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 PACIFIC LEGAL FOUNDATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Did the Veterans' Judicial Review Act (VJRA) 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?

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

The Constitution sets out three branches of government and vests in each a distinct form of power—legislative, executive, and judicial. *See* U.S. Const. art. I, § 1; *id.* art. II, § 1, cl. 1; *id.* art. III, § 1. Yet too often, Congress has ceded its power to administrative agencies. Under such schemes, agencies investigate claims, impose orders and penalties on private parties, and prosecute the very parties they regulate. Worse, Congress has purportedly authorized these agencies to funnel such cases through their own "adjudicatory" systems. *See Axon Enter., Inc. v. FTC*, 598 U.S. 175, 202 (2023) (Thomas, J., concurring). These systems combine prosecutorial and adjudicative functions within a single agency and confine judicial review to a limited, deferential backstop—stripping away the due process protections that Article III courts exist to provide.

Fortunately, this Court has held that an agency-review scheme does not displace federal district courts' general jurisdiction over constitutional challenges to an agency's structure, procedures, or existence. In *Axon*, this Court held that structural constitutional challenges—those contesting an agency's very power to proceed—belong in federal district court, not within the agency's own review scheme. That holding reflects a foundational principle: when a party suffers an injury simply by being subjected to an unconstitutional proceeding, no post hoc appellate remedy can make it

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[1] No party's counsel authored any part of this brief. And no person or entity, other than *Amicus Curiae* and its counsel, paid for the preparation or submission of the brief.

whole. By the time a court of appeals can act, the harm has already occurred.

That principle is under pressure here. Under the government's theory, even pure structural constitutional challenges must pass through proceedings presided over by the very officials whose authority is contested. If accepted, that reading would transform *Axon* from a real protection into an empty promise—leaving parties to endure years of unconstitutional proceedings with no meaningful remedy.

This threat to collateral constitutional challenges explains why Pacific Legal Foundation (PLF) appears here to resist "the growing power of the administrative state." *City of Arlington v. FCC*, 569 U.S. 290, 315 (2013) (Roberts, C.J., dissenting). Founded in 1973, PLF is a nonprofit, tax-exempt California corporation established for the purpose of litigating matters affecting the public interest. PLF provides a voice in the courts for Americans who believe in limited constitutional government, private property rights, and individual freedom.

PLF is the most experienced public-interest legal organization defending the constitutional principle of the separation of powers in the arena of administrative law. PLF's attorneys have participated as lead counsel in several cases before this Court involving the role of the Judicial Branch as an independent check on the Executive and Legislative branches under the Constitution's Separation of Powers. *See*, *e.g.*, *Walmsley v. FTC*, 145 S. Ct. 2870 (2025) (mem.) (granting cert petition raising non-delegation challenge and remanding for further consideration in light of *FCC v. Consumers' Research*, 606 U.S. 656 (2025));

Sackett v. EPA, 598 U.S. 651 (2023) (agency regulations defining "waters of the United States"); *U.S. Army Corps of Eng'rs v. Hawkes Co., Inc.*, 578 U.S. 590 (2016) (judicial review of agency interpretation of Clean Water Act).

PLF has a direct and substantial interest in the question presented. The government's cramped reading of *Axon* would return structural constitutional claims to the very administrative forums this Court's precedents removed them from—leaving regulated parties, veterans, and others at the mercy of unconstitutional proceedings that no court may timely review. PLF has seen this pattern recur across the country: by the time agency proceedings conclude, the constitutional violation has already done its damage, and no appellate court can restore the rights the party lost. This Court should reaffirm that district courts remain open for structural constitutional challenges and reject any construction of the Veterans' Judicial Review Act (VJRA) that forecloses them.

SUMMARY OF ARGUMENT

I. The Constitution vests the judicial power in Article III courts and grants federal district courts jurisdiction over all civil actions arising under federal law. 28 U.S.C. § 1331. Given that grant of authority, the question is not whether Congress has specifically conferred jurisdiction, but whether it has taken it away. For structural constitutional claims, this Court has held that challenges to an agency's power to proceed at all must be heard in federal district court, not channeled through agency review schemes. Appellate review post proceedings cannot remedy an injury that is complete by the time review becomes available. Claims attacking an agency's power to proceed are

wholly collateral to the merits the agency adjudicates, and questions of constitutional structure fall entirely outside agency expertise. District court jurisdiction is therefore the rule, not the exception.

II. The separation of powers depends on courts willing to enforce it before constitutional harm becomes irreversible. Routing structural constitutional claims through the agencies whose authority is contested inverts the constitutional design: it makes the accused the judge, compounds injury with every passing day, and produces proceedings whose unconstitutionality no appellate court can meaningfully remedy. This Court's own precedents show the severe practical consequences when review is delayed.

III. The VJRA does not strip district courts of jurisdiction over structural constitutional claims. Section 511(a) channels "questions of law and fact necessary to a decision" on benefits claims—not structural challenges to the adjudicator's constitutional authority. That silence cannot satisfy the clear-statement rule this Court demands before stripping district courts of jurisdiction. *Axon* further confirms that the VJRA does not implicitly foreclose such claims: they are collateral to benefits determinations, fall outside the agency's expertise, and no deferred review can meaningfully remedy them. Any contrary construction of Section 511 would raise serious constitutional questions that this Court should avoid.

ARGUMENT

I. *Axon* Confirms That Structural Constitutional Claims Must Be Heard by District Courts

Congress has conferred on federal district courts jurisdiction to hear "all" civil actions arising under the Constitution and federal law. 28 U.S.C. § 1331. Federal-question jurisdiction ensures the separation of powers and protects constitutional rights.

Congress may sometimes channel or limit the jurisdiction of federal district courts, but this Court permits such displacement only in narrow circumstances. Congress may strip jurisdiction expressly through a clear statement, or a statutory scheme may implicitly foreclose district-court review if it provides a specialized process that preserves meaningful judicial review in an Article III court. *See Free Enter. Fund v. PCAOB*, 561 U.S. 477, 489 (2010); *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 207-12 (1994). If a party simply seeks to avoid fines or reinstatement to a job, delaying judicial review until after administrative proceedings conclude causes no material hardship. But when the challenge goes to the very structure or existence of the agency, the agency's proceedings cannot provide an effective remedy. Forcing the challenger to undergo the agency's proceedings inflicts a "here-and-now" injury by subjecting it to a decisionmaker who lacks constitutional authority.

Axon confirms the limits of Congress's authority to strip jurisdiction. There, respondents in administrative enforcement actions challenged the constitutional structure of the agencies prosecuting them. 598 U.S.

at 180. The Court held that district courts have jurisdiction over such suits and that parties need not go through the administrative process first. *Ibid.*

The Court explained that although some "special statutory review scheme[s]" may implicitly "divest[] district courts of their ordinary jurisdiction over the covered cases," they do not necessarily extend to every claim touching agency action. *Id.* at 185 (citing *Thunder Basin*, 510 U.S. at 207-12; *Elgin v. Dep't of Treasury*, 567 U.S. 1, 10-15 (2012); *Free Enter. Fund*, 561 U.S. at 489). As in *Free Enterprise Fund*, *Axon* recognized that some claims—especially challenges to an agency's "power to proceed at all"—fall outside such review schemes. *Axon*, 598 U.S. at 192. Where a statutory review scheme would preclude meaningful judicial review of a constitutional claim, district courts retain jurisdiction; otherwise, judicial relief would come "too late to be meaningful." *Id.* at 191.

To determine whether a statutory review scheme displaces district court jurisdiction, *Axon* applied the three-factor framework from *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994). Courts must consider (1) whether precluding district court jurisdiction would "foreclose all meaningful judicial review"; (2) whether the claim is "wholly collateral to the statute's review provisions"; and (3) whether the claim falls "outside the agency's expertise." *Axon*, 598 U.S. at 186 (cleaned up). *Axon* held that structural constitutional claims—those challenging an agency's "power to proceed at all"—satisfy all three factors and need not proceed through the normal statutory review scheme. *Id.* at 192-94.

On the first factor, the Court examined the nature of the injury. A party subjected to an unconstitutionally structured adjudication suffers a harm that cannot be remedied after the fact. *Axon*, 598 U.S. at 192. Just as immunity doctrines protect the right "not to stand trial or face other legal processes," structural constitutional claims must be vindicated before proceedings conclude. *Ibid.* (cleaned up). A party forced to await the outcome of an unlawful proceeding will have suffered its "here-and-now" injury by the time any post-proceeding review arrives—and no meaningful remedy will remain.

The second and third factors fared no better for the government. Those factors "reflect in related ways the point of special review provisions—to give the agency a heightened role in the matters it customarily handles, and can apply distinctive knowledge to." *Axon*, 598 U.S. at 186. Structural constitutional claims are entirely collateral to the merits questions resolved in agency adjudications—they "object to the Commissions' power generally, not to anything particular about how that power was wielded." *Id.* at 193. As to agency expertise, the Court was emphatic: such claims "raise 'standard questions of administrative' and constitutional law, detached from 'considerations of agency policy.'" *Id.* at 194 (quoting *Free Enter. Fund*, 561 U.S. at 491). Agencies bring no specialized competence to questions of constitutional structure.

Axon confirms that district-court jurisdiction is the rule, not the exception. When a party alleges a structural defect that renders the proceeding itself unlawful, forcing that claim through administrative proceedings would deny any meaningful judicial review and invert the very principles that justify channeling in the first place.

II. Immediate Judicial Review of Structural Constitutional Claims Is Essential to Preserving the Separation of Powers and Individual Liberty

Forcing parties to litigate structural constitutional claims before the very agencies whose authority is contested inverts the constitutional design, compounds ongoing injury, and undermines the separation of powers that protects individual liberty. The Constitution does not tolerate a system in which the government acts as both prosecutor and judge in its own cause, nor does it permit constitutional violations to become effectively unreviewable simply because review comes too late.

A. Deferring judicial review poses a grave threat to the separation of powers

The separation of powers is not a mere structural nicety—it is the constitutional mechanism that preserves individual liberty against government overreach. As the Framers recognized, "[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands . . . may justly be pronounced the very definition of tyranny." The Federalist No. 47, at 298 (James Madison) (Clinton Rossiter ed., 2003). The "[s]eparation of powers 'was not simply an abstract generalization in the minds of the Framers: it was woven into the document that they drafted in Philadelphia in the summer of 1787.'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 422-23 (2021).

"[T]o preserve the liberty of all the people," *Collins v. Yellen*, 594 U.S. 220, 245 (2021), the Constitution established three branches and divided federal power among them: Article I vests "all Legislative powers"

in Congress, U.S. Const. art. I, § 1; Article II vests "[t]he Executive power" in the President, U.S. Const. art. II, § 1; and Article III vests "[t]he judicial power" in the courts, U.S. Const. art. III, § 1. *See also INS v. Chadha*, 462 U.S. 919, 951 (1983).

That design depends on each branch exercising the power entrusted to it. The Framers' "constant aim" was "to divide and arrange the several [branches] in such a manner as that each may be a check on the other." The Federalist No. 51, at 349 (Madison). When courts decline to hear constitutional claims until an agency proceeding has run its course, they abandon that checking function precisely when it is needed most.

Allowing an agency first crack at resolving structural constitutional claims threatens this constitutional design. As this Court has long explained, "[a] fair trial in a fair tribunal is a basic requirement of due process," and "no man can be a judge in his own case." *In re Murchison*, 349 U.S. 133, 136 (1955); *see Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388 (1798) ("[A] law that makes a man a Judge in his own cause . . . is against all reason and justice."); *see also* The Federalist No. 10, at 74 (James Madison) (similar). Agency adjudication—where the government acts as prosecutor and judge—plainly "runs up against" that "mainstay of our system of government." *De Martinez v. Lamagno*, 515 U.S. 417, 428 (1995). That injury is immediate. A structural constitutional violation inflicts a concrete, here-and-now injury that a court can and must remedy. *Seila Law LLC v. CFPB*, 591 U.S. 197, 212 (2020). That injury does not wait for agency proceedings to conclude; it deepens with every passing day.

Permitting Congress to channel all structural challenges through administrative bodies would hollow out judicial review. *Axon*, 598 U.S. at 195-96. First, channeling constitutional claims through agency proceedings contradicts the basic division of labor the Constitution establishes. Agencies have every institutional incentive to delay and suppress structural constitutional challenges, allowing unconstitutional proceedings to run their course while the party's injury compounds. Second, "policing the 'enduring structure' of constitutional government when the political branches fail to do so is 'one of the most vital functions of this Court.'" *NLRB v. Noel Canning*, 573 U.S. 513, 572 (2014) (Scalia, J., concurring in the judgment). Deferring to agencies on questions they are constitutionally incapable of resolving does not serve that function—it forfeits it.

Those practical consequences can be irreversible. If a party prevails before the agency—unlikely, given the well-documented institutional advantages agencies enjoy in their own proceedings—there will be no final order to appeal and no opportunity for a court to resolve the constitutional questions the agency could not resolve. The litigant will have endured an unconstitutional proceeding in full, with no judicial remedy whatsoever. Article III's mandate that federal courts hear "all cases" arising under the Constitution cannot be read to permit Congress to foreclose structural constitutional claims entirely. As Justice Story recognized, the "judicial power of the United States *shall*"—not may—"be vested" in the federal courts. *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 328 (1816) (emphasis added). That obligation requires courts to exercise jurisdiction when they have it—not to devise

procedural channels through which constitutional claims quietly disappear.

That obligation has teeth. Parties have the right to raise separation-of-powers challenges in federal court, and "[a]n injured person" has "standing to object to a violation of a constitutional principle" such as "actions that transgress separation-of-powers limitations." *Bond v. United States*, 564 U.S. 211, 222 (2011); *see also Free Enter. Fund*, 561 U.S. at 491 n.2. When structural constitutional violations inflict a here-and-now injury, federal courts are obligated to hear the case. *Seila Law*, 591 U.S. at 212.

B. Deferring judicial review poses a grave threat to individual liberty

If parties cannot bring structural constitutional claims in district court, judicial review becomes illusory. To begin, regulated parties must raise these challenges before the very decisionmaker they contend is not constitutionally accountable. That same decisionmaker will "issue an opinion complete with factual findings, legal conclusions, and sanctions"—a dynamic that creates enormous pressure for regulated parties to "stay in line" and not challenge ALJs' authority or "resist [their] order[s]." *Lucia v. SEC*, 585 U.S. 237, 250 (2018). On top of that, regulated parties must spend years litigating in the agency's own tribunal—at great expense and reputational risk—before reaching any court. Agencies exploit that dynamic, bringing immense settlement pressure or manipulating the proceedings to ensure that structural constitutional claims never reach an Article III court. *See Axon*, 598 U.S. at 216 (Gorsuch, J., concurring in the judgment) (noting that most agency cases settle in part because of the federal government's leverage);

Serpe v. FTC, No. 0:24-CV-61939, 2025 WL 4098300, at *6 (S.D. Fla. Oct. 30, 2025) (Horseracing Integrity and Welfare Unit dropped pursuit of a fine in an internal arbitration to moot respondent's collateral Seventh Amendment claim in federal court).

Even for those willing to fight to the bitter end, meaningful relief may remain out of reach. This Court's cases—and the experience of regulated parties—confirm that delaying judicial review of structural constitutional claims harms parties in ways that no appellate remedy can cure.

Consider first Raymond J. Lucia. Administrative proceedings against him began in September 2012. After a hearing before an unconstitutionally appointed SEC ALJ and an appeal to a Commission insulated from Presidential Control, the SEC found that Lucia had violated the Advisers Act, ordered him to pay a penalty, and barred him from the securities industry for life. In 2018—six years later—this Court ruled in his favor on his Appointments Clause claim and held that ALJs are "Officers of the United States." *Lucia v. SEC*, 585 U.S. 237, 241 (2018). But that victory proved hollow. Lucia's remedy was not relief from the unconstitutional proceeding he had endured, but a new proceeding—in which the new ALJ simply reached the same conclusion as his predecessor. *See In the Matter of Raymond J. Lucia Companies, Inc.*, Adm. Proc. File No. 3-15006 (S.E.C. June 16, 2020). His experience illustrates the core problem *Axon* identified: once a party has been subjected to an unconstitutional adjudication, no later judicial intervention can restore what was lost.

That same pattern persists today for Jeffrey Moats. He served as CEO of a small credit union for more

than 25 years before the National Credit Union Administration (NCUA) fired him in 2021—the same day it placed the credit union in conservatorship. *Moats v. Nat'l Credit Union Admin. Bd.*, 153 F.4th 449, 451 (5th Cir. 2025). In March 2023, Moats sued to recoup over a million dollars in unpaid post-termination benefits. *Ibid.*; *see also* Amended Complaint, *Moats v. Nat'l Credit Union Admin. Bd.*, No. 23-00147 (S.D. Tex. Aug. 11, 2023), ECF No. 24-1 at 6-7. The NCUA responded by launching an administrative proceeding accusing him of breaching his fiduciary duties and unjustly enriching himself. ECF No. 24-1 at 7.

Like Lucia, Moats faces an adjudication before an administrative law judge shielded by dual-layer for-cause removal protection. *Moats*, 153 F.4th at 451. He sued in federal court to enjoin those proceedings. *Id.* But the district court dismissed for want of jurisdiction, *Moats v. Nat'l Credit Union Admin. Bd.*, No. 23-00147, 2024 WL 1724271, at *1 (S.D. Tex. Apr. 9, 2024), and the Fifth Circuit affirmed. *Moats*, 153 F.4th at 451. Absent this Court's intervention, Moats faces a years-long unconstitutional process that the Fifth Circuit itself recognized is unconstitutional. *See Jarkesy v. SEC*, 34 F.4th 446, 465 (5th Cir. 2022) (holding that the statutory removal restrictions for SEC ALJs are unconstitutional); *Space Expl. Techs. Corp. v. NLRB*, 151 F.4th 761, 774-75 (5th Cir. 2025) (holding the same for NLRB ALJs).

Delayed review also imposes institutional costs. In *United States v. Arthrex, Inc.*, 594 U.S. 1 (2021), this Court confronted an Appointments Clause challenge to Administrative Patent Judges (APJs) who adjudicate inter partes review proceedings at the Patent Trial and Appeal Board. *Id.* at 8-9. The Court held

that APJs exercise "significant authority" but are insulated from meaningful supervision because their decisions cannot be reviewed or reversed by the Director of the Patent and Trademark Office. *Id.* at 23. APJs are appointed as inferior officers by the Secretary of Commerce rather than by the President with Senate confirmation—yet they finally and unreviewably adjudicate patent rights, a role the Framers reserved for principal officers. *Ibid.* The Court held that structure unconstitutional. *Ibid.*

But the harder question was how to remedy the violation. Rather than invalidating the entire inter partes review scheme or striking down the APJ appointments wholesale, the Court instead excised the statutory restriction that prevented the Director from reviewing final written decisions, thereby restoring a layer of executive supervision over APJ rulings. *Arthrex*, 594 U.S. at 23-27. That approach required the Court to speculate about whether Congress would have preferred a modified, Director-supervised scheme over no inter partes review at all. *Id.* at 25. Yet severance raises serious problems: it does not "comport[] with traditional judicial remedial principles"; it allows the "Court to serve as a council of revision free to amend legislation," and it ignores that the "judicial power is limited to resolving discrete cases and controversies." *Id.* at 32-33 (Gorsuch, J., concurring in part and dissenting in part). In short, severance "risks undermining the very separation of powers" it "purports to vindicate." *Ibid.*

Arthrex thus illustrates the constitutional costs of forcing parties to complete an administrative adjudication before seeking judicial relief. Because the constitutional issue was not addressed at the outset, the regulated party suffered a here-and-now injury, his

case (like Lucia's) was simply remanded for further administrative review, *id.* at 26-27, and the Court was forced to grapple with difficult severability questions.

These examples underscore a common point: requiring a party subjected to separation-of-powers violations to complete the unconstitutional proceeding before seeking review makes little sense. By then, the injury is complete, meaningful review is impossible, and both individual liberty and the constitutional structure have already been compromised.

III. Section 511 Cannot Be Read to Strip Jurisdiction Over Structural Constitutional Challenges

Given Section 1331's express grant of jurisdiction, this Court must decide whether the VJRA "removes the jurisdiction given to the federal courts" under Section 1331. *Whitman v. Dep't of Transp.*, 547 U.S. 512, 514 (2006) (per curiam). This Court has held that Congress can strip district court jurisdiction in two ways. First, Congress may do so "expressly" through a clear statement that excludes particular claims from federal district courts. *See, e.g.*, *Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 10 (2000). Second, this Court has inferred that Congress meant to eliminate district-court jurisdiction even when Congress did not say so explicitly in statutory text, such as when it creates an alternative judicial review scheme in the courts of appeals. *Axon*, 598 U.S. at 185. Congress neither expressly nor implicitly stripped district courts of jurisdiction over structural constitutional claims in the VJRA.

A. Section 511 does not expressly strip jurisdiction over structural constitutional challenges

When Congress wants to strip federal courts of jurisdiction, it does so explicitly. *See, e.g.*, 8 U.S.C. § 1252(a)(5) (providing that a petition for review filed in a court of appeals "shall be the sole and exclusive means for judicial review of an order of removal"). Section 511(a) contains no comparable language. It channels "questions of law and fact necessary to a decision" on benefits claims to the Board and the Veterans Court—but it says nothing about structural constitutional challenges to the adjudicatory scheme itself.

That silence is dispositive given this Court's clear-statement rule. The Supreme Court has consistently required an explicit statement before holding that Congress displaced district-court jurisdiction over constitutional claims. *Webster v. Doe*, 486 U.S. 592, 603 (1988). That requirement reflects a foundational interpretive principle: courts do not lightly conclude that Congress has foreclosed all judicial review of a colorable constitutional claim. *Bowen v. Mich. Acad. of Fam. Physicians*, 476 U.S. 667, 681 n.12 (1986). Where the statute addresses the merits of benefits disputes—not whether the adjudicator has constitutional authority—the clear-statement rule is not satisfied.

The government's contrary reading would require this Court to infer from silence that Congress eliminated all immediate judicial review of claims that *Axon* recognized as categorically different. Courts do not make such inferences. They demand explicit text. Section 511(a) supplies none.

The statute's text confirms what the clear-statement rule requires. The section precludes district court review of a "decision of the Secretary" on "all questions of law and fact . . . under a law" affecting benefits. 38 U.S.C. § 511(a). That language, however, does not reach structural constitutional claims. In *Robison*, this Court construed materially identical language—which barred review of "decisions of the Administrator on any question of law or fact under any law administered by the [VA] providing benefits for veterans"—and concluded that a constitutional challenge is not a challenge to a "decision of the Administrator" rendered "under any law" governing benefits. 415 U.S. at 367. That's because "[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," and a challenge to a statute is not a challenge to a "decision of the *Administrator*, but rather to a decision of *Congress*." *Id.* (emphasis added). By adopting the language used in an "earlier act," Congress "adopt[s] also the construction given by this Court to such language." *Shapiro v. United States*, 335 U.S. 1, 16 (1948) (cleaned up).

B. *Axon* confirms that Section 511 does not implicitly strip jurisdiction over structural constitutional challenges

Under *Axon*, the VJRA cannot bar district courts from hearing structural constitutional challenges. Section 511's review provision, which channels only "questions of law and fact necessary to a decision," does not implicitly strip jurisdiction over structural constitutional challenges either. Such challenges have nothing to do with benefits entitlement; they

contest the adjudicator's very authority to proceed. The *Axon* framework confirms this: structural constitutional claims—those challenging an agency's "power to proceed at all"—fall outside such schemes because channeling them would foreclose meaningful review, involve issues wholly collateral to the agency's work, and present questions beyond the agency's expertise. *Axon*, 598 U.S. at 186-94. The government's approach would nullify *Axon*.

1. Structural challenges to the VA check all of *Axon*'s boxes

First, channeling structural constitutional claims through the VJRA would foreclose meaningful judicial review. As *Axon* explains, the injury in such cases is not simply an adverse final decision, but the "here-and-now" harm of being subjected to an unconstitutional proceeding. *Id.* at 191-92. That injury cannot be remedied after the fact, because by the time appellate review becomes available, the proceeding—and the constitutional violation—is complete. Requiring parties to endure years of adjudication before raising structural objections thus makes judicial review meaningless.

Second, structural constitutional claims are wholly collateral to the matters Section 511 channels. The statute directs administrative review of "questions of law and fact necessary to a decision" on veterans' benefits claims. § 511(a). Challenging the adjudicator's constitutional authority has nothing to do with entitlement to benefits or the correctness of any agency decision. It instead asks whether the tribunal itself may lawfully act at all. As in *Axon* and *Free Enterprise Fund*, that kind of claim is independent of the merits and therefore lies outside the channeling

scheme. *Axon*, 598 U.S. at 193; *Free Enter. Fund*, 561 U.S. at 490.

Third, structural constitutional questions fall outside the VA's expertise. The Board of Veterans' Appeals and related bodies specialize in administering benefits programs, not in resolving fundamental questions about the constitutional structure of the Executive Branch. As *Axon* emphasized, such claims raise "standard questions of administrative and constitutional law," detached from policy or technical considerations. 598 U.S. at 194 (cleaned up). Requiring agencies to pass on the limits of their own authority thus serves none of the purposes that justify channeling in the first place.

All three *Thunder Basin* factors show that the VJRA does not bar district courts from hearing structural constitutional claims.

2. The government's contrary arguments cannot be reconciled with *Axon*

The government advances a sweeping vision of jurisdiction stripping—one that would allow Congress to channel even pure structural constitutional challenges into agency review schemes. *Axon* forecloses that vision.

The government's brief proceeds as if *Axon* did not happen and *Elgin* still controls. But the Court in *Axon* distinguished *Elgin*: constitutional claims need not always be channeled through the agency process. Under the government's view, "meaningful review" exists so long as some Article III court in the scheme can eventually reach the issue—and a claim is non-collateral whenever it could serve as a vehicle for obtaining

relief the agency controls. The government pressed these theories in *Axon*, and this Court rejected them all. It should do so again.

a. The government's "meaningful judicial review" argument is a non-starter. BIO 13-14. The government contends that the VJRA properly bars district-court jurisdiction because the VJRA vests the Veterans Court and Federal Circuit with jurisdiction to resolve constitutional challenges and "to grant any appropriate relief." BIO 13. This reduces "meaningful review" to a single question: can any Article III court anywhere in the scheme eventually reach the issue? *Axon* rejected that framing outright.

Axon held that the plaintiffs alleged a "here-and-now injury" from being "subject[ed] to an illegitimate proceeding, led by an illegitimate decisionmaker"—an injury "impossible to remedy once the proceeding is over, which is when appellate review kicks in." 598 U.S. at 191. The Court analogized this to the right "not to stand trial," which is "'effectively lost' if review is deferred until after trial." *Id.* at 192 (citing *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985)).

The government pressed the same argument in *Axon*. It argued there that "a party has a meaningful opportunity for judicial review if it can raise its constitutional challenge in an Article III court at the end of agency proceedings." Govt Br. at 51-52, *Axon v. FTC*, 598 U.S. 175. The Court acknowledged that court-of-appeals review can sometimes suffice, but held that the timing and posture of review matter independently of its ultimate availability. *Axon*, 598 U.S. at 191 (cleaned up). When the claim is "about subjection to an illegitimate proceeding, led by an illegitimate decisionmaker," a court of appeals reviewing

a final agency order "can do nothing"—the harm has already occurred. *Ibid.*

The government also concedes that "the authority of the Veterans Court and the Federal Circuit to decide a constitutional issue does not depend on the Board's having decided it first." BIO 14. That concession undercuts the government's own channeling rationale: if the agency plays no special role in resolving the constitutional question, routing through the agency scheme serves no purpose relevant to that claim.

b. The government's view on collaterality is equally untethered from *Axon* and would swallow any claim. BIO 14. *Axon* held that the collaterality inquiry asks whether a claim has "[any]thing to do with" the matters the agency regularly adjudicates. 598 U.S. at 193. The claims in *Axon* were collateral because the constitutional challenge to the agency's structure "do[es] not relate to the subject of the enforcement actions." *Id.* at 193. One case concerned auditing practices, the other a merger—but both challenged "the Commissions' power to proceed at all." *Id.* at 192. A claim is collateral when it is independent of the underlying merits.

The government concedes the premise: "No matter how petitioner's constitutional claim is labeled, it is inextricably tied to his claim for veteran's benefits and therefore must be adjudicated through the VJRA system." BIO 13. *Elgin* supports that framing on its own facts—the employee's equal-protection challenge was the vehicle for getting his job back, and the MSPB could handle both. 567 U.S. at 8.

But the government overreaches by arguing that Johnson fails the collaterality test simply because his

claim "is 'the vehicle by which [he] seek[s] to reverse' the reduction of his veteran's benefits." BIO 14. That proves too much: every constitutional claim in the benefits context seeks some downstream relief. And *Axon* expressly rejected this view. The government's approach, the Court explained, "would strip the collateralism factor of its appropriate function." *Axon*, 598 U.S. at 193; *see also* Govt Br. at 52-53, *Axon v. FTC*, 598 U.S. 175 (arguing the cases were not collateral but "concern[ed] specific actions taken by the Commissions in specific proceedings"). Yes, enjoining the agency from acting as currently structured would have the incidental effect of eliminating the enforcement scheme—but that has never been the test. *Free Enterprise Fund* confirms it: the Court held that a "general challenge" to the PCAOB's very "existence" was "collateral" to any objection the petitioners might raise to one of the agency's auditing rules—even though a successful challenge would have prevented the agency from issuing any standards or rules at all. 561 U.S. at 490.

Axon also explained that the government's view "ill fits the point of the *Thunder Basin* inquiry." 598 U.S. at 194. In *Thunder Basin*, the Court identified two examples of cases involving "wholly collateral" claims. 510 U.S. at 212-13. *Mathews v. Eldridge*, 424 U.S. 319 (1976) involved a due process challenge to administrative procedures established for assessing the existence of a "continuing disability" before terminating disability benefits. *Id.* at 324-25. Although that challenge would have had the ultimate effect of precluding those procedures from being used to issue final agency action against the petitioner, the Court still called it collateral because it was "entirely collateral to his substantive claim of entitlement" to benefits. *Id.* at 330.

Similarly, *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479 (1991), involved a due process challenge to amnesty-determination procedures, even though a separate statute expressly channeled individual amnesty denials to deportation proceedings. *Thunder Basin*, 510 U.S. at 213. The Court again found the claim collateral—not because of how it was labeled, but because it was distinct from any individual determination. *McNary*, 498 U.S. at 492. The pattern is clear: a challenge to the *process* is collateral to the *merits*, even when a successful challenge would shut down the merits.

Free Enterprise Fund confirms that the collaterality inquiry turns on the nature of the claim, not the status of a pending agency proceeding. Even when proceedings are underway, some claims warrant immediate review precisely because they are distinct from the underlying merits. *Cf. Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949) (permitting interlocutory appeal of a "collateral" ruling "too independent of the cause itself").

The government's redefinition of collaterality would force structural challenges like the one described above to go through the agency's review scheme—precisely the approach this Court rejected in *Axon*.

c. *Elgin* does not save the government's position. BIO 13-14. That case accurately described the claims before it: federal employees who wanted their jobs back and whose constitutional challenge was the vehicle for getting them. The Civil Service Reform Act channeled exactly that relief to the MSPB and appellate courts. Their constitutional challenge to the Se-

lective Service statutes did not make their claims "collateral" to the discharge orders—it was their discharge challenge. *Elgin*, 567 U.S. at 7-8. The claims fell in the heartland of the Reform Act's channeling provision. *Elgin* thus stands for a narrow proposition—when a constitutional claim is the merits of the channeled dispute, it goes through the scheme. It does not stand for the government's sweeping proposition that any constitutional claim whose resolution would affect a pending benefits proceeding must go through the agency.

d. A simple example underscores why structural constitutional claims fall outside Section 511. Consider a veteran who appeals a benefits denial to the Board of Veterans' Appeals, an administrative tribunal staffed by Veterans Law Judges (VLJs) who, like ALJs, enjoy multiple layers of tenure protection insulating them from Presidential removal. *See* 38 U.S.C. § 7101A(e)(2); Michael Neal, *Burning Down the Administrative State:* Lucia *and the Threat to the Decisional Independence of Veterans Law Judges*, 50 Stetson L. Rev. 53, 66 (2020) (arguing that VLJs enjoy unconstitutional removal protection post-*Lucia*). Under *Seila Law* and *Free Enterprise Fund*, that layered protection is unconstitutional—the President must be able to remove executive officers without cause. That veteran has the same structural constitutional claim the plaintiffs pressed in *Axon*: he faces a proceeding before an adjudicator the President cannot constitutionally control. *Axon*, 598 U.S. at 183.

Under the government's theory, that veteran cannot bring his structural challenge in district court. The government would say that a federal court will eventually provide review—even though *Axon* held that this type of claim is immediately reviewable. BIO

13-14. The government would also say that the claim is not collateral because winning would reverse his benefits reduction. BIO 14. But that is true of every structural challenge a benefits claimant could bring. The government's rule swallows *Axon* entirely.

Properly applied, the *Thunder Basin* framework confirms that Section 511 does not implicitly strip district courts of jurisdiction to hear structural constitutional challenges. Those claims, by their nature, fall outside the agency's specialized competence, are independent of the merits, and cannot be meaningfully remedied after the fact. District courts therefore retain jurisdiction to hear them in the first instance.

3. Interpreting Section 511 to strip jurisdiction raises serious constitutional issues

Construing Section 511 to foreclose district-court jurisdiction over structural constitutional claims would raise serious constitutional questions this Court should avoid. Such a reading would conflict with *Marbury v. Madison*'s foundational principle that the United States is "a government of laws, and not of men"—one that ceases to deserve that title if "the laws furnish no remedy for the violation of a vested legal right." 5 U.S. (1 Cranch) 137, 163 (1803). Barring structural constitutional claims from district courts would do just that.

This Court has long recognized that statutory interpretation must avoid such constitutional difficulties: "where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of

Congress." *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *see also Bowen*, 476 U.S. at 681 n.12 (stating that a statutory scheme that operates to deny meaningful judicial resolution of a constitutional question would itself raise "serious constitutional question[s]").

This Court should not adopt such an interpretation when a sound alternative is available. Construing Section 511(a) to preserve district court jurisdiction intact for structural constitutional challenges avoids these constitutional concerns while remaining faithful to the statute's text and this Court's precedents. The Court should do just that.

CONCLUSION

This Court should reaffirm that structural constitutional claims like those in *Axon* belong in federal district court. Doing so preserves the separation of powers and ensures that the Constitution's structural guarantees remain more than empty promises.

Respectfully submitted,

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