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.

DONALD J. TRUMP,
PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
V.O.S. SELECTIONS, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURTS OF APPEALS FOR THE DISTRICT OF COLUMBIA AND FEDERAL CIRCUITS

JOINT MOTION FOR DIVIDED ARGUMENT AND FOR AN ENLARGEMENT OF TIME FOR ARGUMENT OF PETITIONERS IN 24-1287 AND PRIVATE AND STATE RESPONDENTS IN 25-250

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RULE 29.6 STATEMENT

The full names of every private party represented by undersigned counsel are V.O.S. Selections, Inc.; Plastic Services and Products, LLC, dba Genova Pipe; MicroKits, LLC; FishUSA, Inc.; Terry Precision Cycling, LLC; Learning Resources, Inc.; and hand2mind, Inc. None has any parent corporations, and there are no publicly held companies that own 10 percent or more of the stock of any party represented by undersigned counsel.

Pursuant to Rules 21, 28.3, and 28.4 of this Court, the petitioners in No. 24-1287 and the respondents in No. 25-250 (collectively, the "Non-Federal Parties") move for a divided oral argument and for an enlargement of time for argument to 45 minutes per side. The Non-Federal Parties have conferred with the Federal Parties, who do not oppose the Non-Federal Parties' request for a divided argument. The Federal Parties also do not oppose an enlargement of argument time to 45 minutes per side.

1. At issue in this case are two questions regarding the validity of tariffs imposed by President Trump pursuant to the national emergencies declared or continued in Proclamation 10,886 and Executive Orders 14,157, 14,193, 14,194, 14,195, and 14,257. The first question presented asks whether those tariffs are authorized by the International Emergency Economic Powers Act (IEEPA), Pub. L. No. 95-223, tit. II, 91 Stat. 1626 (1977) (codified as amended at 50 U.S.C. § 1701 *et seq.*). The second question presented asks whether, if IEEPA authorizes the tariffs, the statute unconstitutionally delegates legislative authority to the President. The case arises from three consolidated suits involving separate groups of plaintiffs who brought distinct challenges to three different sets of tariffs in two different courts.

On April 14, 2025, V.O.S. Selections, Inc.; Plastic Services and Products, LLC, dba Genova Pipe; MicroKits, LLC; FishUSA, Inc.; and Terry Precision Cycling, LLC (collectively, "*V.O.S.* Private Respondents") brought suit in the Court of International Trade challenging the global tariffs imposed through Executive Order 14,257. They

sought summary judgment alleging that 1) the global tariffs exceed the President's statutory authority under IEEPA, and 2) if IEEPA authorizes the tariffs, it is an unconstitutional delegation of legislative authority.

The following week, on April 23, 2025, Oregon and eleven other States (collectively, "*V.O.S.* State Respondents") brought suit in the Court of International Trade challenging the global tariffs imposed through Executive Order 14,257 and the trafficking tariffs imposed on Canada, Mexico, and China under Executive Orders 14,157, 14,193, 14,194, 14,195. The States sought summary judgment on the ground that IEEPA does not authorize the tariffs. They did not, however, press or join the *V.O.S.* Private Respondents' separate nondelegation claim.

On May 28, 2025, a three-judge panel of the Court of International Trade granted both the *V.O.S.* Private and State Respondents' motions for summary judgment, holding that IEEPA does not authorize the challenged tariffs. *V.O.S.* Pet. App. 140a-200a. The Federal Circuit, following briefing and oral argument in an en banc proceeding, affirmed. *Id.* at 3a-46a. The court held that both the plain text of IEEPA and the major questions doctrine support the conclusion that IEEPA does not authorize the sweeping tariffs imposed by President Trump's Executive Orders. *Id.* at 3a-46a. Four judges concurred, joining the majority, but further concluding that IEEPA does not authorize tariffs at all and that the government's understanding of IEEPA "would render it an unconstitutional delegation." *Id.* at 49a; see *id.* at 48a-62a. Four judges dissented. *Id.* at 64a-136a.

2. On April 22, 2025, Learning Resources, Inc. and hand2mind, Inc. (collectively, "*Learning Resources* Petitioners") brought suit in the United Stated District Court for the District of Columbia ("D.C. District Court") challenging the lawfulness of the global and reciprocal tariffs and the trafficking tariffs imposed on China. The government moved to transfer the case to the Court of International Trade, citing 28 U.S.C. § 1581(i)(1), which provides that the Court of International Trade has exclusive jurisdiction over "any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for * * * tariffs." The D.C. District Court rejected the government's motion on the ground that IEEPA does not provide for tariffs at all, placing the case outside the jurisdiction of the Court of International Trade. *Learning Resources* Pet. App. 1a-43a. The D.C. District Court also granted the *Learning Resources* Petitioners' motion to preliminarily enjoin the tariffs because the President lacked any statutory authority to impose them. *Id.* at 43a. The government appealed that decision to the D.C. Circuit.

On September 9, this Court granted certiorari before judgment in *Learning Resources* (No. 24-1287), granted the government's petition in *V.O.S.* (No. 25-250), and consolidated the cases.

3. The Non-Federal Parties respectfully request that their argument time be divided equally among (1) the *Learning Resources* Petitioners; (2) the *V.O.S.* Private Respondents; and (3) the *V.O.S.* State Respondents. The Non-Federal Parties also

request an enlargement of the argument time to 45 minutes per side. A divided argument and additional argument time are appropriate for two main reasons.

First, the *V.O.S.* Private and State Respondents have diverging interests that have caused them to press different claims. The *V.O.S.* Private Respondents are small businesses that have been severely financially harmed by the tariffs they have been forced to pay to import goods their businesses need. Accordingly, they have focused their challenge on the global tariffs imposed through Executive Order 14,257, which hurt them the most, and they have brought broad statutory and constitutional challenges to those tariffs. Specifically, they have made the statutory arguments that 1) IEEPA does not authorize tariffs, see Br. for Pls.-Appellees 19-26, Dkt. No. 92, *V.O.S. Selections, Inc.* v. *Trump*, 149 F.4th 1312 (Fed. Cir. 2025), and 2) even if IEEPA grants some tariff authority, it does not authorize the global tariffs imposed under Executive Order 14,257, see *id.* at 26-54. Separately, they have advanced the constitutional claim that, if IEEPA authorizes the global tariffs, the statute effects an unconstitutional delegation of legislative power. *Id.* at 54-64.

The *V.O.S.* State Respondents, by contrast, are sovereigns that have sued because of the tariffs' effects on state governmental entities, like research universities, which have been forced to pay the tariffs on the goods they import directly and to pay higher prices for domestic goods the state entities source from businesses that themselves pay tariffs. The States have challenged both the global tariffs imposed under Executive Order 14,257 and the tariffs against China, Mexico, and Canada imposed

under Executive Orders 14,157, 14,193, 14,194, 14,195. They have made the statutory arguments that 1) IEEPA does not authorize tariffs at all, see States Pls.-Appellees' Br. 32-51, Dkt. No. 100, *V.O.S.*, 149 F.4th 1312 ("*V.O.S.* State Respondents' Br."), and 2) even if the statute authorizes some tariffs, it does not authorize either the global tariffs or the tariffs against China, Mexico and Canada, see *id.* at 10-32. And the stakes for the State Respondents are enormous in scope: Those 12 States will have to pay $1.6 billion more per year because of the tariffs. J.A. Appx235, Dkt. No. 148, *V.O.S.*, 149 F.4th 1312. The *V.O.S.* State Respondents have not, however, pressed a separate non-delegation challenge at any stage in the proceedings. Their complaint does not advance a non-delegation claim, and they did not press one in their briefing before the Court of International Trade. Indeed, when that Court asked the States to comment on the summary judgment motion of the *V.O.S.* Private Respondents, the State Respondents explained that they agreed with the Private Respondents' statutory arguments, but then stated that "[a]lthough the plaintiffs in *V.O.S. Selections* raise broad constitutional arguments against President Trump's use of IEEPA, this Court can rule in their favor on the narrower ground that IEEPA simply does not authorize President Trump's broad use of tariffs." Pl. States' Br. on Mot. for Summ. J. at 1, Dkt. No. 15, *Oregon* v. *DHS*, 772 F. Supp. 3d 1350 (Ct. Int'l Trade 2025). In their Federal Circuit briefing, too, the State Respondents did not advance any independent non-delegation claim, and they discussed non-delegation only as part of a constitutional avoidance argument. *V.O.S.* State Respondents' Br.

18-20. That is consistent with the general litigating position of the State Respondents, some of which have expressed reservations about the delegation doctrine in a variety of contexts.

On the other hand, the *V.O.S.* State Respondents are advancing arguments that none of the private parties are pressing. The State Respondents are the only group that challenged all of the tariffs at issue in this case. The *V.O.S.* Private Respondents are challenging only the global tariffs, not the trafficking tariffs (*V.O.S.* Pet. App. 133a (Taranto, J., dissenting)), and the *Learning Resources* Petitioners' challenge to the trafficking tariffs is limited to the tariffs on imports from China, not the those on imports from Canada or Mexico (Compl. at 37, Dkt. No. 1, *Learning Resources, Inc.* v. *Trump*, 784 F. Supp. 3d 209 (D.D.C. 2025)).

The difference in the scope of the claims, and the different procedural posture of the cases, means that the State Respondents are the only group arguing the trafficking tariffs violate the statutory requirement that they "deal with" the threat the President identified, an argument addressed on pp. 29-32 of *V.O.S.* State Respondents' Brief. The *V.O.S.* Private Respondents have no stake in that argument because they did not challenge the trafficking tariffs, and the *Learning Resources* Petitioners cannot make it because, as explained below, it is inconsistent with their jurisdictional argument.

Given these diverging interests and claims, the *V.O.S.* Private and State respondents filed separate suits, submitted separate briefs, and appeared separately at

oral argument before the Court of International Trade and the Federal Circuit. Moreover, the need for *V.O.S.* Private and State Respondents to continue to represent themselves separately is enhanced before this Court because of the breadth of the grant of certiorari. The first question presented asks whether IEEPA authorizes the tariffs imposed under "Proclamation 10,886 and Executive Orders 14,157, 14,193, 14,194, 14,195, and 14,257," and the second question presented asks "[i]f IEEPA authorizes the tariffs, whether the statute unconstitutionally delegates legislative authority to the President." *V.O.S.* Pet. I. Only the *V.O.S.* State Respondents have directly challenged the full suite of tariffs imposed under the Executive Orders referenced in the first question presented. And only the *V.O.S.* Private Respondents have briefed and argued the constitutional claim at issue in the second question presented, and only their Complaint presents it.

Second, the *Learning Resources* Petitioners' interests diverge from the interests of both the *V.O.S.* Private and State Respondents because the parties are adverse with respect to the threshold jurisdictional question. The *Learning Resources* Petitioners contend that the D.C. District Court properly exercised jurisdiction over their claim that IEEPA does not authorize tariffs because that claim falls outside of Section 1581(i)(1), the provision that gives the Court of International Trade exclusive jurisdiction over cases arising out of laws that "provid[e] for * * * tariffs." The *V.O.S.* Private and State Plaintiffs, by contrast, are aligned with the government on that issue and allege that the Court of International Trade appropriately exercised its

exclusive jurisdiction over their parallel claim that IEEPA does not authorize tariffs under Section 1581(i)(1).

Further, the parties' distinct jurisdictional arguments have led to differences in the scope of their merits claims. The D.C. District Court held that it had jurisdiction to consider the *Learning Resources* Petitioners' argument that IEEPA does not authorize tariffs because, if it is correct, then IEEPA is *not* a statute that "provid[es] for * * * tariffs." That reasoning, however, does not establish the D.C. District Court's jurisdiction over the alternative statutory argument (advanced by both the *V.O.S.* Private and State Respondents) that, even if IEEPA grants some tariff authority, it does not authorize the tariffs imposed by the challenged Executive Orders. Nor does the D.C. District Court's reasoning establish jurisdiction over the separate constitutional claim (advanced only by the *V.O.S.* Private Respondents) that, if IEEPA authorizes these tariffs, it violates the non-delegation doctrine. Accordingly, *Learning Resources* did not press the alternative statutory argument in its briefing before the D.C. Circuit, and it raised the non-delegation argument only in the context of constitutional avoidance. See Resp. Br. for Pls.-Appellees 46-51, *Learning Resources, Inc.* v. *Trump*, No. 25-5202, 2025 WL 1600547 (D.C. Cir. June 5, 2025).

Extending the time for argument to 45 minutes per side and permitting each of the three sets of Non-Federal Parties to argue will ensure that the various interests are adequately represented before the Court. It will also ensure that the

fundamentally important statutory and constitutional arguments in this case are fully explored, and that the jurisdictional dispute is properly ventilated.

It is not unusual for the Court to permit three advocates to appear for one side where, as here, the parties advance different claims or represent different interests and perspectives. See, *e.g.*, *Moore* v. *Harper*, 143 S. Ct. 401 (2022) (mem.) (private respondents, state respondents, and United States); *Students for Fair Admissions, Inc.* v. *Univ. of North Carolina*, 143 S. Ct. 46 (2022) (mem.) (state university respondents, student respondents, and United States); *Dep't of Com.* v. *New York*, 139 S. Ct. 1543 (2019) (mem.) (state respondents, private respondents, and U.S. House of Representatives); *Am. Legion* v. *Am. Humanist Ass'n*, 586 U.S. 1125 (2019) (mem.) (private petitioner, state petitioner, and United States); *Friedrichs* v. *California Tchrs. Ass'n*, 577 U.S. 1004 (2015) (union respondents, state respondents, and United States); *Obergefell* v. *Hodges*, 575 U.S. 947 (2015) (mem.) (two sets of private petitioners and United States); *Sanchez-Llamas* v. *Oregon*, 546 U.S. 1213 (2006) (mem.) (two sets of state respondents and United States); *McConnell* v. *Fed. Election Comm'n*, 539 U.S. 974 (2003) (eight separate advocates representing federal officials, political parties, union, individuals, and the United States).*

* This Court also often allows divided argument when States and private parties support the same side of a case. See, *e.g.*, *Trump* v. *CASA, Inc.*, 145 S. Ct. 2679 (2025) (mem.); *Ohio* v. *EPA*, 144 S. Ct. 691 (2024) (mem.); *West Virginia* v. *EPA*, 142 S. Ct. 894 (2022) (mem.); *Nat'l Fed'n of Indep. Bus.* v. *Dep't of Lab.*, 142 S. Ct. 746 (2021) (mem.); *Brnovich* v. *Democratic Nat'l Comm.*, 141 S. Ct. 1263 (2021) (mem.); *United States* v. *Texas*, 142 S. Ct. 416 (2021) (mem.); *Trump* v. *Sierra Club*, 141 S. Ct. 1264 (2021) (mem.); *Trump* v. *New York*, 141 S. Ct. 870 (2020) (mem.); *DHS* v. *Regents of the Univ. of Cal.*, 140 S. Ct. 398 (2019) (mem.).

The Non-Federal Parties thus respectfully request that the Court grant divided argument and additional argument time to ensure that the Court has an opportunity to explore at oral argument the full breadth of the arguments raised by the Non-Federal Parties in this important case. If the Court declines an equal three-way division, the Non-Federal Parties respectfully ask that the Court permit the *Learning Resources* Petitioners and the *V.O.S.* Respondents to divide their argument time between two advocates that they select.

Respectfully submitted,

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