

HOUSE JOINT RESOLUTION 140

By Lafferty

A RESOLUTION urging state and federal courts to refrain from giving judicial deference to state agencies in their interpretation of statutes and administrative rules.

WHEREAS, the United States Supreme Court's 1984 ruling in *Chevron v. Natural Resources Defense Council* established the principle of *Chevron* deference, which requires a federal court to yield to an agency's interpretation of a statute; and

WHEREAS, since the development of *Chevron*, the Court has adopted additional forms of deference to an agency's interpretation of a regulation promulgated by the agency, including the principle of *Auer* deference, which requires a federal court to defer to an agency's interpretation of an ambiguous regulation promulgated by the agency; and

WHEREAS, in recent years, an increasing number of judges, policymakers, and scholars have advocated eliminating or narrowing *Chevron* deference; and

WHEREAS, the United States Congress has recently introduced legislation to abolish *Chevron* deference and require courts to review agency interpretations de novo; and

WHEREAS, prominent judges, including U.S. Supreme Court Justices Clarence Thomas and Brett Kavanaugh, have questioned *Chevron's* intersection with the separation of powers doctrine; and

WHEREAS, legal scholars, litigants, and judges have also contested *Chevron's* theoretical grounding, its provenance, and its impact on case outcomes, specifically its growing reach in the modern administrative state; and

WHEREAS, the case against *Auer* deference has focused on separation of powers and the dangerous consolidation of lawmaking and law-executing powers in the same government actor; and

WHEREAS, while on the 10th U.S. Circuit Court of Appeals, United States Supreme Court Justice Neil Gorsuch also addressed concerns with the *Chevron* decision and the constitutional separation of powers doctrine in that the decision may well violate the doctrine because it requires judges to defer to federal agencies' interpretations of ambiguous statutes; and

WHEREAS, before his passing, Justice Scalia, *Auer's* author, joined the call to revisit *Auer* deference, observing that "for decades, and for no good reason, we have been giving agencies the authority to say what their rules mean" and "to both make and execute the same law"; and

WHEREAS, the U.S. Supreme Court has significantly narrowed *Auer's* domain to refuse deference when the interpretation of ambiguous regulations that would impose potentially massive liability on the regulated community; and

WHEREAS, the judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon laws and regulations, while deference precludes judges from exercising that judgment, forcing them to abandon what they believe is the best reading of an ambiguous statute in favor of an agency's construction, thus wresting from courts the ultimate interpretative authority to say what the law is; and

WHEREAS, the State of Tennessee is more unique than other states in that its General Assembly legislates with the philosophy that less regulation by state government entities is better for businesses and Tennesseans as a whole; and

WHEREAS, this legislative body strongly supports the premise that state statutes and administrative rules must be narrowly construed by state entities in the exercise of their delegated authority; now, therefore,

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE ONE HUNDRED ELEVENTH GENERAL ASSEMBLY OF THE STATE OF TENNESSEE, THE SENATE CONCURRING, that this body staunchly opposes the current principles of judicial deference as

it relates to both the *Chevron* and *Auer* decisions and urges all state and federal courts to refrain from applying such principles.

BE IT FURTHER RESOLVED, that a certified copy of this resolution be transmitted to the director of the administrative office of the courts for distribution to each member of the Supreme Court of Tennessee, the Clerk of the United States Supreme Court for distribution to each member of the Court, and to all members of the Tennessee Congressional delegation.