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No. 08-525

IN THE

Supreme Court of the United States

JONATHAN L. HAAS,
Petitioner,

v.

JAMES B. PEAKE, M.D., 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 THE AMERICAN LEGION, MILITARY ORDER OF THE PURPLE HEART, AND UNITED SPINAL ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

TABLE OF CONTENTS

TABLE OF AUTHORITIES

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INTEREST OF *AMICI CURIAE*

Amici curiae have a vital interest in the resolution of the question presented in this case.[1]

[1] The parties have consented to the filing of this amicus brief. Counsel of record for all parties received notice at least 10 days prior to the due date of the *amici curiae*'s intention to file this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund its preparation or submission. No person other than *amici curiae*, their members, or their counsel made a monetary contribution to the preparation or submission of this brief.

Amicus curiae The American Legion is a not-for-profit veterans service organization that, among other things, helps war-time veterans and their families. Among its several million members are many veterans who served in the territorial waters of the Republic of Vietnam during the Vietnam era.

Amicus curiae Military Order of the Purple Heart is a not-for-profit organization of combat-wounded veterans that serves all veterans and their families. Its members likewise include many who served in the territorial waters of the Republic of Vietnam during the Vietnam era.

Amicus curiae United Spinal Association is a not-for-profit membership organization founded by paralyzed veterans. Its mission is to improve the quality of life for all Americans, including veterans, who have spinal cord injuries and disorders.

These organizations ("Amici") also provide advocates who represent many claimants for benefits before the Department of Veterans Affairs ("DVA"). By virtue of their missions, Amici have an interest in ensuring that those who serve the United States in time of war receive in a fair and expeditious manner the disability benefits to which Congress has entitled them. This includes ensuring proper application of the presumptions established by Congress in the Agent Orange Act of 1991 to Vietnam veterans who are situated similarly to the claimant here.

This Court's review is necessary to prevent the systematic application of a defective framework for construing veterans benefits statutes. If followed, the approach of the United States Court of Appeals for the Federal Circuit will permit the erosion of important benefits that Congress has conferred upon

veterans. Amici have a strong interest in preserving these benefits for veterans in need. Amici therefore urge this Court to grant the petition for certiorari.

SUMMARY OF ARGUMENT

The petition for certiorari should be granted because the Federal Circuit's decision frustrates the will of Congress by wrongly deciding important legal questions with significant practical consequences. Congress intended to compensate blue-water Navy veterans for Agent-Orange-related disabilities to the same extent as other veterans who served in the Republic of Vietnam during the Vietnam era. The Federal Circuit's frustration of this intent is based on its adoption of an incorrect legal framework for construing veterans benefits statutes.

Application of that framework in this case already portends the denial of important disability benefits to a large class of veterans whom Congress intended to compensate. If allowed to stand, the continued application of this mistaken framework threatens to erode other benefits that Congress has conferred upon this Nation's service veterans.

Amici support each of the grounds for review advanced by Commander Haas in his petition. This amicus brief focuses on the legal and practical significance of two of the Federal Circuit's errors. The first error is the Federal Circuit's departure from the "plain meaning" canon of statutory construction. The second error is the Federal Circuit's award of priority to *Chevron* deference over the pro-veteran canon of statutory construction required by this Court's precedent.

ARGUMENT

A. This Court Should Grant Review to Ensure Conformity to the "Plain Meaning" Canon in Interpreting Veterans Benefits Statutes.

The Federal Circuit held that naval veterans who served only in the territorial waters of the Republic of Vietnam did not "serve[ ] in the Republic of Vietnam" within the meaning of 38 U.S.C. § 1116(a)(1)(A). The threshold step in the Federal Circuit's analysis was its ruling that "served in the Republic of Vietnam" is ambiguous. The Federal Circuit arrived at this conclusion by identifying several conceivable interpretations that would exclude the service of blue-water Vietnam veterans. *See* Pet. at 18-27.

The Federal Circuit's methodology in concluding the statutory term is ambiguous contravenes this Court's precedent. This Court has held that "[a]mbiguity is a creature not of definitional possibilities but of statutory context." *Brown v. Gardner*, 513 U.S. 115, 118 (1994); *see also Moskal v. United States*, 498 U.S. 103, 108 (1990) ("Because the meaning of language is inherently contextual, we have declined to deem a statute 'ambiguous' for purposes of lenity merely because it was *possible* to articulate a construction more narrow than that urged by the Government."). Accordingly, the context of the statute must be considered in determining whether a statutory term has a plain meaning and, if so, what that plain meaning is. *See also King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991) ("[T]he meaning of statutory language, plain or not, depends on context.").

Here, the Federal Circuit found ambiguity based on its conception of the definitional possibilities largely

unmoored from the statutory purpose and history. *See* Pet. at 18-27. This is precisely the kind of approach to statutory construction that this Court has held improper. *See, e.g.*, *Brown*, 513 U.S. at 118; *King*, 502 U.S. at 221; *Moskal*, 498 U.S. at 108. And once the statutory context is properly accounted for, the meaning of "served in the Republic of Vietnam" is clear. *See* Pet. at 18-27.

If left intact, the Federal Circuit's approach to statutory interpretation in this case will give the DVA wide latitude to narrow improperly the scope of veterans benefits statutes. If ambiguity can be found so readily in a statutory term whose meaning is clear in context, and a restrictive agency interpretation is then given *Chevron* deference, it will be easy to thwart Congress's intent to confer benefits more broadly than the agency is inclined to recognize.

B. This Court Should Grant Review to Ensure Conformity to the Pro-Veteran Canon in Interpreting Veterans Benefits Statutes.

After finding ambiguity where none exists, the Federal Circuit compounded its error by applying *Chevron* deference over the pro-veteran canon of statutory construction. *See* Pet. at 27-30. This canon requires the resolution of interpretive ambiguities in veterans benefits statutes in favor of the veteran. *Brown*, 513 U.S. at 118. It is not merely a tie-breaking principle of last resort. Rather, Congress is presumed to legislate against the backdrop of this principle, *King*, 502 U.S. at 220-21 n.9, to assist "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, 285 (1946).

The pro-veteran canon thus gives effect to Congress's intent. Consequently, *Chevron* itself demands application of this canon ahead of any deference to the agency's interpretation. That is because *Chevron* deference comes into play only when Congress's intent is unclear, *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 n.9 (1984), and the pro-veteran canon serves to clarify Congress's intent when the scope of a veterans benefits statute is called into question, *King*, 502 U.S. at 220-21 n.9.

The Federal Circuit previously recognized the need to prioritize the pro-veteran canon over *Chevron* deference. *See* Pet. at 28. A plurality of the *en banc* court recently reinforced the point. *See Kirkendall v. Department of Army*, 479 F.3d 830, 846 (Fed. Cir. 2007). In *Kirkendall*, the plurality observed that the Uniformed Services Employment and Reemployment Rights Act "emphatically does not admit of deference to the [Merit Systems Protection Board] à la *Chevron* because '[i]f a court, employing traditional tools of statutory construction, ascertains that Congress had an intention on the precise question at issue, that intention is the law and must be given effect.'" 479 F.3d at 846 (quoting *Chevron*, 467 U.S. at 843 n.9) (second alteration in original). The plurality concluded that "[a]fter applying the [pro-veteran canon], it is abundantly clear that Congress' intent is to provide veterans a hearing upon request, especially because we 'presume congressional understanding of such interpretive principles,' at the time of enactment." *Id*. at 846 (quoting *King*, 502 U.S. at 220-21 n.9).

The Federal Circuit now has given conflicting guidance on the interplay of the pro-veteran canon and

Chevron. And the Federal Circuit declined to resolve the conflict *en banc* in this case. Both the pro-veteran canon and the *Chevron* framework were established by this Court's precedent. And the Federal Circuit has exclusive Court of Appeals jurisdiction with respect to the questions at hand. *See* 38 U.S.C. § 7292(c) (vesting in the Federal Circuit "exclusive jurisdiction to review and decide any challenge to the validity of any statute or regulation or any interpretation thereof" in cases involving review of a decision of the United States Court of Appeals for Veterans Claims). As a result, this Court's intervention is warranted now.[2]

The pro-veteran canon recognizes the "strongly and uniquely pro-claimant" character of veterans benefits statutes. *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998). The Federal Circuit's framework for statutory interpretation in this case undermines this character of the statutes. The Federal Circuit bypassed the pro-veteran canon to apply an unalloyed *Chevron* analysis. In doing so, the Federal Circuit has authorized the DVA to thwart Congress's intent to compensate veterans to the full extent of its legislation. The decision allows the DVA instead to construe ambiguous veterans benefits statutes parsimoniously subject only to *Chevron* reasonableness review. Immediate review is warranted to repair the Federal Circuit's defective framework before it

[2] The Court of Appeals for Veterans Claims also has recognized the need for this Court's guidance on this issue. *See DeBeaord v. Principi*, 18 Vet. App. 357, 368 (2004) (discussing possible tension between pro-veteran canon and *Chevron* and noting that "guidance from the Supreme Court would appear necessary to resolve this matter definitively").

deprives veterans of badly-needed, legislatively-intended benefits here and in other cases.

The consequences of this case for blue-water Vietnam veterans' access to the particular disability benefits at issue are reason enough to grant review. The broader implications of the Federal Circuit's methodology for the interpretation of veterans benefits statutes make review all the more imperative.

CONCLUSION

The petition for certiorari raises questions of great legal and practical importance to those who have served this Nation in its armed forces. The Federal Circuit answered these questions in a manner contrary to this Court's precedent and detrimental to disabled veterans. Amici thus urge this Court to grant the petition.

Respectfully submitted,

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