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Rubber Stamps

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Rubber-stamping is more often alleged than understood. The basic idea involves an actor with formal authority following the views of another actor without serious second thought. Such arrangements are broadly disreputable yet terrifically common, and they lack thorough treatment in legal scholarship. Recent allegations regarding presidential autopens, the Department of Government Efficiency, and congressional acquiescence make the inquiry timely, but the relevant structural issues are more enduring than daily partisan controversies. This Article addresses rubber-stamping in government generally, and its contributions are conceptual, positive, legal, and normative. Altogether, the case against rubber-stamping in government, whatever its reputation, is surprisingly limited.

The Article first offers a working concept of rubber-stamping, while emphasizing boundary problems and empirical uncertainty. Second, the Article develops explanations and justifications for rubber-stamping beyond self-interested schemes, including rational designs for decision quality at tolerable cost and second-best adaptations to legal constraints and work overloads. Common complaints frequently distract us from those possibilities, and from deeper concerns about power and results. Eliminating rubber-stamping might be irrelevant on those scores, or make matters worse. Third, the Article explores current law on rubber-stamping, which is largely permissive yet not well-settled. Where the practice is legally disfavored, the demand for thoughtfulness seems modest and likely unenforceable. Finally, the Article compiles system-design options and small-scale tactics that may reduce rubber-stamping, to the extent we remain concerned. But the most effective interventions tend to be costliest (such as thoughtfulness audits and live explanations), while cheaper tricks have limited effects (such as sign-offs and waiting periods). Nothing will work without adequate decision resources. And the emergence of machines that automate reason-writing makes rubber-stamping easier to hide and harder to stop.

These considerations recommend targeted responses. We can set sensible priorities for anti-rubber-stamping efforts by thinking harder about the relevant concepts and empirical uncertainties, the most plausible explanations and justifications for official behavior, and the range of feasible interventions based on their likely efficacy and costs. At minimum, we can better appreciate that rubber-stamping is an arresting charge associated with both damaging and respect-worthy conduct, and that existing law and legal institutions leave space for both. That much mindfulness is enough to become smarter about government, which must manage rubber-stamping well to earn respect—and which we can make better without every government actor having second thoughts.

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[A] perpetual and restless desire of power after power . . . .†

Justices . . . are almost the only people in Washington who do their own work.††

What am I signing here?†††

INTRODUCTION

To allocate decision making by design, the allocations must be stable. People must choose recipients, deliver power, and keep it there until another design is selected. Those challenges arise whether the aim is hierarchical control, decentralized decisions, separated institutions, or balanced public and private sectors. But of course our designs may fail and power may slip, for more than one reason. If people generally desire power, those out of the loop will try to rearrange the allocations. And the truth is that not everyone is able and willing to exercise power to decide, even when they must keep the formal authority to do so. Sometimes people want to offload power to others for convenience and better results,[1] or because they are overloaded with responsibilities and overrun by the demands of other actors.[2]

Thus concentrations as well as migrations of decision-making power are features of social life, and both should be central topics in law. To an extent, they are. Public law, administrative law, and constitutional law certainly address concentrations of power in certain ways.[3] Concerns about some of us (or them) dictating to the rest of us are legitimate, even as the targets of concern vary.[4] If concentrated power matters to us, offloaded power should matter, too. In that field, we can use more work. And the understudied territory includes a particularly disreputable form of offloading, in which actors who enjoy formal decision-making authority follow actors who do not, without serious second thought.

Complaints about such behavior are remarkably popular. And varied.[5] They cover

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† 2 THOMAS HOBBES, LEVIATHAN 151 (Noel Malcolm ed., 2012) (1651) (spellings modernized) (suggesting "a general inclination of all mankind").

†† CHARLES E. WYZANSKI, WHEREAS—A JUDGE'S PREMISES 61 (1965) (quoting from memory Justice Louis Brandeis). On contemporary realities, see notes 258–259 below.

††† Unpopular phrase. For a reported instance, see JEAN STEIN, AMERICAN JOURNEY: THE TIMES OF ROBERT KENNEDY 278 (George Plimpton ed., 1970) (recalling Attorney General Kennedy's response to a form that would authorize suit by the United States to prevent peace marchers from traveling to Cuba).

[1] *See infra* Part II.B.1.

[2] *See infra* Part II.B.2–3.

[3] Not all these fields have adequately addressed power and interests. On one view, constitutional law and theory have lagged. *See* DARYL J. LEVINSON, LAW FOR LEVIATHAN: CONSTITUTIONAL LAW, INTERNATIONAL LAW, AND THE STATE 146 (2024); Daryl J. Levinson, *Foreword: Looking for Power in Public Law*, 130 HARV. L. REV. 31, 40, 141–43 (2016) (distinguishing government institutions from coalitions of political actors with power); *see also* Nikhil Menezes & David E. Pozen, *Looking for the Public in Public Law*, 92 U. CHI. L. REV. 971, 974–75 (2025) (contending that constitutional and administrative law lack working concepts and institutions for influence of "the public").

[4] Ordered thematically, see, for example, THE FEDERALIST NO. 48, at 309 (James Madison) (Clinton Rossiter ed., 1961) (a legislative vortex); BRUTUS NO. X (1788), *in* 2 THE COMPLETE ANTI-FEDERALIST 115 (Herbert J. Storing ed., 1981) (a standing army); C. WRIGHT MILLS, THE POWER ELITE (1956) (a power elite); Thomas I. Emerson, *Freedom of Expression in Wartime*, 116 U. PA. L. REV. 975, 988 (1968) (a police state); William J. Novak, *A Revisionist History of Regulatory Capture*, *in* PREVENTING REGULATORY CAPTURE: SPECIAL INTEREST INFLUENCE AND HOW TO LIMIT IT 25, 29–31 (David Moss & Daniel Carpenter eds., 2013) (a captured state); Jon D. Michaels, *The American Deep State*, 93 NOTRE DAME L. REV. 1653, 1653–54 (2018) (a deep state); *see also* Noah A. Rosenblum, *The Antifascist Roots of Presidential Administration*, 122 COLUM. L. REV. 1, 54 (2022) (tracing New Deal efforts to prevent collapse into the chief executive's personality); Aziz Huq & Tom Ginsburg, *How to Lose a Constitutional Democracy*, 65 UCLA L. REV. 78, 144–48 (2018) (detailing attempted institutional checks against power concentrations).

[5] For some of the countless criticisms, fears, and denials, from different policy perspectives and ordered thematically, see Dharna Moor, *Team Trump Invents Fake "Emergency" to Sidestep Environmental Laws*, MOTHER JONES (Feb. 20, 2025), https://www.motherjones.com/politics/2025/02/trump-administration-fake-energy-emergency-environmental-laws-fast-track-fossil-fuel-projects/ (voicing concern about agency approvals of pipeline permits); Robert F. Kennedy, Jr., *Opinion: HHS Moves to Restore Public Trust in Vaccines*, WALL ST. J. (June 9, 2025, at 04:00 ET), https://www.wsj.com/opinion/rfk-jr-hhs-moves-to-restore-public-trust-in-vaccines-45495112\ (alleging an immunization advisory committee "has become little more than a rubber stamp for any vaccine"); Jennifer Calfas & Siobhan Hughes, *Senate Republicans Express Alarm Over CDC Director's Firing*, WALL ST. J. (Aug. 28, 2025, at 5:44 ET), https://www.wsj.com/politics/policy/cdc-director-refused-to-fire-leaders-approve-vaccine-recommendations-c777704c (reporting allegations the Centers for Disease Control director was fired because she refused to rubber-stamp future decisions of the immunization advisory committee); Kristina Peterson, *Democrats Depict RFK Jr. as "Rubber Stamp" for Trump*, WALL ST. J. (Jan. 30, 2025, at 11:20 ET), https://www.wsj.com/livecoverage/trump-cabinet-confirmation-hearings/card/democrats-depict-rfk-jr-as-rubber-stamp-for-trump-i8lyoTyc6vY209zzfyWS (reporting allegations that Secretary Kennedy is himself a rubber stamp); Ryan King, *Mitt Romney's GOP Senate Successor Vows Not to Be "Rubber Stamp" for Trump*, N.Y. POST (Dec. 22, 2024, at 01:24 ET), https://nypost.com/2024/12/22/us-news/john-curtis-mitt-romneys-gop-senate-successor-wont-be-rubber-stamp-for-trump/ (quoting Senator John Curtis as declaring, "I do have my own mind"); Elie Mystal, *The Courts Can't Stop the Trump-Musk Coup*,

familiar allegations about the criminal legal system—that magistrate judges rubber-stamp warrant applications,[6] that grand juries follow prosecutors,[7] and that trial judges in turn rubber-stamp magistrate recommendations and prosecutor-induced plea bargains.[8] With a different ideological base, similar themes appeared in claims that immigration officials rubber-stamped hundreds of thousands of Deferred Action for Childhood Arrivals applications,[9] and that some Social Security judges rubber-stamped benefits claims to knock out a backlog.[10] More recent instances include charges that Biden Administration staffers procured auto-penned presidential signatures without the President's full awareness,[11] that agencies in the Trump Administration became tools of the White House's shadowy Department of Government Efficiency,[12] and that majorities in Congress cave to presidential demands without a good fight.[13]

The charges are attractive. Usually calling someone a "rubber stamp" is a cutting insult backed by serious ideas—an accusation recurrently aimed at government officials or institutions for yielding to others' demands, often demands the accusers oppose but are otherwise unable to block. The charges tap into honest if abstract commitments to process, structure, independence, courage, and hard work, without strictly requiring audiences to take sides on the concrete results of those commitments. Many rubber-stamping claims are like many claims to due process, separation of powers, federalism, interpretive method, and law generally, insofar as their logic does not depend on the results of the process or structure in question, while those making the claim might well care most about exactly those results.[14] Sometimes the point hits hard. The integrity of an institution or an official can be pierced when the charge is true, and their operational legitimacy may decline to the extent the charge is believed.

Yet we know full well that mindless sign-offs are pervasive. Social life would not go on, not sensibly anyway, unless much of the time we "keep the paper moving" when we are entitled to stop and think more. People do so when accepting lengthy terms and conditions of sales and software, when signing off on unread employee handbooks, when unswervingly following the advice of their agents, now including machines, and more. The practice is a consequence of information firehoses plus accumulated decision-making authority, in a formal sense,

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THE NATION. (Feb. 7, 2025), https://www.thenation.com/article/politics/courts-cant-stop-the-trump-musk-coup/ (predicting the Supreme Court will rubber-stamp a number of executive orders); Matt O'Brien, *Biden Admin Seeks More Immigration Judges to Rubber-Stamp Asylum Claims*, WASH. TIMES (Nov. 13, 2023), https://www.washingtontimes.com/news/2023/nov/13/biden-admin-seeks-more-immigration-judges-to-rubbe/ (imagining robotic asylum approvals).

[6] *See, e.g.*, Oren Bar-Gill & Barry Friedman, *Taking Warrants Seriously*, 106 NW. U. L. REV. 1609, 1613–14 (2012); Miguel F.P. de Figueiredo, Brett Hashimoto & Dane Thorley, *Unwarranted Warrants?*, 139 HARV. L. REV. 1959, 1964–66 (2025) (noting rubber-stamping claims, finding few empirical studies, and reporting results); *infra* text accompanying notes 151–156 (reviewing data).

[7] *See, e.g.*, Kevin K. Washburn, *Restoring the Grand Jury*, 76 FORDHAM L. REV. 2333, 2352 (2008) (characterizing conventional wisdom); *see also* Jordan M. Steiker et al., *The Problem of "Rubber-Stamping" in State Capital Habeas Proceedings*, 55 HOUS. L. REV. 889, 894 (2018) (reporting that a particular post-conviction county court sometimes "will not even change the heading" of opinions drafted by the State).

[8] *See, e.g.*, Edward R. Adams & William C. Price, Jr., *An Empirical Constitutional Crisis: When Magistrate Judges Exercise De Facto Article III Power*, 2023 MICH. ST. L. REV. 195, 200 (2023); Stephanos Bibas, *Regulating Local Variations in Federal Sentencing*, 58 STAN. L. REV. 137, 145 (2005) (characterizing "some districts"); Nora Freeman Engstrom et al., *Secrecy by Stipulation*, 74 DUKE L.J. 99, 106–07 (2024) (studying stipulated protective orders).

[9] *See* Texas v. United States, 809 F.3d 134, 172–76 (5th Cir. 2015); *infra* text accompanying notes 145 & 157.

[10] *See* Comm. on Oversight & Gov't Reform, *Systemic Waste and Abuse at the Social Security Administration* 15 (June 10, 2014), https://oversight.house.gov/wp-content/uploads/2014/06/2014-06-10-Systemic-Waste-and-Abuse-at-the-SSA.ALJs_.pdf; Ken Matheny, *The Social Security Disability Appeals Backlog Crisis and the Necessity of Radical Reform*, 45 CAP. U. L. REV. 361, 381–82 (2017) (noting charges that, in response to backlogs, the Social Security Administration imposed "unreasonable production goals" on its administrative law judges, some of whom met them "by awarding benefits in well over 90% of the cases they decided").

[11] *See infra* Part I.B.

[12] *See infra* Part I.C.

[13] Such claims are not restricted to one party. *See, e.g.*, *Will Democrats Rubber Stamp Biden's Mass Amnesty?*, NRSC (June 15, 2024), https://www.nrsc.org/press-releases/will-democrats-rubber-stamp-bidens-mass-amnesty-2024-06-15/; *President Trump Asks for Republican Rubberstamp on Elon Musk's Destruction*, APPROPRIATIONS COMM. DEMOCRATS (June 3, 2025), https://democrats-appropriations.house.gov/news/press-releases/president-trump-asks-republican-rubberstamp-elon-musks-destruction; Perry Stein et al., *Whistleblower: Emil Bove Misled Lawmakers about Case of NYC Mayor Eric Adams*, WASH. POST (July 29, 2025), https://www.washingtonpost.com/investigations/2025/07/29/emil-bove-nyc-mayor-adams-whistleblower/ (regarding the then-upcoming Senate confirmation vote on now-Judge Bove).

[14] *See, e.g.*, Levinson, *supra* note 3, at 83 (characterizing separation-of-powers arguments); Eric A. Posner & Cass R. Sunstein, *Institutional Flip-Flops*, 94 TEX. L. REV. 485, 492–93 (2016) (promoting continued efforts at institutional analysis nonetheless); David E. Pozen & Adam M. Samaha, *Anti-Modalities*, 119 MICH. L. REV. 729, 731–32 (2021) (contrasting conventional interpretive arguments with ordinary nonconstitutional cares).

without resources and willingness to exercise that authority personally across its full range.[15] Sometimes we can do better by offering more decision resources to decision makers, or by moving formal authority to where the power is. But sometimes neither option is either feasible or better than managing the situation through rubber-stamping. Often, although not always, such workarounds are lawful.[16]

Indeed, following someone else's judgment without serious second thought is both terrifically common and normatively ambiguous. It might comport with one's honorable duties, or instead their awful dereliction. It might further self-interested schemes, or public-regarding fixes. At the extremes, routinized following can abet either authoritarianism or democracy. There are toy parliaments with labels such as "Constituent Assembly" that look like legislatures but enjoy little or no power.[17] Their members might provide information or gain favors, but their policy views are supposed to mean nothing or next to it. Rigid follow-the-leader behavior in critical institutions, such as legislatures and judiciaries as well as organizations of civil society, hollow out constitutional democracies and rule of law values. Compare the King of England, who might seem superficially similar. His power in government is now inversely proportional to the length of his full title,[18] and everyone knows it.[19] Maybe this transparently ceremonial arrangement is wasteful or nostalgic, but it isn't very dangerous. It reflects a democratic transition.

We may feel similarly about the Electoral College in the United States. Early ideas about "discretion and discernment"[20] were overcome by politics and laws that induce electors to act as "trusty transmitters of other people's decisions."[21] Those moves increased democratic responsiveness to a broader electorate. Likewise, we may readily support a merely ministerial duty for the Vice President in the evaluation of electoral votes,[22] which minimizes glaring conflicts of interests for that particular official. Actually, a related feeling of possibility may reach any troublesome official decision maker whom you can imagine disempowered, including, if you side with the machines, human judgment generally.[23]

In any event, rubber-stamping is more often alleged than understood. Contentions about rubber-stamping in government, moreover, are sufficiently repeated and significant to develop frameworks for those settings. They implicate distinctive empirical, legal, and policy

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[15] *See generally* OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE 43–93, 169–82 (2014) (flagging accumulation of disclosure mandates that may become meaningless); TIM WU, THE ATTENTION MERCHANTS: THE EPIC SCRAMBLE TO GET INSIDE OUR HEADS 16–17, 28, 325, 343 (2016) (depicting information access technology and efforts to harvest user attention); Daryl J. Levinson & David E. Pozen, *Disconsents*, 126 COLUM. L. REV. (forthcoming 2026) (manuscript at 1, 4), https://ssrn.com/abstract=5113308 (claiming that, as liberal legal orders extended the role of consent, several large-scale developments made meeting the demand more difficult).

[16] *See* Daniel Farber, Jonathan Gould & Matthew Stephenson, *Workarounds in American Public Law*, 103 TEX. L. REV. 503, 515–16 (2025) (evaluating unconventional uses of procedures that comply with formal law but might conflict with law's purposes); Adam M. Samaha, *Workarounds in Law: User and Designer Perspectives*, 103 TEX. L. REV. ONLINE 178, 178 (2025) ("Workarounds are clever and sometimes little more."); Mark Tushnet, *Constitutional Workarounds*, 87 TEX. L. REV. 1499, 1503 (2009) (describing use of one constitutional text to overcome obstruction from another constitutional text).

[17] *See, e.g.*, JOHN SPARGO, BOLSHEVISM 199–200 (1919) (discussing Russia's Constituent Assembly); 10 EDWARD ELLIS & CHARLES HOME, THE STORY OF THE GREATEST NATIONS 1814 (1914) (alleging that Abdul Hamid II of Turkey created a toy parliament to placate European powers in 1876); Karl Loewenstein, *Law in the Third Reich*, 45 YALE L.J. 779, 788 (1936) (reporting the Reichstag was called to "rubber-stamp" Nazi measures infrequently and "only because the appearance of parliamentary ratification was desirable for political reasons"); Rory Truex, *The Returns to Office in a "Rubber Stamp" Parliament*, 108 AM. POL. SCI. REV. 235, 235–38 (2014) (examining China's National People's Congress). On using legal formalism to advance authoritarianism, see Kim Lane Scheppele, *Autocratic Legalism*, 85 U. CHI. L. REV. 545, 547–48, 560–71 (2018). Legislatures widely known to be powerless may be a tool for terrorizing people, as a kind of continuous surrender ritual. Transparency is no solution to that.

[18] *See* David Torrance, *The King's Style and Titles in the UK and the Commonwealth*, HOUSE OF COMMONS LIB.: INSIGHT (Jan. 31, 2024), https://commonslibrary.parliament.uk/the-kings-style-and-titles-in-the-uk-and-the-commonwealth/ (quoting a title with more words than this citation and parenthetical).

[19] He retains formal authority to appoint prime ministers, for instance, but has no significant power of choice. *See* CABINET OFFICE, THE CABINET MANUAL 3, 8 (1st ed. 2011); RODNEY BRAZIER, CONSTITUTIONAL PRACTICE: THE FOUNDATIONS OF BRITISH GOVERNMENT 11–12 (3d ed. 1999) (discussing royal theory and reality).

[20] THE FEDERALIST NO. 64, at 391 (John Jay) (Clinton Rossiter ed., 1961).

[21] Chiafalo v. Washington, 591 U.S. 578, 592 (2020); *see also Presidential Elections*, FAIRVOTE (Oct. 2024), https://fairvote.org/resources/presidential-elections/?section=faithless-elector-state-laws (counting over 23,000 electoral votes and only 90 "deviant" votes for president, mostly following the death of Horace Greeley).

[22] *See* 3 U.S.C. § 15(b)(1)–(2) (assigning the President of the Senate "solely ministerial duties," except as otherwise provided, not to "solely determine . . . the validity of electors").

[23] On whether people may rubber-stamp machines, conceptually, which I attempt to finesse, see note 147 below.

issues.[24] Compared to the relentless work on nondelegation doctrine for legislatures and agencies,[25] or inquiries into what counts as "independent judgment,"[26] we have far fewer resources for handling questions about maximally *de*pendent judgments in the form of rubber-stamping. We should keep asking about formal authority throughout government,[27] then do likewise for the law's regulation of power, developing realistic ways to evaluate allocations of both. As part of that effort, this Article addresses government decisions where actors with legal authority to reach final decisions follow, more or less automatically, the views of other actors who lack it.[28] The Article's interrelated contributions are conceptual, positive, legal, and normative.

Part I spotlights a few concrete rubber-stamping disputes that should be controversial. From such examples, Part II offers a working concept of the practice that distinguishes power from formal authority, while emphasizing boundary problems and empirical uncertainties.[29] The discussion also develops trade-offs for rubber-stamping arrangements, drawing from institutional design theories and ethnographies of bureaucracy.[30] In the abstract, rubber-stamping compares poorly with independent, delegated, or more collaborative judgments. However, a closer look at leading explanations for rubber-stamping finds not only self-interested schemes, but rational designs to achieve decision quality at tolerable costs, as well as second-best adaptations to legal constraints and work overloads. Unfortunately, outsiders may struggle to determine which account is most plausible. And often our core concerns are not about power diverging from authority, but rather the pattern of results or who exercises power. Eliminating rubber-stamping might have no effect on the relevant results or power allocations, and might make matters worse.[31] We should care about decision structures and procedures, but many ideas are bad or good regardless of who did the thinking and who did the signing.

Part III turns to current law on rubber-stamping in government, for which there is no existing *Restatement*. Overall, relevant law—including administrative law, constitutional law, legislative process, and other fields—seems largely permissive if not well-settled. We can find notable declarations against rubber-stamping or for independent judgment, particularly in adjudications.[32] But the messages are mixed. After all, law contributes to rubber-stamping by allocating formal authority with limited decision resources, and sometimes law is expressly open to rubber-stamping.[33] Where government rubber-stamping is legally disfavored, the demand for thoughtfulness is typically modest and difficult to enforce. There are legal footholds to require more but, tellingly, they have not been leveraged. Generally, the law's concern is that someone in government has adequate reasons for decisions, not that a designated official develops and endorses those reasons.

Part IV compiles system-design options and small-scale tactics that might reduce rubber-stamping, to the extent we remain concerned. The discussion taps a variety of sources in decision theory and experimental research. One simple message here is that nothing will work without adequate decision resources. Yet, supplying resources only creates opportunities for thoughtfulness, not guarantees. If we supplement those efforts, further trade-offs emerge. The

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[24] To the extent the analysis generalizes beyond government, such as conceptually and in the available anti-rubber-stamping options, the risks of underclaiming seem acceptable.

[25] *See infra* Part III.C (distinguishing nondelegation arguments from rubber-stamping analysis).

[26] *See infra* notes 82–84, 107, 233–239 & accompanying text.

[27] That territory is not fairly settled even as to some basic public law questions. These include the President's legal authority to reallocate his authority, *see* Ashley S. Deeks, *(Sub)delegating National Security Powers*, 172 U. PA. L. REV. 2053, 2059, 2063 (2024), and to direct the decisions of agency officials within their express statutory authority, *see, e.g.*, Rosenblum, *supra* note 4, at 7–8; Kevin M. Stack, *The President's Statutory Powers to Administer the Laws*, 106 COLUM. L. REV. 263, 267 (2006) (opposing implied directive authority); Cary Coglianese, *The Emptiness of Decisional Limits: Reconceiving Presidential Control of the Administrative State*, 69 ADMIN. L. REV. 43, 74–81 (2017) (advocating formalistic treatment of agency official sign-offs).

[28] "Government" must be the formal decision maker, but that term covers institutions, employees, and officers.

[29] *See infra* Part II.A.2 & Table 1; text accompanying notes 87–90.

[30] *See infra* Part II.A.3 & Table 2.

[31] *See infra* Part II.B.1; text accompanying notes 123–126.

[32] *See infra* Part III.A.1.

[33] *See infra* Part III.A.2.

most effective interventions tend to be the costliest (such as thoughtfulness audits and live explanations[34]), while the cheapest tricks usually have limited effects (such as personal sign-offs and waiting periods[35]). Some interventions will backfire, such as providing decision resources that create easy off-ramps for power. Moreover, the spread of cheap machines that automate reason-writing makes thoughtless government decisions easier to hide and harder to stop.[36] Combined, these considerations seriously limit—and focus—the case against rubber-stamping in government. A closing section consolidates the primary lessons.[37]

Before proceeding, two caveats. First, "rubber-stamping" covers a variety of unthoughtful following, but a workable version of the idea will not cover all thoughtlessness or all following. Following someone else is only one type of simplified decision making, with each version bearing different trade-offs.[38] Furthermore, not all following involves rubber-stamping, let alone rubber-stamping in government. An official with authority following other actors without reconsideration does not cover every kind of loyalty, peer effect, or herd behavior within groups.[39] The kind of rubber-stamping explored here suggests even less thoughtfulness, and it requires such thoughtlessness from actors with authority to decide.

Second, there is a risk we will forgive rubber-stamping too easily in the end, despite all our loud allegations and denials. When we aren't simply responding to results rather than decision structures and procedures, we might over-valorize actors who find ways to offload work within a culture that prizes speed, appearances, intuitions, and simplicity.[40] Rapid-fire sign-offs surround us, in markets and elsewhere, and our technology makes it simpler than ever to transfer power over decisions. With that familiarity, we might adapt too readily to overloads of formal authority and rationalize too quickly the techniques of convenience—then forfeit valuable parts of government that are supposed to make decision making hard, not easy. I have attempted to guard against that leaning in the effort below, but probably imperfectly.

Fortunately, rubber-stamping entails thinking at some stage. Deciding to establish a rubber-stamping arrangement requires thought, maybe deep thought. And those arrangements are not all inevitable. Equally significant, our own following of government decisions is related to whom, when, and how the government follows. Respect for governments should partly depend on our evaluations of how governments manage rubber-stamping arrangements.[41] To that end, the primary goal of this project is to help us think harder about official thoughtlessness. That will test our tolerance for ambiguity and measured judgments. At times, a kind of rubber-stamping is good, practical, and lawful, or should be. When it isn't, attempts to prevent rubber-stamping, bad as it sounds, sometimes are not worth the effort. Those conclusions are not simple or definitive, but they are useful. They are based on the right questions. And we should be prepared for the issues to become more difficult as we think harder.

I. CONCERNS, RECONSIDERED

Begin with a few provocative examples, old and new. Examining them will quickly deliver a sense of the relevant concepts and concerns, as well as some second thoughts. Rubber-stamping involves those with formal authority to decide not exercising actual power to decide.[42] But that simple idea understates the challenges, conceptual and normative. Sensible evaluation of rubber-stamping arrangements requires more than intuition, and we will gain an analytical

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[34] *See infra* Part IV.A.2 & IV.B.4.

[35] *See infra* Part IV.B.1–2.

[36] *See infra* Part II.C & IV.B.4.

[37] *See infra* Part V.

[38] *See infra* text accompanying notes 98–102.

[39] *See, e.g.*, Cass R. Sunstein, *Deliberative Trouble? Why Groups Go to Extremes*, 110 YALE L.J. 71, 77–78 (2000) (regarding information and reputation within social groups).

[40] On stresses of pace and countervailing movements, see Maria João Silvestre et al., *Slow Work: The Mainstream Concept*, 13 SOC. SCIENCES 178 (2024).

[41] The topic of following or resisting official decisions involves authority and power, too, but it concentrates on the effects of official decisions more than their inputs. That divide might be fragile, and we must choose frames for relevant decisions, *see infra* text accompanying notes 94–97, but we can start with a sense of difference between inputs and consequences.

[42] *See infra* text accompanying notes 87–90.

edge at the outset by flagging and then reconsidering our misgivings.

A. Stamped Ballots

Among the odd spin-offs from an earlier Age of Invention was the physical rubber stamp. The exact date of the tool's creation appears unknown,[43] but the device certainly generated legal problems. Personalized stamps allowed people to mass-produce facsimiles of their hand-drawn signatures and to distribute power to make those marks. If legal institutions counted rubber-stamped marks as valid signatures, people and their agents could sign off on deals, payments, and other decisions more easily, while the risks of profligate approvals and fraud would increase. The laws of evidence, contract, property, and other fields confronted these issues by the late 1800s.[44] Probably not coincidentally, the metaphorical charge of "rubber-stamping" seems to have entered popular discourse at about that time, as social, economic, and government systems grew and intertwined.[45] In those accusations, the stamp signified a decision process that was all too convenient, threatening excessive rigidity or mindless deference.

One legal contest arose from an obscure 1902 election for county school superintendent. The canvassing board's tally left the candidates separated by three votes, but a local election judge's shortcut became the basis for discarding hundreds of ballots.[46] A statute declared that, once a prospective voter's name was found on the registration list, an election judge was supposed to distribute a ballot to the voter and "such judge shall indorse his initials" on the back.[47] One R.V. Groce decided to stamp his initials, then lent his stamp to another election judge to use while Groce was absent.[48] In reaction, the Illinois Supreme Court excluded all ballots from that precinct. Hoping (perhaps against hope) to prevent fraud in Illinois elections, the Court concluded the law favored manual writing over routinized stamping,[49] and that one official's endorsement was not as good as another's: "The statute is, not only that the initials of one of the judges shall be placed upon the ballot, but that the particular judge who hands the ballot to the voter shall indorse his initials thereon."[50]

Literal rubber-stamping simplified the work, but our interest is in a kind of metaphorical rubber-stamping: Not merely an official rigidly applying rules of decision,[51] but an official routinely following someone else's judgment, perhaps regardless of their basis for decision.[52] On that score, we are entitled to conflicting reactions about Groce's conduct. Yes, the law best interpreted sometimes requires particular actors to retain power beyond routinized sign-offs, even for ministerial decisions. And Groce simplified his work non-transparently. Once he

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[43] *See* HOLLAND THOMPSON, THE AGE OF INVENTION 169, 172 (1921) (discussing vulcanization before 1850); The Southwell Co., *A Brief History of the Rubber Stamp*, 4 J. FORENSIC DOC. EXAM. 18, 18–19 (1991) (noting evidence that rubber stamps were used as signature facsimiles during the Civil War).

[44] *See, e.g.*, Adelbert Moot, *Written Evidence and Alterations*, 25 HARV. L. REV. 691, 692 (1912) (lamenting busy people resorting to rubber-stamped signatures); *Agency—Agent's Liability to Third Persons—Promissory Note Signed by Authorized Agent*, 23 HARV. L. REV. 60, 60–61 (1909). Similar legal challenges appeared for other technology such as telegraphs, fax machines, and e-signatures. *See, e.g.*, Howley v. Whipple, 48 N.H. 487, 488–90 (1869) (dealing with telegraph messages); Benjamin Wright, *Making Electronic Signatures a Reality*, 15 COMPUT. L. & SEC. REP. 401, 401 (Nov./Dec. 1999) (characterizing the handwritten signature as a ceremonial event to warn of gravity and show voluntariness more than identity).

[45] *E.g.*, SPARGO, *supra* note 17, at 199–200 (reporting in 1919 and covering Russia's Constituent Assembly); JAMES OPPENHEIM, THE NINE-TENTHS: A NOVEL 5 (1911) (depicting a new "rubber-stamped neighborhood, of which each street was a brownstone duplicate of the next"); P. McArthur, *Rubberstampism*, *in* LIFE, vol. 38, at 112 (John Ames Mitchell ed., 1901) (referencing the "stony-hearted cashier," but also predictable straight-ticket voters and systematic, reflexive, uncreative replication).

[46] *See* Choisser v. York, 71 N.E. 940, 940, 943–44 (Ill. 1904). Several issues were raised in litigation, and these discarded ballots did not flip the outcome.

[47] 2 ILL. COMP. STAT. ANN. ch. 46, § 22, at 1688 (1896).

[48] *See Choisser*, 71 N.E. at 943–44.

[49] *See id.* at 944. Perhaps handwritten initials increased the chances of identifying dishonest and careless officials. *See Elections—Indorsement of Ballots with Rubber Stamp*, 21 HARV. L. REV. 287, 287 (1908). Additionally, perhaps writing by hand tends to slow and deepen the writer's thinking—although results are partly mixed in studies of handwritten and computer-entered responses. *See infra* note 313; *see also* Ian Ayers, *Regulating Opt-Out: An Economic Theory of Altering Rules*, 121 YALE L.J. 2032, 2069 (2012) (noting that "to reduce error, the law might require certain provisions to be separately initialed," but "repetition can be at odds with mindfulness").

[50] *Choisser*, 71 N.E. at 944.

[51] *See infra* text accompanying notes 98–100.

[52] *See infra* text accompanying notes 87–90.

passed along his stamp, observers would be misled if they thought his initials showed the identity of the actual ballot-distributor. In fact, we may wonder whether Groce was even metaphorically rubber-stamping anything once his colleague got the stamp.

But presumably Groce retained legal authority to distribute ballots—and perhaps the power to take back the stamp and the task[53]—while the job was done in his name. Moreover, Groce easily could have been made accountable for any bad distribution results associated with his initials. Sometimes that safeguard is enough. Transferring decision power can make life easier for one official, access another official's capacity, and reach the same or better results for third parties. For all we know, Groce achieved all that. He reallocated a task to an official of the same rank, whose judgment the Court did not question. And the direct effect of the Court's decision was not to discipline Groce or anyone else, but to ignore hundreds of voters' ballots without showing any error in distribution. Are such legal constraints justified? When and why?

B. Auto-Penned Decisions

The stakes of metaphorical rubber-stamping can be much higher and the allegations more sensational. Fast-forward to modern dust-ups over presidential autopens. Recently, critics of the Biden Administration alleged that important documents such as official pardons were "signed" on the President's behalf by staffers with a machine, perhaps without the President's consent.[54] Extreme versions of those attacks might be unfounded, and former President Biden has assured the public that he himself made the decisions.[55] Still, this is not the first round of complaints that a White House made decisions in the president's name without the president's deliberation. The charge also arose during the second Reagan Administration.[56] Outsiders may be troubled by these stories, even if the Department of Justice is correct that presidents may lawfully direct subordinates to autopen bills into law.[57] However signified, surely some presidential decisions should be made, in a meaningful sense, by the president personally. And surely constitutional law, best interpreted, sometimes requires that much from the president and other officials.[58]

But demanding that every official deliberate deeply over every decision they are authorized or required to make is wildly unrealistic. In this respect, technologies like autopens or electronic signatures are mostly sideshows. A brute fact of contemporary governance is that staffers sometimes not only "sign" documents on behalf of presidents and other officials, they make underlying decisions, to whatever extent. No modern president is able, let alone rationally willing, to think hard about all the final decisions their signatures reflect.[59] In fact, capacity

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[53] *See infra* text accompanying note 93 (addressing "take-backs").

[54] *See, e.g.*, Jason Lalljee, *What to Know About Autopen, Which Trump Claims Nullifies Biden Pardons*, AXIOS (Mar. 17, 2025), https://www.axios.com/2025/03/17/what-is-autopen-biden-pardons. President Trump ordered an investigation earlier this year. *See Reviewing Certain Presidential Actions*, THE WHITE HOUSE (June 4, 2025), https://www.whitehouse.gov/presidential-actions/2025/06/reviewing-certain-presidential-actions/. The majority staff of a congressional committee issued a report this Fall. *See* H. COMM. ON OVERSIGHT & GOV'T REFORM, THE BIDEN AUTOPEN PRESIDENCY i, iv–v, 78, 83 (Oct. 28, 2025) (alleging staff abuse of the autopen and lack of documentation that the president made certain decisions, and questioning whether the president was aware of criminal backgrounds of clemency candidates).

[55] *See* Rebecca Falconer, *"Ridiculous": Biden Hits Back at Trump Over Autopen Investigation*, AXIOS (June 5, 2025), https://www.axios.com/2025/06/05/biden-trump-autopen-investigation-mental-fitness.

[56] In one version of events, some White House staffers concluded President Reagan was not interested in reading briefings or otherwise doing the job, and "[t]hey felt free to sign his initials on documents without noting that they were acting for him." JANE MAYER & DOYLE MCMANUS, LANDSLIDE: THE UNMAKING OF THE PRESIDENT 1984–1988 ix (1988). For other autopen complaints, see Frank James, *Obama's Autopen "Signing" of Patriot Act Raises Eyebrows, Has Unlikely Ally*, NPR (May 27, 2011, at 17:47 ET), https://www.npr.org/sections/itsallpolitics/2011/05/27/136724009/obamas-autopen-signing-of-patriot-act-raises-eyebrows-has-unlikely-ally.

[57] *See Whether the President May Sign a Bill by Directing that His Signature Be Affixed to It*, 29 Op. O.L.C. 97, 126 (2005) [hereinafter *2005 OLC Opinion*].

[58] *See id.* at 97 ("[W]e are not suggesting that the President may delegate the decision to approve and sign a bill[.]"); *see also* Kennedy v. Braidwood Mgmt., Inc., 145 S. Ct. 2427, 2456 n.6 (2025) (stating "delegation is not an option" where the Constitution requires an agency head to "personally perform a particular function").

[59] *Accord* Anya Bernstein & Cristina Rodríguez, *The Accountable Bureaucrat*, 132 YALE L.J. 1600, 1626, 1679–80 (2023) (reporting that in "many situations" interviewed agency officials concluded the president lacked specific policy priorities). On pardons, consider President Trump's remarks on Changpeng "CZ" Zhao. *See* Osmond Chia, *"No Idea Who He Is," Says Trump*

constraints on thoughtfulness are real for a large set of officials, from low to high on the org charts, given the large portfolios of responsibilities assigned to them. To take just one clump of decisions, final agency rules are sometimes hundreds of pages long and filled with technical terms, predictions, regression tables, and even mathematical equations.[60]

Autopen and electronic signature usage are reflections of more important binds in government: Particular officials are supposed to be "the deciders" for an unrealistically large set of decisions, yet they often decide to follow the judgments of others without much or any second thought—whatever tech they use to sign off. Understanding that decision-making capacities are limited and decision environments may feel overloaded, we might concede that sometimes rubber-stamping is predictable and tolerable, even if partly regrettable. We should further ask whether the situation would be any better if these officials did not sign off at all, and instead the decisions were fully delegated to other actors. When and why?

C. DOGE-ed Agencies

When officials are not too overloaded for thoughtfulness, the reasons for offloading power might be much worse than achieving quality results. That is the dim view of DOGE. Early in the second Trump Administration, critics accused the U.S. Department of Government Efficiency Service (DOGE) and then-presidential advisor Elon Musk of unlawfully accessing private data, firing government employees, canceling government grants and contracts, and even shuttering the U.S. Agency for International Development (USAID).[61] Musk and part of DOGE were formally established within the Executive Office of the President, not within the relevant agencies.[62] When the Administration's defenders countered that DOGE merely made recommendations and appropriate agency officials preapproved or ratified these ideas,[63] many observers found the story unbelievable—and inconsistent with brash credit-claiming on *X*.[64] The accusations cut hard, tapping into fears that shrouded forces were infiltrating agency systems and callously dictating major policy changes.

Rubber-stamping arrangements that merely circumvent valuable regulations and hide misconduct are no good. But given the blizzard of action and limited information about official conduct in the Trump Administration, it wasn't always apparent who was running the wood chipper. True, many agency officials might have routinely approved whatever DOGE or Musk demanded in the opening months.[65] But perhaps sometimes those actors simply agreed with each other. And some agency heads might have staked out areas where they made the final decisions regardless of DOGE.[66] On the flipside, perhaps some of DOGE's decisions were directly implemented by DOGE workers without any agency official in the loop at all. None

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After Pardoning Crypto Tycoon, BBC (Nov. 3, 2025), https://www.bbc.com/news/articles/cn7ek63e5xyo (reporting that the President stated he did not know who Zhao was and was told that Zhao had been the target of a witch hunt).

[60] *See* 89 Fed. Reg. 27842, 28203 (2024) (prescribing a fuel economy formula with eleven defined variables); *see also infra* note 255 (providing other examples).

[61] *See* Does 1-26 v. Musk, 771 F. Supp. 3d 637, 662, 665 (D. Md. 2025); New Mexico v. Musk, 769 F. Supp. 3d 1, 6–7 (D.D.C. 2025); Citizens for Resp. & Ethics in Wash. v. U.S. DOGE Serv., 769 F. Supp. 3d 8, 22–26 (D.D.C. 2025).

[62] *See* Exec. Order 14158, § 3(a)–(b), 90 Fed. Reg. 8441, 8441 (2025); Decl. of Joshua Fisher, Dir., White House Office of Admin. ¶¶ 3–4, 6, New Mexico v. Musk, No. 1:25-cv-429 (D.D.C. Feb. 17, 2025) [hereinafter Fisher Decl.]. Agency heads were ordered to establish DOGE Teams within their respective agencies, but also to ensure that DOGE Team Leads coordinated with the Executive Office of the President's DOGE. *See* Exec. Order 14158, § 3(c).

[63] *See, e.g.*, Memo. in Supp. of Def.'s Mot. to Dismiss, New Mexico v. Musk, No. 1:25-cv-429 (D.D.C. Mar. 7, 2025) (arguing for "a formalist inquiry" into whether a person lacks an office and de jure authority, for Appointments Clause purposes); *cf.* Fisher Decl., *supra* note 62, at ¶ 5 (representing that Musk had "no actual or formal authority to make government decisions himself").

[64] *See, e.g.*, Elon Musk (@elonmusk), X (Feb. 3, 2025, at 01:54 ET), https://x.com/elonmusk/status/1886307316804263979 ("We spent the weekend feeding USAID into the wood chipper.").

[65] *See* Benjamin Wallace-Wells, *What Did Elon Musk Accomplish at DOGE?*, THE NEW YORKER (June 16, 2025), https://www.newyorker.com/magazine/2025/06/23/what-did-elon-musk-accomplish-at-doge (quoting an anonymous official in foreign aid asserting the Administration used DOGE as an "instrument in frankly unlawful ways to carry out its will," and another anonymous source claiming Musk sometimes referred to Members of Congress as "N.P.C.s"). Reporting on the decline of DOGE includes Sophia Cai & Daniel Lippman, *Inside the DOGE Succession Drama Elon Musk Left Behind*, POLITICO (Nov. 21, 2025, at 10:01 ET), https://www.politico.com/news/magazine/2025/11/21/doge-elon-musk-succession-00641110.

[66] *See* Chris Cameron & Maggie Haberman, *Some Trump Appointees Resist Musk's Ultimatum to Federal Workers*, N.Y. TIMES (Feb. 23, 2025), https://www.nytimes.com/2025/02/23/us/politics/elon-musk-email-federal-workers.html (regarding demands that government employees summarize their accomplishments from previous weeks).

of that behavior—thoughtful agreement, effective resistance, independent action—would involve rubber-stamping.[67] That is true no matter how bad or lawless the resulting decisions. Part of what makes these controversies noteworthy is the uncertainty surrounding official behavior, at least at the margins, plus the debatable normative significance of officials with formal authority signing off on DOGE's views. For supporters or opponents of a robust USAID, should it matter much who signs the paperwork to incapacitate the agency? Why, exactly?

II. CONCEPTS AND THEORY

Having introduced critical questions about rubber-stamping, we can better specify the concept, compare alternatives, and develop explanations and justifications. The discussion below summarizes prominent theories for choosing decision makers, then turns to the structures within which decision makers operate. Among the structural options are rubber-stamping arrangements, which depend on splitting formal authority from actual power to decide. With the concepts sketched, we can appreciate the difficulties in identifying those arrangements and, throughout, generalize about the trade-offs.

A. Building Decision Systems

1. Choosing decision makers

To design a respect-worthy system, we may rely on several familiar reasons from public law and institutional design for allocating subsets of decisions to subsets of actors. The allocations should fit with the rules or standards for making those decisions, the surrounding decision structure, and available decision resources. There is no fixed place to begin—who decides, how they decide, and the resources they enjoy are related questions.[68] But we can motivate who-decides inquiries by assuming the relevant decisions are relatively difficult, in that they involve substantial uncertainty or disagreement about relevant values, facts, predictions, or good judgment more broadly. Assume further that we lack an acceptable, simple rule for those decisions and that they are better made with a relatively flexible standard or perhaps a complex rule.[69] That increases the urgency of choosing suitable decision makers.

Most optimistically, those with the power to allocate decisions will choose actors to enhance decision quality at acceptable decision costs,[70] based on perceptions of skills and values. We might rationally prefer actors who already have relevant information, expertise, and judgment,[71] share our policy preferences,[72] and are self-motivated.[73] Crucially, however, we can remain concerned with decision quality and cost without agreed-upon measures of success. The allocation may include the task of trying to decide what amounts to success.[74] Relatedly, sometimes we should allocate decisions to increase learning rather than to exploit existing knowledge. Responsibility for making decisions can yield new capabilities through study and experimentation, for the actor's own good as well as others'.[75]

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[67] *See infra* Part II.A.2.

[68] For example, the standards and structures for decision making will work better for, and will attract, some actors more than others, and their likely behavior should influence the choice of standards and structures. These features also can influence the mix of decisions fielded.

[69] *See* DANIEL KAHNEMAN, OLIVIER SIBONY & CASS R. SUNSTEIN, NOISE: A FLAW IN HUMAN JUDGMENT 351–53 (2021) (explaining that disagreement and uncertainty may provide reasons to adopt discretionary standards).

[70] *See, e.g.*, NEIL K. KOMESAR, IMPERFECT ALTERNATIVES: CHOOSING INSTITUTIONS IN LAW, ECONOMICS, AND PUBLIC POLICY 5 (1994) (emphasizing trade-offs across institutions); David L. Weimer, *Institutional Design: Overview*, *in* INSTITUTIONAL DESIGN 1, 12 (David L. Weimer ed., 1995) (examining designs within an institution); Cass R. Sunstein, *Foreword: Leaving Things Undecided*, 110 HARV. L. REV. 4, 16, 19 (1996) (promoting consideration of decision costs and error costs, even without a unitary metric for consequences).

[71] *See, e.g.*, David Epstein & Sharyn O'Halloran, *The Nondelegation Doctrine and the Separation of Powers: A Political Science Approach*, 20 CARDOZO L. REV. 947, 960–66 (1999) (applying principal/agent trade-offs).

[72] *See, e.g.*, Jonathan Bendor et al., *Theories of Delegation*, 4 ANN. REV. POL. SCI. 235, 266 (2001) (discussing the ally principle and its qualifications, such as for credible commitments).

[73] *See infra* Part IV.A.3 (noting trade-offs in selecting for self-motivation).

[74] *See* KAHNEMAN, SIBONY & SUNSTEIN, *supra* note 69, at 226 (distinguishing verifiable from unverifiable expertise).

[75] *See* Matthew C. Stephenson, *Information Acquisition and Institutional Design*, 124 HARV. L. REV. 1422, 1425–27 (2011) (emphasizing production and effective use of expertise); Elizabeth Magill, *Agency Self-Regulation*, 77 GEO. WASH. L. REV. 859, 890 (2009) (similar); *see also* KAHNEMAN, SIBONY & SUNSTEIN, *supra* note 69, at 225–35 (emphasizing open-mindedness as

Less fortunately, decision allocations may follow impressions of practical necessity under existing law, resources, or politics. Our best interpretation of law may identify one person, group, or institution over others for a given decision. Moreover, everyone is resource-constrained in time, information, and other support. Nobody can thoughtfully make every decision that affects them, so resources and priorities may recommend that we assign many decisions to nonideal actors who are available for the work. As well, constructive politics may drive decision allocations. To build coalitions and increase acceptance of results, groups might choose to include certain actors in a decision loop insofar as they are trusted or valued by key constituencies.[76] Allocations for politics or learning might recommend special hesitation before reallocating those decisions, however transparently.

These felt constraints should be defended at some point.[77] The situation might be less stable than we thought or might have become fluid. Likewise, quality and cost predictions should not be irreversible. And some current decision makers, with their experience, are well-situated to judge who is now fit for the work. And without doubt, certain decision allocations are not even arguably quality-driven from a social perspective.[78] Sometimes from demands of strong forces in society, sometimes from voluntary agreements among insiders, decisions end up controlled by those who favor themselves and disadvantage many others. Yet knowing that some decision allocations are unjustifiable suggests we can begin to mark allocations that are acceptable, if not first best.

2. Choosing decision structures

Those are typical reasons for choosing among potential decision makers, but they cannot identify or normatively cut between rubber-stamping arrangements and the alternatives. To understand the options, we need to outline varying structures for decision making that address relationships among multiple actors. The structural possibilities and trade-offs are numerous, yet some options are fragile or shade into others. So, we should test proposed boundaries and consider differences of degree as we try to restate useful groupings and estimate their effects. Rubber-stamping is supposed to stand out because of a peculiar separation between actors with *formal authority* and those with *actual power*—basically, power on paper distinguished from power in fact.[79] The idea is that an allocation of formal authority to make a set of final decisions will not necessarily track the persons who influence those decisions. Theorists do not always specify how to locate authority.[80] But for our purposes, we can resort to *legal* authority to decide, in a thin sense, without asking whether people are persuaded or morally obligated to comply.[81] Examples include a statute we interpret to mean that particular officials are authorized to issue final orders with each applicant's grant amount, or that the agency head is authorized to promulgate regulations that set grant levels—and not, say, DOGE or the applicants

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well as training, knowledge, and intelligence).

[76] *See, e.g.*, David Fontana, *Government in Opposition*, 119 YALE L.J. 548, 564–67, 581–82 (2009); Samuel Issacharoff, *Constitutionalizing Democracy in Fractured Societies*, 82 TEX. L. REV. 1861, 1863–65 (2004).

[77] *See infra* Part II.B.2 (regarding asserted necessity).

[78] *See infra* Part II.B.3 (regarding schemes).

[79] *See, e.g.*, Philippe Aghion & Jean Tirole, *Formal and Real Authority in Organizations*, 105 J. POL. ECON. 1, 2–3 (1997); Peter Bachrach & Morton S. Baratz, *Two Faces of Power*, 56 AM. POL. SCI. REV. 947, 948–49 & n.11 (1962) (emphasizing power over which issues are considered); Levinson, *supra* note 3, at 57 ("[T]he proximate 'doer' is not necessarily or even usually the 'decider' of what should be done.").

[80] Economic theory, for one, might use law-like terms without necessarily adopting law's details. *See* Aghion & Tirole, *supra* note 79, at 1–2 (describing authority as "the right to select actions" affecting an organization which "may" result from asset ownership or contract); Oliver Hart, *An Economist's Perspective on the Theory of the Firm*, 89 COLUM. L. REV. 1757, 1765 & n.33 (1989) (comparing without adopting law's property rights). Even "final decision" is worth attention. The effects of many decisions can be altered even though we cannot literally eliminate a previous decision. For finality in administrative law, which is a useful starting point, see *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (relying on consummation of a process and legal consequences).

[81] "Authority" instead may reference a form of power that includes legal authority. *Cf.* MAX WEBER, ECONOMY AND SOCIETY: A NEW TRANSLATION 341–42 (Keith Tibe ed., 2019) (discussing types of rule and influence in relation to "legitimacy"). Another thick idea of "authority theories" involves the question whether the status of law adds a good moral reason to believe or behave in accord with law. *See* Larry Alexander & Lawrence B. Solum, *Popular? Constitutionalism?*, 118 HARV. L. REV. 1594, 1605 (2005) (distinguishing legitimate authority from de facto power); Adam M. Samaha, *Dead Hand Arguments and Constitutional Interpretation*, 108 COLUM. L. REV. 606, 630 (2008) (summarizing theories). I am not relying on those thicker ideas here.

themselves. Officials with formal authority to decide are not necessarily all, or even any, of the actors who influence those decisions. An authority/power distinction allows us to break out ideas about decision structures, including not only rubber-stamping but independent judgments, delegated judgments, and collaborative judgments generally (Table 1).

TABLE 1: SOME DECISION STRUCTURES, SIMPLIFIED

	Actor 1	*Actor 2*
Independent Judgments	Authority & Power	
Delegated Judgments		Authority & Power
Rubber-Stamping	Authority	Power
Collaborative Judgments	Authority & Power	Authority & Power

Notes: (1) Independent judgments are like delegated judgments, with the latter indicating a transfer of authority and power. (2) Rubber-stamping varies by whether an actor may take back power; collaborative judgments include arrangements where some actors have authority plus power, while other actors have only power. Table 1 omits those options; Table 2 adds them.

Beginning with the simplest structure, we may and often do ask one actor to exercise *independent judgment* to make decisions on the merits.[82] The actor is supposed to conduct their own study and evaluation of options rather than following someone else's views.[83] Here, independence is relative to other actors in reaching the merits, as opposed to prescribing the rules or standards of decision, which might or might not be constrained. Either way, the notion is that the actor is not a follower on final judgment. A decision maker's freedom from others is, however, easily overstated. If we open the frame wide enough or at the right angle, we will find a variety of influences on our judgments from countless actors who shaped our beliefs, assumptions, and thinking. Advocates submit evidence and arguments to officials, whose predispositions and cognitive styles had upstream influences, and who operate within larger social systems.[84] To capture many real-world examples of independence, we need to allow for influences of some kind and degree external to decision makers who nonetheless retain real power.

With that partly fuzzy sense of independent judgment, we can quickly restate an idea of *delegated judgment*. Albeit not necessarily popular in law, one technical notion of a delegation adds another actor to the picture but keeps authority and power together.[85] We can say people "delegate" a decision by transferring both authority and power from one actor to another. The same complications of independent judgment apply, and the combined transfer might be difficult to accomplish. Surely formal authority is not empirically unrelated to influence, but the relationship is not one-to-one either. And even successfully delegated decisions might be redelegated.[86] Anyway, we can think about delegation as a form of independent judgment, just

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[82] "Actor" may include a group or an institution. "On the merits" merely denotes a decision of interest and for which we are making yet other decisions—about decision makers, standards, and structures.

[83] *See Independent*, CAMBRIDGE DICTIONARY, https://dictionary.cambridge.org/us/dictionary/english/independent ("[N]ot influenced or controlled in any way by other people, events, or things."); *see also* Philip Hamburger, Chevron *Bias*, 84 GEO. WASH. L. REV. 1187, 1201–02 (2016) (attempting to distinguish a duty of merely considering arguments from the practice of deferring to, giving respect to, or otherwise relying to some degree on the views of government); Michael Stokes Paulsen, *The Most Dangerous Branch: Executive Power to Say What the Law Is*, 83 GEO. L.J. 217, 301–03 (1994) (distinguishing independent judgment from both final say and being told what judgment to reach).

[84] *See, e.g.*, LAWRENCE BAUM, JUDGES AND THEIR AUDIENCES 50–157 (2006) (compiling audiences and their potential influences on judicial decisions); Adam M. Samaha, *Starting with the Text—On Sequencing Effects in Statutory Interpretation and Beyond*, 8 J. LEGAL ANALYSIS 439, 552–54 (2016) (exploring upstream influences on interpretation).

[85] "Delegation" is certainly associated with an allocation of formal authority, *see infra* Part II.B.1 (regarding organizational economics), and sometimes we assume for sake of analysis that power follows from delegation of authority unless intentionally offloaded, *see, e.g.*, Bendor et al., *supra* note 72, at 240 (summarizing game-theoretic models). In law, however, analysis of "delegation" often concentrates on formal authority while actual power might be unregulated or unaddressed. *See infra* Part III.C.

[86] *Accord* Patrick Bolton & Mathias Dewatripont, *Authority in Organizations*, *in* THE HANDBOOK OF ORGANIZATIONAL ECONOMICS 342, 352 (John Roberts & Robert S. Gibbons eds., 2012) (noting problems of credible delegations where intra-organizational contracts are unenforceable); Jennifer Nou, *Subdelegating Powers*, 117 COLUM. L. REV. 473, 485, 500–07 (2017) (observing that agency subdelegations differ along a continuum of credibility, and developing options for increasing perceived credibility).

with the suggestion that someone has somehow moved authority and power from somewhere else.

Now a type of *rubber-stamping* pops out, with multiple actors plus a separation of authority from power. Although the label may reference superficial or inflexible decision making generally, one typical use of "rubber-stamp" indicates that an actor with formal authority is not exercising actual power to decide on the merits.[87] In other words, an actor makes *an authoritative judgment without an independent assessment of the options*,[88] or at least without a serious assessment,[89] *by following the views of another actor within some range of decisions*. The decision on the merits is not final unless and until the actor with formal authority somehow gives the signal, which may be an important condition, but other actors routinely if not always choose the result. This conception of rubber-stamping will not prescribe who should have authority or power, or teach us how to keep them separate, but that's the idea.[90] It's the idea in play with allegations that agencies were captured by organized interests or DOGE, that Congresses caved to presidents, that presidents abandoned their judgment to staffers yet signed off, and so on.

This arrangement suggests thoughtlessness for one actor in one respect: the formal decision maker insofar as that actor merely signs off and moves on. This simplification should be put in perspective. First, formal decision makers may struggle over the propriety of rubber-stamping,[91] similar to law's occasionally complex deference doctrines.[92] Rubber-stamping arrangements may be adopted thoughtfully, not only mindlessly or by compulsion, which racks up decision costs on that score. Second, rubber-stamping can promote deep thinking on the merits by those who exercise power. Some formal decision makers are too overloaded with work to be thoughtful, while other actors have the will and the capacity. Therefore, rubber-stamping arrangements will not necessarily save systems any decision costs in total, compared to independent judgments or delegations that cut out other actors.

Relatedly, rubber-stamping arrangements vary by whether and when "take-backs" are possible. In one version, the actor with formal authority lacks discretion or power to stop rubber-stamping and (re)assert influence over the relevant decisions—like always giving infinite weight or automatically deferring to another actor's view. But we can soften the lines between authority and power. In other versions of rubber-stamping, the actor with formal authority may check the results of the arrangement and sometimes take full control of a decision, pause the process to gather more information, or offer feedback and guidance for future decisions.[93] The details of take-back conditions matter, and the variations offer a range of trade-offs. For instance, rubber-stamping arrangements with very easy take-backs operate more like a stream of independent judgments by the formal decision maker.

Adding slippage, rubber-stamping depends on different actors working the same decisions, not different decisions. Identification of one or more decisions can be debatable or subjective.[94] Perhaps most of us will see different decisions when a notary helps someone complete a transaction: A good notary carefully checks one's ID, watches the signing, and

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[87] *See, e.g.*, *supra* note 5 (collecting media sources); *Rubber-stamp*, THE BRITANNICA DICTIONARY (2025), https://www.britannica.com/dictionary/rubber%E2%80%93stamp (including "to approve or allow (something) without seriously thinking about it," as in, "[t]hey expected the proposal to be rubber-stamped by the legislature"); *Rubber-stamp*, CAMBRIDGE DICTIONARY (2025), https://dictionary.cambridge.org/us/dictionary/english/rubber-stamp (including "to officially approve a decision or plan without thinking about it").

[88] *See* MICHAEL LIPSKY, STREET-LEVEL BUREAUCRACY: THE DILEMMAS OF THE INDIVIDUAL IN PUBLIC SERVICE 128–29 (2010) (characterizing rubber-stamping as "accepting the judgment of others so that independent assessments need not be made").

[89] To avoid empty sets, we may include situations in which the formal decision maker has a bit more than zero input. Sometimes officials ask perfunctory questions ("What am I signing?") and elicit superficial adjustments to the deliverable decision ("I don't use that language, revise so it sounds like me."), without affecting the result in terms of what most everyone cares about.

[90] The sequence of events is not important here. However, retaining power while transferring authority might suggest the label "figurehead," "stalking horse," or "cat's paw."

[91] *See infra* Part II.A.3 (organizing rubber-stamping's trade-offs).

[92] *See* United States v. Mead Corp., 533 U.S. 218, 229–34 (2001) (regarding *Chevron* deference).

[93] *See infra* text accompanying notes 115, 119–121 (listing take-back mechanisms).

[94] A similar challenge arises for tiebreaking decision structures. *See* Adam M. Samaha, *On Law's Tiebreakers*, 77 U. CHI. L. REV. 1661, 1673–74 (2010).

ministerially stamps the document,[95] but whether it's wise to sign and pursue the transaction is ordinarily considered a separate decision and the signer's own business. Even if we cannot view the notary as thoughtlessly signing off on a single decision to transact, there will be close calls. Think about courts holding that a statute tells agencies, not courts, to make particular decisions.[96] Should we characterize courts as thoughtlessly ratifying an agency's decision within a range of results, or instead making one decision about the scope of an agency's authority and then respecting the agency's separate decision about what to do?[97] There could be more than one fair characterization. To care about rubber-stamping, unfortunately, we have to tolerate those complications.

Regardless, stronger forms of simplification are available. One actor may simply apply a simple rule.[98] Simple rules may sacrifice decision quality, according to conventional wisdom, but they economize on decision costs at the point of application compared to flexible standards and complex rules.[99] One actor applying a simple rule is simpler and cheaper than any rubber-stamping arrangement, even without take-backs. A demand that another actor keep formal authority and somehow sign off increases expected decision costs, whatever the other consequences.[100] Consider ministerial duties, which are supposed to involve officials following clear-cut instructions.[101] Maybe discretion is unavoidable, and people may object to callous rule-following when clock-watching officials refuse to budge.[102] But one actor's application of rigid rules is not the rubber-stamping at issue here.

This takes us, finally, to *collaborative judgment*. This large mass of structures includes multiple actors, but they share power and perhaps formal authority. The options are otherwise diverse. For example, all participants might be required to reach a consensus after deliberation.[103] Or they might vote under majority rule, like legislatures and multi-member courts. Or certain participants might operate within a feedback loop that encourages experiments but intermittently guides future decisions, as sometimes occurs within administrative systems.[104] Or some participants might double-check the work of other actors, as with cost-benefit analysis for federal regulations and centralized review of civil rights conditions on federal spending.[105]

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[95] *See Everything You Need to Know About Your Notary Seal Stamp or Seal Embosser*, NAT'L NOTARY ASS'N, https://www.nationalnotary.org/knowledge-center/about-notaries/stamp-seal-information (last visited Nov. 1, 2025).

[96] *See, e.g.*, Loper Bright Enters. v. Raimondo, 603 U.S. 369, 394 (2024); U.S. Sugar Corp. v. EPA, 113 F.4th 984, 999–1000 (D.C. Cir. 2024) (per curiam) (regarding certain agency data selections for certain emissions standards).

[97] *See infra* note 239 & accompanying text (revisiting such framings).

[98] *See, e.g.*, BERNARDO ZACKA, WHEN THE STATE MEETS THE STREET: PUBLIC SERVICE AND MORAL AGENCY 102–04 (2017) (studying officials who convert their discretionary authority into simple protocols, and describing a posture of indifference and lost particularization); Frederick Schauer, *The Tyranny of Choice and the Rulification of Standards*, 14 J. CONTEMP. LEGAL ISSUES 803, 805–06 (2005); Dan Simon, *A Third View of the Black Box: Cognitive Coherence in Legal Decision Making*, 71 U. CHI. L. REV. 511, 515–16 (2004) (discussing simplifying responses to complex decision tasks, though recognizing limits on the influence of coherence-based reasoning); Michael Coenen, *Rules Against Rulification*, 124 YALE L.J. 644, 658–60, 662 (2014) (studying judicial doctrine that disfavors specific rules but arguing that subsequent precedents tend to rulify doctrine); Adam M. Samaha, *Looking Over a Crowd—Do More Interpretive Sources Mean More Discretion?*, 92 N.Y.U. L. REV. 554, 607 (2017) (examining "quasi-law" approaches that imperfectly apply complex law under resource constraints).

[99] *See, e.g.*, ADRIAN VERMEULE, JUDGING UNDER UNCERTAINTY: AN INSTITUTIONAL THEORY OF LEGAL INTERPRETATION 68 (2006) (listing trade-offs); Louis Kaplow, *Rules Versus Standards: An Economic Analysis*, 42 DUKE L.J. 557, 559–63, 586–96 (1992) (distinguishing prescribed rules and open standards from their complexity or simplicity).

[100] This conception excludes default approvals and "auto-renew" arrangements, to the extent sign offs stop. On many functional measures, those arrangements approximate rubber-stamping narrowly defined. There is a case for bundling them. However, personal sign offs can serve as reminders about authority, accountability, and take-backs where applicable. *See infra* Part IV.B.1.

[101] *See, e.g.*, 67 C.J.S. *Officers* § 331 (2024) (demanding a "simple and definite" legal duty "to be performed with a precision and certainty that leaves nothing to the exercise of discretion or at least any meaningful official discretion"); 52 AM. JUR. 2D *Mandamus* § 260 (2025) (similar); State *ex rel.* Morales v. Alessi, 679 S.W.3d 467, 472–73 (Mo. 2023) (holding official immunity does not protect failures to perform ministerial or "rubber stamp" duties but that such duties involve no discretion).

[102] *See* David A. Strauss, *On the Origin of Rules (with Apologies to Darwin)*, 75 U. CHI. L. REV. 997, 999–1000 (2008).

[103] *See, e.g.*, Michelle M. Kwon, *Easing Regulatory Bottlenecks with Collaborative Rulemaking*, 69 ADMIN. L. REV. 585, 601–07 (2017) (describing negotiated rulemaking options); Joseph A. Siegel, *Collaborative Decision Making on Climate Change in the Federal Government*, 27 PACE ENV'T L. REV. 257, 261–62 (2010) (discussing options ranging from trust-building communication to mutual agreement).

[104] *See, e.g.*, Charles F. Sabel & William H. Simon, *Minimalism and Experimentalism in the Administrative State*, 100 GEO. L.J. 53, 55 (2011) (exploring structures with general goals, learning, and improvement pressures).

[105] *See, e.g.*, Exec. Order 12250, §§ 1-1, 1-2, 45 Fed. Reg. 72995, 72995 (1980) (requiring coordination by the Attorney General of various civil rights obligations); Exec. Order 12866, §§ 3(f), 6, 58 Fed. Reg. 51735, 51738, 51740–43 (1993) (prescribing cost-benefit analysis and centralized review).

Or some participants might have authority and power to reach decisions only after giving some weight, respect, deference, or presumption that favors the views of other participants, as with many forms of judicial review.[106]

For the latter, we might think that an actor may afford enough weight to another actor's view to avoid making an independent judgment, but not so much to constitute rubber-stamping.[107] The boundaries are admittedly hard to mark since they rely on matters of degree. We may nonetheless accept that rubber-stamping lacks the collaborative power of a kind or degree that sets the latter apart. With distinctive effects. Adding participants and their views will likely increase decision costs compared with independent judgments, delegations, or rubber-stamping.[108] But under certain conditions, we can improve the quality of results, including their social acceptance, by expanding the range of participants and perspectives with influence.[109]

This much work still leaves line-drawing challenges and instability. Some boundaries are vague and, however easily classified, structures can be replaced over time. Authority can be reallocated, power can drift, delegation may be subject to redelegation, and rubber-stamping might include take-backs that turn into independent judgment, which itself seems fragile in strong form. Yet with these basic ideas and types assembled, we can spread out practically different options and start sketching likely trade-offs for each, while they last.

3. Organizing trade-offs

Let's return to decision costs and decision quality, and let's repeat our assumption that the relevant merits decisions are fairly difficult. With those starting points, we can highlight expected trade-offs (Table 2). And, in this initial assessment, rubber-stamping does not show well.

At first cut, simple rules for difficult decisions will probably yield relatively low-quality results by some measure but will keep decision costs low at the time of application. If that combination is best—for example, because the decisions are numerous and unimportant yet must be made—then simple rules are fine. Complex decision structures probably are not. Although we might want safeguards against errors, we probably should lean toward independent or delegated judgments and against collaborative judgments or rubber-stamping, especially with take-backs. The latter structures tend to increase decision costs, for which we already should have little tolerance. Perhaps law or an exceptional circumstance demands otherwise, but, in the abstract, a solid preference for simple rules on the merits seems to suggest objections to collaboration and rubber-stamping.

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[106] Other than de novo review. *See* HARRY T. EDWARDS & ANNE DENG, FEDERAL STANDARDS OF REVIEW 2, 21–22, 64–70 (2024) (describing de novo, clearly erroneous, and abuse of discretion standards); *see also* Skidmore v. Swift & Co., 323 U.S. 134, 140 (1944) (referring to variable weight based partly on agency consistency); Peter L. Strauss, *"Deference" Is Too Confusing—Let's Call Them "*Chevron *Space" and "*Skidmore *Weight"*, 112 COLUM. L. REV. 1143, 1156 (2012).

[107] There are legal sources awkwardly suggesting that giving some weight to another's view is a kind of independent judgment. *Compare* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 394, 399 (2024) (requiring "independent" judgment while accepting degrees of respect under *Skidmore*), *and* Yamaha Corp. v. State Bd. of Equalization, 960 P.2d 1031, 1034 (Cal. 1998) (similar), *with* Kristin E. Hickman & Matthew D. Krueger, *In Search of the Modern* Skidmore *Standard*, 107 COLUM. L. REV. 1235, 1251, 1255 (2007) (distinguishing doctrine for determining weight of an agency view from independent judgment where an agency's view is treated like a party's view). I favor Hickman and Krueger's characterization.

[108] *See, e.g.*, JAMES BUCHANAN & GORDON TULLOCK, THE CALCULUS OF CONSENT: LOGICAL FOUNDATIONS OF CONSTITUTIONAL DEMOCRACY 68–77 (1962) (modeling decision-cost implications of voting rules across fractions of required agreement); Ville A. Satopää et al., *Decomposing the Effects of Crowd-Wisdom Aggregators*, 39 INT'L J. FORECASTING 470, 472–74, 482–84 (2023) (examining trade-offs for simple and complex prediction aggregators to increase information, reduce bias, and reduce noise).

[109] This is true from a variety of perspectives on good social decisions. *See, e.g.*, BENJAMIN R. BARBER, STRONG DEMOCRACY: PARTICIPATORY POLITICS FOR A NEW AGE (1984) (advocating participatory democracy); ROBERT E. GOODIN, REFLECTIVE DEMOCRACY 91–108 (2003) (regarding reflection plus aggregation); HÉLÈNE LANDEMORE, OPEN DEMOCRACY: REINVENTING POPULAR RULE FOR THE TWENTY-FIRST CENTURY 11–13 (2020) (promoting deliberation by subsets of ordinary citizens); CASS R. SUNSTEIN, INFOTOPIA: HOW MANY MINDS PRODUCE KNOWLEDGE 25–38, 88–92 (2006) (elaborating crowd-wisdom arguments but addressing informational and reputational cascades).

TABLE 2: SOME DECISION STRUCTURES, WITH GENERALIZED TRADE-OFFS

	Actor 1	*Actor 2*	*Expected Cost*	*Expected Quality*
Independent Judgments				
◦ Simple Rule	Authority & Power		Low	Low
◦ Standard/Complex Rule	Authority & Power		Middle	Middle
Delegated Judgments				
◦ Simple Rule		Authority & Power	Low	Low
◦ Standard/Complex Rule		Authority & Power	Middle	Middle
Rubber-Stamping				
◦ No Take-Backs	Authority	Power	>Middle	Middle
◦ Take-Backs	Authority/Power	Power	>Middle/High	>Middle/High
Collaborative Judgments				
◦ Consensus, etc.	Authority & Power	Authority & Power	High	High
◦ Weighted Review, etc.	Authority & Power	Power	High	High

Notes: (1) Assume decisions are at least somewhat difficult, and that decision costs and decision quality tend to increase with flexible standards or relatively complex rules instead of relatively simple rules. (2) These assumptions and the expected costs and benefits in the table are rough generalizations that depend on other variables, such as decision resources. The cost of developing rules or standards should be considered, too. (3) The table omits the options of simple rules with either rubber-stamping or collaborative judgments.

If instead we have good reason to prefer a flexible standard or a more complex rule for decision, then probably we should be more open to complex decision structures. Standards and complex rules, when actually used, often increase decision quality while increasing decision costs at the time of application—perhaps to middling levels compared to simple rules with low cost and low quality. But that trade-off is best for many important decisions.[110] Good reasons to accept increased decision costs for better decision quality further suggest we should sometimes lean against simple and cheap decision structures, such as independent or delegated judgments.[111] Not always, because we might find an excellent solo actor to make fairly difficult decisions. Still, we might have a convincing basis for trying to improve decision quality to even higher levels by accepting the likely higher costs of, say, multiple actors reaching consensus or one actor giving some weight to the views of another actor.

Even so, rubber-stamping arrangements remain difficult to defend in the abstract. If people rightly want low-cost decision making with simple rules, independent or delegated judgments seem better than rubber-stamping. The latter increases expected decision costs, perhaps slightly, without obviously improving quality. Adding take-backs merely allows the formal decision maker to grab control of decisions that are easy to make anyway. If instead people rightly tolerate higher costs to make difficult and important decisions, they have the option of collaborative judgments in which multiple actors are thoughtfully engaged at some level. It is not immediately apparent that rubber-stamping is ever better than collaboration for hard, important decisions, while independent or delegated judgments arguably dominate for easy decisions and unimportant decisions.

Rubber-stamping *without* take-backs is especially counterintuitive. If one set of decision makers thoughtlessly follows another, we'd better have a good reason for not eliminating one and merging authority and power in the other. Otherwise, the system might end up wasteful at best, with routinized sign-offs that contribute nothing but a little extra decision cost and perhaps misunderstandings about who runs the wood chipper. At worst, the arrangement might

[110] This generalization simplifies matters. Some decision makers do not perform well with, or will not use, complex rules or flexible standards. And performing well partly depends on the people who make decisions. *See* KAHNEMAN, SIBONY & SUNSTEIN, *supra* note 69, at 355–59 (observing that rules may reduce noisy variation and that standards might enable bias or incompetence, but that bad rules might be ignored and obscure discretion); *see also infra* Part IV.A.3 (regarding selection efforts).

[111] A broad idea of decision costs, including dollars, time, delay, and low quantity of decisions, is helpful in this analysis. *See* Adam M. Samaha, *Undue Process*, 59 STAN. L. REV. 601, 616–20 (2006).

be a deceptive scheme that benefits only its participants. The case for rubber-stamping *with* take-backs starts strong but becomes tricky. The actor with formal authority stays in the decision loop and may serve as a wise monitor who does not take over too often. But the prospect of intervention increases expected decision costs and can undercut useful incentives.[112] If take-backs are easy, the arrangement will approach collaborative judgment, or even independent judgment with extraneous actors. Hence, finding space for a sensible, unique category of rubber-stamping calls for additional argument—not in the abstract, but from non-ideal decision theory.

B. Rubber-Stamping Reassessed

Rubber-stamping is not impossible to conceptualize or associate with trade-offs, but we should understand its vulnerable normative position. In some cases, we can do better by either merging authority with power or working toward more collaboration. When rubber-stamping is alleged or proposed, someone should wonder about the explanations and justifications. These questions are related: Our normative assessments often improve when we understand the most plausible accounts for the practice. And the leading explanations and justifications circle back to our reasons for allocating decisions to particular actors in the first place. Accordingly, we can bundle three packages of explanations that might ground justifications for rubber-stamping, starting with brighter and closing with shadier accounts: (1) rational design, (2) practical necessity, and (3) selfish scheme.

1. By design

Some rubber-stamping arrangements are chosen by rational design under fairly loose constraints. These arrangements might achieve relatively high-quality decisions at tolerable costs, even without regrettable pressures from existing law or bottlenecks. In this spirit, we can draw from organizational economics to emphasize the rationality of rubber-stamping as much as the constraints that motivate it, without overclaiming that these arrangements are ideal.

Consider the influential analysis of Philippe Aghion and Jean Tirole, who modeled organizational behavior by separating authority from power. They began with the observation that actors who lack formal authority may enjoy actual power over some range of decisions.[113] The authors articulated the benefits of full delegations—to manage workload, incentivize information acquisition, and avoid strategic communication problems.[114] But they also specified circumstances in which a principal rationally retains authority with limited opportunity to exert control (take-backs, in our terms), routinely remaining uninformed and rubber-stamping an agent's choices.[115] Doing so, an organization keeps some power in its managers when they have hard information while still approximating the benefits of delegation, including incentives for other actors to work hard on decisions, gain expertise, and communicate openly.[116]

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[112] *See infra* notes 114–115 & accompanying text.

[113] *See* Aghion & Tirole, *supra* note 79, at 2–3. The authors used "real authority" to mean, in my terms, actual power. For a few of many papers in this analytical line with applications to government, see Scott Baker & Lewis A. Kornhauser, *A Theory of Claim Resolution*, 39 J.L. ECON. & ORG. 77 (2023) (modeling appellate review in which some information is shared and some is local to the lower court, where the appellate court adopts a rule to affirm within a range and otherwise reverse with some probability, and where preference divergence incentivizes revelation of local information); Ryan Bubb & Patrick L. Warren, *Optimal Agency Bias and Regulatory Review*, 43 J. LEGAL STUD. 95 (2014) (examining delegation as a tool for generating information but with risks of shirking and bias, and modeling delegation to two agents, one to review the decisions of another); Wouter Dessein, *Authority and Communication in Organizations*, 69 REV. ECON. STUD. 811, 811–13, 816–17 (2002) (reasoning that principals may prefer delegation over retaining formal authority, to avoid noisy strategic communication, where principal-agent objectives diverge but not too greatly); Nou, *supra* note 86, at 491–96 (comparing "final" with "reviewable" subdelegations within agencies, and emphasizing incentives to gather information and reduced strategic communication); Canice Prendergast, *The Motivation and Bias of Bureaucrats*, 97 AM. ECON. REV. 180 (2007) (concluding that policy differences between principals and agents can motivate agent effort); Stephenson, *supra* note 75, at 1461 (similar for information-poor environments). A conclusion in several of these papers is that participants need not have the same preferences for power-sharing or delegation to work well enough, undercutting a simple ally principle.

[114] *See* Aghion & Tirole, *supra* note 79, at 3, 27.

[115] *See id.* at 2–3.

[116] These organizational studies typically use principal/agent models in which the principal somehow starts with authority and power, then chooses whether to reallocate them. *See id.* However, rubber-stamping may emerge from situations where roles of principal and agent are contested, or where the people developing the structure are not principals and agents with respect to each

Their analysis is not a history or full normative assessment, nor does it specify how authority and power are allocated or when delegations seem irreversible. But Aghion and Tirole did offer smart tactics for implementing rubber-stamping without losing all control. The organization might intentionally overload managers with a broad scope of authority or short deadlines;[117] managers might build reputations for sign-offs through consistent practice, at least for decisions unimportant to them; and the organization might require consensus among multiple managers to second-guess agent decisions.[118] As suggested above, a qualified review may verge on or become collaborative judgment. But the intention to largely debilitate effective review might set such arrangements apart, depending on any take-back mechanism.

We can treat rubber-stamping without take-backs as affording automatic deference or infinite weight to the views of another actor, who hopefully makes better decisions. That option approaches full delegation. Rubber-stamping with take-backs is something else, but it takes many forms. First, a formal decision maker could review all recommended decisions while giving very heavy weight to them, less than infinite but more than suggested by collaborative standards.[119] A second option is to devise rules or standards that flag outlier recommendations for independent assessment.[120] A third option is to randomly select some recommendations for audits, reversing ones that seem bad or offering feedback going forward.[121] This list is just a starting point, but differing consequences are apparent. For instance, reviewing all recommendations increases decision costs for formal decision makers compared to occasional audits. Developing and applying good rules for additional review can be not only hard and costly, but also tilt toward independent or collaborative judgments. And each option affects the incentives for actors who work up recommendations.

Granting the complications, rubber-stamping arrangements now seem like notable if not categorically unique options for rational system designers, with acceptable consequences in some domain. The actor with authority must sign off, but that actor's influence is engineered to be rare at most. Which is convenient and cheap for the formal decision maker—close to Groce passing his stamp to a colleague—while the views of other actors with better information routinely prevail. When power allocations are misplaced and rubber-stamping misfires, formal decision makers might be reassert control. The downsides of that safeguard are somewhat higher expected decision costs, lower learning incentives, and some unreliable communications.[122] Given the right situation, accepting those trade-offs is entirely rational. Undoubtedly such arrangements work well for countless issue sets in the White House and federal agencies, whether grant programs, environmental regulation, or data privacy. High-level officials safeguard their general policy commitments and sometimes engage collaboratively, but they lack information, expertise, and maybe time for more than spot checks on staff work.

Having labored to conceptually separate authority from power, however, we are well-warned that announcing a take-back authority sometimes does not matter. The formal decision

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other but equals resolving disagreement and uncertainty.

[117] *See id.* at 26. A surprise late-breaking proposal may draw suspicion from those who know that others might try to jam them with tight deadlines. *See id.* For a few examples of jamming and concerns about it, see 87 Fed. Reg. 39439, 39442 (2022) (indicating that pressure on the National Highway Traffic Safety Administration to rubber-stamp manufacturer positions can be relieved by the agency's demand that fuel economy exemption petitions be filed two years in advance of implementation); JOHN BOLTON, THE ROOM WHERE IT HAPPENED: A WHITE HOUSE MEMOIR 51, 53–54 (2024) (stating that "a savvy bureaucrat" may withhold options until the last minute, and also skew them, and suggesting an example regarding military options); *Roadblock to Revenue or Onramp to Opportunity?*, ACC DOCKET, Jan. 2006, at 76, 77 (noting the possibility of corporate counsel getting jammed with a short deadline). On experimental effects of short deadlines on bargaining, see, for example, Emin Karagözoğlu & Martin G. Kocher, *Bargaining Under Time Pressure from Deadlines*, 22 EXPERIMENTAL ECON. 419, 422, 437–38 (2019) (reviewing studies suggesting greater concessions when facing time pressure, but finding a lower likelihood of reaching agreement at all).

[118] *See* Aghion & Tirole, *supra* note 79, at 3.

[119] *See supra* note 106 & accompanying text (covering, for instance, abuse of discretion).

[120] *See* Aghion & Tirole, *supra* note 79, at 7–9 (modeling verifiable and unverifiable information). The core idea appears in other review models, although the space for approval must be large to count as rubber-stamping. *Cf.* Baker & Kornhauser, *supra* note 113, at 94 (developing an equilibrium space, based on globally accessible facts and judge types, within which all decisions are affirmed); Matthew C. Stephenson & Adrian Vermeule, Chevron *Has Only One Step*, 95 VA. L. REV. 597, 601–02 (2009) (depicting a policy space, based on statutory interpretation, within which agency decisions are deemed reasonable and upheld).

[121] *Cf. infra* Part IV.A.2 (discussing thoughtfulness audits).

[122] *See supra* note 79.

maker might be unable to claw back control. Conversely, delegated authority and power sometimes can be clawed back, which moderates the difference with rubber-stamping. Nonetheless, rubber-stamping can be thoughtfully adopted and socially beneficial when people recognize the imperfection of formal decision makers, along with a fair but uncertain chance that other actors will do better.

None of this means we should stop questioning existing structures. We should spend some time wondering whether those who allocated power were well-situated to do so, and whether those who received power are the right ones. Transparency of decision-making structures is an important normative criterion as well, as hidden structures interfere with external assessment and accountability, albeit understanding that tracing every influence on decisions is frequently unrealistic. Still, valid concerns about those who influence decisions do not depend on whether rubber-stamping is happening. Those concerns depend on evaluations of those who ended up with *power*, whatever formal authority they possess. Which immediately suggests that many rubber-stamping complaints are unwelcome distractions.

One way to check the normative significance of rubber-stamping is to imagine that an example of concern stays the same, except authority and power are combined in one actor. The merger eliminates rubber-stamping, after all, in favor of full delegation. But frequently our concerns will persist—or worsen—because any separation of authority and power is irrelevant or marginal to our commitments. Recall complaints that agencies were rubber-stamping DOGE's views; or think about claims that officials rubber-stamp the views of fossil fuel organizations[123] (or their opponents); or that Members of Congress rubber-stamp the President's views;[124] or that courts rubber-stamp law enforcement positions.[125] How many people who express those concerns would be satisfied to know that authority and power are now consolidated in DOGE, in the agency of concern, in the President, in law enforcement, or in fossil fuel organizations (or their opponents)? Not many, often for good reasons. If our goal is a different pattern of results or just more thoughtful decision-making, it is useless to eliminate rubber-stamping by reallocating authority to those who already exercise power. Objectors and their audiences should ask themselves, too, whether they would accept automatic approval of the *opposite* results favored by the opposite forces. If so, rubber-stamping is not their problem.

Enhancing the power of those with formal authority is not necessarily better, either. The effects depend on *how* formal decision makers would exercise that power, assuming power can be reallocated. An ongoing rubber-stamping arrangement obscures the answer, and eliminating it delivers no assurances. More power grants the opportunity for those with authority to oppose positions held by other forces and to use thoughtful procedures for high-quality decisions, if they have the resources and inclination. But empowered agencies, legislatures, or courts might think things over and then broadly agree with the President, DOGE, law enforcement, industries, or whomever. Or they might advance their own agendas at odds with the objectors' goals. Or they may prefer snap judgments. Rubber-stamping is a shortcut for formal decision makers, but it is hardly the only one, or necessarily the worst one.[126] The actors with power in a rubber-stamping arrangement might have the capacity and desire to take the most care. We should not flatly assume that blocking rubber-stamping yields more thoughtfulness.

2. By necessity

In any case, there are less-bright explanations for rubber-stamping arrangements, some without take-backs. They center on felt necessities stemming from overloaded decision environments and legal constraints on the allocation of authority. Those drivers contribute to the

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[123] *See* Megan Gibson, *FERC's Rubber-Stamp Approach to LNG Is Bad News for Our Economy, Consumers and Environment*, UTILITY DIVE (Nov. 26, 2024), https://www.utilitydive.com/news/fercs-rubber-stamp-lng-liquefied-natural-gas-export-price-volatility/733979/.

[124] *See supra* note 5 & accompanying text.

[125] *See supra* notes 7–8; Timothy Sandefur, *By Overturning* Chevron*, Supreme Court Takes a Step Toward Protecting Democracy*, GOLDWATER INST. (June 28, 2024), https://www.goldwaterinstitute.org/by-overturning-chevron-supreme-court-takes-a-step-toward-protecting-democracy/ (criticizing pre-*Loper Bright* doctrine).

[126] *See supra* notes 98–99.

most convincing accounts of many examples of rubber-stamping in government. Although the arrangements might be no less rational than happier design efforts, the situations often are occasions for concern about the constraints.

Consider Michael Lipsky's classic study of bureaucratic routinization and simplification, with its positive and negative themes. Offering detailed narratives of frontline-worker practices in government, some of his case studies featured rubber-stamping with tones of regret. He described busy if not uncaring workers who were making do in challenging decision environments, saving resources through "the effective transferring of decision-making responsibility about clients" to other actors by "routinely adopt[ing] the judgments of others as their own."[127] Social workers, trial judges, teachers, emergency room personnel, and other officials at least sometimes ratify the reasons or outcomes supplied by presumably trustworthy third parties.[128] Those routines can emerge, moreover, whether or not take-backs are realistic.

Lipsky portrayed this behavior as one response to dilemmas from scarce decision resources.[129] He did agree that it can be rational and efficient for officials to minimize their discretionary judgments by flatly deferring to others whom the official respects.[130] But such rubber-stamping, Lipsky recognized, may also involve "subverting" existing public policy where the applicable rules call for more complex and individualized assessments.[131] Regardless, the practice may jeopardize impartial, fair, and humane decisions for those judged.[132] Most dismally, formal decision makers might follow actors who faced similar decision pressures, and who expected they would not have the last word on judgments with stakes as high as incarceration or child custody.[133] We should add that aggressive actors, who realize their views will be followed by official decision makers, may feel free to march toward their most extreme positions.[134]

Perhaps all rubber-stamping arises from non-ideal situations, but certainly some of it is an adaptation to unfortunate realities. In Lipsky's renderings, frontline workers are overloaded.[135] Within a system they do not fully control, they are pressured to reach decisions—with duties to hit deadlines or minimize backlogs—without the time and information to judge thoughtfully. Importantly, workload is combined with legal constraints on decision allocation. Although some might be legally obligated to consider the views of other experts, Lipsky's examples include officials who may not lawfully reallocate formal authority. Judges, for instance, may not lawfully offload formal authority to actors of their choosing in child custody or bail matters. Those legal constraints plus heavy dockets help instigate rubber-stamping.

Not always happily. However rational the adaptation, maybe someone should loosen the constraints. Increasing decision resources per person, by adding formal decision makers or other system renovations, reduces pressure to rubber-stamp. Furthermore, we should want assurances on the expertise, values, learning capacity, and political effects of the actors who drive

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[127] LIPSKY, *supra* note 88, at 128–29; *see id.* at 130 (discussing the effective abrogation of discretion).
[128] *See id.* at 130–31.
[129] *See id.* at 128–29.
[130] *See id.* at 131.
[131] *Id.*
[132] *See id.*
[133] *See id.* (describing a social worker "horrified to discover that her ambivalent, highly tentative report on placing children in a divorce proceeding, rendered under great pressure," was used as a basis for action).
[134] Those with authority may recognize a risk of unchecked third-party power and try to avoid the *appearance* of rubber-stamping. But misleading appearances can fade where results are transparent, and the situation is normatively problematic regardless. *See* Adam M. Samaha, *Regulation for the Sake of Appearance*, 125 HARV. L. REV. 1563, 1590–92 (2012) (identifying efficacy and transparency issues where government appearances are not associated with self-fulfilling prophecies).
[135] On overload driving simplification including rubber-stamping, see LIPSKY, *supra* note 88, at 130; ZACKA, *supra* note 93, at 102 (discussing commitments to efficiency and dispassionate judgment, and against burnout); Jonah B. Gelbach & David Marcus, *Rethinking Judicial Review of High Volume Agency Adjudication*, 96 TEX. L. REV. 1097, 1099 (2018) (studying judicial review of Social Security disability benefits and immigration decisions, where adjudicators averaged hundreds of decisions per year in situations "hardly conducive to thoughtful deliberation"); Mark A. Lemley & Bhaven Sampat, *Is the Patent Office a Rubber Stamp?*, 58 EMORY L.J. 181, 181, 201 (2008) (noting claims that patent examiners are overworked with incentives to grant applications, though concluding the Office rejected a nontrivial fraction of applications). For studies suggesting workload increases permissiveness or deference to others, although not attempting to identify rubber-stamping, see Bert I. Huang, *Lightened Scrutiny*, 124 HARV. L. REV. 1109, 1130–35 (2011), and Michael D. Frakes & Melissa F. Wasserman, *Does the U.S. Patent and Trademark Office Grant Too Many Bad Patents?*, 67 STAN. L. REV. 613, 616–17 (2015).

outcomes. Simply following the views of all regulated parties or all grant applicants presents obvious problems without other safeguards. More generally, we should care about the consequences for those affected by the decisions, even if we sympathize with people trying hard to handle excessive workloads.

We should also understand, however, that resource constraints are not universally regretted. They can result from political compromises that attempt to bottleneck controversial systems.[136] Some people want to preserve austerity, which depends on preventing rubber-stamping. Heavy workloads in a benefits or permitting program can ration access to those results through delay and hassle.[137] There might be theoretically better ways to limit benefits, such as lower caps on grants. But benefits rationing is the upshot when officials devote significant time to deciding each of many cases. Rubber-stamping is an enemy of those bottlenecks. It allows formal decision makers to reach more decisions with much less work, and the resulting decisions might conflict with political compromises that favored bottlenecks.[138] This is not to defend any particular resource constraint—only to acknowledge that tough decision environments that trigger rubber-stamping might be more intentional than they appear at first look.

3. By scheme

The shadiest accounts of rubber-stamping extend beyond resource constraints and legal formalities. The most socially troubling allegations are that officials are weakening laws or best practices by caving into self-interested forces that should have little or no influence. Of course, people disagree over what the law requires and which influences to respect. Also, we may prudently wonder whether the relevant actors are rubber-stamping instead of thoughtfully agreeing, and whether rubber-stamping is our core concern. There should be no doubt, however, that certain forms of rubber-stamping involve efforts to circumvent valid regulations and duties, as well as non-transparency to prevent interruptions of those arrangements.

To generalize, some rubber-stampers are less overloaded than unmotivated to perform duties associated with their position.[139] Other rubber-stampers are committed to the job in principle but overwhelmed by demands of actors who were supposed to be boxed out. "Telephone justice" is an extreme example.[140] Relatedly, system overloads can be manufactured to induce rubber-stamping. A formal decision maker can be jammed into capitulation by late-breaking demands coupled with consequences for delay.[141] More generally, rubber-stamping often is problematic when the arrangement is not fairly transparent to outsiders.[142] Those with authority might pass off their decisions as independent from actors who actually call the shots, insulating them from evaluations of care, bias, and legality, and inducing a false sense of security about the system. Transparency will not solve every problem of self-interest, however. No

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[136] *See, e.g.*, LEVINSON, *supra* note 3, at 96–98 (analyzing capacity constraints as potentially effective yet risky tools for preventing abuse); Kwon, *supra* note 103, at 597–98 (describing Internal Revenue Service budgets).

[137] For instance, as a second-best option, critics might want food support or renewable energy permits rationed through paperwork. *See* KATHRYN J. EDIN & H. LUKE SHAEFER, $2.00 A DAY: LIVING ON ALMOST NOTHING IN AMERICA 2, 32–33 (2016) (describing process burdens for benefits programs); Josh Siegel & Zack Colman, *Trump Administration Taking New Steps to Block Wind and Solar Projects, Undisclosed Memo Says*, POLITICO (July 16, 2025, at 08:20 ET), https://www.politico.com/news/2025/07/16/interior-requires-burgum-sign-off-for-solar-wind-projects-00458999 (reporting the Interior Department required the Secretary's review for various decisions related to wind and solar permits). Other bottlenecks might result from carelessness. *See* Maxine Joselow, *FEMA Didn't Answer Thousands of Calls from Flood Survivors, Documents Show*, N.Y. TIMES (July 11, 2025), https://www.nytimes.com/2025/07/11/climate/fema-missed-calls-texas-floods.html (describing expired contracts for more than $100,000, which did not receive the Secretary of Homeland Security's approval during flood relief).

[138] Rubber-stamping does not entail one pattern of results or another. The patterns follow whichever actors' views are rubber-stamped.

[139] *See generally* Bubb & Warren, *supra* note 113, at 96 (regarding shirking); Margaret H. Lemos & Max Minzner, *For-Profit Public Enforcement*, 127 HARV. L. REV. 853, 889 (2014) (noting some risk of shirking or capture among government employees); *see also* Edward L. Rubin, *Bureaucratic Oppression: Its Causes and Cures*, 90 WASH. U. L. REV. 291, 317 (2012) ("[M]any government agents are not trying to maximize anything, but rather trying to minimize work or hassle.").

[140] *See* Cass R. Sunstein & Adrian Vermeule, *The Morality of Administrative Law*, 131 HARV. L. REV. 1924, 1961–62 (2018) (adverting to executive officers privately directing the result in a formal adjudication, for example in reports about the old Soviet Union).

[141] *See supra* note 117.

[142] *See* Adam M. Samaha, *Government Secrets, Constitutional Law, and Platforms for Judicial Intervention*, 53 UCLA L. REV. 909, 916–23 (2006) (discussing principles of government translucency).

amount of daylight will justify law enforcement or grant applicants deciding for themselves whether they should receive a warrant or an award. Nor does transparency mean we have a feasible remedy for bad rubber-stamping. But concerns should increase when such arrangements are hidden and then exposed.

Stories matching those schemes are easy to find. Take the cover-up allegations in *Peatross v. City of Memphis*.[143] According to the estate of a motorist killed by police gunfire, the Memphis Police Department's Director systematically excused from discipline those officers who merely alleged that their shooting victims had a deadly weapon. The Director's routine sent a message of permissiveness, plaintiffs claimed, as the officers' use of excessive force increased.[144] Nevertheless, we face diverging perspectives on contested behavior in many instances. There are, for example, the confident claims and rebuttals that DOGE avoided legal problems through agency sign-offs. Shifting to complaints from a different ideological base, recall the Department of Homeland Security's Deferred Action for Childhood Arrivals (DACA) process. On one union official's account, the DACA process was intentionally fashioned to "guarantee that applications will be rubber-stamped for approval."[145] While many observers support blanket deferral for children brought into the country years ago, others objected that the process was too short on information and too loaded with applications for officials to meaningfully make discretionary, individualized judgments.

C. Empirical Doubts

Those stories foreground a transparency gap, even when we have working concepts and a solid normative framework. Sure, we can be confident that the likelihood of rubber-stamping increases when formal authority is locked into a set of actors with heavy workloads. But that generalization cannot identify particular instances, and the empirical fog presents a complex problem. Rubber-stamping is attractive to allege because, first, it initially sounds outrageous to many audiences and, second, it is often difficult to prove or disprove. The allegation does not force us to take sides on resulting decisions, which often generate disagreement, while it invokes disreputable weakness or callousness and suggests that tax-financed processes have been circumvented or rigged. All without an easy test of truth.

The crux of the challenge is reliably identifying, in a particular actor, thoughtlessness or some level thereof. Part of the problem arises from processes that deliver results without explanations, but the problem extends to explanations, too. It is an open secret that decisions issued in the names of government officials are regularly ghostwritten by staff if not interested private parties.[146] Perhaps many ghostwritten explanations are sufficiently inspired or evaluated by the formal decision maker to avoid rubber-stamping. Perhaps not. Worse, generative artificial intelligence eases the offloading of reason-writing, whoever exercises power.[147] Granted, machine-generated texts grounded in human communications and predictions of plausible word strings sometimes include serious factual and logical errors.[148] Human authors need

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[143] 818 F.3d 233 (6th Cir. 2016).

[144] *See id.* at 238–39, 244–45 (summarizing the complaint and denying qualified immunity).

[145] *USCIS Union President: Lawmakers Should Oppose Senate Immigration Bill, Support Immigration Service Officers*, NAT'L CITIZENSHIP & IMMIGR. SERVS. CNCL. (May 20, 2013), https://www.fairus.org/sites/default/files/2017-08/USCIS_statement_5-20-2013.pdf; *see also* Jan Ting, *President Obama's "Deferred Action" Program for Illegal Aliens Is Plainly Unconstitutional*, CTR. FOR IMMIGR. STUD. (Dec. 2, 2014), https://cis.org/Report/President-Obamas-Deferred-Action-Program-Illegal-Aliens-Plainly-Unconstitutional#28 (calling arguments about discretionary case-by-case judgments "a departure from reality").

[146] *See infra* text accompanying notes 258–259.

[147] The discussion here is indifferent on whether humans may rubber-stamp machine-generated views. The analysis should generalize that far—though trade-offs on cost and quality will vary, and many people evaluate machine contributions in special ways. *See, e.g.*, David Freeman Engstrom & Amit Haim, *Regulating Government AI and the Challenge of Sociotechnical Design*, 19 ANN. REV. L. & SOC. SCI. 277, 284 (2023); Benjamin Chen et al., *Having Your Day in Robot Court*, 36 HARV. J.L. & TECH. 127, 160–61 (2022) (reporting differences in perceived fairness between human and algorithmic decisions in sentencing, bail, and consumer arbitration, although suggesting the gap depends on perceived accuracy more than voice); Benjamin Chen et al., *Mitigating the Judicial Human-AI Fairness Gap* 5–7, 12–15 (Apr. 2025) (unpublished manuscript), https://ssrn.com/abstract=5244954 (reporting that depictions of "minimal human oversight" might wash out perceived fairness gaps, where machine-learning algorithm predictions are described as generally more accurate than humans). I defer a fuller discussion to other work.

[148] *See* ARVIND NARAYANAN & SAYASH KAPOOR, AI SNAKE OIL: WHAT ARTIFICIAL INTELLIGENCE CAN DO, WHAT IT CAN'T, AND HOW TO TELL THE DIFFERENCE 137–39 (2024) (explaining machine learning in large language models and characterizing

to supervise and edit AI-drafted results to minimize errors, which itself prevents superficial rubber-stamping. But outsiders might be unable to verify such engagement.[149] We cannot verify rubber-stamping by finding errors. Persons who think hard make plenty of errors on hard questions and, for some decisions, we lack agreed-upon tests for quality,[150] or we think that machines do well enough.

Nor can we rely on agreement. Agreement between formal and actual decision makers is necessary to prove rubber-stamping, but never sufficient. Even stratospherically high rates of agreement might be explained away. Consider a new study of warrant applications by Miguel de Figueiredo, Brett Hashimoto, and Dane Thorley.[151] Some of their data plainly suggest rubber-stamping to an extent, based on the apparent impossibility of serious thought. The authors report that ten percent of all applications were evaluated in one minute or less,[152] and they estimate that at least half of the approved applications were skimmed or not read fully.[153] That is consistent with very shallow assessments and strong deference in a fraction of cases, assuming the judges lacked other case-specific information before receiving the applications.

Other findings are more difficult to interpret. Ninety-three percent of warrant applications were approved on the first try, and ninety-eight percent were ultimately approved.[154] The authors are wisely reserved about charging judges with frequent rubber-stamping, however. Without a reliable measure of application quality, we cannot rule out the possibility that many applicants were selective in requesting warrants, which can partly explain high approval rates.[155] Or perhaps judges thoughtfully adopted a relatively extreme position on what counts as a sufficient application. Mere agreement on the merits is not rubber-stamping, whether or not the results are bad.[156]

Selection effects favoring strong claims are especially plausible when applicants have something to lose. Revisit the situation of noncitizen applicants for DACA who were willing to self-identify as potential targets for deportation. Without credible assurances of non-enforcement against ineligible applicants, we should not expect the whole eligible population to apply.[157] Those who brave the system are more likely to believe they have a "sure thing" claim, which can yield high approval rates for them. Then again, that isn't the whole story. Frequent rubber-stamping should be unsurprising insofar as officials feel overloaded, underinformed, and obligated to produce results quickly, whatever the formal duty to exercise case-specific discretion.[158] These situations leave reasonable disagreements, not certainty, on the extent of rubber-stamping.

Thoughtless following is not the only opaque behavior, either. A converse worry might be more likely: misleading appearances of deference. Decision makers benefit not only from convincing appearances of thoughtfulness but also from offloading responsibility through

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chatbots as "statistical engines at their core").

[149] *See id.* at 139 (describing ChatGPT as "shockingly good at sounding convincing"); Hua Hsu, *What Happens After A.I. Destroys College Writing?*, THE NEW YORKER (June 30, 2025), https://www.newyorker.com/magazine/2025/07/07/the-end-of-the-english-paper (discussing "a solid imitation of how an undergraduate might describe a set of images").

[150] *See supra* Part II.A.1.

[151] *See* Figueiredo, Hashimoto & Thorley, *supra* note 6, at 1966–68 & n.35, 1983–85 (explaining the dataset covered more than 30,000 non-sealed electronic warrant applications in Utah from 2017 to 2020).

[152] *See id.* at 1967, 1998 & n.193, 2013.

[153] *See id.* at 2000, 2009.

[154] *See id.* at 1967.

[155] *See* Theodore Eisenberg, *Testing the Selection Effect: A New Theoretical Framework with Empirical Tests*, 19 J. LEGAL STUD. 337, 337–40 (1990) (reviewing selection effects that defeat inferences from results about skews in decision rules); Jonah B. Gelbach, *The Reduced Form of Litigation Models and the Plaintiff's Win Rate*, 61 J.L. & ECON. 125, 126–27, 145–46 (2018) (concluding that any plaintiff-win rate is possible, including under some litigation models that assume highly accurate party information). Complicating matters, clever rubber-stampers might arbitrarily toss in a few observable denials or approvals to weaken the pattern.

[156] *Cf.* Lemley & Sampet, *supra* note 135, at 186 (observing that fairly high/low grant rates may be too low/high, depending on the mix of applications). The ex parte warrant procedure is slanted anyway. *See* WILLIAM J. STUNTZ, THE COLLAPSE OF AMERICAN CRIMINAL JUSTICE 225 (2011) ("Unsurprisingly, this one-sided process leads to one-sided results.").

[157] *See* Texas v. United States, 787 F.3d 733, 783 (5th Cir. 2015) (Higginson, J., dissenting) (following selection logic). The majority relied on Government statements regarding nonenforcement against applicants. *See id.* at 764.

[158] *See Prioritizing and Deferring Removal of Certain Aliens Unlawfully Present in the United States*, 38 O.L.C. Op. 39, 52 (2014) (stating DACA provided "ample room for the exercise of individualized discretion").

ostensible deference obligations. The U.S. Supreme Court is a prime suspect for false modesty given its enviable resources. The Court enjoys a largely discretionary docket and luxurious institutional support for the Justices,[159] in ways that make independent judgment possible for the few cases they choose to decide on the merits. Perhaps the Justices accurately report when they have (thoughtfully) decided to defer to others—Congress in certain military affairs,[160] the President in foreign affairs,[161] national security personnel,[162] prison administrators,[163] and so on. It is also reasonable to ask whether some announced deference is better characterized as an unspoken endorsement of the decisions, with a degree of conscious evaluation. Wondering about official avowals of deference is as easy and valuable as doubting official assertions of independence.

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Rubber-stamping occurs in one version or another, yet the phenomenon is elusive. No decision is entirely independent in a strict sense, while allegations of relatively thoughtless rubber-stamping are easily made, usually denied, and often hard to prove or disprove. When rubber-stamping happens, the arrangements have more than one explanation and justification. Some rubber-stamping wisely allocates power to actors with the ability and commitment to decide thoughtfully, while other arrangements are tolerable adaptations to legal demands and resource constraints. Still other forms are unjustified and obscure schemes. Even so, we should stop to ask whether our core concerns are objectionable results or implicit views about who should have power, regardless of who has authority. These ideas, not casual allegations, will steer our attention to what matters, and sometimes away from rubber-stamping.

III. LAWS OF RUBBER STAMPS

Whether or not rubber-stamping seems rational or common, existing law may impede it. Best interpreted, the law might aim to regulate both power and authority in ways that risk the legality of certain arrangements. But there is no *Restatement of the Law of Rubber Stamps*. Much more legal work needs doing, beyond our persistent investigations into nondelegation limits on legislatures and agencies.[164] Those efforts will not resolve the legality of rubber-stamping in those institutions or anywhere else.[165] Based on the review here, current law seems generally relaxed about rubber-stamping in government, outside of relatively formal adjudications. Neither textualist nor purposivist arguments against rubber-stamping have had much impact.[166] Yet there aren't many clear rules in the field, and existing law is amenable to development in more than one direction.

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[159] *See, e.g.*, Richard Marcus, *A Happy-Go-Lucky Story: The American Supreme Court and Overload Problems*, 83 IUS GENTIUM 183, 183–84, 192–98 (2021) (denying the Court has a case overload problem in light of its resources and discretion); Adam B. Sopko, *Catalyzing Judicial Federalism*, 109 VA. L. REV. ONLINE 144, 147 (2023) (comparing state supreme courts).

[160] *See* Rostker v. Goldberg, 453 U.S. 57, 69 (1981) (characterizing precedent as "requiring deference to Congress in military affairs").

[161] *See* Jama v. ICE, 543 U.S. 335, 348 (2005) (referencing a "customary policy of deference to the President in matters of foreign affairs"); Trump v. Hawaii, 585 U.S. 667, 684 (2018) (interpreting an immigration statute).

[162] *See* United States v. Zubaydah, 595 U.S. 195, 216 (2022) (Thomas, J., concurring) (evaluating a privilege claim and stating "the court must afford 'the utmost deference' to the Executive's national-security assessment" under *Dep't of Navy v. Egan*, 484 U.S. 518, 530 (1988)).

[163] *See* Florence v. Bd. of Chosen Freeholders of the Cnty. of Burlington, 566 U.S. 318, 326 (2012).

[164] Litigation over nondelegation claims continues to reach and partly divide the Court. *See, e.g.*, FCC v. Consumers' Rsch., 145 S. Ct. 2482, 2496–97, 2501 (2025) (accepting that the Article I allocation of legislative powers therein granted to Congress "is a bar on its further delegation," then applying the intelligible-principle test to a statute); *id.* at 2539 (Gorsuch, J., dissenting) (advocating a more restrictive nondelegation test); Gundy v. United States, 588 U.S. 128, 157–59 (2019) (Gorsuch, J., dissenting) (similar). The scholarly literature is too large for an ordinary footnote. For a few recent contributions that concentrate on history and tradition, see Nicholas R. Parrillo, *Foreign Affairs, Nondelegation, and Original Meaning: Congress's Delegation of Power to Lay Embargoes in 1794*, 172 U. PA. L. REV. 1803 (2024); Philip Hamburger, *Nondelegation Blues*, 91 GEO. WASH. L. REV. 1083 (2023); Julian Davis Mortenson & Nicholas Bagley, *Delegation at the Founding*, 121 COLUM. L. REV. 277 (2021); Ilan Wurman, *Nondelegation at the Founding*, 130 YALE L.J. 1490 (2021). For a sharp analytical critique, see Eric A. Posner & Adrian Vermeule, *Interring the Nondelegation Doctrine*, 69 U. CHI. L. REV. 1721 (2002). For now, we continue to live with many fairly broad and discretionary statutory authorizations.

[165] *See infra* Part III.C (distinguishing nondelegation issues from rubber-stamping issues).

[166] *Cf.* Farber, Gould & Stephenson, *supra* note 16, at 549–51 (developing formalist and functionalist legal arguments

A. Mixed Messages Across Actors

1. Assumptions and declarations

We should not start by assuming that law broadly opposes, much less effectively regulates, thoughtless official sign-offs. Law is complicit in rubber-stamping, after all. Those arrangements require an allocation of authority to a particular actor, which is at least partly a matter of law,[167] and rubber-stamping is more likely if that allocation sticks while power moves elsewhere. Law can help cement those allocations with clear statutory or constitutional assignments that are difficult to amend or interpret away. Plus other laws—deadlines, appropriations, hiring authority, and more—cap decision resources and increase pressures for rubber-stamping. Sometimes we may infer that a bottleneck in operations is intentional or an element of the law's purposes, such that we should conclude that rubber-stamping is unlawful. But the evidence and logic for that result are typically debatable, and probably not enough to construct a general legal presumption against rubber-stamping.[168]

Some official declarations do oppose, disavow, or deny rubber-stamping in certain situations. They include judicial opinions discussing, for instance, the limited goals for relatively deferential standards of review such as clear error, abuse of discretion, and arbitrariness,[169] as well as old claims, however credible, that magistrates will not rubber-stamp warrant applications.[170] Agencies also sometimes speak out against rubber-stamping in their adjudications,[171] or within rule-making proceedings for single-shot approvals.[172] An executive order this year told senior agency appointees (and their designees) to "not ministerially ratify or routinely defer" to recommendations for discretionary grant awards.[173] Conversely, commitments to independent judgment or de novo review appear in particular statutes, judicial doctrines, and agency regulations.[174] These positions sometimes are pitched at an institutional level, as when an agency is publicly committed to independent judgment without claiming its judgments will be formulated personally by an agency official who signs the order or rule. But sometimes the independence commitment seems personal to individual officials, such as adjudications by ALJs under the APA.[175]

As for the legislative process, legal materials are mixed, with some anti-rubber-stamping signals for the President. Article I, Section 7 of the Constitution states that if "he approve[s]" of a bill that passed both houses of Congress, "he shall sign it," and the bill becomes a law.[176] Those instructions are simple, and we might conclude the President's decision to

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regarding workarounds).

[167] As conceptualized above. *See supra* Part II.A.2.

[168] *See generally* Matthew C. Stephenson, *Public Regulation of Private Enforcement*, 91 VA. L. REV. 93, 107 n.40 (2005) (summarizing problems with inferring legislative intentions from funding levels).

[169] *See, e.g.*, Alexander v. S.C. State Conf. of NAACP, 602 U.S. 1, 18 (2024) (stating that the clear error test for district court factual findings is demanding but "not a rubber stamp"); Arakas v. Commissioner, 983 F.3d 83, 95 (4th Cir. 2020) (similar for substantial evidence review in Social Security benefits cases); Penobscot Air Servs. v. FAA, 164 F.3d 713, 720 (1st Cir. 1999) (similar for arbitrariness review under the APA).

[170] *See, e.g.*, United States v. Leon, 468 U.S. 897, 914, 916 & n.14, 917 n.18 (1984).

[171] *See, e.g.*, *In re* Rosenblum, 87 Fed. Reg. 21181, 21190 (2022) (indicating the Drug Enforcement Administration Administrator's statutory duties "do not call for me to rubber stamp" a registrant's prescription practice based on the latter's experience); 85 Fed. Reg. 81588, 81593–94 (2020) (denying a new immigration rule would tilt the agency toward rubber-stamping removals, and assuring case-by-case adjudication); 85 Fed. Reg. 73138, 73146 (2020) (responding to a claim that Social Security Administration appeals judges rubber-stamp benefits denials, and assuring those judges will retain the "independence they have always had").

[172] *See, e.g.*, 90 Fed. Reg. 24008, 24027 (2025) (denying shirking or rubber-stamping of a state implementation plan by the EPA, with assurances of thorough analysis of control options); 88 Fed. Reg. 82740, 82764 (2023) (denying rubber-stamping of a local counsel's fishery management proposal, with assurances that public comments are considered); 82 Fed. Reg. 49938, 49943–44 (2017) (agreeing the Consumer Product Safety Commission is statutorily prohibited from rubber-stamping an advisory panel's report on chemical hazards in children's products).

[173] Exec. Order 14332, §4(a), (c), 90 Fed. Reg. 38929, 38931–32 (2025).

[174] *See, e.g.*, Bauer v. FDIC, 38 F.4th 1114, 1121 (D.C. Cir. 2022) (regarding de novo review of legal questions); EDWARDS & DENG, *supra* note 106, at 12–13, 111–12 (restating judicial standards of review including independent review); *infra* notes 231, 233.

[175] *See* Elizabeth Magill & Adrian Vermeule, *Allocating Power Within Agencies*, 120 YALE L.J. 1032, 1075–76 (2011).

[176] U.S. CONST. art. I, § 7, cl. 2.

approve (then duty to sign) may not be lawfully reallocated to anyone else, formally or practically.[177] It is less clear that the President may not lawfully choose to approve a bill by deferring to the reasons of an advisor or confidante.[178] But offloading vetoes or reasons therefor seems textually problematic. If the President does *not* approve a bill, and assuming no pocket veto, "he shall return it, with *his* Objections," to the originating house for an override opportunity.[179] That reads like a personal and perhaps reputation-related condition on the veto authority, obligating the President to both have and give reasons.[180] To borrow some aged judicial language on signing or vetoing bills, "the ultimate decision must be his."[181] Nobody should guess that modern presidents write all their veto messages, and a president loaded with responsibilities may have convincing reasons to rely on expert judgments of other actors. Receiving advice is lawful.[182] But vetoes are rare events historically that do not seem overloading,[183] the text indicates engaged presidential decision making, and formal law has its claims.

Compare the apparently lax constitutional demands on Members of Congress in the legislative process, as far as courts are concerned. Although interpreters theoretically might return to Article I, Section 7 and demand that Members of Congress actively engage with proposed legislation, as part of their assigned role in passing legislation, no such constitutional duty is established.[184] If anything, the Supreme Court has undercut the idea. In *INS v. Chadha*,[185] the Court shied away from judicial review for mindfulness. Yes, the Article I, Section 7 process ensures "an opportunity for deliberation and debate,"[186] but the Court denied that valid legislation requires a debate or that a legislature must "articulate its reasons for enacting a statute."[187] Whatever the President's obligations in the legislative process, as a matter of surviving judicial review, Members of Congress might pass statutes without thinking up reasons.[188] Many judges may consider themselves poorly situated, as outsiders, to test thoughtfulness at either the legislator or institutional level when the validity of a statute is at stake.

A similarly formal and permissive analysis for agencies appears in *FCC v. Consumers' Research*,[189] where the evidentiary problems were not as difficult. The Commission had relied on a nonprofit corporation to make financial projections for calculating universal-service payments from telecommunications companies.[190] Upholding the arrangement against a private nondelegation claim, the Court stressed that the corporation's submissions lacked legal effect without the Commission's promulgation: "It is sufficient in such schemes that the private

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[177] *Accord 2005 OLC Opinion*, *supra* note 57, at 115 ("It has long been the view of the Executive Branch that the President may not delegate this decision."); Eber Bros. Wine & Liquor Corp. v. United States, 337 F.2d 624, 628 (Ct. Cl. 1964) (similar).

[178] Or even by ordering up an auto-penned signature. *See supra* Part I.B.

[179] U.S. CONST. art. I, § 7, cl. 2 (emphasis added).

[180] *See North Carolina Ratifying Convention*, 4 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 74 (1836) (remarks of James Iredell) (July 26, 1788) ("[A]s his reasons are to be put on record, his fame is committed both to the present times and to posterity."). This is not to argue here that the Veto Message Clause was originally designed to discourage vetoes from some baseline. *Cf.* THE FEDERALIST NO. 73, at 445–46 (Alexander Hamilton) (Clinton Rossiter ed., 1961) (expressing concerns about too *few* vetoes if the authority were unqualified).

[181] *Eber Bros. Wine*, 337 F.2d at 628.

[182] *See id.*; *accord Pennsylvania Ratifying Convention*, 2 JONATHAN ELLIOT, THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION 472–73 (1836) (remarks of James Wilson) (Dec. 4, 1787) (defending the qualified veto and contending the president will avail himself of records and have "the advice of the executive officers").

[183] Regular vetoes seldom occurred before President Grover Cleveland, whose first four-year term clocked more than 300. During many two-year Congresses, no more than a dozen have been issued. *See Presidential Vetoes*, AM. PRESIDENCY PROJECT, https://www.presidency.ucsb.edu/statistics/data/presidential-vetoes (last visited Nov. 1, 2025) (through Jan. 19, 2025). Possibly some of those veto numbers were kept low by an assumption that presidents must DIY their vetoes and reasons. A DIY assumption does not seem to hold now, however.

[184] Article I, Section 7 does reference "[r]econsideration" by the originating house in the case of a veto, U.S. CONST. art. I, § 7, cl. 2, which may indicate some level of thoughtfulness. But even then the section calls for a vote and personal identification in the Journal rather than expressly demand legislator reasons. *See id.*

[185] 462 U.S. 919 (1983).

[186] *Id.* at 958 n.23.

[187] *Id.* (internal quotation marks omitted).

[188] *See* King v. Burwell, 576 U.S. 473, 516 (2015) (Scalia, J., dissenting) (maintaining that "[a] law enacted by voice vote with no deliberation whatever is fully as binding upon us as one enacted after years of study, months of committee hearings, and weeks of debate"); *cf.* Brnovich v. Democratic Nat'l Comm., 594 U.S. 647, 689 (2021) (stating that "[t]he 'cat's paw' theory has no application to legislative bodies").

[189] 145 S. Ct. 2482 (2025).

[190] *See id.* at 2494–95.

party's recommendations . . . cannot go into effect without an agency's say-so, *regardless of how freely given*."[191] The frequency with which an agency follows recommendations lockstep is irrelevant, the Court indicated, if the agency "retains decision-making power."[192] That language might be used to litigate whether an agency retains a realistic take-back power.[193] But the opinion proceeded to defend a constitutional test concentrated on who has authority to make final, legally effective decisions, which avoids the evidentiary task of figuring out whether the agency was really paying attention to the recommendations it followed.[194] Again, intermittent declarations in law against rubber-stamping are counterbalanced by more forgiving positions.

2. Principles and blanket ratifications

Mixed messages resurface at the level of general principle. Consider the attention to accountability, then supervision, in *United States v. Arthrex, Inc.*[195] As to the former, the President is supposed to retain "ultimate responsibility" for the actions of the Executive Branch,[196] while relying on subordinates. In fact, "thousands of officers wield executive power on behalf of the President in the name of the United States."[197] That position leaves room for presidential rubber-stamping even if full delegations are prohibited. The President can retain responsibility for what thousands of officers do, whether or not he pauses to thoughtfully consider any of it. As to supervision, however, not only is the President apparently forbidden from delegating ultimate responsibility and evading accountability, but we are told the President cannot delegate "the active obligation to supervise."[198] Read for all it's worth—which courts have not done[199]—the pro-supervision position suggests presidential rubber-stamping might be unconstitutional. Rubber-stamping conflicts with active supervision of subordinates before final decisions, in the sense of meaningfully second-guessing their views, albeit with limited room for take-backs.

Arthrex began with tension in principles and it closed with ambiguity for concrete issues of administrative behavior. Plainly enough, the majority concluded that certain administrative patent judges could not retain unreviewable authority to issue certain final decisions on patent validity for the Executive Branch.[200] But then Chief Justice Roberts' preferred remedy merely made those decisions "subject to review," in the discretion of the Patent Office Director.[201] Review authority does not guarantee actual review, let alone thoughtful review.[202] The Chief Justice added that "the Director need not review every decision."[203] But the critical questions include whether that official is obligated to review *any* decisions,[204] and whether lawful discretion includes letting alone whole categories of decisions as a rule. Later, Arthrex's request for review was denied without explanation, in the name of yet lower-level officials to whom the Director redelegated authority.[205] Strictly speaking, the Director and those designees

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[191] *Id.* at 2509 (emphasis added).

[192] *Id.* at 2508; *see id.* (relying on *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 399 (1940) (concluding that certain private boards "function[ed] subordinately" to the agency)).

[193] *See id.* (offering, as well, several grounds for believing the agency "dominates" the relationship). The private party seemed to work under semi-complex rules that restricted discretion. *See id.*

[194] *See id.* at 2509. It is unclear what result would follow if a private party *was* authorized to make final decisions, in the sense of legal effect on third parties, but the agency retained discretionary review authority.

[195] 594 U.S. 1 (2021).

[196] *Id.* at 11 (cleaned up).

[197] *Id.*; *see also* Free Enter. Fund v. Public Co. Acct. Oversight Bd., 561 U.S. 477, 498 (2010) (promoting "a clear and effective chain of command" so the public may assign blame).

[198] *Arthrex*, 594 U.S. at 11 (cleaned up) (quoting *Free Enter. Fund*, 561 U.S. at 496–97 (quoting Clinton v. Jones, 520 U.S. 681, 712–13 (1997) (Breyer, J., concurring)).

[199] This impression of permissiveness is consistent with Gillian E. Metzger, *The Constitutional Duty to Supervise*, 124 YALE L.J. 1836, 1870 (2015) ("[L]ittle attention is paid to whether such oversight actually occurs, and the Court is extremely reluctant to fault high-level officers for failed supervision.").

[200] *See Arthrex*, 594 U.S. at 23.

[201] *Id.* at 24 (plurality opinion).

[202] *See id.* at 27 (remanding).

[203] *Id.*; *see also* Kennedy v. Braidwood Mgmt., 145 S. Ct. 2427, 2446–47 (2025) (reiterating that what matters most to the inferior officer inquiry is whether a superior has discretion to review).

[204] *See* Jennifer Mascott & John F. Duffy, *Executive Decisions After* Arthrex, 2021 SUP. CT. REV. 225, 233 (2021).

[205] *See id.* at 243 (reporting a review grant rate under 2% for the first 142 orders, and 0 sua sponte reviews).

were not even rubber-stamping validity decisions: Insofar as those decisions were not reviewed on the merits and no sign-offs occurred, the structure resembles full delegation to the patent judges. So much for active supervision, by the President or any high-level official.

Some uncertainty also clouds the legality of wholesale ratifications of past decisions, but it happens. Higher-ups in the organizational chart sometimes formally adopt the decisions of lower-downs when the authority of the latter is questioned or rejected. If conducted with adequate superficiality and accepted as lawful, ratification quickly eliminates legal risk and secures the same results that subordinates already reached. When this move was made during pending litigation in *Lucia v. SEC*,[206] the Supreme Court dodged the issue. The Commission had attempted to ratify the decisions of its chief administrative law judge to hire certain other ALJs immediately after the Solicitor General told the Court that those ALJs were officers subject to the Appointments Clause.[207] The Court agreed that those ALJs could not constitutionally be appointed by another ALJ, but the majority declined to offer a view on the legal effect of Commission ratification.[208] Three dissenting Justices indicated their approval (presumably not itself rubber-stamped) of the Commission's ratification fix.[209] And life went on with the old ALJs.[210] Although the effects of blanket ratifications within agencies and without evidence of deliberation are not entirely settled, the legal light seems yellow, not red.[211]

This swings us back, finally, to DOGE debates where formal agency sign-offs became a center of attention. Elon Musk, who has since left his government post, was never appointed as an officer of the United States under the Appointments Clause.[212] A Senate confirmation process normally requires background investigations and potentially uncomfortable live questions,[213] even if confirmation is extremely likely. Other kinds of appointments for officers might have demanded more disclosures than Musk and others wanted to undertake. Either way, the price for the Administration's approach was litigation risk. One complaint was that, functionally, Musk was the leader of DOGE and that he and DOGE made decisions to cancel grants, fire workers, shut down agencies, and so forth.[214]

One response, however, was that appropriate agency officials either signed off on these decisions before or ratified them after. This lenient position scored some points in court. Judges have not plainly endorsed agency rubber-stamping of DOGE recommendations, and district courts voiced worries about who was really running the show.[215] But in stay proceedings,[216] a Fourth Circuit majority suggested that formal "approval or ratification" by an agency

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[206] 585 U.S. 237 (2018).

[207] *See* SEC, *Press Release: SEC Ratifies Appointment of Administrative Law Judges*, Nov. 30, 2017, https://www.sec.gov/newsroom/press-releases/2017-215.

[208] *See Lucia*, 585 U.S. at 252 n.6.

[209] *See id.* at 267 (Breyer, J., dissenting).

[210] The Commission subsequently re-ratified the ALJ appointments and offered parties in pending matters new hearings. *See In re* Pending Administrative Proceedings, SEC Release No. 10536 (Aug. 22, 2018), https://www.sec.gov/files/litigation/opinions/2018/33-10536.pdf.

[211] *See* Wille v. Lutnick, 158 F.4th 539, 544–45, 547, 549–50 (4th Cir. 2025) (allowing ratification of the signing of a rule under agency law principles where, among other considerations, the ratifying officer stated that he independently evaluated the rule and the basis for adopting it); *see also* Jooce v. FDA, 981 F.3d 26, 29 (D.C. Cir. 2020) (similar where a Commissioner stated that he carefully reviewed the rule). However unsettled that issue, the Supreme Court has now accepted that *statutes* may ratify certain otherwise questionable agency decisions related to appointments. *See* Kennedy v. Braidwood Mgmt., 145 S. Ct. 2427, 2458 (2025) (addressing agency reorganization plans). Note also the *judicial* moves made after the Supreme Court declared certain statutes had unconstitutionally granted Article III power to non-Article III bankruptcy judges. *See* Lynn M. LoPucki, *The Systems Approach to Law*, 82 CORNELL L. REV. 479, 494–95 (1997) (recounting post-*Northern Pipeline* interim rubber-stamping by district judges, and the old bankruptcy judges transitioning to "quasi-magistrates" and then "consultants").

[212] *See* U.S. CONST. art. II, § 2. In 2024, Musk was announced as DOGE's co-leader to be. *See* Donald J. Trump, TRUTH SOC. (Nov. 12, 2024), https://truthsocial.com/@realDonaldTrump/posts/113472884874740859. But court filings indicate that was not his formal position. *See* Fisher Decl., *supra* note 62, at ¶ 5 (representing that Musk served as a Special Government Employee and Senior Advisor to the President).

[213] *See, e.g.*, *Appointment and Confirmation of Executive Branch Leadership: An Overview* 3–5, CONG. RES. SERV. (Mar. 17, 2021), https://www.congress.gov/crs_external_products/R/PDF/R44083/R44083.5.pdf.

[214] *See, e.g.*, Does 1-26 v. Musk, 771 F. Supp. 3d 637, 662, 665 (D. Md. 2025).

[215] *See id.* at 665 (expressing concerns about "an end-run around the Appointments Clause" if the case turned on Musk's formal legal authority "on paper"); New Mexico v. Musk, 769 F. Supp. 3d 1, 7 (D.D.C. 2025) (concluding the plaintiff-States "legitimately call into question what appears to be the unchecked authority of an unelected individual and an entity that was not created by Congress," but denying them a temporary restraining order for not showing imminent irreparable harm).

[216] *See* Does 1-26 v. Musk, 2025 WL 1020995, at *1 (4th Cir. Mar. 28, 2025) (per curiam) (granting a stay).

official is sufficient to defeat such claims even if Musk "directed" the action taken.[217] Although constitutional doctrine has not solidified into a formalist track against all inquiries into the location of power,[218] Appointments Clause cases might well lean that way. Most judges in most cases probably are unable or unexcited to reliably map the "actual power structure" of government, to borrow a phrase.[219]

B. Legal Footholds

Perhaps our legal system should be more univocally against rubber-stamping. Perhaps we underestimate the threat of those arrangements to law's purposes or legal designers' intentions. However, a serious challenge is determining the goals for these fields: mere control over allocations of authority and a chance at accountability, or also achieving influential participation by those same officials. Either goal is consistent with law's specification of one formal decision maker or the existence of a bottleneck. Simple checks for sign-offs can achieve accountability in terms of job loss, personal liability, or electoral consequences. In contrast, sometimes the best understanding of law is a restrictive allocation of power that aligns with authority; and conventional interpretive arguments can make some areas of law more ambitious in that way. Yet those possibilities remain mostly unrealized.

1. Scalable doctrines?

Anti-rubber-stamping norms could be built up from legal materials that sweep across many government operations. In theory, separation-of-powers principles could be elaborated into demands for minimally thoughtful consideration of positions taken across institutional borders, in pursuit of real-world checking and balancing among institutions that otherwise attract little loyalty. But that hasn't happened.[220] If dependable cross-institution rivalry seems hopeless, other fields present logical opportunities. Given a legal allocation of authority to a specified government actor, candidate doctrines for constraining the mindless following of other actors include arbitrariness review,[221] abuse of discretion guardrails,[222] and possibly rational basis review under the Fifth and Fourteenth Amendments.[223] The beginnings of resistance appear in the proposition that government may not avoid Equal Protection Clause complaints "by deferring to the wishes or objections of some fraction of the body politic."[224] Today, however, that doctrine limits rubber-stamping of illegitimate interests, not officials following others more generally.[225] In extreme forms, moreover, rational basis review actually illustrates *judges rubber-stamping* other officials' decisions, not rooting out the practice.[226]

Probably the most radical and appealing resources for anti-rubber-stamping advocates are simply the allocations of legal authority themselves. Which are everywhere. A multiplicity of constitutional, statutory, and regulatory provisions name a particular official, institution, or

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[217] *Id.* at *3 (Quattlebaumm & Niemeyer, JJ., concurring) ("The question is whether Musk both directed those decisions and did so without the approval or ratification of USAID officials."); *cf.* Andrade v. Regnery, 824 F.2d 1253, 1257 (D.C. Cir. 1987) ("[I]t does not offend the Appointments Clause so long as the duly appointed official has final authority over the implementation of the governmental action."). *But cf.* New Mexico v. Musk, 784 F. Supp. 3d 174, 204–05 (D.D.C. 2025) (distinguishing *Andrade* as involving staff carrying out policies of elected or appointed officials, not a non-"duly appointed" person directing appointed officials).

[218] For constructive generalizations about institutional-level formalism in judicial doctrine, see Richard H. Pildes, *Institutional Formalism and Realism in Constitutional and Public Law*, 2013 SUP. CT. REV. 1, 34 (2013).

[219] City of St. Louis v. Praprotnik, 485 U.S. 112, 145 (1988) (Brennan, J., concurring) (regarding § 1983 municipal liability). The *Praprotnik* plurality instead emphasized formal allocations of authority under state and local law, while leaving room for municipal liability where "a particular decision by a subordinate was cast in the form of a policy statement and expressly approved by the supervising policymaker." *Id.* at 130; *cf.* Jett v. Dallas Indep. Sch. Dist., 491 U.S. 701, 737 (1989) (including custom and usage with the force of law).

[220] *See* Daryl J. Levinson & Richard H. Pildes, *Separation of Parties, Not Powers*, 119 HARV. L. REV. 2311, 2317–18, 2329–30 (2006).

[221] *See, e.g.*, 5 U.S.C. § 706(2)(A) (APA).

[222] *See, e.g.*, *id.*

[223] *See* U.S. CONST. amend. V & XIV, § 1.

[224] City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 448 (1985).

[225] *See id.* Current rational-basis doctrine does not identify particular decision makers who must reach conclusions on legitimate grounds.

[226] *See* Sunstein, *supra* note 70, at 61 (contending rational basis is "traditionally little more than a rubber stamp," but can be used to invalidate ill-motivated laws).

group to exercise authority, including approval of other actors' decisions.[227] We are entitled to ask, regarding *all* these allocations, whether they mean to place actual decisional power in that same spot. Mere allocation of authority cannot rule out lawful rubber-stamping, but surely some allocations are fairly interpreted against routinized sign-offs. Convenient textual hooks include statutory calls for decisions in the judgment or discretion of a particular actor.[228] Developing part of this tall stack of texts in anti-rubber-stamping directions would not depend on entirely new principles, either. Arguably the effort would recover a faded administrative law principle that used to warn, where hearings were required, "[t]he one who decides must hear."[229] But the legal entrenchment and expansion of those ideas haven't happened, whatever the textual plausibility for agency heads, frontline workers, presidential electors, or anyone else.[230] That is another tell about the legal system's permissiveness.

More narrowly, various statutes and regulations prescribe discretionary, independent, or de novo decisions by a designated official or institution.[231] They are plausible footholds for requiring active official engagement, although the indications seem concentrated in adjudications. The Supreme Court declared once (and only once) that "if the word 'discretion' means anything in a statutory or administrative grant of power, it means that the recipient must exercise his authority according to his own understanding and conscience."[232] Most significantly, law marks spaces for "independent" adjudication.[233] A marquee example is *Loper Bright*'s doctrine for judicial review of agency statutory authority under the APA, which favors a wider area of assessment than "mechanically afford[ing] binding deference to agency interpretations."[234] Instead, "courts must exercise independent judgment in determining the meaning of statutory provisions."[235] Not literally independent in strong form, though—the Court preserved levels of respect for agency positions on the statutes they administer,[236] which we may understand as more collaborative than independent judgment.[237] Either way, the opinion disavowed mechanical rubber-stamping of agency views on statutory authority.

Even so, *Loper Bright* acknowledged that federal statutes may authorize agencies to exercise discretion within some constitutional limit.[238] On this point, the majority opinion prevented judicial rubber-stamping only through a debatable partition of decisions. It suggested that the courts or enabling statutes divide authority between the judiciary and agencies, with courts drawing boundaries around agency authority and agencies making decisions within those bounds.[239] On that view, a court cannot rubber-stamp an agency's position, conceptually, because the two actors are deciding different questions.[240] But surely thoughtful observers may also picture the judges and agencies as collaboratively implementing the statutes,[241] with courts

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[227] *See, e.g.*, Magill & Vermeule, *supra* note 175, at 1072–73.

[228] *See, e.g.*, 2 U.S.C. § 300 (referencing a congressional committee); 21 U.S.C. § 341 (referencing the Secretary of Health and Human Services); 22 U.S.C. § 277e (referencing the Secretary of State). Those provisions nonetheless may permit collaborative judgments. *See* Willapoint Oysters v. Ewing, 174 F.2d 676, 696 (9th Cir. 1949) (holding that a statute required an administrator to "himself make the actual decision" in adjudication, but that the law "does not proscribe the assistance, expertise, and recommendations of his subordinates," thus avoiding "an impossible task").

[229] Morgan v. United States, 298 U.S. 468, 481 (1936); *see also infra* note 243 (noting the erosion of this principle).

[230] *See, e.g.*, Chiafalo v. Washington, 591 U.S. 578, 592 (2020) (accepting disempowerment of electors).

[231] *See, e.g.*, 5 U.S.C. § 706(2)(F) (APA) (regarding trial de novo); 7 U.S.C. § 136a-1(b)(4) (noting "an independent, initial review" by the EPA Administrator for certain pesticide registrations); 42 U.S.C. § 1766(a)(1)(B), (a)(2), (d)(5)(D)(ii)(II) (requiring states in a food support program for child care to "provide for an independent review" of certain fraud-based suspensions).

[232] United States *ex rel.* Accardi v. Shaughnessy, 347 U.S. 260, 266–67 (1954). Another outlier is state secrets doctrine, which requires "actual personal consideration" by the relevant high official. United States v. Reynolds, 345 U.S. 1, 8 (1953).

[233] *See supra* note 174.

[234] Loper Bright Enters. v. Raimondo, 603 U.S. 369, 399 (2024) (emphasis omitted) (presenting the majority's view of *Chevron* doctrine).

[235] *Id.* at 394.

[236] *See id.* (citing *Skidmore*).

[237] *See supra* notes 106–107 & accompanying text; *see also* Thomas W. Merrill, *The Demise of Deference—And the Rise of Delegation to Interpret?*, 138 HARV. L. REV. 227, 262 (2024) (distinguishing de novo review in administrative law as rare and different from *Loper Bright*'s independent judgment).

[238] *See Loper Bright*, 603 U.S. at 394–95.

[239] *See id.*

[240] *See supra* text accompanying notes 94–97 (flagging such framings).

[241] *Cf.* Henry P. Monaghan, Marbury *and the Administrative State*, 83 COLUM. L. REV. 1, 27 (1983) (asserting a court's task is "fix[ing] the boundaries of delegated authority," but stating "responsibility for meaning is shared between court and agency").

affirming agency decisions within that zone of discretion. Even if the Court's decisional separation is persuasive, though, some rubber-stamping may persist. Courts may end up accepting without serious resistance any number of agency positions in practice, especially on complex issues that judges care little about, while talking up "independent" judicial review.

Regardless, any anti-rubber-stamping law needs workable tests for invalidity. That challenge becomes greater as legal resistance broadens. Importantly, any test should not (exclusively) depend on the quality of decisions rubber-stamped. Targeting unlawfully bad results makes rubber-stamping arrangements legally irrelevant. Conversely, unlawfully rubber-stamped results may have perfectly valid justifications—just not the reasons held by formal decision makers. That said, completing the trick of manageable tests is not inconceivable within some domain. We have a sense of what counts as self-interested rubber-stamping schemes,[242] even if we disagree over exactly which conduct should be unlawful. The thickest barriers probably are not problems of legal logic, it seems, but the desirability and feasibility of using law to stop rubber-stamping.

Among the serious feasibility blockades are information asymmetries. Often outsiders have difficulty verifying rubber-stamping arrangements as distinct from deeper agreement on results.[243] And current law is part of the problem. The legal system offers no guarantee that observers can obtain useful evidence of actual influences on decisions, even in fields where thoughtful decisions are required. In administrative law, outsiders face presumptions of regularity and good-faith in agency decisions,[244] related limits on access to the ordinary tools of discovery in litigation,[245] and deliberative process or other privileges that restrict access to an administrative record that might demonstrate rubber-stamping.[246] Generally, critics must make a "strong showing" of improper behavior first before federal courts will help "peel back the curtain" on agency internal deliberations, as the Court remarked this year.[247]

These information-access limits are not spurious or offbeat trends. They were constructed over decades. Their obvious effects on the ability of concerned observers to enforce official commitments against rubber-stamping should make us reconsider the seriousness of those commitments. Law's opposition to rubber-stamping might be built out in theory, but the crosscurrents indicate skepticism.

2. All procedure?

Nonetheless, swaths of law do influence the likelihood of rubber-stamping without directly addressing it. A fair impression is that *most* procedural law aims to promote thoughtfulness. Officials and institutions can be tilted toward engaged decision making by law that guarantees or rewards opportunities for interested parties to offer their views to those officials before final decisions,[248] and that requires those decision makers to give nonarbitrary reasons

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[242] *See supra* Part II.B.3.

[243] *See supra* Part II.C.

[244] *See, e.g.*, Freytag v. Commissioner, 501 U.S. 868, 872 n.2 (1991) ("We are not inclined to assume 'rubber stamp' activity on the part of the Chief Judge [of the Tax Court]."); Hercules, Inc. v. EPA, 598 F.2d 91, 123 (D.C. Cir. 1978) (concluding that mere accord with staff positions does not overcome the presumption of regularity); *cf.* Dep't of Com. v. New York, 588 U.S. 752, 781–82 (2019) (offering an exceptional instance of a challenger with convincing evidence of pretext and substituted judgment).

[245] *See, e.g.*, United States v. Morgan, 313 U.S. 409, 420 (1941) (declaring "[i]t is not for us to try to penetrate the precise course of the Secretary's reasoning"); Nat'l Nutritional Foods Ass'n v. FDA, 491 F.2d 1141, 1145–46 (2d Cir. 1974) (Friendly, J.) (similar); Willapoint Oysters v. Ewing, 174 F.2d 676, 696 (9th Cir. 1949) (explaining that a mere allegation in a brief is insufficient to challenge an administrator's "recitation that he has personally examined and considered the evidence in making his decision").

[246] On deliberative process privilege, see U.S. Fish & Wildlife Serv. v. Sierra Club, Inc., 592 U.S. 261, 267–69 (2021) (explaining that privilege protections apply to documents that reflect a "preliminary view" as opposed to "final decisions"); *see also* Braniff Airways, Inc. v. Civ. Aeronautics Bd., 379 F.2d 453, 460 (D.C. Cir. 1967) (Leventhal, J.) ("Agencies are no more bound to enter for the record the time, place, and content of their deliberations than are courts.").

[247] FDA v. Wages & White Lion Invs., 145 S. Ct. 898, 923 (2025).

[248] A now-familiar idea in administrative law is that, under certain conditions, agency officials may accept the costs of more elaborate procedures to gain favor with courts on the merits of resulting decisions. *See generally* Matthew C. Stephenson, *The Strategic Substitution Effect: Textual Plausibility, Procedural Formality, and Judicial Review of Agency Statutory Interpretations*, 120 HARV. L. REV. 528, 531 (2006). For a *Chevron*-era argument that agency positions should not be eligible for such deference unless the official with statutory authority signs off before the decision and after "meaningful review" by "the delegatee *or* her close advisors," see David J. Barron & Elena Kagan, Chevron*'s Nondelegation Doctrine*, 2001 SUP. CT. REV. 201, 238–40, 252–57 (2001) (emphasis added) (contending that a "meaningful review" requirement would be largely self-enforcing).

for those decisions.[249] This is true even when those laws do not explicitly forbid rubber-stamping. Not every government decision is covered by these areas of law, and many final decisions are not accompanied by any record of reasons. Yet agency heads, judges, and even congressional committee chairs sometimes sign off on elaborate explanations for their positions.[250] For some officials, required procedures and the possibility of review for arbitrariness encourage the production of reasons.[251]

At the same time, procedural and administrative law often fixate on voices and reasons, not who hears the former and who holds the latter. Usually what matters is that adequate reasons are available to support the relevant decision, not that a particular individual listened to others and developed those adequate reasons. Those ambitions are not superficial. A legal system can drive hard and successfully for thoughtfulness, and it can achieve a kind of accountability in designated officials, without attempting to regulate who exactly does the hard thinking. Like *Chadha*'s view of the legislative process,[252] many procedural norms may generate opportunities for debate, engagement with ideas, and development of reasons by official decision makers, without law or judicial review attempting to guarantee any of that. We still can demand nonarbitrary decisions at the end of the day.[253]

The Administrative Procedure Act generally matches that relaxed position. The APA helps guide and constrain federal "agency action," including rulemaking,[254] without necessarily aligning power and formal authority within agencies. Even if a statute designates the agency head as the person authorized to make some regulation, and even if the agency head merely signs off on that decision, courts exercising APA review seem indifferent to the identity of the people who actually developed the reasons subject to evaluation. Nobody can seriously believe the Secretary of Whatever developed even a substantial part of the reasoning, or all the conclusions, that appear in preambles to final rules—which are sometimes hundreds of pages long, highly technical, and supported by dense empirical findings and predictions. A recent final rule on emissions standards, signed by the EPA Administrator, exceeded 350,000 words.[255] That work is primarily for other policymakers and staff in agencies and the White House, along with any other external organizations and individuals who influence decisions. All that work can be rubber-stamped by an agency head without, it seems, serious legal risk under the APA.[256]

Nor do we find successful challenges to judicial decisions on the basis that the judge who signed the judgment had a law clerk ghostwrite the opinion, or to legislation on the charge that most legislators didn't pay attention to what they voted on. Congress and its bureaucracies may deliberate in many ways, but elected legislators themselves are generally not drafting or even reading bill text.[257] Imagine the upheaval that would follow from a rule that the *only*

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[249] *See, e.g.*, 5 U.S.C. § 706(2)(A) (regarding arbitrariness review); City of Cleburne v. Cleburne Living Ctr., 473 U.S. 432, 448 (1985) (regarding rational basis review).

[250] *See infra* text accompanying note 255; Jesse M. Cross, *Legislative History in the Modern Congress*, 57 HARV. J. ON LEGIS. 91, 92–96, 126–34 (2020) (describing drafting of committee reports and chair statements by staff).

[251] Anti-rubber-stamping incentives appear in other patches of current law. Some cases indicate a government defendant cannot claim immunity from damages for discretionary judgments if the defendant did not actually exercise discretion. *See, e.g.*, Johnson v. State, 447 P.2d 352, 361 n.8 (Cal. 1968); Haddock v. City of New York, 553 N.E.2d 987, 991 (N.Y. 1990); Peatross v. City of Memphis, 818 F.3d 233, 236–39, 246 (6th Cir. 2016) (rejecting qualified immunity for a supervisor who allegedly rubber-stamped exonerations of police shootings). As well, the government contractor defense for private parties may be limited to tasks that were substantively evaluated by government officials. *See, e.g.*, Trevino v. Gen. Dynamics Corp., 865 F.2d 1474, 1480 (5th Cir. 1989); Smargisso v. Air & Liquid Sys. Corp., 750 F. Supp. 3d 1046, 1066 (N.D. Cal. 2024). That creates some incentive for contractors to oppose otherwise convenient rubber-stamping arrangements.

[252] *See supra* text accompanying notes 185–188.

[253] *Cf.* Lisa Schultz Bressman, *Beyond Accountability: Arbitrariness and Legitimacy in the Administrative State*, 78 N.Y.U. L. REV. 461, 485–93 (2003) (emphasizing non-arbitrariness over notions of accountability).

[254] *See* 5 U.S.C. § 553; *id.* § 706 (prescribing bases and standards for judicial review of agency action).

[255] *See* 89 Fed. Reg. 27842, 28144 (2024). The associated regulatory impact analysis exceeded 800 pages. *See* Assessment & Standards Div., EPA, *Multi-Pollutant Emissions Standards for Model Years 2027 and Later Light-Duty and Medium-Duty Vehicles Regulatory Impact Analysis* (Mar. 2024) (EPA-420-R-24-004).

[256] *Accord* Coglianese, *supra* note 27, at 75 (observing a widespread "formalistic understanding of signing-as-deciding" in federal agencies).

[257] *See, e.g.*, Jesse M. Cross, *The Staffer's Error Doctrine*, 56 HARV. J. ON LEGIS. 83, 98–99, 105–06 (2019) (describing reading habits and vote-rec notecards from staff); Jesse M. Cross & Abbe R. Gluck, *The Congressional Bureaucracy*, 168 U. PA. L. REV. 1541, 1566 (2020) (reporting that neither Members nor senior policy staff are generally involved in drafting legislation); Ganesh Sitaraman, *The Origins of Legislation*, 91 NOTRE DAME L. REV. 79, 103–06 (2015) (listing non-congressional bill drafters including

reasons that may support the legal validity of a statute, agency action, or judicial judgment are the reasons that were actively considered by those with formal authority to decide. Current law is more committed to the modest demand that someone at some stage has adequate reasons for government decisions. Justice Brandeis reportedly suggested that Justices are especially respected by the public because "they are almost the only people in Washington who do their own work."[258] That is no longer a fair characterization of even the Justices in strict terms, much less for lower court judges,[259] or high-level officials such as agency heads, who do not make those claims. If they do, they are not credible, not without slashing the scope of "their own work" to preserve a lot of ghostwriting and rubber-stamping.

C. Disconnecting Nondelegation

Perhaps we can reduce the legal noise and uncertainties about rubber-stamping by hitching the conclusions to our positions on (non)delegation. That might comport with intuitions. First off, perhaps the legality of fully delegating authority and power to another actor supports the legality of rubber-stamping that actor's judgments instead. One might think rubber-stamping is a kind of "lesser power" that should be included with the authority to fully delegate. Recall too that some economic theory treats rubber-stamping as a partial substitute for full delegation.[260] Perhaps law will track that line of reasoning, assuming the arrangement is no less transparent than delegation.

A broad pro-delegation/pro-rubber-stamp pairing is, however, difficult to confirm in law. It is true that many high-level officials may lawfully subdelegate authority within their own agencies,[261] and instead many sign off on others' work. Current law does not generally forbid that,[262] which coheres with the idea that rubber-stamping is a lawful alternative to lawful delegation. In the same spirit, courts have allowed statutory delegations of authority to agencies without foreclosing the alternative of Congress rubber-stamping agency proposals through the Article I, Section 7 legislative process.[263] But these are not broad and clear holdings.

Risk-averse readers might draw a soft cautionary note from *Chadha*,[264] the legislative veto case. The Court was essentially pro-delegation from Congress to agencies.[265] But the Court ruled out an arrangement in which agency officials sent reports of their decisions to Members of Congress, who could have the final word if they stirred themselves to action in a disapproval resolution. To the extent legislative vetoes were pitched as a lesser step than full delegation to agencies,[266] the Court opposed the compromise.[267] Still, *Chadha* was not about rubber-stamping per se. The legislative veto process did not depend on formal congressional sign-offs, but rather allowed agency officials to move forward absent a disapproval resolution. And again, the case did nothing to stop rubber-stamping through repeated use of the full legislative process.[268]

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executive branch staff and private organizations).

[258] WYZANSKI, *supra* note ††, at 61.

[259] *See, e.g.*, Perry Dane, *Law Clerks: A Jurisprudential Lens*, 88 GEO. WASH. L. REV. ARGUENDO 54, 63–66 (2020) (discussing staff writing for judges, presidents, and legislators); Mitu Gulati & Richard A. Posner, *The Management of Staff by Federal Court of Appeals Judges*, 69 VAND. L. REV. 479, 483–84 (2016) (describing a standard model where law clerks draft and appellate judges edit opinions); *see also* Natasha-Eileen Ulate, Note, *The Ghost in the Courtroom: When Opinions Are Adopted Verbatim from Prosecutors*, 68 DUKE L.J. 807 (2019). Note the now-stunning report that Judge Learned Hand forbade his law clerks to show him their notes. *See Annual Judicial Conference Second Judicial Circuit of the United States*, 93 F.R.D. 673, 748 (1981) (remarks of Judge Alvin Rubin).

[260] *See supra* Part II.B.1.

[261] *See supra* note 86 & accompanying text.

[262] *See supra* Part III.A–B.

[263] *See supra* notes 185–188; *see also infra* notes 278–279 (addressing nondelegation).

[264] 462 U.S. 919 (1983).

[265] *See id.* at 952–53 & n.16 (defending statutory grants of discretionary authority).

[266] *See id.* at 986–87 (White, J., dissenting).

[267] *See id.* at 951, 956–57 (majority opinion).

[268] *See id.* at 958 n.23. *Chadha* did not even stop Members of Congress from telling agencies to check with them, albeit without judicial enforceability. *See* Curtis A. Bradley, *Reassessing the Legislative Veto: The Statutory President, Foreign Affairs, and Congressional Workarounds*, 13 J. LEGAL ANALYSIS 439, 461 (2021) ("Congress has included many more legislative veto provisions in statutes enacted *after Chadha* than in statutes enacted before the decision.").

A broad *anti*-delegation/*anti*-rubber-stamp pairing is not easier to show in current law. That combination will not immediately appeal to those who consider rubber-stamping a lesser alternative to full delegation: Prohibiting the greater move does not necessarily suggest problems with a lesser move. And we know rubber-stamping, perhaps with take-backs, can be a rational and convenient option when reallocations of authority are prohibited, considering decision quality and work overloads. Law does not oppose every convenient workaround.[269] Yet because of the attractions, we should not be surprised if sometimes the law prohibits a rubber-stamping arrangement that approximates a full delegation to which the law is opposed.

Courts have indicated that redelegation of authority across institutional boundaries, as opposed to subdelegations within a single agency, is suspect in statutory interpretation.[270] The presumption is confined to allow agencies to get fact-gathering and policy recommendations from outsiders, but those influences need not amount to rubber-stamping.[271] A few cases further indicate legal risk when rubber-stamping defeats a statute-inspired restriction on redelegation, or undercuts duties of independent judgment or trusteeship. In the 1980s, one court wanted "meaningful review" by a trustee federal agency without "rote approval" of a state board's orders on oil wells that affected tribal lands.[272] Another court was satisfied with "proof of actual agency review" of consultant-written reports that contributed to environmental impact statements.[273] The existing standards of thoughtfulness may not be demanding, they will not reach all official decisions, and outsiders often have difficulty collecting evidence of actual decision processes. But the red flags are worth noticing.

On the constitutional side, nondelegation invalidations remain rare. Nonetheless, and remarkably, *A.L.A. Schechter Poultry Corp. v. United States*[274] partially matches anti-delegation with anti-rubber-stamping. The Court first concluded the National Industrial Recovery Act unconstitutionally delegated authority to the President, then went out of its way to hold the Act exceeded Congress's authority under the Interstate Commerce Clause as applied to certain poultry markets.[275] Combining those holdings meant the President and Congress could not solve the nondelegation problem by getting Congress to rubber-stamp the President's poultry code (perhaps itself a rubber-stamped industry plan). The Court's opposition to that workaround was understandable, insofar as a Court majority was then trying to constrain federal government power to regulate commercial activity generally—whether the details were determined by the executive branch, the Congress, or interest groups.

But we cannot pull much guidance from *Schechter*'s one-two punch on presidential discretion and interstate commerce. It tells little about Members of Congress rubber-stamping bills drafted by the White House or industry in areas the Court thinks are *within* Congress's legislative powers. Those powers remain broad today. Additionally, remember the Court's apparently formal and permissive stance toward rubber-stamping under the private nondelegation doctrine in *Consumers' Rsch.*[276] For their part, "major questions" cases block some range of agency initiatives while concluding that those issues are for Congress.[277] The Justices might be right or wrong about what Members of the enacting Congress wanted, and judges might

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[269] *See supra* note 16.

[270] *See* U.S. Telecom Ass'n v. FCC, 359 F.3d 554, 565 (D.C. Cir. 2004) (relying on impressions about clear lines of responsibility and democratic accountability); Brian D. Feinstein & Jennifer Nou, *Submerged Independent Agencies*, 171 U. PA. L. REV. 945, 1008–09 (2023) (summarizing that agencies may take statutory "silence" as permitting internal subdelegation but not redelegation to another entity).

[271] *See U.S. Telecom*, 359 F.3d at 567–68 (adding an anti-rubber-stamping proviso for recommendations).

[272] Assiniboine & Sioux Tribes of Ft. Peck Indian Reserv. v. Bd. of Oil & Gas Conservation of State of Mont., 792 F.2d 782, 794–95 (9th Cir. 1986) (indicating the behavior "would constitute an unlawful delegation of authority" if plaintiffs proved the Bureau of Land Management office failed to meet the standard); *see also* Barron & Kagan, *supra* note 248, at 248 (noting "meaningful review" as a potentially self-enforcing, staff-satisfied obligation).

[273] Save Our Wetlands, Inc. v. Sands, 711 F.2d 634, 641–43 (5th Cir. 1983) (stating that, with such proof, "it is not a delegation of authority to an interested party").

[274] 295 U.S. 495 (1935).

[275] *See id.* at 541–42, 550–51.

[276] *See supra* text accompanying notes 189–194.

[277] *See* Biden v. Nebraska, 600 U.S. 477, 506 (2023) (concluding that Congress likely kept the trade-offs of mass debt cancellation to itself); West Virginia v. EPA, 597 U.S. 697, 729–30 (2022) (similar for a climate regulation initiative).

follow their own inclinations about what agencies should do. Regardless and thus far, the Court has not purported to regulate how legislators should evaluate those initiatives.

So, Members of Congress enacting replicas of agency initiatives is still a legal fix for certain legal problems, as far as we know. The important limits on congressional rubber-stamping are the politics, partisanship, and capacity of the legislative process. Those impediments are real and, within certain timeframes, prohibitive. People who debate REINS Act proposals grasp the point.[278] Freely rubber-stamping agency initiatives with fast-track procedures might not strain legislative capacity,[279] but Members of Congress are highly unlikely to enact legislation that codifies agency initiatives during times of divided-party government. Those politics are important for estimating the effectiveness of judicial opposition to agency authority. But focusing on politics and capacity coheres with the view that limits on rubber-stamping are not, in the end, primarily sourced in law.

IV. POTENTIAL FIXES AND FAILINGS

Current law leaves substantial space for rubber-stamping, but notable legal uncertainty persists and law is unstable over long runs. Actually, significant legal ambiguity could be an acceptable middle ground, promoting caution without overreaching. The practice is troubling only sometimes, probably not subject to simple rules of propriety, and impossible to stop entirely. Still a live question is the extent to which anyone should try to use law or other tools to further control not only allocations of formal authority, which certainly is feasible, but allocations of power on which rubber-stamping depends. Sensible responses depend on a search for strategies or tactics that can limit rubber-stamping, and their trade-offs.

Cheap and usually inadequate responses include reminding or ordering those with formal authority to be independent or thoughtful,[280] or drawing lines around institutions and assuming competing loyalties will prevent cave-ins.[281] Those announcements are plainly insufficient to control rubber-stamping wherever people want thoughtfulness.[282] As for better options, first-draft answers don't have to be comprehensive and definitive to be useful; people should continue to experiment with inducing thoughtfulness, whether to interrupt mindless following or for broader purposes.[283] For now, we can usefully divide candidate ideas, roughly, into redesigns of decision environments and simpler tricks that target particular decision protocols. Then trade-offs will resurface: the former can be effective but tend to be costly, the reverse generally characterizes the latter, and certain interventions may backfire.

A. Redesigning Environments

1. Decision resources

A leading explanation for rubber-stamping is asymmetric resource constraints: limited

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[278] REINS act proposals aim to require bicameral approval and presentment before major agency rules gain the force of law. *See* Jonathan R. Siegel, *The REINS Act: Constitutional, But a Bad Idea*, 42 ADMIN. & REG. L. NEWS 9, 9 (Spr. 2017) ("Given the strong divisions between the parties, the REINS Act could powerfully impact federal rulemaking, perhaps even grinding it to a halt.")

[279] *See* Ronald M. Levin, *The REINS Act: Unbridled Impediment to Regulation*, 83 GEO. WASH. L. REV. 1446, 1455 (2015) (arguing the process would be unwise, "at least if legislators are going to study the issues carefully enough to make their votes meaningful"); Siegel, *supra* note 278, at 10 (estimating that each house would have to vote twice weekly on average to pass on all major rules, and arguing that Members "would not have time to cast responsible votes").

[280] *See supra* note 174.

[281] *See, e.g.*, Seila Law LLC v. CFPB, 591 U.S. 197, 223 (2020) (characterizing the Framers' original constitutional design as dividing power across institutions and enabling ambition to counteract ambition).

[282] *See, e.g.*, Coenen, *supra* note 98, at 658–60, 662 (acknowledging anti-rule doctrines will not necessarily be followed); Levinson, *supra* note 3, at 92 (contending that interests with policy commitments have no loyalty to government institutions such as legislatures, executive branches, courts, and states); *see also* OLIVER SIBONY, YOU'RE ABOUT TO MAKE A TERRIBLE MISTAKE: HOW BIASES DISTORT DECISION-MAKING AND WHAT YOU CAN DO TO FIGHT THEM 14–15, 163 (2020) (contending people generally cannot eliminate biases by attempting to recognize them, although recommending attention to processes).

[283] *See* Ozan Isler, Onurcan Yilmaz & Burak Dogruyol, *Activating Reflective Thinking with Decision Justification and Debiasing Training*, 15 JUDGMENT & DECISION MAKING 926, 926–27 (2020) (describing the beginnings of effectiveness testing for reflection manipulations). Despite early hopes, displaying pictures of Rodin's *The Thinker* does not reliably prompt reflective thinking. *See id.* at 927; Kristen D. Deppe et al., *Reflective Liberals and Intuitive Conservatives: A Look at the Cognitive Reflection Test and Ideology*, 10 JUDGMENT & DECISION MAKING 314, 321–22, 328 (2015).

decision resources for actors with formal authority, and available resources for other actors who gain power.[284] A straightforward anti-rubber-stamping response for those environments is flooding formal decision makers with resources, such as time and information available per decision,[285] assuming the number of decisions and their scope cannot be reduced. That may include hiring and training more people to work on hard problems, when we have identified mistakes and settled on tests for quality.[286] Another approach is to convert complex decision standards into simpler rules or to pay for machines that automate decisions, which likewise decreases per-person effort for the same number of decisions.

These moves frequently involve significant costs. The commitments may include salaries for staff, reduced speed to handle complex information, time and paid personnel for trainings and related testing, or, if decision rules are simplified or automated, possibly lower quality results.[287] Opponents of rubber-stamping do not always control those resources, and low system resources may be part of a resilient political compromise. More resources per decision is nonetheless a logical response where inadequately thoughtful decision making occurs, and where imperfections in human discretion leave opportunities for improvement through simple rules or automation.[288]

The core shortfall, however, is that "can" does not imply "will." Lack of resources surely instigates rubber-stamping, but rubber-stamping might be easier to encourage than stop. While other efforts to promote thoughtfulness can work only if decision makers are not overloaded, a wealth of resources cannot guarantee thoughtfulness by anyone.[289] Rubber-stamping arises for multiple reasons, including shirking and hassle-minimization or hopes that other actors will learn and apply expertise. Crucially, resources such as human staff and generative AI are tools for rubber-stamping, not only fixes for it. Granting those resources may backfire by easing the way for formal decision makers to rely on other actors and machines without looking like it. Controlling rubber-stamping means influencing both the amount and the use of decision resources.

2. Thoughtfulness audits

Assuming the necessary decision resources, a supplemental option is performance audits backed with positive reinforcement or disciplinary penalties.[290] If formal decision makers

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[284] *See supra* Part II.B.2.

[285] *See, e.g.*, Kwon, *supra* note 103, at 597 (addressing bottlenecks).

[286] *See, e.g.*, KAHNEMAN, SIBONY & SUNSTEIN, *supra* note 69, at 297–98 (discussing frame-of-reference training with anchoring vignettes to improve consistency of performance evaluations, though noting their complexity and time consumption); Ozan Isler & Onurcan Yilmaz, *How to Activate Intuitive and Reflective Thinking in Behavior Research?*, 55 BEHAV. RSCH. METHODS 3679, 3684–87 (2023) (reporting positive effects on a cognitive reflection test from debiasing training); Ville A. Satopää et al., *Bias, Information, Noise: The BIN Model of Forecasting*, 67 MGMT. SCI. 7599, 7610 (2021) (reporting that, in multi-year forecasting experiments, probability training improved accuracy largely through noise reduction). Useful training need not perfectly target a predefined problem. *See id.* at 7611 (indicating training was motivated by statistical biases yet mainly reduced noise). However, not everyone benefits from training and, for some decisions, people predisposed to analytic reasoning may gain most. *See* Esther Boissin & Gordon Pennycook, *Who Benefits from Debiasing?*, 262 COGNITION 106166, at 2 (Sep. 2025) (testing efficacy of base-rate neglect training).

[287] *See supra* Part II.A.3; notes 98–99 (regarding rulification). Simplified decision rules may draw complaints for requiring a different kind of "rubber-stamping": insensitivity to relevant information. *See supra* note 102.

[288] *See, e.g.*, Aziz Z. Huq, *A Right to a Human Decision*, 106 VA. L. REV. 611, 651–53 (2020); Kiel Brennan-Marquez, *"Plausible Cause": Explanatory Requirements in the Age of Powerful Machines*, 70 VAND. L. REV. 1249, 1251–65, 1288–97 (2017).

[289] *Cf.* M. Asher Lawson, Richard P. Larrick & Jack B. Soll, *Comparing Fast Thinking and Slow Thinking: The Relative Benefits of Interventions, Individual Differences, and Inferential Rules*, 15 JUDGMENT & DECISION MAKING 660, 660, 666–69, 679 (2020) (raising complications for instructions that decision makers slow down, and suggesting that harm from induced fast thinking about statistical judgments could be larger than benefits from slow thinking); Bence Bago, David G. Rand & Gordon Pennycook, *Does Deliberation Decrease Belief in Conspiracies?*, 103 J. EXPERIMENTAL SOC. PSYCH. 1, 5–8, 10 (2022) (reporting no effect from time-pressure manipulations on subjects' reported beliefs in some high-profile conspiracy theories, and mixed results regarding presumably lesser-known conspiracy theories).

[290] *See, e.g.*, Stephenson, *supra* note 75, at 1455–61 (considering oversight options and effects on production of expertise, with varying information available to overseers); Miroslav Sirota, Marie Juanchich & Dawn L. Holford, *Rationally Irrational: When People Do Not Correct Their Reasoning Errors Even If They Could*, 152 J. EXPERIMENTAL PSYCH. GEN. 2052, 2053–56, 2070 (2023) (testing an expected-value model of engagement motivation, and reporting effects of performance payments and feedback in hints).

care about audit results and believe an audit is sufficiently likely, system designers can prescribe random audits of a manageable subset of all decisions.[291] With settled or even provisional measures for adequate thoughtfulness, auditors can evaluate behavior and deliver feedback. The process should help ensure not only that some actor in the loop is adequately thoughtful, but that the preferred actors do the thinking.

These are not accountability mechanisms based on correct or incorrect decisions, but audits of thoughtfulness. In a range of situations, the reasons for allocating authority and power are harnessing certain actors' time, expertise, values, and learning, not making those actors conform to preset standards for success.[292] That may be a wise response to our incompetence, a fair hope that those with power will learn beyond what we understand, or a requirement of political representation. In those situations, there might not be a correct result that observers can objectively assess. Even if there were, a correct result is not adequate proof of thoughtfulness, nor is an incorrect result proof of mindlessness.[293] And if we have reliable tests of good results, we might well want to impose some form of accountability on formal decision makers *without* separately testing for thoughtfulness. Officials could choose other actors to exercise power (or not) and face penalties or rewards for the results.

Restricted to assessments of thoughtfulness, complications remain. First, we again have the conceptual challenge of defining rubber-standing and the empirical challenge of verifying it.[294] Second, even random audits cost something, partly depending on the sensitivity of decision makers to positive or negative feedback. In government, this sensitivity is diminished by a limited set of lawful incentives.[295] For example, current law frequently shields from personal liability those officials who exercise discretionary authority, while exposing officials charged with nondiscretionary ministerial duties.[296] The Supreme Court's support for broad immunity for in-office conduct by the President—a leading rubber-stamper in government—is just one illustration.[297] Third and relatedly, the consequences for thoughtful and unthoughtful decisions can influence who wants to participate in problematic ways, discussed below. Good system designers must attend to selection effects and activity levels.

Perhaps most important, those with the power to impose anti-rubber-stamping mechanisms are not always those calling for the effort. There is only a loose relationship between, say, courts controlling the allocation of formal authority and their ability to implement audits and structures of personnel selection that might reduce rubber-stamping. This is not to argue that mechanisms of influence cannot be implemented through law, but to acknowledge a common separation between influencers of authority and influencers of power.

3. Selection efforts

Again assuming decision resources, systems need actors who are able and willing to conduct adequately thoughtful discovery and evaluation of options. So, system designers may devote effort to choosing decision makers who seem able and committed to perform well, apart from material incentives, or committed and promising in their capacity for learning.[298] Self-motivated care for the subject matter and consequences, along with a level of self-confidence or pride indicating the person is unlikely to offload power unless forced—these attributes might be difficult to confirm but they suggest attraction to DIY high-quality decision making.

Selecting and retaining such decision makers reduces the need for financial incentives to motivate effort. It also reduces the pressure of imperfect auditing systems, to the extent that

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[291] *See* Adam M. Samaha, *Randomization in Adjudication*, 51 WM. & MARY L. REV. 1, 21–22 (2009).

[292] *See supra* Part II.A.

[293] *See supra* text accompanying note 150.

[294] The discussion returns to this point in Part IV.B.3.

[295] *See* Jean Tirole, *The Internal Organization of Government*, 46 OXFORD ECON. PAPERS 1, 6 (1994) (observing that formal incentives for government employees may be "low powered").

[296] *See supra* notes 101 & 251. As an alternative to damages, "thoughtfulness injunctions" would face some of the challenges discussed here.

[297] *See* Trump v. United States, 603 U.S. 593, 605–06 (2024) (addressing immunity from criminal prosecution); Nixon v. Fitzgerald, 457 U.S. 731, 756 (1982) (addressing immunity from civil damages liability).

[298] *See supra* note 75 & accompanying text.

audits are even viable given the reasons for allocating authority and power. On the heavy downside, essential information might be unavailable for conducting effective personnel screening, including accurate predictions about learning or job performance. Claims about predictability in employment not uncommonly exceed any confirming evidence, notwithstanding enhanced data collection.[299] Due to information constraints on screening, decision systems also must rely on people sorting themselves into well-fitting positions.

For sorting, public service constraints are not all bad for anti-rubber-stamping efforts. Government institutions normally lack the budgets or legal authority to financially reward comparable decision makers at private-sector levels, and glowing commendations go only so far.[300] But sometimes financial incentives have only modest effects on actors who are highly motivated to make decisions well, and material incentives can even reduce other-regarding behavior under certain conditions.[301] Exercising government power can be the kind of decision those candidates value. People in a game only for pay might be the type of actor least likely to take care when no one is watching.

Relatedly, well-advertised distinctive missions may attract workers who are enthusiastic about those missions.[302] More expensively, anti-rubber-stamp designers may assure personnel they will enjoy actual power over socially important dockets,[303] show off generous decision resources,[304] and attempt to boost expectations that authority and power will not shift elsewhere. On such features, the decisions and working conditions for low-level agency personnel who handle matters without direct impact on human life contrast starkly with a Supreme Court Justice's supportive chambers, docket control over most filings, modest caseload of merits decisions and decreasing numbers of certiorari petitions,[305] plus opportunities to contribute on high-profile issues.

There are weaknesses and risks with these attempts, too. Adequate decision resources are still necessary, and selection strategies are essentially inapposite when our goal is spreading duties broadly for learning or political representation.[306] More humbling for designers who lack perfect information, the system might draw extraordinarily bad decision makers where power over other people is a primary attraction. Not only expert altruists but the most power-hungry, overconfident zealots are strongly attracted to these positions, where power and resources seem secure while the pay is relatively low. When those actors crowd into government positions, we might start wishing for resource constraints, even if they induce rubber-stamping.

B. Cheapish Tricks

Other tactics for minimizing rubber-stamping are targeted at particular decision protocols and several are low cost. Oaths to personally exercise independent judgment might not have much effect beyond the oath-takers' existing commitments, but oaths are extremely inexpensive to conduct. Indeed, the impact of most cheap tricks is probably limited even when decision resources are flush. Some gimmicks are associated with problematic side effects.

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[299] *See, e.g.*, NARAYANAN & KAPOOR, *supra* note 148, at 24, 59 (reviewing algorithmic and other automated prediction of social phenomena including job performance).

[300] *See* Tirole, *supra* note 295, at 6.

[301] *See* SAM BOWLES, THE MORAL ECONOMY: WHY GOOD INCENTIVES ARE NO SUBSTITUTE FOR GOOD CITIZENS 39–77 (2016) (reviewing experimental evidence that material incentives sometimes reduce influence of moral sentiments and social preferences); Kristen Underhill, *When Extrinsic Incentives Displace Intrinsic Motivation*, 33 YALE J. ON REG. 213, 219–29, 253–78 (2016) (parsing incentive-design options for reducing crowd-out of intrinsic motivations).

[302] *See* Tirole, *supra* note 295, at 12.

[303] *See* Adrian Vermeule, *Selection Effects in Constitutional Law*, 91 VA. L. REV. 953, 962 (2005) (exploring the argument that comparatively limited economic benefits may select for those who value the work of judging).

[304] Offerings might include guaranteed time to complete few decisions, numerous colleagues, high-technology workstations, large digital and physical libraries that are hard to dismantle, and support staff.

[305] *See* Steve Vladek, *Why Is the Court's Docket Shrinking?*, ONE FIRST (Sept. 9, 2024) (noting a general decline in signed opinions since 1988, from over 100 to under 60 per Term; and charting a general decline in certiorari petitions, especially in forma pauperis petitions, since a peak during October Term 2006). Varying levels of action on the Court's orders list does complicate generalizations about docket loads. *See, e.g.*, William Baude, *Foreword: The Supreme Court's Shadow Docket*, 9 N.Y.U. J. L. & LIBERTY 1, 3–4, 6 (2015) (focusing on stays, injunctions, and summary reversals on the orders list).

[306] *See supra* Part II.A.1. Consider in this regard jury duty, and compulsory education requirements where the relevant "decisions" involve study, participation, and assessments.

Even so, low-cost tactics with questionable effects should be compiled: they might be worth a try, and reviewing their limits shows the difficulties of controlling rubber-stamping. Costlier versions of decision-protocol engineering are introduced as the discussion proceeds.

1. Personal sign-offs

One option is to require a personal sign-off by the formal decision maker, such as a manual signature or initials—like the retro demand in Groce's case.[307] Recall, too, the contention that the President's manual signature is required to approve legislation and grant pardons,[308] which might well be traditional practice. In similar territory is the National Security Act's provision for authorizing certain covert action, which calls for the President to make a determination of necessity with an accompanying finding.[309] Another version of personal sign-off is voting Members of Congress forced to identify themselves as favoring or opposing a veto override,[310] as is polling jurors on their verdict.[311] Pausing for decision makers to associate themselves with decisions can promote reflection, particularly if sign-offs facilitate accountability later.[312] Effortful formality to communicate a final decision might induce focus or deepened cognition, although empirical studies are not uniform on this point.[313]

These mechanisms are weak fixes at most, however. Some notion of sign-off is built into our concept of rubber-stamping, which requires a sign of assent from actors with formal authority. Although we should not ignore effects of effortful communication, there is no reason to believe these formalities are very effective against rubber-stamping. If they were, much more rubber-stamping would have disappeared already. For similar reasons, achieving "active choice" is insufficient. Those rules attempt to elicit a person's preferred option for a given decision, one way or another, and without the system invoking a default option for that decision.[314] But in rubber-stamping arrangements, the person with authority does make an "affirmative" choice in a sense—just not a choice deemed adequately thoughtful beyond routinized deference. Plans for thoughtful choosing might end up with thoughtless picking. System designers need stronger mechanisms for instigating thinking that is deliberative, reflective, and probably slow.[315]

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[307] *See supra* Part I.A.

[308] *See supra* Part I.B.

[309] *See* 50 U.S.C. § 3093(a) (requiring findings in writing, with exceptions).

[310] *See* U.S. CONST. art. I, § 7, cl. 2.

[311] Jurors do not quite always affirm the supposed verdict when polled in open court. *See* Karl Moltzen, *The Jury Poll and a Dissenting Juror: When a Juror in a Criminal Trial Disavows Their Verdict in Open Court*, 35 J. MARSHALL L. REV. 45, 54–60 (2001).

[312] *See supra* note 50; Maj. Peter C. Combe II, *Traditional Military Activities in Cyberspace: The Scope of Conventional Military Authorities in the Unconventional Battlespace*, 7 HARV. NAT'L SEC. J. 526, 535 (2016) (claiming the presidential sign-off process "ensures that there is deliberative thought" in authorizing covert actions, but also asserting "the primary concern is to ensure that the President is accountable").

[313] *Compare, e.g.*, F.R. Van der Weel & Audrey L.H. Van der Meer, *Handwriting But Not Typewriting Leads to Widespread Brain Connectivity*, 14 FRONTIERS IN PSYCH. 1219945 (2024) (measuring brain connectivity patterns, as suggestive of learning, during handwriting and keyboarding); Pam A. Mueller & Daniel M. Oppenheimer, *The Pen Is Mightier than the Keyboard: Advantages of Longhand Over Laptop Note Taking*, 25 PSYC. SCI. 1159 (2014) (suggesting handwriting notes induces deeper information processing than laptop typing); *and* Vito Tassiello, Giampaolo Viglia & Anna S. Mattila, *How Handwriting Reduces Negative Online Ratings*, 73 ANNALS OF TOURISM RSCH. 171, 174–77 (2018) (suggesting handwriting induces more empathy than online evaluation); *with, e.g.*, Svetlana Pinet & Marieke Longcamp, *General Commentary*, 15 FRONTIERS IN PSYCH. 1517235 (2025) (noting evidence that handwriting training may promote single-letter recognition, word recall, and reading, but that long-term learning effects have not been evaluated); *and* Michael Russell, *Testing on Computers: A Follow-Up Study Comparing Performance on Computer and on Paper*, EDUC. POL'Y ANALYSIS ARCHIVES, vol. 7, no. 20, June 8, 1999, https://epaa.asu.edu/index.php/epaa/article/view/555/678 (reporting mixed results on academic test scores of handwriting versus computer inputs, partly depending on the student's typing proficiency).

[314] *See, e.g.*, Cass R. Sunstein, *Active Choosing or Default Rules? The Policymaker's Dilemma*, 1 BEHAV. SCI. & POL'Y 29, 32–33 (2015) (comparing active choosing and (other) default rules); Ian Ayers & Fredrick E. Vars, *Tell Me What You Want: An Affirmative-Choice Answer to the Constitutional Concern About Concealed-Carry on Private Property* 26–32 (2025) (unpublished manuscript), https://ssrn.com/abstract=5063180 (categorizing and detailing variation in affirmative-choice efforts).

[315] *See, e.g.*, DANIEL KAHNEMAN, THINKING, FAST AND SLOW 23, 37 (2011); Daniel Kahneman, *Maps of Bounded Rationality: Psychology for Behavioral Economics*, 93 AM. ECON. REV. 1449, 1467 (2003) (observing that nonintuitive thinking is impaired by time pressure and concurrent engagement with a different cognitive task). For present purposes, we need not assume mutually exclusive intuitive and deliberative thinking systems, only that thoughtfulness is a category or matter degree. A recent

2. Waiting periods

Another traditional option is a mandatory waiting period. Against the tide of short deadlines and hot takes, a decision system can start a clock running on a specified event—such as the decision maker's receipt of a task, or indication that a preference has been formed—then prohibit a decision from becoming final and acted upon for additional time.[316] Waiting periods create opportunities for reflection, assuming we aren't overloaded with other matters. They have long been pitched as antidotes to impulsive and irrational decisions.[317] Ensuring access to information might facilitate such reflection, as with required training sessions,[318] and proposals that AI-generated recommendations arrive with explanations to reduce non-evaluative human sign-offs.[319] A classic observation about signing or vetoing legislation applies: "Whatever the help a President may have, the ultimate decision must be his. And to decide, he must have time. He is neither a rubber-stamp nor an instantaneous computer."[320]

Time for reflective thought, unfortunately, does not control how the time will be spent. No matter how long the mandatory waiting period, severely limited decision resources overall will prevent any such consideration. With a large enough docket and a small enough number of decision makers, waiting periods are irrelevant or merely promote delay in releasing final decisions. Even without work overloads, more is needed to prevent rubber-stamping. As our discussion highlights throughout, those with formal authority may favor rubber-stamping because they are convinced that other actors will achieve better results, or because they care little about the work and others demand influence. In those situations, waiting periods will have little or no effect on routinized following.[321]

In contrast, mandatory waiting periods can effectively prevent aggressive actors from setting tight deadlines that jam formal decision makers, perhaps intentionally. With otherwise adequate resources and motivation, decision makers poised for thoughtfulness are vulnerable to actors who demand rapid responses. A clear waiting period not subject to relaxation provides a ready objection: "I have to wait." Now, people do want speed from government officials, and current law frequently announces deadlines rather than waiting times.[322] In practice, demanding a short deadline might be a stronger tool for inducing rubber-stamping than waiting periods are for preventing it. Nonetheless, a sudden demand for, say, a decision within the hour may raise suspicions about motives,[323] and a formal decision maker might not have an effective

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disaggregation of psychological deliberation is Wim De Neys, *Defining Deliberation for Dual-Process Models of Reasoning*, 4 NATURE REVIEWS PSYCH. 544 (2025) (covering cognitive resources regulation and response control, generation, and justification).

[316] *See* Cass R. Sunstein & Richard H. Thaler, *Libertarian Paternalism Is Not an Oxymoron*, 70 U. CHI. L. REV. 1159, 1188 (2003) (distinguishing mandatory delays from opportunities to reverse a decision).

[317] *See, e.g.*, Silvester v. Harris, 843 F.3d 816, 829 (9th Cir. 2016) (regarding a 10-day waiting period for firearms purchases and impulsivity); Colin Camerer et al., *Regulation for Conservatives: Behavioral Economics and the Case for "Asymmetric Paternalism"*, 151 U. PA. L. REV. 1211, 1238–47 (2003) (collecting examples in law and elsewhere, and emphasizing transient emotional states); Jungmin Lee, *The Impact of a Mandatory Cooling-Off Period on Divorce*, 56 J.L. & ECON. 227, 228 (2013) (noting the idea that divorces are "emotionally driven by temporary negative shocks"). Presumably imposing waiting periods on government does not prompt serious paternalism worries given third-party interests, even if officials are not like arguably vulnerable consumers. *See* Sunstein & Thaler, *supra* note 316, at 1188 (suggesting cooling-off periods for infrequent, emotionally charged decisions).

[318] *See supra* note 286 (collecting sources on training); Fed. Student Aid, *Complete Your Student Loan Entrance Counseling Requirement*, https://studentaid.gov/entrance-counseling/.

[319] *See* Elizabeth M. Renieris et al., *AI Explainability: How to Avoid Rubber-Stamping Recommendations*, MIT SLOAN MGMT. REV. (June 12, 2025), https://sloanreview.mit.edu/article/ai-explainability-how-to-avoid-rubber-stamping-recommendations/.

[320] Eber Bros. Wine & Liquor Corp. v. United States, 337 F.2d 624, 628 (Ct. Cl. 1964). For evidence of early presidents feeling time pressure to act on piles of late-breaking bills before the end of a legislative "session," until practices and understandings of constitutional requirements changed, see Saikrishna Bangalore Prakash, *Of Synchronicity and Supreme Law*, 132 HARV. L. REV. 1220, 1260–63 (2019).

[321] Similar reservations apply to recommendations that decision makers use checklists, practice mindful empathy, frame and reframe decisions, and other efforts associated with "decision hygiene." *See* KAHNEMAN, SIBONY & SUNSTEIN, *supra* note 69, at 245–324.

[322] Recognizing that judicial enforcement of deadlines is highly imperfect. *See* Cass R. Sunstein & Adrian Vermeule, *The Law of "Not Now": When Agencies Defer Decisions*, 103 GEO. L.J. 157, 181 (2014) (suggesting that legal demands for reasoned decision making might overcome conflicting legal deadlines).

[323] *See* Aghion & Tirole, *supra* note 113, at 26; *supra* note 117.

response without an enforceable waiting period.[324]

3. Attention tools

The trick is to provide time that decision makers use well. Sometimes formal decision makers don't need much encouragement, finding it hard to dial down their own input on issues of interest or as an ethic, so minor interventions tip them into engaged thinking. Attention checks are one cheap tactic, although they ensure attention to the check better than to other content. In trainings, for example, presentations can be interrupted at random intervals with access codes that participants must enter to proceed or receive credit.[325] Audience members pay attention to the codes, at least. Similarly, surveys may add an easy fact question, or a speed flag with a request to slow down, in attempts to increase the chances that participants mentally process other content and answer other questions non-arbitrarily.[326]

Some "mental speed bumps" are better targeted at thoughtful responses to questions of concern.[327] Answers can be made harder rather than easier, in that decision makers must engage with relevant information to understand what they are choosing. Thus queries can be designed so that the meaning or consequences of the options are *not* transparent, such as intentionally ambiguous "Yes" and "No" options when likely to prompt users to read associated text.[328] The shortfalls for these tactics are that system designers must know the options and consequences beforehand. And important for present purposes, speed-bump frameworks are not necessarily designed to prevent those who select the options from offloading the choice and the reasons to other actors. Moreover, it's difficult to imagine these tricks implemented against high-level officials such as legislators, agency heads, and federal judges.

Particularly effective tactics will lead decision makers to work on the given problem rather than using the allotted time for anything else. One encouragement is the provision of information in forms conducive to active learning by the preferred decision makers, such as live meetings beyond "paper hearings,"[329] in which questions from decision makers are the norm or required. Although some statutes require that decision makers confer with other parties,[330] those duties might have to be live exchanges rather than conversations conducted or drafted by others. The goal is attention-grabbing inputs that are relevant to the key decision.

Complementing tactics that fill time are tactics that *burn time* when not used for progress on the target decision. System designers can attempt to ensure decision makers cannot use time for non-decision purposes by minimizing distractions within the decision environment—along the lines of "quiet rooms" plus "noise rooms" in workplaces,[331] and cellphone prohibitions in classrooms[332]—for adult government officials. These rules are not fully effective and are improbable for, say, appellate judges or agency heads. But live meetings with certain norms can serve the goal. Once attendance is secured, some attention to decision-relevant sources is likely if decision makers are unable to mentally check out without others noticing and reacting negatively.

These fixes are imperfect, too. Attention tools will fail during work overloads, and they are unnecessary if not resentment-inducing when decision makers are already motivated.

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[324] Hearings and explanation requirements can have the same defensive effect. *See infra* Part IV.B.4.

[325] *See, e.g.*, *Legal Education: Attendance Verification Overview*, N.Y. STATE UNIFIED CT. SYS., https://ww2.nycourts.gov/attorneys/cle/attendanceverification_info.shtml?utm (last visited Nov. 1, 2025).

[326] *See, e.g.*, Emily Geisen, *Improve Data Quality by Using a Commitment Request Instead of Attention Checks*, QUALTRICS (Aug. 4, 2022), https://www.qualtrics.com/blog/attention-checks-and-data-quality/.

[327] Ayers, *supra* note 50, at 2069.

[328] *See id.* at 2070–71 (showing sample dialogue boxes for decision confirmation).

[329] *See* Richard B. Stewart, Vermont Yankee *and the Evolution of Administrative Procedure*, 91 HARV. L. REV. 1805, 1812–14 (1978) (discussing evolution of paper hearings, sometimes supplemented with live hearings).

[330] *See, e.g.*, 12 U.S.C. § 4118 (regarding the Secretary of Housing and Urban Development and certain state assistance programs); 16 U.S.C. § 824p(h)(4)(C) (regarding agencies siting electric transmission facilities and the applicants); 42 U.S.C. § 300j-6(b)(3) (regarding the EPA Administrator and federal agencies facing penalties).

[331] *See 8 Office Distractions in the Workplace and How to Manage Them*, ACTIVTRAK (Oct. 20, 2025), https://www.activtrak.com/blog/distractions-in-the-workplace.

[332] *See* Arianna Prothero, *States Are Cracking Down on Cellphones in Schools*, EDUCATIONWEEK (May 23, 2024), https://www.edweek.org/technology/states-are-cracking-down-on-cellphones-in-schools-what-that-looks-like/2024/05.

Importantly, sometimes the tools are at cross-purposes and backfire. Think about mandating conferrals to stimulate learning when the conferrals offer input that formal decision makers can rubber-stamp. Yes, many industries and subcultures are devoted to attracting attention, but we lack inexpensive and reliable gimmicks for securing thoughtfulness in government decision making. Devoting time to interactive meetings on decision-relevant topics remains a promising response to rubber-stamping fears, but that option is among the costliest for decision makers. We should want assurances that those officials are the right decision makers to preoccupy, in view of the opportunity costs and alternative actors, and that they are not in a better position than we are to make that judgment.

4. Explanation requirements

Among the most effective—and potentially most costly—tools for inducing thoughtfulness is requiring relevant decision makers to explain themselves. An explanation might be written, oral, dictated, or otherwise, but if we want the reasons to be the author's own in a meaningful sense, the explanation cannot be forced, mindlessly plagiarized, or fully ghostwritten.[333] When a decision maker personally articulates reasons for a decision, we gain evidence that the actor accepted and perhaps developed those reasons with some level of understanding. The formal decision maker *personally having* reasons for a decision seems sufficient in principle to avoid rubber-stamping, but *personally giving* reasons to others is a practice that yields some evidence of adequate thought and tends to promote it.[334] Although further research is necessary to identify the best options for different situations, there is some suggestive experimental evidence that soliciting short written explanations from survey participants can induce somewhat higher cognitive reflection scores.[335]

Nobody will seriously demand anytime soon that presidents write all their own veto messages, or agency heads write final rule preambles, or all legislators explain their reasons for their votes live, or even that judges draft their own opinions. The scope of their work is too demanding for that. Yet explanation practices are widespread across legal institutions, for officials high and low. Apart from the constitutional provision for the President returning bills to give "his Objections,"[336] some federal statutes and regulations call for written explanations or reason-giving.[337] Judges sign opinions with reasons for many of their merits decisions.[338] And the Supreme Court once called statutory reporting requirements for agencies "well within Congress' constitutional power."[339] Of course, large masses of government decisions are not accompanied by reasons, or reasons of any depth. But the volumes of judicial opinions, the

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[333] Those concepts and practices, like rubber-stamping, may be vague or contested. *See, e.g.*, Diana Kwon, *AI Is Complicating Plagiarism. How Should Scientists Respond?*, NATURE (July 30, 2024), https://www.nature.com/articles/d41586-024-02371-z. That presents another complication for anti-rubber-stamping efforts.

[334] *See* Frederick Schauer, *Giving Reasons*, 47 STAN. L. REV. 633, 657 (1995) (observing that reason-giving requirements may counter bias, self-interest, and insufficient reflection). There are several arguments for officials to have and to give reasons publicly, such as the facilitation of evaluation by affected parties. *See, e.g.*, Micah Schwartzman, *Judicial Sincerity*, 94 VA. L. REV. 987, 1005 (2008); *accord* Tourus Recs., Inc. v. DEA, 259 F.3d 731, 737 (D.C. Cir. 2001). Here the question is whether personal explanations may reduce rubber-stamping.

[335] *See* Isler, Yilmaz & Dogruyol, *supra* note 283, at 928–31 (comparing justification requests and debiasing training favorably to time delays and memory recalls, measured by the CRT-2 test of trick questions); *cf.* Isler & Yilmaz, *supra* note 286, at 3684–87 (reporting minor effects from justification requests on a different cognitive performance test). The Isler team asked participants in the justifications condition to write "a description of your reasoning in one sentence or more." *Id.* at 3684.

[336] *See supra* text accompanying notes 179–183.

[337] *See, e.g.*, 5 U.S.C. § 552(a)(6)(A)(i)(I) (Freedom of Information Act) (requiring agencies to notify requestors of the agency's decision "and the reasons therefor"); *id.* § 553(c) (APA) (requiring that an agency's final rule incorporate "a concise general statement of their basis and purpose"); *id.* § 555(e) (requiring agencies to provide "a brief statement of the grounds for denial" for a range of requests); 28 C.F.R. § 35.164 (2024) (regarding written reasons for noncompliance with certain communications accessibility regulations); Bradley, *supra* note 268, at 459–60 (discussing statutory "report-and-wait" provisions).

[338] *See* Rita v. United States, 551 U.S. 338, 356 (2007) ("[P]ublic statement of those [judicial] reasons helps provide the public with the assurance that creates [public] trust."); *see also* 18 U.S.C. § 3553(c) (requiring federal courts to "state in open court the reasons for [their] imposition of the particular sentence"); *cf.* Chavez-Meza v. United States, 585 U.S. 109, 120 (2018) (allowing a "minimal" explanation from a sentencing judge). *But see* Wilson v. Sellers, 584 U.S. 122, 131 (2018) (adopting a "look through" presumption on habeas for higher court dispositions that lack reasons).

[339] INS v. Chadha, 462 U.S. 919, 955 n.19 (1983).

size of the *Federal Register*, and the length of the *Congressional Record* are indicators of official commitments to publicize decisions and reasons, understanding that those expressions cannot cover all government decisions and all sources of influence.

However, some explanation requirements are weakly written or leniently interpreted. When a federal agency decides to terminate a probationary employee for performance deficiencies, the agency is supposed to tell "why."[340] Recently, the Trump Administration attempted to fire tens of thousands of probationary employees at once. Although baseless form letters should not count as reasons for firing anyone,[341] in the past, the explanatory demand has been characterized as minimal, and a sentence or two may do the trick.[342] Another example involves inspectors general. The D.C. Circuit did an interpretive favor for the Obama Administration under an older version of the Inspector General Act, which required the President to "communicate in writing the reasons" for removing an Inspector General (IG) from office.[343] On mandamus, the court held that letters stating the President "'no longer' had 'the fullest confidence'" in the IG were sufficient.[344] The statutory language was later ramped up to require a "substantive rationale, including detailed and case-specific reasons."[345] That amendment did not prevent swift efforts by the Trump White House to fire IGs four days after inauguration on wafer-thin reasons: "changing priorities."[346]

The central weakness with explanation requirements is not that they are insufficiently widespread, demanding, and enforced, although that might be true. The basic problem is connecting explanations with preferred decision makers. Ghostwriting is pervasive in government. Those who sign usually are not those who draft reasons, whether judges, agency heads, or presidents.[347] In fact, requiring detailed explanations practically guarantees ghostwriting for busy officials who retain formal authority. Worse yet for anti-rubber-stamping forces, generative AI automates the production of human-seeming reasons.[348] It has never been easier for people to produce reasons not their own.[349] Blocking those offloading efforts depends on sufficient decision resources for preferred decision makers, complementary structures to prevent unthinking reliance on colleagues and machines, and assurances that those with formal authority at least actively review and edit draft reasoning, to the extent reasoning is needed to avoid rubber-stamping.[350]

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[340] 5 C.F.R. § 315.804(a) (2024).

[341] *Cf.* Maryland v. Dep't of Agric., 777 F. Supp. 3d 432, 471 (D. Md. 2025) (stating the record reflected terminations en masse through form letters "despite good performance by those employees"), *vacated*, 151 F.3d 197, 215 (4th Cir. 2025) (denying standing to the State-plaintiffs).

[342] *See* Wolfe v. United States, 228 Ct. Cl. 791, 793 (1981) (approving a two-sentence termination letter that referenced absences); *see also* Harrington v. United States, 673 F.2d 7, 9–10 (1st Cir. 1982) (relying partly on what the plaintiff already knew).

[343] 5 U.S.C. § 403(b) (2020) (directing the communication to both houses of Congress not later than 30 days before removal or transfer).

[344] Walpin v. Corp. for Nat'l & Cmty. Servs., 630 F.3d 184, 187 (D.C. Cir. 2011).

[345] Securing Inspector General Independence Act of 2022, Pub. L. 117-263, title LII, subtitle A, sec. 5202(a)(1)(B)(i), 136 Stat. 2395, 3222.

[346] Letter from Hannibal Ware to Sergio Gor, Dir. of Presidential Personnel (Jan. 24, 2025) (describing an email from Gor to IGs); *see also* Zeke Miller, Eric Tucker & Will Weissert, *Trump Uses Mass Firing to Remove Independent Inspectors General at a Series of Agencies*, AP (Jan. 25, 2025, at 22:33 ET), https://apnews.com/article/trump-inspectors-general-fired-congress-unlawful-4e8bc57e132c3f9a7f1c2a3754359993.

[347] *See supra* notes 257–259.

[348] *See supra* note 148.

[349] Acknowledging that current detection techniques are imperfect is not to say that no one gets caught when they use generative AI without permission or when they pass off AI outputs as their own work. *See, e.g.*, TREASURY INSPECTOR GEN. FOR TAX ADMIN., FINAL EVALUATION REPORT 14–15 (Nov. 12, 2024), https://www.tigta.gov/sites/default/files/reports/2025-08/2025ier003fr_3.pdf (regarding IRS agents' unauthorized use of AI); Debra Cassens Weiss, *No. 42 Law Firm by Head Count Sanctioned Over Fake Case Citations Generated by AI*, ABA J. (Feb. 10, 2025, at 11:30 ET), https://www.abajournal.com/news/article/no-42-law-firm-by-headcount-could-face-sanctions-over-fake-case-citations-generated-by-chatgpt; Justin Henry, *Judges Admit to Using AI After Made-Up Rulings Called Out*, BLOOMBERG LAW (Oct. 23, 2025, at 5:33 ET), https://news.bloomberglaw.com/business-and-practice/judges-called-out-for-nonfactual-rulings-admit-to-use-of-ai (reporting that the two judges attributed AI reliance to staff); *see also* Steven Woloshin & Richard L. Kravitz, *The MAHA Children's Health Report Mis-Cited Our Research*, STAT (June 20, 2025) https://www.statnews.com/2025/06/20/maha-children-health-report-citations-errors-sloppy/ (vetting suspicions).

[350] People's worries about machines sometimes abate when humans are in the loop, by preserving formal authority in human beings. But justifiable confidence in human-machine collaboration depends on how humans exercise authority, including whether we too readily defer to machines. *See* Rebecca Crootof, Margot E. Kaminski & W. Nicholson Price II, *Humans in the Loop*, 76 VAND. L. REV. 429, 467–69 (2023) (noting that human-machine combinations might make matters worse); *see also* Margot E. Kaminski & Jennifer M. Urban, *The Right to Contest AI*, 121 COLUM. L. REV. 1957, 1961 (2021) (discussing a tendency to over-rely

Probably the most effective and costly version of the explanation tool is live presentation with questioning. These performances—similar to legislative committee hearings, Prime Minister's Questions in the House of Commons, trial-type agency proceedings with cross-examination, even press conferences—moderate the influence of ghostwriters. True, decision makers who care about these events and potential embarrassment will prepare with assistance from others who formulate "Tough Q&A" scripts.[351] Those routines can amount to rubber-stamping. But live performance encourages the performer to review and memorize, and possibly agree with or reformulate, content recommended by others. Live interactive performances also tend to crowd out distractions. The attention-consuming feature of this tool isn't free, of course. Live explanation with preparation increases opportunity costs for decision makers and other participants. In fact, it can increase overload and then rubber-stamping for *other* decisions. But those costs arrive with a fair chance of minimizing rubber-stamping within some domain.

We could eliminate rubber-stamped ghostwriting by changing the formal decision makers. Theoretically, authority can be assigned to the ghostwriters, or to entire institutions such as "the agency" or "the court" or "the presidency," to the extent thoughtful reasons of anyone within the institution are attributed to the entity. Of course, those moves give in to the patterns of actual influence. Perhaps giving in is the best available response, especially for those who value clear labeling in formal law of those who exercise power. Yet reassignment of formal authority is not much of a tool for preventing rubber-stamping when power moves away from authority. Instead, it suggests openness to reconsidering earlier positions on who should have power, and perhaps less attention to rubber-stamping per se.

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Nothing will work without adequate decision resources. Yet flooding people with resources will not eliminate rubber-stamping—and might facilitate it. When we want to prevent rubber-stamping, the basic trade-offs are that redesigns and demanding protocols can work but are costly or infeasible, while cheaper tricks usually have minor effects. On the pricey side, thoughtfulness audits and selection mechanisms are promising if we provide adequate resources, manage information problems, and avoid attracting power-hungry actors. On the cheap side, sign-offs and waiting periods create opportunities for thoughtfulness and may prevent jammed decisions. But system designers need tactics to prompt that thinking in the preferred actors. Live explanations lean us toward engagement and against full offloading to other actors or machines. However, those moves are implausible for many officials with broad portfolios, which almost guarantee some rubber-stamping. Staff may be high-quality decision makers anyway, and designers should always account for the costs of explanations.

V. LESSONS

We are now well-positioned to consolidate lessons—conceptual, positive, legal, and ultimately normative.

▪ *Caring about rubber-stamping means tolerating some conceptual haze and empirical uncertainty.* Rubber-stamping involves someone with formal authority, somehow allocated, signing off on the views of another actor without serious second thought. Surely the practice is common. But the concept shares fuzzy boundaries with full delegations (when take-backs

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on machine decisions); Daniel J. Solove & Hideyuki Matsumi, *AI, Algorithms, and Awful Humans*, 92 FORDHAM L. REV. 1923, 1936–37 (2024) (asserting a human inclination to "rubber-stamp algorithms"). However, part of the pro-automation or pro-algorithm bias concern is based on the attraction of *quantified* values. *See* Dan L. Burk, *Algorithmic Legal Metrics*, 96 NOTRE DAME L. REV. 1147, 1161 (2021). Similar attraction might or might not apply to machine-generated prose.

[351] *See, e.g.*, *Listicle/Press Release: Your Quick Summary of the Week*, AMERICA'S VOICE (Sep. 22, 2023), https://americasvoice.org/press_releases/14-your-quick-summary-of-the-week-from-americas-voice/; Plaintiff's Consolidated Memorandum in Opposition to Summary Judgment, *In re* Nat'l Prescription Opiate Litig., No. 1:17-md-02804, 2019 WL 9518104 (N.D. Ohio Aug. 12, 2019) (characterizing certain corporate Tough Q&A as canned responses); *cf.* Greg Ip, *Will AI Choke Off the Supply of Knowledge?*, WALL ST. J. (Sept. 7, 2025, at 05:30 ET), https://www.wsj.com/tech/ai/will-ai-choke-off-the-supply-of-knowledge-8a71cbcd (reporting on a ChatGPT mock briefing for a Senate confirmation hearing).

are disavowed) and independent or collaborative judgments (when take-backs are available). Equally important, rubber-stamping allegations are attractive because the conduct is disreputable yet hard to verify. Although we cannot clear up all the uncertainty and fuzziness, we can recognize those challenges when we evaluate options.

▪ *Evaluating rubber-stamping requires choosing among competing accounts, and asking whether the decision structure really matters.* Abstract institutional design theory doesn't do well for rubber-stamping, which may seem wasteful at best. It fits poorly with simple rules when a single actor can do the job, and other structures might be better for complex decisions. That said, leading explanations and examples of rubber-stamping suggest not only (1) self-interested schemes of circumvention, which is the dim view of DOGE-ed agencies, but also (2) rational designs to achieve decision quality and learning at tolerable costs, as with many high-level officials relying on staff, and (3) second-best adaptations to legal constraints and work overloads, as with a disempowered Electoral College and some street-level bureaucratic decisions. Rubber-stamping on the latter accounts, perhaps with limited take-backs, may outperform higher-cost collaboration and lower-cost simple rules or automation. But we may struggle to tell which account applies, or whether rubber-stamping is happening at all. And our deep concerns may be results and power, not power getting separated from authority. Some ideas are simply bad or good, regardless. It clarifies matters if we *imagine authority and power are combined in one actor, but the results are the same*—then ask, would that be better?

▪ *Current law is generally permissive, and our tools for stopping rubber-stamping are typically costly or minimally effective.* With notable exceptions for adjudications, relevant law seems lax about rubber-stamping in government, albeit not well-settled. Where government rubber-stamping is legally disfavored, the demand for thoughtfulness is typically modest and difficult to enforce. That is not inappropriate for what we know, insofar as there aren't good simple rules to evaluate rubber-stamping, and a residual litigation risk discourages some abusive forms. As for policy interventions, the leading lessons are that *nothing will work without adequate decision resources*, yet *resources create mere opportunities for thoughtfulness*. The most effective responses tend to be costliest (such as live explanations), while cheaper tricks have limited effects (such as waiting periods). Some responses backfire, such as adding decision resources that facilitate judgment offloading. On that point, the emergence of inexpensive machines that automate reason-writing makes rubber-stamping easier to hide and harder to stop.

CONCLUSION

Altogether, the case against rubber-stamping in government is surprisingly limited, and our opposition should be targeted. Much depends on the details of given arrangements and our core values. Still, we may establish sensible priorities for anti-rubber-stamping efforts by thinking harder about the relevant concepts and empirical uncertainties, the most plausible explanations and justifications for official behavior, and the range of feasible interventions based on their likely efficacy and costs, including backfire. At minimum, we can better appreciate that rubber-stamping is an arresting charge associated with both damaging and respect-worthy conduct, and that existing law and legal institutions leave space for both. That much mindfulness is enough for us to become smarter about government, which must manage rubber-stamping well to earn respect—and which we can make better without every government actor having second thoughts.