

Nos. 25250, 241287

IN THE SUPREME COURT OF THE UNITED STATES

DONALD J. TRUMP, et al., *Applicants*

v.

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

LEARNING RESOURCES, INC., et. al., *Applicants*

v.

DONALD J. TRUMP, et. al., *Respondents.*

BRIEF AMICUS CURIAE OF COREY J. BIAZZO, ESQ.
IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS

Amicus is a practicing civil litigation attorney and author who has conducted extensive legal research and continuous legal education in the field of Constitutional Law. As an author, Amicus has drafted politically neutral guidebooks for laypersons to understand the objective meaning, scope and limitations of the U.S. Constitution's Second Amendment and foundational state and federal gun laws. *See* Corey J. Biazzo, *Florida Gun Ownership and the Second Amendment* (2nd ed. 2025). As a legal practitioner, Amicus has encountered situations in the representation of clients where provisions of the U.S. Constitution were implicated. Amicus' knowledge of those implications enabled amicus to provide amicus' clients with high quality zealous advocacy.

For example, in *Hallandale Plaza, LLC v. New Tropical Car Wash, LLC*, 335 So. 3d 712 (Fla. 4th DCA 2022), amicus' advocacy with Co-Counsel Kevin Fabrikant, Esq. resulted in Florida's Fourth District Court of Appeals reversing and remanding a commercial eviction action after the Fourth District Court of Appeals found that the trial court violated the appellant's Fourteenth Amendment Due Process Rights under the U.S. Constitution. The trial court violated the appellant's Due Process rights when it dismissed the appellant's commercial eviction action at a preliminary hearing after no Motion to Dismiss had been filed by the Respondent or set for a hearing, and no notice was given to the Appellant that the action could be dismissed at the preliminary hearing. During the preliminary hearing, the trial court was statutorily limited to determining the amount of rent to be paid into the court registry by the tenant during the pendency of the eviction action pursuant to Fla. Stat. § 83.60. The appellate court found that the trial court exceeded its authority when the trial court *sua sponte* dismissed the Appellant's case, after the trial court rendered opinions on issues of merit in the case that were supposed to be ruled on at trial.

Amicus is filing this brief to address the vital interests in this Court upholding the integrity of our nation's present system of federalism as designed by the U.S. Constitution, regardless of who occupies the elected and appointed offices in the White House, Congress and the Judiciary. Amicus is a concerned member of the bar and an officer of the Court who is oath bound to support the U.S. Constitution. Additionally, Amicus is a U.S. Navy veteran who has taken an oath to support and defend the U.S. Constitution. Amicus is concerned that this instant appeal presents a pivotal moment in the history of the United States where this Court must fiercely and unambiguously reinforce our well established system of federalism and jealously guard the independent constitutional authorities of the U.S. Congress from the Executive Branch that seems intent on absorbing the authorities of the co-equal branches of the federal government in this matter and other ongoing matters, in contravention of the mandates of the U.S. Constitution. Therefore, Amicus tenders the foregoing.

SUMMARY OF ARGUMENT

The American federal government must maintain an equilibrium of power between the three branches of the government, as prescribed in Articles I, II and III of the U.S. Constitution to preserve our present constitutional democratic republic. No branch of the federal government shall be permitted to exercise the constitutionally designated powers of a co-equal branch. Further, this Court shall not be permitted to amend the Constitution through its Power of Judicial Review when the political branches manufacture litigation through the issuance of unconstitutional executive orders and unconstitutional congressional statutes.

In this instant matter, the President appears to have attempted to usurp the Legislature's Article I power to "lay and collect Taxes, Duties, Imposts and Excises", as assigned by U.S. Const. art. I. Sec. 8, Cl. 1. While the International Emergency Economic Powers Act of 1977 ("IEEPA") and the National Emergencies Act ("NEA") may delegate some of Congress' Article I authority to the President, the IEEPA and NEA do not delegate unbounded unilateral tariff authority to the President.

Every Executive Order issued by a President must be rooted in a President's Constitutional authority or by authority vested in the President by Congress. "The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself." *Youngstown Sheet Tube Co. v. Sawyer*, 26 A.L.R.2d 1378, 343 U.S. 579, 96 L.Ed. 1153, 72 S.Ct. 863 (1952). In the instant case before us, as in *Youngstown*, there is no statute that expressly authorizes the President to unilaterally issue tariffs to accomplish the policy objectives of the President in the absence of Congressional authorizing legislation.

The IEEPA and the NEA do not delegate a tariff-promulgating power to the President. The IEEPA simply generally authorizes the President to block, regulate, or prohibit certain targeted "transactions" involving foreign property and commerce when a national emergency exists. It does not authorize the President to enact general revenue measures. Even if IEEPA's text were pliable (it is not), foundational doctrines require a narrow construction. A presidential decision to essentially tax all imports is a paradigmatic "major question." Under the "major question" doctrine, courts "expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic and political significance." *West Virginia v. Env'tl. Prot. Agency*, 142 S.Ct. 2587, 213 L.Ed.2d 896 (2022). As of the time of this brief, Congress has not clearly assigned decisions of vast economic and political significance, (at least involving tariffs), to the President nor to any Executive branch agencies.

This situation is akin to *Biden v. Nebraska*, 143 S.Ct. 2355, 216 L.Ed.2d 1063 (2023). "While Congress specified in the Education Act a few narrowly delineated situations that could qualify a borrower for loan discharge, the Secretary has extended such discharge to nearly every borrower in the country. It is "highly unlikely

that Congress” authorized such a sweeping loan cancellation program “through such a subtle device as permission to ‘modify.’” *Id.*

There is no clear authorization for the implementation of a wide spread tariffing regime under the IEEPA and the NEA. Further, “the Congress manifestly is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested.” *Panama Refining Co. v. Ryan Amazon Petroleum Corporation v. Same*, 293 U.S. 388, 55 S.Ct. 241, 79 L.Ed. 446 (1935). The Court should further take into account, in leaving the precedent of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), the Court told lower courts to “exercise their independent judgment in deciding whether an agency has acted within its statutory authority, and courts may not defer to an agency interpretation of the law simply because a statute is ambiguous.”

“Each branch is vested with an exclusive form of power, and “no branch can encroach upon the powers confided to the others.” *Moody v. Netchoice, LLC*, 144 S.Ct. 2383, 219 L.Ed.2d 1075 (U.S. 2024) *citing Patchav v. Zinke*, 583 U.S. 244, 250, 138 S.Ct. 897, 200 L.Ed. 2d 92 (2018). “That Congress cannot delegate legislative power to the president is a principle universally recognized as vital to the integrity and maintenance of the system of government ordained by the constitution.” *Field v. Clark Boyd v. United States Sternbach v. United States*, 143 U.S. 649, 12 S.Ct. 495, 36 L.Ed. 294 (1892). This Court should make it clear that broad, revenue-raising tariffs require statutes from Congress to enact, pursuant to Article I Sec. 8, Cl. 1 of the U.S. Constitution. Anything less unconstitutionally transfers Congress’ taxing power to the Executive and erodes the separation of powers that was designed by the Framers.

This Court must affirm the vitality of the Constitution’s Separation of Powers, as delineated in Articles I, II, and III, because the Separation of Powers is the foundation to all of our constitutionally recognized civil liberties. “... while it is entirely appropriate for us Americans to celebrate our wonderful Bill of Rights, we realize (or should realize) that it represents the fruit, and not the roots, of our constitutional tree. The rights it expresses are the *reasons* that the other provisions exist. But it is those other humdrum provisions—the structural, mechanistic portions of the Constitution that pit, in James Madison’s words, “ambition against ambition,” and make it impossible for any element of government to obtain unchecked power—that convert the Bill of Rights from a paper assurance to a living guarantee.” Antonin Scalia, *Scalia Speaks* 163 (1st ed. 2017).

ARGUMENT

I. The Constitution Vests the Power to Lay Duties and Taxes in Congress—Not the President

The Congress shall have Power to lay and collect Taxes, Duties, Imposts and Excises... U.S. Const. art. I. Sec. 8, Cl. 1. “Tariff” is another word for “duty.” Duties are taxes. The U.S. Constitution unambiguously places the power to impose taxes on Congress, together with exacting procedural requirements—bicameralism and presentment—and substantive limitations such as uniformity. The Executive Branch may recommend and execute, but it does not have the power to unilaterally tax.

However, Congress is permitted to delegate some of its legislative authority in limited circumstances. “In determining what it may do in seeking assistance from another branch, the extent and character of that assistance must be fixed according to common sense and the inherent necessities of the governmental coordination. The field of Congress involves all and many varieties of legislative action, and Congress has found it frequently necessary to use officers of the executive branch within defined limits, to secure the exact effect intended by its acts of legislation, by vesting discretion in such officers to make public regulations interpreting a statute and directing the details of its execution, even to the extent of providing for penalizing a breach of such regulations.... The true distinction ... between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and conferring an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter no valid objection can be made.” *J.W. Hampton, Jr. & Co. v. United States*, 276 U.S. 394 (1928). “If Congress shall lay down by legislative act an intelligible principle to which the person or body authorized to fix such rates is directed to conform, such legislative action is not a forbidden delegation of legislative power.” *Id.*

While it is established that Article I of the U.S. Constitution delegates the authority to levy taxes including tariffs solely to the U.S. Congress, some authorities can be delegated to the president, with defined parameters of the authorities a President can act within. Entire legislative authorities cannot be delegated to the President by Congress. In this instant matter, unlike the statute contemplated in *J.W. Hampton*, the legislation in controversy here, the International Emergency Economic Powers Act delegates none of Congress’ taxation authority to levy tariffs and adjust tariff rates to the President, whether to enable the President to advance his policy objectives or otherwise.

Likewise, none of the other authority claimed in President Trump’s Executive Order Number 14257, titled, “Regulating Imports with a Reciprocal Tariff to Rectify Trade Practices that Contribute to Large and Persistent Annual United States Goods Trade Deficits”, including the National Emergencies Act (50 U.S.C. 1601 *et. seq*),

Section 604 ¹of the Trade Act of 1974, as amended (19 U.S.C. 2483) nor Section 301 of Title 3, United States Code provide anything remotely close to unbridled and unilateral Presidential tariff implementation and adjustment authority from Congress.

Article II of the U.S. Constitution delegates no authority to the Executive, to impose, adjust, set or otherwise create tariffs or levy any other type of taxation. Article I of the U.S. Constitution places the U.S. government's taxation authority solely with the U.S. Congress. Article II provides that the President “.. shall take Care that the Laws be faithfully executed.” Art. II, Sec. 3 U.S. Const. While this language delegates the authority to the President to enforce federal law, it does not give the President the authority to create law, impose taxes, tariffs, or impose the President's desired interpretation of the law and the Constitution.

Therefore, this Court shall rule that the President's disputed tariffs are unconstitutional because the President lacks authority under the U.S. Constitution to unilaterally implement taxes, including tariffs on imported goods. Such authority is vested in the U.S. Congress through Article I Sec. 8, Cl. 1.

II. Neither the IEEPA Nor the NEA Authorize a Presidential Tariff Program

In short, the IEEPA targets transactions with foreign adversaries; it is not a general revenue-raising or trade-remedy statute. The IEEPA authorizes the President, during an appropriately declared national emergency with respect to an “unusual and extraordinary threat” originating abroad, to “investigate, regulate, or prohibit” certain transactions and to “block” or “nullify” interests in property subject to U.S. jurisdiction. 50 U.S.C. Sec. 1702. The statutes verbs and objects are the verbs of sanctions, not taxation. The focus on the statute is disabling harmful foreign economic activity—not raising domestic revenue or recalibrating lawful, otherwise-permitted imports across the board.

Reading the IEEPA to authorize nationwide tariffs would collapse sanctions, remedies and revenues into a single, standardless presidential power. That is not what Congress wrote. Indeed IEEPA contains explicit carve-outs (e.g., for personal communications and informational materials) that make no sense if the statute silently contains a general power to tax all imports regardless of adversary, product or conduct.

Section 122 of the Trade Act of 1974 and other trade statutes confirm that when Congress meant “tariff,” it said so and set strict limits. Section 122 gives the President a time-limited, rate-capped authority to impose a temporary surcharge to address balance-of-payments crises—subject to congressional review. 19 U.S.C. Sec. 2132.

¹ No counsel for any party authored this brief in whole or in part and no person or entity, other than amicus curiae has contributed money that was intended to fund preparing or submitting the brief.

Section 232 authorizes action to “adjust imports” to safeguard national security, but only after a specified investigation and recommendation and subject to congressional oversight. 19 U.S.C. Sec. 1862. Section 301 similarly cabins remedial duties to respond to unfair trade practices. 19 U.S.C. Sec. 2411. These statutes demonstrate two things: (1) Congress knows how to speak in tariff terms; and (2) it does so with guardrails, findings, time limits, and review.

One thing is for sure, Congress decides the tariff structure and the circumstances in which the President may implement particular adjustments. The Executive’s role is at most conditional—make findings, then implement Congress’s chosen tool. That pattern reinforces the structural point here.

III. The President Cannot Issue Unlawful Executive Orders to Manufacture Litigation to Amend the Constitution Through Judicial Review

An evaluation of the substantive arguments presented by the President is likely unnecessary in this matter because the only issue that needs clarification at this time is whether an unconstitutional Executive Order, that appears to attempt to usurp Legislative authority is an appropriate vehicle to amend the U.S. Constitution, notwithstanding the existence of Article V’s Amendment procedures. In the instant case, it appears that the President may have issued the subject aforementioned Executive Order to manufacture a case or controversy for the respondents, who would initiate litigation against the President, so the President could attempt to obligate this Court to revisit its prior interpretations of federalism under the U.S. Constitution, to legislate a constitutional amendment from the bench that vests a never before recognized taxing authority and authority to issue unilateral tariff regimes vested in the President, notwithstanding the clear and unambiguous text of Article I of the U.S. Constitution that vests the taxing authority solely in the U.S. Congress.

The President is free to pursue his policy objectives as an elected official, in this instance, by signing congressional legislation into law that properly implements his desired tariff regime with Congress. The President is also free to pursue a constitutional amendment in coordination with the appropriate other elected officials and/or voters as prescribed in Article V of the U.S. Constitution, to lawfully obtain a unilateral Presidential taxing authority, that is not dependent on Congressional authority. However, the President is not free to unilaterally implement taxation regimes as the law is currently written.

Further, this Court cannot create an express lane through this Court for the President to bypass the sole lawful procedures for implementing his taxation policy objectives or for amending the U.S. Constitution outside of Article V. The President must follow the standard legislative process with Congress like all presidents who came before him to implement his taxation policy objectives. Alternatively, the

President must gather the necessary consensus pursuant to Article V to advance his apparent agenda of creating a constitutional unilateral taxing authority for the President. Otherwise this Court risks potentially fatal blows to its independence, credibility and legitimacy as an institution of the American Constitutional Order and as a co-equal branch of government to the Executive. Public confidence in the Court would likely further erode and the public may question whether members of the Judiciary are just politicians in robes if this Court either allows the President's unconstitutional and illegal tariffs to stand or if this Court recognizes an unprecedented unilateral taxing authority in the President under the U.S. Constitution.

This Court is not a proper venue for rubber stamping illegally and unconstitutionally effectuated political policy changes and for amending the U.S. Constitution outside of the confines of Article V. The Court should nullify the President's disputed unlawful and unconstitutional, unilaterally issued tariffs because they violate Article I of the U.S. Constitution because they attempt to usurp the taxation authority of the U.S. Congress. The Court should take this action in light of the fact that the President may have erroneously manufactured a crisis for others through his above-mentioned unconstitutional Executive Order, to create a venue where 9 lawyers could potentially redefine the U.S. Constitution's system of federalism and strategic separation of powers for the whole country, outside of the Article V process that is designated in the Constitution as the sole process for amending the Constitution.

If this Court opens up a political Judicial Review express ramp on this case, the current President and future Presidents will likely continue to attempt to create standing in others to sue them through issuing unconstitutional executive orders, so the Presidents can advance their political agendas through this Court, outside of the standard political process and Article V's constitutional revision procedures to further consolidate power in the presidency and away from the U.S. Congress and U.S. Judiciary. That would result in the one branch of government that is supposed to be apolitical becoming the third political branch of government, that likewise would create a disproportionate separation of powers between the three branches of our federal government.

On at least four occasions members of this Court have articulated the vital principle that *no person, including the President, is above the law*. See *United States v. Burr*, 25 F. Cas. 30, 34 (C.C. Va. 1807) (No. 14,692d); *United States v. Nixon*, 418 U.S. 683, 713 (1974); *Clinton v. Jones*, 520 U.S. 681 (1997); *Trump v. Vance*, 140 S. Ct. 2412, 2431 (2020); *Trump v. United States*, 144 S.Ct. 2312, 219 L.Ed.2d 991 (U.S. 2024).

This potential erosion of the rule of law is something that cannot be tolerated by this Court under our Constitution. If the President is permitted to blatantly break

the law, in plain sight, by the United States Supreme Court, our system of government as we know it is over.

IV. Conclusion

“The government of the United States has been emphatically termed a government of laws, and not of men.” *Marbury v. Madison*, 5 U.S. 137, 163 (1803). This phrase means that the U.S. government faithfully abides by the U.S. Constitution’s requirements and properly enacted laws. The President’s attempt at eroding the rule of law is something that cannot be tolerated by this Court under our Constitution. It is urgent that this Court uphold our Constitutional system and that our system remains a system of equally divided powers split among three co-equal branches of government in accordance with the U.S. Constitution.

No elected official in this country is unbound by the rule of law and the superior law of the land, the U.S. Constitution. While this may be a pesky reality for some politicians, it applies to all officials in the Federal Government, regardless of the popularity of some officials. Each branch of government must stay in their respective constitutionally designated lanes and lawfully execute their powers on behalf of the People, without violating the rights of the People and at all times in conformity with the law and with the supreme American law, the U.S. Constitution.

In this instance and others, the Judiciary, regardless of shifting political winds, must protect the People’s rights enshrined in the Constitution. This foundational constitutional mandate applies at least until the People amend the Constitution through the lawful procedures in Article V, to require something else of this Court. Regardless of where the People stand on the political spectrum, this Court and the entire Federal Judiciary must unapologetically uphold the U.S. Constitution regardless of who it upsets. An alternative path would ignore the intention behind the text of the Constitution, which is to not allow the nation to become a monarchy or dictatorial system akin to the European monarchies that the framers of the U.S. Constitution descended from. This Court must prevent the President’s red ball cap from becoming the 21st century red coat. Such malfeasance could ignite a renaissance of colonial style monarchy in the United States.

Amicus urges this Court to overrule the President’s unlawful and unconstitutional tariffs and rule that they are unconstitutional because they violate Article I of the U.S. Constitution because the President’s disputed actions attempt to usurp legislative authority to impose taxes from the U.S. Congress for the President. The Court should reaffirm that the only lawful way to effectuate modifications to the U.S. Constitution is through the procedures outlined in Article V. Finally, this Court should affirm that it will not serve as a rubber stamp for the President’s blatantly illegal and unconstitutional conduct or an express ramp to approve the President’s likely desired constitutional amendments to increase his power.

Respectfully submitted,

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