
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 *AMICI CURIAE*
EDISON ELECTRIC INSTITUTE, CENTER FOR
ENERGY WORKFORCE DEVELOPMENT,
VETERANS IN ENERGY, THE AMERICAN
PUBLIC GAS ASSOCIATION, GAS AND OIL
ASSOCIATION OF WEST VIRGINIA, INC. AND
THE NUCLEAR ENERGY INSTITUTE
IN SUPPORT OF PETITIONER**

Elbert Lin

Counsel of Record

David M. Parker

HUNTON ANDREWS KURTH LLP

951 East Byrd Street, East Tower

Richmond, Virginia 23219

Phone: (804) 788-8200

elin@HuntonAK.com

dparker@HuntonAK.com

Counsel for Amici Curiae

GibsonMoore Appellate Services, LLC
206 East Cary Street ♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
INTRODUCTION AND INTEREST OF <i>AMICI</i> <i>CURIAE</i>	1
SUMMARY OF ARGUMENT.....	3
ARGUMENT	4
I. Properly trained veterans are important to the energy industry.	4
II. By depriving veterans of educational benefits, the decision below thwarts Congressional intent and harms the energy industry.....	7
CONCLUSION	13

TABLE OF AUTHORITIES

	Page(s)
Other Authorities	
154 Cong. Rec. H3891-03, 2008 WL 2067799.....	8
154 Cong. Rec. H3905-03, 2008 WL 2067806.....	8
154 Cong. Rec. S4714-01, 2008 WL 2151025.....	8
<i>Am. Petroleum Inst., Veterans and Energy: Opportunities in the Oil and Natural Gas Industry (2015)</i>	<i>7</i>
<i>Burton Blatt Inst., Veterans in the Workplace: Recruitment and Retention (Apr. 2013).....</i>	<i>7</i>
<i>CLR Skills Training Found., Chemical Plant Operators - Skills and Abilities (Feb. 13, 2019).....</i>	<i>9</i>
<i>EEI, Issues & Policy: Workforce Development</i>	<i>4</i>
<i>EEI, Saluting Service: Veterans’ Crucial Roles in America’s Electric Companies, ELECTRIC PERSPECTIVES (Nov.-Dec. 2022)</i>	<i>10</i>
<i>Forbes, What’s Needed to Close the Skills Gap in the Power Industry (Apr. 8, 2022).....</i>	<i>9</i>
<i>Harvard Bus. Sch., Business & Environment Alumni Travis Nels MBA 2013.....</i>	<i>11</i>

Office of Nuclear Energy, <i>Advantages and Challenges of Nuclear Energy</i> (March 29, 2021).....	5
Pew Rsch. Ctr., <i>The American Veteran Experience and the Post-9/11 Generation</i> (Sept. 10, 2019).....	7
Subcomm. on Educ. & Health, <i>A Cost-Benefit Analysis of Government Investment in Post-Secondary Education Under the World War II GI Bill</i> (Dec. 14, 1988).....	12
Troops to Energy Jobs, <i>Explore Energy Careers</i>	5-6
Troops to Energy Jobs, <i>Why Veterans Ge Into Energy</i> , Travis Nels, YOUTUBE (May 23, 2023).....	11
U.S. Bureau of Lab. Stat., <i>Nuclear Technicians</i> (Sept. 8, 2022).....	8
U.S. Dept. of Energy, <i>Clean Energy</i>	5
U.S. Dept. of Energy, <i>Economic Benefits of Oil and Gas</i>	5
U.S. Dept. of Energy, Office of Efficiency & Renewable Energy, <i>Career Map: Wind Technician</i>	9
U.S. Dept. of Energy, <i>Pathways to Commercial Liftoff: Advanced Nuclear</i> (Mar. 2023).....	10
U.S. Dept. of Energy, <i>United States Energy & Employment Report 2022</i> (June 2022).....	4

U.S. Dept. of Energy, *Veterans Boost America's Energy Workforce* (Nov. 17, 2020)..... 6, 10

U.S. Dept. Of Veterans Affairs, *Post 9/11 GI Bill (Chapter 33)* (Mar. 9, 2023) 11

U.S. Nuclear Regul. Comm'n, *Licensing Process for Operators* (June 23, 2023) 9

Univ. of Texas at Austin, Petroleum Extension, *Oilwell Drilling Primer E-Course* 9

Veterans in Energy, *Our History*..... 6

INTRODUCTION AND INTEREST OF *AMICI CURIAE*¹

The Edison Electric Institute (EEI) is the national association of all U.S. investor-owned electric companies. EEI members provide electricity and related services for about 250 million Americans and operate in all 50 States and the District of Columbia.

The Center for Energy Workforce Development (CEWD) is a non-profit consortium of energy companies, contractors, associations, unions, educators, and business partners. CEWD's goal is to ensure a sufficient pipeline of skilled workers into the energy industry. CEWD takes a particular interest in skilled veterans—in 2010, it launched the Troops to Energy Jobs Initiative, which provides information, counseling, and other resources to facilitate veterans' transition to the energy sector.

Veterans in Energy (VIE) is a national organization that provides transition, retention, and professional development support to military veterans working in energy. VIE advocates through education and networking to improve the working environment, career development, and quality of life for military veterans in the energy industry.

The American Public Gas Association is the trade association representing more than 730 communities across the U.S. that own and operate their retail

¹ This brief was not authored in whole or in part by counsel for any party. A party or a party's counsel did not contribute money that was intended to fund preparing or submitting this brief. No person, other than *amici curiae*, their members, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

natural gas distribution entities. These include not-for-profit gas distribution systems owned by municipalities and other local government entities, all accountable to the citizens they serve.

The Gas and Oil Association of West Virginia, Inc. is a non-profit corporation serving the entire oil and natural gas industry in the State. Its members include independent producers, fully integrated energy companies, companies engaged in various aspects of service and supply activities, and consulting companies.

The Nuclear Energy Institute (NEI) is a policy organization of the nuclear technologies industry, based in Washington, D.C. NEI develops policy on key legislative and regulatory issues affecting the industry. Its members include companies that own or operate nuclear power plants, reactor designers and advanced technology companies, architect and engineering firms, fuel suppliers and service companies, consulting services and manufacturing companies, companies involved in nuclear medicine and nuclear industrial applications, radionuclide and radiopharmaceutical companies, universities and research laboratories, law firms, labor unions and international electric utilities.

Amici submit this brief because of their interest in providing employment to veterans with adequate education and vocational training. As explained further below, there are over 650,000 veterans in the United States energy workforce, many of whom occupy positions requiring higher education or specialized training. By depriving long-serving veterans of educational benefits under the Post-9/11 GI-Bill, the decision below not only defies

congressional intent, but also harms Amici and the energy industry as a whole in doing so.

SUMMARY OF ARGUMENT

Amici fully agree with Mr. Rudisill that the decision below misconstrued the Post-9/11 GI Bill. The relevant provisions do not *require* veterans to exchange unused Montgomery benefits for Post-9/11 benefits; they merely provide the *option* for those veterans who have already credited all of their eligible service to the Montgomery GI Bill. Long-serving veterans like Mr. Rudisill do not need that option. Instead, they can obtain Post-9/11 benefits by simply drawing on a separate period of service—one that has not previously been credited towards any other GI Bill. By turning the benefits-exchange option into a requirement, the decision below deprives those long-serving veterans of the additional benefit that Congress rightly recognized they had earned and deserved.

Veterans are an important part of the energy industry, and are particularly well-represented there. It is critical that these veterans receive the education and specialized training required for many energy-related careers. By depriving long-serving veterans of hard-earned educational benefits, the decision below not only harms millions of veterans, but ultimately the energy industry and the United States economy more broadly. *Amici* submit this brief to highlight for the Court yet another of the many sensible reasons Congress wrote the Post-9/11 GI Bill in a way that encourages *more* education, not less, as the decision below and the government contend.

ARGUMENT

I. Properly trained veterans are important to the energy industry.

The energy industry is one of the largest and most important sectors of the American economy. The electricity, fuel, and other natural resources we have all come to rely upon also support our enhanced quality of life. And while the energy industry as a whole is complex, one aspect is simple: the industry could not function without a sufficient number of workers, especially veterans.

Nearly eight million workers serve in the country's energy industry.² These workers keep the lights on in our homes and keep us warm during the winter. And their duties are as varied as they are important. Some climb poles to fix downed wires, while others serve as engineers in nuclear power plants or atmospheric scientists.

These workers also form an important part of the United States economy. As a whole, the electric power industry supports more than seven million jobs in communities across the United States.³ The Department of Energy recognizes that “[o]il and gas production helps save American consumers an estimated \$200 billion annually,” and in 2019 helped lower the United States trade deficit by \$305

² U.S. Dept. of Energy, *United States Energy & Employment Report 2022* at 1 (June 2022), <https://www.energy.gov/media/275712> (“DOE Employment Report”).

³ EEI, *Issues & Policy: Workforce Development*, <https://www.eei.org/en/issues-and-policy/workforce> (last visited Aug. 16, 2023).

billion.⁴ Renewable energy, too, “generates hundreds of billions in economic activity.”⁵ And nuclear power “supports nearly half a million jobs in the United States and contributes an estimated \$60 billion to the U.S. gross domestic product each year.”⁶

A large portion of energy workers are veterans of the United States military. As of 2021, the industry employed 650,000 veterans, comprising 9% of the industry’s workforce.⁷ Per capita, the energy industry employs veterans at a rate 50% higher than the national average.⁸

Veterans are so well represented in this industry because their service yields readily transferrable skills. In Amici’s experience, veterans are easily trained, and also possess the grit required to perform difficult jobs under adverse conditions. Veterans are also team players, and perform their work with a heightened sense of purpose. Other energy employers point to veterans’ “leadership skills, team orientation, ‘can do’ spirit, and work ethic.”⁹ And

⁴ U.S. Dept. of Energy, *Economic Benefits of Oil and Gas*, <https://www.energy.gov/articles/economic-impact-oil-and-gas> (last visited Aug. 16, 2023).

⁵ U.S. Dept. of Energy, *Clean Energy*, <https://www.energy.gov/clean-energy> (last visited Aug. 16, 2023).

⁶ Office of Nuclear Energy, *Advantages and Challenges of Nuclear Energy* (Mar. 29, 2021), <https://www.energy.gov/ne/articles/advantages-and-challenges-nuclear-energy>.

⁷ DOE Employment Report at 6, Table 2.

⁸ *See id.* (showing that veterans comprise 6% of the entire American workforce).

⁹ Troops to Energy Jobs, *Explore Energy Careers*, <https://getintoenergy.org/veterans/> (last visited Aug. 16,

longer-serving veterans—like those affected by the Federal Circuit’s decision below—accrue more of these skills the longer they serve.

These are skills the energy industry needs. Many, if not most, energy jobs require critical (and quick) thinking, including the ability to diagnose and resolve unexpected problems, some dangerous and potentially life threatening. Every year, energy workers handle power lines carrying hundreds of thousands of volts, extract oil thousands of feet underwater, climb wind turbines hundreds of feet tall, and operate commercial nuclear reactors. These projects often have many moving parts (both literally and figuratively), and experience managing people, duties, and deadlines is vital for success. And of course, the energy industry relies heavily upon workers with knowledge of science, technology, engineering, and math (STEM).

Because veterans are such a good fit for the energy industry, the industry affirmatively seeks them out. One example is the Troops to Energy Jobs Initiative, launched by CEWD in 2010.¹⁰ This program provides information, counseling, and other resources to facilitate veterans’ transition to the energy sector. Another is the Veterans Energy Pipeline, an online tool that matches particular

2023). See also U.S. Dept. of Energy, *Veterans Boost America’s Energy Workforce* (Nov. 17, 2020), <https://tinyurl.com/jhv3brxv> (veterans are “well-prepared” for jobs in energy sector).

¹⁰ Veterans in Energy, *Our History*, <https://www.veteransinenergy.org/history> (last visited Aug. 16, 2023).

military occupations with top jobs in the oil and gas industry.¹¹

While the energy industry has a particular interest in hiring veterans, other employers recognize their value too. When 100 American businesses were asked why they retained and advanced veterans, a majority of respondents cited “strong leadership qualities” (73%), the “ability to persevere in the face of obstacles” (68%), “flexibility to work well in teams or independently” (67%), and “the ability to learn new skills and concepts related to the job” (65%).¹² The American public agrees, and sees veterans as more disciplined, loyal, and hard-working than those without military service.¹³

II. By depriving veterans of educational benefits, the decision below thwarts Congressional intent and harms the energy industry.

By misconstruing the Post-9/11 GI Bill and depriving veterans of educational benefits, the Federal Circuit’s decision harms Amici, and the energy industry as a whole. And in doing so, the decision also thwarts Congress’s intent. Congress

¹¹ Am. Petroleum Inst., *Veterans and Energy: Opportunities in the Oil and Natural Gas Industry*, at 4 (2015), <https://www.api.org/-/media/Files/Policy/Jobs/Veterans-Energy/Veterans-and-Energy-One-Page.pdf>.

¹² Burton Blatt Inst., *Veterans in the Workplace: Recruitment and Retention*, at 24 (Apr. 2013), https://www.va.gov/vetsinworkplace/docs/veterans_in_workplace_final_report.pdf.

¹³ Pew Rsch. Ctr., *The American Veteran Experience and the Post-9/11 Generation*, at 4 (Sept. 10, 2019), <https://tinyurl.com/48vez3pf> (“How veterans and the public see each other and themselves”).

wanted the Post-9/11 GI Bill to reward long-serving veterans, including those “who have served multiple tours of duty and extended tours of duty.”¹⁴ And Congress was also aware that “every dollar we spend on education today will come back to bolster our economy tomorrow,” because veterans would “develop skills that will help improve our economy.”¹⁵ The whole point of the Post-9/11 GI Bill was to “greatly expand[]” educational benefits for veterans.¹⁶ Achieving Congress’s goals requires *more* benefits, not less.

Educational benefits are particularly important for veterans transitioning to the energy industry, because careers there often require higher education and specialized training. Nuclear technicians must have knowledge of nuclear science,¹⁷ and reactor operators must qualify pursuant to extremely

¹⁴ 154 Cong. Rec. H3905-03, H3940, 2008 WL 2067806. *See also* 154 Cong. Rec. S4714-01, S4718, 2008 WL 2151025 (“[G]uardsmen and reservists who serve multiple tours of duty do not receive one extra penny of educational benefits for their added service because benefits are based on the single longest deployment. Passage of this [Post-9/11 GI Bill] will make that change.”)

¹⁵ 154 Cong. Rec. H3905-03, H4040, 2008 WL 2067806.

¹⁶ 154 Cong. Rec. H3891-03, H3895, 2008 WL 2067799. *See also id.* (“I strongly support provisions to expand and improve the GI Benefits for veterans education.”); *id.* at H3894 (“We will have the opportunity to vote in support of greatly expanded educational benefits for our military veterans.”); 154 Cong. Rec. H3905-03, H3950, 2008 WL 2067806 (“[W]e’re passing a new expanded GI Bill that will provide important educational benefits for our veterans.”); *id.* at H4030 (“[T]he amended bill includes provisions designed to expand the educational benefits for men and women who have served in the armed forces . . .”).

¹⁷ U.S. Bureau of Lab. Stat., *Nuclear Technicians* (Sept. 8, 2022), <https://www.bls.gov/ooh/life-physical-and-social-science/nuclear-technicians.htm>.

stringent testing administered by the Nuclear Regulatory Commission.¹⁸ Chemical plant operators must have knowledge of chemistry.¹⁹ Oilwell drillers must have knowledge of petroleum geology and the mechanics of drilling systems.²⁰ Wind turbine technicians must have knowledge of “all systems of the wind turbine including structural, mechanical, electrical, controls, communications, electronic components, hydraulic systems, and environmental safety and health systems.”²¹ And utilities are increasingly needing workers with skills in “data-driven management, data science, analytics and modeling, environmental impact and efficiency and strategic planning.”²² John D. Rockefeller once said he “would rather hire a man with enthusiasm, than a man who knows everything,” but even he would have to agree that education and training are vital for achieving success in the energy industry.

Accordingly, veterans with these qualifications are in high demand. As the Department of Energy recently wrote, it “cannot carry out [its] mission for

¹⁸ U.S. Nuclear Regul. Comm’n, *Licensing Process for Operators* (June 23, 2023), <https://www.nrc.gov/reactors/operator-licensing/licensing-process.html>.

¹⁹ CLR Skills Training Found., *Chemical Plant Operators – Skills and Abilities* (Feb. 13, 2019), <https://tinyurl.com/4d7w4drf>.

²⁰ Univ. of Texas at Austin, Petroleum Extension, *Oilwell Drilling Primer E-Course*, <https://tinyurl.com/yp5pm8hs> (last visited Aug. 16, 2023).

²¹ U.S. Dept. of Energy, Office of Efficiency & Renewable Energy, *Career Map: Wind Technician*, <https://www.energy.gov/eere/wind/career-map-wind-technician> (last visited Aug. 16, 2023).

²² Forbes, *What’s Needed to Close the Skills Gap in the Power Industry* (Apr. 8, 2022), <https://tinyurl.com/3uyfw55p>.

energy, environment, and national security” without a “well-educated, prepared workforce” that “includes highly-skilled veterans.”²³

The need for well-educated and highly-skilled veterans is of particular importance in the nuclear energy industry, where veterans account for about 20 percent of the work force.²⁴ The demand for veterans is expected to grow further still in the coming decades. The Department of Energy has projected the need for at least 200 gigawatts-electric of new advanced nuclear power capacity by 2050 to meet the nation’s clean energy generation needs.²⁵ It estimates that the U.S. would need approximately 375,000 additional workers by 2025 to build and operate advanced reactors at that scale.²⁶ The Department pointedly recommends “outreach to military veterans” to help meet that projected need.²⁷

The Post-9/11 GI Bill helps veterans obtain the kind of education and training the energy industry demands. It provides many eligible veterans up to 36 months of education benefits that expire either 15

²³ U.S. Dept. of Energy, *Veterans Boost America’s Energy Workforce* (Nov. 17, 2020), <https://tinyurl.com/jhv3brxv>.

²⁴ EEI, *Saluting Service: Veterans’ Crucial Roles in America’s Electric Companies*, ELECTRIC PERSPECTIVES (Nov.-Dec. 2022), https://www.eei.org/-/media/Project/EEI/Documents/Resources-and-Media/EP_22_ND_Veterans_SpecialPreview.pdf.

²⁵ U.S. Dept. of Energy, *Pathways to Commercial Liftoff: Advanced Nuclear*, at 7 (Mar. 2023), <https://liftoff.energy.gov/wp-content/uploads/2023/05/20230320-Liftoff-Advanced-Nuclear-vPUB-0329-Update.pdf>.

²⁶ *Id.* at 4, 31, 45.

²⁷ *Id.* at 46.

years after active service ended or not at all.²⁸ Benefits can be used for a variety of purposes, including undergraduate and graduate degrees, vocational and technical training, and on-the-job apprenticeships.²⁹

Major Travis Nels, for example, used the Post-9/11 GI Bill to transition from the active-duty Air Force to the energy industry. The Post-9/11 GI Bill enabled Major Nels to enroll in a two-year program at Harvard business school.³⁰ And because of that degree, he is now leading the corporate financial planning and analysis team at AES Corporation, a global Fortune-200 energy company.³¹

The benefits at issue could help millions of other veterans, too. As Petitioner observes, over 5.2 million veterans will be eligible for Post-9/11 benefits by September 2023, and roughly a third (1.7 million) will be impacted by the decision below, as they have enough service to fully qualify for benefits under both the Montgomery and Post-9/11 GI Bills. Rudisill Pet. for Writ of Cert. at 18-19 n.3 (Mar. 13, 2023). Accordingly, the decision below will affect more than double the number of veterans as are currently employed in the entire energy industry.

²⁸ U.S. Dept. Of Veterans Affairs, *Post 9/11 GI Bill (Chapter 33)* (Mar. 9, 2023), <https://tinyurl.com/mvdw954j>.

²⁹ *See id.*

³⁰ Troops to Energy Jobs, *Why Veterans Ge Into Energy, Travis Nels*, YOUTUBE (May 23, 2023), <https://www.youtube.com/watch?v=aveUnN9cRy0&t=36s>.

³¹ *Harvard Bus. Sch., Business & Environment Alumni Travis Nels MBA 2013*, <https://www.hbs.edu/environment/for-alumni/Pages/alumni-profile-details.aspx?profile=tnels> (last visited Aug. 16, 2023).

Those benefits could also pay sizeable dividends to the American economy. One Congressional subcommittee found that “for every dollar the government invested in education” under the original, post-World War II GI Bill, “the nation received at least \$5 of benefits and as much as \$12.50 of benefits.”³² This was “far above the returns earned by most other forms of investment, either government or private.”³³

Yet veterans with sufficient education and training are still in short supply. Energy employers consistently rank a lack of “certifications or education” as one of the top three reasons for difficulties hiring.³⁴ These difficulties persist across many careers in the industry, from electric power generation to energy efficiency.³⁵

The decision below exacerbates this challenge by denying educational benefits to long-serving veterans, and thus reducing the number of qualified workers trained to meet the evolving demands of the energy industry. The consequences are far-reaching. For the energy industry, it means less efficiency, less production, and ultimately less growth and success. For the average American, it means greater demand, higher costs, and diminished financial freedom.

Reversing the erroneous decision below would not only provide educational benefits to deserving, long-

³² Subcomm. on Educ. & Health, *A Cost-Benefit Analysis of Government Investment in Post-Secondary Education Under the World War II GI Bill* (Dec. 14, 1988), page 13 of pdf, <https://files.eric.ed.gov/fulltext/ED338323.pdf>.

³³ *Id.*

³⁴ DOE Employment Report at 16-17, 72-73, 84, 137, 145.

³⁵ *Id.*

serving veterans, it would also increase the number of qualified veterans for hire, thus positively influencing employment trends and overall industry productivity. Given the importance of the energy industry to the American economy and our nation's way of life, enabling more qualified veterans to join the energy sector will lead to broader benefits for the United States as a whole.

CONCLUSION

For these reasons, Amici respectfully request that the Court reverse the en banc decision of the Federal Circuit.

August 17, 2023

Respectfully submitted,

/s/ Elbert Lin

Elbert Lin

Counsel of Record

David M. Parker

HUNTON ANDREWS KURTH LLP

951 East Byrd Street, East Tower

Richmond, Virginia 23219

Phone: (804) 788-8200

elin@HuntonAK.com

Counsel for Amici Curiae