No. 25-735

IN THE

Supreme Court of the United States

FLOYD D. JOHNSON,

Petitioner,

v.

UNITED STATES CONGRESS,

Respondent.

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

BRIEF FOR PETITIONER

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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?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Board of Veterans' Appeals Decisions

Constitutional Provisions

Statutes

Regulations

Legislative Materials

Other Authorities

BRIEF FOR PETITIONER

Petitioner Floyd D. Johnson respectfully requests that this Court reverse 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 App. 17a-20a) is unpublished but available at 2022 WL 18716714.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. The petition was filed on that date and granted on April 6, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The relevant statutory provisions are reproduced in the Petition Appendix (Pet. App. 31a-41a).

INTRODUCTION

Petitioner Floyd D. Johnson became disabled as a result of his honorable service as an infantryman in the U.S. Army. He seeks to challenge the constitutionality of a statute limiting his disability benefits. The question presented is whether veterans can bring such constitutional challenges directly in Article III district courts, or whether they must instead navigate a years-long administrative process before the

notoriously backlogged Board of Veterans' Appeals (BVA)—a process doomed to futility because the BVA cannot decide constitutional challenges to statutes.

Text, context, structure, and precedent show that Congress did not require veterans to jump through such pointless hoops. The relevant statute directs the Department of Veterans Affairs (VA) to "decide all questions of law and fact necessary to a decision by the [VA] under a law that affects the provision of benefits," then bars district courts from reviewing the VA's decision "as to any such question." 38 U.S.C. § 511(a). In so doing, Section 511(a) channels most challenges to the VA's benefits decisions into a special review scheme that starts in the BVA and eventually reaches the Federal Circuit. But Section 511(a) encompasses only questions "necessary" to the VA's decisions "under" the statutes affecting veterans' benefits—that is, questions the VA must resolve to interpret and apply the statutes as written. It does not strip district courts of jurisdiction under 28 U.S.C. § 1331 to hear challenges to the statutes themselves.

That is exactly how this Court read Section 511(a)'s materially similar predecessor in *Johnson v. Robison*, 415 U.S. 361 (1974). The Court unanimously held that a provision barring review of "'the decisions of the [VA] on any question of law or fact under any law administered by the [VA]'" did not preclude district courts from hearing challenges to "the constitutionality of veterans' benefits legislation." *Id.* at 365-66 & n.5 (citation omitted). By preserving the same key language in Section 511(a), Congress also preserved *Robison*'s settled interpretation of that language.

We also have concrete proof that deciding the constitutionality of statutes is not "necessary" to the

VA's benefits decisions within the meaning of Section 511(a). The BVA renders the VA's final decisions in matters subject to Section 511(a), and everyone agrees that the BVA *cannot* decide constitutional challenges to acts of Congress. To the contrary, VA regulations specify that "the Board is bound by applicable statutes." 38 C.F.R. § 20.105. The BVA thus maintains that it has no "jurisdiction to consider constitutional challenges to statutes." Bd. Vet. App. A24018528, at *4 (Apr. 15, 2024). Questions the BVA is barred from resolving cannot be "necessary" to its decisions.

The Government can hardly argue otherwise. Congress mandated that the BVA "shall decide all questions" subject to Section 511(a). 38 U.S.C. § 511(a). Accordingly, if Section 511(a) truly barred district courts from hearing challenges to statutes, the BVA would be *required* to decide such challenges. And that would mean the Government has been defying Section 511(a) since the day it was passed.

Despite all that, the Eleventh Circuit held that the district court lacked jurisdiction to hear Mr. Johnson's claim. But the court failed to ground that holding in Section 511(a)'s text; instead, it was forced to add words to the statute. The Eleventh Circuit also relied on *Elgin v. Department of Treasury*, 567 U.S. 1 (2012), which held that Congress's creation of a different specialized review scheme *impliedly* barred district courts from hearing claims that could have been brought through the scheme. But there is no basis for an *Elgin*-style inquiry into implied preclusion where, as here, Congress has defined the bounds of preclusion in express statutory text.

This Court should apply Section 511(a) as written and reverse. Such a holding would not affect the vast

majority of challenges to VA benefits decisions: Veterans challenging any aspect of the VA's interpretation or application of a statute would still have to go through the BVA and ultimately to the Federal Circuit. But when a veteran raises only a constitutional challenge to an act of Congress, the justification for that cumbersome bureaucratic process evaporates. Standalone challenges to statutes affecting veterans' benefits belong in the Article III district courts, which have been hearing them without difficulty since this Court decided *Robison* half a century ago.

STATEMENT OF THE CASE

Congress enacted Section 511(a) and created the current scheme for review of VA benefits decisions in the Veterans' Judicial Review Act (VJRA), Pub. L. No. 100-687, Div. A, 102 Stat. 4105 (1988). We start by describing the pre-VJRA scheme, then discuss the VJRA and the proceedings in this case.

A. The pre-VJRA scheme

1. Congress established the VA (originally called the Veterans Administration) to provide "relief and other benefits" for the Nation's military veterans. Act of July 3, 1930, ch. 863, § 1, 46 Stat. 1016, 1016. As relevant here, veterans are generally entitled to lifetime compensation for disabilities incurred as a result of their service. 38 U.S.C. §§ 1110, 1131.

Before the VJRA, veterans generally could not seek judicial review of the VA's benefits decisions. Instead, the only review of those decisions occurred within the VA itself. Veterans who disagreed with the VA's initial resolution of their claims were entitled to "one review on appeal to the Administrator." 38 U.S.C. § 4004(a) (1982). The BVA rendered the Admini-

strator's "[f]inal decisions" in those appeals. *Id.* And Section 511(a)'s predecessor generally barred judicial review of the VA's decisions by specifying that, with limited exceptions not relevant here:

> [T]he decisions of the Administrator on any question of law or fact under any law administered by the [VA] providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise.

38 U.S.C. § 211(a) (1982).

2. When Congress adopted Section 511(a), it acted against the backdrop of two of this Court's decisions interpreting that predecessor provision.

First, in *Johnson v. Robison*, 415 U.S. 361 (1974), this Court held that Section 211(a) did not bar district courts from hearing constitutional challenges to acts of Congress governing veterans' benefits. *Id.* at 366. The Court explained that "[a] decision of law or fact 'under' a statute" involves the Administrator's "interpretation or application of a particular provision of the statute." *Id.* at 367. A constitutional challenge to a statute, in contrast, "arise[s] under the Constitution, not under the statute whose validity is challenged." *Id.* (citation omitted). The Court added that such a challenge seeks review of "a decision of *Congress*," not any "decision of the *Administrator*." *Id.*

Second, in *Traynor v. Turnage*, 485 U.S. 535 (1988), the D.C. Circuit and this Court relied on different language in Section 211(a) to authorize a different type of claim. The VA had refused to extend the time

for two veterans to use certain benefits, citing a regulation providing that alcoholism was not a disability justifying an extension. *Id.* at 538. The veterans challenged those decisions under the Rehabilitation Act. *Id.* at 539-40. The D.C. Circuit allowed the challenge to proceed, holding that Section 211(a) barred only claims that had been "resolved by an actual 'decision of the Administrator'" and that the VA had not decided whether the regulation was consistent with the Rehabilitation Act. *Id.* at 540-41 (citation omitted). This Court affirmed on a different ground, holding that because the Rehabilitation Act governs "all federal agencies," *id.* at 543, it is not "administered by the [VA]" within the meaning of Section 211(a).

B. The VJRA

In the Veterans' Judicial Review Act, Congress enacted the provision now codified at Section 511(a) and created a special review scheme that for the first time allowed broad judicial review of VA benefits decisions. As the VJRA's name suggests, the new review scheme was the Act's primary focus. But we start with Section 511(a) because it is the provision directly at issue here.

1. The VJRA amended Section 211(a), which has since been recodified as Section 511(a) and now provides in full:

> The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), the decision of the Secretary as to any such question shall be final and con-

> clusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.

That text reflects two changes made in response to *Traynor*, which was decided just seven months before the VJRA's enactment.[1]

First, Congress tied the preclusion of review to a new mandate on the Secretary. Section 511(a) directs that the Secretary "shall decide" certain questions and then precludes review of the Secretary's decision "as to any such question." That mandate responded to the D.C. Circuit's reasoning in *Traynor* by ensuring that the Secretary actually decides all questions necessary to resolving a veteran's benefits claim. By its terms, Section 511(a) makes its preclusion of review coextensive with the new duty to decide: District courts are barred from reviewing a question if—but only if—the Secretary is required to decide it.

Second, Section 511(a) broadens the preclusion of review to "questions of law and fact necessary to a decision by the Secretary under a law that *affects* the provision of benefits"—not merely a "law *administered* by" the VA, 38 U.S.C. § 211(a) (1982) (emphasis added). That change abrogated this Court's reasoning in *Traynor* by expanding the preclusion of review to reach the VA's benefits decisions under statutes that are not administered by the VA alone.

Although Congress changed the language on which the D.C. Circuit and this Court had relied in *Traynor*, it preserved the different language on which

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[1] Section 511(a) has also been updated to replace "the Administrator" with "the Secretary" in order to reflect the VA's status as a Cabinet-level Department. *See* 38 U.S.C. § 301.

Robison had relied to hold that district courts can hear constitutional challenges to statutes. Like its predecessor, Section 511(a) defines the bounds of preclusion by reference to the VA's decisions "under" a statute. And like its predecessor, Section 511(a) bars district-court review only of a "decision of the Secretary," not any "decision of *Congress*." *Robison*, 415 U.S. at 367.

2. The VJRA also created a new scheme allowing veterans to challenge the legal and factual determinations underlying the VA's benefits decisions. Congress exempted claims brought through the VJRA scheme from Section 511(a)'s general preclusion of review. *See* 38 U.S.C. § 511(b)(4). But the VJRA requires veterans to navigate multiple layers of administrative review before reaching an Article III court.

Today, as before the VJRA, a veteran seeking benefits starts the process by submitting a claim to a VA regional office. *Bufkin v. Collins*, 604 U.S. 369, 373 (2025). The regional office adjudicates the claim and issues an initial "decision by the Secretary." 38 U.S.C. § 5104(a). A veteran who disagrees with that decision may seek further review within the VA, culminating in an appeal to the BVA. *Bufkin*, 604 U.S. at 373. The BVA renders the Secretary's "[f]inal decision" on "[a]ll questions in a matter which under section 511(a) of this title is subject to decision by the Secretary." 38 U.S.C. § 7104(a); *see Henderson v. Shinseki*, 562 U.S. 428, 431 (2011).

Once the BVA has issued the Secretary's final decision, the veteran may appeal to the Court of Appeals for Veterans Claims (CAVC), an Article I court created by the VJRA. 38 U.S.C. §§ 7251-7252. The VA, by contrast, cannot appeal a BVA decision. *Id.* § 7252(a). Although the CAVC is called a court, it is

"an Executive Branch entity." *United States v. Arthrex, Inc.*, 594 U.S. 1, 20 (2021). It reviews the BVA's legal and factual determinations under standards "modeled after the scope-of-review provision in the Administrative Procedure Act." *Bufkin*, 604 U.S. at 374; *see* 38 U.S.C. § 7261.

Either the veteran or the VA can appeal an adverse CAVC decision to the Federal Circuit. 38 U.S.C. § 7292. The scope of review is generally limited to legal issues; the Federal Circuit "lacks jurisdiction to review most factual determinations." *Bufkin*, 604 U.S. at 375.

C. The present controversy

1. Mr. Johnson volunteered and served honorably as an infantryman in the U.S. Army from 1983 to 1985. While stationed in Cold War Germany, he was "involved in a deadly combat training exercise." Statement in Supp. of Claim at 1, ECF No. 6. He earned medals for his service and an honorable discharge. *Id.*[2]

In 2013, Mr. Johnson was convicted of several felonies in Florida state court and sentenced to a lengthy prison term. Pet. App. 2a. While incarcerated, he was diagnosed with post-traumatic stress disorder. *Id.* He applied for disability benefits, and the VA concluded that his condition resulted from his service and warranted an 80 percent disability rating. *Id.*

Because service-connected disability benefits compensate veterans for their sacrifices in service of

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[2] Because Mr. Johnson's claims were dismissed at the pleading stage, we describe the facts as alleged in his complaint and supporting statement. *See Nat'l Rifle Ass'n v. Vullo*, 602 U.S. 175, 181 (2024).

our Nation, they are not based on veterans' expenses, income, or resources—indeed, veterans are generally entitled to full disability compensation even if their needs are met by other government programs. *See* Jennifer D. Oliva, *Son of Sam, Service-Connected Entitlements, and Disabled Veteran Prisoners*, 25 Geo. Mason L. Rev. 302, 336-40 (2018). But Mr. Johnson is subject to a statutory exception: Under 38 U.S.C. § 5313, veterans incarcerated for more than 60 days for felony convictions must receive no more than the benefits for a 10 percent disability rating, regardless of the severity of their service-connected disabilities. 38 U.S.C. § 5313(a)(1).

2. Mr. Johnson filed a pro se complaint in the U.S. District Court for the Middle District of Florida under 28 U.S.C. § 1331. Pet. App. 3a; *see* Compl. 1, ECF No. 1. He alleged that Section 5313 violates the Bill of Attainder Clause and the equal protection component of the Fifth Amendment. He did not challenge the VA's interpretation of Section 5313 or any other aspect of its handling of his claim. Pet. App. 3a.

A magistrate judge screened the complaint and recognized that the district court "may have jurisdiction" over Mr. Johnson's suit "to the extent he alleges only facial constitutional challenges" to Section 5313. Pet. App. 28a. But the magistrate judge recommended dismissal on the merits, and the district court adopted that recommendation. *Id.* 22a, 24a.

3. Mr. Johnson appealed and moved for appointed counsel. Pet. App. 19a. The Eleventh Circuit granted his motion, finding that Mr. Johnson's challenge to Section 5313 raised "a novel issue" and that he had a "nonfrivolous argument that his claim was wrongly dismissed." *Id.* 20a. After briefing, the court directed

the parties to be prepared to address at argument whether Congress—which Mr. Johnson had named in his pro se complaint—was a proper defendant. *Id.* 4a. Mr. Johnson, now represented by counsel, acknowledged that Congress was immune from suit but asked the court "to construe his complaint as naming a proper defendant or to grant him leave to amend" in order to substitute the Secretary and the VA. *Id.* 7a.

4. The Eleventh Circuit vacated the district court's judgment and remanded with instructions to dismiss for lack of jurisdiction. Pet. App. 1a-16a.

The Eleventh Circuit first held that sovereign immunity barred a suit against Congress. Pet. App. 7a. Ordinarily, that defect could have been cured by simply amending the complaint to name the Secretary or the VA. But the court held that amendment would be futile here because it believed that the VJRA strips district courts of jurisdiction over "all questions arising from veterans' benefits decisions." *Id.*

In reaching that conclusion, the Eleventh Circuit appeared to rely on a combination of express and implied preclusion. First, the court read Section 511(a)'s express-preclusion provision to encompass constitutional challenges to statutes. Pet. App. 7a-10a. The court acknowledged this Court's contrary holding in *Robison*, but believed that the VJRA's amendments to Section 511(a) abrogated this Court's decision. *Id.* 13a. Second, relying on *Elgin v. Department of Treasury*, 567 U.S. 1 (2012), the court concluded that Congress's intent to channel challenges to statutes affecting veterans' benefits through that VJRA process was "fairly discernible" from the broader statutory scheme. Pet. App. 9a (quoting *Elgin*, 567 U.S. at 9-10). As evidence of that intent, the court emphasized that

the VJRA allows veterans to appeal BVA decisions to the CAVC and gives the Federal Circuit "exclusive jurisdiction" to review the CAVC's decisions. 38 U.S.C. § 7292(c); *see* Pet. App. 8a.

SUMMARY OF THE ARGUMENT

Constitutional challenges to statutes affecting veterans' benefits fall squarely within the district courts' jurisdiction over "all civil actions arising under the Constitution." 28 U.S.C. § 1331. The VJRA neither expressly nor impliedly withdraws that unambiguous jurisdictional grant.

I. Congress expressly defined the VJRA's preclusive scope in Section 511(a). That provision bars district courts from reviewing only questions the VA must resolve to interpret and apply the veterans' benefits statutes as written. It does not reach challenges to the validity of the statutes themselves.

A. Section 511(a) precludes review of "the decision of the Secretary" on questions "necessary to a decision by the Secretary under a law that affects the provision of benefits." 38 U.S.C. § 511(a). The ordinary meaning of a decision "under" a statute is a decision interpreting or applying the statute, not one inquiring into its validity. That is exactly how *Johnson v. Robison*, 415 U.S. 361 (1974), construed identical language in Section 511(a)'s predecessor—language that Congress then reenacted in Section 511(a). And we also have concrete proof that resolving constitutional challenges to statutes is not "necessary" to the Secretary's benefits decisions: The BVA makes the Secretary's final decisions, and it consistently refuses to decide constitutional challenges to statutes. Indeed, the VA's regulations *prohibit* the BVA from deciding them.

B. Context and structure reinforce the natural reading of Section 511(a)'s text. Section 511(a) does not just bar review of covered questions; it also directs that the Secretary "shall" decide those questions. So if constitutional challenges to statutes were within Section 511(a)'s preclusive scope, the BVA would be *required* to decide them. But when Congress enacted the VJRA, it was widely understood that agency adjudicators in general—and the BVA in particular—could not decide the validity of a statute. There is no indication that Congress sought to challenge that settled view. Just the opposite: Congress specifically authorized the Federal Circuit to decide the validity of statutes, but it omitted any similar language in defining the BVA's authority. And the Government is in no position to disagree: If Section 511(a) requires the BVA to decide challenges to statutes, the Government has been defying Congress for decades.

C. There is no good reason to force standalone constitutional challenges to statutes into the VJRA's review scheme. That scheme ensures that specialized tribunals resolve the technical questions that arise in the day-to-day administration of the complex system of veterans' benefits statutes. But as this Court recognized in *Robison*, constitutional challenges to statutes do not raise the same concerns. And the cumbersome VJRA process is profoundly unsuited for constitutional challenges like this one. Most obviously, it typically takes a veteran several years just to get a decision from the BVA. And because the BVA cannot decide constitutional challenges to statutes, that years-long wait would serve no purpose but delay.

D. The remaining arguments advanced by the Government and the Eleventh Circuit lack merit. The

VJRA's changes to Section 511(a) did not abrogate *Robison*; in fact, they preserved the specific language on which this Court relied. The VJRA makes clear that the Federal Circuit has jurisdiction to hear constitutional challenges to statutes when they are brought through the VJRA process, but does not suggest that district courts lack jurisdiction to hear such challenges under Section 1331. And the Government's appeal to the VJRA's legislative history provides no basis for departing from Section 511(a)'s plain text.

E. If there were any ambiguity about Section 511(a)'s reach, this Court should resolve it by applying the venerable canon that ambiguities in veterans' benefits laws should be construed in favor of veterans.

II. The Eleventh Circuit relied heavily on *Elgin v. Department of Treasury*, 567 U.S. 1 (2012), which held that a statute creating a different special review scheme impliedly barred district courts from hearing related claims. *Id.* at 9-10. But an *Elgin*-style search for implied preclusion is both unnecessary and unjustified where, as here, Congress defined the metes and bounds of preclusion in express statutory text. As the Government appears to agree, the Court should resolve this case by simply applying Section 511(a) as written. And even if an implied-preclusion inquiry were proper, nothing in the VJRA would withdraw district-court jurisdiction over Mr. Johnson's claim.

ARGUMENT

District courts have "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Mr. Johnson's challenge to Section 5313 falls squarely within Section 1331's plain text because it "aris[es]

under the Constitution." The only question is whether some other statute withdraws the jurisdiction that Section 1331 unambiguously confers.

The most natural way for Congress to limit Section 1331 is to do so "explicitly," by "providing in so many words that district court jurisdiction will yield." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023). In cases where Congress has not spoken directly to the preclusion issue, this Court has sometimes held that Congress stripped Section 1331 jurisdiction "implicitly," by "specifying a different method to resolve claims about agency action." *Id.* But Congress neither expressly nor impliedly withdrew district courts' jurisdiction to hear challenges to statutes affecting veterans' benefits—as they have consistently done since *Johnson v. Robison*, 415 U.S. 361 (1974). *See Prewitt v. McDonough*, 633 F. Supp. 3d 195, 202-03 (D.D.C. 2022) (collecting cases).

To be clear, district courts' jurisdiction under Section 1331 is not exclusive: At least in theory, veterans may also raise constitutional challenges to statutes through the VJRA scheme. The BVA cannot decide those challenges, but a veteran who manages to navigate the VJRA process while preserving a constitutional challenge to a statute may eventually obtain review in the Federal Circuit. Veterans who seek to bring constitutional challenges to statutes along with garden-variety claims that must go through the VJRA process can thus litigate all of their claims in a single proceeding. But when a veteran raises only a stand-alone challenge to a statute, nothing in the VJRA forces him to go through a years-long administrative

process in a tribunal that can neither consider his claim nor grant relief.[3]

I. Section 511(a) does not expressly withdraw Section 1331's grant of jurisdiction over constitutional challenges to statutes affecting veterans' benefits.

In Section 511(a), Congress specifically defined the extent to which "district court jurisdiction" must "yield" to the VJRA's special review scheme. *Axon*, 598 U.S. at 185. All of the traditional tools of statutory interpretation—text, context, structure, and purpose—show that Section 511(a) does not bar district courts from hearing constitutional challenges to statutes affecting veterans' benefits.

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[3] Lower courts sometimes call the type of constitutional claim at issue here a "facial" challenge. *E.g.*, *Larrabee v. Derwinski*, 968 F.2d 1497, 1500 (2d Cir. 1992). We avoid that term because it risks confusion. In this context, "facial" challenges are the type of challenges authorized by *Robison*: "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); *see, e.g.*, *Larrabee*, 968 F.2d at 1500 ("attacks upon the statute as drafted"). Our position is not limited to claims asserting that a statute is invalid in all of the circumstances where it governs rather than only a subset. *Cf. United States v. Salerno*, 481 U.S. 739, 745 & n.3 (1987). Accordingly, when Mr. Johnson "concede[d]" below that Section 511(a) "strips district courts of jurisdiction over as-applied constitutional challenges," he was referring to challenges to the VA's actions in applying a statute—not challenges to the statute itself. Pet. App. 10a; *cf.* Gov't Cert. Br. 6, 12-13.

A. Section 511(a)'s text does not include constitutional challenges to statutes.

"We start, as always, with the text." *Bufkin v. Collins*, 604 U.S. 369, 379 (2025). Section 511(a) bars district-court review of "the decision of the Secretary" on "questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits." 38 U.S.C. § 511(a). Examining each element of that text in turn shows that Section 511(a) reaches only questions the VA must resolve in interpreting and applying statutes, not questions about the validity of the statutes themselves.

1. At the outset, there is no dispute that Section 511(a)'s reference to "a law that affects the provision of benefits" refers to a *statute* affecting the provision of benefits, not the Constitution. Even a cursory review of the U.S. Code shows that when Congress wants to include both statutes and the Constitution, it refers to the "Constitution and laws." 42 U.S.C. § 1983; *see, e.g.*, 28 U.S.C. §§ 1331, 1362, 1441(c), 2241(c). The Government appears to agree: It acknowledges that the "law that affects the provision of benefits" in this case is 38 U.S.C. § 5313, not the Fifth Amendment or the Bill of Attainder Clause. Gov't Cert. Br. 9.

2. Section 511(a) defines the scope of preclusion by referring to a "decision by the Secretary" made "under" a statute affecting veterans' benefits. The natural reading of that text refers to a decision interpreting or applying a statute, not one inquiring into its validity. And *Robison*'s authoritative construction of identical language removes any doubt on that score.

a. As this Court has often recognized, something done "under" a statute must be done "in accordance with," *Pereira v. Sessions*, 585 U.S. 198, 215 (2018),

"pursuant to," *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 583 U.S. 109, 124 (2018), or "in compliance with" the statute, *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 530 (2013). Dictionaries contemporaneous with the VJRA agree. *See* 18 Oxford English Dictionary 950 (2d ed. 1989) ("[i]n accordance with"); Webster's Third New International Dictionary 2487 (1976) (same).

By definition, then, a decision "under" a statute takes the statute as given and determines how to apply it in a particular case; it does not inquire into the statute's validity. Section 511(a)'s reference to a "decision of the Secretary" points in the same direction: A constitutional challenge to a statute takes issue with a decision of *Congress*—not with any decision of the Secretary in applying the statute.

b. That natural reading of the text is confirmed by the familiar principle that when Congress adopts "language used in an earlier act," it also adopts "the construction given by this Court to such language." *Georgia v. Public.Resource.Org, Inc.*, 590 U.S. 255, 270 (2020) (brackets and citation omitted). Congress enacted Section 511(a) against the backdrop of *Robison* and preserved the text the Court had already interpreted to allow challenges to statutes.

Recall that the statute at issue in *Robison* barred review of "decisions of the Administrator on any question of law or fact under any law administered by the [VA] providing benefits for veterans." 38 U.S.C. § 211(a) (1982). *Robison* relied on two aspects of that text to hold that Section 211(a) did not apply to constitutional challenges to statutes. First, it explained that a "decision of law or fact 'under' a statute is made by the Administrator in the interpretation or application of a particular provision of the

statute to a particular set of facts." *Robison*, 415 U.S. at 367. Second, the Court noted that a challenge to a statute is not a challenge to a "decision of the *Administrator*, but rather to a decision of *Congress*." *Id.*

When Congress enacted Section 511(a), it retained both of the phrases *Robison* had construed. Like its predecessor, Section 511(a) defines the bounds of preclusion by referring to a decision "under a law." And like its predecessor, Section 511(a) precludes review of "decisions of the Secretary" (who replaced the Administrator), not decisions of Congress.

Given *Robison*'s authoritative construction of the relevant language in Section 511(a)'s direct predecessor, this Court should "presume that when Congress reenacted the same language" in the VJRA, "it adopted the earlier judicial construction." *Helsinn Healthcare S.A. v. Teva Pharm. USA, Inc.*, 586 U.S. 123, 131 (2019). Section 511(a)'s reference to a "decision by the Secretary" made "under" a statute thus refers only to the Secretary's "interpretation or application of a particular provision of the statute to a particular set of facts." *Robison*, 415 U.S. at 367.

3. Section 511(a) restricts the scope of preclusion to questions of law and fact that are "necessary" to such a decision. That includes the myriad legal and factual issues the VA must resolve to render decisions in accordance with applicable statutes—everything from what it means for a veteran's disability to be "contracted in line of duty," 38 U.S.C. § 1131, to the degree of limitation of movement in a particular veteran's nondominant arm, *see* 38 C.F.R. § 4.73. But it does not include deciding the constitutionality of statutes: The VA need not inquire into a statute's

validity to issue a decision "in accordance with" the statute; it need only apply the statute as written.

Experience proves the point. When Congress enacted Section 511(a), the VA had made clear that resolving challenges to statutes was not "necessary" to its benefits decisions. To the contrary, the BVA had "expressly disclaimed" any authority to resolve such challenges, holding that "'the constitutionality of the pertinent laws'" was "'not within the jurisdiction of this Board.'" *Robison*, 415 U.S. at 368 (quoting *Appeal of Sly*, C-27 593 725 (May 10, 1972)). Given that backdrop, no one could have believed that deciding constitutional challenges to statutes was "necessary" to the VA's benefits decisions when Congress enacted Section 511(a) in 1988.

The VA's subsequent practice provides yet more proof. When the VA updated its regulations after the VJRA, it *prohibited* the BVA from deciding constitutional challenges to acts of Congress by specifying that "the Board is bound by applicable statutes." 38 C.F.R. §§ 19.5, 20.101(a) (1992); *see* 54 Fed. Reg. 34,334 (Aug. 18, 1989) (proposing this language). That prohibition has governed ever since, spanning six presidential administrations and more than three decades. *See* 38 C.F.R. § 20.105 (2026).

The BVA itself has remained steadfast in insisting that it has "no jurisdiction to remedy a constitutional challenge [to] a law that is binding on the Board." Bd. Vet. App. 20079501, at *8 (Dec. 16, 2020). The Board sometimes says that it may "express an opinion" on such challenges, but it does not purport to decide them. *Id.* Instead, it "presumes the constitutionality of the statute[s]" it is charged with applying. *Id.*; *see, e.g.*, Bd. Vet. App. 18117756, at *2 (July 12, 2018). And the

BVA has grounded that approach squarely in Section 511(a), explaining that "38 U.S.C. § 5111(a) [sic], which defines the authority of the Secretary," does not "confer[] upon the Board jurisdiction to consider constitutional challenges to statutes." Bd. Vet. App. A24018528, at *4 (Apr. 15, 2024); *see, e.g.*, Bd. Vet. App. A23022357, at *5 (Aug. 30, 2023); Bd. Vet. App. 22036802, at *4 (June 27, 2022); Bd. Vet. App. 20079501, at *8 (Dec. 16, 2020).[4]

Questions the BVA is barred from resolving—and that it consistently refuses to resolve—cannot possibly be "necessary" to the BVA's decisions. And that means that constitutional challenges to statutes are not within Section 511(a)'s preclusive reach.

4. The Eleventh Circuit nonetheless held that district courts cannot hear constitutional challenges to statutes because Section 511(a) strips them of jurisdiction over "all questions arising from veterans' benefits decisions." Pet. App. 7a. But that is not what the statute says. Section 511(a) reaches only questions "necessary to a decision by the Secretary under a law that affects the provision of benefits." The Eleventh

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[4] The Government has identified no BVA decision to the contrary; instead, its filing at the certiorari stage relied on decisions of the CAVC. Gov't Cert. Br. 9. But those are not "decision[s] of the Secretary" within the meaning of Section 511(a). The CAVC is not within the VA at all, and it is the BVA that renders the Secretary's "[f]inal decisions" in matters subject to Section 511(a). 38 U.S.C. § 7104(a). The CAVC's decisions thus say nothing about the scope of preclusion under Section 511(a). And none of the Government's CAVC decisions suggest that *the BVA* had decided the relevant constitutional challenge.

Circuit replaced the words chosen by Congress with different, broader language.

The Government has not defended that rewriting of Section 511(a); instead, it has added different words of its own. On the Government's telling, Mr. Johnson's claim is barred because "[t]he constitutionality of Section 5313 is a 'question of law' that necessarily *bears on*" the VA's decision to reduce his benefits under Section 5313. Gov't Cert. Br. 9 (emphasis added; brackets and citation omitted). Again, though, that is not what the statute says. Section 5313's constitutionality may "bear on [Mr. Johnson's] entitlement to benefits." *Id.* at 11. But that does not mean resolving that constitutional question is "necessary" to the Secretary's decision "under" Section 5313. 38 U.S.C. § 511(a). To the contrary, the BVA has repeatedly declined to consider challenges to Section 5313 in its decisions applying the statute. *See, e.g.*, Bd. Vet. App. 20079501, at *7-8 (Dec. 16, 2020); Bd. Vet. App. 1703629, at *13-14 (Feb. 7, 2017); Bd. Vet. App. 1535263, at *6-7 (Aug. 18, 2015).

If Congress had wanted to adopt a broader preclusion rule like the ones posited by the Eleventh Circuit and the Government, it knew how to do so. Other statutes bar review of all claims "arising from" certain agency decisions, 8 U.S.C. § 1252(b)(9), (g), or "related to" particular agency programs, 31 U.S.C. § 3336(c). But Congress rejected those "ready alternative[s]" in favor of Section 511(a)'s more cabined text. *Advoc. Health Care Network v. Stapleton*, 581 U.S. 468, 477 (2017). The sort of "[a]textual judicial supplementation" the Government and the Eleventh Circuit propose is "particularly inappropriate where, as here, Congress has shown that it knows how to

adopt the omitted language" by including it in other statutes. *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019).

B. Context and structure confirm the natural reading of Section 511(a)'s text.

Section 511(a) does not simply bar review of questions "necessary to a decision by the Secretary under a law that affects the provision of benefits"; it also directs that the Secretary "shall decide all" such questions. The word "shall" imposes "a nondiscretionary duty." *SAS Inst. Inc. v. Iancu*, 584 U.S. 357, 362 (2018). And that duty to decide is exactly coextensive with the preclusion of review—they are two sides of the same coin, defined by the same statutory text. Thus, if constitutional challenges to statutes affecting veterans' benefits fell within the scope of Section 511(a)'s preclusion of review, Section 511(a) would also *require* the BVA to decide those challenges. But the VJRA's context and structure make clear that Congress imposed no such mandate. And the Government can scarcely disagree: If such a mandate exists, the Government has been flouting it for decades.

1. "It is a commonplace of statutory interpretation that 'Congress legislates against the backdrop of existing law.'" *Parker Drilling Mgmt. Servs., Ltd. v. Newton*, 587 U.S. 601, 611 (2019) (citation omitted). Congress enacted the VJRA against a settled understanding that agency adjudicators in general—and the BVA in particular—could not decide constitutional challenges to statutes.

This Court articulated that principle in a series of decisions recognizing that "the constitutionality of a statutory requirement" is "beyond [an agency's] jurisdiction to determine." *Weinberger v. Salfi*, 422 U.S.

749, 765 (1975); *see Mathews v. Diaz*, 426 U.S. 67, 76 (1976); *Oestereich v. Selective Serv. Sys. Local Bd. No. 11*, 393 U.S. 233, 242 (1968) (Harlan, J., concurring in the judgment). Among other things, the Court reasoned that "[c]onstitutional questions obviously are unsuited to resolution in administrative hearing procedures." *Califano v. Sanders*, 430 U.S. 99, 109 (1977).

In *Robison*, this Court reaffirmed that "adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies." 415 U.S. at 368 (brackets and citation omitted). And as particularly relevant here, the Court noted that the BVA had expressly disclaimed any power to "reach the issue of the constitutionality of the pertinent laws" in resolving claims for veterans' benefits. *Id.* (citation omitted); *see supra* at 20.[5]

2. Had Congress intended to challenge that settled understanding, it would at minimum have spoken clearly. Instead, Congress reenacted the very language this Court construed as *excluding* constitutional challenges to statutes. And nothing else in the VJRA suggests that Congress meant to take the unprecedented step of requiring the BVA to decide such challenges. In fact, the VJRA's structure confirms that Congress did no such thing.

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[5] In some post-VJRA decisions, this Court has left open the question "whether the oft-stated principle that agencies cannot declare a statute unconstitutional is truly a matter of jurisdiction." *Elgin*, 567 U.S. at 17. The Court likewise need not decide that question here. The relevant point is that this "oft-stated principle" was an established feature of the legal landscape when Congress enacted the VJRA.

Congress carefully delineated the scope of review at each stage of the VJRA's adjudicatory scheme. *See* 38 U.S.C. § 7104(a) (BVA); *id.* § 7261(a) (CAVC); *id.* § 7292(a) and (c) (Federal Circuit). In so doing, Congress conspicuously declined to suggest that the BVA can decide constitutional challenges to statutes—much less that it is obligated to do so. To the contrary, Congress specified that the BVA is bound by "regulations of the [VA], instructions of the Secretary, and the precedent opinions of the chief legal officer of the [VA]." 38 U.S.C. § 7104(c). It would be odd for an adjudicatory body to be bound by mere agency regulations, instructions, and opinions, yet empowered to disregard acts of Congress.

Elsewhere in the VJRA, Congress made clear that it knew how to authorize a tribunal to decide constitutional challenges when it wished to do so. Congress authorized the CAVC to set aside VA actions that are "contrary to constitutional right, power, privilege, or immunity." 38 U.S.C. § 7261(a)(3)(B). And Congress expressly specified that the Federal Circuit may "review and decide any challenge to the validity of any statute." 38 U.S.C. § 7292(c).[6]

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[6] Although the statute defining the CAVC's authority refers to constitutional issues, it does not expressly include challenges to statutes. The question whether the CAVC can decide such challenges is unsettled. The CAVC itself has held that it can. *See Giancaterino v. Brown*, 7 Vet. App. 555, 557 (1995). But some members of the CAVC "remain unconvinced." *Copeland v. Shinseki*, 26 Vet. App. 86, 93 (2012) (Hagel, J., dissenting). The Government has taken the dissenters' view, arguing as recently as last year that the CAVC "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); *see* Gov't Cert. Br. 13 n.1. That

The omission of any such reference in the provision governing review by the BVA, paired with its inclusion in the provisions about subsequent stages of review, confirms that Congress did not intend to authorize or require the BVA to invalidate statutes. When "Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally." *Russello v. United States*, 464 U.S. 16, 23 (1983) (citation omitted). The BVA itself has made precisely that point, relying on the different statutory language defining the CAVC's authority to hold that constitutional challenges to statutes must be left to "the Veterans Court, which possesses the necessary jurisdiction for constitutional questions." Bd. Vet. App. 20079501, at *8 (Dec. 16, 2020) (citing 38 U.S.C. § 7261(a)(1), (a)(3)(B)); *see, e.g.*, Bd. Vet. App. 1535263, at *7 (Aug. 18, 2015) (same); Bd. Vet. App. 1523577, at *5 (June 3, 2015) (same).

3. Three structural features of the BVA would make it a particularly odd choice to receive a novel mandate to decide constitutional challenges to statutes.

First, proceedings before the BVA "are informal and nonadversarial." *Henderson v. Shinseki*, 562 U.S. 428, 440 (2011). But the Government is not ordinarily nonadversarial as to the validity of statutes; instead, it generally has a "duty to defend an act of Congress whenever a reasonable argument can be made in its support." *The Attorney General's Duty to Defend the*

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unsettled question is immaterial here. Whether or not the VJRA confers authority to decide constitutional challenges on the CAVC, it does not confer such authority on the BVA. And the BVA is the entity that matters, because it renders the final "decision of the Secretary" under Section 511(a). *See supra* at 8.

Constitutionality of Statutes, 5 U.S. Op. Off. Legal Counsel 25, 25 (1981).

Second, the VJRA establishes an asymmetric review scheme in which only claimants—not the VA itself—may appeal adverse BVA decisions. *See* 38 U.S.C. § 7252(a). Accordingly, if the BVA were required to decide challenges to statutes, the Government would have no mechanism for seeking further review of a BVA decision holding a statute invalid. Again, that would be a stark departure from ordinary practice: Congress generally expects the Executive Branch to appeal decisions holding statutes unconstitutional and has gone so far as to require a report to Congress whenever the Department of Justice declines to do so. *See* 28 U.S.C. § 530D(a)(1)(B)(ii).

Third, the BVA consists of more than 100 Veterans Law Judges (VLJs) who typically decide cases by themselves. *See* 38 U.S.C. § 7102(a); BVA, *Annual Report FY2024* 7 (2024) (*BVA Annual Report*), https://perma.cc/D8XN-ZX7M. Those VLJs are analogous to administrative law judges at other agencies and enjoy comparable protections from removal. *Compare* 38 U.S.C. § 7101A, *with* 5 U.S.C. §§ 7521, 7532. It is implausible to think that Congress vested such a large number of independent adjudicators with authority to render a final decision for the Executive Branch on a matter as significant as whether to disregard an act of Congress.

Indeed, such a result would raise questions under Article II. As this Court has explained, "the traditional rule" is that "a principal officer, if not the President himself, makes the final decision on how to exercise executive power." *United States v. Arthrex, Inc.*, 594 U.S. 1, 21 (2021). Accordingly, inferior adjudicatory

officers like VLJs may be vested with executive power only to the extent their decisions are subject to review "by a superior executive officer." *Id.* at 14. The Court noted that the BVA generally satisfies that requirement because its "decisions are reviewed by the [CAVC], an Executive Branch entity." *Id.* at 20. But because the VA cannot appeal BVA decisions, the CAVC could not review a decision granting benefits based on a holding that a statute was invalid.

4. Although the Government insists that Section 511(a) bars district courts from hearing constitutional challenges to statutes, it has not grappled with the necessary implication of that position—that the BVA is *required* to decide such challenges. The Government cannot take the position that such a mandate exists: If it did, it would have to acknowledge that the VA has been flouting Section 511(a) since it was passed. But it would be equally untenable for the Government to maintain that the very same words in Section 511(a) mean one thing when they define the BVA's own obligations and something entirely different when they define veterans' access to the Article III courts.

C. There is no reason to force standalone constitutional challenges to statutes into the VJRA's review scheme.

Section 511(a) channels challenges to VA benefits decisions based on the interpretation or application of veterans' benefits laws through the VJRA's "unique administrative scheme" involving review by the BVA, the CAVC, and the Federal Circuit. *Henderson*, 562 U.S. at 438. Congress's reasons for routing claims to those specialized tribunals do not apply where, as here, a veteran raises only a constitutional challenge

to a statute. Just the opposite: The VJRA process is profoundly ill-suited for such challenges.

1. Before the VJRA, Congress generally barred judicial review of VA benefits decisions to ensure that "the technical and complex determinations" required to administer the veterans' benefits system would be "uniformly made." *Robison*, 415 U.S. at 370. The relevant determinations include "medical, legal, and other technical questions" such as the "length and character of service," the "origin of disabilities," and the application of "complex rating schedules." *Id.* at 370 n.12 (citation omitted). Congress believed that "[d]ue to the nature and complexity of the determinations to be made, it is inevitable that the decisions of the courts in such matters would lack uniformity." *Id.* (citation omitted).

In enacting the VJRA, Congress concluded that it had become untenable to continue precluding all judicial review of those questions. But to preserve uniformity in this highly technical area, it routed the previously barred challenges to the CAVC, a dedicated Article I court that could ensure consistency and develop the "expertise" to make "complex determinations in a specialized area of the law." *Shinseki v. Sanders*, 556 U.S. 396, 412 (2009) (citation omitted). And Congress centralized review of the CAVC's decisions in a single Article III court, the Federal Circuit.

As this Court explained in *Robison*, constitutional challenges to statutes "obviously" do not implicate Congress's reasons for barring (and later channeling) other challenges to the VA's benefits decisions. 415 U.S. at 373. Constitutional challenges to statutes do not "involve technical considerations of [VA] policy" or otherwise require the special expertise developed by

the BVA and the CAVC. *Id.* Instead, such challenges simply require courts to apply the same constitutional principles they apply in every other context.

2. On the other hand, forcing constitutional challenges to statutes into the VJRA process would impose severe costs on veterans. The BVA portion of that process has been described as a "bureaucratic labyrinth" where "many veterans find themselves trapped for years." *Martin v. O'Rourke*, 891 F.3d 1338, 1349 (Fed. Cir. 2018) (Moore, J., concurring). Even after modest reforms adopted in 2017, *see id.* at 1351, the BVA remains notoriously backlogged. At the end of 2024, it had more than 200,000 appeals pending. *BVA Annual Report* at 6. Depending on the procedural posture, BVA appeals take an average of roughly three to six years to complete. *Id.* at 39-40. Last year, even the most expedited BVA reviews under the new system—those with no hearing and no new evidence—averaged 937 days. *Id.* at 40. And because the BVA will not address constitutional challenges to statutes, consigning those claims to the VJRA process maroons veterans in an adjudicative desert, waiting years before they even reach a tribunal capable of hearing their constitutional claims or providing relief.

It is untenable to maintain that constitutional challenges to statutes must go through that long and pointless process. Imagine, for example, that Congress passed a law limiting veterans' benefits based on religion, or capping benefits for married women but not for married men. *Cf. Frontiero v. Richardson*, 411 U.S. 677, 678-79 (1973) (invalidating a statute providing such differential benefits to married service-members). Under the Government's reading of Section 511(a), challenges to those laws could be brought only

before the BVA, where they would languish for years—only to have the BVA decline to decide them. In the meantime, veterans and their families would have vital benefits unconstitutionally withheld.

The Government's interpretation of Section 511(a) also sweeps in structural challenges to the BVA itself. For example, some veterans have sought to challenge the statutes governing the appointment of the BVA's members or restricting their removal. *See, e.g.*, *Prewitt*, 633 F. Supp. 3d at 205-06. Reading Section 511(a) as written allows those challenges to proceed in district court. *See id.* The Government's reading, in contrast, would compel veterans to advance those challenges before the very agency they allege is unconstitutional. This Court has recognized that such separation-of-powers challenges assert a "here and now injury" that is "impossible to remedy once the [administrative] proceeding is over." *Axon*, 598 U.S. at 191 (citation omitted). The Court has thus allowed parties challenging other administrative review schemes to go directly to district court rather than forcing them to proceed through the allegedly unconstitutional scheme. *Id.* at 195-96; *see Free Enter. Fund v. PCAOB*, 561 U.S. 477, 490-91 (2010). There is no reason to close the courthouse doors to veterans asserting similar constitutional claims.

D. The remaining arguments advanced by the Eleventh Circuit and the Government are unpersuasive.

Lacking support in Section 511(a)'s text, context, structure, or purpose, the Eleventh Circuit and the Government have advanced a handful of other arguments. None is persuasive.

1. The VJRA did not abrogate *Robison*.

Although the Eleventh Circuit and the Government acknowledge that *Robison* interpreted Section 511(a)'s predecessor to allow constitutional challenges to statutes, they insist that this Court's interpretation is no longer controlling. That is wrong.

1. The Government and Eleventh Circuit first assert that *Robison* is irrelevant because it was based on constitutional avoidance rather than textual analysis. Gov't Cert. Br. 2-3, 11-12; Pet. App. 13a-14a. Both the premise and the conclusion are mistaken.

First, *Robison* squarely grounded its holding in Section 211(a)'s text. The Court began by explaining that "[p]lainly, no explicit provision of § 211(a) bars judicial consideration" of constitutional challenges to statutes. *Robison*, 415 U.S. at 367. The Court then concluded that its interpretation was "not only 'fairly possible' but [wa]s the most reasonable construction" of Section 211(a). *Id.* at 373. Those are not the words of a court straining to avoid constitutional doubt. Thus, "despite dictum about constitutional concerns," *Robison* "did not ultimately rest on principles of constitutional avoidance." *Prewitt*, 633 F. Supp. 3d at 203. Instead, as this Court explained the next year, the challenge in *Robison* "was simply not within [Section] 211(a)'s express language." *Salfi*, 422 U.S. at 761.

Second, this Court's decision in *Robison* established a settled judicial construction of Section 211(a)'s operative language. When Congress preserved that language in the VJRA, it "adopted also the construction given by this Court," *Helsinn*, 586 U.S. at 131, regardless of the Court's original reasoning. *See supra* at 18-19.

2. The Government and the Eleventh Circuit also emphasize that Section 511(a)'s text differs in some respects from Section 211(a). *See* Gov't Cert. Br. 10-11; Pet. App. 14a-15a. Section 211(a) barred review of "decisions of the Administrator" on questions "under any law administered by the [VA] providing benefits," whereas Section 511(a) bars review of "decision[s] of the Secretary" on questions "necessary to a decision by the Secretary under a law that affects the provision of benefits." Those changes do not suggest any intent to upset *Robison.*

Robison relied on the phrases "*under* [a] law" and "*decisions* of the Administrator" (now Secretary). *Robison*, 415 U.S. at 367. Congress retained both of those phrases without material change. Accordingly, as Judge Moss has explained, "the VJRA's textual changes to § 211(a)" do not "call into question [*Robison*'s] continued vitality." *Prewitt*, 633 F. Supp. 3d at 203. Under Section 511(a), as before, a "decision by the Secretary under a law" involves only the "interpretation or application of a particular provision of the statute to a particular set of facts." *Robison*, 415 U.S. at 367.

Rather than seeking to abrogate *Robison*, the changes the Government highlights were a response to *Traynor v. Turnage*, 485 U.S. 535 (1988). There, this Court held that Section 211(a) did not reach questions arising under statutes "applicable to all federal agencies." *Id.* at 543. Congress responded by requiring the Secretary to decide all questions "necessary to a decision by the Secretary under a law that affects the provision of benefits," then precluding review of the Secretary's decision "as to any such question." 38 U.S.C. § 511(a). Congress thus expanded the set of

covered statutes to include those not administered by the VA. But because Congress did not intend to compel the Secretary to decide—or bar courts from reviewing—*all* questions arising under that broader universe of statutes, it cabined the scope of Section 511(a) to questions "necessary" to the VA's benefits decisions.

Those changes were a perfectly natural way to abrogate *Traynor*, but they would have been an exceedingly oblique and ineffective way to abrogate *Robison*. Indeed, the Government's view would require this Court to assume that Congress silently repudiated *Robison* while reenacting the very language *Robison* interpreted. That would put Congress in an impossible position: When Congress seeks to change one aspect of a statute while preserving this Court's reading of another, what is it to do if not retain the words on which this Court relied?

2. The Federal Circuit's jurisdiction to hear constitutional challenges does not alter Section 511(a)'s plain text.

The VJRA authorizes appeals from the CAVC to the Federal Circuit and gives the Federal Circuit "exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under this section." 38 U.S.C. § 7292(c). The Eleventh Circuit believed that this grant of "exclusive" jurisdiction "clearly barred district courts from exercising jurisdiction over constitutional claims relating to veterans' benefits decisions." Pet. App. 9a-10a. The Government has not embraced that argument, and with good reason: By its terms, Section 7292(c)'s exclusivity provision applies only to challenges "brought under this section"—that is, appeals of CAVC decisions brought under Section

7292. It has no bearing on the district court's jurisdiction here.

The Government makes a different argument about Section 7292(c), emphasizing that it expressly authorizes the Federal Circuit to decide constitutional challenges to statutes—and adding that the CAVC has likewise decided such challenges. Gov't Cert. Br. 8-10. But those points are not in dispute. The question is whether Section 511(a) strips district courts of their concurrent jurisdiction under 28 U.S.C. § 1331. And on that issue, Section 7292(c) cuts decidedly against the Government: Congress explicitly authorized the Federal Circuit to decide constitutional challenges to statutes without conferring any comparable authority on the BVA—the relevant body in determining Section 511(a)'s scope, since it issues the Secretary's "[f]inal decisions" in matters subject to Section 511(a). 38 U.S.C. § 7104(a); *see supra* at 25-26.

3. The Government's appeal to legislative history is misplaced.

The Government invokes snippets of a committee report purportedly showing that Congress intended the VJRA to strip district courts of the jurisdiction recognized in *Robison*. Gov't Cert. Br. 12, 14. That appeal to legislative history is misplaced for three reasons.

First, "legislative history is not the law." *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 523 (2018). Even if the report supported the Government, it would provide no basis for departing from Section 511(a)'s plain text.

Second, the Government's account of the legislative history is based on a single report describing an unenacted House bill that was materially different

from the final version of the VJRA (which originated in the Senate, not the House). One of the Government's excerpts, for example, is from a portion of the report addressing a provision that would have abolished the BVA and replaced it with a vastly larger CAVC—not the portion addressing amendments to the preclusion provision now codified as Section 511(a). *See* Gov't Cert. Br. 12 (quoting H.R. Rep. No. 963, 100th Cong., 2d Sess. 30 (1988) (House Report)).

The final version of the VJRA contained a different version of the preclusion provision than the one discussed in the House Report. And the statement summarizing the final House-Senate compromise explained that the language of what is now Section 511(a) had been narrowed from the House version "to clarify that the requirement to make decisions and the general preclusion of judicial review apply *only* to a decision by the Administrator under a law affecting the provision of benefits." 134 Cong. Rec. 31,474 (1988) (emphasis added).

Third, a full review of the legislative history underscores what is apparent from the VJRA's text: Congress agreed with *Robison* and did not seek to disturb this Court's holding. Most obviously, even the report on which the Government relies recognized that *Robison* was "properly decided" and "clearly correct." House Report 19. It also "favorably contrasts" *Robison* with other decisions, such as *Traynor*, that allowed courts to "review a broader range of challenges to VA decisions." *Prewitt*, 633 F. Supp. 3d at 204. That confirms "that § 511(a) was meant to displace the latter category of cases, but not [*Robison*] itself." *Id.*

E. To the extent any ambiguity remains, the veterans' canon counsels in favor of district-court jurisdiction.

If this Court concludes that Section 511(a) is subject to multiple plausible readings, it should resolve that ambiguity by applying "the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *King v. St. Vincent's Hosp.*, 502 U.S. 215, 220-21 n.9 (1991). The VJRA is a statute "decidedly favorable to veterans," *Henderson*, 562 U.S. at 441, enacted against the backdrop of Congress's "special solicitude" for those who served our Nation, *Sanders*, 556 U.S. at 412. The Government's reading of Section 511(a)—which would strip veterans of access to district court and consign their constitutional claims to languish in a futile administrative process—is the antithesis of this Court's traditional presumption about Congress's intent in statutes dealing with our Nation's veterans.

II. The VJRA does not impliedly withdraw Section 1331's grant of jurisdiction over constitutional challenges to statutes affecting veterans' benefits.

In addition to invoking Section 511(a), the Eleventh Circuit also relied on *Elgin v. Department of Treasury*, 567 U.S. 1 (2012), which in turn relied on *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994). In *Elgin* and *Thunder Basin*, this Court addressed two other statutes providing for review of certain agency decisions in the courts of appeals. Unlike the VJRA, those statutes did not expressly displace district courts' jurisdiction under Section 1331. But the Court nonetheless held that the statutes impliedly barred district courts from hearing related claims because

Congress's intent to withdraw jurisdiction was "fairly discernible in the statutory scheme." *Thunder Basin*, 510 U.S. at 207; *see Elgin*, 567 U.S. at 9-10, 17.

That sort of implied-preclusion inquiry is both unnecessary and unjustified here. As the Government seems to agree, there is no need for an extra-textual inquiry to "discern[]" the extent to which Congress intended to displace district-court jurisdiction because Congress answered that question in Section 511(a)'s express text. As in any other context, courts have no license to add to or vary from Section 511(a)'s text based on speculation about congressional intent. In any event, even if an implied-preclusion inquiry were appropriate, nothing in the VJRA would impliedly withdraw district court jurisdiction over Mr. Johnson's constitutional challenge to Section 5313.

A. There is no basis for an implied-preclusion analysis here.

As the Government appears to recognize, courts should not resort to *Thunder Basin*'s "multifactor test" for "determining whether Congress has implicitly precluded jurisdiction" where, as here, Congress has defined the scope of preclusion "*explicitly*." Gov't Cert. Br. 13. Instead, a court's task is simply to apply the express-preclusion provision as written.

1. This Court developed the *Thunder Basin* framework to identify circumstances where Congress's creation of "a statutory scheme of administrative review followed by judicial review in a federal appellate court" impliedly precludes district-court jurisdiction over related claims. *Elgin*, 567 U.S. at 9. Because that framework is designed to identify "implied preclusion," *id.* at 12, the Court has applied it

only when the relevant statute did not expressly define the scope of preclusion. In *Elgin*, the Court noted that the statute "[did] not expressly bar suits in district court." *Id.* at 9. In *Thunder Basin*, the statute was likewise "facially silent." 510 U.S. at 208; *see also Axon*, 598 U.S. at 185-86; *Free Enter. Fund*, 561 U.S. at 489. Lacking express direction from Congress, the Court in those cases applied a multifactor inquiry aimed at discerning the existence and scope of "Congress's intent to preclude district court jurisdiction." *Elgin*, 567 U.S. at 9.

2. In contrast, the VJRA *does* contain an express preclusion provision—Section 511(a). The Court has never invoked the *Thunder Basin* framework to alter or supplement such a provision. Instead, when Congress expressly addresses the issue, this Court "determine[s] the scope of preclusion simply by interpreting the words Congress has chosen." *Elgin*, 567 U.S. at 25 (Alito, J., dissenting).

For example, in *Jennings v. Rodriguez*, 583 U.S. 281 (2018), the Court held that two statutes expressly precluding district-court review of certain immigration matters did not bar a district court from hearing a suit by noncitizens challenging their detention. *Id.* at 292-96. The Court did not go on to conduct a separate implied-preclusion inquiry; instead, its preclusion analysis was complete once it held that the express-preclusion provisions did not apply. *Id.* at 296; *see, e.g.*, *Am. Hosp. Ass'n v. Becerra*, 596 U.S. 724, 733-34 (2022); *Nasrallah v. Barr*, 590 U.S. 573, 581-83 (2020); *SAS Inst.*, 584 U.S. at 370-71.

That approach follows directly from fundamental principles of statutory interpretation. Relying on an *Elgin*-style analysis to expand the scope of preclusion

beyond the bounds of an express-preclusion provision like Section 511(a) would contradict this Court's repeated admonition that courts may not "replace the actual text with speculation as to Congress' intent." *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 642 (2022) (citation omitted). It would also violate the "cardinal principle of statutory construction" that courts "must 'give effect, if possible, to every clause and word of a statute.'" *Williams v. Taylor*, 529 U.S. 362, 404 (2000) (citation omitted). If the VJRA scheme implicitly precluded district courts from hearing "all questions arising from veterans' benefits decisions," Pet. App. 7a, there would have been no need for an express-preclusion provision at all. Yet the VJRA not only retained that provision, but also fine-tuned its scope. *See supra* at 6-8. Imposing broader implied preclusion would render those amendments—and, indeed, all of Section 511(a)—superfluous.

3. Members of this Court have vigorously disagreed with both the legitimacy of *Elgin*'s implied-preclusion test, *Axon*, 598 U.S. at 204-09 (Gorsuch, J., concurring in the judgment), and the Court's application of that test to bar other constitutional challenges to statutes, *see Elgin*, 567 U.S. at 23-36 (Alito, J., dissenting). Among other things, *Elgin*'s multi-factor search for unexpressed congressional intent departs markedly from the Court's usual preference for "straightforward" jurisdictional rules that allow courts to "readily assure themselves of their power to hear a case." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010); *see Axon*, 598 U.S. at 205-07 (Gorsuch, J., concurring in the judgment).

But the Court need not reconsider its implied-preclusion precedents here. Whatever the merits of

"jurisdiction-stripping-by-implication" in cases where Congress has not spoken directly to the preclusion question, there is no justification for extending *Elgin*'s "judge-made, multi-factor balancing test" to cases where Congress has defined the bounds of preclusion in express statutory text. *Axon*, 598 U.S. at 205 (Gorsuch, J., concurring in the judgment).

B. Even if an implied-preclusion analysis were appropriate, the VJRA would not bar district courts from hearing constitutional challenges to statutes.

This Court has held that a preclusion inquiry under *Thunder Basin* and *Elgin* is supposed to examine the statutory "text, structure, and purpose" to "determine whether it is 'fairly discernible' that Congress precluded district court jurisdiction" over the relevant claims. *Elgin*, 567 U.S. at 10 (citation omitted). As we have already shown, the text, structure, and purpose of Section 511(a) make clear that claims like Mr. Johnson's are not precluded. *See supra* Part I. That should be the end of the inquiry.

In cases without such directly applicable text, this Court has also looked to three factors drawn from *Thunder Basin*: (1) whether precluding district-court jurisdiction would foreclose "meaningful judicial review," (2) whether the claim is "wholly collateral to the statute's review provisions," and (3) whether the claim is "outside the agency's expertise." *Axon*, 598 U.S. at 186 (citations omitted). To the extent those extra-textual considerations are relevant here, they reinforce the conclusion that Mr. Johnson's suit can proceed in district court.

1. For judicial review to be meaningful, it must be available "as a practical matter," not just in theory. *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 496 (1991). The VJRA scheme flunks that test. To begin with, the process is slow, even by bureaucratic standards. At the BVA alone, resolving an appeal takes years. *BVA Annual Report* 39-40; *see supra* at 30. And because the BVA will not address constitutional challenges to statutes, consigning those claims to the VJRA process condemns veterans to wait years before they even reach a tribunal capable of providing relief (if they are able to preserve their constitutional claims at all).

Moreover, the BVA lacks the tools to conduct constitutional adjudication. Lay veterans are not equipped to litigate such complex challenges on their own. Federal courts can appoint counsel when presented 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 before the BVA, the CAVC and the Federal Circuit will not review it. *See, e.g.*, *Seiflein v. Collins*, 2025 WL 2267022, at *2 (Fed. Cir. Aug. 8, 2025) (per curiam).

All of that sharply distinguishes the VJRA from the scheme *Elgin* deemed sufficient to provide meaningful judicial review for federal employees challenging personnel actions. There, an employee needed to navigate only a single layer of administrative review (the Merit Systems Protection Board (MSPB)) before reaching an Article III court. *See Elgin*, 567 U.S. at 6. The MSPB handles only a fraction of the BVA's caseload, and its "policy is to adjudicate

all appeals within 120 days" absent "good cause" for delay. MSPB, *Judges' Handbook* 1 (Oct. 2019), https://perma.cc/UPQ4-K7H6. Here, in contrast, veterans must navigate two layers of non-Article III review (the BVA and the CAVC)—and the BVA stage alone takes vastly longer than the MSPB process.

2. A veteran's constitutional challenge to a federal statute is also collateral to the BVA's "ordinary proceedings." *Axon*, 598 U.S. at 187. Those proceedings focus on assessing the nature and extent of veterans' disabilities, their connection to veterans' military service, and similar "medical, legal, and other technical questions" arising under the veterans' benefits laws. *Robison*, 415 U.S. at 370 n.12 (citation omitted). The constitutionality of the underlying laws is wholly collateral to that enterprise.

Relying on *Elgin*, the Government objects that Mr. Johnson's claim cannot be collateral to the BVA's ordinary proceedings because his ultimate goal is to secure the benefits to which he would be entitled if not for Section 5313. Gov't Cert. Br. 14. But that is not the test. In *Axon*, for example, the challengers' ultimate goal was to secure a favorable outcome in agency proceedings (dismissal). *See* 598 U.S. at 182-84. This Court nonetheless held that their constitutional challenges were "collateral" because they were "wholly disconnected in subject." *Id.* at 193. So too here: Mr. Johnson's constitutional challenge to Section 5313 has no relationship to the BVA's ordinary administration of the laws governing veterans' benefits.

3. Finally, the BVA has no expertise in deciding constitutional challenges to statutes. Such a challenge "raise[s] only a 'standard' issue" of "constitutional law" that is detached from "'considerations of agency

policy.'" *Axon*, 598 U.S. at 188 (citation omitted). Here, for example, the BVA "knows a good deal about" eligibility requirements for veterans' benefits, "but nothing special about" the Fifth Amendment or the Bill of Attainder Clause. *Id.* at 194.

The Government does not disagree. Instead, it asserts that the BVA may have expertise on "other matters" that could conceivably be relevant to a constitutional challenge, such as the "proper interpretation of the statute" or an "understanding of the veterans'-benefits scheme as a whole." Gov't Cert. Br. 14-15. But again, the same thing could have been said in *Axon*: The Federal Trade Commission, for example, surely had comparable expertise on the proper interpretation and functioning of the provisions of its organic statute that allegedly created an unconstitutional "combination of prosecutorial and adjudicative functions." 598 U.S. at 194.

In any event, the Government's invocation of the BVA's purported expertise rings hollow because the BVA would never have an opportunity to bring that expertise to bear. At the risk of belaboring the issue, the Government prohibits the BVA from deciding constitutional challenges to statutes. *See supra* at 20-21. That only further underscores the fundamental point: There is no justification for stretching *Elgin* and *Thunder Basin* to override Section 511(a)'s limits and condemn our Nation's veterans to years of futile proceedings in a bureaucracy that can neither consider their claims nor provide relief.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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