



PACIFIC LEGAL
FOUNDATION



LIBERTY
&
LAW CENTER
ANTONIN SCALIA LAW SCHOOL - GEORGE MASON UNIVERSITY

Call For Papers

STATE JUDICIAL DEFERENCE RESEARCH ROUNDTABLE

Pacific Legal Foundation's Center for the Separation of Powers and George Mason University's Liberty & Law Center at the Antonin Scalia Law School seek papers for a State Judicial Deference Research Roundtable, to be held in late August or early September 2021, in Arlington, VA, or virtually.

Judicial deference isn't just a hot topic at the federal level. As PLF's [Daniel Ortner has shown in his 50-state survey](#), many states are leading a revolution against administrative deference doctrines. In recent years, at least six states have rejected deference through judicial rulings, two have done so through legislation or referendum, and still other states have taken skeptical intermediate or hybrid approaches to deference doctrines.

What are the effects of this quiet deference revolution? We would like papers that address this topic from numerous perspectives, including some empirical and nonempirical angles:

1. What impact has eliminating and/or limiting deference had on the success rate of litigants challenging government action (i.e., does the government lose more often without or with limited deference doctrines)?
2. Has eliminating and/or limiting deference had a measurable impact on the regulatory burdens that citizens in those states experience?
3. In states that have eliminated deference, have agencies been measurably hampered in their ability to regulate and enforce their regulations?
4. What economic impacts have there been from the elimination or limitation of judicial deference, if any?

5. Do 1–4 above differ based on whether a state eliminated or limited deference through judicial decision or political means?
6. Has eliminating deference had any impact on the legislative process in these states?
7. What reasons have courts, legislators, or public policy groups given in favor of or against the elimination of deference in the states? How is this reasoning and rhetoric similar or different from the debate concerning federal deference?
8. What impact has the elimination of deference had on the precedential value of decisions that relied on deference?

RESEARCH PROPOSAL SUBMISSION DETAILS

Please submit a brief research proposal that describes your research question(s), your intended methodology, and how your research will contribute to the legal discussion of judicial deference. Proposals should be submitted by **February 15, 2021**, to ASomin@pacificlegal.org. Early proposal submission is encouraged, however, as proposals will be reviewed on a rolling basis, and approvals will allow authors to begin work early.

HONORARIUM AND OTHER SUPPORT

Authors of accepted papers will receive a \$2,500 honorarium. If you require additional funds for data collection, compilation, or other research purposes, please let us know. Authors will benefit from robust feedback on their research, including peer-review at the research roundtable and copyediting assistance for the revised paper after the roundtable. The sponsors will also make a serious effort to secure publication of the workshop papers in an appropriate law review as part of a law review symposium. Submission to other journals will be encouraged if that effort is not initially successful.

In addition, papers will be published as a working paper series on one or both sponsor websites. PLF and the Liberty & Law Center will also provide additional outreach and marketing support for the working paper series to maximize the reach and impact of all research findings. If requested during the initial proposal period or soon thereafter, we also will try to connect potential coauthors with different legal and empirical expertise.

RESEARCH ROUNDTABLE

Completed paper drafts are due by **August 1, 2021, but need not be in polished or publishable form**. Authors will present their papers at a research roundtable co-hosted by PLF and the Liberty & Law Center. The roundtable is tentatively scheduled for the last week of August or early September 2021, in Arlington, VA, and will provide authors the opportunity to get feedback from other legal and academic experts. A travel stipend will be available if the roundtable is conducted in person.

TIMELINE

- February 15, 2021: submission deadline for paper proposals. Proposals will be reviewed on a rolling basis after December 15, 2020. Authors are encouraged to apply early to ensure honoraria for their paper are still available.
- August 1, 2021: deadline for draft papers, to be circulated to roundtable participants.
- Late August/early September: presentation of the papers at the roundtable.
- October 1, 2021: deadline for paper revisions.
- November 1, 2021: target for copyedit review and posting of final papers online.

CONTACT INFORMATION

For questions regarding the call for papers please contact: **ASomin@pacificlegal.org**

References

Ortner, Daniel. "The End of Deference: How States Are Leading a (Sometimes Quiet) Revolution Against Administrative Deference Doctrines." [Available at SSRN \(2020\)](#).

Walker, Christopher J. "Chevron Inside the Regulatory State: An Empirical Assessment." [Fordham Law Review](#) 83 (2014): 703-729.

Kerr, Orin S. "Shedding Light on Chevron: An Empirical Study of the Chevron Doctrine in the U.S. Courts of Appeals." [Yale Journal on Regulation](#) 15 (1998).

Barnett, Kent, and Christopher J. Walker. "Chevron in the Circuit Courts." [Michigan Law Review](#) 116 (2017).

Choi, Jonathan H., "How Does Chevron Shape Agency Rulemaking? An Empirical Study." [Available at SSRN \(September 10, 2020\)](#). [Yale Journal on Regulation](#) 38 (2021 Forthcoming).

Eskridge Jr., William N. and Lauren E. Baer. "The Continuum of Deference: Supreme Court Treatment of Agency Statutory Interpretations from Chevron to Hamdan." [The Georgetown Law Journal](#) 96 (2008): 1083-1226.