FROM DEFERENCE TO DUTY: ADVANCING THE PRO-VETERAN CANON IN THE *LOPER BRIGHT* ERA

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> "As I prepare to leave government, I am struck by a recurring thought: It should not be this hard to serve your country."[1]
>
> –David J. Shulkin, M.D., Former U.S. Secretary of Veterans Affairs

ABSTRACT

The United States has long pledged to support those who serve, yet legal scholars and veterans' advocates have increasingly questioned whether our institutions effectively deliver the benefits veterans have earned. This concern is most evident in the Department of Veterans Affairs, which frequently denies claims and interprets veteran-friendly statutes in ways that conflict with its duty to assist veterans. For decades, courts exacerbated this issue by applying Chevron *deference in VA benefits cases, requiring them to accept the VA's statutory interpretations even when inconsistent with congressional intent. This broad deference often led to decisions that denied veterans*

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1. David J. Shulkin, *Privatizing the V.A. Will Hurt Veterans*, N.Y. TIMES (Mar. 28, 2018), https://www.nytimes.com/2018/03/28/opinion/shulkin-veterans-affairs-privatization.html [https://perma.cc/MD2U-3AK5]. Shulkin, former Secretary of Veterans Affairs, also earned his M.D. from Drexel University College of Medicine, where he later served as co-chairman and Vice Dean. *See Former U.S. Secretary of Veterans Affairs Will Deliver Drexel College of Medicine Commencement Address*, DREXELNEWS (May 1, 2019), https://drexel.edu/news/archive/2019/May/College-of-Medicine-Commencement-Speaker-Shulkin/ [https://perma.cc/9BC9-BECX].

essential medical and financial support, eroding trust in an agency designed to support them.

The Supreme Court's decision in Loper Bright Enterprises v. Raimondo *overturned* Chevron *deference, presenting an opportunity to correct long-standing failures in agencies like the VA. Without* Chevron*, courts are no longer required to accept agency interpretations that may conflict with congressional intent, opening the door for a more just and balanced approach to veterans' claims. This shift presents an opportunity to restore fairness to a system that has too often disadvantaged veterans.*

Courts, Congress, and the VA each have a duty to uphold the pro-veteran principles embedded in Title 38. This Note provides that, to uphold this duty, courts should adopt the pro-veteran canon as the primary interpretive framework in VA benefits cases, ensuring fairness and fidelity to congressional intent. However, judicial application of this canon alone is insufficient, as courts may remain tethered to precedent developed under the now-defunct Chevron *framework. A lasting solution requires judicial vigilance and deliberate legislative reform. Congress must codify its pro-veteran intent to provide clear guidance to courts and pursue reforms that cure the VA's deficiencies. Collectively, these efforts will ensure that veterans are cared for before and after disputes arise without being mired in an opaque and burdensome legal process that too often fails them.*

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INTRODUCTION

The Department of Veterans Affairs,[2] plagued by a history of mismanagement and inefficiency,[3] has failed to uphold the Nation's solemn promise to care for those who have served in the armed forces.[4] Despite its broad mandate to provide essential benefits and support,[5] the VA has become synonymous with bureaucratic dysfunction—marked by an overwhelming backlog of claims,[6] excessive delays,[7] and restrictive lending of

2. *See VA Structure*, U.S. DEP'T OF VETERANS AFFS. (Dec. 4, 2024), https://www.ruralhealth.va.gov/aboutus/structure.asp [https://perma.cc/B9Q3-KP5T]. The VA is a federal agency tasked with delivering benefits, health care, and cemetery services to military veterans. *Id.* This Note focuses on the VA's role in administering veterans' benefits.

3. *See, e.g.*, Hugh McClean, *Delay, Deny, Wait Till They Die: Balancing Veterans' Rights and Non-Adversarial Procedures in the VA Disability Benefits System*, 72 SMU L. REV. 277, 278–82 (2019) (highlighting the failures of the VA); *Legion Urges Congress to Re-Evaluate Fiduciary Programs*, AM. LEGION (June 17, 2015), https://www.legion.org/veteransbenefits/228250/legion-urges-congress-re-evaluate-fiduciary-programs [https://perma.cc/SS7N-GAAU] (discussing findings regarding inefficiencies plaguing the VA, including significant backlogs in adjudication, burdening family members, and stripping away the constitutional rights of veterans); *VA Wasted $233 Million on Transportation Services, Failed to Pay Veterans' Medical Bills Resulting in Denied Care*, U.S. OFF. OF SPECIAL COUNS. (Dec. 13, 2019), https://osc.gov/News/Pages/20-07-VA-Wasted-223-Million.aspx [https://perma.cc/E8BW-GZFG] (describing the VA's financial mismanagement as, at best, negligence and, at worst, a "gross waste of funds").

4. *See History of Serving Veterans*, U.S. DEP'T OF VETERANS AFFS. (June 13, 2025), https://department.va.gov/history/history-overview/ [https://perma.cc/E5CW-RY52]. This principle dates back to the founding era, with George Washington being credited for expressing the belief that "a nation will be judged by how it treats its defenders." Sherman Gillums, *Why Veteran Treatment Matters*, PARALYZED VETERANS OF AM. (June 22, 2017), https://pva.org/blog/veteran-treatment-matters/ [https://perma.cc/ZF54-9YSG].

5. *See, e.g.*, 38 U.S.C. § 1110 (outlining the basic entitlements for disability benefits); 38 U.S.C. § 1710 (describing the eligibility requirements for hospital and nursing home care); 38 U.S.C. § 3001 (discussing educational assistance programs designed for veterans).

6. *See Claims Backlog*, U.S. DEP'T OF VETERANS AFFS. (Apr. 7, 2025), https://www.benefits.va.gov/reports/mmwr_va_claims_backlog.asp [https://perma.cc/MU3U-8G8N]. There were over 400,000 claims in the VA's backlog at the end of 2023. *See id.*; *see also infra* notes 96–102 and accompanying text (defining and discussing the VA's backlog).

7. *4 Unique Challenges in Veterans Administration Claims Processing That Lead to Millions in Lost Revenue*, HFMA (Dec. 7, 2021) [hereinafter *4 Unique Challenges*], https://www.hfma.org/region-9/mississippi/blog/4-unique-challenges-in-veterans-administration-claims-processing-that-lead-to-millions-in-lost-revenue/ [https://perma.cc/9NHQ-RHXP] (highlighting how confusion over patient eligibility, poor coordination in filing claims, limited resources for follow-up, and inadequate information about denials prolong access to benefits); *see also* Kraebel v. N.Y.C. Dep't of Hous. Pres. & Dev., 959 F.2d 395, 405 (2d Cir. 1992) (describing delays in processing claims becoming so unreasonable that they could amount to a denial of due process).

benefits.[8] Rather than serving as a lifeline for veterans, the VA has too often acted as a barrier, leaving many without the care and assistance they legally deserve and desperately need.[9] When veterans turn to the courts for relief, they do not find justice; instead, they encounter a legal system skewed in the VA's favor, further compounding their challenges.[10]

To illustrate, consider the tragic case of Thomas Buffington.[11] In 2000, the VA granted Buffington service-connected disability benefits following his active duty service in the Air Force.[12] In 2003, Buffington was recalled to service, and his benefits were appropriately suspended and replaced with active duty pay.[13] Upon completing his second period of service in 2004, Buffington encountered an unexpected complication: the VA required veterans to formally request the resumption of

8. *See* U.S. DEP'T OF VETERANS AFFS., OFF. OF INSPECTOR GEN., No. 24-00118-01, STAFF INCORRECTLY PROCESSED CLAIMS WHEN DENYING VETERANS' BENEFITS FOR PRESUMPTIVE DISABILITIES UNDER THE PACT ACT 8 (2024) (finding that VBA staff did not consistently follow policies and procedures before denying claims). The problem of restricting benefits access is further compounded by racial disparities, as the VA has denied claims from Black veterans at higher rates than those from white veterans. *See* Sareen Habeshian, *VA Denied Black Veterans Health Benefits More Often Than White Vets*, AXIOS (June 23, 2023), https://www.axios.com/2023/06/23/veterans-benefits-black-white-rate-disproportionate [https://perma.cc/Y7AK-XE5G].

9. *See* Michael Serota & Michelle Singer, *Veterans' Benefits and Due Process*, 90 NEB. L. REV. 388, 390–91, 414–15 (2011) (describing the severe toll of VA delays, including the financial hardship they impose and the exacerbation of conditions like PTSD among veterans); *e.g.*, *Air Force Veteran Felt Abandoned by the VA in His Final Days*, CONCERNED VETERANS FOR AM., https://cv4a.org/the-overwatch/my-va-story-air-force-veteran-felt-abandoned-by-the-va-in-his-final-days/ [https://perma.cc/GYP3-9EYN] (last visited Nov. 14, 2025) (detailing the story of Bob Bowser, an Air Force veteran who died feeling abandoned by the VA).

10. *See, e.g.*, Buffington v. McDonough, 7 F.4th 1361, 1365 (Fed. Cir. 2021) (describing a case in which a veteran sought back pay for years of owed benefits, only to have their claim denied, with the courts ultimately ruling in favor of the VA); Sears v. Principi, 349 F.3d 1326, 1332 (Fed. Cir. 2003) (examining a case in which a veteran sought retroactive benefits after the VA initially wrongfully denied his claim for PTSD benefits, only to have his request for back pay rejected once again, with the court ultimately siding with the VA); Heino v. Shinseki, 683 F.3d 1372, 1381 (Fed. Cir. 2012) (analyzing a case in which a veteran challenged the administrative costs tied to his medication, only for courts to uphold the VA's position that the charges were reasonable).

11. *See Buffington*, 7 F.4th at 1363.

12. *Id.*

13. *Id.*; *see also* 38 U.S.C. § 5112(b)(3) (establishing that when a veteran returns to active duty, their benefits are paused in lieu of active duty pay); 38 U.S.C. § 5304(c) (prohibiting simultaneous collection of benefits and active duty pay).

benefits after returning to civilian life.[14] Under this policy, veterans who reapplied were entitled to retroactive compensation for only one year before filing.[15] Unaware of this rule, Buffington did not reapply for benefits until 2009, leaving him without support from 2004 to 2008.[16]

Seeking to challenge the VA's rule, Buffington argued that it conflicted with Congress's statutes under Title 38.[17] However, the agency invoked *Chevron* deference, which required courts to defer to an agency's reasonable interpretation of congressional statutes when ambiguities existed.[18] Congress had never specified when or under what conditions benefits should resume after returning to civilian life, so the VA exercised its authority[19] to dictate the terms of reinstatement.[20] Ultimately, the VA prevailed, and the courts provided no recourse for Buffington—a veteran who had twice answered the call to serve his country.[21]

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14. *See Buffington*, 7 F.4th at 1363 (citing 38 C.F.R. § 3.654(b)(2).

15. *See id.* at 1366; 38 C.F.R. § 3.654(b)(2) (stating that the VA allows only one year of retroactive compensation prior to the date of receipt of a new claim). Veterans who promptly informed the VA of their release from active duty had their payments reinstated immediately. *See Buffington*, 7 F.4th at 1367 (citing § 3.654(b)(2)). However, the VA bears no responsibility for notifying veterans of when they should or could reapply for benefits; its duty is only to assist veterans with filing claims and gathering supporting evidence. *See* 38 U.S.C. § 5103(a).

16. *See Buffington*, 7 F.4th at 1363.

17. *Id.* at 1363, 1365 n.3 (analyzing plaintiff's claim under 38 U.S.C. § 1131); *see generally* 38 U.S.C. (embodying a broad mandate to provide benefits to veterans who have served their country).

18. *See Buffington*, 7 F.4th at 1364 (citing Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984)) (discussing the emergence of the *Chevron* deference framework); *see infra* Part II.A (detailing the *Chevron* deference framework).

19. *See* 38 U.S.C. § 501(a) (granting the VA Secretary the authority "to prescribe all rules and regulations which are necessary or appropriate to carry out the laws administered by the Department").

20. *See Buffington*, 7 F.4th at 1366; 38 C.F.R. § 3.654(b)(2) (dictating the terms for reinstating VA benefits). The VA likely considers its rules sufficient based on its own internal records, institutional expertise, and policy judgment. *See* 5 U.S.C. § 553 (discussing the power of agencies to promulgate rules based on files, expertise, views, or opinions); *see also* Flying Tiger Line, Inc. v. Boyd, 244 F. Supp. 889, 892 (D.D.C. 1965) (concluding that it is not necessary for an agency "performing a legislative function" to rely on formal evidence).

21. *See Buffington*, 7 F.4th at 1367 (O'Malley, J., dissenting). Interestingly, the VA considered a proposed rule that would have benefited Buffington by tracking paused benefit awards during a veteran's return to active duty and requiring the agency to notify the veteran within sixty days of separation—but the rule ultimately failed to pass. *See* Active Service Pay, 84 Fed. Reg. 16421 (proposed Apr. 19, 2019).

In part, the experiences of petitioners like Buffington, the veterans who faced harm due to agency deference,[22] shaped the Supreme Court's decision to overturn *Chevron* deference in *Loper Bright Enterprises v. Raimondo*.[23] This decision marked a departure from broadly granting deference to agencies in interpreting statutes, especially when those interpretations were ones that Congress did not expressly authorize.[24] Justice Gorsuch's concurring opinion highlighted Buffington's case, recounting how the veteran had challenged the VA's decision as contrary to Congress's statutory directive, only for the agency to prevail "armed with *Chevron*."[25] According to Justice Gorsuch, the VA's reading of the law may not have represented the "*best* reading," but because it was a "permissible one," the appellate court was required to defer nonetheless.[26] Gorsuch argued that this deference has repeatedly allowed the VA to sidestep legislative intent in veterans benefits cases.[27]

With *Chevron* no longer controlling,[28] courts have the opportunity to recalibrate the interpretive framework in veterans' law by adopting the pro-veteran canon.[29] Using this canon, courts

22. In another famous instance, Vietnam War veteran James Kisor was denied retroactive disability benefits after the VA initially rejected his PTSD claim in 1982. Kisor v. Wilkie, 588 U.S. 558, 564 (2019). When Kisor reapplied in 2006 with new medical evidence, the VA granted benefits only from the date of his reopened claim, citing *Auer* deference—another form of agency deference—to justify its interpretation of its own regulations. *Id.* at 563 (citing Auer v. Robbins, 519 U.S. 452 (1997)). Despite presenting documentation related to his initial denial, the VA deemed the records irrelevant, ultimately denying him the full benefits that Congress had intended for veterans like Kisor. *See id.* at 564.

23. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 375 (2024).

24. *See id.*

25. *Id.* at 439 (Gorsuch, J., concurring). This echoed Justice Gorsuch's dissent from the Supreme Court's refusal to hear Buffington's appeal to the Supreme Court from the United States Court of Appeals for the Federal Circuit. *See* Buffington v. McDonough, 143 S. Ct. 14, 14–16 (2022) (Gorsuch, J., dissenting).

26. *Loper Bright*, 603 U.S. at 439 (Gorsuch, J., concurring) (emphasis added) (discussing *Buffington*, 143 S. Ct. at 17 (Gorsuch, J., dissenting)).

27. *See id.*; *Buffington*, 143 S. Ct. at 19 (Gorsuch, J., dissenting).

28. *See Loper Bright*, 603 U.S. at 412.

29. *See* Brown v. Gardner, 513 U.S. 115, 117–18 (1994) (establishing the pro-veteran canon as the principle that "interpretive doubt is to be resolved in the veteran's favor"); *see also* James D. Ridgway, *Toward a Less Adversarial Relationship Between* Chevron *and* Gardner, 9 U. MASS. L. REV. 388, 393 (2014) (describing *Gardner* as the first Supreme Court case to conclude that ambiguity in a veterans benefits statute should be resolved in the veteran's favor).

can interpret statutory ambiguities in a manner that more faithfully reflects Congress's long-standing intent to protect veterans,[30] rather than deferring to the VA's often restrictive interpretations.[31] This shift would promote a more equitable and accessible benefits system, ensuring veterans receive the full scope of entitlements guaranteed under Title 38.[32] The pro-veteran canon, however, remains susceptible to underenforcement, as Title 38, despite its recurring pro-veteran themes, does not explicitly direct courts to resolve ambiguities in favor of veterans. [33] Meanwhile, the VA continues to face persistent issues of mismanagement and inefficiency, contributing to the litigation these interpretive questions seek to resolve.[34] Accordingly, this Note argues that, in the *Loper Bright* era, courts must adopt the pro-veteran canon as the primary interpretive tool in veterans' law. Additionally, Congress must solidify this shift by codifying pro-veteran intent and curing the VA's deficiencies to reduce the need for judicial intervention in the first place.

Part I of this Note provides essential background on veterans and their interactions with the VA. It highlights veterans' hardships when returning to civilian life, outlines key statutory provisions under Title 38, and considers recurring issues veterans face when seeking benefits. Part II shifts to an overview of administrative law, explaining the *Chevron* doctrine and examining the implications of *Loper Bright*. Part III analyzes how *Chevron* deference has produced outcomes that have conflicted with Congress's intent under Title 38, drawing on case law to illustrate the impact of agency deference on veterans. Lastly, Part IV advocates for a comprehensive approach that integrates a pro-veteran stance with judicial vigilance, legislative reform,

30. *See History of Serving Veterans*, *supra* note 4; Ridgway, *supra* note 29, at 392–93.

31. *See, e.g.*, Buffington v. McDonough, 7 F.4th 1361, 1365 (Fed. Cir. 2021); Sears v. Principi, 349 F.3d 1326, 1332 (Fed. Cir. 2003); Heino v. Shinseki, 683 F.3d 1372, 1381 (Fed. Cir. 2012).

32. *See, e.g.*, 38 U.S.C. § 1110 (outlining the basic entitlements for disability benefits); 38 U.S.C. § 1710 (describing the eligibility requirements for hospital and nursing home care); 38 U.S.C. § 3001 (discussing educational assistance programs designed for veterans).

33. *See* Bronson Phillips, Comment, Chevron*'s Grip Meets Resistance: The Pro-Veteran Canon as a Path to Correcting Interpretive Precedent*, 18 EST. PLAN. & CMTY. PROP. L.J. 1, 20 (forthcoming 2025).

34. *See* discussion *infra* Section I.B.2.

and agency accountability to fulfill the Nation's mission of supporting veterans.

I. AN OVERVIEW OF VETERANS AND VETERANS' AFFAIRS

Veterans often face a complicated—and, at times, deeply disturbing—reality after transitioning from active duty.[35] Confronting this reality highlights the urgent need for legal protections that ensure reliable access to the benefits they have earned.[36] The VA was established to ensure access to these benefits, but persistent institutional shortcomings have frequently undermined its effectiveness.[37] These failures have led to widespread benefit denials and exacerbated the problems veterans already face.[38] To lay the groundwork for the following discussion, this Part explores the challenges veterans experience after service, the VA's responsibilities, and the systemic deficiencies that result in claims disputes.

A. Challenges Faced by Veterans

Honoring, supporting, and caring for veterans is deeply embedded in the fabric of this Nation's identity.[39] This commitment reflects the Nation's gratitude and reinforces confidence in military service, encouraging new generations to enlist in the armed forces.[40] Unfortunately, veterans require heightened care and support because many face significant day-to-day

35. *See* Katherine Elliott, *From Service to Struggle: Navigating Legal Challenges Faced by Veterans in the Civil and Criminal Justice System*, RICH. PUB. INT. L. REV. (Dec. 3, 2024), https://pilr.richmond.edu/2024/12/03/from-service-to-struggle-navigating-legal-challenges-faced-by-veterans-in-the-civil-and-criminal-justice-systems/ [https://perma.cc/CG6H-95WC].

36. *See id.*

37. *See id.*

38. *See id.*

39. *See History of Serving Veterans*, *supra* note 4.

40. Notably, George Washington was also credited with stating, "[t]he willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional to how they perceive veterans of earlier wars were treated and appreciated by our nation." *Why Veteran Treatment Matters*, *supra* note 4.

challenges as they transition back to civilian life.[41] These challenges are multifaceted and encompass physical, psychological, social, and financial difficulties that significantly hinder veterans' well-being.[42]

Mental health challenges are among the most widely recognized issues facing veterans.[43] Specifically, veterans frequently encounter mental health issues, including PTSD and depression.[44] These issues may be compounded by, or occur alongside, other serious concerns such as substance abuse disorders, violence, and suicide.[45] Typically, addressing these conditions requires ongoing medical care, rehabilitation, and access to support services.[46] The inability to access care promptly exacerbates these conditions and leaves veterans subject to worsening mental health and related problems like homelessness or substance abuse.[47]

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41. *See Veterans Employment Toolkit*, U.S. DEP'T OF VETERANS AFFS. (Aug. 6, 2021), https://www.va.gov/vetsinworkplace/docs/em_challengesreadjust.asp [https://perma.cc/3Y93-BULN].

42. *See id.*

43. *See, e.g.*, MARYLN J. MOORE, EVAN SHAWLER, CHRISTOPHER H. JORDAN & CHRISTOPHER A. JACKSON, VETERAN AND MILITARY MENTAL HEALTH ISSUES 1 (2023) (studying the management of mental health disorders affecting military veterans); *Veterans' Mental Health Issues*, RAND HEALTH CARE, https://www.rand.org/health-care/projects/navigating-mental-health-care-for-veterans/mental-health-issues.html [https://perma.cc/5U2A-H2ZE] (last visited Nov. 14, 2025) (outlining research on the mental health conditions or cognitive injuries of veterans); Stacey Owens, *Supporting the Behavioral Health Needs of Our Nation's Veterans*, SAMHSA (Nov. 8, 2022), https://www.samhsa.gov/blog/supporting-behavioral-health-needs-our-nations-veterans [https://perma.cc/X9AY-MVNN] (describing data on veterans with complex behavioral health conditions).

44. *See* MOORE ET AL., *supra* note 43, at 2–3. According to the VA, nearly 30% of veterans from operations in Iraq and 21% of Gulf War veterans suffer from PTSD. *See PTSD: National Center for PTSD*, U.S. DEP'T OF VETERANS AFFS. (Mar. 26, 2025), https://www.ptsd.va.gov/understand/common/common_veterans.asp [https://perma.cc/FZ7H-WMQU].

45. *See* MOORE ET AL., *supra* note 43, at 1. Suicide is particularly concerning, being the second leading cause of death for veterans under forty-five years old. OFF. OF SUICIDE PREVENTION, U.S. DEP'T OF VETERANS AFFS., 2024 NATIONAL VETERAN SUICIDE PREVENTION ANNUAL REPORT: PART 2 OF 2: REPORT FINDINGS 52 (2024). In 2022, suicide was the leading cause of death among all veterans only after various diseases and bodily health conditions. *Id.* at 51.

46. *See* MOORE ET AL., *supra* note 43, at 21.

47. *See* NAT'L ACADS. OF SCIS., ENG'G & MED., EVALUATION OF THE DEPARTMENT OF VETERANS AFFAIRS MENTAL HEALTH SERVICES 23 (2018) [hereinafter EVALUATION OF VA MENTAL HEALTH SERVICES].

Beyond mental health issues, veterans face economic hardships when returning to civilian life.[48] Veterans may struggle with finding stable employment, in part due to difficulty translating military experience into qualifications for civilian jobs.[49] Thus, veterans enter the workforce at a disadvantage.[50] This can lead to prolonged unemployment or underemployment periods, contributing to financial insecurity.[51] Veterans returning with disabilities face even more significant employment challenges as they may need workplace accommodations or struggle to perform in traditional roles.[52]

Congress recognizes these challenges and aims to support veterans through legislation.[53] However, many veterans face difficulty accessing this care,[54] which often exacerbates their existing conditions and increases their risk of worsening health, homelessness, or substance abuse.[55] This ongoing struggle

48. *See* George Taylor, *The Psychological Impact of Reintegration: Understanding the Long-Term Effects of Service*, NVHS (May 9, 2024), https://nvhs.org/the-psychological-impact-of-reintegration-understanding-the-long-term-effects-of-service/ [https://perma.cc/9K3M-9J8N].

49. *Id.*; *but cf.* BUREAU OF LAB. STATS., EMPLOYMENT SITUATION OF VETERANS 1–3 (2025) (recognizing disparities in employment outcomes among veterans but reporting a surprisingly lower overall unemployment rate for veterans compared to nonveterans in 2024).

50. *See* DEBORAH A. BRADBARD, NICHOLAS J. ARMSTRONG & ROSALINDA MAURY, WORK AFTER SERVICE: DEVELOPING WORKFORCE READINESS AND VETERAN TALENT FOR THE FUTURE 10 (2016).

51. *See id.*

52. *See id.* at 9. The financial disparities are even more pronounced when examined through the lenses of gender and race, with female veterans reporting lower financial capability than their male counterparts and Black and Hispanic veterans experiencing worse employment outcomes than white veterans. *See* WILLIAM SKIMMYHORN, GARY R. MOTTOLA & OLIVIA VALDES, THE FINANCIAL CAPABILITY OF UNITED STATES MILITARY VETERANS: THE ROLE OF GENDER AND RACIAL/ETHNIC IDENTITY 6 (2023).

53. *See, e.g.*, 38 U.S.C. § 1720J (promulgating urgent suicide care and assistance for veterans); 38 U.S.C. § 1712A (mandating the VA to offer readjustment counseling and related mental health services for veterans); 38 U.S.C. § 4215(b) (providing priority services for veterans seeking job training programs funded by the Department of Labor).

54. *See* Maggie E. Turek, "*To Care for Him Who Shall Have Borne the Battle:" Expanding the Choice Card Program to Provide for Those Who Serve*, 26 KAN. J.L. & PUB. POL'Y 215, 222 (2017) (describing how many veterans continue experiencing struggles accessing healthcare). According to a 2024 report, a VA medical center in West Virginia delayed initial outreach to some veterans by more than 100 days and took over forty-five days to schedule initial medical consultations. *See* U.S. DEP'T OF VETERANS AFFS., OFF. OF INSPECTOR GEN., 23-02020-85, DELAYS IN COMMUNITY CARE CONSULT PROCESSING AND SCHEDULING AT THE MARTINSBURG VA MEDICAL CENTER IN WEST VIRGINIA, at i (2024).

55. *See* EVALUATION OF VA MENTAL HEALTH SERVICES, *supra* note 47, at 13.

highlights the critical need for a VA benefits system that ensures veterans receive the assistance and support they need.[56]

B. What is the Department of Veterans Affairs?

The VA can best be analyzed through its development as an institution committed to serving veterans and its persistent shortcomings that have hindered its ability to fulfill that mission.

1. The VA's history

The United States has always committed to caring for veterans as a gesture of gratitude for their service.[57] For instance, following the American Revolutionary War, the federal government provided pensions to injured veterans.[58] Then, in 1818, Congress broadened the pension system to "include any veteran who needed assistance, making clear that the pension was a reward for service, not a charity."[59] In response to rising demand, Congress established the Bureau of Pensions in 1833 to fully manage and distribute these benefits.[60] The General Pension Law of 1862 extended benefits to Civil War veterans suffering from service-related injuries or illnesses.[61] By the early twentieth century, the foundations of the modern VA system had evolved to meet the substantial needs of veterans from World Wars I and II, offering disability compensation, insurance, and vocational rehabilitation programs.[62]

Subsequently, the VA underwent substantial structural changes.[63] Advocates argued that a stronger and more

56. *Id.* at 13–14.

57. *See History of Serving Veterans*, *supra* note 4.

58. *History of the National Home for Disabled Volunteer Soldiers*, NAT'L PARK SERV. (Nov. 14, 2017), https://www.nps.gov/articles/history-of-disabled-volunteer-soldiers.htm [https://perma.cc/8EFE-LSJF].

59. *Id.*

60. *Id.*

61. *Id.*

62. *See History of Serving Veterans*, *supra* note 4.

63. *See* Barbara Matos & Jeffrey Seiken, *Object 41: Creating the Department of Veterans Affairs*, U.S. DEP'T OF VETERANS AFFS. (Mar. 20, 2025), https://department.va.gov/history/100-

authoritative VA was essential[64] as the veteran population had grown more than sixfold between 1930 and 1980.[65] In response, Congress elevated the VA to a Cabinet-level department in 1989, formally codifying its legal obligations under Title 38.[66] This complex web of statutory and regulatory obligations outlines the VA's responsibilities in delivering benefits for veterans, reflecting a system that, in theory, aims to care for veterans.[67]

The broad range of services that the VA is responsible for providing includes healthcare, disability compensation, education benefits, housing assistance, and more.[68] For example, under 38 U.S.C. § 1710, the VA is required to provide hospital care and medical services to eligible veterans, prioritizing those with service-connected disabilities.[69] Additionally, 38 U.S.C. § 1110 establishes disability compensation for veterans suffering from injuries or illnesses incurred or aggravated during military service.[70] The VA is also tasked with administering educational benefits through the Post-9/11 GI Bill, authorized by 38 U.S.C. §

objects/object-41-creating-the-department-of-veterans-affairs/ [https://perma.cc/NB9Q-T4B8] [hereinafter *Object 41*].

64. *See, e.g.*, 134 CONG. REC. S9212-01 (daily ed. July 11, 1988) (statement of Sen. John Glenn) (urging Congress to make the VA a Cabinet-level department).

65. *See Object 41, supra* note 63. The United States Census Bureau has tracked the number of U.S. veterans over time, reporting an increase from approximately 485,000 veterans during World War II to approximately 3,804,000 during the Vietnam War. *See* JONATHAN E. VESPA, U.S. CENSUS BUREAU, THOSE WHO SERVED: AMERICA'S VETERANS FROM WORLD WAR II TO THE WAR ON TERROR 2 (2020).

66. *See* Department of Veterans Affairs Act of 1988, Pub. L. No. 100-527, 102 Stat. 2635 (codified in scattered sections of 38 U.S.C.); *History of Serving Veterans, supra* note 4. Achieving Cabinet-level status enables an agency to have a Secretary, appointed by the President, who provides counsel on matters related to the agency's needs. *See* U.S. CONST. art. II, § 2, cl 1. Cabinet-level departments receive substantial resources to fulfill their responsibilities and financial obligations. *See The Budgetary Implications of Eliminating a Cabinet Department*, CONG. BUDGET OFF., https://www.cbo.gov/content/budgetary-implications-eliminating-cabinet-department [https://perma.cc/TQK3-P5DC] (last visited Nov. 14, 2025).

67. *See* Angela Drake, Yelena Duterte & Stacey Rae Simcox, *Review of Recent Veterans Law Decisions of the Federal Court*, 69 AM. U. L. REV. 1343, 1345 (2020).

68. *See, e.g.*, Buffington v. McDonough, 7 F.4th 1361, 1365 (Fed. Cir. 2021); Sears v. Principi, 349 F.3d 1326, 1332 (Fed. Cir. 2003); Heino v. Shinseki, 683 F.3d 1372, 1381 (Fed. Cir. 2012); *About VBA*, U.S. DEP'T OF VETERANS AFFS. (April 16, 2025), https://www.benefits.va.gov/benefits/about.asp [https://perma.cc/9EUP-CFGL].

69. 38 U.S.C. § 1710.

70. 38 U.S.C. § 1110; *About VBA*, *supra* note 68.

3311, which helps veterans and their families access higher education.[71] For housing assistance, 38 U.S.C. § 3702 provides loan guaranty benefits, allowing eligible veterans to obtain VA-backed home loans.[72] Veterans can access these benefits by filing claims with the VA.[73]

Several provisions within Title 38's benefits claims process embody pro-claimant themes.[74] For instance, when a veteran submits a claim to receive benefits, Congress requires the VA to assist claimants with obtaining records and information relating to their claims under 38 U.S.C. § 5103A.[75] Additionally, the VA operates under a statutory mandate commonly referred to as the "benefit of the doubt" rule, codified in 38 U.S.C. § 5107(b).[76] This rule requires that when the evidence in an individual veteran's claim is in relative equipoise—meaning it does not persuasively favor one side or the other—the VA must give

71. 38 U.S.C. § 3311(a)–(b).

72. 38 U.S.C. § 3702.

73. *See, e.g.*, *Your Intent to File a VA Claim*, U.S. DEP'T OF VETERANS AFFS. (Jan. 16, 2025), https://www.va.gov/resources/your-intent-to-file-a-va-claim/ [https://perma.cc/5TJP-MVMP] (explaining the process for filing a VA benefits claim for disability, pension, or dependency compensation); *About GI Bill Benefits*, U.S. DEP'T OF VETERANS AFFS. (Nov. 29, 2024), https://www.va.gov/education/about-gi-bill-benefits/ [https://perma.cc/KM49-BK6Y] (describing the process for filing a claim for GI Bill benefits); *Purchase Loan*, U.S. DEP'T OF VETERANS AFFS. (Aug. 15, 2024), https://www.va.gov/housing-assistance/home-loans/loan-types/purchase-loan/ [https://perma.cc/KM49-BK6Y] (detailing the process for filing a claim for a VA-backed purchase loan on a home).

74. *See* Rory E. Riley, *The Importance of Preserving the Pro-Claimant Policy Underlying the Veterans' Benefits Scheme: A Comparative Analysis of the Administrative Structure of the Department of Veterans Affairs Disability Benefits System*, 2 VETERANS L. REV. 77, 80 (2010) (describing the veterans' benefits system as "pro-claimant" and "nonadversarial").

75. 38 U.S.C. § 5103A(a) ("The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary."); Henderson v. Shinseki, 562 U.S. 428, 440 (2011) (describing how the VA is charged with the task of assisting veterans in gathering evidence that supports their claims); Drake et al., *supra* note 67, at 1345 n.4.

76. 38 U.S.C. § 5107(b) ("The Secretary shall consider all information and . . . [w]hen there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant."); Drake et al., *supra* note 67, at 1345 ("[T]he VA is statutorily obligated to help the veteran by developing evidence to support the claim and by giving the benefit the benefit of the doubt in deciding the claim."). Additionally, the VA codified this rule in its own regulations. *See* 38 C.F.R. § 3.102 (2025).

the veteran the benefit of the doubt and provide benefits.[77] This inherently veteran-friendly theme reflects the heightened duty of care that the VA owes veterans.[78] These statutory duties shape the VA's legal obligations and Congress's broader moral theme of supporting veterans through a fair and equitable process.[79]

The pro-claimant theme in Title 38 establishes that the VA is fundamentally a pro-claimant agency.[80] By imposing affirmative duties on the VA, such as assisting in the development of claims and applying the benefit of the doubt standard, Congress reinforces an agency that should prioritize fairness and accessibility for veterans.[81] This structure reflects a broader recognition that veterans, as a protected group, deserve gratitude and tangible, meaningful support.[82] The VA's statutory

77. *See* Lynch v. McDonough, 21 F.4th 776, 781–82 (Fed. Cir. 2021) (citing Ortiz v. Principi, 274 F.3d 1361 (Fed. Cir. 2001)) (describing how the benefit of the doubt rule does not apply when evidence "persuasively favors one side or the other"); Drake et al., *supra* note 67, at 1345.

78. *See* Gregory M. Rada, *Navigating the "Benefit of the Doubt" Standard in VA Disability Claims*, GREGORY M. RADA (Oct. 21, 2023), https://afterservice.com/navigating-the-benefit-of-the-doubt-standard-in-va-disability-claims/ [https://perma.cc/S9CB-9RSP] (describing the "benefit of the doubt" rule as "inherently veteran-friendly") (internal quotations omitted); *see also* Shinseki v. Sanders, 556 U.S. 396, 412 (2009) (noting that Congress has expressed solicitude for veterans, recognizing their significant service to the Nation, and has made clear that the VA, unlike ordinary agencies, has a statutory duty to assist veterans).

79. *See History of Serving Veterans*, *supra* note 4; *Shinseki*, 556 U.S. at 412. Congress has deliberately characterized veterans' benefits as "compensation," signaling an intent to provide generous support without imposing strict limiting principles. *See* James D. Ridgway, *A Benefits System for the Information Age*, *in* VETERANS GLIMPSES OF THE NEW VETERAN: CHANGED CONSTITUENCIES, DIFFERENT DISABILITIES, AND EVOLVING RESOLUTIONS 131, 134 (Alice A. Booher ed., 2015) [hereinafter *Benefits System for the Information Age*].

80. Courts agree that statutes governing the VA intend to be pro-claimant. *See*, *e.g.*, Coffy v. Republic Steel Corp., 447 U.S. 191, 196 (1980) (citing Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275, 285 (1946)) (emphasizing that veterans' statutes must be interpreted liberally to benefit returning veterans); McKnight v. Gober, 131 F.3d 1483, 1485 (Fed. Cir. 1997) (citing Brown v. Gardner, 513 U.S. 115, 118 (1994)) (highlighting that, when ambiguity is present, "interpretive doubt is to be resolved in the veteran's favor"); Smith v. Brown, 35 F.3d 1516, 1522 (Fed. Cir. 1994) (acknowledging the "uniquely pro-claimant principles underlying the veterans' benefits dispensation scheme" identified by amicus); *Henderson*, 562 U.S. at 437 (noting that the veterans benefits program, when compared with the Social Security disability benefits program, is "unusually protective" of claimants).

81. Drake et al., *supra* note 67 ("[T]he VA is statutorily obligated to help the veteran by developing evidence to support the claim and by giving the veteran the benefit of the doubt in deciding the claim."). Additionally, the VA codified this rule in its own regulations. *See* 38 C.F.R. § 3.102 (2025).

82. *See History of Serving Veterans*, *supra* note 4.

obligations make clear that its role is not to act as an adversary in providing benefits but as a partner in fulfilling the Nation's commitment to those who have served.[83] Despite these legal safeguards, the reality often falls short, as the VA's failures have undermined Congress's pro-veteran mandate.[84]

2. The VA's shortcomings

Title 38 governs the system for veterans' benefits claims, outlining the procedural steps Congress requires for veterans to obtain their benefits.[85] Unfortunately, this framework is highly complex.[86] For instance, veterans are required to submit extensive documentation, including service records, medical reports, and evidence of a nexus between military service and a claimed disability.[87] Navigating this evidentiary burden is incredibly challenging for veterans who may not have immediate access to their records or struggle to understand the legal and medical language required to present a complete claim.[88] As Buffington's story illustrated, this complexity can cause delays or

83. *See* 38 U.S.C. § 5103A(a)(1) ("The Secretary shall make reasonable efforts to assist a claimant in obtaining evidence necessary to substantiate the claimant's claim for a benefit under a law administered by the Secretary."); *see also Henderson*, 562 U.S. at 440–41 (describing how Congress charged the VA with the task of assisting veterans in gathering evidence that supports their claims); Drake et al., *supra* note 67, at 1365 (noting that the Federal Circuit has found that congressional statutes are fundamentally pro-veteran).

84. *See infra* pp. 283–84.

85. S*ee* 38 U.S.C. § 5103(a) (describing the notice requirements for claims, which include informing veterans of the evidence needed to substantiate their claims); 38 U.S.C. § 5107(a) (explaining that "a claimant has the responsibility to present and support a claim for benefits"). *See generally* 38 U.S.C. § 5101 (outlining the claims and forms required for receiving veterans' benefits).

86. *See* Eric Pines, *Title 38 vs. Hybrid 38: What's the Difference?*, PINES FED. (Nov. 27, 2023), https://www.pinesfederal.com/legal-blog/title-38-vs-hybrid-38-what-s-the-difference/ [https://perma.cc/RJ5W-6EX7].

87. *See Evidence Needed for Your Disability Claim*, U.S. DEP'T OF VETERANS AFFS. (July 2, 2025), https://www.va.gov/disability/how-to-file-claim/evidence-needed/ [https://perma.cc/FLP6-DZPY].

88. *See* Nikki Levy, *Easing the Burden: Military Sexual Trauma, Retaliation, and Veterans Benefits*, 27 FED. CIR. B.J. 377, 377–79 (2018) (describing the varied evidentiary requirements for specific claims and the difficulty of obtaining such evidence).

denials of claims, burdening veterans who rely on these benefits for financial or medical support.[89]

The nuanced procedures in collecting benefits lead to a high error rate in claim submissions.[90] In 2024, 76% of denied total unemployed disability claims had at least one processing error, while procedural deficiencies accounted for 58% of these denials.[91] Veterans unfamiliar with the VA's complex evidentiary requirements are especially susceptible to experiencing delays or denials during submission.[92]

This complexity disproportionately affects veterans with mental health conditions who may struggle with navigating the claims process due to cognitive or emotional impairments.[93] Additionally, veterans with mental health conditions must meet a higher evidentiary standard to substantiate the relationship between what caused their mental health issue and the veteran's service.[94] Veterans with PTSD, for instance, must provide a detailed account of their stressor incident, which may cause additional turmoil.[95]

Veterans who successfully navigate procedural requirements must then face a significant backlog.[96] The VA defines the backlog as the number of initial claims pending over 125 days.[97] According to the VA, there were over 400,000 claims in its

89. *See* Buffington v. McDonough, 7 F.4th 1361, 1363 (Fed. Cir. 2021); *see also 4 Unique Challenges*, *supra* note 7 (highlighting how confusion over patient eligibility, poor coordination in filing claims, limited resources for follow-up, and inadequate information about denials all place significant burdens on veterans).

90. *See* Benjamin P. Pomerance & Katrina J. Eagle, *The Pro-Claimant Paradox: How the United States Department of Veterans Affairs Contradicts Its Own Mission*, 23 WIDENER L. REV. 1, 11 (2017).

91. *See* U.S. DEP'T OF VETERANS AFFS., OFF. OF INSPECTOR GEN., 23-01772-162, VBA NEEDS TO IMPROVE THE ACCURACY OF DECISIONS FOR TOTAL DISABILITY BASED ON INDIVIDUAL UNEMPLOYABILITY, at ii (2024).

92. *See id.* at 17–19; *Common Reasons VA Claims Are Denied*, VETLAW, https://www.vet.law/blog/common-reasons-va-claims-are-denied/ [https://perma.cc/9HPG-FUPE] (last visited Nov. 14, 2025).

93. *See* Levy, *supra* note 88, at 379.

94. *Id.*

95. *Id.* at 389.

96. *See Claims Backlog*, *supra* note 6.

97. *Veterans Benefits Administration Reports*, U.S. DEP'T OF VETERANS AFFS. (Sep. 29, 2025), https://www.benefits.va.gov/reports/detailed_claims_data.asp [https://perma.cc/B5H5-SDM5].

backlog at the end of 2023.[98] This backlog grew by nearly 40% after 2022,[99] primarily due to new claims following the passage of the PACT Act, which expanded eligibility for veterans with toxic exposure-related conditions.[100] Staffing increases and system upgrades have allowed the VA to process more claims per year, but this pace still falls short of keeping up with the high volume of complex cases entering the system.[101] More complex cases demand even longer processing times, often stretching from several months to a year.[102]

The situation becomes even more dire for veterans who appeal a denied claim.[103] Like Buffington, veterans denied benefits often appeal to pursue justice.[104] But the process is notoriously slow and, in some cases, could take up to seven years to resolve.[105] The process is often compared to a hamster wheel, as veterans' claims are developed, denied, appealed, and remanded *ad infinitium*, essentially going on forever.[106] As a result, veterans endure years of uncertainty, only to receive decisions

98. *See Claims Backlog*, *supra* note 6.

99. Leo Shane III, *VA Staff Are Completing More Claims Than Ever but Still Falling Behind*, MILITARY TIMES (Jan. 17, 2024), https://www.militarytimes.com/veterans/2024/01/17/va-staff-are-completing-more-claims-than-ever-but-still-falling-behind/ [https://perma.cc/9J6K-3PB2].

100. *See id.*; *see also* Sergeant First Class Heath Robinson Honoring our Promise to Address Comprehensive Toxics Act of 2022, Pub. L. No. 117-168, § 103, 136 Stat. 1759 (2022) (enacting the PACT act).

101. *See* Shane, *supra* note 99.

102. *See How Long Does a VA Disability Claim Take?*, CAMERON FIRM PC (June 23, 2023), https://veteranappeal.com/how-long-does-a-va-disability-claim-take/ [https://perma.cc/J3HT-8FWU].

103. *See* Mike Woods, *How Long Will It Take to Appeal a VA Decision?*, WOODS & WOODS LLC (July 14, 2025), https://woodslawyers.com/current-va-appeals-process-timeline/ [https://perma.cc/8ZA4-43RK] (describing the current appeals process).

104. *See* Buffington v. McDonough, 7 F.4th 1361, 1363 (Fed. Cir. 2021). The U.S. Court of Appeals for Veterans Claims serves as the forum for veterans and other claimants, including surviving spouses of veterans, to appeal decisions made by the VA that deny veterans' benefits. *See* JONATHAN M. GAFFNEY, CONG. RSCH. SERV., IF11365, U.S. COURT OF APPEALS FOR VETERANS CLAIMS 1 (2021). The Federal Circuit then holds exclusive jurisdiction to review appeals originating from the Court of Appeals for Veterans Claims. *See id.* at 2.

105. *See* McClean, *supra* note 3, at 284.

106. *See, e.g.*, *id.* at 283 (likening the procedure for claiming and appealing veterans to a hamster wheel); Coburn v. Nicholson, 19 Vet. App. 427, 434 (2006) (Lance, J., dissenting) (providing that continuous remands "perpetuate[] the hamster-wheel reputation of veterans law."); Serota & Singer, *supra* note 9, at 390–91 (noting that even veterans refer to the process as a hamster wheel).

that may lead to an appeal again.[107] Little can be done to break the cycle.[108]

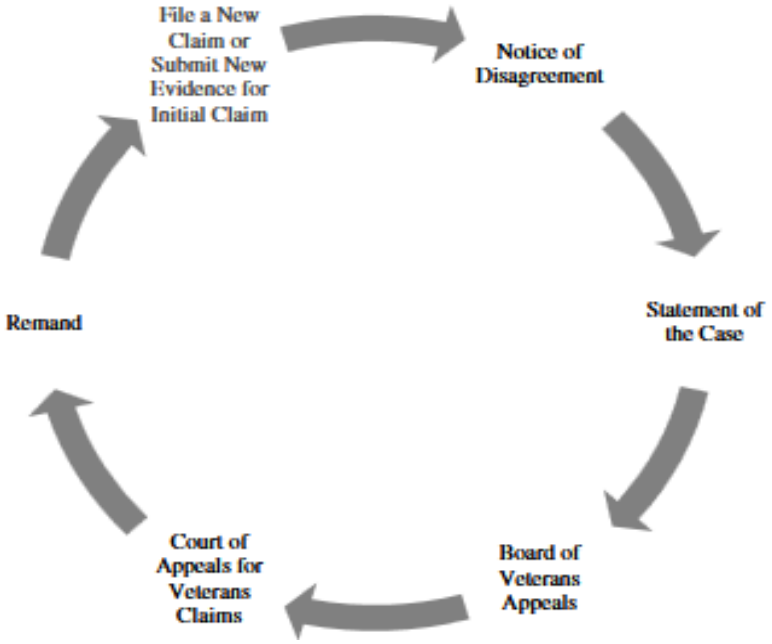

FIGURE 1. THE VA APPEAL HAMSTER WHEEL[109]

The delays caused by this cycle have profound consequences.[110] Veterans waiting for their claims or appeals to be processed often experience financial hardship, as many rely

107. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-24-106156, BOARD OF VETERANS' APPEALS SHOULD ADDRESS GAPS IN ITS QUALITY ASSURANCE PROCESS 1 (2023).

108. *See* Jon C. Heiden, *Federal Circuit Court of Appeals*, ATTIG STEEL, https://attigcur-ransteel.com/practice-areas/federal-circuit-court-appeals/ [https://perma.cc/422V-M694] (last visited Nov. 14, 2025). Veterans may appeal a decision from the Court of Appeals for Veterans Claims to an Article III Federal Circuit Court, but only if the appeal falls within the Federal Circuit's limited jurisdiction—such as challenges involving erroneous legal rules, statutory or regulatory interpretation, jurisdictional questions, or constitutional issues. *See id.*

109. This chart was created by legal scholar and professor, Hugh B. McClean. *See* McClean, *supra* note 3, at 284. This is a highly simplified depiction of the VA claims cycle, intended to illustrate its repetitive and cyclical nature. For a more complex version, *see* BD. OF VETERAN'S APPEALS, ANN. REP. 31 (2017).

110. *See* Serota & Singer, *supra* note 9, at 391 (highlighting how delays can compound existing financial hardship and intensify the effects of PTSD).

on disability benefits for income.[111] For example, delays in receiving benefits can lead to difficulties paying for housing, medical care, and other essential needs.[112] Additionally, the emotional toll of waiting years for a resolution can exacerbate mental health issues, such as anxiety and depression, which are already prevalent among veterans.[113] This creates understandable frustration and, in some tragic cases, leads to death—one in fourteen veterans do not live to see the outcome of their appeal, passing away before ever receiving benefits.[114]

Congress is aware of the detrimental outcomes of claims delays.[115] In 2017, Congress passed the Veterans Appeals Improvement and Modernization Act ("AMA") to streamline the appeals process for veterans' claims.[116] The reforms were designed to ensure that the VA more effectively implements legislative intent and fulfills its mission to support veterans.[117] However, despite the well-meaning nature of these reforms,

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111. *See id.*

112. *See id.*

113. *See id.* (noting how delays contribute to "foreclosure, divorce, and even suicide," which is already prominent among veterans).

114. *See* Drake et al., *supra* note 67 at 1345–46; *e.g.*, Aaron Glantz, *Number of Veterans Who Die Waiting for Benefits Claims Skyrockets*, REVEALNEWS (Dec. 20, 2012), https://revealnews.org/article-legacy/number-of-veterans-who-die-waiting-for-benefits-claims-skyrockets/ [https://perma.cc/CV44-RRFR] (recounting the story of a veteran who received a benefits award posthumously); *see also Why Are Veterans Waiting Years on Appeal?: A Review of the Post-Decision Process for Applied Veterans' Disability Benefits Claims Hearing on H.R. 113-22 Before the Subcomm. on Disability Assistance and Memorial Affs. of the Comm. On Veterans' Affs.*, 113th Cong. 78 (2013) (statement of Bergmann & Moore, LLC) (stressing that no veteran should die waiting for appeals decisions).

115. *See, e.g.*, *Why Are Veterans Waiting on Appeal?: A Review of the Post-Decision Process for Applied Veterans' Disability Benefits Claims Hearing on H.R. 113-22 Before the Subcomm. on Disability Assistance and Memorial Affs. of the Comm. On Veterans' Affs.*, 113th Cong. 2 (2013) (statement of Hon. Gus Bilirakis, Acting Chairman) (expressing awareness that the appeals process is "plagued by lengthy delays").

116. Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, 131 Stat. 1105; *see Appeals Modernization*, U.S. DEP'T OF VETERANS AFFS. (June 13, 2025), https://benefits.va.gov/benefits/appeals.asp [https://perma.cc/7NS5-UEHY]. The AMA provides veterans with three distinct pathways to appeal denied claims, offering greater flexibility. *See Board of Veterans' Appeals*, U.S. DEP'T OF VETERANS AFFS. (Aug. 6, 2025) https://www.bva.va.gov/veteran-choices-for-type-of-board-appeal-influences-wait-times.asp [https://perma.cc/N6RR-2ZMV]; U.S. DEP'T OF VETERANS AFFS., OFF. OF INSPECTOR GENERAL, 22-02064-155, VHA FACES CHALLENGES IMPLEMENTING THE APPEALS MODERNIZATION ACT 2 (2023) [hereinafter CHALLENGES IMPLEMENTING THE APPEALS MODERNIZATION ACT].

117. *See* Kenneth M. Carpenter & Sara Huerter, *Appeals Modernization: An Overview of Critical Changes*, 7 STETSON J. ADVOC. & L. 19, 19–21 (2020).

Congress failed to allocate the necessary resources to fully empower the VA in carrying out its mandate to provide veterans with timely and appropriate benefits.[118] As a result, veterans continue experiencing lengthy wait times for appeals.[119] In 2025, the Board of Veterans' Appeals reported that the average processing time for AMA appeals was 506 days for direct reviews, 713 days for evidence submission, and 791 days for hearings.[120] These figures represent an improvement from the pre-AMA system but still reflect considerable delays.[121]

These systemic inefficiencies and bureaucratic hurdles have severely strained the relationship between the VA and the veterans it serves.[122] Many veterans seek assistance with the expectation of timely and compassionate assistance, only to encounter delays and denials.[123] These obstacles have fueled frustration and distrust, as veterans increasingly feel that the very agency designed to support them actually places barriers to their well-being.[124]

Other high-profile failures within the VA have further

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118. *See* CHALLENGES IMPLEMENTING THE APPEALS MODERNIZATION ACT, *supra* note 116, at 10–11.

119. *See Board of Veterans' Appeals*, *supra* note 116.

120. *More Board Personnel Address Pending AMA Appeals and Wait Times*, DEP'T OF VETERANS AFFS. (July 15, 2025), https://department.va.gov/board-of-veterans-appeals/decision-wait-times/more-board-personnel-address-pending-ama-appeals-wait-times/ [https://perma.cc/TU2B-2ZGL].

121. *See AMA Appeals System Shows Improvements Over the Older Legacy System*, DEP'T OF VETERANS AFFS. (July 15, 2025), https://department.va.gov/board-of-veterans-appeals/decision-wait-times/ama-appeals-system-shows-improvements-over-the-older-legacy-system/ [https://perma.cc/T865-F2QX]. In 2024, veterans who appealed under the AMA process waited 2.8 years for a decision, compared to 6.2 years for those using the pre-AMA system. *Id.* The factors contributing to these delays include poor distribution of information, resource limitations within the VA, and a critical need for additional staffing and training to implement the new appeals process effectively. *See* CHALLENGES IMPLEMENTING THE APPEALS MODERNIZATION ACT, *supra* note 116, at 17, 20; *What is the Appeals Modernization Act?*, CAMERON FIRM (June 15, 2023), https://veteranappeal.com/appeals-modernization-act/ [https://perma.cc/2TV8-EE9L].

122. *See, e.g.*, Josh Stanwitz, *#VAFAIL: The Only Reason I Don't Have Problems with the VA Is Because I Stopped Using It for Care*, CONCERNED VETERANS FOR AM., https://cv4a.org/the-over-watch/vafail-i-dont-have-problems-with-the-va-because-i-stopped-using-it-for-care/ [https://perma.cc/Z2AX-44S2] (describing a veteran's personal experience that highlights the VA's dysfunction and mismanagement) (last visited Nov. 14, 2025).

123. *See id.*

124. *See id.* Frustrated by systemic delays, disabled American veterans coined the slogan, "Delay, Deny, Wait Till They Die" to capture their deep-seated disillusionment with the VA's inefficiencies. McClean, *supra* note 3, at 277.

worsened the strain, including reports of mismanagement and revelations that officials manipulated data to conceal excessive wait times.[125] Such incidents have reinforced the perception that the VA prioritizes bureaucratic interests over the well-being of veterans, leaving many feeling abandoned by the system designed to protect them.[126] As a result, disillusionment continues to grow, with veterans viewing the VA not as an ally but as an institution riddled with inefficiency and indifference.[127] Restoring trust will require more than superficial reforms—it demands policies and practices that genuinely uphold the Nation's moral and legal commitment to veterans.[128]

Given these challenges, veterans must have access to a fair judicial process that addresses the systemic failures that have long hindered veterans from receiving support.[129] The issues they face highlight the need for strong judicial oversight to ensure that veterans receive fair benefits without obstacles.[130] Timeliness is essential, as delays in receiving benefits will continue exacerbating the issues veterans already struggle with daily, including financial insecurity, access to medical care, and mental health concerns.[131] With the removal of *Chevron* deference, courts and Congress can use the opportunity to hold the VA accountable by ensuring it fulfills its mandate under Title 38.[132]

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125. *See VA Wasted $233 Million on Transport Services*, *supra* note 3; *see also Scandal Has Become the Status Quo at VA Eight Years After Phoenix*, CONCERNED VETERANS FOR AM., https://cv4a.org/news-media/scandal-status-quo-eight-years-after-phoenix/ [https://perma.cc/9E9L-HJCE] (last visited Oct. 22, 2025) [hereinafter *Scandal Has Become the Status Quo*] (describing how a scandal exposing egregious mismanagement of veterans' care has become the status quo at the VA).

126. *See, e.g.*, *Air Force Veteran Felt Abandoned by the VA In His Final Days*, *supra* note 9.

127. *See id.*

128. *See* McClean, *supra* note 3, at 303, 307.

129. *See id.* at 285.

130. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 441 (2024) (Gorsuch, J., concurring) ("[A]gencies cannot invoke a judge-made fiction to unsettle our Nation's promise to individuals that they are entitled to make their arguments about the law's demands on them in a fair hearing . . . .").

131. *See* Serota & Singer, *supra* note 9, at 391.

132. *See Loper Bright*, 603 U.S. at 441 (Gorsuch, J., concurring).

II. THE EVOLVING LANDSCAPE OF ADMINISTRATIVE LAW

The current state of administrative law is complicated,[133] but understanding it will highlight how *Chevron* has disadvantaged veterans and how a pro-veteran approach would help correct these shortcomings moving forward.[134] This Part begins by examining the *Chevron* doctrine, explaining its origins, purpose, and how it shaped judicial review of agency interpretations.[135] Next, it explores the Supreme Court's recent decision to overturn *Chevron*,[136] analyzing the current state of administrative law and the rationale behind this shift. Lastly, it discusses moving forward in administrative law under *Loper Bright*.[137]

A. Chevron Explained

The *Chevron* deference doctrine was based on the belief that administrative agencies should have the authority to expedite governance using their expertise.[138] This principle began with the Administrative Procedures Act ("APA"), in which Congress authorized agencies to implement congressional laws and engage in rulemaking to define those laws.[139] Sections 553 through 557 of the APA outline the procedures for rulemaking, including notice-and-comment procedures.[140] Congress created

133. *See id*. at 471 (Kagan, J., dissenting) (describing *Loper Bright* as a "shock to the legal system").

134. *See* Phillips, *supra* note 33, at 15–16.

135. *See also* Cass R. Sunstein, Chevron *as Law*, 107 GEO. L.J. 1613, 1624 (2019) [hereinafter Chevron as *Law*] (describing how *Chevron* came to dominate the legal landscape of administrative law).

136. *See* Susan Frederick, *Supreme Court Throws Out* Chevron *Decision, Weakening Federal Regulators*, NCSL (June 30, 2024), https://www.ncsl.org/state-legislatures-news/details/supreme-court-throws-out-chevron-decision-weakening-federal-regulators [https://perma.cc/9M7B-E3CA].

137. *See infra* notes 192–96 and accompanying text (discussing *Loper Bright*, 603 U.S. at 412).

138. *See* Ridgway, *supra* note 29, at 397. *See generally* Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984) (explaining the rationale behind the Court's decision).

139. 5 U.S.C. § 551(5) (defining agency "rule making" as "agency process for formulating, amending, or repealing a rule").

140. 5 U.S.C. §§ 553(b)–(c), 554(c)–(d), 555, 556–57. Notice-and-comment rulemaking allows the public to participate in agency rulemaking to maintain administrative transparency and provide a "check" on agency action in the form of democratic accountability. *See* ADMIN. CONF. OF THE U.S., IIB-014, NOTICE-AND-COMMENT RULEMAKING (2021); Ridgway, *supra* note 29, at 397.

this framework, recognizing that agencies possess expertise in specialized fields.[141] By recognizing agencies' expertise , the APA indirectly created the conditions for *Chevron* deference, where courts would later defer to agency interpretations of congressional statutes in recognition of their specialized knowledge and rulemaking authority.[142]

In addition to these foundational principles of administrative law, the doctrine of implied delegation also paved the path for *Chevron* deference.[143] Congress frequently passes broad and complex statutory frameworks.[144] As a result, Congress may leave ambiguities undefined, which may be interpreted as an implicit delegation of power to administrative agencies to interpret and implement those statutes.[145] For example, in 2018, Congress passed the VA MISSION Act, which established the Veterans Community Care Program "to furnish hospital care, medical services, and extended care services" outside VA facilities.[146] However, the VA faced a gap in express guidance regarding how it should implement these services. [147] In response, the VA promulgated its own rules to fill these statutory ambiguities.[148]

The Court in *Chevron, U.S.A., Inc., v. Natural Resources Defense Council, Inc.* recognized these principles of

141. *See Chevron*, 467 U.S. at 865 (deferring to the agency's statutory interpretation, since "[p]erhaps [Congress] consciously desired the Administrator to strike the balance at this level, thinking that those with great expertise and charged with responsibility for administering the provision would be in a better position to do so"). *But see* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 395–96 (2024) ("The deference that *Chevron* requires of courts reviewing agency action cannot be squared with the APA.").

142. *See Chevron*, 467 U.S. at 863 (granting flexibility to agency interpretations and ruling that "[a]n initial agency interpretation is not instantly carved in stone.").

143. *See id.* at 843–44 (providing that deference rests on either express or implied delegation of authority from Congress to agencies).

144. *See, e.g.*, 42 U.S.C. § 13103 (outlining broadly the Environmental Protection Agency's responsibilities); 21 U.S.C. § 393 (establishing the Food and Drug Administration and outlining its mission, leadership structure, and reporting requirements); 38 U.S.C. (governing the Department of Veterans Affairs and veterans' benefits).

145. *See Chevron*, 467 U.S. at 844. Even under *Chevron*, there was no scholarly consensus regarding when Congress delegates its authority to an agency. *See id*. *But see* Lisa Schultz Bressman, *Reclaiming the Legal Fiction of Congressional Delegation*, 97 VA. L. REV. 2009, 2050 (2011) (describing how critics of *Chevron* see agency delegation as "both false and fraudulent").

146. 38 U.S.C. § 1703.

147. *Id.* § 1703(2).

148. *See, e.g.*, 38 C.F.R. pt. 17 (2019).

administrative law and implied delegation.[149] There, the Supreme Court held that agencies, not courts, were the proper bodies to interpret ambiguous statutory provisions due to their technical expertise and rulemaking authority.[150] Courts were required to defer to an agency's interpretation if it was reasonable.[151] The decision ultimately set forth a two-step framework for reviewing federal agency interpretations of ambiguous statutes.[152]

The two-step framework was used to assess challenges to an agency's interpretation of a statute.[153] In Step One, the court must examine whether Congress has directly addressed an issue.[154] If the statutory language is clear and unambiguous, the court must enforce Congress's intent.[155] Courts often look at legislative history and utilize canons of statutory construction to resolve this ambiguity.[156] However, if the statute is silent or ambiguous, the court moves to Step Two.[157] Here, the Court assumes Congress has left a statutory gap and considers whether the agency's interpretation is reasonable or permissible.[158] If the interpretation is deemed reasonable—even if it is not the one the court would have adopted—the court

149. *Chevron*, 467 U.S. at 862–64 ("To the extent any congressional 'intent' can be discerned from this language, it would appear that the listing of overlapping, illustrative terms was intended to enlarge, rather than to confine, the scope of the agency's power to regulate particular sources in order to effectuate the policies of the Act.").

150. *Id.* at 865. Interestingly, the *Chevron* Court never actually referenced the APA in its decision, a detail the *Loper* majority drew on in overturning *Chevron*. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 407 (2024).

151. *Chevron*, 467 U.S. at 865; *see* 5 U.S.C. § 706 (outlining the scope of judicial review for agency actions).

152. *Chevron*, 467 U.S. at 843 n.9. Despite being highly well-known as a two-step framework, *Chevron* never explicitly outlines the two-step test. *See id.* In fact, this significant principle from the case originates from a footnote, leading some to argue that *Chevron* ultimately did not carry the weight it receives credit for. *See* Devin Humphreys, *Footnote Nine* Chevron*: When SCOTUS Comes to South Bend*, THE OBSERVER (Apr. 19, 2023, at 22:58 ET), https://www.ndsmcobserver.com/article/2023/01/footnote-nine-chevron-when-scotus-comes-to-south-bend [https://perma.cc/EG4Q-67X7] (citing *Chevron*, 467 U.S. at 843 n.9).

153. *Chevron*, 467 U.S. at 843 n.9 (establishing the two-step framework).

154. *See* Chevron *Deference*, BALLOTPEDIA, https://ballotpedia.org/Chevron_deference_(doctrine) [https://perma.cc/5YV9-LXUQ] (last visited Oct. 22, 2025).

155. *Id.*

156. *See* VALERIE C. BRANNON, CONG. RSCH. SERV., R45153, STATUTORY INTERPRETATION: THEORIES, TOOLS, AND TRENDS 2–3 (2023) [hereinafter THEORIES, TOOLS, AND TRENDS].

157. *See Chevron*, 467 U.S. at 842–43; Chevron *Deference*, *supra* note 154.

158. *See Chevron*, 467 U.S. at 845.

must defer to the agency's judgment.[159] This two-step process recognizes both the expertise of agencies in their specialized areas and the limits of judicial oversight when Congress has not provided express guidance.[160]

For instance, *Buffington* examined *Chevron* deference in the context of veterans' benefit entitlements.[161] Buffington argued that, upon discharge, his VA benefits should have automatically resumed without requiring him to reapply. [162] Buffington's VA benefits are controlled by Section 5304 of Title 38, which explicitly states that "[p]ension, compensation, or retirement pay on account of any person's own service shall not be paid to such person for any period for which such person receives active service pay," but did not establish when or under what conditions compensation would recommence after leaving active service.[163] The VA, utilizing its internal expertise, had interpreted the statute to require that veterans notify the agency to reinstate benefits—a policy Buffington argued was overly restrictive and contrary to the statute's intent.[164] The Court determined that the statute was ambiguous enough to warrant deferring to the VA's interpretation, concluding that the agency's policy reasonably filled the statutory gap left by Congress.[165] By deferring, the Court effectively upheld the agency's interpretation of Section 5304, despite the additional administrative burden this imposed on veterans.[166]

The Court's rationale for *Chevron* relied on practical and statutory reasoning.[167] Agencies possess greater expertise in their respective fields, and courts do not second-guess specialized regulatory decisions.[168] Moreover, deference to

159. *Id.* at 843–44; *see* Chevron *Deference*, *supra* note 154.

160. *See Chevron*, 467 U.S. at 865–66; Chevron *Deference*, *supra* note 154.

161. Buffington v. McDonough, 7 F.4th 1361, 1364–65 (Fed. Cir. 2021).

162. *Id.* at 1365.

163. 38 U.S.C. § 5304(c); *Buffington*, 7 F.4th at 1365.

164. *Buffington*, 7 F.4th at 1363; *see also* 5 U.S.C.A. § 553 (discussing the power of agencies to promulgate rules based on files, expertise, views, or opinions).

165. *See Buffington*, 7 F.4th at 1366–67.

166. *See id.*

167. *See* Aditya Bamzai, *The Origins of Judicial Deference to Executive Interpretation*, 126 YALE L.J. 908, 921 (2017).

168. *See* Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 865 (1984) ("Judges are not experts in the field, and are not part of either political branch of the Government.").

agency interpretations respects the separation of powers by allowing the executive branch, through its administrative agencies, to fill in the gaps left by Congress.[169]

However, *Chevron* deference became a focal point of legal and political debate, with strong arguments for and against its application.[170] Supporters contended that *Chevron* deference appropriately allocated interpretive authority to agencies with specialized expertise, allowing them to resolve statutory ambiguities within their purview.[171] Additionally, proponents argued that the doctrine streamlined judicial review and respected the policymaking role Congress has granted to administrative agencies.[172] Rather than enabling unchecked agency power, proponents asserted that *Chevron* has facilitated a balanced approach to statutory interpretation by deferring to the expertise of those responsible for implementing complex regulatory schemes.[173]

Conversely, critics argued that *Chevron* deference was at odds with constitutional principles, especially the judiciary's role in interpreting the law.[174] Opponents contended that allowing agencies to determine the meaning of statutes encroached on the authority of the courts and Congress, violating the separation of powers.[175] Additionally, opponents

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169. *See* Cass R. Sunstein, Chevron *Step Zero*, 92 VA. L. REV. 187, 197–98 (2006) (explaining that *Chevron* is "rooted in separation of powers"). *But see* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 413 (2024) (Thomas, J., concurring) (voicing significant concern that *Chevron* undermines the separation of powers); Gus Hurwitz, Chevron *and the Politicization of Law (or,* Chevron *Step Three)*, TRUTH ON THE MARKET (June 4, 2018), https://truthonthemarket.com/2018/06/04/chevron-and-the-politicization-of-law-or-chevron-step-three/ [https://perma.cc/Z9YD-RY3A].

170. *See* Hurwitz, *supra* note 169 (describing how *Chevron* "increase[ed] both politicization and polarization of law and policy").

171. *See* Chevron *as Law*, *supra* note 135, at 1626–27 (illustrating how agencies possess the specialized expertise necessary to resolve complex regulatory questions, with the Endangered Species Act serving as an example of why agencies, rather than courts, are best suited to define terms like "harm" in an animal context).

172. *See id.* at 1620.

173. *But see id.* (admitting that *Chevron* deference may enable agencies to override congressional intent by exploiting ambiguities and expanding their authority through excessive deference).

174. *See* Christopher J. Walker, *Attacking* Auer *and* Chevron *Deference: A Literature Review*, 16 GEO. J.L. & PUB. POL'Y. 103, 113 (2018).

175. *See id.* at 112–13 (noting how *Chevron* conflicted with the roles of both courts and Congress).

claimed that *Chevron* deference results in an impermissible transfer of interpretive authority from judges to executive agencies, potentially undermining the impartial application of the law and leading to politically driven interpretations.[176]

Applying these debates to the VA reveals the pros and cons of *Chevron*'s impact on veterans. On one hand, courts may lack the specialized expertise needed to address the intricate and nuanced issues within Title 38's complex statutory framework.[177] On the other hand, the VA can misuse its deferred authority to interpret Title 38 in ways that undermine veterans' interests, contrary to the intent of Congress when it enacted the statute.[178] Nonetheless, the debate is now irrelevant, as the Supreme Court rendered the question of *Chevron*'s validity moot in 2024 by overturning the doctrine.[179]

B. Chevron *Overturned*

The Supreme Court's 2024 decision in *Loper Bright* marked a turning point in administrative law, overturning nearly forty years of precedent.[180] The specific facts of the Plaintiff's issue were inconsequential to the Supreme Court.[181] Instead, the Court saw the case as an opportunity to revisit *Chevron* and the boundaries of agency authority.[182] In a closely watched decision,[183] the Court overturned the long-established standard for deference, rejecting the notion that *Chevron* aligns with the APA and that agencies receive any implied discretion to

176. *See id.* at 114–15 (describing how agencies are often involved in drafting the legislation they later interpret, raising concerns about agencies creating and interpreting laws under *Chevron*); Jonathan R. Siegel, *The Constitutional Case for "Chevron" Deference*, 71 VAND. L. REV. 937, 951–52 (describing the reasoning for the Separation of Powers Resolution Act and why it failed to pass).

177. *See* Ridgway, *supra* note 29, at 405.

178. *See infra* Part III.

179. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 406–07 (2024).

180. *See id.*; *see also* THE SIDLEY PODCAST: *How the Regulatory State May Change in the Aftermath of the SCOTUS* Chevron *Ruling*, (Spotify, July 10, 2024).

181. *See Loper Bright*, 603 U.S. at 478–79 (Kagan, J., dissenting) (limiting the scope of the case only to answer whether Chevron should be overruled or clarified).

182. *See id.*

183. *See* Craig Orji & Jason Hayes, *Why All the Hysteria Over Supreme Court's* Loper Bright *Ruling?*, MACKINAC CTR. FOR PUB. POL'Y (July 19, 2024), https://www.mackinac.org/blog/2024/why-all-the-hysteria-over-supreme-courts-loper-bright-ruling [https://perma.cc/D7HD-VAGT].

interpret ambiguous laws.[184] This decision also reflected the increasingly conservative trajectory of the Roberts Court in recent years, particularly in its skepticism toward the administrative state and preference for judicial interpretation over agency deference.[185]

The Court's ruling in *Loper Bright* was grounded in a hesitancy to provide agencies with broad deference to interpret laws without oversight.[186] Justice Thomas emphasized the importance of maintaining the separation of powers and argued that deferring to agencies' interpretations gives the executive branch too much authority at the expense of both the legislative and judicial branches.[187] By eliminating *Chevron* deference, the Court reinforced that it is the judiciary's role, not the executive's, to interpret the law.[188]

Some critics label *Loper Bright* as the "death of the modern administrative state,"[189] while others see it as a moral and legal check on administrative power.[190] Nonetheless, overturning *Chevron* deference will have profound implications on how the VA operates and how courts will review the VA's actions.[191] Without the shield of *Chevron* deference, the VA may face greater judicial scrutiny in its interpretations of Title 38.[192]

The Supreme Court has not yet provided a definitive

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184. *See Loper Bright*, 603 U.S. at 444 (Gorsuch, J., concurring).

185. *See* Victoria F. Nourse, Loper Bright *in a Larger Interpretive Perspective: Is This Justice Scalia's Court Anymore?*, 31 GEO. MASON L. REV. 601, 603 (2024).

186. *See id.*

187. *Loper Bright*, 603 U.S. at 413; *see also* discussion *supra* notes 174–75 and accompanying text.

188. *See Loper Bright*, 603 U.S. at 413. It is important to note that the Supreme Court does not entirely dismiss agency expertise; instead, it encourages courts to consider an agency's specialized knowledge and informed judgment when making decisions. *See id.* at 402–03 (quoting Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944)).

189. *See* Comment, *Administrative Law Deference First Circuit Deems Agency Action Not an Interpretation of Law*, 138 HARV. L. REV. 883, 883 (2025) [hereinafter *Administrative Law Deference*] (quoting Joseph Schaeffer & Jessica Deyoe, *In Memoriam: The Modern Administrative State*, LAW360 (July 8, 2024, at 15:51 ET), https://www.law360.com/articles/1855157/in-memoriam-the-modern-administrative-state) (internal quotation omitted).

190. *See* Eric R. Bolinder, *Fishing for Justice: The Legal and Moral Case for* Loper Bright, 19 LIBERTY U. L. REV. 357, 363 (2024).

191. *See* Phillips, *supra* note 33, at 11 (describing how *Loper Bright* is likely to impact the VA).

192. *See Loper Bright*, 603 U.S. at 391–92 (specifying that courts must find the best reading of a statute rather than accepting a merely permissible one from an agency).

framework to guide courts in the *Loper Bright* era.[193] Scholars have proposed various frameworks, but none have been explicitly endorsed as the Court's preferred path forward.[194] This uncertainty has left agencies, courts, and legal practitioners grappling with the question: what is the best way to navigate this new administrative landscape? [195]

Even though the Supreme Court did not set up a new framework, it did expressly decline to overturn the precedent decided under *Chevron*, leaving those interpretations intact as binding authority.[196] As a result, lower courts hesitate to adopt new legal standards to address issues, instead continuing to rely on established precedents to interpret ambiguous statutes.[197]

A case in point is *Rorie v. McDonough*, a 2024 decision from the Court of Appeals for Veterans Claims.[198] In this case, a veteran sought back pay for service-connected disability benefits.[199] The veteran urged the court to reconsider the VA's interpretation of Congress's statute in light of *Loper Bright*.[200] However, the court declined to revisit its precedent, adhering to the Ninth Circuit's "clearly irreconcilable" standard, which was adopted by both the Federal Circuit and the Court of Appeals for Veterans Claims.[201] This standard permits overruling a prior decision only when it is fundamentally incompatible with subsequent Supreme Court rulings.[202] This

193. *See Administrative Law Deference*, *supra* note 189, at 833.

194. *See id.* at 889. Potential paths forward under *Loper Bright* include: reliance on *Skidmore* deference, which grants weight to agency interpretations based on their persuasiveness and consistency; explicit congressional delegation of authority, where statutes clearly assign interpretive power to agencies; and a distinction between policymaking and fact-finding, wherein agencies retain deference in technical or expertise-driven determinations while courts take a more active role in statutory interpretation. *Id.*

195. *See* Thomas W. Merril, *The Demise of Deference and the Rise of Delegation to Interpret?*, 138 HARV. L. REV. 227, 228 (2024); Phillips, *supra* note 33, at 3.

196. *See Loper Bright*, 603 U.S. at 412 (instructing lower courts to uphold *Chevron*-reliant precedent absent "special justification").

197. *See, e.g.*, Rorie v. McDonough, 37 Vet. App. 430, 434 (2024).

198. *Id.* at 433.

199. *See id.*

200. *Id.* at 437–39.

201. *Id.* at 443–44.

202. *Id.*; *see also* Miller v. Gammie, 335 F.3d 889, 899–900 (9th Cir. 2003) (articulating the "clearly irreconcilable" standard for overruling precedent).

strict standard requires that the reasoning in higher court decisions directly undermines earlier rulings.[203]

In *Rorie's* application of this standard, the Court of Appeals for Veterans Claims declined to overturn *Pacheco v. Gibson*, a prior decision that already established the meaning of the statute in question.[204] It reasoned that although *Loper Bright* had overturned *Chevron* deference, doctrinal shifts do not automatically invalidate past rulings based on those doctrines unless they create an irreconcilable conflict.[205] The court emphasized that the principles of *stare decisis* required continued adherence to *Pacheco*, even though the veteran invoked newer administrative law precedents.[206] This decision effectively reinforced the status quo, blocking efforts to reconsider or revise established precedents in veterans' law.[207]

Upholding the "clearly irreconcilable" standard is an indication that the Supreme Court is hesitant to overturn *Chevron*-based rulings unless they expressly choose to do so.[208] This hesitancy ultimately risks preserving decisions that had negative impacts on veterans.[209] If *Rorie* moves to the Federal Circuit on appeal, the judiciary should caution whether strict adherence to precedent in this context risks unfairly confining veterans to a legal framework shaped by an overruled doctrine.[210]

III. CASE STUDIES: GRAPPLING WITH *CHEVRON* DEFERENCE IN BENEFITS DISPUTES

Courts applying *Chevron* deference have long hindered

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203. *See Miller*, 335 F.3d at 899–900; *Rorie*, 37 Vet. App. at 443–44.

204. *See Rorie*, 37 Vet. App. at 436–37 (refusing to revisit *Pacheco v. Gibson*); Pacheco v. Gibson, 27 Vet. App. 21, 25–26 (2014).

205. *See Rorie*, 37 Vet. App. at 442–43; *see also* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024) (holding that prior cases that relied on *Chevron* "are still subject to statutory *stare decisis* despite our change in interpretive methodology.").

206. *See Rorie*, 37 Vet. App. at 436–37.

207. *Id.*

208. *See* Phillips, *supra* note 33, at 13.

209. *Id.*

210. *Id.* However, *Loper Bright Enters. v. Raimondo* did leave open a potential avenue for revisiting past decisions. 603 U.S. 369, 411–12 (2024). *See* discussion *infra* Part IV.A.2.

veterans' ability to obtain benefits.[211] This Part reaffirms how deference to the VA's interpretations of Title 38 has disadvantaged veterans in benefits disputes and highlights the need for a judiciary more attuned to veterans' interests.[212]

A. Virgil Lawton

Virgil Lawton, a U.S. Army veteran who served in Vietnam, was denied his claim for service-related PTSD despite multiple formal diagnoses confirming the condition.[213] When he later sought to reopen his claim, the VA approved it; however, his benefits did not date back to his initial PTSD diagnosis.[214] Lawton contested this interpretation in the United States Court of Appeals for Veterans Claims, asserting that he was entitled to retroactive compensation from the onset of filing his claim.[215]

Section 5110 of Title 38 and the VA's interpretation of this statute is at the heart of one of Lawton's arguments in this dispute.[216] Section 5110 is a congressional statute that prohibits setting the effective date for a benefit award earlier than the date the VA receives the application.[217] The VA issued a rule expanding on this statute, stating that when a veteran submits new and material evidence (excluding service department records) after a claim's final denial, the effective date for benefits is the latter of either the date the new claim was received or the date the entitlement arose.[218] Lawton challenged this rule, arguing that the VA's regulation conflicted with the plain meaning of Section 5110, as the term "new claim" in the regulation does not appear within the statute.[219]

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211. *See* Phillips, *supra* note 33, at 9.

212. *See* Buffington v. McDonough, 143 S. Ct. 14, 16 (2022) (Gorsuch, J., dissenting).

213. Sears v. Principi, 16 Vet. App. 244, 245 (2002).

214. *Id.* at 245–46.

215. *Id.*

216. Lawton presents three arguments for the court; for the purposes of this analysis, only his first argument will be examined. *See id.* at 248–49.

217. *See* 38 U.S.C. § 5110(a)(1)–(2); *Sears*, 16 Vet. App. at 246. The claim can be an initial claim, a reopened claim after final adjudication, or a claim for increased compensation. *See* 38 U.S.C. § 5110(a)(1).

218. 38 C.F.R. § 3.400(q)(2) (2025); *Sears*, 16 Vet. App. at 246.

219. *See Sears*, 16 Vet. App. at 246–47. *Compare* 38 U.S.C. § 5110(a)(1)–(2) (failing to distinguish between a new claim and a reopened claim for the effective date of an award), *with* 38

Lawton's argument was ultimately unsuccessful, as the court upheld the VA's interpretation.[220] It concluded that the VA's stance was consistent with Congress's statutory framework, determining that Lawton's reopened claim qualified as a "new claim" under Section 5110.[221] As a result, the court found no legal basis to grant retroactive benefits dating back to Lawton's original claim.[222]

Lawton appealed to the Federal Circuit Court of Appeals but was again unsuccessful.[223] He reiterated his argument that the VA's regulation conflicted with Congress's statute, but this time, the court quickly applied *Chevron* deference, finding Section 5110 ambiguous.[224] Turning to legislative history, the court found no clear guidance, emphasizing that Congress had ample opportunity to clarify its intent but had not done so.[225] Relying on *Chevron*'s rationale, the court concluded that Congress's silence indicated an intent to leave the matter to the VA's discretion.[226] Consequently, Lawton was denied an earlier

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C.F.R. § 3.400(q)(2) (2025) (stating that when new and material evidence is submitted, the effective date of an award is the date of the later of a new claim or the date the entitlement arose).

220. *See Sears*, 16 Vet. App. at 250.

221. *Id.* at 248.

222. *Id.* Interestingly, the court conducted this entire analysis without once explicitly invoking *Chevron* deference, nor did it refer to the agency's interpretation as a "reasonable one" at any point. *See id.* This serves as a strong example of how automatic *Chevron* deference had become for courts, with the analysis focusing solely on the substance of the issue rather than engaging in the traditional deference framework. *See* Linda D. Jellum, *The Impact of the Rise and Fall of* Chevron *on the Executive's Power to Make and Interpret Law*, 44 LOY. U. CHI. L.J. 141, 162 (2012) (describing how *Chevron* became an "automatic" response).

223. *See* Sears v. Principi, 349 F.3d 1326, 1332 (Fed. Cir. 2003).

224. *Id.* at 1328–29.

225. *See id.* at 1329–30. Notably, the court limits its analysis to seeking explicit answers found in the legislative history, refraining from interpreting implicit expressions of congressional intent. *See id.* This issue was central to the Supreme Court's concern with *Chevron* deference, as the Court viewed the assumption that any lack of an express answer equated to an implicit delegation of authority as overly deferential. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 399–400 (2024); *see also* Bolinder, *supra* note 190, at 380 (describing the idea that all ambiguities are delegations as a "fiction").

226. *See Sears*, 349 F.3d at 1330. This significance of congressional silence has been debated in administrative law—while *Chevron* was often read to interpret silence as an implicit authorization for agency action, *Loper Bright* suggests that such silence should now be construed as withholding that authority. C*ompare* Chevron v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 865–66 (1984) (leaving the interpretation of congressional silence to agencies), *with Loper Bright*, 603 U.S. at 399–401 (2024) (leaving the interpretation of congressional silence to the courts); *see also* Caroline Cecot, *The Meaning of "Silence"*, 31 GEO. MASON L. REV. 515, 516 (2024) (explaining that the *Chevron* Court reasoned that since Congress might not resolve every question that is relevant

effective date for his benefits, and the VA's regulation was upheld.[227]

The VA's regulation may have been a reasonable interpretation of Congress's statute, but was it the *best* reading? While the court deferred to the VA's interpretation under *Chevron*, it failed to consider whether Congress's intent supported a more veteran-friendly outcome.[228] Congress designed Title 38 to be veteran-friendly, reflecting its long-standing commitment to ensuring that those who served are not unfairly disadvantaged in the benefits process.[229] It is possible that a more faithful reading of Section 5110 may have supported Lawton's argument that his benefits should have been retroactive to his initial PTSD diagnosis.[230] The court's heavy reliance on agency deference[231] meant it never truly considered whether the VA's reading aligned with Congress's broader statutory purpose, or whether a more just outcome was possible.

A closer analysis of the legislative history underlying Section 5110 suggests that Lawton's argument may have had more merit than the court acknowledged.[232] In a Senate Report on the 1962 amendments that ultimately introduced Section 5110 to Title 38, lawmakers did not include the attributes of a new claim when discussing reopened claims.[233] This omission could reasonably be interpreted as Congress's intent to differentiate reopened claims from entirely new ones rather than a mere simplification of statutory language.[234] If Congress had intended for reopened claims to be treated identically to new claims for effective-date purposes, as the court suggested,

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to a legislative act, the resulting "silence" on such questions might be intentional space left for agency expertise).

227. *See Sears*, 349 F.3d at 1332.

228. *See id.* at 1331–32.

229. *See* Drake et al., *supra* note 67, at 1345 ("[T]he VA is statutorily obligated to help the veteran by developing evidence to support the claim and by giving the veteran the benefit of the doubt in deciding the claim."); discussion *supra* pp. 278–79.

230. *See* Sears v. Principi, 16 Vet. App. 244, 245–46 (2002).

231. *See Sears*, 349 F.3d at 1329–30.

232. *See id.*

233. *See* S. REP. NO. 87-2042, at 5 (1962).

234. *See id.*

it could have explicitly stated so.[235] Instead, by not including this language, Congress may have been signaling a substantive difference in how reopened claims should be classified.[236] The court relied on statutory ambiguity and congressional silence to uphold the VA's interpretation; however, as *Loper Bright* suggested, congressional silence in such cases may warrant a more searching judicial analysis.[237]

With a court interpretation of this ambiguity, the case may have been resolved in Lawton's favor rather than defaulting to deference of the VA.[238] At a minimum, the court would have engaged in a more thorough analysis of Congress's intent.[239] Instead, the court held that even if the VA's interpretation disadvantaged claimants, it was still entitled to reflexive deference.[240] This approach conflicts with Congress's pro-veteran intent in drafting Title 38 statutes, which was to create a fair and accessible claims process for veterans, not to impose additional obstacles through agency interpretation.[241] Lawton, a Vietnam Army veteran suffering from PTSD, was ultimately denied benefits he may have rightfully earned if not for this procedural interpretation.[242]

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235. *See Sears*, 349 F.3d at 1329–30.

236. *See* S. REP. NO. 87-2042, at 3263; *Sears*, 349 F.3d at 1330.

237. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 399 (2024).

238. *See* S. REP. NO. 87-2042, at 3263; *Sears*, 349 F.3d at 1329–30.

239. *See Loper Bright*, 603 U.S. at 399.

240. *See Sears*, 349 F.3d at 1332.

241. *See* discussion *supra* pp. 278–79.

242. *See Sears*, 349 F.3d at 1332. It is worth noting that, in this case, the Plaintiff was denied benefits because of a procedural rule that benefited the government. *See id.* Procedural rules can create friction between a "fair" outcome and a "reasonable" outcome that is within the financial limits of the government's power. While the Board of Veterans' Appeals is tasked with "provid[ing] every possible assistance" to veterans, it must also act within its financial limitations. *See* Board of Veterans' Appeals, *Board Hearing Overview*, U.S. DEP'T OF VETERANS AFFS. (June 10, 2025), https://department.va.gov/board-of-veterans-appeals/ [https://perma.cc/N6RR-2ZMV]. Courts may therefore be hesitant to overturn rules that weigh spending considerations. *See* Rudisill v. McDonough, 601 U.S. 294, 316–18 (2024) (Kavanaugh, J., concurring). Therefore, a solution that aims to strike a balance between the needs of the Government with fairness to veterans is necessary. *See* discussion *infra* Section IV.B.

B. William H. Heino, Sr.

William H. Heino, Sr., a Korean War-era Navy veteran,[243] relied on the blood pressure medication Atenolol.[244] However, he was charged a copayment twice as high as what other veterans paid for the same medication because his doctor instructed him to split a 25mg tablet in half to achieve the proper daily dosage.[245] As a result, Heino received only fifteen tablets for a thirty-day supply, while another veteran prescribed thirty whole tablets for the same period would have paid the same amount.[246] Heino argued that this practice unfairly overcharged him simply because he was required to split his pills.[247] However, despite his complaints, the VA did not adjust the copayment.[248]

Heino contested the VA's decision, arguing that the VA violated Section 1722A(a)(2) of Title 38, in which Congress prohibits the VA from charging veterans more than the actual cost of their medication.[249] He maintained that the VA was overcharging by requiring him to pay the same copayment for a reduced supply.[250] He also argued that the additional cost was unreasonable as it exceeded the actual cost of providing the medication.[251]

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243. Heino is a frequent outspoken advocate for veterans. *See, e.g.*, William Heino Sr., *What Happened to Tennessee Disabled Veteran Joshua Jones Should Never Have Happened*, STATE GAZETTE (Oct. 17, 2016), https://www.stategazette.com/archives/what-happened-to-tenn-disabled-veteran-joshua-jones-should-never-have-happened/article_ed78462f-86c3-5fc9-aed9-15bc37f86e58.html [https://perma.cc/UMQ4-FRPR]; *see also Veteran's News*, NORTHLAND VIETNAM VETERANS ASS'N, [https://perma.cc/6JAB-KVKR] (last visited Oct. 17, 2025).

244. *See* Heino v. Shinseki, 24 Vet. App. 367, 368 (2011); *see also* American Society of Health-System Pharmacists, Inc., *Atenolol*, MEDLINE PLUS (Aug. 15, 2023), https://medlineplus.gov/druginfo/meds/a684031.html [https://perma.cc/RQ73-6TUF] (defining Atenolol).

245. *Heino*, 24 Vet. App. at 368. Copayment policies are a frequent source of frustration for veterans; a recent investigation revealed that over 970,000 veterans may be owed more than $100 million in refunds due to widespread billing errors and improper copayment charges. *See VA Acknowledges Long Delays in Processing Millions of Dollars in Refunds Owed to Veterans but Failed to Provide Plan to Fix*, U.S. OFF. OF SPECIAL COUNS. (Jan. 15, 2025), https://osc.gov/News/Pages/25-16-VA-Copayment-Veteran-Refunds.aspx [https://perma.cc/49PP-XJJQ].

246. *Heino*, 24 Vet. App. at 368.

247. *Id.*

248. *Id.*

249. *Id.* at 369; *see* 38 U.S.C. § 1722A(a)(2).

250. *Heino*, 24 Vet. App. at 369.

251. *Id.*

The VA disagreed, relying on its regulation for copayments for veterans.[252] According to the VA, the statute does not prohibit a copayment for each thirty-day supply of medication, regardless of the number of pills prescribed to fulfill that supply.[253] The VA also argued that it has the authority to raise the copayment minimum from the ceiling price set in Section 1722A to cover "administrative costs" associated with dispensing the medication.[254]

The Court of Appeals for Veterans Claims sided with the VA.[255] The court conducted a *Chevron* analysis to determine whether the VA's regulation was reasonable and consistent with Section 1722A.[256] It concluded that the statute clearly applies to a thirty-day supply of medication, meaning Heino's case did not merit special consideration.[257] However, the court then delved into whether the VA was authorized to increase copayments to cover administrative costs.[258] Finding no explicit guidance in Section 1722A, the court examined the legislative history, which it interpreted as supporting the VA's actions.[259]

Heino appealed the decision to the Federal Circuit, but the outcome remained the same.[260] The court conducted its own *Chevron* analysis and found no clear guidance in the legislative history of Section 1722A.[261] When evaluating the reasonableness of the VA's regulation imposing additional administrative costs, the court again upheld the VA's position.[262] It determined that the VA had reasonably calculated its costs to ensure veterans were not charged in excess and concluded that the agency had the authority to adjust copayments to account for

252. *See id.*; 38 C.F.R. § 17.110(b).

253. *See Heino*, 24 Vet. App. at 369. *Compare* 38 U.S.C. § 1722A(a)(2) (allowing the VA to require veterans to pay an "excess" amount without clearly defining what constitutes "excess"), *with* 38 C.F.R. § 17.110(b)(1) (requiring veterans to cover all copayment charges imposed by the VA).

254. *Heino*, 24 Vet. App. at 369; 38 U.S.C. § 1722A(a)(2).

255. *Heino*, 24 Vet. App. at 376.

256. *Id.* at 371.

257. *Id.* at 371–72.

258. *Id.* at 372.

259. *Id.* at 373.

260. *See* Heino v. Shinseki, 683 F.3d 1372, 1381 (Fed. Cir. 2012).

261. *Id.* at 1378.

262. *Id.* at 1380.

administrative expenses.[263] The court reasoned that Congress had granted the VA "relatively broad discretion" to set copayment amounts within reasonable limits.[264] Heino was ultimately required to pay more than the congressional statute prescribed while receiving fewer pills.[265]

A closer examination suggests that the VA's regulation was not necessarily the *best* interpretation of Section 1722A, even if it may have been a reasonable one.[266] The most compelling evidence that this was not the best outcome is that the Court of Appeals for Veterans Claims' explicitly acknowledged that this was not the most "cost-favorable result" and that regulations were only required to operate "reasonably."[267] The court admitted that it is unfair for two veterans to receive varying amounts of medication for the same price.[268] Despite this, *Chevron* required that the unfavorable outcome remain in place as long as the agency's interpretation was reasonable or permissible under the congressional statute.[269]

Additionally, a closer examination of Section 1722A's legislative history reveals Congress's intended boundaries for the VA's authority in determining administrative costs.[270] The congressional record reflects concern about the VA's ability to set copayment values because of the potential financial burden on veterans.[271] Lawmakers specifically expressed concern that

263. *See id.* at 1380–81 (referring to national average of administrative costs and the Medical Consumer Price Index to determine reasonable administrative costs).

264. *See id.* at 1380; *see also* H.R. REP. NO. 106-237, at 42 (intending the VA to set "reasonable copayment increases in the face of . . . [rising] pharmaceutical costs").

265. *See Heino*, 683 F.3d at 1381.

266. *See* Buffington v. McDonough, 143 S. Ct. 14, 16 (2022) (Gorsuch, J., dissenting) (noting that, with *Chevron* overturned, engaging in a more rigorous judicial review to determine the best reading of congressional statutes would result in better outcomes).

267. Heino v. Shinseki, 24 Vet. App. 367, 376 (2011).

268. *Id.* ("The Court recognizes that there may be cases in which § 17.110 . . . does not produce the most cost-favorable result, such that, for example, two veterans, who pay the same copayment amount for the same type of medication, may receive varying amounts of the medication.").

269. *See id.*

270. 145 CONG. REC. S14904 (daily ed. Nov. 19, 1999) (statement of Sen. Arlen Specter).

271. *Id.* at S14907 ("I can assure my colleagues that to the veteran and his family living on a very limited income, [increasing copayment prices are] quite significant . . . ."); *but see* Heino v. Shinseki, 683 F.3d 1372, 1380 (Fed. Cir. 2012) (describing how Congress intended the VA to have broad discretion in setting copayment values); H.R. REP. NO. 106-237, at 41–43 (discussing the VA's authority over healthcare costs.

increases in pharmaceutical copayments could force veterans into difficult financial decisions, such as choosing between necessary medications and affording necessities like food.[272] This record exemplifies Congress's intent for the VA to consider veterans' financial hardships and to exercise sensitivity when determining administrative costs, which raises questions about whether the agency's interpretation in *Heino* aligned with that legislative purpose.[273]

Unfortunately, agency deference has resulted in denied benefits for many veterans, making cases like Lawton's and Heino's far from unique.[274] The VA's regulations were legally permissible under *Chevron* deference but did not represent the most accurate or just interpretation—one that upholds fairness and the pro-veteran principles embedded in the law.[275] Without more judicial scrutiny and stronger legislative safeguards, veterans like Lawton and Heino must shoulder burdens that Congress likely never intended.[276] Their experiences highlight the consequences of unchecked agency discretion in benefits determinations and reinforce why scholars and jurists like Justice Gorsuch have called for a more exacting approach that does not reflexively defer to an agency's interpretation simply because it is reasonable.[277]

IV. SHIFTING FROM DEFERENCE TO A DUTY OF PROTECTING VETERANS

Courts and scholars remain uncertain about how to proceed

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272. 145 CONG. REC. S14907 (daily ed. Nov. 19, 1999) (statement of Sen. Arlen Specter) ("It is critically important that we do not place this segment of our veteran population in the same situation as many of our aging population . . . having to choose between buying their medication or putting food on the table.").

273. *Id.*; *see also Heino*, 683 F.3d at 1380–81 (holding that "it was reasonable for the VA to conclude that the statute prohibits the Secretary from charging veterans a copayment 'in excess of the actual cost of the medication and the pharmacy administrative costs related to the dispensing of the medication.'").

274. *See* Sears v. Principi, 349 F.3d 1326, 1332 (Fed. Cir. 2003); *Heino*, 683 F.3d at 1381; *see also* Buffington v. McDonough, 7 F.4th 1361, 1367 (Fed. Cir. 2021) (deferring to the VA's regulation because the VA "reasonably filled a statutory gap").

275. *See* Phillips, *supra* note 33, at 20.

276. *See id.* at 20–21.

277. *See* Bolinder, *supra* note 190, at 363 and accompanying text.

without *Chevron*,[278] but this moment presents an opportunity to confront some of the systemic challenges veterans face in obtaining benefits.[279] Addressing these challenges requires a collective duty across multiple fronts. First, courts must resolve ambiguous provisions of Title 38 in favor of veterans, as Congress intended, by actively applying the pro-veteran canon.[280] Additionally, Congress must enact legislation that codifies its pro-veteran intent, eliminating the likelihood that courts underutilize the pro-veteran canon.[281] Moreover, Congress must reform the VA itself to reduce the need for judicial intervention in the first place.

A. Judicial Duty

The death of *Chevron* deference allows courts to require the VA to adopt the *best* interpretation of Title 38, rather than merely a reasonable one,[282] by applying the pro-veteran canon in VA benefits cases.[283] Adding this canon as a regular tool[284] to the courts' proverbial toolbox would promote greater consistency in decision-making and ensure that courts, rather than the VA, will interpret ambiguous provisions of Title 38 in a way that best serves veterans.[285] This pro-veteran interpretive framework has the potential to reinforce Congress's intent to support those who have served.[286] Embracing the pro-veteran canon would ultimately validate Justice Gorsuch's view in *Loper Bright* that veterans would stand to benefit from eliminating

278. *See Buffington*, 143 S. Ct. at 21–22 (Gorsuch, J., dissenting); Phillips, *supra* note 33, at 20.

279. *See* Phillips, *supra* note 33, at 20.

280. *See* Brown v. Gardner, 513 U.S. 115, 118–19 (1994).

281. *See* Jarrod Shobe, *Congressional Rules of Interpretation*, 63 WM. & MARY L. REV. 1997, 2014 (2022) (arguing that Congress should codify rules of statutory construction because it needs leeway to clarify the meaning of its statutes).

282. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 400 (2024).

283. *See* Brown, 513 U.S. at 118–20. The pro-veteran canon is also referred to as "the veteran's canon" or the *Gardner* Presumption. *See, e.g.*, Buffington v. McDonough, 7 F.4th 1361, 1374–75 (2021).

284. Courts' means of statutory interpretation are often referred to as "tools." *See, e.g.*, THEORIES, TOOLS, AND TRENDS, *supra* note 156, at 3.

285. *See Buffington*, 7 F.4th at 1374–75.

286. *See id.* at 1375.

Chevron deference.[287]

1. The pro-veteran canon

The pro-veteran canon is a legal principle that favors veterans in courts.[288] It originated in *Brown v. Gardner*, where the Court held that interpretations of ambiguities in statutes governing veterans' benefits must favor veterans.[289] This principle is rooted in the broader principle of the Nation's long-standing commitment to supporting those who have served, as well as the uniquely pro-claimant theme of Title 38.[290] Unlike *Chevron* deference, which granted agencies the authority to interpret ambiguous statutes within their jurisdiction, the pro-veteran canon reflects a judicial rule for safeguarding veterans' benefits, acknowledging the unique sacrifices veterans have made.[291]

The pro-veteran canon was long underutilized due to the tension it created with the framework of administrative deference under *Chevron*,[292] which had dominated agency interpretation for more than a decade prior to the canon's creation in *Gardner*.[293] Where *Chevron* granted the VA latitude in filling statutory gaps left by Congress, the pro-veteran canon reverses that presumption by prioritizing the interests of veteran claimants over agency interpretations.[294] This tension resulted in courts often overlooking the canon in favor of

287. *See Loper Bright*, 603 U.S. at 439 (Gorsuch, J., concurring); *see also* Buffington v. McDonough, 143 S. Ct. 14, 16 (2022) (Gorsuch, J., dissenting) (arguing that the Court's use of Chevron deference "bypassed any independent review of the relevant statutes" at the expense of the law and veterans' rights).

288. *See* Jon Rehagen, *SCOTUS's* Chevron *Deference Ruling: How It Could Hurt Veterans and the VA*, VETERAN.COM (Aug. 29, 2025), https://veteran.com/scotus-chevron-deference-impact-va-veteran/ [https://perma.cc/SY82-5MEX].

289. *See* Brown v. Gardner, 513 U.S. 115, 118–19 (1994).

290. *See* Rehagen, *supra* note 288; discussion *supra* note 80.

291. *See* Carolyn Ryan, *The Common Law Solution to* Gardner's *Presumption*, 8 VETERANS L. REV. 24, 45 (2016).

292. *See* Ridgway, *supra* note 29, at 391; *Justice Scalia Headlines the Twelfth CAVC Judicial Conference*, VETERANS L.J., Summer 2013, at 1, 22–23.

293. *Compare* Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 865–66 (1984), *overruled by* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 399–400 (2024), *with* Brown v. Gardner, 513 U.S. 115, 118–19 (1994).

294. *See* Ridgway, *supra* note 29, at 392.

prioritizing VA interpretations in veterans' benefits cases.[295] With *Chevron* no longer creating tension with *Gardner*, courts can utilize the pro-veteran canon when interpreting veterans' benefits statutes.[296]

One of the most compelling arguments for applying the pro-veteran canon is that it naturally aligns with Congress's veteran-friendly themes in Title 38.[297] For instance, the benefit of the doubt rule upholds pro-veteran principles by requiring the VA to grant veterans a favorable decision when the evidence for a benefits claim is roughly equal, which mirrors the pro-veteran canon's emphasis on courts resolving ambiguous statutes in favor of veterans.[298] Likewise, 38 U.S.C. § 5103A(a) imposes an affirmative duty on the VA to assist claimants in gathering evidence to support their claims, reinforcing a pro-veteran framework that prioritizes fairness and accessibility in the benefits process.[299] Applying the pro-veteran canon to more closely align statutory interpretations with the congressional intent evident in these statutes reflects the very aim articulated by Justice Gorsuch and the Court in

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295. *See id.* at 394 (noting how the cases preceding and following *Gardner* did not apply much guidance as to its application). *Gardner* was only utilized in VA case law sixty-nine times, and only eight of those cases discuss both *Chevron* and *Gardner*. The search terms that yielded the first result were "Veteran's Affairs" and "Gardner" on LEXIS. The search terms that yielded the second result were "Veteran's Affairs" and "Gardner" and "Chevron" on LEXIS. The cases that mentioned both *Chevron* and *Gardner* failed to form a framework discussing their interaction. *See id*. at 392.

296. *Cf. Justice Scalia Headlines the Twelfth CAVC Judicial Conference*, *supra* note 292, at 23 (describing Scalia's belief that *Chevron* and the pro-veteran canon could not coexist, but affirming that if a court determined an agency was not entitled to deference, that deference would shift to the veteran, thus supporting the notion that with *Chevron's* removal, deference now defaults to the veteran).

297. *See, e.g.*, Shinseki v. Sanders, 556 U.S. 396, 412 (2009) (noting that Congress has expressed solicitude for veterans, recognizing their significant service to the Nation, and has made clear that the VA, unlike ordinary agencies, has a statutory duty to assist veterans); discussion *supra* note 80.

298. *See* 38 U.S.C. § 5107(b); Brown v. Gardner, 513 U.S. 115, 117–19 (1994). It is important to note that the "benefit of the doubt" rule was often in tension with *Chevron* deference. Courts often deferred to the VA in its interpretation of the "benefit of the doubt" rule, which resulted in denying veterans' benefits. *See, e.g.*, Lynch v. McDonough, 21 F.4th 776, 781 (Fed. Cir. 2021); Buffington v. McDonough, 7 F.4th 1361, 136 (Fed. Cir. 2021); Procopio v. Wilkie, 913 F.3d 1371, 1384 (Fed. Cir. 2019) (Lourie, J., concurring) ("When the pro-veteran canon and agency deference come to a head, it is agency deference—the weaker of the two doctrines at any level—that must give way."). With *Chevron* gone, courts can ensure the benefit of the doubt rule applies appropriately through the pro-veteran canon.

299. *See* 38 U.S.C. § 5103A(a); *Gardner*, 513 U.S. at 118–19.

Loper Bright—to seek the *best* reading of a statute rather than a merely permissible one.[300] By resolving ambiguities in favor of veterans, courts reaffirm the remedial purpose of veterans' benefits law and reinforce Congress's intent to provide broad protections for veterans.[301]

Using a substantive canon[302] to press a "thumb on the scale in favor of policy" is not a novel concept.[303] Consider, for example, the rule of lenity, one of the most widely recognized substantive canons.[304] The rule requires courts to interpret ambiguous criminal statutes in favor of the defendants to whom they apply.[305] This is grounded in the principle that "no citizen should be held accountable for a violation of a statute whose commands are uncertain, or subjected to punishment that is not clearly prescribed."[306] This rule advances a broader policy—ensuring fairness when statutory language is ambiguous—that courts presume Congress considered when drafting the statute.[307] Similarly, the pro-veteran canon can be applied by courts to enforce the policy of ensuring veterans receive a fair and just process when appealing denied claims.[308]

Courts can draw on precedent to effectively utilize the pro-veteran canon. For example, in *Hodge v. West*, the Federal Circuit considered whether the VA could adopt a legal test from Social Security case law and apply it to a veteran's benefits

300. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 400 (2024).

301. *See Gardner*, 513 U.S. at 118–19.

302. Substantive canons are interpretive tools that guide courts to construe statutes in a manner that advances underlying policy objectives, such as looking to the legal consequences of an interpretation. *See* THEORIES, TOOLS, AND TRENDS, *supra* note 156, at 31–32.

303. *See* Shobe, *supra* note 281, at 2007; Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 HARV. L. REV. 405, 457 (1989). *Contra Justice Scalia Headlines the Twelfth CAVC Judicial Conference*, *supra* note 292, at 20 (quoting Scalia, who described the pro-veteran canon as more of a "fist" than a "thumb" in tipping the scales of justice). *But see id.* (quoting Scalia, who concluded his statement with "as it should be," signaling his endorsement of the pro-veteran canon).

304. *See* Shobe, *supra* note 281, at 2007; Sunstein, *supra* note 303, at 459 n.201.

305. *See* United States v. Bass, 404 U.S. 336, 347–48 (1971); United States v. Santos, 553 U.S. 507, 514 (2008).

306. *Santos*, 553 U.S. at 514.

307. *See* Shobe, *supra* note 281, at 2008.

308. *See* Ridgway, *supra* note 29, at 392 (stating that "veteran friendliness and agency deference" are the "heart and soul" of veterans law).

claim.[309] Conducting a *Chevron* analysis, the court found that the test was not reasonable in light of the relevant statute under Title 38 as the VA failed to ground its reading within its own statutory framework.[310] Instead, the agency based its interpretation on the statutory scheme of a separate benefits system—an interpretation that failed to align with the historically pro-veteran theme of Title 38.[311] Unbound by *Chevron*, the court applied the *Gardner* framework instead, reaffirming the principle that where a statute is ambiguous, "interpretive doubt is to be resolved in the veteran's favor."[312] The Federal Circuit ultimately held that the VA's approach to denying benefits was unfair and would undermine veterans' ability to submit evidence effectively.[313] As long as courts apply the pro-veteran canon as it did in *Hodge*, it can become a suitable and effective tool for veterans' benefits cases without the need to overcome the *Chevron* obstacle.

Had the pro-veteran canon been applied in *Buffington*, the Air Force veteran seeking reinstated benefits may have had a more favorable outcome.[314] In her dissent, Judge Kathleen O'Malley criticized the majority for completely sidestepping any discussion of the pro-veteran canon and instead deferring to the VA under *Chevron*.[315] She emphasized that *Gardner* is pivotal in resolving statutory ambiguities in a manner that aligns with Congress's intent to create a non-adversarial, veteran-friendly system.[316] By prioritizing *Chevron* deference, the majority allowed the agency to interpret the statute in a way that limited benefits, despite the principle that interpretive

309. Hodge v. West, 155 F.3d 1356, 1357 (Fed. Cir. 1998). *Compare* 38 U.S.C. § 5108(a) (requiring that "if new and material evidence is presented or secured with respect to a supplemental claim [which has been disallowed], the Secretary shall readjudicate the claim taking into consideration all of the evidence in of record"), *with* Colvin v. Derwinski, 1 Vet. App. 171, 172 (1991) (demonstrating the VA's application of the Social Security benefits test, which mandates evaluating new evidence alongside existing evidence when reviewing a claim).

310. *See Hodge*, 155 F.3d at 1359, 1362.

311. *See id.* at 1362–63.

312. *See id.* at 1362; 38 U.S.C. § 5103A(a); Brown v. Gardner, 513 U.S. 115, 118 (1994).

313. *See Hodge*, 155 F.3d at 1364.

314. *See* Buffington v. McDonough, 7 F.4th 1361, 1375 (Fed. Cir. 2021) (O'Malley, J., dissenting).

315. *See id.*

316. *See id.*

doubt should be resolved in favor of veterans.[317] Had the Court applied the pro-veteran canon, it would have been compelled to consider whether the VA's restrictive reading of the statute unjustly disadvantaged an Air Force veteran, rather than simply accepting the agency's interpretation as controlling.[318] Thomas Buffington likely would have been entitled to the five years of back pay he was initially seeking.[319]

It is important to note that the pro-veteran canon does not mean that courts must always rule in favor of veterans, even at the expense of the VA's ability to function effectively.[320] Realistically, the VA operates within financial and logistical constraints, requiring careful allocation of resources to serve the greatest number of veterans fairly.[321] However, the pro-veteran canon directs courts to resolve statutory ambiguities in a manner that aligns with Congress's intent in Title 38 to create a generous, but fair system for veterans.[322] Rather than mandating an automatic victory for veterans, the canon provides a value-based review that keeps veteran-friendly outcomes in mind within reasonable administrative and financial limits.[323]

2. Limitations of the pro-veteran canon

While the pro-veteran canon offers a promising tool for protecting veterans in court, it is not an absolute safeguard against unjust outcomes.[324] For example, *stare decisis* may limit a court's ability to apply the canon.[325] In *Loper Bright*, the Supreme Court expressly declined to overturn precedent decided under *Chevron*, leaving those interpretations intact as

317. *See id.*

318. *See id.*

319. *See id.* at 1363.

320. *See* Ridgway, *supra* note 29, at 408–09.

321. *See* U.S. GOV'T ACCOUNTABILITY OFF., GAO-08-1097, VETERAN'S AFFAIRS: ADDITIONAL DETAILS ARE NEEDED IN KEY PLANNING DOCUMENTS TO GUIDE THE NEW FINANCIAL AND LOGISTICS INITIATIVE 18–19 (2008).

322. *See* Brown v. Gardner, 513 U.S. 115, 118–19 (1994).

323. *See id.*

324. *See* Phillips, *supra* note 33, at 20.

325. *See id.* at 19; *see also* Kimble v. Marvel Ent., 576 U.S. 446, 456 (2015) (defining *stare decisis* as "apply[ing] . . . even when a decision has announced a 'judicially created doctrine' designed to implement a federal statute . . . .").

binding authority.[326] As a result, lower courts have been reluctant to adopt alternative legal standards, such as the pro-veteran canon, to resolve statutory ambiguities.[327] Instead, courts continue to rely on *Chevron*-based precedent, even in cases where a pro-veteran interpretation may be more appropriate.[328] The Court's decision to preserve decisions relied upon by outdated law "risks perpetuating outdated interpretations that may disadvantage veterans."[329]

The Supreme Court, however, left open a potential avenue for revisiting precedent.[330] In *Ramos v. Louisiana*, Justice Kavanaugh outlined several factors that courts can consider when deciding to use a "special justification" for overturning precedent.[331] These include: (1) the quality of the precedent's reasoning; (2) its consistency and coherence with prior and subsequent decisions; (3) changes in the law; (4) changes in factual circumstances; (5) the precedent's workability; (6) the reliance interests of those affected by the precedent; and (7) the age of the precedent.[332] Given these factors, there is a strong argument that cases erroneously decided under *Chevron* in the veterans' benefits context warrant reconsideration.[333]

Nonetheless, significant challenges remain.[334] Overturning precedent based on the *Chevron* framework does not guarantee that courts will consistently apply the pro-veteran canon.[335] Notably, in *Rudisill v. McDonough*, Justice Kavanaugh raised

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326. *See supra* text accompanying notes 185–96; Loper Bright Enters. v. Raimondo, 603 U.S. 369, 405 (2024). Justices were split on how to confront *stare decisis* in *Loper Bright*. *Compare id.* at 471 (Kagan, J., dissenting) (noting that *Chevron* precedent is merited a high degree of *stare decisis* protection), *with id.* at 448 (Gorsuch, J., concurring) (observing that over time courts are increasingly likely to revisit and depart from *Chevron's* precedent).

327. *See, e.g.*, Rorie v. McDonough, 37 Vet. App. 430, 442–43(2024).

328. *See id.*

329. *See* Phillips, *supra* note 33, at 13.

330. *See id.* at 19.

331. Ramos v. Louisiana, 590 U.S. 83, 120–22 (2020) (Kavanaugh, J., concurring).

332. *Id.* at 121–22. This list is not exhaustive; *Loper Bright* only used three of the six factors to justify overturning *Chevron* deference. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 407.

333. *See* Phillips, *supra* note 33, at 19–20 (providing that the denial of veterans' benefits under *Chevron* in conjunction with the courts affirmation of the pro-veteran canon satisfies many of these factors).

334. *See id.* at 20.

335. *Id.* at 20–22 (describing how the pro-veteran canon raises concerns about judicial overreach and the potential for inconsistency in veterans' benefits law).

concerns about the pro-veteran canon, characterizing it as a mere "proverbial icing on a cake" when a veteran would already prevail under the statutory text.[336] He further argued that spending laws should not be subject to interpretive canons that favor or disadvantage specific groups, as doing so could conflict with Congress's broader intent regarding federal expenditures.[337]

Additionally, the VA is required to balance its statutory obligations to veterans with its financial limitations.[338] This constraint often complicates the mission of supporting veterans as the agency must make decisions that are fiscally responsible while ensuring that veterans receive benefits for their service.[339] Judicial deference to the VA's financial and administrative considerations may therefore prevent courts from fully adopting pro-veteran principles even if they were to apply the pro-veteran canon.[340] These criticisms highlight the potential limits of the pro-veteran canon as a judicial safeguard.[341]

B. Legislative Duty

Post-*Loper Bright*, Congress has its own opportunity to enhance the lives of veterans and fulfill the Nation's long-standing duty to advocate for and protect their well-being.[342] Congress can do so in two ways: first, by codifying pro-veteran intent to ensure that courts resolve all ambiguities in Title 38 in favor of veterans; and second, by implementing meaningful reforms to address inefficiencies within the VA, ensuring that veterans receive benefits and support.

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336. Rudisill v. McDonough, 601 U.S. 294, 316 (2024) (Kavanaugh, J., concurring).

337. *See id.* at 316–18.

338. *See Board of Veterans' Appeals – Board Hearing Overview*, U.S. DEP'T OF VETERANS AFFS. (May 20, 2025), https://department.va.gov/board-of-veterans-appeals/ [https://perma.cc/N6RR-2ZMV].

339. *See id.*; *see, e.g.*, Sears v. Principi, 349 F.3d 1326, 1332 (Fed. Cir. 2003).

340. *See* Bernard Bell, *Mere "Icing on a Cake Already Frosted": The Potentially Uncertain Future of the Veterans' Canon*, YALE J. ON REGUL. (June 20, 2025), https://www.yalejreg.com/nc/mere-icing-on-a-cake-already-frosted-the-potentially-uncertain-future-of-the-veterans-canon/ [https://perma.cc/R3C8-UL7H] (noting Justice Kavanaugh's concern with the pro-veteran canon in an era where the government is particularly budget conscious).

341. *See* Phillips, *supra* note 33, at 19.

342. *See History of Serving Veterans*, *supra* note 4.

1. Codifying the pro-veteran canon

Codifying the pro-veteran canon is essential to curing its deficiencies.[343] Justice Kavanaugh noted that the Court exercises concern in applying canons that favor or disfavor specific groups in spending statutes, cautioning that the court may ultimately conflict with Congress's intended allocation of federal funds.[344] However, Congress has demonstrated its commitment to affording service members heightened legal protections,[345] distinguishing them from ordinary claimants in other spending statutes, such as Social Security.[346] Enshrining this intent in a statute would not only reinforce that commitment but also provide courts with an unambiguous mandate to apply the canon—even within the context of a spending law—thereby addressing and alleviating Justice Kavanaugh's concern.

Legislative efforts to codify congressional intent are not unprecedented.[347] For example, prior to *Loper Bright*, proponents of the *Chevron* doctrine sought to codify it in order to shield it from potential reversal by the Supreme Court.[348] In

343. *See* Shobe, *supra* note 281, at 2014 (arguing that Congress should codify rules of statutory construction because it needs leeway to clarify the meaning of its statutes).

344. Rudisill v. McDonough, 601 U.S. 294, 317–18 (2024) (Kavanaugh, J., concurring); *see* U.S. CONST. art. I, § 9, cl. 7 (vesting the power of the purse in Congress, meaning only Congress can authorize the expenditure of federal funds, not courts).

345. *See* H.R. REP. NO. 100-963, at 13 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5794–95 ("Congress has designed and fully intends to maintain a beneficial non-adversarial system of veterans benefits.").

346. *See* Hodge v. West, 155 F.3d 1356, 1361 (Fed. Cir. 1998). *Compare* 38 U.S.C. § 5103A(a) (requiring the VA to make "reasonable efforts" in "obtaining evidence necessary to substantiate" a claim for a benefit), *with* 42 U.S.C. § 421(h) (failing to impose a duty on the Social Security Administration to assist a claimant in gathering all evidence to support a claim, only requiring them to make every reasonable effort to confirm that a qualified doctor has verified the existence of an ailment). *Cf.* 20 C.F.R. § 404.1512(b) (requiring the Social Security Administration to assist in collecting medical evidence without an explicit mandate from Congress, but *not* obligating the administration to develop other aspects of a disability claim—unlike the VA).

347. *See, e.g.*, Maisie A. Wilson, *The Law of Lenity: Enacting a Codified Federal Rule of Lenity*, 70 DUKE L. J. 1663, 1669 (2021) (arguing that codifying the rule of lenity would provide courts with explicit guidance on congressional intent in the interpretation of criminal statutes); Kent Barnett, *Codifying Chevmore*, 90 N.Y.U. L. REV. 1, 6, 8 (2015) (noting that the *Chevron* doctrine was increasingly under scrutiny by the Supreme Court and advocating for its codification to preserve agency deference).

348. *See* Barnett, *supra* note 347, at 8; Jack M. Beerman, *End the Failed Chevron Experiment Now: How Chevron Has Failed and Why It Can and Should Be Overruled*, 42 CONN. L. REV. 779, 792–93 (2010).

Loper Bright's aftermath, efforts to legislatively restore *Chevron* emerged within months as members of Congress introduced bills aimed at codifying the doctrine.[349] However, these attempts failed to gain sufficient support.[350]

A statute codifying the pro-veteran canon should align with principles found in existing laws which prioritize veterans' interests in the interpretation of statutes.[351] In fact, the benefit of the doubt rule, which requires the VA to resolve reasonable doubt in favor of veterans, can serve as a model for the type of pro-veteran legislation this proposal aims to codify.[352] A draft of the statute might read as follows:

> Findings—Congress finds that: (1) The United States has a long-standing moral and legal obligation to provide for veterans who have honorably served the Nation. (2) Ambiguities in the interpretation of Title 38, United States Code, have historically led to inconsistent rulings and administrative decisions that have disadvantaged veterans. (3) Veterans should receive the broadest reasonable interpretation of statutes governing their benefits to ensure full access to the services and support they have earned.
>
> Purpose—The purpose of this statute is to: (1) Codify the principle that all ambiguities in Title 38 shall be resolved using pro-veteran context. (2)

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349. *See* Restoring Congressional Authority Act, S. 4987, 118th Cong. (2024) (failed bill to codify *Chevron* deference); *see also* Carten Cordell, *New Senate Bill Aims to Codify* Chevron *Deference with Congressional Intent*, GOV'T EXEC. (Aug. 2, 2024), https://www.govexec.com/management/2024/08/new-senate-bill-aims-codify-chevron-deference-congressional-intent/398540/ [https://perma.cc/62VQ-VW33] (Democratic Senator from Oregon proposed legislation to reinstate *Chevron* deference to agencies when interpreting federal statutes).

350. *See* S. 4987.

351. *See, e.g.*, Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, 131 Stat. 1105 ("amend[ing] title 38 . . . to reform the rights and processes relating to appeals of decisions regarding claims for benefits."); 38 U.S.C. § 5107(b) (giving veterans the benefit of the doubt in claims disputes).

352. *See* 38 U.S.C. § 5107(b). In fact, when legislating the benefit of the doubt rule, members of Congress emphasized their intent to ensure veterans received the "best possible adjudication" and acknowledged the desire to "give our veterans the best that [Congress] can." 134 CONG. REC. E3682-01 (daily ed. Oct. 21, 1988) (statement of Hon. Dan Burton).

> Ensure that the VA and courts adhere to Congress's pro-veteran intent when interpreting statutory provisions related to veterans' benefits. (3) Establish a clear directive for agencies and courts to apply a veteran-centric approach in all administrative and judicial decisions under Title 38.
>
> Courts shall consider all information and lay and medical evidence of record in a case before the court with respect to benefits under laws administered by the VA. When a Title 38 statute contains ambiguity, and there is an approximate balance of positive and negative evidence to the determination of a matter, the court shall recognize Congress's pro-veteran intent for Title 38 and resolve the ambiguity in favor of the veteran.
>
> Nothing in this Act shall be construed to limit or narrow any rights, privileges, or benefits provided to veterans under existing law. This Act shall be liberally construed to implement its remedial and pro-veteran purposes effectively.

This proposed statute builds on historical rationale[353] and directs courts and agencies to interpret Title 38 in ways that align with Congress's pro-veteran intent, ensuring that interpretations do not disadvantage veterans.

Some argue that codifying a canon of statutory interpretation would unconstitutionally infringe on judicial power.[354] Justice Scalia, for instance, cautioned that legislatively enacted rules of interpretation could constitute "an intrusion upon the courts' function of interpreting the laws."[355] However,

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353. *See supra* Section I.A.

354. Shobe, *supra* note 281, at 2010–11.

355. ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 199 (2012); *see also* Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803) (giving courts the power to "say what the law is"). There has been extensive debate over whether Congress should enact a guide or set of rules of statutory interpretation. *Compare* Shobe, *supra* note 281, at 2000 (advocating for Congress to adopt rules of interpretation), *with* SCALIA & GARNER, *supra*, at 56 (suggesting that legislative interpretive rules can be a constitutional issue).

"courts . . . [*already*] rely on statute-specific rules of interpretation . . . without raising constitutional concerns."[356] Moreover, Congress has the authority to define the scope and application of statutes to ensure they reflect its intent.[357] Providing clear interpretive guidance is not an overreach—it is a constitutional tool for legislative precision.[358] The debate remains unresolved, leaving the constitutionality of codifying the pro-veteran canon uncertain.[359] Nevertheless, Congress has alternative means of supporting veterans.

2. *Addressing the VA's shortcomings*

Congress can address the remaining deficiencies in the pro-veteran canon by improving the VA's budgetary and management issues.[360] While judicial doctrines and congressional intent are important, they often come into play only *after* a veteran is denied a claim and goes to court with an appeal.[361] A well-functioning VA that is properly funded, efficiently managed, and deeply committed to serving veterans can prevent many of these disputes from arising in the first place.[362] Improving the VA would effectively honor the national promise to care for veterans by creating a system that serves veterans proactively.[363] While the system faces numerous challenges, this discussion focuses on a few critical issues.

First, simplifying the language and structure of Title 38 is one of the most effective steps Congress could take toward improving veterans' access to the benefits they've earned.[364] As

356. Shobe, *supra* note 281, at 2014.

357. *See id.*

358. *See id.*

359. *See id.* at 1210, 1213–14.

360. *See Benefits System for the Information Age*, *supra* note 79, at 36 (describing the outdated nature of the VA benefits system).

361. *See generally* John Fussell & Jonathan Hager, *The Evolution of the Pending Claim Doctrine*, 2 VETERANS L. REV. 145, 145 (2010) (describing the various procedural, doctrinal, and political discussions that come into play only after a veteran files a claims appeal for benefits).

362. *See id.* at 145–46 (highlighting how the failures of the VA have led to undesirable results).

363. *See History of Serving Veterans*, *supra* note 4.

364. *See* Jennifer D. Oliva, *Representing Veterans*, 73 SMU L. REV. F. 103, 104 (2020); *see also Benefits System for the Information Age*, *supra* note 79, at 45 (describing complexity as the most fundamental issue in the VA claims process).

previously highlighted, both the procedural and substantive aspects of Title 38 are highly complex, adding to the challenges veterans face.[365] This not only impacts veterans navigating the benefits system but also hampers courts tasked with interpreting Title 38.[366] In response, members of Congress are advancing a bipartisan "Simplifying Forms for Veterans Claims Act," a measure designed to streamline the claims process and eliminate the overwhelming paperwork currently burdening veterans.[367] Enacting similar and more precisely drafted legislation is essential to ensuring that veterans can navigate the system and courts can more clearly discern and apply Congress's intent.[368]

Moreover, Congress can improve the delivery of benefits by breaking the cyclical and often demoralizing nature of the claims appeals process—a loop in which veterans' claims are repeatedly denied, appealed, and remanded without resolution.[369] The AMA[370] was intended to address this issue by offering veterans multiple lanes for review and streamlining the adjudication process, but its implementation has fallen short in practice.[371] To fulfill the promise of the AMA, Congress must cure its deficiencies by investing in better training for claims processors, ensuring timely and accurate communication with veterans, and committing to resolving claims efficiently rather than recycling them through procedural technicalities.[372]

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365. *See* Oliva, *supra* note 364, at 114.

366. *See, e.g.*, Shinseki v. Sanders, 556 U.S. 396, 399, 407, 413 (2009), *rev'g*, 487 F.3d 881 (Fed. Cir. 2007), *and vacating* 487 F.3d 892 (Fed. Cir. 2007) (rejecting the Federal Circuit's presumption-of-prejudice framework as overly rigid, unnecessarily complex, and inconsistent with the statutory scheme).

367. *See* Press Release, *Bresnahan Introduces Legislation to Simplify Veterans Claims*, CONGRESSMAN ROB BRESNAHAN (Feb. 13, 2025), https://bresnahan.house.gov/media/press-releases/bresnahan-introduces-legislation-simplify-veterans-claims [https://perma.cc/JZQ7-PHFC].

368. Some have even called for a complete overhaul of the system, arguing that it has become fundamentally flawed and has abandoned its original veteran-friendly purpose. *See Benefits System for the Information Age*, *supra* note 79, at 49.

369. *See* McClean, *supra* note 3, at 283–84; *supra* Figure 1.

370. Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, 131 Stat. 1105.

371. *See* CHALLENGES IMPLEMENTING THE APPEALS MODERNIZATION ACT, *supra* note 116, at 10.

372. *See id.* at v, 5.

Ultimately, Congress can move the VA closer to a system that prioritizes resolution over delay by fully realizing the goals of the AMA.

Congress must also address the VA's budgetary issues, including the misappropriation and misallocation of resources, to ensure that funding is efficiently directed toward programs that meaningfully support and benefit veterans.[373] The VA has long faced criticism for misusing resources, which has hindered the agency's ability to serve veterans effectively.[374] The origin of these issues is difficult to pinpoint; while the VA blames Congress for its budgetary deficiencies,[375] Congress blames the VA.[376] Nonetheless, the VA itself has taken steps toward greater accountability by committing to an independent audit of its budgeting process and pledging to share its findings with lawmakers.[377] This initiative marks an effort to address long-standing issues of mismanagement and misallocation of resources, but it is not enough; Congress must leverage its

373. *See VA Wasted $233 Million on Transport Services*, *supra* note 3 (describing the VA's financial mismanagement as at best negligence and at worst a "gross waste of funds"); *Scandal Has Become the Status Quo*, *supra* note 125 (describing how a scandal exposing egregious mismanagement of veterans' care has become the status quo at the VA).

374. *See, e.g.*, *Scandal Has Become the Status Quo*, *supra* note 125.

375. The agency points to Congress, asserting that the expanded claims volume under the PACT Act strains its resources without a corresponding increase in funding to meet the growing demand. *See VA Budgetary Shortfall Threatens Veteran Benefits*, BROWNSTEIN (Sep. 11, 2024), https://www.bhfs.com/insights/alerts-articles/2024/va-budgetary-shortfall-threatens-veteran-benefits [https://perma.cc/S8VV-9M45].

376. *See* Shane, *supra* note 99. Congress expresses frustration with the VA, deeming budgetary shortfalls "unacceptable." Press Release, House Appropriations Mil. Constr. & Veterans Affs. Subcommittee, Subcommittee Slams VA for Repeated Budgeting Failures (Nov. 20, 2024), https://appropriations.house.gov/news/press-releases/subcommittee-slams-va-repeated-budgeting-failures#:~:text=Military%20Construction%20and%20Veterans%20Affairs%20Subcommittee%20Chairman%20John%20Carter%20(R,billion—this%20is%20wholly%20unacceptable [https://perma.cc/VQ2K-J3LR] (describing the VA's "inability to accurately forecast [the budget as] unacceptable"). Congress also labeled the agency's actions as a "risk." Leo Shane III, *Watchdog Blasts VA Leaders for Exaggerating Budget Shortfall Last Year*, MILITARYTIMES (Mar. 27, 2025), [*hereinafter Watchdog blasts VA*] https://www.militarytimes.com/veterans/2025/03/27/watchdog-blasts-va-leaders-for-exaggerating-budget-shortfall-last-year/ [https://perma.cc/6F5F-VKRB] (describing the risk to veterans that the budgetary shortfall caused).

377. *See About the Office of Audits and Evaluations*, DEP'T VETERAN AFFS., OFF. INSPECTOR GEN., https://www.vaoig.gov/about/organization/audit [https://perma.cc/2TXG-GDJR] (last visited Nov. 5, 2025); *Semiannual Reports to Congress*, DEP'T VETERAN AFFS., OFF. INSPECTOR GEN., https://www.vaoig.gov/semiannual-reports-to-congress#:~:text=April%201%2C%202024–September%2030,address%20concerns%20with%20VA%20activities [https://perma.cc/24XT-HRZN] (last visited Nov. 5, 2025).

legislative authority and oversight capabilities to enact targeted reforms that prevent further misappropriation.[378] This way, the VA's funds are directed toward programs that effectively serve veterans.[379]

It warrants attention that reform within the VA need not rely solely on congressional action.[380] Even after *Loper Bright*, the VA retains its rulemaking authority to implement rules that are in line with Congress's intent.[381] The agency should exercise this power to adopt more equitable procedures that maintain the system's non-adversarial nature while incorporating additional procedural safeguards to better protect veterans' interests.[382] However, this solution is hindered by broader challenges, including budgetary constraints and systemic mismanagement, which Congress is better equipped to resolve through its legislative authority and control over resources.[383]

Chevron deference's removal signals a new era where courts, Congress, and the VA can collaborate more closely to ensure veterans receive the benefits they deserve. The responsibility

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378. *See* James T. O'Reilly, *Burying Caesar: Replacement of the Veterans Appeals Process Is Needed to Provide Fairness to Claimants*, 53 ADMIN. L. REV. 223, 249 (2001) (recommending that Congress enact legislation to correct a systemic flaw within the VA that has contributed to ongoing mismanagement and inefficiency).

379. Also addressing this issue is President Trump's Department of Government Efficiency ("DOGE"), aiming to slash waste, fraud, and abuse in the federal government. *See* VA Digital Media Engagement, *VA Secretary Doug Collins Addresses Veterans' Benefits in New Video*, VA NEWS (Feb. 13, 2025), https://news.va.gov/138326/va-secretary-doug-collins-veterans-benefits/ [https://perma.cc/9JHR-CF3Y]. Skepticism remains regarding DOGE, with concerns raised about potential access to veterans' personal information or the risk of benefit reductions. *Id.* Soon after Secretary Collins made his statement reassuring veterans, the VA had to suspend a planned DOGE contract cut, which would have hurt access to critical veterans' health services. *See* Tara Copp & Carla K. Johnson, *VA Pauses Billions in Cuts Lauded by Musk as Lawmakers and Veterans Decry Loss of Critical Care*, AP NEWS (Feb. 26, 2025, at 19:41 ET), https://apnews.com/article/doge-veterans-affairs-cuts-health-services-contracts-9a726b744e402da01d711023b0fc49a1 [https://perma.cc/QHF6-PJM5]. Additionally, due to DOGE's findings, the Trump Administration made plans to cut 80,000 employees from the VA, leaving concerns about the VA's ability to function after DOGE. *See* Stephen Groves, *Trump Administration Plans to Cut 80,000 Employees from Veterans Affairs, According to Internal Memo*, AP NEWS (Mar. 5, 2025, at 17:45 ET), https://apnews.com/article/veterans-affairs-cuts-doge-musk-trump-f587a6bc3db6a460e9c357592e165712 [https://perma.cc/78C8-YERS].

380. *See* McClean, *supra* note 3, at 306–07.

381. *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412–13 (2024) (overruling the Chevron deference framework while preserving agencies' authority to promulgate rules within their statutory mandates).

382. *See* McClean, *supra* note 3, at 306–07.

383. *See* O'Reilly, *supra* note 378, at 224–25.

falls on these actors to work together and refine the regulatory framework to prioritize fairness and efficiency in veterans' benefits. The goal should be to build a system that fully recognizes veterans' invaluable contributions to this Nation by implementing pro-veteran deference, clearly written statutes, and agency reforms to ensure fair and efficient access to benefits. Now is a critical moment for positive change, and it is up to the system to rise to the challenge.

CONCLUSION

Veterans return home bearing the invisible wounds of service—post-traumatic stress, depression, and chronic health conditions.[384] They face some of the harshest challenges in our society, including homelessness, suicide, systemic neglect, and the burden of navigating a slow and often unforgiving benefits system.[385] These are not merely administrative failures; they are moral ones.[386] A population that has sacrificed for the Nation's defense deserves more than vague statutory promises and bureaucratic red tape.[387] Reform is not optional; it is a moral and legal imperative to improve the lives of a population confronted with severe and enduring challenges.[388]

The death of *Chevron* deference presents a critical inflection point in veterans' law that demands action from courts, Congress, and the VA to realign the VA benefits system with its pro-veteran purpose. Without *Chevron*, courts are no longer bound to reflexively defer to VA interpretations that have, in many cases, undermined Congress's intent to protect veterans.[389] This Note demonstrates that the pro-veteran canon offers a doctrinally sound, historically rooted alternative to *Chevron* that compels courts to resolve Title 38 ambiguities in

384. *See* MOORE ET AL., *supra* note 43, at 1 (studying the management of mental health disorders affecting military veterans).

385. *See id.*

386. *See* Serota & Singer, *supra* note 9, at 390–91 (describing the VA's systemic delays as "morally unconscionable").

387. *See* Shinseki v. Sanders, 556 U.S. 396, 412 (2009) (emphasizing the special solicitude owed to veterans in recognition of their service and sacrifice on behalf of the Nation).

388. *See supra* Section I.A.

389. *See supra* Part III.

favor of veterans.[390] This interpretive approach reflects the non-adversarial nature of the benefits system[391] and reinforces the principle that the law must work *for* veterans, not *against* them. However, judicial reform alone is insufficient; as this Note highlights, a stronger solution requires action from Congress. To ensure consistent application across the judiciary, Congress must codify the pro-veteran canon into Title 38.[392] Additionally, Congress must continue strengthening the VA's infrastructure, transparency, and administrative capacity so that veterans receive the support they deserve before needing to resort to litigation.[393] Through these efforts, we can begin to repair a system that has fallen short in serving veterans.

390. *See supra* Section IV.A.1.

391. *See* Buffington v. McDonough, 7 F.4th 1361, 1375 (Fed. Cir. 2021) (O'Malley, J., dissenting).

392. *See supra* Section IV.B.1.

393. *See supra* Section IV.B.2.