No. 25-_____

IN THE

Supreme Court of the United States

FLOYD D. JOHNSON,

Petitioner,

v.

UNITED STATES CONGRESS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

Easha Anand
Brian H. Fletcher
Pamela S. Karlan
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305

Patrick C. Fagan
Jeffrey W. Chen
Counsel of Record
BONDURANT MIXSON &
ELMORE LLP
1201 W. Peachtree St. NW
Suite 3900
Atlanta, GA 30309
Chen@bmelaw.com
(404) 881-4104

QUESTION PRESENTED

Did the Veterans' Judicial Review Act strip district courts of the jurisdiction, recognized by this Court in *Johnson v. Robison*, 415 U.S. 361 (1974), to hear challenges to the constitutionality of acts of Congress affecting veterans' benefits?

RELATED PROCEEDINGS

Johnson v. United States Congress, No. 6:22-cv-00504-WB-DAB (M.D. Fla Nov. 14, 2022)

Johnson v. United States Congress, No. 23-10682-H (11th Cir. Aug. 19, 2025)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Floyd D. Johnson respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eleventh Circuit (Pet. App. 1a-16a) is published at 151 F.4th 1287. The district court's order (Pet. App. 17a-20a) is unpublished but available at 2022 WL 18716714.

JURISDICTION

The judgment of the court of appeals was entered on August 19, 2025. Pet. App. 1a. On November 4, 2025, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including December 17, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The Appendix to this petition reproduces the relevant provisions of the Veterans' Judicial Review Act (codified, as amended, in various sections of 38 U.S.C.).

INTRODUCTION

In *Johnson v. Robison*, 415 U.S. 361 (1974), this Court unanimously held that district courts have subject matter jurisdiction over constitutional challenges to acts of Congress governing veterans' benefits. Specifically, the Court held that the so-called

"no-review clause" in 38 U.S.C. § 211(a) (1970) did not preclude review of such claims. 415 U.S. at 369. By its terms, that clause barred judicial review of "decisions of the Administrator" of Veterans Affairs made "under [a] law administered by the Veterans Administration." By contrast, the Court explained, a constitutional challenge to a federal statute both "is not [a challenge] to any such decision of the Administrator, but rather to a decision of *Congress*" and "'arise[s] under the Constitution, not under the statute whose validity is challenged.'" *Id.* at 367 (citation omitted).

Fourteen years later, Congress enacted the Veterans' Judicial Review Act (VJRA). Pub. L. No. 100-697, 102 Stat. 4105 (1988) (codified, as amended, in various sections of 38 U.S.C.). In the VJRA, Congress provided judicial review in the Court of Appeals for the Federal Circuit of many individual benefits decisions previously covered by the no-review clause. Congress also retained an amended no-review clause. *See* 38 U.S.C. § 511(a). But Congress preserved the language on which this Court had relied in *Robison*: The clause continues to apply only to "decision[s]" by the Secretary of Veterans Affairs made "under" a law that affects the provision of benefits. *Id.*

The decision below solidifies a circuit split over whether *Robison* remains good law or whether the VJRA now precludes district courts from hearing constitutional challenges to federal statutes. The Eleventh Circuit acknowledged that "some of [its] sister circuits" continue to find jurisdiction over such claims. Pet. App. 11a. Indeed, a majority of them do. Nevertheless, the Eleventh Circuit explicitly broke with that prevailing view, joining the Eighth Circuit

in holding that district courts no longer have the jurisdiction this Court recognized in *Robison*.

A veteran's access to the courts should not vary depending on where he lives. This case presents an ideal vehicle for resolving this conflict on an important question of federal law. The Court should grant review and reaffirm *Robison*'s unanimous jurisdictional holding. Nothing in the text, structure, or purpose of the VJRA deprives district courts of their jurisdiction to adjudicate constitutional challenges to acts of Congress under 28 U.S.C. § 1331.

STATEMENT OF THE CASE

A. Legal background

1. Congress established the Veterans Administration (VA) to provide "relief and other benefits provided by law" for United States military veterans. Act of July 3, 1930, ch. 863, § 1, 46 Stat. 1016, 1016. For many years, Congress foreclosed review of challenges to the VA's benefits decisions with a clause providing that "no . . . court of the United States shall have power or jurisdiction to review" any "decisions of the Administrator" made "under any law" providing veterans' benefits. 38 U.S.C. § 211(a) (1970).

In *Johnson v. Robison*, 415 U.S. 361 (1974), this Court held that judicial review over challenges to the constitutionality of acts of Congress fell outside the scope of Section 211(a)'s no-review clause. The Court held that district courts have jurisdiction to "decid[e] the constitutionality of veterans' benefits *legislation*." *Robison*, 415 U.S. at 366 (emphasis added). Emphasizing the specific language Congress had used in Section 211(a), the Court explained that the

section's no-review clause applied only to "*decisions* of the Administrator" made "*under*" statutes. *Id.* at 367 (emphasis supplied by the Court). The district court in *Robison* thus had jurisdiction to hear a First Amendment challenge to a statute denying veterans' benefits to conscientious objectors who performed alternative service. *See id.* at 364-67. As the Court explained, this type of constitutional challenge does not involve a "decision of the *Administrator*"; rather, it involves "a decision of *Congress*." *Id.* at 367.

2. In 1988, as part of its restructuring of the VA, Congress enacted the Veterans' Judicial Review Act (VJRA). With the VJRA, Congress sought to address, among other "unjust features," the "no longer tenable" rule precluding any judicial review of benefits decisions. S. Rep. No. 100-418, at 30 (1988).

The VJRA did two things to address that problem. First, it created a pathway for veterans ultimately to obtain judicial review of individual benefits decisions. Second, it modified Section 211(a) (which was later recodified as 38 U.S.C. § 511(a)).

a. With respect to individual benefits decisions, the VJRA sets out a four-stage process:

- **VA Regional Office:** When a veteran applies for benefits, non-attorney staff in a regional office make an initial determination by reviewing the veteran's record against administrative guidance. *See* Jeffrey Parker, *Two Perspectives on Legal Authority Within the Department of Veterans Affairs Adjudication*, 1 Veterans L. Rev. 208, 208, 210 (2009). This determination is denominated a "decision by the Secretary." 38 U.S.C. § 511(a).

- **Board of Veterans' Appeals (BVA):** A veteran dissatisfied by the regional office decision can seek *de novo* review of a benefits determination before administrative adjudicators (referred to as Veterans Law Judges) on the BVA. 38 U.S.C. § 7104; *See* Daniel T. Shedd, *The Board of Veterans' Appeals: A Brief Introduction*, Cong. Research Serv. (2024), https://www.congress.gov/crs-product/IF12680. The BVA's decision is treated as the final decision of the Secretary. 38 U.S.C. § 7104; *see Beamon v. Brown*, 125 F.3d 965, 967 (6th Cir. 1997).
- **Court of Appeals for Veterans Claims (CAVC):** A veteran may seek review of an adverse BVA decision in the CAVC, an Article I court. 38 U.S.C. §§ 7251-7252. By contrast, the Secretary cannot appeal a BVA decision. *Id.* § 7252(a). Review in the CAVC is limited to the decision of the BVA and the record of the proceedings below. *Id.* § 7252(a)-(b).
- **Court of Appeals for the Federal Circuit:** Either the veteran or the Secretary may seek judicial review of a final CAVC decision in the Federal Circuit. 38 U.S.C. § 7292(a). The Federal Circuit has "exclusive jurisdiction" to review CAVC decisions. *See id.* § 7292(c). Only at this final stage of review does jurisdiction expressly extend to determinations of a statute's "validity." *Id.*

b. The VJRA exempted from the no-review clause "matters covered" by the new procedures for reviewing individual benefits decisions in the CAVC and the Federal Circuit. 38 U.S.C. § 511(b)(4). The VJRA also

expanded the no-review clause to cover any "decision by the Secretary under a law that *affects* the provision of benefits," rather than just laws administered by the VA. 38 U.S.C. § 511(a) (emphasis added). That amendment responded to *Traynor v. Turnage*, 485 U.S. 535 (1988), which had held that the no-review clause did not apply to a challenge to a benefits policy brought under § 504 of the Rehabilitation Act—a statute that is not administered by the VA. *Id.* at 537, 543.

But Congress retained in Section 511(a) the relevant "decisions . . . under" language on which this Court had relied in *Robison* to find district court jurisdiction over constitutional challenges to federal statutes. *See* H.R. Rep No. 100-963, at 19 (1988) (describing *Robison's* holding as "clearly correct").[1]

B. Factual and procedural background

1. Floyd Johnson is a veteran who served in the U.S. Army from 1983 to 1985. While serving in Germany, he experienced a combat training exercise that turned deadly. Statement in Supp. of Claim at 1, ECF No. 1-2. Mr. Johnson earned medals and commendations for his service and was honorably discharged. *Id.*[2]

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[1] Congress did substitute the word "Secretary" for "Administrator" to reflect the fact that the Veterans Administration had become a Cabinet-level agency (the Department of Veterans Affairs).

[2] Because Mr. Johnson's claims were dismissed at the complaint stage, the facts alleged in his complaint are taken as true. *Nat'l Rifle Ass'n v. Vullo*, 144 S. Ct. 1316, 1322 (2024).

In 2013, Mr. Johnson was convicted in Florida of several felonies and sentenced to a lengthy prison term. Pet. App. 2a. While incarcerated, he was diagnosed with post-traumatic stress disorder (PTSD). *Id.*

As a result of his PTSD diagnosis, Mr. Johnson applied for service-connected disability benefits from the VA. Pet. App. 2a. Initially, the VA classified him as having a 70 percent disability rating. *Id.* But after an administrative appeal, *id.*, the VA agreed that his disability merited an 80 percent rating, *id.*[3]

But a separate statute reduces the benefits for veterans who have been incarcerated for a felony conviction for more than sixty days. 38 U.S.C. § 5313. Such veterans cannot receive benefits corresponding to more than a 10 percent disability rating, no matter how severe their service-related disability. 38 U.S.C. § 5313(a)(1)(A). As a result, a veteran whose arm was amputated—rated at 80 percent disabling under 38 C.F.R. § 4.71a—would be compensated at the same level as a servicemember who lost an eyebrow, *id.* § 4.79.

2. Mr. Johnson filed a *pro se* complaint in the U.S. District Court for the Middle District of Florida. Pet. App. 3a. He did not argue that the VA misapplied Section 5313(a). Instead, he alleged that Section 5313(a) violated both the Bill of Attainder Clause and the equal protection component of the Fifth Amendment's Due Process Clause. *Id.* Because Congress enacted the statute and Mr. Johnson was

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[3] Disability ratings are based on "the ability of the body as a whole, or of the psyche, . . . to function under the ordinary conditions of daily life including employment." 38 C.F.R. § 4.10.

proceeding *pro se*, he named the United States Congress as the defendant. *Id.* 2a.

A magistrate judge screened Mr. Johnson's complaint pursuant to 28 U.S.C. § 1915(A). The magistrate judge recognized that, "to the extent [Mr. Johnson] alleges only facial constitutional challenges," rather than a challenge to a particular benefits determination, "the Court may have jurisdiction." Pet. App. 28a. But she then recommended dismissing the complaint on the merits under 28 U.S.C. § 1915(e)(2)(B). Pet. App. 24a. The district court adopted that recommendation. *Id.* 22a.

3. Mr. Johnson appealed the dismissal and moved for appointment of counsel. Pet. App. 19a. The Eleventh Circuit granted the motion, reasoning that Mr. Johnson's appeal presented "a novel issue" and that he had a "nonfrivolous argument that his claim was wrongly dismissed." *Id.* 20a. After briefing, the Eleventh Circuit directed the parties to be prepared to discuss at oral argument the question whether Congress had waived its sovereign immunity. *Id.* 4a. Mr. Johnson responded by moving to amend the complaint to "formally name the proper defendants" if the original complaint's "express identification of and request for relief against the VA was not sufficient to sustain jurisdiction." Appellant's Motion to Amend to Resolve Jurisdictional Question 2-3 (July 14, 2025), BL-53.

4. After oral argument, the Eleventh Circuit vacated the district court's judgment and remanded the case with instructions to dismiss the complaint without prejudice for lack of jurisdiction. Pet. App. 2a.

The panel first held that Mr. Johnson could not sue Congress because Congress had not waived sovereign immunity for challenges to Section 5313. Pet. App. 7a. Usually, that defect would not be fatal: A plaintiff who names the wrong federal defendant can amend the complaint to name a proper defendant—here, the Secretary of Veterans Affairs. *See Krupski v. Costa Crociere S.p.A.*, 560 U.S. 538, 550 (2010) (citing Fed. R. Civ. P. 15(c)(1)(C)).

But the Eleventh Circuit held that any amendment would be futile here because the VJRA precluded district court jurisdiction. The panel acknowledged that "some of our sister circuits" had reached the opposite conclusion. Pet. App. 11a. But it nevertheless held that "Congress has vested exclusive jurisdiction" over constitutional challenges to veterans' benefits laws in the CAVC and the Federal Circuit. *Id.* 7a.

The Eleventh Circuit thought that the VJRA abrogated *Robison* even though Section 511(a) carries forward the "decisions" of the Secretary "under" a law language from Section 211(a). *See* Pet. App. 14a. In reaching this conclusion, the panel relied on *Elgin v. Dep't of Treasury*, 567 U.S. 1 (2012), a case construing the Civil Service Reform Act, for the proposition that congressional intent to preclude district court jurisdiction can be "fairly discern[ed]" from a "statutory scheme." Pet App. 9a (internal quotation marks omitted). The panel then discerned that intent in the VJRA's provisions authorizing judicial review of benefits decisions in the Federal Circuit and in Section 511(a)'s language barring judicial review of "decision[s] of the Secretary" as to any "questions of law . . . under a law that affects the provision of

benefits," which the panel read to encompass constitutional challenges to statutes. Pet. App. 7a-10a (quoting 38 U.S.C. § 511(a)).

Thus, "[e]ven if Johnson were to remove Congress as a defendant and assert only a facial constitutional challenge" to the statute against an appropriate agency defendant, the Eleventh Circuit believed that the district court would lack jurisdiction. Pet. App. 16a. The Eleventh Circuit thus vacated the district court decision and remanded with instructions to dismiss without prejudice for lack of jurisdiction.

REASONS FOR GRANTING THE WRIT

I. There is an intractable and acknowledged split on the question presented.

A. In six circuits, district courts can hear constitutional challenges to veterans' benefits statutes.

1. Since the enactment of the VJRA, the Second, Ninth, and D.C. Circuits have found jurisdiction over cases brought in district courts raising constitutional challenges to federal statutes.

The Second Circuit holds that Section 511(a) "does not deprive [district courts] of jurisdiction to hear facial challenges of legislation affecting veterans' benefits." *Disabled Am. Veterans v. U.S. Dep't of Veterans Affs.*, 962 F.2d 136, 140 (2d Cir. 1992). Thus, that court found jurisdiction to consider a Fifth Amendment challenge to a statute suspending benefits to disabled veterans without dependents. *Id.* at 138, 140. Because the veterans challenged "the constitutionality of a statutory classification drawn by

Congress," rather than individual benefits decisions by the VA, "the district court had jurisdiction to consider their claim." *Id.* at 141. Courts in the Second Circuit recognize that "facial challenges to the constitutionality of a statute, even if they may affect veterans' benefits, are not limited to the VJRA process." *Nat'l Org. for Women-N.Y.C. v. U.S. Dep't of Def.*, 755 F. Supp. 3d 350, 360 (S.D.N.Y. 2024).[4]

The Ninth Circuit has held repeatedly that Section 511(a) does not bar district court jurisdiction over constitutional challenges to federal statutes. *See Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1033 (9th Cir. 2012) (en banc); *Recinto v. U.S. Dep't of Veterans Affs.*, 706 F.3d 1171, 1176 (9th Cir. 2013). In *Recinto*, for example, veterans challenged a statute on Fifth Amendment equal protection grounds "because it [gave] fewer benefits to Filipino veterans" than to other veterans. 706 F.3d at 1177. The Ninth Circuit concluded that it (and the district court) had jurisdiction because "[e]valuation of [the equal protection] claim only requires us to look at the text of the statute," and not at "whether individual claimants have a right to veterans benefits." *Id.* at 1175, 1176. The Ninth Circuit has since reaffirmed that Section 511(a) "allows the exercise of jurisdiction over certain facial constitutional challenges." *Gila River Indian*

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[4] Courts often refer to these claims as "facial" challenges. While the word "facial" can have different meanings, here it refers to "constitutional claims that attack the validity of a statute based on its inherent characteristics, not as a result of how the statute has been applied." *Elgin v. Dep't of Treasury*, 567 U.S. 1, 35 (2012) (Alito, J., dissenting).

Cmty. v. U.S. Dep't of Veterans Affs., 899 F.3d 1076, 1079 (9th Cir. 2018).

2. The D.C. Circuit has also exercised jurisdiction over constitutional challenges to veterans' benefits statutes. Faced with a constitutional challenge to a statute that excluded Philippine Army veterans who served with the U.S. Army during World War II from benefits for non-service-connected disabilities, the district court initially "dismissed the complaint on jurisdictional grounds." *Quiban v. U.S. Veterans Admin.*, 713 F. Supp. 436, 437 (D.D.C. 1989), *rev'd*, 928 F.2d 1154 (D.C. Cir. 1991). But the D.C. Circuit "vacated the dismissal and remanded the case for consideration of the constitutionality" of the exclusion, *id.* (citing *Johnson v. Robison*, 415 U.S. 361 (1974)). Accordingly, the district court, and the D.C. Circuit in an opinion by then-Judge Ruth Bader Ginsburg, addressed the merits of the plaintiff's claim. *Quiban v. Veterans Admin.*, 928 F.2d 1154, 1156 (D.C. Cir. 1991). More recently, in *Prewitt v. McDonough*, 633 F. Supp. 3d 195 (D.D.C. 2022), Judge Moss exercised jurisdiction over a facial challenge to the VJRA process, explaining that "[f]acial challenges are still challenges to decisions of Congress, not to decisions rendered by the Secretary, and the trigger for Section 511(a)'s preclusion of jurisdiction is still a 'decision of the Secretary.'" *Id.* at 203 (quoting 38 U.S.C. § 511(a)).

3. In holding that the Federal Circuit has exclusive jurisdiction over *other* types of claims, the Fifth, Sixth, and Seventh Circuits recognize that district courts *do* have jurisdiction over constitutional challenges to statutes.

In the Fifth Circuit, district court jurisdiction turns on "whether the plaintiff is alleging a facial

attack on the constitutionality" of a veterans' benefits statute "or whether the plaintiff is challenging the VA's decision to deny him benefits." *Zuspann v. Brown*, 60 F.3d 1156, 1158 (5th Cir. 1995). Looking at Section 511(a), the court held that if a plaintiff "makes a facial challenge to a statute, then the district court has jurisdiction to hear his case." *Id.* Relying on *Zuspann*, a district court in the Fifth Circuit has exercised jurisdiction over several constitutional challenges to 38 U.S.C. § 5313—the statute that Mr. Johnson seeks to challenge here. *Sorrow v. United States*, 2020 WL 13280677, at *7 (S.D. Tex. Oct. 27, 2020), *report and recommendation adopted*, 2021 WL 8441967 (S.D. Tex. Feb. 9, 2021).

The Sixth Circuit has also recognized that "district court jurisdiction over facial challenges to acts of Congress survived the statutory revisions" of the VJRA. *Beamon v. Brown*, 125 F.3d 965, 972-73 (6th Cir. 1997); *see also* Pet. App. 12a (acknowledging the split between the Sixth and Eleventh Circuits).

Finally, the Seventh Circuit reached the same conclusion: Because "[Section] 511(a) does not apply to suits challenging the constitutionality of the statutes" affecting veterans' benefits, "federal district courts have jurisdiction over such claims." *Evans v. Greenfield Banking Co.*, 774 F.3d 1117, 1124 (7th Cir. 2014). This recent decision reaffirmed the Seventh Circuit's previous determination that district court jurisdiction survived the VJRA. *Marozsan v. United States*, 90 F.3d 1284, 1287 (7th Cir. 1996) (continuing to "construe [Section 511(a)] as permitting constitutional challenges" in a successor case to one interpreting the statute before the VJRA's enactment).

B. The Eleventh Circuit joined the Eighth Circuit in rejecting the majority rule.

Departing from the six circuits that have continued to adhere to *Robison* after the enactment of the VJRA, the Eighth and Eleventh Circuits treat Section 511(a) as stripping district courts of jurisdiction over constitutional challenges to veterans' benefits statutes.

The Eighth Circuit holds that Section 511(a) precludes district courts from adjudicating "all issues, even constitutional ones." *Hicks v. Veterans Admin.*, 961 F.2d 1367, 1370 (8th Cir. 1992). Similarly here, the Eleventh Circuit saw "no textual basis" in Section 511(a) for "carving out facial constitutional challenges." Pet. App. 12a, 16a.

Moreover, courts on both sides of the split acknowledge its existence. In *Veterans for Common Sense*, the Ninth Circuit explained that the Eighth Circuit had "taken a different view" on the jurisdictional issue. 678 F.3d at 1033. And here, the Eleventh Circuit recognized its disagreement with its "sister circuits." Pet. App. 11a (pointing to the Second, Sixth, and Ninth Circuits as "hav[ing] agreed" that district courts have jurisdiction).[5]

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[5] Attempting to downplay the circuit split, the Eleventh Circuit insisted that its "sister circuits' decisions largely predate *Elgin*" or did not adequately address that decision. Pet. App. 12a. Not so. Those courts have continued to reaffirm their precedents after *Elgin*. *See, e.g.*, *Gila River Indian Cmty*, 899 F.3d at 1079 (9th Cir. 2018); *Evans*, 774 F.3d at 1124 (7th Cir. 2014). And in any event, *Elgin*—which did not interpret Section 511(a) or disturb this Court's holding in *Robison*—is inapposite. *See infra* 26-28.

C. Even beyond the circuit split, there is uncertainty as to which tribunals can exercise jurisdiction over constitutional challenges to veterans' benefits statutes.

The Eighth and Eleventh Circuits would require that all constitutional challenges to veterans' benefits statutes proceed through the veterans' benefits review apparatus—from the regional office to the BVA and CAVC before finally reaching the Federal Circuit. But the BVA and CAVC—the fora to which those courts would consign those claims—disagree with the Eighth and Eleventh Circuits in two ways. First, the BVA and CAVC take the position that district courts *do* have jurisdiction over constitutional challenges to federal statutes. Second, the BVA and CAVC equivocate over whether *they* have jurisdiction over such constitutional challenges.

1. The BVA and CAVC both agree that district courts have jurisdiction to adjudicate constitutional challenges to veterans' benefits statutes. The BVA has stated that "[n]othing in title 38 prohibits a constitutional challenge to any of the provisions of that title from being litigated in U.S. district court." *(Title Redacted by Agency)*, Bd. Vet. App. 9628849 (Oct. 10, 1996). This is because "[a] claim which alleges only the unconstitutionality of a statute is not a claim 'under a law that affects the provision of benefits by the Secretary' under § 511(a), but rather is a claim under the Constitution of the United States." *Id.*

Similarly, the CAVC holds that "a claim that a statutory provision is unconstitutional *may be raised in U.S. district court*, even if such statute is 'a law that affects the provision of benefits by the Secretary to veterans[.]'" *Dacoron v. Brown*, 4 Vet. App. 115, 118

(1993) (quoting 38 U.S.C. § 511(a)) (emphasis added); *accord Prewitt v. McDonough*, 36 Vet. App. 1, 13 n. 7 (2022) (Jaquith, J., concurring) (citing *Dacoron*, 4 Vet. App. at 119).

2. While the BVA and the CAVC agree that district courts retain jurisdiction over constitutional challenges like Mr. Johnson's, they equivocate about their own jurisdiction to entertain such claims, leaving veterans uncertain where and how they can obtain judicial review.

Start with the BVA. The BVA sometimes expressly disclaims jurisdiction over constitutional claims. For example, faced with an Ex Post Facto Clause challenge to a benefits reduction, the BVA has stated that "any constitutional questions exceed the jurisdiction of the Board." *(Title Redacted by Agency)*, Bd. Vet. App. 1143951 (Nov. 4, 2011). And the BVA has also stated that as a "quasi-adjudicatory administrative tribunal," it "lacks the mandate to strike a statute as unconstitutional." *(Title Redacted by Agency)*, Bd. Vet. App. A24038011 (July 15, 2024) (citing *Robison*, 415 U.S. at 368). This has led to a world in which the BVA (sometimes) apparently sees itself as having jurisdiction to uphold congressional statutes, but not to strike them down. *Compare (Title Redacted by Agency)*, Bd. Vet. App. 1126713 (July 18, 2011) (rejecting equal protection challenge) *with (Title Redacted by Agency)*, Bd. Vet. App. A22008470 (May 10, 2022) (agreeing that a benefits provision was constitutionally problematic but holding the BVA was "bound" to apply it). Still other times the BVA has "acknowledge[d]" constitutional concerns but then "decline[d] to express an opinion" one way or the other.

(Title Redacted by Agency), Bd. Vet. App. 1131905 (Aug. 30, 2011).

As for the CAVC, it seems to think it has jurisdiction to hear constitutional challenges to federal statutes. *See Giancaterino v. Brown*, 7 Vet. App. 555, 557 (1995). *But see Copeland v. Shinseki*, 26 Vet. App. 86, 93 (2012) (Hagel, J., dissenting) ("I remain unconvinced that this Court has the power to entertain *facial* constitutional challenges to statutes[.]"). Yet the Secretary of Veterans Affairs takes the opposite position. The Secretary has argued that the "Veterans Court lack[s] authority under 38 U.S.C. § 7261 to rule on" such questions. *Pereida v. Collins*, 2025 WL 1099947, at *3 (Fed. Cir. Apr. 14, 2025). The Federal Circuit declined to resolve that issue in *Pereida*, *see id.*, and it remains unresolved to this day.

3. This confusion makes it hard to know whether the Federal Circuit will actually be able to adjudicate constitutional challenges to veterans' benefits statutes. The Federal Circuit's jurisdiction under the VJRA is much narrower than typical Article III jurisdiction: It can only review "decision[s]" of the CAVC and questions of law that were "relied on by the [CAVC] in making the decision." 38 U.S.C. § 7292(a).

Thus, if the BVA and CAVC do not "decide" a constitutional issue, the Federal Circuit lacks jurisdiction to reach it. *Seiflein v. Collins*, 2025 WL 2267022, at *2 (Fed. Cir. Aug. 8, 2025). And when the Federal Circuit is unclear as to whether the CAVC actually decided a constitutional question, it will remand the case to the CAVC—with the prospect that the CAVC will then have to remand the case to the BVA (which may or may not address the constitutional

issue). *See Pereida*, 2025 WL 1099947, at *4. So if the Secretary is right that the CAVC lacks jurisdiction over facial constitutional challenges, there will be no avenue for these cases to receive judicial review in the Federal Circuit.

This uncertainty is untenable. Veterans who are told by the Eighth and Eleventh Circuits to go through the VJRA process may wait years to be told, without guidance or explanation, that the BVA is "not the appropriate forum" for their constitutional challenges. *(Title Redacted by Agency)*, Bd. Vet. App. 0201853 (Feb. 26, 2002). Veterans deserve, at barest minimum, to know where they can get an adjudication of their constitutional challenges to congressional statutes limiting their benefits. This Court's intervention is necessary to answer that question.

II. This case presents a frequently recurring issue of national importance.

1. A veteran's access to the courts should not depend on where he lives. "[V]eterans have been obliged to drop their own affairs and take up the burdens of the nation." *Regan v. Tax'n With Representation of Washington*, 461 U.S. 540, 550 (1983) (internal quotation marks omitted). Veterans, who serve the *whole* nation, should not have their constitutional protections limited by the *part* of the nation in which they live. *Cf.* Charles L. Black, Jr., *Structure and Relationship in Constitutional Law* 10-11 (1969) (members of the armed forces were "recruited by the national government to perform a crucial national function" and their constitutional rights should not depend on where they live). Were Mr. Johnson located in New York, California, or Texas, he

could have filed his constitutional claim in federal district court. But veterans living in Florida and Arkansas are denied that forum. Especially given Congress's "special solicitude" for veterans, a veteran's access to the courts should not depend on where he lives after service. *Shinseki v. Sanders*, 556 U.S. 396, 412 (2009).

2. The constitutionality of a veterans' benefits statute is no small matter. Over nine million Americans—half of all veterans—used at least one VA benefit or service in FY 2023.[6] Of those using VA benefits, 84 percent—about 7.7 million people—received health care or disability compensation benefits.[7]

This case illustrates the impact of a single veterans' benefits statute. Section 5313, the statute Mr. Johnson challenges, limits the benefits of thousands of veterans. Moreover, 30 percent of all veterans experience service-connected disabilities, and veterans with PTSD are disproportionately at risk of incarceration.[8]

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[6] *Use of VA Benefits and Services: 2023, Part 1 - Characteristics of Those Served by VA*, U.S. Dep't of Veterans Affairs (Sep. 2025), https://perma.cc/K5W2-H4A5.

[7] *Use of VA Benefits and Services: 2023, Part 3 - Health Care and Disability Compensation*, U.S. Dep't of Veterans Affairs (Sep. 2025), https://perma.cc/2Z29-T5X9.

[8] *See* Jonathan Vespa & Caitlin Carter, U.S. Census Bureau, *Trends in Veteran Disability Status and Service-Connected Disability: 2008-2022*, at 2 (2024), https://perma.cc/958W-Y2LR (approximately 30 percent of veterans have service-connected disabilities); Emmeline N.

3. This case lies at the intersection of two important issues on which this Court regularly grants review.

First, the Court has recently and repeatedly granted certiorari to clarify veterans' issues. *See, e.g.*, *Soto v. United States*, 605 U.S. 360 (2025); *Bufkin v. Collins*, 604 U.S. 369 (2025); *Rudisill v. McDonough*, 601 U.S. 294 (2024).

Second, this Court regularly grants review to decide whether a statute strips jurisdiction from federal district courts. *See, e.g.*, *McLaughlin Chiropractic Assocs., Inc. v. McKesson Corp.*, 606 U.S. 146, 151-59 & n.4 (2025); *Axon Enter., Inc. v. FTC*, 598 U.S. 175 (2023); *Elgin v. Dep't of Treasury*, 567 U.S. 1 (2012). The Court should do the same here.

III. This case is an excellent vehicle for resolving the question presented.

The Eleventh Circuit directly passed upon the question whether district courts have jurisdiction over constitutional challenges to veterans' benefits statutes. Pet App. 11a-16a. Mr. Johnson invoked the district court's jurisdiction in his *pro se* complaint. Complaint at 1, ECF No. 1. Because the Eleventh Circuit then dismissed Mr. Johnson's complaint for lack of subject matter jurisdiction, the question presented is dispositive of whether Mr. Johnson can proceed in federal district court.

Taylor et al., *Posttraumatic Stress Disorder and Justice Involvement Among Military Veterans: A Systematic Review and Meta-Analysis*, 33 J. Traumatic Stress 804, 807 (2020) (veterans with PTSD had 1.61 times greater odds of criminal justice involvement compared to veterans without PTSD).

And Mr. Johnson's claims *should* be heard. The Eleventh Circuit itself said as much when it recognized his appeal was "nonfrivolous" and appointed appellate counsel. Pet. App. 20a. If this Court resolves the jurisdictional question, Mr. Johnson can continue his suit with the Secretary as the proper defendant.

IV. The district court has jurisdiction to hear Mr. Johnson's claim.

Under 28 U.S.C. § 1331, district courts "shall have original jurisdiction of all civil actions arising under the Constitution . . . of the United States." Because "[Section 1331] is as clear as statutes get" in conferring jurisdiction on district courts, the Court should be skeptical "whether Congress has *actually* carved out some exception in some other statute." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 205, 209 (2023) (Gorsuch, J., concurring in judgment). Here, Congress has neither explicitly nor implicitly stripped district courts of Section 1331 jurisdiction over constitutional challenges to veterans' benefits statutes.

The text of Section 511 does not explicitly strip such jurisdiction. This Court declared in *Johnson v. Robison*, 415 U.S. 361 (1974), that "[p]lainly, no explicit provision of § 211(a)"—the predecessor of Section 511(a)—"bars judicial consideration of [a plaintiff's] constitutional claims." *Id.* at 367. Section 511(a) carries forward the same text that dictated the outcome in *Robison*, and other amendments worked by the VJRA do not overcome that result.

Nor is it "fairly discernible" from the overall "text, structure, and purpose" of the VJRA that Congress *implicitly* stripped district court jurisdiction over

constitutional challenges to acts of Congress. *Elgin v. Dep't of Treasury*, 567 U.S. 1, 10 (2012). Rather, both those considerations and the framework this Court developed in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), confirm that Congress preserved the district court jurisdiction this Court recognized in *Robison*.

A. Section 511 does not explicitly strip district courts of jurisdiction over constitutional challenges to acts of Congress.

The Court's construction of Section 211(a) in *Robison*, which preserved district court jurisdiction over constitutional challenges to veterans' benefits statutes, should govern the interpretation of Section 511(a).

1. Start with the text of Section 211(a). That provision deprived federal courts of jurisdiction only over "*decisions* of the [Secretary] on any question of law or fact *under* any law" administered by the VA. *Robison*, 415 U.S. at 367 (quoting 38 U.S.C. § 211(a) (1970)) (internal quotation marks omitted). This Court held that "a decision of law or fact 'under' a statute" does not encompass the statute's constitutionality. *Id.* Rather, "decisions" made "under any law" reach only the Secretary's "interpretation or application of a particular provision . . . to a particular set of facts." *Id.* (emphasis omitted).

Moreover, this Court further held that constitutional challenges to a federal statute are "not [challenges] to any such decision of the [Secretary], but rather to a decision of *Congress*." *Robison*, 415 U.S. at 367. The Court therefore concluded that under "the

most reasonable construction" of Section 211(a), the statute did not deprive district courts of jurisdiction over constitutional challenges. *Id.* at 373. As this Court later underscored in *Weinberger v. Salfi*, 422 U.S. 749 (1975), the claim that the veteran in *Robison* sought to litigate "was simply not within [Section] 211(a)'s express language, and there was accordingly no basis for concluding that Congress sought to preclude review of the constitutionality of veterans' legislation." *Id.* at 761-62.

Section 511(a) carries forward the text that dictated *Robison's* outcome. The Section precludes district court review of a "*decision* of the Secretary" on "any question of law or fact . . . *under* a law" that affects the provision of benefits. 38 U.S. § 511(a) (emphasis added). And constitutional challenges to a "decision of Congress" still do not require review of the Secretary's "decisions . . . under any law." *Robison*, 415 U.S. at 367 (emphasis omitted). "In adopting the language used in [an] earlier act," Congress "adopt[s] also the construction given by this Court to such language." *Shapiro v. United* States, 335 U.S. 1, 16 (1948) (citations and internal quotation marks omitted). Section 511(a) thus "incorporate[s]" *Robison*'s "judicial interpretation." *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998); *see also* H.R. Rep. No. 100-963 at 19 (1988) (describing *Robison*'s holding as "clearly correct").[9]

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[9] The court below disregarded *Robison*'s textual analysis because it mistakenly thought the Court's holding relied on the "canon of constitutional avoidance." Pet. App. 13a. To the contrary: The Court emphasized that its reading of the statute

2. In the VJRA, Congress restructured the no-review clause (later recodified as Section 511 and now entitled "Decisions of the Secretary/finality"). These adjustments in no way undercut *Robison*'s holding that district courts retain jurisdiction over constitutional challenges to statutes.

a. In Section 511, Congress rearranged the components of Section 211. Previously, Section 211(a) had begun with a list of exceptions before declaring that "the decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans" should "be final and conclusive and no other official or any court of the United States [should] have power or jurisdiction to review any such decision." 38 U.S.C. § 211(a) (1970).

The amended finality provision begins by directing the Secretary to "decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits" before providing that, subject to a set of exceptions listed in subsection 511(b), the Secretary's decisions shall be "final and conclusive and may not be reviewed by any other official or by any court." Merely reshuffling the components of 511 does not affect *Robison*'s holding.

b. In Section 511(a), Congress also replaced the phrase "administered by," which appeared in Section 211(a), with the word "affects." The Eleventh Circuit thought this change somehow abrogated this Court's decision in *Robison* and swept challenges to federal

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was not just "fairly possible" but was "the most reasonable construction." *Robison*, 415 U.S. at 373 (internal quotation marks omitted); *see also Weinberger*, 422 U.S. at 761-62.

statutes within the no-review clause. Pet. App. 15a. The Eleventh Circuit was mistaken.

First, that changed language responded not to *Robison* but rather to this Court's decision in *Traynor v. Turnage*, 485 U.S. 535 (1988). There, the Court held that Section 211(a) did not preclude district court jurisdiction over an individual benefits determination challenge that turned on application of the Rehabilitation Act (a non-VA statute) to a VA regulation. The Court decided that when a benefits determination turns on a statute "whose enforcement is not the exclusive domain of the Veterans' Administration," the no-review clause should not apply. *Traynor*, 485 U.S. at 544. The Court observed that Congress could intervene if it disagreed with that result. *Id.* at 545. "Congress responded almost immediately" by broadening Section 511(a) to encompass all individual benefits determinations, including *Traynor*-type challenges. *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1021 (9th Cir. 2012).

Second, *Robison*'s analysis did not turn on the phrase "administered by." As already explained, it turned on the words "decisions of the Administrator" and "under." Those pivotal terms remain in the statute. 38 U.S.C. § 511(a) ("decision by the Secretary under a law"). *Robison's* holding thus "remains applicable" because "[f]acial challenges are still challenges to decisions of Congress" and "the trigger for § 511(a)'s preclusion of jurisdiction is still a 'decision of the Secretary.'" *Prewitt v. McDonough*, 633 F. Supp. 3d 195, 203 (D.D.C. 2022) (quoting 38 U.S.C. § 511(a)).

c. Finally, Congress added a new subsection to Section 511 to "provide[] claimants with an avenue for the review of VA decisions" that were previously judicially "unreviewable" anywhere. *Veterans for Common Sense*, 678 F.3d at 1021 (citation and internal quotation marks omitted). It did so by removing matters that can be raised in the CAVC from the no-review clause. *See* 38 U.S.C. § 511(b)(4). This grant of jurisdiction over previously *unreviewable* matters cannot fairly be read as a withdrawal of jurisdiction over matters that were previously *reviewable*. This is especially true because courts "should hold firm against mere implication" of jurisdiction stripping. *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 383 (2012) (internal quotation marks and citation omitted). As this Court long ago stated, "[i]t is a general rule that the grant of jurisdiction to one court does not, of itself, imply that the jurisdiction is to be exclusive." *United States v. Bank of New York & Tr. Co.*, 296 U.S. 463, 479 (1936).

B. The VJRA did not implicitly strip district courts of jurisdiction over constitutional challenges to acts of Congress.

The court below thought that *Elgin v. Dep't of Treasury*, 567 U.S. 1 (2012), "requires a different result" than the one the Court reached in *Robison*. Pet. App 12a. But the Court's opinion in *Elgin* did not discuss *Robison* at all. And nothing in *Elgin* suggests that the Court *sub silentio* overruled *Robison.* To the contrary: This Court has consistently refused to disturb settled interpretations of statutory provisions "[a]bsent a clear indication from Congress of a change in policy." *Grogan v. Garner,* 498 U.S. 279, 290 (1991).

In *Elgin*, several federal employees brought a constitutional challenge to a statute barring individuals who failed to register for the Selective Service from federal jobs. 567 U.S. at 6-7. The question before this Court was whether the district court had jurisdiction over their claim. To decide that question, this Court examined whether the Civil Service Reform Act (CSRA) established an "exclusive avenue to judicial review" for an "adverse employment action" through the Merit Systems Protection Board and then the Federal Circuit. *Id.* at 5-6. The Court concluded Congress's intent to "preclude[] district court jurisdiction" was "fairly discernable" from the CSRA. *Id.* at 10.

Elgin recognized that whether a statute implicitly strips district courts of jurisdiction turns on the particular "text, structure, and purpose" of the statute. 567 U.S. at 10. But nothing about the Court's analysis of those features of the CSRA resolves how the VJRA should be construed. The VJRA, after all, is an entirely distinct statute addressing an entirely different program. Its text, structure, and purpose all cut in favor of district courts retaining jurisdiction.

1. As already explained, the text of Section 511 does not strip jurisdiction from district courts. Instead, Congress reenacted the same language that this Court relied on in *Robison* to hold that district courts *retain* jurisdiction over constitutional claims. *See supra* 22-26.

That makes this case fundamentally different from *Elgin*. There, Congress had enacted a scheme for administrative and judicial review of federal personnel decisions culminating in review by the Federal Circuit, but had *not* expressly addressed

whether and to what extent that scheme precluded district court jurisdiction over constitutional claims. 567 U.S. at 6-7; *see id.* at 9 (noting that the statute "does not expressly bar suits in district court"). The Court thus engaged in a multifactor inquiry to determine whether the statute should be construed to contain an "implied preclusion of district court jurisdiction." *Id.* at 12.

But in the VJRA, Congress expressly addressed the question of preclusion by explicitly barring district court jurisdiction over some claims while preserving the language this Court had already interpreted as allowing district courts to hear constitutional challenges to acts of Congress. Because Congress directly addressed the scope of the VJRA's preclusion of district court jurisdiction, there is no basis for treating the statute as withdrawing other jurisdiction by mere implication. Indeed, had the new BVA-CAVC-Federal Circuit process implicitly precluded district court jurisdiction over *all* challenges related to veterans' benefits, the VJRA's amendment expanding the no-review clause to cover benefits decisions based on non-VA statutes would have been superfluous. In short, the VJRA precludes district court jurisdiction to the extent—but only to the extent—expressly specified in Section 511(a).

2. Nor does the structure of the VJRA imply that district courts lose jurisdiction here. Multiple features of Congress's scheme suggest the opposite.

First, any challenges to the VA's rules and regulations can go directly to an Article III court, skipping BVA and CAVC review. 38 U.S.C. § 502; *see also Love v. McDonough*, 106 F.4th 1361, 1368 (Fed. Cir. 2024) (holding Section 502 "authorizes direct

review of the Secretary's actions"). It is implausible that Congress would give garden-variety challenges to VA regulations a direct route to Article III review while encumbering challenges to statutes with multiple layers of administrative review.

Second, unlike the CSRA, the VJRA establishes an asymmetric review scheme, where only a claimant (and not the Government) can appeal an adverse administrative decision. *Compare* 38 U.S.C. § 7252(a) ("The Secretary may not seek review" of a BVA decision) *with* 5 U.S.C. § 7703(d) (providing a direct path for the Director of the Office of Personnel Management to petition for the Federal Circuit's review). As discussed later in more detail, channeling all constitutional claims against veterans' benefit statutes through this asymmetric agency review process may violate basic separation-of-powers principles. *See infra* 32-33. This constitutional tension, absent from *Elgin,* counsels against the Eleventh Circuit's interpretation of Section 511(a).

3. Finally, the purpose of the VJRA was to "ensure all veterans are served with compassion, fairness, and efficiency." S. Rep. No. 100-418, at 31 (1988). This Court has described the statute as "decidedly favorable to veterans." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 441 (2011). And "[i]t is not to be assumed that Congress intended to adopt a means of protection which would have been indirect, fortuitous and largely futile," especially "when direct, certain, and better means of protection were available." *Missouri Pac. R. Co. v. Boone*, 270 U.S. 466, 474 (1926).

Forcing veterans to bring their constitutional challenges through the VJRA process is indirect,

uncertain, and potentially futile. The VJRA process is slow, even by bureaucratic standards. Resolving a claim dispute takes years: Appeals before the BVA alone average three to six years. U.S. Dep't of Veterans Affairs, *Board of Veterans' Appeals Annual Report FY2024*, 39-40 (2024), https://perma.cc/D8XN-ZX7M. In 2024, even the most expedited BVA reviews—with no hearing and no new evidence—averaged 937 days. *Id.* at 40. Moreover, the BVA has equivocated on whether and to what extent it can even decide constitutional challenges to statutes. *See supra* 16-17. That ambivalence can only inject additional delay and uncertainty into the VJRA process. And even for veterans whose constitutional claims (eventually) reach the Federal Circuit, it is quite unclear whether they can get resolution there. *See supra* 17-18. This Court should not construe the VJRA to deny veterans the opportunity other citizens have: to bring their constitutional claims in federal district court.

Moreover, Congress's aim in enacting the VJRA was quite different from its motivation for enacting the CSRA, the statute at issue in *Elgin*. The CSRA and the VJRA were passed against different baseline levels of judicial review. Before the CSRA, any federal employment dispute against any agency could be adjudicated in district court. *Elgin*, 567 U.S. at 13-14. The CSRA aimed to serve federal government interests in curtailing "wasteful and irrational" litigation by channeling those everyday personnel disputes into an administrative process. *Id.* (citation omitted). In short, the CSRA was designed to *reduce* the amount of litigation in district courts.

By contrast, prior to the VJRA, Section 211(a) had already precluded district court jurisdiction over

everyday disputes involving individual veterans' benefits determinations. The VJRA provided veterans with a *new* "avenue for the review of VA decisions that would otherwise have been unreviewable." *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1021 (9th Cir. 2012) (citation omitted). So while the CSRA was intended to cut back on Article III courts' preexisting jurisdiction, the VJRA was intended to create a new form of Article III jurisdiction. It left untouched the preexisting, limited category of jurisdiction that *Robison* had recognized.

C. The *Thunder Basin* factors further reinforce the conclusion that district courts have jurisdiction over claims like Mr. Johnson's.

In assessing whether the "statutory structure" of an administrative scheme evinces Congress's (implied) intent to preclude district court jurisdiction, this Court has also applied three factors from *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994): A claim is not precluded if it (1) will not be subject to meaningful judicial review in the administrative scheme, (2) is collateral to the "ordinary proceedings" of the review scheme, and (3) sits outside the agency's area of expertise. *Id.* at 212-13; *see Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185-88 (2023) (applying the *Thunder Basin* factors). Here, these factors all cut in favor of holding that Congress did not preclude district court

jurisdiction over constitutional challenges to veterans' benefits statutes.[10]

1. First, denying district court jurisdiction over constitutional challenges like Mr. Johnson's may preclude meaningful judicial review. In fact, stripping jurisdiction here risks not only foreclosing meaningful judicial review, but also violating bedrock separation-of-powers principles. To avoid this constitutional difficulty, this Court should hold that the district court retained its jurisdiction here.

a. The Eleventh Circuit's rule would force all challenges to the constitutionality of veterans' benefits statutes through the BVA and the CAVC. But agencies like the BVA have "no authority to entertain a facial constitutional challenge to the validity of a law." *Jones Bros., Inc. v. Sec'y of Lab.*, 898 F.3d 669, 673-74 (6th Cir. 2018) (Sutton, J.) (collecting cases). As this Court observed on its way to finding district court jurisdiction in *Robison*, "[a]djudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies." 415 U.S. at 368 (internal quotation marks omitted).

To be sure, in a case where both the BVA and the CAVC reach and *uphold* the constitutionality of a benefits statute, it is possible for the Federal Circuit to provide judicial review if the veteran appeals that far. But the administrative review scheme established by the VJRA means that if the BVA were to hold a federal statute *un*constitutional, there would be no

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[10] While all three *Thunder Basin* factors favor Mr. Johnson here, the factors can weigh against jurisdiction stripping even if they "point in different directions." *See Axon*, 598 U.S. at 186.

Article III review: The BVA would have the final say because its decision is treated as the final decision of the Secretary. *See* 38 U.S.C. § 7104(a). The Secretary cannot appeal that decision to the CAVC. *See id.* § 7252(a); *see also Hibbard v. West*, 13 Vet. App. 546, 548 (2000). And the Federal Circuit can review only CAVC decisions. *See* 38 U.S.C. § 7292(c).

Absent clear textual direction, courts should not presume that Congress mandates such an unusual scheme. "Under the basic concept of separation of powers . . . the judicial Power of the United States cannot be shared with the other branches." *SEC v. Jarkesy*, 603 U.S. 109, 127 (2024)) (citation omitted). To avoid this constitutional tension, this Court should leave in place the conventional process of constitutional adjudication, which begins in the district courts.

b. Moreover, this Court has explained that "meaningful judicial review" must be available "as a practical matter" and not just in theory. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991). As a practical matter, the VJRA benefits review process cannot promise meaningful judicial review for constitutional challenges to statutes.

Cases that enter the VJRA's administrative process may languish at nearly every stage, as veterans find themselves "trapped for years in a bureaucratic labyrinth, plagued by delays and inaction." *Martin v. O'Rourke*, 891 F.3d 1338, 1349 (Fed. Cir. 2018) (Moore, J., concurring); *see also supra* 30. The Regional Office and the BVA lack the tools altogether to conduct constitutional adjudication. Lay veterans—especially those who, like Mr. Johnson, are disabled and incarcerated—are not equipped to

litigate such complex challenges on their own. Federal courts can, and do, appoint counsel when faced with non-frivolous constitutional claims, as the Eleventh Circuit did here. Pet. App. 20a; *see* 28 U.S.C. § 1915(e)(1). But there is no mechanism for such an appointment before the BVA. And if the veteran fails to properly raise his claim in the BVA, he will likely be barred from any judicial review in the CAVC or Federal Circuit. *See also* James D. Ridgeway, *Why So Many Remands?: A Comparative Analysis of Appellate Review by the United States Court of Appeals for Veterans Claims*, 1 Veterans L. Rev. 113, 133 (2009) (BVA cases are "unlikely . . . [to be] conducted with an appeal in mind").

Even if a veteran properly raises his constitutional claim in the BVA and continues pressing that claim all the way up to the Federal Circuit, it is *still* uncertain whether he can obtain judicial review there. *See supra* 17-18. As detailed above, veterans with constitutional challenges to statutes face a Kafkaesque loop, as the entities in the VA process push them up and down the chain, unsure where such claims can or should be heard. *See supra* 15-18. This is not the meaningful judicial review that the Constitution promises.

2. With respect to the second *Thunder Basin* factor, a veteran's constitutional challenge to a federal statute is collateral to the question whether, if the statute is constitutional, he's entitled to benefits. Proceedings under the VJRA are intended to assess the latter. Such review focuses on technical assessments of "length and character of service, origin of disabilities, complex rating schedules, a multiplicity of medical and physical phenomena for consideration

intercurrently with such schedules, and the application of established norms to the peculiarities of the particular case." *Robison*, 415 U.S. at 370 n.12. Indeed, the constitutionality of federal law is so collateral to a typical benefits decision that sometimes actors within the administrative process simply ignore these issues altogether. *See, e.g.*, *Pereida v. McDonough*, 2024 WL 861518, at *4 (Vet. App. Feb. 29, 2024); *(Title Redacted by Agency)*, Bd. Vet. App. 1131905, at *5 (Aug. 30, 2011).

3. As for the final *Thunder Basin* factor, the VA has no expertise in adjudicating constitutional challenges to statutes. The VJRA creates a "unique administrative scheme," which this Court has likened to Social Security, *Henderson*, 562 U.S. at 437-38—a scheme that is designed to make and review "technical and complex" benefits decisions, *Robison*, 415 U.S. at 370. VA administrative staff apply subregulatory manuals to veterans' files and develop factual records; they have no formal legal training.[11] Mr. Johnson does not allege that the Secretary misapplied Section 5313 to him; he challenges the statute's very validity. This raises standard constitutional law questions, "detached from considerations of agency policy." *Axon*, 598 U.S at 194. Like the FTC and the SEC in *Axon*, the VA "knows a good deal about" eligibility requirements for veterans' benefits, "but nothing special about" the Fifth Amendment or the Bill of Attainder Clause. *Id.* It is no surprise, then, that the Secretary has argued that the CAVC "lack[s]

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[11] Rory E. Riley, *Simplify, Simplify, Simplify-An Analysis of Two Decades of Judicial Review in the Veterans' Benefits Adjudication System*, 113 W. Va. L. Rev. 67, 85 (2010).

authority" to decide these constitutional questions. *Pereida v. Collins*, 2025 WL 1099947, at *3 (Fed. Cir. Apr. 14, 2025).

4. As the *Thunder Basin* factors demonstrate, Mr. Johnson's claims are "unsuited to resolution in administrative hearing procedures." *Califano v. Sanders*, 430 U.S. 99, 109 (1977). It would be strange for Congress to have implicitly relegated constitutional review of federal statutes exclusively to an administrative process. It would be even stranger to design a scheme that gives those administrators the *final say* over the constitutionality of a federal statute in some circumstances.

And if there is any remaining interpretive doubt regarding whether the VJRA implicitly stripped district court jurisdiction over veterans' constitutional challenges, this Court should "liberally construe[]" Section 511(a) in Mr. Johnson's favor. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). Construing the statute to implicitly consign veterans' constitutional claims against legislative acts exclusively to agency proceedings fails to safeguard the rights of veterans, "who left private life to serve their country in its hour of need." *Id.*

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Easha Anand
Brian H. Fletcher
Pamela S. Karlan
STANFORD LAW SCHOOL
SUPREME COURT
LITIGATION CLINIC
559 Nathan Abbott Way
Stanford, CA 94305

Patrick C. Fagan
Jeffrey W. Chen
Counsel of Record
BONDURANT MIXSON &
ELMORE LLP
1201 W. Peachtree St. NW
Suite 3900
Atlanta, GA 30309
Chen@bmelaw.com
(404) 881-4104

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