North Dakota Association for Justice
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The Trial Lawyers of North Dakota

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Chairwoman Larson and members of the Senate Judiciary Committee, I am Jaci Hall, Executive Director of the North Dakota Association for Justice. I am here today in support of SB2285.

On June 28, 2024, the Supreme Court finally and emphatically overruled *Chevron* deference, the watershed rule that governed the level of deference afforded to administrative agency interpretation of ambiguous statutes for nearly forty years.

Chevron deference, established in 1984, required courts to defer to 'permissible' agency interpretations of statutes those agencies administer, even when a reviewing court reads the statute differently. This principle of the deference to administrative agencies was a cornerstone of administrative law for nearly four decades.

In *Loper Bright Enterprises v. Raimondo*, the majority opinion represents an emphatic rejection of the agency deference ushered in *Chevron*. The court's decision had an immediate and lasting impact on an executive agency interpretation of ambiguous statutes.

Chief Justice Roberts noted, under the American Procedures Act, courts utilize their own judgment in deciding questions of law, notwithstanding an agency's interpretation of the law. In the majority's view, the APA "makes clear that agency interpretations of statutes—like agency interpretations of the Constitution—are *not* entitled to deference.

According to Chief Justice Roberts, "agencies have no special competence in resolving statutory ambiguities. Courts do," and "even when an ambiguity happens to implicate a technical matter, it does not allow the agency to authoritatively interpret the statute from the courts and give it to the agency.

Federal and state statutes share a common problem: they're vague. When legislators write bills, they often fail to define complicated terms and frequently use fuzzy language. When enforcing unclear laws, executive agencies must make educated guesses about the best way to interpret hazy statutory language.

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But sometimes, agencies guess wrong, and that leads them to implement laws in ways state legislatures never would have approved—from forcing factory workers in West Virginia to use expensive smokestack scrubbers to meet emissions standards, to forcing fishermen in Rhode Island to pay federal "herring monitors" to perform fishing inspections. These consequences prompt lawsuits against the administrative state that all hinge on the same question: what does the law mean?

The most common way state courts defer to administrators is by using what we call "substantial deference" standards. These standards give state agencies about the same amount of deference that *Chevron* gave to federal agencies.

American courts—federal and state—were designed to interpret statutes. It is their job, plain and simple—the very "judicial power" assigned to them in the Constitution. Shifting the power of statutory interpretation to executive agencies snatches away the constitutional prerogative of an impartial judiciary and drops it into the hands of unelected, often politically motivated agency officials.

SB2285 seeks to do what the Chevron decision at the Supreme Court achieved – shift judicial power back to the statutes the Legislature has created.

Here is an Example - On January 19, 2025, the North Dakota Supreme Court overturned a WSI denial of PTSD benefits Oak Reile, an injured worker. In his decision, Chief Justice Jensen wrote that he believed WSI exceeded the scope of the legislature's delegation of authority when it promulgated N.D. Admin. Code § 92-01-02-02.5. He determined that the ALJ's order affirming WSI's decision denying benefits, despite finding that Mr. Reile is statutorily entitled to them, is not in accordance with the law. The court determined the ALJ had found Mr. Reile was not entitled to benefits based on WSI's regulation, explaining: "If N.D.C.C. § 65-01-02(11) were the only applicable statute, Mr. Reile's treatment for adjustment disorder with depressed mood should be covered."

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If the Administrative Law Judge utilized the statute instead of the administrative rule, Mr. Reile would have received his benefits timely and the request would not have had to go to the ND Supreme Court – saving both time and money.

The founding fathers created three branches of government, legislative, executive and judicial. These three branches are very important – and to allow executive agencies to interpret legislative statutes how they see fit is not right. After the *Chevron* decision, it is not law.

Allowing any agency official, <u>whether appointed, elected or hired</u>, to be able to utilize their interpretation of the statute and not the statute itself goes against the decision the United States Supreme Court decided. The legislature creates statutes, and they are law. No person or agency is above the laws of North Dakota. If agencies determine adjustments should be made, they should go through the proper channels and not interpret the law through changes in the administrative rule.

In closing, North Dakota is not alone in their decision to follow the US Supreme Court's action. Idaho, Nebraska, Indiana, Arizona, Wisconsin, and Tennessee have created legislation and Kansas, Utah, Mississippi, Arkansas, Michigan, Ohio, and Delaware's Supreme Courts have deemed this type of deference unconstitutional. SB2285 does not reject all administrative rules, rather it dictates the statute is the law and the administrative rule can be used to support the statute.

Please vote for a Do Pass on SB2285.

Thank you.