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# Troutman Pepper and Dominion Energy Pro Bono Team Turn to Nation's Highest Court as Fight Continues for Full Educational Benefits for Military Veterans

## Supreme Court Victory Would Support Millions of Post-9/11-Era Veterans with Expanded Educational Opportunities

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**RICHMOND, VA** – In their fight to secure full educational benefits potentially worth billions of dollars for about 1.7 million post-9/11-era veterans and counting, attorneys from [Troutman Pepper](#) and [Dominion Energy](#) today filed a [petition for a writ of certiorari](#), asking the Supreme Court to review the lower court ruling.

The case was brought by FBI Special Agent James R. Rudisill, a decorated U.S. Army veteran, against the Secretary of Veterans Affairs (VA) in 2015. It seeks to resolve how many months of educational benefits a veteran is entitled to under two different GI bills. Rudisill is represented pro bono by Troutman Pepper attorneys [Timothy McHugh](#), [Misha Tseytlin](#), [Kevin LeRoy](#), [Abbey Thornhill](#), and [Trey Smith](#), among others, and David DePippo from Dominion Energy.

Based on nearly eight years of qualifying service, many of which occurred on active duty in combat in Iraq and Afghanistan, Rudisill separately is entitled to educational benefits under both the Montgomery and Post-9/11 GI Bills. The VA concedes as much. Despite that, in order to access the generous Post-9/11 GI Bill benefits, the VA required Rudisill to first either exhaust or forfeit his remaining entitlement to Montgomery benefits, and limited his entitlement to Post-9/11 benefits to just 10 months, instead of the 36 months the program provides. The VA concedes it has applied this same forfeit-or-exhaust-first requirement to millions of veterans.

Until a December 15, 2022, ruling by an en banc panel of the United States Court of Appeals for the Federal Circuit reversing the ruling of a three-judge panel of the same court in July 2021, appeals courts agreed with Rudisill that the VA's forfeit-or-exhaust-first requirement was contrary to law when applied to long-serving veterans, like Rudisill, with enough service to separately qualify for benefits under both the Post-9/11 and Montgomery GI Bill programs.

"We are hopeful the U.S. Supreme Court will hear our case because, as the dissenting judges pointed out in the December ruling, the majority gave short shrift to the bulk of the statutory and regulatory text that would be

rendered moot or absurd based on the majority's reading," McHugh said. "This violates the pro-veteran canon of construction that the nation's highest court has employed in practice since very soon after the Revolutionary War to recognize that veterans' benefits legislation is meant to do just that – benefit veterans and their survivors."

Under Rudisill's view, when the law is applied correctly, he would be allowed to keep his earned Montgomery benefits, as well as obtain 36 months of Post-9/11 GI Bill benefits, and use those benefits as he sees fit, subject to Congress's long-standing 48-month cap on the usage of benefits under any combination of GI Bill programs. The VA's forfeit-or-exhaust-first requirement does not benefit Rudisill or any other long-serving veteran.

"I finished my service in 1999, and used the Montgomery GI Bill to help pay for law school, to the tune of about \$600 per month, in arrears. The rest of my tuition, books, and living expenses were paid by loans, which took me nearly 16 years to pay back. Today, the Montgomery benefits pay about \$2,200 per month. In stark contrast, benefits under the Post-9/11 GI Bill are equivalent to a full-scholarship to college, with generous stipends for living expenses, books, and fees. In short, these are life-changing benefits for veterans—setting them up to begin their new, post-service chapters successfully, and without the staggering student loan debt impacting so many in this country," said DePippo, Assistant General Counsel at Dominion Energy and a U.S. Coast Guard veteran. "The Supreme Court granting certiorari and ruling in Jim's favor would greatly and positively impact his and his family's lives, and it would be transformative for millions of veterans, their families, and their communities."

The petition for writ of certiorari highlights the following:

- The Federal Circuit's en banc decision breaks Congress' core promise in the GI Bills for post-9/11 era veterans by, for the first time in our nation's history, depriving veterans with multiple periods of qualifying service the full use of the 48 months of education benefits that they have earned. The result is that veterans with multiple periods of qualifying service—including veterans like Rudisill, who first served in peacetime before September 11, 2001, and then re-enlisted after the 9/11 terrorist attacks to serve again in wartime—cannot use the generous Post-9/11 Bill benefits that they earned with their wartime service, unless they first agree to suffer the penalty of giving up the right to a full 48 months of benefits that veterans with multiple periods of service have received for generations. The Federal Circuit never even attempted to explain why Congress would have wanted to adopt such an unprecedented, punitive regime, to the great detriment of our nation's veterans.
- Under the Federal Circuit's decision, millions of veterans face the same nonsensical penalty. The Department of Veterans Affairs' own data shows that over 2.6 million post-9/11 veterans already have exhausted or forfeited other GI Bill benefits to obtain Post-9/11 benefits, and that number continues to rise as veterans who enlist and re-enlist today continue to establish entitlement to education benefits, including under the Post-9/11 GI Bill program.

Case Highlights:

- Rudisill served three periods of active military service between 2000 and 2011 and applied for education benefits under the Montgomery GI Bill receiving 25 months and 14 days of the 36 months of benefits available under that program.
- After his final stint in the Army, Rudisill applied for education benefits under the Post- 9/11 GI Bill, which also provides 36 month of benefits and has a 48-month combined limit of benefits for veterans who have had multiple terms of service and use benefits under multiple programs.
- The VA claimed Rudisill was only entitled to the remaining 10 months and 16 days of the time allotted by the

Montgomery GI Bill.

- The U.S. Court of Appeals for Veterans Claims determined that Rudisill isn't limited to the 36 months given by the Montgomery GI Bill because he also qualifies for later benefits under the Post 9/11 Bill.
- S. Court of Appeals for the Federal Circuit Judges Pauline Newman, Timothy B. Dyk, and Jimmie V. Reyna heard arguments in the case in December 2020. The panel issued an opinion affirming the U.S. Appeals Court for Veterans Claims' decision in July 2021.
- The VA requested and was granted reconsideration before the full U.S. Court of Appeals for the Federal Circuit on Thursday, October 6, 2022. The court reversed the ruling of the three-judge panel in December 2022.

### **About Troutman Pepper**

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