No. 00-1669

In the Supreme Court of the United States

FLEETWOOD HOMES OF FLORIDA AND CRAWFORD & COMPANY, PETITIONERS

v.

LARRY G. MASSANARI, ACTING COMMISSIONER OF SOCIAL SECURITY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the Social Security Act, 42 U.S.C. 405(b)(1), and the Commissioner of Social Security's regulations, 20 C.F.R. 404.932(b), 416.1432(b), require that a disability claimant's employer and the employer's disability insurance carrier be permitted to intervene as parties in Social Security benefits determinations before the Social Security Administration.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A, at 1-35) is reported at 235 F.3d 1298. The judgment and order of the district court (Pet. App. B, at 1) is unreported, as are the district court's clarification order (App., *infra*, 1), and the report and recommendation of the magistrate judge (Pet. App. B, at 1-12).[1] The order

[1] Although Appendix B to the petition for a writ of certiorari contains the judgment of the district court, the recommendations and reports of the magistrate judge, and decisions of the Social Security Administration's Appeals Council, those documents are each paginated separately, beginning with page 1. As a result, there are, for example, four page fives in Appendix B, each in a separate decision. Accordingly, when citing Appendix B, we will

of the Social Security Administration's Appeals Council and that of the administrative law judge (App. B, at 1-3; App. B, at 1-5) are also unreported.

JURISDICTION

The opinion of the court of appeals was filed on December 14, 2000. The petition for a writ of certiorari was filed on March 8, 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Title II of the Social Security Act, 42 U.S.C. 401 *et seq.*, provides old-age, survivor, and disability benefits for insured individuals. Under 42 U.S.C. 405(b)(1), the Commissioner of Social Security must "make findings of fact, and decisions as to the rights of any individual applying for a payment." If there is a decision "which involves a determination of disability and which is in whole or in part unfavorable to such individual," then "[u]pon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father, husband, divorced husband, widower, surviving divorced husband, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Commissioner of Social Security has rendered, the Commissioner shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision." *Ibid.*

Although many systems of agency adjudication follow the judicial model of adversarial presentation, the

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attempt to identify which opinion or decision we are citing, unless context makes the opinion's identity obvious.

Social Security Act is not administered under that model. *Sims* v. *Apfel*, 530 U.S. 103, 110 (2000) (plurality opinion) (citing 2 K. Davis & R. Pierce, *Administrative Law Treatise* 103 (3d ed. 1994); B. Schwartz, *Administrative Law* 469-470 (4th ed. 1994)); *id.* at 117 (Breyer, J., dissenting) (noting "the nonadversarial nature of" Social Security Administration proceedings). "Social Security proceedings are inquisitorial rather than adversarial," and Administrative Law Judges (ALJs) have a "duty to investigate the facts and develop the arguments both for and against granting benefits." *Id.* at 110-111 (plurality opinion). The Commissioner's regulations, issued pursuant to 42 U.S.C. 405(a), similarly provide that the Social Security Administration (SSA) must "conduct the administrative review process in an informal, nonadversary manner." 20 C.F.R. 404.900(b). Consistent with that policy, the Commissioner has no attorney or other representative who opposes a benefits request before an ALJ. *Sims*, 530 U.S. at 111 (plurality opinion).

The Commissioner's regulations also address who may request a hearing and who may be a party to a hearing. See 20 C.F.R. 404.932, 416.1432. Under the regulations, an applicant "may request a hearing if a hearing is available under § 404.930. In addition, a person who shows in writing that his or her rights may be adversely affected by the decision may request a hearing." 20 C.F.R. 404.932(a), 416.1432(a). The applicant, "the other parties to the initial, reconsidered, or revised determination, and any other person who shows in writing that his or her rights may be adversely affected by the hearing, are parties to the hearing. In addition, any other person may be made a party to the hearing if his or her rights may be adversely affected by the decision, and the administra-

tive law judge notifies the person to appear at the hearing or to present evidence supporting his or her interest." 20 C.F.R. 404.932(b), 416.1432(b).

2. In 1994, Deborah D. Scott was injured on the job while employed by petitioner, Fleetwood Homes of Florida. Pet. App. A, at 3. In 1995, Scott filed an application for federal Social Security disability insurance benefits (and an application for Supplemental Security Income benefits which was denied). *Id.* at 3-4. She also filed a claim in Florida for workers' compensation; in that claim, she sought permanent total disability (PTD) benefits under state workers' compensation law. *Id.* at 4.

In 1996, petitioner Fleetwood and its workers' compensation insurance carrier, petitioner Crawford & Company, Inc., filed a motion to intervene in administrative proceedings on Scott's federal Social Security disability claim, which was then pending before an ALJ. Pet. App. A, at 4. Petitioners claimed that their rights could be "adversely affected" by the decision of the ALJ even though the federal government pays Social Security disability insurance benefits awards. Petitioners noted that they would have to pay Scott permanent total disability benefits if such benefits were awarded under Florida workers' compensation law. Florida law, petitioners further explained, limits permanent total disability benefits awards to cases of "catastrophic injury," and defines catastrophic injury by reference to standards established under Title II of the Social Security Act.[2] Were the ALJ to make a

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[2] Florida's Workers' Compensation Law, Fla. Stat. Ann. §§ 440 *et seq.* (West Supp. 2001), provides that "[o]nly a catastrophic injury as defined in s. 440.02 shall, in the absence of conclusive

finding of "catastrophic injury," they contended, the Florida Judge of Compensation Claims (JCC) might rely on that ruling to support an award of PTD benefits in favor of Scott—and against them—in state proceedings. *Id.* at 5.

The ALJ denied the motion to intervene. Pet. App. A, at 6; Pet. App. B (ALJ Dec.), at 2. Petitioners then sought review of the ALJ's decision before the Appeals Council of the SSA, which likewise concluded that petitioners were not entitled to intervene. The Appeals Council noted that (1) petitioners were not Scott's appointed representatives; (2) with respect to benefits, petitioners' rights were not adversely affected by the decision of the ALJ; (3) they were not parties to the ALJ decision; and (4) they would not be adversely affected by any decision the Appeals Council might make. Pet. App. B (Appeals Council Dec.), at 1-2. The Appeals Council also explained that the Social Security Act specifies when applicants and other parties are entitled to a hearing with respect to their rights under Titles II and XVI of the Social Security Act. In this case, petitioners had "not claimed any benefits or other

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proof of a substantial earning capacity, constitute permanent total disability. Only claimants with catastrophic injuries are eligible for permanent total disability. In no other case may permanent total disability be awarded." Fla. Stat. Ann. § 440.15(1)(b) (West Supp. 2001). Under Section 440.02(37)(f), "[c]atastrophic injury" is defined as "[a]ny other injury that would otherwise qualify under this chapter of a nature and severity that would qualify an employee to receive disability income benefits under Title II [42 U.S.C. 401 *et seq.*] * * * of the federal Social Security Act as the Social Security Act existed on July 1, 1992, without regard to any time limitations provided under that act." Fla. Stat. Ann. § 440.02(37)(f) (West Supp. 2001).

rights provided under Title II or XVI of the Act and ha[d] not established that such rights would be adversely affected." Pet. App. A, at 8; Pet. App. B (Appeals Council Dec.), at 2. Accordingly, the Appeals Council dismissed petitioners' request for review "because they [were] not a proper party" under the regulations. Pet. App. A, at 8; Pet. App. B (Appeals Council Dec.), at 3. See generally 20 C.F.R. 404.932, 416.1432.

3. a. Petitioners sought review in district court pursuant to 42 U.S.C. 405(g),[3] and the Commissioner moved to dismiss that action for lack of standing and lack of jurisdiction. Pet. App. A, at 9. On March 26, 1998, the magistrate judge issued a Report and Recommendation (Mar. 26 R&R) recommending that the motion be granted. See *ibid.*; Pet. App. B (Mar. 26 R&R), at 1-12. The magistrate judge explained that 42 U.S.C. 405(b)(1) directs the Commissioner to make findings of fact and decisions of law with respect to the rights of "any *individual applying for a payment* under this subchapter," and further provides for a hearing "[u]pon request by *any such individual* or *upon request by a wife, divorced wife*" or any other specified relative who makes a showing in writing that his or her rights may be prejudiced by any decision of the Commissioner of Social Security. Pet. App. B (Mar. 26 R&R), at 6.

Congress, the magistrate observed, "ha[d] taken great care to specifically name each individual who may seek an administrative determination," Pet. App. B

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[3] Section 405(g) provides in pertinent part: "Any individual, after any final decision of the Commissioner of Social Security made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action * * * . Such action shall be brought in the district court of the United States." 42 U.S.C. 405(g).

(Mar. 26 R&R), at 6, and had "limited benefit determinations to individuals," such as those (the applicant, his or her spouse, ex-spouse, parents, etc.) listed in the Act itself, *id.* at 7. Because the only persons entitled to request a benefits hearing were individuals, the magistrate reasoned, Congress "had no need to allow anyone other than an individual to seek judicial review of the Commissioner's final decision," and indeed Section 405(g) permits "any individual" to seek judicial review of a final decision made "after a hearing to which he was a party." *Ibid.* (quoting 42 U.S.C. 405(g)).

Turning to the Commissioner's regulations, the magistrate came to the same conclusion. The regulations specify that the applicant "and any other person who shows in writing that his or her rights may be adversely affected by the hearing" are considered parties to the hearing. Pet. App. B (Mar. 26 R&R), at 8. The magistrate acknowledged that the quoted passage could be read as broader than 42 U.S.C. 405(b)(1), because it uses the word "person" rather than "individual." Pet. App. B (Mar. 26 R&R), at 9. But the Commissioner had interpreted the phrase "any other person who shows in writing that his or her rights may be adversely affected" as a reference to the individuals specifically listed in Section 405(b)(1)—including spouses, ex-spouses, parents, etc.—who are entitled to a hearing if they show in writing that their rights under the Social Security Act will be adversely affected. *Id.* at 9-10. Thus, the magistrate explained, the Commissioner's interpretation of his own regulations would permit a "wife, divorced wife, widow, surviving divorced wife," etc. to seek a hearing or intervene, but would not allow a corporation or other unlisted individual to do so. *Ibid.* Because that construction was reasonable and consistent with the statute, the magis-

trate concluded that it is entitled to deference and should be upheld. *Id.* at 10-11.[4]

b. The district court rejected the magistrate's recommendation and report by a series of handwritten notations and brief orders concluding that petitioners are proper parties. Pet. App. A, at 11-12; App., *infra*, 1.

4. The court of appeals reversed. Pet. App. A, at 1-35. "Social security disability proceedings," the court observed, are "inquisitorial rather than adversarial." *Id.* at 22 (citing *Sims* v. *Apfel*, *supra*). The court explained that the SSA "has replaced normal adversary procedure with an investigatory model, where it is the duty of the ALJ to investigate the facts and develop the arguments both for and against granting benefits; review by the Appeals Council is similarly broad." *Ibid.* "The Commissioner has no representative before the ALJ to oppose the claim for benefits; neither is there any indication that he opposes claimants before the Appeals Council." *Id.* at 23. The non-adversarial model, the court stated, is also made "quite clear" by SSA regulations, which "expressly provide that the SSA 'conducts the administrative review process in an informal, nonadversary manner.'" *Id.* at 22-23 (quoting 20 C.F.R. 404.900(b)).

Petitioners' demand that they be permitted to intervene in an individual disability benefits case, in a posture adverse to the applicant, raised more than mere procedural concerns, the court of appeals ob-

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[4] The magistrate judge also noted that there was no indication in the record that (1) the Florida JCC would be bound to follow the determination of the Commissioner, or (2) the Florida JCC would not allow petitioners an opportunity to present their evidence in the state workers' compensation proceeding. Pet. App. B (Mar. 26 R&R), at 4 n.1; Pet. App. A, at 11.

served. Instead, it was a request for "an unprecedented broad order, revamping social security hearings, transforming a non-adversarial, inquisitorial system, established by Congress * * * to determine eligibility for disability benefits." Pet. App. A, at 34. Such a result, the court concluded, was not supported by the Act or the Commissioner's regulations. "Under the Act, the statutory provisions governing hearings in disability cases contemplate participation by only individuals with a stake in obtaining benefits." *Id.* at 25. Thus, the court stated, "[t]he statute speaks in terms of 'individuals applying for a payment,' 'his or her rights,' 'such individual or upon request by a wife, divorced wife, widow.'" *Id.* at 25-27 (quoting 42 U.S.C. 405(b)(1)). The court concluded that "[a]s corporate entities, it is clear that [petitioners] are not the individuals or specified persons enumerated by the Act or regulations with a potential stake in the award of social security benefits to a particular claimant," *id.* at 28-29, and that "[a]s a result, under the law, they are not proper parties to Scott's federal hearing." *Id.* at 29.

The court then turned to petitioners' justification for seeking intervention—the assertion that an award of Social Security disability benefits could influence the result of state workers' compensation proceedings in which petitioners have a financial interest. Pet. App. A, at 29. The court pointed out that, in this case, the ALJ's decision appeared not to have affected state proceedings. To the contrary, the JCC had "held that she had 'considered whether [Scott] has sustained a catastrophic injury which would entitle her to receive disability income benefits'" and "found that '[Scott's] injuries . . . are of such a nature and severity that they would qualify this Claimant to receive disability income benefits.'" *Id.* at 30. "In her opinion," the court

emphasized, "the JCC makes no reference to the prior decision of the ALJ to award benefits." *Ibid.* Thus, the court concluded, "[i]t appears clear from the record that the JCC applied social security standards yet made her own independent findings," and that such an approach "is in accordance with Florida case law." *Ibid.* See also *id.* at 32.

The court recognized that a federal ALJ's fact-findings apparently can be placed into the record of state proceedings to the extent they assist the JCC in making appropriate determinations. Pet. App. A, at 34. But that feature of state law, the court explained, could not justify a dramatic alteration in federal proceedings under the Social Security Act. "What the ALJ does with [his or her] findings," the court explained, "does not 'cost' [petitioners] anything. It is what the State of Florida allows the JCC, in the state proceeding, to do with those findings that concerns them." *Ibid.* As a result, the proper solution was not to "revamp[] social security hearings." *Ibid.* Instead, to the extent petitioners require relief, the court explained, their remedy lies "at the state level, in the reform of the Florida Workers' Compensation Law." *Id.* at 35.

ARGUMENT

The decision of the court of appeals is correct and does not conflict with any decision of this Court or any other court of appeals. Accordingly, further review is unwarranted.

1. Petitioners continue to press their claim that, as a matter of law, the Social Security Administration was required to permit them to intervene in proceedings on Debra Scott's application for Social Security disability benefits. The court of appeals properly rejected that claim. As this Court and the court of appeals have both

observed, Social Security proceedings are fundamentally investigatory rather than adversarial in nature. See *Sims* v. *Apfel*, 530 U.S. 103, 110-111 (2000) (plurality opinion); *id.* at 117 (Breyer, J., dissenting); Pet. App. A, at 22-23. There is no representative of the Commissioner who seeks to defeat benefits claims, nor any counsel for the defense; instead, the proceeding is informal, and the Administrative Law Judge is expected to investigate the facts and develop the arguments on both sides. See *ibid.*; 20 C.F.R. 404.900(b) (SSA "conduct[s] the administrative review process in an informal, nonadversary manner."). Petitioners' demand, if granted, would fundamentally alter the nature of Social Security claims administration. As the court of appeals explained, permitting intervention by entities with interests under state law that are adverse to the beneficiary's would "revamp[] social security hearings, transforming [the] non-adversarial, inquisitorial system" established by Congress and the Commissioner's regulations into adversary proceedings. Pet. App. A, at 34. There is no justification for such an alteration in adjudicative processes where, as here, the entity seeking intervention has no direct financial interest in the award of benefits the beneficiary seeks from the Social Security Administration.

Nor is there support for that result in the text of the Social Security Act or the Commissioner's regulations. The Social Security Act directs the Commissioner "to make findings of fact, and decisions as to the rights *of any individual applying for a payment* under" the Act. 42 U.S.C. 405(b)(1) (emphasis added). The Act is then very specific about who may seek a hearing with respect to that determination. If the determination is "in whole or in part *unfavorable to such individual*," the Commissioner must offer a hearing "[u]pon request

by *any such individual* or upon request by a wife, divorced wife, widow, surviving divorced wife," or any other listed legal or biological relative of the applicant "who makes a showing in writing that his or her rights may be prejudiced by any decision the Commissioner of Social Security has rendered." *Ibid.* (emphasis added).

The Social Security Act thus does not provide entities like petitioners a right to seek a hearing on individual disability benefits determinations. To the contrary, corporate employers and insurers are not included in the extensive list of those entitled to seek a hearing under 42 U.S.C. 405(b). Instead, the Act limits the right to seek a hearing on an individual benefits determination to "individuals," which is most naturally understood as encompassing natural persons. More important, the persons listed in Section 405(b)(1), in addition to being natural persons, are also persons (relatives of the applicant, etc.) who might have a direct stake in the grant or denial of benefits to the claimant under the Social Security Act, because their own entitlement to benefits under the Act might be affected by SSA's decision on the principal claim. The Act itself therefore furnishes no support for petitioners' contention that corporations, which have no entitlement to receive Social Security benefits, may intervene in individual benefits determinations.

The Commissioner's regulations similarly belie petitioners' contention. As explained above, 42 U.S.C. 405(b)(1) provides a list of individuals entitled to seek an administrative hearing upon a "showing in writing that his or her rights may be prejudiced by any decision the Commissioner of Social Security has rendered." Echoing that language, the Commissioner's regulations provide that the applicant and any other "person who shows in writing that his or her rights may be ad-

versely affected by the decision may request a hearing," 20 C.F.R. 404.932(a), and "are parties to the hearing," 20 C.F.R. 404.932(b). As the magistrate judge pointed out (Pet. App. B (Mar. 26 R&R), at 9-10), the Commissioner has interpreted the phrase "any other person who shows in writing that his or her rights may be adversely affected by the hearing" in his regulations as "limited to any other person who may request a hearing under 42 U.S.C. 405(b)(1)," *e.g.*, a "wife, divorced wife, widow, surviving divorced wife," etc. That construction of the Commissioner's regulations is reasonable and thus is entitled to deference. See also *id.* at 10-11.

Petitioners, moreover, have failed to offer any compelling reason why they should have been permitted to intervene. As the court of appeals explained, the Florida Judge of Compensation Claims who handled the state proceedings did *not* rely on or even refer to the findings of the ALJ in this case. Pet. App. A, at 30-32.

2. Petitioners nonetheless argue (Pet. 6) that the court of appeals' decision conflicts with this Court's decision in *Califano* v. *Yamasaki*, 442 U.S. 682 (1979), and with the Seventh Circuit's decision in *Attorney Registration & Disciplinary Commission* v. *Schweiker*, 715 F.2d 282 (1983). Neither claim of conflict is correct.

Califano v. *Yamasaki* involved a class action, brought by Social Security beneficiaries under 42 U.S.C. 405(g), to challenge recoupment procedures under the Social Security Act. This Court held that Section 405(g)'s use of the word "individual" did not preclude aggrieved individuals from seeking relief through a class action. 442 U.S. at 698-703. Section 405(g), the Court explained, did not expressly prevent class relief, and by its terms did not purport to create an exception to the Federal Rules of Civil Procedure,

which authorize class actions. *Id.* at 700. Moreover, the court continued, many other statutes speak in terms of individual plaintiffs, but class relief has always been thought available with respect to them. *Ibid.*

Yamasaki, however, did not address who may intervene in agency proceedings under Section 405(b), much less hold that entities with no direct stake in an award of Social Security benefits may intervene to oppose the applicant's request. Instead, *Yamasaki* merely held that "individuals" (*i.e.*, natural persons) who are otherwise entitled to seek judicial review under Section 405(g) may utilize the class action mechanism provided by the Federal Rules of Civil Procedure. It thus nowhere suggests that corporations are "individuals" within the meaning of the Act, or that corporate employers and insurers with no direct stake in an award of disability insurance benefits under the Act may be deemed to be the "individual applying for a payment" of benefits or "a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father," etc. entitled to a hearing under Section 405(b)(1).

Petitioners' reliance on *Schweiker*, 715 F.2d at 289-290, is likewise misplaced. Like *Yamasaki*, *Schweiker* did not involve the effort of an employer or insurer to intervene in an individual employee's claim for benefits. Instead, in that case, the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois sought judicial review of an SSA ruling that was adverse to it, that was issued in response to its inquiry, and in which it had a direct financial interest. In particular, after the Disciplinary Commission had "paid $180,000 of its own money into the social security fund" to secure insurance for its employees, *id.* at 289, the SSA issued a blanket ruling that the Disciplinary Com-

mission's employees were not covered by the Social Security program. *Id.* at 288-289. Under those circumstances, the court of appeals concluded that the Commission could be considered an "individual" entitled to seek review of the SSA's decision under Section 405(g). "A company that paid premiums year in and year out for group life insurance for its employees and then was told by the insurance company that the policy was cancelled," the court stated, "would have standing to sue for a declaration that it was still in force." *Id.* at 289. And, absent an ability to seek review under Section 405(g), the Disciplinary Commission would be left "with no possible avenue of judicial review" of a ruling issued in response to its own requests. *Id.* at 290.

Here, in contrast, petitioners do not seek review of an administrative decision made with respect to them under the Act in response to their own submission. Instead they seek to intervene in an individual benefits proceeding initiated by another person before the SSA. Moreover, each of the considerations that led the court of appeals to permit the Disciplinary Commission to seek judicial review in *Schweiker* is absent here. While the appellant there had "a vital interest in knowing whether it ha[d] gotten anything for" its $180,000 "expenditure," 715 F.2d at 289, petitioners have no comparably direct pecuniary interest under the Act in the outcome of the proceeding. And unlike the appellant in *Schweiker*, petitioners cannot claim that they will have no opportunity to obtain judicial review if they ultimately are harmed by the ALJ's findings. If the ALJ's findings are relied upon in state workers' compensation proceedings—and thus far they have not —petitioners will have the opportunity to challenge any adverse effects of that reliance on judicial review in state court.

The Seventh Circuit's decision in *Schweiker*, furthermore, pre-dates this Court's decisions in *Shalala* v. *Illinois Council on Long Term Care, Inc.*, 529 U.S. 1 (2000), and *Bowen* v. *Michigan Academy of Family Physicians*, 476 U.S. 667 (1986), which cast doubt on the continuing significance of *Schweiker*'s reasoning, even in the fact-specific context in which it arose. Because the court of appeals in *Schweiker* construed 42 U.S.C. 405(h) as foreclosing judicial review through *any* means other than Section 405(g), 715 F.2d at 286-287, that court thought it necessary to do "some violence to the everyday meaning of 'individual'" in Section 405(g) to ensure that an entity with a direct stake in the controversy could obtain judicial review. *Id.* at 289-290. Three years after *Schweiker* was decided, however, *Michigan Academy* clarified that Section 405(h) does not necessarily foreclose judicial review under 28 U.S.C. 1331 *if* review cannot be obtained under Section 405(g) and the result would be a complete preclusion of judicial review. As this Court explained in *Illinois Council*, Section 405(h) demands the "'channeling' of virtually all legal attacks through the agency," 529 U.S. at 13, but it does not apply where the effect "would not simply channel review through the agency, but would mean no review at all" by any party at any time, *id.* at 19.

In any event, the extent or availability of administrative review for particular parties and particular issues is always a question of Congress's intent. *United States* v. *Fausto*, 484 U.S. 439 (1988); *Block* v. *Community Nutrition Inst.*, 467 U.S. 340 (1984). The Social Security Act nowhere evinces an intent to give employers a right to intervene in otherwise non-adversarial proceedings on an individual employee's application for disability benefits under the Act. For that reason, the

decision of the court of appeals does not warrant further review.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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