



PACIFIC LEGAL FOUNDATION

April 21, 2025

Statement of Pacific Legal Foundation before the Rhode Island House Committee on State Government and Election in support of HB 5722—Ending Judicial Deference

Chair Shanley and members of the Committee:

My name is Jaimie Cavanaugh, and I am Legal Policy Counsel at Pacific Legal Foundation (PLF). PLF is a nonprofit, public-interest law firm dedicated to defending Americans' civil liberties when threatened by government overreach and abuse. Since its founding more than 50 years ago, PLF has been helping Americans fight for their constitutional rights in courthouses and legislatures across the country. PLF has won 18 cases at the United States Supreme Court, and helped enact more than 50 laws across the country.

I write to express PLF's strong support for House Bill 5722, which ends the practice of judicial deference to agencies in Rhode Island. This reform is essential to restoring the balance of power among the three branches of government and ensuring that courts fulfill their constitutional duty to independently interpret the law. By passing this legislation, Rhode Island would join a growing movement of states committed to protecting individual liberties and the rule of law. A full list is available at statedeference.org.

Judicial Deference

The doctrine of judicial deference requires courts to defer to an agency's interpretation of law or regulation instead of as a neutral arbiter that considers arguments on both sides. Judicial deference—such as *Chevron*-style deference long criticized at the federal level—allows agencies to effectively rewrite laws under the guise of interpretation, which often results in agencies granting themselves excessive power and insulating their decisions from meaningful judicial review. As PLF has [documented](#), this practice undermines accountability, allowing unelected bureaucrats to expand their authority beyond

legislative intent. Judicial deference has resulted in regulatory overreach, reduced economic freedom, and violations of property rights¹

Judicial Deference in Rhode Island

In Rhode Island, as in most states, the doctrine of judicial deference is judge-made. But courts have applied this doctrine inconsistently. In 2003, the Rhode Island Supreme Court ruled that it was free to review determinations of law made by an agency independently and without deferring to an agency's interpretation of law.²

Yet, later decisions retreat from this position. For example, in 2017, the Rhode Island Supreme Court declared that courts defer based "on the persuasiveness of the interpretation, given all the attendant circumstances."³ And in 2018, the Court ruled that it must defer to an agency's interpretation of law providing: "It is well settled that Rhode Island courts accord great deference to an agency's interpretation of its rules and regulations and its governing statutes, provided that the agency's construction is neither clearly erroneous nor unauthorized."⁴

Further muddying the waters, in 2020, the Court flipped again, ruling that in considering statutory interpretations of law, courts must exercise and apply independent review.⁵ One administrative law scholar described these conflicting opinions in this way: "Rhode Island seems to be trapped in the contradiction of claiming to engage in de novo but also deferential review, and it isn't clear how Rhode Island courts will naviga[te] this quagmire."⁶

House Bill 5722

¹ Nicole W.C. Yeatman, "Three Chevron Deference nightmare: What happens when courts defer to federal agencies," Pacific Legal Foundation (Sept. 18, 2023), <https://pacificlegal.org/chevron-deference-nightmares-3-examples/>.

² *Arnold v. R.I. Dept. of Labor and Training Bd. of Review*, 822 A.2d 164, 167 (R.I. 2003).

³ *Mancini v. City of Providence*, 155 A.3d 159, 167–68 (R.I. 2017).

⁴ *Endoscopy Assocs., Inc. v. R.I. Dep't of Health*, 183 A.3d 528, 533–34 (R.I. 2018).

⁵ *In re: A & R Marine Corp.*, 199 A.3d 533, 538 (R.I. 2019).

⁶ Daniel Ortner, "The End of Deference: How States (and Territories and Tribes) Are Leading a (Sometimes Quiet) Revolution Against Administrative Deference Doctrines," 55 Center for the Study of the Administrative State Antonin Scalia Law School, <https://administrativestate.gmu.edu/wp-content/uploads/2021/04/Ortner-the-End-of-Deference.pdf>.

Establishing that courts may no longer put a thumb on the scale in favor of government by enacting House Bill 5722 will reaffirm the judiciary's role as an independent arbiter of the law. It will also ensure that agencies exercise only the power the legislature has delegated to them. As PLF's "[Three Pillars of Regulatory Reform](#)" framework emphasizes, eliminating judicial deference fosters transparency and fairness, ensuring that laws reflect the will of the people rather than the preferences of bureaucrats.⁷

Moreover, codifying that courts must exercise independent judicial review aligns with the state's constitutional commitment to limited government and separation of powers. By requiring agencies to adhere strictly to legislative mandates, this reform would not only curb bureaucratic overreach but also incentivize clearer and more precise lawmaking. The result is a legal system where citizens, businesses, and local governments can better predict and comply with regulatory requirements.

PLF supports House Bill 5722 because it places important guardrails on the administrative authority the legislature has entrusted to state regulators. Administrative agencies with insufficient democratic controls do more than fill in technical gaps left by the legislature in regulatory schemes, but instead, often write detailed rules with the force of law that have sweeping social and economic consequences, including imposing significant civil or even criminal penalties on businesses and individuals. House Bill 5722 is a critical step toward safeguarding individual freedoms, promoting good governance, and upholding the rule of law in Rhode Island.

Thank you for considering this testimony. I am happy to answer any questions; my contact information is listed below.

Respectfully,



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⁷ "Three Essential Pillars of Regulatory Reform," Pacific Legal Foundation, https://pacificlegal.org/wp-content/uploads/2024/01/PLF380_3-Pillars-of-Reform.pdf.