

No. 22-888

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

JAMES R. RUDISILL,

Petitioner,

v.

DENIS MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

*On Writ of Certiorari to the United States
Court of Appeals for the Federal Circuit*

**BRIEF OF THE COMMONWEALTH OF
VIRGINIA, 39 OTHER STATES, THE DISTRICT
OF COLUMBIA, AND THE COMMONWEALTH
OF THE NORTHERN MARIANA ISLANDS AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

JASON S. MIYARES
*Attorney General of
Virginia*

ANDREW N. FERGUSON
*Solicitor General
Counsel of Record*

KEVIN M. GALLAGHER
*Deputy Solicitor
General*

ERIKA L. MALEY
*Principal Deputy
Solicitor General*

RICK W. EBERSTADT
*Assistant Solicitor
General*

OFFICE OF THE VIRGINIA
ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071
aferguson@oag.state.va.us

*Counsel for Amicus Curiae the Commonwealth of Virginia
(Additional Counsel listed on Signature Page)*

TABLE OF CONTENTS

INTERESTS OF *AMICI CURIAE*1

INTRODUCTION AND SUMMARY OF
ARGUMENT2

ARGUMENT4

 I. The lower court’s interpretation of the G.I. Bills
 deprives veterans of the expansive education
 benefits that Congress intended to confer.....4

 II. The lower court’s approach denies veterans the
 special solicitude the pro-veteran canon affords
 them 11

CONCLUSION 15

APPENDIXA1

TABLE OF AUTHORITIES

| | Page(s) |
|--|----------------|
| Constitutional Provisions | |
| U.S. Const. art. I, § 8..... | 4 |
| Cases | |
| <i>Boone v. Lightner</i> , 319 U.S. 561 (1943)..... | 12 |
| <i>County of Yakima v. Confederated Tribes & Bands of Yakima Indian Nation</i> , 502 U.S. 251 (1992)..... | 14 |
| <i>Desert Palace, Inc. v. Costa</i> , 539 U.S. 90 (2003)..... | 12 |
| <i>Fishgold v. Sullivan Drydock & Repair Corp.</i> , 328 U.S. 275 (1946)..... | 3, 13 |
| <i>Gregory v. Ashcroft</i> , 501 U.S. 452 (1991)..... | 14 |
| <i>Hayburn’s Case</i> , 2 U.S. (2 Dall.) 408 (1792) | 12 |
| <i>Henderson ex rel. Henderson v. Shinseki</i> , 562 U.S. 428 (2011)..... | 12 |
| <i>Johnson v. Robison</i> , 415 U.S. 361 (1974)..... | 2 |
| <i>King v. St. Vincent’s Hosp.</i> , 502 U.S. 215 (1991)..... | 12, 14 |

| | |
|--|---------------|
| <i>Kisor v. Wilkie</i> , 139 S. Ct. 2400 (2019)..... | 14 |
| <i>Selective Draft Law Cases</i> , 245 U.S. 366 (1918)..... | 4 |
| <i>Torres v. Texas Dep’t of Pub. Safety</i> , 142 S. Ct. 2455 (2022)..... | 4 |
| <i>Walton v. Cotton</i> , 60 U.S. (19 How.) 355 (1856)..... | 13 |
| Statutes | |
| 38 U.S.C. § 3011 | 8 |
| 38 U.S.C. § 3013 | 8 |
| 38 U.S.C. § 3014 | 8 |
| 38 U.S.C. § 3695 | 14 |
| Post-9/11 Veterans Educational Assistance Act, Pub. L. No. 111-252, 122 Stat. 2357 | <i>passim</i> |
| Servicemen’s Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284..... | 6,7 |
| Other Authorities | |
| Anna Quindlen, <i>Because It’s Right</i> , Newsweek (Mar. 22, 2008), https://tinyurl.com/ye25j8mr | 7 |

| | |
|--|-------|
| Cassandra Dortch, Cong. Research Serv., R44728, <i>The Role of State Approving Agencies in the Admin. of GI Bill Benefits I</i> (2016), https://tinyurl.com/ycxhcark | 9 |
| H. Rep. 110-720 | 8, 14 |
| Jennie W. Wenger & Jason M. Ward, <i>The Role of Education Benefits in Supporting Veterans as They Transition to Civilian Life</i> , RAND Corporation (2022), https://tinyurl.com/5z5cdv7h | 6 |
| Katherine Kiemle Buckley & Bridgid Cleary, <i>The Restoration & Modernization of Educ. Benefits Under the Post-9/11 Veterans Assistance Act of 2008</i> , 2 <i>Veterans L. Rev.</i> 185 (2010) | 7, 8 |
| National Association of State Approving Agencies, <i>About: Quality Education & Training Programs for Veterans</i> , https://tinyurl.com/yrdb4hcb | 9 |
| Nikki Wentling, <i>Court decides millions of veterans are eligible for more GI Bill benefits</i> , <i>Stars and Stripes</i> (Jul. 21, 2021), https://tinyurl.com/2katb3pt | 11 |
| Pres. George H.W. Bush, Remarks at a Ceremony Honoring the G.I. Bill, June 5, 1990, https://tinyurl.com/33c2uce4 | 7 |

| | |
|---|---------|
| U.S. Dept. of Defense, <i>75 Years of the GI Bill: How Transformative It's Been</i> , Jan. 9, 2019, https://tinyurl.com/yky732hk | 6, 7, 8 |
| Univ. of Va. School of Continuing and Pro. Studies, <i>Active Duty Military & Veterans</i> , https://tinyurl.com/54m2as7s | 10 |
| Va. Dept. of Veterans Serv., Comm'r 2017 Annual Report, https://tinyurl.com/3ch5xch3 | 5 |
| Va. Dept. of Veterans Serv., Comm'r 2018 Annual Report, https://tinyurl.com/3mh52zdx | 5 |
| Va. Dept. of Veterans Serv., Comm'r 2019 Annual Report, https://tinyurl.com/y8rcr2jh | 5 |
| Va. Dept. of Veterans Serv., Comm'r 2020 Annual Report, https://tinyurl.com/zn4esbbe | 5 |
| Va. Dept. of Veterans Serv., Comm'r 2021 Annual Report, https://tinyurl.com/yv5f5j27 | 5 |
| Va. Dept. of Veterans Serv., <i>Education, Training, and Employment: State Approving Agency (GI Bill)</i> , https://tinyurl.com/4r695tt7 | 9 |
| Va. Dept. of Veterans Serv., <i>Virginia Veterans Resource Guide June 2022</i> , https://tinyurl.com/yc5hbwpm | 5, 9 |

Veterans Benefits Admin., *Annual Benefits
Report Fiscal Year 2022*.....6, 9

INTERESTS OF *AMICI CURIAE*

Amici curiae are the Commonwealth of Virginia, the State of Alabama, the State of Arizona, the State of Arkansas, the State of California, the State of Colorado, the State of Connecticut, the State of Delaware, the District of Columbia, the State of Florida, the State of Georgia, the State of Idaho, the State of Illinois, the State of Iowa, the Commonwealth of Kentucky, the State of Louisiana, the State of Maine, the State of Maryland, the Commonwealth of Massachusetts, the State of Minnesota, the State of Mississippi, the State of Montana, the State of Nevada, the State of New Jersey, the State of New Mexico, the State of New York, the State of North Carolina, the Commonwealth of the Northern Mariana Islands, the State of Oklahoma, the State of Oregon, the Commonwealth of Pennsylvania, the State of Rhode Island, the State of South Carolina, the State of South Dakota, the State of Tennessee, the State of Texas, the State of Utah, the State of Vermont, the State of Washington, the State of West Virginia, the State of Wisconsin, and the State of Wyoming (the *Amici States*). *Amici States* submit this brief in support of Virginia citizen and United States Army veteran James R. Rudisill.

Since World War II, the States have partnered with the federal government to provide veterans with significant educational benefits through the federal G.I. Bills. State agencies approve educational and training programs where veterans may utilize their G.I. Bill benefits. Veterans within *Amici States*' borders have relied upon those benefits during their transition back to civilian life. Respondent Secretary of Veteran Affairs, however, seeks to limit Rudisill and veterans like him to fewer educational benefits than he has earned in his multiple tours of duty.

Amici States have two important interests in this case. First, *Amici* States have an important interest in the federal benefits that their veterans can receive. The status of these federal benefits is important to *Amici* States as they structure their own policies for assisting military members in pursuing their education and rejoining the civilian life that they have helped protect for the rest of the country.

Second, *Amici* States seek to ensure that courts continue to apply the pro-veteran canon of interpretation that this Court has long recognized as a means of respecting veterans, their service to our nation, and the substantial sacrifices they and their families have made.

INTRODUCTION AND SUMMARY OF ARGUMENT

Although the federal G.I. Bills cannot recompense “veterans for the battle risks they ran” or their “personal sacrifices,” the Bills were “designed to assist [veterans] in readjusting to civilian life and in catching up to those whose lives were not disrupted by military service.” *Johnson v. Robison*, 415 U.S. 361, 381 n.15 (1974) (quotation marks omitted). Congress first enacted these bills after World War II, and has repeatedly extended them since. A key provision of the G.I. Bills grants veterans with multiple qualifying periods of service up to 48 months of education benefits.

The Federal Circuit erroneously limited Rudisill (and veterans like him) to 36 months of education benefits, rather than the 48 months that Rudisill earned in his heroic service to his country. The Federal Circuit’s en banc decision was wrong for the reasons stated in Rudisill’s brief, and by the dissenting judges below. The Federal Circuit erroneously ruled that

Congress intended to treat reenlisting veterans of the wars this country fought following the terrorist attacks of September 11, 2001 less generously than veterans of earlier wars. This result cannot be justified as a matter of statutory text, history, or policy. It undermines the promises Congress made to veterans when they joined the Armed Forces and deprives them of their full educational benefits. And the Federal Circuit's unjustifiably narrow reading of the statute could even threaten military readiness, given that education benefits play an important role in attracting high-quality recruits to the Armed Forces.

The ruling below creates two further problems that merit reversal. First, it risks confounding the States' efforts to help veterans obtain federal benefits under the G.I. Bill and to supplement those federal benefits. Individual States work hard to ensure that veterans understand and receive their federal benefits, and supplement those federal benefits with additional State services. The federal government harms these States and their resident veterans when it reneges on its promises.

Second, the Federal Circuit wrongly refused to apply the pro-veteran canon, an important interpretative tool that protects the interests of the men and women who serve in our military. When a statute has been "designed to protect the veteran," this Court has "liberally construed [it] for the benefit of those who left private life to serve their country in its hour of great need." *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284–85 (1946). The Federal Circuit's disregard for the pro-veteran canon dramatically shrinks the field in which the canon is meant to operate. This Court should reverse.

ARGUMENT**I. The lower court’s interpretation of the G.I. Bills deprives veterans of the expansive education benefits that Congress intended to confer**

The Continental Congress created the first veterans’ benefit program (a pension for disabled veterans) in 1776 “in response to the states’ failure to pay soldiers fighting the Revolutionary War and the resulting mutinies, protests, and rebellions.” Pet. App. 39a–40a (Reyna, J., dissenting). Indeed, the failure of the Articles of Confederation adequately to provide for the raising and support of armies in defense of the whole nation was one of the principal reasons the Framers met in Philadelphia in 1787. See *Selective Draft Law Cases*, 245 U.S. 366, 381 (1918) (“When the Constitution came to be formed it may not be disputed that one of the recognized necessities for its adoption was the want of power in Congress to raise an army . . .”). Thus, “the Constitution’s text, across several Articles, strongly suggests a complete delegation of authority to the Federal Government to provide for the common defense.” *Torres v. Texas Dep’t of Pub. Safety*, 142 S. Ct. 2455, 2463 (2022). It is therefore hardly surprising that Congress, vested with the power to “declare War” and to “raise and support armies,” U.S. Const. art. I, § 8, cl. 11, 12, plays the preeminent role in caring for Americans who return to civilian life after serving their country on the battlefield.

But States also provide crucial benefits to the tens of thousands of veterans within their respective borders. They look to, and partner with, the federal government to ensure that their veterans are able to transition back to civilian life. They also supplement

federal assistance with their own. States therefore have a compelling interest in ensuring that their resident veterans are able to obtain the full scope of federal benefits to which they are entitled after putting their lives on the line to serve their country.

1. States play a critical role in providing benefits to veterans as they transition back to civilian life. Virginia, for example, is home to approximately 700,000 veterans—including Rudisill—and offers numerous innovative programs and services for veterans. These programs include the Virginia Veteran and Family Support Program, which monitors and coordinates behavioral health, rehabilitative, and supportive services through an integrated and responsive system of care; the Military Medics and Corpsmen Program, which helps put highly-skilled military medical professionals on an express track to employment in hospitals and other healthcare institutions; and the Virginia Values Veterans Transition Program, which connects veterans with employers who understand and appreciate the value of military service. Virginia Dep't of Veterans Services, *Virginia Veterans Resource Guide June 2022*, at 3, <https://tinyurl.com/yc5hbwpm>. Virginia has allocated hundreds of millions of dollars to its Department of Veterans Services to administer these programs over the last several years.¹

¹ See Virginia Department of Veterans Services, Commissioner's 2021–2017 Annual Reports, available at <https://tinyurl.com/yv5f5j27> at 74 (2021); <https://tinyurl.com/zn4esbbe> at 71 (2020); <https://tinyurl.com/y8rcr2jh> at 64 (2019); <https://tinyurl.com/3mh52zdx> at 70 (2018); <https://tinyurl.com/3ch5xch3> at 47 (2017).

Like Virginia, other *Amici* States provide wide-ranging support for millions of veterans (including providing education benefits). See Appendix. But the federal G.I. Bills account for the “vast majority of spending on veteran education benefits.” Jennie W. Wenger & Jason M. Ward, *The Role of Education Benefits in Supporting Veterans as They Transition to Civilian Life*, RAND Corporation (2022), <https://tinyurl.com/5z5cdv7h>. Indeed, over 44,000 people in Virginia received veteran education benefits from the federal government in FY 2022, including over 30,000 who received education benefits under the Post-9/11 Veterans Educational Assistance Act. Veterans Benefits Administration, *Annual Benefits Report Fiscal Year 2022* (hereinafter, “VBA Report”), at 60, <https://tinyurl.com/4zs5r8c2>. In addition, at least 10,000 Alabamans, 31,000 Arizonans, 50,000 Californians, 38,000 Floridians, 6,000 Minnesotans, 3,400 Nevadans, 5,100 New Jerseyans, 15,000 New Yorkers, 4,000 Oregonians, 7,500 South Carolinians, and 47,000 Texans relied on the Post-9/11 Veterans Educational Assistance Act to fund their education in FY 2022. *Id.* at 14, 16, 18, 23, 37, 42, 44, 46, 51, 54, 57.

Members of the Armed Forces have relied on the United States’ promise to provide veterans with education benefits since World War II. In 1944, Congress enacted the Servicemen’s Readjustment Act, known commonly as the “G.I. Bill.” See Servicemen’s Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284. This bill offered aid to the sixteen million men and women who defeated America’s enemies in Europe and the Pacific, and offered to help them pursue an education, find a job, buy a home, and successfully transition back to civilian life after the war. U.S. Department of Defense, *75 Years of the GI Bill: How*

Transformative It's Been, Jan. 9, 2019, <https://tinyurl.com/yky732hk>.

The G.I. Bill's education benefits were transformative for veterans, and for the whole country. The Bill gave veterans the right to apply to the education and training programs of their choice. § 400, 58 Stat. 287. Its benefits covered tuition, books, supplies, counseling, and living allowances for education expenses. The "tuition benefits under the GI Bill of 1944 more than covered the cost of higher education." Katherine Kiemle Buckley & Bridgid Cleary, *The Restoration & Modernization of Educ. Benefits Under the Post-9/11 Veterans Assistance Act of 2008*, 2 Veterans L. Rev. 185, 190 (2010). And veterans used these benefits to great effect: within seven years of the G.I. Bill's passage, over eight million veterans had used the program, and the number of college and university degree-holders in the United States more than doubled between 1940 and 1950. See *75 Years of the GI Bill*, *supra*.

President George H.W. Bush later described the G.I. Bill as having "changed the lives of millions by replacing old roadblocks with paths of opportunity." Pres. George H.W. Bush, Remarks at a Ceremony Honoring the G.I. Bill, June 5, 1990, available at <https://tinyurl.com/33c2uce4>. And commentators have since observed that "[e]very dollar spent on the GI Bill was multiplied many times over in benefits to the postwar U.S. economy." Anna Quindlen, *Because It's Right*, Newsweek (Mar. 22, 2008), <https://tinyurl.com/ye25j8mr>. Its success has led it to be "viewed by most historians as a resounding legislative achievement, which resulted not only in the successful reintegration of millions of World War II veterans, but also the renewal of the American dream through

expanded access to higher education and home ownership.” Buckley & Cleary, *supra*, at 185.

Congress has extended the G.I. Bill’s benefits several times since World War II. The bill in revised forms helped more than ten million veterans after the wars in Korea and Vietnam. See *75 Years of the GI Bill, supra*. In 1984, Congress again extended the benefits when it enacted the Montgomery G.I. Bill. Servicemembers who entered the Armed Forces between July 1984 and September 2030, and served in active duty for two or three continuous years (depending on the enlistment contract), were eligible for 36 months of Montgomery benefits to help meet the costs of tuition, books, and fees. 38 U.S.C. §§ 3011(a)(1)(A), 3013(a)(1), 3014(a). And after the terrorist attacks of September 11, 2001, Senator Jim Webb of Virginia led the effort to update the G.I. Bill for the veterans who fought in the “especially arduous” wars that followed. H. Rep. 110-720 at 37.

This Post-9/11 Veterans Educational Assistance Act (“Post-9/11 G.I. Bill”), Pub. L. No. 110-252, 122 Stat. 2357 (codified at 38 U.S.C. §§ 101, 3301, 3311–19, 3321–24), was meant to recognize “the difficult challenges in readjusting to civilian life after wartime service involved in the Armed Forces,” and provide post-9/11 veterans “with enhanced educational assistance benefits” that are “worthy of such service.” H. Rep. 110-720 at 37. Accordingly, the benefits are more extensive than those that the Montgomery G.I. Bill offered. See, *e.g.*, Pet. App. 9a. The Post-9/11 G.I. Bill has since provided educational benefits to hundreds of thousands of veterans and their families; for instance, in fiscal year 2022, 564,501 beneficiaries received over \$8 billion in Post-9/11 G.I. Bill payments. See VBA Report at 11.

Administering the G.I. Bills is not an exclusively federal endeavor: States partner with the federal government to “play an important role in the administration of [G.I. Bill] benefits.” Cassandra Dortch, Cong. Research Serv., R44728, *The Role of State Approving Agencies in the Administration of GI Bill Benefits I* (2016), available at <https://tinyurl.com/ycxhcark>. State Approving Agencies (SAAs) promote and safeguard quality education and training programs for veterans to ensure greater education and training opportunities for returning military members. 38 U.S.C. 3671(a); National Association of State Approving Agencies, *About: Quality Education & Training Programs for Veterans*, available at <https://tinyurl.com/yrdb4hcb>. SAAs decide whether to approve schools and training programs for use with G.I.-Bill funds, and help schools and training facilities that seek approval. *Ibid.* These state agencies work with federal agencies and other stakeholders to make G.I. Bills the best education assistance programs possible for veterans.

For example, the Virginia SAA approves and monitors more than 900 programs that are certified for G.I.-Bill use. *Virginia Veterans Resource Guide June 2022, supra*, at 3; Virginia Dep’t of Veterans Services, *Education, Training, and Employment: State Approving Agency (GI Bill)*, <https://tinyurl.com/4r695tt7>. In that capacity, the Virginia SAA works with Virginia’s public universities to provide G.I. Bill-covered education for veterans. For example, at the University of Virginia’s School of Continuing and Professional Studies, approximately ten percent of the students are veterans, and another six percent are in active duty, or the spouses or children of veterans. See University of Virginia School of Continuing and Professional

Studies, *Active Duty Military & Veterans*, <https://tinyurl.com/54m2as7s>.

2. Given their important role in the administration of G.I. Bill benefits and their provision of supplemental benefits to veterans, *Amici* States have a strong interest in ensuring that veterans like Rudisill are not deprived of well-earned education benefits by the federal government—benefits that undoubtedly play a critical role in some servicemembers’ decisions to volunteer for the Armed Forces.

Rudisill volunteered to serve his country in the Armed Forces. He spent nearly eight total years in the U.S. Army over the course of three separate tours of duty, during which he fought in two of America’s wars abroad in Afghanistan and Iraq. Pet. App. 81a–82a. He served with remarkable distinction and received several commendations for his service, including the Bronze Star. He also suffered injuries in a suspected suicide attack and from roadside bombs, and he helped save numerous American lives by turning back a Taliban assault on his remote outpost and directing medical evacuations under fire. Fed.Cir.Dkt.24 at 4. He was twice honorably discharged, and relied on approximately 25 months of education benefits under the Montgomery G.I. Bill before November 2007 to obtain his undergraduate degree. He then reenlisted, was commissioned as an officer, and served for a third tour from 2007 to 2011. Pet. App. 20a, 82a.

After completing his third tour, Rudisill wanted to serve his country a fourth time, this time as an Army Chaplain. Pet. App. 82a. He gained admission into Yale Divinity School to prepare for the role. *Ibid.* Congress had passed the Post-9/11 G.I. Bill during his third tour of duty, so he applied for Post-9/11 G.I. Bill

benefits based on his understanding that, under the Bill, he had approximately 22 months of education benefits remaining out of his 48 aggregate months. Pet. App. 57a.

The U.S. Department of Veterans Affairs informed him, however, that it would instead limit his Post-9/11 benefits to 10 months and 16 days, because Rudisill had used some of his entitled benefits under the prior version of the G.I. Bill. Pet. App. 83a. Rudisill thus was unable to attend Yale Divinity School to become a military chaplain. See Nikki Wentling, *Court decides millions of veterans are eligible for more GI Bill benefits*, Stars and Stripes (Jul. 21, 2021), <https://ti-nyurl.com/2katb3pt>.

This Court should secure the rights of hundreds of thousands of veterans—like Rudisill—placed in jeopardy by the Federal Circuit’s decision below. The federal government has borne primary responsibility for the care of veterans since the Constitution’s adoption concomitantly with its exclusive exercise of the war powers. Although States play a critical role in administering federal benefits and in providing supplemental benefits, they lack the resources to fill the breach opened by a contraction of federal benefits. The Federal Circuit’s stenotic reading of the Post-9/11 G.I. Bill threatens precisely such a contraction.

II. The lower court’s approach denies veterans the special solicitude the pro-veteran canon affords them

The Federal Circuit’s rejection of the pro-veteran canon contravenes this Court’s well established case law and disrespects veterans and the services they have rendered to our nation. This Court has “long applied” the canon that “provisions for benefits to

members of the Armed Services are to be construed in the beneficiaries' favor." *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 441 (2011) (quotation marks omitted). Rudisill's opening brief correctly explains that the Montgomery G.I. Bill and Post-9/11 G.I. Bill unambiguously allow up to 48 months of aggregate benefits. Rudisill Br. 43–58. The Court therefore need not resort to any of its ambiguity-resolution tools. See, e.g., *Desert Palace, Inc. v. Costa*, 539 U.S. 90, 98 (2003) (Where "the words of the statute are unambiguous, the judicial inquiry is complete." (quotation marks omitted)). But, to the extent any ambiguity exists, the pro-veteran canon requires resolution in Rudisill's favor. The Federal Circuit thus erred in rejecting the holding of the Court of Appeals for Veterans Claims, which correctly concluded that if the pro-veteran canon would "ever have a real effect on an outcome, it would be here." Pet. App. 127a.

This Court has long recognized the "canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." *King v. St. Vincent's Hosp.*, 502 U.S. 215, 220 n.9 (1991). The Court first recognized the canon in 1943, when it held that the Soldiers' and Sailors' Civil Relief Act of 1940 was "always to be liberally construed 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). But the origins of the canon stretch back even further—all the way to the Founding. See *Hayburn's Case*, 2 U.S. (2 Dall.) 408, 410 (1792) (letter from Chief Justice John Jay to President George Washington on behalf of the Circuit Court for the District of New York expressing concerns about the legality of the Invalid Pensions Act of 1792 yet adopting an interpretation of the act that permitted circuit court judges to hear the claims of

veterans, because the objects of the veterans' benefit statute "are exceedingly benevolent, and do real honor to the humanity and justice of Congress"); *Walton v. Cotton*, 60 U.S. (19 How.) 355, 358 (1856) (in passing acts that granted pensions to Revolutionary War soldiers, Congress was "presumed to have acted under the ordinary influences which lead to an equitable and not a capricious result"). Thus, when a statute has been "designed to protect the veteran," the Court has "liberally construed [it] for the benefit of those who left private life to serve their country in its hour of great need." *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 284–85 (1946).

The Federal Circuit held that this pro-veteran canon "plays no role" because "the language of the statute is unambiguous." Pet. App. 16a–17a. As Judge Reyna explained in dissent, however, this holding is "belied by a number of factors": the "near entirety" of the lower court's opinion was "devoted to classic statutory interpretation"; the question before the court had "a rich history of litigation"; the case had "garnered the attention of numerous amici"; and the majority "overturn[ed] the judgment of the Court of Appeals for Veterans Claims." Pet. App. 42a.

Substantive canons of interpretation safeguard important substantive values. The pro-veteran canon protects the interests of the men and women who put their lives on the line to defend our country against foreign adversaries, and comports with the will of Congress that these veterans receive expansive and substantial benefits in recognition of their service. *King*, 502 U.S. at 220 n.9; H. Rep. 110-720 at 37. This canon protects these interests in the same way that other canons protect the interests of Native American tribes, *County of Yakima v. Confederated Tribes &*

Bands of Yakima Indian Nation, 502 U.S. 251, 269 (1992), and *States, Gregory v. Ashcroft*, 501 U.S. 452, 460–61 (1991). Courts use these canons as part of their “interpretive toolkit” to “reach a decision about the best and fairest reading of the law.” *Kisor v. Wilkie*, 139 S. Ct. 2400, 2430 (2019) (Gorsuch, J., concurring). The pro-veteran canon should likewise guide courts’ interpretation.

Here, failure to follow the pro-veteran canon risks contravening Congress’s clear purpose in passing the Post-9/11 G.I. Bill: to provide veterans like Rudisill, who fought after September 11, 2001, with expansive benefits for his honorable service to the nation. H. Rep. 110-720 at 37. Interpreted consistently with the canon, the statute entitles Rudisill to the benefits he sought. Congress enacted the G.I. Bills to expand education access for veterans, and allowed veterans who reenlist multiple times to seek up to 48 months of aggregate education benefits. 38 U.S.C. § 3695. Thus, the Post-9/11 G.I. Bill’s text and context show that the statute did not unambiguously impose a new limitation on certain veterans to receive only 36 months of benefits as the result of a technicality. And unless the statute unambiguously forecloses Rudisill’s reading of the statute, then the pro-veteran canon commands the result that Congress intended: to provide Rudisill, and numerous veterans like him, the benefits that they need to pursue their education.

CONCLUSION

The judgment of the Federal Circuit should be reversed.

August 17, 2023

Respectfully submitted,

JASON S. MIYARES
*Attorney General
of Virginia*

ANDREW N. FERGUSON
*Solicitor General
Counsel of Record*

KEVIN M. GALLAGHER
*Deputy Solicitor
General*

ERIKA L. MALEY
*Principal Deputy Solicitor
General*

RICK W. EBERSTADT
*Assistant Solicitor
General*

OFFICE OF THE VIRGINIA
ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071
aferguson@oag.state.va.us

Counsel for Amicus Curiae the Commonwealth of Virginia

Counsel for Additional Amici States

STEVE MARSHALL
Attorney General
State of Alabama

KRISTIN K. MAYES
Attorney General
State of Arizona

TIM GRIFFIN
Attorney General
State of Arkansas

ROB BONTA
Attorney General
State of California

PHILIP J. WEISER
Attorney General
State of Colorado

WILLIAM TONG
Attorney General
State of Connecticut

KATHLEEN JENNINGS
Attorney General
State of Delaware

BRIAN L. SCHWALB
Attorney General
District of Columbia

ASHLEY MOODY
Attorney General
State of Florida

CHRISTOPHER M. CARR
Attorney General
State of Georgia

RAÚL R. LABRADOR
Attorney General
State of Idaho

KWAME RAOUL
Attorney General
State of Illinois

BRENNA BIRD
Attorney General
State of Iowa

DANIEL CAMERON
Attorney General
Commw. of Kentucky

JEFF LANDRY
Attorney General
State of Louisiana

AARON M. FREY
Attorney General
State of Maine

ANTHONY G. BROWN
Attorney General
State of Maryland

ANDREA JOY CAMPBELL
Attorney General
Commw. of Massachusetts

KEITH ELLISON
Attorney General
State of Minnesota

LYNN FITCH
Attorney General
State of Mississippi

AUSTIN KNUDSEN
Attorney General
State of Montana

AARON D. FORD
Attorney General
State of Nevada

MATTHEW J. PLATKIN
Attorney General
State of New Jersey

RAÚL TORREZ
Attorney General
State of New Mexico

LETITIA JAMES
Attorney General
State of New York

JOSHUA STEIN
Attorney General
State of North Carolina

EDWARD E. MANIBUSAN
Attorney General
Commw. Northern
Mariana Islands

GENTNER F. DRUMMOND
Attorney General
State of Oklahoma

ELLEN F. ROSENBLUM
Attorney General
State of Oregon

MICHELLE A. HENRY
Attorney General
Commw. of Pennsylvania

PETER F. NERONHA
Attorney General
State of Rhode Island

ALAN WILSON
Attorney General
State of South Carolina

MARTY J. JACKLEY
Attorney General
State of South Dakota

JONATHAN SKRMETTI
Attorney General
State of Tennessee

ANGELA COLMENERO
Prov. Attorney Gen.
State of Texas

SEAN D. REYES
Attorney General
State of Utah

CHARITY R. CLARK
Attorney General
State of Vermont

ROBERT W. FERGUSON
Attorney General
State of Washington

PATRICK MORRISEY
Attorney General
State of West Virginia

JOSHUA L. KAUL
Attorney General
State of Wisconsin

BRIDGET HILL
Attorney General
State of Wyoming

Appendix

Like Virginia, other *Amici* States provide wide-ranging support for millions of veterans (including providing education benefits).

More than 350,000 veterans live in Alabama. VBA Report at 14. Among other programs to assist these veterans, Alabama offers a dependent scholarship program to more than 16,000 students, totaling nearly \$43 million in educational benefits for the dependents of disabled veterans attending Alabama universities, community colleges, and technical schools. Alabama Department of Veterans Affairs, *Fiscal Year 2021 Annual Report*, at 8, <https://tinyurl.com/5ykc5wyn>. Alabama's Department of Veterans Affairs spent over \$52 million in FY 2021 to assist Alabama veterans. *Id.* at 19.

Arizona has nearly 500,000 veterans. VBA Report at 16. The State provides a wide array of housing, healthcare, finance, education, employment, and recreation benefits to its veterans. Specifically, it has created in-state tuition benefits for qualifying veterans, tuition waivers for injured or disabled veterans of the Arizona National Guard or the family members of those killed in the line of duty, veterans' nursing and rehabilitative homes, and a military relief fund, providing financial assistance to veteran families that experienced hardship caused by a deployment. Arizona Department of Veterans' Services, *Arizona Benefits Guide October 2021*, at 6–7, 10, 12, <https://tinyurl.com/3645rfh4>. In any given year Arizona spends between \$57 million and \$81 million per year on veterans' services. State of Arizona, *Master List of State Government Programs: State Agencies' Five Year*

Strategic Plans, at 834 (Nov. 2022), <https://tinyurl.com/57b63zff>.

California is home to roughly 1.6 million veterans and provides them a variety of services. These programs include the Veterans Homes Program, which provides housing, skilled nursing, and independent living supports for elderly veterans and veterans with disabilities; the CalVet Home Loans Program, which has helped California veterans and their families become homeowners for over one hundred years; and the California Transition Assistance Program, which informs and connects veterans to their earned federal and state benefits.² Approximately 89,000 veterans, active-duty servicemembers, and dependents are enrolled in California Community Colleges alone, see California Community Colleges, *Serving Those Who Serve Us*, <https://tinyurl.com/y5t5af5t>, while the University of California system enrolls an additional 2,000 veterans and military-affiliated students annually, see University of California, *Institutional Research and Academic Planning, March 2020*, <https://tinyurl.com/4zdtvafe>.

More than 1.45 million veterans live in Florida. VBA Report at 23. The State of Florida created a non-profit called Veterans Florida to recruit veterans to Florida and assist them in finding jobs to transition to civilian life. See Veterans Florida, <https://tinyurl.com/4p8dt2p3>. The Florida Legislature also funds the Florida Veterans Foundation to meet the unfunded emergency needs of Florida veterans. See Florida Veterans Foundation,

² See CalVet pages that describe these programs, available at <https://tinyurl.com/5n8mapyj>; <https://tinyurl.com/4934y8f7>; <https://tinyurl.com/4z3stdjk>.

<https://tinyurl.com/2fh6w7nf>. During the Fiscal Year 2023-2024, Florida budgeted over \$200 million for veterans' services. Florida Senate, *SB 2500 – General Appropriations Act*, <https://tinyurl.com/3334e7ka>.

Minnesota has over 300,000 veterans. Minnesota Department of Veterans Affairs, *2022 Annual Report*, at 5, <https://tinyurl.com/bdftarfe>. The State spends millions of dollars on veterans services every year, including over \$52 million in specific appropriations in FY 2023. *Id.* at 10.

There are over 216,000 veterans in Nevada. VBA Report at 42. Nevada offers numerous state programs for veterans, including work opportunity tax credits to employers who employ veterans, veteran preferences for state hiring, tax exemptions for veterans which may be used to reduce vehicle or personal property taxes, and annual permit discounts for Nevada State Parks. Nevada Department of Veterans Services, *Nevada Transition Assistance Program (NVTAP)*, <https://tinyurl.com/44xukeuz>.

New Jersey has over 300,000 veterans. VBA Report at 44. Included among New Jersey's services for its veterans are programs offering peer-to-peer counseling and mental health support, PTSD-recovery programming, and assistance with issues involving education, employment, and housing. See, e.g., New Jersey Vet2Vet, <https://tinyurl.com/36prj9xv>; New Jersey Veterans Affairs Resources, <https://tinyurl.com/38medjtj>. New Jersey's FY 2024 budget appropriated approximately \$121 million to its Department of Military and Veterans Affairs to serve these veterans. See New Jersey 2024 Appropriations Bill, at B1, <https://tinyurl.com/37pp6z7y>.

In New York, there are over 688,000 veterans. See New York State Division of Veterans' Services, *2022 Annual Report*, at 5, <https://tinyurl.com/2s4mcd2z>. The State runs many important veterans-related programs, such as those to combat food insecurity among veterans, defend veterans' rights, and provide continuing education opportunities. *Id.* at 17–28. New York spent \$53 million in FY 2022-23 on these services, including millions of dollars advising veterans on their benefits, aid to localities, Gold-Star family services, and cemetery services. *Id.* at 7.

Oregon has over 277,000 veterans living within the State. VBA Report at 51. Oregon offers veterans a home-loan program, several education programs, special advocacy programs for veterans, and numerous grant programs, among other benefits.³

South Carolina counts nearly 400,000 veterans among its residents, and offers a variety of services to care for these veterans. South Carolina Department of Veterans Affairs, *SCDVA Releases 2022 Study of the Economic Impact of SC's Military* (June 29, 2022), <https://tinyurl.com/yb76m6vn>. Among these services are free college tuition for children of certain wartime veterans; waived real property taxes for certain veterans; waived fees for hunting and fishing licenses; and no state income tax on military retirement pay.⁴

³ See Oregon Department of Veterans Affairs pages on these programs, including <https://tinyurl.com/yd72cr23>; <https://tinyurl.com/yru82skb>; <https://tinyurl.com/mr3s2ea8>; <https://tinyurl.com/yk5yr5eb>.

⁴ See South Carolina pages on these programs, available at <https://tinyurl.com/23yh59rm>; <https://tinyurl.com/2h8t6j3n>; <https://tinyurl.com/yckk3yr6>; <https://tinyurl.com/4hbpvxh4>.

A5

Finally, Texas has over 1.5 million veterans. Texas Workforce Investment Council, *Veterans in Texas: A Demographic Study (2021 Update)*, <https://tinyurl.com/58wm2mpp>. Several different State agencies provide services to veterans, including the Texas Veterans Commission, the Veterans Land Board, and the Texas Veterans Portal.⁵ Across these agencies, Texas provides veterans assistance with education, employment, health care advocacy, home and land assistance, and benefits services.

⁵ See Texas pages on these programs, available at <https://tinyurl.com/bdh89y65>; <https://tinyurl.com/ycxk5vmn>; <https://tinyurl.com/mr3zv6ev>