

No. 25-735

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**In the Supreme Court of the United States**

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FLOYD D. JOHNSON,  
PETITIONER,

*v.*

THE UNITED STATES CONGRESS,  
RESPONDENT.

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

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**BRIEF OF THE NATIONAL VETERANS LEGAL  
SERVICES PROGRAM, CONNECTICUT VETERANS  
LEGAL CENTER, DISABLED AMERICAN VETERANS,  
NATIONAL ORGANIZATION OF VETERANS'  
ADVOCATES, INC., AND SWORDS TO PLOWSHARES AS  
AMICI CURIAE IN SUPPORT OF 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?

II

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## INTEREST OF AMICI CURIAE\*

Amici curiae are national veterans' organizations. Founded in 1981, the National Veterans Legal Services Program ("NVLSP") is a nonprofit organization that works to ensure that the nation's 18 million veterans and active-duty service members have access to benefits for veterans. NVLSP does so in part by serving as a national support center that recruits, trains, and assists thousands of volunteer lawyers and veterans' advocates. For over two decades, NVLSP has published the 2,400-page Veterans Benefits Manual, the leading practice guide on the subject.

The Secretary of the Department of Veterans Affairs ("VA") has recognized NVLSP as an organization authorized to assist veterans in the preparation, presentation, and prosecution of their benefits claims. *See* 38 U.S.C. § 5902. NVLSP has represented thousands of veterans in proceedings before the VA, the Board of Veterans' Appeals ("Board" or "BVA"), the Court of Appeals for Veterans Claims ("Veterans Court" or "CAVC"), and other federal courts. NVLSP also has filed numerous amicus briefs in this Court (and others) in cases that present issues of broad importance to veterans and the VA benefits system.

Amicus Connecticut Veterans Legal Center ("CVLC") provides legal representation at no cost to low-income veterans and is the creator of the nation's first medical legal partnership co-located with the VA. CVLC's mission is to empower, support, and improve the

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\*No counsel for any party authored this brief in whole or in part, and no person or entity other than amicus and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

lives of Connecticut veterans by providing free legal assistance to help them overcome barriers to housing, healthcare, income, and recovery. As part of this work, CVLC attorneys assist veterans in VA service-connected disability claims and in applications to correct military records made to the Department of Defense (“DoD”). CVLC advocates for policy changes to create a more inclusive veterans benefits system for the most vulnerable low-income veterans: those who are living with mental illness, trauma, substance dependence, and homelessness as a result of their service, those who have experienced military sexual trauma, and those who have been harmed by discrimination or other injustices in the DoD and VA systems.

Disabled American Veterans (“DAV”) is a federally chartered veterans service organization, founded to serve the interests of the nation’s disabled veterans. 36 U.S.C. § 50301. DAV has nearly a million members, all of whom are service-connected disabled veterans. Although DAV operates several charitable programs that serve the interests of its constituency, its marquee program is the National Service Program. Through that program, DAV service officers provide free assistance to veterans with their claims for benefits from the VA.

Amicus curiae National Organization of Veterans’ Advocates, Inc., (“NOVA”) is a not-for-profit educational membership organization of accredited attorneys, agents, and other qualified members. These members assist tens of thousands of our nation’s military veterans, survivors, family members, and caregivers seeking to obtain their earned benefits from VA. NOVA works to develop and encourage high standards of service and representation for all persons seeking VA benefits through regular training programs. NOVA routinely advocates for laws

and policies that advance the rights of veterans, including by filing amicus briefs where appropriate.

Amicus Swords to Plowshares is a community-based not-for-profit organization in San Francisco providing needs assessment and case management, employment and training, housing, and legal assistance to veterans—particularly veterans who are low-income, experiencing housing insecurity, and living with mental health conditions. Swords to Plowshares promotes and protects the rights of veterans through advocacy, public education, and partnership with local, state, and national entities, as well as direct representation of veterans before the VA and other government agencies. In its legal work, Swords to Plowshares assists hundreds of veterans each year at every level of the VA adjudicatory system to obtain both monetary disability benefits and access to healthcare.

#### INTRODUCTION AND SUMMARY OF ARGUMENT

This case raises an important question of statutory interpretation that will have profound effects on the lives of veterans across the nation: whether the Veterans Judicial Review Act (“VJRA” or “Act”) stripped federal district courts of jurisdiction to hear facial challenges to the constitutionality of veterans’ benefits legislation.<sup>2</sup> In the decision below, the Eleventh Circuit erroneously construed the VJRA as eliminating district-court jurisdiction over such challenges. *Johnson v. U.S. Cong.*, 151 F.4th 1287 (11th Cir. 2025). This Court should correct the erroneous decision below and establish much-needed

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<sup>2</sup> Consistent with the Petitioner’s brief, amici use the term “facial” constitutional challenges to refer to claims attacking “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).

uniformity, certainty, and fairness in courts' consideration of challenges to the constitutionality of laws affecting veterans' benefits.

In the VJRA, Congress channeled challenges to certain “decision[s] of the [Secretary]” to the Veterans Court and the United States Court of Appeals for the Federal Circuit.<sup>3</sup> See Pub. L. No. 100-687, §§ 101(a)(1), 223(c), 102 Stat. 4105, 4106 (1988) (codified, as amended, in various sections of 38 U.S.C.). But as Petitioner explains, the plain text of the VJRA, the relevant part of which is codified at 38 U.S.C. § 511(a), makes clear that Congress did not strip federal district courts of jurisdiction over facial constitutional challenges to federal statutes. And as amici explain below, the statutory and legislative history of the VJRA is equally unambiguous. Congress enacted the VJRA to provide judicial review of benefits decisions from the BVA, not to curtail judicial review over constitutional challenges to veterans' benefits statutes. Indeed, the VJRA specifically created the Veterans Court to “ensure that our Nation's veterans receive their day in Court.” *Jefferson v. Collins*, No. 24-4929, 2025 WL 1874677, at \*1 (Vet. App. July 8, 2025).

1. Following the Vietnam War, a highly contested movement for judicial review of veterans' individualized benefits decisions began. This movement was motivated at least in part by veterans' inconsistent access to courts. In 1974, in *Johnson v. Robison*, 415 U.S. 361 (1974), this Court held that a predecessor of the VJRA, 38 U.S.C. § 211, did not bar federal courts from deciding the constitutionality of veterans' benefits legislation, which

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<sup>3</sup> For ease of reference, decisions by the Administrator, and later by the Secretary following the elevation of the Veterans Administration to Cabinet status, are referred to as “decisions by the VA.”

the Court distinguished from individual benefits decisions by the VA.

In the wake of *Robison*, courts disagreed about whether their jurisdiction also extended to challenges regarding VA regulations or VA procedures. Then, in April 1988, months before the VJRA was passed, this Court issued its decision in *Traynor v. Turnage*, 485 U.S. 535 (1988). *Traynor* held that the no-review clause addressed in *Robison* did not preclude review of whether a VA regulation was inconsistent with a statute applicable to all federal agencies—a decision that, unlike *Robison*, faced skepticism from Congress. Ultimately, Congress passed the VJRA, which established judicial review for BVA decisions in the newly created Veterans Court, and on further appeal, the Federal Circuit.

2. Congress amended Section 211 when it passed the VJRA, but it preserved the pertinent language that this Court interpreted in *Robison* as permitting district court review of “actions challenging the constitutionality of laws providing benefits for veterans.” *Robison*, 415 U.S. at 373. The no-review clause, now codified at 38 U.S.C. § 511(a), applies only to a “decision by” the VA made “under” a law that affects the provision of benefits.<sup>4</sup> Where “judicial interpretations have settled the meaning of an existing statutory provision, repetition of the same language in a new statute indicates, as a general matter, the intent to incorporate its . . . judicial interpretations as well.” *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998). The legislative history of the VJRA confirms that Congress ratified this Court’s interpretation in *Robison*—namely,

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<sup>4</sup> The former 38 U.S.C. § 211(a) referred to laws “providing benefits for veterans,” whereas the VJRA refers to laws “affect[ing] the provision of benefits.” *Robison*, 415 U.S. at 367; 38 U.S.C. § 511(a). This amendment does not affect the central holding of *Robison*.

that a “decision by” the VA “under” a statute or pursuant to a VA rule or regulation is distinct from a “constitutional challenge . . . to a decision of Congress.” *Robison*, 415 U.S. at 367.

3. Preserving judicial review of facial constitutional challenges to statutes in federal district court serves the interests of both veterans and the VA. The government’s preferred framework—channeling such challenges through the benefits determination process—would force veterans to navigate a complex, multi-layered administrative review scheme, likely for many years, before reaching the first tribunal empowered to address a statute’s constitutionality. Indeed, the average wait time for a decision by the BVA—a tribunal that cannot overturn unconstitutional regulations or statutes—exceeds 500 days. That administrative process burdens veterans—many of whom are not represented by counsel—with consequential strategic choices at every stage and can result in proceedings that ping pong between the VA and BVA rather than advancing toward resolution. And facial constitutional claims are not factually intensive inquiries and therefore do not require, nor benefit from, the technical expertise of the VA. Permitting facial challenges in district court avoids these inefficiencies and advances Congress’s intent to maintain a veteran-friendly system of benefits adjudication.

## ARGUMENT

### **I. The VJRA Established Judicial Review for Individual Veterans’ Benefit Decisions Without Curtailing Judicial Review of Constitutional Challenges to Statutes.**

#### **A. Prior to the VJRA, Congress Prohibited Judicial Review of Decisions by the VA—But Not Decisions By Congress.**

1. In 1930, President Herbert Hoover established the

Veterans Administration (the agency that preceded the United States Department of Veterans Affairs) to coordinate federal veterans' benefits programs to support the growing number of veterans following World War I. Exec. Order No. 5398; Pub. L. No. 71-536, 46 Stat. 1016 (1930).<sup>5</sup> In these early years, the VA operated in “splendid isolation,” generally unconstrained by judicial review due to what this Court has described as no-review statutes prohibiting review of individual benefits determinations by the VA. *Brown v. Gardner*, 513 U.S. 115, 122 (1994) (citing H.R. Rep. No. 100-963, pt. 1, at 10 (1988) (“House Report”)). This “splendid isolation” continued for decades and was preserved by a series of “no-review” clauses included in veterans’ benefits legislation, as codified at 38 U.S.C. § 211. Given these various clauses, the BVA, an administrative body within the VA, retained “final authority” over claims for benefits, and the “BVA’s decision [wa]s not subject to judicial review.” *Walters v. Nat’l Ass’n of Radiation Survivors*, 473 U.S. 305, 307, 308–11 (1985) (outlining administrative scheme).

Although Congress modified these “no-review clauses” over the years, it retained a consistent focus on insulating decisions by the VA from review. *See infra* Appendix A (listing prior “no review” provisions). As this Court recognized in *Robison* when it construed the then-operative “no-review” clause at 38 U.S.C. § 211, neither the text nor the primary purposes of the no-review clauses “suggest[ed] any congressional intent to preclude judicial cognizance of constitutional challenges to veterans’

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<sup>5</sup> Given that the Department of Veterans Affairs was the successor to the original Veterans Administration, amici refer to them both as, simply, the “VA.”

benefits legislation.” *Robison*, 415 U.S. at 373.

2. Beginning in the 1970s, some veterans’ services organizations (“VSOs”)—key players in representing veterans in legislative advocacy before the federal government and in representing veterans in the benefits adjudication process—became increasingly concerned with the absence of judicial review for individual benefits determinations. Laurence R. Helfer, *The Politics of Judicial Structure: Creating the United States Court of Veterans Appeals*, 25 Conn. L. Rev. 155, 156 (1992) (discussing the influence of VSOs from World War II to passage of the VJRA). These VSOs, led by the Vietnam Veterans of America, began calling on Congress to amend the existing laws to permit judicial review of certain benefits determinations. See James D. Ridgway, *The Splendid Isolation Revisited: Lessons from the History of Veterans’ Benefits Before Judicial Review*, 3 Veterans L. Rev. 135, 215–16 (2011).

Other VSOs, along with the VA and the House Committee on Veterans’ Affairs (“House Committee”) opposed judicial review of individualized claims, citing concerns regarding expertise and capacity. These stakeholders viewed the non-adversarial system for resolving disputes as beneficial to veterans. *Id.* at 216. This disagreement set off a multi-year debate within Congress over whether to establish judicial review for VA benefits determinations. See 134 Cong. Rec. 31461 (1988) (statement of Sen. Cranston) (“After working on this legislation for over 10 years—during which the Senate has passed judicial review legislation five times—I am delighted that the dedication and hard work of all those involved have at last resulted in a consensus on how to proceed.”).

Yet even as Congress considered whether to provide

judicial review of benefits decisions, federal courts continued to hear facial constitutional challenges. This was spurred on by this Court's recognition in *Robison* that the text of § 211(a) evinced a distinction which allowed for judicial review of certain benefits decisions:

The prohibitions would appear to be aimed at review only of those decisions of law or fact that arise in the administration by the Veterans' Administration of a statute providing benefits for veterans. 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. Appellee's constitutional challenge is not to any such decision of the Administrator, but rather to a decision of Congress[.]

*Robison*, 415 U.S. at 367. Thus, under *Robison*, courts had jurisdiction to decide questions of law that arose under the Constitution rather than "the statute whose validity is challenged." *Id.* In *Robison's* wake, federal courts regularly exercised this authority. *See, e.g., Ziviak v. United States*, 411 F. Supp. 416, 419 (D. Mass. 1976) (reviewing challenge to the constitutionality of 38 U.S.C. § 3203 concerning VA benefits for hospitalized veterans), *aff'd*, 429 U.S. 801 (1976); *Horton v. Roudebush*, 411 F. Supp. 529, 530 (N.D. Ga. 1976) (reviewing constitutional challenge to 38 U.S.C. § 101(4) concerning definition of "child"); *see also Anderson v. Veterans Admin.*, 559 F.2d 935, 936–37 (5th Cir. 1977) (recognizing § 211(a) as limiting jurisdiction to constitutional challenges to statutes).

Some federal courts went further and began exercising jurisdiction over challenges to VA rules and

regulations. First, the Sixth Circuit held that Section 211, as construed in *Robison*, did not preclude challenges to the VA's authority to promulgate regulations or procedures employed. *Wayne State Univ. v. Cleland*, 590 F.2d 627, 631 (6th Cir. 1978). Other circuits followed suit. See *Merged Area X (Educ.) v. Cleland*, 604 F.2d 1075, 1078 (8th Cir. 1979) (following *Wayne State* and hearing challenge to VA regulation); *Univ. of Maryland v. Cleland*, 621 F.2d 98, 101 (4th Cir. 1980) (same); *Evergreen State Coll. v. Cleland*, 621 F.2d 1002, 1008 (9th Cir. 1980) (same). Other courts broke from the Sixth Circuit. See *Traynor v. Walters*, 791 F.2d 226, 230 (2d Cir. 1986). Eventually, this Court weighed in on the split in *Traynor v. Turnage* and approved the expansion of jurisdiction when it held that Section 211 did not preclude review of whether a VA regulation violated a statute applicable to all federal agencies. 485 U.S. at 536.

Congress, however, remained unsatisfied. For example, Senator Cranston explained that he believed this Court's decision in *Traynor* left unresolved "some important differences between the various U.S. Courts of Appeals regarding the sweep of this prohibition, particularly with regard to review of regulations." *Jud. Rev. Legis.: Hrg. Before the S. Comm. on Veterans' Affs. on S.11, the Proposed Veterans' Admin. Adjudication Proc. & Jud. Rev. Act, & S. 2292, Veterans' Jud. Rev. Act*, 100th Cong., 2d Sess. 7 (1988) ("S. Hrg. on S.11 and S.2292"); see also *Hrg. Before the H. Comm. on Veterans' Affs. on H.R. 585 and Other Bills Relating to Jud. Rev. of Veterans' Claims*, 99th Cong. 2d Sess., Vol. 1 452-53 (1986) ("H. Hrg. 99-52") (summarizing circuit split). As a result, the Chairmen and members of the Committees on Veterans' Affairs engaged in "intensive negotiations" over the appropriate amount of judicial review during the drafting of the VJRA. See 134 Cong. Rec. 31481 (1988)

(statement of Sen. Murkowski).

**B. The VJRA Provided Judicial Review for Acts by the VA—the Act Did Not Preclude District Court Review of Facial Constitutional Challenges.**

In 1988, Congress resolved the longstanding debate over the appropriate amount of judicial review by passing the VJRA. Consistent with the precursor no-review clauses, Section 511 of the VJRA prohibits judicial review of “all questions of law and facts necessary to a decision by the” VA (i.e., benefits determinations based on case-specific facts). As Petitioner explains, that restriction does not mean that veterans are barred from challenging in federal district courts the validity of veterans’ benefit statutes, which are decisions by Congress—not by the VA. Indeed, the legislative history of the VJRA shows that review in federal district courts was a right to which no stakeholders objected. Insofar as members of Congress or others expressed concerns, it pertained to courts’ subsequent expansion of *Robison* and the resulting inconsistency amongst courts as to the scope of Section 211 with respect to VA regulations.

This Court’s responsibility to interpret statutes in a manner faithful to Congress’ intent is aided “when it considers all reliable evidence of Congress’s intent—including statutory and legislative history.” *See Chevron USA Inc. v. Plaquemines Parish*, 146 S. Ct. 1052, 1064 (2026) (Jackson, J., concurring).<sup>6</sup> Legislative history can

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<sup>6</sup> House and Senate legislative reports provide an important lens for evaluating legislative history, since sometimes “lawmakers themselves pay more attention to these reports than a statute’s text” when seeking “to understand the statute’s purpose and meaning.” *See Learning Res., Inc. v. Trump*, 146 S. Ct. 628, 678 (2026) (Jackson, J., concurring) (citing A. Gluck & L. Bressman, *Statutory*

help fill the gap left by ambiguous statutory text, including when interpreting provisions of the VJRA. *See Hodge v. West*, 155 F.3d 1356, 1362–63 (Fed. Cir. 1998) (reviewing House Report on the VJRA and concluding that “Congress intended to preserve the historic, pro-claimant system”). Here, the added context of legislative history shows no evidence of intent to further curtail a veteran’s rights.

1. The drafting and legislative history of the VJRA—specifically the competing bills considered alongside the Act—reveal that Congress considered and rejected proposals to expand *Robison*. Congress instead chose to enact the VJRA and provide a carefully calibrated structure of judicial review for decisions by the VA. Specifically, Section 511 of the VJRA prohibits judicial review of “all questions of law and fact necessary to a decision by the” VA (i.e., its benefits decisions and rules and regulations). Congress did so without abrogating *Robison*.

In the 100th Congress alone, five comprehensive veterans’ benefits bills were introduced by members of the Senate and House Committees on Veterans’ Affairs that addressed judicial review: Senate Bill 11 (Cranston), House Bill 639 (Evans), Senate Bill 2992 (Murkowski), House Bill 5039 (Montgomery), and House Bill 5288 (Montgomery). Ultimately, following “intensive negotiations” between the Chairmen and members of the Committees on Veterans’ Affairs, Congress enacted the VJRA by passing Senate Bill 11, as modified by Senate Amendment 3726 (S. Amend. 3726, 100th Cong. (1988)).

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*Interpretation From the Inside—An Empirical Study of Congressional Drafting, Delegation, and the Canons: Part I*, 65 Stan. L. Rev. 901, 965–66, 968–69 (2013)).

See 134 Cong. Rec. 31481 (statement of Sen. Murkowski).

An Explanatory Statement “prepared by the two Veterans’ Affairs Committees” was published in the *Congressional Record* shortly before the VJRA’s passage. See *id.* at 31468. It reflects the unified congressional view on the intended scope of judicial review and the corresponding limits of its preclusion provision. See *id.* at 31473–81 (outlining the Senate proposal (S. 11), the House Amendment (H.R. 5288), and the “compromise agreement”). The Statement demonstrates that Congress intended to “provid[e] for judicial review of BVA decisions on the record, and of VA rules and regulations challenged in the course of a case” by the Veterans Court, “with limited appellate review in the [Federal Circuit].” *Id.* at 31477 (summarizing Title III of the VJRA). The Statement further explains that Congress intended that “[r]eview of VA rules and regulations on their face, and the process by which they were issued, would be available in the [Federal Circuit] under [Chapter 72] as well as through direct appeal to the [Federal Circuit].” *Id.*<sup>7</sup> What is missing from the Statement is any suggestion that Congress intended for facial constitutional claims to similarly be subject to review exclusively in the Federal Circuit.

Rather, the compromise agreement vested the Federal Circuit with jurisdiction over a veteran’s challenge to the validity of a statute *only if* the statute “was germane to his claim,” (i.e., it contemplated a claim before the VA). *Id.* at 31482. That conclusion is reflected in the language of Section 511, which provides that the “Secretary shall decide *all questions of law and fact*

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<sup>7</sup> Chapter 72 provides the framework for the Veterans Court. See 38 U.S.C. §§ 7251–7299.

*necessary* to a decision by the” VA, including benefits determinations. As the Petitioner explains, there may be multiple legal and factual issues that must be resolved before the VA can render a benefits decision. Pet. at 19. Indeed, the circuit split that led to this Court’s decision in *Traynor* involved a dispute over whether courts could review interpretive questions regarding VA rules and regulations—i.e., questions of law necessary to a VA decision. And Congress intended to curtail the expansive judicial review announced by *Traynor*. But whether a statute is constitutional is not one of the questions of law necessary to a benefits determination. To the contrary, the Secretary, as head of an administrative agency, lacks the power to decide whether a statute is constitutional, so that question of law cannot be “necessary” to a decision by the VA.

The government cites the House Report to contend that the VJRA stripped district courts of “jurisdiction to entertain challenges to the constitutionality of any matter affecting veterans benefits.” See U.S. Opp. at 12 (quoting House Report at 30). The statement the government cites, however, was made in the context of explaining that a court would not have “jurisdiction to review the schedule of ratings for disabilities issued under 38 U.S.C. § 355 or any action of the Administrator in adopting or revising that schedule.” House Report at 30. In fact, the passage continues, “In the event that a constitutional question arises *concerning the rating schedule*, it must be resolved in accordance with the procedure envisioned in this chapter, since district courts would no longer have jurisdiction to entertain challenges to the constitutionality of any matter affecting veterans benefits.” *Id.* (emphasis added). At that time, 38 U.S.C. § 355 provided that “[t]he Administrator shall adopt and apply a schedule of ratings . . . .” 38 U.S.C. § 355 (1988) (now codified at 38 U.S.C.

§ 1155). Accordingly, this passage is consistent with the rest of the legislative history, which indicates that Congress intended to limit review of VA action but not Congressional action. Indeed, the report expressly notes that Congress “believe[d] that *Johnson v. Robison* was correct in asserting judicial authority to decide whether statutes meet constitutional muster,” House Report at 22, but that Congress wanted to prohibit courts’ involvement in “individual decision-making”, *id.*, or “whether the Administrator had made an unconstitutional decision,” *id.* at 20, including implementing regulations. In any event, even if the government’s interpretation of this statement were correct, a single statement plucked from a House report record cannot overcome the weight of the rest of the history decisively supporting Petitioner’s interpretation.

2. Likewise, the VJRA’s extensive legislative record does not reveal any congressional intent to abrogate *Robison*; instead, the record confirms that Congress meticulously tailored its new review framework to address expansions of *Robison* while leaving undisturbed the existing path for statutory constitutional challenges. In fact, the House and Senate Veterans’ Affairs Committee members who negotiated the VJRA reaffirmed *Robison*. As the Chairman of the House Committee, Sonny Montgomery of Mississippi, explained:

The Supreme Court properly decided that a decision not to provide benefits to conscientious objectors was a decision of the Congress, not of the Administrator, and the Court was free to examine the constitutionality of Congress’ decisions . . . .

The result in *Johnson v. Robison* is generally accepted as being in accord with a line of

decisions stretching back to *Marbury v. Madison* which hold that the courts have a constitutional responsibility to determine whether Congressional enactments meet constitutional muster.

House Report at 19–20 (citing *Robison*, 415 U.S. at 367).

Representative Montgomery’s view was broadly shared. During the debate over the proper scope of judicial review, various stakeholders and advocates repeatedly affirmed the necessity of judicial review. For example, Disabled American Veterans (“DAV”), which comprised over 1 million members and accounted for 40% of veterans submitting claims in 1985, explained that the non-adversarial veterans’ benefits process was consistent with fundamental due process rights in part because “veterans have always been able to take to court” “constitutional violations.” H. Hrg. 99-52 at 283-84, 290. DAV reiterated that, “[a]s to the question of judicial review, VA decisions of any sort that arguably violate a constitutional right are currently subject to review in the courts and have been for the almost fifteen years since the Supreme Court’s decision in *Johnson v. Robison*.” S. Hrg. on S.11 and S.2292 at 280–81. DAV added that “[j]udicial review of agency action for *other* kinds of alleged legal error — *the subject of this hearing* — is . . . a matter of policy for the Congress to decide.” *Id.*(emphasis added).

The General Counsel for the VA, Donald Ivers, similarly endorsed *Robison*’s interpretation of Section 211 as permitting judicial review of constitutional challenges to veterans’ benefits legislation. *Hrg. Before the H. Comm. on Veterans’ Affs. on Jud. Rev. of Veterans’ Affs.*, 100th Cong., 2d Sess. 451 (1988) (“H. Hrg. 100-60”). Indeed, Mr. Ivers represented that, from a policy perspective, the VA would not object to expanding the

exception “to authorize bona fide challenges to VA regulations” because the VA’s “principal concern” was “with judicial review of VA benefit decisions in the Federal courts.” *Id.* at 450–52.

And the Judicial Conference, which makes recommendations to Congress concerning legislation involving the federal judiciary, expressed the view that “judicial review should be limited to the review of constitutional issues and statutory interpretations, including the review of regulations, to see if they are beyond the authority of the agency to make.” H. Hrg. 99-52 at 31 (stating opposition to “any provision requiring judicial review of any factual determination of the V[A]”).

3. Although Congress and stakeholders unanimously endorsed *Robison*, the record shows the Committee members who negotiated the VJRA viewed as problematic lower courts’ reliance on *Robison* in permitting review of VA regulations. Representative Montgomery expressed concern that courts had paid “too much attention to the *policy* behind the enactment of 211(a) as articulated by the Court in *Johnson v. Robison*, and not enough attention to the explicit language that Congress used in isolating *decisions of the Administrator* from judicial scrutiny.” House Report at 21 (emphasis added).

Senator Cranston viewed the VJRA as an opportunity to clarify the scope of the no-review clause following this Court’s decision in *Traynor*, which he believed left unresolved “some important differences between the various U.S. Courts of Appeals regarding the sweep of this prohibition, particularly with regard to review of regulations.” S. Hrg. on S.11 and S.2292 at 7; *see also* H. Hrg. 100-60 at 451–52 (summarizing circuit split). Representative Montgomery proposed swapping the

language “under any law administered by” the VA in Section 211 with “under a law affecting the provisions of benefits.” House Report at 27. He described the substantive effects of the amendment as precluding district court review of challenges to either the validity of: (1) a VA regulation (reviewed in *Wayne State*); or (2) the VA’s interpretation of a VA regulation as consistent with a statute applicable to all federal agencies (reviewed in *Traynor*). *Id.*

Representative Montgomery disclaimed any further substantive effects. *See id.* Accordingly, there is no basis to infer that Congress made additional substantive changes—such as precluding judicial review of facial constitutional challenges to statutes—sub silentio. *See, e.g., Keene Corp. v. United States*, 508 U.S. 200, 209 (1993) (explaining this Court does not “presume [every] revision” in a comprehensive revision “worked a change in the underlying substantive law ‘unless an intent to make such [a] chang[e] is clearly expressed’” (original alterations; citation omitted)).

The language Representative Montgomery proposed was ultimately amended to clarify that “the general preclusion of judicial review apply only to a *decision by* the [VA],” and codified in the VJRA. 134 Cong. Rec. 31474 (1988) (explanatory statement) (emphasis added).<sup>8</sup> Congress retained that qualifier—“a decision by”—in the amended no-review clause precisely because Congress

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<sup>8</sup> Compare H.R. 5288, 100th Cong. § 2 (1988) (“The Administrator shall decide all questions of law and fact necessary to a decision under a law affecting the provision of benefits”), with VJRA, Pub. L. No. 100-687, § 101(a)(1) (“The Administrator shall decide all questions of law and fact necessary to a decision *by the Administrator* under a law that affects the provision of benefits *by the Administrator to veterans.*” (emphases added)).

did not intend to abrogate *Robison*. Where “Congress has taken no step to modify” a holding of the Supreme Court, “long congressional acquiescence ‘has enhanced even the usual precedential force’ we accord to our interpretations of statutes.” *Watson v. United States*, 552 U.S. 74, 82–83 (2007) (citing *Shepard v. United States*, 544 U.S. 13, 23 (2005)).

## II. Preserving Judicial Review Aids Veterans and the VA by Reducing Burden and Delay.

This Court has held that, when evaluating a statute, any “interpretive doubt is to be resolved in the veteran’s favor.” See *Brown v. Gardner*, 513 U.S. 115, 117–18 (1994). The imperative to “liberally construe[]” statutes affecting veterans is founded in the need “to protect those who have been obliged to drop their own affairs to take up the burdens of the nation.” *Boone v. Lightner*, 319 U.S. 561, 575 (1943). “The solicitude of Congress for veterans is of long standing . . . [a]nd . . . plainly reflected in the VJRA.” *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 440 (2011) (cleaned up). Congress’s consistent stance in favor of veterans further supports interpreting § 511 in favor of veterans’ access to district court review of facial constitutional claims. Judicial review of such claims not only significantly benefits veterans, it aids the VA as well.

1. In its opposition to Petitioner’s petition for certiorari, the government argued that veterans should bring facial constitutional challenges via the benefits process rather than in district court. U.S. Opp. at 13. That framework, however, will result in an increased burden on the veterans as well as delay resolution of facial constitutional challenges, thereby running afoul of Congress’s intent to develop a veteran-friendly benefits system. See, e.g., *Bufkin v. Collins*, 604 U.S. 369, 373

(2025).

The process to obtain benefits is complex and slow moving. First, the veteran files a claim for benefits with the Veterans Benefits Administration (“VBA”). 38 U.S.C. § 5101(a)(1)(A). A VBA adjudicator then determines whether the veteran is entitled to the benefits sought. *Id.* § 5104(a). If the veteran is dissatisfied with the VBA’s decision, he or she may seek review of the decision.

The veteran has three review options. First, the veteran can file a supplemental claim in which he or she may present new or additional evidence for consideration. Second, the veteran may request a higher-level review in which the decision is reviewed but no new evidence is submitted. Third, the veteran can request review by the BVA.<sup>9</sup> 38 USC §§ 7104(a), 7105(b)(1). If the veteran selects a Board appeal, the veteran must also choose from among the Board’s three appeal options: (1) the Direct Review lane, in which no new evidence is submitted and there is no hearing; (2) the Evidence Submission lane, in which new evidence can be submitted, but there is no hearing; or (3) the Hearing lane, in which a hearing is held by an Administrative Law Judge, and the veteran can submit new evidence both during and after that hearing.

If the veteran disagrees with the Board decision, the veteran can file a supplemental claim with the VA or appeal the decision to the CAVC. If the veteran disagrees with the decision from the CAVC, the veteran may appeal the decision to the Federal Circuit.

The structure of this appeal process is relevant here because a veteran cannot bring a facial constitutional

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<sup>9</sup> The Board is an administrative body housed within the VA. 38 U.S.C. §§ 7101, 7104(a).

challenge to a statute during the benefits determination process until the proceeding reaches the CAVC. As noted above, the benefits determination process begins before a VBA adjudicator and then moves to the Board. Both of those tribunals are administrative agencies within the VA and thus lack the power to review the constitutionality of statutes.<sup>10</sup> *Axon Enter., Inc. v. Fed. Trade Comm’n*, 598 U.S. 175, 195–96 (2023) (constitutional claims “are not ‘of the type’ the statutory review schemes reach”). It is only after the veteran receives and appeals a decision from the Board that the proceeding can move from an administrative tribunal to a judicial tribunal—i.e., the CAVC. And it is only at that point that the veteran can first challenge the facial constitutionality of a statute (or regulation).<sup>11</sup>

At each step of the appeals process, the veteran must wait with the length of delay depending in part on the type of review sought. Before a claimant can argue that a law is unconstitutional in the CAVC, the Board must render a decision. The three types of review the Board provides all

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<sup>10</sup> 38 U.S.C. § 7701 (“The primary function of the Veterans Benefits Administration is the administration of nonmedical benefits programs of the Department which provide assistance to veterans and their dependents and survivors.”); 38 U.S.C. § 7104(a) (“Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.”).

<sup>11</sup> 5 U.S.C. § 706 (“To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.”); 38 U.S.C. § 7261(a)(1) (“the Court of Appeals for Veterans Claims, to the extent necessary to its decision and when presented, shall [] decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions”); *see also Bufkin*, 604 U.S. at 373 (describing scope of CAVC review).

typically take years: For direct review by the Board, VA's own statistics show that the average wait time in 2025 was 506 days.<sup>12</sup> For an evidence submission review in front of the Board, the average wait time in 2025 was 713 days.<sup>13</sup> And the average wait time before the veteran received a hearing in 2025 was 791 days.<sup>14</sup> That means that, even if the veteran manages to take a relatively linear path to the CAVC without any intervening remands, that path is likely to be years long.<sup>15</sup> Thus, a veteran must wait years before he or she can first raise a facial constitutional challenge. In contrast, if the veteran is permitted to bring a challenge in district court, he or she can obtain relief in a much shorter order.

2. Progressing through the benefits determination process is not only slow; it is also burdensome on the veteran. The review scheme, as set forth above, is complex to navigate, especially for an unrepresented petitioner, as many veterans are before the VA regional office and Board. At each stage of review, a veteran is faced with multiple potential pathways, including whether to seek review by a different—i.e., lower or higher—

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<sup>12</sup> Bd. of Veterans' Appeals, *More Board personnel address pending AMA appeals and wait times* (July 15, 2025), <https://department.va.gov/board-of-veterans-appeals/decision-wait-times/more-board-personnel-address-pending-ama-appeals-wait-times/>

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> While the exact duration for a benefits determination depends on both the speed of the various tribunals and the review pathway selected by the veteran, it is not uncommon to find benefits requests that remain unresolved for over a decade. *See e.g., Bufkin*, 604 U.S. at 375 (claim filed in 2013). In fact, it is not uncommon for a veteran to pass away before a benefits determination is finalized. *E.g., Frazier v. McDonough*, 37 Vet. App. 244, 248 (2024).

tribunal or continue the proceeding before the current tribunal. Thus, despite appearing linear, the appeals process in practice can be circular with a proceeding lingering before the VA regional office or repeatedly bouncing between the VA regional office and Board. And beyond just the decision of in which tribunal to continue review, the veteran must make many strategic decisions along the way, such as whether to submit new evidence or wait to have a hearing. In contrast, challenging a statute in district court is a much more limited and narrow proceeding. A veteran whose core challenge is to the benefits statute itself—rather than an individualized determination made under the statute—can therefore minimize the expense and burden associated with seeking judicial review by seeking that review directly in district court.

Despite the complexity and associated burden of the review scheme, the government suggests there are advantages to the scheme because it is “comprehensive, uniform, and specialized.” U.S. Opp. at 13. While those features might be advantages when it comes to the VA’s application of the law to the facts to reach an actual determination of benefits, neither the CAVC nor the Federal Circuit are better positioned to decide facial constitutional challenges to legislation—i.e., acts of Congress—than other federal courts. *See Axon*, 598 U.S. at 195 (explaining that constitutional claims may not be “intertwined with or embedded in matter” on which the agency has expertise). But even if claims could implicate the technical expertise of the VA, district courts have the “institutional competence to resolve” constitutional claims and “authority to grant the type of relief requested.” *McCarthy v. Madigan*, 503 U.S. 140, 147–48 (1992); accord *Axon Enter., Inc. v. Fed. Trade Comm’n*, 986 F.3d 1173, 1192 (9th Cir. 2021) (Bumatay, J., dissenting)

(“pronouncing the constitutionality of a government function is precisely the business of Article III courts”), *rev’d and remanded*, 598 U.S. 175 (2023). Accordingly, little, if any, efficiency is gained by funneling facial constitutional challenges through the CAVC.

3. It is not just veterans who benefit from judicial review of facial constitutional challenges to veterans’ benefits legislation; the VA benefits too. The current delays in proceedings pending before the VA, Board, and CAVC are due in part to the sheer volume of benefits determination petitions that are filed each year. If veterans cannot seek judicial review of legislation, any veteran who has a benefits claim that is affected by potentially unconstitutional legislation would need to file a claim with the VA, obtain an unfavorable benefits determination, appeal that determination to the Board, and then appeal the Board decision to CAVC and potentially the Federal Circuit. And because such facial constitutional challenges cannot be brought until the proceeding is before the CAVC, the VA will have necessarily made an initial benefits determination before the legislation has been challenged. Accordingly, the VA must expend resources before it knows whether the legislation will survive judicial review.

And the burden on the VA of delaying facial constitutional challenges goes beyond the burden of making just one additional benefits determination. This Court has held that a change in controlling interpretation of federal law “must be given full retroactive effect in all cases still open on direct review.” *Harper v. Virginia Dep’t of Tax’n*, 509 U.S. 86, 97 (1993). If the CAVC or Federal Circuit holds that the governing legislation is unconstitutional, then any determination affected by that holding would need to be reevaluated by the VA. And

redoing those determinations has the potential to be incredibly burdensome given the volume of benefits determinations pending before the VA and Board at any given time.

In contrast, permitting judicial review for facial constitutional challenges allows those challenges to be fast tracked through district court so that they can be resolved before the VA expends resources rendering benefits determinations. Fast tracking these challenges would also provide the VA with more certainty regarding the constitutionality of the relevant legislation. Finally, the CAVC, like the VA, currently has an overburdened docket. Despite entering 16,236 dispositions in 2025, the CAVC continued to have 10,133 pending appeals, petitions, and applications at the close of the year.<sup>16</sup> Forcing veterans to bring constitutional challenges before the CAVC will add to that court's backlog, thus further burdening the court as well as further delaying benefits determinations for veterans. Preserving judicial review therefore promotes administrative efficiency by minimizing costly, time-intensive, and duplicative litigation.

### CONCLUSION

For the foregoing reasons, the Court should reverse the erroneous decision by the Eleventh Circuit.

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<sup>16</sup> CAVC, *Fiscal Year 2025 Annual Report* (2025), <https://www.uscourts.cavc.gov/documents/FY2025AnnualReport.pdf>. Nor was 2025 an outlier. In 2024 the CAVC entered 14,568 dispositions and had 8,263 pending appeals, petitions, and applications at the close of the year. CAVC, *Fiscal Year 2024 Annual Report* (2024), <https://www.uscourts.cavc.gov/documents/FY2024AnnualReport.pdf>.

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## FORMER NO-REVIEW PROVISIONS

**The Economy Act of 1933, ch. 3, § 5, 48 Stat. 8, 9 (1933)** (current version at 38 U.S.C. § 511) provides, in relevant part:

“All *decisions rendered by the Administrator of Veterans’ Affairs* under the provisions of this chapter, or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision.”

**The Act of October 17, 1940, ch. 893, § 11, 54 Stat. 1193, 1197 (1940)** (current version at 38 U.S.C. § 511) provides, in relevant part:

“[T]he *decisions of the Administrator of Veterans’ Affairs* on any question of law or fact concerning a claim for benefits or payments under this or any other Act administered by the Veterans’ Administration 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 decisions.”

**The Veterans’ Benefits Act of 1957, Pub. L. No. 85-56, § 211, 71 Stat. 83, 92 (1957)** (current version at 38 U.S.C. § 511) provides, in relevant part:

“[T]he *decisions of the Administrator* on any question of law or fact concerning a claim for benefits or payments under any law administered by the Veterans’ Administration 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.”

**The Veterans’ Disability Compensation and Survivor Benefits Act of 1970, Pub. L. No. 91-376, § 8(a)** (current version at 38 U.S.C. § 511) provides, in relevant part:

“[T]he *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 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.”