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July 13, 2022

Via CM/ECF

Deborah Hunt, Clerk of Court
U.S. Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, Ohio 45202

RE: *Commonwealth of Kentucky v. Biden*, No. 21-6147

Dear Ms. Hunt:

I write to respond to plaintiffs' letter concerning the Supreme Court's application of the major questions doctrine in *West Virginia v. EPA*, __ S. Ct. __, 2022 WL 2347278 (June 30, 2022).

As our brief explains (at 38-43), the major questions doctrine sheds no light on this case for four independent reasons. First, the Executive Order at issue here does not exercise regulatory authority; it invokes the federal government's proprietary authority to choose with whom to do business. Second, the statutory provision invoked by the order is not vague or ancillary. Third, that provision delegates authority to the President himself, rather than an agency. Finally, the statute builds on the President's inherent power to exercise administrative control over the Executive Branch.

None of those factors was present in *West Virginia*, which involved a delegation of regulatory power to an agency, not supported by inherent constitutional authority, through statutory language that the Supreme Court perceived to be insufficiently clear to justify the significant consequences of the regulation at issue. *West Virginia* thus offers no support to plaintiffs' major-questions argument here.

Sincerely,

/s/ Anna O. Mohan

Anna O. Mohan

cc: All counsel (via CM/ECF)