THE MAJOR QUESTIONS DOCTRINE: A CHECK ON PRESIDENTIAL ADMINISTRATION

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The major questions doctrine serves an important purpose of administrative law: ensuring Congress knows what it is doing when it delegates to agencies and thus can control its delegations. The doctrine does so by requiring a clear statement that Congress intended an agency to resolve a particular question, a statement whose clarity ensures members of Congress can understand the content of delegations before they delegate. The major questions doctrine requires a clear statement just where the risk of accidental delegation is greatest: in cases involving questions likely to draw the attention of the President, with his unique incentives and abilities to find new powers in existing statutes. The major questions doctrine thus effectively protects against risks inherent in presidential administration.

INTRODUCTION

The major questions doctrine, or MQD, is often defended (and attacked) as a principle of statutory interpretation.[1] This essay does not join that debate. Rather, I would like to evaluate the MQD as a substantive principle of administrative law. Putting aside whether the MQD represents sound statutory interpretation, I would like to ask whether, as a policy matter, we should welcome it as part of our administrative doctrine. A comprehensive answer to this question is too large a quarry for this brief essay, but we can get started by asking what goals of administrative law, if any, the MQD serves and how well it serves them.

Those who, like myself, find deeply troubling the cession of vast amounts of legislative authority to administrative agencies can easily see the MQD's merits. But there is little point in preaching to the choir, so here I adopt the perspective of someone committed to the modern administrative project. I aim to show that such a person also has good reasons to value the MQD. Those reasons are rooted in the need for Congress to know what it is doing when it delegates. This need is in tension with the need, claimed for Congress by committed administrativists,[2] to delegate capaciously and with relative ease, for the most effective ways to ensure Congress knows what it is doing when it delegates would make it much harder to delegate.

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[1] *See, e.g.*, West Virginia v. EPA, 142 S. Ct. 2587, 2607–08 (2022); *id.* at 2633 (Kagan, J., dissenting).

[2] I am indebted to Gillian Metzger, *Foreword: 1930s Redux: The Administrative State under Siege*, 131 HARV. L. REV. 1, 4 (2017), for the term.

The MQD, I suggest, offers a reasonable solution. The doctrine picks out certain interpretive questions for special treatment. When these questions of great "economic and political significance"[3] are in play, the MQD ratchets up protections against agency discoveries of powers Congress did not mean to delegate. These especially significant questions raise the most serious risk of accidental delegations. That is because these questions can draw the attention of the President, who has unique incentives and abilities to strain the interpretation of statutory delegations. By raising additional barriers against accidental delegation, the MQD helps Congress to know what it is doing when it delegates. And because the MQD offers additional protections (and imposes the costs of those protections) only in those relatively few cases implicating the most important policy questions, its costs are lower than the alternatives.

I

Members of Congress need to know the authorities a potential delegation would confer before they delegate those authorities. Without such knowledge, Congress cannot effectively exercise the legislative power with which the Constitution vests it. Even putting this constitutional issue aside, the compelling need for members to know, at least in broad outline, what they are doing when they delegate is too plain for argument. Even those who favor the most expansive administrative authority cannot wish for that authority to be granted or withheld at random. This is not to say lawmakers should have in mind every issue over which they intend to confer authority at the time of delegation; it is rather to say that accidentally giving away powers with which Congress would not willingly have parted is well worth avoiding.

One goal for administrative law, then, is to enable Congress to know what it is doing when it delegates. A robust version of the non-delegation doctrine would accomplish this. By refusing to give effect to delegations that are too vague or open-ended to guide agency action,[4] a robust non-delegation doctrine would incidentally give effect only to delegations sufficiently definite for members of Congress themselves to know the powers they are giving away when they vote on bills containing delegations. For the same reasons, a clear statement rule with respect to delegations would ensure that effective delegations are in terms clear enough to apprise members of what they are doing when they vote on them.

Both options would raise serious impediments to the delegation of broad powers to agencies: a robust non-delegation doctrine would prohibit some such delegations, and a clear statement rule would make them more difficult to enact. Neither of these courses is likely to attract the committed administrativists for whom this essay is intended. A commitment to the administrative project commonly flows from an appreciation of the value of flexibility. Agencies, so the argument goes, are able to respond more effectively than Congress to today's bewildering welter of complex, rapidly changing problems.[5] By giving the agencies broad powers, Congress can respond to our complex, changing world better than if it tried to grapple with those problems

[3] *West Virginia*, 142 S. Ct. at 2596.

[4] *See* Gundy v. United States, 139 S. Ct. 2116, 2143 (2019) (Gorsuch, J., dissenting).

[5] *See, e.g.*, William N. Eskridge, Jr. & John Ferejohn, *The Article I, Section 7 Game*, 80 GEO. L.J. 523, 561 (1992).

itself in legislation. Restricting Congress's ability for capacious delegation is unlikely to attract someone who believes Congress has a compelling need to delegate broadly.

It's easy to see how, in the course of conferring flexibility to deal with complex, changing problems, Congress can give away powers with which it does not mean to part. It can do so by enacting broad delegations whose very breadth accidentally opens the door to regulations no one in Congress could have contemplated or would have favored. Justice Barrett's analogy in her concurrence in *Biden v. Nebraska*[6] is illuminating. We can easily imagine a parent giving a baby-sitter an open-ended instruction like "make sure the kids have fun"; after all, such an instruction gives the baby-sitter useful flexibility and keeps the parent's own transaction costs in instructing the sitter low. Such an instruction, if read for all it's worth, would permit activities that the parents would never have contemplated or approved.[7] But it's difficult for the parents to avoid this problem without abandoning the flexibility that makes the formula attractive or incurring large transaction costs by specifying all the fun that is off limits.

The question for administrativists, then, is this: how to maintain Congress's ability to make broad delegations with relative ease while ensuring it also has the ability to know the authorities it confers on agencies?

II

We might come to grips with this question by reflecting on the reasons parents usually do not fear to give baby-sitters open-ended instructions. It is because they believe the sitters have reasons to stick to actions that the parents would approve, notwithstanding instructions that on their face sweep more expansively. Agencies sometimes have similar reasons, too.

For one thing, agencies need funding and legal authorities to carry out their missions. Agency leadership and staff know that regulations operating far beyond the expectations held by members of Congress may result in punitive congressional action, in the form of reduced appropriations, adverse changes to the agency's statutes, and painful oversight.[8] To be sure, this risk arises when a regulation departs from the preferences of the Congress in being at the time of regulating rather than of the Congress that enacted the statute at issue.[9] Yet the preferences of these Congresses may resemble each other with regard to the regulation in question, for instance when the regulation issues relatively shortly after the statute's enactment[10] or when it would insert one agency's activity into another agency's (and hence another committee's) domain.[11] And even where the preferences of a critical mass of members have changed substantially from the time of enactment, a sizable minority who adheres to the original understanding can

[6] 143 S. Ct. 2355 (2023).

[7] *Id.* at 2379–80 (2023) (Barrett, J., concurring).

[8] *See, e.g.*, Sharon B. Jacobs, *The Administrative State's Passive Virtues*, 66 ADMIN. L. REV. 565, 591–92 (2014) (detailing these and other forms of congressional discipline).

[9] Elena Kagan, *Presidential Administration*, 114 HARV. L. REV. 2245, 2350 (2001).

[10] *See* Eskridge & Ferejohn, *supra* note 5, at 537 n.54 (noting that "congressional preferences in the post-World War II era" change relatively slowly).

[11] *See* David A. Hyman & William E. Kovacic, *Why Who Does What Matters: Governmental Design and Agency Performance*, 82 GEO. WASH. L. REV. 1446, 1482-83 (2014) ("Once regulatory boundaries are set, congressional committees aggressively police the perimeter.").

nevertheless make life difficult for agency leadership and staff by drumming up public opposition to the regulation.[12] The danger of upsetting congressional expectations thus must loom large in the mind of agency officials considering an expansive interpretation of their statutes.

Agencies need the support of many stakeholders, internal and external. External stakeholders[13] may have reliance interests in the status quo, interests that would be upset by an aggressive interpretation of an agency's statutory authority.[14] Agencies may decline to read their authorities for all they're worth to avoid losing the support of key outside groups. Agencies also have internal stakeholders whose goodwill agency leadership needs[15] and who may oppose an aggressive interpretation of an agency's delegated authorities. This opposition may stem from the agency staff's own commitments to what they see as the agency's core mission; staff who join EPA to fight air pollution may resist diverting their efforts toward projects only tangentially related to that goal.[16] Or it may rise from the staff's desire to maintain consistency with their prior interpretations.

An agency may hesitate to interpret its statutes to expand its jurisdiction because it wishes to avoid operational, budgetary, branding, or other difficulties. Agency officials have strong interests in preserving their resources, avoiding new missions for which they lack capacity or that would dilute their brand, and staying out of the lane of powerful institutional competitors.[17] These interests may counsel an agency away from a maximalist interpretation of its authorities. Then, too, agencies may wish to avoid losing in court on an aggressive interpretation. Agency lawyers in particular have powerful interests in maintaining their agency's long-term credibility with the courts; they may resist aggressive interpretations that could imperil that interest.[18] Or an agency may wish to avoid the significant cost in staff time and other resources of rewriting a regulation after a loss in court.

Perhaps more important than all the reasons agencies have for declining to read their authorities aggressively is their *lack* of reasons to take the most aggressive interpretations. After all, usually an "agency succeeds by accomplishing the goals Congress set for it as thoroughly as

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[12] *See, e.g.*, Douglas Kriner, *Can Enhanced Oversight Repair "The Broken Branch"?*, 89 B.U. L. REV. 765, 785 (2009).

[13] *See, e.g.*, Richard B. Stewart, *The Reformation of American Administrative Law*, 88 HARV. L. REV. 1669, 1685–86 (1975) (discussing the goods that outside groups can provide to agencies).

[14] *See* Anita S. Krishnakumar, *Longstanding Agency Interpretations*, 83 FORDHAM L. REV. 1823, 1854–55 (2015) (outside groups form reliance interests on longstanding agency interpretations).

[15] *See* Anya Bernstein & Cristina Rodriguez, *The Accountable Bureaucrat*, 132 YALE L.J. 1600, 1631–37 (2023) (describing interdependence of agency political leadership and career staff).

[16] *See* David B. Spence, *Administrative Law and Agency Policy-Making: Rethinking the Positive Theory of Political Control*, 14 YALE J. ON REGUL. 407, 424 (1997) ("[A]n agency with a well-defined mission will tend to attract bureaucrats whose goals are sympathetic to that mission.").

[17] *See, e.g.*, JAMES Q. WILSON, BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT 181–83 (1989); Hyman & Kovacic, *supra* note 11, at 1464–65, 1474–77.

[18] *See* Daniel Hornung, Note, *Agency Lawyers' Answers to the Major Questions Doctrine*, 37 YALE J. ON REGUL. 759, 766–67 (2020); *cf.* Cornelia T.L. Pillard, *The Unfulfilled Promise of the Constitution in Executive Hands*, 103 MICH. L. REV. 676, 729–30 (2005).

possible."[19] In particular cases, an aggressive interpretation would give an agency powers to accomplish the goals that are its *raison d'etre*, but in others it would not. In the latter cases, it's just not clear why agency leadership or employees would advance an aggressive interpretation; supposing, for instance, that EPA could interpret the Clean Air Act to give it authority to regulate the securities markets, why would it? Even agency leadership and staff fired with an inordinate passion for rule may well decide that this passion can best be gratified by more effective control within their core domain than by a campaign of expansion. To be sure, special circumstances may create compelling pressure to read an agency's statutes expansively in a given instance, such as to please a constituency to which the agency head plans to appeal in a future political campaign. But because aggressive interpretations are not inherently more rewarding than less aggressive ones, often enough agencies will simply lack motives to maximize their delegated authorities.

The preceding paragraphs considered some reasons agency leaders and staff have for interpreting the scope of their authorities. But they are not the only ones who decide how to interpret delegations; the President also has something to say. Of course, presidents devote little of their fantastically scarce time to the close reading of statutes. Nevertheless, "the role of Chief Executive . . . permits presidents to exert considerable influence over the manner in which statutes are interpreted,"[20] such as by making policy decisions that shape agency interpretations.[21]

Presidential reasons in interpreting the scope of agency authorities differ in important ways from those of agency officials. In the first place, presidents generally need fear congressional displeasure less than do agency officials. Armed with the veto, presidents can usually withstand congressional threats to limit agencies' powers in response to aggressive interpretations.[22] Congress plays a stronger hand where appropriations are concerned, but even here presidents can (as agencies typically cannot) deploy their own arsenal of threats to counter Congress's'.[23] And presidents, with their national constituency and unrivaled visibility, are a match for even the most popular members of Congress; they can withstand popular pressure, and return it with interest, in a way agency heads cannot.[24]

Presidents also care about different stakeholders than do agency officials. Presidents arrive in Washington full of plans for change,[25] which they can achieve today largely through regulatory action.[26] They are of course attuned to the interests of external stakeholders, but often they have been elected on promises to aid precisely those stakeholders who are dissatisfied with the status

[19] Christopher C. DeMuth & Douglas H. Ginsburg, *White House Review of Agency Rulemaking*, 99 HARV. L. REV. 1075, 1081 (1986).

[20] Christopher S. Yoo, *Presidential Signing Statements: A New Perspective*, 164 U. PA. L. REV. 1801, 1827 (2016).

[21] *See, e.g.*, Chevron U.S.A., Inc. v. Nat. Res. Def. Council, 467 U.S. 837, 865–66 (1984) (recognizing that presidential policy choices shape agency interpretations).

[22] *See, e.g.*, Kagan, *supra* note 9, at 2347.

[23] *See* Frank H. Easterbrook, *The State of Madison's Vision of the State: A Public Choice Perspective*, 107 HARV. L. REV. 1328, 1341 (1994).

[24] *See* WOODROW WILSON, CONSTITUTIONAL GOVERNMENT IN THE UNITED STATES 54–72 (1908) (explaining the weight of public opinion that stands behind popular presidents and makes them "irresistible").

[25] *See* THE FEDERALIST NO. 72 (Alexander Hamilton).

[26] *See, e.g.*, Metzger, *supra* note 2, at 76.

quo. External stakeholders are thus less likely to exert a constraining influence on interpretations driven by presidential direction.

Further, presidents have both inclinations and electoral incentives to focus on the "Big Issues."[27] They may gladly trade off goodwill among career staff for success on these core priorities, even if doing so impedes agencies' achievement of other, less politically salient goals. For the same reasons, presidents tend to worry less than agency officials about agency resource, operational, and branding problems. From the President's perspective, it may make sense to give an agency awkward tasks, bring it into competition with other agencies, and change or degrade its brand for the sake of achieving high-level policy objectives. Indeed, because the view from the White House necessarily omits many operational realities that loom large for agency leadership and staff,[28] often enough presidents are not even aware of their major initiatives' negative side effects on agencies.

Presidents also have less reason to worry about losing in court than do agency officials. Presidents value any one agency's reputation in court far less than notching a win on a Big Issue, so we should not expect them to share agency lawyers' risk aversion. Further, presidents may value being *seen* to try to address problems as much as successfully addressing them.[29] A loss in court need not detract from the former goal. Indeed, because presidents may make political capital from their litigation losses,[30] they may have good reasons to welcome or even seek losses on popular regulations.

Perhaps most importantly, presidents have strong reasons to take aggressive interpretations. "[T]he president has increasingly been held responsible for designing, proposing, legislating, administering, and modifying public policy . . . . His chances for reelection, his standing with opinion leaders and the public, and his historical legacy all depend on his perceived success as the generalized leader of government."[31] To carry out their perceived responsibilities, presidents need power, and at least where domestic policy is concerned, they can get it only by delegation from Congress. When Congress refuses to grant powers to address the issues of the day in the way the President would like, he faces compelling incentives to interpret existing delegations to confer the powers he seeks.

These incentives are far stronger than those felt by most agency officials. The American system of government divides responsibility among many institutions and, within the federal executive branch, among a host of departments and commissions. The gravest problems of the day map onto these divisions very imperfectly; some cut across multiple jurisdictions, while

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[27] WILSON, *supra* note 17, at 261.

[28] *Id.* at 276; *see also id.* ("Presidential plans . . . often lack realism, refinement, concreteness, and subtlety. They are suffused with a false simplicity, the product both of faulty comprehension of applied tasks and the quest for order and uniformity that is associated with a central perspective.") (internal quotation marks omitted).

[29] *See, e.g.*, THEODORE J. LOWI, THE PERSONAL PRESIDENT 151–52 (1985) (discussing the presidential need to display the appearance of initiative).

[30] *See, e.g.*, President Joseph R. Biden, Remarks on the Supreme Court's Decision on the Administration's Student Debt Relief Program (June 30, 2023), available at https://www.whitehouse.gov/briefing-room/speeches-remarks/2023/06/30/remarks-by-president-biden-on-the-supreme-courts-decision-on-the-administrations-student-debt-relief-program/.

[31] Terry M. Moe, *The Politicized Presidency*, *in* THE NEW DIRECTION IN AMERICAN POLITICS 235, 239 (John E. Chubb & Paul E. Peterson eds., 1985).

others fall outside them all. Agency officials with their particularized goals can thus often disclaim responsibility for a given problem rather than take an aggressive interpretation that would allow them to address it. But the President lacks that luxury. He has "a comprehensive governance portfolio,"[32] and what is more, voters know he has it. Fairly or not, they hold him to account for the problems they experience on his watch.[33] Because disclaiming responsibility is not an option, presidents have a powerful incentive to find powers to address all the Big Issues that arise during their tenure, even if doing so requires repurposing statutes enacted without those issues in mind.

The bottom line is this: presidents have both abilities and incentives to favor aggressive interpretations of agency authorities. Congress gives opportunity to these through the open-ended, ambiguous enactments by which it often delegates. To the extent presidents decide about agency interpretations, we can expect those interpretations to depart further and more often from what Congress had in mind than agency-originated interpretations do. And we can expect presidential involvement, and thus more aggressive interpretation, on rulemakings that implicate Big Issues. Of course, presidential involvement also brings important advantages to rulemaking, most importantly a connection to the sense of the people as expressed through their ballots. This advantage and others are good reasons to favor presidential involvement in rulemaking. But they do not eliminate the danger of presidentially-driven interpretations that extract from statutes powers Congress never wished to confer.

III

Administrative law can help ameliorate that danger. To do so at a price committed administrativists are willing to pay, it needs a principle that allows Congress to delegate flexible authorities to agencies with relative ease and to know the authorities it is giving away when it does so, notwithstanding presidential abilities and incentives to read delegations aggressively when important issues are in play. The major questions doctrine, I suggest, is the principle we are after.

When it applies, the MQD helps Congress to know the powers it is giving away. That is because the doctrine requires a "clear congressional authorization for the power [an agency] claims."[34] Clear statements make the scope of delegation evident on the face of bills on which members of Congress vote and thus help members to know what they are doing. By refusing to uphold regulations unless the authority to issue them has been delegated clearly, the MQD within its domain helps keep Congress from giving away powers without meaning to.

The MQD applies only where concern about aggressive interpretations is greatest, i.e., when an agency's interpretation would give it authority over questions of great "economic and political

[32] Mila Sohoni, *On Dollars and Deference: Agencies, Spending, and Economic Rights*, 66 DUKE L.J. 1677, 1720 (2017).

[33] *See, e.g.*, Nicholas O. Stephanopoulos, *Accountability Claims in Constitutional Law*, 112 NW. L. REV. 989, 1028 (2018) (noting "the tendency to see the president as the sole relevant (perhaps omnipotent) governmental actor in the U.S. political system") (internal quotation marks omitted).

[34] West Virginia v. EPA, 142 S. Ct. 2587, 2609 (2022).

significance."[35] The concern here is greatest because these are the cases in which presidential attention is most likely and therefore in which aggressive interpretations are most likely. (To be sure, the Court's MQD cases have assessed a question's significance from the vantage point of Congress, not the President.[36] But because questions that are important for Congress also tend to be important for the President and vice versa, the vantage point from which courts assess a policy question's significance doesn't much matter.) Further, the cases in which the MQD applies are also those likely to have the greatest practical effect on the public. While it is desirable for Congress to know what it is doing in every delegation, it is most important in the cases that most of all shape our national life.

The MQD has been criticized on the grounds that it impedes Congress from necessary delegation by increasing the transaction costs of delegating authority over the most consequential matters.[37] But because it applies only in the cases in which concern about aggressive interpretation is greatest, the MQD is much more cost-effective than alternative arrangements for ensuring Congress knows what it is doing when it delegates. Under the MQD, Congress may continue to delegate free of the costs imposed by a clear-statement rule in the vast majority of instances; it can delegate without a clear statement in statutory provisions that do not implicate major questions and even in those that do except insofar as major questions are implicated in particular regulations. The MQD's costs are thus far lower than the costs of requiring a clear statement for every delegation.

They are also far lower than the costs of congressional attempts to foreclose aggressive interpretations. For Congress to spell out all the policy questions over which it does *not* intend to delegate authority, even those at the limit of what the statutory text can bear, would require a massive investment of legislative resources.[38] Congress would have to foresee and bar a vast number of potential agency actions, few of which would ever have come to pass in any event. It is far more cost-effective for courts to opine on just those actions that agencies in fact attempt than for Congress to anticipate every action over which it does not intend to confer authority (at any rate an impossible exercise).

The MQD has also come in for criticism on the grounds that its threshold significance determination is basically standardless.[39] But the MQD must take significance into account because presidents do. The risk of aggressive interpretation is in fact keyed to the significance of the policy questions in play, and a principle of administrative law that pretends otherwise would blink reality. Because significance is not susceptible to bright-line definitions for presidents, we should not expect it to be otherwise for the MQD. This is not to deny the difficulty of courts trying to apply an indeterminate standard like the MQD's threshold for significance (or of

[35] *Id.* at 2608.

[36] *See, e.g.*, Biden v. Nebraska, 143 S. Ct. 2355, 2374 (2023).

[37] *See, e.g.*, *id.* at 2397 (Kagan, J., dissenting).

[38] *Cf.* Harold H. Bruff, *Judicial Review and the President's Statutory Powers*, 68 VA. L. REV. 1, 31 (1982) (noting the great burden that "requir[ing] that [Congress] always speak explicitly in order to deny a President the authority to act" would impose) (emphasis omitted).

[39] *See, e.g.*, Elena Chachko, *Toward Regulatory Isolationism? The International Elements of Agency Power*, 57 U.C. DAVIS L. REV. 57, 122–23 (2023).

agencies trying to anticipate that application); my point, rather, is that this difficulty is inevitable in light of the role of significance in motivating the presidential influence that drives aggressive interpretations.

If the MQD's justification as a substantive principle of administrative law comes largely from its role in checking the President's ability to repurpose old statutes, we might wonder whether the MQD should turn directly on presidential involvement rather than on significance. But conditioning the MQD's application on presidential involvement in a rulemaking would simply create incentives to mask that involvement through the use of "confidential contacts and . . . executive privilege," among other means.[40] Significance, which turns on a rule's effects,[41] is far more difficult to conceal. And significance seems a reasonable indicator of significant presidential engagement. Witness the extensive presidential involvement in each of the rulemakings at issue in the Supreme Court's most recent major questions cases.[42]

By requiring a clear statement precisely in those cases in which the risk of aggressive presidential interpretation is greatest, the MQD responds to some of the risks posed by the growth of presidential administration, but not to all of those risks. Recall that a president may find it in his political interest to accept, or even seek, a loss in court on a popular regulation. The MQD can no more eliminate this incentive than any other substantive principle of administrative law can, for presidents can make political capital of a loss under the MQD as much as of a loss under any other doctrine. Acknowledging as much does not cast doubt on the MQD's value; rather, it cautions skepticism of the courts' ability to address alone the problems brought on by the advent of presidential administration.

CONCLUSION

For these reasons, administrativists should concede that the MQD serves an important goal of administrative law and that it does so at a more reasonable cost than the alternatives. That is not the same as welcoming the MQD. To know whether the MQD is on balance a positive substantive development, our administrativists would need to know whether the MQD's promotion of Congress's ability to act intelligently outweighs what they see as the MQD's downsides, such as restrictions on the executive's power to act swiftly and vigorously to respond to the problems of the day. This brief essay cannot take up this broader question. From what we have seen so far, though, we can say that the MQD is likely the best way to allow Congress to know what it is doing when it delegates while continuing to allow Congress to enact broad delegations with relative ease.

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[40] Lisa Schultz Bressman, *Beyond Accountability: Arbitrariness and Legitimacy in the Administrative State*, 78 N.Y.U. L. REV. 461, 506 (2003).

[41] *See* West Virginia v. EPA, 142 S. Ct. 2587, 2610–14 (2022).

[42] *See* Jed Handelsman Shugerman & Jodi L. Short, *Major Questions about Presidentialism: Untangling the "Chain of Dependence" Across Administrative Law*, 65 B.C. L. REV. (forthcoming 2024) (manuscript at 16–39). In their important article, Professors Shugerman and Short argue that "presidents have been controlling major agency policies since the debut of the MQD in 2000," though they also posit that "the most recent cases . . . are especially salient examples of presidential involvement." *Id.* (manuscript at 18).