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IN FOCUS

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The Major Questions Doctrine

Congress frequently delegates authority to agencies to regulate particular aspects of society, in general or broad terms. However, in a number of decisions, the Supreme Court has declared that if an agency seeks to decide an issue of major national significance, its action must be supported by *clear* congressional authorization. Courts and commentators have referred to this doctrine as the **major questions doctrine** (or major rules doctrine). The Supreme Court never used that term in a majority opinion prior to 2022, but the doctrine has recently become more prominent.

This In Focus provides an overview of the major questions doctrine. It discusses the doctrine's framework, provides examples of its application, explores recent Supreme Court developments, and offers considerations for Congress in crafting legislation against the backdrop of the doctrine.

Overview

Agencies often must interpret statutes that grant them regulatory authority. If challenged, courts may need to review such interpretations to determine if an agency has exceeded its authority. In doing so, courts will sometimes defer to an agency's interpretation of an ambiguous statute. The Supreme Court has explained that, in general, courts interpret statutory language "in [its] context and with a view to [its] place in the overall statutory scheme." In cases where there is something extraordinary about the "history and breadth of the authority" an agency asserts or the "economic and political significance" of that assertion, however, the Court indicated courts should "hesitate before concluding that Congress meant to confer such authority." *West Virginia v. EPA*, 142 S. Ct. 2587, 2607–2608 (2022).

Under the major questions doctrine, the Supreme Court has rejected agency claims of regulatory authority when (1) the underlying claim of authority concerns an issue of "vast 'economic and political significance,'" and (2) Congress has not clearly empowered the agency with authority over the issue. *Util. Air Regul. Grp. (UARG) v. EPA*, 573 U.S. 302, 324 (2014). In requiring agencies to point to clear congressional authorization for their actions in major questions cases, the Supreme Court has further explained that Congress rarely provides an extraordinary grant of regulatory authority through language that is modest, vague, subtle, or ambiguous.

The Court has used the doctrine to reject agency claims of regulatory authority, including in regard to

- the Federal Communication Commission's waiver of a tariff requirement for certain common carriers under its statutory authority to "modify" such requirement (*MCI Telecomms. Corp. v. AT&T Co.*, 512 U.S. 218 (1994)),
- the Food and Drug Administration's regulation of the tobacco industry pursuant to its statutory authority over "drugs" and "devices" (*FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120 (2000)),
- the Environmental Protection Agency's (EPA's) consideration of costs in regulating air pollutants under its authority to prescribe ambient air quality standards that "are requisite to protect the public health" with "an adequate margin of safety" (*Whitman v. Am. Trucking Ass'ns, Inc.*, 531 U.S. 457 (2001)),
- the Attorney General's regulation of assisted suicide drugs under his statutory authority over controlled substances (*Gonzales v. Oregon*, 546 U.S. 243 (2006)),
- EPA's determination that the regulation of greenhouse gas (GHG) emissions from motor vehicles triggered GHG permitting requirements for stationary sources (*UARG*, 573 U.S. 302),
- the Internal Revenue Service's (IRS's) decision that a federal health care exchange is "an exchange established by the State" for purposes of determining eligibility for tax credits (*King v. Burwell*, 576 U.S. 473 (2015)),
- the Centers for Disease Control and Prevention's (CDC's) nationwide eviction moratorium (*Ala. Ass'n of Realtors v. HHS*, 141 S. Ct. 2485 (2021) (per curiam)),
- the Occupational Safety and Health Administration's (OSHA's) emergency temporary standard imposing COVID-19 vaccination and testing requirements on a large portion of the national workforce (*Nat'l Fed'n of Ind. Business v. OSHA*, 142 S. Ct. 661 (2022) (per curiam)), and
- an EPA regulation of GHG emissions that was premised on "generation shifting," or shifting electricity generation from higher-emitting sources to lower-emitting ones (*West Virginia*, 142 S. Ct. 2587).

On the other hand, in *Massachusetts v. EPA*, 549 U.S. 497 (2007), the Court rejected EPA's argument, based on the major questions doctrine, that it did not have legal authority to regulate GHG emissions from motor vehicles.

These examples indicate the range of questions the Court has defined as "major" under the doctrine. However, the precise scope of the doctrine is unknown. The Court has not clearly explained when an agency's regulatory action will raise a question so significant that the doctrine applies, nor has it specified what legislative acts could constitute clear congressional authorization.

Recent Developments

In several recent decisions, the Court has placed increasing emphasis on the major questions doctrine. First, in *Alabama Association of Realtors v. HHS*, the Court explained that the CDC's eviction moratorium was of major national significance and required a clear statutory basis because the agency's action covered 80% or more of the nation; created an estimated economic impact of tens of billions of dollars; and interfered with the landlord-tenant relationship, which the Court explained is "the particular domain of state law." Then, in *National Federation of Independent Business v. OSHA*, the Court considered OSHA's emergency temporary standard to be of major economic and political significance because, in its estimation, it seriously intruded upon the lives of more than 80 million people.

Most recently, the Court's decision in *West Virginia v. EPA* marked the first express reference to the major questions doctrine in a majority opinion of the Supreme Court. In *West Virginia*, the Court rejected EPA's reliance on a statutory provision that, in the Court's view, was a "previously little-used backwater." The Court concluded that it was unlikely Congress would task EPA with "balancing the many vital considerations of national policy implicated in deciding how Americans will get their energy," such as deciding the optimal mix of energy sources nationwide over time and identifying an acceptable level of energy price increases. For more information on the case, see CRS Legal Sidebar LSB10791, *Supreme Court Addresses Major Questions Doctrine and EPA's Regulation of Greenhouse Gas Emissions*, by Kate R. Bowers.

Relationship to the *Chevron* Doctrine

The major questions doctrine's precise relationship to the ***Chevron* doctrine** is unclear. The *Chevron* doctrine, which the Court established in *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), governs judicial review of an agency's interpretation of a statute it administers. If *Chevron* applies, a court will typically engage in a two-step analysis to determine if it must defer to an agency's statutory interpretation. At step one, the court asks whether the statute directly addresses the precise issue before the court. If the statute is ambiguous or silent in that respect, the court must proceed to step two, which instructs the court generally to defer to the agency's reasonable interpretation.

In some cases, the Court has treated the major questions doctrine as an exception to the *Chevron* doctrine. In those cases, when an agency's interpretation of an ambiguous statute concerns an issue of vast economic and political significance, the Court has invoked the major questions doctrine to deny the agency the deference traditionally accorded under *Chevron*. When the Court refuses to defer to an agency's interpretation of a major question, it has often (but not always) rejected the agency's position. At times, the Court has applied the major questions doctrine at step one of *Chevron*, concluding that Congress did not authorize the agency to regulate the major question at issue. The Court has also invoked the major questions doctrine at step two, determining that the agency's interpretation was unreasonable because Congress did not clearly give it such authority. The Court has even used the doctrine as a reason to reject engaging in the *Chevron* two-step analysis altogether.

The Court, therefore, has arguably applied the major questions doctrine in the *Chevron* context in an unclear, ad hoc manner. In its three most recent cases applying the major questions doctrine, the Court did not discuss the *Chevron* framework, possibly signaling that the major questions doctrine is an independent principle of statutory interpretation focused on ensuring Congress bears the responsibility for confronting questions of major national significance. This approach also appears to be consistent with other recent cases in which the Court has not applied or referred to the *Chevron* doctrine in reviewing agency actions. *See, e.g.*, *Am. Hosp. Ass'n v. Becerra*, 142 S. Ct. 1896 (2022). That silence leaves unanswered questions about how to determine which doctrine applies or whether courts should undertake a major questions inquiry prior to or as part of their *Chevron* analyses. These questions will likely be important to the lower courts in challenges to agency action in the near future.

Considerations for Congress

Under the Court's formulation of the major questions doctrine, an agency will lack the ability to determine authoritatively a major question if it lacks "clear congressional authorization" to do so. Therefore, if Congress wants an agency to decide issues in an area courts would likely consider to be of vast economic and political significance, Congress should clearly specify that intention in the relevant underlying statute as opposed to relying on vague or imprecise statutory language. This task may be difficult at times, given the lack of clear guidance from the Court on what can be considered a "major" question or clear congressional authorization. The Court's jurisprudence also leaves open the question of how, or even whether, Congress may grant agencies the authority to act to address major issues in the future that Congress did *not* anticipate when it enacted a statute.

Additionally, the Supreme Court has not specified whether material other than the text of an enacted statute could constitute clear congressional authorization. The Court in *West Virginia* looked beyond the statutory text in its analysis of EPA's authority, including by considering that Congress "conspicuously and repeatedly declined to enact" a program similar to aspects of the challenged regulation.

Even when a statutory delegation of authority over a major economic and political question is clear, courts may find that the underlying statute raises other problems. For example, in his concurrence in the *OSHA* case, Justice Gorsuch argued that even had Congress clearly authorized the vaccination mandate at issue in that case, that delegation would have probably violated the **non-delegation doctrine**—the separation-of-powers principle that limits Congress's ability to confer legislative authority on entities—because the statute contained no meaningful restrictions on the agency's regulatory power and, per the agency, conferred near-unlimited discretion on the agency.

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