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An Essay on the Major Questions Doctrine

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Abstract: *This paper traces the development of the Major Questions Doctrine (MQD), analyzes its doctrinal and constitutional structure, examines its application in key Supreme Court cases, and evaluates its implications for the future of administrative law and regulation.*

Key Words: major questions doctrine, delegation, Chevron deference, separation of powers

INTRODUCTION

The Major Questions Doctrine (MQD) holds that federal agencies must point to clear congressional authorization when asserting regulatory authority over issues of "vast economic and political significance" (see *West Virginia v. EPA*, 2022). In recent years, the United States Supreme Court has elevated the MQD into a *constraint* on federal administrative and regulatory power and the "ever expanding administrative state" (Bartholomew, 2024; Lofthouse & Schaefer, 2025). As Ritter (2024) notes:

> "The major questions doctrine has already featured in challenges across a vast expanse of policy areas, including environmental regulation, public health, education, immigration, data privacy, labor and employment, election law, public safety, national security, economic affairs, and anti-discrimination law. The doctrine has also been used to challenge various types of executive actions, including agency rules and regulations, enforcement actions for statutory violations, presidential (nonagency) actions, and actions that confer a public benefit rather than regulating private conduct."

Whether intended or not, the MQD stands at the center of debate over separation of powers, accountability of democratic institutions, and the proper role of federal agencies in addressing complex issues such as climate change (see Klein, 2025), public health (Lucero-Prisno et al., 2024), and emerging technologies (see Johnson & Tournas, 2023).

However, a more fundamental doctrinal problem remains: the United States Supreme Court has not articulated a single, coherent formulation of the Major Questions Doctrine. Instead, what has emerged is not one doctrine, but several competing versions, each grounded in different constitutional assumptions

and interpretive approaches. As Piatt and Morgan (2024) observe, following *Biden v. Nebraska*, the Court has effectively fractured the doctrine:

> "After the Supreme Court's decision in Biden v. Nebraska, we now have three interpretations of the major questions doctrine. Chief Justice John Roberts, Justice Neil Gorsuch, and Justice Amy Coney Barrett have each offered different justifications for the doctrine and different ideas about how it should operate. Of course, whenever three versions of the same doctrine appear in the law, at least two questions must be answered: What are they? And how are they different?"

This fragmentation is not merely doctrinal ambiguity; it reflects a deeper uncertainty about the doctrine's constitutional foundation, its proper scope, and its role in allocating authority among Congress, administrative agencies, and the courts. Two competing interpretations emerge from this uncertainty.

On one view, the Major Questions Doctrine represents a significant expansion of judicial power. By reserving to itself the authority to determine what constitutes a "major question," and by requiring clear congressional authorization before such questions may be addressed, the Court effectively inserts itself into decisions traditionally allocated to the political branches. In practice, this approach risks transforming the doctrine into a vehicle for judicial policy-making, allowing the Court to function as a shadow version of both the legislative and executive branches, shaping the scope and direction of national policy without the corresponding mechanisms of democratic accountability.

On a competing view, however, the Major Questions Doctrine reflects an effort to restore constitutional balance. Under this interpretation, the doctrine serves as a structural safeguard, ensuring that decisions of vast economic and political significance remain anchored in clear congressional authorization. The emerging variations in the Court's opinions can thus be understood not as fragmentation but as different methodological approaches to a common objective: reinforcing Congress's primacy in making major policy decisions and preserving the separation of powers.

It is within this tension, between judicial expansion and constitutional correction, that the modern Major Questions Doctrine must be understood. Accordingly, this paper traces the development of the Major Questions Doctrine, analyzes its doctrinal and constitutional structure, examines its application in key Supreme Court cases, and evaluates its implications for the future of administrative law and regulation.

Historical Development of the Major Questions Doctrine

Early Roots

Interestingly, the phrase "major questions" first appeared in legal scholarship in a 1986 article written by Justice Stephen Breyer while he was serving on the First Circuit Court of Appeals (Breyer, 1986; see also Griffith & Proctor, 2022). However, the conceptual roots of the MQD in litigation can be traced to the Supreme Court's decision in *FDA v. Brown & Williamson Tobacco Corp.* (2000). In *Brown & Williamson*, the Food and Drug Administration claimed authority to regulate tobacco products as "drugs" or "devices" under the *Food, Drug, and Cosmetic Act of 1938*, concluding that nicotine is a

"drug" and cigarettes and smokeless tobacco are "devices" that deliver nicotine into the body (see U.S. Food and Drug Administration, 2026).

In a 5-4 decision, the Supreme Court rejected the FDA's interpretation, emphasizing that Congress had repeatedly legislated on tobacco in ways inconsistent with granting the FDA such sweeping administrative authority (see Fazioli, 1999). The Court ruled that Congress had not given the FDA authority to regulate tobacco as it is customarily marketed to consumers. The Court found that the FDA's interpretation of the FDCA was inconsistent with its legislative history and the intent of Congress, which had instead acted to create a distinct regulatory scheme for tobacco products. The Supreme Court held that the FDA could not assert jurisdiction over tobacco products in this manner, even though Congress had explicitly denied the FDA such authority in prior legislation. Ardy (2025) notes that "Justice O'Connor refers to the 'economic and political significance' of the FDA's proposed rule; she repeatedly reiterates its inconsistency with the long history of congressional legislation on tobacco." Justice O'Connor writes:

> "… we are confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion. To find that the FDA has the authority to regulate tobacco products, one must not only adopt an extremely strained understanding of "safety" as it is used throughout the Act, a concept central to the FDCA's regulatory scheme, but also ignore the plain implication of Congress's subsequent tobacco-specific legislation. It is therefore clear, based on the FDCA's overall regulatory scheme and the subsequent tobacco legislation, that Congress has directly spoken to the question at issue and precluded the FDA from regulating tobacco products."

Although the Court did not specifically use the phrase "major question" in *Brown & Williamson*, Justice Scalia stressed that Congress does not "hide elephants in mouseholes" (see Chen, 2023). This metaphor would later become a foundational element of MQD jurisprudence, reflecting the Supreme Court's growing skepticism toward the assertion of broad regulatory power in the absence of clear statutory textual authority.

Reinforcement in *Gonzales* and *Utility Air*

Following its decision in *Brown & Williamson*, the Supreme Court continued to signal its concerns in two cases, one in relation to a Department of the government (the office of Attorney General) and a second, relating to an administrative agency (the Environmental Protection Agency), both of whom were asserting broad regulatory authority based on ambiguous statutory language or broad assertions relating to public policy.

In 1994, the State of Oregon enacted a statute, the *Death with Dignity Act*, which permitted physicians to prescribe lethal doses of certain medications to patients who were terminally ill and who had requested such assistance (Curran, 1998; La Ganga, 2015). The Oregon statute permitted physicians to prescribe a lethal dose of medication to a competent adult, upon agreement by two doctors to be within six months of dying from an incurable condition. The law was the first of its kind in the United States and had been approved by Oregon voters. In 2001, President George Bush's Attorney General, John Ashcroft, secured

a memorandum from the Office of Legal Counsel concluding that physician-assisted suicide violated the *Controlled Substances Act of 1970* (CSA). The Attorney General issued an "Interpretive Rule" or directive that under the CSA, assisted suicide was not a "legitimate purpose." The directive threatened to revoke the medical licenses of any physician who participated in an assisted suicide. The state of Oregon initiated a suit against the Attorney General (see Rich, 2003).

Oregon Attorney General Hardy Myers, joined by a physician, a pharmacist, and a group of terminally ill patients, all from Oregon, filed a challenge to Attorney General Ashcroft's "Interpretive Rule" in the United States District Court for the District of Oregon. On April 17, 2002, U.S. District Judge Robert Jones granted summary judgment to the state of Oregon and issued a permanent injunction against the enforcement of the Attorney General's Interpretive Rule. The District Court held that the Attorney General had exceeded his authority under the CSA and that the directive Ashcroft had issued was illegal. On appeal, the Ninth Circuit Court of Appeals affirmed the District Court's decision, prompting the government to file a further appeal with the United States Supreme Court.

Meanwhile, Alberto Gonzales succeeded Attorney General Ashcroft on February 3, 2005. On January 17, 2006, in *Gonzales v. Oregon* (2006), the United States Supreme Court, in a 6-3 decision, ruled that the CSA did not give the Attorney General the authority to prohibit physicians from prescribing controlled substances in connection with physician-assisted suicide when such practices were permitted under state law. The Supreme Court emphasized that the regulation of medical practices had traditionally been a state responsibility. The Court noted that the CSA was intended to combat illicit drug trafficking, not to regulate or dictate state medical practices.

The *Gonzales* Court stated:

> "The Attorney General's opinion is unpersuasive…. The CSA and this Court's case law amply support the conclusion that Congress regulates medical practice insofar as it bars doctors from using their prescription-writing powers as a means to engage in illicit drug dealing and trafficking as conventionally understood. Beyond this, the Act manifests no intent to regulate the practice of medicine generally, which is understandable given federalism's structure and limitations. The CSA's structure and operation presume and rely upon a functioning medical profession regulated under the States' police powers."

In a second case, *Utility Air Regulatory Group v. EPA* (2014), the Court rejected the Environmental Protection Agency's (EPA) attempt to regulate millions of "small sources" of greenhouse gases, calling the agency's interpretation "unreasonable" because it would "bring about an enormous and transformative expansion" of the EPA's authority (see Carlson & Herzog, 2014). Justice Scalia authored the majority opinion, which Justices Roberts and Kennedy joined in full. The Court held that the EPA had the authority to regulate greenhouse gas emissions from power plants and other large stationary sources of pollution; however, the Agency had overstepped its authority by applying the same regulatory scheme to smaller stationary sources, such as shopping centers, apartment buildings, and schools. The majority noted that "would radically expand those programs, making them both unadministrable and unrecognizable to the Congress that designed them."

"Chevron Deference."

One other issue was raised in *Gonzales v. Oregon*. Since 1984, the United States Supreme Court had consistently held that decisions of administrative agencies would ordinarily be subject to "deference" by the courts, a legal doctrine with its origins in the U.S. Supreme Court's 1984 decision in *Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.* (1984), which required courts to "defer" to the interpretations of a federal agency of an ambiguous statute which they administer (see Werntz, 2017; Choi, 2021). In *Gonzales*, however, the Supreme Court found that the "Interpretive Rule" issued by the Attorney General was not entitled to *Chevron deference.*

The *Chevron* doctrine established a two-step test for courts when called upon to review an agency's interpretation of a statute:

- **Step One**: Has Congress directly addressed the issue? If yes, the court must follow congressional intent.
- **Step Two:** If the statute is ambiguous, courts must determine whether the agency's interpretation is reasonable or permissible. If it is, the court must *defer* to the agency's interpretation.

From the beginning, however, *Chevron deference* was met with skepticism by conservative members of the Court, who mainly cited "separation of powers" concerns. Werntz (2017) noted:

> "And yet, a generation after the Supreme Court handed down the Chevron decision, there is heightened concern over the constitutionality of Chevron deference because it continues to raise separation of powers issues. Under the United States Constitution, the legislative branch (Congress) makes the law, the executive branch (the President) executes the law, and the judicial branch (the courts) interprets the law. The "fourth branch" (agencies), not mentioned in the Constitution, but generally ascribed to the executive branch, exercises a combination of legislative, executive, and judicial functions. May the court defer to the agency's reasonable interpretation of an ambiguous statute it administers without abdicating its judicial interpretive function? Is the agency's reasonable interpretation entitled to deference because the agency and its experts are more directly politically accountable for their interpretation than the courts are?"

Interestingly, but not wholly unsurprisingly, in June of 2024, the Supreme Court overruled the precedent of the *Chevron deference* in *Loper Bright Enterprises v. Raimondo* (2024) and its companion case, *Relentless, Inc. v. Department of Commerce* (2024). Chief Justice Roberts majority opinion concluded that courts must no longer defer to agency interpretations of ambiguous statutes, meaning that unless Congress has explicitly delegated interpretive authority to an agency, review by the courts is required. Courts must instead rely on "traditional statutory-interpretation principles" under which courts will exercise an independent judgment as to the legitimacy of an agency rule or administrative regulation.

Justice Thomas wrote a concurring opinion, in which he stated that *Chevron deference* was inconsistent with both the APA and the separation of powers established in the Constitution. Justice Gorsuch also wrote a concurrence, stating, "Today, the Court places a tombstone on *Chevron* no one can miss. In

doing so, the Court returns judges to interpretative rules that have guided federal courts since the Nation's founding." Justice Gorsuch further wrote that the only change in administrative law going forward is that federal courts should "resolve cases and controversies without any systemic bias in the government's favor."

Justice Elena Kagan wrote a dissenting opinion, which Justices Sonia Sotomayor and Ketanji Brown Jackson joined. Justice Kagan was critical of the majority's position and voiced concern for the disruption that eliminating *Chevron* would create. Justice Kagan viewed the majority's decision as *increasing the power of the Supreme Court at the expense of the other branches of government.*

Coupled now with *Loper*, both *Utility Air* and *Gonzales* signaled the Court's growing insistence that an agency (or a Department of the Federal Government) must identify clear statutory authorization before regulating matters of "major national significance."

Doctrinal Foundations

Although the MQD has been framed as a "principle of statutory interpretation," the doctrine is not deeply rooted in constitutional structure or in precedence but rather reflects the views of several of the more conservative members of the Supreme Court that broad delegations of policymaking authority to agencies risk undermining the separation of powers (Roisman, 2024). The Court has noted that Congress, not the executive branch, is the institution constitutionally charged with making major national policy decisions. MQD thus functions as a structural safeguard, ensuring that agencies do not assume sweeping powers without explicit legislative authority.

Relationship to the Nondelegation Doctrine

Is the MQD a throwback to pre-New Deal Supreme Court interpretations of the doctrine of separation of powers? The history of the United States Supreme Court's cases in the 1930s concerning the delegation of powers by Congress may offer insight into the current analysis of the MQD. In a series of cases in the mid-1930's, the Supreme Court struck down several major New Deal statutes, targeting Congress's attempts to expand federal regulatory power by delegating broad authority to the executive branch during the Great Depression.

In *Schechter Poultry Corp. v. United States* (1935), perhaps the most famous case of the era, the Court unanimously struck down the *National Industrial Recovery Act* (NIRA), a centerpiece of New Deal legislation. The Court held that Congress had delegated too much legislative power to the President and that the law's industrial "codes of fair practice" attempted to regulate intrastate activity which was beyond Congress's Commerce Clause authority (Shane 218).

Other pieces of New Deal legislation met a similar fate. In *Railroad Retirement Board v. Alton Railroad Co.* (1935), the Court struck down the *Railroad Retirement Act* (1934), once again for exceeding Congress's Commerce Clause power (Monthly Labor Review, 1937; Whitman, 2008). In *Louisville Joint Stock Land Bank v. Radford* (1935), the Court struck down the *Frazier–Lemke Farm Bankruptcy Act* for violating the Fifth Amendment's Takings Clause. Moreover, in 1936, in *United States v. Butler* (1936), the Court struck down the *Agricultural Adjustment Act* (AAA), holding that Congress could not use its

taxing and spending power to regulate agriculture, which the Court viewed as a "state" and not a federal domain (Hayes, 2012). The Court's conservative majority found that Congress was overreaching its enumerated powers and was delegating legislative authority to the executive branch in ways the Constitution did not allow. The Court held that the economic regulation of local activities (such as wages, hours, agriculture, and manufacturing) was reserved to the states.

In contrast, the MDQ has been described as a "nondelegation lite" doctrine (Sunstein, 2000). Rather than striking down a statute as an unconstitutional delegation of legislative power as the Court did in the early days of the "New Deal," the Court uses the MQD to interpret statutes narrowly, thereby avoiding the need to confront the nondelegation issue directly. It can thus be asserted that MQD serves as a judicially crafted "workaround" that limits agency power without directly invalidating congressional enactments. Joyce (2024, p. 94) notes: "That the major questions doctrine is merely the nondelegation doctrine by another name is an appealing explanation, and one that's easy to accept, the former certainly feels like it is nothing more than a malleable tool by which the Court can accomplish the substantive aims of the latter."

Key Features of the Doctrine: Identifying a "Major Question."

While the Supreme Court has embraced the MQD, it has not articulated a precise test for identifying A "major question." However, several factors recur across cases, which may guide *courts* in the future in determining whether a "heightened scrutiny" under the MDQ is warranted:

• *Economic magnitude*: regulations imposing billions in costs or affecting entire industries (*National Federation of Independent Business (NFIB) v. OSHA*, 2022);
• *Political salience*: issues of intense national debate or broad social impact;
• *Novelty*: agency claims of authority never before asserted or exercised;
• *Breadth of claimed power*: interpretations that would fundamentally transform the agency's regulatory role (*Utility Air Regulatory Group v. EPA*, 2014).

4.1. Requirement of Clear Authorization: Explication of Three Major Cases

Once a question is deemed "major," the agency must identify *clear statutory text authorizing its action.* Ambiguous or broad language is insufficient. This requirement shifts interpretive power from agencies to courts, as judges must independently assess whether Congress has spoken clearly on the matter.

- **NFIB v. OSHA (2022)**

In *National Federation of Independent Business v. OSHA* (2022), the Supreme Court stayed the Occupational Safety and Health Administration's (OSHA) COVID-19 "vaccine-or-test" mandate for large employers (Mello, Gould, & Duff, 2022). The Court held that OSHA lacked clear congressional authorization to impose such a sweeping public health measure, emphasizing that the mandate affected "84 million Americans" and constituted a major question.

The Supreme Court's unsigned (per curiam) opinion emphasized several core points:

- *OSHA regulates workplace dangers, not broad public health risks.* The majority drew a sharp line between hazards that arise *in the workplace* and those that exist *everywhere people gather*. COVID19, they said, is a universal risk, not a uniquely occupational one, so OSHA lacked authority to impose a sweeping nationwide mandate.
- *The mandate was too broad to fit OSHA's statutory powers.* The Court described the rule, covering more than 80 million workers, as a "significant encroachment" into the lives and health decisions of a vast portion of the population, something it said Congress would have had to authorize clearly but did not.
- *Emergency Temporary Standards must address workplace-specific dangers.* OSHA issued the rule as an emergency measure. The Court said such emergency powers are narrow and must target dangers particular to the workplace, not general public health conditions. COVID19, in the Court's view, did not meet that threshold for most workplaces.

In sum, the Court reasoned that OSHA's statutory authority to regulate workplace hazards did not clearly extend to broad public health measures of this magnitude. *NFIB* marked one of the Court's most explicit articulations of the MQD.

- **West Virginia v. EPA (2022)**

The Court's most definitive statement of the MQD came in *West Virginia v. EPA* (2022). The EPA's Clean Power Plan (the Plan) sought to shift electricity generation from coal to cleaner sources by setting statewide emissions caps (Environmental Defense Fund, 2020). Boehme (2026) noted that the Plan was "the scientific determination that has anchored federal regulation of greenhouse gas ("GHG") emissions under the *Clean Air Act* [initially enacted in 1963] for over fifteen years." Doniger (2015) commented:

> "The Clean Power Plan announced by President Obama on August 3rd sets the first-ever limits on carbon pollution from power plants, the nation's largest source of the pollution driving dangerous climate change. We are already seeing the impacts of climate change in extreme weather, drought, wildfires, floods, and many other disruptions to the world we depend on. Limiting carbon pollution from the nation's power plants is the single biggest step we can take to fight climate chaos. That makes the Clean Power Plan a game-changer."

Without deciding on the merits of the Plan, the Court held that this situation constituted a "major question" because it would "substantially restructure the American energy market." The Court concluded that the *Clean Air Act of 1963* (as amended in 1970, 1977, and 1990) did not authorize such "transformative measures" without explicit authorization by Congress. This decision placed MQD as a central constraint on administrative agency power and signaled the Court's willingness to scrutinize ambitious regulatory initiatives unsupported by clear statutory authority.

Chief Justice Roberts, writing for the Court in its 6-3 decision, explained that the Clean Power Plan exceeded the EPA's statutory authority under section 111(d) of the *Clean Air Act*. The opinion emphasized that "extraordinary cases" require a distinct approach to statutory interpretation, especially when "the history and the breadth of the authority" asserted, alongside its "economic and political significance," signal a need to "hesitate before concluding that Congress meant to confer such authority."

In such cases, the Court requires the agency to "point to clear congressional authorization for the power it claims." The Court found that the EPA lacked sufficient authority to implement the Plan, reasoning that decisions "of such magnitude and consequence" fall to Congress or an agency acting pursuant to a clear delegation (see Yip, 2025).

Interestingly, as Boehme (2026) noted, on February 12, 2026, the U.S. Environmental Protection Agency (EPA) under President Donald Trump finalized its decision to repeal the EPA's 2009 *Greenhouse Endangerment Finding* under President Barack Obama (see Bell, 2026; McGrath, 2026). The EPA also finalized the repeal of "all subsequent GHG emission standards" governing motor vehicles and engines that relied on that finding. Boehme (2026) added: "Six days later, a coalition of environmental and public health organizations petitioned for review in the U.S. Court of Appeals for the D.C. Circuit, setting the stage for a high-stakes legal challenge, which will likely find its way to the Supreme Court," where the MQD will no doubt take center stage.

- **Biden v. Nebraska (2023)**

Would the same line of reasoning doom President Biden's attempt to cancel student debt? (Root, 2023). In *Biden v. Nebraska* (2023), the Court struck down the Secretary of Education's student loan forgiveness program under the HEROES Act (Liu & Stiff, 2023). The *Health and Economic Recovery Omnibus Emergency Solutions Act* (HEROES) was a $2.2 trillion COVID19 relief proposal approved by the House in October 2020. It aimed to address the economic and health fallout of the pandemic by expanding aid to individuals, businesses, and state and local governments. Core components of the Act included:

- Direct payments to individuals: Additional stimulus checks to help households manage pandemic-related financial strain;
- Enhanced unemployment benefits: Extensions and expansions of federal unemployment support;
- State and local government aid: Significant funding to help governments manage budget shortfalls caused by the pandemic.
- Public health funding: Support for testing, tracing, and healthcare systems; and
- Small business support: Additional funding for programs like the Paycheck Protection Program (PPP).

The Supreme Court, however, held that the *HEROES Act* did not clearly authorize the cancellation of over $400 billion in student debt (Burga & Kohli, 2023). The Court again invoked the MQD, emphasizing the vast economic significance of the President's program of debt forgiveness and the absence of clear congressional authorization. Chief Justice Roberts wrote for the majority: "The Secretary asserts that the HEROES Act grants him the authority to cancel $430 billion of student loan principal. It does not." The Chief Justice added: "We hold today that the Act allows the Secretary to 'waive or modify' existing statutory or regulatory provisions applicable to financial assistance programs under the Education Act, not to rewrite that statute from the ground up."

Further Discussion: Both Pro and Con

Proponents argue that the MQD reinforces democratic accountability by ensuring that major policy decisions are made by Congress rather than by "unelected bureaucrats." Freeman and Jacobs (2021) noted that "Critics of the modern administrative state characterize the federal bureaucracy as an imperious and unaccountable behemoth that threatens core principles of democratic governance." In this regard, the MDQ also prevents administrative agencies from exploiting ambiguous statutes to expand their authority, especially when congressional approval of a controversial policy might prove problematic. In addition, the use of the MDQ enhances the doctrine of the separation of powers by limiting executive branch overreach. Wurman (2023) writes: "Specifically for our purposes, at least five Justices on the Supreme Court have now expressed interest in resurrecting the nondelegation doctrine, the idea that Congress cannot delegate its legislative power to the Executive, based on originalist principles."

Critics of the MQD contend that the MDQ invites *judicial policymaking* by giving courts broad discretion to label issues "major," thereby shifting policymaking authority from agencies whose members are subject to Senate confirmation to unelected federal judges. Justice Kagan, writing for the dissent in *West Virginia v. EPA*, "accused the Court of 'magically' creating a new doctrine for its own convenience. The phrase 'major questions doctrine' or 'major questions canon had appeared sporadically in lower court opinions, mostly penned by dissenting judges, but the federal circuit courts rarely gave weight to such arguments."

In the end, the MQD may place greater responsibility on Congress to legislate with specificity and, perhaps more narrowly, on matters of importance, rather than broadly delegating this responsibility to administrative agencies. The MQD may thus force agencies to exercise caution before addressing controversial issues, such as climate change, artificial intelligence, and the public health crisis, because courts may deem their actions "major" and thus unauthorized in the absence of specific statutory language. In applying the MQD, administrative agencies can no longer rely on broad or ambiguous statutory language to justify major regulatory actions. At the same time, Congress should understand that by eschewing its constitutional authority, it has empowered courts to determine what constitutes a "major question" and to decide whether Congress has spoken clearly, which, in practice, expands judicial influence over national policy.

At the same time, the Major Questions Doctrine may be understood not simply as a constraint on administrative power, but as part of a broader constitutional recalibration. From this perspective, the doctrine reflects an effort to restore structural balance among the branches of government by ensuring that decisions of vast economic and political significance remain anchored in clear congressional authorization. In this sense, the MQD serves to reinforce the primacy of Congress in making major policy decisions, rather than permitting such decisions to be made through broad or implied delegations to administrative agencies. What may appear as doctrinal uncertainty or variation in the Court's reasoning can thus be understood as differing methodological approaches to a common constitutional objective: preserving the separation of powers and ensuring democratic accountability in the exercise of regulatory authority.

Recently, in *Learning Resources v. Trump* (2026), Justice Gorsuch offered an interesting perspective on the role and responsibilities of Congress (Puri, 2026) in setting tariffs (Barone, 2026), certainly one of the most important issues confronting the United States today. The controversy essentially pitted the executive against the legislative branch. The 6-3 Supreme Court majority held that the International Emergency Economic Powers Act (IEEPA), essentially an economic sanctions law, does not authorize the president to unilaterally set tariffs, vacating many of the tariffs implemented during the second Trump administration.

Although *Learning Resources* is not a case involving an exercise of rulemaking by an administrative agency, Justice Gorsuch nonetheless reminds readers of the importance of the legislative process and Congress in the American legal system's separation-of-powers configuration. Justice Gorsuch wrote:

> "For those who think it important for the Nation to impose more tariffs, I understand that today's decision will be disappointing. All I can offer them is that most major decisions affecting the rights and responsibilities of the American people (including the duty to pay taxes and tariffs) are funneled through the legislative process for a reason. Yes, legislating can be hard and take time. Moreover, yes, it can be tempting to bypass Congress when some pressing problem arises. However, the deliberative nature of the legislative process was the whole point of its design. Through that process, the Nation can tap the combined wisdom of the people's elected representatives, not just that of one faction or man. There, deliberation tempers impulse, and compromise hammers disagreements into workable solutions. Moreover, because laws must earn such broad support to survive the legislative process, they tend to endure, allowing ordinary people to plan their lives in ways they cannot when the rules shift from day to day. In all, the legislative process helps ensure each of us has a stake in the laws that govern us and in the Nation's future. For some, the weight of those virtues is apparent. For others, it may not seem so obvious. However, if history is any guide, the tables will turn and the day will come when those disappointed by today's result will appreciate the legislative process for the bulwark of liberty it is."

Whether the MQD and the reassertion of congressional authority ultimately enhance democratic accountability, as suggested in Justice Gorsuch's concurring opinion in Learning Resources, or whether the MQD undermines effective governance carried on through rule-making by administrative agencies who presumably exhibit a high level of expertise and subject-matter competence, remains a subject of intense debate and no doubt future litigation.

One thing is clear: the Major Questions Doctrine has transformed the landscape of administrative law by limiting agency authority, requiring clear congressional authorization for major regulatory actions, and elevating the role of courts in resolving questions of national significance. At the same time, these developments may be understood as part of a broader effort to reassert constitutional boundaries among the branches of government. What remains uncertain, however, is whether the MQD ultimately restores that balance or instead reconfigures it, shifting greater responsibility to the judiciary in ways that may prove difficult to reconcile with its traditional institutional role.

This unresolved tension suggests that the doctrine's future will not turn on doctrinal clarity alone. As courts are increasingly called upon to evaluate disputes of both legal and technical complexity, the question becomes not only how the MQD should be defined but also how it can be applied in a manner consistent with both the constitutional structure and institutional competence. It is to that question, and the possibility of an emerging institutional response, that the discussion now turns.

Final Thoughts: The Special Master as an Institutional Response

If the central challenge of the Major Questions Doctrine is not simply defining what constitutes a "major question," but determining how courts can apply the doctrine in a manner consistent with both constitutional structure and institutional competence, then the doctrine's future turns on more than doctrinal refinement; it turns on institutional design: *The Major Questions Doctrine does not simply resolve disputes; it relocates them.*

As this paper has demonstrated, the MQD sits at the center of a persistent structural tension. In one view, the doctrine restores constitutional discipline by requiring Congress to speak clearly before agencies act on matters of vast economic and political significance. On another, it expands judicial authority by allowing courts to determine which questions are sufficiently "major" to warrant intervention. What the doctrine does not yet provide, however, is a workable institutional framework for resolving the increasingly complex disputes it invites.

Traditionally, the Supreme Court has avoided direct fact-finding, relying instead on the administrative record developed below and confining its role to questions of law. Only in rare circumstances, most often in cases involving its original jurisdiction (see, e.g., Burnett, 2018), has the Court appointed a Special Master to gather evidence, make findings, and assist in resolving complex disputes.

The evolution of MQD jurisprudence raises the question of whether that limited practice should be reconsidered (see Brazil, 1986).

As *Chevron deference* recedes and courts assume a more assertive interpretive role, the judiciary is increasingly called upon to resolve disputes that are not only legally significant but also technically intricate. Cases involving climate regulation, public health policy, financial systems, and emerging technologies require evaluation of scientific data, economic modeling, and complex administrative records, matters that often extend beyond the traditional competence of courts.

In such circumstances, the appointment of a Special Master could serve as a mechanism for bridging the gap between legal analysis and technical expertise. A Special Master could gather evidence, evaluate administrative records, conduct proceedings where necessary, and produce findings and recommendations to inform judicial decision-making.

Properly understood, this approach would not displace judicial authority. Rather, it would discipline the Court's application of the MQD by grounding it in a more rigorous understanding of the factual and technical context in which regulatory decisions are made.

At the same time, this approach raises difficult constitutional questions. If the Court relies on a Special Master to determine whether a regulatory action implicates a "major question," does it risk transforming itself into a quasi-administrative body? Does the process begin to resemble an advisory function, one traditionally outside the judiciary's constitutional role? Moreover, perhaps most significantly, what happens after the Court invalidates an agency action under the MQD and effectively returns the issue to Congress?

The practical reality is that Congress may not act. Political division, institutional inertia, and competing priorities may prevent legislative resolution, leaving regulatory gaps in areas of significant national concern. In such circumstances, the Court's intervention, intended to reinforce the separation of powers, may instead produce uncertainty, delay, or policy paralysis.

These concerns underscore the central insight of this paper: the MQD is not merely a doctrine of interpretation but one with structural consequences.

The Special Master framework does not resolve the tension between judicial expansion and constitutional correction. It does, however, offer a way to manage it. By introducing an institutional mechanism capable of addressing the complexity of modern regulatory disputes, the Court may be better positioned to exercise its interpretive authority while remaining attentive to the limits of its institutional competence.

Ultimately, the future of the Major Questions Doctrine will not be determined solely by doctrinal refinement. It will depend on whether the institutions of governance, courts, Congress, and administrative agencies adapt to the new equilibrium the doctrine has created.

Whether the Special Master becomes part of that adaptation remains uncertain. However, the need for some form of institutional response is not.

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