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Media Inquiries: [Judy Pino](#), 202-869-5218

NCLA Reply Brief Calls on U.S. Supreme Court to Overrule *Brand X* Judicial Deference Doctrine
Baldwin v. United States

WASHINGTON, DC, December 23, 2019 – The New Civil Liberties Alliance today filed a [reply brief](#) on behalf of clients, Howard and Karen Baldwin in their case against the Internal Revenue Service. NCLA’s brief criticizes the government’s backwards idea that it should be able to ignore federal court decisions it does not like under *Brand X*, a judicial deference doctrine that has become a game-changer in favor of government litigants since the Supreme Court created it in 2005.

The Baldwins were forced to sue the IRS after the agency said it never received their tax refund claim. The Hollywood couple, who produced the Academy Award winning movie, *Ray* (2004) about the life of singer Ray Charles, won at trial in federal District Court. On appeal, however, the Ninth Circuit, invoking the *Brand X* doctrine, deferred to the IRS’s new regulation over the court’s own precedent. That regulation, put in place two months *after* the Baldwins filed their claim, did not allow testimony to be introduced at trial. Thus, *Brand X* single-handedly reversed the favorable – and just- outcome the Baldwins had obtained.

This case offers the Supreme Court a golden opportunity to put an end to the damage and injustice *Brand X* is doing to people like the Baldwins. When federal agencies get to ignore federal court decisions, it puts citizens and judges in an impossible bind. Citizens cannot figure out when law applies to them, and they cannot get a fair trial from an impartial judge. At the same time judges who must defer to the government litigant before them on an interpretation of the law cannot do their job to say what the law is or uphold their oaths to “administer justice without respect to persons” and “impartially discharge...[their] duties. Granting certiorari is imperative in this case. *Brand X* is unworkable, unconstitutional, and a direct assault on judicial authority.

NCLA release the following statements:

“The IRS appears willing to sacrifice the Constitution by asserting its authority to overturn court decisions it dislikes. This case presents a historic opportunity for the Court to confront and correct *Brand X*. Otherwise, good, independent judicial analysis will be routinely overturned by sloppy, self-interested, outcome-driven agency regulations.” – **Adi Dynar, NCLA Litigation Counsel**

“I doubt these talented movie producers have ever come across a more sinister storyline than the one the IRS has conjured up against them. The Administrative State is truly the villain here. No government agency should have the power to ignore federal court interpretations of statutes. The Supreme Court is ultimately going

to have to choose between upholding *Brand X* and upholding the Constitution.”—**Mark Chenoweth, NCLA Executive Director and General Counsel**

NCLA is asking the Court to revisit *Brand X* and either 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. NCLA expects to learn whether the court will grant certiorari in January or February. **Read 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**.