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In Victory for NCLA, Supreme Court Unanimously Rejects “Issue Exhaustion” Requirement before ALJ

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

Washington, DC (April 22, 2021) – Today, the U.S. Supreme Court unanimously held that the lower courts erred in imposing an issue-exhaustion requirement on Social Security disability claimants. In *Carr v. Saul*, claimants challenged a judge-made version of the administrative exhaustion rule, a requirement that litigants at an administrative hearing must raise any legal arguments in support of their claim at each step of the administrative process or forfeit those arguments on appeal. The New Civil Liberties Alliance and the Cato Institute filed a joint [amicus brief](#) arguing that imposing issue exhaustion requirements is inappropriate when the issue does not depend on an agency’s discretion, expertise, or fact-finding.

In the Social Security system, claimants dissatisfied with initial determinations on their applications for disability benefits can request further review from a Social Security administrative law judge (ALJ), and then from the Appeals Council. After that, claimants proceed to the district court. In *Sims v. Apfel*, the Supreme Court held that Social Security claimants need not raise particular issues before the Appeals Council to preserve those issues for judicial review. But *Sims* left open whether an issue-exhaustion rule might apply to proceedings before ALJs.

In Justice Sotomayor’s [opinion](#) for the Court, the judgments of the Eighth and Tenth Circuit Courts of Appeal were reversed under the reasoning that petitioners could not have developed their Appointments Clause challenges in the Social Security Administration (SSA) ALJ proceedings given that: (1) the proceedings were non-adversarial; and (2)(a) the structural constitutional claims at issue were ill suited for agency adjudication because they fell outside the agency’s expertise; and (b) raising them would have been futile since the SSA ALJ could not have granted the claimants their requested relief.

Carr is one of several cases that arose in the aftermath of the Supreme Court’s 2018 decision in *Lucia v. SEC*, which held that the ALJs working for the Securities & Exchange Commission (SEC) were “Officers of the United States” who had not been appointed in a manner required by the Appointments Clause of the Constitution.

NCLA’s *amicus* briefs in *Lucia* and now *Carr* aim to ensure that agency adjudicators must afford people their constitutionally guaranteed rights. The Court’s decision in *Carr* makes certain that Article III courts will serve as a constitutional backstop and step in to enforce the Constitution when agencies can’t or won’t.

NCLA released the following statement:

“Just as NCLA argued in its *amicus* brief, the Court recognized today that it makes little sense to penalize litigants for failing to articulate constitutional challenges before ALJs who lack the expertise and authority to resolve such claims. This decision helps ensure that Article III judges will fulfill their constitutional duty to resolve structural challenges to agency adjudications when the agency can’t or won’t do so.”

— Jared McClain, Litigation Counsel, NCLA

For more information visit the case page [here](#).

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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