Nos. 24-1287 and 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.

AND

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 THE INSTITUTE FOR POLICY INTEGRITY AT NEW YORK UNIVERSITY SCHOOL OF LAW AS AMICUS CURIAE IN SUPPORT OF PETITIONERS IN NO. 24-1287 AND RESPONDENTS IN NO. 25-250

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INTEREST OF *AMICUS CURIAE*

The Institute for Policy Integrity at New York University School of Law (Policy Integrity)[1] is a nonpartisan, not-for-profit think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy.[2]

Policy Integrity has produced extensive scholarship on administrative law. Our faculty director, Professor Richard L. Revesz, is one of the nation's most cited environmental and administrative law scholars, having published more than 100 articles and books in the field. Of relevance here, Revesz and Policy Integrity staff have published extensively on the major questions doctrine. *E.g.*, Richard L. Revesz & Max Sarinsky, *Regulatory Antecedents and the Major Questions Doctrine*, 36 Geo. Env't L. Rev. 1 (2023); Natasha Brunstein & Donald L. R. Goodson, *Unheralded and Transformative: The Test for Major Questions After* West Virginia, 47 Wm. & Mary Env't L. & Pol'y Rev. 47 (2022); Natasha Brunstein & Richard L. Revesz, *Mangling the Major Questions Doctrine*, 74 Admin. L. Rev. 217 (2022). Revesz and Policy Integrity have also filed *amicus curiae* briefs in litigation involving the major questions doctrine, *e.g.*, Br. of the Inst. for Pol'y Integrity as *Amicus Curiae* in Supp. of Defs.-

1. Per Supreme Court Rule 37.6, no party's counsel authored this brief wholly or partly, and no entity or person outside of *amicus curiae* contributed money intended to fund its preparation or submission.

2. This brief does not purport to represent the views, if any, of New York University School of Law.

Appellees, *Utah v. Su*, 109 F.4th 313 (5th Cir. 2024) (No. 23-11097); Br. of Richard L. Revesz as *Amicus Curiae* in Supp. of Resp'ts, *West Virginia v. EPA*, 597 U.S. 697 (2022) (No. 20-1530), including in the district- and appellate-court proceedings at issue here.

In a previous *amicus curiae* brief filed in this Court, we emphasized the importance of providing workable standards for applying the major questions doctrine. Br. of Richard L. Revesz, *supra*, at 2. This Court did so in *West Virginia v. EPA*, 597 U.S. 697 (2022). Yet many lower courts have since employed the major questions doctrine inconsistently with that precedent—sometimes applying it to actions that are hardly "extraordinary." *Id.* at 723. Accordingly, Policy Integrity submits this brief to urge the Court to further clarify the doctrine's contours and thereby help ensure its consistent and proper application in lower courts.

SUMMARY OF ARGUMENT

I. The major questions doctrine has generated substantial confusion in lower courts. *See* Natasha Brunstein, *Major Questions in Lower Courts*, 75 Admin. L. Rev. 661 (2023). This case presents a prime opportunity for the Court to clear up the confusion.

Since *West Virginia*, courts have taken many different approaches to determine whether the doctrine applies. Some have even been inconsistent from one case to the next. Most notably, courts often rely on the challenged action's economic and political significance alone, extending the doctrine to routine actions. This haphazard application produces results that are unpredictable and often appear outcome-driven.

This Court's precedents, however, already provide guideposts—many lower courts just appear to have missed them. Major questions decisions from this Court have looked to history, breadth, and significance to determine whether the doctrine applies—requiring, in essence, an unheralded and transformative exercise of power in addition to economic and political significance. Given the widespread confusion in lower courts, this Court should now reemphasize those triggers.

The President's reliance on the International Emergency Economic Powers Act (IEEPA) to impose the tariffs at issue here meets these requirements. It is unheralded, transformative, and of vast economic and political significance. Indeed, if this case does not call for applying the doctrine, it is unclear what would.

II. Lower courts have also struggled to reconcile the "ongoing debate" over the "source and status" of the major questions doctrine. *Biden v. Nebraska*, 600 U.S. 477, 507 (2023) (Barrett, J., concurring). Some treat the doctrine as a substantive canon or, more specifically, a clear-statement rule that puts a thumb on the scale; others, as a linguistic canon that aids in finding the best reading of the statute. Still others have acknowledged the confusion and not taken a position. Only this Court can resolve this debate.

Again, the answer lies in this Court's precedents. Those decisions do not put a thumb on the scale favoring (or disfavoring) a particular reading. Instead, they require "clear congressional authorization," which demands more than a "merely plausible" statutory basis but also does not require magic words. *West Virginia*, 597 U.S. at 722–23, 732–36. Properly understood, this requirement helps a

court discern, not depart from, the "best meaning" of the statute, *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024), thereby functioning as a linguistic canon rather than a clear-statement rule.

III. This Court has never suggested any carveout to the major questions doctrine for actions by the President or related to foreign affairs or national security—and should not create one now. Actions taken by the President do not merit a more lenient interpretive standard than those taken by agencies, as the President is responsible for the actions of Executive Branch officials. Nor are actions relating to foreign affairs a safe harbor: Delegated foreign affairs powers remain subject to "the ordinary controls and checks of Congress," *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 21 (2015), and so unprecedented and extraordinary statutory claims in that realm warrant similar skepticism. That is especially true here, where the Constitution grants Congress the power to impose import taxes. Moreover, prior actions subject to major questions review have similarly implicated foreign affairs or emergency powers.

Creating doctrinal carveouts would also sow uncertainty and impede administrability—concerns that plagued the *Chevron* doctrine and contributed to its demise. The Court should not repeat those mistakes here.

ARGUMENT

I. The Court Should Resolve Uncertainty In The Lower Courts Over When The Major Questions Doctrine Applies.

Well over 100 lower-court decisions have applied the major questions doctrine since *West Virginia*. Those

opinions diverge widely. Some imply that the major questions doctrine is easily triggered; others state a more demanding test. Scholars have also observed that lower courts appear to apply the major questions doctrine in line with the policy preferences of the party of the President who nominated the deciding judge. Given this uncertainty, inconsistency, and perceived outcome-oriented flexibility, further clarity is needed from this Court.

This Court's decisions already furnish the necessary contours. They provide that the major questions doctrine is triggered when the challenged action (1) is unheralded, (2) transforms the government actor's role, and (3) is of vast economic and political significance. But lower courts do not consistently apply these requirements. Given this inconsistency in the lower courts, this Court should take the opportunity to clarify the factors that trigger the major questions doctrine.

The major questions doctrine is triggered here because the challenged tariffs meet all three factors. In other words, "this is a major questions case." *West Virginia*, 597 U.S. at 724.

A. Lower courts have applied this Court's major questions precedents haphazardly and far beyond the "extraordinary" case.

This Court has explained that the major questions doctrine applies only in "extraordinary cases." *Id.* at 721 (quoting *Food & Drug Admin. v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)). But lower courts have applied the doctrine inconsistently and often in undisciplined ways. This uneven application has also created the appearance of outcome-driven results.

1. Courts apply different tests for triggering the major questions doctrine.

In assessing whether the major questions doctrine applies, some decisions focus mainly or exclusively on economic and political significance—finding that when the government action at issue implicates "a question of vast economic and political significance, it is a major question." *In re MCP No. 185*, No. 24-7000, 2024 WL 3650468, at *3 (6th Cir. Aug. 1, 2024) (per curiam) (cleaned up).

For example, the Fifth Circuit applied a single-trigger test in concluding that the Nuclear Regulatory Commission lacks authority to license certain private storage facilities for spent nuclear fuel. *Texas v. Nuclear Regul. Comm'n*, 78 F.4th 827, 844 (5th Cir. 2023), *rev'd on other grounds*, 605 U.S. 665 (2025). In a two-sentence analysis, the court determined that the major questions doctrine applied because "[w]hat to do with the nation's ever-growing accumulation of nuclear waste . . . has been hotly politically contested for over a half century." *Id.* The Fifth Circuit's unidimensional analysis did not consider that "history and precedent offer significant support for the Commission's longstanding interpretation"—facts this Court emphasized when overturning the appellate decision on other grounds. *Nuclear Regul. Comm'n v. Texas*, 605 U.S. 665, 683 (2025).

Similar examples abound. To give just a few: In 2022, a court applied the major questions doctrine to a Medicare rule issued under the first Trump Administration simply because it constituted a "major policy decision[]." *Kaweah Delta Health Care Dist. v. Becerra*, No. CV 20-6564-CBM-SP(X), 2022 WL 18278175, at *9 (C.D. Cal. Dec. 22,

2022), *aff'd in part on other grounds, vacated in part* 123 F.4th 939 (9th Cir. 2024). In 2023, a court applied the doctrine to a minimum-wage directive issued under the Biden Administration because it "significantly affects the economy." *Texas v. Biden*, 694 F. Supp. 3d 851, 869 (S.D. Tex. 2023), *vacated as moot Texas v. Trump*, No. 23-40671, 2025 WL 968277 (5th Cir. Mar. 28, 2025). And earlier this year, a court applied the doctrine to the second Trump Administration's rescission of various COVID-related public health grants, pointing principally to the policy's economic and political significance. *Colorado v. U.S. Dep't of Health & Hum. Servs.*, 788 F. Supp. 3d 277, 302 (D.R.I. 2025).

Other courts include factors beyond economic and political significance, but vary in their approaches. Some decisions apply a three-part, disjunctive test, asking whether the challenged action is "of great political significance," "require[s] billions of dollars" in private spending, *or* "seeks to intrude into" traditional state-law domains. *E.g.*, *Mayfield v. U.S. Dep't of Lab.*, 117 F.4th 611, 616 (5th Cir. 2024) (citation omitted) (stating that "each" of the three factors "independently trigger[s] the doctrine"). Others apply a multi-factor balancing test. *E.g.*, *Kansas v. Kennedy*, 787 F. Supp. 3d 906, 930–31 (N.D. Iowa 2025) (finding that different factors counseled in different directions and concluding that, "[o]n balance," a challenge to a Medicaid staff rule presented "an extraordinary case").

In contrast to those formulations, numerous decisions apply a conjunctive test that requires the history (i.e., unprecedented nature of the action), breadth (i.e., transformation of the actor's role), *and* economic and

political significance of the challenged action each to call for caution. *E.g.*, *United States v. Cal. Stem Cell Treatment Ctr., Inc.*, 117 F.4th 1213, 1221 (9th Cir. 2024); *State v. Su*, 121 F.4th 1, 14 (9th Cir. 2024) ("If both prongs [i.e., (1) history and breadth, and (2) significance] are met, the major questions doctrine applies . . . ."). As described below, this test is consistent with this Court's precedents. *See infra* Sec. I.B.

The "vastly different approaches to defining and applying the doctrine" appear not only "across circuits" but also even "within" them. Brunstein, *supra*, at 663. For instance, the Fifth Circuit applied three different versions of the major questions test in a span of 16 months. First, in August 2023, it focused exclusively on economic and political significance. *See Texas*, 78 F.4th at 844. Next, in September 2024, it applied the three-factor disjunctive test noted above. *See Mayfield*, 117 F.4th at 616. Finally, in December 2024, it applied a conjunctive test assessing history, breadth, and economic and political significance. *See All. for Fair Bd. Recruitment v. Sec. & Exch. Comm'n*, 125 F.4th 159, 180–83 (5th Cir. 2024) (en banc).

Inconsistent application of the major questions doctrine creates significant uncertainty for regulated individuals and businesses, litigants, and policymakers.

2. The doctrine's inconsistent application risks outcome-driven and anomalous results.

Uncertainty over the major questions doctrine's requirements—and their perceived flexibility—has also created the appearance of outcome-driven results.

For example, within 15 months of *West Virginia*, 21 opinions considered the doctrine in response to Biden Administration actions. Of these, "eight involved Democratic appointees upholding Biden Administration agency actions or executive orders, and nine of these cases involved Republican appointees invalidating Biden Administration agency actions or executive orders." Brunstein, *supra*, at 667.

Inconsistent and unprincipled application of the major questions doctrine also risks applying the doctrine well beyond the extraordinary case. In fact, numerous lower-court decisions have already applied the doctrine expansively. For instance, in 2022, a federal court invoked the doctrine after the first Trump Administration adjusted the Medicare reimbursement schedule by reducing inpatient hospital payments by 0.2016%. *See Kaweah*, 2022 WL 18278175, at *4, *9. While that adjustment resulted in a cut of only $3.8 million to the plaintiffs, *id.* at *4, the court reasoned that it constituted a "'major policy decision[]' and a 'fundamental' change" in the statute, with little additional analysis. *Id.* at *8 (quoting *West Virginia*, 597 U.S. at 723).

And this June, another court found that the federal government's legal position in support of removing a noncitizen who had "conceded removability" ran afoul of the major questions doctrine. *Luvian v. Bondi*, No. 25-CV-04035-TLT, 2025 WL 1616538, at *2 (N.D. Cal. June 7, 2025); *see also id.* at *4. Specifically, the court concluded that the government's attempt to terminate removal proceedings and proceed to deportation without judicial review because the noncitizen "had been previously removed from the United States pursuant to

a valid removal order" constituted a transformative and unprecedented expansion of authority. *Id.* at *2, *4–5.

To prevent anomalous and outcome-driven decisions, further guidance from this Court is necessary on when the major questions doctrine applies.

B. Under this Court's precedents, history, breadth, and economic and political significance are all required to trigger the doctrine.

Despite lower courts' inconsistent application of the major questions doctrine, this Court's decisions already indicate when the doctrine applies. Repeatedly, this Court has emphasized that three factors—history, breadth, and significance—must each "provide a 'reason to hesitate before concluding that Congress' meant to confer" the authority asserted. *West Virginia*, 597 U.S. at 721 (quoting *Brown & Williamson*, 529 U.S. at 159–60); *accord Nebraska*, 600 U.S. at 501. Specifically, the doctrine applies where an "unheralded" government action "transform[s]" the delegated authority of the relevant actor and has great "economic and political significance." *West Virginia*, 597 U.S. at 721, 724 (citation omitted). The Court should take this opportunity to reiterate that this is the proper test.

1. This Court's precedents emphasize history and breadth.

This Court's major questions analyses have always examined the history and the breadth of the asserted authority.

Take *West Virginia*, this Court's most thorough discussion of the doctrine. There, "a major questions case" was present because the Environmental Protection Agency (EPA) "'claim[ed] to discover in a long-extant statute [1] an unheralded power' [2] representing a 'transformative expansion in [its] regulatory authority.'" *Id.* at 724 (quoting *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014)). The Court first addressed why the challenged action was "unheralded," *see id.* at 724–28, and next addressed why that action also represented a "transformative" change in EPA's authority, *see id.* at 728–32. *Biden v. Nebraska*, 600 U.S. 477 (2023), similarly first addressed history and breadth in its analysis of the major questions doctrine. *See id.* at 501–02.

When looking to history, this Court has asked whether the challenged action has a comparable antecedent under the relevant statutory provision. In *West Virginia*, the Court began its application of the major questions doctrine by concluding that EPA fundamentally departed from "prior Section 111 rules" in issuing the Clean Power Plan, making the action "unheralded." 597 U.S. at 724, 726. Other major questions cases similarly focus on the unprecedented nature of the government action. *E.g.*, *Nebraska*, 600 U.S. at 501–02 (stressing that the agency had "never previously claimed powers of this magnitude under" the operative statute); *Nat'l Fed'n of Indep. Bus. v. Dep't of Lab.* (*NFIB*), 595 U.S. 109, 119 (2022) (per curiam) (highlighting that the agency "never before adopted a broad public health regulation of this kind"); *Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs.* (*Alabama Realtors*), 594 U.S. 758, 765 (2021) (per curiam) (noting that the government's claim of "expansive authority" was

"unprecedented" over the relevant provision's 77-year history).[3]

In contrast, when this Court has declined the invitation to apply the major questions doctrine, it has highlighted the challenged action's consistency with past practice. For example, after the Fifth Circuit cited the major questions doctrine when invalidating a vaccine mandate for staff at Medicare and Medicaid providers, *Louisiana v. Becerra*, 20 F.4th 260, 262 (5th Cir. 2021), this Court upheld the requirement, noting that the government "routinely imposes [similar] conditions of participation" in those programs, *Biden v. Missouri*, 595 U.S. 87, 94 (2022) (per curiam). Similarly, the Fifth Circuit invoked the major questions doctrine in holding unlawful the Nuclear Regulatory Commission's licensing of off-site storage, *Texas*, 78 F.4th at 844; this Court cast doubt on that analysis by emphasizing "50 years" of precedent for that licensing program, *Texas*, 605 U.S. at 683 (reversing on threshold issues).

When looking to breadth, this Court has asked whether the challenged action would transform the government actor's authority relative to previous applications or understandings. In *West Virginia*, after concluding that the challenged action was unheralded, the Court next discussed how it also "effected a 'fundamental

3. Of course, the government need not identify an identical antecedent, as new actions will rarely be identical to previous ones. *Cf. United States v. Rahimi*, 602 U.S. 680, 692 (2024) (explaining, in a separate context, that courts should not insist on a "historical twin" to justify current government action (citation omitted)). Rather, this Court's analyses suggest that the relevant antecedent must be an analogous exercise of authority.

revision of the statute, changing it from one sort of scheme of regulation' into an entirely different kind." 597 U.S. at 728 (alterations omitted) (quoting *MCI Telecomms. Corp. v. Am. Telephone & Telegraph Co.*, 512 U.S. 218, 231 (1994)). Specifically, the challenged rule was predicated on a "different kind of policy judgment" than prior EPA actions: how to distribute "national electricity generation" among energy sources rather than how to limit pollution at "each individual regulated source." *Id.* In *Nebraska*, this Court concluded that the government's reading of the relevant statute would effectively permit the Secretary of Education to "unilaterally define every aspect of federal student financial aid," 600 U.S. at 502, similarly effecting a "fundamental revision of the statute," *id.* (quoting *West Virginia*, 597 U.S. at 728).

2. Economic and political significance are necessary but insufficient.

This Court has also emphasized the "vast economic and political significance" of the challenged action when invoking the major questions doctrine. *E.g.*, *West Virginia*, 597 U.S. at 716 (quoting *Util. Air Regul. Grp.*, 573 U.S. at 324). In *Nebraska*, this Court emphasized that the "economic and political significance of the [challenged] action is staggering by any measure," noting that it would "cost taxpayers between $469 billion and $519 billion." 600 U.S. at 502 (cleaned up). In *Alabama Realtors*, the Court emphasized the "sheer scope" of the claimed authority and cited $50 billion as a reasonable impact estimate. 594 U.S. at 764.

But economic and political significance alone have never sufficed to trigger the doctrine. For instance, while the size of the student-loan cancellation program played a

role in *Nebraska*, *see* 600 U.S. at 502–03, this Court first addressed its history and breadth, *see id.* at 501–02. In *Alabama Realtors*, this Court likewise emphasized the eviction moratorium's "unprecedented" nature and the "breathtaking amount of authority" it would allow. 594 U.S. at 764–65. A major questions test that turned purely on economic and political significance would undeniably be triggered here, *see infra* Sec. I.C.3, but such an application would miss such key questions as how Presidents have previously invoked IEEPA.

This Court's three-pronged analysis—considering history, breadth, and significance—makes sense given that the major questions doctrine applies only in "extraordinary" cases. Many federal actions can be described as economically and politically significant; for instance, the large scope of many government programs (such as Medicare) means that cases concerning those programs often involve billions of dollars in spending or costs. Yet far fewer are unprecedented or represent a transformative change in authority.

C. All factors signaling an "extraordinary case" for the major questions doctrine are present here.

This is an extraordinary case that triggers the major questions doctrine, as the challenged tariffs are unheralded, transformative, and economically and politically significant.

1. The challenged tariffs are unheralded.

The challenged tariffs are both of a different character and far broader in scope than prior actions taken under IEEPA.

In the nearly half-century since Congress enacted IEEPA, no President had ever used it to impose a tariff. Christopher A. Casey et al., Cong. Rsch. Serv., R45618, *The International Emergency Economic Powers Act: Origins, Evolution, and Use* 60 (2025), https://perma.cc/Q7V3-V958. Rather, past Presidents have used IEEPA only to impose targeted economic sanctions in response to relatively narrow emergencies, like import bans and asset freezes. *See id.* at 30–32; *see also id.* at App. A (listing every past use of IEEPA). As of January 2025, Presidents had declared 70 national emergencies invoking IEEPA, *id.* at 69–73, but "no President had used IEEPA to impose tariffs," *id.* at 60.

Even President Trump during his first term used IEEPA as his predecessors had: to impose targeted economic sanctions like asset freezes in response to relatively narrow emergencies. *See id.* at 72–73 (listing uses from 2017–2020). When he sought to impose tariffs on imports from China, he relied on Section 301 of the Trade Act of 1974, 19 U.S.C. § 2411. Brock R. Williams et al., Cong. Rsch. Serv., R45529, *Trump Administration Tariff Actions: Frequently Asked Questions* 10 (2020), https://perma.cc/34YN-EHRP. When he sought to impose tariffs on steel and aluminum imports, he relied on Section 232 of the Trade Expansion Act of 1962, 19 U.S.C. § 1862. *Id.* at 9. When he sought to impose tariffs on solar cells and washing machines, he relied on Section 201 of the Trade Act of 1974, 19 U.S.C. § 2251. *Id.* at 8. These statutes all require the government to follow specific procedures before imposing tariffs—procedures President Trump followed in his first term but not here.[4]

4. True, President Trump *threatened* to impose tariffs under IEEPA during his first term, but he never carried out the threat. *See* Casey et al., *supra*, at 60 n.460. The fact thus remains that,

To be sure, President Nixon relied on a predecessor emergency statute, the Trading with the Enemy Act (TWEA), to impose a 10% *ad valorem* tariff on a limited subset of imports. *See* Casey et al., *supra*, at 6 & n.46, 63–64. But this Court has not considered actions taken under another statute when assessing whether an action is unheralded for major questions purposes. *West Virginia*, for example, did not consider EPA actions issued under other Clean Air Act provisions in its "unheralded" analysis. 597 U.S. at 726 n.1 (rejecting the relevance of similar EPA actions that "were not Section 111 rules"); *see also Nebraska*, 600 U.S. at 502 (focusing on "regulation[s] premised on the HEROES Act" (cleaned up)). While government actions taken under "other provisions" may be relevant for assessing whether clear congressional authorization is present, *West Virginia*, 597 U.S. at 732, those actions do not inform the "unheralded" analysis under this Court's precedents.

Moreover, even if this Court finds that actions analyzed under TWEA are relevant to the "unheralded" inquiry, President Nixon's actions were far more "modest and narrow in scope" than President Trump's. *Nebraska*, 600 U.S. at 501. President Nixon imposed a 10% *ad valorem* charge on only those "dutiable" articles that had been subject to earlier tariff concessions, with the total rate not to exceed that prescribed in the Tariff Schedules. *United States v. Yoshida Int'l, Inc.*, 526 F.2d 560, 577–78 (C.C.P.A. 1975). In upholding President Nixon's actions, the U.S. Court of Customs and Patent Appeals underscored that

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until now (and certainly not before President Trump), no previous President had ever invoked IEEPA to impose tariffs, much less the sweeping tariffs at issue here. *Id.* at 60.

it did not "sanction the exercise of an unlimited power." *Id.* at 583. Instead, it emphasized that the tariffs were "limited," "temporary," and did not "supplant the entire tariff scheme of Congress." *Id.* at 578 (citation omitted).

President Trump's tariffs, in contrast, are essentially unlimited. The order imposing reciprocal tariffs, for example, imposed a 10% *ad valorem* duty on "all imports from all trading partners" (subject to some product-specific exceptions), and higher rates up to 50% on 57 countries, far exceeding the existing tariff schedule. Exec. Order No. 14,257, 90 Fed. Reg. 15,041, 15,045 & Annex I (Apr. 7, 2025). The order specified that the rates would continue indefinitely, until the President determined that the conditions they were intended to rectify were "satisfied, resolved, or mitigated." *Id.* at 15,045.

Moreover, President Nixon's tariffs raised $485 million in revenue (or about $3.8 billion in 2025 dollars) before they were terminated less than a year after being adopted. *See* Douglas A. Irwin, *The Nixon Shock After Forty Years: The Import Surcharge Revisited*, 12 World Trade Rev. 29, 46 n.16 (2013). President Trump's tariffs, on the other hand, are estimated to increase federal tax revenue by more than $170 billion in 2025 alone. Erika York & Alex Durante, *Trump Tariffs: Tracking the Economic Impact of the Trump Trade War*, Tax Foundation (Oct. 3, 2025), https://perma.cc/3AJM-NBJ9. Thus, even if actions under TWEA provided a relevant comparison for "unheralded" purposes for actions under IEEPA, no President has ever "previously claimed powers of this magnitude" under either statute. *Nebraska*, 600 U.S. at 501.

Because, in its nearly 50-year history, IEEPA has never been used to impose tariffs—much less any other

actions approaching the scale of the challenged tariffs—President Trump's use of IEEPA here is unheralded.

2. The President's interpretation of IEEPA is transformative.

The President's use of IEEPA is also transformative: It turns a statute used to provide surgical tools for narrow sanctions during national emergencies into the power to override all of Congress's carefully drawn trade statutes, effectively appropriating Congress's authorities over foreign taxation as his own.

As noted above, Presidents have previously used IEEPA to impose targeted trade restrictions meant to address specific threats posed by hostile actors or illicit trade. For instance, previous invocations of IEEPA have been targeted sanctions (not tariffs) that: (1) concerned certain goods such as chemical and biological weapons, rough diamonds, and weapons of mass destruction; or (2) addressed international crises or hostile actors by blocking property to groups such as transnational criminal organizations, those engaging in malicious cyber-enabled activities, or persons contributing to foreign conflicts. *See* Casey et al., *supra*, at App. A. As opposed to these surgical and targeted uses, the President is now attempting to use the IEEPA tariffs to reduce trade deficits, enhance American manufacturing capacity, and expand domestic job opportunities, fundamentally transforming the statute into a blank check to rebalance international trade and manage the domestic economy. *See* Gov't Br. 6–9. This would effect a "fundamental revision of the statute," asserting it for "an entirely different kind" of authority. *West Virginia*, 597 U.S. at 728 (citation omitted).

The President's assertion of this authority is particularly transformative because Congress has already enacted multiple trade statutes that authorize tariffs only in certain circumstances (e.g., specifying industries, countries, or criteria) and after following specified procedures. For example, Section 301 of the Trade Act of 1974 authorizes tariffs on countries that violate certain trade agreements, but only after the U.S. Trade Representative satisfies various processes including conducting an investigation and making detailed factual findings. 19 U.S.C. § 2414. While these statutes delegate broad tariff-setting authority, that authority is circumscribed by procedural and substantive limitations and is narrower than the President's claimed power under IEEPA. Interpreting IEEPA to give the President a blank check to reduce trade deficits would render Congress's many other carefully drawn trade statutes basically superfluous.

3. The challenged tariffs are economically and politically significant.

Although there is no precise threshold for economic significance, the anticipated effects of the President's tariffs surpass those deemed significant in prior major questions cases. As one reference point, *Alabama Realtors* found significant the roughly one-year, $50 billion economic impact of President Biden's eviction moratorium. 594 U.S. at 764.

The President's full slate of recent tariffs is projected to "increase federal tax revenues by $174.9 billion" in a single year, representing "the largest tax hike since 1993." York & Durante, *supra*. And they are projected

to reduce GDP by 0.8% (before foreign retaliation), *id.*, which equates to over $200 billion per year or more than $2 trillion over ten years.[5] Those anticipated economic effects satisfy any measure of economic significance.

The tariffs are politically significant, too. There are few decisions that are more politically fraught than taxation. Given that these tariffs, as just noted, by one estimate represent the largest tax hike in a generation, it is unsurprising that they have been the subject of "earnest and profound debate across the country." *West Virginia*, 597 U.S. at 732 (quoting *Gonzales v. Oregon*, 546 U.S. 243, 267–68 (2006)). Legislation was introduced in Congress before President Trump took office that would have enacted worldwide 10% tariffs, *see* H.R. 505, 119th Cong. (2025), and, since the tariffs were adopted, members of Congress have proposed legislation to terminate the emergency underlying the reciprocal tariff order, *see* S.J. Res. 49, 119th Cong. (2025), and to limit the President's ability to enact new tariffs, *see* Trade Review Act of 2025, S. 1272, 119th Cong. (2025). Although this Court's precedents have not spelled out a clear test for political significance, these IEEPA tariffs would qualify under any reasonable standard.

* * *

The major questions doctrine is limited in scope. But if the President's tariff orders are not "extraordinary" enough to trigger the doctrine, it is hard to imagine an

5. U.S. GDP is currently over $30 trillion. *United States: Datasets*, Int'l Monetary Fund (last updated Oct. 2025), https://perma.cc/W8NV-PU8P.

action that would be. The Government therefore "must point to 'clear congressional authorization' for the power it claims." *West Virginia*, 597 U.S. at 723. We leave the more detailed textual arguments concerning whether clear congressional authorization exists to the parties' briefing.

II. The Court Should Also Resolve Uncertainty In The Lower Courts Over Whether The Major Questions Doctrine Is A Linguistic Or Substantive Canon.

In addition to clarifying what factors trigger the major questions doctrine, the Court should further clarify that the doctrine is a linguistic tool that aids a court in discerning statutory meaning—not a substantive canon that permits a court to diverge from the best reading of the statute.

A. Lower courts have expressed uncertainty over whether the doctrine is a linguistic or substantive canon.

As one Justice of this Court has highlighted, there is "an ongoing debate" over the "source and status" of the major questions doctrine, with different courts and commentators expressing uncertainty as to whether it serves as a substantive or linguistic canon. *Nebraska*, 600 U.S. at 507 (Barrett, J., concurring); *see also, e.g.*, Cass R. Sunstein, *There Are Two "Major Questions" Doctrines*, 73 Admin. L. Rev. 475 (2021).

This distinction has significant consequences. A clear-statement rule is commonly understood to permit a court to diverge from the most natural reading of the text to further a value external to the statute. Amy Coney

Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 118–19 (2010). A linguistic canon, in contrast, functions as "a tool for discerning—not departing from—the text's most natural interpretation" by "situat[ing] text in context." *Nebraska*, 600 U.S. at 508, 511 (Barrett, J., concurring); *see also* Barrett, *supra*, at 117. Courts applying the doctrine in this light would lack "permission[] to choose an inferior-but-tenable alternative" statutory reading. *Nebraska*, 600 U.S. at 516.

Yet lower courts have been divided over how the major questions doctrine applies. Some judges have referred to the doctrine as "essentially a clear-statement rule." *Georgia v. President of the United States*, 46 F.4th 1283, 1314 (11th Cir. 2022) (Anderson, J., concurring in part and dissenting in part); *see also Baxter v. Becerra*, No. 3:23-CV-92 (RCY), 2024 WL 627262, at *7 (E.D. Va., Feb. 14, 2024), *aff'd sub nom. Baxter v. Kennedy*, 136 F.4th 70 (4th Cir. 2025). Others have likened the doctrine to the interpretive principle that Congress does not "hide elephants in mouseholes," *see Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001), thus framing the major questions doctrine as a linguistic canon, *see, e.g.*, *Bradford v. U.S. Dep't of Labor*, 101 F.4th 707, 725–26 (10th Cir. 2024); *All. for Fair Bd. Recruitment*, 125 F.4th at 180; *In re MCP No. 185*, 2024 WL 3650468, at *3.

And still other courts have declined to take a position. For example, the Fifth Circuit has questioned "whether the doctrine is one interpretative tool among many or a clear-statement rule." *Mayfield*, 117 F.4th at 616. Similarly, the D.C. Circuit has asked whether the doctrine serves as "a linguistic canon, or a substantive canon with a constitutional basis safeguarding the separation of

powers, or both." *Save Jobs USA v. U.S. Dep't of Homeland Sec., Off. of Gen. Couns.*, 111 F.4th 76, 80 (D.C. Cir. 2024), *cert. denied*, No. 24-923, 2025 WL 2906616 (Oct. 14, 2025). A Ninth Circuit judge has acknowledged competing justifications for the "source and status" of the doctrine, while claiming that the "Supreme Court in *West Virginia* . . . does not take a side on that debate." *Su*, 121 F.4th at 18 (R. Nelson, J., concurring) (citation omitted). And the Fourth Circuit has observed the "ongoing debate," while noting that "clear-statement rules sit uncomfortably with our commitment to textualism." *N.C. Coastal Fisheries Reform Grp. v. Capt. Gaston LLC*, 76 F.4th 291, 296 n.5 (4th Cir. 2023).

Given this widespread confusion, clarification of this point would be beneficial. As noted above, a court applying the major questions doctrine as a substantive canon might come to a different outcome on an issue than a court applying it as a linguistic canon—choosing "an inferior-but-tenable reading" rather than "the text's most natural interpretation." *Nebraska*, 600 U.S. at 508–09 (Barrett, J., concurring).

B. Under this Court's precedents, the major questions doctrine operates as a linguistic canon, not a substantive clear-statement rule.

Despite some confusion in the lower courts, this Court's precedents already demonstrate that the major questions doctrine is a linguistic canon directing courts to look to "context" to determine "whether Congress in fact meant to confer the power the [government] has asserted." *West Virginia*, 597 U.S. at 721.

As Justice Barrett has recognized, none of this Court's major questions cases "requires an unequivocal declaration from Congress authorizing the *precise* agency action under review." *Nebraska*, 600 U.S. at 511 (Barrett, J., concurring) (cleaned up). Rather, this Court's major questions cases seek to determine the "best interpretation of the text," consistent with a linguistic canon. *Id.* For instance, *West Virginia* began its statutory analysis by reciting the "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." 597 U.S. at 721 (quoting *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989)). And then, when it assessed whether "clear congressional authorization" supported the challenged action, *West Virginia* looked beyond the "vague" text of the operative statutory provision, and considered other contextual factors including nearby provisions and statutory history. *Id.* at 732–35 (citation omitted).

This Court has similarly treated the major questions doctrine as a linguistic canon in other cases. *King v. Burwell*, 576 U.S. 473 (2015), stressed that "oftentimes the 'meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.'" *Id.* at 486 (quoting *Brown & Williamson*, 529 U.S. at 132). Similarly, *Nebraska* treated the doctrine as an additional ground for reaching the result arrived at through "ordinary tools of statutory interpretation." 600 U.S. at 506 & n.9.

Where this Court has adopted clear-statement rules, which it has never done in its major questions jurisprudence, it has done so explicitly. For example, a waiver of the federal government's sovereign immunity

must "be unequivocally expressed." *Irwin v. Dep't of Veterans Affairs*, 498 U.S. 89, 95 (1990) (citation omitted). Similarly, Congress "must make its intention" to interfere with state sovereignty "unmistakably clear." *Gregory v. Ashcroft*, 501 U.S. 452, 464 (1991) (citation omitted). In contrast, the phrase "clear-statement rule" is absent from the *West Virginia* majority's legal analysis, even though the agency, the partial dissent below, at least one petitioner brief, and the concurring opinion all framed the doctrine that way. *West Virginia*, 597 U.S. at 699 (describing the agency's framing of the doctrine); *Am. Lung Ass'n v. EPA*, 985 F.3d 914, 999 (D.C. Cir. 2021) (Walker, J., concurring in part, concurring in the judgment in part, and dissenting in part), *rev. and remanded sub nom. West Virginia v. EPA*, 597 U.S. 697 (2022); Br. for Pet'r N. Am. Coal Corp. 17, *West Virginia v. EPA*, 597 U.S. 697 (2022) (No. 20-1530); *West Virginia*, 597 U.S. at 735 (Gorsuch, J., concurring).

This Court's opinion in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), further supports treating the major questions doctrine as a linguistic canon. *Loper Bright* treated the major questions doctrine as a carveout to *Chevron* deference, *id.* at 405, and, in eliminating that deference regime, instructed courts to use "all relevant interpretive tools" in agency cases to discern the "single, best meaning" of the statute, *id.* at 400. As this Court's major questions cases demonstrate, the doctrine is one "tool at [a court's] disposal" in exercising "its obligation to independently interpret the statute." *Id.*

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In short, this Court's precedents already establish that the major questions doctrine functions as a linguistic

canon. Because lower courts have expressed confusion on this point, further clarity from this Court would be highly useful.

III. The Court Should Also Clarify That There Are No Carveouts To The Major Questions Doctrine.

The Government asks this Court to create doctrinal exceptions to the major questions doctrine for acts by the President or concerning foreign affairs. Gov't Br. 34–36. But there is no sound basis for carving out such exceptions—particularly not here, where Congress holds the authority to impose import tariffs and the President has justified the tariffs by reference to core domestic policy matters, including economic competitiveness. Further, this Court's prior major questions decisions have also implicated foreign affairs. This Court also recently lamented the creation of doctrinal exceptions to *Chevron* deference that led to that doctrine's incomplete and inconsistent application. *Loper Bright*, 603 U.S. at 404–06. Creating exceptions under the major questions doctrine risks the same fate.

A. The major questions doctrine applies to presidential acts under delegated authority.

While this Court has so far applied the major questions doctrine only to agencies or cabinet departments, nothing in this Court's opinions suggests that a different rule would apply to the President when acting under delegated authority from Congress.[6] *Contra* Gov't Br. 36.

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6. Three courts have applied the major questions doctrine to presidential actions. *See Louisiana v. Biden*, 55 F.4th 1017, 1031

As discussed above, the major questions doctrine is a tool for interpreting the scope of the power Congress has lawfully delegated. When the President acts under such a delegation, as with any other government official, courts must independently analyze the scope of that delegation to assess "a claim alleging that the President acted in excess of his statutory authority." *See Am. Forest Res. Council v. United States*, 77 F.4th 787, 796 (D.C. Cir. 2023), *cert. denied*, 144 S. Ct. 1110 (2024). "An implausible reading of a statute is no less implausible when that statute confers authority on the President versus an agency." *Su*, 121 F.4th at 19–20 (R. Nelson, J., concurring).

Excusing presidential acts from major questions review would also sit uncomfortably with this Court's teachings that "a single President [is] responsible for the actions of the Executive Branch." *Free Enter. Fund v. Pub. Co. Acct. Oversight Bd.*, 561 U.S. 477, 496–97 (2010) (quoting *Clinton v. Jones*, 520 U.S. 681, 712–13 (1997)); *see also Seila Law LLC v. Consumer Fin. Prot. Bureau*, 591 U.S. 197, 203 (2020). Under this Court's precedents, delegations to "executive officers or agencies . . . are not analytically distinct . . . from delegations to the President because the President controls, supervises, and directs those executive officers and agencies." *Fed. Commc'ns Comm'n v. Consumers' Rsch.*, 145 S. Ct. 2482, 2512 n.1 (2025) (Kavanaugh, J., concurring).

& n.40 (5th Cir. 2022); *Georgia*, 46 F.4th at 1295–96; *Kentucky v. Biden*, 23 F.4th 585, 606–08 (6th Cir. 2022). One circuit took the opposite view, *Mayes v. Biden*, 67 F.4th 921, 933–34 (9th Cir. 2023), but that decision was vacated as moot, 89 F.4th 1186 (9th Cir. 2023); *see also Su*, 121 F.4th at 17–19 (R. Nelson, J., concurring) (explaining that the major questions doctrine should apply to the President).

That the President may be more directly politically accountable to the public than the agencies he supervises, *see* Gov't Br. 36, does not afford him greater leeway to deviate from Congress's design. No matter "how likely the public is to hold the Executive Branch politically accountable" for an action premised on delegated authority, that action "must always be grounded in a valid grant of authority from Congress." *Brown & Williamson*, 529 U.S. at 161.

B. The major questions doctrine applies to delegated acts that implicate foreign affairs.

Even where the challenged actions involve delegated powers implicating foreign affairs or national security, the major questions doctrine remains relevant. *Contra* Gov't Br. 34–36.

"[T]he President's authority to act necessarily 'stem[s] either from an act of Congress or from the Constitution itself.'" *Trump v. United States*, 603 U.S. 593, 607 (2024) (quoting *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 585 (1952)). Here, the Constitution grants *Congress* the power to "lay and collect Taxes, Duties, Imposts and Excises." U.S. Const. art. I, § 8, cl. 1. This constitutional allocation makes "clear that no undelegated power to . . . set tariffs[] inheres in the Presidency." *Yoshida*, 526 F.2d at 572; *see also* Saikrishna B. Prakash & Michael D. Ramsey, *The Executive Power over Foreign Affairs*, 111 Yale L.J. 231, 263 n.123 (2001) (describing the power to set tariffs as an independent power of Congress).

The Government's contention that a "broad reading of . . . statutory delegation" is implicit for "foreign-policy

emergencies," Gov't Br. 35, should not remove IEEPA entirely from major questions review. Of course, this Court has recognized that Congress "often enact[s]" statutes that allow "a degree of discretion." *Loper Bright*, 603 U.S. at 394. But that discretion is never unlimited: The judiciary must in all contexts "independently interpret the statute and effectuate the will of Congress." *Id.* at 395. When a government actor applies a statute in an unprecedented and transformative manner—in any context—there is no baseline assumption that Congress meant to delegate in that manner. "The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue." *Zivotofsky*, 576 U.S. at 21.

Indeed, this Court's major questions precedents frequently involve foreign affairs or invocations of emergency powers. For instance, *Nebraska* involved an emergency declaration under a provision of the HEROES Act authorizing waiver or modification if deemed "necessary in connection with a war or other military operation or national emergency." 20 U.S.C. § 1098bb(a)(1); *see also* 600 U.S. at 485–86. Likewise, the eviction moratorium challenged in *Alabama Realtors* was established under a provision of the Public Health Service Act authorizing the Surgeon General to regulate "to prevent the introduction, transmission, or spread of communicable diseases from foreign countries into the States." 42 U.S.C. § 264(a); *see also* 594 U.S. at 760–61. *NFIB* dealt with an "emergency standard" that the Executive Branch deemed "necessary to protect employees from [grave] danger." 29 U.S.C. § 655(c)(1); *see also* 595 U.S. at 114. And in *West Virginia*, the challenged Clean Power Plan was adopted to address greenhouse gas

emissions that contribute to climate change, 597 U.S. at 711—an issue that, like tariffs, implicates U.S. "foreign policy" and greatly affects our ability to "work with other countries and partners," *see* Exec. Order No. 14,008, 86 Fed. Reg. 7619, 7619 (Feb. 1, 2021); *see also id.* at 7619–21. In none of these cases did the challenged policy's global importance, the relevant statute's foreign reach, or the government's emergency invocation prevent the Court from applying the major questions doctrine.

There is no sound basis, then, for exempting the President's exercise of congressionally delegated tariff authority from the same searching inquiry.

C. Creating carveouts will repeat the errors that led the Court to eliminate *Chevron* deference.

Introducing carveouts to the major questions doctrine also risks collapsing the doctrine under its own weight, much like what happened to the *Chevron* doctrine. Last year, this Court lamented that it had "impos[ed] one limitation on *Chevron* after another," resulting in a "byzantine set of preconditions and exceptions" that led lower courts to apply the doctrine inconsistently, incompletely, or sometimes not at all. *Loper Bright*, 603 U.S. at 404–06; *see also id.* at 409 (describing the *Chevron* inquiry as a "dizzying breakdance"). Creating carveouts to the major questions doctrine risks this same fate: If the Court creates "one limitation" here, "another" is bound to develop in a future case. *See id.* at 404. "[T]he basic nature and meaning of a statute does not change when an agency happens to be involved," *id.* at 408—nor should it just because the President is the

one interpreting the statute, or because foreign affairs are involved.

A foreign affairs carveout in particular would cause the same "unworkability" issues that plagued the *Chevron* doctrine. *See id.* at 409. As illustrated above, the line between foreign and domestic concerns is thin and courts may not be well-positioned to discern it. *See* Timothy Meyer & Ganesh Sitaraman, *The National Security Consequences of the Major Questions Doctrine*, 122 Mich. L. Rev. 55, 83–85 (2023). Creating a foreign affairs carveout could also create perverse incentives for the Executive Branch to pursue domestic policy goals through statutes that ostensibly concern foreign affairs, thus evading review under the major questions doctrine. *Id.* at 85. Here, for instance, the President's stated goals in adopting the challenged tariffs are to "rectify America's country-killing trade deficits," reinvigorate American manufacturing, and raise "massive sums of money." Gov't Br. 2–6 (citation omitted). Categorically removing any actions taken under IEEPA from major questions review would broadly permit the President to use that authority and others to pursue expansive domestic policy goals.

Given the inconsistency that has already arisen in applying the major questions doctrine, the Court should take the opportunity to clarify the doctrine, not complicate it further.

CONCLUSION

This case offers the ideal opportunity to clarify the major questions doctrine. That doctrine is reserved for

extraordinary cases. Because the challenged tariffs are unheralded, transformative, and of vast economic and political significance, this is such a case.

October 23, 2025 Respectfully submitted,

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