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NCLA Discourages Supreme Court from Upholding “Issue Exhaustion” in Social Security Benefits Cases

Willie Earl Carr, et al. v. Andrew M. Saul, Commissioner of Social Security; John J. Davis, et al. v. Saul

Washington, DC (January 4, 2021) – The New Civil Liberties Alliance, a nonpartisan, nonprofit civil rights group, today filed a joint [*amicus curiae*](#) brief with the Cato Institute in the U.S. Supreme Court in the consolidated cases of *Willie Earl Carr, et al. v. Andrew M. Saul, Commissioner of Social Security* and *John J. Davis, et al. v. Andrew M. Saul, Commissioner of Social Security*. The case concerns whether claimants seeking disability benefits under the Social Security Act must “exhaust” constitutional challenges to their benefits determinations before an Administrative Law Judge (ALJ) at the Social Security Administration (“SSA”) in order to obtain judicial review on that issue on later appeal in federal court.

Specifically, the Petitioners did not challenge the constitutionality of their ALJs’ appointments during their respective ALJ hearings, but they each raised a constitutional challenge on appeal in district court. The Eighth and Tenth U.S. Circuit Courts of Appeals closed the courthouse doors on the Petitioners’ Appointments Clause challenges, ruling that “issue exhaustion” precluded a challenge that was not first raised before the ALJ.

In the Supreme Court’s June, 2018 decision in [*Lucia v. Securities and Exchange Commission \(SEC\)*](#), the court held that SEC judges were “officers of the United States” who must be appointed by the President or the Head of a Department in accordance with the Appointments Clause. In August 2018, in direct response to *Lucia*, the Head of SSA ratified the appointments of all Social Security ALJs (whom a lesser official had appointed).

No federal law prohibits Petitioners and similarly situated Social Security claimants from raising a claim in federal court that they did not first raise before a Social Security ALJ. The SSA nonetheless asks the Supreme Court to adopt a rule forfeiting claimants’ constitutional rights for “prudential” reasons. Like other prudential rules, judge-made exhaustion is supposed to promote judicial efficiency, provide courts and litigants the benefits of an agency’s expertise, and compile a record for judicial review. But lower courts’ refusal to consider Petitioners’ Appointments Clause claims did not advance any of those purposes.

The lower courts need clear guidance about when—or if—courts may decline to exercise their jurisdiction to decide legal issues that do not depend on an agency’s expertise, discretion, or fact-finding. NCLA and Cato’s joint brief asks the Supreme Court to reverse the courts of appeals and return these cases to the lower courts for consideration on the merits.

NCLA released the following statements:

“Judge-made exhaustion rules lead courts to abdicate their judicial responsibility by closing the courthouse doors to people with viable legal challenges to the structure and authority of administrative agencies. NCLA is asking the Supreme Court to ensure that the lower courts hear these cases on the merits and thereby fulfill their constitutional role as a check on administrative overreach.”

—**Jared McClain, Litigation Counsel, NCLA**

“It makes no sense to find that a Social Security benefits applicant waives his right to raise constitutional claims in federal court if he fails to “exhaust” the claims by first raising them during administrative proceedings. The law encourages applicants to raise issues before an agency if the administrative law judge has some expertise on the issue; but Social Security ALJs have absolutely no expertise on constitutional law issues.”

—**Richard Samp, Senior Litigation Counsel, NCLA**

ABOUT NCLA

NCLA is a nonpartisan, nonprofit civil rights group founded by prominent legal scholar Philip Hamburger to protect constitutional freedoms from violations by the Administrative State. NCLA’s public-interest litigation and other pro bono advocacy strive to tame the unlawful power of state and federal agencies and to foster a new civil liberties movement that will help restore Americans’ fundamental rights.

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