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NO TWO-STEPPING IN THE LABORATORIES

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NO TWO-STEPPING IN THE LABORATORIES: STATE DEFERENCE STANDARDS AND THEIR IMPLICATIONS FOR IMPROVING THE CHEVRON DOCTRINE

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I. INTRODUCTION

The “Chevron two step” is no simple dance. The doctrine’s apparent simplicity makes it easy to announce, but courts and commentators have shown that actually applying the standard is a much taller order. This Article compares the federal Chevron procedure with its state equivalents, hoping that the states’ experience might teach federal courts to move more gracefully when considering agency interpretations.
announces the well-known, two-step standard for federal review of agency interpretation of law. When reviewing an agency’s statutory interpretation, step one requires that the court address the statute, inquiring whether Congress has “directly spoken to the precise question at issue” or “clear[ly]” and “unambiguously expressed” a specific intent. If the court finds these conditions satisfied, it simply applies the statute, but if not, the court proceeds to step two, which requires deference to an agency’s “permissible construction” of the statute.

There is little disagreement about the articulation of the test, but the volumes of commentary devoted to the doctrine note the various complexities buried in the two famous steps. Many scholars, including Justices Scalia and Breyer, have weighed in on the substantive merits, legitimacy, and content of the doctrine.\[5\]

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\[2\] Id. at 842-3.
\[3\] Id. at 843.
\[4\] Articles point to the enormous number of citations to Chevron as support for its continuing importance. See, e.g., Cass R. Sunstein, Chevron Step Zero, 92 VA. L. REV. 187, 188 fn 1 (2006). This Article, in turn, points to the enormous number of scholarly articles written on Chevron as support for its continuing complexity. A search shows 6173 instances of law review articles citing Chevron and over a hundred articles with Chevron in the title. Westlaw search, Apr. 2007.
Additionally, and most relevant to this Article, academics have criticized the procedures and application of *Chevron*.\(^6\)

Of all these analyses, though, none compares the federal approach to the various state *Chevron*-equivalent doctrines. Thus it seems that *Chevron* scholarship has missed an extraordinarily developed and accessible source for information and comparison. Whether this lack of attention to state deference schemes has resulted from a federal bias,\(^7\) perceived difficulty,\(^8\) or oversight, there appears no reason to continue ignoring the state experience when analyzing federal principles of agency review. For that reason, this Article analyzes state courts’ doctrines of judicial review of agency interpretation and compares them to the federal *Chevron* doctrine. This Article explicitly does not compare the substance of these doctrines; it does not make normative judgments or suggest amendment to the principle of deference. Rather, the Article takes the substantive principles underlying *Chevron* as given and examines the state approaches only to inform or reform the federal procedures implementing *Chevron*.

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> Constitutional specialists... need to overcome the ingrained assumptions that constitutional law means the decisions of the United States Supreme Court, that for a national career, in a "national" law school, professional scholarship means adding one more ream to each year's paper mountain of commentary on those decisions, and that attention to the constitutional law of a state, including the state where the law school happens to be located, or to the treatment of one issue in several states, is for ambitious professors and law review editors a distinctly minor league game. These self-perpetuating biases are hard to overcome. *Id.* at 936.

\(^8\) “The variety in state administrative laws is the primary reason why law school casebooks and courses in administrative law almost never cover state administrative law in a meaningful way. It would simply be impossible to cover them in any depth…” *WILLIAM F. FUNK & RICHARD H. SEAMON, EXAMPLES AND EXPLANATIONS: ADMINISTRATIVE LAW* 20 (2001 Aspen).
Part II of the Article analyzes criticisms of *Chevron’s* process and application, specifically focusing on the Supreme Court’s divergent announced versus applied *Chevron* standards, the Supreme Court’s emphasis on plain meaning versus ambiguity, and the two-step structure for applying *Chevron*. With these criticisms in mind, the Article then compiles and analyzes the various state doctrines of judicial review of agency interpretation and compares the state doctrines to their federal counterpart. Part III broadly considers the various states’ announced standards, which fall into four general categories. Part IV then more thoroughly analyzes representative states from each of the four categories for insight into the practical application and development of these state standards. Drawing on the states’ information, Part V suggests that certain state doctrines not only allow for the same substantive deference principles underlying *Chevron* but also alleviate the *Chevron* doctrine’s shortcomings, especially in the areas of 1) consistency between announced and applied standards and 2) handling of statutory ambiguity. Thus, these state doctrines may present more efficient alternatives to the *Chevron* approach because they can maintain the same deferential results without the shortcomings of the *Chevron* process. Finally, Part VI considers the development of the state deference doctrines and analyzes how the various state-level administrative procedure acts (SLAPAs) have influenced state procedures. Based on these state experiences, as well as attempts to amend the federal Administrative Procedure Act (APA), the Article concludes by considering possible routes to amending or altering the *Chevron* doctrine.

The findings from these state law inquiries have promising implications for alleviating the problems identified with the *Chevron* doctrine. Most strikingly, no state uses a two-step process akin to *Chevron’s*, so the *Chevron* doctrine is unique to the
federal system. While states do have substantive deference principles similar to those underlying *Chevron*, no state impose those principles through a test that matches *Chevron*’s. Instead, most states employ some form of reasonableness inquiry to determine whether deference is proper. Based on this finding, coupled with many of the criticisms levied at *Chevron*’s process, application, and two-step structure, the Article suggests amending the *Chevron* inquiry to match the reasonableness tests employed by most states. The Article also finds that SLAPAs do not influence state deference standards; rather these standards of review appear to be uniformly judge-made. Such a finding implies that any attempt to amend the *Chevron* doctrine would either have to originate in the judiciary or arise out of specific, targeted legislative efforts.

**II. CRITICISM OF CHEVRON’S APPLICATION AND PROCEDURES**

The *Chevron* literature demonstrates dissatisfaction with *Chevron*’s procedures and applications. Scholars have frequently criticized the inconsistency between announced versus applied *Chevron* standards, particularly with *Chevron* step one. Commentators have also faulted *Chevron*’s two-step process for placing incentives against acknowledging statutory ambiguity and for encouraging the destructive union of *Chevron* and textualism.

One common criticism of *Chevron* does not call the two-step structure into question but rather challenges the Supreme Court’s inconsistent application of the

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9 See Appendix A, infra.
Particularly, the varied applications of *Chevron* step one have concerned critics. For example, Thomas Merrill has noted:

Post-*Chevron* cases have in fact begun to change the formulation of the step-one inquiry. The first sign of change was when opinions began to drop any reference to "specific intentions" or whether Congress had "clearly spoken to" the issue at hand and instead described the threshold inquiry simply in terms of whether the statute was "ambiguous" or "unclear." Then…a more dramatic change emerged: the Court began to describe the inquiry at step one in terms of whether the statute has a "plain meaning." This rubric, an offspring of the "new textualism"…has not been followed uniformly. Some opinions continue to quote the language of *Chevron* about whether Congress has spoken to the precise question at issue. The trend, however, has been strongly away from the original *Chevron* formulation of step one.\(^\text{11}\)

Inconsistent formulations of the step-one inquiry, like those that Merrill describes, can destabilize the entire *Chevron* doctrine by leaving the relevant inquiry uncertain.

Scholars have noted an even more troubling inconsistency, though, pointing out that even when the Supreme Court settles on a step-one inquiry for a particular case, the Court does not necessarily follow the standard that it announces.\(^\text{12}\) According to commentators, such

\(^{10}\) See, e.g., Merrill, *Judicial Deference to Executive Precedent*, supra note 5, at 970 ("It turns out that the Court does not regard *Chevron* as a universal test for determining when to defer to executive interpretations: the *Chevron* framework is used in only about half the cases that the Court perceives as presenting a deference question."); *Id.* at 982 ("[I]t is clear that *Chevron* is often ignored by the Supreme Court. Although the *Chevron* opinion purports to describe a universal standard by which to determine whether to follow an administrative interpretation of a statute, the two-step framework has been used in only about one-third of the total post-*Chevron* cases in which one or more Justices recognized that a deference question was presented.").

\(^{11}\) *Id.* at 990-91.

\(^{12}\) For example, Sunstein categorizes recent cases, in which the Supreme Court has employed more *de novo* review than deference, as "evident attempt[s] to reassert the primacy of the judiciary in statutory interpretation"; he argues that these cases display "shocking readings" of *Chevron* and increase "uncertainty about the appropriate approach" for applying the doctrine. Sunstein, *Chevron Step Zero*, supra note 4, at 190. Sunstein points to *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000); *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687 (1995); and *INS v. Cardoza-Fonseca*, 480 U.S. 421 (1987), as examples of cases demonstrating inconsistencies between the Courts' announced and applied standards. *Id.* at fn 13. Merrill similarly identifies inconsistencies between the Supreme Court's announced and applied standards in *Chevron* cases. Merrill, *Judicial Deference to Executive Precedent*, supra note 5, at 985-90.
discrepancy results in a messy and confused *Chevron* doctrine that handicaps the underlying deference principles it is supposed to enact.\(^{13}\)

Some critics identify *Chevron*'s "all or nothing"\(^{14}\) step-one as a potential cause for these inconsistent applications, arguing that the prospect of mandatory deference pressures the Court into altering step-one application to achieve certain results. For example, Merrill argues "the failure of *Chevron* to perform as expected can be attributed to the Court's reluctance to embrace the draconian implications of the doctrine for the balance of power among the branches, and to practical problems generated by its all-or-nothing approach to the deference question."\(^{15}\) Expounding on this point, he states:

> [T]he two-step inquiry as framed by *Chevron* would have profound consequences for the way in which courts approach the deference question.…. First, in contrast to the previous approach, the two-step structure makes deference an all-or-nothing matter. If the court resolves the question at step one, then it exercises purely independent judgment and gives no consideration to the executive view. If it resolves the question at step two, then it applies a standard of maximum deference. In effect, *Chevron* transformed a regime that allowed courts to give agencies deference along a sliding scale into a regime with an on/off switch.\(^{16}\)

Perhaps the most significant post-*Chevron* development, however, is a subtle but important modification in the statement of the relevant inquiry at step one. As we have seen, *Chevron* formulated that inquiry in terms of whether the court could "clearly" discern that Congress "had an intention on the precise question at issue." If this threshold requirement were faithfully followed, there is little doubt that it would mark a major shift of interpretative power toward the executive branch: it is a rare case where a court can fairly say that Congress thought about, let alone formulated a clear view on, the precise issue in controversy. The "specific intentions" formulation therefore operates as an engine of judicial deference. By the same token, however, if the threshold determination for independent judicial resolution at step one were described differently—for example, if courts were instructed to ask whether the statute has a general meaning that resolves the controversy, even if Congress has not specifically addressed the issue at hand—then the balance might shift back toward independent judgment. In short, under the two-step

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\(^{13}\) "The Supreme Court...has not applied the *Chevron* test in a consistent manner. Its post-*Chevron* jurisprudence is so confused that it is difficult to determine what remains of the original, highly deferential test." Pierce, *The Supreme Court's New Hypertextualism*, supra note 6, at 750; Merrill, *Judicial Deference to Executive Precedent*, supra note 5, at 980 ("On the whole, the overall picture suggests that the judicial understanding that informs the deference question is probably more confused today than it has ever been.").

\(^{14}\) Merrill, *Judicial Deference to Executive Precedent*, supra note 5, at 980.

\(^{15}\) Id.

\(^{16}\) Id. at 976-77.
Chevron framework, everything turns on the theory of judicial interpretation adopted at step one.\(^{17}\)

Merrill argues that since *Chevron*’s step one essentially determines the outcome of a case, the Supreme Court has demonstrated an inability or unwillingness to constrain itself to a consistent step-one inquiry.

Commentators also charge the over-importance of step one, along with the rise of textualism within the *Chevron* doctrine, with pressuring the Court not to acknowledge statutory ambiguity, and this aversion to ambiguity can undermine both principled statutory interpretation and the substantive deference ideal at the root of *Chevron*. For example, Merrill identifies textualism as inconsistent with *Chevron*’s deference principles because “the merger of the two-step Chevron framework and Justice Scalia's ‘plain meaning’ approach to statutory construction…dramatically transform[s] Chevron from a deference doctrine to a doctrine of antideference” because textualism places interpretive authority with the reader whereas *Chevron* places it with the agency.\(^{18}\) Similarly, Richard Pierce has implied that *Chevron*’s incentives against finding statutory ambiguity force textualism to act as a completely manipulable and subjective interpretive technique.\(^{19}\) Ultimately, Merrill and Pierce find textualism and *Chevron* to be mutually inconsistent and damaging.\(^{20}\) While Merrill claims that textualism withdraws *Chevron*’s

\(^{17}\) Id. at 990.

\(^{18}\) Id. at 992.

\(^{19}\) See Pierce, *The Supreme Court’s New Hypertextualism*, supra note 6, at 750 (“As the Court has changed the mix of ‘tools’ it uses and the ways in which it uses those tools, it has gradually ceased to apply step two of the Chevron test to uphold an agency construction of ambiguous statutory language, because it rarely acknowledges the existence of ambiguity.”).

\(^{20}\) Merrill suggests that *Chevron* is detrimental to textualism and vice versa, observing “the general pattern in the Court appears to suggest something of an inverse relationship between textualism and use of the Chevron doctrine.” Merrill, *Textualism and the Future of the Chevron Doctrine*, supra note 6, at 354. Merrill sees this relationship as based on a tension between the roles that the respective doctrines ask the court to play: “that Chevron is based on a model of courts as faithful agents [to the legislature and agency]... [t]extualism, in contrast, rejects the faithful agent model and instead adopts a model of courts as autonomous interpreters who seek answers to questions of statutory meaning through application of the
deference, Pierce notes the inverse, that *Chevron* leads to unprincipled applications of textualism. 21

With these criticisms in mind, this Article now considers the deference principles of the various states to determine if the state approaches might allow for agency deference while avoiding these pitfalls.

### III. BROAD SURVEY OF THE FIFTY STATES

A survey of the fifty states’ equivalents to the *Chevron* doctrine shows an array of different announced standards, ranging from strong deference to agency interpretation to completely *de novo* review explicitly discouraging deference. 22 The different state standards actually represent a continuous spectrum of possible approaches to agency interpretation, but they generally fit into four categories: strong deference, intermediate

ordinary reader perspective.” *Id.* at 353. Thus, Merrill concludes “textualism poses a threat to the future of the deference doctrine” *Id.* at 354.

21 Pierce claims that, as applied in the *Chevron* context, “textualism resembles the extreme versions of intentionalism that the textualists have long criticized. Judge Leventhal's characterization of the extreme versions of intentionalism applies equally well to the new textualists' selective use of dictionary definitions, judicial opinions, and treatises to support their preferred resolutions of policy disputes.” Pierce, *The Supreme Court’s New Hypertextualism,* supra note 6, at 752. “The Court now rarely defers to an agency's construction of ambiguous statutory language because a majority of Justices have now begun to use textualist methods of construction that routinely allow them to attribute ‘plain meaning’ to statutory language that most observers would characterize as ambiguous or internally inconsistent.” *Id.* Pierce asserts that taming the hypertextualism and unprincipled application in the *Chevron* context is necessary to preserve the value of textualism in statutory interpretation in general. *See Id.*

22 *See Appendix A, infra.* In this survey, conducted in January, 2007, I used only results from a single, consistent search method. I searched each Westlaw state digest under the digest entry “361k219” (361 is Westlaw’s headnote devoted to “statutes” and k219 is they keynote “executive construction”) and limited the search using the terms and connectors phrase “‘defer!’ /15 ‘agency.’” From the results of this search, I determined the state’s standard of review by considering the three to five most recent decisions; in Appendix A I list not only my standard classifications but also the cases and specific language upon which I based my classification. For states with contradictory cases, I considered more decisions and classified the state according to the seemingly dominant standard. For states with multiple cases all announcing a consistent standard, I included a smaller number of cases in Appendix A.

While my survey method did provide some degree of consistency, it could be criticized as overly narrow. Still, it yielded a data set rich enough to classify the states with some confidence. My search method produced results from every state except South Dakota, which I omitted it from consideration. Additionally, I do not consider Louisiana because its civil law system makes it incompatible with the rest of this comparison.
deference, *de novo* review with the possibility of deference to agency expertise or experience, and *de novo* review with deference discouraged.\(^{23}\)

This survey is, of course, limited to considering only states’ announced standards as derived from a relatively few cases. Still, this should provide a useful overview of how state judiciaries review agency interpretations of law. Also, the in-depth review of representative states will hopefully mitigate some of the broad survey’s limitations.

This Article classifies the survey results into four broad categories,\(^ {24}\) and though such classification may risk overlooking the nuances of each different standard, these four categories seem to describe the states’ announced\(^ {25}\) standards accurately.

The “strong deference” category\(^ {26}\) includes states in which courts will defer to the agency interpretation as long as it is not contrary to the statute. The main defining feature of this category is that such deference appears to be mandatory. Standards in this category often stress both legislative intent to delegate authority to agencies and efficiency in avoiding duplication of interpretive work. This category seems most consistent with the announced “*Chevron* two step,” because these standards imply that

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\(^{23}\) I acknowledge that classification of some states’ announced standards is debatable, so in the interest of objectivity, I have included the citations and quotations upon which I based my classification in Appendix A.

\(^{24}\) While there has not been much work in this area, the past efforts to group states according to their deference principles have lumped them into either only three categories or four similar categories different than those I chose. For example, one casebook divides state court approaches to judicial review of agency legal interpretation into three basic approaches: 1) strong, *Chevron*-style deference (taken by a minority of states), 2) weaker deference (taken by most states), and 3) no deference (taken by a few states). MICHAEL ASIMOW, ARTHUR EARL BONFIELD, AND RONALD M. LEVIN, STATE AND FEDERAL ADMINISTRATIVE LAW 557-64 (2nd Ed.). A comprehensive article on state administrative law, a more in depth review, divided states into high deference, no deference, variable deference, and no standard categories. William A. McGrath et al., *Project: State Judicial Review of Administrative Action*, 43 ADMIN. L. REV. 571, 763 (1991). The classifications in these sources are dated, though, and I found my four-category system better described the present range of state standards.

\(^{25}\) While practical application of these standards may blur their differences even further, the four-part grouping remains a handy principle for initial organization of states.

deference is mandatory when a statute is ambiguous and the agency interpretation is reasonable.

The “intermediate deference” category\(^\text{27}\) appears practically similar to the strong deference classification, but “intermediate deference” courts often explicitly assert authority to review matters of law \textit{de novo}. Thus, this category differs from the last because it presents the option, rather than the obligation, of deference. While the “intermediate deference” courts do announce \textit{de novo} review authority, they also note that they often defer as a practical matter. So, while these courts reserve the ultimate authority to determine matters of law, they generally defer to agency interpretations. This category may be most consistent with current federal application of \textit{Chevron}\(^\text{28}\) because it allows courts to engage in detailed review but with the practical result of frequent deference.

The third category, “\textit{de novo} with the possibility of deference to agency expertise or experience,”\(^\text{29}\) contains state courts that assert their \textit{de novo} authority but imply that they will not often defer. These states do acknowledge the importance of agency expertise and experience, though, and allow that deference to such institutional competency can be proper. Like the intermediate deference classification, here deference is neither mandatory nor forbidden, but this category differs from the last because there courts announced deference as the likely outcome whereas here \textit{de novo} review is the

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\begin{itemize}
\item \textbf{27} Containing Arizona, Arkansas, Colorado, Idaho, Illinois, Kansas, Kentucky, Massachusetts, Missouri, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oregon, Rhode Island, Texas, and Wisconsin.
\item \textbf{29} Containing Alaska, California, Iowa, Maryland, Minnesota, New Hampshire, New Mexico, Utah, and Washington.
\end{itemize}
default. This category may be most akin to the federal Skidmore doctrine because agency interpretations are valued only as far as they are persuasive.

Finally, the “de novo with deference discouraged” category features state courts that imply that de novo review is mandatory. As the category label indicates, these courts often expressly discourage deference to agency interpretation, asserting that the judiciary is the branch most capable to determine statutory meaning.

Interestingly, no state expressly adopts the “Chevron two step.” The “strong deference” courts often express similar substantive principles to those underlying Chevron, but they frequently announce their standard as a one-step reasonableness review. This one-step recast of the Chevron test is consistent with some scholars’ views, but there is an important difference between Chevron, as currently practiced, and the equivalent one-step reasonableness test. The one step tests employed by the states do not focus on “plain meaning” or “ambiguity” as the initial inquiry; rather they ask whether the agency’s interpretation is reasonable.

As Merrill discusses, this difference is meaningful because when deference is mandatory a federal court must find “plain meaning” to avoid deferring to an agency,

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30 See U.S. v. Mead Corp., 533 U.S. 218, 228 (2001) (explaining the Skidmore principle that “[t]he fair measure of deference to an agency…has been understood to vary with circumstances, and courts have looked to the degree of the agency's care, its consistency, formality, and relative expertness, and to the persuasiveness of the agency's position…”).
31 Containing Delaware, Nebraska, New York, Oklahoma, and Virginia.
32 See, e.g., Gary Lawson, Outcome, Procedure and Process: Agency Duties of Explanation for Legal Conclusions, 48 RUTGERS L. REV. 313, 314 fn 5 (1996) (“The Chevron test can be formulated more simply as a one-step inquiry that asks whether the agency interpretation is reasonable. This one-step test would reach exactly the same results as the current two-step formulation, but with less room for misunderstanding, because an interpretation that is inconsistent with the clear meaning of the relevant statute is ipso facto unreasonable.”). But see Claire R. Kelly & Patrick C. Reed, Once More unto the Breach: Reconciling Chevron Analysis and De Novo Review after United States v. Haggar Apparel Company, 49 AM. U. L. REV. 1167, 1170 fn 20 (2000) (“Chevron analysis should not, however, be misunderstood to be a one-step method in which the court must accept the agency's interpretation as controlling…if the court finds that agency's interpretation is sufficiently reasonable.”).
33 Merrill, Judicial Deference to Executive Precedent, supra note 5, at 990.
34 Both this difference and its implications are discussed in detail below.
whereas these state courts need only find that the agency interpretation is unreasonable to avoid deference. Though this may appear to be the same decision under a different name, the difference is more than semantic. Finding “plain meaning” assigns a singular, exclusive meaning to statutory language, whereas finding an interpretation unreasonable eliminates one possible interpretation but does not pin down an exact statutory meaning, allowing for a range of interpretations in the future.

IV. IN-DEPTH ANALYSIS OF REPRESENTATIVE STATES

A. Delaware -- De Novo with Deference Discouraged

1. The Standard

Delaware has one of the least deferential announced standards for reviewing agency interpretations of law. DiPasquale announces that in Delaware “statutory interpretation is ultimately the responsibility of the courts. A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it. A reviewing court will not defer to such an interpretation as correct merely because it is rational or not clearly erroneous.” In DiPasquale, the court “expressly decline[d]” to adopt the Chevron standard of deference, choosing instead to retain a “plenary standard of review.”

DiPasquale forbids deference but allows “due weight,” raising the question of the functional difference between the two concepts. The answer seems to be in the next sentence of the holding, which states that the court need not uphold even a rational agency interpretation and may substitute whatever interpretation it finds most

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36 Id. at 382-3 (emphasis added).
37 Id. at 383.
compelling. Thus, an agency’s interpretation is only as weighted as the court finds it convincing.

A number of recent cases demonstrate that *DiPasquale* practically stands for a *de novo* standard of review that gives little attention to agency interpretation; even when Delaware courts do consider agency interpretation, it is only after a *de novo* inquiry. Though courts applying this standard have not actually addressed *DiPasquale*’s prohibition on deference, they appear to read the standard as requiring full articulation of the reasoning underlying an interpretation. For example, when courts do choose to give weight to agency interpretation, they first engage in *de novo* review and then explain why the interpretation is persuasive.\(^{38}\)

In two recent cases, Delaware courts found statutory meaning contrary to agency interpretations and overturned agency actions based on plain meaning, legislative history, and canons of construction. For example, in *Hirneisen v. Champlain Cable Corp.*., a Delaware court applied the *DiPasquale* standard to overturn a state agency’s interpretation of a worker’s compensation statute.\(^{39}\) At issue was whether death benefits applied to spouses of retired workers. The court held that since the “plain language of the statute” contained no exception for spouses of retired workers, the agency and lower court had erred in interpreting the statute to have one.\(^{40}\) In reaching its decision, the court announced a standard for statutory review similar to that in *DiPasquale*, noting that the court would not have been required to defer even to a reasonable agency interpretation.\(^{41}\)

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\(^{38}\) See text and accompanying discussion, infra note 51 (discussing *McKinney v. Kent County Bd. of Adjustment*, which gave weight to an agency interpretation only after *de novo* review and examination of agency’s longstanding interpretation).

\(^{39}\) *Hirneisen v. Champlain Cable Corp.*, 892 A.2d 1056, 1057-8 (Del. 2006).

\(^{40}\) *Id.* at 1059-60.

\(^{41}\) *Id.* at 1059 (“Statutory interpretation is ultimately the responsibility of the courts. A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it. A reviewing
New Castle County Department of Land Use v. University of Delaware provides another recent application of this standard, overturning an agency’s decision that a bank on a college campus does not fit a “school purpose” tax exemption.\textsuperscript{42} Here the agency affected a policy change and altered its interpretation of a tax exemption statute.\textsuperscript{43} The court overturned the agency interpretation based on a statutory analysis, which found the agency decision improper for failing to recognize different meanings for “school” and “educational” purposes in the statute.\textsuperscript{44}

Dismissing the agency’s argument that the court ought to defer to the agency’s interpretation, the New Castle court held “the construction of statutes is a purely legal determination that the Superior Court and this Court review \textit{de novo}.”\textsuperscript{45} The court then examined legislative history, consulted a dictionary, and applied the canon against surplusage in interpreting the statute contrary to the agency’s view.\textsuperscript{46}

Similarly, another recent pair of Delaware cases relied on both statutory language and precedent to overturn agency interpretations. In Holowka v. New Castle County Bd. of Adjustment, the court relied on DiPasquale and reviewed a zoning variance statute \textit{de novo} by considering statutory language and case law.\textsuperscript{47} The opinion determined the proper statutory standard for granting a variance without even referring to the agency’s interpretation; instead the court employed a four-part test completely derived from

\textsuperscript{42} New Castle County Dept of Land Use v. University of Delaware, 842 A.2d 1201, 1202 (Del. 2004).
\textsuperscript{43} \textit{Id.} at 1204.
\textsuperscript{44} \textit{Id.}
\textsuperscript{45} \textit{Id.} at 1206.
\textsuperscript{46} \textit{Id.} at 1207.
precedent. Likewise, the court applied the same *de novo* standard in *Reserves Development Corp. v. State Public Service Com'n*. Again, the decision focused completely upon statutory language and case law, ignoring the agency interpretation.

Even in their *de novo* review, Delaware courts sometimes do find agency interpretations persuasive. For example, in *McKinney v. Kent County Bd. of Adjustment*, the court applied the *DiPasquale* standard but upheld the agency’s interpretation, determining that the interpretation was entitled to weight. Here the court once again considered a zoning ordinance, but after consulting a dictionary in its full *de novo* inquiry, the court still found the statute ambiguous. The court then examined the agency interpretation and, finding the interpretation both reasonable and longstanding, accorded it enough weight to tip the interpretive balance in favor of upholding the agency’s interpretation.

2. How Delaware’s Standard Came About: Its History and Relationship to Delaware’s APA

The Delaware SLAPA does not address the proper standard for judicial review of agency statutory interpretation. The most relevant section merely provides for “review of regulations,” announcing the presumed validity of regulations and requiring reviewing courts to “take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency acted.” Despite the Delaware SLAPA’s silence on review of agency interpretation, *DiPasquale* does refer to

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48 *Id.* at *5.
50 *Id.*
52 *Id.* at *5-6.
53 *Id.* at *5.
the statute in its reasoning. Though DiPasquale does not rely on the SLAPA to derive its standard, the court seems to interpret the statute’s silence as a statement that deference to the agency is not required.

The Delaware court used DiPasquale to reconcile two conflicting standards of agency deference. DiPasquale affirms the Stoltz line of cases, which descend from a judicial proclamation that courts have plenary power to review issues of law. In the process, DiPasquale overruled Eastern Shore, which announced a highly deferential standard of review. The DiPasquale court justified overruling Eastern Shore by stating “it would be anomalous for this Court to accord a higher level of deference to the legal rulings of an administrative agency than that applied to trial courts.” In addition to citing Eastern Shore’s dubious precedential support and internal inconsistency, the court further justified the overrule by noting “Eastern Shore's standard evolved from a case dealing with application of a federal statute and which preceded Delaware's adoption of the Administrative Procedures Act in 1976.”

While the court did not assert that the Delaware SLAPA compels the DiPasquale standard, in the footnotes it does explain how this standard is consistent with Delaware’s SLAPA. The court also notes that the Delaware APA mandates deference to factual

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55 DiPasquale relied on Stoltz for the plenary review of statutory interpretation. Stoltz Management Co., Inc. v. Consumer Affairs Bd., 616 A.2d 1205, 1208 (Del. 1992). Stoltz, in turn, relied on E.I. du Pont de Nemours and Co., Inc. v. Shell Oil Co., 498 A.2d 1108 (Del. 1985), for the proposition. The court in E.I. du Pont asserted, without citation, that “the question we must address is really one of construction and the application of law to the facts. Over such matters, we have plenary review.” Id. at 1113.


57 Id. at 381.

58 Id. at 382-3.

59 Id. at 382.

60 See id. at 383 fn 8-9.
findings,\textsuperscript{61} and attention to this detail implies that the APA’s decision not to mandate
deferece to agency interpretation leaves that standard to be determined by common law.
This reasoning, an extension of the \textit{expressio unius est exclusio alterius} canon of
statutory interpretation, infers that courts retain “plenary standard of review”\textsuperscript{62} of
statutory interpretation from the Delaware SLAPA’s silence on the matter.

\textbf{B. Mississippi—Strong Deference}

\textit{1. The Standard}

Mississippi courts announce a highly deferential standard: “when an agency
interprets a statute that it is responsible for administering, we must defer to the agency's
interpretation so long as the interpretation is reasonable.”\textsuperscript{63} Even though Mississippi
courts ordinarily review questions of law \textit{de novo}, the state’s courts have “accepted an
obligation of deference to agency interpretation and practice in areas of administration by
law committed to their responsibility.”\textsuperscript{64} Expressed in this way, Mississippi’s standard
resembles a more deferential, single-step \textit{Chevron} inquiry. In fact, Mississippi courts
often equate the deference due to an agency’s statutory interpretation with that due to an
agency’s interpretation of its own regulations.\textsuperscript{65}

\textsuperscript{61} \textit{Id.}
\textsuperscript{62} \textit{Id.} at 383.
\textsuperscript{63} Parkerson v. Smith, 817 So.2d 529, 534 (Miss. 2002) (citing \textit{Chevron U.S.A., Inc. v. Natural Resources
Defense Council, Inc.}, 467 U.S. 837, 843 (1984)).
\textsuperscript{64} Gill v. Mississippi Dep't of Wildlife Conserv., 574 So.2d 586, 593 (Miss. 1990).
\textsuperscript{65} See, \textit{e.g.}, Electronic Data Systems Corp. v. Mississippi Division of Medicaid, 853 So.2d 1192, 1204
(Miss. 2003) (“This Court accords great deference to an administrative agency's construction of its own
rules and regulations and the statutes under which it operates.”); Mississippi State Tax Comm'n v. Mask,
667 So.2d 1313, 1314 (Miss.1995) (“This court generally accords great deference to the agency's
interpretation of its own rules and statutes which govern its operation.”).
Mississippi courts certainly invoke this deferential standard consistently, even when they need not apply it,\textsuperscript{66} but it is debatable whether the courts’ application of this standard measures up to the extraordinarily strong deference principles announced. With language like “must defer”\textsuperscript{67} and “obligation of deference,”\textsuperscript{68} one might expect courts to conduct a very limited statutory inquiry before deferring to the agency. While Mississippi courts do seem to defer to agency interpretations, one could argue that their extensive statutory inquiries prior to deference do not accord with the strong wording of their standard.

Unfortunately, relatively few cases offer insight into Mississippi’s practice of this deference standard. Though courts frequently cite the standard,\textsuperscript{69} they often do so in arbitrary and capricious challenges or in other cases that do not require them to actually apply deference. When one examines these cases for actual use of the deference standard, there are not a great number of recent instances. This paucity of relevant cases could result from nearly a century of a consistently announced deferential standard, which might discourage challenges to agency interpretations. Still, while this line of precedent states the consistent and often cited proposition that Mississippi courts have “generally accorded great deference to an administrative agency's construction of its own

\textsuperscript{66} Even in cases that turn on factual questions or arbitrary and capricious review, the courts often state the statutory interpretation standard as well. See, e.g., Mississippi Bureau of Narcotics v. Stacy, 817 So.2d 523 (Miss. 2002); Mississippi Department of Corrections v. Harris, 831 So.2d 1190 (Miss. Ct. App. 2002).

\textsuperscript{67} Parkerson v. Smith, 817 So.2d 529, 534 (Miss. 2002).

\textsuperscript{68} Gill v. Mississippi Dep’t of Wildlife Conserv., 574 So.2d 586, 593 (Miss. 1990).

\textsuperscript{69} In fact, courts routinely cite the same chain of precedent: Mississippi State Tax Comm’n v. Mask, 667 So.2d 1313, 1314 (Miss. 1995); Melody Manor Convalescent Ctr. v. Mississippi State Dept’of Health, 546 So.2d 972, 973 (Miss.1989); General Motors Corp. v. Mississippi State Tax Comm’n, 510 So.2d 498, 502 (Miss. 1987). These cases cite back to Briscoe v. Buzbee, 143 So. 407 (1932); Winston County v. Woodruff, 187 So.2d 299 (Miss.1966); State Tax Commission v. Edmondson, 196 So.2d 873 (Miss.1967); Grant Center Hosp. v. Health Groups, etc., 528 So.2d 804, 808 (Miss.1988).
rules and regulations and the statutes under which it operates,\textsuperscript{70} when Mississippi courts have applied the standard, they have engaged in more than the minimum of review before deferring to the agency.

For example, in \textit{Gill v. Mississippi Dept. of Wildlife Conservation}, the court thoroughly reviewed a statute protecting civil servants from political firings before upholding the agency’s interpretation.\textsuperscript{71} After announcing a standard of deference to “agency interpretation and practice” in areas committed to agency responsibility, the court examined the lower court’s opinion, the statutory language and purpose, and related precedent to determine whether the agency had exceeded its statutorily granted authority.\textsuperscript{72} After this analysis, the court upheld the agency’s interpretation on mixed grounds of law and fact.\textsuperscript{73} Ironically, the court stated “we stay our hand in the face of [the agency’s interpretive authority]” only after conducting a rather probing review of statutory meaning.\textsuperscript{74}

Thus, despite announcing a standard of deference, the \textit{Gill} court actually engaged in an extensive statutory review that could be considered \textit{de novo}. While this probing statutory reexamination could have resulted from the court’s failure to completely separate the statutory interpretation and substantial evidence inquiries, the court’s actions may also demonstrate that an agency interpretation will not receive deference until the court is satisfied that it is correct.

\textsuperscript{70} Mississippi State Tax Comm’n v. Mask, 667 So.2d 1313, 1314 (Miss. 1995).
\textsuperscript{71} Gill v. Mississippi Dep’t of Wildlife Conserv., 574 So.2d 586, 593 (Miss. 1990).
\textsuperscript{72} \textit{Id.} at 593-4.
\textsuperscript{73} \textit{Id.} at 593.
\textsuperscript{74} \textit{Id.} at 595.
Manufab, Inc. v. Mississippi State Tax Comm’n potentially stands for a similar principle.\textsuperscript{75} In this dispute over the interpretation of a tax exemption statute, the Court first examined the statutory language and statutory purpose.\textsuperscript{76} The Court then reviewed precedent to derive the rule that “tax exemptions [and credits] will be strictly construed against the taxpayer.”\textsuperscript{77} Finally, the Court addressed and dismissed Manufab’s statutory interpretation arguments.\textsuperscript{78} Only after all this analysis did the Court assert the principle of deference in upholding the agency interpretation, stating “an agency's interpretation of the statute it is to enforce is given controlling weight unless it is manifestly contrary to the statute.”\textsuperscript{79}

So the Manufab court announced a highly deferential standard but deferred only after an essentially \textit{de novo} statutory review. While the court, of course, must first interpret the statute to determine whether the agency interpretation is “manifestly contrary,” here it appears that the Court did much more. If the court truly intended to defer to any agency interpretation not “manifestly contrary” to the statute, the court could have announced the deference standard first and determined whether deference was appropriate after a less involved statutory analysis.

\textit{Wheeler v. Mississippi Department of Environmental Quality} provides an example of the court deferring after a less thorough statutory review.\textsuperscript{80} Here the court decided the statutory validity of an agency’s practice of treating similar permit evaluations as a single appealable decision.\textsuperscript{81} The Court upheld the agency practice,

\textsuperscript{75} Manufab, Inc. v. Mississippi State Tax Comm’n, 808 So.2d 947 (Miss. 2002).
\textsuperscript{76} Id. at 949.
\textsuperscript{77} Id. at 949.
\textsuperscript{78} Id.
\textsuperscript{79} Id. at 950 (internal quotations and citations omitted).
\textsuperscript{80} Wheeler v. Mississippi Department of Environmental Quality, 856 So.2d 700 (Miss. Ct. App. 2003).
\textsuperscript{81} Id. at 703.
stating that the agency had valid policy reasons for such an interpretation. Additionally, the Court held that finding the statute to preclude the agency’s practice would require an “extremely narrow reading.” In this short opinion, the court did evaluate the statute and consider policy grounds before announcing the standard of deference, but this analysis did not appear to amount to a full *de novo* review.

Finally, *Mississippi Gaming Com’n v. Six Electronic Video Gambling Devices* provides an example of the court declining to defer to agency interpretation, not because the interpretation was faulty, but because the interpretation was not officially established and could have been considered a mere litigating position. Though the court upheld the agency’s interpretation of the definition of an illegal slot machine, this case offers insight into the court’s process of review when it explicitly does not defer. Ultimately, the court’s *de novo* review relied on the plain language of the statute, statutory history, and precedent to resolve the issue in the agency’s favor.

The court’s statutory review in this case, where it expressly stated that it was not giving the agency deference, is no different than its supposedly deferential review in *Gill* and *Manufab*. While the announced *de novo* review in *Six Electronic Gaming Devices* was more involved than the announced deference in *Wheeler*, even those two cases do not demonstrate a vast difference between the court reviewing in deference and the court reviewing *de novo*.

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82 Id. at 703-4.
83 Id. at 703.
85 Id. at 329.
86 Id. at 329.
Though these few cases are insufficient to allow conclusive inferences, it appears that Mississippi’s statutory review goes beyond determining whether the agency was reasonable and more closely approximates a *de novo* review. Then again, the agency’s victory record within this small sample is quite good, which might indicate that Mississippi courts do substantially defer despite their extensive statutory inquiries.

2. How Mississippi’s Standard Came About: Its History and Relationship to Mississippi’s APA

Mississippi’s APA, similar to the model state APA,\(^{87}\) is completely silent on judicial review of agency statutory interpretation and nearly completely silent on judicial review altogether. The most relevant sections generally refer to judicial review, but neither offers any meaningful guidance for review of statutory interpretation.\(^{88}\)

Thus, it is no surprise that Mississippi’s standard is based on common law. Noteworthy, though, is the continuous line of precedent for this standard, which dates back before the 1930s. The 1932 case *Briscoe v. Buzbee* holds “[w]here the construction of a statute is doubtful, the interpretation placed thereon and followed for a considerable course of time by the administrative departments should be followed.”\(^{89}\) *Briscoe*, which cites even more ancient cases for this principle of deference,\(^{90}\) is still followed.\(^{91}\) *State Tax Commission v. Edmondson*\(^{92}\) links *Briscoe* and its contemporaries to the more

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\(^{87}\) According to the annotated code on Westlaw.
\(^{89}\) *Briscoe v. Buzbee*, 143 So. 407, 407 (Miss. 1932); *see also* Gully v. Jackson International Co., 145 So. 905, 907 (Miss. 1933) (announcing a deference standard similar to that in *Briscoe*).
\(^{90}\) *Briscoe v. Buzbee*, 143 So. 407, 407 (Miss. 1932)
\(^{91}\) *See, e.g.*, Electronic Data Systems Corp. v. Mississippi Div. of Medicaid, 853 So.2d 1192, 1204 (Miss. 2003) (citing *Briscoe*).
\(^{92}\) *State Tax Commission v. Edmondson*, 196 So.2d 873 (Miss. 1967).
modern Mississippi cases. *Edmonson* affirms that an agency interpretation is entitled “to weight” except when that interpretation conflicts with the underlying statute.\(^\text{93}\)

This line of cases has evolved independent of Mississippi’s SLAPA. Obviously, cases like *Briscoe* predate the SLAPA, but even more recent cases make no reference to the statute. Thus, the Mississippi deference standard is grounded not in statutory mandate but rather in judicially-determined prudential reliance on agency experience and expertise.\(^\text{94}\)

The similarities between the federal *Chevron* standard and Mississippi’s might also make one think that Mississippi actually adopted *Chevron*, but such is not the case. *As Briscoe and Edmondson* demonstrate, the Mississippi standard predated and grew independently of *Chevron*, and no subsequent cases have adopted *Chevron* as the new basis for the standard. Mississippi courts do, however, cite federal precedent as additional support for the deference standard.\(^\text{95}\)

Rather than being influenced by *Chevron*, the longstanding Mississippi standard seems to have influenced Mississippi courts’ reading of *Chevron*. For example, instead of describing the standard as the traditional “*Chevron* two step,” Mississippi courts interpret it as a single step: “when an agency interprets a statute that it is responsible for administering, we must defer to the agency's interpretation so long as the interpretation is

\(^{93}\) *Id.* at 877.

\(^{94}\) For examples of Mississippi Courts relying on prudential and policy reasons (e.g. agency expertise and experience) for this standard, see Gill v. Mississippi Dep't of Wildlife Conserv., 574 So.2d 586, 593 (Miss. 1990); Briscoe v. Buzbee, 143 So. 407 (Miss. 1932); Wheeler v. Mississippi Department of Environmental Quality, 856 So.2d 700 (Miss. Ct. App. 2003).

reasonable.” While *Chevron* does not appear to have changed the substance of Mississippi’s test, *Chevron* does seem to have influenced the phrasing of Mississippi’s standard, which shifted from “entitled to weight” in *Edmondson* to “must defer” in *Parkerson*.

C. Alaska—De Novo with the Possibility of Deference to Agency Expertise or Experience

1. The Standard

The *Tesoro* case announces Alaska’s two possible standards for reviewing agency action. The first standard, a rational basis review, calls for deference to reasonable agency judgment; this standard is applicable to “agency expertise or the determination of fundamental policies within the scope of the agency's statutory function.” The second standard, referred to as either “independent judgment” or “substitution of judgment,” applies *de novo* review. The court applies substitution of judgment “where the questions of law presented do not involve agency expertise or where the agency's specialized knowledge and experience would not be particularly probative as to the meaning of the statute.” The *Tesoro* court asserted that substitution of judgment “is appropriate where the knowledge and experience of the agency is of little guidance to the court or where the case concerns ‘statutory interpretation or other analysis of legal

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98 Parkerson v. Smith, 817 So.2d 529, 534 (Miss. 2002).
100 Id.
101 Id.
102 Id. (emphasis original).
relationships about which the courts have specialized knowledge and experience.” 103

The vast majority of the cases applying the Tesoro standard exercise a straightforward de novo review of agency statutory interpretation. 104 Indeed, Tesoro implies that the substitution of judgment standard should always apply to cases of statutory interpretation, but one case has left open the possibility of applying rational basis review to interpretations that involve “agency expertise or determination of fundamental policies.” 105 Of course, even under the substitution of judgment standard, nothing prevents a court from relying on an agency’s expert interpretation.

State v. McCallion offers one example of Alaska’s de novo substitution of judgment standard. 106 This case involves a challenge to the statutory validity of an agency’s computation of good behavior credit for shortening the length of prison sentences. 107 Here the court announced the “substitution of judgment” standard and engaged in a completely de novo review, considering the statute’s language, history and purpose. 108 Similarly, United Parcel Service Co. v. State, Dept. of Revenue involved a de novo review of an agency’s interpretation of a statutory provision for fuel tax. 109 Applying the substitution of judgment standard, the court examined statutory language and legislative purpose before affirming the agency’s interpretation. 110

103 Id. (emphasis original).
106 Id. at 94.
107 Id. at 98-9.
109 Id. at 88-90.
Sumner v. Eagle Nest Hotel also applied the Tesoro test but held that either substitution of judgment or rational basis review could apply to the agency interpretation at issue.\(^{111}\) The case involved an interpretation of the proper standard for review of workers’ disability payments.\(^ {112}\) After explaining Tesoro’s two possible standards of review, the court declined to choose one to apply, holding that the agency’s interpretation would satisfy either.\(^ {113}\) The court found the underlying statute ambiguous and, after examining statutory purpose and related precedent, concluded both that the agency interpretation would meet rational basis review and that the court reviewing \textit{de novo} would agree with the agency.\(^ {114}\)

The standard for applying Tesoro is well established, and there is little question that Alaska courts will review these issues \textit{de novo}. To the extent that Sumner is an outlier, it still does not foreclose the court’s \textit{de novo} power of review; for example, at no point does it imply mandatory deference to the agency’s interpretation. So, while the court may choose to defer to agency interpretation, nothing appears to limit its \textit{de novo} authority.

2. How Alaska’s Standard Came About: Its History and Relationship to Alaska’s APA

Like other SLAPAs, Alaska’s SLAPA does not prescribe standards for judicial review of agency interpretations of law. The most relevant provision\(^ {115}\) allows for “judicial review of validity,” stating that “an interested person may get a judicial

\(^{111}\) Sumner v. Eagle Nest Hotel, 894 P.2d 628 (Alaska 1995).
\(^{112}\) Id. at 630.
\(^{113}\) Id.
\(^{114}\) Id. at 631.
\(^{115}\) Alaska Stat. § 44.62.300 (2007).
declaration on the validity of a regulation,” but it does not specify procedures for review of legal interpretation.

The roots of the Tesoro standard actually predate Alaska’s SLAPA, which has had no apparent effect on the standard. Though most recent cases cite Tesoro\textsuperscript{116} for Alaska’s standard of judicial review, Tesoro cites Kelly v. Zamarello\textsuperscript{117} for the same standard. Interestingly, Kelly actually borrowed the rational basis versus substitution of judgment scheme from the Oregon Supreme Court, though the Alaska court claimed to adopt the bifurcated review standard more to describe the de facto bifurcation of recent Alaska precedents than to change the practice.\textsuperscript{118} While borrowing the Oregon court’s framework, Kelly also cited the United States Supreme Court for additional policy justifications for the standard.\textsuperscript{119}

\textit{D. Idaho—Intermediate Dference}

\textit{1. The Standard}

A single case, \textit{J.R. Simplot Co. v. Tax Com'n},\textsuperscript{120} announces Idaho’s comprehensive four-prong test for determining whether an agency interpretation deserves deference:

\begin{enumerate}
\item The court must first determine if the agency has been entrusted with the responsibility to administer the statute at issue. Only if the agency has received this authority will it be “impliedly clothed with power to construe” the law.
\item The second prong of the test is that the agency’s statutory construction must be reasonable....
\item The third prong for allowing agency deference is that a court must determine that the statutory language at issue does not expressly treat the precise question at issue....
\item If an agency, with authority to administer a statutory area of the law, has made a reasonable construction of a statute on a question without a precise statutory
\end{enumerate}

\begin{footnotes}
\textsuperscript{117} Kelly v. Zamarello, 486 P.2d 906 (Alaska 1971).
\textsuperscript{118} \textit{Id.} at 915-16.
\textsuperscript{119} \textit{Id.} at 917-18.
\textsuperscript{120} J.R. Simplot Co. v. Tax Com'n, 820 P.2d 1206 (Idaho 1991).
\end{footnotes}
answer then, under the fourth prong of the test, a court must ask whether any of the rationales underlying the rule of deference are present.  

To determine whether the fourth prong is satisfied, Idaho courts examine five separate rationales for deference:

(1) the rationale requiring that a practical interpretation of the statute exists, (2) the rationale requiring the presumption of legislative acquiescence, (3) the rationale requiring agency expertise, (4) the rationale of repose, and (5) the rationale requiring contemporaneous agency interpretation.

If an agency interpretation meets the test, Idaho courts accord it “considerable weight.” If the interpretation does not meet one of the prongs, it is “left to its persuasive force” and the court can decide the issue de novo. Nearly without exception, Idaho courts explicitly and methodically apply these four prongs to determine deference. At no point does the Simplot test mandate deference; it just calls courts to give great weight. Still, applications of the test show that when an interpretation fulfills all four prongs it will receive deference.

*Mason v. Donnelly Club* demonstrates a standard application of the Simplot test. Here the Court reviewed whether an agency regulation complied with the underlying statute regarding unemployment benefits. With little inquiry, the court held that Simplot prong one was met and found that the regulations satisfied prong two.

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121 Id. at 1219.
123 Id. at 187.
127 Id. at 905.
because they were reasonably based on precedent.\textsuperscript{128} The statute’s lack of specificity met the third prong, and finally, in the fourth prong analysis, the court found that the rule was practical.\textsuperscript{129} Though the regulations demonstrated no legislative acquiescence and were based on no particular expertise, the court found the rule’s practicality and persuasiveness sufficient to satisfy the fourth prong.\textsuperscript{130} Thus, the court deferred to the regulations.\textsuperscript{131}

Both \textit{Pearl v. Board of Professional Discipline of Idaho State Bd. of Medicine}\textsuperscript{132} and \textit{Canty v. Idaho State Tax Com’n}\textsuperscript{133} applied the \textit{Simplot} test just as in \textit{Mason}. Both cases cycled through the four prongs and found them fulfilled.

On the other hand, in \textit{Westway Const., Inc. v. Idaho Transp. Dept}. the court rejected an agency interpretation of the term “clerical mistake” at step one of the \textit{Simplot} test.\textsuperscript{134} The Court held that since the agency had not been entrusted to administer the statute in question because the statute “applies generally to any public entity receiving bids for public works construction,” it failed step one of \textit{Simplot} and was entitled to no deference.\textsuperscript{135} The Court went on to consider the question \textit{de novo}.

A recent Idaho case did not apply the \textit{Simplot} standard in pattern with the past cases, though. In \textit{Sons & Daughters of Idaho, Inc. v. Idaho Lottery Com’n} the court paraphrased the \textit{Simplot} test and did not expressly apply the four prongs.\textsuperscript{136} Rather, the Court stressed that legislative intent was the ultimate test of statutory interpretation and that, regardless of whether deference to the agency was appropriate, the judiciary was the

\footnotesize
\begin{itemize}
  \item \textsuperscript{128} \textit{Id.} at 906.
  \item \textsuperscript{129} \textit{Id.} at 907.
  \item \textsuperscript{130} \textit{Id}.
  \item \textsuperscript{131} \textit{Id}.
  \item \textsuperscript{132} \textit{Pearl v. Board of Professional Discipline of Idaho State Bd. of Medicine}, 44 P.3d 1162 (Idaho 2002).
  \item \textsuperscript{133} \textit{Canty v. Idaho State Tax Com’n}, 59 P.3d 983 (Idaho 2002).
  \item \textsuperscript{134} \textit{Westway Const., Inc. v. Idaho Transp. Dept}, 73 P.3d 721, 730 (Idaho 2003).
  \item \textsuperscript{135} \textit{Id}.
  \item \textsuperscript{136} \textit{Sons & Daughters of Idaho, Inc. v. Idaho Lottery Com’n}, 2007 WL 542715 at *2 (Idaho 2007).
\end{itemize}
ultimate interpreter of statutory meaning. In the end, however, the court held that the agency’s reasonable construction of the statute was entitled to deference. Also, the court’s failure to apply Simplot may be explained by the fact that the case was ultimately resolved on factual issues rather than on the statutory interpretation. Overall, it appears unlikely that this case will undermine the otherwise unwavering Simplot standard.

2. How Idaho’s Standard Came About: Its History and Relationship to Idaho’s APA

Idaho’s deference standard comes entirely from Simplot and does not rely on Idaho’s SLAPA at all. Idaho’s SLAPA provides for a right of judicial review and mandates deference to agency fact finding, but it does not announce a standard for review of agency interpretation. While Simplot was decided after Idaho’s SLAPA was in effect, the holding makes no mention of the statute. Simplot does consult nearly every other conceivable source of deference principles, though, because Simplot represents the Idaho court’s attempt to fashion a modern deference standard by examining elements from other courts. Prior to Simplot, Idaho had a historically consistent highly-deferential standard, but a case decided shortly before Simplot undermined that deferential principle and left the standard of review uncertain. In Simplot the court attempted to restore certainty by designing a new standard of review that would balance deference to the agency with judicial responsibility for interpreting law. Thus, the court comprehensively reviewed its own precedent, that

137 Id.
138 Id.
142 See id.
of other states, and that of the United States Supreme Court. From these sources, the court constructed the four-prong Simplot test that combined principles from Idaho precedent as well as from Chevron.

V. HOW THE STATE APPROACHES RELATE TO CHEVRON

A. The Lack of Difference Between State and Federal Approaches and Deference Standards as Substantive Value Judgments

Before exploring the differences between the state and federal approaches to agency interpretation, it is worth highlighting the similarities. Really all state and federal courts ultimately inquire into the same interpretive factors, the diverging standards just differ in the order of inquiry, relative importance of certain factors, and mandatory versus discretionary nature of deference. For example, courts from Delaware, Mississippi, Alaska, and Idaho all directly engaged the statutory language at some point in their analyses and often resolved interpretive issues based on plain language. Similarly, the use of cannons, legislative history, and statutory purpose were common across the different standards; both the most and least deferential courts applied these techniques.

All of these standards use the same tools but assign them different relative importance. Courts with more deferential standards, like federal courts or those in Mississippi and Idaho, certainly emphasize textual meaning, but they also place great importance on agency expertise and experience. Further, they value legislative intent to

143 Id. at 1212-1219.
144 Id. at 1219-1220.
delegate to agencies. Though the Alaska court also values agency expertise and experience, it’s substitution of judgment standard places less emphasis on agency competencies and more emphasis on the court’s own interpretive strength. While Delaware’s standard encourages its courts not to rely on agency expertise and experience, *McKinney*¹⁴⁷ shows that even these least deferential courts can find some value in agency experience.

The differences between the different state and federal standards really demonstrate the tension between competing values of interpretive techniques; thus, choosing the “proper” or “most correct” standard really amounts to ranking the relative value of these techniques. Put another way, a deferential standard elevates the value of agency expertise or interpretive efficiency over the court’s interpretive competence. Since development of a standard reflects substantive choices and valuations of techniques, this Article does not attempt to assert that a more or less deferential standard is an objectively better approach. Rather, the Article assumes that whatever choice a jurisdiction has made represents the best decision about that state’s relative valuation of interpretive approaches. Thus, the Article assumes that Mississippi and Delaware’s respective deferential and *de novo* standards represent the best articulation of those states’ interpretive valuations.

Working from this assumption, this Section examines whether the *Chevron* standard is articulated and executed to elevate the value of deferential interpretation without damaging other values noted in the criticisms¹⁴⁸ of *Chevron*. Specifically, the Section will compare the state standards with *Chevron* to examine how implementation

¹⁴⁸ See Part II, *supra*.  

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of these standards affects 1) reasoned decisionmaking and consistency between announced and applied standards and 2) the broader integrity of textualism, statutory interpretation, and the Supreme Court as a whole.

B. Harmonizing Announced and Applied Standards to Achieve Reasoned Decisionmaking

Consistency between announced and applied judicial standards is a value central to our legal system. In *Allentown Mack* the Supreme Court explained as much:

“It is hard to imagine a more violent breach of [reasoned decisionmaking] than applying a rule of primary conduct or a standard of proof which is in fact different from the rule or standard formally announced. And the consistent repetition of that breach can hardly mend it. Reasoned decisionmaking, in which the rule announced is the rule applied, promotes sound results, and unreasoned decisionmaking the opposite. The evil of a decision that applies a standard other than the one it enunciates spreads in both directions, preventing both consistent application of the law by subordinate agency personnel (notably ALJ's), and effective review of the law by the courts.”

Similarly important is the concept of “transparency,” the idea that a court’s statement of its basis for a decision should match its actual basis for the decision.

Arguably, recent Supreme Court applications of the *Chevron* doctrine are inconsistent with reasoned decisionmaking and transparency because these applications do not actually match the announced procedure. For example, Merrill, Sunstein, and a number of other scholars cite numerous cases showing the Court’s application of *Chevron* step one to be a *de novo* review rather than a simple test for ambiguity.

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150 Scholars have noted that while lower courts seem to apply *Chevron* fairly faithfully and consistently, the Supreme Court has applied the doctrine in an inconsistent and unprincipled way. *See, e.g.*, Pierce, *The Supreme Court’s New Hypertextualism, supra* note 6, at 749-52. One might argue that since lower courts, which apply the doctrine far more than the Supreme Court, are consistently following the announced standard, the Supreme Court’s lapses present more of a theoretical problem than a practical one. Pierce has responded to this argument, noting that although the D.C. Circuit probably applies *Chevron* more often than the Supreme Court, the Supreme Court’s inconsistent precedents will inevitably influence both lower courts and agencies, leading to “cacophony and incoherence throughout the administrative state.” *Id.* at 752.
151 *See* discussion, *supra* note 12.
The Supreme Court might resolve this inconsistency between announced and applied standards in two ways. First, the Court could change its practical application of *Chevron*, consistently limiting its step-one review to the actual inquiry announced in the standard. Such a self-imposed change is unlikely, though, especially because the structure of *Chevron’s* two-step standard may pressure the Court into inconsistent applications of the test.\(^{152}\) Second, the Court could change the announced *Chevron* standard to reflect the Court’s practice more accurately. This course would not require any substantive change to the Court’s practice, it would merely require a change to the articulated procedure (e.g. abandoning the “two-step” as currently articulated). It is in light of this second possibility that examples from state practice could inform the federal standard and help *Chevron* become more consistent with reasoned decisionmaking.

For Delaware and Alaska courts, fidelity to announced *de novo* standards is simple because independent review requires no specific processes. Delaware’s prohibition on deference may be considered a formal requirement, but it is practically little more than an obligation that the court explain its reasoning, which is not really a burden beyond the justifications necessary for any judicial opinion. Thus, these state standards provide an easy means of achieving reasoned decisionmaking and transparency. But, their examples are not applicable to *Chevron* without a change in the underlying substantive principle of deference to federal agencies. Thus, to find a standard that can inform *Chevron* without changing its substantive commitment to deference we must examine Mississippi’s and Idaho’s standards.

Mississippi’s standard is similar to a one-step *Chevron*, and consequently it seems to suffer from announced versus applied problems similar to *Chevron*. Though

\(^{152}\) *See* Part II, *supra*.  

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Mississippi’s announced standard is highly deferential, Mississippi courts appear to engage in nearly *de novo* review before deferring to agencies. Certainly courts must undertake some review before determining if the agency is reasonable, but Mississippi courts appear to review more than necessary. Gauging how much analysis is sufficient before deference is challenging, and likely judges hope to be thorough and err on the side of over-analysis. Still, Mississippi’s consultation of canons and legislative purpose seems unnecessary if deference is truly due to any “reasonable” interpretation.

Whether Mississippi’s degree of over-analysis constitutes an actual threat to reasoned decisionmaking is questionable, but Mississippi’s application of its own standard may highlight an inherent problem with unguided standards like Mississippi’s and *Chevron*. Operating under standards that limit the scope of judicial review, Courts may always have a tendency to overanalyze.\(^{153}\) Moreover, high stakes cases, like those often before the Supreme Court, will likely intensify the inherent difficulty of judicial restraint. As announced, the *Chevron* and Mississippi standards may place unrealistic expectations on well-intentioned judiciaries, which are accustomed to fully articulating their reasoning and are unlikely to curb their statutory review, particularly if just a little more interpretive work will resolve a case differently (i.e. “correctly” in a jurist’s mind).

On the other hand, Idaho demonstrates that a guided standard may allow courts to substantively defer while still achieving reasoned decisionmaking. The first two steps of Idaho’s standard quite closely approximate the Supreme Court’s recent applications of

\(^{153}\) Merrill makes a similar point; his criticism of *Chevron*’s “all or nothing” approach implies that courts faced with this approach have incentives to overanalyze or even ignore the prescribed inquiry at *Chevron* step one. Merrill, *Judicial Deference to Executive Precedent*, supra note 5, at 970.
Chevron\textsuperscript{154} because these steps amount to a guided \textit{de novo} inquiry. Particularly, Idaho’s second prong allows the court to consider a full range of statutory interpretation techniques while inquiring whether the agency’s interpretation was reasonable. This full consideration does not undermine Idaho’s announced standard, though, because Idaho maintains that, underlying its four-prong test, the courts are still the ultimate authority on statutory meaning. Thus, Idaho seems to demonstrate that federal courts could continue practicing the \textit{Chevron} doctrine just as they have been and reconcile this with reasoned decisionmaking by simply adopting a standard that allows them to engage in full \textit{de novo} review before deferring.

\textbf{C. Plain Meaning, Pressure Against Ambiguity, and the Costs to Statutory Interpretation}

\textit{Chevron} requires that federal courts place a huge upfront emphasis on plain meaning because the finding of statutory ambiguity essentially determines the outcome of a case. Thus \textit{Chevron}’s structure places enormous pressure on the issue of ambiguity, and these raised stakes make an otherwise simple question of statutory clarity become quite complex.\textsuperscript{155}

As Merrill and Pierce point out,\textsuperscript{156} \textit{Chevron}’s emphasis on plain meaning and its incentives against recognizing ambiguity may have a number of damaging consequences. First, it may thwart the legislature’s intentions or, conversely, encourage sloppy drafting

\begin{footnotesize}
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\item \textsuperscript{154} See, e.g., FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 125- 26, 161 (2000); Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or., 515 U.S. 687, 708 (1995); Cardoza-Fonseca, 480 U.S. at 446-49. See also discussion, supra note 12.
\item \textsuperscript{155} “The Court now rarely defers to an agency’s construction of ambiguous statutory language because a majority of Justices have now begun to use textualist methods of construction that routinely allow them to attribute "plain meaning" to statutory language that most observers would characterize as ambiguous or internally inconsistent.” Pierce, The Supreme Court’s New Hypertextualism, supra note 6, at 752. See also Babbitt v. Sweet Home Chapter of Cmtys. for a Great Or., 515 U.S. 687, 708 (1995); MCI Telecommunications Corp. v. American Tel. & Tel. Co., 512 U.S. 218, (1994); Part II, supra.
\item \textsuperscript{156} See Part II, supra.
\end{itemize}
\end{footnotesize}
if the court declares that a statute has a clear, exclusive meaning when such is not the
case for any but a five-justice majority. Second, the pressure to deny ambiguity may
undermine the validity of textual analysis in general, and textualism specifically, because
it may lead judges to thrust uncomfortable certainties upon ambiguous text. Finally, it
might hurt the broader enterprise of statutory interpretation, and ultimately the court’s
credibility, by forcing the court to appear politically motivated in its interpretive
decisions.

This plain-meaning problem seems to arise not only out of the intersection
between textualism and *Chevron* but also out of *Chevron*’s two-step inquiry structure.
The federal system is unique in its immediate and conclusive stress on the question of
ambiguity. None of the state standards adopt the *Chevron* two step, and none place such
stakes on the finding of ambiguity. Instead, the deferential state standards focus on the
reasonableness of agency interpretations. As noted above, this focus shifts the inquiry
from defining the absolute, positive statutory meaning to rejecting a single negative
meaning. The latter, far easier to accomplish, avoids the plain-meaning problem entirely.

For example, Mississippi’s standard, substantively similarly to *Chevron*’s
deference principle, defers to reasonable agency interpretation and thereby avoids the

157 *See, e.g.*, MCI Telecommunications Corp. v. American Tel. & Tel. Co., 512 U.S. 218, (1994); *See also*
discussion, *supra* note 20. Justice Scalia would likely disagree with this assessment, finding that there is no
ambiguity in these situations. *See, e.g.*, Antonin Scalia, *Judicial Deference to Administrative
Interpretations of Law*, 1989 DUKE L.J. 511, 521 (1989) (“One who finds more often (as I do) that the
meaning of a statute is apparent from its text and from its relationship with other laws, thereby finds less
often that the triggering requirement for *Chevron* deference exists.”) (emphasis original). Of course, such a
response leads to one of the criticisms of textualism: the idea that plain meaning is so subjective and that a
term is unambiguous despite four of nine justices disagreeing as to its meaning. Cf. *Merrill, Textualism
and the Future of the Chevron Doctrine, supra* note 6, at 366-67 (responding to Justice Scalia’s above
quoted passage).

158 *See e.g.* Thomas J. Miles & Cass R. Sunstein, *Do Judges Make Regulatory Policy? An Empirical
Investigation* of *Chevron*, 73 U. CHI. L. REV. 823, 828 (2006) (testing the hypothesis “whatever *Chevron*
says, political convictions actually continue to drive judicial review of agency interpretations of law”).

159 *See Part III, supra.*
threshold debate over ambiguity. In adopting a federal standard that more closely mirrors Mississippi’s, federal courts might be able to retain substantive deference principles akin to those announced in *Chevron* while avoiding the problem of dodging ambiguity. A federal standard that resembled Mississippi’s would still suffer from the problems of consistency between announced and applied standards, as discussed above, but would resolve some of these plain-meaning issues.

Idaho’s standard also maintains deference principles while avoiding ambiguity fights. Idaho’s third-prong inquiry essentially asks the same question as *Chevron* step one; in fact, Idaho’s third prong is explicitly modeled after *Chevron*. But in the Idaho cases, determination of whether a statute “expressly treat[s] the precise question at issue” is not a contentious affair. Rather, Idaho courts resolve the question fairly simply and without great debate.

Likely, Idaho courts can easily answer this question because this single inquiry is not issue-determinative. While Idaho’s standard is still highly deferential to agencies, the determination whether the statute expressly addresses an issue (i.e. the

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160 Of course, as mentioned above, if federal courts chose to abandon the substantive principles underlying *Chevron*, a simple shift to a *de novo* standard, like Alaska’s or Delaware’s, could also solve this plain meaning problem because the court could decide the issue whether the meaning was plain or not. In fact, disregarding the loss of the substantive values underlying *Chevron*, this switch would probably benefit the court by allowing for easier opinion writing, or at least opinion writing that focused on the merits rather than the presence or absence of ambiguity.


163 As Merrill notes, “the failure of *Chevron* to perform as expected can be attributed to the Court's reluctance to embrace the draconian implications of the doctrine for the balance of power among the branches, and to practical problems generated by its all-or-nothing approach to the deference question.” Merrill, *Judicial Deference to Executive Precedent, supra* note 5, at 970.

164 While Idaho’s standard never explicitly mandates deference, practically speaking the courts have accorded deference every time an interpretation meets the four prongs, so deference may be de facto mandatory.
question of ambiguity) is just one of four inquiries,¹⁶⁵ so the outcome of the case does not turn on the court’s finding of plain meaning.

The order of Idaho’s four-prong inquiry might also help diffuse the plain meaning question. For Idaho courts, the real debate on statutory interpretation occurs at the second prong, which inquires whether the agency’s interpretation is reasonable.¹⁶⁶ When inquiring into this prong, the courts use the full array of de novo statutory techniques,¹⁶⁷ which allows the full interpretation debate to play out under its proper label, a reasonableness inquiry.

D. Changing Process, Not Substance, by Moving to a Reasonableness Inquiry

As the Mississippi and Idaho examples illustrate, amending the Chevron standard need not change federal deference principles, and the values of reasoned decisionmaking, transparency, and propriety in statutory interpretation need not stand in tension with deference. Based on the examples of Mississippi and Idaho, it may make sense to shift from the Chevron two-step model to an explicit reasonableness inquiry similar to that employed by many of the states. While an unguided inquiry, like Mississippi’s, may risk similar announced versus applied issues, it would at least diminish the problems that Chevron faces when dealing with statutory ambiguity. Idaho’s guided model could

¹⁶⁵ Not to mention the fact that the fourth prong involves a multi-factor balancing test which can provide hesitation courts with a huge pressure release.
¹⁶⁷ The court looks at statutory language, legislative history, purpose, canons, and other interpretive devices. These are the same factors that the Supreme Court considers in Chevron step one, that the Mississippi court considers in its reasonableness inquiry, and that the Alaska and Delaware courts consider in their undisguised de novo review. See, e.g., New Castle County Dept of Land Use v. University of Delaware, 842 A.2d 1201 (Del. 2004); Manufab, Inc. v. Mississippi State Tax Comm’n, 808 So.2d 947 (Miss. 2002); State v. McCallion, 875 P.2d 93 (Alaska Ct. App. 1994); Mason v. Donnelly Club, 21 P.3d 903 (Idaho 2001).
alleviate both the announced versus applied and ambiguity problems of *Chevron*, but moving to such a model might represent too large a break from past practice. Even without the drastic move to adopt Idaho’s lengthy standard, though, the federal system could incorporate aspects of Idaho’s approach to improve *Chevron*. For example, Idaho demonstrates that rephrasing or changing the order of *Chevron* inquiry (i.e. eliminating the immediate, determinate pressure to find plain meaning) might improve workability of the standard. Regardless of what specific lessons the states might teach, overall open-mindedness to learn from state practice would likely improve the *Chevron* doctrine; after all, what good are laboratories if one disregards their findings.

**VI. HOW DEFERENCE STANDARDS DEVELOP AND CHANGE**

Assuming that one wished to amend *Chevron* to more closely resemble one of the state standards, the question would remain how best to do so. One might expect that legislative enactments would drive changes in courts’ principles of review, but both the state and federal experience have shown that statutes, particularly administrative procedure acts, have played little role in shaping deference standards. Rather, judicial prudential concerns seem to have played the largest role in molding state deference standards, so any reform of *Chevron* might have to come from the Supreme Court itself.

_A. Interaction Between Statutes and Deference Standards_

Legislation has not determined state deference standards. As discussed above, none of the state policies rely on positive SLAPA enactments as bases for their standards. In fact, Mississippi’s, Alaska’s, and Idaho’s standards have developed so completely independently from their respective SLAPAs that none of the cases acknowledge the
statutes’ existence. Of these standards, Mississippi’s, developed prior to SLAPA enactments, did not change in response to the statutory scheme, and Alaska’s and Idaho’s, developed subsequent to SPALA enactments, paid no attention to the statutes when crafting new deference principles. Delaware’s standard may represent the most effect a SLAPA has had on a deference standard because the Delaware court at least references its SLAPA. Still, the Delaware court’s SLAPA reference seems a secondary justification, at best, and hardly drives the state deference standard. In fact, the Delaware court relied more on the SLAPA’s statutory omissions than any positive enactment.

Given SLAPAs’ vagueness or silence regarding judicial review of administrative interpretations, it is hardly surprising that these statutes have had little effect on doctrinal development. Similarly, the federal APA does not clearly mandate any particular standard for review of agency interpretations, and Chevron does not even cite the federal APA. The state and federal APAs’ general silence on judicial review of statutory interpretation may reflect legislative intent to leave these deference doctrines to develop with common law, and if this is the case, courts’ shaping of their own standards is consistent with legislative intent. But, this tradition of courts, rather than legislatures, shaping deference standards might mean that any legislative attempt to alter these standards would have to be clear in its intent and specifically worded to mandate certain standards.

If history is any indication, specific legislative action targeted to reform judicial review of agency interpretations will not be forthcoming. No such legislation shaped the state standards, and the Bumpers Amendment, the only serious attempt to amend the

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168 For more information of the Bumpers Amendment, see generally James T. O'Reilly, Defe
 iterative Makes a Difference; A Study of Impacts of the Bumpers Judicial Review Amendment, 49 U. CIN. L. REV. 739 (1980);
federal APA to mandate *de novo* judicial review, has remained long dead. Additionally, amending the *Chevron* procedure does not seem to arouse popular attention, so it is unlikely to spur Congress into action. Thus, it appears that any change to the *Chevron* procedure will have to originate with the judiciary.

**B. Judicial Reform of *Chevron***

The deference standards from Mississippi, Delaware, Alaska, and Idaho all represent judicial attempts to shape prudent and effective standards for reviewing agency interpretations. Particularly, Alaska’s and Idaho’s standards arose out of judicial decisions to improve review procedures by considering the standards and practices of other jurisdictions.¹⁶⁹ None of these state standards sprung from spontaneous self-examination, though. Mississippi’s standard simply continued from a tradition that predated the modern administrative state, and in Alaska, Delaware, and Idaho, contrary or diverging precedents lead the courts to reshape their standards.

Most likely, the only way that the federal *Chevron* standard will change is if the Supreme Court identifies similarly divergent precedents and initiates a self-reform procedure. Such an undertaking is probably unlikely without significant split or confusion in federal case law, but some scholars predict just such a result from the Supreme Court’s present inconsistent application of *Chevron*.¹⁷⁰ As the *Chevron* doctrine continues to develop, such a split may be possible, but reconsideration of the principle seems unlikely in the near future. If the Supreme Court does reconsider its standard,

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¹⁷⁰ See generally, Pierce, *The Supreme Court’s New Hypertextualism*, supra note 6, at 752.
though, the doctrine would likely benefit from a process like Idaho’s,\textsuperscript{171} a thorough consideration and conscious attempt to forge a comprehensive standard. Such a standard could retain much of the substance of \textit{Chevron} and alleviate many of its shortcomings.

\textsuperscript{171} Indeed, the Idaho Court’s \textit{Simplot} opinion shares many of the goals and techniques of this article in its inter-jurisdictional quest for a workable deference standard.
APPENDIX A—STATE DEFERENCE TABLE

ALABAMA—Strong deference
- “The traditional deference given an administrative agency's interpretation of a statute appropriately exists when the agency is actually charged with the enforcement of the statute and when the interpretation does not exceed the agency's statutory authority.” Ex parte State Health Planning and Development Agency, 855 So.2d 1098 (Ala., 2002).
- “The interpretation placed on statute by executive or administrative agency charged with its enforcement is given great weight and deference by reviewing court.” McCullar v. Universal Underwriters Life Ins. Co., 687 So.2d 156 (Ala., 1996.)

ALASKA—Announced de novo with the possibility of deference to agency expertise or experience
- “When a question of law involves agency expertise an appellate court will defer to an agency's interpretation of a statute unless it is unreasonable.” Grimm v. Wagoner, 77 P.3d 423 (Alaska, 2003)
- “When a case concerns statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience, Supreme Court substitutes its judgment for that of an agency, adopting the rule of law that is most persuasive in light of precedent, reason, and policy.” United Parcel Service Co. v. State, Dept. of Revenue, 1 P.3d 83 (Alaska, Dept. of Revenue, 1 P.3d 83 (Alaska, 2000).

ARIZONA—Intermediate deference
- “Where the legislature has addressed the precise issue in a clear and unequivocal manner, the court that is construing the governing statute need not defer to the administrative interpretation. Stearns v. Arizona Dept. of Revenue, 131 P.3d 1063 (Ariz.App. Div. 1, 2006)
- “In cases in which statutory language is not dispositive, the administrative agency's expert interpretation deserves considerable deference by the judiciary.” Phelps Dodge Corp. v. Arizona Dept. of Water Resources, 118 P.3d 1110 (Ariz. App. Div. 1, 2005)
- “While Court of Appeals gives the administrative interpretation of a statute or ordinance some weight, Court of Appeals need not defer to an agency's legal conclusions and may substitute its own.” Thomas and King, Inc. v. City of Phoenix, 92 P.3d 429 (Ariz. App. Div. 1, 2004.)

ARKANSAS--Intermediate deference

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- “Agency interpretations of statutes are ordinarily afforded great deference, even though they are not binding.” *Ford v. Keith*, 996 S.W.2d 20 (Ark., 1999)
- “Ordinarily, agency interpretations of statutes are afforded great deference, even though they are not binding.” *Arkansas State Medical Bd. v. Bolding*, 920 S.W.2d 825 (Ark., 1996)

**CALIFORNIA** -- Announced *de novo* with the possibility of deference to agency expertise or experience
- “Labor statute is a legal question which we review independently from the determination of the [Board]. Nonetheless, we generally defer to the [Board's] interpretation of labor statutes, unless the interpretation is clearly erroneous.” *Matea v. Workers' Comp. Appeals Bd.*, 51 Cal.Rptr.3d 314 (Cal.App. 6 Dist., Nov 21, 2006)
- “While interpretation of a statute or regulation is ultimately a question of law, courts must also defer to an administrative agency's interpretation of a statute or regulation involving its area of expertise, unless the interpretation flies in the face of the clear language and purpose of the interpreted provisions.” *Divers' Environmental Conservation Organization v. State Water Resources Control Bd.*, 51 Cal.Rptr.3d 497 (Cal. App. 4 Dist., 2006).
- “The standard for judicial review of agency interpretation of law is the independent judgment of the court, giving deference to the determination of the agency appropriate to the circumstances of the agency action.” *Santa Clara Valley Transp. Authority v. Rea*, 45 Cal.Rptr.3d 511 (Cal.App. 6 Dist., 2006).
- “The amount of deference given to an administrative construction depends upon the thoroughness evident in agency's consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” *Hoechst Celanese Corp. v. Franchise Tax Bd.*, 22 P.3d 324 (Cal.,2001).
- “Interpretation…was not entitled to judicial deference, since interpretation of statutory provisions on limitations was not within [agency’s] area of expertise.” *Church v. Jamison*, 50 Cal.Rptr.3d 166, (Cal. App. 5 Dist., 2006).

**COLORADO** -- Intermediate deference
- “The Supreme Court extends deference to the Workers' Compensation Division's interpretation of the Workers' Compensation Act, although the court is not bound by it.” *Sanco Industries v. Stefanski*, 147 P.3d 5 (Colo., 2006).
- “When construing a statute, courts afford deference to the interpretation given the statute by the officer or agency charged with its administration.” *Rivera-Bottzeck v. Ortiz*, 134 P.3d 517 (Colo. App., 2006).
While statutory construction is ultimately a judicial responsibility, the Supreme Court consults and ordinarily defers to the administrative agency’s guidance, rules, and determinations, if they are within the agency's statutory authority and do not contravene constitutional requirements.” *Colorado Dept. of Revenue v. Hibbs*, 122 P.3d 999 (Colo., 2005).

CONNECTICUT -- Strong deference

- “Ordinarily, the reviewing court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes. A court that is faced with two equally plausible interpretations of regulatory language properly may give deference to the construction of that language adopted by the agency charged with enforcement.” *Trumbull Falls, LLC v. Planning and Zoning Com'n of Town of Trumbull*, 902 A.2d 706 (Conn. App., 2006).

- “Although ordinarily, an appellate court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes, when a state agency's determination of a question of law has not previously been subject to judicial scrutiny, the agency is not entitled to special deference; it is for the courts, and not administrative agencies, to expound and apply governing principles of law.” *Rweyemamu v. Commission on Human Rights and Opportunities*, 911 A.2d 319 (Conn.App., 2006).

- “Ordinarily, the reviewing court affords deference to the construction of a statute applied by the administrative agency empowered by law to carry out the statute's purposes.” *Autotote Enterprises, Inc. v. State, Div. of Special Revenue*, 898 A.2d 141 (Conn., 2006).

DELAWARE -- Announced *de novo* with deference discouraged

- “A reviewing court may accord due weight, but not defer, to an agency interpretation of a statute administered by it, and reviewing court will not defer to such an interpretation as correct merely because it is rational or not clearly erroneous.” *Hirneisen v. Champlain Cable Corp.*, 892 A.2d 1056 (Del.Supr., 2006).


FLORIDA -- Strong deference

- “A reviewing court must defer to an agency's interpretation of an operable statute as long as that interpretation is consistent with legislative intent and is supported by substantial, competent evidence.” *Cagle v. St. Johns County School Dist.*, 939 So.2d 1085 (Fla. App. 5 Dist., 2006).

- “Generally, a reviewing court should defer to the interpretation given a statute or ordinance by the agency responsible for its administration; that deference is not absolute, however, and when the agency's construction of a statute amounts to an unreasonable interpretation, or is clearly erroneous, it cannot stand.” *Palm Beach Polo, Inc. v. Village of Wellington*, 918 So.2d 988 (Fla. App. 4 Dist., 2006).

GEORGIA -- Strong deference
“Court of Appeals must defer to an administrative agency in matters involving the interpretation of the statutes which the agency is empowered to enforce.” Piedmont Healthcare, Inc. v. Georgia Dept. of Human Resources, 638 S.E.2d 447 (Ga. App., 2006).

“The interpretation of a statute by an administrative agency is given great deference, unless contrary to law.” Metropolitan Atlanta Rapid Transit Authority v. Reid, 640 S.E.2d 300 (Ga. App., 2006).

“Although an appellate court is not bound to blindly follow an agency's interpretation of a statute that the agency enforces, it will defer to an agency's interpretation when it reflects the meaning of the statute and comports with legislative intent.” Moulder v. Bartow County Bd. of Educ., 599 S.E.2d 495 (Ga. App., 2004).

HAWAII-- Strong deference
- “To the extent that the legislature has authorized an administrative agency to define the parameters of a particular statute, that agency's interpretation should be accorded deference.” Del Monte Fresh Produce (Hawaii), Inc. v. International Longshore and Warehouse Union, Local 142, AFL-CIO, 146 P.3d 1066 (Hawai‘i, 2006).
- “Where an agency is statutorily responsible for carrying out the mandate of a statute which contains broad or ambiguous language, that agency's interpretation and application of the statute is generally accorded judicial deference on appellate review.” TIG Ins. Co. v. Kauhane, 67 P.3d 810 (Hawai‘i App., 2003).

IDAHO-- Intermediate deference
- “In determining whether an agency interpretation of a statute is entitled to deference, a four-prong test is used.” Westway Const., Inc. v. Idaho Transp. Dept., 73 P.3d 721 (Idaho, 2003).

ILLINOIS-- Intermediate deference
- “While a court's review of an agency's statutory interpretation is de novo, the agency's interpretation should receive deference because it stems from the agency's expertise and experience.” Niles Township High School Dist. 219 v. Illinois Educational Labor Relations Bd., 859 N.E.2d 57 (Ill.App. 1 Dist., 2006).
- “Reviewing courts generally accord substantial deference to the interpretation placed on a statute by the agency charged with its administration and enforcement; however, an agency's statutory interpretation will be rejected on appeal if it is unreasonable or erroneous.” Hawthorne Race Course, Inc. v. Illinois Racing Bd., 851 N.E.2d 214 (Ill.App. 1 Dist., 2006).

INDIANA-- Strong deference
- “The Court of Appeals will pay due deference to the interpretation of a statute by the administrative agency charged with its enforcement in light of its expertise.” Bowles v. Griffin Industries, 855 N.E.2d 315 (Ind. App., 2006).
- “When a court is faced with two reasonable interpretations of a statute, one of which is supplied by an administrative agency charged with enforcing the statute, the court should defer to the agency.” State v. Young, 855 N.E.2d 329 (Ind. App., 2006).
“Administrative agency's interpretation of a statute it is charged with enforcing is given considerable deference by reviewing courts.” Villegas v. Silverman, 832 N.E.2d 598 (Ind. App., 2005).

IOWA-- Announced de novo with the possibility of deference to agency expertise or experience
- “Under certain circumstances, courts are required to give some deference to an agency's interpretation of a statute.” City of Des Moines v. Employment Appeal Bd., 722 N.W.2d 183 (Iowa, 2006).
- “Supreme Court need not give agency any deference regarding its interpretation of statute whose interpretation has not clearly been vested by provision of law in discretion of agency, and thus Supreme Court is free to substitute its judgment de novo for agency's interpretation.” Lee v. Iowa Dept. of Transp., Motor Vehicle Div., 693 N.W.2d 342 (Iowa, 2005).
- “When reviewing a commissioner's interpretation of the statutes governing the agency, the Supreme Court defers to the agency's expertise, but reserves for itself the final interpretation of the law.” Grundmeyer v. Weyerhaeuser Co., 649 N.W.2d 744 (Iowa, 2002).

KANSAS-- Intermediate deference
- “The interpretation of a statute by an administrative agency which is charged with the responsibility of enforcing that statute is generally entitled to judicial deference, and if there is a rational basis for the agency's interpretation, it should be upheld on judicial review.” Kansas Industrial Consumers Group, Inc. v. State Corp. Com'n of State, 138 P.3d 338 (Kan. App., 2006).
- “Although an appellate court gives deference to an agency's interpretation of a statute it is charged with the responsibility of enforcing, the final construction of a statute lies with the appellate court.” Kansas Industrial Consumers Group, Inc. v. State Corp. Com'n of State, 138 P.3d 338 (Kan. App., 2006).
- “Deference to an administrative agency's interpretation of a statute is appropriate when the agency is one of special competence and experience.” Estate of Pemberton v. John's Sports Center, Inc., 135 P.3d 174 (Kan. App., 2006).

KENTUCKY-- Intermediate deference
- “Although the courts give great deference to the agency interpretation of regulations and the law underlying the regulations, it is the responsibility of the courts to finally construe the statute.” LWD Equipment, Inc. v. Revenue Cabinet, 136 S.W.3d 472 (Ky., 2004).
- “Although courts give great deference to agency interpretation of regulations and law underlying the regulations, court's responsibility to finally construe the statute or regulation is not abdicated.” Delta Air Lines, Inc. v. Com., Revenue Cabinet, 689 S.W.2d 14 (Ky., 1985).

LOUISIANA-- not considered because of its civil law system
MAINE— Strong deference
- “An administrative agency's interpretation of a statute administered by it will be given great deference and should be upheld unless the statute plainly compels a contrary result.” Hannum v. Board of Environmental Protection, 898 A.2d 392 (Me., 2006).
- “When a case concerns the interpretation of a statute that an administrative agency administers and that is within its area of expertise, the Supreme Judicial court's scope of review is to determine first whether the statute is ambiguous; if the statute is unambiguous, the Court does not defer to the agency's construction and it interprets the statute according to its plain language, but if the statute is ambiguous, the Court defers to the agency's interpretation and it affirms the agency's interpretation unless it is unreasonable.” Cobb v. Board of Counseling Professionals Licensure, 896 A.2d 271 (Me., 2006).

MARYLAND-- Announced de novo with the possibility of deference to agency expertise or experience
- “When reviewing agency's legal conclusions, appellate court must determine whether the agency interpreted and applied the correct principles of law governing the case and no deference is given to a decision based solely on an error of law; appellate court does, however, give deference to an agency's interpretation of its own rules and regulations, and gives the agency's interpretation and application of a statute it administers considerable weight.” Bereano v. State Ethics Com'n, 2006 WL 3231875 (Md. App., 2006).
- “Courts afford deference to an agency's consistent and long-standing construction of a statute because the agency is likely to have expertise and practical experience with the statute's subject matter.” Bereano v. State Ethics Com'n, 2006 WL 3231875 (Md. App., 2006).

MASSACHUSETTS-- Intermediate deference
- “The duty of statutory interpretation is for the courts, but an administrative agency's interpretation of a statute within its charge is accorded weight and deference.” Eastern Cas. Ins. Co. v. Commissioner Of Ins., 856 N.E.2d 872 (Mass. App. Ct., 2006).
- “Court gives substantial deference to a reasonable interpretation of a statute by the administrative agency charged with its administration enforcement, but the duty of statutory interpretation rests in the courts.” Commerce Ins. Co. v. Commissioner of Ins., 852 N.E.2d 1061 (Mass., 2006).
- “Judicial deference to an administrative agency's interpretation of a statute it is charged with enforcing is necessary to maintain the separation between the powers of the Legislature and administrative agencies and the powers of the judiciary.” Brackett v. Civil Service Com'n, 850 N.E.2d 533 (Mass., 2006).

MICHIGAN-- Strong deference
- “The Court of Appeals generally defers to the interpretation of a statute provided by the administrative agency responsible for administering it, unless that interpretation is clearly wrong.” Bureau of Workers' & Unemployment Comp. v. Detroit Medical Center, 705 N.W.2d 524 (Mich. App., 2005).
- “While an agency's construction generally deserves deference, it is not controlling and can not be used to overcome a statute's plain meaning.” Wolfe v. Wayne-Westland Community Schools, 703 N.W.2d 480 (Mich. App., 2005).

MINNESOTA-- Announced de novo with the possibility of deference to agency expertise or experience
- “Appellate court need not defer to an administrative agency's interpretation of a statute; but if the statutory language is technical in nature and the agency's interpretation is longstanding, the agency's interpretation is entitled to some deference.” State ex rel. Guth v. Fabian, 716 N.W.2d 23 (Minn. App., 2006).
- “Judicial deference is extended to an administrative agency decision-maker in the interpretation of statutes that the agency is charged with administering and enforcing.” Mattice v. Minnesota Property Ins. Placement, 655 N.W.2d 336 (Minn. App., 2002).
- “When an agency statement does not reflect formal rules or agency adjudications, yet attempts to address an ambiguity in the law, deference to the agency's interpretation of a statute is not appropriate; such agency interpretations are only entitled to respect to the extent that those interpretations have the power to persuade.” Martin ex rel. Hoff v. City of Rochester, 642 N.W.2d 1 (Minn., 2002).

MISSISSIPPI-- Strong deference
- “When an agency interprets a statute that it is responsible for administering, the court must defer to the agency's interpretation so long as the interpretation is reasonable; rather than applying its own interpretation when the applicable statute is silent or ambiguous regarding a specific question, the court determines whether the agency's interpretation was reasonable.” Titan Tire of Natchez, Inc. v. Mississippi Com'n on Environmental Quality, 891 So.2d 195 (Miss., 2004).
- “An administrative agency's interpretations of statutes that it uniquely is to enforce or apply are entitled to deference; unless the agency's interpretation overrides a plain meaning that must be given to such a statute or is otherwise unreasonable, a court should accept the interpretation.” Mississippi Dept. of Corrections v. Harris, 831 So.2d 1190 (Miss. App., 2002).
- “An agency's interpretation of its own enabling statute is to be given deference; this is due to the practical understanding that an agency far better understands its daily operations needs than the judiciary ever could.” Wheeler v. Mississippi Dept. of Environmental Quality Permit Bd., 856 So.2d 700 (Miss. App., 2003).

MISSOURI-- Intermediate deference
- “If agency's interpretation of statute is reasonable and consistent with language of statute, it is entitled to considerable deference, but when agency's decision is based on agency's interpretation of law, reviewing court must exercise unrestricted, independent judgment and correct erroneous interpretations.” Morton v. Missouri Air Conservation Com'n, 944 S.W.2d 231 (Mo. App. S.D., 1997).

MONTANA-- Strong deference
- “The Supreme Court will defer to an agency's legal determination, where that agency is interpreting a statute that it has been authorized by the legislature to administer.” Lewis v. B & B Pawnbrokers, Inc., 968 P.2d 1145 (Mont., 1998).
- “On judicial review of administrative agency's decision, court defers to agency's interpretation of statute that it administers.” Waste Management

NEBRASKA-- Announced de novo with deference discouraged
- “Interpretation of statutes presents a question of law on judicial review of administrative decision, and an appellate court is obligated to reach an independent conclusion, irrespective of the decision made by the court below, with deference to the agency's interpretation of its own regulations, unless plainly erroneous or inconsistent.” Gracey v. Zwonechek, 643 N.W.2d 381 (Neb., 2002).

NEVADA-- Intermediate deference
- “The district court may decide purely legal questions without deference to an agency's determination; accordingly, the reviewing court may undertake independent review of the construction of a statute.” Bacher v. Office of State Engineer of State of Nevada, 146 P.3d 793 (Nev., 2006).
- “Statutory interpretation of a coordinate governmental branch or an agency that is authorized to execute that statute, unless it conflicts with the Constitution or other statutes, exceeds the agency's powers, or is otherwise arbitrary and capricious, is entitled to deference.” Cable v. State ex rel. its Employers Insurance Company of Nevada, 127 P.3d 528 (Nev., 2006).
- “Although appellate court reviews questions of statutory construction de novo, an administrative agency charged with the duty of administering an act is impliedly clothed with the power to construe the relevant laws, and the construction placed on a statute by the agency charged with the duty of administering it is entitled to deference.” State, Dept. of Business and Industry, Office of Labor Com'r v. Granite Const. Co., 40 P.3d 423 (Nev., 2002).

NEW HAMPSHIRE-- Announced de novo with the possibility of deference to agency expertise or experience
- “Administrative interpretation of a statute is entitled to deference, but is not ordinarily controlling; however, where the legislature has entrusted the administrative agency with the primary authority for interpreting the statute, such interpretations may have persuasive effect.” New Hampshire Dept. of Revenue Administration v. Public Emp. Labor Relations Bd., 380 A.2d 1085 (N.H. 1977).

NEW JERSEY-- Intermediate deference
- “Although the reviewing court is not obliged to defer to an agency decision on a question of law, substantial respect is accorded an agency decision interpreting and applying the statute the agency was created to enforce.” In re Dennis, 897 A.2d 399 (N.J. Super. A.D., 2006).
- “An administrative agency's interpretation of a statute is entitled to deference where agency expertise forms the basis for that interpretation, but no such deference is warranted or appropriate where the agency has exceeded the scope or authority of the enabling legislation.” T.H. v. Division of Developmental Disabilities, 886 A.2d 194 (N.J. Super. A.D., 2005).
NEW MEXICO-- Announced de novo with the possibility of deference to agency expertise or experience
  - “Court of Appeals gives little or no deference to agencies engaged in statutory construction because they have no expertise in that area.” Phelps Dodge Tyrone, Inc. v. New Mexico Water Quality Control Com’n, 143 P.3d 502 (N.M. App., 2006).
  - “Although a reviewing court is not bound by an administrative agency's interpretation of law and may substitute its own judgment for that of the agency, the court is more likely to defer to an agency interpretation if the relevant statute is unclear or ambiguous, the legal questions presented implicate special agency expertise or the determination of fundamental policies within the scope of the agency's statutory function, and it appears that the agency has been delegated policy-making authority in the area.” Dona Ana Mut. Domestic Water Consumers Ass’n v. New Mexico Public Regulation Com’n, 139 P.3d 166 (N.M., 2006).

NEW YORK-- Announced de novo with deference discouraged
  - “While as a general rule courts will not defer to administrative agencies in matters of pure statutory interpretation, deference is appropriate where the question is one of specific application of a broad statutory term.” O’Brien v. Spitzer, 851 N.E.2d 1195 (N.Y., 2006).
  - “When the matter presented is one of pure statutory interpretation, no deference is accorded to the agency's determinations.” Kreitzer v. New York City Dept. of Bldgs., 806 N.Y.S.2d 532 (N.Y.A.D. 1 Dept., 2005).

NORTH CAROLINA-- Intermediate deference
  - “Although the interpretation of a statute by an agency created to administer that statute is traditionally accorded some deference by appellate courts, those interpretations are not binding; the weight of such an interpretation in a particular case will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.” Wake Forest University Health Sciences v. North Carolina Dept. of Health and Human Services, 638 S.E.2d 219 (N.C. App., 2006).
  - “When a court reviews an agency's interpretation of a statute it administers, the court should defer to the agency's interpretation of the statute as long as the agency's interpretation is reasonable and based on a permissible construction of the statute.” Craven Regional Medical Authority v. North Carolina Dept. of Health and Human Services, 625 S.E.2d 837 (N.C. App., 2006).

NORTH DAKOTA-- Intermediate deference
  - “Although an administrative construction of a statute by the agency administering the law is ordinarily entitled to some deference if that interpretation does not contradict clear and unambiguous statutory language, questions of law, including the interpretation of a statute, are fully reviewable on appeal from an administrative decision.” Victor v. Workforce Safety & Ins., 711 N.W.2d 188 (N.D., 2006).
- “Administrative agency's interpretation of a statute is entitled to deference if the statute is complex and technical in nature, or if the statute is reenacted after a contemporaneous and continuous construction of the statute by the administrative agency.” *Simon v. Simon*, 709 N.W.2d 4 (N.D., 2006).
- “Supreme Court will ordinarily defer to a reasonable interpretation of a statute by the agency enforcing it, but an interpretation which contradicts clear and unambiguous statutory language is not reasonable.” *GO Committee, ex rel. Hale v. City of Minot*, 701 N.W.2d 865 (N.D., 2005).

**OHIO**-- Intermediate deference
- “Due deference should be given to statutory interpretations by an agency that has accumulated substantial expertise and to which the General Assembly has delegated enforcement responsibility.” *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 856 N.E.2d 940 (Ohio, 2006).
- “The court will give due deference to the director's reasonable interpretation of the legislative scheme governing his agency.” *Sandusky Dock Corp. v. Jones*, 834 N.E.2d 786 (Ohio, 2005).

**OKLAHOMA**-- Announced *de novo* with deference discouraged
- “On appeal, Court of Appeals will decide questions of law and will not defer to agency interpretation of Constitution or statutes.” *Metcalf v. Oklahoma Bd. of Medical Licensure and Supervision*, 848 P.2d 48 (Okl. App., 1992).

**OREGON**-- Intermediate deference
- “If the legislature granted authority to an agency to complete the meaning of a delegative term in a statute, courts will defer to the agency's interpretation so long as it is consistent with the legislature's purpose.” *Qwest Corp. v. Public Utility Commission*, 135 P.3d 321 (Or. App., 2006).
- “When the issue involves an administrative agency's construction of the relevant statute, the weight that courts give to the agency's construction depends on the nature of the statutory terms; if the terms are delegative in nature, then judicial review of the agency's construction is highly deferential.” *Gambee v. Department Of Forestry*, 81 P.3d 734 (Or. App., 2003).
- “An agency's interpretation of a statute may be entitled to some measure of deference, depending on whether the disputed terms are exact, inexact, or delegative in nature.” *Thomas Creek Lumber and Log Co. v. Board of Forestry*, 69 P.3d 1238 (Or. App., 2003).

**PENNSYLVANIA**-- Strong deference
- “When state courts are faced with interpreting statutory language, they afford great deference to the interpretation rendered by the administrative agency overseeing the implementation of such legislation; accordingly, courts will not disturb administrative discretion in interpreting legislation within an agency's own sphere of expertise absent fraud, bad faith, abuse of discretion or clearly arbitrary action.” *Universal Health Services, Inc. v. Pennsylvania Property and Cas. Ins. Guar. Ass'n*, 884 A.2d 889 (Pa. Super., 2005).
RHODE ISLAND-- Intermediate deference
- “Although factual findings of an administrative agency are afforded great deference, a dispute involving statutory interpretation is a question of law to which Supreme Court applies de novo review.” Rossi v. Employees’ Retirement System, 895 A.2d 106 (R.I., 2006).
- “Administrative agency will be accorded great deference in interpreting statute whose administration and enforcement have been entrusted to agency.” State v. Cluley, 808 A.2d 1098 (R.I., 2002).

SOUTH CAROLINA-- Strong deference
- “The construction of a statute by the agency charged with its administration should be accorded great deference and will not be overruled without a compelling reason.” Hall v. United Rentals, Inc., 636 S.E.2d 876 (S.C. App., 2006).
- “Supreme Court generally gives deference to administrative agency's interpretation of applicable statute or its own regulation, but where plain language of statute is contrary to agency's interpretation, Court will reject agency's interpretation.” Brown v. Bi-Lo, Inc., 581 S.E.2d 836 (S.C., 2003).

SOUTH DAKOTA-- no cases available

TENNESSEE-- Strong deference
- “Interpretations of statutes by administrative agencies are customarily given respect and accorded deference by courts.” Riggs v. Burson, 941 S.W.2d 44 (Tenn., 1997).

TEXAS-- Intermediate deference
- “Court of Appeals need not give as much deference to an agency's interpretation of its statute if that interpretation deals with a non-technical question of law or a matter outside of the agency's expertise.” TXU Generation Co., L.P. v. Public Utility Com’n of Texas, 165 S.W.3d 821 (Tex. App.-Austin, 2005).
- “When an agency's interpretation of a statute it is charged with enforcing does not involve technical or regulatory matters within the agency's expertise but requires the discernment of legislative intent, the court gives much less deference to the agency's reading of a statute.” Strayhorn v. Willow Creek Resources, Inc., 161 S.W.3d 716 (Tex. App.-Austin, 2005).
- “The construction of a statute by the administrative agency charged with its enforcement is entitled to substantial deference, as long as the construction is reasonable and does not contradict the plain language of the statute.” Houston v. Nelson, 147 S.W.3d 589 (Tex. App.-Corpus Christi, 2004).

UTAH-- Announced de novo with the possibility of deference to agency expertise or experience
- “An exception to the general rule that an agency's interpretation or application of statutory terms should be reviewed under the correction-of-error standard exists if the legislature has either explicitly or implicitly granted discretion to the agency, in which case an agency's statutory construction should only be given deference when there is a grant of discretion to the agency concerning the language in question, either expressly made in the statute or implied from
the statutory language.” Wood v. Labor Com’n, 128 P.3d 41 (Utah App., 2005).
- “Unless the legislature has granted discretion to an agency to interpret statutory language, Supreme Court reviews an agency’s construction of statutory provisions under a correction of error standard, granting the agency no deference.” Committee of Consumer Services v. Public Service Com’n of Utah, 75 P.3d 481 (Utah, 2003).
- “An agency's interpretation of statutory provisions is entitled to deference when there is more than one permissible reading of the statute and no basis in the statutory language or the legislative history to prefer one interpretation over another.” Ekshteyn v. Department of Workforce Services, 45 P.3d 173 (Utah App., 2002).

VERMONT-- Strong deference
- “Generally, Supreme Court will defer to an agency's interpretation of a statute it has been charged to execute.” In re Butson, 892 A.2d 255 (Vt., 2006).
- “Although the Supreme Court gives deference to the construction of a statute by an agency responsible for administering it, statutory interpretation is a question of law, and the Supreme Court cannot affirm an unjust or unreasonable interpretation of a statute.” In re Sleigh ex rel. Unnamed Motorists Accused of DWI Infractions, 872 A.2d 363 (Vt., 2005).

VIRGINIA-- Announced de novo with deference discouraged
- “On appeal from an administrative agency's decision, when a question involves a statutory interpretation issue, little deference is required to be accorded the agency's decision because the issue falls outside the agency's specialized competence; pure statutory interpretation is the prerogative of the judiciary.” Brandt v. Maha Lakshmi Motors, Inc., 632 S.E.2d 628 (Va. App., 2006).
- “Though court defers to an agency's factual determinations, court affords no such deference to agency's legal interpretations of statutes.” The Mattaponi Indian Tribe v. Com., 601 S.E.2d 667 (Va. App., 2004).
- “Although decisions by administrative agencies regarding matters within their specialized competence are entitled to special weight in the courts, when the question involves an issue of statutory interpretation, little deference is required to be accorded the agency decision because the issue falls outside the agency's specialized competence.” Virginia Imports Ltd. v. Kirin Brewery of America, 589 S.E.2d 470 (Va. App., 2003).

WASHINGTON-- Announced de novo with the possibility of deference to agency expertise or experience
- “On review of an administrative proceeding, the Court of Appeals accords deference to an agency interpretation of the law where the agency has specialized expertise in dealing with such issues, but the Court is not bound by an agency's interpretation of a statute.” Preserve Our Islands v. Shorelines Hearings Bd., 137 P.3d 31 (Wash. App. Div. 1, 2006).
- “Court of Appeals does not defer to an agency's interpretation of legislative intent or a statute's meaning unless (1) the statute is ambiguous, or (2) the agency is charged with its administration and enforcement.” Seattle Area

WEST VIRGINIA-- Strong deference
- “If agency's interpretation of statute is at least as plausible as competing ones, there is little, if any, reason not to defer to agency's construction.” Appalachian Power Co. v. State Tax Dept. of West Virginia, 466 S.E.2d 424 (W.Va., 1995).
- “Defersence to agency's interpretation of statute is especially appropriate where rule was adopted only after all interested persons were given notice and opportunity to comment.” Appalachian Power Co. v. State Tax Dept. of West Virginia, 466 S.E.2d 424 (W.Va., 1995).
- “Once Supreme Court of Appeals determines statute's clear meaning, it will adhere to that determination under doctrine of stare decisis, and agency's later determination of statute is not entitled to deference, but will be judged against that prior judicial determination of statute's meaning.” Appalachian Power Co. v. State Tax Dept. of West Virginia, 466 S.E.2d 424 (W.Va., 1995).

WISCONSIN-- Intermediate deference
- “In assessing an administrative agency's interpretation of the statutes it enforces, the Court of Appeals gives it varying degrees of deference, depending on the agency's experience and expertise in implementing and applying those statutes.” State v. Harenda Enterprises, Inc., 724 N.W.2d 434 (Wis. App., 2006).
- “When the question of law concerns the interpretation of a statute that the agency is charged with administering, the Court of Appeals generally gives either due weight or great weight deference to the agency's interpretation because the agency has some degree of experience or expertise.” Wisconsin Dept. of Workforce Development v. Labor and Industry Review Com'n, 725 N.W.2d 304 (Wis. App., 2006).
- “The Court of Appeals generally applies one of three standards of review, with varying degrees of deference, when reviewing an agency's legal conclusions under a statute: great weight deference, due weight deference, or de novo review.” Patrick Cudahy Inc. v. Labor and Industry Review Com'n, 723 N.W.2d 756 (Wis. App., 2006).
- “A reviewing court, under due weight deference, need not defer to an agency's statutory interpretation which, while reasonable, is not the interpretation which the court considers best and most reasonable.” Patrick Cudahy Inc. v. Labor and Industry Review Com'n, 723 N.W.2d 756 (Wis. App., 2006).

WYOMING-- Strong deference
- “An agency's interpretation of statutory language which the agency normally implements is entitled to deference, unless clearly erroneous.” Buehner Block Co., Inc. v. Wyoming Dept. of Revenue, 139 P.3d 1150 (Wyo., 2006).
“Courts generally defer to the construction placed on a statute by the agency that is charged with its execution, provided, however, that the agency's construction does not conflict with the legislature's intent.” *Qwest Corp. v. State ex rel. Wyoming Dept. of Revenue*, 130 P.3d 507 (Wyo., 2006).