No. 26-437

IN THE

Supreme Court of the United States

DANIEL GEORGE,

Petitioner,

v.

PIEDMONT AIRLINES, INC.,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF THE RESERVE ORGANIZATION OF AMERICA AS *AMICUS CURIAE* SUPPORTING PETITIONER

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INTRODUCTION AND INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Reserve Organization of America ("ROA") is America's only exclusive advocate for the Reserve and National Guard—all ranks, all services. With a sole focus on support of the Reserve and National Guard, ROA promotes the interests of Reserve Component members, their families, and veterans of Reserve service. As part of this advocacy, ROA regularly files briefs in this Court and others on matters that implicate the interests of the Reserve Components. *See, e.g.*, *Feliciano v. DOT*, 605 U.S. 38 (2025); *Torres v. Tex. Dep't of Pub. Safety*, 597 U.S. 580 (2022).

This case raises an issue that is critically important to ROA and its members. In the decision below, the Third Circuit adopted an atextual reading of the Uniformed Services Employment and Reemployment Rights Act that sharply limits that statute's core prohibition on discrimination against employees because of their military service. As the Petition persuasively demonstrates, that decision joins the wrong side of a circuit split, further entrenching an intractable conflict.

ROA submits this brief to further explain why that split in authority raises an issue of exceptional importance. The Third Circuit's interpretation flouts Congress's servicemember protections, makes less certain the civilian employment of countless

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[1] No party's counsel authored this brief in whole or in part, and no person or entity other than *amicus* or its counsel made a monetary contribution to fund the brief's preparation or submission. *Amicus* provided timely notice of this filing to all parties.

Reservists, and undermines America's warfighting capabilities.

This Court should thus grant the Petition to resolve the circuit split and give effect to Congress's command that employers may not discriminate against employees on the basis of their uniformed service.

SUMMARY OF ARGUMENT

United States military reserves date back to before the founding of the Republic when national citizen-soldier forces fought in the French and Indian War. State militias—which became the National Guard—played a major role in the Revolutionary War. During the Civil War, state militias supplied 96 percent of the Union army. About 400,000 Guardsmen served in World War I, representing the largest state contribution to overseas military operations during the 20th century. Nearly 300,000 Guardsmen served in World War II. More than 200,000 Reservists contributed to the liberation of Kuwait in the Gulf War. And since September 11, 2001, more than a million Reservists and National Guardsmen have answered the call to serve their nation.

Recognizing the dedication of the nation's Reservists and National Guardsmen, as well as their importance to our national security, Congress has repeatedly acted to protect our citizen soldiers and to alleviate the burdens of their service. Since 1940, it has granted servicemembers reemployment rights—requiring employers to give servicemembers their jobs back upon return from deployment. Since 1968, Congress has also prohibited employers from discriminating against employees on account of their

military service—ensuring that Reservists are not fired or deprived of employment benefits merely because they answer their nation's call. Congress has codified both protections—the reemployment right and the nondiscrimination principle—in the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). And both protections remain critical to ensure fair treatment of our nation's warriors and to encourage service in the Armed Forces.

The decision below undermines USERRA's nondiscrimination principle. The decision concerns an airline that denied a pilot a bonus that he would have received but for his Reserve deployment with the United States Air Force. Even though that is a quintessential denial of a benefit on the basis of an employee's military service, the Third Circuit did not find a violation of the nondiscrimination principle. Worse still, its holding is based on an implied limitation from the servicemember reemployment right—essentially pitting Congress's two core servicemember protections against one another. That reading has no support in the statutory text, structure, or purpose, and it flies in the face of the pro-servicemember canon of construction.

The Third Circuit's error puts it on the wrong side of a circuit split that warrants this Court's review. Congress has spent decades passing bipartisan legislation to ensure that Reservists are not disadvantaged by their service to the nation. The decision below thwarts that policy and undermines Congress's recruitment and retention efforts. And because the United States relies on more than one million Reservists—who can be activated at a

moment's notice to provide mission-critical support—that decision hinders the nation's warfighting capabilities in a moment of heightened tension across the globe.

This Court should grant the Petition.

ARGUMENT

I. THE DECISION BELOW CONCERNS AN ISSUE OF EXCEPTIONAL IMPORTANCE.

Congress has spent decades and passed dozens of bipartisan laws to eliminate civilian-employment disadvantages to U.S. servicemembers. As the Petition explains, the Third Circuit's decision below joins the wrong side of a circuit split that misconstrues a foundational nondiscrimination principle from that legislative effort. Pet. 5–10. While that split in authority is sufficient for the Court to grant the Petition, *see ibid.*, it also raises an issue of exceptional importance because it undermines Congress's decades-long servicemember-benefits project and, ultimately, the nation's warfighting capabilities.

A. Congress Has Worked For Decades To Eliminate Employment Disadvantages For Servicemembers.

At the dawn of the Second World War, Congress "declare[d] that in a free society the obligations and privileges of military training and service should be shared generally." Selective Training and Service Act of 1940, Pub. L. No. 76-783, § 1(b), 54 Stat. 885, 885. Those were not just words. To prepare for the worst,

Congress established the Selective Service System and asked American families to shoulder the immense burden of sending their own to fight for our nation. *See id.* §§ 3, 6.

To ease that burden, Congress took steps to spread it across society by imposing on employers a duty to reemploy those who served. Specifically, Congress required businesses to reemploy workers following any induction into the Armed Forces, *id.* § 8(b), and to treat their absence "as having been on furlough or leave of absence," such that they would be "restored without loss of seniority" and "entitled to participate in insurance or other benefits offered by the employer" upon their return, *id.* § 8(c).

Congress's rationale was clear: those who serve their nation should not be disadvantaged in return. Past experience had shown that these protections were crucial: "after the [first] World War, … men were promised their jobs back and did not get them." *Selective Compulsory Military Training and Service: Hearings on H.R. 10132 Before the H. Comm. on Mil. Affs.*, 76th Cong. 118 (1940) (statement of Rep. Thomason). To avoid repeating those broken promises, Congress adopted reemployment protections "in order that no hardships may be imposed upon these people who are selected" for service. *Id.* at 81 (statement of Rep. Clason); *see also id.* at 86 (statements of Rep. Brooks and General Shedd).

Congress spent decades steadily expanding this reemployment right. In 1946, it extended the right to members of the Women's Army Auxiliary Corps. *See* Pub. L. No. 79-709, 60 Stat. 971, 971–72 (1946). In

1948, it required employers to find reemployment opportunities for those who had become disabled during their service. *See* Pub. L. No. 80-759, § 9(b)(B)(ii), 62 Stat. 604, 615 (1948). In 1955, it required reemployment for Reservists who completed their initial active-duty training. *See* Pub. L. No. 84-305, § 2(i), 69 Stat. 598, 602 (1955). And in 1960, it broadened those Reservist-training reemployment rights and extended them to the National Guard. *See generally* Pub. L. No. 86-632, 74 Stat. 467 (1960).

Congress saw the reemployment right as a "corelative of the duty of service" to ensure "democratic notions of social and economic justice." The Selective Service Act: Its Legislative History, Amendments, Appropriations, Cognates and Prior Instruments of Security 541 (1954) (quoting Duggin, Joseph C., The Legislative and Statutory Development of the Federal Concept of Conscription for Military Service 102 (1946)).

In 1968, Congress adopted a new law that was even more explicitly aimed at alleviating the burdens of military service: a nondiscrimination principle. It provided that military Reservists "shall not be denied retention in employment or any promotion or other incident or advantage of employment because of any obligation as a member of a reserve component of the Armed Forces of the United States." *See* Pub. L. No. 90-491, § 1(1), 82 Stat. 790, 790 (1968). "[T]he consistent focus of the administration that proposed th[is] statute, and of the Congresses that considered it, was on the need to protect reservists from the temptation of employers to deny them the same treatment afforded their co-workers without military obligations." *Monroe v. Standard Oil Co.*, 452 U.S.

549, 560 (1981).[2]

As with the reemployment right, Congress worked to refine and expand the nondiscrimination principle. In the Vietnam Era Veterans' Readjustment Assistance Act of 1974, Congress extended both the nondiscrimination principle and the reemployment right to servicemembers employed by "a State or political subdivision thereof." Pub. L. No. 93-508, § 404, 88 Stat. 1578, 1596 (1974); *see Torres v. Tex. Dep't of Pub. Safety*, 597 U.S. 580, 584 (2022). In the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, Congress extended the nondiscrimination principle to employer hiring decisions. *See* Pub. L. No. 99-576, § 331, 100 Stat. 3248, 3279 (1986).

These efforts culminated in the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). *See* Pub. L. No. 103-353, 108 Stat. 3149 (1994). In USERRA, Congress codified the most sweeping versions yet of both the reemployment right, 38 U.S.C. §§ 4312–19, and the nondiscrimination principle, *id.* § 4311.

Under USERRA's nondiscrimination principle, it is unlawful for any employer to deny "any benefit of employment … on the basis of" an individual's "performance of [uniformed] service." 38 U.S.C. § 4311(a). "Benefit of employment" is defined broadly

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[2] While *Monroe* rejected one broad interpretation of the nondiscrimination principle, Congress "supersed[ed] [that] decision" with even more "expansive protection[s]" for "servicemembers." *Travers v. Fed. Express Corp.*, 8 F.4th 198, 201 & n.7 (3d Cir. 2021); *see also* H. Rep. No. 103-65, pt. 1, at 24 (1993).

as "the terms, conditions, or privileges of employment, including any advantage, profit, privilege, gain, status, account, or interest (including wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment." 38 U.S.C. § 4303(2). Taken together, USERRA imposes a simple but expansive rule: an employer cannot deny any benefit to an employee because of his military service.

Identifying USERRA's aims "requires no guesswork, since the Act includes … [a] detailed statement of the statute's purposes." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 131 (2014). Congress sought to continue its decades-long effort "to encourage service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service." 38 U.S.C. § 4301(a)(1). And it specified that its means of accomplishing that goal included both the 1940 "reemployment" right, *id.* § 4301(a)(2), and the 1968 "prohibit[ion]" on "discrimination against persons because of their service in the uniformed services," *id.* § 4301(a)(3).

Ultimately, USERRA marked Congress's strongest and most comprehensive commitment yet to the principle that, "[h]e who was called to the colors [i]s not to be penalized." *Fishgold v. Sullivan Drydock*

& Repair Corp., 328 U.S. 275, 284 (1946).

B. The Decision Below Undermines Congress's Efforts To Eliminate Employment Disadvantages For Servicemembers.

The decision below flies in the face of Congress's decades of iterative legislation to prevent those who serve from facing employment disadvantages. Petitioner Daniel George, an Air Force Reservist, was ordered to deploy while he was employed as a pilot by Piedmont Airlines. Pet. App. 7a–8a. While serving, George accepted a position as a pilot with American Airlines—Piedmont's parent company—entitling him to a $70,000 bonus under a Piedmont retention program. Pet. App. 2a. Nobody disputes that if George had been flying Piedmont planes instead of Air Force planes, he would have received this bonus. Yet, Piedmont denied him the bonus, and the Third Circuit did not find a USERRA violation, Pet. App. 4a–5a, because it found USERRA's nondiscrimination principle implicitly limited by its reemployment right, *see* Pet. 10–13; *infra* Section II.A.

This watered-down reading of USERRA not only deepens a circuit split, *see* Pet. 6–9, but it also presents an issue of exceptional importance. The decision below undermines Congress's goal to "eliminat[e] or minimiz[e] the disadvantage to civilian careers and employment which can result from [military] service." 38 U.S.C. § 4301(a)(1). Indeed, under the Third Circuit's construction, servicemembers like Daniel George now must worry whether their employer will deny them benefits when they answer their nation's call to serve—the precise

problem Congress has set out to solve. This Court should thus "grant[ ] certiorari because of the question's importance to the administration of the federal [servicemember-benefits] laws." *Randall v. Loftsgaarden*, 478 U.S. 647, 655 (1986).

Indeed, consider the stakes. More than one million Reservists currently volunteer to serve our nation. *See* Ready Reserve Personnel, Military OneSource (2024), https://tinyurl.com/5n8pw4a4. Approximately one third have been called to active duty at some point "in the [preceding] 24 months." Laura Werber et al., RAND Corp., Understanding and Improving Civilian Employer Experiences with Guard and Reserve Duty 14–15 (2024), https://tinyurl.com/mvnpwpan; *accord* Defense Reserve Forces Policy Board, Action Memo, Tab A at 1 (Feb. 21, 2023) ("RFPB Action Memo") ("since 9/11, over one million [Reserve Component] personnel have mobilized"), https://tinyurl.com/2n2wdyxd. About three quarters of non-activated Reservists hold civilian employment, and "[a] majority of [Reservists] work in the private sector." Werber, *supra* at 16. The bottom line is that America's citizen-soldiers rely on USERRA to serve their nation with confidence that such service will not adversely affect their civilian employment. A narrow construction of USERRA undermines that confidence.

Because the Third Circuit's construction deepens a split in authority, it also undermines certainty, predictability, and fairness. A Reservist employee in California, subject to the Ninth Circuit's construction of the nondiscrimination principle, *see, e.g.*, *Huhmann v. Federal Express Corp.*, 874 F.3d 1102, 1112 (9th Cir. 2017); *Belaustegui v. International Longshore &*

Warehouse Union, 36 F.4th 919, 927–30 (9th Cir. 2022), would be afforded broader protections than a similarly-situated employee in Pennsylvania, subject to the Third Circuit's more restrictive approach. That result is not only unfair, but it also injects uncertainty into a system designed to provide servicemembers with express reassurances.

These limits on USERRA's scope and predictability, in turn, undermine America's warfighting capabilities. Indeed, one of Congress's key aims in minimizing disadvantages to servicemembers has been "to encourage service in the Armed Forces." *Torres*, 597 U.S. at 585; *accord* 38 U.S.C. § 4301(a)(1). As Congress has recognized from the beginning, minimizing civilian-employment disadvantages "take[s] a long step in providing the Army and Navy with patriotic men who are willing and anxious to serve their country." 86 Cong. Rec. 10573 (1940) (statement of Sen. Elbert Thomas). Interpreting USERRA to permit such disadvantages works against Congress's warfighting aim.

That result is especially problematic given Reservists' pivotal role in America's military. Since 2008, the Reserve Components have been designated "an operational force." Dep't of Def., Dir. 1200.17, Managing the Reserve Components as an Operational Force, ¶¶ 1, 4a–b (Oct. 29, 2008). The Reserves are thus no longer a "force of last resort," but instead "vital contributors on a day-to-day basis around the world." Lawrence Kapp & Barbara Salazar Torreon., Cong. Rsch. Serv., Reserve Component Personnel Issues: Questions and Answers 7 (updated Nov. 2, 2021), http://tinyurl.com/5n7kf9kd. Reservists have been deployed "in support of combat operations

overseas and in response to national emergencies such as hurricanes, flooding, wildland fires, civil disturbances, and in support of the Nation's response to COVID including Operation Warp Speed." RFPB Action Memo, Tab A at 1.

Reservists' civilian employment enhances their effectiveness. Reservists "bring unique capabilities and professional expertise to the Total Force gained through years of experience" in "the civilian sector"—especially in professions that are typically too "cost-prohibitive to develop in the [Active Components] (i.e. doctors, nurses, lawyers, computer analysts, cyber experts, engineers, etc.)." Reserve Forces Pol'y Bd., Improving the Total Force: Using the National Guard and Reserves, RFPB Report FY20-01 at 36 (Aug. 14, 2020), http://tinyurl.com/5n929tz7. The result is an effective force that "provide[s] low density, high demand skills." RFPB Action Memo, Tab A at 2. The results speak for themselves. The Department of War explained in no uncertain terms that its "domestic security and global operations since September 11, 2001 *could not have been executed* without the activation of hundreds of thousands of trained Reserve Component personnel." Dep't of Def., Comprehensive Review of the Future Role of the Reserve Component, Vol. 1, at 1–2 (Apr. 5, 2011) (emphasis added).

An interpretation of USERRA that deters Reservist service raises especially heightened concerns in this moment of profound international tension. The United States is engaged in an "ongoing international armed conflict with Iran." Off. Of Mgmt. & Budget, Exec. Off. Of the President, Statement of Administration Policy on H. Con. Res.

93, at 1 (Sep. 15, 2026), https://tinyurl.com/5923pf2u. Meanwhile, an allied intelligence agency recently assessed a "growing risk that Russia will launch a limited military attack against one or several NATO countries." Danish Defence Intelligence Service, Assessment of the Threat from Russia, at 2 (Sep. 24, 2026), https://tinyurl.com/3cedd9mw. In this "period of great consequence for our Republic," the Department of War is targeting "profound recruiting and retention success" to ensure that our nation's "all-volunteer force"—"the lifeblood of our military"—attracts and "retain[s] the nation's best and brightest." *On Department of Defense Fiscal Year 2027 Budget Request: Before the H. Comm. On Armed Servs.*, 119th Cong. 3, 15, 17 (2026) (Statement of the Hon. Pete Hegseth, Secretary of War), https://tinyurl.com/696y4wpt. Thus, at the exact moment the nation is encouraging Americans to say, "send me to fight," C. Todd Lopez, *Hegseth Thanks Young Americans in Knoxville Who Say 'Send Me'*, U.S. Dept. of War (Oct. 17, 2026), https://tinyurl.com/2psn7s8w, the Third Circuit and a growing number of courts of appeals are adopting a construction of USERRA that broadcasts just the opposite.

For all of these reasons, the narrow construction of USERRA adopted by the Third Circuit and other courts across the country presents an issue of exceptional importance worthy of this Court's review.

II. THE DECISION BELOW IS WRONG AND WARRANTS URGENT CORRECTION.

The Third Circuit's decision deepens a circuit split and undermines decades of servicemember-benefits

legislation. That alone warrants this Court's review. Compounding the need for that review, the Third Circuit's analysis displays how circuits on its side of the split in authority have interpreted USERRA in a manner that flouts its text, structure, and purpose. And while those indicators of meaning are sufficient to resolve this case, the Third Circuit's analysis also failed to follow the pro-servicemember canon of construction.

A. The Decision Below Misinterprets The Statute.

The Third Circuit's decision relies on a fundamental misreading of USERRA. That statute provides for two core protections: (1) a suite of reemployment protections dating back to 1940, 38 U.S.C. §§ 4312–19, and (2) a sweeping nondiscrimination principle dating back to 1968, *id.* § 4311; *see supra* Section I.A. The Third Circuit erred because it held that a leave-benefits protection (part of the reemployment right) applied to the exclusion of the nondiscrimination principle. *See* Pet. App. 3a–5a. Thus, even though Petitioner Daniel George was denied a bonus "on the basis of" his "service" for the U.S. Air Force in direct violation of the nondiscrimination principle, 38 U.S.C. § 4311(a); *accord* Pet. 10, the Third Circuit found that George could show a USERRA violation only if his employer violated the statute's separate leave-benefits protection, Pet. App. 4a–5a. That implied limitation on USERRA's nondiscrimination principle finds no basis in the statutory text, structure, or history.

Start with the text. USERRA's leave-benefits provision does not even mention the anti-

discrimination principle—and vice versa. *See* 38 U.S.C. §§ 4316, 4311. Further, each provision does separate work: the leave-benefits provision sets baseline leave benefits to which servicemembers are entitled, and the nondiscrimination principle broadly precludes employers from denying benefits to employees because of their military service. Nothing in one provision purports to limit or displace the other. Because the two provisions can be "interpreted harmoniously," "there can be no justification for needlessly rendering [them] in conflict," such that "one … nullif[ies] the other." A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts 180–81 (2012); *accord Van Buren v. United States*, 593 U.S. 374, 389 (2021) (interpreting statute as "an harmonious whole").

Structure and context confirm that understanding of the text. For decades, Congress has pursued two complementary but distinct policies: a generous reemployment right and a broad non-discrimination principle. *See supra* Section I.A; *accord BNSF Railway Co. v. Loos*, 586 U.S. 310, 329 (2019) (Gorsuch, J., dissenting) (explaining that "statutory history" is "the sort of textual evidence everyone agrees can sometimes shed light on meaning"). Mirroring that two-track policy approach, the first section of USERRA explains in two discrete subsections that the statute both "provid[es] for … prompt reemployment," 38 U.S.C. § 4301(a)(2), *and* "prohibit[s] discrimination against persons because of their service," *id.* § 4301(a)(3). This structure supports giving full effect to the nondiscrimination principle, rather than placing it at war with the separate reemployment right. *Accord Fischer v. United States*, 603 U.S. 480, 486 (2024) ("we must give

effect, if possible, to every clause and word of the statute" (cleaned up)); *see also* H. Rep. No. 103-65, pt. 1, at 19 (1993) ("the Committee bill reaffirms the actions taken by Congress in 1968 and 1986 to make [discriminatory] practices violative of the law"); *id.* at 23 (similar).

The statute's purpose is in accord. "The best evidence of [congressional] purpose is the statutory text," *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 98 (1991), and here, that text unambiguously declares Congress's intent to "eliminat[e] or minimiz[e] the disadvantages to civilian careers and employment which can result from [uniformed] service," 38 U.S.C. § 4301(a)(1); *accord* Reading Law, *supra*, at 217 ("A preamble, purpose clause, or recital is a permissible indicator of meaning."). This purpose further confirms that the nondiscrimination principle should not be read as implicitly limited in a manner that would result in a civilian-employment disadvantage for a servicemember. *Accord* H. Rep. No. 103-65, pt. 1, at 19 ("The Committee intends that these anti-discrimination provisions be broadly construed and strictly enforced."); *see also id.* at 23; S. Rep. No. 103-158, at 40 (1993) (similar).

Thus, the Third Circuit's decision does not reflect the "single, best meaning" of USERRA. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024).

B. The Decision Below Overlooks The Pro-Servicemember Canon.

Because "the statute is clear," the error from the Third Circuit's side of the split in appellate authority is apparent from the "statutory text alone." *Rudisill*

v. McDonough, 601 U.S. 294, 314 (2024). But that error is compounded by the Third Circuit's failure to abide by "the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." [3] *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 441 (2011).

Like other substantive canons, the pro-servicemember canon "ha[s] a long historical pedigree." *Biden v. Nebraska*, 600 U.S. 477, 509 (2023) (Barrett, J., concurring). "Congress" has "long" shown special "solicitude … for veterans." *Henderson*, 562 U.S. at 440. As far back as 1789, it guaranteed "military pensions" to soldiers "who were wounded and disabled" in the "late war." Act of September 29, 1789, ch. 24, § 1, 1 Stat. 95. And in the centuries since, Congress has enacted a "pattern of legislation," *United States v. Oregon*, 366 U.S. 643, 647 (1961), designed "to protect those who have been obliged to drop their own affairs to take up the burdens of the nation," *Boone v. Lightner*, 319 U.S. 561, 575 (1943); *see supra* Section I.A.

To respect Congress's special solicitude for servicemembers, this Court has applied the pro-servicemember canon for at least 170 years. In *Walton v. Cotton*, 60 U.S. (19 How.) 355 (1856), this Court construed the meaning of a statute that "provid[ed] for the relief of certain surviving officers of

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[3] The Court has at times referred to this canon as the "pro-veteran canon." *Rudisill*, 601 U.S. at 314. Although the canon does protect veterans, it also protects parties "in military service." *Boone v. Lightner*, 319 U.S. 561, 561, 575 (1943); *see also King v. St. Vincent's Hosp.*, 502 U.S. 215, 216–17, 221 n.9 (1991). To avoid confusion about the canon's scope, this brief uses the term "pro-servicemember canon."

the Revolution." *Id.* at 356. The issue was whether "the word children in the act[ ] embrace[d] the grandchildren of a deceased pensioner." *Ibid.* The Court rejected the apparent textual answer and held that "children" included "grandchildren." *See id.* at 358. The Court reasoned that a contrary result would "stop short of carrying out the humane motive of Congress" to show its "national gratitude" to "a class of men who suffered in the military service by the hardships they endured and the dangers they encountered." *Ibid.* It thus "construed" the statute "to carry out" Congress's "benign policy" to care for veterans of the Revolutionary War. *Ibid.*

Since *Walton*, this Court has repeatedly invoked the pro-servicemember canon. In *Boone v. Lightner*, 319 U.S. 561 (1943), the Court held that a servicemember-benefits statute "is *always* to be liberally construed." *Id.* at 575 (emphasis added). In *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275 (1946), the Court held that "legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need." *Id.* at 285. In *Alabama Power Co. v. Davis*, 431 U.S. 581 (1977), the Court referred to the pro-servicemember canon as a "guiding principle." *Id.* at 584. In *King v. St. Vincent's Hosp.*, 502 U.S. 215 (1991), the Court explained that it would have used "the canon" to construe a veterans-benefits statute "in the beneficiaries' favor" if the statute had been ambiguous. *Id.* at 220 n.9. In *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 441 (2011), the Court refused to find that a deadline was jurisdictional "in light of this canon." *Id.* at 441. And most recently in *Rudisill v. McDonough*, 601 U.S. 294 (2024), this Court reaffirmed "the pro-veteran canon."

Id. at 314.

Congress has expressly relied on the canon when passing legislation. When it enacted USERRA, Congress "stresse[d] its intention that the extensive body of case law" applying the pro-servicemember canon "would remain in full force and effect." S. Rep. No. 103-158, at 40 (1993); *see also* H. Rep. No. 103-65, pt. 1, at 19 (same). It cited this Court's opinions in *Fishgold* and *Alabama Power Co.* for the "basic principle" that servicemembers' "reemployment rights are to be 'liberally construed.'" S. Rep. No. 103-158 at 40 (1993). And in 2004, when considering the Servicemembers and Veterans Legal Protections Act, Congress expressed awareness of the "principle[ ] laid down by the United States Supreme Court" that a servicemember-benefits statute "is to be construed liberally." H. Rep. No. 108-683, at 40–41 (2004). This Court has thus been correct to "presume congressional understanding of" this "interpretive principle[ ]." *King*, 502 U.S. at 220 n.9.

The Executive has also used the pro-servicemember canon as an interpretive guide. The Merit Systems Protection Board cited *Fishgold*'s instruction—to "constru[e] broadly" servicemember-benefits statutes—for the proposition "that application of a time limitation to Federal employees' USERRA claims would be inconsistent with congressional intent." Uniformed Services Employment and Reemployment Rights Act of 1994, Final Rule, 64 Fed. Reg. 54,507, 54,508 (1999). The Department of Veterans Affairs also cited the "Supreme Court" decisions "liberally construing" servicemember-benefits statutes as a reason to favor a "benefit of the doubt evidentiary standard for

adjudication of [Servicemembers' Group Life Insurance Traumatic Injury Protection] claims." *See* Servicemembers' Group Life Insurance Traumatic Injury Protection, Proposed Rule, 85 Fed. Reg. 50,973, 50,976 (2020).

Accordingly, all three branches of Government have, for more than a century, consistently recognized and relied upon the pro-servicemember canon—including Congress when it enacted USERRA. Thus, to the extent there were any ambiguity in the proper application of USERRA, the Third Circuit erred because it failed to consult that venerable interpretive principle.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted.

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