No. 06-1343

In the Supreme Court of the United States

CLAIRE G. COLLIER, PETITIONER

v.

MICHAEL J. ASTRUE, COMMISSIONER OF SOCIAL SECURITY

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the "20/40 Rule," which requires an applicant for Social Security Disability Insurance to have received 20 quarters' worth of earnings over the last 40 calendar quarters in order to qualify for benefits, see 42 U.S.C. 423(c)(1)(B)(i), is consistent with the equal protection and substantive due process requirements of the Fifth Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-9a) is reported at 473 F.3d 444. The decision of the district court (Pet. App. 10a-31a) and recommended ruling of the magistrate judge (Pet. App. 32a-58a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on January 4, 2007. The petition for a writ of certiorari was filed on April 4, 2007. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner Claire G. Collier was diagnosed with amyotrophic lateral sclerosis (ALS) in late 2003. Pet. App. 1a-2a. In January 2004, she applied for Social

Security Disability Insurance (SSDI) benefits. *Id.* at 2a. Persons with ALS who are under age 65 and qualify for such benefits become eligible to receive Medicare hospital insurance benefits as well. See 42 U.S.C. 426(b)(2)(A)(i), 426(h).

Petitioner did not qualify for SSDI benefits, however, because she did not satisfy the "20/40 Rule," 42 U.S.C. 423(c)(1)(B)(i). That Rule provides that individuals between the ages of 31 and 62 qualify for SSDI only if they have earned 20 quarters of qualified earnings over the 40 calendar quarters directly preceding the one for which benefits are to begin. 42 U.S.C. 423(c)(1); see 20 C.F.R. 404.130(b)(2). As a practical matter, this means that a person must have worked, and paid a certain amount of Social Security taxes, in at least five of the ten years leading up to the onset of his or her disability. It is undisputed that petitioner, who left the workforce in 1994 to become a stay-at-home mother, did not meet this requirement. Pet. App. 3a. Consequently, she was denied SSDI benefits. *Id.* at 2a.

2. After exhausting her administrative remedies, petitioner sought review in district court, claiming that the 20/40 Rule violated equal protection principles by discriminating against women between the ages of 31 and 41 who leave the workforce to raise children. Pet. App. 33a, 42a-43a. Petitioner further alleged that, as applied to her, the statute violated the substantive due process requirements of the Fifth Amendment because it is contrary to the policies underlying the Social Security program, the Medicare program, and congressional initiatives seeking to aid those with ALS, and therefore the statute is irrational. See *id.* at 28a-29a.

Applying rational basis review, the district court rejected both arguments. Pet. App. 18a, 26a-27a, 30a. The

court determined that Congress's decision to limit the availability of benefits to individuals with a recent history of Social Security-taxable income serves two legitimate governmental purposes: (1) focusing SSDI benefits on those persons with a demonstrated dependence on employment income, and (2) maintaining the program's fiscal solvency. *Id.* at 24a-25a. With regard to petitioner's equal protection challenge, the court found that she had "failed to cite any evidence" that Congress had intentionally discriminated against women in enacting the statute. *Id.* at 23a-24a.

3. The court of appeals affirmed. Pet. App. 1a-9a. Although it recognized that petitioner had offered evidence suggesting that the 20/40 Rule has a disproportionate impact on women, the court of appeals agreed with the district court that petitioner had offered "no evidence that Congress was motivated by an 'invidious discriminatory purpose' in enacting" the Rule. *Id.* at 6a-7a. Because petitioner had shown, at most, that the statute was enacted "in spite of," not "because of," its potential adverse effect on women, the court of appeals applied rational basis review. *Ibid.* (quoting *Johnson* v. *Wing*, 178 F.3d 611, 615 (2d Cir. 1999), cert. denied, 528 U.S. 1162 (2000), and citing *Personnel Adm'r* v. *Feeney*, 442 U.S. 256, 279 (1979)). The court concluded that the statute is constitutional because "Congress could rationally choose to distribute a scarce resource among those who both have contributed more recently to the system and have indicated, by their actions, that they are more dependent on the salaries they draw from being employed." *Id.* at 8a. "[F]or similar reasons," the court of appeals rejected petitioner's due process claim. *Ibid.* (recognizing Congress's "wide latitude to create classifications that allocate noncontractual benefits under a

social welfare program") (quoting *Califano* v. *Goldfarb*, 430 U.S. 199, 210 (1977) (plurality opinion)). Although the court of appeals sympathized with petitioner's situation, it recognized that any remedy would have to be provided by Congress, not the court. *Id*. at 9a.

ARGUMENT

Petitioner contends that the court of appeals erred in rejecting her constitutional challenge to the 20/40 Rule. That claim does not merit this Court's review. The court of appeals correctly held, consistent with the precedent of this Court and the decisions of every court of appeals to have considered the issue, that 42 U.S.C. 423(c)(1)(B)(i) satisfies the equal protection and due process requirements of the Fifth Amendment.

1. Petitioner urges this Court to conclude that the 20/40 Rule in 42 U.S.C. 423(c)(1)(B)(i) is irrational and thus unconstitutional under the equal protection and due process requirements of the Fifth Amendment. Pet. 10-11. As petitioner acknowledges (Pet. 20-21), however, every federal court to have addressed the question has concluded otherwise. The statute rationally advances legitimate government interests in (1) providing individuals benefits only as a replacement for lost earnings, and (2) supporting the solvency of the Social Security fund. See Pet. App. 8a; *Harvell* v. *Chater*, 87 F.3d 371, 373 (9th Cir. 1996) (per curiam); *Tuttle* v. *Secretary of Health, Educ. & Welfare*, 504 F.2d 61, 62-63 (10th Cir. 1974).

Although petitioner contends (Pet. 16-19, 25-26) that the statute is not sufficiently tailored to achieve those interests, "courts are compelled under rational-basis review to accept a legislature's generalizations even when there is an imperfect fit between means and ends."

Heller v. *Doe*, 509 U.S. 312, 321 (1993). "A classification does not fail rational-basis review because 'it is not made with mathematical nicety or because in practice it results in some inequality.'" *Ibid.* (quoting *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970)). Rather, classifications under the Social Security Act must be sustained unless they are "lacking in rational justification." *Weinberger* v. *Salfi*, 422 U.S. 749, 768 (1975) (quoting *Flemming* v. *Nestor*, 363 U.S. 603, 611 (1960)); see generally *id.* at 768-776; see also *United States R.R. Retirement Bd.* v. *Fritz*, 449 U.S. 166, 177 (1980) (classification must be sustained unless it is "patently arbitrary or irrational").

Accordingly, a classification under the Social Security Act must be sustained if Congress "could rationally have concluded" that the particular qualification would protect against the consequence to which it is directed —here, that disability benefits not be extended beyond persons who have had sufficiently long and recent employment to indicate that they are probably dependent upon their earnings—and that "the expense and other difficulties of individual determinations justified the inherent imprecision of a prophylactic rule." *Salfi*, 422 U.S. at 777. The 20/40 Rule readily satisfies that test.

2. Petitioner additionally contends (Pet. 15) that Section 432(c)(1)(B)(i) violates the equal protection component of the Fifth Amendment's Due Process Clause because it "is predicated on women of child-bearing age leaving the workforce" and thus invidiously discriminates against women.

In attempting to show an invidious purpose, petitioner relies (Pet. 15-16) upon statements made by the Social Security Administration that recognize that some women leave the labor force in order to care for their

children and may depend on the Social Security benefits of their husbands. As the court of appeals in this case explained, however, the recognition that a statute may adversely impact a particular group of individuals does not render the statute unconstitutional. Pet. App. 7a. It is only where the statute was enacted "because of," not "in spite of," that adverse effect that the statute violates equal protection requirements. *Feeney*, 442 U.S. at 279. Petitioner has offered no evidence that Congress enacted Section 432(c)(1)(B)(i) "because of" its alleged disproportionate effect on women. Pet. App. 6a-7a. Rather, as every court of appeals that has considered the issue has recognized, Congress adopted the 20/40 Rule in order to provide a "reliable means of limiting [disability] protection to those persons who have had sufficiently long and sufficiently recent covered employment to indicate that they probably have been dependent upon their earnings." *Id.* at 7a (quoting S. Rep. No. 2388, 85th Cong., 2d Sess. 12-13 (1958)); *Harvell*, 87 F.3d at 373; *Tuttle*, 504 F.2d at 63. The court of appeals correctly applied the precedent of this Court, consistent with the decisions of other courts of appeals, to reject petitioner's constitutional challenge to Section 423(c)(1)(B)(i).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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