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JUDICIAL DEFERENCE REFORMED

How States are Reclaiming Judicial Autonomy from Bureaucratic Influence

STATES 250 ALEC

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INTRODUCTION

For more than 200 years, the United States and its various jurisdictions have operated under a framework where, when disagreements on the true meaning of a law exist, courts will be the only government branch authorized to interpret those laws and inform the rest of society as to their final, legally binding meaning and effect. This is judicial review. Established as a bedrock component of American jurisprudential law since *Marbury v. Madison* in 1803,[1] judicial review demands that there can only be one interpreter of the law whose words carry adjudicatory finality, and that that interpretive power belongs only to the judicial branch. *Judicial deference* is a practice that intentionally strips this exclusive interpretive authority from the judiciary and hands it to agency employees in the executive bureaucracy.

> *"It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule."*
>
> ***Marbury v. Madison* (1803)**

For decades, courts across the United States have frequently deferred to administrative agencies when interpreting laws executed by those agencies. This practice, commonly known as *judicial deference*, has fundamentally reshaped the balance of power between the branches of government. Instead of courts independently interpreting statutes enacted by legislatures (or administrative rules derived from them), states often permit and demand that their courts defer to the agency's interpretations of the law. At both the federal and state levels, the practice of judicial deference has raised significant concerns about accountability, democratic legitimacy, and the expected role of the judiciary.

Within the past decade, the interest in reforming and prohibiting judicial deference has grown rapidly. At the federal level, the U.S. Supreme Court abolished deference in a major 2024 decision, *Loper Bright v. Raimondo*. Even before the federal ban, state legislatures across the country have been eager to abolish the deference practice as well, with more state legislative introductions and enactments taking place each year.

This publication examines the modern doctrine of judicial deference in the federal and state judiciaries and the growing movement among states to restore independent judicial review. It is intended to provide lawmakers and policy stakeholders with a comprehensive understanding of how deference operates, why it has become a major structural issue in administrative law, and how states are responding in the wake of the U.S. Supreme Court's decision to overturn its own 40-year-old mandatory deference framework. The report outlines the legal foundations and practical consequences of deference doctrines, surveys the current state-level landscape nationwide, and highlights legislative solutions designed to reestablish the judiciary's constitutional role as an independent branch of government. Ultimately, this publication seeks to clarify both the stakes of the deference practice and the pathways available to states pursuing meaningful structural reform.

Eliminating deference has nothing to do with advancing a particular political ideology, regulatory perspective, or desired legal outcome. Rather, eliminating deference simply advances the view that the courts should be the exclusive, independent interpreters of the law. It is a rehabilitation of judicial review itself and restores the balance between the separation of powers within a constitutionally constrained, powers-sharing system—a core reform that must be secured to repair the integral fabric of American jurisprudence.

1 *Marbury v. Madison*, 5 U.S. 137, 177 (1803)

JUDICIAL DEFERENCE

When It Occurs and Why

Judicial deference occurs when courts defer to an executive agency's interpretation of the law at issue, in lieu of the court itself interpreting the law anew, or *de novo*. Deference can be housed as judicial doctrine established via case law or as statute enacted by a legislature. Additionally, the forcefulness of judicial deference law rests on a spectrum, as mandates imposed on courts to defer exist in some jurisdictions, while permissive authorizations of the practice govern in others. Prior to 2024, deference was mandatory, binding precedent in the federal judiciary for 40 years. Today, deference exists in various forms among 29 states.

At its conceptual core, the doctrine entered the conversation due to the convoluted nature of executive agencies and administrative law execution. Legislatures often enact statutes that establish broad policy frameworks, while agencies are tasked with executing those statutes through regulatory and enforcement action. In theory, agencies act as instruments of legislative policy, further extending the purpose, intent, and goals of the statutory law that the democratic republic itself yielded.

> *"Prior to 2024, deference was mandatory, binding precedent in the federal judiciary for 40 years. Today, deference exists in various forms among 28 states."*

However, statutes frequently contain ambiguous language or leave significant details unresolved. Agencies then interpret those provisions through rulemaking and agency regulation, all with a baseline theoretical purpose of acting as honest extensions of the statutes they are executing. Inherent to this process, there is a degree of basic legal comprehension required on the part of agency bureaucrats, as agency staff must comprehend and interpret the text and meaning of the law in order to carry out their statutory obligations. Further, such comprehension and rulemaking duties are often required by statutes themselves.[2] This is the case in both federal and state agencies.

While the authority and scope of agency responsibility are legitimate, such definitionally interpretive practices do not guarantee any degree of accuracy. Bureaucrats frequently interpret statutes and constantly engage in rulemaking as part of their executive-branch responsibility. This is their job. Once they are tasked to promulgate rules, those rules and regulations written are based on these interpretations of statutes or already established rules or regulations within an agency. Quality of intentions aside, the legal interpretation the agency makes and further establishes in rulemaking has significant impacts on the language, administration, and execution of the law. Judicial deference ensures those interpretations control the adjudicatory process as well.

Judicial deference laws permit, and often demand, courts to defer to and implement those interpretations in the adjudication of a case. In the federal domain, the rationale offered at the genesis was largely practical, as agencies were thought to possess subject-matter expertise, institutional knowledge, and policy execution experience that courts lack.[3] States apply similar logic in justifying their deference laws. And so, under judicial deference, courts defer to an agency's subjective interpretations of the law, even if the court might have reached a different conclusion independently."

2 See various states' Administrative Procedures Acts that require action on part of executive agencies to engage in rulemaking when directed by the legislature.
3 See *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984), overruled by *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

Chevron U.S.A., Inc. v. Natural Resources Defense Council

One of the most influential judicial doctrines in American law arose from the U.S. Supreme Court's 1984 decision in *Chevron U.S.A. v. Natural Resources Defense Council*.[4] In that case, the Court considered whether the Environmental Protection Agency had properly interpreted provisions of the Clean Air Act when regulating industrial pollution sources. Rather than deciding the statutory interpretation question independently as a matter of simple judicial review, the Court announced a two-step framework for all federal courts to utilize when reviewing challenges to agency interpretations of statute:

1. Courts first ask whether Congress has spoken clearly on the issue. If the statute is unambiguous, the court must enforce the law as written.

2. If the statute is ambiguous, courts must defer to the agency's interpretation so long as it is "reasonable."[5]

This approach dramatically expanded the influence and de facto authority of federal executive agencies. Instead of resolving statutory ambiguities themselves (as judicial review permits and demands), all federal courts were now bound to automatically uphold agency interpretations of ambiguous laws, so long as they fell within a range of permissible meanings. This was the birth of "*Chevron* deference."

Perspectives in *Chevron*

The Supreme Court's decision in *Chevron* reflected a particular view of administrative governance. The Court reasoned that agencies, not courts, should make policy choices when statutes leave room for interpretation. Because agencies operate under the direction of the executive branch, they were thought to possess greater democratic accountability than unelected judges.

The Court also emphasized agency expertise. Regulatory agencies often deal with complex and technical issues involving economics, science, and specialized industry practices. Judges, by contrast, are generalists. Under this reasoning, the *Chevron* doctrine seemed to promote a more balanced and reasonable approach to administering justice when the law is unclear.

Chevron in Application

Over time, *Chevron* became one of the most cited decisions in administrative law. Federal courts applied the doctrine thousands of times across regulatory contexts,[6] including environmental regulation, labor law, telecommunications, immigration policy, financial regulation, and general statutory interpretation matters.

The doctrine had several major effects. It expanded the practical authority of federal agencies, reduced the willingness of courts to interpret regulatory schemes and statutes independently, and encouraged agencies to adopt broad interpretations of their own powers.

Critics have argued that the doctrine allowed agencies to change statutory meaning simply by adopting new interpretations when presidential administrations changed. As a result, regulatory policy could shift dramatically without new legislation from Congress because the federal judiciary was bound to uphold the interpretations of the bureaucracy.

4 *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837 (1984)
5 *Id.* at 844
6 Kent Barnett & Christopher J. Walker, Chevron in the Circuit Courts, 116 Mich. L. Rev. 1 (2017)

THE UNELECTED BUREAUCRACY EMPOWERED

The deference doctrine brings with it impactful consequences. Whether in a mandatory or discretionary context, when courts defer too often to agencies, those agencies effectively gain the power to define the scope of their own authority, blurring the lines between legislative, executive, and judicial functions.

Delegation v. Ambiguity

Two related concepts are central to understanding the growth of administrative authority in a deference context: delegation and ambiguity.

Legislative Delegation occurs when a legislature intentionally delegates authority to an agency to create and develop detailed rules within a statutory framework. This practice is common in modern governance, as legislatures often cannot address every technical detail in complex regulatory systems.

Statutory Ambiguity is when the statutory language itself is objectively unclear and therefore reasonably open to varying interpretations. The subject of the ambiguity can be the scope of the explicit legislative delegation itself, the rulemaking parameters, the law's intent and purpose, or specific provisions of a statute governing conduct.

Deference cases often arise within the "statutory ambiguity" context. When Congress, or a state legislature, is explicit in its intent to assign rulemaking authority to an agency in the executive branch, particularly with detailed instructions on what regulations are to be promulgated and how to do so, there is far less of a potential for far-stretched interpretations of law to take place on the part of bureaucrats.

Judicial deference doctrines, such as *Chevron deference*, treat statutory ambiguity scenarios as an invitation for agency interpretations to govern the courtroom. The combination of broad legislative delegation and judicial deference has particularly allowed agencies to exercise substantial policymaking authority.

Federal Rulemaking

Administrative agencies exercise policy influence primarily through the rule-making process. When Congress enacts a statute establishing a regulatory framework, agencies are typically tasked with implementing the law through detailed regulations.

Under the Administrative Procedure Act,[7] rulemaking generally involves five main steps:

1. Proposed Rule Issuance
2. Public Notice and Comment Period
3. Agency Review of Comments
4. Final Rule Publication
5. Enforcement and Implementation

Although this process includes opportunities for public participation (and often requires agencies to consider public comments), federal agencies retain final authority to promulgate and finalize the version of the rule they prefer.

State Rulemaking

States also maintain their own administrative procedure frameworks and rulemaking systems, many of which were modeled in whole or in part on the federal Administrative Procedure Act and the Model State Administrative Procedure Act. Although deference doctrines vary widely across jurisdictions, numerous state courts historically deferred to administrative agencies when interpreting statutes and regulations. Such disputes have arisen in areas including occupational licensing, environmental permitting, state tax administration, and labor and employment regulation.[8]

In such cases, courts often upheld agency interpretations even when statutory language could support alternative readings. As a result, state agencies—like their federal counterparts—sometimes exercise significant authority to effectively shape regulatory frameworks and policy indirectly.

7 5 U.S.C. §§ 551–559
8 Martha Kinsella & Benjamin Lerude, ***Judicial Deference to Agency Expertise in the States***, State Court Report (Oct. 26, 2023, updated Jun. 28, 2024).

This dynamic conflicts with the separation of powers that structures the federal and state system. The Constitution assigns distinct and exclusive roles to each branch to prevent the concentration of authority in any one institution. Article I vests lawmaking power in the legislature, while Article III assigns adjudication to the judiciary. Judicial deference disrupts that allocation. When courts accept agency interpretations of statutes, unelected executive officials effectively shape the meaning of laws enacted by the legislature. In doing so, the functions the constitutional design seeks to keep separate are instead consolidated.

THE END OF FEDERAL DEFERENCE

Loper Bright Enterprises v. Raimondo (2024)

The U.S. Supreme Court's 2024 decision in *Loper Bright Enterprises v. Raimondo* eliminated the longstanding federal judicial doctrine of *Chevron Deference*,[9] marking one of the most consequential administrative law-related judicial outcomes in decades.

The Court held that federal courts are not only no longer bound to defer, but shall no longer defer to agency interpretations under the *Chevron* framework. Instead, federal courts must now exercise independent judgment when interpreting statutes.[10] The Court reasoned that the Administrative Procedure Act requires courts—not agencies—to decide questions of law. According to the decision, deference doctrines under *Chevron* improperly shifted interpretive authority away from the judiciary.

Loper Bright does not mitigate agency regulatory powers or general administrative authority. Agencies may still issue regulations and interpret statutes in the standard course of administering federal law, as the APA requires. However, under *Loper Bright*, those interpretations no longer receive automatic deference from courts. Federal courts now evaluate agency interpretations of ambiguous law how they would interpret ambiguous statutes in any other case, using traditional tools of statutory interpretation.

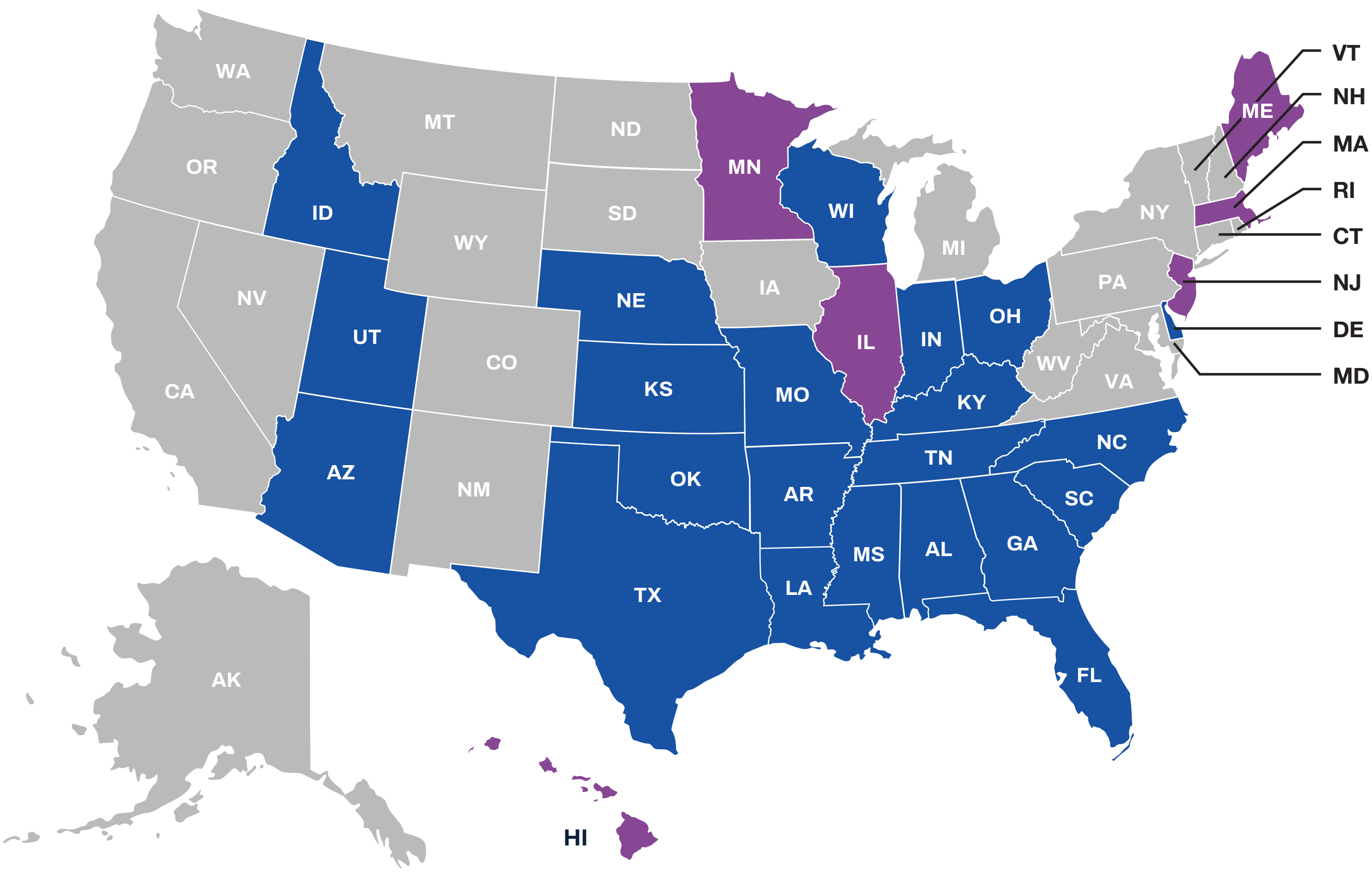
While the decision may seem to merely restore the judiciary to its proper interpretive role, it in fact constitutes one of the most consequential structural shifts in administrative adjudication in decades. While states have been active on the deference reform front in years prior to the *Loper Bright* decision, states have taken notice of the Supreme Court's rejection of deference and have increasingly moved to codify its principles within their own legal frameworks.

> *"Chevron is overruled. Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority, as the APA requires. Careful attention to the judgment of the Executive Branch may help inform that inquiry. And when a particular statute delegates authority to an agency consistent with constitutional limits, courts must respect the delegation, while ensuring that the agency acts within it. But courts need not and under the APA may not defer to an agency interpretation of the law simply because a statute is ambiguous."*
>
> ***Loper Bright Enterprises. v. Raimondo* (2024)**

9 *Loper Bright Enterprises. v. Raimondo*, 603 U.S. 369 (2024)
10 *Id.* at 412

STATE DEFERENCE STATUS IN 2026

The Pacific Legal Foundation's State Deference Map[11] is a widely cited resource that illustrates the various judicial deference regimes applied across the states. The map below identifies states that have prohibited deference to agency interpretations, states that require deference, and those where deference is regularly applied irrespective of the governing law. Additionally, the map's interactive function outlines each state's legal authority governing judicial deference—explaining whether it is codified in statute, established through state court precedent, or enshrined in a constitutional amendment. Importantly, the states categorized as "Inconsistent" demonstrate how the doctrine operates in practice when no statutory prohibition exists; nearly half of the states apply deference principles inconsistently, even when state supreme courts have issued decisions prohibiting the doctrine.



DEFERENCE TO AGENCIES: State courts defer to agency interpretations of statues, rules, guidance, facts, or more.

INCONSISTENT: State courts defer to only some agency interpretations or in certain types of cases.

INDEPENDENT JUDICIAL REVIEW: State courts are not allowed to defer to state agencies.

11 Pacific Legal Foundation, *State Deference Map*, Pacific Legal Foundation, https://pacificlegal.org/state-deference-map/

STATE SOLUTIONS

Judicial Deference Reform Act

Scan for ALEC Resources

The most direct and effective avenue for reforming judicial deference is legislative action. State legislatures can enact statutes that expressly require courts to interpret laws independently, without deferring to agency interpretations. The American Legislative Exchange Council's Judicial Deference Reform Act, one of ALEC's Essential Policy Solutions for 2026, seeks to restore the judiciary's traditional role as the final arbiter of statutory meaning through the following language:

> *"In interpreting a state statute, regulation, or other sub-regulatory document, a state court or an officer hearing an administrative action may not defer to a state agency's interpretation of it, and must instead interpret its meaning and effect de novo.*
>
> *In actions brought by or against state agencies, after applying all customary tools of interpretation, the court or hearing officer must exercise any remaining doubt in favor of a reasonable interpretation which limits agency power and maximizes individual liberty."*

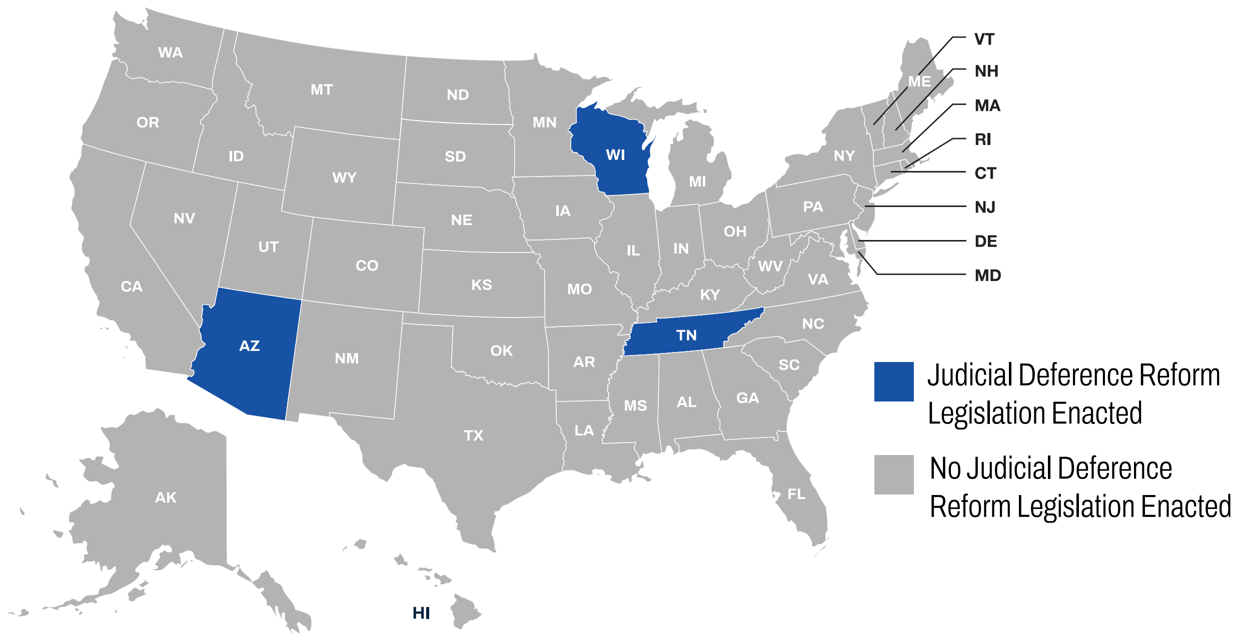
Judicial Override

As the U.S. Supreme Court did in *Loper Bright Enterprises v. Raimondo*, state courts may also recalibrate deference doctrines through adjudication. State supreme courts possess the authority to revisit and revise administrative law principles, including limiting or abandoning deference within their jurisdictions. Several have done so. In practice, however, such judicial reforms are often applied unevenly by lower courts, diminishing their consistency and effect. For that reason, legislative action overriding deference case law remains the most reliable and durable mechanism for reform.

LEGISLATIVE SUCCESS

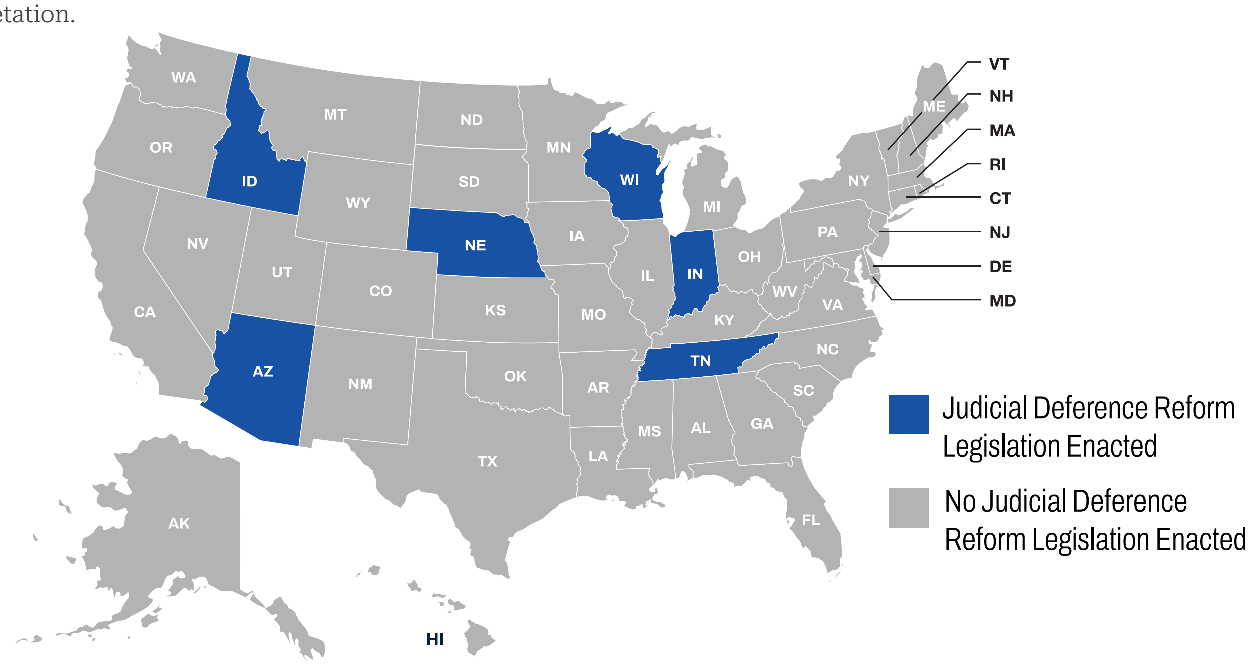
Pre-2024 | Arizona, Tennessee, Wisconsin

Prior to 2024 and the landmark decision in *Loper Bright Enterprises v. Raimondo*, several states had already moved to curtail or eliminate judicial deference through legislative action or judicial rulings. These early reforms demonstrated that administrative law frameworks can operate effectively without reliance on deference doctrines.



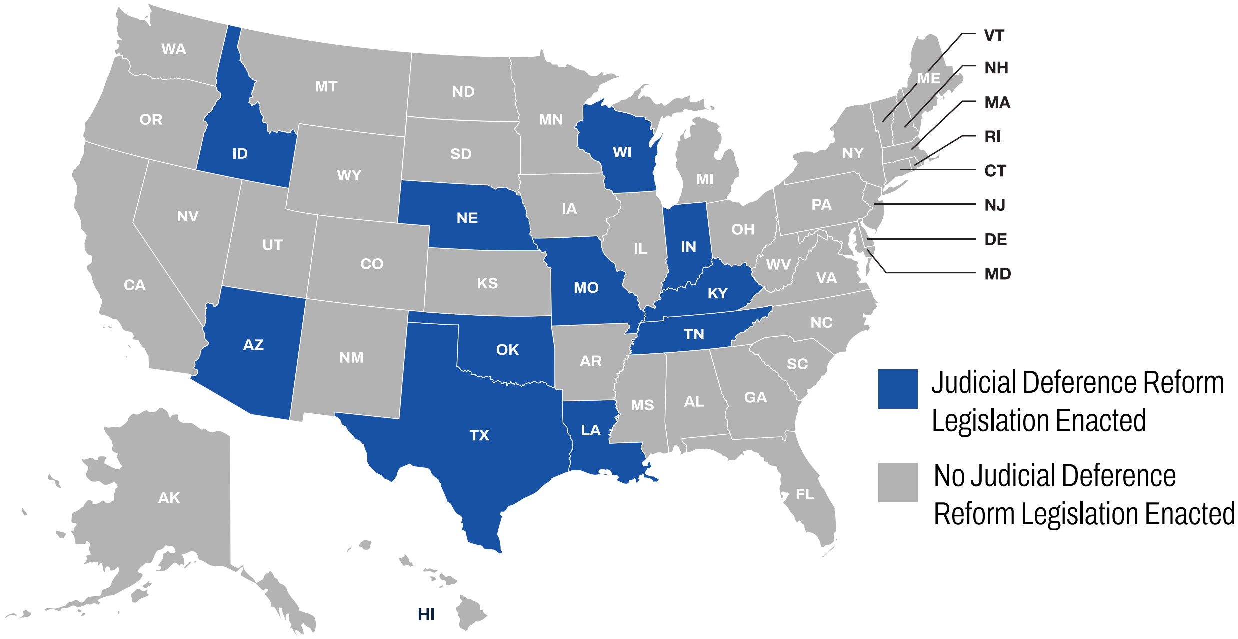
2024 | Idaho, Indiana, Nebraska

In the wake of *Loper Bright Enterprises v. Raimondo*, a wave of state action emerged to reassess and reform deference doctrines, underscoring the priority legislatures place on restoring the proper balance among the branches of government. Amid a growing national debate over administrative law, additional states enacted reforms in 2024 aimed at reinforcing judicial independence in statutory interpretation.



2025 | Kentucky, Louisiana, Missouri, Oklahoma, Texas

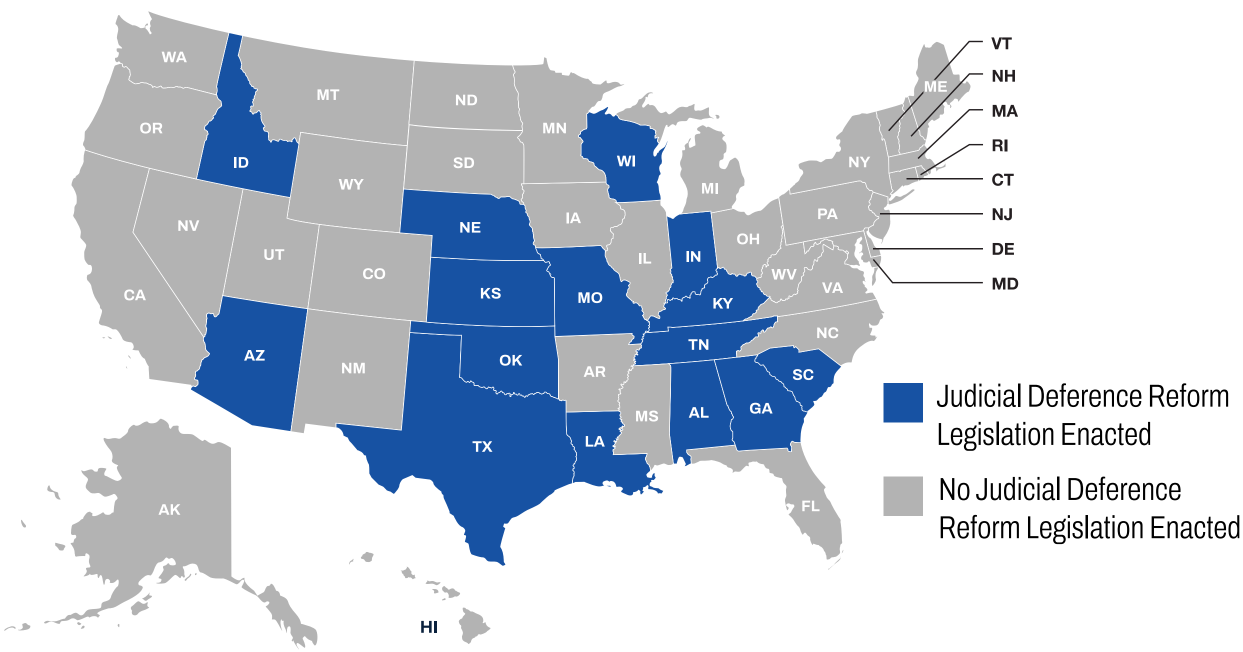
Momentum accelerated in 2025 as multiple legislatures enacted bills clarifying that courts must independently review agency interpretations. These reforms reflected bipartisan recognition that judicial deference raises fundamental structural concerns.



2026 | Alabama, Georgia, Kansas, and South Carolina

Introductions in Mississippi, New Hampshire, South Dakota, West Virginia, Wyoming

Today, states continue to evaluate reforms addressing judicial deference, with legislatures across the country considering proposals aimed at reinforcing the judiciary's constitutional role. In 2026, four states have enacted such measures. Nine states introduced legislation to do so this 2026 session.



CONCLUSION

Judicial deference is, at its core, a question of constitutional structure rather than policy preference. For decades, deference doctrines permitted administrative agencies to exercise substantial interpretive authority, often blurring the carefully calibrated separation of powers by allowing executive actors to shape the meaning of laws enacted by legislatures. While frequently justified on grounds of efficiency and expertise, this arrangement diluted the judiciary's exclusive role as the final arbiter of statutory meaning.

Recent developments—most notably the Supreme Court's decision in *Loper Bright Enterprises v. Raimondo* and the accelerating wave of state-level reforms—reflect a decisive shift back to first principles. These efforts do not seek to diminish the legitimate role of administrative agencies, but rather to reestablish the proper boundary between executing the law and interpreting it. By restoring independent judicial review, states reinforce democratic accountability, preserve legislative supremacy, and prevent the consolidation of governmental power. In doing so, they reaffirm a foundational premise of American governance: that the meaning of the law must ultimately be determined by courts, not the bureaucracies charged with its enforcement.

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