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 Writs of Certiorari to the United States Courts of Appeals for the D.C. and Federal Circuits

BRIEF OF JILL HOMAN AS *AMICUS CURIAE* IN SUPPORT OF DONALD J. TRUMP

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INTEREST OF THE *AMICUS CURIAE*[1]

Jill Homan has spent her career advocating on behalf of bringing jobs to low-income communities. She is a fierce advocate for investing in urban revitalization. Increasing domestic manufacturing and reviving American industry is pivotal to this work.

Over a two-decade career in private equity, Homan has focused on investing in low-income communities, including Opportunity Zones. She is recognized for her expertise in Opportunity Zones and has worked closely with legislative and administrative members to advocate for effective regulations and promote economic development in underserved areas.

She is also a small business owner and a former territory manager for a major American manufacturer. She has witnessed firsthand how bringing well-paying jobs can positively transform underserved communities.

Homan recognizes that tariffs protect American workers from unfair competition, incentivizing companies to invest and expand domestically and encouraging the return of blue-collar jobs. Homan has an interest in these cases to protect the right of the executive to utilize statutory vehicles that Congress has authorized in furtherance of these policy objectives.

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[1] No counsel for a party authored this brief, in whole or in part, and no person or entity other than counsel for *amicus curiae* made a monetary contribution to the preparation or submission of the brief. Sup. Ct. R. 37.6.

SUMMARY OF THE ARGUMENT

The International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, Tit. II, 91 Stat. 1626 (50 U.S.C. § 1701 *et seq*.) gives the president broad powers to regulate foreign commerce during a declared emergency. Included in the authority is the power to "regulate . . . importation . . . of . . . any property in which any foreign country or national thereof has any interest . . . ." 50 U.S.C. § 1702(a)(1)(B). On its face, the power to "regulate importation" includes the power to impose tariffs because tariffs have been used throughout American history as a common tool for regulating commerce, and they have been imposed specifically on imported goods.

But even if the Court determines that it is ambiguous, in general, whether "regulate importation" encompasses tariffs, the Court should find that "regulate importation" clearly encompasses tariffs in IEEPA. Under the commonly used canon of construction *noscitur a sociis*, the Court should look to the neighboring words in the statute to help determine the meaning of "regulate importation." The neighboring words in IEEPA include broad, sweeping powers, including the all-encompassing power to "prohibit" goods from entering the country altogether. Because the clear meaning of the neighboring words in IEEPA is broad, the Court should apply a broad interpretation to the meaning of "regulate importation." For if Congress gave the president the expansive power to deny goods from entering the country at all, it logically follows that it also gave him the lesser included power to impose a tariff on them.

The Federal Circuit Court of Appeals erred by insisting that Congress did not grant the president the power to impose tariffs in IEEPA because it did not use the word "tax." A tariff and a tax need not be the same thing. A tax is primarily used as a method to *raise revenue*, and its effects on regulating commerce are secondary. But a tariff is primarily used to *regulate commerce*, and its effects on raising revenue are secondary. Definitions by economists confirm this distinction in practice. And examples throughout American history also confirm the difference, including the Tariff of 1828.

Because tariffs and taxes are different policy tools, it does not matter that IEEPA—and the Constitution—do not give the president the explicit power to levy "taxes." The power to "regulate importation" is distinct from taxing authority generally, and its plain meaning, and meaning as interpreted among its neighboring terms, includes the power to levy tariffs on goods that are imported.

ARGUMENT

I. The explicitly broad powers granted by IEEPA include the power to impose tariffs.

The question presented by these cases is whether the statutory phrase "regulate . . . importation" encompasses the power to impose tariffs. On its face, it does. Tariffs are a classic means of regulation directly tied to the importation of goods.

But even if the phrase were deemed ambiguous, common canons of construction guide the Court to interpret the text in a manner confirming that the phrase includes tariff authority. IEEPA grants powers far more sweeping than tariffs—most notably, the power to "prohibit" the importation of goods altogether. It would be illogical to conclude that Congress conferred the greater authority to ban foreign goods entirely while at the same time withholding the lesser authority to condition their entry on payment of a tariff.

As Judge Taranto wrote in dissent in *V.O.S. Selections*, "Taxing through tariffs is just a less extreme, more flexible tool for pursuing the same objective of controlling the amount or price of imports that, after all, could be barred altogether." *V.O.S. Selections, Inc. v. Trump*, No. 2025-1812, 2025 WL 2490634, at *35 (Fed. Cir. Aug. 29, 2025) (Taranto, J., dissenting). As Judge Taranto pointed out, the relevant IEEPA "provision includes authorization for the extreme tools of 'prohibit[ing]' and 'prevent[ing]' importation (and a host of related tools)." *Id*.

The phrase "regulate . . . importation," therefore, must be read in context with these "extreme"

measures. *Id*. If Congress gave the president the power to prohibit imports, then a "natural reading" of its permission to regulate them must also include the power to merely impose a tariff on them. *Id*. For "[c]ontext is always relevant to interpretation." *Id*.

It is a longstanding rule of statutory interpretation that a statute should be interpreted as a whole. *Harrison v. Vose*, 50 U.S. 372, 380 (1850). As lexicographer Henry Campbell Black explained, "The foregoing rule embodies the principle of . . . 'comparative interpretation' . . . which seeks to arrive at the meaning of a statute . . . by comparing its several parts with each other . . . ." Henry Campbell Black, *Handbook on the Construction and Interpretation of the Laws* 317 (2d ed. 1911). Black concludes, "It is a familiar and fundamental doctrine, and is expressed in several maxims, both of the common and the civil law, of great antiquity." *Id*.

The particular canon of statutory interpretation that the Court should apply in these cases is *noscitur a sociis*. As Justice Scalia defined it, "[T]he commonsense canon of *noscitur a sociis* . . . counsels that a word is given more precise content by the neighboring words with which it is associated." *United States v. Williams*, 553 U.S. 285, 294, (2008) (citing 2A N. Singer & J. Singer, *Sutherland Statutes and Statutory Construction* § 47:16 (7th ed. 2007) ("*Noscitur a sociis* means literally 'it is known from its associates,' and means practically that a word may be defined by an accompanying word").

Under *noscitur a sociis*, when a word appears in a list of other words, if its meaning is in question, the Court should look to the other words in the list to help

define it. In this case, if the Court finds the term "regulate . . . importation" to be ambiguous—and it should not—then it faces a decision on whether to interpret it broadly, as the government argues, or narrowly, as the plaintiffs argue. In order to make that determination in accordance with *noscitur a sociis*, the Court should look to the surrounding words in the list. When it does, it finds that extremely broad terms abound: the president may "nullify, void, prevent or prohibit" importation. 50 U.S.C. § 1702(a)(1)(B). Because these neighboring words are broad, it follows that "regulate" should be read broadly, as well. And when the Court gives a broad meaning to "regulate," it encompasses many different types of regulation of imports, including the regulation most common throughout American history: tariffs.

II. The Federal Circuit erred in conflating a tariff with a tax and requiring that the word "tax" appear in IEEPA.

The majority opinion in *V.O.S. Selections* made a critical factual mistake that led to an error in its legal reasoning: it assumed without analysis that a tariff and a tax are necessarily the same thing. But they do not have to be. As the court put it, incorrectly, "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. But tariffs are not axiomatically the same as a tax. Rather, they are first and foremost a tool for controlling the importation of goods. Therefore, it matters not what the Constitution says about taxing power, which is irrelevant to IEEPA.

A tax is primarily a tool for collecting revenue, and any effect it has on market consumption or production is secondary, and often unintentional. For example, an income tax is designed to collect revenue; it is not designed to discourage people from making income, an effect which is secondary and unintended. But a tariff can also function as a tool for affecting market consumption and production, and the revenue it generates is often secondary. For example, a tariff on the importation of foreign automobiles is designed to increase the price—and, thus, reduce domestic consumption—of foreign automobiles, which, in turn, will increase demand for and production of domestic automobiles. It is designed to protect domestic manufacturing from foreign competition, and the revenue that it generates is secondary to this goal.

Therefore, tariffs can often function differently from traditional domestic taxes, such as an income tax. As two economists described it, taxes and tariffs function differently "for two important reasons. First, domestic tax policy is typically set at the national level while trade policies are set at the industry level." James Levinsohn & Joel Slemrod, *Taxes, Tariffs, and the Global Corporation,* Nat'l Bureau of Econ. Research Working Paper No. 3500 (Oct. 1990), at 2.[2] In other words, tariffs are often aimed at particular types of goods in order to protect particular domestic industries, but taxes are not: "While a tariff on imported sweaters may well be observed, a sales tax unique to sweaters is almost never observed." *Id.*

[2] Available at https://www.nber.org/papers/w3500.

A second reason tariffs and taxes can differ is the point of assessment: "Trade policy operates at the border." *Id*. As a result, a cell phone produced by a U.S. corporation in China and sold in India would not be subject to an American tariff. But the profits earned from it would be subject to a domestic corporate income tax. *See id*. Therefore, a government more concerned about raising revenue would institute an income tax to indirectly tax all goods, regardless of where they are produced. Meanwhile, a government more concerned with protecting domestic manufacturing would impose tariffs on imported goods to encourage domestic production instead. As with the first difference, revenue is the primary goal of taxation, while protecting domestic manufacturing is the primary goal of a tariff.

The greatest tariff controversy in American history confirms this distinction, *i.e.*, the Tariff of 1828, or "Tariff of Abominations," as it was known by its Southern opponents. This tariff (and the subsequent Tariff of 1832) nearly led to the Civil War occurring thirty years earlier than it did when the South Carolina legislature voted to "nullify" the tariffs within its borders. The leader of tariff opposition, Vice President and South Carolinian John Calhoun, described his objection to the tariff in terms of protectionism: "legislation imposing duties on imports, not for revenue, but for the protection of one branch of industry, at the expense of others, is unconstitutional, unequal and oppressive . . . ." John C. Calhoun, *South Carolina Exposition*, 1828.[3] Calhoun and his followers were opposed

[3] Available at https://dc.statelibrary.sc.gov/entities/publication/dd721165-27a6-447a-942b-df06f12e45ea (last retrieved Sept. 22, 2025).

to the tariff precisely because it was not instituted to raise tax revenue. They were incensed that the Tariff of 1828 advantaged the manufacturing industries in the North and disadvantaged the agricultural industries in the South by increasing the prices of foreign manufactured goods for Southerners and forcing them to buy more expensive goods manufactured in the North. The tariff was "abominable" in their view because it was aimed at protecting domestic manufacturing, which at that time was concentrated in the Northern states.

Throughout American history, the goal of tariffs, as opposed to taxes, has largely been to protect domestic industry. As Law Professor Chad Squitieri writes, "the Constitution's original meaning and Supreme Court precedent indicate that tariffs can be used" "both to raise revenue and regulate commerce." Chad Squitieri, *The President's Authority to Impose Tariffs*, 2025 Harv. J.L. & Pub. Pol'y Per Curiam 12, 1, 11 (2025). More often than not, tariffs have been used to regulate commerce. Therefore, "tariff" and "tax" are not "synonyms," as the Federal Circuit described them. *V.O.S. Selections*, 2025 WL 2601020, at *10.

As Professor Squitieri stated elsewhere, "[T]ariffs need not be a tax. Tariffs can instead be an exercise of the commerce-regulation power. Given as much, it is nonsensical to require Congress to use the word 'taxes' in order to delegate a tariff power that flows not from Congress's taxation power, but instead from Congress's power to regulate commerce." Chad Squitieri, *Conflating Taxes with Tariffs: Clear Error in the Fed-*

eral Circuit's Tariff Opinion, YALE J. ON REG.: NOTICE & COMMENT (Sept. 2, 2025).[4] [5] This Court need not look for the word "tax" in the text of IEEPA for the Court to correctly determine that the power to "regulate . . . importation" includes the power to impose tariffs.

CONCLUSION

For these reasons, the Court should reverse the Federal Circuit decision in *V.O.S. Selections, Inc. v. Donald J. Trump* and find that the power to "regulate . . . importation" includes the power to impose tariffs.

Respectfully submitted,

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[4] Available at https://www.yalejreg.com/nc/conflating-taxes-with-tariffs-clear-error-in-the-federal-circuits-tariff-opinion-by-chad-squitieri/.

[5] Recent bills introduced by Congress confirm its agreement that it has ceded tariff power to the president in IEEPA because they attempt to claw it back. *See e.g.*, Global Trade Accountability Act of 2018, H.R.5281, 115th Cong. (2018).