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NCLA Files Petition with the U.S. Supreme Court Seeking to Abolish Brand X Deference

The petitioners in Baldwin v. United States are the Hollywood producers of the film "Ray" (2004)

WASHINGTON, DC, September 16, 2019 — The New Civil Liberties Alliance today filed a **Petition for a Writ of Certiorari** with the U.S. Supreme Court seeking to overturn the so-called *Brand X* doctrine. Under the Court's 2005 case, **National Cable & Telecommunications Ass'n v. Brand X Internet Services**, federal courts are supposed to defer to federal agencies' reasonable statutory interpretations even when those interpretations contradict a previous court ruling interpreting the same statute. Lower federal courts have found this rule to be unworkable, and federal agencies have taken advantage of *Brand X* deference in ways that deny due process and fair notice to people like Howard and Karen Baldwin.

NCLA's petition seeks review of the United States Court of Appeals for the Ninth Circuit's decision in *Baldwin v. United States*. The two questions presented before the Court are the following: 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?

The Baldwins are producers of multiple films including the Academy Award-winner, *Ray* (2004), about the life of singer Ray Charles. But they are also law-abiding Americans who had overpaid their 2005 income taxes. Four months before the October 15, 2011 deadline for refiling, they mailed their refund claim for \$167,663 in overpaid taxes to the Internal Revenue Service by regular United States mail. But the IRS alleges it never received their refund claim and refused to pay. The IRS also argued that a new regulation the agency issued in August 2011 ended the common-law mailbox rule for refund claims.

The Baldwins were forced to sue the IRS to get their money back, and they won at trial in the U.S. District Court for the Central District of California, which upheld the common law mailbox rule under a 1992 court of appeals precedent. On appeal, however, the Ninth Circuit, invoking the *Brand X* doctrine, decided that it had to defer to the IRS's new regulation over the court's own precedent. The IRS's regulation did not allow the use of extrinsic evidence to prove the Baldwins mailed their tax return on time. The court gave *Chevron* deference to IRS's interpretation and reversed the favorable outcome the Baldwins had obtained after trial in district court.

NCLA is asking the Court to grant certiorari to revisit *Brand X* in order to abolish the doctrine or say that it does not apply when a previous court ruling interpreted the same statute using traditional tools of statutory interpretation.

"The Brand X doctrine gives litigants like the Baldwins a Hobson's Choice—follow court precedent and thereby violate federal regulations or follow the federal regulations and thereby violate court-set precedent. Brand X is incompatible with the Constitution. The Supreme Court should take the Baldwins' case and recommit the Nation to the rule of law." — **Adi Dynar, NCLA Litigation Counsel**

“This is the case opponents of Brand X deference have been waiting for. You would be hard-pressed to find the injustice at the heart of Brand X illustrated more clearly or set up for reconsideration more cleanly. A world where federal agencies can overrule the prior statutory interpretations of the federal courts has proven to be totally unworkable, and this case provides the U.S. Supreme Court a golden opportunity to correct course.” – **Mark Chenoweth, NCLA Executive Director and General Counsel**

See the full case summary [here](#).

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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