

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

**BRIEF OF NATIONAL INSTITUTE OF
MILITARY JUSTICE AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONER**

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INTEREST OF AMICUS¹

The National Institute of Military Justice (“NIMJ”) is a District of Columbia nonprofit corporation organized in 1991 to advance the fair administration of the laws governing servicemembers and veterans. NIMJ’s advisory board includes law professors, private practitioners, and other experts in the field, none of whom are on active duty in the military, but nearly all of whom have served as military lawyers.

This case presents the question of whether the “pro-veteran canon” has any role to play in interpreting veterans’ benefits statutes, and what exactly that role should be. As an organization whose membership and broader constituents include many veterans, the NIMJ submits this brief in support of petitioner’s argument that the pro-veteran canon is a tool of statutory construction that guides courts towards the more generous textually permissible interpretation of a veterans’ benefits statute. This approach, grounded in the nation’s history and traditions, not only avoids unfairness to those who serve, but also protects the longer-term public interest in ensuring the value of future promises that the country will need to make to incentivize military service in times of crisis.

This brief, based upon studies and research by professional historians over many decades, aims to provide an accurate historical perspective on the

¹ No counsel for a party authored this brief in whole or in part, and no such counsel, any party, or any other person or entity—other than amicus curiae and its counsel—made a monetary contribution intended to fund the preparation or submission of this brief.

development of the pro-veteran canon as the Court considers the question of whether veterans who have served two separate and distinct periods of qualifying service under the Montgomery GI Bill and the Post-9/11 GI Bill are 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.

INTRODUCTION AND SUMMARY OF ARGUMENT

The promises and programs that incentivize Americans to risk life and limb for the nation – and reward them for their service – have been pillars of American society since before the Founding. The United States’ veterans’ benefits system has roots tracing back to 1636, when the Pilgrims at Plymouth County passed a law providing support for soldiers injured in a war with the Pequot Indians. And the country made (and ultimately fulfilled) promises of veterans’ pensions to incentivize soldiers during the darkest days of the American Revolution.

However, as integral as those promises are to securing the strength of the nation’s military forces, history shows that the U.S. government’s gratitude can be short-lived once a wartime emergency has been met. Often, as time passes after war has ended and the country turns to face new problems and economic challenges, the government has been tempted to be stingy in fulfilling its promises to those who served. In extreme cases, this has led to major outbreaks of violence, whether it was Shays’ Rebellion after the American Revolution or the Bonus Army after World War I. This historical cycle cautions that political

checks are too often insufficient to ensure that wartime promises of benefits for veterans have durable value.

Indeed, this history of broken promises informed Congress' pro-veteran approach in post-World War II legislation, such as the current GI Bills. The scale of the Second World War, the values for which it was fought, and the sheer number of young men and women who served (nearly sixteen million over four years) moved the country from treating veterans as a charity case, forever hostage to the national mood remaining generous, to a national resource worthy of investment.

This Court has been indispensable in ensuring that wartime promises made are promises kept by liberally construing veterans' benefits statutes to match the generosity intended by Congress. This interpretive maxim, dubbed the "pro-veteran canon," helps to guarantee that the value of benefits promised to induce wartime enlistment are not diminished through loopholes and parsimony.

NIMJ agrees that Petitioner's construction of the statutes before this Court is the best one regardless of any interpretive canon. But this case presents this Court with an opportunity to reaffirm that whatever the ambiguity, the pro-veteran canon is decisive.

ARGUMENT

I. History Favors a Generous Construction of Veterans' Benefits Statutes

The history of veterans' benefits in the United States is a testament to the nation's evolving

recognition of the sacrifices made by its servicemen and women. From the earliest days of the country's formation to the present, veterans' benefits have undergone a profound transformation, reflecting changes in societal attitudes, wartime experiences, and the nation's commitment to caring for those who have defended its ideals. The one constant, however, has been the need for judicial vigilance to ensure that Congress' promises of generosity to veterans are promises kept.

A. Shays' Rebellion and the Paper Money Riot

In 1776, the Continental Congress sought to build the Continental Army by offering soldiers a pension of half-pay for life if they became disabled in the line of duty. See 1st National Veterans Benefits Law - August 26, 1776. In writing to John Adams, General Nathanael Greene argued that it was "necessary to adopt every measure that will engage people in service [...] If the Congress was to fix a certain support upon every Officer and Solider that got maim'd in the service or upon the families of those that were kild it would have as happy an influence towards engaging people in the service and inspire those engagd with as much courage as any measure that can be fixt upon." Letter from Nathanael Greene to John Adams (May 26, 1776), <https://perma.cc/WU6E-V6QC>. In 1780, in the bleakest years of the war, the Continental Congress expanded this pension to provide half-pay for seven years for soldiers who remained in service to the war's end. Charles J. Finocchiaro & Jeffery A. Jenkins, *Distributive politics, the electoral connection, and the antebellum US Congress: The case of military service*

pensions, 28 J. of Theoretical Politics 2, 192–224 (2016).

National gratitude after the victory at Yorktown, however, did not last long enough to make good on these promises. The Continental Congress struggled with massive war debt and had limited ability to raise funds, and the Executive branch began tightening its belt. Much of the pay given to Continental soldiers had been in the form of Continental Currency or bonds, so-called “Continental Certificates.” Both were given in lieu of hard currency and rapidly depreciated in value as the Continental Congress printed more Continental Currency and as its creditworthiness grew more tenuous. E. James Ferguson, *The Power of the Purse, A History of American Public Finance 1776-1790*, at 32 (1961).

States refused to contribute funds to the national government to pay its debts and this fiscal crisis was compounded by an economic depression that would span much of the decade.

In “The History of the Insurrections in Massachusetts in the Year Seventeen Hundred and Eighty Six and the Rebellion Conquest Thereon,” written in 1788, the author George Minot wrote of how as the problems of government debt destabilized the country, the public turned against creditors. “The first of this class of men who fell under popular censure were the unfortunate officers of the army. At a time when the country was disheartened with the appearance of an unequal struggle, Congress thought it necessary to promise half pay for life to such of them as would continue in service. This measure occasioned no difficulties at the time,” but was soon the first

target of government belt-tightening and popular hostility. George Richards Minot, *The History of the Insurrections in Massachusetts in the Year Seventeen Hundred and Eighty Six and the Rebellion Conquest Thereon*, at 17 (1788). “The censure of the people ought to have been, and possibly was lessened by a mortifying circumstance, on the part of the officers, arising from the very execution of this agreement.” *Ibid.* But, as Minot explained, sympathy for veterans was not sufficient to compel the raising of taxes to make good on the new government’s promise. *Ibid.*

This left many veterans on the verge of bankruptcy and confronted with the imminent prospect of foreclosure on their farms. Leonard L. Richards, *Shays’s Rebellion: The American Revolution’s Final Battle*, at 2 (2002). Among them was former Continental Army Captain Daniel Shay, from Hampshire County, Massachusetts, who had fought in the Battle at Bunker Hill. *Id.* at 95. In 1786, Shays organized a few thousand men, many fellow veterans, with the initial purpose of closing Massachusetts’ courts to prevent foreclosure proceedings and liberating men from debtors’ prisons. *Id.* at 1–6. But the violence escalated and reached its peak in 1787, when it was violently suppressed by troops of government-authorized militiamen. *Id.* at 32–33. The chaos led George Washington to lament, “What a triumph for the advocates of despotism, to find that we are incapable of governing ourselves.” Letter from George Washington to John Jay (August 15, 1786), <https://perma.cc/WW2W-6GQE>.

Simultaneously, in 1786, a group in New Hampshire called the Regulators armed themselves and marched on Exeter, New Hampshire to demand

that the New Hampshire General Court issue paper money, believing it would stimulate the economy. Many of the rioters were former soldiers suffering from the economic downturn and the government's purse-tightening. The riot was quelled without bloodshed, but ultimately signaled that the fledgling republic's austerity measures were particularly harmful to the very people whose sacrifice brought the country into existence. These rebellions and smaller riots like them also highlighted the problems with the Articles of Confederation and led to the Constitutional Convention.

In its first legislative session, Congress passed An Act Providing for the Payment of Invalid Pensioners of the United States in 1789, which stated that the military pensions paid to soldiers wounded and disabled during the war shall be continued and paid in full by the federal government for the space of one year. An Act Providing for the Payment of Invalid Pensioners of the United States, 1 Stat. 95. This Act constituted the first disabled veterans' benefits system established in the United States.

In reviewing this Act and other Revolutionary War veterans' laws that Congress ultimately enacted, this Court began the tradition of liberal construction that would one day be formalized as the pro-veteran canon. The Court construed the class of beneficiaries, which by statute was limited to "children," to include grandchildren. *Walton v. Cotton*, 60 U.S. 355, 358 (1856). The Court read the word children expansively, explaining:

Congress, from high motives of policy, by granting pensions, alleviate, as far as

they may, a class of men who suffered in the military service by the hardships they endured and the dangers they encountered. But to withhold any arrearage of this bounty from his grandchildren, who had the misfortune to be left orphans, and give it to his living children, on his decease, would not seem to be a fit discrimination of national gratitude.

Ibid. In reading the statute to benefit veterans' grandchildren, the Court rejected the ordinary but narrower construction of the word "children" as including only one's immediate offspring. It instead adopted the broader, but textually permissible, interpretation of the word children to include descendants of the veteran, giving effect to Congress' presumed generosity.

B. Post-Civil War Pension Austerity

Some 70 years later, Congress enacted the first of what would be many Civil War veterans' benefits laws, the General Pension Act of 1862. General Pension Act of 1862, 12 Stat. 566. The law created a disability pension system for Union veterans and their families. The law was ahead of its time in that it covered both mental and physical injuries and established a ranking system for severity of disability and impact on the veteran's ability to work. *Ibid.*

After the war, Congress enacted the 1879 Arrears Act, which significantly expanded veterans' benefits by providing back pay for disabled veterans from the date of discharge or death, rather than the date the claim was filed as originally required under

the General Pension Act. This law permitted a substantial number of new claims resulting in large, lump-sum payments. Alexandra Boelhouwer & Jeffery Seiken, U.S. Dep’t of Veterans Affairs, *Object 42: Pension Bureau Special Examiners* (Oct. 6, 2022), <https://perma.cc/6V8J-KSLA>. The 1890 Disability Pension Act further expanded veterans’ benefits to cover disability not directly related to wartime experience. As pensions rose to become the largest item in the federal budget and the Civil War itself became a distant memory, national gratitude for veterans once again began to wane. Unfounded claims of widespread pension fraud gained political currency, and the Executive formed several government agencies to crack down on perceived corruption. *Ibid.* The Pension Bureau began using its own clerks to investigate “suspicious” claims even though it had little manpower to spare, at the expense of the enormous backlogs of claims filed by veterans who had yet to receive their benefits. By 1871, there were over 200,000 persons on the pension rolls, and yet the newly formed Special Services Division, dedicated to rooting out fraud, found 1,425 cases of fraud between 1876 and 1879. <https://perma.cc/6V8J-KSLA>.

Against this backdrop, the Court once again employed pro-veteran constructions of statutory text, acting as a check on the Executive’s departure from Congress’ original generosity in passing the law. In *United States v. Bowen*, 100 U.S. 508, 512–13 (1879), the Court allowed a veteran to both receive his pension and receive care as a patient in the Soldier’s Home for an injury sustained during the war, despite the government arguing for a construction that required the veteran to give up his pension for the

period of time he received care in the Home. The *Bowen* Court, in analyzing the text of the statute, found that it must have been Congress' intent to maximize benefits for the class of veterans at issue. *Id.* at 513.

C. World War I and the Bonus Army

During World War I, Congress enacted a national draft as well as several statutes, most prominently the Vocational Rehabilitation Act of 1918, that promised to provide veterans with government support when they returned to civilian life. *See, e.g.*, Vocational Rehabilitation Act of 1918, Pub. L. No. 65-178, 40 Stat. 617. President Woodrow Wilson also raised military pay at the start of the war to closer approach prevailing civilian wages. National Defense Act of 1916, Pub. L. No. 64-85, 39 Stat. 166. Military pay, however, was not pegged to inflation, which ballooned during the war, reaching an annualized rate of 18.5%. U.S. Bureau of Labor Statistics, *One hundred years of price change: the Consumer Price Index and the American inflation experience* (April 2014) , <https://perma.cc/567S-P72Z..>

The doughboys returned home into an economic downturn with stale labor skills and savings worth far less than at the start of the war. They formed the American Legion to advocate for compensation commensurate with their sacrifice. American Legion, *History*, <https://perma.cc/7CPA-UPLQ>. But the 1920s were an era of fiscal austerity. Several legislative efforts to provide military pension benefits failed until a compromise bill was enacted in 1924. In lieu of a pension, the World War Adjusted Compensation Act provided veterans with “Adjusted Service

Certificates,” bonds that could only be redeemed upon their reaching 20 years’ maturity. World War Adjusted Compensation Act, Pub. L. No 68-120, 43 Stat. 121.

The compromise soon proved unsustainable. By 1932, the national unemployment rate had reached more than 23%. Jose A. Tapia Granados & Ana V. Diez Roux, *Life and Death During the Great Depression*, 106 Proceedings of the National Academy of Sciences 41 (Oct. 13, 2009). For many veterans the “Adjusted Service Certificates” were their only assets. By law, however, the certificates were non-transferable and could only be used as collateral for a loan up to 50% of their value. Veterans therefore began lobbying to redeem the certificates, even at a discount.

In support of that effort, a group of approximately 300 veterans, led by Walter W. Waters, a former sergeant from Portland, Oregon, embarked on a march to Washington D.C. in May 1932. They were dubbed the “Bonus Expeditionary Force,” or more commonly the “Bonus Army.” Stephen R. Ortiz, *Beyond the Bonus March and GI Bill: How Veteran Politics Shaped the New Deal Era*, at 49 (2010). Along the way, they picked up supporters and their numbers swelled into thousands of veterans and their families. And on June 7, 1932, 7,000 veterans peacefully marched down Pennsylvania Avenue. *Id.* at 53.

To draw public attention to their cause and lobby for legislative reforms, they set up encampments around the capitol. Roger Daniels, *The Bonus March, An Episode of the Great Depression*, at

292 (1971). The largest, on a vacant field across the Anacostia River, garnered the name “Hooverville.” Paul Dickson & Thomas B. Allen, *The Bonus Army: An American Epic*, at 115 (2004). It is estimated that the total number of people involved in the demonstration reached between 10,000 and 20,000.

Representative Wright Patman of Texas, himself a veteran of the Great War, introduced the so-called “Bonus Bill” to make the certificates immediately redeemable. The bill passed in the House but failed in the Senate. Daniels at 49–51. The Hoover Administration, seeing the rise of the Bonus Army as a political embarrassment, responded to the veterans’ legislative defeat with an offer to pay for the veterans’ transportation home. Many, however, refused to give up.

On July 28, 1932, President Hoover ordered the U.S. Army, then under the command of General Douglas MacArthur, to clear the capitol of protestors. Hoover instructed MacArthur not to cross the bridge to Hooverville. MacArthur, however, defied the order, stating that the Bonus Army members were “insurrectionists.” MacArthur assembled cavalry, tanks, and infantry, who donned gas masks and fixed bayonets. Dickson & Allen at 175. As the troops moved in, they fired tear gas canisters to disperse the veterans and their families and set the camp on fire. *Ibid.* Two veterans, thirty-five-year-old William Hushka and thirty-eight-year-old Eric Carlson, died from police gunfire. *Id.* at 169. And the U.S. Army remained positioned throughout the capitol for days.

The Bonus Army affair, and its aftermath, provoked a fundamental shift in the nation’s

relationship to its veterans. In the short term, Congress passed the Adjusted Compensation Payment Act, which allowed for early redemption of the bonus certificates. Adjusted Payment Compensation Act of 1936, Pub. L. No. 74-425, 49 Stat. 1099. In the long term, the crisis provoked a political reckoning under which veterans' benefits transformed from being a form of charity to being an investment in the peacetime health and prosperity of the nation.

D. The GI Bill

World War II marked a cultural shift in the treatment of U.S. veterans. With more than sixteen million men and women serving over four years, the national attention focused on the country into which these Americans would return when their service ended. For example, an advertisement appeared in several newspapers, including the *Washington Post*, picturing a doleful GI servicemember with a food tray from a soup kitchen. The ad read, “[I]s this his reward? This time let's not have any ‘Solider Boy’ apple vendors, no more veterans’ bread lines, no more bonus armies.” The ad reminded the reader that “the power to act lies in Washington” and that it is up to each citizen to create a demand for action. Dickson & Allen at 266.

The tune of the Executive Branch also changed. President Roosevelt stated:

Every day that the war continues
interrupts the schooling and training of
more men and women, and deprives
them of the education and skills which
they would otherwise acquire for use in

later life. Not only the individual welfare of our troops, but the welfare of the Nation itself, requires that we reverse this trend just as quickly as possible after the war. Vocational and educational opportunities for veterans should be of the widest range.

Franklin D. Roosevelt, Message to Congress on the Education of War Veterans (October 27, 1943), <https://perma.cc/8P96-68FD>. With millions of servicemembers' lives and career prospects disrupted by the need to serve, the American Legion met on December 15, 1943 to discuss potential veterans benefits. Dickson & Allen at 270. Over the course of five weeks, six categories of benefits were outlined by the proposed "GI Bill of Rights": education; loan guaranty for a home, farm, or business; unemployment pay; employment-finding assistance; VA hospital building prioritization; and military review of dishonorable discharges. *Ibid.* Congress enacted nearly all of the GI Bill of Rights on June 22, 1944.

Prior to the GI Bill, most veterans' benefits were in the form of pensions, and served as a kind of charitable gratitude for veterans' service. As such, this Court had long held that "Pensions are the bounties of the government, which congress has the right to give, withhold, distribute, or recall, at its discretion." *United States v. Teller*, 107 U.S. 64, 68 (1883). The GI Bill marked a turning point in Congressional intent, as the bill was drafted for the first time as an explicit investment in those who have proven their dedication to the success and welfare of their country through service. The GI Bill was and is

devoted to reintegrating veterans into a successful civilian life, evidenced by its focus on helping veterans obtain an education and find employment.

This shift was not without controversy. Elite sentiment in the universities, that was often shared by lawmakers, objected to the inclusion of educational benefits in the GI Bill out of fear that “colleges and universities would find themselves converted into educational hobo jungles.” Dickson & Allen at 274.

However, those that doubted the American veterans were quickly proven wrong. The maturity and experience that the veterans brought to their classes was appreciated. Traditional students were ten times more likely to fail out of college than a veteran. In fact, James B. Conant, the then-President of Harvard, stated that “for seriousness, perceptiveness, steadiness, and all other undergraduate virtues” the veteran students were “the best in Harvard’s history.” *Id.* at 276.

In reflecting on the GI Bill’s success, future President Dwight Eisenhower remarked:

Many thousands of our veterans are now filling the campuses of colleges and universities throughout the country, and proving themselves both eager and earnest students. . . . From almost every campus in the country come enthusiastic reports of their sincerity and their performance. They have brought to the country’s schools a wholesome, vigorous spirit, and through them we are building up in the ledger of our human assets increased credit balances of well

educated men and women, matured by experience and schooling and competent judgment. They are becoming daily a more and more potent influence in producing a stable and strong America and therefore a peaceful and orderly world. . . . No one can ask more of Americans.

Dwight Eisenhower, Address at Veterans Day at the Nebraska State Fair in Lincoln, Nebraska, September 1, 1946.

Though the GI Bill was not perfect, it followed through on Congress' intent to reintegrate veterans and plan for their success after war. By July 1956, when the bill initially expired, almost half of the 16 million World War II veterans had gotten education or training through the GI Bill U.S. Dep't of Defense, *75 Years of the GI Bill: How Transformative It's Been* (Jan. 9, 2019), <https://perma.cc/YWV9-X9EM>, and 2,232,000 veterans had matriculated to universities using the GI Bill. According to historian Michael J. Bennett, "After World War I virtually every belligerent nation other than Britain and the United States had its government overthrown by its veterans. That didn't happen after World War II because of the Marshall Plan but there wouldn't have been such a plan if America's 16 million veterans – more than one fourth of the civilian workforce – hadn't successfully readjusted to civilian life thanks to the GI Bill." Dickson & Allen at 276..

The GI Bill also ushered in a formal recognition of the interpretive norm that this Court had relied upon to guide the interpretation of veterans'

legislation since the Revolution: the pro-veteran canon. Since the enactment of modern veterans' benefits laws, this Court has explicitly instructed that those statutes that provide benefits are "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); *see also Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 278, 285 (1946) (holding that the Act being interpreted must be "liberally construed for the benefit of those who left private life to serve their country in its hour of great need"); *Lawrence v. Shaw*, 300 U.S. 245, 249-50 (1937) (construing veteran-benefits statute in manner most favorable to veteran).

With the promise of benefits in the GI Bill, this Court has recognized Congress's intent to "place a thumb on the scale in the veteran's favor." *Henderson v. Shinseki*, 562 U.S. 428, 440 (2011). Indeed, Justice Scalia approvingly described the pro-veteran canon as operating "more like a fist than a thumb, as it should be." Justice Scalia Headlines the Twelfth CAVC Judicial Conference, Veterans L.J. 1 (Summer 2013), <https://perma.cc/Z55Q-GNA6>. Justice Scalia noted in this same speech that a nation can be judged on how well it treats its veterans. *Ibid.*

The GI Bill has been adjusted several times since the original GI Bill expired in 1956. The Veterans' Readjustment Assistance Act of 1952, Pub. L. No. 82-550, 66 Stat. 663, known as the Korean GI Bill, and the GI Bills of 1966 and 1976 all provided educational benefits to servicemembers. *See* Veterans' Readjustment Benefits Act of 1966, Pub. L. No. 89-358, 80 Stat. 12; *see also* Veterans' Education and

Employment Assistance Act of 1976, Pub. L. No. 94-502, 90 Stat. 2383 . Over 72 percent of Vietnam-era veterans – those who served between August 4, 1964 and May 7, 1974 – claimed education benefits under the GI Bill, more than half of this total for a college-level education. U.S. Dep’t of Veterans Affairs, *Veterans Administration Annual Report*, 81 (1984), <https://perma.cc/M78M-ZLUG> . Vietnam-era veterans used their education benefits at a considerably higher rate than either World War II veterans (51 percent) or Korean Conflict veterans (43 percent). *Ibid.*

With the shift to an all-volunteer force and unpredictable military commitments throughout the world, Congress enacted the Montgomery GI Bill of 1984. To become eligible for Montgomery GI-Active Duty (MGIB-AD) benefits, individuals must not have declined the benefit in writing, and must have had their military pay reduced by \$100 per month for 12 months. MGIB-AD benefits could be used for a maximum of 36 months; and, in general, benefits must be used within ten years of discharge from active duty. Congressional Research Services, RL34549, *A Brief History of Veterans’ Education Benefits and Their Value*, 3 (June 25, 2008), <https://perma.cc/M3XS-LHA5> .

For the Montgomery GI Selected Reserve (MGIB-SR), benefits are determined by Selected Reserve service components, and individuals must have agreed to a six-year service obligation. Individuals could receive up to 36 months of benefits, and the benefits had to be used within 14 years of becoming eligible. (Individuals who became eligible for MGIB-SR prior to October 1, 1992 must utilize benefits within 10 years of becoming eligible.)

Education benefits may be used for activities that include degree programs, certificate or correspondence courses, cooperative training, independent study, apprenticeship, and vocational flight training programs. *Id.* at 4.

With each new GI Bill, this Court has reiterated the pro-veteran canon. The text of veterans' benefits statutes are presumed to reflect the "solicitude of Congress for veterans is of long standing." *United States v. Oregon*, 366 U.S. 643, 647 (1961). That presumption directly impacts the interpretation of the statute. *See, e.g., Coffy v. Republic Steel Corp.*, 447 U.S. 191, 196 (1980) (reading the text of a statue liberally for the benefit of the 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.").

The newest GI Bill was enacted on June 30, 2008, as the Post-9/11 Veterans' Educational Assistance Act of 2008 (Post-9/11 GI Bill). The Post-9/11 GI Bill provides benefits to veterans and servicemembers and is transferrable to their family members. Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, 122 Stat. 2357. The Post-9/11 GI Bill had four main drivers: (1) providing parity of benefits for reservists and members of the regular Armed Forces, (2) ensuring comprehensive educational benefits, (3) meeting military recruiting goals, and (4) improving military retention through transferability of benefits. Congressional Research Services, R42755, *The Post-9/11 GI Bill: A Primer*, 1 (Sept. 23, 2021), <https://perma.cc/K8U6-3FNA>. As recognized by Congress, the Post-9/11 GI Bill was

enacted in response to findings that “service on active duty in the Armed Forces [had] been especially arduous for the members of the Armed Forces since September 11, 2001,” and that there was a need for an educational assistance program that provided “enhanced educational assistance benefits … worthy of such service.” *Ibid.* (citing the Supplemental Appropriations Act of 2008, Pub. L. No. 110-252, 122 Stat. 2323).

Through every iteration of the GI Bill, the U.S. government has provided benefits as a means of exhibiting “that we owe a debt of gratitude to those who served our country, . . . that those who served their country are entitled to special benefits from a grateful nation.” *Procopio v. Wilkie*, 913 F.3d 1371, 1387 (Fed. Cir. 2019) (citing 137 Cong. Rec. E1486-01, 137 Cong. Rec. E1486-01, E1486, 1991 WL 65877, *1). And, as with previous veterans’ benefits laws, they also remain as a tool for the military to recruit people into the armed forces.

Education, and the benefits promised to individuals that serve, remain the largest reason why individuals commit themselves to the military. Syracuse University’s D’Aniello Institute for Veterans and Military Families ran a study in which it asked 8,000 active-duty, reservists, members of the National Guard, and veterans their reasons for joining the military. Fifty-three percent said the reason they joined the armed services was the educational benefits. Corri Zoli et al., *Missing Perspectives: Servicemembers’ Transition from Service to Civilian Life — Data-Driven Research to Enact the Promise of the Post-9/11 GI Bill*, Institute for Veterans & Military Families, Syracuse University (2015).

In sum, the history of veterans' benefits in the United States reflects a dynamic interplay of societal values, legislative actions, and evolving perceptions of the responsibilities owed to those who have served. The one constant, however, has been this Court's insistence that Congress' words must be understood as reflecting generosity. And that norm has ensured, from the modest pensions of the Revolutionary era to the comprehensive benefits systems of today, that the nation's promises to those who have sacrificed for its ideals are kept.

II. The Pro-Veteran Canon Ensures that the Government Honors Promises Made to Servicemembers

Amicus fully endorses Petitioner's statutory arguments as the best reading of the text irrespective of any interpretive guide. However, in light of the history, the Court should re-affirm the pro-veteran canon and hold that, irrespective of the plausibility of any alternative construction Respondent might put forward, "where the language used may be so construed as to carry out a benign policy within the reasonable intent of Congress, it should be done." *Walton*, 60 U.S. at 358.

Such canons foster stability in the law by providing a reliable guide for ascertaining the meaning of statutory language. See Antonin Scalia & Bryan A. Garner, *Reading the Law: The Interpretation of Legal Texts*, 298 (2012) (discussing this principle in the context of the rule of lenity). Substantive canons such as the pro-veteran canon are principles and presumptions that courts have created to "protect important background norms derived from the

Constitution, common-law practices, or policies related to particular subject areas.” See Anita S. Krishnakumar, *Reconsidering Substantive Canons*, 84 U. Chi. L. Rev. 825, 833 (2017), citing William N. Eskridge Jr., et al., *Cases and Materials on Legislation and Regulation: Statutes and the Creation of Public Policy*, at 743 (5th ed. 2014).

Other such canons include the rule that ambiguities in statutes dealing with Native American tribes are resolved in favor of the tribes, *see, e.g.*, *Montana v Blackfeet Tribe of Indians*, 471 U.S. 759, 766–68 (1985), and the rule that ambiguities in criminal statutes be resolved in favor of defendants. *United States v. Wiltberger*, 18 U.S. (5 Wheat) 76, 95 (1820) (describing the rule as “perhaps not much less old than construction itself”).

All of these default rules are accepted norms against which Congress is presumed to – and does – legislate. *King*, 502 U.S. 215, 220 n.9 (1991) (“We will presume congressional understanding of” the pro-veteran canon); *Coffy v. Republic Steel Corp.*, 447 U.S. 191, 195–96 (1980); *Kisor v. McDonough*, 995 F.3d 1347, 1368 n.3 (Fed. Cir. 2021) (“It is because Congress drafts veterans legislation against the backdrop of the pro-veteran canon that Congress does not need to be clairvoyant in order to see that its intent to benefit veterans can be effectuated when parties have legitimate debates regarding terms employed.”). And they function as a check on shifting political currents that push back against that intent. In short, the pro-veteran canon protects and upholds the benefits Congress promises to those who serve.

By focusing on the veterans' best interest, the canon gives effect to the national commitment to veterans as expressed through veterans' benefits laws. This Court has accepted that Congress legislates with the understanding that these laws will be interpreted in light of the pro-veteran canon. *See, e.g., King*, 502 U.S. at 220 n.9; *see also Finley v. United States*, 490 U.S. 545, 556 (1989) (noting the "paramount importance" of Congress being able to "legislate against a background of clear interpretive rules, so that it may know the effect of the language it adopts"). These veterans' benefits laws are written with "gratitude for services that often entail hardship, hazard, and separation from family" and to help "facilitate the reentry into civilian society." *Hooper v. Bernalillo Cty. Assessor*, 472 U.S. 612, 626 (1985) (Stevens, J., dissenting).

The pro-veteran canon serves to benefit all involved in or impacted by veterans' benefits legislation. It benefits Congress, which relies upon it in drafting laws. It benefits the courts, which rely upon it in the interpretation and enforcement of those laws. It benefits past and future servicemembers, who rely on the promise that the full benefits committed to them at their enlistment will be available to them upon discharge. And it benefits the public, who relies on servicemembers called upon to meet national emergencies.

Failure to apply the pro-veteran canon in favor of Petitioner in this case risks slippage, as minor as it may seem, back into a history of broken promises. This Court should not allow that to happen.

CONCLUSION

For these reasons, and those set out by Petitioner, the Court should reverse the Federal Circuit's judgment.

Respectfully submitted,

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