No. 21-432

IN THE

Supreme Court of the United States

ADOLFO R. ARELLANO,

Petitioner,

v.

DENIS MCDONOUGH,
SECRETARY OF VETERANS AFFAIRS,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
SMITA GHOSH
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

* Counsel of Record

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC has an interest in ensuring that all statutes, including the important veterans' benefits statute at issue in this case, are interpreted in a manner consistent with their text and history, as well as applicable equitable principles. Accordingly, CAC has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Veterans of our nation's armed services, "who have been obliged to drop their own affairs to take up the burdens of the nation," *Boone v. Lightner*, 319 U.S. 561, 575 (1943), are entitled to monthly compensation for disabilities related to injuries or illnesses incurred during service, 38 U.S.C. § 1110; *see Walters v. Nat. Ass'n of Radiation Survivors*, 473 U.S. 305, 309 (1985) (noting that Congress has historically "provided for him who has borne the battle"). The "effective date" of this compensation is generally the date on which the Department of Veterans Affairs (VA) receives the veteran's application for benefits, 38 U.S.C. § 5110(a)(1), but federal law provides for retroactive compensation, which begins on the date of the veteran's discharge

[1] The parties have consented to the filing of this brief. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

from service if the VA receives the application within one year of discharge, *id.* § 5110(b)(1).

Petitioner Adolfo Arellano served in the U.S. Navy for almost four years. During that time, he worked on the flight deck of the U.S.S. Midway, an aircraft carrier that collided with a freighter in the Persian Gulf during the Iranian Hostage Crisis. Pet. App. 119a. Petitioner Arellano watched the collision crush some of his shipmates and sweep others overboard. *Id.* at 119a-120a. After this traumatic experience, Arellano suffered from psychosis, delusions, schizoaffective disorders, paranoia, anxiety, and post-traumatic stress disorder, which, as the VA determined, rendered him "completely disabled." *Id.* at 113a.

Although Arellano's disability began the year after his discharge from the Navy, his mental illnesses prevented him from recognizing his disabilities and understanding his entitlement to and need for compensation until 2011. *Id.* at 128a. While the VA agreed that Arellano's service-connected injuries rendered him completely disabled in the year after his discharge, *id.* at 113a, it refused to award him retroactive benefits because he did not apply within one year of his discharge, *id.* at 116a. It held that circuit precedent categorically precluded equitable tolling of the deadline for "establishing an award of retroactive benefits," even if the facts of Arellano's case might otherwise justify tolling. *Id.* The Court of Appeals for Veterans Claims agreed. *Id.* at 4a. The Federal Circuit, sitting *en banc*, affirmed the judgment and divided equally on the question of whether to revisit its previous decisions concluding that equitable tolling is categorically unavailable in this context. *Id.* at 16a.

The decision of the court below is wrong. The doctrine of equitable tolling is "centuries old," *McQuiggin*

v. Perkins, 569 U.S. 383, 409 (2013) (Scalia, J., dissenting), and as this Court has recognized, has become a "traditional feature of American jurisprudence," *Boechler, P.C. v. Comm'r of Internal Revenue*, No. 20-1472, 2022 WL 1177496, at *5 (U.S. Apr. 21, 2022). Tolling permits courts to extend a deadline "because of an event or circumstance that deprives the filer, through no fault of his own, of the full period accorded by the statute." *McQuiggin*, 569 U.S. at 409. As this Court has explained, equitable tolling is presumptively available in the context of all "statutory time limits," *Irwin v. Department of Veteran Affairs*, 498 U.S. 89, 95-96 (1990), especially when those limits appear in statutory schemes that are designed to be "'unusually protective' of claimants," *Bowen v. City of New York*, 476 U.S. 467, 480 (1986) (quoting *Heckler v. Day*, 467 U.S. 104, 106 (1984)), and serve "humane and remedial" purposes, *Burnett v. New York Central R. Co.*, 380 U.S. 424, 427-28 (1965).

Notwithstanding all of this, the court below concluded that equitable tolling was categorically unavailable here because, in its view, § 5110(b)(1) "is not a statute of limitations amenable to equitable tolling but merely establishes an effective date for the payment of benefits." Pet. App. 18a. Specifically, the court explained that § 5110(b)(1) does not have the "'functional characteristics'" of a statute of limitations" because it is not "triggered by harm from the breach of a legal duty owed by the opposing party," *id.* at 30a, does not "start the clock on seeking a remedy for [a] breach from a separate remedial entity," *id.* at 31a, and does not have the "practical effect" of "foreclos[ing] a veteran from all benefits," *id.* at 40a. But these rationales are wholly disconnected from the history of and traditional justifications for equitable tolling, as

well as this Court's precedents.

Significantly, equitable tolling has never been limited to statutes of limitations or deadlines that "start the clock on seeking a remedy for [a] breach," *id.* at 31a, as the court below held. At common law, courts invoked tolling principles whenever they were called upon to assess a defense grounded upon the "lapse of time." *Lupton v. Janney*, 38 U.S. 381, 385-86 (1839). For example, they applied tolling principles to equitable presumptions that were prompted by the passage of time, even though those presumptions were not triggered by "the breach of a legal duty," Pet. App. 30a. They also tolled statutes authorizing the redemption of property, although these enactments were not considered to be statutes of limitations and did not set a time limit on seeking a remedy for a breach, *id.* at 31a.

In accordance with this history, this Court has consistently recognized that equitable tolling is available in the context of provisions that serve the "basic policies furthered by all limitations provisions" and "prescribe[] a period within which certain rights . . . may be enforced." *Young v. United States*, 535 U.S. 43, 47, (2002). For "limitations principles" to apply, *Scarborough v. Principi*, 541 U.S. 401, 421 (2004), a deadline need only address "the end[s] served" by such a statute, *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394 (1982).

That is exactly what § 5110(b)(1) does. As the provision's text and history make clear, § 5110(b)(1), which prescribes a period in which "certain rights"—that is, the right to benefits retroactive to a veteran's date of discharge—can be enforced, *Young*, 535 U.S. at 47, was enacted to encourage quick filing and forestall the evidentiary burdens imposed by "stale claims," *id.* Equitable tolling should be available here no less than

in other contexts in which statutory deadlines serve those purposes, especially because § 5110(b)(1) is located within the type of "humane," "remedial," and claimant-protective scheme to which the presumption of equitable tolling is most applicable, *Burnett*, 380 U.S. at 427-28.

Consistent with the long history of equitable tolling, and this Court's decisions holding that tolling is presumptively available to all "statutory time limits," *Irwin*, 498 U.S. at 95, this Court should conclude that equitable tolling is available here.

ARGUMENT

I. The Doctrine of Equitable Tolling Has Deep Roots.

A. Originally at common law, "there was no limitation as to the time within which an action might be brought," although actions at tort were limited to the "duration of the life of either party." 1 H.G. Wood, *Statutes of Limitations* § 1, at 2-3 (2d ed. 1893); James John Wilkinson, *A Treatise on the Limitation of Action* 2 (1829) ("It was a maxim that a right never dies . . . ."). But over time, the "abuses from stale demands became so great as to be unendurable," 1 Wood, *supra*, § 2, at 6, and English legislators created statutes of limitations—statutory periods in which "certain rights may be enforced," *id.* at § 1, at 1. When forming their own legal systems, American colonists "founded" their own statutes of limitations using these English statutes as a guide. *Walden v. Heirs of Gratz*, 14 U.S. 292, 297 (1816).

On both sides of the Atlantic, courts and legislators developed a set of justifications for their decision to "abridge[] the common law" by setting limitations periods. Wilkinson, *supra*, at 12. Statutes of

limitations "requir[ed] parties to settle their business matters within certain reasonable periods," 1 Wood, *supra*, § 4, at 8, "quiet[ed] men in the enjoyment of their estates and possessions," *Wall v. Robson*, 11 S.C.L. 498, 499 (S.C. Const. App. 1820), and punished the "indolence of those who [we]re dilatory in . . . claiming what is due to them," J.K. Agnell, *A Treatise on the Limitations of Actions at Law*, 5 (2d ed. 1846). They also "guard[ed] against suspicious and ill-founded claims," *id.*, by "compel[ling] the settlement of claims . . . while the evidence . . . is yet fresh in the minds of the parties or their witnesses," 1 Wood, *supra*, § 5, at 7; *Sherwood v. Sutton*, 21 F. Cas. 1303, 1307 (C.C.D.N.H. 1828) (Story, J.) ("The statute of limitations was mainly intended to suppress fraud, by preventing fraudulent and unjust claims from starting up at great distances of time.").

Despite the justifications for these limitation periods, courts of equity quickly began permitting exceptions to them, even when those exceptions were not "within the letter" of the statute. *Sherwood*, 21 F. Cas. at 1308; 1 Wood, *supra*, § 6, at 9. As an initial matter, when considering purely equitable matters, courts recognized that the "lapse of time, however long, [did] not deprive a party of his remedy thereon if there [wa]s a reasonable excuse for the delay." *Id.* § 59, at 146. And this was true even after "a considerable lapse of time." 1 Joseph Story, *Commentaries on Equity Jurisprudence* § 529, at 503 (1836). As Joseph Story instructed, "Courts of Equity [should] not refuse their aid in furtherance of the rights of the party," when there are "peculiar circumstances . . . excusing or justifying the delay." *Id.* at 503-04. Indeed, when a defendant raised a plaintiff's laches or delay as a defense to a claim, courts of equity considered factors specific to the

plaintiff that might excuse the late filing, including a plaintiff's service in the army, 4 John Bouvier, *Institutes of American Law* 214 n.b (1851), an office fire, 1 Wood, *supra*, § 59, at 146 (citing *Johnson v. Diversey*, 82 Ill. 446 (1879)), and any other "reasonable excuse for the delay" that was put forward, *id.* 146 n.2.

Moreover, when courts sitting in equity enforced statutes of limitation by "analogy"—that is, when those statutes would bar similar actions at law—they would still "interfere in many cases, to prevent the bar of the statutes, where it would be inequitable or unjust." 2 Story, *supra*, § 1521, at 906. In other words, despite a relevant statute of limitations, equity courts permitted plaintiffs to bring claims, however "long outstanding," when they "perceive[d] that a party ha[d] equitable rights." 1 Wood, *supra*, § 58, at 140. As long as a plaintiff could show "good faith[] and reasonable diligence," a court could still give relief. 2 Story, *supra*, § 896, at 210.

B. In the Founding era and afterwards, American courts followed these principles and permitted the tolling of statutory deadlines in equitable circumstances, provided that the plaintiff had exercised due diligence.

For example, courts tolled the statute of limitations when "inevitable necessity" prevented the plaintiff from filing suit. *Wall*, 11 S.C.L. at 499. In *Wall*, a South Carolina court considered a British subject's claim against an American citizen for non-payment of debt. *Id.* In defense, the defendant raised the statute of limitations, which had clearly run, and the plaintiff responded that the limitations period should be tolled for the duration of the War of 1812, when courts were "shut up against British creditors." *Id.* at 509.

The court concluded that the statute contained an

implied exception for "act[s] of God," including "storms, tempests, earthquakes, and other casualties of nature," *id.* at 500, as well as the "declaration of war," *id.* at 505. According to the court, statutes of limitations were not intended to "prevent a man who had never been guilty of any wilful[l] laches or delay . . . from pursuing his just rights." *Id.* at 499. Tolling would enable the court to "preserve the plaintiff's right" in this exceptional circumstance. *Id.* at 509; *see Braun v. Sauerwein*, 77 U.S. 218, 222-23 (1869) (noting that when "the creditor has been disabled to sue, by a superior power, without any default of his own," the "running of a statute of limitation may be suspended"); *Hanger v. Abbott*, 73 U.S. 532, 538-39 (1867) (concluding that tolling the limitations period during the Civil War would not "encourage laches or . . . promote negligence" and to do otherwise would make a "mockery" of the plaintiff's right to sue).

Similarly, courts suspended the application of statutes of limitations when the plaintiff did not recognize that he had a cause of action due to the defendant's "fraudulent concealment." *Sherwood*, 21 F. Cas. at 1303-05. In *Sherwood*, Justice Story, when riding circuit, considered a case involving a defendant who had defrauded the plaintiff when selling a ship, and managed to conceal the fraud for several years after the sale. *Id.* The applicable statute of limitations had expired, but Justice Story invoked the equitable exception for cases of fraud and mistake. *Id.* at 1304-07. Adopting this exception would be, in Story's words, consistent with "legislative intention," because the statute of limitations was enacted to "suppress," and not encourage, fraud. *Id.* at 1307; *First Massachusetts Tpk. Corp. v. Field*, 3 Mass. 201, 207 (1807) (when the "delay of bringing the suit is owing to the fraud of the

defendant" the statute could be tolled "until the plaintiff could obtain the knowledge that he had a cause of action"); *Clementson v. Williams*, 12 U.S. 72, 74 (1814) (noting that the defendant's belated "acknowledgement of a debt" could "take the case out of that statute of limitations").

Although the tolling doctrine originated in equity, courts later made clear that tolling should also be available in actions at law. *See Sherwood*, 21 F. Cas. at 1308; *Bailey v. Glover*, 88 U.S. 342, 349 (1875) ("[T]he weight of judicial authority, both in this country and in England, is in favor of the application of the rule to suits at law as well as in equity."). In *Bailey*, the plaintiff sought to set aside an allegedly fraudulent conveyance that he had received from the defendant before the defendant's bankruptcy, and that the defendant had "kept secret and concealed." 88 U.S. at 348. The Bankruptcy Act required certain suits to be brought "within two years from the time [when] the cause of action accrued," *id.* at 344 (quoting Bankruptcy Act of Mar. 2, 1867, ch. 176, § 2, 14 Stat. 518), with no exception for fraudulent concealment. Nonetheless, this Court tolled the two-year period, relying on the principle that the period would not run when the "party injured by the fraud remains in ignorance of it without any fault or want of diligence or care on his part." *Id.* at 348.

In more recent cases, this Court has reiterated that tolling is available in cases in which "hardships . . . arise from a hard and fast adherence to more absolute legal rules." *Holland v. Florida*, 560 U.S. 631, 650 (2010) (quoting *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U. S. 238, 248 (1944)); *see, e.g.*, *id.* at 631 (tolling one-year limitation for filing application for writ of habeas corpus); *Young*, 535 U.S. at 43 (tolling

three-year "lookback period" in bankruptcy proceedings); *Rotella v. Wood*, 528 U. S. 549 (2000) (tolling four-year period for filing civil suit under Racketeer Influenced and Corrupt Organizations Act); *Zipes*, 455 U.S. at 398 (tolling ninety-day deadline for filing charge with Equal Employment Opportunity Commission (EEOC)).

These examples demonstrate the long history of courts recognizing that tolling is appropriate when situations beyond a plaintiff's control make it difficult or impossible to meet a statutory deadline, even with the exercise of due diligence, such that it would be "inequitable or unjust" for the "bar of the statute" to apply, 2 Story, *supra*, § 1521, at 738.

II. Congress Drafts Statutes with Equitable Tolling as a Background Principle, and This Court Has Therefore Held that Many Different Kinds of Deadlines May Be Equitably Tolled.

A. The doctrine permitting tolling in equitable circumstances is so deeply embedded in the law that this Court has recognized that Congress drafts "statutory time limits," *Irwin,* 498 U.S. at 95, in "light of this background principle," *Young*, 535 U.S. at 49-50; *Irwin*, 498 U.S. at 95 (describing a "rebuttable presumption of equitable tolling"); *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1945) (equitable tolling doctrine should be "read into every federal statute of limitations"); John F. Manning, *Textualism and the Equity of the Statute*, 101 Colum. L. Rev. 1, 114 (2001) ("statutes of limitations must be read against the embedded practice of equitable tolling").

For instance, in *Holmberg*, several creditors sued a shareholder of a land bank under the Federal Farm

Loan Act. 327 U.S. at 393. Anticipating the defendant's statute of limitations defense, the creditors alleged that they did not learn of the defendant's ownership of the stock until 1942 because his ownership had been "concealed" under another name. *Id.* This Court agreed with the creditors. Citing *Bailey* and *Sherwood*, it described the "old chancery rule" that permitted tolling when "a plaintiff has been injured by fraud and remains in ignorance of it without any fault or want of diligence or care on his part." *Id.* at 397. Because that equitable doctrine "is read into every federal statute," this Court reasoned, it should apply in the Federal Farm Loan Act as well. *Id.*; *Sherwood*, 21 F. Cas. at 1307 (noting that the exception for fraud or mistake would have been "well known" to the lawmakers who framed the limitations period).

In *Irwin*, this Court extended the presumption of tolling to "suits against the United States." *Irwin*, 498 U.S. at 95-96. *Irwin* considered whether a thirty-day period for filing suit against a federal agency under Title VII of the Civil Rights Act of 1964 was subject to equitable tolling. *Id.* at 94 (citing 42 U.S.C. § 2000e-16(c) (1988)). In deciding that the deadline was subject to tolling, this Court affirmed the "rebuttable presumption of equitable tolling" applicable to any "time requirement in lawsuits between private litigants," *id.* at 95, and concluded that "the same rebuttable presumption of equitable tolling applicable against private defendants should also apply to suits against the United States," *id.* at 95-96.

This Court has explained that this presumption is doubly applicable to statutory deadlines contained in "humane and remedial Act[s]," *Burnett*, 380 U.S. at 427-28, that are designed to "aid claimants," *Honda v. Clark*, 386 U.S. 484, 496 (1967). In *Honda*, claimants

of property held under the Trading with the Enemy Act, which had permitted the seizure of assets from businesses owned by Japanese nationals during WWII, sought to toll the Act's sixty-day deadline for appealing an administrative claim schedule. *Id.* at 493. This Court tolled the limitations period during the pendency of related litigation because it was consistent with the statutory scheme and equitable principles to do so. *Id.* at 501. Specifically, the statute "was intended to provide a method for the fair and equitable distribution of vested enemy assets," and the limitations period was "designed to further this end—to aid claimants by expediting a final distribution," rather than to act "primarily as a shield for the Government." *Id.* at 495-96. Further, this Court emphasized, tolling the limitations period for some claims would not impact the "amount of others' claims" because other claimants had no interest in "the time of proof." *Id.* at 497. Finally, legislative history made clear that "the overall congressional purpose"—to address the country's "moral obligation" to compensate Japanese nationals with "proper claims"—was consistent with the application of tolling. *Id.* at 501.

Similarly, in *Bowen*, plaintiffs challenging a Social Security policy sought to toll the sixty-day deadline for appealing the Social Security administrator's denial of a claim for the period in which an allegedly illegal policy was "operative but undisclosed," 476 U.S. at 478. This Court held that the "application of the 'traditional equitable tolling principle'" to the deadline was "consistent with the overall congressional purpose" of the Social Security Act, *id.* at 480 (citing *Honda*, 386 U.S. at 501), to be "unusually protective of claimants" seeking benefits, *id.* at 480 (internal quotation marks omitted); *see also Urie v. Thompson*, 337 U.S. 163, 169-70

(1949) (application of tolling to Federal Employers' Liability Act (FELA) statute of limitations was available because the "humane legislative plan" suggested that a plaintiff should not "waive[] his right to compensation" because of "blameless ignorance"); *Burnett*, 380 U.S. at 427-28 (tolling available because FELA was a "humane and remedial Act," and "the interests of justice require[d] vindication of the plaintiff's rights"); *Boechler*, 2022 WL 1177496, at *6 (tolling is especially appropriate for limitations periods in statutes that were designed to allow "laymen, unassisted by trained lawyers" to initiate claims).

B. The availability of equitable tolling does not hinge on whether the provision at issue has the "functional characteristics of a statute of limitations," Pet. App. 33a, as defined narrowly by the court below. Historically, courts applied tolling principles in the context of many different kinds of time limits, even those that did not determine the timing for filing a suit and were not "triggered by harm from the breach of a legal duty owed by the opposing party," *id*. at 30a.

First, courts of equity analogized to tolling principles whenever they were called upon to assess a defense grounded upon the "lapse of time," even when there was no applicable statute of limitations. *Lupton*, 38 U.S. at 385-86. In *Lupton*, for example, this Court concluded that equitable tolling was available in the context of a "general rule" of equity courts that objections to the rulings of a Virginia Orphan's Court should be brought within a "reasonable time." *Id.* at 386 (noting that there could have been grounds to "justify or excuse" the delayed challenge). Although this "general rule" was an equitable practice adopted to protect the "acknowledged jurisdiction" of the Orphan's Court and was triggered by the decision of the

Orphan's Court, *id.* at 385, rather than "the breach of a legal duty owed by the opposing party," Pet. App. 30a, this Court concluded that equitable tolling was available because the "general rule" requiring filings within a "reasonable time" was grounded in the equitable principle of laches and an "analogy" to the statute of limitations for the common law claim of account, which itself could be tolled in equitable circumstances. *Lupton,* 38 U.S. at 385-86 (noting that the prayer of the bill sought "in effect" to open the accounts of an executor).

Similarly, even before statutes of limitations existed, courts "recogniz[ed] the injustice of enforcing stale demands" and presumed that a debt or bond had been paid after a period of twenty years, 1 Wood, *supra*, § 1, 3, and that a trust had been extinguished after a similar "lapse of time," Agnell, *supra*, at 172. These equitable presumptions were decidedly not statutes of limitations that ran from the accrual of a cause of action, but rather were "established rule[s] . . . derived by analogy from the English statute of limitations." *See* 1 Wood, *supra*, § 1, at 3 (citing *Gregory v. Commonwealth*, 121 Pa. 611 (1888)). Nevertheless, because equitable presumptions were sufficiently "analogous" to statutes of limitations, *Cape Girardeau Cnty., to Use of Rd. & Canal Fund v. Harbison*, 58 Mo. 90, 96 (1874), fraud would suspend the presumption just as it would a limitations period, *Sherwood*, 21 F. Cas. at 1307.

For example, in *Prevost*, this Court considered allegations that deceased defendants had participated in a secret trust. *Prevost v. Gratz*, 19 U.S. 481, 492 (1821). Because of the lapse of time and "antiquity of the transaction," this Court presumed that the trust had been "lawfully discharged or extinguished," *id.* at

493, but nevertheless noted that fraud, if "imputed and proved," would disturb the presumption, *id*. at 497; *see* 2 Wood, *supra*, § 275, at 706 (citing *Prevost* to describe the "imputation of fraud" alongside limitations cases); *Hughes v. Edwards*, 22 U.S. 489, 497-98 (1824) (describing equitable "circumstances" in which a mortgagee could rebut the presumption of discharge of a mortgage after a certain period of time); *Piatt v. Vattier*, 34 U.S. 405, 416 (1835) (noting the possibility of tolling or "overcom[ing]" the presumption created by a defendant's adverse possession).

Second, courts applied tolling principles to statutory deadlines creating a borrower's right of redemption—the right to re-purchase a property in a given period—even though redemption laws did not create or function as statutes of limitations, as defined by the court below. *Reynolds v. Baker*, 46 Tenn. 221, 229-30 (1869). In *Reynolds*, the Tennessee Supreme Court considered a statute that gave real estate debtors a two-year right of redemption. *Id.* at 223. The court considered the impact of a Civil War-era amendment to the state's constitution providing that "no statute of limitations" would be operative during the years of the war. *Id.* Because there were "essential differences" between the redemption law, which was "strictly a right to re-purchase . . . within the prescribed time," *id.* at 227, and a statute of limitations, which prescribed the time at which an "action . . . can be maintained," *id.* at 225, the court held that the redemption law was not a statute of limitations under the constitutional amendment, *id.* Nevertheless, the same court concluded that there should be exceptions to the "general rule" of the redemption period, including "where the debtor was prevented by the fraud of the purchaser[] from redeeming within the statutory time,"

and in cases of "duress, imprisonment, overwhelming power, and the like." *Id.* at 229.

Clearly, the period established by redemption laws was not "triggered by harm from the breach of a legal duty owed by the opposing party." Pet. App. 30a. A right of redemption was a right "to have a re-conveyance of the land" and ran from the initial conveyance. *Reynolds*, 46 Tenn. at 226. Further, redemption laws did not "start the clock on seeking a remedy" from a "remedial entity," Pet. App. 31a, but rather created a right to re-purchase the property from the purchaser. Nevertheless, courts routinely applied tolling principles in this context. 2 Wood, *supra*, § 233, at 548 n.3 (noting that a mortgagor's right to redeem could be tolled by "special circumstances" (citing *Skinner v. Smith*, 1 Day 124, 127 (Conn. 1803)); *id.* at § 231, 558 (noting that, in cases of fraud, "a court of equity will let the mortgagor in to redeem, although more than the statutory period has elapsed"); *Michoud v. Girod*, 45 U.S. 503, 561 (1846) (Louisiana statute allowing prescription, or acquisition of title after a certain period, could be set aside in "a case of actual fraud").[2]

As this history makes clear, courts have held that the doctrine of equitable tolling is available in a variety of circumstances, including in the context of deadlines other than statutes of limitations.

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[2] More recently, some courts have analogized redemption statutes to statutes of repose which cannot be tolled, *see, e.g.*, *Jones v. Saxon Mortg.*, 537 F.3d 320, 327 (4th Cir. 1998) (right to redemption in the Truth in Lending Act is a "statute of repose," so "the time period stated therein is typically not tolled for any reason"), but others continue to permit tolling of the right to redemption, particularly in cases of "fraud or irregularity," *see, e.g.*, *Conlin v. Mortg. Elec. Registration Sys., Inc.*, 714 F.3d 355, 360 (6th Cir. 2013).

C. This history is consistent with this Court's recent cases, which have stated that tolling is presumptively available in the context of any statutory "[t]ime requirement," *Irwin*, 498 U.S. at 95, that addresses "the end[s] served by a statute of limitations," *Zipes*, 455 U.S. at 394.

In *Zipes*, this Court held that the time limit for filing charges with the EEOC under Title VII of the Civil Rights Act of 1964 could be equitably tolled. *Id.* at 398. As the Court explained, "filing a timely charge of discrimination with the EEOC is not a jurisdictional prerequisite to suit, but a requirement . . . *like* a statute of limitations." *Id.* at 393 (emphasis added). The deadline was like a statute of limitations because legislators "described its purpose as preventing the pressing of stale claims, the end served by a statute of limitations." *Id.* at 394 (internal citations omitted). Furthermore, this Court explained that it would "honor the remedial purpose of the legislation as a whole" to permit "tolling when equity so requires." *Id.* at 398.

Similarly, in *Young*, this Court considered the application of *Irwin* (extending the presumption of tolling to suits against the United States, *see supra* at 11) to a statute establishing a three-year "lookback period" applicable to the Internal Revenue Service. Specifically, the statute entitled government entities to receive priority status for claims they made during a bankruptcy proceeding, provided that the claim was for a tax "due within three years before the bankruptcy petition was filed." *Young*, 535 U.S. at 46. As this Court acknowledged, the lookback period was "unlike most statutes of limitations." *Id.* at 47. First, it barred "only some, and not all, legal remedies for enforcing the claim." *Id.* Second, it was not, strictly speaking, triggered by "the breach of a legal duty owed by the

opposing party," Pet. App. 30a, because the period began at the filing of an individual debtor's bankruptcy petition, *Young*, 535 U.S. at 46.

Despite these distinctions, this Court held that the "lookback period" was a "limitations period" subject to equitable tolling. *Id.* at 49. This Court focused on whether the statute "prescribes a period within which certain rights . . . may be enforced," *id.* at 47 (citing 1 Wood, *supra*, § 1, at 1), and furthered the policies of "repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities," *id.* (internal quotation marks omitted). These features mattered more than the statute's relationship to a breach of a legal duty. *Id.*

Finally, in *Scarborough*, this Court considered whether a timely application for attorneys' fees under the Equal Access to Justice Act (EAJA) could be amended after the thirty-day filing deadline. 541 U.S. at 406 (citing 28 U.S.C. § 2412(d)). It held that the deadline was not jurisdictional, and that a curative amendment could be allowed based on the "relation back" doctrine, *id.* at 417, an equitable "limitations principle[]" similar to equitable tolling. According to this Court, this equitable principle should generally apply to the government in the same way it applies to private parties. *Id.* at 421-22. The fact that the thirty-day period was not triggered by "the breach of a legal duty owed by the opposing party," Pet. App. 30a, but rather a final judgment in the action, *Scarborough*, 541 U.S. at 408, did not make *Irwin* inapplicable, *id.* at 422.

III. Equitable Tolling Should Be Available in the Context of § 5110(b)(1).

Section 5110 governs the "[e]ffective dates of awards" of compensation for veterans and provides that, unless "specifically provided otherwise . . . the effective date of an award . . . shall not be earlier than the date of receipt of application therefor" by the VA. 38 U.S.C. § 5110(a)(1). Section 5110(b)(1) provides an exception wherein the "effective date of an award . . . shall be the day following the date of the veteran's discharge," so long as the "application therefor is received within one year from such date of discharge or release" from the armed services. *Id.* § 5110(b)(1). In other words, § 5110(b)(1) creates a one-year "period within which certain rights"—namely, the right to retroactive compensation beginning at the date of discharge—"may be enforced," *Young*, 535 U.S. at 47.

The court below concluded that equitable tolling is categorically unavailable here because this statutory deadline does not function as a statute of limitations. This was wrong because, consistent with the long history of equitable tolling, this Court has held that equitable tolling is available for statutory deadlines that further the "same basic policies" as statutes of limitations, *id.*, even if they do not function exactly like a statute of limitations. Here, the history of the one-year period for filing retroactive claims makes clear that, much like a statute of limitations, it fosters "repose, elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities,'" *id.* (quoting *Rotella*, 528 U.S. at 555), and thus equitable tolling should be available, *id.*

In 1943, when lawmakers amended veterans' benefits laws to provide for retroactive benefits, they initially sought to provide for retroactive compensation

for service-related disabilities "notwithstanding the date of filing a claim therefor," *see* A Bill to Amend Veterans Regulations, H.R. 1551, 78th Cong. (1943). They believed that this provision would "increase the compensation of many veterans" by permitting retroactive benefits from the date of discharge, rather than the date of application. 89 Cong. Rec. 6213 (1943) (Rep. Robsion) (explaining that "[u]nder the present law [a veteran] can only secure compensation from the date he makes his application").

The VA pushed back, advocating for a one-year "limitation on the retroactive payment of compensation," *Effective Date for Entitlement to Pension or Compensation for Disability Resulting From Injury or Disability Incurred in Or Aggravated by Active Service*, Report on H.R. 1551 (July 27, 1943), in order to "prevent[] the pressing of stale claims," *Zipes*, 455 U.S. at 394. In accepting the VA's advice, Congress settled on the one-year limit because that limit furthered the "end[s] served by a statute of limitations," *id.* at 394. Significantly, § 5110(b)(1)'s one-year period was not enacted as a "shield for the government," *Honda*, 386 U.S. at 496; *see* Report on H.R. 1551, *supra,* at 2-3 (noting that the VA still anticipated making retroactive awards in the "far majority of cases," despite its advocacy for the one-year deadline), but rather to discourage claims that would be "difficult, if not impossible, to determine accurately," *id.* at 1. By preventing veterans from "defer[ring] any such claim as long as practicable," *id.*, lawmakers sought to establish "certainty about a plaintiff's opportunity for recovery," *Young*, 535 U.S. at 47, prevent plaintiffs from sleeping on their rights, *id.*, and prevent "fraudulent and unjust claims from starting up at great distances of time, when the evidence might no longer be within . . .

reach," *Sherwood*, 21 F. Cas. at 1307.

In short, the one-year limit serves the purpose of a statute of limitations—"to require the reasonably diligent presentation" of claims. *United States v. Kubrick*, 444 U.S. 111, 123 (1979). And as is the case with statutes of limitations, the limit does not serve that purpose when "extraordinary circumstances" prevent claimants who otherwise "diligently pursued" their claims from meeting the statutorily prescribed deadline, *Holland*, 560 U.S. at 663; *see Braun*, 77 U.S. at 222 (tolling appropriate when a party "has been disabled . . . by a superior power, without any default of his own").

In addition to serving the same "ends . . . [as] a statute of limitations," *Zipes*, 455 U.S. at 394, § 5110(b)(1) is housed within exactly the type of "humane," "remedial," and claimant-protective scheme in which the presumption in favor of tolling is most applicable, *Burnett*, 380 U. S. at 427-28. As this Court has acknowledged, Congress designed veterans' benefits statutes to be "'unusually protective' of claimants," *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 437 (2011) (citing *Heckler*, 467 U.S. at 106-07), "design[ing] [them] to function throughout with a high degree of informality and solicitude for the claimant," *id.* at 431, and anticipating that "the veteran [would] often [be] unrepresented during the claims proceedings," *Shinseki v. Sanders*, 556 U.S. 396, 412 (2009); Pet'r Br. 27-29.

Indeed, when legislators passed the benefits provision in 1943, during a "great and terrible war," 89 Cong. Rec. 6213 (1943) (Rep. Bennett), they planned to "simplify[] adjudicative practices and administrative procedure," and "correct certain inequalities arising under existing law," *id.* at 6210 (Rep. Rankin); *see id.*

at 6213 (Rep. Bennett) (describing a desire to "do all we can for those sturdy citizens who today are giving their all for the stars and stripes"). Lawmakers doubled down on that objective when they consolidated veterans' benefits laws into title 38 of the U.S. Code in 1958, Pub. L. No. 85-857, 72 Stat. 1226, again seeking to benefit disabled veterans by enabling them to "use [the law] with . . . confident understanding," H. R. Rep. No. 85-2259 (1958). In sum, the nature of the veterans' benefits provision—a remedial statute written with great solicitude for applicants who served their country—reinforces the conclusion that tolling should be available here.

Finally, as this Court recognized in *Honda*, the fact that tolling the limitations period for some claims would not affect the "amount of others' claims" also supports the view that equitable tolling should be available. 386 U.S. at 497. Here, a conclusion that tolling is available would not "affect the amount of others' claims," *id.*, as each veteran's entitlement to compensation is assessed independently.

* * *

Since our nation's Founding, courts have exercised the power to extend statutory deadlines when applying them "would be inequitable or unjust." 2 Story, *supra*, § 1521, at 738. Because of this "long history," *Holland*, 560 U.S. at 651, the presumption that equitable tolling is available has become "hornbook law," *Young*, 535 U.S. at 49, particularly for deadlines contained in "humane" and claimant-protective legislation, *Urie*, 337 U.S. at 170. The court below ignored this history, as well as this Court's precedent, making a "mockery" of Arellano's right to seek retroactive benefits, *Hanger*, 73 U.S. at 538. The decision of the court

below should not stand.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

ELIZABETH B. WYDRA
BRIANNE J. GOROD*
SMITA GHOSH
CONSTITUTIONAL
ACCOUNTABILITY CENTER
1200 18th Street NW, Suite 501
Washington, D.C. 20036
(202) 296-6889
brianne@theusconstitution.org

Counsel for Amicus Curiae

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* Counsel of Record