



Testimony in Opposition to LD 1408:

“An Act to Codify Judicial Deference to Agency Interpretations.”

Senator Carney, Representative Kuhn, and the distinguished members of the Committee on Judiciary, my name is Harris Van Pate, and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, nonprofit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify in opposition to LD 1408, “An Act to Codify Judicial Deference to Agency Interpretations.”

This bill requires courts to defer to agency interpretations of statutes and rules under a two-part test—if the language is ambiguous and the interpretation falls within the agency’s expertise and is deemed reasonable. However, this approach is fundamentally at odds with the principles of separation of powers enshrined in both the United States and Maine Constitutions, and it flies in the face of recent developments at the federal level that are worth careful consideration.

Federal Rejection of Judicial-Agency Deference

The United States Supreme Court recently overturned the “Chevron deference” doctrine in the 6-2 decision *Loper Bright Enterprises v. Raimondo* (2024).¹ For four decades, Chevron allowed federal courts to defer to agency interpretations of statutes when the statutory language was unclear. But the Court reversed this precedent, holding that it is the judiciary’s responsibility—not the executive branch’s—to interpret laws. Writing for the majority, Chief Justice John Roberts reaffirmed that the Administrative Procedure Act makes clear that courts, not agencies, are tasked with saying what the law is.

In a concurring opinion, Justice Clarence Thomas went further to argue that Chevron deference violated both the APA and the Constitution’s structure by requiring courts to abdicate their role as independent interpreters of the law. He emphasized that such deference gave excessive power to the executive branch and eroded the constitutional function of the judiciary.

By codifying a deference doctrine similar to Chevron in Maine law, LD 1408 would invite precisely the kind of constitutional conflict the Supreme Court expressed concern over. This bill would compromise the independence of Maine’s judiciary by instructing judges to defer to the executive branch, even in cases where the court’s judgment should prevail. Maine is free to codify judicial deference in conflict with federal rulings. Still, the confusion this might cause, and its ignorance of the Supreme Court’s concerns that justified the *Loper Bright* ruling, may have significant negative consequences.

¹ <https://www.scotusblog.com/case-files/cases/loper-bright-enterprises-v-raimondo/>



Constitutional Concerns and National Trends

While many states have historically applied a degree of deference to administrative agencies, there is a growing shift in state courts and legislatures toward curbing such practices. Florida, for instance, explicitly prohibited judicial deference to agency interpretations in its state constitution in 2018, requiring judges to conduct independent, *de novo* reviews.² Similarly, Mississippi's Supreme Court ended Chevron-style deference in a 2018 decision, affirming the principle that the judiciary must retain full authority to interpret the law.³

Maine should not move in the opposite direction. Judicial deference undermines democratic accountability by placing too much power in the hands of unelected bureaucrats. When agencies are allowed to define the scope of their authority, the rule of law gives way to executive overreach.

LD 1408 represents a dangerous encroachment on the prerogatives of the judicial branch and a setback for constitutional governance in Maine. This bill would make our state a national outlier by reinstating a legal framework that the U.S. Supreme Court has formally rejected. Furthermore, failing to pass LD 1408 would not be a direct limitation on courts or a ban on judicial deference. Instead, it leaves it up to Maine's independent judiciary to determine when and where agency deference should be granted, instead of LD 1408's "chainsaw" approach to judicial independence.

Conclusion

At its core, LD 1408 subverts the essential role of the courts in our constitutional system. It is not an agency's job to interpret the law; that duty belongs to the judiciary. This bill undermines that principle and threatens the integrity of Maine's legal system. The Maine Policy Institute urges this committee to oppose LD 1408 and instead affirm the fundamental tenet of our system of government: that power must remain separated, and no branch should be its own judge. Thank you for your time and consideration.

² <https://www.floridabar.org/the-florida-bar-journal/the-demise-of-agency-deference-florida-takes-the-lead/>

³ <https://www.yalejreg.com/nc/the-end-of-deference-an-update-from-mississippi-by-daniel-ortner/>