

Major Questions About the Major Questions Doctrine

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On June 30, 2023, the U.S. Supreme Court invoked the “major questions doctrine” for the second time, concluding that the Biden Administration’s plan to forgive \$430 billion of federal student loans under the Health and Economic Recovery Omnibus Emergency Solutions Act (HEROES Act) is a “major question” lacking clear statutory authorization. The decision, [Biden v. Nebraska](#), 600 US ____ (2023), expands the major questions doctrine, which was first announced as a distinct doctrine exactly one year earlier in [West Virginia v. EPA](#). While the case does not directly implicate environmental law, it helps define the contours of the major questions doctrine, which is likely to be a staple of challenges to administrative actions involving environmental law.

Key Takeaways

- The *Biden* decision includes a substantial discussion of the major questions doctrine, providing litigants with context for when and how the doctrine applies, although [some observers](#) assert that the decision may create more confusion than clarification.
- The decision underscores the importance of the major questions doctrine as a tool to challenge administrative action where the agency relies on a statute that does not clearly spell out its authority, at least where the agency action has significant political or economic impacts.
- The major questions doctrine is crucial in environmental litigation, as the Administration frequently relies on statutes originally enacted decades ago in addressing problems that were not considered when the original legislation was adopted. The U.S. Environmental Protection Agency (EPA)’s invocation of Clean Air Act (CAA) provisions, originally enacted in the 1970s, as the statutory basis for [regulations to limit greenhouse gas emissions from power plants](#) is a prime example.
- Justice Barrett’s lengthy concurring opinion may prove to be of great importance in future litigation. She argues that the major questions doctrine is merely an ordinary canon of statutory interpretation, not a “strong-form substantive canon” like the rule requiring courts to interpret statutes to avoid constitutional issues. Justice Barrett’s opinion contrasts with the view espoused by Justice Gorsuch in his *West*

Virginia concurrence. If Justice Barrett's view is ultimately adopted by the courts, the major questions doctrine may have less force than if Justice Gorsuch's view is adopted.

Discussion

Chief Justice Roberts' majority opinion in the *Biden* decision starts as a run-of-the-mill statutory interpretation case. The majority relies on dictionary definitions of the key terms "modify" and "waiver" to conclude that the complete cancellation of student debts cannot reasonably be characterized as either a modification or waiver. The Court invokes the major questions doctrine to reject the Administration's claims about Congress's intent in enacting the HEROES Act rather than as a primary tool of statutory interpretation. Nonetheless, the Court's decision sheds some light on when the major questions doctrine can be invoked and how it is to be applied.

The major questions doctrine, as formulated by the Court, requires that, absent "clear congressional authorization," courts presume Congress does not delegate issues of major political or economic significance to executive agencies. The *Biden* majority rejected the Administration's student loan forgiveness plan because the HEROES Act's provision allowing the Administration to "waive or modify" student loan requirements did not provide clear authorization to cancel up to \$20,000 in student debt for eligible borrowers, as opposed to modifying or waiving specific terms governing loan repayment.

At the outset, following last year's opinion in *West Virginia v. EPA*, the Court concludes that the student loan relief program's \$430 billion price tag has "economic and political significance" that is "staggering by any measure," thus establishing the threshold requirement for applying the major questions doctrine. The *Biden* Court, like *West Virginia*, also cites the fact that the Secretary of Education has not previously asserted such broad powers to cancel debt as an indication that Congress did not intend to delegate such powers. And, like *West Virginia*, the Court cites the fact that Congress previously considered and rejected bills that would broadly permit the cancellation of student loan debts. The *Biden* court also follows *West Virginia* in rejecting the Administration's claim that its plan is authorized by a statutory provision giving the Secretary of Education rulemaking power, concluding that this is a "wafer-thin reed on which to base such sweeping power."

On the other hand, unlike in *West Virginia*, the Court does not claim that student loans are outside the expertise of the Department of Education. Hence, it appears that an agency acting outside its area of expertise may indicate that the agency acted beyond its authority under the major questions doctrine, but such a showing is not necessary. Likewise, several other factors the Court pointed to in *West Virginia* are not discussed in *Biden*.

Finally, the Court rejects the government's argument that the major questions doctrine should not apply, or should apply with less force, when federal benefits, as opposed to federal regulations, are involved. This distinction is invalid, according to the majority's reasoning, because the power of the purse is one of the central powers of Congress and it follows that Congress is no less likely to delegate the spending power than the power to regulate without a clear statutory statement authorizing the Executive Branch to exercise that power.

Justice Barrett's concurring opinion is of particular interest because it takes a relatively limited view of the nature of the major questions doctrine, in contrast to the view espoused by Justice Gorsuch in

his *West Virginia* concurrence. Hence, it is apparent that there is no consensus among the Court's majority as to the fundamental nature of the major questions doctrine. Justice Barret's concurrence is aimed primarily at rebutting "the charge that the [major questions] doctrine is inconsistent with textualism." According to Justice Barrett, the major questions doctrine is simply an ordinary canon of statutory interpretation, similar to the canon that words in a statute must be interpreted in context. The major questions doctrine, in Justice Barrett's view, recognizes that, in the constitutional context of legislation, Congress is unlikely to delegate power to the Executive Branch using ambiguous or obscure language. In this way, the major questions doctrine is "a tool for discerning—not departing from—the text's most natural interpretation."

In this respect, Justice Barrett's concurrence departs from Justice Gorsuch's in *West Virginia*, which characterizes the major questions doctrine as a "strong rule of interpretation," like the rule requiring courts to interpret statutes to avoid constitutional issues. If the major questions doctrine is treated as such a strong rule of interpretation, it would require courts to reject statutory interpretations that create a delegation of Congressional authority to the Executive Branch, even if the statute could reasonably be read to create such a delegation. Justice Barrett's view, however, would not permit courts to employ the major questions doctrine to reject the most plausible interpretation of the statute. The future resolution to this unresolved question is likely to have a major impact on the development of the major questions doctrine.

Conclusion

The *Biden* decision underscores the continuing vitality of the major questions doctrine, which will remain a central focus of litigation challenging administrative actions across a broad spectrum of agency actions, especially litigation challenging environmental regulations. The decision also demonstrates the doctrine's continuing evolution. In particular, Justice Barrett's concurrence, when contrasted with Justice Gorsuch's concurrence in *West Virginia*, demonstrates that fundamental questions about the nature of the doctrine have yet to be resolved.

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