



April 29, 2021

To the Members of the United States Senate Committee on Finance:

The Association of Administrative Law Judges (“AALJ”) wishes to express its gratitude to the United States Senate Committee on Finance for its continued focus on issues impacting the Social Security Administration’s delivery of services to the American people. The AALJ is a local union of the International Federation of Professional & Technical Engineers (IFPTE), representing approximately 1,200 administrative law judges across the United States. As members of the Committee are aware, the logistical challenges presented by the COVID-19 pandemic have significantly affected the operations of all federal agencies. Nowhere is this more true than the Social Security Administration, whose employees are responsible for ensuring the well-being of millions of disabled children and adults, elderly persons, and individuals living in poverty who rely on Supplemental Security Income to meet their basic needs.

However, members of the Committee might not be aware that the current leadership of the Social Security Administration—Trump appointees Andrew Saul and David Black—exploited the pandemic to weaken the fundamental rights of persons applying for disability benefits. In particular, the Administrative Procedure Act (“APA”), which governs the adjudication of disability claims, entitles disability applicants to a formal hearing with an Administrative Law Judge (“ALJ”) appointed in accordance with the APA. *See, e.g., Carr v. Saul*, --- U.S. ---, 2021 WL 156608 (April 22, 2021). Yet, in late 2020, Commissioner Saul brazenly implemented a regulation (85 Fed. Reg. 73138, known informally as the “Appeals Council Rule”) that unlawfully allows the agency to assign disability hearings to unqualified attorneys rather than lawfully appointed ALJs whose independence is protected by the APA. *See Nash v. Bowen*, 869 F.2d 675, 678 (2d Cir. 1989) (noting that the APA exempts ALJs from performance appraisals).

Fortunately, Congress has the opportunity to correct this flagrant violation of the APA by passing the Congressional Review Act resolution introduced on April 1, 2021, by John B. Larson and Danny K. Davis. The resolution, if adopted, would overturn the regulation, thereby ensuring that applicants for disability benefits continue to have their cases heard by Administrative Law Judges—not handpicked attorneys who lack decisional independence.

Respectfully,

/s/Melissa McIntosh
AALJ President