MISSOURI HOUSE OF REPRESENTATIVES

WITNESS APPEARANCE FORM

BILL NUMBER: **SB 221**	DATE: **4/2/2025**
COMMITTEE: **Judiciary**	

TESTIFYING: ☑ IN SUPPORT OF ☐ IN OPPOSITION TO ☐ FOR INFORMATIONAL PURPOSES

WITNESS NAME

INDIVIDUAL:

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EMAIL:	ATTENDANCE:	SUBMIT DATE: **4/2/2025 12:00 AM**	

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WITNESS NAME

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WITNESS NAME

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TO THE HONORABLE MEMBERS OF THIS COMMITTEE:My name is David Stokes, and I am director of municipal policy at the Show-Me Institute. The Show-Me Institute is a nonprofit, nonpartisan Missouri-based think tank that supports free-market solutions for state and local policy. The ideas presented are my own. Thank you for this opportunity to testify.Senate Bill 211 (SB 221) and House Bill 663 (HB 663) relate to the 2024 ruling by the United States Supreme Court that overturned the Chevron doctrine. Under the prior federal Chevron doctrine, "if Congress has not directly addressed the question at the center of a dispute, a court was required to uphold the agency's interpretation of the statute as long as it was reasonable."1 In the simplest terms, federal courts were instructed under Chevron to show deference to the interpretation of rules by government agencies, regulators, etc., when those rules or interpretations were challenged by citizens. Missouri has its own laws regarding judicial hearings for contested administrative rules, and while Missouri's rules do not have a phonaesthetically pleasing name like "Chevron," they exist nonetheless. SB 221 and HB 663 address that point to make clear that Missouri courts are not expected to show deference to agency interpretations and, in fact, would be required to interpret regulations and rules in a manner that limits government agency authority and maximizes personal liberty. There are numerous examples in Missouri where regulatory bodies at the state and local levels have established rules that citizens have contested because they appear to exceed the authority of the issuing agency. A short list of such examples includes:• Previous regulations requiring that African-style hair-braiders undergo the long and expensive process of obtaining a cosmetology license, even though the latter license has nothing to be with hair-braiding.• Local rules in St. Louis County that previously limited the inspection of irrigation backflow prevention devices to licensed plumbers, even though irrigation companies and their employees built out the rest of the irrigation systems.• Local rules throughout Missouri that had restricted Uber, Lyft, and new taxicab competitors from entering markets in favor of currently licensed taxi operators. To be clear, these are simply examples of state and local regulatory issues that have been challenged in various ways in Missouri, not an assessment of whether those regulations aligned with the underlying law.Currently, a state agency is suing a woman for St. Louis for practicing dentistry without a license.2 The question is whether installing tooth jewelry should require a dental license (which is, obviously, difficult to get). If this legislation passes, the regulators in this instance would have to act more strictly under the law as written by the legislature and less under various interpretations of that law by the Missouri Dental Board. If this case goes to court, the judges will not be expected to presume the dental board is correct. While it is entirely possible that the Missouri Dental Board is correct, the court would be required to base its decision on the law, not the dental board's interpretations of it. Missouri citizens would be better off if our laws made clear that courts are

not required to show deference to interpretations by regulatory agencies. Courts should examine the laws as written in making their judgements when people contest administrative decisions by government agencies, boards, or commissions. SB 211 and HB 663 would help make Missouri a freer and more prosperous place for all of its citizens. Thank you for the opportunity to submit this testimony. 1 Howe, Amy, "Supreme Court strikes down Chevron, curtailing power of federal agencies," SCOTUSblog, June 28, 2024. 2 Kukuljan, Steph, "State alleges St. Louis business performed dentistry without license," St. Louis Post-Dispatch, February 9, 2025.

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WITNESS NAME

REGISTERED LOBBYIST:

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My name is Kileen Lindgren, and I am legal policy manager at Pacific Legal Foundation. The Foundation is a nonprofit, public interest law firm that has litigated over 2400 cases that include 18 U.S. Supreme Court wins on behalf of Americans' constitutional rights - many of those in the area of separation of powers. We represent our clients free of charge and are dedicated to defending and promoting property rights, proper separation of powers, andequality and opportunity under the law in courtrooms and capitols around the country.I write in support of Senate Bill 221—a bill that prevents judicial bias. For decades,judges at the federal and state level have wrongly deferred to regulatory agencies' interpretations oflaws they are charged with carrying out, regulations they created, and their factual determinationswhen bringing enforcement actions against Americans. In showing "deference," judges abdicate theirduty to only "say what the law is" - not what they or others may think it should be.Judges also fail to render independent, impartial judgments when they put a thumb on the scale infavor of the government. This subverts the adversarial system of adjudication that has been centralto American legal tradition for centuries - and a vital institution established by our nation's founders.Judges must not only hear both sides of a case before making a decision, they must listen withoutsystematically favoring any party.Deference to state agencies has been increasingly criticized and the US Supreme Court issued adecision last year ending deference to agency interpretations of statutes. In recent years, states havebegun ending improper judicial deference through state Supreme Court decisions and legislativeaction, and Missouri should join this trend toward fairness under the law by adopting SB 221.In recent years, states like Arizona, Florida, Indiana, Nebraska, Tennessee, and Wisconsin - and Kentucky just last week - have amended their laws to protect the separation of powers that is so pivotal to our system of justice.As Chief Justice John Roberts stated in his confirmation hearing over 20 years ago, judges aresupposed to "call balls and strikes, not pitch or bat." By passing SB 221, the Missouri legislature willbe doing its part to uphold the Framers' vision for checks and balances as well as the MissouriConstitution's promise of separate but equal branches of government.Thank you for your time,KILEEN LINDGRENLegal Policy ManagerPacific Legal Foundation

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WITNESS NAME

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WITNESS NAME

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Dear Chairwoman Parker and Members of the Committee, Missouri Coalition for the Environment is a statewide, advocacy nonprofit organization that works to empower Missourians to protect their environment and health. SB 221 would make it harder for the experts in government agencies to do their jobs by giving courts more power to second-guess their decisions. The bill mirrors the recent Supreme Court decision in Loper Bright Enterprises v. Raimondo by dramatically reducing court deference to administrative agencies. SB 221 removes courts' traditional practice of deferring to agency interpretations of laws and regulations, requiring courts to interpret statutes and regulations de novo (from scratch), without giving weight to the advice of experts working for agencies. While the Supreme Court's ruling eliminated deference to federal agencies in policy making, this bill would apply nearly identical principles at the state level, undermining regulatory consistency and effectiveness across Missouri.The bill further stifles agency authority by requiring courts to resolve any remaining ambiguity in favor of limiting agency power and maximizing individual liberty. While this may sound appealing in theory, it would create significant practical problems in the implementation and enforcement of essential regulatory programs that protect public health, safety, and welfare. Agency employees are experts on the minutiae of the rulemaking process in their area of focus, whereas the justice system is ill equipped to handle these technical details. SB 221 would have several implications that could significantly slow down administrative proceedings and increase costs for both the state and regulated parties by encouraging more litigation over settled interpretations:SB 221 undermines the effectiveness of agencies that rely on technical expertise to implement complex regulatory schemes in areas such as environmental protection, public health, professional licensing, and workplace safety.SB 221 would likely create regulatory uncertainty as long-standing interpretations could be more easily challenged and overturned, making it harder for businesses and individuals to plan and comply with the law.SB 221 would burden our court system with technical matters that are better suited to agency expertise, potentially leading to inconsistent interpretations across different courts.In conclusion, SB 221 sews discontent and confusion throughout Missouri's established judicial system and threatens established precedent. Judges and courts cannot and should not be experts in everything, and passing this bill would mean losing the guidance and support of time tested experts in their fields. I urge you to vote NO on Senate Bill 221 and maintain Missouri's existing administrative law that has served our state effectively for many years.

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WITNESS NAME

INDIVIDUAL:

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The bill statement summary is vague.

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Chairwoman Parker, Vice-Chair Reuter, and Members of the Missouri House Judiciary Committee, My name is Nino Marchese, and I serve as the director of the Judiciary Task Force at the American Legislative Exchange Council. I appreciate the opportunity to testify to provide our nonpartisan research and analysis. Thank you for having me. The American Legislative Exchange Council is America's largest nonpartisan, voluntary membership organization of state legislators dedicated to the principles of limited government, free markets and federalism. Comprised of nearly one-quarter of the country's state legislators and stakeholders from across the policy spectrum, ALEC members represent more than 60 million Americans and provide jobs to more than 30 million people in the United States. Members of ALEC's Judiciary Task Force include state lawmakers and policy experts who handle issues ranging from criminal justice reentry and recidivism to civil litigation and administrative state reform. A large part of the Task Force's portfolio includes protecting the separate and co-equal framework established between our three distinct branches of government. To begin, I'd like to touch on our members' experiences with judicial deference reform. Regarding opposition to eliminating deference, the most common obstacle our members encounter is the fundamental misunderstanding of the doctrine itself. Additionally, there are claims that conservative parties and/or courts are given a leg-up in the court room when deference is eliminated. However, because of its procedural nature, deference provides no benefit to any type of group or political party. But prohibiting deference does promote justice and upholds our nation's separations of powers. So, what is judicial deference, exactly? It is the practice of a court deferring to the executive on something courts have long been assigned the exclusive privilege and responsibility to handle themselves: questions of law. With deeply set roots, our legal system has determined that when the law is ambiguous, objectively or arguably, the judiciary will be the adult in the room to determine what the meaning of a law is. Judicial deference obliterates this legal framework our nation is built on by instead having courts defer to bureaucrats' interpretations of the law when an ambiguous statutory matter is afoot. Deference takes one of two forms: mandated or voluntary. The former, forcing courts by law to defer to agency views, with the latter simply allowing the practice. Missouri's particular deference status is unclear, as its courts have held inconsistent rulings on the matter. What is clear is that this legislature has yet to prohibit the practice. But what's so wrong with Missouri courts deferring to executive agencies? Employees in state agencies often dedicate their careers to developing the subject matter expertise which they use in their statutory enforcement responsibilities. Further, some may have a deep knowledge of the policy issues the judges are tasked with interpreting and ruling on. Regardless, courts deferring to such employees creates three major problems. First, it increases the power and unjustified lawmaking abilities of unelected bureaucrats. Each Senator on this committee endures the

adversarial struggle of justly achieving their political power through an election, earning lawmaking authority through the consent of the governed. One of the core purposes behind our representative democracy is to ensure that those who make our laws are accountable to the public they govern. Unelected bureaucrats are not. Nonetheless, they hold immense rulemaking powers which govern and affect the lives of Missourians. Allowing subjective agency interpretations of a law to prevail over that of a judge's effectively increases bureaucracy power because it teleports their preferred reading of this legislature's laws into the courts—and into the law—where they might have otherwise died in a government building cubicle. Second, judicial deference abdicates judges of their exclusive responsibility to interpret the law. Judicial review is a long-established power and core function of the judicial branch, in both state and federal systems. It is well equipped to interpret the law when unclear and has many tools at its disposal to do so. Most importantly, legal interpretation is a responsibility exclusive to the judicial branch. While Agency expertise on policy issues may serve as potentially valuable insight and resources to actual lawmakers, their views have no business determining judicial decisions. In mandated deference jurisdictions, judges are simply stripped of this exclusive power because they are forced to defer. But in jurisdictions where deference is not required, but instead allowed, judges are simply forfeiting an exclusive responsibility our system has deemed them responsible to exercise. Lastly, deference simply gives a party in a lawsuit an unfair advantage in the court room. For those seeking a remedy through the courts, a level playing field is a minimum expectation. But when deference is at play, and a party brings an action — let's say a civilian suing the state which they believe to have violated their liberty — the courtroom touts two basketball hoops on either side of the ballcourt, one at a standard height for the private citizen, and the other six-feet-lower for the agency defendant. The entire system is made less fair because the court is not interpreting the law de novo. Instead, bureaucrats do so for the parties. Many other states like Missouri are revisiting this issue. Just last year, Idaho, Nebraska and Indiana's legislatures all prohibited the deference practice, and another eight states have already introduced similar legislation for this 2025 session. A contributing factor has been the timeliness of last year's landmark Supreme Court ruling out of the Loper Bright case which overturned Chevron Deference, prohibiting the practice in the federal judiciary, however, only in the federal judiciary. As a result, state legislators are more motivated than ever to take power out of the hands of unelected bureaucrats and put it back into those of their state judges where it belongs. I hope our ALEC nonpartisan research and analysis is helpful to you all as you join states across the nation in considering this very important issue. I am happy to answer any questions the committee may have. Respectfully, Nino Marchese Director, Judiciary Task Force American Legislative Exchange Council Nmarchese@alec.org