CHEVRON'S GRIP MEETS RESISTANCE: THE PRO-VETERAN CANON AS A PATH TO CORRECTING INTERPRETIVE PRECEDENT

Bronson Phillips[*]

ABSTRACT

The Supreme Court's recent decision to abolish Chevron deference in Loper Bright Enterprises v. Raimondo brings veterans' benefits law to a critical crossroads. For decades, Chevron deference compelled courts to uphold administrative agencies' reasonable interpretations of ambiguous statutes, often sidelining the pro-veteran canon—a longstanding principle requiring that genuine ambiguities in veterans' benefits statutes be resolved in favor of veterans. The elimination of Chevron presents a unique opportunity to reevaluate statutory interpretation within the Court of Appeals for Veterans Claims, particularly where the pro-veteran canon was undermined. However, this opportunity is constrained by stare decisis, which currently shields prior Chevron-reliant decisions from review. This Comment examines this fundamental conflict between the pro-veteran canon and Chevron deference and argues that this situation constitutes a "special justification" to revisit Chevron-based precedents in this uniquely situated court.

* Bronson Phillips, Articles Editor, Estate Planning and Community Property Law Journal; J.D. Candidate 2026, Texas Tech University School of Law; Veteran. The author would like to thank Krystan Merrifield, whose unwavering support and encouragement inspired him throughout the writing process. The author would also like to thank Professor Gerry Beyer, Professor Richard Murphy, Josh Mendez, and his fellow staff editors for all their advice and assistance during the comment writing process.

I. INTRODUCTION

Thomas Buffington served in the United States Air Force for eight years before receiving an honorable discharge.[1] Following his separation, he completed two additional periods of active duty with his National Guard Unit.[2] After his initial separation, Mr. Buffington received monthly disability payments for multiple service-connected conditions.[3] The Department of Veterans Affairs (VA) suspended these payments when his Guard unit was activated in accordance with a law prohibiting servicemembers from receiving both active-duty pay and disability compensation simultaneously.[4] However, once Mr. Buffington's active-duty period with the Guard ended, the VA failed to automatically reinstate his benefits.[5]

When Mr. Buffington discovered the mistake and attempted to claim the benefits that had been suspended, the VA refused to provide retroactive payments for the four-year lapse.[6] Seeing the statute governing the reinstatement as ambiguous, the agency imposed the requirement that a veteran must file a new claim to trigger the reinstatement of benefits, despite no statutory language supporting this requirement.[7] The Court of Appeals for Veterans Claims upheld this interpretation, citing *Chevron* deference, which required courts to defer to an agency's reasonable interpretation of an

1. Buffington v. McDonough, 7 F.4th 1361, 1363 (Fed. Cir. 2021).
2. *Id.*
3. *Id.*
4. *Id.*; 38 U.S.C. § 5304(c).
5. *Buffington*, 7 F.4th at 1363.
6. *Id.*
7. *Id.* at 1364.

ambiguous statute.[8] As a result, Mr. Buffington lost years of disability benefits to which he was entitled, not because the law explicitly required it, but because the VA's interpretation was granted judicial deference under *Chevron*.[9]

Mr. Buffington's case is not an isolated incident but a representation of a broader structural issue in veterans' benefits law—one that has persisted for decades due to the tension between two competing interpretive frameworks.[10] On one side is *Chevron* deference: the now-overturned principle that required courts to defer to an administrative agency's reasonable interpretation of an ambiguous statute.[11] On the other side is the "pro-veteran canon," also known as "*Gardner*'s presumption," a long-standing interpretive rule mandating that ambiguities in veterans' benefits laws should be resolved in favor of veterans.[12]

For decades, these two doctrines coexisted uneasily, with *Chevron* deference often prevailing at the expense of the pro-veteran canon.[13] Ultimately, this resulted in agency interpretations receiving judicial deference even when they restricted veterans' access to benefits—contradicting Congress's intent to create a non-adversarial, claimant-friendly benefits system.[14] Cases like Mr. Buffington's demonstrate how *Chevron* enabled the VA to impose restrictive interpretations of veterans' benefits statutes, and how the courts are bound to uphold those interpretations rather than resolve ambiguities in favor of veterans.[15]

Despite this contentious relationship, the Supreme Court's decision in *Loper Bright* has changed the legal landscape by eliminating *Chevron* deference entirely.[16] Now that courts are no longer required to defer to agency interpretations, there is a significant opportunity to reassess all *Chevron*-dependent rulings, particularly in veterans' benefits law.[17]

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8. *Id.*; Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842–43 (1984).

9. *Buffington*, 7 F.4th at 1364; *Chevron*, 467 U.S. at 865.

10. *See generally* Chadwick J. Harper, *Give Veterans the Benefit of the Doubt: Chevron, Auer, and the Veteran's Canon*, 42 HARV. J.L. & PUB. POL'Y 931, 949–50 (2019) (discussing the unresolved conflict within the Veterans Court over the application of *Chevron*, *Auer*, and the pro-veteran canon).

11. *Chevron*, 467 U.S. at 866.

12. Brown v. Gardner, 513 U.S. 115, 117–18 (1994) (acknowledging the rule that interpretive doubt in veterans' benefits statutes must be resolved in favor of veterans); *see also* Linda D. Jellum, *Heads I Win, Tails You Lose: Reconciling Brown v. Gardner's Presumption That Interpretive Doubt Be Resolved in Veterans' Favor with* Chevron, 61 AM. U. L. REV. 59, 63–65 (2011).

13. Jellum, *supra* note 12, at 949–50; Harper, *supra* note 10, at 63–65.

14. Henderson v. Shinseki, 562 U.S. 428, 431 (2011) (emphasizing the non-adversarial nature of the veterans' benefits system).

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

16. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024).

17. *See generally* Christopher J. Walker, *What Loper Bright Enterprises v. Raimondo Means for the Future of Chevron Deference*, YALE J. ON REG.: NOTICE & COMMENT (June 28, 2024), https://www.yalejreg.com/nc/what-loper-bright-enterprises-v-raimondo-means-for-the-future-of-chevron-deference/ [https://perma.cc/VH6V-V6PF] ("I am not too confident that [the Supreme Court's stare decisis language] will do the trick, but time will tell."); *see also The Supreme Court's Double Hammer to Agencies: Loper Bright and Corner Post Set New Precedents for Challenging Federal Agency Action*, CROWELL &

However, the Court constrained this opportunity by stating that, under the principles of stare decisis, lower courts should preserve these precedents unless there is a "special justification" for revisiting them.[18]

The focus of this Comment is whether the pro-veteran canon constitutes such a special justification—a basis for courts to overturn *Chevron*-dependent precedents that will continue to disadvantage veterans.[19] This Comment argues that it does.[20] Given Congress's explicit intent to prioritize veterans in benefits adjudication, the long-standing recognition of the pro-veteran canon by the Supreme Court, and the real-world harm caused by past agency deference moving forward, courts must act to ensure that the pro-veteran canon is restored to its rightful place in the judiciary's interpretive toolkit.[21]

Part II delves into the historical development of veterans' benefits, the emergence of the pro-veteran canon, the origins and impact of *Chevron* deference, and the Supreme Court's reasoning in *Loper Bright*.[22] Part II also contextualizes the gravity of this issue by examining the current trajectory of the Court of Appeals for Veterans Claims in the post-*Loper Bright* era—per its recent decision in *Rorie v. McDonough*.[23]

Part III is the central argument of this Comment; the pro-veteran canon constitutes a special justification for revisiting stare decisis in the post-*Chevron* landscape.[24] By overturning past rulings that relied on *Chevron* deference to deny veterans benefits, courts can restore fairness to the system and uphold Congress's clear intent.[25] Part III also addresses anticipated counterarguments, such as concerns about judicial overreach and the potential for inconsistency or indeterminacy in the law, by explaining how a narrowly tailored approach to revisiting precedents can mitigate these concerns while ensuring justice for veterans.[26] Finally, Part III examines the broader policy implications of restoring the pro-veteran canon, outlining how this approach would enhance legislative and administrative efficiency, improve access to benefits, and foster trust in the veterans' benefits system.[27]

MORING LLP (July 11, 2024), https://www.crowell.com/en/insights/client-alerts/the-supreme-courts-double-hammer-to-agencies-loper-bright-and-corner-post-set-new-precedents-for-challenging-federal-agency-action [https://perma.cc/M9RS-PMRC] ("[T]here is chatter that the Supreme Court has opened the floodgates to new litigation over old matters.").

18. *Loper Bright Enters.*, 603 U.S. at 412 (instructing lower courts to uphold *Chevron*-reliant precedents absent "special justifications"); Ramos v. Louisiana, 590 U.S. 83, 120–24 (2020) (Kavanaugh, J., concurring) (summarizing Supreme Court precedent on "special justifications").

19. *See* discussion *infra* Part III.

20. *See* discussion *infra* Part III.

21. *See* discussion *infra* Part III.

22. *See* discussion *infra* Part II.

23. *See* discussion *infra* Part II; Rorie v. McDonough, 37 Vet. App. 430, 434 (2024).

24. *See* discussion *infra* Part III.

25. *See* discussion *infra* Part III.

26. *See* discussion *infra* Part III.

27. *See* discussion *infra* Part IV.

Part IV reiterates the urgent need for courts to act decisively at this pivotal moment in veterans' benefits law.[28] By prioritizing the pro-veteran canon in the post-*Chevron* landscape, the judiciary can uphold Congress's intent, protect veterans' rights, and restore fairness to a system that has long been unbalanced by agency deference.[29]

II. BACKGROUND: THE FUNDAMENTAL CONFLICT BETWEEN CANONS

A. Historical Development of Veterans Benefits

Veterans' benefits have deep historical roots in the United States, reflecting a longstanding national commitment to honoring and supporting those who serve.[30] The earliest legislative efforts to compensate veterans for service-related injuries date back to the colonial era.[31] In 1636, the Plymouth Colony established the first formal system of veterans' benefits, providing support to soldiers injured while defending the colony.[32] This tradition continued into the Revolutionary War when the Second Continental Congress, recognizing the unique sacrifices of those who fought for the nation's independence, created a pension system for disabled servicemembers.[33]

Shortly thereafter, in 1792, Congress formally codified these laws, delegating to the judiciary the responsibility of determining whether a disability was service-connected.[34] However, this system soon encountered constitutional challenges, as circuit judges objected to the delegation of such authority.[35] In response, Congress amended the law, transferring decision-making power to the Secretary of War.[36] For the next two centuries, Congress continued to exclude judicial oversight from veterans' benefits disputes, and the courts disclaimed any role in their adjudication.[37]

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28. *See* discussion *infra* Part IV.

29. *See* discussion *infra* Part IV.

30. NEW PLYMOUTH COLONY, 11 RECORDS OF THE COLONY OF NEW PLYMOUTH, IN NEW ENGLAND 182 (David Pulsifer ed., 1861) ("It is enacted by the Court that if any [shall be] sent forth as a souldier [sic] and shall [return] maimed [he shall be] maintained competently by the Countrey [sic] during his life . . . . ").

31. *Id.*

32. *Id.*

33. Worthington C. Ford, 5 Journals of the Constitutional Congress, 1774–1789, 702–03 (1906), *reprinted by* LIBR. OF CONG.: MANUSCRIPT DIV., https://www.loc.gov/resource/llscdam.lljc005/?sp=287 [https://perma.cc/Q2ST-NY3E].

34. UNITED STATES STATUTES AT LARGE, 1 Stat. 401 (1792) ("An Act to provide for the settlement of the Claims of Widows and Orphans barred by the limitations heretofore established, and to regulate the Claims to Invalid Pensions.").

35. H.R. REP. NO. 100-963, at 9 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5790.

36. UNITED STATES STATUTES AT LARGE, 1 Stat. 95 (1789) ("An Act providing for the payment of the Invalid Pensioners of the United States.").

37. H.R. REP. NO. 100-963, at 9 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5790.

Despite the lack of judicial oversight, the prioritization of veterans' benefits made significant strides in the twentieth century as the federal government assumed a more expansive role in veterans' affairs.[38] A defining moment in this evolution was the passage of the Servicemen's Readjustment Act of 1944, commonly known as the GI Bill.[39] This legislation provided returning World War II veterans with comprehensive benefits, including education assistance, housing loans, and unemployment benefits.[40] These legislative efforts implicitly upheld the same colonial-era ideal of valuing those who risked their lives in service to their country.[41]

Efforts to safeguard these benefits included the Executive Order 6230, through which President Roosevelt established the Board of Veterans' Appeals to review denied veterans' claims.[42] However, this solution proved to be largely ineffective.[43] As an administrative review board within the same department responsible for denying the initial claims, the Board lacked true independence, leaving the adjudication process encased in what would later be described as the "splendid isolation" of the Veterans Administration.[44] Even the passage of the Administrative Procedure Act in 1946 failed to offer adequate protections, as the VA was exempted under the provision excluding matters related to loans, grants, benefits, or contracts.[45]

It was not until more than four decades later, with the passage of the Veterans' Judicial Review Act of 1988, that Congress took action to provide judicial oversight to veterans' benefits disputes.[46] This Act established the Court of Appeals for Veterans Claims—a specialized Article I court tasked with reviewing decisions made by the Board of Veterans' Appeals.[47] Congress enacted this measure to preserve the non-adversarial and claimant-friendly nature of the veterans' benefits system, ensuring that veterans continued to receive "every possible consideration" under the law.[48] By granting veterans access to judicial review, Congress sought to ensure fairness and transparency in the adjudication process, reinforcing the pro-veteran canon's centrality to the system.[49]

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38. *VA History Summary*, U.S. DEP'T OF VETERANS AFFAIRS, https://department.va.gov/history/%20history-overview/[https://perma.cc/FG57-BN48](last updated Aug. 6, 2024).

39. *Id.*

40. *Id.*; Servicemen's Readjustment Act of 1944, Pub. L. No. 78-346, 58 Stat. 284 (1944).

41. Author's original thought.

42. *Board of Veterans Appeals*, U.S. DEP'T OF VETERANS AFFAIRS (Sept. 27, 2023), https://department.va.gov/history/%20history-overview/ [https://perma.cc/8CQK-8AFF].

43. H.R. REP. NO. 100-963, at 9 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5790.

44. *Id.*

45. *Id.*

46. Veterans' Judicial Review Act of 1988, Pub. L. No. 100–687, 102 Stat. 4105 (1988) (codified as amended in scattered sections of 38 U.S.C.).

47. *Id.*; *see* 38 U.S.C. § 7252(a) (establishing the jurisdiction of the Veterans Court to review decisions of the Board of Veterans' Appeals).

48. H.R. REP. NO. 100-963, at 26 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5808.

49. *Id.*

B. Case Law and Canons

Before examining the case law, it is helpful to first outline interpretive canons that provide courts with tools to clarify statutory meaning when a law's language or intent is unclear.[50] These canons have developed from various sources, and understanding their origins helps contextualize their role in legal interpretation.[51] Generally speaking, an interpretive canon is a tool used by the judiciary to clarify the meaning of a statute when the language or intent of the statute is in dispute.[52] Although their origins vary, these canons are generally categorized into two broad groups: linguistic and substantive.[53] Linguistic canons rely on established rules of language and grammar to ascertain the meaning of ambiguous statutory text, while substantive canons guide interpretation based on broader policy considerations.[54] The precise boundary between these categories is widely debated and largely beyond the scope of this article.[55]

For the purposes of this Comment, the argument relies on the premise that both the pro-veteran canon and *Chevron* deference fall within the category of substantive canons, albeit "non-aggressive" ones.[56] While they aim to resolve statutory ambiguity through policy and practical understandings, neither was intended to override unambiguous statutory text.[57] Instead, they aimed to use logic and reasoning to infer congressional intent and guide statutory interpretation accordingly.[58]

Before turning to the main argument, the following case law analysis will further contextualize the conflicting canons within the broader framework of veterans' benefits law.[59]

1. The Pro-Veteran Canon

The pro-veteran canon predates the *Chevron* case by decades, with its earliest application appearing in the 1943 case of *Boone v. Lightner*.[60] In that

50. Author's original thought.

51. *Id.*

52. Brian G. Slocum & Kevin Tobia, *The Linguistic and Substantive Canons*, 137 HARV. L. REV. 70, 70 (2025); Amy C. Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. REV. 109, 117 (2010).

53. Slocum & Tobia, *supra* note 52, at 70; Barrett, *supra* note 52, at 117.

54. Slocum & Tobia, *supra* note 52, at 70; Barrett, *supra* note 52, at 117.

55. Author's original thought.

56. Barrett, *supra* note 52, at 117 (describing canons that forego the most plausible interpretation in favor of one in accord with policy objectives as "aggressive.").

57. *Id.*; Interview with Richard Murphy, AT&T Professor of L., Tex. Tech. Sch. of L., in Lubbock, Tex. (Feb. 5, 2025) ("Although it is clear the *Loper Bright* opinion suggests that the problem with *Chevron* is that it was aggressive, it is still fair to argue that *Chevron* did not start out that way, nor was it the Justice's intent when the doctrine was established. What *Chevron* has become since—that is another story.").

58. Murphy, *supra* note 57.

59. *See* discussion *infra* Part II.B.1–4.

60. Boone v. Lightner, 319 U.S. 561, 565 (1943).

case, the Supreme Court emphasized that statutes designed to protect servicemembers must be liberally construed to safeguard those who set aside their own affairs to serve the nation.[61] This principle was reinforced three years later in *Fishgold v. Sullivan Drydock & Repair Corp.* when the Court extended the canon's application to the Selective Training and Service Act of 1940.[62] The canon's reach expanded further in the 1991 case of *King v. St. Vincent's Hospital,* in which the Court stated that the canon should be applied broadly to all veterans' benefits statutes.[63]

Often referred to as *Gardner*'s presumption, the pro-veteran canon was solidified in *Brown v. Gardner,* in which the Supreme Court unequivocally stated that interpretive doubt must be resolved in the veteran's favor.[64] Specifically, the Court explained that "[a]mbiguity is a creature not of definitional possibilities but of statutory context" and emphasized that even if an ambiguity existed, it would have to be resolved in favor of the veteran, "assuming that such a resolution would be possible after applying the rule that interpretive doubt is to be resolved in the veteran's favor."[65] The Court referenced *Chevron* in its reasoning, yet prioritized the pro-veteran canon, signaling its elevated status in adjudicating veterans' benefits.[66] However, despite this strong foundation, the Court of Appeals for Veterans Claims has struggled to reconcile the canon's application with *Chevron* deference.[67] This tension is evident in cases like *Buffington v. McDonough*, when judicial deference to agency interpretations led to the denial of benefits that would have been granted under a more claimant-friendly standard.[68] The Supreme Court's refusal to grant certiorari in cases that could have explicitly clarified the canon's precedence over *Chevron* has left lower courts with little guidance.[69]

The Supreme Court's denial of certiorari in *Buffington* signaled that it was not yet ready to address whether *Chevron* should be overruled; particularly, the Court had not taken up a *Chevron* case in years leading up to *Loper Bright*.[70] Nevertheless, lower courts, particularly in the Federal

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61. *Id.* at 575.

62. Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275, 285 (1946).

63. King v. St. Vincent's Hosp., 502 U.S. 215, 221 n.9 (1991).

64. Brown v. Gardner, 513 U.S. 115, 122 (1994).

65. *Id.* at 117–18.

66. *See* Harper, *supra* note 10, at 947 n.111.

67. *Compare* Duran v. McDonough, 36 Vet. App. 230, 241–42 (2023) (Jaquith, J., concurring) ("I concur with all of the Court's opinion but write separately because I believe the pro-veteran canon informs the plain meaning analysis . . . ."), *with* Gumpenberger v. McDonough, 35 Vet. App. 195, 205 n.46 (using *Buffington* as a justification to ignore the pro-veteran canon in the plain meaning analysis).

68. Buffington v. McDonough, 7 F.4th 1361, 1366–67 (Fed. Cir. 2021); *see* discussion *supra* notes 1–6 and accompanying text.

69. *See, e.g.*, Brief for Military-Veterans Advocacy, Inc. et. al. as Amici Curiae Supporting Petitioners at 9, Veterans Warriors, Inc. v. McDonough, 143 S. Ct. 775 (2023) (Mem. Op.) (No. 22-360) (pleading for the Supreme Court to finally resolve the inconsistent application of the conflicting canons).

70. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 406 (2024) ("This Court, for its part, has not deferred to an agency interpretation under *Chevron* since 2016.")

Circuit and the Court of Appeals for Veterans Claims, have relied on *Buffington* as precedent, continuing to apply *Chevron* in veterans' benefits cases.[71] Yet, in the same Supreme Court term that *Loper Bright* overturned *Chevron*, the Court reaffirmed the pro-veteran canon in *Rudisill v. McDonough*.[72] Writing for a seven-justice majority, Justice Jackson confirmed the canon's continued validity, but clarified that it applies only when a statute contains genuine ambiguity.[73] However, four Justices expressed skepticism about its future.[74] Justice Kavanaugh, joined by Justice Barrett, concurred in the judgment but questioned the canon's legitimacy, arguing that veterans' benefits statutes should not receive special interpretive treatment over other federal spending laws and that allocating benefits is a role for Congress, not the judiciary.[75] Meanwhile, Justice Thomas, joined by Justice Alito, adopted a strict textualist approach, rejecting the canon altogether and asserting that statutory interpretation should never be influenced by substantive canons—ambiguous or not.[76]

The pro-veteran canon reflects a longstanding national commitment to recognizing the unique status of veterans and ensuring they receive due consideration in benefits adjudication.[77] As reaffirmed by the Court in *Rudisill v. McDonough*, the canon serves as a mechanism to protect veterans from ambiguous statutory language, ensuring they are not disadvantaged by complex regulations or unclear legislative drafting.[78] However, the *Rudisill* case also revealed a growing divide among the Justices regarding its continued role in statutory interpretation.[79] This broader debate reflects a judicial trend toward reassessing interpretive doctrines—a shift that is also central to the abrogation of *Chevron* deference, another principle that has significantly impacted administrative law and agency decision-making.[80]

2. Chevron *Deference: Origin and Impact*

Chevron deference, established by the Supreme Court in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, marked a turning point in administrative law.[81] The doctrine provided a framework for courts to defer to reasonable interpretations of ambiguous statutes by administrative agencies, based on three premises: that agencies possess specialized expertise

71. *E.g.*, *Gumpenberger*, 35 Vet. App. at 206.
72. Rudisill v. McDonough, 601 U.S. 294, 314 (2024).
73. *Id.*
74. *Id.* at 314–29.
75. *Id.* at 314–18 (Kavanaugh, J., concurring).
76. *Id.* at 319–29 (Thomas, J., dissenting).
77. Author's original thought.
78. *Id.*; *Rudisill*, 601 U.S. at 314.
79. Author's original thought.
80. *Id.*
81. Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 842–43 (1984).

in their respective areas, that Congress implicitly delegated this responsibility to the agencies by leaving the statute ambiguous, and that the agency heads are subject to political accountability.[82] The two-step framework required courts to first determine whether Congress had directly addressed the issue in question.[83] If the statute was silent or ambiguous, courts would then defer to the agency's interpretation provided it was reasonable.[84]

Chevron deference was initially lauded as a pragmatic solution to the complexities of modern governance.[85] By allowing agencies to resolve statutory ambiguities, the doctrine aimed to promote regulatory consistency and efficiency while respecting the separation of powers.[86] Agencies, staffed by subject-matter experts, were presumed to possess both the technical knowledge and institutional capacity to effectively interpret and implement complex statutes.[87]

Over the decades, however, *Chevron* deference exponentially garnered more and more criticism.[88] Critics argued that it conferred excessive power on administrative agencies, effectively allowing unelected bureaucrats to make binding legal interpretations.[89] This shift, they contended, undermined the judiciary's constitutional role as the ultimate arbiter of statutory meaning.[90] Moreover, the broad application of *Chevron* led to inconsistent outcomes because lower courts struggled to navigate its ambiguities and determine when deference was appropriate.[91] The doctrine also raised

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82. *Id.* at 865; Thomas W. Merrill & Kristin E. Hickman, *Chevron's Domain*, 89 GEO. L.J. 833, 836–38 (2001) (discussing *Chevron*'s dominance in administrative law and its reliance on agency expertise); John F. Duffy, *Chevron, De Novo: Delegation, Not Deference*, 31 GEO. MASON L. REV. 541, 542–43 (2024) (explaining the problems with the argument about implicit delegation); Richard J. Pierce, *The Combination of Chevron and Political Polarity has Awful Effects*, 70 DUKE L. J. ONLINE 91, 91–92 (2021) ("The Court based its new test on the superior political accountability of agencies headed by people who. . .can be removed by the president in comparison with judges who have life tenure.").

83. *Chevron*, 467 U.S. at 842–43.

84. *Id.* at 843.

85. Aditya Bamzai, *The Origins of Judicial Deference to Executive Interpretation*, 126 YALE L.J. 908, 912–13 (2017) (explaining the policy rationale behind *Chevron* deference).

86. *Chevron*, 467 U.S. at 842–43; Merrill & Hickman, *supra* note 82, at 837–38.

87. *Chevron*, 467 U.S. at 865; Thomas W. Merrill, *Judicial Deference to Executive Precedent*, 101 YALE L.J. 969, 980–82 (1992) (discussing *Chevron*'s reliance on agency expertise).

88. *See generally* Cass R. Sunstein, *Chevron as Law*, 107 GEO. L.J. 1613, 1619 (2019) (discussing the rise of criticism against *Chevron* deference).

89. *E.g.*, Brett M. Kavanaugh, *Fixing Statutory Interpretation*, 129 HARV. L. REV. 2118, 2120 (2016).

90. Michigan v. E.P.A., 576 U.S. 743, 761 (2015) (Thomas, J., concurring) ("*Chevron* deference raises serious separation-of-powers questions."); *see generally* Marbury v. Madison, 5 U.S. 137, 177 (1803) (establishing that courts are the final interpreters of the law).

91. *Compare* Lacey v. Wilkie, 32 Vet. App. 71, 80 (2019) ("Absent a clear statutory answer or any countervailing considerations, the pro-veteran canon compels the Court to read the statute in Mr. Lacey's favor."), *with* Cox v. McDonald, 28 Vet. App. 318, 324 (2016) ("Therefore, the Court is obligated to give *Chevron* deference to VA's determination. . . .").

concerns about agency overreach because some interpretations appeared to stretch statutory language beyond its intended bounds.[92]

For decades, Veterans Court panels applying *Chevron* deference often overlooked the pro-veteran canon in veterans' benefits law, while others that prioritized the pro-veteran canon treated it as prevailing over *Chevron* deference at step one—the plain-meaning analysis.[93] The Veterans Court, a specialized Article I court, was uniquely tasked with applying both doctrines—one requiring deference to agency interpretations and the other mandating that ambiguities be resolved in favor of veterans.[94] This dual obligation often led to interpretive dilemmas in which courts upheld agency interpretations that conflicted with the claimant-friendly intent of the veterans' benefits system.[95] In practice, the reliance on *Chevron* deference frequently undermines the pro-veteran canon, placing veterans at a systemic disadvantage and prompting scholars to seek ways to reconcile the two.[96] This dynamic was evident in numerous cases in which agency interpretations were upheld despite conflicting with the claimant-friendly intent of the veterans' benefits system.[97] The reliance on *Chevron* deference in such cases effectively eroded the protections afforded by the pro-veteran canon, leaving veterans at a systemic disadvantage.[98]

This ongoing tension was abruptly resolved in *Loper Bright Enterprises v. Raimondo,* in which the Supreme Court abrogated *Chevron* deference, declaring it incompatible with the judiciary's constitutional role.[99] The decision reaffirmed that courts, not agencies, bear the ultimate responsibility for statutory interpretation.[100] While many celebrated the end of *Chevron*, it left critical questions unanswered—particularly regarding how courts should

92. Kavanaugh, *supra* note 89, at 2120; Michael Showalter & Samuel A. Rasche, *Gorsuch Says 'Chevron Doctrine' is Dead Even Though the US Supreme Court Refuses to Say So*, ARENTFOX SCHIFF (Nov. 11, 2022), https://www.afslaw.com/perspectives/environmental-law-advisor/gorsuch-says-chevron-doctrine-dead-even-though-the-us[https://perma.cc/V5HH-RVJ2] (highlighting concerns that agencies overextend their authority under *Chevron*).

93. *Compare Lacey*, 32 Vet. App. at 80 ("Absent a clear statutory answer or any countervailing considerations, the pro-veteran canon compels the Court to read the statute in Mr. Lacey's favor."), *with Cox*, 28 Vet. App. at 324 ("Therefore, the Court is obligated to give *Chevron* deference to VA's determination.").

94. Harper, *supra* note 10, at 949–50.

95. *Id.*

96. *Id.*; Linda D. Jellum, *The United States Court of Appeals for Veterans Claims: Has It Mastered Chevron's Step Zero?*, 3 VETERANS L. REV. 67, 71–72 (2011).

97. *E.g.*, Breniser v. Shinseki, 25 Vet. App. 64, 70–71 (2011); *Cox*, 28 Vet. App. at 318.

98. *See generally* Cynthia M.A. Geppert, *The Veteran's Canon Under Fire*, FED. PRAC., https://cdn.mdedge.com/files/s3fs-public/FDP04111356_0.pdf[https://perma.cc/WY7R-92TW] (last visited Oct. 9, 2025) (analyzing the negative impacts that would accompany eliminating the pro-veteran canon).

99. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 369 (2024); Marbury v. Madison, 5 U.S. 137, 177 (1803) (establishing the judiciary's role as the final arbiter of statutory interpretation).

100. *Loper Bright Enters.*, 603 U.S. at 369.

handle statutory ambiguity in the absence of agency deference. [101] Additionally, the ruling preserved prior *Chevron*-based decisions under stare decisis, complicating efforts to revisit agency interpretations that disproportionately harmed veterans.[102]

3. Loper Bright Enterprises v. Raimondo *and the End of Chevron*

The Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* represents a pivotal moment in administrative law, marking the formal end of *Chevron* deference.[103] This ruling reaffirmed the judiciary's constitutional role as the final interpreter of statutes, fundamentally altering the relationship between courts and administrative agencies for the foreseeable future.[104] The case arose from a dispute over the National Marine Fisheries Service's interpretation of statutory language regarding the funding of fishery monitoring programs.[105] The Court used this case as an opportunity to revisit the broader question of *Chevron*'s viability.[106]

In its majority opinion, the Court held that the "Administrative Procedure Act requires courts to exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous."[107] In this holding, the Court declared that *Chevron* deference was incompatible with the judiciary's duty to "say what the law is," as articulated in *Marbury v. Madison*.[108] They emphasized that statutory interpretation is a core judicial function that cannot be delegated to administrative agencies.[109] By allowing agencies to resolve ambiguities in their own favor, *Chevron* undermined the separation of powers and created a framework in which executive entities effectively wielded legislative and judicial authority alike.[110] This erosion of checks and balances, the Court reasoned, was incompatible with the principles of democratic governance.[111]

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101. *Id.* at 407; Walker, *supra* note 17 (noting that *Loper Bright* raises unanswered questions about statutory interpretation post-*Chevron*).

102. *Loper Bright Enters.*, 603 U.S. at 412 (instructing lower courts to uphold *Chevron*-reliant precedents absent "special justifications"); Rorie v. McDonough, 37 Vet. App. 430, 434 (2024) (applying stare decisis to *Chevron*-based rulings despite *Chevron*'s abrogation).

103. *Loper Bright Enters.*, 603 U.S. at 412.

104. *Id.* at 385; *Marbury*, 5 U.S. at 177 (establishing the judiciary's role as the final arbiter of statutory interpretation).

105. *Loper Bright Enters.*, 603 U.S. at 373–75 (describing the factual and statutory background of the case).

106. *Id.* at 385–87.

107. *Id.* at 369.

108. *Id.* at 385; *Marbury*, 5 U.S. at 177.

109. *Loper Bright Enters.*, 603 U.S. at 385–86.

110. *Id.* at 386–88; Michigan v. E.P.A., 576 U.S. 743, 761 (2015) (Thomas, J., concurring) ("*Chevron* deference raises serious separation-of-powers questions.").

111. *Loper Bright Enters.*, 603 U.S. at 387–89.

While the Court's rejection of *Chevron* deference was definitive, its implications were tempered by an explicit caution against revisiting prior *Chevron*-based precedents without special justification.[112] The Court acknowledged concerns about opening the "litigation floodgates" by allowing challenges to decades of agency interpretations that relied on the *Chevron doctrine*.[113] To mitigate this risk, the decision preserved the validity of prior rulings unless petitioners could demonstrate a special justification to overturn them.[114] This balancing act reflected the Court's recognition of statutory stare decisis as a stabilizing principle even in the face of significant doctrinal shifts.[115]

For veterans' benefits law, this portion of the *Loper Bright* decision carries profound implications.[116] The Court's rejection of *Chevron* creates an opportunity to reexamine how statutory ambiguities in this area are resolved, as *Chevron* deference has historically displaced the pro-veteran canon by enabling agency interpretations to prevail even when they conflict with the mandate to favor veterans.[117] This dynamic left veterans vulnerable to adverse outcomes because courts prioritized agency expertise over the claimant-friendly principles enshrined in the veterans' benefits system.[118]

Despite the opportunity created by *Loper Bright*, the decision's deference to stare decisis poses a significant hurdle for veterans seeking relief from *Chevron*-dependent precedents.[119] The ruling effectively shields prior interpretations unless a petitioner can demonstrate a special justification to revisit them.[120] This standard demands more than a mere showing that a decision was wrongly decided; it requires evidence of unique circumstances that warrant a departure from established precedent.[121] For veterans, this creates a dual challenge: not only must they argue for the application of the

112. *Id.* at 412 (stating that stare decisis protects prior *Chevron*-based rulings absent a "special justification" to overturn them).

113. *Id.*; Transcript of Oral Argument at 24–25, Loper Bright Enters. v. Raimondo, 603 U.S. 369 (2024) (No. 22-451) (discussing concerns about an influx of litigation post-*Chevron*).

114. *Loper Bright Enters.*, 603 U.S. at 412.

115. *Id.*; *see also* Ramos v. Louisiana, 590 U.S. 83, 120–24 (2020) (Kavanaugh, J., concurring) (discussing factors constituting "special justifications" for overruling precedent).

116. *Loper Bright Enters.*, 603 U.S. at 412.

117. Buffington v. McDonough, 7 F.4th 1361, 1366–67 (Fed. Cir. 2021) (illustrating a case where *Chevron* deference overrode the pro-veteran canon); Brown v. Gardner, 513 U.S. 115, 117–18 (1994) (affirming that interpretive doubt must be resolved in favor of veterans).

118. *Buffington*, 7 F.4th at 1364; Henderson v. Shinseki, 562 U.S. 428, 431 (2011) (describing the non-adversarial nature of the veterans' benefits system and its intent to prioritize fairness for claimants).

119. *Loper Bright Enters.*, 603 U.S. at 412 (stating that prior *Chevron*-based precedents remain binding unless a "special justification" is demonstrated); Rorie v. McDonough, 37 Vet. App. 430, 434 (2024) (applying stare decisis to prior *Chevron*-based rulings despite *Chevron*'s abrogation).

120. *Loper Bright Enters.*, 603 U.S. at 412; *Ramos*, 590 U.S. at 120–24 (Kavanaugh, J., concurring) (discussing factors constituting special justifications for overruling precedent).

121. *Loper Bright Enters.*, 603 U.S. at 412 (emphasizing that stare decisis requires more than showing a decision was incorrect).

pro-veteran canon, but they must also overcome the judicial reluctance to disturb past rulings.[122]

The implications of *Loper Bright* extend beyond the theoretical to the practical.[123] By removing the presumption in favor of agency interpretations, the decision empowers courts to take a more active role in resolving statutory ambiguities.[124] This shift aligns with the principles underlying the pro-veteran canon, which seeks to ensure that veterans receive the full scope of benefits to which they are entitled, despite administrative power.[125] However, the success of this transition depends on the willingness of courts to prioritize the pro-veteran canon over the residual influence of *Chevron*-based precedents.[126]

In sum, *Loper Bright* represents both an opportunity and a challenge for veterans' benefits laws.[127] The decision to eliminate *Chevron* deference reaffirms the judiciary's role as the ultimate arbiter of statutory meaning, creating a pathway to restore fairness and equity in veterans' claims.[128] At the same time, the Court's cautious approach to stare decisis underscores the need for targeted arguments that demonstrate why the pro-veteran canon constitutes a special justification for revisiting past rulings.[129] This dual dynamic sets the stage for a broader reevaluation of interpretive principles in the post-*Chevron* era.[130]

4. Rorie v. McDonough *and the Treacherous Path Forward*

In the wake of *Loper Bright*, the Court of Appeals for Veterans Claims grappled with the Supreme Court's language on stare decisis in *Rorie v. McDonough*.[131] This case involved a veteran seeking an earlier effective date for service connection of a disability—specifically, *tinea pedis* (athlete's

122. *Rorie*, 37 Vet. App. at 434 (illustrating how the Veterans Court remains hesitant to overturn *Chevron*-based precedents even in veterans' benefits law); Geppert, *supra* note 98, at 357.

123. *Loper Bright Enters.*, 603 U.S. at 412; Walker, *supra* note 17.

124. *Loper Bright Enters.*, 603 U.S. at 412; Michigan v. E.P.A., 576 U.S. 743, 761 (2015) (Thomas, J., concurring) (criticizing *Chevron* for allowing agencies too much interpretive power and diminishing the Judiciary's role).

125. Brown v. Gardner, 513 U.S. 115, 117–18 (1994) (holding that interpretive doubt must be resolved in favor of veterans); Geppert, *supra* note 98, at 357.

126. *Rorie*, 37 Vet. App. at 434 (noting courts' hesitancy to overturn *Chevron*-based rulings despite the pro-veteran canon); *Buffington*, 7 F.4th at 1364 (illustrating a case in which *Chevron* deference overrode the pro-veteran canon).

127. *Loper Bright Enters.*, 603 U.S. at 412; Geppert, *supra* note 98, at 357.

128. *Loper Bright Enters.*, 603 U.S. at 412; Marbury v. Madison, 5 U.S. 137, 177 (1803) (establishing the Judiciary's role as the final interpreter of the law).

129. *Loper Bright Enters.*, 603 U.S. at 412 (requiring a special justification for revisiting past *Chevron*-based precedents); *Ramos*, 590 U.S. at 120–24 (discussing conditions under which stare decisis can be overridden

130. *Loper Bright Enters.*, 603 U.S. at 412; Geppert, *supra* note 98, at 357 (analyzing the broader implications of *Loper Bright* for statutory interpretation).

131. *Rorie*, 37 Vet. App. at 434.

foot).[132] The veteran argued that prior interpretations of 38 C.F.R. § 3.157(b), which governs informal claims based on VA treatment records, should be reconsidered in light of recent shifts in administrative law doctrines, including *Loper Bright* and *Kisor v. Wilkie*.[133] However, the Court declined to revisit its precedent, adhering instead to the Ninth Circuit's "clearly irreconcilable" standard, which permits a prior panel's decision to be overruled only if it is fundamentally incompatible with subsequent Supreme Court precedent.[134] This strict standard requires that the higher court's reasoning directly undercuts the earlier decision.[135]

Applying this standard, the Court of Appeals for Veterans Claims refused to overturn *Pacheco v. Gibson*, a decision that had restricted the use of treatment records as informal claims.[136] The court reasoned that even though *Loper Bright* overturned *Chevron* deference, such doctrinal shifts do not automatically invalidate past rulings based on those doctrines unless they create an unavoidable conflict.[137] In *Rorie*, the court emphasized that principles of stare decisis demand continued adherence to *Pacheco* despite the veteran's reliance on newer administrative law precedents.[138] This decision effectively reinforces the status quo, preventing changes in deference doctrines from reopening established precedents in veterans' law.[139]

By maintaining the "clearly irreconcilable" standard, the Court signaled a reluctance to revisit prior *Chevron*-based rulings unless directly invalidated by the Supreme Court or the Court of Appeals for Federal Claims.[140] This rigid approach risks perpetuating outdated interpretations that may disadvantage veterans, particularly when substantive canons, like the pro-veteran canon, could provide more favorable outcomes.[141] Because *Rorie* is now on appeal to the Federal Circuit, the judiciary must critically reassess whether strict adherence to stare decisis in this context is truly justifiable—or, whether it unfairly locks veterans into a legal framework shaped by now-overturned doctrines.[142]

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132. *Id.* at 433.

133. *Id.*; Kisor v. Wilkie, 588 U.S. 558, 583–86 (2019) (clarifying the limits of agency deference under *Auer* and applying it to veterans' law); *Loper Bright Enters.*, 603 at 369 (2024); *Rorie*, 37 Vet. App. at 438.

134. *Rorie,* 37 Vet. App. at 443; Miller v. Gammie, 335 F.3d 889, 899 (9th Cir. 2003) (articulating the "clearly irreconcilable" standard for overruling prior precedent adopted by the Veterans Court).

135. *Miller*, 335 F.3d at 899; *Rorie*, 37 Vet. App. at 444.

136. *Rorie*, 37 Vet. App. at 436–37 (noting the court's refusal to revisit *Pacheco v. Gibson*); Pacheco v. Gibson, 27 Vet. App 21, 29 (2014) (Although the interpretive question in *Pacheco* revolves around a regulation, not a statute, the court declared them sufficiently analogous for the purposes of their opinion on revisiting interpretive precedent).

137. *Rorie*, 37 Vet. App. at 442–43.

138. *Id.*

139. *Id.*

140. *Id.*; Author's original thought.

141. *Rorie*, 37 Vet. App. at 442–43; Author's original thought.

142. *Rorie*, 37 Vet. App. at 442–43; Author's original thought; *see* discussion *infra* Part III.

III. THE SOLUTION: THE PRO-VETERAN CANON CONSTITUTES A "SPECIAL JUSTIFICATION" TO REVISIT STATUTORY STARE DECISIS

The need for special justifications to revisit statutory stare decisis has taken on renewed significance in the wake of *Loper Bright*.[143] Traditionally, statutory stare decisis has been grounded in the principle of legal stability, ensuring that judicial interpretations remain consistent over time.[144] However, the application of *Chevron* deference in veterans' benefits law highlights a unique problem in which individuals received disparate treatment regarding benefits for which they would be otherwise entitled.[145] The pro-veteran canon provides a compelling special justification for revisiting these precedents, given its direct conflict with *Chevron* and its alignment with legislative intent.[146] By adopting a narrowly tailored approach to reconsidering these cases, courts can address the harms caused by *Chevron* without undermining broader principles of stare decisis.[147] This approach underscores the importance of flexibility within the doctrine, allowing for corrective measures when prior interpretations fail this nation's veterans.[148]

In Part III, this Comment argues that the irreconcilability between the pro-veteran canon and *Chevron* deference, compounded by the indiscriminate application of *Chevron*, should serve as a special justification to revisit a narrowly tailored line of *Chevron* cases within the uniquely situated Court of Appeals for Veterans' Claims.[149] Then, it addresses two anticipated concerns: judicial overreach and the potential for legal uncertainty.[150] Section III.B counters these by emphasizing the supporting legislative texts and history that support the pro-veteran canon and provide an example of a clear judicial standard to mitigate any potential uncertainty.[151] Finally, Section III.C examines the practical considerations of revisiting these cases and explore how this decision could impact veterans and the role of estate planners in the process.[152]

A. The Unique Canon and Irreconcilable Precedent

As discussed above in Part II.B, the pro-veteran canon is not merely a semantic doctrine; rather, it is a substantive canon whose foundation lies in

143. Author's original thought.
144. Ramos v. Louisiana, 590 U.S. 83, 115 (2020) (Kavanaugh, J., concurring).
145. *Id.*; Author's original thought.
146. *See* discussion *infra* Part III.A.
147. Author's original thought.
148. *Id.*
149. *See* discussion *infra* Part III.A.
150. *See* discussion *infra* Part III.A.
151. *See* discussion *infra* Part III.B
152. *See* discussion *infra* Part III.C.

the history and tradition of American values.[153] Unlike other substantive canons that serve as general aids to judicial reasoning, the pro-veteran canon is explicitly designed to protect one specific group from administrative encroachment: veterans.[154] This unique nature not only reflects the legislative intent underlying veterans' benefits statutes but also underscores the moral and societal obligation to prioritize the rights of those who have served.[155]

1. Conflict with the Chevron Framework

The pro-veteran canon is completely irreconcilable with *Chevron* deference when genuine ambiguity is found in a statute: one mandates that ambiguity be resolved in favor of the agency, while the other directs the court to assume that ambiguity was intended to favor the veteran.[156] As a preliminary matter, Congress originally modeled the Court of Appeals for Veterans Claims after other Article I courts, such as the Tax Court and the Court of Military Appeals, and gave it *exclusive jurisdiction* to review the Board of Veterans Appeals' decisions.[157] Specifically, the power granted included *all* questions involving benefits rather than just questions regarding *claims*.[158] This language was purposefully construed broadly in fear that courts (and potentially the Veterans Administration) would limit the Court of Appeals for Veterans Claims' power to question regarding claims.[159] The Legislature also granted the Veterans Court the broad power of non-deferential, de novo review of any and all questions of law and other interpretations of constitutional, statutory, and regulatory provisions.[160] In this review, the Legislature expected the court would not give any deference to the agency's decision at any point.[161] In this de novo review, the House of Representatives expected that:

> The Court [of Appeals for Veterans Claims] would be required to base its decision on the entire record. As is presently the case in matters appealed to the Board of Veterans' Appeals, the Court would not be required to give *any* deference to the decision of the Administrator, and may substitute its

153. *See* discussion *supra* Part II.B.

154. *See generally* Barrett, *supra* note 52, at 151 (providing an example of a corollary canon, namely, one designed to protect Native Americans in contractual matters).

155. *Id.*; Author's original thought.

156. Harper, *supra* note 10.

157. H.R. REP. NO. 100-963, at 4 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5785; 38 U.S.C. § 7252(a).

158. *Id.* at 29.

159. *Id.*

160. *Id.*

161. 133 CONG. REC. S201-01 (1987) (statement of Sen. Cranston).

> judgment for the judgment of the VA decision-maker. It may remand the case if it finds the evidence insufficient upon which to base a decision.[162]

Yet, the *Chevron* directive, to defer to an agency's reasonable interpretation when there exists a genuine ambiguity in the statutory language, is at odds with Congress's expectation.[163]

This issue mirrors the problem identified by Chief Justice Roberts in *Loper Bright*, when he described *Chevron*'s conflict with Section 706 of the Administrative Procedure Act.[164] However, this issue presented an additional and unique complication: *Chevron* deference was fundamentally at odds with the pro-veteran canon as well.[165] Both interpretive canons required courts to determine congressional intent using standard methods of statutory interpretation.[166] The pro-veteran canon, when applied at this stage, demonstrates that congressional intent can be easily inferred because the intent behind veterans' benefits statutes is clear.[167] Further, only after making this determination—when the statute remains silent or ambiguous—would courts traditionally defer to the agency's reasonable interpretation.[168]

In cases that followed this approach, courts not only relied on an outdated interpretive framework but also disregarded an anti-*Chevron* interpretive tool: the long-standing directive to construe veterans' benefits statutes liberally in favor of veterans.[169] This neglect persisted even as the Supreme Court repeatedly reaffirmed the validity of the pro-veteran canon—something it never did for *Chevron* deference.[170] While this is not a criticism of courts that have done their best to navigate these complex legal conflicts, the failure to apply the pro-veteran canon has had serious consequences, as the following section will demonstrate.[171]

Now that *Chevron* has been officially discarded in the recent *Loper Bright Enterprises v. Raimondo* holding, the courts have the opportunity to revisit those cases and provide relief to hundreds of thousands of veterans each year.[172] As explained before, this involves overturning stare decisis, which is something that the Supreme Court strongly discouraged in that opinion.[173] However, all of the foregoing reasons in this section support a special justification to revisit and reconsider these previous decisions in this

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162. H.R. REP. NO. 100-963, at 7 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5788 (emphasis added).
163. *Id.*
164. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 391 (2024).
165. Harper, *supra* note 10, at 949–50.
166. Jellum, *supra* note 12, at 67.
167. *See* discussion *infra* Section III.A.2.
168. *See* discussion *infra* Section III.A.2.
169. *See* discussion *infra* Section III.A.2.
170. *See* discussion *supra* notes 65–67 and accompanying text.
171. *See* discussion *infra* Section III.A.3.
172. Loper Bright Enters. v. Raimondo, 603 U.S. 369, 440 (2024); Author's original thought.
173. Author's original thought.

narrow grouping of veterans' benefits cases in the uniquely situated Court of Appeals for Veterans Claims.[174]

2. The Legislative Intent Is Explicit

The creation of the Court of Appeals for Veterans Claims established a neutral and detached avenue for reviewing veteran benefit disputes.[175] Congress had a specific intent to remove the adjudication process for veterans' claims from purely administrative remedies without losing the "beneficial non-adversarial system of veterans benefits."[176] Even in the prior system of internal administrative adjudication, the Veterans Administration was obligated to gather any and all evidence favorable to the claimant, construe the claim in a favorable light, and resolve any close issues in the claimant's favor.[177] The purpose of providing judicial oversight was not to change any of these procedures; instead, they sought to ensure that this process was accurate, informal, efficient, and fair while keeping as much of the burden off of the veterans as possible.[178] In other words, the process was already supposed to "thumb the scale" in favor of the veteran claimant, and the new system was created to ensure that would continue to happen.[179]

In the 100th Congress, Senate Bill 11—later becoming the Veterans Judicial Review Act—was also introduced in part because the Senate believed that the lack of judicial oversight "leaves the Congress open to . . . micromanaging the Veterans' Administration."[180] Stated another way, the Senate felt that it had to consistently rewrite the law when the VA would interpret a statute in a way that was adverse to veterans.[181] At that same time, the House Committee on Veterans Affairs proposed a similar bill with almost identical language.[182] While the Senate version was ultimately chosen as the final bill with minor changes, the House Report on their own bill reflects similar fears:

> [T]he committee believes that veterans presently receive every possible consideration when the [Board of Veteran's Appeals] reviews a case, and the committee expects that the new court will be similarly inclined. The creation of a court is intended to provide a more independent review by a body which is not bound by the Administrator's view of the law, and that will be more clearly [perceived] as one which has as its sole function

174. *Id.*
175. *See* discussion *infra* Part II.A.
176. H.R. REP. NO. 100-963, at 13 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5795.
177. *Id.*; 38 U.S.C. 5107(b).
178. H.R. REP NO. 100-963, at 26 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5808.
179. 38 U.S.C. § 5107 (explaining how veterans should always receive the benefit of the doubt in adjudication of claims disputes).
180. 134 CONG. REC. S4188-05 (daily ed. Apr. 18, 1988) (statement of Sen. Murkowski).
181. *Id.*
182. Veterans Judicial Review Act, H.R. 5288, 100th Cong. (2nd Sess. 1988).

> deciding claims in accordance with the Constitution and the laws of the United States.[183]

Both of these proposed Bills—and the final codified version—highlight the importance placed by both Houses of Congress on ensuring that veterans would be afforded a new perspective, unbound by the Administration's interpretation, so that they would receive "every possible consideration."[184] Stated another way, Congress recognized the importance of the Court having the authority to overrule the Secretary's interpretation of the law, ensuring favorable outcomes for veterans.[185]

One of the clearest indications of the legislature's intent to favor veteran claimants is the alignment between 38 U.S.C. § 7261 and 38 U.S.C. § 5107(b).[186] The former establishes the Court of Appeals for Veterans Claims' authority to review legal questions while the latter imposes a uniquely favorable standard for claimants in administrative proceedings—as a matter of law.[187] Given this statutory language, a deeper discussion of interpretive canons is largely unnecessary—these provisions suggest that the pro-veteran canon is not merely a canon of construction but rather a codified legal principle.[188]

At the time of writing, this very argument is before the Supreme Court.[189] However, regardless of how the Court ultimately rules, its decision is unlikely to affect the core argument presented here.[190] The key issue raised during oral arguments was whether the amendment to the Court of Appeals for Veterans Claims' scope of review requires the Secretary to apply the pro-veteran canon.[191] If the Court finds that traditional methods of statutory interpretation resolve any ambiguity, the pro-veteran canon may not even be a deciding factor.[192] If ambiguity persists, the question will be whether the duty to apply the canon lies with the Secretary rather than the judiciary.[193] In either case, the Court is unlikely to issue a broad ruling on the long-term viability of the pro-veteran canon, though such a decision would be informative.[194]

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183. H.R. REP NO. 100-963, at 26 (1988), *as reprinted in* 1988 U.S.C.C.A.N. 5782, 5808.

184. Veterans Judicial Review Act, H.R. 5288, 100th Cong. (2nd Sess. 1988).

185. *Id.*

186. 38 U.S.C. §§ 7261, 5107(b).

187. *Id.*

188. *See, e.g.*, Anton Scalia & Bryan A. Garner, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 56 (ThomsonWest, 2012) ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.")

189. Bufkin v. McDonough, No 23-713 (S. Ct. filed Dec. 29, 2023).

190. Author's original thought.

191. Transcript of Oral Argument at 4–5, Bufkin v. McDonough, No. 23-713 (2024); Veterans Benefits Act of 2002, Pub. L. 107–330, 116 Stat. 2820 (2002).

192. Author's original thought.

193. *Id.*

194. *Id.*

Regardless of the outcome, the statutory language itself underscores Congress's intent to impose a liberal burden of proof in favor of veterans.[195] This historical and ongoing reaffirmation of the pro-veteran principle supports its continued importance independent of any pending Supreme Court decision.[196]

3. Due Process Concerns and Other Considerations

For the past fifteen years, courts have rightfully recognized a veteran's entitlement to disability benefits as a property interest protected by the Due Process Clause.[197] While the law is clear that property interests require more than "an abstract need or desire," strict adherence to the *Chevron* framework deprived veterans of a fair and consistent adjudicative process because courts applied *Chevron* deference in some cases while overlooking the pro-veteran canon in others.[198] Although this inconsistency does not necessarily constitute a procedural due process violation, the lack of uniformity in interpretive methods creates uncertainty for veterans seeking benefits.[199] More importantly, the pro-veteran canon—unlike other canons that occasionally conflicted with *Chevron*—was the only one routinely ignored in a way that directly harmed a protected class of individuals.[200]

This issue is distinct from those faced by most other groups affected by *Chevron*'s abrogation because few areas of law have experienced such systemic inconsistency in judicial interpretation.[201] Among the few canons designed to protect specific groups, only the Native American canon and the rule of lenity for criminal defendants share a similar purpose.[202] However, of these, only the rule of lenity has produced a comparable interpretive dispute in the courts.[203] While this Comment focuses on how the Court of Appeals for Veterans Claims should address violations against veteran claimants, a similar argument—if modified—could apply to future criminal

195. *Id.*

196. *Id.*

197. Buffington v. Wilkie, 31 Vet. App. 293, 305 (2019) (citing Cushman v. Shinseki, 576 F.3d 1290, 1296 (Fed. Cir. 2009)).

198. The Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 577 (1972); *see also* Kolender v. Lawson, 461 U.S. 352 (1983).

199. *Id.*; Author's original thought.

200. *See, e.g.*, Esquivel-Quintana v. Lynch, 581 U.S. 385, 398 (2017) (Sutton, J., concurring in part and dissenting in part) (arguing the rule of lenity should trump *Chevron* deference when the Immigration and Nationality Act's civil provisions may entail criminal consequences); *see also* Justin Levine, *A Clash of Canons: Lenity, Chevron and the One-Statute, One-Interpretation Rule*, 107 GEO. L.R. 1423, 1425 ("[F]ailure to resolve the interaction between lenity and Chevron creates confusion and uncertainty.").

201. *Cf.* Levine, *supra* note 200, at 1424–25 (explaining an individual's conviction in the Second Circuit relied, at least in part, on that circuits previous use of *Chevron* to define a term).

202. *Compare id.*, *with* Cargill v. Garland, 602 U.S. 406, 415 (2024) (discussing that the rule of lenity applies if the statute is ambiguous).

203. *Cargill*, 602 U.S. at 415.

defendants.[204] That said, veterans' benefits cases differ from criminal cases in a key way: they are not subject to the complexities of "hybrid statutes."[205] Many courts that applied *Chevron* deference in the civil context later found themselves bound by the "one-statute, one-interpretation" rule when those same statutes were applied in criminal proceedings.[206] These courts, however, never had a justification to apply *Chevron* deference over the equal and opposite pro-veteran canon.[207] Because the two canons were entirely irreconcilable, courts arbitrarily chose one over the other, resulting in inconsistent rulings that disadvantaged veterans.[208]

While this inconsistency alone may not rise to the level of a procedural due process violation for the original claimants, the problem has been exacerbated by the Court of Appeals for Veterans Claims' recent decision in *Rorie v. McDonough*.[209] By relying on prior *Chevron*-based interpretations in future cases, the Court of Appeals for Veterans Claims risks erroneously depriving veterans of benefits.[210] Given that *Chevron* and the pro-veteran canon inherently lead to opposite results, there is little doubt that prior decisions relying on *Chevron* to a veteran's detriment would have reached a different outcome under the correct interpretive framework.[211] To prevent ongoing unfairness, the court must revisit the limited subset of cases in which courts improperly prioritized *Chevron* over the pro-veteran canon to ensure that veterans are not denied benefits due to outdated deference doctrines.[212]

4. The Pro-Veteran Canon as a "Special Justification"

Given that *Chevron* deference has been expressly overruled by *Loper Bright*, there is a unique opportunity to revisit agency actions in light of the pro-veteran canon's goals.[213] As mentioned in Part II, in *Loper Bright*, the Supreme Court discarded the *Chevron* test after forty years of use.[214] In the same breath as recognizing the *Chevron* test's unconstitutionality, the Court urged that the precedent relying upon it must remain.[215] Not even two paragraphs after stating that "*Chevron* accordingly has undermined the very

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204. Author's original thought; *see also* Levine, *supra* note 200, at 1452 (arguing for the rejection of the "one-statute, one-interpretation" rule for criminal defendants *prior* to the abrogation of *Chevron* deference).

205. *See* Levine, *supra* note 200, at 1425 ("[A] hybrid statute . . . calls for both criminal and administrative (civil) enforcement.")

206. Author's original thought; *see* Harper, *supra* note 10.

207. Harper, *supra* note 10.

208. *Id.*

209. Rorie v. McDonough, 37 Vet. App. 430, 434 (2024).

210. *Id.*

211. Author's original thought.

212. *Id.*

213. *Id.*; Loper Bright Enters. v. Raimondo, 603 U.S. 369, 405 (2024).

214. *See* discussion *infra* Part II.

215. *Loper Bright Enters.*, 603 U.S. at 405.

'rule of law' values that [statutory] *stare decisis* exists to secure," the Court states, "however, we do not call into question prior cases that relied on the *Chevron* framework."[216] The Court justified this antithetical approach by explaining that there must be special justifications to overturn statutory stare decisis, and mere reliance on *Chevron* does not meet this standard.[217]

What constitutes a special justification is typically defined through application, but Justice Kavanaugh compiled the factors that have been identified by the Supreme Court in previous cases during his concurrence in the Court's opinion in *Ramos v. Louisiana*.[218] Although Justice Kavanaugh stated that these factors were limited to constitutional stare decisis cases, this limitation does not exist in practice; the Court relied on these factors for its analysis in *Loper Bright*, which was a judicially created doctrine that was unmistakably entitled to statutory stare decisis.[219] Putting aside the Court's assertion that the Legislature can readily address four decades of lower court precedent reliant on *Chevron*, the denial of veterans' benefits under this doctrine—despite the Supreme Court's consistent reaffirmation of the pro-veteran canon—not only satisfies many of these factors but also presents unique challenges of its own.[220]

In the context of veterans' benefits, the Supreme Court has established and reaffirmed two nearly identical doctrines that purposefully diverged at the final and meaningful step to reach irreconcilable results.[221] Unlike the holding in *CBOCS West, Inc. v. Humphries*, this is not simply an argument that the Court changed its approach to statutory interpretation and should revisit certain holdings.[222] Instead, this is an argument that the Court of Appeals for Veterans Claims' arbitrary application of the wrong substantive canon, despite the existence of another equal and opposite canon that was—and continues to be—binding precedent, will continue to rob future claimants of the procedure intended by the Legislature.[223] Thus, there exists a special

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216. *Id.* at 410–13.

217. *Id.* at 407.

218. Ramos v. Louisiana, 590 U.S. 83, 115 (2020) (Kavanaugh, J. concurring).

219. *See* Kimble v. Marvel Ent., LLC, 576 U.S. 446, 456 (2015) ("Indeed, we apply statutory *stare decisis* even when a decision has announced a "judicially created doctrine" designed to implement a federal statute."); *see also Loper Bright Enters.*, 603 U.S. at 407 (using three of the six factors for overturning stare decisis).

220. *Ramos*, 590 U.S. at 115 (Kavanaugh, J., concurring) (identifying the stare decisis factors as "(1) the quality of the precedent's reasoning; (2) the precedent's consistency and coherence with previous or subsequent decisions; (3) changed law since the prior decision; (4) changed facts since the prior decision; (5) the workability of the precedent; (6) the reliance interests of those who have relied on the precedent; and (7) the age of the precedent.").

221. *See* discussion *infra* Section III.A.2.

222. CBOCS W., Inc. v. Humphries, 553 U.S. 442, 457 (2008).

223. *See* Rudisill v. McDonough, 601 U.S. 294, 314 (2024) ("If the statute were ambiguous, the pro-veteran canon would favor [the claimant], but the statute is clear, so we [reverse the denial of his benefits] based on the statutory text alone."); Brown v. Gardner, 513 U.S. 115, 118 (1994) ("[I]nterpretive doubt is to be resolved in the veteran's favor."); King v. St. Vincent's Hosp., 502 U.S. 215, 221 n.9 (1991). ("[P]rovisions for benefits to members of the Armed Services are to be construed in the beneficiaries'

justification to overturn this narrow group of cases that are reliant upon *Chevron* deference.[224]

B. Addressing Counter Arguments and Tailoring the Approach

Despite the historical significance of the pro-veteran canon, its consistent conflict with *Chevron* and the lack of justification for prioritizing *Chevron* over it, some may argue that the proposed solution is too far-reaching.[225] This Section addresses two anticipated objections to treating veterans' cases differently from other *Chevron*-based precedents: (1) concerns about judicial overreach, and (2) the potential for inconsistency and uncertainty in veterans' benefits law.[226]

To mitigate concerns about judicial overreach, this Section highlights the extensive legislative history supporting the pro-veteran canon, demonstrating that this approach aligns with congressional intent.[227] Additionally, it proposes a clear judicial standard that would narrowly apply this exception to a specific subset of veterans' cases, ensuring a balanced and targeted remedy.[228]

1. Concerns About Judicial Overreach

One of the strongest objections critics may raise is that, regardless of its limitations, revisiting prior decisions would contribute to judicial overreach.[229] As explained in Section II.B.1, some Supreme Court Justices have even expressed interest in reevaluating the pro-veteran canon altogether.[230] In a concurring opinion, Justice Kavanaugh, joined by Justice Barrett, outlined three primary concerns: (1) the pro-veteran canon necessarily leads to outcomes different from those the court would otherwise reach, (2) it lacks a clear foundation in congressional intent, and (3) it unfairly prioritizes veterans over other groups in what they describe as the "zero-sum game" of government spending.[231] While a five-justice majority reaffirmed support for the canon, concerns about judicial overreach remain overstated.[232]

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favor."); Fishgold v. Sullivan Drydock & Repair Corp., 328 U.S. 275, 285 (1946). ("[Veterans' benefits] legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need.").

224. Author's original thought.

225. *Id.*

226. *See* discussion *infra* Part III.B.1–2.

227. *See* discussion *infra* Part III.B.1.

228. *See* discussion *infra* Part III.B.2.

229. *See generally* Barrett *supra* note 52 (exploring the debate between "substantive canons and faithful agency.")

230. *See* discussion *infra* Part II.B.1; *Rudisill*, 601 U.S. at 294.

231. *Rudisill*, 601 U.S. at 315–317.

232. *Id.*; Author's original thought.

First, the statement that the pro-veteran canon must always alter the outcome of a case to have any effect is true, yet it oversimplifies how courts interpret statutory ambiguity.[233] If the canon required courts to rule in favor of veterans regardless of clear statutory language to the contrary, that would indeed raise concerns about judicial overreach.[234] However, the canon does not do so—it serves as a guiding principle that applies only when a statute contains genuine ambiguity.[235]

Second, as explained in Section III.A.2, the legislative intent behind the pro-veteran canon is explicit and deeply rooted in both congressional history and national tradition.[236]

Third, concerns that the canon distorts budgetary priorities were expressly addressed and rejected by Congress when it created the Court of Appeals for Veterans Claims.[237] As reflected in Senate Bill 11, which later became the Veterans' Judicial Review Act, lawmakers were particularly concerned about increasing pressure within the executive branch to cut costs at the expense of veterans' benefits.[238] The Senate noted the rising frequency of questionable agency actions driven by cost-saving measures and took steps to ensure that budgetary concerns would not undermine veterans' entitlements. [239] Therefore, Justice Kavanaugh's argument lacks historical and legislative support. [240]

2. Potential for Inconsistency and Uncertainty in Veterans' Benefits Law

A second argument critics may raise against using the pro-veteran canon as a special justification is that reconsidering past decisions could create confusion and instability in veterans' benefits law.[241] The Supreme Court generally requires special justifications for departing from statutory stare decisis precisely to avoid opening the floodgates to litigation based on claims that past precedent was wrongly decided.[242] However, these concerns can be mitigated, if not entirely avoided, through clear judicial standards.[243]

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233. *See, e.g.*, Brian G. Slocum, *The Importance of Being Ambiguous: Substantive Canons, Stare Decisis, and the Central Role of Ambiguity Determinations in the Administrative State*, 69 MD. L.R. 791, 799–800 ("Defining Ambiguity.").

234. Author's original thought.

235. *Id.*

236. *See* discussion *supra* Part III.A.2.

237. Veterans' Judicial Review Act of 1988, Pub. L. No. 100–687, 102 Stat. 4105 (codified as amended in scattered sections of 38 U.S.C.); 133 CONG. REC. S201-01 (1987) (Statement of Sen. Cranston).

238. 133 CONG. REC. S201-01 (1987) (Statement of Sen. Cranston).

239. *Id.*

240. *Compare id.*, *with* Ramos v. Louisiana, 590 U.S. 83, 115 (2020) (Kavanaugh, J. concurring); Author's original thought.

241. *Id.*

242. Transcript of Oral Argument at 24–25, Loper Bright Enterprises v. Raimondo, 603 U.S. 369 (2024) (discussing concerns about an influx of litigation post-*Chevron*).

243. Author's original thought.

The only way that this special justification exception would apply is when (1) the decision materially and detrimentally relied on *Chevron* deference, and (2) that reliance is explicitly stated in the decision itself.[244] This standard enables the Court of Appeals for Veterans Claims to make a preliminary determination as to whether a case qualifies for reconsideration, ensuring that the exception benefits veterans as a whole rather than serving as a tool for endless relitigating.[245] Additionally, this approach prevents individual panels from loosely inferring or implying that *Chevron* played a pivotal role in past cases—such reliance must be expressly stated in the original decision.[246] By adopting a clear and narrowly tailored judicial standard, courts can maintain consistency and fairness while fulfilling Congress's intent to protect veterans in the adjudication process.[247]

C. Policy Implications and Practical Considerations

In addition to the main argument above, there are several practical considerations that underscore the importance of this implementation.[248] This Section explains the impact that failing to revisit these cases will have on veteran claimants, as well as the implications this will have on estate planning for veterans.[249]

1. Implications for Veterans' Legal Rights

Many *Chevron*-dependent rulings led to the wrongful denial of benefits due to restrictive agency interpretations of ambiguous statutory language.[250] These interpretations often placed the burden on veterans to prove entitlement, rather than requiring agencies to resolve ambiguities in favor of claimants.[251] This approach contradicted the non-adversarial nature of veterans' benefits law and forced many veterans into prolonged legal battles to receive benefits to which they were entitled.[252]

As a result, many veterans lack confidence in the benefits system due to historical inconsistencies in how their claims have been adjudicated.[253]

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244. *Id.*
245. *Id.*
246. *Id.*
247. *Id.*
248. *Id.*
249. *Id.*
250. *See* Rorie v. McDonough, 37 Vet. App. 430, 434 (2024) (illustrating *Chevron*'s impact on limiting veterans' access to benefits).
251. *Id.*
252. Henderson v. Shinseki, 562 U.S. 428, 431 (2011) (explaining the non-adversarial nature of the veterans' benefits system).
253. U.S. Dep't of Veterans Affs., Off. of Inspector Gen., *The Veterans Benefits Administration Inadequately Supported Permanent and Total Disability Decisions* 3 (Veterans Benefits Administration Sept. 10, 2020).

Chevron-dependent rulings contributed to this distrust by allowing agencies to interpret statutes in ways that favored administrative discretion over claimants' rights.[254] As a result, many veterans became frustrated with the system, viewing it as adversarial rather than claimant-friendly.[255]

This shift will strengthen the overall legal framework for veterans' benefits, reinforcing the principle that statutory interpretation should reflect the government's obligation to care for those who served.[256] By ensuring that courts apply a consistent, pro-claimant standard, the judicial system can foster greater transparency, predictability, and fairness for veterans navigating the benefits process.[257]

Revisiting *Chevron*-dependent precedents will have far-reaching implications for veterans' legal rights and financial security.[258] By correcting past injustices, reducing legal barriers, and ensuring fairness in statutory interpretation, courts can create a more accessible and predictable benefits system.[259] The removal of *Chevron* deference presents an opportunity to restore trust, establish stronger legal precedents, and reinforce Congress's intent to prioritize veterans in claims adjudication.[260] Rather than creating uncertainty, this shift will bring long-overdue consistency and fairness to the veterans' benefits system.[261]

2. Implications for Estate Planning

Reconsidering past agency interpretations could have significant implications for estate planning among veterans and their families, particularly regarding eligibility for benefits such as survivors' compensation or disability benefits.[262] Every year, approximately 200,000 men and women leave U.S. military service and return to civilian life, and the benefits that an individual accrues or is entitled to after separation vary significantly.[263] These individuals require a knowledgeable and experienced attorney to assist them

254. *Id.*
255. *Id.*
256. Geppert, *supra* note 98.
257. Author's original thought.
258. *Id.*
259. *Id.*
260. *Id.*
261. *Id.*
262. *See, e.g.*, Lynch v. Wilkie, 30 Vet. App. 296, 301 (2018) (using *Chevron* to determine the appropriate date to assess whether a person qualifies as a child for the purposes of dependency and indemnity compensation).
263. *Transition Assistance Program* (TAP), U.S. DEP'T OF LAB., https://www.dol.gov/agencies/vets/programs/tap#:~:text=Every%20year%2C%20approximately%20200%2C000%20men,TAP)%2C%20provided%20under%2010%20 [https://perma.cc/F4KW-GAMS] (last visited Jan. 24, 2025).

with their claims and to litigate any disagreements that may arise.[264] This requires a minimal amount of extra preparation as detailed below.[265]

The additional requirements to aid a veteran are minimal, and estate planners should consider becoming certified, despite the lack of financial gain.[266] In addition to all the basic requirements for maintaining a professional license in the attorney's state of residence, those who seek to represent veterans must also fill out VA Form 21a, submit it to the Office of General Counsel of the VA, and complete three hours of qualifying continued legal education (CLE) within twelve months of being certified.[267] After that, an attorney is only required to complete an additional three hours for every two years thereafter, which is only a fraction of the requirement for Texas attorneys generally.[268] Although this CLE accounts for only 10% of the required CLE hours for Texas attorneys over a two-year period, fewer than 0.3% of all Texas attorneys currently hold accreditation to represent an individual before the VA.[269] As explained further below, this is likely due to the restrictions on fee agreements; however, estate planners are still the best situated to help.[270]

Federal law prohibits an attorney from charging a fee for simply helping a veteran fill out a claims form, so claimants usually seek out free veterans' service organizations for help.[271] Attorneys may seek a fee after a formal decision is rendered on a claim if they file a notice of disagreement, power of attorney, and a fee agreement with the VA; however, most veterans are financially limited, and the contingent fees are considerably lower for these

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264. Author's original thought.

265. *See* discussion *infra* notes 265–68 and accompanying text.

266. Author's original thought.

267. *See generally* 38 C.F.R. § 14.629 ("Requirements for accreditation of service organization representatives; agents; and attorneys"); *see also* 38 U.S.C. § 5904 (authorizing the Agency to promulgate these rules).

267. *How to Apply for VA Accreditation*, U.S. DEP'T OF VETERANS AFFS., https://www.va.gov/OGC/docs/Accred/HowtoApplyforAccreditation.pdf[https://perma.cc/ZT9D-DFU9].

268. *Id.*; *see also Minimum Continuing Legal Education (MCLE)*, STATE BAR OF TEX., https://www.texasbar.com/Content/NavigationMenu/ForLawyers/MCLE1/MCLEHomepage/default.htm [https://perma.cc/RTG9-7GQM] (last visited Jan. 24, 2025) (stating that you are required to have fifteen hours per year).

269. *See VA-Accredited Representatives FAQs*, U.S. DEP'T OF VETERANS AFFS., OFF. OF GEN. COUNS., https://www.va.gov/resources/va-accredited-representative-faqs/[https://perma.cc/8CMB-ZQXX] (last visited Jan. 24, 2025) (showing a total of 310 attorneys accredited in Texas); *see also Texas Lawyer Population Trends*, STATE BAR OF TEX., https://www.texasbar.com/AM/Template.cfm?Section=Home&Template=/CM/ContentDisplay.cfm&ContentID=61533#:~:text=Over%20the%20past%2010%20years,2012%20to%20111%2C412%20in%202022 [https://perma.cc/Z946-DFGR] (showing a total of 111,412 attorneys in Texas in 2022).

270. Author's original thought.

271. *NVLSP Releases 2023 Report on Pro Bono Program: Lawyers Serving Warriors*, NAT'L VETERANS LEGAL SERVS. PROGRAM, (June 24, 2024) https://nvlsp.org/nvlsp-releases-2023-report-on-pro-bono-program-lawyers-serving-warriors/[https://perma.cc/3PLV-APP6] ("In 2023, NVLSP's pro bono partners donated over 84,000 hours in pro bono time to veterans, with an approximate value of over $68 million.").

cases.[272] Therefore, these individuals are typically represented pro bono.[273] As such, estate planners are most likely to encounter these issues, even when the veterans themselves are unaware of their entitlement.[274] Because of the minimal additional requirements to represent a veteran before the VA, estate planners should apply for certification, devote a small fraction of their CLE requirements to ensure they are prepared and procedurally capable to address these issues.[275]

In sum, attorneys should advocate for veterans who have been adversely affected by *Chevron* by pushing to revisit their case on the grounds of a special justification.[276] While veterans currently find themselves limited to veterans' organizations that will represent them pro bono, estate planners should recognize their potential proximity to these issues and prepare to provide support when they can.[277] Should the Court of Appeals for Veterans Claims choose to revisit those limited cases, there will be greater clarity on which benefits veterans or their heirs are entitled to, improving long-term planning and support for their families.[278]

3. Legislative and Administrative Efficiency

Reassessing agency interpretations under *Chevron*, after *Loper Bright*, would benefit veterans by restoring the pro-veteran canon to its full effect.[279] There are 19,158 cases citing *Chevron* prior to June 28, 2024, when *Loper Bright* was published.[280] Over the span of forty years since *Chevron* was decided, that equates to roughly 466 cases per year; yet, the Veterans Court has only cited *Chevron* in 233 cases total.[281]

Despite this comparatively small number of affected cases within the Veterans Court, there are eighty parts of agency regulations in Title 38 of the Code of Federal Regulations that interpret and apply the scope of the power given to them from a total of forty-seven different chapters of statutes in Title 38 of the U.S. Code.[282] In fiscal year 2024, 1.1 million veterans and their survivors have received some type of benefit, yet over two million veterans

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272. *See* 38 U.S.C. § 5904.

273. *See NVLSP Releases 2023 Report on Pro Bono Program: Lawyers Serving Warriors*, *supra* note 271.

274. Author's original thought.

275. *Id.*

276. *Id.*

277. *Id.*

278. *Id.*

279. *Id.*

280. *See* Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837, 837 (1984). This data can be found on Westlaw, click on "Citing References" and limit to cases.

281. *Id.* Limit the search to "The Court of Appeals for Veterans Claims."

282. *See generally* 38 U.S.C. §§ 101–8528 (demonstrating the broad scope of Title 38).

have applied.[283] Although a detailed analysis of how many veterans' claims were materially and adversely affected by the rigid application of *Chevron* deference in those 233 cases is unknown, the number of veterans who are likely affected is staggering.[284] Even though roughly 900,000 veterans were denied benefits, only around 100,000 individuals appeal an adverse decision to the Board of Veterans of Appeals and receive a final decision each year.[285] Further, the Court of Veterans Appeals only hears about 9,000 cases per year, and veterans already experience unbelievable wait times for a decision from a Veterans Law Judge at the Board of Veterans' Appeals—in some instances as long as five to seven years.[286]

The expectation that the Legislature can fix each *Chevron*-based decision that they disagree with is well outside the breadth of the Legislature's capabilities; this is something the Senate recognized at the Court's inception:

> Although the Committees on Veterans' Affairs in both Houses do their utmost to oversee the activities of the VA, the limited resources of the committees do not allow for thorough review of and congressional action to resolve satisfactorily all of the legal and policy issues arising in such a large and complex agency. In addition, I do not believe that aggrieved veterans should have to be dependent for relief on congressional committee processes which, for all their virtues, cannot be fairly said to be designed to achieve or to be capable of achieving systematically and evenhanded dispensation of justice. Also, although the results of committee oversight are often salutary in terms of bringing about-either through legislation or administrative action under pressure-reversals of agency action, there is usually a long delay in having the correction made.[287]

The current problems concerning the delays in the appeals process are a good example.[288] The Legislature proposed extreme modifications seven years ago when it passed the Veterans Appeals Improvement and Modernization Act of 2017.[289] There, the Legislature proposed and passed

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283. U.S. DEP'T OF VETERANS AFFS., *VA Has Now Granted Benefits to 1.1 Million Veterans and Their Survivors in Fiscal Year 2024, Surpassing All-Time Records*, https://news.va.gov/press-room/va-has-now-granted-benefits-to-1-1-million-veterans-and-their-survivors-in-fiscal-year-2024-surpassing-all-time-records/ [https://perma.cc/77QK-ZBNX] (last visited Jan. 24, 2025).

284. *Id.*

285. *Id.*

286. Annual Report Fiscal Year (FY) 2023, DEPT. OF VETERANS AFFS. (VA) BOARD OF VETERANS' APPEALS,https://department.va.gov/board-of-veterans-appeals/wpcontent/uploads/sites/ 19/2025/04/2023_bva2023ar.pdf [https://perma.cc/M47S-A3S4] (last visited Oct. 8, 2025); *Manage a Legacy VA Appeals*, U.S. DEP'T OF VETERANS AFFS., https://www.va.gov/decision-reviews/legacy-appeals/ [https://perma.cc/NZS6-8BB6] (last visited Jan 24, 2025).

287. 133 CONG. REC. S201-01 (1987) (Statement of Sen. Cranston).

288. Author's original thought.

289. *See* Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115–55, 131 Stat. 1105 (2017).

legislation aimed at "streamlin[ing] VA's appeals process while protecting veterans' due process rights."[290] Seven years later, the Legislature has recognized that this solution has proven to be inefficient.[291]

Another example is the Supreme Court's denial of certiorari in the case of *Buffington v. McDonough*.[292] Justice Gorsuch wrote an eight-page dissent arguing against the denial because it effectively upheld the lower court's application of *Chevron*, denying Mr. Buffington three years of retroactive benefits, despite his entitlement to the benefits themselves.[293] In the two years since this certiorari petition was denied, it is unclear how many of the 1.8 million individuals were denied retroactive payments under the *Buffington* precedent, and they either chose not to appeal or are currently stuck in a futile appeals process.[294]

The additional benefit that this precedent creates is to further the Legislature's attempts to fix the "broken" VA appeals process and increase accessibility for veterans.[295] Veterans would have an easier time securing benefits if the Court was more inclined to apply the pro-veteran canon to agency decisions.[296] This in turn would truly effectuate the intent of the Legislature to maintain a non-adversarial system of veterans' benefits.[297] Waiting on a legislative fix when the courts have the opportunity to implement something now could result in tens of millions of disheartened veterans over the next decade.[298]

IV. CONCLUSION

The rejection of *Chevron* deference has far-reaching effects that extend well beyond veterans' law, altering the dynamic between administrative agencies and the courts.[299] The Court's decision in *Loper Bright* essentially necessitates a reconsideration of how courts handle situations when the meaning of laws is unclear, affecting all areas of administrative law.[300] This shift prompts the question of whether other interpretive rules, like the pro-veteran canon, could provide a framework for balancing fairness and judicial

290. H.R. REP. NO. 115-135, at 5 (2017), *as reprinted in* 2017 U.S.C.C.A.N. 97, 101.

291. *See, e.g.*, H.R. 1329, 118th Cong. (1st Sess. 2023) (proposing a permanent increase of Judges on the Court of Appeals for Veterans Claims).

292. Buffington v. McDonough, 143 S. Ct. 14, 14–15 (2022) (Gorsuch, J., dissenting from denial of certiorari).

293. *See id.* at 14 (Gorsuch, J., dissenting).

294. *See* discussion *supra* notes 282–84 and accompanying text (explaining that 900,000 this year alone were denied benefits and only about 10% choose to appeal).

295. *See* H.R. REP. NO. 115-135, at 5, *as reprinted in* 2017 U.S.C.C.A.N. 97, 101 (2017) (stating that "VA's current appeals process is broken.").

296. Author's original thought.

297. *Id.*

298. *Id.*

299. *Id.*

300. *Id.*

independence.[301] By focusing on fair outcomes and legislative intent, these canons could help guide courts in navigating the complexities of interpreting laws in the post-*Chevron* era while also safeguarding vulnerable groups.[302] Veterans' benefits law serves as a useful example, showing how targeted reforms can fix systemic problems without disrupting core legal principles.[303]

The pro-veteran canon presents a unique opportunity to revisit cases that relied on the judicial framework of *Chevron,* given its distinct nature and focus on protecting veterans' rights.[304] The conflict between the two canons creates a gap that should be addressed through crafting a unique standard for a small group of decisions within the Court of Appeals for Veterans Claims.[305] Judicial correction would benefit both veterans and the Legislature by addressing the issue at its source, as the Legislature already has numerous concerns regarding the court.[306] By reaffirming the pro-veteran canon and applying it consistently after *Loper Bright*, courts can ensure that veterans receive the benefits they deserve while navigating the shift in judicial review after the overruling of *Chevron*.[307]

301. *Id.*
302. *Id.*
303. *Id.*
304. *Id.*
305. *Id.*
306. *Id.*
307. *Id.*