Nos. 24-1287 & 25-250

IN THE
Supreme Court of the United States

LEARNING RESOURCES, INC., 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 PROFESSOR CHAD SQUITIERI AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS IN No. 24-1287 AND PETITIONERS IN No. 25-250

R. TRENT MCCOTTER
Counsel of Record
SEPARATION OF POWERS CLINIC
COLUMBUS SCHOOL OF LAW
THE CATHOLIC UNIVERSITY OF AMERICA
3600 John McCormack Rd. NE
Washington, DC 20064
(202) 706-5488
mccotter@cua.edu

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Chad Squitieri is an Assistant Professor of Law at Catholic University of America's Columbus School of Law, where he serves as Director of the Separation of Powers Institute and as a Managing Director of the Center for the Constitution and the Catholic Intellectual Tradition.[2] His scholarship focuses on separation-of-powers topics, including the major questions doctrine and the nondelegation doctrine. His essay, *The President's Authority to Impose Tariffs*, 2025 Harv. J.L. & Pub. Pol'y Per Curiam, No. 12, forms a foundation for this brief. He has a strong interest in the sound development of separation-of-powers jurisprudence.

---

[1] No counsel for any party has authored this brief in whole or in part, and no entity or person other than *amicus curiae* and his counsel made any monetary contribution intended to fund the preparation or submission of this brief.

[2] Professor Squitieri serves as an *amicus* in his personal capacity. His institutional affiliation is offered for identification purposes.

SUMMARY OF THE ARGUMENT

In these consolidated cases, both lower courts concluded that tariffs *must* be an exercise of taxation power. Those courts were mistaken. Overwhelming originalist evidence establishes that tariffs can be an exercise of *either* taxation *or* commerce-regulation power. Congress need not delegate *taxation* power to delegate *tariff* power. Congress can instead delegate tariff power by delegating *commerce-regulation* power.

Fundamental and dispositive problems flow from the lower courts' error—including problems relating to elucidating the ordinary meaning of the International Emergency Economic Powers Act (IEEPA) and applying the nondelegation and major questions doctrines. This Court should rule that, by empowering the President to "regulate … importation," 50 U.S.C. § 1702(a)(1)(B), IEEPA empowers the President to use a traditional and familiar means of regulating foreign commerce conducted via importation: tariffs.

Since the Founding, it has been understood that tariffs can be imposed as an exercise of commerce-regulation power. That understanding is reflected in the writings of James Madison, Chief Justice John Marshall, Joseph Story, and ordinary Americans such as the revolutionary pamphleteers. It is also the understanding reflected in the Tariff Act of 1789—signed by George Washington—and this Court's precedents. Neither the United States District Court for the District of Columbia nor the United States Court of Appeals for the Federal Circuit offered any

justification for rejecting the well-established understanding of tariffs' constitutional source. To the contrary, both courts seemed unaware that, for over two hundred years, tariffs have been understood as a constitutional means of exercising the power to regulate commerce.

The District Court's and Federal Circuit's mistaken conclusion infected key aspects of those courts' interpretations of IEEPA. For example, because both courts reasoned that tariffs *must* be a tax, both courts suggested that Congress must use a special statutory term like "tax" to delegate tariff authority. But it is nonsensical to require Congress to use a magic word relating to the *taxation* power to delegate tariff authority flowing from Congress's distinct power to *regulate commerce*.

It was similarly misguided for the lower courts to reason that Congress could delegate tariff authority only by using other magic words, such as "tariff" and "duties." To be sure, Congress *could* use those terms to delegate tariff authority flowing from Congress's power to regulate commerce. At the Founding, tariffs were a well-known means of regulating commerce, and duties could be imposed either for taxation or commerce-regulation purposes. But just because Congress could use those terms does not mean that Congress must use those terms. The ordinary meaning of the phrase "regulate … importation" encompasses the power to regulate importation through traditional and familiar means (*e.g.*, tariffs). And there are weighty reasons for courts not to unnecessarily insert themselves into the messy and dangerous world of international relations by reading

a traditional and familiar means of regulating foreign commerce out of an emergency statute.

Conflating tariffs with taxation also leads to flawed applications of the nondelegation and major questions doctrines. The Federal Circuit's nondelegation analysis, for example, focused on Congress's power to *tax*. But IEEPA need not delegate *taxation* power to delegate *tariff* power; IEEPA can instead delegate tariff power by delegating power to *regulate foreign commerce*. And this Court's precedents, as well as an originalist understanding of the separation of powers, make clear that the nondelegation principle applies less stringently in the foreign affairs context.

Even putting the foreign affairs context to the side, IEEPA's delegation of tariff authority satisfies the domestic nondelegation doctrine. In *FCC v. Consumers' Research*, 145 S. Ct. 2482 (2025), this Court ruled that a broad delegation of domestic taxation or commerce-regulation authority did not violate the intelligible principle test. The delegation in *Consumers' Research* was not curtailed by any numerical limit—the rate of the tax (or fee) was left entirely to the executive branch, so long as the rate was "sufficient" to "support" a government program. IEEPA places more serious limitations on the President's delegated tariff authority. To wit, IEEPA limits *who* can impose tariffs (the President), *what* the President can impose tariffs on (specific categories of foreign property), *when* the President can impose tariffs (after a declared emergency), the *time-length* tariffs can last without reauthorization (one year unless sooner terminated by Congress), and the *scope*

and *magnitude* of the tariffs—which is limited by the statutory requirement that the tariffs be used only to "deal with" specific emergency threats that have specific scopes, 50 U.S.C. § 1701(b).

As to the major questions doctrine: this Court has never applied it in the foreign policy and national security settings. And regardless of whether one understands the doctrine as a linguistic or substantive canon, the logical underpinnings of the doctrine counsel against expanding it to those settings. It is also mistaken to apply the doctrine in these consolidated cases because the President has not claimed "unheralded" tariff authority. Nearly fifty years ago, the statutory phrase "regulate … importation" was judicially recognized as delegating tariff authority to the President. *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 576 (C.C.P.A. 1975) (*Yoshida II*). Although the tariffs at issue in that case can be distinguished on policy grounds from the challenged tariffs in this case (*e.g.*, different tariff rates) nothing in IEEPA suggests those policy distinctions are legally relevant. So long as IEEPA tariffs satisfy IEEPA's requirements, the relevant emergency-policy decisions are for the President to make—not the courts.

In sum, serious and dispositive errors flow from the District Court's and the Federal Circuit's erroneous conclusion that tariffs must be an exercise of taxation power. This Court should reverse (No. 25-250) and remand for dismissal (No. 24-1287).

ARGUMENT

I. Tariffs are a Traditional and Well-Known Means of Regulating Commerce.

A. Originalist Evidence

The historical record is overwhelming: Tariffs have long been understood as an exercise of commerce-regulation power.

Start with the revolutionary pamphleteers. Although those "pamphleteers staunchly contested efforts by Parliament to '*tax*' them," they "conceded the authority of the British government to *regulate commerce* though financial exactions—by, for example, … imposing prohibitory *tariffs* to restrict trade." Robert G. Natelson, *What the Constitution Means by "Duties, Imposts, and Excises"—and "Taxes" (Direct or Otherwise)*, Case W. Rsrv. L. Rev. 297, 306 (2015) (emphases added) (citations omitted). The pamphleteers "defined 'tax'" as "a financial imposition for the *sole* purpose of raising revenue." *Id.* (citation omitted). "By the time of the constitutional debates of 1787–90 … Americans no longer claimed that a tax must be for the *sole* purpose of raising revenue." *Id.* at 307. Instead, "during the constitutional debates Americans considered exactions adopted *primarily* for regulatory purposes to be fundamentally different from taxes, which were enacted *primarily* for revenue." *Id.*

Chief Justice Marshall offers additional insight into the Founding-era understanding of tariffs. As he explained in *Gibbons v. Ogden*, "[t]he right to *regulate commerce* … by the imposition of duties[] was not

controverted" by the "illustrious statesmen and patriots" of the Founding era, 22 U.S. (9 Wheat) 1, 202 (1824) (emphasis added). For modern originalists who seek to interpret the Constitution pursuant to its original public meaning, historical evidence concerning the views of ordinary Americans is of significant relevance. Here there is an embarrassment of riches: the historical record includes the views of revolutionary pamphleteers and a clear statement from Chief Justice Marshall concerning the views of Founding-era "statesmen and patriots." *Id.*

James Madison also wrote on this issue. In 1828, Madison reflected on "the first session of the first Congress," which had "made" "use" of "the power[] to regulate trade" to "encourage[] … Manufacture[r]s." *Letter from James Madison to Joseph C. Cabell* (Sept. 18, 1828), *in* 9 *The Writings of James Madison* (Gaillard Hunt ed., 1910) ("*Madison 1828 Letter*").[3] "To wit, the Tariff Act of 1789"—signed by George Washington—"was enacted both 'for the support of government' (*i.e.,* revenue raising) and for 'the encouragement and protection of manufacture[r]s' (*i.e.*, commerce regulation)." Chad Squitieri, *The President's Authority to Impose Tariffs*, 2025 Harv. J.L. & Pub. Pol'y Per Curiam, No. 12, at 1, 3 (quoting An Act for Laying a Duty on Goods, Wares, and Merchandises Imported into the United States, ch. 2, § 1, 1 Stat. 24 (1789)). The Tariff Act of 1789 sought

---

[3] *Available at* https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/1940/Madison_1356-09_EBk_v6.0.pdf (pages 198–204).

to protect domestic industry by placing duties on various goods. *Id.* And "[r]eflecting in 1828 on forty years of similar and unquestioned practice, Madison thought there was more than sufficient 'evidence in support of the Cons[tituional] power to protect [and] foster manufactures by regulations of trade.'" *Id.* at 3–4 (quoting *Madison 1828 Letter*). Indeed, the question was "settle[d]" by "the uniform & practical sanction given to the power, by the Gen[eral] Gov[ernment] for nearly 40 years with a concurrence or acquiescence of every State Gov[ernment] throughout the same period." *Madison 1828 Letter*.

Madison also discussed the overlapping nature of Congress's taxation and commerce-regulation powers. "[I]n his 1828 letter concerning 'the constitutionality of the power in Cong. to impose a tariff for the encourag[e]m[en]t[] of Manufactures,' Madison pointed to both the Taxation Clause and the Commerce Clause as sources of authority." Squitieri, *The President's Authority to Impose Tariffs*, *supra*, at 5 (quoting *Madison 1828 Letter*). Madison "did not think it problematic that the two clauses gave Congress overlapping authority." *Id.* Instead, he noted that "examples of overlapping powers could be seen 'elsewhere in the Constitution' as well." *Id.* (quoting *Madison 1828 Letter*). For Madison, those "[p]leonasms, tautologies [and] the promiscuous use of terms [and] phrases" were to "be ascribed sometimes to the purpose of greater caution; sometimes to the imperfections of language; [and] sometimes to the imperfection of man himself." *Madison 1828 Letter*. Madison thus thought it "quite natural, however certainly the general power to regulate trade might

include a power to impose duties on [trade], not to omit [the power to impose duties] in a clause enumerating the several modes of revenue authorized by the Constitution." *Id.*

Joseph Story's Commentaries on the Constitution offer similar insight. Story's Commentaries posed a question: "Why does the power" to "regulate commerce … involve the right to lay duties?" 2 Joseph Story, *Commentaries on the Constitution* § 1084 (1833). The answer was straightforward: "Simply, because [laying duties] is a common means of executing the power [to regulate commerce]." *Id.* To be sure, raising "revenue is an incident to such an exercise of the power." *Id.* And so "the mere fact that a tariff raises revenue does not in and of itself require an exercise of taxation power." Squitieri, *The President's Authority to Impose Tariffs*, *supra*, at 4; *see also* Natelson, *supra*, at 307. As Story wrote, "revenue 'flows from, and does not create the power' to regulate commerce." Squitieri, *The President's Authority to Impose Tariffs*, *supra*, at 4 (quoting 2 Story, *Commentaries*, *supra*, § 1084).

B. Supreme Court Precedent

Given the historical record, it is unsurprising that this Court's precedents similarly indicate that tariffs may be imposed as a means of regulating commerce. Most prominently, and as mentioned, Chief Justice Marshall explained in *Gibbons v. Ogden* that "[t]he right to *regulate commerce* … by the imposition of duties … was not controverted" by the "illustrious statesmen and patriots" at the Founding. 22 U.S. (9 Wheat) at 202 (emphasis added).

In *Board of Trustees of University of Illinois v. United States*, this Court recognized that although "the taxing power is a distinct power and embraces the power to lay duties, it does not follow that duties may not be imposed in the exercise of the power to regulate commerce," 289 U.S. 48, 58 (1933). Instead, "[t]he contrary is well established." *Id.* (citing *Gibbons*, 22 U.S. (9 Wheat) at 202). "The laying of duties is 'a common means of executing the power'" of regulating commerce, and "[i]t has not been questioned that this power may be exerted by laying duties 'to countervail the regulations and restrictions of foreign nations.'" *Id.* (quoting 2 Story, *Commentaries*, *supra*, §§ 1083–84).

Similarly, in *McGoldrick v. Gulf Oil Corp.*, this Court explained that although "[t]he laying of a duty on imports" can be "an exercise of the taxing power," it "is also an exercise of the power to regulate foreign commerce," 309 U.S. 414, 428 (1940). Thus, "[c]ustoms regulations" concerning "imports" "are not only necessary or appropriate to protect the revenue, but are means to … the regulation of foreign commerce …." *Id.*

II. Both Lower Courts Erroneously Concluded that Tariffs Must be an Exercise of Taxation Power.

A. The District Court

In *Learning Resources, Inc. v. Trump*, the United States District Court for the District of Columbia erroneously concluded that tariffs must be an exercise of taxation power, No. 1:25-cv-1248, 2025 WL 1525376 (D.D.C. May 29, 2025).

The District Court began by reasoning that, because "[t]he Constitution recognizes and perpetuates th[e] distinction" between "the power to regulate" and "the power to tax," it followed that "[i]f imposing tariffs and duties were part of the power '[t]o regulate [c]ommerce with foreign [n]ations,' then [the Taxation Clause] would have no independent effect." *Id.* at *8. In reasoning as much, the District Court did not seem aware that James Madison had come to the opposite conclusion. *See Madison 1828 Letter* (discussing overlapping powers). The District Court did cite Chief Justice Marshall's statement in *Gibbons* that "the power to regulate commerce is … entirely distinct from the right to levy taxes and imposts." *Learning Resources*, 2025 WL 1525376, at *8 (quoting *Gibbons*, 22 U.S. (9 Wheat.) at 201). But the District Court seemed unaware that, in the very same opinion, Chief Justice Marshall recognized duties as a traditional means of regulating commerce. *See Gibbons*, 22 U.S. (9 Wheat.) at 202.

Having concluded that tariffs must be an exercise of taxation power, the District Court thought it relevant that "IEEPA does not use the words 'tariffs' or 'duties,' their synonyms, or any other similar terms like 'customs,' 'taxes,' or 'imposts.'" *Learning Resources*, 2025 WL 1525376, at *8. The District Court also referred to dictionary definitions: "To regulate something is to '[c]ontrol by rule' or 'subject to restrictions,'" *id.* (quoting *Regulate*, The Concise Oxford Dictionary of Current English 943 (6th ed. 1976)), while "[t]ariffs are, by contrast, schedules of 'duties or customs imposed by a government on imports or exports,'" *id.* (quoting *Tariff*, Random

House Dictionary of the English Language 1454 (1973)).[4] The District Court then summarized those dictionary definitions: "To regulate is to establish rules governing conduct; to tariff is to *raise revenue* through taxes on imports or exports." *Id.* (emphasis added). The District Court did not explain why, when summarizing the definition for "tariff," it inserted a reference to "rais[ing] revenue" when the dictionary definition relied on by the District Court *did not* similarly limit tariffs to the revenue-raising context. *See id.*

The District Court also noted that other tariff statutes "established express procedural, substantive, and temporal limits on" tariff authority, and thus explained that the court would "not assume that, in enacting IEEPA, Congress repealed by implication every extant limitation on the President's tariffing authority." *Id.* at *9. In reasoning as much, the District Court did not suggest that other tariff statutes were limited (like IEEPA) to "unusual and extraordinary threat[s]." 50 U.S.C. § 1701(b). Nor did the District Court address why a statute limited to

---

[4] These definitions from the 1970s indicate that, when IEEPA was enacted in 1977, the Founding-era understanding of tariffs as a means of regulation had not been meaningfully disturbed. *See also* Jack Goldsmith, *The Weaknesses in the Trump Tariff Rulings*, Exec. Functions (May 30, 2025), https://executivefunctions.substack.com/p/the-weaknesses-in-the-trump-tariff (finding the District Court's use of the dictionary terms "unpersuasive, since a schedule of government duties on imports is a form of government control over imports by rule or an example of the government subjecting imports to restrictions").

unusual and extraordinary situations should be read to include the same limitations imposed by statutes addressing merely usual and ordinary situations.

The District Court also referenced the major questions doctrine. Citing *Biden v. Nebraska*, 600 U.S. 477 (2023), the court reasoned that "[i]f Congress had intended to delegate to the President *the power of taxing* ordinary commerce from any country at any rate for virtually any reason, it would have had to say so." *Learning Resources*, 2025 WL 1525376, at *8 (emphasis added). After concluding that "[t]he plain meaning of 'regulate' is not 'to tax,'" the District Court explained it need not address "the nondelegation doctrine." *Id.* at *13.

B. The Federal Circuit

In *V.O.S. Selections, Inc. v. Trump*, Nos. 2025-1812 & 2025-1813, 2025 WL 2490634 (Fed. Cir. Aug. 29, 2025), the United States Court of Appeals for the Federal Circuit began its statutory analysis with "the mistaken premise that tariffs must be a means of taxation." Chad Squitieri, *Conflating Taxes with Tariffs: Clear Error in the Federal Circuit's Tariff Opinion*, Yale J. Regul. Notice & Comment Blog (Sept. 2, 2025), https://www.yalejreg.com/nc/conflating-taxes-with-tariffs-clear-error-in-the-federal-circuits-tariff-opinion-by-chad-squitieri/. To wit, the Federal Circuit began the portion of its opinion "discuss[ing] the history and legal authority concerning the imposition of tariffs" by stating:

> The Constitution grants Congress the power to 'lay and collect Taxes, Duties, Imposts and Excises' and to 'regulate Commerce with

> foreign Nations.' U.S. Const. art. I, § 8, cl. 1, 3. *Tariffs are a tax*, and the Framers of the Constitution expressly contemplated the exclusive grant of *taxing power* to the legislative branch ….

V.O.S. Selections, 2025 WL 2490634, at *4 (emphases added).

Having started with the mistaken conclusion that tariffs must be a means of taxation, the Federal Circuit thought it "[n]otabl[e]" that "IEEPA does not use the words 'tariffs' or 'duties,' nor any similar terms like 'customs,' 'taxes,' or 'imposts.'" *Id.* at *7. The Federal Circuit also reasoned that "the mere authorization to 'regulate' does not in and of itself imply the authority to impose tariffs," given that "[t]he power to 'regulate' has long been understood to be distinct from the power to 'tax.'" *Id.* at *12. The Federal Circuit observed that "the Constitution vests these authorities in Congress separately," and cited the portion of *Gibbons* noting that taxation and commerce-regulation are separately vested. *Id.* (citing *Gibbons*, 22 U.S. (9 Wheat) at 201). Like the District Court in *Learning Resources*, the Federal Circuit majority seemed unaware that *Gibbons* elsewhere made clear that duties were a traditional means of regulating commerce. *See Gibbons*, 22 U.S. (9 Wheat.) at 202.

To be sure, the Federal Circuit did note that "Congress may use its taxing power in a manner that has a regulatory effect." *V.O.S. Selections*, 2025 WL 2490634, at *12 (citation omitted). But the Federal Circuit thought that immaterial because "the power

to tax is not *always* incident to the power to regulate." *Id.* at *12. In stating as much, the Federal Circuit further demonstrated that it mistakenly believed IEEPA's reference to "regulate" would have to delegate *taxation* power to delegate *tariff* power.

Continuing in its mistaken belief that the relevant inquiry concerned whether the word "regulate" delegated taxation power, the Federal Circuit noted "examples where Congress has granted the power to regulate to the executive branch without delegating the power to impose tariffs." *Id.* Those examples included the Security and Exchange Commission's (SEC) statutory power "to regulate the trading of [tradeable assets]." *Id.* (citation omitted). The Federal Circuit reasoned that interpreting IEEPA's reference to "regulate" to include tariff authority would require concluding "that Congress delegated to the SEC power to *tax* substantial swaths of the American economy." *Id.* (emphasis added). The Federal Circuit did not explain why it had focused that part of its analysis on the word "regulate," rather than the relevant phrase used by IEEPA: "regulate … *importation*," 50 U.S.C. § 1702(a)(1)(B) (emphasis added). Nor did the Federal Circuit contend that agencies such as the SEC are empowered to regulate *importation*.

The Federal Circuit also referenced other tariff statutes. "[I]n each statute delegating tariff power to the President," the Federal Circuit reasoned, "Congress has provided specific substantive limitations and procedural guidelines to be followed in imposing any such tariffs." *V.O.S. Selections*, 2025 WL 2490634, at *12. The court thus thought it "unlikely that Congress intended, in enacting IEEPA,

to depart from its past practice and grant the President unlimited authority to impose tariffs." *Id.* The court did not contend that the other tariff statutes were limited (like IEEPA) to addressing unusual and extraordinary threats.

The Federal Circuit also ruled that the challenged tariffs violated the major questions doctrine because the claimed authority was "'unheralded' and 'transformative.'" *Id.* at *14 (citation omitted). Here, the Federal Circuit erroneously focused on the taxation power to reject the suggestion that the major questions doctrine should not apply in the foreign affairs and national security contexts. *Id.* at *15. As the court reasoned, although "the President … has independent constitutional authority in" the foreign affairs and national security settings, "the power of the purse (including the power to *tax*) belongs to Congress," and "the President has no authority to impose *taxes*." *Id.* (emphases added).

Finally, the Federal Circuit reasoned that "[t]he Government's interpretation of IEEPA would render it an unconstitutional delegation." *Id.* at *22. Here, too, the Federal Circuit erroneously assumed tariffs must be a means of taxation. As the Federal Circuit put it: "Because *taxation* authority constitutionally rests with Congress, any delegation of that authority … must at least set out an intelligible principle." *Id.* (emphasis added). "For *taxes*," the Federal Circuit reasoned, "it would pose a constitutional problem if the statute gives the executive branch power, all on its own, to raise" money "with no ceiling." *Id.* (cleaned up) (emphasis added).

C. Certiorari-Stage Briefing

In certiorari-stage briefing, private respondents double-down on the lower courts' mistaken conclusion that tariffs must be an exercise of taxation power. Private respondents stress that "Congress, not the President, has authority over all taxes on the American people, including 'Duties' and 'Imposts'—*i.e.*, tariffs." Mem. for Private Respondents at 2, *Trump v. V.O.S. Selections, Inc.*, No. 25-250 (U.S. Sept. 5, 2025). By conflating tariffs with taxes, their argument runs against Founding-era usage of the relevant terms. "By 1787," Americans understood that "not all duties were taxes: Some were imposed not for revenue but merely to regulate (or effectively prohibit) trade in particular articles." Natelson, *supra*, at 320.

Private respondents also argue that, for this Court to conclude that IEEPA delegates tariff authority, this Court would have to "pump[] into the word 'regulate'—which occurs in hundreds of statutes—the authority to 'tax,' which would give the President overnight the power to tax every corner of the economy that is subject to regulation." Mem. for Private Respondents at 3. That is incorrect, because IEEPA need not delegate *taxation* authority to delegate *tariff* authority; IEEPA can instead delegate authority to *regulate* foreign commerce. Moreover, IEEPA does not use the word "regulate" in isolation; IEEPA uses the term "regulate … *importation*." 50 U.S.C. § 1702(a)(1)(B) (emphasis added). Notably, private respondents do not argue that hundreds of statutes contain the phrase "regulate … *importation*."

III. The Ordinary Meaning of IEEPA Delegates Traditional Tariff Authority.

Both the District Court and the Federal Circuit relied on legislative history. *Learning Resources*, 2025 WL 1525376, at *12; *V.O.S. Selections*, 2025 WL 2490634, at *6. For purposivist jurists, the legislative history should confirm that IEEPA delegates tariff authority. The legislative history references *Yoshida II*, which recognized that the phrase "regulate … importation" empowers the President to impose duties, *V.O.S. Selections*, 2025 WL 2490634, at *6–7 (citing H.R. Rep. No. 95-459, at 5 (1977)).

But legislative history is of marginal relevance to textualist jurists.[5] Textualists "approach language from the perspective of an ordinary English speaker—a congressional outsider." Amy Coney Barrett, *Congressional Insiders and Outsiders*, 84 U. Chi. L. Rev. 2193, 2194 (2017). Approaching IEEPA from the perspective of the ordinary English speaker outside of Congress leads to the conclusion that IEEPA delegates tariff authority. That is because tariffs have, for over two hundred years, been a familiar and well-known means of regulating foreign commerce.

---

[5] Textualists might use legislative history as one piece of evidence for triangulating original public meaning. Here, the reference to *Yoshida II* in the legislative history suggests that legislators in the 1970s were aware that the phrase "regulate … importation" was understood by congressional outsiders (*e.g.*, the *Yoshida II* court and the Nixon administration) to encompass the authority to impose duties.

A. Congress Need Not Use Magic Words

Since the Founding, tariffs have been a familiar and well-known means of regulating foreign commerce. And evidence such as dictionary definitions, the *Yoshida II* opinion, and the Nixon Administration's tariff position indicate that tariffs were still a familiar and well-known means of regulating foreign commerce in the 1970s.[6] Thus, like the revolutionary pamphleteers—*i.e.*, ordinary Americans who understood tariffs as a means of commerce-regulation—the ordinary reader in 1977 understood IEEPA's use of the phrase "regulate … importation" to include the power to impose tariffs.

It is immaterial that courts might prefer Congress to have drafted IEEPA using different words; drafting decisions are for Congress. And there are weighty reasons for courts not to unnecessarily insert themselves into the messy and dangerous world of international relations by reading a traditional and familiar means of regulating foreign commerce (*i.e.*, tariffs) out of an emergency statute.

Because the ordinary meaning of IEEPA encompasses the power to impose tariffs, it is inappropriate for courts to require Congress to use magic words—such as "taxes," "duties," or "tariffs"—to delegate tariff authority. To start with the word

---

[6] *See supra* note 4 and corresponding text (discussing definitions of "tariff" and "regulate" from the 1970s and noting those definitions indicate that, when IEEPA was enacted, the Founding-era understanding of tariffs had not been meaningfully altered).

"taxes": tariffs are a well-known means of regulating commerce. It is thus nonsensical to require Congress to use the word "tax" to delegate tariff authority that need not flow from Congress's taxation power.

Requiring Congress to use words such as "tariffs" or "duties" to delegate commerce-regulation power would be slightly less absurd. That is because tariffs and duties can be imposed for taxation and commerce-regulation reasons. *See, e.g.*, Natelson, *supra*, at 320. But just because Congress could use those terms does not mean that Congress must use those terms. Legislators in Congress can instead expect the phrase "regulate … importation" to be interpreted against the backdrop of over two hundred years of history, which demonstrates that tariffs are a traditional and well-known means of regulating foreign commerce conducted through importation.

B. Surrounding Terminology in IEEPA Confirms a Delegation of Tariff Authority

IEEPA empowers the President to choose between a wide range of tools to "deal with" emergencies. 50 U.S.C. § 1702(b)(2). At one end of the spectrum, the President can "investigate" foreign "importation." *Id.* § 1702(a)(1)(B). At the other end, the President can outright "prohibit" imports. *Id.* It was sensible for IEEPA's drafters to include the word "regulate" between "investigate" and "prohibit." *Id.* Moreover, the use of the term "prohibit" alongside the related term "regulate" supports the conclusion that an ordinary reading of IEEPA grants the President emergency tariff-flexibility.

Since the Founding, commerce-regulating tariffs could be used both to "regulate" and "prohibit" foreign importation. Natelson, *supra*, at 320. In some instances, domestic industry might be sufficiently protected from unusual and extraordinary threats by regulatory-tariffs that merely slow foreign importation; in other situations, it might be necessary to set regulatory-tariffs at rates high enough to effectively prohibit certain imports. By opting to "regulate" imports, *id.*, President Trump has opted to use one of the related tools listed in IEEPA.

C. The President Need Not Rely on Non-Emergency Statutes During an Emergency

Interpreting IEEPA within the broader context of other tariff statutes confirms the conclusion that IEEPA delegates tariff authority. But the lower courts reasoned that, because Congress has imposed limits on the President's tariff authority in *other* statutes, Congress did not intend to delegate a less-restricted tariff authority via IEEPA. *Learning Resources*, 2025 WL 1525376, at *9; *V.O.S. Selections*, 2025 WL 2490634, at *12. That argument is flawed because other tariff statutes are not reserved (as IEEPA is reserved) to dealing with "unusual and extraordinary threat[s]." 50 U.S.C. § 1701(b). A sensible statutory framework includes both emergency and non-emergency tariff power, and it would upset that framework to require the President to abide by non-emergency requirements when the President has instead invoked emergency statutory authority.

The broader statutory framework reveals that, although the President must abide by one set of statutory constraints in situations that are not "unusual and extraordinary," the President is bound by a different set of constraints (*i.e.*, IEEPA constraints) when he invokes IEEPA to combat "unusual and extraordinary threat[s]." *Id.* As Professor Jack L. Goldsmith explains, "IEEPA is an independent emergency power with independent aims and authorities as well as quite different substantive and procedural requirements tied to emergency situations." Goldsmith, *The Weaknesses in the Trump Tariff Rulings*, *supra*.

Courts should not require the President to jump through the procedural hurdles imposed by non-IEEPA statutes when the President has invoked IEEPA to respond to an "unusual and extraordinary threat." 50 U.S.C. § 1701(b). Otherwise, courts would upset the broader statutory framework established by Congress. *See also* Goldsmith, *The Weaknesses in the Trump Tariff Rulings*, *supra* ("[A]ny adverse impact of IEEPA's expansive emergency power on the more carefully gauged tariff and other statutes should be addressed to Congress.").

D. Congress Need Not Delegate Taxation Authority to Delegate Tariff Authority

Private respondents suggest that, for this Court to conclude that IEEPA delegates tariff authority, this Court would have to "pump[] into the word 'regulate' … the authority to 'tax.'" Mem. for Private Respondents at 3. That is incorrect; tariffs need not

be an exercise of taxation power. Tariffs can instead be an exercise of commerce-regulation power.

If private respondents continue to insist that IEEPA must delegate *taxation* power to delegate *tariff* power, this Court should consider asking private respondents the following question at oral argument:

> Do you concede that Congress may delegate tariff authority by delegating *commerce-regulation* authority, rather than by delegating *taxation* authority?

Private respondents may be tempted to partially concede the point by noting, as the Federal Circuit did, that "Congress may use its taxing power in a manner that has a regulatory effect," *V.O.S. Selections*, 2025 WL 2490634, at *12.[7] But that sleight-of-hand only confuses the issue. The relevant question is not whether IEEPA delegates *taxation* authority through the phrase "regulate … importation." The relevant question is instead whether IEEPA delegates traditional *commerce-regulation* authority through the phrase "regulate … importation."

---

[7] On this tangential point, the Federal Circuit was correct. And for similar reason, the Government is correct to note rulings indicating that "regulating trade includes imposing taxes or tariffs." Opening Br. for Govt. at 21, Nos. 24-1287, 25-250 (U.S. Sept. 19, 2025). But even if Congress *may* empower the President to regulate trade via taxes, Congress *need not* take that route to delegate tariff authority. Some (but not all) tariffs are taxes.

E. Other Statutory References to "Regulate" Are Distinct

The Federal Circuit and private respondents suggest that, if IEEPA is interpreted to delegate tariff authority, other statutes containing the word "regulate" must be understood as delegating taxation authority. *V.O.S. Selections*, 2025 WL 2490634, at *12; Mem. for Private Respondents at 3. There are two problems with that argument.

First, IEEPA does not use the word "regulate" in isolation. IEEPA instead uses the phrase "regulate … *importation*." 50 U.S.C. § 1702(a)(1)(B) (emphasis added). The latter phrase clearly encompasses the power to regulate foreign importation through traditional and well-known means (*i.e.*, tariffs). Reasonable interpreters understand that different statutes empower different actors to regulate different things. Recognizing IEEPA's grant of import-regulation power as including tariff authority does not require recognizing that unrelated regulatory agencies—which are not empowered to regulate importation—are similarly empowered to impose tariffs.

Second, a ruling that IEEPA empowers the President to impose commerce-regulating tariffs would not signal that every statutory reference to "regulate" includes a power to tax. That is because tariffs need not be an exercise of taxation power; tariffs can instead be an exercise of commerce-regulation power. This Court can (and should) rule that IEEPA delegates a traditional form of commerce-regulating power (*i.e.*, tariffs). And it would be absurd

to interpret such a ruling as suggesting that distinct statutory uses of the term "regulate" necessarily delegate taxation power.

F. Commerce-Regulating Tariffs May Raise Revenue

Because the Government has publicly highlighted that the challenged tariffs raise significant revenue, challengers might suggest that the challenged tariffs must be defended as an exercise of taxation power. But that argument turns on the mistaken idea that commerce-regulating tariffs may not raise revenue. Commerce-regulating tariffs *may* raise revenue.

As noted, "during the constitutional debates Americans considered exactions adopted *primarily* for regulatory purposes to be fundamentally different from taxes, which were enacted *primarily* for revenue." Natelson, *supra*, at 307. In this case, the legal evidence demonstrates that the challenged tariffs are enacted primarily for regulatory purposes. Neither the executive orders relating to contraband drug tariffs, nor the orders relating to reciprocal tariffs, stress a desire to raise revenue. Instead, those orders establish that the tariffs are a means of regulating foreign commerce.

First consider the contraband drug tariffs. The relevant executive orders make clear that those tariffs are intended to encourage countries to stop the importation of contraband drugs into the United States. *See, e.g.*, Exec. Order No. 14,193, 90 Fed. Reg. 9,113 (Feb. 7, 2025); Exec. Order No. 14,194, 90 Fed. Reg. 9,117 (Feb. 7, 2025); Exec. Order No. 14,195, 90 Fed. Reg. 9,121 (Feb. 7, 2025). The goal of those tariffs

is *not* to raise revenue by allowing contraband drugs to continue flowing into the country so long as those drugs are taxed. Instead, the stated goal is to apply financial pressure to stop the importation of contraband drugs. That falls within a traditional use of the power to regulate commerce. At the Founding, duties could be imposed "to regulate (or effectively prohibit) trade in particular articles." Natelson, *supra*, at 320. And this Court's Commerce Clause jurisprudence recognizes that federal commerce-regulation power extends to the illegal drug trade. *Gonzales v. Raich*, 545 U.S. 1, 26 (2005).

Regulating commerce is also the stated goal of the reciprocal tariffs. Those tariffs are intended to improve "domestic production capacity" that was negatively impacted by "trade deficits." Exec. Order No. 14,257, 90 Fed. Reg. 15,041, 15,044 (Apr. 7, 2025). As the President explained, "[t]he absence of sufficient domestic manufacturing capacity in certain … sectors … compromises U.S. economic and national security," and "military readiness" has been "compromised" by the trade deficits targeted by these tariffs and "the concomitant loss of industrial capacity." *Id.* at 15,045. Protecting domestic producers has long been a motivation of commerce-regulating tariffs. *See Madison 1828 Letter* (discussing "the constitutionality of the power in Cong[ress] to impose a tariff for the encouragem[ent] of Manufacture[r]s"); Natelson, *supra*, at 305–06 & n.38. And one needs only to reflect on the COVID-19 pandemic, when domestic manufacturers transitioned to manufacturing pandemic-related items, or World War II, when domestic manufacturers transitioned to

manufacturing materials for the war effort, to understand why protecting domestic industry is important for national security and foreign affairs purposes. *See, e.g.*, Norah O'Donnell, *How Ford and GM Joined the Fight Against the Coronavirus*, CBS News (Apr. 27, 2020), https://www.cbsnews.com/news/ford-general-motors-coronavirus-ventilators-medical-supplies/.

The legal evidence therefore indicates that the challenged tariffs were imposed primarily for commerce-regulation purposes. Of course, commerce-regulating tariffs may raise revenue as an incident to regulating commerce. Even if tariffs are set at a rate intended to overwhelmingly reduce or even prohibit imports, some importation can be expected to continue, and that importation raises revenue. Moreover, one would expect political actors to inform the public that commerce-regulating tariffs raise tremendous[8] revenue as an incident to regulating commerce. Politicians highlight positive results all the time. But for *legal* purposes, what matters is whether the tariffs were enacted primarily for regulatory or taxation purposes. And the legal evidence indicates that the challenged tariffs were primarily imposed to regulate commerce.

---

[8] The amount of revenue raised is not particularly meaningful as a legal matter. Tariffs regulating a small amount of commerce can be expected to raise a small amount of revenue; tariffs regulating a large amount of commerce can be expected to raise a large amount of revenue.

IV. IEEPA's Delegation Satisfies the Nondelegation and Major Questions Doctrines.

A. The Constitution's Nondelegation Principle Applies Less Stringently in the Foreign Affairs Context

This Court's precedents make clear that the Constitution's nondelegation principle applies less stringently in the foreign affairs context than in the domestic context. *See* Squitieri, *The President's Authority to Impose Tariffs*, *supra*, at 7–8 (discussing cases).

In *United States v. Curtiss-Wright Export Corp.*, this Court highlighted important "differences" between "the powers of the federal government in respect of foreign or external affairs and those in respect of domestic or internal affairs," 299 U.S. 304, 315 (1936). In the foreign affairs context, statutory delegations are properly interpreted alongside "the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations." *Id.* at 320. And "congressional legislation which is to be made effective through negotiation … within the international field must often accord to the President a degree of discretion and freedom from statutory restriction which would not be admissible were domestic affairs alone involved." *Id.*

"*Curtiss-Wright* was consistent with earlier, 19th century Supreme Court precedent."[9] Squitieri, *The President's Authority to Impose Tariffs*, *supra*, at 7 (citing *Marshall Field & Co. v. Clark*, 143 U.S. 649, 691 (1892)). And precedent like *Curtiss-Wright* is consistent with an originalist understanding of the Constitution's structure.

As Justice Gorsuch has explained, "when a congressional statute confers wide discretion to the executive, no separation-of-powers problem may arise if 'the discretion is to be exercised over matters already within the scope of executive power.'" *Gundy v. United States*, 588 U.S. 128, 159 (2019) (Gorsuch, J., dissenting) (citation omitted). Justice Gorsuch cited the "foreign-affairs-related statute in *Cargo of the Brig Aurora*" as "an example of this kind of permissible lawmaking, given that many foreign affairs powers are constitutionally vested in the president under Article II." *Id.* The *Cargo of the Brig Aurora* concerned a statute empowering the President to exercise authority relating to foreign importation. 11 U.S. 382, 382–83 (1813).

Originalist academics have similarly written about the nondelegation principle applying differently in the

---

[9] In *Consumers' Research*, this Court explained that its "precedents foreclose th[e] argument" that "tax statutes—and probably all revenue-raising statutes—have to satisfy a special nondelegation rule." 145 S. Ct. at 2497. In reasoning that a heightened nondelegation test would not apply to revenue-raising statutes, this Court did not purport to overrule *Curtiss-Wright*. Nor has this Court been asked to overrule *Curtiss-Wright* in these consolidated cases.

foreign affairs context. For example, Amicus Squitieri has argued that, because the Constitution vests different powers in Congress using different language, an original understanding of that language indicates that Congress may delegate different powers differently. *See* Chad Squitieri, *Towards Nondelegation Doctrines*, 86 Mo. L. Rev. 1239, 1243, 1294 (2022) (discussing foreign affairs). And Professor Michael W. McConnell has argued that "[i]t is plausible to think that the non-delegation doctrine" may not apply "to the former royal prerogative powers given to the legislative branch." Michael W. McConnell, *The President Who Would Not Be King* 328–29 (2020).

As Professor McConnell explains, "[n]ot all powers entrusted to Congress are of a strictly 'legislative' nature"; instead, "[s]ome are prerogative powers, previously exercised by the Crown." *Id.* at 328. The power to regulate foreign commerce falls into the latter category. "[R]oyalist lawyers and judges" contended that "pre-1688 monarchs had 'the sole power' over foreign trade," and "[o]ne might" even "infer" from the relevant texts that "the king's prerogative to govern foreign commerce survived the Glorious Revolution" of 1688. *Id.* at 214–15.

The power to regulate foreign commerce was, of course, vested in Congress. But the power's status as a power formerly exercised by the king would explain why, as a historical matter, the power can be more readily delegated to the President. As Professor McConnell puts it, the theory would explain why "[t]he First Congress … delegated to executive officials" the power "to trade with Indian tribes (which

was regarded as a matter of *external* relations)," and which did not "intrude[] into the core of the legislative power," while relatively "stronger nondelegation norms survive in the context of power that is especially central to the legislative branch, such as *domestic* taxation." *Id.* at 333–34 (emphases added). Moreover, Professor McConnell suggests the "theory may … provide a superior grounding for *Field v. Clark*, where Congress gave the President a bargaining chip to use in foreign negotiations, and *Curtiss-Wright*, which recognized a broader range of legitimate delegation in the foreign affairs arena than in domestic law, though for unpersuasive reasons." *Id.* at 334.

B. IEEPA Satisfies the Domestic Nondelegation Doctrine

Even ignoring the precedential and originalist arguments concerning the foreign affairs context, IEEPA's delegation of tariff authority satisfies the version of nondelegation doctrine applicable in the domestic context. That is because IEEPA cabins the President's discretion with an intelligible principle.

IEEPA limits *who* can impose tariffs (the President), 50 U.S.C. § 1702(a)(1); *what* the President can impose tariffs on (specific categories of foreign property), *id.* § 1702(a)(1)(B), (b); *when* the President can impose tariffs (after a declared emergency), *id.* § 1701(b); the *time-length* tariffs can last without reauthorization (one year unless sooner terminated by Congress), *id.* § 1622(a)(1), (d); and the *scope* and *magnitude* of the tariffs—which is limited by the statutory requirement that IEEPA tariff-authority

"may *only* be exercised to *deal with* an unusual and extraordinary threat … *and may not be exercised for any other purpose*," *id.* § 1701(b) (emphases added).

Under *Consumers' Research*'s rationale, IEEPA imposes both "a floor and a ceiling" on the delegated authority, 145 S. Ct. at 2502, and tariffs set at too low or high a rate to "deal with" the declared threat are not statutorily permitted. To be sure, IEEPA's "deal with" limitation leaves the President broad authority to set the correct tariff rates—and courts should not often second-guess that decision. But IEEPA's "deal with" limitation nonetheless imposes a legal limit that courts can invoke in edge cases.

To paraphrase this Court's rationale in *Consumers' Research*: "If you told a friend to order" food to *deal with* "five people[,] and 500 boxes of pizza showed up at your house, you would not think he had followed instructions." *Id.* Or to offer a follow-on analogy: If, after the pizza party, you asked your friend to "deal with" the dirty dishes, you would not think your friend followed instructions if he washed only half of the dishes—or if he washed all of the dishes in the sink, ordered a new set, and washed those too. The ordinary reader understands that the delegated authority to "deal with" threats is properly interpreted in light of intuitive background principles concerning proportional defense. *See, e.g.*, 3 William Blackstone, *Commentaries* *4 (1769) ("[C]are mu[s]t be taken that" self-defense "does not exceed the bounds of mere defence and prevention.").

C. IEEPA Satisfies the Major Questions Doctrine

This Court has never applied the major questions doctrine in the foreign policy and national security settings. *Consumers' Rsch.*, 145 S. Ct. at 2516 (Kavanaugh, J., concurring). Nor should it. A jurist who understands the doctrine as a linguistic canon should account for the fact that Congress routinely delegates "major" authority to the President in those settings. *See id.* And the emergency context of IEEPA makes the analysis even easier.

To extend Justice Barrett's major questions analogy: although a babysitter might not ordinarily have the authority to take the kids on "a road trip," sometimes "obvious contextual evidence," such as an *unusual and extraordinary* hurricane emergency, indicates that a babysitter empowered to *deal with* emergencies may *deal with* the hurricane emergency by driving the children to safety. *Nebraska*, 600 U.S. at 513–14 (Barrett, J., concurring). Or to use an analogy to which northerners might better relate: although a babysitter might not ordinarily have the authority to take the kids outside of the home at midnight in the dead of winter, "obvious contextual evidence," *id.* at 514, such as a house fire, would indicate that a babysitter empowered to *deal with* emergencies may *deal with* the house fire by evacuating the house. IEEPA is limited to special emergency contexts, where Congress is expected to delegate major authority.

A jurist who understands the major questions doctrine as a substantive canon promoting the

constitutional value of nondelegation should ensure that the major questions doctrine is, like the nondelegation doctrine, sensitive to the President's overlapping authority in the foreign affairs and national security settings. *See Gundy*, 588 U.S. at 159 (Gorsuch, J., dissenting). The major questions doctrine would not faithfully promote the nondelegation doctrine if the major questions doctrine was not itself sensitive to the nondelegation doctrine's contours.

The major questions doctrine is not applicable in these cases for another reason: the President has not claimed "unheralded" tariff authority. Nearly fifty years ago, the statutory phrase "regulate … importation" was judicially recognized as delegating tariff authority to the President. *Yoshida II*, 526 F.2d at 576. Although the tariffs at issue in that case can be distinguished on policy grounds from the challenged tariffs in this case (*e.g.*, different tariff rates), nothing in IEEPA suggests those policy distinctions are legally relevant. As Professor Goldsmith writes: "Even given the differences between the Nixon and Trump administration actions, Trump following in the Nixon administration footsteps based on identical statutory language reenacted by Congress was not unheralded action, and certainly falls far outside the novelty/unheralded action rubric of prior [major questions] cases." Jack Goldsmith, *The Tariff Case and the Major Questions Doctrine*, Exec. Functions (Sept. 12, 2024), https://executivefunctions.substack.com/p/the-tariff-case-and-the-major-questions.

Finally, and even assuming the major questions doctrine applies, the challenged tariffs are supported by "clear congressional authorization," *West Virginia v. EPA*, 597 U.S. 697, 723 (2022). For over two hundred years, tariffs have been understood as a traditional and well-known means of regulating foreign commerce. That traditional power clearly falls within IEEPA's authorization to "regulate … importation." 50 U.S.C. § 1702(a)(1)(B). It would be absurd, for example, to conclude that a hypothetical statute empowering the President to take major emergency action concerning "professional sports" did not clearly authorize the President to take major emergency action concerning "baseball." That is in part because baseball is a traditional and well-known professional sport. So too here, where tariffs are a traditional and well-known means of regulating commerce.

CONCLUSION

For the foregoing reasons, *amicus* urges the Court to reverse in No. 25-250 and to remand for dismissal in No. 24-1287.

Respectfully submitted,

R. TRENT MCCOTTER
Counsel of Record
SEPARATION OF POWERS CLINIC
COLUMBUS SCHOOL OF LAW
THE CATHOLIC UNIVERSITY OF AMERICA
3600 John McCormack Rd. NE
Washington, DC 20064
(202) 706-5488
mccotter@cua.edu

September 23, 2025