No. 23-861

IN THE

Supreme Court of the United States

NICK FELICIANO,

Petitioner,

v.

DEPARTMENT OF TRANSPORTATION,

Respondent.

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

BRIEF OF THE RESERVE ORGANIZATION OF AMERICA AS *AMICUS CURIAE* SUPPORTING PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Reserve Organization of America ("ROA") is America's only exclusive advocate for the Reserve and National Guard—all ranks, all services. With a sole focus on support of the Reserve and National Guard, ROA promotes the interests of Reserve Component members, their families, and veterans of Reserve service. As part of this advocacy, ROA regularly files briefs in this Court and others on matters that implicate the interests of the Reserve Components.

This case raises issues that are critically important to ROA and its members. The Federal Circuit has, in many circumstances, barred federal civilian-employee Reservists from receiving differential pay when they mobilize into the military to serve their nation. The result is to disadvantage Reservists over other federal civilian employees, to deter military service, and to undermine the readiness and effectiveness of the Armed Forces. That outcome is contrary to the text, structure, and purpose of Congress's differential-pay scheme.

The Court should reverse the Federal Circuit's interpretive error.

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made a monetary contribution to fund the brief's preparation or submission.

SUMMARY OF ARGUMENT

United States military reserves date back to before the founding of the Republic when national citizen-soldier forces fought in the French and Indian War. State militias—which became the National Guard—played a major role in the Revolutionary War. During the Civil War, state militias supplied 96 percent of the Union army. About 400,000 Guardsmen served in World War I, representing the largest state contribution to overseas military operations during the 20th century. Nearly 300,000 Guardsmen served in World War II. More than 200,000 Reservists contributed to the liberation of Kuwait in the Gulf War. And since September 11, 2001, more than a million Reservists and National Guardsmen have answered the call to serve their nation, many several times over.

Today, the Reserve Components constitute a significant portion of the total U.S. military force. Reservists hail from all walks of life. They are public high school teachers, doctors, lawyers, police officers, and, like Petitioner, federal civilian employees. They are united not only by their undying commitment to this nation, but by their commitment to public service—many devoting their entire careers to working for the federal government.

This case concerns a statute designed to minimize the economic burdens these citizen-warriors would otherwise bear when mobilizing from their civilian jobs: the differential-pay statute. *See* 5 U.S.C. § 5538. The statute is part of a long line of laws—ranging from reemployment rights to nondiscrimination rules—

that were enacted to minimize the negative impact of military service on civilian careers.

The differential-pay statute acknowledges a basic economic reality: mobilized federal employees often earn less on active duty than they would have earned in their federal civilian positions. The statute is designed to ensure that these employees do not take a financial hit when they leave their typical day job to serve in the Armed Forces.

The differential-pay statute is an important part of Congress's scheme to promote the military's operational readiness. Over the last three decades, the Reserve Components have shifted from a force of last resort to an integrated fighting force that is vital to military operations. By removing what is often a substantial economic disadvantage to service, the differential-pay statute helps to recruit and retain Reservists for that fighting force. And it makes sure that Reservists will not hesitate to answer their nation's call for fear of missing a loan payment or allowing a bill to go unpaid.

The decision below undermines Congress's intent in enacting the differential-pay statute and—consequently—the military's operational readiness. The Federal Circuit's cramped reading of the statute relies on a vague (and demonstrably incorrect) hunch about the statute's purpose that turns Congress's scheme on its head. Properly construed, the statute's text, structure, and purpose all require differential pay for a mobilized Reservist under any provision of law during a national emergency.

Even if the statute was ambiguous (it is not), the

pro-servicemember canon would require the same result. That canon requires construing any ambiguity in a servicemember-benefits statute in favor of the servicemember. The Court has applied the pro-servicemember canon for more than 150 years, and Congress has repeatedly invoked the canon when drafting servicemember-benefits legislation. The canon thus independently confirms Petitioner's reading of the statute.

This Court should reverse the Federal Circuit to correct its interpretive error and to properly apply Congress's scheme to protect and bolster our country's Armed Forces.

ARGUMENT

I. THE DIFFERENTIAL-PAY STATUTE PROTECTS RESERVISTS AND BOLSTERS THE MILITARY'S OPERATIONAL READINESS.

Congress enacted the differential-pay statute not in a vacuum, but as part of a suite of civilian-employment policies designed to protect Reservists and bolster military effectiveness. This context shows why the Government's cramped interpretation of the statute cannot stand.

A. Congress Enacted Civilian-Employment Policies To Ensure Military Effectiveness.

Congress has long sought "to smooth" servicemembers' "reentry into civilian life." *Torres v. Texas Dep't of Pub. Safety*, 597 U.S. 580, 585 (2022).

And for good reason. Defending the United States is a trying endeavor for the brave Americans who serve our nation. Because of the immense pressures soldiers face in the course of their service, Congress has made it a priority to at least "eliminat[e] or minimiz[e] the disadvantages to civilian careers and employment which can result from such service." Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. No. 103-353, § 2(a)(1), 108 Stat. 3149, 3150 (codified at 38 U.S.C. § 4301(a)(1)) ("USERRA").

Congress has used these civilian-employment policies "to encourage service in the Armed Forces in a variety of ways." *Torres*, 597 U.S. at 585. For example, through the Selective Training and Service Act of 1940, Congress required federal and private employers to "restore[ ]" servicemembers to their prior position or a "position of like seniority, status, and pay" after being "inducted into" military service. *See* Pub. L. No. 76-783, § 8(a)–(b), 54 Stat. 885, 890. By ensuring a "right to return to civilian employment without adverse effect," *Torres*, 597 U.S. at 585 (quoting H.R. Rep. No. 105-448, at 2 (1998)), Congress sought to "provid[e] the Army and Navy with patriotic men who are willing and anxious to serve their country," 86 Cong. Rec. 10573 (1940) (statement of Sen. Thomas); *see also* Selective Service Act of 1948, Pub. L. No. 80-759, § 1(b), 62 Stat. 604, 605 (explaining that reemployment helps "achieve[ ]" and "maintain[ ]" "an adequate armed strength" "to insure the security of th[e] Nation.").

But reemployment rights are only one arrow in Congress's civilian-employment quiver. Congress has also "promote[d] the maximum of employment and job

advancement opportunities within the Federal Government for" veterans through special "readjustment appointments." Vietnam Era Veterans' Readjustment Assistance Act, Pub. L. No. 93-508, § 403, 88 Stat. 1578, 1593 (1974). And it prohibits civilian employers from discriminating against employees and applicants based on "service in the uniformed services." Pub. L. No. 103-353, § 2(a), 108 Stat. 3149, 3153 (1994) (codified at 38 U.S.C. § 4311).

Congress has also long recognized the importance of extending civilian-employment policies to Reservists. As President Johnson explained when he signed legislation granting Reservists reemployment rights, "members of the reserve components are … indispensable sinews in the military strength of our Nation." Presidential Statement on Signing Pub. L. No. 90-491, 4 WEEKLY COMP. PRES. DOC. (Aug. 17, 1968).

Indeed, as citizen-soldiers, Reservists face unique problems for which Congress has given special attention. For example, Congress has legislated to "protect" against "employment practices that discriminate against employees with Reserve obligations," such as "weekend drills or summer training." *Monroe v. Standard Oil Co.*, 452 U.S. 549, 557 (1981) (cleaned up). Legislators recognized that "[i]f these young men are essential to our national defense, then certainly our Government and employers have a moral obligation to see that their economic wellbeing is disrupted to the minimum extent possible." *Id.* at 561 (quoting House report).

B. Congress Enacted The Differential-Pay Statute To Ensure Military Effectiveness.

In the wake of the September 11, 2001 attacks on our country, Congress considered a significant new measure to bolster military effectiveness and minimize disruption to Reservists' economic wellbeing: a differential-pay scheme. *See* Reservists Pay Security Act of 2001, S. 1818, 107th Cong.; Reservists Pay Security Act of 2001, H.R. 3337, 107th Cong. A pair of 2001 bills sought to pay federal-employee Reservists the difference between their military pay and their civilian pay during a mobilization in order to offset any negative financial consequences of service.

The bills' proponents advocated to alleviate "the financial burden faced by many of the men and women who serve in the military Reserves or National Guard." 147 Cong. Rec. S13148 (Dec. 13, 2001) (statement of Sen. Durbin). With "[f]ifty-five thousand" Reservists "activated since the attacks of September 11th," many "federally employed reservists" and their families were "starting to feel the pinch of service." 147 Cong. Rec. S13294 (Dec. 14, 2001) (statement of Sen. Mikulski). For example, the wife of one Reservist—"with an 8-month-old son to care for"—had to "move in with her parents until her husband return[ed]" due to a "$50,000" drop in "family income." *Ibid.* The family recognized they "may be forced to sell their home" to make ends meet. *Ibid.* The bills' sponsors deemed this situation "a travesty," finding it "simply wrong" that "dedicated Americans" were "forced to leave their families financially vulnerable at a time when they have so many other

things to worry about." *Ibid.*

Congress considered the differential-pay scheme again in 2003. *See* Reservists Pay Security Act of 2004, S. 593, 108th Cong. (2003). It was introduced "with war looming with Iraq," "hundreds of thousands of our troops poised for battle overseas," and "nearly 170,000 Guard and Reservists mobilized and serving on active duty." 149 Cong. Rec. S3517 (2003) (statement of Sen. Durbin). Thousands of these mobilized Reservists were federal employees, and many of them incurred significant financial losses because their military pay was less than their federal civilian pay. S. Rep. No. 108-409, at 2, 5 (2004). Once again, legislators recognized that it was "unfair to ask the men and women who have volunteered to serve their country, often in dangerous situations, to also face a financial strain on their families." 149 Cong. Rec. S3517 (statement of Sen. Durbin). Seeking to make the federal government a "model employer" and an "example for large businesses," *ibid.* (statement of Sen. Mikulski), the differential-pay bill sought to "alleviate the financial burdens created when federal employees are called to active duty and experience a reduction in pay," S. Rep. No. 108-409, at 2 (2004).

After these initial legislative efforts, the need for the differential-pay scheme became even more acute. The 2000s saw the Reserves transform from a "force of last resort" into "vital contributors on a day-to-day basis around the world." Lawrence Kapp et al., Cong. Rsch. Serv., *Reserve Component Personnel Issues: Questions and Answers* at 7, (updated Nov. 2, 2021) ("Reserve Component CRS Report"), http://tinyurl.com/5n7kf9kd. In 2008, the Department of Defense issued a Directive to

redesignate the Reserve Components "as an operational force." Dep't of Def., Dir. 1200.17, Managing the Reserve Components as an Operational Force, ¶¶ 1, 4a–b (Oct. 29, 2008). These changes effectuated a monumental shift in military composition: "reservists contributed about 1 million duty-days per year" in the late 1980s, compared to "68.3 million days in FY2005" and "17.3 million days" in 2014. Reserve Component CRS Report at 9 n.35. And while prior Reserve mobilizations were often involuntary, post-September 11 operations increasingly relied on *voluntary* mobilizations—spurring a need to eliminate obstacles to voluntary service. *See id.* at 8–9.

In 2009, Congress responded to these changes by enacting the differential-pay statute. *See* Omnibus Appropriations Act, 2009, Pub. L. No. 111-8, § 751, 123 Stat. 524, 693–95. The statute provides that federal employees who are "absent" from their positions "in order to perform active duty in the uniformed services pursuant to a call or order to active duty under [certain provisions] shall be entitled" to the difference between their military pay and their civilian salaries. 5 U.S.C. § 5538(a).

C. The Differential-Pay Statute Protects Reservists And Helps The Military Achieve Its Objectives.

The differential-pay statute is an important tool for the Government to recruit and retain Reservists and to incentivize voluntary mobilizations. Such tools are essential to military readiness. The Reserve Components reported "dire recruiting numbers" in recent years. Thomas Novelly et al., *Big Bonuses,*

Relaxed Policies, New Slogan: None of It Saved the Military from a Recruiting Crisis in 2023, Military.com (Oct. 13, 2023), http://tinyurl.com/mrs83er5. Defense analysts are actively calling for efforts to "recruit" and "retain more members in the service, both active and reserve." Brad McNally et al., *Now is the time to save the all-volunteer force*, Brookings (Jan. 19, 2023), http://tinyurl.com/e4mre7uy. Meanwhile, 37% of Reservists are not satisfied with their compensation. Dep't of Def., Office of People Analytics, *2020 Status of Forces Survey Reserve Component Members (SOFS-R)* at 16 (July 14, 2021), https://tinyurl.com/4fdv5s4z. One in five Reservists report that they are "unlikely to stay" in their position. *Id.* at 9.

Inhibiting Congress's choice to minimize economic disadvantages to Reservists under these circumstances would hinder the military's operational effectiveness. Approximately one-million citizen-warriors serve in the Ready Reserve, with the vast majority maintaining civilian employment. *See* Dep't of Def., *2022 Demographics Profile of the Military Community* at 57 (2023), https://tinyurl.com/2hv3vmrs; Screening the Ready Reserve, Final Rule, 86 Fed. Reg. 60,166, 60,168 (2021). The Reserve Components bear a significant burden in carrying out the nation's overseas operations and "provid[ing] critical combat power and support." Col. (Ret.) Richard J. Dunn, *America's Reserve and National Guard Components: Key Contributors to U.S. Military Strength*, The Heritage Found. (Oct. 5, 2015), http://tinyurl.com/33nrmuwv. Reservists "have repeatedly deployed and operated … in Bosnia, Iraq, Afghanistan, Syria and numerous other contingency, humanitarian, and homeland

support missions to include providing the majority of the COVID-19 (Coronavirus) pandemic response forces." Reserve Forces Pol'y Bd., *Improving the Total Force: Using the National Guard and Reserves,* RFPB Report FY20-01 at 9 (Aug. 14, 2020), http://tinyurl.com/5n929tz7. Over one-million Reservists have been activated since September 11, 2001. *Id.* at 30. In that time, more than half of Reservists have been mobilized more than once, and 89% of the Reservists' mobilizations were to combat zones. *Ibid.*

The military derives substantial benefit by tapping into the abilities that Reservists develop in their civilian careers. Reservists "bring unique capabilities and professional expertise to the Total Force gained through years of experience" in "the civilian sector"—especially in professions that are typically too "cost-prohibitive to develop in the [Active Components] (i.e. doctors, nurses, lawyers, computer analysts, cyber experts, engineers, etc.)." *Id.* at 36. And the Reserve Components "require[ ] significantly less overhead and infrastructure" costs—"typically less than one-third the cost of the Active Component." *Id.* at 21. Yet, the Reserve Components' "operational record consistently demonstrates exceptional performance." *Id.* at 9.

The Reserve Components are an indispensable part of securing and protecting the national interest. As the Department of Defense itself found: "Unless we had chosen to dramatically increase the size of the Active Components, our domestic security and global operations since September 11, 2001 *could not have been executed* without the activation of hundreds of thousands of trained Reserve Component personnel."

Dep't of Def., Comprehensive Review of the Future Role of the Reserve Component, Vol. 1, at 1–2 (Apr. 5, 2011) (emphasis added).

The differential-pay statute is a key piece of Congress's strategy to ensure the readiness of the Reserve Components—and thus the military as a whole.

II. THE STATUTE REQUIRES DIFFERENTIAL PAY UNDER ANY PROVISION OF LAW DURING A NATIONAL EMERGENCY.

The history and context of the differential-pay statute counsel in favor of an interpretation that minimizes disadvantages to federal civilian-employee Reservists. Doing so gives effect to Congress's policy of "encourag[ing] service in the Armed Forces." *Torres*, 597 U.S. at 585. And because the statute "was enacted to address the" unfairness of financially penalizing civilian-employee Reservists, an interpretation that allows that unfairness to persist would be "inconsistent with the context from which the statute arose." *Fischer v. United States*, 144 S. Ct. 2176, 2190 (2024) (cleaned up). This legislative context independently confirms Petitioner's reading of the statute, but, as he notes, the Court can reach the same result on the text alone.

Congress provided that federal employees are entitled to differential pay when they are absent "pursuant to a call or order to active duty under," a list of enumerated provisions "or *any other provision of law during a war or during a national emergency declared by the President or Congress*." 5 U.S.C. § 5538(a); 10 U.S.C. § 101(a)(13)(B) (emphasis added).

The plain meaning of the statute is clear: Because the President has declared a national emergency that has been ongoing since September 14, 2001, *see* Continuation of the National Emergency With Respect to Certain Terrorist Attacks, 88 Fed. Reg. 62,433 (Sept. 7, 2023), a Reservist called up under any "provision of law" is eligible for differential pay. This provision contains no additional caveats about the nature of a Reservist's service—including whether it is voluntary or involuntary or the type of mission the Reservist undertakes while mobilized.

The Federal Circuit has rejected this straightforward statutory text in a series of cases that rely on misguided policy preferences. In *Adams v. DHS*, 3 F.4th 1375 (Fed. Cir. 2021), that court held (wrongly) that Congress did not "intend[ ]" for the statute to cover "voluntary duty that was unconnected to the emergency at hand." *Id.* at 1380. In *Flynn v. Department of State*, No. 2022-1220, 2023 WL 3449169 (Fed. Cir. May 15, 2023), the court denied differential pay to a federal employee who "performed active duty … at the Office of Military Commissions at the Pentagon." *Id.* at *1. And in the case at hand, the Federal Circuit used its flawed interpretation to deny differential pay to a Federal Aviation Administration employee who "perform[ed] military duty in the Coast Guard to support various operations," including "Operation Iraqi Freedom" and "Operating Enduring Freedom." Pet. App. 2a. In the Federal Circuit's opinion, this "voluntary, active service" was not sufficiently connected to "the ongoing national emergency." Pet. App. 4a.

As Petitioner persuasively explains, the Federal Circuit's interpretation of the differential-pay statute

is wrong. The court ignores the plain text of the statute to conduct an *ad hoc* inquiry into whether a Reservist's service is sufficiently "connected" to a national emergency. That "connection" requirement must be rejected because it appears nowhere in the statute.

But that is not the Federal Circuit's only error. The Federal Circuit has also implied a distinction between voluntary and involuntary mobilizations. In *Adams*, it suggested that the phrase "any other provision of law" does not include voluntary service because it follows a list of provisions that provide for involuntary service. *See* 3 F.4th at 1380. But the statutory text provides differential pay for *all* service "during a national emergency." 10 U.S.C. § 101(a)(13)(B). Thus, failing to provide differential pay to *any* servicemember that "has performed … uniformed service" is unlawful under USERRA. *See* 38 U.S.C. § 4311(a); *Adams*, 3 F.4th at 1377–78.

Far from being "implausible," *Adams*, 3 F.4th at 1380, that outcome makes good sense. Absent a national emergency, voluntary mobilizations may be excluded. But when there *is* a national emergency, the military needs the ability to tap every available member of its operational forces, including those possessing the most relevant and unique expertise. In such an all-hands-on-deck situation, Reservists should not be disincentivized from volunteering for service for fear of the financial repercussions that will occur if they do.

Absent a textual commitment, there is no reason to assume that Congress would have drawn a *sub silentio* distinction between voluntary and

involuntary deployments. The United States ended involuntary military service half-a-century ago. *See* 50 U.S.C. § 3815(c) (providing that generally "no person shall be inducted for training and service in the Armed Forces"). With "50 years of an all-volunteer force," National Veterans and Military Families Month, Proclamation No. 10668, 88 Fed. Reg. 75,473, 75,474 (Oct. 31, 2023), it would make little sense to presume from Congress an atextual policy-driven distinction between volunteer and non-volunteer mobilizations by Reservists.

Indeed, the Federal Circuit's reading of the differential-pay statute will actively thwart Congress's intent. The law's own sponsors have explained that the Federal Circuit's decision "frustrate[s] the intent of Congress." *See* Mem. of Congress Cert. Br. 10. And the Government has activated Reservists "involuntarily *and voluntarily*" for significant operations, including "Operation Noble Eagle," "Operation Iraqi Freedom," and a host of "COVID-19 response efforts." Reserve Component CRS Report at 8–9 & nn.32–33 (emphasis in original). In these emergencies, the Reserve Components were able to offer their unique skills to increase operational efficiency. During the COVID-19 pandemic, for example, the military asked for "volunteer[s]" with "specialized skills in the medical field, in logistics, and in command and control." Air Reserve Personnel Center, *In order to preserve the nation's combat readiness*, http://tinyurl.com/337w8p2j (last visited Aug. 25, 2024). The Federal Circuit's atextual exclusion of voluntary mobilizations from the differential-pay statute will inhibit the Government's ability to marshal specialized personnel in future emergencies.

This Court should thus reverse the Federal Circuit's interpretation because it is inconsistent with the text, structure, and purpose of the differential-pay statute.

III. THE PRO-SERVICEMEMBER CANON CONFIRMS THE STATUTE REQUIRES DIFFERENTIAL PAY UNDER ANY PROVISION OF LAW DURING A NATIONAL EMERGENCY.

Because "the statute is clear," the Court should reverse the Federal Circuit's decision "based on statutory text alone." *Rudisill v. McDonough*, 601 U.S. 294, 314 (2024). But even "[i]f the statute were ambiguous," *ibid.*, the result would be the same under "the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor."[2] *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 441 (2011).

Like all substantive canons, the pro-servicemember canon "ha[s] a long historical pedigree." *See Biden v. Nebraska*, 143 S. Ct. 2355, 2377 (2023) (Barrett, J., concurring). "Congress" has "long" shown special "solicitude … for veterans." *Henderson*, 562 U.S. at 440. As far back as 1789, it guaranteed "military pensions" to soldiers "who were wounded and disabled" in the "late war." Act of

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[2] The Court has at times referred to this canon as the "pro-veteran canon." *Rusidisill*, 601 U.S. at 314. Although the canon does protect veterans, it also protects parties "in military service." *Boone v. Lightner*, 319 U.S. 561, 561, 575 (1943); *see also King v. St. Vincent's Hosp.*, 502 U.S. 215, 216–17, 221 n.9 (1991). To avoid confusion about the canon's scope, this brief uses the term "pro-servicemember canon."

September 29, 1789, ch. 24, § 1, 1 Stat. 95. And in the centuries since, Congress has enacted a "pattern of legislation," *United States v. Oregon*, 366 U.S. 643, 647 (1961), designed "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 supra* Section I.

To respect Congress's special solicitude for servicemembers, this Court has employed the pro-servicemember canon for at least 168 years. In *Walton v. Cotton*, 60 U.S. 355 (1856), this Court construed the meaning of a statute that "provid[ed] for the relief of certain surviving officers of the Revolution." *Id.* at 355. The issue was whether "the word children in the act[ ] embrace[d] the grandchildren of a deceased pensioner." *Ibid.* The Court rejected the apparent textual answer and instead held that "children" included "grandchildren." *Id.* at 358. The Court reasoned that a contrary result would "stop short of carrying out the humane motive of Congress" to show its "national gratitude" to "a class of men who suffered in the military service by the hardships they endured and the dangers they encountered." *Ibid.* It thus "construed" the statute "to carry out" Congress's "benign policy" to care for veterans of the Revolutionary War.[3] *Ibid.*

Since *Walton*, this Court has repeatedly invoked the pro-servicemember canon. In *Boone v. Lightner*, 319 U.S. 561 (1943), the Court held that a veterans-benefits statute "is always to be liberally construed."

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[3] Apparently overlooking *Walton*, some jurists have erroneously traced the canon's origins to 1943. *See, e.g.*, *Kisor v. McDonough*, 995 F.3d 1347, 1350 (Fed. Cir. 2021) (Prost, C.J., concurring).

Id. at 575. In *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946), the Court held that "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." *Id.* at 285. In *Alabama Power Co. v. Davis*, 431 U.S. 581 (1977), the Court referred to the pro-servicemember canon as a "guiding principle." *Id.* at 584. In *King v. St. Vincent's Hosp.*, 502 U.S. 215 (1991), the Court explained that it would have used "the canon" to construe a veterans-benefits statute "in the beneficiaries' favor" if the statute had been ambiguous. *Id.* at 220 n.9. In *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 441 (2011) the Court refused to find that a deadline was jurisdictional "in light of this canon." *Id.* at 441. And last term in *Rudisill v. McDonough*, 601 U.S. 294 (2024), this Court reaffirmed that it applies "the pro-veteran canon" where statutory text is "ambiguous." *Id.* at 314.

Congress has expressly relied on the canon when passing legislation. When it enacted USERRA, Congress "stresse[d] its intention that the extensive body of case law" applying the pro-servicemember canon "would remain in full force and effect." S. Rep. No. 103-158 at 40 (1993); *see also* H.R. Rep. No. 103-65, pt. 1, at 19 (same). It cited this Court's opinions in *Fishgold* and *Alabama Power Co.* for the "basic principle" that servicemembers' "reemployment rights are to be 'liberally construed.'" S. Rep. No. 103-158 at 40 (1993). And in 2004, when considering the Servicemembers and Veterans Legal Protections Act, Congress was aware of the "principle[ ] laid down by the United States Supreme Court" that a servicemember-benefits statute "is to be construed liberally." H.R. Rep. No. 108-683, at 40–41 (2004).

This Court has thus been correct to "presume congressional understanding of" this "interpretive principle[ ]." *King*, 502 U.S. at 220 n.9.

The Executive has also used the pro-servicemember canon as an interpretive guide. The Merits Systems Protection Board cited *Fishgold*'s instruction—to "construe[] broadly" servicemember-benefits statutes—for the proposition "that application of a time limitation to Federal employees' USERRA claims would be inconsistent with congressional intent." Uniformed Services Employment and Reemployment Rights Act of 1994, Final Rule, 64 Fed. Reg. 54,507, 54,508 (1999). The Department of Veterans Affairs also cited the "Supreme Court" decisions "liberally construing" servicemember-benefits statutes as a reason to favor a "benefit of the doubt evidentiary standard for adjudication of [Servicemembers' Group Life Insurance Traumatic Injury Protection] claims." *See* Servicemembers' Group Life Insurance Traumatic Injury Protection, Proposed Rule, 85 Fed. Reg. 50,973, 50,976 (2020). Accordingly, all three branches of Government have long recognized and relied upon the pro-servicemember canon.

Thus, to the extent this Court finds any ambiguity in the differential-pay statute, it should construe the ambiguity in Petitioner's favor.

CONCLUSION

The Court should reverse.

Respectfully submitted.

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