Janet T. Mills
GOVERNOR

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AUGUSTA, MAINE
04333-0001

April 7, 2025

Hon. Anne Carney, Chair
Hon. Amy Kuhn, Chair
Joint Standing Committee on Judiciary
State House, Room 438
Augusta, Maine 04330

Re: LD 1408, An Act to Codify Judicial Deference to Agency Interpretations

Dear Sen. Carney and Representative Kuhn:

Please accept these comments in opposition to LD 1408, *An Act to Codify Deference to Agency Interpretations*. While we believe this bill is well intentioned, we believe it is unnecessary. This legislation may inadvertently lead to confusion and politicize an issue that is more appropriately left to the courts.

Summary of Judicial Deference under the U.S. Supreme Court

In 1984 the U.S. Supreme Court decided *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*,[1] which established a framework by which federal courts would defer to an agency's reasonable interpretation of ambiguous statutory language. This principle became a cornerstone of administrative law across the United States. The issue presented in *Chevron* is who should decide the meaning of an ambiguous statute: unelected judges or executive branch agencies responsible for administering the statute. The rational underlying *Chevron* was essentially that unelected judges, who lack any political accountability, should defer to the reasonable interpretation of agencies, which are accountable to the voters and have expertise in the statute's subject matter. This decision allowed agencies to change their interpretations of ambiguous statutes between administrations, allowing the executive branch to be responsive to political pressures and goals, within reason. In 2024, the U.S. Supreme Court changed course and overruled

[1] 467 U.S. 837 (1984).

Chevron in a pair of cases, *Loper Bright Enterprises v. Raimondo*,[2] and *Relentless Inc. v. Department of Commerce*.[3] These decisions held that federal courts may no longer defer to federal agencies' interpretations of ambiguous statutes, and that instead judges themselves should declare the best interpretation of such statutes. *Loper Bright* and *Relentless* were intensely controversial decisions, and there is concern the result of these decisions will be to empower unelected federal judges to act as policymakers by interpreting statutes in accordance with their personal political preferences, rather than permit agencies to be responsive to concerns of voters.

Summary of Judicial Deference under Maine Law Court Precedent

Importantly, Maine Courts have never relied on the U.S. Supreme Court in their approach to deference to state agency interpretations of ambiguous statutes, and they are not required to do so. Maine's legal framework for judicial deference to an agency's interpretation of ambiguous statutory language can be traced back to the Law Court's decision in *Maine Human Rights Com'n v. Local 1361, AFL-CIO*[4] in 1978, over six years before the U.S. Supreme Court decided *Chevron*. Our research did not reveal any relevant Maine Supreme Judicial Court decisions since the *Loper Bright* and *Relentless* cases. However, the Committee should understand these recent U.S. Supreme Court decisions do not control how state courts must interpret state statutes. State Supreme Judicial Courts, including the Law Court, are not bound by federal court decisions except when deciding an issue of federal law or Constitutional interpretation. In fact, one state supreme court has already explicitly rejected the *Loper* and *Relentless* framework when reviewing state law matters.[5] Here, *Chevron, Loper Bright,* and *Relentless* only addressed what level of deference a *federal* court should grant to *federal* agencies. As we previously stated, Maine has its own jurisprudence on this issue as it relates to *state* court deference to *state* agencies, making a statutory response to these Supreme Court decisions unnecessary, and potentially confusing.

We are also concerned that enacting a statutory framework purporting to govern this judge-made doctrine of agency deference would further politicize what should be an apolitical issue. Judicial deference, as applied both through *Chevron* and the Maine Law Court's caselaw, does not favor either Democrats or Republicans. It favors whichever party leads the executive branch at the time. That makes sense, because it recognizes the will of the voters, as expressed through executive branch policies.

Our concern about codifying a framework for judicial deference in statute is not hypothetical. The Legislature has considered bills in the past that would essentially do the opposite of the bill before you today, by prohibiting courts from deferring to an agency's interpretation. In 2012 the 125th Legislature considered LD 1546, *An Act To Amend the Laws Governing the Deference Afforded to Agency Decisions*, sponsored by Senator Deborah Plowman. There, the

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[2] 144 S.Ct. 2244 (2024).
[3] 144 S.Ct. 325 (2024).
[4] *See Maine Human Rights Com'n v. Local 1361, AFL-CIO, 383 A.2d 369, 378* (Me. 1978) holding that an administrative agency's interpretation of its statutory grant of power is entitled "great deference."
[5] *Rosehill Tr. of Linda K. Rosehill Revocable Tr. dated August 29, 1989 v. State*, 155 Hawai'i 41, 59, 556 P.3d 387, 405 (2024).

Senate adopted the Ought to Pass as Amended report before it failed in the House. The Legislature should similarly oppose this bill for the reasons stated in this letter.

Finally, codifying the doctrine of agency deference in statute invites litigation over the precise language used, and how that may arguably differ from the standards expressed in the many Law Court decisions that have addressed this issue over the years. This would inevitably inject an element of confusion into the process and serve no one's interest.

For these reasons, we urge the committee to reject L.D. 1408.

Sincerely,

Gerald D. Reid
Chief Counsel

Governor Janet T. Mills