

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
ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE FEDERAL CIRCUIT

**CRUTCHFIELD *AMICUS CURIAE* BRIEF
SUPPORTING PETITIONERS IN NO. 24-1287
AND RESPONDENTS IN NO. 25-250**

PETER J. BRANN
Counsel of Record
DAVID SWETNAM-BURLAND
BRANN & ISAACSON
113 Lisbon Street, P.O. Box 3070
Lewiston, ME 04243
(207) 786-3566
pbrann@brannlaw.com
Attorneys for Amicus Curiae
Crutchfield Corporation

TABLE OF CONTENTS

	<i>Page</i>
TABLE OF CONTENTS.....	i
TABLE OF CITED AUTHORITIES	ii
<i>AMICUS CURIAE</i> INTEREST.....	1
SUMMARY OF ARGUMENT.....	2
ARGUMENT.....	3
I. Both High Tariffs and the Threat of Rapidly Changing Tariffs Are Devastating to Retailers that Must Import their Products	3
II. The Plain Language of the IEEPA and U.S. Constitution Do Not Grant the President Unprecedented, Unilateral, and Unreviewable Authority to Set or Change Tariffs, Which Would Violate the Major Questions Doctrine and the Nondelegation Doctrine	6
CONCLUSION	19

TABLE OF CITED AUTHORITIES

	<i>Page</i>
CASES	
<i>Ala. Assn. of Realtors v. DHHS</i> , 594 U.S. 758 (2021).....	8, 10, 11, 14
<i>American Power & Light Co. v. SEC</i> , 329 U.S. 90 (1946).....	16
<i>Biden v. Nebraska</i> , 600 U.S. 477 (2023).....	10, 11
<i>Bostock v. Comstock Cty., Georgia</i> , 590 U.S. 644 (2020).....	9
<i>Christopher v. SmithKline Beecham Corp.</i> , 567 U.S. 142 (2012).....	8
<i>Dept. of Transportation v.</i> <i>Assoc. of Am. Railroads</i> , 575 U.S. 43 (2015).....	15, 17
<i>FCC v. Consumers Research</i> , 145 S. Ct. 2482 (2025)	15, 16, 17
<i>FDA v. Brown & Williamson Tobacco Corp.</i> , 529 U.S. 120 (2000).....	11, 14
<i>Feliciano v. Dep’t of Transportation</i> , 145 S. Ct. 1284 (2025)	9
<i>Gundy v. United States</i> , 588 U.S. 128 (2019).....	14, 15, 16

Cited Authorities

	<i>Page</i>
<i>J.W. Hampton, Jr., & Co. v. United States</i> , 276 U.S. 394 (1928).....	16
<i>Mistretta v. United States</i> , 488 U.S. 361 (1989).....	14
<i>Stanley v. City of Sanford, Florida</i> , 145 S. Ct. 2058 (2025)	9
<i>United States v. Yoshida Int’l, Inc.</i> , 526 F.2d 560 (C.C.P.A. 1975).....	9
<i>Utility Air Reg. Grp. v. EPA</i> , 573 U.S. 302 (2014).....	7, 11, 14
<i>Wayman v. Southard</i> , 23 U.S. (10 Wheat.) 1 (1825)	15
<i>West Virginia v. EPA</i> , 597 U.S. 697 (2022).....	8, 11, 14
<i>Whitman v. Am. Trucking Assoc.</i> , 531 U.S. 457 (2001).....	8, 15, 16
<i>Youngstown Sheet & Tube Co. v. Sawyer</i> , 343 U.S. 579 (1952).....	10

STATUTES

50 U.S.C. §§ 1701–1710	2
50 U.S.C. § 1701(a)	4, 7, 18

Cited Authorities

	<i>Page</i>
50 U.S.C. § 1702	7, 8, 17
50 U.S.C. § 1702(a)(1)(B)	8, 17
50 U.S.C. § 1702(b)	18
50 U.S.C. §§ 4301–4341	9
Cal. Civ. Code § 1770(a)(29)	6
CONSTITUTIONAL PROVISIONS	
U.S. Const. Art. I	15
U.S. Const. Art. I, § 8, cl. 1	15
U.S. Const. Art. II, § 1	15
OTHER AUTHORITIES	
Neil Bradley, <i>Latest Tariffs Amount to \$200 Billion Tax on Small Businesses</i> , U.S. Chamber of Commerce (Aug. 1, 2025)	13
Laura Doan, <i>Trump Says His Tariffs Could Bring in Trillions in Revenue. Economists Disagree</i> , CBS News (Apr. 4, 2025)	11
Stephen Dudash, <i>Tariffs May Make Cheap Consumer Electronics a Think of the Past</i> , Forbes (Apr. 30, 2025)	3

Cited Authorities

	<i>Page</i>
Nicholas Molinari, <i>Spirit of the Holiday: American Business at the Heart of the Holidays</i> , U.S. Chamber of Commerce (Dec. 29, 2024).....	5
National Retail Federation, <i>Winter Holiday FAQs</i> (Dec. 2024)	5
Brian Reinbold and Yi Weng, <i>Historical U.S. Trade Deficits</i> , Fed. Reserve Bank of St. Louis (May 17, 2019)	18
Statista, <i>Higher Tariffs Here to Stay Despite Trade War De-Escalation</i> , (May 2025).....	5
Ana Swanson, <i>In Retaliatory Move, Trump Threatens 100% Tariffs on Chinese Goods</i> , N.Y. Times (Oct. 11, 2025).....	5
White House X Account, <i>Labor Day Golden Age</i> (Aug. 31, 2025)	13
Erica York and Alex Durante, <i>Trump's Tariffs: Tracking the Economic Impact of Trump's Trade War</i> , Tax Federation (Oct 3, 2025).....	13

AMICUS CURIAE* INTEREST

Amicus Curiae Crutchfield Corporation is a family-owned and operated business that has been selling electronics to American consumers for over 50 years from Charlottesville, Virginia. Starting in the family's basement, Crutchfield originally sold its products through its catalogs and by telephone, and now also sells its wide range of consumer electronics products through the internet in all 50 states.

Crutchfield obtains its products from different suppliers and vendors, almost all of which are overseas. For many products, the *only* available suppliers and vendors, at least in 2025, are overseas. Thus, tariffs imposed today, and the threat of additional tariffs imposed tomorrow, matter.

Crutchfield has a direct interest not only in the ultimate merits of the issues on appeal—does the President have the unprecedented, unilateral, and unreviewable authority to set tariffs, and if so, is such authority constitutional—but also in the threat stemming from such claimed power. If tariffs can be imposed, increased, decreased, suspended or altered, not through the deliberate legislative process in which both chambers of Congress must agree and the President must sign the legislation, but instead through the changing whim of a single person, then Crutchfield cannot plan for the short term, let alone the long run,

* Under Sup. Ct. R. 37.6, Crutchfield states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus, its members, and its counsel, made any monetary contribution toward the preparation or submission of this brief.

because it cannot possibly predict what the household electronics it sells will cost. That is, Crutchfield asks the Court to quell the chaos, not add to it.

SUMMARY OF ARGUMENT

Crutchfield submits this brief in support of the private party plaintiffs and State plaintiffs that challenged the tariffs imposed this year by the President under the International Emergency Economic Powers Act of 1977 (IEEPA), 50 U.S.C. §§ 1701–1710. *First*, before considering the merits, it is important to recognize that high and highly volatile tariffs, and not trade deficits, are the “unusual and extraordinary threat” to American retailers that must import the products they sell. Crutchfield wants to avoid the economic harm not only of the tariffs, but also of the chaos and uncertainty resulting from wild gyrations in the tariffs that make rational business planning impossible. Crutchfield seeks a reset to the *status quo* that existed from the IEEPA’s enactment in 1977 until early 2025 to prevent unpredictable and unexpected changes to the tariff rates unmoored from any express authority conferred by Congress.

Second, the unprecedented assertion that the IEEPA grants the President unilateral and unreviewable authority to impose, increase, decrease, suspend, or alter tariffs on imports from virtually every country in the world cannot be derived from the plain language of the IEEPA or the U.S. Constitution. Even if this reading survived a straightforward textual analysis, which it does not, that interpretation would violate the major questions doctrine and the nondelegation doctrine. If these doctrines apply across-the-board, then they certainly apply to this previously unknown presidential tariff power.

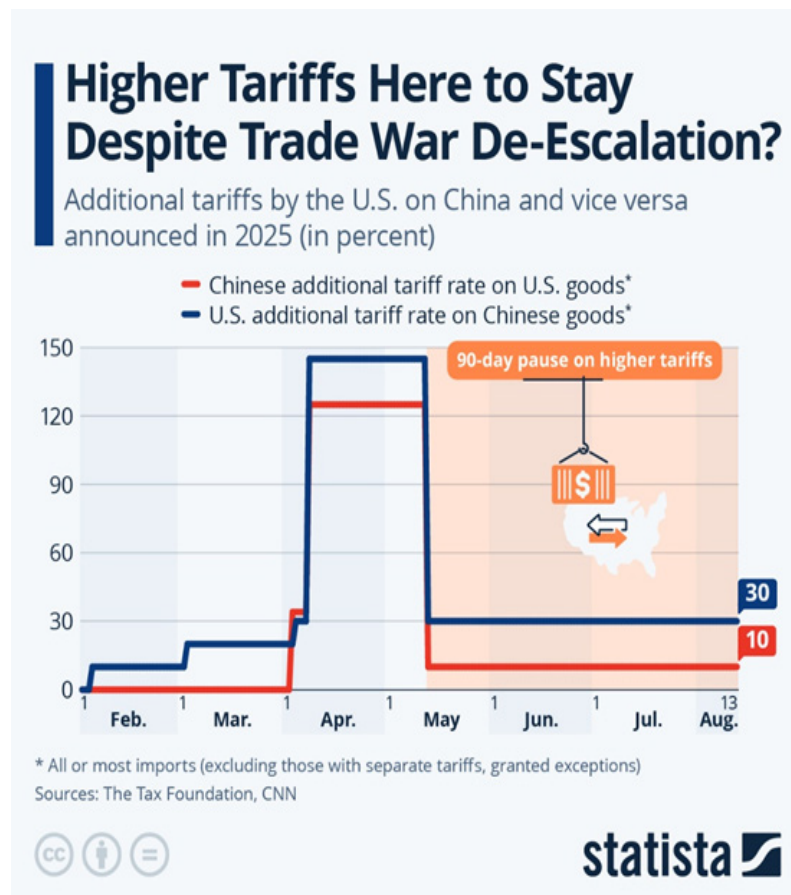
ARGUMENT

I. Both High Tariffs and the Threat of Rapidly Changing Tariffs Are Devastating to Retailers that Must Import their Products.

Before considering the legality of the recently imposed tariffs, it is important to recognize that both high tariffs and the frequent changes in the tariffs have real-world, devastating consequences on retailers like Crutchfield that have no alternative today to importing the electronics and other products they sell. Obviously, announced tariffs of 145% for imports from China (which supplies nearly 60% of Crutchfield's products), and announced tariffs of 50% for imports from the European Union (EU), 25% for imports from Mexico and Canada, as well as many other countries that supply products to Crutchfield, are potentially crippling. *See* Stephen Dudash, *Tariffs May Make Cheap Consumer Electronics A Thing Of The Past*, *Forbes* (Apr. 30, 2025), available at <https://www.forbes.com/sites/greatspeculations/2025/04/30/tariffs-may-make-cheap-consumer-electronics-a-thing-of-the-past/>.

Pauses to announced tariffs of uncertain length and the threat of additional tariffs of unknown size likewise paralyzes Crutchfield's ability to make intelligent business decisions. Although many of the highest announced tariffs are currently paused, they hang like the proverbial sword of Damocles over every retailer that imports any product, or component part, from anywhere in the world. Furthermore, Crutchfield cannot engage in sensible business planning if tariffs can be increased, decreased, suspended, or altered on a moment's notice without any recourse (in the Government's view) to challenge them. In other words, the "unusual and extraordinary threat"

contemplated by the IEEPA, 50 U.S.C. § 1701(a), is not the trade deficit, and not just high tariffs, but also the threat posed by an unbridled President able to impose at any moment any tariffs of any amount on any imports from any country. This chart on the changing tariffs on Chinese imports illustrates the whirlwind Crutchfield and other retailers face:



Statista, *Higher Tariffs Here to Stay Despite Trade War De-Escalation* (May 2025), available at <https://www.statista.com/chart/34447/additional-tariffs-by-the-us-on-china-and-vice-versa-2025/>; *see also* Ana Swanson, *In Retaliatory Move, Trump Threatens 100% Tariffs on Chinese Goods*, N.Y. Times (Oct. 11, 2025) (additional 100% tariffs on Chinese goods threatened effective Nov. 1, 2025), available at <https://www.nytimes.com/2025/10/10/us/politics/trump-xi-china-tariffs-rare-earth.html>.

This turmoil is particularly devastating to American retailers. The holiday season can be make-or-break. Studies suggest consumers spent approximately \$1 trillion on holiday sales in 2024. *See* Nicholas Molinari, *Spirit of the Holiday: American Business at the Heart of the Holidays*, U.S. Chamber of Commerce (Dec. 29, 2024), available at <https://www.uschamber.com/economy/spirit-of-the-season-american-businesses-at-the-heart-of-the-holidays>. Additionally, holiday sales account for a disproportionate amount of retailers' sales and profits. *See* National Retail Federation, *Winter Holiday FAQs* (Dec. 2024) ("Overall, holiday sales in November and December have averaged about 19% of total retail sales over the last five years, but the figure can be higher for some retailers. In addition, holiday sales can be more profitable because the increased volume of purchases comes without significantly increasing retailers' fixed costs of doing business."), available at <https://nrf.com/research-insights/holiday-data-and-trends/winter-holidays/winter-holiday-faqs>.

Just as Irving Berlin wrote *White Christmas* in the summer, to prepare for the holiday season, retailers like Crutchfield must make critical business decisions many

months in advance. For example, to send its catalogs in time for the holidays, it must determine what products to sell and finalize for the printers the catalog copy with fixed prices long before the snow flies. Customers expect, and regulators require, that prices advertised in the catalog are accurate. *See, e.g.*, Cal. Civ. Code § 1770(a)(29).

For its online products, Crutchfield must make go-no go business decisions long before it hopes to sell those products. Due to the extensive lead time to source, manufacture, and ship products from overseas, decisions on how many products to order must be made months in advance. Conversely, faced with possible crippling tariffs, decisions to cancel or scale back purchase orders from overseas vendors for future orders must be made long before retailers know if their worst fears are realized. Stated differently, although the President claims authority to change tariffs instantaneously, retailers cannot react immediately, and that inability could be catastrophic for retailers like Crutchfield that have crossed the Rubicon on sourcing, ordering, and pricing.

II. The Plain Language of the IEEPA and U.S. Constitution Do Not Grant the President Unprecedented, Unilateral, and Unreviewable Authority to Set or Change Tariffs, Which Would Violate the Major Questions Doctrine and the Nondelegation Doctrine.

Plain Language. We do not presume to improve upon the lengthy, careful, analysis of the court below that demonstrates beyond peradventure the IEEPA did not grant the President authority to set tariffs. *See* 25-250 Pet. App. 25a–39a. Rather, we argue that it is a simple straight line from the plain language of the IEEPA and

the U.S. Constitution to the conclusion that the IEEPA did not and, more importantly, could not, delegate such authority to the President.

The Government does not and cannot dispute that no other President has claimed since the IEEPA was enacted in 1977 that it conferred authority on the President to set tariffs, *i.e.*, it claims to have unearthed the President’s unexercised tariff authority in a statute dating from the Carter Administration. “When an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy, we typically greet its announcement with a measure of skepticism.” *Utility Air Reg. Grp. v. EPA*, 573 U.S. 302, 324 (2014) (plurality opinion) (citation omitted).

To unlock this authority under 50 U.S.C. § 1701(a), the Government claims that the “unusual and extraordinary threat” is worldwide trade deficits, although it provides scant support to support the counterintuitive conclusion that these historical trade deficits are either unusual or extraordinary. *See* Gov’t Brief 6–10. The Government contends that under this newly discovered power in 50 U.S.C. § 1702, the IEEPA “clearly” authorizes these tariffs, *see* Gov’t Brief 23, 25, but it does not point to any plain language that supports that proposition.

In describing the President’s authority, the IEEPA does not mention “tariffs” or any of its usual synonyms, such as tax, levy, imposition, impost, excise, or duty. *See* 50 U.S.C. § 1702. Instead, the Government plucks the words “regulate” and “importation” from a laundry list of administrative powers to argue that this language “clearly” gives the President the right to impose tariffs:

[I]nvestigate, block during the pendency of an investigation, *regulate*, direct and compel, nullify, void, prevent or prohibit, any acquisition, holding, withholding, use, transfer, withdrawal, transportation, *importation* or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, *any property in which any foreign country or a national thereof* has any interest by any person, or with respect to *any property, subject to the jurisdiction of the United States*[.]

50 U.S.C. § 1702(a)(1)(B) (emphasis added to show language relied upon by the Government); *see* Gov’t Brief 3, 15, 23–24, 30. Because language in a statute is known by the company it keeps, *see Christopher v. SmithKline Beecham Corp.*, 567 U.S. 142, 163 n.19 (2012), the fact that none of the rest of this statute suggests any taxing power reinforces the conclusion that this statute did not delegate tariff authority to the President. *Cf. Ala. Assn. of Realtors v. DHHS*, 594 U.S. 758, 764–65 (2021) (*per curiam*) (statute that doesn’t mention evictions is a “wafer-thin reed” to convey “unprecedented,” “expansive authority” to the CDC to halt evictions for millions of people); *West Virginia v. EPA*, 597 U.S. 697, 723 (2022) (“Extraordinary grants of regulatory authority are rarely accomplished through ‘modest words,’ ‘vague terms,’ or ‘subtle devices.’”) (cleaned up) (quoting *Whitman v. Am. Trucking Assoc.*, 531 U.S. 457, 468 (2001)); *Whitman*, 531 U.S. at 468 (Congress does not “hide elephants in mouseholes”) (citation omitted).

The Government does not claim, nor could it, that the express language of Section 1702 granted the President the previously overlooked power to impose trillions of dollars in

tariffs. Rather, the Government takes a long and winding road in which a predecessor court interpreting a different statute 50 years ago under different circumstances and under different Supreme Court precedent concluded that President Nixon had authority to impose temporary tariffs under the Trading With the Enemy Act (TWEA), 50 U.S.C. §§ 4301–4341. *See United States v. Yoshida Int’l, Inc.*, 526 F.2d 560 (C.C.P.A. 1975). As this Court recently reminded, when interpreting statutes, “we do not usually pick a conceivable-but-convoluted interpretation over the ordinary one.” *Stanley v. City of Sanford, Florida*, 145 S. Ct. 2058, 2065 (2025) (citations omitted); *see also Feliciano v. Dep’t of Transportation*, 145 S. Ct. 1284, 1291 (2025) (“those whose lives are governed by law are entitled to rely on its ordinary meaning, not left to speculate about hidden messages”) (citations omitted). Even if a predecessor lower court faithfully applied this Court’s statutory and constitutional interpretation tools in 1975 to interpret the TWEA, those results cannot be teleported by this Court in 2025 to interpret the IEEPA.

Because “[l]egislative history, for those who take it into account, is meant to clear up ambiguity, not create it[.]” *Bostock v. Comstock Cty., Georgia*, 590 U.S. 644, 674 (2020) (quotation omitted), the Government’s interpretation of the IEEPA using a different statute is unavailing. Even the Government concedes that the TWEA was “modified” by the IEEPA, *see* Gov’t Brief 14, and the court below more accurately described that modification—the IEEPA was enacted in part to *cabin* the authority asserted by President Nixon to set tariffs. *See* 25-250 Pet. App. 39a–42a. The suggestion that the IEEPA secretly expanded the President’s peacetime tariff power cannot be squared with either the plain language or the legislative history of the IEEPA.

Similarly, the Government’s argument that tariffs and the threat of tariffs allegedly give the President great “leverage” is unavailing. *See* Gov’t Brief 41. “[O]ur system does not permit agencies to act unlawfully even in pursuit of desirable ends.” *Ala. Assn. of Realtors*, 594 U.S. at 766 (citing *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 582, 585–86 (1952), and describing *Youngstown* as “concluding that even the Government’s belief that its action ‘was necessary to avert a national catastrophe’ could not overcome a lack of congressional authorization”). Following *Youngstown*, if Congress shares the President’s view that high, volatile, tariffs are necessary to avert a national catastrophe, Congress can authorize such tariffs. If Congress does not authorize such tariffs, the President cannot impose them just because he believes they are necessary or appropriate. The plain language of the IEEPA does not grant the President the expansive authority claimed by the Government.

Major Questions Doctrine. The Government’s claim that the IEEPA granted the President unlimited and unreviewable authority to impose any tariff on imports from any country at any time runs into the brick wall of the major questions doctrine. The Court could have been describing this case in its recent decisions: “Even if the text were ambiguous, the sheer scope of the [President’s] claimed authority under [the IEEPA] would counsel against the Government’s interpretation.” *Ala. Assn. of Realtors*, 594 U.S. at 724 (brackets added). In asserting boundless tariff power over all imports from any country in the world, “[t]here is no serious dispute that the [President] claims the authority to exercise control over ‘a significant portion of the American economy.’” *Biden v. Nebraska*, 600 U.S. 477, 503 (2023) (brackets added)

(quoting *Utility Air*, 573 U.S. at 324; *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)).

In this Court’s recent cases applying the major questions doctrine, the amounts at stake, albeit significant, were smaller than the stakes in this case. *See Utility Air*, 573 U.S. at 322 (EPA greenhouse gas rules would increase administrative costs in one program to \$1.5 billion and in another program to \$21 billion, lead to “decade-long delays in issuing permits,” and cause permitting costs of \$147 billion); *Ala. Assn. of Realtors*, 594 U.S. at 764 (“Congress has provided nearly \$50 billion in emergency rental assistance—a reasonable proxy of the [eviction] moratorium’s economic impact.”) (brackets added); *West Virginia*, 597 U.S. at 714 (“EPA’s own modeling concluded that the [Clean Power Plan] rule would entail billions of dollars in compliance costs,” require closure of “dozens of coal-fired plants, and eliminate tens of thousands of jobs across various sectors,” while opponents claimed significantly higher costs) (brackets added); *Nebraska*, 600 U.S. at 483 (“The Secretary [of Education]’s plan canceled roughly \$430 billion of federal student loan balances[.]”) (brackets added). These amounts pale in comparison to the *trillions of dollars* claimed to be at stake in this case.

When originally imposed, the President claimed that these worldwide tariffs will “raise over \$1 trillion in the next year or so, helping to reduce the national debt and even potentially offset some income taxes.” Laura Doan, *Trump Says His Tariffs Could Bring in Trillions in Revenue. Economists Disagree*, CBS News (Apr. 4, 2025) (“‘You’re going to see billions of dollars, even trillions of dollars coming into our country very soon in the form of tariffs,’ the President said last week.”), available at

<https://www.cbsnews.com/news/factcheck-trump-tariffs-revenue/>.

Now, the Government repeatedly argues that this case concerns *trillions* of dollars. *See, e.g.,* Gov’t Brief 3, 11. The White House’s recent public statements are even more fulsome, claiming that the tariffs already have resulted in “\$8 *trillion* in tariff revenue” from new investment and have created “hundreds of thousands of new jobs.”



White House X Account, *Labor Day Golden Age* (Aug. 31, 2025), available at <https://x.com/WhiteHouse/status/1962170169020613082?lang=en>. The President’s public pronouncements should inform the Court whether the major questions doctrine is implicated.

On the other side of the ledger, opponents of these recently imposed tariffs claim that they amount to a \$200 billion annual tax on small businesses. *See* Neil Bradley, *Latest Tariffs Amount to \$200 Billion Tax on Small Businesses*, U.S. Chamber of Commerce (Aug. 1, 2025), available at <https://www.uschamber.com/tariffs/latest-tariffs-spell-200-billion-annual-tax-for-small-businesses>. Other opponents contend that the IEEPA tariffs will cost American consumers \$1.7 trillion over the next decade; will result in 0.7% decline in long-term GNP; and will lead to 672,000 lost jobs. *See* Erica York and Alex Durante, *Trump’s Tariffs: Tracking the Economic Impact of Trump’s Trade War*, Tax Foundation (Oct. 3, 2025), available at <https://taxfoundation.org/research/all/federal/trump-tariffs-trade-war/>.

For present purposes, the issue is not whether the tariff proponents or opponents are correct—the key point that both sides agree that these tariffs will have a trillion-dollar impact on the American economy, which is substantially more than necessary to trigger analysis under the major questions doctrine articulated by this Court. Applying the standards enunciated in those cases, the Court should be skeptical that this trillion-dollar power to affect the American economy lay hidden in a 1977 statute for nearly 50 years.

With great power comes great responsibility. “We expect Congress to speak clearly when authorizing an

agency to exercise powers of vast economic and political significance.” *Ala. Assn. of Realtors*, 594 U.S. at 724 (cleaned up) (quoting *Utility Air*, 573 U.S. at 324; *Brown & Williamson*, 529 U.S. at 160). In these circumstances, “both separation of powers principles and a practical understanding of legislative intent make us ‘reluctant to read into ambiguous statutory text’ the delegation claimed to be lurking there.” *West Virginia*, 597 U.S. at 723 (quoting *Utility Air*, 573 U.S. at 324). The President “instead must point to ‘clear congressional authorization’ for the power [he] claims.” *West Virginia*, 597 U.S. at 723 (brackets added) (quoting *Utility Air*, 573 U.S. at 324).

Suffice it to say, connecting the words “regulate” and “importation” with an ellipsis that erases 16 intervening words of the statute does not add up to “clear congressional authorization” for the President to impose a “tariff.” The major questions doctrine prohibits the President from asserting unilateral and unreviewable authority to impose, increase, decrease, suspend, or alter tariffs on imports from virtually every country in the world.

Nondelegation Doctrine. Even if the ambiguous language of the IEEPA can be elastically expanded to authorize the imposition of tariffs, the Government’s argument runs aground on another shoal, namely, the nondelegation doctrine. “The nondelegation doctrine bars Congress from transferring its legislative power to another branch of Government.” *Gundy v. United States*, 588 U.S. 128, 132 (2019) (plurality opinion). “The nondelegation doctrine is rooted in the principle of separation of powers that underlies our tripartite system of Government.” *Mistretta v. United States*, 488 U.S. 361, 371 (1989).

As every civics student knows, “[a]ll *legislative* Powers herein granted shall be vested in a Congress of the United States,” U.S. Const. Art. I (emphasis added), while “[t]he *executive* Power shall be vested in a President of the United States of America,” U.S. Const. Art. II, § 1 (emphasis added). Additionally, the Constitution expressly grants to Congress, not the President, the power to raise money and impose taxes and tariffs: “The Congress shall have Power To *lay and collect Taxes, Duties, Imposts and Excises*, to pay the Debts and provide for the common Defense and general Welfare of the United States[.]” U.S. Const. Art. I, § 8, cl. 1 (emphasis added).

“Accompanying that assignment of power to Congress is a bar on its further delegation: Legislative power, we have held, belongs to the legislative branch, and to no other.” *FCC v. Consumers Research*, 145 S. Ct. 2482, 2496 (2025) (citing *Whitman*, 531 U.S. at 472). “Congress, this Court explained early on, may not transfer to another branch ‘powers which are strictly and exclusively legislative.’” *Gundy*, 588 U.S. at 135 (quoting *Wayman v. Southard*, 23 U.S. (10 Wheat.) 1, 42–43 (1825) (Marshall, C.J.)); *see also* *Dept. of Transportation v. Assoc. of Am. Railroads*, 575 U.S. 43, 61 (2015) (Alito, J., concurring) (Congress “cannot delegate its exclusively legislative authority *at all*.”) (emphasis added and citation omitted); *id.* at 68 (Thomas, J., concurring in the judgment) (“When the Government is called upon to perform a function that requires an exercise of legislative, executive, or judicial power, *only* the vested recipient of that power can perform it.”) (emphasis added).

“To distinguish between the permissible and the impermissible in this sphere, we have long asked whether

Congress has set out an ‘intelligible principle’ to guide what it has given the agency to do.” *Consumers Research*, 145 S. Ct. at 2497 (quoting *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928)); accord *Whitman*, 531 U.S. at 473 (“Congress must ‘lay down by legislative act an intelligible principle to which the person or body authorized to [act] is directed to conform.’”) (emphasis and brackets in original) (quoting *Hampton*, 276 U.S. at 409). “The ‘guidance’ needed is greater, we have explained, when an agency action will ‘affect the entire national economy’ than when it addresses a narrow, technical issue (*e.g.*, the definition of ‘country [grain] elevators’).” *Consumers Research*, 145 S. Ct. at 2497 (quoting *Whitman*, 531 U.S. at 475) (brackets added by Court).

Given that standard, a nondelegation inquiry always begins (and often almost ends) with statutory interpretation. The constitutional question is whether Congress has supplied an intelligible principle to guide the delegatee’s use of discretion. So the answer requires construing the challenged statute to figure out what task it delegates and what instructions it provides.

Gundy, 588 U.S. at 135–36.

As the Court recently explained, the issue is “whether Congress has made clear both ‘the general policy’ that the agency must pursue and ‘the boundaries of [its] delegated authority.’” *Consumers Research*, 145 S. Ct. at 2497 (quoting *American Power & Light Co. v. SEC*, 329 U.S. 90, 105 (1946)) (brackets added by Court). In contrast to the modest and qualitative, but ascertainable and meaningful, guideposts upheld in *Consumers Research*,

i.e., amounts “sufficient” to support the FCC universal-service programs, 145 S. Ct. at 2501, the IEEPA does not contain any direction or boundaries on the amounts or duration or scope cabining the recently imposed tariffs.

In contrast to the Court’s late nineteenth and early twentieth century tariff cases in which Congress set the legislative policy and the President made factual determinations to adjust the tariffs, which also were subject to judicial review, so there was no delegation of legislative power, *see Dept. of Transportation*, 575 U.S. at 77–82 (Thomas, J., concurring in the judgment), the IEEPA does not provide *any* “intelligible principle” to guide anyone in imposing, increasing, decreasing, suspending, or altering tariffs of any amount for any length of time on imports from any country.

The statutory language relied upon by the Government—“regulate” and “importation”—provides no discernible standard on anything to do with tariffs. *See* 50 U.S.C. § 1702(a)(1)(B). The statute likewise provides no guidance on when or how the national emergency that justified the tariffs would end. The multiple twists this year in the tariff rates underscore the conclusion that Section 1702 is standardless.

Although the Government claims that Section 1702(a)(1)(B) supplies the necessary intelligible principle, *see* Gov’t Brief 46, it does not explain how “regulate” or “importation” supplies *any* principle, and it concedes that this ephemeral principle does not extend to the essential features of tariffs, namely, their “numerical rates or duration.” *Id.* So long as the tariffs are not imposed on a small universe of products set forth in

50 U.S.C. § 1702(b), *see* Gov’t Brief 46, which exempts postal and other communications that do not involve a transfer of anything of value, donations, informational materials, and transactions ordinarily incident to travel, any tariff imposed at any rate on (almost) any import from any country for any duration, is permissible. Under the nondelegation doctrine, “anything goes” is not an intelligible—or acceptable—limiting principle.

If we open the aperture to include the preconditions necessary to invoke the IEEPA, *see* 50 U.S.C. § 1701(a), the “unusual and extraordinary threat” relied upon to impose the tariffs are trade deficits that have existed for generations. *See* Brian Reinbold and Yi Weng, *Historical U.S. Trade Deficits*, Fed. Reserve Bank of St. Louis (May 17, 2019) (“Running a trade deficit is nothing new for the United States. Indeed, it has run a persistent trade deficit since the 1970s—but it also did throughout most of the 19th century.”), available at <https://www.stlouisfed.org/on-the-economy/2019/may/historical-u-s-trade-deficits>. Something that has persisted nearly as long as the United States itself cannot be considered an “unusual and extraordinary threat.” In sum, the IEEPA did not *and* could not delegate unprecedented, unlimited, and unreviewable authority to the President to set worldwide tariffs that everyone agrees will affect the entire national economy.

CONCLUSION

Amicus Curiae Crutchfield respectfully requests that the judgment of the U.S. Court of Appeals for the Federal Circuit in No. 25-250 be affirmed, and that these consolidated petitions be remanded for further proceedings.

October 2025

Respectfully submitted,

PETER J. BRANN
Counsel of Record
DAVID SWETNAM-BURLAND
BRANN & ISAACSON
113 Lisbon Street, P.O. Box 3070
Lewiston, ME 04243
(207) 786-3566
pbrann@brannlaw.com
Attorneys for Amicus Curiae
Crutchfield Corporation