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 OF WASHINGTON LEGAL FOUNDATION AS AMICUS CURIAE SUPPORTING PETITIONER

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QUESTION PRESENTED

Did the Veterans' Judicial Review Act oust 28 U.S.C. § 1331?

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. It defends free enterprise, individual rights, limited government, and the rule of law. To that end, WLF often appears as amicus curiae to urge this Court to keep the federal district courts open to properly pled constitutional claims. *First Choice Women's Resource Ctrs v. Davenport*, 608 U.S. __ (2026); *Axon Enter., Inc. v. FTC*, 598 U.S. 175 (2023).

INTRODUCTION AND SUMMARY OF ARGUMENT

A lot of complicated provisions are stuffed in the nooks and crannies of the United States Code. But 28 U.S.C. § 1331 is a single, simple sentence: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." That's it.

That straightforward text easily resolves this case. Floyd Johnson brought a civil action. He claims he's suffering a constitutional injury—an unlawful bill of attainder. And he filed his complaint in the United States District Court for the Middle District of Florida.

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* No party's counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief's preparation or submission.

Yet Johnson's been told something's missing—and he can't fix it. The federal district courts are closed to his claim. What gives?

The government chalks this up to forum confusion. Congress can reallocate Article III jurisdiction to other bodies, and in the Veterans' Judicial Review Act (so the story goes), it moved the ability to hear Johnson's constitutional claim to the Federal Circuit. He can't file his claim there immediately—only after he takes an exhaustive trip through the other branches: first stop, the Secretary of Veterans Affairs (Article II), then the Board of Veterans' Appeals (Article II), then the Court of Appeals for Veterans Claims (Article I). After that, Johnson will finally arrive at the Federal Circuit, an Article III body capable of permanently setting aside an offending statute as unconstitutional. *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (observing "the basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution").

Maddening that may be, but the government's case has surface plausibility. Congress certainly can set aside § 1331 by passing a law, so long as Article III sifting for constitutional wrongs occurs somewhere at some time. *See Sheldon v. Sill*, 8 How. 441, 449 (1850). But federal trial courts have had general original jurisdiction over constitutional claims for 150 years. And as Justice Gorsuch recently noted, the modern vestiture crackles with mandatory language. "Not *may* have jurisdiction, but *shall*. Not *some* civil actions arising under federal law, but *all*." *Axon*, 598 U.S. at 205 (Gorsuch, J., concurring) (emphasis in original). So the "true rule of construction [of § 1331] is this: When there are statutes clearly defining the

jurisdiction of the courts, the force and effect of such provisions should not be disturbed by a mere implication flowing from subsequent legislation." *Rosecrans v. United States*, 165 U.S. 257, 262 (1897).

Over the years, this Court has used many terms—and even developed a multifactor balancing test (totally ignored below, incidentally)—to police that "true rule." *E.g.*, *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 212–16 (1994). And maybe that zigzagging grammar is responsible for the wrong outcome downstairs. But the Court's formulations all really boil down to the same thing: Did Congress really mean to create an exception to § 1331? If it did, it should have said so.

That rule—the *Rosecrans* rule—makes sense. It ensures that litigants facing "irreparable" constitutional harms don't get bogged down in wasteful litigation about whether they picked the right place to file. *See Mahmoud v. Taylor*, 606 U.S. 522, 569 (2025) (internal quotation marks and citation omitted). That's especially important for businesses caught in the crosshairs of an unconstitutional statute, regulation, or order. Businesses spend scarce resources on litigation after assessing the risk of losing—both on the merits and to a time-sucking forum fight. "Simple jurisdictional rules," like the true rule, "promote greater predictability" and allow for an informed business judgment on whether to fight back. *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010).

Not least, this standard works with the basic tools of statutory construction. After all, Congress wouldn't set aside a century-and-a-half default

lightly. The Legislature's bound to speak clearly when doing so. And while "context can also do the trick" of showing legislative clarity, neither text nor context works for the government's case. *Biden v. Nebraska*, 600 U.S. 477, 515 (2023) (Barrett, J., concurring). Combined, they kill it.

Congress not only failed to displace § 1331 in the Veterans' Judicial Review Act, but that law "carrie[d] forward," Pet. 9, the same language that this Court unanimously decided—in the veterans' benefits context, no less—did *not* supplant § 1331. *Johnson v. Robison*, 415 U.S. 361, 373–74 (1974). By reenacting that exact substance in the new Act, Congress spoke clearly—and not in the direction the federal government would like.

So nothing's missing from Johnson's complaint. His constitutional claim must go before an Article III judge—now, not later. And in the Middle District of Florida, not the Federal Circuit.

ARGUMENT

I. CONGRESS MUST SPEAK CLEARLY TO OVERRIDE SECTION 1331.

In 1875, Congress "exclusively conferred" original jurisdiction upon federal trial courts for most constitutional claims. *Sheldon*, 8 How. at 449; 18 Stat. 470 (Mar. 3, 1875). That's still so today. 28 U.S.C. § 1331. The modern provision is a single, declaratory sentence: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." That's about "as clear as statutes get." *Axon*, 598 U.S.

at 205 (Gorsuch, J., concurring). A civil action bringing a constitutional claim defaults to district court.

True, what Congress gives, it can take away. But it still must "leave intact some judicial forum capable of providing constitutionally adequate remedies for constitutional wrongs." Lawrence Gene Sager, *Constitutional Limitations on Congress' Authority to Regulate the Jurisdiction of the Federal Courts*, 95 Harv. L. Rev. 17, 42 (1981). So the Legislative Branch can, for instance, assign initial consideration of constitutional claims to the administrative process, with Article III review as a backstop via a federal appellate court. *Elgin v. U.S. Dep't of the Treas.*, 567 U.S. 1, 23 (2012); *Thunder Basin*, 510 U.S. at 218. But when Congress does so, it must do so clearly. "When there are statutes clearly defining the jurisdiction of the courts, the force and effect of such provisions should not be disturbed by a mere implication flowing from subsequent legislation." *Rosecrans*, 165 U.S. at 262.

Over the years, this Court has policed that line various ways: sometimes demanding "clear and convincing evidence" of deviation, *Abbott Labs. v. Gardner*, 387 U.S. 136, 141 (1967), at others squinting for what's "fairly discernable in the statutory scheme." *Thunder Basin*, 510 U.S. at 207 (internal quotation marks and citation omitted). Most recently, in *Axon*, the Court applied a multifactor test (derived from *Thunder Basin*) that asks if precluding district-court jurisdiction would (1) eliminate meaningful Article III review (2) of an issue outside the agency's general docket and (3) institutional competence. *Axon*, 598 U.S. at 186–87. In practice, all that boils

down to a single proposition. Did Congress really mean to create an exception to § 1331? If it did, it should have said so.

That rightly puts § 1331 at the center of the analysis. The court of appeals below—perhaps confused by this Court's inconsistent phrasing—focused on Congress's later-in-time enactment, not the import of a 150-year-old default rule. Pet. App. 7a–10a. Notably, the Eleventh Circuit didn't even cite *Thunder Basin*—or *Axon*, this Court's most recent take on § 1331 displacement.

But an allegedly jurisdiction-stripping statute can't be read alone, for "a vacuum is no home for a textualist." *Biden*, 600 U.S. at 517 (Barrett, J., concurring). Every law, including the Veterans' Judicial Review Act, has a "single, best meaning . . . 'fixed at the time of enactment.'" *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024) (quoting *Wisc. Cent. Ltd. v. United States*, 585 U.S. 274, 284 (2018)). Whether a statute reallocates jurisdiction depends on what a "reasonable interpreter would expect" Congress to say, *Biden*, 600 U.S. at 515 (Barrett, J., concurring), if it wanted to override a 150-year-old statutory norm. 28 U.S.C. § 1331.

This "expectation of clarity," *id.* at 514 (Barrett, J., concurring), also plays well with the interpretative canons. "Ouster of jurisdiction" is "protected" against by "the presumption against implied repeal." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 276 (2011). Since "[r]epeals by implication are disfavored—very much disfavored," they happen only when a subsequent statute "flatly contradicts"

another. *Id.* at 250 (internal quotation marks and citation omitted). If a later statute doesn't clearly contradict § 1331, then § 1331 controls—full stop. *Rosecrans*, 165 U.S. at 262 ("[I]n the absence of subsequent legislation equally express" to a prior jurisdictional grant, the old "statute[] clearly defining the jurisdiction of the courts . . . is not overthrown").

This insistence on clarity isn't just correct, it's salutary. After all, the liberties guaranteed by our national charter are "priceless," with "no measure in money." *Elgin v. Marshall*, 106 U.S. 578, 580 (1883). Even a nanosecond loss of a fundamental freedom is forever "irreparable." *See Mahmoud*, 606 U.S. at 569 (internal quotation marks and citation omitted). So unconstitutional acts should be cashiered at the earliest proper moment. If Congress could oust § 1331 without expressly saying so, courts would have to assume that vague surmises could suffice—an invitation to lengthy pre-merits contests over jurisdiction, potentially delaying the permanent stoppage of a Constitution-defying act. Because the *Rosecrans* true rule offers "administrative simplicity," *Hertz*, 559 U.S. at 94, it takes that hazard off the menu.

That's especially valuable to the Nation's business community, which regularly vindicates the Constitution by showing up in court. *E.g.*, *Learning Resources v. Trump*, 607 U.S. __ (2026); *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109 (2022); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477 (2010). But litigation is time consuming, and a company's "two most valuable resources" are its "time and [the] ability to try new things." Alan Greenspan

& Adrian Wooldridge, *Capitalism in America* 411 (2018). In a world of finite resources, choosing to litigate means sacrificing some portion of both, so being able to accurately calculate litigation risk is essential to figuring out if a claim (even one of great constitutional moment) should be brought at all.

If litigation risk *can't* be accurately assessed, fewer going concerns (who may be the only actors with standing) will stand up to federal abuses—leaving unconstitutional laws, regulations, and executive ukases on the books. That's an intolerable outcome for our constitutional order, where "[t]he rule of law is not merely an instrument of the State, but the basis for determining its scope." Philip Bobbitt, *America's Relation to World Order: Two Indictments, Two Thought Experiments, and a Misquotation*, 1-4 Tex. Nat'l Sec'y Rev 57, 59 (2018) (punctuation altered). But that measurement can happen only if constitutional cases are first brought to bar.

II. CONGRESS DIDN'T OVERRIDE SECTION 1331 HERE.

Nothing suggests that Congress really meant to create an exception to § 1331. Granted, the federal government would have you think otherwise. It points to 38 U.S.C. § 511(a), which gives the Secretary of Veterans Affairs authority to "decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits." The Secretary's decision can be appealed to the Board of Veterans' Appeals (an Article II body), and from there to the Court of Appeals for Veterans Claims (an Article I court), and from there—at last—to the Federal Circuit (Article III's first look), 38 U.S.C.

§§ 511(a), 7104, 7252, 7292. The government claims that this mention of "Federal Circuit" in 38 U.S.C. § 7292 quietly deletes the pellucid language of 28 U.S.C. § 1331.

That kind of wooden analysis doesn't meet the moment. Words acquire meaning based on how and why they are used—and the whole statutory scheme matters. To discern a statute's best meaning, the underlying facts matter. Here's an important fact: in 1974, this Court unanimously held that constitutional questions related to veterans' benefits run the default § 1331 course. *Robison*, 415 U.S. at 373–74; *id.* at 366 n.7 (noting complaint's invocation of § 1331).

In *Robison,* the federal government (as it does here) tried to claim another statute undid the § 1331 promise. There the government pointed to 38 U.S.C. § 211(a)—§ 511(a)'s predecessor—which said 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 and their dependents or survivors shall be final and conclusive." 38 U.S.C. § 211(a) (1970). That grant of "final and conclusive" power to the Administrator precluded judicial review of "any such decision" by any "other official or any court of the United States." *Id.*

Robison didn't unsettle that statute—it saluted Congress's decision to leave benefits administration outside Article III review. 415 U.S. at 367–70. But the Court held that a constitutional defect in the underlying statutory scheme isn't the result of a "decision of the Administrator, but rather a decision of Congress." *Id.* at 367. So § 211(a) couldn't keep the

"federal courts from deciding the constitutionality of veterans' benefits legislation." *Id*. at 366.

At the close of President Reagan's second term, Congress decided that precluding judicial review of garden-variety administrative decisions was too harsh. So it passed the Veterans' Judicial Review Act to channel claims about "decision[s] by the Secretary under a law that affects the provision of benefits," 38 U.S.C. § 511(a), through the forementioned appeal process. *Id*. §§ 7104, 7252, 7292. That class of decisions is interpretatively identical to § 211(a)'s class of "decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans," which the *Robison* Court found not to defeat § 1331.

Sure, there are a few differences: the current statute cognizes Congress's weeks-earlier decision to promote the Veterans' Administration to Cabinet rank and swaps "Administrator" for "Secretary." Pub. L. 100–527 (Oct. 25, 1988) ("redesignat[ing] the VA "as the Department of Veterans Affairs"). But at bottom, the "decisions by the Administrator/decision by the Secretary" change is a "restyling project," not a substantive "change in meaning. Scalia & Garner, *Reading Law* 203 (discussing the reenactment canon). That reveals the best meaning of the Act: the Federal Circuit ultimately reviews "decisions by the Secretary," while the district courts immediately review "decisions by Congress."

And so, for benefits issues, 38 U.S.C. § 7292 governs. For all constitutional claims, 28 U.S.C. § 1331 provides the answer.

CONCLUSION

Mr. Johnson is entitled to his day in district court now. The Court should reverse so he may have it.

Respectfully submitted,

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