Chairman Phil Mendelson

A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To declare the existence of an emergency with respect to the need to amend the District of Columbia Administrative Procedure Act to codify agency deference and clarify that a reviewing court or tribunal shall defer to an agency's interpretation of a statute or regulation it administers so long as that interpretation is not plainly wrong, inconsistent with the statutory or regulatory language or legislature's intent.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Review of Agency Action Clarification Emergency Declaration Resolution of 2024".

Sec. 2. (a) The District's Administrative Procedure Act authorizes the District of Columbia Court of Appeals to review orders and decisions of administrative agencies in contested cases. In exercising that review, the Court has the power, "[s]o far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action" (D.C. Official Code § 2-510(a)(1)). The Court is authorized, among other things, to "hold unlawful and set aside any action or findings and conclusions found to be" (A) "Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;" (B) "Contrary to constitutional right, power, privilege, or immunity;" (C) "In excess of statutory jurisdiction,

authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights;" (D) "Without observance of procedure required by law, including any applicable procedure provided by this subchapter;" or (E) "Unsupported by substantial evidence in the record of the proceedings before the Court" (D.C. Official Code § 2-510(a)(3)).

(c) For decades, the Court of Appeals has deferred to agency interpretations of ambiguous statutes and regulations unless the agency's reading was unreasonable. *See, e.g.*, *Nunnally v. D.C. Metro. Police Dep't*, 80 A.3d 1004, 1010 (D.C. 2013) ("Where we determine that a statutory term is ambiguous, . . . we must defer to an agency's interpretation of that ambiguity that is reasonable and not plainly wrong or inconsistent with the legislature's intent."); *Eldridge v. D.C. Dep't of Hum. Servs.*, 248 A.3d 146, 155 (D.C. 2021) (similar). This standard of review is substantially similar to the approach adopted by the United States Supreme Court in *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-44 (1984), and its progeny. This doctrine also traces back to judicial decisions predating the adoption of the District's Administrative Procedure Act. *See Red Lion Broad. Co. v. FCC*, 395 U.S. 367, 381-82 (1969); *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965); *Unemployment Comp. Comm'n of Alaska v. Aragon*, 329 U.S. 143, 153-54 (1946).

(d) The Court of Appeals has additionally made clear that this deference extends to an agency's interpretation of its own regulations and should also be applied by other tribunals reviewing the work of the administrative agency, like the Office of Administrative Hearings. *See D.C. Dep't of Env't v. E. Capitol Exxon*, 64 A.3d 878, 879 (D.C. 2013).

(e) Deference has become an important background principle for ensuring stability in the law. Individuals can rely on agency interpretations as authoritative unless a clear conflict exists between the agency's interpretation and the statute or regulation being interpreted. The Council

has also legislated for decades with this background principle and the assumption that an agency's reasonable construction of a statute it is charged with administering will be sustained on judicial review. This principle is consistent with the Council's understanding of the current judicial review provision of the District's Administrative Procedure Act.

(f) In June 2024, in *Loper Bright Enterprises v. Raimondo*, 144 S. Ct. 2244 (2024), however, the United States Supreme Court overruled *Chevron* and held that the federal Administrative Procedure Act prohibits courts from deferring to agencies when they offer reasonable interpretations of ambiguous federal statutes.

(g) Notwithstanding the Council's understanding of the District's Administrative Procedure Act, the textual similarities between the scope of review provision in the federal Administrative Procedure Act, which the Supreme Court interpreted in *Loper Bright*, and the judicial review provision of the District's Administrative Procedure Act may create confusion and uncertainty as to what standard of review applies when reviewing District agency action.

(h) Therefore, there exists an immediate need to amend the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1209; D.C. Official Code § 2-510), to clarify that in reviewing an order or decision of the Mayor or an agency, a reviewing court or tribunal shall defer to the Mayor or agency's reasonable interpretation of a statute or regulation it administers so long as that interpretation is not plainly wrong, or inconsistent with the statutory or regulatory language or legislature's intent.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Review of Agency Action Clarification Emergency Amendment Act of 2024 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.