

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

PATRIOTCLAIMS LLC, d/b/a VetClaims.ai,
and JOSEPH JOHNSON,

Plaintiffs,

v.

DOUGLAS A. COLLINS, in his official
capacity as Secretary of Veterans Affairs,

Defendant.

Civil Action No. 2:26-cv-00203

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This action is brought by and for those who fought to secure the very freedoms now trampled by the bureaucracy charged with serving them. More than 160 years ago, President Abraham Lincoln made the Nation a solemn promise: “To care for him who shall have borne the battle and for his widow, and his orphan.” The Department of Veterans Affairs (“VA”) long carried those words as its motto and exists to keep that promise. Yet rather than clear the path to benefits earned through sacrifice, the VA subjects veterans to a labyrinth of regulations, procedural traps, and opaque, arbitrary demands that has become a barrier unto itself.

2. The consequences are not abstract. Veterans already carrying physical injury, psychological trauma, and financial hardship must decipher a system they did not design, and overextended nonprofits cannot meet every need. Yet as the VA reads the law, veterans may not pay for help at the outset of a claim, when it would do the most good, even as accredited representatives may take a percentage of their past-due benefits once the VA has ruled. *See* 38 U.S.C. § 5904(c)(1), (d). Protecting veterans, it seems, now means denying them the freedom to

choose who may help them—and when. Fortunately, one compass reliably guides veterans through the maze: **education**.

3. Congress has long sought to protect veterans from those who would prey on them. Section 5901(a) bars any individual from acting as an “agent or attorney in the preparation, presentation, or prosecution of any claim” without the Secretary’s recognition. 38 U.S.C. § 5901(a). Its purpose is plain: to keep unqualified and unscrupulous persons from standing in a veteran’s shoes—from “practice before the Department,” in Congress’s words. *Id.* § 5904(b). The VA’s own regulations name the goal as “responsible, qualified representation,” 38 C.F.R. § 14.626, and in 2023 Congress reaffirmed it by directing the VA to warn claimants of “potential predatory practices,” 38 U.S.C. § 5901(b).

4. The VA has turned that shield into a sword. It enforces the bar on paid help even for claims veterans sign and file themselves, and holds it in place until the VA decides the claim—too often denying or underrating it not on the merits but on the VA’s own procedural pitfalls. Worse, the VA claims the power to make it unlawful for anyone to help a veteran—even when that help is nothing more than speech the First Amendment protects—unless the VA first grants permission.

5. The VA’s position fails on the statute’s plain text. Veterans who prepare, sign, and file their own claims have no “agent or attorney.” No one stands in their shoes, and no one practices before the Department on their behalf. Chapter 59 governs those who act as a veteran’s agent or attorney, not those who equip veterans to act for themselves. Nothing in its text authorizes the VA to police a private exchange between a veteran and the company that educates them—an exchange in which the agency plays no part.

6. The irony is difficult to overstate. Having fought to defend their country, wounded veterans come home to a second battle—not against a foreign adversary, but against the very agency charged with their care. This time, the weapons are forms, deadlines, and technicalities, and the casualties are the benefits on which veterans and their families depend—and, far too often, veterans themselves.

7. Plaintiff PatriotClaims LLC, d/b/a VetClaims.ai (“VetClaims”), was founded to restore that freedom of choice. Built on firsthand experience, VetClaims combines education, experienced support personnel, and technology to help veterans pursue the benefits they have earned—for a reasonable flat fee set in advance, not a cut of their awards—while the veteran remains in command of the claim. Rather than welcome this alternative, the VA bars VetClaims from offering its services and provides no accreditation pathway that fits its model. The government has made help hard to find, then made offering it unlawful.

8. The question before this Court is not whether the VA’s bureaucracy is efficient or its intentions benign. It is, first, whether Congress ever gave the VA the power to regulate private exchanges between veterans and those who educate them—a question of law for this Court, not the agency, to decide. *See Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412–13 (2024). Congress did not. And were the statute read to reach that far, it would violate the First Amendment’s guarantees of speech, association, and petition, and the Fifth Amendment’s guarantee of due process. Neither bureaucratic convenience nor professed benevolence excuses that infringement.

9. Plaintiffs do not ask this Court to dismantle legitimate safeguards against exploitation. They ask it to end restrictions that strip veterans of the very liberties they fought to

preserve. The government cannot invoke its duty to care for those who bore the battle as license to stand between them and the help they freely choose.

I. NATURE OF THE ACTION

10. The principle of serving veterans dates back to the Founding, when George Washington was credited with stating that “a nation will be judged by how it treats its defenders.”¹ But today’s version of repaying veterans for their services is far from adequate. The VA has been “plagued by a history of mismanagement and inefficiency,” producing only an “overwhelming backlog of claims, excessive delays, and restrictive lending of benefits.”² At the same time, the path for veterans seeking disability benefits has become increasingly complex, and the resources available to them too few and flawed.³

11. VetClaims was founded by Purple Heart veteran Lukas Simianer after fighting through his own VA claims process. The process was confusing, slow, and stacked against the veterans it was meant to serve. VetClaims walks veterans through the complex process of claiming disability benefits, advising them on how the VA evaluates claims, assisting them in identifying covered disabilities, understanding the requirements for how to prove those disabilities, and compiling a packet of data acquired by the veteran for the veteran to submit to the VA in the form most likely to be decided correctly the first time.

12. Veterans work with a VetClaims specialist to discuss reported health conditions and potential service-related events and to prepare claim documentation. VetClaims also offers condition-specific educational videos, group question-and-answer sessions, and optional one-on-

¹ Jonathan R. Vinokurov, *From Deference to Duty: Advancing the Pro-Veteran Canon in the Loper Bright Era*, 18 Drexel L. Rev. 257, 260 n.4 (2025).

² *Id.* at 260.

³ Matthew J. Dowd, No Claim Adjudication Without Representation: A Criticism of 38 U.S.C. § 5904(c), 16 Fed. Cir. B.J. 53, 55-56 (2006).

one sessions. Following a VA decision, veterans with unfavorable outcomes may use VetClaims's appeals-support process involving review of decision letters and guidance on collection of additional medical records, lay statements, and other necessary evidence. The veterans are responsible for obtaining their own records and completing their VA submissions—at no point does VetClaims appear before the VA, communicate with the VA on the veteran's behalf, or interact with VA staff. VetClaims then offers follow-up emails and reminders about VA deadlines. This complaint refers to these services, described further in Part V.A below, as the "Defined Service."

13. Unlike accredited agents and attorneys, who may take a percentage of a veteran's past-due benefits, VetClaims charges a flat fee of \$1,250, set in advance and refunded in full—together with an additional \$500 payment to the veteran—if the claim does not increase the veteran's benefits. VetClaims has helped more than 80,000 veterans obtain hundreds of millions of dollars in compensation that they were not only promised but statutorily owed. But because the VA interprets the accreditation statute to reach any individualized help with a claim, VetClaims operates under a continuing threat of enforcement action by the VA, by the States that have incorporated the VA's interpretation into their own laws, and by private litigants.

14. This is a challenge to the federal statutes and regulations that prohibit compensated, competent assistance to veterans during the initial, pre-decisional stage of a claim for disability compensation.

15. The challenged provisions are 38 U.S.C. §§ 5901(a) and 5904(c)(1) (collectively, the "Challenged Statutes") and their implementing regulations, 38 C.F.R. §§ 14.627(a), 14.629(b)(1), and 14.636(b) and (c)(1)(i) (collectively, the "Challenged Regulations"). The Challenged Statutes and the Challenged Regulations are referred to together as the "Initial-Stage

Fee Restriction.” As alleged below, the Initial-Stage Fee Restriction operates through two mechanisms: an accreditation gate under § 5901(a), which the VA interprets to forbid any unaccredited person from providing individualized assistance in the preparation of a claim, and a fee bar under § 5904(c)(1), which forbids any compensation for services of “agents and attorneys” rendered before the agency of original jurisdiction issues notice of its initial decision.

16. As a threshold matter, the Challenged Statutes do not reach VetClaims at all. Both provisions govern persons who act as a veteran’s “agent or attorney” before the Department. A company that educates a veteran who then prepares, signs, and files his or her own claim is neither. The VA’s contrary reading—the “OGC Interpretation” defined below—exceeds the authority Congress conferred, and Plaintiffs are entitled to a declaration that chapter 59 of title 38 does not apply to the Defined Service.

17. If read to reach the Defined Service, the Challenged Statutes violate Plaintiffs’ First Amendment rights by unlawfully restricting their speech based on content. The Statutes target speech in the form of advice and assistance when it concerns veterans’ benefits, and target particular speakers—namely, individuals and entities that assist veterans for compensation and are not accredited by the VA. The Statutes also violate the individual Plaintiff’s First Amendment rights to receive that speech, to associate with the advisers of their choosing, and to petition the government for redress of grievances with the assistance of those advisers.

18. The Challenged Statutes are not narrowly tailored to further a compelling government interest. The Statutes treat responsible, non-predatory industry participants like VetClaims the same as companies and individuals who act unscrupulously by broadly prohibiting all of them from participating in initial-claim consultations. *See Village of Schaumburg v. Citizens for a Better Env’t*, 444 U.S. 620, 637 (1980). Even if the VA adequately articulated or justified its

interest in protecting veterans in connection with the Challenged Statutes, it must act through “narrowly drawn regulations designed to serve those interests without unnecessarily interfering with First Amendment freedoms,” *id.* The Challenged Statutes’ indiscriminate prohibitions fall far short of that rigorous standard.

19. The Challenged Statutes are facially unconstitutional because “no set of circumstances exists under which [the law] would be valid” and because “a substantial number of its applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep,” *United States v. Stevens*, 559 U.S. 460, 472–73 (2010) (internal quotation marks omitted).

20. Because the Statutes also deprive the individual Plaintiff of assistance in preparing their claims, they violate their procedural due process rights. Veterans have a constitutionally protected property interest in the disability benefits to which they are entitled. *See Mathews v. Eldridge*, 424 U.S. 319 (1976); *Cushman v. Shinseki*, 576 F.3d 1290, 1298 (Fed. Cir. 2009). *Walters v. National Ass’n of Radiation Survivors*, 473 U.S. 305 (1985), which rejected a facial challenge to the former \$10 fee cap, does not control: the as-applied claims there remained open, *id.* at 336–38 (O’Connor, J., concurring), and the premises on which the decision rested—an informal, nonadversarial process with no judicial review and no paid representation at any stage—have since been dismantled by Congress itself. Without the ability to rely on the advice of compensated advisers like VetClaims, claimants run a significant risk of forfeiting their rights to benefits. Similarly, the individual Plaintiff and VetClaims have a substantive due process right to obtain and provide services to veterans in need. The statutory barriers to providing them assistance are not rationally related to a legitimate government interest. *See St. Joseph Abbey v. Castille*, 712 F.3d 215, 225 (5th Cir. 2013).

21. Plaintiffs also challenge, under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, the VA’s administration of the accreditation process and the VA’s interpretation as reflected in its published guidance and its enforcement correspondence that the accreditation requirement reaches assistance even if the adviser is not acting as an agent or representing the veteran (the “OGC Interpretation”), as applied to VetClaims.

22. The Challenged Regulations and OGC Interpretation are arbitrary and capricious as applied to VetClaims. They exceed the scope of Congress’s mandate to protect veterans, are internally inconsistent, are unsupported by any reasoned explanation, and leave no option for organizations or companies such as VetClaims to come into compliance.

23. Plaintiffs seek a declaration that the Initial-Stage Fee Restriction does not reach the Defined Service and, in the alternative, is unconstitutional; a narrowly tailored injunction permitting VetClaims to provide the Defined Service subject to appropriate consumer-protection conditions; and an order under the APA holding unlawful and setting aside the OGC Interpretation and the VA’s arbitrary administration of the accreditation process as applied to VetClaims.

II. JURISDICTION AND VENUE

24. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States, including the First and Fifth Amendments, title 38 of the United States Code, and the APA.

25. The Court may grant declaratory and injunctive relief under 28 U.S.C. §§ 2201–2202 and Federal Rules of Civil Procedure 57 and 65.

26. This action does not seek review of any decision of the Secretary on a claim for benefits and therefore is not barred by 38 U.S.C. § 511(a). Plaintiffs bring a facial challenge to the constitutionality of the statutes that restrict compensated initial-stage assistance—a systemic, pre-

enforcement constitutional question not barred by § 511(a). *See Zuspann v. Brown*, 60 F.3d 1156, 1158 (5th Cir. 1995).

27. The Court also has jurisdiction over Counts I and VII under 28 U.S.C. § 1331 and the APA, 5 U.S.C. §§ 702–706. Section 702 waives the sovereign immunity of the United States for actions seeking relief other than money damages against an agency or officer acting in an official capacity, and § 704 makes reviewable final agency action for which there is no other adequate remedy in a court. The VA has itself taken the position that decisions under its accreditation program are reviewable in the United States District Court under the APA, rather than through the veterans’ benefits review system. Accreditation of Agents and Attorneys; Agent and Attorney Fees, 73 Fed. Reg. 29,852, 29,853–54 (May 22, 2008) (“2008 Final Rule”).

28. Plaintiffs challenge acts of Congress, which are not “action[s] of the Secretary” within the meaning of 38 U.S.C. § 502; the OGC Interpretation, which was never promulgated under 5 U.S.C. § 553 or published under 5 U.S.C. § 552(a)(1); and the application of the Challenged Regulations to the Defined Service. Section 502 therefore does not channel these claims to the United States Court of Appeals for the Federal Circuit, whose exclusive jurisdiction under § 502 extends only to direct review of the Secretary’s rulemaking actions. *See Preminger v. Sec’y of Veterans Affairs*, 517 F.3d 1299, 1308 n.5 (Fed. Cir. 2008).

29. Venue is proper in this District under 28 U.S.C. § 1391(e)(1) because Plaintiff Joseph Johnson resides in this District and no real property is involved in this action, 28 U.S.C. § 1391(c)(1), (e)(1)(C); and because a substantial part of the events giving rise to the claims—including Johnson’s preparation and filing of his claims—occurred here, 28 U.S.C. § 1391(e)(1)(B). Assignment to the Amarillo Division is proper because Johnson resides in

Randall County, Texas, and a substantial part of the events giving rise to his claims occurred there. *See* 28 U.S.C. § 124(a)(5).

III. PARTIES

A. PLAINTIFFS

30. Plaintiff PatriotClaims LLC, doing business as VetClaims, is a Texas limited liability company with its principal place of business at 14205 Burnet Road, Suite 570, PMB 553893, Austin, Texas 78728. VetClaims is owned by Lukas Simianer, its founder. VetClaims operates a technology-enabled service that helps veterans identify potentially compensable conditions, organize records, and prepare complete, well-supported claims. It offers that service—the Defined Service—for the initial claim stage under a transparent, flat, one-time fee of \$1,250, refunded in full, together with an additional \$500 paid to the veteran, if the claim does not result in a new or increased rating, with no power of attorney and no assignment of benefits. It is ready, willing, and able to continue doing so, but it operates under a credible threat of enforcement that chills and burdens its protected activity.

31. Plaintiff Joseph Johnson is a 36-year-old veteran residing in Canyon, Randall County, Texas. He served on active duty in the United States Marine Corps from 2011 to 2014. His claim to the VA involves seven claimed conditions, including four secondary conditions.

B. DEFENDANT

32. Defendant Douglas A. Collins is the Secretary of Veterans Affairs and is sued in his official capacity. The Secretary administers the VA, including the Office of General Counsel that administers the accreditation program under the Challenged Statutes and the Challenged Regulations, and is responsible for their interpretation and administration. The current officeholder is automatically substituted under Fed. R. Civ. P. 25(d).

IV. STATUTORY AND REGULATORY FRAMEWORK

A. THE BENEFITS CLAIMS PROCESS

33. Veterans who incurred an injury or disability in the line of duty are entitled to financial compensation in the form of disability benefits. To obtain compensation, the veteran first files a claim at one of the fifty-six Veterans Affairs Regional Offices (“VAROs”) throughout the United States, Puerto Rico, and the Philippines. Submitting a claim requires providing military separation documents, service treatment records, medical evidence related to a current diagnosis, and lay or “buddy” statements—optional statements from friends, family, or other service members who witnessed the injury or onset of symptoms.⁴ Specific medical conditions, such as PTSD, may require more information.⁵

34. Once a veteran submits a claim, the VARO makes a decision concerning the claim and notifies the veteran. 38 U.S.C. § 5104. If the claim is denied, the veteran has one year from the decision date to choose one of three avenues for review: file a supplemental claim with new and relevant evidence for readjudication, *id.* § 5108; seek Higher-Level Review from a senior reviewer, *id.* § 5104B; or appeal to the Board of Veterans’ Appeals (“BVA” or “the Board”), *id.* § 7105.

35. If the veteran cannot succeed before the BVA, he can appeal to the Court of Appeals for Veterans Claims (“CAVC”) within 120 days. *Id.* §§ 7252, 7266(a). But the CAVC cannot review the schedule of ratings for disabilities. *Id.* § 7252(b). After CAVC is the U.S. Court of Appeals for the Federal Circuit, which has limited jurisdiction to review CAVC decisions. *Id.* § 7292(a).

⁴ Evidence Needed For Your Disability Claim | Veterans Affairs, <https://www.va.gov/disability/how-to-file-claim/evidence-needed/>, last updated June 8, 2026.

⁵ *Id.*

36. The process is far from perfect. In fiscal year 2025, CAVC received a record 10,449 appeals and disposed of 8,758 appeals. Of those dispositions, 2,883 were remanded; 816 were reversed or vacated and remanded in whole or in part; and 3,656 were affirmed or dismissed in part but reversed or vacated and remanded in part. Thus 7,355 of 8,758 appeal dispositions—approximately 84.0 percent—involved a remand, reversal, or vacatur in whole or in part, while only 363 were affirmed outright. In 76 percent of the cases conferenced by CAVC’s staff mediators in fiscal year 2025, the VA itself agreed with the appellant that the Board’s decision contained error necessitating remand. *See* U.S. Court of Appeals for Veterans Claims, Fiscal Year 2025 Annual Report at 1, 3, 7.

37. Separately, the Government Accountability Office reported in November 2023 that, over the three fiscal years it examined, the CAVC remanded approximately 80 percent of appealed Board decisions, often because CAVC found the Board’s explanation of its findings to be inadequate. U.S. Gov’t Accountability Office, GAO-24-106156, *VA Disability Benefits: Board of Veterans’ Appeals Should Address Gaps in Its Quality Assurance Process* (Nov. 29, 2023).

B. THE VA’S DUTY TO ASSIST AND THE FREE-ASSISTANCE NETWORK

38. Veterans service organizations (“VSOs”) recognized under 38 U.S.C. § 5902 may provide veterans unpaid assistance at the initial stage of the claims process. Federal law also permits the Secretary to recognize any individual to prepare, present, and prosecute a “particular claim” without a fee, 38 U.S.C. § 5903; 38 C.F.R. § 14.630.

39. The VA’s statutory duty to assist, 38 U.S.C. § 5103A, and its implementing regulation, 38 C.F.R. § 3.159, require the VA to make reasonable efforts to locate relevant records that the claimant adequately identifies, to obtain the claimant’s service treatment records and the

VA medical records, and to provide a medical examination or opinion when necessary to decide the claim.

40. These options are not sufficient. The claimant remains responsible for identifying the conditions to be claimed, identifying or submitting private evidence, cooperating with examinations, and presenting the theories of entitlement on which the claim rests. The duty to assist does not require the VA to identify every compensable condition, to obtain private nexus opinions—opinions tying the medical condition to an event during service—to develop secondary theories, or to make the strategic choices on which entitlement frequently turns.

41. Choices made at the initial stage carry consequences that cannot be undone on later review. Higher-Level Review is confined to the record as it stood at the initial decision, 38 U.S.C. § 5104B(d); a condition never claimed is never adjudicated, an award on a later claim for that condition is generally effective no earlier than the later claim, 38 U.S.C. § 5110(a)(1), and a veteran who does not seek review or file a supplemental claim within one year of the decision forfeits the earlier effective date, *id.* § 5110(a)(2)–(3). As the Third Circuit observed, “[i]f some choices in the initial claim cannot be changed on appeal (for instance, what disability the veteran claimed for), then by limiting paid advice to appeals, the law would effectively bar paid advice about these aspects of a claim.” *Veterans Guardian VA Claim Consulting LLC v. Platkin*, 133 F.4th 213, 222 (3d Cir. 2025).

42. While a veteran may retain an accredited agent or attorney for a fee—subject to the VA’s reasonableness review and limits on contingent fees, 38 U.S.C. § 5904(a)(5), (d)—after the VARO issues its initial decision, a veteran may not pay anyone for help in preparing and filing the initial claim. And, as VA reads § 5901(a), unaccredited advisers may not assist at any stage, with or without a fee.

C. THE CHALLENGED STATUTES

43. Plaintiffs challenge the scope and, in the alternative, the constitutionality of 38 U.S.C. §§ 5901(a) and 5904(c)(1).

44. Section 5901(a) provides: “Except as provided by section 500 of title 5, no individual may act as an agent or attorney in the preparation, presentation, or prosecution of any claim under laws administered by the Secretary unless such individual has been recognized for such purposes by the Secretary.” 38 U.S.C. § 5901(a).

45. Section 5904(c)(1) provides, in relevant part, that “in connection with a proceeding before the Department with respect to benefits under laws administered by the Secretary, a fee may not be charged, allowed, or paid for services of agents and attorneys with respect to services provided before the date on which a claimant is provided notice of the agency of original jurisdiction’s initial decision under section 5104 of this title with respect to the case.” *Id.* § 5904(c)(1). By its terms, § 5904(c)(1) restricts only fees “for services of agents and attorneys.”

46. The statutory predecessors of §§ 5901 and 5904 were enacted as §§ 3401 and 3404 of title 38 as part of the codification of that title on September 2, 1958, Pub. L. No. 85-857, 72 Stat. 1105, 1238, effective January 1, 1959, and were renumbered as §§ 5901 and 5904 in 1991, Pub. L. No. 102-40, § 402(b)(1), 105 Stat. 187, 238.

47. Section 5901 was most recently amended on November 13, 2023, by § 3(a) of the Wounded Warrior Access Act, Pub. L. No. 118-21, 137 Stat. 109, 110. That amendment designated the preexisting prohibition as subsection (a) and added subsection (b), which requires the VA to display, each time a claimant logs in to a VA website or online tool, “a warning about individuals who seek to act in violation of this chapter.” It did not alter the operative language of § 5901(a).

48. Congress has progressively relaxed the fee restriction in § 5904(c). Former § 3404(c) capped fees at \$10 per claim. The Veterans' Judicial Review Act of 1988, Pub. L. No. 100-687, § 104(a), 102 Stat. 4105, 4108, repealed the \$10 cap and permitted fees for services rendered after the Board issued a final decision in a case. The Veterans Benefits, Health Care, and Information Technology Act of 2006, Pub. L. No. 109-461, § 101(c)(1), 120 Stat. 3403, 3407, moved the fee trigger to the filing of a notice of disagreement, effective June 20, 2007. Section 5904(c)(1)'s present initial-decision trigger was enacted on August 23, 2017, by § 2(n) of the Veterans Appeals Improvement and Modernization Act of 2017, Pub. L. No. 115-55, 131 Stat. 1105, 1110, replacing the former notice-of-disagreement trigger.

49. The Challenged Statutes burden VetClaims's activity through § 5901(a)'s accreditation gate and § 5904(c)(1)'s pre-initial-decision fee restriction. Section 5901(a), as interpreted and administered by the VA, prohibits an unaccredited person from acting as an agent or attorney in preparing, presenting, or prosecuting a VA benefits claim; § 5904(c)(1) restricts compensation for agent-or-attorney services performed before the VA has issued notice of the initial decision. Each of those amendments expanded veterans' access to paid assistance, and each rejected the premise that paid assistance is incompatible with the VA's claims process. The fee bar that remains is confined to the initial stage—the stage at which, as alleged below, the consequential choices are made.

D. THE CHALLENGED REGULATIONS

50. Plaintiffs also bring an as-applied challenge to 38 C.F.R. §§ 14.627(a), 14.629(b)(1), and 14.636(b) and (c)(1)(i). These regulations—the Challenged Regulations—impose restrictions beyond those established by the Challenged Statutes.

51. Section 14.627(a) defines “accreditation” as “the authority granted by VA to representatives, agents, and attorneys to assist claimants in the preparation, presentation, and prosecution of claims for VA benefits.”

52. Section 14.629(b)(1) provides that “[n]o individual may assist claimants in the preparation, presentation, and prosecution of claims for VA benefits as an agent or attorney unless he or she has first been accredited by VA for such purpose.” Section 14.636(b) provides that “[o]nly accredited agents and attorneys may receive fees from claimants or appellants for their services provided in connection with representation,” and § 14.636(c)(1)(i) permits accredited agents and attorneys to charge for representation only after an agency of original jurisdiction has issued notice of an initial decision on the claim, subject to the regulation’s stated conditions and exceptions. Where § 5901(a) reaches only one who “act[s] as an agent or attorney,” § 14.627(a) speaks of authority “to assist claimants”—and, as alleged below, the VA reads that word to reach any individualized help with a claim.

53. Accreditation as a claims agent requires an application on VA Form 21a, a determination of character and fitness, a passing score on a written examination administered by the VA, and completion of continuing legal education; accreditation as an attorney requires membership in good standing of a State bar and completion of continuing legal education. 38 C.F.R. § 14.629(b). Accreditation is conferred only on individuals: the statute authorizes the Secretary to recognize “any individual” as an agent or attorney, 38 U.S.C. § 5904(a)(1), and neither the statute nor § 14.629 provides a mechanism for accrediting a business entity.

54. The 2008 Final Rule was published at 73 Fed. Reg. 29,852 on May 22, 2008, and became effective June 23, 2008. The amendments implementing the Veterans Appeals Improvement and Modernization Act of 2017, which gave § 14.636(c)(1)(i) its present initial-

decision trigger, were published at 84 Fed. Reg. 138 on January 18, 2019, and became effective February 19, 2019.

55. In addition, the VA, through its Office of General Counsel (“OGC”), adopted a sweeping interpretation of the accreditation regime, as reflected in OGC’s published Accreditation Frequently Asked Questions (“Accreditation FAQs”), https://www.va.gov/ogc/accred_faqs.asp, last updated October 10, 2023. That interpretation, together with the enforcement correspondence described below, is the OGC Interpretation.

56. OGC states that it determines whether an activity falls within the “practice before VA” and the “preparation, presentation, and prosecution” of a claim by asking two questions: whether the veteran or beneficiary “has expressed an interest in filing a VA benefit claim,” and “[w]hat are the services being provided to the Veteran or beneficiary, and do those services have significance beyond entitlement to VA benefits.” OGC states that services “that would have no value or purpose, or very little value or purpose, outside of the VA’s adjudication process for benefits claims” strongly suggest they fall within practice before the VA.

57. In the Accreditation FAQs, OGC states that preparing a benefits claim “generally includes, but is not limited to, consulting with or giving advice to a claimant or potential claimant in contemplation of filing a benefits claim, gathering evidence in support of a benefits claim on behalf of a claimant or potential claimant, or filling out VA forms for their submission to VA,” and that presenting and prosecuting a benefits claim generally includes “filing, or pursuing in any way, an initial claim for VA benefits, a request for further review of a decision by the agency of original jurisdiction, or an appeal to the Board of Veterans’ Appeals.”

58. OGC further states that advice given “in regards to a specific application for benefits rather than general advice not related to a specific claim,” which assists “in making the

claim ready for filing,” constitutes preparation of a claim requiring accreditation, even when the adviser does not itself file the claim.

59. OGC expressly answers “Yes” when asked whether VA accreditation is required to assist a veteran in preparing his or her claim, explaining that “[u]naccredited individuals may provide other services to veterans so long as they do not assist in the preparation, presentation, and prosecution of claims for benefits.” “VA accreditation is required to assist claimants in the preparation, presentation, and prosecution of claims for benefits before VA regardless of whether fees are charged.”

60. OGC also states that even an accredited agent or attorney may not charge a fee for “preparing a claims form,” because accredited agents and attorneys “may only charge fees for representation.” An attorney may not charge a fee to assess whether a veteran already receiving compensation would be eligible for additional or increased benefits unless the services relate to a claim on which the agency of original jurisdiction has already issued an initial decision.

61. The regulation itself does not define “representation” as every one of those activities. Section 14.627(p) separately defines “representation” as the acts associated with representing a claimant in a proceeding before the VA pursuant to a properly executed and filed VA Form 21-22 or VA Form 21-22a.

62. But the VA has historically taken a broader position regarding what activities require accreditation. In congressional testimony in 2006, the VA stated that it “considers all aspects of the preparation, presentation, and prosecution of claims as ‘representation’ before the Department.” The 2008 Final Rule then expressly distinguished “accreditation,” meaning authority to assist in preparation, presentation, and prosecution, from “representation,” meaning acts performed pursuant to the specified appointment forms. 73 Fed. Reg. at 29,852.

63. In the 2008 Final Rule, the VA also acknowledged a May 24, 2004 letter from the VA's General Counsel concluding that § 5904 permitted attorneys to charge fees for pre-filing consultation on two specified fact patterns, but declined to incorporate that conclusion into the regulation because "[t]here may be other fact patterns which the General Counsel did not consider that might result in a different legal conclusion." 73 Fed. Reg. at 29,866. The line between permissible paid consultation and prohibited claim preparation is thus drawn by the VA case by case, and the VA has never defined it by rule.

64. The VA has asserted its interpretation against commercial claims-assistance providers. OGC sent cease-and-desist letters to Veterans Guardian VA Claim Consulting, LLC ("Veterans Guardian") in January 2019 and August 2024 stating that "to provide assistance with a claim for VA benefits, even without charge, a person must be accredited by VA as an agent," and that "Congress requires that an individual be accredited by VA to act as an agent or attorney in the preparation of a VA claim." *Ford v. Veterans Guardian VA Claim Consulting, LLC*, No. 1:23-CV-756, 2026 WL 1407920, at *8 n.5 (M.D.N.C. May 20, 2026).

E. THE GOVERNMENTAL INTERESTS ASSERTED

65. In enacting, amending, and defending the Challenged Statutes and the Challenged Regulations, Congress and the VA have identified governmental interests including preserving veterans' benefits from unnecessary diversion to representatives' fees; maintaining an informal, claimant-friendly, and nonadversarial initial adjudication process; avoiding unnecessary displacement of the established network of free nonattorney and veterans-service-organization assistance; ensuring that claimants receive responsible and qualified representation; and allowing the VA an initial opportunity to adjudicate a claim before paid representation becomes available.

66. The VA's 2008 Final Rule similarly stated that the accreditation rules were intended to ensure that claimants have responsible, qualified representation, 73 Fed. Reg. at 29,852, and explained that Congress had balanced claimant choice of representation against the prevention of unnecessary reduction of benefits through fees. *Id.* at 29,868.

F. ENFORCEMENT OF THE INITIAL-STAGE FEE RESTRICTION

67. Federal law provides no criminal penalty for an unaccredited person's charging of fees for claims assistance. The Veterans Benefits, Health Care, and Information Technology Act of 2006 struck from 38 U.S.C. § 5905 the former clause that criminalized charging or receiving a fee "except as provided in" § 5904, Pub. L. No. 109-461, § 101(g), 120 Stat. at 3408, leaving § 5905 to reach only the wrongful withholding of benefits due to a claimant. The VA's disciplinary authority under § 5904(b) extends to agents and attorneys "recognized under this section." As the Third Circuit has observed, although federal law sets the accreditation and fee rules, "it does not empower the VA or anyone else to enforce them." *Platkin*, 133 F.4th at 217.

68. The Initial-Stage Fee Restriction is nonetheless enforced against unaccredited providers through at least three channels. First, the VA's OGC issues cease-and-desist demands asserting that unaccredited assistance with claim preparation violates § 5901(a), as it did to Veterans Guardian in January 2019 and August 2024. *Ford*, 2026 WL 1407920, at *8 n.5. Second, States such as New Jersey, California, and Illinois have enacted statutes that incorporate the federal accreditation and fee standards and attach civil-enforcement mechanisms to them; New Jersey's statute, for example, provides that "[n]o person shall receive compensation for advising or assisting" anyone with "the preparation, presentation, or prosecution of any claim" for veterans' benefits except as allowed by federal law, and separately bars compensation for services rendered before a veteran appeals the VA's initial decision. N.J. Stat. Ann. § 56:8-228(a)(1), (a)(4); *see*

Platkin, 133 F.4th at 218; *see also* Cal. Mil. & Vet. Code § 401 (2025); Cal. Civ. Code § 1770 (2025); 815 Ill. Comp. Stat. 505/2YYY (2025). Third, private litigants pursue consumer-protection and debt-collection claims against providers on the theory that charging for unaccredited claim preparation violates federal law; in *Ford*, every claim asserted by the plaintiffs “depend[ed] on the factual assertion that Guardian is acting as an agent in the preparation or presentation of claims to the VA and on the legal proposition that doing so for a fee and without accreditation violates federal law.” *Ford*, 2026 WL 1407920, at *5.

V. FACTUAL ALLEGATIONS

A. VETCLAIMS’S DEFINED SERVICE

69. The Defined Service is designed to be functionally distinct from accredited representation. The veteran, not VetClaims, selects which conditions to claim, reviews and approves all content, files the claim through his or her own VA.gov account, and communicates directly with the VA. VetClaims holds no power of attorney, accesses no VA credentials on the veteran’s behalf, and does not communicate with the VA as the veteran’s representative. VetClaims provides records organization, condition-identification education, analytic assistance, and veteran-controlled document-preparation technology.

70. A customer purchases a one-time, flat-fee package that includes at least two one-on-one working sessions (a claim-strategy interview and a review of the veteran’s service and medical history); an evidence package consisting of a map of the primary and secondary conditions the veteran’s records support, guidance on obtaining nexus opinions from independent, licensed medical providers of the veteran’s choosing, and templates and guidance for the lay (“buddy”) statements the veteran obtains; and preparation and support for the compensation-and-pension

examination. A package is file-ready approximately 14 days after the first call, and the veteran files the claim under his or her own name.

71. The service proceeds in four steps: (1) a qualification call; (2) a records and strategy session; (3) an evidence build; and (4) a file-ready handoff.

72. The veteran—not VetClaims—makes the final decision on which conditions to claim, which evidence to submit, which provider to use, the wording of statements, form completion, filing, review-lane choice, and whether to appeal.

73. VetClaims and its personnel do not sign VA forms, submit claims, access VA systems on a veteran's behalf, communicate with the VA as a veteran's representative, hold a power of attorney, or appear in VA adjudicatory proceedings.

74. These terms are reflected in VetClaims's publicly posted Terms of Service, Legal Disclaimer, Notice Regarding Fees for Assistance with VA Disability Claims (last updated March 12, 2026), and Pricing page (last updated September 3, 2026).

B. VETCLAIMS'S PRICING AND CONSUMER SAFEGUARDS

75. VetClaims charges a single flat fee of \$1,250; it takes no percentage of past-due benefits and charges no fee tied to the rating awarded. If the claim does not result in a new or increased rating, VetClaims refunds the entire fee and pays the veteran an additional \$500. VetClaims holds no power of attorney and takes no assignment of benefits. Because the fee is refunded in full—and a further \$500 paid—if the claim does not result in a new or increased rating, the veteran bears no financial risk from using the Defined Service.

76. VetClaims discloses on its website that it is not accredited by the VA and does not represent veterans before the VA. It provides "self-help assistance" in the form of educational and informational technology services, including providing access to articles, guides, tutorials, videos,

webinars, and other educational content explaining the VA disability claims process, eligibility requirements, rating criteria, evidence requirements, and procedural rules. It also provides access to AI-driven tools, templates, checklists, calculators, and other informational resources to help veterans gather information, organize evidence, and prepare documentation for submission to the VA.

77. VetClaims also informs visitors to its website that there is free assistance available for VA claims from VA-accredited VSOs, and it provides links to help veterans identify accredited attorneys and agents. It states that the service is designed to complement, not replace, services provided by VA-accredited representatives, as well as empower veterans with the knowledge, understanding, and tools to make informed decisions and communicate effectively with VA-accredited representatives, VA personnel, and medical providers.

C. LESS RESTRICTIVE ALTERNATIVES

78. Other federal benefit systems address the same consumer-protection concerns without a categorical bar on paid assistance at the initial stage. The Social Security Administration permits claimants to retain paid representatives, including non-attorneys, at every stage of the claims process, including the initial application, subject to agency approval of fees under 42 U.S.C. § 406(a), *see* 20 C.F.R. § 404.1705 (qualification of representatives), and a cap on fees payable under fee agreements. The Third Circuit has likewise observed that a State could pursue its interest in protecting veterans through less-restrictive means, such as requiring paid advisers to tell veterans that free help is available elsewhere. *Platkin*, 133 F.4th at 222.

D. VETCLAIMS'S INJURY AND THE CREDIBLE THREAT OF ENFORCEMENT

79. Notwithstanding its design, VetClaims faces a credible and ongoing threat that the Challenged Statutes and the Challenged Regulations will be enforced against it because it charges

for initial-stage assistance. The VA's OGC has publicly interpreted § 5901(a) to reach individualized pre-filing assistance of the kind the Defined Service provides and has issued cease-and-desist demands to a commercial provider on that basis. A federal court has now held, adopting the VA's interpretation, that a commercial provider of initial-claim preparation is an unaccredited "agent" acting in violation of federal law (*Ford*); State statutes incorporate the federal standard and attach civil enforcement to it; and private litigants use the federal standard as the predicate for consumer-protection and debt-collection claims. That threat prohibits and chills VetClaims's protected activity and its provision of a demonstrably beneficial service to disabled veterans.

80. The relief requested would redress these injuries by removing the federal legal predicate on which the VA's interpretation, the State enforcement statutes, and the private litigation described above rest, and by permitting VetClaims to offer the Defined Service for a fee and without accreditation.

E. THE INDIVIDUAL PLAINTIFFS' INJURIES

81. Plaintiff Johnson initially sought help from a VSO but did not receive adequate assistance. He then turned to VetClaims and received competent, compensated assistance from VetClaims to prepare his seven claimed conditions, including four secondary conditions, at least one of which requires a more complex system of evidence than generally required. With VetClaims's assistance, he was able to receive a 90 percent disability rating. He now seeks to use VetClaims's assistance on appeal to increase his rating. If VetClaims can no longer operate, he will be unable to use its services and be deprived of his chosen competent assistance for his benefits claim appeal in an area where appeals are known to be complex and the VA has acknowledged that veterans may need an attorney's or agent's assistance.

F. THE VA’S ADMINISTRATION OF THE ACCREDITATION PROCESS IS ARBITRARY AND CAPRICIOUS

82. The VA administers the accreditation program through OGC. Accreditation as an agent requires an application, a character-and-fitness determination, a written examination, and continuing legal education designed for individuals who will represent claimants before the VA; accreditation is conferred only on individuals; and the VA provides no mechanism by which a business entity, or a technology-enabled service such as the Defined Service, may obtain recognition for what it does.

83. The VA has never defined by rule the line between permissible education or consultation and prohibited “preparation.” OGC applies a two-question, case-by-case test that turns on whether a service has “value or purpose” outside the VA’s adjudication process—a standard under which records organization, condition education, and document-preparation technology are prohibited whenever they are useful to a veteran who intends to file a claim—while acknowledging that pre-filing consultation may lawfully be compensated on some fact patterns it has declined to specify.

84. The VA has not reexamined the scope of the accreditation requirement in light of the Veterans’ Judicial Review Act, the Veterans Appeals Improvement and Modernization Act of 2017, or the emergence of technology-enabled self-preparation tools. The VA has not proposed any mechanism for recognizing entities or technology-enabled services.

85. As applied to the Defined Service, the accreditation process and the OGC Interpretation are arbitrary and capricious. The VA’s stated purposes—protecting veterans from unreasonable fees and ensuring competent assistance—are not implicated by a service that charges a flat \$1,250 fee, refunds that fee and pays the veteran \$500 if the claim does not produce a new or increased rating, and leaves every decision and every filing in the veteran’s own hands. The VA

has offered no reasoned explanation for extending the accreditation requirement to such assistance; has not considered the obvious alternatives of disclosure, fee limits, and refund guarantees; and has provided no path by which a service of this kind could comply.

VI. CLAIMS FOR RELIEF

COUNT I

Chapter 59 of Title 38 Does Not Reach the Defined Service Ultra Vires Agency Action and Declaratory Relief (5 U.S.C. § 706(2)(C); 28 U.S.C. § 2201)

86. Plaintiffs reallege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

87. Section 5901(a) applies only to one who “act[s] as an agent or attorney in the preparation, presentation, or prosecution of any claim.” Section 5904(c)(1) restricts only fees “for services of agents and attorneys” rendered “in connection with a proceeding before the Department.” Both provisions regulate representation of a claimant before the VA. Neither regulates a veteran’s private purchase of education, organization, and analytic assistance from a company that never acts for the veteran before the VA.

88. The words Congress chose carry their ordinary meaning. An “agent” is one who acts on behalf of another, subject to the other’s control, in dealings with third parties; an “attorney” is one authorized to appear for another. *See* Restatement (Third) of Agency § 1.01 (Am. L. Inst. 2006); *Black’s Law Dictionary* (12th ed. 2024) (“agent”; “attorney”). A veteran who selects the conditions to claim, approves every document, signs and files the claim through his or her own VA.gov account, and communicates with the VA directly has no agent and no attorney. The structure of chapter 59 confirms the point: recognition is paired with a power of attorney, 38 U.S.C. § 5902(b)(1)(B); discipline is addressed to “practice before the Department,” *id.* § 5904(b); fee agreements must be filed with the VA, *id.* § 5904(c)(2); and the VA may pay fees directly from past-due benefits to the claimant’s representative, *id.* § 5904(d). Each of those provisions

presupposes a representative who appears before the agency. The VA’s own regulations likewise define “representation” by reference to an executed and filed appointment form. 38 C.F.R. § 14.627(p).

89. Whether chapter 59 reaches the Defined Service is a question of law for this Court to decide independently, without deference to the VA’s view. *Loper Bright Enters.*, 603 U.S. at 412–13. The VA’s reading would convert a statute governing the recognition of representatives into a licensing requirement for speech about veterans’ benefits—a power to make it unlawful for a tutor, a spouse, a pastor, or a software company to help a veteran understand and complete his or her own claim. An assertion of authority of that breadth, and one that raises grave First Amendment concerns, requires clear congressional authorization that chapter 59 does not supply. *See West Virginia v. EPA*, 597 U.S. 697, 723 (2022).

90. The VA’s contrary interpretation—extending § 5901(a) to any individualized assistance given “in contemplation of filing a benefits claim,” whether or not the adviser acts for the veteran before the VA, and extending § 5904(c)(1) to fees charged by persons who are not agents or attorneys—exceeds the authority Congress conferred. It is “in excess of statutory jurisdiction, authority, or limitations,” 5 U.S.C. § 706(2)(C), and ultra vires. No binding authority has construed §§ 5901(a) or 5904(c)(1) to reach a service in which the veteran alone acts before the Department.

91. Plaintiffs are entitled to a declaration that 38 U.S.C. §§ 5901(a) and 5904(c)(1), and the Challenged Regulations, do not apply to the Defined Service or to veterans who prepare and file their own claims with its assistance, and to an order holding unlawful and setting aside the OGC Interpretation to the extent it provides otherwise.

COUNT II

Fifth Amendment—Procedural Due Process (Pleaded in the Alternative)

92. Plaintiffs reallege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

93. The Due Process Clause of the Fifth Amendment protects veterans' constitutionally significant interest in the accurate and timely adjudication of disability benefits. Under *Mathews v. Eldridge*, the constitutionality of the Initial-Stage Fee Restriction, which effectively prohibits veterans from receiving competent paid assistance from VetClaims, turns on the private interest at stake, the risk of erroneous deprivation and the probable value of the additional safeguard, and the government's interest. *United States v. Robinson*, 542 F.3d 1045, 1051 (5th Cir. 2008); see *Mathews*, 424 U.S. at 335.

94. The private interest is substantial; the risk of erroneous, entitlement-affecting deprivation is prevalent and quantified; competent front-end assistance measurably and sharply reduces that risk; the free substitute safeguards are not functionally sufficient; and the government's interests in benefit preservation and administrative economy are advanced, not harmed, by the Defined Service and are fully served by narrower consumer-protection measures.

95. The Initial-Stage Fee Restriction is therefore facially unconstitutional because it deprives veterans of the procedural due process guaranteed by the Fifth Amendment.

COUNT III

Fifth Amendment—Substantive Due Process (Pleaded in the Alternative)

96. Plaintiffs reallege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

97. The Due Process Clause of the Fifth Amendment protects the liberty of veterans to obtain, and of VetClaims to provide, lawful assistance in the pursuit of benefits, and the liberty of

VetClaims and its principals to pursue a lawful occupation. Government restraints on those liberties must at a minimum bear a rational relationship to a legitimate governmental interest. A restriction that serves no legitimate purpose—or that serves only to protect one group of providers from another—fails even that standard. *See St. Joseph Abbey*, 712 F.3d at 225.

98. On its face, the Initial-Stage Fee Restriction does not advance any legitimate interest and instead deprives veterans of effective assistance and VetClaims of its livelihood without any rational justification. The restriction violates the substantive component of the Fifth Amendment’s Due Process Clause.

COUNT IV

First Amendment—Freedom of Speech (Pleaded in the Alternative)

99. Plaintiffs reallege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

100. VetClaims’s communication of truthful, individualized information that helps a veteran identify compensable conditions, organize evidence, and complete a claim—what conditions to claim, what evidence to include, and how to complete the forms—is speech protected by the First Amendment. Laws that ban charging for speech burden the right to speak, and there is no separate, less-protected category of “professional speech.” *National Institute of Family & Life Advocates v. Becerra*, 585 U.S. 755, 767–68 (2018); *Platkin*, 133 F.4th at 220; *Vizaline, L.L.C. v. Tracy*, 949 F.3d 927, 931–34 (5th Cir. 2020) (occupational-licensing requirement applied to speech is subject to First Amendment scrutiny). The Initial-Stage Fee Restriction prohibits and chills that protected speech when offered for compensation at the initial stage.

101. The restriction is content-based: it singles out speech on one subject—advice about claiming veterans’ benefits—for differential treatment, and it draws the line between permitted and prohibited speech by reference to what is said (general education is permitted; individualized

advice about a specific claim is prohibited). *See Reed v. Town of Gilbert*, 576 U.S. 155, 163–64 (2015) (a law is content based if it “applies to particular speech because of the topic discussed or the idea or message expressed”).

102. It is also speaker-based, applying to persons whom the VA has not accredited and entities that provide services for compensation. *See Sorrell v. IMS Health Inc.*, 564 U.S. 552, 563–66 (2011) (law that disfavors specific speakers and specific content warrants heightened scrutiny).

103. Content-based restrictions on speech are presumptively unconstitutional and subject to strict scrutiny. *Reed*, 576 U.S. at 163. At a minimum, the restriction must satisfy intermediate scrutiny by showing that alternatives that burden substantially less speech would fail to achieve the government’s interests. *See McCullen v. Coakley*, 573 U.S. 464, 485, 495 (2014).

104. The Initial-Stage Fee Restriction also infringes on the individual Plaintiff’s right to receive information from VetClaims. *See Stanley v. Georgia*, 394 U.S. 557, 564 (1969).

105. The restriction cannot survive any applicable level of scrutiny. The Defined Service does not consume benefits owed to veterans and reduces administrative burden; the government’s asserted interests are absent in the case of a flat, modest, guaranteed fee; and those interests are fully served by less-restrictive alternatives—fee caps, disclosure of the availability of free assistance, refund guarantees, and a bar on percentage-of-benefits fees. The restriction burdens substantially more protected expression than necessary and violates the First Amendment.

COUNT V

First Amendment—Right to Petition (Pleaded in the Alternative)

106. Plaintiffs reallege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

107. “Inseparable from the guaranteed rights entrenched in the first amendment, the right to petition for redress of grievances occupies a ‘preferred place’ in our system of representative

government, and enjoys a ‘sanctity and a sanction not permitting dubious intrusions.’” *United States v. Hylton*, 710 F.2d 1106, 1111 (5th Cir. 1983) (quoting *Thomas v. Collins*, 323 U.S. 516, 530 (1945)). The right extends to petitions directed to administrative agencies, *Cal. Motor Transp. Co. v. Trucking Unlimited*, 404 U.S. 508, 510 (1972), and it protects the ability to obtain assistance in presenting one’s claims. *See Bhd. of R.R. Trainmen v. Virginia ex rel. Va. State Bar*, 377 U.S. 1, 5–8 (1964).

108. The right to petition the government for redress includes the right of veterans to obtain competent assistance in presenting claims to the VA. By foreclosing compensated, competent assistance at the initial stage, the Initial-Stage Fee Restriction unconstitutionally burdens the right to petition on its face.

COUNT VI

First Amendment—Right to Associate (Pleaded in the Alternative)

109. Plaintiffs reallege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

110. The Challenged Statutes prevent organizations like VetClaims from gaining accreditation by the VA, preventing VetClaims from speaking to veterans about the disability claims process when the information is most helpful.

111. If VetClaims were an individual, accreditation would be possible, but because VetClaims is an association of individuals, it is entirely prohibited from speaking to veterans about their claims. The Challenged Statutes thus violate VetClaims’s right to speak as an association of individuals. *See Citizens United v. FEC*, 558 U.S. 310, 392 (2010) (Scalia, J., concurring).

COUNT VII

Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C), (D) Arbitrary and Capricious Administration of the Accreditation Process

112. Plaintiffs reallege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

113. The APA requires a reviewing court to hold unlawful and set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” or “in excess of statutory jurisdiction, authority, or limitations.” 5 U.S.C. § 706(2)(A), (C). Agency action is arbitrary and capricious when the agency has failed to consider an important aspect of the problem, has offered an explanation that runs counter to the evidence, has failed to consider obvious alternatives, or has failed to provide a reasoned explanation for its position. *Motor Vehicle Mfrs. Ass’n v. State Farm*, 463 U.S. 29, 43 (1983).

114. The VA’s administration of the accreditation process, as applied to the Defined Service, is final agency action. The OGC Interpretation is the VA’s settled, published position, applied through cease-and-desist demands and defended in litigation, and it determines the legal consequences of VetClaims’s conduct: under it, VetClaims may not provide the Defined Service for a fee, or without a fee, and has no mechanism by which to obtain recognition. *See Texas v. EEOC*, 933 F.3d 433, 441–46 (5th Cir. 2019) (agency guidance that binds agency staff and carries legal consequences for regulated parties is final agency action). There is no other adequate remedy in a court: VetClaims is not a claimant and has no access to the veterans’ benefits review system, and the VA has itself stated that disputes under the accreditation program are reviewable in the district courts under the APA. Although VetClaims has not itself been sued, a regulated party need not “expose [itself] to actual arrest or prosecution to be entitled to challenge” the rule under which it is threatened, *Steffel v. Thompson*, 415 U.S. 452, 459 (1974), and the choice between abandoning a lawful business and courting enforcement is itself a cognizable hardship. *See Abbott Labs. v. Gardner*, 387 U.S. 136, 152–53 (1967).

115. The VA’s administration of the accreditation process is arbitrary and capricious and contrary to law as applied to the Defined Service because, among other things: (a) the VA has extended the accreditation requirement to pre-filing education, records organization, analytic assistance, and veteran-controlled document-preparation technology, activities that do not constitute acting “as an agent or attorney” within the meaning of § 5901(a); (b) the VA draws the line between permissible consultation and prohibited preparation case by case, under a test that turns on whether a service is useful to a veteran who intends to file, while acknowledging that some compensated pre-filing consultation is lawful, and has never defined the line by rule; (c) the VA confers accreditation only on individuals, through an examination and training regime designed for representatives who appear before the VA, and provides no mechanism by which an entity or technology-enabled service can obtain recognition or otherwise comply; (d) the VA has not reexamined the accreditation regime in light of the transformation of the claims system since 1988 or the emergence of technology-enabled self-preparation; (e) the VA has failed to consider obvious, less-restrictive alternatives such as disclosure, fee limits, and refund guarantees; (f) the VA has offered no reasoned explanation for applying the requirement to a service whose fee terms eliminate the risks the requirement exists to address; and (g) to the extent the OGC Interpretation imposes obligations beyond those in the Challenged Regulations—requiring accreditation for assistance rendered without charge and treating any individualized advice as “preparation”—it is a legislative rule issued without the notice and comment that 5 U.S.C. § 553 requires, *id.* § 706(2)(D).

116. Plaintiffs are entitled to an order holding unlawful and setting aside the VA’s administration of the accreditation process and the OGC Interpretation as applied to the Defined

Service and enjoining the Secretary from applying the accreditation requirement to bar VetClaims from providing the Defined Service to veterans.

COUNT VIII
Declaratory Judgment (28 U.S.C. § 2201)

117. Plaintiffs reallege and incorporate by reference each of the foregoing paragraphs as though fully set forth herein.

118. An actual, justiciable controversy exists between Plaintiffs and Defendant regarding the scope and constitutionality of the Initial-Stage Fee Restriction as applied to the individual Plaintiff and to VetClaims's Defined Service, and regarding the lawfulness of the OGC Interpretation and the VA's administration of the accreditation process. Plaintiffs are entitled to a declaration of their rights and to injunctive relief effectuating that declaration.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that 38 U.S.C. §§ 5901(a) and 5904(c)(1) and the Challenged Regulations do not apply to the Defined Service or to veterans who prepare and file their own claims with its assistance;
- B. Declare, in the alternative, that 38 U.S.C. §§ 5901(a) and 5904(c)(1) are facially unconstitutional under the First and Fifth Amendments;
- C. Hold unlawful and set aside, under 5 U.S.C. § 706(2), the VA's administration of the accreditation process and the OGC Interpretation as applied to the Defined Service;
- D. Enjoin Defendant, and those acting under his direction, from enforcing or applying the Initial-Stage Fee Restriction and the OGC Interpretation against Plaintiff VetClaims's provision of the Defined Service, subject to such consumer-protection conditions as the Court deems appropriate (including a fee cap, a prohibition on percentage-of-benefits fees,

mandatory disclosure of the availability of free assistance, the refund-plus-\$500 guarantee, and a prohibition on holding a power of attorney or taking an assignment of benefits);

E. Award Plaintiffs their reasonable attorneys' fees and costs as permitted by law, including under 28 U.S.C. § 2412; and

F. Grant such other and further relief as the Court deems just and proper.

Dated: October 14, 2026

Respectfully submitted,

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