

No. 13-762

In the Supreme Court of the United States

MICHELE D. BURDEN, PETITIONER

v.

ERIC K. SHINSEKI, SECRETARY OF VETERANS AFFAIRS

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Section 103(c) of Title 38 of the United States Code provides that, when a person applies for veterans' benefits as the surviving spouse of a veteran, the applicant's marriage to the veteran must be "proven as valid * * * according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued." Under Alabama law, a person seeking to establish the existence of a valid common-law marriage must provide "clear and convincing proof." *Etheridge v. Yeager*, 465 So. 2d 378, 380 (Ala. 1985). Section 5107(b) of Title 38 of the United States Code provides that, when the Secretary of Veterans Affairs adjudicates a claim for benefits, and "there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant." The question presented is as follows:

Whether the Secretary, in determining the validity of petitioners' claimed common-law marriages under state law under 18 U.S.C. 103(c), was required to apply the "benefit of the doubt" standard set out in 38 U.S.C. 5107(b), rather than the Alabama-law requirement of "clear and convincing proof."

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-22a) is reported at 727 F.3d 1161. The opinion of the United States Court of Appeals for Veterans Claims (Veterans Court) for petitioner Burden (Pet. App. 23a-46a) is reported at 25 Vet. App. 178. The opinion of the Veterans Court for petitioner Coleman (Pet. App. 47a-52a) is not published but is available at 2012 WL 638764.

JURISDICTION

The judgment of the court of appeals was entered on July 16, 2013. Petitions for rehearing were denied on September 26, 2013 (petitioner Coleman) and September 30, 2013 (petitioner Burden). Pet. App. 53a-56a. The petition for a writ of certiorari was filed on December 23, 2013. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Spouses of veterans are entitled to certain benefits under federal law. Those benefits include dependency and indemnification compensation benefits, which are benefits paid to a surviving spouse when a veteran dies as a result of a service-related injury or disease. See 38 U.S.C. 1310-1311. A “surviving spouse” is defined as a person who was the “spouse of a veteran at the time of the veteran’s death”; who had “lived with the veteran continuously from the date of marriage to the date of the veteran’s death”; and who has “not remarried” or “lived with another person and held himself or herself out openly to the public to be the spouse of such other person.” 38 U.S.C. 101(3); see 38 C.F.R. 3.50(b). The surviving spouse must have been married to the veteran for one year or more, unless the couple had a child before or during the marriage, or less than 15 years expired after the end of the veteran’s military service. 38 U.S.C. 1304; see 38 C.F.R. 3.54.

Congress anticipated that questions would arise about whether a claimant for benefits is or was validly married to a veteran. The governing statutory scheme provides that questions concerning the validity of a marriage are to be resolved by reference to state law:

In determining whether or not a person is or was the spouse of a veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.

38 U.S.C. 103(c); see also 38 C.F.R. 3.1(j).

2. Petitioners both filed applications for dependency and indemnification compensation benefits as surviving spouses of deceased veterans.

a. Petitioner Michele Burden married Louis Burden in a ceremonial marriage in April 2004. Pet. App. 3a. Louis Burden had served on active duty in the United States Army from 1948 until 1968. *Ibid.*

i. In June 2004, Louis Burden died. Pet. App. 3a. Michele Burden applied for dependency and indemnification compensation benefits. *Ibid.* The regional office of the Department of Veterans Affairs (VA) denied the benefits application because Michele Burden had not been married to Louis Burden for at least one year before he died. *Id.* at 3a-4a; see 38 U.S.C. 1102(a); 38 C.F.R. 3.54.

Michele Burden responded to the denial of benefits by asserting that she and Louis Burden had been living together in a common-law marriage for several years before his death. Pet. App. 4a. The regional office again denied the claim. *Ibid.*

ii. The Board of Veterans Appeals (Board) affirmed. 12-7096 C.A. App. A124-A133; see Pet. App. 4a-5a. The Board noted that Alabama law requires “clear and convincing proof” to establish a valid common-law marriage. 12-7096 C.A. App. A129. It determined that the evidence submitted did not meet that standard because Alabama law requires an agreement or mutual consent to enter into the marriage relationship, and “[t]here was no indication that [Louis Burden] considered himself married.” *Id.* at A131-A132. In particular, the Board observed that medical records from 1997 reported that Louis Burden was divorced; in 1999, he told his doctor that he had a “girlfriend”; in an application for veterans bene-

fits in 2002, he told the VA that he was “divorced” and that his “nearest relative” was his brother; and on 16 separate occasions between 2000 and 2002, “he indicated that he was not married.” *Id.* at A130; see Pet. App. 4a-5a.

iii. The Veterans Court affirmed. Pet. App. 23a-46a. Michele Burden had argued that the court should not apply Alabama’s “clear and convincing proof” standard to assess the validity of her claimed common-law marriage, but instead should use the “benefit of the doubt” standard that applies when “there is an approximate balance of positive and negative evidence” regarding a material issue in a veteran’s benefits case. *Id.* at 24a & n.1 (quoting 38 U.S.C. 5107(b)). The Veterans Court rejected that argument, explaining that 38 U.S.C. 103(c) “explicitly provides” that the validity of a marriage shall be determined under state law. Pet. App. 32a.

b. Petitioner Helen Coleman married Willie Coleman in 1969, and the couple had eight children. Pet. App. 6a. The couple divorced in 1982. *Ibid.* Willie Coleman had served on active duty in the United States Army from 1960 to 1963. *Ibid.*

i. In June 2001, Willie Coleman died. Pet. App. 6a. Helen Coleman applied for various benefits, including dependency and indemnification compensation benefits. *Ibid.* The regional office denied her claim on the ground that she was not married to Willie Coleman at the time of his death. *Ibid.*; see 38 U.S.C. 101(3); 38 C.F.R. 3.50(b).

ii. The Board affirmed. 12-7122 C.A. App. A11-A29; see Pet. App. 6a-7a. The Board acknowledged that Willie and Helen Coleman had lived together for periods after their divorce. 12-7122 C.A. App. A13. It

found insufficient evidence to establish a common-law marriage under Alabama law, however, because there was no “agreement or mutual consent” to enter into a common-law marriage; no “public recognition of the existence of” such a marriage; and no “mutual assumption openly of marital duties and obligations.” *Id.* at A23. The Board noted that on numerous occasions from 1982 to 1998, Willie Coleman had a different address than Helen Coleman; in 1983, he told the VA that he lived alone; in a 1990 VA hospitalization report, he said that he was divorced and lived with his grandmother; in a 1991 questionnaire, he said that his children lived with Helen Coleman, not with him; in 1994, Helen Coleman applied for apportionment of Willie Coleman’s veterans disability benefits on the ground that she was the “ex-wife of a veteran”; and in 1999, Willie Coleman reported to the VA that he was “divorced.” *Id.* at A17-A19, A24-A25.

iii. The Veterans Court affirmed. Pet. App. 47a-52a. Helen Coleman originally argued that the Board had erred by requiring her to provide clear and convincing proof of a valid marriage under Alabama law. *Id.* at 48a n.1. After the Veterans Court decided Michele Burden’s case, however, the parties agreed that the Alabama standard applies, *ibid.*, and the Veterans Court concluded that the Board had not “erred in any facet of its evaluation of the evidence” or in its “application of law and regulation.” *Id.* at 52a.

3. The court of appeals consolidated petitioners’ cases and affirmed. Pet. App. 1a-22a. The court held that “[S]ection 103(c) requires the VA to apply state law, including state law evidentiary burdens, in determining whether the criteria for a valid common law marriage have been satisfied.” *Id.* at 9a-10a. The

court explained that Section 103(c)'s plain text resolves the question of the appropriate evidentiary standard by requiring that the validity of a marriage be "proven" in accordance with state law, meaning that a claimant must provide evidence of a valid marriage that meets the standard set by state law. *Id.* at 10a. The court further explained that such a rule makes sense because "matters related to marriage and domestic relations have long been considered to be the domain of the states." *Id.* at 12a (citing cases). The court noted as well that numerous other federal benefits schemes require proof of a marital relationship in accordance with state law, and that courts applying those provisions have treated the applicable state law as including state evidentiary burdens. *Id.* at 13a-15a & nn.3-4.

The court of appeals rejected petitioners' contention that the "benefit of the doubt" rule in 38 U.S.C. 5107(b) precludes the VA from applying state-law evidentiary standards in determining the validity of a claimed marriage. Pet. App. 16a-18a. The court explained that this rule "is inapplicable where a statute or regulation specifically dictates a different evidentiary standard." *Id.* at 17a. The court also held that the pro-veteran canon of construction does not compel petitioners' interpretation, both because Section 103(c) is "unambiguous[]," and because petitioners' construction would have the effect of "favoring the interests of a veteran's purported common law spouse over those of his children," rather than simply favoring the veteran. *Id.* at 10a, 16a. Finally, the court noted that its conclusion is supported by Section 103(a), which provides a "limited exception" to the general requirement in Section 103(c) that a marriage

between a veteran and a claimant must be valid under state law for the claimant to receive benefits. *Id.* at 19a.

ARGUMENT

Petitioners contend (Pet. 9-26) that they are not required to satisfy the relevant state-law evidentiary standard to show that their purported common-law marriages were valid under 38 U.S.C. 103(c). The courts of appeals correctly rejected that argument, and its decision does not conflict with any decision of this Court or another court of appeals. In any event, this case would be a poor vehicle to decide the question presented because there is no reason to believe the resolution of that question would affect the proper disposition of petitioners' claims. Further review is not warranted.

1. Federal law requires a person seeking veterans benefits as a surviving spouse to meet certain requirements. One requirement is that the applicant must have been married to the veteran. See 38 U.S.C. 101(3) (defining "surviving spouse" as a person who, *inter alia*, "was the spouse of a veteran at the time of the veteran's death"); 38 C.F.R. 3.50(b). Whether the applicant and the veteran had a valid marriage is determined under state law:

In determining whether or not a person is or was the spouse of a veteran, their marriage shall be proven as valid for the purposes of all laws administered by the Secretary according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.

38 U.S.C. 103(c).

In this case, “there is no dispute that Alabama law must be applied in determining whether [the Burdens and Colemans] entered into valid common law marriages.” Pet. App. 9a. Petitioners contend, however, that in determining their entitlement to benefits, the courts should consider only the four substantive elements of an Alabama common-law marriage (capacity; a present intention to be married; public recognition of the marriage; and cohabitation or mutual assumption of marital duties) and should not apply the Alabama standard of proof for establishing a marriage (clear and convincing proof). Pet. 6, 14-26; see Pet. App. 9a. In petitioners’ view, the Alabama standard for proving a marriage is displaced by the general requirement in 38 U.S.C. 5107(b) that “[w]hen there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.” Pet. 14-15.

The court of appeals correctly rejected that contention. Pet. App. 8a-11a. Section 103(c) provides that, in determining “whether or not a person is or was the spouse of a veteran,” the marriage “*shall be proven as valid * * ** according to the law of the place where the parties resided at the time of the marriage or the law of the place where the parties resided when the right to benefits accrued.” 38 U.S.C. 103(c) (emphasis added). By directing that any claimed marriage “shall be proven as valid” under state law, Congress made clear that state law controls not only the substantive requirements for a valid state-law marriage, but the mode and standard of proof as well. See Pet. App. 10a (quoting *Black’s Law Dictionary* (9th ed. 2009) definition of “prove” as “establish[ing] the truth of” a fact

or hypothesis by providing “satisfactory evidence”). As the court of appeals explained, “a claimant cannot ‘prove’ that his marriage is valid under the laws of a particular state unless he supplies the evidence or ‘proof’ that state law requires.” *Id.* at 11a.

Congress’s approach sensibly “reflects the fact that matters related to marriage and domestic relations have long been considered to be the domain of the states.” Pet. App. 12a-13a. Alabama law reasonably requires that a common-law marriage be proved by “clear and convincing proof” because of “the serious nature of the marriage relationship.” *Etheridge v. Yeager*, 465 So. 2d 378, 380 (Ala. 1985) (internal quotation marks omitted). Under petitioners’ approach, the Secretary could be required to recognize, and treat as valid for benefits purposes, purported common-law “marriages that are not recognized by the State or anywhere outside the veterans benefits context.” Pet. App. 29a; see *id.* at 12a (explaining that petitioners’ view would “eviscerate an essential element of state law”). That approach is also inconsistent with the way in which similar questions have been resolved under other federal benefits programs. “[M]arital status, as defined by state law, frequently plays a prominent role in determining eligibility for benefits from the federal government.” *Id.* at 13a. In many other federal-benefits contexts, “courts apply not only the substantive elements of state law, but also state law evidentiary burdens.” *Ibid.*; see *id.* at 13a-15a & nn.3-4 (citing examples).¹

¹ Petitioners contend (Pet. 25-26) that the court of appeals erred in considering other statutory schemes because those schemes do not utilize a pro-veteran presumption. But the court did not find any of those schemes dispositive. Instead, after finding the text of

Section 5107(b) does not trump the specific requirement for proving a marriage in Section 103(c). Section 5107(b) is a general provision for adjudication of benefits claims. It directs the Secretary to “consider all information and lay and medical evidence of record” to determine benefits, and it provides that “[w]hen there is an approximate balance of positive and negative evidence regarding any issue material to the determination of a matter, the Secretary shall give the benefit of the doubt to the claimant.” 38 U.S.C. 5107(b). Section 5107(b) is inapplicable when deciding the validity of a marriage because another statute—Section 103(c)—“specifically dictates a different evidentiary standard” to resolve that question. Pet. App. 17a; see *Yates v. West*, 213 F.3d 1372, 1375 (Fed. Cir.) (explaining that the “benefit of the doubt” provision does not displace the more specific rule that a decision may be revised only where there is a “clear and unmistakable error”), cert. denied, 531 U.S. 960 (2000); see also, *e.g.*, *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974) (specific provision controls over general one).²

The broader statutory context reinforces the conclusion that Section 103(c) requires a claimant to use the state-law standard of proof in order to establish the existence of a valid marriage. Section 103(a) iden-

Section 103(c) to be clear, the court simply noted that, when Congress mandates the use of state law to determine the validity of a purported marriage, courts typically apply state-law standards of proof as well as state-law substantive requirements. Pet. App. 12a-15a.

² Petitioners’ contention (Pet. 17) that “Section 5107(b) is more specific because it focuses on the standard of proof” ignores the language of Section 103(c), which says that a marriage must be “*proven as valid*” in accordance with state law.

tifies limited circumstances in which a marriage may be “deemed” valid even though a “legal impediment” made the marriage invalid under state law. 38 U.S.C. 103(a). As the court of appeals explained, Congress’s inclusion of this “limited exception” in the statute implies that the general rule for determining the validity of a marriage under Section 103(c) requires consideration of all relevant state law. Pet. App. 19a-20a. Petitioners are wrong to suggest (Pet. 20-21) that Section 103(a)’s exception shows Congress’s intention to allow exceptions for other invalid marriages; Section 103(a) instead shows that, when Congress intended an exception, it said so explicitly.

2. Petitioners do not contend that the decision below conflicts with any decision of another court of appeals (or of any lower court). Indeed, the Board, the Veterans Court, and the Federal Circuit all unanimously found in this case that state-law standards of proof apply under Section 103(c). See Pet. App. 10a-21a, 30a-40a, 48a n.1; 12-7096 C.A. App. A129; 12-7122 C.A. App. A17.

Contrary to petitioners’ contention (Pet. 11-14), the court of appeals’ decision does not conflict with any decision of this Court. Citing a number of this Court’s decisions recognizing a pro-veteran canon of construction, petitioners assert that the Federal Circuit has been “less consistent” than this Court in applying the canon. Pet. 12. But in the Federal Circuit decisions that petitioners cite, the court recognized that the pro-veteran canon functions as a tie-breaker in close cases.³ The Federal Circuit’s decision not to apply the

³ See *Viegas v. Shinseki*, 705 F.3d 1374, 1380 (Fed. Cir. 2013); *Sursely v. Peake*, 551 F.3d 1351, 1357 (Fed. Cir. 2009); see also Pet. App. 15a-16a. Petitioners also cite *Schism v. United States*,

canon in this case does not mean that court's overall approach to the pro-veteran canon conflicts with any holding of this Court.

The court of appeals correctly declined to decide this case based on the pro-veteran canon of construction. This Court has stated that, when a statute providing veterans benefits is ambiguous, "interpretive doubt is to be resolved in the veteran's favor." *Brown v. Gardner*, 513 U.S. 115, 118 (1994); see, e.g., *Henderson v. Shinseki*, 131 S. Ct. 1197, 1206 (2011). But that interpretive canon is a last resort, applicable only where the statute's text, context, and purposes do not resolve the statute's meaning. *Nielson v. Shinseki*, 607 F.3d 802, 808 & n.4 (Fed. Cir. 2010) (explaining that the pro-veteran canon is "only applicable after other interpretive guidelines have been exhausted"); *Terry v. Principi*, 340 F.3d 1378, 1383-1384 (Fed. Cir. 2003) (similar), cert. denied, 541 U.S. 904 (2004). The canon does not apply where, as here, the text of the statute is "unambiguously" clear. Pet. App. 10a.

As the court of appeals recognized, moreover, petitioners' proposed construction of the relevant statutory provisions cannot properly be characterized as more favorable to veterans than the interpretation that the court below adopted. Rather, "when the VA recognizes a common law marriage as valid for purposes of awarding * * * compensation to a common law spouse, the effect may to reduce the amount of benefits that are paid directly to the veteran's chil-

316 F.3d 1259 (Fed. Cir. 2002) (en banc), cert. denied, 539 U.S. 910 (2003), but the plaintiffs in that case were bringing a breach-of-contract case regarding military recruitment, not a claim for statutory veterans benefits. See *id.* at 1262-1263.

dren.” Pet. App. 16a (citing 38 U.S.C. 1313). In such cases, the disputed issue is not whether benefits will be awarded to survivors of deceased veterans, but *which* survivors will receive them. Accordingly, this is not a situation where finding petitioners’ purported common-law marriages to be valid would decide a close case “in the veteran’s favor.” *Gardner*, 513 U.S. at 118.

Petitioners contend (Pet. 13-14) that, under the pro-veteran canon, ambiguous statutory provisions that bear on the availability of veterans’ survivorship benefits should be construed in the manner most favorable to the claimant whose claim is before the court, even if the construction is detrimental to other potential statutory beneficiaries. That argument is untenable. Under that interpretive approach, the determination whether a valid common-law marriage existed in a particular case would depend on which survivor—a putative spouse or the veteran’s child—had brought the claim. Such a rule has no logical basis and has never been accepted by this Court.⁴

3. This case would be a poor vehicle for consideration of the question presented because there is no

⁴ In *King v. St. Vincent’s Hospital*, 502 U.S. 215 (1991), when the Court said that a veterans-benefits statute should be construed in favor of the “beneficiaries,” the beneficiary was a veteran. See *id.* at 216, 217, 220 n.9 noting (“canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries’ favor”) (emphasis added); see also *Hodge v. West*, 155 F.3d 1356, 1362 (Fed. Cir. 1998) (“claimant” at issue was a veteran). In *Walton v. Cotton*, 60 U.S. 355 (1856) (cited at Pet. 13-14), the Court did not apply a pro-veteran canon as a tie-breaker to provide benefits to a deceased veteran’s grandchildren. Instead, the Court held that the grandchildren were entitled to benefits based on the statute’s text. *Id.* at 357-358.

reason to believe the outcomes of petitioners' cases would be different if the "benefit of the doubt" rule were applied. As the Board explained (and the Veterans Court agreed), ample evidence showed that Louis Burden did not consider himself married before his ceremonial marriage to Michele Burden in April 2004. See 12-7096 C.A. App. A126, A130, A131-A132 (finding "no indication that [Burden] considered himself married"); Pet. App. 42a-44a. Similarly, after Willie Coleman and Helen Coleman divorced in 1982, Willie Coleman regularly reported that he was divorced and lived away from Helen Coleman, and Helen Coleman referred to herself as his "ex-wife" in seeking veterans benefits. 12-7122 C.A. App. A17-A19, A23-A25; Pet. App. 50a-52a. It is therefore unlikely that the application of the "benefit of the doubt" standard of proof would change the result in this case. For that reason as well, further review is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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