



FOR IMMEDIATE RELEASE

Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Amicus Argues for Honoring Veterans By Doing Away with *Chevron* Deference

Thomas H. Buffington v. Robert L. Wilkie, Secretary of Veterans Affairs

Washington, DC (July 13, 2020) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, filed an [amicus](#) brief today in the U.S. Court of Appeals for the Federal Circuit challenging the lower court’s biased ruling in favor of the U.S. Department of Veterans Affairs (V.A.) in *Thomas H. Buffington v. Robert L. Wilkie, Secretary of Veterans Affairs*.

Mr. Buffington, who suffered service-connected disability (tinnitus) while serving for the U.S. Air Force, is seeking disability benefits in a lawsuit against V.A. The law is clear that when one asks for resumption of disability payments to which one is entitled, the resumption should begin as of the date one leaves active service. But the V.A. disagrees. It claims that payments can be resumed for no more than 12 months before the veteran requests resumption. The U.S. Court of Appeals for Veterans Claims ruled against Buffington holding that (1) the relevant statute in this case is ambiguous; and (2) V.A.’s interpretation of the relevant statute was entitled to deference under the *Chevron* deference doctrine. NCLA argues that the Court did not exercise its independent judgment regarding the best reading of the statutes at issue in this case and instead deferred to the interpretation of the V.A.—a party to this proceeding.

The Court stated that deference doctrines are based on a presumption that, in many instances, Congress intends to delegate interpretive authority to administrative agencies. But there is a well-established, pro-veteran maxim by the courts which provides that interpretive doubt is to be resolved in the veteran’s favor. The reason for rejecting *Chevron* deference in veterans’ cases is similar to the reason for rejecting it in criminal cases, to which the rule of lenity applies. Congress cannot be presumed to have intended to delegate to the V.A. authority to adopt a rule withholding otherwise-available disability benefits depending on the date on which a veteran seeks reinstatement of benefits. Likewise, Congress cannot be presumed to have intended courts both to construe such statutes in favor of veterans and to defer to an agency interpretation that disfavors veterans. Rule-of-lenity case law provides additional support for the proposition that *Chevron* is inapplicable when, as here, competing court maxims undercut presuming congressional intent.

NCLA also urges the Court, in the course of its opinion, to note the constitutionally problematic nature of the *Chevron* judicial deference doctrine. *Chevron* is inconsistent with separation-of-power and due-process principles embedded in the Constitution. Judges violate Article III of the Constitution and their judicial oaths when they give *Chevron* deference instead of providing their independent judgment. Furthermore, judges

violate the Due Process Clause when they favor a government litigant’s interpretation of the law over the interpretation of the other party in the case.

The Court recently issued an *en banc* decision indicating that the question of how to resolve the tension between the pro-veteran canon and *Chevron* deference is an open question within the circuit. NCLA submits that this case provides an excellent vehicle for addressing and finally resolving the question.

NCLA released the following statement:

“A longstanding rule of statutory construction known as the pro-veteran canon requires that ambiguous statutes governing the award of veterans’ benefits be construed in favor of veterans. That canon precludes application of *Chevron* deference when the federal government adopts a conflicting interpretation of relevant statutes.”

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

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.

###