

VIA ELECTRONIC FILING

March 2, 2021

Hon. Gregory O. Block
Clerk of the Court
U.S. Court of Appeals for Veterans Claims
625 Indiana Avenue, N.W., Suite 900
Washington, DC 20004

Re: *Wendell Andrews v. Denis McDonough, Secretary of Veterans Affairs*, No. 19-3227

Dear Mr. Block:

Pursuant to U.S. Vet. App. R. 30(b), Appellant Wendell Andrews hereby advises the Court of additional pertinent and significant authorities that have recently come to his attention and are relevant to a point argued orally on February 24, 2021, in the above-referenced case.

During the oral argument (56:23-59:10), the Court and counsel for Appellant discussed whether the principle set forth in *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 662-63 (2007)—that statutory repeals by implication are disfavored and will not be presumed—applies to statutory repeals of judicially created principles such as those in *Kutcherousky v. West*, 12 Vet. App. 369 (1999) and *Fletcher v. Derwinski*, 1 Vet. App. 394 (1991).

Appellant advises the Court of the following additional pertinent and significant authorities related to this point: *Midlantic Nat'l Bank v. N.J. Dep't of Env'tl. Prot.*, 474 U.S. 494, 501 (1986) (“[t]he normal rule of statutory construction is that if Congress intends for legislation to change the interpretation of a judicially created concept, it makes that intent specific”); *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256, 266-67 (1979); and *Rios v. Nicholson*, 490 F.3d 928, 931 (Fed. Cir. 2007) (the rule that “[s]tatutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles . . . ’ applies unless Congress clearly intended to abrogate the common law rule when enacting [the statute]. Congress’s intent to abrogate a common law rule may be shown (1) expressly where the statute ‘speaks directly’ to the question addressed by the common law . . . or (2) impliedly where the application of the common law rule would render an aspect of the statute superfluous or inoperative”) (citations omitted).

Respectfully submitted,

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