

# FALL 2022 SYMPOSIUM SYNOPSIS

## MAJOR QUESTIONS ABOUT AGENCY AUTHORITY: A PRACTICAL DISCUSSION ON THE IMPACT OF LIMITING ADMINISTRATIVE AUTHORITY

The *Administrative Law Review's* Fall 2022 Symposium humanized administrative law while tackling substantive administrative law issues. With the human impact of administrative law as the touchpoint, the panels explored the practical implications of deregulation, nondelegation, and major questions. The resultant was thoughtful yet at the same time accessible to those who do not routinely practice in the space. Full transcripts of the discussions summarized below are forthcoming in the *Administrative Law Review's* online companion, the *Accord*.

### PANEL I

Professors Gillian Metzger, William Buzbee, and Aram Gavoort discussed the issue of deregulation through the lens of judicial decisions, methods of statutory interpretation, and executive actions taken during the Trump and Biden Administrations to modify the scope of administrative authority. Professor Metzger described the ways in which the Judiciary challenges agency action, discussing “Fifth Circuit specials” *Jarkesy v. SEC*<sup>1</sup> and *Community Financial Services Association v. CFPB*.<sup>2</sup> Professor Metzger explained that originalist justifications from courts seeking to undermine agency authority can be seen as reflecting a distrust of administrative government, and aiming to protect individual liberties. Professor Buzbee discussed “anti-regulatory cost skewing and anti-democratic imbalance on the Supreme

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1. 34 F.4th 446 (5th Cir 2022).

2. 52 F.4th 616 (5th Cir 2022).

Court.” Professor Buzbee highlighted the ways in which the Court’s decisions create “skewed” interpretations of enabling statutes that disrespect congressional intent regarding agency authority and disregard the expertise of agency conclusions. Professor Gavor provided his insight on the Court’s recent *West Virginia v. EPA*<sup>3</sup> decision arguing that the *Chevron*-doctrine<sup>4</sup> is still very much alive. Professor Gavor also discussed the residual impact of the Trump Administration’s Executive Orders targeting the administrative state.

## PANEL II

Administrative Law Judge Doug Rawald, and Professors Kimberly Wehle and Jonas Monast discussed the ways in which uncertainty regarding the administrative state has affected agencies “in real time.” Judge Rawald described his work as an Administrative Law Judge (ALJ), and the challenges the public would face if the Court were to dictate that ALJ responsibilities should be transferred from the Executive Branch to Article III courts. Professor Monast summarized the Major Questions Doctrine and aptly characterized the Doctrine’s ill-defined applicability by quoting Justice Potter Stewart: “[we’ll] know it when [we] see it.”<sup>5</sup> Professor Monast additionally explained how *West Virginia* and the Major Questions Doctrine hinders agencies’ ability to regulate complex and ever-evolving issues like climate change. Professor Wehle wrapped up the discussion by addressing cases currently before the Court, including challenges to the Indian Child Welfare Act, the Deferred Action for Childhood Arrivals program, and the Biden Administration’s student loan forgiveness plan. Professor Wehle also described portions of Justice Alito’s decision in *Brnovich v. Democratic National Committee*<sup>6</sup> as “legislating from the bench.” Considering Congress’s failure to revive voting rights protections after the Court’s decision in *Shelby County v. Holder*,<sup>7</sup> Professor Wehle expanded upon Professor Metzger’s discussion about challenges with originalist justifications.

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3. 142 S. Ct. 2587 (2022).

4. *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837 (1984).

5. *Jacobellis v. Ohio*, 378 U.S. 185, 197 (1964) (Stewart, J., concurring).

6. 141 S. Ct. 2321 (2021).

7. 570 U.S. 529 (2013).

## SPEAKER BIOS

*Panel I**Aram Gavoov*

Aram A. Gavoov is the Associate Dean for Academic Affairs and Professorial Lecturer in Law at the George Washington (GW) University Law School, and a nationally recognized scholar in the fields of administrative law, federal courts, and national security law. His scholarship has earned placement in prestigious academic journals and has been cited by the U.S. Supreme Court. Before transitioning to a full-time role at GW Law, he held various senior positions in the U.S. Department of Justice as a career attorney where he litigated federal appellate and trial cases involving high-profile challenges to statutes, regulations, and policies. During his career, he has briefed or argued dozens of cases before a majority of the United States courts of appeals and litigated in nearly a third of the United States district courts

*Gillian Metzger*

Gillian Metzger is the Harlan Fiske Stone Professor of Constitutional Law at Columbia Law School, where she is also faculty co-director of Columbia's Center for Constitutional Governance. In 2021, she served as a Senior Counsel in the U.S. Department of Justice Office of Legal Counsel. She writes and teaches in the areas of federal courts, administrative law, and constitutional law, specializing on the separation of powers, federalism, and privatization. She is a co-editor, with Peter L. Strauss, Todd D. Rakoff, Anne Joseph O'Connell and David Barron, of *Gellhorn & Byse's Administrative Law: Cases and Comments* (12th ed., 2018). She has won Columbia Law School's Willis Reese award for excellence in teaching, Columbia University's faculty mentor award, and the ABA Administrative Law and Regulatory Practice annual award for scholarship. Professor Metzger is a Senior Fellow of the Administrative Conference of the United States, where she was a public member from 2010-2017, and is a past member of the ABA Section of Administrative Law and Regulatory Practice Council. She has filed briefs at the Supreme Court and lower courts in a number of high-profile cases. Prior to coming to Columbia in 2001, Professor Metzger served as a law clerk to Justice Ginsburg and Judge Wald of the D.C. Circuit, and worked as a staff attorney at the Brennan Center for Justice.

*William Buzbee*

William W. Buzbee is the Edward and Carole Walter Professor at Georgetown University Law Center. His scholarship and teaching focus on environmental law, administrative law, and regulatory federalism. He also regularly publishes op-eds in leading news outlets. On a pro bono basis, he testifies before Congress, assists with legislative and regulatory matters, and writes or participates as an amicus curiae. This recently included authoring an amicus brief in *Sackett v. United States* for 167 members of Congress in support of the Clean Water Act's longstanding jurisdictional reach. Professor Buzbee has also worked for over a decade in support of federal power to address climate change. This included assisting with *West Virginia v. EPA* and crafting or critiquing the underlying regulatory actions of the Obama and Trump Administrations. Before becoming a professor, he practiced both public interest and private sector law in New York City, and clerked for Judge Cabranes of the Second Circuit.

*Panel II**Doug Rawald*

Judge Doug Rawald has been an ALJ with the US Department of Transportation since March 2016, where his docket primarily includes civil penalty cases brought by operating administrations within the Department. Prior to his current position, Judge Rawald spent one year as a Social Security ALJ adjudicating disability claims. Before assuming the bench, Judge Rawald worked in several different trial attorney positions, including as the senior trial attorney for the Department of Energy Office of Enforcement, and as a supervisory attorney with the Department of Defense Office of General Counsel. Judge Rawald also spent a year in Iraq working on a State Department project to train Iraqi judges. Judge Rawald began his legal career as a judge advocate with the U.S. Air Force, where he held various roles including as a prosecutor in Germany, and as a defense counsel in South. Judge Rawald is a graduate of Cornell University and Cornell Law School, where he also taught as an adjunct professor from 2012 to 2014.

*Kimberly Wehle*

Kimberly Wehle is visiting professor of law at American University Washington College of Law and a tenured law professor at the University of Baltimore School of Law, where she teaches civil procedure, administrative law, and federal courts. She is also a legal contributor for ABC News, and regularly writes for Politico, The Atlantic, The Bulwark, The Guardian, and The Hill. Her scholarship focuses on the separation of powers, with an emphasis on presidential power and administrative agencies. She is a former Assistant United States Attorney, Associate Independent Counsel in the Whitewater Investigation, and author of the books *What You Need to Know about Voting—and Why*, *How to Read The Constitution—and Why*, and *How to Think Like a Lawyer and Why*. Professor Wehle also hosts an Instagram TV series called *#SimplePolitics*.

*Jonas Monast*

Jonas Monast is the C. Boyden Gray Distinguished Fellow at the University of North Carolina (UNC) School of Law and directs the Center for Climate, Energy, Environment & Economics (CE3). His work focuses on climate policy, ratemaking, and aligning energy and environmental policy goals. Prior to joining the UNC Law faculty, Monast directed the Climate and Energy Program at Duke University's Nicholas Institute for Environmental Policy Solutions and taught courses on energy and environmental policy at Duke University School of Law and Nicholas School of the Environment. Monast has also worked as an attorney in the Corporate Social Responsibility Practice at Foley Hoag LLP, as a congressional fellow for Senator Paul Wellstone, and as legislative counsel for the Center for Responsible Lending. Monast received his B.A. from Appalachian State University in 1995 and his J.D. in 2002 from the Georgetown University Law Center.