

GOLDWATER

I N S T I T U T E

February 12, 2025
Senator Wheeler
Chair, Senate Judiciary Committee
RE: Vote Yes on SB 122

Chair Wheeler and Members of the Senate Judiciary Committee:

I am writing to submit written testimony in support of SB 122 on behalf of the Goldwater Institute. The Goldwater Institute works in courtrooms, capitols, and communities nationwide to protect constitutional rights and empower individuals to live freer lives.

Across the nation, government agencies often apply overzealous interpretations of their own statutes and regulations which serve to expand their own power in enforcement or regulatory proceedings. These generous interpretations are then upheld by exceedingly deferential courts, which can expand agency power in a manner that goes against legislative intent. This dynamic effectively turns administrative agencies into law-making entities that step into the constitutional domain of the legislative branch. This status quo is woefully biased in favor of the government, and it is irreparably harming Americans from all walks of life.

In fact, in 2024, the United States Supreme Court finally recognized that agency deference is fundamentally unfair and that courts have the sole constitutional duty to interpret law by overturning *Chevron* deference in *Loper Bright v. Raimondo*. However, South Dakota courts still defer to agency interpretations of laws and their own regulations.

SB 122 levels the playing field by requiring courts to review agency actions without deference. This provision will ensure that judges are neutral arbiters of justice rather than parties biased in favor of administrative power. The legislation's presumption in favor of limiting agency power will create a necessary check on the administrative state's ever-expanding shadow over our individual liberties and protect the legislature's constitutional lawmaking prerogative.

In 2018, based on legislation developed by the Goldwater Institute, Arizona became the first state in the country to adopt this reform. 13 other states have followed suit via legislation or through court decisions. Just last year, Indiana, Idaho and Nebraska each ended judicial deference by adopting similar legislation.

Adopting SB 122 will protect your constituents' constitutional rights before deferential judges and reclaim the legislative branch's sole authority to create law. We urge you to support this bill.

Sincerely,

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