

IN THE
Supreme Court of the United States

JAMES M. KERNZ,

Petitioner,

v.

DOUGLAS A. COLLINS, SECRETARY OF
VETERANS AFFAIRS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**BRIEF OF *AMICUS CURIAE* THE NATIONAL
LAW SCHOOL VETERANS CLINIC CONSORTIUM
IN SUPPORT OF PETITIONER**

STACEY-RAE SIMCOX
Associate Dean; Director
VETERANS LAW INSTITUTE
STETSON UNIVERSITY
COLLEGE OF LAW

AMBER WILSON
Fellow
VETERANS LAW INSTITUTE
STETSON UNIVERSITY
COLLEGE OF LAW

SYDNIE ROULEAU
Staff Attorney
VETERANS ADVOCACY CLINIC
STETSON UNIVERSITY
COLLEGE OF LAW

MORGAN ZIMARAKOS
Counsel of Record
Interim Director
VETERANS ADVOCACY CLINIC
STETSON UNIVERSITY
COLLEGE OF LAW
1401 61st Street South
Gulfport, FL 33707
(727) 562-7320
memacisaacbykowski
@law.stetson.edu

Counsel for Amicus Curiae

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INTEREST OF AMICUS CURIAE¹

The National Law School Veterans Clinic Consortium (NLSVCC) submits this brief in support of the position of Petitioner James A. Kernz. The filing of this brief was authorized by the Board of the NLSVCC, a 501(c)(3) organization.

The NLSVCC is a collaborative effort of the nation's law school legal clinics dedicated to addressing the unique legal needs of U.S. military veterans on a *pro bono* basis. The NLSVCC's mission is to work with like-minded stakeholders to gain support and advance common interests with the U.S. Department of Veterans Affairs (VA), the U.S. Congress, state and local veterans service organizations, court systems, educators, and all other entities for the benefit of veterans throughout the country.

The NLSVCC exists to promote the fair treatment of veterans under the law. Clinics in the NLSVCC work daily with veterans, advancing benefits claims through the arduous VA appeals process. The NLSVCC presents this *Amicus* Brief to the Court in light of the important VA disability benefits issue presented. It respectfully submits that preventing the VA from improperly divesting the U.S. Court of Appeals for Veterans Claims (CAVC) of a veteran's right to judicial review is critical to protecting the interests of our nation's veterans.

1. Counsel provided timely notice to the parties. 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.

SUMMARY OF THE ARGUMENT

Congress spent decades debating whether the Department of Veterans Affairs should continue to review its own decisions, and it decided in the Veterans Judicial Review Act of 1988 that it should not. It created the U.S. Court of Appeals for Veterans Claims (“CAVC”), an Article I court outside of the agency, and gave the court exclusive jurisdiction to review Board of Veterans’ Appeals (“Board”) decisions. 38 U.S.C. § 7252. When making that decision, Congress was aware of the agency’s concerns regarding cost, delay, and maintaining the non-adversarial nature of the system. Independent judicial review is a deliberate structural safeguard of the veterans benefits system, not an optional supplement to it.

The decision in this case undermines that safeguard in two ways. First, it allows the Board to defeat judicial review after the veteran has invoked it. Once Mr. Kernz appealed, jurisdiction over the dispute passed to the CAVC. *Cerullo v. Derwinski*, 1 Vet. App. 195, 196–201 (1991); *Graves v. Principi*, 294 F.3d 1350, 1352–53 (Fed. Cir. 2002). The Board nevertheless acted on the claim while the appeal was pending, and the CAVC and Federal Circuit treated that action as eliminating the controversy. A rule that lets the agency regain control of a claim and moot the appeal by “correcting” itself essentially does away with the judicial review protection that Congress implemented in 1988. Internal correction is not an acceptable substitute for independent review.

Second, the Federal Circuit avoided the question that decided the case. It held that Mr. Kernz’s dual-jurisdiction

argument was waived because it did not appear in the argument section of his opening brief. This conclusion is incorrect because the argument was not new, did not seek different relief, and required no new facts. The waiver rule that the Federal Circuit employed is prudential, not jurisdictional. The Federal Circuit has discretion to reach a pure question of law about the authority between the agency and the court created to review it, and the Supreme Court has made clear that courts are not confined to the parties' chosen theories. *Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 99 (1991). If the Board's action was void, the appeal was not moot, because reversal would still change the parties' legal position. *Chafin v. Chafin*, 568 U.S. 165, 172–75 (2013).

The consequences reach well beyond this appeal. If a pending appeal can be mooted by the Board's unilateral action, claimants have no way to know which forum controls their claims or what they must do to preserve their rights. Representatives lose the fee-shifting that encourages representation of veterans, a gap that the Federal Circuit has already confirmed is real. *Veterans Legal Advocacy Group v. Collins*, No. 2024-1759, slip op. at 6 (Fed. Cir. June 1, 2026). The agency is given a mechanism to restart claims in a system where a veteran may wait up to 2.4 years, on average, for a Board decision – without assurance that the Board will in fact correct all errors. Each of these outcomes contradicts the pro-claimant, nonadversarial design that Congress intended. 38 U.S.C. § 5107(b); *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011). Amicus therefore urges the Court to grant review and correct the lower court's decision.

ARGUMENT

I. Congress Deliberately Created Independent Judicial Review as a Structural Safeguard in the Veterans Benefits System.

The history of judicial review in the veterans benefits system matters to the question presented here because Congress deliberately moved review of Board decisions outside VA. *See* Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988); 38 U.S.C. § 7252(a). The Veterans Judicial Review Act (VJRA) emerged from decades of debate over whether internal administrative processes alone were sufficient to protect veterans' rights. *See Colorado v. Veterans Admin.*, 430 F. Supp. 551, 557 (D. Colo. 1977). That history shows why independent judicial review cannot be treated as interchangeable with agency self-correction.

A. Before 1988, VA Benefits Decisions Were Largely Insulated from Independent Judicial Review.

For much of the modern history of veterans benefits adjudication in the United States, the VA effectively escaped judicial review of agency decisions. Regional Offices made initial benefits determinations, and the Board of Veterans' Appeals (the Board) administratively reviewed these decisions from within. *See* 38 U.S.C. §§ 511, 7104, Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988). For most individual benefits disputes, the Board was the last stop, and its decisions were final and conclusive. Now-repealed 38 U.S.C. § 211(a) broadly shielded individual VA benefits determinations from

outside judicial review by explicitly barring federal courts from reviewing VA decisions. *See* 38 U.S.C. § 211(a) (1982); *Johnson v. Robison*, 415 U.S. 361, 367 (1974); *Walters v. Nat'l Ass'n of Radiation Survivors*, 473 U.S. 305, 309–10 (1985). That bar extended to both factual and legal determinations. *Johnson*, 415 U.S. at 367. The Federal Circuit described VA as “the single federal administrative agency whose major functions were explicitly insulated from judicial review.” *See Gardner v. Brown*, 5 F.3d 1456, 1463 (Fed. Cir. 1993). That insulation reflected a longstanding policy choice. Congress historically sought to preserve an informal, nonadversarial system for veterans, rather than one resembling standard civil litigation. *See Walters*, 473 U.S. at 311–12, 323–24.

But the consequence of that structure was that a veteran who believed the agency had committed legal error in a decision generally had no remedy in an independent judicial tribunal capable of reviewing the Board’s decision on an individual benefits decision. The absence of outside review meant that any alleged legal errors were evaluated only within VA, leaving no independent authority to check the agency’s application of the law.

After operating under these conditions, Congress began to consider if the benefits system could remain informal and claimant-friendly while also subjecting the agency’s legal decisions to independent judicial oversight. The debate began as early as 1952. *See Colorado v. Veterans Admin.*, 430 F. Supp. 551, 557 (D. Colo. 1977). It ultimately culminated in the Veterans’ Judicial Review Act of 1988, which created an independent judicial forum for review of Board decisions. Veterans’ Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988).

B. After Extensive Debate, Congress Intentionally Created an Independent Judicial Review System.

In 1988, The Veterans' Judicial Review Act (the VJRA) was passed, and the United States Court of Veterans Appeals, now known as the Court of Appeals for Veterans Claims (CAVC), was born. Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988). The decision was not made in haste nor without extensive rumination. Judicial review had been debated for decades, and the 1988 legislation emerged from a long-running dispute over whether VA's internal review system was enough.

Opponents of judicial supervision over VA decisions had concerns about maintaining the informal, nonadversarial nature of the claims system, flooding the system with an abundance of lawyers, and increasing delays. *Judicial Review Legislation: Hearing Before the S. Comm on Veterans' Aff.s*, 100th Cong. 225, 627 (1988). During hearings before the 100th Congress on the proposals for judicial review, the VA urged Congress to preserve the existing administrative model, warning that judicial oversight would increase "costs, delays, and burdens" and arguing that "the veterans' benefits programs should be maintained under a purely administrative system." *Judicial Review of Veterans' Affairs: Hearing on S.11 Before the H. Comm. On Veterans' Aff.s*, 100th Cong. 477 (1988) (Statement of the Veterans Administration). Congress therefore enacted the VJRA with those concerns squarely before it.

However, Congress also heard substantial reasons for concluding that internal administrative review alone was insufficient. The Senate bill's sponsor similarly explained

that the case for judicial review did not depend solely on whether the existing system was “broken,” yet “the entire claims adjudication process, including the Board, ha[d] developed serious problems.” *Id.* at 338 (statement of Sen. Alan Cranston, Chairman, S. Comm. on Veterans’ Aff.s). Other legislators framed judicial review as a basic procedural protection. Senator Tom Daschle, for example, remarked on the irony that veterans who had fought to protect legal rights were themselves denied comparable access to judicial review. *Judicial Review Legislation: Hearing Before the S. Comm on Veterans’ Aff.s*, 100th Cong. 47 (1988) (Statement of Sen. Tom Daschle).

Congress resolved that debate by creating an Article I court outside VA and assigning it defined authority over Board decisions. The CAVC received exclusive jurisdiction to review Board decisions and authority to affirm, modify, reverse, or remand them. 38 U.S.C. § 7252. Congress also established further, more limited review in the Federal Circuit. *See* 38 U.S.C. § 7292. Congress therefore did not merely authorize generalized judicial oversight, it deliberately determined which institution would review Board action, what authority that reviewing court would possess, and where the limits of judicial review would lie. 38 U.S.C. §§ 7252(a), 7292. That structure shows Congress intended judicial review to play a meaningful role in the veterans’ benefits system.

C. Independent Judicial Review Serves a Function that Agency Self-Correction Cannot.

Congress ultimately concluded that even a uniquely claimant-friendly administrative system requires independent judicial oversight because internal agency review and judicial review serve different institutional

functions. *See* Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988). The Board remains part of the agency charged with administering veterans' benefits law, whereas the CAVC, by contrast, exists outside VA and independently determines whether the Board's actions comply with governing law. Internal correction may change an administrative result, but it does not perform the same function as independent judicial review. *See* 38 U.S.C. § 7252(a). Judicial review provides an external check on agency action and places legal questions before a tribunal that does not answer to the agency whose decision is under review.

That distinction is central here. Mr. Kernz invoked the independent judicial review Congress created when he filed a Notice of Appeal to the CAVC. *See Kernz v. McDonough*, No. 20-2365, slip op. at 1 (Vet. App. Oct. 4, 2023); 38 U.S.C. § 7252(a). The Board then attempted to correct its own error while that appeal was still pending, which the Federal Circuit ultimately treated as having eliminated any remaining controversy. *Kernz v. Collins*, 171 F.4th 1364, 1372 (Fed. Cir. 2026). However, this defies the very purpose of the VJRA by eliminating the judicial correction of the Board from outside the VA. *See* Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988).

Congress did not create the CAVC to give the Board or even the Secretary himself another opportunity to correct their mistakes. *See* Veterans' Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105 (1988). It created an independent tribunal to review Board action from outside the agency. If, after a veteran invokes judicial review, the Board can unilaterally take back control of a claim, the safeguard Congress created becomes moot because

the agency can eliminate the controversy simply by modifying its final decision before the CAVC has a chance to complete judicial review. A system where the Board can sidestep judicial review by taking a controversy back and, eliminating the appealable error, risks recreating the very agency-finality system Congress deliberately abandoned.

II. The Federal Circuit’s Mechanical Application of Waiver Foreclosed Review of the Central Question.

The Federal Circuit’s mechanical application of the waiver rule is unfounded. At the heart of this case, since its inception, has been a question of jurisdiction. At first, the question was whether the CAVC had jurisdiction over the Board letter appealed to the court. *Kernz v. Collins*, 171 F.4th 1364, 1365 (Fed. Cir. 2026). Very shortly after Mr. Kernz filed his appeal, the case manifestly shifted, entirely due to a *sua sponte* action by the Board of Veterans’ Appeals. The Court simply assumed the Board’s action was permissible instead of deciding as much, and thereby determined that Mr. Kernz lacked standing because he obtained the benefit he requested. *Kernz v. Collins*, 171 F.4th 1364, 1369 (Fed. Cir. 2026). The decision below cannot stand because it rests on a conclusion for which no adequate foundation was established.

A. The Dual-Jurisdiction Argument Was Properly Before the Federal Circuit and the Prudential Waiver Rule Should Not Have Precluded its Consideration.

The court treated Mr. Kernz’s dual-jurisdiction argument as waived because it did not appear in the argument section of his opening brief. *Kernz v. Collins*, 171 F.4th 1364, 1372 (Fed. Cir. 2026). That characterization

obscures what remained constant throughout the appeal: once he filed his notice of appeal, jurisdiction transferred to the CAVC and the Board's subsequent actions could not lawfully extinguish the controversy. *Kernz v. Collins*, 171 F.4th 1364, 1367 (2026) (citing *Kernz v. McDonough*, 36 Vet. App. 372, 393 (2023) (Chief Judge Bartley, dissenting)). The dual-jurisdiction argument did not introduce a different claim, request different relief, or depend on additional facts. It supplied another legal reason why *Cerullo's* transfer-of-jurisdiction rule governed the dispute already before the court. *Cerullo v. Derwinski*, 1 Vet. App. 195, 196-201 (1991); *Graves v. Principi*, 294 F.3d 1350, 1352-53 (Fed. Cir. 2002).

The waiver rule is well-known. The Federal Circuit, like most courts, will generally disregard issues not raised in the opening brief. See *SmithKline Beecham Corp. v. Apotex Corp.*, 439 F.3d 1312, 1319 (Fed. Cir. 2006); *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc.*, 424 F.3d 1293, 1320-21 n.3 (Fed. Cir. 2005). The rule ensures that issues will be timely raised so that the court and the parties will have an opportunity to address them. See *Becton Dickinson and Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 800 (Fed. Cir. 1990). Notably, the Supreme Court distinguishes between an issue presented for decision and the authorities or arguments offered in support of it. *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). Once a claim is properly before a court, the court is not confined to the particular legal theories advanced by the parties. *Kamen v. Kemper Financial Services, Inc.*, 500 U.S. 90, 99 (1991). Courts instead retain responsibility for identifying and applying the controlling law. *U.S. National Bank of Oregon v. Independent Insurance Agents of America, Inc.*, 508 U.S. 439, 446-48 (1993). Here, the operative

question was preserved: whether the Board’s post-appeal actions had legal effect sufficient to eliminate Mr. Kernz’s injury. The dual-jurisdiction argument bore directly on that question, regardless of when Mr. Kernz cited *Cerullo*. *Cerullo*, 1 Vet. App. at 196.

At minimum, Mr. Kernz’s opening brief to the Federal Circuit did not compel the court to disregard that argument. The rule is prudential, not jurisdictional, and its application rests within the court’s discretion. *Apple Inc.*, 992 F.3d at 1382; *Harris Corp. v. Ericsson Inc.*, 417 F.3d 1241, 1251 (Fed. Cir. 2005). The court retains discretion to consider a waived issue, particularly when it presents a pure question of law, requires no additional fact finding, and declining review would undermine the interests of justice or would result in unfair procedure. *Interactive Gift Express, Inc. v. Compuserve Inc.*, 256 F.3d 1323, 1344–45 (Fed. Cir. 2001); *Becton Dickinson and Co. v. C.R. Bard, Inc.*, 922 F.2d 792, 800 (Fed. Cir. 1990). Though we need not lean on them, those considerations nevertheless favored judicial review here. Foremost, the argument presented a pure question of law. More importantly, the question concerned the division of authority between an administrative agency and the court Congress created to review it. *Kernz v. McDonough*, 36 Vet. App. 372, 393 (2023) (Chief Judge Bartley, dissenting). Declining to consider controlling law under those circumstances allowed a prudential briefing rule to insulate an acknowledged jurisdictional defect from meaningful review. Having raised the principal issue, Mr. Kernz’s “failure to identify the applicable legal rule certainly does not diminish a court’s responsibility to apply that rule.” *Dan Ryan Builders, Inc. v. Crystal Ridge Dev., Inc.*, 783 F.3d 976, 980 (4th Cir. 2015).

B. The Decision Rests on an Unsupported Conclusion and Lacks the Necessary Predicate.

Ultimately, the court’s refusal to decide the most important issue of the appeal leaves its opinion perfunctory. With so much on the line, a precedential opinion of enormous importance to claimants both present and future, counsel’s nonprejudicial oversight should not have compromised the value and completeness of the decision. *Manning v. Caldwell*, 930 F.3d 264, 271 (4th Cir. 2019) (en banc) (“[W]e have recognized that when deemed necessary to reach the correct result on matters of public importance, we may *sua sponte* consider points not presented to the district court *and not even raised on appeal by any party.*”) (citations and internal quotation marks omitted, italics in original); *Sindi v. El-Mostimany*, 896 F.3d 1, 28 (1st Cir. 2018) (holding that for opinions having important and wide-ranging effect, “a mechanical application of the raise-or-waive principle” is undesirable). The court disregarded the question at the heart of this case, leaving its opinion largely unsupported. It omitted the analysis required to reach its result and instead assumed its conclusion – that the VA did not err because Mr. Kernz received the benefit he originally requested – without first considering whether the VA had the ability to act at all. *Kernz v. Collins*, 171 F.4th 1364, 1370 (2026). If the Board’s action was void, it did not lawfully restore the appeal, define the evidence window, authorize further development, or eliminate the March 2020 dismissal. A CAVC decision vacating that dismissal and ordering a lawful remand would have changed Mr. Kernz’s legal position and supplied effectual relief. An appeal does not become moot merely because the challenged order has been implemented when reversal can still affect the

parties' rights. *Chafin v. Chafin*, 568 U.S. 165, 172-75 (2013).

III. Supplanting lawful judicial review has a real-world cost for veterans.

Veterans will bear the consequences if the ruling is allowed to stand. First, it creates substantial uncertainty regarding claim status, evidentiary deadlines, and appellate rights. Second, it discourages fee-shifting, which was created by Congress for the purpose of ensuring access to representation and agency accountability. H.R. Rep. No. 96-1418, at 9-11 (1980), reprinted in 1980 U.S.C.C.A.N. 4984, 4988-89. Lastly, it creates incentives for repetitive adjudication that may further prolong the resolution of veterans' claims.

A. The ruling creates substantial uncertainty regarding claim status, evidentiary deadlines, and appellate rights.

The Board's actions created confusion and uncertainty as to what evidence would be considered and when the evidence submission period began and ended. More fundamentally, Mr. Kernz was deprived of his statutory right of judicial review. 38 USC § 7252. This harm is not exclusive to Mr. Kernz: this precedent can easily become systemic, and many veterans will be subject to the same procedural dysfunction if the ruling is allowed to stand. If the Board can restore and act on a claim *sua sponte* while an appeal is pending, a veteran claimant would be left unaware of which forum currently controls their case or what they need to do to preserve their rights. A typical (oftentimes, *pro se*) veteran claimant monitoring the CAVC

docket would have no way to know that their claim had been restarted due to Board action taken without notice. This illustrates just how many points in this process invite confusion and how easily that confusion could push a veteran to abandon a well-founded claim.

This is precisely the outcome the VA claims system is designed to prevent: it is statutorily nonadversarial and claimant friendly. 38 U.S.C. § 5107(b); *Henderson v. Shinseki*, 562 U.S. 428, 431 (2011). Resolving a jurisdictional ambiguity against the veteran—and treating his appeal as moot because of an action the Board took unilaterally, and arguably without authority—runs directly counter to that nonadversarial design. Administrative efficiency should never come at the cost of a veteran’s meaningful opportunity to be heard.

B. The ruling discourages fee-shifting, one of Congress’s primary mechanisms for ensuring access to representation and agency accountability.

In addition to the procedural confusion, this ruling further disadvantages veterans by impeding their access to justice and deterring them from seeking legal representation. Most veterans, if represented at all, are represented on contingency or seeking fees under the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412(d)(1)(A). Congress created EAJA in 1980 because it recognized that litigation costs often prevented individuals from challenging unlawful government action. H.R. Rep. No. 96-1418, at 9-11. If mootness forecloses relief, veterans cannot recover their attorney’s fees, even where the Board’s own miscalculation—not substantially

justified—created the need for litigation in the first place. 28 U.S.C. § 2412(d)(1)(A). This dynamic discourages attorneys and non-attorney representatives from taking these cases at all, thereby limiting veterans’ access to justice and high-quality representation. If the Board can always moot an appeal by correcting its own mistake, fee-seeking representatives then have no standing to protest how that correction happened, and no fee-shifting under EAJA occurs.

This concern is not purely hypothetical. The Federal Circuit has already held that VA self-correction (via the Board) leading to mootness defeats EAJA recovery. *Veterans Legal Advocacy Group v. Collins*, No. 2024-1759, slip op. at 6 (Fed. Cir. June 1, 2026). This is exactly the gap that the Board stands to exploit here, which would work against the VA benefits system’s pro-claimant, nonadversarial design by restricting veterans’ access to resources, ultimately disadvantaging the very people the system was designed to help. 38 U.S.C. § 5107(b); *Henderson*, 562 U.S. at 431.

This issue is not merely a fee-shifting technicality; it strikes at whether veterans can obtain representation in the first place. The importance of legal representation in safeguarding veterans’ due process rights has been widely recognized. As Professor Simcox has noted, “Attorneys can help to ensure that the VA’s adjudication process maintains the veteran friendly character that Congress desires, while ensuring that the process affords veterans the due process to which they are entitled.” Stacey-Rae Simcox, *Thirty Years After Walters the Mission Is Clear, the Execution Is Muddled: A Fresh Look at the Supreme Court’s Decision to Deny Veterans the Due Process Right*

to Hire Attorneys in the VA Benefits Process, 84 U. Cin. L. Rev. 671, 748 (2018). Left uncorrected, this rule lets the Board manufacture its own immunity from fee-shifting simply by fixing what it broke, undermining the deterrent function of EAJA at the very moment it is needed most.

C. The ruling creates incentives for repetitive adjudication that may further prolong the resolution of veterans' claims.

Beyond discouraging representation, the current holding exacerbates VA's well-known backlog of claims and appeals. U.S. Dep't of Veterans Affairs, *Claims Backlog*, Veterans Benefits Admin., https://www.benefits.va.gov/reports/mmwr_va_claims_backlog.asp (last visited September 9, 2026). The average length of time that a veteran spends waiting for a decision from the Board in the AMA system can be up to 2.4 years. U.S. Dep't of Veterans Affairs, *Decision Wait Times*, Veterans Benefits Admin., <https://department.va.gov/board-of-veterans-appeals/decision-wait-times/> (last visited September 17, 2026). That delay occurs even when the system is functioning exactly as intended, and the current holding needlessly makes the wait even longer. A rule that allows the Board to unilaterally moot a pending appeal creates both the incentive and the mechanism for delay by restart, which effectively resets the veteran's place in the long VA claims queue. Cases can be bounced back and forth, restored to active dockets *sua sponte*, or declared moot, without the veteran seeking or consenting to any of these actions. This self-correction workaround rewards delay over accuracy.

When a claim is reinitiated by the Board, that prolonged period of uncertainty is extended even further,

requiring veterans to wait years longer for a decision. Many veterans are elderly, disabled, or *pro se*, and are more susceptible to the harm that backlog delay causes, including lost benefits during pendency, worsening medical conditions, or in some cases, death before adjudication. *Ribaud v. Nicholson*, 21 Vet. App. 16, 36 (2007). Here, justice postponed often results in justice being denied.

This case is not about jurisdictional technicality. It is about whether veterans are entitled to a fair and accountable adjudicatory system, or whether the agency can insulate its own mistakes from review while veterans bear the consequences. If veterans cannot trust that established procedures will be followed and agency errors will be subject to meaningful judicial scrutiny, then the veteran-friendly system Congress intended exists in name only.

CONCLUSION

Congress created the CAVC so that veterans would have a forum outside of the agency to review Board decisions. The Federal Circuit's decision allows the Board to remove a claim from that forum after the veteran has invoked it, even as it declined to consider whether the Board had the authority to do so. This approach leaves veterans unable to discern which tribunal controls their claims, weakens the fee-shifting that encourages representation, and invites delay in the adjudication of claims that already take years to resolve. For these reasons, Amicus respectfully requests that the decision of the Federal Circuit be reversed.

Respectfully submitted,

STACEY-RAE SIMCOX
Associate Dean; Director
VETERANS LAW INSTITUTE
STETSON UNIVERSITY
COLLEGE OF LAW

AMBER WILSON
Fellow
VETERANS LAW INSTITUTE
STETSON UNIVERSITY
COLLEGE OF LAW

SYDNIE ROULEAU
Staff Attorney
VETERANS ADVOCACY CLINIC
STETSON UNIVERSITY
COLLEGE OF LAW

MORGAN ZIMARAKOS
Counsel of Record
Interim Director
VETERANS ADVOCACY CLINIC
STETSON UNIVERSITY
COLLEGE OF LAW
1401 61st Street South
Gulfport, FL 33707
(727) 562-7320
memacisaacbykowski
@law.stetson.edu

Counsel for Amicus Curiae