was] outmoded and designed for peacetime service." § 5002(4), 122 Stat. at 2358. Congress determined that "[i]t is in the national interest for the

United States to provide veterans who serve on active duty in the Armed Forces after September 11, 2001, with enhanced educational assistance benefits that are worthy of such service and are commensurate with the educational assistance benefits provided by a grateful Nation to veterans of World War II." § 5002(6), 122 Stat. at 2358.

According to one analysis, the Post-9/11 GI Bill offered "approximately double the value of benefits previously paid to veterans under the Montgomery GI Bill." Keillor, *supra*, at 184. This generosity prompted some to compare the Post-9/11 GI Bill with the heralded original GI Bill. See Buckley & Cleary, 2 Veterans L. Rev. at 186 ("With the signing of the Post-9/11 GI Bill, proponents argue that the federal government is finally 'getting it right' by reinstituting the 1944 model of education benefits which led to the transformation of American society."); see also *Pending Montgomery G.I. Legislation*, *Hearing before the Subcomm. on Econ. Opportunity of the H. Comm on Veterans' Affairs*, 110th Cong. 2 (2008) ("the Post-9/11 Veterans Educational Assistance Act of 2007[] would offer a 'World War II-like' GI Bill" (statement of Thomas L. Bush, Acting Deputy Assistant Secretary of Defense for Reserve Affairs and Curtis L. Gilroy, U.S. Department of Defense)).

While the Post-9/11 GI Bill offers enhanced new benefits, Congress did not want to take away veterans' existing sources of benefits. So, following its predecessors, the Post-9/11 GI Bill gave veterans access to benefits under multiple statutes, subject to the traditional 48-month aggregate cap. See 38 U.S.C. §§ 3312(a), 38 U.S.C. § 3695(a).

All this makes the Post-9/11 GI Bill the *least likely* legislation to impose a *new restriction* like the one defended by respondent in this case. Congress explicitly stated that veterans "may receive assistance under two or more of the provisions of law listed" in 38 U.S.C. § 3695(a) for up to 48 months, including both Montgomery and Post-9/11 benefits. 38 U.S.C. § 3695(a)(4). Moreover, none of the predecessor legislation included respondent's supposed requirement to exhaust less generous benefits before enjoying better ones or give up some fraction of their 48-month maximum entitlement. The Federal Circuit's decision turns Congress's objectives upside down by reading this unprecedented restriction into a statute that was meant to increase veterans' access to education.

Congress would have spoken clearly—as it did with other express prohibitions and limitations—had it meant to invent a novel exception to the traditional 48-month limit on aggregate benefit use. See, *e.g.*, *Whitman* v. *Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress * * * does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions[.]"). But there is no indication, let alone a clear one, that Congress intended to upend its usual approach to multiple sources of veterans' education benefits. Veterans with multiple periods of service qualifying them for benefits under two programs are entitled to benefits under two programs in whichever order they wish, subject to the familiar 48-month aggregate cap. The more generous Post-9/11 GI Bill should be interpreted as consistent with the approach of the past GI Bills. Cf. *Carr*, 961 F.3d at 1175-1176 (rejecting the "harsh consequence[s]" of the VA's position on a different educational benefits issue because

the court is "unwilling to assume such anomalous treatment without a clearer expression of intent").

Maintaining consistent interpretation from one piece of legislation to the next serves an important function. It "is of paramount importance * * * that Congress be able to legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts." *Finley* v. *United States*, 490 U.S. 545, 556 (1989). Otherwise, Congress must navigate the legislative process without fixed points of reference. To interpret this law more harshly than its less generous predecessors would force Congress into a guessing game whereby an acontextual reading of an ancillary provision could unsettle a familiar framework.

III. The Federal Circuit's dismissiveness toward the pro-veteran canon also favors review.

Another troubling feature of the Federal Circuit's ruling is its dismissive attitude toward the longstanding pro-veteran canon of construction. Amici believe that the statutory provisions, combined with the history and purposes discussed above, are more than sufficient to affirm petitioner's right to the benefits he seeks. The court below not only disagreed but made matters worse by refusing to apply the pro-veteran canon. Pet. App. 16a-17a. That refusal threatens to significantly weaken this canon's role in future cases.

This Court has applied the pro-veteran canon for well over a century. In *Walton* v. *Cotton*, 60 U.S. 355, 358 (1856), the Court read a statute that paid pensions to Revolutionary War veterans to allow grandchildren to inherit such payments if the veterans died with no widow or surviving children. The Court did

so even though the statute referred to "children" but not "grandchildren." *Ibid.* Limiting the statute to surviving children was not "a fit discrimination of national gratitude." *Ibid.* The "humane motive of Congress" in providing for the Nation's veterans and their families required "an equitable and not a capricious result." *Ibid.*

Throughout the ensuing decades, this Court has repeatedly reaffirmed the pro-veteran canon. The Court has "long applied 'the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor.'" *Henderson ex rel. Henderson* v. *Shinseki*, 562 U.S. 428, 441 (2011) (citation omitted); see also, *e.g.*, *Boone* v. *Lightner*, 319 U.S. 561, 575 (1943) ("The 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."); *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) ("This legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need."); *United States* v. *Oregon*, 366 U.S. 643, 647 (1961) ("The solicitude of Congress for veterans is of long standing."); *Coffy* v. *Republic Steel Corp.*, 447 U.S. 191, 196 (1980) ("The statute is to be liberally construed for the benefit of the returning veteran."); *King* v. *St. Vincent's Hosp.*, 502 U.S. 215, 221 n.9 (1991) ("[P]rovisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor."); *Brown* v. *Gardner*, 513 U.S. 115, 117-118 (1994) ("[I]nterpretive doubt is to be resolved in the veteran's favor.").

Sometimes Congress expressly directs other government officials to assist veterans in obtaining benefits. See, *e.g.*, 38 U.S.C. § 5103A (obligating the VA to assist veteran claimants in developing their claims); *id.* § 5107(b) (obligating the VA to give veterans "the benefit of the doubt" in adjudicating benefits claims). But even without that sort of express direction, the veterans-benefits scheme overall reflects Congress's intention to "award entitlements to a special class of citizens, those who risked harm to serve and defen[d] their country," and "[t]his entire scheme is imbued with special beneficence from a grateful sovereign." *Barrett* v. *Principi*, 363 F.3d 1316, 1320 (Fed. Cir. 2004) (citation omitted).

The pro-veteran canon takes its cue from such congressional commitments. It requires courts to interpret laws in veterans' favor based on the same important policy that informs every veterans-benefits law. As this Court has explained—and importantly for purposes of this case—Congress is presumed to understand this canon and legislate knowing that its laws will be interpreted, where possible, to help veterans rather than hurt them. *King*, 502 U.S. at 220 n.9.

The Federal Circuit brushed aside the canon because "the language of the statute is unambiguous." Pet. App. 17a. But as shown already, the statute does not unambiguously require veterans with multiple qualifying periods of service and a preexisting Montgomery entitlement to use 38 U.S.C. § 3327 to access their Post-9/11 benefits. The statute is best read not to require such an election, and at worst, is silent on the issue. In any event, the pro-veteran canon is not limited to circumstances in which a court makes a

threshold finding of ambiguity. It is an overarching principle for construing veterans-benefits statutes. Cf. Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 Harv. L. Rev. 2118, 2154 (2016) (arguing that courts should stop focusing on whether a statute is "ambiguous" and instead determine the best reading followed by open and honest application of relevant substantive canons).

The pro-veteran canon should control the outcome, at minimum, of close cases. Veterans have a unique relationship with the United States. Day after day, year after year, they risk and sacrifice much for the Nation. Congress must be viewed as repaying the great debt we owe veterans to the fullest extent of interpretive doubt.

Nor is there any question here of which interpretation most favors veterans. Below, respondent questioned whether aiding petitioner is a pro-veteran result. See Gov't C.A. En Banc Br. 26-30. For purposes of the pro-veteran canon's applicability, it should suffice that respondent's interpretation manifestly harms petitioner and many other veterans in his position. Every indication before the Federal Circuit was that the veteran before the court would benefit from a particular interpretation. And based on amici's years of experience providing legal assistance to veterans, respondent's interpretation is worse for the vast majority of other veterans.[3]

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[3] Respondent's contrary argument hypothesized a veteran with multiple periods of qualifying service who preferred to make an election under § 3327(a) to exchange Montgomery benefits for Post-9/11 benefits and receive the supplemental benefits of § 3327(f) and (g). Gov't C.A. En Banc Br. 28-29. Respondent

The statute certainly can be read as allowing veterans to choose from all the benefits they have earned, through multiple periods of service, up to the aggregate cap. The Federal Circuit should have honored veterans' right to all the benefits they earn through their service. Yet it chose instead to adopt a flawed statutory interpretation and completely ignore the venerable pro-veteran canon.

The interpretation that benefits veterans is clear. It is better for petitioner and countless others in his position to have an option to stop receiving partly used Montgomery benefits and start receiving far more generous Post-9/11 benefits instead. Veterans overwhelmingly prefer the much more generous Post-9/11 GI Bill benefits. In 2016, for example, 90% of veterans chose Post-9/11 benefits over Montgomery benefits, as Post-9/11 benefits greatly reduced the need to take out student loans. See Veterans Education Success, *Veteran Student Loan Debt 7 Years After Implementation of the Post 9/11 GI Bill* (Jan. 2019), https://vetsedsuccess.org/veteran-student-loan-debt-7-years-after-implementation-of-the-post-9-11-gi-bill.

There is no reason to require qualifying veterans to sacrifice their more generous Post-9/11 benefits when, like petitioner, they have met the service requirement through a period of service that was not

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speculated that some veterans might wish to trade a year of Montgomery benefits for a contribution-refund under § 3327(f) or critical skills assistance under § 3327(g). *Ibid.* It is not clear that real-world veterans would choose that tradeoff given the value of the forgone year of education benefits. See Pet. 37. But regardless, amici's position is that the statute permits any veteran who meets § 3327(a)'s terms to make a voluntary election under that provision. See note 2, *supra*.

previously credited to any other program. And "[w]ithout a clear indication that Congress wished to impose [this] harsh consequence," *Carr*, 961 F.3d at 1176, the Federal Circuit should have followed the pro-veteran canon and adopted the interpretation that furthers the Post-9/11 GI Bill's express purposes. This Court's review is needed to reaffirm the important role that the pro-veteran canon plays in interpreting veterans-benefits statutes and in fulfilling the Nation's commitment to the heroes who secure our freedom.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

MICHAEL E. KENNEALLY
Counsel of Record
JAMES D. NELSON
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
(202) 739-3000
michael.kenneally@morganlewis.com

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