



Written by [Bob Adelman](#) on March 13, 2023

Supreme Court Uses “Major Questions” Doctrine to Rein In Federal Agencies

Once again the impact of Supreme Court justices nominated by former president Donald Trump is being felt, this time on the illegal, unconstitutional so-called fourth branch of government. Often referred to as “the administrative state,” it encompasses the vast array of federal agencies operating outside constitutional constraints and utilizing powers illegally and unconstitutionally granted to them by the legislative branch.

The “[major questions doctrine](#),” which says that if an agency seeks to decide an issue of major national significance its action must be supported by clear congressional authorization, [is already being used to clip the wings](#) of those agencies. For example, in June 2022 the high court struck down the Environmental Protection Agency’s Clean Power Plan, using the doctrine as the scythe: “both separation of powers principles and a practical understanding of legislative intent” required the EPA to point to “clear congressional authorization” for its action.

The agency’s Clean Power Plan called on states not only to improve the efficiency of coal-fired power plants, but also to shift energy production from fossil fuels to natural gas, and ultimately to wind, solar, and other renewable energy sources.

Using the major questions doctrine, the high court struck down the agency’s excessive enthusiasm by holding that the powers granted the agency by Congress did not constitute a “clear congressional authorization” for such authority. Chief Justice John Roberts wrote: “It is not plausible that Congress gave EPA the authority to adopt on its own such a regulatory scheme.... A decision of such magnitude and consequence rests with Congress itself.... We expect Congress to speak clearly if it wishes to assign to an agency decisions of [such] vast economic and political significance.”

Another fourth-branch agency, the Centers for Disease Control and Prevention (CDC), overreached its mandate in August 2021 when it halted all evictions across the country. It claimed it was doing so to prevent the spread of Covid-19, and claimed that the powers granted to it by Congress allowed such transgressions of property rights of owners of rental properties:

[The Secretary of Health and Human Services was granted the power to] make and enforce such regulations as in his judgment are necessary to prevent the introduction, transmission,



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or spread of communicable diseases from foreign countries into the States ... or from one State ... into any other State.

Supreme Court Justice Brett Kavanaugh wrote, "I agree ... that the [CDC] exceeded its existing statutory authority by issuing a nationwide moratorium.... In my view, clear and specific congressional authorization (via new legislation) would be necessary for the CDC to extend the moratorium...."

In January 2022 the high court invoked the major questions doctrine when it blocked a federal Covid testing mandate issued by OSHA (the Occupational Safety and Health Administration) that applied to major businesses. In the unsigned opinion, the high court ruled that:

Although Congress has indisputably given OSHA the power to regulate occupational dangers, it has not given that agency the power to regulate public health more broadly. Requiring the vaccination of 84 million Americans, selected simply because they work for employers with more than 100 employees, certainly falls in the latter category.

As noted above, the high court refrains from reviewing the primary issue: whether under the Constitution the legislative branch may delegate *any* of its powers to an unelected fourth branch. But at least it is willing to clip the wings of agencies tempted to extend those delegations beyond what Congress intended.

In another "time of crisis," President Ronald Reagan in 1981 said this:

In this present crisis, government is not the solution to our problem; government is the problem.

From time to time we've been tempted to believe that society has become too complex to be managed by self-rule, that government by an elite group is superior to government for, by, and of the people.

Well, if no one among us is capable of governing himself, then who among us has the capacity to govern someone else?



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