Eight Amici Join NCLA's Cert. Petition With the Supreme Court to Nix *Brand X* Deference

Baldwin v. United States

WASHINGTON, DC, October 31, 2019 – The New Civil Liberties Alliance is grateful for the overwhelming support our **Petition for a Writ of Certiorari** with the U.S. Supreme Court has received. The petition seeks to overturn the so-called *Brand X* doctrine. Amici curiae, or friends of the Court, submitted briefs urging the Court to hear NCLA's case representing Howard and Karen Baldwin against the Internal Revenue Service. NCLA's petition seeks review of the Ninth Circuit's decision in *Baldwin v. United States.* The two questions presented before the Court are: 1) Should *Brand X* be overruled? and (2) What, if any, deference should a federal agency's statutory construction receive when it contradicts a court's precedent and disregards traditional tools of statutory interpretation, such as the common-law presumption canon? **See full case summary here**.

"The Constitution is meant to protect the people's liberties from intrusion by the government, not vice versa. Yet *Brand X* protects government litigants from the people by instructing federal judges to side with the government. The Court should heed the clarion call of these amici curiae and grant certiorari in this case." – **Adi Dynar, NCLA Litigation Counsel**

Excerpts from Amici Curiae submitted in support of NCLA's Petition for a Writ of Certiorari:

- Administrative agencies are "weaponizing *Brand X*" to undermine the people's liberties. "Congressional legislation responding to judicial precedent interpreting statutes reflects healthy operation of the separation of powers," which "is a central feature of our system of checks and balances." – *Americans for Prosperity and Cause of Action Institute*

- *Brand X* deference "occasion[s] a disconcerting disruption of the constitutional balance between the separated powers." The IRS's "transparently superficial exercise," "should not be rewarded" with deference merely because IRS went "through the motions of a *Chevron*-begging rulemaking."—*Cato Institute and NFIB Small Business Legal Center*

- "*Brand X* is contrary to the plan of the Administrative Procedure Act which vests judicial review of legal questions in the courts. The Court's decision in *Brand X* abdicates the judiciary's duty under section 706 of the … Act … to rule on questions of law and to invalidate agency actions that are contrary to statute." – *Claremont Institute's Center for Constitutional Jurisprudence*

- *Brand X* "enables federal administrative agencies to effectively rewrite state laws," and "allows federal executive bureaucracies"—despite the Court's "presumption against preemption in the absence of a 'clear statement'"—to also "override state court jurisprudence." – *Goldwater Institute*

- *Brand X* deference is a "ubiquitous problem in administrative law," and "a liberty destroying cocktail." The Court should "begin to crawl back from the abyss by reasserting Article III power and abandoning *Brand X*." – *The National Right to Work Legal Defense Foundation, Inc.*

- It is important that courts do not give "reflexive deference" to agency interpretations of Congressional silence, especially "when the silence signals that the common law tacitly supplies a legal presumption." – *The New England Legal Foundation*

ABOUT NCLA

NCLA is a nonprofit civil rights organization 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. For more information visit us online: **NCLAlegal.org**.

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