

No. 25-735

In the Supreme Court of the United States

FLOYD D. JOHNSON, PETITIONER

v.

UNITED STATES CONGRESS

*ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

**BRIEF OF THE FEDERAL CIRCUIT BAR ASSOCIATION
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER**

COREY SALSBERG
President
FEDERAL CIRCUIT BAR
ASSOCIATION
1620 I Street, NW, Suite 801
Washington, DC 20006

ZACHARY D. TRIPP
Counsel of Record
CRYSTAL L. WEEKS
MELISSA V. BREDBENNER
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
zack.tripp@weil.com

ANDREW H. GREINETZ
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Ave.
Miami, FL 33131
(305) 577-3118

TABLE OF CONTENTS

| | |
|--|----|
| Interest of <i>amicus curiae</i> | 1 |
| Summary of argument..... | 2 |
| Argument..... | 5 |
| I. The VJRA preserved district-court jurisdiction over constitutional challenges to veterans' benefits legislation | 5 |
| II. Preserving <i>Robison</i> is fully consistent with the Federal Circuit's overall role..... | 8 |
| III. Preserving <i>Robison</i> is sensible, narrow, and administrable | 10 |
| A. <i>Robison</i> challenges do not require the VA's time-consuming benefits-adjudication process | 10 |
| B. This area of concurrent jurisdiction is narrow and well-defined | 13 |
| C. Courts have ample tools for addressing parallel proceedings | 16 |
| Conclusion | 18 |

TABLE OF AUTHORITIES

| Cases | Page(s) |
|---|------------------|
| <i>Acevedo-Garcia v. Monroig</i> , 351 F.3d 547 (1st Cir. 2003) | 15 |
| <i>Bartenwerfer v. Buckley</i> , 598 U.S. 69 (2023) | 7 |
| <i>Bufkin v. Collins</i> , 604 U.S. 369 (2025) | 6-7, 9, 12 |
| <i>Copeland v. Shinseki</i> , 26 Vet. App. 86 (2012) | 11 |
| <i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005) | 12 |
| <i>Disabled Am. Veterans v. U.S. Dep’t of Veterans Affs.</i> , 962 F.2d 136 (2d Cir. 1992) | 14 |
| <i>Elgin v. Dep’t of Treasury</i> , 567 U.S. 1 (2012) | 16 |
| <i>Evans v. Greenfield Banking Co.</i> , 774 F.3d 1117 (7th Cir. 2014) | 14 |
| <i>Gardner v. Brown</i> , 5 F.3d 1456 (Fed. Cir. 1993) | 5 |
| <i>Henderson v. Shinseki</i> , 562 U.S. 428 (2011) | 5, 7 |
| <i>Johnson v. Robison</i> , 415 U.S. 361 (1974) | 2-3, 5-6, 10, 14 |
| <i>Landis v. N. Am. Co.</i> , 299 U.S. 248 (1936) | 16 |
| <i>Lorillard v. Pons</i> , 434 U.S. 575 (1978) | 7 |
| <i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803) | 8 |
| <i>Mims v. Arrow Fin. Servs., LLC</i> , 565 U.S. 368 (2012) | 8 |

| | |
|---|---------|
| <i>Pereida v. Collins</i> , 2025 WL 1099947 (Fed. Cir. Apr. 14, 2025)..... | 11 |
| <i>Price v. United States</i> , 228 F.3d 420 (D.C. Cir. 2000) | 14 |
| <i>Rostker v. Goldberg</i> , 453 U.S. 57 (1981) | 5 |
| <i>Taylor v. Sturgell</i> , 553 U.S. 880 (2008) | 16 |
| <i>Thomas v. Principi</i> , 394 F.3d 970 (D.C. Cir. 2005) | 14, 15 |
| <i>Univ. of Tenn. v. Elliott</i> , 478 U.S. 788 (1986) | 16 |
| <i>Veterans for Common Sense v. Shinseki</i> , 678 F.3d 1013 (9th Cir. 2012) | 10, 15 |
| Constitution, Statutes, and Regulations | |
| U.S. Const. Art. VI, cl. 2 | 8 |
| Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25 | 9 |
| Veterans’ Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988) | 2, 6 |
| 38 U.S.C. 511(a) | 3, 4, 7 |
| 38 U.S.C. 7252(a) | 6, 12 |
| 38 U.S.C. 7252(b) | 12 |
| 38 U.S.C. 7261 | 11 |
| 38 U.S.C. 7261(a)(1) | 6 |
| 38 U.S.C. 7261(a)(3)(B) | 6 |
| 38 U.S.C. 7292(a) | 7 |
| 38 U.S.C. 7292(c) | 7 |
| 28 U.S.C. 530D(a)(1)(B)(ii) | 12 |
| 28 U.S.C. 1331 | 5 |
| 38 U.S.C. 211(a) (1970) | 5, 6 |
| 38 C.F.R. 20.105 | 11 |

Miscellaneous

Advisory Council to the United States Court of Appeals for the Federal Circuit, A History: 1990–2002 (2004) 9

The Attorney General’s Duty to Defend the Constitutionality of Statutes, 5 Op. O.L.C. 25 (1981)..... 12

Donald W. Banner, *Witness at the Creation*, 14 Geo. Mason U.L. Rev. 557 (1992) 9

H.R. Rep. No. 312, 97th Cong., 2d Sess. (1981) 9

H.R. Rep. No. 963, 100th Cong., 2d Sess. (1988) ... 5, 7

Restatement (Second) of Judgments (1982)..... 17

James D. Ridgway, *Why So Many Remands? A Comparative Analysis of Appellate Review by the United States Court of Appeals for Veterans Claims*, 1 Veterans L. Rev. 113 (2009)..... 7

S. Rep. No. 275, 97th Cong., 1st Sess. (1981) 9

Stacey-Rae Simcox, *Thirty Years of Veterans Law: Welcome to the Wild West*, 67 U. Kan. L. Rev. 513 (2019) 6

U.S. Gov’t Accountability Off., *GAO-18-352, VA Disability Benefits: Improved Planning Practices Would Better Ensure Successful Appeals Reform* (2018) 11

In the Supreme Court of the United States

No. 25-735

FLOYD D. JOHNSON, PETITIONER

v.

UNITED STATES CONGRESS

*ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT*

**BRIEF OF THE FEDERAL CIRCUIT BAR ASSOCIATION
AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER**

INTEREST OF *AMICUS CURIAE*¹

The Federal Circuit Bar Association (“FCBA”) is a national organization for the bar of the United States Court of Appeals for the Federal Circuit. Started in 1985, the FCBA was organized to unite the different groups across the nation that practice before the Federal Circuit, including those practicing in veterans’ law.

One of the FCBA’s primary purposes is to assist the Federal Circuit in appropriate instances by submitting its views on the legal issues before that court. The FCBA also has an interest in assisting this Court by

¹ Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, and its counsel, made a monetary contribution to its preparation or submission.

submitting its views on cases that implicate subject matter within the appellate jurisdiction of the Federal Circuit.

This case implicates the scope of the Federal Circuit’s exclusive jurisdiction over veterans’ benefits disputes and the structure Congress created for judicial review under the Veterans’ Judicial Review Act (“VJRA”), Pub. L. No. 100-687, 102 Stat. 4105 (1988). Consistent with its longstanding engagement with veterans’ issues—including through veterans’ scholarships, educational programming, and legal advocacy—the FCBA has long maintained that the VJRA was enacted to expand opportunities for judicial review of veterans’ claims, not to restrict them. It is with this interest in mind that the FCBA submits this *amicus* brief in support of petitioner.

Because respondent is part of the federal government, FCBA members and leaders who are employees of the federal government have not participated in the FCBA’s decision-making regarding whether to participate as *amicus curiae* in this litigation, developing the content of this brief, or the decision to file this brief.

SUMMARY OF ARGUMENT

This case requires the Court to decide whether Congress, when it enacted the VJRA, silently displaced district-court jurisdiction this Court had already recognized in *Johnson v. Robison*, 415 U.S. 361 (1974). The text, history, and context of the VJRA confirm that Congress preserved that narrow district-court path. Preserving district-court jurisdiction over *Robison* challenges is also fully consistent with the Federal Circuit’s role in the VJRA scheme, as the centralized appellate court for reviewing the legality of the VA’s own benefits determinations.

1. Congress enacted the VJRA to expand judicial review of Department of Veterans Affairs (“VA”) benefits decisions, not to eliminate district-court jurisdiction over constitutional challenges to Acts of Congress. Before the VJRA, this Court held in *Robison* that the predecessor to 38 U.S.C. 511(a)—the provision governing finality and review of VA benefits decisions—did not bar district-court review of constitutional challenges to veterans’ benefits statutes. 415 U.S. at 366. The Court distinguished review of a VA decision under a benefits statute from review of Congress’s decision to enact a statute under the Constitution. *Id.* at 367.

When Congress later enacted the VJRA, it legislated against that backdrop and retained the key text. The VJRA bars district-court review only of the Secretary’s decision on a question “necessary to a decision by the Secretary under a law that affects the provision of benefits.” 38 U.S.C. 511(a). A freestanding constitutional challenge to an Act of Congress does not fit that description. It challenges Congress’s enactment of the statute, not the VA’s administration of that statute in an individual benefits proceeding. That point is reinforced by the role of the Board of Veterans’ Appeals (the “Board”) in the statutory scheme. Notably, the Board acts on the Secretary’s behalf in deciding benefits appeals, but it is bound by the applicable statutes. Because the Board does not decide whether those statutes are constitutional, district courts can.

The VJRA’s history and structure confirm that conclusion. Congress extended the Federal Circuit’s specialized judicial review to VA benefits decisions without displacing the district-court jurisdiction *Robison* had recognized.

2. Preserving district-court jurisdiction over constitutional challenges to benefits legislation is fully

consistent with the Federal Circuit’s role in the VJRA scheme. Individual benefits determinations would remain strictly within the VJRA’s specialized review process. The Federal Circuit would continue to review decisions of the United States Court of Appeals for Veterans Claims (“CAVC”) and decide any constitutional questions that arise in veterans’ benefits appeals. District courts also would not become alternative veterans’ benefits tribunals. They would retain jurisdiction only over the narrow category of claims recognized in *Robison*: challenges to the validity of Acts of Congress. Preserving that district-court path is consistent with the Federal Circuit’s expertise-driven role and with Congress’s decision to centralize review of VA benefits decisions.

3. Preserving the *Robison* rule is also narrow, sensible, and administrable. Courts have long distinguished between challenges to the validity of statutes and disguised attempts to obtain review of individual VA benefits decisions. If a veteran asks a district court to decide a disability rating, effective date, evidentiary issue, or application of law to an individual benefits claim, Section 511(a) bars jurisdiction. If a veteran instead challenges the constitutionality of an Act of Congress, the district court can decide that question without reviewing a VA benefits determination. Ordinary tools—including tailoring relief, applying claim-splitting and preclusion principles where appropriate, staying or severing claims, and managing the docket—also enable courts to address any overlap between district-court proceedings and the VJRA process.

ARGUMENT

I. The VJRA Preserved District-Court Jurisdiction Over Constitutional Challenges to Veterans' Benefits Legislation

Ordinarily, federal district courts have jurisdiction to decide constitutional challenges to federal statutes. See 28 U.S.C. 1331. Indeed, “judg[ing] the constitutionality of an Act of Congress” is “the gravest and most delicate duty” federal courts are “called upon to perform.” *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981) (citation omitted). Congress has not created an exception for federal statutes granting benefits to our Nation’s veterans. In enacting the VJRA, Congress greatly expanded judicial review of VA benefits decisions. It did so without stripping federal district courts of that core jurisdiction.

1. Before Congress enacted the VJRA, “a veteran whose claim was rejected by the VA was generally unable to obtain further review.” *Henderson v. Shinseki*, 562 U.S. 428, 432 (2011). The then-governing statute, 38 U.S.C. 211(a) (1970), made “the decisions of the Administrator on any question of law or fact” under veterans’ benefits laws final and unreviewable. That jurisdictional bar reflected Congress’s longstanding decision to “insulate[]” decisions of VA administrators from ordinary judicial review. *Gardner v. Brown*, 5 F.3d 1456, 1463 (Fed. Cir. 1993) (quoting H.R. Rep. No. 963, 100th Cong., 2d Sess. 10 (1988)).

Yet even under that scheme—when Congress broadly barred judicial review—Congress left the courthouse doors open to constitutional challenges to benefits legislation itself. In *Johnson v. Robison*, this Court held that district courts had jurisdiction to hear a constitutional challenge to a statute denying certain benefits to conscientious objectors. 415 U.S. 361, 367-68 (1974).

The Court emphasized that the jurisdictional bar applied only to “*decisions* of the Administrator on any question of law or fact *under* any law administered by the Veterans’ Administration providing benefits for veterans.” *Id.* at 367 (quoting 38 U.S.C. 211(a)) (emphasis in *Robison*). The Court reasoned that *Robison*’s challenge was not to “any such decision of the *Administrator*, but rather to a decision of *Congress*.” *Ibid.* (emphasis in *Robison*). That question “ar[ose] under the Constitution, not under the statute whose validity is challenged.” *Ibid.* (citation omitted).

2. In the VJRA, Congress dramatically expanded the availability of judicial review of VA benefits decisions. After years of debate, Congress created a specialized path for judicial review of individual VA benefits determinations. See VJRA, 102 Stat. 4105; see also Stacey-Rae Simcox, *Thirty Years of Veterans Law: Welcome to the Wild West*, 67 U. Kan. L. Rev. 513, 522 (2019).

That path begins with an initial agency adjudication by a regional office. See *Bufkin v. Collins*, 604 U.S. 369, 373 (2025). Next, the veteran—but not the government—can appeal to the Board. See *ibid.* In both the regional office and before the Board, the process is “non-adversarial” and the VA “must assist veterans in developing the evidence necessary to substantiate their claims.” *Ibid.*

The veteran—but not the VA—can then appeal to the CAVC,² an Article I appellate tribunal. *Id.* at 373.

² The VJRA vested the CAVC with exclusive jurisdiction to “review decisions of the Board of Veterans’ Appeals.” 38 U.S.C. 7252(a). It also gave the CAVC the ability to “decide all relevant questions of law, interpret constitutional ... provisions” and “hold unlawful and set aside decisions ... contrary to constitutional right, power, privilege or immunity[.]” 38 U.S.C. 7261(a)(1) and (a)(3)(B).

Finally, after those steps, either party can obtain judicial review in the Federal Circuit. See 38 U.S.C. 7292(a) and (c); see also *Henderson*, 562 U.S. at 433.

That structure serves two related purposes. First, it preserves the nonadversarial character of VA benefits adjudication, “with a high degree of informality and solicitude for the claimant.” *Bufkin*, 604 U.S. at 373 (quoting *Henderson*, 562 U.S. at 431); see James D. Ridgway, *Why So Many Remands? A Comparative Analysis of Appellate Review by the United States Court of Appeals for Veterans Claims*, 1 Veterans L. Rev. 113, 117-18 (2009). Second, it promotes nationwide uniformity in the interpretation of veterans’ benefits law by channeling review of agency decisions under those laws to the Federal Circuit. See H.R. Rep. No. 963, at 28 (“[I]t is strongly desirable to avoid the possible disruption of VA benefit administration which could arise from conflicting opinions on the same subject due to the availability of review in the 12 Federal Circuits.”).

3. Critically, in adding that new path to judicial review of VA benefits decisions, Congress did not take away district courts’ preexisting power to adjudicate challenges to Congress’s choices in enacting benefits legislation itself. Rather, Congress reenacted the key language that this Court had relied upon—and emphasized—in *Robison*. The VJRA’s jurisdictional bar precludes review of Board determinations that are “necessary to a *decision* by the [Board] *under a law* that affects the provision of benefits.” 38 U.S.C. 511(a) (emphasis added).

“This Court generally assumes that, when Congress enacts statutes, it is aware of this Court’s relevant precedents.” *Bartenwerfer v. Buckley*, 598 U.S. 69, 80 (2023) (citation omitted); see *Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978). By reenacting the terms *Robison* rests

upon, the VJRA is properly understood to preserve district-court jurisdiction over constitutional challenges to benefits legislation.

That conclusion flows naturally from the text itself. A challenge to the constitutionality of an Act of Congress is not ordinarily understood to involve a challenge to an agency decision “under” a statute. The Constitution is the “supreme Law of the Land.” U.S. Const. Art. VI, cl. 2. But statutes sit underneath the Constitution. “[A] legislative act contrary to the constitution is not law.” *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). Such a challenge is thus to “a legislative act”—not to agency action. *Ibid.* And a contention that a law is “contrary to the constitution” is one under the Constitution—which sits above, not below, the statute Congress enacted. *Ibid.*

The VJRA thus *added* judicial review that was previously unavailable; it did not *take away* the district-court jurisdiction that *Robison* had already recognized. Cf. *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 383 (2012) (courts “should hold firm against ‘mere implication’ of jurisdiction stripping”) (citation omitted). Veterans therefore may raise constitutional challenges to benefits legislation through the administrative review process, with eventual review in the Federal Circuit, or they may bring *Robison*-style constitutional challenges directly in district court. The VJRA made judicial review available through both paths; it did not make the administrative path exclusive.

II. Preserving *Robison* is Fully Consistent with the Federal Circuit’s Overall Role

Congress made the Federal Circuit the exclusive court of appeals for VA benefits decisions. But it did not make the Federal Circuit the exclusive forum for

standalone constitutional challenges to veterans' benefits statutes. Allowing those challenges to proceed in district court, with review in the regional circuits, is fully consistent with the Federal Circuit's specialized role.

Congress created the Federal Circuit as a national court of appeals defined by specialized subject matter rather than geography. See *Advisory Council to the United States Court of Appeals for the Federal Circuit, A History: 1990–2002*, at 9 (2004). The Federal Circuit's jurisdiction is designed to promote expertise, coherence, and predictability in complex and specialized areas of law, including patents and government contracts. See Federal Courts Improvement Act of 1982, Pub. L. No. 97-164, 96 Stat. 25; S. Rep. No. 275, 97th Cong., 1st Sess. 3 (1981); H.R. Rep. No. 312, 97th Cong., 2d Sess. 20-23 (1981); see also Donald W. Banner, *Witness at the Creation*, 14 *Geo. Mason U.L. Rev.* 557, 560 (1992).

Through the VJRA, Congress used that same institutional model to provide centralized appellate review of VA benefits decisions. Those decisions involve a complex statutory scheme and detailed VA regulations, with unusual standards of review and doctrines involving disability ratings, effective dates, and individual entitlement that are unique to the veterans' nonadversarial adjudicatory system. See *Bufkin*, 604 U.S. at 373. Review of such decisions is exclusively channeled to the Federal Circuit. And in the decades since, the Federal Circuit has developed deep expertise in veterans' benefits law.

Challenges to the constitutionality of benefits legislation are fundamentally different. Such challenges do not typically require expertise in the specialized adjudicatory scheme, evidentiary rules, or regulations governing veterans' benefits. Nor do they ask whether the VA correctly applied a benefits statute to a particular

veteran. They ask whether Congress overstepped constitutional limits in enacting the statute. See *Robison*, 415 U.S. at 367; *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1034 (9th Cir. 2012) (en banc). That question turns on constitutional constraints on Congress's power—such as the Bills of Attainder and Equal Protection Clauses raised here—that apply to Congress regardless of the statutory scheme at issue.

As a result, a standalone constitutional challenge of the kind at issue does not implicate the Federal Circuit's institutional advantages and specialized expertise. Like the Federal Circuit, the other federal circuit courts also have expertise in those kinds of constitutional questions. Congress thus sensibly put all of the circuit courts on equal footing, enabling them all to decide this kind of constitutional claim.

III. Preserving *Robison* is Sensible, Narrow, and Administrable

A. *Robison* Challenges Do Not Require the VA's Time-Consuming Benefits-Adjudication Process

Congress had good reason to give veterans the option to proceed in district court in rare cases when a veteran has a challenge to benefits legislation. Imposing a categorical requirement that such a challenge must always begin in the VA would add multiple layers of time-consuming administrative review that would rarely aid resolution of the constitutional question.

Under the government's rule, a veteran would need to proceed all the way through agency adjudication at a regional office and the Board before first obtaining review of the constitutional question at the CAVC or the

Federal Circuit.³ That administrative pathway can take years for a veteran’s case to move through each stage of VA appeals before getting to the Federal Circuit. For example, one study found that cases can take an average of three years for a veteran to receive a Board decision and *seven years* to be fully resolved through the VA appeals process. See U.S. Gov’t Accountability Off., GAO-18-352, *VA Disability Benefits: Improved Planning Practices Would Better Ensure Successful Appeals Reform 1* (2018).⁴

If a veteran has both administrative and constitutional claims, it may be sensible to pursue them all simultaneously. But when a veteran primarily seeks to raise a constitutional challenge to the statute itself, then it serves little or no purpose to force the veteran to wade through multiple years and multiple layers of agency proceedings before finally being heard on that challenge by an Article III court.

Forcing veterans to bring constitutional challenges exclusively through the administrative process would also create a series of practical difficulties. The Board’s own regulations require it to apply the statute as written without considering its constitutionality. See 38 C.F.R. 20.105. So if the veteran must raise the claim before the Board, that requirement would yield little or no

³ It remains an open question whether the CAVC can decide such constitutional questions. See *Copeland v. Shinseki*, 26 Vet. App. 86, 93 (2012) (Hagel, J., dissenting) (“I remain unconvinced that this Court has the power to entertain facial constitutional challenges to statutes[.]”) (emphasis omitted); *Pereida v. Collins*, 2025 WL 1099947, at *3 (Fed. Cir. Apr. 14, 2025) (noting the Secretary’s argument that the CAVC “lack[s] authority” under 38 U.S.C. 7261 to rule on such challenges). The FCBA takes no position on that question, which is not presented here.

⁴ <https://www.gao.gov/assets/700/690982.pdf>.

benefit. Moreover, the nonadversarial nature of Board proceedings would be in tension with the longstanding tradition that the government *is* adverse to people who challenge Acts of Congress: absent unusual circumstances, the government will defend the constitutionality of federal statutes. See, e.g., *The Attorney General's Duty to Defend the Constitutionality of Statutes*, 5 Op. O.L.C. 25 (1981). And if the Board found a law unconstitutional, the government lacks a clear path to appeal. 38 U.S.C. 7252(a); see also *Bufkin*, 604 U.S. at 373. That too would mark a departure from ordinary practice, because the government must notify Congress if it forbears from appealing “any judicial, administrative, or other determination adversely affecting the constitutionality” of a statute. See 28 U.S.C. 530D(a)(1)(B)(ii). It would be unusual for Congress to sharply break from those traditions without mentioning it.

Raising a constitutional challenge for the first time at the CAVC would be unusual too. The CAVC is not a trial court; it is an appellate tribunal that reviews the Board’s decision on the administrative record. See 38 U.S.C. 7252(a) and (b). That scheme would invert the ordinary rule that appellate tribunals are “court[s] of review, not of first view.” *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Moreover, because the CAVC lacks authority to find facts or weigh evidence in the first instance, any factual predicate for a constitutional challenge would need to be developed before the Board. That would create an odd mismatch: the place where the record must be built (the Board) cannot decide the question, and the first tribunal that could possibly decide the question (the CAVC) does so in an appellate capacity and is largely confined to the record already made. And because the Federal Circuit is also an appellate

tribunal, its own review will likewise be limited to whatever record has already been made.

The result would be an unusual scheme for constitutional litigation. The record would have to be developed before a tribunal that is not designed to decide the constitutional question, while the courts that can decide the question would review only after the administrative record has closed.

Congress thus had sensible reasons to preserve an option for veterans to challenge the constitutionality of benefits statutes in district court. The alternative administrative pathway for judicial review that Congress created did not obviate the need for that option.

B. This Area of Concurrent Jurisdiction is Narrow and Well-Defined

A district court hearing a *Robison* claim has exceedingly narrow jurisdiction: It may decide only the validity of the statute itself. It may not assign ratings, determine effective dates, calculate arrears, or otherwise review any VA benefits determination. Veterans seeking review of agency benefits determinations must still proceed exclusively through the VA, the Board, the CAVC, and ultimately the Federal Circuit. Preserving the *Robison* path therefore leaves the Federal Circuit's expertise-driven role intact—and enables the Federal Circuit to decide any constitutional questions that arise during that process. At the same time, it preserves a narrow but important avenue in rare cases when a veteran has a constitutional challenge that does not seek review of the VA's decisions under a law.

This Court need not break any new ground to define the relevant line because it already drew the line in *Robison*. A VA benefits decision involves “the interpretation or application of a particular provision of the

statute to a particular set of facts.” *Robison*, 415 U.S. at 367. A constitutional challenge to an Act of Congress, by contrast, arises under the Constitution and challenges the validity of the statute itself. *Ibid.* Courts can apply that distinction without intruding on the VA or the Federal Circuit’s jurisdiction over ordinary benefits disputes.

Notably, district courts have policed this line for decades and it has proven to be limited and manageable. Courts already recognize that veterans may not obtain district-court review of an individualized benefits decision by recasting that challenge in constitutional terms or under different causes of action. See, e.g., *Thomas v. Principi*, 394 F.3d 970, 975 (D.C. Cir. 2005) (dismissing a claim that would have required the court to determine whether the VA acted properly in an individual benefits case). In such cases, the central question involves “determin[ing] first whether the VA acted properly in handling’ [a benefits] request.” *Ibid.* (quoting *Price v. United States*, 228 F.3d 420, 422 (D.C. Cir. 2000)). Courts thus have long rejected such creative pleading that merely repackages benefits disputes in constitutional terms, while recognizing that challenges to Acts of Congress are different. See, e.g., *Disabled Am. Veterans v. U.S. Dep’t of Veterans Affs.*, 962 F.2d 136, 140 (2d Cir. 1992) (holding that federal courts were not stripped of jurisdiction to hear constitutional challenges); *Evans v. Greenfield Banking Co.*, 774 F.3d 1117, 1124 (7th Cir. 2014) (using *Robison* as an example of the line between ordinary suits and constitutional challenges to statutes).

District courts also have ample tools to tailor relief to avoid intruding on the VA’s authority. If a veteran in district court raises both a constitutional challenge *and* requests relief that would require the court to calculate

benefits, assign ratings, determine effective dates, or order individualized payments, the court can deny or narrow that relief without dismissing the constitutional claim. The availability of some improper requested relief does not convert a challenge to an Act of Congress into a challenge of an agency benefits determination. It means only that remedies must be limited to those the district court may properly award.

Federal courts have long done this kind of tailoring without any significant difficulty. In *Thomas*, for example, the D.C. Circuit dismissed claims that would have required the district court to decide whether the VA properly handled the veteran's benefits-related medical-care requests. 394 F.3d at 975. And in *Veterans for Common Sense*, the en banc Ninth Circuit held that Section 511 forecloses any claim that would require a district court to review VA benefits decisions. 678 F.3d at 1025. The court focused on the practical effect of the requested relief, including whether it would require ongoing supervision of VA benefits processing. *Ibid.* It explained that the claim was impermissible because "in order to provide the relief [sought] ..., the district court would ... [be embroiled] in the day-to-day operation of the VA and, of necessity ... [be required to] monitor individual benefits determinations." *Id.* at 1028.

These cases demonstrate that lower courts are comfortable policing the boundary between permissible constitutional review and impermissible review of benefits administration. See also *Acevedo-Garcia v. Monroig*, 351 F.3d 547, 558-59 (1st Cir. 2003) (explaining that severance under Rule 21 lets courts split claims for separate proceedings). Courts thus can resolve the statute's validity while leaving any individualized benefits determinations to the administrative process, subject to review in the Federal Circuit.

C. Courts Have Ample Tools for Addressing Parallel Proceedings

Courts also have ample tools for addressing parallel proceedings in rare cases when they arise. A veteran may sometimes raise a constitutional issue in the administrative process and also in a parallel district-court action. As Justice Alito has noted, there is typically “no overlap with the issues of law and fact that will pertain to the administrative proceeding,” and thus “allowing the constitutional claims to be adjudicated separately before a district court does not invite wasteful or duplicative review.” *Elgin v. Dep’t of Treasury*, 567 U.S. 1, 34 (2012) (Alito, J., dissenting).

Even in cases in which some overlap exists, federal courts have many tools for avoiding inefficiency, duplication, or conflict. Indeed, federal courts routinely confront cases where related claims are proceeding in multiple forums at the same time, and they have broad discretion to stay or sequence claims as appropriate. See, e.g., *Landis v. N. Am. Co.*, 299 U.S. 248, 254-55 (1936).

Preclusion principles also apply and prevent veterans from obtaining a second bite at the apple. See *Univ. of Tenn. v. Elliott*, 478 U.S. 788, 798 (1986). Issue preclusion will ensure that any issue can be actually litigated and decided only once. See *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008).

Claim preclusion also helps avoid duplication. If a veteran has fully adjudicated a claim via the administrative process—through which a veteran can obtain judicial review of a constitutional challenge in the Federal Circuit—then the veteran will be precluded from later relitigating the same claim in district court. See *Elliott*, 478 U.S. at 798. Conversely, if a veteran has fully adjudicated a constitutional challenge in district court and

lost, then that determination would be preclusive in subsequent agency proceedings—but the veteran would not be precluded from later challenging the VA’s benefits determination via the agency process. The district courts lack jurisdiction over agency benefits determinations, so claim preclusion would not attach. See Restatement (Second) of Judgments 26(1)(c) (1982). Preclusion principles thus ensure veterans will have, at most, one opportunity to litigate and obtain judicial review of all their claims, while protecting veterans from inadvertently losing the ability to challenge an agency benefits decision.

In sum, the VJRA greatly expanded the availability of judicial review of VA benefits decisions. In doing so, Congress preserved district-court jurisdiction over constitutional challenges to veterans’ benefits legislation. That path gives veterans the choice to raise such claims in either the administrative process or in court (but not both). And the scope of any such district-court review is narrow, well-defined, familiar, and administrable.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

COREY SALSBERG
President
FEDERAL CIRCUIT BAR
ASSOCIATION
1620 I Street, NW, Suite
801
Washington, DC 20006

ZACHARY D. TRIPP
Counsel of Record
CRYSTAL L. WEEKS
MELISSA V. BREDBENNER
WEIL, GOTSHAL & MANGES LLP
2001 M Street NW
Washington, DC 20036
(202) 682-7000
zack.tripp@weil.com

ANDREW H. GREINETZ
WEIL, GOTSHAL & MANGES LLP
1395 Brickell Ave.
Miami, FL 33131
(305) 577-3118

JUNE 2026