



PUBLIC HEALTH AUTHORITY Fact Sheet

What's Judicial Deference Got to Do with Public Health Authority?

Background


Public health actions can take many forms, including [laws, policies, and regulations](#), and should be based on extensive data, knowledge, and expertise tailored to solve the particular health needs of various communities. Our democratic system of governance provides several legal safeguards to protect the public from concentrating power within any one branch of government. Legislatures create laws that are implemented and enforced by the executive branch, and the courts exercise judicial review of actions from the other two branches.

Governmental public health resides within the executive branch, predominantly through the legislative establishment of statewide public health systems that authorize state and local health departments and officials to administer and implement a range of programs and activities. For example, in times of crisis, health departments must act swiftly to protect the health of our communities. Even after an initial disease outbreak, health officers continue to shape policies and procedures to curb infection, prevent illness, and ensure the community is informed about important health issues. Health departments also act daily to monitor population health and shape effective responses from the government and other sectors to common health problems.

Judicial deference is one legal principle that has historically respected the knowledge and experience of governmental public health actors, including public health agencies. However, recent attempts to dismantle judicial deference to executive branch agencies could have a negative impact on health departments without explicitly targeting public health. This fact sheet introduces the concept of judicial deference and its role in health agency administrative decision-making.

Judicial Deference Defined

Judicial deference is a principle of legal review for administrative or executive agency actions authorized by legislatures. When a judge or judiciary hears a contested case involving an agency's interpretation of a statute, they defer to a qualified party—typically a state or federal agency—for their technical subject matter expertise in interpreting the statute, rather than substituting in the court's own interpretation. Deference allows courts to uphold an agency's interpretation of an unclear or ambiguous statute, provided that the agency's interpretation



is reasonable. This gives agencies—who are ultimately accountable to an elected executive—some latitude to carry out the day-to-day administration of their legislatively-determined duties, which are not always clear or defined with exact precision.

Health officials have historically received deference from the courts, reflecting public health’s [crucial role](#) in the history of administrative regulation in the United States. The 1905 Supreme Court Case [Jacobson v. Massachusetts](#) is a foundational example of this history. At the time, a local board of health in Massachusetts used a grant of authority from state law to create a regulation mandating smallpox vaccination. The Court upheld the vaccine mandate by deferring to the state legislature’s appropriate delegation of authority to a board of health comprised of locally impacted individuals who were appointed based on their fitness to determine questions of public health and safety. At the time, the Supreme Court found that the courts should have a limited role in reviewing public health decisions.

Judicial Deference Today

In recent years, several proponents of dismantling the authority of regulatory agencies have moved to attack judicial deference, in the hope that the courts will no longer follow an agency’s interpretation of a challenged statute or regulation. Judicial deference has been challenged at both the state and federal levels with a few key decisions shifting complex policy decisions from the executive branch to the judiciary.

At the federal level, the [Loper Bright Enterprises v. Raimondo](#) decision, issued by the Supreme Court on June 28, 2024, overruled its previous legal framework for deference to federal agencies that had been in effect since the 1984 decision in [Chevron U.S.A., Inc. v. Natural Resources Defensive Council, Inc.](#) *Chevron* stemmed from federal regulation of pollution under the Clean Air Act and required that in instances where Congress has been silent or ambiguous about a statutory issue, a court will follow an agency’s interpretation of a statute, so long as that interpretation is reasonable. Now, under *Loper Bright*, while courts may still consider federal agency interpretations—and in fact, “must respect” statutory delegations of authority to an agency that are “consistent with constitutional limits”—they are no longer obligated to do so “simply because a statute is ambiguous.” Rather, “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.”


At the state and local level, the *Loper Bright* decision adds to the arsenal of Supreme Court decisions demonstrating [hostility to the administrative state](#) that state courts may decide to adopt (or not). Indeed, some states have already rejected *Chevron*-like deference as *Loper Bright* just did at the federal level, but **[“35 states provide for substantial or appreciable deference to agency actions, and states nearly universally acknowledge the unique expertise agencies have to make policy in the public interest.”](#)** Proponents of various state efforts to end judicial deference [seek](#) to do so not only through litigation, but also through legislation and Constitutional amendment.

Conclusion

The ability of public health agencies to create effective rules and policies based on professional expertise is critical to maintaining the health and welfare of the public. *Loper Bright* and other federal and state efforts to eliminate judicial deference do not change that fact, but they do make it more difficult for public health agencies and other executive branch agencies administering statutory duties and programs that influence the public’s

“[S]urely it was appropriate for the legislature to refer that question...to a Board of Health, composed of persons residing in the locality affected and appointed, presumably, because of their fitness to determine such questions.”

John M. Harlan, Former Supreme Court Justice
Jacobson v. Massachusetts, 1905



health to do their jobs. Public health practitioners and advocates are no strangers to adversity, though, and using the law and policy [resources](#) available to them, will no doubt continue to [innovate](#) to protect and promote the health of our communities, especially in ways that demonstrate transparency, accountability, well-reasoned decision making, and alignment with community priorities.

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