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IN THE

Supreme Court of Pennsylvania

No. 7 MAP 2025

LUTHERAN HOMES AT KANE AND SIEMON'S LAKEVIEW MANOR ESTATE,

Appellants,

vs.

DEPARTMENT OF HUMAN SERVICES,

Appellee.

On appeal from the judgment of the Commonwealth Court of Pennsylvania dated June 4, 2024, in No. 303 CD 2023, affirming the orders of the Department of Human Services, Bureau of Hearings and Appeals, dated March 1, 2023

BRIEF OF *AMICI CURIAE* THE PENNSYLVANIA CHAMBER OF BUSINESS AND INDUSTRY, THE PENNSYLVANIA MANUFACTURERS ASSOCIATION, THE MARCELLUS SHALE COALITION, THE PENNSYLVANIA INDEPENDENT OIL & GAS ASSOCIATION, AND THE PENNSYLVANIA COAL ALLIANCE IN SUPPORT OF NEITHER SIDE

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STATEMENT OF THE INTERESTS OF THE *AMICI CURIAE*[1]

The Pennsylvania Chamber of Business and Industry (the "Pennsylvania Chamber") is the largest broad-based business association in Pennsylvania. It has close to 10,000 member businesses throughout Pennsylvania, which employ more than half of the Commonwealth's private workforce. Its members range from small companies to mid-size and large business enterprises across all industry sectors in the Commonwealth. The Pennsylvania Chamber's mission is to advocate on public policy issues that will expand private sector job creation, to promote an improved and stable business climate, and to promote Pennsylvania's economic development for the benefit of all Pennsylvania citizens.

The Pennsylvania Manufacturers' Association (the "PMA") has served since 1909 as a leading voice for Pennsylvania manufacturing, its 540,000 employees, and the millions of additional jobs in supporting industries. The PMA seeks to improve the Commonwealth's competitiveness by promoting pro-growth public policies that reduce the cost of creating and keeping jobs in Pennsylvania

The Marcellus Shale Coalition represents producers, midstream, and local supply-chain companies that promote the safe and responsible development of

[1] No person or entity other than the *amici curiae*, their members or counsel paid in whole or in part for the preparation of this brief or authored this brief in whole or in part.

natural gas from the Marcellus and Utica geological formations located in the Commonwealth. The Commonwealth accounts for about 20 percent of the nation's natural-gas production and produces more natural gas than any state except Texas.

The Pennsylvania Independent Oil & Gas Association is an association of independent oil and gas producers and related service providers that provides education, training and other support to the oil and gas industry in Pennsylvania.

The Pennsylvania Coal Alliance is an association of Pennsylvania coal producers and related service providers committed to promoting and advancing the Pennsylvania coal industry and the economic and social benefit to the employees, businesses, communities, and consumers who depend on coal for industrial growth, steelmaking, and affordable and reliable energy.

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The members of each of the *Amici* organizations conduct their business activities in heavily regulated industries. The *Amici* provide their members with advocacy, training and guidance regarding compliance with regulations, and they therefore have a strong interest in the clarity and consistency of interpretation and application of the regulations applicable to their members' activities.

INTRODUCTION

As the U.S. Supreme Court and this Court have explained, "[i]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison*, 5 U.S. (Cranch) 137, 177 (1803) (quoted in *Corman v. Acting Sec'y of Pa. Dep't of Health*, 266 A.3d 452, 486 (Pa. 2021)). Once an agency has promulgated rules via the robust process Pennsylvania law requires, the resulting regulations should be interpreted by the courts according to the interpretive processes used for all statutes and regulations. Agency deference, if it is to be given, should only be considered after all other means to resolve facial ambiguities have been employed.

Pennsylvania's Statutory Construction Act, 1 Pa.C.S. §§ 1501-1991, sets out the proper considerations for interpreting statutes and regulations. *Linkosky v. Cmwlth, Dep't of Transp.*, 247 A.3d 1019, 1026 (Pa. 2021) (Statutory Construction Act should be used to construe regulations). While the Statutory Construction Act includes among those considerations "Legislative and administrative interpretations of such statute [or regulation]," 1 Pa.C.S. § 1921, it does not suggest that a court should give *deference* to such interpretations.

In *Auer v. Robbins*, 519 U.S. 452 (1997), the federal high court explained that, if a regulation is unambiguous, a court should interpret it according to its plain text

but, if the regulation is ambiguous, the court should defer to the interpretation of the agency that promulgated it. This Court has generally followed *Auer*. *See Corman*, 266 A.3d at 485-86. The U.S. Supreme Court has now refined that standard with respect to *Auer*'s first step to say that, before a court may conclude that a regulation is ambiguous, it must exhaust all available tools of construction to determine there is a genuine ambiguity. *See Kisor v. Wilkie*, 588 U.S. 558 (2019).

In its order granting review in this case, the Court asked whether it should adopt *Kisor*'s refinement of *Auer*. The answer is that the Court should at least do that. Pennsylvania courts should exhaust all means of resolving a regulation's meaning—including analyzing the considerations set out in the Statutory Construction Act—before concluding that there is an ambiguity in the regulation. They should also recognize the other limitations on *Auer* deference described in the *Kisor* majority opinion.

The Court may wish to go further in its holding. In granting allowance of appeal, the Court asked whether it should follow *Kisor* and "update Pennsylvania law limiting deference to agency interpretations, including for the reasons recently presented by the U.S. Supreme Court's overruling of '*Chevron* Deference.'" Given that language, *Amici* submit that the Court could address the second step in the *Auer* analysis: whether there is a basis to defer to agency interpretations of

regulations even in the event of a genuine ambiguity. Whether in this case or in a future one, the Court should conclude that agency interpretations should receive no deference even if the regulation is genuinely ambiguous.

Pennsylvania law has in place a detailed process for promulgation of regulations that includes layers of review and public comment.[2] Allowing an agency to have a definitive say over the interpretation of an ambiguous regulation is counter to the spirit of that process.

Auer, a judicial creation, set in place a regime that is at odds with Pennsylvania rules for regulatory enactment and interpretation. Moreover, as some U.S. justices noted in their concurrence in *Kisor*, courts have had to carve out so many exceptions to *Auer* that what remains is unsustainable. *See Kisor*, 588 U.S. at 592 (Gorsuch, J., concurring).

Amici ask the Court to hold at the least that Pennsylvania courts must exhaust interpretative measures before declaring an ambiguity, and they ask that the Court consider in this or another case whether it is time to step back from agency deference altogether.

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[2] *Amici* do not take a position on the second, third and fourth issues on which the Court granted review. Their focus is on the purely legal questions of how a court should decide if a regulation is genuinely ambiguous and whether a court should defer to an agency's interpretation if there is, in fact, a genuine ambiguity.

ARGUMENT

I. The Court should at least refine its application of *Auer* deference so that Pennsylvania courts give deference only when there is a genuinely ambiguous regulation.

This Court should follow the lead of the U.S. Supreme Court in *Kisor* and hold that Pennsylvania courts should exhaust all means of interpreting a regulation before considering giving deference to an agency's interpretation.[3]

As the U.S. Supreme Court held in *Kisor*, 588 U.S. at 575, "the core theory of *Auer* deference is that sometimes the law runs out, and policy-laden choice is what is left over." The Court asserted that it assumes Congress intended *Auer* deference because resolving genuine regulatory ambiguity will often "entail the exercise of judgment grounded in policy concerns." *Kisor*, 588 U.S. at 570 (quoting *Thomas Jefferson Univ. v. Shalala*, 512 U.S. 504, 512 (1994)). But "[i]f the law gives an answer—if there is only one reasonable construction of a regulation—then a court has no business deferring to any other reading, no matter how much the agency insists it would make sense." *Kisor*, 588 U.S. at 575.

The first part of the *Kisor* rationale makes strong sense. There is certainly no basis for deferring to an agency's interpretation of a regulation before a court has

[3] Pennsylvania courts have recognized different sorts of agency regulations—interpretive and legislative—and they currently receive different levels of deference. *Harmon v. Unemp. Comp. Bd. of Review*, 207 A.3d 292, 299 (Pa. 2019). The regulation at issue here is legislative, and so this brief focuses accordingly.

exhausted all means of determining if there truly is an ambiguity. In *Kisor*, the Court noted that federal law sets out means of interpreting regulations that should be employed before a court declares a genuine ambiguity.

In Pennsylvania, of course, there is the Statutory Construction Act, which this Court has held should be applied to interpreting regulations. *Linkosky*, 247 A.3d at 1026. The General Assembly has, through that enactment, explained how courts and others should construe statutes and regulations that are not clear from their text. Thus, if the Court is to retain some form of *Auer* deference, it should at the least demand that courts—itself included—apply the Statutory Construction Act and any other sanctioned means of interpretation *before* giving that deference. Were it to do so, it would merely be saying that *Auer* means what it says: a court may defer only when there truly is an ambiguity. That is no large jurisprudential step.

There is a related point. In *Kisor*, the federal high court summarized other refinements it has made to *Auer* deference, and *Amici* believe this Court should confirm—if it follows *Kisor*—that it follows those additional refinements.

1. In *Kisor*, the Court underscored that, even if a regulation is genuinely ambiguous, an agency's reading must be "reasonable" to receive deference. *Kisor*, 588 U.S. at 575-76 (citing *Thomas Jefferson Univ.*, 512 U.S. at 515). "In other words,

it must come within the zone of ambiguity the court has identified after employing all its interpretive tools." *Kisor*, 588 U.S. at 576. Thus, a court finding a genuine ambiguity cannot just defer to an agency without first analyzing the text, structure, history and related considerations to establish "the outer bounds of permissible interpretation." *Id. Amici* ask this Court, if it follows *Kisor* and goes no further, to confirm that Pennsylvania law follows the U.S. Supreme Court on this point. An agency interpretation of a regulation has to be reasonable and within the outer bounds of permissible interpretation after the court conducts the analysis required by the Statutory Construction Act.

2. In *Kisor*, the Court held that the interpretation must be one actually made by the agency. 588 U.S. at 577. The Court reasoned that the basis for *Auer* deference is that Congress has delegated rulemaking to the agency alone to exercise through official means. *Id.* In Pennsylvania, that refinement should mean that—if the Court continues to follow *Auer*—deference should be afforded only to interpretations made by authoritative agency personnel employing proper channels, like rulemaking through the means set out by the statutes that require regulatory and legal review and public comment.

3. In *Kisor*, the Court also held that, to warrant *Auer* deference, the agency's interpretation must implicate its substantive expertise. 588 U.S. at 577-78.

Justice Kagan, writing for the majority, explained that there is a presumption underlying *Auer* that an agency has a nuanced understanding of the regulations they administer, particularly when they are technical in nature." *Id.* at ks. Should this Court retain *Auer* deference in some form, *Amici* ask that it include this refinement as well. If agencies have any "edge" over courts with respect to interpreting regulations, surely it can only be in areas in which the agencies have particular expertise.

4. Finally, the Court in *Kisor* underscored that, to warrant deference, an agency's interpretation had to reflect "fair and considered judgment." 588 U.S. at 579 (citing *Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 155 (2012), and quoting *Auer*, 519 U.S. at 462). Thus, the interpretation may not be one developed *ad hoc* to rationalize or defend past agency action for purposes of litigation or otherwise. *Kisor*, 588 U.S. at 579; *see also, Com., Dep't of Educ. v. Empowerment Bd.*, 938 A.2d 1000, 1014 (Pa. 2007) (Baer, J., concurring) ("While I agree that the Secretary enjoys a great deal of latitude in administering the Code, I do not believe that his interpretations of his mandate in this case, or any administrative interpretations forwarded for the first time in connection with adversarial litigation, are entitled to any more weight than any other litigant's argument in support of its position"). It can also not be a new interpretation that would surprise regulated

parties and, accordingly, disrupts reasonable expectations or reliance interests. *Kisor*, 588 U.S. at 579. The Court noted, for example, that it would be rare to afford *Auer* deference when an agency's current interpretation plainly conflicts with a previous interpretation the agency has offered. *Id.*

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As discussed in the following section, *Amici* believe the Court may wish to reject *Auer* deference wholesale. But, should the Court choose to retain *Auer* deference in some form or fashion, *Amici* ask that the Court follow the considerable refinements to that doctrine set out in *Kisor v. Wilkie*.

II. The Court should consider setting aside *Auer* deference because it is inconsistent with the Statutory Construction Act, the Commonwealth Documents Law, the Commonwealth Attorneys Act, the Regulatory Review Act and this Court's duty to say what the law is.

The Court should at a minimum adopt the *Auer* refinements set out in *Kisor*, most particularly that there must be a genuine ambiguity in the regulation. The next question is what a court should do if it concludes there is a real ambiguity. *Auer* concluded that the court should, subject to some exceptions *Amici* discuss in the previous section of this brief, defer to the interpretation of the agency that promulgated the regulation. *Amici* submit that the better holding would be that the court should not defer.

Auer deference is inconsistent with the mechanism the General Assembly has established for interpreting statutes and regulations, it allows agencies to modify existing regulations without complying with the strict mandates for promulgating regulations, and it amounts to bad policy.

A. The General Assembly has authoritatively mandated in the Statutory Construction Act what role an agency's interpretation should play in understanding a regulation, and it nowhere provided for judicial deference.

Auer deference is a judicially created means to resolve ambiguities in regulations. In Pennsylvania, however, there is a legislatively established set of considerations a court is obligated to analyze in interpreting statutes and, per this Court, regulations. The Statutory Construction Act provides that, in interpreting a statute (or regulation) the words of which are not explicit, a court may consider "[l]egislative and administrative interpretations of such statute [or regulation]." 1 Pa.C.S. § 1921(c)(8).

There is, of course, a difference between *considering* an agency's interpretation and *deferring* to it. The first means to give the interpretation thought for its potential persuasive value, as *Amici* hope the Court will do with this brief. The second means to accept the agency's determination, not as persuasive but as essentially binding.

In *Harmon v. Unemp. Comp. Bd. of Review*, 207 A.3d 292 (2019), Justice Donohue wrote that the Statutory Construction Act "conspicuously and correctly does not instruct courts to defer to agency interpretations (or any other factor listed in section 1921(c)) when engaging in an interpretive analysis." *Harmon*, 207 A.3d at 309 (Donohue, J., concurring). Justice Donohue reiterated her view in *Woodford v. Com. of Pa. Insur. Dep't*, 243 A.3d 60, 83 (Pa. 2020) (Donohue, J., concurring) ("Per the Statutory Construction Act, we may consider, but not defer to, agency interpretation of statutes.").[4] While, in both cases Justice Donohue was addressing statutory interpretation, her reasoning applies just as well to regulatory interpretation.

In his own *Harmon* concurrence, Justice Wecht made similar points. He wrote that, "[a]s I have explained in the past, I do not agree that reviewing courts should afford what often amounts to unqualified deference—*i.e.*, *Chevron* deference—to an executive-branch agency's interpretation of an ambiguous statute." 207 A.3d at 310 (footnote omitted) (Wecht, J., concurring).

In *Snyder Bros., Inc. v. Pa. Public Utility Comm'n*, 198 A.3d 1056 (Pa. 2018), Justice Wecht explained the following:

[4] Justice Donohue noted that nothing in the Pennsylvania Administrative Agency Law suggests that there is a delegation to agencies of the responsibility of interpreting statutes. *Woodford*, 243 A.3d at 83 (Donohue, J., concurring).

> The General Assembly tells us what a law is. When that law is less than clear, we must perform our interpretive duty. In cases involving ambiguous statutory language, the interpretation suggested by an agency charged with administering the statute may be considered, but the meaning of a statute is essentially a question of law for the court.

198 A.3d at 1083 (Wecht, J., concurring) (quotation omitted). Certainly, the same reasoning applies to interpretation of regulations, which likewise presents a question of law for judicial resolution.

One way to examine the issue is to look at how courts interpret ambiguous statutes when agencies are not involved. We know that, in Pennsylvania, that process is guided by the provisions of the Statutory Construction Act. But, even if it were not, surely no one would say that, if a caucus of the majority party in the General Assembly filed a brief describing the caucus's interpretation, that interpretation should receive deference. Instead, the caucus would file an its brief, and the court would consider it as it does other briefs—giving it so much attention as its persuasive strength warrants—but no deference. Agencies are due no greater leverage over judicial interpretation of regulations. *See Kisor*, 588 U.S. at 616 (Gorsuch, J., concurring) ("But if a legislature can't control a judge's interpretation of an existing statute, how can an executive agency control a judge's interpretation of an existing and equally binding regulation?").

Amici submit that Justices Donohue and Wecht are correct. Agency interpretations are due fair consideration under the Statutory Construction Act, but they are not due judicial deference.

B. Deference is inconsistent with the mandatory statutory processes agencies must follow to enact regulations.

An agency seeking to promulgate a regulation must not only apply its subject-matter expertise and policy preferences, it must comply with the requirements of the Commonwealth Documents Law, the Commonwealth Attorneys Act and the Regulatory Review Act, which this Court has explained "comprise the core of Pennsylvania's scheme for notice-and-comment rulemaking by administrative agencies and legal and regulatory review by the Attorney General and the Independent Regulatory Review Commission." *Marcellus Shale Coalition v. Dep't of Env't Prot.*, 292 A.3d 921, 927 (Pa. 2023). The purpose of Pennsylvania's regulatory review process "is to promote public participation in the promulgation of a regulation." *Corman v. Acting Sec'y of Pa. Dep't of Health*, 267 A.3d 561, 572 (Pa. Cmwlth 2021).

Auer is at odds with that process. It mandates that, notwithstanding those detailed and important procedures, if the resulting regulation is found to be ambiguous, the agency that sponsored it may insist that the court accept its interpretation—even though that interpretation might be quite different than what

the regulatory and legal reviewers and public commenters understood the regulation to mean at promulgation. *See generally*, Douglas H. Ginsburg & Steven Menashi, *Our Illiberal Administrative Law*, 10 N.Y.U. J. L. & Liberty 475, 513 (2016) ("Because interpretation may work a significant change, the agency's power to interpret—subject to deferential review—is akin to the power to rewrite the rule."). That cannot be right.

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What, then, if the Court steps away from *Auer* and a court is unable to dispositively resolve a regulatory ambiguity even after considering all of the factors set out in the Statutory Construction Act? That would hardly be an unusual circumstance for a court. Judges frequently find statutes ambiguous, and they do not "defer" to the interpretations of the legislatures that enacted those statutes. The judges do the best they can with the tools available to them, knowing that, if the legislature believes they erred, it can always correct the error through additional legislation.

The same applies in the regulatory context. Without deference, a judge can interpret a regulation as best she can, secure in the knowledge that, if the agency intends a different interpretation, it can formally amend the regulation complying

with the various mechanisms that ensure public participation, appropriate regulatory and legal review and careful deliberation.

C. Agency deference is unwarranted as a matter of policy.

Auer deference implicates broader policy issues as well.

1. As Professor John F. Manning has written, *Auer* deference violates separation-of-powers requirements. John F. Manning, *Constitutional Structure and Judicial Deference to Agency Interpretations of Agency Rules*, 96 Colum. L. Rev. 612, 617 (1996). The U.S. Constitution separates responsibility for making the law and executing the law—the former to the legislature and the latter to the executive. *Compare* U.S. Const. art. I (Congress to enact legislation) and U.S. Const. art. II (Executive to execute the laws). Pennsylvania's Constitution makes a similar delineation. *Compare* Pa. Const. art. II (General Assembly to enact legislation) with Pa. Const. art. IV (Executive to execute the laws). Courts should be reluctant to recognize in the same actors the ability both to make the law and to enforce it.

2. *Auer* deference can create unfortunate incentives for agency personnel to draft vague regulations. *See Talk Am., Inc. v. Mich. Bell Co.*, 564 U.S. 50, 68 (2011) (Scalia, J., concurring) ("deferring to an agency's interpretation of its own rule encourages the agency to enact vague rules, which give it the power, in future

adjudications, to do what it pleases. This frustrates the notice and predictability purposes of rulemaking, and promotes arbitrary government.").

3. In an attempt to retain *Auer* yet respond to its various failings, the U.S. Supreme Court has created a host of limitations on it that have made it particularly difficult for courts, parties and agencies to know when it will and when it will not be employed. *See Kisor*, 588 U.S. at 592-93 (Gorsuch, J., concurring). The law—and the means for interpreting it—should be predictable. *Auer*, at least as it exists in the federal context, is anything but that. The more stable approach, at least in Pennsylvania, is to eschew *Auer* and simply have the courts treat ambiguous regulations as they would ambiguous statutes: a court employs the Statutory Construction Act to divine the best understanding it can, and the agency can revise the regulation—through the proper channels and means—if it believes the court erred.

Supporters of deference doctrines often appeal to their own considerations of public policy. Those policy arguments are overstated.

In the majority opinion in *Kisor*, Justice Kagan described some of those policy rationales.

1. She wrote that *Auer* deference is at least in part rooted in the presumption that Congress "would generally want the agency to play the primary

role in resolving regulatory ambiguities." 588 U.S. at 569. "... Congress knows (how could it not?) that regulations will sometimes contain ambiguities. But Congress almost never explicitly assigns responsibility to deal with that problem, either to agencies or to courts. Hence the need to presume, one way or the other, what Congress would want. And as between those two choices, agencies have gotten the nod." *Id.* (citation omitted). Whatever strength that argument might have in the federal context, it has none in Pennsylvania. In the Statutory Construction Act, the General Assembly assigned the task of resolving ambiguity to courts and told them what steps to take.[5] *See Woodford*, 243 A.3d at 83 (Donohue, J., concurring) ("The existence of Section 1921(c)(8) of the Statutory Construction Act establishes that our General Assembly legislates against a different backdrop [than does Congress]. If a court finds that a statute is ambiguous, the General Assembly has dictated that the ambiguity will be resolved by the courts, with the agency's interpretation as one of eight non-exclusive factors to be considered.").

2. Justice Kagan wrote that the agency that promulgated the rule is in the better position to reconstruct its original meaning. 588 U.S. at 570. While that may

[5] It is no answer to say that the Statutory Construction Act, on its face, applies only to statutes and that the application to regulations is a judicial choice. This Court has long applied the Statutory Construction Act to regulations, and the General Assembly could easily have amended the statute to reject that practice if it did not condone it.

be so, it is hardly a justification for deference. If an agency has helpful information about its original intent in establishing a regulation, it can include it in a brief and alert the court to that understanding. The court may then assess that information against the other considerations set out in the Statutory Construction Act. Importantly, Justice Kagan assumes that, at the time of litigation, an agency will have the institutional knowledge and policy preferences it had when it promulgated a regulation. That's often not so. New administrations bring new approaches, some very much different than those of former administrations. *Kisor*, 588 U.S. at 620 (Gorsuch, J., concurring) ("Agency personnel change over time, and an agency's policy priorities may shift dramatically from one presidential administration to another."). So, too, with gubernatorial administrations.

3. Justice Kagan focused on the oft-relied-upon idea that resolving regulatory ambiguities involves the exercise of judgment grounded in policy concerns. 588 U.S. at 570-71. But that is an argument for courts to *consider* agency positions, not for courts to automatically *defer* to agencies. There can be no question that agencies have authority to implement an administration's policy agenda through regulations, and courts should respect that authority. But it is no justification for binding a court to interpret an ambiguous regulation as an agency tells it to do long after promulgation. Courts decide what the law is, *Marbury*, and

agencies—like other parties—may offer their non-binding arguments on how the courts should attend to that task.

4. Justice Kagan wrote that deference promotes the benefits of uniformity of application. *Kisor*, 588 U.S. at 572. While it is true that, in the federal context, different courts may reach different interpretations of regulations (say, the Third Circuit vs. the Second Circuit), that potential is far less concerning in Pennsylvania. Our intermediate appellate courts have statewide jurisdiction, and so it is less likely for there to be such disparities. And, even if one were to occur, this Court could step in to give a definitive interpretation. In any event, as *Amici* note above, agencies not infrequently change their positions on existing regulations from one gubernatorial administration to the next—especially when there is a change of political parties—and, so, agency deference is no guarantee of uniformity.

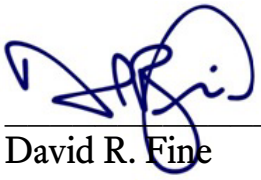
Neither the law nor policy supports maintaining *Auer* deference.

CONCLUSION

Therefore, *Amici Curiae* request that the Court at least follow the *Kisor* refinement of *Auer* deference and also consider whether Pennsylvania courts should no longer give deference to agency interpretations of their regulations.

Respectfully submitted,

K&L GATES LLP



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March 10, 2025

CERTIFICATE OF COMPLIANCE: LENGTH OF BRIEF

I hereby certify that the foregoing brief consists of 4,410 words based on the word-count function of the word-processing program on which it was prepared, excluding the title page, table of contents, table of citations, and signature blocks, and thus complies with the requirement of Pennsylvania Rules of Appellate Procedure 531 and 2135 that *amicus* briefs shall not exceed 7,000 words.

/s/ David R. Fine

CERTIFICATE OF COMPLIANCE: PUBLIC ACCESS POLICY

I certify that this brief complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

/s/ David R. Fine

PROOF OF SERVICE

I certify that, on March 10, 2025, I filed the attached brief with the Court's PACFile system such that all counsel will receive service automatically, which satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121.

/s/ David R. Fine