



## PUBLIC HEALTH AUTHORITY Fact Sheet

# What Does Judicial Deference Have to Do with Public Health Authority?

## Background


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

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

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

## Judicial Deference Defined

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



uphold an agency’s interpretation of an unclear or ambiguous statute, provided that the agency’s interpretation is deemed reasonable. When dealing with significant or technical public health issues, legislatures often enact statutes that grant broad authority to agency officials to create rules and regulations that execute the law’s intent. While not laws themselves, the regulations that agencies create have the force of law, and the ability to shape policy at the state and local level.

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

## Judicial Deference Today

In recent years, several proponents of dismantling the authority of regulatory agencies have moved to attack judicial deference, in the hope that the courts will no longer follow an agency’s interpretation of a challenged statute or regulation. Judicial deference has been challenged at both the state and federal level with a few key decisions reflecting a potential shift toward deregulation and general skepticism of technical, subject matter expertise.


At the federal level, the legal framework for deference to executive agencies has been in effect since the 1984 decision in [Chevron U.S.A., Inc. v. Natural Resources Defensive Council, Inc.](#), which stemmed from federal regulation of pollution under the Clean Air Act. The Chevron decision requires that in instances where Congress has been silent or ambiguous about a statutory issue, a court will follow an agency’s interpretation of a statute, so long as that interpretation is reasonable. In a challenge to the Chevron precedent and judicial decisions that have followed that framework for forty years, several cases that focus on overturning deference to administrative agency expertise at the federal level have made their way to the Supreme Court. Groups in favor of deregulation argued in January 2024 to overturn judicial deference at the federal level in the case of [Loper Bright Enterprises v. Raimondo](#), with a final decision from the Supreme Court still pending. Though Loper Bright Enterprises involved a challenge to a commercial fishing regulation, during oral argument justices discussed the potential impact of overruling Chevron on the administration of key [health care programs](#) like Medicaid.

At the state and local level, efforts to remove judicial deference focus on [legislation](#) and litigation. Some proponents of a deregulatory agenda advocate for state legislatures to pass laws that would require courts to review agency interpretations of statutes *de novo*, and to resolve statutory ambiguity in a way that limits agency power and maximizes individual liberty. Review *de novo* requires that when a court interprets a statute or regulation, it cannot use an agency’s prior interpretation and must substitute its own judgment when rehearing evidence in cases involving regulatory agencies.

In the courts, [Parmet and Khalik](#) note that the judicial move away from deference to public health authority began prior to the COVID-19 pandemic. Challenges to health officials’ authority to mandate vaccines and

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

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



masking during the pandemic also called deference to public health officials into question, though Parmet and Khalik found that courts largely rejected these challenges.

## **Conclusion**

The ability of public health agencies to create effective rules and policies based on professional expertise is critical to maintaining the health and welfare of the public. Judicial deference to agencies' interpretations of unclear or ambiguous statutes preserves reasonable rulemaking from agency officials in challenges to rules or policies. Although the courts have historically afforded deference to the decisions of public health officials, there are ongoing efforts to remove judicial deference to agency actions at both the state and federal level, and these efforts should be monitored closely for their impact on health agencies.

**This document was developed by Arianna Murray, Law Clerk and Darlene Huang Briggs, Deputy Director, with input and review from Donna Levin, Act for Public Health Project Director, all with the Network for Public Health Law. The Network for Public Health Law provides information and technical assistance on issues related to public health. The legal information and assistance provided in this document does not constitute legal advice or legal representation. For legal advice, please consult specific legal counsel.**

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