No. 25A_____

IN THE

Supreme Court of the United States

FLOYD D. JOHNSON,

Applicant,

v.

UNITED STATES CONGRESS,

Respondent.

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

APPLICATION FOR AN EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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APPLICATION FOR EXTENSION OF TIME IN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

TO: Justice Clarence Thomas, Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

Pursuant to Rules 13.5 and 30.2 of the Rules of this Court, Applicant Floyd D. Johnson respectfully requests a 30-day extension of time, to and including December 17, 2025, within which to file a petition for a writ of certiorari.

JUDGMENT FROM WHICH REVIEW IS SOUGHT

Applicant anticipates seeking review of the attached judgment and opinion of the United States Court of Appeals for the Eleventh Circuit in *Johnson v. United States Congress*, 151 F.4th 1287 (11th Cir. 2025) (No. 23-10682). App. 1-17. The court entered judgment on August 19, 2025. App. 1.

JURISDICTION

This Court has jurisdiction to review the Eleventh Circuit's judgment and opinion under 28 U.S.C. § 1254(1). Unless extended, the deadline for filing a petition for a writ of certiorari expires on November 17, 2025. This application is being filed more than 10 days before the expiration date. Applicant has not requested any prior extensions of the deadline.

BACKGROUND

1. Applicant Floyd D. Johnson, a United States Army veteran, applied for service-connected disability benefits after a diagnosis of post-traumatic stress disorder. App. 2-3. The Veterans Administration (VA) determined that Mr. Johnson's disability should be rated at 80 percent. *Id.* at 3. But because Mr. Johnson is serving a lengthy prison sentence after conviction for several state felonies, the VA reduced Mr. Johnson's monthly benefits to a 10 percent rate pursuant to 38 U.S.C. § 5313(a)(1)(A). *Id.*

2. Mr. Johnson filed a *pro se* complaint against the United States Congress, alleging that Section 5313 violated both the Bill of Attainder Clause, U.S. Const. art. I, § 9, cl. 3, and the Equal Protection component of the Fifth Amendment, *id.* amend. V. App. 3. A magistrate judge, screening the complaint pursuant to 28 U.S.C. § 1915A, recommended dismissing the complaint on the merits under 28 U.S.C. § 1915(e)(2)(B), App. 3, and the district judge adopted the recommendation. *Id.* at 4.

3. On appeal, the Eleventh Circuit granted Mr. Johnson's motion for the appointment of counsel, reasoning that Mr. Johnson's appeal "present[ed] a novel issue" and that he had a "nonfrivolous argument that his claim was wrongly dismissed." Order at 3, ECF 18-2. The undersigned counsel was then appointed by the court to represent Mr. Johnson. Order at 2, ECF 20-2.

Ultimately, however, the Eleventh Circuit vacated the district court's decision and remanded with instructions to dismiss the case without prejudice for lack of jurisdiction. App. 17.

The panel first held that Mr. Johnson could not sue Congress because Congress had not waived sovereign immunity for challenges to Section 5313. App. 7. Usually, that defect would not be fatal: A plaintiff who names the wrong federal government defendant can amend the complaint to name a proper defendant—in this case, the Secretary of Veterans Affairs. But the Eleventh Circuit held that any amendment would be futile here because in the Veterans' Judicial Review Act (VJRA), "Congress has vested exclusive jurisdiction to review challenges to the constitutionality of veterans' benefits laws in the Court of Appeals for Veterans Claims and in the United States Court of Appeals for the Federal Circuit," thereby depriving federal district courts of jurisdiction to hear such challenges. *Id.; see* 38 U.S.C. § 511(a).

REASONS FOR GRANTING THE EXTENSION

1. This case is a serious candidate for review by this Court. The Eleventh Circuit panel acknowledged that "some of [its] sister circuits" had reached the opposite conclusion and had permitted district courts to hear constitutional challenges to federal statutes governing veterans' benefits. App. 11-12.

There is indeed an entrenched and longstanding split among the circuits on this issue. *Compare, e.g.*, *Disabled Am. Veterans v. U.S. Dep't of Veterans Affs.*, 962 F.2d 136, 140, 141 (2d Cir. 1992) (finding district court jurisdiction to

entertain a constitutional challenge to a "statutory classification drawn by Congress" denying benefits to veterans without dependents); *Gila River Indian Cmty. v. U.S. Dep't of Veterans Affs.*, 899 F.3d 1076, 1079 (9th Cir. 2018) (reaffirming that Section 511(a) "allows the exercise of jurisdiction" by federal district courts over "facial constitutional challenges" to veterans' benefits statutes), *with Hicks v. Veterans Admin.*, 961 F.2d 1367, 1370 (8th Cir. 1992) (Section 511(a) strips district courts of jurisdiction over "all issues, even constitutional ones").

Moreover, the issue of where veterans should bring constitutional challenges to congressional statutes governing veterans' benefits is an important one. There is uncertainty within the administrative process to which the Eleventh Circuit has relegated Mr. Johnson's claim regarding whether and how that claim could even be adjudicated. And veterans' access to federal courts should not depend on where they live.

2. The Eleventh Circuit's decision here is also in tension with this Court's decision in *Johnson v. Robison*, 415 U.S. 361 (1974). There, this Court held that the prior version of Section 511(a) (codified at 38 U.S.C. § 211(a) (1970)), which provided that no court of the United States should "have power or jurisdiction to review any [benefits] decision" by the Veterans Administration did not bar district courts from "deciding the constitutionality of veterans' benefits *legislation*." *Johnson*, 415 U.S. at 366-67 (emphasis added). This Court reasoned that, because the statute's no-review provision applied only to "decisions of the

[VA] Administrator" made "under" statutes, the district court had jurisdiction to hear a First Amendment challenge to a statute denying veterans' benefits to conscientious objectors who performed alternative service. *Id.* at 364, 366, 367. As the Court explained, a constitutional challenge does not involve a "decision of the Administrator"; rather, it involves "a decision of Congress." *Id.* at 367. Nothing in the amendments to Section 511(a) undercuts that reasoning.

3. This application is not filed for purposes of delay. Applicant's counsel is currently consumed with a wide range of matters. Accordingly, the time sought here is necessary to produce the best possible work product.

For all of these reasons, Applicant respectfully requests the entry of an order extending his time to file his petition for a writ of certiorari until December 17, 2025.

Respectfully submitted,

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