



FOR IMMEDIATE RELEASE

Media Inquiries: Judy Pino, 202-869-5218

NCLA Asks Supreme Court to Reconsider *Chevron* Deference in Veterans Benefits Suit

Thomas H. Buffington v. Denis McDonough, Secretary of Veterans Affairs

Washington, DC (January 3, 2022) – Thomas Buffington is a U.S. Air Force veteran who served his country honorably for over nine years. Now after incurring a disability in the line of duty, he is having to fight the very agency that should be helping him. The New Civil Liberties Alliance filed a [petition](#) for *writ of certiorari* in the U.S. Supreme Court today on behalf of Mr. Buffington against the U.S. Department of Veteran Affairs (VA), seeking to overturn the Federal Circuit’s disregard of the pro-veteran canon of statutory construction in determining his benefits.

The petition raises a hotly contested issue of administrative law: should courts defer to an administrative agency’s interpretation of a federal statute under *Chevron* deference?

After being honorably discharged in May 2000, Mr. Buffington sought disability compensation for tinnitus. The VA concluded that his disability was service-connected and began paying him disability compensation effective May 31, 2000. Mr. Buffington was later recalled to active duty for several months in the Air National Guard, during which time VA discontinued paying his disability compensation. Four years after completing his tour of duty, Mr. Buffington, in 2009, formally requested that VA reinstate his disability benefits, including paying the benefits he had earned in the periods following completion of his active duty. VA refused to award him the benefits due, citing its “forfeiture rule”—under which veterans lose past-due disability benefits if they wait more than one year before submitting a claim to resume benefits. Mr. Buffington argues that VA’s adoption of a one-year forfeiture rule lacks any basis in the underlying statute.

In this case, a divided panel of the Federal Circuit applied *Chevron* and deferred to the *anti*-veteran interpretation offered by VA, thus denying benefits to Mr. Buffington without applying its full toolkit of statutory interpretation. NCLA argues that the Court must apply a rule of statutory construction known as the pro-veteran canon, which resolves statutory ambiguities in favor of veterans. Once the pro-veteran canon is applied, there will be no remaining ambiguities and thus no need to resort to *Chevron* deference. Alternatively, NCLA asks the Court to jettison the *Chevron* doctrine entirely.

The Federal Circuit’s ruling spotlights the fundamental ways in which *Chevron* deference itself is contrary to law. Instead of deciding for itself which interpretation was correct, the court invoked *Chevron* and rubber-stamped VA’s construction. Such abdication of the Judiciary’s responsibility to “say what the law is,” is incompatible with the constitutional separation of powers, with basic principles of due process of law, and with the Administrative Procedure Act. After 37 years, experience has shown that *Chevron*’s deference regime is wrong, unworkable in practice, leads to arbitrary and subjective decisions, and affirmatively undermines the stable development of law.

NCLA drafted the petition with valuable pro bono assistance from Latham & Watkins, LLP.

NCLA released the following statements:

“Congress has long made clear that laws affecting veterans whose meanings are at all unclear are to be interpreted in favor of veterans. Yet in this and many other cases, the Federal Circuit has been violating this pro-veteran canon by affording *Chevron* deference to the VA’s interpretation of veterans statutes and thereby adopting anti-veteran interpretations. *Chevron* deference has no role to play in cases involving veterans seeking compensation for their service-connected disabilities.”

— **Rich Samp, Senior Litigation Counsel, NCLA**

“In our constitutional system, judges should be independent and impartial, faithfully applying the law as best they understand it. The *Chevron* doctrine contradicts that principle by requiring judges to defer to federal agencies in close cases. The Court should rein in *Chevron* by confirming that courts must apply all traditional canons of interpretation before considering whether deference is appropriate. Better yet, the Court should overturn *Chevron* and reaffirm the Judiciary’s independent duty to say what the law is.”

— **Roman Martinez, Deputy Office Managing Partner, Latham & Watkins**

ABOUT NCLA

[NCLA](#) is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar [Philip Hamburger](#) to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

###