

A New Era: Judicial Deference (Or Lack Thereof) in Kentucky in a Post-*Loper Bright Enterprises v. Raimondo* World

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For nearly 40 years, Kentucky courts deferred “to an administrative agency’s interpretation of the statutes and regulations it is charged with implementing.” *Huxol v. Daviess Cnty. Fiscal Court*, 507 S.W.3d 574, 578 (Ky. App. 2016). This practice of judicial deference was commonly referred to as the “Chevron Doctrine.” This was, of course, shorthand for the United States Supreme Court decision which established it: *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984).

The *Chevron* case held that there was nothing inherently unlawful when a court deferred to the decision of an executive branch agency in reaching a judicial conclusion. The Chevron Doctrine was born. And while the Chevron Doctrine was technically only doctrine in federal jurisprudence, many states also adopted such a policy for their own judicial review. Kentucky was one of those states.

In the decades following *Chevron*, the Commonwealth’s Supreme Court held that, pursuant to the Chevron Doctrine, when

it is in the “form of an adopted regulation or formal adjudication,” Kentucky courts “review an agency’s interpretation of a statute it is charged with implementing.” *Metzinger v. Kentucky Retirement Systems*, 299 S.W.3d 541, 545 (Ky. 2009) (citation omitted). This meant that Kentucky courts afforded significant deference to an agency’s interpretation of statutes within its purview – oftentimes when those very interpretations were being challenged by another party.

But the standards established in 1984 through *Chevron* came to an end two years ago in another United States Supreme Court case: *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). In *Loper*, the nation’s

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highest court ruled it’s the function of courts to decide questions of law independently and that interpreting statutes is fundamentally judicial in nature. The *Loper* court held, for these reasons, interpretation of a statute shouldn’t be left to an administrative agency regardless of whether that agency is tasked with enforcing that statute.

The Supreme Court’s *Loper* decision doesn’t mean that agency expertise as it relates to a particular statute is totally irrelevant. It also doesn’t prohibit courts from considering an agency’s interpretations for their persuasive, rather than binding, value. The *Loper* decision does mean that courts may now also independently interpret federal statutes rather than deferring to an agency’s interpretation of those statutes. With this, the Chevron Doctrine was relegated to the dustbin of federal judicial history (for the time-being, at least).

Closer to home, there were indications that when Kentucky courts were confronted with an agency’s interpretation of a statute that the Chevron Doctrine would also be dispensed with in the aftermath of *Loper*. See Justice Thompson’s dissent in *Hall v. BPM Lumber, LLC*, 706 S.W.3d 191, 206 (Ky. 2024). However, there were no state-level counterpart holdings to *Loper* made by the Kentucky Supreme Court. The lack of such rulings is now a moot point.

That’s because following the *Loper* decision, Kentucky’s Legislature enacted statutory changes which fundamentally alter the approach to judicial review of decisions of administrative agencies. These changes came with the passage of Senate Bill 84 (SB 84) during the Legislature’s 2025 Regular Session. That legislation expressly cited *Loper* and codified a rejection of the premise that administrative agencies possess superior authority or expertise in interpreting statutes. (“WHEREAS, in *Loper*... the United States Supreme Court ruled that the federal judiciary’s deference to the interpretation of statutes by federal agencies as articulated in *Chevron*... and its progeny was unlawful.”)

In SB 84, the Legislature further declared that judicial deference to agency interpretations is inconsistent with Kentucky’s constitutional separation of powers and that courts, rather than executive agencies, bear the ultimate responsibility for determining the meaning of the law. (“WHEREAS, the General Assembly believes that judicial

deference to a state agency’s interpretation of a statute is inconsistent with the role of the Court of Justice within the separation of powers provisions of the Constitution of Kentucky...”)

With SB 84, Kentucky’s Legislature statutorily abolished any form of *Chevron*-type deference previously recognized in Kentucky case law. See generally *Metzinger*, 299 S.W.3d 541. See also *Kentucky Occupational Safety & Health Review Comm’ v. Estill Cnty. Fiscal Court*, 503 S.W.3d 924 (Ky. 2016).

Now, as set out in SB 84, an administrative body’s interpretation of a statute or administrative regulation “shall not be entitled to deference from a reviewing court” and directs that courts apply *de novo* review to agency interpretations of statutes, regulations and other questions of law.

Portions of SB 84 were enacted and codified over Governor Beshear’s veto in KRS 13A, KRS 13B.150 and KRS 446, respectively.

Through the passage of SB 84, and with its codification in Kentucky’s statutes, the Commonwealth’s courts are now **required** to exercise independent judgment when reviewing legal conclusions reached by administrative agencies.

As is the case with review of by federal courts following the *Loper* ruling, while interpretations of any Kentucky agency may still be considered for whatever persuasive value their reasoning might hold, they no longer enjoy any presumptive weight or controlling authority. Instead, the reviewing Kentucky court must determine the best interpretation of the statute or regulation for itself.

Practically (and statutorily) speaking, Kentucky has moved from a framework in which agency interpretations often received substantial judicial respect to one in which questions of law are reviewed independently by the judiciary. The Commonwealth’s current statutory structure mirrors the core holding of *Loper*. This means that on both the federal and state level, the era of Chevron Deference is over. The era of less deferential judicial review is here. It remains to be seen whether this era also receives its own shorthand for generations of legal minds to commit to memory for decades to come.

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