

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

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FLOYD D. JOHNSON, PETITIONER

*v.*

UNITED STATES CONGRESS

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

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**BRIEF FOR THE RESPONDENT**

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JAMES S. C. BAEHR  
*General Counsel*  
BRIAN D. GRIFFIN  
*Associate General Counsel*  
JULIE M. HONAN  
MATTHEW ALBANESE  
*Attorneys*  
*Department of Veterans*  
*Affairs*  
*Washington, D.C. 20420*

D. JOHN SAUER  
*Solicitor General*  
*Counsel of Record*  
BRETT A. SHUMATE  
*Assistant Attorney General*  
MALCOLM L. STEWART  
*Deputy Solicitor General*  
KEVIN J. BARBER  
*Assistant to the*  
*Solicitor General*  
CHARLES W. SCARBOROUGH  
CAROLINE D. LOPEZ  
*Attorneys*  
*Department of Justice*  
*Washington, D.C. 20530-0001*  
*SupremeCtBriefs@usdoj.gov*  
*(202) 514-2217*

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### **QUESTION PRESENTED**

Whether the district court had jurisdiction over petitioner's constitutional challenge to the reduction of his veteran's benefits, notwithstanding the administrative and judicial review scheme established by the Veterans' Judicial Review Act, Pub. L. No. 100-687, Div. A, 102 Stat. 4105 (1988)

**PARTIES TO THE PROCEEDING**

Petitioner (plaintiff-appellant below) is Floyd D. Johnson.

Respondent (defendant-appellee below) is the United States Congress.

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**BRIEF FOR THE RESPONDENT**

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## **OPINIONS BELOW**

The opinion of the court of appeals (Pet. App. 1a-16a) is reported at 151 F.4th 1287. The order of the district court (Pet. App. 21a-23a) is available at 2022 WL 18716714.

## **JURISDICTION**

The judgment of the court of appeals was entered on August 19, 2025. On November 3, 2025, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including December 17, 2025, and the petition was filed on that date. The petition for a writ of certiorari was granted on April 6, 2026. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

**STATUTORY AND REGULATORY  
PROVISIONS INVOLVED**

Pertinent statutory and regulatory provisions are reproduced in the appendix. App., *infra*, 1a-11a.

**INTRODUCTION**

Petitioner, an Army veteran, was convicted of a felony and sentenced to 40 years of imprisonment. The Department of Veterans Affairs (VA) then reduced his disability benefits pursuant to 38 U.S.C. 5313, which requires benefit cuts for certain veterans who are incarcerated and thus being cared for at taxpayers' expense. Petitioner filed this suit in federal district court to challenge the reduction of his benefits, arguing that Section 5313 is unconstitutional.

It is common ground that, in the typical case, a veteran cannot sue in federal district court to challenge a denial of his VA-benefits claim or a reduction of his benefits. Rather, the veteran must invoke the comprehensive and exclusive scheme of administrative and judicial review established by the Veterans' Judicial Review Act (VJRA), Pub. L. No. 100-687, Div. A, 102 Stat. 4105 (1988). Under the VJRA, a veteran can obtain review of an adverse benefits decision before the Board of Veterans' Appeals, a body within the VA; then the United States Court of Appeals for Veterans Claims; then the United States Court of Appeals for the Federal Circuit; and then potentially this Court.

Petitioner has acknowledged that the "vast majority" of veterans' challenges to VA benefits decisions—including as-applied constitutional challenges to federal statutory provisions—are channeled into that review scheme. Pet. Br. 3-4; see Pet. App. 10a. He contends, however, that his current facial challenge to Section 5313 may proceed in district court.

Petitioner’s jurisdictional theory is incorrect. Facial and as-applied constitutional challenges alike are covered by the VJRA, which broadly displaces district courts’ jurisdiction over all “questions of law \* \* \* necessary to a decision by the [VA] Secretary under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a). The statutory provisions that authorize judicial review of VA benefits decisions confirm that the VJRA framework encompasses claims like petitioner’s. *E.g.*, 38 U.S.C. 7292(c) (granting the Federal Circuit “exclusive jurisdiction to review and decide any challenge to the validity of any statute” brought under the VJRA). In construing other jurisdiction-preclusion provisions, this Court has previously rejected proposed distinctions among different types of constitutional claims, describing such distinctions as “hazy,” “incoherent,” and “amorphous.” *Elgin v. Department of the Treasury*, 567 U.S. 1, 15 (2012).

Petitioner invokes *Johnson v. Robison*, 415 U.S. 361 (1974), in which this Court held that district courts could adjudicate constitutional challenges to VA benefits statutes under the statutory scheme in effect at that time. But when *Robison* was decided, filing suit in district court was the *only* means by which veterans could obtain judicial review of those constitutional claims. Because the VJRA now authorizes the Veterans Court and the Federal Circuit to resolve constitutional challenges to VA-benefits statutes, the potential gap that concerned the *Robison* Court no longer exists.

Although petitioner contends that the Board of Veterans’ Appeals cannot adjudicate constitutional challenges to statutes, that is incorrect. Current Section 511(a) *requires* the Secretary to resolve all legal issues that bear on the proper disposition of a veteran’s bene-

fits claim, subject to review by the Veterans Court and the Federal Circuit. Indeed, the Board has previously considered and rejected challenges to Section 5313 itself.

## STATEMENT

### A. Legal Background

1. “The law entitles veterans who have served on active duty in the United States military to receive benefits for disabilities caused or aggravated by their military service.” *George v. McDonough*, 596 U.S. 740, 743 (2022) (citation omitted). The Department of Veterans Affairs, formerly the Veterans’ Administration (both of which we refer to as the VA), determines when veterans or their families are entitled to benefits for disability or death incurred in connection with eligible military service. 38 U.S.C. 301(b), 1110, 1131, 1310.

The government has provided veterans’ benefits since the earliest days of the Republic. In 1789, Congress passed a law to assume responsibility for “the military pensions which have been granted and paid by the states \* \* \* to the invalids who were wounded and disabled during the late war.” Act of Sept. 29, 1789, ch. 24, § 1, 1 Stat. 95. One of this Court’s earliest landmark cases, *Hayburn’s Case*, 2 Dall. 409 (1792), arose from a 1792 veterans’ pension law. See *Miller v. French*, 530 U.S. 327, 342-343 (2000).

For most of the Nation’s history, veterans’ benefits decisions were not subject to judicial review. *Henderson v. Shinseki*, 562 U.S. 428, 432 (2011); see, e.g., *Decatur v. Paulding*, 14 Pet. 497, 517 (1840) (affirming the denial of mandamus relief to a Navy officer’s widow who claimed survivor’s benefits). A 1933 statute made the unavailability of judicial review explicit, providing that “[a]ll decisions rendered by the Administrator of Veter-

ans' Affairs \* \* \* shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision." Act of Mar. 20, 1933, ch. 3, § 5, 48 Stat. 9; see *Lynch v. United States*, 292 U.S. 571, 587 (1934). Congress would later expand that judicial-review bar in response to court decisions finding various exceptions to the bar. See, e.g., *Daylo v. Administrator of Veterans' Affs.*, 501 F.2d 811, 819-821 (D.C. Cir. 1974); see also H.R. Rep. No. 1166, 91st Cong., 2d Sess. 10 (1970) (explaining that "the exemption from judicial review" was "intended \* \* \* to be all inclusive").

2. In *Johnson v. Robison*, 415 U.S. 361 (1974), this Court recognized another exception to the general bar on judicial review of VA benefits decisions. In that case, the VA denied a conscientious objector's application for education benefits on the ground that federal statutory provisions rendered conscientious objectors ineligible for such benefits. *Id.* at 362-364. The applicant sued the VA in federal district court, alleging that the relevant statutes violated the First and Fifth Amendments. *Id.* at 364. The VA invoked the judicial-review bar, which then was codified at 38 U.S.C. 211(a) (1970) and provided that "the decisions" of the VA Administrator "on any question of law or fact under any law \* \* \* providing benefits for veterans \* \* \* 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." See *Robison*, 415 U.S. at 364-365.

This Court held that Section 211(a) did not "bar[] federal courts from deciding the constitutionality of veterans' benefits legislation." *Robison*, 415 U.S. at 366. The Court stated that a contrary reading of the statute,

as precluding all judicial review of such claims, would “raise serious questions concerning the constitutionality of § 211(a).” *Ibid.* The Court emphasized that the statutory text barred judicial review of VA decisions “on any question of law or fact *under any law administered by*” the VA, whereas “[t]he questions of law presented in these proceedings arise under the Constitution, not under the statute whose validity is challenged.” *Id.* at 367 (emphasis added; citations omitted); see *ibid.* (noting that the “constitutional challenge is not to any such decision of the Administrator, but rather to a decision of Congress”) (emphasis omitted). The Court also observed that “adjudication of the constitutionality of congressional enactments has generally been thought beyond the jurisdiction of administrative agencies.” *Id.* at 368 (citation and brackets omitted).

The *Robison* Court held that reading Section 211(a) not to preclude constitutional challenges to legislation was “not only ‘fairly possible’ but [was] the most reasonable construction, for neither the text nor the scant legislative history of § 211(a) provides the ‘clear and convincing’ evidence of congressional intent required by this Court before a statute will be construed to restrict access to judicial review.” 415 U.S. at 373-374 (citing *Abbott Labs. v. Gardner*, 387 U.S. 136, 141 (1967)). In *Traynor v. Turnage*, 485 U.S. 535 (1988), the Court extended *Robison*’s reasoning to allow district-court review of a claim that a VA benefits regulation was invalid under the Rehabilitation Act of 1973, 29 U.S.C. 701 *et seq.* See *Traynor*, 485 U.S. at 541-545.

#### **B. The Veterans’ Judicial Review Act**

In 1988 Congress enacted the Veterans’ Judicial Review Act, 102 Stat. 4105, which established a comprehensive, integrated, and exclusive scheme of adminis-



trative and judicial review of VA benefits decisions. The VJRA amended Section 211(a), which today is codified at 38 U.S.C. 511(a). 102 Stat. 4105. That provision now states:

The [VA] Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), 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.

38 U.S.C. 511(a).

The Secretary renders his initial decision granting or denying benefits through a VA regional office. *Henderson*, 562 U.S. at 431. If the regional office denies a claim, the veteran may appeal its decision to the Board of Veterans' Appeals (Board), an administrative body "within the VA that makes the agency's final decision in cases appealed to it," *ibid.*, and "is under the administrative control and supervision of a chairman directly responsible to the Secretary," 38 U.S.C. 7101(a); see 38 U.S.C. 7104(a).

Section 511(b) provides that Section 511(a)'s review bar does not apply to, among other matters not directly relevant here, "matters covered by chapter 72 of [Title 38]." 38 U.S.C. 511(b)(4). Enacted as part of the VJRA, Chapter 72 established the United States Court of Veterans Appeals, which is now called the United States Court of Appeals for Veterans Claims (Veterans Court). 102 Stat. 4113. The Veterans Court is a non-Article III court that is independent of the VA and is vested with

“exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals.” 38 U.S.C. 7251, 7252. In reviewing Board decisions, the Veterans Court must, among other things, “decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions,” and “hold unlawful and set aside decisions” as “contrary to constitutional right” and on other grounds. 38 U.S.C. 7261(a)(1) and (3)(B).

Under Chapter 72, further review is available by appeal from the Veterans Court to the United States Court of Appeals for the Federal Circuit. 38 U.S.C. 7292. “[A]ny party to the case may obtain a review of the [Veterans Court’s] decision with respect to,” among other matters, “the validity \* \* \* of any statute \* \* \* that was relied on by the Court in making the decision.” 38 U.S.C. 7292(a). The Federal Circuit has “exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under [Section 7292], and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision.” 38 U.S.C. 7292(c). Like the Veterans Court, the Federal Circuit “decide[s] all relevant questions of law, including interpreting constitutional and statutory provisions,” and can set aside decisions as “contrary to constitutional right” and on other grounds. 38 U.S.C. 7292(d)(1). “Except to the extent that an appeal \* \* \* presents a constitutional issue,” the Federal Circuit “may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.” 38 U.S.C. 7292(d)(2). Further review may be available in this Court by writ of certiorari. 38 U.S.C. 7292(c).

### C. The Present Controversy

1. Petitioner is an Army veteran who, in 2013, was convicted of a felony and sentenced to 40 years of imprisonment. Pet. App. 2a, 24a. “During his incarceration,” petitioner applied to the VA “for disability benefits based on service-related post-traumatic stress disorder.” *Id.* at 2a; see 38 U.S.C. 1131. The VA “initially approved [petitioner’s] application at a 70 percent [disability] rate and later increased it to 80 percent following an administrative appeal.” Pet. App. 2a. But the VA later lowered petitioner’s benefit payments “under section 5313 of the Veterans’ Benefits Act, which limits disability benefits to veterans incarcerated for more than 60 days due to a felony conviction.” *Ibid.*; see 38 U.S.C. 5313; see also 38 U.S.C. 5307, 5313(b) (authorizing benefits withheld from incarcerated veterans to be apportioned to their dependents).

Section 5313 reflects Congress’s concern with “providing government benefits to individuals who [a]re already being provided for by taxpayer funding of penal institutions.” Pet. App. 28a (citation omitted); see *Mulder v. McDonald*, 805 F.3d 1342, 1348 (Fed. Cir. 2015), cert. denied, 580 U.S. 827 (2016). The statute has been “uniformly and consistently upheld \* \* \* against various constitutional challenges,” Pet. App. 29a (citation omitted), including by the Board, the Veterans Court, and the Federal Circuit. See, e.g., *Hall v. West*, 16 Vet. App. 391 (Tbl.), 1999 WL 59690 (Feb. 9, 1999), aff’d, 217 F.3d 860 (Tbl.), 1999 WL 1072252 (Fed. Cir. Nov. 17, 1999) (per curiam); *Wanless v. McDonough*, No. 23-326, 2023 WL 8764419, at \*4-\*5 (Vet. App. Dec. 19, 2023); *Estrada v. Shinseki*, No. 11-3439, 2013 WL 64489, at \*10-\*12 (Vet. App. Jan. 7, 2013); Bd. Vet. App. 1103047, 2011 WL 752915, at \*11 (Jan. 24, 2011).

Rather than seek review of his benefits reduction through the VJRA scheme, petitioner filed a *pro se* complaint in the United States District Court for the Middle District of Florida, naming Congress as the sole defendant and alleging that Section 5313 is unconstitutional on bill-of-attainder and equal-protection grounds. Pet. App. 3a. A magistrate judge, while stating that the district court “may have jurisdiction over [petitioner’s] claim for veterans benefits to the extent he alleges only facial constitutional challenges to 38 U.S.C. § 5313,” recommended that the complaint be dismissed on the merits. *Id.* at 28a; see *id.* at 29a-30a. The district court adopted that recommendation. *Id.* at 21a-22a. Petitioner then appealed to the Eleventh Circuit, which appointed counsel to represent him. *Id.* at 20a.

2. The court of appeals vacated the district court’s judgment and remanded with instructions to dismiss the suit for lack of jurisdiction. Pet. App. 1a-16a. The court first held that Congress was “not a proper defendant” because “Congress has not waived sovereign immunity for constitutional challenges to section 5313.” *Id.* at 7a. Although petitioner had asked the court “to construe his complaint as naming a proper defendant or to grant him leave to amend on appeal to substitute a proper party,” the court declined to do so. *Ibid.* The court of appeals concluded that “any amendment would be futile because Congress has vested exclusive jurisdiction to review challenges to the constitutionality of veterans’ benefits laws in the Court of Appeals for Veterans Claims and in the United States Court of Appeals for the Federal Circuit.” *Ibid.*

The court of appeals stated that, because the VJRA “does not eliminate judicial review” but “instead channels review” to the Veterans Court and the Federal Cir-

cuit, the availability of district-court review turned on “‘whether Congress’ intent to preclude district court jurisdiction is fairly discernible in the statutory scheme.’” Pet. App. 9a (quoting *Elgin v. Department of the Treasury*, 567 U.S. 1, 9-10 (2012)) (brackets and internal quotation marks omitted). The court found that “Congress clearly barred district courts from exercising jurisdiction over constitutional claims related to veterans’ benefits decisions.” *Id.* at 9a-10a. The court emphasized the VJRA provisions “vesting in the Federal Circuit ‘exclusive jurisdiction’ to interpret constitutional provisions ‘necessary to a decision’ and empowering that federal court to set aside any regulation or interpretation found ‘contrary to constitutional right.’” *Id.* at 9a (quoting 38 U.S.C. 7292(c) and (d)(1)).

The court of appeals noted petitioner’s concession that the VJRA “strips district courts of jurisdiction over as-applied constitutional challenges to statutes affecting individual benefits decisions.” Pet. App. 10a. And the court found “no textual support in the Act distinguishing between facial and as-applied claims.” *Id.* at 11a. The court also found inapposite this Court’s construction of former 38 U.S.C. 211(a) (1970) in *Robison*, *supra*, because that decision involved “materially different” statutory language and the potential preclusion of all judicial review rather than the channeling of judicial review to a specified forum. Pet. App. 14a; see *id.* at 15a.

#### SUMMARY OF ARGUMENT

The district court lacked jurisdiction over petitioner’s constitutional challenge to the reduction of his veteran’s benefits pursuant to 38 U.S.C. 5313.

A. Although the federal-question statute, 28 U.S.C. 1331, grants federal district courts “original jurisdiction

of all civil actions arising under the Constitution, laws, or treaties of the United States,” Congress is free to displace that jurisdiction and channel particular federal claims to other forums. Congress has frequently done so, either explicitly or implicitly. To determine whether a statute implicitly precludes district-court jurisdiction, this Court applies the three-factor analytical framework described in *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994).

B. Here, the Veterans’ Judicial Review Act explicitly bars district courts from exercising jurisdiction over claims like petitioner’s. The VJRA directs the VA Secretary to resolve “all questions of law \* \* \* necessary to a decision” by the VA under a law affecting veterans’ benefits. 38 U.S.C. 511(a). That language encompasses a constitutional challenge to a statute, like Section 5313, that requires a reduction of benefits and therefore bears on the agency’s ultimate determination as to the amount of benefits petitioner should receive. Section 511(a)’s second sentence in turn directs that “the decision of the Secretary as to any such question \* \* \* may not be reviewed \* \* \* by any court” except (as relevant here) through the VJRA’s specialized judicial-review mechanisms. *Ibid.* The phrase “any such question” makes clear that district courts are precluded from reviewing the same set of legal questions that the agency is directed to resolve.

The VJRA provisions that govern review of VA decisions by the Veterans Court and the Federal Circuit reinforce the conclusion that the VJRA review framework covers constitutional challenges to statutes. For example, the Federal Circuit is specifically authorized “to review and decide any challenge to the validity of any statute \* \* \* to the extent presented and necessary to a

decision.” 38 U.S.C. 7292(c). Petitioner previously recognized that as-applied constitutional challenges to VA statutes are channeled into the VJRA review scheme. Nothing in the statutory text or structure, or in this Court’s jurisdiction-preclusion cases, supports a different rule for facial challenges.

C. Petitioner’s counterarguments lack merit. Petitioner relies principally on *Johnson v. Robison*, 415 U.S. 361 (1974), in which this Court held that a previous preclusion statute for VA decisions, 38 U.S.C. 211(a) (1970), did not displace district courts’ jurisdiction over constitutional challenges to statutes. “But *Robison* involved a materially different statutory scheme that has since been amended.” Pet. App. 13a.

Former Section 211(a) precluded district-court review of legal or factual *questions* that arose under laws administered by the VA. The *Robison* Court held that the plaintiff’s First and Fifth Amendment claims were not subject to that preclusion rule because those claims arose under the Constitution, not under the challenged VA-benefits law. Under current Section 511(a), by contrast, preclusion turns on whether a particular legal or factual question is “necessary to a *decision* by the Secretary under a law that affects the provision of” veterans’ benefits. 38 U.S.C. 511(a) (emphasis added). Here, the VA’s ultimate determination as to the amount of benefits petitioner should receive is such a “decision,” and the question whether Section 5313 is constitutional is necessary to that decision. In addition, because *Robison* was decided before VA benefits decisions were made reviewable by the Veterans Court and the Federal Circuit, reading former Section 211(a) to preclude district-court jurisdiction would have wholly barred judicial review of the veteran’s constitutional challenge.

Under the current statutory scheme, by contrast, the effect of precluding district-court review is to channel review to other courts, not to deny judicial review altogether.

Petitioner is also wrong in invoking the Board’s purported lack of authority to consider constitutional challenges to statutes as a justification for allowing district-court review. The premise that the Board is disabled from considering such challenges is incorrect, and it is undisputed that such issues can be decided by the VA Secretary and at higher levels of the VJRA review scheme. And because (among other reasons) the VJRA is not ambiguous in any relevant respect, the pro-veteran canon is inapplicable here.

D. To the extent that the *Thunder Basin* factors are relevant in this case, they point strongly in the same direction as the VJRA’s text, structure, and history. The VJRA provides for “meaningful judicial review” of veterans’ claims in the Veterans Court and the Federal Circuit. *Thunder Basin*, 510 U.S. at 212-213. Those courts have addressed and rejected the same constitutional challenges to Section 5313 that petitioner raises. And because petitioner challenges the constitutionality of the very statute under which his benefits were reduced, his claim is neither “‘entirely collateral’” to the VJRA review scheme nor “outside the agency’s expertise.” *Id.* at 213 (citation omitted).

#### ARGUMENT

#### THE DISTRICT COURT LACKED JURISDICTION OVER PETITIONER’S CONSTITUTIONAL CHALLENGE TO THE STATUTORY PROVISION THAT MANDATES REDUCTION OF HIS VETERAN’S BENEFITS

The court of appeals correctly held that the district court lacked jurisdiction over petitioner’s challenge to



the constitutionality of 38 U.S.C. 5313. Section 511(a) of Title 38 explicitly divests district courts of federal-question jurisdiction over such claims, and other provisions of the Veterans' Judicial Review Act channel those claims to the Veterans Court and the Federal Circuit.

**A. Congress Regularly Displaces District Courts' Federal-Question Jurisdiction**

The Constitution empowers Congress to establish inferior federal courts, “invest[] them with jurisdiction either limited, concurrent, or exclusive, and \* \* \* withhold[] jurisdiction from them in the exact degrees and character which to Congress may seem proper for the public good.” *Cary v. Curtis*, 3 How. 236, 245 (1845); see U.S. Const. Art. III, § 1. As a general matter, Section 1331 of Title 28 grants federal district courts “original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. 1331.

Congress frequently has chosen, however, to “substitute for that district court authority an alternative scheme of review” for various claims arising under federal law. *Axon Enter., Inc. v. FTC*, 598 U.S. 175, 185 (2023). Congress “may do so explicitly, providing in so many words that district court jurisdiction will yield.” *Ibid.* Or it may “do so implicitly,” without expressly foreclosing resort to Section 1331, “by specifying a different method to resolve claims about agency action.” *Ibid.*; see *Whitney Nat'l Bank v. Bank of New Orleans & Tr. Co.*, 379 U.S. 411, 421-422 (1965); cf. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (“It is a commonplace of statutory construction that the specific governs the general.”) (brackets and citation omitted). This Court recently applied similar logic in holding that federal prisoners may not circum-

vent the constraints on collateral review of criminal convictions, see 28 U.S.C. 2255, by seeking similar relief under the “compassionate release” statute, 18 U.S.C. 3582(c)(1)(A). *Fernandez v. United States*, 146 S. Ct. 1292 (2026).

“When dealing with an express preclusion clause,” this Court generally “determine[s] the scope of preclusion simply by interpreting the words Congress has chosen.” *Elgin v. Department of the Treasury*, 567 U.S. 1, 25 (2012) (Alito, J., dissenting); see, e.g., *Shalala v. Illinois Council on Long Term Care, Inc.*, 529 U.S. 1, 10-15 (2000); see also *Axon*, 598 U.S. at 208-209 (Gorsuch, J., concurring in the judgment). Absent express preclusion, the question is “whether the particular claims brought were ‘of the type Congress intended to be reviewed within’” the relevant special review scheme. *Axon*, 598 U.S. at 186 (citation omitted). The Court asks “whether Congress’ intent to preclude district court jurisdiction [i]s fairly discernible in the statutory scheme.” *Elgin*, 567 U.S. at 9-10 (citation and internal quotation marks omitted).

In *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200 (1994), this Court “identified three considerations designed to aid in that [implicit-preclusion] inquiry, commonly known now as the *Thunder Basin* factors.” *Axon*, 598 U.S. at 186. The Court asks: (1) “could precluding district court jurisdiction ‘foreclose all meaningful judicial review’ of the claim?”; (2) “is the claim ‘wholly collateral to the statute’s review provisions’?”; and (3) “is the claim ‘outside the agency’s expertise’?” *Ibid.* (quoting *Thunder Basin*, 510 U.S. at 212-213) (brackets omitted). “When the answer to all three questions is yes,” Congress is presumed not to have displaced Section 1331—although “the same conclusion

might follow if the factors point in different directions.”  
*Ibid.*

This case can be decided without considering the *Thunder Basin* factors. The VJRA explicitly channels claims like petitioner’s to the Veterans Court and the Federal Circuit. The express preclusion language in Section 511(a) mandates that result, and other VJRA provisions reinforce the most natural understanding of Section 511(a)’s text. But cf. pp. 38-43, *infra* (explaining that the *Thunder Basin* factors point to the same result). Congress’s intent to displace district courts’ jurisdiction over such claims is not just “‘fairly discernible’” but “clear[.]” Pet. App. 9a (citation omitted).

**B. The VJRA Expressly Channels Facial Constitutional Challenges Into That Statute’s Specialized Administrative And Judicial Review Scheme**

**1. Section 511(a)**

Section 511(a) of Title 38 contains two sentences. The first describes a set of questions that the VA “shall decide” in adjudicating a veteran’s claim for benefits. 38 U.S.C. 511(a). The second sentence provides, as relevant here, that “the decision of the Secretary as to any such question” may be challenged only through the specialized judicial-review mechanisms established by the VJRA. *Ibid.* The phrase “any such question” in that sentence makes clear that the VJRA at least precludes district-court review of the questions that the VA is required to decide. See Pet. Br. 23. Thus, while Section 511(a)’s second sentence explicitly addresses preclusion, the provision’s first sentence effectively defines a class of questions for which district-court review is foreclosed.

a. Section 511(a)’s first sentence directs that “[t]he Secretary [of the VA] shall decide all questions of law

and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a). Petitioner suggests (Br. 17-19) that the phrase “decision by the Secretary” refers to the agency’s resolution of a subsidiary legal or factual issue in the course of adjudicating a claim for veterans’ benefits. From that premise, petitioner contends (Br. 18) that a VA decision as to Section 5313’s constitutionality is not a decision “under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a).

Within the context of Section 511(a)’s first sentence, petitioner’s reading of the phrase “decision by the Secretary” is implausible. It would make no sense to require the agency to resolve all subsidiary issues that are necessary to the VA’s resolution of the same subsidiary issues. Rather, in this sentence the phrase “decision by the Secretary” can sensibly be understood only as referring to the Secretary’s *ultimate* decision in the matter, *i.e.*, his bottom-line determination whether a particular claimant is entitled to veteran’s benefits, and if so in what amount. That ultimate decision necessarily will be made “under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a).

Here, petitioner receives VA disability benefits under 38 U.S.C. 1131, and the VA reduced those benefits pursuant to 38 U.S.C. 5313 as a result of his incarceration. Petitioner contends that the VA’s decision to reduce his benefits was erroneous because Section 5313 is facially unconstitutional. Pet. App. 2a-3a.

If petitioner had presented that argument to the Board in a challenge to the reduction of his benefits, rather than to the district court in this federal-question suit, Section 511(a) would have required the agency to

decide the constitutional issue in order to resolve that challenge. For purposes of Section 511(a)'s first sentence, the relevant "decision by the Secretary" is the decision to reduce petitioner's benefits. Sections 1131 and 5313 are "law[s] that affect[] the provision of benefits by the Secretary to veterans," and the decision to reduce petitioner's benefits was made "under" those provisions. 38 U.S.C. 511(a).

Finally, in a case like this one, the constitutionality of Section 5313 is a question "necessary to a decision by the Secretary under" the veterans' benefits laws. 38 U.S.C. 511(a). Petitioner contends (Pet. 19-21) that Congress could not have viewed resolution of such constitutional challenges as "necessary" to the VA's benefits decisions because, in a decision 16 years before the VJRA was enacted, the Board had disclaimed authority to resolve those challenges. See *Johnson v. Robison*, 415 U.S. 361, 368 (1974). But even assuming that that decision reflected the Board's consistent practices at the time, there is no reason to suppose that Section 511(a)'s first sentence was intended to freeze in place those practices. That is especially so because that sentence, which identifies a set of legal and factual questions that the "Secretary shall decide," 38 U.S.C. 511(a), had no analogue in former 38 U.S.C. 211(a) (1970). Rather, this language is best understood to require the Secretary to resolve all questions that are *logically* necessary to a determination of the claimant's actual legal entitlement to benefits.

When a veteran disputes the constitutionality of a statutory barrier to his benefits request, the veteran's legal right to benefits cannot be determined without resolving that constitutional issue. Here, for example, petitioner has an incentive (and standing) to challenge the

constitutionality of Section 5313 only because resolution of the constitutional question will affect *his own* entitlement to benefits. Cf. Compl., D. Ct. Doc. 1, at 7 (Mar. 9, 2022) (requesting that the district court declare Section 5313 unconstitutional and “[o]rder a time-table on which the Veterans Administration is to complete payment adjustment”). The first sentence of Section 511(a) therefore directs that the Secretary “shall decide” a constitutional challenge if a claimant presents that challenge to the agency. 38 U.S.C. 511(a).

b. Section 511(a)’s second sentence in turn provides that, “[s]ubject to subsection (b), 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.” 38 U.S.C. 511(a). The only provision within Subsection (b) that is relevant here is paragraph (4), which cross-references Chapter 72 of Title 38, the VJRA provisions for review of VA benefits decisions in the Veterans Court and the Federal Circuit. See 38 U.S.C. 511(b)(4); cf. 38 U.S.C. 511(b)(1)-(3) (pertaining to review of VA rules and regulations and certain insurance and loan programs). Because the phrase “any such question” clearly refers back to the “questions of law and fact necessary to a decision by the Secretary” referenced in Section 511(a)’s first sentence, Section 511(a)’s preclusion of district-court review encompasses the range of legal and factual issues that the provision directs the agency to decide. Section 511(a)’s first sentence would have required the VA to decide the constitutionality of Section 5313 if that question had been presented to the agency, so the second sentence precludes district-court review of that issue.

## 2. Chapter 72

Other VJRA provisions reinforce the conclusion that the district court lacked jurisdiction over petitioner’s constitutional claim. As we have explained, review of decisions covered by Section 511(a) is channeled to the Board of Veterans’ Appeals and then, under Chapter 72 of Title 38, to the Veterans Court and the Federal Circuit. See 38 U.S.C. 7104(a) (providing for review by the Board of “[a]ll questions in a matter which under section 511(a) of this title is subject to decision by the Secretary”); 38 U.S.C. 7252(a) (providing that the Veterans Court “shall have exclusive jurisdiction to review decisions of the Board of Veterans’ Appeals”); 38 U.S.C. 7292 (granting the Federal Circuit exclusive jurisdiction to review decisions of the Veterans Court). Several provisions of Chapter 72 confirm that the VJRA’s scheme of administrative and judicial review encompasses constitutional claims.

a. In reviewing Board decisions, the Veterans Court must “decide *all* relevant questions of law, [and] interpret *constitutional*, statutory, and regulatory provisions.” 38 U.S.C. 7261(a)(1) (emphases added). It must “hold unlawful and set aside decisions” of the Board found to be, among other things, “not in accordance with law” or “contrary to constitutional right, power, privilege, or immunity.” 38 U.S.C. 7261(a)(3). That language, which is largely copied from the Administrative Procedure Act, 5 U.S.C. 706; see *Bufkin v. Collins*, 604 U.S. 369, 374 (2025), includes constitutional challenges to VA benefits statutes. A VA decision that denies or reduces benefits based on an unconstitutional statute would be “contrary to constitutional right,” or at least “not in accordance with law.” 38 U.S.C. 7261(a)(3)(A) and (B); see *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 516

(2009) (“agency action that is ‘unlawful,’ 5 U.S.C. § 706(2)(A), \* \* \* of course includes unconstitutional action”); *Preseault v. ICC*, 853 F.2d 145, 148 (2d Cir. 1988) (“A party seeking judicial review of administrative action may, ordinarily, ‘draw in question the constitutionality’ of the statute under which the agency acted.”) (citation omitted), *aff’d*, 494 U.S. 1 (1990).

b. The VJRA provision that governs Federal Circuit review of Veterans Court decisions, 38 U.S.C. 7292, is even more explicit. Under that provision, “the Federal Circuit shall have exclusive jurisdiction to review and decide any challenge to the *validity of any statute* \* \* \* brought under this section, and to interpret constitutional \* \* \* provisions, to the extent presented and necessary to a decision.” 38 U.S.C. 7292(c) (emphasis added); see 38 U.S.C. 7292(a) (authorizing Federal Circuit review “with respect to the validity of \* \* \* any statute \* \* \* that was relied on by the [Veterans] Court in making the decision”). Like the Veterans Court, the Federal Circuit “decide[s] all relevant questions of law, including interpreting constitutional \* \* \* provisions,” and must set aside decisions found to be “not in accordance with law” or “contrary to constitutional right, power, privilege, or immunity.” 38 U.S.C. 7292(d)(1). Section 7292 also bars the Federal Circuit from reviewing “a factual determination” or “a law or regulation as applied to the facts of a particular case,” “[e]xcept to the extent that an appeal under this chapter presents a constitutional issue.” 38 U.S.C. 7292(d)(2).

Petitioner observes (Br. 34-35) that Section 7292 refers specifically to the Federal Circuit’s exclusive jurisdiction over constitutional claims “brought under this section.” 38 U.S.C. 7292(c). Section 7292(c) thus does not directly address the availability of district-court re-



view, but instead designates the Federal Circuit as the only court of appeals that can review decisions of the Veterans Court. In mandating that form of exclusivity, however, Congress sought to facilitate uniform resolution of recurring legal issues pertaining to veterans' benefits, and to enable the Federal Circuit to accumulate expertise regarding those issues over the course of time. Allowing district courts around the country to resolve constitutional challenges to VA-benefits statutes, subject to review in the regional circuits, would disserve those interests. Cf. *Elgin*, 567 U.S. at 14 (explaining that, where the Civil Service Reform Act (CSRA), 5 U.S.C. 1101 *et seq.*, channeled judicial review of specified federal personnel actions to the Federal Circuit, allowing district-court review of challenges to the constitutionality of federal statutes “would reintroduce the very potential for inconsistent decisionmaking and duplicative judicial review that the CSRA was designed to avoid”).

c. Chapter 72's legislative history provides “extra icing on a cake already frosted.” *Van Buren v. United States*, 593 U.S. 374, 394 (2021) (quoting *Yates v. United States*, 574 U.S. 528, 557 (2015) (Kagan, J., dissenting)); compare Pet. 4, 6, 23, 29 (invoking the VJRA's congressional committee reports), with Pet. Br. 35-36 (disavowing reliance on legislative history). In discussing proposed Section 7292, the House committee report on the VJRA explained that under the VJRA, “district courts would no longer have jurisdiction to entertain challenges to the constitutionality of any matter affecting veterans benefits.” H.R. Rep. No. 963, 100th Cong., 2d Sess. Pt. 1, at 30 (1988) (House Report); see *id.* at 69-71; see also 134 Cong. Rec. 31,482 (1988) (statement of Sen. Murkowski) (“If a veteran believes that a law or regula-

tion is invalid on its face and if that law or regulation was germane to his claim, then the veteran can ask the Federal [C]ircuit to rule on the validity of that law or regulation.”). That statement did not pertain to a proposed abolition of the Board of Veterans’ Appeals. See House Report 29; contra Pet. Br. 36. The report likewise stated that the Veterans Court “would have exclusive jurisdiction to consider all questions involving benefits under laws administered by the VA,” and “[t]his would include factual, legal, and constitutional questions.” House Report 5. The House Report’s expectations align with the text and structure of the law that Congress passed and the President signed.<sup>1</sup>

### 3. *Facial and as-applied claims*

As explained above, the VJRA’s comprehensive and exclusive administrative and judicial review scheme encompasses constitutional challenges to VA benefits legislation. Indeed, petitioner acknowledged below that district courts lack jurisdiction over VA claimants’ “as-applied constitutional challenges to statutes,” and no court of appeals has held otherwise. Pet. App. 10a; see Cert. Resp. Br. 12-13.

With respect to the proper forum for judicial review, nothing in the statutory scheme distinguishes between facial and as-applied constitutional challenges to federal statutory provisions that bear on a veteran’s entitlement to benefits. This Court has declined to rely on “amorphous distinctions” between facial and as-applied

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<sup>1</sup> As petitioner points out (Br. 35-36), the House Report discussed a version of the judicial-review bar that was not identical to the language contained in the VJRA as ultimately enacted. Contrary to petitioner’s suggestion (*ibid.*), however, the differences in wording are insignificant. Compare House Report 54 with 102 Stat. 4105 and 38 U.S.C. 511(a).

constitutional challenges for purposes of jurisdictional preclusion. *Elgin*, 567 U.S. at 15; see *Jarkesy v. SEC*, 803 F.3d 9, 18 (D.C. Cir. 2015); see also *Citizens United v. FEC*, 558 U.S. 310, 331 (2010). And the Court “generally do[es] not read limitations into statutes that do not appear in their text.” *M & K Emp. Solutions, LLC v. Trustees of the IAM Nat’l Pension Fund*, 146 S. Ct. 1224, 1231 (2026).

In a footnote in his opening brief (at 16 n.3), petitioner argues that district courts may adjudicate “claims asserting that a statute is invalid in all of the circumstances where it governs” or “a subset” thereof, and that the VJRA channels to the Veterans Court and Federal Circuit only constitutional challenges to “the VA’s actions in applying a statute.” But “[a]gencies are created by and act pursuant to statutes,” so a plaintiff’s claim that an “agency ‘acted in an unconstitutional manner’ will generally be a claim that the statute authorizing the agency action was unconstitutionally applied to him.” *Elgin*, 567 U.S. at 16 n.5; see *National Fed’n of Indep. Bus. v. Department of Labor*, 595 U.S. 109, 117 (2022) (per curiam) (noting that administrative agencies “possess only the authority that Congress has provided”). The *Elgin* Court accordingly described the same proffered distinction between types of constitutional claims as “hazy at best and incoherent at worst.” 567 U.S. at 15; see *id.* at 16 n.5 (“dubious at best”; a “curious line”).

### **C. Petitioner’s Understanding Of The VJRA’s Jurisdictional Provisions Is Incorrect**

#### **1. Johnson v. Robison**

Petitioner’s contrary view rests principally (Br. i, 2, 18-19, 32-34) on *Johnson v. Robison*, 415 U.S. 361 (1974), in which this Court held that the then-existing statutory

scheme did not preclude district courts from hearing constitutional challenges to VA benefits statutes—in that case, First and Fifth Amendment challenges to laws that excluded conscientious objectors from certain veterans’ benefits. Petitioner argues that when Congress enacted the VJRA’s judicial-review provisions 14 years later, it left untouched *Robison*’s holding that constitutional challenges to relevant statutory provisions may be brought in district court. That contention lacks merit.

a. When this Court decided *Robison* in 1974, 38 U.S.C. 211(a) (1970) provided in pertinent part that

the decisions of the Administrator on any question of law or fact under any law administered by the Veterans’ Administration providing benefits for veterans and their dependents or survivors shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision by an action in the nature of mandamus or otherwise.

Consistent with the historical unavailability of judicial review of veterans’ benefits matters, see pp. 4-5, *supra*, there was at that time no statutory provision authorizing judicial review of the VA’s benefits decisions.

The *Robison* Court held that Section 211(a) did not preclude district-court jurisdiction over constitutional challenges to statutes. The Court first stated that, given Section 211(a)’s total preclusion of judicial review of covered claims, a contrary construction would “raise serious questions concerning the constitutionality of § 211(a).” *Robison*, 415 U.S. at 366; see *id.* at 373-374; see also *Webster v. Doe*, 486 U.S. 592, 603 (1988) (noting “the ‘serious constitutional question’ that would arise if a federal statute were construed to deny any judicial fo-

rum for a colorable constitutional claim”) (citation omitted). The Court also emphasized that Section 211(a) insulated from review only decisions on questions of “law or fact ‘under’ a statute” administered by the VA, and it observed that constitutional questions “‘arise under the Constitution, not under the statute whose validity is challenged.’” *Robison*, 415 U.S. at 367 (citation omitted). The Court further observed that the Board of Veterans’ Appeals had “disclaimed authority to decide constitutional questions,” and that nothing in Section 211(a)’s legislative history “suggest[ed] any congressional intent to preclude judicial cognizance of constitutional challenges to veterans’ benefits legislation.” *Id.* at 368, 373.

b. That reasoning is largely inapplicable to the subsequently enacted VJRA. The VJRA obviated the *Robison* Court’s constitutional concerns by establishing an avenue for judicial review of VA benefits decisions in the Federal Circuit (and in this Court by writ of certiorari). See 38 U.S.C. 7292. Constitutional concerns of the kind discussed in *Robison* do not arise when “Congress simply channels judicial review of a constitutional claim to a particular court” instead of foreclosing review altogether. *Elgin*, 567 U.S. at 9.

As for former Section 211(a)’s text, the VJRA “expanded” that provision’s coverage. *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1022 (9th Cir. 2012) (en banc), cert. denied, 568 U.S. 1086 (2013). The statutory provision at issue in *Robison* covered VA decisions “on any question of law or fact under any law administered by” the VA. 38 U.S.C. 211(a) (1970). In construing that provision, the *Robison* Court endorsed the conclusion of the district court in that case that the veteran’s constitutional challenges “ar[o]se under the Con-

stitution, not under the statute whose validity is challenged.” 415 U.S. at 367 (citation omitted). The current Section 511(a), however, covers decisions “as to” “all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a). The amended version thus separates the “questions of law” clause from the phrase “under a law,” which now modifies “decision of the Secretary” instead. *Ibid.*; see *Lockhart v. United States*, 577 U.S. 347, 351 (2016) (describing the “rule of the last antecedent,” under which “a limiting clause or phrase should ordinarily be read as modifying only the noun or phrase that it immediately follows”) (citation and ellipsis omitted). And as explained above, the relevant “decision by the Secretary”—*i.e.*, the agency’s bottom-line determination whether a particular claimant is entitled to benefits and if so in what amount—will necessarily arise “under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a); see p. 18-20, *supra*. Thus, if resolution of a particular legal question is necessary to a VA benefits decision, it is covered by current Section 511(a), whether or not the question itself arises “under” a VA benefits statute.

Petitioner recognizes (Br. 33-34), for example, that current Section 511(a) covers a claim that a VA benefits regulation conflicts with a generally applicable federal statute. Indeed, petitioner contends (*ibid.*) that Congress crafted current Section 511(a) in order to abrogate this Court’s holding in *Traynor v. Turnage*, 485 U.S. 535, 541-545 (1988), that former Section 211(a) did not bar two veterans’ district-court suits alleging that a VA regulation conflicted with the Rehabilitation Act. But for purposes of the changes in wording between for-

mer Section 211(a) and current Section 511(a), there is no relevant difference between the *Traynor* plaintiffs' Rehabilitation Act claims and petitioner's constitutional challenge. Both present questions of law that are necessary to the VA's ultimate benefits determination, even though neither claim presents a question "under any law administered by the [VA]" (as former Section 211(a) required). There is no sound textual basis for petitioner's contention (Br. 33-34) that the VJRA's specialized judicial-review scheme encompasses claims of the former variety but not of the latter.

Current Section 511(a) differs from former Section 211(a) in another respect as well. Former Section 211(a)'s sole purpose and effect was to preclude judicial review of specified VA decisions; that provision did not specify which issues the VA must consider in rendering those decisions. By contrast, current Section 511(a)'s first sentence, which had no analogue in former Section 211(a), states that "[t]he Secretary shall decide" the "questions of law and fact" that the provision goes on to describe. 38 U.S.C. 511(a). Thus, if (as we argue above) petitioner's constitutional challenge presents a question that is "necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans," *ibid.*, the agency would be obligated to decide that question before ruling on petitioner's benefits application, notwithstanding the *Robison* Court's statement that determining the constitutionality of federal statutes "has generally been thought beyond the jurisdiction of administrative agencies," 415 U.S. at 368 (citation omitted).

As detailed below, the Board has not uniformly "disclaimed authority to decide constitutional questions" since the VJRA was enacted. *Robison*, 415 U.S. at 368;

see p. 33, *infra*. And the VJRA’s legislative history indicates that Congress intended to channel constitutional challenges to statutes into the VJRA’s exclusive framework for review of benefits decisions. See House Report 5, 27, 30; 134 Cong. Rec. 31,482. Although the *Robison* Court rendered an “authoritative construction” of Section 511(a)’s predecessor statute 52 years ago, Pet. Br. 17, 19, that statute no longer exists. See *Patterson v. McLean Credit Union*, 491 U.S. 164, 172–173 (1989) (“in the area of statutory interpretation,” “Congress remains free to alter what [the Court has] done”).

c. Petitioner’s contrary arguments lack merit. Although petitioner minimizes (Br. 32) the significance of the *Robison* Court’s constitutional concerns, the Court raised those concerns at both the opening and closing of its analysis of Section 211(a). See 415 U.S. at 366–367, 373. During the following Term, the Court observed that *Robison* “was expressly based, at least in part, on” the constitutional concerns that would arise “if § 211(a) reached constitutional challenges to statutory limitations, [and] absolutely no judicial consideration of the issue [were] available.” *Weinberger v. Salfi*, 422 U.S. 749, 762 (1975). The Court made that observation in the course of distinguishing the pre-VJRA veterans’ benefits regime from the Social Security Act, which “itself provide[d] jurisdiction for constitutional challenges to its provisions,” *id.* at 762—just as the VJRA does now. And even if the *Robison* Court’s discussion of constitutional concerns was ultimately unnecessary to the Court’s interpretation of former Section 211(a), see Pet. Br. 32, the availability of judicial review under the VJRA is relevant to the Court’s construction of current Section 511(a), since “[i]t is a ‘fundamental canon of



statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted).

Petitioner contends (Br. 33) that Section 511(a) still precludes review of “decision[s] by the Secretary under” VA benefits laws, 38 U.S.C. 511(a), and that the VJRA preserved the statutory language that drove the *Robison* Court’s interpretive analysis. That argument glosses over the VJRA’s changes to the statutory text. Section 511(a) precludes district courts from deciding any “questions of law and fact necessary to a decision by the Secretary under a law that affects” VA benefits. *Ibid.* Questions concerning the constitutionality of a VA-benefits law are comfortably encompassed by that language, even if they were not covered by the significantly different text of former Section 211(a).

The House Report’s description (at 19) of *Robison* as “properly decided” and “clearly correct” does not help petitioner, contra Br. 36. The committee viewed *Robison* as correct “in asserting judicial authority to decide whether statutes meet constitutional muster.” House Report 22. But in enacting the VJRA, Congress established a specialized judicial-review scheme under which the Veterans Court and the Federal Circuit are expressly authorized to decide constitutional challenges to VA benefits statutes, thus filling the gap that the *Robison* Court had identified. See 38 U.S.C. 7292. The House committee’s view that *Robison* was correctly decided under former Section 211(a) does not suggest that district-court review remains available under the current statutory scheme.

## 2. *Authority of the Board of Veterans' Appeals*

Petitioner's other principal contention (Br. 20-28) is that Section 511(a)'s preclusion of district-court review does not encompass constitutional challenges to statutes because the Board of Veterans' Appeals—which acts on behalf of the VA Secretary in resolving individual veterans' benefits applications, see 38 U.S.C. 7104(a)—does not and cannot decide such questions. That theory is incorrect.

a. Section 511(a)'s first sentence states that “[t]he Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans.” 38 U.S.C. 511(a). As explained above, that language is best read to encompass questions concerning the constitutionality of federal statutory provisions that bear on a claimant's entitlement to benefits. Where resolution of a constitutional question is necessary to the proper disposition of a veteran's request for benefits, the Secretary therefore is required to decide that question.

This does not mean that each individual Board member may make benefits decisions based on her own perception of the applicable constitutional rules. See Pet. Br. 27 (noting that more than 100 administrative judges sit on the Board). As we explain below, important mechanisms exist by which the VA Secretary may ensure that individual Board members act in accordance with legal and policy judgments—including decisions as to the constitutionality of statutes—made by higher-level VA officials. But the statute makes clear that the agency writ large must decide any constitutional issues whose resolution is necessary to the proper disposition of a veteran's request for benefits.

b. Although petitioner now contends (Br. 12, 20-21) that the Board “steadfast[ly]” and “consistently” refuses to decide constitutional challenges to statutes, he said at the petition stage (Pet. 20, 30; see Pet. 15-16) that the Board has “equivocated” about its authority to do so. He was correct the first time. Board members have stated that they lack the authority to decide constitutional challenges to statutes. See, *e.g.*, *Robison*, 415 U.S. at 368 (citing *Appeal of Sly*, No. C-27 593 725 (Bd. Vet. App. May 10, 1972)); Bd. Vet. App. 22071305, 2022 WL 18700969, at \*5-\*6 (Dec. 22, 2022). But they have also exercised such authority and resolved such claims on the merits. See, *e.g.*, Bd. Vet. App. 1217673, 2012 WL 2882100, at \*5 (May 17, 2012) (rejecting an equal-protection challenge to laws providing benefits for certain children of female veterans); Bd. Vet. App. 1126713, 2011 WL 4144303, at \*2 (July 18, 2011) (rejecting an equal-protection challenge to a benefits law that distinguished between veterans based on their citizenship status).

On several occasions, the Board has resolved constitutional challenges to Section 5313, rejecting the challenge in each case. See, *e.g.*, Bd. Vet. App. 1103047, 2011 WL 752915, at \*11 (Jan. 24, 2011) (finding “no legal merit to the Veteran’s constitutionality claim”); Bd. Vet. App. 0125148, 2001 WL 34593043, at \*10 (Oct. 23, 2001) (“reject[ing] as unmeritorious the argument that the statute requiring reduction of the [veteran’s] monthly benefits payment is unconstitutional”). And the Veterans Court has stated that the Board can, but is not required to, decide constitutional claims. See *Saunders v. Brown*, 4 Vet. App. 320, 326 (1993).

c. Petitioner invokes the proposition, recited in *Robison*, that “adjudication of the constitutionality of congressional enactments has generally been thought

beyond the jurisdiction of administrative agencies.” 415 U.S. at 368 (brackets and citation omitted); see Pet. Br. 23-24. But the Executive Branch, which executes the laws principally through administrative agencies, has an “independent obligation[] to interpret and uphold the Constitution.” *Boumediene v. Bush*, 553 U.S. 723, 798 (2008); accord *United States v. Nixon*, 418 U.S. 683, 703 (1974) (“In the performance of assigned constitutional duties each branch of the Government must initially interpret the Constitution[.]”); see U.S. Const. Art. II, § 3 (Take Care Clause); Art. II, § 1, Cl. 8, Art. VI, Cl. 3 (Oath or Affirmation Clauses). The Office of Legal Counsel recently concluded that the Merit Systems Protection Board (MSPB) is required to consider certain constitutional issues that may be raised in proceedings where federal officers and employees contest their removals. See *The Merit Systems Protection Board’s Authority to Adjudicate Constitutional Questions within an Administrative Proceeding*, 49 Op. O.L.C. \_\_\_, at \*1, \*9-\*10 (Sept. 26, 2025). Agencies have regularly assessed the constitutionality of statutes, sometimes concluding that particular statutes are invalid and declining to enforce them. See, e.g., *Exclusion of Religiously Affiliated Schools from Charter-School Grant Program*, 44 Op. O.L.C. 131 (2020); see also 28 U.S.C. 530D; Brian Lipshutz, *Administrative Self-Constitutionalism*, 94 U. Chi. L. Rev. (forthcoming) (manuscript at 14-19, 34-37); Yonatan Gelblum, *The Myth That Agency Adjudications Cannot Address Constitutional Claims*, 32 Geo. Mason L. Rev. 223, 248-251 (2025).

The *Robison* Court did not suggest that Congress lacks *power* to authorize or require administrative agencies to resolve constitutional challenges to federal

statutes. Congress exercised that power when it enacted Section 511(a), which directs that “[t]he Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a” veterans’ benefits law. 38 U.S.C. 511(a).

Petitioner errs in suggesting (Br. 24 & n.5) that Congress assumed the VJRA would disable the VA from resolving constitutional issues bearing on the proper disposition of veterans’ requests for benefits. To the contrary, the House Report explained that, under the bill proposed in the House,

if a veteran alleges that a statute is unconstitutional,  
\* \* \* the Administrator must take a position with respect to such a contention if it is necessary to a decision in a case. By requiring the Administrator to rule on such challenges, the Administrator is fairly apprised of a matter which may become the subject of further judicial review and may reformulate or clarify the position of the agency on the particular question.

House Report 27.

Adoption of petitioner’s view—that the Board is categorically barred from deciding constitutional challenges to statutes—would have startling consequences. Petitioner appears to argue from the premise that the Board would be required to apply even flagrantly unconstitutional statutes, such as “a law limiting veterans’ benefits based on religion, or capping benefits for married women but not for married men.” Br. 30; see Br. 30-31. And petitioner’s approach presumably would extend even to statutes that had been declared unconstitutional by this Court or by the Federal Circuit, so long as those statutes had not been repealed by Congress.

d. Petitioner cites (Br. 3, 20) a VA regulation providing that, “[i]n the consideration of appeals and in its decisions, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs and precedent opinions of the General Counsel of the Department of Veterans Affairs.” 38 C.F.R. 20.105. A statutory provision similarly states that the Board is “bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.” 38 U.S.C. 7104(c); see Pet. Br. 25.

As explained above, however, Section 511(a) directs “the Secretary” to decide all legal questions that are relevant to the proper disposition of a veteran’s request for benefits. The statutory and regulatory provisions that circumscribe the Board’s authority do not call into question the power of the agency writ large. Rather, those provisions simply confirm the Board’s subordinate status vis-à-vis VA leadership. Thus, if the VA’s General Counsel issued a precedent opinion stating his view as to the proper resolution of a recurring constitutional issue, all Board members would be required to adhere to that view in resolving any benefits requests where the constitutional question was implicated. Because an “unconstitutional law is void, and is as no law,” *Montgomery v. Louisiana*, 577 U.S. 190, 204 (2016) (quoting *Ex parte Siebold*, 100 U.S. 371, 376 (1880)), the regulation’s statement that “the Board is bound by applicable statutes,” 38 C.F.R. 20.105, would not preclude the Board from treating a federal statutory provision as unconstitutional if that treatment were consistent with relevant directives issued by higher-level VA officials.

For much the same reason, there is nothing odd about the VA Secretary’s inability to appeal Board de-

cisions to the Veterans Court, *contra* Pet. Br. 27-28. See 38 U.S.C. 7252(a). The Board decides cases on the Secretary’s behalf and is bound by his instructions. 38 U.S.C. 7104(a) and (c). If the Board nevertheless issued a constitutional ruling with which the Secretary disagreed, the Secretary could order reconsideration through the Board’s chairman, who is “directly responsible to the Secretary.” 38 U.S.C. 7101(a); see 38 U.S.C. 7103.

### 3. *The pro-veteran canon*

Petitioner additionally contends that, “[i]f this Court concludes that Section 511(a) is subject to multiple plausible readings, it should resolve that ambiguity by applying ‘the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries’ favor.’” Br. 37 (citation omitted). The legitimacy of that canon is questionable. See *Rudisill v. McDonough*, 601 U.S. 294, 314-318 (2024) (Kavanaugh, J., concurring); *id.* at 329 (Thomas, J., dissenting). And even assuming the pro-veteran canon remains in effect, it would apply only in circumstances where “competing interpretations” of the statutory text “are equally plausible,” *Arellano v. McDonough*, 598 U.S. 1, 14 (2023), not when the text is merely “subject to multiple plausible readings,” Pet. Br. 37.

It would be particularly inappropriate to apply a pro-veteran canon in a manner that facilitates evasion of the specialized statutory scheme that governs requests for VA benefits. “The VA’s adjudicatory ‘process is designed to function throughout with a high degree of informality and solicitude for the claimant.’” *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011) (citation omitted); see *id.* at 431-432 (describing features of the procedural scheme that reflect that solicitude). The statutory scheme demonstrates the political branches’ commitment to as-

sisting veterans through the regular lawmaking process, without a need for a judicial “thumb on the scale” in veterans’ favor. *Rudisill*, 601 U.S. at 318 (Kavanaugh, J., concurring).

Finally, it is far from clear that petitioner’s position in this case in fact reflects the pro-veteran interpretation of Section 511(a). Petitioner’s argument that district-court review is available here is inextricably linked to his contention that the Board *lacks* authority to consider constitutional challenges to federal statutes, and that the merits of such challenges may be considered *only* by a court. The government, by contrast, reads Section 511(a) as *requiring* the agency to decide any constitutional issues that bear on the proper disposition of a veteran’s request for benefits, while channeling all judicial review of those decisions through the Veterans Court and the Federal Circuit. There is no evident basis for concluding that the former approach would better serve the interests of veterans’ benefits claimants as a group.

**D. Implied-Preclusion Principles Reinforce The Most Natural Understanding Of Section 511(a)’s Text**

As noted above, the Court can decide this case by simply interpreting and applying Section 511(a), without resort to the *Thunder Basin* factors that the Court employs in implied-preclusion cases. In applying express preclusion provisions, however, the Court has sometimes consulted those factors. See, e.g., *McNary v. Haitian Refugee Ctr.*, 498 U.S. 479, 492, 496 (1991) (describing claims as “collateral challenges” and discussing the availability of “meaningful judicial review”); *Board of Governors of the Fed. Reserve Sys. v. MCorp Fin., Inc.*, 502 U.S. 32, 43 (1991) (discussing the availability of “a meaningful and adequate opportunity for judicial re-



view”). To the extent they are relevant here, all three of the *Thunder Basin* factors reinforce the most natural understanding of Section 511(a)’s plain text.

### *1. Meaningful judicial review*

The first *Thunder Basin* factor, whether “a finding of preclusion could foreclose all meaningful judicial review,” 510 U.S. at 212-213, squarely supports preclusion of this suit. Even where district-court review is unavailable, “[r]eview of agency action in a court of appeals can alone ‘meaningfully address’ a party’s claims.” *Axon*, 598 U.S. at 190 (quoting *Thunder Basin*, 510 U.S. at 215) (brackets omitted). The VJRA provides for review of claims like petitioner’s in the non-Article III Veterans Court and then the Article III Federal Circuit. See 38 U.S.C. 7261, 7292. In fact, those tribunals have already addressed and rejected the same constitutional challenges to Section 5313 that petitioner has asserted here. See, e.g., *Hall v. West*, 16 Vet. App. 391 (Tbl.), 1999 WL 59690 (Feb. 9, 1999), aff’d, 217 F.3d 860 (Tbl.), 1999 WL 1072252 (Fed. Cir. Nov. 17, 1999) (per curiam). In *Elgin*, this Court held that the CSRA provides meaningful judicial review of federal employees’ constitutional challenges to statutes because “the CSRA provides review in the Federal Circuit, an Article III court fully competent to adjudicate [those] claims.” 567 U.S. at 17. The VJRA likewise authorizes ultimate Federal Circuit review of any constitutional issue that is relevant to the disposition of a veteran’s claim for benefits. See 38 U.S.C. 7292.

It is irrelevant for this purpose that petitioner deems (Br. 30, 42) the Board’s review process to be too “long” and “slow.” The Board statistics he cites (Br. 30) appear to reflect temporary changes to the Board’s docket rather than long-term trends. See Bd. of Veterans’ Ap-

peals, *Annual Report: Fiscal Year (FY) 2024*, at 13-14 & fig. 5 (2025). And requiring the VA to defend against constitutional challenges to its benefits statutes in district courts and courts of appeals around the country, instead of channeling such claims to a single, specialized court of appeals, would increase the agency's litigation burdens.

## 2. *Collateral nature of the challenge*

Constitutional claims like petitioner's are also not "wholly 'collateral'" to the VJRA's review provisions. *Thunder Basin*, 510 U.S. at 212 (citation omitted). To the contrary, petitioner's challenge to the constitutionality of Section 5313 is "the vehicle by which" he seeks to undo the VA's reduction of his veteran's benefits pursuant to that statute. *Elgin*, 567 U.S. at 22. If Section 5313 were found to be unconstitutional, the VA could not lawfully apply it to petitioner, and he would receive benefit payments at a higher rate. See Pet. App. 2a.

Reductions of benefits are "precisely the type of \* \* \* action regularly adjudicated by" the Board, the Veterans Court, "and the Federal Circuit within the [VJRA] scheme." *Elgin*, 567 U.S. at 22. While proceedings in those tribunals often involve factual disputes about veterans' disabilities and "similar 'medical, legal, and other technical questions,'" Pet. Br. 43 (citation omitted), that does not mean that broader constitutional questions directly affecting veterans' entitlement to benefits are collateral to the review scheme. As noted above, the VJRA expressly contemplates that challenges to the validity of statutes will be resolved within that framework. See, e.g., 38 U.S.C. 7292(c).

Although petitioner likens (Br. 43) this case to *Axon*, the comparison is inapt. In *Axon*, the respondents in two agency enforcement proceedings sued the relevant

agencies in federal district court; both respondents alleged that the agencies' administrative law judges were unconstitutionally insulated from removal, and one respondent challenged the consolidation of prosecutorial and adjudicatory functions in a single agency. See 598 U.S. at 180, 182-184. In holding those claims to be collateral under *Thunder Basin*, this Court emphasized that the claims "challeng[ed] the [agencies'] power to proceed at all, rather than actions taken in the agency proceedings." *Id.* at 192; see *Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 490 (2010) (categorizing similar claims as collateral). Here, by contrast, petitioner challenges not the VA's power to adjudicate benefits claims in general, but the reduction of his own veteran's benefits pursuant to Section 5313.<sup>2</sup>

### 3. *Agency expertise*

For purposes of the final *Thunder Basin* factor, petitioner's claim does not lie "outside the agency's expertise." 510 U.S. at 212. Here too, *Elgin* is closely on point. In that case, the plaintiffs contended that their claims should not be channeled into the CSRA review system because the MSPB lacks expertise over constitutional challenges to statutes (there, laws barring from federal employment men who had failed to register for the Selective Service). See *Elgin*, 567 U.S. at 6-7, 22. This Court rejected that argument, noting that "the challenged statute may be one that the MSPB regularly construes," and that "the MSPB can apply its expertise" to "the many threshold questions that may accompany

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<sup>2</sup> In any event, this Court has suggested that Section 511(a) would preclude district-court jurisdiction over even collateral constitutional challenges to agency procedures. See *Haitian Refugee Ctr.*, 498 U.S. at 494; but cf. Pet. Br. 31. The Court need not resolve that question in this case, however.

a constitutional claim” and “may obviate the need to address the constitutional challenge.” *Id.* at 22-23.

That reasoning is fully applicable here. Section 5313 is a statute that the VA regularly construes and applies: a Westlaw search for Board decisions citing 38 U.S.C. 5313 generates more than 1300 decisions since 1991. And such cases often present other questions whose resolution may obviate the need to resolve a challenge to the statute’s constitutionality or that otherwise bear on the veteran’s entitlement to benefits. For example, there may be a dispute over whether the veteran is incarcerated in a “penal institution or correctional facility” within the meaning of Section 5313. 38 U.S.C. 5313(a)(1); see, *e.g.*, *Philbrook v. McDonough*, 15 F.4th 1117, 1120-1121 (Fed. Cir. 2021) (holding that a state mental institution does not count); *Wanless v. Shinseki*, 618 F.3d 1333, 1337-1338 (Fed. Cir. 2010) (holding that a privately owned prison does count).

The Board would likely have expertise to apply to many constitutional challenges. For example, resolving an equal-protection claim like petitioner’s would entail an assessment of the government’s interest in reducing benefits for incarcerated veterans. See, *e.g.*, *Hall*, 1999 WL 1072252, at \*2 (finding the governmental interests supporting Section 5313 sufficient under rational-basis review). The Board’s longstanding familiarity with Section 5313, and with the veterans’ benefits system in general, would contribute to that inquiry.

Constitutional claims like petitioner’s thus are deeply “intertwined with or embedded in matters on which” the agency is “expert.” *Axon*, 598 U.S. at 195. And while Board members are not typically experts in constitutional law more generally, the statutory scheme includes mechanisms by which Board members may be

guided by other federal officials who possess that expertise. The VA may “require the opinion of the Attorney General on any question of law arising in the administration of the Department.” 38 U.S.C. 505; see, *e.g.*, *Constitutionality of Section 7(b)(3) of the Emergency Veterans’ Job Training Act of 1983*, 13 Op. O.L.C. 31 (1989). And Board members may obtain, and are bound by, precedent opinions of the VA’s general counsel. See 38 U.S.C. 7104(c); 38 C.F.R. 20.906(c); see also, *e.g.*, *Constitutionality of Retroactive Application of Proposed Legislation to Limit Time to Claim Insurance Proceeds*, VA Op. Gen. Couns. Prec. 5-2000, 2000 WL 35724224 (May 2, 2000).

#### CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

JAMES S. C. BAEHR  
*General Counsel*  
 BRIAN D. GRIFFIN  
*Associate General Counsel*  
 JULIE M. HONAN  
 MATTHEW ALBANESE  
*Attorneys*  
*Department of Veterans*  
*Affairs*

D. JOHN SAUER  
*Solicitor General*  
 BRETT A. SHUMATE  
*Assistant Attorney General*  
 MALCOLM L. STEWART  
*Deputy Solicitor General*  
 KEVIN J. BARBER  
*Assistant to the*  
*Solicitor General*  
 CHARLES W. SCARBOROUGH  
 CAROLINE D. LOPEZ  
*Attorneys*

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## APPENDIX

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## APPENDIX

1. 38 U.S.C. 511 provides:

### **Decisions of the Secretary; finality**

(a) The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans. Subject to subsection (b), 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.

(b) The second sentence of subsection (a) does not apply to—

- (1) matters subject to section 502 of this title;
- (2) matters covered by sections 1975 and 1984 of this title;
- (3) matters arising under chapter 37 of this title; and
- (4) matters covered by chapter 72 of this title.

2. 38 U.S.C. 5313 provides:

### **Limitation on payment of compensation and dependency and indemnity compensation to persons incarcerated for conviction of a felony**

(a)(1) To the extent provided in subsection (d) of this section, any person who is entitled to compensation or to dependency and indemnity compensation and who is incarcerated in a Federal, State, local, or other penal in-

(1a)

stitution or correctional facility for a period in excess of sixty days for conviction of a felony shall not be paid such compensation or dependency and indemnity compensation, for the period beginning on the sixty-first day of such incarceration and ending on the day such incarceration ends, in an amount that exceeds—

(A) in the case of a veteran with a service-connected disability rated at 20 percent or more, the rate of compensation payable under section 1114(a) of this title; or

(B) in the case of a veteran with a service-connected disability not rated at 20 percent or more or in the case of a surviving spouse, parent, or child, one-half of the rate of compensation payable under section 1114(a) of this title.

(2) The provisions of paragraph (1) of this subsection shall not apply with respect to any period during which a person is participating in a work-release program or is residing in a halfway house.

(b)(1) All or any part of the compensation not paid to a veteran by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned under the same terms and conditions as are provided under section 5307 of this title.

(2) All or any part of the dependency and indemnity compensation not paid to a surviving spouse or child by reason of subsection (a) of this section may, as appropriate in an individual case, be apportioned as follows:

(A) In the case of dependency and indemnity compensation not paid to a surviving spouse, any apportionment shall be to the surviving child or children.



(B) In the case of dependency and indemnity compensation not paid to a surviving child, any apportionment shall be to the surviving spouse or other surviving children, as applicable.

(3) No apportionment may be made under this subsection to or on behalf of any person who is incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony.

(c) The Secretary shall not assign to any veteran a rating of total disability based on the individual unemployability of the veteran resulting from a service-connected disability during any period during which the veteran is incarcerated in a Federal, State, local, or other penal institution or correctional facility for conviction of a felony.

(d) The provisions of subsection (a) of this section shall apply (1) with respect to any period of incarceration of a person for conviction of a felony committed after October 7, 1980, and (2) with respect to any period of incarceration on or after October 1, 1980, for conviction of a felony of a person who on October 1, 1980, is incarcerated for conviction of such felony and with respect to whom the action granting an award of compensation or dependency and indemnity compensation is taken on or after such date.

(e) For purposes of this section—

(1) The term “compensation” includes disability compensation payable under section 1151 of this title.

(2) The term “dependency and indemnity compensation” means death compensation payable under section 1121 or 1141 of this title, death compensation and dependency and indemnity compensation

payable under section 1151 of this title, and any benefit payable under chapter 13 of this title.

3. 38 U.S.C. 7104 provides:

**Jurisdiction of the Board; decisions; notice**

(a) All questions in a matter which under section 511(a) of this title is subject to decision by the Secretary shall be subject to one review on appeal to the Secretary. Final decisions on such appeals shall be made by the Board. Decisions of the Board shall be based on the entire record in the proceeding and upon consideration of all evidence and material of record and applicable provisions of law and regulation.

(b) Except as provided in section 5108 of this title, when a claim is disallowed by the Board, the claim may not thereafter be readjudicated and allowed and a claim based upon the same factual basis may not be considered.

(c) The Board shall be bound in its decisions by the regulations of the Department, instructions of the Secretary, and the precedent opinions of the chief legal officer of the Department.

(d) Each decision of the Board shall include—

(1) a written statement of the Board's findings and conclusions, and the reasons or bases for those findings and conclusions, on all material issues of fact and law presented on the record;

(2) a general statement—

(A) reflecting whether evidence was not considered in making the decision because the evi-

dence was received at a time when not permitted under section 7113 of this title; and

(B) noting such options as may be available for having the evidence considered by the Department; and

(3) an order granting appropriate relief or denying relief.

(e) After reaching a decision on an appeal, the Board shall promptly issue notice (as that term is defined in section 5100 of this title) of such decision to the following:

(1) The appellant.

(2) Any other party with a right to notice of such decision.

(3) Any authorized representative of the appellant or party described in paragraph (2).

(f)(1) The Secretary may provide notice under subsection (e) electronically if a claimant (or the claimant's representative) elects to receive such notice electronically.

(2) A claimant (or the claimant's representative) may revoke such an election at any time, by means prescribed by the Secretary.

4. 38 U.S.C. 7252 provides:

**Jurisdiction; finality of decisions**

(a) The Court of Appeals for Veterans Claims shall have exclusive jurisdiction to review decisions of the Board of Veterans' Appeals. The Secretary may not seek review of any such decision. The Court shall have power to affirm, modify, or reverse a decision of the Board or to remand the matter, as appropriate.

(b) Review in the Court shall be on the record of proceedings before the Secretary and the Board. The extent of the review shall be limited to the scope provided in section 7261 of this title. The Court may not review the schedule of ratings for disabilities adopted under section 1155 of this title or any action of the Secretary in adopting or revising that schedule.

(c) Decisions by the Court are subject to review as provided in section 7292 of this title.

5. 38 U.S.C. 7261 provides:

**Scope of review**

(a) In any action brought under this chapter, the Court of Appeals for Veterans Claims, to the extent necessary to its decision and when presented, shall—

(1) decide all relevant questions of law, interpret constitutional, statutory, and regulatory provisions, and determine the meaning or applicability of the terms of an action of the Secretary;

(2) compel action of the Secretary unlawfully withheld or unreasonably delayed;

(3) hold unlawful and set aside decisions, findings (other than those described in clause (4) of this subsection), conclusions, rules, and regulations issued or adopted by the Secretary, the Board of Veterans' Appeals, or the Chairman of the Board found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law; and

(4) in the case of a finding of material fact adverse to the claimant made in reaching a decision in a case before the Department with respect to benefits under laws administered by the Secretary, hold unlawful and set aside or reverse such finding if the finding is clearly erroneous.

(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title and shall—

(1) take due account of the Secretary's application of section 5107(b) of this title; and

(2) take due account of the rule of prejudicial error.

(c) In no event shall findings of fact made by the Secretary or the Board of Veterans' Appeals be subject to trial de novo by the Court.

(d) When a final decision of the Board of Veterans' Appeals is adverse to a party and the sole stated basis for such decision is the failure of the party to comply with any applicable regulation prescribed by the Secretary, the Court shall review only questions raised as to compliance with and the validity of the regulation.

6. 38 U.S.C. 7292 provides:

**Review by United States Court of Appeals for the Federal Circuit**

(a) After a decision of the United States Court of Appeals for Veterans Claims is entered in a case, any party to the case may obtain a review of the decision with respect to the validity of a decision of the Court on a rule of law or of any statute or regulation (other than a refusal to review the schedule of ratings for disabilities adopted under section 1155 of this title) or any interpretation thereof (other than a determination as to a factual matter) that was relied on by the Court in making the decision. Such a review shall be obtained by filing a notice of appeal with the Court of Appeals for Veterans Claims within the time and in the manner prescribed for appeal to United States courts of appeals from United States district courts.

(b)(1) When a judge or panel of the Court of Appeals for Veterans Claims, in making an order not otherwise appealable under this section, determines that a controlling question of law is involved with respect to which there is a substantial ground for difference of opinion

and that there is in fact a disagreement between the appellant and the Secretary with respect to that question of law and that the ultimate termination of the case may be materially advanced by the immediate consideration of that question, the judge or panel shall notify the chief judge of that determination. Upon receiving such a notification, the chief judge shall certify that such a question is presented, and any party to the case may then petition the Court of Appeals for the Federal Circuit to decide the question. That court may permit an interlocutory appeal to be taken on that question if such a petition is filed with it within 10 days after the certification by the chief judge of the Court of Appeals for Veterans Claims. Neither the application for, nor the granting of, an appeal under this paragraph shall stay proceedings in the Court of Appeals for Veterans Claims, unless a stay is ordered by a judge of the Court of Appeals for Veterans Claims or by the Court of Appeals for the Federal Circuit.

(2) For purposes of subsections (d) and (e) of this section, an order described in this paragraph shall be treated as a decision of the Court of Appeals for Veterans Claims.

(c) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof brought under this section, and to interpret constitutional and statutory provisions, to the extent presented and necessary to a decision. The judgment of such court shall be final subject to review by the Supreme Court upon certiorari, in the manner provided in section 1254 of title 28.

(d)(1) The Court of Appeals for the Federal Circuit shall decide all relevant questions of law, including interpreting constitutional and statutory provisions. The court shall hold unlawful and set aside any regulation or any interpretation thereof (other than a determination as to a factual matter) that was relied upon in the decision of the Court of Appeals for Veterans Claims that the Court of Appeals for the Federal Circuit finds to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or in violation of a statutory right; or

(D) without observance of procedure required by law.

(2) Except to the extent that an appeal under this chapter presents a constitutional issue, the Court of Appeals may not review (A) a challenge to a factual determination, or (B) a challenge to a law or regulation as applied to the facts of a particular case.

(e)(1) Upon such review, the Court of Appeals for the Federal Circuit shall have power to affirm or, if the decision of the Court of Appeals for Veterans Claims is not in accordance with law, to modify or reverse the decision of the Court of Appeals for Veterans Claims or to remand the matter, as appropriate.

(2) Rules for review of decisions of the Court of Appeals for Veterans Claims shall be those prescribed by the Supreme Court under section 2072 of title 28.



7. 38 C.F.R. 20.105 provides:

**Rule 105. Criteria governing disposition of appeals.**

In the consideration of appeals and in its decisions, the Board is bound by applicable statutes, regulations of the Department of Veterans Affairs, and precedent opinions of the General Counsel of the Department of Veterans Affairs. The Board is not bound by Department manuals, circulars, or similar administrative issues.