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 MILITARY-VETERANS ADVOCACY, INC. AS AMICUS CURIAE IN SUPPORT OF PETITIONER

John B. Wells
Brian Lewis
MILITARY-VETERANS ADVOCACY, INC.
P.O. Box 5235
Slidell, LA 70469-5235
(985) 641-1855
JohnLawEsq@msn.com

Melanie L. Bostwick
Counsel of Record
Melanie R. Hallums
Anne W. Savin
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 339-8400
mbostwick@orrick.com

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE[1]

Military-Veterans Advocacy, Inc., (MVA) is a non-profit organization that litigates and advocates on behalf of servicemembers and veterans. Established in 2012 in Slidell, Louisiana, MVA educates and trains servicemembers and veterans concerning rights and benefits, represents veterans contesting the improper denial of benefits, and advocates for legislation to protect and expand servicemembers' and veterans' rights and benefits.

MVA believes that the Veterans' Judicial Review Act (VJRA), Pub. L. No. 100-687, 102 Stat. 4105 (1988), which expanded veterans' access to courts by expressly providing judicial review of many individual benefits decisions, cannot properly be read to implicitly preclude district courts from hearing constitutional challenges to federal statutes. In enacting the VJRA, Congress recognized the importance of judicial review for decisions denying veterans' individual benefits claims. It did not, in the same statute, silently eliminate the preexisting jurisdiction of district courts to review the constitutionality of veterans' benefits statutes. MVA urges this Court to resolve the existing circuit split by reversing the Eleventh Circuit's decision and reaffirming the principle, announced by this Court and adhered to by six other circuits in the wake of the VJRA, that district courts have jurisdiction to "decid[e] the constitutionality of

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[1] No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amicus curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

veterans' benefits legislation." *Johnson v. Robison*, 415 U.S. 361, 366 (1974).

INTRODUCTION AND SUMMARY OF ARGUMENT

Congress has long recognized federal district courts as essential guardians of constitutional law. *Compare* Act of March 3, 1875, § 1, 18 Stat. 470 ("[district] courts … shall have original cognizance … of all suits of a civil nature … arising under the Constitution"),[2] *with* 28 U.S.C. § 1331 (2026) ("district courts shall have original jurisdiction of all civil actions arising under the Constitution"). So strong was this presumption that, although Congress previously prohibited all judicial review of veterans' individual benefits *claims*, 38 U.S.C. § 211(a) (1970), this Court recognized district courts' continuing jurisdiction to hear constitutional challenges to veterans' benefits *statutes*. *See Robison*, 415 U.S. at 367.

The Court explained the reasoning behind that recognition: "Plainly, no explicit provision of § 211(a) bars judicial consideration of appellee's constitutional claims." *Id.* "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." *Id.* And, unlike a challenge to an individual

[2] The Act of March 3, 1875, refers to "circuit courts," which were established by the Judiciary Act of 1789. Act of Sept. 24, 1789, ch. 20, § 11, 1 Stat. 73, 78-79. The modern district court is the successor to this historic circuit court.

benefits decision, a veteran's "constitutional challenge is not to any such decision of the Administrator, but rather to a decision of Congress." *Id.*

Nothing that has transpired since the *Robison* ruling has undermined the Court's reasoning. In 1988, Congress enacted the VJRA and gave veterans and their families the right to challenge adverse decisions issued by the Department of Veterans Affairs (previously known as the Veterans Administration). The agency's final disposition of a claim for benefits is rendered by the Board of Veterans' Appeals. 38 U.S.C. § 7104(a). The VJRA allows claimants to appeal adverse Board decisions, first to the U.S. Court of Appeals for Veterans Claims (an Article I tribunal referred to as the Veterans Court) and then to an Article III tribunal, the U.S. Court of Appeals for the Federal Circuit. 38 U.S.C. § 7292(a) & (c). Although the VJRA version of the statute retains a no-review clause barring judicial review over certain matters, that clause—like its predecessor—applies only to "decision[s] of the Secretary" rendered "under" laws affecting the provision of veterans' benefits. 38 U.S.C. § 511(a). As this Court recognized when considering § 211(a), the text of the no-review clause does not encompass constitutional challenges to federal statutes. *See Robison*, 415 U.S. at 367 ("Appellee's constitutional challenge is not to any such decision of the [Secretary], but rather to a decision of Congress," and thus, "[t]he questions of law presented in these proceedings arise under the Constitution, not under the statute whose validity is challenged.") (citation omitted).

As Petitioner shows, nothing in § 511(a) changes the application of *Robison* to facial constitutional challenges such as the one brought here by Mr. Johnson. *See* Pet. Br. 16-23. Instead, the text confirms that district courts retain jurisdiction under 28 U.S.C. § 1331 to hear such challenges to veterans' statutes. There is no need to go beyond the statutory text where, as here, Congress has expressly established the limits of preclusion. *See* Pet. Br. 3-4, 16-23.

Nevertheless, the Eleventh Circuit and the government both rely on *Elgin v. Department of Treasury*, 567 U.S. 1 (2012), which held that, by creating a specialized review scheme, Congress might sometimes *implicitly* preclude district courts from hearing related claims. Even if the Court considers the *Elgin* framework relevant to a case, like this one, where the statute contains express language addressing preclusion, Petitioner's reading of that language should still prevail. The statute's "text, structure, and purpose" confirm that Congress preserved the jurisdiction of district courts to hear constitutional challenges, as established in *Robison*. *See Elgin*, 567 U.S. at 10 (considering a statute's "text, structure, and purpose" to determine whether "Congress precluded district court jurisdiction"); *see* Pet. Br. 17-23 (text), 23-28 (context and structure).

The framework this Court developed in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994)—relied on by *Elgin*—further supports this conclusion. Pet. Br. 41-44. To determine whether Congress implicitly precluded district court jurisdiction in an administrative scheme, the Court considers whether a claim: (1) will be subject to meaningful judicial review in the

administrative scheme; (2) is collateral to the "ordinary proceedings" of the review scheme; and (3) sits outside the agency's area of expertise. 510 U.S. at 212-13. If the Court undertakes an implied-preclusion analysis, *but see* Pet. Br. 38-41, each of these factors favors preserving district court jurisdiction over constitutional challenges to veterans' benefits legislation. Several distinctive attributes of VA's adjudication system—including its notorious delays—inhibit it from serving as a pathway to meaningful judicial review, and constitutional questions are both wholly collateral to VA's "ordinary" individual benefits determinations and outside the agency's expertise in veterans' law.

The VJRA did not expressly usurp district court jurisdiction over constitutional challenges to veterans' benefits statutes. Nor is there any "fairly discernable" basis for this Court to find implicit preclusion under the *Thunder Basin* factors. The Court should reverse the Eleventh Circuit and reaffirm that veterans need not spend years navigating a VA claims process that cannot meaningfully address their constitutional challenges before reaching an Article III court.

ARGUMENT

I. The Text, Structure, And Purpose Of § 511 Support District Court Jurisdiction Over Constitutional Challenges To Veterans' Benefits Statutes.

In *Elgin*, the Court considered whether Congress implicitly precluded district court jurisdiction in the

statutory review scheme of the Civil Service Reform Act (CSRA). 567 U.S. at 10. The CSRA did "not expressly bar suits in district court." *Id.* at 9. So the Court asked "whether it [wa]s 'fairly discernible' from the CSRA that Congress intended covered employees appealing covered agency actions to proceed exclusively through the statutory review scheme, even in cases in which the employees raise constitutional challenges to federal statutes." *Id.* at 10 (quoting *Thunder Basin*, 510 U.S. at 207). And to determine whether such intent was "fairly discernible," the Court "examine[d] the CSRA's text, structure, and purpose." *Id.*

Here, the VJRA's text, structure, and purpose support Mr. Johnson's reading of § 511(a). The text is nearly identical to the predecessor statute, which this Court already determined did not preclude district court jurisdiction over constitutional challenges to federal veterans' benefits statutes. The structure of the statutory scheme lends further support to preserving district court jurisdiction, as it establishes an appellate process meant to benefit veterans, not to diminish their preexisting ability to vindicate constitutional rights. And VJRA's purpose undoubtedly serves to expand, not constrict, avenues for judicial review.

A. Congress reenacted the same statutory text after *Robison*, so the *Robison* holding should continue to apply.

Section 511 directs VA to "decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits … to

veterans." 38 U.S.C. § 511(a). The law provides that, except in certain enumerated circumstances, "the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise." *Id.*

As Petitioner shows, this no-review clause tracks the key language of § 511(a)'s predecessor statute, § 211(a). *See* Pet. Br. 18-19. Section 211 provided that "the decisions of the Administrator on any question of law or fact 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." 38 U.S.C. § 211(a) (1970).

In *Robison*, decided four years after the 1970 amendment of § 211(a), this Court held that the statute's no-review clause did not foreclose district court review of constitutional challenges to veterans' benefits statutes. 415 U.S. at 367. Nothing in § 511(a) changes *Robison*'s applicability here. On the contrary, as Petitioner explains, the relevant text remains the same. *See* Pet. Br. 7, 17-19. Just like § 211(a), nothing in the text of § 511(a) expressly precludes district court jurisdiction over constitutional challenges to veterans' benefits legislation. *See Robison*, 415 U.S. at 367 ("Plainly, no explicit provision of § 211(a) bars judicial consideration of appellee's constitutional claims."). And the prohibitions on district court review in both versions of the statute are directed to decisions made "under" a statute—that is, those that involve VA's "interpretation or application of a particular provision of the statute," not those in which the

statute's validity is questioned. *Id.* As with § 211(a), moreover, the decisions precluded from review under § 511(a) are those "of the Secretary"—formerly the "Administrator"—rather than those of Congress in enacting a statute. *Id.*

Here, just like in *Robison*, Petitioner challenges not the agency's interpretation or application of the governing statutes to his individual benefits claim, but whether the statute itself is constitutional. Pet. Br. 10. As this Court has already determined, "the most reasonable construction" of the no-review clause allows for district court review of this challenge. *Robison*, 415 U.S. at 373. Such a construction simply "does not extend the prohibitions of [the no-review clause] to actions challenging the constitutionality of laws providing benefits for veterans." *Id.*

The similarity of § 511(a) to its predecessor is no accident. When it enacted the VJRA, Congress was not only aware of *Robison*'s holding, it endorsed it: "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." H.R. Rep. No. 100-963, pt. 1, at 19 (1988); *see id.* at 20 ("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."); *see id.* at 22 ("[T]he [U.S. House Veterans' Affairs C]ommittee believes that *Johnson v. Robison* was correct in asserting judicial authority to decide whether statutes

meet constitutional muster."); S. Rep. No. 96-178, at 91 (1979) ("[T]he doctrine enunciated by the Supreme Court in *Johnson v. Robison*, 415 U.S. 361 (1974), should logically be extended to permit review of all constitutional questions arising under the Veterans' Administration's administration of veterans' programs."); *see* Pet. Br. 35-36.

As Petitioner shows (Pet. Br. 33-34), the substantive changes in the amended § 511(a) responded instead to this Court's decision in *Traynor v. Turnage*, 485 U.S. 535, 543-44 (1988), which held that the former § 211(a) did not reach questions arising under Section 504 of the Rehabilitation Act—"a statute applicable to all federal agencies"—because it was limited to statutes "administered by [VA]." Eight months after *Traynor* was decided, Congress amended the statute and expanded the covered statutes to those "affect[ing] the provision of benefits," not just those "administered by" VA. 38 U.S.C. § 511(a). But Congress explained that, aside from this broadening of the types of statutory claims being channeled through the administrative review process, "[t]he rest of the changes to section 211 [we]re proposed merely to make the section easier to read, and do not have substantive effect." H.R. Rep. No. 100-963, pt. 1, at 27.

Because Congress reenacted the same statutory language more than a decade after *Robison* was decided, and expressly endorsed *Robison*'s holding, *Robison* continues to provide the best understanding of Congress's text. *See Helsinn Healthcare S.A. v. Teva Pharms. USA, Inc.*, 586 U.S. 123, 131 (2019) ("In light of this settled pre-[statute] precedent on the meaning of [a term], we presume that when Congress

reenacted the same language in the [statute], it adopted the earlier judicial construction of that phrase."); *Lamar, Archer & Cofrin, LLP v. Appling*, 584 U.S. 709, 721-22 (2018) ("When Congress used the materially same language in [a statute], it presumptively was aware of the longstanding judicial interpretation of the phrase and intended for it to retain its established meaning."); *Bragdon v. Abbott*, 524 U.S. 624, 645 (1998) ("When administrative and 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 administrative and judicial interpretations as well."); *Shapiro v. United States*, 335 U.S. 1, 16 (1948) ("In adopting the language used in the earlier act, Congress 'must be considered to have adopted also the construction given by this Court to such language, and made it a part of the enactment.'") (citation omitted).

B. The structure of the VJRA supports district court jurisdiction.

The structure of the VJRA does not suggest that district courts lose their inherent jurisdiction to adjudicate constitutional questions. *See, e.g.*, *Marbury v. Madison*, 5 U.S. 137, 178 (1803) ("The judicial power of the United States is extended to all cases arising under the constitution."). Nor does it suggest that veterans themselves are precluded from bringing such challenges in district court. Quite the opposite. The VJRA establishes a structure meant to benefit veterans, not to diminish their preexisting ability to vindicate constitutional rights. *See, e.g.*, *Robison*, 415 U.S. at 367; *see also Davis v. Passman*, 442 U.S. 228, 241-

42 (1979). Reading the VJRA to strip veterans of their access to district courts for constitutional claims would turn this pro-veteran scheme on its head.

To start, the VJRA is part of Congress's "unequivocally pro-claimant scheme … for reviewing veterans' disability claims." *Dixon v. Shinseki*, 741 F.3d 1367, 1376 (Fed. Cir. 2014). The benefits provided to veterans are generous, including medical care, tuition, housing loans, disability payments, and burial benefits. *See, e.g.*, 38 U.S.C. §§ 1110-1176 (service-connected death and disability benefits), 3311 (post-9/11 educational benefit), 3710 (home loan benefit), 3742 (small business loan benefit). And the system favors veterans at every turn, reflecting the longstanding "solicitude of Congress for veterans." *United States v. Oregon*, 366 U.S. 643, 647 (1961); *see infra* 27-28. In a system designed to help veterans pursue relief, a reading that instead inhibits judicial review is an odd fit. *See Henderson v. Shinseki*, 562 U.S. 428, 441 (2011) (enactment of VJRA "was decidedly favorable to veterans").

Furthermore, within this broader statutory scheme, the VJRA specifically is addressed to judicial review of agency action in resolving individual veterans' benefits claims. *See* Pub. L. No. 100-687 ("An Act … to establish certain procedures for the adjudication of claims for benefits" and "provide for judicial review of certain final decisions of the Board of Veterans' Appeals ….''). The legislation extended the administrative review path into the courts by "creat[ing] the Veterans Court, an Article I tribunal, and authoriz[ing] that court to review Board decisions adverse to veterans." *Henderson*, 562 U.S. at 432; 38

U.S.C. §§ 7251, 7252(a). And it ensured further judicial review of these claims by permitting review of legal questions in the Federal Circuit. 38 U.S.C. § 7292. Nothing in this scheme suggests a *limitation* on veterans' access to courts. Nor should a statute focused on review of factual and legal questions affecting the resolution of individual cases be read to divest district courts of their jurisdiction to hear constitutional questions. *See Robison*, 415 U.S. at 373-74 (explaining that "'clear and convincing' evidence of congressional intent [is] required … before a statute will be construed to restrict access to judicial review"); *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 494 (1991) ("Because respondents' action does not seek review … of a denial of a particular application, the District Court's general federal-question jurisdiction under 28 U.S.C. § 1331 to hear this action remains unimpaired by" the Immigration Act's no-review clause).

C. The purpose of the VJRA was to expand, not constrict, avenues for judicial review.

The final *Elgin* factor points the same way as the others. The purpose of the VJRA was to "ensure that all veterans are served with compassion, fairness, and efficiency, and that each individual veteran receives from the VA every benefit and service to which he or she is entitled under law." S. Rep. No. 100-418, at 31 (1988). One of the primary ways the VRJA sought to accomplish this goal was by allowing veterans to appeal adverse benefits decisions to the newly created Veterans Court. *See Henderson*, 562 U.S. at 432; 38 U.S.C. §§ 7251, 7252(a). It also provided for review of

"certain issues of law" in the Federal Circuit. *Henderson*, 562 U.S. at 433; 38 U.S.C. § 7292(a).

Before passage of the VJRA, "a veteran or other claimant aggrieved by a final [Board] decision [wa]s left without any further recourse." S. Rep. No. 100-418, at 30. "The passage of the Veterans' Judicial Review Act … provided veterans with their day in court." *Bates v. Nicholson*, 398 F.3d 1355, 1363 (Fed. Cir. 2005). "[T]he legislation was 'intended to produce timely, consistent, and fair decisions for veterans.'" *Id.* at 1364 (quoting 134 Cong. Rec. H27789 (daily ed. Oct. 3, 1988)). Indeed, the Senate Committee on Veterans' Affairs explained that "its attitude toward judicial review … reflects a faith in the system of checks and balances embodied in Federal court review, a system which can only enhance the likelihood that the truth will be found and a correct and just decision reached." S. Rep. No. 100-418, at 50. Judicial review was "necessary in order to provide … claimants with fundamental justice." *Id.*

The animating purpose of the VJRA, in other words, was to expand the role of the judiciary in ensuring that veterans' benefits claims are processed in a lawful manner to achieve fairer and more accurate decisions. It makes little sense to read this same statute to withdraw a previously available and critical judicial forum for ensuring that the applicable laws themselves pass constitutional muster.

Such a reading would be particularly anomalous in the context of veterans' benefits. Congress manifests its "special solicitude for the veterans' cause" by providing for the benevolent adjudication of these

generous benefits. *Shinseki v. Sanders*, 556 U.S. 396, 412 (2009); *Gilbert v. Derwinski*, 1 Vet. App. 49, 54 (1990) ("It is in recognition of our debt to our veterans that society has through legislation taken upon itself the risk of error."). The laws governing veterans' appeals must be read in harmony with this evident congressional purpose. *See*, *e.g.*, *Rudisill v. McDonough*, 601 U.S. 294, 314 (2024) ("If the statute were ambiguous, the pro-veteran canon would favor Rudisill."); *Henderson*, 562 U.S. at 440-41 (reaffirming "the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor") (citation omitted). And the reading of § 511(a) that best comports with this purpose is Petitioner's.

II. The *Thunder Basin* Factors Favor District Court Jurisdiction Here.

This Court's other test for implicit preclusion of district court jurisdiction leads to the same conclusion. In *Thunder Basin Coal Co. v. Reich*, the Court addressed when a statutory administrative review scheme implicitly precludes district court jurisdiction. 510 U.S. at 202. It identified three factors relevant to whether a plaintiff's claims "are of the type Congress intended to be reviewed within this statutory structure." *Id.* at 212. First, could the finding of preclusion foreclose all meaningful judicial review? *Id.* at 212-13. This factor recognizes that "Congress rarely allows claims about agency action to escape effective judicial review." *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 186 (2023). Second, is the claim "wholly collateral" to a statute's review provisions? *Thunder Basin*, 510 U.S.

at 212. Third, is the claim outside the agency's expertise? *Id.* The second and third 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. Here, if the Court concludes *Thunder Basin*'s implied-preclusion analysis is appropriate, *contra* Pet. Br. 37-41, all three factors militate in favor of district court jurisdiction over Mr. Johnson's claims.

A. The *Thunder Basin* decision.

To understand why the *Thunder Basin* factors favor district court jurisdiction here, it is instructive to first examine how the Court applied them in *Thunder Basin* itself—and, in particular, what features of the Mine Safety and Health Act's administrative review scheme led the Court to conclude that Congress impliedly foreclosed district court review.

Thunder Basin, a coal mining company, sued in district court to enjoin a threatened Mine Safety and Health Act (Mine Act) citation for refusing to post information about its employees' designated representatives. 510 U.S. at 204-05. It alleged the representatives' appointment violated the National Labor Relations Act (NLRA), and that the Mine Act's administrative review process violated its Fifth Amendment due process rights. *Id.* at 205. The district court agreed that Thunder Basin "raised serious questions," and enjoined the government from enforcing the Act. *Id.* at 205-06. The Tenth Circuit reversed,

concluding the Mine Act's detailed administrative review scheme deprived the district court of jurisdiction. *Id.* at 206.

This Court affirmed the Tenth Circuit, identifying and applying the three factors discussed above (at 14-15). *Id.* at 207-18. Far from "wholly collateral," Thunder Basin's statutory claims "at root require[d] interpretation of the parties' rights and duties under" the Mine Act. *Id.* at 214. Moreover, the claims "f[e]ll squarely within the [Federal Mine Safety and Health Review] Commission's expertise," given its "extensive experience interpretating the [safety representatives'] rights" and recent experience with "the precise NLRA claims presented here." *Id.*

While the Court recognized that constitutional questions are generally "thought beyond the jurisdiction of administrative agencies," it noted that such concerns were "of less consequence where, as here," the Commission was independent of the enforcing agency (the Department of Labor) and was experienced in "address[ing] constitutional questions." *Id.* at 215 (citation omitted); *see also Carr v. Saul*, 593 U.S. 83, 92 (2021) ("agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators' areas of technical expertise"). Even if the Commission lacked that experience, however, the Court noted that the Court of Appeals could "meaningfully address[]" "petitioner's statutory and constitutional claims." *Thunder Basin*, 510 U.S. at 215. This meaningful appellate review was accelerated by Congress's focus on "rapid abatement of violations" and short

statutory deadlines for review. *Id.* at 207-08 & n.9, 211 (citation omitted).

B. The *Thunder Basin* factors favor district court jurisdiction over Mr. Johnson's facial constitutional challenge.

This case is different in every way from *Thunder Basin*. The critical factors that led this Court to conclude that the Mine Act allowed for meaningful judicial review are conspicuously absent from VA's adjudicatory system.

1. Precluding district court review could deprive parties of meaningful judicial review.

Precluding district court review of constitutional challenges like Mr. Johnson's could foreclose "effective judicial review." *Axon*, 598 U.S. at 186; *see* Pet. Br. 41-43. The prompt and certain Mine Act administrative scheme underscoring the *Thunder Basin* decision has no parallel in VA benefits adjudication.

Under the Mine Act at issue in *Thunder Basin*, administrative review followed a clear, expeditious timeline. A mine operator had 30 days to challenge any citation issued under the Act. 510 U.S. at 207. After initial review by an administrative law judge, the Commission had 40 days to grant further review. *Id.* at 207-08 & n.9. An aggrieved operator could then, within 30 days of the Commission's decision, petition the court of appeals for relief. *Id.* at 208; 30 U.S.C. § 816(a)(1). Given the timely and defined path to judi-

cial review, this Court reasonably concluded that "petitioner's statutory and constitutional claims here can be meaningfully addressed in the Court of Appeals." *Thunder Basin*, 510 U.S. at 215.

VA's adjudicative system presents a strikingly different picture. Although the claims process was meant to function with a "high degree of informality and solicitude for the claimant," *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 311 (1985), it instead operates as a byzantine system that is often (and fairly) criticized for being neither efficient nor effective.

VA's claims processing delays are notorious. *See, e.g.*, *Martin v. O'Rourke*, 891 F.3d 1338, 1349-50 (Fed. Cir. 2018) (Moore, J., concurring). From the outset of the veterans' benefits adjudication process, no statutory or regulatory timeline binds VA. The agency deems any application awaiting initial decision that is pending for more than 125 days as backlogged, but that label has no legal consequence. U.S. Dep't of Veterans Affs., *Veterans Benefits Administration Reports*, *Detailed Claims Data*, https://perma.cc/ZL3Q-H2AX (last updated June 3, 2026). As of May 30, 2026, VA's claims inventory of 583,029 claims included 72,048 "backlogged" claims. *Id.*

VA's internal review and appeal processes add further complexity and delay. Under the Appeals Modernization Act of 2017, veterans whose claims are first denied on or after February 19, 2019, may select one of three review options: (1) de novo review of the existing claims file by a senior claims adjudicator; (2) review of supplemental evidence by the original

claims adjudicator; or (3) appeal to the Board. 38 U.S.C. §§ 5104B, 5104C, 5108, 7105. Before the Board, claimants may again select from three distinct appellate paths: (1) appeal without submitting additional evidence or requesting a hearing (direct docket); (2) submit additional evidence to support the existing claim (evidence docket); or (3) request a hearing before a Veterans Law Judge with the opportunity to submit additional evidence (hearing docket). 38 U.S.C. § 7105; 38 C.F.R. §§ 20.202(b), 20.301-303, 20.800(a). In 2024, those appeal avenues averaged 937 days, 1,028 days, and 1,091 days to completion, respectively. U.S. Dep't of Veterans Affs., *Congressionally Mandated Report—Periodic Progress Report on Appeals, P.L. 115-55 § 3*, at 16 (Feb. 2025), https://perma.cc/N7DT-JK9L (*2025 Appeals Progress Report*). And "completed" does not equal "granted" (or even finally resolved)—of the Board's 71,262 dispositions in 2024, 27,666 (nearly 40%) remanded claims back to the VA Regional Office for additional processing. *Id.* at 21. A veteran has no recourse if he disagrees with a remand; a Board "decision to remand that does not fully grant or deny relief is not appealable to the Veterans Court." *Wright v. Collins*, 157 F.4th 1379, 1381 (Fed. Cir. 2025). Even more stunning than these delays, at the end of December 2024, VA still had 35,494 "legacy" appeals pending—claims that VA denied *before* February 19, 2019, and which may have spent years cycling through successive rounds of review, appeal, and remand. *2025 Appeals Progress Report* at 7.

Once VA finally resolves a veteran's internal appeal, the veteran may appeal to the Veterans Court. *See supra* 3, 11-12; 38 U.S.C. § 7252(a). According to

the most recent data available, the median time from filing an appeal to disposition is 422 days for single-judge cases and 659 days for multi-judge cases. *See* U.S. Court of Appeals for Veterans Claims, *Fiscal Year 2025 Annual Report*, at 5, https://perma.cc/EWX2-6TMK (*2025 Veterans Court Report*). As before the Board, however, "disposition" often means remand to VA for further processing. Few veterans receive closure on their claims at the Veterans Court level. In 2025, the court remanded in whole or in part in 7,355—or 84%—of the veterans' appeals it addressed. *Id.* at 3. Shockingly, in 76% of the 7,192 appeals resolved through the Veterans Court mediation program, VA *agreed* with the veteran "that the Board's decision contained error necessitating remand to the agency for readjudication." *Id.* at 7. In other words, the agency that had rendered the decision agreed, without judicial intervention, that a redo was required.

Finally, even the path to review in the Federal Circuit is often postponed. If a veteran receives a decision from the Veterans Court that is largely adverse, but the court remands as to one or more issues, the Federal Circuit deems the decision "not sufficiently final" for judicial review. *Williams v. Principi*, 275 F.3d 1361, 1363-64 (Fed. Cir. 2002). The Federal Circuit has applied its *Williams* doctrine even when the Veterans Court ruling may contain legal error that cannot be corrected during the agency remand and that, if corrected by the appellate court, would lead to a decision in the veteran's favor. *See Duchesneau v. Shinseki*, 679 F.3d 1349, 1352-53 (Fed. Cir. 2012). In other words, even a viable, claim-dispositive constitutional challenge might never reach the Article

III court if some other case-specific issue separately warrants a remand.

For veterans, this process can seem like a never-ending merry-go-round. "[T]he Board is not dealing with an appeal once, but often multiple times, due to the practice of remanding appeals that need correction either from the Board to [the VA Regional Office] or from the [Veterans] Court back to the Board." *Examining the VA Appeals Process: Ensuring High Quality Decision-Making for Veterans' Claims on Appeal: Hearing Before the Subcomm. on Disability Assistance and Mem'l Affs. of the H. Comm. on Veterans' Affs.*, 118th Cong. 5 (2023) (statement of Elizabeth Curda, U.S. Gov't Accountability Office). As a result, veterans hoping to obtain benefits often face a years- or decades-long process. *See*, *e.g.*, Hugh B. McClean, *Delay, Deny, Wait Till They Die: Balancing Veterans' Rights and Non-Adversarial Procedures in the VA Disability Benefits System*, 72 SMU L. Rev. 277, 280-81 (2019). Only after years of ricocheting between initial VA adjudication, internal appeals, and the Veterans Court may a veteran's constitutional challenge reach an Article III court—if he has managed to preserve it through repeated cycles of review and remand.

Moreover, the VJRA created a lopsided review scheme. Only the veteran may appeal an adverse Regional Office decision. 38 U.S.C. § 7105(a). Likewise, only the veteran may appeal an adverse Board decision. *Id.* § 7252(a). Only after a Veterans Court decision may "any party to the case"—including the Secretary—seek appellate review. *Id.* § 7292(a). Even then, the Veterans Court could decline to rule on a

constitutional question, depriving the Federal Circuit of jurisdiction due to its limited jurisdictional grant. *Id.* (authorizing review of a decision on a rule of law, statute, or regulation "or any interpretation thereof … that was relied on by the [Veterans] Court in making the decision"); *see, e.g.*, *Morris v. McDonough*, 40 F.4th 1359, 1364 (Fed. Cir. 2022) (affirming Veterans Court's discretion to decline to decide constitutional questions). The Federal Circuit has declined jurisdiction over constitutional questions that the Veterans Court did not decide or that the Federal Circuit deems "inextricably intertwined" with remanded claims. *E.g.*, *Prewitt v. McDonough*, 856 F. App'x 280, 282-83 (Fed. Cir. 2021) (declining to review constitutional challenges "'inextricably intertwined' with the remanded portions of the Veterans Court's decision"); *Smith v. West*, 214 F.3d 1331, 1334 (Fed. Cir. 2000) (declining to hear due process challenge not raised below because, "[i]n the absence of a timely challenge to the constitutionality of a statute or regulation, or its interpretation," the Court has "no jurisdiction"); *see* Pet. Br. 42-43.

Apart from these administrative and judicial hurdles, veterans face another relentless foe—time. Veterans pursuing the benefits Congress has promised them often face a years- or decades-long process, and many do not live long enough to see the end of it. *See, e.g.,* McClean, *supra*, at 280-81; H.R. Rep. No. 110-789, at 17 (2008) (noting "the many instances where veterans die while awaiting resolution of a claim"). When veterans die while pursuing their claims through the VA system, the law provides only two narrow paths for certain eligible individuals either to obtain the benefits that were due and unpaid to the

veteran upon death (38 U.S.C. § 5121) or to substitute as the claimant and process the pending claim to completion (38 U.S.C. § 5121A). Neither statutory path is open to a veteran's adult children, except in limited circumstances. *Sucic v. Wilkie*, 921 F.3d 1095, 1099 (Fed. Cir. 2019) (excluding "non-dependent, adult children" from definition of "veteran's children" in 38 U.S.C. § 5121(a)(2)(B)) (relying on definition of "child" in 38 U.S.C. § 101(4)(A)); *Smith v. Collins*, 133 F.4th 1059, 1061-62 (Fed. Cir. 2025) (adult child of veteran only eligible to substitute as "person who bore the expense of last sickness and burial"); *see also Smith v. McDonough*, 35 Vet. App. 454, 463 (2022) (applying § 5121A's "substantive standard for substitution" at the Veterans Court). If no eligible substitute is available or willing to continue the veteran's claim, it dies with the veteran. Thus, even if a veteran has managed to preserve a constitutional claim, VA's extended delays may alone defeat Article III review.

The VA system, as applied to constitutional challenges, does not merely defer review in the constitutionally tolerable sense *Thunder Basin* contemplated. It so attenuates and delays it as to cross from permissible delay into functional foreclosure—precisely the concern this Court flagged in *Thunder Basin*. 510 U.S. at 207 n.8 (noting that "this case does not implicate 'the strong presumption that Congress did not mean to prohibit all judicial review'") (quoting *Bowen v. Mich. Acad. of Family Phys.*, 476 U.S. 667, 672 (1986)). This factor therefore favors district court jurisdiction over Mr. Johnson's claim.

2. Mr. Johnson's constitutional claim is wholly collateral to VA's statutory review scheme and outside its expertise.

The remaining *Thunder Basin* factors point toward the same conclusion. Mr. Johnson's constitutional challenge is wholly collateral to VA's benefits adjudication scheme and falls entirely outside VA's institutional expertise. *Thunder Basin*, 510 U.S. at 212-16; *see* Pet. Br. 28-31, 43-44. Neither prong of that inquiry supports channeling his claim through VA's administrative labyrinth.

In *Thunder Basin*, the Court concluded the mine operator's claims were not wholly collateral to the Mine Act's review scheme because they turned on interpretation of the parties' rights and duties under the Act itself—questions that "arise under the Mine Act and fall squarely within the Commission's expertise." 510 U.S. at 214. The Commission had been established specifically to "develop a uniform and comprehensive interpretation" of the Mine Act, and had recently addressed the precise statutory claims presented in the case. *Id.* at 214-15 & n.18 (citation omitted). The constitutional claim fared no differently because an independent commission—not the agency itself—would conduct the review, and that body had previously addressed constitutional questions in enforcement proceedings. *Id.* at 215.

VA's adjudicatory system presents a fundamentally different picture. Mr. Johnson does not challenge VA's decision-making in adjudicating his individual

benefits claim. Pet. Br. 10. He challenges the constitutionality of a statute limiting benefits payments to incarcerated felons. *Id.* (explaining challenge to 38 U.S.C. § 5313 under Bill of Attainder Clause and Fifth Amendment). That question bears no relationship to the technical determinations of service-connection and disability rating that VA's system was built to resolve and which form the core of VA's expertise. Pet. Br. 29. Because VA does not "customarily handle[]" or have "distinctive knowledge" about the constitutionality of congressional statutes, the district court should be permitted to exercise jurisdiction over Mr. Johnson's constitutional challenge. *Axon*, 598 U.S. at 186.

a. "[T]his Court has often observed that agency adjudications are generally ill suited to address structural constitutional challenges, which usually fall outside the adjudicators' areas of technical expertise." *Carr*, 593 U.S. at 92 (citing cases). Such challenges "are not to any specific substantive decision—say, to fining a company (*Thunder Basin*) or firing an employee (*Elgin*). Nor are they to the commonplace procedures agencies use to make such a decision." *Axon*, 598 U.S. at 189. "Both considerations apply fully here: Petitioner[] assert[s] purely constitutional claims about which [VA tribunals] have no special expertise and for which they can provide no relief." *Carr*, 593 U.S. at 93. Indeed, as Petitioner repeatedly points out, VA's own regulations prohibit the Board from "consider[ing] constitutional challenges to statutes." Pet. Br. 3 (quoting Bd. Vet. App. A24018528, at *4 (Apr. 15, 2024)); *see id.* at 20; 38 C.F.R. § 20.105.

For this reason, in other areas where a statutory scheme provides exclusive jurisdiction in the courts of appeals to review administrative action, district courts still retain jurisdiction over constitutional questions. For example, the Securities Exchange Act and the Federal Trade Commission Act both provide for review of a final administrative decision in a court of appeals, rather than a district court. Nevertheless, this Court held that "the review schemes set out in the Exchange Act and the FTC Act do not displace district court jurisdiction over [plaintiffs'] far-reaching constitutional claims." *Axon*, 598 U.S. at 185; *see also Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 489-90 (2010) (holding that Exchange Act did not strip district courts of jurisdiction to hear constitutional claims). Likewise, even though the D.C. Circuit has exclusive jurisdiction over appeals from decisions of the Federal Communications Commission, 47 U.S.C. § 402(b), district courts have jurisdiction over constitutional challenges to the Telephone Consumer Protection Act. *See Moser v. F.C.C.*, 46 F.3d 970, 973 (9th Cir. 1995).

b. VA's adjudicatory system is also ill-suited to resolve constitutional issues. Veterans typically do not have legal counsel, VA's initial benefits decisions are made by non-lawyers, and VA's lawyers themselves lack constitutional experience and expertise. These systemic issues make the VA system a poor substitute for district court adjudication of constitutional questions.

To start, VA is uniquely ill-suited among federal agencies to resolve constitutional challenges. "Congress has made clear that the VA is not an ordinary

agency." *Sanders*, 556 U.S. at 412. In the standard formulation frequently invoked by courts (and advocates), VA's system is "strongly and uniquely pro-claimant" and "historically non-adversarial." *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). What that means in practice is that VA's system simply does not provide the adversarial testing that would allow for adequate development and consideration of the often-complex questions regarding a statute's constitutionality.

VA's adjudicative process does not resemble the typically adversarial processes of American courts or even other agencies. *See Walters*, 473 U.S. at 309 ("[T]he process prescribed by Congress for obtaining disability benefits does not contemplate the adversary mode of dispute resolution utilized by courts in this country."); McClean, *supra*, at 295. Throughout the agency process, the claimant—who may or may not be assisted by any sort of representative, *see infra* 28-29—presents the case for benefits, and no one presents a rebuttal. At the initial adjudication level (though not at the Board), VA has an affirmative statutory duty to assist veterans to develop their benefits claims. 38 U.S.C. § 5103A. By design, moreover, agency adjudicators are not neutral. The system "place[s] a thumb on the scale in the veteran's favor," *Henderson*, 562 U.S. at 440 (citation omitted), including by requiring the agency to "give the benefit of the doubt to the claimant" on any material issue, 38 U.S.C. § 5107(b). And VA's own regulations direct adjudicators to "render a decision which grants every benefit that can be supported in law." 38 C.F.R. § 3.103(a).

The asymmetry throughout the system is entirely appropriate for implementing "[t]he solicitude of Congress for veterans," *Oregon*, 366 U.S. at 647, and fulfilling the agency's own mission "to care for those who have served in our nation's military," U.S. Dep't of Veterans Affs., *About the Department*, https://perma.cc/D5ME-KUEX (last visited June 7, 2026). But it is ill-suited to resolve questions that reach far beyond any individual benefits claim and test the validity of Congress's own actions. And it is at least unclear how agency adjudicators directed to maximize available benefits "while protecting the interests of the Government," 38 C.F.R. § 3.103(a), are meant to approach questions about the validity of actions taken by another governmental branch.

Other unique aspects of the VA claims system compound the problem. Because the adjudicatory process is meant to be paternalistic and non-adversarial, it structurally discourages attorney representation during the claims process. *Walters*, 473 U.S. at 321-24. Attorneys are prohibited from charging fees for representation in the early stages of a claim and face restrictions on their ability to do so throughout the claims process. *See* 38 U.S.C. § 5904(c) (prohibiting lawyers for charging for representation "before the date on which a claimant is provided notice of the agency['s] … initial decision," and providing for VA review and rejection of fee agreements); 38 C.F.R. § 14.636 (regulating fees that "accredited agents and attorneys" may charge for representation); *see also Henderson*, 562 U.S. at 440-41 (describing the "dramatic" contrast between veterans' benefits adjudication system and "ordinary civil litigation").

In part because of these restrictions, self-representation or representation by non-attorney agents (such as those supplied by veterans service organizations, or "VSOs") has been the norm for decades. U.S. Gov't Accountability Off., GAO-13-643, *VA Benefits* 4 (2013), https://tinyurl.com/c6j5c5aw (estimating 98% of veterans appear pro se or through VSO representatives); *Walters*, 473 U.S. at 312 n.4 (same). Without the help of trained lawyers at this critical juncture, many veterans struggle even to identify, much less preserve, constitutional issues for review. *See Comer v. Peake*, 552 F.3d 1362, 1369 (Fed. Cir. 2009) (assistance from a VSO "is not equivalent to representation by a licensed attorney").

Just as veterans are not well-positioned to defend their constitutional interests during the benefits adjudication process, VA adjudicators lack the resources needed to decide constitutional issues that arise (even if they had the authority to do so). For example, VA's benefits decisions are guided by its M21-1 Adjudications Procedures Manual (Manual). Over roughly 5,000 pages, the Manual makes only scattered and incidental references to constitutional rights and contains no analysis of constitutional principles. Its overwhelming purpose is to guide VA adjudicators through the mechanics of a disability claim, with chapters describing "The Development Process," "Examinations," "The Rating Process," and "The Authorization Process." *See* U.S. Dep't of Veterans Affs., *M21-1, Adjudication Procedures Manual*, Parts III-VI, https://perma.cc/SK9M-6J6Q (last updated Apr. 27, 2026).

Not only does the Manual not provide any guidance on constitutional questions, but the VA employees deciding these claims in the first instance need not have any legal education. And while members of the Board and VA's internal attorney-advisors do have legal training, their specialized professional practice focuses narrowly on veterans' law. *See, e.g.*, 38 C.F.R. § 20.104(a) (non-exhaustive list of "issues over which the Board has jurisdiction," including "All-Volunteer Force Educational Assistance Program," "Veterans' Job Training," and "Matters arising under National Service Life Insurance and United States Government Life Insurance").

And there is reason to doubt the competence of even the Board members to render consistent and well-reasoned decisions on constitutional questions. The Board's inconsistency in rendering accurate, quality opinions even within its specialized areas of expertise has been noted, with Congress considering measures to address the problems. U.S. Gov't Accountability Off., GAO 24-106156, *VA Disability Benefits: Board of Veterans' Appeals Should Address Gaps in Its Quality Assurance Process* 20 (2023), https://tinyurl.com/2rtzrfws (noting that "some VLJs write very reasoned, legally-based decisions … [while] others do not" and "inconsistency among VLJs is a recurring problem"); *Veterans Law Judge Experience Act of 2025*, H.R. 659, 119th Cong. (2025) (requiring Board Chairman to give "priority [in hiring] to individuals with three or more years of legal professional experience in areas that pertain to the laws administered by the Secretary"). Perhaps most telling is the agency's poor appellate record in cases within its purportedly core competency—adjudicating individual veterans'

benefits claims. In 2025, for example, the Veterans Court reversed or remanded, in whole or in part, in 84% of appeals. *See 2025 Veterans Court Report* at 3. Furthermore, the Veterans Court awarded Equal Access to Justice Act fees—recognizing that the government's litigation position was not "substantially justified," 28 U.S.C. § 2412(d)(1)(A)—in nearly 80% of cases. *2025 Veterans Court Report* at 3-4. Given VA's struggles to correctly adjudicate claims *within* its recognized expertise, it is doubtful that it could fairly and adequately adjudicate constitutional claims *outside* that expertise.

In short, constitutional challenges are wholly collateral to VA's adjudicatory system and well outside its expertise. Although 38 U.S.C. § 7292 gives the Federal Circuit jurisdiction to review constitutional questions in cases that reach the Article III court through the ordinary appeal process, neither the agency nor the adjudicatory system it administers can generate the well-grounded adversarial arguments that this Court has identified as a precondition for sound adjudication. *See Greenlaw v. United States*, 554 U.S. 237, 244 (2008) ("[O]ur adversary system is designed around the premise that the parties know what is best for them, and are responsible for advancing the facts and arguments entitling them to relief.") (citation omitted). The second and third *Thunder Basin* factors thus favor recognizing the district court's jurisdiction over Mr. Johnson's constitutional challenges.

* * *

The Court need not reach the *Thunder Basin* factors because the plain text of § 511 permits district court jurisdiction over constitutional challenges like Mr. Johnson's, as this Court recognized in *Robison*. If, however, the Court concludes § 511 does not explicitly authorize district court jurisdiction, the *Thunder Basin* factors strongly favor such review. VA's labyrinthine system functionally forecloses meaningful review of constitutional challenges. Such challenges are also wholly collateral to VA's "ordinary" process for resolving individual veterans' benefits claims. Likewise, given VA's error rate even within this field of its notional expertise, the Court should not assign to VA exclusive responsibility to adjudicate veteran's standalone constitutional challenges.

CONCLUSION

For the foregoing reasons, the Court should reverse the judgment of the Eleventh Circuit.

Respectfully submitted,

John B. Wells
Brian Lewis
MILITARY-VETERANS ADVOCACY, INC.
P.O. Box 5235
Slidell, LA 70469-5235
(985) 641-1855
JohnLawEsq@msn.com

Melanie L. Bostwick
Counsel of Record
Melanie R. Hallums
Anne W. Savin
ORRICK, HERRINGTON & SUTCLIFFE LLP
2100 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 339-8400
mbostwick@orrick.com

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