

Nos. 24-1287/25-250

In the
Supreme Court of the United States

LEARNING RESOURCES, et al.,
Petitioners,

v.

DONALD J. TRUMP,
President of the United States, et al.,
Respondents.

DONALD J. TRUMP,
President of the United States, et al.,
Petitioners,

v.

V.O.S. SELECTIONS, INC., et al.,
Respondents.

**On Writ of Certiorari Before Judgment to the
United States Court of Appeals for the District
of Columbia Circuit and on Writ of Certiorari to the
United States Court of Appeals for the Federal Circuit**

**BRIEF OF WASHINGTON LEGAL FOUNDATION
AS AMICUS CURIAE SUPPORTING
PETITIONERS (24-1287)/RESPONDENTS (25-250)**

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QUESTION PRESENTED

Whether 50 U.S.C. § 1702(a)(1)(B) grants the President legal authority to impose tariffs.

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INTEREST OF AMICUS CURIAE*

Washington Legal Foundation is a nonprofit, public-interest law firm and policy center with supporters nationwide. It defends free markets, individual rights, limited government, and the rule of law. It often appears as amicus curiae in cases where one branch of the federal government has usurped the powers of another. *Trump v. Slaughter*, Case No. 25-332 (U.S. 2025); *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197 (2020). WLF also filed as amicus curiae when Case No. 24-1287 was before the Court on petition for certiorari before judgment.

INTRODUCTION AND SUMMARY OF ARGUMENT

“In deciding cases involving the American economy, courts should strive, where possible, for clarity and predictability.” *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 605 U.S. ___, 145 S. Ct. 1497, 1518 (2025). The President claims a virtually unlimited authority to tariff, with the ability to change rates on imports at whim. He rests his claim not on an inherent Article II power, but on the International Emergency Economic Powers Act (IEEPA). The President reads IEEPA as if it gives him the authority to “tax imports.” *E.g.*, Trump Br. at 20, 23–25. But that’s not what IEEPA says at all.

* No party’s counsel authored any part of this brief. No person or entity, other than Washington Legal Foundation and its counsel, paid for the brief’s preparation or submission.

True, IEEPA contains a 76-word provision, 50 U.S.C. § 1702(a)(1)(B), that happens to contain the words “regulate” and “importation.” Not next to each other, but sixteen (quite different) words apart. On this basis, and this basis alone, the President asserts the right to control America’s seven-trillion-dollar import-export market by himself. U.S. Dep’t of Commerce, Bureau of Economic Analysis, *U.S. International Trade in Goods and Services, Annual and December 2024*, (Feb. 5, 2025); <https://perma.cc/UQ2E-LDB4>.

The President’s contention that two “modest words,” *W. Va. v. EPA*, 597 U.S. 697, 723 (2022) (internal quotation marks and citation omitted), so separated from each other in the text, vest the Executive with a global license to tariff is just wrong. “We expect Congress to speak clearly when authorizing [the Executive Branch] . . . to exercise powers of vast economic and political significance.” *Ala. Ass’n of Realtors v. U.S. Dep’t of HHS*, 594 U.S. 758, 764 (2021) (internal quotation marks and citation omitted).

Congress knows well how to delegate tariff powers to the President and those Executive Branch personnel he commands. It did not do so here. Congress has finely, even minutely, described the circumstances under which the President himself may impose import taxes. *E.g.*, 19 U.S.C. §§ 1338, 1862, 2132, 2411. This is unsurprising. The tariff power is a core feature of Article I, and it would be odd indeed if the Congress had, as the President claims, so cavalierly abandoned it.

Undaunted, the President claims IEEPA as a “sweeping authority,” *Ala. Ass’n of Realtors*, 594 U.S. at 760, to impose, reduce, hike, suspend, double, treble, quadruple, eliminate, and re-enact tariffs on any import, bounded only by the ministerial act of first announcing a national emergency, which he alone may endlessly renew. *Id.* at 766 (ending *ultra vires* executive action undertaken via emergency powers); *Nat’l Fed’n of Indep. Bus. v. Occupational Safety & Health Admin.*, 595 U.S. 109, 120–21 (2022) (same). It “strains credulity,” *Ala. Ass’n of Realtors*, 594 U.S. at 760, that Congress, well-aware of the importance of regulatory and taxation certainty to America’s business community, would have given the President unbridled whipsaw authority on such a major question.

ARGUMENT

I. IEEPA PROVIDES NO LEGAL AUTHORITY FOR THE PRESIDENT’S TARIFFS.

The Constitution unreservedly entrusts the tariff power to the Legislative Branch, and only Congress may authorize the Executive to “lay and collect Taxes, Duties, Imposts and Excises.” U.S. Const., art. I, § 8. If the President wishes to set tariff rates by executive order, his “power, if any, to issue” such an “order must stem . . . from an act of Congress.” *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952); *J.W. Hampton Jr. & Co. v. United States*, 276 U.S. 394, 413 (1928) (Congress may delegate customs duty rates to the Executive).

Tariffs are taxes on international trade. As a result, they may well pose second-order “diplomatic

challenges” and consequences “in the national security or foreign policy contexts” for the President. *FCC v. Consumers’ Rsch.*, 606 U.S. ___, 145 S. Ct. 2482, 2516 (2025) (Kavanaugh, J., concurring); Trump Br. at 10–11 (observing that the President’s subordinate officers rely on the President’s reading of IEEPA in negotiating with foreign states). But since there is no “independent Article II authority” or “power” to tariff, this Court has no basis to presume “that Congress intend[ed] to give the President substantial authority and flexibility” to do so, *Consumers’ Rsch.*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring), through open-ended, “oblique,” *Gonzales v. Or.*, 546 U.S. 243, 267 (2006), “vague,” *W. Va.*, 597 U.S. at 732, or “cryptic” terms. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 160 (2000).

So, like any other legislative delegation of great magnitude, any statutory authority for a freestanding presidential right to tariff must be unambiguous. See *Gundy v. United States*, 588 U.S. 128, 163 (2019) (Gorsuch, J., dissenting) (“To boost American competitiveness in international trade, the legislation directed the President to investigate the relative costs of production for American companies and their foreign counterparts and impose tariffs or duties that would equalize those costs”) (internal quotation marks, brackets, and citations omitted). The President reads IEEPA as such a clear authority. Trump Br. at 23; see, e.g., Executive Orders 14345, 14334, 14326, 14323, 14316, 14298, 14266, 14259, 14257, 14256, 14245, 14232, 14231. He has leaned on IEEPA to impose specific tariffs on some of the Nation’s largest trading partners, e.g., Executive Orders 14193 (Canada), 14194 (Mexico), 14195 (China), to impose reciprocal rates on other countries

to improve America’s balance-of-trade, Executive Order 14257, and to impose a more-or-less universal floor tariff of ten percent on all foreign goods sold in the United States. *Id.*

Some of these tariffs have been altered or held in abeyance (for now), but not all. What certainly hasn’t changed in the President’s theory that IEEPA gives him a free hand. But IEEPA doesn’t say what the President says it does. As one of the lower courts noted, “IEEPA does not use the words ‘tariffs’ or ‘duties,’ their synonyms, or any similar terms like ‘customs,’ ‘taxes,’ or ‘imposts.’” 24-1287 App. 21a. That accords with the Act’s provenance—an economic sanctions statute enacted with wartime or near-wartime conditions in mind. Pub. L. No. 95-223, 91 Stat. 1625 (1977) (enacting IEEPA “with respect to the powers of the President in time of war or national emergency”).

Start with “the language of the delegation provision itself.” *Gonzales*, 546 U.S. at 258. Section 1702(a)(1)(B) has 76 operative words. To be sure, two those words are “regulate” and “importation.” The President claims those words are “paired” in the statute, Trump Br. at 24, to create a right to “regulate importation.” *Id.* at 20, 23, 24, 25, 26, 28, 30, 31, 33, 34. But IEEPA intentionally separates those terms by no fewer than sixteen additional words. 50 U.S.C. § 1702(a)(1)(B). The President ignores that context to sharpshoot “regulate” and “importation.” At the same time, he gives those two words extraordinary meaning—the power to regulate commerce is not typically understood as the power to tax. *Nat’l Fed’n of Indep. Bus. v. Sebelius*, 567 U.S. 519 (2012); 24-1287 App. 22a; 25-250 App. 31a.

And those sixteen words matter—“statutes ‘should not be read as a series of unrelated and isolated provisions.’” *Gonzales*, 546 U.S. at 273 (quoting *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995)). The President’s reading can be accepted only if “regulate” and “importation” are “shorn of all context,” where each “word is an empty vessel” for an interpreter to fill. *W. Va.*, 597 U.S. at 732. But such “a vacuum is no home for a textualist.” *Biden v. Neb.*, 600 U.S. 477, 517 (2023) (Barrett, J., concurring). Those sixteen words, “direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation,” are far removed from the rote rate-setting of customs duties. 50 U.S.C. § 1702(a)(1)(B).

Those sixteen words connote compellence, avoidance, prevention—traditional national security or wartime aims we would expect to find in a sanctions authority, not a taxing one. 25-250 App. 33a, n.14 (“[T]he other verbs implicate the common law doctrine that trade with enemy nations or hostile actors is illegal . . . Congress has long enacted statutes on this backdrop”). Yet the President asks us to believe that Congress used those words not to allow for the President to embargo a hostile foreign power, but to slap taxes on goods imported from a NATO ally. Executive Order 14193 (Canada). That doesn’t wash.

As even the President’s brief concedes, those verbs are about “means of control,” Trump Br. at 29, and “*noscitur a sociis* indicates that [‘regulate’] should be read in a similar manner to its companions.” *Dubin v. United States*, 599 U.S. 110, 126 (2023). Tariffs aren’t a direct “mechanism of control,” such as “an

asset freeze, an embargo, [or] a quota.” Trump Br. at 29; 25-250 App. 36a (“In almost all other instances where IEEPA has been invoked, presidents did so to freeze assets, block financial transfers, place embargoes, or impose targeted sanctions on hostile regimes and individuals”). A tariff is a tax—not a taking.

Other provisions of IEEPA further counsel against the President’s strained construction. IEEPA has always contained a carve-out for American “donations” of “food, clothing, and medicine.” 50 U.S.C. § 1702(b)(2). When Congress amended IEEPA in 1988, it added an additional exemption for the exportation of American “informational materials.” *Id.* § 1702(b)(3). Those kinds of caveats make sense if IEEPA is about economic warfare, but are rather odd if it’s an import-export-balancing power. *Cf.* Executive Order 14257 (imposing reciprocal tariffs and an import floor duty of ten percent). In short, “[w]hat we have here, in” the President’s preferred reading, “is a fundamental revision of the statute.” *MCI Telecomms. Corp. v. Am. Tel. & Tel. Co.*, 512 U.S. 218, 231 (1994).

Yet other, uncontested delegations of the tariff power by Congress to the President—housed in Title 19 (customs duties) and not Title 50 (war and national defense)—do not require the reader to squint or delete. Section 1338 gives the President the power to “specify and declare new or additional duties.” 19 U.S.C. § 1338(a). Section 1862 enumerates the circumstances under which the President may “adjust imports of an article and its derivatives” for national security reasons. 19 U.S.C. § 1862(c). Section 2411 allows the President, through the U.S. Trade

Representative he controls, to “impose duties or other import restrictions on the goods of, and, notwithstanding any other provision of law, fees or restrictions on the services of, such foreign country for such time as [is] . . . appropriate.” 19 U.S.C. § 2411(c)(1)(B).

Contrast IEEPA with the Tariff Act of 1922, which this Court blessed against a separation-of-powers challenge. *J.W. Hampton*, 276 U.S. at 413. Congress enacted that statute “[t]o boost American competitiveness in international trade,” not provide for gray-zone, near-wartime exigencies. *Gundy*, 588 U.S. at 163 (Gorsuch, J., dissenting). It “directed the President to investigate the relative costs of production for American companies and their foreign counterparts and impose tariffs or duties that would equalize their costs,” all while directly providing the Executive “guidance on how to determine costs of production, listing several relevant factors and establishing a process for interested parties to submit evidence.” *Id.* (internal quotation marks, brackets, and citations omitted). The Tariff Act did all this expressly, not with blink-and-you-miss-it verbiage. *Id.* (It also bears some textualist weight that the Tariff Act was called the *Tariff* Act.)

Lacking similarly explicit authorization, the President’s brief flags President Nixon’s aberrant and deeply contested *post hoc* rationalization that IEEPA’s predecessor statute (not even IEEPA) provided a legal basis to (briefly) impose tariffs. The President contends that IEEPA’s “modest words,” *W. Va.*, 597 U.S. at 723 (internal quotation marks and citation omitted), constitute a ratification of the Nixon administration’s conduct. *E.g.*, *Trump Br.* at 26, 36.

This blinks reality. IEEPA was a post-Watergate reform “passed by Congress to counter the perceived abuse of emergency controls by presidents to . . . interfere with international trade in non-emergency, peacetime situations.” *Sacks v. Office of Foreign Assets Control*, 466 F.3d 764, 776 (9th Cir. 2006). President Carter, who signed IEEPA, confirmed that the statute was a “largely procedural” one, but one that, if anything, “place[d] additional constraints on use of the President’s emergency economic powers.” Statement of President Carter on Signing H.R. 7738 Into Law (Dec. 28, 1977); <https://perma.cc/BX8M-4J23>. And even the federal appellate court that reviewed the Nixon administration’s after-the-fact argument admitted that blessing an unbounded emergency-based presidential right to tariff would “sound the death-knell of the Constitution.” *United States v. Yoshida Int’l, Inc.*, 526 F.2d 560, 583 (C.C.P.A. 1975).

In fact, over the past several decades, Members of Congress have tried to give the Executive Branch the power to do what the President insists IEEPA already licenses. *E.g.*, *Restoring Trade Fairness Act*, H.R. 10127, 118th Congress (2024) (authority for the President to impose tariffs on China); *Neither Permanent Nor Normal Trade Relations Act*, S. 5264, 118th Congress (2024) (same); *United States Reciprocal Trade Act*, H.R. 764, 116th Congress (2019) (vesting a reciprocal tariff power in the President); *Balanced Trade Restoration Act*, S. 3899, 109th Congress (2006) (granting authority to the Commerce Secretary “[t]o achieve balance in the foreign trade of the United States, through a market-based system of tradable certificates”); *A Bill to*

Authorize the President to Impose a Tariff Surcharge . . . , H.R. 1740, 98th Congress (1983) (“authoriz[ing] the President to impose a tariff surcharge on the products of certain countries in order to offset the expense of providing United States defense assistance to such countries”). None of these efforts succeeded.

These failures further counsel against reading IEEPA as an unrestrained grant to the President. He, like this Court, has no power to “redraft statutes in an effort to achieve that which Congress” has “failed to do.” *United States v. Locke*, 471 U.S. 84, 95 (1985); *cf. W. Va.*, 597 U.S. at 724 (“the Agency’s discovery allowed it to adopt a regulatory program that Congress had conspicuously and repeatedly declined to enact itself”); *Brown & Williamson*, 529 U.S. at 159–60 (stating similar).

II. CONGRESS WOULD NOT HAVE HANDED OVER THIS MULTI-TRILLION-DOLLAR ECONOMIC QUESTION SO OBLIQUELY

“In arguing that Section [1702(a)(1)(B)] empowers [him] to substantially restructure the American [import-export] market,” the President has “claimed to discover in a long-extant statute an unheralded power representing a transformative expansion in [his] . . . authority.” *W. Va.*, 597 U.S. at 724 (cleaned up, brackets supplied). This action’s “economic and political significance . . . is staggering by any measure.” *Biden*, 600 U.S. at 502 (internal quotation marks and citations omitted). Whether IEEPA vests the President with unilateral tariff authority is a major question affecting trillions of dollars in purchasing, production, and pricing decisions for every business in America that engages,

even in an ancillary fashion, in the international marketplace. So “[e]ven if the text were ambiguous, the sheer scope of the [President’s] claimed authority under [IEEPA] would counsel against the Government’s interpretation.” *Ala. Ass’n of Realtors*, 594 U.S. at 764.

The President’s brief suggests that the major questions canon isn’t relevant because IEEPA is often used by the Executive. Trump Br. at 37. That cuts against him. In IEEPA’s nearly 50-year history, no other President has picked up section 1702(a)(1)(B) for tariffing. *Id.* (recounting IEEPA invocations related to the seizure of the American embassy in Tehran and the al Qaida terrorist attacks of September 11th). And that’s not because Presidents Carter, Reagan, Bush, Clinton, Bush, Obama, and Biden were overly deferential to Congress. It’s because none of those Administrations found it plausible that Congress had quietly crammed an elephantine tariff delegation into IEEPA. *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468 (2001).

Until now, the business community could rest assured that presidential tariffs would arrive only through established means with “well-defined procedural and substantive limitations.” 25-250 App. 19a. And under those provisions, the Executive’s tariff authorities are either strictly time-limited, 19 U.S.C. § 2132(a), require a pre-tariff investigation, or even have a notice-and-comment period before taking effect. *Id.* at 19a–20a. Time limits give market actors a date certain for executive-only tariffs to expire. Time lags give market actors lead time to adjust or petition for change. This well-planned course gives

the Nation’s businesses legal certainty they can count on.

Businesses “crave certainty as much as almost anything: certainty is what allows them to make long-term plans and long-term investments.” Alan Greenspan & Adrian Wooldridge, *Capitalism in America: A History* 258 (2018). Certainty is especially crucial in the context of tariffs. Tariffs are taxes, and “frequent tax changes [are] the greatest factor in business uncertainty affecting investment and growth.” Xuan-Thao Nguyen & Jeffrey A. Maine, *Attacking Innovation*, 99 B.U. L. Rev. 1687, 1738 (2019).

But if IEEPA is a freestanding grant to the President, certainty crumbles. Rates can be (and have been) immediately and significantly changed day to day based on the Executive’s policy whims. *E.g.*, Executive Orders 14316, 14298, 14259. As a result, it’s already too late for companies struggling amid this vast zone of uncertainty to figure out how to best fill inventory for Christmas. Scott Lincicome, *Toys, Pencils, and Poverty at the Margins*, Cato Inst., May 7, 2025, <http://perma.cc/9Z2Y-UBP2> (observing that “97 percent of toys purchased in the United States are imported”).

So risking the legal certainty on which America’s global supply chain depends is exactly the sort of “big-time policy call[]” that “a reasonable interpreter” would find unlikely to be “pawn[ed] . . . off to another branch” by the Congress. *Biden*, 600 U.S. at 515 (Barrett, J., concurring) (*see* citing to *W. Va.*, 597 U.S. at 723). “Regulate” no more grants the Executive a tariff power than “waive or modify”

granted a power to cancel debt,” *Biden*, 600 U.S. at 506, “necessary” granted a power to freeze evictions nationwide, *Ala. Ass’n of Realtors*, 594 U.S. at 765, or “drug” afforded carte blanche to regulate tobacco products. *Brown & Williamson*, 529 U.S. at 125.

In return, the President’s brief suggests that the major questions canon doesn’t apply to him, just those administrative agencies he commands and controls. Trump Br. at 36. But the interpretative canons fall on the President and the heads of departments alike. For the major questions canon to only apply to Executive Branch agencies and not the President, it must be true that there are independent pockets of power within Article II that are unaccountable to the Chief Executive and may be constrained only by the other branches. But there are not. Pet. Br., *Trump v. Slaughter*, Case No. 25-332 (U.S. 2025).

The President’s effort to split the Executive Branch for purposes of judicial review so that he may “effect important change in the equilibrium of power” by seizing the tariff authority from Congress should be resisted—for “this wolf comes as a wolf.” *Morrison v. Olson*, 487 U.S. 654, 699 (1988) (Scalia, J., dissenting).

CONCLUSION

The President's claimed authority to tariff under IEEPA doesn't exist. This Court should affirm.

Respectfully submitted,

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