SUPREME COURT OF THE UNITED STATES

No. 94–172

JOHN BRUCE HUBBARD, PETITIONER *v.*
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

[May 15, 1995]

CHIEF JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR and JUSTICE SOUTER join, dissenting.

The bankruptcy trustee objected to the discharge of petitioner, a voluntary bankrupt, believing that he had filed false information. The trustee filed a complaint under 11 U. S. C. §727, alleging petitioner stored a well-drilling machine at his residence; petitioner answered by denying the allegation "for the reason that it is untrue." App. 12, ¶ 10. The trustee also alleged in a separate motion that petitioner had, despite requests, failed to turn over all the books and records relating to the bankruptcy estate. Petitioner filed a response denying the allegation, and asserting that he had produced the requested documents at the behest of a previous trustee. Petitioner was then indicted under 18 U. S. C. §1001, and a jury found that each of these responses was a lie.

Today, the majority jettisons a 40–year-old unanimous decision of this Court, *United States* v. *Bramblett*, 348 U. S. 503 (1955), under which petitioner's conviction plainly would have been upheld. It does so despite an admission that the Court's reading of §1001 in *Bramblett* was "not completely implausible," *ante*, at 11. In replacing *Bramblett*'s plausible, albeit arguably flawed, interpretation of the statute with its own "sound" reading, the Court disrespects the traditionally stringent adherence to *stare decisis* in statutory decisions. *Patterson* v. *McLean Credit Union*, 491 U. S.

164, 172 (1989); *Illinois Brick Co.* v. *Illinois*, 431 U. S. 720, 736 (1977). The two reasons offered by the plurality in Part V of the opinion and the justification offered by the concurring opinion fall far short of the institutional hurdle erected by our past practice against overruling a decision of this Court interpreting an act of Congress.

The first reason is styled as an "intervening development in the law"; under it, decisions of courts of appeals that cannot be reconciled with our earlier precedent are treated as a basis for disavowing, not the aberrant court of appeals decisions, but, *mirabile dictu* our own decision! This novel corollary to the principle of *stare decisis* subverts the very principle on which a hierarchical court system is built. The second reason given is that there has been little or no reliance on our *Bramblett* decision; I believe that this ground is quite debatable, if not actually erroneous.

Today's decision harkens to the important reason behind the doctrine of *stare decisis*, but does not heed it. That doctrine is "a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon `an arbitrary discretion.'" *Patterson*, 491 U. S., at 172, citing The Federalist No. 78, p. 490 (H. Lodge ed. 1888) (A. Hamilton). Respect for precedent is strongest "in the area of statutory construction, where Congress is free to change this Court's interpretation of its legislation." *Illinois Brick Co*., 431 U. S., at 736. Justice Brandeis' dissenting opinion in *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393 (1932), made the point this way:

> "*Stare decisis* is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. This is commonly true even where the error is a matter of serious concern, provided correction can be had by legislation." *Id*., at 406 (citations omitted).

We have recognized a very limited exception to this principle for what had been called "intervening developments in the law." But the cases exemplifying this principle, *e.g.*, *Andrews* v. *Louisville & Nashville R. Co.*, 406 U. S. 320 (1972); *Rodriguez de Quijas* v. *Shearson/American Express, Inc*., 490 U.

S. 477 (1989), have invariably made clear that the "intervening developments" were in the case law of this Court, not of the lower federal courts. Indeed, in *Illinois Brick Co*., we refused to follow a line of lower court decisions which had carved out an exception from one of our precedents. 431 U. S., at 743–744.

But today's decision departs radically from the previously limited reliance on this exception. The principle of *stare decisis* is designed to promote stability and certainty in the law. While most often invoked to justify a court's refusal to reconsider its own decisions, it applies *a fortiori* to enjoin lower courts to follow the decision of a higher court. This principle is so firmly established in our jurisprudence that no lower court would deliberately refuse to follow the decision of a higher court. But cases come in all shapes and varieties, and it is not always clear whether a precedent applies to a situation in which some of the facts are different from those in the decided case. Here lower courts must necessarily make judgments as to how far beyond its particular facts the higher court precedent extends.

If there is appeal as a matter of right from the lower court to the higher court, any decision by the lower court which is viewed as mistaken by the higher court will in the normal course of events be corrected in short order by reversal on appeal. But in the present day federal court system, where review by this Court is almost entirely discretionary, a different regime prevails. We receive nearly 7,000 petitions for certiorari every Term, and can grant only a tiny fraction of them. A high degree of selectivity is thereby enjoined upon us in exercising our certiorari jurisdiction, and our Rule 10 embodies the standards by which we decide to grant review. One of the reasons contained in Rule 10.1(a) is the existence of a conflict between one court of appeals and another. The negative implication of this ground, borne out time and again in our decisions to grant and deny

certiorari, is that ordinarily a court of appeals decision interpreting one of our precedents—even one deemed to be arguably inconsistent with it—will not be reviewed unless it conflicts with a decision of another court of appeals. This fact is a necessary concomitant of the limited capacity in this Court.

One of the consequences of this highly selective standard for granting review is that this Court is deprived of a very important means of assuring that the courts of appeals adhere to its precedents. It is all the more important, therefore, that no actual inducements to ignore these precedents be offered to the courts of appeals. But today's decision is just such an inducement; it tells courts of appeals that if they build up a body of case law contrary to ours, their case law will serve as a basis for overruling our precedent. It is difficult to imagine a more topsy-turvy doctrine than this, or one more likely to unsettle established legal rules which the doctrine of *stare decisis* is designed to protect.

The plurality attempts to bolster this aspect of its opinion by blandly assuring us that "the cases endorsing the exception almost certainly reflect the intent of Congress." *Ante*, at 18. Members of Congress will surely be surprised by this statement. Congress has not amended or considered amending §1001 in the 40 years since *Bramblett* was decided. We have often noted the danger in relying on congressional inaction in construing a statute, *Brecht* v. *Abrahamson*, 507 U. S. __, __ (slip op., at 11–12) (1993), citing *Schneidewind* v. *ANR Pipeline Co.*, 485 U. S. 293, 306 (1988), but even there the "inaction" referred to is a failure of Congress to enact a particular proposal. Here there was not even any proposal before Congress.

If we delve more deeply into the hypothetical thought processes of a very diligent Member of Congress who made a specialty of following cases construing §1001, the Member would undoubtedly

know of our decision in *Bramblett* 40 years ago. If he also followed decisions of the courts of appeals, he would know that in various forms—whether a "judicial function" exception or an "exculpatory no" rule—several Courts of Appeals have held §1001 inapplicable to some statements made in the course of judicial proceedings. If, after due deliberation, he concluded that this exception was inconsistent with our opinion in *Bramblett*, he would surely also realize that in due course, on the assumption that the judiciary was functioning as it should, the Supreme Court would itself decide that the exception was inconsistent with *Bramblett*, and disavow the exception. But of one thing he would have been in no doubt: that under *Bramblett* one who lied to an officer of Congress was punishable under §1001, since that was the precise holding of *Bramblett*. But it is that very justifiable expectation of Congress that is set at naught by today's decision, under which the legislative process is no longer protected by §1001.

The plurality offers a second reason in defense of its decision to overrule *Bramblett*. It points to a lack of significant reliance interests in *Bramblett*. It dispels any reliance prosecutors might have in enforcement of §1001 by arguing that the government has expressed a preference for proceeding under alternative statutes that punish comparable behavior. U. S. Department of Justice, United States Attorneys' Manual ¶9–69.267 (1992). The Government offered a convincing explanation for this preference: it instructs prosecutors to proceed under alternative statutes due to the uncertain mine field posed by the judicial function exception adopted in some but not all circuits. Brief for Petitioner 20, and n. 9. I do not think the Government disclaims reliance by adopting a defensive litigating strategy in response to the choice of lower courts to disregard precedent favorable to the Government. And in this particular case, the perjury alternative in 18 U. S. C.

§1621 was altogether unavailable to punish petitioner's falsehoods because his statements were not verified, and the obstruction of justice alternative in 18 U. S. C. §1503 was of dubious utility.

Statistics compiled by the Administrative Office of the United States Courts indicate that the Government has secured convictions under §1001 in 2,247 cases over the last five fiscal years. Because the Administrative Office does not break down its statistics by type of agency to which the defendant made a false statement, further exploration of the subject must be limited to published decisions. It is unclear what proportion of these cases involved false statements made to the legislative or judicial branch, but it appears that the Government has attempted to proceed under §1001 for false statements made to the judiciary and legislature with mixed success.[1] To

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[1]For false statements made to bankruptcy courts, see *United States* v. *Taylor*, 907 F. 2d 801 (CA8 1990) (upheld dismissal under exculpatory no doctrine); *United States* v. *Rowland*, 789 F. 2d 1169 (CA5), cert. denied, 479 U. S. 964 (1986) (affirmed conviction). For false statements made to Article III courts, see *United States* v. *Masterpol*, 940 F. 2d 760 (CA2 1991) (reversed conviction); *United States* v. *Holmes*, 840 F. 2d 246 (CA4), cert. denied, 488 U. S. 831 (1988) (affirmed conviction); *United States* v. *Mayer*, 775 F. 2d 1387 (CA9 1985) (reversed conviction); *United States* v. *Powell*, 708 F. 2d 455 (CA9 1983) (affirmed conviction); *United States* v. *Abrahams*, 604 F. 2d 386 (CA5 1979) (reversed conviction); *United States* v. *D'Amato*, 507 F. 2d 26 (CA2 1974) (reversed conviction); *United States* v. *Erhardt*, 381 F. 2d 173 (CA6 1967) (reversed conviction); *United States* v. *Stephens*, 315 F. Supp. 1008 (WD Okla. 1970) (denied motion to dismiss; ultimate disposition unclear). For false statements made to the legislative branch, see *United States* v. *Poindexter*, 951 F. 2d 369 (CADC 1991), cert. denied, 506 U. S. __ (1992) (remand to allow Independent

the extent it has secured valid convictions in some courts in reliance on *Bramblett*, the Government should not now be forced to endure requests for habeas relief that will inevitably be filed in the wake of the Court's opinion.

The additional comments set forth in the concurring opinion equally disregard the respect due a unanimous decision rendered by six justices who took the same oath of office sworn by the six justices who overrule *Bramblett* today. The doctrine of *stare decisis* presumes to reinforce the notion that justice is dispensed according to law and not to serve "the proclivities of individuals." *Vasquez* v. *Hillery*, 474 U. S. 254, 265 (1986). The opinion of one justice that another's view of a statute was wrong, even really wrong, does not overcome the institutional advantages conferred by adherence to *stare decisis* in cases where the wrong is fully redressable by a coordinate branch of government.

This, then is clearly a case where it is better that the matter be decided than that it be decided right. *Bramblett* governs this case, and if the rule of that case is to be overturned it should be at the hands of Congress, and not of this Court.

Counsel to pursue §1001 count); *United States* v. *Hansen*, 772 F. 2d 940 (CADC 1985), cert. denied, 475 U. S. 1045 (1986) (affirmed conviction); *United States* v. *Diggs*, 613 F. 2d 988 (CADC 1979), cert. denied, 446 U. S. 982 (1980) (affirmed conviction); *United States* v. *Levine*, 860 F. Supp. 880 (DDC 1994) (denied motion to dismiss); *United States* v. *Clarridge*, 811 F. Supp. 697 (DDC 1992) (denied motion to dismiss); *United States* v. *North*, 708 F. Supp. 380 (DDC 1988) (denied motion to dismiss).