



Ending Deference in South Dakota SB 122

Deference “allows the agency to assume the legislative power (the rule drafter), the judicial power (the rule interpreter), and the executive power (the rule enforcer).” *In re Alamo Solar I, LLC*, 2023-Ohio-3778, P14 (2023).

Judicial deference—such as the *Chevron*-style deference long criticized at the federal level—allows agencies to effectively rewrite laws under the guise of interpretation, often granting the agencies themselves excessive power and insulating their decisions from meaningful judicial review.

As PLF has extensively [documented](#) “*Chevron* deference nightmares,” showing how this practice undermines accountability, allowing unelected bureaucrats to expand their authority beyond legislative intent. Deference has resulted in regulatory overreach, chilling economic freedom, and violating property rights.

South Dakota Courts are Inconsistent on Deference

South Dakota courts are inconsistent on deference—declaring they do not defer, while also issuing extremely deferential decisions. As one legal scholar put it, “South Dakota rarely defers to administrative agencies, except when it does.”

In a 2017 case involving a zoning law, the South Dakota Supreme Court embraced the old federal *Chevron* standard of deferring to agency interpretations of ambiguous statutes. *Croell Redi-Mix, Inc. v. Pennington Cty. Bd. of Commissioners*, 905 N.W.2d 344, 350 (2017). Yet in a 2015 decision the Court stated: “Conclusions of law are given no deference. Questions of statutory interpretation are reviewed de novo.” *Midwest Railcar Repair, Inc. v. S. Dakota Dep’t of Revenue*, 872 N.W.2d 79, 85 (2015). The Court has also ruled that “so long as the agency’s interpretation is a reasonable one, it must be upheld.” *Mulder v. S. Dakota Dep’t of Soc. Servs.*, 675 N.W.2d 212, 214 (2003). Further complicating matters, there are cases that seem to imply that courts must defer to the agency’s interpretation of statutes in certain cases. *Matter of Change of Bed Category of Tieszen Mem’l Home, Inc., Marion*, 343 N.W.2d 97, 98 (1984).

SB122 Resolves This Confusion in Favor of Freedom

By passing this legislation, South Dakota would clarify that deference has no place in the state and solidify its position as a leader among a growing movement of states committed to protecting individual liberties and the rule of law by outlawing judicial deference. A full list is available at statedeference.org.



Enshrining South Dakota's deference doctrine in statute ensures that the courts cannot put a thumb on the scale in favor of government and ensures agencies exercise only the power the legislature has delegated to them.

Other states that have codified deference and a presumption of liberty

Idaho Statutes § 67-5279(5) (2024)

When interpreting the provisions of any state law, this chapter, or any rule, as defined in section 67-5201, Idaho Code, the court shall not defer to an agency's interpretation of the law or rule and shall interpret its meaning and effect de novo. In an action brought by or against an agency, after applying all customary tools of interpretation, the court shall exercise any remaining doubt in favor of a reasonable interpretation that limits agency power and maximizes individual liberty.

Nebraska Revised Statute § 84-919.02, -.03. (2024)

Any court reviewing an appeal from a contested case shall interpret the statute or rule or regulation de novo on the record and shall not defer to the agency's interpretation of such statute or rule or regulation.

In actions brought by or against state agencies, after applying all customary tools of interpretation of a statute or rule or regulation, the court or hearing officer shall resolve any remaining doubt in favor of a reasonable interpretation which is consistent with an individual's fundamental constitutional rights.

Tennessee Code § 4-5-326 (2022)

In interpreting a state statute or rule, a court presiding over the appeal of a judgment in a contested case shall not defer to a state agency's interpretation of the statute or rule and shall interpret the statute or rule de novo. After applying all customary tools of interpretation, the court shall resolve any remaining ambiguity against increased agency authority.