

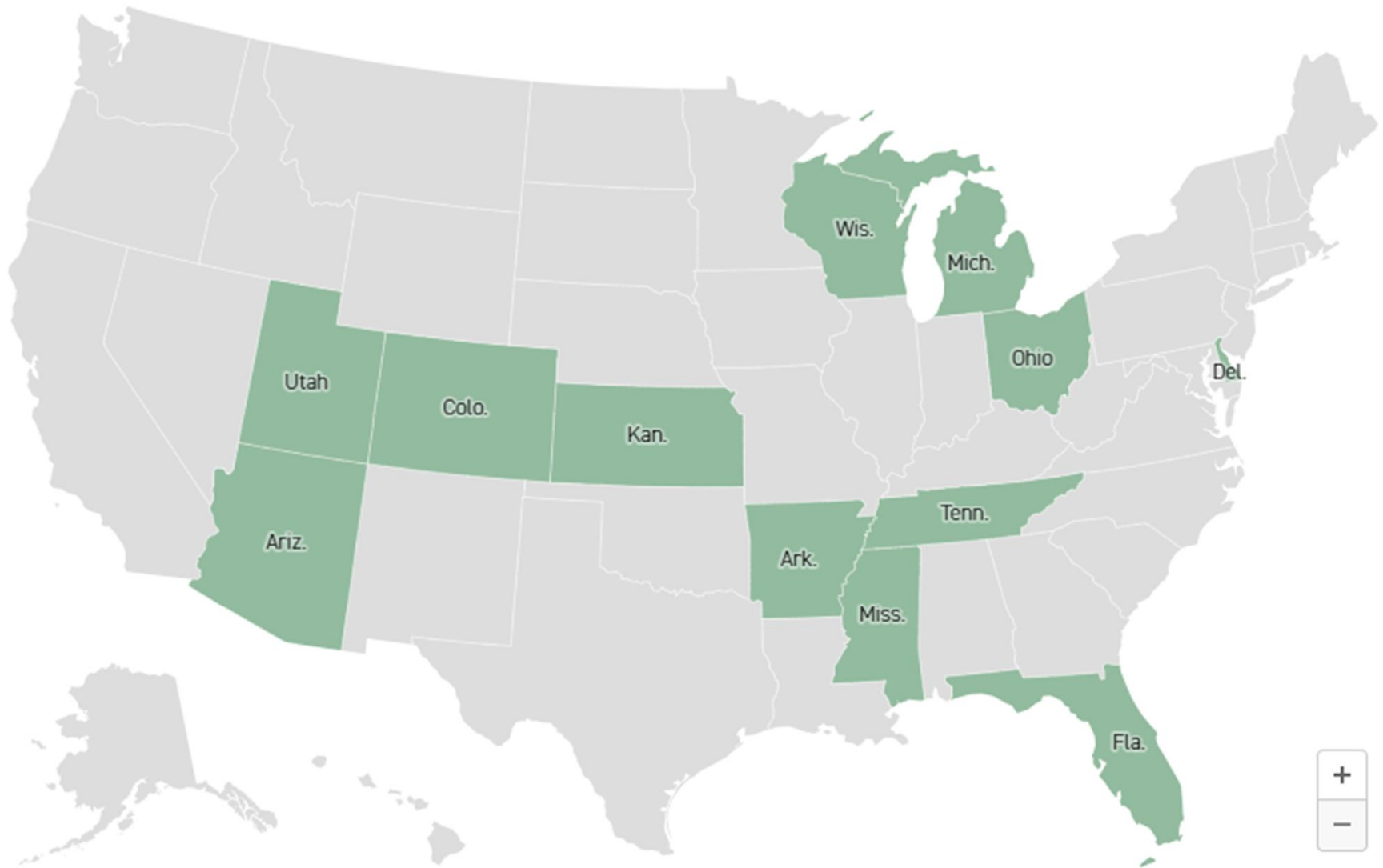
Judicial Deference to Agency Interpretation: Would *Loper Bright* be Persuasive in Oregon?

Molly K. Marcum
Keating Jones Hughes PC
mmarcum@keatingjones.com
(503) 222-9955

KJH
KEATING
JONES
HUGHES·P.C.
ATTORNEYS AT LAW

Chevron doctrine in the states

12 states that have weakened or overturned agency deference through court rulings or legislation



Source: POLITICO's E&E News reporting
Claudine Hellmuth/POLITICO

Oregon:

Administrative Procedures Act

183.482 Jurisdiction for review contested cases; scope of Ct authority.

(8)(a) The court may affirm, reverse or remand the order. If the court finds the agency **erroneously interpreted** a provision of law . . . the court shall:

(A) Set aside or modify the order; or

(B) Remand case to agency for further action under a correct interpretation of the provision of law.

b) The court shall remand the order to the agency if the court finds the agency's exercise of discretion to be:

(A) **Outside range of discretion delegated to the agency** by law;

(B) Inconsistent with agency rule, stated agency position, or prior agency practice, if inconsistency is not explained by the agency; or

(C) Otherwise in violation of a constitutional or statutory provision.

c) The court shall set aside or remand order if it finds the order is not supported by **substantial evidence** in the record . . .

Springfield Education Assn v School Dist 19, 290 Or 217, 226-35 (1980) (holding ERB erred in interpretation of **inexact** terms on whether teacher evaluations were “condition of employment” subject to mandatory bargaining; discusses types of legislative delegation to agency).

In deciding whether to defer to agencies, Oregon courts consider whether words in statutes are “**exact,**” “**inexact,**” or **delegative.**” Because **exact** terms are to the point, agencies do not receive deference for their interpretations. Also, no court deference as to **inexact** terms, because they “express a complete legislative meaning but with less precision.” Courts do defer when confronted with **delegative** terms, as they express “incomplete legislative meaning that the agency is authorized to complete.”

- *Megdal v Board of Dentistry*, 288 Or 293 (1980)(revocation of license for “unprofessional conduct” reversed; making misrepresentations to malpractice insurer was not a legal ground for revocation as legislature **delegated** rulemaking but Bd had no rule to proscribe the conduct; notes **3 types of statutory terms** convey different responsibility to agency).

- *Childress v Board of Psychology*, 327 Or App 48 (2023)
(Board did not err in finding petitioner engaged in unlicensed practice of psychology by providing “consultation” services to an individual in Oregon; exclusion for “consulting services to an organization,” has **inexact terms**, not delegative terms, and Bd not required to adopt a rule defining phrase prior to enforcement actions, **citing *Springfield***).

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(503) 222-9955
mmarcum@keatingjones.com

Molly Marcum practices health care law and medical malpractice defense, with a primary focus on representing healthcare providers before licensing boards, professional liability defense, credentialing issues, and HIPAA compliance. Molly is regularly recognized by Best Lawyers and Super Lawyers, and was voted as Health Care Lawyer of the Year **in 2025**, 2023, and 2020 by Best Lawyers. As a partner with Keating Jones Hughes, PC, her practice includes litigation, arbitration and mediation, and administrative proceedings before licensing boards.