UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

INFORMAL BRIEF OF APPELLANT

Case Number: 26-1063

Short Case Caption: Loomis v. Collins

Name of Appellant: Charles G. Loomis

Instructions: Read the Guide for Unrepresented Parties before completing this form. Answer the questions as best as you can. Attach additional pages as needed to answer the questions. This form and continuation pages may not exceed 30 pages.

Attach a copy of the opinion, order, and/or judgment of the Court of Appeals for Veterans Claims. You may also attach other record material as an appendix. Any attached material should be referenced in answer to the below questions. Please redact (erase, cover, or otherwise make unreadable) social security numbers or comparable private personal identifiers that appear in any attachments you submit.

1. Have you ever had another case in this court? ☐ Yes ☑ No
   If yes, state the name and number of each case.

   United States Air Force veteran Charles G. Loomis ("Appellant") has never submitted or had another case before this Court.

2. Did the Court of Appeals for Veterans Claims decision involve the validity or interpretation of a statute or regulation? ☑ Yes ☐ No

   If yes, what are your arguments concerning those issues?

   See page 2, section B of Informal Brief.

3. Did the Court of Appeals for Veterans Claims decide constitutional issues?
☑ Yes ☐ No

If yes, what are your arguments concerning those issues?

See page 23, section C of Informal Brief.

4. Did the Court of Appeals for Veterans Claims fail to decide any other issue correctly? ☑ Yes ☐ No

If yes, how?

See page 23, section D of Informal Brief.

5. Are there other arguments you wish to make? ☑ Yes ☐ No
If yes, what are the arguments?

See page 24, section E of Informal Brief.

6. What action do you want this court to take in this case?

See page 26, section F of Informal Brief.

Date: 02/10/2026

Signature: /s/ Charles G. Loomis

Name: Charles G. Loomis

No. 26-1063

United States Court of Appeals for the Federal Circuit

Charles G. Loomis
Appellant,

v.

Douglas A. Collins, Secretary of
Veterans Affairs,
Appellee

Appeal from the United States Court of Appeals for
Veterans Claims in No. 23-4348, Judge Joseph L. Falvey.

APPELLANT INFORMAL BRIEF
WITH SEPARATELY ATTACHED APPENDIX

Charles G. Loomis
Appellant, Pro Se
415 Greenwich Drive
Richmond Hill, GA 31324
Tel: (912) 572-1760
Email: chuck_loomis2000@yahoo.com

February 10, 2026

B. Did the Court of Appeals for Veterans Claims decision involve the validity or interpretation of a statute or regulation? Yes.

1. Appellant is representing himself in an appeal of a July 15, 2025, decision by the United States Court of Appeals for Veterans Claims ("Veterans Court"), which denied his request for educational assistance benefits to obtain a private pilot license ("PPL"). The appeal was prompt, and the United States Court of Appeals for the Federal Circuit ("Court") has authority to review the Veterans Court decision. 38 U.S.C. § 7292(c).

2. According to 38 U.S.C. § 3672, veterans are eligible for educational assistance benefits if they enroll in a flight training course that has been approved by a State Approving Authority ("SAA") or the Department of Veterans Affairs ("VA"). Flight training that meets certain Federal Aviation Administration (FAA) accreditation standards may be regarded as constructively approved, even if it does not have formal state or VA authorization. 38 U.S.C. § 3672(b)(2)(A)(ii). This same statutory provision tells us that this constructive approval is "subject to" other specific statutory provisions. 38 U.S.C. § 3672(b)(2)(A).

3. One of those specific provisions is 38 U.S.C. § 3680A, which requires that flight training be "given by an educational institution of higher learning ("IHL") for credit toward a standard college degree the eligible veteran is seeking" with *exceptions*. 38 U.S.C § 3680A(b).

4. Appellant concurred with the decision of the Board of Veterans Appeals ("Board"), which correctly denied educational assistance benefits for a PPL, as the flight training course in which the Appellant chose to enroll was not approved by the Georga SAA or VA acting as an SAA. 38 U.S.C. § 3672(a). Per regulation, the VA will approve private pilot flight training only if it takes place at an IHL. 38 C.F.R. § 21.4252(c)(1). The Board had a duty to deny benefits as they "shall be bound in its decision by the regulations of the Department [of Veterans Affairs], instructions of the Secretary [of the VA], and the precedent opinions of the chief legal officer of the Department" even if the Board's interpretation of the authoritative statute conflicted with regulation. 38 U.S.C. § 7104(c). It is for these reasons that Appellant brought his challenge before the Veterans Court escalating his claim that section 21.4252(c)(1) is inconsistent with section 3680A(b). 38 U.S.C. § 7292(c).

5. The Appellant, in contrast to his opinion of the Board's decision, contends that the Veterans Court three-judge panel majority ("majority") erred in its interpretations of statutes and regulation and thus incorrectly affirmed the Board's decision on appeal. The Veterans Court appeal involved challenging the validity of the regulation, 38 C.F.R. § 21.4252(c)(1), and the interpretations of statutes, 38 U.S.C. § 3674(b)(2)(A)(ii) and 38 U.S.C. § 3680A(b). The intersection

of these statutory provisions, specifically the interpretation of section 3680A(b)'s exception clause, was the subject of the Veterans Court panel's decision.

6. Secretary of Veterans Affairs Douglas Collins ("Appellee") and ("Secretary") could undermine Appellant's appeal by offering a statute which adheres to the majority's interpretation of 38 U.S.C. § 3680A(b). "[T]o be excused from section 3680A(b)'s criteria, another statutory provision must explicitly exclude" section 3680A(b)'s IHL requirement. ROA at 9. If the Appellee could present a statute that meets this criterion, the Appellant's appeal would be dismissed and the Court's task would be complete. However, such a statutory exclusion does not exist. The majority rendered section 3680A(b)'s exception clause inoperative without effect, and all statutes which relied on the majority's interpretation of section 3680A(b), including regulations derived from the statute's interpretation, are flawed, including, but not limited to, 38 U.S.C. § 3672(b)(2)(A)(ii) and 38 C.F.R. § 21.4252(c)(1).

7. 38 U.S.C. § 3680A(b) states:

> "(b) *Except* to the extent otherwise *specifically* provided in this title or chapter 106 of title 10, the Secretary shall not approve the enrollment of an eligible veteran in any course of flight training other than one given by an educational [IHL] for credit toward a standard college degree the eligible veteran is seeking (emphasis added)."

8. The majority focused on the words "except" and "specifically" stating:

> "Two terms drive th[e] phrase ['except to the extent otherwise specifically provide'] – except and specifically. An exception is ['s]omething that is excluded from a rule's operation.' BLACK's [Law Dictionary 705 (12th ed. 2024)] ("Black's"). And the word 'specific' refers to something that's 'explicit' or 'named.' *Id*. at 1690. Thus, to be excused from section 3680A(b)'s criteria, another statutory provision must explicitly exclude that section." ROA at 9.

9. "[O]ne of the most basic interpretive canons" requires the Court to construe a statute "so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant." *Baude v. United States*, 955 F.3d 1290, 1305 (Fed. Cir. 2020) (quoting *Corley v. United States*, 556 U.S. 303, 314 (2009)); *see also Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013) (stating that the "canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme")."

10. The majority interpreted the statute's exception clause as meaning that "[a] statutory provision must explicitly exclude [the IHL requirement] provision." ROA at 9. This strict adherence to the plain meaning canon of statutory construction and interpretation resulted in the conclusion, in the opinion of the majority, that the statute is patently unambiguous. If the intent of Congress is clear from the language of the statute, the Court need not examine anything else. Sinner v. Brown, 27 F.3d 1571, 1574 (Fed. Cir. 1994) (citing Darby v. Cisneros, 509 U.S. 137, 147 (1993)). And the majority did just that. They did not examine anything

else because the majority assumed that the intent was clear. Congress' intent, statutes, and regulations are always assumed clear, if they are not challenged.

11. The majority could have easily checked their work and tested their interpretation using statutes readily available. If they had looked for, or requested Appellee's council provide, a specific statute that matched their reading of the exception clause, they would have quickly realized their error. There are no statutes which "explicitly exclude [the IHL requirement] provision." This is clear and unmistakable error on the part of the Veterans Court, and, had the majority known that such a statute does not exist, it would have rendered a different outcome, because the majority's decision was based on the premise that such a statute does exist.

12. The majority's interpretation renders the exception clause ineffective, as there are no statutes to give it effect. Rather than not bothering to look for, or request, a statute but instead, the Veterans Court could have, as an exercise, imagined away the entire exception clause and then compared the impact on 38 C.F.R. § 21.4252(c)(1), which gives the regulation authority. Then they would have witnessed how the deletion of the entire clause has zero effect on Congress's statutory scheme. The clause itself is superfluous, and it has been for 33 years, finding effect and purpose in regulation, 38 C.F.R. § 21.4252(c)(1), with the

assumption that the Secretary is prohibited from approving private pilot flight training.

13. The majority provided their opinion on section 21.4252(c)(1)'s validity:

> "[W]e are asked to decide whether 38 C.F.R. § 21.4252(c)(1), which prohibits VA from approving any private pilot training, conflicts with section 3672(b)(2)(A) [which is subject to section 3680A including 3680A(b)'s exceptions clause]. Mr. Loomis insists that it does. Although he may have a point – [section 21.4252(c)(1)] seemingly prohibits any private pilot license training, *while the statutory scheme leaves room for VA to approve such training* – his challenge to the regulation dies with his statuary interpretation argument (emphasis added)." ROA at 2.

The majority's misinterpretation of section 3680A(b)'s exception clause, not the Appellant's interpretation, killed the Appellant's argument.

14. The nonexistence of an explicit IHL exclusion provision can be explained: Section 3680A(b)'s exception clause was enacted three years after Congress gave the Secretary the authority to approve flight training at locations other than at an IHL. The majority's interpretation of the exception clause manifested the assumption that an explicit IHL exclusion provision exists and was not based on any definitive proof that it does.

15. 38 U.S.C. § 3680A(b) was enacted on October 29, 1992, adding: "[e]xcept to the extent otherwise specifically provided in this title or chapter 106 of title 10." *See* Pub. Law 102-568, 106 Stat. 4331-4332, § 313. Enacting section

3680A(b) had no effect on permitting veterans to enroll in a course of flight training as veterans were already authorized to obtain vocational flight training under 38 U.S.C. § 3034(d) with specific enumerated conditions. None of the conditions specify a requirement or exempt a training location such as at an IHL. 38 U.S.C. § 3034(d).

16. 38 U.S.C. § 3034(d) states:

> "(d) The Secretary may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 3680A(b) of this title) by an individual entitled to basic educational assistance under this chapter if –
> (1) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;
> (2) the individual possesses a valid private pilot certificate and meets, on the day the individual begins a course of flight training, the medical requirements necessary for a commercial pilot certificate; and
> (3) the flight school courses are approved by the [FAA] and are offered by a certified pilot school that possesses a valid [FAA] pilot school certificate."

17. Congress reinstated vocational Montgomery GI Bill flight training benefits on December 18, 1989, amending 38 U.S.C. § 1434(d)(1). *See* Pub. Law 101-237, 103 Stat. 2088-2089, § 422. Section 1434(d)(1) was renumbered section 3034(d) on August 6, 1991. *See* Pub. Law 102-83, 105 Stat. Table III, § 5(b)(2).

18. At the time of enactment, section 1434(d)(1) stated:

> "(d)(l) The Secretary may approve the pursuit of flight training (in addition to a course of flight training that may be approved under section 1673(b) of this title) by an individual entitled to basic educational assistance under this chapter if—

> (A) such training is generally accepted as necessary for the attainment of a recognized vocational objective in the field of aviation;
> (B) the individual possesses a valid *private pilot's license* and meets the medical requirements necessary for a commercial pilot's license; and,
> (C) the flight school courses meet [FAA] standards for such courses and are approved by the [FAA] and the State approving agency (emphasis added)."

19. Section 1434(d)(1)(B) required a PPL as a condition for enrollment. That requirement remains today in 38 U.S.C. § 3034(d)(2). Requiring a PPL for flight training approval, as a condition in section 3034(d)(2), does not prohibit the Secretary from approving the enrollment in a PPL course pursuant to another statute. This Court will not find a statute which explicitly prohibits the Secretary from approving PPL course enrollment. This specific prohibition is found only in regulation 38 C.F.R. § 21.4252(c)(1).

20. According to 38 U.S.C. § 1434(d)(1), the Secretary may also approve other flight training courses specifically referencing 38 U.S.C. § 1673(b). Section 1673(b) was renumbered 38 U.S.C. § 3473(b) on August 6, 1991. *See* Pub. Law 102-83, 105 Stat. Table III, § 5(b)(2). 38 U.S.C. § 3473(b) was then renumbered 38 U.S.C. § 3680A(b) on October 29, 1992, in addition to adding the exception clause. *See* Pub. Law 102-568, 106 Stat. 4331-4332, § 313. Enacting 38 U.S.C. § 1434(d)(1) created a new statute, which specifically established that both statutes, section 1434(d)(1) and section 1673(b), operated in parallel and do not conflict even though section 1434(d)(1) is permissive, and section 1673(b) is mandatory.

21. At the time of section 1434(d)(1)'s enactment, section 1673(b) stated:

> "(b) The Administrator shall not approve the enrollment of an eligible veteran in any course of flight training other than one given by an educational [IHL] for credit toward a standard college degree the eligible veteran is seeking."

Apart from the Secretary being referred to as "Administrator," the wording of section 1434(d)(1) is verbatim to section 3680A(b)'s mandatory provision.

22. Enacting section 3680A(b) and adding the exception clause had no effect on permitting veterans to enroll in a course of flight training at other than an at an IHL as veterans were already authorized to obtain flight training outside of an IHL. Therefore, an alternative interpretation that section 3680A(b) permits the Secretary to approve flight training under section 3034(d) renders the exception clause superfluous. This interpretation was provided to Appellant by Thomas Alphonso, VA Assistant Director of Policy and Procedures, during a phone conversation on or about July 22, 2020. (see Appendix A1). Since applying the majority's interpretation of the clause renders the exception clause inoperative, as there are no statutes that give the exception clause effect, Appellant is resolute in his assertion that the exception clause is best read as "specifically" bestowing the Secretary with discretionary authority to authorize an exception to section 3680A(b)'s mandatory provision if statutorily permitted.

23. When Congress acts to amend or enact a statute, the presumption is that the change should have real and substantial effect. See *Reiter* v. *Sonotone*

Corp., 442 U. S. 330, 339 (1979) (Court must construe statute to give effect, if possible, to every provision); *Moskal* v. *United States,* 498 U. S. 103, 109-111 (1990) (same). If Congress wanted section 3680A(b) to function just as it did before it was enacted, there would have been no need to add an exception clause. The most logical interpretation is that the clause was intended to create an actual exception, rather than simply restate an existing rule that section 3034(d) allows the Secretary to approve vocational flight training.

24. A key principle of statutory interpretation is to harmonize conflicting provisions. *See Otero-Castro v. Principi*, 16 Vet.App. 375, 380 (2002) (stating that each part or section of a statute or regulation "should be construed in connection with every other part or section so as to produce a harmonious whole"). Statutes do exist which achieve this harmonious whole giving effect to section 3680A(b). One such statute is 38 U.S.C. § 3680A(a)(3). ROA at 24. Another is 38 U.S.C. § 3104(b). Both statutes delegate broad discretionary authority to the Secretary to approve enrollment in vocational, section 3680A(b), and rehabilitation-vocational, section 3104(b), programs.

25. 38 U.S.C. § 3680A(a)(3) states:

> "(a) The Secretary shall not approve the enrollment of an eligible veteran in any of the following:
> (3) Any type of course which the Secretary finds to be avocational or recreational in character (or the advertising for which the Secretary finds contains significant avocational or recreational themes) unless the veteran submits justification showing that the course will be of

> bona fide use in the pursuit of the veteran's present or contemplated business or occupation."

The difference between an avocation course and a vocational course is dependent upon the present Secretary's opinion of that course.

26. Section 3680A(a)(3) does not specifically refer to flight training but the VA interpreted section 3680A(a)(3) as a necessary statute to approve flight training when the Secretary promulgated 38 C.F.R. § 21.4235(b)(2). (Reply letter from R. Worley to C. Loomis, September 19, 2018). (see Appendix B1-B2). Section 21.4235(b)(2) references section 3680A(a)(3) specifically but does not reference section 3034(b) as an authoritative statute.

27. 38 C.F.R. § 21.4235(b)(2) states:

> "(b)(2) VA will pay educational assistance to an eligible individual for an enrollment in an instrument rating course only if the individual simultaneously enrolls in a course required for a commercial pilot certificate for the category for which the instrument rating course is pursued or if, at the time of enrollment in the instrument rating course, the individual has a commercial pilot certificate issued by the [FAA] for such category. The enrollment in an instrument rating course alone does not establish that the individual is pursuing a vocational objective, as required for VA purposes, since the rating equally may be applied to an individual's [PPL], only evidencing an intent to pursue a non-vocational objective."

28. According to the VA interpretation, section 3034(d) is not an independent flight training statute. It is dependent upon section 3680A(a)(3) to give section 3034(d) effect. Section 3680A(a)(3) is to section 3680A(b) as section 3680A(a)(3) is to section 3034(d). Sections 3034(d) and 3680A(b) are flight

training statutes while section 3680A(a)(3) permits the Secretary to exercise broad discretion to implement vocational programs, to include vocational flight training, and by the Secretary's authority, make avocational flight training vocational, in the best interest of eligible veterans, just as 38 U.S.C. § 3104(b) permits the Secretary to exercise broad discretion to approve vocational rehabilitation flight training programs in the best interest of eligible veterans. *See Clarke v. Brown*, 10 Vet.App. 20 (1997).

29. 38 U.S.C. § 3104(b) states:

> "(b) A rehabilitation program (including individual courses) to be pursued by a veteran shall be subject to the approval of the Secretary. To the maximum extent practicable, a course of education or training may be pursued by a veteran as part of a rehabilitation program under this chapter only if the course is approved for purposes of chapter 30 or 33 of this title. *The Secretary may waive the requirement under the preceding sentence to the extent the Secretary determines appropriate* (emphasis added)."

30. The Veterans Court, in 1997, addressed the Secretary's broad discretionary authority:

> "Section 3104(c) of title 38 states that '[a] rehabilitation program (including individual courses) to be pursued by a veteran shall be subject to the approval of the Secretary.' Based on the clear language of the statute, which was enacted in October 1980, it is apparent that *Congress intended to give the Secretary broad discretion* in implementing vocational rehabilitation programs (emphasis added)." *See Clarke v. Brown*, 10 Vet.App. 20, 23 (1997).

This broad discretion equally applies to non-rehabilitation vocational programs just like in section 3680A(a)(3).

31. Section 3104(c) was renumbered, on October 9, 1996, to section 3104(b). *See* Pub. Law 104-275, 110 Stat. 3323-3324, § 101(d)(2). Section 3104(b)'s delegated authority has expanded considerably. It now allows the Secretary to approve course enrollments that would otherwise be prohibited under chapters 30 or 33 by approving courses which are not approved for benefits. 38 U.S.C. § 3104(b). The 1997 Veterans Court concluded that "thereby limiting flight training under chapter 31 to a degree curriculum, the Secretary was exercising the discretion conferred upon him by Congress." Id at 23. Because the Secretary has the discretion to limit flight training to degree programs offered at IHLs, the Secretary also has the authority to "exercise discretion" and approve veteran enrollment in non-degree flight training courses outside of an IHL. The Veterans Court continued, "Congress subsequently acted to buttress the Secretary's exercise of discretion. In 1992, Congress enacted 38 U.S.C. § 3680A[(b)]." Id at 23.

32. In 1997, the Veterans Court did not delve into the limits of the Secretary's discretionary authority. But, since flight training had been approved three years prior to the enactment of section 3680A(b) and since section 3680A(b)'s exception clause does not cross-reference reciprocally to 38 U.S.C. § 3034(d), which would limit the exception clause in scope by cross-reference, it is

logical to conclude that "except to the extent otherwise specifically provided" buttresses the Secretary's broad discretionary authority to approve flight training under sections 3034(d), 3104(b), 3680A(a)(3), and 3680A(b).

33. With the Secretary able to approve flight training under sections 3034(d), 3104(b), 3680A(a)(3), and 3680A(b), the enactment of 38 U.S.C. § 3672(b)(2)(A)(ii) has greater effect and impact but only if the majority's interpretation of section 3672(b)(2)(A)(ii) and its intersectional relationship to section 3680A(b)'s exception clause is reversed as error by this Court.

34. 38 U.S.C. § 3672(b)(2)(A)(ii) states:

> "(b)(2)(A) Subject to sections 3675 paragraphs (1), (2), and (6) of section 3675(b), 3680A, 3684, and 3696 of this title, a program of education is deemed to be approved for purposes of this chapter if a [SAA], or the Secretary when acting in the role of a [SAA], determines that the program is one of the following programs:…
> (ii) A flight training course approved by the [FAA] that is offered by a certified pilot school that possesses a valid [FAA] pilot school certificate."

35. The majority's interpretation of 38 U.S.C. § 3672(b)(2)(A)(ii) is dependent upon their interpretation of 38 U.S.C. § 3680A(b). "A veteran who wants benefits for a flight training course under 3672(b)(2)(A) must show that the course is both offered by an IHL and approved by a state or VA (or deemed approved because it was approved by the FAA)." ROA at 21. It is a sound interpretation of section 3680A(b) and section 3672(b)(2)(A), if this Court accepts the majority's interpretation of the exception clause as meaning that "[a] statutory

provision must explicitly exclude [the IHL requirement] provision." ROA at 9. But, as pointed out, there are no statutes in title 38 or chapter 106 of title 10 that explicitly exclude the IHL requirement that would give the exception clause effect. Therefore, under the majority's interpretation, the clause is inoperative and has no effect.

36. This Court could concur with the VA official's interpretation and take a softer stance and interpretate the exception clause, "except to the extent otherwise specifically provided," to mean section 3034(d), even though section 3034(d) is not cross-referenced in the clause, and there are no other statutes cross-referenced. However, this would render the exception clause superfluous and insignificant, as the exception clause was not necessary to allow the Secretary to approve vocational flight training, outside of an IHL, which section 3034(d) does in addition to specifically cross-referencing to section 3680A(b). 38 U.S.C. § 3034(d).

37. If either of these interpretations are adopted, the exception clause in section 3680A(b) is rendered ineffective, lacking purpose, or insignificant. This is far from what the majority concluded when they stated, "Because these provisions are clear and specific, we need not give weight to the legislative findings. *See Reeves v. Astrue*, 526 F.3d 732, 737 (11th Cir. 2008) (stating that the court "'cannot use Congress's general statements of findings and purpose to override the plain

meaning of specific provisions of the Act'")." But when the provision's history is considered, the provision—which once seemed clear—reveals hidden ambiguity which makes it unclear and unspecific.

38. The majority rejected the Appellant's pro-veteran canon argument explaining:

> "[B]ecause the statute is clear, [the pro-veteran] canon does not factor into our analysis. *See Rudisill*, 601 U.S. at 314 ("If the statute were ambiguous, the pro-veteran canon would favor [the veteran], but the statute is clear, so we resolve this case based on statutory text alone."). Otherwise, we would risk interpreting the statute in a way that is inconsistent with its ordinary meaning. Thus, we will disregard this argument." ROA at 19.

39. The majority was referring to section 3672(b)(2)(A), which is unambiguous. The section that is unclear is the exception clause in section 3680A(b), which has a significant impact on section 3672(b)(2)(A)(ii), which is "subject to" section 3680A. But since the majority commented that they would favor the Appellant's appeal if a statute was ambiguous, which section 3680A(b)'s exception clause is due to the lack of clarity and its multiple interpretations, ambiguous must be added to the list of adjectives denoting the clause's multiple canons of interpretation violations: ambiguous, inoperative, insignificant, noneffective, and superfluous.

40. There are four interpretations of section 3680A(b)'s exception clause. The majority interprets section 3680A(b)'s exception clause as "modif[ying]

section 3672(b)(2)(A) and thus doesn't permit veterans to receive educational benefits solely because a flight training course is constructively approved." ROA at 9. The dissenting opinion of the Veterans Court interprets section 3680A(b)'s exception clause stating, "By its plain terms, Congress crafted section 3680A(b) to allow exceptions. Years later, Congress specifically provided section 3672(b)(2)(A)(ii). As I see it, section 3672(b)(2)(A)(ii) is a specific exception to section 3680A(b)'s requirement that a flight training course must be offered at an IHL." ROA at 26. Thomas Alphonso, VA's Assistant Director of Policy and Procedures, explained to the Appellant that the exception clause refers to 38 U.S.C. § 3034(d) regardless of the lack of specific cross-referencing. (see Appendix A1). Finally, the Appellant, supported by the 1997 Veterans Court opinion, interprets the exception clause as allowing the Secretary to approve enrollment of a flight training course if statutorily permitted to exercise broad discretionary authority. One exception clause; four interpretations.

41. This Court may choose to look past the majority's interpretation of the plain language of the statute and conclude that there is a "most extraordinary showing of contrary intentions", which may lead this Court to disregard the plain meaning of the statute. Garcia v. United States, 469 U.S. 70, 75 (1984). This situation shows a clear conflict of intentions, as key interpretive principles nullify the exception clause, without effect on any other statutes or regulations. The

majority's interpretation is a nullification of the clause sacrificing the clause to achieve statutory harmony and in doing so, nothing changes, which is apropos.

42. Since applying the majority's interpretation renders the exception clause inoperative and applying a less stringent interpretation renders the clause superfluous, Appellant offers the Court a third interpretation, an interpretation the majority rebuked, which is that the exception clause "means that any provision in title 38 [and chapter 106 of title 10] with its own criteria is an exception to section 3680A(b)." ROA at 15.

43. 38 U.S.C. § 3680A(a)(3), by design, falls within section 3672(b)(2)(A)'s "subject to" section 3680A provision encompassing both sections 3680A(a)(3) and 3680A(b). "[W]e must assume that Congress was intentional in how [they] cross-referenced other sections and subsections so VA could implement Congress's policy. To be clear, section 3672(b)(2)(A) references all of section 3680A, which naturally includes section 3680A(b)" and naturally includes section 3680A(a)(3). ROA at 25.

44. "[T]o the extent that Congress enacts two conflicting provisions—one with general language and missing criteria, and the other with specific language and present criteria—the more specific provision prevails." *Brown v. Gen. Servs. Admin.*, 425 U.S. 820, 834 (1976) ("In a variety of contexts the Court has held that a precisely drawn, detailed statute pre-empts more general remedies."); *see also*

SCALIA & GARNER, READING LAW, at 183 ("Under th[e general/specific] canon, the specific provision is treated as an exception to the general rule."). ROA at 16.

45. Although section 3680A(a)(3) and section 3680A(b) might appear to conflict under the "general-specific" canon, a closer review shows that there is no conflict between these statutes. 38 U.S.C. § 3680A(a)(3) is specific and clearly states:

> "(3) The Secretary shall not approve the enrollment of an eligible veteran in any of the following: Any type of course which the Secretary finds to be avocational or recreational in character…unless the veteran submits justification showing that that course will be of bona fide use in the pursuit of the veteran's present or contemplated business or occupation."

The statute is clear. The exception provision is clear. Congress' intent is clear. The Secretary's authority is clear. This statute stands alone and is specific in its purpose. Compare section 3680A(a)(3) to section 3680A(b).

46. 38 U.S.C. § 3680A(b) is unspecific and unclear. It states:

> "(b) Except to the extent otherwise specifically provided in this title or chapter 106 of title 10, the Secretary shall not approve the enrollment of an eligible veteran in any course of flight training other than one given by an educational [IHL] for credit toward a standard college degree the eligible veteran is seeking."

The statute's general rule is clear: limit flight training to IHLs. The exception clause, on the other hand, is notably unspecific, cross-referencing the entirety of title 38 and chapter 106 of title 10…more than 5,900 statutes to choose from. It is

inoperative by the majority's interpretation, and it is superfluous by its statutory history.

47. Section 3680A(b) uses the word "specifically" but does not articulate what "otherwise specifically provided" means nor offer enumerations to narrow the scope of Congress's "specific" intent of the exception clause. Instead, the section specifically cross-references the entirety of title 38 and chapter 106 of title 10. The Appellant is fully aware of the irony. Using the word "specifically" without providing specificity does nothing to identify the possible exception or exceptions, if they exist. In contrast, section 3680A(a)(3) is clear. It uses present criteria based on the Secretary's judgement of a changing vocational and economic landscape, giving the Secretary discretionary authority to approve enrollment in vocational courses. Section 3680A(a)(3), is clear and specific. Therefore, section 3680A(a)(3) prevails over section 3680A(b)'s unspecific language.

48. 38 U.S.C. § 3680A(b) permits the Secretary to exercise discretion and enroll veterans in vocational private pilot flight training at other than an IHL on the condition the veteran submits justification which meets the Secretary's policy in accordance with 38 U.S.C. § 3680A(a)(3), and upon enrollment approval from the Secretary. 38 U.S.C. § 3674(b)(2)(A)(ii) constructively approves the flight training course.

49. The Secretary is not obligated to approve requests, as Appellant's interpretation in no way enlarges, restricts, or modifies the scope of the statutes but is in harmony with them, as section 3680A(a)(3) legislatively leaves the decision to approve or deny petitions strictly with the Secretary. In the event the Secretary denies a veteran's justification petition, the decision is unappealable by the veteran. "The decision of the Secretary as to any question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise." 38 U.S.C. § 511(b).

50. Implementing Appellant's interpretation of section 3680A(b)'s exception clause requires this Court to set aside 38 C.F.R. § 21.4252(c)(1) as invalid and find that the majority erred in their interpretation of section 3680A(b)'s exception clause and the subsequent interpretation of section 3672(b)(2)(A)'s "subject to" section 3680A provision because the majority's interpretation of sections 3672(b)(2)(A)(ii) and 3680A(b) are the authorities the majority used to affirm the Board's denial decision. The Board stated: "This case starts and ends with whether VA is bound by the IHL requirement. We've found that it is, and the Board found that this requirement was not met." ROA at 21. The requirement was not met, because section 21.4252(c)(1) prohibits veteran enrollment in a private pilot flight training course. Therefore, no private pilot flight training courses are approved by an SAA or the VA outside of an IHL.

C. Did the Court of Appeals for Veterans Claims decide constitutional issues? Yes.

1. The Veterans Court did not decide overtly constitutional issues although, in Section D of this appeal, Appellant challenges VA regulation, 38 C.F.R. § 21.4235(b)(2), which nullifies a statutory provision in 38 U.S.C. § 3680A(a)(3), which permits veterans to petition for use of their educational benefits.

2. The right to petition, in this case the Secretary of the VA to approve flight training under section 3680A(a)(3), is a fundamental right and protected by the First Amendment and section 3680A(a)(3). Whether or not the Secretary grants the petition is legislatively left to the Secretary. Even if the current Secretary's policy is to deny all petitions, this does not negate a veteran's right to petition the government as permitted in section 3680A(a)(3).

D. Did the Court of Appeals for Veterans Claims fail to decide any other issue correctly? Yes.

The majority chose not to decide the validity of 38 C.F.R. § 21.4252(c)(1) stating: "[W]e need not reach this issue of regulatory invalidity. '[T]he cardinal principle of judicial restraint—if it is not necessary to decide more, it is necessary not to decide more—counsels us to go no further.' *PDK Lab'ys Inc. v. DEA*, 362

F.3d 786, 799 (D.C. Cir. 2004) (Roberts, J., concurring in part and concurring in the judgment).” ROA at 21.

E. Are there other arguments you wish to make? If yes, what are the arguments? Yes.

1. Appellant additionally argues that 38 C.F.R. § 21.4235(b)(2) is inconsistent with 38 U.S.C. § 3680A(a)(3). Section 21.4235(b)(2) derives its authority from section 3680A(a)(3). The regulation requires simultaneous enrollment of an instrument and a commercial rating course. Section 21.4235(b)(2). Promulgating regulations is within the Secretary’s authority, nullifying provisions by regulation is not. The VA’s Education Service Director stated:

> “[Y]ou recommended that VA amend section 21.4235([b])(2) of title 38, Code of Federal Regulations, to strike the requirement for simultaneous enrollment in instrument rating and commercial pilot certification courses. VA cannot currently remove this provision as it is required by law under section 3860A(a)(3), of title 38, United States Code. While an instrument rating alone may further one’s aviation education, it is not, by itself, evidence of intent to pursue aviation as a vocation and, consequently, VA is barred from paying education benefits for pursuing it. It only becomes clearly vocational in nature when combined with commercial pilot certification courses, which is why the limitation in section 21.4235([b])(2) exists and must remain. VA would need a change in statute in order to justify the recommended change to VA’s regulations.”

(Reply letter from R. Worley to C. Loomis, September 19, 2018). (see Appendix B1-B2).

2. The VA does not require a change in statute, as the VA possesses the authority vested in the Secretary in section 3680A(a)(3) to make this determination. The danger posed by sustaining section 21.4235(b)(2), in current form, is that 1) it removes petition language from the statute nullifying the veterans right to petition the Secretary, and 2) it reinforces, over time, the assumption that the regulation represents the intent of the statute, to restrict the Secretary's authority, when the statute clearly grants the Secretary broad discretional authority to approve or deny veteran vocational enrollment petitions and to set policy and determine what "is" and what "is not" a vocational course. Section 21.4235(b)(2) binds current and future Secretary's to a prior Secretary's interpretation of section 3680A(a)(3) setting the interpretation in "regulation" stone.

3. The Appellant is not asking this Court to force Appellee to approve petitions. This appeal is a 10-year effort to establish that the Secretary has the authority to make such decisions based on the present Secretary's policy, and Secretaries are not bound by their predecessor's policy. It is the Appellee's council who is telling the Secretaries, past and present, that they do not possess the authority to make such decisions, because the Secretary is prohibited by section 21.4235(b)(2), an assertion which is based on an incorrect interpretation of section 3680A(a)(3).

4. 38 C.F.R. § 21.4235(b)(2) has a financial cost to veterans.

Simultaneous enrollment in an instrument and commercial rating course combines two flight training courses as if they were one course with one total cost. This significantly exceeds vocational flight training benefits, which are capped at $17,097.67 annually. The cost of an instrument rating course is $8,100 and a commercial rating course is $17,925. (see Appendix C1-C2). The total for simultaneous enrollment is $26,025. (see Appendix C1-C2). Veterans are required to cover $8,927.33 of this expense out of pocket because of capped annual limits. This is in addition to the $11,150 veterans must pay to earn a PPL, unlocking their earned flight training education benefits under section 3034(d)(2). (see Appendix C1-C2). If permitted by the Secretary, veterans could reduce their personal flight training expenses and maximize their earned education benefits: one course enrollment per fiscal year.

F. What action do you want this court to take in this case?

1. Appellant respectfully requests that this honorable Court reverse the Veterans Court decision on the grounds that the majority 1) erred in their interpretation of 38 U.S.C. § 3680A(b) rendering the exception clause inoperative and without effect and that the correct interpretation is that the statute permits the Secretary to approve flight training course enrollment at other than an IHL, if the course is constructively approved under 38 U.S.C. § 3672(b)(2)(A)(ii) or by an

SAA or VA; 2) erred in their interpretation of 38 U.S.C. § 3672A(b)(2)(A)'s "subject to" section 3680A provision and that the correct interpretation of the provision applies to 38 U.S.C. § 3680A as a whole, which includes 38 U.S.C. § 3680A(a)(3) and § 3680A(b) equally, that section 3680A(a)(3) gives section 3680A(b)'s exception clause effect while adhering to section 3672(b)(2)(A)'s "subject to" section 3680A provision, therefore, section 3680A(a)(3) is a valid exception to section 3680A(b)'s exception clause; and 3) erred in their interpretation of 38 U.S.C. § 3674A(b)(2)(A)(ii) and that the correct interpretation is that it does expand Post-9/11 GI Bill benefits eligibility beyond the preexisting restriction that flight training must be offered by an IHL under 38 U.S.C. § 3680A(b) for the Secretary to approve enrollment.

2. The Appellant also asks that this honorable Court set aside 38 C.F.R. §21.4252(c)(1) as inconsistent with sections 3672(b)(2)(A)(ii), 3680A(a)(3), 3680A(b), and section 3104(b). Furthermore, the Appellant requests that 38 C.F.R. §21.4235(b)(2) be set aside as inconsistent with section 3680A(a)(3).

Respectfully submitted,

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/s/ Charles G. Loomis
Appellant, Pro Se
415 Greenwich Drive
Richmond Hill, GA 31324
Tel: (912) 572-1760
E: chuck_loomis2000@yahoo.com