Supreme Court of the United States

Howard L. Baldwin, et ux. v. United States

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

No. 19–402. Decided February 24, 2020

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, dissenting from the denial of certiorari.

Under *Chevron* deference, courts generally must adopt an agency's interpretation of an ambiguous statute if that interpretation is "reasonable." *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U. S. 837, 844 (1984). Usually, the agency interprets the statute before any court has considered the question. But sometimes, the agency advances an interpretation after a court has already weighed in. In the latter instance, we have held that it "follows from *Chevron*" that a court must abandon its previous interpretation in favor of the agency's interpretation unless the prior court decision holds that the statute is unambiguous. *National Cable & Telecommunications Assn.* v. *Brand X Internet Services,* 545 U. S. 967, 982 (2005).

This petition asks us to reconsider *Brand X.* In 1992, the Ninth Circuit interpreted a deadline for requesting a refund from the Internal Revenue Service (IRS). See *Anderson* v. *United States,* 966 F. 2d 487, 489 (interpreting 26 U. S. C. §7502). Nineteen years later—and two months after petitioners claim to have mailed their paperwork to the IRS—the Treasury Department adopted a different interpretation through an informal rulemaking. See 26 CFR § 301.7502–1(e)(2)(i) (2012). When petitioners sued the IRS to recover their refund, the Ninth Circuit followed *Brand X,* deferred to the agency's new interpretation, and rejected petitioners' claim. 921 F. 3d 836, 843 (2019).

Although I authored *Brand X,* "it is never too late to 'surrende[r] former views to a better considered position.'" *South Dakota* v. *Wayfair, Inc.,* 585 U. S. ___, ___ (2018) (THOMAS, J., concurring) (slip op., at 1) (quoting *McGrath* v. *Kristensen,* 340 U. S. 162, 178 (1950) (Jackson, J., concurring)). *Brand X* appears to be inconsistent with the Constitution, the Administrative Procedure Act (APA), and traditional tools of statutory interpretation. Because I would revisit *Brand X,* I respectfully dissent from the denial of certiorari.

I

My skepticism of Brand X begins at its foundation—*Chevron* deference. In 1984, a bare quorum of six Justices decided *Chevron.* The Court reasoned that "if [a] statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency's answer is based on a permissible construction of the statute." 467 U. S., at 843. The decision rests on the fiction that silent or ambiguous statutes are an implicit delegation from Congress to agencies. *Id.,* at 843–844. *Chevron* is in serious tension with the Constitution, the APA, and over 100 years of judicial decisions. * * *

II

Even if *Chevron* deference were sound, I have become increasingly convinced that *Brand X* was still wrongly decided because it is even more inconsistent with the Constitution and traditional tools of statutory interpretation than *Chevron.*

A

By requiring courts to overrule their own precedent simply because an agency later adopts a different interpretation of a statute, *Brand X* likely conflicts with Article III of the Constitution. The Constitution imposes a duty on judges to exercise the judicial power. That power is to be exercised "for the purpose of giving effect to the will of the Legislature; or, in other words, to the will of the law." *Osborn* v. *Bank of United States,* 9 Wheat. 738, 866 (1824) (Marshall, C. J., for the Court). But *Brand X* directs courts to give effect to the will of the Executive by depriving judges of the ability to follow their own precedent. This rule raises grave Article III concerns, no less than if it allowed judges to substitute their policy preferences for the original meaning of a statute.

The Article III duty to decide cases even when the Executive disagrees with the conclusion has long been recognized by this Court. In a statutory interpretation case in 1841, the Court acknowledged "the uniform construction given to the act … ever since its passage, by the Treasury Department," but stated that "if it is not in conformity to the true intendment and provisions of the law, it cannot be permitted to conclude the judgment of a Court of justice." *Dickson,* 15 Pet., at 161. Justice Story, writing for the Court, admonished that

> "it is not to be forgotten, that ours is a government of laws, and not of men; and that the Judicial Department has imposed upon it, by the Constitution, the solemn duty to interpret the laws, in the last resort; and

> however disagreeable that duty may be, in cases where its own judgment shall differ from that of other high functionaries, it is not at liberty to surrender, or to waive it." *Id.,* at 162.

Brand X is in serious tension with this understanding of Article III.

Brand X takes on the constitutional deficiencies of *Chevron* and exacerbates them. *Chevron* requires judges to surrender their independent judgment to the will of the Executive; *Brand X* forces them to do so despite a controlling precedent. *Chevron* transfers power to agencies; *Brand X* gives agencies the power to effectively overrule judicial precedents. *Chevron* withdraws a crucial check on the Executive from the separation of powers; *Brand X* gives the Executive the ability to neutralize a previously exercised check by the Judiciary. But, with this said, there is no need to question *Chevron* in order to recognize the heightened constitutional harms wrought by *Brand X.*

B

Brand X also seems to be strongly at odds with traditional tools of statutory interpretation. * * * Under traditional rules of statutory interpretation, this Court declined to give weight to late-arising or inconsistent statutory interpretations by the Executive. In *Merritt* v. *Cameron,* for example, the Court rejected an interpretation offered by the Executive because there was no "long and uninterrupted … departmental construction … as will bring the case within the rule announced at an early day in this court, and followed in very many cases." 137 U. S., at 552; see also *United States* v. *Alabama Great Southern R. Co.,* 142 U. S. 615, 621 (1892). Even if only to resolve the tension with our traditional approach to statutory interpretation, we should revisit *Brand X.*

III

Regrettably, *Brand X* has taken this Court to the precipice of administrative absolutism. Under its rule of deference, agencies are free to invent new (purported) interpretations of statutes and then require courts to reject their own prior interpretations. *Brand X* may well follow from *Chevron,* but in so doing, it poignantly lays bare the flaws of our entire executive-deference jurisprudence. Even if the Court is not willing to question *Chevron* itself, at the very least, we should consider taking a step away from the abyss by revisiting *Brand X.*