

Trump hasn't been at all secretive about plans for a possible second term. He has plans, big plans. So big, in fact, that they may collide with a conservative judicial [rule](#) called the Major Question Doctrine (MQD). Since the Court has mostly used the MQD to block initiatives by Democratic presidents, it would be more than fair to apply it to Trump. What's sauce for the goose, after all, is sauce for the gander.

The exact contours of the MQD are still unclear, but the upshot is a restriction on dramatic administrative actions that lack clear congressional authority. The underlying theory is that Congress probably would want to decide rather than delegate "an issue of vast economic and political significance" to the executive branch. Applying that theory, the Supreme Court struck down an Obama climate regulation on the theory that Congress was unlikely to have given EPA to revamp the entire U.S. electricity system. Although that's an unfair characterization of what EPA did, the ruling does give you a sense of the scope of the MQD. Other recent decisions have involved student loan cancellation and COVID-related eviction restrictions.

Trump's plans seem equally ambitious and thus equally prone to MQD challenges. Begin with his effort to radically transform the civil service. Trump's campaign website says that the first entry on his "a ten-point plan to dismantle the deep state and reclaim our democracy from Washington corruption" is to restore "the president's authority to fire rogue bureaucrats." The plan, which would be sure to devastate environmental programs, is to [transfer](#) as many of fifty-thousand high level bureaucrats to what is called Schedule F, which would allow him to fire them and replace them with Trump loyalists. Another step would be to make all federal employees pass a test to show they have a "correct" understanding of the Constitution.

Trump says his plan would fundamentally change the nature of the bureaucracy, and I believe him. By the same token, however, wouldn't this kind unprecedented, drastic, and controversial plan qualify as a "major question"?

Trump's substantive environmental [plans](#) are equally dramatic. Besides exiting the Paris Agreement again, he will "deploy a team of warrior lawyers to hunt down every unnecessary regulation in the federal registry that hampers domestic production. And we will wipe them off the books."

Moreover, fossil fuel energy proposals will all be quickly approved: "And we will rapidly issue approvals for all worthy energy infrastructure projects with a focus on

maximum speed to bring prices down rapidly. So, get those proposals ready now, because we are going to put thousands of Americans to work building the power plants, pipelines, grids, ports, refineries, and shipping terminals of tomorrow.”

This plan, Trump says, will create a kind of national nirvana:

“Nobody has more liquid gold under their feet than the United States of America. And we will use it and profit by it and live with it. And we will be rich again and we will be happy again. And we will be proud again.”

Congress’s current approach seems best described as “all of the above.” A shift from that to fossil fuel *über alles* seems like the kind of question that Congress would likely want to reserve for itself, and thus a “major question.” If phasing out coal is too fundamental a decision for EPA to make, as the Supreme Court thought, then so is elevating fossil fuels above all alternatives.

The MQD is often framed as an attack on the power of bureaucrats, but in every case where it has been used, the policy decision was actually made by the president. The effect of the MQD is to limit presidential power. The current attack on *Chevron* is similar. Thus, legal conservatives have been cutting away the power of the president to drive big policy changes, just at the time that Trump wants to expand it.

Of course, all this assumes that the conservative Justices would be willing to apply the MQD to conservative presidential actions, not just liberal ones. I know that some people will consider this idea hopelessly naïve, but I’m not willing to give up on the idea of a principled judiciary quite yet.

Hopefully, things won’t come to the point where the only barrier between Trump and massive legal disruption is the Supreme Court. But it’s worth keeping in mind the possibility that, in case have emergency, we may have to break the glass and pull that particular lever.

