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 SENATOR TIM KAINE, CONGRESSWOMAN JENNIFER MCCLELLAN, AND FOURTEEN OTHER MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are sixteen members of the United States Senate and House of Representatives: Senators Tim Kaine, Richard Blumenthal, John Fetterman, and Mark R. Warner, and Representatives Jennifer L. McClellan, Gerald E. Connolly, Adriano Espaillat, Raúl M. Grijalva, Henry C. "Hank" Johnson Jr., Stephen F. Lynch, Grace Meng, Robert C. "Bobby" Scott, Abigail D. Spanberger, Glenn "GT" Thompson, Jennifer Wexton, and Robert J. Wittman. Senators Kaine and Blumenthal sit on the Senate Armed Services Committee; Senator Blumenthal sits on the Senate Committee on Veterans' Affairs; Representative Connolly serves on the House Committee on Foreign Affairs; and Representatives McClellan and Wittman sit on the House Armed Services Committee (with Rep. Wittman serving as Vice Chair). Representative Scott was also the lead sponsor of the House bill that eventually became the statute that this case centers on: the Post-9/11 GI Bill. Moreover, each of the *amici* has sponsored or voted on many bills supporting our Nation's veterans, and have a powerful interest in the proper interpretation of those laws. Given their responsibility for overseeing military issues, *amici* also have a significant interest in the proper administration of veteran-benefits laws.

Further, as a result of *amici's* firsthand legislative experience, they are also aware of the role that the

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[1] No counsel for a party authored this brief in whole or in part. No party, counsel for a party, or person or entity other than amici curiae, their members, and their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

pro-veteran canon plays not only in the judicial interpretation of statutory text, but also in the legislative drafting process. When adopting statutes meant to benefit our Nation's veterans, *amici* understand that courts confronted with doubt about the meaning of those texts will apply this well-established canon of interpretation to resolve any such doubt. *Amici* submit this brief in part to urge the Court to reaffirm this principle and thereby ensure that the Federal Circuit and other courts vindicate congressional intent when interpreting veteran-benefits laws.

INTRODUCTION AND SUMMARY OF ARGUMENT

When Congress enacted the statute at the core of this dispute—the Post-9/11 Veterans Educational Assistance Act of 2008 (or "Post-9/11 GI Bill"), *see* 38 U.S.C. § 3301 et seq.—it set out to transform the "outmoded" old "Montgomery GI Bill" regime into one fit for the realities of twenty-first-century military service. Congress recognized both the "especially arduous" conditions of post-9/11 service and the skyrocketing costs of higher education in this country. It therefore radically expanded the educational benefits available to returning veterans—generally *doubling* what was available under the old program—in an express effort to replicate the original, World War II–era GI Bill that revolutionized American society.

This case concerns an erroneous attempt by the Department of Veterans Affairs ("VA") to curtail this commitment for some of the veterans who deserve it most (and possibly many others): those with multiple periods of military service, who started school after serving our Nation in active duty once but then returned to military service after the terror attacks on September 11, 2001. According the en banc Federal Circuit below, such veterans are barred from fully using the expanded benefits Congress provided in the Post-9/11 GI Bill. Instead, these veterans, unlike others, must either fully use up (or, "exhaust") thirty-six months of their old, inadequate Montgomery GI Bill benefits before using any Post-9/11 GI Bill benefits—or else they must give up (or, "forfeit") a year of benefits entirely.

As petitioner explains, this perverse "exhaust-or-forfeit" rule defies the plain text of the Post-9/11 GI Bill. *See* Pet. Br. 43-58. *Amici*, who have decades of collective experience legislating in the area of veterans' benefits, file this brief to emphasize—based on their firsthand experience—two key contextual points that underscore that conclusion.

First, *amici* explain how the Federal Circuit's en banc decision below fundamentally conflicts with both the general history of the GI Bill since World War II, and the particular history of the Post-9/11 GI Bill itself. Before the Federal Circuit's ruling, veterans (like petitioner) with independent entitlements under multiple GI Bills had *never* been subject to an exhaust-or-forfeit rule like the one in this case. The result below would thus be surprising even had Congress meant the Post-9/11 GI Bill only to continue this long tradition. But that outcome is simply unthinkable given Congress's clear intent to enact a revolutionary GI Bill meant to radically expand benefits—*especially* for veterans who served multiple tours of qualifying duty, and who sacrificed educational opportunities to do so.

Second, *amici* urge the Court to reaffirm the centrality of the pro-veteran canon when interpreting statutes designed to protect veterans, who have risked their lives to protect our Nation. This canon is an essential tool for courts to use when interpreting veteran-benefits statutes because it reflects *Congress's* understanding that courts will resolve ambiguity in those statutes in veterans' favor. To the extent there is any doubt about the meaning of the statutes here, the Court should vindicate congressional intent by applying the pro-veteran canon and resolving that doubt in petitioner's favor.

ARGUMENT

Petitioner's reading of the Post-9/11 GI Bill's text is correct. The core of that law, like GI Bills before it, are the provisions establishing *entitlement* to benefits based on qualifying periods of service. *See* 38 U.S.C. §§ 3311(a), 3312(a), 3313 (any veteran with qualifying post-9/11 service "is entitled" to thirty-six months of benefits, including "the actual net cost" of tuition); *see also id.* §§ 3011(a), 3013(a)(1), 3014(a) (any qualifying veteran also "is entitled," under the Montgomery GI Bill, to thirty-six months of a fixed stipend to "help meet, in part" educational costs). When multiple periods of service lead to multiple such "entitl[ements]," the law has always provided that veterans are "entitled" to benefits under *each* entitlement provision, subject only to an overall cap of forty-eight months of benefits across all such entitlements. *See id.* § 3695(a).

Here, petitioner previously used only twenty-five months and fourteen days of Montgomery GI Bill benefits arising from his first period of qualifying service between 2000 and 2002. So, he should be able to use all remaining twenty-two months and sixteen days of entitlement, arising from a second period of qualifying post-9/11 service, under the much more generous Post-9/11 GI Bill. *See* Pet. Br. 38-41.

The Federal Circuit's decision below errs in reading Section 3327 to compel a different result. As petitioner explains, Section 3327 simply provides that veterans with a *single* entitlement to GI Bill benefits for post-9/11 service "may," but need not, "elect[]" to convert their old benefits to Post-9/11 benefits. *See id.* at 43-58 (quoting 38 U.S.C. § 3327(a)). It does not deprive long-serving veterans with *multiple*

independent entitlements under separate GI Bills, who have no need to "elect" any such conversion, of the full benefits to which they are entitled. *See id.*

Amici file this brief to explain how the decision below *also* disregards the history of the Nation's many GI Bills, and—more acutely—the history and purpose of the Post-9/11 GI Bill itself. Affirming the Federal Circuit's decision below would perversely disadvantage the very veterans Congress sought to protect with this law. And to the extent there is any doubt about the meaning of the text at issue, *amici* urge this Court to apply the pro-veteran canon to resolve that doubt in petitioner's favor.[2]

I. THE GI BILL'S HISTORY SUPPORTS PETITIONER

The Post-9/11 GI Bill is the most recent in a long line of laws providing educational benefits for returning veterans. In the decades since World War II, these laws have represented a promise: To attract recruits, reintegrate veterans into society, and give

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[2] The parties appear to disagree about the scope and implications of the Federal Circuit's ruling. Petitioner argues that the Federal Circuit's decision below allows VA to continue imposing its "exhaust-or-forfeit" rule on *all* veterans with dual entitlement under the Montgomery GI Bill and the Post-9/11 GI Bill—not just those who have used some, but not all, of their Montgomery GI Bill entitlement. *See* Pet. Br. 23-24, 33-34, 55. In opposing certiorari, the Solicitor General asserted that the Federal Circuit's decision affects only the narrower class of veterans who "ha[ve] used, but retain[] unused," Montgomery GI Bill benefits. *See* BIO 14 (alterations in original) (quoting 38 U.S.C. § 3327(a)(1)(A)). This *amicus* brief explains why even the government's narrower understanding of the decision below is contrary to the Post-9/11 GI Bill's text, context, and history. If petitioner is correct about the reach of the decision below, these problems are only more severe.

thanks for each veteran's immeasurable sacrifice, the American government would provide those who served with a ticket to higher education. The GI Bill has thus sent millions to college, empowered generations of families to buy homes, and, in doing so, has built the world's most robust middle class.

But by 2008, a new generation of veterans found that the government was no longer holding up its end of this bargain. The existing version of the GI Bill—the1984 Montgomery GI Bill—no longer covered the cost of a college degree, preventing far too many from attending school and relaunching their lives at home. So, Congress acted. Rejecting a more modest proposal, it passed the Post-9/11 GI Bill—the largest revamp of veterans' educational benefits in generations—which keyed educational benefits to the *actual* cost of college, thereby often *doubling* the benefits that were available under the old, Montgomery GI Bill. In doing so, Congress repeatedly emphasized its main goal: To replace the "outmoded" Montgomery GI Bill for those who had served after September 11, restoring the system to one like the World War II–era GI Bill that had once revolutionized American society.

Against this history, the decision below vastly diminishes the Post-9/11 GI Bill for some veterans whose multiple (or extended) periods of service support entitlements under *both* the Post-9/11 GI Bill and the Montgomery GI Bill. Affirming the Federal Circuit's ruling would (at the very least, *but see supra* note 2) plunge veterans like petitioner—who served once, came home to begin school, and then *returned* to service before finishing their education—back into the old, Montgomery GI Bill system, for at least a significant portion of their educational costs. It would do so by putting these veterans to an unenviable (and

unprecedented) choice: Stick with the cheaper, less generous Montgomery GI Bill benefits for a full thirty-six months before using twelve final months of expansive post-9/11 support, or give up twelve months of benefits altogether.

That result conflicts with every prior scheme of veterans' education benefits in our Nation's history: Never before has Congress imposed an "exhaust-or-forfeit" rule like the one the Federal Circuit created below. The decision below also contradicts Congress's stated goal, in enacting the Post-9/11 GI Bill, of superseding the "outmoded" Montgomery GI Bill with far more generous benefits for post-9/11 service. There is no reason to think that Congress would have imposed a rule like the Federal Circuit's for the first time in the Post-9/11 GI Bill—which was meant to radically expand, not tighten, educational benefits for post-9/11 veterans. In short, the Federal Circuit's decision below betrays the entire purpose of the Post-9/11 GI Bill, and those that came before it, by singling out veterans like petitioner for worse treatment than all others.

A. No Pre-9/11 GI Bill Imposed An "Exhaust-Or-Forfeit" Rule Like The One The Federal Circuit Adopted Below

1. The history of modern veterans' benefits began in 1933, when President Franklin D. Roosevelt tried to use newly granted executive powers to unilaterally slash veterans' benefits, in order to pay for several New Deal programs. *See* James D. Ridgway, *The Splendid Isolation Revisited: Lessons from the History of Veterans' Benefits Before Judicial Review,* 3 Veterans L. Rev. 135, 179-80 (2011). Congress intervened by passing—over President Roosevelt's

veto—the Independent Offices Appropriation Act of 1935, Pub. L. No. 73-141, 48 Stat. 509, which reinstated (and then safeguarded against future reduction) many benefits the President had cut, *see* James D. Ridgway, *Recovering an Institutional Memory: The Origins of the Modern Veterans' Benefits System from 1914 to 1958*, 5 Veterans L. Rev. 1, 22 (2013); Ridgway, *The Splendid Isolation Revisited*, *supra*, at 180 & n.302. Though just an opening salvo, this conflict between Congress and the Executive would become a theme of later laws benefitting veterans: While the Executive Branch has often tried to pinch pennies, Congress consistently writes generous laws supporting those who defend our Nation.

World War II again tested the federal government's approach to veterans' benefits. Even before the United States entered the war, the Roosevelt Administration began planning for the return and reintegration of some 15 million servicemembers. National Archives, *Milestone Documents: Servicemen's Readjustment Act (1944)* (updated May 3, 2022), https://www.archives.gov/milestone-documents/servicemens-readjustment-act. In so planning, the President favored a program that would equally serve *all* disabled workers—one that would include veterans, but not single them out for favored treatment. *See* Ridgway, *The Splendid Isolation Revisited*, *supra*, at 181-84; *see also* Stephen R. Ortiz, *Beyond the Bonus March and GI Bill: How Veteran Politics Shaped the New Deal Era* 140-46 (2010). President Roosevelt had long resisted recognizing veterans as "a special class of beneficiaries over and above all other citizens." *The Presidency: Roosevelt to the Legion*, Time (Oct. 9, 1933),

https://content.time.com/time/subscriber/article/0,33009,882485,00.html. Veterans and their allies in Congress, on the other hand, disagreed with this effort to "destroy the identity of veterans as a group for special consideration." Ridgway, *The Splendid Isolation Revisited*, *supra*, at 183 & n.316 (indirectly quoting *Vocational Rehabilitation Education and Training: Hearings on H.R. 699 Before the H. Comm. on Educ. and Labor*, 78th Cong. 180 (1943) (statement of Omar N. Ketchum, Legislative Representative, Veterans of Foreign Wars ("VFW"))).

The veterans ultimately prevailed. In 1944, Congress passed the Servicemen's Readjustment Act, Pub. L. No. 78-346, 58 Stat. 284—commonly known as the "GI Bill"—which enshrined the special place of veterans in American society. This law enabled millions of working-class Americans to buy a home and attend college, thereby "transform[ing] the face and future of American society." Katherine Kiemle Buckley & Brigid Cleary, *The Restoration and Modernization of Education Benefits Under the Post-9/11 Veterans Assistance Act of 2008*, 2 Veterans L. Rev. 185, 185 (2010). In a single act, our country made "[h]igher education, which had [until then] been the privilege of the fortunate few, . . . part of the American dream—available to all citizens who served their country through military service." *Id.* Among those who benefited were three future Presidents, three future Supreme Court Justices, and fourteen future Nobel Prize laureates. Edward Humes, *Over Here: How the G.I. Bill Transformed the American Dream* 6 (2006). "No investment our government has ever made returned better dividends," noted President Ronald Reagan nearly 50 years later. *Remarks on Signing the New GI Bill Continuation*

Act, Ronald Reagan Presidential Library & Museum (June 1, 1987), https://www.reaganlibrary.gov/archives/speech/remarks-signing-new-gi-bill-continuation-act.

2. The original GI Bill set the template for veterans' education-benefit laws to follow. It entitled veterans to one year of education benefits, plus additional benefits equal to the time the veteran spent in service after September 1940—up to four years total. *See* Pub. L. No. 78-346, § 400(b), 58 Stat. at 288. The original GI Bill also allowed veterans who qualified under multiple education and training programs to receive assistance under each program—limited only by a bar on receiving both benefits concurrently, or beyond the statutory caps. *See id.* Noting that veterans may also be eligible for a separate "benefit . . . payable for training" under an earlier program, Congress decided that a veteran "may elect which benefit he desires." *Id.* § 400(b), 58 Stat. at 289. Congress *did not* require veterans to exhaust any prior benefits before gaining access to the new GI Bill education benefits to which they were entitled.

Eight years later, faced with a new armed conflict, Congress reexamined educational benefits for veterans. Now in the GI Bill's second generation, the 1952 "Korean Conflict GI Bill" explicitly addressed veterans who had served in multiple conflicts, with multiple periods of qualifying service. *See* Veterans Readjustment Assistance Act of 1952, Pub. L. No. 82-550, § 214(a), 66 Stat. 663, 665. Korean Conflict veterans were entitled to up to thirty-six months for their Korean service. *Id.* And those who had also served in World War II (and were thus eligible under the 1944 Act too) were "entitled under this title together with the education or training received

under [the training program mentioned above] or [the original GI Bill]" to use benefits provided under each such program. *Id.* Just as before, Congress imposed no exhaustion rule; the only limit it set was, again, to cap combined benefits at "forty-eight months in the aggregate." *Id.*

By 1955, President Dwight Eisenhower had won the presidency on promises to reduce the federal budget. To follow through on those pledges, he appointed a commission to cut veterans' benefits. *See* Ridgway, *The Splendid Isolation Revisited*, *supra*, at 189-90. Again, veterans rallied to oppose these efforts, and called on Congress to assist. And yet again, Congress intervened—enacting two laws extending educational benefits and other special programs for veterans. *See* Michael J. Wishnie, *"A Boy Gets Into Trouble": Service Members, Civil Rights, and Veterans' Law Exceptionalism*, 97 B.U. L. Rev. 1709, 1718 (2017); *see also* Veterans' Benefits Act of 1957, Pub. L. No. 85-56, 71 Stat. 83; Act of Sept. 2, 1958, Pub. L. No. 85-857, 72 Stat. 1105. Once again, when the Executive Branch tried to pinch pennies, Congress stepped in to safeguard veterans' benefits.

Congress's fidelity to the protection of veterans' benefits has not wavered since. As relevant here, not one iteration of the GI Bill has ever contained an exhaustion requirement like the one imposed by the Federal Circuit's decision below. The Vietnam-era veteran-benefits laws lacked any such rule. *See* Veterans' Readjustment Benefits Act of 1966, Pub. L. No. 89-358, § 2, 80 Stat. 12, 13-14 (imposing only an overall cap on benefits under the World War II, Korean Conflict, and new GI Bill); Act of Oct. 23, 1968, Pub. L. No. 90-631, § d(1), 82 Stat. 1331, 1331 (same). So did the post-Vietnam GI Bill amendments. *See, e.g.*,

Veterans' Rehabilitation and Education Amendments of 1980, Pub. L. No. 96-466, § 404, 94 Stat. 2171, 2201-02 (imposing no exhaustion requirement on benefits arising from separate periods of service).

In 1984, Congress passed the last major update to veterans' educational benefits before the Post-9/11 GI Bill: the Montgomery GI Bill. Even that peacetime law—which, as discussed below, veterans and Congress later recognized as too meager to support wartime service—never contained a requirement like the one the Federal Circuit imposed below. *See* Veterans' Educational Assistance Act of 1984, Pub. L. No. 98-525, § 701, 98 Stat. 2492, 2553-71 (codified at 38 U.S.C. § 3001 et seq.). Instead, like those before it, the Montgomery GI Bill provided qualifying veterans with thirty-six months of educational benefits (this time in statutorily defined, fixed monthly amounts), subject only to 38 U.S.C. § 3695's overall forty-eight-month cap, plus bars on the receipt of "concurrent[]" benefits from this bill and prior GI Bills, and on receiving credit under multiple GI Bills for the same service period. *See* 38 U.S.C. §§ 3011(a), 3014(a)(2), 3015(a)(1)(A), 3033(a)(1), (c). In short, until the Federal Circuit's en banc decision here, not a single law providing educational benefits to veterans ever imposed a rule like the one adopted below.

B. Congress Intended The Post-9/11 GI Bill To Radically Expand Educational Benefits For Veterans

Thus, even if Congress merely intended the Post-9/11 GI Bill to continue the longstanding tradition described above, the inclusion of an exhaust-or-forfeit rule like the one imposed by the Federal Circuit would have been surprising, to say the least. But that is not,

at all, what Congress meant the Post-9/11 GI Bill to do. Instead, by 2008, it had become clear that the Montgomery GI Bill was failing returning veterans. Congress passed the Post-9/11 GI Bill—and rejected a less generous alternative proposal—precisely to remedy this problem, and transform the system into one much more like the original, 1944 GI Bill.

The Post-9/11 GI Bill came to life as the Montgomery GI Bill had begun to flatline. In its own time, the Montgomery GI Bill was seen as generous. It paid veterans more than its predecessor, though substantially less than the original GI Bill of 1944. *See* Richard Halloran, *G.I. Bill, Once a Reward, Is Now a Lure to Sign Up*, N.Y. Times (Dec. 5, 1986), https://www.nytimes.com/1986/12/05/us/washington-talk-pentagon-gi-bill-once-a-reward-is-now-a-lure-to-sign-up.html. Yet by the Iraq-and-Afghanistan era, the Montgomery GI Bill had failed to keep pace with the rising costs of education and inflation.

Veterans decried this sorry state of affairs. Their advocates told Congress that the Montgomery GI Bill's outdated, fixed monthly benefits had become "an embarrassment," were mere "lip service," and were "fall[ing] far short of meeting" the needs of today's college students. *Hearing on Pending Benefits Legislation: Hearing Before the S. Comm. on Veterans' Affairs*, 110th Cong. 75 (2008) ("*May 7, 2008 Hr'g*") (statement of Raymond C. Kelley, Nat'l Legislative Dir., AMVETS); *id.* at 67 (statement of Eric A. Hilleman, Deputy Dir. of the Nat'l Legislative Service, VFW). As one leading advocate explained, the Montgomery GI Bill—which provided only a monthly stipend totaling $9,306 over a full academic year—was by 2008 covering only 53% of the total average cost of higher education. *Pending*

Montgomery GI Bill Legislation: Hearing Before the H. Subcomm. on Economic Opportunity of the Comm. on Veterans' Affairs, 110th Cong. 9 (2008) ("*Jan. 17, 2008 Hr'g*") (statement of Eric Hilleman); *see* 154 Cong. Rec. S4714 (daily ed. May 22, 2008) (statement of Sen. Jon Tester) (existing benefits were merely "a drop in the bucket" for many schools). This made it "difficult" and sometimes "prohibitive" for veterans to attend college at all. *Jan. 17, 2008 Hr'g* at 9 (statement of Eric Hilleman). The Montgomery GI Bill, quite simply, was "not meeting the needs of our veterans." *Id.*

Congress agreed. Across the board, legislators wanted a new, more muscular GI Bill for the twenty-first century. But there was some disagreement as to just how far new legislation should go. One proposed version, backed by VA at the time, was fairly modest. *See* S. 2938, 110th Cong. (2008). Under this approach, Congress would only have "modernized" the Montgomery GI Bill, but not "throw[n] it out" or "reinvent[ed] the wheel." *May 7, 2008 Hr'g* at 13-14 (statement of Sen. Graham) (contrasting this bill with the one later adopted). In substance, this bill would have retained the Montgomery GI Bill's fixed monthly payment scheme, merely bumping the allotted monthly benefits for most veterans up to $1,500. *Id.*; *see* S. 2938, 110th Cong. § 4(a)(1).

But Congress rejected that proposal in favor of a more ambitious overhaul of the structure of GI Bill benefits. Instead of S. 2938, Congress took up and enacted S. 22, a bill introduced by Senator Jim Webb that *did* seek to reinvent the veteran-benefits wheel. The text of that bill made its purpose clear: The "current educational assistance program for veterans"—that is, the Montgomery GI Bill—was

"outmoded," "designed for peacetime service," and not able to provide for the veterans who had experienced the "especially arduous" conditions of post-9/11 service. Post-9/11 Veterans Educational Assistance Act of 2008, Pub. L. No. 110-252, § 5002, 122 Stat. 2323, 2358 (codified at 38 U.S.C. § 3301 note). Those conditions demanded "enhanced educational benefits that are worthy of such service and are commensurate with the educational assistance benefits provided by a grateful nation to veterans of World War II." *Id.* Congress's purpose, in the text it enacted, was thus clear. For those serving after September 11, it wanted to radically expand the moribund Montgomery GI Bill into a more robust GI Bill for the new millennium.

Deliberations preceding that enactment drove the point home. Senator Webb, who sponsored S. 22, explained that "the Montgomery GI Bill makes it very tough for these young men and women to get into better schools which they might be able to if they had this kind of assistance." *Hearing on Pending Benefits Legislation: Hearing Before the S. Comm. on Veterans' Affairs*, 110th Cong. 5-6 (2007). Representative Bobby Scott, who was the bill's lead sponsor in the House, agreed—and put a finer point on it: "The current [Montgomery] GI Bill does not honor [veterans'] service sufficiently." 154 Cong. Rec. H3940 (daily ed. May 15, 2008). In particular, Representative Scott decried the Montgomery GI Bill as falling "far short in meeting the needs of today's college students"—*especially* those, like Petitioner, "who have served multiple tours of duty and . . . are getting pulled away from school, their jobs, and their families." *Id.* As "statement[s] of . . . the legislation's sponsors, th[ese] explanation[s] deserve[] to be accorded substantial weight in interpreting the

statute." *Fed. Energy Admin. v. Algonquin SNG, Inc.*, 426 U.S. 548, 564 (1976).

Other legislators echoed these points—some even more forcefully. They explained that the Montgomery GI Bill "[wa]s not meeting the needs of our veterans," 154 Cong. Rec. H5701 (daily ed. June 19, 2008) (statement of Rep. Mitchell); had become "woefully inadequate," 154 Cong. Rec. S4714 (daily ed. May 22, 2008) (statement of Sen. Tester); and was simply incapable of doing "what we have historically been able to do and willing to do for those who serve our country," 154 Cong. Rec. S4468 (daily ed. May 20, 2008) (statement of Sen. Dorgan).

In sum, Congress's *chief purpose* in enacting the Post-9/11 GI Bill (and rejecting its competitor) was to depart from the "outmoded," "woefully inadequate," and "embarrassing" Montgomery GI Bill—in other words, to do "something very different" entirely. *Id.* (statement of Sen. Dorgan).

And different it was: Unlike the Montgomery GI Bill's fixed monthly stipends, the Post-9/11 GI Bill keyed benefits to the *actual* cost of education. *See* 38 U.S.C. § 3313(c)(1)(A)(i) (granting "the actual net cost for in-State tuition" at public universities); *id.* § 3313(c)(1)(A)(ii) (similar for private universities); *id.* § 3317(d) (providing for cost-sharing up to *total* cost of participating private universities). And on top of that, the new Post-9/11 GI Bill also added "a host of smaller benefits," such as a $1,000 annual stipend for books, $1,200 for tutoring, and $2,000 for exam fees. *See* Joseph B. Keillor, *Veterans at the Gates: Exploring the New GI Bill and Its Transformative Possibilities*, 87 Wash. U. L. Rev. 175, 182 (2009) (collecting authorities). All told, "the new benefits [would] often approximately double the value

of benefits previously paid to veterans under the Montgomery GI Bill." *Id.* at 184; *see* Michael J. Carden, *New GI Bill Provides Increased Educational Benefits*, U.S. Army (July 29, 2008), https://www.army.mil/article/11318/new_gi_bill_provides_increased_educational_benefits (estimating annual value of Post-9/11 GI Bill benefits at $80,000, or "double the value of those in the previous program").

C. The Federal Circuit's Decision Conflicts With Congress's Clear Goal Of Expanding Veterans' Educational Benefits

For veterans with two qualifying entitlements—one under the Montgomery GI Bill and another under the Post-9/11 GI Bill—all agree that there is a forty-eight-month cap on the *total* benefits available under both bills. The issue is this: Must such veterans, who have used *some* Montgomery GI Bill benefits, use *all* remaining Montgomery GI Bill entitlement before receiving a final twelve months of more generous Post-9/11 GI Bill benefits? Or do these veterans' second, independently qualifying periods of service entitle them to use a full thirty-six months of Post-9/11 GI Bill benefits immediately, and then whatever Montgomery GI Bill benefits might be left over (up to the forty-eight-month total cap)?

Below, the en banc Federal Circuit chose the first option: Veterans with multiple periods of service must exhaust Montgomery GI Bill benefits they have started using, before accessing the more generous Post-9/11 GI Bill benefits to which their service entitles them—or they must forgo twelve months of benefits entirely. *See* Pet. App. 2a (requiring such veterans to "exhaust[] their Montgomery benefits").

That interpretation is untenable given the history outlined above. Congress's whole purpose in enacting the Post-9/11 GI Bill was to replace the Montgomery GI Bill with a vastly expanded regime for those serving after September 11. That was because the Montgomery GI Bill was "fall[ing] far short in meeting the needs" of today's veterans—*especially* those "who have served multiple tours of duty and [we]re getting pulled away from school." 154 Cong. Rec. H3940 (daily ed. May 15, 2008) (statement of Rep. Scott). Yet the Federal Circuit's holding condemns *exactly* those veterans to years of the very Montgomery GI Bill benefits Congress thought it was replacing with the Post-9/11 GI Bill. Under the Federal Circuit's rule, veterans like petitioner—who served once in active duty and began school before interrupting that education to serve their country again after September 11—must exhaust *all* thirty-six months of "woefully inadequate" Montgomery GI Bill benefits before accessing merely twelve months of the much more valuable Post-9/11 benefits (or else give up twelve months of their benefits altogether). *See* 154 Cong. Rec. S4714 (daily ed. May 22, 2008) (statement of Sen. Tester).

The Court should reject this anomalous outcome. It would make little sense for a Congress singularly focused on improving Montgomery GI Bill benefits to turn around and require veterans like petitioner to exhaust exactly those benefits before gaining access to the more generous Post-9/11 GI Bill system. It would be all the more absurd for a Congress specifically aiming to support veterans who had "served multiple tours of duty," and been "pulled away from school" by their calling to national service, to concoct and impose such a rule for the first time in

our Nation's history. 154 Cong. Rec. H3940 (daily ed. May 15, 2008) (statement of Rep. Scott). If Congress wanted to make sure such veterans received the expanded benefits it was now providing, it is hard to fathom why it would have forced those veterans to first use up the "embarrassing" Montgomery GI Bill benefits before obtaining (and for up to twelve months at most) the new, vastly expanded benefits available under the Post-9/11 GI Bill.

Indeed, the Federal Circuit's rule, even if construed most narrowly, *but see supra* note 2, would uniquely disadvantage veterans (like petitioner) who chose to pursue education between qualifying periods of service. Consider two hypothetical veterans. Each served in the Army from 1998 to July 2001, earning thirty-six months of Montgomery GI Bill entitlement. Each then reenlisted in November 2001, after the September 11 terror attacks, and served until 2009—earning thirty-six months of Post-9/11 GI Bill entitlement. The only difference between the two is this: Upon finishing their first periods of service in 2001, one enrolled in school and began using his Montgomery GI Bill benefits in September and October 2001; the other went directly to work before returning to service, so only began school in 2009.

On the Federal Circuit's reading of Section 3327(a)(1)(A) and (d)(2), the second veteran—who spent two months working rather than going to school—could leave military service in 2009 and make full use of her thirty-six months of Post-9/11 GI Bill benefits, plus twelve months of Montgomery GI Bill benefits, up to the forty-eight-month cap. That is because the provision that the Federal Circuit relied on applies only to those who have "used, but retain[] unused," Montgomery GI Bill benefits—not those who

have "not used any entitlement" under the Montgomery GI Bill at all. 38 U.S.C. § 3327(d)(2) (applying only to persons covered by paragraph (a)(1)(A), which covers the former, not (a)(1)(C), which covers the latter).[3]

But the first veteran—who began college under the Montgomery GI Bill before quickly choosing to forgo that opportunity and return to military service after September 11—is in a much different position. Because he used two months of Montgomery GI Bill benefits in 2001, he (like petitioner) faces a choice when he returns: He can use 34 more months of the much-less-valuable Montgomery GI Bill benefits and then, if still useful, a mere twelve months of Post-9/11 GI Bill benefits. Or he can "elect[]" to convert his thirty-four remaining months of Montgomery GI Bill benefits to Post-9/11 GI Bill benefits—but then must forfeit the other twelve months of benefits to which his initial period of service entitled him.

Neither the Federal Circuit nor VA have ever offered, through this entire proceeding, *any* reason—much less one that the Congress enacting the Post-9/11 GI Bill would have embraced—favoring such an outcome. Because the text, history, and purpose of the Post-9/11 GI Bill resoundingly reject this inequitable result, this Court should too.

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[3] As Petitioner argues, VA's erroneous Form 22-1990 appears to bar even this veteran from using all of the benefits described above. *See* Pet. Br. 23-24. In opposing certiorari, the Solicitor General declined to defend this position. *See* BIO 8, 14.

II. THE PRO-VETERAN CANON CONFIRMS THAT PETITIONER'S INTERPRETATION SHOULD PREVAIL

The Post-9/11 GI Bill's text, especially considered alongside the legislative context discussed above, is more than enough to hold in petitioner's favor and reverse the decision below. *See* Pet. Br. 43-58. But if the Court has any doubt about the meaning of the relevant statutes, it should resolve that doubt in petitioner's favor by reaffirming and applying the long-settled "rule that interpretive doubt is to be resolved in the veteran's favor." *Brown v. Gardner*, 513 U.S. 115, 117-18 (1994). The Court has "long applied" that rule as a means "to ascertain Congress' intent," and it should do so again here if necessary. *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 438, 441 (2011) (collecting cases).

A. The Pro-Veteran Canon Has Deep Roots In American Law And Reflects Congress's Intent

1. In 1943, one year before Congress passed the first GI Bill, this Court declared that laws providing for our Nation's veterans are "always to be liberally construed to protect those who have been obliged to drop their own affairs and 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 Selective Training and Service Act of 1940 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).

In the eight decades since World War II, the rule of construction embodied in the pro-veteran canon has retained its force. When it comes to "those who left private life to serve their country in its hour of great need," *Fishgold*, 328 U.S. at 285, statutes must "be liberally construed for the benefit of the returning veteran," *Coffy v. Republic Steel Corp.*, 447 U.S. 191, 196 (1980); *see King v. St. Vincent's Hosp.*, 502 U.S. 215, 220 n.9 (1991) (reaffirming the "canon that provisions for the benefits to members of the Armed Services are to be construed in the beneficiaries' favor"). Today, this "rule" functions as a tie-breaker: If the underlying statutory provision is unclear, any "interpretive doubt is to be resolved in the veteran's favor." *Brown*, 513 U.S. at 117-18. Or as the Court most recently put it, it takes a "clear indication" of congressional intent to find that a statute meant to benefit veterans "carr[ies] the harsh" results that VA often urges. *Henderson*, 562 U.S. at 441.

2. Although this Court has long embraced the pro-veteran canon, at its core the canon is not a tool of *judicial* policymaking. Rather, it advances fidelity to *congressional* intent. In other words, far from reflecting a judicial policy judgment that veterans are a particularly praiseworthy group who deserve special treatment (true as that is), the pro-veteran canon is a descriptive canon based on the Court's understanding of *Congress's* purposes in enacting laws that benefit veterans. *See, e.g.*, *Regan v. Tax'n with Representation of Wash.*, 461 U.S. 540, 550-51 (1983) (noting Congress's "long standing policy of compensating veterans for their past contributions by providing them with numerous advantages"). "The solicitude of Congress for veterans is long standing." *United States v. Oregon*, 366 U.S. 643, 647 (1961).

The text of our Nation's veteran-benefits laws reflects Congress's longstanding "solicitude" for veterans. For example, unlike almost any other federal agency administering a benefits scheme, VA must *help* veteran claimants develop their claims when appearing before it. *See* 38 U.S.C. § 5103A. And then, when adjudicating those claims, VA must "give the benefit of the doubt to the claimant." *See id.* § 5107(b). The pro-veteran canon thus serves as both a product of and complement to these laws, which "place a thumb on the scale in the veteran's favor." *Henderson*, 562 U.S. at 440 (citation omitted). In doing so, the canon correctly reflects this basic fact: In passing statutes benefitting veterans, Congress understands that courts, like VA, will err in veterans' favor when facing close interpretive calls raised by those statutes.

Thus, as the Court recently explained, the pro-veteran canon is a tool aimed at "ascertain[ing] Congress' intent" as to particular statutory terms. *Id.* at 438. Or as one expert put it, the Court's embrace of this canon rests "upon the premise that Congress . . . created the system with a residual intent that ambiguity be resolved in the favor of veterans." James D. Ridgway, *Toward a Less Adversarial Relationship Between* Chevron *and* Gardner, 9 U. Mass. L. Rev. 388, 408 (2014). So, when a court applies the pro-veteran canon, it does not place its *own* thumb on the scale in favor of a veteran beneficiary. It instead faithfully applies *Congress's* longstanding solicitude for veterans, recognizing that Congress has already placed *its own* "thumb on the scale in the veteran's favor in the course of . . . judicial review of VA decisions." *Henderson*, 562 U.S. at 440 (citation omitted).

3. The Court thus should not hesitate to apply the pro-veteran canon, as a standard tool of statutory construction, when resolving close questions about the meaning of veteran-benefits statutes. After all, "[b]ackground legal conventions," even outside "the four corners of a statute," are "part of the statute's context." *Biden v. Nebraska*, 143 S. Ct. 2355, 2378 (2023) (Barrett, J., concurring) (citation omitted). And "[i]n textual interpretation, context is everything." Antonin Scalia, *A Matter of Interpretation* 37 (1997). "[N]o 'textualist' favors isolating statutory language from its surrounding context . . . ." Caleb Nelson, *What Is Textualism*, 91 Va. L. Rev. 347, 348 (2005).

Deploying the pro-veteran canon to resolve genuine ambiguity in a statute fully adheres to standard principles of textual interpretation. As then-Professor Barrett explained, the view that courts should be "the faithful agents of Congress" does not conflict with the use of substantive canons like this one: "Substantive canons are in no tension with faithful agency insofar as they are used as tie breakers between equally plausible interpretations of a statute." Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 123 (2010). In cases of ambiguity, the pro-veteran canon thus merely gives courts faithfully applying congressional enactments a reliable proxy for the intent of Congress. *See id.*

The pro-veteran canon is an especially reliable tool for understanding congressional intent because, as the Court has recognized, Congress legislates with "background legal conventions" like the canon in mind. *See Biden*, 143 S. Ct. at 2378 (Barrett, J., concurring). The Court generally "presume[s]

congressional understanding of . . . interpretive principles" like "the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *King*, 502 U.S. at 220 n.9; *see id.* (explaining assumption that "Congress legislates with knowledge of our basic rules of statutory construction" (citation omitted)); *Finley v. United States*, 490 U.S. 545, 556 (1989) (noting "paramount importance" of Congress being able to "legislate against a background of clear interpretive rules"). As a result, "[a] traditional and hence anticipated rule of interpretation," like the pro-veteran canon, "imparts meaning" into the very text of the statute at issue. Antonin Scalia & Bryan A. Garner, *Reading Law* 31 (2012).

Here, the Court need not merely "presume" such congressional knowledge. *Amici* know from decades of collective lawmaking in the veterans' space that Congress enacts veteran-benefits statutes against the interpretive backdrop of the pro-veteran canon. The canon is thus self-reinforcing: Because Congress knows that *courts* will apply the pro-veteran canon to the veteran-benefits statutes it enacts, the canon is effectively woven into the text of the laws *Congress* passes. The canon thus works as an "interpretive tool reflecting 'common sense as to the manner in which Congress is likely to legislate'" in the area of veterans' affairs. *Biden*, 143 S. Ct. at 2378 (Barrett, J., concurring) (citation omitted). Especially given the history of this particular statute, the Court should not hesitate to apply such a common-sense assumption of what Congress intended when legislating for the benefit of our Nation's veterans.

B. The Pro-Veteran Canon Favors Petitioner Here

Even if the text and history of the relevant statutes could not resolve the question presented here, the pro-veteran canon would confirm that petitioner's reading is the right one: Section 3327(d)(2)'s "[l]imitation on entitlement for certain individuals" does not apply to multiple-period-of-service veterans like petitioner.[4] As described above, "the new benefits" available under the Post-9/11 GI Bill generally will "*double* the value of benefits previously paid to veterans under the Montgomery GI Bill"—and will often exceed even that. *See* Keillor, *Veterans at the Gates*, *supra*, at 183-84 (emphasis added). *Compare, e.g.*, *id.* at 182-83 (Montgomery GI Bill benefits were fixed at $9,875 per academic year in 2008), *with* U.S. Dep't of Veterans Affairs, *Post-9/11 GI Bill (Chapter 33) Rates: Full Rates for School and Training Programs* (last updated Aug. 10, 2023) https://www.va.gov/education/benefit-rates/post-9-11-gi-bill-rates/ (benefits under the Post-9/11 GI Bill are the actual cost of public universities, and up to $27,120 per year for private universities, before cost-sharing under Section 3317(d)).[5]

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[4] The en banc Federal Circuit held that the pro-veteran canon "play[ed] no role" here because the statutory text unambiguously favored VA. *See* Pet. App. 16a-17a. For the reasons above and in petitioner's brief, the text here—if it does not clearly favor petitioner—is (as the Veterans Court concluded) at least ambiguous. *See* Pet. Br. 59.

[5] The Solicitor General has suggested that adopting petitioner's position might mean that veterans with multiple periods of qualifying service will lose access to some Post-9/11 GI Bill benefits—and that petitioner's position therefore is "not unambiguously pro-veteran." BIO 12-13. Petitioner is right that

In short, the Post-9/11 GI Bill is—as Congress intended—far more generous than the Montgomery GI Bill. Denying access to its benefits would distinctly disadvantage the very veterans Congress sought to protect with this law. Ruling that Section 3327 applies only to veterans with one GI Bill entitlement, on the other hand, would provide multiple-period-of-service veterans, like all others, with the full range of benefits Congress provided in the Post-9/11 GI Bill and its predecessors. So, if the Court is unsure, even after consulting the text and context of the Post-9/11 GI Bill, about the meaning of that law, it should apply the pro-veteran canon and reject the Federal Circuit's interpretation. *See* Pet. App. 127a (Allen, J.) ("[I]f [the pro-veteran canon] would ever have a real effect on an outcome, it would be here.").

* * *

Congress enacted the Post-9/11 GI Bill to help brave and patriotic Americans just like petitioner. After serving his country once in peacetime, he interrupted his undergraduate studies to serve again in the wake of the September 11 terror attacks—this time in Iraq. He did the same again after completing his undergraduate studies, returning to service as a commissioned officer deployed to Iraq and Afghanistan between 2007 and 2011. *See* Pet. 12-13. Each time, petitioner put his country first, placing his own education on hold to do so. Now that petitioner has served his country so honorably, the time has

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this argument "flunks basic math." Pet. Reply 11-12; *see* Pet. Br. 56-60. It vastly underestimates the tremendous worth of Post-9/11 GI Bill benefits, which far outweigh the limited benefits the Solicitor General cites. VA's position is, unequivocally, not pro-veteran.

come for the government to uphold its end of its bargain. The Court should award petitioner the benefits he has earned.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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