No. 22-888

In the Supreme Court of the United States

JAMES R. RUDISILL,

Petitioner,

v.

DENIS MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

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

BRIEF OF THE COMMONWEALTH OF VIRGINIA, 32 OTHER STATES, AND THE DISTRICT OF COLUMBIA AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF *AMICI CURIAE* [1]

Amici curiae are the Commonwealth of Virginia, the State of Alabama, the State of Arizona, the State of Arkansas, the State of California, the State of Colorado, the State of Connecticut, the State of Delaware, the District of Columbia, the State of Georgia, the State of Idaho, the State of Illinois, the State of Iowa, the Commonwealth of Kentucky, the State of Louisiana, the Commonwealth of Massachusetts, the State of Minnesota, the State of Mississippi, the State of Montana, the State of New Jersey, the State of New Mexico, the State of New York, the State of Oklahoma, the State of Oregon, the State of Rhode Island, the State of South Carolina, the State of South Dakota, the State of Texas, the State of Utah, the State of Vermont, the State of Washington, the State of West Virginia, the State of Wisconsin, and the State of Wyoming (collectively, the *Amici* States). *Amici* States submit this brief in support of Virginia citizen and United States Army veteran James R. Rudisill's petition for a writ of certiorari.

Since World War II, the States have partnered with the federal government to provide veterans with significant educational benefits through the federal G.I. Bills. State agencies approve educational and training programs where veterans may utilize their G.I. Bill benefits. Veterans within *Amici* States' borders have relied upon the federal G.I. Bills to provide critical benefits during their transition back to civilian life. Respondent Secretary of Veteran Affairs, however, seeks to limit Petitioner (and veterans like

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[1] Under Supreme Court Rule 37.2(a), *amici curiae* notified counsel of record of their intent to file this brief at least 10 days prior to the due date for the brief.

him) to fewer educational benefits than he has earned in his multiple tours of duty.

Amici States raise two important interests in this case. First, *Amici* States seek clarity in the federal benefits that their veterans can receive. *Amici* States need this clarity to assist returning military members in pursuing their education and rejoining the fulfilling civilian life that they have helped protect for the rest of the country.

Second, *Amici* States seek to ensure that courts continue to apply the pro-veteran canon of interpretation that this Court has long recognized as a means of respecting veterans, their service to our nation, and the substantial sacrifices they and their families have made.

INTRODUCTION AND SUMMARY OF ARGUMENT

Although the federal G.I. Bills cannot recompense "veterans for the battle risks they ran" or their "personal sacrifices," the Bills were "designed to assist [veterans] in readjusting to civilian life and in catching up to those whose lives were not disrupted by military service." *Johnson* v. *Robison*, 415 U.S. 361, 381 n.15 (1974) (quotation marks omitted). Congress first enacted these bills after World War II, and has repeatedly extended them since. A key provision of the G.I. Bills grants veterans with multiple requisite periods of service up to 48 months of education benefits.

The Federal Circuit erroneously limited Petitioner (and veterans like him) to 36 months of education benefits, rather than the 48 aggregate months that Petitioner earned in his heroic service to his country. The Federal Circuit's en banc decision was wrong for the

reasons stated in Petitioner's petition to this Court, and in the en banc dissents below. The Federal Circuit erroneously ruled that Congress intended to treat reenlisting veterans of the wars this country fought following the terrorist attacks of September 11, 2001 less generously than veterans of earlier wars. This result cannot be justified as a matter of statutory text, history, or policy. It undermines the promise Congress made to veterans, and deprives them of the full educational benefits that they earned in their service to our country. And the Federal Circuit's unjustifiably narrow reading of the statute could even threaten military readiness, given that education benefits play a role in attracting high-quality recruits to the Armed Forces.

The ruling below also creates two further problems that merit this Court's granting the petition. First, it risks confounding and confusing the States' efforts to help veterans seek federal benefits under the G.I. Bill and to supplement those federal benefits. Individual States work hard to ensure that veterans understand and receive their federal benefits, and supplement those federal benefits with additional State services. The federal government harms these States and their resident veterans when it reneges on its promises.

Second, the Federal Circuit wrongly refused to apply the pro-veteran canon, an important interpretative tool that protects the interests of the men and women who serve in our military. When a statute has been "designed to protect the veteran," this Court has "liberally construed [it] for the benefit of those who left private life to serve their country in its hour of great need." *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284–85 (1946). The Federal

Circuit's disregard for the pro-veteran canon dramatically shrinks the field in which the canon is meant to operate.

This Court should grant the petition and reverse.

ARGUMENT

I. The lower court's interpretation of the G.I. Bills deprives veterans of the expansive education benefits that Congress intended to confer

The Continental Congress created the first veterans' benefit program (a pension for disabled veterans) in 1776 "in response to the states' failure to pay soldiers fighting the Revolutionary War and the resulting mutinies, protests, and rebellions." Pet. App. 39a–40a (Reyna, J., dissenting). Indeed, the failure of the Articles of Confederation adequately to provide for the raising and support of armies in defense of the whole nation was one of the principal reasons the Framers met in Philadelphia in 1787. See *Selective Draft Law Cases*, 245 U.S. 366, 381 (1918) ("When the Constitution came to be formed it may not be disputed that one of the recognized necessities for its adoption was the want of power in Congress to raise an army . . . ."). Thus, "the Constitution's text, across several Articles, strongly suggests a complete delegation of authority to the Federal Government to provide for the common defense." *Torres* v. *Texas Dep't of Pub. Safety*, 142 S. Ct. 2455, 2463 (2022). It is therefore hardly surprising that Congress, vested with the power to "declare War" and to "raise and support armies," U.S. Const. art. I, § 8, cl. 11, 12, plays the preeminent role in caring for Americans who return to civilian life after serving their country on the battlefield.

But States also provide crucial benefits to the tens of thousands of veterans within their respective borders. They look to, and partner with, the federal government to ensure that their veterans are able to transition successfully back to civilian life. They also supplement federal assistance with their own. States therefore have a strong interest in ensuring that their resident veterans are able to obtain the full scope of federal benefits to which they are entitled after putting their lives on the line to serve their country.

1. States play a critical role in providing benefits to veterans as they transition back to civilian life. Virginia, for example, is home to over 700,000 veterans—including Petitioner—and offers numerous innovative programs and services for veterans. These programs include the Virginia Veteran and Family Support Program, which monitors and coordinates behavioral health, rehabilitative, and supportive services through an integrated and responsive system of care; the Military Medics and Corpsmen Program, which helps put highly-skilled military medical professionals on an express track to employment in hospital and health care settings; and the Virginia Values Veterans Transition Program, which connects veterans with employers who understand and appreciate the value of military service. Virginia Dept. of Veterans Services, *Virginia Veterans Resource Guide June 2022*, at 3, https://tinyurl.com/yc5hbwpm. Virginia has allocated hundreds of millions of dollars to its Department of Veterans Services to administer these programs over the last several years.[2]

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[2] See Virginia Department of Veterans Services, Commissioner's 2021–2017 Annual Reports, available at https://tinyurl.com/yv5f5j27 at 74; https://tinyurl.com/zn4esbbe at 71;

Likewise, California is home to roughly 1.6 million veterans and provides a variety of services to its veterans. These programs include the Veterans Homes Program, which provides housing, skilled nursing, and independent living supports for elderly veterans and veterans with disabilities; the CalVet Home Loans Program, which has helped California veterans and their families become homeowners for over one hundred years; and the California Transition Assistance Program, which informs and connects veterans to their earned federal and state benefits.[3]

In the education sector, however, the federal G.I. Bills account for the "vast majority of spending on veteran education benefits." Jennie W. Wenger & Jason M. Ward, *The Role of Education Benefits in Supporting Veterans as They Transition to Civilian Life*, RAND Corporation (2022), https://tinyurl.com/5z5cdv7h. Members of the Armed Forces have relied on the United States' promise to provide veterans with education benefits since the Second World War. In 1944, Congress enacted the Servicemen's Readjustment Act, known commonly as the "G.I. Bill." See Servicemen's Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284. This bill offered aid to the sixteen million men and women who defeated America's enemies in Europe and the Pacific, and offered to help them pursue an education, find a job, buy a home, and successfully transition back to civilian life after the war. U.S. Department of

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https://tinyurl.com/y8rcr2jh at 64; https://tinyurl.com/3mh52zdx at 70; https://tinyurl.com/3ch5xch3 at 47.

[3] See CalVet pages on these programs, available at https://tinyurl.com/5n8mapyj; https://tinyurl.com/4934y8f7; https://tinyurl.com/4z3stdjk.

Defense, *75 Years of the GI Bill: How Transformative It's Been*, Jan. 9, 2019, https://tinyurl.com/yky732hk.

The G.I. Bill's education benefits were transformative for veterans, and for the whole country. The Bill gave veterans the right to apply to the education and training programs of their choice. § 400, 58 Stat. at 287. Its benefits covered tuition, books, supplies, counseling, and living allowances for education expenses. The "tuition benefits under the GI Bill of 1944 more than covered the cost of higher education." Katherine Kiemle Buckley & Bridgid Cleary, *The Restoration & Modernization of Educ. Benefits Under the Post-9/11 Veterans Assistance Act of 2008*, 2 Veterans L. Rev. 185, 190 (2010). And veterans used these benefits to great effect: within seven years of the G.I. Bill's passage, over eight million veterans had used the program, and the number of college and university degree-holders in the United States more than doubled between 1940 and 1950. See *75 Years of the GI Bill*, *supra*.

President George H.W. Bush later described the G.I. Bill as having "changed the lives of millions by replacing old roadblocks with paths of opportunity." Pres. George H.W. Bush, Remarks at a Ceremony Honoring the G.I. Bill, June 5, 1990, available at https://tinyurl.com/33c2uce4. And commentators have since observed that "[e]very dollar spent on the GI Bill was multiplied many times over in benefits to the postwar U.S. economy." Anna Quindlen, *Because It's Right*, Newsweek (Mar. 22, 2008), https://tinyurl.com/ye25j8mr. Its success has led it to be "viewed by most historians as a resounding legislative achievement, which resulted not only in the successful reintegration of millions of World War II veterans, but

also the renewal of the American dream through expanded access to higher education and home ownership." Buckley & Cleary, *supra*, at 185.

Congress has extended the G.I. Bill's benefits several times since World War II. The bill in revised forms helped more than ten million veterans after the Korean and Vietnam wars. See *75 Years of the GI Bill*, *supra*. In 1984, Congress again extended the bill when it enacted the Montgomery G.I. Bill. Servicemembers who entered the Armed Forces between July 1984 and September 2030, and served in active duty for two or three continuous years (depending on the enlistment contract), were eligible for 36 months of Montgomery benefits to help meet the costs of tuition, books, and fees. 38 U.S.C. §§ 3011(a)(1)(A), 3013(a)(1), 3014(a). And after the terrorist attacks of September 11, 2001, Senator Jim Webb of Virginia led the effort to update the G.I. Bill for the veterans who fought in the "especially arduous" wars that followed. H. Rep. 110-720 at 37.

This Post-9/11 Veterans Educational Assistance Act ("Post-9/11 G.I. Bill"), Pub. L. No. 110-252, 122 Stat. 2357 (codified at 38 U.S.C. §§ 101, 3301, 3311-19, 3321-24), was meant to recognize "the difficult challenges in readjusting to civilian life after wartime service in the Armed Forces" and provide post-9/11 veterans "with enhanced educational assistance benefits" that are "worthy of such service." H. Rep. 110-720 at 37. Accordingly, the benefits are financially superior to those that the Montgomery G.I. Bill offered. See, e.g., Pet. App. 9a. The Post-9/11 G.I. Bill has since provided educational benefits to hundreds of thousands of veterans and their families; for instance, in fiscal year 2022, 564,501 beneficiaries received over

$8 million in Post-9/11 G.I. Bill payments. See Veterans Benefits Administration, *Annual Benefits Report: Fiscal Year 2022*, at 11, https://tinyurl.com/ukp5vepz.

Administering the G.I. Bills is not a solely federal endeavor: States partner with the federal government to "play an important role in the administration of [G.I. Bill] benefits." Cassandria Dortch, Cong. Research Serv., R44728, *The Role of State Approving Agencies in the Administration of GI Bill Benefits I* (2016), available at https://tinyurl.com/ycxhcark. State Approving Agencies (SAAs) promote and safeguard quality education and training programs for veterans to ensure greater education and training opportunities for returning military members. 38 U.S.C. 3671(a); National Association of State Approving Agencies, *About: Quality Education & Training Programs for Veterans*, available at https://tinyurl.com/yrdb4hcb. SAAs decide whether to approve schools and training program for use by G.I.-Bill funds, and help schools and training facilities that seek approval. *Ibid.* These state agencies work with federal agencies and other stakeholders to make G.I. Bills the best education assistance programs possible for veterans.

For example, the Virginia SAA approves and monitors more than 900 programs that are certified for G.I.-Bill use. *Virginia Veterans Resource Guide June 2022*, *supra*, at 3; Virginia Dept. of Veterans Services, *Education, Training, and Employment: State Approving Agency (GI Bill)*, https://tinyurl.com/4r695tt7. In that capacity, the Virginia SAA works with Virginia's public universities to provide G.I Bill-covered education for veterans. For example, at the University of Virginia's School of Continuing and Professional

Studies, approximately ten percent of the students are veterans, and another six percent are either active-duty military, or the spouses or children of veterans. See University of Virginia School of Continuing and Professional Studies, *Active Duty Military & Veterans*, https://tinyurl.com/54m2as7s.

2. Given their important role in the administration of G.I. Bill benefits and their provision of supplemental benefits to veterans, *Amici* States have a strong interest in ensuring that veterans like Petitioner are not deprived of well-earned education benefits by the federal government—benefits that undoubtedly play a critical role in some servicemembers' decisions to volunteer for the Armed Forces.

Petitioner volunteered to serve his country in the Armed Forces. He spent nearly eight total years in the U.S. Army over the course of three separate tours of duty, during which he fought in two of America's wars abroad in Afghanistan and Iraq. Pet. App. 81a–82a. He served with remarkable distinction and received several commendations for his service, including a Bronze Star. He also saved numerous lives while becoming injured in the line of duty. Pet. App. 47a, 127a. He was twice honorably discharged, and relied on approximately 25 months of education benefits under the Montgomery G.I. Bill before November 2007 to obtain his undergraduate degree. He then reenlisted, was commissioned as an officer, and served for a third tour from 2007 to 2011. Pet. App. 20a, 82a.

After completing his third tour, Petitioner wanted to serve his country a fourth time, this time as an Army Chaplain. Pet. App. 82a. He gained admission into Yale Divinity School to prepare for the role. *Ibid*. Congress had passed the Post-9/11 G.I. Bill during his

third tour of duty, so he applied for Post-9/11 G.I. Bill benefits based on his understanding that, under the Bill, he had approximately 22 months of education benefits remaining out of his 48 aggregate months. Pet. App. 57a.

The U.S. Department of Veterans Affairs informed him, however, that it would instead limit his Post-9/11 benefits to 10 months and 16 days, because Petitioner had used some of his entitled benefits under the prior version of the G.I. Bill. Pet. App. 83a. Petitioner thus was unable to attend Yale Divinity School to become a military chaplain. See Nikki Wentling, *Court decides millions of veterans are eligible for more GI Bill benefits*, Stars and Stripes (Jul. 21, 2021), https://tinyurl.com/2katb3pt.

This Court should step in to secure the rights of hundreds of thousands of veterans placed in jeopardy by the Federal Circuit's decision below. The federal government, concomitantly with its exclusive exercise of the war powers under our Constitution, has borne primary responsibility for the care of veterans since the Constitution's adoption. Although States play a critical role in administering federal benefits and in providing supplemental benefits, they lack the resources to fill the void caused by a contraction of federal benefits. The Federal Circuit's stenotic reading of the Post-9/11 G.I. Bill threatens precisely such a contraction. At the very least, the lack of clarity about the scope of federal veterans benefits caused by the Federal Circuit cries out for this Court's review.

II. The lower court's approach denies veterans the special solicitude the pro-veteran canon affords them

The Federal Circuit's flippant rejection of the pro-veteran canon contravenes this Court's well established case law, while also fundamentally disrespecting veterans and the services they have rendered to our nation. This 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) (quotation marks omitted). The Petition correctly explains that the Montgomery G.I. Bill and Post-9/11 G.I. Bill unambiguously allow up to 48 months of aggregate benefits, so there is no need to use interpretive tools to resolve ambiguities. Pet. 26, 30. But, to the extent any ambiguity exists, the pro-veteran canon requires adoption of Petitioner's interpretation unless the exact opposite were true: that the statutes unambiguously denied him the benefits he sought. The Federal Circuit thus erred when it concluded that the pro-veteran canon "plays no role." Pet. App. 16a–17a. To the contrary, the Court of Appeals for Veterans Claims correctly held that if the pro-veteran canon would "ever have a real effect on an outcome, it would be here." Pet. App. 127a.

This Court has long recognized the "canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *King* v. *St. Vincent's Hosp.*, 502 U.S. 215, 220 n.9 (1991). The Court first recognized the canon in 1943, when it held that the Soldiers' and Sailors' Civil Relief Act of 1940 was "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." *Boone* v.

Lightner, 319 U.S. 561, 575 (1943). But the origins of the canon stretch back even further—all the way to the Founding. See *Hayburn's Case*, 2 U.S. (2 Dall.) 408, 410 (1792) (letter from Chief Justice John Jay to President George Washington on behalf of the Circuit Court for the District of New York acknowledging that the objects of a veterans' benefit statute "are exceedingly benevolent, and do real honor to the humanity and justice of Congress"); *Walton* v. *Cotton*, 60 U.S. (19 How.) 355, 358 (1856) (in passing acts that granted pensions to Revolutionary War soldiers, Congress was "presumed to have acted under the ordinary influences which lead to an equitable and not a capricious result"). Thus, when a statute has been "designed to protect the veteran," the Court has "liberally construed [it] for the benefit of those who left private life to serve their country in its hour of great need." *Fishgold* v. *Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284–85 (1946).

The Federal Circuit held that this pro-veteran canon "plays no role" because "the language of the statute is unambiguous." Pet. App. 16a–17a. As Judge Reyna explained in dissent, however, this holding is "belied by a number of factors": the "near entirety" of the lower court's opinion was "devoted to classic statutory interpretation"; the question before the court had "a rich history of litigation"; the case had "garnered the attention of numerous amici"; and the majority "overturn[ed] the judgment of the Court of Appeals for Veterans Claims." Pet. App. 42a.

Substantive canons of interpretation safeguard important substantive values. The pro-veteran canon protects the interests of the men and women who put their lives on the line to defend our country against

foreign adversaries, and comports with the will of Congress that these veterans receive expansive and substantial benefits in recognition of their service. *King*, 502 U.S. at 220 n.9; H. Rep. 110-720 at 37. This canon protects these interests in the same way that other canons protect the interests of Native American tribes, *County of Yakima* v. *Confederated Tribes & Bands of Yakima Indian Nation*, 502 U.S. 251, 269 (1992), and States, *Gregory* v. *Ashcroft*, 501 U.S. 452, 460–61 (1991). Courts use these canons as part of their "interpretive toolkit" to "reach a decision about the best and fairest reading of the law." *Kisor v. Wilkie*, 139 S. Ct. 2400, 2430 (2019) (Gorsuch, J., concurring). The pro-veteran canon should likewise guide lower courts' interpretation.

Here, failure to follow the pro-veteran canon risks contravening Congress's clear purpose in passing the statute itself: to provide veterans like Petitioner, who fought after September 11, 2001, with expansive benefits for his honorable service to the nation. H. Rep. 110-720 at 37. Under a proper application of the canon, Petitioner would be entitled to the benefits he sought. Congress enacted the G.I. Bills in an effort to expand education access to veterans, and allowed veterans who reenlist multiple times to seek up to 48 months of aggregate education benefits. 38 U.S.C. § 3695. Thus, the Post-9/11 G.I. Bill's context shows that the statute did not unambiguously impose a new limitation on certain veterans to receive only 36 months of benefits as the result of a technicality. And if there is no such unambiguous reading, then the pro-veteran canon commands the result that Congress intended: to provide Petitioner, and numerous veterans like him, the benefits that they need to pursue their education.

CONCLUSION

This Court should grant the petition.

April 14, 2023

Respectfully submitted,

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